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DEATH DUTIES: AN INTERESTING TRANSACTION BETWEEN FATHER AND SON.

IN *Hammond* v. *Commissioner of Inland Revenue*, recently decided by Mr Justice Turner, the documents showing the transaction between the deceased and his son had been prepared with an admitted purpose of obviating any question of gift.

It was admitted on the Commissioner's behalf that, if the documents had at any stage been assessed for gift duty or for more conveyance duty than had actually been paid, no duty would have been payable. He lost no revenue. Moreover, the Commissioner wished it to be made clear that no party to the transaction had failed in any statutory duty towards him, and there was no question of any party having made himself liable for any penalty.

All the Commissioner sought was the Court's decision on the true legal relation between the parties, to guide him in determining whether or not a sum should be allowed as a debt due by the deceased to his son at the time of the deceased's death.

This matter came before the Court as a Case Stated for its opinion pursuant to s. 62 of the Death Duties Act 1921.

In 1951, one Sydney Ernest Hammond (hereinafter called "the deceased") was the registered proprietor of the land described in the Case Stated, lots 2 and 3 of which adjoined the family home. He and a son were builders, the son being the employer and the father his employee. It was agreed between them that the son should be permitted to erect a workshop on lot 3 of his father's property. The deceased promised that he would give the section (of only a very small value) to the son, and execute a transfer putting the title into his name. The son accordingly built upon lot 3 a workshop of the value of £804 14s. 7d.

On taking legal advice about the transfer, father and son were informed that lot 3 had no legal frontage, and could not be transferred unless other adjoining land were also included in the transfer. Lot 2, suitable in other respects, had a house upon it. The Government valuation of lot 2 was £2,000; and the valuation of lot 3 before the erection of the workshop was £60. There was some suggestion by the deceased that he should transfer both lots by way of gift, but the son thought that this would give him an unfair advantage over other members of the family, and said that he preferred to purchase lot 2 at a fair value.

It was arranged that the son should purchase lots 2 and 3 from his father at the price of £2,060.

At this stage, the father's solicitors pointed out that the Assistant Commissioner of Stamp Duties might possibly raise some difficulty, if (as appeared likely) a new Government valuation of lots 2 and 3 were required, and this showed (taking account of the workshop now erected) that the value was some £2,860; and that the transfer was therefore, on the face of matters, given for an inadequate consideration. Rightly or wrongly, (and it may conceded that it was a transaction about which opinions could differ), the solicitors advised that the most prudent course was to prepare and register a transfer showing a consideration of £2,860, together with a mortgage back, whereby the son gave security to his father over both lots for repayment of the whole sum of £2,860. These documents were prepared, executed, stamped, and registered. Registration was completed in April, 1953.

Following on the registration of the documents, the son paid interest to his father, but he paid interest, and his father accepted interest, as on £2,060 only. The father died on June 18, 1954, and probate of his will was granted to the appellant in this case. Some time before his death, father and son had had some discussion about writing off, without actual payment, the sum of £800 (which it will be remembered had been included in the original purchase price only to avoid duty complications), and some documents had been prepared by which the sum secured by the mortgage was to be formally reduced by £800, the transaction being shown for duty purposes in the form of a gift from father to son. These documents, although prepared, were never signed by the parties, since the father's death took place before the transaction was ready for completion.

On the death of the father, his administrator, the appellant, included in his dutiable estate the mortgage from the deceased's son at its full value of £2,860 and added interest outstanding at date of death on £2,060 only, 10s. 6d.: he then claimed an allowance of £800 against this amount in respect of the claim of the son for his expenditure in erecting the workshop. It was common ground that this amount was exactly computed at £804 14s. 7d. The respondent Commissioner refused to make the allowance claimed, and added as well a further sum of £36 5s. 11d., representing the interest on £800 during the currency of the mortgage up to the date of the death of the deceased, which amount, it will be remembered, had been remitted in life by the father.

After Turner J. had heard argument, it appeared to him that the questions necessary for his decision were three in number :

(*a*) What immediately before registration of the transfer and mortgage was the true position as between father and son ?

(*b*) Was this position changed by the execution and registration of the transfer and mortgage ?

(*c*) If the position between son and executor is now other than appears on the face of the mortgage, is the executor still precluded by any rule of law from setting up the real position as against the respondent Commissioner ?

Considering the first question, His Honour said that he was not left in the position of being asked to decide a question as between the son and his father's executor without hearing those parties : for they were agreed that, whatever the result of the present dispute with the Commissioner, as between themselves the son's claim to a discount of £800 had to be recognized. His Honour said that he would not allow himself to be influenced in his decision by that fact ; but it made it possible for him to set out his views on the first and second points immediately. If the parties had been at issue over the matter, it might have been necessary to ask them to resolve the dispute between themselves before the liability of the estate for duty could receive full consideration. He continued :

> I am relieved, as matters stand, from hearing these parties *inter se* and, assisted by the lucid and cogent argument presented by Mr Wacher, I come without hesitation to the conclusion that on the agreed facts, on the authority of *In re Whitehead, Whitehead* v. *Whitehead*, [1948] N.Z.L.R. 1066 ; [1948] G.L.R. 365, the son had immediately before registration of the transfer and mortgage an enforceable claim against the estate of the deceased for the sum of £804 14s. 7d. It may be of importance to understand the exact nature of this claim ; and it will therefore be of interest to cite verbatim the relevant passage from the judgment of Sir Humphrey O'Leary C.J., delivering the judgment of the Court of Appeal in that case :
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> > " The conclusion arrived at by the learned Judge is that, neither by reason of the words and conduct of the testator nor by reason of work done or money expended did the appellant acquire an equitable estate or interest in the cottage on the land. We are unable to agree with this. There was something which he might acquire which, on the facts, we think he did acquire—namely, *an equitable charge or lien to be reimbursed the value* of the labour and materials expended on the building and property. His Honour appears to have thought that nothing short of the acquisition of a transferable estate or interest in the land would give the appellant any claim. The authorities, in our opinion, are clear that *he is entitled to reimbursement* where the owner of the land with full knowledge had not only stood by, as we find he did, but encouraged the appellant to make expenditure in the expectation that the cottage on the land available was his " (*ibid.*, 1072 ; 367).
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> It appears from this passage that, in *In re Whitehead*, the appellant was entitled to : (*a*) reimbursement ; and (*b*) an equitable charge or lien on the land for the amount in respect of which he was entitled to reimbursement. I think that the same position resulted in the present case ; and that, before registration of the transfer, the son had similar rights as against his father.

The conclusion which His Honour thus expressed did not form the subject of any submissions in opposition from counsel for the Commissioner.

The learned Judge then proceeded to decide whether this claim for £804 14s. 7d. survived (as between the parties) the execution and registration of the transfer and mortgage. It was submitted for the Commissioner that the doctrine of merger operated to destroy the son's claim as from the date of registration. Alternatively, he submitted that, as a matter of evidence, it was impossible after registration for the son to lead evidence which could have the effect of varying by parol agreement the provisions of the mortgage from son to father.

His Honour considered that those two submissions appeared to be closely inter-related, and it might be that, in this case, they were simply statements of the same submission from different points of view. He went on to say :

> I was referred, on the question of merger of estates, to s. 11 of the Property Law Act 1908 (now s. 30 of the Property Law Act 1952), and to *13 Halsbury's Laws of England*, 2nd Ed., 184, for the proposition that questions of merger are to be decided according to the rules of equity, and, therefore, in accordance with the intention of the parties. I do not think I am assisted by these principles, for in so far as the rights of son against father in this case take effect as a charge on the land, I think that it must be taken to have been the intention of the parties that such a charge should disappear and merge in the transfer. This result appears to follow from the rule set out in *13 Halsbury's Laws of England*, 2nd Ed., p. 185, para. 172 :
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> > " . . . when the ownership in fee simple of the land and the absolute ownership of the charge become vested in the same person, and there is no special reason for keeping the charge alive, the presumption is in favour of merger ; the title is simplified by the charge being extinguished, and its continued existence is useless to the owner."
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> I do not find in the evidence any reason for the continued existence of the charge on the land which the son had before the transfer, and I find nothing in the conduct of the parties to lead me to the conclusion that it was ever contemplated that this charge should not be extinguished—rather does the giving and taking of a transfer in this case lead me to the contrary conclusion.
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> But the rights of the son against the father need not be regarded exclusively as a charge on the land. In *In re Whitehead*, it will be remembered, the appellant was found to be " entitled to be reimbursed ", and it is clear from *Plimmer* v. *Wellington City Corporation*, (1884) N.Z.P.C.C. 250, that the rights of a claimant in equity may assume widely different forms : " In fact, the Court must look at the circumstances in each case to decide in what way the equity can be satisfied " (*ibid.*, 260).

In so far in the present case as the rights of the son before the registration of the transfer were to be regarded as a right to be reimbursed, a further question now arises. This, His Honour said, could be regarded as one of merger or one of extrinsic evidence. He added :

> If two persons enter into a simple contract, either orally or in writing, and subsequently embody the same contract in a deed, the simple contract will be extinguished and their rights will depend upon the deed : *Leggott* v. *Barrett*, (1880) 15 Ch.D. 306 (per James L.J., at p. 309, and Brett L.J., at p. 311). The legal doctrine of merger is effectual in such a case to merge the former contract in the latter : but the question must always remain to be decided whether it was the intention of the parties that the deed should embody the whole contract or whether there remained outstanding some collateral obligation as between them.

The learned Judge then cited the words of Bowen L.J. in *Clarke* v. *Ramuz*, [1891] 2 Q.B. 456, 461 :

> It is true that the execution of the conveyance puts an end to all contractual obligations which are intended to be satisfied by the execution of the conveyance. But that doctrine does not apply to cases where the contractual obligation is of such a kind that it cannot be supposed to have been the intention that it should be extinguished by the conveyance.

Mr Justice Turner then said that, even in cases where there exists a contract purporting to be fully

expressed in writing, and in fact required by law to be in writing, proof may yet be given of a contemporaneous oral agreement not inconsistent with the document which forms part of the consideration for the main contract: *Phipson on Evidence*, 9th Ed., 603; *Heilbut Symons and Co.* v. *Buckleton*, [1913] A.C. 30, 47. Extrinsic evidence may also be given to show the true nature of the transaction, even though such evidence may vary or add to the written contract: *Phipson on Evidence*, 9th Ed., 604; *Barton* v. *Bank of New South Wales*, (1890) 15 App. Cas. 379, 380. He continued:

> I have readily come to the conclusion that in the present case I may consider dehors the documents any available evidence which will inform me either of the true nature of this transaction or of any collateral contemporaneous agreement, not inconsistent with the documents, which forms part of the arrangement between the parties.

Once regard is had to extrinsic evidence, it appeared to His Honour that the Court must accept it as proved in the present case that, notwithstanding the form of the documents, the intention of the parties was that the right of the son to receive credit for his investment should be preserved. The affidavit of the son (which both parties agreed should be accepted as evidence of the truth of its contents) shows in terms:

> "The agreement between my father and myself always was that the property should be bought as it was before the workshop was put on, and I have never surrendered, nor did my father ever dispute, my right to have the mortgage reduced by £800."

The learned Judge proceeded to say:

> This evidence is, of course, positively corroborated in the present case by the undisputed fact that the parties just before the death of deceased were arranging for a formal reduction of the mortgage by £800 without payment. Mr McLeod, for the Commissioner, persuasively argued that the fact that this reduction was to have been effected by way of formal gift would lead the Court to the conclusion that the reality of the transaction corresponded in this case to its form. He invited me to conclude that this was a transaction in which the parties had later thought better of their original contract—a situation in which they will have no assistance from the Court: see *Liquidation Estates Purchase Co.* v. *Willoughby*, [1896] 1 Ch. 726, per Lindley and A. L. Smith L.JJ., at pp. 734, 735. I do not come to the conclusion suggested by Mr McLeod; and I remind myself of the significant fact that the father throughout accepted interest on the lesser sum of £2,060, which he evidently regarded as all that was due to him. Notwithstanding that the onus lies heavily upon him who sets out to prove that the written contract does not disclose the essence of the transaction (*Barton* v. *Bank of New South Wales*, (1890) 15 App. Cas. 379, 381) and that such collateral contracts as I have mentioned are always "viewed with suspicion by the law": (per Lord Moulton in *Heilbut Symons and Co.* v. *Buckleton*, [1913] A.C. 30, 47), in this case I have no difficulty in finding the onus discharged. I therefore find as a fact that the parties agreed as an oral agreement collateral to the mortgage that the son should receive credit for £800 thereunder in respect of the workshop which he had erected; it appears that the parties agreed to this sum in substitution for the more-exactly computed figure of £804 14s. 7d.
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> I find, moreover, that the true nature of the transaction was that the mortgage should, in truth, secure only the net sum of £2,060, the documents being drawn in their actual form for a specific reason known and accepted by both parties—namely, the advice they had received as to a possible gift-duty assessment. The suspicion with which the Court will look upon extrinsic evidence will be, and it is in this case, much lessened when the disclosure of the reason for the form of the documents makes the course actually followed a natural and reasonable one, cf. the remarks of Lord Moulton in *Heilbut Symons and Co., Ltd.* v. *Buckleton*, cited above.

One point remained still to be considered under this head: the submission that the effect of the extrinsic evidence would be to introduce a condition inconsistent with or contradictory of the main contract. It was contended in this regard that it was not competent, after a mortgage for £2,000 was duly proved, for one of the parties to lead evidence which had the effect of reducing the principal sum to £1,200. His Honour agreed that the extrinsic evidence rule enunciated in *Heilbut Symons and Co.'s* case must be applied with some caution: see the judgment of the Privy Council in *Lysnar* v. *National Bank of New Zealand, Ltd.*, [1935] N.Z.L.R. 129, 140:

> "But though the rule is established it is subject at least to one definite limitation; though the collateral contract must inevitably, it seems, add to the written contract, it must not vary it in the sense of being inconsistent with or contradictory of the written contract to which it is collateral."

In *New London Credit Syndicate, Ltd.* v. *Neale*, [1898] 2 Q.B. 487, a case which their Lordships immediately afterwards proceeded to mention, evidence of a contemporaneous oral agreement to renew a bill of exchange was rejected by the Court on the ground that it would contradict the term of the bill whereby it was payable in three months. A. L. Smith L.J., at p. 490, said:

> This document was signed and handed over as a bill of exchange, but there was an oral agreement that at maturity it should be renewed if the defendant required it. In other words, although the written document states that the bill is to be met upon a day certain, the parol evidence is that it is not to be then met. Nothing is more clearly settled than that evidence of such an agreement is not admissible.

His Honour proceeded:

> I agree that it is difficult to draw the line between cases where the parties simply execute a mortgage for £2,000, agreeing orally that only £1,200 is to be payable (which would seem to me to approximate to the *New London Credit Syndicate* case), and cases where the parties execute such a mortgage, but agree that a claim which the mortgagor has already outstanding against the mortgagee shall survive and be available as a credit against the sum advanced: but there does seem to me to be a distinction. "The line between what is contradictory of and what is merely supplemental to the written instrument may not be easy in all cases to draw", said their Lordships in *Lysnar* v. *National Bank of New Zealand, Ltd.*, [1935] N.Z.L.R. 129, 140; in the present case, I am prepared to decide that a sufficient distinction appears.

As between the parties then, His Honour concluded that the position must be that the son was still entitled as against the father's estate to credit for £800 against the amount due under the mortgage.

At this stage of a somewhat different set of facts, Mr Justice Turner said that he might still have had to consider a possible third submission from the Commissioner—namely, that the parties were estopped, as against him, from setting up this position in the face of the documents which they had presented to the Revenue authorities for assessment for duty. In a case based upon different facts, His Honour could well imagine that this submission might be the subject of interesting argument: but, in this case, Mr McLeod for the Commissioner had expressly said that his instructions were not to pursue it, for the Commissioner was content to make the assessment on the true legal position as between the parties. The learned Judge concluded:

> This attitude must be regarded as correct when it is realized that in the present case the Commissioner lost no revenue at any stage by reason of the form in which the transactions were presented to him. I particularly asked Mr McLeod whether, if the documents had been prepared so as to show the position as it is now put forward, they could have been assessed at any stage for gift duty or for more conveyance duty than was actually paid. The answer was:

"No". In answer to a further question, Mr McLeod said that the Commissioner wished it to be made clear that no party to these transactions had failed in any statutory duty to him, nor was there any question of any person having made himself liable for any penalty. It is therefore apparent that the Commissioner has lost no revenue through the form in which the documents were presented and, in these circumstances, it might indeed have been difficult to set up an estoppel, since no detriment could be shown. I am relieved, however, by the Commissioner's attitude, from considering any question of estoppel in this case. The matter will be determined on the basis of the true position as between the parties as at the date of death. I have already held that at this date the son had a good claim against his father for £800.

The questions asked in the Case, therefore, were answered as follows:

1. The sum of £36 5s. 11d. (outstanding interest) was not correctly included in computing the final balance of the estate.

2. In the computation of the final balance, the appellant was entitled to an allowance of £800.

SUMMARY OF RECENT LAW.

BUILDING CONTRACT.

Contracts to Sell Land and Erect Dwelling House. *221 Law Times*, 188.

Time for Completion of Building Contracts. *100 Solicitors' Journal*, 275.

CHARITABLE TRUST.

How Schemes for Alteration to be Made. *100 Solicitors' Journal*, 238.

COMPANY LAW.

Directors and Pension Schemes. *221 Law Times*, 161.

The Unpaid Creditor of a Company. *100 Solicitors' Journal*, 272.

CRIMINAL LAW.

Costs against the Prosecution. *100 Solicitor's Journal*, 255.

Trial—Judge's Direction to Jury—Nature of Defence which Judge is bound to put to Jury—General Requirements of Summing-up—Test of Adequacy—Function of Court of Appeal when reviewing Summing-up. The defence which a Judge is bound to put to the jury is a specific defence, which, if established, would operate to nullify the effect of the evidence of the Crown, e.g., accident, mistake, self-defence, colour of right, consent, provocation, drunkenness, or some like explanation consistent with innocence. There is no rule of law requiring a Judge in summing up to advert to every contention raised by the accused, or to traverse seriatim all the arguments presented on his behalf. It is sufficient if it can be said that the summing-up was fair and adequate, bearing in mind that it is impossible for any Judge to traverse all the details of a complicated case. He performs his duty in summing up if he directs the jury's attention sufficiently to the issues it has to decide. (This statement of principle was confirmed by the Court of Appeal (Gresson, F. B. Adams, and McGregor JJ.) in *R.* v. *Anghelachis*, unreported, April 27, 1956.) (*R.* v. *Immer*, *R.* v. *Davis*, (1917) 13 Cr. App. R. 22, followed. *R.* v. *Anderson*, [1951] N.Z.L.R. 615; [1951] G.L.R. 237, approved (and preferred to *R.* v. *Campbell*, [1954] N.Z.L.R. 22). *R.* v. *Radich*, [1952] N.Z.L.R. 193; [1952] G.L.R. 199, referred to.) It is not the function of the Court of Appeal to consider whether this or that phrase was the best which might have been chosen by the Judge in his summing-up, or whether more or less stress should have been put on particular parts of the evidence. Its function is to determine broadly and generally whether in the summing-up the case was fairly put before the jury; and, if the summing-up has done that, and all relevant issues have been left for decision by the jury, no objection can be taken to it. (*R.* v. *Immer*, *R.* v. *Davis*, (1917) 13 Cr. App. R. 22, followed.) *The Queen* v. *Raymond*, (C.A. Wellington. April 24, 1956. Gresson J. F. B. Adams J. Shorland J.)

DIVORCE AND MATRIMONIAL CAUSES.

Alimony—Pendente lite—Adultery of Wife—Wife's Petition for Judicial Separation—Plea of Conduct conducing and Condonation—Court's Power to order. In connection with her petition for judicial separation on the ground of her husband's cruelty, the wife filed a discretion statement and affidavits in which she admitted acts of adultery but alleged that they had been conduced to by the cruel conduct of the husband complained of in the petition and/or had been condoned. The wife applied for alimony pendente lite under s. 20 (1) of the Matrimonial Causes Act 1950. *Held*, the Court had power to make an order for alimony pendente lite notwithstanding the wife's adultery; in considering an application for such an order the Court should take into account all relevant circumstances, including the adultery, the conduct of the parties and any plea of conduct conducing or condonation. (*Welton* v. *Welton*, [1927] P. 162, applied.) Appeal dismissed. *Waller* v. *Waller*. [1956] 2 All E.R. 234 (C.A.)

Conduct conducing—Adultery of Husband—Wife's Improper but not Adulterous Association with Another Man—Ignorance of Husband—Wife's Conduct not conducing to Husband's Adultery. The parties were married in 1953. In March, 1955, the wife, who had been told by the husband that she could go out on her own, began to go out with one M. She did not disclose this fact to the husband, but he noticed a change in her attitude, that she was no longer interested in him and that as regards sexual intercourse she had become cold. The husband sometimes asked the wife with whom she had been out; but he attributed her sexual coldness to her fear of childbirth and took precautions against conception. In August, 1955, the husband committed adultery with a Mrs A. on two occasions. The husband confessed this adultery to the wife who then told him of her association with M., though she denied that she had committed adultery with him. The wife made a complaint to the Justices under the Matrimonial Causes Act 1937, s. 11 (1), alleging that the husband had committed adultery and applied for an order under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1949. The husband by way of defence alleged that she had by her misconduct conduced to his adultery and that by s. 11 (3) she was not entitled to an order. The Justices dismissed the complaint. On appeal by the wife, *Held*, the wife's association with M. was improper and constituted misconduct to the husband, notwithstanding his ignorance of it and that association was the cause of her change in attitude to the husband; but, although misconduct which fell short of adultery could amount to conduct conducing, yet whether it did so amount was a question of degree and in the present case, even assuming that the husband suspected more than he knew and was affected by what he suspected, the wife's misconduct did not in law amount to conduct conducing to his adultery, and she was, therefore, entitled to an order. (*Cox* v. *Cox*, (1893) 70 L.T. 200, distinguished.) Appeal Allowed. *Brown* v. *Brown*. [1956] 2 All E.R. 1 (P.D.A.)

Custody and Maintenance: Jurisdiction. *106 Law Journal*, 115.

For Life or Joint Lives? (Maintenance). *100 Solicitors' Journal*, 269.

Separation Order as Ground for Divorce—Separation Order to be "in full force and effect"—Separation during Statutory Period required to be Complete and Uninterrupted by Even One Act of Sexual Intercourse—Intention of Parties irrelevant—"Full force and effect"—Divorce and Matrimonial Causes Act 1928, s. 10 (j). To entitle a petitioner to a decree on the ground provided by s. 10 (*j*) of the Divorce and Matrimonial Causes Act 1928 (that the petitioner and respondent are parties to a separation order which "is in full force and has been in full force for not less than three years"), the separation must be complete for the statutory period and not interrupted by even one act of sexual intercourse. Section 10 (*j*) thus imposes a more exacting

LEGAL ANNOUNCEMENTS.

Continued from page i.

Mr L. G. H. ARNOLD announces that consequent on the retirement from practice of his late partner, Mr D. H. Hall, he will as from the 1st day of July, 1956, continue to practise as a Barrister and Solicitor on his own account at his present address, Miriama Street, Taumarunui. LLOYD ARNOLD

test than would be applied by a Court of law faced with the duty of deciding whether the conduct of the parties had been such to destroy an agreement for separation for all purposes. (*Bennett* v. *Bennett*, [1936] N.Z.L.R. 872; [1936] G.L.R. 624, considered and applied. *Hope* v. *Hope*, [1954] N.Z.L.R. 157, and *Kelman* v. *Kelman*, [1956] N.Z.L.R. 74, referred to.) Distinction drawn between petitions founded on desertion under s. 10 (*b*). where the intentions of the parties are all-important, and petitions founded on an order for separation under s. 10 (*j*), where the intentions of the parties are irrelevant. (*Perry* v. *Perry*, [1952] P. 203; [1952] 1 All E.R. 1076; *Bartram* v. *Bartram*, [1950] P. 1; [1949] 2 All E.R. 270; *Stacey* v. *Stacey*, [1955] N.Z.L.R. 335, and *Pugh* v. *Pugh*, [1953] N.Z.L.R. 330, referred to.) *Wilkins* v. *Wilkins*. (S.C. Hamilton. April 18, 1956. North J.)

EVIDENCE.

Some Aspects of Circumstantial Evidence. *106 Law Journal*, 230.

EXECUTORS AND ADMINISTRATORS.

Commorientes Resurgent. *221 Law Times*, 160.

FAMILY PROTECTION.

Children—Testator directing Income from Estate to be paid to His Nine Children until Death of Last Survivor of Them—Income for Period of Twenty Years thereafter to be paid to Issue of Testator's Children per stirpes—Gift of Residuary Capital at End of Twenty-year Period to Issue of Children "who shall then be living who being male shall attain the age of twenty-one years or being female shall attain that age or previously marry"—Four of Testator's Children applying for Further Provision and Order made for Payment to One of Them—Appeal from Such Order lodged—Supreme Court, in other Proceedings, later holding Gift of Residuary Estate Void for Remoteness with Residuary Estate to be disposed of as on Intestacy—On Appeal from Family Protection Order, heard subsequently, Reconsideration by Court of Appeal of Application for Further Relief in Light of Substantially Different Situation—Award of One-ninth Share of Residuary Capital to Each Daughter-applicant. The testator, by his will, after making provision for his widow, who had since died, left his estate so that the income went to his nine children in equal shares until the last survivor of them died, the shares of those dying in the meantime to go to the survivors. He then directed that for a period of twenty years after the death of his last surviving child the income should be paid to the issue per stirpes of his children. At the end of that period, the corpus was to go to "all and every the issue per stirpes of my said children who shall then be living who being male shall attain the age of twenty-one years or being female shall attain that age or previously marry". On an application by four of the testator's children for further provision out of the estate, Gresson J. ordered that £1,250 should be paid to one daughter, but refused to make an order in favour of the other claimants. The four claimants appealed against that order. After the lodging of the appeal, it was held by the Supreme Court on an originating summons for interpretation of the testator's will, that the testator's disposition of the capital of his estate infringed the rule against perpetuities and was void, and such capital fell to be disposed of as on an intestacy (*In re Harding, New Zealand Insurance Co., Ltd.* v. *Milne*, [1956] N.Z.L.R. 482). The result of that judgment was that none of the testator's children could ever receive any of the capital of the testator's estate and their representatives could not do so until twenty years from the death of his last surviving child, the youngest of whom was twenty-three years of age at the death of the testator: the period before distribution might extend to seventy years or more. The appeal from the order of Gresson J. then came before the Court of Appeal. *Held*, 1. That nothing that had been put before the Court of the history or circumstances of the testator's family suggested any sensible reason or useful purpose for such long postponement of receipt of capital, which in all probability must result in dividing the testator's substantial estate into microscopic fragments. 2. That, upon a consideration of the circumstances of each of the four claimants, they were entitled to some personal and present enjoyment of their own shares in the capital of the estate, even to the detriment of those children who might happen to live the longest and of the whole of the issue of the testator's children. 3. That each claimant should be given an equal ninth share in the residue of the estate, thereby restoring the basis of equality established by the testator, as the persons prejudicially affected by the invalidation of the testator's provisions were three of the claimants, and they had established their right to an equal share. 4. That each of the three daughter claimants should be paid the full amount of her one-ninth share, which involved that her family and descendants lost all interest or right to participate further in the estate, and the son claimant, who had not established his claim to a present payment to the same extent, should be allowed one-fourth of his one-ninth share of capital as a present payment, the balance to be held subject to the testator's will as to income. 5. That the shares of the other five children would be held in trust for them, subject to the provisions of the will as to income, until twenty years from the death of the last survivor of the testator's children. *In re Harding (Deceased), Patterson and Another* v. *New Zealand Insurance Co., Ltd.* (C.A. Wellington. April 24, 1956. Barrowclough C.J., Stanton, McGregor JJ.)

LAW PRACTITIONER.

Solicitor—Negligence—Sale of Dwellinghouse—Solicitor acting both for Vendor and for Purchaser—Duty to ascertain Standard Rent—Sale of Land—Solicitor's Duty—Requisitions on Title—Duty to deliver although Inquiries made before Contract. The plaintiff instructed the defendant, a solicitor, to act for him on the plaintiff's purchase of a leasehold dwellinghouse. At the plaintiff's suggestion the vendor instructed the defendant to act also in the matter on his, the vendor's, behalf. The premises were registered with a good leasehold title and were within the Rent Restrictions Acts. The house contained three floors, and was to be sold with vacant possession of the ground floor. The two upper floors were each let at 25s. per week. The defendant noted answers to questions raised on a printed form of "Inquiries before contract", and in reply to a question relating to subsisting tenancies, with particular reference to the Rent Restrictions Acts and to the amount of the statutory and net rents, the defendant noted, on information supplied by the vendor, that the two upper floors were each let at 25s. weekly inclusive of rates. As regards the top floor the defendant noted that 25s. was the rent receivable when the vendor bought the property in 1948 and no increases in rates had been passed on to the tenant. It was further stated that the vendor could give no information of previous lettings. The contract of sale contained a special condition referring to the fact that the two upper floors were each let at rentals of 25s. per week inclusive. When the plaintiff attended to sign his part of the contract, the defendant went through the inquiries and answers and remarked that as there had been increases in rates since 1950 it was possible that the plaintiff could increase the rents. In January, 1954, the sale was completed. In May, 1954, the plaintiff proposed an increase of rent to the tenants of the upper floors. In reply a reduction was demanded and in September, 1954, the standard rents of the upper floors were fixed by the County Court at 15s. each, the recoverable rents with permitted increases being 17s. 6d. per week and 18s. 4d. per week respectively. In consequence the plaintiff had to make repayments of overpaid rents to the tenants. He claimed damages for the defendant's negligence. *Held*, the defendant was liable for negligence because he had accepted the information given by the vendor relating to rents without ascertaining, either by questioning the vendor further or by asking the tenants, what were the standard and recoverable rents of the property, and because he had failed to advise the plaintiff that he could not rely on the rents which were being paid being recoverable rents. (*Hunt* v. *Luck*, [1902] 1 Ch. 428, applied.) *Per Curiam*: Where inquiries before contract have been made, it is still the duty of a purchaser's solicitor to make the appropriate requisitions and inquiries after the formal contract is signed, even if the preliminary inquiries have been so complete that it is only necessary to ask whether the answers thus received are still complete and accurate. *Goody* v. *Baring*. [1956] 2 All E.R. 11 (Ch.D.).

NEGLIGENCE.

Burst and Leaking Pipes. *106 Law Journal*, 148.

Liability of Sub-contractor to Servant of Contractor—Dangerous Scaffolding erected or altered by Sub-contractor—Contractor responsible for Scaffolding—Contributory Negligence. The plaintiff, a foreman bricklayer, was employed by building contractors on the construction of a building designed to contain a lift, which was to be installed by sub-contractors. When the brickwork of the lift shaft was completed A., a lift erector employed by the sub-contractors, went to the site to mark with chalk the positions on the walls of the shaft where holes for the lift runners should be bored. Under the contract between the building contractors and the sub-contractors the former had undertaken to provide the scaffolding for the installation of the lift. Before a working platform in the lift shaft had been provided, however, A., wish-

ing to get on with his work, constructed a temporary platform by placing loose planks across some tubular scaffolding which was already in the shaft. This platform was highly dangerous in that four of the five planks which were used caused "trap ends", as the planks were too short to reach the tubular scaffolding on the right side of the shaft. The foreman in charge of scaffolding, P., passing the platform on his way to the top of the building to lower a ladder into the shaft, noticed the "trap ends" and warned A., who was standing near the platform. Shortly afterwards the plaintiff, who had not heard the warning and had not been warned himself either by P. or by A., approached the entrance to the lift shaft on the first floor in order to receive the ladder which P. intended to lower down the shaft to the platform. The plaintiff stepped on to the platform without looking carefully at the place on which he proposed to stand, one of the boards tipped up and he fell into the well of the shaft and was seriously injured. In an action by the plaintiff against the building contractors and the sub-contractors for damages for negligence and breach of statutory duty under the Building (Safety, Health and Welfare) Regulations 1948, it was contended that the regulations did not apply to the installation of the lift and, on behalf of the sub-contractors, that alternatively the regulations imposed no duty on them in relation to scaffolding; but it was not contended that the platform complied with the requirements of the regulations if they applied to it. *Held*, (i) The work on which the sub-contractors were engaged at the time of the accident, viz., the preparation of the lift shaft for the fixing of the lift runners, formed part of the construction of the building within Reg. 2 (1) of the Building (Safety, Health and Welfare) Regulations 1948, and, therefore, the regulations applied. (*Elms* v. *Foster Wheeler, Ltd.*, [1954] 2 All E.R. 714, applied.) (ii) The sub-contractors were in breach of statutory duty to the plaintiff, viz., of the duty imposed by Reg. 4 of the Building (Safety, Health and Welfare) Regulations 1948, on "every contractor and employer of workmen who erects or alters any scaffold to comply with" the requirements of the regulations regarding scaffolds, since the sub-contractors had, through their employee, A., erected or altered a scaffold. (iii) The building contractors were liable to the plaintiff at common law for the negligence of P. in failing to foresee that some other employee of the contractors might step on to the platform while the ladder was being lowered, and in failing to provide a safe platform before the ladder was lowered. (iv) The sub-contractors were liable to the plaintiff at common law for the negligence of A., who should have foreseen that some person in the position of the plaintiff might step on to the platform unless he was expressly warned not to do so. (*M'Alister* v. *Stevenson*, [1932] A.C. 562, applied.) (v) The plaintiff was guilty of contributory negligence in not looking at the platform before he stepped on to it, and, his share of the responsibility for the accident being assessed at ten per cent., the damages for which the defendants were liable would be reduced accordingly. *Simmons* v. *Bovis, Ltd. and Another.* [1956] 1 All E.R. 736 (Chester Assizes.)

PRACTICE.

Appeals to Court of Appeal—Court bound to follow House of Lords' Decision on Matter of General Principle—One Division of Court bound to follow Decision of House of Lords with which Earlier Decision of Court of Appeal in Conflict. The Court of Appeal of New Zealand is bound to follow a decision of the House of Lords upon a matter of general principle where there is a clear conflict between a decision of the House of Lords and a decision of the Court of Appeal. (*Robins* v. *National Trust Coy., Ltd.*, [1927] A.C. 515, and *In re Rayner, Daniell* v. *Rayner*, [1948] N.Z.L.R. 455 (*sub nom. In re Rayner, Rayner* v. *Daniell*, [1948] G.L.R. 51), followed. *R.* v. *Seaton*, [1933] N.Z.L.R. 548; [1933] G.L.R. 451, and *Piro* v. *W. Foster and Co., Ltd.*, (1943) 68 C.L.R. 313, referred to.) A single Division of the Court of Appeal is equally bound to decline to follow a decision of the Court of Appeal which is in conflict with a subsequent decision of the House of Lords. (*In re Rayner, Daniell* v. *Rayner*, [1948] N.Z.L.R. 455 (*sub nom. In re Rayner, Rayner* v. *Daniell*, [1948] G.L.R. 51), extended and applied.) *Smith* v. *Wellington Woollen Manufacturing Co., Ltd.* (C.A. Wellington. April 24, 1956. Barrowclough C.J., Stanton, McGregor JJ.)

Trial—Action claiming Damages, Mandamus, and Injunction—Such Action to be tried before Judge without a Jury—Judicature Amendment Act (No. 2) 1955, s. 3—Code of Civil Procedure, R. 473. An action in which writs of mandamus and injunction are claimed in addition to damages falls within s. 3 of the Judicature Amendment Act (No. 2) 1955, and must accordingly be tried before a Judge alone, unless an order is made for trial with a jury on the ground that the action or any issue therein can be more conveniently so tried. The plaintiffs in such an action are not entitled to trial by jury as of right by virtue of R. 473 of the Code of Civil Procedure. (*Blackpool Corporation* v. *Starr Estate Co., Ltd.*, [1922] 1 A.C. 27, *Hartmont* v. *Foster*, (1881) 8 Q.B.D. 82; *Seward* v. *The Vera Cruz*, (1884) 10 App. Cas. 59; *Begg and Co.* v. *Naujoks*, (1903) 23 N.Z.L.R. 565; 6 G.L.R. 222, and *Stevens* v. *Collinson*, [1938] N.Z.L.R. 64; [1938] G.L.R. 12, referred to.) *So held* by the Court of Appeal, dismissing an appeal from a judgment of Gresson J., for the reasons given in the several judgments. *Dick and Sauer* v. *Attorney-General and Others* (*No. 2*). (C.A. Wellington. April 16, 1956. Stanton, McGregor, Shorland JJ.)

PRINCIPAL AND SURETY.

Guarantee of Infant's Contract—Infant purchasing Motor-car under Hire-purchase Agreement—Guarantee of Payments thereunder—Infant's Contract "absolutely void"—Action against Guarantor in Respect of Infant's Debt not maintainable—Infants Act 1908, s. 12. The guarantor of an infant's debt under a contract which is void by virtue of s. 12 of the Infants Act 1908 cannot be made liable in an action on the guarantee. (*Coutts and Co.* v. *Browne-Lecky*, [1947] K.B. 104; [1946] 2 All E.R. 207, followed. *Harris* v. *Huntbach*, (1757) 1 Burr. 373; 97 E.R. 355; *Duncomb* v. *Tickridge*, (1648) Aleyn 94; 82 E.R. 933; and *Wauthier* v. *Wilson*, (1912) 28 T.L.R. 239, distinguished.) *Robinson's Motor Vehicles, Ltd.* v. *Graham and Another.* (S.C. Auckland. April 19, 1956. North J.)

PUBLIC REVENUE—DEATH DUTIES (ESTATE DUTY).

Shares in Farming Company—Valuation of Shares—Assets-value Method—Allowable Deductions from Amount ascertained by Assets-value Method—Valuation of Shares to be Subject to Such Deductions. The deceased, the owner of shares in a farming company, in which his holding of shares was sufficient to give him control of the company, died when wool prices and stock prices, although falling from their peaks, were still very high. The Commissioner was of the opinion that, in valuing the shares, the assets-value method of valuation should be applied without any qualifications. The appellant, while accepting the adoption of the assets-value method, contended that, in applying that method, deductions should be made for the costs and expenses of realization or liquidation, for an increase in personal taxes on other income of the person concerned due to a liquidation dividend in excess of the normal values of the shares (which was conceded by the Commissioner as amounting to a little over 3d. per share), and for the risks of realization and reinvestment, and for a margin of profit to the purchaser. The appellant further contended that, after applying the assets-value method, there should be an appropriate deduction from the result arrived at for the low earning-capacity. The parties were agreed that the result of the assets-value method simpliciter was that the value of the shares was £1 16s. *Held*, 1. That, underlying the assets-value method, there is always a notional liquidation, and, in principle, that method is directed to the ascertainment of what would be the net result to the shareholder if liquidation were carried out; and that, consequently, the costs and expenses of liquidation are a proper deduction in applying that method. 2. That, as stock agents' commission is taken into account in arriving at the value of the stock which is taken at the ruling net prices, it should be disallowed. 3. That, as costs and expenses of the liquidation, there should be deducted land agents' commission, legal expenses, liquidator's fees and the cost of advertisement and other disbursements. 4. That, in applying the assets-value method, deductions in respect of risks of realization should be allowed only in cases in which there is a risk of difficulty or delay in realization and of consequential loss. (*Keesing* v. *Commissioner of Stamp Duties*, [1935] G.L.R. 58, referred to.) 5. That there should be no allowance in respect of reinvestment or in respect of a margin of profit to purchasers, or in respect of low earning-capacity. 6. That, on making adjustments in terms of the judgment, the value of the shares was £1 14s. 5d. per share. *New Zealand Insurance Co., Ltd.* v. *Commissioner of Inland Revenue.* (S.C. Wellington. April 12, 1956. Cooke J.)

SALE OF GOODS.

Expected and Scheduled Dates of Voyages. *106 Law Journal*, 211.

Sale by Sample. *100 Solicitors' Journal*, 254.

SAMOA—CRIMINAL LAW.

Evidence—Accomplice—No Provision in Samoan Statute-law relating to Accessories before or after the Fact—All Offences deemed to be Misdemeanours—Common-law Category of Accomplices for Application of Rule as to Evidence of Accomplices not including, in Samoa, Accessories before or after the Fact—Such Rule applicable, in Samoa, only to Persons "committing, procuring or aiding and abetting" Offence charged—Samoa Act 1921, ss. 149, 204, 214, 349—Samoa—Criminal Law—Practice—Trial—Judge with Assessors—Summing-up of Judge in Open Court unnecessary —Where Judge sums up in Open Court for Guidance of Assessors, Summing-up to conform with Rules followed in British Courts for Guidance of Jury—Such Rules including Rule of Law Relating to Warning as to Evidence of Accomplices. At a trial, in accordance with the law of Western Samoa, before a Judge sitting with assessors, a summing-up in open Court is not necessary. (*Latoatama, Folitolu, and Tamaeli* v. *Williams*, [1954] N.Z.L.R. 594, followed.) But where the trial Judge thinks it expedient to sum up, and does in fact sum up in open Court for the guidance of the assessors, the summing-up should conform with the rules which are followed and observed in British Courts of Justice in summing-up for the guidance of a jury, including the rule of law that, when a witness for the prosecution is or may be an accomplice, it is incumbent upon the trial Judge to direct the jury to decide whether in fact such witness is an accomplice, and to tell the jury that, if they find him to be an accomplice, they should pay heed to the warning which ought always to be given in such a case. The issue of *accomplice vel non* is one for the Court—comprising Judge and assessors—and not, as in the case of a trial in New Zealand, for the Judge alone. (*Davies* v. *Director of Public Prosecutions*, [1954] A.C. 378; [1954] 1 All E.R. 507, referred to.) *Semble*, That the rule of law as to evidence of accomplices which was defined in *Davies* v. *Director of Public Prosecutions*, [1954] A.C. 378; [1954] 1 All E.R. 507, is in force in Western Samoa as a common-law rule applicable under s. 349 of the Samoa Act 1921, subject to the necessary modifications hereinafter referred to. The action of P., one of the witnesses for the prosecution, in counselling the accused to dispose of the incriminating weapons, for which the Police were searching, could have been regarded as motivated by a desire to suppress or destroy evidence of the accused's guilt, and, on that footing, under the law of England and of New Zealand, P. might have been held to be an accessory after the fact. (*R.* v. *Levy*, [1912] 1 K.B. 158; 7 Cr. App. R. 61, followed. *R.* v. *Sweeney*, (1905) 7 G.L.R. 529, not followed.) The Samoa Act 1921 contains no provision comparable with s. 92 of the Crimes Act 1908 (N.Z.), and, having regard to the fact that it prescribes its own criminal code and to the provisions of ss. 204 and 351 thereof, it would be inconsistent with the Samoa Act 1921, in view of the qualification in s. 349, to hold, even if it were only in connection with the rule as to the evidence of an accomplice, that P., a witness for the prosecution, could be an accessory after the fact. *Semble*, That, for the purposes of a criminal trial in Western Samoa under the provisions of the Samoa Act 1921, the category of accomplices for the purpose of applying the common-law rule as to evidence of accomplices is confined to persons "committing, procuring or aiding and abetting" the offence charged, and cannot include accessories before or after the fact at common law. By reason of s. 214 of the Samoa Act 1921 (providing that there shall be no distinction between felonies and misdemeanours, and that, for the purpose of any rule of the common law or of any enactment in force in Samoa, all offences are to be deemed to be misdemeanours), P. could be an accomplice only if he were a person, "committing, procuring or aiding and abetting" the offence charged; and, on the evidence, P. could not be held to be a person within that category. To hold that P.'s offence was so intimately connected with the offence charged against the accused that P. should be regarded as an accomplice would be to include within the term "accomplices" a class of persons whom the law has hitherto not regarded as such; and the circumstances of the case did not afford any reason for such an extension. (*Davies* v. *Director of Public Prosecutions*, [1954] A.C. 378; [1954] 1 All E.R. 507, followed.) *In re Moke Ta'ala.* (S.C. Wellington. March 28, 1956. Barrowclough C.J., Gresson J. Stanton J. McGregor J. Shorland J.)

SETTLEMENT.

Variation of Trusts by the Court—Infant interested in Capital contingently on surviving Tenant for Life—Proposed Sale of Reversionary Interest to Tenant for Life—Whether Court could sanction Sale—Inherent Jurisdiction—Trustee Act 1925 (15 & 16 Geo. 5 c. 19), s. 53. Under two settlements trust funds were held, subject to the life interest of F. who was seventy-four years of age, on trusts by which members of a class of whom the infant applicant was one were entitled to the capital contingently on surviving F. and, in the case of the applicant, on attaining twenty-one. By an agreement of sale dated January 9, 1956, it was agreed that, conditionally on the Court's sanctioning the carrying out of the transaction on behalf of the applicant, F. should purchase immediately for cash from the reversioners entitled to the trust funds expectant on her death their respective contingent reversionary interests therein. The applicant, who would be twenty-one on May 19, 1956, had been maintained for the past two years as a student nurse out of other funds and there was no serious suggestion that the agreement of sale was necessary to enable her to be maintained down to the date of her twenty-first birthday. On an application for the sanction of the Court in respect of the proposed purchase of the applicant's reversionary interest either under s. 53 of the Trustee Act 1925, or under the Court's inherent jurisdiction, *Held*, (i) The conditional agreement had not been entered into "with a view to the application of" any capital or income of the applicant for her benefit within s. 53 of the Trustee Act 1925, but merely in order to put an end to the trusts of the settlements, and the Court had, therefore, no jurisdiction under the section to sanction the proposed purchase. (ii) Save where necessary for the maintenance of an infant or in the salvage cases, the Court had no power under its inherent jurisdiction to deal with infants' interests and alter trusts of settlements merely because it would be for the infants' benefit so to do (*Chapman* v. *Chapman*, [1954] 1 All E.R. 798, followed); and accordingly the Court had no inherent jurisdiction in the present case to sanction the proposed purchase. *Re Heyworth's Settlements.* [1956] 2 All E.R. 21 (Ch.D.)

TRADE UNION.

Expulsion—Expulsion by Union, affiliated to Trades Union Congress, pursuant to Award of Disputes Committee—All Members recruited in Certain Areas after a Certain Time to be excluded—Recruitment in Disregard of Principles of Bridlington Agreement—Whether Term implied in Contract of Membership that Union entitled to do Everything Necessary to conform with Bridlington Agreement. Both the defendant union and the T. Union were affiliated members of the Trades Union Congress. In 1939 the Trades Union Congress at Bridlington affirmed and revised certain principles (known as the Bridlington Agreement) with regard to relationship between trades unions for the purpose of avoiding disputes. Neither the rules of the defendant union nor those of the T. Union referred to the Bridlington Agreement. The principles included a principle that no man who was or had recently been a member of any trade union should be accepted into membership of another union without inquiries being made, among which was to be an inquiry whether he had resigned from his former union and was clear on their books; and a further principle was that no member should be allowed to escape his financial obligations by leaving one union while in arrears and joining another. The Bridlington Agreement constituted in effect a morally binding code of conduct between trade unions. It contained nothing about expulsion of members of trade unions from their unions or about what members of trades unions were to do or to abstain from doing. In 1954 a large number of dockers at northern ports wanted to leave the T. Union and to join the defendant union. By the rules of the T. Union a member who was more than thirteen weeks in arrears was deemed to be no longer a member. At the end of March or the beginning of April, 1955, the plaintiff, who was then more than thirteen weeks in arrear with his contributions to the T. Union, was locally accepted at Merseyside into membership of the defendant union on signing its acceptance form, which was filled up in the handwriting of one K., who was the chairman of the Merseyside executive council of the defendant union, and on paying his membership fee, but without, e.g., having been required to be clear on the books of the T. Union. The plaintiff was not at that date aware of the terms of the Bridlington Agreement. In June, 1955, the defendant union and the T. Union appeared before the disputes committee of the Trades Union Congress in reference to the conduct of the defendant union and the Bridlington Agreement, and the committee awarded that the defendant union should exclude from their organization all members recruited since August 17, 1954, at, among other places, Liverpool. The defendant union took steps to inform all such members, including the plaintiff, that they were excluded from membership. The plaintiff having brought an action for a declaration that he was a member of the defendant union and that his purported exclusion was ultra vires, the defendant union contended, among other contentions, that there was an implied term in the plaintiff's contract of membership that the defendant union should have the right to do all such things as should be proper to comply with the Bridlington Agreement, and thus was entitled to exclude the plaintiff from membership pursuant to

the award of the disputes committee. *Held*, No term that the defendant union might exclude the plaintiff from membership in pursuance of the principles embodied in the Bridlington Agreement was implied in the plaintiff's contract of membership with the defendant union because (a) the plaintiff did not know of the Bridlington Agreement when he became a member of the defendant union, (b) the Bridlington Agreement contained no rules about what a member of a trade union should do or should abstain from doing, and (c) contained no power of expulsion; accordingly the purported exclusion of the plaintiff from membership of the defendant union was ultra vires and void. (Dicta of MacKinnon L.J. in *Shirlaw* v. *Southern Foundries (1926), Ltd.*, [1939] 2 All E.R. 113, 124, applied.) *Spring* v. *National Amalgamated Stevedores and Dockers Society.* [1956] 2 All E.R. 221 (Lan. Ch. Ct.)

TRANSPORT.

Offences—Driving or attempting to Drive, or Incapable of Having Proper Control of Vehicle while "under the influence of drink"—Nature of Offences—Evidence or Inferences from Evidence on which Court can convict—Transport Act 1949, ss. 40, 40A—Transport Amendment Act 1953, ss. 7, 8 (1). The words "while under the influence of drink or a drug to such an extent as to be incapable of having proper control of the vehicle" in s. 40 of the Transport Act 1949 (the "driving and attempting to drive" section), and, with an immaterial variation, in s. 40A (the "in charge" section), must be construed in the same way in each place in which they appear. In charges under these sections, even though the person concerned has not driven at all, the Court is entitled to hold on sufficient evidence that he is under the influence of drink to such an extent as to be incapable of having proper control of the vehicle, although there is no evidence of lack of control while driving. Consequently, in respect of a charge under s. 40A the Court may be satisfied beyond reasonable doubt that the person charged was so much under the influence of drink as to be incapable of exercising proper control upon inferences drawn from evidence which may possibly not include any actual act of driving by him; or, on the other hand, the Court may be so satisfied notwithstanding evidence of acts of driving which appear compatible with his being capable of driving his vehicle on a straight course. (*Pulleine* v. *Button*, [1948] S.A.S.R. 1, applied.) *Harford* v. *Twentyman.* (S.C. Wellington. April 26, 1956. Cooke J.)

TRUSTS AND TRUSTEES.

Administrator or Trustee—Which? *221 Law Times*, 162.

Since *Chapman* v. *Chapman.* *106 Law Journal*, 228.

Variation of Trusts by the Court—Administrative Power—Sale of Reversionary Interest by Trustees—No Power of Sale by Trustees until Interest in Possession—Expediency—Sale for Benefit of Estate—Whether Court will sanction Sale—Trustee Act, 1925 (15 and 16 Geo. 5 c. 19), s. 57 (1)—Settlement—Variation of Trusts—Jurisdiction of Court to authorize Transaction not authorized by Settlement—Sale of Reversionary Interest by Trustees—No Power to sell until Interest in Possession—Whether Court will sanction Sale—Trustee Act, 1925 (15 and 16 Geo. 5 c. 19), s. 57 (1). Under the will of his grandfather dated July 25, 1913, and under an appointment made pursuant to powers conferred by the will, the plaintiff was beneficially interested in two-thirds of the residuary estate subject to the life interest of his mother F., who was sixty-five years of age. By a settlement dated January 27, 1948, the plaintiff settled one equal half-share of his reversionary interest on trust that the trustees should sell it but not until it should fall into possession. It was now desired that the trustees of the settlement should sell to F. the half-share of the plaintiff's reversionary interest which was subject to the trusts of the settlement in order to save estate duty which would otherwise be exigible on F.'s death. The value of the half-share after payment of estate duty on F.'s death at the current rate was some £44,333 odd. The price offered by F. was £80,000. The offer was fair also on an actuarial basis. On an application for an order under the Trustee Act 1925, s. 57 (1), that the trustees might be authorized to effect the sale, *Held*, the Court would sanction the transaction under s. 57 (1) of the Act of 1925, since it was for the benefit of the trust, was within the terms of s. 57 and further in no way involved any alteration of the beneficial trusts subsisting under the settlement of January 27, 1948. (*Re Heyworth's Settlements*, *ante*, p. 21, distinguished. *Re Wells*, [1903] 1 Ch. 848, followed.) *Re Cockerell's Settlement Trusts. Cockerell* v. *National Provincial Bank, Ltd. and Another*, [1956] 2 All E.R. 172 (Ch.D.)

VALUATION OF LAND.

Unimproved Value—Condition of Land in Natural State at Time of European Settlement to be ascertained, Subject to Certain Exceptions—Land not "improved" unless Capital Value in Excess of Present-day Value of Land in Its Natural State, and only to the Extent of Such Excess—Value of Clearance of Secondary Growth Scrub not to be in Excess of Amounts allowable for Initial Clearing of Fern—Valuation of Land Act 1951, ss. 9, 19. In this case the objector contended that the duty of the valuer, in assessing the unimproved value of any land, is to ascertain the condition of the land in its natural state at the time of European settlement and determine the value of the land in that state at the date of the valuation. The Valuer-General contended that, where land, which was clear in its natural state, was for a time so neglected that it became covered with scrub and the like and consequently deteriorated in value, then the unimproved value is to be determined by reference to the land in its deteriorated state at the date of valuation; if, by that date, the land has been cleared, that constitutes an improvement to the land and this fact is to be reflected in the value of improvements. In short, the difference between the parties related to unimproved value only: the objector contended that the valuer should determine this as a separate and independent fact, while the Valuer-General submitted that this may not properly be done without regard to the nature of the improvements on it. *Held*, by the Land Valuation Committee, That, subject to certain exceptions which are well recognized or will be recognized if and when they arise and are tested, under the Valuation of Land Act 1951, no parcel of land, irrespective of what may have been done to or erected upon it at any time or the cost of these items, is to be regarded as "improved" unless its capital value for the time being is in excess of the present-day value of the land in its natural state (which state is to be ascertained by reference to the time of first entry upon an assessment roll), and then only to the extent by which the former sum exceeds the latter. (*Cox* v. *Public Trustee*, [1918] N.Z.L.R. 95, [1918] G.L.R. 55, applied.) 2. That the District Valuer was wrong in principle when he reduced the unimproved value of the land on ascertaining that, for a period during its recent history, it had been infested with large patches of manuka and mingi which were not a part of the land in its natural state; and, also, when he raised the value of improvements by including allowances for clearing that growth in excess of amounts that could fairly be allowed in respect of the initial clearing of the land of fern, in so far as the land in its natural state was so affected. 3. That, in any case, the District Valuer should have raised the unimproved value up to the value of the land in its natural state before increasing the value of improvements thereon. *Patangata County* v. *Valuer-General.* (Hawke's Bay Land Valuation Committee. Napier. July 23, 1954. W. A. Harlow S.M. Chairman.)

VENDOR AND PURCHASER.

Sale of Land—Warranty—Sale by Builder of House in Course of Erection—Express Terms as to the Way in Which the House was to be completed—Whether Warranty of Fitness implied. By an agreement in writing a builder agreed to sell to a purchaser a plot of land together with a dwelling-house in course of erection thereon and to complete the building in accordance with a plan and a specification attached to the agreement. According to the plan, the southern wall of the house was to be a nine-inch solid brick wall. The building was completed precisely in accordance with the agreement, with good materials and good workmanship, but, after the house had been conveyed to the purchaser, rain penetrated through part of the southern wall and made one room uninhabitable. The purchaser claimed damages against the builder for breach of an implied warranty that the house should be completed in such a way that it was fit for human habitation. According to the expert evidence on both sides, a nine-inch solid brick wall, in that particular position, would not be completely weather-proof. *Held*, a warranty that the house, when completed, would be fit for human habitation should not be implied, since there was an express contract between the parties as to the way in which the building was to be completed and the provisions of the contract had been exactly complied with; the purchaser's claim, therefore, failed. (Dictum of Romer L.J. in *Perry* v. *Sharon Development Co., Ltd.*, [1937] 4 All E.R. 390, 394, applied.) Appeal allowed. *Lynch* v. *Thorne.* [1956] 1 All E.R. 744 (C.A.)

AT THE PALAIS DE JUSTICE.

A Day in the Paris Courts.

By Henry Muller.*

Our steps led us this week to the Palais de Justice. We arrived there at 11.30 a.m., which is really very early; that is when Thémis is scarcely beginning to wake up in Paris; you understand that only the Police Court is in action. We went to the Police Court. There was a dispute concerning a mechanics' union who were claiming money from their taxi-drivers. The latter were all present; if I got it right, they were all convicted. President Dumont seemed, moreover, kindly and sceptical. These are almost his words: "What can that matter to you, since you will appeal?" And then he began to call out some names, and as in the army, each time a man replied "Present!" Then President Dumont added: "Six hundred francs plus thirty-six thousand." That became rather monotonous after a while, and we left this Court to go to the restaurant in the Palais.

This was half-empty when we arrived; it seems to be reserved especially for unmarried barristers and for those who have not yet become famous; at all events the Beaujolais wine there is amusing. That was what, overcoming our timidity, caused us to enter into conversation with Maître Fabienne Vilmer, a charming young woman whose husband also is a lawyer. Me Fabienne Vilmer, abandoning a cross-word puzzle, was good enough to tell us about the women at the Palais. And this led us quite naturally to speak about fiery Stephen Hecquet, the lawyer who hates his female colleagues in particular and women in general, and who has just given his reasons for so doing in an article entitled: "Must We Drive Women into Slavery?" Me Fabienne Vilmer, in reply to our question, "Are there any pretty women lawyers?", pointed one out to us, Me Suzanne Renaux who, indeed, is charming, but who—if we are not very much mistaken—cannot be of much help to her opponent in Court. Later, we recalled with Me Vilmer memories of President Royer whose record for speed remains to this day unbeaten.

President Royer settled as may as a hundred cases in his afternoon, he listened neither to the accused nor to his lawyer; what amused him was to go on with a high hand—nothing else mattered to him; one day, in his haste, he convicted a witness; another day, and even before he had pronounced judgment, a lawyer, Me de Moro-Giafferi outstripped him in his turn and shouted: "I appeal."

Afternoon in the Courts.

Having finished our meal, we went to the Galerie Marchande, and were able to see for ourselves that the Palais was coming to life for the afternoon. From all directions there appeared black gowns with white bands; these gentlemen were going in every direction or were conversing with their clients or, stopping opposite each other, were already repeating their addresses. In the last instance, the resemblance to two penguins was indeed striking.

We noticed, engrossed in a spirited conversation, our friend Me Savignac, who did not hesitate to tell us that, in order to be a good lawyer, it is necessary and sufficient (1) to know how to park your car when you arrive, (2) to have a good client, (3) to know how to do business. Me Savignac had one very interesting case concerning a property transaction, and he left us.

Later, we learnt that lawyers live mainly nowadays on tenancy and property cases. If that is good business for them, it brings with it little glory and that is why it seems there is an old-established custom of saying in a conversation with one's colleagues: "Just now I am pleading in the first Court," which means, in the first chamber of the Court of Appeal. It doesn't matter in the least whether it is correct, it looks well; as you might say, it corresponds with: "I am going to the Besteigui ball", when talking with society folk, even when one has never been invited to it.

Leautaud and the Vanished Reminiscences.

Later, we had the good fortune to hear Me Maurice Garcon defend Paul Léautaud. It is well known that the author of the *Le Petit Ami* charged the review *La Table Ronde* with having lost typescript pages of his Reminiscences bearing notes in his own handwriting. Paul Léautaud himself even thinks that a shrewd collector has taken them surreptitiously. Me Garcon did not follow his client on the plan of the theft, but merely on that of their disappearance.

Paul Léautaud, having beside him the radio-commentator, Robert Mallet, and his close friend, Jean Denoel, listened without saying a word to the brilliant speech of the Maître. President Colomiez afterwards reserved judgment to December 15. Paul Léautaud was surrounded, when he left, with a swarm of admirers and onlookers. He always dresses in the same way, with his collar à la Joseph Prudhomme; but we were not the only ones to notice that his grey cape has been renewed, as well as his small round hat, and that they are now, both of them, of excellent cut. Even if we were told that the hat was specially made by Gelot, we would not be very surprised. When someone asked Léautaud how his cats were, he was heard to reply: "What business is that of yours?" followed by his famous harsh laugh.

Tenancy Matters.

After that, leaving Léautaud, we intruded into the lawyers' robing-room, which is strictly forbidden. There are set out in named boxes the Maîtres' flat caps; this cap is essential as far as its purchase is concerned, but the wearing of it is optional; besides that, no one, or hardly anyone, puts it on his head. We were told that the robing-room was not a place to go to sleep in, and that often goods were stolen from it; when it is a matter of a black gown, the burglar is also a lawyer, evidently.

It was in the robing-room that we met Me Gabriel Delattre, who kindly introduced us to President Toulouse. Me Delattre led us towards what he calls "The Rents Court". It is a small room crowded with lawyers who push each other so as to succeed in

* From *Jours de France*, "Une Partie de Thémis", Trs. A. M. Presants, M.A.

stating their case to the President. The latter, of thoughtful mien, is seated in an armchair on a small platform and separated—fortunately, for otherwise they would smother him—from the lawyers by a wooden railing. That is where are settled all disputes between tenants and landlords, which turn most often on rents of vacant rooms or on out-of-order water-cisterns. Naturally, the lawyer does not have to make a lengthy address, and you should see the heads of his impatient colleagues, if one of them decides to be long-winded. As for the President, he usually reserves his judgment for a fortnight, so as to get a clearer view of the matter in the quietness of his Chambers.

But fair rents are nothing as compared with provisional orders. There, on the contrary, the President must make an interim decision, subject to revision, but an immediate one. There, also, a swarm of " penguins " surrounds him ; he listens to one as he reads the pleadings, while others show signs of impatience ; that is what is called expeditious justice.

We then went to the outer hall, where clients and lawyers meet, and, usually, beneath the statue of predecessor Berryer who, his hand over his heart, makes an everlasting appeal to the clemency of the Judges. Opposite that statue is the statue erected to the glory of Malesherbes, representing a young woman seated ; a strange peculiarity : this young woman, so as to be more at ease, or not to crumple her coat, has lifted it up, revealing roundness of limbs which have been the admiration of lawyers and Judges since the Palais existed. We likewise were shown, in the outer hall, many famous faces, from President Dejean de la Batie down to Me Arrighi. And, finally, we decided to take a keen interest in a case in the Police Court.

In the Police Court.

The Court was presided over by President Serre, a calm man of unmoved countenance, who reveals a piercing glance from beneath half-closed eyelids. The case was about a scuffle that had occurred fifteen months previously in a café doorway ; the motive had been the theft by a little boy of a bottle of beer. It was fairly warm in the Police Court, and this explained the presence of several people sound asleep, who had come there, without a doubt, because the central heating in their own homes was not the best. There also were seated the litigants, those who had fought together. Just when we entered, a witness of the name of Poirot was being questioned ; a year ago he had given to a Police Superintendent an account of the scuffle just as it had appeared to him ; but it seemed to President Serre that it no longer appeared in the same way to witness Poirot. So he was trying to learn which was the correct version, the earlier one or the later one, and it was not an easy task, for witness Poirot seemed to have a weak memory.

One of the litigants, beside whom we had sat down, was commenting on this in these words repeated in an undertone as a litany : " Confounded liar ! Confounded liar ! Confounded liar ! "

"Well, then," said President Serre, calmly, " you really saw Bouvet strike Pécuchard ? "

" Yes."

" And you saw Pécuchard fall ? "

" Yes."

" And it was just outside the café ? "

" Yes."

" And, finally, you went to another café ? "

" Yes."

" And you saw Bouvet come in ? "

" That's to say, Sir, that I did not see Pécuchard fall."

" What ? But you have just said so and you made that statement to the Police Superintendent."

" That's to say, Sir, that I was in the café. Well then, I saw nothing."

At this moment, the prosecutor rose and handed to the President a Code Napoléon open at the page where are to be found the penalties prescribed for false witnesses. The President read the Article, and the witness understood him to say that he was liable to a penalty of up to two years' imprisonment. That's enough, you understand, to send a shiver down the spine of a man who has a short memory. And, in any case, that would hardly restore the self-confidence of witness Poirot. Fortunately, the members of the Court chose this moment to confer with one another ; and the room was three parts emptied. Filled with compassion for witness Poirot, we followed him towards a café, where, in company with a friend, he went to seek reassurance from a glass of red wine. " You think whether I remember something ! " he said. " That's fifteen months ago ! And then, besides, that evening, I was not certain of not having had too much to drink . . . They do keep picking at you."

When the Court reassembled, poor Poirot was again called to the witness-box. He must have been thinking things over, because he began to declare that he had seen nothing of either Bouvet or Pécuchard, nor seen one hit the other ; then, doubtless thinking of the Article in the Code which punishes false witnesses, he remembered having seen Bouvet, then Pécuchard, then having seen Bouvet strike Pécuchard. With tireless patience, President Serre, assisted by one of his Assessors, tried to make Poirot say that it was just outside a café. Poirot repeated that he was inside the café itself, and that, consequently, he could not have seen Bouvet strike Pécuchard. There we were back at our starting-point, and some folk in the Court were beginning to chuckle. Poirot had unbuttoned his overcoat, and was wiping his forehead ; it was clear that he would have given anything for to-morrow morning to come. Bouvet's lawyer proposed that they should take no account of Poirot's evidence. And, once more, the Court retired to deliberate. The *entr'actes* are evidently very long ones in the Palais de Justice ; but this did not displease Poirot who, still accompanied by his faithful friend, went off to the café, where, most likely, he once again ordered some red wine. This time we did not follow him.

A Rather Intoxicating Perfume.

Evening fell. Thémis was returning to slumber, her day over, and already the outer hall was resuming its deserted appearance of the morning. The " penguins " had resumed their men's attire ; and, in the offices, the dust once more was beginning to settle slowly on the records wherein are written the verdicts. In the Court, before the Palais boulevard, we passed Poirot, now at last set free, but still railing at the cross-questioning of which he had been the victim. " Come and take a glass of red wine," his friend was saying, " that will fix you

up ! But this will teach you to meddle in what doesn't concern you. And then, you must always say that you weren't there, as well ! "

But there must be something intoxicating in Thémis's perfume, for we then went on to a delightful cocktail party given by Princess Guy de Polignac ; dreamily we called her " dear Maître " ; and people began to cast curious glances in our direction when, leaning on the bar and forgetting that we wanted a whisky, we christened the good barman " Monsieur le Président."

WHEN IS A GIFT COMPLETE ?

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

The exact date a gift is complete is often of vital importance. It may arise as to whether previous gifts should be aggregated with the gift in question, thus perhaps affecting the rate of gift duty payable or whether it is dutiable at all having regard to the dates of previous gifts, in any. The question may arise as to death duty payable. Does the subject of the intended gift come under para. (*a*) of s. 5 (1) of the Estate and Gift Duties Act 1955, because it was not complete as at date of deceased's death ? In such a case, the executor or administrator will also be interested for, if the gift was not complete, he will hold the property comprised in the gift in trust in accordance with the terms of the will or the law of intestacy, as the case may be. Again, although it may be clear that the gift was complete as at date of deceased's death, the exact date on which it became complete may nevertheless be most important, for the Revenue authorities may seek to bring the property within s. 5 (1) (*b*), which drags into the death duty net,

> Any property comprised in any gift made by the deceased within three years before his death, and whether before or after the commencement of this Act, unless the gift is exempt from gift duty on the ground that it creates or is in aid of a charitable trust, if the property was situated in New Zealand at the time of the gift.

That was the problem presented to the Court in the unreported case of *Lowry* v. *Commissioner of Stamp Duties*, in 1954, hereinafter discussed in the course of this article.

Again, the property comprised in a gift complete as at date of deceased's death cannot be attacked under the Family Protection Act 1955 or the Law Reform (Testamentary Promises) Act 1949. Since the coming into operation of the Family Protection Act 1955, a *donatio mortis causa* is subject to that Act, but this article deals not with " death-bed " gifts, but with *donationes inter vivos.*

The general rule is that a Court of equity cannot enforce a mere intention to give or to forgive (a debt) : *Chambers* v. *Commissioner of Stamp Duties*, [1943] N.Z.L.R. 504, 528 ; [1943] G.L.R. 330, 340. There is a vast difference in legal consequences between an actual gift and a mere intention to make a gift. This proposition is well illustrated by *Rai* v. *Wilson*, (1915) 17 G.L.R. 589, where it was held that there was no complete gift where a father expressed an intention of giving his son sufficient stock to stock his farm but no specific stock was selected or set aside and no specific number or kind of stock was ever fixed although the son was appointed one of his executors.

In the second edition of my book on the *Law of Death and Gift Duties in New Zealand*, at p. 211, I endeavour to deal, inter alia, with the point as to the exact date a gift of shares in a joint stock company becomes complete :

> *Shares in a Joint-stock Company.*—The general rule is that the gift is complete when a registrable transfer is handed by the donor to the donee or to some other person on the donee's behalf. In *Commissioner of Stamp Duties* v. *Todd*, [1924] N.Z.L.R. 345, [1923] G.L.R. 505, the transfer by way of gift was executed by both the transferor and the intended donee, but it was held that the gift was not complete because the transfer had remained in the hands of the donor's solicitors. But the gift would have been complete if the donor had handed the transfer to the donee together with the scrip for the shares, for then the donee could have acquired the legal ownership of the shares by having the transfer registered in the books of the company. The *ratio decidendi* appears consistent with the Australian case of *Brunker* v. *Perpetual Trustee Co., Ltd.*, (1937) 57 C.L.R. 555. In *Todd's* case the articles of association of the company were the regulations contained in Table " A " of the Companies Act 1908. *If the shares of a company were transferable only by entry in the books of the company, then the principle of* Milroy *v.* Lord, (1862) 4 DeG. F. & J. 264, *would apply, and the gift would not be complete until the necessary entry was made in the books of the company. Commissioner of Stamp Duties* v. *Todd* is discussed by all the Judges in *Scoones* v. *Galvin and Public Trustee*, [1934] N.Z.L.R. 1004 ; [1934] G.L.R. 777. Sir Michael Myers C.J. said : " In order to complete gift there it was necessary to deliver the share certificate together with the transfer of the shares. As we read the judgment, the delivery of the transfer of shares alone would have been insufficient."

My learned friend, Mr R. M. Daniell, of Masterton, has written to me as follows :

> " Should not the sentence ' If the shares of a company were transferable by entry in the books of the company ' etc. in para. 113 on page 211 now disappear ? "

I agree that these words, which I have placed in italics in the passage above cited, should now disappear. *Re Rose*, *Rose* v. *Inland Revenue Commissioners*, [1952] 1 All E.R. 1217 (a decision of the English Court of Appeal) has now altered my previous opinion as to the ratio of the leading case *Milroy* v. *Lord*, (1862) 4 DeG. F. & J. 264 ; 45 E.R. 1185. It would

appear that transfers of shares in companies of the class dealt with in that case, are now subject to the same principles as the Land Transfer cases dealing with imperfect gifts. (Some of these Land Transfer cases are discussed and applied by the Supreme Court in *Lowry's* case *supra*.) As I point out on page 30 of the 1954 supplement to my book on the *Law of Death and Gift Duties in New Zealand*, in *Milroy* v. *Lord* the deed poll executed was not a form of transfer which was apt to procure a transfer of shares in the books of the bank according to its regulations. Thus also a transfer of the legal fee simple in the form of a conveyance under the general law would with one exception (s. 210 of the Land Transfer Act 1952) not be sufficient, even with delivery of the certificate of title to the donee, to constitute a gift of land subject to the Land Transfer Act, for a conveyance, with the one exception above noted, is not registrable under the Land Transfer Act.

A close study of decided cases shows that the question as to whether an intended gift is complete or not, often varies as to the nature of the property involved. That is strikingly illustrated by the leading case of *Macedo* v. *Stroud*, [1922] 2 A.C. 330, where a conveyance of land under the general law passed muster as a complete gift, whereas in similar circumstances an unregistered transfer of land held under Torrens title failed to operate as a gift, the ratio being that, in the former case, the legal estate passed on the execution of the deed of conveyance, whereas, in the latter, registration of the transfer was necessary to transfer the legal estate, and as there was no delivery of the transfer to the donee, the gift was incomplete.

Lowry v. *Commissioner of Stamp Duties*, *supra*, affected New Zealand Inscribed Stock, a species of property which I discuss at p. 215 of my book (op. cit.), sub nom. *Government Loans*. It is submitted that unless specifically made transferable by delivery, e.g., National Savings Bonds, a gift of Government Stock requires to be completed by execution and delivery to the donee or his agent of a transfer in the prescribed form: New Zealand Loans Act 1932, s. 48. Thus, in *In re Wylie*, *Sinclair* v. *Sinclair*, [1948] G.L.R. 165, a deed by which an owner of Liberty Bonds purported to "allocate" them to his grandchildren was held insufficient to constitute a complete gift, nor could the deed be construed as a declaration of trust. (A declaration of trust is the speediest way of making a gift complete *inter partes*, for it operates *instanter* to transfer the property in equity; but it may not in practice be the most effective method, for the legal estate or interest does not pass thereby.)

Lowry's case has not been reported, because in the Court of Appeal the decision was based on a pure question of fact. The writer of this article, however, has found the case most instructive and interesting for it deals with the difficult questions which arise when the same solicitor appears, or claims, to be acting for both intending donor and intended donee (a position often arising in practice) and when the plea of constructive delivery is submitted to the Court.

The relevant facts are set out in the first judgment delivered by Hutchison J. in the Supreme Court.

Thomas Henry Lowry died on September 23, 1944. By two memoranda of transfer, dated September 19, 1941, the deceased assigned and transferred by way of gift £10,000 of New Zealand Government Stock to each of his two sons.

The point is whether these gifts were completed without or within the three-year period referred to in s. 5 (1) (*b*) of the Death Duties Act 1921. Gift duty at 25 per cent. was paid on these gifts, amounting to £4,975; but the estate was a very large one, and, if the property comprised in the gifts comes within s. 5 (1) (*b*), a further like amount would be payable by way of death duty.

The stock that was in fact transferred was Death Duty Stock under s. 40 of the New Zealand Loans Act 1932. The parcels of stock comprised in the transfers were part of a considerable holding of Death Duty Stock registered in the deceased's name and held by the Union Bank of Australia, at Napier. On the day on which the transfers were dated, the deceased gave to his solicitors a letter addressed to the manager of the Bank requesting him to hand to the solicitors "the titles to £20,000 (face value) of New Zealand Government Stock 3¼% stock". This letter was received by the Bank on September 20, 1941. On September 19, too, the deceased completed the necessary gift statements in respect of these gifts and an application for a certificate of title for the balance of his holding of Death Duty Stock. One son executed, as transferee, the transfer to him before September 19. The other son executed the transfer to him after that date, but before September 25.

The solicitors forwarded the transfers on September 25 to the Registrar of Stock, Wellington, for registration; and, on the same day, by direction of the solicitors, the Union Bank of Australia at Napier forwarded to the Registrar the certificate of title to the Death Duty Stock held by the deceased. On September 26, the solicitors lodged with the Assistant Commissioner of Stamp Duties at Napier, under cover of a letter written on September 25, the gift statements that had been signed on September 19.

By letter, dated September 27, the Registrar of Stock informed the solicitors that the stock registered in the deceased's name was Death Duty Stock, and, as such, was not transferable; and that, before the transfers could be registered, it would be necessary for the deceased to complete and return a form of application under s. 57 of the New Zealand Loans Act 1932, which he enclosed.

On October 1, the solicitors forwarded to the Registrar of Stock the form of application duly completed by the deceased for the cancellation of the deceased's Death Duty Stock to the extent of £20,000, and for the issue in exchange therefor of ordinary stock to that extent. Such cancellation and issue in exchange were duly effected; and by two letters, dated October 7, the Registrar of Stock notified the deceased that, failing objection being received within three days, the transfers would be registered. On October 14, 1941, the transfers were duly registered in the Registry of Stock.

It is material to point out that for some little time, at any rate since early August, 1941, the donor was proposing to make a gift of £10,000, from his holdings of Government Stock (of which he held both 4% stock and 3¼% Death Duty Stock), to each of the two sons. Shortly before August 22, 1941, Mr T. H. Lowry had executed transfers of the 4% stock to his sons. *He had, it seems, been vacillating whether he would make the gift of* 4% *stock or of Death Duty Stock at* 3¼%. However, he then signed transfers of 4% stock. But, on August 22, the donor's solicitor received the donor's

instructions by telephone that the stock to be transferred was to be 3¼%: the solicitor then wrote to one of the sons asking him to return the transfer of £10,000 stock, "as the scrip to be transferred to you and Mr J. N. Lowry is to carry interest at 3¼% not 4% as mentioned in the transfer which you hold". On the same date the donor's solicitor wrote to the donor's bankers as follows:

> We inclose New Zealand Government Stock Certificates Nos. 33771 for £5,965 and 40601 for £15,215 as arranged between you and Mr Scannell by telephone this afternoon.
>
> We should, perhaps, mention that Mr T. C. Lowry [one of the sons] called on us on Wednesday afternoon and we asked him if he would then sign the acceptance of a transfer of £10,000 stock. He did not do so but took it with him and we cannot tell what he may have done with it. No use could, however, be made of the transfer without the scrip, and as that has always remained in our possession and is now being returned to you, the transfer of the £10,000 may be ignored. We are writing to him today to return it.

Hutchison J., in the Court of first instance, pointed out that there was a very important underlying question of fact on which depended whether there was at September 19, 1941 (which was more than three years before deceased's death) a constructive delivery of the documents by Mr T. H. Lowry to his sons.

His Honour then briefly reviewed the relevant authorities on constructive delivery as follows:

> "In *Commissioner of Stamps* v. *Todd*, [1924] N.Z.L.R. 345; [1923] G.L.R. 505, it appears to have been common ground that the solicitors acting in the matter were acting as solicitors for the transferor only, and in *Wadsworth* v. *Wadsworth*, [1933] N.Z.L.R. 1336; [1933] G.L.R. 793, it was held that the solicitor's clerk who claimed to have been acting for both parties was not, in fact, doing so but was acting for the donor only.
>
> *Scoones* v. *Galvin and Public Trustee*, [1934] N.Z.L.R. 1004; [1934] G.L.R. 777, and *Kennedy* v. *Tickner*, [1950] N.Z.L.R. 62; [1950] G.L.R. 225, were, however, cases in each of which one solicitor was acting for both parties. In *Scoones* v. *Galvin and Public Trustee* it was held that there was a constructive delivery of the memorandum of transfer but no constructive delivery of the certificate of title, and that the proper inference was that the solicitor held the certificate of title on behalf of the donor, or at the highest, from the defendant's point of view, that he held it for both parties—see the judgment of the majority of the Court (pp. 1018, 1019; 785), of Herdman J. (p. 1021; 786), and of Fair J. (p. 1026; 789). In *Kennedy* v. *Tickner*, I held that there was a constructive delivery of the memorandum of transfer and the lease to the common solicitor as from a date prior to the death of the donor."

To the writer's knowledge, *Kennedy* v. *Tickner* is the only reported case in which the plea of constructive delivery was successful, in convincing the Court that at the crucial date the gift was complete.

In *Scoones* v. *Galvin and Public Trustee* there is one passage in the joint judgment of Sir Michael Myers C.J., Blair and Kennedy JJ. which immediately catches the eye:

> "As a matter of fact, only the one solicitor acted; but we cannot see how the donee can be placed in a better position on that account than if he had been represented by a separate solicitor" (*ibid.*, 1019; 785).

The plea of constructive delivery of the memorandum of transfer did not, however, prevail in a leading Australian case, *Brunker* v. *Perpetual Trustee Co., Ltd.*, (1937) 57 C.L.R. 555, which does not appear so far to have created much interest in New Zealand; there in that case it was held that the question as to whether the certificate of title had been delivered or not to the donee did not necessarily arise; because, as the land was mortgaged, the certificate of title was in the custody of the mortgagee, and the transferee possibly might have been able to procure its production to the Lands Titles Office.

In *Lowry's* case, the Court of Appeal emphatically held that the gifts of the stock had not been completed more than three years before deceased's death; and, therefore, the gifts totalling £19,900 were liable to death duty. It added:

> "This Court, however, is of opinion that the true effect of the evidence is that from the beginning to the end of the transaction the solicitors were acting exclusively for the donor, and that at no time did the relationship of solicitor and client exist between them and the donees in connection therewith. The transaction was in its nature a simple one from the legal point of view, not calling for legal aid in the interests of the donees. In general, the fact of only one solicitor acting in a transaction does not necessarily lead to the inference that he acts for both parties (*Cordery on Solicitors*, 4th Ed., 129)."

The Court of Appeal further held that there was an entire absence of evidence that the solicitors at any time received anything in the nature of instructions from the donee. In the Court's opinion, the action taken by the solicitor when it was found that the transfers as then drawn could not be registered was inconsistent with a view that he was also acting for the donees. The question was not referred to the donees: on the contrary, the matter was at once put to the donor for him to sign the formal application under s. 57 of the New Zealand Loans Act 1932 for ordinary stock to be issued in exchange for the Death Duty Stock, the subject of the gifts. This particular incident was consistent with what took place throughout the whole transaction—namely, that the solicitors looked to the donor alone for their instructions.

In considering the issues involved in *Lowry's* case, the provisions of ss. 48 and 57 of the New Zealand Loans Act 1932 (now the New Zealand Loans Act 1953) should be studied.

Section 48 provided that the registered holder of any stock under Part IV of the Act might by memorandum of transfer in the prescribed form, transfer to any other person the whole of such stock or any portion thereof, etc.; it further provided that on application to the Registrar, either by the registered holder or by the transferee, and on production to him of a duly executed memorandum of transfer the Registrar should enter in the Register the name of the transferee as the registered holder of the stock; and it further provided that every such entry should operate as a transfer of the stock to which it related and should vest that stock in the transferee. It is clear, therefore, that until registration of a transfer in the prescribed form, the legal ownership of the stock does not pass to the transferee.

Section 57 provided that the Minister might *on application in the prescribed form by the holder of the securities*, etc., cancel such securities, and issue in

exchange therefor securities of an equal value under that Act, whether or not the securities to be issued in exchange were of the same class as the existing securities.

Section 40 contained special provisions as to Death Duty Stock : one provision thereof was that no transfer of stock issued under that section should be registered in respect thereof during the lifetime of the registered holder.

Lowry's case therefore had some resemblance to *In re Fry, Chase National Executors and Trustees Corporation, Ltd.* v. *Fry*, [1946] Ch. 312 ; [1946] 2 All E.R. 106, in which an intending donor executed by way of intended gift two transfers of shares : the transfers were prohibited by a war regulation, unless permission from the Treasury was obtained thereto. The intending donor had made application for such consent, but he died before it was obtained. It was held that the gift was incomplete, that the executor of the intending donor ought not to execute confirmatory transfers, and that the shares belonged to the testator's residuary estate.

In considering this vital issue of constructive delivery to the intended donee, it may be of interest to mention that in *Brunker* v. *Perpetual Trustee Co., Ltd.*, (1937) 57 C.L.R. 555, a point was raised which does not appear to have been considered in any reported New Zealand case ; that is, in whom is vested the property in the paper on which is written a memorandum of transfer of land held under the Torrens system ? Dixon J., with whom Rich J. concurred, said :

> The question is whether by his acts he [i.e. the intending donor, the transferor] has placed the intended donee in such a position that under the statute the latter has a right to have the transfer registered, a right which the donor, or his executors, cannot defeat or impair. That delivery of the transfer to the donee or the donee's agents is a condition which must be fulfilled before such a right will arise appears to me to be clear. It is only by the control or possession of the instrument that the transferee could effect registration without any liability to interference or restraint on the part of the transferor. *Further, I think that the donee must obtain property in the piece of paper itself and property in the paper could pass only by delivery* (*Cochrane* v. *Moore*, (1890) 25 Q.B.D. 57) (*ibid.*, 602).

The italics are mine.

That the property in the paper is a material factor appears clear from *In re Dickens, Dickens* v. *Hawksley*, [1935] Ch. 267, where the English Court of Appeal held that the proceeds from the publication of *Charles Dickens's Life of Christ*, was to be shared equally between the person in whom the copyright existed and the person who owned the paper on which the book was written.

Dixon J. went on to say :

> If property in the transfer remained in the transferor his power of recalling it must also remain. For he would be entitled to possession of the paper, he could refuse to present it for registration and he could destroy it, (1937) 57 C.L.R. 555, 603).

Further, another principle appears to emerge from *Brunker's* case. When an intending donor hands the duly executed transfer of land under the Torrens system to his solicitor or agent with instructions to register it, he has given the solicitor or agent a mere mandate, which he can revoke at pleasure, and which in the event of his death is automatically revoked.

A perusal of New Zealand cases shows that an intended donee often " misses the bus " because, when the transfer is presented for stamping, it is held up for a special valuation : in practice, it is often advisable for the solicitor to interview the appropriate District Commissioner of Stamp Duties on the question of valuation, as soon as he has instructions to prepare the transfer. A transfer of land or of shares in a company must be stamped before it can be registered. A transfer of Inscribed Stock is not liable to stamp duty, but it may be liable to gift duty. It also appears from decided cases that the question as to whether a gift is complete or not does not depend in any way as to whether or not a gift statement has been filed in the Stamp Duties Office or gift duty paid. In *Lowry's* case, the deceased died on September 23, 1944 : he signed the necessary gift statements on September 19, 1941, and these were filed in the Stamp Duties Office on September 26, 1941. But nothing appears to have turned on these facts. In the writer's opinion they were evidential merely of an intention to make gifts. In this connection, see also the cases cited by North J. in *Buckland* v. *Commissioner of Stamp Duties*, [1954] N.Z.L.R. 1194, 1203.

Statute.—" The first case reported in the series, "The House of Lords Cases ", is *Fordyce* v. *Bridges*, (1847) 1 H.L.C. 1 ; 9 E.R. 649, and it has quite a modern flavour. Their Lordships were asked to exclude Scotland from the meaning of the words, " United Kingdom of Great Britain and Ireland ", in a statute, on the grounds that the enactment amended a purely English Act treating of " tenants " in a sense not recognized in Scotland. Lord Brougham said : " We must construe this statute by what appears to have been the intention of the Legislature. But we must ascertain that intention from the words of the statute, and not from any general inferences to be drawn from the nature of the objects dealt with by the statute."

The Common Law.—" Common law is nothing else but common reason, and yet we mean not thereby that common reason wherewith a man is naturally endued, but that perfection of reason which is gotten by long and continuall study."—Sir Edward Coke, Co. Litt. 394b.

Knowing the Law.—" The knowledge of the lawe is like a deepe well, out of which each man drawesth according to the strength of his understanding. He that reacheth deepest, he seeth the aimable and admirable secrets of the law, wherein, I assure you, the ages of the law in former times have had the deepest reach. And as the bucket in the depth is easily drawne to the uppermost part of the water, but take it from the water it cannot be drawne up but with a great difficultie ; so albeit beginnings of this study seem difficult, yet when the professor of law can dive into the depth it is delightfull, easie and without any heavy burthen, so long as he keepe himself in his owne proper element." —Sir Edward Coke, Co. Litt. 71a.

IN YOUR ARMCHAIR—AND MINE.

By Scriblex.

Marriage and Divorce.—The long-awaited report of the Royal Commission on Marriage and Divorce, which was set up in 1951, has now been reported. The Commission under the Chairmanship of Lord Morton of Henryton held 102 meetings, hearing evidence of sixty-seven organizations and forty-eight individual witnesses. There are one hundred and forty-nine recommendations for England and eighty-one for Scotland made by it. In 1953, Mr Justice Finlay and a representative of the New Zealand Bar both gave evidence before the Commission in regard to our own divorce practice. It is of interest, therefore, to find that the most controversial topic of divorce before the Commission is what is described as "divorce by consent", which presumably covers our divorce by separation, although the term as used in England will not meet with entire favour from our divorce practitioners. Nine members were in favour of a proposal that there should be a provision for divorce in cases where, altogether apart from the commission of a matrimonial offence, the marriage had broken down completely. Nine other members considered that this principle ought not to be introduced into the law in England. It would thus seem that the possibilities of overseas enjoyment of this form of divorce (which has worked so well in New Zealand) will be substantially delayed, if ever accepted at all. From some four years' work and a huge volume of evidence, there emerge only three new proposed grounds for divorce—wilful refusal by a spouse to consummate the marriage (instead of being a ground for nullity), acceptance by a wife of artificial insemination by a donor without the husband's consent, and the fact that a spouse is a mental defective who has been detained in an institution for mental defectives for at least five years on account of his or her dangerous or violent propensities and whose recovery from such propensities is highly improbable.

Time Remembered.—One of our retired Judges who was a fellow Cambridge undergraduate has always asserted that F. E. Smith, later Lord Birkenhead, had the best brain of any legal man he ever met. Be this as it may, "F. E." both as advocate and judge was not devoid of those failings manifest in others of the human race. In "Random Notes" (*Law Journal*, London: April 20, 1956), the author, in writing of the appointment of Q.C.'s, mentions that there appears to be, in recent times, only one instance of a deserving applicant in England being refused the patent on personal grounds. This was the late Professor Jenks of Cambridge, one of the four examiners who in 1896 examined "F. E." for the B.C.L. and (so Smith believed) was responsible for giving him a Second Class. The story (as told in "Random Notes") is that, on Smith failing to answer correctly a question at his *viva voce* examination, Jenks advised him to improve his knowledge of Real Property Law to which Smith replied: "I came here to be examined, and not to receive unsollicited advice". Over thirty years later, when "F. E." had become Lord Chancellor, Jenks applied for silk. He received a letter from the Lord Chancellor's secretary advising him that it was not the practice to give silk to academic lawyers. He replied pointing out that Dicey, Holland, and Pollock had all received silk. Thereupon, the secretary wrote apologizing for his error: what he should have said was that silk was only given to *distinguished* academic lawyers. Birkenhead then proceeded to rub salt into the wound by making W. S. Holdsworth a silk. Holdsworth was certainly by then a distinguished academic lawyer, but he, too, had apparently been given a Second Class in 1896 at the instigation of Jenks.

Sir Travers Humphreys.—Following the death of his distinguished father, the Rt. Hon. Sir Travers Humphreys, Mr Christmas Humphreys found amongst his papers the text of an unpublished talk given by him to members of the Central Criminal Court Bar Mess in October, 1948. The text has since appeared in [1956] Crim. L.R. 297-304. Here are some of his views:

"Do not object to evidence doubtfully admissible merely for the sake of objecting. A jury is apt to be suspicious of any attempt to keep from them what may be the very thing they wish to hear. As a rule, the defence would be well-advised to confine their efforts to preventing anything being given in evidence which may injure the accused. On the other hand, do not be deterred from taking any objection, if you think your point is a good one, by the fact that you have heard similar evidence given in other cases without objection."

"Turning to the question of cross-examination I would say let it be as short as you can make it. Never put a question at random or without considering what you may be letting in by way of re-examination."

"When it comes to his speech the young barrister will be given his head. He will be bound by no rules or regulations other than such as must apply to all speakers. He must not misrepresent either the evidence or the law but is free to put his client's case in the most attractive light possible. He will be well advised to ignore the belief in the virtues of prolixity evinced by the Bellman in the line from the *Hunting of the Snark*: 'What I tell you three times is true', though some slight repetition is perhaps more excusable in a speech to a jury than in an argument to a Judge."

"It may help you if you get into the habit of using the expression 'My proposition of law is' so and so, or 'My submission in law is'. The use of such legal terms will tend to clarify in your own mind the proposition of law upon which you are asking for a ruling. No effective argument ever yet came out of a muddled head. Never make the mistake of saying what your own belief or opinion may be. The expression 'I think' should be banished from the vocabulary of the advocate."

"Unfairness will never lead to success, for Judges and juries instinctively dislike it, so it may be said that in the long run fairness pays, though it is not on that account alone that I recommend it. Be fair, but firm. Fairness and flabbiness are not interchangeable terms. While being scrupulously fair to the other side, remember that you are briefed to see that your client's case is fully placed before the jury. When you have done that you will have performed your duty, no more and no less."

His wide experience and his impartial outlook caused Humphreys J. to be regarded by many as the greatest criminal law Judge of modern times.

NEW ZEALAND LAW SOCIETY.

Annual Meeting.

The Annual Meeting of the Council of the New Zealand Law Society was held on April 20, 1956.

The Societies represented were as follows: Auckland, Messrs D. L. Bone (proxy), H. J. Butler, S. D. E. Weir, and H. R. A. Vialoux; Canterbury, Messrs P. Wynn Williams and A. L. Haslam; Gisborne, Mr K. A. Woodward; Hamilton, Mr F. C. Henry; Hawkes Bay, Mr H. W. Dowling; Marlborough, Mr F. Noble-Adams; Nelson, Mr H. G. Brodie; Otago, Messrs F. M. Hanan and J. E. K. Mirams; Southland, Mr H. E. Russell; Taranaki, Mr R. O. R. Clarke; Wanganui, Mr G. W. Currie (proxy); Westland, Mr A. M. Jamieson, and Wellington, Messrs A. B. Buxton, R. L. A. Cresswell, E. T. E. Hogg, and I. H. Macarthur.

The President (Mr T. P. Cleary) occupied the Chair. The Treasurer (Mr D. Perry) was also present.

Election of Officers.—President: On the nomination of the Wellington Society, Mr T. P. Cleary was re-elected President.

Vice-Presidents: The President informed the Council that under the new Act, provision was made to elect not more than three Vice-Presidents. The Council was asked to first consider whether it was desirable to have three Vice-Presidents. It was unanimously resolved that, for the forthcoming year, the number of Vice-Presidents be three. The only three nominees, Messrs A. L. Haslam (Canterbury), A. B. Buxton (Wellington), and H. R. A. Vialoux (Auckland) were duly elected Vice-Presidents of the Society for the ensuing year.

The President expressed his thanks to the Council for the confidence shown in re-electing him as President. He also thanked Mr Buxton and Dr Haslam for the assistance received from them over the year and Mr Vialoux for the interest he had always shown in the work of the Council and the Society.

Hon. Treasurer: Mr D. Perry was re-elected.

Management Committee of the Solicitors' Fidelity Guarantee Fund: The Act, having been amended to provide for six members, the following were elected: Messrs D. Perry, Sir Alexander Johnstone, Q.C., E. T. E. Hogg, G. C. Phillips, D. R. Richmond, and A. T. Young.

Disciplinary Committee: Messrs J. B. Johnston, L. P. Leary, Q.C., Sir William Cunningham, H. R. Biss, M. R. Grant, A. N. Haggitt, W. E. Leicester, and A. C. Perry were re-appointed.

Finance Committee: Messrs D. Perry, E. T. E. Hogg, G. C. Phillips, D. R. Richmond, and A. T. Young were elected.

Library Committee, Judges' Library: Mr F. C. Spratt, having resigned from this Committee, Messrs I. H. Macarthur and H. R. C. Wild were elected.

Joint Audit Committee: Messrs J. R. E. Bennett and F. B. Anyon were re-elected.

Legal Education Committee: Messrs H. J. Butler, G. G. Briggs, and N. M. Izard having resigned from the Legal Education Committee, Messrs H. R. C. Wild, A. C. Perry, K. W. Tanner, and N. Wilson were elected.

Conveyancing Committee: Messrs S. J. Castle, J. R. E. Bennett, and G. C. Phillips were re-elected.

Costs Committee: Messrs E. T. E. Hogg, D. R. Richmond and D. W. Virtue were re-elected.

Members of Law Revision Committee: Sir Wilfrid Sim, Q.C., and Mr H. J. Butler were re-elected.

It was resolved that a letter be sent to Mr C. P. Richmond and Mr F. C. Spratt expressing the thanks of the Society for the valuable services given by them during 1955 as deputizing members on the Law Revision Committee.

Legal Education.—A letter was received from the Registrar of the University of New Zealand advising, inter alia, that regulations have now been made reducing the Arts Units to four: that discussions were still proceeding as to the syllabus: that the amendments to the Act to provide for additional membership to the Council of Legal Education and to enable its recommendations to be sent direct to Senate would be enacted early in this Session.

Probate Forms.—The Canterbury Society wrote enclosing two specimen Probate forms which were used by the Otago Society, but, when submitted to the Registrar at Canterbury, he noted certain alterations which would be required in his District. Members reported that what is acceptable by one Registry is rarely approved by a Registrar in another Registry. Considerable inconvenience was thus caused as a result of the required variations. The matter was left to the Standing Committee, to take the necessary action.

Separate Court of Appeal.—The following letter was received from the Hon. the Attorney-General:

"20th December, 1955.

"You will recall that earlier this year you brought a deputation to me from the New Zealand Law Society, on the question of the establishment of a Permanent Court of Appeal. I told you then that I was not in a position to give you an immediate decision, but I hoped that a decision could be made before the end of this year.

"I am writing to let you know that I have not yet been able to arrange for this question to be dealt with by Cabinet. I hope that I will be able to obtain a decision early next year, but I wanted to let you know that, although other matters have been given higher priority, I have not forgotten that the Society and others are concerned to have this matter settled one way or the other as soon as possible."

It was said the congestion in the Courts in Wellington in non-jury cases had never been worse than at present. Canterbury members said a similar position existed in their district.

Law Council of Australia—Biennial Conference.—An invitation was received from the Law Council of Australia inviting New Zealand practitioners to attend its Conference to be held at Melbourne from July 15 to July 21, 1957.

It was decided to circulate the information to District Societies.

Commonwealth and Empire Law Conference.—The Canadian Bar Association, Ottawa, wrote advising that its Executive Committee extended an invitation to the New Zealand Society to participate in a second Commonwealth and Empire Law Conference to be held in Canada in 1960. It was resolved that the Canadian Bar Association be advised that the Council of this Society supports the suggestion, but that it is too early yet to say what part New Zealand would be able to take.

Estate and Gift Duties Act 1955, s. 5. (1) (j).—The following letter was received from a member of the Wellington Society:

"17th April, 1956.

"I wish to bring to the notice of the Society the judgment of the Privy Council in the case of *Ward* v. *Commissioner of Inland Revenue*. I enclose herewith a copy of the judgment [see [1956] N.Z.L.R. 367]. The decisions of the Courts in New Zealand appear in [1955] N.Z.L.R. at p. 361.

"This case raised for the first time in relation to s. 5 (1) (*j*) of the Death Duties Act, 1921, a clear cut issue of 'commercial transaction' that is a sale for full consideration. In earlier cases, as noted in the decision of the Privy Council the topic had been raised: see *Russell's* case and *Craven's* case, in each of which the Court held that the transaction was not a transaction for full consideration, but did not express any view upon the general question whether such a transaction would lie outside the section.

"Reference may be made to *Adams's Death Duties*, 2nd Ed., 98, 99, for a discussion of these and other cases.

"The section in question is now s. 5 (1) (*j*) of the Estate and Gift Duties Act, 1955. In my respectful submission, the law should be altered so as to bring it into line with s. 7 of the Death Duties Act 1853 (U.K.) which deals with a 'disposition of property *not being a bona fide sale*'; and s. 38 (2) (*c*) of the Customs and Inland Revenue Act 1883 (U.K.) which deals with 'property passing under . . . *a voluntary settlement.*'

"It appears to me essentially unsound, and outside the real purpose of such legislation, that a property the subject of a bona fide sale for ample consideration should be made part of the notional estate of the transferor as is the property in *Ward's* case.

"I write in the hope that the Society may see fit to make representations to the Government along these lines."

It was resolved that the matter be left to the Standing Committee.

(To be concluded.)