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NEW LEGISLATION OF INTEREST.

THE Parliamentary Session of 1957 produced a crop of legislation which is of general interest in the everyday work of practitioners. We propose to give our readers a review of this legislation to show in what respects it changes or augments the existing law. Much of it will not come into force until April 1, 1958. In the meantime we propose publishing, for the information of our readers, articles by Mr J. G. Hamilton on alterations in the law of trusts and trustees. Mr E. C. Adams explains on another page in this issue, changes in the law of property and kindred subjects of interest to the conveyancer. Here, we propose to deal with a number of other statutes which are of interest in general practice.

Adoption.

Section 25 of the Adoption Act 1955 provides that, except with the consent of the Court, it shall not be lawful for any person to give or receive any payment or reward in consideration of the adoption or proposed adoption of a child or in consideration of the making of arrangements for an adoption or proposed adoption.

The interpretation of this section in relation to a proposed payment by adopting parents of the nursing-home fees incurred by the natural mother of the adopting child has been the subject of several conflicting judgments by Magistrates, some of whom held that the payment was a "payment or reward in consideration . . . of the making arrangements for an adoption" within the meaning of s. 35 and consequently the consent of the Court was necessary for any such payment or reward to be lawful. Other Magistrates held that the consent of the Court was not necessary for any such payment. Another Magistrate went so far as to hold that such a payment would be contrary to public interest and to the intention of the Adoption Act 1955.

The matter has been clarified by the addition of a proviso to s. 25 which declares that the terms of the section do not prevent the payment of the hospital and medical expenses of the confinement of the mother of a child in any licensed hospital or separate institution within the meaning of the Hospitals Act 1926, being a licensed hospital or separate institution that is under the control of any society or body of persons caring for the welfare of children, if:

(a) The payment is made by an applicant for an adoption order in respect of the child direct to the society or body of persons that controls the licensed hospital or separate institution; and

(b) The amount paid has been approved by the Director-General of Health in the particular instance, or is in accordance with a scale approved generally by the Director-General of Health.

Aliens.

As from April 1, 1958, the administration of the Aliens Act will be the responsibility of the Minister of Justice and not of the Minister in charge of the Police Force as heretofore.

Auctioneers.

The administration of the Auctioneers Act 1928, as from April 1, 1958, will be transferred from the Internal Affairs Department to the Justice Department.

Amendments to the Auctioneers Act 1928 provide that in the case of a company, the company itself must be the holder of the auctioneers' licence, and this cannot be held by some person on its behalf. Formerly where a company carried on business as an auctioneer, some person appointed by the general manager, or pursuant to a resolution of the directors, could be the holder of the licence.

Under s. 7 (3) it was provided that, where an applicant for a licence desired that more than one person should conduct auction sales under the licence, application had to be made for a separate licence in respect of each such person. This has been amended to provide that, where the applicant is a company, the licence may authorize several persons to conduct auction sales on its behalf, and consequential amendments are made in relation to fidelity bonds. Authority is also given to the company to apply to the Registrar of the Magistrates' Court to add to the licence the names of the additional persons authorized to conduct auction sales on behalf of the company.

In future, auctioneers' licence fees are to be prescribed by regulations, thus replacing the present provision prescribing a licence fee of £40 where the licence is available throughout New Zealand and £20 where the licence is available only in a special district.

Provision is now made for reduced licence fees in cases where one person holds several licences. Where the licensee has more than one place of business, an additional licenee fee may be prescribed in respect of each additional place of business.

The principal Act required the keeping of a central Register of Auctioneers and the publication of an annual list of licensed auctioneers in the *Gazette* with

supplementary lists from time to time showing changes in the register. These requirements are now abolished.

Diplomatic Immunities.

Only part of the law relating to diplomatic immunities and privileges is statutory, the greater part of that law, particularly in relation to immunities, being derived from the rules of the common law, which reflects the international law on the subject. The question of diplomatic immunities and privileges has become increasingly important in New Zealand in recent years owing to the growth in the number of envoys and consular officers of foreign sovereign powers accredited to Her Majesty in New Zealand.

The Diplomatic Immunities and Privileges Act 1957 consolidates, with some amendments, the existing statute-law amendments relating to diplomatic immunities and privileges, including those accorded to international organizations and their staffs.

It is not necessary here to detail the provisions of this enactment; but the attention of practitioners is drawn to it, as occasion may arise when it is important, in the interests of a client, to consider the nature and extent of diplomatic immunity and privilege attaching to some person with whom a client may have business or other relations.

In particular, attention is drawn to the fact that s. 17 re-enacts the provision that a certificate by the Minister of External Affairs stating any fact relevant to any question as to immunity is conclusive evidence of that fact; and the new section extends the provisions so as to apply to all questions of immunity arising under any provision of the enactment.

Income-Tax Assessment.

This is not the time to enter into any explanations of the "P.A.Y.E." system of income-tax collection which is initiated by the Income Tax Assessment Act 1957.

We propose, when the legislation settles down in a more permanent form, and before it becomes operative on April 1 next, to provide our readers with a general explanation of the requirements of the Act in relation to both principals and staffs of legal offices.

Industrial and Provident Societies.

Provision is made by a new s. 25 of the Industrial and Provident Societies Act 1908 for the appointment of barristers of the Supreme Court to be revising barristers for the purposes of the statute. The existing provisions of the Building Societies Act 1908 as to the appointment and duties of revising barristers are applied to them.

Juries.

Section 12 of the Juries Act 1908 (as amended by s. 3 of the Juries Amendment Act 1951) provides that for every city or town at which sittings of the Supreme Court are held there shall be a jury district which shall include all places within ten miles of the Courthouse or, in the case of the cities of Auckland, Wellington, Christchurch, and Dunedin, within fifteen miles of the Courthouse. By s. 2 (1) of the Juries Amendment Act 1957 a fifteen-mile radius is to apply in respect of every place in which Supreme Court Sessions are held.

Section 177 of the Juries Act 1908 provides that no verdict by a jury will be affected by reason of any member having been erroneously summoned or by reason of any irregularity in relation to the jury lists, jury books, precepts, or panels. The effect of an amendment made by s. 2 (2) of the Juries Amendment Act 1957 is that a verdict will also not be affected by reason of the fact that any disqualified person served as a juror. The classes of persons who are disqualified, as set out in s. 6 of the principal Act, are as follows:

(a) Persons who are not British subjects;

(b) Persons convicted of certain crimes;

(c) Undischarged bankrupts;

(d) Persons of bad fame or repute.

Law Practitioners.

The Law Practitioners Amendment Act 1957 amends s. 99 of the Law Practitioners Act 1955 so as to enable the Council of the New Zealand Law Society or of any District Law Society to appoint an investigating officer with general authority to examine the trust accounts of solicitors. The powers of investigation given by s. 99 are extended so as to enable the investigating officer, with the consent of the Council of the New Zealand Law Society or of any District Law Society, to extend the normal scope of investigations for the purpose of tracing money received by any solicitor or firm of solicitors.

Section 105 of the principal Act provides that a barrister or solicitor who is in practice on his own account is deemed to be a member of the District Law Society of a district wherein he is in practice. Section 3 (1) of the Amendment Act 1957, adds to that subsection a proviso to the effect that the Council of a District Law Society may exempt any such barrister or solicitor from membership of the society, subject to such conditions as it may impose.

Law Reform.

A new section (s. 9A) is added to the Law Reform Act 1936 by s. 2 of the Law Reform Amendment Act 1957. The purpose of the new section is to avoid a procedural difficulty that arises where a person desires to claim damages or compensation the liability for which is covered by insurance, but the person who would be primarily liable is deceased and there is no one willing to take out administration in his estate. The section provides that in such a case the claimant may give notice to the insurer requiring the insurer to nominate a defendant for the purposes of the proposed action. The insurer may nominate a defendant within fourteen days; but, if he does not, the claimant may apply to the Court to appoint the Public Trustee to be the administrator *ad litem* of the estate of the person primarily liable, and, if the Court makes the appointment, the action may be commenced against the Public Trustee. The nominated defendant or, as the case may be, the Public Trustee, will be entitled to be indemnified by the insurer in respect of any judgment against him and also in respect of costs and expenses reasonably incurred; and the Public Trustee will also be entitled to reasonable remuneration for his services.

Tenancy.

In a recent case, *Walsh* v. *St. John's College Trust Board* [1957] N.Z.L.R. 680, the Supreme Court decided that where the tenant under a Glasgow lease had erected a dwelling-house on the land the premises

must be treated as a " dwellinghouse ", and not as a " property " for the purposes of the Tenancy Act 1955.

A new subs. (8) of s. 2 of the Tenancy Act 1955 (added by s. 2 (1) of the Tenancy Amendment Act 1957) now provides that the premises comprised in a Glasgow lease are to be treated (as between the landlord and tenant under that lease) as a " property " and not as a " dwellinghouse " for the purposes of the Tenancy Act 1955.

The leases to which the subsection applies are renewable leases which provide for the erection of buildings by the tenant and for the fixing of the rent by valuation of the land alone without taking the buildings or other improvements into account.

Such leases have always been assumed to relate to the bare land as a " property " even where the tenant may have erected a dwellinghouse, because, according to the lease, the rent is not affected by the erection of any buildings or other improvements.

Subsection (2) of s. 2 of the Tenancy Amendment Act 1957 preserves the rights of the parties under *Walsh's* case; but, in all other respects, the law is declared to be what it has always been assumed to be.

Mental Defectives.

In an article in this Journal ((1956) Vol. 32, p. 170), Mr M. Buist dealt in detail with the then recent cases of *In re P.* [1956] N.Z.L.R. 283, following *In re W.* [1954] N.Z.L.R. 183 (both mental patient cases), and *In re F.* [1956] N.Z.L.R. 64, (in respect of a person protected by an order under the Aged and Infirm Persons Protection Act 1912 and later committed as a mental patient), and with the need for suitable legislation.

In *F.'s* case, Gresson J. had pointed out the lack in New Zealand of the statutory provisions that exist in England (in the case of mental patients) by virtue of which it could be ordered that a devisee of property included in a disposition under the will of the patient (who is still living) was to have the same interest in any moneys arising from the sale of such property as that devisee would have had if there had been no sale. As His Honour pointed out, s. 123 of the Lunacy Act 1890 (17 *Halsbury's Statutes of England*, 2nd ed., 1052) gives power to order the moneys to be carried to a separate account, and such assurances and things to be executed and done as may be thought expedient. Following the line adopted by F. B. Adams J. and by Sir Harold Barrowclough C.J. in the above-cited cases, however, His Honour ordered inter alia that the proceeds of the sale of the land or so much thereof as should remain should be deemed to represent the patient's share in the land, to the intent that the beneficiaries under her will should take the same interests in such proceeds or such portion of them as remained as they would have taken in the land if it had not been sold.

His Honour pointed out that he made this order " for what it may be worth " in the absence of statutory provisions such as those enjoyed in England. He had said, in referring to s. 123 above mentioned :

> It is desirable that similar legislative provisions should be enacted in this country to offset the possible adverse effect of an order upon the devolution of the property. Such a provision is indeed more necessary in New Zealand, where such orders are made not only in reference to the property of persons committed under the Mental Health Act but also in respect of persons who have been the subject of an order under the Aged and Infirm Persons Protection Act; such orders are by no means infrequent.

He then raised the question of the Court's power to peruse the will, saying :

> Legislative authority might too well be given to the Court in such cases to require the production of the will of any mental patient or protected person. It may be that the Court can rely upon the ancient inherent jurisdiction alluded to by F. B. Adams J. in *In re W.* (*supra*) as justifying a disclosure to the Court of the contents of a patient's will in the case of a mental patient, but this has no application to the case of a protected person's will.

Both these matters received the careful consideration of the Law Revision Committee, which recommended the legislation that has now become operative by virtue of the Mental Health Amendment Act 1957, which makes considerable improvements in relation to the administration of the estates of mentally defective persons.

A new section, s. 119A, provides that where capital money is raised by any sale, mortgage, charge, or other disposition of property pursuant to powers conferred by or under the principal Act or conferred under any inherent jurisdiction of the Court in respect of the estates of mentally defective persons, the original owner of the property and his administrators, beneficiaries, and assigns shall have the same interest in any unexpended balance of the money as they would have had in the property, and that unexpended balance shall be deemed to be of the same nature as the property. The provision is to apply whether the money was raised before or after the commencement of the new section, but not where the person died before October 18, 1957, unless the Court has in the lifetime of the person made an order which would have been authorized by the new s. 119C. (The section is based on s. 123 of the Lunacy Act 1890 (U.K.) and s. 210 of the Lunacy Act 1928 (Vict.).)

The new s. 119B provides that the Court shall have power to order that the whole or any part of the money of a mentally defective person expended or to be expended for the improvement of any of his property or for repaying money secured by a mortgage thereon shall be a charge upon the property.

Section 119C confers on the Court power to make such orders as it thinks fit for preserving the nature, quality, tenure, and devolution of the property of a mentally defective person. For this purpose money may be ordered to be carried to a separate account. (This section derives from s. 2 (8) of the Lunacy Act 1922 (U.K.) and s. 123 (3) of the Lunacy Act 1890 (U.K.).)

Section 119D provides for the termination of the notional preservation of the character of assets (as above) either twelve months after the mentally defective person recovers, or upon his making a fresh testamentary disposition, or a payment or transfer, of the money or property concerned.

Provisions similar to those in force in the United Kingdom and in Victoria enabling the Supreme Court to settle property of a mentally defective person are contained in the new s. 119E.

It is made clear that the principal Act does not restrict the general jurisdiction of the Court in relation to the property of mentally defective persons : s. 119F.

The Court is authorized by s. 119G, whenever it

considers it expedient to do so for any of the purposes of the principal Act or in connection with the exercise of its inherent jurisdiction in connection with the estates of mentally defective persons, to compel information to be furnished respecting, and production of, testamentary dispositions, and their lodgment in Court.

SUMMARY OF RECENT LAW.

COMPANY LAW.

Winding Up—Company in Voluntary Liquidation—Creditors Right to Petition for Compulsory winding up by Court—Restriction on Petitions presented by Official Assignee—Curing of Irregularities in Petition—Companies Act 1955, ss. 219 (2), 300—Companies Winding-Up Rules 1956, RR. 19, 191. Section 219 (2) of the Companies Act 1955 applies only to a winding-up petition presented by the Official Assignee in respect of a company already in voluntary liquidation, subject to the special restriction imposed on him by the subsection. Consequently, any creditor of a company which is being wound up voluntarily may, under s. 300 of the Companies Act 1955, apply to have it wound up by the Court. (*In re James Millward and Co. Ltd.* [1940] Ch. 33; [1940] 1 All E.R. 347, followed. *In re McLean Constructions Ltd.* (1943) 43 S.R. (N.S.W.) 322, referred to. *In re Automatic Bread Baking Co. Ltd.* (1939) 39 S.R. (N.S.W.) 148, not followed.) *Semble*, Irregularities (such as the non-fiing of a verifying affidavit within the prescribed time, and the swearing of the verifying affidavit before the filing of the petition) are capable of being cured by invoking R. 191 of the Companies (Winding-Up) Rules 1956. (*In re Snowdrift Lime Co. Ltd.* [1934] G.L.R. 2, roferred to.) Appeal from the judgment of Barrowclough C.J. [1957] N.Z.L.R. 752, allowed. *In re E. E. McCurdy Ltd. (In Liquidation).* (C.A. Wellington. 1957. September 30; November 18. North J. Henry J. McCarthy J.)

DESTITUTE PERSONS.

Affiliation—Complaint heard and dismissed—Second Complaint to Same Effect lodged—Evidence taken to ascertain if Fresh Evidence available—Magistrate granting "Re-hearing"—Such Decision not an "Order" but Decision preliMinary to making an Order—Complainant's Right to make Further Complaint—Order not appealable—"Order"—Destitute Persons Act 1910, ss. 3, 77. In May, 1957, a complaint by F. against T. alleging that the appellant was the father of an illegitimate child born to her on February 15, 1957, was heard and dismissed. An appeal was lodged, but was subsequently withdrawn. On June 4, 1957, another complaint to the same effect was lodged. On July 22, 1957, evidence was taken apparently on the basis that whether or not the second complaint should be allowed to proceed to a hearing depended upon whether there was fresh evidence available. The Magistrate, after hearing the evidence, said, orally: "Had it depended on the evidence of Mrs Murray alone, I would hardly think it worthwhile embarking on a hearing of the new complaint. The same applies to Mr Mullins. Had it depended on his evidence alone, little could be gained by a fresh hearing. However, there is the evidence of Dr Ongley and it may be that his evidence is, in the circumstances, quite important. I, therefore, consider that the new complaint should be set down for hearing." The formal entry in the Court-Record Book stated the names of the parties and, in the column "Decision", "Rehearing granted". Against this decision, T. appealed. The Notice of Appeal expressed the appeal to be against "Order under Section 67 of the Destitute Persons Act 1910 that the above-named respondent could have heard a second complaint for an affiliation order after dismissal on the merits of former complaint". *Held*, 1. That s. 67 of the Destitute Persons Act 1910 confers the right to make a further complaint or application in the same matter, subject to the Court's inherent jurisdiction to prevent its procedure being abused. (*Metropolitan Bank* v. *Pooley* (1885) 10 App. Cas. 211, followed. *Crozier* v. *Myers* (1915) 17 G.L.R. 583, considered. *Willis* v. *Earl Beauchamp* (1886) 11 P.D. 59, referred to.) 2. That, accordingly, as the Magistrate was not called upon to make a judicial determination but a decision preliminary to the making of an order—namely, whether or not the second complaint should be allowed to proceed—his decision was not an "order" such as might be appealed against under s. 77 of the Destitute Persons Act 1910. (*Harvey* v. *Lister* [1943] N.Z.L.R. 19; [1942] G.L.R. 469, followed.) *Tinney* v. *Ferrel.* (S.C. Wellington. October 31, 1957. Gresson J.)

Maintenance—Registered Maintenance agreement—Agreement rendered Unenforceable before Registration—Registration cancelled—Destitute Persons Act 1910, s. 47B. A written agreement for maintenance, which before registration, has been rendered unenforceable by the conduct of one of the parties, cannot be registered under s. 47B of the Destitute Persons Act 1910 (as enacted by s. 4 of the Destitute Persons Amendment Act 1955), and, if registered, the registration should be cancelled. *Maintenance Officer* v. *Winter*, *Winter* v. *Murphy.* (July 19, 26, 1957. Warrington S.M.)

DIVORCE AND MATRIMONIAL CAUSES.

Maintenance—Order sought for Maintenance limited to "allowable income" under Social Security Legislation, Former Husband consenting—Such Order refused—Divorce and Matrimonial Causes Act 1928, s. 33 (2). If a former wife, when seeking an order for payment of maintenance by her former husband, limits her claim to the "allowable income" of a Social Security beneficiary, the Court ought not to permit an approach which operates to the advantage of the former husband and to the disadvantage of the Social Security Fund (i.e., of the community generally), and it should not make such an order even though the amount of the order has been consented to. *McGill* v. *McGill.* (S.C. Wellington. 1957. November 18, 20. Gresson J.)

PUBLIC REVENUE.

Income Tax—Scheme to obtain Control of Company by Acquisition of Ordinary Shares—Sale of Such Shares conditional on Purchaser's acquiring Preference Shares—Acquisition of Preference Shares not "for the purpose of selling or otherwise disposing of" them—Profit on Subsequent Sale of those Shares not taxable—Land and Income Tax Act 1923, s. 79 (1) (c). The word "purpose" as used in s. 79 (1) (c) of the Land and Income Tax Act 1923 is not the equivalent of "intention", but is the object which a taxpayer has in view or in mind. Where the purpose of the whole of a transaction was merely the acquirement of control of a company, there can be, as a matter of law, a separate and different purpose motivating a part only of the transaction. (*Beaford Investments Ltd.* v. *Commissioner of Inland Revenue* [1957] N.Z.L.R. 978, and *Marshall Industrials Ltd.* v. *Commissioner of Inland Revenue* (1951) 17 S.A. Tax. Cas. 378, followed.) Consequently, where a taxpayer could not acquire ordinary shares in a company unless he undertook contemporaneously to acquire the preference shares, the preference shares, though bought for the purpose of selling them, were not acquired "for the purpose" (or with the object) "of selling" them; and the profit derived from the sale of those shares was not taxable under s. 79 (1) (c). *Plimmer* v. *Commissioner of Inland Revenue.* (S.C. Wellington. October 2; December 2, 1957. Barrowclough C.J.)

Race Winnings—Banking of Cheques representing racing profits not of Itself conclusive of Winnings—"Assets Method" approved—Land and Income Tax Act 1954, s. 32. The mere banking of cheques of racing clubs, the Totalizator Agency Board or bookmakers does not of itself establish conclusively that the betting which produced those cheques was all placed by the ultimate holder of them, and the cheques are not of themselves conclusive of winnings. The "assets method" of assessing the amount on which, in the judgment of the Commissioner of Inland Revenue, tax ought to be levied is the proper approach in appropriate cases. (*Babington* v. *Commissioner of Inland Revenue* [1957] N.Z.L.R. 861, followed.) *N.* v. *Commissioner of Inland Revenue.* (S.C. Wanganui. 1957. November 8, 12, 20. McCarthy J.)

WILL.

"Acceleration" and Settlements Inter Vivos. *101 Solicitors' Journal*, 510.

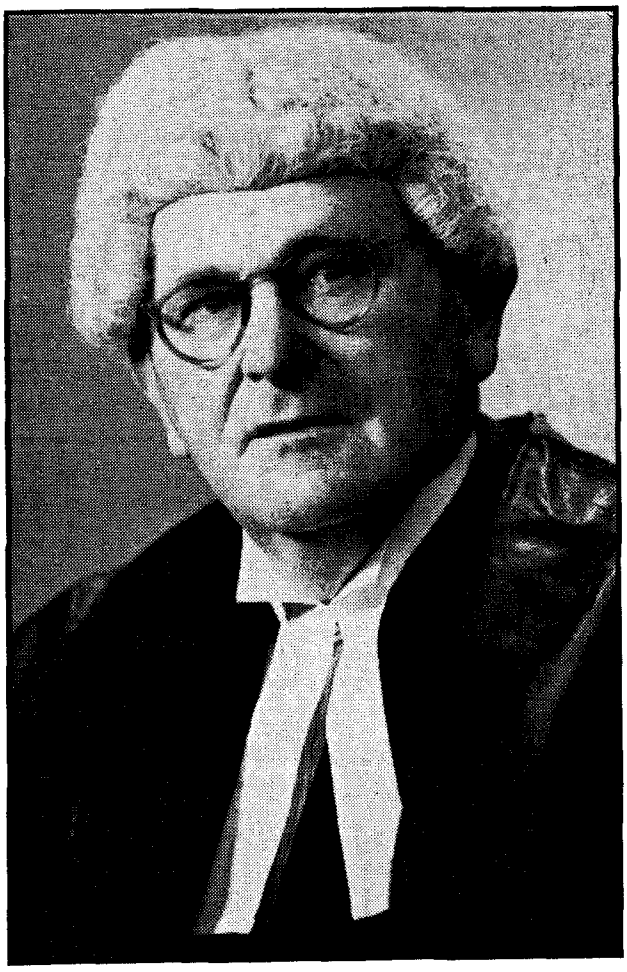
Special Powers of Appointment: Exercise by Will. *107 Law Journal*, 406.

THE PRESIDENT OF THE COURT OF APPEAL.

Honoured by the Canterbury Bar.

There was an historical as well as congratulatory flavour to proceedings in the ninety-year-old Supreme Court precincts on December 6 when Canterbury practitioners assembled in unusual numbers to pay tribute to the Hon. Mr Justice Gresson as the first President of the new permanent Court of Appeal which will hold its inaugural sitting next month.

The profession's congratulations and felicitations were tendered almost exactly one hundred years after the appointment of His Honour's grandfather, Mr Justice H. B. Gresson, as the first resident Judge in the provincial district of Canterbury. His Honour recalled the occasion with pride when he addressed the Bar in reply, and the President of the Canterbury District Law Society, Mr R. A. Young, found a particular appositeness in the recollection when he conveyed to His Honour the goodwill and congratulations of those present. His Honour, during a brief incursion into retrospection, took time to suggest that those who practised law in Christchurch that day might with profit pause to reflect not alone on the work of successive resident and visiting Judges over the past century, but also on the services of countless juries that had served justice and their country in those same surroundings.



The Honourable Sir Kenneth Gresson P.

Mr Young said that members of the profession were gathered that day to pay a tribute to His Honour on his appointment as President of the permanent Court of Appeal.

" One hundred years ago ", he said, addressing His Honour, " your grandfather, Henry Barnes Gresson, took the oaths of office as a Supreme Court Judge. He was the first resident Judge in the Province of Canterbury, and there have been only seven more—two of them father and son. The son, Mr Justice F. B. Adams, is at present on circuit duty on the West Coast and so, unfortunately, is not with us today.

" It was in 1907 that a separate Court of Appeal was first mooted by the then Attorney-General and the personnel provisionally selected comprised Sir Robert Stout, Sir Joshua Williams and Mr F. H. D. (later Sir Francis) Bell. There was such opposition to the scheme from several quarters that fifty years were to elapse before the necessary legislation could be brought down. At last, however, the hopes of the profession were realized when the Attorney-General announced at the Dominion Conference held here earlier this year, to the accompaniment of much applause, that a permanent Court of Appeal would be established.

" That in itself was most gratifying ", said Mr Young, " but practitioners knew how important it was that the President of the new Court should be one of the most eminent jurists in the land. It was, then, with great satisfaction and pride that we learned that you, only ten years from our Bar, were to occupy that high judicial office.

" If your Honour's attention has been drawn to Minhinnick's cartoon of Judge Pettigrew (which your Honour may well deny) you will appreciate the significance of my reference to ten years—a period that your Honour spent in Wellington that should have been sufficient to break down that isolation that the Attorney-General felt to be inseparable from the life of Judges in the South Island.

" Your Honour will recollect that on September 30, 1947, your fellow-practitioners gathered to congratulate you upon your elevation to the Supreme Court Bench. You were told that for long your character, zeal and learning had been held in high regard. Reference was made to your service to the Law Society, the profession, Army, the University and the Church. At that the function, Sir Arthur Donnelly used these words to you : ' You are a Christian gentleman, a good lawyer, a good judge of human nature and a man of the highest standards of character and principle ; these qualities will enable you to serve the country well in the distinguished office to which you have now been called '.

" With another leader of our Bar, your own brother Maurice, Arthur Donnelly has since passed on, but we cherish, in this community, the fondest and most respectful memory of them both. In your reply on

that occasion you said that you found it sad to leave this town and those with whom you had been associated from your school days. You spoke of the good fellowship in Christchurch between all counsel, solicitors and clerks alike, and said that when you departed hence—that was to Wellington—you would, in a measure, be representing our local profession and with your typical humility you said that you would try not to let them down.

" We are proud of the fact that your nephew, Mr Justice T. A. Gresson, is the third of the family in four generations to be appointed as one of Her Majesty's Judges. A decade has passed since we paid a tribute to you but despite your period of judicial exile in Wellington we would not want to amend one word of what Sir Arthur Donnelly said.

" Today, and indeed this actual sitting ", continued Mr Young, " marks the last occasion on which you will preside in this ninety-year-old Court as a Judge of first instance. Early next year you and your brothers of the permanent Court of Appeal will be embarking upon a new phase of judicial life. The greatest contribution that an Appellate Court can make to the development of the law can only come when its members work together with reasonable continuity. The new Court will be what Sir Raymond Evershed (as he then was) described in Melbourne five years ago, ' a combined judicial operation '.

" The vacation will soon be here and your Honour and Mrs Gresson will be spending what I understand to be at least your twenty-fifth Christmas at Wainui. We trust that you will have a well-earned rest and that you will be refreshed and ready for the arduous tasks that lie ahead in 1958. The profession in Canterbury tenders you its respectful congratulations upon your appointment as the first President of this new Court, and you embark upon your new duties with our complete goodwill."

His Honour's Reply.

Mr Justice Gresson in reply said it was not easy to find words adequately to express his appreciation of their having attended that day in such numbers and addressing to him, through their President, such kind and encouraging felicitations upon his appointment to preside in the newly-constituted Court of Appeal as its first President.

" That you have come as you have done ", he said, " demonstrates how real is the brotherhood of the legal profession and, within it, that rather special brotherhood, the brotherhood of the Bar where there is present a camaraderie the nature of which only those who enjoy it can fully appreciate. It can I think fairly be claimed that in no profession is jealousy or ill-will more absent and no profession has a higher standard of honour. That surely we owe to those who first practised here, who brought with them and implanted here not only the common law of England but also the standard of behaviour and demeanour which they had acquired in the ancient Inns of Court—a propriety of conduct in and out of Court which has been passed on from generation to generation, mostly by example, for it is something that cannot be learnt from any book.

" It so happens ", said His Honour, " that I am sitting today in the Supreme Court, which I am so soon to quit, just on one hundred years since the first Judge of Canterbury, himself a Gresson, took his seat on the Bench, though not in this building until 1869. We have not in this country anything comparable to the magnitude of the Law Courts of London, or the majesty of England's many Courts, but in our modest and sometimes uncomfortable Court precincts the same principles of English law are applied, and the same spirit animates the proceedings. Sitting here today, as I do a hundred years after Canterbury's first resident Judge took up his office, I think of all those who in this building have maintained the tradition of their high office and whose judgments are enshrined in the *Law Reports*—the first Gresson, Johnson (J. A.), Denniston, Herdman, Adams (A. S.), Johnston (H. F.) and Northcroft. All these served the community in their time, and served it well. Mr Justice F. B. Adams, the present resident Judge, unfortunately cannot be present as he is occupied on the West Coast circuit, which circumstance has led to my being here in his stead.

" And in this retrospective mood should we not pay tribute to the countless juries who, over a hundred years, have sat to judge the facts, to appraise conduct, and to decide on innocence or guilt. It is, I think, characteristic of the New Zealander to be fair-minded, and though there have been from time to time verdicts which could not be regarded as satisfactory, nevertheless, for the most part, juries have discharged their tasks—often difficult—with common sense, fairness, impartiality and a sense of responsibility.

" The time has come for me to quit this Court and to try and be judicially useful in another sphere ", said His Honour. " This reply to the address of congratulation which your President has so eloquently delivered is perhaps in some sense ' a swan song '. I am glad that it should be sung here in this Court where I first tremulously raised my voice as a barrister; where I spent thirty happy years until as a baby Judge I left to cut my judicial teeth in the North. Now for a brief period I have returned on the eve of quitting the Supreme Court, where the work though sometimes tedious is of infinite variety, and has a human interest which will not be present, at any rate to the same degree, in the rarefied atmosphere of the Court of Appeal. Perhaps it will be less strenuous; that remains to be seen.

" It was good of you to assemble today to wish me well ", he concluded. " I value this gesture very greatly and fortified by your goodwill, and in the company of two admirable colleagues, I shall hope to be judicially useful for a few more years in the Court to which I have been called, until the operation of the statute brings down the curtain upon my judicial efforts.

" I fear this reply is an inadequate acknowledgment of such a generous tribute as you have paid me, but so many memories crowd in upon me that it is difficult to speak composedly. I find it very moving, and from my heart I thank you."

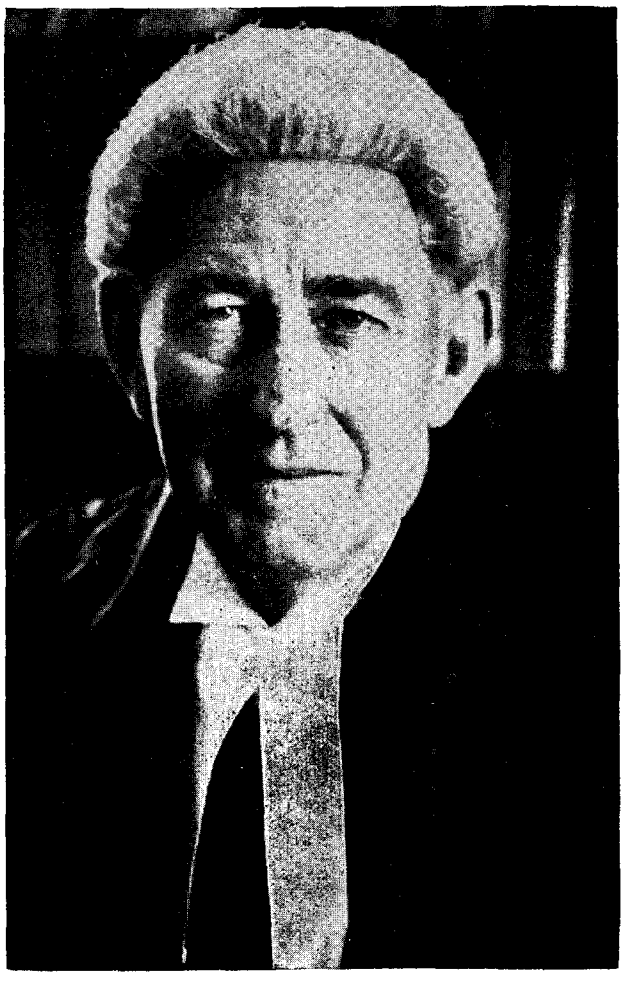
Knighthood Bestowed.

His Honour's services to the law and his country and his distinction as President of the permanent Court of Appeal were recognized by Her Majesty the Queen at the New Year when the honour of Knighthood of the British Empire was conferred upon him. The profession throughout the Dominion will be unanimous in its congratulations to the recipient of so well-earned an award.

MR JUSTICE CLEARY.

Two topics of keen speculation among practitioners in recent years have been the setting up of the separate Court of Appeal and the question whether the Bench and the country would ever enjoy the services of Mr T. P. Cleary as a Judge. Now, within the space of a few months, the profession's pleasure at the establishment of the new Court has been surmounted by its delight in the appointment of Mr Cleary as a member of its Bench. No wiser and more popular appointment could be imagined.

Timothy Patrick Cleary was born at Meeanee in Hawke's Bay fifty-seven years ago. While his family was living in the remote district of Mangaweka he came to Wellington on a Junior National Scholarship to begin his secondary education at St. Patrick's College where, in four years of all-round achievement, he laid the foundations of his later distinction and leadership in the profession. He won a Senior National Scholarship and was for two years a member of the School's oratory and debating team and the First XV. In 1917 he was captain of the XV, head prefect, and dux of the School, and he added to his record a University National Scholarship upon which he entered Victoria University College in the following year. There he studied under the late Professor Garrow who, years later, was to describe him as the best student he had ever had. Mr Cleary completed his LL.B. degree in three years and was duly admitted as a barrister and solicitor. For some years he continued as a part-time law lecturer at the College. He began his employment with Edwards and O'Donnell and later became Mr Carroll O'Donnell's partner in the firm of O'Donnell and Cleary. In 1937, he joined Mr M. O. Barnett under the style of Barnett and Cleary.



Mr Justice Cleary.

Though his firm was among the smaller ones in Wellington, Mr Cleary had not been very long in practice before his quite exceptional ability began to attract the admiration of his colleagues and by the middle thirties he was being sent work from near and far. Indeed the *Law Reports* for the past twenty-five years are so full of his cases, far more often than not decided in his favour, that it is difficult to select any for mention.* His special field has, of course, been banco argument and, in that he has for long been recognized as pre-eminent. Jury work has made no appeal to him and yet memories of the effectiveness of the deliberate style, the skilful concentration on essential issues, and the enlightening humour remain with many who have witnessed his successes in that arena. In any public inquiry of major importance he has usually been a first choice, and among those in which he has appeared in recent years are the War Assets Inquiry and the Royal Commissions on Ballantyne's fire and the Waterfront Commission. In 1948, he was appointed Chairman of the Medical Services Committee which carried out a national investigation on behalf of the Government.

What has been the secret of Mr Cleary's outstanding prowess at the Bar ? Perhaps it lies somewhere in the industry and acumen with which he masters the facts of a case, the depth of his knowledge of the law to be applied to them, his extraordinary skill in building on the strengths of a case while never ignoring its weaknesses, the matchless lucidity of his arguments, and his astute perceptiveness of reaction from the Bench. He is never guilty of over-statement : he says nothing that is ill-considered. With his unpretentious but scrupulous adherence to the highest professional standards and his generosity to all other counsel, he has for years, though he would certainly disclaim it, been a model for the younger men wherever he has appeared.

That Mr Cleary should be elected to leadership in the profession was only natural. After years of service on the Council he was President of the Wellington District Law Society in 1943, and he has been a member of the Disciplinary and the Rules Committees and the Council of Legal Education. In 1954 he was elected to the highest office in the profession when he became President of the New Zealand Law Society and he held that position until his recent appointment. But his services to his brethren have gone far beyond the discharge of official duties. His willingness at all times to bring his wise guidance and sound judgment to the aid of a colleague, from the youngest to the

oldest, in a legal difficulty or a personal problem, is known far beyond Wellington; and his qualities of patience and charitableness are the main reasons for the affection in which he is held throughout the profession.

It was of course inevitable that such a man should be asked to accept judicial appointment and, as his successor said in farewelling him from the presidential office, the belief that "Tim has turned it down" has been the accepted starting point for any speculation as to judicial appointments in recent years. It is indeed believed that Mr Cleary has been a first choice for almost every judicial appointment made in the past ten years, and that the embarrassment to his diffident nature became so acute that a year ago he had to ask that he be finally dismissed from all consideration. It is, however, a matter of the greatest satisfaction that the Attorney-General was able to persuade Mr Cleary to accept appointment to the new appellate Court for the work of which his talents and experience so ideally suit him. The fact that the Attorney-General took what he described as the exceptional course of appointing Mr Cleary direct from the Bar is a tremendous tribute, and, in the view of his many admirers, it guarantees the success of the new Court.

Wellington Practitioners Pay Tribute.

An unprecedented representation of all branches of the profession in the Wellington provincial district crowded the rooms of the English-Speaking Union on December 2 for the complimentary luncheon tendered to Mr Cleary to mark his withdrawal from practice on his elevation to the Judiciary as a member of the new permanent Court of Appeal. Veterans of fifty years' service at the Bar, young men only recently admitted, and the great company of practitioners who comprise the link between these two categories made up the attendance at one of the most universal professional gestures of goodwill ever made in Wellington.

THE WELLINGTON LAW SOCIETY.

As the President of the Wellington District Law Society, Mr R. L. A. Cresswell, emphasized at the outset, it was an informal gathering to give as many as possible of the members of the society the opportunity of meeting Mr Cleary individually in the interval between his active practice and his assumption of the high office to which he had been appointed.

"That the opportunity has been welcomed", said Mr Cresswell, "is clear by the very large number of practitioners who have attended. I know that all of you who have not had the opportunity of having a few words with our guest would desire to do so and I do not want to limit that opportunity by lengthy remarks. However, on your behalf I must express to our guest our very great pleasure that one we esteem very highly as a lawyer and a man has received due recognition of the qualities which have fitted him for high judicial office. (Applause.)

"Our pleasure", he said, "is tempered only by regret that his appointment will involve the loss to us of the distinguished and unselfish services he has given to the profession for so many years. In making these remarks, I refer not only to his service to the New Zealand Law Society and in the other offices he has held, but perhaps even more, to what he has done as a friend and counsel of so many of the profession when they were in personal difficulties. He has, regardless of financial loss to himself, laid aside his own work, however important, and unsparingly assisted his colleagues. (Applause.) In doing so he has been a substantial loser of monetary reward, but he has recognized that there are other things than money, and the attendance here today is a tribute to the services he has given."

Mr Cresswell concluded with congratulations on the high distinction Mr Cleary had gained, and on behalf of the profession generally assured the guest of honour that no appointment had met with such unanimous and unqualified approval, mainly because none had been more richly deserved.

"We wish you good health and we look forward", he concluded, "to your having as distinguished a career on the Bench as you have had at the Bar." (Applause.)

IN REPLY.

Mr Cleary, in reply, said he greatly appreciated the opportunity of meeting his colleagues in the profession in Wellington while he was still a constitutional oddity and able to enjoy the sunny climate of their company before his removal to what had been rather forbiddingly called the chilly heights. Whether that Asquithian description of the atmosphere of the Court of Appeal was warranted or not, he hoped he might still from time to time, and at reasonable hours, be allowed into the lowlands where his friends in the profession might be found.

"First", he said, "I would like to thank the President for the kindly and all too generous things he has said. And I would like to thank you all for your presence at this gathering today to afford me the occasion of meeting you all informally once again before I am obliged to take leave of you. If you will allow me, there is a special acknowledgment which I would like to make in your presence, and that is to those who have been my partners over the years, and who have borne any financial loss of the kind referred to by the President. What I say applies in a special manner to 'Olly' Barnett, who has been my friend for almost the whole of my professional life, and my partner for nearly twenty years. I wish to thank you all for your presence, especially those who have come despite the attraction of a more sumptuous lunch elsewhere,† and even more especially those who have climbed the stairs.

"I know of no more apt allusion which may be made on an occasion like this than the reference to a passage from Kipling which was made at a similar gathering by the late Ernst Hay nearly ten years ago, which impressed all of us who were then present, and has remained in my memory since. The passage", said Mr Cleary, "speaks of the reward that was valued most by the Charioteer and Shipmaster of ancient Rome—the strict verdict of their equals:

> 'Neither the wreath nor the statue; nor the welcome of the city, nor the profit of the bale, but the strict verdict of their equals.'

"Whatever I have prized most in my professional life has come unsought from your hands—office in your own District Society, office in the New Zealand Law Society, and this gathering today. I am vain enough to look on these things, and on what you have said, Mr President, as evidence of the strict verdict of my equals in the profession, and for such things, and

for all I have had from the profession, I am more than grateful.

" There are those here today ", said Mr Cleary, " who have been my contemporaries and with whom I grew up in the law. Among them I number most of my closest personal friends. There are others of later generations in the law whom I may not know so well, but whom I am particularly glad to meet collectively today. It is to them that the Law Society will be looking in the years to come to supply its officers, and to whom the Bench will be looking to recruit its members. I shall hope always to take as close an interest as I can in their progress, and I trust they will think that I am neither preaching nor giving utterance to a trite phrase when I say that in their hands will rest the task and the proud privilege of maintaining the traditions of what Sir Alexander Johnston used to call the grandest profession of all.

" I have nothing more to say than to thank you once again for all the kindness that you have shown to me in the past, and to wish you one and all the best for the future."

New Judge Sworn In.

Mr. Justice Cleary took the prescribed Oath of Allegiance and Judicial Oath in the Supreme Court at Wellington on December 17. These were administered by the Chief Justice, the Honourable Sir Harold Barrowclough, who had associated with him on the Bench Mr Justice Gresson, Mr Justice Hutchison, Mr Justice McGregor, Mr Justice Henry, Mr Justice McCarthy and Mr Justice Haslam.

That the occasion was a significant one in the view of the profession as a whole was evidenced by the unprecedented attendance of practitioners, headed by the leader of the Bar, the Attorney-General, the Hon. H. G. R. Mason Q.C., which taxed the precincts of the Court to their capacity. Included among those present were members of the new Judge's family.

Chief Justice's Welcome.

The formality of swearing-in having been disposed of, the Chief Justice, addressing Mr Justice Cleary, said :

" I have now done that which I was commanded to do ; but I would like you to know that I have performed that duty with a great deal of pleasure. I know I speak for all the Judges here present when I say that we offer you the warmest congratulations on your appointment, and that we extend to you a most cordial welcome to our brotherhood.

" You have had a long and distinguished career at the Bar and we are confident that you will give the same distinguished service to the community in the new field which you have now entered. We look forward to your assistance, and trust that you will enjoy your work as much as we shall enjoy the opportunity of working with you.

" It has already been announced that next year you will sit as a member of the newly-constituted Court of Appeal. The President of that Court is sitting on my right and supports me in my welcome to you and I must add that I have today received a message from the other member of that Court, Mr Justice North, in which he says that he desires to associate himself with all that I may say in welcoming you to the Court of Appeal. I am sure that appellate work will be very much to your liking, and I am glad that you will be able to undertake it freed from those difficulties that beset that Court when it was constituted, as for many years it has been constituted, as a Full Court sitting in two Divisions, the members of which have been compelled to disperse on circuit duties without any opportunity of conferring, except by letter, upon the judgments they were required to prepare.

" We wish you every happiness in your new office and we welcome you to our midst.

Bar's Congratulations

" Mr Justice Cleary qualified and practised here in Wellington, but his readiness to place his ability wholeheartedly at the service of anyone who sought his aid led to his appearance at the Bar of nearly every Court in New Zealand," said Mr A. B. Buxton, successor to His Honour as President of the New Zealand Law Society.

" Few members of our society can have been known personally to so many of their colleagues and none has held more their respect, trust and affection. It seems eminently fitting to us that His Honour should be appointed a Judge of the Court of Appeal for which, as our President, he has been the spokesman of the society's views.

" Every member of the society throughout New Zealand and particularly those in the Wellington district, whose President His Honour has also been, are grateful for this opportunity of tendering their congratulations and their hope and wish that His Honour's tenure of office will continue long and happily.

" I am authorized by the Attorney-General, who is present here today, to express his concurrence with the views of the society and to join him in its congratulations and good wishes."

His Honour's Thanks.

Mr Justice Cleary replying to the Chief Justice said :

" May I first express my thanks to the Chief Justice for the kindliness of his welcome during the last few weeks and today, and to his colleagues who have been so friendly in their expressions of welcome also."

The new Judge also thanked the Bar for its expressions of goodwill, and concluded :

" When one stands on the threshold of new work one is inclined to look before and after, and I think one feels more than you realize what a source of comfort and fortitude it is to believe that I have the goodwill of colleagues of the profession to which I have belonged for so many years. I thank you all."

When the Judges retired Mr Justice Cleary followed Mr Justice Gresson in the order of precedence.

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* The following are some, all of them Court of Appeal or Full Court cases :

General Motors Acceptance Corporation v. *Traders Finance Corporation Ltd.* [1932] N.Z.L.R. 1 ; *Strand* v. *Dominion Airlines Ltd.* [1933] N.Z.L.R. 1 ; *Public Trustee* v. *Guardian Trust Co. Ltd.* [1939] N.Z.L.R. 613 ; *Tauranga Borough* v. *Tauranga Electric Power Board* [1944] N.Z.L.R. 155 ; *Hanna* v. *Auckland City Corporation* [1945] N.Z.L.R. 622 ; *Re Raglan Electric Petition* [1948] N.Z.L.R. 65, 98 ; *Pettersson* v. *Royal Oak Hotel* [1948] N.Z.L.R. 136 ; *Attorney-General* v. *Abraham and Williams Ltd.* [1949] N.Z.L.R. 461 ; *Cory-Wright & Salmon Ltd.* v. *Akatarawa Sawmilling Co. Ltd.* [1949] N.Z.L.R. 562 ; *Bankier* v. *Waterfront Industry Commission* [1950] N.Z.L.R. 308 ; *Slater* v. *Glen Afton Collieries Ltd.* [1951] N.Z.L.R. 979 ; *Re Campbell* [1952] N.Z.L.R. 214 ; *Cameron* v. *Worboys* [1952] N.Z.L.R. 963 ; *City Improvements Ltd.* v. *Lower Hutt City* [1954] N.Z.L.R. 493 ; *C. E. Daniell Ltd.* v. *Celekou* [1955] N.Z.L.R. 645 ; *Attorney-General ex rel. Hutt River Board* v. *Leighton* [1955] N.Z.L.R. 750 ; *Mouat* v. *Betts Motors* [1957] N.Z.L.R. 380 ; *Hoani* v. *Wallis* [1956] N.Z.L.R. 395 ; *Re General Order of Court of Arbitration* [1957] N.Z.L.R. 357 ; *Ideal Laundry* v. *Petone Borough* [1957] N.Z.L.R. 1038.

† Some of those present had absented themselves from a State Luncheon in order to attend.

RECENT STATUTES AFFECTING THE CONVEYANCER.

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

In 1957, the New Zealand Legislature passed several amendments to our statutory law of interest and importance to the conveyancer.

ESTATE AND GIFT DUTIES.

The Estate and Gift Duties Amendment Act 1957 is couched in technical language, and is not easy to read by itself. But, if read with the Estate and Gift Duties Act 1955, the daylight gradually emerges.

(*a*) *Superannuation Exemptions Extended to Infant Children.*—In recent years, death-duty exemptions have been bestowed in respect of pensions to widows: the State superannuitants were first in the field. Then the exemption was extended to widows of employees entitled under *approved* superannuation funds. By s. 2 of the Estate and Gift Duties Act 1955, "Superannuation Fund" means any superannuation fund, established for the benefit of the employees of any employer *and approved for the time being by the Commissioner for the purposes of the Act.* Thus it is not every superannuation fund which enjoys these exemptions.

Section 3 of the Estate and Gift Duties Amendment Act 1957 extends the exemption to allowances payable from superannuation funds to, or for the benefit of, any infant child of the deceased until that child attains an age not greater than twenty-one years.

Children of contributories to the State superannuation funds were already exempted by virtue of ss. 45 and 46 of the Superannuation Act 1956.

(*b*) *Ameliorating Provisions in Favour of Husbands.*—Previously, husbands—especially when succession duty was payable—were rather harshly treated by our death-duty law. They received no exemption in respect of estate duty and paid succession duty at rather high rates. The sense of hardship was particularly acute in the not uncommon cases where the husband had contributed, knowingly or unknowingly, willingly or unwillingly, to the building-up of his wife's estate.

Section 4 of the Amendment Act 1957 provides that, where the final balance of the dutiable estate of a deceased woman does not exceed £12,000, the first £1,000 of her husband's succession is to be exempt from estate duty in the same way as the first £500 of a child's succession is exempt under s. 17 (3) of the principal Act. The exemption is to apply in the estates of persons dying on or after July 25 1957.

(*c*) *Commissioner May Remit Payment of Duty in Cases of Late Discovery of Further Assets.*—To the payment of death duty and gift duty the maxim, *nullum tempus occurrit regi*, applies. Time does not run against the King, or, in other words, in taxation matters the Crown is not bound by any statute of limitation. This can be very awkward in the administration of estates. For example, in the administration of an estate in the year 1957, facts may come to light which will show that certain assets in a parent's estate, administered a generation ago, were inadvertently omitted and extra death duty will become payable accordingly by the beneficiaries in the parent's estate. If the parent's estate came under the Death Duties Act 1921, there will also be interest to pay on the amount of unpaid death duty, and that in itself may prove a crippling blow.

Section 5 of the Estate and Gift Duties Amendment Act 1957 is designed to furnish relief in cases of hardship: its efficacy will depend upon the manner in which it is administered by the Department. It amends s. 78 of the principal Act by adding the following subsections:

> (4) Where it is discovered after the expiration of ten years from the date of the death of a person (whether the death occurred before or after the commencement of this Act) that the estate duty payable in his estate has not been fully assessed and paid because of material facts not originally disclosed, and the Commissioner is satisfied that the non-disclosure of those facts was not due to the wilful act or negligence of the administrator or other person liable to pay the duty, the Commissioner may, on special grounds, remit the duty so unpaid together with the interest thereon.
>
> (5) For the purposes of subsection four of this section:
>
> (a) The expression "estate duty", in relation to the estate of a person who has died before the commencement of this Act, shall include estate duty and succession duty under the Death Duties Act 1921:
>
> (b) The term "Commissioner" shall not include a District Commissioner of Stamp Duties.

Immediately there is apparent one noticeable omission from the section. There is no relief in the case of unpaid gift duty. It is the writer's experience that it took a long time, both for the officers of the Department and the members of the legal profession, to appreciate fully the changes effected in the pre-existing death and deed-of-gift duty law by the Death Duties Act 1909; and there are still many people who make gifts who are not aware that gift duty is payable in New Zealand. Recent statutory amendments have tightened up the tax, for it was not until the passing of s. 12 of the Death Duties Amendment Act 1953 that there was any effective penalty for the late payment of gift duty. A penalty of ten per cent. now automatically accrues by virtue of s. 64 of the Estate and Gift Duties Act 1955, if duty is not paid within one year after the making of the gift, which means, however, within one year after the gift has become completed and not one year after the date of an *intended* gift.

STAMP DUTIES.

Amendments to the Stamp Duties Act 1954.—During the last decade, the classes of instruments liable to stamp duty have been considerably lessened. First, the stamp duty on receipts was abolished; then, the stamp duty on statutory declarations: these two acts of the Legislature not only relieved us of duties which could be irritating, but also simplified the stamp-duty law, for there were many exemptions from these two duties, and, especially in the case of receipts, these exemptions had received judicial interpretation. Then, in 1956, agreements for the sale (with certain exceptions) of goods, wares, or merchandise were exempted from the simple agreement duty of 1s. 3d., imposed by s. 140 of the Stamp Duties Act 1954. That exempted many instruments from the agreement duty of 1s. 3d. previously payable, although it did not simplify the stamp-duty law, for there is in the United Kingdom a similar exemption on which there are several reported cases.

(*a*) *Exemption of Appraisements, Awards, Bills of Lading, and Charter Parties.*—The Stamp Duties Amendment Act 1957 abolishes duty on several other classes of instruments, all of which were apt to trap the unwary, but were not of any great assistance to the revenue. Section 5 abolishes the duty on appraisements and awards, and s. 6 that on bills of lading and charter parties and makes it clear that the latter two will not in future be liable to simple-agreement or deed-not-otherwise-charged duty. Of most interest to the conveyancer is the abolition of stamp duty on appraisements: no longer will one be liable, when dealing with a sale of chattels and other property, to receive a requisition from the Stamp Duties Office for production of a duly-stamped instrument of appraisement.

(*b*) *Exemption from Stamp Duty of Overseas Charities.*—Section 2 amends ss. 69, 90, and 151 of the principal Act so as to exempt conveyances to, and declarations of trust in favour of, overseas charities from conveyances duty and certain other forms of stamp duty in the same way as New Zealand charities are at present exempt. Similar exemptions have already been given in respect of gift duty and amusement tax.

It may be noted here that the exemption from gift duty followed a suggestion by the learned editor of this JOURNAL in (1955) 31 N.Z.L.J. 212. This amendment also will simplify stamp-duty law, for the question often arose in practice whether a charity was in law a New Zealand charity or an overseas one.

(*c*) *Commutation of Stamp Duty on Bills of Exchange and Promissory Notes.*—Section 3 provides for the making of regulations under which the drawers of bills of exchange and the makers of promissory notes can pay the duty thereon in lump sums by way of commutation. The section consequentially relieves banks and others from liability in respect of dealings with unstamped bills of exchange where the bills bear a printed inscription that stamp duty in respect thereof is not payable.

(*d*) *Repeal of Special Provisions Dealing with Sales of Shares in Mining Companies.*—Ever since the days of the gold-mining rushes in New Zealand, special and rather stringent provisions as to the *sale* of shares in mining companies have prevailed. They appear to have been designed with the intention of preventing leakages in revenue when shares in gold-mining or silver-mining companies passed hands in quick succession. The requisites were that, on the *sale* of *mining* shares (as defined), a duly-stamped seller's contract note should within twenty-four hours from the *hour* of the sale be signed by the seller and transmitted by him to the buyer, and on the *purchase* of shares in a mining company a duly-stamped buyer's contract should within twenty-four hours from the *hour* of purchase be signed by the buyer and transmitted by him to the seller. These provisions were contained in Part VIII of the Act.

Section 4 repeals Part VIII of the principal Act, and makes other consequential amendments to that Act, with the effect of putting sales of shares in mining companies in the same position as sales of other shares. The result is another simplification of the stamp-duty law.

JOINT FAMILY HOMES.

Devolution in Cases of Simultaneous Deaths.—There is still another amendment to this popular but frequently-amended Act. Section 2 of the Joint Family Homes Amendment Act 1957 amends s. 7 (2) (*b*) of the principal Act by adding the following proviso:

> Provided that, notwithstanding anything in any other Act, if after the commencement of this proviso the husband and wife die at the same time or in circumstances which give rise to reasonable doubt as to which of them survived the other, the joint family home (so subject) shall devolve as if it were owned by the husband and wife at their deaths as tenants in common in equal shares.

There are to be particularly noted the words, "notwithstanding anything in any other Act". This must refer to s. 27 of the Property Law Act 1952, which provides that where two or more persons have died in circumstances rendering it uncertain which of them survived the other or others, those deaths shall (subject to any order of the Court) for all purposes affecting the title to property, be presumed to have occurred in order of seniority, and accordingly the younger shall be deemed to have survived the elder. Under the common law there was no presumption as to who died first in these cases, and difficult questions of fact arise. They still do: see, for example, *In re Smith, Huzzift* v. *Public Trustee* [1955] N.Z.L.R. 1122 S.C.; [1956] N.Z.L.R. 992.

It will interest all lawyers to learn that last session a Bill (the Simultaneous Deaths Bill) was introduced. It would have repealed s. 27 of the Property Law Act 1952, and substituted more elaborate provisions. The reason for the Bill was set out in the relevant explanatory note:

> The present [statutory]* rule avoids the previous uncertainty, but produces unsatisfactory consequences in some cases. For instance, where a childless couple are killed together and the husband is the elder, the wife's estate will receive whatever portion of the husband's property she is entitled to under his will or on his intestacy. This may mean that a farm or other valuable property given to the husband by his parents will go to the wife's family.

This reason does not appear to the writer to justify the repeal of s. 27 of the Property Law Act 1952, which has brought certainty to this branch of the law. Childless couples, for example, can easily avoid their property going to their "in-laws" by instructing their legal advisers to make the necessary provisions in their wills.

To revert to the provision in the Joint Family Homes Amendment Act 1957, there is no mention therein of any special death-duty concession. It appears to the writer that once the joint tenancy is deemed to be a tenancy-in-common, the special death-duty exemption conferred by s. 16 of the Joint Family Homes Act 1950 (as enacted by s. 4 of the Joint Family Homes Amendment Act 1955)—an exemption on an amount not exceeding £3,000—will not apply. The amendment will simplify the devolution of the *legal* estate—that will devolve as to one-half on the personal representative of the husband, and, as to the other half, on the personal representative of the wife. As to the devolution of the *beneficial* estates, that appears to be an entirely different matter.

PROPERTY LAW.

(*a*) *Liability of Purchaser of Mortgaged Property to the Mortgage.*—Section 104 of the Property Law Act 1952 broke entirely new ground by making the purchaser of mortgaged land personally liable to the mortgagee, thus saving the cost of deeds of covenant by the purchaser, which until then had become an almost universal practice in New Zealand.

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* (The word "statutory" has been interpolated by the writer.)

Subsection (2) of s. 104 provided that nothing in that section should render an executor or administrator personally liable in respect of the estate of the deceased person except to the extent of the assets of the deceased under his control as executor or administrator. There was no mention in this subsection of a trustee. This omission has now been remedied, and s. 4 of the Property Law Amendment Act 1957 repeals s. 104 (2), and substitutes the following subsection:

> (2) Nothing in this section shall render an executor or administrator or trustee personally liable in respect of the estate of a deceased person or in respect of the property subject to a trust, as the case may be, except to the extent of the property under his control as such executor or administrator or trustee.

(*b*) *Court's Power to Grant Special Relief in Case of Encroachment.*—One defect in s. 129 of the Property Law Act 1952 (as in the corresponding provisions of the earlier Acts) was that the owner of the encroaching land had no recourse to the Court for relief, unless the owner of the land encroached upon took legal action to eject him.

Section 129 of the principal Act, which relates to the power of the Court to grant special relief in cases of encroachment has been redrafted. The main changes are in subss. (1) and (5), which have been expanded so as to allow any person concerned to apply to the Court for relief, whether or not any action or proceeding relating to the land is pending. It is made clear that all such cases can be taken in a Magistrate's Court by consent. The proviso to subs. (6) has been consequentially amended so as to require that, except where a Magistrate's Court is acting under its consent jurisdiction, the party invoking the remedies given by the subsection shall give notice of his intention to all other parties to the proceedings; and so as to allow any party as of right to have the proceedings transferred to the Supreme Court.

The new section applies not only to land under the Land Transfer Act or the Deeds Registration Act, but also to land under the Mining Act, such as residence sites and business sites. The case of *Dean* v. *Johnson* [1953] N.Z.L.R. 656 shows one that the extending of the jurisdiction to land held under the Mining Act was desirable. In that case Stanton J. ordered rectification of the boundaries of two properties held as residence sites, on the ground of mutual mistake in the conveyances.

Oaths and Declarations.

The Oaths and Declarations Act 1957 consolidates and amends certain enactments relating to oaths, affirmations, and declarations.

It repeals provisions in many Acts, and conveniently puts into one Act the New Zealand statute law as to oaths, affirmations and declarations.

Repeal of Many Old Acts.—Section 31 of the Act is interesting: Certain United Kingdom Acts cease to have effect as part of the law of New Zealand. It reads as follows:

> (1) As from the commencement of this Act the Acts of the Parliament of England or of the United Kingdom specified in the Fifth Schedule to this Act shall cease to have effect as part of the law of New Zealand.
>
> (2) It is hereby declared that the provisions of sections twenty and twenty-one of the Acts Interpretation Act 1924 shall apply with respect to the Acts specified in the Fifth Schedule to this Act as if the last-mentioned Acts were Acts of the General Assembly of New Zealand.
>
> (3) Nothing in this Act shall be deemed to affect the validity of any declaration duly made out of New Zealand before the commencement of this Act in the manner prescribed by the Act of the Parliament of the United Kingdom intituled the Statutory Declarations Act 1835, and every such declaration which, if this Act had not been passed, would be received in evidence in any judicial proceedings shall be received in evidence in those proceedings as if this Act had not been passed.

Among the Acts thereby repealed there will be found in the Fifth Schedule, the Statutory Declarations Act 1835, the (Colonies) Evidence Act 1843, and s. 47 of the New Zealand Constitution Act 1852.

Sections 20 and 21 of the Acts Interpretation Act 1924 are to apply to these repealed Acts of England or of the United Kingdom.

Section 20 of the Acts Interpretation Act 1924 contains general provisions as to repeals. Thus, para. (*b*) thereof provides that the repeal of any enactment shall not affect any Act in which such enactment has been applied, incorporated, or referred to. And s. 21 provides that in every unrepealed Act in which reference is made to any repealed Act such reference shall be construed as referring to any subsequent enactment passed in substitution for such repealed Act, unless it is otherwise manifested by the context, and all the provisions of such subsequent enactment, and of any enactment amending the same, shall, as regards any subsequent transaction, matter or thing, be deemed to have been applied, incorporated, or referred to in the unrepealed Act.

(*b*) *New Form of Statutory Declaration.*—To the conveyancer, however, the most important alteration to the law which will be effected when the Oaths and Declarations Act 1957 comes into force on April 1 next is the new form of statutory declaration made mandatory by the joint effect of s. 9 and the First Schedule to the Act. Section 9 reads as follows:

> (1) A declaration made in New Zealand shall be in the form prescribed in the First Schedule to this Act, and shall be made before a Justice of the Peace, solicitor, or notary public, or any Registrar or Deputy Registrar of the Supreme Court or of any Magistrate's Court, or any other person by law authorized to administer an oath, or before any postmaster or other officer in the service of the Crown from time to time authorized for that purpose by the Governor-General by notice in the *Gazette*, or before any member of Parliament.
>
> (2) An officer in the service of the Crown so authorized to take declarations may be an officer designated by name or as the holder for the time being of any specified office in the service of the Crown.

The form of declaration set out in the First Schedule is as follows:

Form of Declaration.

I, A. B., of [*Insert place of abode and occupation*], solemnly and sincerely declare that [*Insert facts*].

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths and Declarations Act 1957.

A. B.

Declared at this day of 19 .

J. S., Justice of the Peace.

[*Or other person authorized to take a statutory declaration.*]

Now, for many years, we have all been accustomed to the form of declaration prescribed by the Justices of the Peace Act 1927. There is no form more commonly used in a solicitor's office than that of a statutory declaration, and clients often come into one's office to declare to them some days or even weeks after they have been typed. Now the Oaths and Declarations Act 1957 will not come into operation until April 1 next. As I read the cases, *R.* v. *Smith*

(1909) 29 N.Z.L.R. 244; 12 G.L.R. 246; *R.* v. *Haynes* [1916] N.Z.L.R. 407; [1916] G.L.R. 297, and *R.* v. *Habgood* [1934] N.Z.L.R. 73; [1934] G.L.R. 78, the words in the form of declaration in the First Schedule to the Act, " by virtue of the Oaths and Declarations Act 1957 " are essential. As Reed J. said in *R.* v. *Habgood*: " The concluding portion of the prescribed form is not of such a character as to call for any deviation; *it is a fixed and stereotyped formula* ". Therefore, it appears to the writer that a declaration purporting to be made under the Justices of the Peace Act 1927, will not in actual fact be a statutory declaration, if declared to on or after April 1, 1958. Therefore, as that date approaches, we shall all have to watch our steps very carefully in drawing and attending to the execution of statutory declarations.

COMPANY LAW: REFUSAL TO REGISTER SHARE TRANSFER.

By GLOSSATOR.

The limiting effect which quotation on the Stock Exchange would have on the discretion of directors to refuse registration of a share transfer is discussed by Mr Justice Stanton in his judgment in *In re Dominion Builders' Supplies (Christchurch) Ltd.* [1957] N.Z.L.R. 635, which he gave recently in Christchurch.

In this case C., already a shareholder, sought to have registered several transfers of shares which he had purchased through his broker on the Stock Exchange. The company's articles conferred a discretion on its directors to refuse registration to a transferee of whom they did not approve. The directors wrote refusing registration on the grounds that, as the company was a timber merchant, no transfers would be accepted from builders. C. was a builder. At a subsequent meeting, further transfers to C. of shares also bought on the Stock Exchange were considered, and, again, the directors refused registration, but this time gave as their reason that C. was a transferee of whom they did not approve. C. took proceedings to rectify the company's register and have himself registered as holder of the shares comprised in the transfers.

Stanton J., after reviewing the authorities, came to the conclusion that the directors might in such a case refuse registration, but only if they were acting reasonably in the circumstances. He then proceeded to consider whether they had done this. He held that the particular circumstances of the case in relation to which reasonableness must be considered included the following:—

1. The company was a public company with a large number of shareholders.
2. Its shares were quoted on the Stock Exchange.
3. The proposed transferee was already a shareholder.
4. At least two other builders were at the time shareholders.
5. No personal objection to C. was suggested.
6. The company's customers were mainly builders.
7. If the transfers were registered, C. would be entitled, on a poll, to approximately seven-and-a-half per cent. of all the votes.
8. C. was not a rival or competitor of the company.
9. The company had suffered no detriment by having C. and some other builders as shareholders.

Registration was accordingly ordered. His Honour referred to several authorities: *6 Halsbury's Laws of England*, 3rd ed. 253; *Moffatt* v. *Farquhar* (1878) 7 Ch.D. 591, 610, where Malins V.-C., referring to an earlier case, said: " The Court held as it does in all these cases that the company must exercise their power in a reasonable manner "; and *In re Bell Brothers Ltd., Ex parte Hodgson* (1891) 65 L.T. 245, where Chitty J., in a judgment, which has been frequently quoted with approval, said:

> In these articles there is an express provision protecting the directors against any liability to disclose their reasons. They are, however, at liberty, if they think fit, to disclose them, and if they do the Court must consider the reasons assigned with a view to ascertain whether they are legitimate or not; or, in other words, to ascertain whether the directors have proceeded on a right or wrong principle. If the reasons assigned are legitimate, the Court will not overrule the directors' decision merely because the Court itself would not have come to the same conclusion. But if they are not legitimate, as for instance, if the directors state that they rejected the transfer because the transferor's object was to increase the voting power in respect of his shares by splitting them among his nominees, the Court would hold that the power had not been duly exercised. So also, if the reason assigned is that the transferee's name is Smith, or is not Bell (*ibid*, 246).

In previous cases, where the article from which the directors derived their power or discretion was of the same type as in the *Dominion Builders'* case—that is, that the discretion might be exercised against *transferees* who were not approved and not against *transfers*—the Courts had always proceeded on the principle that transferees could only be excluded or discriminated against on personal grounds. Examples of these personal grounds are cited by Lord Cozens-Hardy M.R. in *In re Bede Steam Shipping Co. Ltd.* [1917] 1 Ch. 123, 133, as " the transferee is . . . a quarrelsome person . . . he is an uncertain person . . . he is acting in the interests of a rival company, or something of that kind." The Courts have never regarded accretions to voting power, vote splitting or objections of possible use of votes and influence as valid reasons for disapproval: see *In re Alfred Shaw & Co. Ltd.*; *Hughes's Case* (1896) 21 V.L.R. p. 599; *Re Bell Brothers Ltd. ex parte Hodgson* (1891) 65 L.T. 245, and *New Lambton Land and Coal Co. Ltd.* v. *London Bank of Australia Ltd.* (1904) 1 C.L.R. 524.

In the *Dominion Builders* case it was contended, apart from use of votes and influence, that the transferee's large holding would influence customers, who were builders, away from trading with the company as amongst other considerations they would suspect that he enjoyed preference in the allotment of scarce commodities. For this reason, it was alleged C. was not a person of whom the directors approved. This is certainly a novel reason for disapproval. It might well be said to be included in " the something of that kind " category mentioned by Lord Cozens-Hardy M.R. in the *Bede Steam Shipping* case. Here, however, the

test of reasonableness in the circumstances was applied and the company's contention that such an objection could be a personal one accordingly failed. The fact, which is mentioned by Stanton J., that M., the chairman of directors, was competing on the Stock Exchange to acquire the same parcel of shares may also have weighed with the Court in noting the results of the test applied.

It is well established that in refusing to register, directors may refuse to give reasons and cannot be compelled to do so. It is also equally well established that the Court will not inquire into the sufficiency of their reasons if they are given provided they are furnished bona fide: *Bell Brothers'* case (*supra*); *In re Hafner, Olhausen* v. *Powderley* [1943] I.R. 426. How then can reasonableness be applied as a test? This apparent conflict was noted by Scrutton L.J. in his dissenting judgment in the *Bede Steam Shipping* case, [1917] 1 Ch. 123, 137 et seq.; and it seems that the Court, if it wishes to interfere with the directors' decision not to register, must hold, not that the directors' reasons were insufficient, but that the matters dealt with by the directors were such that they could not reasonably form the opinion, and therefore exceeded their powers.

Chitty J. said in *Bell Brothers'* case (*supra*) p. 245 et seq:

> The discretionary power is of a fiduciary nature, and must be exercised in good faith; that is legitimately for the purpose for which it is conferred. It must not be exercised corruptly, or fraudulently, or arbitrarily or capriciously or wantonly. It may not be exercised for a collateral purpose In exercising it, the directors must act in good faith in the interests of the company and with due regard to the shareholder's right to transfer his shares, and they must fairly consider the question of the transferee's fitness at a board meeting.

Before concluding discussion on the power to refuse to register transfers created by articles in "the transferee of whom the directors do not approve" form, it is to be noted that there is at least one reported case—*In re Dublin North City Milling Co.* [1909] 1 I.R. 179—in which it has been held that as the power is discretionary the directors may refuse to register further transfers to a person who is already a member, provided the directors act bona fide in so doing. In the *Dominion Builders'* case, Stanton J. held that the fact that the transferee was already a member might be regarded as some indication that the directors were acting unreasonably. It is suggested that the two decisions are not altogether at variance. In the *Dublin* case the directors did not at any stage disclose their reasons and the decision stems from the inability of the transferee to show that the directors' actions were not bona fide.

Where the articles are in the form that "the directors may in their discretion or the interests of the company refuse to register any transfer", the powers of the directors are wider. The directors in such case are not limited to personal objections as they are when the other form of article is used. If the directors also refuse to disclose reasons for refusal they appear to be in an unassailable position. "Hedged round with the privilege of remaining mute and the prima facie presumption of rectitude, the astutely silent director who wishes to exercise this power illegitimately may well consider himself all but invulnerable. No need to speak and no unfavourable inference from reticence —that is the settled rule. Yet, like many another settled rule, I am persuaded that it is not proof against possible exception," said Black J. in *In re Hafner, Olhausen* v. *Powderley* [1943] I.R. 426, 440. In this case, the plaintiff had shown that the directors drew what Black J. characterized as "bloated emoluments" which "would convert this flourishing company from a dividend-paying concern into a director-remunerating enterprise." Black J. found, therefore, that he was entitled to infer that the decision to refuse registration was actuated by a motive to facilitate the payment of these emoluments and was not a bona fide exercise of the power. More importantly, however, he also held that he was now no longer bound, once an illegitimate motive had been found, to ignore the directors' silence or to refuse to draw any inference from it, and that in so doing he was following Chitty J. in *Bell Brothers'* case. It is to be noted that, on an appeal, Black J. was on this point upheld and the general statement by the directors that they had acted in the interests of the company was not considered in the circumstances to have any evidentiary value (*ibid.*, 474).

There is also one further weapon of considerable power to assist in breaching the defences of a board of directors which has chosen merely to plead the interests of the company and remain silent as to the real reason which induced it to refuse registration; that is, the liability of the directors themselves to cross-examination. This is mentioned by Lord Greene M.R. in *In re Smith & Fawcett Ltd.* [1942] 1 Ch. 304, 308, where he says:

> If it is desired to charge a deponent with having given an account of his motives and his reasons, which is not the true account, then the person on whom the burden of proof lies should take the ordinary and obvious course of requiring the deponent to submit himself for cross-examination.

Proceedings seeking to enforce registration may be either by way of originating motion commenced under s. 124 of the Companies Act 1955, or by writ of summons. If the proceedings are by motion, cross-examination may be ordered under R. 183 of the Code of Civil Procedure, but presumably, no matter what form the proceedings took, it would be incumbent on the plaintiff to establish a prima facie or probable case of lack of bona fides before the Court would compel or allow cross-examination of a director or directors. It is also to be noted that once proceedings have been issued, if evidence is to be given at all to justify the refusal, it must be given by a director personally, even if it is only a short affidavit to the effect that the directors acted in what they considered to be in the interests of the company. A refusal by the directors to give evidence is in itself a circumstance calculated to establish lack of bona fides, and evidence by company servants and others in place of the directors is regarded as an attempt "to swear by deputy": *Bell Brothers'* case (1891) 65 L.T. 245, 248. Here, of course, is the strength of the directors' position if they have acted bona fide and in the interests of the company; but, if they have not, there must generally emerge some fact or facts from the plaintiff's case which in effect allows the Court to look to the directors for an explanation and submit themselves to cross-examination on it.

In the absence of corruption or dishonesty, what amounts to lack of a legitimate reason or bona fides? What is a capricious reason? What is an arbitrary exercise of the power? It is suggested that here again the test is what is reasonable in the circumstances,

(*Concluded on p. 16.*)

IN YOUR ARMCHAIR—AND MINE.

By Scriblex.

Revels at Gray's Inn.—Numerical transposition and the approach of the Vacation seem to have projected Scriblex's note (17/12/57) on the Gray's Inn Revels a mere matter of 360 years in time. These were held in 1594 not 1954, as stated; and the note was taken from Dr G. B. Harrison's "Elizabethan Journal." As to whether the "Prince of Purpool" governed the Revels in 1954, Scriblex has no knowledge. It seems unlikely as in that year the Inn had three functions presided over by the Treasurer, His Royal Highness, the Duke of Gloucester, the third being a dinner to celebrate the ascendancy of Lord Kilmuir to the Woolsack. He is the third member of Gray's Inn to become Lord Chancellor, the others being Sir Francis Bacon and Lord Birkenhead.

Condonation Note.—In *Scadden* v. *Scadden McHardy* [1944] N.Z.L.R. 908, where the petitioner continued to live with her husband after an admission that he had had over a lengthy period adulterous relations with her sister, Finlay J. granted her a decree upon the ground that her actions were dominated by financial considerations and the difficulty of finding any alternative accommodation for herself and her children in the only locality she knew or, indeed, elsewhere. But where acts of intercourse take place between husband and wife following conversations in which they had agreed to a reconciliation, it would appear from the recent Court of Appeal decision in *Baguley* v. *Baguley** that the rule as to condonation may be as strictly applied against one as against the other, and particularly in those where the wife continues, as it were, to be her own mistress. In this case, the Court of Appeal held that there had been nothing to force the wife to submit to the embraces of husband except her own will, and in such circumstances the authorities had consistently proceeded on the basis that the law of condonation was the same for the husband as for the wife. Morris L.J. also stated that there was no suggestion here that the wife had been overborne, and no circumstances which made it difficult for her to decline to accept the husband's suggestion. She had yielded voluntarily, and if the husband had been guilty of the matrimonial offence of cruelty she had condoned it. Sellers L.J. stated that to hold in this case that there had not been condonation would amount to a reflection on the wife which he was not prepared to make.

Helena Normanton Q.C.—The death, at 74, of Mrs Helena Normanton Q.C., removes one of the most notable women practitioners from the legal scene. She took First Class Honours in Modern History at the London University and diplomas in French Language and Literature at the Dijon University. The first woman barrister to be briefed at the High Court, the Central Criminal Court, and the London Sessions, she was also the first woman barrister to be elected to the General Council of the Bar. Later, with Miss Rose Heilbron, she became one of the first two women silks. She lectured both at the Glasgow University and at the London University. She wrote *The Trial of Norman Thorne* in the Famous Trial series, and *The Trial of A. A. Rouse* in the Notable Trial series, and was the author of *Sex Differentiation in Salary* and *Everyday Law for Women*. She was a contributor to the *Encyclopaedia Britannica* (13th ed.), and the author of works and articles concerning the economic position of her sex. As President of the Married Women's Association, she drew up a report to the Royal Commissioner on Divorce recommending fair financial share for husbands and wives and the setting up of courts of domestic relations.

* As yet unreported *The Times* Oct. 10, 1957.

An Extreme Penalty.—A country contributor has drawn the attention of Scriblex to an advertisement in the *Leader*, the local newspaper of the Upper Hutt, reading:

> Water Restrictions
>
> Notice is hereby given that it has been resolved by the Council that it is an offence against the By-laws for a hose to be connected to the Borough Water Supply unless the hose is held in the hand during the full period of use.
>
> Automatic Sprinklers or Sprayers are Not Permitted.
>
> Any person found contravening these restrictions will be prosecuted and shot.
>
> A. M. Hosking,
> Town Clerk.

This Notice is in the issue of December 20, and the penalty proposed seems out of harmony with the avowed policy of the Government in capital cases.

From My Notebook ("This England" Division).—Is it not time we altered the wording of the judicial phrase: "Detained during Her Majesty's pleasure" It is surely an insult to the Queen to suggest that she takes any pleasure in such matters.—Letter in *Everybody's*.

The father of a nine-year-old boy, brought before Brighton Juvenile Court for stealing an ignition key from a car, said: "We have tried to do everything for him. I have just installed a television set for him, we cannot do any more."—*Brighton Evening Argus*.

A Pole was fined £1 at Birmingham yesterday for being drunk and disorderly. But he got a guinea as interpreter for a Pole on a similar charge.—*News Chronicle*.

Mr A. A. Walter, Assistant Official Receiver, said it seemed pretty clear that the company was well on the rocks by March 1950. "I have heard from two secretaries of the company that the Sheriff's officer was so constantly in attendance that when he died the staff clubbed together and bought him a wreath. There seemed to be some doubt whether he was a member of the staff himself."—*Daily Telegraph*.

At King's Lynn, Norfolk, yesterday a man was granted legal aid when he chose to go for trial on a charge of making a false statement for the purpose of obtaining free legal aid.—*Daily Herald*.

"I have seen a good many corpses in my time," said the Coroner (Mr W. R. Wallace), "but I have never seen such a pleasant one as Mrs . . . "—*Cambridge Independent Press*.

COMPANY LAW: REFUSAL TO REGISTER SHARE TRANSFER.

(*Concluded from p. 14.*)

although in the " transfer " form of articles, as distinct from the " transferee " form, there is no limitation to personal reasons. " The power of refusing to register a transfer . . . must be exercised reasonably and bona fide and for the company's benefit, and not arbitrarily . . . " : *6 Halsbury's Laws of England*, 3rd ed. 253. What is reasonable of course depends on the instant case. A refusal which is reasonable in the case of a private company, where the directors may be justified in using their power to exclude other persons or to limit their voting powers (see, for example, *In re Smith & Fawcett Ltd.* (*supra*)) might very well be capricious in a public company, where there are many shareholders and the shares are quoted on the Stock Exchange.

No attempt has been made to deal with all the authorities, or even to list them. They can be readily found in *Halsbury*, the *English and Empire Digest*, or the text-books. Questions may arise over articles giving power to refuse where calls are in arrear or in other specified cases and in these cases the directors' powers must be ascertained by reference to the article concerned. The same applies, of course, to the articles which have been referred to in this discussion as the " transferee " form and the " transfer " form. The extent of the limitation of the right to transfer depends in all cases on the wording of the article itself. However, the directors' powers may not always be taken literally from the company's articles. Under cross-examination, the most artful and plausible exercise of discretion arranged in the false security and briefly encouraging atmosphere of the board-room may, as the scheming director stands without support in the witness-box, be revealed for what it is—capricious or corrupt.

AQUA SAXUM CADENDO CAVAT.

By Advocatus Ruralis.

Advocatus still has an occasional farmer client in spite of his at times firmly expressed views on farmers and farming. One farmer who prides himself on keeping up to date with farming methods has two properties one of which lies alongside a river. When the farmer was surprised about six years ago by the wonderful rise in farmers' income he thought the time had come to invest in one of those electric pumps which would spread the river water all over his farm at the rate of 750 gallons per hour. This was accordingly done and it was so successful that he extended it considerably till even his bookkeeper was surprised at the amount of fencing repairs he was doing.

Our farmer was so pleased with his new toy that he couldn't help showing these results to his farmer friends. This was all right for a time, but our client had forgotten that his other farm was watered largely by a stream which ran through many farms before reaching him. This stream had run freely for more than twenty years but in the last year or two the flow had slowed down till now, in dry seasons, it had almost stopped. On searching for a reason, he found to his annoyance that a number of upstream farmers whom he had previously regarded as friends had installed electric pumps of even larger capacity than his and it looked as if his farm was going dry. What could he do about it ? This was rather a poser, as Advocatus felt that riparian rights was a subject over which even the late Professor Garrow passed during the night.

We explained that the question of riparian rights had been obscured for at least a century by a thing called *Rylands* v. *Fletcher*—a case which sooner or later obtruded itself into every conveyancing lawyer's life. The position had been made more difficult by an article in that miscellany of fact and fiction, the *Reader's Digest*, which had set out to show that the ground levels of townships were sinking right and left in the United States simply because the farmers and the neighbours generally were taking all the underground water supply. This article had no doubt caused our Government to bring in a new Act,[1] which was intended to control the underground streams or artesian water supplies in places like the Hutt Valley, or Christchurch.

We explained that a riparian owner had the right to use the water for domestic purposes, an undefined term which we felt extended further than the washing-up. He could, if Professor Garrow is to be believed, entirely exhaust the stream for domestic purposes.[2] Our client had never heard of Professor Garrow, so we carried on by explaining that apart from the domestic supply the position was *Aqua currit et debit currere*. We do not see why a perfectly simple Latin quotation should make a client want to tear his (or our) hair, but we have noticed the same tendency in the Junior Partner.

Advocatus then pointed out that the proper department to approach in matters having to do with water was the Catchment Board, which according to the Act controlled all flowing water. We explained our own experience with Catchment Boards was very similar to our experience of forty-odd years ago when as a one-pip artist we were sent to beard Dados in his den and we found both corporations equally helpful.

Advocatus advised that the matter was serious enough (see *Reader's Digest*) to require the intervention of the Federated Farmers ; but the difficulty we foresaw there was that ninety per cent. of the farmers were busy pinching water from the remaining ten per cent.

We assured him that if this were a mere social call he had our sympathy, but that if it were a business call we would be glad to start proceedings which no doubt would set a precedent for New Zealand. After a few minutes spent in thought (or possibly in sleep) our client left and our diary entry read :

Wealthy Farmer—1 Hour W.B.T.

Our typist knows that W.T. stands for Wasting Time. B as in P.B.I.

1. Underground Water Act 1953.
2. *Garrow's Real Property*, 4th ed. 346. (*In medias res*).