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FAMILY PROTECTION: SOME RECENT JUDGMENTS.

IN *In re McDonald, McDonald* v. *Stout and Others*, there was an application by the widow of the testator for further provision out of the estate. Her claim for relief was conceded and the judgment dealt, in her case, with the questions of the nature and quantum of the further provisions to be made for her.

The assets available for distribution amounted in round figures to £16,000 and the will provided only an annuity of £104 for the widow. She and the testator were married in 1912 and for some years they lived happily, the widow doing all that was required of her in assisting to build up her husband's estate and more than most wives would have felt called upon to do. However, after a few years relations deteriorated, and in 1944 the widow left the matrimonial home. Proceedings for separation and maintenance were compromised by the widow accepting a maintenance allowance of £1 per week. Until shortly before the Family Protection proceedings she helped to support herself by taking work as a domestic.

On her behalf application was made for the provision of a home free of all outgoings including maintenance and repairs, as well as an increased annuity, but Henry J. could not see that a case had been made out for the provision of a home. He took into account the fact that the widow had been separated from her husband for over 15 years and no home had been provided for her during the period of separation; also she had accepted a very small sum for maintenance. In explanation the widow attributed the separation to her husband's attitude to her but said that she would not face the publicity of domestic proceedings. Henry J. found this explanation unconvincing and said:

> "The Court ought not to close its eyes to the evaluation of the plaintiff herself of her rights against her husband and particularly her failure shortly before his death to press her claim for better provision."

The claim for provision of a home was rejected and an increased annuity of £416 was granted.

IN RE HARRISON.

The case of *In re Harrison, Thomson* v. *Harrison* was dealt with by Sir Harold Barrowclough C.J. on 4 October 1960. The estate of the deceased was worth about £12,800 and the whole of it was given to his widow, who was his second wife. The plaintiff was a married daughter of the deceased by his first marriage, and it was clear that the plaintiff and the widow were the only persons who could possibly have claims under the Family Protection Act.

The deceased's marriage to the plaintiff's mother was an unhappy one. After about three years cohabitation a separation agreement was entered into which was followed by a divorce, the wife retaining the custody of the daughter. The daughter saw little of her father although they occasionally exchanged letters. They were not unfriendly but were far from intimate. A contribution was made by the deceased to the maintenance of his daughter while she was a child, but only under the compulsion of a maintenance order.

The deceased married his second wife in 1935 and that marriage continued until his death in 1959. For some years he was not able to maintain his second wife in any degree of comfort and in various ways she seemed to have maintained herself and to some extent her husband. For lengthy periods the couple lived with the wife's parents and the wife rendered assistance in the parents' home in return for the accommodation so provided. At times she took outside employment.

The testator's estate did not arise from his own activities but chiefly from legacies which he received. Some of the money was invested in a farm which was largely managed by the wife, and two assets comprising cash and blood stock worth about £3,000 were derived from breeding racehorses from a brood mare owned by the wife which was apparently grazed free on the wife's brother's property. His Honour commented that if the wife had insisted on a strictly businesslike partnership arrangement between herself and her husband, both as regards the farm and the breeding venture, her own estate would have been larger and his correspondingly smaller. After detailing certain other facts the Chief Justice commented that there was no doubt that the wife had the strongest possible claims on her husband's bounty and that while a widow's claim was generally a strong one, in this case it could not be stronger.

The plaintiff was 38 years of age. She had no assets apart from a small sum in the Post Office Savings Bank but was married to a farmer possessing assets worth some £13,000 whose life was insured for £8,000 to £9,000. His Honour concluded that, if the husband died and left the plaintiff a life interest in his estate she would be entitled to the income from £17,000.

On these facts the daughter's case was certainly not a strong one, and the Chief Justice queried whether she

had any claim at all under the Act. Before it could assume jurisdiction to make an order the Court must first be satisfied that there was a need for maintenance: *In re Blakey* [1957] N.Z.L.R. 875, 877.

Counsel for the plaintiff sought to bring the case within the principles of recent decisions in which provision had been made for daughters married to husbands capable of maintaining them, and relied strongly on *In re Easton* [1958] N.Z.L.R. 125. He based the claim on the principle that the daughter should have something in her own right, whereas she had next to nothing. However his Honour did not agree that the Court of Appeal in *Easton's* case (*supra*) had laid down any such principle. It decided that in a case *such as that before it* the daughter should have something in her own right, but was there dealing with an estate worth £210,000.

The plaintiff also relied on *In re Bennett*, reported in (1959) 35 N.Z.L.J. 35. That case was however distinguishable because of the differing financial positions of the respective daughters concerned. In *Bennett's* case, although the daughter had property of her own worth £3,000 and the income for life from £1,000 her husband was in by no means as strong a capital financial position as was the husband of the present plaintiff, and the residuary beneficiary was a charity which acquiesced in the order made by the Court.

His Honour went on to say that the will before him seemed to have treated the plaintiff unjustly from a moral point of view when she had had the scantiest financial assistance from her father in infancy and as a young unmarried woman. Nevertheless, on a review of the facts, the plaintiff was quite comfortably provided for and, while expressing sympathy with her, his Honour was forced to hold that she was not in need of proper maintenance and support. Her need was already amply and reasonably assured both now and in the future. The order sought for further provision was therefore refused, but the plaintiff was allowed her costs out of the estate.

In re Mullen.

The case of *In re Mullen* dealt with by Richmond J. on 23 November 1960 had some unusual features. The plaintiff was the widow of the deceased having married him in 1957 when the deceased was 78 and the plaintiff 45. The deceased had previously been married, his first wife having died, and there being no issue of either marriage. The bulk of the deceased's estate had come from his first wife.

At the time of the second marriage the plaintiff was carrying on a convalescent home in Christchurch and the deceased had been one of her patients. He had been paying £7 7s. per week but on the marriage the rate was increased to £10 per week till December 1957 when it reverted to the former rate of £7 7s. per week.

Under his will the deceased left a legacy of only £200 to the widow, the residue of the estate being left for charitable purposes.

There was a conflict as to the facts of the marriage. The testator is alleged to have told his trustee that the marriage was one in name only and that he was treated no differently from the other patients in the Home. He thought that, having paid full maintenance during the period of the marriage, he was not obliged to leave his wife more than £200. The plaintiff on the other hand alleged that the marriage was a true marriage until December 1957 when the deceased's condition deteriorated to such an extent that they had to occupy different rooms. She also said that the deceased was treated as a husband and not as a patient. Since the plaintiff was not cross-examined on her affidavit his Honour felt bound to accept it as correct.

The Judge summed up the matter in the following words:

> "What then, in these circumstances, was the moral duty owed by the testator to the plaintiff? It seems to me that by entering into this marriage he undertook a responsibility towards the plaintiff to ensure that in the event of his death her position would be reasonably secure financially. This object he could, in my opinion, best ensure by providing for her a sufficient sum of money, which, together with her own assets, would enable her to acquire a small property free of encumbrance. She was a woman used to earning her own living and could continue to do so for many years to come. The testator evidently took this view of the matter when he left her a legacy in his will in preference to making a provision for her by way of an annuity out of capital and income. I think that if any further provision is to be made for the plaintiff it can properly take the exceptional form of a lump sum payment rather than a provision for periodical payments.
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> "It is to be assumed that the testator was aware of his wife's financial position and in all the circumstances of the case I have come to the conclusion that there was a clear failure on the part of the testator to make adequate provision for the plaintiff. I think that a proper provision would have been a legacy of £750, in lieu of the legacy of £200 left by the will."

In re Stephens.

In re Stephens in which judgment was delivered by Hutchison J. on 23 February 1961 illustrates the extreme difficulty of deciding on competing claims under the Act. He had before him an estate worth some £7,422. The will gave certain specific and pecuniary legacies and the residue was to be converted and the annual income divided between a son and a daughter. On the death of the survivor of the two life tenants the capital was to be divided amongst certain grandchildren.

The plaintiffs were the son and the daughter. In regard to the son's application, his Honour found that both his capital and income position were quite sound even though owing to ill-health he was forced to employ a manager on his farm, and despite the fact that he had helped to build up the deceased's estate his claim was rejected.

The daughter's position is best described in the words of the judgment, the relevant portion reading as follows:

> "Mrs Peers is a widow aged 50 years. Her assets consist of an unencumbered house in Feilding which she purchased for £2,750, the money coming partly from the realisation of her interest in the estate of her late father and partly from the estate of her late husband George Peers. She has furniture, personal effects and a motor car of the value of £1,100. Her capital position, as a person

without dependants, is, I think, reasonably sound. Her income position calls for more consideration. At the date of death of the testatrix she was in receipt of a sickness benefit from the Social Security Department, being unable to work on account of illness; but she had been in the habit of working, and is now employed as a counter-hand at a department store at a wage of £7 10s. per week. She has had to take periods of from two days to a week off work on account of her health, and is advised that it will be necessary for her to do this from time to time. Looking at the position as at the date of the death of testatrix, Mrs Peers was capable of earning £7 10s. per week. If it were proper to visualise her going on earning that amount of money for an indefinite period, with £125 a year in addition from the estate, it might well be that there would have been no moral duty on the testatrix to do more for her than she did. If, on the other hand, it was a fact, and should have been apparent as such, that within a limited period of time, her health, her advancing years and the competition of younger women would tend to make her living as a counter-hand more precarious and her earnings smaller, there might well have been some moral duty on the testatrix to make some further provision for her than she did. There might, however, be other avenues of employment open to her, housekeeping for instance, and, without dependants as she is, she might be able to make some use of part of her house beyond what she reasonably requires for herself by way of letting rooms or something of that sort; and in the distant future, at 65 years of age, there would be Universal Superannuation.

"I have found it difficult to say whether there was any moral duty on the testatrix to do more for Mrs Peers than she did; but I have finally come to the conclusion that there was. I think that a just but not generous mother, though she wished to give the bulk of her estate to her grandchildren and possibly great-grandchildren, would have given this daughter a sum of money upon which she could fall back if and when her income began to fall off."

In the result a payment of £1,000 was directed to be made to Mrs Peers.

SUMMARY OF RECENT LAW.

ACCORD AND SATISFACTION.

Acknowledgment to accept seen in satisfaction of claim—Part of receipt—Extrinsic evidence admission to explain receipt. An acknowledgment to accept a certain sum in full satisfaction of a claim, on payment of that sum, at once becomes a part of the receipt therefor. Such an acknowledgment can have no greater effect than a receipt, and extrinsic evidence is admissible to explain it. (*Lee* v. *Lancashire & Yorkshire Rly. Co.* (1871) L.R. 6 Ch. App. 527; *Day* v. *McLea* (1889) 22 Q.B.D. 610; *Ellen* v. *Great Western Railway Co.* (1901) 17 T.L.R. 453; *Oliver* v. *Nautilis S.S. Co. Ltd.* [1903] 2 K.B. 639 and *Neuchatel Asphalte Co.* v. *Barnett* [1957] 1 All E.R. 362; [1957] 1 W.L.R. 357, followed.) *Mutual Rental Cars (Wanganui) Ltd.* v. *Gerrard.* (1960. 9 December. 1961. 19 January. W. A. Harlow S.M. Hastings.)

CRIMINAL LAW.

False pretence—Amount of cheque properly payable inflated as result of false pretence—Cheque to be regarded as obtained by false pretence—Not necessary to allege in indictment that it was the property of a particular person—Immaterial that after payment it will be returned by the bank to the drawer—Cheque capable of being stolen—Bank credit not so capable—Crimes Act 1908, ss. 252 (a), 238. The accused was charged on indictment that with intent to defraud by a specified false pretence he "did procure something capable of being stolen, to wit, the sum of fifty pounds six shillings and eight pence to be delivered to F. and J. Bognuda Ltd., by the New Zealand Government". The said sum of £50 6s. 8d. was included in a cheque for a much larger amount including moneys rightly payable as well as the money alleged to have been procured by means of the false. The indictment referred to s. 252 (a) of the Crimes Act 1908. On a motion to quash the indictment on the ground that it was not founded on the facts or evidence. *Held*, 1. A bank credit or chose in action is not capable of being stolen. It is not an inanimate thing but a right. (*R.* v. *Crosby* (1843) 2 L.T.O.S. 230; 1 Cox C.C. 10, followed.) 2. Where a cheque is procured by a false pretence the offence is complete on delivery of the cheque, and the only tangible or movable thing which has been delivered is the cheque. The holder of the cheque obtains a right to the transfer of a bank credit from the drawer to the payee, or the right to obtain from the bank of the drawer in money the amount of the cheque. This is a mere right and the sum of money represented by the cheque is not delivered to the payee until the payee negotiates the cheque, which is after the offence has already been completed. It cannot therefore be said that by means of the false pretence the person making the representation procured "a sum of money" to be delivered. 3. On a motion to quash an indictment under s. 407 (5) of the Crimes Act 1908 the Court may amend the indictment if the indictment and the evidence as given in the Lower Court do disclose the commission of a crime, and the defect in the indictment is a matter of description by way of particulars. Such a defect is one of form and not of substance. 4. A cheque is capable of being stolen and (*semble*) its value is more than merely the value of the paper on which it is written. In any event, where a cheque has been obtained by a false pretence, the person making the false pretence may be charged in the alternative under s. 252 (f) of the Crimes Act with inducing the drawer to execute a valuable security, under s. 252 (1) (a) with procuring to be delivered something capable of being stolen of a value exceeding the sum of £2, and under s. 252 (2) with procuring to be delivered something capable of being stolen of a value not exceeding £2. 5. Where a cheque would have been delivered for an amount properly payable but the amount of the cheque is different from what it would otherwise have been because of a false representation, the cheque, even if regarded only as a piece of paper, is a different piece of paper from that which would have been delivered had the false representation not been made. 6. An indictment charging an offence against s. 252 of the Crimes Act is not defective because it does not allege that the thing delivered is the property of a particular person. 7. In New Zealand the offence of obtaining goods by false pretences is committed when the offender secures physical possession of the goods though not the ownership. (*R.* v. *Miller* [1955] N.Z.L.R. 1038, followed.) It is immaterial therefore that after payment the drawer of a cheque procured by a false representation may have the right to regain possession of it from the Bank on the ground that the cheque was his own property. *The Queen* v. *Bennitt.* S.C. Wellington. 1960. 22, 24 November; 5, 16 December. McGregor J.)

Indictment—Motion to quash—Indictment and evidence in lower Court disclosing a crime—Defect a matter of description by way of particulars—Power of Court to amend instead of quashing—Crimes Act 1908, ss. 392, 399, 407 (5)—*See* FALSE PRETENCE (*supra*).

Negligence—Negligent driving—Particulars of negligence alleged not required to be specified in information if offence otherwise sufficiently described—Transport Act 1949, s. 40. Negligence both in civil and criminal law is no more and no less than a failure to do what a reasonable prudent person in the same circumstances would do, or the doing of an act which such a person in such circumstances would not do. Where the defendant to a charge of negligent driving is informed that such charge concerned the standard of his driving of a named motor vehicle at a named place on a named date and a reference is supplied to the relevant section of the Act creating the offence the information is not defective and the defendant is not entitled to further particulars of the negligence alleged

against him, subject always to his right to proper justice if *bona fide* taken by surprise at the hearing by some allegation which he would have no reason to believe he was required to meet and answer. *Ford* v. *Police*. (S.C. Auckland. 1960. 9 December. 1961. 2 February. Hardie Boys J.)

DIVORCE AND MATRIMONIAL CAUSES.

Evidence—Copy of separation order purporting to be certified by the Registrar of the Court in which it was made—No evidence of the official character of the certifying officer or of his signature—Copy not admissible—Destitute Persons Act 1910, s. 70—Evidence Amendment Act 1945, s. 12. A copy of a separation order made by the Magistrate's Court purporting to be certified as a true copy by the Registrar of the Court in which it was made is not admissible in evidence in divorce proceedings without proof of the official character of the person certifying the copy and of his signature. In particular the copy is not made admissible by s. 12 of the Evidence Amendment Act 1945, or by s. 70 of the Destitute Persons Act 1910. *Thomson* v. *Thomson*. (S.C. New Plymouth. 1961. 2, 6 February. Barrowclough C.J.)

COOK ISLANDS.

No jurisdiction in High Court to make maintenance order in respect of illegitimate children against person alleged but not adjudged to be their father—Not a provisional order—Cook Islands Act 1915, s. 548—Cook Islands Maintenance Enforcement Regulations 1948 (S.R. 1948/134), Reg. 4—See DESTITUTE PERSONS *(infra).*

DESTITUTE PERSONS.

Maintenance (Children's)—Illegitimate children—Order made by High Court of Cook Islands for maintenance of children by person alleged but not adjudged to be their father—No jurisdiction to make such order—Not a provisional order—Cook Islands Act 1915, s. 548—Cook Islands Maintenance Enforcement Regulations 1948 (S.R. 1948/134), Reg. 4. In view of the clear provision for orders in respect of illegitimate children contained in ss. 547 and 549 of the Cook Islands Act 1915, s. 548 is intended to apply to orders in respect of legitimate children only. It cannot be invoked for the making of an order against a person who has not been first adjudged the father of the child or children in respect of whom maintenance is sought. An order which is in the nature of an affiliation order cannot be the subject of a provisional order under the Cook Islands Maintenance Enforcement Regulations 1948 (S.R. 1948/134). *Heather* v. *Henry*. (1960. 24 November. 1961. 16 January. Donne S.M. Putaruru.)

PRACTICE.

Jury—Trial of certain issues by jury sought—Mixed questions of fact and law likely to arise—Allegations of fraud not invariably to be tried by jury— Jury not to be required to sit and listen to lengthy evidence relating to matters reserved for Judge—Mining Amendment Act 1941, s. 11 (1). In an appeal brought against a decision of the Warden's Court awarding damages for coal wrongfully taken from land held by the respondent under a coal lease from the Crown and granting an injunction, the appellant moved under s. 11 (1) of the Mining Amendment Act 1941 for the trial by jury of certain issues. *Held*, 1. As difficult mixed questions of fact and law might arise at the trial the case was not a suitable one for trial by jury. Such a trial might result in the presiding Judge having to decide at short notice difficult questions of law with the consequent risk of a new trial becoming necessary in the event of a misdirection. 2. There is no invariable principle that an allegation of fraud is one which should more conveniently be tried by a jury. 3. In deciding such a motion the Court must have consideration among other things for the interests of the Court and jury whose time is occupied, and the general interests of the administration of justice. It is not in such interests that a jury should be required to listen to a great deal of evidence a lot of which has no bearing on the particular issue or issues with which the jury is concerned. *Mouat* v. *Bryan and Others*. (S.C. Greymouth. 1961. 15, 17 February. Richmond J.)

PRACTICE NOTE.

Law practitioners—Barrister—Precedence of counsel—Waiver of precedence and seniority—When permissible—Procedure to be followed. Joint Memorandum issued by the Chief Justice, the Right Honourable Sir Harold Barrowclough, and the President of the Court of Appeal, Sir Kenneth Gresson. To be reported in the *New Zealand Law Reports*.

PUBLIC REVENUE.

Income tax—Mutual Life Assurance Society—Assessment of income tax—Income "exempt from taxation"—Must first be subject to tax and specifically exempted—Land and Income Tax Act 1954, s. 149 (2). Income cannot be said to be "exempt from taxation" within the meaning of that expression as used in s. 149 (2) of the Land and Income Tax Act 1954 unless it would, but for an exemption, be subject to taxation in New Zealand. The appellant society, which was a company registered in Australia but also carrying on business in New Zealand, purchased Australian shares with funds said to have been provided by its New Zealand branch. The dividends on those shares were credited to the New Zealand branch. *Held*, That such shares were held by the society in its corporate capacity and the dividends could not be said to be derived from its New Zealand business. They were therefore not part of the society's income liable to New Zealand income tax and could not be said to be "exempt from taxation" for the purposes of s. 149 (2). *Australian Mutual Provident Society* v. *Commissioner of Inland Revenue*. (S.C. Wellington. 1960. 10, 11, 12 October. 1961. 21 February. Barrowclough C.J. McGregor J. McCarthy J.)

TRANSPORT.

Offences—Driving without due care and attention—Evidence of amount of drink consumed by driver admissible—Weight to be attached to such evidence—Transport Act 1949, s. 46. On a charge of driving without due care and attention evidence as to the amount of drink which a driver has had, even though it may fall far short of establishing that the driver is incapable of properly driving the car, nevertheless has some probative value in relation to the question of the actual manner of driving at the time. It is evidence which may tend to make it more probable that the driver was not exercising the proper degree of care required by the law. The weight to be attached to such evidence in any given case is quite a different matter from its admissibility. *Clayton-Jones* v. *Police*. (S.C. Nelson. 1960. 9 December. Richmond J.)

Offences—Negligent driving—Particulars of negligence alleged not required to be specified in information if offence otherwise sufficiently described—Transport Act 1940, s. 40—See CRIMINAL LAW *(supra).*

WAGES PROTECTION AND CONTRACTORS' LIENS.

Claim for charge in respect of moneys due under subcontract lodged after completion of subcontract but before completion or abandonment of head contract—Claim not premature—Wages Protection and Contractors' Liens Act 1939, s. 34. In s. 34 of the Wages Protection and Contractors' Liens Act 1939 the Legislature is looking at each contract in isolation and not as part of a complex structure of interdependent contracts. It uses the terms "employer" and "contractor" as applying equally to a head contract, a subcontract or a sub-subcontract. Where a subcontractor claimed a charge in respect of moneys due under his subcontract, such claim being lodged within sixty days after completion of the subcontract but before the head contract had been abandoned (as in fact happened), *Held*, That under the particular circumstances the "contract" referred to in s. 34 was the subcontract, work under which had been completed, and not the head contract, and that the claim for a charge had been made within the period allowed by s. 34. *Lucas* v. *Harlow and Others*. (S.C. Napier. 1960. 4 October; 15 December. McCarthy J.)

WORKERS' COMPENSATION.

Accident arising out of and in course of the employment—Worker authorised to travel to work in motor car pushing it to start engine—Not travelling to work—Meaning of word "travelling"—Workers' Compensation Act 1956, s. 5. The word "travelling" where used in s. 5 of the Workers' Compensation Act 1956 imports the idea of going from one place to another. A person who proposes to use a motor car to travel cannot be said to have commenced to travel by the car before he is in the car and it is ready to start in motion. He must start the engine before he commences his journey and if he finds difficulty in starting it with the self-starter and has to use a starting handle or to push the car in order to get the engine started he still has not commenced to travel by the car while he is doing any of those things. *McDowall* v. *New Zealand Plywoods Ltd.* (Comp. Ct. Christchurch. 1960. 8 December. 1961. 10 February. Dalglish J.)

CASE AND COMMENT.

Contributed by Faculty of Law of the University of Auckland.

The Mischievous Tendencies of "Lolita".

The reserved judgment of the Court of Appeal was delivered on 7 March almost four months after the hearing. By a majority, North & Cleary JJ, Gresson P. dissenting, it was held that *Lolita* was an indecent document within the meaning of the Indecent Publications Act 1910. It was recognised that due regard must be had by the Court " to the days in which we live and consequently the standard should not be narrow or puritanical." The test to be applied by a New Zealand Court under our legislation is in effect that laid down in *R.* v. *Hicklin* (1868) L.R. 3 Q.B. 360, 371, " whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall."

North J. considered that the words introduced into the legislation by the amendment of 1954 extended the common law definition laid down in *Hicklin's* case and that he was obliged, in consequence, to have regard to the cases decided under comparable legislation in Victoria. The learned Judge considered that a book offended against the standards of the community if it gave undue prominence to one aspect of relations between the sexes or if it selected a particular theme relating to sexual matters. Furthermore, he stated that

> " the theme of a book cannot be separated from the treatment of the theme and therefore if an author decides to write a novel about a perverted or abnormal sexual relationship, then he must be content for his book to be judged as a whole, and the Court, in determining whether the book does or does not deal with matters of sex in a manner which offends against the standards of the community in which the book is published and distributed, is entitled to pay due regard to the theme as well as to the method of treatment of the theme by the author."

His Honour said, after referring to some of the passages in the book, that he had reached

> " the clear conclusion that the author did succeed in writing a very subtle but nevertheless a very lewd book, in which an abnormal sexual relationship is the all-absorbing subject, and its treatment, in my opinion, does offend the standards which we are entitled to expect in this community whatever the position may be in other countries."

The literary merit of the book, though a factor in its favour, did not save the book from being regarded as an indecent document.

Cleary J. was satisfied that the two factors of " undue emphasis on matters of sex " (s. 6) and a " tendency to deprave or corrupt " (s. 5), largely merge into and coalesce with one another. He too was satisfied that the literary or artistic merit of the publication did not protect it. He recognised that a judgment on the merits of a contemporary work was much more difficult than on a classic. This is, it is suggested, the central problem; the Courts are being asked, under the terms of a statute directed against indecency, to judge whether a particular book has the characteristics that will gain for it in the future recognition as a classic.

The dissenting Judge, Gresson P. made it clear that in his view *Lolita* did not unduly emphasise sex. The President considered that where the theme of the book was a sexual obsession it would necessarily give prominence to matters of sex, but matters of sex did not receive " undue emphasis." The learned Judge stated:

> " The theme may be, indeed in my opinion it is, a revolting one, but nevertheless the book is sincere, well-written, and not without considerable literary merit. The author's sincerity of purpose is an important consideration in judging whether there is an undue—i.e. an excessive or unjustified—emphasis on sex. Having regard to the theme, I think such emphasis as there is on sex was essential. Moreover the author in his treatment of this dominant theme has avoided crude or vulgar expressions and has treated the subject with skill and artistry. In my opinion therefore the work being devoted to the portrayal of a sexual aberration matters of sex must necessarily pervade the whole book and it does not in my view 'unduly emphasise matters of sex.' "

On this question of indecency, which is of necessity one of opinion, the Judges involved have divided sharply. Hutchison J. and the majority of the Court of Appeal have decided that *Lolita* should not be available at bookshops because it has a tendency to deprave or corrupt young persons, but one Judge—the President of the Court of Appeal—has seen no risk of this. In fact, Gresson P. treats the book as so boring and tedious that few young readers or adults would do no more than " skim it." " Nothing," he has said, " but the necessity of judging it would have induced me to read it to the end."

J.F.N.

Time to Pay.—" In a recent case at Folkestone Magistrates' Court a twenty-one year old labourer convicted of being drunk and disorderly asked the Court to dispense with immediate payment of the fine. The young man admitted that he was able to pay the fine, but said that he wanted some money to pay for a celebration. His application was refused and the chairman said: 'It would seem you have done enough celebrating already. You pay the fine now'." (1961) 105 *S.J.* 94.

Courtesy Personified.—A correspondent informs us that a client of his firm, somewhat incensed by the actions of a certain company, instructed the firm to issue a summons. In due course the solicitors received an envelope from the company enclosing the summons and a cheque for the full amount claimed. The solicitors were amused to find endorsed on the envelope by means of a rubber stamp the message " Your business is really appreciated ".

VARIATION OF TRUSTS BY THE SUPREME COURT.

New Statutory Provisions

In a recent article in the JOURNAL on recent amendments to the Estate and Death Duties Act 1955, I made a brief reference to s. 9 of the Trustee Amendment Act 1960, by which (with the addition of a few additional words, and a modification of a few others, the New Zealand Legislature has adopted the Variation of Trusts Act 1958 (*38 Halsbury's Statutes of England*) and in the course of that article I expressed the opinion that the Supreme Court of New Zealand has now the power to vary a trust *inter vivos* for the purpose of lessening estate duty payable in respect of the donor's estate.* So far as estate duty is concerned I think that the new enabling provisions will be availed of in the main to escape the effect of para. (g) of s. 5 (1) of the Estate and Gift Duties Act 1955. That para. provides that in calculating for the purposes of that Act the final balance of the estate of a deceased person, his estate shall be deemed, subject to the provisions of s. 5, to include :

> (g) Any annuity or other interest purchased or provided by the deceased . . . either by himself alone or in concert by arrangement with any other person, to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased, if that annuity or other interest is property situated in New Zealand at the date of the deceased.

In recent years there has been litigation in the United Kingdom arising out of the interpretation and application of the corresponding provision as to estate duty in the Finance Act 1894 (U.K.), (*9 Halsbury's Statutes of England* 2nd. ed. 347) and several of the cases have gone to the House of Lords. It is very dangerous to have in a settlement any provision by which the indefeasible vesting of any of the trust property should be made to depend on the death of the settlor.

Although the Act authorising variations of trusts has been in force in the United Kingdom for such a short time, already there has grown up there quite an appreciable body of case law, which it is most probable will be followed by our New Zealand Judges, unless the two differences in language above referred to require otherwise.

I do not think that there can be any doubt but that the legislation was passed in the United Kingdom to abrogate the principle laid down by the House of Lords in *Chapman* v. *Chapman* [1954] 1 All E.R. 798 ; [1954] A.C. 429. It was there laid down that a Judge of the Chancery Division has no inherent jurisdiction to sanction on behalf of infant beneficiaries and unborn persons, a re-arrangement of the trusts of a settlement for no other purpose than to secure an adventitious benefit (e.g., that estate duty payable in a certain event will in consequence of the proposed re-arrangement not be payable in respect of the trust funds). In other words apart from the special jurisdiction conferred by the Variation of Trusts Act 1958, the power of the Court in the United Kingdom to sanction a compromise by an infant in a suit in which he is a party cannot be extended to cover cases in which there is no real dispute as to rights but by which it is sought by way of bargain between the beneficiaries to re-arrange the beneficial interests under the trust instrument and to bind infants and unborn children. One will find that infants and unborn children figure very largely in the cases under the Variation of Trusts Act 1958.

Chapman v. *Chapman* (*supra,*) was followed by Gresson J. in *In re Gray* [1956] N.Z.L.R. 764, which sets out very clearly the position in New Zealand before the coming into operation of the Trustee Act 1956.

Section 64A of the Trustee Act 1956, as inserted by s. 9 of the Trustee Amendment Act 1960, reads as follows :

> "64A. (1) Without limiting any other powers of the Court, it is hereby declared that where any property is held on trusts arising under any will, settlement, or other disposition, or on the intestacy or partial intestacy of any person, or under any order of the Court, the Court may if it thinks fit by order approve on behalf of :
>
> "(a) Any person having, directly or indirectly, an interest, whether vested or contingest, under the trusts who by reason of infancy or other incapacity is incapable of assenting ; or
>
> "(b) Any person (whether ascertained or not) who may become entitled, directly or indirectly, to an interest under the trusts as being at a future date or on the happening of a future event a person of any specified description or a member of any specified class of persons, so however that this paragraph shall not include any person who would be of that description, or a member of that class, as the case may be, if the said date had fallen or the said event had happened at the date of the application to the Court ; or
>
> "(c) Any unborn or unknown person ; or
>
> "(d) Any person in respect of any discretionary interest of his under protective trusts where the interest of the principal beneficiary has not failed or determined—
>
> any arrangement (by whomsoever proposed, and whether or not there is any other person beneficially interested who is capable of assenting thereto) varying or revoking all or any of the trusts, or enlarging the powers of the trustees of managing or administering any of the property subject to the trusts :
>
> "Provided that, except by virtue of paragraph (d) of this subsection, the Court shall not approve an arrangement on behalf of any person if the arrangement is to his detriment ; and in determining whether any such arrangement is to the detriment of any person the Court may have regard to all benefits which may accrue to him directly or indirectly in consequence of the arrangement, including the welfare and honour of the family to which he belongs :
>
> "Provided also that this subsection shall not apply to any trust affecting property settled by any Act other than the Administration Act 1952.
>
> "(2) Any rearrangement approved by the Court under subsection (1) of this section shall be binding on all persons on whose behalf it is so approved, and thereafter the trusts as so rearranged shall take effect accordingly.
>
> "(3) In this section :
>
> "'Discretionary interest' means an interest arising under the trust specified in paragraph (b) of subsection (1) of section 42 of this Act or any like trust :
>
> "'Principal beneficiary' has the same meaning as in the said subsection (1) :
>
> "'Protective trusts' means the trusts specified in paragraphs (a) and (b) of the said subsection (1) or any like trusts."
>
> (2) Subsection (2) of section 64 of the principal Act is hereby consequentially repealed.

* (1961) 37 N.Z.L.J. 41.

LEGAL ANNOUNCEMENTS.

Concluded from p. i.

Messrs W. FORTUNE, J. W. MANNING and R. M. COLLINS, Barristers and Solicitors, have pleasure in announcing that they have been joined in partnership by Mr F. D. ROBERTSHAW, LL.M., Barrister and Solicitor, formerly of Hamilton. The practice will continue in the offices at 4th Floor, Norwich Union Building, High Street, Auckland, under the name or style of FORTUNE, MANNING, COLLINS & ROBERTSHAW.

Messrs H. W. DOWLING, C. E. W. WACHER and A. K. MONAGAN, at present practising in partnership as Barristers and Solicitors in the A.M.P. Buildings, Napier, and at Takapau, under the firm name of Dowling, Wacher & Co., announce that as from 1 April 1961 they have been joined in partnership by RICHARD JAMES HANLON SIDDELLS, LL.B. The new partnership will carry on practice under the same firm name of DOWLING, WACHER & Co. at the same address.

H. W. DOWLING
C. E. WESTON WACHER
A. K. MONAGAN
R. J. H. SIDDELLS

ALLAN MARTYN FINLAY and NORMAN JOEL SHIEFF, practising as Barristers & Solicitors at the Australia and New Zealand Bank Ltd. Chambers, corner Vulcan Lane and High Street, Auckland, C.1. have admitted to partnership JOHN STEPHEN ANGLAND, LL.B., formerly a member of their staff. The new partnership will carry on business at the same address under the name of FINLAY, SHIEFF & ANGLAND as from 1 April 1961.

Solicitor required for Supreme Court and other Court work, and also estate and general work, by progressive North Island firm. Energy and enthusiasm essential. Good commencing salary and, if suitable, early partnership, which should yield with energy approximately £2,000 per annum. State experience. Apply to:—

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The English Act does not extend to an intestacy or partial intestacy. The wording of the proviso to para. (d) is unfortunately not identical in both jurisdictions, the proviso in the United Kingdom Act reading :

> Provided that except by virtue of paragraph (d) of this subsection the court shall not approve an arrangement on behalf of any person unless the carrying out thereof would be for the benefit of that person.

In the United Kingdom therefore the Court cannot take into consideration the factor of the welfare and honour of the family.

The most convenient method of examination of the English cases appears to be the chronological. The first case reported is *In re Chapman's Setlement Trusts (No. 2)*, and *Re Rouse's Will Trusts* [1959] 2 All E.R. 47 ; [1959] 1 W.L.R. 372, in which it was held that applications should be made in open Court, so that there may be uniformity of practice, and all interests on whose behalf the approval of the Court is sought may be represented by counsel. In *Rouse's* case Vaisey J. said :

> "I again wish to stress the importance of these cases being heard in open Court. It is necessary for uniformity of practice, and the variation of trusts is a serious matter which ought not to be dealt with behind closed doors. Everybody, the trustees and the next-of-kin, should be separately represented by counsel. I am not suggesting that solicitors are not competent to represent persons with varying interests but it is desirable that counsel should appear in a critical mood so that the whole picture is before the Court. To make an order in chambers with parties represented by solicitors is not the proper way to deal with a large trust estate. If there is real reason, such as the avoidance of unnecessary or undesirable publicity, an application can always be made for the case to be held in chambers."

In *Chapman's* case the result of clause 3 of the settlement was that the grandchildren could not claim the capital of the settled funds until 21 years after the death of the settlors, and the property passed notionally on those deaths for estate duty purposes. Counsel for the grandchildren and the unborn grandchildren said that the usual course had been followed showing that counsel's opinion had been taken, and the opinion was exhibited showing that the arrangement proposed was for the benefit of the grandchildren, in that there was a likely saving of death duties ; and that it was in the interest of each grandchild that the capital should vest in possession on his (or) her attaining 21 years. Vaisey J. said :

> "I am quite satisfied that this arrangement is for the benefit of the grandchildren. I think that the form of the order should be, 'the Court doth order under the powers conferred by the above-mentioned Act . . . '"

In *Re Coates's Trusts* and in *Re Byng's Will Trusts* [1959] 2 All E.R. 51, 54 ; [1959] 1 W.L.R. 375, it was held that in an application under the Variation of Trusts Act 1958 the Court had power at its discretion to enlarge or vary the powers of investment conferred on the trustees by the trust investment. In *Byng's* case the full order is set out in the law reports and the new clause as to investments set out in full as a schedule to the order.*

It is pointed out in *In re Oakes's Settlement Trusts* [1959] 2 All E.R. 58 ; [1959] 1 W.L.R. 502, that, as the power to vary a trust under the Act is a discretionary one, where application is made for approval of the Court, the affidavit of the applicant should contain a statement of the reasons why the variation is desired. A bare statement that the variation is desired is not sufficient.

The discretionary nature of the jurisdiction is also emphasised in *Re Steeds' Will Trusts* [1959] 1 All E.R. 609 ; [1959] Ch. 354, 609, where Harman J. declined to make an order as it would over-ride the decision of responsible trustees clothed with a delicate and difficult discretion which they wished to exercise in a certain way. The refusal was confirmed by the Court of Appeal† but for a different reason : in the opinion of the Court of Appeal the views of the trustees were relevant but not conclusive. For the purposes of the Act an " arrangement " need not by *inter partes*, i.e. some kind of scheme which two or more people have worked out. The Master of the Rolls, however, thought that the word " arrangement " was deliberately used in the widest possible sense so as to cover any proposal which any person may put forward for varying or revoking the trusts. The person whose interests the Court had to take cognisance of in that case was a possible husband of an elderly spinster which husband the Judge of the first instance referred to as " this hypothetical and shadowy spouse ", and the Judges in the Court of appeal as " the spectral spouse." And in the result the " spectral spouse " had his protective interest protected by the Court, which declined to vary the trust as desired by the applicant.

The proposal had to be looked at as a whole to see whether it was proper to be sanctioned by the Court, and the Court had to have regard not only to the material benefit of the person who was not able to give his consent because he was not in a position to do so, but to the purpose of the trust. It was held that applying that test, and having regard particularly to the interest, of any husband that the applicant might thereafter marry, the Court should not approve the proposed variation.

The application in this case was under para. (d) of the section and as pointed out by Danckwerts J. in *In re Turner's Will Trusts* [1959] 2 All E.R. 689 ; [1959] 3 W.L.R. 498, in cases other than those covered by paragraph (d), the Court must be satisfied that the carrying out of the proposed arrangement would be for the benefit of the person mentioned, but in case (d) the Court may, if it likes, disregard the question whether any benefit is provided or not. Danckwerts J. said :

> "The point has been raised whether 'any person' in (d) in regard to the discretionary trusts includes an unborn person. My attention has been directed to the fact that in (b) the words 'whether ascertained or not' have been inserted ; and (c) deals with an unborn person in terms. Therefore it is argued that I have no power to approve under (d) in the case of persons unborn, even though such a person is a person who would benefit from a discretionary interest under the protective trusts."

Thinking that that argument was not well founded, the learned Judge said that it seemed to him that the words " any person " were perfectly general, and, unless restricted in some way, must include an unascertained or unborn person : in other words, any person who might take under the provisions of the discretionary trust.

It may be noted in passing that in contrast with *Re Steed's Will Trusts (supra)*, Danckwerts J. approved

* Similarly in re *Thompson's Will Trusts* [1960] 3 All E.R. 378 ; [1960] 1 W.L.R. 1165, where the Court widened the powers of the trustees to invest in equities.

† [1960] 1 All E.R. 487.

of the desired variation, although there was no provision whatever for any future husband of the testator's daughter, who might be a member of the class entitled to a share under the discretionary trust. In this case there appears to have been cited by counsel only one case, that of *In re Poole's Settlement Trusts* [1959] 2 All E.R. 340; [1959] 1 W.L.R. 651, and that case is not referred to by Danckwerts J. in his judgment. In that case Roxburgh J. held that on an application for an order under s. 1 of the Variation of Trusts Act 1958 (U.K.) the Court in the exercise of its equitable jurisdiction, will have regard to the interests of future unborn persons. Roxburgh J. said that under the Act of 1958 it was no longer essential for him to consider unborn persons, but he did not think that it was equitable to ignore them. It appears to me that the statement that it is no longer necessary to consider unborn persons is against the trend of modern authority.

There was at least one important point decided in *Re Cohen's Will Trusts* [1959] 3 All E.R. 523; [1959] 1 W.L.R. 865.

The Court in approving an order will take a risk (not advantageous) in the event of a certain unlikely contingency occurring, to the person on whose behalf the order is made) which it would be reasonable for an adult to take, and will approve an arrangement proposed without ordering provision to be made against such a contingency.

The purpose of the application to the Court in *In re Clitheroe's Settlement Trusts* [1959] 3 All E.R. 789; [1959] 1 W.L.R. 1159 was lessening of income tax, and Danckwerts J. approved of the order in principle because the avoidance of the effect of the Finance Act 1958 would be beneficial to the settlor, the infant beneficiaries, and also to any future wife of the settlor since she would receive—so it appeared—£100 certain each year in lieu of a possible benefit.

Re Suffert's Settlement [1960] 3 All E.R. 561; [1960] 3 W.L.R. 797 was a case under para (b). Two out of three of the potential beneficiaries *sui juris* did not consent to the application, and Buckley J. ruled that these two dissentients would not be bound by any order which he might make, but he expressed his willingness to make an order to bind anyone else who was unascertained and who might become interested.

Important matters of procedure were decided in *Viscount Hambleden's Will Trusts* [1960] 1 All E.R. 354; [1960] 1 W.L.R. 82. After the Court had considered and approved the scheme in principle with minor amendments, draft minutes of order were produced which, after reciting that the adult respondents by their counsel consented to the order, provided that the Court approved the arrangement set forth in the schedule thereto (being the document referred to in the summons) on behalf of the infant respondents and unborn persons and persons entitled under protective trusts as indicated in the summons and also contained the words: "And doth authorise and direct the trustees of the said will to carry the said will into effect." It was pointed out to the Court that no instrument had been executed by any of the adult parties and it was not intended that this should be done.

In the course of the argument counsel for Lord Hambleden said:

> "The question has been raised whether, when the Court makes an order under the Variation of Trusts Act 1958, the trusts are *ipso facto* varied or some document is necessary. Apart from the Act, the Court has no power to vary the trusts in a case such as this, where no question of compromise arises. Although the Act is not perhaps very happily worded, its scheme seems to be that all the beneficiaries in existence must be before the Court. All persons of full age consent to the proposed variation in the trusts, which the Court approves, if it sees it way to doing so, on behalf of the infants and and unborn persons beneficially interested, thereby *ipso facto* varying the trusts. Having regard, however, to the decision of Vaisey J. in *In re Joseph's Will Trusts* [1959] 3 All E.R. 474; [1959] 1 W.L.R. 1019, the words "and doth authorise and direct the trustees of the said will to carry the said arrangement into effect have been inserted in the draft minutes of order."

Wynn-Parry J. said that he did not agree with that decision. The learned Judge took the view that he had no jurisdiction to make an order including words directing the trustees to carry the arrangement into effect and that those words should be deleted form the draft minutes.

> "Nothing is required except the approval of the Court to the arrangement. If that approval is given the trusts are *ipso facto* altered, and the trustees are bound thereafter to give effect to the arrangement."

Whilst dealing with procedure one should not omit to mention, *In re Sanderson's Settlement Trusts* [1961] 1 All E.R. 25; [1961] W.L.R. 36, for there the all-important question of costs was raised. An application was made to the Court under s. 1 of the Variation of Trusts Act 1958, for approval of an arrangement extending the powers of investment of the trustees of a settlement. The sixth respondent to the application, who was contingently interested in reversion in the capital of the trust funds, was subject to a disability and the arrangement was approved, subject to a slight amendment by the Master in Lunacy under s. 1 (3) of the Act as being for her benefit. Pennycuick J. approved the arrangement, as slightly alerted, on behalf of the infant respondents and all other unborn and unascertained persons who might become interested, and directed that all costs, including the costs in the Court of Protection, be paid out of the trust estate.

In *In re Robertson's Will Trust* [1960] 3 All E.R. 146; [1960] 1 W.L.R. 1050, the application under the Variation of Trusts Act 1958 was preceded by the exercise of a special power of appointment by the applicant. Russell J. of his own motion raised the question whether possibly the appointment was a fraud on the power, because, if so, the proposed scheme of arrangement involving the disbursement of the fund, would be one which the Court ought not to approve. However, in delivering judgment Russell J. said that there was no reason to continue to suppose that there was a fraud on the power. Incidentally it may be mentioned that one of the purposes of the application was to reduce the estate duty which would become payable on his death.

In *Re Tinker's Settlement* [1960] 3 All E.R. 85; [1960] 1 W.L.R. 1011 the Court expunged from the settlement certain trusts for accumulation of income which had they not been expunged would have given rise to a liability for estate duty, but declined to vary the trusts to cover an alleged defect in the settlement, the failure to treat equally the son's children and the daughter's children. From this case it appears clear that the Court will not rectify a settlement, unless it is established that the rectification would be for the benefit of the persons on whose behalf it would make the order.

E. C. ADAMS.

WELLINGTON DISTRICT LAW SOCIETY.

Annual General Meeting.

The annual general meeting of the Wellington District Law Society was held on Wednesday 22 March 1961. Seventy-four members were present.

Obituaries.—At the beginning of the meeting members stood in silence as a mark of respect to the following members and past members who had died during the year: Mr R. L. A. Cresswell; Mr J. S. Hanna S.M.; Mr A. S. Lyons; Mr W. E. Mason; Mr R. M. Watson; Mr W. Heine; Mr W. G. Mellish and Mr James Christie C.M.G.

Mr Justice Leicester.—The president (Mr H. R. C Wild Q.C.) referred to the recently announced appointment of Mr W. E. Leciester to the Supreme Court Bench. He said Mr Leicester was not only a former president of the society but also one of the best known practitioners in Wellington and much further afield. The society would wish to offer its congratulations and good wishes. On his motion the following resolution was passed with acclamation:

> "That on the occasion of the announcement of his appointment as a Judge of the Supreme Court of New Zealand this annual meeting of the Wellington District Law Society tenders its respectful congratulations to Mr W. E. Leicester, a former President of the society, and wishes him success and happiness in his high office."

Annual Report and Accounts.

In moving the adoption of the annual report and accounts Mr Wild said that he wished to refer to only one or two matters in the printed report, which presented a fair picture of the work of the council and the activities of the society, but he would mention also some other matters of general interest.

The principal event of the year was the Dominion Legal Conference. Apart from its success in other respects the financial result had proved more satisfactory than anticipated. Wellington practitioners had not had to contribute up to £4 as forecast, but only 35s. for those (including wives) attending all functions and 15s. for others.

On the recommendation of the chairman and vice-chairman of the Conference Committee, the New Zealand Law Society had resolved:

1. That at future Conferences two full days should be set aside for business session.
2. That the Conference levy should be increased from 15s. to £1 per practitioner per annum.
3. That the host Society (Auckland in 1963) be authorised to charge a registration fee to all practitioners attending.

The object of these changes, particularly the latter two, was to provide a fund to enable a distinguished overseas guest to be invited to future Conferences, following the lead Wellington had given with such success.

Referring to social functions, Mr Wild said that three luncheons had been held during the winter months and he suggested that the incoming council might consider arranging for a speaker at future luncheons.

The council had given serious consideration to the form of the annual dinner and to the suggestion that a more informal function might take its place. The decision was made to hold the dinner as usual and this had been attended by over a hundred practitioners, including three lady practitioners. It was recommended to the incoming council that the dinner be continued in that form.

Principally because of the Conference entertainment, there had been no cocktail party in 1960; but a most successful party had been held in February in honour of the United Nations visitors to the Seminar on Human Rights, who had expressed keen appreciation of the hospitality received from the society and from individual practitioners.

The Complaints Committee had been continued, and greatly expedited disposal of cases by dealing with them immediately by telephone or personal call on the solicitor concerned. Twenty-seven complaints had been investigated during the year.

The Emergency Legal Service had been repeated during the Christmas vacation. Although only half the number of inquiries received during the previous holiday period were dealt with the Council was satisfied that the service was well worth while as a matter of public relations.

Mr Wild stressed the need for a building for the New Zealand and Wellington Law Societies, which had been raised at the New Zealand Law Society by the president, Mr David Perry. The council had investigated some possibilities and the incoming president Mr J. C. White, was considering the setting up of a special Building Committee.

When requested by the New Zealand Law Society to consider an increase in practising fees, the Wellington Society (in view of increased running costs and the need for a building) had recommended an increase of £5 5s. It had been found, however, that other societies were already levying their members in addition to practising fees, and the increase was fixed at only £3 3s. per annum.

In addition to the installation in the library of additional heaters, a second telephone, and various alterations, the council had approved the laying of linoleum and carpet on the library and robing room floors. This work would be done after Easter.

A proposal to form a medico-legal society had come from discussions between members of the council and some doctors. Membership would be voluntary and unofficial.

The council had made its contribution to the activities of the New Zealand Law Society in improving Supreme Court procedure, and various matters, including time for pleadings, fixtures for civil jury cases and disposal of interlocutory matters, had been under discussion. Mr Wild reminded members of their duty to the profession and the public to draw attention (either through the society, or direct to the Law Revision Committee) to any matter of law or procedure which merited reform.

Concluding his address, Mr Wild referred to the loss the society suffered through Mr Hain's retirement, in accordance with the rules, after 10 years' service.

Mr Hain had always been a most willing worker, particularly in detailed and exacting work in the field of his own special experience. On behalf of all members he expressed thanks to Mr Hain for his years of faithful service.

Mr Wild expressed his personal thanks to all council members, including the country members, and particularly to the vice-president, for their loyalty and devotion to the affairs of the society. He also paid a tribute to the efficiency and loyal work of the staff during the year, particularly to the secretary for her unselfish devotion to the interests of all members. He expressed his gratitude for what had been a most enjoyable year as well as a great privilege.

Mr Hurley seconded the motion and briefly reviewed the items in the revenue accounts and balance sheet, which differed little from the preceding year. The income for the coming year would present a new picture. Although there would be an increase in income from practising fees, the society might be faced with contributing a greater proportion towards salaries, and the expenses of flooring in the library might well exceed £600.

The report and accounts were then formally adopted.

Election of Officers.

The election of officers resulted as follows :

President : Mr J. C. White, the only nominee, was duly elected.

On Mr White's taking office, Mr Wild pointed out that during the 82 years of the society's existence, there had been only five previous occasions when a son had followed after his father as president. This sixth time was unique in that Mr C. G. White, president in 1929, was still practising in Wellington and was present at the meeting. All present would share Mr White's great satisfaction at seeing his son installed as president.

Mr White expressed his sincere thanks and appreciation for the honour paid him in his election as president, his pleasure in following in the footsteps of his father and that the latter was present on this occasion. He would do his utmost to live up to the high standards set up by his predecessors over the last 80 years. He then paid a tribute to his immediate predecessor in office. The society could have had no better president than Mr Wild. It had been a busy year, and indeed a memorable one because of the Conference. All appreciated just how much Mr Wild had done to make that Conference the success it undoubtedly was. As a chairman Mr Wild was always fully prepared. Whether in his role as chairman of the council, as the society's representative on some special assignment, as spokesman at meetings of the New Zealand Law Society, at bar dinners and in Court, he had served the society faithfully and skilfully and eloquently. His chairmanship was indeed outstanding, and Mr White mentioned that at the close of the Seminar on Human Rights recently held in Wellington, the Director, Dr Humphrey, had commented that in all his experience of chairmanship, he had never watched a more efficient chairman than Mr Wild.

The meeting joined with Mr White in carrying with acclamation a hearty vote of thanks to Mr Wild for his outstanding services as president.

Vice-President.—Mr A. E. Hurley, the only nominee, was elected.

Hon. Treasurer.—Mr W. G. Smith, the only nominee, was elected.

Council.—There being eight nominations for eight vacancies, no ballot was necessary, and the following members were elected :

Messrs. H. R. C. Wild Q.C. ; R. C. Christie ; A. R. Cooper ; W. J. Kemp ; D. McGrath ; J. B. O'Regan ; F. L. Parkin and R. S. V. Simpson. *Members elected by Branches* : Feilding : Mr D. C. Cullinane ; Palmerston North, Mr L. Laurenseon ; Wairarapa, Mr D. L. Taverner.

Delegates to the New Zealand Law Society.—Messrs. E. D. Blundell, A. E. Hurley, J. C. White and H. R. C. Wild Q.C. the only nominees, were elected delegates to the New Zealand Law Society.

Election of Auditors.—Messrs. Clarke, Menzies & Co. were re-elected auditors of the society.

Annual Holidays.

(a) Easter Vacation.—As permanently fixed by resolution 14 March 1956.

(b) Christmas Vacation.—It was resolved that the Christmas vacation be observed from the usual closing time on Friday 22 December 1961, to the usual opening hour on Monday, 15 January 1962.

(c) Emergency Service.—It was resolved that the Council's recommendation as to the continuation of the emergency service be approved.

New Zealand Law Society.

Mr David Perry, president of the New Zealand Law Society, addressed the meeting on matters currently before his society. Mr Perry first congratulated Mr White on his election as President and expressed regret at Mr Hain's retirement. As a member of the Standing Committee, Mr Hain had rendered yeoman and invaluable service, and he would be very much missed by both societies.

Mr Perry expressed the gratitude of the New Zealand Society to members of the Wellington Society for all they had done to make the Dominion Legal Conference such an outstanding success.

He referred to the representations made during the year with regard to Judges' salaries. Although the society's representatives had been received with the utmost courtesy, their submissions to the Government had been unsuccessful. The society, however, intended to pursue the matter further.

Mr Perry mentioned Mr H. G. R. Mason's service to the country and the profession as Attorney-General. Mr Mason had always been approachable and had given the society every consideration.

The question of legal education, referred to in both the New Zealand and Wellington reports, had been a very live issue during the year, and the subject of conferences between the New Zealand Society's representatives and the University authorities, and a satisfactory arrangement has been reached following a conference with the Deans of the Law Faculties.

He referred to the increase in practising fees and the important question of a Law Society building. The New Zealand Society was vitally interested in this matter, and he proposed to suggest that the Standing

Committee should collaborate with the Wellington Society with a view to seeking premises that would be worthy of the society.

The volume of legislation during the year had created problems, especially the spate of legislation brought down in the dying days of the session.

Amendments to the Law Practitioners Act were going forward this year and it was hoped a Bill would be ready early in the new session.

Another matter of more than passing interest was the question of junior counsel leading another more senior in point of call. This matter had been referred to his Honour the Chief Justice and to the Judges, and a memorandum would be available shortly from the Chief Justice.

The question of solicitor trustees had been considered by the New Zealand Council and a ruling passed that it was improper for a solicitor, when preparing a will appointing himself or a partner an executor, to incorporate therein, in addition to the usual " power to charge " clause, a provision entitling the executor to any additional remuneration by way of commission.

One of the most important matters discussed during the year was that of the societies' policy. Should the society continue to follow the long-standing practice of making no comment or representation on any matter of Government policy ? The society affirmed that it owed a duty to the public to draw public attention to any aspect of Government policy which appeared to the society to be contrary to the principle of justice, and a procedure was adopted designed to give effect to this view. Mr Perry quoted an extract from a newspaper report of a discussion at the recent United Nations Seminar, as to whether it was the duty of the legal profession to speak out when the rule of law, or any matter of principle was in jeopardy as a result of any proposed legislation. Mr Chaudhury Nazir Ahmed Kahn, Attorney-General of Pakistan, said : " The Bar should stand up as one man to protect human rights."

Mr H. T. Ong, Justice of the Supreme Court of Malaya, said : " The Bar, as guardian of the rights and liberties of the people, has a duty to the people in expressing their objection to any impending legislation which might impinge on the people's rights."

Mr C. V. Sanchez, Justice of the Court of Appeals of the Philippines, said : " Countries should allow lawyers to intervene in Court where human rights are jeopardised."

In conclusion, Mr Perry said how greatly the society was indebted to the respective heads of the Justice Department, Mr S. T. Barnett, the previous Secretary, and Dr J. L. Robson, the present Secretary, for their assistance and courtesy.

Grand Jury.

At the request of the New Zealand Law Society the question of abolition or retention of the Grand Jury was discussed. The president said that when this question arose last year, on the introduction of the new Crimes Bill, the New Zealand Law Society had made representations that the Grand Jury be retained ; but the then Attorney-General had announced the intention of proceeding with the Bill. The Bill had in fact not been proceeded with last session, and District Societies had been asked to discuss the matter at their annual meetings.

In the discussion which followed views were expressed both for and against, a motion for retention of the Grand Jury being defeated by 32 votes to 16.

Benevolent Fund.

The president explained that when the council sought an exemption from tax for the income of the fund, the Inland Revenue Department declined the exemption because there was no approved trust deed. A draft deed recording the trusts originally affected had been prepared, and approved by the Commissioner.

It was resolved that the Society enter into the Deed of Trust (in the form approved by the Council and signed for the purposes of identification by Mr H. R. C. Wild) recording in terms of the relevant Section of the Law Practitioners Act the trusts and powers applicable to the Society's Benevolent Fund in respect of the moneys and investments shown in the duly audited Solicitors' Benevolent Fund Account as at 31 December 1960, and all bequests and gifts hereafter made to the Fund and (until otherwise decided by resolution of the Council and of any Annual or Special General Meeting of the Society) the annual levy of 5s. each collected after that date from all members of the Society engaged in practice on their own account, whether in partnership of otherwise, and all other moneys investments and property hereafter lawfully forming part of the said Fund and the income thereof respectively.

The President expressed the thanks of the society to Mr R. C. Christie and Mr P. A. Cornford for their work in preparing the draft Deed and negotiating with the Commissioner of Taxes.

General Business.

Law Society Building.—It was resolved to form a special committee to investigate the practicability of securing a site for the ultimate erection of Law Chambers in Wellington.

Civil Jury Cases in the Supreme Court.—The question of speeding up the disposal of civil jury cases in the Supreme Court was discussed.

The following resolution was passed unanimously :

That the Council investigate ways and means whereby the hearing of civil actions, especially jury cases, may be improved, and if though fit, appropriate representations be made to the Rules Committee.

Mr C. G. White moved a vote of thanks to the outgoing council and office bearers for the manner in which they had presented the business of the year, particularly the address given by the retiring president which was a model in the way it explained the work of the society. From the reports of the New Zealand and Wellington Societies it would be recognised how much work had gone into them, not only in their preparation but in the work that had been done to bring the various matters before the meeting. He thanked the meeting for references to his presidency and the election of his son as president. It had always been a most pleasant experience to be working with members of the profession, and it gave him very great pleasure to be at the meeting this evening and to witness the initiation of his son.

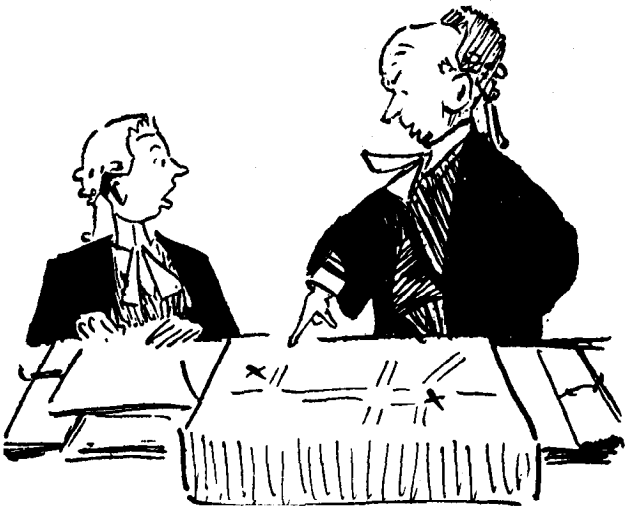
Before the conclusion of the meeting the president referred to the centenary celebrations of Messrs. Bell, Gully & Co. and the congratulations and good wishes of the meeting were recorded.

FORENSIC FABLE.

By "O"

The Double-First and The Old Hand.

A Double-First, whose Epigrams were Quoted in Every Common-Room of the University, became Weary of Tuition and went to the Bar. His Friends were Satisfied that he was Bound to become in the Near Future either Prime Minister or Lord Chancellor. They Doubted, however, whether Either of these Jobs Afforded Sufficient Scope for his Splendid Abilities. Shortly after his Call, a Near Relative Provided him with a Brief. He was to Appear for a Public Authority which Owned a Tram-Car. The Plaintiff was a Young Lady who had Sustained Injuries while being Carried Thereon from her Place of Residence to her Place of Business. Her Story, as Set Forth in the Statement of Claim, was that the Conductor, without Any or Alternatively Sufficient Warning, had Rung the Bell whilst she was Stepping off the Vehicle, and that by Reason of his Said Negligence she had Fallen Heavily in the Road, Abrased her Shin-Bone, and Suffered



from Shock and Other Discomforts. Her Claim (including Extra Nourishment and Various Items of Special Damage) Totalled £583 4s. 9d. The Double-First had Little Doubt that the Claim was Grossly Exaggerated, if not Actually Dishonest. He was Confident of Victory. When he Got into Court the Double-First found himself Opposed by an Old Hand of Unrivalled Experience in that Class of Action. He Looked Harmless Enough, and the Double-First Felt no Alarm. But Strange Things Soon Happened. The Old Hand Conducted the Case for the Plaintiff in a Manner which Shocked the Double-First Exceedingly. After the Jury had been Sworn he Informed his Solicitor-Client in a Whisper which could be Heard in the Central Hall that he would not Settle for Less than Five Hundred and he Asked the Double-First in Stentorian Tones, with Reference to the Plan, whether he would Agree (i) the Exact Spot where the Pool of Blood was Found, and (ii) the Precise Locality where the Conductor had Admitted to the Policeman that he had Done the Same Thing on Another Occasion. When the Double-First Cross-Examined the Plaintiff, the Old-Hand Asked the Judge to Protect his Client from Insult; and when he Addressed the Jury the Old Hand Repeatedly Begged that he would not Deliberately Misrepresent the Evidence. The Double-First Struggled against these Tactics in Vain. In his Final Speech, the Old Hand Reminded the Jury of the Possibility that Tetanus or Paralysis might Hereafter Supervene, and the Certainty that a Disfigured Tibia would Seriously Impair the Plaintiff's Matrimonial Prospects. Apart from his Successful Application for a Stay of Execution on the Ground that the Damages (£1,000) were Excessive, the Double-First had a Disastrous Day.

Moral.—*Despise not Your Enemy.*

HAMILTON SUPREME COURT

For long enough there has been complaint that the Auckland Judges are overworked, but nothing has been done to relieve them. Now some measure of relief is in sight since it is understood that in future the Sessions at Hamilton will be presided over by a Judge from Wellington instead of from Auckland as in the past.

How far this re-arrangement of judicial duties will help to solve the problem it is difficult to say. It may not aid the position as much as a further appointment to Auckland and retention of the Hamilton sessions by the Auckland Judges would have done but with judicial work at Hamilton reaching an increasingly high level, the assistance given by the rearrangement will be quite substantial. In fact the time is fast approaching when the appointment of a Judge stationed permanently at Hamilton must be seriously considered.

THE LAST OF THE MASONS.

Early this year, the LAW JOURNAL recorded the death of Mr William Mason who (after serving for many years as clerk and secretary to Mr C. P. Skerrett K.C.) became associate to him as Chief Justice from 1926 to 1929 and associate to Sir Michael Myers K.C.M.G. during the whole of his term as Chief Justice (1929 to 1946).

It is with regret that the JOURNAL now records the passing of his son Charles Mason at Auckland on 2 April.

"Charlie" Mason entered the Supreme Court as a cadet at Wellington in April 1914 and remained in that office for 24 years until promoted to be Deputy Registrar at Auckland. Early in 1949 he became Registrar at Dunedin; and, eight years later, returned to Auckland as Registrar of the Court there. He retired on superannuation in October 1958.

"Charlie" Mason had the same qualities of imperturbability and affability as his father possessed. One of his characteristic features as a Court clerk was his ability to recall, and to produce for the assistance of Court clerks and solicitors, a precedent for almost any job they had in hand. Several tempting offers were made for him to join legal firms and to engage in private practice. Having determined on a career in the Government service however he preferred to remain a Court official and to render, in that capacity, most useful service to law clerks. To live still in the memory of those practitioners he leaves behind, is not to die.

O.C.M.

LEGAL LITERATURE.

Garrow's Law of Real Property in New Zealand, 5th ed., by E. C. ADAMS, I.S.O., LL.M.; Wellington, Butterworth and Co. (New Zealand) Ltd. 1961. Pp. 749 + lxxvii. Price: £5 17s. 6d.

One's first reaction, "What—another edition so soon!" shows how *Garrow's Real Property* has become part of the normal round. It comes as a surprise to realise that nearly seven years have passed since the fourth edition left the press, and then to find set out in this fifth edition so much new law, both statute and case.

The present is the second edition to be edited by the well-known hand of Mr E. C. Adams. As is to be expected, there has been thorough and painstaking research into the cases and statutes bearing upon every topic raised. For example, *Nelson Guarantee Corporation* v. *Fawell* [1955] N.Z.L.R. 405 is cited in relation to the capacity of infants (p. 102), supplementing a reference to *Doyle* v. *White City Stadium Ltd.* [1935] 1 K.B. 110.

Neither case is mentioned in the previous edition, but now the relevant footnote has been expanded with a variety of examples, drawn from the books, of recent cases on contracts relating to infants. The reference on p. 190 to an article in the (*1912*) *Harvard Law Review* shows the wide range of Mr Adams's work and leaves one, like Oliver Twist, asking for more. For example:

(a) The question whether a Land Transfer mortgage by one joint tenant effects a severance remains unsolved by authority, and the note on p. 65 still recommends caution. For the practitioner there would be some interest in a reference to an article on the subject by Mr R. F. Baird (former District Land Registrar at Auckland) on p. 431 of the (1936) *Australian Law Journal*, following an article on p. 322 of the same volume recommending the mortgagee in such circumstances to take an absolute transfer accompanied by a deed of defeasance.

(b) In respect of co-ownership, it seems that the principle laid down in *Bull* v. *Bull* [1955] 1 All E.R. 253; [1955] 1 Q.B. 234, as noted on p. 71, that purchasers of land with unequal shares of money take as tenants in common may be limited, at least in respect of joint family homes, by the element of gift invoked by McCarthy J. in *Phipps* v. *Phipps*, an unreported case heard in Wellington on 31 August 1960.

(c) The mention on p. 118 of the provisions of s. 29 (4) of the Social Security Amendment Act 1958 recalls the little-known power of a borough council to makes under authority of s. 370 of the Municipal Corporation, Act 1954, advances for repairs, to private property, chargeable against the land. A note of this, perhaps on p. 614, would assist in advising pensioners in difficulties, as some councils use this power benevolently.

(d) The relationship between a tenant-occupier and his landlord in respect of fencing notices served on the former when the latter is protected by a fencing covenant is a point that occasionally arises in practice, and, although there does not appear to be any relevant New Zealand authority, the learned Editor may perhaps be able on a future occasion to amplify the data on p. 338 by drawing on *Luxford* v. *Cairns* [1914] V.L.R. 433, an Australian decision that an owner who has let his land is not a person entitled as owner to occupy and therefore not an "occupier" within the relevant definition.

On the other hand,

Unlike the learned author of *Hanbury's Equity* (7th ed. onwards), Mr Adams has not dispensed with the formal enumeration of the Maxims of Equity, but the precis in the various editions preceding this 5th has been retained (p. 152 *et. seq.*). This is particularly to the advantage of the student, to whom a case such as *Taitapu Gold Estates Ltd.* v. *Prouse* [1916] N.Z.L.R. 825; [1916] G.L.R. 646 is more intelligible on the "activist" basis of a maxim than in terms of the abstract nature of equity itself. This case is an excellent illustration of the maxim, "Equity follows the law" (p. 153 of the book under review), in the sense expounded in the older classical works such as *Snell's Equity* (12th ed., 1898, at p. 17), which notes, "Even where the circumstances of the case are such as to be sufficient to create an equity, then even there a Court of Equity never does break through a rule of law, or refuse to recognise, because it has no power and no discretion in the matter; but while recognising the rule of law, and even founding upon it and maintaining it, a Court of Equity will in a proper case get round about, avoid, or obviate it. For example, if an eldest son should prevent his father from executing a proposed will devising an estate to his younger brother, by promising to convey that estate to the younger brother, and the estate accordingly descends at law to the eldest son as a consequence flowing from the promise, a Court of Equity would, in such case, interpose and say, 'True it is, you (the eldest son) have the estate at law, in other words the legal estate; that we don't deny or interfere with: but precisely because you have it, you will make a convenient trustee of it for your younger brother . . .'". This is rested upon the "original concurrent jurisdiction" of equity, which the *Taitapu* case shows is not as obsolete as many would have us think, in respect of this maxim understood as its exponents intended.

An innovation is found in App. I. Instead of the almost traditional reprinting of the Property Law Act (now 1952), there has been set out only that part not already reproduced in the body of the volume. As one practitioner remarked to the reviewer, if the statute is involved one should turn to its provisions first. The course adopted is a protection against "short cut" use of the textbook instead of the latest annotated volume of the statutes, as well as *pro tanto* reducing the volume and cost of this edition. There have been substituted, as Appendices, a reprint of the Wills Amendment Act 1958 (relevant to co-ownership as adverted to on p. 69), notes on the Waters Pollution Act 1953, and an extract from *McVeagh's Land Valuation Law*, 2nd ed., on the Tenancy Act 1955 and finally a reprint of the Land Transfer Amendment Act 1960.

One of the remarkable things about this *Garrow* is that it *is* still *Garrow*, e.g. the admirable paragraph on Easements in relation to the Rule against Perpetuities has itself outlasted the late Professor by more than 21 years and now re-appears verbatim on p. 496 as it was known to the generations of earlier students. The editorial labours involved however are shown by the fact that in the second edition (the author's last) this material appeared on p. 353.

At the prosaic level of proofs, the work sets a good standard. There is an adventitious "(c)" at the foot of the text on p. 498; "537", the page reference for statutory changes on land in the Index at p. 789, does not rationalise until the corresponding item in the Index to the 4th ed. is turned up; it was quite a surprise to find a transposition in "Conveyancing" on p. 260, and "creditors" mis-spelled in note (n) on p. 508.

One thing should be said in conclusion. There are occasional references, by footnote, to *Adams's Land Transfer Act*, and to articles by the learned editor in the NEW ZEALAND LAW JOURNAL. To the alert reader this means, not, as overseas readers might think, over-zealous recommendation, but, quite to the contrary, that further valuable information is being kept in sight, as though by way of appendix to the present work on Real Property.

M. B.

MR JUSTICE LEICESTER SWORN IN.

Mr Justice Leicester took the oath of office in the Supreme Court Wellington on 29 March 1961. There were on the bench the Right Honourable Sir Harold Barrowclough, Chief Justice, Mr Justice Hutchison, Mr Justice McGregor, Mr Justice McCarthy, Mr Justice Haslam and Mr Justice Hardie Boys.

The Chief Justice extended a warm welcome to Mr Justice Leicester from all the Judges and conveyed messages from those unable to be present.

Speaking on behalf of the Bar and of the Government, the Attorney-General, the Honourable Mr Hanan, wished the new Judge a successful and happy term of office. He referred to Mr Leicester's experience, which was probably not excelled by any other practitioner, and referred to the favourable way in which the appointment had been received both by Bar and by the public generally.

Mr J. C. White, President of the Wellington District Law Society, referred to the services which Mr Justice Leicester had rendered in Law Society affairs despite the very busy professional life which he had led. He concluded his address in the following terms:

> "Needless to say we shall miss him, but we know that his many gifts and his long and wide experience which brought him to the front rank of the leaders of the Bar in New Zealand will now be applied in full measure on the Bench".

In a brief reply Mr Justice Leicester expressed his gratitude to those present for their attendance and said that their presence should be an incentive to him to merit the words of commendation which he had heard and to discharge to the best of his ability the duties of his new office.

OBITUARY.

Mr Allan Norman Haggitt.

We regret to record the death of Mr Allan Norman Haggitt which occurred at Auckland on 17 March 1961.

Mr Haggitt was one of Dunedin's leading lawyers and, as the *Otago Daily Times* put it, "one of Dunedin's most prominent citizens".

Mr Haggitt came from a family with legal traditions, his father, Mr B. C. Haggitt having been Crown Prosecutor at Dunedin. He was born at Dunedin in 1894 and after receiving his primary and secondary education at Anderson's Bay School and the Otago Boy's High School he began his legal studies at Otago University in 1914. However, on the outbreak of war in August of that year he enlisted for overseas service and served in Egypt, Gallipoli and France, being twice wounded.

On his return to New Zealand, Mr Haggitt resumed his legal studies which he completed while acting as associate to the late Mr Justice Sim, and on qualifying joined the predecessor to the firm of Ramsay, Haggitt and Robertson, of which he was senior partner at his death.

Mr Haggitt served as a member of the Council of the Otago District Law Society, being president in 1936, and was also a member of the Disciplinary Committee of the New Zealand Law Society. He maintained a keen interest in golf and tennis, lectured in Roman Law at Otago University for a period of 31 years and was also Consular Agent for France and Chancellor of the Diocese of Dunedin. He will be sadly missed in legal circles both within and outside Dunedin.

RECENT DISTRICT ADMISSIONS.

Auckland

(By Mr Justice Hardie Boys on 17 March 1961)

Barristers and Solicitors

H. T. D. Knight (Mr L. F. Moller)
M. F. P. Frankovich (Mr J. J. K. Terry)
A. D. Buxton (Mr H. S. Devenport)

Barrister

G. K. Souness (Mr G. D. Grant)

Solicitor

P. J. Little (Mr H. S. Devonport)

(By Mr Justice T. A. Gresson on 17 March 1961)

Barrister

S. Shera (Mr R. D. Boyes)

Wellington

(By Mr Justice Haslam on 28 March 1961)

Barristers and Solicitors

J. H. J. Crawford (Mr F. L. Parkin)
E. W. Morrison (Mr T. E. Ennis)

Barrister

H. B. Marumaru (Mr K. Bryan)

Solicitors

R. B. King (Mr F. C. Spratt)
D. L. Brooker (Mr F. L. Parkin)

IN YOUR ARMCHAIR—AND MINE.

By SCORPIO.

Judicial Trends.—A recent issue of *The Times* records the appointment of nine new Judges to the English High Court Bench, which appears to be a record for simultaneous appointments. The dignified *Times* sets out the academic careers of the new Judges and also their extra judicial interests. These interests vary from shooting to motoring, from golf to travel nd the turf and from opera to yachting. The *Times* states: "We hasten to add that no inference should be drawn therefrom: some of the new Judges have more than one outside activity recorded against them individually and others have none". SCORPIO was present some twenty-five years ago when the late Noel Curtis-Bennett was interviewed on the occasion of his taking silk. Asked by a journalist what were his hobbies, Mr Curtis-Bennett stated, "watching". "Birdwatching?" asked the journalist helpfully Without a muscle of his face quivering, the newly appointed King's Counsel replied "No! Watching pretty girls getting off buses and big girls getting out of little cars".

Removal of Corpses.—Recently at Birkenhead a person was charged with removing a corpse without lawful authority from a grave. It seems that the accused's mother died and it was alleged that on the day of the funeral he returned to the cemetery, dug open the grave and took the body away. According to a statement alleged to have been made by the accused, he did this because he had decided to "have a go at bringing her back to life;" she was a good mother to him and he was doing his best for her. From a legal point of view, this unusual and rather unpleasant case is interesting because the offence of removing a corpse from a grave is one known to both common law and statute. It is a misdemeanour at common law to remove, without lawful authority, a corpse from a grave (*R.* v. *Lynn* (1788) 2 Term Rep. 733) and s. 25 of the Burial Act 1857, stipulates: "Except in the cases where a body is removed from one consecrated place of burial to another by faculty granted by the Ordinary for that purpose, it shall not be lawful to remove any body, or the remains of any body, which may have been interred in any place of burial, without licence under the hand of one of Her Majesty's Principal Secretaries of State". The motives of the accused are irrelevant. In *R.* v. *Sharpe* (1857) Dears & B. 160, a son removed his mother's corpse from a burial ground belonging to a congregation of Protestant dissenters and it was found that in so doing he was actuated by motives of affection for his mother and of religious duty. The judgment of the Court was delivered by Erle J., and in the course of that judgment his Lordship said: "Although we are fully sensible of the estimable motives on which the defendant acted—namely, filial affection and religious duty, still neither authority nor principle would justify the position that the wrongful removal of a corpse was no misdemeanour if the motive for the act deserved approbation". If it were otherwise, it would be a defence to show that the corpse was removed for, say, the purpose of medical research.

The Lady was not for Burning.—An interesting case reported in the issue of the *Solicitor's Journal* dated 13 January 1961 deals with an appeal to the Court of Criminal Appeal by a young lady named June Caslin. It would appear, according to the evidence, that June accosted an American sergeant and offered herself to him for the purpose of prostitution for the sum of £2 10s. June was hungry and the sergeant gallantly took her to dinner and, after a pleasant meal, June made an assignation giving the sergeant an address for service. The sergeant generously placed £3 upon the restaurant table which was seized by June and placed in her handbag. At midnight a love-lorn sergeant reported for the assignation but June did not appear. The frustrated American complained to the Police and June was apprehended and duly tried on the charge that she had defrauded the sergeant of his money by pretending that she was going to have intercourse with him, although she had no such intention, and so inducing him to part with his money. June was convicted and sentenced to six months' imprisonment. She was found guilty of larceny contrary to s. 2 of the Larceny Act 1916. She appealed against this conviction. The Court of Criminal Appeal, through Lord Parker C.J., said that it was obvious that the jury had accepted the evidence of the sergeant, but that June had not been guilty of theft. She had merely been guilty of false pretences in that she had represented herself as a prostitute when in fact she was not. However, the Court of Criminal Appeal quashed the conviction for larceny and substituted a conviction for obtaining money by false pretences, but the Court reaffirmed the sentence of six months' imprisonment. It would appear that June's virtue was vindicated but her guilt was re-established.

To the Point.—In a recent murder trial at Manchester Assizes the following is an excerpt from the evidence of a Crown witness:

Q. Doctor, tell me the first thing that you do in performing an autopsy.

A. We look at the body and determine whether or not it is a male or female body.

Q. Is that necessary for the proper performance of an autopsy involving death attributed to a brain haemorrhage?

A. No, not at all; It is just a point of interest.

Interpleader Proceedings—"Taken by and large, as we said before—and let us admit that how or why one should do that thing remains a mystery —itwould seem that interpleader proceedings are the nearest legal approach to an Irish wedding, since they afford the finest possible excuse for the greatest possible number of individuals to have a right royal bang at each other. The basic difference is that, whereas the wedding guests all have a wonderful time, generally only one party to interpleader proceedings will find them wholly to his liking. Since making knife-edge decisions of this kind is more likely to lead to peptic ulcers and anxiety neurosis than jubilation, include His Honour out". *(1961) 105 S.J.* 120.

Tail Piece.—The following comment is attributed to the late Mr Justice Darling: "The standard to be applied by a Court in allowing counsel's fees is to be reasonably mean".

CORRESPONDENCE.

Blood Tests.

Sir,

May I refer to the passage at p. 66 of the LAW JOURNAL (21 March 1961) wherein you mention :

> "A case before one of the Victorian Courts in which a pathologist under cross-examination said that the previous medical assumption that, if blood from the heart gave a certain percentage of alcohol blood samples from other parts of the body would give the same result was not correct ; in fact four samples from different parts of the body had given different results. In the result, the evidence of the blood test was disregarded."

I have not seen the issue of the *New Zealand Motor World* to which you refer but am of the opinion that the reference is to a case briefly reported in the New Zealand daily press last October. A comparison of the New Zealand press report and that appearing in the Melbourne daily papers at the time shows that the former is quite misleading.

The pathologist in the Victorian case was speaking of blood samples taken from different parts of the *dead* body and, it is fair to assume, was relying, properly so, on experimental work undertaken at Melbourne University by K.M. Bowden and N.E.W. McCallum—reported in *1949 Medical Journal of Australia*, vol 2, p. 76. Briefly, Bowden and McCallum demonstrate that alcohol in, for example, the stomach at death diffuses through the body post mortem and the greater the period following death the greater is the diffusion ; that the rate of diffusion is not uniform throughout the body (for example diffusion to the heart and thoracic cavity is very fast and marked while that to the extremities is slow and comparatively low) ; and that blood samples from the femoral and saphenous veins taken fairly close to death are, in the hands of a pathologist conversant with the phenomenon, reasonably reliable.

There does not appear to be any dispute in the literature as to the distribution of alcohol in the blood of the *living* body after equilibrium is reached. With only insignificant variation, this distribution is uniform in all parts of the body from which a sample is likely to be taken for testing.

Yours etc.,
H. F. MURPHY.

RULES COMMITTEE.

The following notice appeared in the *New Zealand Gazette* of 9 March 1961 at p. 392 :

APPOINTMENT OF MEMBERS OF THE RULES COMMITTEE UNDER THE JUDICATURE AMENDMENT ACT 1930.

Pursuant to s. 2 of the Judicature Amendment Act 1930 the Right Honourable the Chief Justice has appointed :

The Honourable Mr Justice K. M. Gresson ;
The Honourable Mr Justice Hutchison ;
The Honourable Mr Justice McGregor ;
The Honourable Mr Justice Shorland :

Alan Murray Cousins, Esquire, of Wellington, Barrister and Solicitor ;

Wilfred Erne Leicester, [now Mr Justice Leicester] Esquire, of Wellington, Barrister and Solicitor ; and

Frederick Campbell Spratt, Esquire, of Wellington, Barrister and Solicitor,

to be members of the Rules Committee, each to hold office until 31 December 1963.

Dated at Wellington 2 March 1961.

J. R. HANAN, Minister of Justice.

In addition there are, of course, the permanent members—namely the Right Honourable Sir Harold Barrowclough, Chief Justice, and the Attorney-General, the Honourable Mr J. R. Hanan.

ANNUAL BOWLING TOURNAMENT.

A very successful bowling day was held on the Wellington Bowling Club's green on Wednesday 8 March when 40 members of the Wellington District Law Society and friends took part. Play took the form of a progressive fours tournament and the winners of each classification were as follows :

Skips	.. ..	J. B. Jameson
Thirds	.. ..	W. S. T. Till
Seconds	.. ..	F. W. Jones
Leads	.. ..	H. N. Burns

A pleasing feature of the day was the fact that four country members were present—namely Mr C. F. Atmore, of Otaki (who has been a regular attender for some years) Mr S. T. Tinney, formerly of Pahiatua but now of Waikanae, and Messrs. F. G. Opie and J. M. Gordon, of Palmerston North.

At the conclusion of play, the participants were called into the pavilion where they were shortly addressed by Mr H. R. C. Wild Q.C., President of the Society. Mr Wild expressed pleasure at the attendance of so many from towns outside Wellington and also appreciation to the Wellington Bowling Club for the use of its green and facilities, to the ladies who looked after the refreshments and to the organisers, Messrs. A. A. Wylie and C. H. Hain. Miss Frances Parker, secretary of the society, then presented to the winners trophies donated by Messrs. Butterworth and Co. (New Zealand) Ltd.

Mr Wild then called forward again Mr F. W. Jones who has recently retired from the position of Assistant Land Registrar. He spoke of the great help which Mr Jones had been to practitioners and law clerks in connection with Land Registry matters and handed Mr Jones an envelope as an expression of the thanks due to Mr Jones from the profession. Mr Jones suitably replied.