

## ..Legal..

CONDUCTED BY H. F. VON HAAST, M.A. LL.B.

### RECENT DECISIONS.

#### New Zealand Cases

**PRINCIPAL AND AGENT. COMMISSION.**—Mr. Parsons promised Mr. Latter a commission of £100 if he effected a sale of the former's farm. Mr. Latter found a purchaser, Mr. Lehevre, with whom Mr. Parsons entered into a proper contract for sale. Afterwards Mr. Lehevre refused to carry out the agreement, and Mr. Parsons agreed with him to cancel it, Mr. Lehevre paying £200 and being released from liability. HELD that Mr. Latter was entitled to his commission when a sale was effected and the vendor had accepted and approved of the purchase. HELD if an agent is employed simply to sell without any special condition making his commission payable only upon an actual completion of the purchase, and the performance of some other specified condition, the agent is entitled to his remuneration as soon as he has procured a person approved by the vendor to enter into a binding contract of purchase upon terms warranted by his authority, and is not concerned with what afterwards takes place between the parties. *Latter v. Parsons*. 8 Gaz. L.R., 596.

**INTEREST. WRITTEN DEMAND WITH NOTICE THAT INTEREST WILL BE CLAIMED.** Lord Tenterden's Act (3 and 4 Will. IV. c. 42) gives discretion to a jury to give interest where there is a written instrument whereby a debt or sum certain is made payable at a certain time, or a written demand of the money with notice that interest will be claimed. *W. E. Clouston & Co., Ltd., v. Corry*. On 10th October, 1903, he wrote to the Co.—"I shall be glad if you can arrange to let me have a cheque for balance of my account, with interest, by 1st November." All moneys due to defendant were paid on the 1st November but without interest. HELD that a demand of payment with interest at a future date, is not less a demand because couched in courteous and moderate language, and is a notice that interest will be claimed from the date of such demand until the time of payment. It makes no difference that the demand was intended to cover interest from an earlier period. Mr. Corry was therefore held entitled to interest from 10th October to 9th November.—*W. E. Clouston & Co. Ltd. v. Corry*. 8 Gaz. L. R.-572.

**SALE OF GOODS. INSURANCE BY PURCHASE. WHOSE RISK?**—*Donaghy's Rope & Twine Co. Ltd.* agreed to sell to Wright, Stephenson & Co. 26 tons of flax binder twine. Over 12 tons were delivered, and in 1905 on receipt of an invoice for the balance of 13 tons odd, Wright, Stephenson & Co. wrote asking the Rope Co. to store the twine free of storage. The Rope Co. consented to do this, requesting Wright, Stephenson & Co. to attend to the insurance. Wright, Stephenson & Co. insured the twine for £500, but the insurance company after making enquiries described the twine in the policy as in "A" store. A fire took place in the Rope Co.'s premises and the twine which was in "B" store was destroyed, and Wright, Stephenson & Co. lost the benefit of the insurance. HELD that the twine in a deliverable state had been unconditionally appropriated by the Rope Co. to the contract by the seller with the assent of the buyer and that therefore the property in the goods had passed to the buyer (under sec. 20 rule 5 paragraph 1 of "The Sale of Goods Act, 1895") and the risk was therefore the buyers'. HELD further that even if the property had not passed, there was an agreement by which the risk was transferred from the seller to the buyer and the seller, not having represented to the insurance co. that the twine was stored in the "A" store, was therefore entitled to the price sued for.—*Donaghy's Rope & Twine Co. Ltd. v. Wright, Stephenson & Co.* 8 Gaz. L. R. 561.

**BANKRUPTCY. APPARENT POSSESSION. HIRE PURCHASE.**—Mr. Scott, a furniture dealer, sold goods on the hire-purchase system. The purchasers signed bailments agreeing to pay for the hire—a monthly sum for a fixed term. In default of any payment Mr. Scott could terminate the hiring and retake possession of the chattels. The purchaser could terminate the hiring at any time by returning the chattels. In the event of punctual payment of all monthly instalments the goods became the purchaser's property. Mr. Scott assigned to Mrs. Vincent by deed all his interest

in the bailments and also the chattels comprised therein. Neither assignment nor bailments were registered. On Mr. Scott's becoming bankrupt, the Official Assignee moved to set aside the assignment on the ground that the goods bailed were at the time of the bankruptcy in the possession or apparent possession of the bankrupt under section 25 of "The Chattels Transfer Act, 1889" HELD that, as, while the bailee kept up his payments and complied with the conditions of the agreement, the bankrupt had no right to the possession of the goods, the goods were therefore neither in his possession nor his apparent possession, and that the case was within neither the words nor the mischief of the Act.—*Re James Scott*. 8 Gaz. L. R. 578.

#### Australian Cases.

**INFANT. NECESSARIES.**—An infant about to marry may make himself liable for goods reasonably required for the marriage or for the joint establishment after marriage. *Quiggan Bros. v. Baker*, 1906 V.L.R. 259.

**PATENT. PAPER ANTICIPATION.**—In an action for infringement of a patent of an ore-concentrating table the defendant alleged that the invention had been anticipated by a description of the Wilfley machine in the Engineering and Mining Journal of New York. HELD that in order to constitute a paper anticipation the prior description must be such that a person skilled in the matter reading it would find in it the invention sought to be protected by the patent. The skilled person referred to means not only a man well acquainted with the subject, but also includes a man of scientific attainments, but the information given must be such as would enable such a person without the exercise of inventive ingenuity to understand the invention aided solely by his knowledge of the subject at the time of the publication. HELD that the description did not give sufficient information to enable a skilled person to construct a table similar to that of the plaintiff. *Wilfley Ore Concentration Syndicate Ltd. v. N. Guthridge Ltd.*, 1906. V.L.R. 210.

#### English Cases.

**HUSBAND AND WIFE. CONTRACT BY WIFE. MARRIED WOMEN'S PROPERTY ACTS.**—By section 2 of "The Married Women's Property Act, 1894" (N.Z.) "Every contract hereafter entered into by a married woman otherwise than as an agent shall be deemed to be a contract entered into by her with respect to and to bind her separate property. The English statute is identical. Mrs. Holden had large dealings with her dressmakers, Paquin Limited. She merely gave her married name and address, was debited by her married name, and paid the bills sent into her by her own cheques. Her husband, who had approved of her dealing with Paquin Ltd. and seen her wearing the dresses purchased, became insolvent and absconded. Paquin Ltd. sued her for the balance owing. HELD by the House of Lords that she entered into the contract as agent for her husband and was therefore not liable, and that if a wife in fact contracts as an agent for her husband, she does not contract "otherwise than as an agent," and it is immaterial whether or not when the contract was made the tradesman knew that she had her husband's authority or even knew she was a married woman.—*Paquin Limited v. Beauclerk (formerly Holden)* 1906. H.L. 148.

**THE TRUCK ACT. SET OFF OF DEBT.**—Section 5 of "The Truck Act, 1891" provides that "The entire amount of the wages earned by or payable to any workman shall be actually paid to such workman in money and not otherwise. The corresponding section of the English Act is similar, but uses the words "in current coin of the realm" in lieu of money. The defendant Company obtained an order from a court of petty sessions for payment of a fine by the plaintiff, a workman in its employ, for having absented himself without leave. Next pay day the Company deducted the fine from the plaintiff's wages, and paid him the balance. HELD by the House of Lords that the deduction was illegal as a contravention of the Truck Act.—*Williams v. North's Navigation Collieries* (1889) Ltd.

**DEBTOR AND CREDITOR. PROMISE TO PAY DEBT BY INSTALMENTS.**—The mere payment by a debtor of part of a debt immediately due, accompanied by a promise to pay the balance by instalments, although such part payment and promise are accepted by the creditor, is a mere indulgence by the creditor and affords no consideration for a promise by the execution creditor, who has put in an execution upon the goods of the debtor, to withdraw the sheriff. The debtor has therefore no remedy if the creditor fails to withdraw the sheriff.—*Hookham v. Moyle*. 22 Times. L.R. 241.

**LANDLORD AND TENANT. DISTRESS.**—Section 7 of "The Distress Act, 1885" exempts from distress for rent (inter alia) tools of trade to an amount not exceeding £25. In England there is a similar exemption to the value of £5 only. A cab of the value of £25 was hired by a cab driver and used by him to earn his livelihood. The cab was seized under a distress for rent due from the cab driver. There was nothing else upon the premises which could be seized. HELD that it was an implement of trade and that as there were no other chattels seizable it was an exempt from seizure.—*Lavell v. Ritchings*. 22 Times. L.R. 316.

**RESTRAINT OF TRADE.**—Mr. Calfe, on entering the service of Mr. Cade, a coal merchant, covenanted that he would not within 2 years after leaving Mr. Cade's employment, "either directly or indirectly be engaged, concerned, or interested in, or carry on the trade or business of a coal merchant" within 3 miles from King's Cross. On leaving Mr. Cade, he entered the service of a rival coal merchant within the prohibited area and solicited orders from Mr. Cade's customers. An injunction was granted restraining him from doing so and it was HELD a breach of the covenant to become a servant of another employer carrying on a similar business.—*Cade v. Calfe*. 22 Times L.R. 243.

### Patent Oil Filter.

A trial of a patent oil filter which is claimed to effect a saving of from 70 to 80 per cent. was recently witnessed by a number of interested persons at the premises of Mr. John Edmonds, of Dunedin. Mr. Rees Williams, of Waikanae is the patentee. The filter consists of three cylindrical chambers. In the uppermost of these is placed 5 gallons of water, which filters through a pipe at a pressure of 2 lb. to the sq. in. to the bottom chamber, in which is contained 5 gallons of oil requiring to be filtered. The water tube from the cylinder enters the bottom cylinder at the foot, and the action of the water forces the oil up through a patent pad in the third or middle cylindrical receptacle. Any dirt or impure matter in the oil in the bottom chamber, being heavier than both the water and oil, falls to the bottom, the then partially cleansed oil being forced up through the pad into the chamber above, thereby undergoing a further cleaning. When it reaches its right chamber the oil is perfectly pure, and can be drained off at pleasure. The impure matter, which falls to the bottom of the lowest chamber, is carried off through a plug, and the process of oil cleansing repeated, the amount treated at one time being limited to 5 gallons. The experiment was produced on oil which was perfectly clear, and those present were unanimous in their praise of the filter as an oil cleanser. When used on machinery, and if good savers are placed under every bearing, the oil that is saved after passing through the bearings can be refilled and used again until it is exhausted. The filter has been in constant use on the "Duke of Gordon" dredge at Waikanae for over four months, and during that time is estimated to have effected a saving of from 70 to 80 per cent. It is of simple construction, easily understood, and not cumbersome, and can cleanse oil at the rate of nearly one gallon per minute.

The cleaning of guns and rifles is laid stress upon in the *Bazaar*, which says that it is most important that the weapon be properly cleaned as soon after its day's work is done as possible. Although more expensive, a wood-covered steel rod is far better than a common brass rod or pull-through. Jointed hardwood rods are made for shot guns, and are very handy. There are several ways of cleaning the barrels. Some prefer a slip of flannel threaded through a loop in the cleaning rod. Others recommend washing the small-bore rifle barrels with boiling water and a bristle brush. If the water is hot enough to leave the barrel dry when the operation is over, it may answer very well; but it is not a pleasant process, especially if the barrel is foul with the residue of black powder. Another method is to use cotton wool or tow wound round the jag of the cleaning-rod; and a small piece of cotton-wool, pushed through from the breach end, is a good way of beginning. Care should be taken that it is not large enough to get jammed. After the interior of the barrel is bright and clean it can be tested by a piece of white cotton wool wound round the jag not becoming soiled when pushed through—the cotton should be well smeared with vaseline and pushed and pulled through several times. Too much wool should not be wound on, or it will not leave enough vaseline behind it to protect the barrel from rust. If an expensive small-bore rifle were to be put away for any length of time, it would be economy to fill the barrel with vaseline, and so effectually prevent the rifling from becoming damaged by rust.