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PREFACE

THIS volume has been compiled by Mr. Clifford Walsh, LL.B., and covers the whole law from January 1 to December 31, 1948. It supersedes the twelve monthly parts of CURRENT LAW for 1948.

The CURRENT LAW YEAR BOOK, 1948, is somewhat larger than the YEAR BOOK for 1947, containing 3,990 paragraphs as against 3,334.

It comprises all the English cases, statutes and statutory instruments of 1948 and, in addition, a selection of cases from the Scottish and Irish Courts and the Courts of the British Dominions and from the English county courts.

The Index is cumulative and covers the law for 1947 as well as for 1948.

As before, the Table of Statutes and the Table of Cases are elaborate and detailed and cover every development of statute law and case law throughout the year.

Thus, the Table of Statutes contains a reference not only to the statutes digested herein but references to statutes which have been judicially considered or been the subject of articles, and statutes under which rule-making powers have been exercised, and demonstrates the complete effect of the year's legislation on the statute book.

Similarly, the Table of Cases refers to the cases digested herein, and to the cases followed, overruled, distinguished, applied, affirmed or otherwise judicially considered; it also includes the cases which have been the subject of articles during the year.

The Table of Statutory Instruments (as they are now called) is a complete list in numerical order of the statutory instruments published during the year. The number issued is 2,858 (as against 2,909 in 1947).

A complete list of the statutes in alphabetical order appears in the text under the title **STATUTES AND ORDERS**. A list of short titles given to older Acts by the Statute Law Revision Act, 1948, is also given under that heading.

While every care has been taken with this volume and a prodigious amount of effort has been expended in checking every item, it is too much to expect that the tables and index are free from error ; but it is hoped that this volume will continue to justify the claim : **ALL** the Law from **EVERY** Source.

J. B.

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- *v.* Arnold, [1947] C. L. Y. 2604 *Article*, 3251
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- 14 Ric. 2 (1390).
c. 11, repealed: S.L.R. 1948.
- 15 Ric. 2 (1391).
c. 3, short title: § 3575.
- 16 Ric. 2 (1392-3).
c. 5, short title: § 3575.
c. 6, repealed: S.L.R. 1948.
- 17 Ric. 2 (1393-4).
c. 8, part repealed: S.L.R. 1948.
- 2 Hen. 4 (1400-1).
c. 3, repealed: S.L.R. 1948.
- 4 Hen. 4 (1402).
cc. 12 (in part), 22, repealed: S.L.R. 1948.
- 5 Hen. 4 (1403-4).
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- 7 Hen. 4 (1405-6).
cc. 2, 5, 12, repealed: S.L.R. 1948.
- 13 Hen. 4 (1411).
c. 7, short title: § 3575.
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- 1 Hen. 5 (1413).
c. 7, repealed: S.L.R. 1948.
- 2 Hen. 5, Stat. 1 (1414).
cc. 1, 4, 8 (in part), repealed: S.L.R. 1948.
c. 8, short title: § 3575.
- 9 Hen. 5, Stat. 1 (1421).
c. 7, repealed: S.L.R. 1948.
- 2 Hen. 6 (1423).
c. 2, repealed: S.L.R. 1948.
- 3 Hen. 6 (1425).
c. 5, repealed: S.L.R. 1948.
- 8 Hen. 6 (1429).
c. 9, short title: § 3575.
part repealed: S.L.R. 1948.
- 9 Hen. 6 (1430-1).
cc. 3, 5, 9, repealed: S.L.R. 1948.
- 14 Hen. 6 (1435).
c. 3, repealed: S.L.R. 1948.
- 20 Hen. 6 (1441).
c. 9, short title: § 3575.
c. 9, repealed: 11-2 Geo. 6, c. 53, ss. 81, 83, Sch. 10, III (as from September 13, 1948: SI 1948, No. 1840).
- 27 Hen. 6 (1448).
c. 5, short title: § 3575.
part repealed: S.L.R. 1948.
- 29 Hen. 6 (1450).
cc. 1, 3, repealed: S.L.R. 1948.
- 17 Edw. 4 (1477-8).
c. 2, repealed: S.L.R. 1948.
- 22 Edw. 4 (1482-3).
cc. 7, 8, repealed: S.L.R. 1948.
- 1 Ric. 3 (1483-4).
cc. 6, 15, repealed: S.L.R. 1948.
- 1 Hen. 7 (1485).
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- 3 Hen. 7 (1487).
cc. 2 (or part of c. 1), 3, repealed: S.L.R. 1948.
- 4 Hen. 7 (1488).
c. 20, short title: § 3575.
part repealed: S.L.R. 1948.
- 7 Hen. 7 (1491).
cc. 4, 8, 12-15, 17, 18, 20-23, repealed: S.L.R. 1948.
- 11 Hen. 7 (1495).
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- 12 Hen. 7 (1496-7).
c. 11, repealed: S.L.R. 1948.
- 19 Hen. 7 (1503).
c. 7, short title: § 3575.
cc. 18, 36, repealed: S.L.R. 1948.
- 3 Hen. 8 (1511-12).
c. 11, repealed: S.L.R. 1948.
- 4 Hen. 8 (1512).
c. 8, short title: § 3575.
c. 20, repealed: S.L.R. 1948.
- 5 Hen. 8 (1513-14).
cc. 6, 19, repealed: S.L.R. 1948.
- 6 Hen. 8 (1514-5).
cc. 16 (part), 18, 25, repealed: S.L.R. 1948.
- 14 & 15 Hen. 8 (1523).
c. 5, s. 3, repealed: S.L.R. 1948.
cc. 6, 28, 29, 32, 35, repealed: S.L.R. 1948.
- 21 Hen. 8 (1529).
c. 6, short title: § 3575.
s. 1, part repealed: S.L.R. 1948.
cc. 17, 20, 25, repealed: S.L.R. 1948.
- 22 Hen. 8 (1530-1).
c. 3, repealed: S.L.R. 1948.
c. 5, ss. 1, 3, 7, part repealed: S.L.R. 1948.
ss. 4, 5, repealed: S.L.R. 1948.
c. 5, short title: § 3575.
c. 11, repealed: S.L.R. 1948.
- 23 Hen. 8 (1531-2).
c. 9, short title: § 3575.
s. 1, part repealed: S.L.R. 1948.
s. 4, repealed: S.L.R. 1948.
cc. 12, 13, repealed: S.L.R. 1948.
- 24 Hen. 8 (1532-3).
c. 11, repealed: S.L.R. 1948.
c. 12, short title: § 3575.
c. 15, repealed: S.L.R. 1948.
- 25 Hen. 8 (1533-4).
cc. 8, 12, repealed: S.L.R. 1948.
c. 19, short title: § 3575.
c. 19, ss. 4, 5, part repealed: S.L.R. 1948.
c. 20, short title: § 3575.
c. 21, ss. 19, 20, 22, repealed: S.L.R. 1948.
c. 21, short title: § 3575.
cc. 27, 29, repealed: S.L.R. 1948.
- 26 Hen. 8 (1534).
c. 7, repealed: S.L.R. 1948.
c. 14, short title: § 3575.
cc. 15, 26, repealed: S.L.R. 1948.
- 27 Hen. 8 (1535-6).
cc. 18, 21, repealed: S.L.R. 1948.
c. 24, short title: § 3575.
words of commencement, repealed: S.L.R. 1948.
s. 10, part repealed: S.L.R. 1948.
ss. 16, 18, repealed: S.L.R. 1948.
s. 19, part repealed: S.L.R. 1948.
s. 20, repealed: S.L.R. 1948.
- c. 25, short title: § 3575.
- c. 26, words of commencement, s. 22, repealed: S.L.R. 1948.
- c. 28, short title: § 3575.
- c. 28, ss. 4-6, 8-12, 14, repealed: S.L.R. 1948.
- cc. 35, 42, repealed: S.L.R. 1948.
- 28 Hen. 8 (1536).
c. 5, short title: § 3575.
c. 5 (in part), repealed: S.L.R. 1948.
c. 11, short title: § 3575.
c. 11, ss. 1, 2, part repealed: S.L.R. 1948.
c. 15, ss. 2 (in part), 3, repealed: S.L.R. 1948.
- c. 16, short title: § 3575.

- 28 Hen. 8 (1536)—*cont.*
 c. 16, preamble, repealed: S.L.R. 1948.
 ss. 2, 3 (in part), 4, repealed: S.L.R. 1948.
 c. 23, repealed: S.L.R. 1948.
- 31 Hen. 8 (1539).
 c. 3, repealed: S.L.R. 1948.
 c. 10, short title: § 3575.
 c. 10, s. 2, part repealed: S.L.R. 1948.
 s. 9, repealed: 11-2 G. 6, c. 58, ss. 81, 83, Sch. 10, III (as from September 13, 1948; SI 1948, No. 1840).
 s. 10, part repealed: S.L.R. 1948.
 c. 13, short title: § 3575.
- 32 Hen. 8 (1540).
 c. 5, repealed: S.L.R. 1948.
 c. 7, short title: § 3575.
 c. 9, short title: § 3575.
 c. 9, ss. 3, 6, part repealed: S.L.R. 1948.
 cc. 17-19, 24, 25, 27, 29, 35, repealed: *ib.*
 c. 37, short title: § 3575.
 c. 37, s. 4, part repealed: S.L.R. 1948.
 c. 38, short title: § 3575.
 c. 40, short title: § 3575.
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 preamble, part repealed: S.L.R. 1948.
 s. 3, repealed: *ib.*
- 33 Hen. 8 (1541-2).
 c. 9, short title: § 3575.
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 c. 12, short title: § 3575.
 c. 12, part repealed: S.L.R. 1948.
 s. 7, repealed: 11-2 G. 6, c. 58, ss. 81, 83, Sch. 10, III (as from September 13, 1948; SI 1948, No. 1840).
 c. 20, repealed: S.L.R. 1948.
 c. 21, short title: § 3575.
 c. 21, (except ss. 3, 5), repealed: S.L.R. 1948.
 c. 25, repealed: *ib.*
 c. 27, short title: § 3575.
 c. 27, part repealed: S.L.R. 1948.
 c. 30, repealed: *ib.*
 c. 31, s. 4, repealed: *ib.*
 cc. 33, 36, repealed: *ib.*
 c. 39, short title: § 3575.
 c. 39, ss. 36, 37 (in part), 43-50, 58, repealed: S.L.R. 1948.
- 34 & 35 Hen. 8 (1542-3).
 c. 8, short title: § 3575.
 c. 9, ss. 1-3, 4 (in part), repealed: S.L.R. 1948.
 c. 12, repealed: *ib.*
 c. 13, repealed: S.L.R. 1948; 11-2 G. 6, c. 65, Sch. 13.
 c. 17, repealed: S.L.R. 1948.
 c. 20, short title: § 3575.
 c. 24, repealed: S.L.R. 1948.
 c. 26, short title: § 3575.
 c. 26, ss. 9, 21 (in part), repealed: S.L.R. 1948.
 c. 26, ss. 33 (in part), 36-38 (in part), 50, 56 (in part), 57 (in part), 58, repealed: S.L.R. 1948.
- 35 Hen. 8 (1543-4).
 c. 1, repealed: S.L.R. 1948.
 c. 2, short title: § 3575.
 c. 2, s. 2, repealed: 11-2 G. 6, c. 58, ss. 81, 83, Sch. 10, III (as from September 13, 1948; SI 1948, No. 1840).
 cc. 4, 9, 10, 13, repealed: S.L.R. 1948.
- 37 Hen. 8 (1545).
 c. 1, short title: § 3575.
 c. 1, s. 4, repealed: S.L.R. 1948.
 cc. 2, 3, repealed: *ib.*
 c. 4, short title: § 3575.
 cc. 11, 12, repealed: S.L.R. 1948.
- 1 Edw. 6 (1547).
 c. 1, short title: § 3575.
 c. 1, ss. 1, 2, part repealed: S.L.R. 1948.
 c. 7, short title: § 3575.
 c. 7, preamble, ss. 4, 5 (in part) repealed: S.L.R. 1948.
 cc. 8, 9, 12, repealed: *ib.*
 c. 14, short title: § 3575.
- 2 & 3 Edw. 6 (1548).
 c. 1, short title: § 3575.
 c. 1, words of commencement, s. 1 (in part) repealed: S.L.R. 1948.
 c. 1, s. 10, repealed: 11-2 G. 6, c. 58, ss. 81, 83, Sch. 10, III (as from September 13, 1948; SI 1948, No. 1840).
 cc. 7, 17, repealed: S.L.R. 1948.
 c. 21, short title: § 3575.
 c. 30, repealed: S.L.R. 1948.
- 3 & 4 Edw. 6 (1549-50).
 cc. 4, 13, repealed: S.L.R. 1948.
- 5 & 6 Edw. 6 (1551-2).
 cc. 1, 3, 4, 11, 12, short titles: § 3575.
 c. 11, preamble, ss. 6, 10, repealed: S.L.R. 1948.
 c. 12, short title: § 3575.
 c. 16, s. 3, repealed: S.L.R. 1948.
- 7 Edw. 6 (1552-3).
 c. 3, repealed: S.L.R. 1948.
- 1 Mar. sess. 1 (1554).
 c. 1, short title: § 3575.
- 1 Mar. sess. 2 (1554).
 c. 1, repealed: S.L.R. 1948.
 c. 3, short title: § 3575.
 c. 3, s. 3, repealed: S.L.R. 1948.
 c. 9, repealed: *ib.*
 c. 15, repealed: *ib.*
- 1 Mar. sess. 3 (1554).
 c. 1, short title: § 3575.
 cc. 5, 6, repealed: S.L.R. 1948.
- 1 & 2 Phil. & Mar. (1554-5).
 c. 10, short title: § 3575.
 c. 10, title part repealed: S.L.R. 1948.
 c. 12, short title: § 3575.
 c. 12, part repealed: S.L.R. 1948.
- 2 & 3 Phil. & Mar. (1555).
 c. 7, short title: § 3575.
 ss. 2 (in part), 4, repealed: S.L.R. 1948.
 cc. 14, 17, 19, repealed: *ib.*
- 4 & 5 Phil. & Mar. (1557-8).
 c. 1, repealed: S.L.R. 1948.
- 1 Eliz. (1558-9).
 c. 1, short title: § 3575.
 words of commencement, repealed: S.L.R. 1948.
 ss. 2, 3 (in part), 6, 15 (in part), 16, S.L.R. 1948.

1 Eliz. (1558-9)—*cont.*

- c. 1, s. 18, repealed: 11-2 G. 6, c. 58, ss. 81, 83, Sch. 10, III (as from September 13, 1948: SI 1948, No. 1840).
 - c. 2, short title: § 3575.
 - c. 2, s. 9, repealed: *ib.*, ss. 81, 83, Sch. 10, III (as from September 13, 1948: SI 1948, No. 1840).
 - c. 3, repealed: S.L.R. 1948.
 - cc. 4, 17, 19, 23, repealed: *ib.*
 - c. 24, ss. 3, 10, 12, repealed: *ib.*
- 5 Eliz. (1562-3).
- cc. 18, 23, short titles: § 3575.
 - c. 23, ss. 1, 2 (in part), 3, 5 (in part), 6, 7 (in part), repealed: S.L.R. 1948.
- 8 Eliz. (1566).
- cc. 21, 22, repealed: S.L.R. 1948.
- 19 Eliz. (1571).
- c. 2, words of commencement, ss. 1 (in part), 2, 3, 7, 9, repealed: S.L.R. 1948.
 - c. 6, short title: § 3575.
 - c. 6, part repealed: S.L.R. 1948.
 - c. 10, short title: § 3575.
 - c. 12, short title: § 3575.
 - c. 12, ss. 2, 4 (in part), 5, repealed: S.L.R. 1948.
 - cc. 18, 20, 23, repealed: *ib.*
 - c. 29, short title: § 3575.
- 14 Eliz. (1572).
- cc. 11, 14, short titles: § 3575.
- 18 Eliz. (1575-6).
- cc. 2, 4, repealed: S.L.R. 1948.
 - c. 5, short title: § 3575.
 - ss. 1, 2 (in part), 3, 5 (in part), 7 (in part), repealed: S.L.R. 1948.
 - c. 11, short title: § 3575.
 - preamble (in part), ss. 3, 4, repealed: S.L.R. 1948.
 - c. 21, repealed: *ib.*
- 23 Eliz. (1580-1).
- cc. 6, 12, 13, 17, repealed: S.L.R. 1948.
- 27 Eliz. (1584-5).
- cc. 22, 24, 27, repealed: S.L.R. 1948.
- 31 Eliz. (1588-9).
- c. 5, short title: § 3575.
 - ss. 1 (in part), 2, 3 repealed: S.L.R. 1948.
 - c. 6, short title: § 3575.
 - words of commencement, s. 3, repealed: S.L.R. 1948.
 - c. 6, excluded: C.A.M. No. 1, s. 59.
 - c. 11, short title: § 3575.
 - c. 12, short title: § 3575.
 - c. 12, words of commencement, repealed: S.L.R. 1948.
 - c. 13, repealed: *ib.*
- 39 Eliz. (1597-8).
- c. 5, short title: § 3575.
 - s. 1, part repealed: S.L.R. 1948.
 - cc. 23, 24, 25, repealed: *ib.*
- 43 Eliz. (1601).
- c. 2, ss. 1, 2 (in part), 5, 8, 10, repealed: S.L.R. 1948.
 - cc. 5, 11, 16, repealed: *ib.*
- 1 Jac. 1 (1603-4).
- cc. 1, 3, repealed: S.L.R. 1948.
 - c. 13, short title: § 3575.
 - cc. 30, 32, repealed: S.L.R. 1948.

3 Jac. 1 (1605-6).

- c. 5, short title: § 3575.
 - c. 5, s. 13, part repealed: S.L.R. 1948.
 - cc. 19, 22-24, repealed: *ib.*
- 4 Jac. 1 (1606-7).
- c. 8, repealed: S.L.R. 1948.
- 7 Jac. 1 (1609-10).
- c. 9, repealed: S.L.R. 1948.
 - c. 12, short title: § 3575.
 - c. 12, s. 1, part repealed: S.L.R. 1948.
 - c. 15, short title: § 3575.
 - c. 15, words of commencement, repealed: S.L.R. 1948.
 - cc. 18 (in part), 20, 21, repealed: *ib.*
- 21 Jac. 1 (1623-4).
- c. 1, repealed: S.L.R. 1948.
 - c. 3, short title: § 3575.
 - ss. 4 (in part), 13, 14, repealed: S.L.R. 1948.
 - c. 4, short title: § 3575.
 - c. 4, ss. 1, 5, part repealed: S.L.R. 1948.
 - c. 11, repealed: *ib.*
 - c. 14, short title: § 3575.
 - c. 15, short title: § 3575.
 - c. 15, part repealed: S.L.R. 1948.
 - cc. 23, 24, repealed: *ib.*
 - c. 25, short title: § 3575.
 - c. 25, part repealed: S.L.R. 1948.
 - c. 29, repealed: *ib.*
- 1 Car. 1 (1625).
- c. 1, part repealed: S.L.R. 1948.
 - c. 2, repealed: *ib.*
- 3 Car. 1 (1627).
- c. 1, short title: § 3575.
 - c. 2, part repealed: S.L.R. 1948.
- 16 Car. 1 (1640).
- c. 10, short title: § 3575.
 - c. 10, words of commencement, preamble (in part), repealed: S.L.R. 1948.
 - c. 11, words of commencement, repealed: *ib.*
 - cc. 14, 16, short titles: § 3575.
- 12 Car. 2 (1660).
- c. 1, short title: § 3575.
 - cc. 11, 12, repealed: S.L.R. 1948.
 - c. 24, short title: § 3575.
 - c. 24, ss. 3, 13 (in part), 14, 16-18, 24, repealed: S.L.R. 1948.
 - cc. 30 (in part), 31, repealed: *ib.*
- 13 Car. 2, Stat. 1 (1661).
- c. 1, short title: § 3575.
 - c. 1, preamble (in part), ss. 3-5 (in part), repealed: S.L.R. 1948.
 - s. 7, part repealed: 11-2 G. 6, c. 58, ss. 81, 83, Sch. 10, III (as from September 13, 1948: SI 1948, No. 1840).
 - c. 5, short title: § 3575.
 - c. 5, s. 1, part repealed: S.L.R. 1948.
 - c. 12, short title: § 3575.
 - c. 15, repealed: S.L.R. 1948.
- 13 Car. 2, Stat. 2 (1661).
- c. 4, repealed: S.L.R. 1948.
- 14 Car. 2 (1662).
- c. 2, repealed: S.L.R. 1948.
 - c. 3, short title: § 3575.
 - c. 4, short title: § 3575.
 - c. 4, s. 25, repealed: S.L.R. 1948.
 - cc. 12, 25, 27, 29, repealed: *ib.*

- 15 Car. 2 (1663).
 c. 1, repealed: S.L.R. 1948.
 c. 6, short title: § 3575
- 16 & 17 Car. 2 (1664-5).
 c. 5, short title: § 3575.
- 17 Car. 2 (1665).
 c. 3, short title: § 3575.
- 18 & 19 Car. 2 (1666).
 c. 7, repealed: S.L.R. 1948.
 c. 11, short title: § 3575.
 c. 11, preamble (in part). s. 2, repealed: S.L.R. 1948.
- 19 & 20 Car. 2 (1667-8).
 c. 2, repealed: S.L.R. 1948.
- 22 Car. 2 (1670).
 cc. 2, 6, 7, 10, repealed: S.L.R. 1948.
 c. 12, short title: § 3575.
 c. 12, title (in part). ss. 14, 15, repealed: S.L.R. 1948.
- 22 & 23 Car. 2 (1670-1).
 c. 11, short title: § 3575.
 cc. 14-16, repealed: S.L.R. 1948.
 c. 22, s. 5, repealed: *ib.*
- 25 Car. 2 (1672).
 cc. 3, 10, repealed: S.L.R. 1948.
- 27 Car. 2 (1675).
 repealed: S.L.R. 1948.
- 29 Car. 2 (1677).
 c. 3, s. 4, part repealed: S.L.R. 1948.
 article: § 658.
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 c. 6, repealed: S.L.R. 1948.
 c. 7, ss. 2 (in part), 5, repealed: *ib.*
 cc. 8, 9, short titles: § 3575.
 c. 10, repealed: S.L.R. 1948.
- 30 Car. 2 (1678).
 c. 8, repealed: S.L.R. 1948.
- 31 Car. 2 (1679).
 c. 1, short title: § 3575.
 c. 2, ss. 11 (in part), 12, 13, 20 (in part) repealed: S.L.R. 1948.
- 1 Jac. 2 (1685).
 cc. 2, 9, 15, 16, repealed: S.L.R. 1948.
- 1 Will. & Mar. (1688).
 c. 1, part repealed: S.L.R. 1948.
 c. 6, short title: § 3575.
 c. 11, repealed: S.L.R. 1948.
 c. 16, short title: § 3575.
 c. 18, short title: § 3575.
 c. 18, ss. 5, 15, part repealed: S.L.R. 1948.
 c. 21, short title: § 3575.
 c. 21: ss. 7, 8, repealed: S.L.R. 1948.
 c. 26, short title: § 3575.
 c. 30, short title: § 3575.
 c. 30, s. 3, part repealed: S.L.R. 1948.
- 1 Will. & Mar. sess. 2 (1688).
 c. 2, s. 2, part repealed: S.L.R. 1948.
 c. 9, repealed: *ib.*
- 2 Will. & Mar. (1689).
 cc. 1, 5, short titles: § 3575.
 c. 5, words of commencement, repealed: S.L.R. 1948.
- 2 Will. & Mar. sess. 2 (1690).
 c. 8, repealed: S.L.R. 1948.
- 4 Will. & Mar. (1692).
 c. 24, s. 4, repealed: S.L.R. 1948.
- 5 Will. & Mar. (1693-4).
 c. 4, repealed: S.L.R. 1948.
 c. 7, s. 59, part repealed: S.L.R. 1948.
- 5 & 6 Will. & Mar. (1693-4).
 cc. 6, 7, short titles: § 3575.
 c. 18, repealed: S.L.R. 1948.
 c. 20, ss. 18 (in part), 19 (in part), 29, 30, 31, repealed: *ib.*
- 6 & 7 Will. & Mar. (1694).
 c. 2, short title: § 3575.
 cc. 4, 10, 15, 19, repealed: S.L.R. 1948.
- 7 & 8 Will. 3 (1695-6).
 c. 3, s. 5, part repealed: S.L.R. 1948.
 c. 7, short title: § 3575.
 c. 7, part repealed: S.L.R. 1948.
 repealed, except s. 5; 11-2 G. 6, c. 65, Sch. 13.
 s. 5, part repealed: *ib.*, Sch. 13.
 c. 25, short title: § 3575.
 c. 25, s. 1, part repealed: S.L.R. 1948.
 repealed, except s. 7, 11-2 G. 6, c. 65, Sch. 13.
 s. 7, part repealed: *ib.*, Sch. 13.
- 8 & 9 Will. 3 (1696-7).
 c. 11, short title: § 3575.
 s. 8, part repealed: S.L.R. 1948.
 c. 20, ss. 26, 31, 34, repealed: *ib.*
 c. 27, repealed: *ib.*
- 9 Will. 3 (1697-8).
 cc. 12, 20, repealed: S.L.R. 1948.
 c. 35, short title: § 3575.
- 10 Will. 3 (1698).
 cc. 5, 6, 12, repealed: S.L.R. 1948.
- 11 Will. 3 (1698-9).
 c. 7, short title: § 3575.
 s. 7, part repealed: 11-2 G. 6, c. 56, Sch. 4, I.
 ss. 7, 8, 9, 10, part repealed: S.L.R. 1948.
 ss. 14, 16, 17, repealed: *ib.*
 c. 12, part repealed: 11-2 G. 6, c. 58, Sch. 10, I (as from September 13, 1948: SI 1948, No. 1840).
 c. 18, repealed: S.L.R. 1948.
- 12 & 13 Will. 3 (1700-1).
 c. 2, s. 3, part repealed: 11-2 G. 6, c. 56, Sch. 4, I.
 c. 4, short title: § 3575.
 cc. 7, 13, repealed: S.L.R. 1948.
- 13 & 14 Will. 3 (1701).
 c. 3, repealed: S.L.R. 1948.
- 1 Ann. (1702).
 c. 1, ss. 6, 8, repealed: S.L.R. 1948.
 c. 2, short title: § 3575.
 c. 12, short title: § 3575.
 c. 12, preamble (in part), ss. 2 (in part), 3, 6, 10-12, repealed: S.L.R. 1948.
- 1 Ann. Stat. 2 (1702).
 cc. 6, 7, 9, repealed: S.L.R. 1948.
 c. 21, s. 3, part repealed: *ib.*
- 2 & 3 Ann. (1703).
 c. 20, s. 4, part repealed: S.L.R. 1948.
 short title: § 3575.
- 3 & 4 Ann. (1704).
 c. 11, repealed: S.L.R. 1948.
- 4 & 5 Ann. (1705).
 c. 3, short title: § 3575.
 c. 3, ss. 12, 13, 24 (in part), repealed: S.L.R. 1948.
 c. 16, repealed: 11-2 G. 6, c. 56, Sch. 4, II.
- 6 Ann. (1706-7).
 cc. 7, 10, repealed: S.L.R. 1948.
 c. 11, Arts. VI, VII, XIX, ss. 2 (*prosp.*), 6, part repealed: *ib.*

6 Ann. (1706-7)—*cont.*

- c. 11, Art. XXIII, part repealed: 11-2 G. 6, c. 58, ss. 81, 83, Sch. 10, III (as from September 13, 1948: SI 1948, No. 1840).
- cc. 12, 23, 30, repealed: S.L.R. 1948.
- c. 41, s. 1, part repealed: *ib.*
- c. 52, repealed: *ib.*
- c. 53, ss. 2-6, 8-10, 14-32, repealed: *ib.*
- c. 78, title, part repealed: *ib.*
 - s. 12, repealed: 11-2 G. 6, c. 58, ss. 81, 83, Sch. 10, III (as from September 13, 1948: SI 1948, No. 1840).

7 Ann. (1708).

- c. 12, s. 4, amended: 11-2 G. 6, c. 58, Sch. 9 (as from September 13, 1948: SI 1948, No. 1840).
- c. 20, repealed with savings: S.L.R. 1948.
- c. 21, ss. 5, 7, 8, 11, 12, part repealed: *ib.*
 - s. 10, repealed: *ib.*
- c. 30, ss. 66, 67, repealed: *ib.*

8 Ann. (1709).

- c. 16, s. 1, part repealed: S.L.R. 1948.
 - ss. 2, 4, 6, repealed: *ib.*
- c. 18, ss. 1, 4, 6, part repealed: *ib.*

9 Ann. (1710).

- cc. 24, 26, repealed: S.L.R. 1948.

10 Ann. (1711).

- c. 44, repealed: S.L.R. 1948.

13 Ann. (1713).

- c. 11, excluded: C.A.M. No. 1, s. 59.
- c. 11, title (in part), s. 2 (in part), repealed: S.L.R. 1948.
- cc. 20, 25, repealed: *ib.*

1 Geo. 1, Stat. 2 (1714-16).

- c. 5, ss. 1 (in part), 6 (in part), 7, 9 (in part), 10, repealed: S.L.R. 1948.
- c. 10, ss. 2, 4 (in part), 14, 15, 16 (in part), repealed: *ib.*
- cc. 37, 44, repealed: *ib.*
- c. 54, ss. 10, 12, part repealed: *ib.*

3 Geo. 1 (1716-7).

- cc. 5, 6, repealed: S.L.R. 1948.
- c. 8, ss. 39 (in part), 53, repealed: *ib.*
- cc. 15, 20, repealed: *ib.*

4 Geo. 1 (1717-8).

- c. 8, repealed: S.L.R. 1948.
- c. 11, s. 7, part repealed: *ib.*

5 Geo. 1 (1718-9).

- c. 8, repealed: 11-2 G. 6, c. 29, s. 62 (3), Sch. 7, I.
- cc. 16, 17, repealed: S.L.R. 1948.
- c. 20, preamble (in part), ss. 1 (in part), 2-4, 15, 16, repealed: *ib.*
- cc. 22, 30, repealed: *ib.*

6 Geo. 1 (1719-20).

- cc. 6, 7, 8, 9, 24, repealed: S.L.R. 1948.

7 Geo. 1, Stat. 1 (1720-1).

- cc. 22, 25, 27, repealed: S.L.R. 1948.

8 Geo. 1 (1721-2).

- cc. 7, 14, 15, repealed: S.L.R. 1948.
- c. 24, words of commencement, ss. 1 (in part), 3 (in part), 7, repealed: *ib.*
- c. 27, repealed: *ib.*

9 Geo. 1 (1722-3).

- cc. 7, 9, 14, repealed: S.L.R. 1948.
- c. 19, ss. 15, 18, 19, repealed: *ib.*
- c. 20, repealed: *ib.*

10 Geo. 1 (1723-4).

- c. 19, title, part repealed: S.L.R. 1948.

11 Geo. 1 (1724-5).

- c. 9, s. 4, repealed: S.L.R. 1948.
- c. 30, ss. 5 (in part), 43, repealed: *ib.*

12 Geo. 1 (1725-6).

- cc. 2, 27, 29, repealed: S.L.R. 1948.

13 Geo. 1 (1726-7).

- c. 28, repealed: S.L.R. 1948.

1 Geo. 2, Stat. 1 (1727).

- c. 5, title (in part), s. 7 (in part), repealed: S.L.R. 1948.

1 Geo. 2, Stat. 2 (1727-8).

- c. 8, ss. 8, 15, repealed: S.L.R. 1948.
- c. 21, repealed: *ib.*

c. 22 (except s. 4), repealed: *ib.*

2 Geo. 2 (1728-9).

- c. 3, ss. 7, 14, repealed: S.L.R. 1948.
- cc. 11, 33, repealed: *ib.*

3 Geo. 2 (1729-30).

- cc. 8, 32, repealed: S.L.R. 1948.

4 Geo. 2 (1730-1).

- cc. 11, 13, repealed: S.L.R. 1948.
- c. 14, ss. 10, 11, part repealed: *ib.*
- c. 28, s. 1, part repealed: *ib.*

5 Geo. 2 (1731-2).

- cc. 3, 8, 19, 23, 31, 32, repealed: S.L.R. 1948.

6 Geo. 2 (1732-3).

- cc. 2, 18, 36, repealed: S.L.R. 1948.

7 Geo. 2 (1733-4).

- cc. 4, 5, repealed: S.L.R. 1948.
- c. 16, title (in part), ss. 4 (in part), 6-8, repealed: *ib.*
 - s. 8, repealed: 11-2 G. 6, c. 65, s. 80, Sch. 13.
- cc. 20, 24, repealed: *ib.*

8 Geo. 2 (1734-5).

- c. 29, repealed: S.L.R. 1948.

9 Geo. 2 (1735-6).

- c. 5, ss. 3, 4, part repealed: S.L.R. 1948.
- cc. 12, 27, 28, 31, 33, repealed: *ib.*

10 Geo. 2 (1736-7).

- cc. 4, 7, 20, 34, repealed: S.L.R. 1948.

11 Geo. 2 (1737-8).

- cc. 4, 15, 16, repealed: S.L.R. 1948.
- c. 19, ss. 3, 4, part repealed: *ib.*
- cc. 22, 30, 38, repealed: *ib.*

12 Geo. 2 (1738-9).

- c. 23, repealed: S.L.R. 1948.
- c. 26, ss. 11, 13, 15, 20, 21, part repealed: *ib.*

c. 28, preamble, part repealed: *ib.*c. 29, ss. 6, 20, 21, repealed: *ib.*

13 Geo. 2 (1739-40).

- c. 17, repealed: S.L.R. 1948.
- c. 19, s. 9, part repealed: *ib.*

14 Geo. 2 (1740-1).

- cc. 4, 30, repealed: S.L.R. 1948.

15 Geo. 2 (1741-2).

- c. 8, repealed: S.L.R. 1948.
- c. 20, ss. 2-4, 6, 8, part repealed: *ib.*
- c. 22, s. 1, part repealed: *ib.*
- c. 23, repealed: *ib.*
- c. 33, ss. 6, 7, 9, part repealed: *ib.*

16 Geo. 2 (1742-3).

- c. 8, repealed: S.L.R. 1948.
- c. 31, ss. 1, 2, 3 (in part), repealed: *ib.*

17 Geo. 2 (1743-4).

- c. 3, repealed: 11-2 G. 6, c. 26, Sch. 2, II.

- 17 Geo. 2 (1743-4)—*cont.*
 cc. 5, 8, repealed: S.L.R. 1948.
 c. 30, s. 1, part repealed: *ib.*
 c. 37, ss. 1 (in part), 3, repealed: *ib.*
 c. 38, ss. 4 (in part), 5, 6, 7 (in part), 8 (in part), 11, 13 (in part), 14 (in part), 15, repealed: *ib.*
 c. 40, s. 11, part repealed: *ib.*
- 18 Geo. 2 (1744-5).
 c. 24, ss. 1, 3, 4, part repealed: S.L.R. 1948.
 c. 30, preamble, part repealed: *ib.*
 s. 1, part repealed: *ib.*; 11-2 G. 6, c. 56, s. 31, Sch. 4, I.
 s. 2, repealed: S.L.R. 1948.
 c. 33, repealed: *ib.*
 c. 34, title (in part), ss. 1 (in part), 2, 4, 5, 11, repealed: *ib.*
 c. 37, repealed: *ib.*
- 19 Geo. 2 (1745-6).
 c. 6, title (in part), s. 11 (in part), repealed: S.L.R. 1948.
 c. 21, s. 1, words of commencement repealed: *ib.*
 ss. 3, 7, 11, part repealed: *ib.*
 c. 22, repealed: *ib.*
- 20 Geo. 2 (1746-7).
 cc. 17, 21, 22, 26, repealed: S.L.R. 1948.
 c. 30, words of commencement repealed: *ib.*
 cc. 34, 41, repealed: *ib.*
 c. 42, s. 3, part repealed: *ib.*
 c. 43, ss. 15, 17, 19, 38, 41, 42, repealed: *ib.*
 c. 49, repealed: *ib.*
- 22 Geo. 2 (1748-9).
 cc. 10, 13, repealed: S.L.R. 1948.
 c. 27, preamble, part repealed: *ib.*
 s. 1, 2, 4, 5, 6, part repealed: *ib.*
 s. 12, repealed: *ib.*
 c. 52, repealed: *ib.*
- 23 Geo. 2 (1749-50).
 cc. 6, 14, 37, repealed: S.L.R. 1948.
- 24 Geo. 2 (1750-1).
 c. 23, s. 6, part repealed: S.L.R. 1948.
 Tables to find Easter, repealed: *ib.*
 Table of moveable feasts, repealed, *ib.*
 cc. 31, 38, repealed: *ib.*
 c. 40, s. 12, words of commencement repealed: *ib.*
 ss. 13-16, 31: *ib.*
 c. 43, repealed: *ib.*
 c. 44, s. 6, part repealed: *ib.*
 s. 8, repealed: *ib.*
 c. 50, repealed: *ib.*
- 25 Geo. 2 (1751-2).
 cc. 9, 20, repealed: S.L.R. 1948.
 c. 36, ss. 2, 10, part repealed: S.L.R. 1948.
 c. 37, ss. 3, 4, 6, 7, 8, so far as relating to Scotland, repealed: S.L.R. 1948.
- 26 Geo. 2 (1751-2).
 c. 22, short title: § 3575.
 cc. 27, 44, 79, 96, 101, repealed: S.L.R. 1948.
- 27 Geo. 2 (1753-4).
 c. 16, title, part repealed: S.L.R. 1948.
 s. 2, repealed: *ib.*
 c. 35, repealed: *ib.*
- 29 Geo. 2 (1755-6).
 c. 23, s. 1, part repealed: S.L.R. 1948.
 cc. 48, 90, repealed: *ib.*
- 30 Geo. 2 (1756-7).
 cc. 22, 63, repealed: S.L.R. 1948.
- 31 Geo. 2 (1757-8).
 cc. 22, 40, 52, 69, repealed: S.L.R. 1948.
- 32 Geo. 2 (1758-9).
 cc. 15, 28, 33, 56, repealed: S.L.R. 1948.
- 33 Geo. 2 (1759-60).
 cc. 10, 53, repealed: S.L.R. 1948.
- 1 Geo. 3 (1760-1).
 cc. 11, 13, repealed: S.L.R. 1948.
- 2 Geo. 3 (1761-2).
 cc. 15, 55, repealed: S.L.R. 1948.
- 3 Geo. 3 (1762-3).
 c. 28, repealed: S.L.R. 1948.
- 4 Geo. 3 (1763-4).
 cc. 5, 10, 46, 56, 91, repealed: S.L.R. 1948.
- 5 Geo. 3 (1765).
 c. 13, repealed: S.L.R. 1948.
- 6 Geo. 3 (1765-6).
 cc. 33, 66, repealed: S.L.R. 1948.
- 7 Geo. 3 (1766-7).
 c. 18, short title: § 3575.
 c. 21, repealed: S.L.R. 1948.
 c. 48, words of commencement, repealed: *ib.*
- 8 Geo. 3 (1767-8).
 cc. 10, 26, 28, repealed: S.L.R. 1948.
- 9 Geo. 3 (1768-9).
 cc. 17, 57, repealed: S.L.R. 1948.
- 10 Geo. 3 (1770).
 c. 28, repealed: S.L.R. 1948.
 c. 50, ss. 1, 6, part repealed: *ib.*
- 11 Geo. 3 (1770-1).
 c. 16, repealed: S.L.R. 1948.
- 12 Geo. 3 (1772).
 c. 20, repealed: S.L.R. 1948.
 c. 45, ss. 1, 5, 6, 7, part repealed: *ib.*
 c. 72, ss. 36, 37, 42, 43, part repealed: *ib.*
- 13 Geo. 3 (1772-3).
 c. 18, repealed: S.L.R. 1948.
 c. 32, title, part repealed: *ib.*
 s. 1, words of commencement, repealed: *ib.*
 cc. 41, 75, repealed: *ib.*
 c. 81, ss. 22, 24, part repealed: *ib.*
 c. 82, repealed: *ib.*
- 14 Geo. 3 (1774).
 cc. 22, 28, 35, 40, repealed: S.L.R. 1948.
 c. 48, excluded: 11-2 G. 6, c. 29, s. 130 (9).
 c. 78, s. 86, part repealed: S.L.R. 1948.
- 15 Geo. 3 (1774-5).
 cc. 19, 47, 48, 57, 61, repealed: S.L.R. 1948.
- 16 Geo. 3 (1775-6).
 cc. 16, 18, 29, repealed: S.L.R. 1948.
- 17 Geo. 3 (1776-7).
 c. 6, repealed: S.L.R. 1948.
 c. 11, short title: § 3575.
 preamble, part repealed: S.L.R. 1948.
 ss. 1, 2, part repealed: *ib.*
 s. 8, repealed: *ib.*
 ss. 9, 10, 12, 14, 16, part repealed: *ib.*
 ss. 21, 22, repealed: *ib.*
 cc. 14, 20, 31, 49, repealed: *ib.*
 c. 56, words of commencement, repealed: *ib.*
 preamble, repealed: *ib.*
 s. 3, part repealed: *ib.*
- 18 Geo. 3 (1777-8).
 cc. 8, 17, 35, 43, repealed: S.L.R. 1948.
- 19 Geo. 3 (1778-9).
 c. 30, repealed: S.L.R. 1948.

- 19 Geo. 3 (1778-9)—*cont.*
 c. 45, short title: § 3575.
 c. 70, s. 5, words of commencement, repealed: *ib.*
 s. 6, repealed: *ib.*
 c. 77, repealed: *ib.*
- 20 Geo. 3 (1779-80).
 cc. 11, 22, 32, repealed: S.L.R. 1948.
- 21 Geo. 3 (1780-1).
 c. 13, repealed: S.L.R. 1948.
- 22 Geo. 3 (1781-2).
 c. 18, 22, 42, repealed: S.L.R. 1948.
 c. 45, ss. 1, 6, 9, part repealed: S.L.R. 1948.
 cc. 52, 65, repealed: *ib.*
 c. 82, ss. 27 (in part), 37, repealed: *ib.*
- 23 Geo. 3 (1782-3).
 cc. 15, 29, repealed: S.L.R. 1948.
- 24 Geo. 3, sess. 1 (1783-4).
 c. 20, repealed: S.L.R. 1948.
- 24 Geo. 3, sess. 2 (1784).
 cc. 14, 22, 57, repealed: S.L.R. 1948.
- 25 Geo. 3 (1785).
 cc. 18, 38, 42, repealed: S.L.R. 1948.
 c. 77, short title: § 3575.
 c. 77, s. 1, words of commencement, repealed: *ib.*
- 26 Geo. 3 (1786).
 cc. 23, 29, 37, 102, repealed: S.L.R. 1948.
- 27 Geo. 3 (1787).
 c. 31, repealed: S.L.R. 1948.
 c. 34, short title: § 3575.
 cc. 44, 46, 50, repealed: S.L.R. 1948.
 c. 57, duties on ale or beer, repealed: *ib.*
- 28 Geo. 3 (1787-8).
 cc. 32, 59, repealed: S.L.R. 1948.
- 29 Geo. 3 (1789).
 cc. 4, 29, 46, repealed: S.L.R. 1948.
- 30 Geo. 3 (1790).
 c. 22, repealed: S.L.R. 1948.
 c. 31, words of commencement, repealed: *ib.*
 c. 48, s. 1, part repealed: *ib.*
- 31 Geo. 3 (1790-1).
 cc. 36, 57, 82, repealed: S.L.R. 1948.
- 32 Geo. 3 (1792).
 c. 56, ss. 1-6, words of commencement, repealed: S.L.R. 1948.
 c. 62, repealed: *ib.*
 c. 63, s. 2, part repealed: *ib.*
 s. 3, repealed: *ib.*
 ss. 4, 5, 6, part repealed: *ib.*
 s. 7, part repealed: 11-2 G. 6, c. 65, s. 80, Sch. 13.
 s. 10, part repealed: S.L.R. 1948: 11-2 G. 6, c. 65, s. 80, Sch. 13.
 ss. 12, 13, repealed: S.L.R. 1948.
 cc. 72, 73, 91, repealed: *ib.*
- 33 Geo. 3 (1792-3).
 cc. 31, 39, 41, repealed: S.L.R. 1948.
 c. 55, title, part repealed: *ib.*
 preamble, part repealed: *ib.*
 s. 1, part repealed: *ib.*
 c. 67, title, part repealed: *ib.*
 s. 1, part repealed: *ib.*
 cc. 77, 78, 79, 126, repealed: *ib.*
- 34 Geo. 3 (1794).
 cc. 66, 67, 101, repealed: S.L.R. 1948.
- 35 Geo. 3 (1794-5).
 cc. 42, 45, 68, 69, repealed: S.L.R. 1948.
 c. 122, title, part repealed: *ib.*
 ss. 1 (in part), 2, 3, repealed: *ib.*
 c. 125, repealed: *ib.*
- 36 Geo. 3 (1795-6).
 c. 7, s. 1, part repealed: S.L.R. 1948.
 cc. 9, 27, repealed: *ib.*
 c. 52, s. 12, further duty: § 851.
 c. 60, ss. 1, 2, 3, 5, words of commencement, repealed: S.L.R. 1948.
 c. 85, ss. 1, 5, 6, part repealed: *ib.*
 c. 91, repealed: *ib.*
- 37 Geo. 3 (1796-7).
 c. 133, repealed: S.L.R. 1948.
- 38 Geo. 3 (1797-8).
 c. 5, title, part repealed: S.L.R. 1948.
 ss. 19, 95, part repealed: *ib.*
 c. 21, repealed: *ib.*
 c. 48, s. 1, part repealed: *ib.*
 c. 52, ss. 5, (in part), 9, repealed: *ib.*
 c. 60, title, part repealed: *ib.*
 s. 1, part repealed: *ib.*
 c. 69, ss. 2, 6, 7, part repealed: *ib.*
- 39 Geo. 3 (1798-9).
 c. 37, s. 2, part repealed: S.L.R. 1948.
 c. 56, repealed: *ib.*
 c. 79, part repealed: *ib.*
 ss. 1 (in part) 2 (in part), 6 (in part), 8 (in part), 10, 11, 14, 35 (in part), 38, Sch., repealed: *ib.*
- 39 & 40 Geo. 3 (1799-1800).
 c. 28, ss. 13 (in part), 14, 15 (in part), repealed: S.L.R. 1948.
 c. 36, title, part repealed: *ib.*
 s. 4, repealed: *ib.*
 c. 41, s. 7, repealed: *ib.*
 cc. 43, 54, repealed: *ib.*
 c. 67, Art. IV, part repealed: 11-2 G. 6, c. 58, ss. 81, 83, Sch. 10, III (as from September 13, 1948: SI 1948, No. 1840).
 c. 67, Art. VI, part repealed: *ib.*
 cc. 77, 78, repealed: *ib.*
 c. 86, short title: § 3575.
 cc. 97, 109, repealed: S.L.R. 1948.
- 42 Geo. 3 (1801-2).
 c. 85 (*Criminal Jurisdiction*).
 s. 1, part repealed: 11-2 G. 6, c. 58, Sch. 10, I (as from September 13, 1948: SI 1948, No. 1840).
- 45 Geo. 3 (1805).
 c. 127, short title: § 3575.
- 47 Geo. 3, sess. 2 (1807).
 c. 36, short title: § 3575.
- 48 Geo. 3 (1808).
 c. 75 (*Burial of Drowned Persons*).
 repealed: 11-2 G. 6, c. 29, ss. 50 (7), 62 (3), Sch. 7, III: § 394.
- 52 Geo. 3 (1812).
 c. 161, short title: § 3575.
- 56 Geo. 3 (1816).
 c. 99, short title: § 3575.
- 59 Geo. 3 (1819).
 c. 62, short title: § 3575.
- 60 Geo. 3 & 1 Geo. 4 (1819-20).
 c. 11, repealed: 11-2 G. 6, c. 65, s. 80 (7), Sch. 13.
- 1 Geo. 4 (1820).
 c. 57, repealed: 11-2 G. 6, c. 58, ss. 81, 83, Sch. 10, II (as from September 13, 1948: SI 1948, No. 1840).

- 1 Geo. 4 (1820)—*cont.*
 c. 108, short title: § 3575.
- 1 & 2 Geo. 4 (1821).
 c. 58, repealed: 11-2 G. 6, c. 65, s. 80, Sch. 13.
- 3 Geo. 4 (1822).
 c. 46 (*Levy of Fines*).
 s. 2: see 11-2 G. 6, c. 58, s. 15 (1).
- c. 114 (*Hard Labour*).
 repealed: 11-2 G. 6, c. 58, Sch. 10, I
 (as from April 18, 1949: SI 1949, No. 139).
- 4 Geo. 4 (1823).
 c. 55, repealed except s. 74: 11-2 G. 6, c. 65, s. 80 (7), Sch. 13.
- c. 76 (*Marriage*).
 ss. 7, 22, construed: § 993.
- 5 Geo. 4 (1824).
 cc. 39, 60, short titles: § 3575.
- c. 83 (*Vagrancy*).
 ss. 3, 4, part repealed: 11-2 G. 6, c. 29, s. 62 (3), Sch. 7, I.
 s. 4, construed: § 3794.
 s. 5, part repealed: 11-2 G. 6, c. 58, Sch. 10, I (as from April 18, 1949: SI 1949, No. 139).
 s. 6, excluded: *ib.*, s. 68.
 s. 10, part repealed: 11-2 G. 6, c. 58, Sch. 10, I (as from September 13, 1948: SI 1948, No. 1840).
- c. 90, short title: § 3575.
- c. 84 (*Transportation*).
 repealed: 11-2 G. 6, c. 58, Sch. 10, I
 (as from April 18, 1949: SI 1949, No. 139).
- 6 Geo. 4 (1825).
 c. 50 (*Juries*).
 s. 29, part repealed: 11-2 G. 6, c. 58, Sch. 10, I (as from December 27, 1948: SI 1948, No. 2349).
- c. 66, repealed: 11-2 G. 6, c. 58, s. 83, Sch. 10, III (as from September 13, 1948: SI 1948, No. 1840).
- 7 Geo. 4 (1826).
 c. 46 (*Country Bankers*).
 excluded: 11-2 G. 6, c. 38, s. 432 (1) (a).
- 7 & 8 Geo. 4 (1826-7).
 c. 28 (*Criminal Law*).
 s. 10, part repealed: 11-2 G. 6, c. 58, Sch. 10, I (as from April 18, 1949: SI 1949, No. 139).
- 9 Geo. 4 (1828).
 c. 92 (*Savings Bank*).
 s. 27 explained: 11-2 G. 6, c. 39, s. 19 (5) (a).
- 10 Geo. 4 (1829).
 c. 44 (*Metropolitan Police*).
 s. 12, repealed with savings: 11-2 G. 6, c. 24, Sch. 1, I (1).
 s. 12, construed: § 2715.
 s. 18, part repealed: 11-2 G. 6, c. 65, s. 47 (4), Sch. 13.
 ss. 23-33, repealed: 11-2 G. 6, c. 26, s. 147, Sch. 2, IV.
- 11 Geo. 4 & 1 Will. 4 (1830).
 s. 33, repealed: 11-2 G. 6, c. 58, Sch. 10, I (as from December 27, 1948: SI 1948, No. 2349).
- 11 Geo. 4 & 1 Will. 4 (1830)—*cont.*
 c. 39 (*Transportation*).
 repealed: 11-2 G. 6, c. 58, Sch. 10, I
 (as from April 18, 1949: SI 1949, No. 139).
- c. 70 (*Law Terms*).
- 1 & 2 Will. 4 (1831).
 c. 22 (*London Hackney Carriage*).
 s. 35, construed: § 3358.
 s. 41, construed: § 3357.
- c. 37 (*Truck*).
 s. 7, repealed: 11-2 G. 6, c. 29, Sch. 7, III.
 books published: § 1432.
- c. 41 (*Special Constables*).
 s. 12, repealed: 11-2 G. 6, c. 29, Sch. 7, III.
- 2 & 3 Will. 4 (1831-2).
 c. 45 (*Reform*).
 repealed: 11-2 G. 6, c. 65, s. 80, Sch. 13.
- c. 46 (*British Museum*).
 short title: § 3575.
- c. 120 (*Stage Carriages*).
 s. 5, construed: § 3749.
 s. 48, construed: §§ 3749, 3750.
- 3 & 4 Will. 4 (1833).
 c. 85 (*Saint Helena*).
 short title: § 3575.
- c. 99 (*Fines*).
 s. 29, repealed: 11-2 G. 6, c. 58, Sch. 10, I (as from December 27, 1948: SI 1948, No. 2349).
- 4 & 5 Will. 4 (1834).
 repealed: 11-2 G. 6, c. 58, s. 83, Sch. 10, I (as from April 18, 1949: SI 1949, No. 139).
- c. 24 (*Superannuation*).
 reduction of allowances: § 2621.
- c. 67 (*Transportation*).
- 5 & 6 Will. 4 (1835).
 c. 36 (*Parliamentary Elections*).
 repealed: 11-2 G. 6, c. 65, Sch. 13.
- c. 50 (*Highways*).
 stopping up: § 1591.
 s. 72, construed: § 1582.
 s. 78, construed: § 3344.
- 6 & 7 Will. 4 (1836).
 c. 96 (*Parochial Assessments*).
 repealed: 11-2 G. 6, c. 26, Sch. 2, II (*prosp.*).
- 7 Will. 4 & 1 Vict. (1837).
 c. 26 (*Wills*).
 incorporation: § 3901.
 s. 9, construed: § 3931.
 s. 11, construed: § 3944.
 s. 21, construed: § 3863.
- c. 73 (*Chartered Companies*).
 unregistered companies: 11-2 G. 6, c. 38, s. 435 (3).
- 1 & 2 Vict. (1837-8).
 c. 42 (*Dean Forest (Encroachments)*).
 short title: § 3575.
- c. 74 (*Small Tenements Recovery*).
 construed: § 1609.
 s. 1, construed: §§ 1608, 1965, 1966.
 Sch., construed: § 1966.
 Sch., applied as modified: 11-2 G. 6, c. 63, s. 29 (1).

- 1 & 2 Vict. (1837-8)—*cont.*
 c. 75 (*Fires Prevention*).
 short title: § 3575.
 c. 82 (*Parkhurst Prison*).
 repealed: 11-2 G. 6, c. 58, Sch. 10, I
 (as from April 18, 1949: SI 1948,
 No. 139).
 c. 101 (*Duchies of Lancaster and Cornwall*
(Accounts)).
 short title: § 3575.
 c. 106 (*Pluralities*).
 s. 59, saved: 11-2 G. 6, c. 26, s. 74 (3).
- 2 & 3 Vict. (1839).
 c. 51 (*Pensions*).
 ss. 2-4, 7 (in part), 8 (in part), 10,
 Schs., repealed: 11-2 G. 6, c. 29,
 Sch. 7, III.
 c. 56 (*Prisons*).
 repealed: 11-2 G. 6, c. 58, Sch. 10, I
 (as from April 18, 1949: SI 1949,
 No. 139).
 c. 93 (*County Police*).
 s. 9, repealed: 11-2 G. 6, c. 65,
 s. 47 (4), Sch. 13.
- 3 & 4 Vict. (1840).
 c. 61 (*Beerhouse*).
 s. 7, amended and part repealed: 11-2
 G. 6, c. 58, ss. 81, 83, Schs. 9, 10,
 I (as from September 13, 1948: SI
 1948, No. 1840).
- 4 & 5 Vict. (1841).
 c. 22 (*Felony*).
 repealed: 11-2 G. 6, c. 58, s. 83,
 Sch. 10, III (as from September
 13, 1948: SI 1948, No. 1840).
- 5 & 6 Vict. (1842).
 c. 29 (*Pentonville Prison*).
 repealed: 11-2 G. 6, c. 58, Sch. 10, I
 (as from April 18, 1949: SI 1948,
 No. 139).
 c. 51 (*Treason*).
 s. 2, part repealed: 11-2 G. 6, c. 58,
 s. 83, Sch. 10, II (as from Septem-
 ber 13, 1948: SI 1948, No. 1840).
 c. 57 (*Poor Law Amendment*).
 repealed: 11-2 G. 6, c. 29, Sch. 7, I.
 c. 61 (*South Australia*).
 repealed: 11-2 G. 6, c. 58, Sch. 10, I
 (as from April 18, 1949: SI 1949,
 No. 139).
 c. 65 (*Dean Forest*).
 short title: § 3575.
 c. 94 (*Defence*).
 easements: § 535.
 c. 98 (*Prison*).
 s. 12, repealed: 11-2 G. 6, c. 58,
 Sch. 10, I (as from April 18, 1949:
 SI 1949, No. 139).
- 6 & 7 Vict. (1843).
 c. 7 (*Transportation*).
 repealed: 11-2 G. 6, c. 58, Sch. 10, I
 (as from April 18, 1949: SI 1949,
 No. 139).
 c. 18 (*Parliamentary Voters' Registration*).
 repealed except ss. 85, 93 (part): 11-2
 G. 6, c. 65, Sch. 13.
 s. 93, part repealed: *ib.*, Sch. 13.
- 7 & 8 Vict. (1844).
 c. 32 (*Bank Charter*).
 s. 21, excluded: 11-2 G. 6, c. 38,
 s. 432 (1) (a).
 c. 65 (*Duchy of Cornwall*).
 short title: § 3575.
 c. 101 (*Poor Law Amendment*).
 ss. 6, 7, repealed: 11-2 G. 6, c. 29,
 Sch. 7, I.
 s. 8, part repealed: *ib.*, Sch. 7, I.
 s. 63, repealed: *ib.*, Sch. 7, I.
 c. 105 (*Duchy of Cornwall (No. 2)*).
 short title: § 3575.
 c. 113 (*Joint Stock Banks*).
 s. 47, saved: 11-2 G. 6, c. 38, s. 459,
 Sch. 18.
- 8 & 9 Vict. (1845).
 c. 16 (*Companies Clauses Consolidation*).
 included: 11-2 G. 6, c. 38, s. 287 (6).
 c. 20 (*Railways Clauses Consolidation*).
 s. 16, construed: § 1593.
 ss. 78-85, applied with modifications:
 11-2 G. 6, c. 17, s. 15 (3).
 c. 109 (*Gaming*).
 s. 18, construed: §§ 1520, 1524.
 c. 117 (*Poor Removal*).
 repealed: 11-2 G. 6, c. 29, Sch. 7, I.
- 9 & 10 Vict. (1846).
 c. 93 (*Fatal Accidents*).
 restricted: 11-2 G. 6, c. 41, s. 2 (5).
 construed: § 813.
- 10 & 11 Vict. (1847).
 c. 15 (*Gasworks Clauses*).
 repealed with savings: 11-2 G. 6,
 c. 67, Sch. 4 (*prosp.*).
 ss. 21, 23, construed: § 2816.
 c. 17 (*Waterworks Clauses*).
 s. 32, construed: §§ 1579, 3858.
 ss. 62, 63, construed: § 2816.
 c. 27 (*Harbours, Docks and Piers Clauses*).
 s. 52, construed: § 3465.
 c. 33 (*Poor Removal*).
 repealed: 11-2 G. 6, c. 29, Sch. 7, I.
 c. 34 (*Towns Improvements Clauses*).
 s. 126, construed: § 2980.
 c. 63 (*Royal Marines*).
 s. 6, amended: 11-2 G. 6, c. 25,
 s. 2 (2).
 c. 67 (*Transportation*).
 repealed: 11-2 G. 6, c. 58, Sch. 10, I
 (as from April 18, 1949: SI 1949,
 No. 139).
- 11 & 12 Vict. (1847-8).
 c. 42 (*Indictable Offences*).
 copies of depositions: 11-2 G. 6, c.
 58, s. 33.
 s. 25, acquittal or discharge: *ib.*,
 s. 44 (1).
 c. 43 (*Summary Jurisdiction*).
 s. 1, construed: § 2142.
 s. 11, applied: 11-2 G. 6, c. 58,
 s. 28 (5).
 s. 14, excluded: *ib.*, s. 42 (2).
 s. 16, extended: 11-2 G. 6, c. 58,
 s. 25.
 s. 18, construed: § 2132.
 s. 21, part repealed: 11-2 G. 6, c.
 58, Sch. 10, I (as from April 18,
 1949: SI 1949, No. 139).
 s. 35, part repealed: 11-2 G. 6, c. 29,
 Sch. 7, III.

- 11 & 12 Vict. (1847-8)—*cont.*
 c. 110 (*Poor Law Amendment*).
 repealed: 11-2 G. 6, c. 26, Sch. 2, II (*prosp.*).
- 12 & 13 Vict. (1849).
 c. 103 (*Poor Law Amendment*).
 repealed: 11-2 G. 6, c. 29, Sch. 7, I.
- 13 & 14 Vict. (1850).
 c. 39 (*Convict Prisons*).
 repealed: 11-2 G. 6, c. 58, Sch. 10, I (as from April 18, 1949: SI 1949, No. 139).
- c. 83 (*Abandonment of Railways*).
 unregistered company: 11-2 G. 6, c. 38, ss. 398 (a), 399 (7).
- c. 101 (*Poor Law Amendment*).
 repealed: 11-2 G. 6, c. 26, Sch. 2, II (*prosp.*).
- 14 & 15 Vict. (1851).
 c. 100 (*Criminal Procedure*).
 s. 29, repealed: 11-2 G. 6, c. 58, Sch. 10, I (as from April 18, 1949: SI 1949, No. 139).
- 15 & 16 Vict. (1852).
 c. 57 (*Election Commissioners*).
 s. 1, part repealed: 11-2 G. 6, c. 65, Sch. 13.
 s. 6, extended: *ib.*, s. 53 (3).
- c. 81 (*County Rates*).
 repealed with savings: 11-2 G. 6, c. 26, ss. 120 (3), 147, Sch. 2, V.
- c. 58 (*Burial*).
 s. 49, repealed: 11-2 G. 6, c. 29, Sch. 7, III.
- 16 & 17 Vict. (1853).
 c. 15 (*Parliamentary Elections (Polling)*).
 repealed: 11-2 G. 6, c. 65, Sch. 13.
- c. 33 (*London Hackney Carriage*).
 ss. 7, 17 (2), construed: § 3358.
- c. 51 (*Succession Duty*).
 s. 32, further duty: § 851.
- c. 68 (*Parliamentary Elections*).
 repealed: 11-2 G. 6, c. 65, Sch. 13.
- c. 73 (*Naval Volunteers*).
 army and air force pensioners: § 201.
- c. 99 (*Penal Servitude*).
 repealed: 11-2 G. 6, c. 58, Sch. 10, I (as from April 18, 1949: SI 1949, No. 139).
- c. 121 (*Convict Prisons*).
 repealed: 11-2 G. 6, c. 58, Sch. 10, I (as from April 18, 1949: SI 1949, No. 139).
- c. 134 (*Burial*).
 s. 7, part repealed: 11-2 G. 6, c. 29, Sch. 7, III.
- c. 137 (*Charitable Trusts*).
 variation of scheme: § 417.
- 17 & 18 Vict. (1854).
 c. 67 (*Defence*).
 easements: § 535.
- c. 91 (*Lands Valuation (Scotland)*).
 s. 20, part repealed: 11-2 G. 6, c. 26, Sch. 2, III.
 ss. 21, 22, repealed: *ib.*, Sch. 2, III.
- c. 102 (*Corrupt Practices Prevention*).
 ss. 7, 8, 35, 38 (in part), repealed: 11-2 G. 6, c. 65, ss. 43 (4), 80 (7), Sch. 13.
- 18 & 19 Vict. (1854-5).
 c. 124 (*Charitable Trusts Amendment*).
 variation of scheme: § 417.
- 19 & 20 Vict. (1856).
 c. 2 (*Metropolitan Police*).
 s. 9, part repealed: 11-2 G. 6, c. 65, Sch. 13.
- c. 43 (*Hereditary Revenues*).
 short title: § 3575.
- c. 47 (*Joint Stock Companies*).
 Sch. Table B, definition applied: 11-2 G. 6, c. 38, s. 455 (1).
 Sch. Table B, saved: *ib.*, s. 459 (14) (b).
- c. 54 (*Grand Juries*).
 repealed: 11-2 G. 6, c. 58, Sch. 10, I (as from September 13, 1948: SI 1948, No. 1840).
- c. 69 (*County and Borough Police*).
 s. 9, repealed: 11-2 G. 6, c. 65, Sch. 13.
- 20 Vict. (1857).
 c. 1 (*Royal Marines*).
 s. 1, orders under: 11-2 G. 6, c. 25, s. 2 (1).
- 20 & 21 Vict. (1857).
 c. 3 (*Penal Servitude*).
 repealed (except ss. 2, 6): 11-2 G. 6, c. 58, Sch. 10, I (as from April 18, 1949: SI 1949, No. 139).
- c. 13 (*Workhouse Sites*).
 repealed: 11-2 G. 6, c. 29, s. 62 (3), Sch. 7, I.
- c. 49 (*Joint Stock Banking Companies*).
 s. 12, excluded: 11-2 G. 6, c. 38, s. 459, Sch. 18.
- c. 64 (*Metropolitan Police*).
 ss. 11-14, repealed: 11-2 G. 6, c. 26, Sch. 2, IV.
- c. 81 (*Burial*).
 s. 6, part repealed: 11-2 G. 6, c. 29, s. 62 (3), Sch. 7, I.
- c. 85 (*Matrimonial Causes*).
 s. 42, construed: § 1014.
- 21 & 22 Vict. (1858).
 c. 73 (*Stipendiary Magistrates*).
 ss. 9-11, amended: 11-2 G. 6, c. 58, Sch. 9 (as from September 13, 1948: SI 1948, No. 1840).
- c. 93 (*Legitimacy Declaration*).
 s. 9, part repealed: 11-2 G. 6, c. 56, Sch. 4, I.
- 22 Vict. (1859).
 c. 12 (*Defence*).
 easements: § 535.
- c. 20 (*Evidence by Commission*).
 s. 1, examination of witnesses: 11-2 G. 6, c. 27, Sch. 2, para. 1.
- c. 26 (*Superannuation*).
 s. 17, definition applied: 11-2 G. 6, c. 33, s. 17 (1).
 reduction of allowances: § 2621.
- 22 & 23 Vict. (1859).
 c. 21 (*Queen's Remembrancer*).
 s. 32, applied: 11-2 G. 6, c. 58, s. 15 (1).
 ss. 32, 33, 38, amended: *ib.*, s. 79, Sch. 9.
- c. 32 (*County and Borough Police*).
 s. 22, repealed with savings: 11-2 G. 6, c. 24, Sch. 1, I (2).

22 & 23 Vict. (1859)—*cont.*

- c. 40 (*Royal Naval Reserve (Volunteer)*).
applied subject to modifications: 11-2 G. 6, c. 64, s. 26 (2) (b).
- c. 53 (*Savings Bank (Charitable Societies)*).
s. 1, investment of funds: 11-2 G. 6, c. 39, s. 19 (5) (b).
- c. 66 (*Sale of Gas*).
repealed with savings: 11-2 G. 6, c. 67, Sch. 4 (*prosp.*).

23 & 24 Vict. (1860)

- c. 27 (*Refreshment Houses*).
s. 22, part repealed: 11-2 G. 6, c. 58, Sch. 9 (as from September 13, 1948: SI 1948, No. 1840).
s. 22, part repealed: *ib.*, Sch. 10, I (as from September 13, 1948: SI 1948, No. 1840).
- c. 53 (*Duchy of Cornwall*).
short title: § 3575.
- c. 75 (*Criminal Lunatic Asylums*).
s. 1, amended: 11-2 G. 6, c. 58, s. 62 (1) (2) (*prosp.*).
s. 4, amended: *ib.*, Sch. 9 (*prosp.*).
s. 4, part repealed: *ib.*, Sch. 10, I (*prosp.*).
ss. 5, 6, repealed: *ib.*, Sch. 10, I (*prosp.*).
s. 11, amended: *ib.*, Sch. 9 (*prosp.*).
ss. 14, 15, repealed: *ib.*, Sch. 10, I (*prosp.*).
- c. 106 (*Lands Clauses Consolidation Acts Amendment*).
incorporated in part (mod.): 11-2 G. 6, c. 58, s. 50 (3).
- c. 112 (*Defence*).
easements: § 535.
- c. 135 (*Metropolitan Police*).
s. 5, repealed: 11-2 Geo. 6, c. 65, Sch. 13.
- c. 136 (*Charitable Trusts*).
variation of scheme: § 417.
- c. 137 (*National Debt Commissioners (Investments)*).
repealed so far as it relates to friendly societies: 11-2 G. 6, c. 39, Sch. 6, I.
- c. 146 (*Sale of Gas*).
repealed with savings: 11-2 G. 6, c. 67, Sch. 4 (*prosp.*).

24 & 25 Vict. (1861)

- c. 76 (*Poor Removal (No. 2)*).
repealed: 11-2 G. 6, c. 29, Sch. 7, I.
- c. 96 (*Larceny*).
ss. 12 (in part), 13 (in part), 16 (in part), 108, 119, repealed: 11-2 G. 6, c. 58, Sch. 10, I (*prosp.*).
ss. 12, 13, 16, part repealed: *ib.*, Sch. 10, I (as from April 18, 1949: SI 1949, No. 139).
ss. 108, 119, repealed: *ib.*, Sch. 10, I (*prosp.*).
- c. 97 (*Malicious Damage*).
ss. 1-10, part repealed: 11-2 G. 6, c. 58, Sch. 10, I (as from September 13, 1948: SI 1948, No. 1840).
ss. 14-21, part repealed: *ib.*, Sch. 10, I (as from September 13, 1948: SI 1948, No. 1840).

24 & 25 Vict. (1861)—*cont.*c. 97 (*Malicious Damage*)—*cont.*

- s. 22, part repealed: *ib.*, Sch. 10, I (as from April 18, 1949: SI 1949, No. 139).
- s. 23, part repealed: *ib.*, Sch. 10, I (as from September 13, 1948: SI 1948, No. 1840).
- ss. 26-33, part repealed: *ib.*, Sch. 10, I (as from September 13, 1948: SI 1948, No. 1840).
- s. 35, part repealed: *ib.*, Sch. 10, I (as from September 13, 1948: SI 1948, No. 1840).
- s. 39, part repealed: *ib.*, Sch. 10, I (as from April 18, 1949: SI 1949, No. 139).
- ss. 42-48, part repealed: *ib.*, Sch. 10, I (as from September 13, 1948: SI 1948, No. 1840).
- s. 50, part repealed: *ib.*, Sch. 10, I (as from September 13, 1948: SI 1948, No. 1840).
- s. 54, part repealed: *ib.*, Sch. 10, I (as from April 18, 1949: SI 1949, No. 139).
- s. 66, repealed: *ib.*, Sch. 10, I (*prosp.*).
- s. 75, repealed: *ib.*, Sch. 10, I (as from September 13, 1948: SI 1948, No. 1840).
- c. 100 (*Offences against the Person*).
s. 5, part repealed: 11-2 G. 6, c. 58, Sch. 10, I (as from December 27, 1948: SI 1948, No. 2349).
s. 16, part repealed: *ib.*, Sch. 10, I (as from September 13, 1948: SI 1948, No. 1840).
- ss. 28-30, part repealed: *ib.*, Sch. 10, I (as from September 13, 1948: SI 1948, No. 1840).
- s. 32, part repealed: *ib.*, Sch. 10, I (as from September 13, 1948: SI 1948, No. 1840).
- s. 56, part repealed: *ib.*, Sch. 10, I (as from September 13, 1948: SI 1948, No. 1840).
- s. 64, part repealed: *ib.*, Sch. 10, I (as from April 18, 1949: SI 1949, No. 139).
- s. 70, repealed: *ib.*, Sch. 10, I (as from September 13, 1948: SI 1948, No. 1840).
- s. 73, repealed: 11-2 G. 6, c. 29, Sch. 7, III.
- c. 124 (*Metropolitan Police (Receiver)*).
s. 1, construed: § 2715.
s. 7, repealed with saving: 11-2 G. 6, c. 26, Sch. 2, IV.

25 & 26 Vict. (1862)

- c. 18 (*Whipping*).
repealed: 11-2 G. 6, c. 58, s. 83, Sch. 10, I (as from September 13, 1948: SI 1948, No. 1840).
- c. 65 (*Jurisdiction in Homicides*).
s. 19, repealed: 11-2 G. 6, c. 58, s. 83, Sch. 10, III (as from September 13, 1948: SI 1948, No. 1840).
- c. 89 (*Companies*).
companies formed and registered: 11-2 G. 6, c. 38, s. 377.

25 & 26 Vict. (1862)—*cont.*

c. 89 (*Companies*)—*cont.*

companies registered but not formed:
ib., ss. 378, 382 (1), proviso (i).
 unregistered company: *ib.*, s. 398 (a).
 s. 205, saved: *ib.*, s. 459 (9) (f).
 Sch. 1, Table A, definition applied:
ib., s. 455 (1).

Sch. 1, Table A, saved: *ib.*, s. 459 (14) (c).

c. 103 (*Union Assessment Committee*).
 repealed: 11-2 G. 6, c. 26, Sch. 2, II (*prosp.*).

c. 112 (*Charitable Trusts*).
 variation of scheme: § 417.

c. 113 (*Poor Removal*).
 repealed: 11-2 G. 6, c. 29, Sch. 7, I.

26 & 27 Vict. (1863).

c. 44 (*Garrothers*).
 repealed: 11-2 G. 6, c. 58, Sch. 10, I
 (as from September 13, 1948: SI 1948, No. 1840).

c. 49 (*Duchy of Cornwall Management*).
 s. 8, applied: 11-2 G. 6, c. 63, s. 87 (5).

c. 87 (*Trustee Savings Bank*).
 unregistered company: 11-2 G. 6, c. 38, s. 398.
 ss. 26, 27, restricted: 11-2 G. 6, c. 39, s. 19 (2).
 s. 32, explained: *ib.*, s. 19 (5) (a).

c. 89 (*Poor Removal*).
 repealed: 11-2 G. 6, c. 29, Sch. 7, I.

27 & 28 Vict. (1864).

c. 24 (*Naval Agency and Distribution*).
 applied: 12-3 G. 6, c. 9, s. 2 (2).
 ss. 17, 19, excluded: *ib.*, s. 2 (2) proviso.

c. 25 (*Naval Prize*).
 s. 16, construed: § 2945.
 ss. 42-44, repealed: 12-3 G. 6, c. 9, s. 9 (2).

c. 39 (*Union Assessment Committee Amendment*).
 repealed, except ss. 6, 13: 11-2 G. 6, c. 26, Sch. 2, II (*prosp.*).

c. 47 (*Penal Servitude*).
 repealed: 11-2 G. 6, c. 58, Sch. 10, I
 (as from April 18, 1949: SI 1949, No. 139).

c. 95 (*Fatal Accidents*).
 construed: § 813.

28 & 29 Vict. (1865).

c. 18 (*Criminal Procedure*).
 s. 2, excluded: 11-2 G. 6, c. 58, s. 42 (1).

c. 35 (*Police Superannuation*).
 repealed with savings: 11-2 G. 6, c. 24, Sch. 1, I (3).

c. 65 (*Defence*).
 easements: § 535.

c. 78 (*Mortgage Debenture*).
 s. 3, saved: 11-2 G. 6, c. 38, s. 459 (9) (a).

c. 89 (*Greenwich Hospital*).
 order made: § 1066.

c. 122 (*Clerical Subscription*).
 s. 3, amended: C.A.M., No. 1, s. 56 (1).

28 & 29 Vict. (1865)—*cont.*

c. 126 (*Prison*).

effect of, 11-2 G. 6, c. 58: § 714.
 ss. 37-39, amended: 11-2 G. 6, c. 58, s. 55.
 s. 44, repealed: *ib.* Sch. 10, I (as from September 13, 1948: SI 1948, No. 1840).

29 & 30 Vict. (1866).

c. 68 (*Superannuation*).
 reduction of allowances: § 2621.

c. 78 (*County Rate*).
 repealed: 11-2 G. 6, c. 26, Sch. 2, V.

c. 109 (*Naval Discipline*).
 s. 98A (1), part repealed: 11-2 G. 6, c. 29, Sch. 7, 11.

30 & 31 Vict. (1867).

c. 3 (*British North America*).
 ss. 92, 96, construed: § 2798.

c. 102 (*Representation of the People*).
 s. 2, part repealed: 11-2 G. 6, c. 65, Sch. 13.
 s. 7, repealed: 11-2 G. 6, c. 26, s. 57 (2), Sch. 2, II (*prosp.*).
 s. 37, repealed: 11-2 G. 6, c. 65, Sch. 13.
 s. 49, repealed: *ib.*, Sch. 13.
 s. 50, excluded: *ib.*, ss. 20 (4), 80.
 s. 57, repealed: *ib.*, Sch. 13.
 s. 61, part repealed: *ib.*, Sch. 13.

31 & 32 Vict. (1868).

c. 37 (*Documentary Evidence*).
 applied: 11-2 G. 6, c. 32, s. 6 (4).

c. 46 (*Boundary*).
 repealed: 11-2 G. 6, c. 65, Sch. 13.

c. 58 (*Parliamentary Electors Registration*).
 repealed: 11-2 G. 6, c. 65, Sch. 13.

c. 67 (*Police Rate*).
 repealed: 11-2 G. 6, c. 26, Sch. 2, IV.

c. 122 (*Poor Law Amendment*).
 s. 28, repealed: 11-2 G. 6, c. 26, Sch. 2, II (*prosp.*).

c. 125 (*Parliamentary Elections*).
 s. 3, part repealed: 11-2 G. 6, c. 65, Sch. 13.
 s. 28, amended: *ib.*, Sch. 10, II, para. 2 (2).
 s. 44, repealed: *ib.*, s. 45 (3), Sch. 13.
 s. 48, repealed: *ib.*, Sch. 13.
 s. 49, repealed: *ib.*, s. 54 (3), Sch. 13.
 s. 58, part repealed: *ib.*, Sch. 13.

32 & 33 Vict. (1869).

c. 14 (*Customs and Inland Revenue*).
 s. 39, construed: § 3749.

c. 18 (*Lands Clauses Commission*).
 incorporated in part: 11-2 G. 6, c. 58, s. 50 (3).

c. 21 (*Corrupt Practices Commission Expenses*).
 s. 2, part repealed: 11-2 G. 6, c. 65, Sch. 13.
 ss. 3-6, repealed: *ib.*, Sch. 10, II, para. 5; 13.

c. 41 (*Poor Rate Assessment and Collection*).
 s. 3, amended: 11-2 G. 6, c. 26, s. 55 (2) (*prosp.*).
 s. 13, part repealed: *ib.*, Sch. 2, II (*prosp.*).
 s. 17, repealed: *ib.*, Sch. 2, II (*prosp.*).

32 & 33 Vict. (1869)—cont.

- c. 41 (*Poor Rate Assessment and Collection*)—*cont.*
 - s. 18, part repealed: *ib.*, Sch. 2, II (*prosp.*).
- c. 56 (*Endowed Schools*).
 - s. 5, substituted: 11-2 G. 6, c. 40, Sch. 1, II.
 - s. 9, amended: *ib.*, Sch. 1, II.
 - s. 12, substituted: *ib.*, Sch. 1, II.
 - ss. 15, 16, amended: *ib.*, Sch. 1, II.
 - s. 19, part repealed: *ib.*, Sch. 1, II, Sch. 2.
 - s. 55, saved: *ib.*, s. 2 (4).
- c. 67 (*Valuation (Metropolis)*).
 - s. 4, amended: 11-2 G. 6, c. 26, s. 74 (1).
 - ss. 6-44, repealed: *ib.*, Sch. 2, II (*prosp.*).
 - s. 45, part repealed: *ib.*, Sch. 2, II, IV, V.
 - s. 46, applied temporarily: *ib.*, s. 72 (3).
 - ss. 46-50, repealed: *ib.*, Sch. 2, II.
 - ss. 55-74, repealed: *ib.*, Sch. 2, II, Sch. 3, amended: *ib.*, s. 83 (2).
- c. 114 (*Abandonment of Railways*).
 - unregistered company: 11-2 G. 6, c. 38, ss. 398 (a), 399 (7).

33 & 34 Vict. (1870).

- c. 23 (*Forfeiture*).
 - s. 2, amended: 11-2 G. 6, c. 58, s. 70 (2), Sch. 9 (as from April 18, 1949: SI 1949, No. 139).
 - s. 2, part repealed: *ib.*, Schs. 9, 10, I (as from April 18, 1949: SI 1949, No. 139).
 - ss. 6-30, continued: *ib.*, Sch. 8, para. 8.
 - ss. 6-30, repealed: *ib.*, s. 70 (1), Sch. 10, I (as from April 18, 1949: SI 1949, No. 139).
 - article: § 770.
 - effect of, 11-2 G. 6, c. 58, § 714.
- c. 52 (*Extradition*).
 - s. 18, orders made: §§ 306, 350.
- c. 70 (*Gas and Water Works Facilities*).
 - repealed: 11-2 G. 6, c. 67, Sch. 4.
- c. 77 (*Juries*).
 - s. 8, part repealed: 11-2 G. 6, c. 56, Sch. 4, I.
- c. 78 (*Tramways*).
 - s. 44, construed: § 3746.

34 & 35 Vict. (1871).

- c. 17 (*Bank Holidays*).
 - definition applied: 11-2 G. 6, c. 38, s. 455 (1); c. 65, Sch. 3, V, para. 5 (2).
- c. 31 (*Trade Union*).
 - s. 5, saved: 11-2 G. 6, c. 38, s. 459 (9) (b).
- c. 41 (*Gasworks Clauses*).
 - repealed: 11-2 G. 6, c. 67, Sch. 4.
- c. 61 (*Election Commissioners Expenses*).
 - repealed: 11-2 G. 6, c. 65, Schs. 10, II, para. 5; 13.
- c. 112 (*Prevention of Crime*).
 - ss. 3-5, applied: 11-2 G. 6, c. 58, Sch. 7, I, para. 3.
 - ss. 3-5, repealed: *ib.*, Sch. 10, I (as from April 18, 1949: SI 1949, No. 139).

34 & 35 Vict. (1871)—cont.

- c. 112 (*Prevention of Crime*)—*cont.*
 - s. 6, extended: *ib.*, s. 48 (7).
 - s. 8, applied: *ib.*, Sch. 7, I, para. 4.
 - s. 8, amended: *ib.*, Sch. 8, para. 5 (1).
 - ss. 8, 17, proviso (4), repealed: *ib.*, Sch. 10, I (as from April 18, 1949: SI 1949, No. 139).
- 35 & 36 Vict. (1872).**
- c. 8 (*Deans and Canons Resignation*).
 - amended: 11-2 G. 6, No. 1.
 - c. 33 (*Ballot*).
 - electors' voting place and manner: 11-2 G. 6, c. 65, s. 8 (1).
 - Pt. I (ss. 1-19), amended: 11-2 G. 6, c. 65, Sch. 3, III, para. 9.
 - s. 1, amended: *ib.*, s. 12 (1).
 - s. 1, repealed: *ib.*, Sch. 13.
 - s. 2, part repealed: *ib.*, Sch. 13.
 - s. 3, applied: *ib.*, s. 19 (3), (4).
 - s. 4, applied: *ib.*, s. 19 (1).
 - s. 7, repealed: *ib.*, Sch. 13.
 - s. 8, amended: *ib.*, Sch. 10, II, para. 1 (1).
 - s. 9, amended: *ib.*, Sch. 3, III, para. 9.
 - s. 10, part repealed: *ib.*, Sch. 13.
 - s. 10, amended: *ib.*, Sch. 10, II, para. 1 (1).
 - s. 11, part repealed: *ib.*, Sch. 13.
 - s. 11, amended: *ib.*, Sch. 10, II, para. 1 (1).
 - s. 13, repealed: *ib.*, Sch. 13.
 - s. 14, repealed: *ib.*, Sch. 13.
 - s. 24, repealed: *ib.*, s. 48 (3), Sch. 13.
 - s. 26, repealed: *ib.*, s. 48 (3), Sch. 13.
 - s. 27, part repealed: *ib.*, Sch. 13.
 - s. 29, repealed: *ib.*, Sch. 13.
 - s. 31, repealed: *ib.*, Sch. 13.
 - Sch. 1, rules 1-14, repealed: *ib.*, Sch. 13.
 - Sch. 1, rules 15-16, amended: *ib.*, Sch. 3, III, para. 9.
 - Sch. 1, rule 18, repealed: *ib.*, Sch. 13.
 - Sch. 1, rule 19, amended: *ib.*, Sch. 3, III, para. 9.
 - Sch. 1, rule 20, amended: *ib.*, Sch. 3, III, para. 9.
 - Sch. 1, rule 21, amended: *ib.*, Sch. 3, III, para. 9.
 - Sch. 1, rule 22, part repealed: *ib.*, Sch. 13.
 - Sch. 1, rule 24, part repealed: *ib.*, Sch. 13.
 - Sch. 1, rule 24, amended: *ib.*, Sch. 3, III, para. 9.
 - Sch. 1, rule 25, amended: *ib.*, Sch. 3, III, para. 9.
 - Sch. 1, rule 26, part repealed: *ib.*, Sch. 13.
 - Sch. 1, rule 26, amended: *ib.*, Sch. 3, III, para. 9.
 - Sch. 1, rule 27, part repealed: *ib.*, Sch. 13.
 - Sch. 1, rule 27, amended: *ib.*, Sch. 3, III, para. 9.
 - Sch. 1, rule 29, part repealed: *ib.*, Sch. 13.
 - Sch. 1, rule 35, amended: *ib.*, Sch. 3, IV, para. 3.

- 35 & 36 Vict. (1872)—*cont.*
- c. 33 (*Ballot*)—*cont.*
 - Sch. 1, rule 38, part repealed: *ib.*, Sch. 13.
 - Sch. 1, rule 39, amended: *ib.*, Sch. 10, II, para. 1 (1).
 - Sch. 1, rule 39, applied: 11-2 G. 6, c. 65, s. 42 (6).
 - Sch. 1, rule 40, amended: *ib.*, Sch. 3, III, para. 9.
 - Sch. 1, rule 42, applied: *ib.*, s. 42 (6).
 - Sch. 1, rule 42, amended: *ib.*, Sch. 10, II, para. 1 (1).
 - Sch. 1, rule 43, amended: *ib.*, Sch. 3, III, para. 9.
 - Sch. 1, rules 46, 47, 50, amended: *ib.*, Sch. 10, II, para. 1 (1).
 - Sch. 1, rule 56, repealed: *ib.*, Sch. 13.
 - Sch. 1, rule 57, part repealed: *ib.*, Sch. 13.
 - Sch. 1, rule 59, amended: *ib.*, Sch. 10, II, para. 1 (1).
 - Sch. 1, rule 60, repealed: *ib.*, Sch. 13.
 - Sch. 1, rule 61, repealed: *ib.*, Sch. 13.
 - Sch. 2, part repealed: *ib.*, Sch. 13.
 - Sch. 2, amended: *ib.*, Sch. 3, III, paras. 1 (2), 9.
 - Sch. 3, repealed: *ib.*, Sch. 13.
 - c. 39 (*Naturalisation*).
repealed: 11-2 G. 6, c. 56, Sch. 4, II.
 - c. 52 (*Middlesex Grand Juries*).
repealed: 11-2 G. 6, c. 58, Sch. 10, I (as from September 13, 1948: SI 1948, No. 1840).
 - c. 65 (*Bastardy Laws Amendment*).
s. 3, summons: 11-2 G. 6, c. 29, s. 44 (2)-(6); 11-2 G. 6, c. 43, s. 26.
s. 4, evidence: 11-2 G. 6, c. 43, s. 26 (2).
s. 7, repealed: *ib.*, Sch. 7, III.
articles: § 278.
- 36 & 37 Vict. (1873).
- c. 9 (*Bastardy Laws Amendment*).
s. 5, repealed: 11-2 G. 6, c. 29, Sch. 7, III.
 - c. 72 (*Defence Acts Amendment*).
easements: § 535.
 - c. 87 (*Endowed Schools*).
applied: 11-2 G. 6, c. 40, s. 2 (1).
ss. 7, 8, amended: *ib.*, s. 2 (4).
 - c. 89 (*Gas and Waterworks Facilities Act, 1870, Amendment*).
repealed: 11-2 G. 6, c. 67, Sch. 4.
- 37 & 38 Vict. (1874).
- c. 54 (*Rating*).
s. 6 (1), amended: 11-2 G. 6, c. 26, Sch. 1.
 - c. 57 (*Real Property Limitation*).
s. 8, construed: § 2000.
 - c. 87 (*Endowed Schools*).
applied: 11-2 G. 6, c. 40, s. 2 (1).
 - c. 88 (*Births and Deaths Registration*).
ss. 1, 7, construed: § 864.
- 38 & 39 Vict. (1875).
- c. 17 (*Explosives*).
ss. 37, 39, byelaws made: § 1408.
 - c. 33 (*Metropolis Management*).
ss. 2-4, repealed: 11-2 G. 6, c. 26, Sch. 2, II.
- 38 & 39 Vict. (1875)—*cont.*
- c. 45 (*Sinking Fund*).
ss. 4, 5, applied: 11-2 G. 6, c. 49, s. 80 (2).
 - c. 55 (*Public Health*).
s. 69, river boards: 11-2 G. 6, c. 32, s. 4 (1); Sch. 3, para. 14.
s. 161, part repealed: 11-2 G. 6, c. 67, Sch. 4.
s. 162, repealed: *ib.*, Sch. 4.
book published: § 2988.
 - c. 83 (*Local Loans*).
applied: 11-2 G. 6, c. 67, s. 43 (2).
 - c. 84 (*Parliamentary Elections (Returning Officers)*).
repealed: 11-2 G. 6, c. 65, Sch. 13.
- 39 & 40 Vict. (1876).
- c. 22 (*Trade Union Act Amendment*).
s. 2, part repealed: 11-2 G. 6, c. 39, s. 6 (2).
 - c. 35 (*Customs Tariff*).
Sch., part repealed: 11-2 G. 6, c. 49, s. 11 (a), Sch. 11, I.
 - c. 36 (*Customs Consolidation*).
security and pre-entry: 11-2 G. 6, c. 49, s. 6.
s. 37, extended: c. 37, s. 2 (3).
s. 95, part repealed: c. 49, s. 4 (3).
Sch. 11, I.
s. 186, construed: §§ 799, 804.
s. 259, construed: § 799.
 - c. 42 (*Convict Prisons Returns*).
repealed: 11-2 G. 6, c. 58, Sch. 10, I (as from April 18, 1949: SI 1949, No. 139).
 - c. 53 (*Superannuation*).
reduction of allowances: § 2621.
 - c. 61 (*Divided Parishes and Poor Law Amendment*).
ss. 19, 24, 42, repealed: 11-2 G. 6, c. 29, Sch. 7, I.
 - c. 75 (*Rivers Pollution Prevention*).
river boards: 11-2 G. 6, c. 32, s. 4 (1).
definition applied: *ib.*, s. 5 (1) (b).
s. 6, amended: *ib.*, Sch. 3, para. 15.
s. 8, modified: *ib.*, Sch. 3, para. 15.
- 40 & 41 Vict. (1877).
- c. 2 (*Treasury Bills*).
s. 6, amended: 11-2 G. 6, c. 18, s. 3 (2).
s. 6, excluded: 11-2 G. 6, c. 50, s. 2 (2).
 - c. 13 (*Customs, Inland Revenue and Savings Banks*).
s. 16, repealed: 11-2 G. 6, c. 39, Sch. 6, I.
s. 17 (3), repealed: *ib.*, Sch. 6, I.
 - c. 21 (*Prison*).
s. 9, part repealed: 11-2 G. 6, c. 58, Sch. 10, I (as from April 18, 1949: SI 1949, No. 139).
s. 11, amended: *ib.*, Sch. 9; Sch. 10, I (as from September 13, 1948: SI 1948, No. 1840).
ss. 13, 14, repealed: *ib.*, Sch. 10, I (as from December 27, 1948: SI 1948, No. 2349).
ss. 33, 34, amended: *ib.*, s. 48 (6) (as from December 27, 1948: SI 1948, No. 2349).

40 & 41 Vict. (1877)—*cont.*

- c. 21 (*Prison*)—*cont.*
 - s. 39, repealed: *ib.*, Sch. 10, I (as from December 27, 1948: SI 1948, No. 2349).
 - s. 40, repealed: *ib.*, Sch. 10, I (as from April 18, 1949: SI 1949, No. 139).
- c. 55 (*Public Record Office*).
 - s. 1, order made: § 585.
 - s. 1, applied: 11-2 G. 6, c. 38, s. 427 (1).
- c. 59 (*Colonial Stock*).
 - effect of: 12-3 G. 6, c. 1, § 3257.
 - extended: § 357.
 - s. 16, stock transferable by instrument in writing: 12-3 G. 6, c. 1, s. 1 (1).

41 & 42 Vict. (1878).

- c. 26 (*Parliamentary and Municipal Registration*).
 - ss. 11, 12, 13, repealed: 11-2 G. 6, c. 65, Sch. 13.
- c. 49 (*Weights and Measures*).
 - s. 8, order made: § 3861.
 - s. 66, repealed: 11-2 G. 6, c. 67, Sch. 4.
- c. 76 (*Telegraph*).
 - s. 7 (1)-(8), applied: 11-2 G. 6, c. 17, Sch., para. 6.

42 & 43 Vict. (1879).

- c. 11 (*Bankers' Books Evidence*).
 - definition applied: 11-2 G. 6, c. 38, s. 432 (1) (b).
- c. 31 (*Public Health (Interments)*).
 - book published: § 2988.
- c. 49 (*Summary Jurisdiction*).
 - s. 4, part repealed: 11-2 G. 6, c. 58, Sch. 10, I (as from April 18, 1949: SI 1949, No. 139).
 - s. 9 (1) (2), amended: *ib.*, Sch. 9 (as from December 27, 1948: SI 1948, No. 2349).
 - s. 10 (2), part repealed: *ib.*, Sch. 10, I (as from September 13, 1948: SI 1948, No. 1840).
 - s. 11 (1), amended: *ib.*, Sch. 9 (as from December 27, 1948: SI 1948, No. 2349).
 - s. 11 (1), part repealed: *ib.*, Sch. 10, I (as from December 27, 1948: SI 1948, No. 2349).
 - s. 17, construed: § 2129.
 - s. 17, applied: 11-2 G. 6, c. 58, s. 28 (4) (5).
 - ss. 17 (1) (2), 19, amended: 11-2 G. 6, c. 58, Sch. 9 (as from December 27, 1949: SI 1948, No. 2349).
 - s. 22, applied: *ib.*, s. 8 (4) (*prosp.*).
 - s. 23, applied: *ib.*, s. 11 (1) (*prosp.*).
 - s. 27, para. (2), amended: *ib.*, Sch. 9 (as from December 27, 1948: SI 1948, No. 2349).
 - s. 29, rules made: § 2156.
 - s. 29, extended: 11-2 G. 6, c. 58, s. 19 (6).
 - s. 31, applied: 11-2 G. 6, c. 58, s. 36 (3) (as from December 27, 1948: SI 1948, No. 2349).
 - s. 31 (1), para. (iii), repealed: *ib.*, s. 36 (7); Sch. 10, I (as from December 27, 1948: SI 1948, No. 2349).

42 & 43 Vict. (1879)—*cont.*

- c. 49 (*Summary Jurisdiction*)—*cont.*
 - s. 31 (1), para. (iv), amended and applied: *ib.*, s. 36 (8), Sch. 9 (as from December 27, 1948: SI 1948, No. 2349).
 - s. 31 (1), para. (v), repealed: *ib.*, Sch. 9; Sch. 10, I (as from December 27, 1948: SI 1948, No. 2349).
 - s. 31 (2), repealed: 11-2 G. 6, c. 29, Sch. 7, III.
 - c. 55 (*Prevention of Crime*).
 - repealed: 11-2 G. 6, c. 58, Sch. 10, I (as from April 18, 1949: SI 1949, No. 139).
 - c. 76 (*Companies*).
 - unlimited companies re-registered: 11-2 G. 6, c. 38, s. 379.
- 43 Vict. (1880).
- c. 18 (*Parliamentary Elections and Corrupt Practices*).
 - repealed: 11-2 G. 6, c. 65, Sch. 13.
- 43 & 44 Vict. (1880).
- c. 24 (*Spirits*).
 - s. 70, part applied: 11-2 G. 6, c. 49, s. 4 (3).
 - c. 35 (*Wild Birds Protection*).
 - orders made: § 159.
 - c. 42 (*Employers' Liability*).
 - repealed: 11-2 G. 6, c. 41, s. 1 (2): § 816.
- 44 & 45 Vict. (1881).
- c. 24 (*Summary Jurisdiction (Process)*).
 - applied: 11-2 G. 6, c. 58, s. 11 (5) (*prosp.*).
 - c. 51 (*Wild Birds Protection*).
 - orders made: § 159.
 - c. 58 (*Army*).
 - continued: 11-2 G. 6, c. 28, s. 2 (1): § 178.
 - ss. 13 (1), part repealed: 11-2 G. 6, c. 28, Sch. III.
 - s. 43, part repealed: *ib.*, Sch. I.
 - s. 45 (2A), added: *ib.*, s. 3 (1): § 178.
 - s. 45 (3), amended: *ib.*, s. 3 (2).
 - ss. 59, 60, 64 (4), part repealed: 11-2 G. 6, c. 28, Sch. III.
 - s. 68 (2) (e), amended: *ib.*, s. 9.
 - s. 68 (2) (f) (g) (h), part repealed: *ib.*, Sch. III.
 - s. 73 (3), part repealed: *ib.*, Sch. IV.
 - s. 83 (2), amended: *ib.*, s. 10 (1): § 178.
 - s. 91, substituted: *ib.*, s. 4: §§ 178, 2126.
 - s. 94, part repealed: *ib.*, Sch. 3.
 - s. 95, part repealed: 11-2 G. 6, c. 56, Sch. 4, II.
 - s. 96, excluded: 11-2 G. 6, c. 64, s. 26 (4).
 - s. 104 (2A), added: 11-2 G. 6, c. 28, s. 5.
 - ss. 122 (6), 130 (5), 132 (1), 134, 135, 143, part repealed: *ib.*, Sch. 3.
 - s. 144A, (2A), added: 11-2 G. 6, c. 28, s. 5: §§ 178, 973.
 - s. 145, officers' maintenance liabilities: §§ 178, 973.
 - ss. 154, paras. (5) (7), 156 (8), part repealed: 11-2 G. 6, c. 28, Sch. 3.

44 & 45 Vict. (1881)—*cont.*

- c. 58 (*Army*)—*cont.*
 s. 158 (1), amended: *ib.*, s. 6 (1):
 §§ 178, 713.
 s. 158 (1), construed: § 182.
 ss. 162 (3), 163 (1) (d), (2), 168, 169,
 170 (3), part repealed: 11-2 G. 6,
 c. 28, Sch. 3.
 s. 172 (1), part repealed: *ib.*, Sch. 1.
 s. 175, construed: § 183.
 s. 175, paras. (4), (7), part repealed:
 11-2 G. 6, c. 28, Sch. 1.
 s. 175, para. (9), repealed: *ib.*, Sch. 1.
 ss. 175, para. (ii); 176, paras. (3),
 (8A), (10), 177, 179, para. (8), part
 repealed: *ib.*, Sch. 1.
 s. 179A (2), amended: *ib.*, s. 11 (1).
 s. 179A (2) (e), part repealed: *ib.*,
 Sch. 1.
 s. 179A (2) (h) (i), excluded: *ib.*,
 s. 11 (2).
 s. 179A (3) (4), added: *ib.*, s. 11 (3).
 s. 180, repealed: *ib.*, Sch. 3.
 s. 181 (1), part repealed: *ib.*,
 Sch. 3.
 s. 183, paras. 2 (a) (b), 4, proviso (b),
 part repealed: *ib.*, Sch. 1.
 s. 187c (1), repealed: *ib.*, s. 7.
 s. 190, para. (8), part repealed: *ib.*,
 Sch. 1.
 s. 190, para. (8), construed: § 182.
 s. 190, paras. (21) (22) repealed: *ib.*,
 Sch. 1.
 s. 190, paras. (23) (24), part repealed:
ib., Sch. 5.
 s. 190, para. (23A), part repealed: *ib.*,
 Sch. 1.
 s. 190, para. (26), repealed: *ib.*,
 Sch. 1.
 s. 190, paras. (33) (35), part repealed:
ib., Sch. 1.
 c. 62 (*Veterinary Surgeons*).
 effect of 11-2 G. 6, c. 52: § 2211.
 s. 3, applied: 11-2 G. 6, c. 52, s. 6 (6).
 s. 4, examination of university stu-
 dents: 11-2 G. 6, c. 52, s. 3 (1).
 s. 5 (3), (4), repealed: *ib.*, s. 25 (5).
 ss. 7, 8, 9, 10, 12, applied: *ib.*, s. 6
 (6).
 s. 17, substituted: *ib.*, s. 8 (1).
 s. 18, repealed: *ib.*, s. 27 (2).

45 & 46 Vict. (1882).

- c. 9 (*Documentary Evidence*).
 applied: 11-2 G. 6, c. 32, s. 6 (4).
 c. 20 (*Poor Rate Assessment and Collection
 Act, 1869, Amendment*).
 s. 4, repealed: 11-2 G. 6, c. 26,
 Sch. 2, II (*prosp.*).
 c. 38 (*Settled Land*).
 s. 11, construed: § 509.
 c. 50 (*Municipal Corporations*).
 applied: § 231.
 s. 7, part repealed: 11-2 G. 6, c. 65,
 Sch. 13.
 Pt. IV (ss. 77-104), applied: *ib.*,
 s. 39 (3).
 s. 81, repealed: *ib.*, Sch. 13.
 s. 85, repealed: *ib.*, s. 40 (4), Sch. 13.
 s. 87, amended: *ib.*, s. 46 (2).

45 & 46 Vict. (1882)—*cont.*

- c. 50 (*Municipal Corporations*)—*cont.*
 s. 170 (1) (2), part repealed: *ib.*,
 Sch. 13.
 s. 230, amended: *ib.*, ss. 54 (3), 80.
 c. 56 (*Electric Lighting*).
 books published: § 1122.
 orders made: §§ 1098, 1121.
 c. 72 (*Revenue, Friendly Societies and
 National Debt*).
 s. 21, repealed: 11-2 G. 6, c. 39,
 Sch. 6, I.
 c. 74 (*Post Office (Parcels)*).
 s. 14, warrant made: § 2734.
 c. 75 (*Married Women's Property*).
 saved: 11-2 G. 6, c. 38, s. 217.
 s. 2, construed: § 1612.
 s. 11, construed: §§ 1022, 1023.
 s. 12, construed: § 1612.
 s. 17, construed: §§ 1009, 1625.
 s. 24, construed: § 1612.
 46 & 47 Vict. (1883).
 c. 22 (*Sea Fisheries*).
 ss. 11, 12 (1)-(8), Sea-fishery officer:
 11-2 G. 6, c. 51, s. 2 (5).
 s. 12 (7), amended: *ib.*, s. 2 (5) (a).
 s. 14, amended: *ib.*, s. 2 (5) (b).
 c. 32 (*Greenwich Hospital*).
 s. 2, order made: § 2634.
 c. 37 (*Public Health Act, 1875 (Support of
 Sewers) Amendment*).
 book published: § 2988.
 c. 47 (*Provident Nominations and Small
 Intestacies*).
 s. 10 (1), part repealed: 11-2 G. 6,
 c. 39, Sch. 6, II.
 s. 10 (2), amended: *ib.*, s. 18 (8),
 Sch. 5, para. 2.
 c. 51 (*Corrupt and Illegal Practices Preven-
 tion*).
 s. 4, amended: 11-2 G. 6, c. 65,
 s. 52 (2).
 s. 6 (3) (4), amended: *ib.*, s. 52 (1).
 s. 7 (1) (c), repealed: *ib.*, Sch. 13.
 s. 9 (1), repealed: *ib.*, Sch. 13.
 s. 10, modified: *ib.*, ss. 33 (1) (a),
 80, Sch. 13.
 s. 16, part repealed: *ib.*, Sch. 13.
 s. 17 (2), part repealed: *ib.*, Sch. 13.
 s. 18, applied: *ib.*, s. 43 (5).
 s. 20 (d), applied: *ib.*, s. 36 (1).
 s. 23, amended: *ib.*, Sch. 10, II,
 para. 1 (2).
 s. 24, applied with modifications: *ib.*,
 ss. 38 (1) (2), 44 (5).
 s. 25 (2), amended: *ib.*, Sch. 10, II,
 para. 1 (2).
 s. 26 (2), amended: *ib.*, Sch. 10, II,
 para. 2 (1).
 ss. 26-35, applied with modifications:
ib., s. 33 (1) (2).
 s. 33 (5), part repealed: *ib.*, Sch. 13.
 s. 34 (2), amended: *ib.*, Sch. 10, II,
 para. 1 (2).
 s. 38, extended: *ib.*, ss. 42 (3), 80.
 s. 35 (5), amended: *ib.*, s. 52 (5).
 s. 39 (2)-(8), repealed: *ib.*, Sch. 13.
 s. 40, applied: *ib.*, s. 42 (11).
 s. 40 (5), repealed: *ib.*, Sch. 13.
 ss. 43, 45, amended: *ib.*, s. 50 (5) (1).
 s. 53 (3), part repealed: *ib.*, Sch. 13.

46 & 47 Vict. (1883)—*cont.*

- c. 51 (*Corrupt and Illegal Practices Prevention*)—*cont.*
 s. 58 (1), part repealed: *ib.*, Sch. 13.
 s. 61, repealed: *ib.*, Sch. 13.
 s. 63 (2), part repealed: *ib.*, Sch. 13.
 s. 64, part repealed: *ib.*, Sch. 13.
 s. 68, part repealed: *ib.*, Sch. 13.
 s. 68 (16), repealed: *ib.*, Sch. 13.
 s. 69 (3) (4), repealed: *ib.*, Sch. 13.
 Sch. 1, repealed except Pt. I, para. (2): *ib.*, Sch. 13.
 Sch. 2, part repealed: *ib.*, Sch. 13.
 Sch. 3, part repealed: *ib.*, Sch. 13.

47 & 48 Vict. (1884).

- c. 5 (*Valuation (Metropolis) Amendment*).
 repealed: 11-2 G. 6, c. 26, Sch. 2, II. (*prosp.*).
 c. 31 (*Colonial Prisoners Removal*).
 see 11-2 G. 6, c. 27, Sch. 1, para. 3.
 c. 57 (*Superannuation*).
 reduction of allowances: § 2621.
 c. 64 (*Criminal Lunatics*).
 applied: 11-2 G. 6, c. 58, s. 64 (3).
 ss. 2 (2), (5), 6, 7, 8 (2), 10, 16, amended: 11-2 G. 6, c. 58, Sch. 9 (as from April 18, 1949: SI 1949, No. 139).
 c. 70 (*Municipal Elections (Corrupt and Illegal Practices)*).
 s. 4, amended: 11-2 G. 6, c. 65, s. 52 (2).
 s. 4 (1) (c), repealed: *ib.*, Sch. 13.
 s. 5 (4), applied: *ib.*, s. 38 (3) (c).
 s. 6 (1), part repealed: *ib.*, Sch. 13.
 s. 6 (3), amended: *ib.*, s. 38 (3) (a).
 s. 6 (3) (4), amended: *ib.*, s. 52 (3) (4).
 s. 7, part repealed: *ib.*, s. 43 (1) (a).
 s. 12, part repealed: *ib.*, Sch. 13.
 s. 13 (2), part repealed: *ib.*, Sch. 13.
 s. 14, amended: *ib.*, ss. 38 (3) (a), 43 (1) (b).
 s. 16, amended: *ib.*, s. 40 (1).
 s. 16 (1), amended: *ib.*, Sch. 13.
 s. 17 (1), amended: *ib.*, s. 43 (2).
 s. 17 (2), amended: *ib.*, s. 38 (3) (a).
 s. 18, repealed: *ib.*, Sch. 13.
 s. 19 (a) (b), amended: *ib.*, s. 38 (3) (a).
 s. 21, applied with modifications: *ib.*, s. 39 (1), proviso.
 s. 21 (4), part repealed: *ib.*, Sch. 13.
 s. 23, amended: *ib.*, Sch. 10, II, para. 1 (2).
 s. 24 (1), part repealed: *ib.*, Sch. 13.
 s. 24 (2)-(9), repealed: *ib.*, Sch. 13.
 s. 25 (1) (2), amended: *ib.*, s. 38 (3) (b).
 s. 26 (1), amended: *ib.*, s. 38 (3) (a).
 s. 26 (2), amended: *ib.*, Sch. 10, II, para. 2 (1).
 s. 30 (a), part repealed: *ib.*, Sch. 13.
 s. 34, part repealed: *ib.*, Sch. 13.
 s. 34 (2), amended: *ib.*, Sch. 10, II, para. 1 (2).
 s. 37, repealed: *ib.*, Sch. 13.
 s. 38 (5), amended: *ib.*, s. 52 (5).
 s. 40, applied: *ib.*, s. 42 (11).
 Sch. 3, I, part repealed: *ib.*, Sch. 13.
 Sch. 4: repealed, *ib.*, Sch. 13.

48 & 49 Vict. (1885).

- c. 10 (*Election (Hours of Poll)*).
 repealed: 11-2 G. 6, c. 65, Sch. 13.
 c. 15 (*Registration*).
 repealed: 11-2 G. 6, c. 65, Sch. 13.
 c. 23 (*Redistribution of Seats*).
 repealed: 11-2 G. 6, c. 65, Sch. 13.

49 & 50 Vict. (1886).

- c. 20 (*Burial of Drowned Persons*).
 repealed: 11-2 G. 6, c. 29, s. 50 (7), Sch. 7, III: § 394.
 c. 27 (*Guardianship of Infants*).
 construed: §§ 913, 914, 1711.
 enforcement of orders for payment of money: 11-2 G. 6, c. 43, s. 53.
 s. 7, construed: § 1710.

50 & 51 Vict. (1887).

- c. 9 (*Police Disabilities Removal*).
 repealed: 11-2 G. 6, c. 65, Sch. 13.
 c. 16 (*National Debt and Local Loans*).
 applied: 11-2 G. 6, c. 48, s. 1 (2).
 s. 5, repealed: 11-2 G. 6, c. 39, Sch. 6, I.
 c. 46 (*Truck Amendment*).
 books published: § 1432.
 c. 47 (*Trustee Savings Bank*).
 winding up: 11-2 G. 6, c. 38, s. 399 (8).
 c. 49 (*Charitable Trusts*).
 variation of scheme: § 417.
 c. 55 (*Sheriffs*).
 expression amended: 11-2 G. 6, c. 65, Sch. 10, II, para. 4.
 s. 31, part repealed: *ib.*, Sch. 13.
 c. 67 (*Superannuation*).
 reduction of allowances: § 2621.

51 & 52 Vict. (1888).

- c. 12 (*Electric Lighting*).
 books published: § 1122.
 orders made: §§ 1098, 1121.
 c. 41 (*Local Government*).
 s. 3 (xiii), part repealed: 11-2 G. 6, c. 67, Sch. 4.
 s. 14, amended: 11-2 G. 6, c. 32, Sch. 3, para. 16.
 s. 34 (3) (e), repealed: *ib.*, Sch. 4.
 s. 39 (1) (d), repealed: *ib.*, Sch. 4.
 s. 42 (10), repealed: 11-2 G. 6, c. 26, Sch. 2, II (*prosp.*).
 s. 44, repealed: *ib.*, Sch. 2, II (*prosp.*).
 s. 83 (4), amended: 11-2 G. 6, c. 58, Sch. 9 (as from September 13, 1948: SI 1948, No. 1840).
 c. 54 (*Sea Fisheries*).
 s. 2, restricted: 11-2 G. 6, c. 51, s. 1 (1).
 s. 6, extended: *ib.*, s. 1 (2).

52 & 53 Vict. (1889).

- c. 7 (*Customs and Inland Revenue*).
 s. 11 (1), policy of assurance: 11-2 G. 6, c. 49, s. 76 (1) (2).
 c. 21 (*Weights and Measures*).
 s. 15, repealed: 11-2 G. 6, c. 67, Sch. 4.
 s. 29 (3), construed: § 3860.
 c. 27 (*Advertising Stations (Rating)*).
 ss. 3, 4, excluded: 11-2 G. 6, c. 26, s. 56 (*prosp.*).

52 & 53 Vict. (1889)—*cont.*

- c. 49 (*Arbitration*).
 - applied: 11-2 G. 6, c. 26, s. 50 (2); c. 67, s. 64 (2).
 - excluded: *ib.*, c. 32, s. 29 (6); c. 43, s. 30 (6); c. 63, s. 77 (1); c. 67, ss. 61 (2), 64 (2), C.A.M. No. 1, s. 52 (6).
- c. 63 (*Interpretation*).
 - transitional provisions: 11-2 G. 6, c. 29, Sch. 6, 1 (3).
 - s. 1 (4), construed: § 3197.
 - s. 15 (3), repealed: 11-2 G. 6, c. 65, Sch. 13.
 - s. 15 (4), part repealed: *ib.*, Sch. 13.
 - s. 17 (1), part repealed: *ib.*, Sch. 13.
 - s. 17 (2) (3), repealed: *ib.*, Sch. 13.
 - s. 26, service of notices: 11-2 G. 6, c. 32, s. 19 (6); c. 43, s. 29 (8).
 - s. 38, applied: 11-2 G. 6, c. 22, s. 14 (6).
 - s. 38 (1), excluded: 11-2 G. 6, c. 38, ss. 457, 459 (9), proviso.
 - s. 38 (2), applied: 11-2 G. 6, c. 23, s. 9 (2).
 - s. 38 (2), applied: 11-2 G. 6, c. 27, s. 3 (2), proviso (b).
- c. 69 (*Public Bodies Corrupt Practices*).
 - s. 2 (c) (d), amended: 11-2 G. 6, c. 65, s. 52 (7).

53 & 54 Vict. (1890).

- c. 5 (*Lunacy*).
 - applied: 11-2 G. 6, c. 58, s. 24 (1).
 - excluded: *ib.*, s. 26 (6).
 - children: § 1705.
 - mental health services: §§ 2122, 2123.
 - s. 16, applied: 11-2 G. 6, c. 28, s. 4 (4).
 - s. 16, transitional provisions: 11-2 G. 6, c. 29, Sch. 6, s. 7 (2) (b).
 - s. 20, construed: § 965.
 - s. 162, amended: 11-2 G. 6, c. 58, s. 62 (6).
 - s. 338 (1) (2), rules made: § 2123.
 - Sch. 2, forms amended: § 2123.
- c. 37 (*Foreign Jurisdiction*).
 - orders made: §§ 328, 344
 - s. 5 extended: 11-2 G. 6, c. 38, s. 122; 11-2 G. 6, c. 44, s. 9 (2).

54 & 55 Vict. (1891).

- c. 17 (*Charitable Trusts (Recovery)*).
 - variation of scheme: § 417.
- c. 24 (*Public Accounts and Charges*).
 - s. 2, appropriation of grants: 11-2 G. 6, c. 50, s. 3.
- c. 39 (*Stamp*).
 - s. 12, adjudication stamps: 11-2 G. 6, c. 38, s. 52 (2); c. 49, s. 73 (5).
 - Sch. 1, part repealed: 11-2 G. 6, c. 49, Sch. 11, I.
- c. 65 (*Lunacy*).
 - children: § 1705.
 - mental health services: §§ 2122, 2123.
- c. 69 (*Penal Servitude*).
 - s. 2, applied: 11-2 G. 6, c. 58, Sch. 7, I, para. 4 (*prosp.*).
 - ss. 2, 3, repealed: *ib.*, Sch. 10, I (as from April 18, 1949: SI 1949, No. 139).

54 & 55 Vict. (1891)—*cont.*

- c. 69 (*Penal Servitude*)—*cont.*
 - s. 4, applied: *ib.*, Sch. 7, I, para. 4 (*prosp.*).
 - ss. 4-6, repealed: *ib.*, Sch. 10, I (as from April 18, 1949: SI 1949, No. 139).
 - s. 7, construed: § 3794.
 - s. 8, amended: 11-2 G. 6, c. 58, s. 48 (7) (as from December 27, 1948: SI 1948, No. 2349).
 - s. 8, finger prints: *ib.*, s. 39 (2) (as from December 27, 1948: SI 1948, No. 2349).
 - s. 10, repealed: *ib.*, Sch. 10, I (as from April 18, 1949: SI 1949, No. 139).
- c. ccvii (*Manchester Corporation*).
 - s. 18 (1), construed: § 367.
- 55 & 56 Vict. (1892).
- c. 6 (*Colonial Probates*).
 - s. 2, probates: 11-2 G. 6, c. 27, Sch. 1, para. 4.
- c. 23 (*Foreign Marriage*).
 - order made: § 1616.
- c. 32 (*Clergy Discipline*).
 - s. 1, amended and part repealed: 11-2 G. 6, c. 58, Sch. 9, Sch. 10, I (as from April 18, 1949: SI 1949, No. 139).
- c. 35 (*Colonial Stock*).
 - excluded: 12-3 G. 6, s. 1 (1).
 - effect of, 12-3 G. 6, c. 1: § 3257.
 - extended: § 357.
- c. 40 (*Superannuation*).
 - reduction of allowances: § 2621.
- c. 43 (*Military Lands*).
 - Part II (ss. 14-18), applied: § 231.
- 56 & 57 Vict. (1893).
- c. 6 (*Police Disabilities Removal*).
 - repealed: 11-2 G. 6, c. 65, Sch. 13.
- c. 39 (*Industrial and Provident Societies*).
 - s. 28 (1), amended: 3-4 G. 5, c. 31, s. 6; further amended: 11-2 G. 6, c. 39, s. 18 (2) (3), Sch. 5, para. 3.
 - s. 39, investment of funds: *ib.*, s. 19 (5) (c).
 - s. 49 (1), construed: § 1698.
 - s. 49 (2), part repealed: *ib.*, s. 21, Sch. 6, II.
 - s. 72, change of designation of auditors: *ib.*, s. 20.
- c. 61 (*Public Authorities Protection*).
 - excluded: 11-2 G. 6, c. 67, s. 14 (1).
 - committee: § 2017.
 - s. 1, construed: § 2019.
- c. 66 (*Rules Publication*).
 - construed: § 3566.
- c. 71 (*Sale of Goods*).
 - s. 4, construed: § 3372.
 - s. 4 (1), construed, §§ 3373, 3374.
 - s. 7, construed: § 3364.
 - s. 13, construed: § 3379.
 - s. 14 (2), construed: § 3364.
 - s. 15, construed: § 3379.
 - s. 18 (1), construed: § 3377.
 - s. 20, construed: § 3364.
 - s. 28, construed: §§ 3375, 3377.
 - s. 39 (1), construed: § 3377.
 - s. 51, construed: § 3368.
 - s. 52, construed: § 3385.

56 & 57 Vict. (1893)—*cont.*

c. 71 (*Sale of Goods*)—*cont.*

s. 55, construed: § 3364.

s. 58 (2), construed: § 3377.

57 & 58 Vict. (1894).

c. 24 (*Wild Birds Protection*).

orders made: § 159.

c. 30 (*Finance*).

s. 1, construed: § 845.

s. 2 (1) (b), continuing annuities: § 838.

s. 2 (1) (d), article: § 856.

s. 11 (2), further duty: § 842.

s. 20, applied by order: § 835.

c. 35 (*Charitable Trusts (Places of Religious Worship) Amendment*).

variation of scheme: § 417.

c. 36 (*Valuation of Lands (Scotland) Acts Amendment*).

s. 2, part repealed: 11-2 G. 6, c. 26, Sch. 2, III.

c. 47 (*Building Societies*).

s. 16, investment of funds: 11-2 G. 6, c. 39, s. 19 (5) (d).

c. 57 (*Diseases of Animals*).

orders made: §§ 144, 146, 147, 148.

c. 60 (*Merchant Shipping*).

definition applied: 11-2 G. 6, c. 32, s. 36 (1).

construed: § 3502.

effect of 11-2 G. 6, c. 44: § 3483.

s. 1, part repealed: 11-2 G. 6, c. 56, Sch. 4, I.

s. 79, applied in part as modified: 11-2 G. 6, c. 44, ss. 4 (1), 10 (*prosp.*).

s. 84 (1), amended: 6 Edw. 7, c. 48, s. 45: modified: 11-2 G. 6, c. 44, s. 4 (2).

s. 104, applied: 11-2 G. 6, c. 44, s. 5 (3) (b).

s. 105, part repealed: 11-2 G. 6, c. 29, Sch. 7, III.

ss. 106, 107, repealed: *ib.*, Sch. 7, III.

s. 126, amended by regulations: 11-2 G. 6, c. 44, s. 5 (6).

s. 185, repealed: 11-2 G. 6, c. 29, Sch. 7, III.

s. 210, excluded: 11-2 G. 6, c. 44, s. 4 (3).

s. 214, order made: § 3501.

s. 369, orders made: §§ 3462, 3463.

s. 393 (3), repealed: 11-2 G. 6, c. 29, Sch. 7, III.

ss. 401, 402, exemptions: § 3463.

s. 421, order made: § 3492.

s. 427, rules made: §§ 3460, 3473, 3486.

s. 470 (1), person interested: § 1311.

s. 503 (2) (a) proviso, amended: 11-2 G. 6, c. 44, s. 4 (3).

s. 670, order made: § 3474.

s. 694, applied: 11-2 G. 6, c. 51, s. 2 (4).

s. 738, order made: § 3492.

Sch. 6, excluded: 11-2 G. 6, c. 44, s. 4 (3) (*prosp.*).

58 & 59 Vict. (1895).

c. 39 (*Summary Jurisdiction (Married Women)*).

construed: §§ 912, 913, 952.

58 & 59 Vict. (1895)—*cont.*

c. 39 (*Summary Jurisdiction (Married Women)*)—*cont.*

s. 5 (b), construed: § 914.

s. 5 (c), construed: § 1386.

s. 7, construed: § 914.

s. 9, construed: § 1386.

c. 40 (*Corrupt and Illegal Practices*).

s. 3, extended in part: 11-2 G. 6, c. 65, s. 51 (1) (d).

59 & 60 Vict. (1896).

c. 25 (*Friendly Societies*).

offences: 11-2 G. 6, c. 39, s. 16 (1) (4) (5).

s. 8, definition of society: *ib.*, s. 23 (1).

s. 8 (1), amended: *ib.*, ss. 1 (a), 2, 3, 4, 5 (2), Sch. 2.

s. 26 (1), excluded: *ib.*, s. 14 (1).

s. 26, amended: *ib.*, s. 20 (1).

s. 27, annual return: *ib.*, s. 14 (2) (c).

s. 30, amended: *ib.*, ss. 14 (1), 20 (1).

s. 30 (1), part repealed: *ib.*, s. 14 (4), Sch. 6, II.

s. 30, change of designation of auditors: *ib.*, s. 20 (1).

s. 41, amended: *ib.*, s. 5 (1), (3).

s. 43, repealed: *ib.*, s. 17 (2), Sch. 6, II.

s. 44, investment of funds: *ib.*, s. 19 (5).

s. 44 (1) (c), repealed: *ib.*, s. 19 (4) (a), Sch. 6, II.

s. 52 (1)-(3), repealed: *ib.*, s. 19 (4) (a), Sch. 6, II.

s. 52 (4), repealed so far as it relates to 26-7 Vict. c. 87, ss. 26, 27: *ib.*, s. 19 (4) (a), Sch. 6, II.

s. 52 (5) (7) (8), repealed: *ib.*, Sch. 6, I.

s. 52 (6) (9), repealed: *ib.*, s. 19 (4) (a), Sch. 6, II.

s. 57 (3), amended: *ib.*, s. 18 (3).

ss. 58, 60, amended: *ib.*, s. 18 (1).

s. 58 (1), part repealed: *ib.*, s. 18 (3), Sch. 6, II.

s. 59, amended: *ib.*, s. 18 (2) (a), Sch. 5, para. 1.

s. 62, excluded: *ib.*, s. 6 (2).

s. 62, premium receipt books: *ib.*, s. 12, Sch. 3.

ss. 63-66, repealed with savings: *ib.*, s. 6 (2).

s. 63, part repealed: *ib.*, Sch. 6, II.

s. 68 (3), part repealed: *ib.*, s. 21, Sch. 6, II.

c. 35 (*Judicial Trustees*).

article: § 3432.

c. 45 (*Stannaries Court (Abolition)*).

unincorporated companies: 11-2 G. 6, c. 38, s. 450 (1).

said: *ib.*, s. 218 (5).

c. 48 (*Light Railways*).

order made: § 3054.

c. 55 (*Quarter Sessions (London)*).

extended: 11-2 G. 6, c. 58, ss. 36 (6)

(c), 37 (5) (c).

c. 56 (*Wild Birds Protection*).

orders made: § 159.

- 60 & 61 Vict. (1897).
- c. 18 (*Juries Detention*).
repealed: 11-2 G. 6, c. 58, Sch. 10, I (as from December 27, 1948: SI 1948, No. 2349).
 - c. 31 (*Cleansing of Persons*).
s. 1, part repealed: 11-2 G. 6, c. 29, Sch. 7, III.
- 61 & 62 Vict. (1898).
- c. 12 (*Public Record Office*).
order made: § 585.
 - c. 34 (*Rivers Pollution Prevention (Border Councils)*).
s. 1, transfer of functions: 11-2 G. 6, c. 32, s. 37 (1).
 - c. 36 (*Criminal Evidence*).
s. 1 (f), construed: § 724.
s. 2, excluded: 11-2 G. 6, c. 58, s. 42 (2).
 - c. 41 (*Prison*).
s. 1, repealed: 11-2 G. 6, c. 58, Sch. 10, I (as from April 18, 1949: SI 1949, No. 139).
s. 2, repealed: *ib.*, Sch. 10, I (*prosp.*).
s. 3, repealed: *ib.*, Sch. 10, I (as from December 27, 1948: SI 1948, No. 2349).
ss. 4, 5, 6, 7 (in part), 8, 11, 14 (1) repealed: *ib.*, Sch. 10, I (as from April 18, 1949: SI 1949, No. 139).
 - c. 44 (*Merchant Shipping (Mercantile Marine Fund)*).
effect of 11-2 G. 6, c. 44: § 3483.
s. 5, order made: § 3475.
 - c. 48 (*Benefices Act*).
Sch. excluded: C.A.M. No. 1, s. 59 (2).
 - c. 60 (*Inebriates*).
s. 25, para. (f), repealed: 11-2 G. 6, c. 29, Sch. 7, III.
 - c. xxvii (*Great Orme Tramways*).
s. 57 (1), construed: § 3746.
- 62 & 63 Vict. (1899).
- c. 14 (*London Government*).
s. 11 (1), part repealed: 11-2 G. 6, c. 65, Sch. 13.
- 63 & 64 Vict. (1900).
- c. 23 (*Poor Removal*).
repealed: 11-2 G. 6, c. 29, Sch. 7, I.
 - c. 62 (*Colonial Stock*).
effect of 12-3 G. 6, c. 1: § 3257.
extended: § 357.
- 1 Edw. 7 (1901).
- c. 7 (*Finance*).
s. 10 (1) (2), applied: 11-2 G. 6, c. 49, s. 24 (2).
- 2 Edw. 7 (1902).
- c. 6 (*Wild Birds Protection*).
orders made: § 159.
 - c. 17 (*Midwives*).
rules amended: § 2196.
s. 3, instruments made: §§ 2193, 2196.
- 3 Edw. 7 (1903).
- c. 6 (*Naval Forces*).
s. 1 (2), applied: 11-2 G. 6, c. 25, s. 1 (2).
s. 2 repealed: *ib.*, s. 1 (6).
s. 3 applied: *ib.*, s. 1 (2).
- 3 Edw. 7 (1903)—*cont.*
- c. 33 (*Burgh Police (Scotland)*).
s. 44, para. 3, repealed: 11-2 G. 6, c. 26, Sch. 2, V.
 - c. 43 (*Diseases of Animals*).
orders made: §§ 144, 146, 147, 148.
 - c. 46 (*Revenue*).
s. 16, repealed so far as it relates to drafts of a friendly society: 11-2 G. 6, c. 39, Sch. 6, I.
- 4 Edw. 7 (1904).
- c. 4 (*Wild Birds Protection*).
orders made: § 159.
 - c. 24 (*Wireless Telegraph*).
continued as amended: 12-3 G. 6, c. 3, Sch. 1.
- 6 Edw. 7 (1906).
- c. 47 (*Trade Disputes*).
s. 4, excluded: 11-2 G. 6, c. 66, s. 11 (4).
s. 4 (1), construed: § 1995.
 - c. 48 (*Merchant Shipping*).
effect of, 11-2 G. 6, c. 44: § 3483.
s. 27, certificated cooks: 11-2 G. 6, c. 44, s. 6.
s. 34 (1), expenses of maintenance in case of injury or illness: *ib.*, s. 7.
s. 58, amended by regulations: *ib.*, s. 5 (6).
s. 64, excluded: *ib.*, s. 4 (3).
 - c. 55 (*Public Trustee*).
rules made: § 3421.
s. 2 (1) (c), repealed: 11-2 G. 6, c. 58, Sch. 10, I (as from April 18, 1949: SI 1949, No. 139).
s. 9, order made: § 3413.
- 7 Edw. 7 (1907).
- c. 4 (*Destructive Insects and Pests*).
orders made: §§ 80, 84.
 - c. 9 (*Territorial and Reserve Forces*).
s. 23 (4), service on jury: 11-2 G. 6, c. 64, s. 26 (5).
 - c. 13 (*Finance*).
s. 14, further duty: § 842.
 - c. 17 (*Probation of Offenders*).
coupon offences: § 2159.
s. 1 (1), construed: §§ 3301, 3312.
s. 7, rules continued: 11-2 G. 6, c. 58, Sch. 8, para. 7.
repealed: *ib.*, Sch. 10, I (*prosp.*).
 - c. 23 (*Criminal Appeal*).
amended: 11-2 G. 6, c. 58, s. 38.
applied: *ib.*, ss. 20 (5) (d), 29 (3) (d).
effect of, 11-2 G. 6, c. 58: §§ 714, 715.
s. 1 (6), appeal to House of Lords: 11-2 G. 6, c. 58, s. 44 (3).
s. 4 (1), construed: § 767.
s. 7, part repealed: 11-2 G. 6, c. 58, Sch. 10, I (as from September 13, 1948: SI 1948, No. 1840).
s. 13 (1), amended: 11-2 G. 6, c. 58, Sch. 9 (as from September 13, 1948: SI 1948, No. 1840).
s. 13 (2), saved: *ib.*, s. 44 (2).
s. 14 (1), repealed: *ib.*, Sch. 10, I (*prosp.*).
s. 14 (3), repealed: *ib.*, Sch. 10, I (as from September 13, 1948: SI 1948, No. 1840).

7 Edw. 7 (1907)—*cont.*

- c. 23 (*Criminal Appeal*)—*cont.*
 - s. 14 (4), amended: *ib.*, Sch. 9 (as from September 13, 1948: SI 1948, No. 1840).
 - s. 14 (5), repealed: *ib.*, Sch. 10, I (as from December 27, 1948: SI 1948, No. 2349).
 - ss. 17, 19, amended: *ib.*, Sch. 9 (as from September 13, 1948: SI 1948, No. 1840).
 - s. 19, explained: *ib.*, s. 38 (6).
 - s. 20 (2), part repealed: *ib.*, Sch. 10, I (as from September 13, 1948: SI 1948, No. 1840).
 - c. 29 (*Patents and Designs*).
 - orders made: §§ 2579, 2584, 2585.
 - ss. 3 (2), 25, construed: § 2609.
 - s. 18 (6), construed: § 126.
 - s. 25 (2), construed: §§ 2604, 2608, 2610, 2611.
 - s. 29 (1) (1A), construed: § 2568.
 - s. 35, construed: § 2605.
 - s. 36, construed: § 2602.
 - c. 50 (*Companies*).
 - s. 10 (1) (d), registration of charges on land: 11-2 G. 6, c. 38, s. 458 (1).
 - c. 52 (*Merchant Shipping*).
 - effect of: 11-2 G. 6, c. 44: § 3483.
 - c. 53 (*Public Health Acts Amendment*).
 - s. 76 (1) (d) (e) (h), repealed: 11-2 G. 6, c. 26, s. 132 (8), Sch. 2, V.
- 8 Edw. 7 (1908).
- c. 7 (*Fatal Accidents (Damages)*).
 - construed: § 813.
 - c. 11 (*Wild Birds Protection*).
 - orders made: § 159.
 - c. 15 (*Costs in Criminal Cases*).
 - applied: 11-2 G. 6, c. 58, ss. 20 (5) (c), 24 (3), 26 (5), 29 (c), 44 (3) (5).
 - s. 1, applied *ib.*, s. 44 (1).
 - s. 1 (1) (b), amended: *ib.*, Sch. 9 (as from December 27, 1948: SI 1948, No. 2349).
 - s. 5, regs. made: § 712.
 - c. 36 (*Small Holdings and Allotments*).
 - s. 61 (1), amended: 16-7 G. 5, c. 52, s. 16; small holdings: 11-2 G. 6, c. 63, s. 31 (2) (d).
 - c. 39 (*Endowed Schools (Masters)*).
 - applied, 11-2 G. 6, c. 40, s. 2 (1).
 - c. 47 (*Lunacy*).
 - children: § 1705.
 - mental health services: §§ 2122, 2123.
 - s. 1, receiver's expenses: § 2124.
 - s. 1, extended: 11-2 G. 6, c. 29, s. 49.
 - c. 48 (*Post Office*).
 - ss. 2-4, 12, 16, 17, 82, warrant made: § 2733.
 - c. 57 (*Coal Mines Regulation*).
 - s. 4, order made: § 2232.
 - c. 59 (*Prevention of Crime*).
 - repealed: 11-2 G. 6, c. 58, Sch. 10, I (as from April 18, 1949: SI 1949, No. 139).
 - ss. 1, 3-6, repealed: *ib.*, Sch. 10, I (as from April 18, 1949: SI 1948, No. 2349).
 - s. 4, rules continued: *ib.*, Sch. 8, para. 7.

8 Edw. 7 (1908)—*cont.*

- c. 59 (*Prevention of Crime*)—*cont.*
 - s. 5 (1), construed: § 756.
 - ss. 5, 6, 14, 15, 16, applied: 11-2 G. 6, c. 58, Sch. 7, I, paras. 1, 2 (as from April 18, 1949: SI 1949, No. 139).
 - ss. 7, 8, repealed: *ib.*, Sch. 10, I (as from December 27, 1948: SI 1948, No. 2349).
 - s. 9, repealed: *ib.*, Sch. 10, I (as from April 18, 1949: SI 1948, No. 2349).
 - c. 66 (*Public Meeting*).
 - s. 1 (1), amended: 11-2 G. 6, c. 65, s. 40 (3).
 - c. 69 (*Companies (Consolidation)*).
 - unregistered company: 11-2 G. 6, c. 38, s. 398 (b).
 - companies formed and registered: *ib.*, s. 377.
 - companies registered but not formed: *ib.*, ss. 378, 382 (1) proviso (i).
 - s. 57, unlimited companies re-registered: *ib.*, s. 379.
 - s. 93 (1) (d), registration of charges on land: *ib.*, s. 458 (1).
 - s. 104, applied: *ib.*, s. 91.
 - s. 118, saved: *ib.*, s. 459 (14) (d).
 - s. 274 (1) (a) (b) (c), overseas companies: *ib.*, ss. 407 (3) (b), 408 (c).
 - Sch. 1, Table A, definition applied: *ib.*, s. 455 (1).
 - Sch. 1, Table A, saved: *ib.*, s. 459 (14) (d).
- 9 Edw. 7 (1909).
- c. 7 (*Labour Exchanges*).
 - repealed: 11-2 G. 6, c. 46, s. 21 (2), Sch. 2: § 1246.
 - c. 10 (*Superannuation*).
 - reduction of allowances: § 2621.
 - s. 7 (1), rules made: § 2620.
 - c. 26 (*Diseases of Animals*).
 - orders made: §§ 144, 146, 147, 148.
 - c. 34 (*Electric Lighting*).
 - books published: § 1122.
 - orders made: §§ 1098, 1121.
 - c. 40 (*Police*).
 - s. 2, repealed: 11-2 G. 6, c. 26, Sch. 2, IV.
 - c. 49 (*Assurance Companies*).
 - regs. made: § 1746.
 - Sch. 8, Lloyd's: § 1746.
 - saved in part: 11-2 G. 6, c. 38, s. 433 (6).
 - saved: *ib.*, s. 459 (9).
 - s. 7, saved: *ib.*, s. 127 (4).
- 10 Edw. 7 & 1 Geo. 5 (1910).
- c. 8 (*Finance (1909-10)*).
 - Sch. 1, B, para. 4, construed: § 784.
 - c. 20 (*Diseases of Animals*).
 - orders made: §§ 144, 146, 147, 148.
 - c. 24 (*Licensing (Consolidation)*).
 - s. 25 (2), construed: § 1850.
 - s. 35 (2), article: § 1852.
 - s. 35 (2), repealed: 11-2 G. 6, c. 58, Schs. 9, 10, I (as from September 13, 1948: SI 1948, No. 1840).
 - s. 71, construed: § 1845.

1 & 2 Geo. 5 (1911).

- c. 6 (*Perjury*).
saved: 11-2 G. 6, c. 38, s. 438 (b).
- c. 7 (*Municipal Elections (Corrupt and Legal Practices)*).
s. 1 (4), amended: 11-2 G. 6, c. 65, s. 38 (3) (a).
- c. 11 (*Finance (New Duties)*).
applied: 11-2 G. 6, c. 23, s. 4 (5).
- c. 24 (*Pensions (Governors of Dominions, etc.)*).
s. 2 (1), orders made: § 2633.
- c. 26 (*Telephone Transfer*).
s. 5, extended: 11-2 Geo. 6, c. 16, s. 1 (4).
s. 5, amended: § 2737.
- c. 27 (*Protection of Animals*).
s. 14 (2), amended: 11-2 G. 6, c. 58, Sch. 9 (as from December 27, 1948: SI 1948, No. 2349).
- c. 28 (*Official Secrets*).
s. 10 (2), part repealed: 11-2 G. 6, c. 58, Sch. 10, I (as from September 13, 1948: SI 1948, No. 1840).
- c. 42 (*Merchant Shipping*).
effect of 11-2 G. 6, c. 44: § 3483.
- c. 46 (*Copyright*).
order made: § 663.
s. 5 (2), construed: § 1677.
- c. 50 (*Coal Mines*).
s. 33, order made: § 2229.
s. 61, order made: § 2230.
s. 86, order made: § 2231.

2 & 3 Geo. 5 (1912).

- c. 3 (*Shops*).
book published: § 1432.
- c. 19 (*Light Railways*).
order made: § 3054.
- c. 20 (*Criminal Law Amendment*).
s. 3, repealed: 11-2 G. 6, c. 58, ss. 81, 83, Sch. 10, II.

2 & 3 Geo. 5, cont. (1913).

- c. 24 (*Shops*).
book published: § 1432.
- 2 & 3 Geo. 5 (1913).
- c. 30 (*Trade Union*).
definition applied: 11-2 G. 6, c. 39, s. 23 (1) (d).
- c. 31 (*Pilotage*).
effect of 11-2 G. 6, c. 44: § 3483.
s. 7, order made: § 3487.
s. 15, construed: § 3466.

3 & 4 Geo. 5 (1913).

- c. 6 (*Extension of Polling Hours*).
repealed: 11-2 G. 6, c. 65, Sch. 13.
- c. 27 (*Forgery*).
s. 12 (1), (2) (b), repealed: 11-2 G. 6, c. 58, Sch. 10, I (as from April 18, 1949: SI 1949, No. 139).
- c. 28 (*Mental Deficiency*).
children: § 1705.
mental health services: § 2122.
national health service regulations: § 2118.
s. 1 (c), amended: 11-2 G. 6, c. 40, Sch. 1, II.
s. 2 (1), amended: 11-2 G. 6, c. 58, Sch. 9 (as from April 18, 1949: SI 1949, No. 139).

3 & 4 Geo. 5 (1913)—cont.

- c. 28 (*Mental Deficiency*)—cont.
 - s. 2 (1) (b) (vi), repealed: 11-2 G. 6, c. 29, Sch. 7, III.
 - s. 4, amended: 11-2 G. 6, c. 58, Sch. 9 (as from April 18, 1949: SI 1949, No. 139).
 - s. 9, transference from prisons, etc., to institution for mental defectives: 11-2 G. 6, c. 58, s. 64 (1) (2) (as from April 1, 1949: SI 1949, No. 139).
 - s. 9, amended: *ib.*, Sch. 9 (as from April 18, 1949: SI 1949, No. 139).
 - s. 10, regs. made: § 2118.
 - s. 11, construed: § 2119.
 - s. 13, effect of repeal: § 2314.
 - s. 16 (1), not applicable: 11-2 G. 6, c. 58, s. 64 (3) (as from April 1, 1949: SI 1949, No. 139).
 - ss. 16, 18, 20, 25, regs. made: § 2118.
 - s. 25 (2), proviso, repealed: 11-2 G. 6, c. 58, Sch. 10, I (as from April 18, 1949: SI 1949, No. 139).
 - s. 30, proviso (ii), repealed: 11-2 G. 6, c. 29, Sch. 7, III.
 - ss. 30, 40, regs. made: § 2118.
 - s. 41, regs. made: §§ 2116, 2118.
 - s. 44 (2), amended: 11-2 G. 6, c. 58, Sch. 9 (as from April 18, 1949: SI 1949, No. 139).
 - s. 44 (5), rules made: § 2.
 - s. 49, regs. made: §§ 2116, 2118.
 - ss. 50, 51, 59, regs. made: § 2118.
- c. 31 (*Industrial and Provident Societies (Amendment)*).
expulsion: § 1698.

4 & 5 Geo. 5 (1914).

- c. 12 (*Aliens Restriction*).
s. 1, amended: 11-2 G. 6, c. 56, s. 3 (3).
- c. 15 (*Exportation of Horses*).
orders made: §§ 144, 146, 147, 148.
- c. 17 (*British Nationality and Status of Aliens*).
effect of 11-2 G. 6, c. 56: § 118.
ss. 1-16, 17 (in part), 18 (in part), 19-26, 27 (in part), 28 (in part), Schedules repealed: 11-2 G. 6, c. 56, Sch. 4, II.
- c. 34 (*Police Reservists (Allowances)*).
s. 1 (2), repealed with savings: 11-2 G. 6, c. 24, Sch. 1, I (5).
- c. 42 (*Merchant Shipping (Certificates)*).
effect of 11-2 G. 6, c. 44: § 3483.
- c. 56 (*Charitable Trusts*).
variation of scheme: § 417.
- c. 58 (*Criminal Justice Administration*).
s. 3 (1), amended: 11-2 G. 6, c. 58, Sch. 9 (as from December 27, 1948: SI 1948, No. 2349).
- s. 4 (1), amended: *ib.*, Sch. 9 (as from April 18, 1949: SI 1949, No. 139).
- ss. 7-9, repealed: *ib.*, Sch. 10, I (*prosp.*).
- ss. 10, 11, repealed: *ib.*, Sch. 10, I (as from April 18, 1949: SI 1948, No. 2349).
- s. 15, repealed: *ib.*, Sch. 10, I (as from December 27, 1948: SI 1948, No. 2349).

4 & 5 Geo. 5 (1914)—*cont.*c. 58 (*Criminal Justice Administration*)—*cont.*

- s. 16, repealed: *ib.*, Sch. 10, I (as from April 18, 1949: SI 1949, No. 139).
- s. 17 (6), repealed: *ib.*, Sch. 10, I (as from December 27, 1948: SI 1948, No. 2349).
- s. 26, applied: *ib.*, Sch. 7, I (3) (as from April 18, 1949: SI 1949, No. 139).
- s. 26, repealed: *ib.*, Sch. 10, I (*prosp.*).
- s. 36, repealed: *ib.*, Sch. 10, I (as from September 13, 1948: SI 1948, No. 1840).
- s. 37, construed: § 2129.
- s. 37 (1), repealed: *ib.*, Sch. 10, I (as from December 27, 1948: SI 1948, No. 2349).

c. 59 (*Bankruptcy*).

article: § 272.

- s. 1 (1) (g), final judgment: 11-2 G. 6, c. 38, s. 332 (4), 333 (3).
- s. 1 (1) (d), (2) (c), construed: § 265.
- ss. 30 (2), 37 (1), construed: § 268.
- s. 33, extended: 11-2 G. 6, c. 64, s. 48.
- s. 38 (2) (c), construed: § 270.
- s. 153, unclaimed assets: *ib.*, s. 343 (2).

c. 61 (*Special Constables*).

order made: § 2726.

c. 80 (*Police Constables (Naval and Military Service)*).

repealed with savings: 11-2 G. 6, c. 24, Sch. 1, I (6).

c. 86 (*Superannuation*).

reduction of allowances: § 2621.

5 & 6 Geo. 5 (1915).

c. 41 (*Police (Emergency Provisions)*).

repealed: 11-2 G. 6, c. 24, Sch. 1, I (7).

c. 64 (*Notification of Births (Extension)*).

transitional provisions: 11-2 G. 6, c. 43, Sch. 2, para. 8 (3).

c. 90 (*Indictments*).

s. 4, part repealed: 11-2 G. 6, c. 58, Sch. 10, I (as from December 27, 1948: SI 1948, No. 2349).

Sch. 1, r. 3, construed: § 735.

6 & 7 Geo. 5 (1916).

c. 11 (*Finance (New Duties)*).

s. 4, repealed: 11-2 G. 6, c. 49, s. 13 (a), Sch. 11, I.

s. 6, repealed, *ib.*, Sch. 11, I.

c. 24 (*Finance*).

s. 7, repealed: 11-2 G. 6, c. 49, s. 13 (b), Sch. 11, I.

s. 9, repealed, *ib.*, s. 13 (c), Sch. 11, I.

c. 25 (*Gas (Standard of Calorific Power)*).

repealed: 11-2 G. 6, c. 67, Sch. 4.

c. 31 (*Police, Factories, etc. (Miscellaneous Provisions)*).

s. 12, repealed: 11-2 G. 6, c. 58, Sch. 10, I (as from December 27, 1948: SI 1948, No. 2349).

c. 41 (*Merchant Shipping (Salvage)*).

effect of 11-2 G. 6, c. 44: § 3483.

6 & 7 Geo. 5 (1916)—*cont.*c. 50 (*Larceny*).

ss. 1 (2) (i) (d), 2, construed: § 739.

s. 2, part repealed: 11-2 G. 6, c. 58, Sch. 10, I (as from September 13, 1948: SI 1948, No. 1840).

s. 16, para. (c), repealed: *ib.*, Sch. 10, I (as from September 13, 1948: SI 1948, No. 1840).

s. 17, part repealed: *ib.*, Sch. 10, I (as from September 13, 1948: SI 1948, No. 1840).

s. 23 (1), part repealed: *ib.*, Sch. 10, I (as from September 13, 1948: SI 1948, No. 1840).

s. 29 (1), part repealed: *ib.*, Sch. 10, I (as from September 13, 1948: SI 1948, No. 1840).

s. 33 (1) (c), repealed: *ib.*, Sch. 10, I (as from September 13, 1948: SI 1948, No. 1840).

s. 34, part repealed: *ib.*, Sch. 10, I (as from September 13, 1948: SI 1948, No. 1840).

s. 37 (3), repealed: *ib.*, Sch. 10, I (as from September 13, 1948: SI 1948, No. 1840).

s. 37 (4), repealed: *ib.*, Sch. 10, I (*prosp.*).

s. 37 (5) (b), part repealed: *ib.*, Sch. 10, I (as from April 18, 1949: SI 1949, No. 139).

s. 37 (6), repealed: *ib.*, Sch. 10, I (as from September 13, 1948: SI 1948, No. 1840).

c. 58 (*Registration of Business Names*).

construed: § 2256.

s. 17, rules made: § 2257.

c. 68 (*New Ministries and Secretaries*).

Sch., part repealed: 11-2 G. 6, c. 46, Sch. 2.

7 & 8 Geo. 5 (1917).

(*Air Force*).

continued: 11-2 G. 6, c. 28, s. 2 (1): § 178.

s. 13 (1), amended: 11-2 G. 6, c. 28, Sch.

s. 45 (2A), added: *ib.*, s. 3 (1).

s. 45 (3), amended: *ib.*, s. 3 (2).

ss. 59, 60, 64 (4), 68 (f) (g) (h), amended: *ib.*, Sch.

s. 91, substituted: *ib.*, s. 4: §§ 178, 2126.

s. 94, part repealed: 11-2 G. 6, c. 28, Sch.

s. 95, part repealed: 11-2 G. 6, c. 56, Sch. 4, II.

s. 96, excluded: 11-2 G. 6, c. 64 s. 26 (4).

s. 104 (2A), added: 11-2 G. 6, c. 28 s. 5.

ss. 122, 130 (5), amended: *ib.*, Sch.

s. 132, extended: § 178.

s. 132 (1), amended: 11-2 G. 6, c. 28 Sch. III.

s. 132 (3A), substituted: *ib.*, s. 12.

s. 134, repealed: *ib.*, Sch. III.

ss. 135, 143 (1), 154, paras. (5) (7) 156 (8), amended: *ib.*, Sch.

7 & 8 Geo. 5 (1917)—*cont.**(Air Force)*—*cont.*

- s. 158 (1) proviso, amended: 11-2 G. 6, c. 28, s. 6 (1).
- ss. 162 (3), 163 (1) (d), (2), 168, 169, 170 (3), 175, paras. (4) (7) (11A), 176, amended: *ib.*, Sch.
- s. 179, proviso (d), substituted: *ib.*, s. 13 (1).
- s. 179A (2), amended: *ib.*, s. 13 (2).
- s. 179A (i) (j), excluded: *ib.*, s. 13 (3).
- s. 179A (2A)–(2D), added: *ib.*, s. 13 (4).
- s. 180, repealed: *ib.*, Sch.
- s. 181 (1), amended: *ib.*, Sch.
- s. 187c (1), repealed: *ib.*, s. 7.
- s. 190, paras. (4) (5) (5A), amended: *ib.*, Sch.
- s. 190, paras. (21) (21b), repealed: *ib.*, Sch.
- s. 190, paras. (23) (23A) (24), amended: *ib.*, Sch.
- s. 190, para. (26), repealed: *ib.*, Sch.
- s. 190, paras. (33) (35) (e), amended: *ib.*, Sch.
- Sch. 2, I, applied: *ib.*, s. 8.

- c. 28 (*Companies (Particulars as to Directors)*).
overseas companies: 11-2 G. 6, c. 38, ss. 407 (3) (b), 408 (c).

7 & 8 Geo. 5 *cont.* (1918).

- c. 64 (*Representation of the People*).
effect of: 11-2 G. 6, c. 65: § 1095.
repealed except ss. 19, 21 (3), 42, 43, Sch. 6: 11-2 G. 6, c. 65, Sch. 13.
s. 18, saving: *ib.*, s. 80 (7) (c).

8 & 9 Geo. 5 (1918).

- c. 13 (*Horse Breeding*).
s. 1, repealed: 11-2 G. 6, c. 35, s. 2 (5), Sch.; and see §§ 135, 136.
s. 2, part repealed: 11-2 G. 6, c. 35, s. 2 (5) (a), Sch.
s. 2, proviso, amended: *ib.*, s. 2 (5) (b).
- s. 2 (2), part repealed: *ib.*, s. 5 (5).
- s. 2 (2), amended: *ib.*, ss. 6 (2), 8 (1).
- s. 2 (2), proviso (a) (b), amended: *ib.*, s. 3 (1).
- s. 2 (2), proviso (d), amended: *ib.*, s. 4.
- s. 3 (1), repealed: *ib.*, s. 8 (4), Sch.
- s. 4, applied: *ib.*, s. 3 (3).
- s. 4, excluded: *ib.*, s. 5 (5).
- s. 4 (1), part repealed: *ib.*, Sch.
- s. 5, para. (c), part repealed: *ib.*, Sch.
- s. 6, part repealed: *ib.*, s. 2 (5) (c), Sch.
- s. 6, amended: *ib.*, s. 6 (2).
- s. 8, repealed: *ib.*, s. 9 (2), Sch.
- s. 9, rules made: § 150.
- s. 10, part repealed: 11-2 G. 6, c. 35, Sch.
- s. 11 (2), repealed: *ib.*, s. 12 (2), Sch.
- s. 13, *ib.*, Sch.
- c. 38 (*British Nationality and Status of Aliens*).
effect of: 11-2 G. 6, c. 56: § 118.
repealed: *ib.*, Sch. 4, II.

8 & 9 Geo. 5 (1918)—*cont.*c. 40 (*Income Tax*).

- s. 32, relief for life insurance premiums: 11-2 G. 6, c. 49, s. 29 (2).
- s. 32 (2), amended: *ib.*, s. 29 (6) (a).
- s. 32 (3) (e) (i), amended: *ib.*, s. 29 (6) (c).
- s. 32 (7), amended: *ib.*, s. 29 (6) (a).
- s. 32 (9), amended: *ib.*, s. 29 (6) (b).
- s. 34, amended: *ib.*, s. 82, Sch. 11, II.
- s. 39 (1), limitation of benefits from friendly societies: 11-2 G. 6, c. 39, s. 5 (3).
- s. 39 (1) (2), amended: 11-2 G. 6, c. 49, s. 36.
- s. 105, extended: 2-3 (1. 6, c. 41, s. 19: expenses: *ib.*, s. 39 (1).
- s. 105 (2), amended: *ib.*, s. 43 (1).
- s. 125, construed: § 1640.
- s. 125 (1), construed: § 1641.
- s. 149, applied with modifications: *ib.*, s. 60 (7).
- s. 187, construed: § 1666.
- Sch. A, construed: § 1665.
- Sch. A, No. III, r. 3, construed: § 1666.
- Sch. A, No. VI, r. 1 (2), article: § 2022.
- Sch. B, r. 1 (a), construed: § 3595.
- Sch. D, construed: §§ 1668, 1669.
- Sch. D, Case I, construed, §§ 1670, 1671.
- Sch. D, Cases I and II, r. 3, construed: § 1672.
- Sch. D, Cases I and II, r. 3 (a), construed: §§ 1673, 1674.
- Sch. D, Cases I and II, r. 9, article: § 2561.
- Sch. D, Case III, r. 1, construed: § 1675.
- Sch. D, Case V, construed: § 1676.
- Sch. D, Case VI, construed: § 1677.
- Sch. E, article: § 1694.
- Sch. E, rr. 1, 6, construed: § 1678.
- Sch. 1, All Schedules Rules, r. 16, article: § 1694.
- Sch. 1, All Schedules Rules, r. 16, construed: § 1679.
- Sch. 1, All Schedules Rules, r. 21, construed, §§ 1681, 1682.
- c. 43 (*Midwives*).
rules amended: § 2196.
- c. 50 (*Representation of the People (Amendment)*).
repealed: 11-2 G. 6, c. 65, Sch. 13.
- c. 51 (*Police (Pensions)*).
repealed with savings: 11-2 G. 6, c. 24, Sch. 1, I (8).
- c. 57 (*War Pensions (Administrative Provisions)*).
s. 9, applied: 11-2 G. 6, c. 43, s. 7 (3).

9 & 10 Geo. 5 (1919).

- c. 8 (*Representation of the People (Returning Officers' Expenses)*).
repealed: 11-2 G. 6, c. 65, Sch. 13.
- c. 21 (*Ministry of Health*).
consultative councils dissolved: § 2344.

9 & 10 Geo. 5 (1919)—*cont.*

- c. 32 (*Finance*).
 - s. 8 (1), applied: 11-2 G. 6, c. 49,
 - s. 9 (2).
- c. 38 (*Merchant Shipping (Wireless Telegraphy)*).
 - effect of 11-2 G. 6, c. 44: § 3483.
- c. 46 (*Police*).
 - s. 4, regs. made: §§ 2723, 2727.
 - s. 4 (1), part repealed with savings: 11-2 G. 6, c. 24, Sch. 1, I (9).
 - s. 5, part repealed with savings: *ib.*, Sch. 1, I (9).
 - s. 7, part repealed: 11-2 G. 6, c. 26, Sch. 2, IV.
 - s. 14, part repealed with savings: 11-2 G. 6, c. 24, Sch. 1, I (9).
- c. 54 (*Animals (Anæsthetics)*).
 - s. 3, orders made: § 140.
 - Schs. 3, 6, amended by order: § 140.
- c. 58 (*Forestry*).
 - s. 3 (2), orders made: § 84.
- c. 67 (*Superannuation (Prison Officers)*).
 - reduction of allowances: § 2621.
- c. 69 (*Industrial Courts*).
 - report: § 1251.
- c. 85 (*Mental Deficiency and Lunacy (Amendment)*).
 - mental health services: § 2122.
 - national health services regulations: § 2118.
 - s. 1, children: § 1705.
- c. 92 (*Aliens Restriction (Amendment)*).
 - amended: 11-2 G. 6, c. 56, s. 3 (3).
 - s. 1, continued: 12-3 G. 6, c. 3, Sch. 1.
- c. 100 (*Electricity Supply*).
 - books published: § 1122.
 - orders made: § § 1098, 1121.

10 & 11 Geo. 5 (1920).

- c. 2 (*Merchant Shipping (Amendment)*).
 - effect of 11-2 G. 6, c. 44: § 3483.
- c. 12 (*Savings Banks*).
 - s. 10 (3), definition applied: 11-2 G. 6, c. 39, s. 19 (5).
- c. 17 (*Increase of Rent and Mortgage Interest (Restrictions)*).
 - articles: §§ 1979, 3251.
 - furnished houses: §§ 3176, 3179, 3186.
 - small tenements recovery: § 1966.
 - s. 2, construed: § 3223.
 - s. 2 (1) (a), construed: § 3195.
 - s. 2 (3), construed: §§ 2976, 3242.
 - s. 3, construed: § 3223.
 - s. 5 (4), construed: § 2001.
 - s. 5 (6), construed: § 3200.
 - s. 9, construed: §§ 3176, 3179, 3186.
 - s. 9 (1), construed: §§ 3182, 3183, 3184.
 - s. 10, construed: §§ 3164, 3179.
 - s. 12 (1), construed: § 3245.
 - s. 12 (1) (a), construed: §§ 3210, 3211, 3213.
 - s. 12 (1) (f), construed: § 3218.
 - s. 12 (1) (g), construed: §§ 3217, 3218, 3219, 3222, 3223.
 - s. 12 (2), construed: §§ 3163, 3210.
 - s. 12 (2) (i), construed: §§ 3185, 3186, 3187.
 - s. 12 (2) (iii), construed: § 3245.

10 & 11 Geo. 5 (1920)—*cont.*

- c. 17 (*Increase of Rent and Mortgage Interest (Restrictions)*)—*cont.*
 - s. 12 (3), construed: § 3148.
 - s. 15 (1), construed: § 3225.
 - s. 15 (3), construed: § 3235.
 - s. 17 (2), article: § 3251.
 - s. 17 (2), construed: §§ 3153, 3154.
- c. 18 (*Finance*).
 - s. 3 (1), amended: 11-2 G. 6, c. 49,
 - s. 3 (1).
 - s. 3 (2), amended: *ib.*, s. 3 (2).
 - s. 13, regs. made: § 3331.
 - s. 13, motor licence: 11-2 G. 6, c. 34, s. 5 (1).
 - s. 13, amended: 11-2 G. 6, c. 49,
 - s. 18 (1).
 - s. 18, amended: *ib.*, s. 27 (3).
 - s. 18 (2), definition applied: *ib.*, s. 28 (5).
 - s. 21 (1) (3), construed: § 1635.
 - Sch. 1, amended: 11-2 G. 6, c. 49,
 - s. 3, Sch. 3.
 - Sch. 2, paras. 1, 6, applied: 11-2 G. 6, c. 49, s. 18 (1).
- c. 20 (*Veterinary Surgeons Act (1881) Amendment*).
 - s. 2, repealed: 11-2 G. 6, c. 52, s. 25 (5).
 - s. 4, substituted: *ib.*, s. 8 (1).
- c. 23 (*War Pensions*).
 - s. 7 (1), repealed: 11-2 G. 6, c. 58,
 - Sch. 10, I (*prosp.*).
- c. 28 (*Gas Regulation*).
 - repealed: 11-2 G. 6, c. 67, Sch. 4.
 - s. 1, order made: § 1544.
 - s. 7, order made: § 1539.
 - s. 10, orders made: § 1544.
- c. 33 (*Maintenance Orders (Facilities for Enforcement)*).
 - North Borneo: § 335.
- c. 35 (*Representation of the People (No. 2)*).
 - repealed: 11-2 G. 6, c. 65, Sch. 13.
- c. 39 (*Merchant Shipping (Scottish Fishing Boats)*).
 - effect of 11-2 G. 6, c. 44: § 3483.
- c. 46 (*Dangerous Drugs*).
 - s. 3, regs. made: § 2180.
 - s. 7, regs. made: § 2179.
- c. 49 (*Blind Persons*).
 - repealed: 11-2 G. 6, c. 29, Sch. 7, III.
- c. 63 (*Married Women (Maintenance)*).
 - construed: §§ 913, 952.
 - s. 1 (1), construed: § 914.
- c. 72 (*Roads*).
 - excluded: § 2695.
 - s. 12, regs. made: § 3331.
 - s. 13, excluded: 11-2 G. 6, c. 34,
 - s. 5 (2).
- c. 80 (*Air Navigation*).
 - orders made: §§ 225, 233.

11 & 12 Geo. 5 (1921).

- c. 7 (*Tribunals of Inquiry*).
 - article: § 2924.
- c. 28 (*Merchant Shipping*).
 - effect of 11-2 G. 5, c. 44: § 3483.
- c. 31 (*Police Pensions*).
 - provisions applied: 11-2 G. 6, c. 24,
 - s. 4 (3).
 - s. 3 (6), construed: § 2721.

11 & 12 Geo. 5 (1921)—*cont.*c. 31 (*Police Pensions*)—*cont.*

s. 10 (1) (i), saved: 11-2 G. 6, c. 24, s. 3 (1) (d).

Sch. 1, I, SI No. 1531, r. 66.

s. 14, para. (2), repealed: 11-2 G. 6, c. 29, Sch. 7, III.

s. 15, repealed: 11-2 G. 6, c. 24, s. 4 (5), Sch. 2.

s. 17 (1) (a), repealed: *ib.*, s. 5 (6), Sch. 2.

s. 22, continued in part: SI No. 1531, r. 66.

s. 30, definition applied: 11-2 G. 6, c. 24, s. 8 (1), 11-2 G. 6, c. 38, s. 441 (4); c. 58, Sch. 4, para. 4 (2).

s. 33 (3), construed: § 2721.

Sch. 3, definition applied: 11-2 G. 6, c. 24, s. 8 (1).

Sch. 3, police fund: 12-3 G. 6, c. 5, s. 3 (3).

c. 32 (*Finance*).

s. 30, part repealed: 11-2 G. 6, c. 49, Sch. 11, II.

s. 30 (1), construed: §§ 418, 1645.

c. 34 (*Representation of the People*).

repealed: 11-2 G. 6, c. 65, Sch. 13.

c. 39 (*Admiralty Pensions*).

s. 2 (1), repealed: 11-2 G. 6, c. 58, Sch. 10, I (*prosp.*).

c. 42 (*Licensing*).

s. 21, amended: 11-2 G. 6, c. 65, Sch. 7.

c. 47 (*Safeguarding of Industries*).

key industry duty: 11-2 G. 6, c. 49, s. 8 (2).

s. 1, extended by 9 & 10 G. 6, c. 64, s. 1: extended *ib.*, s. 8 (1).

c. 48 (*Corn Production Acts (Repeal)*).

Sch., para. (6), order made: § 95.

c. 55 (*Railways*).

s. 35, order made: § 3069.

Sch. 3, construed: § 2004.

12 & 13 Geo. 5 (1922).

c. 11 (*Juries*).

jurors books: 11-2 G. 6, c. 65, Sch. 10, II, para. 7 (2).

c. 12 (*Representation of the People*).

repealed: 11-2 G. 6, c. 65, Sch. 13.

c. 17 (*Finance*).

s. 14 (1), construed: § 3317.

s. 14 (2), construed: §§ 53, 3317.

s. 21, apportioned income: 11-2 G. 6, c. 49, s. 59 (1).

s. 21, article: § 1694.

s. 21, construed: §§ 1687, 1688.

c. 41 (*Representation of the People (No. 2)*).

repealed: 11-2 G. 6, c. 65, Sch. 13.

c. 44 (*British Nationality and Status of Aliens*).

effect of 11-2 G. 6, c. 56: § 118.

repealed: 11-2 G. 6, c. 56, Sch. 4, II.

c. 46 (*Electricity (Supply)*).

books published: § 1122.

orders made: §§ 1098, 1121.

c. 60 (*Lunacy*).

ss. 1, 2, children: § 1705.

mental health services: §§ 2122, 2123.

13 Geo. 5, sess. 2 (1922 *cont.*).c. 5 (*Importation of Animals*).

orders made: §§ 144, 146, 147, 148.

13 & 14 Geo. 5 (1923).

c. 4 (*Fees (Increase)*).

effect of 11-2 G. 5, c. 44: § 3483.

c. 8 (*Industrial Assurance*).

offence: 11-2 G. 6, c. 39, s. 16 (2) (3).

definition applied: 11-2 G. 6, c. 49, s. 72 (5).

s. 3, amended: 11-2 G. 6, c. 39, ss. 1 (b), 2, 4, Sch. 2.

s. 3, definition of "relevant insurance": *ib.*, s. 2 (5).

s. 4 (2), part repealed: *ib.*, s. 6 (2), Sch. 6, II.

s. 8 (3), extended: *ib.*, s. 11 (1), (3).

s. 9, repealed: *ib.*, s. 10 (4), Sch. 6, II.

s. 16, applicable to returns: *ib.*, s. 13 (3).

s. 20 (1), amended: *ib.*, ss. 1, 2, 4, Sch. 2.

s. 20 (4), excluded: *ib.*, s. 9 (2).

s. 20 (4), premium receipt books: *ib.*, s. 12, Sch. 3.

s. 21, repealed: *ib.*, s. 12 (1), Sch. 6, II.

s. 22, premium receipt books, *ib.*, s. 12, Sch. 3.

s. 23, premium receipt books, *ib.*, s. 12, Sch. 3.

s. 24, premium receipt books: *ib.*, s. 12, Sch. 3.

s. 27, premium receipt books, *ib.*, s. 12, Sch. 3.

s. 28, repealed: *ib.*, s. 22, Sch. 6, II.

s. 32, premium receipt books: *ib.*, s. 12, Sch. 3.

s. 32 (1), part repealed: *ib.*, s. 21, Sch. 6, II.

s. 39 (5), offences: *ib.*, s. 16 (5), proviso.

s. 41, premium receipt books: *ib.*, s. 12, Sch. 3.

Sch. 1, part repealed: *ib.*, Sch. 6, II.

Sch. 1, extended: *ib.*, s. 11 (1) (2).

Sch. 3, repealed: *ib.*, s. 12 (1), Sch. 6, II.

c. 9 (*Agricultural Holdings*).

effect of 11-2 G. 6, c. 63: § 31.

explanatory booklet: § 40.

repealed: 11-2 G. 6, c. 63, Sch. 8.

s. 3 (3), improvements carried out by landlord: 11-2 G. 6, c. 63, s. 9 (1) (b), (2).

s. 49 (1), directions saved: *ib.*, s. 100 (3).

c. 13 (*Rent Restrictions (Notices of Increase)*).

excluded: 11-2 G. 6, c. 63, Sch. 7.

c. 16 (*Salmon and Freshwater Fisheries*).

costs: § 2132.

ss. 8 (1), 76, construed: § 2144.

s. 38 (1) (4), amended: 11-2 G. 6, c. 32, Sch. 3, para. 8.

s. 39, amended: *ib.*, Sch. 3, para. 8.

s. 43, amended: *ib.*, Sch. 3, para. 10.

s. 44, definition applied: *ib.*, s. 36 (1).

s. 44, amended: *ib.*, Sch. 3, para. 9.

13 & 14 Geo. 5 (1923)—*cont.*c. 16 (*Salmon and Freshwater Fisheries*)—*cont.*

- ss. 45–53, amended: *ib.*, Sch. 3, para. 10.
- s. 54 (1) (a), (2), amended: *ib.*, Sch. 3, para. 10.
- s. 55, extension of river board areas: *ib.*, s. 5 (1).
- s. 55 (1) amended: *ib.*, Sch. 3, para. 10.
- ss. 56–58, amended: *ib.*, Sch. 3, para. 10.
- s. 59 (1) (p), byelaws: *ib.*, s. 34 (2).
- s. 60, amended: *ib.*, Sch. 3, para. 10.
- s. 64 (1), amended: *ib.*, Sch. 3, para. 11.
- s. 65 (2), amended: *ib.*, Sch. 3, para. 10.
- s. 66, amended: *ib.*, Sch. 3, para. 10.
- s. 67 (4), amended: *ib.*, Sch. 3, para. 11.
- s. 68, amended: *ib.*, Sch. 3, para. 10.
- s. 81, amended: *ib.*, Sch. 3, para. 12.
- s. 84, repealed: *ib.*, s. 37 (4).
- s. 85, part repealed: *ib.*, s. 37 (4).
- s. 88, amended: *ib.*, Sch. 3, para. 10.
- Sch. 2, amended: *ib.*, Sch. 3, para. 8.
- Sch. 3, amended: *ib.*, Sch. 3, para. 10.
- Sch. 4, repealed: *ib.*, s. 37 (4).

c. 18 (*War Memorials (Local Authorities' Powers)*).

- s. 1, amended: 11–2 G. 6, c. 26, s. 133 (1), (2).

- s. 1, effect of 11–2 G. 6, c. 26: § 2051.

c. 20 (*Mines (Working Facilities and Support)*).

- s. 15, excluded: 11–2 G. 6, c. 17, s. 15 (3).

construed: § 2233.

modified by regs.: § 3660.

c. 23 (*Bastardy*).

- s. 3, repealed: 11–2 G. 6, c. 29, Sch. 7, III.

c. 25 (*Agriculture (Amendment)*).

- repealed: 11–2 G. 6, c. 63, Sch. 8.

c. 32 (*Rent and Mortgage Interest Restrictions*).

- excluded: 11–2 G. 6, c. 63, Sch. 7.

articles: §§ 1979, 3251.

furnished houses: §§ 3176, 3179, 3186.

small tenements recovery: § 1966.

s. 1 (1), construed: § 3223.

s. 10 (1), construed: §§ 3149, 3185,

3186, 3187, 3189, 3191, 3192, 3193.

14 & 15 Geo. 5 (1924).

c. 11 (*Friendly Societies*).

- s. 2 (1) superseded: 11–2 G. 6, c. 39, s. 6 (2).

c. 18 (*Prevention of Eviction*).

articles: §§ 1979, 3251.

furnished houses: §§ 3176, 3179, 3186.

small tenements recovery: § 1966.

c. 21 (*Finance*).

- s. 10, repealed: 11–2 G. 6, c. 49, Sch. 11, I.

s. 18, motor licence: 11–2 G. 6, c. 34,

s. 5 (3) (c); c. 49, s. 18 (3).

14 & 15 Geo. 5 (1924)—*cont.*c. 34 (*London Traffic*).

- s. 10, orders made: §§ 2106, 2107, 2108.

c. 37 (*Agricultural Wages (Regulation)*).

effect of: 11–2 G. 6, c. 47; § 56.

repealed: 11–2 G. 6, c. 47, Sch. 5.

s. 7 (1) (10), construed: § 55.

s. 8 (1) (a), construed: § 57.

15 & 16 Geo. 5 (1925).

c. 18 (*Settled Land*).

recovery of special contribution: 11–2

G. 6, c. 49, s. 56 (3) (6).

definition applied: *ib.*, s. 68 (1).

re-investment in realty: § 3423.

supervision orders: § 112.

s. 47, construed: § 509.

s. 106, construed: § 3874.

Sch. 3, I, capital money for improve-

ments: 11–2 G. 6, c. 63, s. 81 (1).

c. 19 (*Trustee*).

- s. 2 (1), proviso, excluded: 11–2 G. 6, No. 1.

s. 27, form of advertisements: § 1368.

s. 33 (1) (2), construed: § 3914.

s. 36 (1) (b), construed: § 3420.

s. 44 (ii) (c), construed: § 497.

s. 51, construed: § 2613.

c. 20 (*Law of Property*).

- s. 6 (2), construed: § 1912.

s. 7 (3) (a), repealed: 11–2 G. 6, c. 58,

Sch. 10, I (as from April 18, 1949:

SI 1949, No. 139).

s. 28, article: § 3432.

s. 28 (1), construed: § 3423.

s. 36 (1) (2), construed: § 3418.

s. 40, construed: §§ 1345, 3372.

s. 50 (1) (b) (2), construed: § 2244.

s. 53, construed: §§ 497, 3404.

s. 54, construed: § 3404.

s. 78 (1), construed: § 1880.

s. 99 (13), amended: 11–2 G. 6, c. 63,

Sch. 7, para. 2 (1).

s. 100, construed: § 1969.

s. 104, construed: § 2247.

s. 104 (2) (c), article: § 3826.

ss. 105, 107, 116, construed: § 2247.

s. 140 (2), proviso repealed: 11–2 G.

6, c. 63, Sch. 8.

s. 140 (2) proviso, rules, etc., saved:

ib., s. 100 (1).

s. 142 (1), construed: § 1912.

s. 146, consent to assignment: § 1896.

s. 146, construed: § 1906.

s. 146 (1), construed: § 1904.

s. 149 (6), applied: 11–2 G. 6, c. 63,

s. 3 (3).

s. 164, construed: § 509.

s. 167, saved: 11–2 G. 6, c. 63, s.

85 (b).

s. 181, construed: § 496.

s. 203 (1), construed: § 2244.

c. 21 (*Land Registration*).

book published: § 1890a.

s. 145, order made: § 1886.

c. 22 (*Land Charges*).

definition applied: 11–2 G. 6, c. 17,

s. 14 (3).

rules made: § 1877.

15 & 16 Geo. 5 (1925)—*cont.*

- c. 22 (*Land Charges*)—*cont.*
 - s. 10, applied: 11–2 G. 6, c. 67, s. 21 (4).
 - s. 10 (1) A (iii), substituted: 11–2 G. 6, c. 63, Sch. 7, para. 3.
 - ss. 10 (1) C (iv), 13 (2), construed: § 1875.
 - s. 15, rules made: §§ 1874, 1877.
 - s. 15 (6), applied: 11–2 G. 6, c. 17, s. 14 (4).
- c. 23 (*Administration of Estates*).
 - s. 7, article: § 1405.
 - s. 7, previous law: § 1378.
 - s. 9, notice to quit: §§ 2001, 3219.
- c. 24 (*Universities and College Estates*).
 - s. 26 (5), capital moneys for improvements: 11–2 G. 6, c. 63, s. 81 (2).
- c. 27 (*Charitable Trusts*).
 - variation of scheme: § 417.
- c. 32 (*Rent and Mortgage Interest (Restrictions Continuation)*).
 - articles: §§ 1979, 3251.
 - furnished houses: §§ 3176, 3179, 3186.
 - small tenements recovery: § 1966.
- c. 36 (*Finance*).
 - s. 15 (1) (2), amended: 11–2 G. 6, c. 49, s. 27 (2).
- c. 37 (*Merchant Shipping (Equivalent Provisions)*).
 - effect of 11–2 G. 5, c. 44: § 3483.
- c. 42 (*Merchant Shipping (International Labour Conventions)*).
 - effect of: 11–2 G. 6, c. 44: § 3483.
- c. 45 (*Guardianship of Infants*).
 - construed: §§ 913, 914, 1711.
 - s. 1, construed: § 1712.
 - s. 4 (2A), added: 11–2 G. 6, c. 43, s. 50: § 1705.
 - s. 7 (4), repealed: 11–2 G. 6, c. 43, Sch. 4, I.
- c. 49 (*Supreme Court of Judicature (Consolidation)*).
 - s. 22, construed: § 3437.
 - s. 25, bail on appeal: 11–2 G. 6, c. 58, s. 37 (1) (b).
 - s. 27, construed: § 878.
 - s. 27 (1), construed: § 873.
 - s. 31, construed: § 920.
 - s. 31 (1) (e), construed: § 921.
 - s. 31, (1) (h), construed: § 1008.
 - ss. 38–40, construed: § 2855.
 - s. 41, construed: §§ 2855, 2903.
 - s. 50, construed: § 899.
 - s. 68 (3), amended: 11–2 G. 6, c. 20, s. 1: § 2803.
 - s. 68 (5), new practice: § 2800.
 - s. 99, additional powers: 11–2 G. 6, c. 58, s. 37 (4).
 - s. 155 (1), construed: § 1366.
 - s. 176 (d), construed: § 964.
 - s. 178 (1), construed: § 951.
 - s. 178 (2) (d), construed: § 964.
 - s. 184 (1), construed: § 920.
 - s. 186, construed: § 1018.
 - s. 188, part repealed: 11–2 G. 6, c. 56, Sch. 4, I.
 - s. 189 (1), construed: § 919.
 - s. 190 (1), construed: § 976.

15 & 16 Geo. 5 (1925)—*cont.*

- c. 49 (*Supreme Court of Judicature (Consolidation)*)—*cont.*
 - s. 190 (3), construed: § 873.
 - s. 192, construed: §§ 1021, 1022, 1023.
 - s. 198, construed: §§ 865, 960.
- c. 51 (*Summary Jurisdiction (Separation and Maintenance)*).
 - construed: §§ 913, 952.
 - ss. 1 (4), 2 (2), construed: § 978.
 - s. 6, construed: § 1020.
- c. 53 (*Mental Deficiency (Amendment)*).
 - children: § 1705.
 - mental health services: § 2122.
 - national health service regulations: § 2118.
- c. 59 (*Teachers (Superannuation)*).
 - Part II (ss. 2–19), war service: 11–2 G. 6, c. 33, s. 12 (2).
 - s. 3 (1), amended: *ib.*, s. 8 (1).
 - s. 13, approved external service: *ib.*, s. 11 (1).
 - s. 14, period of war service: *ib.*, s. 12 (2).
 - s. 17, persons serving otherwise than as teachers: *ib.*, s. 12 (1).
 - s. 17, rules made: § 1076.
 - s. 21 (1), amended: 11–2 G. 6, c. 33, s. 9 (2).
 - s. 21 (1) (a), scheme made: § 1077.
 - s. 21 (1) (a), scheme modified: § 2426.
 - s. 21 (1) (b), schemes made: §§ 1080, 1081, 1082.
- c. 60 (*Therapeutic Substances*).
 - ss. 1, 5, regs. made: § 2209.
- c. 71 (*Public Health*).
 - book published: § 2988.
 - s. 56 (1)–(4), repealed: 11–2 G. 6, c. 26, s. 132 (8), Sch. 2, V.
 - s. 70, amended: *ib.*, s. 132 (9).
 - s. 70 (1) proviso, *ib.*, s. 132 (8), Sch. 2, V.
- c. 74 (*Dangerous Drugs*).
 - s. 1, regs. made: § 2180.
- c. 84 (*Workmen's Compensation*).
 - alternative remedies: § 2847.
 - repeal: § 3953.
 - s. 1 (1), construed: §§ 3954, 3956.
 - s. 9 (1) (b), construed: § 3987.
 - s. 9 (3), construed: §§ 3981, 3986.
 - s. 9 (3) (i), construed: § 3979.
 - s. 10 (1), construed: § 3960.
 - s. 13, construed: § 3962.
 - ss. 23, 25, construed: § 3962.
 - s. 30 (1), construed: § 3957.
 - s. 43 (1), construed: § 3986.
 - Sch. 1, para. 4, construed: § 3976.
- c. 86 (*Criminal Justice*).
 - s. 1, repealed: 11–2 G. 6, c. 58, Sch. 10, I (*prosp.*).
 - s. 1 (3), probation officers: 11–2 G. 6, c. 33, s. 13.
 - s. 2, repealed: 11–2 G. 6, c. 58, Sch. 10, I (*prosp.*).
 - s. 2 (1), orders continued: *ib.*, Sch. 8, para. 7.
 - s. 2 (6), orders continued: *ib.*, Sch. 8, para. 7.

15 & 16 Geo. 5 (1925)—*cont.*

c. 86 (*Criminal Justice*)—*cont.*

- ss. 3-8, repealed: *ib.*, Sch. 10, I (*prosp.*).
- s. 8, rules continued: *ib.*, Sch. 8, para. 7.
- ss. 9, 10, repealed: *ib.*, Sch. 10, I (*prosp.*).
- s. 12 (5), amended: *ib.*, Sch. 9 (as from September 13, 1948: SI 1948, No. 1840).
- s. 12 (5), part repealed: *ib.*, Sch. 10, I (*prosp.*).
- s. 20, bail on appeal: *ib.*, s. 37 (1) (b).
- s. 24, indictable offences tried summarily: *ib.*, s. 29 (1).
- s. 24 (1), part repealed: *ib.*, Sch. 10, I (as from December 27, 1948: SI 1948, No. 2349).
- s. 24 (2), amended: *ib.*, Sch. 9 (as from December 27, 1948: SI 1948, No. 2349).
- s. 25, construed: § 2129.
- s. 25, repealed: 11-2 G. 6, c. 58, Sch. 10, I (as from December 27, 1948: SI 1948, No. 2349).
- s. 46, repealed: *ib.*, Sch. 10, I (as from April 18, 1949: SI 1948, No. 2349).
- Sch. 2, para. 11, amended: *ib.*, Sch. 9 (as from December 27, 1948, SI 1948, No. 2349).

c. 90 (*Rating and Valuation*).

- s. 1 (4), repealed: 11-2 G. 6, c. 26, Sch. 1, 2, II.
- s. 2 (1)-(3), construed: § 3096.
- s. 5, repealed: 11-2 G. 6, c. 26, Sch. 2, II.
- s. 6, extended: *ib.*, s. 54 (2).
- s. 9, rules made: §§ 3083, 3084.
- s. 9 (2)-(4), modified and extended: 11-2 G. 6, c. 26, s. 120 (2) (a).
- s. 9 (2)-(4), effect of, 11-2 G. 6, c. 26: § 2051.
- s. 9 (2) (4), extended; § 3077.
- s. 9 (2) (4) (5), applied with modifications: 11-2 G. 6, c. 26, s. 121 (4).
- s. 9 (4), rules made: § 3085.
- s. 11 (1), amended: 11-2 G. 6, c. 26, s. 55 (1): § 3077.
- s. 11 (8), part repealed: *ib.*, Sch. 2, II.
- s. 11, applied: *ib.*, s. 66 (1).
- s. 14, repealed: *ib.*, Sch. 2, II.
- s. 15, extended: *ib.*, s. 54 (2).
- ss. 16-19, repealed: *ib.*, Sch. 2, II.
- s. 23, repealed: *ib.*, s. 57 (2), Sch. 2, II.
- s. 23 (1), construed: § 3090.
- s. 24 (1) (2) (7), amended: 11-2 G. 6, c. 26, Sch. 1.
- ss. 25-47, repealed: *ib.*, Sch. 2, II.
- s. 37, construed: § 3105.
- s. 37 (2), construed: §§ 3104, 3106.
- s. 37 (2) (b), construed: § 3107.
- s. 53 (1)-(3), repealed: 11-2 G. 6, c. 26, Sch. 2, II.
- s. 54 (1), part repealed: *ib.*, Sch. 2, II.

15 & 16 Geo. 5 (1925)—*cont.*

c. 90 (*Rating and Valuation*)—*cont.*

- s. 55 (1), part repealed: *ib.*, Sch. 2, II.
- s. 58, rules made: §§ 3074, 3075, 3081, 3082, 3083, 3084, 3085.
- s. 57, repealed: 11-2 G. 6, c. 26, Sch. 2, II.
- s. 59, extended: *ib.*, s. 63 (1).
- s. 60, extended: *ib.*, s. 61 (2) (a).
- s. 60, applied: *ib.*, s. 61 (2) (b) (c).
- ss. 64 (1) (2), 69 (2), construed: § 3096.
- s. 64 (3), extended: *ib.*, s. 65.
- s. 64 (4), repealed: *ib.*, Sch. 2, II.
- s. 64 (6), repealed: *ib.*, Sch. 2, IV.
- s. 68, amended: *ib.*, s. 74 (1).
- Sch. 2, I, amended: *ib.*, s. 83 (2).
- Schs. 1, 4, 5, repealed: *ib.*, Sch. 2, II.
- c. 91 (*Mines (Working Facilities and Support)*).
- construed: § 2233.
- 16 & 17 Geo. 5 (1926).
- c. 9 (*Economy (Miscellaneous Provisions)*).
- Pt. III (ss. 9-11), repealed: 11-2 G. 6, c. 65, Sch. 13.
- Pt. V extended: 11-2 G. 6, c. 38, s. 210 (5).
- s. 13 (3), amended: 11-2 G. 6, c. 38, s. 170 (5).
- s. 14, fixing of fees: *ib.*, s. 365 (3).
- Sch. 3, repealed: 11-2 G. 6, c. 65, Sch. 13.
- c. 11 (*Law of Property (Amendment)*).
- s. 2, repealed: 11-2 G. 6, c. 63, Sch. 8.
- s. 2, rules, etc., saved: *ib.*, s. 100 (1).
- s. 4, applied: 11-2 G. 6, c. 17, s. 14 (3).
- c. 13 (*Criminal Justice (Amendment)*).
- repealed: 11-2 G. 6, c. 58, Sch. 10, I (*prosp.*).
- c. 22 (*Finance*).
- s. 7 (1), amended: 11-2 G. 6, c. 49, s. 7.
- s. 10 (5), orders made: § 802.
- s. 30, proviso (ii), construed: § 1676.
- s. 33, carrying forward of losses: 11-2 G. 6, c. 49, s. 32 (2).
- Sch. 2, amended: *ib.*, s. 37.
- c. 29 (*Adoption of Children*).
- article: § 1723.
- member of family: §§ 3220, 3221.
- national insurance: § 2418.
- s. 1 (3), construed: § 1702.
- s. 5 (5), applied: 11-2 G. 6, c. 39, s. 23 (3).
- s. 8 (3), construed: § 1701.
- c. 32 (*Midwives*).
- rules amended: § 2196.
- c. 34 (*Police Pensions*).
- repealed with savings: 11-2 G. 6, c. 34, Sch. 1, I (12).
- c. 40 (*Indian and Colonial Divorce Jurisdiction*).
- order made: § 353.
- s. 1 (4), rules made: § 326.
- c. 43 (*Public Health (Smoke Abatement)*).
- book published: § 2988.

16 & 17 Geo. 5 (1926)—*cont.*

- c. 51 (*Electricity (Supply)*).
books published: § 1122.
orders made: §§ 1098, 1121.
 - c. 58 (*Penal Servitude*).
repealed: 11-2 G. 6, c. 58, Sch. 10, I
(as from April 18, 1949: SI 1949,
No. 139).
 - c. 60 (*Legitimacy*).
s. 2, part repealed: 11-2 G. 6, c. 56,
Sch. 4, II.
 - c. 62 (*Palestine and East Africa Loans*).
title, part repealed: 11-2 G. 6, c. 27,
s. 3 (1), Sch. 1.
s. 1 (1) (2), part repealed: *ib.*, s. 3
(1), Sch. 1.
s. 2, part repealed: *ib.*, s. 3 (1),
Sch. 1.
Sch. 1, repealed: *ib.*, s. 3 (1), Sch. 1.
 - c. 63 (*Sale of Food (Weights and Measures)*).
s. 13 (3), construed: § 3860.
 - No. 6 (*Clergy Pensions Measure*).
effect of 11-2 G. 6, No. 1: § 1040.
repealed: 11-2 G. 6, No. 1, Sch. 8.
- 17 & 18 Geo. 5 (1927).
- c. 10 (*Finance*).
s. 6, amended: 11-2 G. 6, c. 49, s. 5
(1).
s. 24 construed: § 1645.
s. 26 (1), construed: § 1682.
s. 29, carrying forward of losses: 11-2
G. 6, c. 49, s. 32 (2).
s. 32, construed: § 1688.
s. 36 (1), applied: 11-2 G. 6, c. 49,
s. 61 (2).
s. 40 (1), relief for life insurance
premiums: *ib.*, s. 29 (4).
s. 40 (2), amended: *ib.*, s. 28.
s. 42 (9), separate assessment of hus-
band and wife: *ib.*, s. 58 (5) (b).
s. 55, applied with modifications: *ib.*,
s. 73.
 - c. 13 (*Diseases of Animals*).
orders made: §§ 144, 146, 147, 148.
 - c. 21 (*Moneylenders*).
company licensed under: 11-2 G. 6,
c. 38, s. 201 (2) (c).
 - c. 23 (*Crown Lands*).
s. 15, applied: 11-2 G. 6, c. 63,
s. 87 (3).
 - c. 29 (*Cinematograph Films*).
repealed: 11-2 G. 6, c. 23, Sch. 1, II.
 - c. 32 (*Destructive Insects and Pests*).
order made: § 80.
 - c. 33 (*Mental Deficiency*).
children: § 1705.
mental health services: § 2122.
national health service regulations:
§ 2118.
s. 5 (a) (b), amended: 11-2 G. 6,
c. 58, Sch. 9 (as from April 18,
1949: SI 1949, No. 139).
 - c. 36 (*Landlord and Tenant*).
articles: §§ 1979, 3251.
construed: § 1923.
s. 1, construed: § 1920.
s. 4, construed: §§ 1920, 1927.
s. 4 (1), construed: § 1921.
s. 5, construed: § 1920.
s. 5 (1), construed: § 1927.

17 & 18 Geo. 5 (1927)—*cont.*

- c. 36 (*Landlord and Tenant*)—*cont.*
s. 5 (3), construed: § 1925.
s. 5 (3) (b), construed: § 1926.
s. 8 (1), construed: § 1927.
s. 18 (1), construed: § 1914.
s. 19 (1) (b), costs: § 3513.
 - c. 37 (*Road Transport Lighting*).
regs. made: § 3333.
 - c. 41 (*Superannuation and other Trust
Funds (Validation)*).
s. 8, regs. made: § 2619.
 - c. xxii (*London County Council (General
Powers)*).
s. 30, construed: § 2100.
 - No. 2 (*Clergy Pensions (Amendment
Measure)*).
effect of: 11-2 G. 6, No. 1: § 1040.
repealed: 11-2 G. 6, No. 1, Sch. 8.
- 18 & 19 Geo. 5 (1928).
- c. 4 (*Industrial and Provident Societies
(Amendment)*).
expulsion: § 1698.
 - c. 8 (*Rating and Valuation*).
s. 2 (1)-(3), applied: 11-2 G. 6, c. 26,
s. 83 (1) (*prosp.*).
s. 3 (1), repealed: 11-2 G. 6, c. 26,
s. 122, Sch. 2, V.
s. 4, repealed: 11-2 G. 6, c. 26, Sch. 2,
II (*prosp.*).
 - c. 12 (*Representation of the People (Equal
Franchise)*).
repealed: 11-2 G. 6, c. 65, Sch. 13.
 - c. 17 (*Finance*).
s. 2 (3), definition applied: 11-2 G. 6,
c. 49, s. 18 (4).
s. 3, regs. made: § 791.
s. 32 (2), part repealed: 11-2 G. 6,
c. 27, s. 3 (1), Sch. 1.
Sch. 4, amended: 11-2 G. 6, c. 49,
s. 37.
 - c. 19 (*Agricultural Produce (Grading and
Marking)*).
s. 1 (1), regs. made: § 86.
 - c. 25 (*Representation of the People (Reading
University)*).
repealed: 11-2 G. 6, c. 65, Sch. 13.
 - c. 31 (*Food and Drugs (Adulteration)*).
s. 2 (1), construed: §§ 1473, 1474.
s. 15, definition applied: 11-2 G. 6,
c. 34, s. 13 (1).
s. 18 (1), construed: § 1473.
 - c. 32 (*Petroleum (Consolidation)*).
s. 6, applied: §§ 2691, 2704.
s. 6, regs. made: § 2691.
s. 19, order made: § 2704.
 - c. 33 (*Shops (Hours of Closing)*).
book published: § 1432.
 - c. 40 (*Merchant Shipping (Line-Throwing
Appliances)*).
effect of: 11-2 G. 6, c. 44: § 3483.
 - c. 44 (*Rating and Valuation (Apportion-
ment)*).
valuation list: 11-2 G. 6, c. 26, s. 35
(3).
s. 1 (2), repealed: *ib.*, Sch. 2, II
(*prosp.*).
s. 2 (2), construed: § 3087.
s. 7 (2), definition repealed: *ib.*,
Sch. 2, II (*prosp.*).

18 & 19 Geo. 5 (1928)—*cont.*

c. 44 (*Rating and Valuation (Apportionment)*)—*cont.*

s. 7, explained: *ib.*, s. 123.

Sch. 2, ss. 29, 30, 38–44, repealed:

ib., Sch. 2, II (*prosp.*).

No. 3 (*Clergy Pensions (Amendment Measure)*).

effect of: 11–2 G. 6, No. 1: § 1040.

repealed: 11–2 G. 6, No. 1, Sch. 8.

19 & 20 Geo. 5 (1928 *cont.*).

c. 4 (*Electricity (Supply)*).

books published: § 1122.

orders made: §§ 1098, 1121.

19 & 20 Geo. 5 *cont.* (1929).

c. 17 (*Local Government*).

ss. 1–14, repealed: 11–2 G. 6, c. 29, Sch. 7, III.

s. 15, repealed: 11–2 G. 6, c. 26, Sch. 2, II (*prosp.*).

ss. 16, 17, repealed: 11–2 G. 6, c. 29, Sch. 7, III.

s. 18 (*f*) (*h*), repealed: 11–2 G. 6, c. 26, Sch. 2, II.

s. 18 (*a*)–(*e*) (*g*), proviso (*i*)–(*iii*), repealed: 11–2 G. 6, c. 29, Sch. 7, III.

ss. 19, 20, repealed: *ib.*, Sch. 7, III.

s. 70, repealed: *ib.*, Sch. 2, II.

s. 72, saved: *ib.*, s. 75 (1).

s. 72, applied: 11–2 G. 6, c. 26, s. 82 (7).

s. 80, annual value: 11–2 G. 6, c. 65, s. 22 (3) (*c*).

ss. 86–92, repealed: 11–2 G. 6, c. 26, Sch. 2, I.

s. 92 (2), regs. made: § 2078.

s. 93, applied: 11–2 G. 6, c. 26, s. 12 (1) (*a*).

ss. 94–100, repealed: *ib.*, Sch. 2, I.

s. 100, excluded: *ib.*, s. 10 (5).

ss. 101, 102, applied: 11–2 G. 6, c. 26, s. 12 (1) (*b*).

s. 102, repealed: 11–2 G. 6, c. 29, s. 30 (3).

ss. 103, 104, repealed: 11–2 G. 6, c. 26, Sch. 2, I.

s. 105, part repealed: *ib.*, Sch. 2, I.

ss. 106–112, repealed: *ib.*, Sch. 2, I.

s. 131 (2), proviso (*a*), repealed: *ib.*, Sch. 2, I.

s. 135, repealed: *ib.*, Sch. 2, I.

Sch. 3, extended: 11–2 G. 6, c. 35, s. 1 (4).

Schs. 4, 5, repealed: 11–2 G. 6, c. 26, Sch. 2, I.

Sch. 10, para. 5, repealed: 11–2 G. 6, c. 26, Sch. 2, IV.

Sch. 10, para. 17, repealed: 11–2 G. 6, c. 63, Sch. 8.

Sch. 11, para. 17 (2), repealed: 11–2 G. 6, c. 26, Sch. 2, III.

Sch. 11, amended: *ib.*, s. 104.

c. 23 (*Companies*).

application to High Court: § 445.

books published: § 501.

companies formed and registered: 11–2 G. 6, c. 38, s. 377.

companies registered but not formed: *ib.*, ss. 378, 382 (1), proviso (*i*).

19 & 20 Geo. 5 *cont.* (1929)—*cont.*

c. 23 (*Companies*)—*cont.*

repealed: 11–2 G. 6, c. 38, Sch. 17, 1, § 463.

subsidiary companies: *ib.*, s. 457.

unlimited companies re-registered: *ib.* s. 379.

unregistered company: *ib.*, s. 398 (*b*). s. 5, construed: § 479.

s. 5 (2)–(7), applied: 11–2 G. 6, c. 38, s. 5 (10).

s. 54, applied: *ib.*, s. 459 (3).

s. 55 (1), construed: § 453.

s. 56 (2), construed: § 451.

s. 63, construed: § 482.

s. 79 (2) (*d*), registration of charges on land: 11–2 G. 6, c. 38, s. 458 (1).

s. 85, extension of time: § 459.

s. 137, saved: 11–2 G. 6, c. 38, s. 459 (6).

s. 173, construed: § 495.

s. 217, saved: 11–2 G. 6, c. 38, s. 459 (7).

s. 234, construed: § 479.

s. 261, construed: § 499.

s. 274 (1), amended: 11–2 G. 6, c. 38, s. 458 (2).

s. 275 (4), saved: *ib.*, s. 459 (7).

s. 277, saved: 11–2 G. 6, c. 38, s. 459 (8).

s. 296, construed: § 496.

s. 344 (1) (2), overseas companies: 11–2 G. 6, c. 38, ss. 407 (3) (*a*), 408 (*b*).

s. 379, regs. made: §§ 447, 448.

Sch. 1, Table A, amendment: § 447.

Sch. 1, Table A, articles: § 500.

Sch. 1, Table A, definition applied: 11–2 G. 6, c. 38, s. 455 (1).

Sch. 1, Table A, saved: *ib.*, s. 459 (14) (*e*).

Sch. 1, Table A, Pt. II, cl. 5, articles: § 500.

Sch. 1, Table C, amendment: § 447.

Sch. 1, Tables D, E, amended by regs.: § 448.

Sch. 1, Table E, amendment: § 447.

c. 24 (*Gas Undertakings*).

repealed: 11–2 G. 6, c. 67, Sch. 4.

s. 1, orders made: § 1533.

s. 5, order made: § 1547.

c. 26 (*Agricultural Rates*).

s. 1 (*i*), construed: § 3087.

c. 27 (*Savings Banks*).

s. 17, part repealed: 11–2 G. 6, c. 39, s. 19 (4) (*b*), Sch. 6, I (*prosp.*).

c. 28 (*Industrial Assurance and Friendly Societies*).

s. 1, amended: 11–2 G. 6, c. 39, s. 1 (*c*).

s. 1, definition of "relevant insurance": *ib.*, s. 2 (5).

s. 1 (1), amended: *ib.*, ss. 1, 2, 4, Sch. 2.

s. 3 (3) (4), part repealed: *ib.*, s. 12 (1), Sch. 6, II.

c. 29 (*Government Annuities*).

s. 39 (2), amended: 11–2 G. 6, c. 39, s. 6 (3).

s. 52 (2) (*g*), part repealed: *ib.*, Sch. 6, II.

- 19 & 20 Geo. 5 *cont.* (1929)—*cont.*
 c. 29 (*Government Annuities*)—*cont.*
 s. 52 (2) (h), repealed: *ib.*, s. 6 (3), Sch. 6, II.
- 20 & 21 Geo. 5 (1929 *cont.*).
 c. 5 (*Colonial Development*).
 s. 3, order made: § 357.
- 20 & 21 Geo. 5 *cont.* (1930).
 c. 17 (*Poor Law*).
 repealed: 11-2 G. 6, c. 29, Sch. 7, I.
 s. 19, transitional provisions: 11-2 G. 6, c. 43, Sch. 2, para. 6 (1).
 s. 52, transitional provision: *ib.*, Sch. 2, para. 2.
- c. 23 (*Mental Treatment*).
 children: § 1705.
 mental health services: §§ 2122, 2123.
 Sch. 1, forms amended: § 2123.
- c. 24 (*Railways (Valuation for Rating)*).
 effect of 11-2 G. 6, c. 26: §§ 2051, 3761.
 ss. 1-21, repealed: 11-2 G. 6, c. 26, Sch. 2, III.
 s. 22 (1)-(3) (4), proviso (6) (8), repealed: *ib.*, Sch. 2, III.
 s. 22 (9), part repealed: *ib.*, Sch. 2, III.
 s. 23, repealed: *ib.*, Sch. 2, III.
 s. 24, part repealed: *ib.*, Sch. 2, III.
 Sch. 1-4, repealed: *ib.*, Sch. 2, III.
- c. 28 (*Finance*).
 s. 14, part repealed: 11-2 G. 6, c. 49, Sch. 11, II.
 s. 32, repealed: 11-2 G. 6, c. 26, Sch. 2, II (*prosp.*).
 s. 40, construed: § 843.
- c. 32 (*Poor Prisoners Defence*).
 applied: 11-2 G. 6, c. 58, s. 29 (3) (b).
 s. 1 (2), amended: 11-2 G. 6, c. 58, s. 20 (5) (b).
 s. 3 (2), amended: *ib.*, s. 20 (5) (b).
- c. 43 (*Road Traffic*).
 article: § 3362.
 excluded: § 2695.
 s. 3, orders made: §§ 3321, 3327.
 s. 7 (4), construed: § 3306.
 s. 11, construed: § 749.
 s. 15 (1), construed: § 3300.
 s. 22 (2), construed: § 3297.
 s. 26, construed: § 3317.
 s. 30, regs. made: §§ 3305, 3308, 3322.
 s. 35, construed: § 3301.
 s. 35 (1) (2), construed: §§ 3303, 3312.
 s. 72, effect of, 10-1 G. 6, c. 49: § 3345.
 s. 72 (1), construed: § 3345.
 ss. 73-76, effect of, 10-1 G. 6, c. 49: § 3345.
 s. 93, award: § 1250.
 s. 94, regs. made: § 3332.
 s. 121 (1), construed: § 3349.
- c. 44 (*Land Drainage*).
 modified: *ib.*, Sch. 3, para. 1.
 definition applied: 11-2 G. 6, c. 32, s. 36 (1).
 s. 1 (except sub-s. (3)), amended: *ib.*, Sch. 3, para. 2.
 s. 2 (1)-(3), amended: *ib.*, Sch. 3, para. 2.
 s. 3, amended: *ib.*, Sch. 3, para. 2.
- 20 & 21 Geo. 5 *cont.* (1930)—*cont.*
 c. 44 (*Land Drainage*)—*cont.*
 s. 4, amended: *ib.*, Sch. 3, para. 3.
 ss. 5, 12, 15, 20, 22, amended: *ib.*, Sch. 3, para. 2.
 s. 23, amended: *ib.*, Sch. 3, para. 4.
 s. 34 (1), construed: § 1880.
 ss. 43, 45, 46, amended: 11-2 G. 6, c. 32, Sch. 3, para. 2.
 s. 47 (2)-(7), amended: *ib.*, Sch. 3, para. 2.
 s. 48, amended: *ib.*, Sch. 3, para. 2.
 s. 49 (1)-(3), (5), amended: *ib.*, Sch. 3, para. 2.
 s. 55, extended: *ib.*, s. 9 (4).
 ss. 56, 71, 72, 73, 75, amended: *ib.*, Sch. 3, para. 2.
 s. 76, saved: *ib.*, s. 13 (3).
 amended: *ib.*, Sch. 3, para. 4.
 ss. 78, 79, 80 (except sub-s. (5)), amended: *ib.*, Sch. 3, para. 2.
 Sch. 1, amended: *ib.*, Sch. 3, para. 2.
 Sch. 1, II, para. 12 (e), repealed: 11-2 G. 6, c. 26, Sch. 2, V.
 Sch. 6, amended: 11-2 G. 6, c. 32, Sch. 3, para. 2.
- No. 6 (*Clergy Pensions (Older Incumbents Measure)*).
 effect of, 11-2 G. 6, No. 1: § 1040.
 s. 10, amended: 11-2 G. 6, No. 1, s. 62.
 Sch. 2, amended: *ib.*, s. 62.
- 21 & 22 Geo. 5 (1931).
 c. 9 (*Colonial Naval Defence*).
 order made: § 198.
- c. 21 (*Palestine and East Africa Loans (Amendment)*).
 title, ss. 1, 2, part repealed: 11-2 G. 6, c. 27, s. 3 (1), Sch. 1.
- c. 42 (*Agricultural Marketing*).
 s. 1, order made: § 92.
 s. 9 (5), substituted: 11-2 G. 6, c. 51, s. 7 (10).
- c. 45 (*Local Government (Clerks)*).
 s. 3 (3), amended: 11-2 G. 6, c. 58, Sch. 9 (as from September 13, 1948: SI 1948, No. 1840).
- 22 & 23 Geo. 5 (1931 *cont.*).
 c. 4 (*Statute of Westminster*).
 ss. 2-4 New Zealand: § 178.
- 22 & 23 Geo. 5 (1932).
 c. 8 (*Import Duties*).
 Pt. I (ss. 1-11), varying of customs duties: 11-2 G. 6, c. 49, s. 9 (3).
 s. 19, applied: *ib.*, ss. 8 (3), 9 (4).
- c. 9 (*Merchant Shipping (Safety and Load Line Conventions)*).
 effect of 11-2 G. 5, c. 44: § 3483.
 s. 65, order made: § 3477.
 ss. 4, 5, rules made: §§ 3460, 3473, 3486.
 s. 37, order made: § 3493.
 ss. 42, 47, 48, rules made: § 3478.
 s. 65, order made: § 3476.
 s. 68, rules made: § 3478.
- c. 22 (*Army and Air Force (Annual)*).
 s. 15 (1), excluded: 11-2 G. 6, c. 28, s. 2 (2).

22 & 23 Geo. 5 (1932)—*cont.*

- c. 33 (*Rating and Valuation* (No. 2)).
repealed: 11-2 G. 6, c. 26, Sch. 2, II (*prosp.*).
- c. 36 (*Carriage by Air*).
measure of damages: 11-2 G. 6, c. 41, s. 2 (5).
s. 1 (2), order made: §§ 230, 241.
- c. 37 (*Solicitors*).
ss. 46, 47, article: § 3522.
- c. 40 (*Gas Undertakings*).
repealed: 11-2 G. 6, c. 67, Sch. 4.
- c. 48 (*Town and Country Planning*).
article: §§ 1979, 3672, 3826.
industrial building: § 3649.
ribbon development: § 3665.
s. 10, construed: § 3650.
s. 10 (6), construed: § 3664.
s. 34, construed: § 3650.
- c. 53 (*Ottawa Agreements*).
Sch. 2, I, part repealed: 11-2 G. 6, c. 49, s. 11 (b), Sch. 11, I.
Sch. 2, extended in part: *ib.*, s. 10 (3).

23 & 24 Geo. 5 (1933).

- c. 4 (*Evidence (Foreign, Dominion and Colonial Documents)*).
s. 2, repealed: 11-2 G. 6, c. 56, Sch. 4, II.
- c. 8 (*Local Government (General Erchequer Contributions)*).
repealed: 11-2 G. 6, c. 26, Sch. 2, I.
- c. 9 (*Assurance Companies (Winding Up)*).
saved: 11-2 G. 6, c. 38, s. 459 (9).
s. 2 (4), amended: *ib.*, Sch. 16, para. 1 (a).
- c. 12 (*Children and Young Persons*).
definition applied: 11-2 G. 6, c. 43, s. 59 (1).
effect of 11-2 G. 6, c. 58: § 714.
s. 26 (1), amended: 11-2 G. 6, c. 43, s. 5 (1).
Pts. III, IV (ss. 31-91), local authority: *ib.*, s. 38 (1).
Pts. III, IV (ss. 31-91), children's committee: *ib.*, s. 39 (1) (a).
s. 18, amended: 11-2 G. 6, c. 40, s. 11, Sch. 1, II.
s. 33, repealed: 11-2 G. 6, c. 58, Sch. 10, I (as from December 27, 1948: SI 1948, No. 2349).
s. 35 (1), proviso (2), part repealed: 11-2 G. 6, c. 29, Sch. 7, III.
s. 48 (2), amended: 11-2 G. 6, c. 58, Sch. 9 (*prosp.*).
s. 48 (3), amended: *ib.*, Sch. 9 (as from December 27, 1948: SI 1948, No. 2349).
s. 48 (3), part repealed: *ib.*, Sch. 10, I (as from December 27, 1948: SI 1948, No. 2349).
s. 52 (1) (2), repealed: *ib.*, Sch. 10, I (as from April 18, 1949: SI 1949, No. 139).
s. 52 (3), repealed: *ib.*, Sch. 10, I (as from December 27, 1948: SI 1948, No. 2349).
s. 53 (1), substituted: 11-2 G. 6, c. 58, s. 16: § 714.

23 & 24 Geo. 5 (1933)—*cont.*

- c. 12 (*Children and Young Persons*)—*cont.*
 - s. 53 (2), part repealed: *ib.*, Sch. 10, I (as from December 27, 1948: SI 1948, No. 2349).
 - s. 54, amended: *ib.*, Sch. 9 (as from December 27, 1948: SI 1948, No. 2349).
 - excluded: *ib.*, s. 18 (4).
 - s. 55 (2), amended, *ib.*, s. 11 (1).
 - s. 58, proviso (a), amended: 11-2 G. 6, c. 58, Sch. 9 (as from December 27, 1948: SI 1948, No. 2349).
 - s. 58, proviso (a), part repealed: *ib.*, Sch. 10, I (as from December 27, 1948: SI 1948, No. 2349).
 - s. 59, amended: *ib.*, Sch. 9 (*prosp.*).
 - s. 59 (1), proviso, repealed: *ib.*, Sch. 10, I (as from April 18, 1949: SI 1948, No. 2349).
 - ss. 62-64, supervision orders: 11-2 G. 6, c. 58, s. 74 (1).
 - s. 64, article: § 1723.
 - s. 66 (3), repealed: 11-2 G. 6, c. 58, Sch. 10, I (*prosp.*).
 - s. 67, detention in a remand centre: *ib.*, s. 75 (1).
 - s. 70 (2), proviso (a), amended: 11-2 G. 6, c. 43, Sch. 3.
 - s. 70 (2), proviso (a), amended: 11-2 G. 6, c. 58, Sch. 9 (*prosp.*).
 - s. 70 (2) (3) (7), part repealed: *ib.*, s. 72 (2), Sch. 4, I.
 - s. 71 (1), substituted: *ib.*, s. 71 (1).
 - s. 71, amended: *ib.*, s. 72 (2).
 - s. 72 (3), part repealed: 11-2 G. 6, c. 29, Sch. 7, III.
 - s. 73, amended: *ib.*, s. 72 (2).
 - s. 74, applied: 11-2 G. 6, c. 43, s. 6 (4).
 - s. 74, amended: 11-2 G. 6, c. 58, s. 72 (2).
 - s. 76, fit person: § 1705.
 - s. 76 (1), amended: 11-2 G. 6, c. 43, s. 5 (1).
 - s. 77, amended: 11-2 G. 6, c. 58, Sch. 9 (*prosp.*).
 - Pts. IV, V (ss. 77-95), advisory Council on Child Care: 11-2 G. 6, c. 43, s. 43 (1).
 - s. 78 (3), amended: 11-2 G. 6, c. 58, Sch. 9 (as from April 18, 1949: SI 1949, No. 139).
 - s. 79, "approved school": 11-2 G. 6, c. 56, s. 80 (1).
 - s. 79, made applicable by rules: 11-2 G. 6, c. 58, s. 49 (2).
 - s. 82, absconders: *ib.*, s. 72 (1).
 - s. 82 (1), amended: *ib.*, Sch. 9 (as from December 27, 1948: SI 1948, No. 2349).
 - s. 82 (1), part repealed: *ib.*, Schs. 9, 10, I (as from December 27, 1948: SI 1948, No. 2349).
 - s. 82 (4) (a), amended: 11-2 G. 6, c. 43, Sch. 3.
 - s. 84, supervision orders: 11-2 G. 6, c. 58, s. 74 (1).
 - s. 84 (1) (2), transitional powers: 11-2 G. 6, c. 43, Sch. 2, para. 4 (1).

23 & 24 Geo. 5 (1933)—*cont.*c. 12 (*Children and Young Persons*)—*cont.*

- s. 84 (2) (5), amended: *ib.*, Sch. 3.
- s. 84 (3), repealed: *ib.*, Sch. 4.
- s. 84 (5), proviso, amended: 11-2 G. 6, c. 43, Sch. 3.
- s. 85 (2), (3) (a), amended: *ib.*, Sch. 3.
- s. 86, person liable to make contributions: *ib.*, s. 24.
- s. 86, person entitled to receive contributions: *ib.*, s. 26 (3), (4) (b).
- s. 86 (1), amended: *ib.*, Sch. 3.
- ss. 86-88, applied: *ib.*, s. 23 (1) (3).
- s. 87 (1), proviso, repealed: *ib.*, s. 25, Sch. 4.
- s. 88 (2) (a), applied: *ib.*, s. 26 (6).
- s. 88 (3), part repealed: *ib.*, Sch. 4, I.
- s. 88 (4), affiliation order: *ib.*, s. 26 (4).
- s. 89 (4), part repealed: 11-2 G. 6, c. 29, Sch. 7, III.
- s. 90 (1), regs. made: § 1051.
- s. 90 (1) (5) (a), transitional provisions: 11-2 G. 6, c. 43, Sch. 2, para. 6 (2).
- s. 90 (5) (a), part repealed: *ib.*, Sch. 4, I.
- s. 90 (6), amended: 11-2 G. 6, c. 43, Sch. 3; c. 58, Sch. 9 (*prosp.*).
- s. 92, amended: 11-2 G. 6, c. 43, s. 27.
- Pt. V (ss. 92-95), amended: *ib.*, s. 28.
- Pt. V (ss. 92-95), definition applied: *ib.*, s. 59 (1).
- s. 95, repealed as from January 1, 1949: *ib.*, s. 29 (9), Sch. 4, II.
- s. 95 (1) (a), amended: *ib.*, Sch. 3.
- s. 96 (1), amended: *ib.*, Sch. 3.
- s. 96 (4), part repealed: 11-2 G. 6, c. 29, Sch. 7, III.
- s. 96 (7), amended: 11-2 G. 6, c. 43, Sch. 3.
- s. 97, amended: *ib.*, Sch. 3.
- s. 98, amended: *ib.*, Sch. 3.
- s. 98, sub-s. (1), part repealed: 11-2 G. 6, c. 29, Sch. 7, III. New section substituted for s. 98: 11-2 G. 6, c. 43, Sch. 3.
- s. 102 (1) (c), amended: *ib.*, Sch. 3.
- s. 102 (1), part repealed: *ib.*, Sch. 4, II.
- s. 103, amended: 11-2 G. 6, c. 43, s. 54 (1).
- s. 104, exchequer grant: *ib.*, s. 47 (2).
- s. 104 (1) (a) (ii), repealed: *ib.*, Sch. 4, I.
- s. 106 (3), made applicable by rules: 11-2 G. 6, c. 58, s. 49 (2).
- s. 107, part repealed: 11-2 G. 6, c. 29, Sch. 7, III. Amended 11-2 G. 6, c. 43, Sch. 3.
- Sch. 3, part repealed: 11-2 G. 6, c. 58, Sch. 10, I (*prosp.*).
- Sch. 4, para. 8, part repealed: *ib.*, Sch. 10, I (as from December 27, 1948: SI 1948, No. 2349).
- Sch. 4, para. 14, amended: 11-2 G. 6, c. 33, s. 14.

23 & 24 Geo. 5 (1933)—*cont.*c. 13 (*Foreign Judgments (Reciprocal Enforcement)*).

- s. 4 (1) (a) (iv), construed: § 2850.
- c. 14 (*London Passenger Transport*).
- s. 92, repealed: 11-2 G. 6, c. 26, Sch. 2, III.
- s. 393, construed: § 3770.
- c. 19 (*Finance*).
- s. 9, varying of customs duties: 11-2 G. 6, c. 49, s. 9 (2).
- s. 9 (5), excluded: *ib.*, s. 9 (2).
- Sch. 7, construed: § 53.
- s. 31, amended: *ib.*, Sch. 11, II.
- c. 25 (*Pharmacy and Poisons*).
- s. 17 (5), orders made: § 2205.
- s. 19 (1) (a), amended: 11-2 G. 6, c. 52, s. 23 (a), Sch. 2, para. 1 (1) (a).
- s. 20 (3), amended: *ib.*, s. 23 (a), Sch. 2, para. 1 (1) (b).
- s. 23, rules made: § 2206.
- s. 23 (1) (b) (ii), amended: 11-2 G. 6, c. 52, Sch. 2, para. 1 (1) (c).
- s. 25 (10), amended: *ib.*, Sch. 2 para. 1 (1) (d).
- s. 29, amended: *ib.*, Sch. 2, para. 1 (1) (e).
- s. 29 (b), amended: 11-2 G. 6, c. 52, Sch. 2, para. 1 (2).
- c. 32 (*Rent and Mortgage Interest Restrictions (Amendment)*).
- articles: §§ 1979, 3251.
- furnished houses: §§ 3176, 3179, 3186.
- small tenements recovery: § 1966.
- s. 3 (1), construed: §§ 3172, 3173, 3197.
- s. 3 (1) (b), construed: § 3139.
- s. 3 (3), construed: § 3139.
- s. 3 (3) (b), construed: §§ 3141, 3143.
- s. 16, construed: § 3169.
- s. 16 (1), construed: § 3165.
- Sch. 1, para. (g), construed: § 3172.
- Sch. 1, para. (h), construed: § 3197.
- c. 33 (*Metropolitan Police*).
- s. 2, repealed with savings: 11-2 G. 6, c. 24, Sch. 1, I, para. 13.
- s. 4 (1), repealed: 11-2 G. 6, c. 24, s. 6, Sch. 2: § 2718.
- s. 4 (2), repealed with savings: *ib.*, Sch. 1, I, para. 13.
- c. 36 (*Administration of Justice (Miscellaneous Provisions)*).
- s. 1 (1), part repealed: 11-2 G. 6, c. 58, Sch. 10, I (as from September 13, 1948: SI 1948, No. 1840).
- s. 1 (4), repealed: *ib.*, s. 31 (3) (as from September 13, 1948: SI 1948, No. 1840).
- s. 3, construed: § 2873.
- Sch. 2, para. 4, part repealed: 11-2 G. 6, c. 58, Sch. 10, I (as from September 13, 1948: SI 1948, No. 1840).
- c. 38 (*Summary Jurisdiction (Appeals)*).
- s. 2 (1), (5) (a), amended: 11-2 G. 6, c. 58, Sch. 9.
- s. 2 (9), repealed: 11-2 G. 6, c. 58, Sch. 10, I (*prosp.*).
- s. 3 (1) (2), part repealed: *ib.*, Sch. 10, I (as from December 27, 1948: SI 1948, No. 2349).

23 & 24 Geo. 5 (1933)—*cont.*

- c. 38 (*Summary Jurisdiction (Appeals)*)—*cont.*
- s. 7 (3) (a), substituted: *ib.*, s. 34.
- s. 7 (5), amended: *ib.*, Sch. 9.
- effect of 11-2 G. 6, c. 58: § 714.
- s. 9 (2), repealed: 11-2 G. 6, c. 29, Sch. 7, III.
- c. 45 (*Sea-Fishing Industry*).
- s. 3, amended: 1-2 G. 6, c. 30, s. 38, extended: 11-2 G. 6, c. 51, s. 1 (1): § 1462.
- s. 3 (3) (a), as so amended, repealed: 11-2 G. 6, c. 51, s. 1 (1).
- s. 4, order made: § 1458.
- c. 46 (*Electricity (Supply)*).
- books published: § 1122.
- orders made: §§ 1098, 1121.
- c. 49 (*British Nationality and Status of Aliens*).
- effect of 11-2 G. 6, c. 56: § 118.
- repealed: 11-2 G. 6, c. 56, Sch. 4, II.
- c. 51 (*Local Government*).
- effect of 11-2 G. 6, c. 65: § 1095.
- termination of third fixed grant period: § 2078.
- s. 9, repealed: 11-2 G. 6, c. 65, Sch. 13.
- s. 11, orders made: § 1090.
- s. 23 (3), repealed: 11-2 G. 6, c. 65, Sch. 13.
- s. 29, construed: § 1088.
- s. 35, amended: 11-2 G. 6, c. 65, Sch. 6, para. 3.
- s. 40 (1) (b), part repealed: *ib.*, Sch. 13.
- s. 40 (2), part repealed: *ib.*, Sch. 13.
- s. 50, amended: *ib.*, Sch. 6, para. 3.
- s. 51, repealed: *ib.*, Sch. 13.
- s. 54 (1) (b), part repealed: *ib.*, Sch. 13.
- s. 54 (2), part repealed: *ib.*, Sch. 13.
- s. 59 (1) (c) (h), proviso (iv), repealed: 11-2 G. 6, c. 29, Sch. 7, III.
- s. 67 (3), article: § 2086.
- s. 70 (1), repealed: 11-2 G. 6, c. 65, Sch. 13.
- applied in part: *ib.*, ss. 29 (4), 75, Sch. 12.
- s. 76, effect of 11-2 G. 6, c. 26: § 2051.
- s. 76, amended: 11-2 G. 6, c. 26, s. 131.
- s. 79, repealed: 11-2 G. 6, c. 65, Sch. 13.
- s. 82, repealed: *ib.*, Sch. 13.
- s. 86 (2), amended: 11-2 G. 6, c. 26, s. 128.
- s. 91, saved: 11-2 G. 6, c. 43, s. 40 (4).
- ss. 105, 106, applied: *ib.*, s. 41 (6).
- s. 118, part repealed: 11-2 G. 6, c. 29, Sch. 7, III.
- s. 151 applied (*temp.*): *ib.*, s. 62 (1), Sch. 6, para. 13.
- s. 152 (1) (b), repealed: 11-2 G. 6, c. 26, s. 11, Sch. 2, I.
- s. 154, repealed: 11-2 G. 6, c. 65, Sch. 13.
- s. 163, construed: § 2548.
- s. 193 (3), amended: 11-2 G. 6, c. 26, s. 114 (5).

23 & 24 Geo. 5 (1933)—*cont.*

- c. 51 (*Local Government*)—*cont.*
- ss. 198-200, applied with modifications: 11-2 G. 6, c. 32, s. 11 (4).
- ss. 202, 203, 205-207 (1)-(4) (6) (7), applied with modifications: *ib.*, s. 11 (4).
- ss. 208-214, applied with modifications: *ib.*, s. 11 (4).
- s. 228 (1) (d), construed: § 2030.
- s. 238, restricted: 11-2 G. 6, c. 65, s. 76 (2).
- s. 267, part repealed: 11-2 G. 6, c. 26, s. 113 (3), Sch. 2, V.
- s. 267, regs. made: § 2036.
- s. 290, applied: 11-2 G. 6, c. 32, s. 24.
- s. 290 (2) (5), applied: 11-2 G. 6, c. 67, s. 73 (1).
- s. 290 (2) (3) (5), applied: 11-2 G. 6, c. 37, s. 9 (4).
- s. 294, repealed: 11-2 G. 6, c. 26, s. 113 (2), Sch. 2, V.
- s. 295, amended: 11-2 G. 6, c. 65, Sch. 10, II, para. 1 (3).
- Sch. 2, I, para. 10, applied: *ib.*, Sch. 4; I, para. 6.
- Sch. 2, II, part repealed: *ib.*, Sch. 13.
- Sch. 2, III, para. 2 (2), repealed: *ib.*, Sch. 13.
- Sch. 2, III, para. 14 (1) (3), repealed: *ib.*, Sch. 13.
- Sch. 2, III, para. 16 (1), part repealed: *ib.*, Sch. 13.
- Sch. 2, III, para. 17 (2), part repealed: *ib.*, Sch. 13.
- Sch. 2, III, paras. 18, 34 (a) (c) (d), construed: § 1088.
- Sch. 2, III, para. 20 (1) (c), part repealed: 11-2 G. 6, c. 65, Sch. 13.
- Sch. 2, III, para. 22 (1), part repealed: *ib.*, Sch. 13.
- Sch. 2, III, para. 26 (e), part repealed: *ib.*, Sch. 13.
- Sch. 2, III, para. 33, part repealed: *ib.*, Sch. 13.
- Sch. 2, III, para. 37, repealed: *ib.*, Sch. 13.
- Sch. 2, III, para. 40, part repealed: *ib.*, Sch. 13.
- Sch. 2, IV, part repealed: *ib.*, Sch. 13.
- Sch. 3, I, para. 1, part repealed: *ib.*, Sch. 6, para. 1 (2).
- Sch. 3, I, para. 1 (2) (a), (3), part repealed: *ib.*, Sch. 13.
- Sch. 3, II, para. 1, part repealed: *ib.*, Sch. 6, para. 2 (4).
- Sch. 3, II, para. 1 (2), part repealed: *ib.*, Sch. 13.
- Sch. 3, III, amended: *ib.*, Sch. 6, para. 3.
- Sch. 3, IV, amended: *ib.*, Sch. 6, para. 3.
- Sch. 3, VI, para. 3 (1) (3), part repealed: *ib.*, Sch. 13.
- Sch. 3, VI, para. 4 (2), part repealed: *ib.*, Sch. 13.
- Sch. 4, para. 11, regs. made: § 1056.

23 & 24 Geo. 5 (1933)—*cont.*

- c. 51 (*Local Government*)—*cont.*
Sch. 5, repealed: 11-2 G. 6, c. 26,
Sch. 2, 1.
- c. 53 (*Road and Rail Traffic*).
s. 6 (2), construed: § 3350.
s. 25, regs. made: § 3330.

24 & 25 Geo. 5 (1934).

- c. 14 (*Arbitration*).
s. 18, repealed: 11-2 G. 6, c. 63,
Sch. 8.
s. 19, proviso, repealed: *ib.*, Sch. 8.
- c. 23 (*Workmen's Compensation (Coal Mines)*).
s. 3 (5), preferential payments: 11-2
G. 6, c. 38, s. 319 (1) (g).
s. 3 (6), part repealed: *ib.*, s. 459,
Sch. 17, 1.
- c. 26 (*Licensing (Permitted Hours)*).
s. 2, amended: 11-2 G. 6, c. 65,
Sch. 7.
- c. 28 (*Gas Undertakings*).
repealed: 11-2 G. 6, c. 67, Sch. 4.
s. 3 (2), saved: 11-2 G. 6, c. 38,
s. 53 (6).
- c. 29 (*Unemployment*).
repealed: 11-2 G. 6, c. 29, Sch. 7, III.
ss. 9, 51, rules under: 11-2, G. 6,
c. 33, s. 2 (7).
s. 73, rules under: *ib.*, s. 3 (1) (b).
- c. 30 (*Cotton Manufacturing Industry (Tem-
porary Provisions)*).
ss. 1, 2, continued: 12-3 G. 6, c. 3,
Sch., 1.
- c. 31 (*Debts Clearing Offices and Import
Restrictions*).
effect of 12-3, G. 6, c. 2: § 3263.
s. 7 (2), effect of expiry: 12-3 G. 6
c. 2, s. 1.
- c. 32 (*Finance*).
s. 2, regs. made: § 791.
s. 6 (1), proviso amended: 11-2 G. 6,
c. 49, s. 10 (1).
s. 6 (2), proviso repealed: *ib.*, s. 10
(1), Sch. 11, 1.
s. 21, saved: *ib.*, s. 31 (1) (d).
- c. 33 (*Palestine Loan*).
repealed: 11-2 G. 6, c. 27, s. 3 (1),
Sch. 1.
- c. 41 (*Law Reform (Miscellaneous Pro-
visions)*).
construed: § 813.
s. 1 (1), construed: § 817.
s. 2 (c), construed: §§ 814, 815.
- c. 42 (*Shops*).
book published: § 1432.
- c. 47 (*Colonial Stock*).
effect of 12-3 G. 6, c. 1: § 3257.
- c. 49 (*Whaling Industry (Regulation)*).
regs. made: § 1461.
- c. 50 (*Road Traffic*).
article: § 3362.
s. 1, continued as amended: 12-3 G. 6,
c. 3, Sch. 1.
s. 6, regs. made: §§ 3305, 3308.
- c. 53 (*County Courts*).
s. 88 (1), applied: 11-2 G. 6, c. 26,
s. 49 (4) (*prosp.*).
s. 89, construed: § 170.
s. 180 (1) (b), construed: § 681.

24 & 25 Geo. 5 (1934)—*cont.*

- c. 58 (*Betting and Lotteries*).
s. 20 (1), definition applied: 11-2
G. 6, c. 49, s. 15 (4) (e).
s. 24 (1) (2), construed: § 1528.
 - c. 59 (*Poor Law*).
repealed: 11-2 G. 6, c. 29, Sch. 7, 1.
- 25 & 26 Geo. 5 (1935).
- c. 3 (*Electricity (Supply)*).
books published: § 1122.
orders made: §§ 1098, 1121.
 - c. 8 (*Unemployment Insurance*).
effect of 11-2 G. 6, c. 46: § 1246.
part repealed: 11-2 G. 6, c. 46,
Sch. 2.
preferential payments: 11-2 G. 6,
c. 38, s. 319 (1) (e).
Supreme Court rules: § 2898.
s. 20 (1), repealed: *ib.*, s. 459,
Sch. 17, 1.
s. 24, construed: § 2442.
s. 27, construed: §§ 2441, 2443.
s. 28, construed: § 2443.
s. 35, construed: § 2445.
s. 35 (5), construed: § 2440.
s. 37, construed: §§ 2444, 2445.
s. 37 (2) (b) (i), construed: § 2440.
s. 38, construed: §§ 2440, 2441,
2445.
s. 73, approved societies staff: § 2618.
s. 76, course of instruction: 11-2
G. 6, c. 46, s. 3 (5).
 - c. 9 (*Herring Industry*).
schemes for reorganisation, develop-
ment and regulation of herring in-
dustry: 11-2 G. 6, c. 51, s. 7 (1).
s. 2 (7) (8), repealed: *ib.*, s. 7 (9).
s. 3, as amended, applied: *ib.*, s. 7 (5).
s. 5, repealed: *ib.*, s. 7 (9).
s. 15, applied: *ib.*, s. 11 (2).
Sch. 2, amended: *ib.*, s. 7 (10).
 - c. 13 (*Interest of Rent and Mortgage
Interest (Restrictions)*).
articles: §§ 1979, 3251.
furnished houses: §§ 3176, 3179, 3186.
small tenements recovery: § 1966.
 - c. 15 (*Post Office (Amendment)*).
ss. 2, 6, warrant made: § 2733.
 - c. 23 (*Superannuation*).
reduction of allowances: § 2621.
s. 9, local government officers:
§ 2644.
s. 9, repealed: 11-2 G. 6, c. 33,
s. 2 (6).
 - c. 24 (*Finance*).
s. 8 (1), proviso, repealed: 11-2 G. 6,
c. 49, s. 10 (2), Sch. 11, 1.
s. 19, amended: *ib.*, s. 27 (1).
 - c. 26 (*Defence (Barracks)*).
easements: § 535.
 - c. 30 (*Law Reform (Married Women and
Tortfeasors)*).
s. 2 (1), construed: § 3940.
 - c. 31 (*Diseases of Animals*).
orders made: §§ 144, 146, 147,
148.
s. 13 (2), amended: 11-2 G. 6, c. 52,
s. 23 (b), Sch. 2, para. 2 (1).
s. 13 (3), amended: *ib.*, Sch. 2,
para. 2 (2).

25 & 26 Geo. 5 (1935)—*cont.*

- c. 46 (*Money Payments (Justices Procedure)*).
 - s. 4 proviso, amended: 11-2 G. 6, c. 58, Sch. 9 (as from September 13, 1948: SI 1948, No. 1840).
- c. 47 (*Restriction of Ribbon Development*).
 - planning regs.: § 3647.
 - ss. 1, 2, planning regs.: § 3665.

26 Geo. 5 (1935).

- c. 2 (*Government of India*).
 - s. 311, definition applied: 11-2 G. 6, c. 56, s. 32 (4).

26 Geo. 5 & 1 Edw. 8 (1936).

- c. 16 (*Coinage Offences*).
 - s. 12 (1), part repealed: 11-2 G. 6, c. 58, Sch. 10, 1 (as from April 13, 1949: SI 1949, No. 139).
- c. 20 (*Electricity Supply (Meters)*).
 - books published: § 1122.
 - orders made: §§ 1098, 1121.
- c. 28 (*Shops*).
 - book published: § 1432.
- c. 31 (*Old Age Pensions*).
 - amended: 11-2 G. 6, c. 29, Sch. 4: § § 2272, 2402.
 - s. 3 (1) (a) (c), repealed: *ib.*, Sch. 4, para. 2 (1), Sch. 7, III.
 - s. 3 (1) (b), amended: *ib.*, Sch. 4, para. 2 (1).
 - s. 3 (1), part repealed: *ib.*, Sch. 4, para. 2 (2), Sch. 7, III.
 - s. 3 (2) (3), repealed: *ib.*, Sch. 4, para. 2 (2), Sch. 7, III.
 - s. 6, excluded: *ib.*, Sch. 4, para. 3.
 - s. 8 (1), amended: § 2402.
 - s. 9 (3) (4), repealed: *ib.*, Sch. 4, para. 4, Sch. 7, III.
 - s. 10, repealed: *ib.*, Sch. 4, para. 1 (4), Sch. 7, III.
 - s. 12, regs. made: § 2401.
 - s. 12, amended: 11-2 G. 6, c. 29, s. 46 (2), Sch. 4, para. 5.
 - s. 12 (1) (d), repealed: *ib.*, Sch. 4, para. 6, Sch. 7, III.
 - s. 12 (2), part repealed: *ib.*, Sch. 4, para. 6, Sch. 7, III.
 - s. 12 (4), repealed: *ib.*, Sch. 4, para. 7, Sch. 7, III.
 - s. 13 (1), repealed: *ib.*, Sch. 7, III.
- c. 32 (*National Health Insurance*).
 - preferential payments: 11-2 G. 6, c. 38, s. 319 (1) (e).
 - regs. made: § 2391.
 - transfer of administration: § 2333.
 - s. 75, repealed: § 2333.
 - s. 122, regs. made: § 2392.
 - s. 177 (1), repealed: 11-2 G. 6, c. 38, s. 459, Sch. 17, I.
 - Sch. 1, I, para. (f), construed: § 2394.
- c. 34 (*Finance*).
 - s. 5 (4), key industry duty: 11-2 G. 6, c. 49, s. 8 (2).
 - s. 18, construed: §§ 1691, 1692.
- c. 40 (*Midwives*).
 - rules amended: § 2196.
 - s. 4, applied: 11-2 G. 6, c. 26, s. 12 (1) (c).
 - s. 9, regs. made: § 2194.

26 Geo. 5 & 1 Edw. 8 (1936)—*cont.*

- c. 43 (*Tithe*).
 - article: § 3596.
 - notice issued: § 3594.
 - ss. 3 (1), 10 (2), 13 (7), construed: § 3592.
 - s. 14 (2), construed: § 3595.
 - s. 16 (1), construed: § 3592.
 - s. 36 (2), order made: § 3591.
- c. 44 (*Air Navigation*).
 - order made: § 233.
 - s. 26 (1), order made: § 231.
- c. 48 (*Health Resorts and Watering Places*).
 - s. 1 (1), amended: 11-2 G. 6, c. 26, s. 137 (1): § 2051.
- c. 49 (*Public Health*).
 - applied: 11-2 G. 6, c. 22, s. 1.
 - book published: § 2988.
 - child life protection: § 1705.
 - definition applied: 11-2 G. 6, c. 32, s. 36 (1).
 - planning enforcement notices: § 3647.
 - transitional provisions: 11-2 G. 6, c. 43, Sch. 2, para. 8 (3).
 - s. 6, see 11-2 G. 6, c. 22, s. 14 (5).
 - s. 58, article: § 2987.
 - s. 61, amended form: § 2965.
 - s. 75, construed: § 2975.
 - s. 75 (1), construed: § 2976.
 - s. 94 (2), construed: § 2981.
 - s. 116 (3), amended: 11-2 G. 6, c. 22, s. 12 (1).
 - ss. 116 (3), 127 (2), restricted: § 3855.
 - s. 126 (1), proviso, repealed: 11-2 G. 6, c. 26, s. 132 (8), Sch. 2, V.
 - s. 127 (2), amended: *ib.*, s. 12 (2).
 - Pt. VII (ss. 200-220), transitional provisions: 11-2 G. 6, c. 43, Sch. 2, para. 10.
 - Pt. VII (ss. 206-220), child life protection provisions excluded: *ib.*, s. 37 (2) (3).
 - Pt. VII (ss. 206-220), child life protection provisions extended: *ib.*, ss. 35, 36.
 - Pt. VII (ss. 206-220), welfare authority: *ib.*, s. 38 (1).
 - Pt. VII (ss. 206-220), children's committee: *ib.*, s. 39 (1) (b).
 - s. 207 (3), amended: 11-2 G. 6, c. 43, Sch. 3.
 - s. 211 (1), amended: *ib.*, Sch. 3.
 - s. 218, repealed: *ib.*, Sch. 4, I.
 - s. 219, modified: *ib.*, s. 37 (6).
 - s. 219 (1), amended: *ib.*, Sch. 3.
 - s. 219, exc'd'd: 11-2 G. 6, c. 53, s. 8 (1).
 - s. 220, part repealed: 11-2 G. 6, c. 29, Sch. 7, III.
 - s. 220, amended: 11-2 G. 6, c. 43, Sch. 3.
 - s. 220, definition applied: *ib.*, s. 49 (1).
 - ss. 300-302, applied: 11-2 G. 6, c. 29, s. 38 (5); c. 53, s. 6 (5).
 - s. 322, excluded: 11-2 G. 6, c. 43, s. 42 (2).
 - s. 324, excluded: *ib.*, s. 42 (2).
 - s. 325, excluded: *ib.*, s. 42 (2).

26 Geo. 5 & 1 Edw. 8 (1936)—*cont.*

- c. 50 (*Public Health (London)*).
transitional provisions: 11-2 G. 6,
c. 43, Sch. 2, para. 8 (3).
- s. 172 (1), proviso, repealed: 11-2
G. 6, c. 26, s. 132 (8), Sch. 2, V.
- s. 224, repealed: 11-2 G. 6, c. 29,
Sch. 7, III.
- Pt. XIII (ss. 256-272), child life pro-
tection provisions extended: 11-2
G. 6, c. 43, ss. 35, 36.
- Pt. XIII (ss. 256-272), child life pro-
tection provisions excluded: *ib.*,
s. 37 (3).
- Pt. XIII (ss. 256-272), local autho-
rity: *ib.*, s. 38 (1).
- Pt. XIII (ss. 256-272), children's
committee: *ib.*, s. 39 (1) (b).
- Pt. XIII (ss. 256-272), Advisory
Council on Child Care: 11-2 G. 6,
c. 43, s. 43 (1).
- Pt. XIII (ss. 256-272), transitional
provisions: *ib.*, Sch. 2, para. 10.
- Pt. XIII (ss. 256-272), amended: *ib.*,
Sch. 3.
- s. 271, modified: *ib.*, s. 37 (6).
- s. 304, part repealed: 11-2 G. 6,
c. 29, Sch. 7, III; amended, 11-2
G. 6, c. 43, Sch. 3.
- c. 51 (*Housing*).
article: § 3128.
fitness for habitation: § 2981.
s. 9 (1), construed: § 1601.
ss. 83 (1), 156 (1) (a), construed:
§ 1607.
- s. 115 (4), repealed: 11-2 G. 6, c. 26,
s. 126 (4) (b), Sch. 2, V.
- s. 129, amended: *ib.*, s. 126 (3).
- s. 156 (2), construed: § 1609.
- s. 188 (4), construed: § 1601.
- c. 53 (*Shops (Sunday Trading Restriction)*).
book published: § 1432.
- No. 1 (*Clergy Pensions (Amendment)*
Measure).
effect of 11-2 G. 6, No. 1: § 1040.
repealed: *ib.*, Sch. 8.
- No. 3 (*Clergy Pensions (Widows and Depen-*
dents) Measure).
effect of 11-2 G. 6, No. 1: § 1040.
repealed: *ib.*, Sch. 8.
- 1 Edw. 8 & 1 Geo. 6 (1936 *cont.*).
- c. 1 (*Merchant Shipping (Carriage of Muni-*
tions to Spain)).
effect of 11-2 G. 6, c. 44: § 3483.
- c. 2 (*Railway Freight Rebates*).
Sch. para. 1 (h), part repealed: 11-2
G. 6, c. 26, Sch. 2, III.
- 1 Edw. 8 & 1 Geo. 6—*cont.* (1937).
- c. 12 (*Firearms*).
s. 21, applied as originally enacted:
11-2 G. 6, c. 58, Schs. 7, I, para. 5,
8, para. 9.
- s. 21 (1), (2) (a) (b), amended: *ib.*,
Sch. 9 (as from April 18, 1949: SI
1949, No. 139).
- s. 21 (2) (b), part repealed: *ib.*, Sch.
10, I (as from April 18, 1949: SI
1949, No. 139).
- s. 22, article: §§ 770, 1451.

1 Edw. 8 & 1 Geo. 6—*cont.* (1937)—*cont.*

- c. 12 (*Firearms*)—*cont.*
s. 25 (1), amended: 11-2 G. 6, c. 58,
Sch. 9 (as from April 18, 1949: SI
1949, No. 139).
- s. 25 (1), part repealed: *ib.*, Sch. 10,
I (as from April 18, 1949: SI 1949,
No. 139).
- c. 19 (*Merchant Shipping (Spanish*
Frontiers Observation)).
effect of 11-2 G. 6, c. 44: § 3483.
- c. 22 (*Local Government (Financial Pro-*
visions)).
repealed: 11-2 G. 6, c. 26, Sch. 2, I.
s. 7, excluded: *ib.*, s. 10 (5).
- c. 23 (*Merchant Shipping*).
effect of 11-2 G. 6, c. 44: § 3483.
- c. 24 (*National Health Insurance (Amend-*
ment)).
regs. made: § 2391.
- c. 32 (*Civil List*).
See 11-2 G. 6, c. 14, s. 1 (2).
- s. 8, amended: 11-2 G. 6, c. 14, s. 4:
§ 586.
- c. 36 (*Local Government (Members' Travel-*
ling Expenses)).
repealed: 11-2 G. 6, c. 26, s. 113 (2),
Sch. 2, V.
- c. 40 (*Public Health (Drainage of Trade*
Premises)).
book published: § 2988.
- c. 42 (*Exportation of Horses*).
orders made: §§ 144, 146, 147, 148.
- c. 46 (*Physical Training and Recreation*).
s. 4, amended: 11-2 G. 6, c. 26,
s. 132 (9).
- s. 10 (5), part repealed: *ib.*, s. 132
(8), Sch. 2, V.
- c. 54 (*Finance*).
books published: § 1364.
- s. 3 (3), excluded: 11-2 G. 6, c. 49,
s. 9 (2).
- s. 7, amended: *ib.*, s. 19: § 789.
- s. 22 (1), excluded: 11-2 G. 6, c. 49,
s. 69 (2) (a).
- s. 22 (1), applied: *ib.*, s. 69 (4).
- Sch. 4, para. 11, directors' remunera-
tion: *ib.*, 71 (1), proviso.
- Sch. 5, III, para. 5, part repealed:
11-2 G. 6, c. 38, Sch. 17, I.
- c. 57 (*Matrimonial Causes*).
sodomy: § 900.
- s. 1 (1), construed: § 1006.
- s. 2, construed: § 964.
- s. 3, construed: § 965.
- s. 4, construed: §§ 880, 951, 1000.
- s. 6 (2), construed: § 952.
- s. 7 (1) (a), construed: §§ 998, 1000,
1001, 1002.
- s. 7 (1), proviso (ii), construed:
§ 996.
- s. 13, construed: § 929.
- c. 58 (*Summary Procedure (Domestic Pro-*
ceedings)).
s. 7, repealed: 11-2 G. 6, c. 58, Sch.
10, I (*prosp.*).
- c. 67 (*Factories*).
saved: 11-2 G. 6, c. 37, s. 5 (7).
amendment of certain powers to make

1 Edw. 8 & 1 Geo. 6—*cont.* (1937)—*cont.*c. 67 (*Factories*)—*cont.*

regulations, etc.: 11-2 G. 6, c. 55, s. 8.

books published: § 1432.

damages: § 830.

definition applied: 11-2 G. 6, c. 32, s. 36 (1).

effect of 11-2 G. 6, c. 55: § 1418.

s. 1, order made: § 1427.

ss. 3 (3), 4 (2), 5 (2), 7 (2), powers to prescribe standards: 11-2 G. 6, c. 55, s. 8 (1), Sch. 2.

s. 11, extension of powers: *ib.*, s. 3.

s. 13 (1), construed: § 1416.

s. 14 (1), construed: §§ 1415, 1416.

s. 17, regs. made: § 1427.

s. 22 (1), construed: § 1413.

s. 22 (3), amended: 11-2 G. 6, c. 55, s. 11 (1).

s. 26 (1), construed: §§ 1423, 1424, 1425.

s. 27 (1), amended: 11-2 G. 6, c. 55, s. 11 (2) (3).

s. 27 (1) (c), part repealed: *ib.*, s. 16 (2), Sch. 3.

s. 28 (4), amended: *ib.*, s. 11 (4).

s. 33 (3), part repealed: *ib.*, ss. 11 (5), 16 (2), Sch. 3.

s. 40, amended: *ib.*, s. 4, Sch. 1.

s. 40, applied: *ib.*, s. 4 (2).

s. 40, part repealed: *ib.*, s. 16 (2), Sch. 3.

s. 42 (2), powers to prescribe standard: *ib.*, s. 8 (1), Sch. 2.

s. 43 (2), powers to prescribe standard: *ib.*, s. 8 (1), Sch. 2.

s. 43 (2), amended: *ib.*, s. 8 (3).

s. 44, substituted: *ib.*, s. 6 (1) (*prosp.*).

s. 46, regs. made: § 1427.

s. 46 (6), regs. made: § 1427.

ss. 47, 60, construed: § 1421.

ss. 56, 60, regs. made: § 1427.

s. 60 (1), amended: 11-2 G. 6, c. 55, s. 12 (1), Sch. 1.

s. 62 (1), amended: *ib.*, s. 12 (2).

s. 94 (1), amended: *ib.*, s. 13 (1).

s. 95, amended: *ib.*, s. 13 (2).

s. 99, applied: *ib.*, s. 1 (1).

ss. 99, 126, regs. made: § 1427.

s. 99 (1), applied: 11-2 G. 6, c. 55, s. 1 (2).

s. 99 (1), part repealed: *ib.*, s. 16 (2), Sch. 3.

s. 99 (3), extended: *ib.*, s. 1 (3).

s. 99 (5), part repealed: *ib.*, s. 16 (2), Sch. 3.

s. 99 (6), repealed: *ib.*, s. 16 (2), Sch. 3.

s. 99 (8), applied: *ib.*, s. 1 (3), proviso.

s. 102, amended: *ib.*, s. 14 (1).

s. 102, part repealed: *ib.*, s. 16 (2), Sch. 3.

s. 105 (2), amended: *ib.*, ss. 2 (1), (2) (a), (3), 14 (2).

s. 106, amended: *ib.*, s. 2 (1), (2) (b).

s. 106 (1), amended: *ib.*, s. 14 (3).

s. 107, amended: *ib.*, s. 2 (1), (2) (c).

1 Edw. 8 & 1 Geo. 6—*cont.* (1937)—*cont.*c. 67 (*Factories*)—*cont.*

ss. 107, 108, amended: *ib.*, s. 14 (4).

s. 108, amended: *ib.*, s. 2 (1), (2) (d).

s. 113 (1), amended: *ib.*, s. 5 (1) (a), Sch. 1.

s. 113 (1), part repealed: *ib.*, s. 16 (2), Sch. 3.

s. 113 (2), amended: *ib.*, s. 5 (1) (b), Sch. 1.

s. 113 (2), part repealed: *ib.*, s. 16 (2), Sch. 3.

s. 123, extension of powers: *ib.*, ss. 5 (4), 9 (1).

s. 123 (1) (e) (f), (2), (3), (4), amended: *ib.*, s. 9 (2).

s. 126, amended: *ib.*, s. 7.

s. 126 (3), proviso, repealed: *ib.*, s. 16 (2), Sch. 3.

s. 130 (2), amended: *ib.*, s. 10 (1), Sch. 1.

s. 151 (1), construed: § 3649.

s. 151 (1) (a) (c) (xiii) (6), construed: § 1422.

s. 156 (17), part repealed: 11-2 G. 6, c. 55, s. 16 (2), Sch. 3.

s. 159, construed: § 1421.

c. 68 (*Local Government Superannuation*).
construed: § 3546.

definitions applied: 11-2 G. 6, c. 26, s. 47 (1).

pension rights: 11-2 G. 6, c. 32, s. 29.

power to extend: 11-2 G. 6, c. 33, s. 7: § 2656.

superannuation of officers: 11-2 G. 6, c. 43, s. 57 (1) (b).

s. 8, extended: 11-2 G. 6, c. 65, s. 72 (3).

s. 8, extended: 11-2 G. 6, c. 33, s. 6 (4) (5).

s. 8, construed: § 2067.

s. 8 (5), construed: § 2070.

s. 10 (7), applied: 11-2 G. 6, c. 33, s. 6 (3) (a).

s. 13, applied: *ib.*, s. 6 (3) (b), Sch.

s. 20, article: § 2086.

ss. 24, 35, construed: § 2067.

s. 27, amended: 11-2 G. 6, c. 65, s. 72 (2), 80.

s. 29, amended: 11-2 G. 6, c. 33, s. 1, Sch., Part I, paras. (4) (6).

s. 29 (1), applied: *ib.*, s. 6 (3) (c).

s. 38, regs. made: § 2066.

s. 40 (1), definition applied: 11-2 G. 6, c. 33, s. 6 (3) (d).

s. 40 (1) (3), construed: § 2070.

c. 70 (*Agriculture*).

s. 5, part repealed: 11-2 G. 6, c. 63, Sch. 8.

s. 20 (1), period extended: 11-2 G. 6, c. 35, s. 1 (1): § 135.

s. 21, amended: *ib.*, s. 1 (3).

s. 27, extended: *ib.*, s. 1 (4).

1 & 2 Geo. 6 (1937 *cont.*).c. 3 (*National Health Insurance (Juvenile Contributors and Young Persons)*).

regs. made: § 2391.

c. 4 (*Merchant Shipping (Superannuation Contributions)*).

effect of 11-2 G. 6, c. 44: § 3483.

1 & 2 Geo. 6 (1937 *cont.*)—*cont.*c. 6 (*Air-Raid Precautions*).

effect of 12-3 G. 6, c. 5: § 429.

s. 8, part repealed: 12-3 G. 6, c. 5, Sch.

1 & 2 Geo. 6 *cont.* (1938).c. 11 (*Blind Persons*).

ss. 2, 3, 4, repealed: 11-2 G. 6, c. 29, Sch. 7, III.

s. 3, transitional provisions: *ib.*, Sch. 6, para. 17.s. 5, part repealed: *ib.*, Sch. 7, III.c. 12 (*Population (Statistics)*).

continued as amended: 12-3 G. 6, c. 3, Sch. I.

c. 14 (*National Health Insurance (Amendment)*).

regs. made: § 2391.

c. 17 (*Cinematograph Films*).

applied: 11-2 G. 6, c. 23, s. 9 (3).

effect of, *ib.*: § 2949.ss. 1-7, repealed: *ib.*, Sch. 1, II.s. 8, amended: *ib.*, Sch. 1, I.s. 9 (1) (2) (3) (4) (7), amended: *ib.*, Sch. 1, I.s. 10 (1), amended: *ib.*, Sch. 1, I.s. 11 (1)-(4), amended: *ib.*, Sch. 1, I.s. 12 (1) (2) (3) (4), amended: *ib.*, Sch. 1, I.s. 13 (1) (2), amended: *ib.*, Sch. 1, I.ss. 14-16, repealed: *ib.*, Sch. 1, II.s. 17 (1), amended: *ib.*, Sch. 1, I.s. 18, amended: *ib.*, Sch. 1, I.s. 20 (1) (a) (b), amended: *ib.*, Sch. 1, I.s. 20 (2), repealed: *ib.*, Sch. 1, II.s. 21, amended: *ib.*, Sch. 1, I.s. 22 (1), proviso (a), amended: *ib.*, Sch. 1, I.s. 23 (1) (2), amended: *ib.*, Sch. 1, I.s. 24 (3), amended: *ib.*, Sch. 1, I.s. 25 (1), amended: *ib.*, Sch. 1, I.s. 26 (1), amended: *ib.*, Sch. 1, I.s. 26 (2)-(7), repealed: *ib.*, Sch. 1, II.s. 29, amended: *ib.*, Sch. 1, I.s. 30, amended: *ib.*, Sch. 1, I.s. 33 (1), amended: *ib.*, Sch. 1, I.

s. 34, construed: § 1278.

s. 34 (1) (3), amended: 11-2 G. 6, c. 23, Sch. 1, I.

s. 34 (2), repealed: *ib.*, Sch. 1, II.s. 35, amended: *ib.*, Sch. 1, I.s. 36 (1), amended: *ib.*, Sch. 1, I.s. 37 (1) (2), repealed: *ib.*, Sch. 1, II.

s. 37 (3), records and return: § 2950.

s. 37 (3) (5) (6), amended: 11-2 G. 6, c. 23, Sch. 1, I.

s. 38 (2), amended: *ib.*, Sch. 1, I.s. 39, amended: *ib.*, Sch. 1, I.

s. 40, regs. made: §§ 2950, 2954, 2956.

s. 40 (1) (b), (2), amended: 11-2 G. 6, c. 23, Sch. 1, I.

s. 41 (1) (a) (b) (d) (e), (2), (6), (7), (8), amended: *ib.*, Sch. 1, I.s. 42 (1) (2), amended: *ib.*, Sch. 1, I.s. 43, amended: *ib.*, Sch. 1, I.s. 44 (1) (4) (6) (7), amended: *ib.*, Sch. 1, I.1 & 2 Geo. 6 *cont.* (1938)—*cont.*c. 17 (*Cinematograph Films*)—*cont.*s. 44 (2) (3), repealed: *ib.*, Sch. 1, II.s. 45 (1)-(5), (7), (8), repealed: *ib.*, Sch. 1, II.s. 45 (6), amended: *ib.*, Sch. 1, I.s. 46 (3), amended: *ib.*, Sch. 1, I.Schs. 1, 3, repealed: *ib.*, Sch. 1, II.c. 19 (*Rating and Valuation (Postponement of Valuations)*).repealed: 11-2 G. 6, c. 26, Sch. 2, II (*prosp.*).c. 21 (*Dogs Amendment*).

s. 1, part repealed: 11-2 G. 6, c. 58, Sch. 10, I (as from December 27, 1948: SI 1948, No. 2349).

s. 1 (2), amended: *ib.*, Sch. 9 (as from December 27, 1948: SI 1948, No. 2349).c. 22 (*Trade Marks*).

s. 2, construed: § 3724.

s. 9 (2), construed: § 3725.

s. 11, construed: § 3724.

c. 23 (*Poor Law (Amendment)*).

repealed: 11-2 G. 6, c. 29, Sch. 7, I.

c. 26 (*Increase of Rent and Mortgage Interest (Restrictions)*).

articles: §§ 1979, 3251.

furnished houses: §§ 3176, 3179, 3186.

small tenements recovery: § 1966.

s. 7, construed: § 3169.

c. 28 (*Evidence*).

s. 1, article: § 1347.

s. 1 (1), construed: §§ 1310, 1316.

s. 1 (3), article: § 1347.

s. 1 (3), construed: §§ 1309, 1310, 1311, 1312, 1316.

s. 1 (4), construed: § 1316.

c. 30 (*Sea Fish Industry*).

regs. made: § 1461.

Part IV (ss. 47-50), effect of 11-2 G. 6, c. 44: § 3483.

s. 38, part repealed: 11-2 G. 6, c. 51, s. 1 (1).

c. 33 (*Air Navigation (Financial Provisions)*).

order made: § 233.

c. 40 (*Children and Young Persons*).s. 4, amended: 11-2 G. 6, c. 58, Sch. 9 (*prosp.*).s. 4 (3), applied: *ib.*, s. 74 (4) (e).s. 6 (2) (3), applied: *ib.*, s. 49 (5).s. 6 (3), amended: *ib.*, Sch. 9 (*prosp.*).c. 43 (*Mental Deficiency*).

children: § 1705.

mental health services: § 2122.

national health service regulations: § 2118.

c. 44 (*Road Haulage Wages*).

effect of 12-3 G. 6, c. 7: § 1283.

ss. 1-3, repealed: 12-3 G. 6, c. 7, Sch. 3.

s. 3, orders made: § 3353.

s. 4 (3) (a), modified: *ib.*, Sch. 1.s. 6 (3), modified: *ib.*, Sch. 1.s. 10 (2), part repealed: *ib.*, Sch. 3.s. 10 (4), part repealed: *ib.*, Sch. 3.s. 13 (2), part repealed: *ib.*, Sch. 3.s. 15 (2), modified: *ib.*, Sch. 1.

1 & 2 Geo. 6 *cont.* (1938)—*cont.*

- c. 44 (*Road Haulage Wages*)—*cont.*
 - s. 15, part repealed: *ib.*, Sch. 3.
 - s. 16 (1) (2), repealed: *ib.*, Sch. 3.
 - Schs. 1, 2, repealed: *ib.*, Sch. 3.
 - Sch. 3, para. 3, part repealed: *ib.*, Sch. 3.
- c. 45 (*Inheritance (Family Provision)*).
 - articles: §§ 1405, 3128, 3948.
 - discovery: § 2822.
 - s. 1 (7), construed: § 3935.
 - s. 2 (1), construed: §§ 3933, 3936, 3937.
 - s. 4 (1) (b), construed: § 3933.
- c. 46 (*Finance*).
 - s. 6, duty on Empire goods: 11-2 G. 6, c. 49, s. 9 (3).
 - books published: § 1364.
 - s. 17 (1), construed: § 1665.
 - s. 38, construed: § 1692.
 - s. 38 (1) (a), construed: § 1690.
 - s. 38 (3) (4), construed: § 1689.
 - s. 41 (4) (a) (ii), construed: § 1688.
 - s. 42 (5) (a) (b), payments of interest, etc., between connected companies: 11-2 G. 6, c. 49, s. 69 (1) (3) (5).
- c. 52 (*Coal*).
 - article: § 3432.
 - disposal of compensation: § 508.
 - Sch. 3, IV, para. 21 (2), construed: §§ 509, 510.
 - Sch. 3, IV, para. 21 (6), construed: § 509.
 - Sch. 3, IV, para. 22, construed: § 510.
- c. 56 (*Food and Drugs*).
 - article: §§ 1492, 2170.
 - damages through conviction: § 3620.
 - regs. made: § 1483.
 - samples taken in transit: § 1490.
 - transfer of functions: § 1482.
 - s. 3 (1), construed: §§ 1467, 1476, 1486.
 - s. 8, regs. made: § 1478.
 - s. 24, construed: § 1470.
 - s. 24 (1) (c), construed: § 1475.
 - ss. 46, 50, transfer of functions: § 2172.
 - s. 66, definition applied: 11-2 G. 6, c. 34, s. 13 (1).
 - s. 68 (4), construed: § 1489.
 - s. 70 (1) (2), construed: § 1491.
 - s. 81 (1), construed: §§ 1486, 1488.
 - s. 83 (1), construed: §§ 1470, 1471, 1472.
- c. 63 (*Administration of Justice (Miscellaneous Provisions)*).
 - s. 4 (2), repealed: 11-2 G. 6, c. 26, Sch. 2, II.
 - s. 11 (1) (2), part repealed: 11-2 G. 6, c. 58, Sch. 10, I (as from September 13, 1948: SI 1948, No. 1840).
 - s. 14 (2), construed: § 977.
- c. 65 (*Rating and Valuation (Air-Raid Works)*).
 - s. 1 (3), repealed: 11-2 G. 6, c. 26, Sch. 2, II.
- c. 70 (*Holidays with Pay*).
 - effect of 11-2 G. 6, c. 47: § 56.
 - effect of 12-3 G. 6, c. 7: § 1283.
 - order made: § 3353.

1 & 2 Geo. 6 *cont.* (1938)—*cont.*

- c. 70 (*Holidays with Pay*)—*cont.*
 - ss. 1, 2, 3, 5, part repealed: 11-2 G. 6, c. 47, Sch. 5.
 - s. 1 (6), repealed: 12-3 G. 6, c. 7, Sch. 3.
 - s. 2 (2), part repealed: *ib.*, Sch. 3.
 - s. 3 (1) (c), repealed: *ib.*, Sch. 3.
 - s. 5, part repealed: *ib.*, Sch. 3.
- 2 & 3 Geo. 6 (1939).
 - c. 5 (*Export Guarantees*).
 - s. 1, modified: 11-2 G. 6, c. 54, s. 1 (1) (a).
 - s. 1 (4), modified: *ib.*, s. 1 (1) (b).
 - s. 2, part repealed: *ib.*, Sch.
 - c. 13 (*Cancer*).
 - s. 1, book published: § 2988.
 - s. 2, applied: 11-2 G. 6, c. 26, s. 12 (1) (c).
 - c. 16 (*Prevention of Fraud (Investments)*).
 - definition applied: 11-2 G. 6, c. 38, s. 455 (1).
 - s. 2 (2), amended: *ib.*, s. 456, Sch. 16, para. 2 (1).
 - s. 13 (2), amended: *ib.*, s. 456, Sch. 16, para. 2 (2) (3).
 - c. 19 (*Wild Birds (Duck and Geese) Protection*).
 - orders made: § 159.
 - c. 21 (*Limitation*).
 - ss. 2, 3, amended: 11-2 G. 6, c. 67, s. 14 (2).
 - s. 2 (4), construed: §§ 2001, 2829.
 - s. 3, construed: § 2007.
 - ss. 12, 16, construed: § 2247.
 - s. 20, construed: § 2015.
 - s. 21, excluded: 11-2 G. 6, c. 67, s. 14 (1).
 - s. 21, construed: § 2019.
 - s. 21 (1), construed: § 2018.
 - s. 23 (4), construed: § 2000.
 - s. 26, construed: § 2007.
 - s. 26 (a), construed: § 2008.
 - s. 27 (6), construed: § 2005.
 - s. 31, construed: § 2829.
 - s. 31 (1), construed: § 2001.
 - c. 26 (*Charities (Fuel Allotments)*).
 - variation of scheme: § 417.
 - powers transferable to Ministry of Education: 11-2 G. 6, c. 40, s. 1.
 - c. 27 (*Adoption of Children (Regulation)*).
 - child-life protection: § 1705.
 - s. 7, children's committee: 11-2 G. 6, c. 43, s. 39 (1) (c).
 - s. 7, Child Life Protection provisions excluded: 11-2 G. 6, c. 43, s. 37 (4).
 - s. 7, Child Life Protection provisions extended: 11-2 G. 6, c. 43, ss. 35, 36.
 - s. 7, Advisory Council on Child Care: *ib.*, s. 43 (1).
 - s. 7 (8) (b), amended: 11-2 G. 6, c. 43, Sch. 3.
 - s. 7, transitional provisions: 11-2 G. 6, c. 43, Sch. 2, para. 11.
 - s. 15 (c) (iii), part repealed: 11-2 G. 6, c. 43, Sch. 4, I.
 - s. 16 (2) (3), amended: 11-2 G. 6, c. 43, Sch. 3.

2 & 3 Geo. 6 (1939)—*cont.*

- c. 29 (*Unemployment Insurance*).
effect of 11-2 G. 6, c. 46: § 1246.
repealed: 11-2 G. 6, c. 46, Sch. 2.
s. 35 (6), construed: § 2439.
- c. 31 (*Civil Defence*).
effect of 12-3 G. 6, c. 5: § 429.
- c. 38 (*Ministry of Supply*).
s. 2, applied: 11-2 G. 6, c. 37, s. 1 (2).
- c. 39 (*Coast Protection*).
s. 1 (1), orders made: § 3391.
- c. 40 (*London Government*).
s. 10, repealed: 11-2 G. 6, c. 65, Sch. 13.
s. 11 (2) (3), repealed: *ib.*, Sch. 13.
s. 24, repealed: *ib.*, Sch. 13.
s. 25, order made: § 1090.
s. 33 (1) (c), repealed: 11-2 G. 6, c. 29, Sch. 7, III.
s. 33 (2) (e), repealed: *ib.*, Sch. 7, III.
s. 45 (1), repealed: 11-2 G. 6, c. 65, Sch. 13.
s. 46 (1), proviso (a), repealed: *ib.*, Sch. 13.
s. 50 (2), repealed: *ib.*, Sch. 13.
s. 52, amended: 11-2 G. 6, c. 26, s. 131.
s. 53, repealed: 11-2 G. 6, c. 65, Sch. 13.
s. 56, repealed: *ib.*, Sch. 13.
s. 60 (3), amended: 11-2 G. 6, c. 26, s. 128.
s. 66 (2) (b), repealed: *ib.*, Sch. 2, II.
s. 68 (4), repealed: *ib.*, s. 147, Sch. 2, II (*prosp.*).
s. 75, applied: 11-2 G. 6, c. 43, s. 41 (6).
s. 85, part repealed: 11-2 G. 6, c. 29, Sch. 7, III.
s. 117 (4), repealed: *ib.*, Sch. 2, V.
s. 163, repealed: *ib.*, Sch. 2, V.
s. 166 (1), proviso, repealed: 11-2 G. 6, c. 29, Sch. 7, III.
s. 196, saved: *ib.*, Sch. 3, para. 11.
Sch. 2, I, para. 4 (1), part repealed: 11-2 G. 6, c. 65, Sch. 13.
Sch. 2, I, para. 5 (5), part repealed: *ib.*, Sch. 13.
Sch. 2, I, para. 7, part repealed: *ib.*, Sch. 13.
Sch. 2, II, para. 3 (2), repealed: *ib.*, Sch. 13.
Sch. 2, II, para. 14 (1) (3), repealed: *ib.*, Sch. 13.
Sch. 2, II, para. 16 (1), part repealed: *ib.*, Sch. 13.
Sch. 2, II, para. 17 (2), part repealed: *ib.*, Sch. 13.
Sch. 2, II, para. 20 (1) (c), part repealed: *ib.*, Sch. 13.
Sch. 2, II, para. 22 (1), part repealed: *ib.*, Sch. 13.
Sch. 2, II, para. 26 (e), part repealed: *ib.*, Sch. 13.
Sch. 2, II, para. 33, part repealed: *ib.*, Sch. 13.
Sch. 2, II, para. 37, repealed: *ib.*, Sch. 13.

2 & 3 Geo. 6 (1939)—*cont.*

- c. 40 (*London Government*)—*cont.*
Sch. 2, II, para. 40, part repealed: *ib.*, Sch. 13.
Sch. 2, III, part repealed: *ib.*, Sch. 13.
Sch. 3, I, para. 1 (2) (a), repealed: *ib.*, Sch. 13.
Sch. 3, II, para. 1 (2), part repealed: *ib.*, Sch. 13.
Sch. 6, para. 17, regs. made: § 2095.
- c. 41 (*Finance*).
book published: § 1364.
s. 7 (2) (b), repealed: 11-2 G. 6, c. 49, Sch. 11, I.
s. 13 (3) (4), construed: § 1688.
s. 19, expenses allowances: 11-2 G. 6, c. 49, s. 38 (2).
s. 30, article: § 3432.
s. 40 (1) (3), construed: § 1683.
- c. 48 (*Agricultural Development*).
s. 30 (2), part repealed: 11-2 G. 6, c. 63, Sch. 8.
- c. 49 (*House of Commons Members' Fund*).
amended: § 2551.
s. 1 (1) (2), amended: 11-2 G. 6, c. 36, s. 1 (1).
s. 3 (2), part repealed: *ib.*, s. 5 (1).
s. 3 (5), amended: *ib.*, s. 6.
Sch. 1, amended: *ib.*, s. 1 (2).
Sch. 1, paras. 1, 2, amended: *ib.*, s. 2 (1) (2).
Sch. 1, para. 4, repealed: *ib.*, s. 2 (3).
Sch. 1, paras. 1-4, 6, excluded: *ib.*, s. 4 (2).
Sch. 1, para. 5, applied: *ib.*, s. 4 (2).
- c. 50 (*Prevention of Violence (Temporary Provisions)*).
continued: 12-3 G. 6, c. 3, Sch. I.
- c. 57 (*War Risks Insurance*).
s. 1 (1) (b), re-insurance: 11-2 G. 6, c. 38, s. 434 (2).
s. 5, repealed: *ib.*, Sch. 17, I.
- c. 58 (*Public Health (Coal Mine Refuse)*).
book published: § 2988.
- c. 62 (*Emergency Powers (Defence)*).
s. 7, construed: § 522.
- c. 68 (*Armed Forces (Conditions of Service)*).
s. 3 (3), excluded: 11-2 G. 6, c. 28, s. 10 (2).
- c. 69 (*Import, Export and Customs Powers (Defence)*).
s. 1, orders made: §§ 785, 786.
- c. 71 (*Rent and Mortgage Interest Restrictions*).
amended: 11-2 G. 6, c. 63, Sch. 7 (1).
articles: §§ 1979, 3251.
furnished houses: §§ 3176, 3179, 3186.
small tenements recovery: § 1966.
s. 3, construed: § 3159.
s. 3 (1), construed: §§ 3164, 3211.
s. 3 (2) (b), construed: §§ 3149, 3186.
s. 3 (2) (c), construed: § 3198.
s. 3 (3), construed: §§ 3249, 3158.
s. 7, construed: § 3159.
s. 7, definition applied: 11-2 G. 6, c. 26, s. 75 (6).
Sch. 1, construed: §§ 3149, 3164, 3186, 3211, 3213.

2 & 3 Geo. 6 (1939)—*cont.*

- c. 72 (*Landlord and Tenant (War Damage)*).
s. 1 (1) (3) (5), construed: § 1975.
- c. 73 (*Housing (Emergency Powers)*).
direction: § 3840.
- c. 74 (*Essential Buildings and Plant (Repair of War Damage)*).
direction: § 3840.
- c. 75 (*Compensation (Defence)*).
amended: § 535.
applied: 11-2 G. 6, c. 17, s. 8 (2).
modified: *ib.*, s. 9.
sums payable applied: *ib.*, s. 16 (a).
s. 2, amended: *ib.*, ss. 10, 11: § 535.
s. 2 (1), modified: *ib.*, s. 7 (1).
s. 2 (1) (b), construed: §§ 534, 3397.
s. 2 (1), proviso (i), modified: 11-2 G. 6, c. 17, s. 7 (2).
s. 3, amended: § 535.
s. 3, excluded: 11-2 G. 6, c. 17, s. 11 (2).
s. 3 (2), excluded: *ib.*, s. 13 (4) (5).
s. 8 (4), amended: *ib.*, s. 13 (5).
s. 11, rules made: § 537.
- c. 81 (*National Service (Armed Forces)*).
decision of the umpire: § 192.
effect of 11-2 G. 6, c. 64: § 193.
repealed: 11-2 G. 6, c. 64, Sch. 6.
women's services: § 179.
s. 5, definition applied: 11-2 G. 6, c. 24, s. 8 (1).
s. 21 (2), saved: 11-2 G. 6, c. 64, s. 60 (2).
- c. 82 (*Personal Injuries (Emergency Provisions)*).
ss. 1, 2, scheme made: § 2672.
- c. 83 (*Pensions (Navy, Army, Air Force and Mercantile Marine)*).
ss. 3, 4, scheme made: § 2661.
s. 5 (1), scheme made: § 2663.
s. 7, schemes made: § 2661, 2663.
- c. 84 (*National Health Insurance and Contributory Pensions (Emergency Provisions)*).
regs. made: § 2391.
- c. 89 (*Trading with the Enemy*).
orders made: §§ 3733, 3741.
s. 1, orders made: §§ 3737, 3738, 3739, 3741.
s. 2 (1) (b), construed: § 3734.
s. 4, orders made: § 3738, 3741.
s. 7, custodian appointed: § 3732.
s. 7, orders made: §§ 3738, 3739, 3741.
s. 7 (1) (f), information: § 3733.
- c. 93 (*Unemployment Assistance (Emergency Powers)*).
repealed: 11-2 G. 6, c. 29, Sch. 7, III.
- c. 94 (*Local Government Staffs (War Service)*).
amended: 11-2 G. 6, c. 33, Sch. 1, I.
- c. 95 (*Teachers Superannuation (War Service)*).
period of war service: 11-2 G. 6, c. 33, s. 12 (2), amended: *ib.*, Sch. 1, II.
- c. 100 (*Stocks (Emergency Provisions)*).
transfer of stock: 11-2 G. 6, c. 26, s. 125 (1) (a).

2 & 3 Geo. 6 (1939)—*cont.*

- c. 103 (*Police and Firemen (War Service)*).
s. 1, applied: 11-2 G. 6, c. 24, s. 3 (2).
s. 2, part repealed with savings: *ib.*, Sch. 1, I, para. 14.
s. 2 (1), saved: *ib.*, s. 3 (1) (b), Sch. 1, III, para. 1.
s. 3, part repealed with savings: *ib.*, Sch. 1, I, para. 14.
s. 4 (1), repealed with savings: *ib.*, Sch. 1, I, para. 14.
s. 4 (3), saved: *ib.*, s. 3 (1) (b).
s. 4 (3) (4) (5), part repealed with savings: *ib.*, Sch. 1, I, para. 14.
s. 5, part repealed with savings: *ib.*, Sch. 1, I, para. 14.
s. 6 (1), repealed with savings: *ib.*, Sch. 1, I, para. 14.
s. 10 (2), part repealed with savings: *ib.*, Sch. 1, I, para. 14.
s. 11, part repealed with savings: *ib.*, Sch. 1, I, para. 14.
s. 13 (3), part repealed with savings: *ib.*, Sch. 1, I, para. 14.
s. 14, part repealed with savings: *ib.*, Sch. 1, I, para. 14.
 - c. 106 (*Universities and Colleges (Emergency Provisions)*).
s. 8 (2), order made: § 3788.
 - c. 109 (*Finance (No. 2)*).
books published: § 1364.
s. 1, amended: 11-2 G. 6, c. 49, s. 2 (1) (2).
s. 3, amended: *ib.*, s. 4 (1).
s. 9 (3), construed: § 1635.
s. 12 (3), construed: §§ 1360, 1361.
s. 14 (1), construed: § 1354.
ss. 15 (2), 18 (1), construed: § 1652.
Sch. 7, I, para. 6 (1), construed: §§ 1358, 1359.
Sch. 7, I, para. 6 (2), construed: § 1358.
Sch. 7, II, para. 2 (1), construed: § 1352.
Sch. 7, II, para. 3, construed: § 1351.
 - c. 114 (*Execution of Trusts (Emergency Provisions)*).
construed: § 1978.
s. 7, order made: § 3406.
 - c. 117 (*National Loans*).
extended: 11-2 G. 6, c. 15, s. 17 (3).
applied: 11-2 G. 6, c. 60, s. 11 (2).
 - c. xcvi (*London Building Acts (Amendment)*).
s. 84, amended form: § 2965.
- 3 & 4 Geo. 6 (1940).
- c. 7 (*Trade Boards and Road Haulage Wages (Emergency Provisions)*).
order made: § 3353.
s. 2 (1), part repealed: 12-3 G. 6, c. 7, Sch. 3.
 - c. 9 (*Cotton Industry*).
development council: § 3687.
s. 6, order made: § 3688.
 - c. 12 (*Rating and Valuation (Postponement of Valuations)*).
repealed: 11-2 G. 6, c. 26, Sch. 2, II.

3 & 4 Geo. 6 (1940)—*cont.*

- c. 13 (*Old Age and Widows' Pensions*).
 - s. 16, repealed: 11-2 G. 6, c. 26, Sch. 2, I.
 - ss. 1-17, repealed: 11-2 G. 6, c. 29, Sch. 7, III.
 - ss. 19, 20, repealed: *ib.*, Sch. 7, III.
 - Sch. 1, 2, repealed: *ib.*, Sch. 7, III.
- c. 14 (*Agriculture (Miscellaneous War Provisions)*).
 - amended: 11-2 G. 6, c. 32, Sch. 3, para. 5.
 - s. 15, drainage scheme: 11-2 G. 6, c. 63, ss. 9 (1), 43 (2) (b).
 - s. 15 (2), part repealed: 11-2 G. 6, c. 63, Sch. 8.
 - s. 18, excluded: 11-2 G. 6, c. 32, Sch. 3, para. 5.
 - s. 25 (1), scheme continued: § 30.
 - s. 26, saved: 11-2 G. 6, c. 63, s. 100 (10).
 - s. 28 (3), construed: §§ 1183, 1184.
 - s. 30, definition applied: 11-2 G. 6, c. 63, s. 9 (5).
- c. 17 (*Agricultural Wages (Regulation Amendment)*).
 - effect of 11-2 G. 6, c. 47: § 56.
- c. 19 (*Societies (Miscellaneous Provisions)*).
 - s. 10 (1), order made: § 1517.
- c. 29 (*Finance*).
 - books published: § 1364.
 - s. 32 (1), construed: § 1354.
 - ss. 50 (1), 55 (2), construed: § 846.
 - s. 54 (4), saved: 11-2 G. 6, c. 38, s. 459 (9) (c).
- c. 31 (*War Charities*).
 - amended: 11-2 G. 6, c. 29, s. 41 (1)-(3).
 - applied: §§ 421, 2272.
 - s. 4, regs. made: § 422.
 - s. 14 (3), proviso (a), repealed: 11-2 G. 6, c. 29, Sch. 7, III.
- c. 34 (*Middlesex Deeds*).
 - article: § 1878.
 - practice: § 2897.
- c. 35 (*Indian and Colonial Divorce Jurisdiction*).
 - order made: § 353.
- c. 38 (*Truck*).
 - books published: § 1432.
- c. 40 (*Colonial Development and Welfare*).
 - s. 1, applied: 11-2 G. 6, c. 15, s. 19 (a).
- c. 43 (*Merchant Shipping (Salvage)*).
 - effect of 11-2 G. 6, c. 44: § 3483.
- c. 44 (*Unemployment Insurance*).
 - repealed: 11-2 G. 6, c. 29, Sch. 7, III.
- c. 48 (*Finance (No. 2)*).
 - s. 19, repealed: 11-2 G. 6, c. 49, Sch. 11, I.
 - s. 20, repealed: 11-2 G. 6, c. 49, s. 21 (1) (7), Sch. 11, I.
 - books published: § 1364.
 - s. 20 (1), order made: § 3005.
 - s. 28, repealed: 11-2 G. 6, c. 49, s. 24 (2), Sch. 11, I.
 - Sch. 7, repealed: 11-2 G. 6, c. 49, Sch. 11, I.
 - Sch. 7, para. 7, construed: § 3010.
 - Sch. 9, para. 2, construed: § 737.

3 & 4 Geo. 6 (1940)—*cont.*

- c. 50 (*Agriculture (Miscellaneous War Provisions) (No. 2)*).
 - definition applied: 11-2 G. 6, c. 33, s. 17 (1).
 - s. 1 (2), repealed: 11-2 G. 6, c. 63, Sch. 8.
 - s. 4 (1), extended: 11-2 G. 6, c. 35, s. 1 (1).
- 4 & 5 Geo. 6 (1941).
- c. 11 (*Determination of Needs*).
 - repealed: 11-2 G. 6, c. 29, Sch. 7, III.
 - c. 15 (*National Service*).
 - decision by the umpire: § 192.
 - effect of 11-2 G. 6, c. 64: § 193.
 - repealed: 11-2 G. 6, c. 64, Sch. 6.
 - women's services: § 179.
 - s. 4 (2), sentence: § 758.
 - c. 24 (*Liabilities (War-Time Adjustment)*).
 - s. 7 (3) (a), construed: § 267.
 - c. 30 (*Finance*).
 - books published: § 1364.
 - s. 10, amended: 11-2 G. 6, c. 49, Sch. 11, II.
 - s. 11, amended 5-6 G. 6, c. 21, s. 28, amended: 11-2 G. 6, c. 49, s. 31 (1) (a).
 - s. 25, construed: §§ 1302, 1303.
 - c. 31 (*Goods and Services (Price Control)*).
 - ss. 1, 20 (4) (a), construed: § 1214.
 - c. 33 (*Local Government (Financial Provisions)*).
 - repealed: 11-2 G. 6, c. 26, Sch. 2, I.
 - c. 39 (*National Health Insurance Contributory Pensions and Workmen's Compensation*).
 - regs. made: § 2391.
 - s. 8, regs. made: §§ 2393, 2395.
 - c. 41 (*Landlord and Tenant (War Damage) (Amendment)*).
 - s. 1 (2) (3), construed: § 1976.
 - s. 1 (6), construed: § 1974.
 - c. 45 (*Local Government (Financial Provisions) (Scotland)*).
 - repealed: 11-2 G. 6, c. 26, Sch. 2, I.
- 5 & 6 Geo. 6 (1941 *cont.*).
- c. 4 (*National Service (No. 2)*).
 - decision of the umpire: § 192.
 - effect of 11-2 G. 6, c. 64: § 193.
 - repealed: 11-2 G. 6, c. 64, Sch. 6.
 - women's services: § 179.
- 5 & 6 Geo. 6, *cont.* (1942).
- c. 9 (*Restoration of Pre-War Trade Practices*).
 - s. 1, postponement: § 1170.
 - c. 16 (*Sugar Industry*).
 - s. 6, order made: § 3708.
 - c. 21 (*Finance*).
 - books published: § 1364.
 - s. 17 (1) (3), repealed: 11-2 G. 6, c. 49, Sch. 11, I.
 - s. 18 (1)-(3), repealed: *ib.*, Sch. 11, I.
 - s. 20 (2) (3) (4), part repealed: 11-2 G. 6, c. 38, s. 459, Sch. 17, I.
 - Sch. 7, repealed: 11-2 G. 6, c. 49, Sch. 11, I.
 - Sch. 8, repealed: *ib.*, Sch. 11, I.

- 5 & 6 Geo. 6, *cont.* (1942)—*cont.*
 c. 26 (*Pensions (Mercantile Marine)*).
 s. 1 (2) (d), construed: § 2674.
- 6 & 7 Geo. 6 (1942 *cont.*).
 c. 3 (*National Service*).
 decision of the umpire: § 192.
 effect of 11-2 G. 6, c. 64: § 193.
 repealed: 11-2 G. 6, c. 64, Sch. 6.
 women's services: § 179.
- 6 & 7 Geo. 6 *cont.* (1943).
 c. 6 (*Workmen's Compensation*).
 alternative remedies: § 2847.
 s. 6, construed: §§ 3976, 3982.
 s. 6 (1), construed: §§ 3983, 3984.
- c. 14 (*British Nationality and Status of Aliens*).
 effect of 11-2 G. 6, c. 56: § 118.
- c. 16 (*Agriculture (Miscellaneous Provisions)*).
 s. 7, part repealed: 11-2 G. 6, c. 26, Sch. 2, V.
 s. 9, improvements by landlord: 11-2 G. 6, c. 63, s. 9 (2) (3).
- c. 14 (*British Nationality and Status of Aliens*).
 repealed: 11-2 G. 6, c. 56, Sch. 4, II.
- c. 17 (*Nurses*).
 instrument made: § 2200.
 s. 8 (2), construed: § 2199.
- c. 19 (*Courts (Emergency Powers)*).
 appeal out of time: § 2759.
 construed: § 2806.
 evacuated areas: § 2807.
 s. 1 (2), construed: § 2805.
- c. 21 (*War Damage*).
 s. 6 (2), construed: § 3639.
 s. 98, approval of assignments: § 3830.
- c. 24 (*Catering Wages*).
 s. 8, orders made: §§ 1276, 1277.
- c. 27 (*Pensions and Determination of Needs*).
 ss. 1-5 (1), repealed: 11-2 G. 6, c. 29, Sch. 7, III.
 ss. 6-8, repealed: *ib.*, Sch. 7, III.
 Sch. 1, repealed: *ib.*, Sch. 7, III.
- c. 28 (*Finance*).
 books published: § 1364.
 s. 9, order made: § 3325.
 s. 12 (2) (3) applied: 11-2 G. 6, c. 49, Sch. 6, para. 6 (1).
 s. 24, construed: § 1349.
 Sch. 5, I, amended: 11-2 G. 6, c. 49, s. 16 (1).
- c. 29 (*Town and Country Planning (Interim Development)*).
 articles: §§ 1979, 3672, 3826.
 ribbon development: § 3665.
 s. 4 (1) (2), construed: § 3650.
 s. 5 (2), construed: § 3651.
 Sch. 1, para. 3, construed: § 3651.
- c. 34 (*Restriction of Ribbon Development*).
 planning regs.: § 3647.
- c. 35 (*Foreign Service*).
 reduction of allowances: § 2621.
 s. 6 (2), order made: § 2632.
- c. 35 (*Foreign Service*).
 s. 6 (2), extended: 11-2 G. 6, c. 38, s. 351 (3).
- 6 & 7 Geo. 6 *cont.* (1943)—*cont.*
 c. 39 (*Pensions Appeal Tribunals*).
 explanatory leaflet: § 2667.
 nominated Judge: § 2848.
 ss. 5 (2), 6 (3), construed: § 2664.
- c. 40 (*Law Reform (Frustrated Contracts)*).
 applied: 11-2 G. 6, c. 67, ss. 22 (6), 36 (5).
- c. 45 (*Income Tax (Employments)*).
 s. 2, definition applied: 11-2 G. 6, c. 49, s. 30 (3) (b).
 s. 2, regs. made: § 1660.
- c. 48 (*Parliament (Elections and Meeting)*).
 Part I repealed: 11-2 G. 6, c. 65, Sch. 13.
 Part II part saved: *ib.*, s. 17 (1) (a).
 s. 27 (6), amended: *ib.*, Sch. 10, II, para. 2 (3).
 s. 27 (7), repealed: 11-2 G. 6, c. 65, Sch. 13.
 s. 27 (8), part repealed: *ib.*, Sch. 13.
 s. 28, repealed: *ib.*, Sch. 13.
 s. 30 (2), part repealed: *ib.*, Sch. 13.
 s. 31 (5), part repealed: *ib.*, Sch. 13.
 s. 33 (1), repealed: *ib.*, Sch. 13.
 Sch. 1, repealed: 11-2 G. 6, c. 65, Sch. 13.
 Sch. 2, repealed: *ib.*, Sch. 13.
 Sch. 4, repealed: *ib.*, Sch. 13.
 Sch. 6, repealed: *ib.*, Sch. 13.
- 7 & 8 Geo. 6 (1944).
 c. 15 (*Reinstatement in Civil Employment*).
 effect of 11-2 G. 6, c. 64: § 193.
 preferential payments: 11-2 G. 6, c. 38, s. 319 (1) (c).
 re-instatement of employees after whole-time service: 11-2 G. 6, c. 64, ss. 39-41, 59.
 ss. 1-5, 6 (1), 9, 20 (5), construed: § 1267.
 ss. 8, 10, amended: 11-2 G. 6, c. 64, s. 59.
 s. 18 (2) (3) (4), repealed: 11-2 G. 6, c. 38, s. 459, Sch. 17.
- c. 21 (*Pensions (Increase)*).
 s. 3 (5), regs. made: § 2635.
 s. 4, order made: § 2653.
 s. 4, amended: 11-2 G. 6, c. 33, s. 13 (2).
 Sch. 1, II, para. 2, repealed with savings: 11-2 G. 6, c. 24, Sch. 1, I (15).
- c. 22 (*Police and Firemen (War Service)*).
 s. 1 (1), part repealed with savings: 11-2 G. 6, c. 24, Sch. 1, I, para. 16.
 s. 2 (1) (2), repealed with savings: *ib.*, Sch. 1, I, para. 16.
 s. 2 (3) (a), repealed with savings: *ib.*, Sch. 1, I, para. 16.
 s. 3 (1) (3), part repealed with savings: *ib.*, Sch. 1, I, para. 16.
 s. 4 (1), part repealed with savings: *ib.*, Sch. 1, I, para. 16.
 s. 4 (2), amended by regulations: *ib.*, Sch. 1, III, para. 1.
 s. 5, part repealed with savings: *ib.*, Sch. 1, I, para. 16.
 s. 6 (2), part repealed with savings: *ib.*, Sch. 1, I, para. 16.

7 & 8 Geo. 6 (1944)—*cont.*c. 23 (*Finance*).

- books published: § 1364.
- s. 11 (1), construed: § 804.
- s. 24, article: § 1694.
- s. 25, construed: § 1675.
- s. 43, illegitimate children: § 852.
- Sch. 2, I, part repealed: 11-2 G. 6, c. 49, Sch. 11, I.

c. 24 (*Parliamentary Electors (War-Time Registration)*).

- effect of 11-2 G. 6, c. 65: § 1095.
- repealed: 11-2 G. 6, c. 65, Sch. 1 β .

c. 31 (*Education*).

- definition applied: 11-2 G. 6, c. 43, s. 59 (1); 11-2 G. 6, c. 53, s. 13 (2).
- s. 2, part repealed: 11-2 G. 6, c. 40, Sch. 2.
- s. 2 (2), replaced: § 1057.
- s. 8, amended: 11-2 G. 6, c. 40, s. 4 (2).
- s. 8 (1), amended: *ib.*, s. 3.
- s. 10, amended: *ib.*, s. 7 (1) (3).
- s. 13, excluded: *ib.*, s. 7 (2) (3).
- s. 14, definition applied: 11-2 G. 6, c. 46, s. 18 (1).
- s. 33 (2), amended: 11-2 G. 6, c. 40, s. 11, Sch. 1, I.
- s. 35, definition applied: 11-2 G. 6, c. 46, s. 18 (1); c. 58, ss. 18 (5), 71 (2).
- s. 36, restricted: 11-2 G. 6, c. 40, s. 4 (2).
- ss. 37, 39, amended: 11-2 G. 6, c. 40, s. 9.
- ss. 40, 80, amended: § 1057.
- ss. 48, 50, amended: 11-2 G. 6, c. 40, Sch. 1, I.
- s. 51, repealed: *ib.*, Sch. 2.
- s. 52, part repealed: *ib.*, Sch. 2.
- s. 53, amended: *ib.*, Sch. 1, I.
- s. 53, part repealed: *ib.*, Sch. 2.
- s. 53, excluded: 11-2 G. 6, c. 53, s. 8 (3).
- ss. 55, 56, 57, amended: 11-12 G. 6, c. 40, Sch. 1, I.
- s. 57, applied: *ib.*, s. 8.
- s. 78, part repealed: *ib.*, Sch. 2.
- s. 80, extended: *ib.*, s. 4 (6).
- s. 80, part repealed: *ib.*, ss. 4 (4) (5), Sch. 2.
- s. 80, regs. made: § 1068.
- s. 81, regs. made: §§ 1069, 1070.
- s. 83, regs. made: § 1055.
- s. 87, article: § 3128.
- s. 87 (1) (2), construed: § 423.
- s. 89, regs. made: § 1075.
- s. 90, amended: 11-2 G. 6, c. 40, s. 10 (1).
- s. 95, excluded: *ib.*, s. 9 (2).
- s. 100, excluded: 11-2 G. 6, c. 53, s. 8 (3).
- ss. 100, 101, exchequer grants: 11-2 G. 6, c. 26, s. 5 (2) (b), 3 (c) (ii).
- s. 100, regs. made: §§ 1061, 1062, 1063, 1071, 1083.
- s. 100 (1) (b), regs. made: § 1060.
- s. 100 (1) (c), regs. made: §§ 1072, 1073.

7 & 8 Geo. 6 (1944)—*cont.*c. 31 (*Education*)—*cont.*

- s. 106, substituted: 11-2 G. 6, c. 40, s. 6 (7).
- s. 107, extended: *ib.*, s. 13.
- s. 114, part repealed: *ib.*, Sch. 2.
- s. 116, amended: *ib.*, Sch. 1, I, 2.
- s. 120 (2), part repealed: 11-2 G. 6, c. 58, Sch. 10, I (as from December 27, 1948: SI 1948, No. 2349).
- Sch. 3, amended: § 1057.
- Schs. 3, 4, amended: 11-2 G. 6, c. 40, Sch. 1, I.

c. 32 (*Herring Industry*).

- effect of 11-2 G. 6, c. 51: § 1462.
- s. 2, applied: 11-2 G. 6, c. 51, s. 7 (5).
- s. 3, amended: *ib.*, s. 5 (3).
- s. 4 (1), amended: *ib.*, s. 6 (1).
- s. 5, amended: *ib.*, s. 5 (4), 6 (2).

c. 34 (*Validation of War-time Leases*).

- construed: § 1978.

c. 40 (*Liabilities (War-time Adjustment)*).

- s. 7 (1), construed: § 267.

c. 41 (*House of Commons (Redistribution of Seats)*).

- ss. 4-7, amended: 8-9 G. 6, c. 5, s. 33; 10-1 G. 6, c. 10; amended, 11-2 G. 6, c. 65, s. 3.
- s. 4 (1) (3), part repealed: *ib.*, Sch. 13.
- s. 6, repealed: *ib.*, Sch. 13.
- Sch. 3, rule 2, paras. (1) (2), part repealed: *ib.*, Sch. 13.
- Sch. 3, rule 3, repealed: *ib.*, Sch. 13.
- Sch. 3, rule 4A, added: *ib.*, s. 3 (5).
- Sch. 3, rule 5 (1) (b) (i), repealed: *ib.*, s. 3 (5), Sch. 13.
- Sch. 3, rule 5 (2), part repealed: *ib.*, s. 3 (5), Sch. 13.
- Sch. 3, rule 5A (2), omitted: *ib.*, s. 3 (5).
- Sch. 3, rule 7, repealed: *ib.*, s. 3 (5), Sch. 13.
- Sch. 3, rule 8 (1) (a) (i), part repealed: *ib.*, s. 3 (5), Sch. 13.
- Sch. 4, rule 8 (2), repealed: *ib.*, s. 3 (5), Sch. 13.

c. 43 (*Matrimonial Causes (War Marriages)*).

- s. 4 (1), orders made: §§ 287, 331, 333, 351.

c. 44 (*Diplomatic Privileges (Extension)*).

- s. 1, order made: § 1777.

c. 47 (*Town and Country Planning*).

- adapted by regs.: § 1032.
- articles: §§ 1979, 3672, 3826.
- s. 1, article: § 3671.
- s. 1 (1), article: § 3672.
- s. 17, rules made: § 1877.
- s. 18, costs: § 511.
- s. 23, regs. made: § 3647.
- s. 25, applied: 11-2 G. 6, c. 17, s. 4 (3).
- s. 26, applied: *ib.*, s. 4 (3).
- s. 27, applied: *ib.*, s. 4 (3).
- s. 28, regs. made: § 3634.
- Schs. 1, 4, I, applied: 11-2 G. 6, c. 17, s. 4 (3).

8 & 9 Geo. 6 (1945).

- c. 5 (*Representation of the People*).
Parts I, III, V (ss. 1-3, 13-24, 33-40),
effect of 11-2 G. 6, c. 65: § 1095.
Part I (ss. 1-3), repealed: 11-2 G. 6,
c. 65, Sch. 13.
Part III (ss. 13-24), repealed: *ib.*,
Sch. 13.
Part IV (ss. 25-32), repealed: *ib.*,
Sch. 13.
s. 33 (3), part repealed: *ib.*, Sch. 13.
s. 35, repealed: *ib.*, Sch. 13.
s. 36, repealed: *ib.*, Sch. 13.
s. 37, repealed: *ib.*, Sch. 13.
s. 38, part repealed: *ib.*, Sch. 13.
s. 39, repealed: *ib.*, Sch. 13.
Schs. 1, 2, 4, repealed: *ib.*, Sch. 13.
- c. 9 (*Export Guarantees*).
s. 1, part repealed: 11-2 G. 6, c. 54,
s. I, Sch.
- s. 2, modified: *ib.*, s. 1 (1) (a) (c).
- c. 14 (*Teachers (Superannuation)*).
s. 2, period of war service: 11-2 G.
6, c. 33, s. 12.
s. 2 (3), repealed: *ib.*, s. 12 (4).
s. 3, amended: *ib.*, s. 10.
s. 5, applied: *ib.*, s. 8 (3).
s. 9, extended: *ib.*, s. 1, Sch. 2,
para. 3 (1).
s. 9, excluded: *ib.*, s. 1, Sch. 2,
para. 3 (2).
- c. 17 (*Wages Councils*).
effect of 12-3, G. 6, c. 7: § 1283.
ss. 4, 5, orders made: § 1281.
s. 5 (5), repealed: 12-3 G. 6, c. 7,
s. 5 (3), Sch. 3.
s. 5, applied: *ib.*, s. 3 (2).
s. 6, orders made: § 1282.
s. 6 (1) (b) (iii), repealed: *ib.*, s. 5
(3), Sch. 3.
s. 6 (2), amended: *ib.*, s. 4.
s. 8 (2) (a), amended: *ib.*, s. 3 (3).
s. 10, orders made: §§ 1284, 1285.
s. 10 (3), amended: *ib.*, s. 6 (1) (2).
s. 10 (5), amended: 12-3 G. 6, c. 7,
s. 6 (3).
s. 11, extended: *ib.*, s. 1, Sch. 2,
para. 4.
s. 20, orders made: § 1281.
- c. 18 (*Local Authorities Loans*).
applied: 11-2 G. 6, c. 32, s. 11 (6).
- c. 24 (*Finance*).
book published: § 1364.
s. 2, amended: 11-2 G. 6, c. 19, s.
21 (2).
- c. 28 (*Law Reform (Contributory Negli-
gence)*).
s. 1, construed: § 1426.
s. 1 (1), construed: § 1425.
- c. 32 (*Income Tax*).
article: § 1694.
book published: § 1695.
Parts I, IV (ss. 1-14, 32-34), stipula-
tion in contract: § 3815.
s. 34, amended: 11-2 G. 6, c. 49,
Sch. 11, II.
s. 59 (1) (a), applied: *ib.*, s. 34 (2).
s. 68, definition applied: *ib.*, ss. 45
(3), 46 (1), proviso (a).

8 & 9 Geo. 6 (1945)—*cont.*

- c. 38 (*Local Government (Boundary Com-
mission)*).
termination of third fixed grant
period: § 2078.
- c. 41 (*Family Allowances*).
s. 2 (1) (b), construed: § 1433.
s. 11, amended: § 1705.
s. 11 (1) (a), part repealed: 11-2 G. 6,
c. 43, Sch. 4, I.
s. 11, explained: *ib.*, s. 52 (3).
s. 11, amended: *ib.*, s. 52 (1) (2).
s. 23, construed: § 1433.
s. 25, regs. made: § 1435.
s. 26 (9), repealed: 11-2 G. 6, c. 43,
Sch. 4, I.
- c. 42 (*Water*).
effect of 11-2 G. 6, c. 22: § 3855.
s. 2, order made: § 3845.
s. 9, amended: § 3855.
s. 9, applications under: 11-2 G. 6,
c. 22, ss. 2 (2)-(5), 3.
s. 9 (6), repealed: *ib.*, s. 14 (5).
ss. 9, 10, orders made: § 3856.
s. 12, applications under: 11-2 G. 6,
c. 22, s. 4.
s. 12 (1), amended: *ib.*, s. 4 (1).
ss. 12, 14, amended: § 3855.
s. 14, orders made: § 3856.
s. 14, restrictions imposed: 11-2
G. 6, c. 22, s. 8 (7).
s. 14 (3), amended: *ib.*, s. 5 (1).
s. 14 (5), amended: *ib.*, s. 5 (2).
s. 14 (10), amended: *ib.*, s. 5 (4).
s. 16, amended: *ib.*, s. 6.
ss. 16, 23, amended: § 3855.
s. 23, orders made: § 3856.
s. 23, amended: 11-2 G. 6, c. 22,
s. 14 (7).
s. 23, applications under: *ib.*, ss. 2,
3, 4.
s. 23 (1), proviso (ii) modified: *ib.*,
s. 4 (4).
s. 23 (1) (c), amended: *ib.*, s. 13 (2).
s. 24, application under: *ib.*, s. 3 (1).
s. 24 (4), development corporations:
ib., s. 13 (1).
s. 24 (4), extended: § 3855.
s. 26 (3)-(5), amended: 11-2 G. 6,
c. 22, s. 2 (5).
ss. 26, 32, 33, 40, § 3856.
s. 33, amended: 11-2 G. 6, c. 22,
s. 14 (2).
s. 33 (1), proviso (a), amended: *ib.*,
s. 14 (3).
s. 37, amended: 11-2 G. 6, c. 22,
s. 14 (4).
s. 42 (1) (2), amended: *ib.*, s. 7 (1)
(2); § 3855.
s. 48, applied: 11-2 G. 6, c. 22,
s. 8 (2).
s. 50, order made: § 3845.
s. 59 (1), amended: 11-2 G. 6, c. 22,
s. 1; § 3855.
Sch. 1, para. 23, applied: 11-2 G. 6,
c. 22, s. 4 (3) (b).
Sch. 1, I, applied: *ib.*, s. 2 (4).
Sch. 1, para. 3, applied: *ib.*, s. 2 (4).
Sch. 1, para. 8, applied: *ib.*, ss. 2 (6),
4 (3) (a).

8 & 9 Geo. 6 (1945)—*cont.*

- Sch. 2, para. 10, repealed: *ib.*, s. 14 (5).
 Sch. 3, s. 1, definition amended: *ib.*, s. 10 (1).
 Sch. 3, s. 1, amended: § 3855.
 Sch. 3, s. 7, amended: 11-2 G. 6, c. 22, s. 11 (1).
 Sch. 3, s. 21, amended: *ib.*, s. 10 (2).
 Sch. 3, ss. 22-28, made applicable: 11-2 G. 6, c. 17, s. 15 (14) (c).
 Sch. 3, s. 30 (1), amended: 11-2 G. 6, c. 22, s. 11 (2).
 Sch. 3, s. 14, applied temporarily: *ib.*, s. 10 (4).
 Sch. 3, s. 63, amended: *ib.*, s. 11 (3).
 Sch. 3, s. 64 (1), amended: *ib.*, s. 11 (4).
 Sch. 3, s. 91, applied: *ib.*, ss. 8 (6), 10 (3).
 c. 43 (*Requisitioned Land and War Works*).
 adapted by regs.: § 1032.
 effect of 11-2 G. 6, c. 17: § 535.
 excluded: 11-2 G. 6, c. 17, s. 4 (3).
 increase of compensation: § 538.
 powers to acquire: 11-2 G. 6, c. 17, Sch., para. 9.
 sums payable applied: *ib.*, s. 16 (a).
 s. 1, construed: § 1591.
 Part II (ss. 4-14), applied: 11-2 G. 6, c. 17, s. 4 (1).
 s. 6 (3), added: *ib.*, s. 2: §§ 70, 535.
 s. 7 (3) (4), applied: 11-2 G. 6, c. 17, s. 4 (2).
 s. 8 (1), applied: *ib.*, s. 15 (1).
 s. 8 (2), amended: *ib.*, Sch., para. 1.
 s. 11 (3), amended: *ib.*, Sch., para. 2.
 ss. 11, 15-22, construed: § 1591.
 s. 13, amended: 11-2 G. 6, c. 17, Sch., para. 3.
 s. 14, part repealed: *ib.*, Sch., para. 5.
 s. 15, applied: *ib.*, s. 3 (1).
 s. 15, extended: *ib.*, s. 3 (2).
 s. 15, amended: *ib.*, Sch., para. 6.
 s. 16, extended: *ib.*, s. 3 (2).
 s. 16, power to exclude: *ib.*, s. 15 (4) (c).
 s. 17 (4), amended: *ib.*, Sch., para. 1.
 s. 21, amended: *ib.*, ss. 3 (2), 6, Sch., para. 7.
 s. 28, applied: *ib.*, ss. 12 (4), 15 (3).
 s. 28 (1), made permanent: *ib.*, s. 12 (1).
 s. 28 (2), modified: *ib.*, s. 7 (3).
 s. 28 (3) (a), made permanent: *ib.*, s. 12 (1).
 s. 28 (1) (3) (a), made permanent: §§ 535, 2693.
 s. 29 (1), amended: 11-2 G. 6, c. 17, Sch., para. 8.
 ss. 33, 34, made permanent: *ib.*, s. 1 (3): § 535.
 ss. 35, 40, extended: *ib.*, s. 1 (2): § 535.
 ss. 40, 41, continued: *ib.*, s. 1 (2): § 1437.
 s. 41, applied: *ib.*, ss. 4 (1) (2), 10 (5).

8 & 9 Geo. 6 (1945)—*cont.*

- c. 43 (*Requisitioned Land and War Works*)—*cont.*
 s. 41, extended: § 535.
 s. 41 (2) (3), amended: 11-2 G. 6, c. 17, s. 10 (3) (4).
 s. 45, restricted: *ib.*, s. 9 (3) (4).
 s. 45, increase of compensation: § 538.
 s. 52, extended: 11-2 G. 6, c. 17, Sch., para. 10.
 9 & 10 Geo. 6 (1945 *cont.*)
 c. 6 (*Chartered and Other Bodies (Resumption of Elections)*).
 s. 1, order made: § 668.
 c. 8 (*War Damage (Valuation Appeals)*).
 decisions of tribunal: § 3842.
 rules made: § 3841.
 c. 10 (*Supplies and Services (Transitional Powers)*).
 construed: § 527.
 s. 1 (1), construed: § 521.
 s. 5 (5), proviso repealed: 11-2 G. 6, c. 17, s. 1 (1): § 535.
 c. 11 (*Inshore Fishing Industry*).
 effect of 11-2 G. 6, c. 51: § 1462.
 s. 1, amended: 11-2 G. 6, c. 51, s. 3.
 c. 12 (*Civil Defence (Suspension of Powers)*).
 effect of 12-3 G. 6, c. 5: § 429.
 s. 1 (1), part repealed: 12-3 G. 6, c. 5, Sch.
 s. 1 (2), repealed: *ib.*, Sch.
 s. 2 (1), part repealed: *ib.*, Sch.
 s. 2 (2), repealed: *ib.*, Sch.
 s. 3, repealed: *ib.*, Sch.
 c. 13 (*Finance (No. 2)*).
 book published: § 1364.
 charities' wireless sets: § 421.
 s. 1, repealed: 11-2 G. 6, c. 49, Sch. 11, I.
 s. 2, amended: 11-2 G. 6, c. 29, s. 41 (4).
 s. 8, regs. made: § 791.
 s. 20, construed: § 1302.
 s. 21, definition applied: 11-2 G. 6, c. 49, s. 44.
 Sch. 1, repealed: *ib.*, Sch. 11, I.
 c. 17 (*Police (Overseas Service)*).
 s. 1, regs. made: § 2716.
 s. 1 (1), saved: 11-2 G. 6, c. 24, s. 1 (5).
 s. 1 (1), excluded: *ib.*, s. 5 (1).
 s. 1 (1), applied: *ib.*, s. 5 (4).
 s. 1 (1), definition applied: *ib.*, s. 8 (1).
 s. 1 (2), part repealed with savings: *ib.*, Sch. 1, I, para. 17.
 s. 1 (3) (4), repealed with savings: *ib.*, Sch. 1, I, para. 17.
 s. 2 (1), part repealed with savings: *ib.*, Sch. 1, I, para. 17.
 s. 2 (1), extended by reg.: *ib.*, Sch. 1, III, para. 2.
 c. 18 (*Statutory Orders (Special Procedure)*).
 s. 6 saved: 11-2 G. 6, c. 32, Sch. 1, para. 6.
 c. 20 (*Building Materials and Housing*).
 s. 7 (1) (3) construed: § 378.
 c. 21 (*Elections and Jurors*).
 effect of 11-2 G. 6, c. 66: § 1095.
 repealed: 11-2 G. 6, c. 65, Sch. 13.

9 & 10 Geo. 6 cont. (1946).

- c. 24 (*Local Government (Financial Provisions)*).
 termination of third fixed grant period: § 2078.
 repealed: 11-2 G. 6, c. 26, Sch. 2, I, s. 3, applied: *ib.*, s. 5 (2) (a).
- c. 26 (*Emergency Laws (Transitional Provisions)*).
 s. 8, pre-war trade practices: § 1170.
- c. 28 (*Assurance Companies*).
 Lloyds: § 1746.
 s. 7 (3), amended: 11-2 G. 6, c. 38, Sch. 16, para. 1 (b).
 Sch. 2, II, para. 2, regs. made: § 1746.
- c. 29 (*Agriculture (Artificial Insemination)*).
 s. 4, regs. made: § 137.
- c. 30 (*Trunk Roads*).
 ss. 1, 4, orders made: § 1597.
- c. 31 (*Ministers of the Crown (Transfer of Functions)*).
 orders made: §§ 1575, 2172.
 s. 1 (1), order made: § 1482.
- c. 34 (*Furnished Houses (Rent Control)*).
 articles: § 3251.
 construed: § 3178.
 construed: 12-3 G. 6, c. 3, Sch. II: § 3177.
 rent tribunal cases: § 3181.
 s. 2 (1), construed: § 3190.
 s. 2 (2), construed: § 3186.
 s. 2 (3), construed: § 3181.
 s. 7, construed: §§ 3176, 3179, 3182.
 s. 12 (3), article: § 3251.
- c. 36 (*Statutory Instruments*).
 applied: 11-2 G. 6, c. 38, s. 365 (5) (b); c. 52, s. 26 (3).
 applied: 11-2 G. 6, c. 55, s. 15 (3).
 construed: § 3566.
 sub-delegated legislation: § 3567.
 s. 2, applied: 11-2 G. 6, c. 36, s. 3 (3).
 s. 4, laying before Parliament: 11-2 G. 6, c. 59, s. 1 (2).
 s. 4 (1), notification during vacancy of office of Lord Chancellor or of Speaker: *ib.*, s. 2.
 s. 9 (1), order made: § 3580.
- c. 38 (*National Service (Release of Conscientious objectors)*).
 decision of the umpire: § 192.
 effect of 11-2 G. 6, c. 64: § 193.
 women's services: § 179.
- c. 46 (*Police*).
 scheme under: 11-2 G. 6, c. 24, s. 8 (1).
 ss. 3 (1), 4 (1), 6 (1), 12 (4), orders made: § 2707.
 s. 11 (3) (b) (c) proviso, repealed with savings: 11-2 G. 6, c. 24, Sch. 1, I, para. 18.
 s. 11 (4) (5), proviso, repealed with savings; *ib.*, Sch. 1, I, para. 18.
 s. 19, police authority: 12-3 G. 6, c. 5, s. 3 (3).
 Sch. 2, para. 10, proviso, repealed with savings: 11-2 G. 6, c. 24, Sch. 1, I, para. 18.
 Sch. 3, paras. 3, 5 (2), proviso, repealed with savings; *ib.*, Sch. 1, I, para. 18.

9 & 10 Geo. 6 cont. (1946)—cont.

- c. 48 (*Housing (Financial and Miscellaneous Provisions)*).
 level of contributions: § 1603.
 s. 8 (2) (3), repealed: 11-2 G. 6, c. 26, s. 126 (4) (a), Sch. 2, V.
 s. 16, extended: 11-2 G. 6, c. 29, s. 28 (7).
- c. 49 (*Acquisition of Land (Authorisation Procedure)*).
 applied: 11-2 G. 6, c. 32, s. 13 (2); 11-2 G. 6, c. 50, s. 59 (2); 11-2 G. 6, c. 67, s. 11; 12-3 G. 6, c. 5, s. 4.
 compulsory purchase: 11-2 G. 6, c. 29, s. 58 (2); 11-2 G. 6, c. 43, s. 56 (2).
 development corporations: 11-2 G. 6, c. 22, s. 13 (1).
 highways: § 1575.
 national assistance: § 517.
 s. 2, excluded: 11-2 G. 6, c. 29, s. 58 (3); 11-2 G. 6, c. 43, s. 56 (3).
- c. 50 (*Education*).
 s. 6, excluded: 11-2 G. 6, c. 58, s. 71 (2).
 s. 8, excluded: *ib.*, ss. 18 (5), proviso, 71 (2).
 s. 9, repealed: 11-2 G. 6, c. 40, s. 11, Sch. 2.
 s. 11, repealed: 11-2 G. 6, c. 26, s. 113 (2), Sch. 2, V.
 s. 12 (3), regs. made: § 1056.
- c. 58 (*Borrowing (Control and Guarantees)*).
 s. 1, applied: 11-2 G. 6, c. 32, s. 11 (6).
- c. 59 (*Coal Industry Nationalisation*).
 railway wagons: 11-2 G. 6, c. 49, s. 35 (1).
 s. 5, regs. made: § 2217.
 s. 21, regs. made: §§ 2223, 2224.
 s. 22, regs. made: § 2224.
 s. 22 (2) (a), order made: § 2222.
 s. 25, article: § 500.
 s. 25, regs. made: § 2219.
 s. 25 (1), construed: § 454.
 s. 37, regs. made: § 2235.
 s. 62, regs. made: § 2217.
- c. 60 (*Superannuation*).
 s. 1 (2), regs. made: § 2623.
 s. 4 (1) (a)-(e), regs. made: § 2624.
 s. 5, applied: 11-2 G. 6, c. 33, s. 4 (3).
 Sch. 2, para. 8 (1), rules made: § 2614.
- c. 61 (*Railways (Valuation for Rating)*).
 repealed: 11-2 G. 6, c. 26, Sch. 2, III.
- c. 62 (*National Insurance (Industrial Injuries)*).
 saved: 11-2 G. 6, c. 24, s. 1 (6).
 appointed day: § 2362.
 article: § 2453.
 preferential payments: 11-2 G. 6, c. 38, s. 319 (1) (e).
 provisions saved: 11-2 G. 6, c. 24, s. 1 (6).
 s. 3, regs. made: §§ 2346, 2379.
 s. 5, regs. made: § 2346.
 s. 12, regs. made: § 2366.
 s. 12 (6), regs. made: § 2364.
 s. 14 amended: § 2374.

9 & 10 Geo. 6 cont. (1946)—cont.

c. 62 (*National Insurance (Industrial Injuries)*)—cont.

- s. 14 (2A), regs. made: § 2363.
- ss. 14 (5), 15, 18, 19, regs. made: § 2366.
- ss. 14 (1)–(4), amended: 11–2 G. 6, c. 42, s. 1 (2).
- s. 22 (3), regs. made: § 2364.
- s. 23, regs. made: § 2366.
- s. 23 (3), regs. made: § 2364.
- ss. 25, 26, regs. made: §§ 2364, 2382.
- s. 27, regs. made: § 2364.
- ss. 29, 30, regs. made: § 2366.
- s. 29 (1) (a) (ii), amended: 11–2 G. 6, c. 42, s. 1 (3) (b).
- s. 29 (2), amended: *ib.*, s. 1 (3) (a).
- s. 31, repealed: 11–2 G. 6, c. 29, Sch. 7, III.
- s. 32, regs. made: §§ 2335, 2382.
- s. 32 (1), regs. made: § 2366.
- s. 32 (2) regs. made: § 2364.
- s. 33, regs. made: §§ 2364, 2366.
- ss. 34, 35, regs. made: § 2366.
- s. 51 (1), regs. made: §§ 2364, 2372.
- s. 52 (3) (6), regs. made: § 2364.
- ss. 56, 57, regs. made: § 2376.
- s. 65, regs. made: § 2346.
- s. 65 (1), regs. made: § 2382.
- s. 66 (2), regs. made: § 2422.
- s. 67, regs. made: § 2346.
- s. 67 (2), regs. made: § 2364.
- s. 71 (1), part repealed: 11–2 G. 6, c. 38, Sch. 17, I.
- s. 77, regs. made: §§ 2335, 2382.
- s. 79, regs. made: § 2366.
- s. 80, regs. made: § 2346.
- s. 80 (1), regs. made: § 2370.
- s. 82, regs. made: § 2366.
- s. 83, order made, § 2365.
- s. 85, orders made: §§ 2371, 2377.
- s. 86, regs. made: §§ 2364, 2366, 2376, 2379.
- s. 88 (1), appointed day: § 2362.
- s. 89 (1), regs. made: § 3973.
- s. 89 (3), order made: § 2369.
- Sch. 1, regs. made: § 2370.
- Sch. 2, III, regs. made: § 2379.
- Sch. 4, para. 1, regs. made: § 2366.
- Sch. 4, para. 3 (2), regs. made: § 2364.
- Sch. 4, paras. 5, 7, regs. made: § 2366.
- Sch. 9, part repealed: 11–2 G. 6, c. 38, Sch. 17, I.

c. 64 (*Finance*).

- book published: § 1364.
- s. 15, repealed: 11–2 G. 6, c. 49, Sch. 11, I.
- s. 16, Treasury orders: 11–2 G. 6, c. 49, s. 21 (7).
- s. 16 (2), part repealed: *ib.*, Sch. 11, I.
- s. 20 (2) (3), construed: § 3040.
- s. 23, part repealed: 11–2 G. 6, c. 49, s. 24 (2), Sched. 11, I.
- s. 37 (2), amended: *ib.*, s. 78.
- s. 37, amended: § 1356.
- s. 52, applied: 11–2 G. 6, c. 67, s. 13 (2).

9 & 10 Geo. 6 cont. (1946)—cont.

c. 64 (*Finance*)—cont.

- Sch. 3, repealed: 11–2 G. 6, c. 49, Sch. 11, I.
- Sch. 5, para. 1, repealed: *ib.*, Sch. 11, I.

c. 67 (*National Insurance*).

- appointed day: § 2897.
- articles: § 2453.
- book published: § 2454.
- circular: § 2375.
- Eire volunteers: § 2446.
- funeral expenses: § 1739.
- midwives: § 2193.
- persons entitled to unemployment benefit: 11–2 G. 6, c. 46, ss. 3 (6), 5 (2) (3), 11 (1) (a) (2).
- preferential payments: 11–2 G. 6, c. 38, s. 319 (1) (e).
- provisions saved: 11–2 G. 6, c. 24, s. 1 (6).
- students: § 2423.
- Supreme Court rules: § 2898.
- s. 1, regs. made: §§ 2343, 2410.
- s. 1 (3), regs. made: § 2417.
- s. 2 (5), regs. made: § 2345.
- s. 4 (3), regs. made: § 2346.
- ss. 4 (4), 5, regs. made: § 2345.
- s. 6, regs. made: § 2346.
- s. 8, regs. made: §§ 2345, 2346.
- s. 8 (1), regs. made: § 2417.
- s. 8 (1) (a), regs. made: §§ 2334, 2381.
- s. 8 (2) (b), regs. made: § 2422.
- s. 9, regs. made: §§ 2343, 2346.
- s. 9 (1), regs. made: § 2417.
- s. 10, regs. made: § 2438.
- s. 10 (4), regs. made: § 2356.
- s. 11, regs. made: § 2438.
- s. 11 (2) (a), regs. made: § 2381.
- s. 11 (2) (a) (ii), regs. made: § 2334.
- s. 11 (3), regs. made: § 2381.
- ss. 12, 13, regs. made: § 2438.
- s. 13, definition applied: 11–2 G. 6, c. 29, s. 64 (1).
- s. 13 (4), regs. made: § 2438.
- s. 14, regs. made: § 2410.
- ss. 14 (3) (6), 15, 16, regs. made: § 2384.
- s. 18, regs. made: § 2411.
- s. 19, regs. made: § 2357.
- s. 20 (2) (b), regs. made: § 2342.
- ss. 21, 23, regs. made: § 2411.
- s. 22 (5), applied: 11–2 G. 6, c. 29, s. 50 (5).
- s. 22 (5), death grant: 11–2 G. 6, c. 43, s. 18 (2).
- s. 22, appointed day: 11–2 G. 6, c. 39, ss. 1, 2 (1) (2), 6 (1) proviso, 11 (4), 12 (3), 15 (1).
- s. 24, regs. made: § 2438.
- s. 24 (1) (4), construed: § 2418.
- s. 25, regs. made: §§ 2411, 2438.
- s. 28, regs. made: § 2342.
- s. 29, regs. made: §§ 2334, 2356, 2381, 2410.
- s. 30, regs. made: § 2404.
- ss. 31 (1), 34, regs. made: § 2356.
- s. 30 (1) (c) (5) (*a*), repealed: 11–2 G. 6, c. 29, Sch. 7, III.

9 & 10 Geo. 6 *cont.* (1946)—*cont.*c. 67 (*National Insurance*)—*cont.*

- ss. 36 (1), 38 (3), 39, 41, regs. made: § 2353.
- s. 42, regs. made: § 2380.
- s. 42 (2), regs. made: § 2353.
- s. 43, applied: 11-2 G. 6, c. 29, s. 14 (3).
- s. 43, regs. made: §§ 2352, 2353.
- s. 43 (5), regs. made: §§ 2334, 2381, 2388.
- s. 46, regs. made: § 2342.
- s. 46 (1), regs. made: § 2353.
- s. 47, regs. made: §§ 2352, 2353, 2356.
- ss. 45, 51, regs. made: § 2353.
- s. 52, regs. made: § 2346.
- s. 52 (2), regs. made: §§ 2334, 2342, 2353, 2381, 2417.
- ss. 55, 56, regs. made: § 2376.
- s. 55 (1), repealed: 11-2 G. 6, c. 38, s. 459, Sch. 17.
- s. 57, regs. made: §§ 2376, 2390.
- s. 58, regs. made: §§ 2334, 2381.
- s. 59, regs. made: § 2383.
- s. 60, regs. made: § 2410.
- s. 61, regs. made: § 2345.
- s. 62, regs. made: § 2435.
- s. 63, regs. made: § 2399.
- s. 63 (5), regs. made: § 2390.
- s. 64, regs. made: §§ 2407, 2419.
- s. 65, regs. made: §§ 2348, 2349, 2354, 2428, 2431, 2437.
- s. 66, regs. made: § 2427.
- s. 67, regs. made: § 2337.
- s. 68 (2), repealed: 11-2 G. 6, c. 46, Sch. 2.
- s. 68 (2), part repealed: 11-2 G. 6, c. 29, Sch. 7, III.
- s. 69 (4), saved: 11-2 G. 6, c. 67, s. 58 (6).
- s. 69 (1) (g), saved: 11-2 G. 6, c. 46, s. 21 (5).
- s. 69, regs. made: §§ 2333, 2336, 2344, 2416, 2428, 2431, 2436, 2437, 2448.
- s. 69 (4), regs. made: §§ 2425, 2426, 2621.
- s. 71, regs. made: §§ 2400, 2410.
- s. 73, appointed day: § 2397.
- s. 77 (4), regs. made: § 2357.
- s. 77 (4) (5), report: § 2360.
- s. 78, regs. made: § 2355.
- s. 78 (1), definition applied: § 2621.
- s. 78 (1) (5), regs. made: § 2356.
- s. 84, regs. made: § 2378.
- s. 85, regs. made: § 2377.
- s. 86, regs. made: §§ 2353, 2376.
- s. 86 (2), part repealed: 11-2 G. 6, c. 29, Sch. 7, III.
- s. 86 (3), repealed: *ib.*, Sch. 7, III.
- s. 86 (4), part repealed: *ib.*, Sch. 7, III.
- s. 86 (6), repealed: *ib.*, Sch. 7, III.
- Sch. 11, I, III, repealed: *ib.*, Sch. 7, III.
- Sch. 11, II, repealed: 11-2 G. 6, c. 46, Sch. 2.
- Sch. 12, repealed: *ib.*, Sch. 2.
- Sch. 12, I, III, repealed: 11-2 G. 6, c. 29, Sch. 7, III.

9 & 10 Geo. 6 *cont.* (1946)—*cont.*c. 68 (*New Towns*).

- effect of 11-2 G. 6, c. 22: § 3855.
- s. 1 (1), construed: § 3661.
- s. 2, development corporation: 11-2 G. 6, c. 22, s. 13 (1).
- s. 9, orders made: § 2979.

c. 70 (*Civil Aviation*).

- s. 20, regs. made: § 227.
- s. 39, regs. made: § 243.
- s. 41, award: § 1250.
- s. 43, regs. made: § 229.
- s. 55 (1), order made: § 237.

c. 73 (*Hill Farming*).

- hill farming land improvement scheme: 11-2 G. 6, c. 63, s. 9 (1) (d).

- improvement scheme: *ib.*, s. 9 (1) (d).
- s. 9, substituted: *ib.*, Sch. 7, para. 4.
- s. 10, regs. made: § 91.
- s. 13, schemes made: §§ 87, 89.
- s. 14 (3), order made: § 89.
- s. 33, instruments made: § 90.

c. 75 (*Public Works Loans* (No. 2)).

- s. 2, limit on commitments of Public Works Loan Commissioners: 11-2 G. 6, c. 48, s. 2.

c. 76 (*Unemployment Insurance* (*Eire Volunteers*)).

- ss. 2, 4, regs. made: § 2446.

c. 81 (*National Health Service*).

- appointed day: § 2318.
- articles: §§ 2212, 2331, 2561, 3128, 3948.
- book published: § 2332.
- cost of maintenance of defectives: § 2156.
- dentists: § 2288.
- discharge of soldiers of unsound mind: § 178.
- ex-Service personnel: § 2281.
- mental defectives in institutions: § 2314.
- mental treatment forms: § 2123.
- mental treatment rules: § 2123.
- midwives: § 2193.
- poisons rules: § 2206.
- teachers in institutions for defectives: § 1082.
- transitional provisions: 11-2 G. 6, c. 43, Sch. 2, para. 9.
- saved: 11-2 G. 6, c. 29, s. 62 (1), Sch. 6, para. 6 (3).
- excluded: *ib.*, s. 29 (6).
- Part III, applied and excluded: *ib.*, ss. 21 (7), 29 (6).
- s. 3, regs. made: § 2282, 2299.
- ss. 4, 5, regs. made: § 2301.
- s. 6, hospital bank accounts: § 2295.
- s. 6 (2), transitional provisions: 11-2 G. 6, c. 29, Sch. 6, para. 7 (1).
- s. 6 (5), regs. made: § 2303.
- s. 7, hospital bank accounts: § 2295.
- s. 7, regs. made: § 2298.
- s. 7 (9), regs. made: § 2203.
- s. 9 (7), construed: § 2305.
- s. 9 (8), regs. made: § 2303.
- s. 11, order made: § 2302.
- s. 11 (8), orders made: § 2302.

9 & 10 Geo. 6 *cont.* (1946)—*cont.*

- c. 81 (*National Health Service*)—*cont.*
 - s. 12, regs. made: §§ 2300, 2315, 2317, 2330.
 - s. 14, regs. made: §§ 2315, 2327.
 - s. 22 (3), amended: 11-2 G. 6, c. 43, Sch. 3.
 - s. 22 (3), part repealed: *ib.*, Sch. 4, I.
 - s. 27, applied: 11-2 G. 6, c. 29, s. 47 (10).
 - s. 29, domestic help: § 1160.
- Part IV (ss. 31-48), supplementary ophthalmic services: § 2324.
- s. 31, orders made: § 2307.
- s. 32, regs. made: §§ 2286, 2309.
- s. 33, regs. made: §§ 2309, 2326.
- ss. 34, 35, regs. made: § 2309.
- ss. 35, 36, partnerships: § 2310.
- s. 36, regs. made: § 2311.
- s. 37, partnerships: § 2310.
- ss. 38, 39, regs. made: §§ 2286, 2309, 2326.
- s. 40, regs. made: §§ 2286, 2289, 2309, 2326.
- s. 41, regs. made: §§ 2289, 2291, 2324.
- s. 42, regs. made: §§ 2324, 2326.
- ss. 44, 45, regs. made: §§ 2286, 2309, 2324, 2326.
- Pt. V (ss. 49-51), mental deficiency regulations: § 2118.
- s. 50 (4), repealed: 11-2 G. 6, c. 29, Sch. 6, Sch. 7, III.
- s. 53 (1), part repealed: 11-2 G. 6, c. 26, s. 7 (1), Sch. 2, I.
- s. 53 (1) (2), exchequer grants: *ib.*, s. 7 (1) (2).
- s. 53 (3) (4), repealed: *ib.*, Sch. 2, I.
- ss. 54, 55, regs. made: §§ 2292, 2294.
- s. 66, regs. made: §§ 2293, 2315.
- s. 67 (1), regs. made: § 2320.
- s. 67 (1) (a), extended: 11-2 G. 6, c. 58, s. 62 (4).
- s. 67 (2), regs. made: § 2322.
- s. 68, civil nursing reserve: § 2284.
- s. 68, regs. made: § 2323.
- s. 69, regs. made: §§ 2306, 2308.
- s. 74, regs. made: §§ 2286, 2309, 2311, 2324, 2326.
- s. 75, order made: § 2302.
- s. 78, authorities not dissolved: § 2304.
- s. 79, definition applied: 11-2 G. 6, c. 29, s. 64 (1); 11-2 G. 6, c. 43, s. 59 (1); 11-2 G. 6, c. 53, s. 13 (2).
- s. 79, regs. made: § 2291.
- s. 79 (1), order made: § 2318.
- s. 80 (3), order made: § 2325.
- Sch. 1, para. 2, regs. made: § 2283.
- Sch. 3, regs. made: § 2294.
- Sch. 5, regs. made: §§ 2291, 2292, 2309, 2326.
- Sch. 5, para. 3, regs. made: § 2325.
- Sch. 6, regs. made: § 2309.
- Sch. 7, regs. made: § 2326.
- Sch. 9, mental deficiency regs.: § 2118.
- Sch. 9, II, mental defectives in institutions: § 2314.
- Sch. 10, I, part repealed: 11-2 G. 6, c. 43, Sch. 4, I.

9 & 10 Geo. 6 *cont.* (1946)—*cont.*

- No. 2 (*Clergy Pensions (Supplementary Pensions Measure)*).
 - effect of 11-2 G. 6, No. 1: § 1040.
 - repealed: 11-2 G. 6, No. 1, Sch. 8.
- 10 & 11 Geo. 6 (1947).
 - c. 5 (*Greenwich Hospital*).
 - s. 2, order made: § 2634.
 - c. 6 (*Trustee Savings Banks*).
 - s. 3 (5), rules made: § 3389.
 - c. 7 (*Pensions (Increase)*).
 - s. 2 (3), repealed with savings: 11-2 G. 6, c. 24, Sch. 1, I, para. 20.
 - c. 10 (*House of Commons (Redistribution of Seats)*).
 - s. 1, part repealed: 11-2 G. 6, c. 65, Sch. 13.
 - Sch., repealed: *ib.*, Sch. 13.
 - c. 14 (*Exchange Control*).
 - articles: §§ 3294, 3432.
 - ss. 1, 2, 5, 23, 31, 42, orders made: § 3267.
 - s. 8 (2), saved: 11-2 G. 6, c. 38, s. 459 (9) (d).
 - Sch. 1 amendments: § 3267.
 - Sch. 3, para. 4, order made: § 3267.
 - Sch. 4, para. 4, order made: § 3267.
 - c. 15 (*Agricultural Wages (Regulation)*).
 - effect of 11-2 G. 6, c. 47: § 56.
 - repealed: 11-2 G. 6, c. 47, Sch. 5.
 - c. 16 (*Summer Time*).
 - s. 1 (2), order made: § 3590.
 - c. 19 (*Polish Resettlement*).
 - s. 2 (1) (3) (4), repealed: 11-2 G. 6, c. 29, Sch. 7, III.
 - s. 9 (8), construed: § 133.
 - Sch. I, repealed: 11-2 G. 6, c. 29, Sch. 7, III.
 - c. 23 (*Treaties of Peace (Italy, Roumania, Bulgaria, Hungary and Finland)*).
 - s. 1, orders made: § 1779.
 - c. 25 (*Army and Air Force (Annual)*).
 - article: § 1633.
 - s. 4, officers' maintenance liabilities: §§ 178, 973.
 - c. 27 (*National Health Service (Scotland)*).
 - regs. made: § 2322.
 - s. 9 (8), construed: § 2305.
 - c. 29 (*Penicillin*).
 - s. 1 (1) (a), amended: 11-2 G. 6, c. 52, s. 23 (e), Sch. 2, para. 5.
 - s. 2, regs. made: § 2210.
 - c. 30 (*Indian Independence*).
 - army and air force: § 178.
 - s. 9, Arbitral Tribunal: 12-3 G. 6, c. 4, s. 6 (3).
 - c. 31 (*National Service*).
 - decision of the umpire: § 192.
 - effect of 11-2 G. 6, c. 64: § 193.
 - repealed: 11-2 G. 6, c. 64, Sch. 6.
 - marines volunteer reserve: § 203.
 - women's services: § 179.
 - ss. 3, 4, amended: 11-2 G. 6, c. 25, s. 1 (3).
 - Sch. 1, para. 1, amended: 11-2 G. 6, c. 58, Sch. 9.
 - c. 32 (*Agriculture (Emergency Payments)*).
 - ss. 2, 3, scheme made: § 89.

10 & 11 Geo. 6 (1947)—*cont.*

- c. 33 (*Foreign Marriage*).
order made: § 1616.
- c. 35 (*Finance*).
articles: §§ 500, 856.
book published: § 1364.
s. 3, amended: 11-2 G. 6, c. 49,
s. 1 (1) (2).
s. 4 (1) (a), amended: *ib.*, s. 1 (7).
ss. 10, 11, 12, repealed: *ib.*, Sch. 11,
I.
s. 24 (1), proviso, amended: *ib.*, s.
33 (1).
s. 29, excluded: *ib.*, s. 35 (1).
Part IV (ss. 30-48), extended: *ib.*,
ss. 69 (6), 70 (2).
s. 36, part excluded: *ib.*, s. 69 (2) (b).
s. 49, construed: § 841.
s. 49, further duty: § 851.
s. 63 (1), part repealed: 11-2 G. 6,
c. 49, Sch. 11, I.
s. 63 (2), applied: *ib.*, s. 71 (3).
Sch. 3, repealed: *ib.*, Sch. 11, I.
Sch. 4, II, modified: *ib.*, s. 20 (5).
Sch. 4, I, repealed: *ib.*, Sch. 11, I.
Sch. 5, repealed: *ib.*, Sch. 11, I.
Sch. 6, repealed: *ib.*, Sch. 11, I.
Sch. 7, excluded: *ib.*, s. 35 (1).
Sch. 10, article: § 1694.
- c. 37 (*Northern Ireland*).
orders made: § 336.
- c. 38 (*Probation Officers (Superannuation)*).
s. 1, order under: 11-2 G. 6, c. 33,
s. 13 (1): § 2652.
s. 1 (5), definition applied: *ib.*, s. 13
(1).
s. 2, part repealed: 11-2 G. 6, c. 58,
Sch. 10, I (*prosp.*).
Sch., Part I, repealed: *ib.*, Sch. 10,
I (*prosp.*).
- c. 39 (*Statistics of Trade*).
additional information in returns:
§ 2965.
s. 2, orders made: §§ 3676, 3677.
s. 11, order made: § 3676.
- c. 40 (*Industrial Organisation and Develop-
ment*).
definition applied: 11-2 G. 6, c. 31,
s. 8 (1).
orders made: §§ 3688, 3696, 3698,
3699.
- c. 41 (*Fire Services*).
appointed day: § 1443.
provisions saved: 11-2 G. 6, c. 24,
s. 3 (1).
s. 5 (1), orders made: § 1438.
s. 17 (1), regs. made: § 1448.
s. 17 (1) (a) (b), regs. made: § 1448.
s. 17 (1) (c) (d), regs. made: § 1441.
s. 25, regs. made: § 1444.
s. 26, order made: § 1446.
s. 26, scheme made: § 1446.
s. 28, regs. made: § 1445.
s. 38 (1), order made: § 1443.
Sch. 5, para. 3, regs. made: §§ 1439,
1450.
Sch. 5, paras. 3, 4, order made:
§ 1449.
Sch. 5, paras. 7, 8, 9, regs. made:
§ 1450.

10 & 11 Geo. 6 (1947)—*cont.*

- c. 41 (*Fire Services*)—*cont.*
Sch. 5, para. 14, regs. made: § 1439.
Sch. 5, para. 18, repealed: 11-2 G. 6,
c. 17, s. 1 (2); § 1437.
- c. 44 (*Crown Proceedings*).
articles: § 588.
books published: § 2925.
s. 13, construed: § 2873.
s. 14, construed: § 3041.
s. 14 (2) (d), construed: § 3040.
s. 23 (2) (b), construed: § 2873.
- c. 47 (*Companies*).
articles: § 500.
books published: § 501.
business names registration: § 2257.
commencement: § 462.
effect of 11-2 G. 6, c. 38: § 463.
repeal: § 464.
ss. 1-57, repealed: 11-2 G. 6, c. 38,
s. 459, Sch. 17, I.
s. 9, articles: § 500.
s. 23 (1), recognised auditors: § 449.
s. 43 (1), construed: § 475.
s. 44, article: § 500.
ss. 46-48, article: § 500.
s. 58, effect of 11-2 G. 6, c. 38: § 463.
s. 58, amended: 11-2 G. 6, c. 38,
s. 456, Sch. 16, para. 4.
ss. 59-90, repealed: *ib.*, s. 459, Sch.
17, I.
s. 76, articles: § 500.
s. 81 (1), given effect to: § 448.
s. 90, article: § 500.
ss. 91, 92, 99, effect of 11-2 G. 6,
c. 35: § 463.
s. 91 (3) (4) (5), part repealed: 11-2
G. 6, c. 38, s. 459, Sch. 17, I.
s. 91 (7) (8), repealed: *ib.*, s. 459,
Sch. 17, I.
s. 91, repealed with saving: *ib.*
Sch. 17, II.
s. 92 (1), repealed: *ib.*, s. 459, Sch.
17, I.
s. 92, repealed with saving: *ib.*,
Sch. 17, II.
ss. 93-98, repealed: *ib.*, s. 459,
Sch. 17, I.
s. 99, repealed with saving: *ib.*,
Sch. 17, II.
ss. 100-114, repealed: *ib.*, s. 459,
Sch. 17, I.
s. 105, regs. made: § 492.
s. 112 (2)-(7), repealed: 11-2 G. 6,
c. 38, s. 459, Sch. 17, I.
s. 115, repealed: *ib.*, s. 456.
ss. 115-117, effect of 11-2 G. 6, c. 35:
§ 463.
s. 115 (1), part repealed: *ib.*, s. 459,
Sch. 17, I.
s. 115 (1) (4) (5), amended: *ib.*, Sch.
16, para. 5 (1).
s. 117, repealed: 11-2 G. 6, c. 38,
s. 456.
s. 117 (3), amended: *ib.*, Sch. 16,
para. 6.
ss. 118-121, repealed: *ib.*, s. 459,
Sch. 17, I.
s. 120 (2), operative: § 462.
s. 120 (2), regs. made: § 447.

10 & 11 Geo. 6 (1947)—*cont.*

c. 47 (*Companies*)—*cont.*

- ss. 122, 123, effect of 11-2 G. 6, c. 38: § 463.
- s. 122 (1), part repealed: 11-2 G. 6, c. 38, s. 459, Sch. 17, I.
- s. 123 (1) (3), part repealed: *ib.*, Sch. 17, I.
- s. 123 (2), order made: § 462.
- Schs. 1-8, 9, I, repealed: 11-2 G. 6, c. 38, s. 459, Sch. 17, I.

c. 48 (*Agriculture*).

- articles: §§ 114, 1979, 3128.
- book published: § 115.
- county committees: § 1128.
- Part II (ss. 9-21), delegation of functions: § 40.
- Part II (ss. 9-21), explanatory booklet: § 40.
- Part II (ss. 9-21), operative: §§ 45, 46, 59, 62, 112.
- Part II (ss. 9-21), saved: 11-2 G. 6, c. 63, s. 100 (10) (c).
- ss. 10, 11, applied: *ib.*, s. 94 (2).
- s. 12, rules made: § 1874.
- s. 16, procedure: § 112.
- s. 16 (3), regs. made: § 62.
- s. 17 (6), excluded: 11-2 G. 6, c. 63, s. 8 (3) proviso (iii).
- s. 19 (4), regs. made: § 62.
- s. 20 (1), procedure: § 112.
- s. 21 (2) (b), procedure: § 44.
- s. 21 (4), regs. made: § 112.
- Part III (ss. 22-46) (except ss. 32, 46), repealed: 11-2 G. 6, c. 63, Sch. 8.
- Part III (ss. 22-46), delegation of functions: § 40.
- Part III (ss. 22-46), explanatory booklet: § 40.
- Part III (ss. 22-46), operative: §§ 33, 34, 35, 45, 46, 59, 62.
- Part III (ss. 22-46), effect of 11-2 G. 6, c. 63: § 31.
- s. 24 (2), regs. made: § 62.
- s. 25, regs. saved: 11-2 G. 6, c. 63, s. 100 (2).
- s. 25 (1), regs. made: § 34.
- s. 30, regs. made: § 38.
- s. 31, construed: § 37.
- s. 31, exclusion: §§ 33, 36, 45.
- s. 31 (6), regs. made: § 45.
- s. 31 (8), regs. made: § 36.
- s. 32, regs. saved: 11-2 G. 6, c. 63, s. 100 (2).
- ss. 32, 46, part repealed: *ib.*, Sch. 8.
- s. 32 (2), regs. made: § 62.
- s. 37 (1), regs. made: § 35.
- s. 38 (3), regs. made: § 62.
- s. 39 (1) (3), regs. made: § 62.
- s. 40, article: § 114.
- Part IV (ss. 47-67), small holdings: 11-2 G. 6, c. 63, s. 31 (2) (d).
- Part V (ss. 68-111) saved: *ib.*, s. 100 (10) (c).
- s. 71 (2), order made: § 71.
- s. 71 (7), order made: § 77.
- s. 71 (8), statement issued: § 73.
- s. 72, regs. made: §§ 72, 82, 103.
- s. 73 (1), order made: § 43.

10 & 11 Geo. 6 (1947)—*cont.*

c. 48 (*Agriculture*)—*cont.*

- s. 73 (3), orders made: § 44.
 - s. 74, regs. saved: 11-2 G. 6, c. 63, s. 100 (2).
 - s. 74 (1), regs. made: § 45.
 - s. 76 (2), order made: § 95.
 - s. 78, operative: § 59.
 - s. 78 (1), regs. made: § 48.
 - ss. 79-81, operative: § 59.
 - ss. 85, 86, procedure: § 45.
 - s. 86, article: § 114.
 - s. 86, operation: § 59.
 - s. 87 (10), repealed: 11-2 G. 6, c. 63, Sch. 8.
 - s. 89, transfer: § 97.
 - s. 95, operative: § 59.
 - s. 95 (1), order made: § 103.
 - ss. 98-100, operative: §§ 59, 81.
 - s. 101, operative: § 59.
 - s. 103, scheme made: § 30.
 - s. 104, regs. saved: 11-2 G. 6, c. 63, s. 100 (2).
 - s. 104 (3) (4), regs. made: § 61.
 - s. 108 (2), regs. made: § 62.
 - s. 109 (1), definition applied: 11-2 G. 6, c. 63, s. 1 (2).
 - s. 110, operative: § 59.
 - s. 111 (2), orders made: § 59.
 - Schs. 1-4, operative: § 59.
 - Sch. 2, para. 2, part repealed: 11-2 G. 6, c. 63, Sch. 8.
 - Sch. 2, para. 4, part repealed: *ib.*, Sch. 8.
 - Schs. 3-7, repealed: *ib.*, Sch. 8.
 - Sch. 4, valuation committee: § 49.
 - Sch. 4, I, II, calculation of values: § 34.
 - Sch. 5, operative: § 59.
 - Sch. 5, paras. 2, 3, regs. made: § 33.
 - Schs. 6, 7, operative: § 59.
 - Sch. 10, operative: § 71.
- c. 49 (*Transport*).
- arbitration tribunal: § 3753.
 - articles: §§ 3073, 3362, 3771, 3826
 - books published: § 3772.
 - definition applied: 11-2 G. 6, c. 26, s. 86 (3).
 - ss. 2 (1), 3 (1), construed: § 3345.
 - ss. 7, 12, road services outside special area: § 3345.
 - s. 14 (2), construed: § 3156.
 - s. 17 (3), orders made: § 3767.
 - s. 29, transfer of railway wagons: 11-2 G. 6, c. 49, s. 35 (1).
 - s. 34, repealed: 11-2 G. 6, c. 26, Sch. 2, III.
 - Part III (ss. 39-62), acquisition: §§ 3351, 3352.
 - s. 58 (6), regs. made: § 3329.
 - s. 61, regs. made: §§ 3330, 3352.
 - Part IV (ss. 63-71), exemption from stamp duty in connection with certain nationalisation schemes: 11-2 G. 6, c. 49, s. 74.
 - s. 63, road services outside special area: § 3345.
 - s. 65 (i), construed: § 3345.
 - s. 87, saved: 11-2 G. 6, c. 26, s. 104 (4).

10 & 11 Geo. 6 (1947)—*cont.*c. 49 (*Transport*)—*cont.*

- s. 89 (1) (b), guarantee: § 3765.
- s. 90 (1), guarantees: §§ 3765, 3766.
- s. 98, regs. made: § 3759.
- s. 101, regs. made: § 3758.
- s. 108, practice: § 3753.
- s. 118, amended: 11-2 G. 6, c. 32, Sch. 3, para. 2.
- s. 119, regs. made: §§ 3330, 3351, 3352.
- s. 125, order made: § 3756.
- s. 125 (3), order made: § 3757.
- Sch. 4, construed: § 3770.
- Sch. 4, 1, guarantee: § 3765.
- Sch. 5, II, para. 1, orders made: § 3764.
- Sch. 12, amended: 11-2 G. 6, c. 32, Sch. 3, para. 2.

c. 51 (*Town and Country Planning*).

- appeals: §§ 3630, 3631, 3632.
- appointed day: § 3667.
- articles: §§ 1878, 1979, 3128, 3671, 3672, 3826.
- books published: § 3673.
- circular: § 2048.
- definition applied: 11-2 G. 6, c. 17, s. 4 (3).
- registration of charges: § 1877.
- s. 8, regs. made: § 3644.
- s. 9, regs. made: § 3647.
- ss. 10, 11, regs. made: § 3644.
- Part III (ss. 12-36) advertisements: § 3627.
- Part III (ss. 12-36) development by planning authorities: § 3653.
- Part III (ss. 12-36) permission to develop: § 3642.
- s. 12, article: § 1979.
- s. 12, order made: § 3669.
- s. 13, order made: § 3642.
- s. 13 (4), London County Council: § 2090.
- s. 14, order made: § 3642.
- s. 14 (4), regs. made: § 3643.
- s. 15, direction given: § 3655.
- s. 16, order made: § 3642.
- s. 17, applications: § 3641.
- ss. 19, 20, 22, regs. made: § 3647.
- s. 23, article: § 3672.
- s. 23 (4), article: § 3671.
- ss. 24, 27, regs. made: § 3647.
- s. 28, regs. made: § 3668.
- s. 29, regs. made: § 3633.
- s. 30, rules made: § 1877.
- s. 30 (6) (8), regs. made: § 3647.
- s. 31, regs. made: § 3627.
- s. 32 (2), compensation: § 3627.
- s. 32 (2) (3), regs. made: § 3627.
- s. 32 (3), fines: § 3627.
- s. 33, article: § 3672.
- s. 33, regs. made: § 3647.
- s. 35 (3), regs. made: § 3653.
- s. 38, regs. made: § 3647.
- s. 39, rules made: § 1877.
- s. 45 (6), regs. made: § 3647.
- s. 49 (5), regs. made: § 1590.
- Part V (ss. 50-57), article: § 3672.
- s. 55 (3), applied: *ib.*, s. 7 (2) (b).
- s. 58, claims for payment: § 3635.

10 & 11 Geo. 6 (1947)—*cont.*c. 51 (*Town and Country Planning*)—*cont.*

- ss. 60, 64 (2), regs. made: § 3635.
 - s. 69 (2) (b), regs. made: § 3638.
 - s. 70 (3), regs. made: § 3639.
 - s. 73 (1), regs. made: § 3641.
 - s. 75 (3), amended: 11-2 G. 6, c. 17, Sch., para. 10 (2).
 - s. 75 (8), regs. made: § 3665.
 - s. 76, registration: § 1877.
 - s. 76 (6), regs. made: § 3665.
 - s. 77, registration: § 1877.
 - ss. 77, 78, articles: § 3671.
 - s. 78, registration: § 1877.
 - s. 79, articles: § 1878.
 - s. 79, regs. made: § 3647.
 - s. 81 (1), regs. made: § 3659.
 - s. 81 (4), regs. made: § 3660.
 - s. 82 (1) (c), regs. made: § 3640.
 - s. 84, regs. made: § 3647.
 - s. 91, article: § 3672.
 - s. 101, regs. made: § 3656.
 - s. 102 (1), regs. made: § 3641.
 - ss. 105 (2), 110, regs. made: § 3647.
 - s. 111, regs. made: §§ 3627, 3635, 3639, 3644, 3659, 3668.
 - s. 114, order made: § 3642.
 - s. 114, regs. made: § 3655.
 - s. 118 (1), London County Council: § 2090.
 - s. 119, order made: § 3667.
 - Sch. 3, para. 6, order made: § 3669.
 - Sch. 7, para. 1 (1), claims for adjustments: § 543.
 - Sch. 7, para. 1 (2), regs. made: § 543.
 - Sch. 7, para. 1 (5), claims for adjustments: § 543.
 - Sch. 10, para. 13, regs. made: § 3647.
- c. 54 (*Electricity*).
- area board: 11-2 G. 6, c. 49, s. 34 (4).
 - book published: § 1122.
 - definition applied: 11-2 G. 6, c. 67, s. 74 (1).
 - s. 7, regs. made: § 1102.
 - Part II (ss. 13-35), value of securities: § 1101.
 - s. 13, applied: 11-2 G. 6, c. 26, s. 98 (2).
 - s. 13, orders made: § 1097.
 - s. 14, orders made: §§ 1104, 1107, 1108.
 - s. 14, Treasury guarantees: § 1110.
 - ss. 15, 17, 18, 25, regs. made: § 1107.
 - s. 17, excluded: 11-2 G. 6, c. 26, s. 9 (3), proviso (a).
 - s. 32 (5), regs. made: § 1103.
 - s. 35, regs. made: § 1107.
 - s. 40 (2), regs. made: § 1099.
 - s. 41 (1), amended: 11-2 G. 6, c. 26, s. 103.
 - s. 41 (1) (d) (e), amended: 11-2 G. 6, c. 49, s. 79 (2).
 - s. 42 (1), Treasury guarantees: § 1110.
 - s. 48, regs. made: § 1107.
 - s. 54, regs. made: § 1113.
 - s. 58, order made: § 1109.
 - s. 67 (1), order made: § 1105.
 - Sch. 3, orders made: §§ 1100, 1101.

10 & 11 Geo. 6 (1947)—*cont.*

- c. 55 (*Supplies and Services (Extended Purposes)*).
 - s. 1 (1), applied: 11-2 G. 6, c. 17, s. 1 (1).
 - s. 1 (1) (2) (3), applied: § 1224.
 - s. 1 (4), order made: § 1224.
 - c. xxxi (*City of London (Tithes)*).
 - s. 16 (1), construed: § 3593.
 - c. xlv (*London County Council (General Powers)*).
 - Part IV (ss. 14-35), articles: §§ 2112, 2174.
 - ss. 17, 19 (1), construed: § 2100.
 - No. 1 (*Incumbents Discipline Measure*).
 - s. 14, rules made: § 1042.
 - No. 2 (*Church Commissioners Measure*).
 - appointed day: § 1038.
 - s. 6 (1), ecclesiastical land: 11-2 G. 6, c. 63, s. 88 (1).
- 11 & 12 Geo. 6 (1947 *cont.*).
- c. 3 (*Burma Independence*).
 - s. 2 (1), aliens regs.: § 120.
 - s. 2 (2), regs. made: § 120.
 - c. 7 (*Ceylon Independence*).
 - Sch. 2, para. 1, repealed: 11-2 G. 6, c. 56, Sch. 4, II.
 - c. 8 (*Mandated and Trust Territories*).
 - See 11-2 G. 6, c. 38, s. 123 (3).
 - c. 9 (*Finance (No. 2)*).
 - book published: § 1364.
 - s. 1 (1) (3), repealed: 11-2 G. 6, c. 49, Sch. 11, I.
 - ss. 2-5, repealed: *ib.*, Sch. 11, I.
 - s. 6 (1), amended: *ib.*, s. 14 (1).
 - s. 6 (5), saved: *ib.*, s. 14.
 - Sch. 1, part repealed: *ib.*, s. 82, Sch. 11, I.
 - Sch. 2, repealed: *ib.*, Sch. 11, I.
 - Sch. 3, repealed: *ib.*, Sch. 11, I.
 - Sch. 4, repealed: *ib.*, Sch. 11, I.
 - Sch. 4, amended: *ib.*, s. 5 (1).
 - Sch. 5, amended: *ib.*, s. 5 (2).
 - c. 10 (*Emergency Laws (Miscellaneous Provisions)*).
 - orders made: §§ 101, 1170.
 - powers of arrest: § 178.
 - s. 3, notice: § 104.
 - s. 5, pre-war trade practices: § 1170.
 - Sch. 1, II, defence regs. expiry: §§ 75, 185, 723, 1136, 1440, 1854, 2953.
 - Sch. 2, paras. 5, 6, excluded: 11-2 G. 6, c. 43, s. 26 (6).
 - c. 11 (*Medical Practitioners and Pharmacists*).
 - changes in registration: § 2190.
- 11 & 12 Geo. 6 (1948).
- c. 14 (*Princess Elizabeth and Duke of Edinburgh's Annuities*).
 - digested: § 586.
 - c. 15 (*Overseas Resources Development*).
 - digested: § 303.
 - regs. made: § 299.
 - Sch., para. 3, regs. made: § 302.
 - c. 16 (*Post Office and Telegraph (Money)*).
 - digested: § 2737.
 - c. 17 (*Requisitioned Land and War Works*).
 - digested: §§ 70, 535, 1031, 1437, 1592, 2693, 3646.

11 & 12 Geo. 6 (1948)—*cont.*

- c. 17 (*Requisitioned Land and War Works*)—*cont.*
 - article: § 543.
 - claims rules: §§ 536, 537.
 - s. 4 (2) (3), regs. made: § 1032.
 - s. 12, registration: § 1877.
 - ss. 13-15, regs. made: § 531.
- c. 18 (*Consolidated Fund (No. 1)*).
 - noted: § 3258.
- c. 19 (*Attempted Rape*).
 - digested: § 703.
 - article: § 770.
- c. 20 (*Supreme Court of Judicature (Amendment)*).
 - digested: § 2803.
- c. 21 (*Army and Air Force (Women's Service)*).
 - digested: § 179.
- c. 22 (*Water*).
 - digested: § 3855.
- c. 23 (*Cinematograph Films*).
 - digested: § 2949.
 - regs. made: §§ 2954, 2956.
 - s. 1 (2) (3), percentages: § 2952.
 - s. 2 (1), order made: § 2952.
- c. 24 (*Police Pensions*).
 - digested: § 2718.
 - ss. 1, 3, 5, regs. made: § 2720.
 - s. 4 (1), amended: 11-2 G. 6, c. 58, Sch. 9 (*prosp.*).
- c. 25 (*Royal Marines*).
 - digested: § 203.
 - s. 1 (3), repealed: 11-2 G. 6, c. 64 Sch. 6.
- c. 26 (*Local Government*).
 - digested: §§ 398, 1114, 1566, 1731, 2051, 2055, 2078, 2714, 2959, 3067, 3074, 3075, 3077, 3081, 3082, 3701, 3761, 3857.
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 - books published: §§ 2087, 3110.
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 - Part III (ss. 33-73), commencement: § 3078.
 - ss. 45-47, 67, 71, commencement: § 3078.
 - s. 72 (1), order made: § 3078.
 - s. 72 (3), commencement: § 3078.
 - ss. 102 (1), 110, regs. made: § 3080.
 - s. 111, regs. made: § 2058.
 - s. 113, regs. made: § 2056.
 - s. 113 (3), regs. made: § 2036.
 - s. 117, regs. made: §§ 2056, 2058.
 - s. 120, rules made: § 3085.
 - s. 121, rules made: §§ 3083, 3085.
 - s. 140, regs. made: § 2064.
 - s. 146, order made: § 2081.
- c. 27 (*Palestine*).
 - digested: § 344.
 - s. 3 (4), order made: § 345.
- c. 28 (*Army and Air Force (Annual)*).
 - digested: §§ 178, 973, 2126.
 - article: § 1633.
- c. 29 (*National Assistance*).
 - digested: §§ 273, 394, 421, 517, 2060, 2124, 2272, 2402, 3387.
 - articles: §§ 2086, 2279.
 - book published: § 2280.
 - commencement: § 2273.

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- c. 29 (*National Assistance*)—*cont.*
 - discharge of soldiers of unsound mind: § 178.
 - national assistance: 11-2 G. 6, c. 46, s. 11 (1) (b) (3).
 - non-contributory old age pensions: § 2401.
 - transitional provisions: 11-2 G. 6, c. 43, Sch. 2, para. 12.
 - ss. 5, 6, regs. made: § 2270.
 - Parts III, IV (ss. 21-68), local authorities' functions: § 2264.
 - s. 21, functions of local authorities: § 2264.
 - s. 22, regs. made: § 2268.
 - s. 29, functions of local authorities: § 2264.
 - s. 35 (2) (3), regs. made: § 2271.
 - s. 41, regs. made: § 422.
 - s. 60, regs. made: § 2274.
 - s. 63, instruments made: §§ 2263, 2277
 - s. 66, order made: § 2278.
 - s. 68 (2), order made: § 2273.
 - Sch. 5, para. 6, instrument made: § 2267.
 - Sch. 6, para. 8, regs. made: § 2302.
 - Sch. 6, para. 8 (2) (a), amended: 11-2 G. 6, c. 43, Sch. 3.
- c. 30 (*Lord High Commissioner (Church of Scotland)*).
 - digested: § 1043.
- c. 31 (*Cotton Spinning (Re-equipment Subsidy)*).
 - digested: § 3686.
- c. 32 (*River Boards*).
 - digested: § 1883.
- c. 33 (*Superannuation (Miscellaneous Provisions)*).
 - digested: §§ 1703, 2424, 2652, 2656
 - s. 2, rules made: § 2643.
 - s. 3, rules made: § 2618.
 - s. 5 (2) (3), rules made: § 319
 - s. 12 (1), rules made: § 1076.
- c. 34 (*Motor Spirit (Regulation)*).
 - digested: § 2695.
 - article: § 2705.
 - s. 12, regs. made: § 2696.
- c. 35 (*Animals*).
 - digested: § 135.
 - rules made: § 150.
 - s. 13 (1), order made: § 136.
- c. 36 (*House of Commons Members' Fund*).
 - digested: § 2551.
- c. 37 (*Radioactive Substances*).
 - digested: §§ 210, 751.
 - revocation of order: § 2704.
- c. 38 (*Companies*).
 - definition applied: 11-2 G. 6, c. 67, s. 74 (1).
 - digested: § 463.
 - applications to High Court: § 445.
 - articles: § 500.
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 - cases overruled: § 465.
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 - list of members: § 440.
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- c. 38 (*Companies*)—*cont.*
 - ss. 38, 39, stock exchange: § 491.
 - ss. 54, 58, cases overruled: § 465.
 - s. 75, construed: § 482.
 - s. 79, case overruled: § 465.
 - s. 101, construed: § 460.
 - s. 149, excluded: 11-2 G. 6, c. 67, s. 40 (1).
 - s. 150, excluded: *ib.*, s. 40 (2).
 - s. 154, definition applied: 11-2 G. 6, c. 66, s. 20 (2).
 - ss. 154, 185, 196, articles: § 500.
 - s. 209, construed: § 2821.
 - s. 210, article: § 500.
 - ss. 417, 418, stock exchanges: § 491.
 - Sch. 1, Table A, art. 92, case overruled: §§ 465, 472.
 - Sch. 8, excluded: 11-2 G. 6, c. 67, s. 40 (1).
 - Sch. 8, I, shipping companies: § 442.
 - Sch. 8, III, para. 25 (3), order made: § 442.
- c. 39 (*Industrial Assurance and Friendly Societies*).
 - digested: § 1739.
 - copies of rules: § 1167.
 - s. 7, order made: § 1740.
 - s. 8 (2), regs. made: § 1741.
 - s. 13, regs. made: § 1742.
- c. 40 (*Education (Miscellaneous Provisions)*).
 - digested: § 1057.
 - circular: § 1058.
 - s. 4, regs. made: § 1068.
 - s. 5, regs. made: § 1067.
- c. 41 (*Law Reform (Personal Injuries)*).
 - digested: §§ 816, 1236.
 - accidents before the Act: § 2459.
 - articles: §§ 832, 1291.
 - safe system of work: § 2507.
- c. 42 (*National Insurance (Industrial Injuries)*).
 - digested: § 2374.
 - regs. made: § 2363.
- c. 43 (*Children*).
 - digested: § 1705.
 - articles: § 1723.
 - midwives: § 2193.
 - s. 29 (2), regs. made: § 1721.
 - s. 53, article: § 2170.
 - s. 57, regs. made: §§ 1706, 1707.
- c. 44 (*Merchant Shipping*).
 - digested: § 3483.
- c. 45 (*Agriculture (Scotland)*).
 - Royal assent, July 13, 1948.
- c. 46 (*Employment and Training*).
 - digested: § 1246.
 - s. 5 (2), regs. made: § 1273.
 - s. 8, regs. made: § 1288.
 - s. 10 (3), regs. made: § 1290.
 - Sch. 1, II, regs. made: § 1288.
- c. 47 (*Agricultural Wages*).
 - digested: § 56.
- c. 48 (*Public Works Loans*).
 - noted: § 2028.
- c. 49 (*Finance*).
 - digested: §§ 789, 833, 844, 1356, 1694, 3039, 3275, 3524, 3529.
 - articles: §§ 1694, 3128, 3526.

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- c. 49 (*Finance*)—*cont.*
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3019, 3034.
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s. 21 (1), order made: § 3018.
s. 22, order made: § 3008.
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1655, 1660, 1661.
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s. 60 (12), regs. made: § 3523.
ss. 61–68, article: § 1694.
s. 76, article: § 856.
Sch. 6, para. 5, regs. made: § 1525.
Sch. 8, II, amended by order: § 3008.
- c. 50 (*Appropriation*).
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- c. 51 (*White Fish and Herring Industries*).
digested: § 1462.
- c. 52 (*Veterinary Surgeons*).
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- c. 53 (*Nurseries and Child-Minders' Regula-
tion*).
digested: § 1718.
- c. 54 (*Export Guarantees*).
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- c. 55 (*Factories*).
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- c. 56 (*British Nationality*).
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s. 29 (1), regs. made: § 119.
s. 29 (1) (b) (g), regs. made: § 3137.
s. 32 (8), orders made: §§ 121, 122.
- c. 57 (*Public Registers and Records (Scot-
land)*).
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- c. 58 (*Criminal Justice*).
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s. 29, documents: § 2167.
s. 30, article: § 770.
s. 38 (2), construed: § 759.
s. 41 (1) (2) (5), rules made: § 722.
s. 61, rules made: § 722.
s. 83 (2), orders made: § 715.
s. 70 (1), article: § 770.
- c. 59 (*Laying of Documents before Parlia-
ment (Interpretation)*).
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- c. 60 (*Development of Inventions*).
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- c. 61 (*Isle of Man (Customs)*).
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- c. 62 (*Statute Law Revision*).
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- c. 63 (*Agricultural Holdings*).
digested: § 31.
article: §§ 114, 3251.
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s. 24, construed: § 37.
Sch. 7, para. 1, article: § 3251.
 - c. 64 (*National Service*).
digested: § 193.
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s. 1 (2), amended: 12–3 G. 6, c. 6,
s. 1.
s. 1 (2) proviso, amended: *ib.*, s. 1
(2).
s. 1 (3), amended: *ib.*, s. 2.
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(1).
s. 17 (6) (b), amended: *ib.*, s. 1 (2).
s. 24 (1), amended: *ib.*, s. 1 (2).
s. 34 (2), substituted: *ib.*, s. 1 (3).
s. 40 (1) (b), amended: *ib.*, s. 1 (2).
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Sch. 2, para. 1, amended: *ib.*, s. 1
(2).
 - c. 65 (*Representation of the People*).
digested: § 1095.
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 - c. 66 (*Monopolies and Restrictive Practices
(Inquiry and Control)*).
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 - c. 67 (*Gas*).
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 - c. liii (*London County Council (General
Powers)*).
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 - No. 1 (*Clergy Pensions Measure*).
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- 12 & 13 Geo. 6 (1948 *cont.*).
- c. 1 (*Colonial Stock*).
digested: § 3257.
 - c. 2 (*Debts Clearing Office*).
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 - c. 3 (*Expiring Laws Continuance*).
digested: §§ 3177, 3569.
 - c. 4 (*Judges' Pensions (India and Burma)*).
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 - c. 5 (*Civil Defence*).
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 - c. 6 (*National Service (Amendment)*).
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 - c. 7 (*Wages Councils*).
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 - c. 8 (*Recall of Army and Air Force Pen-
sioners*).
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 - c. 9 (*Prize*).
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 - c. 10 (*Administration of Justice (Scotland)*).
Royal assent, December 16, 1948.

STATUTORY INSTRUMENTS, 1948

No.

1. Statutory Instruments Regulations, 1947 [2d.].
3. Statutory Instruments Act, 1946 (Commencement) Order, 1947.
4. Bacon (Rationing) Order, 1947 (Re-enactment) Order, 1948.
5. Boot and Shoe Repairs (Maximum Charges) Order, 1948.
6. Stamped or Pressed Metal-Wares Wages Council (Great Britain) Wages Regulation Order, 1948 [3d.].
7. Pears Order, 1948 [3d.].
9. Rivers Birket and Fender Catchment Board Constitution Order.
10. Cloth and Household Textiles (Utility) (Maximum Prices) (No. 11) Order.
11. Road Haulage Wages Order [6d.].
12. Electricity (Christy Bros. & Co.) Order.
13. Footwear (Supply, Marking and Manufacturers' Prices) Order [3d.].
14. Gas Fund (Contribution) Order, 1948.
15. Treasury Minute fixing Rates of Interest on Local Loans.
16. Treasury Minute fixing Rates of Interest on Local Loans (other than Loans to Local Authorities).
17. Exchange Control (Payments) (Union of Soviet Socialist Republics) Order, 1948.
18. Import Duties (Drawback) (No. 1) Order.
19. Wages Regulation (Licensed Residential Establishment and Licensed Restaurant) Order [7d.].
34. Aliens (Exemption) (Burma) Direction.
- 35/S.I. Atomic Energy (Assessment of Compensation for Work done in Searching for Minerals) (Scotland) Rules [2d.].
36. Children and Young Persons (Contributions by Local Authorities) Regulation.
37. Paper Box Wages Council (Great Britain) Wages Regulation Order [2d.].
38. ——— Wages Regulation (Holidays) Order [2d.].
39. Paper Bag Wages Council (Great Britain) Wages Regulation Order [2d.].
40. ——— Wages Regulation (Holidays) Order [2d.].
42. Stopping up of Highways (London) (No. 1) Order.
43. ——— (West Riding of Yorkshire) (No. 2) Order.
44. Retention of Railway across Highways (Cumberland) (No. 1) Order.
45. Diversion of Highways (Lancashire) (No. 1) Order.
48. Motor Vehicles (Driving Licences) (Amendment) Regulation.
49. Rock Bay (Cornwall) Coast Protection Order.
50. Harlyn Bay (Cornwall) Coast Protection Order.
53. National Insurance (Industrial Injuries) Act, 1946 (Appointed Day) Order.
54. National Insurance Act, 1946 (Appointed Day) Order.
55. National Insurance (Pensions, Existing Beneficiaries and Other Persons) (Transitional) Regulation [4d.].
57. Nantwich Gas (Borrowing Powers) Order.
59. Furniture (Maximum Prices and Charges) (Amendment No. 7) Order.
60. National Health Service (Functions of Regional Hospital Boards, etc.) Regulation.
61. Winchester Corporation Water Order.
62. East of Christchurch, Tredegar Park Trunk Road Order [9d.].
64. Dried Fruits (Control and Maximum Prices) Order [2d.].
66. Aliens (Approved Ports) Order.
71. Agriculture (Artificial Insemination) (Financial Matters) (England and Wales) Regulation [3d.].
74. Torquay Gas (Capital Powers) Order.
78. Fish (Control and Maximum Prices) Order, 1947 (Amendment No. 2) Order.
79. Home-grown Apples Order [4d.].
80. Control of Bolts, Nuts, Screws, Screw Studs, Washers and Rivets (No. 15) Order.
81. Control of Iron and Steel (No. 62) Order [4d.].
82. Limitation of Supplies (Toys and Indoor Games) Order.
83. Sheep Scab (Amendment) Order [3d.].
90. Exchange Control (Payments) (French Franc Area) Order.
96. Lloyds (Revocation of Rules) Regulation.
97. Utility Footwear (Maximum Prices) Order [2d.].
98. Diversion of Highways (Staffordshire) (No. 1) Order.
99. Retention of Railway across Highway (Staffordshire) (No. 1) Order.
103. Agriculture Goods and Services Scheme (England and Wales) [2d.].
104. Patents, etc. (Union of South Africa) (Convention) Order.

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105. Tanganyika (Legislative Council) Amendment Order in Council [2d.].
 106. Palestine Order in Council.
 107. Transfer of Functions (Food and Drugs) Order.
 108. Federation of Malaya Order in Council [2s. 4d.].
 109. Colonial Light Dues (Bahamas) Order.
 110. Lower Ouse Rules 1910 (Amendment) Order.
 111. Matrimonial Causes (War Marriages) (New Zealand) Order.
 112. National Health Service Act (Appointed Day) Order.
 113. Defence Regulations (No. 1) Order.
 114. Treaty of Peace (Bulgaria) Order [4d.].
 115. Treaty of Peace (Finland) Order [2d.].
 116. Treaty of Peace (Hungary) Order [4d.].
 117. Treaty of Peace (Italy) Order [5d.].
 118. Treaty of Peace (Roumania) Order [4d.].
 119. Utility Handkerchiefs (Marking and Manufacturers' Prices) (Amendment) Order.
 121. Control of Non-Ferrous Metals (No. 31) (Copper, Lead, and Zinc) Order.
 122. Utility Apparel (Men's and Boy's Shirts, Underwear and Nightwear) Manufacture and Supply Order [7d.].
 123. Rubber Hot Water Bottles (Maximum Prices) Order.
 128. Fats, Cheese and Tea (Rationing) Order, 1947 (Amendment No. 4) Order.
 129. Root Vegetables Order [2d.].
 130. Salmon (Maximum Price and Distribution) Order, 1944 (Amendment No. 6) Order.
 131. Manufactured and Pre-packed Foods (Control) Order, 1942 (Amendment No. 5) Order.
 132. Huntingdon and Soke of Peterborough County Agricultural Executive Committee (Combination of Counties) Order.
 - 133/S.2. Aerated Waters Wages Council (Scotland) Wages Regulation Order [2d.].
 134. Trading with the Enemy (Custodian) (Amendment) (Germany) Order.
 135. ——— (Authorisation) (Germany) Order.
 137. Wild Birds Protection (Administrative County of Durham) Order.
 139. Exchange Control (Payments) (Italy, Republic of San Marino, Vatican City, and Trieste) Order.
 140. Kitchen Waste (Licensing of Private Collectors) (Extension) Order.
 143. Stopping Up of Highways (Wiltshire) (No. 5) Order.
 144. Fishguard-Aberystwyth-Dalgelly-Carnarvon, Bangor (Menai Suspension Bridge) Trunk Road (Station Road, Trawsfydd, Junction Improvements) Order.
 146. Milk (Priority Supplies) Order.
 147. Imported Apples Order, 1946 (Amendment No. 5) Order [2d.].
 148. Melton Mowbray Gas (Capital and Borrowing Powers) Order.
 149. Food (Points Rationing) Order, 1947 (Amendment No. 6) Order [3d.].
 150. Eggs (Control and Prices) (Great Britain) Order, 1946 (Amendment No. 6) Order.
 151. Eggs (Control and Prices) (Northern Ireland) Order, 1947 (Amendment No. 2) Order.
 152. Imported Canned Fish (Maximum Prices) Order, 1947 (Amendment No. 2) Order.
 156. Aerated Waters Wages Council (England and Wales) Wages Regulation Order.
 157. Trading with the Enemy (Enemy Territory Cessation) (Finland) Order.
 158. ——— (Bulgaria) Order.
 159. ——— (Hungary) Order.
 160. ——— (Italy) Order.
 161. ——— (Roumania) Order.
 162. ——— (Trieste) Order.
 167. Isles of Scilly (National Health Service) Order.
 169. Feeding Stuffs (Maximum Prices) Order [10d.].
 170. Fountain Pens (Maximum Prices) (Revocation) Order.
 171. Utility Handkerchiefs (Maximum Prices) (No. 4) Order.
 172. Gloucester Gas (Capital and Borrowing Powers) Order.
 174. Shotley Bridge and Consett District Gas (Capital and Borrowing Powers) Order.
 176. Carrots (1947 Crop) (No. 2) Order, 1947 (Amendment No. 2) Order.
 180. Furniture (Maximum Prices and Charges) (Amendment No. 8) Order.
 181. Explosives in Coal Mines Order.
 183. Bacon (Control and Prices) Order, 1944 (Amendment No. 2) Order [2d.].
 184. Agriculture (Maintenance, Repair and Insurance of Fixed Equipment) Regulations.
 185. ——— (Calculation of Value for Compensation) Regulations [2d.].
 186. ——— (Procedure of Agricultural Land Tribunals) Order [2d.].
 187. ——— (Delegation to County Agricultural Executive Committees) Regulations.
 188. ——— (Miscellaneous Time-Limits) Regulations.
 189. ——— (Certificates of Bad Husbandry) Regulations.
 190. ——— (Control of Notices to Quit) Regulations [2d.].
 191. ——— (Making of Representations) Regulations.
 192. ——— (Areas for Agricultural Land Tribunals) Order.
 193. ——— (Reference to Agricultural Land Tribunals) Order.

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194. Agriculture (Registration of Interests in Land) Regulations.
195. Educational Conferences Amending Regulations.
197. London-Edinburgh-Thurso Trunk Road (Thrapston-Huntingdon Road Junctions Improvements) Order.
- 198/S.4. Hill Sheep Subsidy Payment (Scotland) Order.
- 199/S.5. Act of Sederunt (Exchange Control Act, 1947, Rules).
200. Woven Cloth (Cotton, Rayon and Linen) Amendment Order.
202. Personal Injuries (Civilians) (Amendment) Scheme.
203. War Pensions (Mercantile Marine) (Amendment) Scheme [2d.].
204. War Pensions (Naval Auxiliary Personnel) (Amendment) Scheme.
205. Aliens (Restriction) (Polish Resettlement Forces) Direction.
206. Utility Furniture (Supply and Acquisition) (Amendment) (No. 8) Order.
207. Acquisition of Land (Claims for Adjustment of Compensation for War Damaged Land) Regulations.
- 208/S.6. ——— (Scotland) Regulations.
209. Agriculture (Transfer of Functions to Minister) Regulations.
210. ——— (Transfer of Functions to County Agricultural Executive Committees) Order.
211. National Insurance (Northern Ireland Reciprocal Arrangements) Regulations [2d.].
212. Aliens (Employment) (Polish Resettlement Forces) Order.
213. Town and Country Planning Act, 1947 (Appointed Day) Order.
214. Retention of Pipe under Highway (Lincolnshire-Parts of Kesteven) (No. 1) Order.
215. Stopping Up of Highways (Staffordshire) (No. 1) Order.
216. Utility Overalls and Aprons (Manufacture and Supply) Order [11d.].
217. Electricity (Vesting Date) Order.
218. Exchange Control (Authorised Dealers) Order.
219. ——— (Authorised Depositories) Order.
220. ——— (Payments) (Japan) Order.
221. ——— (Payments) (China and Formosa) Order.
222. Import Duties (Drawback) (No. 2) Order.
223. Electricity Supply (Relaxation of Obligations) Order.
224. Electricity (Price Control) Order.
225. Motor Fuel (Propane, Butane) Order.
226. Electricity (Pension Scheme) Regulations.
227. Footwear Repairs (Maximum Charges) Order.
228. Rope Twine and Net Wages Council (Great Britain) Wages Regulation Order [4d.].
229. Police Regulations.
230. ——— (Women) Regulations.
231. ——— War Reserve Rules.
232. Women's Auxiliary Police Corps Rules.
233. Chocolate, Sugar Confectionery and Cocoa Products (Control and Maximum Prices) Order 1944 (Amendment No. 7) Order.
237. Flax and Hemp Wages Council (Great Britain) Wages Regulation Order [3d.].
238. Boot and Shoe Repairing Wages Council (Great Britain) Wages Regulation Order.
239. Electricity (Vesting of Assets) Regulations [3d.].
- 240/S.7. Wild Birds Protection (County of Aberdeen) Order.
- 241/S.8. ——— (County of Ayr) Order.
- 242/S.9. ——— (County of Caithness) Order.
- 243/S.10. ——— (County of Inverness) Order.
- 244/S.11. ——— (County of Kincardine) Order.
- 245/S.12. ——— (County of Moray) Order.
- 246/S.13. ——— (County of Nairn) Order.
- 247/S.14. ——— (County of Perth) Order.
- 248/S.15. ——— (County of Wigtown) Order.
- 249/S.16. ——— (County of Zetland).
257. Growing of Seed Crops (Control) Order.
264. Berkshire and Reading Fire Services (Combination) Order [2d.].
- 265/S.17. Town and Country Planning (Scotland) Act, 1947 (Appointed Day) Order.
- 266/S.18. Wild Birds Protection (County of Dunbarton) Order.
- 267/S.19. ——— (County of Fife) Order.
- 268/S.20. ——— (County of Renfrew) Order.
- 269/S.21. ——— (County of Ross and Cromarty) Order.
270. Retention of Pipe under Highway (West Riding of Yorkshire) (No. 4) Order.
271. Stopping Up of Highways (Huntingdonshire) (No. 2) Order.
- 272/L.1. Chancery of Lancaster (Exchange Control) Rules [2d.].
273. Utility Apparel (Maximum Prices and Charges) (No. 15) Order.
274. ——— (Merchant Navy Uniforms) (Manufacture and Supply) Order [3d.].
275. District of the River Spey (Annual Close Time) Order.
276. Cotton (Single Yarn) Prices Order [3d.].
277. Control of the Cotton Industry (No. 84) Order.

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278. Control of the Cotton Industry (No. 85) Order.
279. — (No. 86) Order.
280. — (No. 87) Order.
- 281/L.2. Agriculture Act, 1947 (Registration of Supervision Orders) Rules.
283. Conway Gas (Charges) Order.
284. Exchange Control (Definition of Scheduled Territories) Order.
285. — (Payments) (Palestine) Order.
286. — (Payments) (Transjordan) Order.
288. Stopping Up of Highways (Gloucestershire) (No. 6) Order.
289. Retention of Pipe under Highway (West Riding of Yorkshire) (No. 5) Order.
290. — (Hertfordshire) (No. 1) Order.
292. Colonial Development Corporation Regulations.
294. Control of Sulphuric Acid (No. 4) Order.
295. Horse Hides Order.
296. Native Cattle Hides and Calf Skins Order [2d.].
297. London-Carlisle-Glasgow-Inverness Trunk Road (Kegworth By-Pass) Order.
298. Suffolk and Ipswich Fire Services (Combination) Order [3d.].
300. Gas Charges.
301. Food Rationing (General Provisions) Order, 1947 (Amendment No. 3) Order.
302. Coal Mines (Winding and Haulage) General Regulations.
303. Utility Corsets (Manufacture and Supply) Order [3d.].
304. Yarn and Cloth (Wool and Animal Fibre) (Maximum Prices and Charges) Order [2d.].
305. Woven Cloth (Wool and Animal Fibre) (Manufacture, Marking and Supply) Order [2d.].
306. Railway and Canal Securities (Conversion Date) (No. 1) Order.
307. Compensation (Defence) Notice of Claim Rules.
308. London-Edinburgh-Thurso Trunk Road (Biggleswade-Old Warden Road Junction Improvements) Order.
309. — (Ivel Bridge Diversion) Order.
310. London-Fishguard Trunk Road (Robeston Wathen-Narberth Road Junction Improvements) Order.
311. Potatoes (1947 Crop) (No. 2) Order, 1947 (Amendment No. 4) Order.
312. Goole Gas Order.
313. Police (Overseas Service) (Greece) Regulations [2d.].
316. Knitted Goods (Manufacture and Supply) Order [3d.].
317. Wild Birds Protection (Administrative County of East Suffolk) Order
- 323/S.23. General Nursing Council for Scotland Rules, 1948, Approval Instrument.
325. Fire Services (Appointed Day) Order.
329. Consumer Rationing (Amendment) (No. 4) Order.
330. Wild Birds Protection (Administrative County of Lincoln, Parts of Holland) Order.
331. — (County Borough of Grimsby) Order.
332. Fire Services (Transfer of Persons) Regulations.
333. Live Poultry (Regulation of Sales, Exhibitions and Movements) Order.
334. Education (Local Education Authorities) Grant Regulations [2d.].
335. Defence Regulations (No. 2) Order.
336. — Regulations (No. 3) Order.
337. Order in Council declaring that the Government of the Dominican Republic has acceded to the Load Line Convention.
338. Order in Council declaring that the Government of the Republic of the Philippines has acceded to the Safety Convention.
339. Merchant Shipping (Southampton Seamen's Lodging-Houses Keepers) Order.
340. Northern Rhodesia (Legislative Council) (Amendment) Order in Council.
341. Singapore Colony (Amendment) Order in Council.
342. Agricultural Act, 1947 (Commencement) (No. 1) Order.
343. Extradition (Sarawak) Order in Council.
- 344/S.24. National Health Service (Scotland) Act (Appointed Day) Order.
345. Northern Ireland (Land Registry) (Appointed Day) Order.
346. — (Registration of Deeds) (Appointed Day) Order.
347. Wild Birds Protection (City and County Borough of Carlisle) Order.
348. Miscellaneous Goods (Maximum Prices) Order [3d.].
349. General Apparel and Textiles (Manufacturers' Maximum Prices and Charges) Order [2d.].
350. Miscellaneous Maximum Prices Orders (Revocation) Order.
351. General Footwear (Maximum Prices and Charges) Order.
352. General Hollow-Ware (Maximum Prices) Order.
353. General Hardware and Ironmongery (Maximum Prices) Order.
354. Domestic Pottery (Maximum Prices) Order.
355. Uniforms (Retail Bespoke) (Maximum Prices) Order.
356. Glass Tumblers (Maximum Prices) (Amendment) Order.
357. Apparel and Textiles (No. 6) Order and Directions.

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358. Utility Mark and Apparel and Textiles (General Provisions) (Amendment) Order.
359. P.V.C. Sheeting (Maximum Prices) (Amendment No. 3) Order.
360. Footwear (Supply, Marking and Manufacturers' Prices) (Amendment) Order.
361. Perambulators (Maximum Prices and Charges) Order.
365. Caledonian and Crinan Canals and Holyhead Harbour (Date of Transfer) Order.
366. Merchant Shipping (Fishing Boats) Order.
367. Agricultural Orders (Revocation) Order.
368. Food (Licensing of Establishments) Order.
369. Cereal Fillers (Control and Maximum Prices) Order, 1944 (Amendment No. 3) Order.
- 372/S.25. Act of Sederunt (Claims for Solatium).
373. Wild Birds Protection (City of Gloucester) Order.
374. Primary and Secondary Schools (Grant Conditions) Amending Regulations No. 5.
- 382/S.26. Fire Services (Authorisation) (Scotland) Regulations.
384. Central Electricity Board (Keadby Generating Station Lands) Special Order.
385. Craceo, Hebden and District Electricity Special Order [2d.].
386. Motor Fuel (Car Hire) Order.
387. Public Health (Aircraft) Regulations.
389. London Traffic (Prescribed Routes) (No. 1) Regulations
390. Safeguarding of Industries (Exemption) (No. 1) Order.
395. Wild Birds Protection (Administrative County of Bedford) Order.
396. — (Administrative County of Derby) Order.
397. Canned Fruit and Vegetables (No. 2) Order, 1946 (Amendment No. 4) Order.
399. Exchange Control (Payments) (Uruguay) Order.
401. Town and Country Planning (Churches, Places of Religious Worship and Burial Grounds) Regulations.
406. Stopping Up of Highways (West Riding of Yorkshire) (No. 1) Order.
407. London-Folkestone-Dover Trunk Road (Stone Street, New Inn Green, Junction Improvements) Order.
- 408/S.27. Retention of Railway across Highway (Inverness-shire) (No. 1) Order.
409. Wild Birds Protection (Administrative County of Dorset) Order.
410. Food (Points Rationing) Order, 1947 (Amendment No. 7) Order [2d.].
411. Fats, Cheese and Tea (Rationing) Order, 1947 (Amendment No. 5) Order.
- 412/S.28. National Health Service (Scotland) (Superannuation) Regulations [1s. 10d.].
413. Overseas Food Corporation Regulations.
414. Goole Area (Conservation of Water) Order.
416. Hill Cattle (England and Wales) Amendment Scheme.
417. — Subsidy Payment (England and Wales) Order.
418. Bishops Stortford Gas (Borrowing Powers) Order.
419. National Health Service (Superintendents of Mental Hospitals, etc.) Regulations.
420. County of London (Measles and Whooping Cough) Amendment Regulations.
421. Measles and Whooping Cough Amendment Regulations.
422. Coal Distribution Order, 1943, General Direction (Restriction of Supplies) No. 16.
423. Warble Fly (Dressing of Cattle) Order.
426. Workington Water.
428. London-Edinburgh-Thurso Trunk Road (Stilton By-pass) Order.
429. Norman Cross-Grimsby Trunk Road (Norman Cross Diversion) Order.
430. Stopping Up of Highways (Glamorgan) (No. 2) Order.
431. — (Wiltshire) (No. 6) Order.
432. Retention of Pipe under Highway (Leicestershire) (No. 1) Order.
433. Railway and Canal Securities (Conversion Date) (No. 2) Order.
434. Companies (Articles of Association and Annual Return) Regulations [9d.].
439. Companies Act, 1947 (Commencement) Order.
440. Leamington Priors Gas (Borrowing Powers) Order.
441. National Health Service (Executive Council for the Isles of Scilly) Regulations.
443. Diversion of Highways (Lancashire) (No. 2).
448. Food Rationing (General Provisions) Order, 1947 (Amendment No. 4) Order.
449. Exchange Control (Payments) (Poland) Order.
458. Waste Paper and Waste Textile Materials (Prices) (Amendment) Order.
- 459/S.29. Hill Farming (Cottages) (Scotland) Regulations.
460. Utility Apparel (Maximum Prices and Charges) (No. 16) Order.
461. Control of Willow Rods and Willow Sticks Order [2d.].
462. Kitchen Waste (Maximum Prices) (No. 4) Order.
463. Safeguarding of Industries (Exemption) (No. 2) Order.
464. Income Tax (Employments) (No. 7) Regulations.
465. Fire Services (Transfer of Property) Regulations [2d.].
467. London Traffic (Parking Places) (Amendment) (No. 1) Regulations [2d.].
472. Coal Industry Nationalisation (Appointments, Documents, etc.) Regulations.
474. Hotels Executive (Appointed Day) Order.
- 475/S.30. Approved Schools (Contributions by Education Authorities) (Scotland) Regulations.

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- 481. Stopping Up of Highways (Essex) (No. 1) Order.
- 482. Meals (Service at Social Functions) Order, 1947 (Amendment No. 1) Order.
- 483. Milk (Non-Priority Allowance) (No. 1) Order.
- 484. Electricity (Allocation of Undertakings to Area Boards) Order [2d.].
- 485. Northern Ireland (Land Registry) (Adaptation of Enactments) Order.
- 486. ——— (Transfer of Property) Order.
- 487. ——— (Registration of Deeds) (Adaptation of Enactments) Order.
- 488. ——— (Transfer of Property) Order.
- 489. Vestry of St. Giles Without Cripplegate (Resumption of Elections) Order.
- 490. Transfer of Functions (Minister of Health and Minister of Transport) Order.
- 491. Agriculture Act, 1947 (Commencement) (No. 2) Order.
- 492. Colonial Stock Acts Extension (Tanganyika) Order.
- 493. Foreign Service Order.
- 494. Petroleum (Radioactive Substances) Order.
- 495. Summer Time Order.
- 497. Electricity (Security Values) (No. 1) Order [2d.].
- 498. National Insurance (Modification of the Superannuation Acts) Regulations.
- 499. Stopping Up of Highways (Lincolnshire: Parts of Lindsey) (No. 2) Order.
- 500. ——— (Leicestershire) (No. 2) Order.
- 501. ——— (Nottinghamshire) (No. 1) Order.
- 502/S.31. Retention of Railway across Highway (Renfrewshire) (No. 2) Order.
- 504. Utility Apparel (Infants' and Girls' Wear) (Manufacture and Supply) Order [2d.].
- 505. National Health Service (General Dental Services) Regulations [6d.].
- 506. ——— (General Medical and Pharmaceutical Services) Regulations [7d.].
- 507. ——— (Service Committees and Tribunal) Regulations [8d.].
- 508. Miscellaneous Maximum Prices Orders (Amendment) Order.
- 511. Hill Sheep (England and Wales) Emergency Payments Scheme.
- 512. Hill Sheep Scheme Subsidy Payment (England and Wales) Order.
- 514/S.32. Agricultural Goods and Services (Scotland) Scheme.
- 516. Load Line (Amendment) Rules.
- 517/L.3. Land Registration Fee Order.
- 518. Furniture (Maximum Prices and Charges) (Amendment No. 9) Order.
- 520. Shrewsbury—Whitchurch—Warrington Trunk Road (Wyle Cop, High Street and Pride Hill, Shrewsbury) Order.
- 521. Export of Goods (Control) (Amendment) Order.
- 522. ——— (Fish) Licence.
- 523. Wages Council (Retail Drapery, Outfitting and Footwear Trades, Great Britain) Order [2d.].
- 524/S.33. ——— (Retail Food Trades, Scotland) Order [2d.].
- 525. ——— (Retail Furnishing and Allied Trades, Great Britain) Order [2d.].
- 526. Electricity (Stock) Regulations [4d.].
- 538. Canned Puddings (Maximum Prices) Order, 1945 (Amendment No. 7) Order.
- 539. Onions Order, 1946 (Amendment No. 6) Order.
- 540. Supreme Court Rules (Exchange Control) (Northern Ireland) Order in Council [2d.].
- 542. Government Oil Pipe-Lines Regulations [2d.].
- 545. Fire Services (Discipline) Regulations [2d.].
- 546. ——— (Ranks and Conditions of Service) Regulations [5d.].
- 547/S.34. Police (Scotland) (Amendment) Regulations.
- 548/S.35. ——— (Women) (Scotland) (Amendment) Regulations.
- 549/S.36. Police War Reserve (Scotland) (Amendment) Rules.
- 550. Leather (Charges) (No. 2) Order.
- 551. Remuneration of Teachers Order.
- 552. Motor Vehicles (Driving Licences) (Amendment) (No. 2) Regulations.
- 553. London Traffic (Prescribed Routes) (No. 2) Regulations.
- 555. Fire Services (Compensation) Regulations [4d.].
- 562. Foreign Postal Packets (Customs) Warrant [2d.].
- 563. National Insurance (Approved Societies) Regulations [2d.].
- 565. Hampshire Police (Amalgamation) (County Borough of Bournemouth) Order [2d.].
- 566. Preston Gas (Borrowing Powers) Order.
- 567. National Health Service (Transfer of Local Authority Functions) Regulations.
- 568. South Lincolnshire Area (Conservation of Water) Order.
- 569/S.35. Regional Advisory Council (Scotland) Grant Regulations.
- 570/S.36. ——— (Technical Education in Dundee and District) Order.
- 571/S.37. ——— (Technical Education in Highlands and Islands) Order.
- 572/S.38. ——— (Technical Education in North-East Scotland) Order [2d.].
- 573/S.39. ——— (Technical Education in South-East Scotland) Order [2d.].
- 574/S.40. ——— (Technical Education in West Scotland) Order [2d.].
- 575. National Health Service (Central Health Services Council and Standing Advisory Committees) Regulations.

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576. Control of Rubber Tyres (Revocation) Order.
577. Control of Paper (No. 86) (Economy) Order.
578. Services Laundry (Maximum Charges) Order.
580. Safeguarding of Industries (Exemption) (No. 3) Order.
581. Fire Services (Pensionable Employment) Regulations.
582. Cloth and Household Textiles (Utility) (Maximum Prices) (No. 12) Order.
584. Molasses and Industrial Alcohol (Amendment) Order [2d.].
585. Miscellaneous Goods (Prohibition of Manufacture and Supply) (No. 11) Order.
586. Companies (Articles of Association) Regulations.
587. Utility Apparel (Maximum Prices and Charges) (No. 17) Order.
588. Utility Furniture (Supply and Acquisition) (Amendment) (No. 9) Order.
589. Furniture (Control of Manufacture and Supply) (Amendment) Order.
590. British Commonwealth and Foreign Post Warrant [7d.].
591. Food Rationing (General Provisions) Order, 1947 (General Licence No. 3) Order.
592. Eggs (Control and Prices) (Great Britain) Order, 1946 (Amendment No. 7) Order.
593. ——— (Northern Ireland) Order, 1947 (Amendment No. 3) Order.
- 594/S.41. National Health Service (Functions of Regional Hospital Boards) (Scotland) Regulations.
- 595/S.42. Temporary Workers in Agriculture (Minimum Wages) (Scotland) Order.
596. Electricity (Price Control) (Revocation) Order.
598. Hereford Gas Order.
599. Middlesbrough Gas Order.
600. St. Helens Gas Order.
601. South Yorkshire and Derbyshire Gas Order [2d.].
602. Swindon Gas Order [11d.].
603. Weston-super-Mare Gas Order.
604. Firemen's Pension Scheme Order [9d.].
605. Fire Services (Ranks and Conditions of Service) (No. 2) Regulations.
606. Control of Iron and Steel (No. 63) Order.
607. Perth-Aberdeen-Inverness Trunk Road (Sheriffmill-Bishopmill Road Junction Improvements) Order [2d.].
608. Purchase Tax (No. 1) Order.
609. Public Service Vehicles (International Circulation) Regulations.
610. Motor Vehicles (International Circulation) Regulations.
- 611/S.43. Teachers' Salaries (Scotland) Regulations [6d.].
612. National Insurance (Pensions, Existing Contributors) (Transitional) Regulations [5d.].
613. Local Government (Special and Parish Rates) (Third Fixed Grant Period) Regulations.
619. Home Grown Grains (Agricultural Executive Committees) Order.
620. Pulse (Control and Prices) Order, 1943 (Amendment No. 7) Order.
- 621/S.44. Act of Sederunt (Unopposed Executory Petitions).
624. Retention of Pipe under Highways (Brecknockshire) (No. 1) Order.
625. Tobacco Wages Council (Great Britain) Wages Regulation Order.
626. Wild Birds Protection (Sheffield) Order.
627. Durham Police (Amalgamation) Order [2d.].
628. Mid-Wales Police (Amalgamation) Order [2d.].
629. Cotton Industry Development Council Order [3d.].
630. Food (Points Rationing) Order, 1947 (Amendment No. 8) Order.
631. Electricity (Security Values) (No. 2) Order [2d.].
633. Cinematograph Films (Renters' Licences) Regulations.
634. Cinematograph Films (Registration) Regulations [3d.].
638. Central Advisory Water Committee Amendment Order.
641. Brighton Corporation Water Order.
642. Hops Marketing Scheme (Amendment) Order.
643. Motor Vehicles (Authorisation of Special Types) Order.
644. East Worcestershire Water Order [2d.].
646. Wild Birds Protection (Cheshire) Order.
647. ——— (Parts of Kesteven) Order.
650. Feeding Stuffs (Rationing) Order, 1943 (Amendment No. 5) Order.
651. Remuneration of Teachers (Farm Institutes) Order.
652. Rating and Valuation (Form of Precept—County Councils) Rules [2d.].
653. ——— (Forms of Demand Note) Rules [3d.].
654. London County Council Form of Precept Rules [2d.].
655. Form of Demand Note (London) Rules [2d.].
656. National Health Service (Designation of Teaching Hospitals (No. 1)) Order.
657. Wild Birds Protection (Salford) Order.
658. Horsforth Water Order.
662. Fats, Cheese and Tea (Rationing) Order, 1947 (Amendment No. 6) Order.
663. Electricity (Conversion Date) Order.
- 668/S.45. Act of Sederunt (Appeals under the Pensions Appeal Tribunals Act, 1943).

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677. Crawley New Town Sewerage Order.
678. Business Names Rules [9d.].
- 680/S.48. Retention of Pipe under Highway (Fifeshire) (No. 1) Order.
- 681/S.49. ——— (No. 2) Order.
682. Stopping Up of Highways (Leicestershire) (No. 1) Order.
686. Import Duties (Drawback) (No. 3) Order.
687. Shirtmaking Wages Council (Great Britain) Wages Regulation Order.
688. Scholarships and Other Benefits Amending Regulations.
689. Midwives (Amendment) Rules, Instrument of Approval.
690. Potatoes (1947 Crop) (No. 2) Order, 1947 (Amendment No. 5) Order.
691. Food Rationing (General Provisions) Order, 1947 (General Licence No. 2) Order.
692. Nut Kernels Order, 1947 (Amendment) Order.
693. Railway Wagons (Notification of Particulars and Plating) (Revocation) Order.
694. Railways (Acceptance of Merchandise) (Revocation) Order.
695. Medical Practitioners (Fees) Regulations.
698. Consumer Rationing (Amendment) (No. 5) Order.
700. Owners' Risk Standard Charges Modification Order [4d.].
701. Utility Apparel (Maximum Prices and Charges) (No. 18) Order.
702. Fur Apparel (No. 13) Directions.
703. Knitted Goods (Manufacture and Supply) (Amendment) Order.
705. Aerated Waters Wages Council (England and Wales) (Variation) Order.
706. Boot and Shoe Repairing Wages Council (Great Britain) (Variation) Order.
707. Factories Act, 1937 (Extension of Section 46) Regulations.
708. Control of Employment (Directed Persons) (Amendment) Order.
709. Exchange Control (Prescribed Courts) (Scotland, Northern Ireland and Isle of Man) Order.
711. Town and Country Planning (Making of Applications) Regulations.
- 712/S.50. Local Government Audit (Scotland) Regulations.
- 713/S.51. Local Authority (Control of Bank and Cash Balances) (Scotland) Regulations.
- 714/S.52. Local Government (Payment of Accounts) (Scotland) Regulations.
721. Railway and Canal Securities (Conversion Date) (No. 3) Order.
722. Home Grown Wool Order.
723. Lee Conservancy Catchment Board (Termination of Agency) Order.
724. Seizure of Food Order.
725. Trading with the Enemy (Authorisation) (Germany) (No. 2) Order.
726. ——— (Transfer of Negotiable Instruments, etc.) (Germany) Order.
727. ——— (Custodian) (Amendment) (Germany) (No. 2) Order.
728. Sugar Industry (Provision for Research and Education in the Growing of Sugar Beet in Great Britain Order.
729. Hammersmith (Councillors and Wards) Order.
730. Hill Sheep (Northern Ireland) Emergency Payments Scheme.
731. Hill Sheep Scheme Subsidy Payment (Northern Ireland) Order.
732. Photographic Film (Maximum Prices) Order.
- 733/S.53. North of Scotland Hydro-Electric Board (Constructional Scheme No. 9) Confirmation Order.
734. Utility Mark and Apparel and Textiles (General Provisions) (Amendment) (No. 2) Order.
735. Retention of Pipe under Highway (Cheshire) (No. 4) Order.
736. Retention of Pipe under and Cable over Highway (Glamorgan) (No. 2) Order.
737. Retention of Pipe under Highway (Northumberland) (No. 2) Order.
738. ——— (Leicestershire) (No. 2) Order.
742. Kidderminster Gas (Capital and Borrowing Powers) Order.
744. Meals in Establishments Order, 1946 (Amendment No. 5) Order.
746. London Traffic (Ripley) Regulations.
747. Electricity (Financial Years) Regulations.
751. Ground Sulphur (Prices) (Amendment) Order.
752. Control of Bichromates (Revocation) Order.
755. Weston Point Light Railway (Transfer) Order.
756. Utility Apparel (Men's, Youths' and Boys' Outerwear) (Manufacture and Supply) Order [8d.].
757. Wild Birds Protection (Walsall) Order.
758. Trustee Savings Banks (Superannuation Value) Rules.
763. Mersey Area (Conservation of Water) Order.
- 764/S.54. Dressmaking and Women's Light Clothing Wages Council (Scotland) Wages Regulation Order.
765. P.V.C. Sheeting (Maximum Prices) Order.
766. Motor Fuel (Overseas Visitors) (Car Hire) Licence.
767. Consumer Rationing (Tourist Vouchers) Licence.
769. Retention of Pipe under Highway (Cheshire) (No. 1) Order.
770. Silk Duties (Drawback) (No. 1) Order.

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771. Importation of Dogs and Cats (Amendment) Order.
772. Kenya (Non-Domiciled Parties) Divorce (Amendment).
773. Lloyd's and other Approved Associations (Forms of Annual Statements) Regulations [3d.].
774. — (Auditors' Certificates) Regulations.
775. General Apparel, Furnishings and Textiles (Manufacturers' Maximum Prices and Charges) Order [3d.].
776. Miscellaneous Goods (Maximum Prices) (Amendment) Order [5d.].
777. Exchange Control (Payments) (Syria) Order.
778. Utility Apparel (Women's and Maids' Underwear and Nightwear) (Manufacture and Supply) Order [10d.].
779. Domestic Pottery (Maximum Prices) (Amendment) Order [2d.].
780. General Hardware and Ironmongery (Maximum Prices) (Amendment) Order [2d.].
781. General Hollow-Ware (Maximum Prices) (Amendment) Order [2d.].
790. Proprietary Infant Milk Foods Order, 1947 (Amendment) Order.
791. Welfare Foods Order, 1947 (Amendment No. 1) Order.
792. Control of Rates of Hire of Plant Order [2d.].
793. Export of Goods (Control) (Amendment) (No. 2) Order.
- 794/S.55. Holidays with Pay (Agricultural Workers—Scotland) (Application of Enactments) Regulations.
795. Furniture (Maximum Prices and Charges) (Amendment No. 10) Order.
802. Diversion of Highways (Worcestershire) (No. 1) Order.
803. London-Edinburgh-Thurso Trunk Road (Scotch Corner Junctions Improvements) Order.
804. Bude Gas (Charges) Order.
805. Wolverhampton Water Order.
806. Hill Cattle (Northern Ireland) Amendment Scheme.
807. Hill Cattle Scheme Subsidy Payment (Northern Ireland) Order.
808. Citric Acid and Tartaric Acid (Revocation) Order.
810. Railway and Canal Securities (Conversion Date) (No. 4) Order.
814. Woven Cloth (Wool and Animal Fibre) (Manufacture, Marking and Supply) (Amendment) Order.
818. South Staffordshire Water (Trunk Main) Order.
819. Ice Cream (Heat Treatment, etc.) Amendment Regulations.
823. Local Government Act, 1948 (Appointed Days) (No. 1) Order.
824. Home-Grown Linseed (Control) Order.
825. Rationing (Personal Points) Order, 1947 (Amendment No. 2) Order.
826. — (Personal Points) Order, 1947 (Directions No. 2) Order.
827. Milk (Non-Priority Allowance) (No. 2) Order.
828. Tomatoes Order [5d.].
829. Milk Marketing Board (Modifications of Functions) Order.
831. Stopping Up of Highways (Worcestershire) (No. 1) Order.
833. Coal Distribution Order, 1943, General Direction (Restriction of Supplies) No. 17.
834. Utility Furniture (Validation of Units) Order.
838. Jute Wages Council (Great Britain) Wages Regulation Order [4d.].
839. Poisons List (Amendment) Order.
840. Poisons (Amendment) Rules.
841. Wallasey Gas Order.
842. Wallingford Gas Order [5d.].
843. Brighton Gas (Borrowing Powers) Order.
- 844/S.56. National Health Service (Scottish Health Services Council and Standing Advisory Committees) Regulations.
845. Standing Passengers Order.
846. Food (Points Rationing) Order, 1947 (Amendment No. 9) Order.
847. Further Education Grant Amending Regulations No. 2.
849. Pelts (Maximum Prices) Order.
852. Safeguarding of Industries (Exemption) (No. 4) Order.
853. Hill Farming (Cottages) (England and Wales) Regulations.
- 854/S.57. Stopping Up of Highways (Dumfriesshire) (No. 3) Order.
855. Police (No. 2) Regulations.
856. — (Women) (No. 2) Regulations.
857. — War Reserve (No. 2) Rules.
858. Women's Auxiliary Police Corps (No. 2) Rules.
859. Wild Birds Protection (Glamorganshire) Order.
861. Cloth and Household Textiles (Utility) (Maximum Prices) (No. 13) Order.
862. Kenya Protectorate (Amendment) Order in Council.
863. Singapore Colony (Amendment) (No. 2) Order in Council.
864. Matrimonial Causes (War Marriages) (British Guiana) Order.
865. Transfer of Functions (Secretary of State and Minister of Health) Order.
866. Special Constables Order.

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- 867. Extradition (Dominica) Order in Council.
- 868. Coal Mines Regulation (Suspension) Order.
- 869. Cotton Board (Termination of Functions) Order.
- 872. Patents, etc. (Austria) (Convention) Order.
- 873. Supplies and Services (Extended Purposes) (Isle of Man) Order in Council.
- 874/L.4. County Court Districts (Torrington) Order.
- 875/S.58. Fire Services (Transfer of Persons) (Scotland) Regulations.
- 879. Household Textiles (Marking and Manufacturers' Prices) (Amendment) Order.
- 880. Utility Apparel (Mens' and Boys' Shirts, Underwear and Nightwear) (Manufacture and Supply) (Amendment) Order [6d.].
- 881. Upholstery Cloth (Utility) Order [2d.].
- 882. General Apparel Furnishings and Textiles (Manufacturers' Maximum Prices and Charges) (Amendment) Order.
- 883. Product of Rates and Precepts (London) Rules.
- 884. Metropolitan Police Precept Rules.
- 885. Additional Import Duties (No. 1) Order.
- 886. Public Health (Imported Food) Amendment Regulations.
- 888. National Health Service (Apportionment and Transfer) Regulations [3d.].
- 889. National Insurance (Modification of Teachers' Pensions) Regulations [3d.].
- 897. London Traffic (Prescribed Routes) (No. 5) Regulations.
- 898. Electricity (Consultative Council) (Arcas) Regulations.
- 902. Claims for Depreciation of Land Values Regulations [3d.].
- 903. Firedamp Detectors (No. 5) Order.
- 904. Stopping Up of Highways (Hertfordshire) (No. 1) Order.
- 906. Fylde Water Order.
- 907/S.59. Claims for Depreciation of Land Values (Scotland) Regulations [2d.].
- 911. Onions Order.
- 912/S.60. Fire Services (Appointed Day) (Scotland) Order.
- 913/S.61. — (Ranks) (Scotland) Regulations.
- 914/S.62. Town and Country Planning (Application for Planning Permission, etc.) (Scotland) Regulations.
- 915. Workington Water (No. 2) Order.
- 917. London Traffic (Prescribed Routes) (No. 3) Regulations.
- 924. South of Haysgate—East of Crick Trunk Road Order.
- 926. Importation of Raw Cherries Order.
- 927. Wild Birds Protection (Cardiganshire) Order.
- 928. Public Health (Venereal Diseases Regulations) Revocation Regulations.
- 929/S.63. Importation of Raw Cherries (Scotland) Order.
- 930. London Traffic (Prescribed Routes) (No. 4) Regulations.
- 939/L.5. Rules of the Supreme Court (No. 1).
- 940. Camborne Water Order.
- 941/S.64. Fire Services (Conditions of Service) (Scotland) Regulations [5d.].
- 942/S.65. — (Discipline) (Scotland) Regulations.
- 943/S.66. — (Transfer of Property) (Scotland) Regulations.
- 944/S.67. Teachers' Pensions (National Insurance Modifications) (Scotland) Regulations [3d.].
- 947. Potatoes (Control of Supply) (No. 2) Order, 1947 (Revocation) Order.
- 948. — (1947 Crop) (No. 2) Order, 1947 (Amendment No. 6) Order.
- 949. Staffordshire Potteries Water Order.
- 952. Utility Apparel (Maximum Prices and Charges) (No. 19) Order.
- 953. Seizure of Food Order, 1948 (Amendment) Order.
- 954. Town and Country Planning (Use Classes) Order [2d.].
- 955. — (Use Classes for Third Schedule Purposes) Order [2d.].
- 957. Consumer Rationing (Amendment) (No. 6) Order [2d.].
- 958. Town and Country Planning (General Development) Order [5d.].
- 959. Caernarvonshire Rivers (including the River Conway) Catchment Board Transfer Order.
- 960/S.68. Ice Cream (Scotland) Regulations [3d.].
- 961/S.69. Education Authorities (Scotland) Grant Regulations [2d.].
- 963. Import Duties (Drawback) (No. 4) Order.
- 965/S.70. Town and Country Planning (Use Classes for Third Schedule Purposes) [2d.].
- 966/S.71. — (Use Classes) (Scotland) Order [2d.].
- 967/S.72. South Western Fire Area Administration Scheme Order [3d.].
- 968. Consumer Rationing (Raffia Footwear) Licence.
- 969. Utility Furniture (Validation of Units) (No. 2) Order.
- 970. Consumer Rationing (Sandals) Licence.
- 972. Utility Apparel (Nurses' Uniforms) (Manufacture and Supply) Order [3d.].
- 975/S.73. Electricity (Consultative Council) (North of Scotland District) Regulations.
- 976. Motor Vehicles (Construction and Use) (Amendment) Regulations.
- 977. London Traffic (Prescribed Routes) (No. 6) Regulations.
- 978. — (Prescribed Routes) (No. 8) Regulations.

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979. National Health Service (Designation of Teaching Hospitals (No. 2)) Order.
980. Control of Building Materials (Amendment) Order.
- 981/S.74. Central Fire Area Administration Scheme Order [3d.].
983. Paper (Prices) (Amendment No. 2) Order [2d.].
984. Pencils (Maximum Prices) (Amendment) Order.
985. Photographic Film (Maximum Prices) (Amendment) Order.
- 987/L.6. Civil Business (Hereford and Worcester) Order.
988. Railway and Canal Securities (Conversion Date) (No. 5) Order.
990. Bude Gas (Borrowing Powers) Order.
991. Utility Apparel (Women's and Maids' Outerwear) (Manufacture and Supply) Order [4d.].
992. Aerated Waters Wages Council (England and Wales) Wages Regulation (Holidays) Order [3d.].
- 993/S.76. Fire Services (Compensation) (Scotland) Regulations [3d.].
994. Knitted Goods (Manufacture and Supply) (Amendment) (No. 2) Order.
995. Bricks (Range and Prices) (Revocation) Order.
996. Meals in Establishments Order, 1946 (Amendment No. 6) Order.
997. Superannuation (Public Offices) Rules.
- 998/S.77. North of Scotland Hydro-Electric Board (Charges) Amendment Regulations.
- 999/S.78. Lanarkshire Fire Area Administration Scheme Order [2d.].
1000. Mental Deficiency Regulations [1s. 1d.].
1001. General Hollow-ware (Maximum Prices) (Amendment No. 2) Order.
1002. Defence Regulations (No. 4) Order.
1003. Termination of Jurisdiction in Palestine (Transitional Provisions) Order in Council.
1004. Palestine (Revocations) Order in Council.
1005. Agriculture Act, 1947 (Commencement) (No. 3) Order.
1006. Patents, etc. (Spanish Colonies) (Convention) Order.
1007. Merchant Shipping (Life-Saving Appliances) Rules [8d.].
1008. — (Life-Saving Appliances) (No. 2) Rules.
1009. — (Fire Appliances) Rules [6d.].
1010. — (Fire Appliances) (No. 2) Rules [2d.].
1011. — (Musters) Rules.
1012. — (Musters) (No. 2) Rules.
1013. London Traffic (Prescribed Routes) (No. 7) Regulations.
1015. Aliens (Restriction) (Palestinian Citizens) Direction.
1016. Wild Birds Protection (Soke of Peterborough) Order.
1018. Table Jellies (Maximum Prices) Order, 1946 (Amendment No. 2) Order.
1019. Food Rationing (General Provisions) Order, 1947 (General Licence No. 4) Order.
1020. Motor Spirit (Regulation) Order.
- 1021/S.79. Fire Services (Ranks) (Scotland) (No. 2) Regulations.
1022. Milk Distributive Wages Council (England and Wales) Wages Regulation Order.
1023. Boot and Floor Polish Wages Council (Great Britain) Wages Regulation (Holidays) Order.
1024. Retention of Railway across, over and under Highways (Gloucestershire) (No. 2) Order.
1025. Retention of Railway under Highway (Somerset) (No. 1) Order.
- 1026/S.80. Northern Area Administration Scheme Order [3d.].
1029. Cambridge Area (Conservation of Water) Order.
- 1030/S.81. Town and Country Planning (General Development) (Scotland) Order [4d.].
1033. Wild Birds Protection (Sunderland) Order.
- 1034/S.82. Police (Scotland) (Amendment) (No. 2) Regulations.
- 1035/S.83. — (Women) (Scotland) (Amendment) (No. 2) Regulations.
1038. Cloth and Household Textiles (Utility) (Maximum Prices) (No. 14) Order.
1040. Fats, Cheese, and Tea (Rationing) Order, 1947 (Amendment No. 7) Order.
1041. National Insurance (Claims and Payments) Regulations [3d.].
1042. Imported Canned Fish (Maximum Prices) Order, 1947 (Amendment No. 3) Order.
1044. Milk (Control of Maximum Prices) (Great Britain) Order, 1947 (General Licence) Order.
1045. King's Lynn-Sleaford-Newark Trunk Road (Asgarby Diversion) Order.
1047. Trading with the Enemy (Custodian) (Amendment) Order.
1048. Durham Police (Amalgamation) (No. 2) Order.
- 1052/S.84. Fire Area Administration Scheme Order [2d.].
- 1053/S.85. South Eastern Fire Area Administration Scheme Order.
1054. Cereal Breakfast Foods (Control and Maximum Prices) Order, 1947 (Amendment No. 4) Order.
1055. Food (Points Rationing) Order, 1947 (Amendment No. 10) Order.
1057. Stopping Up and Diversion of Highways (West Riding of Yorkshire) (No. 1) Order.
1060. Utility Apparel (Infants' and Girls' Wear) (Manufacture and Supply) (Amendment) Order.
- 1061/S.86. North Eastern Fire Area Administration Scheme Order [3d.].
1062. Cheese (Control and Maximum Prices) Order [2d.].
1065. Retention of Pipe under Highways (Cheshire) (No. 3) Order.

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1066. Retention of Pipe under Highways (Radnorshire) (No. 1) Order.
1067. Stopping up of Highways (Warwickshire) (No. 1) Order.
1069. Agriculture (Delegation of Pest Control Functions to County Agricultural Executive Committees) Regulations.
- 1070/S.87. Police War Reserve (Scotland) (Amendment) (No. 2) Rules.
1071. Mental Treatment Rules.
1072. Furniture (Maximum Prices and Charges) (Amendment No. 11) Order.
1073. Food Standards (Mustard) (No. 2) Order, 1944 (Amendment No. 2) Order.
1074. Cold Storage (Control of Undertakings) Order.
1075. National Health Service (Emergency Mental Treatment) Regulations.
1076. Consumer Rationing (Amendment) (No. 7) Order.
1077. Motor Fuel (Car-Hire) (Revocation) Order.
1078. Control of Fuel Order.
1080. Exchange Control (Payments) Order [3d.].
1081. Wild Birds Protection (County of London) Order.
- 1082/L.7. Mental Treatment (Adaptation of Forms) Rules.
1084. Utility Apparel (Women's and Maids' Outerwear) (Manufacture and Supply) (Amendment) Order.
1085. — (Women's and Maids' Underwear and Nightwear) (Manufacture and Supply) (Amendment) Order.
1089. London-Fishguard Trunk Road (Redhill Farm Diversion) Order.
1090. Retention of Pipe under Highway (North Riding of Yorkshire) (No. 1) Order.
- 1091/S.88. Stopping up of Highways (Renfrewshire) (No. 1) Order.
1092. — (Wiltshire) (No. 1) Order.
1093. Cold Storage (Control of Undertakings) (Charges) Order.
1094. Firemen's Pension Scheme (No. 2) Order.
1095. National Insurance (Increase of Unemployment Benefit) Regulations [3d.].
1097. Gas Meter (Fees) (Amendment) Order.
1098. Coffee Essence (Control) Order, 1942 (Amendment) Order.
1099. Feeding Stuffs (Regulation of Manufacture) Order [4d.].
1100. Hay (Maximum Prices) (Northern Ireland) Order [3d.].
1101. — (Control and Maximum Prices) (Great Britain) Order [3d.].
1102. Sea-Fishing Industry (Restriction of Fishing in Northern Waters) Suspension Order.
1104. Stopping Up of Highways (Devonshire) (No. 1) Order.
1105. Retention of Pipe under Highway (Durham) (No. 1) Order.
1106. Stopping Up of Highways (Gloucestershire) (No. 1) Order.
1107. — (Lancashire) (No. 1) Order.
1108. — (Cumberland) (No. 2) Order.
1109. — (North Riding of Yorkshire) (No. 1) Order.
1110. Diversion of Highways (Gloucestershire) (No. 1) Order.
1111. Retention of Railway over Highway (West Riding of Yorkshire) Order.
1112. Retention of Railway under and across Highways (North Riding of Yorkshire) (No. 3) Order.
1113. Retention of Pipe under Highway (Northumberland) (No. 4) Order.
1115. Live Poultry (Regulation of Sales, Exhibitions and Movements) (No. 2) Order.
1116. New Potatoes (1948 Crop) Order.
1117. Milk (Special Designations) (Amendment) Regulations.
1118. Public Health (Preservatives in Food) (Amendment) Regulations.
1119. — (Meat) (Amendment) Regulations.
1120. — (Shell Fish) (Amendment) Regulations.
1121. — (Imported Food) (Amendment) Regulations.
1122. — (Condensed Milk) (Amendment) Regulations.
1123. — (Dried Milk) (Amendment) Regulations.
1124. Electricity (Conversion Date) (No. 2) Order.
1125. Motor Fuel (Control) Order [3d.].
1126. Town and Country Planning (Enforcement of Restriction of Ribbon Development Acts) Additional Regulations.
1127. Motor Spirit Regulations.
1130. Potatoes (General Provisions) Order, 1944 (Amendment No. 8) Order.
1131. Local Government Superannuation (England and Scotland) Regulations [3d.].
1132. County of Warwick (Electoral Divisions) Order [2d.].
1134. Veneer Prices Order [2d.].
1135. Injurious Weeds (Delegation to County Borough Councils) Order.
- 1136/S.89. Western Fire Area Administration Scheme Order [3d.].
- 1137/S.90. Town and Country Planning (Enforcement of Restriction of Ribbon Development Acts) (Scotland) Additional Regulations.
1139. Direction given by the Treasury under Regulation 2A of the Defence (Finance) Regulations.
1140. Transfer of Powers (London) (Sayes Court, Greenwich) Order.

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- 1141. Furniture (Records and Miscellaneous Provisions) (Amendment) Order.
 - 1144. National Insurance (Determination of Claims and Questions) Regulations [4d.].
 - 1145. Buildings (Safety, Health and Welfare) Regulations [10d.].
 - 1146. Bangor Gas Order.
 - 1147. Dudley Gas Order.
 - 1148. Tiverton Gas Order.
 - 1149. Watermark Disease (Hertfordshire) Order.
 - 1150. ——— (Middlesex) Order.
 - 1151. ——— (Suffolk) Order.
 - 1154. London Pilotage (Amendment) Order.
 - 1156. National Health Service (Executive Councils) Amendment Regulations.
 - 1157. Woven Cloth (Cotton, Rayon and Linen) (Amendment) (No. 2) Order.
 - 1158. Consumer Rationing (Sandal and Slipper Soles) (Licence).
 - 1159. Regulation of Disposal of Stocks (Amendment) (No. 5) Licence.
 - 1160. Curtain Cloth (Utility) Order [4d.].
 - 1161. Consumer Rationing (Amendment) (No. 8) Order [2d.].
 - 1163. Milk (Non-Priority Allowance) (No. 3) Order.
 - 1165. Execution of Trusts (Emergency Provisions) Act (End of Emergency) Order.
 - 1166. National Insurance (Maternity Benefit) Regulations.
 - 1168. Stopping Up and Diversion of Highways (Durham) (No. 1) Order.
 - 1169. Retention of Main under Highway (Brecknockshire) (No. 2) Order.
 - 1170. Retention of Pipe under Highway (Surrey) (No. 4) Order.
 - 1172. Railway and Canal Securities (Conversion Date) (No. 6) Order.
 - 1173. Rubber Manufacturing Wages Council (Great Britain) Wages Regulations Order [2d.].
 - 1174/S.91. Baking Wages Council (Scotland) (Constitution) Order.
 - 1175. National Insurance (Medical Certification) Regulations [2d.].
 - 1176. Use of Vehicles during Harvesting Order.
 - 1177. Trading with the Enemy (Enemy Territory Cessation) (Albania) Order.
 - 1178. Order made by the Board of Trade, revoking licences relating to the goods specified therein.
 - 1181. Direction given by the Treasury under paragraphs (A) and (B) of Article 1 of the Czecho-Slovakia (Settlement of Financial Claims) Order, 1940 (a).
 - 1182. Wild Birds Protection (East Riding) Order.
 - 1183. ——— (Somerset) Order.
 - 1184. Retention of Pipe under Highway (Durham) (No. 4) Order.
 - 1185. Tame, Seamer and Picton Drainage District.
 - 1188. Town and Country Planning (Development Charge Exemption) Regulations [2d.].
 - 1189. ——— Regulations.
 - 1190. Knitted Goods (Manufacture and Supply) (Amendment) (No. 3) Order.
 - 1191. Utility Apparel (Infants' and Girls' Wear) (Manufacture and Supply) (Amendment) (No. 2) Order.
 - 1194. Electoral Registration Regulations.
 - 1195. London-Fishguard Trunk Road (Llanbeder-Penhaw Junctions Improvements) Order.
 - 1196. Retention of Pipe under Highway (Cheshire) (No. 2) Order.
 - 1197. Motor Vehicles (Authorisation of Special Types) (No. 2) Order.
 - 1199. Manchester Water Order.
 - 1200. Agricultural Goods Vehicles (Temporary Relief from Duty) Order.
 - 1201. Carmarthen Gas (Borrowing Powers) Order.
 - 1202/S.92. Perth and Kinross Fire Area Administration Scheme Order [2d.].
 - 1203. Wild Birds Protection (City of Lincoln) Order.
 - 1204/L.8. Non-Contentious Probate Rules.
 - 1205. Feeding Stuffs (National Priority Pigeon Mixture) Order, 1943 (Amendment No. 3) Order.
 - 1207/S.93. National Assistance Act (Appointed Day) (Scotland) Order.
 - 1208. Sugar Confectionery and Food Preserving Wage Council (Great Britain) Wages Regulation Order [2d.].
 - 1209. Control of the Cotton Industry (No. 88) Order.
 - 1210. ——— (No. 89) Order.
 - 1211. Utility Apparel (Waterproofs) Order [3d.].
 - 1212. Pensions (Governors of Dominions, etc.) (No. 2) Order.
 - 1213/L.9. Town and Country Planning Acts, 1944 and 1947 (Registration of Orders and Lists of Buildings) Rules [2d.].
 - 1214. West Cumberland Rivers Catchment Board (Allonby Bay and River Ellen Internal Drainage Board) (Transfer of Powers) Order.
 - 1215. Carrots (1948) Crop (No. 1) Order [2d.].
 - 1216. Police (Consolidation) Regulations [8d.].
 - 1217. ——— (Women) (Consolidation) Regulations [6d.].
 - 1218. National Assistance Act (Appointed Day) Order.
 - 1220. Probation Officers (Superannuation) Order [5d.].

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1224. Export of Goods (Control) (Amendment) (No. 3) Order [2d.].
1225. National Insurance (Modification of Local Government Superannuation Schemes) Amendment Regulations.
1226. Emergency Powers (Defence) Road Vehicles and Drivers (Amendment) Order.
1227. Retention of Main under Highways (Wiltshire) (No. 1) Order.
1228. Retention of Pipe under Highway (Durham) (No. 3) Order.
1229. Retention of Railway over Highways (Gloucestershire) (No. 1) Order.
1230. Retention of Railway across Highway (Northumberland) (No. 7) Order.
1231. Stopping Up of Highways (Gloucestershire) (No. 4) Order.
1232. — (Glamorgan) (No. 1) Order.
1233. Fur Wages Council (Great Britain) Wages Regulation Order [2d.].
1234. — — — (Holidays) Order [2d.].
1235. Sack and Bag Wages Council (Great Britain) Wages Regulation Order.
1236. Town and Country Planning (Transfer of Property and Officers and Compensation to Officers) Regulations [5d.].
1237. National Health Service (Transfer of Property and Liabilities of Insurance Committees, etc.) Regulations.
1239. — (Executive Councils and Dental Estimates Board) Financial Regulations [2d.].
1241. Carpets (Maximum Prices) (Amendment) Order [2d.].
1243. Utility Apparel (Maximum Prices and Charges) (No. 20) Order [2d.].
1244. National Insurance (Overlapping Benefits) Provisional Regulations [3d.].
1247. Fertilisers (Prices) (Amendment) Order.
1248. Retention of Pipe under Highways (Durham) (No. 5) Order.
1249. Stopping up of Highways (Southampton) (No. 1) Order.
1250. Consumer Rationing (Gloves) Licence.
1251. Utility Apparel (Gaberdrine Raincoats) (Manufacture and Supply) Order [4d.].
1252. Furniture (Maximum Prices and Charges) (Amendment No. 12) Order.
1253. Corset Wages Council Wages Regulation [2d.].
1254. Shirtmaking Wages Council (Great Britain) Wages Regulation (No. 2) Order [2d.].
1255. Superannuation (War Service) Regulations.
1256. Safeguarding of Industries (Exemption) (No. 5) Order.
- 1257/S.94. National Health Service (General Dental Services) (Scotland) Regulations [8d.].
- 1258/S.95. — (General Medical and Pharmaceutical Services) (Scotland) Regulations [8d.].
- 1259/S.96. — (Medical and Pharmaceutical Service Committees and Tribunal) (Scotland) Regulations [6d.].
- 1260/S.97. Police Act, 1919 (Scotland) Order.
1261. National Insurance (Widows' Benefit and Retirement Pensions) Regulations [2d.].
1262. — (Industrial Injuries) (Medical Certification) Regulations [2d.].
1263. Aliens (Employment) (Polish Forces) Order.
1264. Food Rationing (General Provisions) Order, 1947 (General Licence No. 5) Order.
1265. Primary and Secondary Schools (Grant Conditions) Amending Regulations No. 6.
1266. Miscellaneous Haberdashery (Maximum Prices) (Amendment) Order.
1268. King's Lynn-Sleaford-Newark Trunk Road (Fox Hall-Asgarby Road Junction Improvements) Order.
- 1269/L.10. Supreme Court Fees (Amendment) Order.
- 1270/L.11. Supreme Court (Non-Contentious Probate) Fees Order.
1271. Wholesale Mantle and Costume Wages Council (Great Britain) Wages Regulation Order [3d.].
1272. Ready-made and Wholesale Bespoke Tailoring Wages Council (Great Britain) Wages Regulation Order [3d.].
1273. National Health Service (Supplementary Ophthalmic Services) Regulations [9d.].
1274. National Insurance and Industrial Injuries (Collection of Contributions) Regulations [4d.].
1275. National Insurance (Residence and Persons Abroad) Regulations [2d.].
1276. — (Sickness Benefit, Maternity Benefit and Miscellaneous Provisions) Transitional Regulations [4d.].
1277. — (Unemployment and Sickness Benefit) Regulations [3d.].
1278. — (General Benefit) Regulations [3d.].
1279. — (Unemployment Benefit) (Transitional) Regulations [4d.].
1280. London Traffic (Parking Places) (Amendment) (No. 3) Regulations
1281. — (Parking Places) (Amendment) (No. 2) Regulations.
- 1283/L.12. Local Land Charges (Amendment) Rules.
1284. Goods Vehicles (Operating Centre) Regulations [2d.].
1285. Road Haulage Undertakings (Notices of Acquisition, etc.) Regulations [4d.].
1286. — (Payment of Compensation) Regulations.
1287. Utility Furniture (Buying Permits) Order [2d.].
1288. Regulation of Disposal of Stocks (Amendment) (No. 6) Licence.
1289. Control of Iron and Steel (No. 64) Order.
1290. Rationing (Personal Points) Order, 1947 (Directions No. 3) Order.

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1291. Soft Drinks Order, 1947 (Amendment) Order.
1292. National Health Service (Dissolved Authorities) Regulations [2d.].
1293. British Commonwealth and Foreign Post Amendment (No. 1) Warrant [2d.].
1294. Retention of Pipes under Highways (Northumberland) (No. 5) Order.
1295. Newport-Shrewsbury Trunk Road (West Street, Rainbow Street and New Street, Leominster) Order.
1297. National Health Service (General Dental Services) Fees Regulations [2d.].
1299. National Insurance (Industrial Injuries) (Determination of Claims and Questions) Regulations [4d.].
1300. ——— (Northern Ireland Reciprocal Arrangements) Regulations [2d.].
1301. National Health Service (Joint Pricing Committee for England) Order [2d.].
1302. Middlesbrough Gas (Bordering Premises) Order.
1307. Laundry (Maximum Charges) Order.
1308. Sewing Cottons and Threads (Maximum Prices) (Amendment) Order.
1309. Town and Country Planning (Erection of Industrial Buildings) Regulations.
1310. Control of Building Operations (No. 11) Order.
1311. National Insurance (Determination of Claims and Questions) (Transitional) Regulations [2d.].
1312. Leather (Charges) (No. 3) Order [2d.].
- 1313/S.98. Town and Country Planning (Erection of Industrial Buildings) (Scotland) Regulations.
- 1314/S.99. Local Government (Compensation Forms) (Scotland) Regulations [3d.].
1317. Railway and Canal Securities (Conversion Date) (No. 7) Order.
1318. Button Manufacturing Wages Council (Great Britain) Wages Regulation Order [2d.].
1319. Newsprint (Prices) Order.
- 1320/S.100. Public Health (Venereal Diseases) (Scotland) Revocation Regulations.
- 1321/S.101. Police (Scotland) (Amendment) (No. 3) Regulations.
- 1322/S.102. ——— (Women) (Scotland) (Amendment) (No. 3).
- 1323/S.103. Assessor of Public Undertakings Valuation Roll (Procedure Dates) (Scotland) Order.
1324. Preserves Order, 1947 (Amendment No. 4) Order.
1325. National Insurance (Unemployment Insurance Special Schemes) Regulations.
- 1326/S.104. Special Constables (Scotland) Order.
1327. Copyright (Rome Convention) (Iceland) Order.
1328. Air Navigation (Amendment) Order [10d.].
1329. Defence Regulations (No. 6) Order.
1330. West African Court of Appeal Order in Council [2d.].
1331. Matrimonial Causes (War Marriages) (Seychelles) Order.
1332. Defence Regulations (No. 5) Order.
1333. Control of Iron and Steel (No. 65) Order.
1334. National Assistance (Determination of Need) Regulations [2d.].
1336. Carriage by Air (Parties to Convention) Order.
1338. Civil Aviation Act (Extension to the Isle of Man) Order.
1339. Mauritius Naval Defence Order.
1340. Merchant Shipping (Light Dues) Order.
1341. National Insurance (Reciprocal Agreement with France as to Retirement Pensions) Order.
1342. ——— (Industrial Injuries) (Reciprocal Agreement with France) Order.
1343. Pensions (Increase) Act (Extension) Order.
1348. Stopping Up of Highways (Concurrent Proceedings) Regulations.
- 1349/S.105. ——— (Scotland) Regulations.
1350. London Traffic (Prescribed Routes) (No. 9) Regulations.
1351. Stopping Up of Highways (Berkshire) (No. 1) Order.
1352. London-Portsmouth Trunk Road (Blendworth Road, Snells Corner, Junction Improvements) Order.
- 1353/L.13. Summary Jurisdiction (Mental Deficiency) Rules.
1358. National Insurance (Guardians' Allowances) Provisional Regulations.
1362. ——— (Industrial Injuries) (Claims and Payments) Regulations [3d.].
1363. Railway and Canal Securities (Conversion Date) (No. 8) Order.
1364. Stopping Up of Highways (Wiltshire) (No. 4) Order.
1365. London-Norwich Trunk Road (Thetford-Brandon Road Junction Improvements) Order.
1366. Oxford-Northampton-Stamford-Market Deeping Trunk Road (Gosford Hill) Order.
- 1367/L.14. County Court Districts (Aberystwyth) Order.
1369. Inland Post Amendment (No. 1) Warrant.
1370. Unemployment Insurance (Eire Volunteers) Regulations.
1371. National Insurance (Industrial Injuries) (Prescribed Diseases) Regulations [6d.].
1372. ——— (Benefit) Regulations [6d.].
1373. St. Helens Gas (Extension) Order.
1374. Wigan Gas Order.
1378. Poisons List (Amendment) (No. 2) Order.
1379. Poisons (Amendment) (No. 2) Rules.

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1880. Town and Country Planning (General) Regulations [2d.].
- 1881/S.106. — (Development Charge) (Scotland) Regulations.
- 1882/S.107. — (Development Charge Exemptions) (Scotland) Regulations [2d.].
- 1883/S.108. National Health Service (Qualifications for Supplementary Ophthalmic Services) (Scotland) Regulations.
1884. Scottish Milk Marketing Boards (Modification of Functions) Order.
1885. National Assistance (Charges for Accommodation) Regulations.
- 1887/L.15. Probation Rules.
- 1888/S.109. National Health Service (Medical Education Committees) (Scotland) Order.
- 1889/S.110. — — — Regulations.
- 1890/S.111. — (Appointment of Medical and Dental Officers) (Scotland) Regulations.
- 1893/S.112. — (General Dental Services Fees) (Scotland) Regulations [2d.].
1894. National Insurance (Approved Societies and Miscellaneous Provisions) Regulation.
1895. — (Share Fishermen) Provisional Regulations [2d.].
1896. Pneumoconiosis (Medical Arrangements) (Transitional) Regulations.
1897. Stopping Up of Highways (Durham) (No. 1) Order.
1898. Companies (Unregistered Companies) Regulations.
1404. Air Navigation Regulations.
1406. Pensions (Governors of Dominions, etc.) (No. 1) Order.
1407. National Insurance and Civil Service (Superannuation) (Schemes and Funds) Rules [2d.].
1408. National Insurance (Transfer of Assets) Regulations.
1409. National Health Insurance (Central Fund) Emergency Regulations.
1410. Morley Water Order.
1411. Civil Aviation (Births, Deaths and Missing Persons) Regulations [3d.].
1412. Hire Purchase and Credit Sale Agreement (Maximum Prices and Charges) (Amendment No. 2) Order.
1413. National Health Service (Expenses in attending Hospitals) Regulations.
1414. — (Hospital Accounts and Financial Provisions) Regulations [6d.].
1415. — (Qualifications of Health Visitors and Tuberculosis Visitors Regulations).
1416. — (Appointment of Specialists) Regulations.
1417. National Insurance (Contributions) Regulations [4d.].
1418. Exchange Control (Payments) (Chile) Order.
1419. Benzole and Allied Products (Control) Order [4d.].
1420. Control of Petroleum (Amendment) Order.
1423. National Insurance (Seamen's Special Fund) Regulations.
1424. — (Industrial Injuries) (Refund of Contributions) Regulations.
1425. — (Classification) Regulations [3d.].
1426. — (New Entrants Transitional) Provisional Regulations [2d.].
1430. Stopping Up of Highways (Northumberland) (No. 1) Order.
- 1431/S.113. Medical Practitioners (Fees) (Scotland) Regulations.
- 1432/S.114. Grass Seed (Growers' Fixed Prices) (Scotland) Order.
- 1433/S.115. Public Health (Meat) Amendment (Scotland) Regulations.
- 1434/S.116. — (Imported Food) Amendment (Scotland) Regulations.
- 1435/S.117. — (Aircraft) (Scotland) Regulations [5d.].
1436. Town and Country Planning (Tree Preservation Order) Regulations.
1437. — Minerals Direction No. 1.
1438. Labelling of Food (General Licence) Order, 1947 (Amendment) Order.
- 1439/L.16. Rules of the Supreme Court (No. 2).
1440. Toilet Preparations (Revocation) Order.
1441. Utility Apparel (Oilskins) Order [3d.].
1442. Candles (Maximum Prices) Order.
1443. National Insurance and Industrial Injuries (Stamps) [3d.].
- 1444/L.17. Matrimonial Causes (Amendment) Rules.
1445. National Assistance (Powers of Inspection) Regulations.
1446. Superannuation (Policy and Local Government Schemes) Interchange Rules.
1447. National Insurance (Extension of Unemployment Benefit) Regulations.
1448. National Health Service (General Medical and Pharmaceutical Services) Amendment Regulations.
- 1450/S.118. — (Supplementary Ophthalmic Services) (Scotland) Regulations.
- 1451/S.119. — (Tribunal for Supplementary Ophthalmic Services) (Scotland) Regulations.
- 1452/S.120. — (Joint Ophthalmic Services Committees) (Scotland) Order.
1453. Medical Practitioners (Fees) (No. 2) Regulations.
1454. National Assistance (Appeal Tribunals) Rules Confirmation Instrument.
1455. Charities for Disabled Persons Regulations.
1456. National Insurance (Industrial Injuries) (Insurable and Excepted Employments) Regulations [2d.].
1457. — (Compensation) Regulations [5d.].
1458. Local Government (Compensation) Regulations [5d.].
1459. Town and Country Planning Delegation (London) Regulations.

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1460. Town and Country Planning (City of London Applications) Direction.
1461. — (Local Authorities' Land: Exceptions to Section 82) Regulations.
- 1462/S.121. Superannuation (Policy and Local Government Schemes) Interchange (Scotland) Rules.
- 1463/S.122. Town and Country Planning (Local Authorities' Land: Exception to Section 79) (Scotland) Regulations.
- 1464/S.123. National Health Service (Scotland) (Superannuation) (Amendment) Regulations [2d.].
- 1465/S.124. — (Transfer of Officers and Compensation) (Scotland) Regulations [5d.].
1466. National Insurance (Airmen) Regulations.
1467. — (Mariners) Regulations [3d.].
1468. — (Members of the Forces) Provisional Regulations [2d.].
1469. — (Industrial Injuries) (Airmen) Regulations [1d.].
1470. — (Married Women) Regulations [3d.].
1471. — (Industrial Injuries) (Mariners) Regulations [2d.].
1474. National Health Service (Superannuation) (Amendment) Regulations [3d.].
1475. — (Transfer of Officers and Compensation) Regulations [5d.].
1476. Police War Reserve (No. 3) Rules.
1477. Women's Auxiliary Police Corps (No. 3) Rules.
1478. Birmingham-Great Yarmouth Trunk Road (Holme Hale-Little Dunham Junctions Improvements) Order.
1479. Retention of Railway under Highway (North Riding of Yorkshire) (No. 5) Order.
1480. Sea Fishing Industry (Immature Sea-Fish) Order.
1481. National Assistance (Reception Centres) Regulations Confirmation Instrument.
1482. — (Administration of Assistance) Regulations Confirmation Instrument.
1483. National Health Service (Superannuation) (England and Scotland) Regulations.
1488. — (Welsh Joint Pricing Committee) Order [2d.].
1489. — (Control and Management at Hospital Endowment Fund) Regulations.
1490. — (Pay-Bed Accommodation in Hospitals, etc.) Regulations [3d.].
- 1491/S.125. National Assistance (Charges for Accommodation) (Scotland) Regulations.
- 1492/S.126. National Health Service (Charges for Hospital Accommodation) (Scotland) Regulations.
- 1493/S.127. — (Expenses in attending Hospitals) (Scotland) Regulations.
- 1494/S.128. — (Finance of Executive Councils and Scottish Dental Estimates Board) (Scotland) Regulations [2d.].
- 1495/S.129. — (Highlands and Islands Medical Service Transitional Provisions) (Scotland) Regulations.
- 1496/S.130. — (Transfer of Property and Liabilities of Insurance Committees) (Scotland) Regulations.
- 1497/S.131. Charities for Disabled Persons (Scotland) Regulations.
- 1498/S.132. National Health Service (Dissolved Authorities) (Scotland) Regulations.
- 1499/S.133. Fire Services (Conditions of Service) (Scotland) (Amendment) Regulations.
1500. — (Ranks and Conditions of Service) (No. 3) Regulations.
1501. Children Act (Compensation of Officers) Regulations.
1502. — (Transfer and Superannuation of Officers) Regulations.
1503. National Insurance (General Transitional) Regulations [4d.].
1505. National Health Service (Charges for Appliances) Regulations.
1506. — (Medical Practices Compensation) Regulations [2d.].
1507. — (General Dental Services) Fees (Amendment) Regulations.
1508. Fish (Control and Maximum Prices) Order, 1947 (Amendment No. 3) Order.
1509. Meat Products and Canned Meat (Control and Maximum Prices) Order [5d.].
1510. Tomatoes Order, 1948 (Revocation) Order.
1511. Consumer Rationing (Services Handkerchiefs Certificates) Licence.
- 1512/S.134. Police War Reserve (Scotland) (Amendment) (No. 3) Rules.
- 1513/S.135. National Assistance (Compensation) (Scotland) Regulations [4d.].
1514. Retention of Railway across Highway (Berkshire) (No. 1) Order.
1515. Retention of Railway under Highway (Berkshire) (No. 2) Order.
1517. Workington Water (No. 3) Order.
1518. Companies (Forms) Order.
1519. Income Tax (Employments) (No. 8) Regulations.
1520. Town and Country Planning (Enforcement of Restriction of Ribbon Development Acts) Regulations.
1521. — (Minerals) Regulations [2d.].
1522. — (Modification of Mines Act) Regulations.
1523. Portsmouth Water Order.
- 1525/S.136. Town and Country Planning (Minerals) (Scotland) Regulations [2d.].
- 1526/S.137. — (Modification of Mines Act) (Scotland) Regulations.
- 1527/S.138. — (Enforcement of Restriction of Ribbon Development Acts) (Scotland) Regulations.

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- 1590/S.139. Police Pensions (Scotland) Regulations.
1581. Police Pensions Regulations.
1592. National Insurance (Industrial Injuries) (Benefit) Amendment Regulations.
1547. Clay Works (Welfare) Special Regulations.
1549. Railways (Transport of Barley) (Revocation) Order.
1551. Hindley Water Order.
1552. Utility Overalls and Aprons (Manufacture and Supply) (Amendment) Order.
1555. Second-hand Plant (Control of Prices) (Revocation) Order.
1556. Utility Apparel (Maximum Prices and Charges) (No. 21) Order.
1558. County of Hereford (Electoral Divisions) Order.
- 1559/S.140. National Insurance (Modification of Local Government Superannuation Schemes) Amendment (Scotland) Regulations.
1560. Ware Potatoes (1948 Crop) (Restrictions on Sales) Order.
1561. Utility Apparel (Men's, Youths' and Boys' Outerwear) (Manufacture and Supply) (Amendment) Order [5d.].
1563. Meals in Establishments Order, 1946 (Amendment No. 7) Order.
1564. Non-Contributory Old Age Pensions Regulations [2d.].
1569. Retention of Railway across and under Highways (Wiltshire) (No. 2) Order.
1570. Stopping Up of Highways (West Riding of Yorkshire) (No. 3) Order.
1575. Control of Roofing and other Materials (Revocation) Order.
1576. Control of Whiting, Chalk and Chalk Lime (Revocation) Order.
1577. War Emergency Paint (Control) (Revocation) Order.
1578. Pulse (Control and Prices) Order, 1943 (Amendment No. 8) Order.
1579. National Health Service (Designation of Teaching Hospitals—Cambridge Hospitals) Order [2d.].
1582. Extinguishment or Modification of Easements Regulations.
1584. Ready-made and Wholesale Bespoke Tailoring Wages Council (Great Britain) (Constitution) Order.
1585. Transferred Undertakings (Pensions of Employees losing Employment) Regulations [2d.].
1587. Food (Points Rationing) Order [5d.].
1588. Utility Pram Rugs (Manufacture and Supply) Order.
1589. Isles of Scilly (National Assistance) Order.
1590. Import Duties (Exemptions) (No. 1) Order.
1591. Safeguarding of Industries (Exemption) (No. 6) Order.
1592. Companies (Stock Exchange) Order.
- 1596/S.141. National Health Service (Drug Accounts Committee) (Scotland) Order [2d.].
1597. Courts Emergency Powers (Isle of Man) (Revocation) Order.
1599. Retention of Pipe under Highway (Carmarthenshire) (No. 1) Order.
1600. Retention of Railway over and under Highways (North Riding of Yorkshire) (No. 4) Order.
1602. Hollow-ware Wages Council (Great Britain) Wages Regulation (Holidays) Order.
1605. Hill Farming (Cottages) (Northern Ireland) Regulations.
1606. Limitation of Supplies (Toys and Indoor Games) (Revocation) Order.
1607. Portsmouth Area (Conservation of Water) Order.
- 1608/S.142. Fire Services (Pensionable Employment) (Scotland) Regulations.
- 1609/S.143. Scottish North Eastern Counties Police (Amalgamation) Order [2d.].
1611. Waste Paper and Waste Textile Materials (Prices) (Amendment No. 2) Order.
1613. Town and Country Planning (Control of Advertisements) Regulations [8d.].
1614. Cold Storage (Control of Undertakings) (Charges) (No. 2) Order.
1615. Import Duties (Drawback) (No. 5) Order.
1616. Domestic Pottery (Manufacture and Supply) (Amendment) Order.
1620. Retention of Pipes under Highways (Monmouthshire) (No. 1) Order.
1621. — (West Suffolk) (No. 2) Order.
1622. Stopping Up of Highways (Buckinghamshire) (No. 1) Order.
1626. London Traffic (Prescribed Routes) (No. 10) Regulations.
1627. — (No. 11) Regulations.
1628. Bananas Order [2d.].
1629. Regulations for Technical State Scholarships.
- 1630/S.144. Town and Country Planning (Construction and Improvement of Private Streets, etc.) (Scotland) Regulations.
1631. Food Rationing (General Provisions) Order [5d.].
1632. Rationing (Personal Points) Order [2d.].
1633. Bacon (Rationing) Order.
1634. Bread (Rationing) Order [2d.].
1635. Meat (Rationing) Order.
1636. Fats, Cheese and Tea (Rationing) Order [2d.].
1637. Sugar and Preserves (Rationing) Order [2d.].
1638. Soap (Licensing of Manufactures and Rationing) Order [3d.].

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1639. Fruit Pulp Order.
1640. Preserves Order, 1947 (Amendment No. 5) Order.
1642. Police (Overseas Service) (Greece) (Amendment) Regulations.
1643. Local Government (Allowances to Members) (Prescribed Bodies) Regulations.
1644. Coal Distribution Order, 1943, General Direction (Restriction of Supplies) No. 18.
- 1645/S.145. Hat, Cap and Millinery Wages Council (Scotland) Wages Regulation Order [2d.].
1646. Supply of Office Machinery (Restriction) (No. 4) (Revocation) Order.
1647. Control of Hand Tools (No. 6) (Revocation) Order.
1648. Supply of Typewriters (Restriction) (No. 3) (Revocation) Order.
1649. Burma Independence (Retention of British Nationality) Regulations.
1650. Wild Birds Protection (Croydon) Order.
1651. — (Middlesex) Order.
1653. Railway and Canal Securities (Conversion Date) (No. 9) Order.
1654. Flour Order, 1947 (Amendment No. 3) Order.
1655. Regulations for State Scholarships and University Supplemental Awards [2d.].
1659. Cloth and Household Textiles (Utility) (Maximum Prices) (No. 15) Order.
1660. Utility Apparel (Merchant Navy Uniforms) (Manufacture and Supply) (Amendment) Order.
1663. Exchange Control (Blocked Accounts) Order.
1664. Primary and Secondary Schools (Grant Conditions) Amending Regulations No. 7.
1665. Wages Regulation (Industrial and Staff Canteen Undertakings) Order [3d.].
- 1666/S.146. Town and Country Planning (General) (Scotland) Regulations [2d.].
1667. Hampton Court Gas (Capital and Borrowing Powers) Order.
1668. Employment and Training (Payment of Travelling Expenses) Regulations.
1669. Knitting Pins (Maximum Prices) Order.
1671. Utility Apparel (Maximum Prices and Charges) (No. 22) Order.
1674. Factories (Cleanliness of Walls and Ceilings) (Amendment) Order.
- 1677/S.147. National Health Service (Local Health Authority Charges) (Scotland) Regulations.
- 1678/S.148. Act of Sederunt (Certificate for Admission to Poor's Roll in Sheriffs Courts).
1679. Police (Consolidation) (No. 2) Regulations.
1680. — (Women) (Consolidation) (No. 2) Regulations.
1681. Falmouth Water Order.
1685. Feeding Stuffs (Maximum Prices) Order, 1948 (Amendment No. 1) Order [2d.].
1686. Milk (Non-Priority Allowance) (No. 4) Order.
1687. Cinematograph Films (Quotas) Order.
1688. City of London Traffic (Miscellaneous Provisions) Order.
1690. Fire Services (Grant) Regulations.
1692. Bread Rationing Revocation Order.
1693. Meals in Establishments Order, 1946 (Amendment No. 8) Order.
1695. Consumer Rationing (Supply to Local Authorities, Hospitals and Other Persons) Licence.
1696. Jute (Safety, Health and Welfare) Regulations [3d.].
- 1697/L.18. War Damage (Valuation Appeals and References) (Amendment) Rules.
1698. Consumer Rationing (Amendment) (No. 9) Order.
1699. London Traffic (Prescribed Routes) (No. 12) Regulations.
1700. Transferred Undertakings (Compensation to Employees) Regulations [3d.].
1701. Retention of Pipes and Cable under Highway (North Riding of Yorkshire) (No. 2) Order.
1702. Stopping Up of Highways (Cumberland) (No. 1).
1703. Coal Industry Nationalisation (Satisfaction of Compensation) Regulations.
1704. Training of Teachers Grant Regulations [3d.].
1705. Trading with the Enemy (Authorisation) (Germany) (No. 3) Order.
1706. — (Transfer of Negotiable Instruments, etc.) (Germany) (No. 2) Order.
1707. — (Custodian) (Amendment) (Germany) (No. 3) Order.
- 1708/L.19. Rules of the Supreme Court (No. 3).
1709. Aycliffe New Town Sewerage Order.
1712. Retention of Pipe under Highway (Wiltshire) (No. 3) Order.
1718. Darwen Water Order.
1721. Swansea-Manchester-Trunk Road (Abermule Division) Order.
1722. Aylesbury Gas (Capital Powers) Order.
1723. Companies (Shipping Companies Exemption) Order.
1724. Control of Hemp (No. 7) Order.
1725. Utility Apparel (Women's and Maids' Outerwear) (Manufacture and Supply) (Amendment) (No. 2) Order.
1727. Explosives (Conveyance) (Private Railways) Byelaws.
1731. Control of the Cotton Industry (No. 90) Order.
1732. Glass Tumblers (Maximum Prices) (Amendment No. 2) Order.
1733. Enamelled Hollow-Ware (Maximum Prices) Order.
1734. Toys and Indoor Games (Maximum Prices and Records) Order [2d.].
1735. Streptomycin Regulations.
1736. Exchange Control (Payments) (Peru) Order.

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 1737. State Scholarships (Mature Students) Amending Regulations.
 1738. Control of Timber (No. 49) (Imported Plywood Prices) Order.
 1739. Doncaster Water Order.
 1740. Teachers' Superannuation (Accepted Schools) Scheme.
 1741. National Insurance (Local Advisory Committees) Regulations.
 1742. Youth Employment Service (Administrative Expenses) Regulations.
 1743. Electricity (Conversion Date) (No. 3) Order.
 1745. Dredge Corn (Control and Prices) (Great Britain) Order 1947 (Amendment No. 4) Order.
 1746. Home Grown Beans and Threshed Feeding Peas (Sack Charges) Order.
 1747. Rye (Control and Prices) (Great Britain and Northern Ireland) (Amendment No. 2) Order.
 1748. Rice (Control and Maximum Prices) Order, 1943 (Amendment No. 2) Order.
 1749. Dredge Corn (Control and Prices) (Northern Ireland) Order, 1947 (Amendment No. 3) Order.
 1750. Bread (Control and Maximum Prices) Order, 1947 (Amendment) Order.
 1751. Ware Potatoes (1948 Crop) (No. 1) Order [2d.].
 1752/S.150. Fire Services (Grant) (Scotland) Regulations.
 1753. Gloves (Manufacture and Supply) Order.
 1756/L.20. Rules of the Supreme Court (Companies).
 1757. Herne Bay Water Order.
 1758. Petroleum-Spirit (Conveyance) Regulations.
 1759. Barley (Control and Prices) (Great Britain) Order, 1947 (Amendment No. 4) Order.
 1760. Oats (Control and Prices) (Great Britain) Order [3d.].
 1761. Wheat (Control and Prices) (Great Britain) Order, 1947 (Amendment No. 4) Order.
 1762. Barley (Control and Prices) (Northern Ireland) Order, 1947 (Amendment No. 3) Order.
 1763. Oats (Control and Prices) (Northern Ireland) Order [3d.].
 1764. Wheat (Control and Prices) (Northern Ireland) Order, 1947 (Amendment No. 3) Order.
 1765/S.151. North of Scotland Hydro-Electric Board (Constructional Scheme No. 5) Confirmation Order.
 1766. Town and Country Planning (Building Preservation Order) Regulations [2d.].
 1767. — (Development Plans) Regulations [3d.].
 1768/S.152. National Health Service (Medical Practices Compensation) (Scotland) Regulations [3d.].
 1769. Electricity Commissioners (Dissolution) Order.
 1770/S.153. National Health Service (General Medical and Pharmaceutical Services) (Scotland) (Amendment) Regulations.
 1771./S.154. Town and Country Planning (Use Classes) (Scotland) (No. 2) Order [2d.].
 1772. Furniture (Maximum Prices and Charges) (Amendment No. 13) Order.
 1773. Export of Goods (Control) (Amendment) (No. 4) Order [2d.].
 1776. Wages Regulation (Licensed Residential Establishment and Licensed Restaurant) Amendment Order [2d.].
 1777. Cotton (Single Yarn) (Prices) (Amendment) Order.
 1779/S.155. Town and Country Planning (Control of Advertisements) (Scotland) Regulations [3d.].
 1780/S.156. — (Churches, Buildings for Religious Worship and Burial Grounds) (Scotland) Regulations.
 1781/S.157. — (Tree Preservation Order) (Scotland) Regulations.
 1782. Fire Services (Ranks and Conditions of Service) (No. 4) Regulations [2d.].
 1784. Local Government (Members' Allowances) Regulations.
 1789/S.158. Local Government (Travelling Allowances, etc.) (Scotland) Regulations.
 1790. Retention of Pipe under Highway (East Suffolk) (No. 1) Order.
 1791. — (North Riding of Yorkshire) (No. 7) Order.
 1792. — (Surrey) (No. 1) Order.
 1793. Stopping Up of Highways (Kent) (No. 1) Order.
 1794. National Insurance (Industrial Injuries) (Colliery Workers Supplementary Scheme) Order [4d.].
 1795. Agriculture (Special Directions) (Maximum Area of Pasture) Order.
 1796. — (Special Directions) (Delegation to County Agricultural Executive Committees) Regulations.
 1797. Sheffield and District Gas Order.
 1799. Consumer Rationing (Amendment) (No. 10) Order.
 1801. Teachers' Superannuation Amending Rules.
 1802. Narrow Fabrics (Maximum Prices) (Revocation) Order.
 1803. Rubber Hot Water Bottles (Maximum Prices) (Revocation) Order.
 1804. Toy and Indoor Games (Maximum Prices and Records) (Amendment) Order.
 1811. Safeguarding of Industries (Exemption) (No. 7) Order.
 1812. Additional Import Duties (No. 2) Order.
 1813. Import Duties (Imperial Preference) Order.
 1814. Silk Duties (No. 1) Order [2d.].

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1815. Safeguarding of Industries (Reduction of Rates) Order.
1816. Ottawa Duties (Geneva Agreement) Order.
1817. South-West Sussex Rivers Catchment Board (South-West Internal Drainage District) Order.
- 1818/S.159. Local Government (Sinking Fund, Rate of Accumulations) (Scotland) Regulations.
1819. Income Tax (Employments) (No. 9) Regulations.
1820. Utility Handkerchiefs (Marking and Manufacturers' Prices) (Amendment) (No. 2) Order.
1821. Fats, Cheese and Tea (Rationing) Order, 1948 (Amendment) Order.
1822. Food (Points Rationing) Order, 1948 (Amendment) Order.
1823. Food (Seasonal Allowances) Order.
1824. Consumer Rationing (Amendment) (No. 11) Order.
1826. Safeguarding of Industries (Lists of Dutiable Goods) Order [2d.].
1829. Purchase Tax (No. 2) Order.
1830. Tobacco Duty (Relief for Pensioners) Regulations [2d.].
1831. Cinematograph Films (Exhibitors) Regulations.
1832. Bookmakers (Licence Duty) Regulations [3d.].
1837. Defence Regulations (No. 7) Order.
1838. Diplomatic Privileges (General Amendment) Order.
1839. Employers' Liability Insurance (Modification) Order.
1840. Criminal Justice Act, 1948 (Date of Commencement) Order [2d.].
1841. Government of India (Family Pension Funds) (Amendment) Order.
- 1842/L.21. Metropolitan Police Courts (Divisions) Order.
1843. Societies (Miscellaneous Provisions) Act (End of Emergency) Order.
1844. National Insurance (Isle of Man Reciprocal Agreement) Order.
- 1845/S.160. Agriculture (Scotland) Act, 1948 (Commencement) (No. 1) Order.
1848. London-Edinburgh-Thurso Trunk Road (Blairforkie Drive and Other Junctions Improvements) Order.
1849. Stockfeed Potatoes (Maximum Prices) Order.
1850. Cheese (Control and Maximum Prices) Order, 1948 (Amendment) Order.
1851. Sugar Confectionery and Food Preserving Wages Council (Great Britain) Wages Regulation (Holidays) Order [3d.].
1852. Railway and Canal Securities (Conversion Date) (No. 10) Order.
1853. Merchant Shipping (Fishing Boats Agreement) Order.
1855. Feeding Stuffs (National Pigeon Mixture) Order.
1856. Exchange Control (Payments) (Tangier) Order.
1858. Driffield Water Order [2d.].
1859. Swansea-Manchester Trunk Road (Maes Gwyn and Llanfair-ar-y-Bryn Diversions) Order [2d.].
1864. Retention of Railway across Highway (Monmouthshire) (No. 2) Order.
1865. Stopping Up of Highways (Hertfordshire) (No. 2) Order.
1866. County of the Isle of Ely (Electoral Division) Order.
1868. Miscellaneous Goods (Maximum Prices) (Amendment No. 2) Order.
1869. Coal Tar Products Prices (Amendment) Order.
1871. Carlisle-Sunderland Trunk Road (Bardon-Mill-Thorngraston Road Junction Improvements) Order.
1872. Newport-Shrewsbury Trunk Road (Mamhilad Road and Other Junctions Improvements) Order.
1873. Made-up Textiles Wages Council (Great Britain) Wages Regulation Order [2d.].
- 1874/S.161. Baking Wages Council (Scotland) Wages Regulation Order.
- 1875/S.162. National Health Service (Constitution of Standing Advisory Committees) (Scotland) Order [4d.].
1879. Superannuation (War-Time Interruption of Service) Regulations.
- 1880/L.22. Rules of the Supreme Court (Companies) (No. 2) [4d.].
1882. Anglesey (Amlwch) Water Order.
1883. Silk Duties (Drawback) (No. 2) Order [2d.].
1884. Canned Fruit and Vegetables (No. 2) Order, 1946 (Amendment No. 5) Order.
1885. Food Rationing (General Provisions) Order, 1948 (Amendment) Order.
1886. Sugar and Preserves (Rationing) (No. 2) Order [2d.].
- 1892/S.163. Berwickshire County Council (Watch Water) Water Order.
1894. Sandbach Gas (Borrowing Powers) Order.
1895. Retention of Pipe under Highway (Durham) (No. 6) Order.
1896. Shirtmaking Wages Council (Great Britain) (Constitution) Order.
1901. Food (Points Rationing) Order, 1948 (Amendment No. 2) Order.
1906. Uckfield Water Order.
1907. Sevenoaks and Tonbridge Water Order.
- 1909/L.23. Witness Allowances Regulations.
1913. Control of Iron and Steel (No. 66) Order.
1914. Road Haulage Wages (No. 2) Order.
1915. Retention of Pipe under Highway (Montgomeryshire) (No. 1) Order.

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1916. Stopping Up of Highways (Wiltshire) (No. 7) Order.
1917. Retention of Pipe under Highway (Worcestershire) (No. 2) Order.
1918. Coal Mines (Pneumatic Lighting Unit) Order.
1919. Incumbents (Discipline) Rules [3d.].
1920. National Health Service (Designation of Teaching Hospitals—The Bethlem Royal Hospital and The Maudsley Hospital) Order.
1921. Upholstery Cloth (Utility) (Amendment) Order.
1922. Knitted Goods (Manufacture and Supply) (Amendment) (No. 4) Order.
1924. Laundry Wages Council (Great Britain) Wages Regulation Order [3d.].
1925. — (Great Britain) Wages Regulation (Holidays) Order [3d.].
1929. Export of Goods (Control) (Amendment) (No. 5) Order.
1930. — (Utility Apparel) Licence.
1931. Electricity (Conversion Date) (No. 4) Order.
1932. Local Government (Conferences) Regulations.
1935. Pigs (Sales) Order.
1938. Lymm Water Order.
1939. Footwear (Rubber and Industrial) (Revocation) Order.
1940. Mechanical Lighter (Revocation) Order.
1941. Perambulators (Control of Supply) (Revocation) Order.
1942. Whaling Industry (Ship) Regulations [2d.].
1943. Agricultural Holdings (England and Wales) Rules [2d.].
1949. Household Textiles (Marking and Manufacturers' Prices) (Amendment) (No. 2) Order.
1954. Fire Services (Conditions of Service) (Scotland) (Amendment) (No. 2) Regulations [2d.].
1955. Wild Birds Protection (Norfolk) Order.
1956. Retention of Pipe under Highway (Surrey) (No. 2) Order.
1962. Chocolate Sugar Confectionery and Cocoa Products (Control and Maximum Prices) Order, 1944 (Amendment No. 8) Order.
1965. Utility Handkerchiefs (Maximum Prices) (No. 5) Order.
1970. Live Poultry (Regulation of Sales, Exhibitions and Movements) (No. 3) Order [2d.].
1971. Utility Furniture (Buying Permits) (Amendment) Order.
1972. Birmingham (River Elan Compensation Water) Order.
1976. West Cheshire Water Board Order.
1977. Consumer Rationing (Supply of Civilian Uniforms and Protective Clothing) Licence and Order [2d.].
1979. Newsprint (Prices) (Amendment) Order.
1980. Woven Cloth (Wool and Animal Fibre) (Manufacture, Marking and Supply) (Amendment No. 2) Order.
1981. Consumer Rationing (Special Producers) Licence.
1982. Stopping Up of Highways (West Riding of Yorkshire) (No. 4) Order.
1983. Utility Apparel (Infants' and Girls' Wear) (Manufacture and Supply) (Amendment) (No. 3) Order.
1985. Tea (Prices) Order.
1987. Wild Birds Protection (Northumberland) Order.
1989. County of Dorset (Electoral Divisions) Order.
1990. Import Duties (Drawback) (No. 6) Order.
1994. Seed Potatoes (Export) (Charges) Order.
1995. Perambulators (Maximum Prices and Charges) (No. 2) [2d.].
1996. Levens Bridge—Broughton-in-Furness—Workington—Aspatia—Carlisle Trunk Road (Carlton Hall, Holmrock and Calder Bridge Diversions) Order.
1997. Safety Lamps (Conditions of Use) (Revocation) Order.
1999. Dressmaking and Women's Light Clothing Wages Council (England and Wales) Wages Regulation Order [3d.].
2000. Hat, Cap and Millinery Wages Council (England and Wales) Wages Regulation Order [3d.].
2001. Retail Bespoke Tailoring Wages Council (England and Wales) Wages Regulation Order.
2002. London—Edinburgh—Thurso Trunk Road (Darlington By-Pass) Order.
2003. — (Scrabster Diversion) Order.
2004. London—Penzance Trunk Road (Barford St. Martin Diversion) Order.
2005. — (Barford St. Martin Junctions Improvements) Order.
2006. Stopping Up of Highways (Lincolnshire—Parts of Kesteven) (No. 1) Order.
2007. Liverpool Corporation Light Railways Order [2d.].
2009. Live Poultry (Regulation of Sales, Exhibitions and Movements) (No. 3) (Amendment) Order.
- 2010/S.165. Compulsory Further Education (Appointed Day) (No. 1) Order.
2014. Goods Vehicles (Change of Operating Centre) Regulations.
2015. Road Vehicles Lighting (Amendment) Regulations.
2016. Stopping Up of Highways (Hampshire) (No. 3) Order.
2019. Seed Potatoes (1948 Crop) Order [2d.].
2020. Stopping Up of Highways (Wiltshire) (No. 3) Order.

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2022. Isles of Scilly (Diseases of Animals Acts) Order.
2024. Import Duties (Drawback) (No. 7) Order.
2026. Wild Birds Protection (Cornwall) Order.
2027. Utility Apparel (Maximum Prices and Charges) (No. 23) Order.
2028. Chicory (Control) Order, 1942 (Revocation) Order.
2029. Special Contributions Regulations [2d.].
2030. Retention of Pipes under Highways (Warwickshire) (No. 1) Order.
2032. London Traffic (Restriction of Through Traffic) (No. 2) Regulations, 1938 (Revocation) Regulations.
2033. Stopping Up of Highways (Lincolnshire—Parts of Kesteven) (No. 2) Order.
2037. Central Welsh Board Amending and Revocation Regulations.
- 2038/S.166. National Health Service (Hospital Accounts and Financial Provisions) (Scotland) Regulations [5d.].
2044. Additional Import Duties (No. 3) Order.
2050. County of Chester (Electoral Divisions) Order.
2051. Wild Birds Protection (Huntingdonshire) Order.
2053. Linen and Cotton Handkerchiefs and Household Goods and Linen Piece Goods Wages Council (Great Britain) Wages Regulation Order.
2056. Criminal Justice Act, 1948 (Date of Commencement) (No. 2) Order.
2057. Agriculture Act, 1947 (Commencement) (No. 4) Order.
2058. Carriage by Air (Parties to Convention) (No. 2) Order.
2059. National Insurance (Reciprocal Agreement with Eire for Sickness and Maternity Benefit) Order.
2060. Gambia (Legislative Council) (Amendment) Order in Council.
2061. Kenya (Native Areas) (Amendment) Order in Council.
2062. Kenya Colony and Protectorate (Boundaries) Order in Council.
2063. British Solomon Islands Maritime Order in Council.
2064. Northern Rhodesia (Legislative Council) (Amendment No. 2) Order in Council.
2065. Somaliland Order in Council.
2066. Tanganyika Order in Council.
2072. Nigeria (Protectorate and Cameroons) Order in Council.
2073. Matrimonial Causes (War Marriages) (Mauritius) Order.
2074. Air Navigation (Amendment) (No. 2) Order.
2075. Stopping Up of Highways (West Suffolk) (No. 1) Order.
2076. Utility Apparel (Men's and Boys' Shirts, Underwear and Nightwear) (Manufacture and Supply) (Amendment) (No. 2) Order [2d.].
2077. — (Nurses' Uniforms) (Manufacture and Supply) (Amendment) Order.
2078. Lace and Woven Curtain Net (Manufacture and Supply) Order [3d.].
2079. Consumer Rationing (Amendment) (No. 12) Order.
2080. Curtain Cloth (Utility) (Amendment) Order [3d.].
2081. National Youth Employment Council and Advisory Committees for Scotland and Wales Regulations.
2082. Cotton (Single Yarn) (Prices) (Amendment) (No. 2) Order.
2084. Control of the Cotton Industry (No. 91) Order.
2085. — (No. 92) Order.
2086. Trading with the Enemy (Authorisation) (Germany) (No. 4) Order.
2087. — (Transfer of Negotiable Instruments, etc.) (Germany) (No. 3) Order.
2088. — (Custodian) (Amendment) (Germany) (No. 4) Order.
2089. Retention of Pipes under Highways (Shropshire) (No. 3) Order.
2090. Swansea—Manchester Trunk Road (Maerdy Bridge—Ardleen Junctions Improvements) Order.
2091. Clearing Office (Italy) Amendment Order.
2092. Treaty of Peace (Bulgaria) Vesting Order.
2093. — (Hungary) Vesting Order.
2094. — (Roumania) Vesting Order.
- 2095/S.167. National Assistance (Powers of Inspection) (Scotland) Regulations.
- 2096/S.168. Town and Country Planning (Building Preservation Order) (Scotland) Regulations.
2097. Pupils' Registration Regulations.
2100. Wages Regulation (Licensed Non-Residential Establishment) Order [3d.].
2101. — (Licensed Non-Residential Establishment) (Managers and Club Stewards) Order [3d.].
2102. — (Licensed Non-Residential Establishment) (Managers and Club Stewards) (Holidays) Order [2d.].
2104. Footwear (Utility Mark) Order.
2105. — (Supply, Marking and Manufacturers' Prices) (Amendment) (No. 2) Order [2d.].
2112. Stopping Up of Highways (Staffordshire) (No. 2) Order.
2113. Glucose (Control and Maximum Prices) Order.
2114. General Hollow-Ware (Maximum Prices) (Consolidation) Order [3d.].

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2115. Stopping Up of Highways (Lincolnshire—Parts of Kesteven) (No. 3) Order.
2116. Retention of Railway over Highway (Monmouthshire) (No. 3) Order.
2118. Winchester—Preston Trunk Road (Knutsford Road and other Junctions Improvements) Order.
2119. Utility Footwear (Maximum Prices) (No. 2) Order.
2120. Utility Apparel (Maximum Prices and Charges) (No. 24) Order.
2121. Cloth and Household Textiles (Utility) (Maximum Prices) (No. 16) Order.
2123. River Great Ouse Catchment Board (Alteration of the Boundaries of the Gaywood Internal District) Order.
2124. West Cumberland Rivers Catchment Board (River Marron Internal Drainage District) Order.
2128. Traffic on Canals and Inland Navigations (Revocation) Order.
2129. Retention of Pipe under Highways (Gloucestershire) (No. 3) Order.
2130. — (Northamptonshire) (No. 2) Order.
2131. Diversion of Highways (Lancashire) (No. 3) Order.
2132. Hydrocarbon Oils Regulations [2d.].
- 2133/S.169. North of Scotland Hydro-Electric Board (Constructional Scheme No. 11) Confirmation Order.
2134. Woven Cloth (Cotton Rayon and Linen) (Amendment) (No. 3) Order.
2135. Wisbech Water Order.
2141. Salvaged Goods Order.
2146. Stroud Water Order.
2148. County of Somerset (Electoral Divisions) Order.
2149. Wandsworth (Councillors and Wards) Order [4d.].
- 2150/S.170. Dressmaking and Women's Light Clothing Wages Council (Scotland) Wages Regulation (No. 2) Order [2d.].
2153. Birmingham—Great Yarmouth Trunk Road (Tilney St. Lawrence Road Junction Improvements) Order.
2154. Stopping Up of Highways (Lincolnshire—Parts of Lindsey) (No. 1) Order.
- 2155/S.171. — (Dumfriesshire) (No. 2) Order.
- 2156/S.172. Retention of Railway under Highway (Dumfriesshire) (No. 1) Order.
2157. Weedon—Atherstone—Brownhills Trunk Road (Three Ways Bridge—Lilbourne Road Junction Improvements) Order.
2159. Paper (Prices) (Amendment No. 3) Order [1s. 1d.].
2161. Factories Acts (Certificates of Fitness of Young Persons) (Adaptation) Regulations.
2162. Young Persons (Certificates of Fitness) Rules.
2163. — (Prescribed Period) Order.
2164. Export of Goods (Fish) (No. 2) Licence.
- 2165/L.24. County Court Districts (Nelson) Order.
2168. Tredegar Urban District Council Water Order.
2169. Safeguarding of Industries (Exemption) (No. 8) Order.
2172. Electricity (Pension Rights) Regulations [3d.].
2174. Flour Confectionery (Control and Maximum Prices) Order, 1946 (Amendment No. 4) Order.
2175. Control of Timber (No. 50) Order.
2176. Census of Distribution (1950) Order.
2177. Wild Birds Protection (Blackburn) Order.
2178. — (Smethwick) Order.
2180. Gloves (Manufacture and Supply) (No. 2) Order [4d.].
2182. Diversion of Highways (Staffordshire) (No. 2) Order.
2183. Stopping Up of Highways (Cornwall) Order.
2184. — (Lincolnshire—Parts of Lindsey) (No. 3) Order.
- 2188/L.25. Public Trustee (Custodian Trustee) Rules.
2189. Consumer Rationing (Amendment) (No. 13) Order.
2190. Tees Valley Water Order.
2191. Stopping Up of Highways (Huntingdonshire) (No. 1) Order.
2192. Swansea—Manchester Trunk Road (Leg Street and other streets, Oswestry) Order.
2193. Midwives (Amendment) Rules (No. 2) Approval Instrument.
2194. Transport and Electricity Authorities' Payments (Rate Product) Regulations.
2195. Hill Farming (General) Delegation Instrument.
2196. — (Control of Rams and Heather and Grass Burning) Delegation Instrument.
2197. Food Rationing (General Provisions) Order, 1948 (Amendment No. 2) Order.
2198. Milk (Control and Maximum Prices) (Great Britain) Order, 1947 (Amendment No. 3) Order.
2199. Potatoes (General Provisions) Order [3d.].
2200. Ware Potatoes (1948 Crop) (No. 2) Order [3d.].
2201. Control of Non-Ferrous Metals (No. 32) (Copper, Lead and Zinc) Order.
2206. Eastbourne Gas (Charges) Order.
2210. Midwives' Rules, Approval (Extension) Instrument.

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- 2213. Cranleigh District Water Order.
- 2214. Jute Yarn (Prices) (Amendment) (No. 2) Order.
- 2215. Prescelly Water Order [5*d.*].
- 2220. General Apparel Furnishings and Textiles (Distributors' Maximum Prices and Charges) Order [4*d.*].
- 2221. Uniforms (Retail Bespoke) (Maximum Prices) (Revocation) Order.
- 2222. Provision of Clothing Regulations.
- 2223. Scholarships and Other Benefits Amending Regulations No. 2.
- 2225/S.173. Housing (Declaration of Unfitness) (Scotland) Regulations.
- 2226. Railway and Canal Securities (Conversion Date) (No. 11) Order.
- 2227. King's Lynn-Sleaford-Newark Trunk Road (Ermine Street, Byard's Leap Junction Improvements) Order.
- 2229. Citrus Fruit Order, 1945 (Amendment No. 5) Order.
- 2230. Onions and Green Onions (Revocation) Order.
- 2231/S.174. National Health Service (Charges for Appliances) (Scotland) Regulations.
- 2233. Gas (Area Boards and Gas Council) Regulations.
- 2234. Food (Licensing of Retailers) Order [2*d.*].
- 2235. — (Restriction on Dealings) Order, 1943 (Amendment No. 4) Order.
- 2236. Eggs (Control and Prices) (Northern Ireland) Order, 1947 (Amendment No. 4) Order.
- 2237. Imported Meat, Canned Meat, and Pork (Requisition) (Revocation) Order.
- 2238. King's Lynn-Sleaford-Newark Trunk Road (Byard's Leap Diversion) Order.
- 2239/S.175. Agricultural Statistics (Scotland) Regulations [2*d.*].
- 2241/S.176. Agricultural Returns (Scotland) Order, 1939 (Revocation) Order.
- 2242. Gas (Notices) Regulations.
- 2243. Birmingham-Great Yarmouth Trunk Road (West Bilney Diversion) Order.
- 2244. London-Carlisle-Glasgow-Inverness Trunk Road (Milton Ernest Junctions Improvements) Order.
- 2245/S.177. Tarbet-Inverary-Lochgilphead-Oban Trunk Road (Rest and Be Thankful and other Diversions) Order.
- 2246. Stopping Up of Highways (Norfolk) (No. 1) Order.
- 2247/S.178. Perth-Aberdeen-Inverness Trunk Road (Balmossie Bridge Diversion) Order.
- 2248. Aliens (Approved Ports) (No. 2) Order.
- 2249. County of York, West Riding (Electoral Divisions) Order [3*d.*].
- 2251. Motor Vehicles (Driving Licences) (Amendment) (No. 3) Regulations.
- 2253. Diplomatic Privileges (Brussels Treaty Permanent Commission) Order in Council.
- 2254. Order in Council declaring that the Government of the Republic of Honduras has acceded to the Load Line Convention.
- 2255. Colonial Air Navigation (Amendment) Order [10*d.*].
- 2256/S.179. Clyde Navigation Trustees (Resumption of Elections) Order.
- 2257. Mersey Docks and Harbour Board (Resumption of Elections) Order.
- 2262. Universities and Colleges (Emergency Provisions) Act (End of Emergency) Order.
- 2263. Whitstable Gas (Charges) Order.
- 2264. Meat Feeding Stuffs (Control and Maximum Prices) Order.
- 2265. Retention of Pipe under Highways (Lincolnshire-Parts of Lindsey) (No. 1) Order.
- 2266. Retention of Railway under Highway (Cheshire) (No. 5) Order.
- 2267. Stopping Up and Diversion of Highways (Northumberland) (No. 1) Order.
- 2268. Stopping Up of Highways (Northamptonshire) (No. 1) Order.
- 2269. Utility Apparel (Women's and Maids' Underwear and Nightwear) (Manufacture and Supply) (Amendment) (No. 2) Order [3*d.*].
- 2270. Kiln-Drying Charges Order [3*d.*].
- 2271/S.180. Ice Cream (Scotland) Amendment Regulations.
- 2276. London Traffic (Prescribed Routes) (No. 13) Regulations.
- 2277. Control of Bolts, Nuts, Screws, Screw Studs, Washers and Rivets (No. 16) Order.
- 2278 and 2279. River Trent Catchment Board (Kingston Brook Internal Drainage District) Order.
- 2280. Import Duties (Exemptions) (No. 2) Order.
- 2281/S.181. House to House Collections (Scotland) Regulations.
- 2282/S.182. Local Government (Security by Officers) (Scotland) Regulations.
- 2283. Bude-Stratton Water Order.
- 2284. Retention of Pipe under Highways (Northumberland) (No. 1) Order.
- 2285. — (Warwickshire) (No. 2) Order.
- 2286. Stopping Up of Highways (Herefordshire) (No. 1) Order.
- 2289/S.183. Local Government (Scotland) (Conferences) Regulations.
- 2290/S.184. Teachers' Salaries (Scotland) (Provisional Amending) Regulations.
- 2291. Nut Kernels Order, 1947 (Amendment No. 2) Order.
- 2292/S.185. Act of Sederunt (Procedure under Companies Act, 1948).
- 2293/S.186. — (Sheriff Court Liquidations) 1948.
- 2294. Agricultural Statistics (England and Wales) Regulations [2*d.*].
- 2295. Agricultural Returns Order, 1939 (Revocation) Order.

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2296. Wild Birds Protection (Cardiff) Order.
 2297. Stopping Up of Highways (Huntingdonshire) (No. 3) Order.
 2301. Import Duties (Drawback) (No. 8) Order.
 2302. Town and Country Planning (Development by Local Planning Authorities) Regulations [2d.].
 2307/S.187. Coal Industry Nationalisation (Liability Enforcement) (Scotland) Regulations [3d.].
 2308. Cloth and Household Textiles (Utility) (Maximum Prices) (No. 17) Order.
 2309. Utility Overalls and Aprons (Manufacture and Supply) (Amendment) (No. 2) Order [2d.].
 2311. Apples (Grading and Marking) (Revocation) Regulations.
 2312. Miscellaneous Goods (Frustrated Exports) (Maximum Prices) Order.
 2313/S.188. Gretna-Stranraer-Glasgow-Stirling Trunk Road (Seamores Road, Dennyloanhead Junction Improvements) Order.
 2315. Price-Controlled Goods (Frustrated Exports) (Restriction of Resale) Licence.
 2318. Utility Apparel (Infants' and Girls' Wear) (Manufacture and Supply) (Amendment) (No. 4) Order.
 2319. Food Rationing (General Provisions) Order, 1948 (Amendment No. 3) Order.
 2323/L.26. County Court Districts (Southend and Brentwood) Order.
 2324. Superannuation and Other Trust Funds (Amendment of Interpretation) Regulation.
 2325. Wild Birds Protection (North Riding) Order.
 2326. Knitted Goods (Manufacture and Supply) (Amendment) (No. 5) Order.
 2328/S.189. Local Government (Change of Name and Alteration of Areas) (Scotland) Regulations.
 2329. Railway and Canal Securities (Conversion Date) (No. 12) Order.
 2332. Control of Building Operations (No. 12) Order.
 2333. Teachers' Superannuation (Foreign Office (German Section)) Scheme.
 2334. Stopping Up of Highways (Somerset) (No. 1) Order.
 2335. Utility Apparel (Men's, Youths' and Boys' Outerwear) (Manufacture and Supply) (Consolidation) Order [5d.].
 2336. Woven Cloth (Wool and Animal Fibre) (Manufacture, Marking and Supply) (Amendment) (No. 3) Order.
 2338. Utility Mark and Apparel and Textiles (General Provisions) (Amendment) (No. 3) Order.
 2339. Utility Apparel (Waterproofs) (No. 2) Order.
 2340. Companies (Stock Exchange) (No. 2) Order.
 2343/S.190. Defence Regulations (No. 8) Order.
 2344. Weights and Measures (Board of Trade Standard Three Metre) Order.
 2347. Coal Distribution (Amendment) Order.
 2349. Criminal Justice Act, 1948 (Date of Commencement) (No. 3) Order [2d.].
 2350. National Insurance (Industrial Injuries) (Isle of Man Reciprocal Agreement) Order.
 2351/S.191. Agriculture (Scotland) Act, 1948 (Commencement) (No. 2) Order.
 2353. Knacker's Yard Order.
 2355. London Government (Polls on Promotion of Bills) Regulations [3d.].
 2356/S.192. Agricultural Orders (Revocation) (Scotland) Order.
 2357/S.193. — (Scotland) Regulations [3d.].
 2358/S.194. — (Transfer of Functions to Agricultural Executive Committees) (Scotland) Order.
 2359/L.27. Chancery of Lancaster (Companies) Rules.
 2360. Coal Industry Nationalisation (Company Adjustment) Regulations [5d.].
 2361. Airways Corporations (General Staff Pensions) Regulations [7d.].
 2362. Stopping Up of Highways (Staffordshire) (No. 3) Order.
 2363. Carrots (1948 Crop) (No. 2) Order [2d.].
 2364. Home-Grown Apples (No. 2) Order [4d.].
 2366. Retention of Railway under Highway (Cheshire) (No. 5) Order.
 2367. Control of Building Materials (Revocation) Order.
 2369. Cannock District Gas (Borrowing Powers) Order.
 2370. Import Duties (Drawback) (No. 9) Order.
 2371. Carlisle-Sunderland Trunk Road (Corbridge-Riding Mill Road Junction Improvements) Order.
 2372. Building Operations (First Aid and Ambulance Room Equipment) Order.
 2373. Bisulphide of Carbon (Conveyance) Regulations.
 2378. Upholstery Cloth (Utility) (Amendment) (No. 2) Order.
 2379. Retention of Pipes under Highway (Rutland) (No. 1) Order.
 2380. Tapioca and Sago (Maximum Prices) Order, 1947 (Amendment) Order.
 2383. Retention of Pipe under Highway (Gloucestershire) (No. 4) Order.
 2386. Electric Torch Dry Batteries (Maximum Prices) Order.
 2388. Feeding Stuffs (Regulation of Manufacture) Order, 1948 (Amendment) Order [3d.].
 2391. Chelmsford Water Order.
 2392. Stamped or Pressed Metal Wares Wages Council (Great Britain) (Constitution) Order.
 2398. Purchase Tax (No. 3) Order.

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2399. East Shropshire Water Board Order [3d.].
2405. Sugar and Preserves (Rationing) (No. 2) Order, 1948 (Amendment) Order.
2406. Food Rationing (General Provisions) Order, 1948 (General Licence) Order
2407. Imported Apples Order [6d.].
2408. Voluntary Homes (Registration) Regulations.
2409. North of St. Helens—Southport Trunk Road (Rainford By-pass and Other Diversions) Order.
2410. Control of Cotton Industry (No. 93) Order [2d.].
2411. Miscellaneous Maximum Price Orders (Variation) Order.
2412. Utility Apparel (Gaberdrine Raincoats) (Manufacture and Supply) (No. 2) Order [3d.].
2414. Food (Points Rationing) Order, 1948 (Amendment No. 3) Order.
2417. Swansca—Manchester Trunk Road (Llanwrtyd Wells—Llangamarch Wells Road Junction Improvements) Order.
2418. Therapeutic Substances Amendment Regulations [5d.].
2419. Feeding Stuffs (Maximum Prices) Order, 1948 (Amendment No. 2) Order [5d.].
2421. Clocks and Watches (Maximum Prices) Order [2d.].
2422. Exchange Control (Definition of Scheduled Territories) (No. 2) Order.
2423. ——— (Payments) (Faroe Islands) Order.
2424. ——— (Specified Currency) Order.
2425. Stopping Up of Highways (Devonshire) (No. 2) Order.
2426. Miscellaneous Textiles (Manufacture and Supply) (Revocation) Order.
2427. National Insurance (Unemployment Benefit) (Transitional) Amendment Regulations.
2429. Goods Vehicles (Licences and Prohibitions) (Amendment) Regulations [3d.].
2430. Coal Industry Nationalisation (Superannuation) Regulations.
2434. National Insurance and Civil Service (Superannuation) Rules [7d.].
2435. Utility Apparel (Maximum Prices and Charges) (No. 25) Order.
2442. Motor Spirit (Amendment) Regulations.
2443. London Traffic (Miscellaneous Provisions) Order [3d.].
2444. ——— (No. 2) Order [2d.].
2445. Traffic Signs (London) Authorisation and Directions.
2447. Safeguarding of Industries (Exemption) (No. 9) Order.
2448. Import Duties (Exemptions) (No. 3) Order.
2453. Nottinghamshire Area (Conservation of Water) Order.
2454. Stafford and Derby Area (Conservation of Water) Order.
2455. Retention of Railway over Highway (Surrey) (No. 3) Order.
2457. Utility Handkerchiefs (Marking and Manufacturers' Prices) (Amendment) (No. 3) Order. [2d.].
2458. Raw Materials (Various Controls) (Revocation) Order.
2459. Stopping Up of Highways (Gloucestershire) (No. 2) Order.
2460. Edible Gelatine Order.
2461. Establishments (Christmas Turkeys) Order.
2462. Eastbourne Water Order [4d.].
2463. London—Fishguard Trunk Road (Drefach—Tumble Road Junction Improvements) Order.
2464. Unmanufactured Tobacco (Supply) (Amendment) Order.
2465. Gas (Area Boards and Gas Council) (Amendment) Regulations.
2466. Cloth and Household Textiles (Utility) (Maximum Prices) (No. 18) Order.
2467. General Hollow-ware (Maximum Prices) (Consolidation) (Amendment) Order.
2468. Utility Apparel (Maximum Prices and Charges) (Amendment) Order [2d.].
2469. London Passenger Transport Board (Execution of Works) (Revocation) Order.
2470. Chocolate, Sugar Confectionery and Cocoa Products (Control and Maximum Prices) Order, 1944 (Amendment No. 9) Order.
- 2471/1.28. Local Land Charges (Amendment No. 2) Rules.
2473. Export of Goods (Control) (Amendment) (No. 6) Order.
2476. Electricity Arbitration Tribunal Rules, 1948 [2d.].
2477. Footwear (Supply, Marking and Manufacturers' Prices) (Amendment) (No. 3) Order.
2478. General Footwear (Maximum Prices and Charges) (Amendment) (No. 2) Order.
2481. Retention of Pipe under Highways (Buckinghamshire) (No. 1) Order.
2482. ——— (Oxfordshire) (No. 1) Order.
2484. Trading with the Enemy (Enemy Territory Cessation) (Siam) Order.
2485. ——— (Authorisation) (Japan) Order.
2486. ——— (Custodian) (Amendment) (Japan) Order.
2489. Tredegar Urban District Council Water (No. 2) Order.
2491. Yarn and Cloth (Wool and Animal Fibre) (Maximum Prices and Charges) (Amendment) Order.
2492. Control of Machine Tools (Electrical Equipment) (No. 3) (Revocation) Order.
2493. Rubber Reclamation Wages Council (Great Britain) Wages Regulation Order.
2497. Bacon (Rationing) Order, 1948 (Amendment) Order.
2498. Food Rationing (General Provisions) Order, 1948 (General Licence No. 2) Order.
2504. Whaling Industry (Ship) (No. 2) Regulations [2d.].

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- 2505. Retention of Pipe under Highway (West Suffolk) (No. 1) Order.
- 2506. Coal Industry Nationalisation (Superiorities) Regulations [3d.].
- 2507. Furniture (Utility Mark) Order [3d.].
- 2508. Retention of Pipe under Highway (Worcestershire) (No. 1) Order.
- 2509. Rationing (Personal Points) Order, 1948 (Amendment) Order.
- 2510. Utility Handkerchiefs (Maximum Prices) (Amendment) Order.
- 2511. Purchase Tax (No. 4) Order.
- 2517. National Health Service (Venereal Diseases) Regulations.
- 2518. Hollow-Ware Wages Council (Great Britain) (Constitution) Order.
- 2522. Stopping Up of Highways (Somerset) (No. 2) Order.
- 2523. Crawley and Three Bridges Water Order.
- 2525. General Apparel, Furnishings and Textiles (Distributors' Maximum Prices and Charges) (Amendment) Order.
- 2526. Motor Fuel (Control) (Amendment) Order.
- 2527. Education (Compensation Forms) Regulations [2d.].
- 2528. Machinery, Plant and Appliances (General) (No. 20) Order.
- 2530. West Hampshire Water Order.
- 2531. Hemming (Maximum Charges) Order.
- 2532. Fats, Cheese and Tea (Rationing) Order, 1948 (Amendment No. 2) Order.
- 2533. Imported Deciduous Fruit Order, 1947 (Amendment) Order.
- 2534. Raw Cocoa (Control and Maximum Prices) Order, 1946 (Amendment No. 3) Order.
- 2535. Poultry (Control and Maximum Prices) Order, 1947 (Amendment) Order.
- 2536. ——— (Northern Ireland) Order, 1947 (Amendment) Order.
- 2537. Rabbits and Hares (Control and Maximum Prices) Order, 1944 (Amendment No. 2) Order.
- 2540. Control of Paper (Economy) (Amendment) Order.
- 2541. Flax Seed (Prices) (Amendment) Order.
- 2542. Increase of Pensions (India and Pakistan) Rules.
- 2543. Owner's Risk Standard Charges Modification (No. 2) Order.
- 2544. Swansea-Manchester Trunk Road (Pen-y-voel Lane, Llanyrnycch Junction Improvements) Order.
- 2547/S.195. Local Government (Qualifications of County Treasurer and Town Chamberlain) (Scotland) Regulations.
- 2549. Wild Birds Protection (Hertfordshire) Order.
- 2552. Dressmaking and Women's Light Clothing Wages Council (England and Wales) (Constitution) Order.
- 2553. Mental Deficiency (Amendment) Regulations.
- 2567. Essex Area (Conservation of Water) Order.
- 2568. Control of Machine Tools (Electrical Equipment) (No. 4) (Revocation) Order.
- 2569. Stopping Up of Highways (Cambridgeshire) (No. 1) Order.
- 2570. Fire Services (Ranks and Conditions of Service) (No. 5) Regulations.
- 2571. Superannuation (Public Offices) (Number 2) Rules.
- 2572. Molasses and Industrial Alcohol (Amendment) (No. 2) Order.
- 2573. Falkland Islands (Legislative Council) Order in Council [3d.].
- 2574. Bahamas (Alteration of Boundaries) Order in Council.
- 2575. Jamaica (Alteration of Boundaries) Order in Council.
- 2576. Death Duties (Relief against Double Duty) (Malayan Union) Order.
- 2577. ——— (Northern Ireland) (Relief against Double Duty) (Malayan Union) Order.
- 2578. Industrial Assurance and Friendly Societies Act, 1948 (Isle of Man) Order.
- 2579. Maintenance Orders (Facilities of Enforcement) (North Borneo) Order in Council.
- 2580. Petroleum (Radio-active Substances) (Revocation) Order.
- 2581. National Insurance and Industrial Injuries (Stamps) (Amendment) Regulations.
- 2583. Food Rationing (General Provisions) Order, 1948 (Amendment No. 4) Order.
- 2584. ——— (Licensing of Establishments) Order, 1948 (Amendment) Order.
- 2585. ——— (Licensing of Retailers) Order, 1948 (Amendment) Order.
- 2586. Utility Quilts (Manufacture and Supply) Order.
- 2587. Teachers' Superannuation (School of Electronics) Scheme.
- 2592. Control of Non-Ferrous Metals (No. 33) (Copper, Lead and Zinc) Order.
- 2595/S.196. Voluntary Homes (Registration) (Scotland) Regulations.
- 2596. Kent Area (Conservation of Water) Order.
- 2598. Labelling of Food Order, 1946 (Amendment No. 4) Order.
- 2599. Sugar (Rationing) Order.
- 2600. Family Allowances (New Zealand Reciprocal Arrangements) Regulations.
- 2601. Metropolitan Police Staffs (Modification of Superannuation Benefits) (National Insurance) Order.
- 2602. Flax and Hemp Wages Council (Great Britain) Wages Regulation (No. 2) Order.
- 2603. Jute Wages Council (Great Britain) (Constitution) Order.
- 2605. ——— Wages Regulation (No. 2) Order.
- 2607. Retention of Pipe under Highway (West Sussex) (No. 1) Order.

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- 2608. Control of Engagement (Amendment) Order.
- 2610. Fish (Maximum Prices) Order [4d.].
- 2611. Fish Sales (Charges) Order.
- 2612. Food (Management of Businesses) Order.
- 2613. Brough Elloughton and District Gas Order.
- 2614. Stoke-on-Trent Gas Order.
- 2615. Wellington (Salop) Gas Order.
- 2616. Retention of Pipe under Highways (Oxfordshire) (No. 2) Order.
- 2620. Stopping Up of Highways (Leicestershire) (No. 3) Order.
- 2621. Fats, Cheese and Tea (Rationing) Order, 1948 (Amendment No. 3) Order.
- 2622. Christmas Food Directions.
- 2623/S.197. New Year (Scotland) Food Directions.
- 2624. Furniture (Maximum Prices and Charges) Order [3d.].
- 2625. — (Records and Miscellaneous Provisions) Order [2d.].
- 2626. Sales by Auction and Tender (Control) (Amendment) Order.
- 2628. Exchange Control (Payments) (Italy, Republic of San Marino and Trieste) Order.
- 2630. Control of Iron and Steel (No. 67) Order.
- 2634. Cheese (Control and Maximum Prices) Order, 1948 (Amendment No. 2) Order.
- 2635. Food (Points Rationing) Order, 1948 (Amendment No. 4) Order.
- 2636. Manufacture and Supply (Various Controls) (Revocation) Order.
- 2637. Utility Apparel (Men's and Boys' Shirts, Underwear and Nightwear) (Manufacture and Supply) (Consolidation) Order [9d.].
- 2638. Display of Photographs (Cinematograph Film Industry) (Revocation) Order.
- 2642. Purchase Tax (No. 5) Order [2d.].
- 2647. Import Duties (Drawback) (No. 10) Order.
- 2649. Happisburgh of Yarmouth Coast Protection Order.
- 2650. Walney Island Coast Protection Order.
- 2651. Footwear Repairs (Control) (Revocation) Order.
- 2653. Dangerous Drugs Regulations.
- 2654. Raw Opium Regulations.
- 2655. Stopping Up and Diversion of Highways (Berkshire) (No. 1) Order.
- 2656. Stopping Up of Highways (North Riding of Yorkshire) (No. 2) Order.
- 2657. — (Somerset) (No. 3) Order.
- 2658. Retention of Pipe under Highways (Berkshire) (No. 3) Order.
- 2659. Retention of Pipe and Cable under Highway (Cumberland) (No. 2) Order.
- 2660. Retention of Pipes and Cable under Highways (North Riding of Yorkshire) (No. 6) Order.
- 2661. Retention of Pipe under Highways (Shropshire) (No. 1) Order.
- 2662. Corset Wages Council (Constitution) Order.
- 2663/L.29. Summary Jurisdiction Rules [3d.].
- 2664/L.30. Evidence by Certificate Rules.
- 2666. Coal Industry (Interim Income) (Rates of Interest) Order.
- 2671. Great Berkhamsted Water Order [2d.].
- 2673. Ware Potatoes (1948 Crop) (No. 2) Order, 1948 (Amendment) Order.
- 2674/L.31. County Court Districts (Miscellaneous) Order.
- 2676. Animals Act (Commencement) Order.
- 2677. Horse Breeding Rules [3d.].
- 2679. Utility Mark and Apparel and Textiles (Export) Order [2d.].
- 2680. Consumer Rationing (Special Coupon Rates) Licence.
- 2681. Return of Clothing Coupons (Footwear) Order.
- 2682. Woven Cloth (Wool and Animal Fibre) (Manufacture, Marking and Supply) (Amendment) (No. 4) Order.
- 2683. National Service (Miscellaneous) Regulations [6d.].
- 2684. Cloth and Household Textiles (Utility) (Maximum Prices) (No. 19) Order.
- 2685. Utility Apparel (Women's and Maids' Outerwear) (Manufacture and Supply) (Amendment) (No. 3) Order [4d.].
- 2686. Feeding Stuffs (Rationing) Order, 1943 (Amendment No. 6) Order.
- 2687. National Insurance (Guardian's Allowances) Regulations.
- 2688/S.198. Fire Services (Pensionable Employment) (Scotland) (No. 2) Regulations.
- 2689. Buckwheat, Millet and Canary Seed (Control of Cultivation) (Revocation) Order.
- 2690. Control of the Cotton Industry (Revocation) Order.
- 2695. North of St. Helens-Southport Trunk Road (Four Lane Ends, Bickerstaffe Junctions Improvements) Order.
- 2697. Raw Materials (Various Controls) (Revocation) (No. 2) Order.
- 2698. London-Fishguard Trunk Road (Banc-y-felin Diversion) Order.
- 2699. Limitation of Packages by Passenger Train (Revocation) Order.
- 2700. Superior Services (India) Family Pension Fund (Amendment) Rules.
- 2701. Increase of Pensions (General) Regulations.
- 2703. Wholesale Mantle and Costume Wages Council (Great Britain) (Constitution) Order.

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- 2704/L.32. Supreme Court Fees (Amendment No. 2) Order.
- 2705. Control of Check Trading Order.
- 2706. Sugar (Rationing) Order, 1948 (Amendment) Order.
- 2707. Meat Products and Canned Meat (Control and Maximum Prices) Order, 1948 (Amendment) Order.
- 2708. Pupils' Registration Amending Regulations.
- 2709. Gas (Stockholders' Representative) Regulations [3d.].
- 2710. Traffic Signs (London) (Amendment) Authorisation and Directions.
- 2711. National Insurance (Overlapping Benefits) Regulations [3d.].
- 2713. Rating and Valuation Act (Product of Rates and Precepts) Amendment Rules.
- 2714. Assistant Nurses (Amendment) Rules, Approval Instrument [2d.].
- 2716. Swansea-Manchester Trunk Road (Garthmyl-Bishops Castle Road Junction Improvements) Order.
- 2717. Additional Import Duties (No. 4) Order.
- 2718. Import Duties (Drawback) (No. 11) Order.
- 2719. Safeguarding of Industries (Exemption) (No. 10) Order [2d.].
- 2720. Purchase Tax (No. 6) Order.
- 2721. British Nationality Regulations [4d.].
- 2723. National Insurance (Industrial Injuries) (Prescribed Diseases) Amendment Regulations.
- 2724. Milk Distributive Wages Council (England and Wales) Wages Regulations (No. 2) Order [3d.].
- 2725/L.33. Matrimonial Causes (Amendment) (No. 2) Rules.
- 2726/S.199. Police (Scotland) (Amendment) (No. 4) Regulations.
- 2727/S.200. — (Women) (Scotland) (Amendment) (No. 4) Regulations.
- 2729. National Insurance (Compensation) Regulations [5d.].
- 2730. Stopping Up of Highways (Lincolnshire—Parts of Kesteven) (No. 4) Order.
- 2731. Consumer Rationing (Tourist Vouchers) (Amendment) Licence.
- 2732. Pianos and Organs (Manufacture and Supply) Order.
- 2733. Isles of Scilly (Local Government) Order.
- 2734. Police (Consolidation) (No. 3) Regulations.
- 2735. — (Women) (Consolidation) (No. 3) Regulations.
- 2740/S.201. Lanarkshire County Council (Daer) Water Order [3d.].
- 2743. Lace and Woven Curtain Net (Manufacture and Supply) (Amendment) Order.
- 2744. Utility Mark and Apparel and Textiles (General Provisions) (Amendment) (No. 4) Order.
- 2745. Utility Braces (Marking and Manufacturers' Prices) Order [2d.].
- 2749. Diversion of Highways (Worcestershire) (No. 2) Order.
- 2750. Glassware (Control of Manufacture and Supply) Order.
- 2751. Agriculture (Procedure of Agricultural Land Tribunals) (No. 2) Order.
- 2752. Candles (Maximum Prices) (Amendment) Order.
- 2753. Control of Flax (Various Orders) (Revocation) Order.
- 2754. Footwear Repairs (Maximum Charges) (Revocation) Order.
- 2755. Control of Hemp Order.
- 2756. — Rope (Revocation) Order.
- 2758. Clocks and Watches (Maximum Prices) (Amendment No. 1) Order.
- 2759. Mechanical Lighters (Maximum Prices) (Revocation) Order.
- 2760. Miscellaneous Goods (Maximum Prices) (Amendment No. 3), Order [2d.].
- 2761. Knitted Goods (Manufacture and Supply) (Amendment) (No. 6) Order.
- 2762. Utility Bedding (Maximum Prices) (No. 6) Order.
- 2764. Bacon (Rationing) Order, 1948 (Amendment No. 2) Order.
- 2765. Pig (Sales) Order, 1948 (Amendment) Order.
- 2766. Food Rationing (General Provisions) Order, 1948 (General Licence No. 3) Order.
- 2767/S.202. Education (Scotland) Miscellaneous Grants Regulations.
- 2768/S.203. Residential Special Schools and Orphanages (Scotland) Grant Regulations.
- 2769. Census of Production (1949) (Returns and Exempted Persons) Order.
- 2770. Industrial Assurance (Premium Receipt Books) Regulations.
- 2771. — (Returns) Regulations.
- 2772. Coal Industry Nationalisation (Satisfaction of Compensation) (No. 2) Regulations.
- 2773. Gas (Areas of Area Boards) Order.
- 2774. Furniture Industry Development Council Order [2d.].
- 2775. Lace Industry (Levy) Order.
- 2776. Retention of Pipes under Highways (Glamorgan) (No. 1) Order.
- 2777. Stopping Up of Highways (West Suffolk) (No. 2) Order.
- 2778. Export of Goods (Control) (Consolidation) Order [7d.].
- 2779. Citizenship Law (Canada) Order.
- 2780. — (Ceylon) Order.
- 2781. Rules of the Supreme Court (No. 4).
- 2782. River Great Ouse Catchment Board (Whittlesey and Kingsland Internal Drainage District) Order.
- 2786. Bucks Water Order.

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 2790. Civil Aviation (Application of Enactments) Order.
 2791. Greenwich Hospital (Dependants) Pensions Order.
 2792. Greenwich Hospital School (Regulations) (Amendment) Order.
 2793. Northern Rhodesia Naturalisation Orders in Council (Revocation) Order in Council.
 2794. Emergency Laws (Continuance) Order.
 2795. Disposal of Valucless Documents (Law Officers' Department and Imperial War Museum) Order.
 2796/S.204. Superannuation Scheme for Teachers (Scotland) Amending (No. 1) Scheme Approval Order [2*d.*].
 2799. Keg and Drum Wages Council (Great Britain) Wages Regulation Order.
 2800. Rope, Twine and Net Wages Council (Great Britain) Wages Regulation (No. 2) Order [6*d.*].
 2801. Jewellery and Silveirware Development Council Order [2*d.*].
 2802. Police Pensions (No. 2) Regulations [2*d.*].
 2803. National Health Service (General Dental Services) Fees (Amendment No. 2) Regulations.
 2809. Floor Coverings (Control of Manufacture and Supply) (Amendment) Order.
 2811. Retention of Pipe under Highway (Hampshire) (No. 1) Order.
 2812. Trading with the Enemy (Authorisation) (Japan) (No. 2) Order.
 2813. — (Transfer of Negotiable Instruments, etc.) (Japan) Order.
 2814. — (Custodian) (Amendment) (Japan) (No. 2) Order.
 2817/S.205. Agricultural Records (Scotland) Regulations.
 2818/S.206. Fire Services (Conditions of Service) (Scotland) (Amendment) (No. 3) Regulations.
 2819/S.207. Town and Country Planning (Development Plans) (Scotland) Regulations [3*d.*].
 2821. Mid-Wessex Water Order [4*d.*].
 2822. Claims for Depreciation of Land Values (Period for Making Claims) Regulations.
 2823. Jute Yarn (Prices) (Consolidation) Order [2*d.*].
 2824/S.208. Act of Sederunt (Sessions of Court).
 2825/S.209. Claims for Depreciation of Land Values (Scotland) Amendment Regulations.
 2826. Newsprint (Prices) (Amendment No. 2) Order.
 2827. Paper (Prices) (Amendment No. 4) Order [11*d.*].
 2828/S.210. Police Pensions (Scotland) (Amendment) Regulations [2*d.*].
 2829. Retention of Pipe under Highways (Worcestershire) (No. 3) Order.
 2830. Control of Non-Ferrous Metals (No. 34) (Copper, Lead and Zinc) Order.
 2831. Household Textiles (Marking and Manufacturers' Prices) (Amendment) (No. 3) Order.
 2832. Mustard Seed Order, 1945 (Revocation) Order.
 2833. Animals (Anæsthetics) Act, 1919, Amending Order, of September 13, 1948.
 2834. — (Anæsthetics) Act, 1919, Amending Order of September 13, 1948 (Commencement) Order.
 2836. Control of Silk Yarn Order.
 2837. Registration of Births and Deaths (Consular Officers) Regulations [5*d.*].
 2838/S.211. National Health Service (General Dental Services Fees) Amendment (Scotland) Regulations.
 2841. Retention of Pipe under Highways (Buckinghamshire) (No. 2) Order.
 2843. London Traffic (Guildford Street, Chertsey) Regulations.
 2844. — (Prescribed Routes) (No. 14) Regulations.
 2845. — — (No. 15) Regulations.
 2846. Stopping Up of Highways (West Riding of Yorkshire) (No. 5) Order.
 2848. Food (Points Rationing) Order, 1948 (Amendment No. 5) Order.
 2852. Utility Overalls and Aprons (Manufacture and Supply) (Amendment) (No. 3) Order [10*d.*].
 2855. Leamington Water Order.
 2856. Ploughing Grants (Application to 1948) Order.
 2857. Ploughing Grants Regulation.
 2858. Airways Corporations Stocks Regulations.

TABLE OF ABBREVIATIONS

- A. C. = Appeal Cases (Law Reports).
 A. L. J. = Australian Law Journal.
 A. L. R. = Argus Law Reports.
 All E. R. = All England Reports.
 B. W. C. C. = Butterworth's Workmen's Compensation Reports.
 c. = Chapter (of Act of Parliament).
 C. A. = Court of Appeal.
 C. C. A. = Court of Criminal Appeal.
 Ch. = Chancery (Law Reports).
 C. L. = Current Law.
 C. L. R. = Commonwealth Law Reports.
 C. L. Y. = Current Law Year Book.
 Com. Cas. = Commercial Cases.
 Conveyancer (N.S.) = Conveyancer and Property Lawyer (New Series).
 Cox C. C. = Cox's Criminal Cases.
 Cr. App. R. = Criminal Appeal Reports.
 Cty. Ct. = County Court.
 D. C. = Divisional Court.
 D. L. R. = Dominion Law Reports.
 E. = England.
 H. L. = House of Lords.
 I. R. or Ir. R. = Irish Reports (Ire).
 J. and JJ. = Justice, Justices.
 J. P. = Justice of the Peace Reports.
 J. P. J. = Justice of the Peace Journal.
 K. B. = King's Bench (Law Reports).
 L.C. or C. = Lord Chancellor.
 L.C.J. or C.J. = Lord Chief Justice.
 L.J. or L.JJ. = Lord Justice, Lords Justices.
 L. J. = Law Journal Newspaper.
 L. J. N. C. C. R. = Law Journal Newspaper County Court Reports.
 L. J. R. = Law Journal Reports.
 L. Q. R. = Law Quarterly Review.
 L. R. = Law Reports.
 L. T. = Law Times Reports.
 L. T. J. = Law Times Journal.
 Ll. L. Rep. = Lloyd's List Reports.
 L. G. R. = Local Government Reports.
 M.R. = Master of the Rolls.
 Mod. L. R. = Modern Law Review.
 N. I. = Northern Ireland; Northern Ireland Reports.
 O. = Order.
 P. = Probate, Admiralty and Divorce (Law Reports).
 P. C. = Privy Council.
 Q. J. P. R. = Queensland Justice of the Peace Reports.
 Q. S. R. = Queensland State Reports.
 r. = Rule.
 reg. = Regulation.
 R. P. C. = Reports of Patent, Design and Trade Mark Cases.
 s. = Section (of Act of Parliament).
 S. = Scotland.
 S. A. L. R. = South African Law Reports.
 S. A. S. R. = South Australian Law Reports.
 S. C. = Session Cases.
 S. C. (J.) = Session Cases (High Court of Justiciary).
 S. C. (H. L.) = Session Cases (House of Lords).
 SI = Statutory Instruments.
 S. J. = Solicitors' Journal.
 S. L. T. = Scots Law Times.
 S. R. & O. = Statutory Rules and Orders.
 T. C. or Tax Cas. = Tax Cases.
 T. L. R. = Times Law Reports.
 T. R. = Taxation Reports.
 Traff. Cas. = Railway, Canal and Road Traffic Cases.
 V. L. R. = Victorian Law Reports.
 W. A. L. R. = West Australian Law Reports.
 W. N. = Weekly Notes (Law Reports).

CURRENT LAW YEAR BOOK

1948

AGENCY

1. **Auctioneers.** See AUCTIONEERS AND VALUERS.
2. **Authority of agent to make contract.** When a vendor merely authorises a house agent to "sell" at a stated price he must not be taken to be authorising the agent to do more than agree with an intending purchaser the essential term, i.e., the price. The making of a contract is no part of an estate agent's business, and although, on the facts of an individual case, the person who employs him may authorise him to make a contract, such an authorisation is not lightly to be inferred from vague or ambiguous language.
Per Lord Greene, M.R.: "To say that a simple authority to make a contract allows a house agent to insert any terms he pleases provided they are ultimately held to be more beneficial to the vendor appears to us to be a proposition which requires careful examination": WRAGG *v.* LOVETT, [1948] W. N. 455; [1948] 2 All E. R. 968, C. A. (considering *Keen v. Mear*, [1920] 2 Ch. 574).
3. **Breach of warranty of authority—action against principal and agent—cross-examination.** See TEDESCHI *v.* SINGH, § 1326.
4. **Bribery.** See READING *v.* THE KING, § 1262.
5. **Carrier—agent of.** [Aus.] In *STOKES & KERR PTY. v. DALGETY & CO.* (1948), 81 Ll. L. Rep. 337, the Supreme Court of New South Wales held that a person employed, as a servant or agent, by a carrier, to perform all or part of the contract of carriage, and into whose possession the goods come for the purpose of carrying out that contract, is a bailee for the cargo-owner and takes and holds the goods on terms similar to those to be found in the contract of carriage.
6. **Commission—on business done—construction.** See LEAK *v.* CHARLES & SONS, § 1235.
7. — **on introducing person "able" to purchase property.** When considering whether or not a person is "able" to purchase a certain property the word "able" must be given the meaning ascribed to it by Atkin, L.J., in *James v. Smith*, [1931] 2 K. B. 317, n., namely: "I think that 'ability' does not depend upon whether the purchaser has the money in hand at the time; to my mind it is a question of fact. . . . I think it is sufficient if it is proved by the agent or by the purchaser that the circumstances are such that if the vendor had been ready and willing to carry out his contract, he on his part at the proper time could have found the necessary money to perform his obligations".
The defendant, the owner of certain freehold premises, entered into a contract with the plaintiffs, a firm of estate agents, to the following effect: "I hereby instruct you . . . to procure for me a person able, ready and willing to purchase my property . . . at the price of £2,900 [or near offer] and I undertake to pay you commission . . . upon your introducing such a person who makes a firm offer to purchase at the price required by me". The plaintiffs introduced one M., who was earning £8 a week, and who owned a house valued at £3,800, as a prospective purchaser, and his offer of £2,800 was accepted subject to contract. Subsequently, the defendant withdrew from this conditional agreement and disposed of the property to another purchaser for £2,900. The plaintiffs claimed that they were entitled to their commission. Held, (1) £2,800 was an offer near to the price required by the defendant; (2) M. was a purchaser able to implement the purchase of this house for £2,800; (3) "a firm offer to purchase"

did not mean to enter into a binding agreement, but it meant an offer capable of acceptance so as to become a contract. Consequently, the plaintiffs had earned their commission: *DENNIS REED v. NICHOLLS*, [1948] 2 All E. R. 914, *Lynskey, J.* (applying *James v. Smith, supra*).

8. — on introducing “purchaser able and willing to complete”. In *Luxor (Eastbourne) v. Cooper*, [1941] A. C. 108, the Court held that where an agent contracts for a commission to be paid to him on finding a purchaser, he must find someone who, in fact, completes a purchase. In *Giddys v. Horsfall*, [1947] C. L. Y. 8, where the agents stipulated for their commission as becoming payable to them in the event of their being instrumental in introducing a party prepared to purchase on the terms of the vendor’s instructions, or on terms acceptable to him, the Court held that the language here did not require the agents to find someone who actually completed a transaction of sale and purchase because the language was such that they could perform the duties they had to perform and earn their commission if they introduced a party prepared to purchase on the terms of the instructions given to them or on terms acceptable to the vendor. In a case where the language chosen by the agents was “that in the event of our introducing a purchaser who is able and willing to complete the transaction” commission was to be payable, it was held, that the words “able and willing to complete the transaction” indicated a qualification of the word “purchaser” and indicated that the agents were offering their services for introducing a person able to buy at the figure asked by the vendor—a person willing and able to complete the transaction so as to become, in the strictest sense of the word, the purchaser: *E. H. BENNETT v. MILLETT*, [1948] W. N. 447; 64 T. L. R. 612; [1948] 2 All E. R. 929, *Hilbery, J.* (applying *Giddys v. Horsfall, supra*; distinguishing *Luxor (Eastbourne) v. Cooper, supra*).
9. — on procuring loan. In *CYRIL LEONARD & Co. v. RAKOFF* (October 15, 1948), where the plaintiffs claimed commission on a sum, the loan of which they procured to the defendant on mortgage, *Lewis, J.*, held that it was sufficient that the plaintiffs, as agents, should, by their actions, have been the efficient cause of the transaction going through. They did not, in order to earn their commission, have actually to convey the money to the borrower or produce the documents for signature. [*Reported by R. C. Calburn, Esq., Barrister-at-Law.*]
10. Delegation—*delegatus non potest delegare*. See *ALLINGHAM v. MINISTER OF AGRICULTURE AND FISHERIES*, § 74; *JACKSON, STANSFIELD & SONS v. BUTTERWORTH*, § 1146.
11. — local authority as Minister’s agent. See *BLACKPOOL CORPN. v. LOCKER*, § 521; *CARLISH v. EAST HAM CORPORATION*, § 522.
12. Estate agent—authority to make contract. See *WRAGG v. LOVETT*, § 2.
13. — profession—excess profits tax. See *WARD, BATESON & SMITH v. I. R. C.*, § 1361.
14. — sole agency. In *E. CHRISTOPHER & Co. v. ESSIG* (November 11, 1948), *Lewis, J.*, held estate agents entitled to damages against the owner of property for breach of his undertaking to grant them sole agency for three months for the sale of the property. The defendant contended that there was no consideration for the grant of sole agency because the agents were not compelled to do anything. *Lewis, J.*, held that there was such consideration in the form of an implied undertaking by the estate agents to use their best endeavours to dispose of the property. [*Reported by R. C. Calburn, Esq., Barrister-at-Law.*] See also [1948] W. N. 461; 92 S. J. 675.
15. Factors Act, 1889. See *JOBLIN v. WATKINS AND ROSEVEARE (MOTORS)*, § 17.
16. Knowledge of agent—insurance proposals. [Can.] In *SALATA v. CONTINENTAL INSURANCE Co.*, [1948] 2 D. L. R. 663, the Ontario Court of Appeal held that where an agent of an insurer has authority to solicit but not to enter into a contract of insurance, the agent’s knowledge of the falsity of statements made by the insured in the proposal form cannot be attributed to his principal.
17. Mercantile agent—“document of title”. (Factors Act, 1889 (52 & 53 Vict. c. 45), ss. 1 (4), 2 (1); Road Vehicles (Registration and Licensing) Regulations, 1941 (No. 1149), reg. 9 (1).) The expression “document of title” in s. 1 (4)

of the Factors Act, 1889, must mean a document by which the person who puts it forward is entitled to dispose of the goods; its object is to dispose of goods. A motor vehicle registration book is not a "document of title" within the meaning of the sub-section, because its purpose is not to show the title to the motor vehicle, but is (i) to indicate what right the seller has to be dealing with that motor vehicle; (ii) to show when its licence fell due and what the position is, generally, about it; and (iii) to show that it is a registered vehicle, because to put a vehicle on the road which is not registered is, generally speaking, a criminal offence. Consequently, the ownership of a motor vehicle which is in somebody else's possession cannot be transferred by handing over the registration book: *JOBLIN v. WATKINS AND ROSEVEARE (Motors)* (1948), 64 T. L. R. 464, Croom-Johnson, J.

- 18. Necessity, agency of.** It is clear from the judgment of Scrutton, L.J., in *Jebara v. Ottoman Bank*, [1927] 2 K. B. 254, that the Courts should be slow to increase the number of classes of people who can be looked on as agents of necessity. They are selling or disposing of other people's goods without the authority of the owners, and it is certain that they have never been entitled so to act unless there is a real emergency.

In 1940, the plaintiff persuaded M to store his furniture without charge. In 1941, the plaintiff ceased to visit M's house and did not keep the latter informed of his various changes of address. In 1943, the room in which the furniture was stored was required for letting. M attempted to communicate with the plaintiff by telephone and wrote two letters to an address supplied by the plaintiff's bank, but as the plaintiff's whereabouts were unknown there was nothing to show that the letters were ever received by him. Eventually, M sent the furniture to auctioneers who sold it by auction in 1944. Held, there was no emergency here, and, consequently, M was not entitled to sell as agent of necessity and was guilty of conversion. The auctioneers were also guilty of conversion. The case should be sent back to the county court Judge, because on the question of damages it was material to find out whether the plaintiff knew or ought to have known in 1944, that if he did not remove his furniture, M intended to sell it. The plaintiff could only be entitled to the increased value at the date of judgment if he neither knew nor ought to have known that the furniture had been sold: *SACHS v. MIKLOS*, [1948] 2 K. B. 23; [1948] L. J. R. 1012, C. A. (See also § 3785.)

- 19. —.** It is very doubtful whether the doctrine of agency of necessity can be applied to a case of goods stored in premises, but, if it can, it can only be applied in a case of real emergency which necessitates the disposal of the goods.

The defendant, the licensee and tenant of an inn, had allowed the plaintiffs' car to remain in his yard without charge, when the plaintiff left the inn in 1942. In 1945, the brewery company owning the inn converted the outhouses and stables into a garage for ambulances, and, following a communication from one of the directors of the company, the defendant decided that the car must be removed as it was becoming something of an inconvenience to the drivers of the ambulances. Not knowing the plaintiff's address, he made inquiries of the police, but without success. Eventually, he disposed of the car at an auction. The plaintiff sued the defendant for damages for detinue and conversion. Held, although the car may have been an inconvenience or to some degree a nuisance, there was no real emergency which justified the sale of the motor car. Consequently, the plaintiff was entitled to recover damages for detinue and conversion of the car: *MUNRO v. WILLMOTT*, [1948] W. N. 450; 64 T. L. R. 627; [1948] 2 All E. R. 983, Lynskey, J. (following *Sachs v. Miklos*, § 18. (See also § 3786.)

- 20. Notice to quit served on agent.** [Cty. Ct.] See *BIRCHLAND v. LOAKE*, § 1942.

- 21. Nurses—agency for the supply of.** See *MIDDLESEX C. C. v. MILLER*, § 2199.

- 22. Pledge by agent—broker.** [Aus.] In *TOBIN v. BROADBENT* (1947), 75 C. L. R. 378; [1948] 1 A. L. R. 25; 22 A. L. J. 478, the High Court of Australia held that a broker did not have authority under a wide power of attorney (which gave him power to sell his principal's personal property) to pledge scrip of his principal which he had endorsed with a transfer in blank, and held that, the lender having notice on the face of the transfer (in the form of a memorandum endorsed thereon by the company to the effect that the power of attorney had been exhibited to it), and there being no representation by the principal that the

broker had authority to pledge the scrip to finance the principal, the principal was entitled to recover the scrip from the lender. (Decision of the Supreme Court of South Australia, [1947] C.L.Y. 5, reversed.)

23. **Premium received by tenant as landlord's agent.** [Cty. Ct.] See *CANTOR v. PACEY*, § 3202.
24. **Ratification—after occurrence of loss insured against.** [Can.] See *GOULDING v. NORWICH UNION FIRE INSURANCE SOCIETY*, § 650.
25. **Signature of agent—vendor's agent signing on behalf of purchaser.** See *WILSON v. PIKE*, § 3373.
26. **Stockbroker.** See *STOCK EXCHANGE*.
27. **Sub-agency.** See *KAHLER v. MIDLAND BANK*, § 259.
28. **Wife as agent of husband.** See *Re BIDIE*, § 1386.
29. **ARTICLES.** Agency of necessity (founded on *Sachs v. Miklos*, § 18): *Solicitor*, May, 1948, p. 104. Powers of attorney: 92 S. J. 419. Authority of estate agents to conclude contracts of sale (founded on *Wragg v. Lovett*, § 2): 92 S. J. 684; 206 L. T. 325.

AGRICULTURE

30. **Agricultural goods and services scheme.** Agricultural Goods and Services Scheme (England and Wales), 1948 (No. 103), made under the Agriculture Act, 1947 (10 & 11 Geo. 6, c. 48), s. 103. This scheme is a continuation of the scheme made under the Agriculture (Miscellaneous War Provisions) Act, 1940 (3 & 4 Geo. 6, c. 14), s. 25 (1), which expired on December 31, 1947. The new scheme is in substantially the same form, but opportunity has been taken to clarify certain matters and remove certain minor administrative anomalies. The objects are, as before, to promote efficiency in agriculture and facilitate food production. The new scheme came into operation on January 29, 1948. [2d.]
31. **Agricultural holdings—Agricultural Holdings Act, 1948 (11 & 12 Geo. 6, c. 63).** [E.] This Act reproduces in a consolidated form the law contained in the Agricultural Holdings Act, 1923 (13 & 14 Geo. 5, c. 9), Part III of the Agriculture Act, 1947 (10 & 11 Geo. 6, c. 48), and certain other enactments amending the Act of 1923, save, with respect to rights to compensation, in the application of those enactments to certain cases specified in the new Act, *e.g.*, where the tenant has already quitted his holding and his claims against his landlord are, accordingly, in process of being settled. In these cases his rights to compensation (and any rights of his landlord) run out under the existing law.
32. — **arbitration.** Agricultural Holdings (England and Wales) Rules, 1948 (No. 1943), made under the Agricultural Holdings Act, 1948 (11 & 12 Geo. 6, c. 63); coming into operation on October 1, 1948. These rules prescribe a form of award and forms of application for arbitration under the Act. They supersede the Agricultural Holdings (England) Rules, 1923 (No. 779). [2d.]
33. — **certificates of bad husbandry.** Agriculture (Certificates of Bad Husbandry) Regulations, 1948 (No. 189) [E.], made under the Agriculture Act, 1947 (10 & 11 Geo. 6, c. 48), s. 30, Sched. V., paras. 2, 3. S. 30 (1) (a) of that Act provides that an application may be made to the Minister, not more than six months before the giving of a notice to quit, for a certificate that the Minister is satisfied that the tenant of a holding is not fulfilling his responsibilities to farm in accordance with the rules of good husbandry. The grant of such a certificate, if the notice to quit states that it is given by reason thereof, affords one of several grounds (enumerated in s. 30 (1)) upon which compensation for disturbance does not fall to be paid by the landlord to the tenant, and upon which the tenant's right to require the landlord to obtain the Minister's consent to the notice to quit (under s. 31) is defeated. The procedure relating to applications for certificates of bad husbandry is dealt with in Sched. V to the Act, wherein the Minister is empowered to prescribe the manner in which such applications are to be made. This power is exercised in reg. 1 of the present regulations. The Minister is also empowered to prescribe a period at the expiration whereof, if he has not taken one of the courses of action open to him on the application, he shall be deemed to have given notice that he proposes to refuse the certificate. This power is exercised in reg. 2

of the present regulations. The regulations came into operation on March 1, 1948, the date on which Part III of the Act came into operation.

34. — **compensation for improvements.** Agriculture (Calculation of Value for Compensation) Regulations, 1948 (No. 185) [E.], made under the Agriculture Act, 1947, s. 25 (1). These regulations prescribe the method of calculating the value to an incoming tenant of the various improvements and other matters set out in Parts I and II of Sched. IV to the Act respectively. Such value constitutes the basis for the payment of compensation to an outgoing tenant for those improvements and other matters, as provided in the Act. The regulations came into force on March 1, 1948, the date on which Part III of the Act came into force. [2d.]
35. — **maintenance of fixed equipment.** Agriculture (Maintenance, Repair and Insurance of Fixed Equipment) Regulations, 1948 (No. 184) [E.], made under the Agriculture Act, 1947, s. 37 (1), which empowers the Minister, after consultation with such bodies of persons as appear to him to represent the interests of landlords and tenants of holdings, to make regulations prescribing terms as to the maintenance, repair and insurance of fixed equipment, which are to be deemed to be incorporated in every contract of tenancy of an agricultural holding. These terms are set forth in the Schedule to the present regulations. They divide between the landlord and tenant of a holding the responsibility for maintaining, repairing and insuring the fixed equipment, and impose upon each party certain specific liabilities in that regard. They do not apply where an agreement in writing is in existence or is made which imposes on one of the parties to the agreement a liability which the prescribed terms would impose on the other. Where, however, an agreement in writing, whether made before or after the commencement of Part III of that Act, substantially modifies the rights and liabilities of the parties under these regulations, it is open to either party to refer the matter to arbitration under s. 37 (2). The regulations came into operation on March 1, 1948, the date on which Part III of the Act came into operation.
36. — **notice to quit—control.** Agriculture (Control of Notices to Quit) Regulations, 1948 (No. 190) [E.], made under the Agriculture Act, 1947, s. 31 (8). S. 31 of the Act lays down the general rule that notice to quit a holding or part of a holding is ineffective unless the Minister consents to the notice, either before it is given, or, if the tenant so requires in accordance with the provisions of the section, after it is given. Accordingly, it is necessary to provide for the making of application by landlords to the Minister for his consent to the operation of notices to quit; and the present regs. 1, 2 and 3 (made pursuant to the power conferred by s. 31 (8) (b) of the Act) prescribe the time and the manner for the making of such applications.

The same s. 31 specifies a number of conditions in which the tenant does not have the protection afforded by the requirement of the Minister's consent to the operation of notices to quit, if the particular conditions applicable to a given case are stated in the notice to quit. It is provided in s. 31 (8) (a) of the Act that the Minister may make regulations to enable a tenant to submit to arbitration the question whether a notice to quit purporting to be given under one or more of such conditions was properly so given; and this is covered by the present regs. 4 and 5. It is, of course, possible that as a result of such an arbitration, the notice to quit is found not to have been properly given under any of the aforesaid conditions, so that the tenant is, after all, entitled to require that the Minister's consent be obtained. In such a case, reg. 6 (made under the power conferred by s. 31 (8) (a) of the Act) extends the period within which the tenant may so require.

The possibility of arbitration proceedings, and of a reference to the Agricultural Land Tribunal by a landlord or a tenant who is dissatisfied by a decision of the Minister upon an application for his consent under these regulations, necessitates that the operation of a notice to quit which may be *sub judice* at the time it is to have effect should be suspended until the determination of the proceedings. Accordingly, reg. 7 so provides, in exercise of the power conferred by s. 31 (8) (c) of the Act. Somewhat similarly, reg. 8 (made under s. 31 (8) (d) of the Act) provides for the postponement by the appropriate tribunal of the

date of operation of a notice to quit where its finding upon the question referred to it is not given until less than six months before the date on which the notice would otherwise have taken effect.

Reg. 9 (made under s. 31 (8) (c) of the Act) contains a number of provisions which apply only where there is a sub-tenancy, and are directed generally to safeguarding the interest of sub-tenants whose immediate lessors have been served with notice to quit. Where a sub-tenant has been given notice to quit by a tenant who has himself been given notice to quit by his landlord, it is provided that the sub-tenant's notice to quit shall stand or fall with the tenant's notice to quit.

These regulations came into force on March 1, 1948. [2d.]

37. — — —. "At common law the tenant is entitled to have a notice on which he can act with certainty from the moment when it is given. That right he has lost under this regulation. It is pointed out to me that under the new Agriculture Act of 1947, s. 31, . . . the system is continued and is made a permanent part of the law of the land, . . . it is now the Minister who holds in his hand the key to go or stay and it is to him that parties to an agricultural holding must look and not to the protection of the common law to ascertain their rights and their duties". See *Re KENDRICK'S AGREEMENT*, § 39 (considering *Re Bebington*, [1921] 1 Ch. 559).

[Note.—S. 31 of the Agriculture Act, 1947, is now replaced by s. 24 of the Agricultural Holdings Act, 1948.]

38. — — — appeal from Minister's consent. The Agricultural Tribunal for the South-Western Province dismissed a tenant's appeal from the Minister's decision to consent to the operation of a notice to quit: *Estates Gazette*, December, 4, 1948, p. 424.

39. — — — sale after beginning of war. (Defence (General) Regulations, 1939, reg. 62 (4A).) The right of a tenant at common law to a notice to quit on which he can act with certainty from the moment when it is given has been lost under reg. 62, para. (4A) of the Defence (General) Regulations, 1939. That paragraph (as amended by a subsequent proviso) provides that: "Where . . . an agricultural holding . . . has been sold in pursuance of a contract of sale made since [September 3, 1939] any notice to quit that holding . . . shall be null and void, provided that this paragraph shall not apply to any notice if (whether before or after the giving thereof) the Minister of Agriculture and Fisheries consents in writing thereto". The effect of this paragraph is that where a consent by the Minister is given the regulation does not apply. The result in such a case is that although the Minister's consent is given less than twelve months before the notice expires the tenant cannot allege that he did not have the twelve months' notice to which he is entitled under s. 23 of the Agricultural Holdings Act, 1923: *Re KENDRICK'S AGREEMENT*, *COLWILL v. BARRINGTON*, [1948] Ch. 430; [1948] L. J. R. 1332, Harman, J. (See also § 37.)

[Note.—The regulation referred to is now revoked: see § 1150.]

40. — — — rights and obligations of landlords and tenants. Part II of the Agriculture Act, 1947, includes provisions dealing with rules of good estate management and good husbandry, the making of supervision orders, directions to secure good estate management and good husbandry, and dispossession of owners or occupiers on the grounds of bad estate management or bad husbandry. Part III of the Act, which is to be construed as one with the Agricultural Holdings Act, 1923, includes provisions dealing with compensation to tenants for improvements and tenant right and to landlords for deterioration, compensation for disturbance and control of notices to quit, and the variation and ascertainment of terms of contracts of tenancy. The position of owners and occupiers under these provisions is set out in an explanatory booklet prepared by the Ministry entitled "Rights and Obligations of Landlords, Tenants and Owner-Occupiers of Agricultural Land". [9d.]

With one or two exceptions, such as the appointment of arbitrators, the Minister has delegated his functions under Parts II and III of the Act to the County Agricultural Executive Committees. Any applications for the Minister's consent or approval should, therefore, be made to the Secretary of the Agricultural Executive Committee for the county in which the land is situated. The above-mentioned booklet indicates those few matters on which application should

be made to the Ministry of Agriculture in London instead of the County Agricultural Executive Committee. (M. A. F. Press Notice 2071.)

41. — **tenant right valuation.** "As between landlord and tenant, a valuation involves balancing, on one side, the payment due from the tenant for dilapidations, and, on the other side, sums due from the landlord to the tenant for tenant right and so forth": *per* Tucker, L.J., in *OADES v. SPAFFORD*, § 3816 (applying *Dalton v. Pickard*, [1926] 2 K. B. 545 n.).

42. **Agricultural land service.** The Land Commissioner Service and the Rural Land Utilisation Organisation have been amalgamated to form a comprehensive Agricultural Land Service. Nine Provincial Land Commissioners are now in charge of land use work: Ministry of Agriculture and Fisheries Circular 132/48, dated August 6, 1948.

43. **Agricultural land tribunals—areas for.** Agriculture (Area for Agricultural Land Tribunals) Order, 1948 (No. 192) [E.], made under the Agriculture Act, 1947 (10 & 11 Geo. 6, c. 48), s. 73 (1), which requires the Minister by order to constitute such number of areas as he may consider expedient, so that for each area there may be established an agricultural land tribunal under the provisions of the Act. The areas so constituted by this Order, set out in the Schedule thereto, correspond in general with the "provinces" which have been constituted for the purposes of the Agricultural Land Service of the Ministry.

The Minister has power, under the Agriculture (Procedure of Agricultural Land Tribunals) Order, 1948 (No. 186) (see § 44), to direct that the tribunal for any area mentioned in this Order shall sit in two or more divisions.

44. — **procedure of.** Agriculture (Procedure of Agricultural Land Tribunals) Order, 1948 (No. 186) [E.] [2d.], made under the Agriculture Act, 1947, s. 73 (3). This Order lays down some procedural rules for the tribunals, and for parties to a reference thereto. The Order provides that subject to the express rules therein laid down, a tribunal has the power to regulate its own procedure. Special rules are provided in art. 17, for the procedure on an application under s. 21 (2) (b) of the Act to have a person named as the "owner" of land who would not be treated as the owner apart from a determination of the tribunal; such an application differs from the normal case of an "appeal" against a proposal or a decision of the Minister. The Order came into operation on March 1, 1948. As to the time and manner in which a normal application for reference to a tribunal is to be made, see § 45.

Agriculture (Procedure of Agricultural Land Tribunals) (No. 2) Order, 1948 (No. 2751), made under the Agriculture Act, 1947, s. 73 (3); came into operation on January 1, 1949. This order amends the Agriculture (Procedure of Agricultural Land Tribunals) Order, 1948, mainly with reference to persons entitled to be parties to proceedings.

45. — **reference to.** Agriculture (Reference to Agricultural Land Tribunals) Regulations, 1948 (No. 193) [E.], made under the Agriculture Act, 1947, ss. 31 (6), 74 (1). That Act provides that proposals of the Minister to take certain courses of action may be referred by the persons concerned to the agricultural land tribunal, and s. 74 empowers the Minister to prescribe the time and the manner in which such persons may require a proposal to be so referred. In one case, it is the decision, and not the proposal, of the Minister which may be so referred: this is the case of a decision to grant or withhold consent to a notice to quit under s. 31 of the Act, and in this case the power to prescribe the time and the manner of requiring a reference to the tribunal is contained in s. 31 (6). The present regulations are made in the exercise of these powers. The period laid down is fourteen days from the date when the Minister gives notice of his proposal or decision, or is deemed to have given such notice. Requests for reference to the agricultural land tribunal are to be served on the Secretary of the appropriate county agricultural executive committee, except in cases arising under s. 85 of the Act (which deals with the retention by the Minister of land of which he is in possession) or s. 86 (which deals with the control of subdivision of agricultural units, and which is in force only during any such period as the Minister may by order determine). In these two cases, the requests for reference to the tribunal are to be served on the Minister. These regulations do not relate to applications under s. 21 (2) (b) of the Act, for a determination by the tribunal

that some person should be treated as the owner of land other than the person who would otherwise be so treated. Such applications are dealt with in the Agriculture (Procedure of Agricultural Land Tribunals) Order, 1948 (No. 186) (see § 44). These regulations came into operation on March 1, 1948, the date on which Parts II and III of the Act came into operation.

46. **Agricultural orders—revocation of.** Agricultural Orders (Revocation) Order, 1948 (No. 367) [E.], revoking the orders specified in the Schedule thereto to the extent mentioned, those orders to that extent having become redundant by reason of the coming into force on March 1, 1948, of Parts II and III of the Agriculture Act, 1947 (10 & 11 Geo. 6, c. 48).
47. **Agricultural product—butter.** (Co-operation Act, 1923-41 (N. S. W. No. 1 of 1924 to No. 44 of 1941), s. 5; Income Tax Management Act (N. S. W.), No. 48 of 1941, s. 19 (o).) Butter resulting from factory operations was held not to be an "agricultural product" within the meaning of a New South Wales Income Tax Act: *PRODUCERS' CO-OPERATIVE DISTRIBUTING SOCIETY v. COMMISSIONER OF TAXATION*, [1948] A. C. 210; [1948] L. J. R. 1213, P. C.
48. **Agricultural statistics.** Agricultural Statistics (England and Wales) Regulations, 1948 (No. 2294), made under the Agriculture Act, 1947 (10 & 11 Geo. 6, c. 48), s. 78 (1); came into operation on December 1, 1948; enable the Minister to serve on occupiers of agricultural land notices requiring them to furnish certain information; replace the Agricultural Returns Order, 1939 (No. 1439), which has been revoked by the Agricultural Returns Order, 1939 (Revocation) Order, 1948 (No. 2295).
49. **Agricultural valuation—appointment of committee.** The Committee on Agricultural Valuation is being convened to consider and make recommendations on the assessment of compensation for tenant right matters other than those included in Part II of the Fourth Schedule to the Agriculture Act, 1947 (10 & 11 Geo. 6, c. 48), as to the desirability of introducing some uniformity into the present customary rights of hold-over and pre-entry, and as to the desirability of reducing the existing number of customary term-days: Ministry of Agriculture Press Notice (M.A.F. 2141), dated June 15, 1948.
50. — **report of committee.** First Report of the Committee on Agricultural Valuation, dated January 13, 1948 (24-161). [4d.]
51. **Agricultural vehicles—tractors—continuation of exemption from Construction and Use Regulations.** See § 3322.
52. — — **driving test.** See § 3305.
53. — — **licence—agricultural purposes.** [Scot.] In *HORNEL v. CRUICKSHANK*, 1948 S. L. T. (Sh. Ct.) 11, the Sheriff Court held that it is a contravention of s. 14 (2) of the Finance Act, 1922 (12 & 13 Geo. 5, c. 17) to use an agricultural tractor (with respect to which only a 5s. licence under the Finance Act, 1933 (23 & 24 Geo. 5, c. 19), Sched. VII, is held), for the haulage on the public road of wood or fuel or other articles or objects required for the private use of the occupier of the farm or his servants. (*Swaffield v. Tory* (C. A.) (unreported), and *Wilshire v. Laphthorne* (K. B. Div. Ct.) (unreported), applied.)
54. — **vehicles used for harvesting—use on roads, etc.** See §§ 3321, 3324, 3325.
55. **Agricultural wages—agreement not to pay wages during illness.** (Agricultural Wages (Regulation) Act, 1924 (14 & 15 Geo. 5, c. 37), s. 7 (1) (10).) The Agricultural Wages (Regulation) Act, 1924, is dealing with the provision of a minimum wage for work done in a period in which a man works, and it would need clear and express words if its scope was to be extended to a man's right to receive wages in respect of a period when he does no work and is not required by his employer to work, e.g., during illness or holidays. Therefore, a term in the contract of employment of an agricultural worker that the worker was to receive no wages when away from work through illness or of his own accord was held not to be void under the Agricultural Wages (Regulation) Act, 1924, s. 7 (10), in a case where the actual claim was in respect of complete weeks in which the worker, being sick, could not and was not required to work.
Semble, if an issue had been raised as to odd days within a week, and if the application of the contract reduced the amount below the minimum, the contract

might have been void under s. 7 (10): *SMART v. SPENCER*, [1948] 2 K. B. 105; [1948] L. J. R. 1061, C. A. (distinguishing *Seabrook & Sons v. Jones*, [1929] 1 K. B. 335). (See also § 57.)

56. — Agricultural Wages Act, 1948 (11 & 12 Geo. 6, c. 47). [E.] This is a consolidating Act, consolidating the Agricultural Wages (Regulation) Acts, 1924 to 1947, and so much of the Holidays with Pay Act, 1938 (1 & 2 Geo. 6, c. 70), as enables provision to be made for holidays and holiday remuneration for persons employed in agriculture. Ss. 1 and 2 continue the Agriculture Wages Board and County Agricultural Wages Committees respectively. Ss. 3 to 11 deal with wages and holidays which the Board is given power to fix. S. 4 deals with the enforcement of wages and holidays orders and imposes penalties on employers failing to comply with such orders. Provisions as to incapacitated persons are contained in s. 5 and as to learners in s. 6. It is an offence for an employer to receive a premium in respect of a learner except in pursuance of an approved agreement (s. 6 (6)). S. 7 deals with the reckoning of benefits and advantages as payment of wages, and s. 8 contains special provisions as to piece work in certain cases. S. 10 deals with the position when an offence under s. 4 or s. 6 (6) of the Act is committed by an agent of the employer. The remaining provisions of the Act are supplementary. The Act does not extend to Scotland or Northern Ireland (s. 21 (2)).

57. — minimum wages. (Agricultural Wages (Regulation) Act, 1924, s. 8 (1) (a).) The fact that under s. 8 (1) (a) of the Agricultural Wages (Regulation) Act, 1924, the benefit that a worker is allowed to occupy a cottage rent free during the period of his employment "may be reckoned as payment of wages" for the minimum does not necessarily make it wages in other contexts. See *SMART v. SPENCER*, § 55.

58. Agricultural workers—food for workers on seasonal operations. See § 1193.

59. Agriculture Act, 1947 [E.]—commencement. Agriculture Act, 1947 (Commencement) (No. 1) Order, 1948 (No. 342) [E.], made under s. 111 (2) of the Agriculture Act, 1947 (10 & 11 Geo. 6, c. 48). The Order brought into operation the following parts of the Act as from March 1, 1948:—

Parts II and III (ss. 9-46) together with the 2nd, 3rd, 4th, 5th, 6th and 7th Schedules (dealing with good estate management and good husbandry, and the relationship of landlords and tenants of agricultural holdings).

Section 95 (dealing with special directions to secure production).

Section 101 (dealing with the provision of equipment and services for pest control).

Section 110 (repealing certain of the enactments set out in the 13th Schedule). Agriculture Act, 1947 (Commencement) (No. 2) Order, 1948 (No. 491) [E.], made under s. 111 (2), provided that ss. 1-8 and Sched. I of that Act (guaranteed prices and assured markets) were to come into operation on March 31, 1948.

Agriculture Act, 1947 (Commencement) (No. 3) Order, 1948 (No. 1005) [E.], made under s. 111 (2), brought into operation from June 1, 1948, ss. 98-100 of the Act (as to destructive animals and pests), and also s. 110, so far as that section relates to the enactments contained in the Schedule to the order. See also § 82.

Agriculture Act, 1947 (Commencement) (No. 4) Order, 1948 (No. 2057) [E.], made under s. 111 (2), brought ss. 78 (agricultural statistics), 79 (information as to dealings in land used for agriculture), 80 (restriction on disclosure of information), 81 (penalties), and part of s. 110 (repeals) of that Act into operation as from September 30, 1948.

Section 86 of the Act, which was brought into operation on October 1, 1947, by S. R. & O., 1947, No. 1767, will not be treated as in force until an order has been made under the section bringing it into force. This is the section which gives the Minister of Agriculture and Fisheries power to purchase an "agricultural unit" if part of the unit is sold without his consent: see *Law Society's Gazette*, January, 1948, p. 9.

60. — repeal of Part III. See § 31.

61. — representations to Minister under. Agriculture (Making of Representations) Regulations, 1948 (No. 191) [E.], made under the Agriculture Act, 1947,

s. 104 (3) (4). That Act provides for the taking of certain courses of action by the Minister only after affording the persons concerned an opportunity to make representations to the Minister, written or oral or both, and s. 104 empowers the Minister to prescribe the time and the manner in which such written representations are to be made, and the time and the manner in which a request for an oral hearing is to be made. The present regulations are made in the exercise of that power. They came into operation on March 1, 1948.

62. — time limits for matters to be done under. Agriculture (Miscellaneous Time-Limits) Regulations, 1948 (No. 188) [E.], made under the Agriculture Act, 1947, ss. 16 (3), 19 (4), 24 (2), 32 (2), 38 (3), 39 (1) (3), and 108 (2), which give the Minister power to prescribe the time within which various actions are to be carried out. These regulations exercise those powers where they do not extend beyond the mere prescription of the time limit. In a few special cases in connection with which the Minister has power to prescribe other matters (such as the form or manner) as well as the time, separate regulations will be found to deal with the whole procedure: see, for instance, §§ 36, 45. These regulations came into operation on March 1, 1948, the date on which Parts II and III of the Act came into operation.

63. Buckwheat, millet and canary seed — cultivation of. Buckwheat, Millet and Canary Seed (Control of Cultivation) (Revocation) Order, 1948 (No. 2689) [E.], revokes as from December 20, 1948, the Buckwheat, Millet and Canary Seed (Control of Cultivation) Order, 1947 (No. 36), which controlled the sowing and growing of buckwheat, millet and canary seed.

64. Cattle. See also ANIMALS.

65. — artificial insemination. See § 137.

66. — bovine tuberculosis—payments in connection with. See § 135.

67. — dressing against warble fly. See § 148.

68. — seizure of imported livestock. [N. I.] See MINISTER OF AGRICULTURE FOR NORTHERN IRELAND *v.* MCCARTNEY, § 1183.

69. — veterinary surgeons. See § 2211.

70. Compulsory acquisition of agricultural land. The Requisitioned Land and War Works Act, 1948 (11 & 12 Geo. 6, c. 17), s. 2, adds a new sub-s. (3) to s. 6 of the Requisitioned Land and War Works Act, 1945 (8 & 9 Geo. 6, c. 43), whereby agricultural land may be acquired where its use in existing units is affected by government war work.

71. County agricultural executive committees—combination of counties for purposes of. Order made under the Agriculture Act, 1947 (10 & 11 Geo. 6, c. 48), s. 71 (2), Sched. 10: SI 1948, No. 132 (Huntingdon and Soke of Peterborough).

72. — delegation of powers. Agriculture (Delegation to County Agricultural Executive Committees) Regulations, 1948 (No. 187) [E.], made under the Agriculture Act, 1947, s. 72. These regulations exercise the power of delegation of the Minister in relation to the functions specified in the Schedule hereto, which are derived from the enactments also therein specified. It is provided in the regulations that the Minister's right and power himself to exercise any of the functions so delegated are unaffected by their delegation. The regulations came into operation on March 1, 1948.

As to pest control, see § 82; as to pasture land, see § 103.

73. — London. The Ministry of Agriculture and Fisheries have issued a statement showing the country agricultural executive committees within whose administrative areas certain county boroughs and London boroughs are treated as falling as directed by the Minister under s. 71 (8) of the Agriculture Act, 1947: Press Notice, MAF 2220, dated October 26, 1948.

74. County war agricultural executive committees—delegation of powers. (Defence (General) Regulations, 1939, regs. 62 (1), 66.) Under reg. 62 (1) the Minister of Agriculture is given power to "give such directions with respect to the cultivation, management or use of land for agricultural purposes as he thinks necessary" for certain purposes. The direction is to be given by notice relating to the land specified therein served on the person by whom the direction shall be

complied with. By reg. 66 the Minister of Agriculture may delegate "to any person or body of persons appointed or approved by him all or any of his functions" under reg. 62. But if the Minister has so delegated his powers of making decisions to such a body of persons, it is that body of persons who must make the decision, and, on the ordinary principle of *delegatus non potest delegare*, they cannot delegate their power to some other person or body.

The Minister having delegated his powers to a war agricultural executive committee, a notice served on persons by that committee directing them to grow eight acres of sugar beet on a field to be named by their executive officer was held to be outside their powers, because the task of deciding the land which was to be the subject of the notice to be served had to be performed by the committee and could not be delegated to their executive officer: *ALLINGHAM v. MINISTER OF AGRICULTURE AND FISHERIES* (1948), 64 T. L. R. 290; [1948] 1 All E. R. 780, D. C.

75. — **expiry of Defence Regulations.** Regs. 28, 28B of the Defence (Agriculture and Fisheries) Regulations, 1939, expired on December 31, 1948: see the Emergency Laws (Miscellaneous Provisions) Act, 1947 (11 Geo. 6, c. 10), Sched. I, Part II. See also § 1128.
76. — **tenancy of land requisitioned by.** [Cty. Ct.] See *MINISTER OF AGRICULTURE v. HUNKIN*, § 3214.
77. — **transfer of functions.** Agriculture (Transfer of Functions to Minister) Regulations, 1948 (No. 209) [E.], made under the Agriculture Act, 1947 (10 & 11 Geo. 6, c. 48), s. 71 (7), transfer the functions of war agricultural executive committees under the enactments specified in the Schedule to the regulations to the Minister of Agriculture and Fisheries. The enactments concerned relate to drainage, requisitioned land, supply of water to farms and employment of children in agricultural work. The new regulations came into operation on February 16, 1948, on which date war agricultural executive committees were replaced by county agricultural executive committees under the Act.
Agriculture (Transfer of Functions to County Agricultural Executive Committees) Order, 1948 (No. 210) [E.], which came into operation on the same date, amends a number of orders (specified in the schedule to the order) by substituting the county committees for the war committees mentioned therein.
78. **Crops, damage to—liability of owner of sporting rights in respect of.** See *SELIGMAN v. DOCKER*, § 1519.
79. **Defence Regulations, revocation and amendment of.** See §§ 75, 1128.
80. **Destructive pests—cherry fruit fly.** Importation of Raw Cherries Order, 1948 (No. 926) [E.], made under the Destructive Insects and Pests Acts, 1877 to 1927, imposing restrictions on the importation of raw cherries in 1948 during that period of the year when there is danger of the introduction of the cherry fruit fly.
81. — **orders for destruction.** Defence Regulations (No. 4) Order, 1948 (No. 1002), revokes reg. 63 of the Defence (General) Regulations, 1939, in its application to England and Wales and makes certain adaptations for its continued application to Scotland and Northern Ireland. The new order was made to take effect on June 1, 1948, as a result of ss. 98–100 of the Agriculture Act, 1947 (10 & 11 Geo. 6, c. 48), which superseded reg. 63 in England and Wales and came into operation on that date (see § 59). Reg. 63 gave power to make orders requiring the destruction of game and pests for the purpose of preventing agricultural damage.
82. — **pest control—delegation of powers.** Agriculture (Delegation of Pest Control Functions to County Agricultural Executive Committees) Regulations, 1948 (No. 1069) [E.], made under the Agriculture Act, 1947, s. 72. These regulations provide for the delegation to county agricultural executive committees with effect from June 1, 1948 (on which date ss. 98–100 of the Act came into operation: see § 59) of the Minister's functions under those sections with respect to animals and birds as mentioned in the Schedule to the Regulations.
83. — **pigeons—right to shoot.** See *HAMPS v. DARBY*, § 157.
84. — **watermark disease.** The following Orders have been made under the Destructive Insects and Pests Acts, 1877 and 1907, and the Forestry Act, 1919

(9 & 10 Geo. 5, c. 58), s. 3 (2), as amended, imposing precautions against the spread of the watermark disease of willow trees: SI 1948, Nos. 1149 (Hertfordshire); 1150 (Middlesex); 1151 (Suffolk).

85. Diseases of animals. See ANIMALS.

86. Grading and marking—apples. Apples (Grading and Marking) (Revocation) Regulations, 1948 (No. 2311) [E.], made under the Agricultural Produce (Grading and Marking) Act, 1928 (18 & 19 Geo. 5, c. 19), s. 1 (1), as amended; revokes as from October 22, 1948, the Agricultural Produce (Grading and Marking) (Apples) Regulations, 1935 (No. 976), which prescribed grade designations and designation marks for apples produced in England and Wales.

87. Hill farming—hill cattle—amendment of scheme. Hill Cattle (England and Wales) Amendment Scheme, 1948 (No. 416), made under the Hill Farming Act, 1946 (9 & 10 Geo. 6, c. 73), s. 13, amends the Hill Cattle (England and Wales) Scheme, 1947 (No. 975), by deleting the words “on hill land” in para. 5 (a).

88. ——— subsidy payments for 1948. Hill Cattle Subsidy Payment (England and Wales) Order, 1948 (No. 417), prescribing the amounts of subsidy payments for 1948 for different descriptions of cattle.

89. ——— hill sheep—emergency payments scheme. Hill Sheep (England and Wales) Emergency Payments Scheme, 1948 (No. 511), made under the Hill Farming Act, 1946, s. 13, and the Agriculture (Emergency Payments) Act, 1947 (10 & 11 Geo. 6, c. 32), ss. 2, 3. The new scheme varies the Hill Sheep (England and Wales) Scheme, 1947 (No. 636), by providing that subsidy payments may be calculated by reference to the numbers of sheep maintained on December 4, 1946, instead of by reference to the number maintained on the relevant days under the original scheme. The new scheme also provides for advances out of subsidy payments payable in 1948 and 1949.

Hill Sheep Scheme Subsidy Payment (England and Wales) Order, 1948 (No. 512), made under s. 14 (3) of the 1946 Act, prescribes the amounts of subsidy payments for 1947–48.

90. ——— local committees—delegation of functions. Hill Farming (General) Delegation Instrument, 1948 (No. 2195) [E.], made under the Hill Farming Act, 1946, s. 33; delegates to local committees in the counties specified in the Schedule the Minister's functions under the Act other than the making of improvement grants or subsidy payments and the making or revocation of schemes, orders or regulations.

Hill Farming (Control of Rams and Heather and Grass Burning) Delegation Instrument, 1948 (No. 2196) [E.], made under the same enactment; similarly delegates to local committees in certain other counties (specified in the Schedule), the Minister's functions as to the control of rams and the burning of heather and grass.

91. ——— provision of cottages. Hill Farming (Cottages) (England and Wales) Regulations, 1948 (No. 853), made under the Hill Farming Act, 1946, s. 10, prescribing conditions to be attached to the occupation and maintenance of cottages attached to a hill farm in respect of which an improvement grant is made. The new regulations also provide for the recovery of a grant with interest by the Minister in the event of breach of the conditions and for the conditions ceasing to apply on the voluntary payment of a proportion of any grant paid.

92. Hops—marketing scheme. Hops Marketing Scheme (Amendment) Order, 1948 (No. 642), made under the Agricultural Marketing Act, 1931 (21 & 22 Geo. 5, c. 42), s. 1. This order extends for two years the provisions of the Hops Marketing Scheme, 1932 (No. 505), which expired on March 31, 1948, and authorises the issue of new basic quotas to cover the additional acreage of hops planted under licence in accordance with the Hops (Control of Cultivation) Order, 1940.

93. Horse breeding—licensing of stallions. See §§ 135, 136, 150.

94. Income tax—method of assessment. See the Finance Act, 1948 (11 & 12 Geo. 6, c. 49), ss. 31, 32, § 1654.

95. Injurious weeds—delegation of powers to county borough councils. Injurious Weeds (Delegation to County Borough Councils) Order, 1948 (No. 1135) [E.],

made under the Corn Production Acts (Repeal) Act, 1921 (11 & 12 Geo. 5, c. 48), Sched., para. (6), as amended by the Agriculture Act, 1947 (10 & 11 Geo. 6, c. 48), s. 76 (2). This Order, which came into force on June 14, 1948, delegates to county borough councils the powers of the Minister of Agriculture and Fisheries under the Schedule to the Act of 1921 to serve notices on occupiers of non-agricultural land requiring the cutting down or destruction of the weeds specified therein.

96. **International Institute of Agriculture.** Protocol for the dissolution of the Institute and the transfer of its functions and assets to the Food and Agriculture Organisation of the United Nations (with Annex), Rome, March 30, 1946. (Treaty Series, No. 29, 1948.) Cmd. 7413.
97. **Land Settlement Association.** Arrangements have been made under s. 89 of the Agriculture Act, 1947 (10 & 11 Geo. 6, c. 48), for the smallholdings estates of the Land Settlement Association to be transferred as from April 1, 1948, to the Minister of Agriculture and Fisheries in consideration for the cancellation of the debt of nearly £2 million owing to the Government by the Association. None of the Association's present tenants will be disturbed by the change of ownership. The Association will be able to carry on any other activities in which it may be interested and for which it can provide the necessary funds and will continue to occupy its own premises at 43 Cromwell Road, London, S.W.7: Ministry of Agriculture and Fisheries Press Notice (M. A. F. 2089) dated March 23, 1948.
98. — **executive committee.** Following the appointment of the Land Settlement Association as the agent of the Minister of Agriculture and Fisheries to manage the smallholdings estates transferred to the Minister as from April 1, 1948 (see § 97), a new Executive Committee of Management has been formed consisting of seven members: Ministry of Agriculture and Fisheries Press Notice (M. A. F. 2116) dated May 6, 1948.
99. **Milk—adulteration.** See FOOD AND DRUGS.
100. — **Milk Marketing Board — limitation of actions.** See JONES v. MILK MARKETING BOARD, § 2018.
101. — — **power to operate grass drying centres.** Milk Marketing Board (Modification of Functions) Order, 1948 (No. 829), made under the Defence (Agriculture and Fisheries) Regulations, 1939 (No. 1303), reg. 26, and the Emergency Laws (Miscellaneous Provisions) Act, 1947 (11 & 12 Geo. 6, c. 10). This order authorises the Milk Marketing Board to operate grass drying centres, which their previously existing powers only permitted them to carry on by way of experiment or research.
102. — **transfer of functions.** See §§ 1482, 1483.
103. **Pasture land—power of Minister to give directions.** Agriculture (Special Directions) (Maximum Area of Pasture) Order, 1948 (No. 1795) [E.], made under the Agriculture Act, 1947 (10 & 11 Geo. 6, c. 48), s. 95 (1); came into operation on July 31, 1948; authorises the Minister to give directions as to the maximum area of land which may be maintained on an agricultural unit under pasture or herbage crops. The power so granted is exercisable only during the period ending on December 31, 1950. Under the Agriculture (Special Directions) (Delegation to County Agricultural Executive Committees) Regulations, 1948 (No. 1796) [E.], made under s. 72 of the Act, the above power of the Minister is delegated to county agricultural executive committees.
104. **Ploughing grants.** Claims for compensation may be made by a tenant when permanent pasture sown by the tenant with the consent of the landlord has been ploughed up under an order issued by a county war agricultural committee: Press Notice, dated February 13, 1948 (M. A. F. 2066).
Ploughing grants under s. 3, Emergency Laws (Miscellaneous Provisions) Act, 1947: Press Notice, dated March 4, 1948 (M. A. F. 2076).
Extension to 1948. See SI 1948, Nos. 2856, 2857.
105. **Potatoes—sale to Minister.** See HORN v. MINISTER OF FOOD, § 3364.
106. **Poultry—regulation on sales, exhibitions and movements.** See § 146.

107. **Rating—garage for car used partly for agricultural, partly for private purposes.** See *PARRY v. ANGLESEY ASSESSMENT COMMITTEE*, § 3087.
108. **Sale of agricultural unit.** See the precedents given in 12 *Conveyancer* (N.S.) 341, 342. See also § 59.
109. **Seeds.** Growing of Seed Crops (Control) Order, 1948 (No. 257), providing (as from February 23, 1948) that specified seeds shall only be grown for harvesting under a contract made between a grower and a seedsman licensed by the Minister of Agriculture and Fisheries.
110. **Sugar beet growing—research and education.** See § 3708.
111. **Supervision orders—registration as local land charges.** See § 1874.
112. — **registration of interests with Minister.** Agriculture (Registration of Interests in Land) Regulations, 1948 (No. 194) [E.], made under the Agriculture Act, 1947 (10 & 11 Geo. 6, c. 48), s. 21 (4). Under s. 20 (1) of that Act any notice relating to supervision orders and the giving of directions, which is to be served on an owner or occupier of land under Part II, is duly served if served on an agent or servant of the owner or occupier who is responsible for the control of the management or farming of the land, as the case may be. In one instance, however, a copy of the notice must be served on the owner himself: that is where the notice is connected with a direction to entrust the management of land to a person approved by the Minister, and the owner is entered on a register to be kept by the Minister. The address for service will be the address entered on the register. Owners may apply for entry on the register; and the present Regulations prescribe the manner of such application (Regs. 1 and 3, and Schedule, Pt. I).

Under s. 16 (1) of the Act, the Minister may certify that he is satisfied that the management of land in relation to which a supervision order is in force has not shown satisfactory improvement; whereupon there come into operation the provisions of the Act leading to dispossession of the owner of the land. Similarly, under s. 16 (2), the Minister may certify that it is necessary, in order to secure the proper management of land affected by a certificate under s. 16 (1), that he should also acquire some other land which is being managed by the same owner in conjunction with the first-mentioned land, whereupon the provisions leading to dispossession of the owner also come into operation as regards the additional land. In each case, the Minister may not give a certificate until he has afforded persons concerned (specified in s. 16 (6)) an opportunity of making representations to him, and until he has given these persons notice in writing of the proposal to give the certificate, with information as to the general grounds on which he bases the proposal. The persons specified in s. 16 (6) for the above purposes include, where the land is settled land within the meaning of the Settled Land Act, 1925, any person entered on the register to be kept by the Minister, who is a trustee of the settlement or who under the settlement has a vested interest in the land immediately following upon the interest of the person beneficially entitled to the land in possession, or who being an infant is beneficially entitled to the land in possession. Such persons may apply for entry on the register; and the manner of such application is prescribed by Regs. 2 and 3 of the present Regulations, and Sched., Pt. II.

These Regulations came into operation on March 1, 1948, the date on which Part II of the Act came into operation.

113. **Tithes.** See *TITHES AND TITHE REDEMPTION*.
114. **ARTICLES.** Agriculture orders (founded on the Agriculture Act, 1947): 98 L. J. 143. The Agriculture Act, 1947, s. 86; 205 L. T. J. 160. Agriculture Act, 1947—remedies: 92 S. J. 177. Ministerial powers over agricultural land: *Solicitor*, March, 1948, p. 51. Farm tenant's new security of tenure (founded on Agriculture Act, 1947): 92 S. J. 215. The Agriculture Act, 1947: *Law Notes*, May, 1948, p. 110. Compensation under the Agriculture Act, 1947, for dilapidations, improvements and tenant right: *Solicitor*, May, 1948, p. 100. The Agriculture Act, 1947, by J. Muir Watt: 12 *Conveyancer* (N.S.) 170. Agriculture Act, 1947, and tenancies for less than one year (founded on Agriculture Act, 1947, s. 40, and *Land Settlement Association v. Carr*, [1944] K. B. 657): 92 S. J. 417. The Agriculture Act, 1947—supervision orders: 206 L. T. 85. Further notes on

agricultural tenancy agreements (founded on the Agriculture Act, 1947), by J. Muir Watt: 12 *Conveyancer* (N.S.) 289. The agricultural worker's rent (founded on *Williams v. Smith*, [1934] 2 K. B. 158); 92 S. J. 468. Decontrol by the Agricultural Holdings Act, 1948: 92 S. J. 511. The Agricultural Holdings Act, 1948—variations in rent, notices to quit: 206 L. T. 153.

115. BOOKS PUBLISHED. Borregaard, R.—Agricultural Holdings [6s.]. Cripps, A.—Agriculture Act, 1947 [21s.]. Denman, D. R.—Tenant-Right Valuation and Current Legislation [5s.]. International Journal of Law and Legislation Relating to Food and Agriculture. Half-yearly [2s. 6d. per part]. Sturrock, Ford—Farm Accounting and Management [16s.]. Walmsley, R. C.—Rural Estate Management [37s. 6d.]. Watt, J. Muir—Guide to the Agricultural Holdings Act, 1948 ("Current Law" Guide, No. 5) [6s. 6d.].

ALIENS

116. **Approved ports.** Aliens (Approved Ports) Order, 1948 (No. 66), made on January 19, 1948, amending the list of ports approved for the purposes of the Aliens Order, 1920 (No. 448), by removing certain air ports from and adding others to that list; came into force on January 26, 1948.

Aliens (Approved Ports) (No. 2) Order, 1948 (No. 2248), made under the Aliens Order, 1920, Art. 2 (3), removing certain airports (Poole Harbour and Stansted Mountfitchet) from the list of approved ports.

117. **Bankruptcy—jurisdiction over foreigners out of the country.** See *Re A Debtor*, § 265.

118. **British Nationality Act, 1948 (11 & 12 Geo. 6, c. 56).** This Act replaces the British Nationality and Status of Aliens Acts, 1914 to 1943, and certain other enactments and contains new provisions for citizenship of the United Kingdom and the Colonies. Part I (ss. 1-3) relates to British nationality. Under s. 1 any person who under the Act is a citizen of the U.K. and Colonies or who is a citizen of Canada, Australia, New Zealand, the Union of South Africa, Newfoundland, India, Pakistan, Southern Rhodesia or Ceylon under an enactment of that country has the status of a British subject and may be known either as such or as a Commonwealth citizen. S. 2 relates to citizens of Eire and s. 3 provides for the limitation of criminal liability of citizens of parts of the Empire other than the U.K. and Colonies and deals with the status of citizens of Eire (who are not British subjects) and British protected persons.

Part II (ss. 4-22) deals with citizenship of the U.K. and Colonies. Persons may be citizens of the U.K. and Colonies by birth (s. 4), by descent (s. 5), by registration (ss. 6-9), by naturalisation (s. 10 and Sched. II), or by incorporation of territory (s. 11). Ss. 12-18 contain transitional provisions. Under s. 12 any person who was a British subject immediately before the commencement of the Act becomes a citizen of the U.K. and Colonies subject to certain qualifications. S. 13 and Sched. III deal with British subjects whose citizenship has not been determined at the commencement of the Act. Under s. 14 a woman who, having married before the commencement of the Act, thereupon ceased to be a British subject is deemed for the purposes of the Act to have been a British subject immediately before the commencement of the Act. S. 18 deals with applications for naturalisation pending at the commencement of the Act. Ss. 19-22 deal with renunciation and deprivation of citizenship.

Part III (ss. 23-34) contains supplemental provisions. S. 23 deals with legitimated children and s. 24 with posthumous children. S. 27 relates to evidence. S. 28 prescribes penalties for making false statements, etc., for the purpose of procuring anything to be done or not to be done under the Act and for failing to comply with any requirement of any regulations as to the delivery up of certificates of naturalisation. S. 30 gives power by order to specify protectorates and protected States for the purposes of the Act. Colonies, for the purposes of the Act, include the Channel Islands and the Isle of Man (s. 33). The Act came into force on January 1, 1949 (s. 34 (2)).

119. **British Nationality Regulations, 1948.** British Nationality Regulations, 1948 (No. 2721), made under the British Nationality Act, 1948 (11 & 12 Geo. 6, c. 56), s. 29 (1); came into operation on January 1, 1949. These Regulations contain five Parts. Part I prescribes the forms of application for registration as a citizen

of the United Kingdom and Colonies under ss. 6 (1) and (2), 7 (1) and 12 (6) of the Act and makes other provision with respect to such registration. Part II relates to applications for, and certificates of, naturalisation and declarations of intention to resume British nationality. Part III deals with renunciation and deprivation of citizenship of the United Kingdom and Colonies. Part IV contains supplementary provisions. [4*d.*]

120. **Burmese citizens.** Aliens (Exemption) (Burma) Direction, 1948 (No. 34), dated January 14, 1948, made under the Aliens Order, 1920 (No. 448), art. 14, exempts persons who ceased to be British citizens and became citizens of Burma on January 4, 1948, under the Burma Independence Act, 1947 (11 & 12 Geo. 6, c. 3), s. 2 (1), from the requirements of art. 1 (leave to land, etc.) and art. 6 (registration).
Burma Independence (Retention of British Nationality) Regulations, 1948 (No. 1649), dated July 14, 1948, made under the Burma Independence Act, 1947, s. 2 (2). These Regulations prescribe the manner of making and registering declarations of election to retain British nationality.
121. **Canada—citizenship.** Citizenship Law (Canada) Order, 1948 (No. 2779), made under the British Nationality Act, 1948 (11 & 12 Geo. 6, c. 56), s. 32 (8); came into operation on January 1, 1949. The Order provides that the enactment of the Legislature of Canada intituled the Canadian Citizenship Act (10 Geo. 6, c. 15) is declared to be an enactment making provision for citizenship in Canada and to have taken effect on January 1, 1947.
122. **Ceylon—citizenship.** Citizenship Law (Ceylon) Order, 1948 (No. 2780), made under the British Nationality Act, 1948 (11 & 12 Geo. 6, c. 56), s. 32 (8); came into operation on January 1, 1949. The Order provides that the enactment of the Legislature of Ceylon intituled the Citizenship Act, No. 18, of 1948, is declared to be an enactment making provision for citizenship of Ceylon and to have taken effect on November 15, 1948.
123. **Company directors.** See § 234.
124. **Domicil—acquisition of—residence permissive only.** See *ZANELLI v. ZANELLI*, § 557.
125. **Eire—citizenship.** The Eire Government on January 1, 1949, made two Orders giving to citizens of the United Kingdom, the British Colonies and New Zealand rights in Eire similar to those enjoyed by the citizens of Eire resident in Great Britain. This coincides with the coming into operation of the British Nationality Act, 1948, § 118.
126. **Enemy alien—deprivation of nationality by decree of enemy state.** (Patents and Designs Acts, 1907 to 1946, s. 18 (6).) It is well established by the authority of *R. v. Home Secretary, ex p. L.*, [1945] K. B. 7, that "the Courts of this country will not in time of war recognise any change of nationality brought about by a decree of an enemy state, which purports to turn any of its subjects into a stateless person or a subject of a neutral state".
The plaintiffs were two German Jews who had come to England in 1933 with the intention of residing permanently here. A decree, which was enacted by the German government in 1941, provided that Jews who were ordinarily resident in a foreign country at the date of the coming into force of the decree should lose their German nationality. The plaintiffs now contended that as a result of the German decree of 1941 they had ceased to be German nationals and had become stateless and that in consequence thereof they did not come under the proviso in s. 18 (6) of the Patents and Designs Acts, 1907 to 1946, which deprived the subjects of a foreign state with whom His Majesty was at war of the right to apply for an order extending a patent belonging to them. Held, the plaintiffs' claim, which was founded on a change of nationality brought about by the decree in 1941, should be dismissed: *LOWENTHAL v. ATT.-GEN.*, [1948] W. N. 66; [1948] 1 All E. R. 295, *Romer, J.* (following *R. v. Home Secretary, ex p. L.*, *supra*).
127. — **forfeiture clause in will.** See *Re HATCH*, §§ 3734, 3889.
128. — **trading with the enemy.** See *TRADING WITH THE ENEMY*.
129. **Northern Rhodesia—certificates of naturalisation.** Northern Rhodesia Naturalisation Orders in Council (Revocation) Order in Council, 1948 (No. 2793), came

into operation on January 1, 1949, revokes the Northern Rhodesia Naturalisation Orders in Council of 1914 (No. 1181) and 1928 (No. 890). This is consequent upon the British Nationality Act, 1948, under which the Governor of Northern Rhodesia will be able to grant Imperial certificates of naturalisation to aliens resident in the territory.

- 130. Palestinian citizens.** Aliens (Restrictions) (Palestinian Citizens) Directions, 1948 (No. 1015), made under the Aliens Order, 1920 (No. 448), Art. 17, para. (2), revoking a direction dated September 24, 1943 (No. 1399), relating to Palestinian citizens.
- 131. Polish forces.** Aliens (Restriction) (Polish Resettlement Forces) Direction, 1948 (No. 205), made under the Aliens Order, 1920 (No. 448), art. 22 (2), as amended, provides that the provisions of art. 22 (2) of that Order (by which certain aliens are deemed not to be aliens for the purposes of any provision having effect by virtue of that order) are not to have effect in relation to any member of the Polish Resettlement Forces who is on leave for more than sixteen days.
- 132. — employment.** Aliens (Employment) (Polish Resettlement Forces) Order, 1948 (No. 212), made under the Aliens Order, 1920, art. 11. This order, which applies to members of the Polish Resettlement Forces who are on leave for more than sixteen days or have been released from service or have been members of those forces, provides that no such alien is to become, or continue to be, engaged in any business, profession or occupation, otherwise than in the service of an employer, in the U.K. without the permission of the Secretary of State. Exemption may be granted in certain circumstances. The order came into force on February 16, 1948.

Aliens (Employment) (Polish Forces) Order, 1948 (No. 1263), restricts the employment of ex-members of certain Polish forces.

- 133. — “recalcitrant Poles”.** In *R. v. Kosciukiewicz, R. v. Ulatowski* (November 9, 1948); the Court of Criminal Appeal (Lord Goddard, C.J., Humphreys and Lewis, JJ.), held that two “recalcitrant Poles”, i.e., former members of the Polish Army in England who had declined all the alternative offers made to them, namely, to emigrate, be repatriated, join the Polish Resettlement Corps, or take work under the direction of the Ministry of Labour, were rightly convicted of contravening art. 6 of the Aliens Order, 1920, by failing to register as aliens. S. 9 (8) of the Polish Resettlement Act, 1947, showed that the appellants, in consequence of the refusal of the Polish Government any longer to recognise Polish soldiers in England as belonging to the Polish army, thereupon became aliens liable to register apart from their subsequent purported formal discharge from the Polish army in England and irrespective of the validity or otherwise of that discharge. [*Reported by R. C. Calburn, Esq., Barrister-at-Law.*] See also [1948] W. N. 443; 92 S. J. 648.
- 134. Race discrimination—restrictive covenant.** [Can.] See *McAleer v. Desjardine*, § 3824.

ANIMALS

- 135. Animals Act, 1948 (11 & 12 Geo. 6, c. 35).** This Act is divided into two main parts. Part I (s. 1) extends the period during which payments may be made under the Agriculture Act, 1937 (1 Edw. 8 & 1 Geo. 6, c. 70), s. 20 (1), in connection with the eradication of bovine tuberculosis. Part II (ss. 2–13) deals with the licensing of stallions. S. 2, which replaces s. 1 of the Horse Breeding Act, 1918 (8 & 9 Geo. 5, c. 13), makes it unlawful for any person to keep a stallion over the prescribed age without a licence or permit (subject to certain exceptions). Ss. 3, 4 and 5 deal with the powers of the Minister as to the granting and refusing of licences and permits. S. 6 contains provisions as to the marking of stallions; and s. 7 relates to the power of the Minister to order the slaughter or castration of stallions. S. 8 deals with the time within which applications for licences must be made and with the duration of licences and permits. S. 9 lays down certain presumptions arising in any proceedings for a contravention of certain provisions of the Act or of the 1918 Act, and also sets out certain defences available to persons charged with such a contravention. This

Part of the Act is to come into operation on a date to be appointed by the Minister (s. 13 (1)).

136. — **commencement.** Animals Act (Commencement) Order, 1948 (No. 2676), made under s. 13 (1); provided that Part II of the Act (as to licensing of stallions) was to come into operation on January 1, 1949.
137. **Artificial insemination.** Agriculture (Artificial Insemination) (Financial Matters) (England and Wales) Regulations, 1948 (No. 71), made under the Agriculture (Artificial Insemination) Act, 1946 (9 & 10 Geo. 6, c. 29), s. 4. These regulations make provision with regard to grants payable under the Act in respect of losses incurred between 1945 and 1950 in the operation in certain centres for the artificial insemination of cattle. [3d.]
138. **Cattle.** See also AGRICULTURE.
139. — **auction sale of pedigree bull—damages for breach of warranty.** See *BUNTING v. TORY*, § 811.
140. — **dishorning.** Animals (Anæsthetics) Act, 1919, Amending Order of September 13, 1948 (No. 2833), made under s. 3 of the Animals (Anæsthetics) Act, 1919 (9 & 10 Geo. 5, c. 54), transfers from the Third to the Sixth Schedule to the Act, the operation of dishorning cattle over one month old so as to permit cattle over one month old to be subjected to the operation of dishorning whilst under the influence either of a general or a local anæsthetic of sufficient power to prevent the animal from feeling pain.
The foregoing order came into operation on January 1, 1949: see the Animals (Anæsthetics) Act, 1919 Amending Order of September 13, 1948 (Commencement) Order, 1948 (No. 2834).
141. — **trespass.** See *CORDINGLEY v. GREAT WESTERN RY.*, § 281; [Cty. Ct.] *COOKE v. SKINNER*, § 153; [Cty. Ct.] *MORRIS v. CURTIS*, § 154.
142. **Dangerous animals—liability of persons keeping.** See *PEARSON v. COLEMAN BROTHERS*, § 2481.
143. — — **dog killing child.** [S.A.] See *R. v. EUSTACE*, § 744.
144. **Diseases of animals—dogs and cats.** Importation of Dogs and Cats (Amendment) Order, 1948 (No. 771), made under the Diseases of Animals Acts, 1894 to 1937; came into operation on May 1, 1948; revoked the Importation of Dogs and Cats (Amendment) Order, 1945 (No. 949). The order revoked enabled duly authorised military officers to issue licences for the landing of dogs belonging to members of the military forces.
145. — **functions of council of Scilly Isles.** See § 2082.
146. — **poultry—regulation of sales, exhibitions and movements.** Live Poultry (Regulation of Sales, Exhibition and Movements) (No. 3) Order, 1948 (No. 1970), made under the Diseases of Animals Acts, 1894 to 1937; came into operation on September 1, 1948; revoked and re-enacted with modifications the Live Poultry (Regulation of Sales, Exhibitions and Movements) (No. 2) Order, 1948 (No. 1115), which revoked and re-enacted with modifications the Live Poultry (Regulation of Sales, Exhibitions and Movements) Order, 1948 (No. 333) [2d.]. Further areas were added to the areas specified in the Schedule to the above Order by the Live Poultry (Regulation of Sales, Exhibitions and Movements) (No. 3) (Amendment) Order, 1948 (No. 2009).
147. — **sheep scab.** Sheep Scab (Amendment) Order, 1948 (No. 83), made under the Diseases of Animals Acts, 1894 to 1937, providing that where an approved dip of the new type is used only one dipping is required instead of two as required by the Sheep Scab Order, 1938 (No. 196). The new order contains amended forms of notice, licence and declaration. [3d.]
148. — **warble fly on cattle.** Warble Fly (Dressing of Cattle) Order, 1948 (No. 423), made under the Diseases of Animals Acts, 1894 to 1937. This Order requires the owner or person in charge of any cattle visibly infested with maggots of the warble fly to dress such cattle periodically between March 15 and June 30 in each year with a preparation of derris powder and soap.
149. **Hill cattle and sheep.** See AGRICULTURE.

150. **Horse breeding.** Horse Breeding Rules, 1948 (No. 2677), made under the Horse Breeding Act, 1918 (8 & 9 Geo. 5, c. 13), s. 9, as amended by the Animals Act, 1948 (11 & 12 Geo. 6, c. 35); came into operation on January 1, 1949; replace the existing regulations as to the licensing of stallions. [3d.] See also §§ 135, 136.
151. **Pheasants—liabilities of sporting right owner in respect of excessive number.** See *SELIGMAN v. DOCKER*, § 1519.
152. **Slaughtering—licensing of knackers' yards.** See § 1480.
153. **Trespass—cattle straying from common.** [Cty. Ct.] In *COOKE v. SKINNER* (1947), 98 L. J. 38, Judge Kingsley Griffith held commoners liable for the damage done to the plaintiff's crops by the escape of their sheep from the common on to the plaintiff's land through gaps in the boundary hedge or from a highway running through the common.
154. — **cattle straying from highway.** [Cty. Ct.] In *MORRIS v. CURTIS*, [1947] L. J. N. C. C. R. 284, Judge A. H. Armstrong held that the proposition that the owner of lands adjoining a highway is responsible for fencing or otherwise keeping animals from his own land is applicable only in the case where the animals are lawfully passing upon the highway, that is, normally, when they are being driven. It does not apply where the animals are straying and therefore trespassing upon the highway.
155. — **cattle straying on railway line.** See *CORDINGLEY v. GREAT WESTERN RY.*, § 281.
156. — **pigeons—right of property.** The question whether a bird or an animal is larcenable is wholly distinct from the question whether a right of property may subsist in it for the purposes of maintaining a civil action. Thus, the authorities of *Bracton* and of *Blackstone's Commentaries*, Vol. II, at p. 391, establish that the owner of tamed or reclaimed pigeons continues to have property in and possession of his birds after they have flown from his dovecote, so long as the birds retain in fact an *animus revertendi* to his control. In case of interference with this right of property the proper form of action is that of trespass to goods: *HAMPS v. DARBY*, [1948] 2 K. B. 311; 64 T. L. R. 440; [1948] 2 All E. R. 474, C. A. (criticising note to *Dewell v. Sanders* (1619), Cro. Jac. 490; doubting *Taylor v. Newman* (1863), 4 B. & S. 89). (See also § 157.)
157. — — **right to kill.** The test laid down by the Court of Appeal in *Cresswell v. Sirl*, [1947] C. L. Y. 94, as to when a person is justified in destroying an attacking dog also applies to the destruction of other animals in the possession and proprietorship of another, such as pigeons. Thus, in a case where the defendant shot at and killed four homing pigeons belonging to the plaintiff whilst they were feeding on the defendant's peas in the latter's field, it was held that the finding of the county court Judge to the effect that the defendant was liable in damages because he failed to establish either limb of proposition No. 2 stated in *Cresswell v. Sirl*, *supra*, i.e., "he entirely failed to establish shooting as the only practicable means", could not be disturbed. See *HAMPS v. DARBY*, § 156 (applying *Cresswell v. Sirl*, *supra*).
158. **Veterinary Surgeons Act, 1948.** See § 2211.
159. **Wild birds protection.** Orders made under the Wild Birds Protection Acts: SI 1948, Nos. 137 (Durham); 317 (East Suffolk); 330 (Parts of Holland); 331 (Grimsby); 347 (Carlisle); 373 (Gloucester); 395 (Bedford County); 396 (Derby County); 409 (Dorset); 626 (Sheffield); 646 (Cheshire); 647 (Parts of Kesteven); 657 (Salford); 757 (Walsall); 859 (Glamorganshire); 927 (Cardiganshire); 1016 (Soke of Peterborough); 1033 (Sunderland); 1081 (County of London); 1182 (East Riding); 1183 (Somerset); 1203 (Lincoln); 1650 (Croydon); 1651 (Middlesex); 1955 (Norfolk); 1987 (Northumberland); 2026 (Cornwall); 2051 (Huntingdonshire); 2177 (Blackburn); 2178 (Smethwick); 2296 (Cardiff); 2325 (North Riding); 2549 (Hertfordshire).
160. **ARTICLES.** Animals on and off the highway (founded on *Searle v. Wallbank*, [1947] C. L. Y. 96): *Solicitor*, February, 1948, p. 40. Liability for domestic animals: 92 S. J. 440. Pigeon pie (pigeons, right of property, right to kill; founded on *Hamps v. Darby*, § 156): 92 S. J. 624.

ANNUITIES AND RENTCHARGES

- 161. **Death duties—continuing annuities.** See § 838.
- 162. **Free of tax annuities—res judicata.** See *Re* WARING, § 1302; *Re* KOENIGSBERG, § 1303.
- 163. **Loan distinguished from annuity.** See *I. R. C. v. Wesleyan and General Assurance Society*, § 1681.
- 164. **Public Trustee's income fee payable out of annuities.** See *Re* EVANS, *PUBLIC TRUSTEE v. GAUSBY*, § 3414.
- 165. **Satisfaction—gift by deed and by will.** See *Re* VAN DEN BERGH'S WILL TRUSTS, § 3920.
- 166. **Tithe annuity.** See TITHES AND TITHE REDEMPTION.

ARBITRATION

- 167. **Agricultural holding.** See § 32.
- 168. **Arbitration clause—frustration of contract.** [Scot.] In *MAURITZEN v. BALTIC SHIPPING Co.*, 1948 S. L. T. 300, the Court of Session (Lord Blades) held that an arbitration clause which provided for the reference to arbitration of "any dispute arising under this contract" covered a dispute between the parties as to whether the performance of the contract had been frustrated. (*Heyman v. Darwins*, [1942] A. C. 356, applied.)
- 169. — **rules of society.** See *JUDSON v. ELLESMERE PORT EX-SERVICEMEN'S CLUB*, § 1698.
- 170. **Arbitrator—misconduct—introduction of evidence not adduced by parties.** (County Courts Act, 1934 (24 & 25 Geo. 5, c. 53), s. 89.) It is misconduct within the meaning of that word as used in relation to arbitrations if the arbitrator introduces into the proceedings evidence other than that adduced by the parties.

In an arbitration held under the provisions of s. 89 of the County Courts Act, 1934, the Registrar of a county court took cognisance of facts of which he was aware through having been the Registrar in the bankruptcy of the defendant's son, the issue in the arbitration being whether or not the defendant and his son were in partnership. The county court Judge refused an application by the defendant under the proviso to the section to set aside the award, intimating that he had informed himself of what the Registrar had taken into account. Held, on appeal, it made no difference whether the Registrar put a file relating to the bankruptcy of the son in evidence or made use of it or whether he made use of his knowledge of the previous proceedings without consulting a file because in either event he would have introduced evidence into the proceedings other than that adduced by the parties, and, consequently, the award should be set aside: *OWEN v. NICHOLL*, [1948] W. N. 138; [1948] 1 All E. R. 707, C. A. (See also § 685.)

- 171. — **mistake—remission.** (Arbitration Act, 1889 (52 & 53 Vict. c. 49), s. 10.) In *THE MELLO, THE NEREUS* (1948), 81 Ll. L. R. 230, Sellers, J., on an application made at the request of the arbitrator for a remission on the ground that the arbitrator had made a mistake in the form of words of the award, remitted the matter to the reconsideration of the arbitrator under s. 10 of the Arbitration Act, 1889.
- 172. — **special knowledge.** It is well settled that where parties select an arbitrator, or agree to arbitrate under the rules of a chamber of commerce under which the arbitrator is appointed for them, and the arbitrator is chosen or appointed because of his knowledge and experience of the trade, such arbitrator can always act on his own knowledge with regard to questions of quality and matters of that description without having expert evidence on these matters before him. The same principle applies where such arbitrator decides a question of damages.

The sellers agreed to sell to the buyers certain textile goods, which subsequently the buyers refused to accept alleging that the goods were not up to sample, unmerchantable and unfit for the purpose for which they were supplied. The

parties agreed to submit their dispute to arbitration in accordance with the rules of the Manchester Chamber of Commerce. Rule 1 of the rules of the Chamber provides for the determination and settlement of any dispute by commercial men of experience and special knowledge of the subject-matter. The sellers in their claim asked for the price of the goods. The arbitrator found that they were future goods and that the property had not passed so the sellers were entitled to the goods; that the buyers had committed a breach of contract in not accepting the goods; and that the sellers were entitled to a certain sum by way of damages for non-acceptance. The buyers sought to set aside the award on the grounds that (1) as the sellers had claimed the price of the goods the arbitrator had no power to award damages, and that (2) as neither side had tendered evidence with regard to damage, the arbitrator had no material before him on which he could fix the amount which the sellers were entitled to receive. Held, (1) because the sellers had put forward a claim on a wrong basis it was impossible to say that the arbitrator was not entitled to award compensation on the true basis; and (2) as the parties had chosen the arbitrator because of his special knowledge of their own trade, the arbitrator in this case could act on his knowledge and experience without having expert evidence before him: *MEDITERRANEAN AND EASTERN EXPORT CO. v. FORTRESS FABRICS (MANCHESTER)*, [1948] W. N. 244; [1948] L. J. R. 1536; [1948] 2 All E. R. 186, Lord Goddard, C.J. (applying *Wright v. Howson* (1888), 4 T. L. R. 386; *Eads v. Williams* (1854), 4 De G. M. & G. 674; and *Jordan & Co. v. Stora, etc., Aktiebolag* (1931), 41 Ll. L. R. 201, distinguishing *Owen v. Nicholl*, § 170). (See also § 174.)

173. — — workmen's compensation. See *REYNOLDS v. LLANELLY, ETC.*, § 3966.

174. Award—grounds on which Court upholds or sets aside. “The modern tendency is, in my opinion, more especially in commercial arbitrations, to endeavour to uphold awards of the skilled persons that the parties themselves have selected to decide the questions at issue between them. If an arbitrator has acted within the terms of his submission and has not violated any rules of what is so often called natural justice the Courts should be slow, indeed, to set aside his award”: *per* Lord Goddard, C.J., in *MEDITERRANEAN AND EASTERN EXPORT CO. v. FORTRESS FABRICS (MANCHESTER)*, § 172.

175. — — workmen's compensation. See *DYDE v. NATIONAL COAL CO.*, § 3976.

176. Electricity. See § 1103.

176a. Employment. See §§ 1234, 1250, 1265.

177. Limitation Act, 1939—application to arbitration. See *PEGLER v. RAILWAY EXECUTIVE*, § 2004.

ARMED FORCES

178. Army and Air Force (Annual) Act, 1948 (11 & 12 Geo. 6, c. 23). This Act, by s. 2, makes the usual provision continuing the Army Act and the Air Force Act in force for another year. S. 3 inserts a new para. (2A) in s. 45 of the Army Act, as to the powers of arrest of provost marshals, etc., thus making permanent the provisions of the Defence (Armed Forces) Regulations, 1939, reg. 9 (1), which was continued in force until December 31, 1948, by the Emergency Laws (Miscellaneous Provisions) Act, 1947 (10 & 11 Geo. 6, c. 10). S. 4 substitutes as from July 5, 1948, a new section for s. 91 of the Army Act as to the discharge of soldiers of unsound mind so as to adapt that section to the changes in the law effected by the National Health Service Act, 1946 (9 & 10 Geo. 6, c. 81), the National Health Service (Scotland) Act, 1947 (10 & 11 Geo. 6, c. 27), and the National Assistance Act, 1948 (11 & 12 Geo. 6, c. 29). Sub-s. (4) of the section enables the new provisions of s. 91 to operate in connection with future Northern Irish legislation. S. 5 inserts a new sub-s. (2A) in s. 144A of the Army Act so as to enable orders or decrees for maintenance to be enforced if they were made before the coming into operation of the Army and Air Force (Annual) Act, 1947 (10 & 11 Geo. 6, c. 25), by s. 4 of which the provisions of s. 145 of the Army Act as to maintenance liabilities were applied to officers. S. 6 amends s. 158 (1) of the Army Act as to the liability of a person who has ceased to be subject to military law to be tried by court martial by inserting the words “or unless the offence was committed outside the United Kingdom and is an offence which when

committed in England is punishable by the law of England, and the Attorney-General consents to the trial". S. 7 is consequential on the adoption by the Parliament of New Zealand of ss. 2-4 of the Statute of Westminster, 1931. S. 8 applies to the Air Force Act the amendments made by ss. 3 to 6 in the Army Act. S. 9 extends the power under s. 68 of the Army Act to commit military offenders to air force detention barracks, so as to enable such offenders to be committed to air force corrective establishments established under s. 12 of this Act. S. 10 removes the requirement of s. 83 of the Army Act for the soldier's consent to a transfer outside his corps except where his attestation, or, if he has extended his service or has been re-engaged, the extension or re-engagement, took place before the coming into operation of the Act. S. 11, which deals with deductions from pay, clarifies the position of officers of the air force attached to, or seconded for service with, the army, and brings them into line with airmen, by making it clear that orders for deductions from pay in respect of maintenance liabilities must be made by authority of the Air Council. S. 12 enables the rules under s. 132 of the Air Force Act governing detention barracks to provide for the committal of offenders to a new type of establishment, to be known as an air force corrective establishment. S. 13 makes provision in relation to the air force corresponding with the provision made by s. 11 for the army. S. 14 and the Schedule make numerous verbal alterations and repeals in the Army Act and the Air Force Act consequential on the passing of the Indian Independence Act, 1947 (10 & 11 Geo. 6, c. 30).

The above amendments to the Army Act and Air Force Act (except that effected by s. 4) took effect from April 30, 1948 (s. 2 (2)).

179. **Army and Air Force (Women's Service) Act, 1948 (11 & 12 Geo. 6, c. 21).** This Act provides by s. 1 that the power of His Majesty to raise and maintain land and air forces is to include power to raise and maintain forces consisting of or including women. S. 2 enables women to hold commissions in the land or air forces; and s. 3 makes provision for the application and adaptation of the Army and Air Force Acts and other enactments to women. The Act does not, however, render a woman liable to be called up for service under the National Service Acts, 1939 to 1947 (s. 4). The Act is to come into operation on a day to be appointed by Order in Council (s. 5).
180. **Chile — military service.** Agreement between the Government of the United Kingdom and the Government of Chile concerning military service. Santiago, October 27, 1948. (Treaty Series No. 83, 1948.) Cmd. 7580.
181. **Criminal offences.** Home Office Circular No. 280/1947, dated December 30, 1947, outlines the change in procedure for dealing with members of the armed forces who commit criminal offences, consequent upon the changes in the Defence (Armed Forces) Regulations, 1939, referred to in [1947] C. L. Y. 137.
182. **Court martial—after release from military duty.** (Army Act, ss. 158 (1), 190 (8); Royal Warrant for Pay, Appointment, Promotion and Non-Effective Pay of the Army, 1940, Art 21; Army Order 83 of 1945).

The applicant, who had held an emergency commission, was released from military duty under Army Order 83 of 1945. More than three months after his release he was arrested, tried and sentenced by a court martial on charges of fraudulent conversion. He now applied for a writ of habeas corpus. Held, the applicant was not, at the time either of his arrest or of his trial, an officer of the regular forces on the active list and so was not subject to military law within the meaning of s. 158 (1) of the Army Act. Consequently, a writ of habeas corpus should issue: *R. v. GOVERNOR OF WORMWOOD SCRUBS PRISON, ex p. BOYDELL*, [1948] 2 K. B. 193; [1948] L. J. R. 1327, D. C. [But see §§ 178, 183, 713.]

183. — **officer on release (demobilisation) leave.** (Army Act, s. 175.) So long as an officer is receiving full pay, he is an officer on the active list and therefore subject to military law under the provisions of s. 175 of the Army Act.

The applicant, an army officer, had been sent on release (demobilisation) leave. Ten days later his leave was suspended, he was ordered to return to Rome, placed under close arrest, and court-martialled and convicted of offences under the Larceny Acts. He applied for an order of certiorari to have his conviction quashed on the ground that he was not at the time of his arrest and trial subject to military law. Held, so long as the applicant was on release leave he was

receiving full pay, and so long as he was receiving full pay he was an officer on the active list and as such liable to military law under the provisions of s. 175 of the Army Act. Consequently, the application had to be refused: *R. v. SECRETARY OF STATE FOR WAR*, *ex p. PRICE*, [1949] 1 K. B. 1; 64 T. L. R. 528; 92 S. J. 588, D. C. (distinguishing *R. v. Governor of Wormwood Scrubs Prison*, *ex p. Boydell*, § 182). (See also § 184.)

184. — **sitting out of jurisdiction — jurisdiction for ordering certiorari.** *Quære*: whether the High Court in England has jurisdiction to grant a writ of certiorari to bring up and quash the proceedings of a court martial sitting out of the jurisdiction, and whether the position is different if a court martial is held in a place where there are no civil Courts to which a man can apply if he is a British subject and be tried before a Court consisting of British subjects and under a British Act of Parliament. *Quære further*: whether the Court will grant certiorari where there has been great delay. See *R. v. SECRETARY OF STATE FOR WAR*, *ex p. PRICE*, § 183 (considering *Re Mansergh* (1861), 1 B. & S. 400).
185. **Defence (Armed Forces) Regulations, 1939.** Regs. 9, 10B, expired on December 31, 1948: Emergency Laws (Miscellaneous Provisions) Act, 1947 (11 Geo. 6, c. 10), Sched. I, Part II. (See also §§ 181, 186.)
186. **Deserters.** Home Office Circular No. 280/1947, dated December 30, 1947, outlines the change in procedure for dealing with members of the Army or R.A.F. or visiting forces who are deserters or absent without leave, consequent upon the changes in the Defence (Armed Forces) Regulations, 1939, referred to in [1947] C. L. Y. 137.
187. **Judge Advocate-General.** The first interim recommendation of the Army and Air Force Courts Martial Committee, 1946 (Chairman: Mr. Justice Lewis) (see [1947] C. L. Y. 135) has been approved and the Judge Advocate-General will in future be appointed on the Lord Chancellor's recommendation and will be responsible to him instead of to the Secretaries of State for War and Air. The Judge Advocate-General's department's functions will be confined to those of a judicial character, and the work of pre-trial advice and prosecution will be transferred to the service directorates. An announcement to this effect was made by the Secretary of State for War in the House of Commons on September 21, 1948.
188. **Maintenance—liability of army and air force officers.** See §§ 178, 973.
189. **National insurance.** See §§ 2334, 2335, 2390.
190. **National service — calling-up regulations.** National Service (Miscellaneous) Regulations, 1948 (No. 2683), made under the National Service Act, 1948, ss. 7–10, 12, 13, 17–22 and 32; came into operation on January 1, 1949. These regulations consolidate the National Service (Miscellaneous) Regulations, 1939 to 1942, the National Service (Postponement Certificates) Regulations, 1939 to 1941, and the National Service (Early Registration and Calling Up) Regulations, 1947. They deal with the procedure for calling up men into the armed forces, the postponement of such service in certain cases and other matters in connection therewith. [6d.]
191. — **counting for pension purposes.** See § 2656.
192. — **decision by the umpire.** (National Service Acts, 1939–47.) An appeal was dismissed against the granting of a postponement certificate to enable the applicant to sit the entrance examination of the Library Association because the applicant, having been a full-time member of the staff of an approved library for over a year (such employment being a pre-condition of eligibility for the examination) and being thus in the position of an apprentice or student, would have suffered exceptional hardship if the postponement had not been granted, his practical experience being an integral part of the examination preparation: Decision 183/48 (N.S.) (March 18, 1948), N. S. Code 2, Pamphlet No. 1/48.
193. — **National Service Act, 1948 (11 & 12 Geo. 6, c. 64).** This Act reproduces, without amendment, the law contained in the National Service Acts, 1939 to 1947, and so much of the law contained in the Reinstatement in Civil Employment Act, 1944 (7 & 8 Geo. 6, c. 15), as relates to persons called up for service after December 31, 1948.

194. — **National Service (Amendment) Act, 1948 (12 & 13 Geo. 6, c. 6).** This Act amends the National Service Act, 1948, by substituting 18 months for 12 months as the term of whole-time service for which a person is liable to be called up under Part I of that Act (s. 1), and by substituting 5½ years for 7 years as the aggregate of the terms of whole-time and part-time service to be served under that Act (s. 2). The new Act also makes an amendment to the principal Act with respect to medical and dental practitioners, which does not, however, affect their general position as regards service under the Act.
195. — **refusal to submit to medical examination.** See *R. v. GREEN*, § 758.
196. — **1929 class.** For particulars as to call-up and deferment of the 1929 class, see *Ministry of Labour Gazette*, January, 1948, p. 11.
197. **Navy—auxiliary personnel—war pensions.** See § 2663.
198. — **colonial naval defence—Mauritius.** Mauritius Naval Defence Order, 1948 (No. 1339), made under the Colonial Naval Defence Act, 1931 (21 Geo. 5, c. 9), approving the exercise of the power of the Legislature of Mauritius to provide for the maintenance and use of vessels of war and to make certain provisions as to the officers and men of the Mauritius Naval Volunteer Force.
199. **Pensions.** See PENSIONS AND SUPERANNUATION.
200. **Polish resettlement forces.** See §§ 131–133.
201. **Recall of Army and Air Force Pensioners Act, 1948 (12 & 13 Geo. 6, c. 8).** This Act makes Army and Air Force pensioners liable in certain circumstances to be recalled for service in the same way as naval service pensioners are already liable to recall under the Naval Volunteers Act, 1853 (16 & 17 Vict. c. 73). The pensioners so liable are those whose pensions have been assessed or re-assessed in accordance with provisions made after the passing of the Act other than those whose pensions were originally granted before September 3, 1939, and certain other pensioners, including ministers of religion, certain mental defectives and blind persons, mentioned in the Schedule to the Act (s. 1 (2)). Liability ceases at the age of 60 (s. 1 (4)). Other provisions of this short Act relate to the occasion for and period of recall, the procedure for recall and the financial position of recalled pensioners (who will receive both full pay and pension).
202. **Reinstatement in civil employment.** See § 1267.
203. **Royal Marines Act, 1948 (11 & 12 Geo. 6, c. 25).** This Act provides for the establishment of a Volunteer Reserve of Royal Marines and makes certain amendments in the law relating to engagements of Royal Marines. The new reserve is to be known as the Royal Marine Forces Volunteer Reserve (s. 1 (1)), and will count as an auxiliary force within the meaning of the National Service Act, 1947 (10 & 11 Geo. 6, c. 31) (s. 1 (3)). By s. 2 power is given to make it a condition of service for Marines that after a specified period of service in the Royal Marines they shall be liable to serve the remainder of their term in the Royal Fleet Reserve.
204. **Service abroad—residence and domicil.** See *LORD INCHQUIN v. I. R. C.*, § 1664; [*S.A.*] *Ex p. GLASS*, § 555; [*S.A.*] *NICOL v. NICOL*, § 556.
205. **Territorial Army—territorial association, application of Rent Acts to.** See *LONDON COUNTY TERRITORIAL AND AUXILIARY FORCES ASSOCIATION v. NICHOLS*, § 3157.
206. **Soldier's will.** See *Re WINGHAM*, § 3944.
207. **Women's services.** See § 179.
208. **ARTICLES.** The military justice system: 205 L. T. J. 16, 45, 47, 87, 115. Reform of procedure in trials before courts martial and military courts: *Solicitor*, March, 1948, p. 64. The Judge Advocate General: 92 S. J. 566.

ATOMIC ENERGY

209. **Radioactive substances—conveyance by road.** See § 2704.
210. — **Radioactive Substances Act, 1948 (11 & 12 Geo. 6, c. 37).** The principal object of this Act is to protect the health of workpeople and the public from the effects of undue exposure to the radiations emitted by radioactive substances, both

natural and artificial, and by certain types of apparatus. Thus the Act provides machinery for the control of the import and export and of the sale and supply of these substances (ss. 2, 3), and for control of the use of irradiating apparatus for therapeutic purposes (s. 4). It also provides for the making, by Regulations, of codes of safety precautions to be observed in premises in which radioactive substances or apparatus are used (s. 5). S. 6 provides for the setting up of an Advisory Committee; and the remainder of the Act deals with powers of entry and inspection, offences and penalties, expenses and other incidental matters. The Act extends, with modifications, to Scotland (s. 13) and to Northern Ireland (s. 14). It received the Royal Assent on June 30, 1948.

AUCTIONEERS AND VALUERS

- 211. Auctioneer's right to sue for price.** There can be no doubt that an auctioneer, for the purpose of enforcing his right to receive the purchase price, can sue in his own name as for goods sold and delivered or bargained and sold, and this is so even where he has sold for a disclosed principal.
Quære: whether the true position is not that the auctioneer sues for the price, not by virtue of the contract of sale, but by virtue of his special property and his lien, and also, in most cases, by virtue of his contract with the buyer that the price shall be paid into his hands. See *WILSON v. PIKE*, § 3373 (considering *Williams v. Millington* (1788), 1 Hy. Bl. 81; and *Benton v. Campbell, Parker & Co.*, [1925] 2 K. B. 410).
- 212. Catalogue conditions.** See *BUNTING v. TORY*, § 811.
- 213. Conversion by auctioneers.** See *SACHS v. MIKLOS*, § 18.
- 214. Estate agent—commission.** See *AGENCY*.
- 215. Profession—excess profits tax.** See *WARD, BATESON & SMITH v. I. R. C.*, § 1361.
- 216. Sale by auction—passing of property.** See *DENNANT v. SKINNER*, § 3376.
- 217. Sale in market overt of property withdrawn from auction.** See § 3384.
- 218. Surveyor.** See *BUILDING AND ENGINEERING, ARCHITECTS AND SURVEYORS*.
- 219. Valuation—agreement for rent to be fixed by.** See *LONG v. BULLOCK*, § 1962.
- 220. — agricultural valuation.** See §§ 49, 50.
- 221. — tenant right.** See *OADES v. SPAFFORD*, § 41.
- 222. — development values.** See § 3635.
- 222a. — probate.** See § 848.
- 223. — rating.** See *RATING AND VALUATION*.
- 223a. — shares.** See § 1162.
- 224. — war damage.** See §§ 3841, 3842.

AVIATION

- 225. Air navigation.** Air Navigation (Amendment) Order, 1948 (No. 1328), made under the Air Navigation Act, 1920 (10 & 11 Geo. 5, c. 80); amends the Air Navigation (Consolidation) Order, 1923 (No. 1508), by making provision as to the conditions under which noise and vibration may be caused by aircraft on licensed aerodromes and Government aerodromes; the registration of aircraft; the provision of load-sheets for public transport aircraft; and Rules of the Air and Air Traffic Control. Different parts of the new Order are fixed to come into operation on different dates between June 23 and September 1, 1948. [10*d.*]
- Air Navigation (Amendment) (No. 2) Order, 1948 (No. 2074), amends the Air Navigation (Consolidation) Order, 1923 (No. 1508), by providing that aircraft registered in any State other than Great Britain and Northern Ireland are not to take on board or disembark in Great Britain or Northern Ireland passengers or goods carried for hire or reward, except in accordance with an agreement for the time being in force with such State or by special permission of the Minister of Civil Aviation.
- 226. —.** Air Navigation Regulations, 1948 (No. 1404), amending the Air Navigation Directions, 1936 (A.N.D. 13), as already amended, by extending the requirements as to the carriage of wireless telegraphy apparatus by aircraft and by specifying conditions under which noise and vibration may be caused on licensed and Government aerodromes.

227. **Airways Corporations—staff pensions.** Airways Corporations (General Staff Pensions) Regulations, 1948 (No. 2361), made under the Civil Aviation Act, 1946 (9 & 10 Geo. 6, c. 70), s. 20. [7d.]
- 227a. — **stock.** SI 1948, No. 2858.
228. **Aliens—approved airports.** See § 116.
229. **Births, deaths, etc., in aircraft—recording of.** Civil Aviation (Births, Deaths and Missing Persons) Regulations, 1948 (No. 1411), made under the Civil Aviation Act, 1946 (9 & 10 Geo. 6, c. 70), s. 43. These Regulations, which are to come into operation on October 1, 1948, provide for the keeping of records of births, deaths, deaths by accident and persons missing in consequence of an accident during a journey in any aircraft registered in Great Britain or Northern Ireland. [3d.]
230. **Canada.** Carriage by Air (Parties to Convention) Order, 1948 (No. 1336), made under the Carriage by Air Act, 1932 (22 & 23 Geo. 5, c. 36), s. 1 (2), on June 22, 1948, certifying that Canada and Liberia are High Contracting Parties to the Warsaw Convention.
231. **Civil aviation.** Civil Aviation (Application of Enactments) Order, 1948 (No. 2790), made under the Air Navigation Act, 1936 (26 Geo. 5 & 1 Edw. 8, c. 44), s. 26 (1), came into operation on December 24, 1948. This Order applies (with modifications) to land acquired by the Minister of Civil Aviation, the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 254, and the Military Lands Act, 1892 (55 & 56 Vict. c. 43), Part II. The Civil Aviation (Application of Enactments) Order, 1936 (No. 1377) is revoked.
232. — **international recognition of rights.** Convention on the International Recognition of Rights in Aircraft, Geneva, June 19, 1948. (This Convention has not been ratified by H.M. Government in the U.K.). Cmd. 7510.
233. **Colonial air navigation.** Colonial Air Navigation (Amendment) Order, 1948 (No. 2255), made under the Air Navigation Acts, 1920–1947, and the Colonial Air Navigation (Application of Acts) Orders, 1937–1947; further amends the Air Navigation (Colonies, Protectorates and Mandated Territories) Order, 1927 (No. 1245), as already amended, by (1) providing for regulating the conditions under which noise and vibration may be caused on licensed and Government aerodromes; (2) amending the provisions as to the registration of aircraft; (3) providing a new code of Rules of the Air and Air Traffic Control; and (4) providing a new list of territories to which the Order applies. [10d.]
234. **Cuba.** Agreement between the Governments of the U. K. and the Republic of Cuba for air services between and beyond their respective territories (with Annex, Schedules and Protocol). Havana, March 19, 1948. (This agreement has not been ratified by the Government of U. K.). Cmd. 7393.
235. **Eire.** The Minister of Health has given notice (in the *London Gazette* of April 30, 1948) under reg. 3 (3) of the Public Health (Aircraft) Regulations, 1948, that on and after May 1, 1948, Eire will be included within the “excepted area” as defined for the purposes of these Regulations. In consequence action under Part II of the Regulations need not be taken as regards aircraft arriving in this country from Eire: Ministry of Health Circular No. 74/48, dated May 13, 1948.
236. **Greece.** Agreements for Air Services dated November 26, 1945 (ratified January 28, 1948): Cmd. 7348, and February 21, 1947: Cmd. 7349.
237. **Isle of Man.** Civil Aviation Act (Extension to the Isle of Man) Order, 1948 (No. 1338), made under the Civil Aviation Act, 1946 (9 & 10 Geo. 6, c. 70), s. 55 (1); came into operation on June 22, 1948; and provides that certain sections of that Act (with certain modifications) are to extend to the Isle of Man.
238. **Liberia.** See § 230.
239. **Luxembourg.** Exchange of Notes (May 24/27, 1948) constituting an Agreement between H.M. Government and the Luxembourg Government for reciprocal facilities for the operation of a commercial air service. Treaty Series No. 35, 1948. Cmd. 7445.

- 240. Peru.** Agreement between the Governments of the U. K. and the Republic of Peru for air services between and beyond their respective territories (with Schedules and Exchange of Notes). Lima, December 22, 1947. (Treaty Series No. 24, 1948.) Cmd. 7394.
- 241. Philippine Republic.** Agreement for Air Services dated January 7, 1948: Cmd. 7341.
- 242. Portugal.** Carriage by Air (Parties to Convention) (No. 2) Order, 1948 (No. 2058), made under the Carriage by Air Act, 1932 (22 & 23 Geo. 5, c. 36), s. 1 (2), certifying that the President of the Republic of Portugal is a High Contracting Party to the Warsaw Convention.
- 243. Sanitary control of airborne traffic.** Public Health (Aircraft) Regulations, 1948 (No. 387) [5d.], made under the Public Health Act, 1936 (26 Geo. 5 & 1 Edw. 8, c. 49), s. 143, as amended by the Civil Aviation Act, 1946 (9 & 10 Geo. 6, c. 70), s. 39. These Regulations provide, in conformity with the International Sanitary Convention for Aerial Navigation, 1933 (Cmd. 4938), as modified by the International Sanitary Convention for Aerial Navigation, 1944 (Cmd. 6638), for sanitary control of airborne traffic between England and Wales and any place outside the "excepted area", as defined in Reg. 3. The new Regulations supersede the Public Health (Aircraft) Regulations, 1938 (No. 299), and extend the control to aerodromes vested in or under the control of the Minister of Civil Aviation. See also Minister of Health Circular 28/48, dated March 5, 1948, and the accompanying Memorandum 5 C (Health Control). As to Eire, see § 235.
- 244. Turkey.** Exchange of Notes between U. K. and Turkey amending the Air Services Agreement of Feb. 12, 1946. Ankara, March 29, April 1, 1948. (Treaty Series No. 30, 1948.) Cmd. 7429.
- 245. United States.** Agreement between the Governments of U. K. and U.S.A. concerning opening of certain Military Air Bases in the Caribbean Area and Bermuda to use by civil aircraft (with Exchange of Notes). Washington, February 24, 1948. (Treaty Series No. 22, 1948.) Cmd. 7389.
- 246. BOOK PUBLISHED—OVERSEAS PUBLICATION.** Fixel, R. W.—Law of Aviation, 3rd ed. (U.S.A.) [50s.]

BAILMENTS

- 247. Carrier.** See CARRIERS.
- 248. Conversion by bailee—action barred by Limitation Act, 1939.** See *BEAMAN v. A. R. T. S.*, § 2007.
- 249. — gratuitous bailment.** See *SACHS v. MIKLOS*, § 18; *MUNRO v. WILLMOTT*, § 19.
- 250. Deposit—securities deposited with foreign bank.** See *FRANKMAN v. ANGLO-PRAGUE CREDIT BANK*, § 260; *KAHLER v. MIDLAND BANK*, § 259.
- 251. Hire and reward—fitness for purpose.** See *REED v. DEAN*, § 625.
- 252. Innkeeper.** See *BONHAM-CARTER v. HYDE PARK HOTEL*, § 1729; *OLLEY v. MARLBOROUGH COURT*, § 1730.
- 253. Warehouseman.** See *WADE v. U. K. CANNING CO.*, § 782; [Cty. Ct.] *YOUNG v. SMITH & SONS*, § 2528.

BANKING

- 254. Banker, meaning of.** (Ceylon Companies Ordinance, No. 51 of 1938, s. 330). The definition of "business of banking" in a Ceylon Ordinance of 1932 as "a company which carries on as its principal business the accepting of deposits of money on current account or otherwise, subject to withdrawal, by cheque, draft or order", in no way conflicts with the meaning attached to the word "banker" in England at that date: *BANK OF CHETTINAD OF COLOMBO v. COMMISSIONER OF INCOME TAX, COLOMBO*, [1948] A. C. 378; [1948] L. J. R. 1925, P. C. (affirming judgment of Supreme Court of Island of Ceylon (1946), 47 N. L. R. 25).
- 255. Banking account—hospital.** See § 2295.
- 256. — mixing of money in.** See *Re DIPLOCK'S ESTATE*, § 1400.
- 257. Cheque—dishonoured—false pretences.** See *R. v. OSTER-RITTER*, § 730.

- 258. — posting of, whether amounts to payment.** See *A/S TANKEEXPRESS v. COMPAGNIE FINANCIERE BELGE DES PETROLES S.A.*, § 3440; [Can.] *DAVIDOVICH v. HILL*, § 1960.
- 259. Deposit of securities owned by foreign customer by foreign bank with English bank.** In 1938, the plaintiff, who was then a Czech resident, deposited for safe custody shares belonging to him with the Z bank in Prague. The Z bank (who were Czech residents) deposited the shares with the defendants, the Midland Bank in London, requesting the latter to place the same into their "depot" (or dossier) with the Z bank, to credit them with the same, and to inform them of the maturity date of the coupons. There was no evidence that the plaintiff had ever authorised the Z bank to make this contract for him. In 1939, the Z bank requested the Midland Bank to transfer the shares belonging to the plaintiff to the depot of the B bank of Prague, who were also Czech residents. The plaintiff, who was now resident in this country asked for an order on the defendant bank to hand the shares over to him. The defendant bank resisted this order. There was evidence that since 1938 the transfer of securities deposited with a Czech resident without the permission of the Czechoslovak National Bank was unlawful. Held, there was no evidence from which the Court could infer any authority to the Z bank or to the B bank, or any intention on their part, to contract with the defendant bank on the plaintiff's behalf and the plaintiff's claim in contract therefore failed. Similarly, though the plaintiff was absolutely beneficially entitled to the shares, he was not entitled to possession of the certificates, because neither the Z bank nor the B bank could consent to the transfer of the shares to the plaintiff without contravening the Czech currency regulations, and, consequently, the claim in detinue also failed: *KAHLER v. MIDLAND BANK*, [1948] 1 All E. R. 811, C. A. (See also § 565.) [Cf. *Frankman v. Anglo-Prague Credit Bank*, § 260.]
- 260. —** The plaintiff, who resided in England, claimed from the London branch of a Czech bank delivery of bonds purchased by his predecessor in title, a Czech national living at that time near Prague, on the London Stock Exchange, by the Czech bank and deposited by them, with the purchaser's consent, at their London bank. Condition 11 of the Conditions of Business of the Czech bank provided: "As regard such stocks and securities as were purchased at a stock exchange other than that of Prague . . . , we shall not have the same sent to us unless the customer has ordered the transmission thereof . . . , but will leave the same . . . deposited with our correspondent, where they shall be subject to the laws of the [country where they are deposited] . . .". Condition 50 of the Conditions of Business provided: "The place of performance and payment in respect of all obligations resulting from the business connection with us shall be considered to be the place of that department of our establishment which has carried out the relevant transaction with the customer . . .". The Czech bank resisted the plaintiff's claim on the ground that under Czech law, which governed the deposit of these bonds, the consent of the Czech National Bank was required before they could be handed out, and that such consent had been refused. Held, even if Czech law governed this matter, Czech law only made it illegal in Czechoslovakia for a Czech subject residing in that country to transfer property to a non-resident or "exchange foreigner", but there was nothing in Czech law to prevent a transaction of any nature taking place between two exchange foreigners. However, Czech law did not govern this matter, because even if Condition 50 only applied to the purchase of the bonds but not to their deposit, Condition 11 which dealt specifically with the deposit of securities by the condition itself provided that the proper law of the country was the law of England and not the law of Czechoslovakia. Therefore, although the *lex loci contractus* was Czech law, the *lex loci solutionis* was English law, and the plaintiff was entitled to have the bonds handed over to him: *FRANKMAN v. ANGLO-PRAGUE CREDIT BANK*, [1948] W. N. 440; 92 S. J. 705; [1948] 2 All E. R. 1025, C. A. (reversing decision of Cassels, J., [1948] 1 K. B. 730). [Cf. *Kahler v. Midland Bank*, § 259.]
- 261. Germany.** See § 3738.
- 262. Joint banking account—survivorship.** See *YOUNG v. SEALEY*, § 1384.
- 263. Savings banks.** See *SAVINGS BANKS*.

- 264. BOOKS PUBLISHED.**—Thomas, S. E., and Megrah, M.—*Banker and Customer*, 5th ed. [25s.] Thorne, W. J.—*Banking*. [5s.]

BANKRUPTCY AND LIABILITIES ADJUSTMENT

- 265. Act of bankruptcy—absence of debtor from country.** (Bankruptcy Act, 1914 (4 & 5 Geo. 5, c. 59), s. 1 (1) (d), (2) (c).) Reading into s. 1 (1) (d) of the Bankruptcy Act, 1914, the extended meaning given to the words “a debtor” by sub-s. (2), the sub-section reads as follows: “Any person, whether a British subject or not, who, at the time when the act of bankruptcy was done or suffered by him, was carrying on business in England, commits an act of bankruptcy if, with intent to defeat or delay his creditors, being out of England, he remains out of England”. The following points arise on the true construction of the sub-section:—

1. By its very character the particular act of bankruptcy of being out of the country and remaining out of the country is an act which can only be committed out of this country.
2. On the true meaning of the phrase “was carrying on business in England”, a debtor was carrying on business in England by reason of the fact that debts concerned with his business remained unpaid, e.g., excess profits tax due to the Crown.
3. It is expressly enacted that this particular act of bankruptcy can be committed by a foreigner, and there is no justification for construing the words “carrying on business” in a more restricted way when dealing with a foreigner.
4. A jurisdiction over foreigners of the very limited kind which results from the application of the limitations in the bankruptcy law can in no way be construed as a violation of the comity of nations.

Consequently, where a foreigner has committed the particular act of bankruptcy with which the sub-section deals, the Court has power to give leave to serve the petition out of the jurisdiction: *Re A Debtor* (No. 355 of 1947), *ex p. H.M. THE KING v. THE DEBTOR*, [1948] W. N. 310; 64 T. L. R. 446; [1948] 2 All E. R. 533, C. A. (applying *Re Dagnall*, [1896] 2 Q. B. 407; distinguishing *Cooke v. Vogeler*, [1941] A. C. 102; and *Re Debtors*, [1936] Ch. 622). (See also § 3544.)

- 266. Debtor—meaning of.** See *Re A Debtor*, § 265.

- 267. Liabilities adjustment—mortgage payments.** (Liabilities (War-Time Adjustment) Act, 1941 (4 & 5 Geo. 6, c. 24), s. 7 (3) (a), as amended by Liabilities (War-Time Adjustment) Act, 1944 (7 & 8 Geo. 6, c. 40), s. 7 (1).) Proviso (a) to sub-s. (3) of s. 7 of the Liabilities (War-Time Adjustment) Act, 1941, which states that “interest in respect of any period whether before or after the making of the order shall either not be payable or be reduced to such rate or amount as may be specified in the order”, refers to payments of interest which have not been made before the date of the order. The proviso does not give the Court power to vary the mortgage deed in such a way as to affect payments which have previously been properly made under it.

The debtor paid monthly instalments of principal and interest under a mortgage deed up to 1946, when she obtained a protection order. On Sept. 30, 1940, the house which formed the security for the mortgage had been destroyed. The county court Judge ordered that the mortgage deed should be varied in such a way that all payments of interest as from Sept. 30, 1940, until the house was re-erected should be eliminated and that all payments since that date should be applied in reduction of the principal due under the mortgage. Held on appeal, the county court Judge had no power to vary the mortgage deed in such a way as to affect payments which had previously been properly made under it: *Re GINGER*, [1948] 1 K. B. 705; [1948] L. J. R. 959, C. A.

- 268. Proof of debts—solicitor's claim for costs incurred after notice of bankruptcy.** (Bankruptcy Act, 1914 (4 & 5 Geo. 5, c. 59), ss. 30 (2), 37 (1).) Solicitors claiming against the estate of a bankrupt (in the absence of directions to the contrary by the Court) are not entitled to anything, whether by way of proof or otherwise, in respect of any of the profit costs or disbursements incurred after the date on which they had notice of the act of bankruptcy except in so

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far as they can be brought within the exception recognised in *Re Simonson*, [1894] 1 Q. B. 433, namely: "As a general rule a trustee in bankruptcy may, in the exercise of his discretion, adopt and pay for services rendered to a bankrupt after notice of an act of bankruptcy, where such services have clearly resulted in a benefit or profit to the bankrupt's estate commensurate with the services rendered, but he must be very strict in the application of the rule".

After an act of bankruptcy, of which the debtor's solicitors had notice, the debtor obtained a protection order in liabilities adjustment proceedings. The protection order was subsequently revoked and the debtor's appeal to the Court of Appeal was dismissed. The debtor's solicitors then made a claim in respect of profit costs and disbursements against the debtor's estate. Held, (1) the solicitors were entitled to prove in respect of the taxed amounts, whether of profit costs or of disbursements, which had been incurred before the act of bankruptcy; (2) the solicitors were entitled to their taxed profit costs and disbursements in an action commenced after the act of bankruptcy by a creditor to whom the county court had given leave to proceed unless her claim was admitted by the debtor, and where the debtor's defence of the action and appeal benefited the estate to the extent of over £2,000, but any costs or disbursements in excess of those which would have been properly incurred if the claim had been made by proof in the bankruptcy and not by action were to be disallowed; (3) their claim had to be disallowed where a claim and cross-claim after bankruptcy had been settled, because there was no proof that the trustee could not have settled on equally favourable terms if the action had never been started; (4) their claims for profit costs and disbursements in respect of the liabilities adjustment proceedings and the unsuccessful appeal to the Court of Appeal had to be disallowed; (5) sums received by the solicitors before the act of bankruptcy had to be deducted from the taxed total of the profit costs and disbursements incurred before the act of bankruptcy, and sums received after the act of bankruptcy had to be deducted from the taxed amount allowed in respect of the successful action: *Re BRITISH FOLDING BED CO., ex p. THE TRUSTEE v. N. A. WOODIWISS & CO.*, [1948] Ch. 635; [1948] L. J. R. 1748, Jenkins, J. (applying *Re Simonson*, *supra*; distinguishing *Re Sinclair* (1885), 15 Q. B. D. 616).

269. Registrar—use of knowledge obtained by, in other proceedings. See OWEN v. NICHOLL, § 170.

270. Reputed ownership. (Bankruptcy Act, 1914 (4 & 5 Geo. 5, c. 59), s. 38 (2) (c).) To bring s. 38 (2) (c) of the Bankruptcy Act, 1914 (commonly known as the "reputed ownership clause"), into operation it must be shown, not merely that the goods in question were in the bankrupt's possession, but also that they were in his possession in such circumstances that he was the reputed owner thereof, and, furthermore, that they were so in his possession by the consent or permission of the true owner. Mere proof of possession in given circumstances (with the requisite consent or permission) may, indeed, raise a *prima facie* case of reputed ownership only to be rebutted by proof—or judicial notice—of a custom negating that view, but the primary question must always be whether in the circumstances the possession of the goods by the bankrupt involved the inference that he was the reputed owner. If the answer to that question is "No", then *cadit quaestio*. It is only if the answer is "Yes" that the question of custom enters into the matter at all. The conditions essential to the operation of the section are that the true owner of the goods should, by leaving them in the possession, order or disposition of the bankrupt, put him in a position by means of them to obtain false credit. It is not, of course, necessary to show that the bankrupt has, in fact, obtained false credit by means of the goods. He will, in effect, be presumed to have done so at the expense of the general body of the creditors if the circumstances in which he is in possession are such as must necessarily lead persons dealing with him to believe the goods are his. Unless the true owner, judged on the footing that knowledge must be imputed to him of the necessary consequences of his acts, can be shown to have been guilty of some remissness in this respect, the section cannot be brought into operation against him. He is not to be deprived of his goods merely because an inference that the bankrupt is the true owner may arise.

The bankrupt, who carried on a builder's business, at the date of his

adjudication in bankruptcy was engaged in building two pairs of houses. By his contract with the first appellants which was written on one of the printed model forms of the Royal Institute of British Architects, the bankrupt was entitled to be paid on presentation of monthly interim certificates a sum arrived at by valuing "the work properly executed" and "the materials and goods delivered upon the site for use in the works". The contract further provided that where an interim certificate on which the builder had received payment included the value of "any unfixed materials and goods intended for and placed on or adjacent to the works" those materials and goods became the first appellants' property. Three interim certificates under which payment had been made covered (a) materials provided by the builder, which were never on the site, but which had been stored in the builder's yard some distance away; (b) further materials provided by the builder, which at all material dates were lying loose on the site; and (c) roofing tiles supplied by the second appellants, which at all material dates were also lying loose on the site, and which under the contract with the second appellants remained their "absolute property until fixed in work". The county court Judge had held that for the purposes of the reputed ownership clause the bankrupt was the reputed owner of (a), (b) and (c). Held on appeal, as to (a), the circumstances were precisely the same as if the goods had been the builder's property, and as the goods in the yard were in the builder's possession "in his trade or business by the consent and permission of the true owner" the reputed ownership clause applied to them; as to (b) and (c), it was impossible to impute to the hypothetical inquirer the inference that the bankrupt was the owner of the materials on the site as an inference which must arise from the bankrupt's possession of those materials, and, consequently, the reputed ownership clause did not apply to them: *Re Fox, ex p. OUNDLE AND THRAPSTON* R. D. C. v. THE TRUSTEE, [1948] Ch. 407; [1948] L. J. R. 1733, D. C. (applying *Re Couston, ex p. Watkins* (1873), 8 Ch. App. 520; *Re Watson & Co.*, [1904] 2 K. B. 753; and *Re Kaufman Segal and Domb*, [1923] 2 Ch. 89; distinguishing *Re Weibking*, [1902] 1 K. B. 713).

271. **Trustee in bankruptcy—party to application for recovery of possession of mortgaged property.** See *MARTINS BANK v. KAVANAGH*, § 2252.
272. **ARTICLES.** The earnings of an undischarged bankrupt: 205 L. T. J. 127, 158. Reputed ownership (founded on *Re Fox*, § 270): 98 L. J. 557. Solicitor acting for a potential bankrupt: 206 L. T. 210. Judgment debtors and the Bankruptcy Act: 206 L. T.

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273. **Affiliation orders—application by National Assistance Board or local authority.** Under s. 44 of the National Assistance Act, 1948 (11 & 12 Geo. 6, c. 29), where assistance is given or accommodation is provided under that Act for an illegitimate child, the National Assistance Board or the local authority concerned may apply for an affiliation order and the Court may order payment to be made to the Board or local authority or otherwise as the Court may direct. These provisions are to come into force on a date to be appointed.
274. — **children in care of local authority.** See Children Act, 1948 (11 & 12 Geo. 6, c. 43), s. 26. See § 1705.
275. **Evidence—admissibility—failure by wife to state name of father when registering birth of child.** See *MAYO v. MAYO*, § 864.
276. **Gestation, period of.** See *HADLUM v. HADLUM*, § 868; *M-T v. M-T*, § 869; *Re B*, § 870.
277. **Wills—when "children" includes illegitimate children.** See *Re WOHLGEMUTH'S WILL TRUSTS*, § 3873.
278. **ARTICLES.** Bastardy law amendment: 112 J. P. J. 117. Bastardy Laws Amendment Act, 1872—application by a married woman (founded on *Watson v. Tuckwell*, [1947] C. L. Y. 248): 112 J. P. J. 258. Irrecoverable arrears under orders enforceable as bastardy orders: 112 J. P. J. 288. Affiliation proceedings: *Solicitor*, June, 1948, p. 127. Bastardy Laws Amendment Act, 1872—application by woman against her husband: 112 J. P. J. 550.

BILLS OF EXCHANGE

279. Cheque. See **BANKING.**

BOUNDARIES AND FENCES

280. Cattle straying. [Cty. Ct.] See *COOKE v. SKINNER*, § 153; [Cty. Ct.] *MORRIS v. CURTIS*, § 154.

281. — railway fences. In *CORDINGLEY v. GREAT WESTERN RY.* (1948), 98 L. J. 35; *Estates Gazette*, January 3, 1948, p. 8, cattle belonging to the plaintiff strayed through a defective hedge on to the defendants' line and were killed or injured. The defendants had been released, by payment of compensation in 1851, from any statutory obligation to fence. Hilbery, J., held that the defendants were under no prescriptive obligation to fence against the plaintiff.

282. Local government boundaries. See §§ 1090, 1092, 2031, 2032.

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283. Bahamas. Bahamas (Alteration of Boundaries) Order in Council, 1948 (No. 2574).

284. — light dues. See § 3474.

285. Barbadoes—double taxation. See § 1650.

286. Bermuda—air bases. See § 245.

287. British Guiana—war marriages. Matrimonial Causes (War Marriages) (British Guiana) Order, 1948 (No. 864), made under the Matrimonial Causes (War Marriages) Act, 1944 (7 & 8 Geo. 6, c. 43), s. 4 (1), declares that a certain law made in British Guiana is a law substantially corresponding to the provision made as respects Great Britain by the last-mentioned Act. The effect is to secure recognition in all British Courts, whether within or without His Majesty's dominions, other than Dominion Courts, of the validity of any decree or order made by virtue of the law of British Guiana. The order came into operation on May 1, 1948.

288. British Nationality Act, 1948. See § 118.

289. Burma—financial arrangements. See § 3254.

290. — independence. See § 120.

291. — Judges' pensions. See § 320.

292. Canada—aviation. See § 230.

293. — British North America Act, 1367. In *ATT.-GEN. FOR SASKATCHEWAN v. ATT.-GEN. FOR CANADA*, [1948] W. N. 466, the Judicial Committee of the Privy Council (Lords Simon, Macmillan, Simonds, Oaksey and MacDermott) held that s. 6 of the Farm Security Act, 1944, of Saskatchewan, as amended by s. 2 of c. 28 of 1945 was *ultra vires*.

294. — citizenship. See § 121.

295. Ceylon. See §§ 122, 254, 3255, 3256.

296. Channel Islands—exports. See § 3678.

297. — Jersey—reform in constitution. On October 5, 1948, the Jersey States passed laws establishing a new constitution for the island's Royal Court. In future Jurats will be subjected to an election by an electoral college composed of sitting Jurats, several selected members of the legal profession, constables of the island, and elected members of the States Assembly; Jurats were previously elected by an island popular vote. The former right of Jurats to sit, by virtue of their office, in the Legislative Assembly of States has been abolished, and Jurats must now retire at seventy, unless an extension up to but not exceeding seventy-five has been granted. These measures are subject to the sanction of His Majesty in Council: 98 L. J. 576.

298. Colonies—air navigation. See § 233.

299. — Colonial Development Corporation. The Colonial Development Corporation Regulations, 1948 (No. 292), made under para. 3 of the Schedule to the Overseas Resources Development Act, 1948 (§ 303). The Regulations deal with the terms of appointment and conditions of tenure of members of the Corporation, the

authentication of the seal, the execution of instruments and the mode of entering into contracts and the proof of instruments executed or issued by the Corporation.

300. — **colonial stocks.** See § 3257.
301. — **official colonial publications.** A monthly list of official colonial publications is being issued, which contains, *inter alia*, information as to colonial legislative acts, ordinances and orders. The first list was published in June, 1948. Copies are obtainable on application to the Colonial Office, Reference Section, Information Department, Sanctuary Buildings, Great Smith Street, London S.W.1.
302. — **Overseas Food Corporation.** Overseas Food Corporation Regulations, 1948 (No. 413), made under para. 3 of the Schedule to the Overseas Resources Development Act, 1948 (§ 303). The Regulations provide for the appointment, tenure and vacation of office of members of the Corporation; the execution of instruments and mode of entering into contracts by or on behalf of the Corporation; and the proof of documents.
303. — **Overseas Resources Development Act, 1948 (11 & 12 Geo. 6, c. 15).** This Act provides for the establishment of the Colonial Development Corporation to develop the resources and trade of, and to expand the production of food stuffs and raw materials in, colonial territories. This Corporation is responsible to the Colonial Secretary. The Act also provides for the establishment of the Overseas Corporation to promote the production of foodstuffs and agricultural products outside the United Kingdom. This Corporation is responsible to the Minister of Food. Each Corporation is to be a body corporate with perpetual succession and a common seal and has power to hold land without licence in mortmain. Regulations are to provide for the execution of instruments and the mode of entering into contracts by and on behalf of the Corporation, and the proof of documents purported to be executed, issued or signed by the Corporation or a member thereof (see § 299). Nothing in the Act is to exempt the Corporations from liability for any tax, duty, rate, levy or other charge whatsoever, whether general or local.
304. — **service of writ on Attorney-General of Colony.** See *CHANNEY v. MURPHY*, § 2902.
305. **Dominica—double taxation.** See § 1650.
306. — **extradition.** Extradition (Dominica) Order in Council, 1948 (No. 867), made under the Extradition Act, 1870 (33 & 34 Vict. c. 52), s. 18, directing that the Dominica Extradition Ordinance, 1946, is to have effect in Dominica as if it were part of that Act.
307. **Dominions—citizenship.** See § 118.
308. — **service of writ on Attorney-General of Dominion or Colony.** See *CHANNEY v. MURPHY*, § 2902.
309. **Eire.** See §§ 125, 235, 2419, 2446, 3692.
310. **Falkland Islands.** Falkland Islands (Legislative Council) Order in Council, 1948 (No. 2573), provides for the establishment of a reformed legislative council to legislate for the Islands. [3*d.*]
311. — **double taxation.** See § 1650.
312. **Gambia.** Gambia (Legislative Council) (Amendment) Order in Council, 1948 (No. 2060), amends the Gambia (Legislative Council) Order in Council, 1946 (No. 2084), as to the constitution of the Legislative Council. See also § 358.
313. **Governors—pensions.** See § 2633.
314. **Grenada—double taxation.** See § 1650.
315. **India—appeals.** See § 2933.
316. — — **special leave to cross-appeal.** See *MADHOLAL SINDHU v. OFFICIAL ASSIGNEE OF BOMBAY*, § 2935.
317. — **pensions.** See §§ 320, 2656.
318. — — **family pension funds.** Government of India (Family Pension Funds) (Amendment) Order, 1948 (No. 1841), amending the Government of India (Family Pension Funds) Order, 1936 (No. 1310).

Superior Services (India) Family Pension Fund (Amendment) Rules, 1948 (No. 2700), amending the Superior Services (India) Family Pension Fund Rules, 1937 (No. 1225).

319. — — — **increase.** Increase of Pensions (India and Pakistan) Rules, 1948 (No. 2542), made under the Superannuation (Miscellaneous Provisions) Act, 1948 (11 & 12 Geo. 6, c. 33), s. 5 (2) (3); provide for the increase of certain pensions payable in respect of service in India.
320. — — — **Judges Pensions (India and Burma) Act, 1948 (12 & 13 Geo. 6, c. 4).** This Act enables proportionate pensions to be granted to European barrister judges of the High Court in India and Burma who retire owing to the changed conditions and also enables additions to be made to the pensions of other European judges of India and Burma in certain cases.
321. — — — **Royal title.** See § 587.
322. **Isle of Man.** See §§ 237, 800, 1224, 1740, 2407, 2808.
323. **Jamaica.** Jamaica (Alteration of Boundaries) Order in Council, 1948 (No. 2575).
324. — — — **double taxation.** See § 1650.
325. **Kenya.** Kenya Protectorate (Amendment) Order in Council, 1948 (No. 862), amending the Kenya Protectorate Order in Council, 1920 (No. 2343), with respect to the power to make laws, Royal instructions, the Governor's reserved powers, assent to bills, disallowance of laws and the reservation of legislative power to His Majesty.
Kenya (Native Areas) (Amendment) Order in Council, 1948 (No. 2061), amends the Kenya (Native Areas) Order in Council, 1939 (No. 516), as to native representation on the Native Lands Trust Board.
Kenya Colony and Protectorate (Boundaries) Order in Council, 1948 (No. 2062), amends the Kenya Colony and Protectorate (Boundaries) Order in Council, 1921 (No. 1134), as to the power to alter boundaries of provinces, etc.
326. — — — **divorce jurisdiction.** Kenya (Non-Domiciled Parties) Divorce (Amendment) Rules, 1948 (No. 772), made April 13, 1948, under the Indian and Colonial Divorce Jurisdiction Act, 1926 (16 & 17 Geo. 5, c. 40), s. 1 (4), amending the Kenya (Non-Domiciled Parties) Divorce Rules, 1928 (No. 702), rr. 3, 20.
327. **Malaya—divorce jurisdiction.** See § 353.
328. — — — **federation.** Federation of Malaya Order in Council, 1948 (No. 108), made under the Foreign Jurisdiction Act, 1890 (53 & 54 Vict. c. 37) and certain other enactments, in pursuance of certain agreements entered into with the rulers of the Malay States. The Order establishes a Federation comprising the Malay States and the Settlements and makes necessary provision for the government of the Settlements and miscellaneous matters. The Malayan Union Order in Council, 1946 (No. 463) is revoked. The new Order came into operation on February 1, 1948. [2s. 4d.]
329. — — — **relief against double death duty.** See § 835.
330. **Mauritius—naval defence.** See § 198.
331. — — — **war marriages.** Matrimonial Causes (War Marriages) (Mauritius) Order, 1948 (No. 2073), declaring that a law made in Mauritius substantially corresponds to the Matrimonial Causes (War Marriages) Act, 1944 (7 & 8 Geo. 6, c. 43). The effect is to secure recognition in all British Courts (other than Dominion Courts) of the validity of any decree or order made by virtue of that law.
332. **New Zealand—family allowances reciprocal arrangements.** See § 1435.
333. — — — **war marriages.** Matrimonial Causes (War Marriages) (New Zealand) Order, 1948 (No. 111), made under the Matrimonial Causes (War Marriages) Act, 1944 (7 & 8 Geo. 6, c. 43), s. 4 (1), declares that a certain law made in New Zealand is a law substantially corresponding to the provision made as respects Great Britain by the last-mentioned Act. The effect is to secure recognition in all British Courts, whether within or without His Majesty's dominions, other than Dominion Courts, of the validity of any decree or order made by virtue of the law of New Zealand. The Order came into operation on February 10, 1948.

- 334. Nigeria.** Nigeria (Protectorate and Cameroons) Order in Council, 1948 (No. 2072), amends the Nigeria (Protectorate and Cameroons) Order in Council, 1946 (No. 1352), as to the power of the Governor to alter boundaries of regions, etc.
- 335. North Borneo.** Maintenance Orders (Facilities for Enforcement) (North Borneo) Order in Council, 1948 (No. 2579), applies the Maintenance Orders (Facilities for Enforcement) Act, 1920 (10 & 11 Geo. 5, c. 33), to North Borneo.
- 336. Northern Ireland.** The following Orders have been made under the Northern Ireland Act, 1947 (10 & 11 Geo. 6, c. 37): Northern Ireland (Land Registry) (Appointed Day) Order, 1948 (No. 345); Northern Ireland (Registration of Deeds) (Appointed Day) Order, 1948 (No. 346); Northern Ireland (Land Registry) (Adaptation of Enactments) Order, 1948 (No. 485); Northern Ireland (Land Registry) (Transfer of Property) Order, 1948 (No. 486); Northern Ireland (Registration of Deeds) (Adaptation of Enactments) Order, 1948 (No. 487); Northern Ireland (Registration of Deeds) (Transfer of Property) Order, 1948 (No. 488).
- 337. — exchange control.** See § 3267.
- 338. — national insurance.** See § 2378.
- 339. Northern Rhodesia.** Northern Rhodesia (Legislative Council) (Amendment) Order in Council, 1948 (No. 340) (altering the constitution of the Legislative Council and making various minor and consequential amendments of the Northern Rhodesia (Legislative Council) Order in Council, 1945 (No. 620).
Northern Rhodesia (Legislative Council) (Amendment No. 2) Order in Council, 1948 (No. 2064), amends the principal Order of 1945 (No. 620).
- 340. — certificates of naturalisation.** See § 129.
- 341. Palestine—aliens restriction.** See § 130.
- 342. — exchange control.** See §§ 3267, 3274.
- 343. — jurisdiction of Supreme Court.** (Palestine Order in Council, 1922 (No. 1282), art. 43; Magistrates' Courts Jurisdiction Ordinance, No. 45 of 1939, art. 12.) Art. 43 of the Palestine Order in Council, 1922, specifies and limits the appellate jurisdiction of the Supreme Court of Palestine, and when a specified jurisdiction is declared to be subject to Ordinances (as in the case of art. 43), it is intended only that the High Commissioner shall have power to prescribe by Ordinance such procedure and practice as cannot appropriately be dealt with by rules made under art. 49. Consequently, where as in the case of art. 12 of the Magistrates' Courts Jurisdiction Ordinance, 1939, the High Commissioner had exceeded his powers, the Supreme Court of Palestine had no jurisdiction to hear an appeal brought pursuant to leave given under this article which was *ultra vires*: *LIPSHITZ v. VALERO*, [1948] A. C. 1; [1948] L. J. R. 625, P. C. (See also § 2936.)
- 344. — Palestine Act, 1948 (11 & 12 Geo. 6, c. 27).** This Act provides by s. 1 for the termination of His Majesty's jurisdiction in Palestine. S. 2 provides for the abatement of Privy Council proceedings, and prohibits the bringing of any action in respect of acts done in good faith and in the course of duty either for peace, order or good government in Palestine, or for the purpose of or in connection with the termination of jurisdiction or the protection and withdrawal from Palestine of His Majesty's forces and stores or other property. S. 3 repeals (with certain savings) Acts of Parliament having application to Palestine, but leaves them to continue in force as part of the domestic law of Palestine. It also contains other transitional provisions including power by Order in Council to transfer any funds or other property of the Government of Palestine which may be required to meet that Government's obligations; and power to adapt the Acts relating to superannuation, so as to avoid any break in the service of officers of the Palestine Government which would otherwise be caused by that Government coming to an end.
- 345. — termination of mandate.** Palestine Order in Council, 1948 (No. 106), empowering the High Commissioner to make provision for the Government of that country pending the withdrawal of His Majesty from Government thereof.
Termination of Jurisdiction in Palestine (Transitional Provisions) Order in

Council, 1948 (No. 1003), made under the Palestine Act, 1948, s. 3 (4), providing for the disposal of certain funds administered by or for the Government of Palestine and of German enemy assets; also for the application of certain enactments relating to superannuation to Palestine Government officers.

Palestine (Revocations) Order in Council, 1948 (No. 1004), made under the Foreign Jurisdiction Act, 1890 (53 & 54 Vict. c. 37), revoking and amending various Orders in Council relating to Palestine and providing that certain enactments which were formerly applied to Palestine are to cease so to apply.

Aliens (Restriction) (Palestinian Citizens) Direction, 1948 (No. 1015). See § 130.

346. ———. A statement, "Termination of the Mandate, May 15, 1948", has been prepared for public information by the Colonial Office and Foreign Office. [3*d.*]

347. Privy Council. See PRIVY COUNCIL PRACTICE.

348. St. Lucia—double taxation. See § 1650.

349. St. Vincent—double taxation. See § 1650.

350. Sarawak. Extradition (Sarawak) Order in Council, 1948 (No. 343), made under the Extradition Act, 1870 (33 & 34 Vict. c. 52), s. 18, directing that an ordinance enacted in Sarawak is to have effect in that colony as if it were part of the Act.

351. Seychelles—war marriages. Matrimonial Causes (War Marriages) (Seychelles) Order, 1948 (No. 1331), made under the Matrimonial Causes (War Marriages) Act, 1944 (7 & 8 Geo. 6, c. 43), s. 4 (1), declares that a certain law made in the Seychelles substantially corresponds to the provision made by the Act as respects Great Britain. The effect is to secure recognition in all British Courts, other than Dominion Courts, of the validity of any decree or order made by virtue of that law. This order came into operation on July 1, 1948.

352. Singapore. Singapore Colony (Amendment) Order in Council, 1948 (No. 341) (making various amendments of the Order in Council of 1946 (No. 464), as amended by the Amendment Order in Council of 1947 (No. 470), with respect to the constitution of the Legislative Council and other matters).

Singapore Colony (Amendment) (No. 2) Order in Council, 1948 (No. 863), amends the Singapore Colony Order in Council, 1946 (No. 464), as already amended, as to the constitution of the Legislative Council.

353. ——— divorce jurisdiction. Divorce Jurisdiction (Singapore and Malayan Union) Order in Council, 1947 (No. 2783), enabling courts in Singapore and, as respects Penang and Malacca, in the Malayan Union, to grant decrees of divorce under the Indian and Colonial Divorce Jurisdiction Acts, 1926 and 1940, in certain cases.

354. Solomon Islands. British Solomon Islands Maritime Order in Council, 1948 (No. 2063), amends the British Solomon Islands Maritime Order in Council, 1912 (No. 1862), as to the port of registry for shipping in the protectorate.

355. Somaliland. Somaliland Order in Council, 1948 (No. 2065), revokes the Somaliland (Military Administration) Order in Council, 1941 (No. 678).

356. South Africa—Convention country for Patents and Designs Acts. See § 2584.

357. Tanganyika. Tanganyika (Legislative Council) Amendment Order in Council, 1948 (No. 105), giving effect to a recent reorganisation of the Central Government of Tanganyika and making minor consequential amendments to the Tanganyika (Legislative Council) Orders in Council, 1926 to 1945. [2*d.*]

Colonial Stock Acts Extension (Tanganyika) Order, 1948 (No. 492), made under the Colonial Development Act, 1929 (20 & 21 Geo. 5, c. 5), s. 3, extending the Colonial Stock Acts, 1877–1900, so as to apply to stock issued after 1929 and forming part of the public debt of Tanganyika.

Tanganyika Order in Council, 1948 (No. 2066), amends the Tanganyika Order in Council, 1920 (No. 1583), as to the power of the Governor to alter boundaries of provinces, etc.

358. West Africa. West African Court of Appeal Order in Council, 1948 (No. 1330), revoking and re-enacting with modifications the previous Orders setting up a Court of Appeal for Nigeria, Gold Coast, Sierra Leone and Gambia. [2*d.*]

- 359. West Indies.** Report (Part I) of the Colonial Office conference on the closer association of the British West Indies: Cmd. 7291 [9d.].
- 360. BOOKS PUBLISHED.** Barry, J. V. and Paton, G. W.—Introduction to the Criminal Law in Australia. (English Studies in Criminal Science, Vol. 6.) [10s. 6d.]. Brodie, D. M.—Tree of Commonwealth [9s.]. Davidson, J. W.—Northern Rhodesia Legislative Council. Vol. 3 [12s. 6d.]. Dudley, E.—Tree of Commonwealth [9s.]. Jennings, W. I.—British Commonwealth of Nations [7s. 6d.]. Meek, C. K.—Colonial Law (A Bibliography) [4s. 6d.]. Northern Ireland—Chronological Table and Index of the Statutes in force to December 31, 1946. 2 Vols. [45s.]. Vesey-Fitzgerald, S. G.—The Future of Oriental Studies [2s. 6d.].
- 361. BOOKS PUBLISHED: OVERSEAS PUBLICATIONS.**
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BUILDING AND ENGINEERING, ARCHITECTS AND SURVEYORS

362. **Builder's charges—war damage assessment.** [Cty. Ct.] In *WARNER v. BOLTON*, *Estates Gazette*, January 3, 1948, p. 9, Judge Konstam, K.C., held that there was no proof that the amount allowed by the War Damage Commission was the fair and reasonable charge which a contractor was entitled to charge his private client, and therefore that the plaintiff could not recover the excess over that amount which, he alleged, he had paid to the defendant in mistake.
363. **Building—collapse—misrepresentation—burden of proof.** See *MOOR MILL v. PICKERING & Co. (CEREALS)*, § 1503.
364. — **dangerous premises.** See *NEGLIGENCE*.
365. — **industrial building.** See *STANGER v. HENDON BOROUGH COUNCIL*, § 3649.
366. — **preservation orders.** See § 3633.
367. — **structure for advertisements.** (Manchester Corporation Act, 1891 (c. ccvii), s. 18 (1).) An advertising sign of sheet metal nailed to the outside of a frame which is put on to a wall does not constitute a "wooden or other structure or erection" within the meaning of s. 18 (1) of the Manchester Corporation Act, 1891, in respect of which a licence from the corporation is required. The section in question is headed "buildings", and the powers of the corporation over advertisements are dealt with in another section: *BOROUGH BILLPOSTING Co. v.*

MANCHESTER CORPORATION (1948), 64 T. L. R. 249; [1948] 1 All E. R. 807, D. C. (applying *Royle v. Orme* (1932), 96 J. P. 468).

368. Building materials. Control of Building Materials (Revocation) Order, 1948 (No. 2367), revokes Control of Building Materials (No. 1) Order, 1947 (No. 1698), and Control of Building Materials (Amendment) Order, 1948 (No. 980).

369. — reputed ownership in bankruptcy cases. See *Re Fox*, § 270.

370. Building operations—first-aid and ambulance room equipment. Building Operations (First-Aid and Ambulance Room Equipment) Order, 1948 (No. 2372), made in pursuance of the Building (Safety, Health and Welfare) Regulations, 1948 (No. 1145), reg. 80; came into operation on October 28, 1948; prescribes the contents of first-aid boxes and the minimum equipment of ambulance rooms required by those regulations to be maintained in connection with certain building sites.

371. Building plant—rates of hire. Control of Rates of Hire of Plant Order, 1948 (No. 792), came into operation on April 28, 1948; revokes S. R. & O., 1941, No. 1277; 1946, No. 609; 1947, No. 915.

372. Building regulations—safety provisions. See §§ 370, 1427.

373. Building restrictions. Control of Building Operations (No. 11) Order, 1948 (No. 1310), made under the Defence (General) Regulations, 1939, Reg. 56A. This Order fixed the financial limits within which building or civil engineering work might be undertaken without authorisation or licence in the calendar year July 1, 1948 to June 30, 1948. The requirement that local authorities and certain public utility undertakings should obtain an authorisation from a Government Department for certain operations (Reg. 56A (1)) did not apply to any operation begun in that period the total cost of which did not exceed £100. As from July 1, 1948, work may be done on any single property without a building licence if its cost together with the cost of any previous work done without a licence since that date does not exceed £100. The Control of Building Operations (No. 10) Order, 1947 (No. 2698), is revoked. See hereon Ministry of Health Circular 104/48 dated June 21, 1948.

Control of Building Operations (No. 12) Order, 1948 (No. 2332); came into operation on November 1, 1948; supersedes Control of Building Operations (No. 11) Order, 1948 (No. 1310). An increase in the financial limit for building licensing from £100 to £1,000, is permitted as from November 1, 1948, in respect of factories, warehouses, farm buildings (excluding farm-houses), schools, universities and other educational buildings, and office buildings with a floor space of 10,000 square feet or more. Where there is more than one such building on a single property the maximum amount which may be spent without licence on the whole property will still be £1,000. The limit of £100 for the year beginning July 1, 1948, remains unchanged for all other buildings. The statutory control of distribution of building components, known as the W. B. A. Priority Distribution Scheme, also came to an end on November 1, 1948. See hereon Ministry of Works Press Notice, MOW/126/48, dated October 23, 1948.

374. —. Defence Regulations (No. 6) Order, 1946 (No. 1329), amends, as from July 1, 1948, Sched. VI of the Defence (General) Regulations, 1939.

375. —. The Ministry of Health have issued Circular 14/48 to housing authorities. This deals with (1) extension of "free" allowances for a further six months (S. R. & O., 1947, No. 2698, now revoked, see § 373); (2) replacement of the term "Control of Civil Building" by the term "Building Licensing"; (3) licensing work done under a statutory notice; (4) work on farmhouses and farm buildings.

The restrictions on the building of private houses have been slightly relaxed. Local authorities may issue licences for the building of private houses, to be occupied by owners of known identity, in the ratio of one to every four houses built by the local authority. It will be possible to obtain a licence for a house up to a maximum superficial area of 1,500 square feet. The conditions limiting cost and selling price are to be fixed by the local authority on the basis of the cost of houses built by them. The selling price will be the all-in, freehold figure. Applications may also be considered by local authorities for the building of

houses for letting provided they are satisfied that the houses will serve genuine needs: Ministry of Health Circular 108/48.

376. — **need for licence to be in writing.** See JACKSON STANSFIELD & SONS *v.* BUTTERWORTH, § 1148.
377. — **professional fees—amendment of licence.** In appropriate cases the fees of an architect, surveyor or engineer may be excluded from the sum mentioned in a building licence. Where the sum authorised by a building licence is exceeded for unforeseen reasons, no work outside the scope of the licence having been carried out, the sum shown on the original licence may be amended by the Licensing Officer. Such an amendment will not be made if work outside the scope of the licence has been carried out. If such work is necessary application should be made for a supplementary licence: Ministry of Works Press Notice (P. I. 49) dated June 21, 1948.
378. — **sale at price exceeding limit.** (Building Materials and Housing Act, 1945 (9 & 10 Geo. 6, c. 20), s. 7 (1) (3).) Where a local authority, in granting a licence to build a house, has fixed a maximum price at which the house can be sold, and a builder takes advantage of the licence and builds under it, he commits an offence against s. 7 of the Building Materials and Housing Act, 1945, if within a period of four years from the passing of the Act he sells the house at more than the price mentioned in the licence. S. 7 (3) of the Act provides that "where a house is sold for a consideration which consists wholly or partly of something other than the payment of a money price for the house, . . . the price shall be deemed to be such sum as . . . would in the opinion of the court represent a benefit equivalent to the [total value of the consideration]".
The appellants had submitted to the local authority a plan showing a house and a garden, and had obtained a building licence by the terms of which the selling price of the house had been limited to £1,140. Held, the appellants, in selling the house for £1,140 and the garden for £60 had gone outside the terms of their licence and committed an offence under s. 7 (1), because the "total value" within the meaning of sub-s. (3) was £1,200: MODERN HOUSING (LEICESTER) *v.* GUNNING (1948), 64 T. L. R. 305; [1948] 1 All E. R. 784, D. C.
379. — **work done in excess of cost covered by licence.** See BOSTEL BROTHERS *v.* HURLOCK, § 1147.
380. **Building returns.** See § 2965.
381. **Building site—rating of erections on.** See LAING & SON *v.* KINGSWOOD ASSESSMENT COMMITTEE, § 3089.
382. **Building work—extra work.** In SIR LINDSAY PARKINSON & Co. *v.* COMMISSIONERS OF WORKS AND PUBLIC BUILDINGS (October 29, 1948), the claimant contractors contracted to erect an ordnance factory for the respondent Commissioners. As the operations proceeded, a supplementary contract was entered into, providing, *inter alia*, for a maximum and minimum profit of £300,000 to the contractors calculated on actual cost. By the time the work was completed in 1940 its total value according to the rates and prices in the bill of quantities and the actual cost to the contractors had greatly exceeded the estimate made in 1937. Lewis, J., held the contractors entitled to an additional £90,298 (the figure found by the arbitrator) when, on the true construction of the supplementary contract, as reasonable or proportionate profit or remuneration in respect of "excess work", or on the basis of a *quantum meruit* in respect of work not within the scope of the contract. [Reported by R. C. Calburn, Esq., Barrister-at-Law.] See also [1948] W. N. 446.
383. **Factories.** See FACTORIES.
384. **Housing.** See HOUSING.
385. **London Building Acts—service of summons.** See R. *v.* ROSE, § 2101.
386. **Surveyor—profession—excess profits tax.** See WARD, BATESON AND SMITH *v.* I. R. C., § 1361.
387. — **professional fees—amendment of building licence.** See § 377.
388. — **rebuilding of war-damaged house.** [Cty. Ct.] See WEBB *v.* ROWLEY, § 3246.

BUILDING SOCIETIES

- 389. Mortgage—variation of deed by liabilities adjustment order.** See *Re GINGER*, § 267.
- 390. ARTICLE.** The omnipotence of building societies: *Solicitor*, February, 1948, p. 28.

BURIAL AND CREMATION

- 391. Bier house—no faculty for erection of.** See *Re NORTON'S WILL TRUSTS*, § 413.
- 392. Burial grounds—town and country planning.** See § 3634.
- 393. Embalming—recovery of cost of, in action for damages.** See *HART v. GRIFFITHS-JONES*, § 814.
- 394. Local authorities, duties of.** By the National Assistance Act, 1948 (11 & 12 Geo. 6, c. 29), s. 50, it is made the duty of certain local authorities to arrange for the burial or cremation of any deceased persons where no other suitable arrangements have been made. The councils of counties and county boroughs are also empowered to arrange for the burial or cremation of persons dying in accommodation provided under Part III of the Act or in a hostel provided under s. 29. The Burial of Drowned Persons Acts, 1808 and 1886, are repealed. The new provisions are to come into operation on a date to be appointed.
- 395. — children in care of local authorities.** See Children Act, 1948 (11 & 12 Geo. 6, c. 43), s. 18. See § 1705.
- 396. Monument over grave—recovery of cost for, in action for damages.** See *HART v. GRIFFITHS-JONES*, § 815.
- 397. BOOK PUBLISHED.** Watkins, E. S.—Law of Burials and Burial Grounds. [12s. 6d.]

CANALS

- 398. Rating.** The Local Government Act, 1948 (11 & 12 Geo. 6, c. 26), Part V, contains provisions relating to the rating of canal hereditaments: see § 4308.
- 399. Transfer to British Transport Commission.** SI 1948, No. 365 (appointing April 1, 1948, as the date on which all property, rights, powers and liabilities of the Minister of Transport in relation to the Caledonian and Crinan Canals and Holyhead Harbour are to be transferred to the British Transport Commission).
- 400. — employees.** See §§ 3758, 3759.
- 401. — securities—date of conversion.** See § 3764.
- 402. — — valuation.** See § 3767.
- 403. Use during conditions of ice—revocation of order as to.** Traffic on Canals and Inland Navigations (Revocation) Order, 1948 (No. 2128), revokes as from November 2, 1948, the Traffic on Canals and Inland Navigations Order, 1942 (No. 2655) and the amending Order of 1945 (No. 972).

CARRIERS

- 404. Agent of carrier.** [Aus.] See *STOKES & KERR PTY. v. DALGETY & Co.*, § 5.
- 405. Carriage—by air.** See AVIATION.
- 406. — by sea.** See SHIPPING AND MARINE INSURANCE.
- 407. Railways.** See RAILWAYS; TRANSPORT.
- 408. Road transport.** See ROAD TRAFFIC; TRANSPORT.

CHARITIES

- 409. Charitable purposes—charitable and non-charitable trusts—remuneration of trustees of charitable trust.** The cases in which a fund or the income thereof is directed to be applied partly to charitable and partly to non-charitable purposes establish the following propositions:
1. Where the amount applicable to the non-charitable purpose be quantified, the trusts fail *quoad* that amount, but take effect in favour of the charitable purpose as regards the remainder;
 2. where the amount applicable to the non-charitable purpose cannot be quantified, the trusts, both charitable and non-charitable, wholly fail

because it cannot in such a case be held that any ascertainable part of the fund or the income thereof is devoted to charity;

3. there is an exception to the general rule in what are commonly known as the "tomb cases", i.e., cases in which there is a primary trust to apply the income of a fund in perpetuity for the repair of a tomb not in a church, followed by a charitable trust in terms extending only to the balance or residue of such income, the established rule in cases of this particular class being to ignore the invalid trust for the repair of the tomb and treat the whole income as devoted to the charitable purpose; and
4. there is an exception of a more general character where as a matter of construction the gift to charity is a gift of the entire fund or income subject to the payments thereout required to give effect to the non-charitable purpose, in which case the amount set free by the failure of the non-charitable gift is caught by and passes under the charitable gift.

The remuneration in kind or in cash to trustees for their services in administering the affairs of a charitable trust does not constitute a non-charitable purpose under these four propositions but constitutes a charitable trust, not because the recipients of the remuneration are objects of charity, but because the provision of the remuneration promotes the efficient management of the trust; the remuneration is, in effect, an expense of administration.

Per Jenkins, J.: "I cannot but think that the Court would find means to quantify the income applicable to the invalid trusts rather than divert from purposes admittedly charitable (say) eleven-twelfths of the income of a fund, because a part of such income, incapable of exact quantification but incapable also on any reasonable estimate of exceeding (say) one-twelfth, is directed to be held on invalid trusts".

The testator directed that his trustees should hold a trust fund "upon trust out of the income of the trust fund to apply once a year a sum not exceeding the sum of £100 per annum to provide a dinner to the Court of Aldermen when they shall meet to decide the business of this trust and to pay to each member of the committee [of the trust fund] . . . who shall attend during the whole time of any committee meeting the sum of £1 ls. for his attendance at such meeting and to apply the balance of such income for the benefit of" certain charitable institutions "in such shares and proportions as the said committee shall from time to time think fit . . .". The trust fund amounted to over £200,000. Held, even if the provisions of the annual dinner and the payment of guineas to members of the committee did not constitute a charitable trust these trusts were ancillary to the charitable trusts, because they were conducive to the attainment of the charitable purpose by encouraging acceptance of the trust, stimulating a good attendance at the annual meeting, and promoting willing service on the committee and punctual and regular attendance at its meetings. However, these ancillary trusts were charitable, because the remuneration in cash and kind promoted efficient management of the trust and was therefore an administrative expense. See *Re COXEN*, § 3871 (applying *Re Birkett* (1878), 9 Ch. D. 576, and *Re Charlesworth* (1910), 101 L. T. 908; distinguishing *Re Porter*, [1925] Ch. 746, and *Re Barnett* (1908), 24 T. L. R. 788; considering *Chapman v. Brown* (1801), 6 Ves. 404, *Re Taylor* (1888), 58 L. T. 538, *Re Dalziel*, [1943] Ch. 277, and *Re Parnell*, [1944] Ch. 107).

410. — cloistered order of nuns. The following principles apply to charitable trusts for religious purposes:

1. Public benefit is a necessary element in religious, as it is in other, charitable trusts, and, if the evidence shows that the "public" element is missing, a gift, however beneficial it may be to those intended to benefit by it, must fail to attain the status of a valid charitable gift.
2. In deciding whether a gift is for the advancement of religion, the Court does not concern itself with the truth of the religion, a matter which is not susceptible of proof. This does not mean that the Court will recognise as a religion everything that chooses to call itself a religion. Once, however, the religion is recognised by the Court as a religion, the beneficial character of a gift for its advancement will *prima facie* be assumed. But this is not enough, because the trust must also be of public benefit, and the existence of a benefit of the necessary public character

cannot be shown to exist otherwise than by proof of works, which have a "demonstrable impact" on the community, or a section of it. (The word "impact" in this connection covers the benefits conferred by teaching and ministration, by the performance of religious services, by the provision or repair of churches and church ornaments, and so forth; and the word "demonstrable" means that the benefit must be capable of proof in a court of law.) It follows that religious beliefs, which in their nature are incapable of proof, cannot be accepted as having for this purpose probative force. Thus, an act of a private character in which the public has no lot or share otherwise than by supernatural intervention believed to be obtained by means of its performance remains a private act in the eyes of English law.

3. The statement of Wickens, V.-C., in *Cocks v. Manners* (1871), L. R. 12 Eq. 574, "that religious purposes are charitable, . . . can only be true as to religious services tending directly or indirectly towards the instruction or the edification of the public . . ." does not mean that every gift that results in religious edification is *ipso facto* charitable. Thus, edification derived from observing the lives of a devout community is not enough to provide the necessary element of public benefit. (The word "indirectly" in Wickens, V.-C.'s statement would cover, e.g., a gift to provide transport for the inhabitants of a sufficiently large area to enable them to attend church.)

Per Evershed, L.J., : ". . . the Irish Courts have accepted the proposition which . . . must be rejected in this country, namely, that the evidence of the belief of the Roman Catholic Church of the efficacy of the prayers of cloistered men and women on behalf of the whole body of the Church must be accepted as sufficient or true".

The income of a trust fund was given upon trust for the Carmelite Priory. The Carmelite Priory was a convent comprising an association of strictly cloistered and purely contemplative nuns who devoted themselves entirely to worship, prayers and meditations within the four walls of their cloister, and performed no works and engaged in no activities whatever for the benefit of anyone outside their own association, but who were regarded, in the belief and teaching of the Roman Catholic Church, as causing, by means of their private worship, prayers and meditations, the intervention of God to bring about the spiritual improvement of members of the public (both Catholic and non-Catholic) outside those walls, and also as providing an example of self-denial and concentration on the life of the Spirit tending to the spiritual edification of such members of the public. Held, the trust lacked the necessary element of public benefit, because neither the unprovable descent of Divine Grace by reason of the prayers of the nuns and the sanctity of their lives, nor the edification derived by the Catholic or the whole Christian community from contemplation of the saintly lives of the nuns constituted a benefit for the public so as to make the gift a valid charitable gift: *Re COATS' TRUSTS*, *COATS v. GILMOUR*, [1948] Ch. 340; [1948] L. J. R. 1178, C. A. (affirming decision of Jenkins, J., [1947] C. L. Y. 384; applying *Cocks v. Manners*, *supra*, and *National Anti-Vivisection Society v. I. R. C.*, [1947] C. L. Y. 382; criticising *Re Caus*, *Lindeboom v. Camille*, [1934] Ch. 162).

411. — **date of determining validity.** The question whether or not a charity or a charitable purpose lapses must be ascertained at the moment when the charity trustees become absolutely entitled to the legacy, i.e., at the moment when the legacy vests and not at the moment when it is payable.

The testator gave a legacy, to take effect after the death of his wife, for charitable purposes, viz., to a church for mission work in a certain district including particularly two named streets. At the date of the testator's death the church in question carried out mission work in that district and in those streets, but at the date of death of his wife the church and most of the buildings in the streets in question had been destroyed and were unlikely to be rebuilt. Held, the question whether or not the charitable purpose lapsed had to be ascertained at the moment of the testator's death, and, consequently, there was no lapse and a scheme should be directed. See *Re MOON'S WILL TRUSTS*, § 419 (applying *Re Slevin*, [1891] 2 Ch. 236).

412. — gift "for God's work". Gifts for "God's work" are valid charitable gifts for the promotion of religion and do not differ in this respect from gifts "for the service of God", which have been held to be charitable: *Re BARKER'S WILL TRUSTS*, *BARKER v. CROUCH*, [1948] W. N. 155; 64 T. L. R. 273, Jenkins, J. (applying *Re Darling*, [1896] 1 Ch. 50).

413. — gift "for the benefit of the church and parish". There is a real difference between a gift for "the benefit of the parish" and a gift for "parish work". A gift for "parish work" may well embrace all sorts of matters which would not come within the ambit of a gift for "the benefit of the parish". A gift for the benefit of the parish is a gift for the benefit of the inhabitants of the parish and is therefore a valid charitable gift.

By his will the testator provided: "I give £500 to the Church Council of B. N. as a thanks-offering. . . . This offering to be applied by the council to any use they may think best for the benefit of the church and parish but preferably for the support of the church school and a small provision for keeping in repair the graves of my wife's parents . . . and the bier house given by us . . .". The bier house referred to in the gift was a wooden structure, erected in the churchyard. No faculty had been obtained for its erection, which meant that, unless and until a faculty was obtained, the bier house would be an unlawful structure, which could be removed at any time under the order of the appropriate ecclesiastical authority. Held, (1) this was a gift to the council "for the benefit of the church and parish" with a discretion as to the particular mode of its application within those limits; (2) the testator meant the "small provision" to come out of the £500 and did not intend to make a separate and independent gift of an unascertained sum over and above the £500; (3) as a gift for "the benefit of the parish" as distinct from a gift for "parish work" was a valid charitable gift, it followed that down to the words "and parish" the gift in this will was a valid charitable gift for the benefit of the church and the inhabitants of the parish; (4) in the precatory words which followed, the main recommendation was that the £500 should be applied for the support of the church school, which was a valid charitable purpose; (5) of the two objects for which the "small provision" was contemplated, the first, inasmuch as the graves were not tombs in a church, was not a valid charitable purpose, with the consequence that that passage in the testator's will was ineffective; (6) the invalidity of this object did not have the result that any part of the £500 had not been validly disposed of so that it fell into residue, because this was a case in which the testator had devoted the whole of the legacy to charitable purposes, and then had empowered the trustees of the legacy to apply a part of it to the particular non-charitable purpose of keeping in repair two specified graves, with the effect that the power *quoad* this particular object should to that extent simply be ignored; (7) the repair of the bier house, being a bier house in the parish churchyard used for the purpose of housing biers in connection with funerals, was a purpose "for the benefit of the church and parish", and, therefore, a good charitable purpose; (8) this gift was not rendered invalid by the absence of a faculty; if the circumstance that no faculty had been obtained would make it impossible to carry that particular charitable purpose into effect, the result would be that any amount which the trustees might have applied in repair of the bier house would become available for the general charitable purposes for which the legacy of £500 was given: *Re NORTON'S WILL TRUSTS*, *LIGHTFOOT v. GOLDSON*, [1948] W. N. 395; 64 T. L. R. 582; [1948] 2 All E. R. 842, Jenkins, J. (applying *Goodman v. Saltash Corpn.* (1882), 7 App. Cas. 633, and *Re Dalziel*, [1943] Ch. 277; distinguishing *Farley v. Westminster Bank*, [1939] A. C. 430).

414. — gift to endowment of charity. It is settled by authority that so long as there are funds held in trust for the purposes of a charity the charity continues in existence and is not destroyed by any alteration in its constitution or objects made in accordance with law, as, for example, by a scheme under the Charitable Trusts Acts. On the other hand, it is equally well settled that (in the absence of a general charitable intention) a gift for a particular charitable purpose which has wholly failed is subject to the ordinary doctrine of lapse.

The testatrix by her will bequeathed a legacy and part of her residuary estate to the Crippled Children's Home, Lindley Moor, Huddersfield. An institution known as the Huddersfield Home for Crippled Children and carried on at Lindley

Moor in Huddersfield under the trusts of a trust deed had been closed before the date of the testatrix's will, and the Charity Commissioners had provided that the home and the endowments thereof should be administered and managed in conformity with the provisions of a scheme by a body of trustees under the title of the Huddersfield Charity for Crippled Children. The scheme provided for sending poor crippled children to holiday or convalescent homes. Held, if the Huddersfield Home for Crippled Children had remained in use until after the death of the testatrix the Court would have held that the description given by the testatrix was a mere misdescription of the Huddersfield Home for Crippled Children, and would have held that the trustees of that institution should hold the funds when received on the trusts of the trust deed as an addition to the funds subject to those trusts. The fact that the home had actually been closed before the date of the will and the testatrix's apparent ignorance of that fact could not alter the meaning of language which she had used, and, consequently, the trustees of the Huddersfield Charity for Crippled Children were entitled to such bequests by way of addition to the endowment of such charity: *Re LUCAS, SHEARD v. MELLOR*, [1948] Ch. 424; [1948] L. J. R. 1914, C. A. (allowing appeal from decision of Roxburgh, J., [1947] C. L. Y. 388; applying *Re Faraker*, [1912] 2 Ch. 488; distinguishing *Re Rymer*, [1895] 1 Ch. 19).

415. — **gift to holder of office—archbishop.** There is clear authority for the proposition that a gift, for example, to the minister for the time being of a particular Roman Catholic chapel, or to the person who at some future time shall be such minister, is to be construed as a gift, not to the individual, but to the holder of the office by virtue of his office and that such a gift constitutes a valid charitable gift for ecclesiastical purposes. The general rule also applies to a case where the gift to the holder of the office contains a superadded direction giving the holder of the office an absolute discretion with regard to its application.

The testatrix gave her residuary estate "to His Eminence the Archbishop of W. Cathedral, L., for the time being . . . to be used by him for such purposes as he shall in his absolute discretion think fit". Held, (1) this was a gift to the Archbishop of W. Cathedral, for the time being, *virtute officii* and not beneficially; (2) the superadded words "to be used by him for such purposes as he shall in his absolute discretion think fit" did not have the effect of enlarging the ambit of the purposes to which the Archbishop could properly apply this gift *virtute officii* beyond the scope of legal charity. They merely directed that the particular mode of application within the charitable purpose of the gift was to be settled by the Archbishop of W. Cathedral for the time being: *Re FLINN, PUBLIC TRUSTEE v. GRIFFIN*, [1948] Ch. 241; [1948] L. J. R. 923, Jenkins, J. (applying *Thornber v. Wilson* (1858), 4 Drew. 350; *Re Delany*, [1902] 2 Ch. 642; *Re Garrard*, [1907] 1 Ch. 382; *Re Barclay*, [1929] 2 Ch. 173; and *Re Norman*, [1947] C. L. Y. 375; distinguishing *Re Davidson*, [1909] 1 Ch. 567).

416. — **vicar and churchwardens.** It is settled by authority that the following constitute valid charitable gifts: (1) A gift to the vicar and churchwardens of such-and-such a parish, *simpliciter*; (2) a gift to the vicar and churchwardens for the time being of a parish to be applied by them in such manner as they shall in their sole discretion think fit; (3) a gift to the vicar of a church for such objects connected with the church as he shall think fit; (4) a gift to the vicar of a church to be used for his work in the parish.

On the other hand, it is equally settled by authority that the following do not constitute valid charitable gifts: (1) A gift to the vicars and churchwardens of named churches for parish work; (2) a gift to the archbishop for the time being of such-and-such an archdiocese for work connected with the Roman Catholic Church in the said archdiocese.

The distinction between the two lines of authority lies in the fact that in the former cases the gift was confined to the maintenance of the church, its fabric and its services, whereas in the latter cases the gift covered an altogether wider range, namely, parish work, which is not charitable.

The testatrix by her will gave her residuary estate to the trustees of the will on trust to pay the income arising therefrom to the vicar and churchwardens for the time being of St. G. Church, D., with the following directions as to its use: ". . . such income of . . . my . . . residuary . . . estate to be used by the said vicar and churchwardens for any purposes in connection with the said church

which they may select it being my wish that they shall especially bear in mind the requirements of the children in the said parish of St. G. Church, and I declare that in no circumstances shall they the said vicar and churchwardens use any portion of the said moneys in connection with the furtherance of overseas missions . . .". Held, the gift to the vicar and churchwardens for the "purposes in connection with the said church" was confined to the maintenance of the church, its fabric and its services and, therefore, charitable. The superadded direction referring to the children was merely precatory and did not enlarge these purposes, but covered the requirements and needs of one section of the congregation, namely, the provision of services particularly suited to the requirements or needs of the young who would normally go to the parish church. Similarly, the superadded direction referring to overseas missions did not enlarge these purposes, because, apart from this declaration, some part of the moneys might have been applied in connection with the furtherance of overseas missions without travelling outside the scope of purposes pertaining to the church, its fabric and services. Consequently, the residuary gift in the testatrix's will was a valid charitable gift: *Re EASTES, PAIN v. PAXON*, [1948] Ch. 257; [1948] L. J. R. 917, Jenkins, J. (applying *Re Bain*, [1930] 1 Ch. 224; *Re Garrard*, [1907] 1 Ch. 382; and *Re Simson*, [1946] Ch. 299; distinguishing *Farley v. Westminster Bank*, [1939] A. C. 430; and *Re Davies* (1932), 49 T. L. R. 5).

417. — **impossibility.** In *Re BRIDEWELL HOSPITAL, Re CHARITABLE TRUSTS ACTS, 1853-1925* (June 29, 1948), a charity was administered under a scheme made in 1931, which provided for the expenditure of not less than £3,000 annually for the benefit of girls. The main activities of the charity were concentrated on the promotion of a boys' school. In view of the inadequacy of available income, a Court order was obtained in 1941 suspending the obligation of the charity to expend £3,000 annually for the benefit of girls. The charity petitioned for a variation of the 1931 scheme by suspending, for a further period of seven years, the expenditure of the £3,000. Roxburgh, J., held that the provisions for the well-being of the girls were one of the principal objects of the charity and that the charity had failed to discharge the burden of proof resting on it that the pursuance of that object had become reasonably impracticable. [*Reported by C. M. Schmitthoff, Esq., Barrister-at-Law.*]

418. — **main and subsidiary objects.** In deciding whether a company is established "for charitable purposes only" within the meaning of s. 30 (1) of the Finance Act, 1921, the principle that one must look only at the main or dominant purpose of the company must be taken with a little reserve. However, whether the principle so stated is correct or not, it is clear that the first paragraph, by itself, of the objects clause of a company does not necessarily express the main object of a company, the question which paragraph or paragraphs express the main object being a matter of construction in each case.

Per Cohen, L.J.: "I feel some doubt whether a company can be said to be established 'for charitable purposes only' if it carried out a substantial non-charitable purpose".

A clause of the memorandum of association of a company provided: "The objects for which the company is established are: (A) to formulate . . . and take all necessary steps for the promotion . . . of education and of educational plays and arts of all kinds and the arts of drama, dance, singing and music . . . (B) to present, promote, . . . conduct such plays, dramas, comedies . . . musical and other pieces . . . educational and other entertainments . . . amusements, recreations and compositions of all kinds, whether educational, partly educational, or scientific, or partly scientific, or otherwise, for philanthropic or charitable purposes . . . (C) to purchase, acquire and obtain interests in the copyright of, or the right to perform or show any play, comedy, drama, stage piece or musical composition which can be used or adapted in any way for any educational or allied play; enter into agreement, if desirable, with authors, dancers, actors or others in connection with all or any of the objects of the company and to produce, distribute, rent, or otherwise deal in cinematograph films (D) as ancillary to the foregoing objects of the company and with a view to finding income and funds for the purposes of the company to carry on business as theatre, music hall . . . and picture house proprietors and managers". Held, even assuming that para. (A) was a charitable object, the objects contained in

paras. (B) and (C) were not subsidiary to the objects of para. (A), but were main objects which were not charitable, the dividing line between main and subsidiary objects being provided by para. (D). Consequently, the company was not a "body . . . established for charitable purposes only" within the meaning of s. 30 (1) (c) of the Finance Act, 1921: *TENNANT PLAYS v. I. R. C.*, [1948] 1 All E. R. 506, C. A. (affirming decision of Macnaghten, J., [1947] C. L. Y. 373, on different grounds; applying *Keren Kayemeth le Jisroel v. I. R. C.*, [1932] A. C. 650).

- 419. — mission work.** A gift to a person for "mission work" may be ambiguous and void for uncertainty, unless there is a sufficient indication that the expression means Christian mission work, in which case the gift will be charitable. For the purpose of discovering whether "mission work" means Christian mission work evidence of what in fact has been done by such person will be admissible.
- The testator by his will gave a legacy to the trustees of the G. Methodist Church at D. upon trust to apply the income to "mission work" in the district served by the G. Methodist Church including particularly J. Street and M. Street. There was evidence that the Methodist Church in that district held meetings and services, visited the sick and infirm and so forth. Held, quite apart from the question whether there was enough in the context of the will to show that the testator used the expression "mission work" as meaning Christian mission work, there was admissible evidence which made it abundantly clear that the testator, in using the phrase "mission work" meant Christian mission work, and, consequently, the testator's gift was charitable: *Re MOON'S WILL TRUSTS*, FOALE v. GILLIANS, [1948] W. N. 55; [1948] L. J. R. 778; [1948] 1 All E. R. 300, Roxburgh, J. (applying *Re How*, [1930] 1 Ch. 66; *Re Kenny* (1907), 97 L. T. 130; and *Re Rees*, [1920] 2 Ch. 59). (See also § 411.)
- 420. — relief of suffering and distress.** [Can.] In *Re FALLIS ESTATE*, [1948] 1 D. L. R. 27, the Saskatchewan Court of Appeal held that a trust "for the relief of suffering and distress" was a valid charitable trust.
- 421. Disabled persons—registration of charities.** By s. 41 of the National Assistance Act, 1948 (11 & 12 Geo. 6, c. 29), charities for disabled persons, as therein defined, are to be registered in the same manner as a war charity and the War Charities Act, 1940 (3 & 4 Geo. 6, c. 31), will apply subject to certain modifications. The exemption from purchase tax of wireless receivers granted by the Finance (No. 2) Act, 1945 (9 & 10 Geo. 6, c. 13), applies to receivers belonging to charities registered under this section.
- 422. — —.** Charities for Disabled Persons Regulations, 1948 (No. 1455) [E.], made under the War Charities Act, 1940, s. 4, and the National Assistance Act, 1948, s. 41, applying the War Charity Regulations, 1940 (No. 1533), with modifications, to charities for disabled persons and providing for applications for the registration of such charities under the Act of 1948. The new regulations came into force on July 5, 1948.
- 423. Educational charity—registration of transfers of land.** (Education Act, 1944 (7 & 8 Geo. 6, c. 31), s. 87 (1), (2).) S. 87 (2) of the Education Act, 1944, which provides that "every assurance of land or of personal estate to be laid out in the purchase of land, . . . shall, if the land or the income thereof is to be used for educational purposes, be void unless the assurance or a copy thereof is sent to the Minister within six months after the date upon which the assurance takes effect", is perfectly general in its terms and is not limited to the assurances which benefit by the exemption accorded by sub-s. (1) of the section. Consequently, a transfer of registered land to Magdalen College, Oxford, has to be sent to the Minister of Education to be recorded under the provisions of the Education Act, 1944, s. 87 (2), although sub-s. (1) of the section, which provides that "the Mortmain and Charitable Uses Act[s] . . . (which impose restrictions upon assurances of land and personal estate to corporations and to charitable uses) shall not have effect with respect to any assurance of land and of personal estate to be laid out in the purchase of land if the land or the income thereof is to be used for educational purposes", has no effect upon assurances to the universities of Oxford and Cambridge or the colleges therein for educational purposes, because such assurances were not previously subject to the restrictions imposed by the Mortmain and Charitable Uses Acts. Furthermore, the words "for

educational purposes" in sub-s. (2) are not limited to educational establishments which are under the jurisdiction of the Minister, but are wide enough to include purposes of an Oxford college: *Re No. 12 REGENT STREET, OXFORD*, [1948] Ch. 735; [1948] L. J. R. 1859, Jenkins, J. (applying *Re Harrow School*, [1927] 1 Ch. 556). (See also § 3545.)

- 424. Hospital covenants.** It was stated in the House of Commons on February 10, 1948, that unexpired deeds of covenant to hospitals would, in the case of teaching hospitals, pass to the new Boards of Governors and, in the case of non-teaching hospitals, to the Hospital Endowment Fund for use at the discretion of the hospital bodies for hospital purposes or research. They would not pass to the Exchequer.
- 425. Money paid to charities under a mistake of law.** See *Re DIPLOCK*, § 1377.
- 426. Youth welfare trusts—transfer of functions.** See § 1057.
- 427. ARTICLE.** Recent charity cases: 92 S. J. 211, 225.
- 428. BOOKS PUBLISHED.** Mess, H. A.—Voluntary Social Services since 1918 [21s.]. Morrison, A. C. L. and Thackeray, E. L.—Outlines of Law for Social Workers [12s. 6d.].

CIVIL DEFENCE

- 429. Civil Defence Act, 1948 (12 & 13 Geo. 6, c. 5).** The object of this Act is to provide for the establishment of a civil defence organisation for the purpose of affording protection against hostile attack by a foreign Power and mitigating the effects of any such attack. It does so mainly by making wide provision for future adjustment by regulations. By s. 1 it is one of the functions of the appropriate Minister to take such steps as he considers necessary or expedient for civil defence purposes generally, and in particular for the establishment of civil defence forces and services, the training and equipment of existing services, the instruction and training of the general public, the accumulation and storage of requisite materials, appliances, plant and equipment and the provision of civil defence works. S. 2 enables the appropriate Minister to make regulations empowering and requiring local authorities and police authorities to take such measures as may be specified therein. S. 4 makes provision for the compulsory acquisition of land required by Ministers, local authorities and police authorities for the discharge of their functions under ss. 1 and 2, and authorises, subject to safeguards, the construction of shelters in, under, or over highways and confers powers of entry on land. S. 5 places on constables, firemen and, if so provided by regulations of the appropriate Minister, other members of ordinary local government services a duty to undergo civil defence training and to take part in civil defence activities. It also renders liable to penalties volunteers for civil defence forces or services who fail to honour undertakings as to training and availability for active service in an emergency. S. 6 substitutes for the power in the Civil Defence (Suspension of Powers) Act, 1945 (9 & 10 Geo. 6, c. 12), to revive by Order in Council, the suspended provisions of the Civil Defence Acts, 1937 and 1939, a power, in the widest terms, to make regulations to revive, extend, amend or replace the provisions of the pre-war enactments as to civil defence, including "spent" enactments. The Act does not extend to Northern Ireland (s. 10).

CLUBS AND ASSOCIATIONS

- 430. Committee of workmen and employees—"person" under Coal Distribution Order, 1943.** See *DAVEY v. SHAWCROFT*, § 1200.
- 431. Cricket club—ball hit out of ground.** See *STONE v. CHEETHAM CRICKET CLUB*, § 2522.
- 432. Expulsion of member.** See *JUDSON v. ELLESMERE PORT EX-SERVICEMEN'S CLUB*, § 1698.
- 433. Gambling on club premises—forfeiture of lease.** See *HOFFMAN v. FINEBERG*, § 1904.
- 434. Golf club—theft of golf balls lost on links.** See *HIBBERT v. MCKIERNAN*, § 739.
- 435. Members' club—assessment of club premises for rating purposes.** See *ABERDARE U.D.C. v. PONTYPRIDD AREA ASSESSMENT COMMITTEE*, § 3099.

436. Superannuation fund—winding up. In *JAMESON v. TYPOGRAPHICAL ASSOCIATION* (July 30, 1948), Romer, J., held that a resolution of the association to wind up their superannuation fund and to distribute the proceeds among the members rateably, was not invalid as being *ultra vires* the association, but was validly passed. [Reported by C. M. Schmitthoff, Esq., Barrister-at-Law.] See also *Times*, July 31, 1948.

437. ARTICLE. Registration of clubs: 112 J. P. J. 696.

COMMONS

438. Cattle trespass. [Cty. Ct.] See *COOKE v. SKINNER*, § 153.

439. Open spaces. See OPEN SPACES AND RECREATION GROUNDS.

COMPANY LAW

440. Accounts and returns—annual return. Every company which holds an annual general meeting after December 31, 1948, is required to include a list of members in its annual return under the Companies Act, 1948. This follows from the expiry on that date of Reg. 3 of the Defence (Companies) Regulations, 1940: see [1947] C. L. Y. 407.

In the first annual return so made there need not, however, be included either particulars as to past members or transfers of shares by existing members since the date of the last return: Board of Trade Press Notice 463, dated December 29, 1948.

441. — form. See § 447.

442. — exemption of companies from requirements as to balance sheet, etc.—shipping companies. Companies (Shipping Companies Exemption) Order, 1948 (No. 1723), made under the Companies Act, 1948 (11 & 12 Geo. 6, c. 38), Sched. 8, Part III, para. 25 (3); exempts shipping companies from certain requirements of Part I of that Schedule as to balance sheet and profit and loss account subject to certain conditions.

443. Action against company—form of injunction. See *MARENGO v. DAILY SKETCH AND SUNDAY GRAPHIC*, § 2837.

444. Action to recover company's property—proper party to sue. [Can.] In *GRAY v. YELLOWKNIFE GOLD MINES*, [1948] 1 D. L. R. 473, the Ontario Court of Appeal held that it is a general rule that a company is the proper party to sue for property alleged to belong to it. To this rule there are exceptions. A shareholder can maintain such an action where there is a complaint that something has been done *ultra vires* the company, or that there has been an oppressive and unjust exercise of the powers of the majority of the shareholders, or that there is fraud. The other exception is where there is misconduct on the part of the company or one or more of its officers to be investigated.

445. Applications to High Court. Rules of the Supreme Court (Companies), 1948 (No. 1756); came into operation on September 30, 1948; make various amendments to the Rules of the Supreme Court. Ord. 50, r. 23 (as to liquidators' accounts) is to be deleted; Ord. 53B (as to the procedure on applications under the Companies Act, 1929) is extensively amended (see below); and amendments are also made to Ord. 55, r. 15, and to various forms.

Rules of the Supreme Court (Companies) (No. 2), 1948 (No. 1880); came into operation on October 1, 1948; substituted a new order for R. S. C. Ord. 53B (as to procedure on applications under the Companies Act) and new forms for Forms 30–37 in Appendix L to those Rules. [4d.]

446. Arrangements and compromises—scheme of arrangement—majority. [Scot.] (Companies Act, 1929 (19 & 20 Geo. 5, c. 23), s. 153.) In *HECTOR & SONS, PETITIONERS*, 1947 S. C. 641; 1948 S. L. T. 76, the Court of Session held that there is nothing in s. 153 of the Companies Act, 1929 (which deals with compromises and arrangements between a company and its creditors or its members or any class of its members) which says that, in ratifying a scheme of arrangement already approved by the class or classes of members affected, the company must also observe the three-fourths in value majority rule.

447. Articles of association—Table A. Companies (Articles of Association and Annual Return) Regulations, 1948 (No. 434) [9d.], made under the Companies Act,

1929 (19 & 20 Geo. 5, c. 23), s. 379, as amended by the Companies Act, 1947 (10 & 11 Geo. 6, c. 47), s. 120 (2). These Regulations contain, in Schedule I thereto, an amended Table A. They also contain in Schedules II and III, amended versions of so much of Tables C and E as consists of articles of association to accompany the memoranda of association set out in those tables, and, in Schedule IV, an amended form of annual return of a company having a share capital. The Regulations became operative on July 1, 1948.

- 448. — Tables D and E.** Companies (Articles of Association) Regulations, 1948 (No. 586), made under the Companies Act, 1929, s. 379, as amended, give effect to s. 81 (1) of the Companies Act, 1947, by inserting in Tables D and E of Schedule I to the 1929 Act articles stating the number of members to be registered in the cases of companies limited by guarantee and having a share capital or unlimited and having a share capital. The Regulations also revoke the Companies (Articles of Association and Annual Return) Regulations, 1948 (No. 434) (see § 447), so far as they relate to Table E and re-enact those provisions, together with a new article as to number of members, in Schedule II. The Regulations came into operation on July 1, 1948, except as to the provision revoking the 1948 Regulations which operates as from March 24, 1948.
- 449. Auditors—recognition by Board of Trade.** The following bodies of accountants established in the United Kingdom have been recognised by the Board of Trade for the purposes of s. 23 (1) of the Companies Act, 1947 (10 & 11 Geo. 6, c. 47): The Institute of Chartered Accountants in England and Wales; The Society of Incorporated Accountants and Auditors; The Association of Certified and Corporate Accountants; The Society of Accountants in Edinburgh; The Institute of Accountants and Actuaries in Glasgow; The Society of Accountants in Aberdeen; The Institute of Chartered Accountants in Ireland. A member of these bodies is accordingly qualified, so far as the above provision is concerned, for appointment as auditor of a company. In addition, persons may be authorised by the Board of Trade to be so appointed either (a) as having similar qualifications obtained outside the United Kingdom, or (b) as having obtained adequate knowledge and experience in the course of his employment by a member of one of these bodies, or (c) as having before August 6, 1947, practised in Great Britain as an accountant. Forms of application for authorisation may be obtained from the Assistant Secretary, Board of Trade, Insurance and Companies Department, Romney House East, Tufton St., S.W.1.
- 450. Capital — reduction — change of circumstances.** [Scot.] In *HAILEY & SONS, PETITIONERS*, 1948 S. L. T. 500, the Court of Session refused to confirm a scheme for the reduction of capital because since the scheme had been approved (that approval being based on a continued loss over a period of years) the latest accounts of the company disclosed a substantial profit, a circumstance which so changed the basis of the scheme as to render amendment impossible.
- 451. — — interests of creditors.** [Scot.] (Companies Act, 1929 (19 & 20 Geo. 5, c. 23), s. 56 (2).) In *GARDINER AND SONS, PETITIONERS*, 1948 S. C. 34; 1948 S. L. T. 136, the Court of Session held that in order to protect the interests of the creditors of a company the Court may make the reduction of the company's capital conditional on an undertaking that the company's fixed assets will be written down in value.
- 452. — — liquidation pending.** [Scot.] In *ALLOA COAL CO., PETITIONERS*, 1948 S. C. 651; 1948 S. L. T. 78, the Court of Session confirmed a reduction of capital of a coal company whose assets had become vested in the National Coal Board but which had to continue to exist for some considerable time to deal with its remaining assets and to await the ascertainment of the compensation to which it would eventually become entitled under the Coal Industry Nationalisation Act, 1946 (*Wallasey Brick and Land Co.* (1894), 63 L. J. Ch. 415, disapproved).
- 453. — — —.** [Scot.] (Companies Act, 1929 (19 & 20 Geo. 5, c. 23), s. 55 (1).) In *WILSONS & CLYDE COAL CO., PETITIONERS*, 1948 S. L. T. 274, the Court of Session, by a majority, confirmed a reduction of capital by a company whose substratum had gone but which continued to exist for the purpose of receiving compensation under the Coal Industry Nationalisation Act, 1946, the reduction involving the repayment at par of the preference shareholders, on the ground

that the reduction was valid if fair and equitable, and that it was not unfair and inequitable to repay the preference shareholders at par because such repayment was a satisfaction of their rights in terms of the contractual conditions binding upon them.

454. ——— preference shareholders. (Coal Industry Nationalisation Act, 1946 (9 & 10 Geo. 6, c. 59), s. 25 (1).) It is a clearly recognised principle that the Court, in confirming a reduction by the payment off of capital surplus to a company's needs, will allow, or rather require, that the reduction shall be effected in the first instance by payment off of capital which is entitled to priority in a winding up. There is nothing contained in the provisions of s. 25 (1) of the Coal Industry Nationalisation Act, 1946 (which, in the case of a nationalised colliery company, makes provision for Regulations to be passed by Parliament which must provide facilities for adjusting the respective interests of the classes of shares and other interests in the company's assets as affected by the substitution of compensation for the transferred interests so as to give effect, so far as may be, to their prospects of income yield), which purports expressly or impliedly to limit or affect in any way the existing provisions of the Companies Act, or the well known practice of the Courts thereunder, or to lay down any new principles for the Court to follow.

Under the Coal Industry Nationalisation Act, 1946, a colliery company's undertaking had become vested in the National Coal Board. Although divested of its main business it was contemplating starting mining operations in other countries. Before nationalisation it used to pay its preference shareholders a dividend of 6 per cent. per annum and its ordinary shareholders a dividend of 12 per cent. per annum for several years. Under its articles the preference shareholders were entitled to a cumulative preferential dividend of 6 per cent. per annum, and, on a winding up, in priority to the holders of the ordinary shares, to repayment of capital and payment of an amount equal to the difference between the total amount of dividends paid on their shares and 6 per cent. per annum on the capital paid up thereon as from the time of payment of such capital. The company had passed a resolution to reduce its capital from £400,000 to £200,000 by the return to the preference shareholders of the whole of the capital paid up on their shares, thus leaving the ordinary shareholders as the only shareholders of the company. The petition by the company to sanction the proposed reduction was opposed by some of the preference shareholders. Held, the proposed reduction of the company's capital by returning to the preference shareholders all capital paid up on their shares should be confirmed: *Re CHATTERLEY-WHITEFIELD COLLIERIES*, [1948] W. N. 367; [1948] 2 All E. R. 593, C. A. (Evershed, L.J., dissenting; reversing decision of Judge Peel, K.C., [1948] 1 All E. R. 911; considering *Wilsons and Clyde Coal Co., Petitioners*, § 453).

455. ———. [Scot.] In *WILLIAM DIXON, PETITIONERS*, 1948 S. L. T. 423, the Court of Session held that although when any reduction of capital takes place the *prima facie* legal position is that any loss should be thrown in the first instance on the ordinary shares, and that any capital repaid should be so repaid in the first instance to the preference shares, that position may be departed from where the company is not a sinking ship but where it is to the advantage of shareholders to retain capital in the company and not to be paid off, as may be the case where a company has been affected by nationalisation. (See also § 478.)
456. ———. [Scot.] (Companies Act, 1929 (19 & 20 Geo. 5, c. 23), s. 153.) In *FIFE COAL CO., PETITIONERS*, 1948 S. L. T. 421, the Court of Session sanctioned a reduction of capital involving a large repayment to the ordinary shareholders notwithstanding that the reduction effected a modification of the rights of the preference shareholders, on the ground that after the repayment there would remain assets amply sufficient to cover the claims of the preference shareholders, and held that in such circumstances the reduction could be sanctioned without a separate meeting of the preference shareholders under s. 153 of the Companies Act, 1929, being required.
457. ——— "total capital of the company", meaning of. See *LLANDUDNO U. D. C. v. GREAT ORME RY.*, § 3746.

- 458. Chancery of Lancaster—Rules of Court.** Chancery of Lancaster (Companies) Rules, 1948 (No. 2359); came into operation on October 28, 1948; make certain amendments consequential on the passing of the Companies Act, 1948, to the Chancery of Lancaster Rules, Ord. 47, and to Forms 36-43 in App. L. to those Rules.
- 459. Charges—registration.** PRACTICE NOTE: On April 28, 1948, Vaisey, J., said that an affidavit supporting an application under the Companies Act, 1929, s. 85, for extension of time for the registration of a charge should not merely state that the omission was due "to inadvertence" and repeat the wording of the section, but should give full particulars of the nature of the inadvertence or other grounds for the application. [*Reported by C. M. Schmitthoff, Esq., Barrister-at-Law.*] See also [1948] W. N. 179; 92 S. J. 297.
- 460. ———.** (Companies Act, 1948 (11 & 12 Geo. 6, c. 38), s. 101.) Where a chargee applies under s. 101 of the Companies Act, 1948, for an extension of time for registering a charge, the application should be supported by evidence of the circumstances giving rise to the omission and should not merely state that the matter was accidental and due to inadvertence. The power of the Court to grant the application is discretionary in that the applicant must satisfy the Court that the omission was without fraudulent intention and due to inadvertence—which includes inattention or carelessness—or to some other sufficient cause—which might include the giving of wrong advice by solicitor or counsel. The insolvency of the company is only material where some step has been taken in contemplation of a winding up.
The application was supported by evidence that the chargees thought that the secretary of the company had registered the charge, while the secretary thought that the chargees had done so, and evidence was also given of the company's insolvency. Held, attention need not be paid to the company's insolvency, but the evidence to satisfy s. 101 went just far enough and the application would be granted. *Re KRIS CRUISERS*, [1948] W. N. 480; 92 S. J. 706; [1948] 2 All E. R. 1105; Vaisey, J. (distinguishing *Re Charles (J. H.) & Co.*, [1935] W. N. 15).
- 461. Committees.** The President of the Board of Trade announced in the House of Commons on January 26, 1948, that he had appointed the General Consultative Committee (chairman, Mr. E. H. S. Marker, of the Board of Trade), and the Accountancy Advisory Committee (chairman, Sir Russell Kettle, F.C.A.).
- 462. Companies Act, 1947—commencement.** Companies Act, 1947 (Commencement) Order, 1948 (No. 439) (made under the Companies Act, 1947 (10 & 11 Geo. 6, c. 47), s. 123 (2). By this Order March 2, 1948, was appointed as the day on which s. 120 (2) of that Act was to come into force, and July 1, 1948, was appointed as the day on which there were to come into force all the provisions of the Act other than s. 120 (2) and the provisions specified in the Companies Act (Commencement) Order, 1947 (No. 2503). If any of the latter provisions were not in force on July 1, 1948, they also were to be brought into force by this Order on that date. The bulk of the Act was, however, repealed as soon as it came into force (see § 463).
- 463. Companies Act, 1948 (11 & 12 Geo. 6, c. 38).** This Act came into operation on July 1, 1948. The Act consolidates the law relating to companies. It repeals the Companies Act, 1929 (19 & 20 Geo. 5, c. 23) and most of the Companies Act, 1947 (10 & 11 Geo. 6, c. 47). The only provisions of the Act of 1947 which remain are ss. 58 and 116 and Sched. IX, Pt. II, which relate to the registration of business names; s. 115, which relates to bankruptcy, and ss. 91, 92 and 99 so far as required for the purposes of s. 115; s. 117, which relates to the prevention of fraud in connection with unit trusts, and ss. 122 (meaning of "principal Act"), 123 (short title). These are subject to the amendments made by ss. 456, 459 and Scheds. XVI, XVII of the Act of 1948.
The bulk of the Act of 1947 came into operation only to be repealed on July 1, 1948. As to the provisions which came into operation earlier, see [1947] C. L. Y. 406, and see § 462.
- 464. ——— appointed day.** The Companies Act, 1948, came into operation on July 1, 1948, on which date the Companies Act, 1947, was brought into force and mainly repealed: see § 463.

- 465. — cases overruled.** The following cases are affected by the provisions of the Companies Act, 1948, noted against them.
Re V. G. M. Holdings, [1942] Ch. 235, no longer good law—s. 54 (purchase of company's own shares).
Re Serpell & Co., [1944] Ch. 233, no longer good law—s. 58 (capital redemption).
Whitechurch (George) v. Cavanagh, [1902] A. C. 117, and *Kleinwort, Sons & Co. v. Associated Automatic Machine Corporation* (1934), 50 T. L. R. 244, overruled—s. 79 (certification of transfers).
Grundt v. Great Boulder Gold Mines, § 472, not applicable to companies under new Table A.—Sched. I, Table A, art. 92.
- 466. Debentures—appointment of receiver and manager.** See *Re NEWPORT CONSTRUCTION Co.*, § 2805.
- 467. — redemption—currency.** [Aus.] See *GOLDSBROUGH, MORT & Co. v. HALL*, § 647; [Aus.] *BONYTHON v. THE COMMONWEALTH*, § 648.
- 468. Defence (Companies) Regulations, 1940.** See § 440.
- 469. Directors—aliens.** The Home Office have agreed to the publication of the following statement (see *Law Society's Gazette*, April, 1948, p. 71): "Generally, aliens who were given leave to land in the United Kingdom before September 3, 1939, have remained here since that date, and are no longer subject to any restrictions on the length of their stay, employment or occupation, or are subject only to the condition that they remain in the United Kingdom until a date to be specified by the Secretary of State, are free to become directors of companies without first obtaining the permission of the Secretary of State.
 A similar view is taken with regard to certain classes of aliens who have entered the United Kingdom since September 3, 1939, and are subject only to the above-mentioned condition. These are foreign husbands of British-born women, former British subjects who have acquired a foreign nationality while resident abroad, and ex-members of His Majesty's forces.
 Aliens not in these categories are not at liberty to become directors of companies without the prior consent of the Secretary of State.
 The concurrence of the Secretary of State is not required in the appointment of an alien who is resident abroad to the directorship of a company operating in the United Kingdom, but such an appointment would not in itself give an alien any claim to be allowed to enter this country.
 The fact that an alien is already, with the permission of the Ministry of Labour and National Service, employed by a company, does not exempt him from the necessity of obtaining the consent of the Secretary of State to his appointment to the Board of Directors."
- 470. — remuneration.** [Scot.] In *OLIVER'S TRUSTEES v. WALKER & SON (EDINBURGH)* 1948 S. L. T. 140, the Court of Session, Outer House, held that an action at the instance of a minority of the shareholders of a company to set aside a resolution of the directors fixing their own remuneration, cannot be entertained by the Court unless the resolution complained of would be *ultra vires* the company to pass in general meeting or unless it can be said that it was of a fraudulent nature.
- 471. — income tax on.** See the Finance Act, 1948 (11 & 12 Geo. 6, c. 49), Part 4, § 1654.
- 472. — retirement by rotation.** Article 102 of the articles of association of a company provided as follows: "If at any general meeting at which an election of directors ought to take place the place of any director retiring by rotation is not filled up, he shall, if willing, continue in office until the ordinary meeting in the next year, and so on from year to year until his place is filled up, unless it shall be determined at any such meeting on due notice to reduce the number of directors in office". Another article provided for the retirement by rotation of one third of the directors at the general meeting each year (specifying that directors so retiring should be eligible for re-election) and the articles further provided that "unless otherwise determined by the general meeting, the number of the directors shall not be less than three or more than five". When the plaintiff retired from office by rotation, a resolution for his re-election was lost, but no other person

was elected director in his place. Held on appeal, that on the true construction of article 102 the plaintiff was deemed to have been re-elected, because on his retirement by rotation he was willing to continue in office, his place was not filled up at the same meeting and no resolution had been passed on due notice determining to reduce the number of directors in office. It was further held, that the words in the article "If at any general meeting at which an election of directors ought to take place" could not refer only to a case where by reason of the retirement of a director or otherwise the number of directors had been reduced below the minimum authorised by the articles: *GRUNDT v. GREAT BOULDER GOLD MINES*, [1948] Ch. 145; [1948] L. J. R. 1100, C. A. (reversing decision of *Wynn-Parry, J.*, [1947] C. L. Y. 412; following *Holt v. Catterall* (1931), 47 T. L. R. 332; overruling *Batcheller and Sons v. Batcheller*, [1945] Ch. 169). [See now Companies Act, 1948 (11 & 12 Geo. 6, c. 38), Sched. I, Table A, art. 92, § 465.]

- 473. — vacation of office—" convicted of an indictable offence "**. In deciding whether or not an offence is " indictable " within the meaning of the expression " convicted of an indictable offence " the material time is the time when the offence was committed, irrespective of the procedural manner in which it may subsequently be dealt with. The expression therefore includes conviction of offences which can at the sole option of the prosecution be proceeded against either summarily or by indictment and not only conviction on indictment or summary conviction of an indictable offence triable summarily, being one of the offences enumerated in Sched. II to the Criminal Justice Act, 1925.

The articles of association of a company provided that a director " convicted of an indictable offence " should vacate his office. The defendant, a director of the company, was convicted by a Court of summary jurisdiction of an offence against Reg. 4 of the Defence (Finance) Regulations, 1939, to which he had pleaded guilty. The offence is punishable under Reg. 92 (1) of the Defence (General) Regulations, 1939, which provides that a breach of the Regulation shall be punishable either on summary conviction or on conviction on indictment. Held, the defendant's conviction of an offence against the Defence (Finance) Regulations, 1939, reg. 4, meant that he vacated office as a director (*Tucker, L.J.*, attaching importance to the exclusion under the company's articles of offences under the Road Traffic Act, 1930, from the offences involving liability to loss of office as a director): *HASTINGS AND FOLKESTONE GLASSWORKS v. KALSON*, [1948] W. N. 469; 64 T. L. R. 631; [1948] 2 All E. R. 1013, C. A. (reversing decision of *Oliver, J.*, [1948] 1 All E. R. 711).

- 474. Forms.** Companies (Forms) Order, 1948 (No. 1518), made under the Companies Act, 1948 (11 & 12 Geo. 6, c. 38); came into operation on July 1, 1948; adds a number of forms to the Companies (Forms) Order, 1929 (No. 823), and provides that certain forms in that Order are to cease to have effect. [7d.] See also §§ 445, 447, 2257.

- 475. Investigation by Board of Trade.** In *Re MILES AIRCRAFT* (No. 2) (May 3, 1948), the directors on August 6, 1947, recommended the declaration of a dividend of 7½ per cent. and of a bonus of 2½ per cent. On September 26, 1947, the shareholders were informed that the company was operating at a loss, and on November 19, 1947, a receiver was appointed for the debenture holders. The Board of Trade applied for an investigation into the company's affairs under the Companies Act, 1947, s. 43 (1); this was the first application under the Act. *Roxburgh, J.*, held that though the application was not opposed, it was his duty under s. 43 to satisfy himself that a *prima facie* case had been made out for investigation. In view of the fact that a dividend of 7½ per cent. had been declared only two months before the company's loss was discovered, he was satisfied that a *prima facie* case had arisen. With respect to the costs of the application, they should be reserved until the Board of Trade had made their report. Investigation ordered. [Reported by *C. M. Schmitthoff, Esq., Barrister-at-Law.*] See also [1948] W. N. 178.

- 476. —** In *Re A. REYROLLE & Co.* (December 6, 1948), *Vaisey, J.*, on the application of a shareholder, made an order for the investigation of the affairs of the company by an inspector of the Board of Trade, on the ground of an alleged misfeasance by a director. The company consented to the order. [Reported by *C. M. Schmitthoff, Esq., Barrister-at-Law.*]

477. Meetings. See also MEETINGS.

478. — majority. [Scot.] In WILLIAM DIXON, PETITIONERS (see § 455), the Court of Session held that when a meeting is specifically required to be convened for the purpose of passing a given proposal by a specified majority in number or value, the body *prima facie* pointed to as the body whose majority is required is the body of persons who take the trouble to answer the summons and come and record their votes.

479. Memorandum of association—alteration of objects. [Scot.] (Companies Act, 1929 (19 & 20 Geo. 5, c. 23), ss. 5 and 234.) In WAVERLEY HYDROPATHIC CO., PETITIONERS, 1948 S. C. 59, the Court of Session sanctioned an alteration of the objects clause in a memorandum to give the company power to sell its undertaking but did not sanction an alteration which would have had the effect of enabling the company to dispose of its undertaking in consideration of shares in another company.

480. Profits tax. See § 1356.

481. Registration of business names—new forms. See § 2257.

482. Shares—devolution. In *Re GREENE, GREENE v. GREENE* (December 7, 1948), Harman, J., held that a clause in the articles of a company that upon the death of a director his shares were deemed to have passed to the deceased director's wife was invalid as being contrary to s. 63 of the Companies Act, 1929 (s. 75 of the Act of 1948), because no proper instrument of transfer could be delivered nor was the right to the shares transmitted to the widow by operation of the law, but the personal representatives of the deceased shareholder had been by-passed. [Reported by C. M. Schmitthoff, Esq., Barrister-at-Law.] See also [1948] W. N. 499, and see [1949] 1 C. L., § § 36, 97.

483. — dissentient shareholders, acquisition of shares of—discovery relating to value of shares. See *Re PRESS CAPS*, § 2821.

484. — gift of shares—transfer not registered at time of donor's death. See *Re ROSE*, § 3867.

485. — Hungarian companies. See § 3697.

486. — preference shares. See *Re CHATTERLEY-WHITFIELD COLLIERIES*, § 454; [Scot.] WILLIAM DIXON, PETITIONERS, § 455; [Scot.] FIFE COAL CO., PETITIONERS, § 456.

487. — ultra vires issue—rights of holder after re-sale. See *LINZ v. ELECTRIC WIRE CO. OF PALESTINE*, § 599.

488. — value of shares—compulsory acquisition. See *SHORT v. TREASURY COMMISSIONERS*, § 1162.

489. — — estate duty. See *Re DUFFY*, § 846.

490. — — not realisable during accounting period for income tax purposes. See *GOLD COAST SELECTION TRUST v. HUMPHREY*, § 1671.

491. Stock Exchanges. Companies (Stock Exchange) Order, 1948 (No. 1592), made under the Companies Act, 1948 (11 & 12 Geo. 6, c. 38); came into operation on July 8, 1948; prescribes that for the purposes of ss. 38, 39, 417, 418 of the Act the Stock Exchange, London, is a prescribed stock exchange.

Companies (Stock Exchange) (No. 2) Order, 1948 (No. 2340), made under the Companies Act, 1948; prescribes the Stock Exchanges at Birmingham, Edinburgh, Glasgow, Liverpool and Manchester as prescribed Stock Exchanges under ss. 39, 418 of the Act, and the same Stock Exchanges and also the Stock Exchanges at Bristol, Cardiff, Newcastle, and Sheffield as prescribed Stock Exchanges under ss. 38 and 417 of the Act.

492. Unregistered companies. Companies (Unregistered Companies) Regulations, 1948 (No. 1398), dated June 25, 1948, made under the Companies Act, 1947 (10 & 11 Geo. 6, c. 47), s. 108. These Regulations apply to certain unregistered companies (including chartered companies trading for profit, and certain public utility companies formed under private Acts of Parliament), the provisions of the Companies Acts as to prospectuses, allotments, annual return, accounts and audit. In the case of most of the companies concerned, these provisions apply as from

October 1, 1948, and accounts laid before a general meeting of such a company held on or after that date must comply with the new provisions. In the case of companies carrying on water, hydraulic power or pier undertakings, the provisions in question will not apply until July 1, 1949. The provisions of the Companies Acts as to investigations and as to the register of directors and secretaries apply to all the companies concerned as from July 1, 1948.

- 493. Winding up—advertisement of petition.** In PRACTICE NOTE (November 29, 1948), Vaisey, J., ruled that in the advertisement of a petition to wind up a company, the heading must correspond with the heading of the petition itself. The advertisement must not contain any tendentious or illustrative matter (such as “trading as —”) on whatsoever grounds it was sought to be introduced. [*Reported by C. M. Schmitthoff, Esq., Barrister-at-Law.*]
- 494. — deadlock.** [S.A.] In LAWRENCE v. LAWRIE MOTORS (PTY.), 1948 (2) S. A. L. R. 1029, the Witwatersrand Local Division of the Supreme Court of South Africa made an order for the compulsory winding up of a company in which there were only two shareholders, who were also the directors, because one director had committed adultery with the wife of the other. (*Lock v. John Blackwood*, [1924] A. C. 783, applied.)
- 495. — disposition of property.** (Companies Act, 1929 (19 & 20 Geo. 5, c. 23), s. 173.) S. 173 of the Companies Act, 1929, provides: “In a winding-up by the court, any disposition of the property of the company . . . made after the commencement of the winding-up, shall, unless the court otherwise orders, be void”. The general effect of this section is that, unless there is in progress a winding up by the Court, the Court is powerless to make any order under the section.
- A petition had been presented for the winding up of the company, but no winding-up order had been made. The company had entered into a contract for the sale of certain leasehold property. The debenture holders wished to adopt the contract. They feared that any disposition of the legal estate would be void under s. 173 of the Companies Act, 1929, if a winding-up order were made on the petition. They, therefore, applied for an order under s. 173 that the contract and any disposition of the property to be made by way of completion or in pursuance of the contract should not be void in the event of an order for the winding up of the company being made. Held, the Court had no jurisdiction under the section to deal with the matter, for it could not anticipate the performance of his duty by the liquidator, and if the petition was ultimately dismissed or withdrawn, there never would have been a winding up by the Court. Consequently, the order could not be made: *Re MILES AIRCRAFT (APPLICATION OF BARCLAYS BANK AND ERLANGERS)*, [1948] Ch. 188; [1948] L. J. R. 1133, Vaisey, J. (distinguishing and criticising *Carden v. Albert Palace Assocn.* (1886), 56 L. J. Ch. 166).
- 496. — dissolved company—vesting of freehold property in shareholders.** (Companies Act, 1929 (19 & 20 Geo. 5, c. 23), s. 296; Law of Property Act, 1925 (15 Geo. 5, c. 20), s. 181.) The legal estate in fee simple in freehold property held by a company in trust for other persons (and, accordingly, excepted from the provisions of s. 296 of the Companies Act, 1929) is not determined by the dissolution of the company, but passes to the Crown, subject to the trusts on which it was formerly held by the company. There is, therefore, no question of creating any new legal estate, and s. 181 of the Law of Property Act, 1925, has no application: *Re STRATHBLAINE ESTATES*, [1948] Ch. 228; [1948] L. J. R. 905, Jenkins, J. (preferring *Re Wells*, [1933] Ch. 29, to *Hastings Corpn. v. Letton*, [1908] 1 K. B. 378). (See also § 497.)
- 497. — — —** (Law of Property Act, 1925 (15 Geo. 5, c. 20), s. 53; Trustee Act, 1925 (15 Geo. 5, c. 19), s. 44 (ii) (c).) Where on a dissolution a company has agreed to divide its freehold properties between its shareholders in equal shares, the company became a trustee of those properties for the shareholders. In such a case, the minutes, signed by the chairman, are sufficient written evidence to satisfy the Law of Property Act, 1925, s. 53. The properties can, therefore, be vested in the shareholders under the Trustee Act, 1925, s. 44 (ii) (c), for all the estate therein formerly vested in the company as joint tenants on trust for sale. See *Re STRATHBLAINE ESTATES*, § 496.

498. — **misfeasance summons.** In *Re SCOTT (G. R.) & Co.* (July 19, 1948), on a summons for an order on a director for the repayment of moneys of the company, Wynn-Parry, J., directed that the misfeasance could be proved by affidavit evidence alone. See [1948] W. N. 323.

499. — **proof of debts—enemy creditors.** (Companies Act, 1929 (19 & 20 Geo. 5, c. 23), s. 261; Trading with the Enemy (Custodian) Order, 1939 (No. 1198), art. 1 (i) (ii) (e), (iv), (d) (as amended by Trading with the Enemy (Custodian) (Amendment) Order, 1940 (No. 94)).) In the voluntary winding up in 1944 of an English company which had subsidiaries in Germany and Brazil, questions arose how German creditors of the company (some of whom were and some of whom were not resident in enemy territory), who under a barter scheme arranged by the company were entitled to have refunded to them in Germany certain sums of money, should be treated in the proof of the company's debts. It was held that:

- (1) the claims of the Custodian of Enemy Property and of the non-enemy creditors ought not to be treated as claims for liquidated amounts, but as rights in the nature of a chose in action, giving a right of proof in sterling, and that, consequently, the Custodian and the non-enemy creditors were not entitled to rank as creditors on the basis of the rate of exchange prevailing at the date of the outbreak of war in September, 1939, namely, Rm. 10.77 to the £, but only on the basis of a judicial estimate of the value of the claims of Rm. 40 to the £ which had been arrived at by the Court of Appeal in the previous proceedings of *Re Parana Plantations*, [1946] 2 All E. R. 214;
- (2) the claims of creditors who were German nationals on September 3, 1939, could now be discharged;
- (3) the liquidator was entitled to use blocked Reichsmarks as and when they became available in discharging the claims of these creditors;
- (4) the liquidator was not entitled to treat the claims of creditors which appeared to have been satisfied during the war in Reichsmarks as discharged:

Re PARANA PLANTATIONS (No. 2), [1948] 1 All E. R. 742, Vaisey, J.

500. **ARTICLES.** Contingent claims in a winding up (continued): 92 S. J. 7, 36. The Companies Act, 1947 (an examination of the provisions relating to directors and secretaries): 98 L. J. 34, 74. Alterations to memorandum (founded on Companies Act, 1947, s. 76): 92 S. J. 62, 91. Director's responsibility for decisions made at board meetings: *Secretary*, January, 1948, p. 9. Retirement of directors by rotation: *ibid.*, p. 10. The exempt private company—an interpretation: *Accountant*, December, 1947, p. 279. The new company law: *Solicitor*, February, 1948, p. 40. Automatic re-election of directors: 205 L. T. J. 86. Fixed assets: *Accountant*, January 31, 1948, p. 78. Retirement and other benefits—Finance Act, 1947: *Accountant*, January 31, 1948, p. 80. Taxation provisions: *Accountant*, February 7, 1948, p. 98. Meetings: *Accountant*, February, 1948, p. 31. Holding and subsidiary companies—consolidated and group accounts (founded on the Companies Act, 1947): *Accountant*, February 14 and 21, 1948, pp. 120, 142. Payments to directors: *Accountant*, February 21, 1948, p. 140. Minorities (Companies Act, 1947, ss. 9, 44): 98 L. J. 102. What constitutes a meeting? (founded on *Prain & Sons' Petition*, [1947] C. L. Y. 416): 98 L. J. 118. Substratum (founded on *Gabraith v. Merito Shipping Co.*, [1947] C. L. Y. 447): 98 L. J. 118. Statutory provisions as to the secretary: 92 S. J. 120. The Companies Act, 1947, and stock exchange practice: *Accountant*, February 28, 1948, p. 162. Companies Act, 1947—prospectuses: *Accountancy*, March, p. 55. The Companies Act, 1947, in practice—consolidated accounts: *Accountant*, March 6, 1948, p. 179. Companies accounts and the 1947 Act: 205 L. T. J. 142. The new company law: *Solicitor*, March, 1948, p. 61. The Companies (Articles of Association and Annual Return) Regulations, 1948: *Accountant*, March 27, 1948, p. 238. The Companies Act, 1947, in practice—auditors: *Accountant*, March 27, 1948, p. 243. Some practical aspects of receiverships: *Accountant*, March 27, 1948, p. 245. The Companies Act, 1947 (enforcement and registration of charges): 98 L. J. 130. The Companies Act, 1947, and Table A: 205 L. T. J. 157. The Companies Act, 1947 (winding up): 98 L. J. 158. Company law and practice—Table A of 1948: 92 S. J. 175. A resolution in writing (Table A, Part II, cl. 5): 92 S. J. 227, 253. Re-election of directors

(founded on *Grundt v. Great Boulder Proprietary Gold Mines*, § 472): 98 L. J. 229; 92 S. J. 201. Terminology: 92 S. J. 279. Companies Act, 1947, form of auditor's certificate (a joint opinion of counsel): 40 *Accountants' Journal* 69. Companies Act, 1947—articles of association and annual returns (founded on the Companies (Articles of Association and Annual Return) Regulations, 1948): *Accountancy*, May, 1948, p. 101. Minority shareholdings in private companies (founded on Companies Act, 1947, ss. 9, 90): 92 S. J. 304. Sales by receivers: 92 S. J. 305. Accounts and the Companies Act, 1947: 98 L. J. 325. Investigations by the Board of Trade (founded on the Companies Act, 1947, ss. 46, 47, 48): 92 S. J. 331. Coal industry nationalisation—compensation: classes of shareholders (founded on Coal Industry Nationalisation Act, 1946 (9 & 10 Geo. 6, c. 59), s. 25, and *Re Chatterley-Whitfield Collieries*, § 454): 205 L. T. J. 341. Company articles and annual return: 98 L. J. 382. The delegation of directors' authority: 92 S. J. 384. Disposition of property in winding up (founded on *Re Miles Aircraft*, § 495). Conviction of director (founded on *Hastings and Folkestone Glassworks v. Kalson*, § 473). Proof of debts owed in Reichsmarks (founded on *Re Parana Plantations*, § 499): 98 L. J. 439. The accounts provisions of the Companies Act, 1948—the balance sheet and the profit and loss account: 92 S. J. 418, 450. Company accounts and directors' expenses (founded on Finance Act, 1948, ss. 38-42, and Companies Act, 1948, s. 196): 98 L. J. 479. Group accounts: 92 S. J. 478. Register of directors' share and debenture holdings (founded on Companies Act, 1948, s. 195): 92 S. J. 509. Subsidiary companies (founded on Companies Act, 1948, s. 154): 92 S. J. 537. Directors' age limit (founded on Companies Act, 1948, s. 185): 92 S. J. 548. Prospectuses and allotments under the Companies Act, 1948: 92 S. J. 568, 582. Notices of meetings under the Companies Act, 1948: 92 S. J. 596. Exempt private companies: 92 S. J. 612, 627. Receivers and managers under the Companies Act, 1948: 92 S. J. 642. Certification of transfers: 92 S. J. 655. Name of the company: 92 S. J. 700, 713, 724. New minority rights in company law (alternative remedy under s. 210 and investigations by Board of Trade): *Solicitor*, December, 1948, p. 277.

501. BOOKS PUBLISHED. Borrie, S.—*Converting a Business into a Private Company*. 13th ed. [2s.]. Charlesworth, J.—*Principles of Company Law*. Supplement to 4th ed. [2s. 6d.]. Charlesworth, J.—*Principles of Company Law*. 5th ed. [15s.]. Farrar, H.—*Elements of Company Law*. 4th ed. [10s. 6d.]. Finer, M. and Sturgess, H. A. C.—*Companies Act, 1948* [28s.]. Frank, V. H.—*Company Accounts* [25s.]. *Guide to the Companies Act, 1947*.—*Dictionary of the Changes in Company Law* [2s.]. Hassell, J. G.—*Comparative Tables of the Sections of the Companies Acts, 1929, 1947, 1948* [3s. 6d.]. Holman, H. C.—*Secretarial Primer*. 2nd ed. [10s. 6d.]. Jones, F. H.—*Accounting Requirements of the Companies Act, 1947* [2s. 6d.]. Jones, F. H.—*Guide to Company Balance Sheets and Profits and Loss Account*. 3rd ed. [15s.]. Jones, F. H.—*New Accounting Requirements for Companies*. 3rd ed. [2s. 6d.]. Jones, F. H.—*New Requirements for Companies affecting Secretaries and Directors* [2s. 6d.]. Lawson, H. B.—*Three Lectures on the Companies Act, 1947* [2s. 6d.]. Magnus, S. W. and Estrin, M.—*Companies Act, 1948* [32s. 6d.]. Morris, G. E.—*Guide to Company Law and Practice* [6s. 6d.]. Mundy, L.—*Company Finance for Everyman* [4s.]. Palmer, Sir F.—*Company Law*. 18th ed. [35s.]. Palmer, F. B.—*Company Guide*. 36th ed. [6s. 6d.]. Palmer, F. B.—*Private Companies*. 40th ed. [3s.]. Purse, A. T.—*Guide to the New Company Law* [5s.]. Purse, A. T.—*Index to Companies Act, 1948* [5s.]. Ranking, D. E. de l'H., Spicer, E. E. and Pegler, E. C.—*Rights and Duties of Liquidators, Trustees and Receivers*. Supplement to 20th ed. [2s.]. Read, A.—*A.B.C. of Limited Liability Companies* [5s.]. Rowland, P. M. B.—*Index-Companion to the Companies Act, 1948* [10s.]. Smith, L. J. Morris.—*Jordan's New Company Law* [10s. 6d.]. Smith, O.—*Index to the Companies Act, 1948* [5s.]. Topham, A. F.—*Principles of Company Law*. 11th ed. [15s. 6d.]. Turner, C. W.—*Index to the Companies Act, 1948* [15s.]. Westby-Nunn, E.—*Secretarial Handbook*. 5th ed. [8s. 6d.].

COMPROMISES AND FAMILY ARRANGEMENTS

502. **Compromise of action by insurer—estoppel.** [Aus.] See *HANSEN v. MARCO ENGINEERING (AUST.) PTY.*, § 1732.
503. **Settlement of probate action.** See *Re WEST*, § 1397.

COMPULSORY PURCHASE AND REQUISITION

- 504. Agricultural unit.** See §§ 59, 70.
- 505. Children Act, 1948—power of local authorities to acquire land for purposes of.** See Children Act, 1948 (11 & 12 Geo. 6, c. 43), s. 56. See § 1705.
- 506. Civil defence—acquisition of land for.** See s. 4 of the Civil Defence Act, 1948 (12 & 13 Geo. 6, c. 5), § 429.
- 507. Coal mine—capital reduction on nationalisation.** See COMPANY LAW.
- 508. — compensation.** In *Re ABERPERGWYM ESTATE, WILLIAM v. SHARPE* (March 5, 1948), Jenkins, J., held that a scheme for the disposal of compensation received under the Coal Act, 1938, for holdings of interests in coal comprised in a settlement had to comply with the principles laid down in *Re Duke of Leeds' Will Trusts*, [1947] C. L. Y. 456–9, and was not acceptable to the Court if in variance therewith. [*Reported by C. M. Schmitthoff, Esq., Barrister-at-Law.*]
- 509. — — apportionment between life tenant and remainderman.** (Coal Act, 1938 (1 & 2 Geo. 6, c. 52), Sched. III, Pt. IV, para. 21 (2), (6).) The compulsory character of the acquisition of a coal mine under the provisions of the Coal Act, 1938, does not alter the fact that in the absence of any context to the contrary the compensation paid under the Act is capital and the income of it is income for the purposes of a will, save in so far as such capital and income may be impressed with some different character by virtue of the provisions of the Act. No special character imposed on the compensation and the income thereof by the provisions of sub-para. (2) of para. 21, which lays down that the compensation is to be paid in such manner as to give the beneficiaries the like benefit as they would have had under the settlement, can be relied on, because the result contended for would then be achieved only by virtue of sub-para. (2) of para. 21, which is the very thing proviso (ii) of the sub-paragraph prohibits.
- The will of a testator, who died in 1915, provided that “after the expiration of such period of twenty years all rent within the meaning of s. 11 of the Settled Land Act, 1882 [now replaced by s. 47 of the Settled Land Act, 1925] shall be treated and applicable in the manner directed by that section in cases where the tenant for life is impeachable for waste”. The question arose whether the tenant for life under the trusts of the will was entitled to the whole of the income of the compensation moneys under the provisions of the Coal Act, 1938, or whether the income of the compensation moneys should be dealt with as if the holding had remained subject to the settlement with the result that the royalty income therefrom would have fallen to be wholly or partially accumulated or set aside as capital. Held, the provision in the testator's will could have no application to the compensation otherwise than by virtue of sub-para. (2) of s. 21 of the Act, and, consequently, having regard to proviso (ii), was not to be applied to such income. Therefore, effect had to be given to the provision in the testator's will by setting aside as capital out of each year's “abated royalty equivalent” three-fourths of such “abated royalty equivalent” or the amount of the “capital supplement” for that year, whichever was the less, the amount to be so set aside in years in which there was no “capital supplement” being accordingly nil. Moreover, even if the provision in the testator's will had been framed in terms in themselves apt to include the income of the compensation, the provision in question, having regard to the testator's death, could have had no valid application to such income, except by virtue of some statutory dispensation from the ordinary restrictions on the accumulation of income imposed by the Law of Property Act, 1925, s. 164: *Re BLANDY-JENKINS, BLANDY-JENKINS v. PUBLIC TRUSTEE*, [1948] Ch. 322; [1948] L. J. R. 1315, Jenkins, J. (following *Re Duke of Leeds' Will Trusts*, [1947] C. L. Y. 456–9).
- 510. — — —.** In *Re PARKER'S WILL TRUSTS, TOWNLEY-PARKER v. TATTON* (October 28, 1948), the tenant for life of a settlement had submitted an application under the Coal Act, 1938, in which the question arose what costs the National Coal Board had to pay by virtue of paras. 21 (2) and 22 in Part IV of the Third Schedule to the Act as being “costs reasonably incurred” and “requisite for the purpose of determining the manner in which the compensation ought to be held

and disposed of". Jenkins, J., held that while the costs of the affidavit exhibiting the actuarial statement and of the copies of the actuarial statement should be allowed, any actuary's fees for making the calculation ought not to be included as costs payable by the National Coal Board. [*Reported by C. M. Schmitthoff, Esq., Barrister-at-Law.*]

- 511. Costs.** The Law Society were advised by counsel that an agreement by a local authority, on the acquisition of land under compulsory powers to pay scale costs to the solicitor of a vendor of unregistered land might be invalid, the proper basis of remuneration being item remuneration: *Law Society's Gazette*, December, 1947, p. 240. A further opinion was obtained, however, to the effect that a special agreement by a local authority to pay scale costs to the solicitor acting for a vendor of unregistered land was not *ultra vires* if reasonable. Alternatively, the authority might agree to pay a gross sum if reasonable. Furthermore, the costs of negotiation could legitimately be included in such an arrangement: *Law Society's Gazette*, May, 1948, p. 88.

This further opinion did not apply to expedited completion cases under s. 18 of the Town and Country Planning Act, 1944 (7 & 8 Geo. 6, c. 47), as to which see *Law Society's Gazette*, March, 1948, p. 55.

- 512. Educational purposes—acquisition of land for.** See § 1057.
- 513. Fire authorities—acquisition of land by.** See § 1437.
- 514. Gas Boards—acquisition of land by.** See s. 11 of the Gas Act, 1948 (11 & 12 Geo. 6, c. 67), § 1535.
- 515. Highways—acquisition of land for—speedy acquisition.** See § 1575.
- 516. ——— transfer of functions of Ministers.** See § 1575.
- 517. National Assistance Act, 1948—power of local authorities to acquire land under.** Under the National Assistance Act, 1948 (11 & 12 Geo. 6, c. 29), s. 58, the councils of counties and county boroughs may be authorised to purchase land compulsorily for the purpose of any of their functions under Part III of the Act. The Acquisition of Land (Authorisation Procedure) Act, 1946 (9 & 10 Geo. 6, c. 49) is to apply, except the provisions thereof relating to the speedy acquisition of land. These provisions will come into force on a date to be appointed.
- 518. New towns.** See TOWN AND COUNTRY PLANNING.
- 519. Prison Commissioners—power to purchase land for prisons, etc.** See s. 50 of the Criminal Justice Act, 1948 (11 & 12 Geo. 6, c. 58), § 714.
- 520. Requisition—dilapidations—apportionment of compensation.** See *Re THOMPSON*. § 3397.
- 521. ——— dwelling-houses — delegation of powers.** (Defence (General) Regulations, 1939, reg. 51 (1), (5); Supplies and Services (Transitional Powers) Act, 1945 (8 & 9 Geo. 6, c. 10), s. 1 (1).) Reg. 51 (5) of the Defence (General) Regulations, 1939, authorises sub-delegated legislation by the Minister. The substance, not the form, of the content of any given instrument issued by the Minister decides whether the matters contained therein constitute administrative or executive instructions or directions or whether they constitute "delegated legislation". Once the Minister has transferred his powers of delegated legislation under reg. 51 (5) to a local authority, he for the time being has divested himself of those powers, and, out of the extremely wide executive powers which reg. 51 (1) has conferred on him to be exercised at his discretion, retains only those powers which he has expressly or impliedly reserved for himself.

Quære: Whether one to whom, under the regulation, the statutory power of requisition has been delegated by a competent authority can be said to exercise those powers as "agent" for the competent authority.

The B. Corporation, to whom the Minister of Health, as competent authority, in exercise of his powers under reg. 51 (5) of the Defence (General) Regulations, 1939, had delegated his powers under reg. 51 (1), had requisitioned the defendant's house which the latter had contracted to sell to a purchaser. Because of the requisition the sale was called off by the purchaser and the defendant then decided to use the house for his own occupation, went into possession, and notified the corporation accordingly. The requisitioning notice failed to comply with the express conditions subject to which the Minister had delegated his powers to the

B. Corporation in a "circular", in that it failed to provide for the exclusion of the defendant's furniture from the requisition. Moreover, another such "circular" had provided that the corporation should not proceed further in the matter of requisitioning where the owner notified his intention to occupy the house himself. By subsequent letters the Minister of Health himself, through the town clerk of the corporation purported to requisition the premises and also purported to ratify the acts of the B. Corporation done in excess of the authority conferred on them. Held, the original requisition was invalid by reason of its failure to provide for the exclusion of the defendant's furniture. Similarly (Evershed, L.J., doubting on this point), it was invalid because of the notification of the owner of intention to use the premises for his own occupation. The subsequent purported requisition by the Minister himself was also invalid, because he had not in his sub-delegated legislation reserved power so to act, and because neither the corporation nor its town clerk was acting as his agent. Finally, the Minister's letters could not be construed as a ratification of the invalid requisition: *BLACKPOOL CORPORATION v. LOCKER*, [1948] 1 K. B. 349; [1948] L. J. R. 847, C. A. (reversing decision of Judge Peel, K.C., [1947] L. J. N. C. C. R. 87). (See also §§ 527, 2823, 3566.)

- 522. ——— form of authority.** (Emergency Powers (Defence) Act, 1939 (2 & 3 Geo 6, c. 62), s. 7; Defence (General) Regulations, 1939, Reg. 51.) Reg. 51 of the Defence (General) Regulations, 1939, which empowers the Minister to delegate his powers to take possession of houses to certain specified persons or classes of persons, does not require the delegation of the Minister's authority to be made in any particular form. Consequently, by virtue of the provisions of s. 7 of the Emergency Powers (Defence) Act, 1939, which provides that "every document purporting to be an instrument made or issued by any Minister . . . in pursuance of any provision contained in . . . Defence Regulations, and to be signed by or on behalf of the said Minister . . . shall be received in evidence, and shall, until the contrary is proved, be deemed to be an instrument made or issued by that Minister . . .", a letter which purports to be written on behalf of the Minister of Health whereby he delegates his functions under the Regulation to a certain town clerk is an instrument which proves delegation by that Minister for the purposes mentioned in it: *CARLISH v. EAST HAM CORPORATION*, [1948] 2 K. B. 380; [1949] L. J. R. 113, Lord Goddard, C.J. (See also § 523.)
- 523. ——— part of house.** It is clear that under reg. 51 of the Defence (General) Regulations, 1939, the Minister can requisition part of a house. Consequently, he can also delegate that power to a local authority or an officer of theirs. See *CARLISH v. EAST HAM CORPORATION*, § 522.
- 524. ——— withdrawal.** The Minister of Health decided not to renew, after June 30, 1948, the delegation of requisitioning powers to clerks of local authorities in Pt. II of Circular 138/45 (as amended by Circulars 5/46 and 141/46). When it is proposed to requisition an unoccupied house it is necessary for the local authority to apply to the Minister's Principal Housing Officer for the issue of a delegation authorising the requisition: Circular 106/48.
- 525. ——— house contracted to be sold.** In *PATCHETT v. LEATHEM* (November 19, 1948), where a local authority purported to requisition the plaintiff's house at a time when she had already contracted to sell it and had accepted a deposit, Streatfeild, J., held that the Minister of Health could withdraw one condition and substitute another, making the latter applicable to a requisition already in operation, though he could not interfere with the actual act of requisitioning; that the "agent" to whom the local authority must give notice of requisitioning as an alternative to the owner herself was her estate agent, and did not include her husband; that the purchaser was also entitled to be served with the notice as (equitable) "owner"; that the requisitioning was rendered void by the existence of certain chattels in the house; and that, while the plaintiff was entitled to a declaration that the requisitioning was void, an injunction would not be granted against the defendant town clerk because not he, but the local authority, were in occupation of the house. [Reported by R. C. Calburn, Esq., Barrister-at-Law.] See also [1948] W. N. 386.

526. — — — **purpose.** [Scot.] See *POLLOCK SCHOOL CO. v. GLASGOW TOWN CLERK.* § 1137.
527. — — — — — **“supplies and services”.** The provision of housing accommodation falls within the ambit of the formula “supplies and services” in the Supplies and Services (Transitional Powers) Act, 1945, as incorporated in reg. 51 (1) of the Defence (General) Regulations, 1939. See *BLACKPOOL CORPORATION v. LOCKER*, § 521.
528. — — — **Rent Acts.** [Cty. Ct.] See *MINISTER OF AGRICULTURE v. HUNKIN.* § 3214.
529. — — — **trespass by owner.** [Cty. Ct.] In *ISLINGTON BOROUGH COUNCIL v. BOWNESS* (1947), 98 L. J. 38, the owner of a requisitioned house had obtained possession thereof and the Council sued for possession, damages for trespass and an injunction. The owner maintained that the Minister of Health was a necessary party to the action. Judge Earengay, K.C., held that the Minister had validly delegated the right to take proceedings under reg. 51 of the Defence (General) Regulations and was not a necessary party.
530. — — — **easements over requisitioned land.** See §§ 1031, 1032.
531. — — — **Government oil pipe-lines — compensation.** Government Oil Pipe-lines Regulations, 1948 (No. 542) [2d.], made under the Requisitioned Land and War Works Act, 1948 (11 & 12 Geo. 6, c. 17), ss. 13–15. These Regulations prescribe the form and manner, and the period, in which claims for compensation in respect of the exercise of the powers conferred by the Act in respect of Government oil pipe-lines are to be made, and the manner of determining disputes by arbitration. There are also provisions relating to the endorsement of documents of title, the duty of the Minister to keep pipe-lines in good repair, notices to be given and action to be taken in the event of the abandonment or removal of pipe-lines, and the maintenance of pipe-lines under highways.
532. — — — **registration of rights.** See § 1877.
533. — — — **hotel — compensation — National Defence Contribution.** See *I. R. C. v. BUXTON PALACE HOTEL*, § 1353.
534. — — — **plantation—damage to trees.** For an award by the General Claims Tribunal of compensation, for damage done to a plantation of trees during requisitioning, under s. 2 (1) (b) of the Compensation (Defence) Act, 1939, and a consideration of the measure of compensation, see *Estates Gazette*, December 25, 1948, p. 484.
535. — — — **Requisitioned Land and War Works Act, 1948 (11 & 12 Geo. 6, c. 17).** This is an Act “to continue certain provisions of the Requisitioned Land and War Works Act, 1945 (8 & 9 Geo. 6, c. 43), to make permanent certain other provisions thereof, and otherwise to amend that Act; to amend the Compensation (Defence) Act, 1939 (2 & 3 Geo. 6, c. 75), as respects compensation for the taking possession of land; to make further provision, by the amendment of those Acts and otherwise, as respects the maintenance and use of certain oil pipe-lines and the compensation therefor; and for purposes connected with the matters aforesaid.
Section 1 repeals the proviso to s. 5 (5) of the Supplies and Services (Transitional Powers) Act, 1945 (9 & 10 Geo. 6, c. 10), and extends the expression “war period” in ss. 35, 40 and 41 of the Requisitioned Land and War Works Act, 1945, to include any period during which the Transitional Powers Act is in force. It also makes permanent ss. 33 and 34 of the same Act. S. 2 adds a new sub-s. (3) to s. 6 of that Act, relating to the power of acquisition of land used as agricultural land. S. 3 gives additional powers with respect to the stopping up of highways. S. 4 relates to the discharge or modification of easements over land acquired under the Defence Acts. S. 5 relates to Northern Ireland, and s. 6 and the Schedule make a number of minor and consequential amendments to the principal Act.
Sections 7–11 effect various amendments and modifications in the Compensation (Defence) Act, 1939. Ss. 7–9 relate to the amount of rental compensation payable for requisitioned land; s. 10 deals with the amount of compensation in respect of making good requisitioned land; and s. 11 makes minor amendments to ss. 2 and 3 of the 1939 Act as to compensation for taking possession of land.
Section 12 makes permanent the provisions of s. 28 (1) and (3) (a) of the

Requisitioned Land and War Works Act, 1945, as to the maintenance and use of Government oil pipe-lines and makes other provision in relation to such pipe-lines.

Section 13 relates to compensation in respect of Government oil pipe-lines; s. 14 provides for the registration of rights as to such pipe-lines; and s. 15 contains supplementary provisions as to the power to enter on land, the restriction of working of minerals, and the power to make Regulations.

Sections 16-20 contain supplementary provisions. The Act applies to Scotland and Northern Ireland with modifications (ss. 18, 19).

- 536. — — — compensation.** The Ministry of Health has advised Housing Authorities as to the publication of notices concerning this Act and as to the method of notifying individual owners of the provisions of the Act by the enclosure of a notice with the next quarterly payment of compensation: Ministry of Health Circular 38/48, dated March 15, 1948.
- 537. — — — forms.** Compensation (Defence) Notice of Claim Rules, 1948 (No. 307), dated February 19, 1948, made under the Compensation (Defence) Act, 1939 (2 & 3 Geo. 6, c. 75), s. 11. These Rules provide new forms of claim for compensation in respect of requisitions of land made or requisitioned after the commencement of the Requisitioned Land and War Works Act, 1948 (11 & 12 Geo. 6, c. 17), in order to fit in with the new basis of compensation laid down by that Act. They also provide a form of claim for an increase of rental compensation under that Act in respect of land already requisitioned.
- 538. — — — time for claim.** The Treasury issued a reminder to owners of requisitioned property requisitioned before February 19, 1948, and still under requisition at that date that the time limit for claims to increased rental compensation under the Requisitioned Land and War Works Act, 1945, expired on August 19, 1948. Outstanding claims to increased rental compensation under s. 45 of the Act of 1945 were also required to be made by August 19, 1948.
- 539. River boards—powers of.** See § 1883.
- 540. Shares, acquisition of—value of shares.** See *SHORT v. TREASURY COMMISSIONERS*, § 1162.
- 541. Town and country planning—new towns.** See *TOWN AND COUNTRY PLANNING*.
- 542. Tramway undertaking acquired by local council.** See *LLANDUDNO U. D. C. v. GREAT ORME RY.*, § 3746.
- 543. War-damaged land—adjustment of compensation.** Acquisition of Land (Claims for adjustments of compensation for War Damaged Land) Regulations, 1948 (No. 207) [E.], made under the Town and Country Planning Act, 1947 (10 & 11 Geo. 6, c. 51), Sched. 7, para. 1 (2). These Regulations specify the time and manner for making a claim, where a claim is made by an acquiring authority in respect of the reduction of the amount of compensation under para. 1 (1) or (5) of Sched. VII to the Act in consequence of certain war damage payments.
- 544. Waterworks.** See the Water Act, 1948 (11 & 12 Geo. 6, c. 22), s. 3, and Sched. referred to in § 3855.
- 545. ARTICLES.** Local authorities' right to requisition property (founded on *Blackpool Corporation v. Locker*, § 521): 92 S. J. 118; 92 S. J. 160; 112 J. P. J. 650. Compulsory acquisition of land and restrictive covenants: 112 J. P. J. 149, 244. Payment of vendors' costs on acquisition of land by local authorities: 92 S. J. 174, 186. Requisition and rent control: 92 S. J. 203. Requisitioned Land and War Works Act, 1948: 92 S. J. 580, 611.
- 546. BOOKS PUBLISHED.** Collier, R.—Valuation for Compensation and Development Charges [25s.]. Stewart-Browne, R. D.—Compulsory Purchase and Compensation ("Current Law" Guide No. 6) [6s. 6d.].

CONFLICT OF LAWS

- 547. Bankruptcy—English jurisdiction over foreigners—comity of nations.** See *Re A DEBTOR*, § 265.
- 548. Commission rogatoire.** [Aus.] See *Re S.*, § 707.
- 549. Community of property—oath on application for grant of administration.** See *PRACTICE NOTE*, § 1394.

550. **Currency for redemption of debentures.** [Aus.] See GOLDSBROUGH, MORT & Co. v. HALL, § 647; [Aus.] BONYTHON v. THE COMMONWEALTH, § 648.
551. **Declaration of presumption of death by foreign court—grant of administration.** See IN THE ESTATE OF ARTHUR DOWDS, § 1390.
552. **Deposit of securities by foreign bank—lex loci solutionis.** See FRANKMAN v. ANGLO-PRAGUE CREDIT BANK, § 260.
553. — **sub-agency.** See KAHLER v. MIDLAND BANK, § 259..
554. **Divorce—domicil.** See ORR-LEWIS v. ORR-LEWIS, § 967; DE RENEVILLE v. DE RENEVILLE, §§ 989, 992.
555. **Domicil—acquisition while on war service.** [S.A.] In *Ex p. GLASS*, 1948 (4) S. A. L. R. 379, the Witwatersrand Local Division of the Supreme Court of South Africa held that a soldier in the British Army acquired a domicil of choice in the Transvaal at a time when he was stationed in the Transvaal during his period of service in the Army.
556. — —. [S.A.] In *NICOL v. NICOL*, 1948 (2) S. A. L. R. 613, the Cape Provincial Division of the Supreme Court of South Africa held that the defendant who was still serving in the Royal Navy at the date of the action but was stationed in Cape Town and had applied for his discharge in South Africa, had acquired a domicil of choice in Cape Province, on the ground that while the mere fact that a person is stationed on service within a particular area will never *per se* avail to establish a choice of residence indicating a change of domicil, yet, if there is sufficient evidence of a voluntary act of choice, the act will not be defeated or refused merely because the area of choice happens to coincide with an area of service.
557. — **residence permissive only.** “A man can still have the intention of staying in a country and may acquire a domicil in it even though his stay is precarious in the sense that he may be turned out, and permissive in the sense that from time to time he has to ask permission to stay”: *per* Lord du Parcq in *ZANELLI v. ZANELLI*, § 929 (following *Boldrini v. Boldrini*, [1932] P. 9).
558. **Executor, powers of.** See *Re GOENAGA*, § 1376.
559. **Judgments—English and foreign judgments, difference of grounds for setting aside.** See *SYALL v. HEYWARD*, § 2850.
560. **Maritime lien for necessities—proper law.** [Can.] In *HARNEY v. M. V. TERRY*, [1948] 1 D. L. R. 728, the Exchequer Court of Canada held that the *lex loci contractus* and not the *lex fori* governs the question of the recognition of a maritime lien for necessities.
561. **Nullity of marriage—domicil and residence.** See *DE RENEVILLE v. DE RENEVILLE*, §§ 989, 992; [Can.] *SPENCER v. LADD*, § 991; [Can.] *GOWER v. STARRETT*, § 990.
562. — **English and Scottish law.** See *HARTHAN v. HARTHAN*, § 948.
563. **Public international law.** See INTERNATIONAL LAW.
564. **Renvoi.** The object of the Spanish Civil Code is to preserve the principle of the unity and universality of the succession, and it is for that reason that in case of succession the *lex patriæ* is substituted for the *lex domicilii* and the *lex situs*. It would, therefore, be contrary to the spirit and intendment of the Spanish Civil Code that, in questions of succession, Spanish law should recognise and apply the doctrine of renvoi. Consequently, the devolution of the immovable property in Spain of an English testator must be resolved by reference to English law, because Spanish law will not accept the renvoi which English law makes to it as the *lex situs*.
- By his first will the testator bequeathed his Spanish estates to “the person who shall become Duke of Wellington and Duke of Ciudad Rodrigo”. By a second will he disposed of all the property not disposed of by the first will and gave the same to the next Duke of Wellington. On the testator’s death his uncle succeeded him as seventh Duke of Wellington, but the dukedom of Ciudad Rodrigo passed by Spanish law to his sister. Held, the Spanish estates passed under the second will to the uncle: *Re DUKE OF WELLINGTON*, *GLENTANAR v. WELLINGTON*, [1948] Ch. 118; 64 T. L. R. 54, C. A. (affirming decision of Wynn Parry, J., [1947] C. L. Y. 530, 532, 3260, 3271, subject to a minor variation in the wording of his order). (See also §§ 567, 3899, 3916.)

- 565. Revenue laws of foreign countries—recognition by English Courts.** It is wrong to say that the English Courts will not in any circumstances "have regard to" the "revenue laws" of another country, even though it is not in any proper sense of the term a question of "enforcing" them. Recognition of the fact that under the regulations of a foreign country it is unlawful to transfer securities deposited with a bank of that foreign country without the consent of the national bank of that country does not amount to enforcement of the revenue laws of that foreign country. See *KAHLER v. MIDLAND BANK*, § 259.
- 566. Tort—foreign tort—libel—letter posted abroad—place of commission of tort.** See *BATA v. BATA*, § 2901.
- 567. Trusts—unknown under foreign law.** Where immovable property in Spain is given by an English will upon certain trusts the mere fact that Spanish law does not recognise trusts will not invalidate the gift of the immovable property: *Re DUKE OF WELLINGTON*, § 564.
- 568. ARTICLES.** Conflict of laws (foreign presumptions of death, security for costs, foreign real estate, legitimacy, nullity, jurisdiction): 98 L. J. 145. *Renvoi* (founded on *Re Duke of Wellington*, § 564), by J. H. C. Morris: 64 L. Q. R. 264. Contracts and their proper law (capacity, illegality, formalities and service out of the jurisdiction): 98 L. J. 511. Some recent cases (founded on *Re Duke of Wellington*, § 564; *De Reneville v. De Reneville*, § 989; *Frankman v. Anglo-Prague Bank*, § 260; *Kahler v. Midland Bank*, § 259): *Solicitor*, October, 1948, p. 235.
- 569. BOOKS PUBLISHED.** Cheshire, G. C.—*International Contracts* [6s.]. Dold, G. W.—*Stipulations for a Third Party: A Comparative Study with special reference to Continental Law* [25s.]. Graveson, R. H.—*Conflict of Laws* [30s.]. Schmitthoff, C. M.—*Textbook of the English Conflict of Laws*, 2nd ed. [35s.].
- 570. — OVERSEAS PUBLICATIONS.** Drost, P. N.—*Contracts and Peace Treaties (Holland)* [15s.]. Meijers, E. M.—*Recueil de Lois Modernes concernant le Droit International Privé (Holland)* [10s.]. Rabel, E.—*Conflict of Laws: A Comparative Study*, Vol. 2 (U.S.A.) [55s.]. *Unification of Law—A general survey of work for the unification of private law, prepared by the International Institute for the Unification of Private Law (Rome)* [55s.].

CONSTITUTIONAL LAW

- 571. British Empire.** See *BRITISH EMPIRE*.
- 572. Crown—declaration binding.** See *CHANNEY v. MURPHY*, § 2902.
- 573. — executive necessity.** "The defence of executive necessity [*i.e.*, the doctrine that the Crown cannot bind itself so as to fetter its future executive action] is of limited scope. It only avails the Crown where there is an implied term to that effect, or that is the true meaning of the contract": *per* Denning, J., in *ROBERTSON v. MINISTER OF PENSIONS*, § 2676.
- 574. — practice.** See *CROWN PRACTICE*.
- 575. — proceedings.** See *Re BARNATO*, § 2873; *CUSTOMS AND EXCISE COMMISSIONERS v. INGRAM*, § 3040.
- 576. — property—railways.** [Cty. Ct.] See *TAMLIN v. HANNAFORD*, § 3156.
- 577. — Rent Restriction Acts.** See *LONDON COUNTY TERRITORIAL AND AUXILIARY FORCES ASSOCIATION v. NICHOLS*, § 3155; [Cty. Ct.] *TAMLIN v. HANNAFORD*, § 3156.
- 578. — servant—police officer.** See *METROPOLITAN POLICE DISTRICT (RECEIVER) v. TATUM*, § 2711.
- 579. — — recovery of bribes received by.** See *READING v. THE KING*, § 1262.
- 580. — — tort by.** See *THE SOBIESKI*, § 3455.
- 581. — use of invention by.** See *AMERICAN FLANGE AND MANUFACTURING CO. v. VAN LEEB*, § 2568.
- 582. Home Secretary—power to transfer persons to an institution for defectives.** See *R. v. BOARD OF CONTROL (SECRETARY)*, *ex p. ABDUL KAYUM*, § 2119.
- 583 Ministers—transfer of functions.** See §§ 1482, 1483, 1575, 2172.

584. Parliament. See PARLIAMENT.

585. Record Office. Disposal of Valueless Documents (Law Officers' Department and Imperial War Museum) Order, 1948 (No. 2795), dated December 22, 1948, made under the Public Record Office Act, 1877 (40 & 41 Vict. c. 55), s. 1, and the Public Record Office Act, 1898 (61 & 62 Vict. c. 12).

586. Royal Family—Princess Elizabeth's and Duke of Edinburgh's Annuities Act, 1948 (11 & 12 Geo. 6, c. 14). This Act makes provision for the payment of life annuities to Her Royal Highness the Princess Elizabeth and her husband, His Royal Highness the Duke of Edinburgh. S. 8 of the Civil List Act, 1937 (1 Edw. 8 & 1 Geo. 6, c. 32), is amended to provide for the contingency of the birth of a child of the marriage.

587. Royal Title—alteration. By a Proclamation dated June 22, 1948, His Majesty has appointed and declared that the words "Indiæ Imperator" or "Emperor of India" shall be omitted from his Style and Titles.

588. ARTICLES. The correlation of allegiance and protection, by Glanville L. Williams (founded on *Joyce v. D. P. P.*, [1946] A. C. 347): *Cambridge Law Journal*, 1948, p. 54. The effect of statutes on the rights and liabilities of the Crown, by H. Street: *University of Toronto Law Journal*, 1948, p. 357. The Crown Proceedings Act, 1947, by Sir Thomas Barnes: *Canadian Bar Review*, February, 1948, p. 387. The House of Lords and the death penalty: 112 J. P. J. 334. The effect of the Crown Proceedings Act, 1947, on the doctrine that statutes do not bind the Crown: *Solicitor*, May, 1948, p. 112. The Crown Proceedings Act, 1947, by Harry Street, *Modern Law Review*, April, 1948, p. 129. The prerogative of mercy: 112 J. P. J. 366. Executive necessity (founded on *Robertson v. M. O. P.*, § 573): 206 L. T. 312. Administrative finality in Britain, by Bernard Schwartz: *Canadian Bar Review*, August—September, 1948, p. 1072. Nation's filing cabinet—the Record Office: 112 J. P. J. 760. Delegated legislation (founded on *Blackpool Corporation v. Locker*, § 521): 22 *Australian Law Journal* 111.

589. BOOKS PUBLISHED. (Hrimes, S. B.—English Constitutional History [5s.]. Fraser, W. I.—An Outline of Constitutional Law, 2nd ed. [18s.]. Greaves, H. R. G.—The British Constitution, 2nd ed. [9s. 6d.]. Harrison, W.—The Government of Britain [7s. 6d.]. Haskins, G. L.—Growth of English Representative Government [10s. 6d.]. Jennings, W. I.—The British Constitution [10s. 6d.]. Maxwell, Sir A.—The Home Office [2s. 6d.]. Robson, W. A.—British System of Government, 3rd ed. [1s.]. Robson, W. A.—Public Administration Today [2s. 6d.]. Warner, R.—The Principles of Public Administration [15s.].

CONTRACT

590. Account stated—betting transactions. See *ALBERG v. CHANDLER*, § 1520; *DAY v. WILLIAM HILL (PARK LANE)*, § 1521.

591. Agency. See AGENCY.

592. Anticipatory breach of contract. See *WRIGHT v. DEAN*, § 1948.

593. Arbitration clause. See ARBITRATION.

594. Capacity—corporations—ultra vires doctrine. [Can.] See *ATT.-GEN., NEW BRUNSWICK v. ST. JOHN*, § 671; [N.Z.] *WAIMARI COUNTY v. RUTHERFORD*, § 672.

595. — infants—separation agreement by infant wife. [N.Z.] See *HOLE v. HOLE*, § 1704.

596. Clayton's Case, rule in. See *Re DIPLOCK*, § 1400

597. Conflict of laws—lex loci contractus and lex loci solutionis. See *FRANKMAN v. ANGLO-PRAGUE CREDIT BANK*, § 260.

598. — money of account. [Aus.] See *GOLDSBROUGH, MORT & CO. v. HALL*, § 647; [Aus.] *BONYTHON v. THE COMMONWEALTH*, § 648.

599. Consideration—failure of. It is well established that, where an *ultra vires* issue of shares has been made, the subscribers are entitled to get their money back. This general proposition, however, does not justify the claim of a subscriber who has sold his shares to assert that they have not been lawfully issued, and even

less to assert, contrary to the plain fact, that there has been, so far as he was concerned, a total failure of consideration.

Quere: Whether in a case where the subscriber still holds the shares which have been issued *ultra vires* he can on the authority of *Rowland v. Divall*, [1923] 2 K. B. 500, still get his money back as on a total failure of consideration, even though he has received a dividend on the shares: *LINZ v. ELECTRIC WIRE Co. OF PALESTINE*, [1948] A. C. 371; [1948] L. J. R. 1836, P. C.

600. — **forbearance—betting transactions.** See *BOB GUINNESS v. SALOMONSEN*, § 1524; *WILLIAM HILL (PARK LANE) v. ROSE*, § 1522.
601. — **promise intended to be acted on.** “If a man gives a promise or assurance which he intended to be binding on him, and to be acted on by the person to whom it was given, then, once it is acted on he is bound by it”: *per* Denning, J., in *ROBERTSON v. MINISTER OF PENSIONS*, § 2676.
602. **Damages.** See *DAMAGES*.
603. **Death of contracting party—performance of contract.** See *Re RUSHBROOK'S WILL TRUSTS*, § 1372.
604. **Deed.** See *DEEDS AND BONDS*.
605. **Duress of goods.** See *THE UNITAS*, § 2941.
606. **Evidence—oral evidence contradicting memorandum.** See *BECKETT v. NURSE*, § 3804.
607. — **oral evidence contradicting written contract.** See *HUTTON v. WATLING*, § 3805.
608. — **oral evidence of subsequent agreement.** See *MOORE v. CITY OF MALINES*, § 3502.
609. — **oral evidence to ascertain subject-matter of contract.** See *A/S TANKEEXPRESS v. COMPAGNIE FINANCIERE BELGE DES PETROLES S.A.*, § 3440.
610. — **secondary evidence of memorandum.** See *BARBER v. ROWE*, § 1345.
611. — **verbal condition overriding subsequent written condition.** See *WEBSTER v. HIGGIN*, § 3365.
612. **Fraud.** See *FRAUD, MISREPRESENTATION AND UNDUE INFLUENCE*.
613. **Frustration—charterparty.** See *E. B. AABY'S REVERI A/S v. LEP TRANSPORT*, § 3446; *MAURITZEN v. BALTIC SHIPPING Co.*, § 168.
614. — **covenant in separation deed.** See *TOMKINS v. TOMKINS*, § 1021.
615. — **lease.** See *DENMAN v. BRISE*, § 1919.
616. **Illegality—building restrictions—unlicensed work.** See *BOSTEL BROTHERS v. HURLOCK*, § 1147; *JACKSON STANSFIELD & SONS v. BUTTERWORTH*, § 1148.
617. — **gaming contracts.** See *GAMING AND WAGERING*.
618. — **restraint of trade.** See *JENKINS v. REID*, § 1269.
619. — **trading with the enemy.** See *BOISSEVAIN v. WEIL*, § 3731.
620. — **winding up—enemy creditors.** See *Re PARANA PLANTATIONS*, § 499.
621. **Implied term—accuracy of plan of harbour.** See *TOWERFIELD (OWNERS) v. WORKINGTON HARBOUR AND DOCK BOARD*, § 3466.
622. — **business efficacy.** [Scot.] In *M'WHIRTER v. LONGMUIR*, 1948 S. L. T. 493, the Court of Session (*per* Lord Jamieson) held that the Court will only hold a term or condition to be implied in a written contract if its nature is such that it must necessarily be implied to give the contract business efficacy. (Dictum of Bowen, L.J., in *The Moorcock* (1889), 14 P. D. 64, at p. 68, considered and criticised.)
623. — —. See also *TOWERFIELD (OWNERS) v. WORKINGTON HARBOUR AND DOCK BOARD*, § 3466.
624. — **covenant to repair road.** In *FYERS-TURNER v. BROWN* (July 16, 1948), Jenkins, J., held that under a covenant to keep a private road in good repair the covenantee was entitled to a road with a reasonable surface; the obligation to repair extended over the whole length of the road. Since the road was not in

good repair, the covenant was broken. The appropriate remedy was not an order for specific performance but for damages. [*Reported by C. M. Schmitthoff, Esq., Barrister-at-Law.*]

- 625. — hire—fitness for purpose.** Where a vessel or any other chattel is hired there is an implied term that it shall be as fit for the purpose as reasonable care and skill can make it. Where the vessel catches fire from an unexplained cause there is a presumption that it was not reasonably fit for the purpose, and lack of equipment which, while not necessary in order to make the vessel go, is necessary to make it safe, such as fire-fighting equipment, raises the same presumption.

The plaintiffs hired a petrol-driven motor-launch from the defendants for the purpose of river-cruising and, on taking over the vessel, paid the hire and £1 10s. for "insurance cover" to the defendants' agent, who also explained the working of the craft and showed the plaintiffs a box which "ought to be filled with sand". Some two hours after starting off the liquid in the bilge by the engine caught fire, the sand-box and a chemical extinguisher were found to be empty and, after vain efforts to extinguish the flames, the plaintiffs were forced to abandon ship and make for the shore. The plaintiffs lost property and suffered some personal injuries, and now claimed damages for breach of an implied warranty of fitness, alternatively for negligence or for breach of the contract to insure. Held, (1) in the absence of evidence that the fire was not caused by any fault of the defendants, the vessel must be presumed not to have been fit for the purpose; (2) the lack of fire-fighting equipment was a further breach of the implied warranty of fitness; (3) the doctrine of *res ipsa loquitur* applied to the claim in negligence, and, as the defendants had not shown that the plaintiffs were at fault, the defendants had failed in their duty of care; (4) the defendants were liable under the contract to insure the plaintiffs' property: *REED v. DEAN*, [1948] W. N. 398; 64 T. L. R. 621; 92 S. J. 647, Lewis, J. (distinguishing *Robertson v. Amazon Tug Co.* (1881), 7 Q. B. D. 598).

- 626. — licence to act as racehorse trainer.** In *RUSSELL v. NORFOLK (DUKE)* (December 8, 1948), the Court of Appeal (Tucker, Asquith and Denning, L.JJ.) dismissed an appeal from Lord Goddard, C.J., [1948] 1 All E. R. 488, holding that there was no contractual obligation on the Jockey Club to hold an inquiry before warning a trainer off Newmarket Heath. [*Reported by R. C. Calburn, Esq., Barrister-at-Law.*] See also [1949] 1 C. L. 48, 146.

- 627. — minimum wages.** See *SIMPSON v. KODAK*, § 1278.

- 628. — not to take advantage of subsequent legislation.** See *CHESSINGTON DEVELOPMENT Co. v. SURBITON BOROUGH COUNCIL*, § 3650.

- 629. — taxicab driver's knowledge of locality.** [Can.] See *MIZENCHUK v. THOMPSON AND NASH TAXI AND U-DRIVE Co.*, § 3356.

- 630. Inducing breach of contract—covenant not to re-sell within twelve months.** In *BRITISH MOTOR TRADE ASSOCIATION v. SALVADORI* (December 20 and 21, 1948), Roxburgh, J., held that some of the defendants had conspired to procure breaches of the covenant which purchasers of new motor cars were required to sign and whereby they undertook not to sell motor cars within twelve months, and had procured breaches of that covenant. There was a series of overt acts amply sufficient to prove that the defendants had combined knowingly to interfere with contractual relations between the plaintiffs and persons who had signed the covenant. That was an actionable tort if damage was proved. The plaintiffs had suffered damages; the covenant system was an integral feature of the plaintiffs' trade policy; to protect it, they had been compelled to build up a large investigation department; the expenditure involved before the proceedings must have been considerable and there was no reason for not treating expenses so incurred and not recoverable as costs of the action as directly attributable to the defendants' torts. The plaintiffs were also entitled to an injunction. [*Reported by C. M. Schmitthoff, Esq., Barrister-at-Law.*] See also [1949] 1 C. L. 244.

- 631. — trade union.** [Can.] In *FOKUHL v. RAYMOND*, [1948] 3 D. L. R. 11, the High Court of Ontario held that where men were called out by the defendants as a means of inducing a breach of the plaintiff employer's contracts with them, and further with the object of bringing about the termination of the employer's contract with a third party, such calling-out amounted to a wrongful interference

with the employer's legal rights, the defendants not being entitled to rely upon the defence that their dominant object was to benefit or advance the interests of the union, because the tort of conspiracy to injure a person in his trade or business is a wholly different tort from that of inducing breach of contract. (*Crofter Hand Woven Harris Tweed Co. v. Veitch*, [1942] A. C. 435, applied.)

- 632. Misrepresentation.** See FRAUD, MISREPRESENTATION AND UNDUE INFLUENCE.
- 633. Mistake—as to the identity of the contracting parties.** See *DENNANT v. SKINNER*, § 3376.
- 634. — of law—payment of extra rent.** [Cty. Ct.] See *CLARKE v. NEWCASTLE CORPORATION*, § 1958.
- 635. Money had and received—bribes received by Crown servant.** See *READING v. THE KING*, § 1262.
- 636. — claim at common law.** “It may, we think, be taken to be clearly established that the common law claim [for money had and received] is founded upon an implied promise to pay . . . [It] is in no sense derived from equity, but has a lineage altogether independent of it . . . It is indeed difficult to see how, save between the parties to the original transaction or between parties linked by a relationship such as that of principal and agent, any implied promise to repay could be imported”. See *Re DIPLOCK*, § 1377.
- 637. — claim in equity.** “If the claim in equity exists it must be shown to have an ancestry founded in history and in the practice and precedents of the courts administering equity jurisdiction. It is not sufficient that because we may think that the ‘justice’ of the present case requires it, we should invent such a jurisdiction for the first time”. See *Re DIPLOCK*, § 1377.
- 638. — — when a claim will lie.** See *Re DIPLOCK*, § 1377.
- 639. — ultra vires issue of shares.** See *LINZ v. ELECTRIC WIRE CO. OF PALESTINE*, § 599.
- 640. Money paid—expenses caused by negligence of third party.** See *METROPOLITAN POLICE DISTRICT (RECEIVER) v. TATUM*, § 2715.
- 641. — mistake of law—extra rent.** [Cty. Ct.] See *CLARKE v. NEWCASTLE CORPORATION*, § 1958.
- 642. Offer and acceptance.** See *ECCLES v. BRYANT*, § 3803; *TELEPHONE RENTALS v. MUSEUM ESTATES*, § 1892.
- 643. — “firm offer to purchase”, meaning of.** See *DENNIS REED v. NICHOLLS*, § 7.
- 644. — invitation by harbour board to all shipowners.** See *TOWERFIELD (OWNERS) v. WORKINGTON HARBOUR AND DOCK BOARD*, § 3466.
- 645. — offer for sale of price-controlled goods.** See *PHILLIPS v. DALZIEL*, § 1214.
- 646. Payment—by cheque.** See *A/S TANKEEXPRESS v. COMPAGNIE FINANCIERE BELGE DES PETROLES S.A.*, § 3440; [Can.] *DAVIDOVICH v. HILL*, § 1960.
- 646a. — discount.** See *AMOS AND WOOD v. KAPRON*, § 3375.
- 647. — money of account.** [Aus.] In *GOLDSBROUGH, MORT & CO. v. HALL*, [1948] V. L. R. 145; [1948] A. L. R. 201, the Supreme Court of Victoria held that the question whether the obligation of the plaintiff company (incorporated in 1893 in Victoria) to redeem its debenture stock (the trustees of the debenture trust deed having at all times been English) was to be measured by reference to English pounds or Australian pounds, considered as two different moneys of account, was a question to be solved as a matter of construction of the contract according to its proper law; and held that the obligation was to be calculated by reference to English pounds. [Cf. *Bonython v. The Commonwealth*, § 648.]
- 648. — —.** [Aus.] In *BONYTHON v. THE COMMONWEALTH*, [1948] A. L. R. 185; 22 A. L. J. 137, the High Court of Australia held that where the sum of £1,000 sterling was payable in 1945 under a debenture issued in 1895 by the Government of Queensland, the debenture providing that, at the option of the holder, payment should be made in Australia or London, the sum of £1,000 was payable in Australian and not in English currency. [Cf. *Goldsbrough, Mort & Co. v. Hall*, § 647.]

- 649. Quantum meruit—extra building work.** See *SIR LINDSAY PARKINSON & Co. v. COMMISSIONERS OF WORKS AND PUBLIC BUILDINGS*, § 382.
- 650. Ratification—fire insurance policy.** [Can.] In *GOULDING v. NORWICH UNION FIRE INSURANCE SOCIETY*, [1948] 1 D. L. R. 526, the Saskatchewan Court of Appeal was equally divided on the question whether an owner of property can ratify a policy of fire insurance, effected by an unauthorised agent, after the loss has occurred.
- 651. Rectification—conveyance on sale.** [Can.] In *HALWA v. OLSON*, [1948] 2 D. L. R. 672, the Supreme Court of Alberta held that where the conveyancer's mistake was proved and the common intention of the vendor and purchaser was established the vendor could not rely upon the mistake and the Court was entitled to rectify the conveyance to achieve that common intention.
- 652. — corporation required to contract by seal.** [Eire.] In *MONAGHAN COUNTY COUNCIL v. VAUGHAN*, [1948] Ir. R. 306, the High Court of Eire held that a document sealed by a corporation which can bind itself only by seal can, in a proper case, be rectified by the Court. (Dictum of Clauson, J., in *Shipley U. D. C. v. Bradford Corporation*, [1936] Ch. 375 at 398, applied.)
- 653. Sale—of goods.** See *SALE OF GOODS*.
- 654. — of land.** See *VENDOR AND PURCHASER*.
- 655. Statute of Frauds.** See *WALFORD v. NARIN*, § 3374; *BANNISTER v. BANNISTER*, § 3404; *ELLIOTT v. PIERSON*, § 3372; *WILSON v. PIKE*, § 3373; *BECKETT v. NURSE*, § 3804; *BARBER v. ROWE*, § 1345.
- 656. Third party—delegation of duty under contract to.** See *VICTORIA LAUNDRY (WINDSOR) v. NEWMAN INDUSTRIES*, § 818.
- 657. Warranty or representation.** See *GILCHESTER PROPERTIES v. GOMM*, § 1507.
- 658. ARTICLES.** The effect of war on contracts with neutrals (founded on *Schering, Ltd. v. Stockholms Enskilda Bank*, [1946] 1 All E. R. 36): 98 L. J. 31. Conditional agreements (founded on *Branca v. Cobarro*, [1947] C. L. Y. 3182: *Solicitor*, January, 1948, p. 7. Some war-time contracts (a comment on the effects of the expiration of emergency legislation): 92 S. J. 21. Licences and legality: 92 S. J. 60. Damages under rescinded contracts: 98 L. J. 199. Commercial agreements from year to year (founded on *Re Berker Sportcraft's Agreements*, [1947] C. L. Y. 581-2); 98 L. J. 202. Severance of illegality in contract, by N. S. Marsh: 64 L. Q. R. 230, 347. Cheques "in full settlement": 92 S. J. 330. Payment by post: 98 L. J. 424. General theory of mistake in the formation of contract, by T. H. Tylor: *Modern Law Review*, July, 1948, p. 257. Mistakes of law (founded on *Re Diplock*, § 1377): 92 S. J. 480. Statute of Frauds (founded on *Wilson v. Pike*, § 3373): *Solicitor*, November, 1948, p. 247. Contracts for the benefit of third parties: 21 *Australian Law Journal* 455.
- 659. BOOKS PUBLISHED.** Cheshire, G. C.—*International Contracts* [6s.]. Chitty, J.—*Treatise on the Law of Contracts*. 20th ed. [70s.]. Chorley R. S. T. and Tucker, H. A.—*Leading Cases in Mercantile Law*. 3rd ed. [15s.]. Dold, G. W.—*Stipulations for a Third Party. A Comparative Study with special reference to Continental Law* [25s.]. Garfitt, A.—*Law of Contracts in a Nutshell. With Epitomes of Leading Cases* [6s.]. Odgers, Sir C. E.—*Introduction to the Law of Contracts* [25s.]. Wright, F. J.—*Commercial Law*, Vol. 1 [8s. 6d.].
- 660. — OVERSEAS PUBLICATIONS.** Drost, P. N.—*Contracts and Peace Treaties (Holland)* [15s.].

COPYRIGHT

- 661. Licence—assignment of copyright and licence—distinction between.** See *WITHERS v. NETHERSOLE*, § 1677.
- 662. — fees from licences to perform gramophone records—liability to excess profits tax.** See *I. R. C. v. ELECTRIC AND MUSICAL INDUSTRIES*, § 1358.
- 663. Rome Convention—addition of Iceland.** Copyright (Rome Convention) (Iceland) Order, 1948 (No. 1327), made under the Copyright Act, 1911 (1 & 2 Geo. 5, c. 46), amends the Copyright (Rome Convention) Order, 1933 (No. 253), as from June 23, 1948, by including Iceland among the foreign countries named therein as members of the Copyright Union.

664. **ARTICLE.** Convention for the protection of literary and artistic works (Berne Copyright Convention, 1948): 98 L. J. 444.
665. **BOOK PUBLISHED.** Copinger, W. A. and Skone James, F. E.—Law of Copyright. 8th ed. [53s.].

CORPORATIONS

666. **Contract under seal—rectification.** [Eire.] See *MONAGHAN COUNTY COUNCIL v. VAUGHAN*, § 652.
667. **Dissolution of company—vesting of freeholds.** See *Re STRATHBLAINE ESTATES*. § 496.
668. **Election of members, postponement of.** Orders made under Chartered and Other Bodies (Resumption of Elections) Act, 1945 (9 & 10 Geo. 6, c. 6), s. 1. SI 1948, No. 489 (Vestry of St. Giles Without Cripplegate); 2257 (Mersey Docks and Harbour Board).
669. **Local authorities.** See **LOCAL GOVERNMENT**.
670. **Registration of business names, new forms.** See § 2257.
671. **Ultra vires—common law corporation.** [Can.] In *ATT.-GEN., NEW BRUNSWICK v. ST. JOHN*, [1948] 3 D. L. R. 693, the Supreme Court of New Brunswick held that the doctrine of *ultra vires* was not applicable to a common law corporation and that such a corporation, having powers enabling it to contract as a natural person, had a right to enact a bye-law authorising such a contract.
672. — **employees' pensions and gratuities.** [N.Z.] In *WAIMARI COUNTY v. RUTHERFORD*, [1948] N. Z. L. R. 300, the Supreme Court of New Zealand held that while a local authority or corporation has implied powers, apart from statute, to make provision for, or gratuities to, retiring workers for the purpose of attracting desirable workers to its employment, a local authority or other corporation which is discontinuing its business has no power to give gratuities to its workers. (*Wimbledon and Putney Commons Conservators v. Tuely*, [1931] 1 Ch. 190, and *Cyclists' Touring Club v. Hopkinson*, [1910] 1 Ch. 179, considered.)
673. **Unincorporated associations.** See **CLUBS AND ASSOCIATIONS; TRADE UNIONS**.
674. **Unregistered companies.** See § 492.
675. **ARTICLE.** Bringing new Acts into operation (transfer of functions to new authorities): 206 L. T. 168.

COUNTY COURT PRACTICE

676. **Adoption of children.** See **INFANTS, CHILDREN AND YOUNG PERSONS**.
677. **Appeals from county courts—findings of fact.** "It is for the County Court Judge to find the facts and to draw the inferences from those facts, but . . . it is always a question of law, which will warrant the interference of [the Court of Appeal], whether there was any evidence to support his findings of fact and whether the inferences which he has drawn are possible inferences from the facts as found": *per* Tucker, L.J., in *HEMNS v. WHEELER*, § 3245.
678. — **burden of proof.** See *MOUNT v. CHILDS*, § 3216.
679. — **fresh evidence.** In an appeal from the county court the Court of Appeal has no power to hear fresh evidence: *GILLAN v. LANDLESS*, 92 S. J. 646; [1948] 2 All E. R. 721, C. A.
680. — **matters of fact arising after trial.** See *R. F. FUGGLE v. GADSDEN*, § 3173.
681. — **point not taken in Court below.** In *ELVINS v. SLANEY* (March 15, 1948), landlords obtained from the registrar of a county court an order for possession of premises within the Rent Restriction Acts on the ground of the tenant's non-payment of rent. The County Court Judge dismissed the tenant's appeal, saying in his note only that it was vexatious. On appeal to the Court of Appeal, the tenant sought to raise the point that the registrar's order was invalid for non-compliance with s. 180 (1) (b) of the County Courts Act, 1934. The Court of Appeal (Tucker and Somervell, L.J.J., and Roxburgh, J.) held that that point was not open to the tenant because it had not been taken before the County Court Judge. The

Court refused to apply the rule that it would entertain a point not taken below on the ground that the County Court Judge had failed to satisfy himself before making an order that all the requirements of the Rent Restriction Acts had been observed. [*Reported by R. C. Calburn, Esq., Barrister-at-Law.*] See also [1948] W. N. 129; 92 S. J. 231.

- 682. Costs—payment into Court—plea of tender filed after.** (County Court Rules, 1936, Ord. 47, r. 8 (2).) Ord. 47, r. 8 (2), of the County Court Rules, 1936, provides that: "Where money is paid into court without a denial of liability and without a plea of tender, and the plaintiff does not accept it in satisfaction of his claim . . . the scale applicable to the costs incurred after the date of the payment into court shall, unless the court otherwise orders, be determined as follows: (a) Where the plaintiff recovers an amount in excess of the amount paid into court, his costs shall be taxed on the scale applicable to the excess. (b) Where the plaintiff fails to recover an amount in excess of the amount paid into court, the defendant's costs shall be taxed on the scale applicable to the amount remaining in dispute".

The plaintiff sued the defendant for the sum of £100 in respect of work and labour and materials supplied. The defendant put in a defence, in which he disputed the claim, but on August 7, he paid into Court a sum of £69 9s. 7d. In answer to a letter from the plaintiff's solicitor, the defendant's solicitor replied on August 14, that the sum was paid into Court with an admission of liability and in full settlement. On September 17, the defendant paid into Court a further sum of £4 9s. 3d. and on the same day delivered "Further and better particulars of defence" in which he pleaded that in February "he tendered to the plaintiff the sum of £69 9s. 7d. in settlement of his claim" and had now paid this sum into Court. He further pleaded that in addition to this sum "and alternative to the plea of tender" the defendant had paid into Court the sum of £4 9s. 3d. to cover the costs on the said sum. On November 11, a further £2 was paid into Court by the defendant on account. Eventually, the plaintiff recovered judgment for £70 0s. 6d. with costs on Scale C. The defendant appealed against that part of the judgment which ordered him to pay all the costs of the action. Held, on appeal, the payment in ought not to have been treated as payment in with a plea of tender with the result that Ord. 47, r. 8 (2), applied, because the plea of tender did not come into the case at all until September 17. Consequently, the plaintiff was entitled to the costs of the action down to August 7, on Scale C, but not to any subsequent costs (the excess recovered over £69 9s. 7d. being less than £2); as the plaintiff failed to recover an amount in excess of the amount paid in by November 11, *i.e.*, £71 9s. 7d., the defendant, under r. 8 (2) (b), was entitled to the costs on the amount "remaining in dispute", *i.e.*, £100 less £71 9s. 7d. or £28 10s. 5d. on Scale B subsequently to November 11: *HIDA v. NOLAN*, [1948] 2 All E. R. 849, C. A.

- 683. Courts emergency powers.** See PRACTICE.

- 684. Districts.** SI 1948, Nos. 874 (Torrington); 1367 (Lampeter—Aberystwyth); 2165 (Colne—Nelson); 2323 (Southend—Brentwood); 2674 (Canterbury—Sittingbourne; Lampeter—Aberystwyth; Redditch—Stratford-on-Avon).

- 685. Judge—consultation of registrar.** "I think . . . that when an unfortunate controversy . . . arises which necessitates the learned Judge consulting the registrar as to what has taken place, it would be desirable that the Judge should inform the parties of what he has ascertained from the registrar before he gives his decision so as to enable the parties, if necessary, to comment thereon, or even, in an extreme case, to tender evidence contrary to what he has been informed or ask the registrar to make a statement in the presence of the parties about what took place": *per* Tucker, L.J., in *OWEN v. NICHOLL*, § 170.

- 686. — Judge's notes.** A County Court Judge ought not to refuse to supply a copy of his notes when required for the purpose of an appeal. See *DONOVAN v. LOUGHER*, § 2001.

- 687. — use of local knowledge.** See *REYNOLDS v. LLANELLY ASSOCIATED TINPLATE CO.*, § 3966.

- 688. Landlord and Tenant Act, 1927.** See LANDLORD AND TENANT.

- 689. Liabilities adjustment.** See *Re GINGER*, § 267.

- 690. Rating and valuation appeals.** See § 2051.
- 691. Registrar—duties of.** See *R. v. REGISTRAR OF PONTYPRIDD COUNTY COURT*, § 3962; *OWEN v. NICHOLL*, § 170.
- 692. Rent Act cases.** See RENT RESTRICTION.
- 693. Report of Committee.** The Committee on County Court Procedure (Chairman—Mr. Justice Austin Jones, M.C.) has issued a first interim report: Cmd. 7468.
- 694. Warrant for possession—extension of.** See *DONOVAN v. LOUGHER*, § 2001.
- 695. — stay of.** [Cty. Ct.] In an innominate case reported in 98 L. J. 136, Judge Wethered held that where the defendant against whom an order for possession had been made was not in occupation of the house in question under the Rent Acts, the county court had no power to stay a warrant for possession.
- 696. Water rate appeals.** See § 2051, 3857.
- 697. Workmen's compensation.** See WORKMEN'S COMPENSATION.
- 698. ARTICLES.** Equitable execution in the county court: 205 L. T. J. 171. Interpleader in the county court: 205 L. T. J. 287. County court procedure—Committee's report: 206 L. T. 84. Adjournments for want of time—Committee's report: 98 L. J. 437. County court delays: 92 S. J. 448. Costs in the county court: 206 L. T. 220, 236, 254, 281.
- 699. BOOK PUBLISHED.** County Court Practice, 1948 [60s.].

CRIMINAL LAW

- 700. Accessory after the fact.** Where a man is charged with the offence of being an accessory after the fact, which involves knowledge on his part that the persons he has received and comforted have committed a felony, it is always improper to accept his plea of guilty until the fact has been tried by a jury whether the other persons are felons or not, unless, of course, they also plead guilty to the felony. While they are awaiting trial and stoutly protesting their innocence, it is wrong to accept a plea of guilty from a person who is indicted for an offence which involves his knowledge of their guilt.

Per Humphreys, J.: "The same observation would in truth and in law apply to a case of conspiracy": *R. v. ROWLEY*, 112 J. P. 207; 92 S. J. 224; [1948] 1 All E. R. 570, C. C. A.

- 701. —.** The charge of being an accessory after the fact calls for a reasoned direction to the jury to ensure that no injustice is done to the accused person. The direction to a jury approved by the Court of Appeal in *R. v. Levy*, [1912] 1 K. B. 158, was as follows: "... if they were satisfied that she removed the things mentioned from G.'s workshop, knowing that he was guilty of committing the felony charged against him, and did so for the purpose of assisting him to escape conviction, they should find her guilty".

The appellant had been acquitted of receiving stolen property but had been convicted of being an accessory after the fact in connection with his wife's conviction of receiving stolen property. When the police had searched his house, where they had found the stolen property, he had told them certain untruths and evasions. In his summing-up the assistant recorder, when dealing with the charge of being an accessory after the fact, had observed: "An accessory after the fact is one who, knowing that another person has been guilty of a felony, takes some active step to conceal the felony and to prevent the apprehension of the principal felon, and, if it is material, you will have to consider whether J.'s conduct was that of a man taking active steps to conceal a felony committed by Mrs. J., assuming, of course, that you think Mrs. J. was guilty of receiving". He then dealt with the things said and done by the appellant on the police visit to his house which was the only evidence against him. Held, on appeal, the summing-up at the trial had been defective in that the assistant recorder (a) had failed to specify any acts alleged to have been done by the appellant to enable his wife to escape conviction; and (b) had failed to direct the jury that if the appellant's motive in telling the untruths had been to avoid his own arrest, that was not sufficient to bring him within the purview of the charge. Consequently, the conviction had to be quashed: *R. v. JONES*, [1948] W. N. 442; 64 T. L. R. 616; [1948] 2 All E. R. 964, C. C. A. (applying *R. v. Levy*, *supra*).

702. Appeal—time counting as part of sentence. See R. v. BEDFORD, § 759.

703. Attempted Rape Act, 1943 (11 & 12 Geo. 6, c. 19). [E.] This Act gives the Court power, where a person is convicted in England or Wales of an attempt to commit rape, to pass a sentence of penal servitude for a term of not more than seven years, in lieu of dealing with him in any other manner in which the Court has power to deal with him. [But see Criminal Justice Act, 1948, s. 1, § 714.]

704. Autrefois acquit—res judicata—facts to be proved. [Can.] In *Re WILSON*, [1948] 1 W. W. R. 680, the Supreme Court of British Columbia held that: "The test to establish the plea of *autrefois acquit* is (1) that the defendant had been previously acquitted of the same offence, or (2) that he could have been convicted at the previous trial of the offence with which he is subsequently charged, or (3) that the two offences are substantially the same; not whether the evidence (facts) necessary to support the second prosecution would have been sufficient to procure a legal conviction on the first, but whether the offences are identical, and whether the accused was "in peril" of conviction at the previous trial. The conditions requisite for the defence of *res judicata* are the same. The burden of proving that the former court had jurisdiction, like that of establishing other facts necessary to support the special plea, is on the accused. The only evidence admissible on the issue of the jurisdiction of the former court is the formal record of conviction or acquittal".

705. — trial of issue. [Aus.] In R. v. GAMBLE, [1948] 1 A. L. R. 21, the Supreme Court of Victoria held that the trial of the issue of *autrefois acquit* was for a jury and not a Judge.

706. Bail—High Court. The Rules of the Supreme Court (Criminal Proceedings), 1938, r. 13A (1) (added by S. R. & O., 1940, No. 924) are amended, as from January 10, 1949, by deleting the words "and no defence certificate under the Poor Prisoners' Defence Act, 1930, has been granted to him": Rules of the Supreme Court (No. 4), 1948 (No. 2781), art. 4.

707. Commission rogatoire—order for examination of person charged with offence. [Aus.] *Re S.*, [1948] V. L. R. 11; [1948] 1 A. L. R. 81, the Supreme Court of Victoria held that, as a person is not a compellable witness in criminal proceedings against himself, an order should not be made for the examination of any person, at the instance of a foreign tribunal, concerning an offence with which that person is charged before that tribunal.

708. Conspiracy. (Defence (General) Regulations, 1939, regs. 55, 90.) Willes, J., when defining conspiracy in *Mulcahy v. R.* (1868), L. R. 3 H. L. 306, stated: "A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act, or to do a lawful act by unlawful means. So long as such a design rests in intention only, it is not indictable". Thus, if an indictment charges a conspiracy to contravene the existing law and further charges an indictable conspiracy by alleging an agreement to disobey any future law which might be made on the same subject and with the same object, that does not amount to an indictable conspiracy according to the definition in *Mulcahy's Case* (*supra*).

Semble: A mere alteration of the law in detail does not necessarily result in a fresh agreement or conspiracy to break the law.

By three different orders made under reg. 50 of the Defence (General) Regulations, 1939, the law dealing with the supply of toilet preparations was considerably altered between 1940 and 1946. The three orders were not all in force at any one time. The accused were charged on indictment in one count with conspiracy to contravene the orders dealing with the supply of toilet preparations between 1940 and 1946. Held, the indictment was bad, because it charged three separate conspiracies in one count, and the convictions should be quashed: *R. v. WEST*; *R. v. NORTHCOTT*; *R. v. WEITZMAN*; *R. v. WHITE*, [1948] 1 K. B. 709; [1948] L. J. R. 1377, C. C. A. (applying *Mulcahy v. R.*, *supra*; and *Quinn v. Leatham*, [1901] A. C. 495). (See also §§ 709, 734.)

709. —. "There is a growing tendency to charge persons with criminal conspiracy rather than with the specific offences which the evidence shows them to have committed. It is not to be encouraged": *per* Humphreys, J., in *R. v. WEST*, § 708.

- 710.** — **plea of guilty.** See *R. v. ROWLEY*, § 700.
- 711.** **Conviction, meaning of.** See *R. v. LONDON COUNTY QUARTER SESSIONS*, § 2129.
- 712.** **Costs—witnesses allowances.** Witnesses Allowances Regulations, 1948 (No. 1909), made under the Costs in Criminal Cases Act, 1908 (8 Edw. 7, c. 15), s. 5; coming into operation on September 13, 1948; revoke the regulations of 1904 (No. 1219), 1920 (No. 354) and 1922 (No. 892); prescribe the allowances payable to professional, expert and ordinary witnesses and to seamen detained on shore in order to give evidence. The new regulations also contain provisions as to night allowance, travelling allowances and allowances to interpreters and to persons necessarily attending the Court otherwise than as witnesses.
- 713.** **Court martial—liability to trial by.** By the Army and Air Force (Annual) Act, 1948 (11 & 12 Geo. 6, c. 28), s. 6 (1), an amendment is made to the proviso to s. 158 (1) of the Army Act, under which (except in the case of certain offences) a person who has ceased to be subject to military law is not liable to be tried by court martial unless the trial is commenced within three months after he has ceased to be subject to military law. There are now inserted after the last-mentioned words, the words "or unless the offence was committed outside the United Kingdom and is an offence which when committed in England is punishable by the law of England and the Attorney-General consents to the trial". By sub-s. (2) this amendment applies in relation to any trial after the coming into operation of the new Act whether the offence was committed before or after that date.
- 714.** **Criminal Justice Act, 1948 (11 & 12 Geo. 6, c. 58).** This Act makes many important changes in the administration of criminal justice. It is expressed to come into operation on such day or days as may be appointed (s. 83 (2)), see § 715. It is divided into three Parts.

Powers and proceedings of Courts.

Part I (ss. 1-44) relates to the powers and proceedings of Courts. By s. 1 penal servitude, hard labour and prison divisions are abolished. S. 2 abolishes sentences of whipping. Ss. 3-12 deal with probation orders. S. 3 empowers Courts to make probation orders for any period of not less than one year and not more than three years, and makes other provision as to the contents of probation orders. S. 4 empowers Courts to include in a probation order in a proper case a requirement that the offender shall submit to medical treatment to improve his mental condition. S. 5 and Sched. I deal with the discharge, amendment and review of probation orders, and s. 6 lays down the procedure for dealing with breaches of probation orders. Under s. 7 the Court is empowered, in any case where they think that it is inexpedient to inflict punishment and that a probation order is not appropriate, to discharge the offender either absolutely or conditionally. S. 8 deals with the procedure to be followed where a person in respect of whom a probation order or order for conditional discharge has been made is convicted of a further offence during the probation period or period of conditional discharge. S. 9 deals with probation orders relating to persons residing in Scotland and s. 10 deals with Scottish probation orders relating to persons residing in England. Under s. 11 the Court, when making a probation order or order for conditional discharge, may allow any consenting party to give security for the offender's good behaviour: the Court may also order the offender to pay damages for injury or compensation for loss. Under s. 12 a conviction for an offence for which a probation order or order of discharge is made is deemed not to be a conviction for any other purpose, but this is not to affect the offender's right of appeal and certain other consequences of a conviction. S. 13 confers power on the Courts to fine offenders on conviction on indictment of felony. Ss. 14 and 15 contain provisions as to the powers of Courts of assize and quarter sessions in relation to fines and forfeited recognisances and other matters connected therewith. Ss. 16-20 contain provisions relating to young offenders. S. 16 substitutes a new subsection for s. 53 (1) of the Children and Young Persons Act, 1933 (23 & 24 Geo. 5, c. 12), providing that sentence of death is not to be pronounced on any person under eighteen. Under s. 17 a Court of summary jurisdiction is not to impose imprisonment on any person under seventeen, and a Court of assize or quarter sessions is not to impose imprisonment on any person under fifteen: restrictions are also placed on

imposing imprisonment on persons under twenty-one. In the case of persons between fourteen and twenty-one the Court may in certain circumstances order detention in a detention centre for three months (s. 18); or in the case of persons between twelve and twenty-one the Court may in certain circumstances order attendance at an attendance centre (s. 19). S. 20 deals with Borstal training. Ss. 21-23 deal with persistent offenders. S. 24 provides for the making of reception orders where the offender is of unsound mind. Ss. 25-27 contain provisions as to adjournment, remand, etc. S. 25 gives power to Courts of summary jurisdiction to adjourn a case after conviction and before sentence; and s. 26 authorises such Courts to remand persons for inquiry into their physical or mental condition. S. 27 deals with the remand and committal of persons under twenty-one. S. 28 deals with the powers of Courts of summary jurisdiction in the case of offences punishable on summary conviction or on indictment. S. 29 empowers a Court of summary jurisdiction to commit an offender, whom they have convicted summarily, to quarter sessions for sentence. S. 30 abolishes privilege of peerage in criminal proceedings. S. 31 deals with the jurisdiction of Courts to deal with offences committed in foreign countries by persons (being British subjects) in the service of the Crown. S. 32 permits the issue of one summons in respect of more than one information; and s. 33 provides for the supply of copies of the written information to any persons entitled to copies of the depositions. S. 34 amends the Summary Jurisdiction (Appeals) Act, 1933 (23 & 24 Geo. 5, c. 38), as to the appointment of members of appeals committees. S. 35 (repealing the Defence (Administration of Justice) Regulations, 1940, Regs. 13, 15A) makes certain alterations with respect to the challenging, swearing and separation of jurors, etc. S. 36 deals with appeals from Courts of summary jurisdiction to quarter sessions; and s. 37 deals with the granting of bail on appeal to quarter sessions or on application for a case stated or for certiorari. S. 38 makes certain amendments to the Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), notably as to the time to be disregarded in computing an appellant's sentence, and as to the power of the Court of Criminal Appeal to order an appellant to pay costs. S. 39 provides for the proof of previous convictions by finger prints. S. 40 empowers Courts of summary jurisdiction, on the application of a police officer not below the rank of inspector, to order a person's finger prints to be taken when such person is charged before them with an offence. S. 41 permits the admission in evidence of certified plans and drawings and certain other certificates with respect to the driving or ownership of motor vehicles or with respect to the dispatch or failure to receive goods alleged to have been stolen. S. 42 provides that the prosecution is not entitled to reply, on the trial of any person on indictment, on the ground only that documents have been put in evidence for the defence, and that in Courts of summary jurisdiction the person charged or his counsel or solicitor is entitled to address the Court either at the conclusion of the case for the prosecution or at the conclusion of the evidence, at his discretion. S. 43 provides that a copy of any report of a probation officer is to be given to the accused or his counsel or solicitor. By s. 44, where an accused person is acquitted or discharged, etc., the Court may order the payment to him of compensation for the expenses of his defence, and similar power is given to the Court of Criminal Appeal and to the House of Lords in the case of a successful appeal.

Administrative provisions and treatment of offenders.

Part II (ss. 45-72) contains administrative provisions and provisions as to the treatment of prisoners, etc. S. 45 and Sched. V contain provisions as to probation areas, the constitution and functions of probation committees and case committees, and the appointment, functions and conditions of service of probation officers. Ss. 46 and 47 deal with approved probation hostels and homes and other institutions used for the residence of probationers. Ss. 48, and 49 relate to remand centres, detention centres, Borstal institutions and remand homes. S. 50 authorises the acquisition, either by agreement or compulsorily, by the Prison Commissioners of land for prisons and similar institutions. S. 51 abolishes the office of the directors of convict prisons. S. 52 provides for the making of rules for the management of prisons, remand centres, Borstal institutions, etc., and s. 53 provides for visiting committees and boards of visitors. S. 54 restricts the infliction of corporal punishment in prisons to cases where such

punishment is permitted under rules made under s. 52. S. 55 amends the provisions of the Prison Act, 1865 (28 & 29 Vict. c. 126) relating to the introduction of prohibited articles. Ss. 56 and 57 deal with remission of sentence for good conduct and the release on licence of young prisoners and persons serving life sentences. Ss. 58-61 relate to the removal and transfer of prisoners to and from prisons and other institutions. In particular, s. 60 provides for the movement of prisoners who are appellants under the Criminal Appeal Act, 1907, or whose attendance is required at any Court or who require medical treatment. Ss. 62-64 provide for the treatment of persons of unsound mind, etc. The expression "criminal lunatic asylum" and "criminal lunatic" are to cease to be used and the expressions "Broadmoor institution" and "Broadmoor patient" are to be substituted (s. 62). S. 65 deals with the apprehension and treatment of prisoners unlawfully at large; and s. 66 relates to "legal custody". S. 67 deals with the power of Courts of summary jurisdiction to issue warrants for the apprehension of persons failing to surrender to their bail. S. 68 restricts the power to arrest without a warrant persons found telling fortunes, etc. S. 70 amends the Forfeiture Act, 1870 (33 & 34 Vict. c. 23) as to the administration of the property of convicts, and authorises the restoration of pensions forfeited under that Act. S. 71 substitutes a new subsection for s. 71 (1) of the Children and Young Persons Act, 1933, as to the period of detention of a child in an approved school. S. 72 deals with the power of Courts of summary jurisdiction in regard to absconders from approved schools, etc.

Supplemental.

Part III (ss. 73-83) contains supplemental provisions. S. 73 authorises the application of ss. 1 and 2 of this Act (by Order in Council) to courts martial. S. 74 relates to supervision orders made under the Children and Young Persons Act, 1933; and s. 75 confers power on the Court to order the detention in a remand centre of young persons as to whose physical or mental condition they think an inquiry should be made. Certain transitory provisions are contained in Sched. VIII.

The Act does not in general extend to Scotland or Northern Ireland, except the provisions thereof set out in ss. 81 and 82.

- 715. — commencement.** Criminal Justice Act, 1948 (Date of Commencement) Order, 1948 (No. 1840), made under the Criminal Justice Act, 1948, s. 83 (2), brings the following provisions of that Act into operation from September 13, 1948: Ss. 2, 16, 30-33, 38, 42, 44, 50, 55, 67, 68, 71, 77 (1), 79, 80, 81 (so far as it relates to ss. 2, 30, 71, 83 (3) and Sched. X, Pts. 2 and 3), 82 (so far as it relates to ss. 30, 83 (3) and Sched. X, Pt. 3), 83 (3) (so far as it relates to Sched. X), part of Sched. IX (as set out in App. A. to the order), Sched. X, Parts 2 and 3 and so much of Part 1 as is set out in App. B to the Order. The most important of the provisions so to be brought into operation relate to the abolition of the power to pass a sentence of whipping, the restriction of the death sentence, the abolition of privilege of peerage in criminal proceedings, the amendment of the Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), and the payment of costs of defence on acquittal, etc. [2*d.*]

Criminal Justice Act, 1948 (Date of Commencement) (No. 2) Order, 1948 (No. 2056) made under s. 83 (2), brings the following provisions of that Act into operation from September 13, 1948: Ss. 52 (rules for management of prisons, etc.), 70 (2) (amendment of Forfeiture Act, 1870), 76 (rules and orders), 78 (transitory provisions), part of 83 (3) (repeals), Sched. VIII, para. 7 (*n*), Sched. X, Pt. 1 (in part).

Criminal Justice Act, 1948 (Date of Commencement) (No. 3) Order, 1948 (No. 2349), made under s. 83 (2), brings the following provisions of that Act into operation from December 27, 1948: Ss. 13-15, 17, 20, 24-29, 34-36, 39-41, 43, 48, 53, 58-60, 65, 66, 72, 77 (3) (*e*) (*f*), 79, part of 81, part of 83 (3), and Schedules II, part of IX (set out in App. A to Sched. I to the Order), and part of Part 1 of Sched. X (set out in App. B). The Order further provides that the following provisions of the Act are to come into operation on April 18, 1949: Ss. 61 (5), 78, part of 81, part of 83 (3), and Schedules VII, paras. 1, 7; VIII, para. 4; and part of Part 1 of Schedule X (set out in the Appendix to Sched. II to the Order). [2*d.*] [See also SI 1949, No. 139.]

716. ——— **circulars.** The Home Office have issued to clerks of the peace Circular 266/1948 with reference to the provisions of the Act of 1948, brought into force by the Criminal Justice Act, 1948 (Date of Commencement) (No. 3) Order, 1948 (No. 2349) (see § 715).

A similar Circular 267/1948 has been issued to clerks of assize.

717. **Depositions.** The Home Secretary has appointed a Departmental Committee (Chairman: Mr. Justice Byrne) to inquire into the existing practice with regard to the taking of depositions in criminal cases, and to report whether any, and if so what, alterations in the law are necessary or desirable with a view to securing the more effective dispatch of the business of the Courts, while retaining public confidence in the administration of justice.

718. **Evidence—admissibility—accomplices.** While a statement made in the absence of an accused person by one of his co-defendants is not evidence against him, if a co-defendant gives evidence in the course of the trial of both of them, then what he says becomes evidence for all the purposes of the case, including, of course, the case of his co-defendant: *R. v. RUDD* (1948), 64 T. L. R. 240; 92 S. J. 206, C. C. A. (applying *R. v. Meredith* (1943), 29 Cr. App. R. 40; and *R. v. Garland* (1941), 29 Cr. App. R. 46n.). (See also § 726.)

719. ——— **proceedings before magistrates.** See *R. v. SHARROCK*, § 2140.

720. ——— **admissions.** What a man says in relation to a charge is admissible evidence against him, even though such a statement amounts to an admission of a previous conviction or discloses other matters reflecting on his character.

A man, having been reported to a police officer for indecent exposure in a railway carriage, said, "I did not pull it out" and continued after being cautioned: "I don't want to get into trouble. I won't do it again. I have done time for this before". Held, the statement "I have done time for this before" was rightly admitted in evidence because it went to show that the accused was admitting that what he had done was a deliberate and indecent act: *TURNER v. UNDERWOOD*, [1948] 2 K. B. 284; [1948] 1 All E. R. 859, D. C.

721. ——— **blood tests.** [Can.] In *R. v. FORD*, [1948] 1 D. L. R. 787, the Supreme Court of Alberta held that the admissibility of the evidence afforded by a blood test of the accused was governed by the same principles and rules as govern the admissibility of an accused person's confession.

722. ——— **certificates.** Evidence by Certificate Rules, 1948 (No. 2664) [E.], made under the Criminal Justice Act, 1948 (11 & 12 Geo. 6, c. 58), s. 61; came into operation on December 27, 1948; lay down the prescribed qualifications of persons certifying plans and drawings under s. 41 (1) of the Act and prescribe the manner of service of certificates and other documents under sub-s. (5) of that section. The new Rules also contain a form of certificate of a statement as to a motor vehicle (s. 41 (2)) and a form of notice by a defendant requiring the attendance of witnesses (s. 41 (5)).

723. ——— **Reg. 17A (proof of certain facts by certificate) of the Defence (Administration of Justice) Regulations, 1940, expired on December 31, 1948: Emergency Laws (Miscellaneous Provisions) Act, 1947 (11 Geo. 6, c. 10), Sched. I, Part II.**

724. ——— **character.** [Scot.] (Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), s. 1 (f).) In *O'HARA v. H.M. ADVOCATE*, 1948 S. L. T. 372, the High Court of Justiciary held that, where an accused was charged with assaulting a police officer and deposed that the officer was under the influence of drink and was the aggressor, and the prosecutor thereupon asked and received leave to cross-examine the accused on his past record, the general character of the prosecution witness had not been attacked except in so far as necessary to enable the accused fairly to establish his defence, and the conviction therefore had to be quashed (*R. v. Hudson*, [1912] 2 K. B. 464, considered; *Stirland v. D. P. P.*, [1944] A. C. 315, applied).

725. ——— **complaint in case of rape.** See *R. v. CUMMINGS*, § 753.

726. ——— **corroboration—accomplices.** Where the evidence given against an accused person in the course of the trial is that of an accomplice, the jury should be given a direction that they ought not to act on it unless they find it to be

corroborated. Moreover, even in the absence of such a direction the Court of Criminal Appeal will refuse to interfere with the verdict of the jury, if there is ample corroboration of the evidence of the accomplice by other witnesses or in the admissions made by the accused person himself. See *R. v. RUDD*, § 718 (applying *R. v. Garland* (1941), 29 Cr. App. R. 46n.).

- 727. — incorporation of company.** [Eire.] In *ATT.-GEN. v. SMITH*, [1947] Ir. R. 332, Gavan Duffy, P., held that there was sufficient evidence of the incorporation of the limited liability company which the accused was charged with conspiring to defraud, to enable the accused to be put on trial, without the production of a certificate of incorporation of the company by an official of the English Companies Office.
- 728. Extradition—Dominica.** See § 306.
- 729. — Sarawak.** See § 350.
- 730. False pretences—passing of worthless cheques.** In *R. v. OSTER-RITTER*, § 767, the Court of Criminal Appeal held that if a person gives a cheque for £10, knowing that he has no money in the bank to meet it, but believing, on reasonable grounds, that somebody is going to pay in £20 next day, so that at the time when the cheque is presented it will be met, then he has not an intent to defraud.
- 731. Gas Act, 1948—offences under.** See s. 68 of the Gas Act, 1948 (11 & 12 Geo. 6, c. 67), § 1535.
- 732. Indecent exposure.** See *TURNER v. UNDERWOOD*, § 720.
- 733. Indictable offence—meaning of.** See *HASTINGS AND FOLKESTONE GLASSWORKS v. KALSON*, § 473.
- 734. Indictment—amendment of.** Where no application for leave to amend the indictment has been made by either side, the Judge, when exercising his discretion in directing an amendment, should invite the parties, and, in particular, the defence, to express their views on the matter before deciding to do so. See *R. v. WEST*, § 708.
- 735. — joinder of counts—"charges . . . part of a series of offences of . . . a similar character".** (Indictments Act, 1915 (5 & 6 Geo. 6, c. 90), Sched. I, r. 3.) R. 3 in Sched. I to the Indictments Act, 1915, provides that: "charges for any offences, whether felonies or misdemeanours, may be joined in the same indictment if those charges are founded on the same facts, or form or are part of a series of offences of the same or a similar character".
- The first count charged the appellant with arson by unlawfully and maliciously setting fire to a yacht. The second count charged him with arson with intent to prejudice underwriters who had underwritten a policy of insurance on the yacht. In the third count he was charged with attempting to obtain money by false pretences in that with intent to defraud he attempted to obtain from the same underwriters payment for the total loss of the yacht by falsely pretending that it had become a total loss by reason of an accidental fire on board. In the fourth count he was charged with obtaining money by false pretences in that with intent to defraud he obtained a sum of money from underwriters by falsely pretending that a mink coat had been stolen from his motor car. It was objected that there had been a misjoinder of the fourth count, or, at least, that there ought to have been a separate trial with regard to it. Held, (1) in substance, the charge contained in the first three counts was that the appellant fired the yacht with the idea of swindling underwriters; the charge with regard to the mink coat was a similar charge of swindling underwriters; there was, therefore, a *nexus* of fraudulent acts to the prejudice of underwriters; consequently, all the charges were "part of a series of offences of . . . a similar character" within the meaning of r. 3; (2) the joinder of the fourth count could not have resulted in a miscarriage of justice, and, therefore, there was no necessity for a separate trial on that count: *R. v. CLAYTON-WRIGHT*, [1948] W. N. 392; 64 T. L. R. 543; [1948] 2 All E. R. 763, C. C. A.
- 736. — separate counts arising out of same act.** [N.Z.] In *R. v. ROACH*, [1948] N. Z. L. R. 677, the New Zealand Court of Appeal held that, where the accused was charged upon an indictment containing four counts of which the first was of buggery and the second of attempted buggery and the jury found him guilty of

both, as the two counts in question were in respect of the same act, the two convictions could not stand together and a new trial should be ordered upon these two counts.

- 737. — time limit for prosecution under Finance (No. 2) Act, 1940.** (Finance (No. 2) Act, 1940 (3 & 4 Geo. 6, c. 48), Sched. IX, para. 2.) In para. 2 of Sched. IX to the Finance (No. 2) Act, 1940, which provides that: "All suits, indictments, informations, or complaints brought or exhibited for any offence against Part V of this Act [e.g., furnishing false purchase tax returns with intent to deceive] in any Court . . . shall be brought or exhibited within three years next after the date of the offence committed, or in which the tax became due . . .", the natural interpretation must be given to the word "informations", and, therefore, if the information which started the prosecution has been preferred within three years that is sufficient, although the indictment is in fact preferred after the three years: *R. v. SARAH SILVER* (1948), 64 T. L. R. 502, C. C. A.
- 738. Information—meaning of.** See *R. v. SARAH SILVER*, § 737.
- 739. Larceny—by finding.** (Larceny Act, 1916 (6 & 7 Geo. 5, c. 50), s. 1 (2) (i) (d).) Every householder or landowner means or intends to exclude thieves and wrongdoers from his property, and this confers on him a special property in goods found on his land sufficient to support an indictment if the goods are taken therefrom, not under a claim of right, but with a felonious intent.
- The appellant, under the Larceny Act, 1916, s. 2, was charged with, and convicted of, stealing golf balls, the property of the secretary and members of a golf club. The appellant had picked up the golf balls, which had been previously lost by members, on the golf links on the day in question. On previous occasions the appellant had been warned off the links which were the property of members of the club. The appellant appealed against his conviction on the ground that the members of the club had no property in the balls, and that, therefore, he had not stolen them within the meaning of s. 1 of the Larceny Act, 1916. Held, the question of ownership of the balls did not arise: the fact that the members of the club intended to exclude thieves and wrongdoers from the property occupied by them conferred on them a special property in the balls sufficient to support the charge, and, consequently, the appellant, who had picked them up *animo furandi*, was rightly convicted of larceny by finding: *HIBBERT v. McKIERNAN*, [1948] 2 K. B. 142; [1948] L. J. R. 1521, D. C. (applying *R. v. Rowe* (1859), 28 L. J. M. C. 128; explaining *R. v. White* (1912), 107 L. T. 528). (See also § 741.)
- 740. — of animal—distinction from right of property for maintaining civil action.** See *HAMPS v. DARBY*, § 156.
- 741. — ownership of stolen property.** "At the present day allegations concerning the ownership of stolen property are, except in a few exceptional cases, treated as immaterial": *per* Lord Goddard, C.J., in *HIBBERT v. McKIERNAN*, see § 739.
- 742. Magisterial law.** See MAGISTERIAL LAW.
- 743. Manslaughter—dangerous driving.** [Eire.] In *THE PEOPLE v. DUNLEAVY*, [1948] Ir. R. 95, the Eire Court of Appeal considered the matters to be dealt with in a direction to a jury where the accused is charged with manslaughter arising out of his negligent driving, and laid down the form which the direction should take. (*R. v. Bateman* (1925), 19 Cr. App. R. 8; *Tinline v. White Cross Insurance*, [1921] 3 K. B. 327; and *Andrews v. D. P. F.*, [1937] A. C. 576, applied.)
- 744. — dog killing child.** [S.A.] In *R. v. EUSTACE*, 1948 (3) S. A. L. R. 859, the Transvaal Provincial Division of the Supreme Court of South Africa held that where a vicious dog belonging to the accused attacked and killed a child, the accused was guilty of culpable homicide, on the ground that, having regard to the dog's history and known propensities, the accused was negligent in keeping the dog and did not act as a reasonable man.
- 745. — negligence.** See *DABHOLKAR v. R.*, § 749.
- 746. Mens rea—knowledge of road accident.** See *HARDING v. PRICE*, § 3297.

747. Misprision of felony. Misprision of felony is an offence which is still described in the textbooks, but it is generally regarded nowadays as having become obsolete or as having fallen into desuetude, although there have been recent cases in which counts for misprision of felony have been included in indictments. If in any future case it is thought necessary or desirable to include in an indictment a count for misprision of felony, great care should be taken to see what are the constituents of the offence. It may be that the Court will have carefully to consider whether it is necessary to show a concealment for the benefit of the person charged. See *R. v. ABERG*, § 766 (applying *Williams v. Bayley* (1866), L. R. 1 H. L. 200).

748. Motor Spirit (Regulation) Act, 1948—offences under. See § 2695.

749. Negligence—degree necessary for conviction. S. 222 of the Tanganyika Penal Code, 1930, which presents a true analogy to s. 11 of the English Road Traffic Act, 1930, provides that "Any person who in a manner so rash or negligent as to endanger human life or to be likely to cause harm to any other person . . . gives medical or surgical treatment to any person whom he has undertaken to treat . . . is guilty of a misdemeanour". The negligence charged in that section is not necessarily as grave, either in its nature or its consequences, as in the offence of manslaughter, but must be of a higher degree than the negligence which gives rise to a claim for compensation in a civil court: *DABHOLKAR v. R.*, [1948] A. C. 221; [1948] L. J. R. 1289, P. C. (referring to *Andrews v. D. P. P.*, [1937] A. C. 576).

750. Plea of guilty of lesser offence—acceptance. While it is impossible to lay down a hard and fast rule in any class of case as to when a plea for a lesser offence should be accepted by the Crown—and it must always be in the discretion of the Judge whether he will accept it—where nothing appears on the dispositions which can be said to reduce the crime from the more serious offence charged to some lesser offence for which, under statute, a verdict may be returned, the duty of counsel will be to present the charge in the indictment, leaving it as a matter for the jury, if they see fit in the exercise of their undoubted prerogative, to find the lesser verdict.

The applicant was charged with the murder of her infant child, but was convicted of infanticide only. There was nothing in the evidence to suggest that the applicant, when she killed her child, was otherwise than normal and in possession of all her faculties. The applicant was willing to plead guilty to infanticide, and counsel for the Crown expressed his willingness to accept that plea. The Judge refused to accept it, and said that the charge was one of murder and that charge must be tried, although, of course, it would be for the jury to say whether the verdict should be guilty of murder or guilty of infanticide. Held, the ruling was a correct one: *R. v. SOANES*, 112 J. P. 193; [1948] 1 All E. R. 289, C. C. A.

751. Radioactive Substances Act, 1948—offences under. Offences and penalties under the Radioactive Substances Act, 1948 (11 & 12 Geo. 6, c. 37), are set out in s. 8 of that Act. The only offence triable on indictment is improper disclosure of information.

752. Rape—attempted. See § 703.

753. — evidence of complaint. The fact that the prosecutrix in a case of rape has made an early complaint has always been regarded as one of the most important matters in a case of that description. The fact that the prosecutrix has made a complaint supports her case because it shows consistency of conduct on her part. The admissibility of evidence of the fact that a complaint was made is subject to the qualification laid down in *R. v. Lillyman*, [1896] 2 Q. B. 167, namely, "provided it was made as speedily after the acts complained of as could reasonably be expected". The question whether a complaint is made as speedily as could reasonably be expected must be decided by the Judge who tries the case, and is a matter for his discretion if he applies the right principle.

The prosecutrix, who was a virgin, alleged that she had been raped by the appellant in a field late at night. When she got back to the camp for land girls, in which she was living, she did not make a complaint either to the warden of the camp, a man whom she hardly knew, or to the girls living in the same hut.

But early next morning she went to a much older woman, who lived two miles away, whom she knew and to whom she made a complaint which led to the arrest of the appellant. It was objected that she did not make a complaint immediately, and consequently, that evidence of the fact that she made a complaint ought not to have been admitted. Held, the Judge could well come to the conclusion that the complaint was made as speedily as the circumstances of the case warranted: *R. v. CUMMINGS*, 92 S. J. 284; [1948] 1 All E. R. 551, C. C. A. (applying *R. v. Lillyman*, *supra*).

- 754. Receiving stolen goods.** In *R. v. FALLOWS* (November 29, 1948), the Court of Criminal Appeal (Lord Goddard, C.J., Hilbery and Birkett, JJ.) declined to assent to the proposition that if stolen goods were delivered at the premises of the person charged with receiving them while that person was out, there would be no evidence that that person had received them knowing that they were stolen. [Reported by *R. C. Calburn, Esq., Barrister-at-Law.*] See also [1948] W. N. 479; 93 S. J. 42.
- 755. Remand for medical report—reception in certified institutions.** See §§ 714, 2116.
- 756. Sentence—Borstal detention.** (Prevention of Crime Act, 1908 (8 Edw. 7, c. 59), s. 5 (1).) Consecutive sentences of Borstal detention are undesirable because they make the scheme of Borstal training unworkable: *R. v. BEAMON*, 112 J. P. 302; [1948] 1 All E. R. 947, C. C. A.
- 757. ———.** A sentence of Borstal detention passed on an offender who is already on licence which is ordered to take effect at the expiration of the earlier sentence is inappropriate, because no one can say for what period it will or will not take effect, as the expiration of the earlier sentence is entirely in the hands of the Prison Commissioners. Therefore, it is not desirable, or, indeed, possible, to give any directions in the case of a sentence of Borstal detention as to when the sentence should begin if the prisoner is already undergoing or liable to undergo a sentence of Borstal detention: *R. v. O'NEILL*, [1948] W. N. 393; 64 T. L. R. 556; [1948] 2 All E. R. 761, C. C. A.
- 758. ——— refusal to submit to medical examination for national service.** In *R. v. GREEN* (July 12, 1948), the Court of Criminal Appeal (Lord Goddard, L.C.J., Singleton and Slade, JJ.) considered twelve months' imprisonment to be the appropriate sentence for a young man of eighteen years of age who refused to be medically examined and who had been convicted under s. 4 (2) of the National Service Act, 1941. Borstal detention was not appropriate since he was not a person of criminal tendencies. [Reported by *R. C. Calburn, Esq., Barrister-at-Law.*] See also (1948), 92 S. J. 443.
- 759. ——— computation of term if appeal dismissed.** (Criminal Justice Act, 1948 (11 & 12 Geo. 6, c. 58), s. 38 (2).) S. 38 (2) of the Criminal Justice Act, 1948, provides that six weeks or less of the time during which an appellant to the Court of Criminal Appeal is specially treated shall be disregarded in computing the term of his sentence. In a case where the application for leave to appeal has come before a single Judge of the Court and been dismissed, and the prisoner has desired that the case should be further considered by the full Court, the time that must elapse between the date of the dismissal of the application by the single Judge and the dismissal of the application by the Court of Criminal Appeal will not count as part of the sentence, since the fact that the application has already been dealt with and refused by the Judge will ordinarily be considered a good reason for the Court exercising the discretion which s. 38 (2) (b) gives it: *R. v. BEDFORD*, [1948] W. N. 392; 92 S. J. 618; [1948] 2 All E. R. 766, C. C. A.
- 760. ——— increase.** In *R. v. ASTON* (June 7, 1948), the appellant abused the trial Judge after sentence had been pronounced. Later in the day the Judge recalled the appellant and increased his sentence without, however, stating that he had done so on a reconsideration of all the facts of the case. The Court of Criminal Appeal (Lord Goddard, L.C.J., Birkett and Pritchard, JJ.) reduced the sentence to what was originally pronounced, on the principle "Justice must not only be done, but must manifestly be seen to be done". See [1948] W. N. 252; 92 S. J. 529.
- 761. ——— "mass punishment".** (Peace Preservation Ordinance (Laws of the Gold Coast, 1936 Revision, c. 40), s. 9.) S. 9 of the Peace Preservation Ordinance

(Laws of the Gold Coast, 1936 Revision, c. 40), which imposes on the District Commissioner the duty of spreading, amongst the inhabitants of a proclaimed district, "after inquiry, if necessary" and "according to his judgment of their respective means", the cost of providing additional constabulary or police, was held, (1) not to impose on the District Commissioner anything in the nature of a judicial inquiry, but to contemplate a simple and ministerial proceeding; and (2) not to be in the nature of a "mass punishment", but to provide that those who have the protection must pay for it, and to provide a rough and ready method of securing that, in substance, the burden shall be borne by those who are best able to bear it, and, in all probability, have the most property to be protected: *PATTERSON v. DISTRICT COMMISSIONER OF ACCRA*, [1948] A. C. 341, P. C. (distinguishing *Bonaker v. Evans* (1850), 16 Q. B. 162).

762. Summary jurisdiction. See MAGISTERIAL LAW.

763. Trial—counsel for defendant failing to appear. In *R. v. KINGSTON* (May 11, 1948), the Court of Criminal Appeal (Humphreys, Oliver and Birkett, J.J.) quashed the conviction before the Assistant Recorder of Manchester of a woman of receiving stolen goods, whose counsel, though duly briefed, was not present to defend her. Counsel for the prosecution suggested that there were other counsel available who would hold the brief for her counsel, but the Assistant Recorder did not adopt the suggestion, and the trial proceeded, the appellant refusing to cross-examine the witnesses for the prosecution and maintaining that it was not fair that her duly briefed counsel was not present. The Court held that the Assistant Recorder's not accepting the suggestion with regard to a substitute for the appellant's counsel was tantamount to denying her right to be defended by counsel. Therefore, though the case was precisely of the kind where the Court would have ordered a new trial had it had the power, the conviction must be quashed. [*Reported by R. C. Calburn, Esq., Barrister-at-Law.*] See also (1948), 92 S. J. 273.

764. — Judge acting as prosecutor. The absence of a prosecutor in breach of s. 226 of the Somaliland Protectorate Administration of Criminal Justice Ordinance, 1926, was held to be a breach which was not curable under the provisions of s. 393 of the Ordinance, which deals with errors, omissions or irregularities in proceedings, because the combination in one person of the duties of prosecutor and judge prevented the trial from being one conducted substantially in the manner required by the Ordinance: *ADAN HAJI JAMA v. R.*, [1948] A. C. 225; [1948] L. J. R. 1503, P. C. (distinguishing *R. v. Hezell* (1844), 1 Cox C. C. 348).

765. — misdirection. In *R. v. DICKINSON AND DE RABLE* (July 9, 1948) the Court of Criminal Appeal (Humphreys, Birkett and Pritchard, J.J.), quashed a conviction on one count of an indictment because of an admitted misdirection on another count. See [1948] W. N. 320; 92 S. J. 574.

766. — — good character of accused. It is no misdirection on the part of a Judge, especially when a defendant is defended by counsel, not to lay stress on the defendant's good character: *R. v. ABERG*, [1948] 2 K. B. 173; [1948] 1 All E. R. 601, C. C. A. (distinguishing *R. v. Bliss Hill* (1918), 82 J. P. 194). (See also § 747.)

767. — — miscarriage of justice. (Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 4 (1).) In *R. v. OSTER-RITTER* (1948), 32 Cr. App. R. 191, the Court of Criminal Appeal held that although there had been a misdirection to the jury, as it was impossible to believe that if a proper direction had been given the jury could have reached any conclusion other than that the defendant was guilty, there had been no miscarriage of justice, and dismissed the appeal under the proviso to s. 4 (1) of the Criminal Appeal Act, 1907.

768. — — observation by accused on arrest. The decision of the Court of Criminal Appeal in *R. v. Leckey*, [1944] K. B. 80, forms the high water mark of those cases in which convictions have been quashed because of a statement made by the presiding Judge about an observation made by the accused man when he was arrested, and the Court of Criminal Appeal is not disposed to extend the decision of that case beyond the facts of that case.

A policeman, who at that time did not know that the contents of a lorry had been stolen, had asked the accused after having cautioned him whether he wished

to say how he had come into possession of the lorry and its contents. The accused had replied: "I have nothing to say. What I have to say I will say to the court". The deputy chairman in his summing-up referred to this statement and remarked that the jury might think it not a little odd that the accused should say that, when, in fact, he had not been charged with anything or told that he was going to come before a court. Held, the observation by the deputy chairman could only constitute a misdirection if it was an invitation to the jury to form an adverse opinion against the accused because he did not then give an explanation. In the present case, the deputy chairman's observation was perfectly harmless and proper, as it could not have misled the jury into thinking that they ought to convict the accused because he did not make some answer to the charge, when, in truth, no charge had been made against him at all: *R. v. GERARD*, 113 J. P. 165; 92 S. J. 113; [1948] 1 All E. R. 205, C. C. A. (distinguishing *R. v. Leckey*, *supra*; following *R. v. Tune* (1944), 29 Cr. App. R. 162).

- 769. — with assessors.** Under the provisions of ss. 156, 157, 248 and 308 of the Criminal Procedure Code of Fiji, a Judge trying a case with the aid of assessors is required to give judgment, and it is for him to convict or acquit and, in so doing, he is not bound by the opinion of the assessors. In a case where the Judge had treated the assessors as a jury, and where the assessors had returned a verdict of "guilty of manslaughter", it was held that the Judge had not pronounced judgment as required by the Code, that the accused had been convicted by assessors who had no power to try or convict him, and sentenced by a Judge who had not convicted him, and, consequently, the conviction should be quashed: *JOSEPH v. R.*, [1948] A. C. 215; [1948] L. J. R. 1246, P. C.
- 770. ARTICLES.** The admissibility of confessions in criminal cases: *Canadian Bar Review*, October, 1947, 823. Insanity as a defence for crime: *Canadian Bar Review*, October, 1947, 871. Offences taken into consideration (founded on *R. v. Nicholson*, [1947] C. L. Y. 641): 98 L. J. 47, 172; 112 J. P. J. 83. Public meetings and free speech: 205 L. T. J. 100. Probation work in Canada: 112 J. P. J. 133. Duress and proof of specific intent (founded on *R. v. Steane*, [1947] C. L. Y. 653, 674): *Law Notes*, March, p. 65. Co-defendant as witness: 112 J. P. J. 147. Probation orders and supervision orders: 112 J. P. J. 163. Receiving stolen property: 112 J. P. J. 242. Firearms Act, 1937, s. 22: 112 J. P. J. 322. The change in the death penalty: *Solicitor*, May, 1948, p. 111. Larceny by finding (founded on *Hibbert v. McKiernan*, § 739; 205 L. T. J. 330; 92 SI 434. Statutory offences—requirement of *mens rea* (founded on *Harding v. Price*, § 3297): 98 L. J. 355. The Lord Chancellor's defence (founded on the Criminal Justice Bill, 1948): 206 L. T. 67. Criminal Justice Act, 1948: 98 L. J. 453, 466, 522; 112 J. P. J. 565; 92 S. J. 490; *Solicitor*, November, 1948, p. 256. Dock briefs: *Solicitor*, August, 1948, p. 176. Ringing the knell on trial by peers (founded on Criminal Justice Act, 1948, s. 30): 98 L. J. 494. Attempted Rape Act, 1948: 98 L. J. 495. Breaches of recognisance taken into consideration: 112 J. P. J. 584. Criminal statistics for 1946: 112 J. P. J. 551. Property of a convict (founded on Forfeiture Act, 1870, and Criminal Justice Act, 1948, s. 70 (1)): 98 L. J. 599. Criminal Justice Act, 1948 (punishments, procedure, evidence, challenges to jury): 92 S. J. 639. Assaults: 92 S. J. 641. Criminal Justice Act, 1948 (offences punishable on summary conviction or on indictment): *Solicitor*, December, 1948, p. 280.
- 771. BOOKS PUBLISHED.** Brock, A.—Casebook of Crime [15s.]. Cross, R., and Jones, P. A.—Introduction to Criminal Law [21s.]. Ewen, C. L'E.—Seances and Statutes [1s. 6d.]. Grunhut, M.—Penal Reform [30s.]. Hodge, H.—Famous Trials. Vol. 2 (Penguin) [1s. 6d.]. Hyde, H. M.—Trial of Oscar Wilde [15s.]. Macdonald, J. H. A.—Criminal Law of Scotland. 5th ed. by J. Walker and D. J. Stevenson [75s.]. Mill, J.—Probation [6d.]. Mullins, C.—Fifteen Years' Hard Labour [12s. 6d.]. Notable British Trials. Trials of Burke and Hare. 3rd ed. [15s.]. Notable British Trials. Vol. 70. Trials of Oscar Wilde [15s.]. Page, L.—Sentence of the Court [10s. 6d.]. Powell, F. J.—Trial of Jesus Christ [6s.]. Radzinowicz, L.—History of English Criminal Law and its Administration from 1750. Vol. I [70s.]. Radzinowicz, L., and Turner, J. W. C.—Journal of Criminal Law [15s.]. Roberts, B.—Famous American Trials [10s. 6d.]. Wayne, J.—This is the Law. Stories of Wrongdoers by Fault or Folly [10s. 6d.].

Wiggin, M.—My Court Casebook [10s. 6d.]. Wilshire, A. M.—Selection of Leading Cases illustrating the Criminal Law. 5th ed. [30s.].

772. — **OVERSEAS PUBLICATIONS.** Orfield, L. B.—Criminal Procedure from Arrest to Appeal (U.S.A.) [31s.]. Von Hentig, H.—Crime: Causes and Conditions (U.S.A.) [17s. 6d.].

CROWN PRACTICE

773. **Certiorari—officer on demobilisation leave tried by court martial.** See *R. v. SECRETARY OF STATE FOR WAR*, § 183.
774. — **oral order.** (*R. S. C.*, Ord. 59, r. 8.) Where an applicant moves for an order of certiorari to bring up to be quashed an order of an inferior Court, he must lodge in the Crown Office a copy of the order complained of, because certiorari does not lie to quash an oral statement. See *R. v. NEWINGTON LICENSING JUSTICES*, § 1850.
775. — **practice.** On applications for leave to move for certiorari the order sought to be brought up must be exhibited to an affidavit and filed with the papers before the application is made. The rule will only be relaxed in very exceptional cases. The note in *Griffit's Guide to Crown Office Practice*, at pp. 74, 75, should be amended accordingly: PRACTICE NOTE (May 14, 1948), [1948] W. N. 207, D. C.
776. **Crown Proceedings Act, 1947.** See CUSTOMS AND EXCISE COMMISSIONERS *v.* INGRAM, § 3040; *Re BARNATO*, § 2873.
777. **Habeas corpus—civilian tried by court martial.** See *R. v. GOVERNOR OF WORMWOOD SCRUBS PRISON*, § 182.
778. — **defective detained in institution.** See *R. v. BOARD OF CONTROL (SECRETARY)*, *Ex p. ABDUL KAYUM*, § 2119.

CUSTOM AND USAGE

779. **Bankruptcy—custom negating reputed ownership.** See *Re Fox*, § 270.
780. **Sale in public market.** See *BISHOPSGATE MOTOR FINANCE CORPORATION v. TRANSPORT BRAKES*, § 3384.
781. **Warehouseman—exclusion of liability for negligence.** [Cty. Ct.] See *YOUNG v. SMITH & SON*, § 2528.
782. — **reasonable time for removal of machinery.** In *WADE v. U. K. CANNING CO.* (December 3, 1948), the Court of Appeal (Tucker and Singleton, L.J.J.) rejected the proposition that the letting of a warehouse was subject to the custom of the trade whereby a reasonable time was allowed the tenants at the termination of the letting for the removal of plant and machinery. [*Reported by R. C. Calburn, Esq., Barrister-at-Law.*] See also *Estates Gazette*, December 11, 1948, p. 448.
783. **ARTICLE.** Custom and trade usage: 92 S. J. 138.

CUSTOMS AND EXCISE

784. **Beer, spirits, wines, etc.—wholesale and retail licences—reduction of duty.** [Eire.] (Finance (1909–10) Act, 1910 (10 Edw. 7, c. 8), Sched. I, Part B, para. 4.) In *FINDLATER & CO. v. ATT.-GEN.*, [1947] I. R. 291, Gavan Duffy, P., held that under para. 4 of the "Provisions applicable to Wholesale Dealers' Licences" contained in the First Schedule to the Finance (1909–10) Act, 1910: (i) the holder of a retail wine or beer or spirits licence, as the case might be, is entitled, by virtue of his possession thereof, to obtain one, but only one, wholesale wine or beer or spirits licence (*i.e.*, of the kind corresponding to the retail licence which he holds) for any place on payment of duty at the lower scale; (ii) the holder of more than one retail wine or beer or spirits licence is entitled, by virtue of his possession thereof, to obtain as many several wholesale wine or beer or spirits licences as he possesses retail licences, and to utilise any one of such his retail licences to obtain the issue, at the lower scale of duty, of any one wholesale licence of the corresponding kind.
785. **Export control.** Export of Goods (Control) (Amendment) Order, 1948 (No. 521), made under the Import, Export and Customs Powers (Defence) Act, 1939 (2 & 3 Geo. 6, c. 69), s. 1, amends Export of Goods (Control) (Consolidation)

Order, 1947 (No. 2683), by exempting from control certain oils, non-utility garments and textiles and other articles and by imposing or re-imposing control on certain metals and various other articles.

Export of Goods (Control) (Amendment) (No. 2) Order, 1948, (No. 793), amends Export of Goods (Control) (Consolidation) Order, 1947 (No. 2683), para. 4 (2), Scheds. 1, 2.

Export of Goods (Control) (Amendment) (No. 3) Order, 1948 (No. 1224), amends Export of Goods (Control) (Consolidation) Order, 1947 (No. 2683), with respect to (1) the sending of seeds, footwear and quinine by post; (2) the exemption from control of bricks, tiles, footwear, chemicals and other articles; and (3) the requirement of licences for the export of beryllium and specified munitions. [2d.]

Export of Goods (Control) (Amendment) (No. 4) Order, 1948 (No. 1773), amends the Export of Goods (Control) (Consolidation) Order, 1947 (No. 2683), by providing that licences are now required for the export of dyestuffs and certain components thereof. [2d.]

Export of Goods (Control) (Amendment) (No. 5) Order, 1948 (No. 1929), amends the Export of Goods (Control) (Consolidation) Order, 1947 (No. 2683), as to bicycle tyres and a large number of miscellaneous goods and as to licences for certain forms of cobalt.

Export of Goods (Control) (Amendment) (No. 6) Order, 1948 (No. 2473), amends the Export of Goods (Control) (Consolidation) Order, 1947 (No. 2683), by exempting certain articles from export licensing control and imposing control on other articles.

SI 1948, Nos. 1930 (utility apparel); 1994 (seed potatoes); 2164 (fish).

- 786. — **consolidation.** Export of Goods (Control) (Consolidation) Order, 1948 (No. 2778), made under the Import, Export and Customs Powers (Defence) Act, 1939 (2 & 3 Geo. 6, c. 69), s. 1; came into operation on December 31, 1948. [7d.]
- 787. — **export licences—fish.** Export of Goods (Fish) Licence, 1948 (No. 522), authorised the export of fish of kinds used for food, other than canned fish, from April 1 to September 30, 1948.
- 788. — **military equipment.** SI 1948, No. 1178 (revocation of licence for export of certain military equipment to Egypt, Palestine, Transjordan and other countries).
- 789. **Finance Act, 1948 (11 & 12 Geo. 6, c. 49).** Provisions relating to customs and excise are contained in Part I. S. 1 and Sched. I increase the duties on tobacco; and ss. 2, 3, 4 and 5 and Scheds. II, III, IV and V increase the duties on beer, spirits, wines and sweets respectively. S. 12 provides for the forfeiture of goods liable to customs duty which are allowed on certain conditions to be delivered without payment of duty or on payment of reduced duty, if the conditions are not fulfilled. S. 13 repeals the excise duty on unsweetened table waters and the requirements as to licensing of manufacturers. S. 14 doubles the pool betting duty. S. 15 imposes a licence duty on bookmakers at dog races where totalisators are operated: this section came into operation on August 9, 1948. Supplementary provisions as to this licence duty are contained in Sched. VI. S. 16 reduces entertainments duty chargeable in respect of stage plays and other "living" entertainments, the new rates being set out in Sched. VII; and s. 17 exempts from liability to that duty entertainments in buildings with a seating capacity for not more than 400 in small boroughs, districts and rural parishes. S. 18 provides for the payment of half the usual duty on motor vehicles where only the standard ration of petrol is used; and s. 19 amends the Finance Act, 1937 (1 Edw. 8 & 1 Geo. 6, c. 54), s. 7, as to the unladen weight of goods vehicles.
- 790. **Foreign postal packets.** See § 2734.
- 791. **Hydrocarbon oils.** Hydrocarbon Oils Regulations, 1948 (No. 2132), made under the Finance Act, 1928 (18 & 19 Geo. 5, c. 17), s. 3, the Finance Act, 1934 (24 & 25 Geo. 5, c. 32), s. 2, and the Finance (No. 2) Act, 1945 (9 & 10 Geo. 6, c. 13), s. 8; came into operation on October 1, 1948; replace S. R. & O., 1945, No. 1648 [2d.].
- 792. **Import duties.** S. R. & O., 1947, No. 2729 (drawback—nitro-cellulose photographic film base); SI 1948, Nos. 18 (drawback—kraft board containers); 222 (drawback); 686 (drawback—shell cameos); 770 (drawback—silk duties); 885

(revoking the duty on certain imported cinematograph films imposed by S. R. & O., 1947, No. 1690, and restoring the duty previously in force); 963 (drawback—carbon black for printers' inks); 1590 (prunes—exemption); 1615 (drawback—kraft board); 1812 (reduction of duty on motor bicycles and tricycles); 1813 (Empire goods—motor bicycles and tricycles and agricultural tractors); 1990 (drawback); 2024 (drawback); 2044 (additional duties); 2280 (exemption—silica refractory bricks); 2301 (drawback—machinery and other articles); 2370 (drawback—mixtures of linseed oil, etc.); 2448 (exemption—gas mantle ash); 2647 (drawback—almonds); 2717 (additional duties—exclusion of certain chemicals and cinematograph appliances); 2718 (drawback—dressed leather).

- 793. — silk.** SI 1948, Nos. 1814 (reducing *ad valorem* duty on certain silk and artificial silk stockings, etc., and altering the alternative specific rates chargeable if in excess of *ad valorem* rates) [2d.]; 1883 (rates of drawback) [2d.].
- 794. — —.** Slip No. 4, dated April, 1948, for attachment to Notice No. 99, contains particulars of the provisions made by the Silk Duties (Drawback) (No. 1) Order, 1948, for allowances of drawback on artificial silk.
- 795. Import licences—fish.** Separate import licences are now required for the import of fresh fish except from France, Denmark, the Faroes, Eire, Holland, Iceland, Norway, Spain, Poland or Sweden: Board of Trade Press Notices, Ref. 1784, 1812, dated February 10, 25, 1948.
- 796. — liquorice juice.** Individual licences for the import of liquorice juice from any other country are required as from March 17, 1948. Import was previously unrestricted: Board of Trade Press Notice, Ref. 1858, dated March 16, 1948.
- 797. — passengers' personal food imports.** Passengers arriving from countries other than Eire may now bring in food up to a total of 50 lbs., no one foodstuffs to exceed 10 lbs.: Board of Trade Press Notice, Ref. 73, dated June 16, 1948.
- 798. Import restrictions — magazines and periodicals.** From March 17, 1948, magazines and periodicals can only be obtained through the post by persons who pay or have paid the overseas suppliers for them either directly or through their banks. Notice to Importers No. 242 is amended accordingly: Board of Trade Press Notice, Ref. 1865, dated March 16, 1948.
- 799. Importation of prohibited goods—recovery of penalties.** (Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), ss. 186, 259). S. 259 of the Customs Consolidation Act, 1876, provides: "If in any prosecution in respect of any goods seized for non-payment of duties, or any other cause of forfeiture, or for the recovering any penalty or penalties under the Customs Acts, any dispute shall arise whether the duties of customs have been paid in respect of such goods, or whether the same have been lawfully imported . . . the proof thereof shall be on the defendant in such prosecution, . . .". On its true construction the section is not confined to cases where goods are seized. The onus of proof is on the defendant when goods are not seized, and cannot, therefore, be condemned, but in respect of which the defendant is liable to a penalty.
- A defendant was charged (i) with unlawfully importing prohibited goods, viz., forty-six watches, contrary to the Customs Consolidation Act, 1876, s. 186; (ii) unlawfully dealing with uncustomed goods (viz., the forty-six watches) with intent to defraud the Crown of duties, contrary to s. 186; and (iii) dealing with the watches with intent to defraud the Crown of purchase tax. Held, that the burden of proof was on the defendant not only in respect of six of the forty-six watches which had been seized by a customs officer, but also in respect of the remaining forty which had not been seized: *R. v. FITZPATRICK*, [1948] 2 K. B. 203; 64 T. L. R. 354; [1948] 1 All E. R. 769, C. C. A.
- 800. Isle of Man (Customs) Act, 1948 (11 & 12 Geo. 6, c. 61).** This Act received the Royal Assent on July 30, 1948.
- 801. Ottawa duties.** Ottawa Duties (Geneva Agreement) Order, 1948 (No. 1816), makes various changes in certain Ottawa duties. The changes affect the duties on rice, patent leather and certain preserved fruits.
- 802. Safeguarding of industries.** Orders made under the Finance Act, 1926 (16 & 17 Geo. 5, c. 22), s. 10 (5), as amended: SI 1948, Nos. 390 (exemption of acid monochloroacetic for a limited period); 463 (exemption of ethyl acrylate and other

substances for a limited period); 580 (exemption of acid phthalic anhydride and other substances); 852 (exemption of oxalic acid and other substances); 1256 (exemption of ammonium perchlorate and other substances); 1591 (exemption of cellulose acetate and other substances); 1826 (amending certain lists, and bringing into operation a new list, of chemicals liable to Key Industry Duty) [2d.]; 1811 (continuing the exemption of all articles previously exempted from Key Industry Duty, except certain substances) [2d.]; 1815 (reduction of rates of duty on certain cinematograph cameras and projectors and certain chemicals); 2169 (aldehyde butyric, normal; methylene chloride); 2447 (exemption of certain gas mantle ash and tricyan and triamide); 2719 (exemption of optical elements, scientific instruments and other articles, chemicals and substances) [2d.].

803. Tobacco duty—relief for pensioners. Tobacco Duty (Relief for Pensioners) Regulations, 1948 (No. 1830), fixing the value of tokens issued to old age pensioners in respect of any period commencing on or after September 13, 1948.

804. Uncustomed goods—evasion of purchase tax. (Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 186; Finance Act, 1944 (7 & 8 Geo. 6, c. 23), s. 11 (1).) If a person is knowingly carrying uncustomed goods he has an intent to defraud His Majesty of any duties due thereon, notwithstanding that he is in possession of the goods inland and not at the port of entry or landing-place of the goods. The Finance Act, 1944, s. 11 (1) provides that, with regard to imported goods, purchase tax is part of the customs duties, so that evasion of customs duty which includes purchase tax is one offence, not two.

The appellant was arrested in London when he was carrying 208 watches on which duty had not been paid. The watches were subject to both customs duty and purchase tax, and it was found as a fact that the appellant knew that the goods were uncustomed. Held, (1) it was immaterial that the goods were being dealt with inland and not at the place at which duty had to be paid, and an offence contrary to the Customs Consolidation Act, 1876, s. 186, had been committed: (2) the Finance Act, 1944, s. 11 (1), provides that purchase tax on imported goods is to be regarded as a customs duty and one offence only is committed when both customs duty and purchase tax are evaded: *BECK v. BINKS*, [1948] W. N. 484; 64 T. L. R. 633; [1948] 2 All E. R. 1058, D. C.

805. United States—American relief goods. Exchange of Notes between H.M. Government in the United Kingdom and the United States Government for the duty-free treatment of American relief goods. London, December 1, 1948. (Treaty Series No. 85, 1948.) Cmd. 7583.

DAMAGES

806. Adultery. See *GREAVES v. GREAVES*, § 918.

807. Arbitrator's power to award damages for non-acceptance on claim for price. See *MEDITERRANEAN AND EASTERN EXPORT CO. v. FORTRESS FABRICS (MANCHESTER)*, § 172.

808. Breach of confidence. See *SALTMAN ENGINEERING CO. v. CAMPBELL ENGINEERING CO.*, § 2566.

809. Breach of covenant in lease—covenant to repair. See *DUKE OF WESTMINSTER v. SWINTON*, § 1902.

810. — option to purchase freehold reversion. See *WRIGHT v. DEAN*, § 1948.

811. Breach of warranty—auction sale of pedigree bull. The *prima facie* measure of damages for a breach of warranty is the difference between the value of the article at the time of delivery to the buyer and the value which it would have had if it had answered the warranty.

At an auction sale the plaintiff had bought a young Friesian bull entered by the defendant. The percentage of butter fat content in the milk given during the first lactation of the dam of that bull was incorrectly entered in the auctioneer's catalogue, by mistake, as 4.5 instead of 3.5. By the terms and conditions of sale, statements in the catalogue were made on the entire responsibility of the seller. The plaintiff alleged that he had bought the bull with the object of improving the butter-fat content of his herd, and that as the mistake had not been discovered for a period of four years, the measure of damages was the loss

in value of every calf sired during that period. Held, the plaintiff was only entitled to the ordinary measure of damages, namely, the difference between the value of the bull at the time of delivery to the buyer and the value it would have had if it had answered the warranty: *BUNTING v. TORY*, 64 T. L. R. 353, Hilbery, J.

- 812. Conversion, measure of damages in.** See *SACHS v. MIKLOS*, §§ 18, 3785; *MUNRO v. WILLMOTT*, § 3786.
- 813. Fatal accidents—claims under Fatal Accidents Acts, 1846–1908, and Law Reform (Miscellaneous Provisions) Act, 1934.** Where a claim was not heard until eight years after the death it was held that it was proper to take into account in assessing damages what the earnings of the deceased would probably have been had he lived to the time of the hearing: *THE SWYNFLEET*, § 3454 (*Williamson v. John I. Thorneycroft & Co.*, [1940] 2 K. B. 658, applied).
- 814. Funeral expenses—embalming.** (Law Reform (Miscellaneous Provisions) Act, 1934 (24 & 25 Geo. 5, c. 41), s. 2 (c).) The cost of having the body embalmed can be recovered as funeral expenses. See *HART v. GRIFFITHS-JONES*, § 817.
- 815. — monument over grave.** (Law Reform (Miscellaneous Provisions) Act, 1934 (24 & 25 Geo. 5, c. 41), s. 2 (c).) A sum of £225 claimed in respect of the cost of a monument to be erected over the grave of a child was held not to constitute “funeral expenses” within the meaning of s. 2 (c) of the Law Reform (Miscellaneous Provisions) Act, 1934. See *HART v. GRIFFITHS-JONES*, § 817 (distinguishing *Goldstein v. Salvation Army Assurance Society*, [1917] 2 K. B. 291).
- 816. Law Reform (Personal Injuries) Act, 1948 (11 & 12 Geo. 6, c. 41).** This Act abolishes the defence of common employment and repeals the Employers’ Liability Act, 1880 (43 & 44 Vict. c. 42) (s. 1). It also (s. 2) amends the law relating to the measure of damages for personal injury by providing that there is to be taken into account, against loss of earnings or profits, one-half of the value of any rights in respect of industrial injury benefit, disablement benefit or sickness benefit for five years from the time when the cause of action accrued. In determining the reasonableness of expenses, the possibility of the injured person taking advantage of the National Health Service is to be disregarded (s. 2 (4)). In case of death the right to any benefit resulting from the death is not to be taken into account in assessing damages (s. 2 (5)). By s. 3 “personal injury” is defined to include any disease and any impairment of a person’s physical or mental condition. S. 1 and that part of s. 2 which relates to the measure of damages for personal injury (other than sub-s. (4)) apply only where the cause of action accrues on or after July 5, 1948; but s. 2 (4) and (5) apply whenever the cause of action accrued and irrespective of the date of commencement of the action (s. 6 (2)). The new Act is binding on the Crown (s. 4). The Act received the Royal Assent on June 30, 1948. (See also § 2623.)
- 817. Loss of expectation of life.** (Law Reform (Miscellaneous Provisions) Act, 1934 (24 & 25 Geo. 5, c. 41), s. 1 (1).) In assessing damages for loss of expectation of life the Court when applying the measure of damages laid down by the House of Lords in *Benham v. Gambling*, [1941] A. C. 157 (i.e., £200 to a child living in rather special circumstances), is justified in making some addition in respect of the alteration in the value of the pound. Thus, in the case of a child aged four, who had been living in a slum area, the Court awarded £200 damages under the Law Reform (Miscellaneous Provisions) Act, 1934: *HART v. GRIFFITHS-JONES*, [1948] 2 All E. R. 729, Streetfield, J. (applying *Benham v. Gambling*, *supra*). (See also §§ 814, 815.)
- 818. Loss of profits.** The authorities on claims for damages for loss of profits establish the general principle that, if there is nothing unusual, and if it is a normal user of the plant in question, it may well be that the parties must be taken to contemplate that a loss of profits may result from the non-delivery, or the delay in delivery, of the particular article. On the other hand, if there are special circumstances, the defendants are not liable for loss of profits unless the special circumstances were brought to their notice. Moreover, it is to be observed that, not only must the circumstances be known to the supplier or the carrier, but they must be such that the object must be taken to have been within the contemplation of both parties. Furthermore, the authorities establish that there

is a distinction between the supply of a part of the profit-making machine, as against the profit-making machine itself.

The defendants, who were not boiler experts, agreed to sell a boiler which they happened to have to the plaintiffs, who required it in connection with the expansion of their business. The defendants were not told of the special purpose for which the plaintiffs were acquiring the boiler, in what manner it was to be used, or, until a comparatively late stage, of the urgency of the matter. The defendants contracted with a reputable contractor to dismantle and load the boiler on the transport, but owing to some mishap the boiler was overturned and damaged, with the result that the defendants were unable to deliver the boiler until five months after the agreed date. Held, (1) the defendants were liable for damages for breach of contract, because if they cared to delegate their duty under the contract to a contractor and he failed, for whatever reason, to effect the object of loading on to the transport, that became their breach of contract, although it was done by a contractor employed by them; but (2) the defendants were not liable for damages for loss of profits under the second rule in *Hadley v. Baxendale* (1854), 9 Exch. 341, because the special purposes of the boiler was not drawn to their attention—quite apart from the fact that the boiler was not in itself, but was only to form part of, a profit-making plant—and because they had not contracted on the basis that delay in the delivery would make them liable for loss of profits: *VICTORIA LAUNDRY (WINDSOR) v. NEWMAN INDUSTRIES (COULSON & CO., THIRD PARTY)*, [1947] W. N. 397; 64 T. L. R. 567; [1948] 2 All E. R. 806, *Streatfeild, J.* (applying *Hadley v. Baxendale, supra*; *Portman v. Middleton* (1858), 4 C. B. (N.S.) 322; and *Simpson v. L. N. W. Ry.* (1876), 1 Q. B. D. 274).

819. Loss of service—claim for indemnity distinguished from claim for. See *METROPOLITAN POLICE DISTRICT (RECEIVER) v. TATUM*, § 2711.

820. Loss of wages—moral duty to repay pension and sick pay. A wrongdoer is not allowed to reduce damages by the fact that other persons have made up to the plaintiff his wages.

The plaintiff was injured through the negligence of the defendants. Until he was fit for work he received no wages, but received approximately the like amount by way of pension and sick pay. The plaintiff was under no legal obligation to repay the bodies who had made the payments in question but was under a moral obligation to do so, if he recovered compensation. Held, *prima facie*, the plaintiff should have his wages paid by the wrongdoer. As they had been made up to him by other people who expected to be repaid it was proper that that sum should be included as damages, subject to the direction that the amount paid to the plaintiff should be paid to the bodies in question out of the sums recovered: *DENNIS v. LONDON PASSENGER TRANSPORT BOARD*, 64 T. L. R. 269; [1948] 1 All E. R. 779, *Denning, J.* (following *Allen v. Waters*, [1935] 1 K. B. 200).

821. Mitigation — non-delivery — no available market. See *LESTER'S LEATHER AND SKIN CO. v. HOME AND OVERSEAS BROKERS*, § 3368.

822. National insurance benefits, taking into account. See § 816.

823. Non-delivery of goods. See *VICTORIA LAUNDRY (WINDSOR) v. NEWMAN INDUSTRIES*, § 818; *LESTER'S LEATHER AND SKIN CO. v. HOME AND OVERSEAS BROKERS*, § 3368.

824. Pension awards, abatement of. See § 2628.

825. Prize law—claimant's right to damages and costs. See *THE UNITAS*, § 2940.

826. Proof of damages. "Plaintiffs must understand that if they bring actions for damages it is for them to prove their damage; it is not enough to write down the particulars, and, so to speak, throw them at the head of the Court, saying: 'This is what I have lost; I ask you to give me these damages'": *per Lord Goddard, C.J.*, in *BONHAM-CARTER v. HYDE PARK HOTEL*, § 1729.

827. Remoteness. See *VICTORIA LAUNDRY (WINDSOR) v. NEWMAN INDUSTRIES*, § 818.

828. Review of registrar's report on quantum. See *THE SWYNFLEET*, § 3454.

829. Title, failure to make good—rule in *Bain v. Fothergill*. See *ELLIOTT v. PIERSON*, § 3823.

- 830. Wholly erroneous estimate of damage suffered.** In *GREENHAM v. TECALEMIT* (November 8, 1948), the Court of Appeal (Bucknill, Singleton and Denning, L.J.J.) reduced to £350 the damages of £750 awarded by Atkinson, J., to a capstan-lathe operator who, in consequence of an accident, for which her employers did not dispute liability under the Factories Act, 1937, lost a quarter of an inch of her thumb, which was now no longer rounded. The Court, on a consideration of all the plaintiff's complaints of her condition, made the reduction stated on the ground that Atkinson, J., had made a wholly erroneous estimate of the damage suffered. [Reported by R. C. Calburn, Esq., Barrister-at-Law.] See also [1948] W. N. 452.
- 831. Workmen's compensation — alternative remedies.** See *ELLIGOTT v. NEBBETT*, § 3957.
- 832. ARTICLES.** Damages for death and personal injury: 92 S. J. 464. Damages for personal injuries (founded on Law Reform (Personal Injuries) Act, 1948): 98 L. J. 697.

DEATH DUTIES

- 833. Double taxation.** Further provision as to relief from double death duty, where appropriate arrangements have been made with other countries, is contained in s. 77 of the Finance Act, 1948 (11 & 12 Geo. 6, c. 49).
- 834. — colonies.** See § 1650.
- 835. — Malayan Union.** Death Duties (Relief against Double Duty) (Malayan Union) Order, 1948 (No. 2576), applies s. 20 of the Finance Act, 1894 (57 & 58 Vict. c. 30) to the Malayan Union as from April 1, 1946.
- 836. — Netherlands.** See § 3285.
- 837. Estate duty—contingent liability—joinder of Crown as party to originating summons.** See *Re BARNATO*, § 2873.
- 838. — continuing annuities.** The Board of Inland Revenue announce a change of practice in the method of charging estate duty on the occasion of the death of a person entitled for life to an annuity continuing after his death or to a share of such annuity. The practice hitherto, on the death of an annuitant other than the last survivor, has been to claim estate duty only in respect of the annuity or the deceased's share thereof as passing to the other annuitants or annuitant. Duty has been assessed on the actuarial value of the amount or share for the remaining lives or life, and not on the "slice" of capital producing the income enjoyed by the deceased. On the death of the last survivor estate duty has been claimed on the basis of cesser of interest in respect of capital producing the annuity. The Board of Inland Revenue are now advised that duty is chargeable under s. 2 (1) (b) of the Finance Act, 1894, upon the capital set free by the cesser of the annuity or share of annuity, and estate duty will in future be claimed on this basis.
- 839. — delivery of Inland Revenue affidavit—practice.** The Board of Inland Revenue have intimated that, in the case of persons dying on or after April 10, 1946, where the value of the estate included in the Inland Revenue affidavit is under £1,500 net and a domicile outside Great Britain is not claimed, the Inland Revenue affidavit should be lodged at the Principal Probate Registry or a District Probate Registry without prior reference to the Estate Duty Office.
- 840. — dollar securities—valuation.** The Estate Duty Office, in a letter to the London Stock Exchange, has stated its view that the values returned for United States dollar securities for estate duty purposes should reflect the premium which was obtainable at the date of valuation on quotations in the United States, and the valuation for estate duty purposes therefore becomes the sterling equivalent of the New York prices at the official rate of exchange plus the premium ruling on the day as at which the valuation takes place. As far as Canadian stocks are concerned premiums vary widely between one stock and another and they should be valued on the basis of the Canadian price converted at the current official rate of exchange or of the price obtainable in London, whichever is the higher.
- 841. — "free of duty" provisions—duty payable on death of tenant for life.** (Finance Act, 1947 (10 & 11 Geo. 6, c. 35), s. 49.) The question, whether words conferring freedom from duty are confined to duties (a) arising in consequence of or on the testator's death, or (b) extend to all duties arising in consequence of

the dispositions made by his will, is a question of construction depending on the particular will under consideration. However, there is by now a presumption that a testator only intends to provide for such duties as are payable by reason of his own death and to rebut this presumption a clear intention to provide for further duties must be found.

By cl. 8 of his will the testator authorised his trustees for a period of twenty years after his death to continue out of income to pay the charitable subscriptions which he had made in his lifetime. By cl. 16 he bequeathed to his trustees the sum of £20,000 upon trust to invest it and pay the income to his granddaughter during her life, and, after her death, to her daughter absolutely, and he directed this sum of £20,000 to be set aside and invested. By cl. 17 he provided: "I declare that all the . . . legacies and specific and pecuniary bequests whether settled or otherwise and all the . . . annuities whensoever payable shall be paid free of all legacy and other death duties (if any) and that all such duties shall be paid out of my residuary estate". By cl. 20 the trustees were to "make provision for the payment of the annuities . . . and the duties on any legacies annuities or bequests bequeathed free of duty". The question arose whether the estate duty, the legacy duty and the further legacy duty imposed by s. 49 of the Finance Act, 1947, which would become payable at the death of the tenant for life of the settled legacy of £20,000 would be payable out of the capital of that legacy or out of residue. Held, (1) in spite of the words "make provision for" in cl. 20 and in spite of the direction to his trustees to continue for twenty years to pay charitable subscriptions which contemplated that the administration of his estate would remain open for a long time, the direction to set apart this £20,000 fund at once and the authority to appropriate for the rest of the annuities showed that the testator only intended to provide for such duties as were payable by reason of his own death, and, therefore, estate duty fell on the legacy; (2) although legacy duty, where payable at different rates on a settled legacy, was not exigible on the testator's death except on the value of the first life interest, it was, nevertheless, a sum owing to the Crown *debitum in presenti solvendum in futuro*, and, therefore, freedom from this duty was enjoined by the will and residue had to bear it; (3) the "further legacy duty" imposed by s. 49 of the Finance Act, 1947, was merely a raising of the rate of the old duty and it therefore also fell on residue: *Re SHEPHERD, PUBLIC TRUSTEE v. HENDERSON*, [1948] W. N. 444; [1949] L. J. R. 205; 92 S. J. 661; [1948] 2 All E. R. 932, Harman, J. (applying *Re Palmer*, [1916] 2 Ch. 391, and *Re Laidlaw*, [1930] 2 Ch. 392; distinguishing *Re Wedgwood*, [1921] 1 Ch. 601, *Re Jones*, [1928] W. N. 227, and *Re Stoddart*, [1916] 2 Ch. 444).

842. — further claims. Executors and trustees are advised to guard against the possibility of further claims for estate duty (by reason, *e.g.*, of the discovery of further free estate of a life tenant after the distribution of an estate) by obtaining a certificate of discharge under s. 11 (2) of the Finance Act, 1894 (57 & 58 Vict. c. 30) (as amended by the Finance Act, 1907 (7 Edw. 7, c. 13), s. 14): *Law Society's Gazette*, March, 1948, p. 55.

843. — objects of national, scientific or historic interest. (Finance Act, 1930 (20 & 21 Geo. 5, c. 28), s. 40.) The provisions of s. 40 of the Finance Act, 1930, which was substituted for s. 20 of the Finance Act, 1896, only alter the measure of liability to death duty in respect of objects of national, scientific or historic interest by substituting as such measure the proceeds of sale for the value of the objects at the date of the testator's death. They do not alter the dutiable subject-matter.

A testator gave to his wife (who survived him) a collection of pictures and expressed the hope, without imposing any legal trust, that she would give as mementoes of him such pictures to such of his friends as she might select. He further bequeathed specifically certain other pictures to his sons, P. and E., and provided, by clause 5 of the same will, that "all pecuniary and specific bequests . . . shall be free from all duties in respect of my death". The testator's widow, in pursuance of the testator's wishes, gave one picture of the collection to P., and another to J. C., a friend of the testator. By virtue of s. 20 of the Finance Act, 1896, she did not have to pay estate duties on the collection, which was certified by the Treasury as of national interest, but P., who sold one of the pictures specifically bequeathed to him and the one given to him by the widow as a memento, became accountable for death duty. The question before the Court

was whether P., E. and J. C. were entitled, by virtue of clause 5 of the will, to recover death duties from the estate if and when they became accountable for them. Held, (1) P. and J. C. were not entitled to recover death duties in respect of the pictures given to them by the widow as mementoes because they were given to the widow as beneficial owner and it was impossible to treat the donees of the mementoes as specific legatees under the will; (2) P. and E. were entitled to recover under clause 5 death duties payable in respect of the pictures specifically bequeathed to them: *Re OPPENHEIMER*; *TYSER v. OPPENHEIMER*, [1948] Ch. 721; [1948] L. J. R. 1553, Roxburgh, J. (applying *Re Scott*, [1916] 2 Ch. 268).

844. — **payments under life insurance policies—policies maintained under settlements.** The Finance Act, 1948 (11 & 12 Geo. 6, c. 49), s. 76, makes further provision with respect to the estate duty payable where a policy of insurance has been kept up or effected under a settlement.

845. — **property "passing" on death.** (Finance Act, 1894 (57 & 58 Vict. c. 30), s. 1.) The principle to be applied when considering whether or not property "passes" in connection with a death within the meaning of s. 1 of the Finance Act, 1894, is stated by Lord Parker in *Att.-Gen. v. Milne*, [1914] A. C. 765, as follows: "The expression 'passing on the death' . . . is evidently used to denote some actual change in the title or possession of the property as a whole which takes place at the death." In *Burrell and Kinnaird v. Att.-Gen.*, [1937] A. C. 286, Lord Russell expressed the formula thus: "In order to test whether it can be said that property passed on [a particular] death, one must compare the position as regards the persons beneficially interested in the property immediately before the death with the position immediately afterwards".

The testator, who died in 1865, by his will directed that his estate should be settled under the fetters of a strict entail in terms of and in conformity with the Scottish law of entail and that the trust for sale and conversion therein contained should not be carried out until a certain event had happened, the date for which was afterwards found to be 1956. The testator further directed that the income from his investments should be allowed to accumulate until it amounted in value to £8,000 or upwards and that whenever the accumulations of income amounted to such sum of £8,000 they should be invested in the purchase of real estate in Scotland and that the rents of the estates so purchased should belong to the person for the time being entitled under the entail in the will. It was shown that the result of Scots law operating on the will would be to entitle the respective life tenant to the payment of the £8,000 itself if he or she took the appropriate steps before the Court of Session to obtain the necessary decree. In the lifetime of the last life tenant who became heir female of the estates directed to be purchased in Scotland in 1905, three amounts of £8,000 each were carried over to a separate account, disentailed by order of the Court of Session and paid and transferred to her for her absolute use and benefit. The Crown contended that on her death in 1935 there had been a passing of the testator's trust property within the meaning of s. 1 of the Finance Act, 1894. Held, the right in relation to the corpus to which the heir female succeeded on the death of the preceding life tenant was the right, contingent on her attaining twenty-one and being *capax* at the time of her application to the Court of Session, to apply for and obtain payment to herself of the entire accruing income of the corpus whenever and so often as such income (together with accretions arising from accumulation) should during her life amount to the sum of £8,000, and that on her death this interest of hers came to an end and an exactly similar interest arose in her successor, thus bringing about an actual change in the title to the corpus as a whole and a "passing" of the property within the meaning of s. 1 of the Finance Act, 1894. The fact that her successor could not obtain any income for himself until, during his lifetime, the necessary period subsequent to the death of the heir female had elapsed for the accumulations to reach the figure of £8,000 did not, by reason of the provisions of s. 22 of the Finance Act, 1894, prevent a passing on the death of the heir female: *HALDANE v. ECKFORD*, [1948] Ch. 664; [1948] L. J. R. 1853, C. A. (allowing appeal from the decision of *Romer, J.*, [1948] L. J. R. 1051; applying *Att.-Gen. v. Milne*, *supra*; and *Burrell and Kinnaird v. Att.-Gen.*, *supra*).

- 846. — shares—valuation of shares with regard to liability for income tax.** (Finance Act, 1940 (3 & 4 Geo. 6, c. 29), ss. 50 (1), 55 (2).) S. 55 of the Finance Act, 1940, provides that in computing for the purposes of estate duty, the value of a deceased's shares in a company falling within the special class of company for which that section makes provision, the principal value of the shares is to be taken as being a proportion of the principal value of the entirety of the shares, and the principal value of the entirety of the shares is to be ascertained by reference to the value of the assets of the company. In ascertaining the value of the assets of the company in accordance with the provisions of s. 55 (2) of the Act, s. 50 (1) (which is incorporated into s. 55) provides that "the Commissioners shall make an allowance from the principal value of those assets for all liabilities of the company (computed, as regard liabilities which have not matured at the date of the death, by reference to the value thereof at that date, and, as regards contingent liabilities, by reference to such estimation as appears to the Commissioners to be reasonable) . . .". The expression "liabilities" in the sub-section cannot be given an extended meaning, but must be confined to an existing legal liability—a liability actually existing in law at the relevant date. Therefore, the words of the sub-section do not include the liability for income tax in respect of the financial year which will only begin after the death of the deceased, although the profits were earned in the year during which the deceased died. The words in brackets in the sub-section, which deal with the computation of the liabilities of the company, cannot extend the meaning of the word "liabilities"; *Re DUFFY, LAKEMAN v. ATT.-GEN.*, [1949] Ch. 28; [1949] L. J. R. 133. C. A. (dismissing appeal from the decision of Roxburgh, J., [1947] C. L. Y. 788).
- 847. Extra-statutory concessions.** The following extra-statutory war-time concession contained in the White Paper published in 1944 (Cmd. 6559), is withdrawn as from the beginning of the financial year 1948-49 as respects deaths occurring after March 31, 1948:—
- The concession set out in para. 1 on p. 18 of the White Paper in regard to members of the Allied Forces dying on service and members of the Dominion and Allied Forces, etc., dying after having come to the United Kingdom by reason of the war.
- 848. — value of property for probate purposes.** The following PRACTICE NOTE, dated October 27, 1948, has been issued from the Principal Probate Registry:—
- The concession granted by the Chancellor of the Exchequer in the case of a house owned and occupied by the deceased that, in certain circumstances, any increase in the market value above the pre-war value in so far as it would only be realised by a sale with vacant possession may be disregarded for estate duty purposes, does not apply to the value required in connection with a grant of representation. The true value of the property at the date of death of the deceased must be taken for the purpose of probate fees, penalty in bond and any life interest that may arise. In the absence of a professional valuation of property, solicitors may estimate the value, which will be accepted by the probate authorities if it appears to be a reasonable one. Such a case may conveniently be dealt with by filling up and annexing a form No. 15 to the Inland Revenue affidavit and completing the Inland Revenue affidavit in accordance with that form. Copies of the form No. 15 may be obtained where the Inland Revenue affidavit is supplied or from the Controller, Estate Duty Office.
- 849. Legacy duty—"free of duty" provisions.** In *Re JURY, LLOYDS BANK v. COOK* (December 1, 1948), some of the legacies were expressed to be given "free of duty", others were silent as to duty, and the will contained a direction to pay "death duties payable out of capital on my death and not charged on or primarily out of other property". Harman, J., held (1) as regards estate duty, that there was no initial obligation upon the legatees to pay that duty, and, that a legacy payable out of the residue remaining after payment of funeral and testamentary expenses and death duties ought not to bear any proportion of the estate duty payable in respect of the death of the testator, and (2) as regards legacy duty, that in view of the distinction in the will between legacies given free of duty and those silent in respect of duty the general direction to pay death duties did not exonerate the legacies silent as regards duty, and that those legacies had to bear legacy duty. [Reported by C. M. Schmitthoff, Esq., Barrister-at-Law.]

- 850.** — — — **duty payable on death of tenant for life—further duty.** See *Re SHEPHERD*, § 841.
- 851.** — — — **further claims.** The Council of the Law Society draw attention to the risk of a claim, under s. 49 of the Finance Act, 1947 (10 & 11 Geo. 6, c. 35), for further legacy or succession duty on the cesser of a life interest after April 5, 1947, where duty has already been paid on the corpus in accordance with s. 12 of the Legacy Duty Act, 1796 (36 Geo. 3, c. 52), or s. 32 of the Succession Duty Act, 1853 (16 & 17 Vict. c. 51): *Law Society's Gazette*, February, 1948, p. 33.
- 852.** — — — **illegitimate children.** The Chancellor of the Exchequer has stated that under the provisions of the Finance Act, 1944 (7 & 8 Geo. 6, c. 23), s. 43, where an illegitimate child or his spouse or issue took any interest in property under the intestacy of his mother, or under a disposition made by her, any legacy or succession duty was payable at the same rate as if the child had been legitimate. That did not apply if the father left the property, since in law the only parent of an illegitimate child was the mother.
- 853.** **Recovery by Crown—future liability to estate duty—joinder of Crown as a party.** See *Re BARNATO*, § 2873.
- 854.** — — — **practice.** See § 2897.
- 855.** **Succession duty—further claims.** See § 851.
- 856.** **ARTICLES.** Further legacy duty (a discussion on the effect of the Finance Act, 1947, s. 49): 92 S. J. 8. Probate and administration (annuities or other interests purchased or provided by the deceased—founded on Finance Act, 1894, s. 2 (1) (d)): 98 L. J. 160. Death duty concessions and personal representatives: 92 S. J. 202. Estate duty—deductions for tax liabilities (founded on *Re Duffy*, [1947] C. L. Y. 788; see § 846): 98 L. J. 219. Estate duty and the double taxation agreements: *Accountant*, June 5, 1948, p. 438. Valuation of goodwill and shares for estate duty: *Accountant*, June 19, 1948, p. 478. Notes on the death duties (gifts *inter vivos*, exemptions from aggregation): 92 S. J. 579; (liability to succession duty, insurance policies—estate duty): 92 S. J. 594. Policies of assurance and estate duty (founded on Finance Act, 1948, s. 76): 98 L. J. 625. True value of property—Chancellor's concession: 98 L. J. 683.
- 857.** **BOOKS PUBLISHED.** Dymond, R.—*Death Duties*. 2nd Supplement to 10th edition. [3s. 6d.]. Hanson, A.—*Death Duties*. 2nd Cumulative Supplement to 9th edition [7s. 6d.]. McFarlane, K.—*Death Duties* [4s.]. Woolley, H. A.—*Handbook on Death Duties*. 6th ed. [27s. 6d.].

DEEDS AND BONDS

- 858.** **Construction—"business efficacy"—implied term to give.** See *TOWERFIELD (OWNERS) v. WORKINGTON HARBOUR AND DOCK BOARD*, § 3466; [Scot.] *M'WHIRTER v. LONGMUIR*, § 622.
- 859.** **Indorsement—documents construed by Court.** See *PRACTICE NOTE*, § 2826.
- 860.** **Middlesex deeds.** See § 2897.
- 861.** **ARTICLES.** Cancellation of deeds and delivery up: 98 L. J. 4. *Non est factum* (founded on *Gillman v. Gillman* (1946), 174 L. T. 272): 205 L. T. 198. Parties to deeds in various capacities: 205 L. T. 213.
- 862.** **BOOK PUBLISHED.** Chedlow, B.—*Interpretation of Deeds and Statutes in a Nutshell* [5s.].

DIVORCE AND MATRIMONIAL CAUSES

- 863.** **Adultery—evidence of.** Adultery must be proved with the same degree of strictness as is required for the proof of a criminal offence. That means that it must be proved beyond all reasonable doubt to the satisfaction of the tribunal of fact. The appearance and demeanour of witnesses is probably of great assistance to the trial Judge where the evidence may otherwise appear very black against them and he accepts their explanation, but if the evidence is very weak or is non-existent then what is lacking in the evidence cannot be supplied by mere observation of the witnesses.

The stipendiary magistrate had found that both the respondent wife and the co-respondent were very charming and attractive and constituted inflammable

material, that they had been together for a long time in the dark in the middle of the night, when they had been to dances, that they had been brought into close contact in business, and that they had been walking out arm-in-arm. At the end of his judgment he said: "Well, it may be that they had not committed adultery. There is just the possibility that they had not, but the probability that they had is so very great that, in my opinion, we should hold that adultery has been proved". The Divisional Court had held that the language used by the stipendiary magistrate showed that he was deciding the case on the balance of probability and, consequently, that he had misdirected himself as to the standard of proof required. Held, on appeal to the Court of Appeal, the language used by the stipendiary magistrate did not necessarily show that he had misdirected himself as to the standard of proof required, but, looking at the whole of the evidence, the charge of adultery had not been proved with the degree of strictness required, and, consequently, on the principle stated by Lord Thankerton in *Watt v. Thomas*, [1947] A. C. 484, the Divisional Court was entitled to reopen and examine the case: *GINESI v. GINESI*, [1948] P. 179; [1948] L. J. R. 892, C. A. (affirming decision of Divisional Court, [1947] C. L. Y. 809, for different reasons; applying *Watt v. Thomas*, *supra*, and *Ross v. Ross*, [1930] A. C. 1; approving dictum of Lord Merriman, P., in *Churchman v. Churchman*, [1945] P. 44).

864. — — — admission—failure by wife to state name of father when registering birth of child. (Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), ss. 1, 7.) The failure of a wife to supply the names of the father of a child, born during the marriage, for the purpose of the registration of the birth under the Births and Deaths Registration Acts, 1836 and 1874, means either that she did not know who the father was, and, therefore, was unable to give the necessary particulars, or that she was admitting that the child was illegitimate. In either event this amounts to an admissible admission of adultery, and in so far as it is an expression of her opinion that the child is illegitimate, the evidence is admissible under the rule in *Russell v. Russell*, [1924] A. C. 687: *MAYO v. MAYO*, [1949] L. J. R. 48; [1948] 2 All E. R. 869, Mr. Commissioner Blanco White, K.C. (applying *Frampton v. Frampton and Bushell*, [1941] P. 24; and *Russell v. Russell*, *supra*).

865. — — — cross-examination—"have you ever committed adultery?" (Judicature Act, 1925 (15 & 16 Geo. 5, c. 49), s. 198.) The words "the alleged adultery" in s. 198 of the Judicature Act, 1925, mean the adultery alleged in the petition, and in a case where that adultery amount to a course of conduct pursued over a number of years, once the wife has given evidence in chief in rebuttal of various specific acts of adultery suggested against her, she can properly be asked in cross-examination without offending against the provisions of s. 198 of the Judicature Act, 1925, whether or not she has been guilty of any other acts of adultery and, therefore, in such a case the question "Have you ever committed adultery?" will be admissible: *BARBER v. BARBER*, [1948] W. N. 416; [1949] L. J. R. 23; [1948] 2 All E. R. 856, Willmer, J.

866. — — — spouse co-respondent in previous suit. [Can.] In *THOMPSON v. THOMPSON*, [1948] 2 D. L. R. 798, the High Court of Ontario held that the adultery of a party can be proved by a decree in a previous suit containing a finding of adultery against that party as co-respondent, where the identity of the party with the co-respondent in the previous suit is established. (*Crawshaw-Williams v. Crawshaw-Williams* (1915), *Times*, Jan. 15, and *Eskell v. Eskell* (1919), 88 L. J. P. 128, applied.)

867. — — — particulars of knowledge of. See *HUBBOCK v. HUBBOCK*, § 2874.

868. — — — period of gestation. A period of gestation of 349 days was held not to be so impossibly long as would justify the Court in inferring that the wife must have committed adultery: *HADLUM v. HADLUM*, [1948] W. N. 288; [1949] L. J. R. 341; [1948] 2 All E. R. 412, C. A. (applying *Gaskill v. Gaskill*, [1921] P. 425; considering *Wood v. Wood*, [1947] C. L. Y. 807).

869. — — —. In *M—T v. M—T* (November 17, 1948) Ormerod, J., on medical evidence, refused to hold that a child born 340 days after the last possibility of coitus between husband and wife could be the child of the husband. [*Reported by R. C. Calburn, Esq., Barrister-at-Law.*] See also [1948] W. N. 464.

870. ———. In *Re B., B. v. B.* (November 26, 1948), the husband had been continuously absent overseas on Army service for more than one year prior to January 29, 1945, when he returned home. He had intercourse with his wife on January 31, 1945, and on August 29, 1945, she gave birth of a child. If it was conceived on January 31, 1945, the period of gestation was only 188 days. The child was a normal child at birth, and the husband denied the paternity but the magistrate hesitated to make an order bastardising the child and made a maintenance order against the husband. On appeal under the Guardianship of Infants Act, 1886 and 1925, Vaisey, J., held that he was driven to the conclusion that the child could not possibly be the offspring of the husband. [*Reported by C. M. Schmitthoff, Esq., Barrister-at-Law.*] See also 92 S. J. 689.
871. ——— **petitioner's duty to disclose own adultery.** See *BARNACLE v. BARNACLE*, § 947.
872. ——— **res judicata.** See *JAMES v. JAMES*, § 950.
873. **Alimony pendente lite—Court of Appeal's powers.** (Judicature Act, 1925 (15 & 16 Geo. 5, c. 49), ss. 27 (1), 190 (3).) The expression "the Court" in s. 190 (3) of the Judicature Act, 1925, which provides that "on any petition for divorce . . . the Court shall have . . . power to make interim orders for the payment of money by way of alimony . . ." does not mean the Court of Appeal, but the High Court. BUCKNILL, L.J.: "I express no views on the point whether the husband, having himself committed adultery, is entitled to repudiate his liability to maintain his wife on the ground of her adultery".
- On the wife's petition for divorce the Judge made an order for alimony *pendente lite*. At the hearing the Judge gave judgment in favour of the wife's prayer for a judicial separation on the ground of her husband's adultery and desertion, and dismissed the prayer in the husband's answer that he should be granted a decree on the ground of his wife's adultery. On appeal, the Court of Appeal reversed the Judge's decision and granted the husband a decree in the exercise of the discretion of the Court. Leave was given to the wife to appeal to the House of Lords. The wife now applied to the Court of Appeal to extend the original order for alimony *pendente lite*. Held, (1) the decree of the Court of Appeal based on a finding of adultery by the wife did not revive the original order for alimony *pendente lite* which was made on the assumption that she was an innocent wife; (2) the Court of Appeal had no power to make an order for alimony *pendente lite* under s. 190 (3) of the Judicature Act, 1925; (3) the matter of alimony *pendente lite* was not incidental to the hearing and determination of the appeal within the meaning of s. 27 (1) of the Judicature Act, 1925. The proper remedy for the wife was to apply to the Probate, Divorce and Admiralty Division for an order for alimony *pendente lite*: *CAVENDISH-BENTINCK v. CAVENDISH-BENTINCK*, [1948] W. N. 301; [1949] L. J. R. 272; [1948] 2 All E. R. 285, C. A.
874. **Appeal—alimony pendente lite, Court of Appeal's power to order.** See *CAVENDISH-BENTINCK v. CAVENDISH-BENTINCK*, § 873.
875. ——— **from justices—copies of notes.** (Matrimonial Causes Rules, 1947 (No. 523), r. 68 (3).) R. 68 (3) of the Matrimonial Causes Rules, 1947, which deals with appeals from justices, provides: "The appeal shall be entered at the Divorce Registry by lodging at the registry two copies of the notice of motion. There shall be lodged at the same time two certified copies of the summons and of the order appealed against, two copies of the justices' clerk's notes of the evidence and two copies of the reasons of the justices for their decision". This rule makes it abundantly clear that justices' clerks are under a duty to supply copies of the justices' notes to parties requiring them for the purpose of considering whether they should bring an appeal or not: *BEVENS v. BEVENS*, [1948] W. N. 90; 64 T. L. R. 126, D. C.
876. ——— **reasons for decision.** In *DARRALL v. DARRALL* (April 20, 1948) Lord Merriman, P., said that it was the duty of magistrates' clerks to furnish reasons of the decision for the purpose of appeal, so that they can be lodged with other documents pursuant to r. 68 of the Matrimonial Causes Rules, 1947. Although magistrates are not obliged to give their reasons in open Court, it is convenient to record them at the time, and it is the duty of a clerk, when reasons for a

decision have not been given in open Court, to obtain them from the magistrate or magistrates. [*Reported by Mrs. Irene Moses, Barrister-at-Law.*] See also (1948), 92 S. J. 284.

- 877. — from registrar's order under Married Women's Property Act, 1882, s. 17.** See *BERNBAUM v. BERNBAUM*, § 1009.
- 878. — jurisdiction of Court of Appeal to entertain appeal from Divisional Court's order for re-hearing.** (Judicature Act, 1925 (15 & 16 Geo. 5, c. 49), s. 27.) The Court of Appeal has jurisdiction to entertain an appeal from an order of the Divisional Court setting aside a decree *nisi* and ordering a re-hearing. See *PEEK v. PEEK*, § 1017.
- 879. — notice of—time for.** (R. S. C., Ord. 58, r. 15.) The test for determining the question whether an order appealed from is an interlocutory order within the meaning of Ord. 58, r. 15, or whether it is an "other" appeal within the meaning of those words in that rule, is—as laid down in *Isaacs and Sons v. Salbstein*, [1916] 2 K. B. 139—"does the judgment or order, as made, finally dispose of the rights of the parties? If it does, then . . . it ought to be treated as a final order; but if it does not, it is then . . . an interlocutory order". Applying this test, an order of the Divisional Court setting aside a decree *nisi* and ordering a new trial is an interlocutory order within the meaning of Ord. 58, r. 15. (However, in view of the obscurity of the matter the Court of Appeal extended the time for giving notice of appeal by two weeks.) See *PEEK v. PEEK*, § 1017 (applying *Isaacs and Sons v. Salbstein*, *supra*; criticising statement in *Rayden on Divorce*, 4th ed., p. 389, para. 15, note (a)).
- 880. Condonation—burden of proof.** (Matrimonial Causes Act, 1937 (1 Edw. 8 & 1 Geo. 6, c. 57), s. 4.) Although under s. 4 of the Matrimonial Causes Act, 1937, the Court must be satisfied upon the evidence that, *inter alia*, there has been no connivance or condonation, the presumption against connivance is stronger than that against condonation, so that the uncorroborated evidence of the respondent as to condonation may raise a sufficient doubt in the mind of the Court to justify refusal of a decree. See *TILLEY v. TILLEY*, § 960.
- 881. — cruelty—revival.** See *KAFTON v. KAFTON*, § 903; *WINNAN v. WINNAN*, § 927.
- 882. — — wife remaining in the home after filing of her petition.** Reconciliation being the test of condonation, nothing short of it will suffice. The fact that the parties continue to live in the same house or the fact that the guilty party is reinstated in his or her former position is, indeed, evidence from which reconciliation may be inferred, but it is by no means conclusive. Attempts to effect a reconciliation do not amount to condonation unless and until a reconciliation is actually achieved. The only exception to this is the positive rule that one act of sexual intercourse by a husband, with full knowledge of his wife's guilt, is conclusive evidence of condonation.
Three weeks after the last act of cruelty the wife filed her petition, but she continued to live in the same house as the husband for eighteen months until the hearing of her petition, because—as she alleged—she did not want to give up her interest either in the furniture or the occupation of the house. She continued to prepare his meals and to do his washing and mending, but they lived in separate rooms. *Hodson, J.*, had held that there had been condonation of the husband's cruelty. Held, on appeal, the learned Judge had failed to draw a distinction between the three weeks which elapsed between the last act of cruelty and the filing of the petition and the eighteen months thereafter before the case came on for hearing, and as on the facts of this case it was impossible to establish condonation during the three weeks between the last act of cruelty and the filing of the petition, the appeal had to be allowed: *MACKRELL v. MACKRELL*, [1948] 2 All E. R. 858, C. A. (applying *Keats v. Keats and Montezuma* (1859), 1 Sw. & Tr. 334; and *Henderson v. Henderson and Crellin*, [1944] A. C. 49; distinguishing and criticising *Wilmut v. Wilmut and Martin*, § 886). (See also § 911.)
- 883. — particulars of knowledge of adultery, necessity to give.** See *HUBBOCK v. HUBBOCK*, § 2874.

884. — **practice where not pleaded.** When condonation has not been pleaded, but it appears from the evidence that there are matters which will require investigation in that connection, and still more so when it becomes apparent that there may be an answer to the allegation of condonation in the shape of a revival of the condoned offence, it is highly desirable that the Judge should indicate to the counsel concerned in the case the nature of the issues which appear to him to be arising and calling for his decision, and, if necessary, adjourn the case or allow the pleadings to be amended so as to raise those issues. See *KAFTON v. KAFTON*, § 903 (applying *Lloyd v. Lloyd and Hill*, [1947] C. L. Y. 820).

885. — **reinstatement of wife.** The decision in *Keats v. Keats and Montezuma* (1859), 1 Sw. & Tr. 334, lays down that to constitute condonation in law there must be a reinstatement of the wife in her former position, which renders proof of conjugal cohabitation, or the restitution of conjugal rights, necessary. Mere words of forgiveness cannot be accepted as proof of condonation.

Per Tucker, L.J.: "I do not suggest that circumstances may not exist in which a petitioner absent overseas may take some irrevocable step which will convert his words of forgiveness into condonation".

A soldier on campaign in Italy in 1944 received a confession of adultery from his wife. He wrote her forgiving and affectionate letters and did not stop her married allowance. Later, after receiving letters from members of his family and from persons unknown to him alleging that his wife was associating with men, he wrote to her that she had not told him the whole truth, and that he now proposed to divorce her. She replied that he could "Go ahead and get a divorce". Held, on appeal, that the husband's conduct after the wife's confession did not constitute condonation. There had been no reinstatement of the wife because the husband did not at any time renounce her. The most that he had done, which was not such conduct as to prejudice her, was to allow her to retain the position which she had enjoyed before her confession: *FEARN v. FEARN*, [1948] P. 241; [1948] L. J. R. 1043, C. A. (applying *Keats v. Keats and Montezuma*, *supra*; *Crocker v. Crocker*, [1921] P. 25; and *Cramp v. Cramp and Freeman*, [1920] P. 158).

886. — —. The following general observations apply as regards the question whether or not there has been condonation by the husband of a matrimonial offence by the wife:

- (1) It is incorrect to say that there can be no condonation or reinstatement of the wife, if there has been no displacement of the wife, because the so-called displacement may be merely a notional displacement involving no break whatever in the continuation of the association of husband and wife and for that reason may immediately be made good by condonation or reinstatement on the part of the husband.
- (2) There is no authority for the proposition that condonation, before it can be operative, must be something joint between the two parties, or that there can be no condonation unless the guilty party consents to being condoned.

By 1939 marital intercourse between the parties had completely ceased, although they continued to live in the same house. In 1942 the husband joined the R.A.F. and was posted overseas. On his return to England, in 1945, the parties continued to live in the same house in the same way as before. Soon afterwards the husband discovered that the wife had committed adultery during his absence overseas, but on learning this took no action of any kind. On the contrary, he continued to live with the wife as before, entrusting her with the management of the household, taking her about to social functions as his wife, making her a wifely allowance for housekeeping, and taking her away to stay with friends as his wife. Held, there had been condonation on the part of the husband. Having regard to an act of adultery by the husband in 1938 (which had only been disclosed in the husband's discretion statement) the Court exercised its discretion in favour of the wife in respect of her condoned adultery, because adultery by the husband in 1936 (which had been condoned subsequently and which had been revived by the adultery in 1938) resulted in his contracting venereal disease, which had been a cause of the deterioration in the relationship between the parties: *WILMOT v. WILMOT AND MARTIN (DAY INTERVENING)*,

[1948] W. N. 193; [1948] L. J. R. 1336; [1948] 2 All E. R. 123, Willmer, J. (distinguishing *Fearn v. Fearn*, § 885).

887. — revival—cruelty. See *KAFTON v. KAFTON*, § 903; *WINNAN v. WINNAN*, § 927.

888. — — desertion—duration. [N.I.] In *COOKE v. COOKE*, [1948] N. Ir. 46, the High Court of Northern Ireland held that a desertion of six months was sufficient to revive condoned adultery on the ground that the matrimonial offence of "desertion" may be committed irrespective of its duration if it be of sufficient reality for the Court to take cognisance of it. (Decision of the majority of the Court of Appeal in *Beard v. Beard*, [1946] P. 8, applied.)

889. — — — offer of reconciliation. (Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39), s. 6.) There is no distinction in principle between the application of the doctrine of the revival of condoned adultery for the purposes of the presentation of a divorce petition and of a claim for damages against a co-respondent and its application to the point whether a past act of adultery is or is not condoned so as to give a magistrates' court jurisdiction on a summons for wilful neglect to maintain under s. 6 of the Summary Jurisdiction (Married Women) Act, 1895. Once a condoned adultery is revived by a completed act of desertion, it is immaterial that later the deserting spouse makes offers of a reconciliation: *PEARSON v. PEARSON*, [1948] W. N. 225; [1948] L. J. R. 1435, D. C. (applying *Beard v. Beard*, [1946] P. 8; and *Lloyd v. Lloyd and Hill*, [1947] C. L. Y. 820).

890. Conduct conducing to insanity. See *GREENSTREET v. GREENSTREET*, § 964.

891. Connivance. In *SLATER v. SLATER* (June 11, 1948), the husband connived at his wife's adultery with the co-respondent and himself committed adultery with the co-respondent's wife. Later he intimated to his wife that he would not return to her, and in his divorce petition asked the Court to exercise its discretion in his favour. Willmer, J., held that the husband, by his intimation not to return to his wife, had not put an end to or broken the continuity of the original connivance; he had not offered her a home or financial provision and did not really expect her to leave the co-respondent. In view of these facts, it was not necessary to decide whether the rule "once connivance always connivance", which was based on a dictum of Lord Westbury in *Gipps v. Gipps* (1861), 33 L. J. M. C. 161; 11 H. L. Cas. 1, was correct. Petition dismissed. [*Reported by Mrs. Irene Moses, Barrister-at-Law.*] See also 92 S. J. 351.

892. —. In *Churchman v. Churchman*, [1945] P. 44, Lord Merriman, P., said: "... it is of the essence of connivance that it precedes the event and, generally speaking, the material event is the inception of the adultery and not its repetition, although the facts may be such that connivance at the continuance of an adulterous association shows that the husband must be taken to have connived at it from the first". As pointed out in another part of that judgment a spouse is guilty of connivance in the case of an adulterous association which has started without any fault on his or her part, if he or she, with a corrupt intention, then behaves in such a way as to promote or encourage the continuance of the adultery, and a "corrupt intention" in such a case would mean, e.g., if such spouse showed by his or her conduct that he or she willingly consented to the continuance of the adultery.

A petitioning wife, who was in a distraught and hysterical condition as a result of the discovery of her husband's adultery, did her utmost to stop the adulterous association, and, after realising that this was hopeless for the time being, wrote a letter to her husband containing the suggestion that he should continue "with Sylvia as her friend and lover", but should share their son with her. Held, the wife had not connived at the husband's adultery: *WOODBURY v. WOODBURY*, [1949] P. 154; [1948] 2 All E. R. 684, C. A. (applying *Churchman v. Churchman*, *supra*).

893. — presumption against. See *TILLEY v. TILLEY*, § 880.

894. Co-respondent—service of petition on. See *GILBERT v. GILBERT AND BROOKS*, § 1012.

895. Costs—of unsuccessful wife respondent. In *USMAR v. USMAR* (May 3, 1948) Willmer, J., held that where the costs of an unsuccessful wife respondent

amounted to £1,205, the husband petitioner should contribute £500 towards them. The reason that an order for costs was made against a successful husband petitioner was in order to protect the wife's solicitors, who should be protected before the husband, provided that the proceedings had been conducted in a proper manner. It was not always correct in a matrimonial suit to say that the husband's success meant that he was free from blame. In this case there had been faults on both sides. [*Reported on this point by Mrs. Irene Moses, Barrister-at-Law.*] (See also § 909.)

896. — poor person's. See *OLDS v. OLDS*, § 1008.

897. — provisional taxation. The President of the Probate, Divorce and Admiralty Division has directed that, as from January 12, 1948, bills of costs over £200 shall be provisionally taxed by the taxing officers of the Probate and Divorce Registry. The registrars will tax the discretionary items and deal with objections to the provisional taxation. This procedure does not apply to bills for taxation under the Solicitors Acts.

898. — security for costs. In *EVANS v. EVANS* (October 18, 1948), the Court of Appeal (Bucknill and Denning, L.J.J., and Pilcher, J.) refused to grant a wife's application for security for the costs of her appeal from a dismissal of her petition for divorce on the ground of alleged cruelty, Bucknill, L.J., saying that even if the Court had jurisdiction to make an order for security for costs in such a case, it would do so only if there were special reasons for it. The Court granted in the sum of £30 the husband's application for security for costs, on the ground that the wife was supported in her appeal by wealthy parents with whom she was living. [*Reported by R. C. Calburn, Esq., Barrister-at-Law.*] See also [1948] W. N. 405; 92 S. J. 633.

899. — wife's costs of husband's appeal. The proposition stated in *Otway v. Otway* (1888), 13 P. D. 141, *Earnshaw v. Earnshaw*, [1896] P. 160, *Medway v. Medway*, [1900] P. 141, and in *Rayden on Divorce*, 4th ed., p. 391, to the effect that a wife who obtains a decree and seeks to uphold her order in opposition to the husband's appeal is entitled to defend herself, and that the husband must pay the costs of the appeal even if he succeeds, is too wide, and would operate as a fetter on the exercise of the discretion of the Court. It is necessary in the exercise of that discretion as to the costs of an unsuccessful wife, *vis-à-vis* her husband, to consider her means. But that the wife should be able to defend her position in the Court of Appeal and the amount of her means are not the only considerations which should affect the mind of the Court in the exercise of its discretion. There are other considerations which might properly be taken into account, such as:

- (1) the desirability of enabling a wife to litigate a reasonable case;
- (2) the importance of a point of law raised and decided;
- (3) the fact that the wife has manifestly committed perjury;
- (4) the discouragement of speculative actions;
- (5) the misconduct of the wife, or her advisers, in respect of the litigation.

However, none of these considerations must be considered as a limitation of the discretion of the Court as defined by s. 50 of the Judicature Act, 1925.

In the Court below the wife had obtained a decree *nisi* on the ground of the husband's cruelty, and the husband had been ordered to pay the costs of the wife and of the co-respondent. On appeal the husband succeeded by showing that the wife's adultery was the real cause of the break-up of the marriage. In the Court of Appeal the wife had obtained a limited order for security of costs of the appeal on the footing that she was without means to uphold the judgment in her favour, and on the strength of an under-estimate of the length of the hearing. Under the circumstances the Court ordered that the husband should pay the wife's costs of the appeal, that the co-respondent should pay the husband's costs in the Court of Appeal and in the Court below, and that the order for costs against the husband in the Court below should be set aside. See *KARA v. KARA AND HOLMAN*, § 952 (applying *Otway v. Otway*, *supra*; *Earnshaw v. Earnshaw*, *supra*, and *Medway v. Medway*, *supra*).

900. Cruelty—attempted sodomy. In *STOKES v. STOKES* (November 10, 1948), Hodson, J., ruled that it was a most undesirable practice, where a wife, in her petition for divorce on the ground of cruelty, alleged various acts of cruelty including sexual perversions, no reference being made to sodomy, to make a charge of sodomy

and attempted sodomy for the first time in the particulars and further and better particulars of the general allegations. His lordship further ruled that the word "sodomy" used in the Matrimonial Causes Act, 1937, should be used by pleaders, and not the Latin description of the act. [*Reported by R. C. Calburn, Esq., Barrister-at-Law.*] See also [1948] W. N. 450, 474.

901. — coitus interruptus. The practice of *coitus interruptus* may in a proper case be a ground for pronouncing a decree on the ground of cruelty. Thus, in the case of a wife with a nervous disposition, where, according to medical evidence, the practice was calculated to impair the health of the wife, and, in fact, did result in serious injury to her health, the Court granted her a decree *nisi* on this ground. See *WHITE (or se. BERRY) v. WHITE*, § 1000 (applying *Rice v. Raynold-Spring-Rice*, § 936).

902. — condonation. See *MACKRELL v. MACKRELL*, § 882.

903. — — revival. The reasoning in *Beard v. Beard*, [1946] P. 8, that to revive a previous matrimonial offence which has been condoned it is not necessary to establish desertion for the full period of three years, but that desertion for a shorter period will suffice, applies equally to a case of cruelty as to a case of adultery.

There had been acts of cruelty on the part of the husband from 1931 till 1940. In 1940 the wife left London owing to the air attacks, but she saw her husband once a month until October, 1943, and during those visits sexual intercourse took place regularly between them. In October, 1943, the husband made a scene after the wife had admitted that she had been associating with men "merely for company's sake". Only two incidents of cruelty were alleged since October, 1943. The Commissioner found that the husband had deserted his wife from January, 1944, down to the date of the petition, and that that breach of matrimonial duty revived the previous acts of cruelty which he had found proved. Held, on appeal, the decision of the Commissioner was correct: *KAFTON v. KAFTON*, 92 S. J. 154; [1948] 1 All E. R. 435, C. A. (applying *Beard v. Beard*, *supra*). (See also §§ 884, 905.)

904. — conduct conducing to insanity. See *GREENSTREET v. GREENSTREET*, § 964.

905. — corroboration, necessity for. In cases of cruelty it is the practice of the Court to require corroboration, but it is not a rule of law. It is merely a matter of practice. There may be many cases in which it would be unsafe to act without corroboration, but it has never been decided that the Court is not entitled in a proper case, where it is in no doubt where the truth lies, to act on the uncorroborated testimony of the petitioner.

Per Cohen, L.J.: "The need of corroboration is necessarily greater in an undefended case, such as *Judd v. Judd*, [1907] P. 241, than in a defended case where the petitioner's evidence, though uncorroborated, is tested by cross-examination and can be measured against the evidence that is given on the other side". See *KAFTON v. KAFTON*, § 903.

906. — husband's fits of depression. In *LAUDER v. LAUDER* (November 25, 1948), the Court of Appeal (Lord Merriman, P. and Pearce, J.; Singleton, L.J., dissenting), held that a husband's fits of depression resulting in prolonged sulky silences coupled with domineering conduct, all of which caused injury to the wife's health, amounted to cruelty such as to entitle her to a decree. [*Reported by R. C. Calburn, Esq., Barrister-at-Law.*] See also [1949] 1 C. L. 67.

907. — intention. The general proposition that a man is presumed to intend the natural and probable consequences of his acts applies to acts amounting to cruelty in matrimonial causes. The law on this point cannot be more clearly expressed than in the brief statement of Shearman, J., in *Hadden v. Hadden* (1919), *Times*, December 5: "I do not question he had no intention of being cruel but his intentional acts amounted to cruelty". Once it is shown that intentional acts amount to cruelty, "it is not necessary" according to the language used by Lord Stowell in *Holden v. Holden* (1810), 1 Hag. Con. 453 "to inquire from what motive such treatment proceeds".

Per TUCKER, L.J.: "I must not . . . be understood to suggest that, in considering whether or not a case of cruelty has been established, the state of health of the parties is not a relevant matter to be taken into consideration, together with all the other surrounding circumstances of the case, or that the

same weight is to be attached to every act, whether committed in sickness or in health, or that it is not the duty of each spouse to care for and show forbearance towards the other in case of illness".

Per EVERSHED, L.J.: "I do not say that proof of [a spiteful or malignant intention] may not be an important, or, in some cases, even an essential consideration".

The wife, who suffered from insomnia and serious nervous distraction, refused, time and again, to allow her husband to sleep at all until 3 or 4 o'clock in the morning, or, at times, at all throughout the night, demanding that he should read to her, and when he showed signs of going to sleep she roused him by such means as pulling off his clothes, moving furniture and turning on taps. There was also nagging of an intemperate kind on her part. The result was seriously to injure the husband's health and to render it impossible for him to live with her any longer. There was no evidence that the husband had voluntarily assented to the demands made on him by his wife. Held, the husband was entitled to a decree *nisi* on the ground of the wife's cruelty: *SQUIRE v. SQUIRE*, [1949] P. 51; [1948] L. J. R. 1345, C. A. (Hodson, J., dissenting; reversing decision of Finmore, J., [1947] C. L. Y. 830; applying *Hadden v. Hadden*, *supra*; *Holden v. Holden*, *supra*; *Kirkman v. Kirkman* (1807), 1 Hag. Con. 409; *Hall v. Hall* (1864), 3 Sw. & Tr. 347; *Edwards v. Edwards*, § 926; and *Evans v. Evans* (1790) 1 Hag. Con. 35; criticising *Astle v. Astle*, [1939] P. 415).

908. — **malignity.** [N.I.] In *WARD v. WARD*, [1948] N. Ir. 60, Porter, L.J., held that malignity was not a necessary ingredient of the matrimonial offence of cruelty.
909. — **nagging, abusiveness and jealousy.** It is clear that before the Court can grant a decree *nisi* on the ground of cruelty there must be something in the nature of wilful and unjustified interference by one spouse in the sphere of life of the other spouse. In that respect physical acts of the kind which show malevolence are far more serious than mere nagging, abusiveness and jealousy. It is, however, established that mere nagging, abusiveness and jealousy can in certain cases amount in themselves to such an interference in the life of the other spouse as to justify the Court in coming to the conclusion that they constitute cruelty: *USMAR v. USMAR*, [1949] P. 1; [1948] L. J. R. 1418, Willmer, J. (applying *Atkins v. Atkins*, [1939] P. 387; and *Horton v. Horton*, [1940] P. 187). (See also § 895.)
910. — **res judicata.** See *HUDSON v. HUDSON*, § 951; *KARA v. KARA*, § 952.
911. — **wife still residing in same house as husband.** "It is not impossible for a woman to complain of cruelty while still residing in the same house as her husband": *per* Denning, L.J., in *MACKRELL v. MACKRELL*, § 882.
912. **Custody.** In *HAYES v. HAYES*, (July 28, 1948), the Divisional Court (Lord Merri-man, P., and Ormerod, J.) made the following observations: (1) Justices have no power under the Summary Jurisdiction (Married Women) Act, 1895, alone to make an order in favour of any one but the wife; (2) an order may be made giving custody to a wife upon an undertaking to leave the child with a third person; (3) there is no power to make an order that no further application shall be made for two years. See [1948] W. N. 361; 92 S. J. 589.
913. — **and maintenance of children—two summonses.** (Guardianship of Infants Acts, 1886 to 1925; Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1925.) If two summonses are taken out regarding custody, one under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1925, and the other one under the Guardianship of Infants Acts, 1886 to 1925, the proper course is for the justices to choose one summons, instead of making an order for custody on both summonses, and if they wish to make an order for £1 a week in respect of the child, as against 10s., which is all they can order under the Summary Jurisdiction Acts, then they should ignore the question of custody under the summary jurisdiction order and deal with the whole thing under the guardianship order: *HEWORTH v. HEWORTH*, [1948] W. N. 182; 64 T. L. R. 268; [1948] 2 All E. R. 715 n. D. C.

- 914.** — — —. (Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39), ss. 5 (b), 7; Guardianship of Infants Acts, 1886 to 1925.) In *Underwood v. Underwood*, [1946] P. 84, the Divisional Court in analysing s. 7 of the Summary Jurisdiction (Married Women) Act, 1895, which provides that "a court of summary jurisdiction . . . may . . . upon cause being shown upon fresh evidence to the satisfaction of the court at any time, alter, vary, or discharge any [custody] order and may upon any such application from time to time increase or diminish the amount of any weekly payment ordered to be made . . ." decided that, in so far as the mere question of quantum was concerned, the words "upon fresh evidence" with all their implications were no longer applicable, but that they were still applicable to anything other than a mere question of amount. In *Timmins v. Timmins*, [1919] P. 75, Hill, J., had held that the words "upon cause being shown" meant "cause shown for discharging that part of the order which is sought to be discharged, and"—he added—"the order cannot be discharged as a whole unless cause is shown for discharging every part of it". Thus, in a case where a wife had obtained an order giving her the custody of the two children of the marriage under s. 5 (b) of the Summary Jurisdiction (Married Women) Act, 1895, together with maintenance in the maximum sum of 10s. for each of the two children under s. 1 (1) of the Married Women (Maintenance) Act, 1920, it was held, that the justices on the application of the wife under the Guardianship of Infants Act, 1925 (under which the husband may be ordered to pay a sum not exceeding £1 for each child), had power to vary the order by revoking the parts thereof referring to the custody and maintenance of the children, because, although on discharging the custody order the wife would obtain a fresh order to the same effect under the said Guardianship of Infants Act, it was impossible to divorce the two integrated questions of custody and welfare of the children, on the one hand, and the means of supporting them, on the other, and, therefore, cause had been shown for discharging every part of the order within the meaning of the dictum of Hill, J., in *Timmins v. Timmins*, *supra*: *Flood v. Flood*, [1948] W. N. 330; [1948] L. J. R. 1880; [1948] 2 All E. R. 712, D. C. (applying *Underwood v. Underwood*, *supra*; *Timmins v. Timmins*, *supra*; and *Re Kinseth*, [1947] C. L. Y. 876; distinguishing *Heworth v. Heworth*, § 913).
- 915.** — **jurisdiction of Judge sitting in chambers.** See *Cliff v. Cliff*, § 1710
- 916.** — **pending suit.** See *Boyt v. Boyt*, § 1628.
- 917.** — **welfare of child.** See *Allen v. Allen*, § 1712.
- 918. Damages.** In *Greaves v. Greaves*, (April 30, 1948), the Court of Appeal reduced to £500 the sum of £1,000 damages awarded by a Divorce Court to a husband against the co-respondent to his petition for divorce. The Court held that in the circumstances of the marriage a figure so high as £1,000 must have been arrived at by reference to the conduct of the co-respondent and, therefore, must contain a punitive element not proper to an award of damages. [*Reported by R. C. Calburn, Esq., Barrister-at-Law.*] See also [1948] W. N. 199; 92 S. J. 323.
- 919. Decree absolute—appeal pending as to damages.** (Judicature Act, 1925, s. 189 (1).) Notwithstanding that an appeal by a co-respondent against the quantum of damages is pending, a petitioner may apply for the decree to be made absolute, because such appeal is not directed to the decree *nisi* of divorce: *W. v. W. and D.*, [1948] P. 157; [1948] L. J. R. 1794, Willmer, J.
- 920.** — **setting aside.** (Judicature Act, 1925 (15 & 16 Geo. 5, c. 49), ss. 31, 184 (1).) S. 31 of the Judicature Act, 1925, provides: "No appeal shall lie . . . (e) from an order absolute for the dissolution or nullity of marriage in favour of any party who having had time and opportunity to appeal from the decree *nisi* on which the order was founded, has not appealed from that decree . . .". The right of appeal was held to have been lost in accordance with the provisions of that section in a case where the solicitors of the appellant husband failed to make the necessary cash payment of the security directed by the date specified owing to the fact that they had not appreciated that a cheque payable to the Accountant-General of the Supreme Court would not be credited until it had been cleared.
Per Scott, L.J.: "In my view, the policy of Parliament requires that a

decree absolute should be protected unless there is some ground on which the Court concerned can properly exercise its inherent jurisdiction to intervene in order that justice may be done".

Per Somervell, L.J.: "In my opinion this application fails irrespective of the special provisions in the Judicature Act, 1925, dealing with decrees absolute": *MEIER v. MEIER*, [1948] P. 89; [1948] L. J. R. 436, C. A.

- 921.** ——. (Judicature Act, 1925 (15 & 16 Geo. 5, c. 49), s. 31 (1) (e); Matrimonial Causes Rules, 1944, r. 36.) Where a decree of divorce or nullity of marriage has been made absolute although the petition has never been served on the respondent there is a substantive right of appeal to the Court of Appeal by virtue of s. 31 (1) of the Judicature Act, 1925, which provides that: "No appeal shall lie . . . (e) from an order absolute for the dissolution or nullity of marriage in favour of any party who, having had time and opportunity to appeal from the decree *nisi* on which the order was founded, has not appealed from that decree". That provision, read positively, must mean that an appeal lies in favour of a party who has not appealed from the decree *nisi* because he has not had the time and opportunity to do so. The lack of time and opportunity may be due to failure to serve the petition.

It was not necessary for the purpose of this case to decide whether either of the alternative methods for setting aside a decree absolute, *viz.*, a motion to a Judge or an application to the Divisional Court under r. 36 of the Matrimonial Causes Rules, 1947, would have been available to the respondent: *EVERITT v. EVERITT*, [1948] W. N. 237, 345; [1948] 2 All E. R. 545, C. A.

- 922. Decree nisi—insanity.** Willmer, J., approved the incorporation in a decree of the following order: It is ordered by consent that the petitioner do as from the date of the decree absolute during the joint lives of the parties and until further order pay to the respondent for maintenance the sum of £7 5s. per annum, the said allowance to be paid by monthly instalments to the Medical Superintendent of . . . or to the Medical Superintendent of any hospital where the respondent may be resident (whose receipt shall be sufficient discharge) and to be applied as follows:—(a) in making payment of a sum of 15s. to the Official Solicitor as the cost of an official visit to the respondent and (b) in making a payment of the sum of £6 10s. to himself to be applied for the cost of extra comforts for the respondent: *PRACTICE NOTE*, November 23, 1948, [1948] W. N. 474. See also § 966.

- 923.** — **made in private.** The fundamental rule in divorce cases is that the hearing of a case, and the whole of the hearing, must take place in open Court. The only ground on which an exception is made to that rule is where justice cannot be done unless the case is heard in private.

The Commissioner, in a case where discretion was asked for, heard the petition in open Court, but later retired to his room and there informed counsel that he would not grant a decree *nisi*. Held, on appeal, as the decree was made in the Commissioner's private room it was voidable and ought to be set aside: *STONE v. STONE*, [1948] W. N. 390; 64 T. L. R. 542; 92 S. J. 633, C. A. (See also §§ 928, 944.)

- 924.** — **setting aside—two marriage ceremonies between parties.** In *REDER v. REDER* (June 9, 1948) a Divorce Commissioner, having found that a husband and wife had been married on September 12, 1914, in a synagogue in Poland, and on August 21, 1926, at Stepney Register Office, on the husband's undefended petition, decreed that the two marriages "whichever of the said ceremonies created the marriage" should be dissolved on the grounds of the wife's desertion, the Court of Appeal (Lord Merriman, P., Bucknell, L.J., and Hodson, J.) affirming Wallington, J., pronounced that decree a nullity, ordering that the husband should apply to the Commissioner to determine which of the ceremonies created the marriage. [*Reported by R. C. Calburn, Esq., Barrister-at-Law.*] See also [1948] W. N. 238; 92 S. J. 469.

- 925. Desertion—burden of proof.** In the case of a husband who is petitioning for divorce on the ground of his wife's desertion, the legal burden of proving that his wife deserted him is on the husband throughout the case. Where, to discharge that burden in such a case, the husband relies on the fact that he asked his wife to join him and that she refused, that is merely a fact from which the Court may infer that she deserted him without cause, but it is not bound to do so. When

he proves the fact of refusal, she may seek to rebut the inference of desertion by proving that she had just cause for her refusal and, indeed, it is usually wise for her to do so, but there is no legal burden on her to do so. Even if she does not affirmatively prove just cause, the Court has still, at the end of the case, to ask itself: Is the legal burden discharged? Has the husband proved that she deserted him without cause?

The wife refused to join her husband for a stay of uncertain duration at the port where he was stationed during the war and where he had found accommodation for her. Her reasons for so doing were, that she was extremely deaf, which made the sharing of accommodation with strangers particularly trying for her, and that she was living with the two children of the marriage, aged fourteen and seven, at M., which had always been their matrimonial home, where she was always ready and willing for him to stay on his leave, and where her son was now starting work. The husband alleged that the wife was guilty of desertion. Jones, J., had held, that in the circumstances it was not unreasonable on her part to fail to go and stay with him and, consequently, had refused a decree of divorce. Held, on appeal, it was impossible to say that that finding was unreasonable, and, therefore, the appeal had to be dismissed: *DUNN v. DUNN*, [1949] P. 98; [1948] 2 All E. R. 822, C. A. (Pilcher, J., dissenting). (See also § 931.)

- 926. — constructive desertion.** It has been stated over and over again in desertion cases that a man must be taken to intend the natural consequences of his acts. If it is a natural consequence of a man's direct treatment of his wife that she leaves him, he must be taken to intend that she will do so. The same principle applies when the conduct of the husband is conduct with a third person which he must know will affect the wife indirectly: *EDWARDS v. EDWARDS*, [1948] P. 268; [1948] L. J. R. 670, D. C. (approving *Charter v. Charter* (1901), 84 L. T. 272; and *Sickert v. Sickert*, [1899] P. 278; overruling *Boyd v. Boyd*, [1938] 4 All E. R. 181). (See also § 930.)
- 927. — revival of condoned cruelty.** Constructive desertion will revive condoned cruelty just as much as active desertion will do. Thus, in a case where a husband had condoned his wife's previous acts of cruelty, it was held that her conduct after such condonation in preferring her twenty-five or thirty cats to him, and in insisting on their intolerable presence in a small house thereby driving the husband from the matrimonial home, was a matrimonial offence amounting to constructive desertion which revived the condoned cruelty. See *WINNAN v. WINNAN*, § 953.
- 928. — evidence of.** "It is not necessary for a man to call corroborative evidence [of desertion]. It is desirable, and it is usually done, but I do not think that it has ever been laid down as essential": *per* Bucknill, L.J., in *STONE v. STONE*, § 923.
- 929. — jurisdiction.** (Matrimonial Causes Act, 1937 (1 Edw. 8 & 1 Geo. 6, c. 57), s. 13.) S. 13 of the Matrimonial Causes Act, 1937, provides that "where a wife has been deserted by her husband . . . and the husband was immediately before the desertion . . . domiciled in England . . . the Court shall have jurisdiction . . . notwithstanding that the husband has changed his domicile since the desertion . . .". In Dicey's *Conflict of Laws* (5th ed., p. 95) it is stated that "a domicile of choice . . . is retained until both residence (*factum*) and intention to reside (*animus*) are in fact given up . . .". Thus, in a case where an Italian had married a British woman, had settled with her in England in 1929, and had deserted her in 1935, returning to Italy, it was held that the requirements of s. 13 had been satisfied, because the husband had retained his English domicile until the moment before the desertion: *ZANELLI v. ZANELLI*, [1948] W. N. 381; 64 T. L. R. 556; 92 S. J. 646, C. A. (See also § 557.)
- 930. — making amends.** "In every case, whether of ordinary desertion or constructive desertion, it is a question of degree what amends a husband must be prepared to make before he can suggest that his wife should take him back. In the ordinary simple case of desertion all he has to do is to return to the matrimonial home. Where he has driven his wife away by some cruel conduct, the case is different. There may be some conduct so gross that no woman could be expected

ever to resume cohabitation with him": *per* Lord Merriman, P., in *EDWARDS v. EDWARDS*, § 926.

931. — **matrimonial home.** The proposition that a husband has the right to say where the home should be is not a proposition of law. It is simply a proposition of ordinary good sense arising from the fact that the husband is usually the wage-earner and has to live near his work. It is not a proposition which applies in all cases. The decision where the home should be is a decision which affects both the parties and their children. It is their duty to decide it by agreement, by give and take, and not by the imposition of the will of one over the other. Each is entitled to an equal voice in the ordering of the affairs which are their common concern. Neither has a casting vote, though, to be sure, they should try so to arrange their affairs that they spend their time together as a family and not apart. If such an arrangement is frustrated by the unreasonableness of one or the other, and this leads to a separation between them, then the party who has produced the separation by reason of his or her unreasonable behaviour is guilty of desertion. See *DUNN v. DUNN*, § 925 (considering *Mansey v. Mansey*, [1940] P. 139).

932. — —. See also *McGOWAN v. McGOWAN*, § 982.

933. — **non-cohabitation clause in maintenance order.** It is well established that if before the presentation of a petition the wife has obtained from the justices a maintenance order which includes a non-cohabitation clause, no decree based on desertion can be granted to a spouse so long as the clause remains in the order. If, however, the clause ought never to have been inserted in the order, *e.g.*, if it was inserted in the order in the wrong exercise by the justices of their discretion, the deletion of the clause would operate from the date of the original order, as the clause must be regarded as never having been effective.

In a maintenance order made by the magistrates against a husband in 1939 a non-cohabitation clause had been inserted. In 1947 the husband, with a view to obtaining a divorce, applied to the magistrates to delete the clause from the order. An appeal from the refusal of the magistrates to delete the clause was allowed by the Divisional Court on the ground that there was no evidence on which the magistrates could find that it was necessary for the protection of the health of the wife. The Divisional Court did not give a direction as to the date on which their order should become operative. Held, the deletion of the clause from the order should date from 1939: *THORP v. THORP*, [1948] P. 236; [1948] L. J. R. 994, Jones, J.

934. — —. Mr. Commissioner Tyndale in considering certain undefended petitions on November 3 and 4, 1948, said that the use by Courts of summary jurisdiction, when making orders under the Married Women's (Separation and Maintenance) Acts, of the recognised form which did not contain the non-cohabitation clause would help to avoid those serious difficulties which sometimes barred a wife's subsequent petition for divorce on the ground of desertion. Such a clause was more likely to be included *per incuriam* when part of the printed form than when it had to be added thereto; and it was most important that the order should contain an accurate expression of the justices' findings: *PRACTICE NOTE*, [1948] W. N. 432.

935. — **parties living under same roof.** The authorities establish that there may be desertion although husband and wife are living in the same dwelling, if there is such a forsaking and abandonment by one spouse of the other that the Court can say that the spouses were living separate and apart from one another.

Per Denning, L.J.: "It is most important to draw a clear line between desertion, which is a ground for divorce, and gross neglect or chronic discord, which is not. That line is drawn at the point where the parties are living separate and apart. In cases where they are living under the same roof, that point is reached when they cease to be one household and become two households, or, in other words, when they are no longer residing with one another or cohabiting with one another".

In 1934 the wife started to occupy a separate bedroom. Quarrels between husband and wife became so frequent that the husband often retired to his bedroom for the sake of peace. The wife did no mending or washing of his clothes, and did no separate cooking for him. On the other hand, the husband always had his meals, which were cooked by the wife, in the common dining room with the other

members of the family, and, when not in his bedroom, shared the rest of the house with his wife and daughters. In 1947 the husband left the house after he had told his wife that he could not stand it much longer. The Commissioner granted the husband a decree on the ground of the wife's desertion. Held, on appeal, the wife's conduct did not amount to living separate and apart from her husband, and, therefore, she was not guilty of desertion: *HOPES v. HOPES*, [1948] W. N. 439; [1949] L. J. R. 104; [1948] 2 All E. R. 920, C. A. (applying *Pardy v. Pardy*, [1939] P. 288, and *Jackson v. Jackson*, [1924] P. 19; distinguishing *Smith v. Smith*, [1940] P. 49, *Wilkes v. Wilkes*, [1943] P. 41, and *Pulford v. Pulford*, [1923] P. 18; overruling *Wanbon v. Wanbon*, [1946] 2 All E. R. 366, and *Evans v. Evans*, [1947] C. L. Y. 886). (See also § 3538.)

- 936. — reasonable cause for withdrawal from cohabitation.** On a wife's summons against her husband alleging wilful neglect to maintain her and desertion, the justices are entitled to take into consideration the sexual life of the spouses, and the responsibility of either or both for a childless home.

On summonses by the wife against the husband alleging neglect to maintain her and desertion, the evidence showed that the wife at all times had refused to allow the husband to complete the sexual act within her body, and that, when the husband complained of it, her attitude led her to insults and extraordinary conduct towards him. Eventually, the husband decided that it was impossible to live with the wife any longer and left her. The justices dismissed the wife's summonses. Held, on appeal, the justices were justified in taking into consideration the sexual life of the spouses, and the responsibility of either or both for a childless home. Consequently, the appeal against their order should be dismissed: *RICE v. RAYNOLD-SPRING-RICE*, [1948] W. N. 50; [1948] L. J. R. 675; [1948] 1 All E. R. 188, D. C. (applying *Baxter v. Baxter*, § 1002).

- 937. — res judicata.** See *MOLESWORTH v. MOLESWORTH*, § 949; *WINNAN v. WINNAN*, § 953.

- 938. — revival of condoned offence.** See *KAFTON v. KAFTON*, § 903; *PEARSON v. PEARSON*, § 889; [N.I.] *COOKE v. COOKE*, § 888.

- 939. — separation of spouses by compulsion.** It is well established that when once desertion has started it is not necessarily interrupted because the intervention of compulsion or force majeure prevents the husband, physically, from returning to cohabitation, provided always that the intention to desert which by the hypothesis is assumed to have been already established is shown to continue, whether by positive evidence or whether by the absence of anything to negative the presumption that the desertion, once established, continues to run. There is no difference in law between the case where the compulsory separation of the spouses already exists at the time of the alleged inception of desertion and that where the compulsory separation of the spouses supervenes after desertion has been established.

Quære: Whether there can be desertion without *de facto* separation where spouses are compelled to live in the same bedroom.

Whilst the spouses were interned in a camp by the Japanese the wife adopted an attitude of antagonism towards her husband and in December, 1942, said that she would not change it unless the husband promised to commence divorce proceedings on their release, which the husband refused to do. At that time the spouses were sharing the same bedroom, but sleeping in separate beds, and the wife was not rendering any wifely duties to her husband. In June, 1943, the spouses were interned in separate camps and in March, 1944, when the wife saw her husband on one of her annual visits she asked him whether he had seen any lawyers in his camp about a divorce. Held, although the evidence was not sufficient to justify a finding of desertion in December, 1942, there had been desertion by the wife in March, 1944: *BEEKEN v. BEEKEN*, [1948] P. 302; 92 S. J. 498, C. A. (following *Pardy v. Pardy*, [1939] P. 288, and *Thomas v. Thomas* (1945), 62 T. L. R. 166; disapproving dictum of Lord Penzance in *Fitzgerald v. Fitzgerald* (1869), L. R. 1 P. & D. 694).

- 940. — unreasonable condition imposed on return.** Where one spouse has left the other spouse for a time but is willing to return, and where the spouse who has been left refuses to receive back the other except upon conditions which there is no right to impose, the spouse who has been left cannot set up the continued absence of the other as desertion. In such a case, the question whether the

spouse who has gone away has reasonable cause for not trying to bring the desertion to an end must always be a question of fact, the determination of which depends on the circumstances of the particular case.

A wife left the matrimonial home in 1941 because of disagreements, taking with her her three unmarried daughters of the marriage all aged less than twenty years. On the husband's request to her to return she expressed her willingness to do so provided that she could bring her three daughters back with her. To this the husband demurred, and the wife remained away. The husband then presented a petition for divorce on the ground of desertion. Held, in the circumstances, and having regard to the undesirability of leaving three young girls to fend for themselves in war-time conditions, the husband was imposing an unreasonable condition by requiring the wife to return without the daughters, and she was accordingly not guilty of desertion: *BARRETT v. BARRETT*, [1948] P. 277; [1948] L. J. R. 1174, C. A. (applying *French-Brewster v. French-Brewster* (1889), 62 L. T. 609; and *Cohen v. Cohen*, [1940] A. C. 631).

941. Discretion—discretion statement—form. “The discretion statement begins in a form that I deprecate . . . ‘The facts which require the discretion of the court to be exercised’: no facts can, of themselves, require the discretion of the court to be exercised. The facts require an application to the court for the exercise of its discretion. There is an idea . . . that if a party sets out the facts, he or she is entitled as of right to have his or her decree. It is not so. It must be understood that the matter is entirely in the discretion of the court, and that the court is bound by certain well-known considerations and principles in the exercise of its discretion, which is of such grave importance that the presentation of the application for its exercise must be accompanied by the utmost care and completeness”: *per* Wallington, J., in *BARNACLE v. BARNACLE*, § 947.

942. — proceedings for presumption of death. Mr. Commissioner Tyndale, following an unreported case (*Edwards v. Edwards*, Dec. 19, 1946), held in an undefended petition for a decree of presumption of death and dissolution of marriage that it was not necessary to file a discretion statement or ask for the exercise of the Court's discretion: PRACTICE NOTE, [1948] W. N. 146.

943. — relevant considerations. The relevant considerations which a Judge should have in mind when he is considering the difficult question whether or not he ought to exercise his discretion in favour of the petitioner in a divorce case are summarised under the five well-known headings in Lord Simon's speech in *Blunt v. Blunt*, [1943] A. C. 517. The fifth of these headings is “the interest of the community at large, to be judged by maintaining a true balance between respect for the binding sanctity of marriage and the social considerations which make it contrary to public policy to insist on the maintenance of a union which has utterly broken down”.

Per Vaisey, J.: “The mere fact of bigamy having been committed by the spouse who is asking for the exercise of discretion does not in itself operate as a bar to such exercise, but the circumstances in which the bigamy was committed have to be carefully considered”.

The husband, unknown to the wife, had venereal disease at the date of the marriage. Owing to another disease from which the husband was suffering the marriage had never been properly consummated and the parties eventually parted in 1935. In 1940 the wife met C. by whom she had a child in 1942 and whom she bigamously married in the same year by posing as a single woman. She left C. in 1945 after she had obtained the allowance due to a soldier's wife when C. joined the army. In 1946 the husband, who was anxious to marry again, indicated to the wife that he desired to be divorced. The wife was now thirty-six years of age and had at present no intention of marrying again. At the hearing of the petition the Commissioner refused to exercise his discretion in her favour. Held, on appeal, in the circumstances of this case it would not be beneficial in the interest of the community at large or enhance the sanctity of marriage if the discretion was not exercised in favour of the wife: *REDMAN v. REDMAN*, [1948] W. N. 94; [1948] 1 All E. R. 333, C. A. (applying *Blunt v. Blunt*, *supra*).

944. — In *Blunt v. Blunt*, [1943] A. C. 517, Lord Simon, L.C., said that one ground on which discretion might be exercised in favour of the petitioner is “the interest of the petitioner and in particular the interest that the petitioner

should be able to remarry and live respectably". Another ground is the social consideration which makes it contrary to public policy to insist on the maintenance of a union which has utterly broken down.

A husband, aged sixty-three years, petitioned for divorce on the ground that his wife had deserted him in 1929. He filed a discretion statement in which he admitted adultery on one occasion in 1940. The husband admitted that he had no woman in mind whom he wished to marry if he was granted a divorce. The Commissioner was unwilling to grant a decree on the ground that the present state of affairs was harming nobody. Held, on appeal, it was not a question whether the present state of affairs was doing harm to anybody or not. This marriage had utterly broken down. The mere fact that the husband had no woman in mind whom he wished to marry was not a reason for not granting a decree. See *STONE v. STONE*, § 923 (applying *Blunt v. Blunt*, *supra*).

945. ——. In *OAKES v. OAKES AND ATKINS* (October 29, 1948) a husband petitioned for divorce on the ground of adultery, and the wife cross-petitioned on the ground of desertion. Both allegations, though denied, were found to have been made out. The wife had filed no discretion statement. Barnard, J., while accepting that the Court had power in certain circumstances (see *Jackson v. Jackson*, [1947] C. L. Y. 858) to exercise its discretion in the absence of a discretion statement, refused to exercise his discretion in the wife's favour here, holding that to exercise it would be to put a premium on perjury and to encourage everyone charged with adultery and himself seeking relief to deny adultery on oath and then, if and when found guilty, to seek the exercise of the Court's discretion in his favour. [Reported by R. C. Calburn, Esq., Barrister-at-Law.] See also [1948] W. N. 431; 92 S. J. 720.

946. ——. See also *WILMOT v. WILMOT AND MARTIN*, § 886.

947. — **solicitor's duty to ensure disclosure of adultery.** It cannot be too directly or clearly stated that a petitioner is not entitled to a decree of divorce unless he or she is free from the matrimonial offence of adultery. If he or she has been guilty of adultery, that adultery must be fully and frankly disclosed to the Court and the Court must be invited to exercise the discretion vested in it by statute. It is the duty of a solicitor and of anybody representing a solicitor, who is acting for a prospective petitioner to make quite certain as far as humanly possible whether such a person has been guilty of adultery. If so, he must advise his client clearly as to the legal effect of his or her adultery and make it plain to the client that either the suit must be abandoned or, if pursued, the Court must be invited to exercise its discretion and that all the relevant facts must be placed before the Court. If, on being so fully advised, the client decides to proceed and to apply for the exercise of the discretion of the Court the solicitor must obtain particulars and have a discretion statement prepared and filed in which those particulars are set out, and in which are specified any circumstances that would or might mitigate the matrimonial offence so disclosed and, perhaps, incline the Court to exercise its discretion and grant a decree notwithstanding the matrimonial offence.

A solicitor's managing clerk had asked his lay client, who was petitioning for divorce on the ground of her husband's cruelty: "Have you anything to disclose so far as your own conduct is concerned; as if there is, it will have to be included in the petition". Held, the language used by the solicitor's managing clerk was ambiguous, confusing and liable to misunderstanding: *BARNACLE v. BARNACLE* (*KING'S PROCTOR SHOWING CAUSE*), [1948] P. 257, Wallington, J. (See also § 941.)

948. **English and Scottish law.** "It is indisputable that there are divergences between the laws of [England and Scotland] in relation to divorce. The case of desertion is the clearest example, and others are to be found in connection with condonation, collusion and connivance, but . . . [there is no] essential difference in the law of the two countries as regards nullity, and . . . it is well settled in both countries that impotence merely renders a marriage voidable and not void": *per* Lord Merriman, P., in *HARTHAN v. HARTHAN*, § 987.

949. **Estoppel—res judicata.** The mere fact that at an earlier stage a Court has adjudged that at that point there was no desertion does not shut out for ever the evidence then before the Court, and in any subsequent proceedings for

desertion the Court has to give its decision with full knowledge of all the relevant facts unhampered by any decision hitherto given.

In March, 1947, the wife took out a summons against her husband for wilful neglect to maintain, but at the hearing that summons was not proceeded with but was altered to one for desertion. The justices dismissed the charge of desertion. In June the wife took out two summonses against her husband alleging desertion and wilful neglect to maintain. The justices dismissed these two summonses on the footing that, it having been adjudged that the wife had not been deserted in March, all they had to consider was whether the wife was deserted between March and June. The Divisional Court held, on appeal, that the charge of wilful neglect to maintain had never been adjudicated on, and that on the charge of desertion the justices should have considered the matrimonial history before March, as it had not become *res judicata* by their previous decision: *MOLESWORTH v. MOLESWORTH*, [1947] 2 All E. R. 842, D. C. (distinguishing *Stokes v. Stokes*, [1911] P. 195). (See also § 980.)

950. ——. A decision of a Judge of assize that on such and such an occasion a certain matrimonial offence has not been committed, being a decision of a Court of record, is conclusive, as *res judicata*, and will prevent the party whose claim for relief has already been defeated from trying to make the same claim again.

Quære: whether a distinction is to be drawn between the case where the decision is that the offence has not been committed and the case in which the decision is that the offence has been committed, because in the latter case estoppel, by obliging a Court to decide something contrary to its own belief on the facts by reason of the fact that some other Court has decided in the affirmative, might be running contrary to the statutory duties imposed on the Court.

The trial Judge had dismissed the husband's petition for divorce on the ground that the wife's adultery had not been proved. On the wife's summons before the justices, in which she alleged wilful neglect to maintain her, the justices, on the evidence before them, found that the wife had committed adultery on the occasions referred to, and, consequently, dismissed the summons. Held on appeal, irrespective of the question whether under the circumstances the justices had jurisdiction to inquire into the matter, the justices ought not to have taken it on themselves to dismiss the charge after the trial Judge had come to the opposite conclusion: *JAMES v. JAMES*, 92 S. J. 126; [1948] 1 All E. R. 214, D. C. (applying *Pratt v. Pratt* (1927), 96 L. J. P. 123; distinguishing *Harriman v. Harriman*, [1909] P. 123; correcting passage in *Knott v. Knott*, [1935] P. 158).

951. ——. (Judicature Act, 1925 (15 & 16 Geo. 5, c. 49), s. 178 (1) (as substituted by the Matrimonial Causes Act, 1937 (1 Edw. 8 & 1 Geo. 6, c. 57), s. 4.) The following general principles apply where an issue which is being or has been decided in one matrimonial cause arises again for decision in another matrimonial cause between the same parties:

- (1) Justices ought not to proceed to determine an issue of adultery, cruelty, or whatever it may happen to be, when they know that the same issue is about to be determined on a petition in the High Court.
- (2) It is inadvisable, when it is known that a petition for divorce is actually pending, that the Divisional Court itself should decide an appeal from justices.
- (3) However, neither a decision of the justices under (1) above, nor a decision of the Divisional Court under (2) above, would effect an estoppel *per rem judicatam*, at any rate in a case where it is sought to rely on a previous conviction of a particular offence in support of a petition for divorce based on the same facts. In such a case it is the duty of the Court under s. 178 of the Judicature Act, 1925, as amended by s. 4 of the Matrimonial Causes Act, 1937, "... to inquire, so far as it reasonably can, into the facts alleged . . . [and to be] satisfied on the evidence that the case for the petition has been proved . . .". The only possible way to conduct an investigation in such a case is in the usual way of a contest *inter partes*.

In a case before a Court of summary jurisdiction the justices found the husband guilty of cruelty, and their decision was confirmed by the Divisional Court ([1947] C. L. Y. 920). In a subsequent petition by the wife on the ground of cruelty based on the same course of conduct, the husband denied the cruelty,

and the wife pleaded that the husband was estopped from so doing. Held, there could be no estoppel *per rem judicatam*: *HUDSON v. HUDSON* (EXELBY CITED), [1948] P. 292; [1948] L. J. R. 907, Lord Merriman, P. (applying *Harriman v. Harriman*, [1909] P. 123; *Knott v. Knott*, [1935] P. 158; and *James v. James*, § 2062).

952. ———. (Matrimonial Causes Act, 1937 (1 Edw. 8 & 1 Geo. 6, c. 57), s. 6 (2).) S. 6 (2) of the Matrimonial Causes Act, 1937, provides that where a petitioner has obtained an order under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1925, on the ground of cruelty, the Court may treat the order as sufficient evidence of cruelty. The same sub-section provides: "... the Court shall not pronounce a decree . . . without receiving evidence from the petitioner". The evidence of the petitioner referred to in this sub-section is intended to relate to evidence directed to the main issue in the case. Thus—as no estoppel is created in divorce cases—a finding of a Court of summary jurisdiction against one of the parties to a divorce suit who is accused of a matrimonial offence may be admitted as evidence that he or she has committed the offence charged, but this does not absolve the Court from examining the evidence given at the trial on the issues there raised: *KARA v. KARA AND HOLMAN*, [1948] P. 287; [1948] L. J. R. 1741, C. A. (See also § 953.)
953. ———. In *Kara v. Kara*, § 952, Lord Greene, M.R., said: "A finding of a court of summary jurisdiction against one of the parties to a divorce suit who is accused of a matrimonial offence may be admitted as evidence that he or she has committed the offence charged, but . . . this does not absolve the court from examining the evidence given at the trial on the issues there raised". This principle, that no estoppel of the parties as the result of proceedings before a Court of summary jurisdiction binds the Divorce Court, applies not only where a spouse has been found guilty of a matrimonial offence, but also where he or she has been acquitted of such offence. Thus, in a case where the justices had found the husband guilty of wilful neglect to maintain his wife and had made a maintenance order against him, it was held that the decision of the justices which implied that the wife was not guilty of actual or constructive desertion at the time when the order was made did not prevent the Divorce Court from granting the husband a divorce on the ground of his wife's constructive desertion at the time when the justices' order had been made, because the rule of *res judicata* could not apply in such a case: *WINNAN v. WINNAN*, [1948] W. N. 422; [1949] L. J. R. 345; [1948] 2 All E. R. 862, C. A. (applying *Kara v. Kara*, *supra*; *Harriman v. Harriman*, [1909] P. 123; *James v. James*, § 950; and *Hudson v. Hudson*, § 951; distinguishing *Pratt v. Pratt* (1927), 96 L. J. P. 123). (See also §§ 927, 981.)
954. **Evidence—blood groups.** See *LIFF v. LIFF*, § 997.
955. — **corroboration—cruelty.** See *KAFTON v. KAFTON*, § 905.
956. — **desertion.** See *STONE v. STONE*, § 928.
957. — **negotiations before probation officer.** Negotiations which take place in the presence of the probation officer with a view to reconciliation are made on the understanding by all concerned that they are to be without prejudice to the rights of the parties. The rule as to "without prejudice" communications applies with special force to negotiations for reconciliation. Therefore, the Court will not compel a probation officer to give evidence of what took place in the course of a negotiation. However, in a divorce case where neither party claimed the privilege and must, therefore, be taken to have waived it, it was held that the Commissioner was entitled to admit the evidence of the probation officer and to accept it in corroboration of the husband's evidence: *MCTAGGART v. MCTAGGART*, [1949] P. 94; [1949] L. J. R. 82, C. A. (applying dictum of Lush, J., in *La Roche v. Armstrong*, [1922] 1 K. B. 485).
958. — **proof of adultery.** See *GINESI v. GINESI*, § 863; *HADLUM v. HADLUM*, § 868; *MAYO v. MAYO*, § 864; *BARBER v. BARBER*, § 865; *M—T v. M—T*, § 869; *Re B.*, § 870; [*Can.*] *THOMPSON v. THOMPSON*, § 866.
959. — **proof of desertion.** See *DUNN v. DUNN*, §§ 925, 931; *STONE v. STONE*, § 928.
960. — **witness compellable if competent.** (Judicature Act, 1925 (15 & 16 Geo. 5, c. 49), s. 198.) In proceedings instituted in consequence of adultery witnesses who,

by virtue of s. 198 of the Judicature Act, 1925, are competent to give evidence are also compellable. Thus, where the issue of condonation was raised by the co-respondent at the hearing and he called the respondent, she could be compelled to give evidence that intercourse had taken place after service of the petition, but her evidence, being uncorroborated and denied by the husband, was insufficient in this case to rebut the provisional presumption against condonation: *TILLEY v. TILLEY*, [1948] W. N. 495; [1948] 2 All E. R. 1113, C. A. (See also § 880.)

961. Indian and Colonial divorce jurisdiction—Kenya. See § 326.

962. — Singapore and Malayan Union. See § 353.

963. Insanity—affidavits of medical superintendents. Wallington, J., stated that the Court viewed with grave displeasure the inaccuracies and omissions which had appeared in some of the affidavits sworn by medical superintendents of mental hospitals in matrimonial causes brought under s. 2 (d) of the Matrimonial Causes Act, 1937.

Affidavits had contained inaccuracies as to the dates of the reception order or the admission of the respondent, and had failed to include the medical qualifications of the deponent or any reference to the fact that the respondent had been continuously under the care and treatment of the deponent, or that the respondent was incurably insane. In future it might be necessary to take serious measures if such defects occurred: *PRACTICE NOTE*, February 26, 1948; [1948] W. N. 90; 92 S. J. 169.

964. — conduct conducing to. (Judicature Act, 1925 (15 & 16 Geo. 5, c. 49), ss. 176 (d), 178 (2) (d); Matrimonial Causes Act, 1937 (1 Edw. 8 & 1 Geo. 6, c. 57), ss. 2, 4.) By s. 178 (2) of the Judicature Act, 1925, "the Court . . . may dismiss the petition if it finds that the petitioner . . . has been guilty . . . (d) when the ground of the petition is . . . unsoundness of mind . . . of such wilful neglect or misconduct as has conduced to the . . . unsoundness of mind".

The respondent, through her guardian *ad litem*, alleged that the petitioner assaulted her on a number of occasions before they separated in 1935. In 1939 the respondent was seriously injured by a motor car accident and was in hospital for some months. In 1940 she was admitted to a mental hospital. Held, although the petitioner's calculated series of cruelties had not succeeded in deranging the respondent's mind, he had brought her into a condition of mind, the consequence of which was that, when she suffered a serious motor accident, the shock of that accident, aggravated by her pre-disposing condition of strain, had produced the insanity. Consequently, the petitioner was not entitled to a decree because his conduct had conduced to the malady of his wife: *GREENSTREET v. GREENSTREET*, [1948] W. N. 172; 64 T. L. R. 334, Judge Willes (sitting as Divorce Commissioner).

965. — detention in pursuance of an order. (Lunacy Act, 1890 (53 Vict. c. 5), s. 20; Matrimonial Causes Act, 1937 (1 Edw. 8 & 1 Geo. 6, c. 57), s. 3.) The action of the relieving officer in removing a person of unsound mind to hospital under s. 20 of the Lunacy Act, 1890, does not amount to "detention" in pursuance of an order under the Lunacy and Mental Treatment Acts, mentioned in s. 3 of the Matrimonial Causes Act, 1937. Such an officer has no power to make such an order for detention.

The relieving officer had removed the respondent to hospital in pursuance of the duty imposed upon him by s. 20 of the Lunacy Act, 1890. She was kept there for two days. After that time she became a voluntary patient in some other mental institution. Held, the act of the relieving officer did not amount to an order for "detention" within the meaning of the Lunacy and Mental Treatment Acts, 1890 to 1930, or the other Acts referred to in s. 3 of the Matrimonial Causes Act, 1937. An order for detention within the meaning of the Acts could only come into existence after a justice of the peace had certified the respondent: *CRUTCHFIELD v. CRUTCHFIELD (BY HER GUARDIAN)*, [1948] L. J. R. 99; [1946] 2 All E. R. 730, n., Jones, J.

966. — form of decree nisi. On July 20, 1948, Willmer, J., settled a form of order, to be incorporated in a decree *nisi* in view of the provisions of the National Health and National Insurance Acts for the maintenance of patients in mental hospitals. In ordinary cases wife petitioners will not be asked to agree to an

order for nominal maintenance of respondent husbands and husband petitioners will only be asked to provide maintenance at the nominal rate of 1s. a year. Petitioners will be invited to make a small voluntary contribution towards extra comforts and towards the cost of an annual visit by the official solicitor: PRACTICE NOTE, [1948] W. N. 332. See also § 922.

- 967. Jurisdiction—domicil—divorce.** In *ORR-LEWIS v. ORR-LEWIS* (June 18, 1948), Willmer, J., held, on the facts of the case, that the husband, who was living in France, had not lost his English domicile of origin and was domiciled in England; the Court had, therefore, jurisdiction to hear the divorce petition of the wife. [*Reported by Mrs. Irene Moses, Barrister-at-Law.*]
- 968. — — —.** See also *ZANELLI v. ZANELLI*, § 929.
- 969. — — — nullity.** See *DE RENEVILLE v. DE RENEVILLE*, §§ 989, 992; [*Can.*] *GOWER v. STARRETT*, § 990; [*Can.*] *SPENCER v. LADD*, § 991.
- 970. Maintenance—claim by widow for recovery of arrears against estate of husband.** See *Re BIDIE*, § 1386.
- 971. — — — facilities for enforcement—application to North Borneo.** See § 335.
- 972. — — — for infant child—concurrent remedies.** See *HEWORTH v. HEWORTH*, § 913; *FLOOD v. FLOOD*, § 914.
- 973. — — — liability of army and air force officers.** By the Army and Air Force (Annual) Act, 1948 (11 & 12 Geo. 6, c. 28), s. 5, a new sub-s. (2A) is inserted in s. 144A of the Army Act, enabling orders or decrees for maintenance to be enforced against army officers if they were made before the coming into operation of the Army and Air Force (Annual) Act, 1947 (10 & 11 Geo. 6, c. 25), by s. 4 of which the provisions of s. 145 of the Army Act were applied to officers. By s. 8 the new provision applies also to the air force.
- 974. — — — net income.** In *GRANTHAM v. GRANTHAM* (July 15, 1948), Slade, J., held that "net income" in a deed of covenant meant income remaining after payment of income tax. Other deductions, e.g., compulsory contribution to a pension fund could not be taken into account. See [1948] W. N. 329; 92 S. J. 541.
- 975. — — — order for maintenance in decree nisi.** When an order for maintenance is embodied in a decree *nisi* to take effect when such decree becomes absolute, the registrar will, on the decree becoming absolute, endorse on the decree *nisi* and sign a note that it has been made absolute on a certain day. In order to make the order for maintenance effective a copy of the decree *nisi* with such note endorsed should be served upon the party who is ordered to pay or his solicitors: PRACTICE NOTE of the Principal Probate Registry, dated April 30, 1948. See also [1948] W. N. 194.
- 976. — — — order for security.** It is the duty of the Divorce Court to see that its own orders are carried out.

By an order for secured maintenance under s. 190 (1) of the Judicature Act, 1925, made on the application of the wife after a decree *nisi* of divorce in her favour had been made absolute it was "ordered that the . . . respondent do secure to the . . . petitioner for her life . . . the annual sum of £1,200 less tax upon security to be agreed . . . and that in default of agreement between the parties it be referred to conveying counsel of the High Court to settle the necessary deed or deeds". Following on that order, the wife's and the husband's solicitors agreed on the security to be provided, and the wife's solicitors sent to the husband's solicitors a draft deed. This draft deed was neither agreed nor executed by the husband, and after the husband's death the executors of the husband refused to execute the draft deed. Held, the order itself could not be said to have created a floating charge over all the husband's property by not specifying any property on which the annual sum was to be secured, but the wife acquired a charge on specific assets of the husband by the joint effect of the order and the subsequent agreement. The wife could enforce that order against the executors of the husband in the Divorce Court, which would direct the executors to execute the necessary deed or deeds to give effect to the order of the Court coupled with the agreement subsequently come to between the husband and the wife: *HYDE v. HYDE*, [1948] P. 198; [1948] L. J. R. 641, Barnard, J. (applying *Maclurcan v. Maclurcan* (1897), 77 L. T. 474).

977. — variation of order. (Administration of Justice (Miscellaneous Provisions) Act, 1938 (1 & 2 Geo. 6, c. 63), s. 14 (2).) S. 14 (2) of the Administration of Justice (Miscellaneous Provisions) Act, 1938, provides that "in exercising the powers conferred by this section [i.e., the powers to vary a maintenance order] the Court shall have regard to all the circumstances of the case, including any increase or decrease in the means of either of the parties to the marriage". In making an order under this section the Court is given a wide measure of judicial discretion and, assuming that no wrong principle of law has been applied, the Court of Appeal will only interfere with the exercise of such judicial discretion where the decision exceeds the generous ambit within which reasonable disagreement is possible, and is, in fact, plainly wrong.

The wife, who had been granted a decree of divorce on the ground of the husband's adultery, had obtained a maintenance order which provided for the payment to her of £400 a year, less tax, during the joint lives of herself and the husband or until further order. After the wife and the husband had both remarried, the maintenance order was varied by reducing the sum payable by the husband to 1s. a year. Held, the husband's marriage constituted a "decrease" in his means and the wife's marriage an "increase" in her means within the meaning of s. 14 (2) of the Administration of Justice (Miscellaneous Provisions) Act, 1938. Consequently, no wrong principle of law had been applied. Moreover, the sum awarded to the wife was not so manifestly wrong that the exercise of the judicial discretion could be successfully challenged: *BELLENDE (or se. SATTERTHWAITE) v. SATTERTHWAITE*, [1948] 1 All E. R. 343, C. A. (applying *Evans v. Bartlam*, [1937] A. C. 473; and *Osenton (Charles) & Co. v. Johnston*, [1942] A. C. 130).

978. Maintenance order—cessation of order. (Summary Jurisdiction (Separation and Maintenance) Act, 1925 (15 & 16 Geo. 5, c. 51), ss. 1 (4), 2 (2).) The words of the Summary Jurisdiction (Separation and Maintenance) Act, 1925, clearly show the difference between the residence which is sufficient to prevent a maintenance order taking effect under s. 1 (4) of the Act and the resumption of cohabitation which is required under s. 2 (2) of the Act to put an end to an order which has taken effect because the parties were living apart. ("Cohabitation" within the meaning of s. 2 (2) does not necessarily depend on whether there is sexual intercourse between husband and wife, but consists in the husband acting as a husband towards the wife and the wife acting as a wife towards the husband, the wife rendering housewifely duties to the husband and the husband cherishing and supporting his wife as a husband should do.)

A maintenance order had been made when the parties were living apart. Afterwards, due to the housing shortage, the wife and the child resumed residence in the husband's house, but occupied rooms in the house which were entirely separate from those occupied by him. The wife paid the husband rent for the rooms occupied by her and the child. The husband claimed that the maintenance order had ceased to have effect. Held, there had been no "resumption of cohabitation" within the meaning of s. 2 (2) of the Summary Jurisdiction (Separation and Maintenance) Act, 1925, and, therefore, the order continued to be enforceable: *THOMAS v. THOMAS*, [1948] 2 K. B. 294; [1948] L. J. R. 1943, D. C. (distinguishing *Evans v. Evans*, [1947] C. L. Y. 886).

979. — enforcement pending appeal. In *HARRISON v. HARRISON* (July 28, 1948), an appeal against a maintenance order had been adjourned generally in view of the imminence of the Long Vacation. In the Court of Appeal (Tucker, Bucknill and Somervell, L.J.J.), Tucker, L.J., stated, in case the matter came before an American Court, that the order for maintenance could, so far as the Courts of this country were concerned, be enforced notwithstanding that an appeal was pending. See [1948] W. N. 346; 92 S. J. 456.

980. — wilful neglect to maintain. Where a charge of wilful neglect to maintain has been withdrawn on the implied condition that the Court should deal with the charge of desertion, the question of wilful neglect to maintain has never been adjudicated on. See *MOLESWORTH v. MOLESWORTH*, § 949 (distinguishing *Pickavance v. Pickavance*, [1901] P. 60).

981. — — constructive desertion as defence. A husband is not guilty of wilful neglect to maintain a wife who has without cause deserted him and is in a state

of desertion at the time of her application for a maintenance order, and the same rule applies to the case where a wife has without cause driven her husband out of the house. See *WINNAN v. WINNAN*, § 953 (applying *Richardson v. Richardson* (1942), 167 L. T. 260).

- 982.** — — — **provision of matrimonial home.** The common law obligation of a husband to maintain his wife is *prima facie* discharged by the provision of a house for her, with all that that entails in the way of her maintenance and that of any children there may be. There is no obligation to provide maintenance in a separate home merely at the option of the wife. In deciding whether or not in a particular case the husband has provided a matrimonial home it must be remembered—as was pointed out by Denning, L.J., in *Dunn v. Dunn*, § 931—that neither spouse has a casting vote in the choice of the home, or, in other words, that neither has, as a matter of law, the right to choose the matrimonial home, and that the spouse who has produced the separation by reason of his or her unreasonable behaviour is guilty of desertion and, in some cases, of wilful neglect to maintain. In claiming that a husband has wilfully neglected to maintain her, a wife has to prove her case just as much as if she were seeking to establish desertion without cause.

When the husband was demobilised, the parties went to live at his parents' house. After a few days the wife left and consistently refused to return on the ground that she was not prepared to live in her mother-in-law's house. The husband's evidence was that he did not intend to live at his parents' house permanently, but only until he and his wife got accommodation of their own. Eighteen months later, the wife, of her own volition, got the tenancy of a flat in Liverpool and asked her husband to come there. This he refused to do as he was unwilling to live in the middle of the city. The wife then issued a summons alleging desertion and wilful neglect to maintain her. The justices found that the husband had acted reasonably in providing the home from which his wife left him, but found him unreasonable in refusing to set up home with his wife in the flat in Liverpool, and, consequently, found him guilty of wilful neglect to maintain her. Held, on appeal, the wife, having deserted her husband in the first place, did not bring the desertion to an end by offering to live with him elsewhere than in the place of his choice, unless she could show that the place of his choice was not a reasonable house for him to offer, having regard to all the circumstances. Consequently, the justices' order had to be discharged: *McGOWAN v. McGOWAN*, [1948] W. N. 415; [1948] L. J. R. 197; [1948] 2 All E. R. 1032, D. C. (applying *Dunn v. Dunn*, *supra*, and *Jackson v. Jackson* (1932), 146 L. T. 406; distinguishing *Millichamp v. Millichamp* (1931), 146 L. T. 96).

- 983. Matrimonial home.** See *BOYT v. BOYT*, § 1628; *McGOWAN v. McGOWAN*, § 982; *DUNN v. DUNN*, § 931.
- 984. Nullity—artificial insemination.** In *L. v. L.* (November 29, 1948), Pearce, J., granted a wife petitioner a decree *nisi* of nullity on the grounds of her husband's incapacity notwithstanding that the wife, as a result of artificial insemination, had conceived a child of which the husband was the father. [Reported by R. C. Calburn, Esq., Barrister-at-Law.] See also [1949] 1 C. L. 71.
- 985.** — — — **Christian doctrine of marriage.** "In any view of Christian marriage the essence of the matter, as it seems to me, is that the children, if there be any, should be born into a family, as that word is understood in Christendom generally, and in the case of a marriage between spouses of a particular faith that they should be brought up and nurtured in that faith. But this is not the same thing as saying that a marriage is not consummated unless children are procreated or that procreation of children is the principal end of marriage": *per* Lord Jowitt, L.C., in *BAXTER v. BAXTER*, § 1002.
- 986.** — — — **decree absolute of nullity, effect of, on rights or property.** See *Re DEWHIRST*, § 3927.
- 987.** — — — **impotence—petition by impotent spouse.** There is no principle of law which lays down that an impotent spouse cannot, in any event, petition for nullity of marriage on the ground of his own incapacity to consummate the marriage. The reaction of the respondent to the situation created by the impotence of the

petitioner should be taken into account in considering whether the circumstances of the case as a whole, including the respondent's attitude, are such as to debar the impotent spouse from suing. The real antithesis is between saying, on the one hand, that the impotent spouse has no cause of action unless the other spouse has repudiated the marriage, whatever that phrase may mean, and, on the other hand, allowing the impotent spouse the right to sue unless in the circumstances of the case it is unjust that he or she should do so, and the latter is the sounder view according to the most recent authorities.

At the date of the marriage the husband was unable to obtain an erection. Twenty years later, as a result of psychological treatment, the husband was able to obtain an erection, though it was doubtful whether even then he was able to effect penetration. A few efforts on the part of the husband to make love to his wife were insufficient to overcome her natural reluctance to begin the sexual side of marriage at this late date. Held, the husband was entitled to petition for nullity on the ground of his own impotence and his right to do so was not conditional on the repudiation of the marriage by the wife: *HARTHAN v. HARTHAN*, [1949] P. 115; [1949] L. J. R. 115, C. A. (applying *F. v. F.*, [1945] S. C. 202, and *G. v. G. (orse. K.)* (1908), 25 T. L. R. 328; distinguishing *Norton v. Seton* (1819), 3 Phillim. 147; *A. v. A. (sued as B.)* (1887), 19 L. R. Ir. 403; and *McM. v. McM.*, [1936] Ir. R. 177 (see also §§ 948, 999, 1004).

988. — **insincerity.** It has frequently been stated that delay is a very material matter to take into consideration in any case where there is doubt whether the petitioner has succeeded in proving the case that he sets out to prove. Yet, as Sir John Hannen said in *M. (orse. D.) v. D.* (1885), 10 P. D. 75: "... delay . . . has never by itself been held to be a bar to a suit of [nullity]".

Per Bucknill, L.J.: "The cases on insincerity seem to me to indicate that the motive which may prove insincerity must be an improper one".

Per Cohen, L.J.: "I wish to reserve the question whether, if the sole reason for the petition were the desire to get rid of a financial liability, that might or might not be a ground on which a Judge might in his discretion refuse to grant a decree, notwithstanding that the petitioner was *prima facie* entitled to it".

For a period of seventeen years the husband had repeatedly tried to consummate the marriage and had used every endeavour to secure consummation by persuading and courting his wife, but without avail. The husband finally left the wife and later became attached to another woman, but continued to support the wife for nine more years, when he finally presented a petition of nullity. One of his reasons for bringing the proceedings was his desire to reduce his financial liability. One of his reasons for delaying it so long was that he had been unaware of the fact that it was possible for a man with his very small means to take divorce proceedings. Held, there had been no approbation of the marriage by the husband, nor any indication of insincerity on his part in commencing proceedings, and, consequently, he was entitled to a decree of nullity: *CLIFFORD v. CLIFFORD*, [1948] P. 187; [1948] L. J. R. 969, C. A. (applying *M. (orse. D.) v. D.*, *supra*; *G. v. M.* (1885), 10 App. Cas. 171; *W. (falsely called R.) v. R.* (1876), 1 P. D. 405; and *Nash v. Nash*, [1940] P. 60).

989. — **jurisdiction—domicil.** It is well established that the Courts of the country in which the parties are domiciled have jurisdiction to pronounce a decree of nullity whether the parties were or were not married in that country. In nullity cases where before the marriage the parties were domiciled in different countries, the parties will have the same domicil at the date of the institution of the suit in one of two events, namely—

- (1) if the marriage is by the proper law voidable and not void, in which case the wife will have acquired the same domicil as the husband by the mere fact of marriage, and retains that domicil until the marriage is annulled;
- (2) if the marriage is void but, nevertheless, the wife on the facts acquired a domicil of choice in the country contemplated as that of the matrimonial domicil and has not subsequently changed that domicil.

The question whether a marriage is void or voidable must be determined by the law of the matrimonial domicil in reference to which the parties may have been supposed to enter into the bonds of marriage.

The wife was born in England of English parents and was now residing in England, but the parties were married in France and the husband, a Frenchman,

was domiciled in France and had resided there at all material times. The wife was seeking a decree of nullity against the husband on two alternative grounds, namely, incurable incapacity or wilful refusal of the husband to consummate the marriage. Held, as the matrimonial domicile was French, the question whether the marriage was void or voidable must be decided by reference to French law. In the absence of proof to the contrary, French law had to be assumed to be the same as English law, and, consequently, the marriage was only voidable. It followed, that as the husband was domiciled in France, the Courts of this country had no jurisdiction to entertain the wife's petition: *DE RENEVILLE v. DE RENEVILLE*, [1948] P. 100; [1948] L. J. R. 1761; [1948] 1 All E. R. 56, C. A. (affirming decision of Jones, J., [1947] C. L. Y. 891; applying *Salvesen v. Austrian Property Administrator*, [1927] A. C. 641; and *Brook v. Brook* (1861), 9 H. L. C. 193). (See also §§ 992, 995.)

990. ———. [Can.] In *GOWER v. STARRETT*, [1948] 2 D. L. R. 853, the Supreme Court of British Columbia held that in a nullity action the Court has jurisdiction and only has jurisdiction where (a) the parties are both domiciled within the jurisdiction, or (b) the respondent cited is resident within the jurisdiction, or (c) the marriage ceremony was performed within the jurisdiction. (*Hutter v. Hutter*, [1944] P. 95, followed.)

991. ———. [Can.] In *SPENCER v. LADD*, [1948] 1 D. L. R. 39, the Supreme Court of Alberta held that it had jurisdiction to make a judgment declaratory of the nullity of a marriage contracted by the plaintiff (who was domiciled in Alberta), the void marriage having been celebrated in a foreign country and the defendant "husband" being domiciled and resident outside Alberta.

992. ——— **residence.** A wife who is resident but, *ex hypothesi*, not domiciled here, cannot compel her husband who is both domiciled and resident abroad to come to this country and submit the question of his status to the Courts of this country.

Quære: Whether residence of both parties is sufficient to found jurisdiction. See *DE RENEVILLE v. DE RENEVILLE*, § 989 (overruling *Robert (orse. De La Mare) v. Robert*, [1947] C. L. Y. 890; criticising *Roberts v. Brennan*, [1902] P. 143; distinguishing *Hutter v. Hutter (orse. Perry)*, [1944] P. 95; and *White v. White*, [1937] P. 111).

993. ——— **publication of banns.** (Marriage Act, 1823 (4 Geo. 4, c. 76), ss. 7, 22.) S. 22 of the Marriage Act, 1823, provides that: "If any person . . . shall knowingly and wilfully intermarry without due publication of banns . . . [his marriage] shall be null and void to all intents and purposes whatsoever". In those cases where a marriage has been declared null and void under the section because some name other than the original name of one of the parties had been given, there had been, in a greater or less degree, an element of fraud or an element of concealment in some form or another. Consequently, the section can have no application where some name other than the original name of one of the parties has been given, not for the purpose of concealing that party's origin or identity, but for the purpose of avoiding concealment.

A wife petitioned for divorce on the ground of her husband's adultery. The husband in his answer asked the Court to declare the marriage null and void on the ground that there had been no due publication of the banns. The petitioner was the legitimate daughter of a Mr. and Mrs. Knight. When she was three years old, her mother began to live with a Mr. Roberts, by whom she had several children. The petitioner was brought up with them in the name of Roberts and did not become aware of her real name until she attained the age of sixteen. She had told her native surname to her husband and to the vicar before marriage, but on the advice of the vicar she used the name of Roberts in having her banns called. Held, (1) as the petitioner had used the name of Roberts not for the purpose of concealing her origin or her identity, but for the purpose of avoiding concealment, it was impossible to say that there had not been due publication of banns; (2) in any case, as the name of Knight had been overridden by the use of the name of Roberts, which had been assumed and generally accredited, the petitioner's true name within the meaning of s. 7 of the Marriage Act, 1823, was the name of Roberts, by which her banns were called before her marriage: *DANCER v. DANCER*, [1949] P. 147; [1949] L. J. R. 138, Ormerod, J. (applying *Sullivan v. Sullivan*

(1818), 2 Hag. Con. 238; distinguishing *Chipchase v. Chipchase*, [1942] P. 37; *Small v. Small* (1923), 67 S. J. 277; *Tooth v. Barrow* (1854), 1 Ecc. & Ad. 371; and *Wormald v. Neale and Wormald* (1868), 19 L. T. 93).

994. — **two marriage ceremonies.** See *REDER v. REDER*, § 924.

995. — **void and voidable marriage, difference between.** "A void marriage is one that will be regarded by every Court in any case in which the existence of the marriage is in issue as never having taken place, and can be so treated by both parties to it without the necessity of any decree annulling it; a voidable marriage is one that will be regarded by every Court as a valid subsisting marriage until a decree annulling it has been pronounced by a Court of competent jurisdiction": *per* Lord Greene, M.R., in *DE RENEVILLE v. DE RENEVILLE*, § 989.

996. — **wife pregnant by another man at time of marriage.** (Matrimonial Causes Act, 1937 (1 Edw. 8 & 1 Geo. 6, c. 57), s. 7 (1), proviso (ii).) In interpreting s. 7 (1) of the Matrimonial Causes Act, 1937, which provides that "... a marriage shall be voidable on the ground: ... (d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner: Provided that ... the Court shall not grant a decree unless it is satisfied — ... (ii) that proceedings were instituted within a year from the date of the marriage ...," the Court cannot treat the section as a statute of limitations to the interpretation of which equitable principles are applicable with the result that in many cases the period of twelve months would be considerably extended. To do so might involve bastardising children that have been born of the union which it was sought to avoid: *CHAPLIN v. CHAPLIN*, [1949] P. 72; [1948] L. J. R. 1839, C. A.

997. — **evidence of blood groups.** In *LIFF v. LIFF* (February 24, 1948, Leeds Winter Assizes) Lord Merriman, P., in a husband's petition for nullity of marriage on the ground that the wife was pregnant by another man at the date of the marriage, admitted expert evidence as to the blood groups of the parties and the child in order to prove the husband's case. The evidence showed that the child could not be the child of the wife by the husband, and on that evidence, corroborated by other evidence, a decree nisi was granted. [Reported by Mrs. Irene Moses, Barrister-at-Law.] See also [1948] W. N. 128.

998. — **wilful refusal to consummate.** (Matrimonial Causes Act, 1937 (1 Edw. 8 & 1 Geo. 6, c. 57), s. 7 (1) (a).) The words "wilful refusal to consummate" in s. 7 (1) (a) of the Matrimonial Causes Act, 1937, connote a settled and definite decision come to without just excuse, and, in determining whether there has been such a refusal, the Judge should have regard to the whole history of the marriage.

The parties were married in October, 1944, when the husband was still serving in the Army. Opportunities for intercourse with his wife were, therefore, limited to those occasions when he was on leave. No attempt to have intercourse was made by the husband until November, 1945, when the first and only attempt was unsuccessful owing to the fact that the husband failed to penetrate. On his next leave the husband, according to his evidence, spoke to the wife about having sexual intercourse and was informed that on account of what had happened on the previous occasion the thought of further intercourse was obnoxious to her. The wife then sought the advice of her parents and her spiritual advisers as to the course she should take. Both her parents as well as her spiritual advisers were anxious to remedy the difficulty which had arisen, but the husband refused to be guided by their advice and presented a petition for nullity on the ground of the wife's "wilful refusal to consummate" the marriage. Held, on appeal, on the facts of the case, the Judge was right in declining to draw the inference that the wife had wilfully refused to consummate the marriage.

Quære: Whether the fact that the husband had for some months refused to consummate the marriage necessarily prevented him, if he changed his mind, from obtaining relief if the wife at a later date wilfully refused to allow consummation: *HORTON v. HORTON*, [1948] W. N. 3; [1948] L. J. R. 396; [1947] 2 All E. R. 871, H. L.

999. — **potency.** "It must be a question of degree, and, therefore, of evidence, whether in a case where potency has been acquired or restored after marriage (whether

by operation or by some psychological change), the effective cause of non-consummation at a given date is the refusal of the respondent": *per* Lord Merriman, P., in *HARTHAN v. HARTHAN*, § 987.

1000. — — — **coitus interruptus.** (Matrimonial Causes Act, 1937 (1 Edw. 8 & 1 Geo. 6, c. 57), s. 7 (1) (a).) In *Baxter v. Baxter*, § 1002, the House of Lords drew a distinction between conception, on the one hand, and mere conjunction of bodies on the other. There is a complete conjunction of bodies (a *vera copula*) as soon as full entry and penetration has been achieved, irrespective of whether there is completion of the act within the body of the woman either with or without the use of mechanical contraceptives. Consequently, in the case of *coitus interruptus*, practised by one party against the will of the other, it is impossible to say that the marriage has not been consummated, although in a proper case *coitus interruptus* may be a ground for pronouncing a decree on the ground of cruelty or desertion: *WHITE (orse. BERRY) v. WHITE*, [1948] P. 330; [1948] L. J. R. 1476; [1948] 2 All E. R. 151, Willmer, J. (applying *Baxter v. Baxter*, *supra*; *D—e v. A—g* (1845), 1 Rob. Eccl. 279; and *L. v. L.* (1922), 38 T. L. R. 697; not following *Grimes (orse. Edwards) v. Grimes*, § 1001). (See also § 901.)

1001. — — — —. (Matrimonial Causes Act, 1937 (1 Edw. 8 & 1 Geo. 6, c. 57), s. 7 (1) (a).) It has been laid down by the House of Lords in *Baxter v. Baxter*, § 1002, that there may be normal and full intercourse although preventatives are used to prevent the conception of children, but it has always been held, from the earliest days that, to establish consummation of marriage, intercourse must be natural and complete. There is no natural and no complete intercourse unless there is emission from the one into the body of the other, and, therefore, the practice of *coitus interruptus* does not merely prevent the procreation of children: it also prevents any real intercourse at all, and, therefore, consummation of the marriage: *GRIMES (orse. EDWARDS) v. GRIMES*, [1948] P. 323; [1948] L. J. R. 1471; [1948] 2 All E. R. 147, Finnemore, J. (applying *Baxter v. Baxter*, *supra*; and *D—e v. A—g* (1845), 1 Rob. Eccl. 279). [Cf. *White (orse. Berry) v. White*, § 1000.]

1002. — — — **contraceptives.** (Matrimonial Causes Act, 1937 (1 Edw. 8 & 1 Geo. 6, c. 57), s. 7 (1) (a).) In s. 7 (1) (a) of the Matrimonial Causes Act, 1937, which provides that "a marriage shall be voidable on the ground that the marriage has not been consummated owing to the wilful refusal of the respondent to consummate the marriage", the word "consummate" denotes *coitus* and not *coitus* which may result in conception. Thus, a marriage is not voidable on the ground that one of the spouses insisted on the use of a contraceptive sheath before consenting to have intercourse. Similarly, a marriage is not voidable where sterility has been artificially produced before marriage, but where the operation has left the husband able to achieve penetration and emission.

Quære: Whether a marriage has been consummated where there has been *coitus interruptus* or where force or fraud has been employed.

The parties had been married for ten years. During the whole period the wife had never permitted the husband to have intercourse with her without using a sheath, although he had constantly pleaded with her to have intercourse in the natural way. Hodson, J., and the Court of Appeal were bound by *Cowen v. Cowen*, [1946] P. 36, to hold that the marriage had not been consummated, but held that the acquiescence of the husband in the use of a contraceptive, although reluctant, meant that he had failed to establish that the non-consummation was due to a wilful refusal by the wife. The House of Lords held (1) that it was impossible to conclude from the evidence that the husband had acquiesced in the wife's refusal to have normal intercourse so as to debar himself from the relief (if any) which such refusal would give him, but (2) that the marriage had been consummated: *BAXTER v. BAXTER*, [1948] A. C. 274; [1948] L. J. R. 479, H. L. (affirming decision of Court of Appeal, [1947] L. J. R. 785, on different grounds; overruling *Cowen v. Cowen*, *supra*, and *J. v. J.*, [1947] C. L. Y. 839; approving *L. v. L.* (1922), 38 T. L. R. 697). (See also § 985.)

1003. **Petition—answer alleging knowledge of adultery and condonation.** See *HUBBOCK v. HUBBOCK*, § 2874.

1004. — nullity—form of pleading. “Much of the difficulty in this case has been caused by the mutually inconsistent character of these allegations, one of which assumes that the husband was capable of consummating the marriage and that its non-consummation was owing to wilful refusal on the part of the wife, while the other asserts that the husband was, and still is, impotent. This, in my opinion, is an embarrassing form of pleading which should not be encouraged”: *per* Lord Merriman, P., in *HARTMAN v. HARTMAN*, § 987.

1005. — service on co-respondent. See *GILBERT v. GILBERT AND BROOKS*, § 1012.

1006. — within three years of marriage—“exceptional hardship”. (Matrimonial Causes Act, 1937 (1 Edw. 8 & 1 Geo. 6, c. 57), s. 1 (1).) S. 1 (1) of the Matrimonial Causes Act, 1937, allows a petition to be presented within three years of marriage on the ground that the case is one of exceptional hardship suffered by the petitioner, or of exceptional depravity on the part of the respondent. Once a Judge has come to a conclusion on that, he has to exercise his discretion and decide whether the case is one in which he should give leave.

The wife, aged nineteen years, and serving with the W.A.A.F., refused during the nine days of the honeymoon, and at subsequent week-ends when the husband, aged twenty-one years, came on leave from military duty, to permit sexual intercourse without the use of a contraceptive, saying that she did not want to bear children. Only four months after the wedding she wrote to him that she did not want to live with him any more. Nine months after the wedding she committed adultery with another man. It was contended but not proved that the wife's conduct had had a bad effect on the husband's health and was detrimental to his career in the army. Finally, it was contended that it was hard on the husband that he was unable to get his case into the list before the House of Lords decided *Baxter v. Baxter*, § 1002, in which case he would have been able to obtain a decree of nullity. Held, none of these facts constituted “exceptional hardship” justifying presentation of the petition within three years of marriage under s. 1 (1) of the Matrimonial Causes Act, 1937: *FISHER v. FISHER*, [1948] P. 263; 64 T. L. R. 245, C. A.

1007. Place of trial—“Divorce Towns”. SI 1948 No. 2725 (adding Bournemouth and Kingston-upon-Hull to the list of Divorce Towns).

1008. Poor persons—costs. (R. S. C., Ord. 16, rr. 28 (1), 31BB; Judicature Act, 1925 (15 & 16 Geo. 5, c. 49), s. 31 (1) (h).) R. 28 (1) of Ord. 16, provides that: “unless the Court or a judge shall otherwise order no poor person shall be liable to pay costs to any other party or be entitled to receive from any other party any profit costs or charges”. By this rule it was intended to leave the matter to the unfettered discretion of the Judge so as to enable him in any proper case to order a poor person whose financial position has improved, or where the circumstances otherwise justify, to make such contribution as he thinks proper towards the costs of the opposing party. This general discretion is not limited by the special power under r. 31BB to make an order as to costs against a poor person who has obtained his certificate by fraud or misrepresentation, whatever his financial position may be at the date of the order. However, subject to this general discretion, although there may be cases in which it is proper, after careful investigation of evidence as to increase of means or other matters, to make an order for a poor person to make some contribution towards the costs of the opposing party, the circumstances would have to be wholly exceptional to justify an order against a poor person to pay the full taxed profit costs.

In the first case, the Commissioner had made a “special order” against a husband petitioner, who was suing as a poor person, and whose petition had been dismissed, ordering him to pay the costs of the respondent wife as if he were not a poor person. On further application, the Commissioner gave leave to appeal, indicating that he had not appreciated the effect of his “special order” which was not justified under the circumstances. Held, there were no circumstances which would warrant making an order for payment of these costs by the husband.

In the second case, the Commissioner had made a similar order against a husband respondent, defending as a poor person, but had refused leave to appeal. In this case, when the poor person's certificate was granted to the husband, he

was serving as a member of His Majesty's forces, but his financial position had greatly improved, and he was now earning £6-£7 a week. Held, the Commissioner had jurisdiction to make the order, which was within his discretion, and, as he had not given leave to appeal under s. 31 of the Judicature Act, 1925, the Court could not entertain the application: *OLDS v. OLDS*, *BRITTAN v. BRITTAN*, [1948] P. 282; [1948] L. J. R. 1385, C. A.

1009. Procedure—appeal from registrar's order under Married Women's Property Act, 1882, s. 17. (R. S. C., Ord. 54, r. 22A (1) (a), (2); Matrimonial Causes Rules, 1947 (S. R. & O., 1947, No. 523), rr. 59, 81, 82.) The provisions of r. 59 of the Matrimonial Causes Rules, 1947, which provide that "a party may appeal from an order or decision of a registrar to a judge in chambers by summons to be issued. . ." apply to an appeal from an order of a registrar under s. 17 of the Married Women's Property Act, 1882, notwithstanding the fact that r. 82 of the Rules, which constitutes the registrar a judge for settling disputes under the section, provides that ". . . a registrar may exercise all the jurisdiction and powers conferred upon a judge . . .", because a registrar, although armed with the jurisdiction and powers of a judge under this section, still remains a registrar. Likewise, the fact that under R. S. C., Ord. 54, r. 22A, an appeal from a judgment of a master in the King's Bench Division who has tried an issue under the section lies to the Divisional Court, and that by virtue of r. 81 of the Matrimonial Causes Rules, 1947, "the Rules of the Supreme Court shall . . . apply . . . to the practice and procedure in any matrimonial cause . . .", is immaterial, because the Rules of the Supreme Court only apply in divorce subject to the Matrimonial Causes Rules: *BERNBAUM v. BERNBAUM*, [1948] W. N. 463; [1949] L. J. R. 236; [1948] 2 All E. R. 1011, Barnard, J.

1010. — decree nisi made in private. See *STONE v. STONE*, § 923.

1011. — Matrimonial Causes Rules. Matrimonial Causes (Amendment) Rules, 1948 (No. 1444). These Rules came into operation on July 5, 1948. They amend the provisions of the Matrimonial Causes Rules, 1947 (see [1947] C. L. Y. 910) as noted hereunder:

R. 1 (3)—new definition of "Un defended cause".

R. 2 (2) (applications for leave to present a petition)—words "whether there has been a previous application under this Rule" inserted after "alleged".

R. 8 (2) proviso (service of petition, etc.)—"spouse" inserted after "respondent".

R. 9 (1) (service out of the jurisdiction)—new paragraph substituted.

R. 12 (3) (entry of appearance)—words "in the book provided for the purpose and" deleted.

R. 14 (5) (a) (supplemental and amended petitions)—words "the memorandum of appearance must be amended or" inserted after "within which".

R. 15 (1) (interveners)—words "a form of acknowledgment of service in accordance with Form 4 and a memorandum of appearance in duplicate in accordance with Form 7" inserted after "Form 13".

R. 16 (answer)—new rule substituted.

R. 17 (evidence in support of and service of answer)—Para (4A) inserted.

R. 20 (pleadings out of time)—the present paragraph to be numbered (1) and a new para. (2) added at the end thereof.

R. 24 (medical inspectors)—new paragraphs (1), (1A), substituted for para. (1); in para. (2) the words "The Order endorsed with" deleted; in para. (4), the words "The petitioner's solicitor shall produce to the medical inspector or inspectors a minute of identification and thereupon" deleted.

R. 30 (registrars' certificate, etc.)—in para. (1) (d), the words "of the respondent" deleted and the following words inserted at the end "or an order made that there shall be no medical inspection"; in para. (3) for the words "no answer has been filed", the words "relief is sought under section 176 (d) of the principal Act or section 7 (1) (b) of the Act of 1937" substituted; in para. (4), for the words "where an answer has been filed" the words "other than those causes in which relief is sought under s. 176 (d) of the principal Act or section 7 (1) (b) of the Act of 1937".

R. 37 (interventions by King's Proctor)—the words "file and" deleted in paras. (3), (4).

R. 55 (2) (custody, etc.)—"respondent" inserted after "spouse".

Form 4 (acknowledgment of service)—amended.

Form 7 (memorandum of appearance)—new paragraphs 5-8 substituted for paras. 5-7.

Form 11 (affidavit of service)—amended.

- 1012.** — **service—on co-respondent.** (Matrimonial Causes Rules, 1947 (S. R. & O., 1947, No. 523), r. 8 (2).) In the proviso to rule 8 (2) of the Matrimonial Causes Rules, 1947, which states that "where the party to be served is a respondent, his signature on the acknowledgment of service shall be proved at the trial or hearing", the expression "respondent" does not include a co-respondent. It follows that, whereas in the case of a respondent spouse there is an express requirement that the acknowledgment of service on the prescribed form must be proved by establishing the identity of the signature at the trial, in the case of a co-respondent no proof of the signature is required: *GILBERT v. GILBERT AND BROOKS*, [1948] P. 314; [1948] L. J. R. 1310, C. A. [Note: this point has been put beyond argument by the amendment of r. 8 (2) of the Matrimonial Causes Rules, 1947; see § 1011.]
- 1013.** — **order dispensing with—service on woman named.** [N.Z.] In *BOND v. BOND*, [1947] N. Z. L. R. 822, the Supreme Court of New Zealand held that the power to dispense with service on a woman with whom it is alleged that the respondent husband committed adultery should not be lightly exercised, and dismissed a motion for dispensation. (*Jones v. Jones*, [1896] P. 165, and *Saunders v. Saunders*, [1897] P. 89, referred to.)
- 1014.** — **service out of the jurisdiction.** (Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 42.) The mere fact that the wife has not sufficient means to advertise is not enough to justify the Court in dispensing with service altogether, under the power given by s. 42 of the Matrimonial Causes Act, 1857, because as was laid down by Lord Merriman, P., in *Iuccioni v. Iuccioni*, [1943] 1 All E. R. 260 (in a passage cited by Scott, L.J., in the same case on appeal, [1943] P. 49), "the Court, before dispensing with service, should require to be satisfied that the respondent spouse has become aware of the fact that the petition is being prosecuted, or, at the very least, of the intention to prosecute it, and in either case has had time and opportunity to indicate whether he or she desires to defend".
- The husband went to Canada in 1926, and until 1943 wrote several letters to his wife in England, telling her that he would return to England when he could afford to do so, but in 1943 he wrote saying that he never intended to return. This letter stated that he had left his former address, but gave no new address. The cost of advertising was beyond the wife's means, and she applied for leave to dispense with service altogether. Held, the husband must have known that he had deserted his wife and that that desertion had continued for more than three years. Therefore, it was a fair inference that he knew that the wife would take proceedings for divorce. Under the circumstances, the conditions laid down by Lord Merriman, P., had been fulfilled, and service of the petition on the husband should be dispensed with: *WEIGHMAN v. WEIGHMAN*, [1947] W. N. 307; 64 T. L. R. 40; [1947] 2 All E. R. 852, C.A.
- 1015.** — **summons—matters to be included in one summons.** After the closure of the pleadings in a divorce cause all matters which are required to be dealt with by summons to a registrar should, if practicable, be included in one summons. If such a summons is adjourned on all or any one or more of the matters raised it may be restored to the list without fee by lodging the usual notice in the Registry. If it is necessary to draw up more than one order a fee of 5s. will be payable for each additional order. If separate applications are made in respect of matters which could properly have been dealt with in one summons the party on whose behalf the applications are made may be ordered to pay the additional costs incurred: PRACTICE NOTE, dated November 15, 1948, issued by the Principal Probate Registry. See also [1948] W. N. 463.
- 1016.** **Rehearing.** In *TUCKER v. TUCKER* (October 14, 1948), the Divisional Court (Hodson and Pilcher, JJ.) refused a wife's application for a rehearing of an undefended matrimonial cause in which the husband had been granted a decree *nisi* on an allegation of cruelty. The grounds for refusal were that on the material before it the Court had no good reason to believe that the husband had wrongly

succeeded in his suit, and that it was not in the public interest to order a rehearing. See [1949] 1 C. L. 73.

- 1017.** — “**error of the Court**”. (Matrimonial Causes Rules, 1944, r. 36.) The test whether “no error of the court at the hearing” is alleged within the meaning of r. 36 of the Matrimonial Causes Rules, 1944, with the result that an application for a re-hearing lies to the Divisional Court, or whether such error is alleged, with the result that an appeal lies to the Court of Appeal, is as stated by Lord Merriman, P., in *Peek v. Peek*, [1947] C. L. Y. 915, namely: “Is the allegation which is made against the decision an allegation that the court went wrong on the materials before it, or is it an allegation that the court went wrong because evidence on a vital matter was concealed from the court?”

Quære: Whether or not it may be immaterial to consider what, in fact, happened before the court, provided the applicant who is seeking a re-hearing is basing his whole case on something quite irrespective of the course the case in fact took on the material before the Court.

The husband had obtained a decree nisi on the ground of the wife's desertion. In his discretion statement he had admitted that he had been living in adultery with a woman since 1924. The wife had not defended the petition, but two letters were before the Court, one written by the husband and one written by the wife in answer to it, which were plainly susceptible of the interpretation that they were written in the light of the known association with the woman mentioned in the discretion statement, but there was nothing in either of those letters which necessarily placed any intention of the husband to keep away from his wife at an earlier date than 1924. New material had come before the Court since the decree in the form of letters written by the husband in 1922, which showed that he wanted to be “left alone” by his wife although she wanted him to return. The Divisional Court had held that it was the husband's concealment of material documents, and not the Judge's failure to appreciate the full implications of the documents before him, which might induce some other tribunal to come to a different conclusion, and that in consequence thereof there had been “no error of the Court”, with the result that they were competent to order a rehearing under r. 36, and, having regard to the facts of the case, ought to do so. Held on appeal, the application of r. 36 to the facts of the case by the Divisional Court was entirely correct, and, therefore, the appeal should be dismissed: *PEEK v. PEEK*, [1948] W. N. 342; 64 T. L. R. 429; [1948] 2 All E. R. 297, C. A. (affirming decision of Divisional Court, [1947] C. L. Y. 915). (See also §§ 878, 879.)

- 1018. Restitution of conjugal rights.** (Judicature Act, 1925 (15 & 16 Geo. 5, c. 49). s. 186.) Before the Court can grant a decree for restitution of conjugal rights it must be satisfied that a proper case has been made out by the petitioner, and that the petitioner is sincere in the presentation of his or her case. It is the duty of the Court to be satisfied on those matters, whatever course has been taken by the respondent and whether the case is defended or undefended, but, although the petitioner has ultimately to satisfy the Court on these matters, it is the practice of the Divorce Division to allow the respondent to open his or her case, where the respondent's answer amounts to an admission that he or she has withdrawn from cohabitation and to an allegation that he or she did so for good cause and, therefore, that the petitioner is not entitled to the relief sought.

Counsel for the petitioner had opened, and the question of the right to begin was not raised until the conclusion of his opening, when the Commissioner of his own motion intimated that counsel for the respondent should have begun and ruled that he should forthwith call evidence. On his refusing to do so the petitioner's evidence was taken and a decree granted. Held, notwithstanding the practice above referred to, having regard to the course taken at the trial, the refusal of counsel for the respondent to call evidence at that stage was justified; there must be a new trial: *HEWITT v. HEWITT*, [1948] P. 150; [1948] L. J. R. 843, C. A. (applying *Cherry v. Cherry* (1858), 1 Sw. & Tr. 319; and *Smith v. Smith*, [1900] P. 66; distinguishing *Burroughs v. Burroughs* (1862), 31 L. J. P. & M. 56).

- 1019 Separation agreement—infant spouse.** [N.Z.] See *HOLE v. HOLE*, § 1704.

1020. Separation order. (Summary Jurisdiction (Separation and Maintenance) Act, 1925 (15 & 16 Geo. 5, c. 51), s. 6.) S. 6 of the Summary Jurisdiction (Separation and Maintenance) Act, 1925, states that an interim order can only continue until the final determination of the case, with the proviso that in any case it shall not remain in operation for more than three months.

The justices, after hearing the evidence of both parties, indicated that they hoped that a reconciliation might be effected, suggested that the probation officer should intervene, and in the meantime made an interim order in respect of the children only. When the case came before the Court again, only one of the justices present on that day had been a member of the Court which had heard the previous evidence. Except that a report was received from the probation officer, no further evidence was heard on this occasion, but the Court as then constituted made a separation order, granted the custody of the children to the wife, and made an order in her favour for maintenance. Held, the Court had no jurisdiction to make any order at all because it had not heard a word of the evidence. Consequently, the case had to be sent back for retrial: *JOSEPH v. JOSEPH*, [1948] W. N. 59; [1948] L. J. R. 513, D. C.

1021. Variation of settlements. (Judicature Act, 1925 (15 & 16 Geo. 5, c. 49), s. 192.) When circumstances have arisen which under the statute entitle the Court to entertain an application for variation of a settlement, there is a complete discretion in the Judge as to the order he shall make which is restricted only by the ordinary principles that govern a judicial discretion, *i.e.*, the Judge should take into consideration whatever is relevant and exclude whatever is irrelevant. On an application to vary a settlement the following circumstances *inter alia* are relevant:—

- (1) what is the nature of the settlement which it is sought to vary;
- (2) the circumstances in which it was made;
- (3) the circumstances in relation to which it was executed;
- (4) the financial position of the spouses;
- (5) the question how one or other or both of them will be affected if matters are left as they are;
- (6) the position of children in cases where children take an interest in the settled property or where one or other of the parties undertakes by contract or by law the maintenance of infant children.

Thus, in a proper case there is nothing that would prevent the Court from making provision for a guilty destitute husband.

On the other hand, it has been clearly laid down that the element of punishment of the guilty spouse is to be excluded as irrelevant.

In a separation deed the wife covenanted *inter alia* to make her husband an allowance of £5 a week free of income tax during the joint lives of herself and her husband for his maintenance and support. After the wife had obtained a decree of divorce on the ground of the husband's adultery, she applied for a variation of the settlement which included complete cancellation of the covenant to make the allowance to the husband. Willmer, J., allowed the application on the grounds (1) that the dissolution of the marriage had brought about a change in the settlement which was analogous to that of an ordinary contract where the consideration had wholly failed, and (2) that in any event the Court had no power to order provision to be made for a guilty destitute husband. Held on appeal, no question of frustration or failure of consideration could arise in a case under this jurisdiction, and in a proper case the Court had power to order provision to be made for a guilty destitute husband. The Court had to consider all the relevant circumstances of the case, which showed *inter alia* that the wife was maintaining an invalid daughter, that the husband's financial position had considerably improved, that he had married another woman who had considerable means of her own, and, in particular, that, if the settlement was allowed to stand, the wife would pay the ordinary household expenses of the husband and the new wife and help in the maintenance of the new wife. For these reasons, the Judge's order should be affirmed on different grounds: *TOMKINS v. TOMKINS*, [1948] P. 170; [1948] L. J. R. 1028, C. A. (applying *Wigney v. Wigney* (1882), 7 P. D. 177).

1022. — meaning of settlement. (Judicature Act, 1925 (15 & 16 Geo. 5, c. 49), s. 192; Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 11.) The

authorities dealing with the meaning attributable to the expression "settlement" in s. 192 of the Judicature Act, 1925, establish the following general propositions:—

1. A transaction may be a settlement within the meaning of s. 192 although it falls far short of being a settlement such as Chancery Judges and practitioners in the Chancery Courts would require before they could hold that there was a settlement. The Court need not find anything like a strict settlement in order to invoke the jurisdiction of the section.
2. Where a husband has made a provision for his wife, or a wife for her husband, in the nature of periodical payments, that amounts to a settlement within the meaning of the section. What matters is that there should be provision for the financial benefit of one or other or both of the spouses as spouses and with reference to their married state.
3. The mere fact that the husband or wife obtains an immediate vested interest does not withdraw the transaction from the provisions of s. 192.

Applying these general propositions, it was held that a life insurance policy effected by a husband under the provisions of s. 11 of the Married Women's Property Act, 1882, for the benefit and separate use of his wife by which the event insured against was the death of the husband was a "settlement" within the meaning of s. 192 of the Judicature Act, 1925, which the Court had power to vary after the dissolution of the marriage: *GUNNER v. GUNNER AND STIRLING*, [1949] P. 77; [1948] L. J. R. 1904, Wallington, J. (applying *Cousins v. Sun Life Assurance Co.*, [1933] Ch. 126; *Bosworthick v. Bosworthick*, [1927] P. 64; *Prinsep v. Prinsep*, [1929] P. 225; and *Melvill v. Melvill and Woodward*, [1930] P. 159).

1023. ———. (Judicature Act, 1925 (15 & 16 Geo. 5, c. 49), s. 192.) Applying the general propositions laid down in *Gunner v. Gunner and Stirling*, § 1022, it was held that a policy of assurance whereby on payment of a single premium by a husband a certain sum was payable on his death to his wife, who was the beneficiary under the policy, was a "settlement" within the meaning of s. 192 of the Judicature Act, 1925, because, although the policy was not expressly issued under the provisions of s. 11 of the Married Women's Property Act, 1882, with the result that the husband did not become a trustee for the wife under the policy, nevertheless the wife under the policy obtained an immediate vested interest, and the husband took out the policy for the benefit of his wife because he desired thereby to make provision for his wife in her character as wife. The fact that in this case the wife's rights were contingent on her surviving the husband could not make any difference: *BOWN v. BOWN AND WESTON*, [1949] P. 91; [1948] L. J. R. 1912, Wallington, J.

1024. War marriages—British Guiana. See § 287.

1025. — Mauritius. See § 331.

1026. — New Zealand. See § 333.

1027. — Seychelles. See § 351.

1028. ARTICLES. Recent decisions on practice (founded on *Peek v. Peek*, [1947] C. L. Y. 915, and *Weighman v. Weighman*, § 1014): 92 S. J. 6. Jurisdiction and discretion (founded on *Forsyth v. Forsyth*, [1947] C. L. Y. 880; *Hutchinson v. Hutchinson*, [1947] C. L. Y. 1405, and *Stewart v. Stewart*, [1947] C. L. Y. 1406): 92 S. J. 35. *Baxter v. Baxter* (§ 1002): 205 L. T. J. 30; 92 S. J. 104, *Law Notes*, March, 1948, p. 62; 98 L. J. 173; 112 J. P. J. 211; *Modern Law Review*, April, 1948, p. 176. Variation of marriage settlements after divorce or nullity, by D. Tolstoy: 12 *Conveyancer* (N.S.) 112. Appointment to wife after divorce: 98 L. J. 46. Res judicata (founded on *Molesworth v. Molesworth*, § 949): 92 S. J. 61, 90. Matrimonial jurisdiction of justices; enforceability of order while parties residing together (founded on *Evans v. Evans*, [1947] C. L. Y. 886); 112 J. P. J. 67, 195. Jurisdiction in nullity suits (founded on *De Reneville v. De Reneville*, § 989); *Law Notes*, February, 1948, p. 42. Just cause for desertion: bona fide belief of adultery (founded on *Beer v. Beer*, [1947] C. L. Y. 849, and *James v. James*, § 950): 92 S. J. 120. Restitution suits—right to open (founded on *Hewitt v. Hewitt*, § 1018); 205 L. T. J. 145. Discretion cases: 92 S. J. 133. Wife obtains a divorce and subsequently commits an act of intercourse—effect upon existing maintenance

order: 112 J. P. J. 179. Recent practice decisions (decree absolute; restitution suit—right to begin): 92 S. J. 162. Wilful refusal as a background to constructive desertion (founded on *Baxter v. Baxter*, § 1002, and *Rice v. Raynold*, § 936): 112 J. P. J. 211. The King's Proctor and the onus of proof (founded on *Bluff v. Bluff* (1946), 175 L. T. 112): 205 L. T. 184. Standard of proof where adultery is alleged—essential elements of a charge of adultery—functions of an appellate court (founded on *Ginesi v. Ginesi*, § 863): 92 S. J. 189. Justices—duty to state reasons (founded on *Sullivan v. Sullivan*, [1947] C. L. Y. 908)—change of panel (founded on *Joseph v. Joseph*, § 1020): 92 S. J. 189. Some aspects of the doctrine of condonation (founded on *Fearn v. Fearn*, § 885): 92 S. J. 212. Effect of divorce on settlements on a future spouse (founded on *Re Slaughter*, [1945] Ch. 355): 92 S. J. 214. Matrimonial jurisdiction of justices—particulars of offence: 112 J. P. J. 243. The three C's (condonation, connivance and collusion) (founded on *Kafton v. Kafton*, § 903): 92 S. J. 252. Conflict of laws—South African divorce: 98 L. J. 286. Non-cohabitation clauses in magistrates' orders: 92 S. J. 292. Points in practice (nullity—founded on *Liff v. Liff*, § 997, and *Smith v. Smith*, [1947] C. L. Y. 896) (condonation—founded on *Fearn v. Fearn*, § 885, and *Kafton v. Kafton*, § 903): 98 L. J. 299. The wife's share (founded on *Ward v. Ward*, [1947] C. L. Y. 875—amount of maintenance): *Solicitor*, May, 1948, p. 109. Recent developments in nullity of marriage (founded on *De Reneville v. De Reneville*, [1947] C. L. Y. 891–2, and see § 989) by R. H. Graveson: 12 *Conveyancer* (n.s.) 185. Refusal of sexual intercourse and the law of desertion (founded on *Weatherley v. Weatherley*, [1947] C. L. Y. 846) by Jasper Ridley: 64 L. Q. R. 243. The King's Proctor and the standard of proof: adultery (founded on *Bluff v. Bluff*, [1946] 2 All E. R. 63, and *Ginesi v. Ginesi*, [1947] C. L. Y. 809, and see § 863): 205 L. T. J. 312, 327. Intention in cruelty cases (founded on *Squire v. Squire*, § 907): 92 S. J. 318; 98 L. J. 521. Costs on appeal (founded on *Kara v. Kara and Holman*, § 952): 92 S. J. 345. Matrimonial causes—estoppel (founded on *Hudson v. Hudson*, § 951): 206 L. T. 6. Residence in matrimonial and bastardy cases (founded on *Forsyth v. Forsyth*, [1947] C. L. Y. 880, 1861): 112 J. P. J. 429. New amending rules and some recent practice points (Matrimonial Causes Amendment Rules, 1948): 92 S. J. 402. Gift or settlement? (founded on *Gunner v. Gunner*, § 1022): 206 L. T. 69. Husband and wife—residence and cohabitation (founded on *Evans v. Evans*, [1947] C. L. Y. 886; *Thomas v. Thomas*, § 978): 206 L. T. 70. Proof of adultery—inference from husband's absence (founded on *Hadlum v. Hadlum*, § 868): 206 L. T. 86. Some notes on collusion (founded on *Emmanuel v. Emmanuel*, [1946] P. 115): 92 S. J. 436. The nullity of marriage—a study in comparative law and legal reform, by E. J. Cohn: 64 L. Q. R. 324, 523. Annulment jurisdiction and law—void and voidable marriages, by John D. Falconbridge (founded on *De Reneville v. De Reneville*, § 989): *Canadian Bar Review*, June–July, 1948, p. 907. Estoppel in divorce (founded on *James v. James*, § 950, and *Hudson v. Hudson*, § 951): 92 S. J. 462. Service on co-respondent (founded on *Gilbert v. Gilbert & Brookes*, § 1012): 98 L. J. 521. The jurisdiction of the Divorce Divisional Court (founded on *Peek v. Peek*, § 878): 92 S. J. 508. Rushcliffe report and divorce: 92 S. J. 567. Custody and maintenance orders (founded on *Heworth v. Heworth*, § 913, *Flood v. Flood*, § 914, *Re Kinseth*, [1947] C. L. Y. 876): 206 L. T. 224; 112 J. P. J. 647, 713. Nullity claim by impotent spouse (founded on *Harthan v. Harthan*, § 948): 206 L. T. J. 243; 92 S. J. 536. Connivance (founded on *Woodbury v. Woodbury*, § 892): 206 L. T. 256; 92 S. J. 595. Residence together and cohabitation (founded on *Evans v. Evans*, [1947] C. L. Y. 886, and *Watson v. Tuckwell*, [1947] C. L. Y. 248): 92 S. J. 625. Variation of settlements (founded on *Tomkins v. Tomkins*, § 1021): 98 L. J. 612. Publication of banns (founded on *Dancer v. Dancer*, § 993): 206 L. T. 298; 92 S. J. 712. Desertion and domicile (founded on *Zanelli v. Zanelli*, § 929): 206 L. T. 310. Appeal (founded on *Peek v. Peek*, § 1017, *Everitt v. Everitt*, § 921, and *Woolfenden v. Woolfenden*, [1947] C. L. Y. 843): 98 L. J. 654. Custody (founded on *Boyt v. Boyt*, § 1628): 98 L. J. 654. Who decides where the matrimonial home is going to be? (founded on *Dunn v. Dunn*, § 931): 92 S. J. 670. Standard of proof in adultery (founded on *Ginesi v. Ginesi*, § 863): 22 *Australian Law Journal* 216.

- 1029. BOOKS PUBLISHED.** Grant, H. B.—Marriage, Separation and Divorce. 2nd ed. [4s.]. Humphreys, T. S.—Notes on Matrimonial Causes [7s. 6d.]. Martin, E. T. Elliott.—Instructions and Evidence in Matrimonial Causes [12s. 6d.]. Rees, D. P.—Probate and Divorce Handbook [27s. 6d.]. Seuffert, S.—Divorce Handbook including other Matrimonial Causes [17s. 6d.]. Tolstoy, D.—Divorce and Matrimonial Causes. First Supplement to December 1, 1947 [7s. 6d.]. Warmington, L. C.—Practice in Divorce. (Reprint of pp. 135–177 of Warmington's Divorce Law. Incorporating Matrimonial Causes Rules, 1947–48) [8s. 6d.].

EASEMENTS AND PRESCRIPTION

- 1030. Fences—railway fences—prescriptive obligation to maintain.** See *CORDINGLEY v. GREAT WESTERN RY.*, § 281.

- 1031. Requisitioned land, easements over—extinguishment or modification.** The Requisitioned Land and War Works Act, 1948 (11 & 12 Geo. 6, c. 17), s. 4, contains provisions as to the discharge or modification of easements over land acquired under the Defence Acts.

- 1032. ———.** Extinguishment or Modification of Easements Regulations, 1948 (No. 1582), made under the Requisitioned Land and War Works Act, 1948, s. 4 (2) (3); came into operation on July 9, 1948; prescribe certain adaptations of the Requisitioned Land and War Works Act, 1945 (8 & 9 Geo. 6, c. 43), and of the Town and Country Planning Act, 1944 (7 & 8 Geo. 6, c. 47), for the purposes of s. 4 (2) (3) of the Act of 1948.

- 1033. Way—covenant to repair road.** See *FYERS-TURNER v. BROWN*, § 624.

- 1034. ——— excessive user.** The principle enunciated by Farwell, J., in *Todrick v. Western National Omnibus Co.*, [1934] Ch. 190, that “in judging whether there is an excessive user of the right regard must be had to ‘the circumstances of the case, the situation of the parties and the situation of the land’” is a principle which must not be allowed to carry the Court blindly. The question of the scope of the right of way expressed in a grant or reservation is *prima facie* a question of construction of the words used. If those words are susceptible of being cut down by some implication from surrounding circumstances, it being, to construe them properly, necessary to look at the surrounding circumstances, of course, they would be cut down.

An assurance from the plaintiff to the defendant comprised a right of way over Oak Way. Oak Way was shown on a map as a 20ft. to 30ft. roadway. The assurance contained a covenant whereby the plaintiff covenanted that he would make up and complete and maintain Oak Way until it should be taken over as a public road by the local authority. There was no covenant restricting the user of the house comprised in the assurance. The plaintiff alleged that there had been an excessive user of the right of way by the defendant, because the house comprised in the assurance formed part of a building estate which was confined to private residential dwelling-houses, whereas the defendant had used the house for the purposes of his business as a builder and had permitted heavy lorries to go up Oak Way and to deposit their contents at the house or to take materials away, thereby changing the limited and occasional user of the right of way which one expects in the case of a private dwelling-house to an extended and repeated user. Held, as between the parties there was nothing to confine the user of the property assured to that of a residential house and, therefore, the fact that the house formed part of a building estate of residential dwelling-houses was not one of the surrounding circumstances which one was entitled to take into account in construing the grant of the right of way. On the contrary, the size of the road and the fact that it was going to be taken over as a public road showed that the right of way granted was a right of way of the ordinary character: *ROBINSON v. BAILEY*, [1948] W. N. 402; [1948] 2 All E. R. 791, C. A. (applying *White v. Grand Hotel, Eastbourne*, [1913] 1 Ch. 113; distinguishing *Todrick v. Western National Omnibus Co.*, *supra*).

- 1035. ———.** In *KAIN v. NORFOLK AND BAKER (HAULIERS)* (December 8, 1948), the first defendant had a right of way over the plaintiff's land whereby he was authorised to use the roadway “with or without horses, carts and agricultural machines and implements”; he sold a large quantity of sand to the second defendant who arranged for it to be taken away in heavy lorries, which regularly

used the roadway. Jenkins, J., held that, upon the proper construction of the grant, the word "cart" included motor lorries. A cart, for that purpose, was primarily a vehicle adapted to carrying materials and goods, possibly in contradistinction to a vehicle adapted for carrying passengers, the mode of propulsion of the vehicle being irrelevant. The use of the right of way by the sand lorries was, therefore, not excessive. [*Reported by C. M. Schmitthoff, Esq., Barrister-at-Law.*] (See also [1949] 1 C. L. 77, 78.)

- 1036. ARTICLES.** What is an equitable easement?: 20 L. T. J. 58. Building controls and the right to light: 92 S. J. 121. Position of the leaseholder in the law of easements, by A. K. Kiralfy: 13 *Conveyancer* (N.S.) 104.

ECCLESIASTICAL LAW

- 1037. Burial.** See BURIAL AND CREMATION.

- 1038. Church Commissioners.** The appointed day for the purposes of the Church Commissioners Measure, 1947 (10 & 11 Geo. 6, No. 2) was April 1, 1948: *London Gazette*, November 7, 1947. Under that Measure Queen Anne's Bounty and the Ecclesiastical Commissioners were united under the name of the Church Commissioners for England, a body corporate having perpetual succession and a common seal and power to acquire and hold land without licence in mortmain. The address of the Church Commissioners is 1 Millbank, Westminster, London, S.W.1. Telephone: Whitehall 8954.

- 1039. Church sites—town and country planning.** See § 3634.

- 1040. Clergy Pensions Measure, 1948 (11 & 12 Geo. 6, No. 1).** This Measure consolidates with amendments, the Clergy Pensions Measures, 1926 to 1946, limits the application of those Measures to clergy already ordained, establishes a new scheme of pensions for clergy hereafter ordained, and amends the Clergy Pensions (Older Incumbents) Measure, 1930 (20 & 21 Geo. 5, No. 6). Thus the Measure makes provision for the payment of pensions to Class A contributors (clergy already ordained) (Part I); the widows and dependants of certain Class A contributors and others (Part II); Class B contributors (clergy hereafter ordained) (Part III); widows and dependants by agreements (Part IV); and non-contributing pensioners and voluntary contributors (Part V). Part VII contains conditions regulating the payment of pensions; and Part VIII deals with the Pensions Authority and Pensions Funds. The Measure extends to the whole of the Province of Canterbury, except the Channel Islands, to which it may be applied, and to the whole of the Province of York including (except s. 8) the Isle of Man. It has effect as from January 1, 1948.

- 1041. Faculty for erection of bier house.** See *Re NORTON'S WILL TRUSTS*, § 413.

- 1042. Incumbents' discipline.** Incumbents (Discipline) Rules, 1948 (No. 1919) [E.], made under the Incumbents (Discipline) Measure, 1947 (10 & 11 Geo. 6, No. 1), s. 14; came into operation on February 6, 1948; and make provision for proceedings before Special Courts and Provincial Courts. The rules also deal with costs and fees. The Schedules contain lists of fees and forms. [3d.]

- 1043. Lord High Commissioner (Church of Scotland) Act, 1948 (11 & 12 Geo. 6, c. 30).** This Act provides that the allowance payable to His Majesty's High Commissioner to the General Assembly of the Church of Scotland is to be of such amount not exceeding £4,000 as may be determined by the Secretary of State.

- 1044. Marriage.** See also HUSBAND AND WIFE.

- 1045. — banns—called in different name.** See *DANCER v. DANCER*, § 993.

- 1046. — Christian marriage.** See *BAXTER v. BAXTER*, § 985.

- 1047. Parsonage house—Rent Acts.** [Cty. Ct.] See *JACKSON v. HILL*, § 3201.

- 1048. Registration of births, deaths and marriages.** See REGISTRATION OF BIRTHS, DEATHS AND MARRIAGES.

- 1049. Religious charities.** See CHARITIES.

- 1050. ARTICLE.** Ornaments in churches: 98 L. J. 354.

EDUCATION

1051. **Approved schools.** Children and Young Persons (Contributions by Local Authorities) Regulations, 1948 (No. 36), dated January 14, 1948, made under the Children and Young Persons Act, 1933 (23 & 24 Geo. 5, c. 12), s. 90 (1). These Regulations revoke and replace the Children and Young Persons (Contributions by Local Authorities) Regulations, 1947 (No. 429).
1052. **Authorities, list of.** Local education authorities, excepted districts and other divisional executives in England and Wales arranged under geographical areas, addresses and telephone numbers, List No. 8A, published by the Ministry of Education, October 1, 1947.
1053. **Charities—registration of transfers of land.** See *Re* No. 12 REGENT STREET OXFORD, § 423.
1054. — **variation of scheme.** See *Re* BRIDEWELL HOSPITAL, § 417.
1055. **Conferences.** Educational Conferences Amending Regulations, 1948 (No. 195) [E.], made under the Education Act, 1944 (7 & 8 Geo. 6, c. 31), s. 83, superseding, without change, the Educational Conferences Provisional Amending Regulations, 1947, which amended the Educational Conferences Regulations, 1945 (No. 699).
1056. **Divisional administration scheme—claims for compensation.** Education (Compensation Forms) Regulations, 1948 (No. 2527) [E.], made under the Local Government Act, 1933 (23 & 24 Geo. 5, c. 51), Sched. IV, para. 11, as applied by the Education Act, 1946 (9 & 10 Geo. 6, c. 50), s. 12 (3); prescribe the forms to be used on claims for compensation by officers of county councils who have suffered loss as the result of the establishment of a scheme of divisional administration. [2d.]
1057. **Education (Miscellaneous Provisions) Act, 1948 (11 & 12 Geo. 6, c. 40).** This Act deals in the main with technical points on which some alteration or clarification of the law was desirable. S. 1, which replaces s. 2 (2) of the Education Act, 1944 (7 & 8 Geo. 6, c. 31), enables an Order in Council to transfer to the Minister of Education charitable trust jurisdiction over trusts, *e.g.*, for youth welfare and community centres, which are now under the jurisdiction of the Charity Commissioners. S. 2 widens the Minister's power to make schemes for educational endowments. S. 3, coupled with s. 4 (1), removes any doubt as to the power of local education authorities to transfer pupils to secondary schools before the age of twelve. S. 4 (2) enables the admission to school of a child who attains the age of five or who moves from one area to another in the middle of a term to be deferred until the beginning of the following term. S. 4 (5) (6) alters the scope of the regulations for the registration of pupils at school which the Minister is required to make under s. 80 of the 1944 Act. S. 5 relates to the provision of clothing by local education authorities. S. 6 restates the law whereby an authority which educates a pupil who belongs to the area of some other authority may be recouped by that other authority. S. 7 permits the Minister to modify the requirements of the building regulations for new schools (as he previously could for existing schools) where shortage of suitable sites, labour or materials makes this necessary. S. 8 enables a local education authority in certain circumstances to cancel a report that a child is mentally incapable of receiving education at a school. S. 9 relates to the presumption of age in proceedings to enforce attendance at school. S. 10 removes any doubt as to the power of local education authorities to purchase land by agreement for, amongst others, voluntary schools subject to recoupment. Sched. I effects a number of miscellaneous amendments of the Education Acts and other Acts, the most important being amendments of—(i) S. 40 of the 1944 Act, which extends the power of local education authorities to bring a child before the juvenile courts to cases where there is a breach of the requirements of s. 37 of that Act; (ii) Sched. III to the 1944 Act; and (iii) Children and Young Persons Act, 1933 (23 & 24 Geo. 5, c. 12), s. 18 (1), as to the age at which a child may be employed part-time.
1058. — **circular.** Ministry of Health Circular No. 155/48, dated August 31, 1948, on the Education (Miscellaneous Provisions) Act, 1948. (See § 1057.)

- 1059. Employment and training schemes—administration by local education authorities.** See ss. 10 and 11 of the Employment and Training Act, 1948 (11 & 12 Geo. 6, c. 46) ; § 1246.
- 1060. Grants—Central Welsh Board.** Central Welsh Board Amending and Revocation Regulations, 1948 (No. 2037), made under the Education Act, 1944 (7 & 8 Geo. 6, c. 31), s. 100 (1) (b), amend and, as from April 1, 1949, revoke the Intermediate Education (Central Welsh Board) Regulations, 1927 (No. 250), as amended.
- 1061. — further education.** Further Education Grant Amending Regulations No. 2, 1948 (No. 847) [E.], made under the Education Act, 1944, s. 100, amend the Further Education Grant Regulations, 1946 (No. 352), as already amended, with the object of enabling the Minister, in assessing grants to responsible bodies, to take into account expenditure of a capital nature.
- 1062. — local education authorities.** Education (Local Education Authorities) Grant Regulations, 1948 (No. 334) [E.] [2d.] made under the Education Act, 1944, s. 100, replacing, as from April 1, 1948, the Education (Local Education Authorities) Grant Regulations, 1946 (No. 1215), as amended by S. R. & O., 1947, No. 2188. The principal change is contained in reg. 7 (2) which embodies the new settlement of the formula for the payment of main grant to local education authorities.
- 1063. — primary and secondary schools.** Primary and Secondary Schools (Grant Conditions) Amending Regulations, No. 5, 1948 (No. 374) [E.], made under the Education Act, 1944, s. 100, further amending the Primary and Secondary Schools (Grant Conditions) Regulations, 1945 (No. 636), as already amended. The new Regulations amend reg. 53 (1) of the 1945 Regulations with the object of making it clear that a pupil is between the ages of ten and nineteen at the beginning of the educational year if the tenth, but not if the nineteenth, anniversary of his birth falls on or before the first day of that year.
Primary and Secondary Schools (Grant Conditions) Amending Regulations No. 6, 1948 (No. 1265), and No. 7, 1948 (No. 1664) [E.], made under the Education Act, 1944 [E.], s. 100. These regulations, which came into operation on June 21, 1948, and August 1, 1948, respectively, amend the Primary and Secondary Schools (Grant Conditions) Regulations, 1945 (No. 636), as already amended.
- 1064. — training of teachers.** See § 1083.
- 1065. — youth employment service.** See § 1290.
- 1066. Greenwich Hospital School.** Greenwich Hospital School (Regulations) (Amendment) Order, 1948 (No. 2792), made under the Greenwich Hospital Act, 1865 (28 & 29 Vict. c. 89) ; came into operation on December 24, 1948.
- 1067. Provision of clothing.** Provision of Clothing Regulations, 1948 (No. 2222) [E.], made under the Education (Miscellaneous Provisions) Act, 1948 (11 & 12 Geo. 6, c. 40), s. 5 ; came into operation on October 5, 1948 ; contain provisions as to the provision of clothing for pupils by local education authorities.
- 1068. Registration of pupils.** Pupils' Registration Regulations, 1948 (No. 2097) [E.], made under the Education Act, 1944 (7 & 8 Geo. 6, c. 31), s. 80, as amended ; came into operation on October 1, 1948 ; replace the Registration of Pupils at Schools Regulations, 1945 (No. 439). The principal changes made by the new regulations are, the omission of the requirement of forms of application for the admission or withdrawal of pupils, the specification of grounds for removing a pupil from the register, and the application of the regulations to all pupils irrespective of age, including (for the first time) pupils of independent schools.
Pupils' Registration Amending Regulations, 1948 (No. 2708), made under the Education Act, 1944, s. 80, as amended by the Education (Miscellaneous Provisions) Act, 1948 (11 & 12 Geo. 6, c. 40), s. 4 ; amend the Pupils' Registration Regulations, 1948 (No. 2097), so as to make it clear that it is not necessary to keep records of pupils who are boarders at independent schools.
- 1069. Scholarships, etc.** Scholarships and Other Benefits Amending Regulations No. 2, 1948 (No. 2223) [E.], made under the Education Act, 1944 (7 & 8 Geo. 6, c. 31), s. 81 ; further amend the Regulations for Scholarships and Other Benefits, 1945 (No. 666), as already amended.

- 1070.** — **correspondence courses.** Scholarships and Other Benefits Amending Regulations, No. 1, 1948 (No. 688) [E.], made under the Education Act, 1944, s. 81. These Regulations amend the Regulations for Scholarships and Other Benefits, 1945 (No. 666), Reg. 2, so as to enable local education authorities to assist students in certain cases to take correspondence courses in subjects of further education.
- 1071.** — **State scholarships.** Regulations for State Scholarships and University Supplemental Awards, 1948 (SI 1948, No. 1655), [E.], made under the Education Act, 1944, s. 100, came into operation on August 1, 1948.
- 1072.** — **mature students.** State Scholarships (Mature Students) Amending Regulations, No. 1, 1948 (No. 1737) [E.], made under the Education Act, 1944, s. 100 (1) (c); came into operation on August 1, 1948; amend the State Scholarships (Mature Students) Regulations, 1947 (No. 1472), with the object of bringing those regulations into line with the present regulations governing the award of other State scholarships.
- 1073.** — **technical State scholarships.** Regulations for Technical State Scholarships, 1948 (No. 1629) [E.], made under the Education Act, 1944, s. 100 (1) (c); came into operation on August 1, 1948; replace the Technical State Scholarships Regulations, 1947 (No. 1471), with some amendments.
- 1074.** **Students—national insurance.** See § 2423.
- 1075.** **Teachers—remuneration.** Remuneration of Teachers Order, 1948 (No. 551) [E.], made under the Education Act, 1944 (7 & 8 Geo. 6, c. 31), s. 89. The object of this order is to secure that the remuneration of teachers by local education authorities should, as from April 1, 1948, be in accordance with the scales of remuneration submitted by the Burnham Committees in their reports of December 30, 1947.
- Remuneration of Teachers (Farm Institutes) Order, 1948 (No. 651), made under the Education Act, 1944, s. 89, came into operation on April 1, 1948. It revokes the Remuneration of Teachers Order, 1946 (No. 1620). The main object of the order is to secure that Burnham Scale remuneration is paid by local education authorities as from April 1, 1948, to teachers in their employment in Farm Institutes.
- 1076.** — **superannuation.** Teachers' Superannuation Amending Rules, 1948 (No. 1801) [E.], made under the Teachers (Superannuation) Act, 1925 (15 & 16 Geo. 5, c. 59), s. 17, and the Superannuation (Miscellaneous Provisions) Act, 1948 (11 & 12 Geo. 6, c. 33), s. 12 (1); came into operation on August 1, 1948; amend the Teachers' Superannuation Rules, 1926 (No. 415), as amended, in various respects.
- 1077.** — **accepted schools.** Teachers' Superannuation (Accepted Schools) Scheme, 1948 (No. 1740) [E.], made under the Teachers' (Superannuation) Act, 1925, s. 21 (1) (a), as amended; came into operation on August 1, 1948; enables teaching service in schools which are efficient but not grant-aided to be pensionable in a similar way to service in grant-aided schools. [2d.]
- 1078.** — **interruptions and transfers.** See § 2656.
- 1079.** — **modification under National Insurance Act.** See § 2426.
- 1080.** — **school of electronics.** Teachers' Superannuation (School of Electronics) Scheme, 1948 (No. 2587), made under the Teachers (Superannuation) Act, 1925 (15 & 16 Geo. 5, c. 59), s. 21 (1) (b), as amended.
- 1081.** — **teachers employed by Foreign Office (German Section).** Teachers Superannuation (Foreign Office (German Section)) Scheme, 1948 (No. 2333) [E.], made under the Teachers (Superannuation) Act, 1925, s. 21 (1) (b); safeguards the superannuation rights of certain persons previously coming under the Teachers (Superannuation) Acts while they are employed as teachers or educational organisers under the Foreign Office (German Section).
- 1082.** — **teachers in institutions for defectives.** Teachers' Superannuation (Institutions for Defectives) Scheme, 1947 (No. 2855) made under the Teachers (Superannuation) Act, 1925, s. 21 (1) (b); enabling the service of teachers in institutions for defectives to continue to be contributory service under the Teachers (Superannuation) Acts despite the former scheme having become inoperative by

reason of the transfer to the Minister of Health of certain functions of the Board of Control by the National Health Service Act, 1946 (9 & 10 Geo. 6, c. 81).

- 1083. — training—grant regulations.** Training of Teachers Grant Regulations, 1948 (No. 1704) [E.], made under the Education Act, 1944, s. 100; replace the Training of Teachers Grant Regulations, 1947 (No. 2187), as from August 1, 1948. [3d.]
- 1084. Universities.** See UNIVERSITIES.
- 1085. Wales.** Report dated October, 1947, of the Working Party appointed by the Minister to investigate the need for a Welsh Joint Education Committee (27-277). [1s. 3d.] See also § 1060.
- 1086. Youth employment service—grants to local education authorities for.** See § 1290.
- 1087. ARTICLES.** Education grants: 112 J. P. J. 57. Accidents to children at school: 205 L. T. 241.

ELECTION LAW

- 1088. Ballot papers—validity.** (Local Government Act, 1933 (23 & 24 Geo. 5, c. 51), s. 29, Sched. II, Pt. III, paras. 18, 34 (a), (c), (d).) In determining whether or not a ballot paper is void, because it does not bear the official mark, either embossed or perforated, as prescribed by Sched. II, Part III, paras. 18 and 34 of the Local Government Act, 1933, the reasoning of Hawkins, J., in *Gloucester (County) Cirencester Division Case, Lawson v. Chester-Master* (1893), 4 O'M & H. 194, should be applied, namely: "It is not necessary that there should be in every respect a clear and distinct impression of every part of the stamp, but . . . it is quite sufficient if the evidence afforded by that which appears on the back of the paper leads . . . to the conclusion that the stamp was applied there with the intention of making the required mark . . .".

Per Birkett, J.: "We think that, in a case where the voter is in no sense to blame, where he has intended to vote and has expressed his intention of voting in a particular way, and, so far as his part of the transaction is concerned, has done everything that he should, and the only defect raised as a matter of criticism of the ballot paper is some defect on the part of the official machinery by which the election is conducted, special consideration should (and, no doubt, would) be given, in order that the voter should not be disfranchised".

An unsuccessful candidate in a municipal election questioned the election on the ground that the respondent "was not duly elected by a majority of lawful votes". He challenged the rejection by the returning officer of certain ballot papers, and the admission of others. Held, (1) applying the principles of the *Cirencester Case, supra*, ballot papers on which the perforating machine had made less than the required number of perforations had been sufficiently marked and were valid; (2) ballot papers bearing initials from which the particular voters could be identified were void; (3) a ballot paper which had some pencil marks over the cross against the name of one of the candidates was valid: *Re KINGSTON-UPON-HULL MUNICIPAL ELECTION PETITION, LEWIS v. SHEPPERDSON*, [1948] W. N. 325; [1948] 2 All E. R. 503, D. C. (applying *Birmingham Case, Woodward v. Sarsons* (1875), L. R. 10 C. P. 733; and *Gloucester (County) Cirencester Division Case, Lawson v. Chester-Master, supra*).

- 1089. Election address—privilege.** See *BRADDOCK v. BEVINS*, § 1990.
- 1090. Electoral divisions—alteration of.** Orders made under the Local Government Act, 1933 (23 & 24 Geo. 5, c. 51), s. 11: SI 1948, No. 1131 (County of Warwick) [2d.]; 1558 (Hereford); 1866 (Isle of Ely); 1989 (Dorset); 2050 (Chester); 2148 (Somerset); 2249 (County of York, West Riding) [3d.].
- Order made under the London Government Act, 1939 (2 & 3 Geo. 6, c. 40), s. 25: SI 1948, No. 2149 (London—Wandsworth) [4d.].

- 1091. — Boundary Commission.** See §§ 2031, 2032.
- 1092. — new constituencies.** Statement showing the names, contents and electorate of the proposed new constituencies in parts of Cheshire, Essex, Kent, Middlesex, Surrey and East Sussex: Cmd. 7397.
- 1093. Electoral registration.** Electoral Registration Regulations, 1948 (No. 1194) [E.], amend the Electoral Registration Regulations, 1946 (No. 240) by advancing the date of publication of the civilian residence and service electors lists in England and Wales from August 12 to August 9.

1094. Paper allowance. The paper allowance for the district council elections in April, 1948, was as follows: U.D.C. elections, for every 2,500 electors, party candidates, 1 cwt.; non-party candidates, 1 cwt. 25 lbs.; party candidates run on a list, 1 cwt. to the list; R.D.C. elections, for every 600 electors, party candidates, 28 lbs.; non-party candidates, 34 lbs. An allowance was made to national parties to be applied under the control of party headquarters for use by themselves or local parties. Candidates not sponsored by such parties were entitled to paper on the non-party scales: Board of Trade Press Notice, February 3, 1948 (Ref. 1776).

1095. Representation of the People Act, 1948 (11 & 12 Geo. 6, c. 65). This Act is an amending and consolidating Act covering a wide field of parliamentary and local government election law including franchise and the registration of electors, the conduct of elections and corrupt and illegal practices. It repeals a large number of enactments, including most of the Representation of the People Act, 1918 (7 & 8 Geo. 5, c. 64), parts of the Local Government Act, 1933 (23 & 24 Geo. 5, c. 51), the Parliamentary Electors (War-Time Registration) Act, 1944 (7 & 8 Geo. 6, c. 24), Parts I, III and V of the Representation of the People Act, 1945 (8 & 9 Geo. 6, c. 5), and the Elections and Jurors Act, 1945 (9 & 10 Geo. 6, c. 21). The principal changes effected by the new Act relate to the redistribution of seats for parliamentary elections, the abolition of the university constituencies and the business vote, thus effecting the total abolition of plural voting, restrictions on the use of motor vehicles for conveying electors to poll and a change of dates for local government elections. The parts of the Act relating to parliamentary and local government franchise and the conduct of elections are to come into force so as to enable the first register of electors under the Act to be the autumn register, 1949 (s. 80 (1)), but provisions as to voting by post or proxy at local government elections will not come into force till the appointed day (s. 80 (3)). That part of the Act which relates to corrupt and illegal practices, etc., will also come into force on the appointed day (s. 80 (4)). Part IV is to come into force for the purpose of the first ordinary election of councillors held after the passing of the Act (s. 80 (5)).

Parliamentary Franchise.

The Act is divided into six Parts. Part I (ss. 1-20) relates to parliamentary franchise and its exercise. Under s. 1 (1) the only constituencies are to be the county and borough constituencies, each returning a single member: these are set out in detail in Sched. I. Under s. 1 (2) the persons entitled to vote in any constituency are to be those resident there on the qualifying date who are British subjects and not under any legal incapacity: they cannot vote unless they are duly registered nor, at a general election, can a person vote in more than one constituency. S. 1 (3) deals with the qualifying date; and s. 2 deals with residence. Ss. 4-6 relate to registration: in particular s. 6 contains provisions as to service qualification. Ss. 7-11 relate to the place and manner of voting, and include provisions as to absent voters and proxies. Ss. 12-18 deal with the conduct of elections including the procedure in the event of a tie, the return or forfeiture of deposits and the functions of returning officers. Ss. 19 and 20 are supplementary and contain provisions as to infringements of secrecy and breaches of official duty.

Local Government Franchise.

Part II (ss. 21-31) relates to local government franchise and its exercise. S. 21 lays down what persons are entitled to vote at local government elections. Ss. 24, 25 deal with the place and manner of voting. S. 26 relates to absent voters, and s. 27 to proxies.

Corrupt and Illegal Practices.

Part III (ss. 32-56) contains provisions as to corrupt and illegal practices and other matters arising out of an election campaign. New provisions are contained in s. 33 as to the use of motor vehicles for conveying electors to the poll at a parliamentary election: under that section, subject to the exceptions therein stated, no person may, with a view to supporting any candidate, lend, let, hire, borrow or use a motor vehicle to convey electors to or from the poll. S. 34 permits a candidate at a parliamentary election to send his election address post free; and s. 35 gives him the right to use certain schools and halls for election meetings. S. 36 deals with the prohibition of the use of schools for

committee rooms; and s. 37 deals with election propaganda. Ss. 38-40 relate specially to local government elections. Ss. 41-56 contain miscellaneous provisions applicable both to parliamentary and local government elections including a provision that the use of premises for an election meeting is not to render them rateable (s. 41), and provisions as to election agents (ss. 44, 45), illegal canvassing by police officers (s. 47), personation (s. 48) and other voting offences (s. 49), prosecutions for and the effect of corrupt and illegal practices (ss. 50-53) and computation of time for election petitions (s. 54).

Miscellaneous and General.

Part IV (ss. 57-61) and Sched. VI contain special provisions as to local government elections in England and Wales including provisions as to the ordinary day of elections (s. 57), electoral divisions (s. 59) and district and parish council elections (ss. 57 (5), 60, 61).

Part V (ss. 62-65) contains special provisions as to local government elections in Scotland.

Part VI (ss. 66-81) is of a general nature. Ss. 66-72 contain supplemental provisions as to registration, etc., including special provisions as to members of the forces and service voters (s. 71). The remainder of the Act relates to interpretation, amendments and other miscellaneous matters. Provisions as to the application of the Act to Scotland and Northern Ireland are contained in ss. 78, 79.

- 1096.** ARTICLES. Committee on electoral law reform: 112 J. P. J. 102. Parliamentary and local elections—the Representation of the People Act, 1948: 98 L. J. 534.

ELECTRICITY

- 1097. Acquisition of electricity undertakings—holding companies.** Order made under the Electricity Act, 1947 (10 & 11 Geo. 6, c. 54), s. 13: SI 1948 No. 12 (Christy Bros. and Co.).
- 1098. Acquisition of land for generating stations—special order.** Order made under the Electricity (Supply) Acts, 1882 to 1936: SI 1948, No. 384 (Keadby, Lincolnshire).
- 1099. British Electricity Stock—conditions of issue, etc.** Electricity (Stock) Regulations, 1948 (No. 526), made under the Electricity Act, 1947 (10 & 11 Geo. 6, c. 54), s. 40 (2). These Regulations provide for the issue, transfer, dealing with and redemption of British Electricity Stock created and issued under s. 40 of the Act.
- 1100. — date of conversion of securities.** Electricity (Conversion Date) Order, 1948 (No. 663), made under the Electricity Act, 1947, Sched. 3, specifying April 1, 1948, as the date for the conversion into British Electricity stock of certain securities specified in the Schedule thereto.
Electricity (Conversion Date) (No. 2) Order, 1948 (No. 1124); (No. 3) Order, 1948 (No. 1743) and (No. 4) Order, 1948 (No. 1931), made under the Electricity Act, 1947, Sched. 3, specifying the conversion dates for the securities specified in the Schedules thereto.
- 1101. — value of securities.** Electricity (Security Values) (No. 1) Order, 1948 (No. 497), made under the Electricity Act, 1947, Sched. 3, sets out the values of certain securities of bodies to which Part II of that Act applies.
Electricity (Security Values) (No. 2) Order, 1948 (No. 631), made under the Electricity Act, 1947, Sched. 3. This Order contains, in the Schedule thereto, a list of certain unquoted securities and their values as determined for the purposes of Part I of Sched. 3 to the Act. [2d.]
- 1102. Consultative councils—constitution and proceedings.** Electricity (Consultative Council) (Areas) Regulations, 1948 (No. 898), made under the Electricity Act, 1947 (10 & 11 Geo. 6, c. 54), s. 7, provide for the chairmanship, terms of membership and proceedings of Consultative Councils in the areas for which Area Boards are established under the Act.
- 1103. Electricity Arbitration Tribunal.** Electricity Arbitration Tribunal Rules, 1948 (No. 2476), made under the Electricity Act, 1947 (10 & 11 Geo. 6, c. 54), s. 32 (5); provide for the procedure in respect of proceedings before the Tribunal established under the Act other than proceedings required to be held in Scotland. [2d.]

- 1104. Electricity boards—allocation of undertakings to area boards.** Electricity (Allocation of Undertakings to Area Boards) Order, 1948 (No. 484) [2d.], made under the Electricity Act, 1947 (10 & 11 Geo. 6, c. 54), s. 14, determining in which area boards the property, rights, liabilities and obligations of the various authorised undertakers are to vest.
- 1105. — financial year.** Electricity (Financial Years) Regulations, 1948 (No. 747), made under the Electricity Act, 1947, s. 67 (1), prescribing March 31 as the day on which the financial year of any electricity board, other than the North of Scotland board, is to end.
- 1106. — income tax and profits tax in connection with.** See § 3275.
- 1107. — vesting of assets.** Electricity (Vesting of Assets) Regulations, 1948 (No. 239), made under the Electricity Act, 1947, ss. 14, 15, 17, 18, 25, 35, 48. These regulations contain supplementary provisions regarding the vesting of property, etc., in electricity boards. Part I deals with registration of title; Part II deals with local authorities; Parts III and IV deal with composite companies and non-statutory undertakings; and Part V contains miscellaneous and general provisions. In particular, reg. 13 prescribes one month as the period within which the disclaimer of agreements or leases may be referred to arbitration. [3d.]
- 1108. — vesting date.** Electricity (Vesting Date) Order, 1948 (No. 217), made under the Electricity Act, 1947, s. 14, fixes April 1, 1948, as the vesting date for the purposes of that Act.
- 1109. Electricity Commissioners—dissolution.** Electricity Commissioners (Dissolution) Order, 1948 (No. 1769), made under the Electricity Act, 1947 (10 & 11 Geo. 6, c. 54), s. 58; came into operation on August 1, 1948; provides for the dissolution of the Electricity Commissioners and for the transfer of their property, rights and obligations to the Minister of Fuel and Power.
- 1110. Guarantees.** House of Commons Papers (Session 1947-48) No. 116 (under s. 14, on loans to be raised by the British Electricity Authority, March 23, 1948); No. 117 (under s. 42 (1), on stocks issued by the British Electricity Authority in respect of compensation to holders of securities to which Part I of the Third Schedule to the Act applies, April 1, 1948); No. 118 (under s. 42 (1), on stocks issued by the British Electricity Authority to satisfy compensation attributable to the North Wales Power Co., Ltd. 3 per cent. Guarantee Debenture Stock, 1946-53; North Wales Power Co., Ltd., 5 per cent. Guaranteed First Debenture Stock, 1930-53, and North Metropolitan Power Station Co., Ltd., 5 per cent. Guaranteed Debenture Stock, 1957).
- Statements of Guarantee given by the Treasury under s. 42 (1) of the Electricity Act, 1947. On July 27, 1948, on Loans proposed to be raised by the B.E.A., House of Commons Papers, No. 2; on July 31, 1948, on Stock issued by the B.E.A. under the Act, House of Commons Papers, No. 3; on August 25, 1948, on Stock issued by the B.E.A. under the Act, House of Commons Papers, No. 4; on August 25, 1948, on Stock issued by the B.E.A. under the Act, House of Commons Papers, No. 5.
- 1111. Highway—obstruction placed in footway by electricity company.** See *CHAPPELL v. DAGENHAM CORPORATION*, § 1577.
- 1112. Negligence—electrocution.** See *BUCKLAND v. GUILDFORD GAS LIGHT AND COKE CO.*, § 2477; [*Can.*] *MAYER v. WINNIPEG ELECTRIC CO.*, § 2478.
- 1113. Officers—pensions.** Electricity (Pension Scheme) Regulations, 1948 (No. 226), made under the Electricity Act, 1947 (10 & 11 Geo. 6, c. 54), authorising electricity boards to establish or participate in any scheme approved by the Minister for providing pensions in respect of persons in their employment or that of their consultative councils or in respect of any other persons mentioned in s. 54 (1) (a) of the Act.
- Electricity (Pension Rights) Regulations, 1948 (No. 2172), made under the Electricity Act, 1947, s. 54; came into operation on October 1, 1948. [3d.]
- 1114. Rating.** Local Government Act, 1948 (11 & 12 Geo. 6, c. 26), Pt. V, contains provisions relating to the rating of electricity authorities. Generally speaking the effect is that hereditaments (other than dwelling-houses) occupied by the

British Electricity Authority, an electricity board, or the North of Scotland Hydro-Electric Board are not liable to be rated, but in lieu of rates those authorities (other than electricity boards) are to make certain annual payments for the benefit of local authorities (ss. 85, 91). The amounts of the payments are laid down in ss. 96-99. The above provisions have effect as from April 1, 1948 (s. 92).

- 1115.** — **payments in lieu of rates by Central Electricity Authority—accounting by local authorities.** See § 3080.
- 1116.** **Supply—relaxation of obligations.** Electricity Supply (Relaxation of Obligations) Order, 1948 (No. 223), relaxing the obligations of undertakers to connect and supply premises not connected at the commencement of the Order and to replace lines or meters in order to provide for increased supplies. The Order came into operation on February 13, 1948.
- 1117.** — **right to supply of direct current.** (Electricity Supply Regulations, 1937, reg. 34 (a).) Reg. 34 (a) of the Electricity Supply Regulations, 1937, provides: "Before commencing to give a supply of energy to any body or person supplied or entitled to be supplied with energy by the undertakers, the undertakers shall declare to that consumer (1) the type of current, whether direct or alternating, which they propose to supply. . . .". This regulation makes it clear that if and when the undertakers enter into a contract, they will be under no obligation to supply the consumers with any current other than that which they declared under the regulation as the current they proposed to supply. See *LONDON INVESTMENT AND MORTGAGE CO. v. CENTRAL LONDON ELECTRICITY*, § 1119.
- 1118.** — —. (Electricity Supply Regulations, 1937, reg. 34 (b).) Reg. 34 (b) of the Electricity Supply Regulations, 1937, provides: "The type of current and the voltage declared as aforesaid [*i.e.*, under reg. 34 (a)] shall be constantly maintained . . . and shall not be altered . . . except with the consent of the Electricity Commissioners and subject to such terms and conditions as they may impose. . . .". In a case where the Electricity Commissioners consented to the change from direct to alternating current the conditions imposed were: "Unless otherwise agreed, the undertakers shall . . . at their own expense carry out the necessary alterations to consumers' installations to suit the change over . . .". It was held that the expression "consumers" in the conditions dealing with the payment of expenses caused by the necessary alterations to installations only applied to consumers who had entered into a contract with the undertakers and to whom a declaration had been made in accordance with reg. 34 (a) and to none other. See *LONDON INVESTMENT AND MORTGAGE CO. v. CENTRAL LONDON ELECTRICITY*, § 1119.
- 1119.** — —. (Strand District Electric Lighting Order, 1895, Art. 27.) Art. 27 of the Strand District Electric Lighting Order, 1895, provides: "Every owner or occupier of premises requiring a supply of energy shall . . . enter into a written contract with the undertakers (if required by them to do so) . . .". The effect of this article is not that, once the owner or occupier of premises qualifying geographically for the supply has required the undertakers to supply electricity, the obligation springs up and continues *in saecula saeculorum* to supply electric current for such premises, but that every second or subsequent owner or occupier of such premises is bound to enter into a written contract with the undertakers, if required by them to do so, and, consequently, in the absence of any special bargain such second or subsequent owner or occupier cannot have any right to any particular voltage or kind of current other than the general supply provided by the undertakers as approved by the Electricity Commissioners under the Order: *LONDON INVESTMENT AND MORTGAGE CO. v. CENTRAL LONDON ELECTRICITY*, [1948] Ch. 266; [1948] L. J. R. 881, Jenkins, J. (applying *Husey v. London Electricity Supply Corporation*, [1902] 1 Ch. 411, distinguishing *Stevens v. Aldershot Gas, Water and District Lighting Co.* (1933), 102 L. J. K. B. 12). See also §§ 1117, 1118.
- 1120.** — **revocation of price control.** Electricity (Price Control) (Revocation) Order, 1948 (No. 596), revoking, as from April 1, 1948, the Electricity (Price Control) Order, 1948 (No. 224), which prohibited, as from February 13, 1948, reductions in charges or rates of charges and discounts and rebates, with certain exceptions.

EMERGENCY LAWS

CURRENT LAW

- 1121.** — **special order.** Order made under the Electricity (Supply) Acts, 1882 to 1936: SI 1948, No. 385 [2d.] (Cracoe, Hebden and District).
- 1122.** **BOOKS PUBLISHED.** Chant, J. W.—Electricity Supply Acts [25s.]. Dalton, J.—The Electricity Act, 1947 [21s.]. Simpson, J. W. and Hornsby, C. J.—Electricity Supply Statutes [20s.].

EMERGENCY LAWS

- 1123. Building restrictions.** See BUILDING AND ENGINEERING, ARCHITECTS AND SURVEYORS.
- 1124. Civil defence.** See CIVIL DEFENCE.
- 1125. Control of engagement.** See §§ 1240, 1241, 1242.
- 1126. Courts emergency powers.** See PRACTICE.
- 1127. Defence (Administration of Justice) Regulations, 1940.** See §§ 714, 723, 1854.
- 1128. Defence (Agriculture and Fisheries) Regulations, 1939.** Defence Regulations (No. 2) Order, 1948 (No. 335), revokes the Defence (Agriculture and Fisheries) Regulations, 1939 (No. 1303), regs. 28, 28B and part of reg. 28A, in consequence of the abolition by the Agriculture Act, 1947 (10 & 11 Geo. 6, c. 48) of certain functions formerly exercised by War Agricultural Executive Committees and the replacement of those committees by County Agricultural Executive Committees. (See also § 77.)
- 1129.** — **expiry.** See § 75.
- 1130. Defence (Armed Forces) Regulations, 1939.** See §§ 181, 185, 186.
- 1131. Defence (Cinematograph Quotas) Regulations, 1940.** See § 2953.
- 1132. Defence (Companies) Regulations, 1940.** See § 440.
- 1133. Defence (Evacuated Areas) Regulations, 1940.** See § 2807.
- 1134. Defence (Finance) Regulations, 1930.** See *BOISSEVAIN v. WEIL*, § 3731; *HASTINGS AND FOLKESTONE GLASSWORKS v. KALSON*, § 473.
- 1135.** — **Ceylon.** See § 3256.
- 1136. Defence (General) Regulations, 1939—regs. 18C, 31A, 31B, 32, 40AC, 41—expiry.** The following regulations expired on December 31, 1948 (Emergency Laws (Miscellaneous Provisions) Act, 1947 (11 Geo. 6, c. 10), Sched. I, Part II):
- 18c (Prisoners of war).
 - 31A (Provision of food, lodging and medical treatment for evacuees).
 - 31B (Remission of charges in respect of evacuees).
 - 32 (Hospitals and ambulances).
 - 40AC (Miscellaneous proceedings as to police forces).
 - 41 (Visiting committees for certain prisons).
- 1137.** — **reg. 51.** [Scot.] In *POLLOK SCHOOL CO. v. GLASGOW TOWN CLERK*, 1947 S. C. 605; 1948 S. L. T. 45, the Court of Session held that it was within the power of the competent authority to decide that the housing of the inadequately housed was a purpose for which property could be requisitioned under reg. 51 of the Defence (General) Regulations, 1939, and that such a decision had been made in the case in question.
- 1138.** — —. See also *BLACKPOOL CORPORATION v. LOCKER*, § 521; *CARLISH v. EAST HAM CORPORATION*, § 522; [Cty. Ct.] *ISLINGTON BOROUGH COUNCIL v. BOWNESS*, § 529; [Cty. Ct.] *MINISTER OF AGRICULTURE v. HUNKIN*, § 3214.
- 1139.** — **reg. 55.** See *R. v. WEST*, § 708.
- 1140.** — — **knackers' yards.** See § 1480.
- 1141.** — **reg. 55 (1D), (1E).** In *ROBERTS v. COLWYN BAY DAIRIES AND WILKINSON* (November 26, 1948), the Divisional Court (Lord Goddard, C.J., Hilbery, J. and Birkett, J.J.), held that "special circumstances" in Reg. 55 (1D) meant circumstances special to the offence and not merely special to the offender. [Reported by *R. C. Calburn, Esq., Barrister-at-Law.*] See also [1948] W. N. 500.
- 1142.** — **reg. 55AA.** See *DAVEY v. SHAWCROFT*, § 1200.
- 1143.** — — **knackers' yards.** See § 1480.

1144. — reg. 55AB. See BETTELEY, ADDYMAN AND JALLAND *v.* SINGER, § 1217.

1145. — reg. 56A—amendment of regulations. See § 373.

1146. — — “circulars” and “notes for guidance of local authorities”. The “circulars” and “notes for guidance of local authorities” issued by the Minister of Works under Reg. 56A are subject to the following criticism:—

1. Administration is mixed up with sub-delegated legislation and none of the mixture is made public.
2. Although the Regulation contained no power for delegated legislation there has been a delegation of the power and discretion under the Regulation to the Minister of Health and to local authorities.

See JACKSON STANSFIELD & SONS *v.* BUTTERWORTH, § 1148.

1147. — — illegal contract. The principle of law stated by Ellenborough, C.J., in *Langton v. Hughes* (1813), 1 M. & S. 593, that: “What is done in contravention of the provisions of an Act of Parliament, cannot be made the subject-matter of an action”, applies to a contract or work done under a contract which is illegal as infringing the building restrictions imposed by the Defence Regulations.

Quære: whether the cost of all articles to be used in the work in respect of which a licence is applied for must, as a matter of law, be included even if, in fact, apart from reg. 56A, the article has been already obtained or is obtainable without a licence.

The defendant had obtained a licence to carry out repairs and decorations to his house for a certain sum. The plaintiffs, whom he had instructed to carry out the necessary work, by an innocent oversight had exceeded the cost of work authorised by the licence without making an application for a supplementary licence. The Ministry of Works had accepted the plaintiffs’ explanation and had refrained from taking criminal proceedings. The plaintiffs now claimed the balance in excess of the cost covered by the licence. Held, (1) as the cost covered by the licence had been exceeded there was no licence in force in respect of the work covered by the excess, and, consequently, there had been a *prima facie* breach of para. (2) of reg. 56A; (2) neither of the provisos to para. (6) of the regulation could apply in favour of the plaintiffs, because at the time the work was done the plaintiffs had not reasonable grounds for believing that the cost would not exceed the amount of the licence, nor had the works been urgently necessary for the purpose for which the operation was undertaken and they had not been done in circumstances of emergency which rendered it impracticable to obtain authorisation; (3) as the cost of the work for which a licence had been obtained included the cost of providing and fixing articles, and as the licensed cost had been exceeded, it was not permissible to deduct the actual cost of the articles from the excess and to seek to reduce the apparent excess to that extent: *BOSTEL BROTHERS v. HURLOCK*, [1949] 1 K. B. 74; [1948] L. J. R. 1846; [1948] 2 All E. R. 312, C. A. (applying *Langton v. Hughes*, *supra*; *Brightman & Co. v. Tate*, [1919] 1 K. B. 463; and *Re Mahmoud and Ispahani*, [1921] 2 K. B. 716).

1148. — — oral licence. The expression “licence” in Reg 56A (2) of the Defence (General) Regulations, 1939, which makes it unlawful to carry out building work “except in so far as there is in force in respect thereof a licence granted by the Minister”, envisages a physical object, *i.e.*, a written instrument. The expression cannot be construed as including an oral licence, because—quite apart from the wording of the Regulation—such a licence would be wholly unsuitable for the purpose where, as in multitudes of cases, permission is sought for elaborate and complex building operations—a type of licence which would make proof of offences, such as the Regulation creates, in such cases almost impracticable.

While carrying out building work for the defendant under a written licence, issued under the Defence (General) Regulations, 1939, Reg. 56A (2), the plaintiffs found that the total cost of the work would exceed the amount covered by the licence. They obtained oral permission from the local authority to proceed with the work, and later, after the work was completed, they obtained a written licence in respect of the additional work. In an action by the plaintiffs to recover the cost of the work done, the defendant claimed that the plaintiffs were debarred from recovering the cost of the additional work as there was no licence in respect of it, and, therefore, it was illegal. Held, (1) the wording of Reg. 56A (2) made

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it clear that the licence must precede the work, and, therefore, the written licence could not have any retrospective effect; (2) an oral licence did not satisfy the provisions of the Regulation, and, consequently, the plaintiffs could not recover the cost of the additional work: *JACKSON STANSFIELD & SONS v. BUTTERWORTH*, [1948] W. N. 315; 64 T. L. R. 481; [1948] 2 All E. R. 558, C. A. (Jenkins, J., dissenting). (See also § 1146.)

- 1149.** — **reg. 62 (1).** See *ALLINGHAM v. MINISTER OF AGRICULTURE AND FISHERIES*, § 74.
- 1150.** — **reg. 62 (2)—revocation.** Defence Regulations (No. 3) Order, 1948 (No. 336), revokes the Defence (General) Regulations, 1939, reg. 62, paras. (2), (4A) and (4b) as to the termination of agricultural tenancies, and amends the Defence (General) Regulations, 1939, reg. 68A, as to the power of councils of county districts to license reconditioned houses for temporary occupation by agricultural workers.
- 1151.** — **reg. 62 (4A)—consent of Minister.** See *Re KENDRICK'S AGREEMENT*, § 39.
- 1152.** — — — **revocation.** See § 1150.
- 1153.** — **reg. 62 (4B)—revocation.** See § 1150.
- 1154.** — **reg. 63—revocation.** See § 81.
- 1155.** — **reg. 63B.** Defence Regulations (No. 1) Order, 1948 (No. 113), revokes regs. 63B, 103 (2) and 104A of the Defence (General) Regulations, 1939. Reg. 63B related to the burning of heather by an agricultural tenant in Scotland; reg. 103 (2) related to the jurisdiction of the Chief Constable of Cornwall, for the purposes of the regulations, to include the Isles of Scilly; and reg. 104A extended certain provisions of the Defence Regulations to Allied Powers and associated authorities and persons in the service of any such power or authority.
- 1156.** — **reg. 66.** See *ALLINGHAM v. MINISTER OF AGRICULTURE AND FISHERIES*, § 74.
- 1157.** — **reg. 68A.** See § 1150.
- 1158.** — **reg. 68CB—registration of living accommodation.** Para. (6) of Reg. 68CB of the Defence (General) Regulations, 1939, which provides that "no accommodation registered for the purposes of [the registration of living accommodation] Regulation which has been let in accordance with the registered terms and conditions shall, as respects that letting, be treated as a dwelling-house to which the Rent . . . Restrictions Acts . . . apply", applies so long as there is in force a registration, and the only way to get rid of a registration, if it is not properly made, is to take the requisite proceedings under the Regulation to get it cancelled: *BALDWIN v. GURNSEY*, [1949] 1 K. B. 102; [1948] L. J. R. 180, C. A. (Somervell, L. J., basing his judgment on the occupation by the landlord and expressing no opinion on the question whether registration can be disputed in *inter partes* proceedings; Cohen, L.J., basing his judgment on the effect of registration and expressing no opinion on the question of occupation). (See also § 1159.)
- 1159.** — — —. A dwelling is "occupied" by a person within the meaning of para. (1) of Reg. 68CB of the Defence (General) Regulations, 1939, which deals with the registration of living accommodation, so long as there is the kind of occupation which is required for rating purposes, e.g., if the rooms of the house contain the householder's furniture, and the word "occupied" is not confined to the physical occupation which is required in the case of a tenant who is claiming the protection of the Rent Restrictions Acts. See *BALDWIN v. GURNSEY*, § 1158.
- 1160.** — **reg. 68E.** Defence Regulations (No. 5) Order, 1948 (No. 1332), revoking Reg. 68E of the Defence (General) Regulations, 1939 (as to the powers of local authorities to provide domestic help). Those powers are now conferred by the National Health Service Act, 1946 (9 & 10 Geo. 6, c. 81), s. 29.
- 1161.** — **reg. 76—continuance.** See § 1407.
- 1162.** — **reg. 78—transfer of shares to government nominees.** Para. 5 of Reg. 78 of the Defence (General) Regulations, 1939, provides, where in pursuance of a Government order under Reg. 55 (4), by which an authorised controller of any

undertaking has been appointed, the Government orders in the case of an undertaking carried on by a company the transfer of the shares of the company to certain nominees under Reg. 78 (1), that the price of "any shares" so transferred shall not be less than the value of those shares as between a willing buyer and a willing seller on the date of the order. The expression "any shares" in the paragraph refers to those embraced in any parcel and it is those shares, not the shares as a whole, the value of which is to be ascertained "as between a willing buyer and a willing seller", a phrase which means a willing buyer and a willing seller of those shares. Consequently, a method of fixing the price by which the value of the whole undertaking is first ascertained and the proportionate value of each class of shares then determined is not justified under this paragraph. In practice, the Stock Exchange prices will generally afford a fair criterion of each block of shares on the relevant date.

Per Lord Uthwatt: "If some one shareholder held a number of shares sufficient to carry control of the company, it might well be that the value proper to be attributed to his holding under the Regulation was greater than the sum of the values that would be attributed to the shares comprised in that holding if they were split between various persons": *SHORT v. TREASURY COMMISSIONERS*, [1948] A. C. 534; [1949] L. J. R. 143, H. L. (affirming decision of Court of Appeal, [1947] C. L. Y. 990; affirming judgment of Morris, J., [1947] 1 All E. R. 22).

- 1163. — **reg. 90.** See *R. v. WEST*, § 708; *DAVEY v. SHAWCROFT*, § 1200.
- 1164. — **reg. 92 (1).** See *HASTINGS AND FOLKESTONE GLASSWORKS v. KALSON*, § 473.
- 1165. — **regs. 103 (2), 104A.** See § 1155.
- 1166. — **Sched. VI.** See § 374.
- 1167. **Defence (Industrial Assurance) Regulations, 1943.** Defence Regulations (No. 7) Order, 1948 (No. 1837), revokes as from August 9, 1948, Reg. 2 of the Defence (Industrial Assurance) Regulations, 1943 (except in its application to Northern Ireland). The matter covered by the revoked Regulation (supply of copies of rules by collecting societies) is now governed by the Industrial and Friendly Societies Act, 1948 (11 & 12 Geo. 6, c. 39), s. 10. (See also § 1739.)
- 1168. **Defence (National Fire Service) Regulations, 1941.** See § 1440.
- 1169. **Defence (Patents, Trade Marks, etc.) Regulations, 1941.** See *AMERICAN FLANGE AND MANUFACTURING CO. v. VAN LEER*, § 2568.
- 1170. **Emergency laws continuance.** Emergency Laws (Continuance) Order, 1948 (No. 2794), dated December 22, 1948, made under the Emergency Laws (Miscellaneous Provisions) Act, 1947 (11 & 12 Geo. 6, c. 10).
 S. 8 of the Emergency Laws (Transitional Provisions) Act, 1946 (9 & 10 Geo. 6, c. 26) as amended by s. 5 of the Emergency Laws (Miscellaneous Provisions) Act, 1947, continues in force until December 31, 1949: see art. 1 of the Order. The main effect of this is to postpone the putting into effect of the obligations imposed on employers by s. 1 of the Restoration of Pre-War Trade Practices Act, 1942 (5 & 6 Geo. 6, c. 9), to restore pre-war trade practices. In addition the extension of the "war period" to cover the year 1949 involves applying the Act to any new departure from a pre-war trade practice that may occur during that year and also involves applying the Act to new undertakings started up during the year.
 As to Reg. 76 of the Defence (General) Regulations, 1939, see § 1407.
- 1171. **Emergency, period of.** See §§ 1517, 2672, 3406, 3788.
- 1172. — **end of the war.** See *TESTER v. BISLEY*, § 3800; *Re ORCHARD*, § 3894; *METROPOLITAN GROUND RENTS v. WARWICK GARAGES*, § 1978.
- 1173. — — **peace treaties.** See *INTERNATIONAL LAW*
- 1174. **Exchange control.** See *REVENUE AND FINANCE*.
- 1175. **Export and import control.** See *CUSTOMS AND EXCISE*.
- 1176. **Food—catering.** Food (Licensing of Establishments) Order, 1948 (No. 368), re-enacting with modifications the Order of 1943 (No. 290). The principal change is that, while a licence is still required to carry on an establishment,

no restriction is now imposed by the order on the foods which the licensee may obtain and use therein.

Meals (Service at Social Functions) Order, 1947 (Amendment No. 1) Order, 1948 (No. 482), relaxing the restriction imposed by the 1947 Order on the service of meals to parties exceeding 100 persons. Under the new Order that restriction is not to apply if the total charge for the meal (including beverages) does not exceed 12s. 6d. per person, of which not more than 5s. may be paid or charged as the price of the meal. Restrictions imposed by the Meals in Establishments Order, 1946 (No. 1132), as amended, are not affected.

Meals in Establishments Order, 1946 (Amendment No. 5) Order, 1948 (No. 744). This Order increases the maximum price which may be charged for draught and bottled beer when supplied at a meal.

Meals in Establishments Order, 1946 (Amendment No. 6) Order, 1948 (No. 996), removing, as from May 12, 1948, the restrictions imposed by the Meals in Establishments Order, 1946 (No. 1132), on the supply of food by establishments between midnight and 5 a.m. in the Metropolitan Police District and the City of London and between 11 p.m. and 5 a.m. elsewhere.

Meals in Establishments Order, 1946 (Amendment No. 7) Order, 1948 (No. 1563), provides that between July 8 and November 30, 1948, fresh fruit is not to be regarded as a dish.

Meals in Establishments Order, 1946 (Amendment No. 8) Order, 1948 (No. 1693), came into operation on July 25, 1948; removes the restrictions on the supply of bread at main meals in restaurants.

SI 1948, Nos. 2461 (restriction on service of turkey in restaurants, etc., over Christmas period, 1948); 2584 (licensing of establishments).

- 1177. — use during period.** (Fats, Cheese and Tea (Rationing) (No. 2) Order, 1946 (No. 1116), arts. 8, 10 (as amended by the Fats, Cheese and Tea (Rationing) (No. 2) (Amendment No. 3) Order, 1946 (No. 2025).) The word "used" in art. 8 of the Fats, Cheese and Tea (Rationing) (No. 2) Order, 1946, which prescribes the total quantity of fats which may be used in any specified period in any catering establishment per person per meal served, must be given its ordinary meaning, and it follows that the Order prohibits the use of fats or cheese in excess of the permitted amounts for any purpose in the restaurant, *e.g.*, use in the manufacture of other articles, and is not equivalent to saying "consumed during that period": *QUAINTWAYS RESTAURANT v. BUDD*, [1948] 2 K. B. 231; 64 T. L. R. 272; [1948] 1 All E. R. 782, D. C.

- 1178. — cold storage.** SI 1948, Nos. 1074 (control of undertakings—consolidation order); 1093 (control of undertakings—charges order—replacing Cold Storage (Control of Undertakings) (Charges) (No. 2) Order, 1941); 1614 (charges).

- 1179. — control and prices.** S. R. & O., 1947, Nos. 2756 (soft drinks) [2d.]; 2772 (dredge corn); 2773 (home grown beans); 2774 (wheat); 2775 (barley); 2777 (condensed milk); 2788 (oats) [2d.]; 2789 (feeding stuffs); 2817 (raw cocoa); 2840 (dripping); 2841 (lard); 2842 (preserves). SI 1948, Nos. 7 (pears) [3d.]; 64 (dried fruits) [2d.]; 78 (fish); 79 (home-grown apples) [4d.]; 129 (root vegetables) [2d.]; 130 (salmon); 131 (manufactured and prepacked foods); 147 (imported apples); 150 (eggs); 152 (imported canned fish); 169 (feeding stuffs) [10d.]; 233 (chocolate, sugar, confectionery and cocoa products); 311 (potatoes, 1947 crop); 369 (cereal fillers); 397 (canned fruit and vegetables); 538 (canned puddings); 539 (onions); 592 (eggs); 619 (home-grown grains); 620 (pulse); 690 (potatoes); 692 (nut kernels); 790 (infant milk foods); 791 (welfare foods); 808 (citric acid and tartaric acid); 828 (tomatoes) [5d.]; 911 (onions) [3d.]; 1018 (table jellies); 1042 (imported canned fish); 1044 (milk); 1054 (cereal breakfast foods); 1062 (cheese) [2d.]; 1098 (coffee essence); 1101 (hay) [3d.]; 1205 (feeding stuffs—pigeon mixture); 1215 (carrots) [2d.]; 1291 (soft drinks); 1324 (preserves); 1508 (fish); 1509 (meat products and canned meat); 1510 (tomatoes); 1578 (pulse) [2d.]; 1628 (bananas) [2d.]; 1639 (fruit pulp); 1640 (preserves); 1654 (flour); 1685 (feeding stuffs) [2d.]; 1745 (dredge corn); 1746 (beans and threshed feeding peas—sack charges); 1747 (rye); 1748 (rice); 1750 (bread); 1759 (barley); 1760 (oats) [3d.]; 1761 (wheat); 1850 (cheese); 1855 (feeding stuffs—national pigeon mixture); 1884 (canned fruit and vegetables); 1935 (pigs); 1962 (chocolate, sugar confectionery and cocoa products); 1985 (tea);

2028 (chicory); 2113 (glucose); 2174 (flour confectionery); 2198 (milk); 2229 (citrus fruit); 2230 (onions); 2237 (imported meat—revocation of requisition orders); 2264 (meat feeding stuffs); 2291 (nut kernels); 2363 (carrots); 2364 (home-grown apples); 2380 (tapioca and sago); 2407 (imported apples) [6d.]; 2419 (feeding stuffs) [5d.]; 2460 (edible gelatine); 2470 (chocolate, sugar confectionery and cocoa products); 2533 (imported deciduous fruit); 2534 (raw cocoa); 2535 (poultry); 2537 (rabbits and hares); 2610 (fish) [4d.]; 2611 (fish sales charges); 2612 (management of businesses—biscuits, sugar, etc., confectionery, flour confectionery and bread); 2634 (cheese); 2707 (meat products and canned meat); 2806 (dried fruits); 2807 (pulse); 2832 (mustard seed—revocation).

1180. — — — **cases.** [Scot.] (Feeding Stuff (Rationing) Order, 1943 (No. 1498), Arts. 2, 4, 17.) In *BROWN v. HOWIE & SONS*, 1947 S. C. (J.) 136; 1948 S. L. T. 32, consumers deposited coupons for rationed feeding stuffs with distributing dealers and the feeding stuffs were delivered to them after the end of the rationing period. The Court of Justiciary held that no offence had been committed under Art. 2 or 4 of the Order, and that as Art. 17 had not been libelled it could not be founded upon.

1181. — — —. [Scot.] In *PATTERSON v. CAM'NETHAN OATMEAL*, 1948 S. L. T. 191, the High Court of Justiciary (Lord Mackay dissenting) held that where a retailer of oatmeal had prepaid postage and charged it against the customer he had not contravened the Oat Products (Control and Maximum Prices) Order, 1945 (No. 5 of 1945), art. 3 (1), First and Second Schedules, by making an addition to the controlled price.

1182. — — — **potatoes.** SI 1948, Nos. 947 (revoking S. R. & O., 1947, No. 2676); 948 (removing and relaxing certain restrictions on sale and transport); 1116 (new potatoes) [2d.]; 1130 (general provisions); 1560 (1948 crop); 1751 (1948 crop) [2d.]; 1849 (stockfeed); 2019 (seed potatoes) [2d.]; 2199 (general provisions) [3d.]; 2200 (ware potatoes—1948 crop) [3d.]; 2673 (ware potatoes—1948 crop).

1183. — — — **import of livestock—forfeiture order.** [N.I.] (Agriculture (Miscellaneous War Provisions) Act, 1940 (3 & 4 Geo. 6, c. 14), s. 28 (3).) In *MINISTER OF AGRICULTURE FOR NORTHERN IRELAND v. MCCARTNEY*, [1948] N. Ir. 1, the Court of Appeal in Northern Ireland held that the words "as soon as practicable" in Reg. 5 (4) of the Livestock (Import from Eire and Isle of Man) Regulations, 1945 (No. 942) (which were made under the power conferred on the Minister of Food by s. 28 (3) of the Agriculture (Miscellaneous War Provisions) Act, 1940, and which provide, by Reg. 5 (4), that the Minister shall as soon as practicable, a claim having been made within the prescribed twenty-one days by the person claiming to be the owner of the imported animals seized under the Regulations, apply to the Court of summary jurisdiction for a forfeiture order with respect to the animals in question) mean as soon as practicable after the notice of claim has been received. (See also § 1184.)

1184. — — — **Livestock (Import from Eire and Isle of Man) Regulations, 1945 (No. 942), reg. 5 (5).** [N.I.] (Agriculture (Miscellaneous War Provisions) Act, 1940 (3 & 4 Geo. 6, c. 14), s. 28 (3).) In *MINISTER OF AGRICULTURE FOR NORTHERN IRELAND v. MCCARTNEY*, § 1183, the Court of Appeal in Northern Ireland held (Black, J., reserving judgment), that the words "and the claimant shall not be entitled to raise any other defence or objection to the making of the order" in Reg. 5 (5) of the Regulations (which were made under s. 28 (3) of the Act) were *ultra vires*, and held, further (without dissent), that the words could only apply when the application, the possible defences and objections to which were in question, was made in accordance with the Regulations, and did not preclude a claimant from pleading that the application by the Minister was irregular.

1185. — — — **kitchen waste.** SI 1948, Nos. 140 (Kitchen Waste (Licensing of Private Collectors) (Extension) Order, 1948, extending the principal Order (S. R. & O., 1944, No. 142) to an additional district (borough of Hereford) as from April 1, 1948); 462 (amendment of Kitchen Waste (Maximum Price) (No. 1) Order, 1942 (No. 669), which has ceased to apply to dried kitchen waste).

1186. — — — **labelling.** SI 1948, Nos. 1438 (beer); 2598 (soft drinks).

- 1187. — rationing.** S. R. & O., 1947, Nos. 2776 (feeding stuffs); 2786 (personal points); 2795 (fats, cheese and tea); 2839 (points rationing). SI 1948, Nos. 4 (bacon); 128 (fats, cheese and tea); 149 (points) [3*d.*]; 301 (general provisions); 410 [2*d.*] (points rationing); 411 (fats cheese and tea); 448 (general provisions); 483 (milk); 591 (general provisions); 630 (points rationing); 662 (fats, cheese and tea); 650 (feeding stuffs); 691 (sugar); 825, 826 (personal points); 827 (milk); 846 (points); 1019 (preserves); 1040 (fats, cheese and tea); 1055 (points); 1163 (milk—non-priority allowance); 1264 (sugar); 1290 (personal points); 1587 (points rationing) [5*d.*]; 1631 (general provisions) [5*d.*]; 1632 (personal points) [2*d.*]; 1633 (bacon); 1634 (bread) [2*d.*]; 1635 (meat); 1636 (fats, cheese and tea) [2*d.*]; 1637 (sugar and preserves) [2*d.*]; 1686 (milk); 1692 (bread—revocation of Bread (Rationing) Order, 1948 (No. 1634)); 1821 (fats, cheese and tea); 1822 (points); 1885 (general provisions); 1886 (sugar and preserves) [2*d.*]; 1901 (points); 2197, 2319 (general provisions); 2405 (sugar and preserves); 2406 (general provisions); 2414 (points); 2497 (bacon); 2498 (general provisions); 2509 (personal points); 2532 (fats, cheese and tea); 2583 (general provisions); 2599 (sugar); 2621 (fats, cheese and tea); 2622 (sugar, tea and personal points—Christmas directions); 2635 (points); 2686 (feeding stuffs); 2706 (sugar); 2764 (bacon); 2765 (pigs); 2766 (general provisions); 2848 (points rationing).
- 1188. — evidence of offences.** In *BROWN v. CASTLE HOTEL (NORWICH)* (1948), 46 L. G. R. 441, the Divisional Court held that where, in a prosecution for over-use of sugar by a catering company, the evidence of the prosecution was based on the company's own returns, which showed such over-use for the several periods to which the prosecution related, the justices were wrong in dismissing the information on the ground that the company's returns for a later period (which showed an under-use for that period) indicated that there was something wrong with the earlier returns, because the returns disclosed a *prima facie* case and it was for the company to bring evidence to show that their own returns were in error.
- 1189. — regulation of manufacture.** SI 1948, Nos. 1099 (feedings stuffs) [4*d.*]; 2388 (feeding stuffs) [3*d.*].
- 1190. — restriction on dealings.** SI 1948, Nos. 824 (linseed); 2235 (Food (Restriction on Dealings) Order, 1943 (Amendment No. 4) Order, 1948, further amending the Food (Restriction on Dealings) Order, 1943 (No. 1769), as already amended).
- 1191. — retailers.** SI 1948, Nos. 2334 (Food (Licensing of Retailers) Order, 1948, re-enacting with modifications Food (Licensing of Retailers) Order, 1945 (No. 131), as amended) [2*d.*]; 2585 (licensing).
- 1192. — salvage.** Salvaged Goods Order, 1948 (No. 2141), prescribes channels of disposal for salvaged food and soap. It revokes the Salvaged Goods (Terms of Sale) Order, 1945 (No. 1091). [2*d.*]
- 1193. — seasonal allowances.** Food (Seasonal Allowances) Order, 1948 (No. 1823), provides that farmers engaged in certain seasonal operations are to complete and deliver to the local Food Executive Officer a form of application for special authority to purchase rationed or controlled foods for consumption by workers employed on such operations.
- 1194. — seizure.** Seizure of Food Order, 1948 (No. 724), re-enacts the Seizure of Food Order, 1946 (No. 1823), with the following additions: (1) seizure may be effected either by physical seizure or by serving a notice in the prescribed form and manner; and (2) it is an offence to use or dispose of any article of food which has been seized under the Order. Seizure of Food Order, 1948 (Amendment) Order, 1948 (No. 953), amends this order by deleting the provision that certain expenses may be deducted from the proceeds of sale of a seized article.
- 1195. — standards.** S. R. & O., 1947, No. 2816 (feeding stuffs) [2*d.*]; SI 1948, No. 1073 (mustard).
- 1196. — transport.** SI 1948, Nos. 176 (carrots); 1549 (transport of barley by rail to Scotland).
- 1197. — welfare foods.** SI 1948, No. 146 (milk—priority supplies).
- 1198. Fuel control—advertisement, use of fuel for.** Control of Fuel Order, 1948 (No. 1078) re-enacts (as from June 1, 1948) Art. 5 of the Control of Fuel (No. 3)

Order, 1942 (No. 2510) (which restricts the consumption of fuel in lighting fittings, etc., for the purposes of advertisement) with an amendment entitling the Minister of Fuel and Power to grant exemption by means of a licence.

- 1199. — coal.** Coal Distribution Order, 1943, General Direction (Restriction of Supplies) No. 16 (SI 1948, No. 422), removed the restriction on quantities of coal and coalite which might be acquired in the period February to April, 1948, while leaving unaffected the total quantities which might be acquired between May 1, 1947, and April 30, 1948. Coal Distribution Order, 1943, General Direction (Restriction of Supplies) No. 17 (No. 833), specifies, subject to certain exceptions, the maximum aggregate quantities of various classes of coal which may be furnished or acquired between May 1, 1948, and April 30, 1949, for consumption in controlled premises. Coal Distribution Order, 1943, General Direction (Restriction of Supplies) No. 18 (No. 1644), amends the Coal Distribution Order, 1943, General Direction (Restriction of Supplies) No. 17. The effect is to free certain grades of fuel from the restrictions of the last-mentioned Direction. Coal Distribution (Amendment) Order, 1948 (No. 2347), further amends the Coal Distribution Order, 1943 (No. 1138), by a slight adjustment to the areas of certain "regions".

- 1200. — — supplies in breach of licence.** (Coal Distribution Order, 1943 (S. R. & O., 1943, No. 1138), Arts. 2, 78.) Art. 78 of the Coal Distribution Order, 1943, provides: "Licensed merchant" means "any person carrying on an undertaking and whose name is entered in the Licensed Merchants' Register as such, and shall include the servant or agent, acting in the course of his employment, of any such person". The expression "person" in the Article includes any body of persons, and, consequently, a committee of workmen and employees whose name was entered in the Licensed Merchants' Register was held to constitute a "person" within the meaning of the Order, and a secretary of the committee, who had delivered coal in breach of the Order, was held to have been rightly convicted as "as a servant or agent . . . of any such person", and it was further held that the servant or agent of the committee, in such a case, though he is the servant or agent of each member, serves or acts for them jointly.

Per Humphreys, J.: Where it is desired to register an unincorporate body under Art. 20 of the Order, they should be registered as "A, B, C and D and others carrying on business in the name of X". *DAVEY v. SHAWCROFT* (1948), 64 T. L. R. 289; [1948] 1 All E. R. 827, D. C.

- 1201. — petrol.** See PETROLEUM.

- 1202. Goods and materials (manufacture and supply)—apparel and textiles.** S. R. & O., 1947, No. 2793 (braces) [2d.]; SI 1948, Nos. 13 (footwear) [3d.]; 119 (utility handkerchiefs); 122 (utility men's and boys' shirts, underwear and nightwear) [7d.]; 200 (woven cloth (cotton, rayon and linen)); 216 (utility overalls and aprons) [11d.]; 274 (utility apparel (Merchant Navy uniforms)) [3d.]; 303 (utility corsets) [3d.]; 305 (woven cloth); 316 (knitted goods); 357 (amending the Apparel and Textiles Order, 1942 (No. 1000) and certain Directions thereunder); 504 (utility apparel—infants' and girls' wear); 702 (fur apparel); 703 (knitted goods); 734 (utility mark); 756 (utility apparel—men's, youths' and boys' outerwear) [8d.]; 778 (utility apparel—women's and maids' underwear and nightwear) [10d.]; 814 (woven cloth, wool and animal fibre); 879 (household textiles); 880 (utility apparel—men's and boys' shirts, underwear and nightwear) [6d.]; 881 (upholstery cloth) [2d.]; 972 (nurses' uniforms) [3d.]; 991 (women's and maids' utility outerwear) [4d.]; 994 (knitted goods); 1060 (utility apparel—infants' and girls' wear); 1084 (utility apparel—women's and maids' outerwear); 1085 (utility apparel—women's and maids' underwear and nightwear); 1157 (woven cloth); 1160 (utility curtain cloth) [4d.]; 1190 (knitted goods); 1191 (utility apparel—infants' and girls' wear); 1211 (utility waterproofs) [3d.]; 1251 (utility gaberdine raincoats) [4d.]; 1441 (utility oilskins) [3d.]; 1552 (utility overalls and aprons); 1561 (men's, youths' and boys' utility outerwear) [5d.]; 1588 (utility pram rugs); 1660 (utility apparel, merchant navy uniforms); 1725 (women's and maids' utility

outerwear); 1753 (gloves) [4d.]; 1820 (utility handkerchiefs); 1921 (upholstery cloth); 1922 (knitted goods); 1939 (rubber and industrial footwear); 1949 (household textiles); 1980 (woven cloth—wool and animal fibre); 1983 (infants' and girls' utility wear); 2076 (men's and boys' utility shirts, underwear, etc.) [2d.]; 2077 (nurses' uniforms); 2078 (lace and woven curtain net) [3d.]; 2080 (utility curtain cloth) [3d.]; 2104 (footwear—utility mark); 2105 (footwear—supply, marking and manufacturers' prices) [2d.]; 2134 (woven cloth); 2180 (gloves) [4d.]; 2269 (women's and maids' utility underwear and nightwear) [3d.]; 2309 (utility overalls and aprons) [2d.]; 2318 (utility apparel—infants' and girls' wear); 2326 (knitted goods); 2338 (utility mark); 2339 (utility waterproofs) [3d.]; 2335 (utility apparel—men's, youths' and boys' outerwear) [5d.]; 2336 (woven cloth); 2378 (utility upholstery cloth); 2412 (utility gaberdine raincoats) [3d.]; 2426 (miscellaneous textiles); 2457 (utility handkerchiefs) [2d.]; 2477 (footwear); 2586 (utility quilts) [2d.]; 2637 (men's and boys' utility shirts, underwear and nightwear) [9d.]; 2679 (goods for export—utility mark) [2d.]; 2682 (woven cloth); 2684 (utility cloth and household textiles); 2685 (women's and maids' utility outerwear) [4d.]; 2743 (lace and woven net); 2744 (utility mark); 2745 (utility braces) [2d.]; 2761 (knitted goods); 2809 (floor coverings); 2831 (household textiles); 2852 (utility overalls and aprons) [10d.].

1203. — — **garments made from unrationed materials.** Garments, such as dressing-gowns and overcoats, are rationed whatever the materials from which they are made: Board of Trade Press Notice, dated February 16, 1948 (Ref. 1793).

1204. — **consumer rationing.** S. R. & O., 1947, No. 2798 (bazaars and sales of work); SI 1948, Nos. 329 (clothing rationing); 698 (boys' and girls' wear); 767 (Consumer Rationing (Tourist Vouchers) Licence, 1948, enabling traders to supply coupon-free before January 1, 1949, rationed goods to persons holding tourist vouchers); 834 (utility furniture); 957 (clothing coupons) [2d.]; 968 (raffia footwear); 970 (sandals); 1076 (clothing coupons); 1158 (sandal and slipper soles); 1161 (clothing coupons) [2d.]; 1250 (gloves); 1287 (utility furniture); 1511 (services handkerchiefs—certificates); 1646 (office machinery decontrol); 1647 (hand tools decontrol); 1648 (typewriters decontrol); 1695 (supply to local authorities, etc.); 1698 (clothing coupons); 1799 (footwear and bathing costumes); 1824 (clothing coupons); 1971 (utility furniture buying permits); 1977 (civilian uniforms and protective clothing) [2d.]; 1981 (special producers—footwear and gloves); 2079 (clothing coupons); 2189 (amendment of Consolidation Order, 1947); 2680 (special coupon rates); 2681 (returns in respect of footwear); 2731 (tourist vouchers).

1205. — — **transfer of clothing coupons.** [Scot.] (Consumer Rationing (Consolidation) Order, 1945 (No. 1000).) In *DIN AND CLIFFORD v. ADAIR*, 1947 S. C. (J.) 145, the High Court of Justiciary held that a clothing coupon is "transferred" within the meaning of art. 14 of the Consumer Rationing (Consolidation) Order, 1945, when any person delivers to another person its physical possession, and with that possession the privileges which possession of the coupon *de facto* confers; and that, where clothing coupons are transferred without any relative business transaction involving clothing, the Crown need not eliminate every limited purpose for which a coupon might be delivered from one person to another, and, in the absence of other facts or explanations to account for the transaction, the Court will be entitled to convict the transferor under art. 14.

1206. — **limitation of supplies.** SI 1948, Nos. 82, 1606 (toys and indoor games).

1207. — **machine tools.** SI 1948, No. 2568 (electrical equipment).

1208. — **miscellaneous goods.** SI 1948, Nos. 206 (utility furniture); 585 (plastic goods); 588 (utility furniture); 589 (furniture); 969 (utility furniture); 1141 (furniture); 1440 (toilet preparations); 1575 (roofing materials); 1576 (whiting, chalk and chalk lime); 1616 (domestic pottery); 1940 (mechanical lighters); 1941 (perambulators); 2277 (bolts, nuts, screws, etc.); 2464 (unmanufactured tobacco); 2492 (machine tools, electrical equipment); 2507 (furniture—utility mark) [3d.]; 2526 (motor fuel); 2528 (machinery, plant and appliances); 2636 (revocation of orders relating to fountain pens, hollow-ware and sports gear); 2750 (glassware); 2732 (pianos and organs); 2808 (soap).

- 1209. — raw materials.** S. R. & O., 1947, Nos. 2799 (paper) [1s.]; 2800 (leather (charges) (No. 1)) [1s.]; 2813 (paper). SI 1948, Nos. 81 (iron and steel) [4d.]; 121 (copper, lead and zinc); 278 (cotton); 295 (horse-hides); 296 (native cattle hides and calf skins); 458 (waste paper and waste textile materials); 461 (willow rods and sticks) [2d.]; 550 (leather—charges); 576 (rubber tyres); 577 (paper); 584 (molasses and industrial alcohol); 606 (iron and steel); 722 (home-grown wool); 751 (sulphur); 752 (bichromates); 849 (pelts); 980 (building materials); 983 (paper) [2d.]; Nos. 1134 (veneer) [2d.]; 1247 (fertilisers); 1289 (iron and steel); 1312 (leather—charges) [2d.]; 1319 (paper—newsprint); 1333 (iron and steel); 1724 (hemp); 1738 (timber—imported plywood); 1777 (cotton); 1913 (iron and steel); 1979 (paper); 2082 (cotton); 2159 (paper); 2175 (timber); 2201 (copper, lead and zinc); 2214 (jute yarn); 2270 (timber—kiln-drying charges) [3d.]; 2458 (various controls—revocation); 2540 (paper); 2541 (flax seed); 2572 (molasses and industrial alcohol); 2592 (copper, lead and zinc); 2630 (iron and steel); 2697 (revocation of various controls in respect of dye-stuffs, caustic potash, etc.); 2753 (flax—revocation); 2755 (hemp); 2756 (rope); 2823 (jute yarn) [2d.]; 2826 (paper—newsprint); 2827 (paper) [11d.]; 2830 (copper, lead and zinc); 2836 (silk).
- 1210. — regulation of disposal of stocks.** SI 1948, Nos. 1159 (curtain material); 1288 (utility furniture).
- 1211. — soap rationing.** SI 1948, No. 1638 [3d.].
- 1212. — unrationed materials—coupons.** See § 1203.
- 1213. Goods and services (price control)—apparel and textiles.** S. R. & O., 1947, Nos. 2732 (utility apparel); 2735 (utility handkerchiefs); 2760 (utility cloth and household textiles). SI 1948, Nos. 10 (cloth and household textiles (utility) (maximum prices)); 97 (utility footwear) [2d.]; 171 (utility handkerchiefs); 227 (footwear repair charges); 273 (utility apparel (maximum prices and charges)); 277, 278, 279, 280 (cotton yarn and cotton cloth); 304 (yarn and cloth (wool and animal fibre)); 349 [2d.], 357, 358 (general apparel and textiles); 351, 360 (footwear); 460 (utility apparel); 582 (utility cloth and household textiles); 587, 701 (utility apparel); 775 (general apparel, furnishings and textiles) [3d.]; 861 (utility cloth and household textiles); 882 (general apparel, furnishings and textiles); 952 (utility apparel); 1038 (utility cloth and household textiles); 1266 (haberdashery); 1243, 1556 (utility apparel); 1659 (utility cloth and household textiles); 1671 (utility apparel); 1802 (narrow fabrics); 1965 (utility handkerchiefs); 2027 (utility apparel); 2119 (utility footwear); 2120 (utility apparel); 2121 (utility cloth and household textiles); 2220 (general apparel, furnishings and textiles) [4d.]; 2221 (uniforms—retail bespoke); 2308 (utility cloth and household textiles); 2411 (miscellaneous orders variation); 2435 (utility apparel); 2466 (utility cloth and household textiles); 2468 (utility apparel) [2d.]; 2478 (footwear); 2491 (yarn and cloth); 2510 (utility handkerchiefs); 2525 (general apparel, furnishings and textiles); 2531 (hemming charges) [4d.]; 2651 (footwear repairs).
- 1214. — footwear.** Goods and Services (Price Control) Act, 1941 (4 & 5 Geo. 6, c. 31), ss. 1, 20 (4) (a); General Footwear (Maximum Prices and Charges) Order, 1946 (S. R. & O., 1946, No. 1413) (as amended), arts. 1, 5.) The expression "offer to sell" is defined in s. 20 (4) (a) of the Goods and Services (Price Control) Act, 1941, as including "a notification by a person of the price proposed by him for a sale of goods". Thus, in a case where a retailer of footwear had boxes containing shoes standing on shelves in his shop marked with prices which were read by a Board of Trade inspector and found to be in excess of the prices which could lawfully be charged for the shoes under the General Footwear (Maximum Prices and Charges) Order, 1946, it was held that there had been an "offer to sell" within the meaning of s. 1 (1) of the Act of 1941, and, consequently, the offence of offering for sale these shoes at too high a price had been proved: *PHILLIPS v. DALZIEL*, [1948] W. N. 429; 64 T. L. R. 628; [1948] 2 All E. R. 810, D. C. (distinguishing *Wiles v. Maddison*, [1943] 1 All E. R. 315).
- 1215. — frustrated exports.** Miscellaneous Goods (Frustrated Exports) (Maximum Prices) Order, 1948 (No. 2312), prescribing maximum prices for price-controlled goods which have been sold for export, but the export of which has become impracticable. The Miscellaneous Goods (Import and Prevented Export) (Maximum Prices) Order, 1943 (No. 1250), is revoked.

EMERGENCY LAWS

CURRENT LAW

Price-Controlled Goods (Frustrated Exports) (Restriction of Resale) Licence, 1948 (No. 2315), permits the resale by certain persons otherwise than by retail of goods to which the above Order applies, and revokes the General Licence dated September 3, 1943.

- 1216.** — **miscellaneous goods.** S. R. & O., 1947, Nos. 2733 (furniture); 2820 (bulbs for flash lamps); 2821 [2d.], 2822 (bricks). SI 1948, Nos. 5 (boot and shoe repairs); 59 (furniture); 80 (bolts, nuts, screws, etc.); 123 (rubber hot water bottles); 170 (fountain pens); 180 (furniture); 294 (sulphuric acid); 348 [3d.], 350 (miscellaneous goods); 352 (hollow-ware); 353 (hardware and ironmongery); 354 (domestic pottery); 355 (uniforms); 356 (glass tumblers); 359 (P.V.C. sheeting); 508 (miscellaneous goods); 518 (furniture); 578 (services laundry); 732 (photographic film); 765 (P.V.C. sheeting); 776 (miscellaneous goods, maximum prices amendment) [5d.]; 779 (domestic pottery) [2d.]; 780 (general hardware and ironmongery) [2d.]; 781 (general hollow-ware) [2d.]; 792 (plant, rates of hire); 795 (furniture); 984 (pencils); 985 (photographic film); 995 (bricks—abolition of control); 1001 (general hollow-ware); 1072 (furniture); 1241 (carpets) [2d.]; 1252 (furniture); 1307 (laundry—charges); 1308 (sewing cottons and threads); 1412 (hire-purchase and credit sale agreements); 1442 (candles); 1555 (second-hand plant); 1577 (war emergency paint); 1611 (waste paper and textile materials); 1669 (knitting pins); 1732 (glass tumblers); 1733 (enamelled hollow-ware); 1734 (toys and indoor games) [2d.]; 1772 (furniture); 1803 (rubber hot water bottles); 1804 (toys and indoor games); 1868 (miscellaneous goods); 1869 (coal tar products); 1995 (perambulators) [2d.]; 2114 (general hollow-ware) [3d.]; 2386 (electric torch dry batteries); 2421 (clocks and watches) [2d.]; 2467 (general hollow-ware); 2624 (furniture) [3d.]; 2625 (furniture—records, etc.) [2d.]; 2626 (furniture—sale by auction); 2752 (candles); 2758 (clocks and watches); 2759 (mechanical lighters); 2760 (miscellaneous goods) [2d.].
- 1217.** — **penalty.** (Defence (General) Regulations, 1939, reg. 55AB (4) (a).) Reg. 55AB of the Defence (General) Regulations, 1939, in dealing with the minimum amount of a fine for exceeding maximum prices provides that “the minimum amount shall be such amount as will, in the opinion of the Court, secure that the offender derives no benefit from the offence”. The intention of the Regulation is that the offender is to be fined such an amount as will leave him in the same position as he would have been in if he had not made the overcharge, and, consequently, in assessing the fine it is necessary to deduct the amount of any tax—whether it be income tax or excess profits tax—which the offender would have had to pay on the amount overcharged: *BETELEY, ADDYMAN AND JALLAND v. SINGER*, [1948] 2 K. B. 405; [1948] L. J. R. 1639, D. C.
- 1218. Liabilities adjustment.** See **BANKRUPTCY AND LIABILITIES ADJUSTMENT.**
- 1219. National service.** See **ARMED FORCES.**
- 1220. Personal Injuries (Civilians) Scheme.** See § 2672
- 1221. Petrol rationing.** See **PETROLEUM.**
- 1222. Prize.** See **PRIZE LAW.**
- 1223. Requisitioning.** See **COMPULSORY PURCHASE AND REQUISITION.**
- 1224. Supplies and Services (Extended Purposes) Act, 1947—application to Isle of Man.** Supplies and Services (Extended Purposes) (Isle of Man) Order in Council, 1948 (No. 873), made under the Supplies and Services (Extended Purposes) Act, 1947 (10 & 11 Geo. 6, c. 55), s. 1 (4), applies the provisions of s. 1 (1) (2) and (3) of that Act (subject to the adaptations contained in the Schedule) in relation to such of the Regulations specified in Schedules 1, 2 to an Order in Council dated February 19, 1946 (No. 168), and such orders, etc., made thereunder, as were in force on the making of the present Order in Council.
- 1225. Trading with the enemy.** See **TRADING WITH THE ENEMY.**
- 1226. War damage.** See **WAR DAMAGE.**

1227. War pensions. See PENSIONS AND SUPERANNUATION.

1228. War-time lease. See METROPOLITAN GROUND RENTS *v.* WARWICK GARAGES, § 1978.

1229. BOOK PUBLISHED. Defence Regulations (printed as in force on January 1, 1948), 18th ed. [5s. 6d.].

EMPLOYMENT

1230. Aliens—Polish forces. See § 132.

1231. Apprentice—clerk training as book-keeper. [Scot.] See FRASER *v.* MINISTER OF NATIONAL INSURANCE, § 1433.

1232. — whether employee of company. See *Re MARRYAT*, § 3906.

1233. Catering wages. See §§ 1276, 1277.

1234. Civil Service Arbitration Tribunal awards. Nos. 93, 94 (superintendents of typists—claim for improved salary scale); 95 (clerical officers in the general class, typing grades, clerical assistants and temporary clerks—claim for an amendment of the assimilation terms contained in certain agreements dated August 25, 1947, relating to these grades and for an amendment of the London scales of pay for clerical officers); 96 (senior staff of the National Gallery—claim for improved salary scales); 97 (storeholders and foremen (store and yard), War Office—claim for improved salary scales with retrospective effect); 98 (superintendent of typists—claim for immediate payment of increases granted by Award No. 93); 99 (superintendent of typists—claim for immediate payment of increases granted by Award No. 94); 100 (established and temporary sorting assistants and supervisors of sorting assistants in the Post Office—claim for improved scales of pay and conditions of service).

1235. Commission—on “business done”. In LEAK *v.* CHARLES & SONS, Morris, J., held that an agreement by the defendant to pay the plaintiff commission on business done after a certain date did not entitle the plaintiff to commission on payments made after that date in respect of orders placed before that date. [Reported by R. C. Calburn, Esq., Barrister-at-Law.] See also (1948), 92 S. J. 154.

1236. Common employment—abolition of doctrine. Law Reform (Personal Injuries) Act, 1948 (11 & 12 Geo. 6, c. 41), s. 1, abolishes the defence of common employment and repeals the Employers' Liability Act, 1880 (43 & 44 Vict. c. 42). See § 816.

1237. — — accidents occurring before. See SMEDLEY *v.* MOIRA COLLIERY, § 2459.

1238. — accident during rest period. See HEALY *v.* L. P. T. B., § 2460.

1238a. — transfer of servant. See THE POLARTANK, § 1256.

1239. — trolley bus colliding with tower wagon. See LANCASTER *v.* L. P. T. B., § 2461.

1240. Control of engagement—direction of labour. Control of Employment (Directed Persons) (Amendment) Order, 1948 (No. 708), amends the Control of Employment (Directed Persons) Order, 1943 (No. 651) by providing that in case of an appeal a national service officer, in considering the recommendation of the local appeal board, should have regard to any directions given by the Minister.

1241. — —. The Ministry of Labour and National Service have issued a quiz leaflet, P. L. 285, explaining the Registration for Employment Order, 1947, No. 2409. A separate leaflet, P. L. 278, is available on the Control of Engagement Order, 1947, No. 2021.

1242. — extension. Control of Engagements (Amendment) Order, 1948 (No. 2608), extends until January 1, 1950, the operation of the Control of Engagement Order, 1947 (No. 2021), which would otherwise have expired on January 1, 1949.

1243. Crown servants. See CONSTITUTIONAL LAW.

1244. Dock workers. (Regulation of Employment) Order, 1947 (No. 1189). In BRIDGES *v.* PORT OF LONDON AUTHORITY (1948), 81 Ll. L. R. 360, Birkett, J., held, having regard to the Dock Workers (Regulation of Employment) Order, 1947,

that the plaintiff's employer was the Port of London Authority and not the National Dock Labour Board.

1245. Employers' liability. See § 816.

1246. Employment and Training Act, 1948 (11 & 12 Geo. 6, c. 46). The main objects of this Act are to bring up to date the statutory provisions regarding the functions of the Minister of Labour and National Service and the facilities and services in respect of employment and training for employment, and also to provide for the establishment of a comprehensive juvenile employment service based on the Report of the Committee on the Juvenile Employment Service presented on September 18, 1945.

Under s. 1 it is the duty of the Minister to provide facilities for assisting persons to select, fit themselves for, obtain and retain suitable employment and for assisting employers to obtain suitable employees. For this purpose he is empowered to appoint advisory committees and make regulations. S. 2 gives the Minister power to establish and maintain employment exchanges and to arrange for the furnishing of information and the provision of advice for any persons for any of the above purposes. By s. 3 the Minister may provide training courses for persons above the upper limit of compulsory school age and make payments in respect of maintenance and travelling and provide residential accommodation in connection with such courses. S. 4 deals with schemes for promoting regularity of employment and s. 5 authorises the Minister to make payments towards the cost of the removal and resettlement of workers.

Pt. II of the Act (ss. 7-13) deals with the Youth Employment Service. S. 7 provides for the setting up of a Central Youth Employment Executive to be staffed by officers of the Ministry of Labour and National Service and of the Ministry of Education (or Secretary of State in Scotland); and s. 8 provides for the constitution of a National Youth Employment Council and Advisory Committees on Youth Employment. Provision is also made for the establishment of Youth Employment Committees (s. 9). S. 10 provides for schemes authorising local education authorities to undertake in the whole of their areas any of the functions of the Minister under s. 2. Such schemes are to provide for the administration by local education authorities of unemployment benefit and national assistance for persons under eighteen to the extent prescribed in the scheme (s. 11). S. 13 provides for the making of regulations for requiring proprietors of schools to furnish particulars of pupils leaving school, etc. This Part of this Act applies to persons under eighteen and persons over that age still attending school.

Part III (ss. 14-22) contains supplemental provisions. The Act applies to Scotland with modifications (s. 19), but not to Northern Ireland (s. 22 (2)), except s. 20, which permits the Parliament of Northern Ireland to make laws for similar purposes. The Labour Exchanges Act, 1909 (9 Edw. 7, c. 7), most of the Unemployment Insurance Act, 1935 (25 & 26 Geo. 5, c. 8), and the Unemployment Insurance Act, 1939 (2 & 3 Geo. 6, c. 29), are repealed (Sched. II).

1247. Factories. See FACTORIES.

1248. Income tax—P.A.Y.E. See §§ 1660, 1661.

1249. Independent contractor—liability for acts of. See *LAVENDER v. DIAMINTS*, § 1425; *O'MAHONY v. PRESS & SONS*, § 1424.

1250. Industrial Court—awards. Nos. 2122 (leather production—time and piece rates); 2123 (rivet, bolt and nut manufacture—method of payment of bolt makers); 2124, 2125 (baking industry—working week, rates of wages and sick pay of bakery staffs); 2126 (wages and conditions of employment of vanmen); 2127 (engineering industry—rates of wages of dandy roll and paper mould makers); 2128 (Government industrial establishments—claim for "dirty work" allowance); 2129 (distributive trades—rates of pay of packers, warehousemen, porters, cleaners of equipment and dock dispatch clerks); 2131 (textile industry—holiday pay, fall-back rate and guaranteed minimum wage); 2132, 2133 (tug-boat industry—wages of tug crews, finishing time on Saturdays, grading of apprentices); 2134 (road transport—starting time of drivers for London meat carriers); 2135 (vehicle builders—overtime payments under "staggered" hours scheme); 2136 (food and medicine manufacture—clerical workers' wages); 2137

(Royal Mint—shorter working week); 2138 (Naval armament depot—travelling allowance); 2139 (entertainment industry—rates of pay of dance band musicians); 2140, 2141 (entertainment industry—fair wages resolution); 2142 (glass container industry—hourly rates); 2143 (docks industry—Sunday, etc., pay of lock foremen and lockmen); 2144 (shipbuilding industry—pay of platers); 2149 (cooperage industry, rates of wages—claim for increase); 2150 (railway shopmen, labourers employed in engineering department of docks—claim for meal allowance); 2151 (Government industrial establishments—electrical fitters—claim for allowance when employed on testing duties); 2152 (sports goods manufacturing industry—rates of wages—claim for increase); 2153 (local authorities administrative, professional, technical and clerical services—local fuel overseer—salary—claim for increase); 2154 (steel wire manufacture—dismissal of employee); 2155 (railway shopmen—crane drivers—base rate); 2156 (fire brigades in England and Wales—firemen, leading firemen and sub-officers—supplementary and rent allowances); 2157 (London Aero and Motor Services—aircraft maintenance mechanics—terms and conditions of employment—Civil Aviation Act, 1946, s. 41); 2158 (baking industry—rates of wages—claim for increase); 2159 (engineering and allied trades—light edge tool industry—edge tool grinders—dental rate and allowance); 2160 (shipbuilding industry—plater's helpers—status—terms and conditions of employment); 2161 (Skyways, Ltd.—foremen, section inspectors and inspectors—terms and conditions of employment—Civil Aviation Act, 1946, s. 41); 2162 (distributive and allied trades—claim for the drug and fine chemical trades' rates of pay and conditions of employment at Timothy Whites & Taylors' Burley Hill factory and warehouse); 2163 (Government Industrial Establishments—R.N. Hospitals—male industrial grades—claim for 44-hour week); 2164 and Appendix (Olley Air Service—aircraft maintenance mechanics—terms and conditions of employment—Civil Aviation Act, 1946, s. 41); 2165 (railway shopmen—Railway Executive, Eastern Region, King's Cross and Gateshead—stores department—workshop staff—bank and public holidays); 2166 (wood and stone carving—South Devon Master Carvers—terms and conditions of employment); 2167 (distributive trades—N.A.A.F.I. Corporation—clerical workers—rates of wages—claim for increase); 2168 (land drainage authorities—claim for increased rates of wages and a 44-hour week); 2169 (civil air transport—radio officers, engineer officers and navigating officers—salaries and pensions structure); 2170 (tugboat industry—tugboatmen—claim for 44-hour week, a stabilised working day, overtime on a daily basis, two weeks' annual holiday with pay, and other amendments of the present agreement); 2171 (tugboat industry—tugboatmen—claim for two nights off per week and one week-end in every three weeks); 2172 (Government industrial establishments—stack loader operator—claim in respect of damage to Government property); 2173 (distributive trades—milk deliverers—claim for one rest day in seven); 2174 (insurance industry—salary scales—claim for increase); 2175 (beet sugar industry—claim for an increased hourly wage with retrospective effect and for payment to be based on a 44-hour week throughout the year); 2176, 2177, 2178 (drivers and conductors—wages and conditions of employment—section 93, Road Traffic Act, 1930); 2179 (sugar beet industry—interpretation of Award No. 2175); 2180 (tugboat industry—interpretation of Award No. 2170); 2181 (railway shopmen employed as "district" men—claim for additional allowance of 4s. per week); 2182 (veneer-producing and plywood manufacturing industry—claim for increased minimum basic wage rate); 2183 (Government industrial establishments—Admiralty—watchmen—claim for double time for Sunday work); 2184 (cable and wireless—telegraphists and phonogram telephonists—assimilation); 2185 (railway shopmen engaged in the inspection and maintenance of electric trains—claim for the provision of Railway Shopmen's National Council Minute No. 466 of January 21, 1947); 2186 (cement manufacture—tradesmen employed on repair and maintenance—claim for a 44-hour week without loss of pay and a proportionate increase to all shift workers); 2187 (railway shopmen—female machinists—piecework prices—claim for increase); 2188 (distributive trades—South Western Wholesale Meat Supply Association—meat porters and humpers—weekly minimum rates—claim for increase); 2189 (civil air transport—interpretation of Award No. 2169); 2190 (aircraft maintenance mechanics—terms and conditions of employment—s. 41 of the Civil Aviation Act, 1946); 2191 (railway electrical staff—holidays with pay—

claim for increase); 2192 (wholesale grocery and provision trade (England and Wales)—warehousemen and transport drivers—rates of wages—claim for increase); 2193, 2194 (railway shopmen—Metal Machinist, Grade II, employed at Doncaster—claim for upgrading to Metal Machinist, Grade I).

- 1251. — court of inquiry.** Report of a Court of Inquiry (Chairman, Sir John Forster, K.C.) appointed to inquire into a dispute between the Engineering and Allied Employers' National Federation and the Confederation of Shipbuilding and Engineering Unions: Cmd. 7511.

1252. Industrial injuries. See NATIONAL INSURANCE.

- 1253. Loss of office—compensation for—extinguishment of tithes in City of London.** See *LANGHAM v. CITY OF LONDON CORPN.*, § 3593.

1254. Master and servant—dismissal of trade union official. See *LEWIS v. NATIONAL UNION OF GENERAL AND MUNICIPAL WORKERS*, § 3727.

- 1255. — invention of servant.** The obligations of confidence in the case of master and servant are based on the contract of employment—either on the express terms of such a contract or on the terms which the law would imply having regard to the relationship of the parties to the subject-matter with which the contract is concerned. The contract of itself and by its own force might create a trusteeship in the employed person. But there cannot exist side by side in a contract of employment two quite separate obligations, one arising from the contract and the other disconnected from the contract and arising, not by virtue of the contract, but by virtue of some equitable doctrine.

A contract between the plaintiff company and the defendant provided that all inventions made by the defendant should without payment become the sole exclusive property of the plaintiff company. The contract further provided that the defendant should do all acts necessary to obtain letters patent for the said inventions in all such countries as the plaintiff company might require and should vest such letters patent in the plaintiff company. The defendant's employment with the plaintiff company was terminated by an agreement made in 1945, which provided *inter alia*: "In consideration of the termination of the agreement and the release by the company from your duties thereunder, you hereby agree and undertake with the company as follows . . .". There followed provisions by which the defendant undertook to keep secret for a period of five years confidential information belonging to the plaintiff company and not to accept employment without the consent of the plaintiff company during that period. Whilst the defendant had been in the plaintiff company's employment he had made a spinning invention and had assigned to the plaintiff company his interest in the letters patent relating to the invention in this country. The plaintiff company now asked the defendant to execute certain documents required for the purpose of making patent applications in various foreign countries, which the defendant refused to do. Held, the obligation imposed by the provision that all inventions should become the sole exclusive property of the plaintiff company made him in effect a trustee of them, and was a continuing obligation for all time. Therefore, the word "terminated" in the agreement of 1945 could not mean that all legal relationships between the parties were to come to an end, and the word "duties" could not apply to every legal obligation under the service agreement. It followed that the defendant would not be fulfilling his obligation to give the plaintiff company the sole exclusive property in an invention unless he was prepared to give them one of the benefits which flowed from having made an invention, namely, the benefit of obtaining a patent. Consequently, the plaintiff company were entitled to the formal assignment of the patent rights: *BRITISH CELANESE v. MONCRIEFF*, [1948] Ch. 564; [1948] L. J. R. 1871, C. A. (affirming decision of *Romer, J.*, [1948] L. J. R. 432; explaining *Triplex Safety Glass Co. v. Scora*, [1938] Ch. 211, distinguishing *Tokes v. Heather* (1945), 62 R. P. C. 135).

- 1256. — master's liability for acts of servant.** In *THE POLARTANK* (November 5, 1948) the plaintiff was the deckhand on board a tug towing the first defendants' vessel. A collision occurred owing to the joint negligence of the towed vessel and another tug, owned by the second defendants, as a result of which the plaintiff was seriously injured. The towage contract between the first defendants and the tug owners provided that during tow the master and crew of the tug "become in

all respects the servants of . . . the ship and are under the control of the person in charge of the ship. . .". Willmer, J., applying the test laid down in *Mersey, etc., Board v. Coggins and Griffiths (Liverpool)*, [1947] C. L. Y. 1066, held that the plaintiff was not in common employment with those in charge of the Polartank, and that his claim against her owners, the first defendants, as well as against the second defendants, must succeed. [Reported by R. C. Calburn, Esq., Barrister-at-Law.] See also [1948] W. N. 462.

- 1256a.** ———. [N.Z.] In *McARTHUR v. AUCKLAND HARBOUR BOARD*, [1948] N. Z. L. R. 29, the Supreme Court of New Zealand held that a loaned servant may be, as to some matters, under the control of the borrower, though as to others he is to exercise the discretion entrusted to him by his permanent employer, a discretion vested in him because of that employer's confidence in his training, skill, prudence and judgment. (*Mersey, etc., Board v. Coggins and Griffith (Liverpool)*, [1947] C. L. Y. 1066, followed).
- 1257.** ——— **commodore of convoy.** See *THE GLAUCUS AND THE CITY OF FLORENCE*, § 3457.
- 1258.** ——— **servant's assault on customer.** The general law dealing with the liability of a master for the acts of his servant was stated by Bankes, L.J., in *Poland v. John Parr & Sons*, [1927] 1 K. B. 236 (quoted in *Salmond on Torts*, 10th ed., p. 89), in the following terms: "'A master is not responsible for a wrongful act done by his servant unless it is done in the course of his employment. It is deemed to be so done if it is either (a) a wrongful act authorised by the master, or (b) a wrongful and unauthorised mode of doing some act authorised by the master'". Salmond dealing with the same topic adds a little further on (p. 90): ". . . if the unauthorised and wrongful act . . . is not so connected with the authorised act as to be a mode of doing it, but is an independent act, the master is not responsible: for in such a case the servant is not acting in the course of his employment, but has gone outside of it".
- The defendants, who were the occupiers of a garage and service station, employed B. as their servant for the purpose, *inter alia*, of selling petrol to motorists. The plaintiff had asked B. to put petrol in his utility van. After this had been done, the plaintiff drove away from the pump to make room for another car. B. pursued the plaintiff and abused him as he was under the impression that the plaintiff intended to abscond without giving money or coupons for the petrol. The plaintiff thereupon paid for the petrol and delivered the appropriate coupons. He then called a police constable, who attempted to soothe the plaintiff and B. However, as soon as the police constable had turned his back, B. asked the plaintiff whether he would report him to the defendants, and when the plaintiff said "Yes", B. struck the plaintiff a blow and knocked him unconscious. The plaintiff claimed damages from the defendants. Held, B's act did not belong to the class of acts that he was authorised to do, nor was it so connected with that class of acts as to be a mode of doing some act within that class, because the assault by B. had no connection whatever with the discharge of any duty for the defendants. Consequently, the defendants were not liable: *WARREN v. HENLYS*, [1948] W. N. 449; [1948] 2 All E. R. 935, Hilbery, J. (applying *Poland v. John Parr & Sons*, *supra*; distinguishing *Dyer v. Munday*, [1895] 1 Q. B. 742, and *Bayley v. Manchester, Sheffield and Lincolnshire Ry.* (1873), L. R. 8 C. P. 148).
- 1259.** ———. [N.Z.] In *PETERSSON v. ROYAL OAK HOTEL*, [1948] N. Z. L. R. 136, a customer who had been refused drink threw a glass at the barman. The barman picked up a piece of the broken glass and threw it at the customer as the latter departed and a splinter of the broken glass thrown by the barman struck and injured the plaintiff. The New Zealand Court of Appeal held that the barman's employer was liable to the plaintiff in damages notwithstanding that the barman had thrown the broken glass to express his personal resentment towards the departing customer.
- 1260.** ——— **transferred servant—control.** See *THE POLARTANK*, § 1256; [N.Z.] *McARTHUR v. AUCKLAND HARBOUR BOARD*, § 1256a.
- 1261.** ——— **negligence.** See *NEGLIGENCE*.
- 1262.** ——— **profits obtained by servant dishonestly by virtue of employment.** It is a principle of law that, if a servant takes advantage of his service and violates

his duty of honesty and good faith to make a profit for himself, in the sense that the assets of which he has control, the facilities which he enjoys, or the position which he occupies, are the real cause of his obtaining the money as distinct from merely affording the opportunity for getting it, that is to say, if they play the predominant part in his obtaining the money, then he is accountable for it to his master. It matters not that the master had not lost any profit nor suffered any damage, nor does it matter that the master could not have done the act himself.

The suppliant sought by petition of right to recover from the Crown £13,632, of which the military authorities took possession from him in Egypt in 1944. The suppliant, who was then serving as a sergeant in the regular army, acquired the money by riding in full uniform on a lorry loaded with cases, as to the contents of which there was no evidence. The effect of the suppliant's presence on the lorry was to afford it a military escort as a result of which it escaped inspection by the civilian police. Held, the uniform of the Crown and the position of the suppliant as a servant of the Crown were the only reasons why he was able to get the money, and that was sufficient to make him liable to hand it over to the Crown: *READING v. THE KING*, [1948] 2 K. B. 268; [1949] L. J. R. 280, Denning, J. (applying *Att.-Gen. v. Goddard* (1929), 98 L. J. K. B. 743).

1263. — **servant or agent of committee of workmen and employees.** See *DAVEY v. SHAWCROFT*, § 1200.

1264. **Miners.** See *MINING LAW*.

1265. **National Arbitration Tribunal awards.** Nos. 1049 (agricultural implement manufacturers); 1050 (rope manufacturers); 1054 (retail drapers, outfitters and house furnishers); 1055 (musicians in music halls); 1056 (claim for payment for two hours lost in January by engineering workers); 1057 (working week of maintenance engineers); 1058, 1059 (engineering workpeople in shipbuilding); 1060 (foremen and under-foremen employed by clothing manufacturers); 1061 (technicians of steel manufacturing firms); 1062 (workers at coal discharging depots); 1063 (grading of administrative, professional, technical and clerical staff of an urban district council); 1064, 1068, 1069 (baking trade workers); 1065 (school caretakers and cleaners); 1066 (engineering); 1067 (lithographic printers and plate preparers); 1070 (workers employed on repairs to fishing vessels in Grimsby); 1071 (claim for payment during a period of temporary suspension in respect of certain workers employed by an engineering firm in Stoke-on-Trent); 1072 (rates of wages and conditions of employment of saleswomen employed in the retail confectionery trade in Scotland); 1073 (question of the observance by a firm in Leicester of recognised terms and conditions in respect of a skilled fitter); 1074 (rates of wages and working week of various classes of workers employed in the pitwood industry in Scotland); 1075-9 (observance of recognised terms and conditions in respect of musicians at London theatres); 1080 (rates of wages and conditions of employment of clerical workers employed by a Lancashire steel and engineering company); 1081 (rates of wages and conditions of employment of certain workers in the Scottish silk screen printing trade); 1082 (rates of wages and conditions of employment of certain workers in the Scottish milk distributive trade); 1083 (rates of remuneration of musicians employed at certain north-eastern music halls); 1084 (rates of wages and conditions of employment of certain workers in the London baking trade); 1085 (salaries and conditions of service of certain administrative and clerical staffs employed by Kent County Council at their Leybourne Grange Colony for Mental Defectives); 1086 (remuneration of certain gas slot meter collectors and inspectors employed by the Teignmouth U. D. C.); 1087 (remuneration of engineering maintenance staff employed by a Lancashire dairy company); 1088 (question of the observance by a firm in Walsall of recognised terms and conditions in respect of a particular worker); 1089 (piecework price to be paid to certain workers employed by an engineering firm near Wakefield on the production of a particular railway wagon spring); 1092 (rates of remuneration and conditions of employment of various classes of workers employed at certain Scottish slaughter-houses); 1093 (claim for payment of a bonus to certain employees of a Kirkcaldy linen manufacturing firm); 1094 (conditions in regard to the provision of meals to non-resident domestic staff of the Swansea General and Eye Hospital); 1095 (remuneration

of certain grades of foremen employed in an industrial undertaking at Dagenham); 1096 (rates of wages of certain ship painters, boiler scalers and chippers in Aberdeen); 1097 (annual holidays of certain workers employed at a mental hospital in Yorkshire); 1098 (annual holidays of certain engineering maintenance staff employed by the Halifax Corporation); 1099 (claim for payment of overtime during a period of fuel emergency in respect of certain workers employed by a Birmingham engineering firm); 1100 (minimum rates of wages of certain workers employed by a Salford bonding warehousing company); 1101 (remuneration of die fitters employed by certain electroceramic manufacturers in North Staffordshire); 1102 (rates of wages of apprentices employed in the electrical contracting industry in Scotland); 1103 (rates of wages of certain skilled toolroom operatives employed in an engineering establishment in Coventry); 1104 (remuneration of workers in Hawick hosiery industry); 1105 (annual holidays of workers employed in the chemical and allied industries); 1106 (rates of wages and conditions of employment of van-sales staff employed by a firm of bakers, grocers, confectioners and provision merchants in Grays, Essex); 1107 (salary scales of clerical staff employed at the chief office of the Scottish Legal Life Assurance Society); 1108 (grading of a foreman employed by the Darlington Corporation); 1109 (rates of wages and annual holidays of certain workers employed by the British Aluminium Co., Ltd.); 1110 (rates of wages and conditions of employment of ambulance staff employed by the Mitcham Corporation); 1111 (claim for extra payment for certain men working aboard oil fuel vessels in the Port of Fleetwood); 1112 (claim for the operation of a system of payment by results in respect of certain workers employed by a constructional engineering company in London); 1113 (claim for the operation of a shorter working week by a firm of agricultural drain tile manufacturers in Perthshire); 1114 (rates of wages and conditions of employment of domestic staffs employed in hospitals and allied institutions by the West Riding of Yorkshire County Council); 1115 (conditions of employment of certain employees of Brentford and Chiswick Corporation); 1116 (application for the payment of an allowance to certain workers employed at a mental institution in Devonshire); 1117 (rates of wages of certain workers employed by refractory brick manufacturers in Scotland); 1118 (rates of wages of certain workers employed by building brick manufacturers in Scotland); 1119 (remuneration of certain officers of Bristol City Council); 1120 (terms and conditions of service of ambulance drivers employed by the Sunderland Corporation); 1121 (terms and conditions of employment of certain Public Ambulance Service workers of Middlesbrough Corporation); 1122 (wages of certain clerical staff employed by a society in Ayr); 1123 (wages and conditions of employment of certain skilled workers employed by Gateshead & District Tramways Company); 1124 (salary scales of male clerical staffs employed by the Royal Liver Friendly Society at Liverpool head office); 1125 (rates of wages of certain classes of adult male workers in the Dundee jute trade); 1126 (rates of wages and conditions of employment of certain workers employed at the Westbury depot of a Somerset firm of food manufacturers); 1127 (rates of wages of electricians in the flour milling industry); 1128 (rates of wages of certain workers employed by an electrical engineering firm at Wembley); 1129 (annual holidays of certain workers in the salt manufacturing industry); 1130 (rates of wages of certain workers in the maintenance department of a Norfolk estate company); 1131 (claim for payment in lieu of notice in respect of certain workers employed by a Huddersfield engineering firm); 1132 (claim for the observance by an Aberdare engineering firm of the provisions of a national agreement relating to holidays); 1133 (annual holiday payments in respect of two workers employed by an Aberdeen packing case and box-making firm); 1134 (rate of remuneration of certain slaughtermen employed at the Islington Cattle Market); 1135 (remuneration and duration of playing time of musicians employed at certain London catering establishments); 1136 (question of the observance by a Rickmansworth engineering firm of recognised terms and conditions in respect of a particular worker); 1137 (rates of wages and conditions of employment of certain male and female hairdressers employed in Aberdeen); 1138 (claim for payment in lieu of notice in respect of a particular worker employed by a Fife textile firm); 1139 (observance by a London firm of musical instrument manufacturers of recognised terms and conditions in respect of a particular worker); 1140 (terms and conditions of

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employment of certain male and female workers employed by an individual firm in Aberdeen); 1141 (rates of wages and conditions of employment of certain workers employed in the baking trade in the North of England); 1142 (questions as to the observance of recognised terms and conditions in respect of certain workers employed by a Darlington engineering firm); 1143 (rates of wages of certain workers employed in the narrow fabric industry); 1144 (rates of wages and conditions of employment of certain workers employed by a Glasgow firm of house furnishers); 1145 (rates of wages and conditions of employment of certain workers employed on outside steel work erection); 1146 (basic wage rates and weekly hours of work of county council roadmen in various parts of England and Wales); 1147 (rates of wages of certain workers employed by the Cheadle Royal Hospital); 1148 (remuneration of workers in the Hawick hosiery industry); 1149 (remuneration and conditions of employment of certain workers employed by three firms of retail drapers, outfitters and house furnishers in Glasgow); 1150 (rate of remuneration of certain workers employed by a Glasgow firm of retail drapers, outfitters and house furnishers); 1151 (minimum basic rate for certain workers employed by a Manchester constructional engineering firm); 1152 (rates of wages of electricians employed in the seed crushing, provender and compound food manufacturing industries); 1153 (question of a weekly time allowance to shift workers employed by a linoleum manufacturing company in Kirkcaldy, when machines run continuously at the change of shift); 1154 (working week of certain workers employed by a firm of linoleum manufacturers in Kirkcaldy); 1155 (remuneration of crane drivers employed in shipyards in the Clyde district); 1156 (rates of wages for manual workers employed in the non-trading services of local authorities in Scotland); 1157 (claim for the observance by a firm of building contractors and engineers in London of the provisions of an agreement relating to holidays in the engineering industry); 1158 (rates of wages and conditions of employment of certain employees of the Worthing Corporation); 1159 (rates of wages and conditions of employment of certain workers employed by a firm in Glamorgan); 1160 (working week in respect of certain workers employed by a firm of engineers and ironworkers in Kent); 1161 (rate of wages and conditions of employment in respect of a certain employee of the Sheffield Corporation); 1162 (claim for payment in lieu of notice in respect of a certain worker employed by a Leeds engineering firm); 1163 (remuneration of certain porters employed at a hospital in South Shields); 1164 (claim for the observance by an engineering firm in Leicestershire of the provisions of agreements in the industry which relate to payment for holidays and to notice to terminate employment); 1165 (rates of wages of certain workers employed by refractory brickmakers in Scotland); 1166 (rates of wages of certain workers employed by building brick manufacturers in Scotland); 1167 (claim for the operation of a system of payment by results in respect of certain workers employed by British Railways); 1168 (dispute relating to the employment of women on certain work by an engineering company in Coventry); 1169 (rates of wages and sick pay of certain workers employed in the baking industry in Herefordshire); 1170 (salary scales of male clerical staffs employed by the Royal Liver Friendly Society at their Liverpool Head Office); 1171 (question as to the observance of recognised terms and conditions of employment by a hairdressing employer in Swindon); 1172 (rates of wages of male and female workers in the biscuit industry); 1173 (claim for increased wages of certain surface and underground workers employed by a tin mining company in Cornwall); 1174 (rates of wages and conditions of employment of certain workers employed by a London firm of film strip publishers); 1175 (rates of wages of certain workers employed at the Nottingham branch of a tobacco company); 1176 (grading of certain officers of the West Hartlepool Corporation); 1177 (rates of wages and conditions of employment of certain clerical and administrative workers employed by four pottery firms at Stoke-on-Trent); 1178 (claim for payment of three days' wages in respect of particular workers employed by a Lanarkshire engineering firm); 1179 (working week of certain workers employed at a Sussex brick and tile works); 1180 (rates of wages of male and female workers in the tobacco industry); 1181 (rates of wages of certain workers employed by a company in South Wales engaged in the manufacture of lighting fittings and accessories); 1182 (rates of wages in the electrical contracting industry); 1183 (working week in respect

of certain workers employed by an engineering firm in Staffordshire); 1184 (rates of wages of certain workers employed at an orthopaedic hospital in Bath); 1185 (wages of certain workers employed in the mining and quarrying of gypsum and in the manufacture of plaster, plaster board and other gypsum products); 1186 (cost-of-living bonus in respect of certain employees of the Sunderland Corporation); 1187 (rates of wages and conditions of employment of certain workers employed by the Sunderland Corporation in their Highfield Institution).

1266. — — — **contracts of service—implied term.** See *SIMPSON v. KODAK*, § 1278.

1267. Reinstatement in civil employment—decisions of the Umpire. (Reinstatement in Civil Employment Act, 1944 (7 & 8 Geo. 6, c. 15), ss. 2 (2), 3 (2).) The obligation of the "former employer" under the Act does not depend upon contract or upon whether, when the applicant was taken into part-time employment, a promise was made to him that after the war he would be employed on a full-time basis. Although under s. 2 (2) of the Act an applicant must notify the date in writing when he will be available for work, an employer who is going to rely on the applicant's failure to notify that date in writing must state this in his "observations" in reply to the application to the Reinstatement Committee. There is a presumption that the date of availability has been duly notified. The renewal of the application within the period of thirteen weeks which is mentioned in s. 3 (2) of the Act must be in writing and must be given to the employer, but need not be in any particular form. There is no provision whereby the period of thirteen weeks can be extended "for reasonable cause", and, therefore, when the application is not renewed within the prescribed period it ceases to have effect: *HANNAH v. GREENOCK CENTRE FOR COMMUNITY SERVICE* (1947), R. E. Code 1, Pamphlet No. 68, Case No. 1050.

Ss. 1, 2, 4 and 9. If a person reinstated and continuing to be employed in accordance with the Act terminates his employment voluntarily by notice or otherwise, the employer being ready and willing to continue to employ him for the period of obligation, the obligation can be treated as discharged and the employer is not in default if he accepts and acts on the notice of termination of the employment: *O'HARE v. STANDARD MOTOR CO.* (1948), R. E. Code 1, Pamphlet No. 69, Case No. 1151.

Ss. 1 (1) (a), 2 (3), 5. An employer is not in default in failing to make employment available to an applicant whose apprenticeship has been interrupted by war service in a case where all available posts as trainees have already been filled by men reinstated under the Interrupted Apprentices Scheme (under which the State grant is forfeited if training is not continuous) notwithstanding that some of such trainees are junior in the employer's service to the applicant; but the applicant may keep his application alive by renewal under s. 2 (3) of the Act: *NEWELL v. MARSTON EXCELSIOR* (1948), R. E. Code 1, Pamphlet No. 70, Case Nos. 1175, 1176, 1177.

S. 20 (5). A N.A.A.F.I. employee who joined the Forces on June 1, 1943, and was on the following day relegated to Class W (T) Army Reserve for the purpose of resuming his N.A.A.F.I. employment is a person who has entered upon a period of whole-time war service. Such a person's war service ends when he ceases the employment for the purpose of which he was relegated to the reserve, notwithstanding that he might before that date have taken up other employment: *CLARKE v. NAVY, ARMY AND AIR FORCE INSTITUTES* (1948), R. E. Code 1, Pamphlet No. 71, Case No. 1190.

Ss. 1 (1), 2, 6 (1), 9 (1) (2). An applicant was held not to be outside the application of the Act by reason only that his pre-service employment was in India; nor to be outside the Act because he was called up to the Forces under the provisions of the Indian Act No. XVIII of 1940, that Act having its own provisions for reinstatement: *NEWETT-CROSS v. RALLI BROS.* (1948), R. E. Code 1, Pamphlet No. 72, Case No. 1244.

Ss. 1 (1) (a), 2 (2), 3 (1). An applicant who did not notify the employer in writing or at all of the date of his availability for employment was held to have failed to satisfy "a condition of obtaining his rights" under the Act: *HIND-MARCH v. NORTHERN BUTCHERS HIDE AND SKIN CO.* (1948), R. E. Code 1, Pamphlet No. 73, Case No. 1228.

S. 6 (1). A person whose whole-time service was in the coal-mining industry

only is not a person to whom the Act applies: *WESTLAKE v. MORRIS & Co.*, (1948), R. E. Code 1, Pamphlet No. 74, Case No. 1278.

S. 7. Where it is not reasonable or practicable for an employer company to employ the applicant, it cannot, while this state of affairs continues, be said that the company is in default because a manager employed by it and working also for associated companies, promised but has failed to find employment for the applicant with one of the associated companies: *FOX v. TUNBRIDGE WELLS VICTORY THEATRE* (1948), R. E. Code 1, Pamphlet No. 75, Case No. 1273.

1268. Restoration of pre-war trade practices. See § 1170.

1269. Restraint of trade—general medical practice. In *Routh v. Jones*, [1947] C. L. Y. 1080, Lord Greene, M.R., when dealing with the validity of covenants in a service agreement concerning a general medical practice said: "... a restriction which extends to a consultant's practice is one which is not reasonably necessary for the protection of [a general medical practitioner's practice]".

The plaintiff, Mrs. J., who was herself a doctor, was the wife of Dr. J., who together with the plaintiff had entered into a deed of partnership with the defendant, Dr. R., which provided *inter alia*: "During the continuance of the partnership or in the event of the death withdrawal or expulsion from the partnership of Dr. J. then Mrs. J. shall not at any time thereafter practise as a physician or surgeon or apothecary within the radius of five miles of A. or O. post offices or professionally visit or consult with any of the patients of the practice save as hereafter provided . . .". At the time when the plaintiff entered into this deed she got no personal benefit either by way of employment or by way of money.

The plaintiff, who had worked as assistant to the practice prior to her husband's death, claimed that this covenant in the deed was void. Held, the considerations which applied in this case were not those of vendor and purchaser but those of master and servant cases. These cases established that the words "physician or surgeon or apothecary" in the first part of the covenant did not mean the same thing as "general medical practice", and, therefore, the first part of the covenant was bad, because the plaintiff would be committing a breach of the covenant by acting as a consultant or specialist in medicine or surgery, and a restriction which extended to a consultant's or specialist's practice was not reasonably necessary for the protection of the defendant. Even if it was permissible to sever the second part of the covenant, which was very doubtful, the second part was also bad, because the words "consult with" would include acting as a consultant, and because, quite apart from that, the words "patients of the practice" and, indeed, the whole of the second part of the covenant, were so hopelessly vague that the plaintiff would not know whether she would be committing a breach of covenant or not: *Re JENKINS' DEED OF PARTNERSHIP, JENKINS v. REID*, [1948] W. N. 98; [1948] 1 All E. R. 471, *Romer, J.* (applying *Routh v. Jones, supra*; *Herbert Morris v. Saxelby*, [1916] A. C. 688; and *Attwood v. Lamont*, [1920] 3 K. B. 571).

1270. Seamen. See SHIPPING AND MARINE INSURANCE.

1271. Street traders—registration of. See SOUTHWARK BOROUGH COUNCIL v. NIGHTINGALE, § 2100.

1272. Trade unions. See TRADE UNIONS.

1273. Travelling expenses. Employment and Training (Payment of Travelling Expenses) Regulations, 1948 (No. 1668), made under the Employment and Training Act, 1948 (11 & 12 Geo. 6, c. 46), s. 5 (2); came into operation on July 24, 1948.

1274. Wages—agricultural. See AGRICULTURE.

1275. ——— payment during illness. See *SMART v. SPENCER*, § 55.

1276. ——— catering industry. Orders made under the Catering Wages Act, 1943 (6 & 7 Geo. 6, c. 24), s. 8; SI 1948, Nos. 19 (licensed residential establishments and licensed restaurants) [7d.]; 1665 (industrial and staff canteen undertakings) [3d.]; 1776 (licensed residential establishments and licensed restaurants) [2d.]; 2100 (licensed non-residential establishment) [3d.]; 2101 (licensed non-residential establishment—managers and club stewards) [3d.].

- 1277. — holidays.** Order made under the Catering Wages Act, 1943, s. 8: SI 1948, No. 2102 (licensed non-residential establishment—managers and club stewards). [2*d.*].
- 1278. — film industry.** (Conditions of Employment and National Arbitration Order, 1940 (No. 1305) (as amended by S. R. & O., 1942, No. 1073, and S. R. & O., 1944, No. 1437), Art. 5 (1), (3); Cinematograph Films Act, 1938 (1 & 2 Geo. 6, c. 17), s. 34.) The authority of *Hulland v. William Sanders & Son*, [1945] K. B. 78, establishes that “where . . . an employer has paid a lower rate of wages than those . . . settled [by negotiation or arbitration under art. 5 (1) of the Conditions of Employment and National Arbitration Order, 1940] a right of action will not arise under [that paragraph] enabling the worker to sue for and recover either the arrears of wages or damages for breach of statutory duty. The fact that an employer has failed to pay the settled rate of wages may, by art. 5, para. 3, be reported to the Minister by any organisation or trade union and must then be referred by him to the National Arbitration Tribunal established under Part I of the order. Under para. 4 and art. 2, para. 5, it is only where an award has been made by the tribunal that, from a date fixed as there provided, it becomes an implied term of the contract that the rate of wages shall be in accordance with the award so as to give the worker a right to sue”.
- The plaintiff, an employee in the film industry, claimed arrears of wages on the ground that he had been paid wages which were less than the amount fixed by the National Arbitration Tribunal as minimum weekly rates for men of his grade in an arbitration between the trade union of which he was a member and an employers' association of which the defendant company, his employers, was, at the time of the award, not a member. Held, (1) the plaintiff had not established any implied term of his contract, or any statutory right to sue under art. 5 of the Conditions of Employment and National Arbitration Order, 1940, for the alleged insufficiency of his wages; (2) on the like grounds the plaintiff could not succeed under s. 34 of the Cinematograph Films Act, 1938; (3) a fair wages clause in a contract between the defendant company and the government could not entitle the plaintiff to sue for wages other than those stipulated in the contract of employment: *SIMPSON v. KODAK*, [1948] 2 K. B. 184; 92 S. J. 271, Sellers, J. (applying *Hulland v. William Sanders & Son*, *supra*).
- 1279. — road haulage.** See § 3353.
- 1280. — sums paid to make up, included in damages.** See *DENNIS v. L. P. T. B.*, § 820.
- 1281. Wages councils.** Orders made under the Wages Councils Act, 1945 (8 & 9 Geo. 6, c. 17), ss. 4, 5: SI 1948, Nos. 523 (retail drapery, outfitting and footwear trades) [2*d.*] [E.]; 525 (retail furnishing and allied trades) [2*d.*] [E.].
- Orders made under s. 20: SI 1948, No. 1584 (ready-made and wholesale bespoke tailoring); 1896 (shirtmaking); 2392 (stamped or pressed metal ware); 2518 (hollow-ware); 2552 (dressmaking and women's light clothing) [E.]; 2603 (jute); 2662 (corsets); 2703 (wholesale mantles and costumes).
- 1282. — variation of field of operation.** Orders made under the Wages Councils Act, 1945, s. 6: SI 1948, Nos. 705 (aerated waters) [E.]; 706 (boot and shoe repairing).
- 1283. — Wages Councils Act, 1948 (12 & 13 Geo. 6, c. 7).** This Act repeals Part I of the Road Haulage Wages Act, 1938 (1 & 2 Geo. 6, c. 44), and transforms the Road Haulage Central Wages Board established under that Act into a wages council under the Wages Councils Act, 1945 (s. 1 (1)). So much of the Holidays with Pay Act, 1938 (1 & 2 Geo. 6, c. 70), as relates to the Road Haulage Central Wages Board is also repealed, and any orders made under the repealed enactments are converted into wages regulation orders (*ibid.*). S. 2 makes certain amendments to the 1945 Act consequential on the above provisions. Ss. 3-6 make various other amendments to the 1945 Act relating to the power to establish wages councils and central co-ordinating committees, the power of joint industrial councils and certain other bodies to apply for the abolition of a wages council, the procedure with respect to objections and reports under Part I of the Act, and the procedure for making wages regulation orders. S. 7 provides for the continuance in office of members of wages councils, etc., until new members are appointed.

- 1284.** — **wages regulation.** Orders made under the Wages Councils Act, 1945, s. 10: SI 1948, Nos. 6 (stamped or pressed metal-ware) [3d.]; 37 (paper box) [2d.]; 39 (paper bag) [2d.]; 156 (aerated waters) [E.]; 228 (rope, twine and net); 237 (flax and hemp); 238 (boot and shoe repairing) [3d.]; 625 (tobacco); 687 (shirtmaking); 838 (jute) [4d.]; 992 (aerated waters) [E.] [3d.]; 1022 (milk distribution) [E.]; 1023 (boot and floor polish) [2d.]; 1173 (rubber manufacturing) [2d.]; 1208 (sugar confectionery and food preserving) [2d.]; 1233, 1234 (fur) [2d.]; 1235 (sack and bag); 1253 (corsets) [2d.]; 1254 (shirtmaking) [2d.]; 1271 (wholesale mantle and costume) [3d.]; 1272 (ready-made and wholesale bespoke tailoring) [3d.]; 1318 (button manufacturing) [2d.]; 1602 (hollow-ware); 1851 (sugar confectionery and food preserving) [3d.]; 1873 (made-up textiles) [2d.]; 1924 (laundry) [3d.]; 1999 (dressmaking and women's light clothing) [E.] [3d.]; 2000 (hat, cap and milliner) [E.] [3d.]; 2001 (retail bespoke tailoring) [E.]; 2053 (linen and cotton handkerchief and household goods and linen piece goods) [2d.]; 2493 (rubber reclamation); 2602 (flax and hemp); 2605 (jute); 2724 (milk); 2799 (keg and drum); 2800 (rope, twine and net) [6d.].
- 1285.** — **holidays.** Orders made under the Wages Councils Act, 1945, s. 10: SI 1948, Nos. 38 (paper box) [2d.]; 40 (paper bag) [2d.]; 1925 (laundry).
- 1286.** **Unemployment benefit.** See NATIONAL INSURANCE.
- 1287.** **Workmen's compensation.** See WORKMEN'S COMPENSATION.
- 1288.** **Youth employment—council and committees.** National Youth Employment Council and Advisory Committees for Scotland and Wales Regulations, 1948 (No. 2081), made under the Employment and Training Act, 1948 (11 & 12 Geo. 6, c. 46), s. 8, Sched. I, Part II; came into operation on October 1, 1948; provide for the appointment of the first members of the Council and Advisory Committees and make provisions as to the term of office of members and vacation of membership.
- 1289.** — **factories.** See §§ 1418, 1427.
- 1290.** — **grants to local education authorities.** Youth Employment Service (Administrative Expenses) Regulations, 1948 (No. 1742), made under the Employment and Training Act, 1948, s. 10 (3); provides for the payment of an annual grant to local education authorities in respect of administrative expenses incurred by them in administering the Youth Employment Service.
- 1290a.** — **part time employment of children.** See § 1057.
- 1291.** **ARTICLES.** Master and servant: statutory obligations and the common law (founded on *Franklin v. Gramophone Co.*, § 1420): 205 L. T. 212. Employees' inventions (founded on *British Celanese v. Moncrieff*, § 1255): 98 L. J. 327; 205 L. T. 188; *Accountant*, July 3, 1948, p. 6. Employers' liability—the new law (founded on the Law Reform (Personal Injuries) Act, 1948): 92 S. J. 448. Legislation through adjudication—the legal aspect of fair wages clauses and recognised conditions, by O. Kahn-Freund: *Modern Law Review*, July, 1948, p. 269. Secret profits (founded on *Reading v. The King*, § 1262): 92 S. J. 683. Loss of services (founded on *Metropolitan Police District (Receiver) v. Tatum*, § 2715, and *Greaves v. Greaves*, § 918): 98 L. J. 639, 655, 711.
- 1292.** **BOOKS PUBLISHED.**—McLaine, W.—*New Views on Apprenticeship* [10s. 6d.]. Samuels, H.—*Industrial Law*, 3rd ed. [16s.]. Tillyard, Sir F.—*The Worker and the State*, 3rd ed. [16s.].

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- 1293.** **Compromise of action—by insurer.** [Ars.] See *HANSEN v. MARCO, ETC.*, § 1732.
- 1294.** — **probate action.** See *Re WEST*, § 1397.
- 1295.** **Implied representation by harbour board.** See *TOWERFIELD (OWNERS) v. WORKINGTON HARBOUR AND DOCK BOARD*, § 3466.
- 1296.** **Landlord and tenant—application of Rent Acts.** See *LONDON COUNTY, ETC., ASSOCIATION v. NICHOLLS*, § 3174; *LANGFORD PROPERTY CO. v. GOLDBRICH*, § 3175.

1297. — doctrine that tenant may not question his landlord's title. See *E. H. LEWIS & SON v. MORELLI*, § 1972.
1298. — representation as to tenancy of land sold. See *OADES v. SPAFFORD*, § 3816.
1299. Representation of law. See *ROBERTSON v. MINISTER OF PENSIONS*, § 2676.
1300. *Res judicata*—actions for fraud and conspiracy. See *WRIGHT v. BENNETT* (No. 2), §§ 2915, 2916.

1301. — *autrefois acquit* compared with. [Can.] See *Re WILSON*, § 704.

1302. — decision of Court of Appeal overruled by House of Lords in subsequent case. Where the decision of a Court has been overruled, or, in other words, has been held by a higher tribunal to be wrong in law and not to be followed in other cases, it is, nevertheless, a subsisting order which is binding on the parties to the proceedings in which it was made.

In *Re Waring, Westminster Bank v. Awdry*, [1942] Ch. 426, the Court of Appeal had decided that if a testator made a will before September 3, 1939, leaving a tax-free annuity, and died after that date, s. 25 of the Finance Act, 1941, would be applicable (provided that in the meantime the provision had not been varied within the meaning of the section), with the result that for the amount of the annuity there should be substituted an amount equal to twenty twenty-ninths thereof. In *Berkeley v. Berkeley*, [1946] A. C. 555, the House of Lords overruled the decision of the Court of Appeal in *Re Waring, supra*, and held that s. 25 of the Act of 1941 did not apply where the testator died after September 3, 1939. Two annuitants to whom tax-free annuities had been given by the testator in *Re Waring, supra*, now asked the Court to have the question determined *de novo* in view of the House of Lords' decision in *Berkeley v. Berkeley, supra*, and in view of the amendment of s. 25 of the Act of 1941 by the Finance (No. 2) Act, 1945, s. 20 (which varied the fraction prescribed by s. 25 in all years where income tax exceeded 5s. 6d. in the £). One of the annuitants had been a party to the previous application, but the other had not been made a party. Held, the annuitant who had been a party to the previous proceedings was bound by the order of the Court on the well-recognised principle of *res judicata*. Moreover, that decision as to the applicability of s. 25 was a decision as to the applicability of that section not only in its original form but also in its amended form. However, the annuitant who was not a party to the previous proceedings was not affected by the decision of the Court of Appeal and was entitled to the full amount of the annuity in accordance with the decision in *Berkeley v. Berkeley, supra*: *Re Waring, Westminster Bank v. Burton-Butler*, [1948] Ch. 221; [1948] L. J. R. 705, Jenkins, J.

1303. — —. In *Re Waring*, § 1302, Jenkins, J., held that where the Court has already applied the principle of the decision of the Court of Appeal in *Re Waring*, [1942] Ch. 426, before it was overruled in *Berkeley v. Berkeley*, [1946] A. C. 555 (in which case the house of Lords decided that for the purpose of s. 25 of the Finance Act, 1941, a provision by will is deemed to be made, not at the date of signature, but at the death of the testator), and has held in the presence of a party that s. 25 does apply, it is impossible for that party afterwards to take advantage of the later decision. The same principle applies if an order of the Court has been made, without challenge or argument, on the assumed footing the *Re Waring, supra*, applied, because in such a case there has been—in the words of Lord Shaw in *Hoystead v. Commissioner of Taxation*, [1926] A. C. 155—"an erroneous assumption as to the legal quality of a fact" which involves a *res judicata* by implication or, in other words, an estoppel.

The Public Trustee applied to the Court in connection with appropriations by way of provision for certain annuities because he was uncertain who was to bear the burden of his income fee, and in his application stated his assumption that s. 25 of the Finance Act, 1941, applied. The evidence showed conclusively that if that section did not apply, the assets of the estate would be insufficient to make full appropriations to meet the annuities and to provide for immediate payment of the pecuniary legacies. Held, that the order of the Court, which was made on that occasion and which directed certain appropriations by way of provision for the annuities and for the Public Trustee's income fee, was made on the assumption that s. 25 applied, and that, accordingly, the estate was sufficient to justify the Court in ordering the appropriations; and that, as the undisputed

assumption that s. 25 did apply was fundamental to the Court's decision, it was now impossible to start fresh litigation on the ground that the House of Lords in *Berkeley v. Berkeley*, *supra*, had made it clear that the decision of the Court of Appeal *Re Waring*, *supra*, was wrong: *Re KOENIGSBERG, PUBLIC TRUSTEE v. KOENIGSBERG*, [1948] Ch. 727; [1948] L. J. R. 1866, Roxburgh, J. (following *Re Waring*, *supra*, and *Hoystead v. Commissioner of Taraton*, *supra*).

- 1304. — finding that matrimonial offence committed. See *HUDSON v. HUDSON* (EXELBY CITED), § 951; *KARA v. KARA*, § 952.
- 1305. — finding that matrimonial offence not committed. See *MOLESWORTH v. MOLESWORTH*, § 949; *JAMES v. JAMES*, § 950; *WINNAN v. WINNAN*, § 953.
- 1306. — refusal of leave to issue execution. See *W. T. LAMB & SONS v. RIDER*, § 2828.
- 1307. ARTICLE. Estoppel and intention: 205 L. T. J. 6.

EVIDENCE

- 1308. Admissibility—latent ambiguity in will. See *Re ALEXANDER'S WILL TRUSTS*, § 3904.
- 1309. — person interested. In *MANSER v. L. P. T. B.* (May 13, 1948), Streatfeild, J., held that the words "a person interested" in s. 1 (3) of the Evidence Act, 1938, were not confined to a person whose conduct was or might be in question in the litigation. [*Reported by R. C. Calburn, Esq., Barrister-at-Law.*] See also [1948] W. N. 206.
- 1310. — nursemaid. (Evidence Act, 1938 (1 & 2 Geo. 6, c. 28), s. 1 (1), (3).) In deciding whether a statement is admissible in spite of the provisions of s. 1 (3) of the Evidence Act, 1938, on the ground that it is not a statement by a "person interested" within the meaning of that subsection, it is imperative—as was pointed out by Morton, J., in *Plomien Fuel Economiser Co. v. National Marketing Co.*, [1941] Ch. 248—that the statement be made by an independent person. An independent person means a person who has no temptation to depart from the truth on one side or the other—a person not swayed by personal interest, but completely detached, judicial, and impartial.

The second plaintiff was an infant suing by her father and next friend, the first plaintiff. The plaintiffs alleged that the defendant, a chemist, had granted a licence to the plaintiffs, including the infant plaintiff, to use the defendant's wash-house, that the licence had never been revoked, and that the defendant knew that children habitually used the wash-house. It was further alleged that the defendant, his servant or agent, left a glass container filled with acid in the wash-house and that this glass container constituted a trap for a child of tender years. The infant plaintiff, when playing with the glass container, caused the escape of acid and sustained serious injuries. The defendant denied the plaintiffs' allegations. After the writ in the action had been issued, the domestic servant of the first plaintiff, in whose charge, at the time of the accident, the infant plaintiff had been left, with instructions to keep an eye on her, had made a written statement with regard to the accident. At the date of the hearing this domestic servant could not be traced, and the plaintiffs sought to put in her written statement under the Evidence Act, 1938, s. 1 (1). Held, the domestic servant was a "person interested", because her reputation for care in minding a child was in issue. Consequently, her statement was inadmissible: *EVON v. NOBLE*, [1948] W. N. 460; [1948] 2 All E. R. 987, Birkett, J. (applying *Bain v. Moss Hutchison Line*, § 1311; *Plomien Fuel Economiser Co. v. National Marketing Co.*, *supra*; *Holton v. Holton*, [1947] C. L. Y. 1110; and *Barkway v. South Wales Transport Co.*, § 1316).

- 1311. — ship's officers. (Evidence Act, 1938 (1 & 2 Geo. 6, c. 28), s. 1 (3).) The expression "person interested" in s. 1 (3) of the Evidence Act, 1938, which renders inadmissible "as evidence any statement made by a person interested at a time when proceedings were pending or anticipated involving a dispute as to any fact which the statement might tend to establish", is not limited to a financial or pecuniary interest in the direct sense, but includes a personal interest in an action because of its nature and because of the allegations made in it.

The plaintiff, the widow of a purser employed by the defendants in one of

their ships, who, in the course of his employment, was asphyxiated when a fire broke out in the ship and as a result died, claimed damages in an action against the defendants. The plaintiff alleged that death was due to the negligence and breach of duty of the defendants, their servants or agents, in providing a faulty system under which the men were compelled to work on board and in failing, *inter alia*, to take adequate precautions and to provide adequate fire appliances. Counsel for the defendants tendered for admission, under the Evidence Act, 1938, s. 1 (1), proofs of evidence of the master and the second and third officers of the ship on the ground that they were beyond the seas, and it was not reasonably practicable to secure their attendance. Under the provisions of s. 470 (1) of the Merchant Shipping Act, 1894, the certificate of a master, mate or engineer may be cancelled or suspended, where the court holding the inquiry under the Act finds, *inter alia*, that loss of life has been caused by his wrongful act or default or that he is incompetent or has been guilty of any gross act of misconduct. Held, although the three witnesses had no financial or pecuniary interest in the direct sense at all, they were "personally interested" in the result of the action because of its nature and because of the allegations made, and, consequently, their proofs could not be accepted in evidence: *BAIN v. MOSS HUTCHISON LINE*, [1949] 1 K. B. 51; [1948] L. J. R. 1918, Birkett, J. (applying *Friend v. Wallmann*, [1946] K. B. 493; *Plomien Fuel Economiser Co. v. National Marketing Co.*, [1941] Ch. 248; *The Atlantic* (1946), 62 T. L. R. 461; and *Holton v. Holton*, [1947] C. L. Y. 1110).

1312. — — — **solicitor's clerk.** (Evidence Act, 1938 (1 & 2 Geo. 6, c. 28), s. 1 (3).) In order to decide whether a person whose evidence is tendered under s. 1 of the Evidence Act, 1938, is "a person interested" within the meaning of s. 1 (3) of that Act it is necessary to ascertain in every case the facts both as to the person whose statement it is sought to put in evidence, as to the character and subject-matter of the proceeding and as to the relation of the person to the subject-matter of the proceeding. It would be wrong to suppose that a servant of a company must be treated in every case as "a person interested". Nor would it be right to say that to make a statement inadmissible in every case there must be a probability or possibility of financial advantage or disadvantage resulting to the person whose statement is tendered.

In a probate action the defendants, one of whom was a partner in a firm of solicitors, were propounding a will. A clerk in the employment of the firm of solicitors, in anticipation of proceedings in relation to the validity of that and another will, prepared a statement of the evidence he proposed to give at the trial of the action, but before the action was brought the clerk died. The statement was tendered in evidence under s. 1 of the Evidence Act, 1938. Held, the clerk was not "a person interested" within the meaning of s. 1 (3) of the Evidence Act, 1938, because his interest in the success of the proceedings was not one which he could ever regard as likely to make any difference to his financial situation or otherwise affect his position. Consequently, the statement was admissible: *IN THE ESTATE OF HILL, BRAHAM v. HASLEWOOD*, [1948] P. 341; [1948] L. J. R. 1634; Wallington, J. (applying *Holton v. Holton*, [1947] C. L. Y. 1110; distinguishing *Plomien Fuel Economiser Co. v. National Marketing Co.*, [1941] Ch. 248).

1313. — — — **tyre tester.** See *BARKWAY v. SOUTH WALES TRANSPORT CO.*, § 1316.

1314. — — — **ship's log.** [Scot.] In *PALESTINE TRANSPORT AND SHIPPING CO. v. GREENOCK DOCKYARD CO.* (1948), 81 Ll. L. Rep. 76, the Court of Session held that there were two rules of evidence applicable to ships' logs: (i) that it is competent to put to a witness a previous statement made by him, and the logs of a ship are simply statements of the persons who compile them or who are responsible for their compilation; (ii) that admissions of parties can be proved and used against them, and this rule extends, in certain circumstances, to admissions made by an agent of the party, and extends, in particular, to the entries in a ship's log, with the effect that the statements contained in it are admissible against the owners of the ship.

1315. — — — **testator's reasons—Inheritance (Family Provision) Act, 1938.** See *Re SEARLE*, § 3935.

- 1316. — transcript of evidence given in earlier action.** (Evidence Act, 1938 (1 & 2 Geo. 6, c. 28), s. 1 (1), (3), (4).) The expression "person interested" in s. 1 (3) of the Evidence Act, 1938, means any person whatsoever provided he is interested.

The plaintiff's husband, who was a passenger in an omnibus belonging to the defendants, was killed in an accident resulting from a burst tyre. In an action for damages for negligence by the plaintiff the defendants sought to put in evidence a transcript of the evidence in an earlier action of one of their employees, a tyre tester, who had since died. The earlier action had arisen from the same accident, but the plaintiff had been different. Held, (1) the testimony was not a "statement made by a person in a document" within s. 1 (1) of the Evidence Act, 1938, because (a) the deceased was not the maker or producer with his own hand of the transcript within the meaning of s. 1 (4) of the Act, nor was there any evidence that he signed or initialled or for the accuracy of which he had vouched in writing within the meaning of the sub-section, and (b) the evidence given in Court was not "information supplied to" the reporter within the meaning of s. 1 (1) (b) of the Act; (2) the deceased was a "person interested" in the result of the earlier action and in the result of the present action within the meaning of s. 1 (3) of the Act, since his reputation as a tyre tester was involved, and since he was interested as an employee in his employers winning the case; (3) although the reporter was not a "person interested", the meaning to be given to these words was any person whatsoever provided he is interested, and to allow the accidental interposition of a reporter to let in statements of interested parties would stultify the Act; (4) the mere fact that in cross-examination of a witness views had been put to such witness which had been expressed by the deceased in the earlier action did not make applicable the rule that, if a part of a document is read by one side, the whole of the text of it must, if the other side insist, also be read. Consequently, the transcript was not admissible in evidence. See *BARKWAY v. SOUTH WALES TRANSPORT Co.*, [1941] Ch. 248; distinguishing *Edmonds v. Edmonds*, [1947] C. L. Y. 861; and *Bullock v. Borrett*, [1939] 1 All E. R. 505.

- 1317. Affidavit—signature of commissioner.** In *PINXTON COLLIERIES v. BURTON HOWARD* (October 26, 1948), Vaisey, J., said that in future an affidavit with an indecipherable signature of a Commissioner of Oaths would not be accepted, and a Commissioner of Oaths who could not write his signature legibly should add a rubber stamp showing the meaning of his signature. [*Reported by C. M. Schmitthoff, Esq., Barrister-at-Law.*]
- 1318. — summons under Crown Proceedings Act, 1947, s. 14.** See *CUSTOMS AND EXCISE COMMISSIONERS v. INGRAM*, § 3041.
- 1319. Authentication of seal, etc.—Colonial Development Corporation.** See § 299.
- 1320. Blood groups.** See *LIFF v. LIFF*, § 997; [*Can.*] *R. v. FORD*, § 721.
- 1321. Burden of proof—adulteration.** See *WADE v. BEADLE*, § 1475; [*Scot.*] *BRECKENBRIDGE v. BARR*, § 1474.
- 1322. Certificate, evidence by.** See §§ 722, 723.
- 1323. Commission rogatoire.** [*Aus.*] See *Re S.*, § 707.
- 1324. Compellability—witness compellable if competent in divorce cases.** See *TILLEY v. TILLEY*, § 960.
- 1325. Criminal cases, in.** See *CRIMINAL LAW*; *MAGISTERIAL LAW*.
- 1326. Cross-examination—by counsel of his own client.** The question whether counsel is entitled to cross-examine his own client is one resting within the Judge's discretion in the conduct of the case. The discretion must be judicially exercised, but is not controlled by any binding rule of practice.

The plaintiff, who claimed specific performance of a contract of sale of land, alleged that the first defendant was the vendor of the land and the second defendant, a solicitor then acting on behalf of the first defendant, had sold him the land as the first defendant's agent; in the alternative, he claimed against the second defendant damages for breach of warranty of authority. One of the defences of the first defendant was that the second defendant had acted

without authority. The second defendant, when called as a witness by the plaintiff gave evidence that he was duly authorised by the first defendant to conclude the contract. Counsel for the second defendant, by way of interlocutory application, applied to cross-examine his own client. Held, the purpose of cross-examination would be to show more clearly that the second defendant had authority, and not to destroy that proposition. This, however, might become a vital issue between the plaintiff and the first defendant. The second defendant could not be allowed to gain an advantage as against his late client, the first defendant, by reason of the fact that having been called by the plaintiff, he could be cross-examined and not merely examined-in-chief. Therefore, counsel for the second defendant was not entitled to cross-examine his own client: *TEDESCHI v. SINGH*, [1948] Ch. 319; [1948] L. J. R. 1262, Roxburgh, J.

- 1327. — interlocutory proceedings.** “The question whether or not cross-examination ought to be allowed is a matter of discretion. I . . . express the hope . . . that in interlocutory proceedings . . . no . . . order [to allow a defendant in a newspaper libel action to be cross-examined on an affidavit dealing with the source of his information] will be made in the absence of special circumstances of some kind”: *per* Lord Greene, M.R., in *LAWSON v. ODHAMS PRESS*, § 2845.
- 1328. — leading questions.** [Aus.] For a consideration of leading questions in cross-examination, see *MOONEY v. JAMES*, [1948] 2 A. L. R. 369.
- 1323a. Discovery, etc.** See PRACTICE.
- 1329. Divorce cases, in.** See DIVORCE AND MATRIMONIAL CAUSES.
- 1330. Estoppel.** See ESTOPPEL.
- 1331. Exclusion of witnesses—admissibility of evidence of witness disobeying order.** [Can.] In *R. v. CAREFOOT*, [1948] 2 D. L. R. 22, the High Court of Ontario held that when an order has been made for the exclusion of witnesses, and it becomes necessary unexpectedly to call someone present in the Court room in rebuttal, this person cannot be said to be included in the order for exclusion. Moreover, if witnesses remain in Court after an order has been made for their withdrawal, a Court has no right to exclude their testimony however much a witness's disobedience of the order may lessen the value of his evidence and render him liable to prosecution for contempt. (*Chandler v. Horne* (1842), 2 M. & Rob. 423; *Corbett v. Hudson* (1852), 22 L. J. Q. B. 11; and *It. v. Briggs* (1930), 22 Cr. App. R. 68, applied).
- 1332. “Giving evidence”—what amounts to.** See *R. v. SHARROCK*, § 2140.
- 1333. Judicial notice—use of knowledge obtained in bankruptcy proceedings.** See *OWEN v. NICHOLL*, § 170.
- 1334. — use of knowledge of local conditions in workmen's compensation cases.** See *REYNOLDS v. LLANELLY ASSOCIATED TINPLATE CO.*, § 3966.
- 1335. Parol evidence—contradicting memorandum of contract.** See *BECKETT v. NURSE*, § 3804.
- 1336. — contradicting written contract.** See *HUTTON v. WATLING*, § 3805.
- 1337. — of subsequent agreement varying written contract.** See *MOORE v. CITY OF MALINES*, § 3502.
- 1338. — to ascertain subject-matter of contract.** See *A/S TANKEXPRESS v. COMPAGNIE FINANCIERE BELGE DES PETROLES, S. A.*, § 3440.
- 1339. — verbal condition overriding subsequent written condition.** See *WEBSTER v. HIGGIN*, § 3365.
- 1340. Presumption—of advancement.** See *MOATE v. MOATE*, § 1626.
- 1341. — of death.** See *IN THE ESTATE OF ARTHUR DOWDS*, § 1390.
- 1342. — res ipsa loquitur.** See NEGLIGENCE.
- 1343. Privilege—probation officer.** See *MCTAGGART v. MCTAGGART*, § 957.
- 1344. Right to begin—restitution of conjugal rights.** See *HEWITT v. HEWITT*, § 1018.
- 1345. Secondary evidence—note or memorandum.** (Law of Property Act, 1925 (15 & 16 Geo. 5, c. 20), s. 40). The general rule as to secondary evidence applies

equally to a writing required by s. 40, Law of Property Act, 1925. The terms of a lost lease may be proved by production of the counterpart.

The plaintiff claimed possession of premises demised for a term of ten years expiring in August, 1946; the defendant set up a lease, executed in 1938 by the landlord, since deceased, under which he claimed to be entitled to a renewal. The defendant's evidence as to the execution of a lease in 1938 was corroborated, but the only evidence in writing of its terms was a counterpart not signed by the landlord. Held, the lease of 1938 had been duly executed and, as it had been lost, the counterpart was admissible as secondary evidence of it; the lease thus proved was a writing sufficient to satisfy s. 40: *BARBER v. ROWE*, [1948] W. N. 423; 92 S. J. 718; [1948] 2 All E. R. 1050, C. A. (applying *Read v. Price*, [1909] 2 K. B. 724).

1346. Statute of Frauds. See FRAUD, MISREPRESENTATION AND UNDUE INFLUENCE.

1347. ARTICLES. Presumption of death: 98 L. J. 283. Proof of foreign marriages, by J. L. Montrose, *Modern Law Review*, July, 1948, p. 326. Documentary evidence of fact (founded on the Evidence Act, 1938, s. 1): 92 S. J. 533. Evidence Act, 1938—person interested (founded on Evidence Act, 1938, s. 1 (3), *Bain v. Moss Hutchison Line*, § 1311, *Barkway v. South Wales Transport Co.*, § 1316, *Re Hill*, § 1312, *Holton v. Holton*, [1947] C. L. Y. 1110; 206 L. T. 195. Without prejudice (founded on *McTaggart v. McTaggart*, § 981): 92 S. J. 653.

1348. BOOK PUBLISHED. Stephen, Sir J. F.—Digest of the Law of Evidence, 12th ed. revised. [10s. 6d.]

EXCESS PROFITS AND PROFITS TAX

1349. Avoidance of tax—sale at less than market value. (Finance Act, 1943 (6 & 7 Geo. 6, c. 28), s. 24.) In twelve appeals arising out of claims by the Crown for excess profits tax in respect of transactions in stocks of whisky the following general propositions relating to the construction of s. 24 of the Finance Act, 1943, were laid down:—

1. It is open to the Commissioners to find as a fact that an original transferor of shares obtained a financial benefit within the meaning of s. 24 (1) (b), as a result of transactions consisting of such a sale and re-sale of stocks as are mentioned in the sub-section and any other transactions which, in their opinion, were effected in connection with or in association with any of the said transactions, although such transferor at no time had knowledge that any such transactions were in progress or contemplated. On the other hand, it may be that the absence of such knowledge is of some evidential value to the Commissioners in determining whether in fact there was such connection or association, and it remains open to maintain, as a matter of law, that there was such evidence to justify the Commissioners' conclusion that there was such a connection or association. The existence of such knowledge might have evidential value in the contrary direction.
2. The words "sold by the company on its own behalf in the ordinary course of trade for its full market value" in s. 24 (2) do not limit the inquiry to the ordinary course of the trade of a particular company, or, alternatively, of companies carrying on the same type of trade, or, alternatively, to the prices at which the company was in the practice of selling to its usual customers, but the market referred to is the open market.
3. The power of apportionment under provisos (i) and (ii) of s. 24 (1) was intended to enable the Commissioners to modify the liability of persons who were neither the company nor the promoters, and whose financial benefit was not dependent on the result of the stock transactions. Apart from sub-s. (4) a person will not be under joint and several liability under sub-s. (1) (b) unless he has in fact received a financial benefit as the result of the stock and any associated transaction, so that an original shareholder might have been able to prove that he sold the shares at a loss, and received no financial benefit, but sub-s. (4) (b) precludes such a contention on his part by enacting the deemed benefit. Accordingly he is primarily liable jointly and severally, but by

proviso (ii), the statute clearly prescribes that each original shareholder is to be released from joint and several liability and to be liable *in singulum* for his apportioned share. The deemed amount under sub-s. (4) (b) is only relevant as a maximum, and that necessarily implies that it is open to the shareholder to establish either that he obtained no financial benefit at all, or the amount of the financial benefit in fact received by him. No apportionment of any sum can be defended as a judicial exercise of the power, if it is established that the original shareholder has sold at a loss. It is essential to any fair and reasonable exercise of the power of apportionment under either proviso that the Commissioners should inform themselves of the amount of the financial benefit accruing to persons other than the company and the promoters.

4. The Commissioners, in considering sub-s. (1) (b), are bound by their direction to impose liability, either as a joint and several liability under that sub-section or as a liability under an apportionment under the two provisos, for sums amounting to the sum made chargeable by sub-s. (1) (b), and they have no power to reduce that total liability. Their only option is not to make a direction. It follows that, if as a result of a decision by the Court a person is excluded from the direction altogether, or the liability of a person included in the direction has to be reconsidered, with a possibility of an alteration in the direction, the distribution of a liability is, or may be, altered, and a fresh direction is or may be necessary so as to distribute the total sum chargeable.
5. A commission paid to an agent which is paid in respect of a transaction which is abortive as regards the stock transactions or the transaction for the purchase of the shares does not become "a transaction effected in connection with or in association with any of the said transactions" within the meaning of sub-s. (1) (b).
6. Reasonable compensation for loss of an existing tenure of office, *e.g.*, a directorship, by termination before its natural expiry by reason of the associated transaction is not a financial benefit resulting from that transaction within the meaning of the statutory provision. In each case, however, it is the duty of the Special Commissioners to consider to what extent (if at all) the financial benefit to each director represented by the sum received as compensation was greater than the financial loss to that director represented by his immediate loss of office. To that extent, and to that extent only, each director in his capacity as a director obtained a financial benefit as a result of the share transaction:

I. R. C. v. ROSS AND COULTER (BLADNOCH DISTILLERY CO.); I. R. C. v. LORD SALTOUN (WILLIAM LONGMORE & CO.); I. R. C. v. BARCLAY (GLASGOW BONDING CO.); I. R. C. v. BARCLAY (ALEXANDER MCGAVIN & CO. (GLASGOW)); I. R. C. v. D. P. McDONALD & SONS (D. P. McDONALD & SONS); I. R. C. v. RUSSELL (PETER DOUGLAS & CO.); I. R. C. v. LANNON; J. S. & J. BROWN v. I. R. C. (J. S. & J. BROWN); HENRY SIMPSON v. I. R. C. (HENRY SIMPSON & CO.); JAMES McVEY v. I. R. C. (JAMES McVEY); I. R. C. v. GRAY (JAMES McVEY); I. R. C. v. BARR (THOMAS BARR); POMEROY v. I. R. C. (THOMAS BARR); HOLT v. I. R. C. (W. H. HOLT & SONS (CHORLTON-CUM-HARDY)); WILLIAM LONGMORE & CO. v. I. R. C.; GARFIELD v. I. R. C.; KEITZ v. I. R. C. (WILLIAM LONGMORE & CO.), [1948] W. N. 114; [1948] 1 All E. R. 616, H. L. (Lord Macdermott dissenting on certain points; reversing decisions of Court of Appeal in *W. H. Holt & Sons (Chorlton-cum-Hardy) v. I. R. C.*, [1947] C. L. Y. 1164; and of Court of Session in *Bladnoch Distillery Co.*, [1946] S. C. 1343 on certain points). (See also §§ 3539, 3562.)

1350. Awards to inventors. See § 2564.

1351. Bank balances—uninvested moneys. (Finance (No. 2) Act, 1939 (2 & 3 Geo. 6, c. 109), Sched. VII, Part II, para. (3).) In deciding whether moneys kept uninvested by a company in a bank for the purpose of replenishing stocks, whenever possible, have to be regarded as "moneys not required for the purposes of the trade or business" within the meaning of para. (3) of Part II of Sched. VII to the Finance (No. 2) Act, 1939, the proper test is: What

would a reasonable business man regard as sufficient money to retain uninvested to meet his commitments in the near future?

During the standard years a timber company's average minimum cash balance on bank deposit was £86,000, and this sum was available for the purchase of timber as and when required. After the outbreak of war, stocks of timber rapidly disappeared and the minimum balances increased. The Special Commissioners and Atkinson, J., on appeal, held that the differences between £86,000 and the minimum balances during the years in question ought to be disallowed as capital required in the business on the ground that in view of the Government control of the importation of timber there was no prospect at the end of the accounting periods in question, or within a reasonable time thereafter, of the company being able to replenish their stocks, with the result that the said differences were "moneys not required for the purposes of the trade or business" within the meaning of para. (3) of Part II of Sched. VII to the Finance (No. 2) Act, 1939. Held, on appeal to the Court of Appeal, the Special Commissioners and Atkinson, J., applied the right test. The matter was a pure question of fact, and there was ample evidence to support the findings at which the Special Commissioners arrived: *ACME FLOORING AND PAVING CO. (1904) v. I. R. C.*, [1948] 1 All E. R. 546, C. A. (affirming decision of Atkinson, J., [1947] C. L. Y. 1140; applying *Thomas Roberts (Westminster) v. I. R. C.*, [1946] E. P. T. Leaflet, No. 42; distinguishing *I. R. C. v. Terence Byron*, [1945] 1 All E. R. 636).

- 1352. Borrowed money.** (Finance (No. 2) Act, 1939 (2 & 3 Geo. 6, c. 109), Sched. VII, Pt. II, para. 2 (1).) The speeches in the House of Lords in *I. R. C. v. Port of London Authority*, [1923] A. C. 507, indicate that the words "borrowed money" in para. 2 (1) of Pt. II of Sched. VII to the Finance (No. 2) Act, 1939, must be construed as words which require the existence of a borrower and lender, and that there must be real borrowing in the legal sense of the word. The fact that the two ways of raising money known as borrowing and discounting a bill in many cases produce the same result of providing financial resources for carrying on a business does not mean that words which are apt to describe one must be construed as covering the other.

A company, by making use of "acceptance credit facilities" offered by an acceptance house who accepted bills drawn by the company and discounted the same as agents and on behalf of the company on the market with a discount house, and remitted the proceeds to the company, obtained the use of the money for the period of the bills. Held, in order that there might be "borrowed money" within the meaning of para. 2 (1) of Pt. II of Sched. VII to the Finance (No. 2) Act, 1939, there had to be the legal relationship of borrower and lender, and it was impossible to discover that there was such a relationship existing either between the company and the acceptance house or between the company and the discount house: *I. R. C. v. ROWNTREE & Co.*, [1948] 1 All E. R. 482, C. A. (reversing decision of Macnaghten, J., [1947] C. L. Y., 1141; applying *I. R. C. v. Port of London Authority*, *supra*).

- 1353. Compensation rental on requisitioning.** In *I. R. C. v. BUXTON PALACE HOTEL* (March 24, 1948), Atkinson, J., held that a compensation rental paid to an hotel company for the requisitioning of their hotel did not fall to be computed in the profits of the company for National Defence Contribution purposes. [*Reported by R. C. Calburn, Esq., Barrister-at-Law.*] See also *Estates Gazette*, April 3, 1948, p. 255.

- 1354. Cost of litigation—allowable deduction.** (Finance Act, 1940 (3 & 4 Geo. 6, c. 29), s. 32 (1); Finance (No. 2) Act, 1939 (2 & 3 Geo. 6, c. 109), s. 14 (1).) See *SMITH'S POTATO ESTATES v. BOLLAND*, § 1673; *RUSHDEN HEEL CO. v. KEENE*, § 1674.

- 1355. Double taxation.** See §§ 1650, 3285.

- 1356. Finance Act, 1948 (11 & 12 Geo. 6, c. 49).** Part VI of this Act makes further provision with respect to the profits tax. S. 69 deals with the payment of interest, etc., between connected companies; s. 70 relates to the repayment of loans treated as gross relevant distributions; and s. 71 defines the meaning of directors' "remuneration" so as to include all amounts which fall to be treated

as chargeable to income tax, having regard in particular to the provisions of Part IV of the present Act (see § 1654).

Provision is also made in s. 78 of the above Act for extending the time for claiming relief from excess profits tax for terminal expenses, by amending the Finance Act, 1946 (9 & 10 Geo. 6, c. 64), s. 37. Special provisions as to profits tax in connection with Electricity Boards are also contained in s. 79.

1357. Income tax—deduction of excess profits and profits tax. [Scot.] See *I. R. C. v. JOHN DOW STUART*, § 1652.

1358. Investment income—company distributing fees from licences among members. (Finance (No. 2) Act, 1939 (2 & 3 Geo. 6, c. 109), Sched. VII, Part I, para. 6 (1), (2).) In *I. R. C. v. Desoutter Bros.*, [1946] 1 All E. R. 58, Lord Greene, M.R., said: "The question whether or not a particular piece of income is income received from an investment must be decided on the facts of the case".

Certain manufacturers of gramophone records formed a company limited by guarantee and not having a share capital, whose business it was to grant licences for public performances of their gramophone records. The articles of the company provided that "all moneys received by the company in respect of the rights, licence or authority granted by the member shall be the property of the company, and shall be by them dealt with in accordance with the rules for the time being in force". Under the rules in force at the material time the revenue of the company was distributable among the members in proportion to the receipts from the user of their respective records. The question arose whether a certain sum received by a gramophone manufacturer from the company constituted income from an investment in the hands of the gramophone manufacturer within the meaning of the Finance (No. 2) Act, 1939, Sched. VII, Part I, para. 6 (1), and therefore had to be excluded from his profits for the purposes of excess profits tax. Held, the case was nearer to an agency case than to an income from investment case. The case was in the nature of a business deal, whereby the manufacturers had handed over their property in the copyright on the terms of getting that which they would have got if they had taken the trouble to manage it themselves. It was in part management, and in part the relationship of trader and customer. Consequently, the sum in question could not be treated as income from an investment: *I. R. C. v. ELECTRIC AND MUSICAL INDUSTRIES*, [1948] 2 All E. R. 514, Singleton, J. (applying *I. R. C. v. Desoutter Bros.*, *supra*, and *I. R. C. v. Tootal Broadhurst Lee Co.*, [1947] C. L. Y. 1152). See also [1949] 1 C. L. 95.

1359. — letting part of premises. (Finance (No. 2) Act, 1939 (2 & 3 Geo. 6, c. 109), Sched. VII, Part I, para. 6 (1).) Whether rents received from the letting of premises are profits assessable to excess profits tax, or investment income and so excluded from assessment, is a question of fact, in determining which both the user of the premises before and after the letting and the duration of the letting are factors which may be properly taken into account.

The company were manufacturers of paper and had erected and equipped two buildings on their premises as stockrooms for the storage of paper. Shortly after the outbreak of war the manufacture of paper was restricted and the company found that the stockrooms were not required. Consequently, in 1940, one building was let under a lease expiring three months after the end of hostilities, and the other was offered to, and requisitioned by, the Admiralty. (No distinction need be drawn between the letting and the requisition.) The Special Commissioners had found that the rent and compensation rent received were not investment income within the meaning of para. 6 (1) on the grounds that the buildings had been erected and, up to the date of the lettings, were in use as ordinary trading assets and were not investments in the business sense of that word; that by the lettings the company merely let to a third party a trading asset, not itself in the nature of an investment, the use of which was temporarily not required by the company. This finding was reversed by Singleton, J., whose decision was the subject of the present appeal. Held, the question was one of fact for the Commissioners and, in applying the correct test to the meaning of "investment", they were entitled to take into consideration the past and future user of the premises and the temporary nature of the lettings. Appeal allowed: *REED & Co. v. I. R. C.*, [1948] 2 All E. R. 1079, C. A. (reversing decision of Singleton, J., [1948] T. R. 273; distinguishing *I. R. C. v. Broadway Car Co.*, [1947] C. L. Y. 1151; applying *I. R. C. v. Desoutter Bros.*, [1946] 1 All E. R. 58).

- 1360. Profession or business—optician—severance from trade.** (Finance (No. 2) Act, 1939 (2 & 3 Geo. 6, c. 109), s. 12 (3).) The exemption from excess profits tax conferred by s. 12 (3) of the Finance (No. 2) Act, 1939, on the profits of a profession dependent wholly or mainly on the taxpayer's personal qualifications does not apply to the profits derived from professional activities which are not separate and severable from commercial activities; so that where a business is, in fact, one business mainly of a commercial nature but involving substantial professional activities the profits must be treated as a whole and cannot be said to be derived from a profession dependent on personal qualifications.

The taxpayer was an optician and a member of various professional bodies. His business activities included testing eyes, prescribing lenses, and having the lenses cut, shaped and framed; on occasions a prescription was supplied to be carried out by someone else, or spectacles made up from other people's prescriptions. The Commissioners assessed the profits from the professional activities at £750 out of a total profit of £2,902. Held, on appeal, in order that advantage may be taken of sub-s. (3) it is necessary to show that there are, in fact, two separate businesses being carried on at the same time, and that the profits of the one are severable from those of the other; the taxpayer's business, by its very nature, required professional qualifications, but it did not, thereby, become two businesses; the fact that only £750 was derived from the professional activities meant that the business, regarded as a whole, was not a profession the profits of which were dependent wholly or mainly on personal qualifications; accordingly, the whole of the business profits were liable to excess profits tax: *NEILD v. I. R. C.*, [1948] 2 All E. R. 1071, C. A. (reversing decision of Macnaghten, J., [1946] 2 All E. R. 405; distinguishing *I. R. C. v. Maxse*, [1919] 1 K. B. 647). See also [1947] C. L. Y. 1161.

- 1361. — surveyors and estate agents.** In *WARD, BATESON AND SMITH (TRADING AS YOUNG & WHITE) v. I. R. C.* (July 14, 1948), Singleton, J., held that there was evidence on which the Tax Commissioners could find that the business of the appellants as surveyors, estate agents, auctioneers and valuers was not a profession within s. 12 (3) of the Finance (No. 2) Act, 1939. See [1948] T. R. 283.
- 1362. Special commissioners—discretionary powers.** See *I. R. C. v. ROSS AND COULTER*, § 3539.
- 1363. ARTICLES.** Profits tax—scope of tax: 40 *Accountants' Journal* 10. Deferred repairs: *Taxation*, January 17, 1948, p. 299. Profits tax—computation of profits: 40 *Accountants' Journal* 40. Investment income (founded on *Reed & Co. v. I. R. C.*, § 1359, and *I. R. C. v. Buxton Palace Hotel*, § 1353): *Taxation*, September 18, 1948, p. 483.
- 1364. BOOKS PUBLISHED.** Borneman, R. E. and Hughes, P. F.—The Profits Tax [21s.]. Edwards, H. and A. M.—Profits Tax. 2nd ed. [12s. 6d.]. Finance Act, 1937, and Finance Acts, 1938 to 1947, so far as they relate to the Profits Tax [10s. 6d.]. McBain, A. G. and Burnet, R. P.—The Profits Tax [12s. 6d.]. Rez, A.—The Profits Tax Simplified [2s. 6d.].

EXECUTORS AND ADMINISTRATORS

- 1365. Administration, letters of—revocation—laches.** There is no authority for the proposition that delay—even though amounting to such laches as would in a Court of equity be a bar to any proceeding to follow and recover property—is a bar in the Probate Court to a claim to establish a will assumed to be valid, or that the Statutes of Limitation apply to defeat such a claim. Nor is it established by authority that the mere existence of laches such as would bar a claim in subsequent and consequential proceedings in the Chancery Division would justify the Probate Court in taking the drastic step of dismissing an action *in limine* as frivolous and vexatious.

C. died in 1892. The present defendants were beneficially entitled under the will of a person to whom C.'s estate had descended under the latter's intestacy. The plaintiff sought in the present proceedings revocation of the grant of letters of administration, which had been obtained on C.'s death, on the ground that a will had been found in 1912, by which C.'s estate had been left to another person under whose intestacy the plaintiff had become absolutely entitled to C.'s estate on the death of his aunt in 1923. The delay in taking the present proceedings

was sought to be explained by the plaintiff as due to lack of means and wrong advice as to his legal position. With the exception of a family tomb worth £157, which still vested in C.'s administrator, administration of the whole of C.'s estate of the value of £600,000 had been completed a long time ago. By a letter written in 1947 by the defendants' solicitors the latter had made proposals as to the proper persons to be made parties in the plaintiff's proceedings. The plaintiff had thereupon abandoned his original proceedings and had started proceedings against the present defendants. The defendants applied for an order that the action brought by the plaintiff for revocation of the grant of letters of administration should be dismissed as frivolous and vexatious. Held, the defendants had failed to discharge the heavy burden that lay on them to show that the action should be dismissed as frivolous and vexatious: *Re COGHAN, BRISCOE v. BROUGHTON*, [1948] W. N. 218; [1948] 2 All E. R. 68, C. A. (reversing decision of Willmer, J., [1948] L. J. R. 736; Evershed, L.J., dissenting on the application of the doctrine of laches to probate actions: Tucker, L.J., basing his judgment on the general circumstances of the case and on the state of the authorities; Evershed, L.J., basing his judgment on the fact that the family tomb was still vested in the administrator, and Hodson, J., basing his judgment on the terms of the letter of 1945; considering *Mohan v. Broughton*, [1900] P. 56; and *Willis v. Beauchamp (Earl)* (1886), 11 P. D. 59).

1366. — settled land—grant to Treasury Solicitor. (Judicature Act, 1925 (15 & 16 Geo. 5, c. 49), s. 155 (1).) On the death of a person intestate and without known next-of-kin, where such person has been tenant for life under a settlement which has come to an end on his or her death, the Court, by virtue of s. 155 (1) of the Judicature Act, 1925, has power to grant letters of administration to the Treasury Solicitor, save and except the land of which such person was tenant for life, and to grant letters of administration to such land to the remainderman: *IN THE ESTATE OF MORTIFEE*, [1948] P. 274; [1948] L. J. R. 1886, Pilcher, J.

1367. Administration pendente lite—practice of Probate Division. It has been the settled practice of the Probate Division to follow the practice of the Chancery Division in the matter of appointing a receiver *pendente lite*, the appropriate relief in the Probate Division being the appointment of an administrator *pendente lite*.

The plaintiff applied to the Probate Division for the appointment of an administrator *pendente lite* in respect of an estate worth £90,000, consisting of securities, the interest and dividends on which had to be collected, real estate in respect of which it was necessary to collect rents, and personal chattels which had to be safeguarded by the employment of a caretaker. Held, this was an estate in respect of which the Chancery Division would unquestionably have appointed a receiver, and, consequently, this was a case for the appointment of an administrator *pendente lite*: *Re BEVAN, BEVAN v. HOULDSWORTH*, [1948] 1 All E. R. 271, C. A. (applying *Bellew v. Bellew* (1865), 4 Sw. & Tr. 58; and *Re Oakes*, [1917] 1 Ch. 230).

1368. Advertisements. The Lord Chancellor's Office, in consultation with the Law Society, has arranged with the editors of the *Times*, the *Daily Telegraph* and the *Manchester Guardian*, that on and after September 1, 1948, advertisements under s. 27 of the Trustee Act, 1925 (15 & 16 Geo. 5, c. 19), will be inserted under a common heading in the form of a schedule, in which the particular entries will be in the form: Smith, John, 1 Alpha Road, . . . , died 13 September, 1948; particulars to Jones & Robinson, Solicitors, 2 Beta Place . . . , before 31 December, 1948. Similar arrangements have been made with the editor of the *Yorkshire Post*, which operate on and after January 1, 1949.

1369. Assents. The Council of the Law Society recommend that (1) solicitors acting for personal representatives should, immediately after an assent or conveyance, endorse a memorandum on the relative grant of representation, which memorandum should be signed and dated either by the personal representatives or by their solicitors; and (2) memoranda endorsed on grants of representation relating to the property under contract for sale should be abstracted by the vendors' solicitors: *Law Society's Gazette*, August, 1948, p. 143.

1370. Capital and income, apportionment between. See *Re THOMPSON*, § 3397.

1371. Charges on property. See *Re COXEN*, § 1380.

1372. Contract entered into by testator—right of devisee to performance. A devisee is entitled to performance of a binding contract entered into by the testator in his lifetime in respect of the property devised at the expense of the testator's personal estate.

The testator gave a freehold farm belonging to him to N. After the date of the will there was a fire at the farm and the testator received £400 in respect of his claim under a fire insurance policy. The testator entered into a binding contract with some builders to repair the damage caused to the farm for the sum of £550, but no repairs were ever effected in the testator's lifetime. After his death the question arose whether N was entitled to have applied out of the estate the sum of £550 or any other sum for the repairs of the farm. Held, N was entitled to have expended out of the personal estate a sum not exceeding £550 and not exceeding the value of the personal estate for the repairs of the farm: *Re RUSHBROOK'S WILL TRUSTS, ALLWOOD v. NORWICH DIOCESAN FUND AND BOARD OF FINANCE*, [1948] Ch. 421; [1948] L. J. R. 1291, Vaisey, J. (applying *Cooper v. Jarman* (1866), L. R. 3 Eq. 98, and *Re Day*, [1898] 2 Ch. 510; considering *Angullia v. Estate and Trust Agencies*, [1938] A. C. 624; referring to *Holt v. Holt* (1694), 2 Vern. 322).

1373. — secured maintenance. See *HYDE v. HYDE*, § 976.

1374. Damages for loss of expectation of life. See *HART v. GRIFFITHS-JONES*, § 817.

1375. Death duties. See DEATH DUTIES.

1376. Domicil of testator. In *Re GOENAGA (deceased)* (November 17, 1948) a testator born and domiciled in France died having executed in England his last will in which he disposed only of his property in Great Britain and the British Empire, bequeathing it to his children and appointing an English bank as executor and trustee. By the French Civil Code the powers of an *exécuteur testamentaire* last only for a year. Ormerod, J., held that the powers of an English executor appointed by an English will restricted to property in Great Britain and the Empire were governed by English law notwithstanding the testator's French domicil. [Reported by R. C. Calburn, Esq., Barrister-at-Law.] See also [1948] W. N. 463.

1377. Equity, personal claim in, against wrong recipient of money. The authorities establish that the following propositions apply to a personal claim in equity (claim *in personam*) against the wrong recipient of money under a will or intestacy:—

1. The equity may be available equally to an unpaid or underpaid creditor, legatee or next-of-kin.
2. A claim by a next-of-kin will not be liable to be defeated merely
 - (a) in the absence of administration by the Court, or
 - (b) because the mistake under which the original payment was made was one of law rather than fact, or
 - (c) because the original recipient, as things turn out, had no title at all and was a stranger to the estate, though the effect of the refund in such a case will be to dispossess the original recipient altogether rather than to produce equality between him and the claimant and other persons having a like title to that of the recipient.
3. As regards the conscience of the defendant on which in this, as in other jurisdictions, equity is said to act, it is *prima facie*, at least, a sufficient circumstance that the defendant, as events have proved, has received some share of the estate to which he was not entitled.
4. Where the original wrong payment was attributable to the blunder of personal representatives, the right of the unpaid beneficiary is in the first instance against the wrongdoing executor or administrator, and the beneficiary's direct claim in equity against those overpaid or wrongly paid is limited to the amount which he cannot recover from the party responsible. In some cases the amount will be the whole amount of the payment wrongly made, e.g., where the executor or administrator is shown to be wholly without assets or is protected from attack by having acted under an order of the Court.

5. The defendant to the personal claim in equity on this particular form of claim may be liable for the principal claimed only and not for any interest.

By his will the testator directed his executors to apply the residue of his estate "for such charitable institution or institutions or other charitable or benevolent object or objects in England" as the executors might "in their absolute discretion select". The testator died in 1936, and by 1938 the executors had distributed more than £200,000 out of the testator's residuary estate to various charitable institutions. In 1939 one of the next-of-kin of the testator challenged the validity of the directions in the will, and the executors' solicitor informed the charities concerned of this fact. In 1944, the House of Lords in *Chichester Diocesan Fund v. Simpson*, [1944] A. C. 341, held that the bequest was void for uncertainty. Those entitled under an intestacy brought an action to recover from the charities the sums paid to them after they had compromised an action against the executors. Held, on the claims *in personam* which the next-of-kin had in equity against the defendant charities, the amount which the next-of-kin could recover from any defendant charity was limited to the same proportion of the sum paid to that defendant charity as the balance of the total sum paid away by the executors to all the charities less the total amount recovered from the executors bore to the total sum paid away. The defendant charities were not liable for interest on the sums paid to them: *Re Diplock*, *Diplock v. Wintle*, [1948] Ch. 465; [1948] L. J. R. 1670, C. A. (allowing appeal from judgment of Wynn-Parry, J., [1947] C. L. Y. 1192; applying *Nelthrop v. Hill* (1669), 1 Cas. in Ch. 135; *David v. Frowd* (1833), 1 My. & K. 200; *Noel v. Robinson* (1862), 1 Vern. 90; and *Peterson v. Peterson* (1866), L. R. 3 Eq. 111; doubting *Re Hatch*, [1919] 1 Ch. 351; distinguishing *Re Mason*, [1929] 1 Ch. 1; and *Re Blake*, [1932] 1 Ch. 54). (See also §§ 636, 637, 1382, 1383, 1399, 1400, 1401, 1402, 2015, 3547.)

1378. **Executor by representation—refusal to prove.** [N.I.] In *IN THE GOODS OF GILKINSON*, [1948] N. Ir. 42, the High Court of Northern Ireland approved the proposition in *Tristram and Coote's Probate Practice* (19th ed.), p. 85, that "When the only, or surviving proving executor, has died, leaving a will and appointing an executor, who for some reason does not prove his testator's will, or renounce probate thereof, a grant can be made, to a residuary legatee or a person entitled, of the unadministered estate of the original deceased, without an order, limited until the executor shall obtain probate of his testator's will", and held that, although the proposition occurs after a citation of s. 7 of the Administration of Estates Act, 1925, it is declaratory of the law existing in England and Northern Ireland before 1925.

1379. **Funeral expenses.** See *HART v. GRIFFITHS-JONES*, §§ 814, 815.

1380. **Incumbrances, incidence of—property bequeathed subject to charge.** (Administration of Estates Act, 1925 (15 & 16 Geo. 5, c. 23), s. 35.) S. 35 of the Administration of Estates Act, 1925, which provides that "where a person dies possessed of, or entitled to" property subject to a charge "the interest so charged, shall . . . , be primarily liable for the payment of the charge . . .", can only apply where the property in the chattel or other interest has passed to the testator.

The testator by his will bequeathed to his wife "all the . . . motor cars . . . which at the time of my death shall be . . . ordered for any dwelling-house and/or flat in which I may reside at my decease . . .". A motor car had been ordered by the testator in his lifetime, but was not delivered until some time after the testator's death. The questions arose (1) whether the motor car passed to the wife under the terms of the testator's will, and if so, (2) whether she was entitled to it subject to the obligation of paying for it. Held, (1) the motor car passed under the bequest to the wife; (2) as no particular motor car had been appropriated to meet the contract under which it had been ordered, and, therefore, no property in any particular motor car had passed to the testator, s. 35 of the Administration of Estates Act, 1925, could not apply, and, consequently, the testator's wife was entitled to the motor car without paying the purchase price. See *Re COXEN*, § 3871.

1381. **Intestacy—vesting of tenancy in probate Judge.** See *SMITH v. MATHER*, § 3219.

- 1382. Invalid disposition—moral or equitable right to retain property.** “It is . . . impossible to contend that a disposition which, according to the general law of the land, is held to be entirely invalid can yet confer on those who, *ex hypothesi*, have improperly participated under the disposition some moral or equitable right to retain what they have received against those whom the law declares to be properly entitled”. See *Re DIPLOCK*, § 1377.
- 1383. — notice of invalidity in respect of payments to legatees.** “We do not think it necessary or desirable to attempt an exhaustive formulation of the law applicable as regards notice in case of payments to legatees, save to say that every case of this kind will depend on its own facts and that the principles applicable to such cases are not the same as the principles in regard to notice of defects in title applicable to transfers of land, where regular machinery has long since been established for inquiry or investigation”. See *Re DIPLOCK*, § 1377.
- 1384. Joint banking account—survivorship.** In *YOUNG v. SEALEY* (December 2, 1948), X and the defendant had a joint bank account; X, during her life retained control of the account, and the defendant never paid anything into the account or withdrew any money therefrom during the life of X. Romer, J., held that although it was the intention of X to retain control over the joint account during her life and to pass the beneficial interest in the account to the defendant on her death, the transaction was not invalid on the ground that it was not made in the form prescribed for wills by the Wills Act, 1837. The defendant by virtue of the right of survivorship had not only become the legal owner of the money in the joint account, but he had also become beneficially entitled thereto. [Reported by C. M. Schmitthoff, Esq., Barrister-at-Law.] See also [1949] 1 C. L. 265.
- 1385. Limitation of actions—in respect of claim to personal estate of a deceased person.** See *Re DIPLOCK*, § 2015.
- 1386. Maintenance—recovery of arrears.** (Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39), ss. 5 (c), 9.) The provisions of the Summary Jurisdiction (Married Women) Act, 1895, by s. 5 (c) impose a statutory liability to pay maintenance, and by s. 9 provide a statutory method of enforcing that liability. Consequently, on the principle that where a statutory liability is created and the statute creating it provides a method whereby it is to be enforced, *prima facie* that method is the only method to which recourse can be had, arrears of payments under a justices’ order for maintenance under the Act of 1895 are irrecoverable. Thus, a widow’s claim as a creditor against a deceased husband’s estate for arrears of maintenance (which had been unpaid for sixteen years) was held to fail, and it was further held, that such claim could not be founded on a wife’s right to pledge her husband’s credit for necessities or on any former equitable procedure which is now obsolete: *Re BIDIE, BIDIE v. GENERAL ACCIDENT, FIRE AND LIFE ASSURANCE CORPORATION*, § 3936 (affirming on this point decisions of *Jenkins, J.*, [1948] Ch. 697; following *Re Hedderwick*, [1933] Ch. 669 and *Re Woolgar*, [1942] Ch. 318; dissenting from *Re Stillwell*, [1916] 1 Ch. 365, and *Firman v. Royal*, [1925] 1 K. B. 681).
- 1387. — — secured maintenance.** See *HYDE v. HYDE*, § 976.
- 1388. Mistake of law, money paid under.** See *Re DIPLOCK*, § 1377.
- 1389. Payment out of Court to creditors.** (R.S.C., Ord. 55, r. 2 (1).) In *Re Terry*, [1929] 2 Ch. 412, Clauson, J., laid down the proposition that “the practice of the Court is to order funds to be paid out of Court only upon the hearing . . . of an action or on a petition, and that if an order for payment of funds out of Court is to be made otherwise than on the hearing of the action or on petition, that order will be irregular, unless something is found in the rules which authorises the making of such an order”. Normally, an administration action terminates by an order on further consideration, but procedure by way of further consideration is not available if any accounts are outstanding. In such a case an order involving distribution out of funds in Court can only be obtained on petition, unless process by summons is permissible, which by virtue of the provisions of Ord. 55, r. 2 (1), is permissible—without limitation

of amount—if there has been a judgment or order declaring the rights of the parties. Thus, an order for administration of an insolvent estate made at the instance of a creditor, taken in conjunction with the master's certificate limited to ascertaining the amounts due to creditors, were treated as together amounting to an order declaring rights within the meaning of the sub-rule, *i.e.*, declaring the ascertained creditors of the testator as being the parties entitled to participate in the funds in Court, and as justifying the Court in making an order for payment of an interim dividend to such creditors limited to 15s. in the £: *Re VISCOUNT ROTHERMERE, MELLORS BASDEN & Co. v. COUTTS & Co.*, [1948] Ch. 238; [1948] L. J. R. 1084, Wynn-Parry, J.

- 1390. Presumption of death.** *In the Goods of Schulhof*, [1947] C. L. Y. 1195, is sufficient authority for the registrar of the Probate Division in England to make a grant in cases where there has been a declaration of death by a competent foreign Court of the domicile followed by an order of that Court vesting the estate of the presumed deceased. However, as circumstances might arise in foreign countries which might cause the English Courts to consider that the evidence tendered required careful investigation, the registrar must have a discretion to refer such cases to the Judge: *IN THE ESTATE OF ARTHUR DOWDS*, [1948] P. 256; [1948] L. J. R. 1887, Pilcher, J.
- 1391. Probate—ascertaining original words of will.** See *Re ITTER, DEDMAN v. GODFREY*, § 3863.
- 1392. — fees.** See §§ 848, 2831.
- 1393. — indorsement.** See § 1369; see also PRACTICE NOTE, § 2826.
- 1394. — oath—community of property.** The Senior Registrar, Principal Probate Registry, has issued the following PRACTICE NOTE, dated May 12, 1948: Where, by the law of the place of domicile of the deceased, community of property exists between the spouses, the following concluding paragraph to the oath to lead to the grant is appropriate and should be used: “the whole of the estate in England in respect of which a grant is required amounts in value to the sum of . . . to the best of my knowledge, information and belief; and that . . . (half) . . . of that sum has accrued to the surviving spouse by reason of the existence of Community of Property under the law of the place of domicile of the said deceased”. The grant will be in respect of the whole estate, but a court fee will be payable in respect of half of it only. The penalty in the bond, if any, will be in respect of half the estate. See also [1948] W. N. 194.
- 1395. — photographic copies.** The Senior Probate Registrar has directed that as from June 21, 1948, photographic copies of grants of representation (price 1s. each) may be bespoken at the same time as the papers applying for the grant are lodged in the Principal Probate Registry. The fees will be payable by means of impressed stamps and copies ordered will be issued with the grant.
- 1396. — rules.** See § 2895.
- 1397. — settlement of probate action.** In *Re WEST, TIGER v. HANDLEY* (November 3, 1948) Wallington, J., on a preliminary issue in a probate action, held the plaintiffs not bound by the settlement of a previous probate action in respect of a will and codicil in which the plaintiffs and their two children were equally interested, though the children and their parents were parties to that action. He so held because the plaintiffs had not signed the settlement, nobody had signed it on their behalf and they had not been present at the trial, and notwithstanding that the solicitor acting for the children had shown by conduct that he was acting also for the parents and that one of the children was living with the plaintiff parents during the trial. [*Reported by R. C. Calburn, Esq., Barrister-at-Law.*]
- 1398. — undertaking in cases provisionally sworn.** Probate Direction issued by the Senior Registrar: On application for a grant in respect of estate “so far as at present can be ascertained,” an undertaking should be given by the solicitor extracting the grant and by the proposed grantee in the following form:

UNDERTAKING

In the estate of deceased.

I of Solicitor hereby undertake that when the total amount of the estate herein is finally ascertained I will file an Affidavit as to the amount, lodge the grant for amendment, and, in the event of an increase in the estate, pay any Court fees which may become due, and I of the proposed grantee undertake similarly, the undertaking of me the said to be operative only if I am acting as Solicitor for the said when such additional fees become payable.

And I the said further undertake that if my retainer shall be cancelled prior to the time at which such fees may become payable, I will give notice forthwith to the Senior Registrar of the Probate Division.

A personal applicant should give a similar undertaking *mutatis mutandis*.

The Circulars of November 9, 1939, of March 1, 1945 (so far as is relevant) and of June 16, 1945, are hereby cancelled.

1399. Tracing—at common law. The common law could only appreciate what might almost be called the “physical” identity of one thing with another. It could treat a person’s money as identifiable so long as it had not become mixed with other money. It could treat as identifiable with the money other kinds of property acquired by means of it, provided that there was no admixture of other money. In this latter case the common law did not base itself on any known theory of tracing such as that adopted in equity. It proceeded on the basis that the unauthorised act of purchasing was one capable of ratification by the owner of the money.

The idea that property could belong in law to A and should nevertheless be treated as belonging to B was entirely foreign to the common law, and it was its materialistic approach coupled with the limited range of remedies available (in particular, the fact that the device of a declaration of charge was unknown) that prevented the common law from identifying money in a mixed fund. See *Re Diplock*, § 1377.

1400. — in equity. The following general equitable principles which are common to all cases of “mixed funds” can be extracted from the speech of Lord Parker in *Sinclair v. Brougham*, [1914] A. C. 398:—

1. Where one claimant is a person in a fiduciary relationship with another and has mixed moneys of that other with moneys of his own, that other takes priority.
2. The same result follows where a person, taking that other claimant’s money from the person in a fiduciary relationship with notice that it is money held in a fiduciary capacity, proceeds to mix it with money of his own.
3. Where the contest is between two claimants to a mixed fund made up entirely of moneys held on behalf of the two of them respectively and mixed together by the fiduciary agent, they share *pari passu*, each being innocent.
4. Where the moneys are handed by way of transfer to a person who takes for value without notice, the claim of the owner of the moneys is extinguished just as all other equitable estates or interests are extinguished by a purchase for value without notice.
5. In the case of a volunteer who takes without notice, *e.g.*, by way of gift from the fiduciary agent, if there is no question of mixing, he holds the money on behalf of the true owner whose equitable right to the money still persists as against him.
6. If the volunteer mixes the money with money of his own, or receives it mixed from the fiduciary agent, he must admit the claim of the true owner, but is not precluded from setting up his own claim in respect of the moneys of his own which have been contributed to the mixed fund. The result is that they share *pari passu*.

Applying these principles to the question whether or not in particular instances moneys paid to charities under a mistake of law could be recovered, it was held, that:

- (1) where the money received had been used in the execution of works on land or buildings already belonging to the charities, it could not be traced and extracted from the altered asset, because it had disappeared leaving no monetary trace behind, and even if it could be so traced, the only remedy available to equity, *viz.*, that of a declaration of charge, would not produce an equitable result and was inapplicable accordingly;
- (2) where the money had been used to repay a sum which had been borrowed for the purpose of executing works on land already belonging to the charity in question, the debt was thereby extinguished, and no equitable doctrine could be applied in order to revive it;
- (3) where the money had been used for the purpose of clearing off an existing incumbrance, the original charge was thereby extinguished, and equity could not create a new charge in favour of those trying to recover the money, because it would thereby place them in a position to insist on a sale of what had been contributed by the charity;
- (4) where a charity had withdrawn from its own accounts, into which it had first been paid, the money which it had received and had placed it on deposit in a separate account at the Post Office Savings Bank, it was to be treated as a volunteer who had "unmixed" and earmarked the trust money, and it was therefore not unconscionable to prevent such volunteer from treating the money as his own and to order repayment of the whole amount received by the charity. (It was later ascertained, however, that no such earmarking in a separate account had taken place, but that the charity in question had paid the trust money into its general account, with the result that the rule in *Clayton's Case*, *supra*, applied and that on applying that rule to the facts of the particular case the right of tracing in equity (or right *in rem*) had gone, and that all that was left was the personal claim in equity (or right *in personam*));
- (5) the rule in *Clayton's Case* (1816), 1 Mer. 529, 572 (*i.e.*, every payment made into an account is presumed to have been applied to the first items on the debit side in order of date) applied to a case in which the money received by the charity together with charity money had been spent on the purchase of a funding loan which had been paid into the charity's general account, out of which subsequent withdrawals had been made, because the rule in *Clayton's Case*, *supra*, applied not only to the case where trust moneys of two beneficiaries had been paid into a mixed banking account, but also in cases where the claimants were one beneficiary and one volunteer;
- (6) the rule in *Clayton's Case*, *supra*, did not apply where the money together with charity money had been spent on the purchase and sale of stock, because the rule in *Clayton's Case*, *supra*, only applied to a banking account; consequently, only a rateable proportion of the stock still held could be recovered.

See *Re DIPLOCK*, § 1377 (considering and explaining *Sinclair v. Brougham*, *supra*, *Re Guardian Permanent Benefit Building Society* (1882), 23 Ch. D. 440, and *Hallett's Case* (1880), 13 Ch. D. 696).

- 1401.** — continued existence of fund. The equitable remedies of an order to restore an unmixed sum of money and a declaration of charge upon a mixed fund (or property acquired therewith) presuppose the continued existence of the money either as a separate fund or as part of a mixed fund or as latent in property acquired by means of such a fund. If such continued existence is not established, equity is as helpless as the common law itself. See *Re DIPLOCK*, § 1377.
- 1402.** — unjust enrichment. Regarded as a pure piece of machinery for the purpose of tracing money into a mixed fund or into property acquired by means of a mixed fund, a declaration of charge might be thought to be a suitable means of dealing with any case where one person has, without legal title, acquired some benefit by the use of the money of another—in other words, any case of what is often called "unjust enrichment". Such a view would dispense with the necessity of establishing as a starting point the existence of a fiduciary or quasi-fiduciary relationship or of a continuing right of property recognised in equity, and apart from the possible case of Lord Dunedin's speech in *Sinclair*

v. *Brougham*, [1914] A. C. 398, no principle so wide in its operation is to be found enunciated in English law. See *Re Diplock*, § 1377.

1403. Trusts. See SETTLEMENTS AND TRUSTS.

1404. Wills. See WILLS.

1405. ARTICLES. Adequacy of the statutory forms of assent: 98 L. J. 20. The order of application of assets in administration (founded on *Re James*, [1947] C. L. Y. 1170): 92 S. J. 63. Trusts for conversion: *Accountancy*, March, p. 57. The Inheritance (Family Provision) Act: 92 S. J. 163. The old law of inheritance: *Law Notes*, March, 1948, p. 60. Death duty concessions and personal representatives: 92 S. J. 202. Liability of personal representatives in respect of leaseholds: 98 L. J. 243. Presumption of death: 98 L. J. 283. Probate, administration and death duties (founded on Administration of Estates Act, 1925, s. 7): 98 L. J. 313. Estate sworn "so far as at present can be ascertained": 98 L. J. 369. Appropriation of infants' pecuniary legacies: 92 S. J. 356. On assents by the personal representatives of a trustee: 206 L. T. 35. Revocation of grant of administration—effect of laches (founded on *Re Coghlan*, § 1365): 206 L. T. 50. *Re Diplock*, § 1377; 92 S. J. 438, 452, 466. Liability of personal representative in respect of leaseholds: 98 L. J. 454. Administration of a small estate: 92 S. J. 614. Appropriation to answer annuities: 92 S. J. 656. Liability of personal representatives in respect of leaseholds: 98 L. J. 667. Some further notes on the administration of a small estate: 92 S. J. 701. Real estate of a person of unsound mind living on January 1, 1926 (founded on *Re Donkin*, [1947] C. L. Y. 1820); 98 L. J. 683.

1406. BOOKS PUBLISHED. Finlay, J. A. R.—Law relating to Executors and Administrators in a Nutshell [5s.]. Finlay, J. A. R.—Questions and Answers on Executors and Administrators [6s.]. Josling, J. F.—Apportionments for Executors and Trustees [2s.]. Phillips, J. H.—Accounts of Executors, Administrators and Trustees, 9th ed. [6s.]. Phillips, J. H. and Jenkins, G. E. M.—Executorships and Trusts, 2nd ed. [30s.]. Rankin, D. E., Spicer, E. E. and Pegler, E. C.—Executorship Law and Accounts, 17th ed. [30s.]. Rees, D. P.—Probate and Divorce Handbook, 2nd ed. [27s. 6d.]. Spicer, E. E.—Accounts of an Executor [4s. 6d.]. Tristram, T. H. and Coote, H. C.—Probate Practice, First Supplement [6s.]. Vickery, B. G.—Law and Accounts of Executors, Administrators and Trustees, 9th ed. [15s.].

EXPLOSIONS AND EXPLOSIVES

1407. Ammunition, etc., in ports. Reg. 76 of the Defence (General) Regulations, 1939 (regulating the handling and conveyance of ammunition, explosives and inflammable substances in ports or canal and inland navigations) has been continued in force until December 31, 1949: Emergency Laws (Continuance) Order, 1948 (No. 2794), art. 2.

1408. Carriage of explosives by rail—private railways. Explosives (Conveyance) (Private Railways) Byelaws, 1948 (No. 1727), made under the Explosives Act, 1875 (38 & 39 Vict. c. 17), ss. 37, 39; amending the byelaws made on September 20, 1924 (No. 1129), as to the quantity of explosives permitted to be carried in any one carriage on a private railway.

1409. Coal mines. See MINING LAW.

1410. Petroleum. See PETROLEUM.

EXTRADITION

1411. Dominica. See § 306.

1412. Sarawak. See § 350.

FACTORIES

1413. Breach of statutory duty—absolute liability. [Scot.] (Factories Act, 1937 (1 Edw. 8 & 1 Geo. 6, c. 67), s. 22 (1).) In *MILLAR v. GALASHIELS GAS CO.*, 1948 S. C. 191; 1948 S. L. T. 282, the Court of Session (Lord Mackay dissenting), held that where a workman pushing a bogey fell down a liftshaft, because the lift, owing to a defective brake, had moved upwards out of position, the employers, who had taken all reasonable steps to keep the lift in good order, while not guilty of negligence at common law, were nevertheless liable in damages because the

duty imposed upon them by s. 22 (1) of the Factories Act, 1937 (which provides that every hoist or lift shall be properly maintained in an efficient state, in efficient working order and in good repair), was an absolute duty, and as the duty was absolute the cause of the breach (once that had been established) was irrelevant, as was also the fact that the failure could not be anticipated.

- 1414. — exclusion of common law liability.** The obligations imposed by s. 47 of the Factories Act, 1937, do not, as regard those factories to which that section applies, exclude common law liability.

A workman was working for a considerable period at a lathe within four or five feet of a metal grinder, the wheels of which were in almost continuous use, inhaled the dust from it, and died from so inhaling it. The employers had not provided the metal grinder with any protective appliances although the dust therefrom substantially affected an area of six feet in radius. Held, although the employers had not committed any breach of a statutory duty, they had taken an unjustifiable risk such as an ordinary prudent man would not take and were, consequently, liable for negligence at common law. See *FRANKLIN v. GRAMOPHONE CO.*, § 1420.

- 1415. Dangerous machinery—obligation to fence.** [Scot.] (Factories Act, 1937 (1 Edw. 8 & Geo. 6, c. 67), s. 14 (1).) In *H.M. INSPECTOR OF FACTORIES v. L. M. & S. RY.*, 1947 S. L. T. (Sh. Ct.) 67, the Sheriff Court held that when an accident happens from a workman being beside a machine only as a consequence of some extraordinary happening, the factory owner is not to be held criminally liable for the absence of fencing, because in such a case the words of exemption in s. 14 (1) of the Factories Act, 1937, are applicable.

- 1416. — —.** (Factories Act, 1937 (1 Edw. 8 & 1 Geo. 6, c. 67), ss. 13 (1), 14 (1).) Any risk arising from the working of a dangerous machine must be guarded against under s. 14 of the Factories Act, 1937, and any danger emanating from the working of transmission machinery must likewise be guarded against under s. 13 of the Act. The working of transmission machinery is deemed to be dangerous; other machines need not be fenced unless they or some part are, in fact, dangerous. But in both cases it is the risk arising from the motion of the machine which is being guarded against, and in neither case does the Act aim at protection against breakage.

Per Lord Porter: "Fencing, in my opinion, means the erection of a barricade to prevent any employee from making contact with the machine, not an enclosure to prevent broken machinery from flying out".

Per Lord du Parcq: "'Securely fenced' . . . may well mean 'so fenced as to give security from such dangers as may be reasonably expected'. If machines exist, or are hereafter invented and used, which are dangerous because fragments or loose parts of the machinery are sometimes ejected from them, then I am not prepared to say that s. 14 does not require such machines to be fenced for the purpose of protecting workmen against that danger".

A workman was injured by the down-lash of a vertical transmission-belt which broke and which was not fenced in along its whole height. Held, the employers were not guilty of a breach of the statutory duty imposed by s. 13 of the Factories Act, 1937: *CARROLL v. ANDREW BARCLAY & SONS*, [1948] A. C. 477; [1948] L. J. R. 1490; H. L. (affirming decision of the Court of Session, [1947] C. L. Y. 1222; doubting dictum of Lord Simonds in *Nicholls v. Austin (Leyton)*, [1946] A. C. 493).

- 1417. Factory, meaning of—gasholder in process of reconstruction.** See *Cox v. S. CUTLER AND SONS*, § 1422.

- 1418. Factories Act, 1948 (11 & 12 Geo. 6, c. 55).** This Act makes a number of miscellaneous amendments to the Factories Act, 1937 (1 Edw. 8 & 1 Geo. 6, c. 67). Ss. 1, 2 amend and extend the scope of s. 99 of that Act so as to elaborate the system of medical examinations of young persons employed in factories, by applying it to all young persons entering factory employments (not merely those under sixteen), by requiring re-examination at least once a year, and by extending the system to other classes of employment. S. 3 extends the power of the Minister under s. 11 of the 1937 Act so as to enable him to require arrangements for medical supervision if he suspects risk of injury to health from any material brought into the factory, or any change in the conditions of work in the factory.

S. 4 amends s. 40 of the 1937 Act, by extending the power of courts of summary jurisdiction to make orders as to dangerous factories so as to enable orders to be made for stopping the use of premises which are unsuitable from the point of view of the safety, health or welfare of the persons employed. S. 5 amends s. 113 of the 1937 Act by requiring as a general rule one month's *previous* notice of intention to occupy a factory or to use mechanical power for the first time instead of giving notice within one month *after* starting a factory or first using mechanical power in a factory. S. 6 extends s. 44 of the 1937 Act by requiring that a supply of suitable seats be available to enable workers, irrespective of age or sex, to take advantage of any opportunities for resting which may occur in the course of their employment, and by making provision as to seats and seating arrangements where a substantial proportion of any work can properly be done seated. Ss. 7-10 deal with administration and enforcement. By s. 7 the title of the medical practitioners officially appointed under s. 126 of the 1937 Act is changed from "examining surgeon" to "appointed factory doctor". S. 9 extends an inspector's powers of entry, etc., under s. 123 of the 1937 Act to certain warehouses in connection with which s. 98 of that Act regulates the hours of young persons. S. 10 deals with the liability of an occupier or owner under s. 130 (2) of the 1937 Act in the event of an offence committed by some other person, and his power under s. 137 to exempt himself from liability. S. 11 amends the safety provisions of the 1937 Act in various minor respects. S. 12 makes it clear that the Minister's power to make special health or safety regulations under s. 60 of the 1937 Act applies not only in the case of manufacturing processes or plant used in them, but also in the case of dangerous equipment although persons are not ordinarily employed in connection therewith. The same section also widens the power of an inspector under s. 62 to take for analysis samples of substances suspected to be likely to prove dangerous. S. 13 (1) amends s. 94 of the 1937 Act so as to provide (subject to prescribed conditions) for the employment of women and young persons over sixteen on Sunday if work has to be done without delay in connection with the preservation of fish, fruit or vegetables; and s. 13 (2) extends to factories where milk powder, condensed milk or any milk product is made the provisions in s. 95 which empower the Minister to make regulations varying, for classes of factory where milk is treated, the ordinary provisions of the Act as to hours of employment and employment on Sundays and holidays. S. 14 (1) amends s. 102 of the 1937 Act, as to buildings partly let off for factory purposes; s. 14 (2) corrects an omission in s. 105 (2) of that Act by applying, as respects the processes of loading, unloading or coaling a ship, Part XIV of the Act; s. 14 (3) enlarges the scope of s. 106 of the Act so as to cover the cleaning of tanks or holds of ships which were last used for other substances of a dangerous, injurious or offensive nature; and s. 14 (4) makes it clear that the provisions in ss. 107, 108 of the Act as to building operations and works of engineering construction apply when those operations or works are undertaken in a factory.

Ss. 1-5 and 11-14 of the new Act came into force on October 1, 1948; s. 6 is not to come into force until October 1, 1950 (s. 16 (3)).

1419. Industrial building, meaning of. See *STANGER v. HENDON BOROUGH COUNCIL*, § 3649.

1420. Metal grinding machinery. (Grinding of Metals (Miscellaneous Industries) Regulations, 1925 (S. R. & O., 1925, No. 904).) The Grinding of Metals (Miscellaneous Industries) Regulations, 1925, which deal with safety appliances for metal grinding machines, provide that "nothing in these regulations shall apply . . . (iv) to any processes in or incidental to the sharpening of tools or implements for use in the factory, except as regards any part of the factory in which one or more persons are wholly or mainly employed in such work".

A dry grinder in a factory produced dust from which the workman died. The grinder was in almost continuous use by various workmen wanting to sharpen tools, but no one of them was "wholly or mainly employed in such work". Held, the exception on the exception contained in sub-para. (iv) could not apply, and, consequently, no cause of action based on a breach of the Regulations lay against the employers: *FRANKLIN v. GRAMOPHONE Co.*, [1948] 1 K. B. 542; [1948] L. J. R. 870, C. A. (See also §§ 1414, 1421.)

1421. —. (Factories Act, 1937 (1 Edw. 8 & 1 Geo. 6, c. 67), s. 47 (1).) By virtue of s. 159 of the Factories Act, 1937, the Grinding of Metals (Miscellaneous Industries) Regulations, 1925, have continued in force. By the terms of that section they must be treated as having effect as though made by virtue of s. 60 of the Act of 1937. It follows that the Regulations, deemed to have been made by virtue of s. 60, must be treated as capable of modifying the obligations imposed by other sections of the relevant parts of the Act, e.g., in the case of any process giving off dust: s. 47. (That section requires that "all practicable measures shall be taken to protect the persons employed against inhalation of the dust . . . and, in particular, where the nature of the process makes it practicable, exhaust appliances shall be provided and maintained".) Thus, in all factories in which the grinding of metals is carried on the Grinding of Metals (Miscellaneous Industries) Regulations, 1925, constitute an exhaustive code which is substituted for the general provisions of s. 47. See *FRANKLIN v. GRAMOPHONE CO.*, § 1420 (applying *Miller v. William Boothman & Sons*, [1944] K. B. 337).

1422. Occupier. (Factories Act, 1937 (1 Edw. 8 & 1 Geo. 6, c. 67), s. 151 (1) (a), (c), (xiii), (6)). The word "occupier", which is not defined in the Factories Act, 1937, was defined by Lord Maclaren in *Ramsay v. Mackie* (1904), 7 F. (Ct. of Sess.) 106 as follows: "'Occupier' plainly means the person who runs the factory . . . , who regulates and controls the work that is done there, and who is responsible for the fulfilment of the provisions of the Factory Act within it".

The plaintiff was a riveter in the employ of contractors, who were engaged in reconstructing a large gasholder, the property of a gas company. The holder had been almost totally destroyed by enemy action. The gas company's works were separated from the holder by a public road. The plaintiff, in the course of reconstructing the steel framework of the upper part of the holder, was standing on some steel bars which were slippery as a result of frost, slipped and fell more than twenty feet, sustaining severe injuries. Sellers, J., had held both the contractor and the gas company jointly and severally liable, the contractors for negligence at common law, and the gas company for breach of s. 26 of the Factories Act, 1937. He apportioned the liability as to three quarters to the contractors and as to one quarter to the gas company. The gas company appealed. Held, on appeal, (1) the making of gases constituted the "making" or "adapting" for sale of an "article" within the meaning of s. 151 (1) (a) and (c) of the Act, and, consequently, the confines within which persons were engaged in these processes constituted a "factory" within the meaning of the section and limited its ambit, thus excluding the gasholder; (2) the gasholder was not a "factory" within the meaning of s. 151 (1) (xiii), which states that "factory" includes "any premises used for the storage of gas in a gasholder . . .", because the language could not cover a holder which once held, but no longer did or could not yet hold, gas; (3) in any event, even if the skeleton of the future reconstructed gasholder was either a gasholder or part of a gas factory, the gas company were not the "occupiers" in the Factory Act sense; (4) moreover, even if the gasholder was "a place within the close, curtilage or precinct", of a factory within the meaning of s. 151 (6) of the Act, it was "solely used for some purpose other than the processes carried on in the factory", namely, for the purpose of engineering construction, and it was therefore "deemed to be a separate factory" of which, by s. 108, the engineering contractor was the sole "occupier". Consequently, the gas company's appeal had to be allowed: *Cox v. S. CUTLER & SONS AND HAMPTON COURT GAS CO.*, [1949] L. J. R. 294; [1948] 2 All E. R. 665; *C. A. (Wynn-Parry, J., considering the gasholder to be part of the "factory" under s. 151 (1) (a) and (c), and the gasholder "a place within the close, curtilage or precincts" of a factory under s. 151 (6); applying Ramsay v. Mackie, supra, and Lewis v. Gilbertson & Co. (1904), 91 L. T. 377).*

1423. Safe means of access. [Cty. Ct.] In *BARLOW v. ROLLS-ROYCE* (1948), 98 L. J. 248, Judge Willes held that the defendant employers were liable for negligence when a workman returning from the factory office to his place of work was injured by a casting which, in circumstances of which there was no evidence, fell from a truck and cut the workman's leg. The maxim *res ipsa loquitur* applied; and the defendants were also liable for breach of statutory duty in having failed to provide and maintain a safe means of access for the workman, as required by the Factories Act, 1937, s. 26 (1).

1424. —. In *O'MAHONY v. PRESS & SONS* (March 13, 1948), an independent contractor was installing gas pipes on premises occupied by a gas company when the plaintiff, one of his workmen, was injured through a pipe being lowered on to his foot. Atkinson, J., held that, while the contractors were negligent in adopting an unsafe system of working from which the accident resulted, the gas company could not be made liable under s. 26 (1) of the Factories Act, 1937, for not providing safe means of access to the place where the plaintiff workman was working, since the necessary ladders were available on the premises and the gas company were not obliged by the sub-section to have ladders at all times actually leaning against plant on which work was in progress. Judgment was given for the plaintiff against the contractors and a *Bullock* order made for payment by them of the gas company's costs because allegations which the contractors had made as to the gas company's responsibility for the accident had made it reasonable for the plaintiff to join the latter as defendants. [*Reported by R. C. Calburn, Esq., Barrister-at-Law.*] See also (1948), 92 S. J. 311.

1425. —. (Factories Act, 1937 (1 Edw. 8 & 1 Geo. 6, c. 67), s. 26 (1).) Law Reform (Contributory Negligence) Act, 1945 (8 & 9 Geo. 6, c. 28), s. 1 (1).) The duty owed under s. 26 (1) of the Factories Act, 1937, which provides: "There shall, so far as is reasonably practicable, be provided and maintained safe means of access to every place at which any person has at any time to work", is a duty owed, not only to the workmen employed by the occupiers of the factory, but also to workmen employed by independent contractors and the independent contractors themselves. It applies also both in respect of the inside of the factory and of the outside of it, and, therefore, *e.g.*, in respect of the work of cleaning windows.

The plaintiff undertook, as an independent contractor, to clean the windows of the defendants' factory for 30s. a month. To clean the windows of the upper floors he had to lay a plank on the asbestos roofing covering the ground floor and had to put his ladder on the plank. After he had cleaned the upper floor windows he laid the ladder along the asbestos roofing and walked along the ladder preparatory to getting down. His foot slipped and he fell through the asbestos roofing. There was evidence that the span of each asbestos sheet from one support to another was 4ft. 6ins., which is too long a span for safety. However, the fact that this span is too long for safety was only discovered during the war. This asbestos roofing was constructed before the war and was passed by the local authority. Held, (1) the plaintiff was an invitee, and this was an unusual danger, but not one of which the defendants knew or ought to have known, because there was no want of reasonable care in not knowing the modern developments in building design or in not altering their factory roof; consequently, the defendants were not liable at common law; (2) it should have been within the ingenuity of reasonably intelligent persons to devise a means of access to these windows which would be safe, and, consequently, the defendants were *prima facie* responsible for a breach of s. 26 (1) of the Factories Act, 1937; (3) however, the plaintiff was not a servant of the defendants, but an independent contractor, and, consequently, it was his own responsibility to lay out the work properly and to provide plant and appliances, or in other words, to see that there were safe means of access to the windows, and as the plaintiff had failed to do this he was guilty of negligence, and such negligence was the decisive cause of the accident; (4) the Law Reform (Contributory Negligence) Act, 1945, could not avail the plaintiff, because having regard to the provisions of s. 1 (1) of that Act which provides that "damages . . . shall be reduced to such extent as the Court thinks just and equitable having regard to the claimant's share in the responsibility for the damage", the plaintiff's share in the responsibility was, for all practical purposes, the whole responsibility, and, consequently, the plaintiff's action ought to be dismissed: *LAVENDER v. DIAMINTS*, [1948] W. N. 275; [1948] 2 All E. R. 249, Denning, J. (applying *Whitby v. Burt, Boulton and Hayward*, [1947] C. L. Y. 1220).

1426. — [Cty. Ct.] In *HAWKINS v. LINOLEUM MANUFACTURING Co.* (1948), 82 Ll. L. Rep. 23, Judge Ralph Thomas held that where the defendants were in breach of their statutory duty to provide a safe means of access and of their duty to provide a safe system of working but had delegated the discharge of these duties to the plaintiff, who was solely responsible for the accident, the plaintiff

could not, either under s. 1 of the Law Reform (Contributory Negligence) Act, 1945, or otherwise, recover damages from the defendants.

- 1427. Safety, health and welfare provisions.** Factories Act, 1937 (Extension of Section 46) Regulations, 1948 (No. 707), made under the Factories Act, 1937 (1 Edw. 8 & 1 Geo. 6, c. 67), s. 46 (6), extend the scope of that section so as to empower the Minister to make welfare regulations with respect to canteens.

Building (Safety, Health and Welfare) Regulations, 1948 (No. 1145), made under the Factories Act, 1937, ss. 46, 60, as extended and amended. These Regulations, which came into operation on October 1, 1948, supersede the Building Regulations, 1926-1931, which are revoked. The new Regulations provide a code of regulations for various operations in connection with the construction, alteration, repair or demolition of a building or otherwise as set out in Reg. 2. The old Regulations applied only to premises on which power-driven machinery was temporarily used for certain purposes: the new Regulations are not limited in this way. There are also new provisions (in Pt. VI) with regard to health and welfare. [10*d.*]

Factories (Cleanliness of Walls and Ceilings) (Amendment) Order, 1948 (No. 1674), made under the Factories Act, 1937, s. 1; came into operation on August 1, 1948.

Clay Works (Welfare) Special Regulations, 1948 (No. 1547), made under the Factories Act, 1937, s. 46; supersede, as from October 1, 1948, the Clay Works (Welfare) Order, 1932 (No. 1013).

Jute (Safety, Health and Welfare) Regulations, 1948 (No. 1696), made under the Factories Act, 1937, ss. 17, 46, 56, 60, as extended and amended; came into operation on January 1, 1949; deal with matters affecting the safety, health and welfare of workers in factories in which is carried on the spinning or weaving of jute or any process incidental thereto. These matters include the ventilation, temperature and humidification of workrooms, the provision of accommodation for washing and taking meals and the safeguarding of new machinery. The new Regulations supersede the Regulations of 1907 (No. 660), in so far as those Regulations apply to jute factories. [3*d.*]

Factories Acts (Certificates of Fitness of Young Persons) (Adaptation) Regulations, 1948 (No. 2161), made under the Factories Act, 1948 (11 & 12 Geo. 6, c. 55), s. 2; came into operation on October 1, 1948.

Young Persons (Certificates of Fitness) Rules, 1948 (No. 2162), made under the Factories Act, 1937, ss. 99, 126, and the Factories Act, 1948, ss. 1, 2; came into operation on October 1, 1948.

Young Persons (Certificates of Fitness) (Prescribed Period) Order, 1948 (No. 2163), made under the Factories Act, 1937, s. 99, and the Factories Act, 1948, s. 1; came into operation on October 1, 1948.

1428. — building operations. See also § 370.

1429. — radioactive substances. See § 210.

1430. Transmission machinery. See *CARROLL v. ANDREW BARCLAY & SONS*, § 1416.

1431. ARTICLE. Liability of employers to negligent workmen (founded on Factories Act, 1948, s. 10, *Cakebread v. Hopping Bros.*, [1947] C. L. Y. 1223, and *Carr v. Decca Gramophone Co.*, [1947] C. L. Y. 1228): 98 L. J. 508.

1432. BOOKS PUBLISHED. Factory Orders, 1948 ed. [6*s.* 6*d.*]. Owner, J.—Handbook to the Factory Acts and Truck Acts, 3rd ed. [7*s.* 6*d.*]. Redgrave, A. and Owner, J.—Factories, Truck and Shop Acts, Supplement to 16th ed. [7*s.* 6*d.*]. Samuels, H.—Factory Law, 4th ed. [45*s.*]. Thomas, M. W.—Early Factory Legislation [35*s.*].

FAMILY ALLOWANCES

1433. Apprentices. [Scot.] (Family Allowances Act, 1945 (8 & 9 Geo. 6, c. 41), ss. 2 (1) (b), 23.) In *FRASER v. MINISTER OF NATIONAL INSURANCE*, 1947 S. C. 594; 1948 S. L. T. 54, the Court of Session held that a junior clerk who was employed on work which was "an essential preliminary to training and qualification as a book-keeper" was not an apprentice within the meaning of the Family Allowances Act, 1945.

1434. Children treated as included in a family. See Children Act, 1948 (11 & 12 Geo. 6, c. 43), s. 52. See § 1705.

- 1435. New Zealand reciprocal arrangements.** Family Allowances (New Zealand Reciprocal Arrangements) Regulations, 1948 (No. 2600), made under the Family Allowances Act, 1945 (8 & 9 Geo. 6, c. 41), s. 25; came into operation on December 1, 1948; give effect to arrangements made between New Zealand and this country as to the payment of family allowances.

FERRIES

- 1436. Ferries in Great Britain.** Report of the Commission (chairman: Mr. Neil S. Beaton) appointed by the Minister of Transport, December 30, 1947. [1s. 6d.]

FIRE SERVICE

- 1437. Acquisition of land by fire authorities.** Ss. 40 and 41 of the Requisitioned Land and War Works Act, 1945 (8 & 9 Geo. 6, c. 43) (as to the adjustment of compensation in certain cases) are now continued in force by the Requisitioned Land and War Works Act, 1948 (11 & 12 Geo. 6, c. 17), s. 1 (2), and, accordingly, para. 18 of Sched. V to the Fire Services Act, 1947 (10 & 11 Geo. 6, c. 41), is repealed.
- 1438. Combination of areas.** Orders made under the Fire Services Act, 1947 (10 & 11 Geo. 6, c. 41), s. 5 (1); SI 1948, Nos. 264 (Berkshire and Reading); 298 (Suffolk and Ipswich).
- 1439. Compensation to firemen, etc.** Fire Services (Compensation) Regulations, 1948 (No. 555) [E.], made under the Fire Services Act, 1947 (10 & 11 Geo. 6, c. 41), Sched. V, paras. 3, 14. These Regulations provide for the payment under certain conditions of compensation (a) to persons who by reason of the formation of the National Fire Service in 1941 suffered a loss of emoluments; (b) to professional firemen in the National Fire Service who by reason of the transfer of the service to the new fire authorities suffer a loss of emoluments; and (c) to certain other persons formerly employed by local authorities who were employed for the purposes of the National Fire Service otherwise than as members, and have again become employed by local authorities and suffer a reduction of emoluments. Payment is generally to be made by way of periodical payments and the new Regulations also provide for appeals and for review of the rate of periodical payments. [4d.]
- 1440. Defence (National Fire Service) Regulations, 1941.** These expired on December 31, 1948: Emergency Laws (Miscellaneous Provisions) Act, 1947 (11 Geo. 6, c. 10), Sched. I, Part II.
- 1441. Discipline.** Fire Services (Discipline) Regulations, 1948 (No. 545) [E.] [2d.], made under the Fire Services Act, 1947 (10 & 11 Geo. 6, c. 41), s. 17 (1) (c) (d). These Regulations contain various provisions relating to discipline applicable to members of fire brigades. Part I deals with the procedure for dealing with charges; Part II relates to punishments; and Part III provides for appeals to the Secretary of State. A list of offences is set out in the Schedule to the Regulations.
- 1442. Driving tests.** See § 3308.
- 1443. Fire Services Act, 1947—appointed day.** Fire Services (Appointed Day) Order, 1948 (No. 325) [E.], made under the Fire Services Act, 1947 (10 & 11 Geo. 6, c. 41), s. 38 (1), fixing April 1, 1948, as the appointed day for the purposes of the Act.
- 1444. Grants to fire authorities.** Fire Services (Grant) Regulations, 1948 (No. 1690) [E.], made under the Fire Services Act, 1947 (10 & 11 Geo. 6, c. 41), s. 25; provide for the making of grants to fire authorities in respect of their expenditure on the provision of fire services.
- 1445. Pensions—pensionable employment.** Fire Services (Pensionable Employment) Regulations, 1948 (No. 581) [E.], made under the Fire Services Act, 1947 (10 & 11 Geo. 6, c. 41), s. 28. Under these Regulations former pensionable members of fire brigades and police forces who have been in the National Fire Service and who enter on local government service are entitled to reckon their former service for pension purposes. Similarly, if they enter the civil service they can reckon such service for the purpose of the Superannuation Acts. Provision is also made for persons in the National Fire Service with no past pensionable

service in certain cases and on certain conditions to reckon part of their fire service for the purposes of the relevant enactments. [3*d.*]

- 1448. — scheme.** Firemen's Pension Scheme Order, 1948 (No. 604), made under the Fire Services Act, 1947, s. 26. This Order contains in the Appendix thereto a pension scheme for firemen which came into operation, as regards England, on April 1, 1948, and, as regards Scotland, on May 16, 1948. [9*d.*] This scheme is amended by Firemen's Pension Scheme (No. 2) Order, 1948 (No. 1094).

- 1447. — war service injury.** See § 2672.

- 1448. Ranks and conditions of service.** Fire Service (Ranks and Conditions of Service) Regulations, 1948 (No. 546) [E.] [5*d.*], made under the Fire Services Act, 1947 (10 & 11 Geo. 6, c. 41), s. 17 (1) (a) (b). These Regulations provide for the organisation of fire brigades and include provisions dealing with ranks, age of retirement, employment, leave, emoluments, etc.

Fire Services (Ranks and Conditions of Service) (No. 2) Regulations, 1948 (No. 605) [E.], add a new para. 3A to Part II of Sched. 4 to the principal regulations, dealing with payment to certain members of increases in travelling expenses caused by their transfer from one place of duty to another.

Fire Services (Ranks and Conditions of Service) (No. 3) Regulations, 1948 (No. 1500) [E.], substitute a new paragraph (sick pay) for para. 3 of Sched. 3 to the principal regulations and a new sub-para. (injury to part-time firemen) for para. 11 (3) of Sched. 5.

Fire Services (Ranks and Conditions of Service) (No. 4) Regulations, 1948 (No. 1782) [E.], came into operation on August 1, 1948; amend the principal regulations with respect to rates of pay of certain officers and firemen and various grants and allowances. [2*d.*]

Fire Service (Ranks and Conditions of Service) (No. 5) Regulations, 1948 (No. 2570) [E.], provide for the relation of pay to previous service in the National Fire Service in certain cases.

- 1449. Transfer of persons.** Fire Service (Transfer of Persons) Regulations, 1948 (No. 332) [E.], made under the Fire Services Act, 1947 (10 & 11 Geo. 6, c. 41), Sched. V, paras. 3, 4. Under these Regulations every member of the National Fire Service holding a rank whose service had not been terminated by notice was on the appointed day (see § 1443) transferred to a fire brigade maintained under the Fire Services Act, 1947, by a new fire authority. Members not holding a rank who were formerly employed by a local authority on duties connected with a fire brigade were on that day transferred to similar employment under a new fire authority.

- 1450. Transfer of property to new fire authorities.** Fire Services (Transfer of Property) Regulations, 1948 (No. 465) [E.] [2*d.*], made under the Fire Services Act, 1947 (10 & 11 Geo. 6, c. 41), Sched. 5, paras. 3, 7, 8, 9. These Regulations provide for the transfer to the appropriate new fire authorities of land and other property used for National Fire Service purposes, and of rights and liabilities in connection therewith, unless notice to the contrary was given before the appointed day (see § 1443). They also make provision for other matters arising out of the transfer of fire services to new fire authorities.

FIREARMS

- 1451. ARTICLE.** Firearms Act, 1937, s. 22: 112 J. P. J. 322.

FISH AND FISHERIES

- 1452. Fishery board—prosecution for pollution of a river.** See *R. v. PWLLHEL* JUSTICES, *ex p.* SOANE, § 2144.

- 1453. Fishing boats—certificated officers.** See § 3462.

- 1454. — duty to explain agreement to seamen.** See § 3463.

- 1455. Indo-Pacific Fisheries Council.** Agreement for the establishment of the Indo-Pacific Fisheries Council. Baguio, February 26, 1948. (The Government of the U.K. have not yet accepted this Agreement.) Cmd. 7590.

- 1456. International Overfishing Conference.** Final report of the Standing Advisory Committee—London, April 16–19, 1947. (Consent to the adoption of this Report

has not been obtained from the Governments of Belgium, Denmark, Eire, France, Iceland, the Netherlands, Norway and Poland). Cmd. 7387.

- 1457. River boards—transfer of functions of fishery boards to.** See § 1883.
- 1458. Sea fishing—prohibition of landing of immature fish.** Sea-Fishing Industry (Immature Sea-Fish) Order, 1948 (No. 1480), made under the Sea-Fishing Industry Act, 1933 (23 & 24 Geo. 5, c. 45), s. 4, as amended; came into operation on August 1, 1948; prohibits the landing, sale or possession for sale of immature sea-fish of the kinds specified therein.
- 1459. — suspension of restrictions.** Sea-Fishing Industry (Restriction of Fishing in Northern Waters) Suspension Order, 1948 (No. 1102), suspending the prohibition on the landing of fish from certain areas during June and July, 1948.
- 1460. Whaling.** Protocol for the Regulation of Whaling for the 1947–48 Season, dated December 2, 1946: Cmd. 7354.
- 1461. —.** Whaling Industry (Ship) Regulations, 1948 (No. 1942), made under the Whaling Industry (Regulation) Acts, 1934 (24 & 25 Geo. 5, c. 49), and 1938 (1 & 2 Geo. 6, c. 30), re-enact without amendment the Whaling Industry (Ship) Regulations, 1947 (No. 1506), to cover the 1948–49 Antarctic whaling season. [2d.]. Whaling Industry (Ship) (No. 2) Regulations, 1948 (No. 2504), came into operation on November 30, 1948, made under the same enactments, re-enact, with amendments, the Whaling Industry (Ship) Regulations, 1948, and give effect to the recommendations of the International Convention for the Regulation of Whaling of December 2, 1946, which came into force after the Whaling Industry (Ship) Regulations, 1948, were made.
- 1462. White Fish and Herring Industries Act, 1948 (11 & 12 Geo. 6, c. 51).** The main object of this Act is to make provision for regulating the mesh of fishing nets, for licensing fishing in the North Sea and for giving financial assistance to inshore fishermen and societies and organisations of fishermen and to the Herring Industry Board. S. 1, which gives effect to a Convention signed in London on April 5, 1946, extends the powers conferred by the Sea-Fishing Industry Act, 1933 (23 & 24 Geo. 5, c. 45), s. 3, as amended, to regulate the mesh of fishing nets to be used in sea fishing. By s. 2, as from a day to be appointed, no British fishing boat is to be used for fishing for white fish in the North Sea except under the authority of a licence and penalties are prescribed for contravention of that rule. S. 3 provides for financial assistance to inshore fishermen by increasing the limit of grants that can be made under the Inshore Fishing Industry Act, 1945 (9 & 10 Geo. 6, c. 11); s. 4 authorises the giving of loans to fishermen's co-operative societies; s. 5 authorises increased grants to the Herring Industry Board and provides for the payment of salaries and allowances to members of the Board; and s. 6 extends the power conferred by the Herring Industry Act, 1944 (7 & 8 Geo. 6, c. 32), to make advances to the Board. S. 7 gives power to certain Ministers to make, vary and revoke schemes for the reorganisation, development and regulation of the herring industry. The Act applies to Scotland and also (except ss. 3 and 4) to Northern Ireland.

FIXTURES

- 1463. Agricultural fixtures.** See § 35.
- 1464. Building erected by tenant included in value of protected tenancy.** See *LIPSHITZ v. VALERO*, § 2936.
- 1465. Furniture and fixtures, difference between.** See *PALSER v. GRINLING*, § 3189.
- 1466. BOOK PUBLISHED.** Adkin, B. W.—Law relating to Fixtures. 3rd ed. [21s. 6d.].

FOOD AND DRUGS

- 1467. Adulteration—food not of quality demanded—standard.** (Food and Drugs Act, 1938 (1 & 2 Geo. 6, c. 56), s. 3 (1).) The fact that no standard is prescribed by law and that no complaints have been made by the public does not prevent an offence being committed under s. 3 (1) if an article of food falls short of a standard which can be fixed in accordance with the evidence.
- On a charge of selling non-brewed vinegar to the prejudice of the purchaser, contrary to s. 3 (1), the defendants pleaded (a) that no standard percentage of

acetic acid was prescribed by law, and (b) that a large number of bottles had been sold to the public without complaint. Evidence was called to show that all public analysts, the Manufacturers' Association and the Ministry of Food regard 4 per cent. as the minimum acetic acid content, and that the sample contained less than 4 per cent. Held, the evidence showed a recognised standard, the sample was below that standard and an offence had been proved: *WEBB v. JACKSON WYNES*, [1948] 2 All E. R. 1054, D. C.

1468. — — —. See also *GAMMACK v. JACKSON WYNES*, § 1486.

1469. — **indemnity against criminal conviction.** See *ASKEY v. GOLDEN WINE CO.*, § 3620.

1470. — **proceedings against person responsible for adulteration—case stated.** (Food and Drugs Act, 1938 (1 & 2 Geo. 6, c. 56), s. 83 (1).) By s. 83 (1) of the Food and Drugs Act, 1938, a person against whom proceedings are brought under the Act is entitled to bring before the Court as a third party the person who is responsible for the contravention of the Act. Where the prosecution ask for a case to be stated against a defendant who has taken advantage of s. 83 (1), it is essential that the prosecution should join the third party to the case if the result of the case may be a remission to the justices for rehearing or with a direction to convict, because otherwise the defendant will lose his right to proceed against the third party on the rehearing. However, it will not be necessary for the prosecution to join the third party where the third party has been convicted.

Semble: Where the third party appeals he will have to serve not only the prosecutor but also the defendant.

The respondent had been charged with having sold for human consumption milk to which water had been added contrary to s. 24 of the Food and Drugs Act, 1938. The respondent laid an information against the man who had supplied the milk, thus bringing him before the Court as a third party under the provisions of s. 83 (1) of the Act. At the hearing of the case before the justices the respondent was cross-examined by the third party and admitted in re-examination that he had been previously convicted of offences under the Act on three occasions. The justices then dismissed the summonses on the ground that their minds might have been prejudiced by the admission of this evidence. The prosecutor then asked for a case to be stated against the respondent. Held, (1) the evidence relating to the respondent's previous convictions was admissible; (2) even if it had not been admissible, the proper course for the justices to take would have been to adjourn the case for hearing by a different bench; and (3) as the prosecution had not joined the third party the case could not be remitted to the justices for rehearing, and, consequently, the appeal should be dismissed: *ELKINGTON v. KESLEY*, [1948] 2 K. B. 256; [1948] L. J. R. 1195, D. C. (See also §§ 1471, 2138.)

1471. — — **cross-examination of defendant.** Once the third party has been brought before the Court by the defendant under s. 83 (1) of the Food and Drugs Act, 1938, he is entitled to cross-examine the defendant as to credit and on every other relevant issue, including whether he has been previously convicted of an offence under the Act. See *ELKINGTON v. KESLEY*, § 1470.

1472. — — **service of summons.** (Food and Drugs Act, 1938 (1 & 2 Geo. 6, c. 56), s. 83 (1).) Under the provisions of s. 83 (1) of the Food and Drugs Act, 1938, a person contravening the provisions of the Act by selling an article of food to the prejudice of a purchaser will be responsible for the contravention, unless he proves that it was due to the act of the person against whom he has laid an information in accordance with the provisions of the section. If he fails to prove that the contravention was due to the act of the person against whom he has laid the information, he cannot avail himself of the defence provided by the section even though it may be that he himself was not actually guilty of the contravention. But if he has taken all the steps provided by the Act which give him a right to have the person produced before the Court, the fact that the person has not been brought before the Court, through no fault of his, e.g., because the latter's whereabouts are unknown, cannot deprive him of the defence which the section otherwise gives him: *MALCOLM v. CHEEK*, [1948] 1 K. B. 400; [1948] L. J. R. 388, D. C. (distinguishing *Walking v. Robinson* (1930), 99 L. J. K. B. 171).

- 1473.** — “**purchaser**”. [Scot.] (Food and Drugs (Adulteration) Act, 1928 (18 & 19 Geo. 5, c. 31), ss. 2 (1), 18 (1).) In *CHEYNE v. FRENCH*, 1948 S. L. T. 535, the High Court of Justiciary held that where a third party buys on behalf of a sampling officer for sampling purposes, both he and the officer must be regarded as the purchasers of the article in question for the purposes both of s. 2 (1) of the Food and Drugs Adulteration Act, 1928 (which prohibits certain sales “to the prejudice of the purchaser”) and of s. 18 (1), which imposes on a purchaser the fulfilment of certain requirements which are conditions precedent to a prosecution.
- 1474.** — **sale of sub-standard milk**. [Scot.] (Food and Drugs (Adulteration) Act, 1928 (18 & 19 Geo. 5, c. 31), s. 2 (1).) In *BRECKENBRIDGE v. BARR*, 1948 S. L. T. 230, the High Court of Justiciary held that where it was proved that a farmer had been selling milk which was below the standard of quality required by Reg. 2 of the Sale of Milk Regulations, 1901 (S. R. & O., 1901, No. 657) contrary to s. 2 (1) of the Food and Drugs (Adulteration) Act, 1928, the onus was on him to prove that access to the milk when it was left unattended was not reasonably possible, and if that onus was not discharged the onus of proving that the milk had not been tampered with was undischarged also.
- 1475.** — —. (Food and Drugs Act, 1938 (1 & 2 Geo. 6, c. 56), s. 24 (1) (c).) It is an offence under s. 24 (1) of the Food and Drugs Act, 1938, for any person to “(c) sell . . . , or have in his possession for the purpose of sale, for human consumption any milk to which any addition has been made in contravention of the provisions of [the] sub-section”. Thus, where a person has milk in his possession for the purposes of sale to which water has been added the offence is complete, and it is no defence for such person to show that the water has not been added by him or by someone on his behalf: *WADE v. BEADLE*, [1948] W. N. 337; 112 J. P. 364, D. C.
- 1476.** — **whisky kept for consumption of licensee**. In *THOMPSON v. BALL* (April 28, 1948), the Divisional Court (Lord Goddard, C.J., Humphreys and Pritchard, JJ.) dismissed an appeal against dismissal by justices of a charge of selling adulterated whisky, contrary to s. 3 (1) of the Food and Drugs Act, 1938, preferred against the licensee of a public house. An inspector of weights and measures, having asked for whisky, insisted on being served from a bottle kept on a shelf which the licensee told him was not for sale, being kept only for the use of himself and his family. The whisky was found on analysis to be adulterated by dilution with water. The Court held that no offence was committed by a licensee who kept adulterated whisky for his own use, its purpose being to enable him to accept, without becoming intoxicated, the numerous invitations which he received from customers to drink with them. [*Reported by R. C. Calburn, Esq., Barrister-at-Law.*]
- 1477.** **Food control**. See EMERGENCY LAWS.
- 1478.** **Ice cream**. Ice Cream (Heat Treatment, etc.) Amendment Regulations, 1948 (No. 819) [E.], made under the Food and Drugs Act, 1938 (1 & 2 Geo. 6, c. 56), s. 8, and the Transfer of Functions (Food and Drugs) Order, 1948 (No. 107) (see § 1482). These Regulations extend the special defence of inability to obtain the necessary apparatus to contraventions of the Ice Cream (Heat Treatment, etc.) Regulations, 1947 (No. 612), with respect to the cooling process in the preparation of ice cream, committed between May 1, 1948, and May 1, 1949. They also make a verbal amendment in Reg. 3 (b) (iv) and (v) of the 1947 Regulations.
- 1479.** **Import of food—removal of prohibition**. Public Health (Imported Food) Amendment Regulations, 1948 (No. 886) [E.], made under the Food and Drugs Act, 1938 (1 & 2 Geo. 6, c. 56), s. 8, amend the Public Health (Imported Food) Regulations, 1937 (No. 329), by removing the prohibition of the import into England and Wales of any mutton or lamb from which a lymphatic gland has been taken out.
- 1480.** **Knackers' yards—licensing of**. Knackers' Yard Order, 1948 (No. 2353), made under the Defence (General) Regulations, 1939, regs. 55, 55AA, as continued and extended, came into operation on December 19, 1948; requires the occupier of a knacker's yard in England and Wales to hold a licence granted by the Minister of Food in addition to any other licence which he may already be required to hold;

also requires the occupier of a knacker's yard in England, Wales or Scotland to keep certain records and furnish such information to the Minister as the Minister may by notice prescribe.

1481. Medicine. See MEDICINE.

1482. Ministerial responsibility, transfer of functions. Transfer of Functions (Food and Drugs) Order, 1948 (No. 107), made under the Ministers of the Crown (Transfer of Functions) Act, 1946 (9 & 10 Geo. 6, c. 31), s. 1 (1). This Order transfers to the Minister of Health acting jointly with the Minister of Food the powers of the Minister of Health under the Food and Drugs Act, 1938 (1 & 2 Geo. 6, c. 56) to make regulations in respect of certain matters. It also provides that the Minister of Agriculture and Fisheries be joined in the powers of making regulations relating to milk and dairies and transfers to the three Ministers already mentioned, acting jointly, the power to make regulations as to presumptive evidence of adulteration of milk. Certain other administrative functions previously exercised by the Minister of Health or the Minister of Agriculture and Fisheries are also transferred to the Minister of Food. The new Order came into operation on March 1, 1948.

1483. — consequential changes. The following Regulations have been made under the Food and Drugs Act, 1938, consequent on or supplementary to the transfer of functions to the Minister of Food under the Transfer of Functions (Food and Drugs) Order, 1948 (No. 107) (see § 1482):

Milk (Special Designations) (Amendment) Regulations, 1948 (No. 1117) [E], making certain changes in the regulations relating to the grant of licences to use special designations for milk.

Public Health (Preservatives, etc., in Food) (Amendment) Regulations, 1948 (No. 1118) [E].

Public Health (Meat) (Amendment) Regulations, 1948 (No. 1119) [E].

Public Health (Shell-fish) (Amendment) Regulations, 1948 (No. 1120) [E].

Public Health (Imported Food) (Amendment No. 2) Regulations, 1948 (No. 1121) [E].

Public Health (Condensed Milk) (Amendment) Regulations, 1948 (No. 1122) [E].

Public Health (Dried Milk) (Amendment) Regulations, 1948 (No. 1123) [E].

1484. — markets. See § 2172.

1485. Poisons. See §§ 2205, 2206.

1486. Sample—analyst's certificate. (Food and Drugs Act, 1938 (1 & 2 Geo. 6, c. 56), ss. 3 (1), 81 (1).) Where it is alleged that an article of food is not of the quality demanded, contrary to s. 3 (1), evidence must be adduced to show both what the standard is and how far the sample falls short of it. The analyst's certificate should be in such a form that the ordinary person can understand the allegations made.

The defendants manufactured non-brewed vinegar, the acetic acid content of which is not prescribed by law. An analyst's certificate was put in evidence, certifying that the sample contained 3.54 per cent. acetic acid, and that it was 11.5 per cent. deficient in acetic acid. Held, in the absence of any evidence to show what the standard acetic acid content should be, no offence under s. 81 (1) had been proved. It was not sufficient that a standard could be arrived at by a mathematical calculation on the analyst's figures: *GAMMACK v. JACKSON WYNESS*, [1948] W. N. 482; [1948] 2 All E. R. 1056, D. C.

1487. — —. See also *WEBB v. JACKSON WYNESS*, § 1467.

1488. — evidence of public analyst. (Food and Drugs Act, 1938 (1 & 2 Geo. 6, c. 56), s. 81 (1).) The effect of s. 81 (1) of the Food and Drugs Act, 1938, is that the party charged can require the analyst to be called as a witness, and, if that is done, the certificate of the public analyst in its prescribed form ceases to be evidence, and the justices have to decide whether they are satisfied by the evidence of the public analyst that an offence under the Act has been committed or not. The mere fact that various assistants in his laboratory have helped the public analyst to make the analysis and that it is not clear what particular part the public analyst himself took in the analysis does not make it necessary to call the assistants to give evidence. See *S. STONE & SONS (HOUNSLOW) v. PUGH*, § 1491.

- 1489.** — **place of delivery.** (Food and Drugs Act, 1938 (1 & 2 Geo. 6, c. 56), s. 68 (4).) S. 68 (4) of the Food and Drugs Act, 1938, which provides that a sample of milk is to be taken "at the place of delivery to the purchaser, consignee or consumer" means the place of delivery by the seller to the purchaser, consignee or consumer. Thus, in a case where a farmer was directed by the Milk Marketing Board to consign his milk to a depot of the United Dairies, and informed that the milk would be collected by a United Dairies' vehicle, it was held that the depot was the place of delivery for the purpose of taking a sample under the Act: *NATTRASS v. LAWES*, [1948] W. N. 337; 64 T. L. R. 479, D. C. (following *Jones v. Edwards*, § 1490; explaining *Evans v. Rogers*, [1946] K. B. 512).
- 1490.** — **taken in transit.** In *JONES v. EDWARDS* (April 23, 1948), the Divisional Court (Lord Goddard, C.J., and Pritchard, J.) held, distinguishing *Evans v. Rogers* [1946] K. B. 512, that samples of milk were taken "in transit" in accordance with the Food and Drugs Act, 1938, while the milk was on its way to the person or the place to whom or which he was directed to send his milk under his contract with the Milk Marketing Board. [*Reported by R. C. Calburn, Esq., Barrister-at-Law.*]
- 1491.** — —. (Food and Drugs Act, 1938 (1 & 2 Geo. 6, c. 56), s. 70 (1), (2).) The effect of the proviso to s. 70 (1) of the Food and Drugs Act, 1938, is to incorporate the provisions of sub-s. (1) into sub-s. (2), except in so far as the provisions of sub-s. (1) deal with the giving of information and the manner of dealing with the samples. By the words of the proviso, the provisions of sub-s. (2) when one is dealing with samples taken from goods in transit or at their destination at the premises of the consignee or consumer, are substituted for the provisions of sub-s. (1). The effect of sub-s. (2) is that, if the name and address of the consignor appears on the goods, then, instead of a demand being necessary before the obligation is imposed on the sampler to deliver a part to the seller of the goods—as is the case under the provisions of sub-s. (1)—there is an obligation imposed on him without any demand to send by registered post the sample and to give notice informing that person that he intends to have part of the sample analysed by the public analyst. On the other hand, if the consignor's name and address do not appear on the container containing the article sampled, when the sample is taken from goods in transit, or when they reach their destination the sampling officer is bound to retain the sample until the hearing, or, possibly, thereafter, and the person who is to be charged or whose goods are going to be analysed has no right to have one of the samples submitted to him and is not entitled to compel the sampling officer to deliver it: *S. STONE & SONS (HOUNSLOW) v. PUGH*, [1948] W. N. 427; [1948] 2 All E. R. 818; 92 S. J. 689, D. C. (See also § 1488.)
- 1492.** **ARTICLE.** The labelling of intoxicating liquors: 112 J. P. J. 227. Food and Drugs Act prosecution—passing over defence (founded on *Elkington v. Kesley*, § 1470): 98 L. J. 340.

FORESTRY

- 1493.** **Compensation for damage during requisitioning.** See § 534.
- 1494.** **Destructive insects and pests.** See § 84.
- 1495.** **Negligence—failure to lop trees.** See *CAMINER v. NORTHERN AND LONDON INVESTMENT TRUST*, § 2493.
- 1496.** **Tree preservation orders.** See § 3668.

FRAUD, MISREPRESENTATION AND UNDUE INFLUENCE

- 1497.** **Agent's knowledge of falsity of statement.** [Can.] See *SALATA v. CONTINENTAL INSURANCE CO.*, § 16.
- 1498.** **Concealment of identity—nullity of marriage.** See *DANCER v. DANCER*, § 993.
- 1499.** **Court order obtained by misrepresentation.** See *SYAL v. HEYWARD*, § 2850; [Cty. Ct.] *HURD v. HICKS*, § 3200.
- 1500.** **Duress—of goods.** See *THE UNITAS*, § 2941.
- 1501.** **Indemnity—contract induced by reckless statements.** See *LONDON AND PROVINCIAL MOTOR AND TRACTOR CO. v. BOUNDARY GARAGE*, § 1554.

1502. Injurious falsehood. See *JOYCE v. MOTOR SURVEYS*, § 1994.

1503. Innocent misrepresentation—burden of proof. In *MOOR MILL v. PICKERING & Co. (CEREALS)* (July 28, 1948), the defendants agreed to purchase a factory from the plaintiffs. Shortly before the date fixed for the completion of the contract, part of the factory building collapsed. The plaintiffs sued for specific performance, and the defendants contended that they were induced to enter into the agreement by the (innocent) misrepresentation of the defendants that the building was sufficiently safe to allow the storage of heavy loads. Vaisey, J., held that the defendants had failed to discharge the burden of proof resting on them that the representation alleged had been made by the plaintiffs, and gave judgment for the plaintiffs. [*Reported by C. M. Schmitthoff, Esq., Barrister-at-Law.*]

1504. — estoppel. See *OADES v. SPAFFORD*, § 3816.

1505. — plan of harbour. See *TOWERFIELD (OWNERS) v. WORKINGTON HARBOUR AND DOCK BOARD*, § 3466.

1506. — relief. It is settled by authority that where an innocent representation is made in the course of negotiations, that representation being erroneous, the person to whom it is made is entitled to rescission but not to specific performance with a deduction from the purchase money by way of compensation. See *GILCHESTER PROPERTIES v. GOMM*, § 1507 (applying *Rutherford v. Acton-Adams*, [1915] A. C. 866; explaining *Powell v. Elliot* (1875), 10 Ch. App. 424).

1507. — representation or warranty. Where in the course of negotiations leading up to a contract an innocent statement, albeit a mistaken one, is made in response to a request for information, and where it is shown that there existed no *animus contrahendi* in respect of the accuracy of such statement, such statement will not constitute a part of the contract itself or anything in the nature of a warranty or a collateral agreement.

A contract for the sale of land embodied the National Conditions of Sale. These provide, *inter alia*: "... the property is sold subject . . . to tenancies, whether mentioned in the particulars of sale or not", and "the purchaser . . . shall be deemed to have notice of and shall take subject to the terms of all the existing tenancies . . .". In the course of inquiries the purchaser's solicitor asked the vendor's solicitors to supply copies of the four existing tenancy agreements, stating whether they were statutory tenancies or not, and, if so, what the respective standard rents were. The vendor's solicitors replied "so far as the vendor knows", and then gave the rents of three of the flats which were approximately £50 more than the rents actually paid, and which had been paid under tenancies which had already expired. In reply to further inquiries, the vendor's solicitors stated that "to the vendor's belief, these rents appear to be standard rents". The purchaser in an action asked for specific performance with compensation. Held, the answer in the reply given to the first preliminary inquiries was a statement made in the course of preliminary investigations in answer to a request for information by the purchaser; it was a statement inducing in the purchaser the intention to contract, and he did contract having that statement in mind, but the statement did not constitute a part of the contract itself or anything in the nature of a warranty or a collateral agreement, and when it turned out that the statement was not accurate his remedy was rescission and not an action for specific performance with compensation: *GILCHESTER PROPERTIES v. GOMM*, [1948] W. N. 71; [1948] 1 All E. R. 493, Romer, J. (applying *Heilbut, Symons & Co. v. Buckleton*, [1913] A. C. 30). (See also § 3155.)

1508. Limitation Act, 1939—application to actions based on fraud. See *BEAMAN v. A. R. T. S.*, § 2008.

1509. Passing off. See *TRADE MARKS AND TRADE NAMES*.

1510. Rescission—action for—particulars—undertaking on order for further and better affidavit of documents. See *ALTERSKYE v. SCOTT*, § 2819.

1511. — refusal of offer of. See *CLEMENTS v. BAWNS SHIPPING CO.*, § 3371.

1512. Statute of Frauds. See *WALFORD v. NARIN*, § 3374; *BANNISTER v. BANNISTER*, § 3404; *ELLIOTT v. PIERSON*, § 3372; *WILSON v. PIKE*, § 3373; *BECKETT v. NURSE*, § 3804; *Re STRATHBLAINE ESTATES*, § 497; *BARBER v. ROWE*, § 1345.

FRIENDLY SOCIETIES

- 1513. Approved societies.** See NATIONAL INSURANCE.
- 1514. Industrial Assurance and Friendly Societies Act, 1948.** See § 1739.
- 1515. Power to insure lives—persons resident in Isle of Man.** See § 1740.
- 1516. Receipt books and returns.** See §§ 1741, 1742.
- 1517. Societies (Miscellaneous Provisions) Act, 1940—end of emergency.** Societies (Miscellaneous Provisions) Act (End of Emergency) Order, 1948 (No. 1843), made under the Societies (Miscellaneous Provisions) Act, 1940 (3 & 4 Geo. 6, c. 19), s. 10 (1); prescribes June 30, 1948, as the date on which the period of emergency came to an end for the purpose of that Act.

GAME

- 1518. Destruction of—power to make orders for.** See § 81.
- 1519. Sporting rights—owner's liability in respect of excessive number of pheasants.** The liability imposed by law on a person who enjoys sporting rights over his neighbour's land in respect of damage caused to that land by game may be stated as follows: On the one hand, as was said by Pollock, B., in *Farrer v. Nelson* (1885), 15 Q. B. D. 258: "Each person in this country is entitled to bring on his land any quantity of game which can reasonably and properly be kept on it, and so that nothing extraordinary and non-natural is done". On the other hand, as was stated by Pollock, B., in the same case: "The moment [the owner of sporting rights] brings on game to an unreasonable amount or causes it to increase to an unreasonable extent, he is doing that which is unlawful, and an action may be maintained by his neighbour for the damage which he has sustained". Or, in the words of Scrutton, L.J., in *Peech v. Best*, [1931] 1 K. B. 1: "[The owner of sporting rights] will be liable for damage caused . . . by extraordinary, non-natural or unreasonable action".

The plaintiff, a farmer, sued his landlord, who had reserved the shooting rights over the plaintiff's land, for an injunction and for damage done to his crops by an excessive number of pheasants congregated on the defendant's land in the 1947-48 season. Held, the pheasants were animals *feræ naturæ*, and as the increase in the number of pheasants was not due to any increase in the breeding stock left at the beginning of the season and far less to an unreasonable increase in such stock, but as such increase was due to the wholly exceptional climatic conditions of that year, there was no "extraordinary, non-natural or unreasonable action" in respect of which the defendant could be liable. Furthermore, the mere fact that the plaintiff had no right to shoot the pheasants did not impose any duty in law upon the defendant to shoot them himself. The question whether the defendant acted reasonably in relation to the public, or to the war agricultural executive committee as representing the public, could not arise in proceedings which had been brought by a private property owner in respect to his property: *SELIGMAN v. DOCKER*, [1948] W. N. 425; [1949] L. J. R. 188; [1948] 2 All E. R. 887, *Romer, J.* (applying *Hilton v. Green* (1862), 2 F. & F. 821, *Giles v. Walker* (1890), 24 Q. B. D. 656, *Stearn v. Prentice Brothers*, [1919] 1 K. B. 394, and *Peech v. Best*, *supra*; distinguishing *Farrer v. Nelson*, *supra*).

GAMING AND WAGERING

- 1520. Betting transactions—account stated.** (Gaming Act, 1845 (8 & 9 Vict. c. 109), s. 18.) It is not possible to recover the amount of a debt in respect of a transaction rendered null and void by s. 18 of the Gaming Act, 1845, by framing the claim as an account stated.

The defendant having lost bets placed with the plaintiff promised to pay something on account and to pay the balance next day. The plaintiff sued on an account stated. Held, this was not an account stated of a kind which was enforceable in law: *ALBERG v. CHANDLER* (1948), 64 T. L. R. 394, *Streatfeild, J.* (dictum of *Tindal, C.J.*, in *Cocking v. Ward* (1845), 1 C. B. 858, 870, approved).

- 1521. ———.** In *DAY v. WILLIAM HILL (PARK LANE)* (December 21, 1948), the Court of Appeal (*Bucknill* and *Singleton, L.JJ.*), held that a weekly account rendered by a company of bookmakers, arising out of betting transactions, was not, in law, an account stated, the account in question being merely a weekly

statement in which the balance was carried forward to the next week; it was not a complete statement of account amounting in law to an account stated. [*Reported by R. C. Calburn, Esq., Barrister-at-Law.*] See also *Times*, December 22, 1948, p. 2.

- 1522. — contract to pay gaming debt.** A promise by a bookmaker not to "take any steps against" the backer is good consideration moving from the bookmaker for the backer's promise to pay the debt, and on the authority of *Hyams v. Stuart King*, [1908] 2 K. B. 696, a separate and enforceable contract is formed.

The defendant, a racehorse owner, was in debt to the plaintiffs for betting losses, and at an interview with the plaintiffs' general manager agreed to pay by instalments if the plaintiffs refrained from reporting the matter to Tattersalls and the bookmakers' societies. The plaintiffs wrote on the same day confirming "our arrangement whereby we do not take any steps against you in consideration of your promise to pay . . . by instalments . . .". The defendant defaulted and the plaintiffs now sued for the outstanding debt. The defendant contended that (a) there was no consideration for his promise to pay, and (b) the words "we do not take any steps" were vague and the agreement void for uncertainty. Held, on the facts, there was good consideration moving from the plaintiffs; there was certainty of time—as long as the backer paid as he promised—and of matter; the agreement was a valid contract and the defendant liable.

Per Denning, L.J.: *Hyams v. Stuart King*, although possessing authority, is open to question in that the backer's new promise to pay was assumed to be enforceable, and so to be good consideration moving from the backer. If, however, the new promise has the same quality as the original promise, then the new promise is no consideration because it adds nothing: *WILLIAM HILL (PARK LANE) v. ROSE*, [1948] 2 All E. R. 1107, C. A.

- 1523. — judgment under Order 14.** See *LOTINE & Co. v. CONN*, § 2854.

- 1524. — threat to report loser to protection society.** (Gaming Act, 1845 (8 & 9 Vict. c. 109), s. 18.) In deciding whether or not an action is in substance a suit to recover a sum of money alleged to be won on a wager and therefore coming within the second part of s. 18 of the Gaming Act, 1845, it is necessary to distinguish between a new promise to pay the betting debt and a new contract to pay a sum equal to the amount of the debt. If the transaction on analysis is nothing more than a new promise to pay the betting debt for a new motive, it will not be enforceable, because any action on the promise comes within the terms of s. 18 of the Gaming Act, 1845. If the transaction is, however, a new contract to pay an equivalent sum for a fresh consideration, it will be enforceable, because the suit is brought, not to recover the betting debt, but an equivalent sum due under a separate and distinct contract. Cases of the latter type are rare, because a person who is owed a debt, albeit a debt of honour, is rarely prepared to pay a fresh price for what he considers is already due to him.

The defendant had refused to pay the losses which he had sustained in the course of betting transactions into which he had entered with the plaintiffs. When the plaintiffs threatened that unless they received payment they would report the defendant to the National Turf Protection Society, which would prevent the defendant from betting with other bookmakers, the defendant said: "Don't do that", gave a cheque for £100 and promised to pay the balance by weekly instalments of £100. The arrangement came to between the parties was put in writing, but the writing contained no express promise to refrain from reporting the defendant. The defendant continued to bet with the plaintiffs, paid further sums and then stopped paying. Held, the threats and inducements by the plaintiffs were no more than representations without any intention to create a contractual promise not to report the loser, because the terms of any such promise which might be implied would be quite uncertain. Furthermore, the plaintiffs' forbearance from carrying out their threat was not a real consideration for the defendant's new promise, but the real consideration for the new promise was the antecedent betting debt, and the action fell within the prohibition of the statute: *BOB GUINNESS v. SALOMONSEN*, [1948] 2 K. B. 42; [1949] L.J.R. 151, Denning, J. (distinguishing *Hyams v. Stuart King*, [1908] 2 K. B. 696).

- 1525. Bookmakers licence duty.** Bookmakers (Licence Duty) Regulations, 1948 (No. 1832), made under the Finance Act, 1948 (11 & 12 Geo. 6, c. 49), Sched. VI.

para. 5; came into operation on August 9, 1948; provide for the form and validity of licences, notices to be given by licensed occupiers, the duties of book-makers with respect to licences, returns, accounts and other matters in connection with the licensing of bookmakers. [3d.] See also § 789.

- 1526. Gambling on club premises—breach of covenant.** See *HOFFMAN v. FINEBERG*, § 1904.
- 1527. — expulsion from club.** See *JUDSON v. ELLESMERE PORT EX-SERVICEMEN'S CLUB*, § 1698.
- 1528. Lottery—private.** In *HUDSON v. CHAMBERLIN* (November 30, 1948) the Divisional Court (Lord Goddard, C.J., Hilbery and Birkett, J.J.) held that a lottery promoted by the National Cyclists' Union from its London premises among its members, who included affiliated members of clubs throughout the country, was not a private lottery as authorised by s. 24 (2) of the Betting and Lotteries Act, 1934, because the effect of what was done was to send invitations to participate in the lottery to local or affiliated clubs each of which was, by s. 24 (1), to be considered a separate society, whereas by that subsection private lotteries are lotteries confined to the members of one society. [*Reported by R. C. Calburn, Esq., Barrister-at-Law.*]
- 1529. Pool betting duty.** See Finance Act, 1948 (11 & 12 Geo. 6, c. 49), ss. 14, 15, Sched. VI, § 789.

GAS AND GAS WORKS

- 1530. Area Boards—areas.** Gas (Areas of Area Boards) Order, 1948 (No. 2773), made under the Gas Act, 1948 (11 & 12 Geo. 6, c. 67), s. 6, prescribes the areas of the Area Boards.
- 1531. — constitution and proceedings.** Gas (Area Boards and Gas Council) Regulations, 1948 (No. 2233), made under the Gas Act, 1948, s. 5, came into operation on October 18, 1948; provide for the terms of appointment of those members of Area Boards and the Gas Council who are appointed by the Minister, for the proceedings of those bodies and other matters.
- 1532. — tenure of office of members.** Gas (Area Boards and Gas Council) (Amendment) Regulations, 1948 (No. 2465), made under the Gas Act, 1948, s. 5, amend Reg. 1 (1) of the Gas (Area Boards and Gas Council) Regulations, 1948 (No. 2233), as to the tenure of office of certain members of the Area Boards and Gas Council.
- 1533. Capital and borrowing powers.** Orders made under the Gas Undertakings Act, 1929 (19 & 20 Geo. 5, c. 24), s. 1; S. R. & O., 1947, Nos. 2879 (Launceston); 2880 (Watford and St. Albans); 2887 (Cheltenham and district); 2888 (Ormskirk); 2889 (Cheadle and Churnet Valley); 2890 (Rugeley). SI 1948, Nos. 57 (Nantwich); 74 (Torquay); 148 (Melton Mowbray); 172 (Gloucester); 174 (Shotley Bridge and Consett); 283 (Conway); 440 (Leamington Priors); 566 (Preston); 742 (Kidderminster); 843 (Brighton); 990 (Bude); 1201 (Carmarthen); 1722 (Aylesbury); 1894 (Sandbach); 2369 (Cannock district).
- 1534. Charges.** Gas Charges (No. 2) Order, 1947 (No. 2832), amends Gas Charges Order, 1947 (No. 2242), Art. 1 (2), so as to cover increases in cost due to increase of prices of coal and gas oil at any time on or after September 1, 1947. Gas Charges Order, 1948 (No. 300), prohibits (as from February 23, 1948), in relation to supplies of gas, any reduction of prices, introduction of new discounts or rebates and increases of existing discounts or rebates, except in pursuance of Art. 2 of the Gas Charges Order, 1947 (No. 2242), or under the authority of a permit granted by the Minister of Fuel and Power.
- 1535. Gas Act, 1948 (11 & 12 Geo. 6, c. 67).** This Act is another nationalising measure and provides for the organisation, under public ownership, of the gas industry in Great Britain.

Area Gas Boards and Gas Council.

The Act provides for the establishment of twelve Area Boards for the areas described in Sched. I. Their duties are to develop and maintain (a) an efficient, co-ordinated and economical system of gas supply; (b) the efficient and economical production of coke; and (c) efficient methods of recovering by-products (s. 1 (1)). The Boards are also charged with the duties of promoting

the welfare, health and safety of persons in their employment, reducing so far as practicable the price of gas and coke and avoiding undue preference (s. 1 (7) (8)). S. 2 provides for the establishment and functions of a Council, to be known as the Gas Council, to advise the Minister on such questions as he may refer to them and to promote and assist the efficient exercise and performance by Area Boards of their functions. Area Boards and the Gas Council are given power to manufacture plant and gas appliances, except for export (ss. 1 (2), 2 (3)). They may also conduct research (s. 3). Area Boards are also to make provision for the training and education of employees subject to co-ordination by the Gas Council (s. 4). S. 5 deals with the constitution of Area Boards, and the Gas Council. Provision is also made for the establishment of a Consultative Council for the area of each Area Board, and it is to be the duty of such councils to consider any matter affecting the supply of gas in their area and to notify their conclusions to the Area Board (s. 9). Under s. 11 Area Boards may be authorised by the Minister to purchase compulsorily any land required for the exercise of their functions. By s. 14 the enactments relating to limitation of actions against public authorities do not apply to actions against Area Boards or the Gas Council.

Acquisition of Gas Undertakings.

Part II of the Act (ss. 15-40) relates to the acquisition of gas undertakings. Ss. 15 to 24 deal with the vesting of the assets and liabilities of persons carrying on gas undertakings in the Area Boards on a date to be appointed (known as "the vesting date"). Compensation is dealt with in ss. 25-32. The holders of securities (which includes debentures but not mortgages unless they are quoted on the London Stock Exchange) of any undertaker, all of whose assets and liabilities are to be transferred, are to be compensated by the issue to them by the Gas Council of British Gas Stock of such amount as in the opinion of the Treasury is of a value equal at or about the vesting date to the value of the securities: the value of any securities for this purpose in the case of quoted securities is to be deemed to be the average Stock Exchange value on certain dates, and in other cases is to be agreed or determined by arbitration. Securities recently issued are to be valued at the price of issue (s. 25). An addition may be made to the Stock Exchange value for compensation purposes in certain cases where companies have suffered substantial reductions in the sale of gas in 1944 as compared with 1938 by reason of war damage or the transfer of population from causes arising out of the war (s. 26). Undertakers the whole of whose assets and liabilities are transferred under the Act are to be dissolved on the vesting date (s. 17 (9)). The compensation payable to local authorities whose undertakings are transferred is dealt with in ss. 28, 29; and the compensation payable to a composite company or other person or body whose gas undertaking only is transferred is dealt with in ss. 30-32. Ss. 33, 34 provide for the control of dividends and interest pending transfer; and s. 35 deals with income tax payable on final payments. S. 36 is designed to protect the assets of transferred undertakings by providing for the reopening of transactions in certain cases. S. 38 contains special provisions as to foreign investments.

Financial Provisions.

Part III of the Act (ss. 41-50) contains financial provisions. Under s. 43 the Gas Council are empowered to issue British Gas Stock for satisfying rights to compensation. Such stock is to be guaranteed by the Treasury (s. 45 (1)).

Miscellaneous and General Provisions.

Part IV (ss. 51-77) contains miscellaneous and general provisions. Under s. 51 no person other than Area Boards may, after the vesting date, except with the consent of the Area Board in whose area the supply is to be given, commence to supply gas to fresh premises, except for his own use or for the use of an associated company, and any person manufacturing gas may require an Area Board to take gas surplus to his requirements, where this is reasonably practicable and economical, while Area Boards can require surplus gas to be supplied to them. Ss. 53-56 contain provisions as to gas charges, meters, etc. Area Boards are to charge for gas by the therm (s. 53). Under s. 54 the function of examining and stamping meters is transferred from county and borough councils and justices to the Minister, and all their equipment for examining and stamping meters vests in the Minister subject to compensation. The testing of

gas is to be carried out by gas examiners appointed and paid by the Minister (s. 55). S. 56 provides for a gas supply code (set out in Sched. III) and for certain local enactments to apply to Area Boards. Conditions of employment, pension rights and compensation are dealt with in ss. 57-61. S. 63 provides for the establishment of a Gas Arbitration Tribunal to determine questions arising under the Act. Under s. 67 the Minister has power to make safety regulations. S. 68 prescribes penalties for giving false information or making false statements.

The Act applies to Scotland, subject to the modifications stated in s. 75. It does not extend to Northern Ireland (s. 77 (2)).

- 1536. — notices.** Gas (Notices) Regulations, 1948 (No. 2242), made under the Gas Act, 1948, s. 16, came into operation on October 14, 1948; prescribe the periods and form in which certain notices are to be given under s. 16 of the Act.
- 1537. Gas Council—constitution and proceedings.** See § 1531.
- 1538. — tenure of office of members.** See § 1532.
- 1539. Gas Fund—rate of contribution to.** Order made under the Gas Regulation Act, 1920 (10 & 11 Geo. 5, c. 28), s. 7, as amended: SI 1948, No. 14 (prescribing the rate of contribution to the Gas Fund for 1948).
- 1540. Gasholder—"factory" within meaning of Factories Act, 1937.** See *Cox v. S. CUTLER & SONS*, § 1422.
- 1541. Mains under highways, retention of.** See § 1584.
- 1542. Meters—fees.** SI 1948, No. 1097 (amending the fees payable in respect of gas meters).
- 1543. Pollution of gas supply—action for penalties.** See *COLNE VALLEY WATER CO. v. WATFORD AND ST. ALBANS GAS CO.*, § 2816.
- 1544. Special orders.** SI 1948, Nos. 312 (Goole); 598 (Hereford); 599 (Middlesbrough); 600 (St. Helens); 601 (South Yorkshire and Derbyshire); 602 (Swindon) [11d.]; 603 (Weston-super-Mare); 804 (Bude); 841 (Wallasey); 842 (Wallingford) [5d.]; 1146 (Bangor); 1147 (Dudley) [2d.]; 1148 (Tiverton) [2d.]; 1373 (St. Helens); 1374 (Wigan); 1797 (Sheffield and district); 2206 (Eastbourne); 2263 (Whitstable); 2613 (Brough Elloughton and district); 2614 (Stoke-on-Trent); 2615 (Wellington, Salop).
- 1545. Stockholders' representatives—appointment and duties of.** Gas (Stockholders' Representative) Regulations, 1948 (No. 2709), made under the Gas Act, 1948 (11 & 12 Geo. 6, c. 67), s. 27, came into operation on December 31, 1948; prescribe the date before which a stockholders' representative is to be appointed and make provision for other matters specified in s. 27 (2) (4) of the Act, including the representative's duty to keep books and accounts and the procedure for holding meetings of stockholders. [3d.]
- 1546. Supply—supply areas.** Gas supply areas: Cmd. 7313.
- 1547. — to bordering premises.** Order made under the Gas Undertakings Act, 1929 (19 & 20 Geo. 5, c. 24), s. 5: SI 1948, No. 1302 (Middlesbrough).
- 1548. ARTICLES.** Gas Act, 1948: 112 J. P. J. 136, 634.

GIFTS

- 1549. Gift inter vivos adeeming gift by will.** See *Re GEORGE'S WILL TRUSTS*, § 3866.
- 1550. Incomplete gift—gift of shares—transfer not registered at time of donor's death.** See *Re ROSE*, § 3867.
- 1551. Settlement and gift, distinction between.** See *GUNNER v. GUNNER AND STIRLING*, § 1022.

GOODWILL

- 1552. Compensation or new lease.** See *BUTLINS v. FYTCHE*, § 1923; *CLIFT v. TAYLOR*, § 1920; *RACKETT v. ASTON & CO.*, § 1927; *IRELAND v. TAYLOR*, § 1922; [*Cty. Ct.*] *LEWIS v. WATNEY, COMBE, REID & CO.*, § 1924.
- 1553. BOOK PUBLISHED.** Leake, P. D.—Commercial Goodwill. 4th ed. [17s. 6d.].

GUARANTEE AND INDEMNITY

- 1554. Indemnity—against claims of third party.** In *LONDON AND PROVINCIAL MOTOR AND TRACTOR CO. v. BOUNDARY GARAGE* (June 4, 1948), the defendant had sold to the plaintiff a motor car in respect of which the plaintiff entered into a hire-purchase agreement with a third party. The car was later found to have been stolen and was returned to the true owner. Birkett, J., held that the defendant had induced the sale by reckless statements and that the plaintiff was entitled to recover the price paid for the car and to have an indemnity against legal claims by the third party arising out of the transaction and due to the findings of the Court. See [1948] W. N. 267; 92 S. J. 499.
- 1555. — against criminal conviction.** See *ASKEY v. GOLDEN WINE CO.*, § 3620.
- 1556. Sale of goods—guarantee of roadworthiness of motor car.** See *WEBSTER v. HIGGIN*, § 3365.
- 1557. Undertaking not to sue.** In *BOARD v. HOEY* (November 5, 1948), the second defendant, whose brother, the first defendant, owed the plaintiff £800, gave the plaintiff this written guarantee: "In consideration of your undertaking not to sue . . . my brother" for the £800, "I hereby guarantee the payment to you of that sum or such part thereof as my brother shall not have repaid to you within six months from the date hereof." Six months having passed without repayment the plaintiff sued both debtor and guarantor. He recovered judgment against the former, but the latter contended that the suing of his brother was a breach of undertaking which rendered the guarantee void. Humphreys, J., gave judgment for the plaintiff against the guarantor, holding that the guarantee, on its true construction, meant that the plaintiff, in consideration of the guarantee, would forbear for six months from suing the principal debtor. [*Reported by: R. C. Calburn, Esq., Barrister-at-Law.*] See also [1949] 1 C. L. 111.

HAWKERS AND PEDLARS

- 1558. Injury to pedlar—débris by kerb.** See *ALMEROTH v. CHIVERS & SONS*, § 2533.
- 1559. Pitching stall in highway—motor van.** See *DIVITO v. STICKING*, § 1582.
- 1560. Registered street trader.** See *SOUTHWARK CORPORATION v. NIGHTINGALE*, § 2100.
- 1561. Touting in street.** See *MCQUADE v. BARNES*, § 1594.

HIGHWAYS AND BRIDGES

- 1562. Acquisition of land for highways—speedy acquisition.** See § 1575.
- 1563. — transfer of functions of Ministers.** See § 1575.
- 1564. Cables over highways, retention of.** SI 1948, No. 736 (Glamorgan).
- 1565. — power to order.** See § 1592.
- 1566. County roads.** Further provision is made by the Local Government Act, 1948 (11 & 12 Geo. 6, c. 26), s. 127, for the transfer to county councils of property and liabilities relating to county roads.
- 1567. Covenant to repair road.** See *FYERS-TURNER v. BROWN*, § 624.
- 1568. Diversion of highways.** SI 1948, Nos. 45 (Lancashire); 98 (Staffordshire); 443 (Lancashire); 802 (Worcestershire); 1110 (Gloucestershire); 1057 (West Riding of Yorkshire); 1168 (Durham); 2131 (Lancashire); 2182 (Staffordshire); 2267 (Northumberland); 2655 (Berkshire); 2749 (Worcestershire).
- 1569. — power to order.** See § 1592.
- 1570. Forecourts—courtyard, whether a road.** [Scot.] See *PURVES v. MUIR*, § 3349.
- 1571. — dangerous forecourts and structures.** See § 2090.
- 1572. Level-crossing—negligence.** See *SMITH v. SMITH AND THE RAILWAY EXECUTIVE*, § 3060; [Scot.] *SMITH v. L. M. S. RY.*, § 3059.
- 1573. — right of way.** [Can.] See *R. v. HERBST*, § 3052.
- 1574. — subsidence.** See *L. N. E. RY. v. YORKSHIRE C. C. (WEST RIDING)*, § 1593.
- 1575. Ministers—transfer of functions.** Transfer of Functions (Minister of Health and Minister of Transport) Order, 1948 (No. 490), made under the Ministers of the Crown (Transfer of Functions) Act, 1946 (9 & 10 Geo. 6, c. 31), transferring

from the Minister of Health to the Minister of Transport the functions of confirming compulsory purchase orders and of otherwise authorising the speedy acquisition of land under the Acquisition of Land (Authorisation Procedure) Act, 1946 (9 & 10 Geo. 6, c. 49), for certain highway purposes.

1576. Negligence. See also NEGLIGENCE; ROAD TRAFFIC.

1577. — highway authority—non-feasance. In *CHAPPELL v. DAGENHAM CORPORATION* (June 2, 1948), the plaintiff tripped over a metal box placed in the public footway by an electricity company. The footway was in the area for which the defendants were the highway authority. The surface of the footway round the box had worn down so that the box came to project above the surface, and so caused the plaintiff's fall. In the plaintiff's action against the defendants as highway authority, Jones, J., held, applying *Thompson v. Brighton Corporation*, 63 L. J. Q. B. 181; [1894] 1 Q. B. 332, and distinguishing *Skilton v. Ewell and Epsom U. D. C.*, 106 L. J. K. B. 41; [1937] 1 K. B. 112, and *Simon v. Islington B. C.*, 112 L. J. K. B. 337; [1943] K. B. 188, that, the box not being alleged to be improperly constructed or maintained, the defendants, as they were not liable for mere non-feasance, could not be liable for the plaintiff's injuries. [Reported by R. C. Calburn, Esq., Barrister-at-Law.] See also [1948] W. N. 274; 92 S. J. 362.

1578. — — —. It is a general proposition of law that a highway authority are not responsible for an accident which results from the fact that a highway is in a state of non-repair.

The plaintiff was thrown from his bicycle and injured through his passing over a pothole in a roadway for which the defendants were the highway authority. About a year before the accident, the defendants had filled the pothole up with tar macadam. As the surface of the roadway was of asphalt, that filling constituted merely a temporary repair. The plaintiff contended that his accident was due to the defendants' misfeasance in repairing the roadway inefficiently. Held, the accident was due not to ineffective repairs but to the reappearance of the pothole in consequence of the non-repair of the roadway, so that the defendants were guilty merely of non-feasance: *WILSON v. KINGSTON-ON-THAMES CORPORATION*, [1948] W. N. 398; 64 T. L. R. 553; 92 S. J. 618; 112 J. P. 433; [1948] 2 All E. R. 780, Morris, J. (considering *Great Central Ry. v. Hewlett*, [1916] 2 A. C. 511).

1579. — repairs to highway—water undertakers' duty to carry out. (Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), s. 32.) For the purpose of their water supply, the respondents, who were a statutory body and as such authorised to supply water in the borough of D., placed stop-cocks in the surface of the roads of that borough. On a certain day the foreman of the D. Corporation, who were the local highway authority, reported to the respondents that as a result of a leakage there was moisture around the paving stones in a certain footpath. The respondents carried out the essential repairs, which had become necessary by reason of defects in the stop-cock boxes, and in the course of these repairs removed six paving stones from the footpath, which they re-instated temporarily on completion of the repairs. Before the respondents had had time to deliver an emergency works notice and a re-instatement voucher to the D. corporation, the appellant was injured by tripping over another paving stone which had become loose and which was near the paving stones which had been relaid by the respondents. Held, as the peccant stone and those in its immediate neighbourhood had looked safe to those who did the work and to the appellant, and as one was not entitled to infer that a skilled man would suspect a paving stone of working loose or of becoming more liable to tilt owing to the percolation of water, there was no evidence from which one could infer that the respondents knew or ought to have known of the dangerous condition of the stones and, consequently, the respondents were not liable for negligence. Nor were the respondents liable on the grounds of nuisance or breach of their statutory duties under s. 32 of the Waterworks Clauses Act, 1847.

Quere: Whether the respondents would have owed a duty to give any warning if they had known of the state of the pavement.

Quere further: Whether the fact that the D. corporation had as much knowledge of the state of the pavement as the respondents had would in itself have

been sufficient to relieve the respondents from further liability: *LONGHURST v. METROPOLITAN WATER BOARD*, [1948] W. N. 418; 64 T. L. R. 579; 92 S. J. 633; [1948] 2 All E. R. 834, H. L. (affirming decision of the Court of Appeal, [1947] C. L. Y. 1361; reversing decision of Humphreys, J., [1947] L. J. R. 612). (See also §§ 2539, 3858.)

1580. Nuisance—débris by kerb. See *ALMEROTH v. CHIVERS*, § 2533.

1581. — highway obscured by steam. See *HOLLING v. YORKSHIRE TRACTION CO.*, § 2536.

1582. Obstruction—pitching stall. (Highways Act, 1835 (5 & 6 Will. 4, c. 50), s. 72.) S. 72 of the Highways Act, 1835, provides that: "if any hawker, higgler, gipsy, or other person travelling shall pitch any tent, booth, stall, or stand, or encamp upon any part of any highway" he shall be guilty of an offence.

The appellant drove his motor van on the highway from D. to H. and stopped at a certain place on the highway to make a sale of ice-cream from the van. He was convicted of an offence under s. 72 of the Highways Act, 1835. Held, on appeal, the stopping of a motor van could not possibly be described as "pitching" a "stall" within the meaning of the section, and, consequently, the appeal against the conviction should be allowed: *DIVITO v. STICKINGS*, [1948] L. J. R. 1079; [1948] 1 All E. R. 207, D. C.

1583. Pipes under highways, retention of. SI 1948, Nos. 214 (Lincolnshire, Parts of Kesteven); 270, 289 (West Riding of Yorkshire); 432 (Leicestershire); 624 (Brecknockshire); 735 (Cheshire); 736 (Glamorgan); 737 (Northumberland); 738 (Leicestershire); 769 (Cheshire); 1065 (Cheshire); 1066 (Radnorshire); 1090 (North Riding of Yorkshire); 1105 (Durham); 1113 (Northumberland); 1169 (Brecknockshire); 1170 (Surrey); 1184 (Durham); 1196 (Cheshire); 1228 (Durham); 1248 (Durham); 1294 (Northumberland); 1599 (Carmarthenshire); 1620 (Monmouthshire); 1621 (West Suffolk); 1701 (North Riding of Yorkshire); 1712 (Wiltshire); 1790 (East Suffolk); 1791 (North Riding of Yorkshire); 1895 (Durham); 1915 (Montgomeryshire); 1917 (Worcestershire); 1956 (Surrey); 2030 (Warwickshire); 2089 (Shropshire); 2129 (Gloucestershire); 2130 (Northamptonshire); 2265 (Lincolnshire, Parts of Lindsey); 2284 (Northumberland); 2285 (Warwickshire); 2379 (Rutland); 2383 (Gloucestershire); 2481 (Buckinghamshire); 2482 (Oxfordshire); 2505 (West Suffolk); 2508 (Worcestershire); 2607 (West Sussex); 2616 (Oxfordshire); 2658 (Berkshire); 2659 (Cumberland); 2660 (North Riding of Yorkshire); 2661 (Shropshire); 2776 (Glamorgan); 2811 (Hampshire); 2829 (Worcestershire); 2841 (Buckinghamshire).

1584. — gas mains. SI 1948, No. 1227 (Wiltshire).

1585. — power to order. See § 1592.

1586. Railways over, under or across highways, retention of. SI 1948, Nos. 44 (Cumberland); 99 (Staffordshire); 1024 (Gloucestershire); 1025 (Somerset); 1111 (West Riding of Yorkshire); 1112 (North Riding of Yorkshire); 1229 (Gloucestershire); 1230 (Northumberland); 1479 (North Riding of Yorkshire); 1514, 1515 (Berkshire); 1569 (Wiltshire); 1600 (North Riding of Yorkshire); 1792 (Surrey); 1864, 2116 (Monmouthshire); 2266 (Cheshire); 2455 (Surrey).

1587. — power to order. See § 1592.

1588. Right of way. See EASEMENTS AND PRESCRIPTION.

1589. Stopping up of highways. SI 1948, Nos. 42 (London); 43 (West Riding of Yorkshire); 143 (Wiltshire); 215 (Staffordshire); 271 (Huntingdonshire); 288 (Gloucestershire); 406 (West Riding of Yorkshire); 430 (Glamorgan); 431 (Wiltshire); 481 (Essex); 499 (Lincolnshire, Parts of Lindsey); 500 (Leicestershire); 501 (Nottinghamshire); 682 (Leicestershire); 831 (Worcestershire); 904 (Hertfordshire); 1057 (West Riding of Yorkshire); 1067 (Warwickshire); 1092 (Wiltshire); 1104 (Devonshire); 1106 (Gloucestershire); 1107 (Lancashire); 1108 (Cumberland); 1109 (North Riding of Yorkshire); 1168 (Durham); 1231 (Gloucestershire); 1232 (Glamorgan); 1249 (Hampshire); 1351 (Berkshire); 1364 (Wiltshire); 1397 (Durham); 1430 (Northumberland); 1570 (West Riding of Yorkshire); 1622 (Buckinghamshire); 1702 (Cumberland); 1793 (Kent); 1865 (Hertfordshire); 1916 (Wiltshire); 1982 (West Riding of Yorkshire); 2006, 2033 (Lincolnshire, Parts of Kesteven); 2016 (Hampshire); 2020 (Wiltshire); 2075

(West Suffolk); 2112 (Staffordshire); 2115 (Lincolnshire, Parts of Kesteven); 2154 (Lincolnshire, Parts of Lindsey); 2183 (Cornwall); 2184 (Lincolnshire, Parts of Lindsey); 2191 (Huntingdonshire); 2246 (Norfolk); 2267 (Northumberland); 2268 (Northamptonshire); 2286 (Herefordshire); 2297 (Huntingdonshire); 2334 (Somerset); 2362 (Staffordshire); 2425 (Devonshire); 2459 (Gloucestershire); 2522 (Somerset); 2569 (Cambridgeshire); 2620 (Leicestershire); 2655 (Berkshire); 2656 (North Riding of Yorkshire); 2657 (Somerset); 2730 (Lincolnshire, Parts of Kesteven); 2777 (West Suffolk); 2846 (West Riding of Yorkshire).

1590. — concurrent proceedings. Stopping up of Highways (Concurrent Proceedings) Regulations, 1948 (No. 1348), made under the Town and Country Planning Act, 1947 (10 & 11 Geo. 6, c. 51), s. 49 (5); came into operation on July 1, 1948. These Regulations enable proceedings for the compulsory acquisition of land to be taken concurrently with proceedings for the stopping up or diversion of highways for development purposes under the Act.

1591. — Minister's powers. (Requisitioned Land and War Works Act, 1945 (8 & 9 Geo. 6, c. 643, ss. 1, 11, 15-22.)) On a motion to quash an order made by the Minister of Transport under the Requisitioned Land and War Works Act, 1945, it was held, that (1) the Court had no jurisdiction to go behind the expression of the Minister's satisfaction; (2) the authorities on the Highway Act, 1835, which lay down that where quarter sessions on the report of two justices have power to make an order for stopping up a highway it is not within their power to block up part of the highway, must be distinguished from the case where the Minister shuts up a highway and then opens part of the site so acquired and makes on that part of the site a new highway for foot passengers only, and such an order is within the Minister's powers; (3) the War Works Commission set up by the Act, by whose report, and by any modifications specified in such report, the Minister is limited in making an order under the Act, have no jurisdiction to consider the Minister's powers to make the proposed order: *Re BECK AND POLLITZER'S APPLICATION*, [1948] 2 K. B. 339; [1948] L. J. R. 1828, Croom-Johnson, J. (distinguishing *R. v. Milverton (Inhabitants)* (1836), 5 Ad. & E. 841, and *R. v. Winter* (1828), 8 B. & C. 785; applying *R. v. Hudson*, [1915] 1 K. B. 133).

1592. — power to order. The Requisitioned Land and War Works Act, 1948 (11 & 12 Geo. 6, c. 17), s. 3, extends the power to order the permanent stopping up or diversion of highways in certain cases. The same section also extends the period for which orders may be made for the retention of railways, cables and pipes on, under or across highways and for the temporary stopping up or diversion of highways.

1593. Subsidence—level-crossing. (Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), s. 16.) In *Sharpness New Docks and Gloucester and Birmingham Navigation Co. v. Att.-Gen.*, [1915] A. C. 654, Lord Parker said: "It is one thing to rely on a common law principle where a statute is silent. It is quite another thing to invoke a common law principle in order to impose an obligation different from or in addition to the obligations which are defined by statute or those subject to which a company may interfere with a highway".

The plaintiff railway company was authorised by the special Act of Parliament under which it was carried on and which incorporated the Railways Clauses Consolidation Act, 1945, to cross a public high-road "upon the level"; the defendant council was responsible for the high-road. The railway line and the high-road had subsided owing to mining operations but could still be used. The plaintiff railway company reinstated the line to its former level and that necessitated the regrading of the approaches of the road, involving the defendant council in expenses. Held, the raising of the railway line was maintenance which the plaintiff railway company was authorised to do by s. 16 of the Railways Clauses Consolidation Act, 1845; but the powers of construction conferred by the special Act of Parliament had long since expired and the plaintiff company had no power to make a new crossing "upon the level". Consequently, the defendant council could not compel the plaintiff company to regrade the approaches or recover from them by action the cost of doing so: *L. N. E. Ry. v. YORKSHIRE C. C. (WEST RIDING)* (1948), 112 J. P. 352, Roxburgh, J. (applying *West Lancashire R. D. C. v. Lancashire and Yorkshire Ry.*, [1903] 2 K. B. 394; and

Sharpness New Docks and Gloucester and Birmingham Navigation Co. v. Att.-Gen., supra.) (See also § 2918.)

- 1594. "Touting" in the street.** In *McQUADE v. BARNES* (November 30, 1948), the Divisional Court (Lord Goddard, C.J., Hilbery and Birkett, J.J.) held that it was a contravention of a bye-law forbidding "touting in any street" for a person to stand on private land adjoining a public street and call out invitations to the public passing by to visit the premises for "fish and chips". [*Reported by R. C. Calburn, Esq., Barrister-at-Law.*] See also [1949] 1 C. L. 116.

1595. Traffic. See ROAD TRAFFIC.

1596. Trespass of animals. [Cty. Ct.] See *MORRIS v. CURTIS*, § 154.

1597. Trunk roads. Orders made under the Trunk Roads Act, 1946 (9 & 10 Geo. 6, c. 30), s. 1: SI 1948, Nos. 62 (East of Christchurch—Tredegar Park) [9d.]; 297 (London—Carlisle—Glasgow—Inverness); 309, 428 (London—Edinburgh—Thurso); 429 (Norman Cross—Grimsby); 520 (Shrewsbury—Whitchurch—Warrington); 924 (South of Haysgate—East of Crick); 1045 (King's Lynn—Sleaford—Newark); 1089 (London—Fishguard); 1295 (Newport—Shrewsbury); 1366 (Oxford—Northampton—Stamford—Market Deeping); 1721 (Swansea—Manchester); 1859 (Swansea—Manchester); 1996 (Levens Bridge—Broughton-in-Furness—Workington—Aspatria—Carlisle); 2002, 2003 (London—Edinburgh—Thurso); 2004 (London—Penzance); 2192 (Swansea—Manchester); 2238 (King's Lynn—Sleaford—Newark); 2243 (Birmingham—Great Yarmouth); 2409 (North of St. Helens—Southport); 2698 (London—Fishguard).

Orders made under s. 4: SI 1948, Nos. 144 (Fishguard—Aberystwyth—Dolgelley—Caernarvon—Bangor); 197 (London—Edinburgh—Thurso); 308 (London—Edinburgh—Thurso); 310 (London—Fishguard); 407 (London—Folkestone—Dover); 607 (Perth—Aberdeen—Inverness); 803 (London—Edinburgh—Thurso); 1195 (London—Fishguard); 1268 (King's Lynn—Sleaford—Newark); 1352 (London—Portsmouth); 1365 (London—Norwich); 1478 (Birmingham—Great Yarmouth); 1848 (London—Edinburgh—Thurso); 1871 (Carlisle—Sunderland); 1872 (Newport—Shrewsbury); 2005 (London—Penzance); 2090 (Swansea—Manchester); 2118 (Winchester—Preston); 2153 (Birmingham—Great Yarmouth); 2157 (Weedon—Atherstone—Brownhills); 2227 (King's Lynn—Sleaford—Newark); 2244 (London—Carlisle—Glasgow—Inverness); 2371 (Carlisle—Sunderland); 2417 (Swansea—Manchester); 2463 (London—Fishguard); 2544 (Swansea—Manchester); 2695 (North of St. Helens—Southport); 2716 (Swansea—Manchester).

1598. ARTICLES. Trees and highways (liability of landowners and highway authorities) (founded on *Hale v. Hants and Dorset Motor Services*, [1947] C. L. Y. 1372); 112 J. P. J. 22. Animals on and off the highway (founded on *Searle v. Wallbank*, [1947] C. L. Y. 96); *Solicitor*, February, 1948, p. 40. Obstruction on highway (founded on *Almeroth v. Chivers & Sons*, § 2533); 205 L. T. J. 72. More trees on highways: 111 J. P. J. 198. The Justices and the King's highway: 112 J. P. J. 367. Potholes and flagstones (repair of highways) (founded on *Wilson v. Kingston-on-Thames Corporation*, § 1578); 92 S. J. 697.

HIRE-PURCHASE

1599. Contract, construction of. See *WEBSTER v. HIGGIN*, § 3365.

1599a. Motor regulation book. See *NORMAN v. PITT*, § 3370a.

HOUSING

1600. Building restrictions. See BUILDING AND ENGINEERING, ARCHITECTS AND SURVEYORS.

1601. Fitness for habitation. (Housing Act, 1936 (26 Geo. 5 & 1 Edw. 8, c. 51), ss. 9 (1), 188 (4).) *Prima facie*, the question whether premises coming under the provisions of ss. 9 (1) and 188 (4) of the Housing Act, 1936, which deal with houses for the working classes, are fit for human habitation is a question of fact. But under s. 188 (4) of the Act, which provides that "regard shall be had to the extent to which the house falls short of the general standard of housing accommodation for working classes in the district", an element of law

is imported. However, the section is careful not to say that exclusive regard must be had to the general local standard. Indeed, the mere fact that a particular house is below the general standard of the houses in the district does not prove that the house is unfit for human habitation.

A notice was served on the owner of a working class house under s. 9 (1) of the Housing Act, 1936, requiring him to execute certain works in connection with the supply of hot water in the house. The hot water system of the house was at all material times out of order. However, the house had running water and a gas cooker for heating it. It was found by an inspector that three out of every four houses in the district had a hot water system. The County Court Judge quashed the notice. Held, on appeal, as the house had means of heating the water, and as the house was in other respects fit for human habitation, the Judge was right in holding that the house had not fallen short of the standard required by the Act, and, consequently, the appeal should be dismissed: *DALY v. ELSTREE* R. D. C. (1948), 64 T. L. R. 318; [1948] 2 All E. R. 13, C. A.

1602. — proceedings under Public Health Act, 1936, or Housing Act, 1936. See *SALISBURY CORPORATION v. ROLES*, § 2981.

1603. Housing contributions. Contributions under the Housing (Financial and Miscellaneous Provisions) Act, 1946 (9 & 10 Geo. 6, c. 48), will be payable at the same level as hitherto in respect of new houses completed before June 30, 1949: Ministry of Health Circular 109-48, dated June 30, 1948.

1604. Local loans—rates of interest. See § 2025.

1605. Registration of living accommodation. See *BALDWIN v. GURNSEY*, §§ 1158, 1159.

1606. Requisitioning of dwelling-houses. See *COMPULSORY PURCHASE AND REQUISITION*.

1607. Working classes, accommodation of—recovery of possession. (Housing Act, 1936 (26 Geo. 5 & 1 Edw. 8, c. 51), ss. 83 (1), 156 (1) (a).) S. 156 (1) of the Housing Act, 1936, provides that “nothing in the Rent and Mortgage Interest Restrictions Acts, 1920 to 1933, as amended by any subsequent enactment shall be deemed . . . to prevent possession being obtained (a) of any house possession of which is required for the purpose of enabling a local authority to exercise their powers under any enactment relating to the housing of the working classes”. S. 83 (1) of the same Act provides that “the general management, regulation, and control of houses provided by a local authority under this Part of this Act shall be vested in and exercised by the authority . . .”. The power to manage, regulate and control houses is a “power under an enactment” within the meaning of s. 156 (1) (a), and “management” within the meaning of s. 83 (1) must include a right to terminate the tenancy so far as the general law allows, *i.e.*, after due notice. As one of the important duties of management is that the local body should be able to pick and choose their tenants at their will, it follows, that in spite of the provisions of the Rent and Mortgage Restrictions Acts, 1920-39, a local authority can recover possession of a dwelling-house from a tenant who has been provided with accommodation by the local authority under its statutory powers for the housing of the working class in a case where the action of the local authority has been taken with a view to the housing of another member of that class: *SHELLEY v. L. C. C.*; *HARCOURT v. L. C. C.*, [1948] W. N. 436; [1949] L. J. R. 57; [1948] 2 All E. R. 898, H. L. (Lord du Parc dissenting; affirming decisions of Court of Appeal and Divisional Court, [1947] C. L. Y. 1397). (See also §§ 1608, 1609, 3542.)

1608. — — discretion of justices. (Small Tenements Recovery Act, 1838 (1 & 2 Vict. c. 74), s. 1.) On its true construction, s. 1 of the Small Tenements Recovery Act, 1838, which provides *inter alia* that if the tenant or occupier should not show to the satisfaction of the justices reasonable cause why possession should not be given, it should be lawful for the justices to issue a warrant to the appropriate constables demanding them within a period to be therein named not less than twenty-one nor more than thirty clear days from the date of the warrant to enter into the premises and give possession of the same to the landlord, does not leave it to the discretion of the magistrate to oust or not to oust according as he or she may consider the personal position of, and hardship caused to, an individual tenant. “Reasonable cause” means some cause which gives a right in law for

the tenant to remain. The phrase "it shall be lawful" was inserted because up to the passing of the Act magistrates had no such power, and s. 1 thereupon gave them power and made it lawful for them to act. There is no reason why justices should postpone the execution of the warrant at their pleasure. On the contrary, the wording of the Act limits in plain terms the length of time afforded to the tenant before the warrant is to be executed and allows no further extension. *Per Lord Uthwatt*: The only discretion given [to the Court] by this provision when properly construed is a discretion to decline to exercise jurisdiction under the Act when, for good reason, it is satisfied that the case ought not to be heard under the Act at all. See *SHELLEY v. L. C. C.*; *HARCOURT v. L. C. C.*, § 1607.

- 1609.** — — — **limits of jurisdiction.** (Housing Act, 1936 (26 Geo. 5 & 1 Edw. 8, c. 51), s. 156 (2).) The limitation of jurisdiction under the Small Tenements Recovery Act, 1838 (1 & 2 Vict. c. 74), has been expressly widened by s. 156 (2) of the Housing Act, 1936, and it follows that the jurisdiction given by the Act is not now limited to houses not exceeding £20 in annual value. See *SHELLEY v. L. C. C.*; *HARCOURT v. L. C. C.*, § 1607.
- 1610.** **ARTICLES.** Powers of local authorities to compel repair of insanitary houses: 112 J. P. J. 55. Local authorities' right to requisition property (founded on *Blackpool Corporation v. Locker*, § 521): 92 S. J. 118.
- 1611.** **BOOK PUBLISHED.** Jarman, J. R.—Housing Subsidies and Rents [25s.].

HUSBAND AND WIFE

- 1612. Action for personal injuries.** (Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), ss. 2, 12, 24.) The definition of property in s. 24 of the Married Women's Property Act, 1882, makes it clear beyond doubt that a wife's personal property (which forms part of her separate property) includes her things in action. Under s. 12 of the Act the right of suing which is given to a married woman extends, so far as concerns what may be the subject-matter of the action, to all her property. The limitation which is imposed by that section is not on the kind of property which may be the subject of an action by her, but only on the purpose for which the action may be brought; it must be for the protection or security of her property. It follows, that a married woman is entitled to maintain an action claiming damages for personal injuries, which she has sustained in a motor car accident, against her husband to whom she has been married after the beginning of the action: *CURTIS v. WILCOX*, [1948] 2 K. B. 474; 64 T. L. R. 392; [1948] 2 All E. R. 573, C. A. (applying *Re Park Gate Waggon Works Co.* (1881), 17 Ch. 234, overruling *Gottliffe v. Edelston*, [1930] 2 K. B. 378).
- 1613. Agency—wife as agent of husband.** See *Re BIDIE*, § 1386.
- 1614. Banns—called in different name.** See *DANCER v. DANCER*, § 993.
- 1615. Bigamous marriage—effect of adoption order in favour of "spouses".** See *SKINNER v. CARTER*, § 1702.
- 1616. Foreign marriages.** Foreign Marriage Order in Council, 1947 (No. 2875), dated December 19, 1947, made under the Foreign Marriage Act, 1892 (55 & 56 Vict. c. 23), and the Foreign Marriage Act, 1947 (10 & 11 Geo. 6, c. 33). This Order provides that the Act of 1947 should come into operation on February 1, 1948, and contains various other provisions regulating matters of detail under the Act. The provisions of the Act with which the Order is thus concerned are: (1) those relating to marriages celebrated in foreign territories by chaplains of the armed forces and other authorised persons, and the registration of such marriages; (2) those providing for the recognition in the United Kingdom of corresponding provisions in the law of the Dominions; (3) those providing for dispensing in certain cases with consents required for consular marriages when one party is a minor; and (4) provisions for the receipt for purposes of record by the Registrars-General in the United Kingdom of certificates of marriages celebrated in foreign countries in accordance with local law and for the issue of copies thereof [3d.].
- 1617. Income tax—married woman living separate from husband.** See *NUGENT-HEAD v. JACOB*, § 1679; [*Eire*] *UA CLOTHASAIGH v. MCCARTAN*, § 1680.
- 1618. Maintenance—claim by widow for recovery of arrears against estate of husband.** See *Re BIDIE*, § 1386; *HYDE v. HYDE*, § 976.

- 1619.** — **order.** See **DIVORCE AND MATRIMONIAL CAUSES; MAGISTERIAL LAW.**
- 1620.** — **statutory duty to maintain spouse and children.** See § 2272.
- 1621. Matrimonial causes.** See **DIVORCE AND MATRIMONIAL CAUSES.**
- 1622. Matrimonial home—belonging to wife—right to exclude husband.** See *BOYT v. BOYT*, § 1628.
- 1623.** — **provision of.** See *Re MCGOWAN v. MCGOWAN*, § 982.
- 1624.** — **right to decide situation of.** See *DUNN v. DUNN*, § 931.
- 1625. Ownership of property.** (Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 17.) In disputes between husband and wife under s. 17 of the Married Women's Property Act, 1882, as to the beneficial ownership of property, the Judge in all cases, after seeing and hearing the witnesses, must try to conclude what at the time of the transaction was in the parties' minds and then make an order which, in the changed conditions, now fairly gives effect in law to what the parties, in the Judge's finding, must be taken to have intended at the time of the transaction itself.
- The purchase price of a house was £1,000. A sum of £100 was paid and provided by the wife and the balance of £900 was raised by means of a mortgage of the house with a building society. After a protest by the wife the contract and conveyance were made out in the name of the husband, who also entered into the mortgage and an indemnity policy required by the building society, and who subsequently paid all instalments of principal and interest due under the mortgage. Held, the parties were entitled to the proceeds of sale, in the proportion, as to the husband, of nine-tenths, and, as to the wife, of one-tenth: *Re ROGERS' QUESTION*, [1948] 1 All E. R. 328, C. A.
- 1626.** — **advancement, presumption of—purchase by intended husband in name of intended wife.** The presumption of advancement which ordinarily obtains in the case of a purchase by a husband in the name of his wife applies even more strongly in the case of a purchase by an intended husband in the name of an intended wife, provided the marriage is duly solemnised.
- The purchase of a house was completed by a conveyance, which, at the husband's request, was made to the wife. The parties married one month after the date of the conveyance after an engagement lasting some eighteen months. The purchase price, subject to a mortgage, had been paid by the husband, but by the conveyance the wife incurred contractual liability with the mortgagee for the payment of the mortgage debt. However, from the date of purchase onwards the husband in fact paid the instalments of the mortgage debt, and, eventually, some fifteen years after the date of the marriage paid off the balance due on the mortgage. In the fourteenth year of the marriage the relations between the parties had deteriorated and at the date when the balance due on the mortgage had been paid the wife had ceased to render any conjugal rights at all to the husband. On a summons to determine the beneficial ownership of the house, it was held, that (1) the presumption of advancement to the effect that the husband had intended the house to be a provision by way of gift to his wife provided the marriage was duly solemnised applied although the parties were not married at the date of the conveyance, and the husband had failed to rebut the presumption; (2) the mortgage repayments were presumptively by way of gift or advancement to the wife, and the husband had clearly failed to discharge the onus that they were not gifts; the fact that the husband had continued the repayments after the relations between the parties had deteriorated was immaterial: *MOATE v. MOATE*, [1948] 2 All E. R. 486, Jenkins, J.
- 1627.** — **appeal from divorce registrar's order under Married Women's Property Act, 1882, s. 17.** See *BERNBAUM v. BERNBAUM*, § 1009.
- 1628.** — **matrimonial home belonging to wife—right to exclude husband.** It is clear from the authorities that the Court has jurisdiction in a suitable case to grant an injunction restraining the husband from entering on premises which had been the matrimonial home where the property belongs to the wife. It is a discretionary remedy which will be exercised with care, and especially so where it involves the breaking up of the matrimonial home.
- The wife's divorce petition was based on allegations of cruelty, which the husband denied by his answer. Before the petition had been filed the husband

had informed the wife that he was going to return to the matrimonial home, where the wife was staying with the children of the marriage, a son aged three years and ten months, and a daughter aged twelve-and-a-half years, and which was her property. As the wife felt that owing to the state of her health, which she alleged was due to the husband's treatment, she could not be in the house with him, she left the matrimonial home by car taking with her the two children. The husband stopped the car and took the two children back with him to the matrimonial home. The wife now applied for the custody of the children until the hearing of her divorce petition and for an injunction to restrain the husband from entering the matrimonial home. Held, the question whether or not the injunction should be granted was closely connected with the question: To whom should be granted the interim custody of these children? Both children should go to the wife, and the proper place, pending suit, for the wife to be with these children was in the house that belonged to her, and where she was at the time when it became desirable to preserve the *status quo*. Consequently, the injunction should be granted: *BOYT v. BOYT*, [1948] 2 All E. R. 436, C. A. (applying *Shipman v. Shipman*, [1924] 2 Ch. 140; and *Symonds v. Hallett* (1883), 24 Ch. D. 346).

- 1629.** — **tenancy—wife remaining in possession after surrender by husband.** See *TAYLOR v. McHALE*, § 3239; *ROBSON v. HEADLAND*, § 3231.
- 1630.** **Registration of marriages.** See *REGISTRATION OF BIRTHS, DEATHS AND MARRIAGES*.
- 1631.** **Separation deed—frustration, applicability of doctrine of.** See *TOMKINS v. TOMKINS*, § 1021.
- 1632.** — **infant wife.** [N.Z.] See *HOLE v. HOLE*, § 1704.
- 1633.** **ARTICLE.** Claims for maintenance against members of the Forces (founded on the Army and Air Force (Annual) Acts, 1947 and 1948): 92 S. J. 357.
- 1634.** **BOOKS PUBLISHED.** Grant, H. B.—*Marriage, Separation and Divorce*, 2nd ed. [4s.]. Lacey, T. A.—*Marriage in Church and State* [10s. 6d.].

INCOME TAX AND SURTAX

- 1635.** **Allowances and reliefs—child allowance.** (Finance Act, 1920 (10 & 11 Geo. 5, c. 18), s. 21 (1), (3), as amended by Finance (No. 2) Act, 1939 (2 & 3 Geo. 6, c. 109), s. 9 (3).) The child of a taxpayer who, during the year, earns in wages more than £50, may be said to be "entitled in his own right to an income exceeding £50 a year" within the meaning of s. 21 (1) of the Finance Act, 1920, as amended, so as to disentitle his parent to a deduction of £50 in respect of such child: *WILLIAMS v. DOULTON*, [1948] 1 All E. R. 603, Atkinson, J. (following *Miles v. Morrow* (1940), 23 Tax Cas. 465).
- 1636.** — **expenses allowances, etc.** See § 1655.
- 1637.** **Annuities given free of tax.** (Finance Act, 1941 (4 & 5 Geo. 6, c. 30), s. 25; Finance (No. 2) Act, 1945 (9 & 10 Geo. 6, c. 13), s. 20.) See *Re WARING*, § 1302; *Re KOENIGSBERG*, § 1303.
- 1638.** **Appeal against finding of Special Commissioners—discretionary powers.** See *I. R. C. v. ROSS and COULTER*, § 3539.
- 1639.** — **finding of fact.** The Special Commissioners found as follows: "We hold . . . (2) That the sums received by her in respect of these rights under the terms of the agreement were of a revenue nature, being paid to her and received by her on account of royalties; (3) That on the authority of the judgment of Macnaghten, J., in *Beare v. Carter*, [1940] 2 K. B. 187, such royalties, being income, are liable to assessment under Case VI of Sched. D". It was contended that the Special Commissioners' decision "that the sums received by the taxpayer were of a revenue nature" was itself a finding of fact which could not be disturbed on appeal. Held, this was not a decision of pure fact but it raised a question of law in support of which a previous decision was cited. See *WITHERS v. NETHERSOLE*, § 1677 (applying *Bomford v. Osborne*, [1942] A. C. 14; and *Usher's Wiltshire Brewery v. Bruce*, [1915] A. C. 433).
- 1640.** **Assessment—additional assessment.** In *STEEL BARREL CO. v. OSBORNE*, [1948] T. R. 11, the Court of Appeal dismissed an appeal against the decision of Macnaghten, J., [1947] C. L. Y. 1426, that when by an oversight an agreed

deduction is not made by the Inspector from the value of the taxpayer's opening stock and the omission is subsequently discovered, the Inspector has "discovered" that profits chargeable to tax have been omitted from the first assessment and may make an additional assessment in accordance with s. 125 of the Income Tax, 1918.

- 1641.** — — —. (Income Tax Act, 1918 (8 & 9 Geo. 5, c. 40), s. 125 (1).) In *COMMERCIAL STRUCTURES v. BRIGGS*, [1948] 2 All E. R. 1041, the Court of Appeal affirmed the decision of Atkinson, J., [1947] C. L. Y. 1427, that the word "discovers" in s. 125 (1) of the Income Tax Act, 1918, was applicable to the case where the inspector "discovers" that, in making the original assessment, a wrong opinion was formed of the effect of the general law upon the facts then existing.
- 1642.** — **liability for tax in respect of year after death of holder of shares in controlled company.** See *Re DUFFY*, § 846.
- 1643.** **Awards to inventors.** See § 2564.
- 1644.** **Capital expenditure—information as to—vendor and purchaser.** See § 3815.
- 1645.** **Charitable purposes, profits applied for.** (Finance Act, 1921 (11 & 12 Geo. 5, c. 32), s. 30 (1) (c) (as substituted by Finance Act, 1927 (17 & 18 Geo. 5, c. 10), s. 24). See *TENNANT PLAYS v. I. R. C.*, § 418.
- 1646.** **Deductions from profits—accrued or contingent liabilities.** In *PETER MERCHANT v. STEDFORD* (November 26, 1948) a company whose business was the management of canteens owned by other concerns were liable under their contracts to maintain the equipment of the canteens in quality and quantity. Owing to war conditions they were unable to purchase the necessary replacements at a reasonable price or at all. They therefore claimed as a deduction for the purposes of computing their liability to income tax for certain years sums representing their liability at current prices to effect the necessary replacements under their contracts when that should become possible. The Court of Appeal (Tucker, Cohen and Asquith, L.JJ.), affirming Singleton, J. (see *Times*, July 10, 1948), held that the liability, though taken by the company's accountant as an actual one and so deductible, was in fact contingent only and therefore not deductible. [*Reported by R. C. Calburn, Esq., Barrister-at-Law.*] See also *Times*, November 27, 1948.
- 1647.** — **damages paid in respect of servant's negligence.** [Can.] In *IMPERIAL OIL CO. v. MINISTER OF NATIONAL REVENUE*, [1948] 1 D. L. R. 305, the Exchequer Court of Canada held that in order to determine whether the amount of a payment made primarily to satisfy a legal liability was deductible from profits, it was necessary to look behind the payment and inquire whether the liability which made it necessary (there being no difference whether such liability was contractual or delictal) was incurred as part of the operation by which the taxpayer earned his income; and that in the particular circumstances the payment in question was deductible.
- 1648.** — **exhaustion of timber.** In *D. R. FRASER & CO. v. MINISTER OF NATIONAL REVENUE (CANADA)* (October 13, 1948), the Judicial Committee of the Privy Council (Viscount Simon and Lords Macmillan, Simonds, Oaksey and MacDermott), held that s. 5 (1) of the Dominion Income War Tax Act, 1927, as amended in 1940, which provided that the Minister of National Revenue "may make such an allowance for the exhaustion of . . . timber limits as he may deem just" gave the Minister a discretion to decide not only how much to allow lumbermen by way of deduction for income tax purposes for the exhaustion of timber being cut by them under licence, but also whether, in the circumstances, to allow any deduction at all. [*Reported by R. C. Calburn, Esq., Barrister-at-Law.*] See also [1948] W. N. 385.
- 1649.** — **legal expenses.** [Can.] In *HUDSON'S BAY CO. v. MINISTER OF NATIONAL REVENUE*, [1948] 1 D. L. R. 145, the Exchequer Court of Canada held that legal expenses incurred in prosecuting a passing-off action in the United States by an English company doing business in Canada, were made in the ordinary course of preserving and maintaining the company's trade and were not to be regarded as a capital outlay and therefore were deductible from income. (*Tata Hydro-Electric Agencies v. C. I. T.*, [1937] A. C. 685; *British Insulated and Helsby*

Cables v. Atherton, [1926] A. C. 205; *Ward & Co. v. C. I. T.*, [1923] A. C. 145, considered and distinguished.)

1650. Double taxation—colonies. Double taxation arrangements have been concluded between the United Kingdom and the following Colonies: Grenada, St. Lucia, Dominica, St. Vincent, Barbadoes, Jamaica, Falkland Islands: 92 S. J. 734.

1651. — Netherlands. See § 3285.

1652. Excess profits and profits tax. [Scot.] (Finance (No. 2) Act, 1939 (2 & 3 Geo. 6, c. 109), ss. 15 (2), 18 (1).) In *I. R. C. v. JOHN DOW STUART*, [1948] T. R. 221, the Court of Session held that the amount of excess profits tax to be deducted as an expense pursuant to s. 18 (1) of the Finance (No. 2) Act, 1939, was the amount payable for the chargeable accounting period in question and not that amount reduced by the relief subsequently given under s. 15 (2) of the Act in respect of a deficiency of profits in a subsequent accounting period.

1653. Extra-statutory concessions. The following extra-statutory war-time concessions contained in the White Paper published in 1944 (Cmd. 6559) are withdrawn as from the beginning of the financial year 1948-49:—

The concessions set out in sub-paras. (i) and (ii) on p. 3 of the White Paper in regard to members of Allied Dominion or Colonial Forces or Mercantile Marine or recognised welfare organisations attached thereto and persons who came to the U.K. to join the armed forces of the Crown or the Mercantile Marine or the British Red Cross.

The concession set out in sub-para. (iv) on p. 4 of the White Paper under which, in certain cases, the service pay of persons from the Dominions or colonies serving in forces paid out of United Kingdom funds is charged to tax by reference to Dominion or colonial income tax rates.

The concession set out in para. 5 on p. 5 of the White Paper under which in certain circumstances the making of an additional assessment for the penultimate years of a discontinued trade, profession or vocation is waived.

The concession set out in para. 14 on p. 7 of the White Paper regarding salvage awards to officers and men of a ship not specifically employed on salvage work.

The concession set out in para. 15 on p. 7 of the White Paper regarding extension of time limits for claims for certain income tax reliefs.

1654. Finance Act, 1948 (11 & 12 Geo. 6, c. 49). The provisions of this Act relating to income tax and surtax are contained in Parts III and IV. Under ss. 25, 26 the standard rate of income tax and the rates of surtax on incomes over £2,000 remain unchanged. Relief in respect of earned incomes is increased to one-fifth, subject to a maximum allowance of £400, and similar relief is given to persons over sixty-five whose income does not exceed £500 (s. 27 (2)). The exemption limit is increased to £135 (s. 27 (1)) and the limit of income chargeable at reduced rates is increased to £250, 3s. being charged on the first £50 and 6s. on the next £200 (s. 28 (1)). Reduced rate relief is also given in respect of the earned income of a wife (s. 28 (2)-(7)). New rates of relief in respect of life insurance premiums are laid down by s. 29. Special provisions as to farming and other profits arising from the land are contained in ss. 31, 32: the general effect is that farming is to be deemed to be carrying on a trade and farmers will in future be assessed under Schedule D. S. 33 extends the time for the purposes of relief in respect of capital expenditure on rehabilitation; and s. 34 makes provision for the remission of balancing charges, etc., in the case of certain undertakings absorbed under nationalisation schemes. S. 36 widens certain exemptions available to friendly societies and trade unions. Under s. 38 any payments made to directors or employees of a company or other body for expenses are to be assessed as part of their remuneration subject to such deductions as are allowed by Rule 9 of the Rules applicable to Schedule E to the Income Tax Act, 1918, as money expended wholly and necessarily in performing the duties of the employment. A similar provision is made by s. 39 with respect to the provision by a company or other body for its directors or employees of living accommodation or other benefits in kind. The valuation of benefits in kind is dealt with in s. 40; and s. 41 defines "director", "employment" and "employment to which this Part of this Act applies". The foregoing provisions do not apply to charitable

and non-trading bodies (s. 44); but they do apply to unincorporated bodies and partnerships (s. 46).

As to income tax in relation to Electricity Boards, see s. 79.

- 1655. — expenses allowances, etc.** The Board of Inland Revenue have issued Leaflet No. 275, being notes on the effect of Part IV of the Finance Act, 1948, in respect of expenses allowances, benefits in kind, etc.
- 1656. Gas securities—tax on final payments of interest on.** See s. 35 of the Gas Act, 1948 (11 & 12 Geo. 6, c. 67), § 1535.
- 1657. Husband and wife—married woman living separate from husband.** See *NUGENT-HEAD v. JACOB*, § 1679; [*Eire*] *UA CLOTHASAIGH v. MCCARTAN*, § 1680.
- 1658. "Income", meaning of.** See *UNION TRUSTEE CO. OF AUSTRALIA v. BARTLAM*, § 3427.
- 1659. Interpretation of taxing provisions.** See *I. R. C. v. ROSS AND COULTER*, § 3562; *RUSSELL v. SCOTT*, § 3561.
- 1660. P.A.Y.E.** Income Tax (Employments) (No. 7) Regulations, 1948 (No. 464), made under the Income Tax (Employments) Act, 1943 (6 & 7 Geo. 6, c. 45), s. 2. These Regulations authorise the indefinite continuance of the procedure introduced in 1945, whereby the requirement that the Inspector should, before sending the tax deduction card to the employer, notify the employee of the code number, was dispensed with in cases in which the code number was the same as for the previous year.
- Income Tax (Employments) (No. 8) Regulations, 1948 (No. 1519), made under the Income Tax (Employments) Act, 1943, s. 2; came into operation on July 6, 1948; amend the Income Tax (Employments) Regulations, 1944 (No. 251), so as to take into account the latest increase in earned income allowance and the relief in respect of National Insurance contributions.
- Income Tax (Employments) (No. 9) Regulations, 1948 (No. 1819), made under the Income Tax (Employments) Act, 1943, s. 2; came into operation on July 30, 1948; authorise employers to ignore, for the purposes of P.A.Y.E. during 1948–49 only, certain expenses payments required by Part IV of the Finance Act, 1948 (11 & 12 Geo. 6, c. 49), to be included in the assessable emoluments of the recipient. Liability to tax on such payments will be dealt with when assessments are made after the end of the year.
- 1661. — expenses payments and benefits.** The Board of Inland Revenue issued Leaflets 275, 276 explaining the application of P.A.Y.E. to expenses payments and benefits in kind under ss. 38 to 46 of the Finance Act, 1948.
- 1662. Removal of offices.** The Board of Inland Revenue announce that the Conjoint Office (United Kingdom and Eire Revenue Departments) and the Dominion Income Tax Section of the Inspector of Foreign Dividends removed from Brettenham House on October 21, 1948, and the address after that date is Lynwood Road, Thames Ditton, Surrey.
- 1663. Repayment claims.** An agreed procedure for income tax repayment claims on the voluntary transfer of stocks and shares where there is no deed of gift or other instrument available is outlined in the *Law Society's Gazette*, July, 1948, p. 119.
- 1664. Residence—military service.** In *LORD INCHQUIN v. I. R. C.* (1948), 41 Rating and Income Tax 570, the Court of Appeal dismissed an appeal against the decision of Singleton, J., [1948] T. R. 279, holding that there was evidence on which it could be found that the appellant was resident in England during the relevant period, and that, the question of residence being one of fact, the finding of the Special Commissioners that the appellant was so resident was final.
- 1665. Schedule A—annual value—air-raid shelter constructed by landlord.** (Finance Act, 1938 (1 & 2 Geo. 6, c. 46), s. 17 (1).) S. 17 (1) of the Finance Act, 1938, provides: "In estimating for the purposes of income tax under Sched. A the annual value of any building no regard shall be had (a) to any room or other part of the building which has been added at any time after the building was first assessed to tax . . . solely for the purpose of affording protection in the event of hostile attack from the air, and is not occupied or used for any other purpose. . . . Provided that this sub-section shall not apply if the building or any part thereof is let and the rent or any other consideration for the lease is greater than it would have been if the room or other part referred to in

para. (a) had not been added or included . . .". In this sub-section the word "rent" is used in its strictly technical meaning, and, therefore, will not include a sum payable to a landlord by a tenant by virtue of a collateral agreement containing no demise.

By an agreement in 1940, the taxpayers, who were the landlords under seven separate underleases expiring in 1958, undertook to construct an air-raid shelter under the premises and to allow the tenants to use it. In consideration of the landlords' undertakings in the agreement the tenants agreed to pay to the landlords in each year during the period of twelve years commencing on the date of completion of the works a certain fixed sum. Held, the sums paid for the erection of the shelter and for the right to use it were no part of the consideration for the underleases, and no part of the consideration for their continuation, but were entirely new and separate, and, therefore, could not be regarded as "other consideration for the lease". Similarly, these sums could not constitute "rent", because (1) non-payment of the agreed sum would not render any of the underleases liable to forfeiture, (2) the obligation continued for a period of twelve years irrespective of whether some or all of the underleases should have previously determined, and (3) there was nothing to show by what amount the rent reserved by any one of the underleases should be increased: *ASSOCIATED LONDON PROPERTIES v. WILLIAMS*, [1948] L. J. R. 287; [1948] 1 All E. R. 442, C. A. (reversing decision of Macnaghten, J., [1947] C. L. Y. 1460; applying *Westminster (Duke) v. Store Properties*, [1944] Ch. 129).

1666. — **No. III, r. 3—sand-pit.** The word "concern" in r. 3 of No. III of Schedule A is a very wide word, and appears to imply an adequate degree of business organisation for the purpose of carrying on the undertaking, but the amount of organisation needed must depend on the character of the concern itself. A regular system of direction and management sufficient for the exploiting of a sand-pit by its owner may constitute the carrying on of a "concern", but a sand-pit does not constitute "a concern of the like nature" within the meaning of Rule 3, and, consequently, income tax will be chargeable on the annual value of the land as a whole, calculated in the case of land situated in Northern Ireland as directed for Ireland by s. 187 of the Income Tax Act, 1918: *RUSSELL v. SCOTT*, [1948] A. C. 422; [1948] L. J. R. 1265, H. L. (affirming decision of Court of Appeal of Northern Ireland, [1947] C. L. Y. 1464; applying *Edmonds v. Eastwood* (1858), 2 H. & N. 811; overruling *Mosley v. George Wimpey & Co.*, [1945] 1 All E. R. 674). (See also § 3561.)

1667. Schedule B—r. 1 (a)—tithe redemption annuity, valuation for remission of. See *R. v. JORDAN, ex p. LUTRING*, § 3595.

1668. Schedule D—profits of trade—co-operative society selling produce exclusively to members. (Assam Agricultural Income Tax Act (No. IX of 1939), s. 3.) In the case of *New York Life Insurance Co. v. Styles* (1889), 14 App. Cas. 381, which decided that in certain cases a mutual insurance association might claim exemption from liability for income tax, the exemption from liability for income tax was based on

- (1) the identity of the contributors to the fund and the recipients from the fund,
- (2) the treatment of the company, though incorporated, as a mere entity for the convenience of the members and policy holders, in other words, as an instrument obedient to their mandate, and
- (3) the impossibility that contributors should derive profits from contributions made by themselves to a fund which could only be expended or returned to themselves.

The principle of *Styles's Case*, *supra*, cannot apply to an association, society or company which grows produce on its own land or manufactures goods in its own factories, using either its own capital or capital borrowed whether from its members or from others, and sells its produce or goods to its members exclusively. If the society sells the produce grown or manufactured by it at a price which exceeds the cost of producing it and rendering it fit for sale, it has earned profits which are, subject to the provisions of the taxing Act, taxable profits,

because in such a case one of the requirements for the application of the principle of *Styles's Case*, *supra*, namely, a common fund to which members of the society contribute and in which they participate, is not satisfied: *ENGLISH AND SCOTTISH JOINT CO-OPERATIVE WHOLESALE SOCIETY v. ASSAM AGRICULTURAL INCOME TAX COMMISSIONER*, [1948] A. C. 405; [1948] L. J. R. 1896, P. C. (dismissing appeal from High Court of Judicature at Fort William in Bengal, [1945] 13 I. T. R. 295; holding *English and Scottish Joint Co-operative Wholesale Society v. Madras Income Tax Commissioner* (1929), 3 I. T. C. 385, to have been wrongly decided; distinguishing *New York Life Insurance Co. v. Styles*, *supra*; *Thomas v. Richard Evans & Co.*, [1927] A. C. 827, and *Municipal Mutual Insurance v. Hills* (1932), 147 L. T. 62; referring to *Cornish Mutual Assurance Co. v. I. R. C.*, [1926] A. C. 281, and *Liverpool Corn Trade Association v. Monks*, [1926] 2 K. B. 110).

1669. — — — **loan or trading receipt.** In *STONELEIGH PRODUCTS v. DODD*, [1948] T. R. 57, the Court of Appeal affirmed the judgment of Atkinson, J., [1947] C. L. Y. 1473, and held that the decision of the General Commissioners on the question whether an item in the accounts of a trading company is a loan or a trading receipt is a decision on a question of fact.

1670. — — — **Case I — trade in shares.** In *MURPHY v. AUSTRALIAN MACHINERY AND INVESTMENT Co.* (1948), 41 *Rating and Income Tax* 332, the Court of Appeal held that where a company acquired certain disused Australian gold mines and sold them to certain Australian companies for shares in those companies, subsequently selling these shares in the United Kingdom, it was necessary, in order to ascertain the profit, if any, made by the company in selling the shares, to discover the value of the shares at the time of their acquisition by the company (that value being the value of the mines at that time—regard being had to any increase in value of the mines between the time when they were purchased and the time when they were sold to the Australian companies), the difference between that value and the price ultimately obtained on the sale of the shares (and not the difference between the nominal value of the shares and the latter price) being the measure of profit.

1671. — — — **valuation of shares not realisable during accounting period.** When a trader in the course of his trade receives a new and valuable asset, not being money, as the result of sale or exchange, that asset, for the purpose of computing the annual profits or gains arising or accruing to him from his trade, should be valued as at the end of the accounting period in which it was received, even though it is neither realised nor realisable till later. The fact that it cannot be realised at once may reduce its present value, but that is no reason for treating it, for the purposes of income tax, as though it had no value until it could be realised. If the asset takes the form of fully-paid shares, the valuation will take into account not only the terms of the agreement, but a number of other factors, such as prospective yield, marketability, the general outlook for the type of business of the company which has allotted the shares, the result of a contemporary prospectus offering similar shares for subscription, the capital position of the company, and so forth. There may also be an element of value in the fact that the holding of the shares gives control of the company. If the asset is difficult to value, but is none the less of a money value, the best valuation possible must be made.

A trust carried on the trade of a dealer in stocks and shares and an exploiter of and dealer in gold-mining concessions. Its practice had been to acquire concessions for land considered to have gold-bearing possibilities and to transfer such concessions to a company which would work the concessions and market the gold produced. The consideration for the transfer of the concessions was in each case satisfied by an issue of fully paid-up shares in the transferee company. The shares so issued were of a par value equal to the price named in the agreement for the sale of the concessions as the sale price. The shares issued to the trust were sufficient to give the trust control over the company which was acquiring the concession from it. So large a block of shares could not be readily disposed of in the stock market without killing the market, and the questions arose whether in the circumstances of the case the shares should be valued for income tax purposes in the year of their receipt although they

could not then be realised, and, if so, at what figure. Held, (1) the fact that these shares could not be immediately realised was no ground for saying that they were incapable of being valued in money for income tax purposes in the year of their receipt; (2) there was no reason that the shares should be valued at par merely because the price of the concessions as agreed between the parties was the par value of the shares; what was the correct figure was a question of fact to be answered after taking into account the relevant circumstances at the times of the transactions: *GOLD COAST SELECTION TRUST v. HUMPHREY*, [1948] A. C. 459; [1948] L. J. R. 1507, H. L. (Lord Oaksey dissenting; affirming in part decision of Court of Appeal, [1946] 2 All E. R. 742; applying *John Cronk & Sons v. Harrison*, [1937] A. C. 185; *Californian Copper Syndicate v. Harris* (1905), 5 Tax Cas. 159; and *Scottish and Canadian General Investment Co. v. Easson*, 1922, S. C. 242).

1672. — **Cases I and II—r. 3.** In *ALEXANDER HOWARD & Co. v. BENTLEY*, [1948] T. R. 289, Singleton, J., held that where under a service agreement a company was under a liability to pay an annuity to the widow of a director during such time as the director's personal representatives held so many shares in the company, the annuity, if it had become payable, would not have been money wholly or exclusively laid out for the purposes of trade; and that a capital sum paid by the company in consideration of its release from the obligation to pay the annuity was for that reason not deductible; and, moreover, that the capital sum was not deductible on the ground that its payment secured an enduring advantage to the company.

1673. — **r. 3 (a)—cost of litigation.** The expression "money wholly and exclusively laid out or expended for the purposes of the trade" in r. 3 (a) of the Rules Applicable to Cases I and II of Sched. D means—as was said by Lord Davey in *Strong & Co. v. Woodfield*, [1906] A. C. 448—"for the purpose of enabling a person to carry on and earn profits in the trade". Thus, in applying this rule, it is necessary to draw a distinction between accounts made up on the purely trading basis and those which are prepared for and accepted by the Inland Revenue, because the latter are not directly associated with the carrying on of the business, but constitute an obligation imposed for another and extraneous purpose, i.e., for the purpose of ascertaining the tax to be paid out of profits. Consequently, the expense of an appeal to the Board of Referees, like all expenditure to ascertain the true amount of tax to be paid, whether it be income tax or excess profits tax and whether successful or unsuccessful, is incurred, at any rate in part, in order to determine the correct amount of income tax or excess profits tax as the case may be, and is not "wholly" or "exclusively laid out . . . for the purposes of . . . trade": *SMITH'S POTATO ESTATES v. BOLLAND*, *SMITH'S POTATO CRISPS* (1929) v. I. R. C., [1948] A. C. 508; [1948] L. J. R. 1557, H. L. (Viscount Simon and Lord Oaksey dissenting; dismissing appeal from decision of Court of Appeal, [1947] C. L. Y. 1483; reversing decision of Atkinson, J., [1946] 2 All E. R. 284; applying *Strong & Co. v. Woodfield*, *supra*; considering *Allen v. Farquharson* (1932), 17 Tax Cas. 59; and *Worsley Brewery Co. v. I. R. C.* (1932), 17 Tax Cas. 349; distinguishing *British Insulated and Helsby Cables v. Atherton*, [1926] A. C. 205).

1674. — — — — —. The House of Lords held that this appeal was concerned with similar facts and gave rise to the same considerations as were found in *Smith's Potato Estates v. Bolland*, § 1673, and, consequently, dismissed this appeal on the same grounds: *RUSHDEN HEEL CO. v. KEENE*, *RUSHDEN HEEL CO. v. I. R. C.*, [1948] W. N. 283; [1948] L. J. R. 1570; [1948] 2 All E. R. 378, H. L. (dismissing appeal from decision of the Court of Appeal, [1947] C. L. Y. 1482; reversing decision of Atkinson, J., [1946] 2 All E. R. 141).

1675. — **Case III—r. 1—maintenance order.** (Finance Act, 1944 (7 & 8 Geo. 6, c. 23), s. 25.) In *BRIGGENSHAW v. CRABB* (1948), 41 Rating and Income Tax 518, Singleton, J., held that a wife was properly chargeable to tax in respect of weekly sums of £2 paid to her by her husband under a maintenance order, these payments being small maintenance payments within the meaning of s. 25 of the Finance Act, 1944.

1676. — **Case V—income from foreign investments.** (Finance Act, 1926 (16 & 17 Geo. 5, c. 22), s. 30, proviso (ii).) In *ATKINSON v. GOODLASS WALL AND LEAD*

INDUSTRIES, 93 S. J. 102; [1948] 2 All E. R. 1095, the Court of Appeal reversed the decision of Singleton, J., [1948] 2 All E. R. 653, and held that the words "any year of assessment", in proviso (ii) to s. 30 of the Finance Act, 1926, mean "any income tax year" or "any time".

Per Tucker, L.J.: "The construction of the words 'any year of assessment' . . . is assisted by re-writing s. 30 so as to give effect to . . . proviso (b) (i) to s. 29(1) as regards proviso (ii) [to s. 30]. So re-written, s. 30, so far as material, reads as follows:—

All profits or income in respect of which any person is chargeable under . . . Case V of Sched. D may . . . be assessed and charged in one sum: Provided that . . . (ii) if in any year of assessment any person acquires a new source of any such profits or income or an addition to any source of any such profits or income, income tax in respect of the profits or income from that source shall be computed separately, and in the case of profits or income chargeable under Case V of Sched. D income tax shall be computed as respects the year of assessment in which the income first arises on the full amount of the income arising within that year."

- 1677. — Case VI—assignment of copyright.** Copyright is a species of incorporeal property. The Copyright Act, 1911, makes it perfectly clear that the ownership of copyright can be transferred by assignment either wholly or partially and "either for the whole term of the copyright or for any part thereof" (s. 5 (2)). So far as the property is assigned, the assignee becomes the owner instead of the assignor. The Act also provides that, in contrast with an assignment of copyright, the owner may grant a licence which, though it permits the licensee to use the copyrighted matter within the limits of the licence without breach of copyright, does not involve any change of ownership in the copyright at all. In the case of an assignment, on the other hand, where the taxpayer ceases to be the owner of the copyright and receives a sum in exchange, and is found not to be engaged in the trade or profession of dealing in such property, there exists a sale of property by a person who is not engaged in the trade or profession of dealing in such property, and the proceeds of such a sale are, for income tax purposes, a sum in the nature of untaxable capital and not in the nature of taxable revenue.

The taxpayer had obtained from K. the right to dramatise one of his novels, and was at all times entitled to the copyright in the play. On an assignment by K.'s personal representatives to a film company of "the sole and exclusive motion picture rights throughout the world" in the play and novel the taxpayer—in accordance with a previous agreement between her and K.—received one-third of the consideration paid by the film company under the agreement. The taxpayer had given up the profession of a dramatist many years before. The Crown claimed the consideration paid to the taxpayer under Case VI of Schedule D as "annual profits or gains not falling under any of the foregoing Cases, and not charged by virtue of any other Schedule". Held, there had been a sale and transfer outright of an item of property which previously belonged to the taxpayer, not a licence to use it granted by its unchanged owner, and this did not give rise to annual profits or gains unless the sale took place in the course of carrying on a trade or profession: *WITHERS v. NETHERSOLE*, [1948] W. N. 105; [1948] L. J. R. 805; [1948] 1 All E. R. 400, H. L. (dismissing appeal from decision of Court of Appeal, [1946] 1 All E. R. 711; distinguishing *Constantinnesco v. R.* (1926-7), 11 T. C. 730; *Mills v. Jones* (1929), 142 L. T. 337; *Desoutter Bros. v. Hanger & Co.*, [1936] 1 All E. R. 535; and *I. R. C. v. British Salmon Aero Engines*, [1938] 2 K. B. 482). (See also § 1639.)

- 1678. Schedule E—rr. 1, 6—person having an office.** [Eire.] In *TIPPING v. JEANCARD*, [1948] Ir. R. 233, the High Court of Eire held that where a company was incorporated and had its registered office in Eire, but was resident and controlled in Paris, a director who during the material periods resided in France and carried out his duties as a director there was nevertheless a person who held an office in Eire at the material times, although he never exercised that office in the latter country. (*McMillan v. Guest*, [1942] A. C. 561, applied.)

- 1679. Schedule I, All Schedules Rules—r. 16—married woman living separate from husband.** R. 16 of the All Schedules Rules provides: "A married woman acting as a sole trader, or being entitled to any property or profits to her separate use, shall be assessable and chargeable to tax as if she were sole and unmarried:

Provided that—(1) the profits of a married woman living with her husband shall be deemed to be the profits of the husband, and shall be assessed and charged in his name, and not in her name or the name of her trustee; and (2) a married woman living in the United Kingdom separate from her husband, whether the husband be temporarily absent from her or from the United Kingdom or otherwise, who receives any allowance or remittance from property out of the United Kingdom, shall be assessed and charged as a *feme sole* if entitled thereto in her own right, and as the agent of the husband if she receives the same from or through him, or from his property, or on his credit". The two provisos in the rule deal with contrasted situations and the second ought not to be read as a qualification of the first. The first deals with the case where there has been no rupture of marital relations and the parties are living together in the ordinary way of man and wife. The fact that one of them is physically away from the other for a time, even for a long time, whether from duty or illness or other cause, is no reason for saying that the wife is not "living with her husband". The second proviso deals with the contrasted case where there has been a rupture in normal marital relations. This may arise from a decree of judicial separation, or from the parties executing a deed of separation, or from a more informal agreement between the spouses that they will not live together. The words "whether the husband be temporarily absent from her or from the United Kingdom" in the second proviso apply, *e.g.*, to a case where a husband and wife, who have not been getting on well together, agree that they will live separate from one another for a time, and will then see whether it would not be better to come together again and live in a common home as an ordinary man and wife; and the words "or otherwise" in the same proviso cover a case where the separation is permanent and the husband's absence has no set limit: *NUGENT-HEAD v. JACOB*, [1948] A. C. 321; [1948] L. J. R. 759, H. L. (reversing decision of Court of Appeal, [1947] C. L. Y. 1451; restoring decision of Macnaghten, J., 62 T. L. R. 66; applying *Eadie v. I. R. C.*, [1924] 2 K. B. 198; criticising *Derry v. I. R. C.*, [1927] S. C. 714).

1680. — — —. [*Eire.*] In *UA CLOTHASAIGH v. McCARTAN*, [1948] Ir. R. 219, the High Court of *Eire* held that it must be taken as settled law that the words of r. 16, proviso 1, "married woman living with her husband" include wives who are temporarily separated from their husbands by force of circumstances.

1681. — *r. 21—monthly payments to holder of life insurance policy.* The following two propositions are well established in the application of the law relating to income tax:—

1. The name given to a transaction by the parties concerned does not necessarily decide the nature of the transaction. The question always is what is the real character of the payment, not what the parties call it.
2. A transaction which, on its true construction, is of a kind that would escape tax is not taxable on the ground that the same result could be brought about by a transaction in another form which would attract tax.

In return for the sum of £500 paid by the assured to the society a lump sum payment on death equal to £4 14s. 8d. for each completed month from the date of the insurance policy was payable by the society. In addition, the assured had the option of borrowing sums not exceeding what would be payable by way of lump sum under the policy if he had died on the date when the loan was granted. The loan was to be free of interest and was not recoverable by the society otherwise than on the death of the assured and out of the sum then payable. The assured decided to borrow from the society to the maximum extent permitted by the policy, and the society, accordingly, paid to the assured £4 14s. 8d. in eight successive months until the end of the fiscal year. The Crown contended that these monthly payments constituted instalments of an annuity which were liable to tax under r. 21 of the All Schedules Rules. Held, the legal relationship created by the transaction between the parties was that of lender and borrower, and, consequently, the payments were not subject to income tax: *I. R. C. v. WESLEYAN AND GENERAL ASSURANCE SOCIETY*, [1948] W. N. 120; [1948] L. J. R. 948; [1948] 1 All E. R. 555, H. L. (affirming decision of Court of Appeal, [1947] C. L. Y. 1495; reversing decision of Macnaghten, J., 90 S. J. 479).

- 1682.** — — — **sums raised out of capital.** (Finance Act, 1927 (17 & 18 Geo. 5, c. 10), s. 26 (1).) It is always open to a settlor to determine the nature of the interest he retains, but in order to see what that is the Court must look at the settlement. By a settlement it was provided that the trustees were to hold the income from a sum of £100,000 paid to them by the settlor, to which the latter was absolutely entitled, on protective trusts for the benefit of the settlor during his life. Clause 5 of the settlement provided: "... whenever in ... any ... year ... the income of the trust fund actually received by the trustees shall be less than such a sum as after deduction therefrom of income tax at the current rate for the time being ... in respect thereof will leave the net amount of £6,500 ... then the trustees unless directed in writing by the settlor to the contrary shall at the end of such year forthwith raise out of the capital of the trust fund and pay to the settlor for his own benefit the amount of the said deficiency of income in such year ...". In none of the years in question had the income of the trust fund amounted to £6,500, and the trustees raised various sums out of the capital of the trust fund which amounted to less than the total deficiency which they were authorised to raise. Held, (1) it was wholly immaterial who provided the funds from which the annual payments were to be made; the settlor had chosen to attach an income quality to these payments and had to abide the consequences; (2) as the settlor under clause 5 of the settlement had power to direct the raising of a smaller sum, the proper inference from the facts was that the sums in question were paid and received as gross sums from which the deductions which ought to have been made pursuant to r. 21 of the All Schedules Rules were not made: *MORANT SETTLEMENT (TRUSTEES) v. I. R. C.*, *I. R. C. v. MORANT SETTLEMENT (TRUSTEES)*, [1948] 1 All E. R. 732; *C. A. (Tucker, L.J., dissenting on the second point; distinguishing Wheeler v. Humphreys, [1898] A. C. 506; Re Cochrane, [1906] 2 I. R. 200; and New South Wales Stamp Duties Commissioner v. Public Trustee Co., [1943] A. C. 425).*
- 1683. Settlement — payment to settlor.** (Finance Act, 1939 (2 & 3 Geo. 6, c. 41), s. 40 (1), (3).) In *PORTS' EXECUTORS v. I. R. C.*, [1948] T. R. 297, Singleton, J., held that where a company connected with the settlement within the meaning of s. 40 (3) of the Finance Act, 1939, made payments to third parties and debited such payments to the account of the settlor with the company, the sums so paid were not to be treated as having been paid by the trustees of the settlement to the settlor under the provisions and within the meaning of s. 40 (1) and (3) of the Act.
- 1684. Special commissioners—discretionary powers.** See *I. R. C. v. ROSS AND COULTER*, § 3539.
- 1685.** — — — **finding of fact.** See *WITHERS v. NETHERSOLE*, § 1639.
- 1686. Special contribution.** See *SPECIAL CONTRIBUTION*.
- 1687. Surtax — apportionment of undistributed income — "actual income from all sources".** (Finance Act, 1922 (12 & 13 Geo. 5, c. 17), s. 21.) Where actual income from all sources of company No. 1 is attributed to company No. 2, as the result of an apportionment for the purpose of an assessment to surtax, that attributed income does not form part of the "actual income from all sources" of company No. 2 within the meaning of the Finance Act, 1922, s. 21. See *LORD HOWARD DE WALDEN v. I. R. C.*, § 1688.
- 1688.** — — — **from shares of foreign company.** (Finance Act, 1938 (1 & 2 Geo. 6, c. 46), s. 41 (4) (a) (ii); Finance Act, 1939 (2 & 3 Geo. 6, c. 41), s. 13 (3) (4).) It is not permissible to expand the reference in s. 41 (4) (a) (ii) of the Finance Act, 1938, to bodies whose income is apportionable so as to embrace bodies to whom that income is apportioned. Therefore, the principle established by s. 21 of the Finance Act, 1922, and by s. 32 of the Finance Act, 1927, that only income apportioned or sub-apportioned to a controlled British company, but not income apportioned or sub-apportioned to a foreign company, is sub-apportionable, has not been affected by the provisions of s. 41 (4) (a) (ii) of the Finance Act, 1938 (as amended by s. 13 (3) of the Finance Act, 1939), with the result that income apportioned or sub-apportioned to a foreign company can never in any circumstances become "income arising under a settlement" within the meaning of the subsection.

The trustees of the settlement made by the taxpayer E., held shares in D., a Canadian company under the control of the taxpayer, on trusts under which at all material times the whole of the income arising from the shares was payable to the taxpayer. D. held all the shares in six other companies incorporated in Canada which were under the control of the taxpayer. D. had declared no dividends and the trustees of the settlement had consequently made no distribution of income. The question arose whether, on the true construction of the Finance Act, 1938, s. 41 (4) (a) (ii), when read in conjunction with the Finance Act, 1939, s. 13 (3) and (4), income of the six other companies could be apportioned to D. and then sub-apportioned to the trustees of the settlement. Held, as D. was not in fact incorporated in the United Kingdom there could be no sub-apportionment of any income apportioned to it: *LORD HOWARD DE WALDEN v. I. R. C.*, [1948] W. N. 419; [1948] 2 All E. R. 825, H. L. (reversing decision of Court of Appeal, [1947] C. L. Y. 1499, *sub nom. I. R. C. v. Scott-Ellis*). (See also §§ 1687, 3548.)

- 1689.** — **settlement—joint power of appointment by settlor and son.** (Finance Act, 1938 (1 & 2 Geo. 6, c. 46), s. 38 (3), (4).) "Income . . . may become payable to or applicable for the benefit of the settlor . . ." within the meaning of s. 38 (4) of the Finance Act, 1938, where the settlor has a joint power of appointment over the funds of the settlement.

Under a settlement certain investments were held on trust for the taxpayer for life, and, subject to that, to the use of the taxpayer's son in tail male. By a resettlement the taxpayer and his son disentailed the investments and provided that the trustees of the resettlement should stand possessed of the investments upon such trusts as the taxpayer and his son should from time to time by any deed or deeds revocable or irrevocable jointly appoint. Another clause of the resettlement provided that the trustees should accumulate the income from the investments until certain events happened. On the happening of one of these events the trustees had an absolute discretion to pay and transfer the accumulations to the son for his own use and benefit. During the years in respect of which the taxpayer had had additional assessments to tax made against him none of these events had yet happened. The taxpayer now appealed against these additional assessments. Held, the taxpayer must be deemed to have an interest in income arising under the settlement within the meaning of s. 38 (4) of the Finance Act, 1938, because by an arrangement between him and his son the income might at any time become payable for his benefit: *GLYN v. I. R. C.*, [1948] W. N. 278; [1948] L. J. R. 1813; [1948] 2 All E. R. 419, Singleton, J.

- 1690.** — **power to revoke or determine.** (Finance Act, 1938 (1 & 2 Geo. 6, c. 46), s. 38 (1) (a).) The natural meaning of the words in s. 38 (1) of the Finance Act, 1938, "if the terms of any settlement are such that any person has power to revoke or otherwise determine the settlement or any provision thereof" is that the power must be formed and conferred by the terms of the settlement. The language of s. 38, in speaking of a power to revoke or determine, is not apt to include some power residing in a third party quite unconnected with the settlement, the exercise of which, by him, in ignorance of the existence of the settlement, may automatically result in the destruction of the source from which the settlement derives its funds. Thus, in a case where a settlor covenanted to pay specified annuities out of the dividends from his shares in a private company, it was held that the power to dissolve the company and thereby to revoke or determine the settlement was not a power under or conferred by the settlement but a power under company law and the articles of association, and, consequently, that such dividends constituted an admissible deduction in computing the settlor's total income for surtax purposes: *WOLFSON v. I. R. C.*, [1948] 1 All E. R. 725, C. A. (Tucker and Somervell, L.J.J., Cohen, L.J., dissenting; affirming decision of Atkinson, J., [1947] C. L. Y. 1503).

- 1691.** — **transfer of assets abroad.** (Finance Act, 1936 (26 Geo. 5 & 1 Edw. 8, c. 34), s. 18.) The following principles can be stated to arise on the true construction of s. 18 of the Finance Act, 1936:

1. An individual can, within the meaning of the section, be said to acquire rights "by means of" a transfer of assets if the transfer is effected neither by the individual nor by his or her agent, but by a company the whole or the greater part of the share capital of which is held by or on

behalf of that individual, *i.e.*, the words "by means of" do not connote any personal activity by the individual who is said to enjoy or suffer something by those means, and do not have to be read in the limited sense of "effected by him".

2. A transfer of assets to a company, which, at the time of transfer, is neither resident nor domiciled out of the United Kingdom, but which thereafter becomes resident out of the United Kingdom and receives income from the transferred assets, is, within the meaning of the section, a transfer "by virtue or in consequence whereof, either alone or in conjunction with associated operations, income becomes payable to" a person resident out of the United Kingdom.

Quære: whether the income payable to a person resident outside the United Kingdom is to be deemed to be the income of the resident taxpayer though it cannot be traced to any transferred assets.

The taxpayers, husband and wife, were American nationals ordinarily resident in the United Kingdom. The wife's father had a controlling interest in an English company. He transferred assets from this English company to a Canadian company and by means of these transfers and other operations the wife had power to enjoy the whole of the income of the Canadian company. Some other companies, in which the wife's father had also a controlling interest, had originally been incorporated and resident within the United Kingdom and had afterwards become resident in Canada. In this case too, the wife by reason of the transactions and operations of her father had power to enjoy the whole of the income of such companies. At the material dates the control of all these companies had been vested abroad. The taxpayers had a controlling interest in them, and it was not disputed by the taxpayers that the avoidance of liability to taxation was the purpose or one of the purposes of the transactions within the meaning of the section. Held, although the transfers had not been made by the taxpayers personally, the wife had by means of such transfers acquired the rights referred to in the section with the result that the prescribed consequences followed. Moreover, the section was wide enough to include transfers to a company in the United Kingdom, where the company afterwards removed itself outside the United Kingdom: *CONGREVE v. I. R. C.*, [1948] W. N. 197; [1948] L. J. R. 1229; [1948] 1 All E. R. 948, H. L. (affirming decision of Court of Appeal, [1947] C. L. Y. 1506; reversing decision of Wrottesley, J., [1946] 2 All E. R. 170).

1692. — (Finance Act, 1936 (26 Geo. 5 & 1 Edw. 8, c. 34), s. 18; Finance Act, 1938 (1 & 2 Geo. 6, c. 46), s. 38.) In *LORD VESTEY'S EXECUTORS AND VESTEY v. I. R. C.* (1948), Tax Leaflet No. 1456, one appellant and his brother (whose executors were the other appellants) demised certain properties situated abroad to a company by a lease whereby the rent was payable to three trustees who were resident in Paris; and by a settlement executed the day after the lease the trustees were directed to capitalise the rent received by them and to hold the capitalised fund upon trusts to accumulate and to hold the accumulated fund upon trust for such of the children and remoter issue of the two lessors as they might (with respect to the half of the fund appropriated to each of them) by deed or will appoint. The settlement provided that the trustees should at the direction of specified persons (who during the relevant periods were the lessors) lend trust money to any person on personal credit. The lease contained a provision for the withdrawal of any of the demised properties with provision for reduction of the rent in case of such withdrawal; and the lease was determinable on six months' notice by either the lessors or the lessees. The Court of Appeal (on appeal from the decision of Macnaghten, J., [1947] C. L. Y. 1500) held that the lessors were properly assessed to surtax in respect of the rent received by the Paris trustees in pursuance of s. 18 of the Finance Act, 1936; and that the lease and the settlement together constituted a settlement for the purposes of s. 38 of the Finance Act, 1938.

1693. — war damage—interest on value payments. Surtax liability will be adjusted so as to prevent, as far as possible, the payment of a larger amount of surtax than would have been payable if the interest on value payments accrued from the date of war damage to the date of payment had been paid annually: *Law Society's Gazette*, January, 1948, p. 10.

- 1694. ARTICLES.** Penalty proceedings: *Taxation*, January 17, 1948, p. 299. S. 34, claims (founded on *R. v. General Commissioners for the St. George Division, ex p. Hood-Barra*, [1947] C. L. Y. 1459): *Accountant*, January 3, 1948, p. 3. Taxation in legal practice; periodical payments: 92 S. J. 80. Some assessments on solicitors: 92 S. J. 106. If the inspector discovers (founded on *Commercial Structures v. Briggs*, § 1641): 98 L. J. 104. Farm land—computing annual value (founded on *De Poix v. Chapman*, [1947] C. L. Y. 1477): *Taxation*, February 21, 1948, p. 402. Practical methods of settling income tax computations: *Accountant*, February 7, 1948, p. 100. Income tax profits (meaning of “profits” for purposes of income tax): *Taxation*, February 28, 1948, p. 425. Non-resident employees: *Accountant*, February 28, 1948, p. 160. Farming: irrevocable election (founded on Finance Act, 1947, Sched. X): 40 *Accountants' Journal* 42. For and against the herd basis (founded on Finance Act, 1947, Sched. X): *Accountant*, March 6, 1948, p. 178. Retirement benefits and money's worth: 98 L. J. 135. Rents under long leases: 98 L. J. 177. Capital or income? (lump sum payments for use of a patent or copyright): 98 L. J. 202. Married women and income tax (r. 16 of the All Schedules Rules and *Nugent-Head v. Jacobs*, § 1679): 205 L. T. 226. Interest by way of damages—income or capital (founded on *Riches v. Westminster Bank*, [1947] C. L. Y. 1474): 98 L. J. 271. Settlements and surtax (founded on *I. R. C. v. Payne* (1941), 23 T. C. 610; *MacAndrew v. I. R. C.* (1943), 25 T. C. 500; *Wolfson v. I. R. C.*, § 1690): 205 L. T. J. 285. Annuities and taxation (founded on the Finance Bill, 1948, *Brodie's Trustees v. I. R. C.* (1933), 17 T. C. 432, *Cunard's Trustees v. I. R. C.*, [1946] 1 All E. R. 159): 92 S. J. 293. Income tax—profits from sandpit (founded on *Russell (Inspector of Taxes) v. Scott*, § 1666): 205 L. T. J. 298, 301. Taxation law and practice (Schedule E): *Taxation*, May 29, 1948, p. 159. Conversion to company (disturbance of normal preceding year basis of assessment): *Taxation*, May 29, 1948, p. 164. Income tax wear and tear allowances (amendments and additions): *Taxation*, May 29, 1948, p. 165. Subscriptions to trade associations: *Taxation*, May 1, 1948, p. 79. Taxation in legal practice—trusts and settlements: 92 S. J. 316. The taxation of settlement income: *Accountant*, June 12, 1948, p. 458. Deductions of tax from annual payments (founded on *Johnson v. Johnson*, [1946] 1 All E. R. 573): *Taxation*, June 12, 1948, p. 202. Patents—payment for licence (founded on *Rustproof Metal Window Co. v. I. R. C.*, [1947] C. L. Y. 1142): *Taxation*, June 12, 1948, p. 204. Unclaimed balances (founded on *I. R. C. v. Jay's The Jewellers*, [1947] C. L. Y. 1163A): *Taxation*, June 12, 1948, p. 205. Tax avoidance by interposition of companies (founded on Finance Act, 1922 (12 & 13 Geo. 5, c. 17), s. 21): 98 L. J. 341. Author's copyright (founded on *Withers v. Nethersole*, § 1677, and Finance Act, 1944 (7 & 8 Geo. 6, c. 23), s. 24): *Taxation*, June 26, 1948, p. 244. Taxation in legal practice—solicitors again (tax cases concerning solicitors): 92 S. J. 344. Is intensive egg-production husbandry? (founded on *Reid v. I. R. C.*, [1947] C. L. Y. 1466): 98 L. J. 425. The Income Tax Commissioners (the past and present functions of the General Commissioners of Income Tax), by A. Farnsworth: 64 L. Q. R. 372. Payments for the user of patents: *Taxation*, August 28, 1948, p. 421. Partnership: *Taxation*, August 28, 1948, p. 425. The Finance Act, 1948: 92 S. J. 520, 534. Payments for the user of patents (founded on Income Tax Act, 1945): *Taxation*, August 28, 1948, p. 421. Finance Act, 1948—expense allowances and benefits in kind (founded on Finance Act, 1948, ss. 38-46): *Taxation*, September 25, 1948, p. 500. Foreign possessions over twenty-one years (founded on *Archer-Shee v. Baker* (1927), 11 T. C. 749): *Taxation*, October 2, 1948, p. 11. Money wholly and exclusively laid out or expended for the purposes of the trade (founded on *Smith's Potato Estates v. Bolland*, § 1673): *Solicitor*, October, 1948, p. 229. Expenses allowances to directors and employees: 98 L. J. 598. Location of a public office for the purposes of taxation, by J. A. Coutts (founded on *Tipping v. Jeancard*, § 1678): 13 *Conveyancer* (N.S.) 129.
- 1695. BOOKS PUBLISHED.** Butler, R. A.—*Income Tax for Everyman*. 1948-9 ed. [2s. 6d.]. Carter's *Income Tax, Surtax and Profits Tax*. 4th ed. by G. W. Murphy [15s.]. Daily Mail *Income Tax Guide*, 1948-9 [1s.]. Fieldhouse, A.—*Income Tax Simplified*. 19th ed. [2s. 6d.]. Harris, R. W.—*At Home with Income Tax*. 2nd ed. [8s. 6d.]. Mortimer, W. C.—*Income Tax for Executors*

and Trustees [18s.]. Murray, A., and Carter, R. N.—Guide to Income Tax Practice. Supplement to 16th ed. [5s.]. Newport, C. A.—Income Tax Law and Practice. 20th ed [20s.]. Simon, Rt. Hon. Viscount—Income Tax. [15 gns.; quarterly service 63s. per annum or 52s. 6d. per annum for a five year contract.] Smith, S. C. H.—A.B.C. of Income Tax Return Making. 52nd ed. [7s. 6d.]. Spicer, E. E., and Pegler, E. C.—Income Tax and Profits Tax. 18th ed. [25s.]. Staples, R.—“Taxation” Key to Income Tax and Surtax, 1947-8. 27th ed. [5s.]. Staples, R.—“Taxation” Key to Income Tax and Surtax. 28th ed. [5s.]. Whillans, G.—Tax Tables, 1948-49 [3s. 6d.]. Wilson, H. A. R. J., and Heaton, J. S.—Income Tax Act, 1945 [25s.].

1696. — OVERSEAS PUBLICATION. Kennedy, L. W.—Federal Income Taxation of Trusts and Estates (U.S.A.) [85s.].

INDUSTRIAL SOCIETIES

1697. **Co-operative society—selling produce exclusively to members—tax liability.** See ENGLISH AND SCOTTISH JOINT CO-OPERATIVE WHOLESALE SOCIETY v. ASSAM AGRICULTURAL INCOME TAX COMMISSIONER, § 1668.

1698. **Disputes—expulsion of member.** (Industrial and Provident Societies Act, 1893 (56 & 57 Vict. c. 39), s. 49 (1).) S. 49 (1) of the Industrial and Provident Societies Act, 1893, provides: “Every dispute between a member of a registered society . . . and the society . . . shall be decided in manner directed by the rules of the society . . . and the decision so made shall be binding and conclusive on all parties without appeal, and shall not be removable into any Court of law . . .”.

The plaintiff had been elected a member of the defendant club, which was a club registered under the Industrial and Provident Societies Acts, 1893 to 1928. Rule 14 of the club gave the committee of the club power to suspend or expel members. Rule 15 gave a member who had been suspended or expelled the right to appeal to an arbitrator, whose decision under rule 28 (2) was to be final. The plaintiff had been expelled from the club under the provisions of rule 29 of the club which prohibited gambling. The defendants made an application to stay proceedings brought by the plaintiff for an injunction to restrain the defendants from enforcing his suspension from their club, for a declaration that he was still a member, and for damages. Held, the decision of *Palliser v. Dale*, [1897] 1 Q. B. 257, forced the Court of Appeal to hold that a dispute as to whether a person is a member of a society or not is not a dispute between the society and a member of it as such, within the meaning of s. 49 (1) of the Industrial and Provident Societies Act, 1893, and, consequently, the defendants' application failed: *JUDSON v. ELLESMERE PORT EX-SERVICEMEN'S CLUB*, [1948] 2 K. B. 52; [1948] L. J. R. 1358, C. A. (applying *Prentice v. London* (1875), L. R. 10 C. P. 679; following but doubting *Palliser v. Dale*, *supra*; *Willis v. Wells*, [1892] 2 Q. B. 225; distinguishing *Heyman v. Darwins*, [1942] A. C. 356).

1699. BOOK PUBLISHED. Surridge, B. J., and Digby, M.—Manual of Co-operative Law [12s. 6d.].

INFANTS, CHILDREN AND YOUNG PERSONS

1700. **Adoption—adopted child—member of family.** [Cty. Ct.] See *SHEPHERD v. NAYLOR*, § 3220; [Cty. Ct.] *BROCK v. WOLLAMS*, § 3221.

1701. — **appointment of Official Solicitor as guardian ad litem.** (Adoption of Children Act, 1926 (16 & 17 Geo. 5, c. 29), s. 8 (3).) The appointment of a guardian *ad litem* on an application under s. 8 (3) of the Adoption of Children Act, 1926, is a matter of public policy and not a matter which concerns the family and which should be limited to the family and their advisers.

A girl aged fifteen had given birth to a child and the parents of the girl, who were the applicants for an adoption order, were anxious to make the whole world believe that the child was not the child of the girl but of her parents, and for this reason contended in an application under s. 8 (3) of the Adoption of Children Act, 1926, that there were special reasons for the appointment as guardian *ad litem* of a person other than the Official Solicitor. Held, that the special reasons shown in the case were in favour of the appointment of the

Official Solicitor: *Re A. B. (AN INFANT)*, 64 T. L. R. 573; [1949] L. J. R. 21, Roxburgh, J. (reported *sub nom. Re D. X. (An Infant)*), [1948] W. N. 377).

- 1702. — validity of order.** (Adoption of Children Act, 1926 (16 & 17 Geo. 5, c. 29), s. 1 (3); Adoption of Children (County Court) Rules, 1926 (S. R. & O., 1926, No. 1602), rr. 8, 9, 12.) An adoption order, when made, is not a mere order operating *inter partes* and affecting only the status of the new adopters. It is essentially something which alters the status of the infant who is the person primarily affected and interested. Consequently, if there are any appropriate proceedings as the result of which an adoption order can be either set aside or lawfully disregarded by another Court—and it is doubtful whether any such proceedings are available—that can be done only in the presence of the infant, who was a party to the making of the order, and must be a party to any proceedings taken to set it aside.

In 1941, the plaintiff, who was the natural mother of an infant, went through a ceremony of marriage with the defendant. In 1942, the county court on the petition of the plaintiff and of the defendant made an adoption order in respect of the infant under s. 1 (3) of the Adoption of Children Act, 1926. Subsequently the defendant was convicted of bigamy in respect of the marriage which he went through with the plaintiff, and in 1947, on the application of the plaintiff to the justices the latter ordered the defendant as the father of the infant to pay 10s. a week for the maintenance of the infant to the plaintiff, thereby recognising the validity of the adoption order. Vaisey, J., had held that as the plaintiff had, before the justices, stated that the defendant had bigamously married her, she could not be heard to assert the validity of the adoption order, because by that statement she was asserting the existence of a state of facts which, if it existed, would have deprived the county court of jurisdiction to make the order. Held, on appeal, the order of the county court could not have been disregarded by the justices, and, consequently, the appeal should be allowed: *SKINNER v. CARTER*, [1948] Ch. 387; [1948] L. J. R. 1628, C. A. (reversing decision of Vaisey, J., [1948] 1 All E. R. 42; *sub nom. Re Skinner, Skinner v. Carter*).

- 1703. Approved schools — superannuation of officers.** S. 14 of the Superannuation (Miscellaneous Provisions) Act, 1948 (11 & 12 Geo. 6, c. 33), contains provisions extending the powers of managers of approved schools to pay or contribute towards the payment of superannuation allowances to certain officers so as to cover officers who have entered into certain other pensionable employment. See also § 2656.

- 1704. Capacity to contract—separation agreement by infant wife.** [N.Z.] In *HOLE v. HOLE*, [1948] N. Z. L. R. 42, the Supreme Court of New Zealand held that the validity or otherwise of a separation agreement entered into by a minor was a question to be considered on the general principles applicable to the capacity of infants to contract, and that an infant has no right to terminate the contract of marriage unless it is clearly shown that it was for his or her benefit to do so, and that, in the absence of such proof, such a separation agreement was invalid.

- 1705. Children Act, 1948 (11 & 12 Geo. 6, c. 43).** This Act, which is based on the recommendations of the Curtis and Clyde Reports, has as its main object the care of children and young persons who have no ordinary home, and it seeks to achieve this object by providing that such children are to be cared for either by the local authority or by some voluntary charitable organisation.

The Act is divided into seven Parts. Part I (ss. 1-10) deals with the duty of local authorities to assume care of children in their area under seventeen years of age who have no parents nor guardians, or who have been abandoned or are lost or whose parents or guardians are incapable or unfit to provide proper maintenance, etc. In certain circumstances the local authority may assume parental rights over the child (ss. 2, 3). S. 5 makes a local authority a "fit person" to undertake the care of a child for the purpose of the Children and Young Persons Act, 1933 (23 & 24 Geo. 5, c. 12), s. 76. S. 7 provides for children whose care is the responsibility of the Minister of Pensions; and s. 8 deals with children becoming subject to the Mental Deficiency or Lunacy and Mental Treatment Acts.

Part II (ss. 11-22) deals with the treatment of children in the care of local authorities. In particular, ss. 13-16 prescribe various methods of providing accommodation and maintenance either by boarding out or by providing homes.

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S. 17 gives power to local authorities to arrange for emigration. S. 18 authorises local authorities to arrange for the burial or cremation of a child dying while under their care. S. 19 empowers local authorities to provide hostels for persons under twenty-one in certain cases, and s. 20 authorises local authorities to give financial assistance for the maintenance, education or training of such persons (being over eighteen).

Part III (ss. 23-26) deals with contributions towards the maintenance of children received into the care of a local authority under the Act. The persons liable to contribute are the father and mother (until the child is sixteen) and after that the young person himself, if engaged in full-time work (s. 24). Provisions as to affiliation orders and the power of local authorities to apply for such orders are contained in s. 26.

Part IV (ss. 27-34) contains provisions as to voluntary homes and voluntary organisations. Under s. 29, after the end of 1948, all voluntary homes must be registered. Regulations may be made as to the conduct of voluntary homes (s. 31) and for the control of the activities of voluntary organisations (s. 33). The after-care of children formerly in the care of local authorities or voluntary organisations is provided for in s. 34.

Part V (ss. 35-37) deals with child life protection. Certain provisions of the Public Health Act, 1936 (26 Geo. 5 & 1 Edw. 8, c. 49), the Adoption of Children (Regulation) Act, 1939 (2 & 3 Geo. 6, c. 27) and other Acts, which formerly applied only to children under nine, are extended to cover all children of compulsory school age (s. 35), and may be extended to children up to eighteen in certain cases (s. 36).

Part VI (ss. 38-49) contains administrative and financial provisions, including provisions for the establishment of children's committees (s. 39) and children's officers (s. 41).

Part VII (ss. 50-62) contains miscellaneous and general provisions. S. 50 inserts a new sub-s. (2A) in s. 4 of the Guardianship of Infants Act, 1925 (15 & 16 Geo. 5, c. 45), as to appointment of guardians by the Court. S. 52 amends the Family Allowances Act, 1945 (8 & 9 Geo 6, c. 81), s. 11, as to children treated as included in a family. S. 54 contains provisions as to entry and inspection; and s. 56 authorises authorities to acquire land compulsorily for the purposes of their functions under the Act. Transitional provisions are contained in Sched. 2.

The Act applies to Scotland and (subject to such modifications as may be made) to the Scilly Islands (s. 61); but not to Northern Ireland (s. 62 (3)). It came into operation on July 5, 1948 (s. 62 (2)).

- 1706. — compensation of officers.** Children Act (Compensation of Officers) Regulations, 1948 (No. 1501), made under the Children Act, 1948, s. 57; came into operation on July 5, 1948; provide for the payment of compensation to former employees of certain local authorities who suffer loss of employment or diminution of emoluments by reason of the passing of the Act. [5d.]
- 1707. — transfer and superannuation of officers.** Children Act (Transfer and Superannuation of Officers) Regulations, 1948 (No. 1502), made under the Children Act, 1948, s. 57; came into operation on July 5, 1948; provide for the transfer and superannuation of officers employed by local authorities whose functions are transferred under the Act.
- 1708. Criminal offenders—changes in law as to.** See § 714.
- 1709. Custody—and maintenance—two summonses.** See *HEWORTH v. HEWORTH*, § 913; *FLOOD v. FLOOD*, § 914.
- 1710. — declaration that divorced parent not fit to have.** (Guardianship of Infants Act, 1886 (49 & 50 Vict. c. 27), s. 7.) A Judge sitting in chambers has no power to make a declaration under s. 7 of the Guardianship of Infants Act, 1886, to the effect that a divorced parent is not fit to have the custody of the children of the marriage. The application must be made and determined in open Court: *CLIFF v. CLIFF*, [1948] W. N. 380; 64 T. L. R. 555; [1948] 2 All E. R. 760 n., C. A.
- 1711. — illegitimate child.** [Cty. Ct.] In *SEYMOUR v. COLLINS* (October 21, 1948), Judge Whitmee held that he had no jurisdiction under the Guardianship of Infants Acts, 1886 to 1925, to make an order for custody in favour of the mother

of an illegitimate child against the persons who had *de facto* custody of the child. [*Ex rel. E. Brian Gibbens, Esq., Barrister-at-Law.*]

- 1712. — welfare of child.** (Guardianship of Infants Act, 1925 (15 & 16 Geo. 5, c. 45), s. 1.) The "welfare" of a child which is stated in s. 1 of the Guardianship of Infants Act, 1925, to be the paramount consideration in deciding the question of custody or upbringing includes both its moral and its physical welfare. It does not follow from the mere fact of a mother's adultery, in the absence of any other evidence against her, that she is not a proper person to have the custody or the care and control of her child. In particular, there is no justification for the supposition that a woman who has once committed adultery will always repeat it.

The father of a girl aged eight, who had obtained a divorce decree on the ground of the adultery by the girl's mother with the co-respondent, had since married a widow with two children. The mother had subsequently married the co-respondent. The girl had always lived with her mother, and there was medical evidence that her health would be affected adversely, if she were transferred to the father and separated from the mother. There was no suggestion that the mother was promiscuous, or a bad mother, or a bad housekeeper. Wallington, J., had made an order entrusting the care and control of the girl to the father. Held, on appeal, it would not be right to snatch this girl from her mother and to force her to make a new start with her father, and, consequently, the order should be reversed; but the father should have access for substantial periods: *ALLEN v. ALLEN* (1948), 64 T. L. R. 418; 112 J. P. 355; 92 S. J. 392; [1948] 2 All E. R. 413, C. A.

- 1713. Factories—employment of young persons.** See §§ 1418, 1427.
- 1714. Guardianship of Infants Acts, 1886–1925—appeals.** See § 2757.
- 1715. Invitee or trespasser.** See *PEARSON v. COLEMAN BROTHERS*, § 2481; *BUCKLAND v. GUILDFORD GAS LIGHT AND COKE CO.*, § 2477.
- 1716. Legitimated children—nationality.** See s. 23 of the British Nationality Act, 1948 (11 & 12 Geo. 6, c. 56), § 118.
- 1717. Next friend—costs.** [Can.] See *MORRIS v. WABASH RY. CO.*, § 2792.
- 1718. Nursery and Child-minders Regulation Act, 1948 (11 & 12 Geo. 6, c. 53).** The purpose of this Act is to provide for the regulation of nurseries, where children are received to be looked after either for the day or continuously for any period not exceeding six days while their mothers are at work or otherwise unable to look after them, and of persons who for reward and in their own homes receive children under five to be looked after for similar periods. Provision is made for the registration of such nurseries and persons by local health authorities (s. 1). Authorities may refuse registration on good grounds (s. 1 (3), (4)) or impose requirements in connection with registration (s. 2), or cancel registration in specified circumstances (s. 5). Registration is compulsory in the case of all nurseries covered by the Act, and in the case of all persons who receive children into their own homes if the children come from more than one family and exceed two in number, and failure to register, or non-compliance with any requirement imposed by the local health authority in connection with registration, is punishable as an offence (s. 4). Where a local health authority propose to refuse or cancel a registration or to impose requirements the person affected must be given an opportunity to be heard by the authority, and, if aggrieved by the authority's decision, may appeal to a Court of summary jurisdiction (s. 6). Provision is also made for the inspection on behalf of the local health authority of premises used as nurseries or for minding (s. 7). Hospitals and certain other institutions are wholly exempted from registration (s. 8), and nurseries and minders covered by existing child life protection enactments are saved from dual inspection and control (ss. 9, 10). The Act applies to Scotland, but not to Northern Ireland (s. 13 (4)).
- 1719. Posthumous children—nationality.** See s. 24 of the British Nationality Act, 1948 (11 & 12 Geo. 6, c. 56), § 118.
- 1720. Registration of births.** See *REGISTRATION OF BIRTHS, DEATHS AND MARRIAGES*.
- 1721. Voluntary homes—applications for registration.** Voluntary Homes (Registration) Regulations, 1948 (No. 2408) [E.], made under the Children Act, 1948 (11 & 12

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Geo. 6, c. 43), s. 29 (2); came into operation on November 15, 1948; prescribe forms of application for the registration of voluntary homes under that section.

1721a. Young offenders. See § 714.

1722. Youth employment. See EMPLOYMENT.

1723. ARTICLES. Juvenile offenders and neglected children in London: 112 J. P. J. 99. Children Act: 112 J. P. J. 101, 566; 98 L. J. 241, 255. The Juvenile Court: 92 S. J. 105. Maintenance of children: 98 L. J. 149. Accidents to children at school: 205 L. T. 241. Beyond control (founded on s. 64 of the Children and Young Persons Act, 1933): 112 J. P. J. 446. Adoption of children: 92 S. J. 400; 112 J. P. J. 496. Arrears under guardianship orders: 112 J. P. J. 712.

1724. BOOKS PUBLISHED. Fry, M.—Lawless Youth. A Policy for the Juvenile Courts [10s. 6d.]. Mannheim, H.—Juvenile Delinquency in an English Middletown [12s. 6d.]. Morrison, A. C. L. and Wells, M. M.—Children Act, 1948 [15s.]. Neglected Child and His Family [5s.]. Watson, J. A. F.—British Juvenile Courts [2s.]. Youthful Lawbreakers. Study of Juvenile Delinquency in Liverpool [2s. 6d.].

INNKEEPERS

1725. Compensation on requisitioning of hotel—National Defence Contribution. See *I. R. C. v. BUXTON PALACE HOTEL*, § 1353.

1726. Fire—duty to warn guest. [Can.] In *ZAWYRUCHA v. RED LAKE HOTEL CO.*, [1948] 1 D. L. R. 669, the High Court of Ontario held that an innkeeper is not responsible for neglecting to warn his guest of the breaking out of a fire in the building so as to enable him to escape.

1727. Hotels Executive—appointed day. See § 3756.

1728. Intoxicating liquors. See INTOXICATING LIQUORS.

1729. Property of guest—liability for negligence. An hotel keeper must be presumed to know that dishonest people do get into hotels for the purpose of stealing. What is a default or neglect on the part of an innkeeper depends entirely on the particular facts and varies according to the nature of the hotel and of the act or acts alleged to constitute negligence.

A door of the plaintiff's bedroom in a hotel provided a communicating door to another bedroom which like the plaintiff's bedroom had its own exit to the hotel corridor. This communicating door had a turnbuckle which could easily be forced by the weight of the body. The plaintiff had given instructions to have the communicating door locked, but his instructions were never carried out and articles were stolen from the plaintiff's bedroom. Held, it was negligence on the part of the defendants not to have locked the door, and it was not open to them to say that if they had taken the precaution it would have been of no use: *BONHAM-CARTER v. HYDE PARK HOTEL*, [1948] W. N. 89; 64 T. L. R. 177; Lord Goddard, C.J. (See also § 826.)

1730. — residential hotel. In *OLLEY v. MARLBOROUGH COURT* (December 3, 1948), the Court of Appeal (Bucknill, Singleton and Denning, L.J.J.) dismissed an appeal from Oliver, J., [1948] 1 All E. R. 955. They held that the hotel proprietors had been guilty of negligence in respect of the theft of the guest's belongings from her bedroom and that a notice in the bedroom about the depositing of valuables was ambiguous. [Reported by R. C. Calburn, Esq., Barrister-at-Law.] See also [1949] 1 C. L. 21.

INSURANCE

1731. Accident insurance—members of local authorities. A local authority has power to insure its members against personal accident while engaged on the business of the authority. Any sums received under such insurance are, after deduction of any expenses incurred in the recovery thereof, payable to the member or his personal representatives: Local Government Act, 1948 (11 & 12 Geo. 6, c. 26), s. 130.

1732. Compromise of action by insurer—estoppel. [Aus.] In *HANSEN v. MARCO ENGINEERING (AUST.) PTY.*, [1948] V. L. R. 198; [1948] 2 A. L. R. 17, the Supreme Court of Victoria held that where the insurer had taken over the defence of an action instituted against the insured and then compromised the action, the insurer was estopped from denying liability to the insured in respect of the claim.

- 1733. Fire insurance—hire of chattel.** See *REED v. DEAN*, § 625.
- 1734. — rights of devisee of fire-damaged property.** See *Re RUSHBROOK'S WILL TRUSTS*, § 1372.
- 1735. Friendly society.** See FRIENDLY SOCIETIES.
- 1736. Germany.** See § 3739.
- 1737. Industrial assurance—agreements as to stamp duty on policies.** See § 3529.
- 1738. — Defence (Industrial Assurance) Regulations—revocation of.** See § 1167.
- 1739. — Industrial Assurance and Friendly Societies Act, 1948 (11 & 12 Geo. 6, c. 39).** This Act makes various amendments to the Friendly Societies Acts, the Industrial Assurance Acts and certain other enactments. The principal changes relate to powers to insure for funeral expenses (which are to cease one year from the coming into operation of the National Insurance Act, 1946) (s. 1); power to insure the life of a parent or grandparent (s. 2); power to insure the life of husband or wife (s. 3); prohibition of insurances payable on death of a child under ten (s. 6); provision and use of premium receipt books (s. 8); returns by industrial assurance companies (s. 13) and audit of accounts of registered societies (s. 14); protection for members joining the forces (s. 17); the designation of auditors (s. 20); and the consent of the Treasury to the mode of determining certain disputes (s. 21). The Act applies to Great Britain, the Isle of Man and the Channel Islands, but (except ss. 17 (3), 19) not to Northern Ireland (s. 24).
- 1740. — power to insure persons resident in Isle of Man.** Industrial Assurance and Friendly Societies Act, 1948 (Isle of Man) Order, 1948 (No. 2578), made under the Industrial Assurance and Friendly Societies Act, 1948, s. 7, extends the changes made by that Act in the powers of industrial assurance companies and friendly societies to insure the lives of certain persons to persons resident in the Isle of Man.
- 1741. — premium receipt books.** Industrial Assurance (Premium Receipt Books) Regulations, 1948 (No. 2770), made under the Industrial Assurance and Friendly Societies Act, 1948, s. 8 (2); came into operation on January 5, 1949.
- 1742. — returns.** Industrial Assurance (Returns) Regulations, 1948 (No. 2771), made under the Industrial Assurance and Friendly Societies Act, 1948, s. 13; came into operation on January 1, 1949.
- 1743. Japan.** See § 3742.
- 1744. Life assurance—life policy as settlement.** See *GUNNER v. GUNNER AND STIRLING*, § 1022; *BOWN v. BOWN AND WESTON*, § 1023.
- 1745. — loans paid to policy holder—liability to income tax.** See *I. R. C. v. WESLEYAN AND GENERAL ASSURANCE SOCIETY*, § 1681.
- 1746. Lloyd's and other approved associations.** Lloyd's (Revocation of Rules) Regulations, 1948 (No. 96); revoke the rules relating to deposits and security to be furnished by members of Lloyd's, which were rendered obsolete by reason of the substitution of a new schedule for Sched. 8 to the Assurance Companies Act, 1909 (9 Edw. 7, c. 49) by the Assurance Companies Act, 1946 (9 & 10 Geo. 6, c. 28).
Lloyd's and Other Approved Associations (Forms of Annual Statements) Regulations, 1948 (No. 773), made under the Assurance Companies Act, 1946, Sched. 2, Part II, para. 2, came into operation on April 26, 1948; revoke (in part) *S. R. & O.*, 1910, No. 566.
Lloyd's and Other Approved Associations (Auditors' Certificates) Regulations, 1948 (No. 774), made April 14, 1948, under the Assurance Companies Act, 1909: prescribe certificates to be furnished by auditors; revoke (with savings) the Insurance (Auditors' Certificate) (Amendment) Regulations, 1940 (No. 249).
- 1747. Marine insurance.** See SHIPPING AND MARINE INSURANCE.
- 1748. Mutual insurance society—exemption from tax liability.** See *ENGLISH AND SCOTTISH JOINT CO-OPERATIVE WHOLESALE SOCIETY v. MADRAS INCOME TAX COMMISSIONER*, § 1668.
- 1749. National insurance.** See NATIONAL INSURANCE.

- 1750. Proposal form—falsity of statements in.** [Can.] See *SALATA v. CONTINENTAL INSURANCE Co.*, § 16.
- 1751. Ratification of unauthorised insurance after loss occurred.** [Can.] See *GOULDING v. NORWICH UNION FIRE INSURANCE SOCIETY*, § 650.
- 1752. Third-party insurance.** See *QUELCH v. COLLETT*, § 3301; *GARDNER v. JAMES*, § 3312; *WOOD v. GENERAL ACCIDENT, FIRE AND LIFE ASSURANCE CORPORATION*, § 3311; *LYONS v. MAY*, § 3303.
- 1753. BOOKS PUBLISHED.** Banfield, G. E.—*Principles and Law of Accident Insurance*. 4th ed. [8s. 6d.]. Godwin, F., and Woods, K. C.—*Principles and Practice of Fire Insurance in the United Kingdom*. 7th ed. [10s. 6d.]. MacGillivray, E. J., and Browne, D.—*Insurance Law*. 3rd ed. [7 gns.]. Welford, A. W. B., and Otter-Barry—*Law relating to Fire Insurance*. 4th ed. [55s.].

INTERNATIONAL LAW

- 1754. Air.** See AVIATION.
- 1755. Albania—trading with the enemy—removal of control.** See § 3737.
- 1756. Argentina—British-owned railways.** Exchange of Notes between the Governments of the United Kingdom and Argentina accepting the agreement of sale of the British-owned railways in Argentina. Buenos Aires, Feb. 13, 1948. (Treaty Series No. 27, 1948.) Cmd. 7405.
- 1757. — exchange control.** See § 3267.
- 1758. Austria—patents.** See § 2579.
- 1759. Belgium.** Treaty of Economic, Social and Cultural Collaboration and Collective Self-Defence between His Majesty in respect of the United Kingdom of Great Britain and Northern Ireland, H.R.H. the Prince Regent of Belgium, the President of the French Republic, H.R.H. the Grand Duchess of Luxembourg and H.M. the Queen of the Netherlands: Brussels, March 17, 1948. (This treaty has not been ratified by His Majesty): Cmd. 7367.
- 1760. — war damage.** Exchange of Notes between the Governments of the United Kingdom and Belgium constituting an Agreement for reciprocal compensation in respect of war damage: Brussels, June 7, 1948 (Treaty Series No. 56, 1948). Cmd. 7495.
- 1761. Brazil—exchange control.** See § 3267.
- 1762. British Empire.** See BRITISH EMPIRE.
- 1763. Bulgaria.** See §§ 1778, 1779, 1780, 3736, 3737.
- 1764. — peace treaty.** Treaty of Peace with Bulgaria. Paris, February 10, 1947. (Treaty Series, No. 52, 1948): Cmd. 7483.
- 1765. Burma.** See §§ 120, 320, 3254.
- 1766. Chile.** See §§ 180, 3267.
- 1767. China—exchange control.** See § 3267.
- 1768. Conflict of laws.** See CONFLICT OF LAWS.
- 1769. Consular officers—registration of births and deaths.** See § 3137.
- 1770. Court of International Justice.** The speech made by the Attorney-General at the first sitting of the Court is reproduced in 205 L. T. J. 156.
- 1771. Cuba—aviation.** See § 234.
- 1772. Czechoslovakia—financial restrictions.** See *FRANKMAN v. ANGLO-PRAGUE CREDIT BANK*, § 260; *KAHLER v. MIDLAND BANK*, § 259.
- 1773. — settlement of financial claims.** See §§ 3260, 3261.
- 1774. De facto government—legislative power.** [Can.] In *ESTONIAN STATE CARGO AND PASSENGER SS. LINE v. SS. ELISE*, [1948] 4 D. L. R. 247, the Exchequer Court of Canada held that so far as its legislative power is concerned there is no distinction between a *de facto* and a *de jure* government, and that the legislative acts of the *de facto* government in question were *intra vires* in purporting to have extra-territorial effect, and that the effect which they had was to transfer and vest in the plaintiff corporation all rights, title and possession in, to and of the defendant ship.

- 1775. Denmark.** Exchange of Notes between the U.K. and Denmark extending the Visa Abolition Agreement of March 20, 1947, to certain British overseas territories (with Annex). London, October 26, 1948. (Treaty Series No. 80, 1948.) Cmd. 7577.
- 1776. Diplomatic privilege.** Diplomatic Privileges (General Amendment) Order, 1948 (No. 1838), revoking certain Orders mentioned in the preamble thereto on the ground that the organisations concerned no longer exist.
- 1777. — Brussels Treaty Permanent Commission.** Diplomatic Privileges (Brussels Treaty Permanent Commission) Order in Council, 1948 (No. 2253), made under the Diplomatic Privileges (Extension) Act, 1944 (7 & 8 Geo. 6, c. 44), s. 1, as amended; provides diplomatic privileges for the Commission, whose seat is in London.
- 1778. Ex-enemy countries — British property in.** Under the Peace Treaties British owners of property in Italy, Hungary, Roumania and Bulgaria were required to make formal application for the return of their property to the Government concerned before September 15, 1948. British subjects in the United Kingdom who wished H.M. Government to act on their behalf and had not registered were required to do so at once: Board of Trade Press Notice, Ref. 1832, March 5, 1948.
- Forms of claim for compensation or rehabilitation of British-owned property in Hungary, Roumania and Bulgaria will be sent out to property owners who have registered with the Administration of Enemy Property Department (formerly the Trading with the Enemy Department). The Department should be notified of changes of address. The address of the Department is: The Administration of Enemy Property (Trading with the Enemy) Department, 7 Crosby Sq., E.C.3: Board of Trade Press Notice, Ref. 53, June 8, 1948.
- 1779. — peace treaty orders.** The following orders have been made under the Treaties of Peace (Italy, Roumania, Bulgaria, Hungary and Finland) Act, 1947 (10 & 11 Geo. 6, c. 23), s. 1: SI 1948, Nos. 114 (Bulgaria) [4d.]; 115 (Finland) [2d.]; 116 (Hungary) [4d.]; 117 (Italy) [5d.]; 118 (Roumania) [4d.]. These orders, which came into operation on February 2, 1948, give effect to various articles of the Peace Treaties with the above countries.
- 1780. — revival of agreements with.** Revival of pre-war treaties and agreements between H.M. Government of the United Kingdom of Great Britain and Northern Ireland and the Governments of Bulgaria, Finland, Hungary, Italy and Roumania. Sofia, March 13, 1948. Helsinki, March 12, 1948. Budapest, March 12, 1948. Rome, March 13, 1948. Bucharest, March 13, 1948. Cmd. 7395.
- 1781. — trading with the enemy.** See TRADING WITH THE ENEMY.
- 1782. — vesting of property.** The following orders have been made vesting the property, rights and interests of the nationals concerned arising from trusts, wills or settlements, or contracts or agreements, in an administrator: SI 1948, Nos. 2092 (Bulgaria); 2093 (Hungary); 2094 (Roumania).
- 1783. Faroe Islands—exchange control.** See § 3267.
- 1784. Finland.** See §§ 1779, 1780, 3737.
- 1785. France.** See §§ 2377, 2415, 3267, 3276.
- 1786. Germany—patents.** See §§ 2580–2582, 3741.
- 1787. — — patentee deprived of German nationality.** See *LOWENTHAL v. ATT.-GEN.*, § 126.
- 1788. — restitution of property.** The Foreign Office (German Section) announce that arrangements have been made to set up the "United Restitution Office" with offices at 8 Fairfax Mansions, London, N.W.3, and at 5 Lower Grosvenor Place, London, S.W.1, to assist claimants of whatever nationality to the restitution of properties in Germany of which their owners were dispossessed by the Nazis. For the full text of the statement see *Law Society's Gazette*, December, 1947, p. 240.
- 1789. — trading with the enemy.** See §§ 3738–3741.
- 1790. Greece—aviation.** See § 236.

- 1791. Honduras—load line.** See § 3477.
- 1792. Hungary.** See §§ 1778, 1779, 1780, 1782, 3697, 3736, 3737.
- 1793. — peace treaty.** Treaty of Peace with Hungary. Paris, February 10, 1947, Treaty Series No. 54, 1948: Cmd. 7485.
- 1794. Iceland—copyright.** See § 663.
- 1795. — visas.** Exchange of Notes between the U.K. and Iceland extending the Visa Abolition Agreement of June 20, 1947, to certain British overseas territories (with Annex). London, October 26, 1948. (Treaty Series No. 77, 1948.) Cmd. 7574.
- 1796. Iraq.** Treaty of Alliance: Cmd. 7309. [Note.—The Treaty has not been ratified by His Majesty.]
- 1797. Italy—financial provisions.** See §§ 3267, 3278, 3279, 3737.
- 1798. — peace treaty.** Treaty of Peace with Italy. Paris, February 2, 1947. (Treaty Series, No. 50, 1948): Cmd. 7481. Maps, Annex to the Treaty of Peace with Italy (in continuation of Treaty Series, No. 50, 1948) (Treaty Series, No. 51, 1948): Cmd. 7482.
- 1799. — —.** See also §§ 1778, 1779, 1780.
- 1800. — — prize.** See THE BELLAMAN, § 2945.
- 1801. — trading with the enemy.** See §§ 3736, 3737
- 1802. — visas.** Agreement for reciprocal abolition of visas with Italy: Cmd. 7295.
Exchange of Notes between the U.K. and Italy extending the Visa Abolition Agreement of December 6, 1947, to certain British overseas territories (with Annex). London, October 26/28, 1948. (Treaty Series No. 81, 1948.) Cmd. 7578.
- 1803. Japan.** See §§ 3267, 3742.
- 1804. Liberia—aviation.** See § 230.
- 1805. Luxembourg—aviation.** See § 239.
- 1806. — visas.** Exchange of Notes between the U.K. and Luxembourg extending the Visa Abolition Agreement of February 14, 1947, to certain British overseas territories (with Annex). London, October 26, 1948. (Treaty Series No. 82, 1948.) Cmd. 7579.
- 1807. Monaco—visas.** Exchange of Notes between the U.K. and Monaco constituting an agreement for the reciprocal abolition of visas. London, October 27, 1948, Monaco, November 10, 1948. (Treaty Series No. 86, 1948.) Cmd. 7589.
- 1808. Netherlands—financial arrangements.** See §§ 3283, 3284, 3285.
- 1809. Norway—visas.** Exchange of Notes between the U.K. and Norway extending the Visa Abolition Agreement of February 26, 1947, to certain British overseas territories (with Annex). London, October 26/30, 1948. (Treaty Series No. 78, 1948.) Cmd. 7575.
- 1810. Palestine.** See BRITISH EMPIRE.
- 1811. Peru.** See §§ 240, 3267.
- 1812. Philippine Republic.** See §§ 241, 3493.
- 1813. Poland.** Exchange of Notes between the Governments of the United Kingdom and the Polish Republic concerning compensation for British interests affected by the Polish Nationalisation Law of Jan. 3, 1946. (With Minute and Annex.) Warsaw, Jan. 24, 1948. (Treaty Series No. 23, 1948.) Cmd. 7403.
- 1814. — exchange control.** See § 3267.
- 1815. — resettlement forces.** See §§ 131, 132.
- 1816. — — “recalcitrant Poles”.** See *R. v. KOSCIUKIEWICZ*, § 133.
- 1817. Portugal.** See §§ 242, 3286.
- 1818. Private international law.** See CONFLICT OF LAWS.
- 1819. Roumania.** See §§ 1778, 1779, 1780, 1782, 3736, 3737.
- 1820. Shipping.** See §§ 3471, 3472.
- 1821. — freedom of the seas.** See *NAIM MOLVAN v. ATT.-GEN. FOR PALESTINE*, § 3470.

- 1822. Siam—enemy territory cessation.** See § 3737.
- 1823. Spain—patents.** See § 2585.
- 1824. Sweden—visas.** Exchange of Notes between the U.K. and Sweden extending the Visa Abolition Agreement of March 20, 1947, to certain British overseas territories (with Annex). London, October 26, 1948. (Treaty Series No. 79, 1948.) Cmd. 7576.
- 1825. Switzerland—exchange control.** See § 3269.
- 1826. — visas.** Exchange of Notes between the U.K. and Switzerland extending the Visa Abolition Agreement of June 10, 1947, to certain British overseas territories (with Annex). London, October 26/29, 1948. (Treaty Series No. 76, 1948.) Cmd. 7573.
- 1827. Syria—exchange control.** See § 3267.
- 1828. Tangier—exchange control.** See § 3267.
- 1829. Trading with the enemy.** See TRADING WITH THE ENEMY.
- 1830. Transjordan.** Treaty of Alliance between His Majesty in respect of the United Kingdom and His Majesty the King of the Hashimite Kingdom of Transjordan (with Exchange of Letters). Amman, March 15, 1948. (Ratifications exchanged in London, April 30, 1948.) (Treaty Series No. 26, 1948.) Cmd. 7368, 7404.
- 1831. — exchange control.** See § 3267.
- 1832. Treaties, etc.—fisheries.** See §§ 1455, 1456.
- 1833. — list.** See Cmd. 7292 (ratifications, accessions, withdrawals, etc., 1946–7, Supplementary List) [3d.]; Cmd. 7293 (Treaty Series, 1946–7, Index) [3d.].
- 1834. — tariffs and trade.** General agreement: documents relating to the First Session of the Contracting Parties (held at Havana, Cuba, February 28 to March 24, 1948): Cmd. 7376.
- 1835. — trade and employment.** United Nations Conference on Trade and Employment, November 21, 1947, to March 24, 1948. Havana, Cuba. Final Act and the Havana Charter for an International Trade Organisation with related documents: Cmd. 7375.
- 1836. Turkey—aviation.** See § 244.
- 1837. U.S.S.R.—financial arrangements.** See §§ 3267, 3293.
- 1838. United Nations Maritime Consultative Organisation.** See § 3472.
- 1839. United States.** See §§ 245, 805, 3292.
- 1840. ARTICLES.** United Nations law: *Canadian Bar Review*, October, 1947, 809. The Nuremberg Trial and the development of an international criminal law, by F. B. Schick: 59 *Juridical Review*, 192. International agreements, by J. E. Read: *Canadian Bar Review*, March, 1948, p. 520. The draft International Declaration and Covenant on Human Rights; *Canadian Bar Review*, March, 1948, p. 548. The Charter of the United Nations, by Louis S. St. Laurent: *Canadian Bar Review*, February, 1948, p. 363. International criminal law—facts and illusions by F. B. Schick: *Modern Law Review*, July, 1948, p. 290. The Corfu Channel Case, by H. F. Feaver: *Canadian Bar Review*, June-July, 1948, p. 924. The International Court of Justice 1946–1948: 206 L. T. 138. The forty-third conference of the International Law Association: 206 L. T. 166. International law and the Nuremberg Trial: *South African Law Journal*, August, 1948, p. 375.
- 1841. BOOKS PUBLISHED.** Grotius Society Transactions for the Year 1946. Vol. 32 [25s.]. History of the United Nations War Crimes Commission and the Development of the Laws of War [10s.]. McNair, A. D.—Legal Effects of War. 3rd ed. [25s.]. Morgan, J. H.—Great Assize. Examination of the Law of the Nuremberg Trials [2s.]. Oppenheim, L.—International Law. Vol. I, Peace. 17th ed [70s.]. Ross, A.—Textbook of International Law [21s.]. War Crimes Trials. Vol. 1. Edited by John Cameron [18s.]. War Crimes Trials. Vol. 3. Trial of Gozawa Sadaichi and nine others [18s.]. Year Book of World Affairs, 1948 [20s.].
- 1842. — OVERSEAS PUBLICATIONS.** Drost, P. N.—Contracts and Peace Treaties (Holland) [15s.]. Grotius International Yearbook. 1940–46 (Holland) [37s. 6d.]. Jessup, P. C.—Modern Law of Nations (U.S.A.) [21s.].

INTOXICATING LIQUORS

1843. Adulteration. See *THOMPSON v. BALL*, § 1476.

1844. Alteration of permitted hours — bias. In *R. v. CAERNARVON LICENSING J.J.* (December 1, 1948), the Divisional Court (Lord Goddard, C.J., Hilbery and Birkett, J.J.), granted an application for an order of certiorari to set aside the refusal of licensing justices for an alteration of permitted hours for the opening of certain licensed premises on the ground that one of the adjudicating justices was a member of a religious body which had opposed the application and had been present at the meeting at which the resolution to oppose had been submitted, though he had not taken any part in that submission or voted on it. [*Reported by R. C. Calburn, Esq., Barrister-at-Law.*] See also [1949] 1 C. L. 159. [Cf. *R. v. Pwllheli J.J.*, § 2144.]

1845. Alterations in licensed premises. (Licensing (Consolidation) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 24), s. 71.) The decision of the Divisional Court in *R. v. Watford Licensing Justices, ex p. Trust Houses*, [1929] 1 K. B. 313, binds that Court to hold that where an application is made under s. 71 of the Licensing (Consolidation) Act, 1910, for the approval by justices of alterations in licensed premises, the justices can consider any questions they like whether or not they have any regard to the alterations for which their consent is necessary, and that they are not limited to the consideration of the alteration itself solely from the point of view of the descriptive words contained in the sub-section.

On an application to licensing justices under s. 71 of the Licensing (Consolidation) Act, 1910, to approve certain alterations in licensed premises, the justices refused the application on the ground that the granting of the application would have entailed the destruction of the identity of the premises in respect of which the licence was held, in that it involved the alteration of the premises from that of a substantial residential hotel into premises materially different in size and solely confined in function to the sale of excisable goods. There was evidence that the takings from the letting of apartments had been so small that the hotel could not be made to pay on that basis. Held, on an application to approve an alteration, the justices had the widest possible discretion to consider any matters they liked, and, consequently, an application for an order of mandamus had to be refused: *R. v. PONTYPRIDD LICENSING JUSTICES, ex p. ELY BREWERY CO.* (1948), 64 T. L. R. 480; [1948] 2 All E. R. 581, D. C.) following *R. v. Watford Licensing Justices, ex p. Trust Houses, supra*).

1846. Barman. [N.Z.] See *PETTERSSON v. ROYAL OAK HOTEL*, § 1259.

1847. Driving under the influence of drink. See ROAD TRAFFIC.

1848. Innkeepers. See INNKEEPERS.

1849. Sale of liquor, profits from — assessment for rating purposes. See *ABERDALE U.D.C. v. PONTYPRIDD AREA ASSESSMENT COMMITTEE*, § 3099.

1850. Transfer of licence. (Licensing (Consolidation) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 24), s. 25 (2).) S. 25 (2) of the Licensing (Consolidation) Act, 1910, provides: "In the case of an application for the transfer of a justices' licence . . . the agreement or other assurance, if any, under which the licence is to be transferred and held shall be produced to the licensing justices . . .".

On an application for the transfer of a full off-licence in respect of certain licensed premises, the applicant, pursuant to s. 25 (2) of the Licensing (Consolidation) Act, 1910, produced to the justices in support of the application the agreement or other assurance under which the licence was to be transferred and held by the applicant, to wit, a lease of the premises made between her and the brewers who owned the premises and an assignment of the goodwill from the outgoing tenant to the applicant. The justices made an order requiring the applicant to produce forthwith to them a mortgage of the premises into which the applicant had entered in order to meet financial commitments relating to the transfer. Held, the justices had no power to make an order for production of any document, even if it was one required by the sub-section to be produced. Held also, the mortgage was not a document required by the sub-section to be produced. The agreement or other assurance under which the licence was to be transferred

within the meaning of the sub-section was the assignment of the goodwill, while the agreement under which the licence was to be *held* included anything in the nature of a tenancy which gave the right to the transferee to occupy the premises as licensee and to sell from them and, in the present case, this was the lease. But the mortgage was not an agreement under which the licence was to be "transferred" or "held".

Quære: Whether a mortgage of licensed premises in certain circumstances might or might not be a relevant document for the justices to consider on the question whether a person is a fit and proper person to be entrusted with a particular licence: *R. v. NEWINGTON LICENSING JUSTICES, ex p. CONRAD*, [1948] 1 K. B. 681; [1948] L. J. R. 1459, D. C. (See also § 774.)

- 1851. Wholesale and retail licences—reduction of duty.** [*Eire.*] See *FINDLATER & Co. v. ATT.-GEN.*, § 784.
- 1852. ARTICLES.** The occasional licence: 112 J. P. J. 259. The labelling of intoxicating liquors: 112 J. P. J. 227. The nineteenth hole (local authorities' golf courses—sale of alcohol in club house): 112 J. P. J. 323. The justices and licensing: 112 J. P. J. 382. Licence holder convicted of felony (founded on Licensing (Consolidation) Act, 1910, s. 35 (2)): 112 J. P. J. 597. The general annual licensing meeting: 92 S. J. 698.

JURIES

- 1853. Challenge, swearing and separation.** See the Criminal Justice Act, 1948 (11 & 12 Geo. 6, c. 58), s. 35; § 714.
- 1854. —.** S. 35 of the Criminal Justice Act, 1948 (11 & 12 Geo. 6, c. 58), came into operation on December 27, 1948: Criminal Justice Act, 1948 (Date of Commencement) (No. 3) Order, 1948 (No. 2349).
Regs. 13 and 15A of the Defence (Administration of Justice) Regulations, 1940, expired on December 31, 1948: see the Emergency Laws (Miscellaneous Provisions) Act, 1947 (11 Geo. 6, c. 10), Sched. I, Part II.
- 1855. Exemption—veterinary surgeons.** See § 2211.
- 1856. Grand jury.** The last vestiges of the grand jury have been abolished by the Criminal Justice Act, 1948 (11 & 12 Geo. 6, c. 58), s. 31 (3).
- 1857. Verdict—Court of Appeal's powers.** See *BRADDOCK v. BEVINS*, § 2867.
- 1858. — general and special verdicts.** [*Aus.*] For a consideration of the rights of a jury to return a general verdict, or to return a special verdict, and the rights of parties to general and special verdicts, see *RUSSELL v. RAILWAYS COMMISSIONERS (VIC.)*, [1948] V. L. R. 118; [1948] 2 A. L. R. 3.
- 1859. — issues to be left to.** "The case, indeed, is a good illustration of the disadvantage of inviting the jury simply to find a verdict for the plaintiff or for the defendant when a number of issues is involved. When this course is taken and there are several alternative grounds on which a verdict for the defendant can be based, it is, in general, impossible to do more than speculate as to the particular ground or grounds on which the verdict was based. The result may be unfortunate since misdirection on one of the grounds will, in general, . . . be sufficient ground for ordering a new trial. The reason for this is that where it is impossible for the Court of Appeal to say that the jury did not base its verdict on the ground as to which there has been misdirection, it cannot be said that the misdirection was not responsible for the verdict": *per* Lord Greene, M.R., in *BRADDOCK v. BEVINS*, § 1993.
- 1860. ARTICLES.** Trial by jury vindicated: *Solicitor*, February, 1948, p. 37. Payment of jurymen: 206 L. T. 179.

JURISPRUDENCE

- 1861. Intention and negligence.** See *HARDING v. PRICE*, § 3297; *DABHOLKAR v. R.*, § 749; *TOWERFIELD (OWNERS) v. WORKINGTON HARBOUR AND DOCK BOARD*, § 2510; *LONGHURST v. METROPOLITAN WATER BOARD*, § 2539; *SQUIRE v. SQUIRE*, § 907.
- 1862. Law and equity.** See *Re DIPLOCK*, §§ 637, 1399.
- 1863. Legal studies.** The Institute of Advanced Legal Studies of the University of London was opened on June 11, 1948.

- 1884. Liability—absolute liability.** See *WADE v. BEADLE*, § 1475; [Scot.] *MILLAR v. GALASHIELS GAS CO.*, § 1413.
- 1885. — mass punishment.** See *PATTERSON v. DISTRICT COMM. OF ACCRA*, § 761.
- 1886. Possession.** See *HIBBERT v. MCKIERNAN*, § 739; *BROWN v. BRASH*, § 3229; *ROBSON v. HEADLAND*, § 3231; [Scot.] *TENNANT v. WHYTOCK*, § 3233.
- 1887. Precedent.** See *WILLIAMS v. GLASSBROOK BROS.*, § 2906; *MINISTER OF PENSIONS v. HIGHAM*, § 2671; *Re DIPLOCK*, § 637; *Re WARING*, § 1302; *Re KOENIGSBERG*, § 1303; *DENMAN v. BRISE*, § 1919.
- 1888. Public policy.** See *ASKEY v. GOLDEN WINE CO.*, § 3620; [Eire] *BELLEW v. CEMENT*, § 2538.
- 1889. Race discrimination.** [Can.] See *Re NOBLE AND WOOLF*, § 3122.
- 1870. Separation of powers.** See *Re KENDRICK'S AGREEMENT*, § 39; *BLACKPOOL CORPORATION v. LOCKER*, § 521; [Can.] *LABOUR RELATIONS BOARD v. JOHN EASTER IRON WORKS*, § 2798.
- 1871. Unjust enrichment.** See *Re DIPLOCK*, §§ 637, 1402.
- 1872. ARTICLES.** The necessity of law reform: *Canadian Bar Review*, November, 1947, 955. Portia: 92 S. J. 123. Jeremy Bentham, by H. A. Hollond: *Cambridge Law Journal*, 1948, p. 3. The writing of judgments, by Lord Macmillan: *Canadian Bar Review*, March, 1948, p. 491. What is a document?, by Glanville L. Williams: *Modern Law Review*, April, 1948, p. 150. Sources of law in Germany, by C. P. Harvey: *Modern Law Review*, April, 1948, p. 196. Legislation through adjudication—the legal aspect of fair wages clauses and recognised conditions, by O. Kahn-Freund: *Modern Law Review*, July, 1948, p. 269. The limits of judicial review—statutory discretions and the doctrine of *ultra vires* (founded on *Johnson & Co. (Builders) v. M. O. H.*, [1947] C. L. Y. 491, *Franklin v. M. T. C. P.*, [1947] C. L. Y. 3061, and *Robinson v. M. T. C. P.*, [1947] C. L. Y. 3064), by S. A. de Smith: *Modern Law Review*, July, 1948, p. 306. The nullity of marriage—a study in comparative law and legal reform, by E. J. Cohn: 64 L. Q. R. 324. Bentham's "Limits of Jurisprudence Defined", by W. Friedman: 64 L. Q. R. 341. A legal information bureau (on the Institute of Advanced Legal Studies): *Solicitor*, September, 1948, p. 214. Natural justice (founded on *Franklin v. M. T. C. P.*, [1947] C. L. Y. 3061, and *Johnson & Co. (Builders) v. M. O. H.*, [1947] C. L. Y. 491): 98 L. J. 546. Bentham and the law: *Solicitor*, November, 1948, p. 258. Spirit of English law, by R. H. Graveson: *Juridical Review*, August, 1948, p. 83. Reason and logic in the common law, by Dennis Lloyd: 64 L. Q. R. 468. American administrative justice, by Bernard Schwartz: 64 L. Q. R. 519. Roman law as an element in European culture: *South African Law Journal*, August, 1948, p. 349. Jurisdictional-choice-of-law relation in conflicts rules, by E. W. Briggs: *Harvard Law Review*, July, 1948, p. 1165. Law and philosophy, by Harold R. McKinnon: *Canadian Bar Review*, August-September, 1948, p. 1045. *Stare decisis* (founded on *Young v. Bristol Aeroplane Co.*, [1944] K. B. 718, and *Minister of Pensions v. Higham*, § 2671): 98 L. J. 681.
- 1873. BOOKS PUBLISHED.** Bentham, J.—Fragment on Government and an Introduction to the Principles of Morals and Legislation [9s. 6d.]. Common Law of England—Broadcast Talks by a King's Counsel [2s. 6d.]. Geldart, W. M.—Elements of English Law. 4th ed. [5s.]. Gottschalk, R.—The Devil Knoweth Not [7s. 6d.]. Graveson, R. H.—Spirit of English Law [2s.]. Hyde, H. M.—Judge Jeffries [21s.]. Keeton, G. W. and Schwarzenberger, G.—Current Legal Problems, 1948. Vol. I [17s. 6d.]. Keeton, G. W. and Schwarzenberger, G.—Jeremy Bentham and the Law. A Symposium [20s.]. King's Good Servant—Papers read to the Thomas More Society. Edited by Richard O'Sullivan [8s. 6d.]. Leo, R. W.—Historical Conspectus of Roman Law, 753 B.C. to A.D. 1948 [2s. 6d.]. McNair, A.—Dr. Johnson and the Law [7s. 6d.]. Miles, G. E., and Dix, D. N.—In the Eyes of the Law. 2nd ed. [3s. 6d.]. Moran, C. G.—Heralds of the Law [17s. 6d.]. Osborn, P. G.—Questions and Answers on Jurisprudence. 2nd ed. [6s.]. Phillips, O. H.—First Book of English Law [16s.]. Plucknett, T. F. T.—Concise History of the Common Law. 4th ed., revised and enlarged [27s. 6d.]. Polak, A. L.—Final Legal Fictions [6s.]. Ross, A.—Towards a Realistic Jurisprudence [23s.]. Williams, G. L.—Learning the Law. 2nd ed., revised [10s.]. Wise, B. R.—Outlines of Jurisprudence, 6th ed. [6s.].

LAND CHARGES

1874. Agriculture Act, 1947—supervision orders. Agriculture Act, 1947 (Registration of Supervision Orders) Rules, 1948 (No. 281) [E.], made under the Agriculture Act, 1947 (10 & 11 Geo. 6, c. 48), s. 12, and the Land Charges Act, 1925 (15 Geo. 5, c. 22), s. 15. These Rules came into operation on March 1, 1948. They provide for the registration as local land charges of supervision orders made by the Minister of Agriculture and Fisheries under s. 12 of the Act of 1947, for placing the owner of land under the Minister's supervision so far as relates to his management of the land, or the occupier of land under the Minister's supervision so far as relates to his farming of an agricultural unit as defined by the Act. The supervision orders are to be registered in a new Part of the Register to be known as Part IX. Provision is made for searching the Register and for the issue of official certificates of search on payment of the fees prescribed in the Second Schedule to the Rules.

1875. Estate contract—failure to register—"estate owner", meaning of. (Land Charges Act, 1925 (15 Geo. 5, c. 22), ss. 10 (1), Class C (iv), 13 (2).) S. 10 (1) of the Land Charges Act, 1925, provides: "The following classes of charges on, or obligations affecting, land may be registered as land charges in the register of land charges, namely:—Class C (iv) Any contract by an estate owner or by a person entitled at the date of the contract to have a legal estate conveyed to him to convey or create a legal estate . . .". Unless an estate contract is so registered it is, by reason of the provisions of the Land Charges Act, 1925, void against a purchaser of the land charged therewith. It is wrong to read s. 10 (1), Class (iv) as meaning that an owner of an estate who contracts to convey an estate which is larger than that which he himself possesses at the time of the contract is not an "estate owner" within the meaning of the section. On the contrary, a contract by a person with a limited interest in land, who contracts that, when he enlarges his interest and becomes the owner of the fee simple or of some other interest large enough for the estate which he has contracted to convey to be carved out of it, is a contract by an "estate owner".

Per Asquith, L.J.: "The estate owner must have an estate of some sort in the same land in respect of which he contracts to convey or creates an estate in favour of someone else".

R. had granted to the defendant "from October 11, 1943, and so on from year to year" a yearly tenancy of certain land. R. at that time held the land under an oral tenancy granted to him by his mother, who was the freeholder. R.'s tenancy agreement with the defendant provided *inter alia* that in the event that at any time during the continuance of the agreement the reversion should become vested in R. he would grant to the defendant a lease for the term of ten years from October 11, 1943. On the death of R.'s mother on September 7, 1944, R. became the freeholder of the land. R. sold the land by auction to the plaintiff subject to the occupation of the defendant. The plaintiff, after completion in December, 1945, gave notice to quit to the defendant. The defendant relied on the proviso in his agreement with R. that he was entitled to have a ten-years' lease of the land and sought to enforce the same against the plaintiff. The plaintiff relied upon the fact that the defendant had failed to register the proviso in his agreement with R. as a land charge under s. 10 of the Land Charges Act, 1925. Held, the plaintiff's contention was correct: *SHARP v. COATES*, [1948] W. N. 421; [1948] 2 All E. R. 871, C. A. (affirming decision of Humphreys, J., [1948] 1 All E. R. 136).

1876. — option to purchase freehold reversion. See *WRIGHT v. DEAN*, § 1948.

1877. Town and Country Planning Act, 1947—orders and charges. Town and Country Planning Acts, 1944 and 1947 (Registration of Orders and Lists of Buildings) Rules, 1948 (No. 1213), made under the Land Charges Act, 1925 (15 Geo. 5, c. 22), s. 15, the Town and Country Planning Act, 1944 (7 & 8 Geo. 6, c. 47), s. 17, and the Town and Country Planning Act, 1947 (10 & 11 Geo. 6, c. 51), ss. 30, 39. These Rules came into operation on July 1, 1948. They supersede the Town and Country Planning Act, 1944 (Registration of Orders) Rules, 1945 (No. 1677).

Local Land Charges (Amendment) Rules, 1948 (No. 1283), which came into force on July 1, 1948, amend the Local Land Charges Rules, 1934 (No. 285), by

providing for the registration in the Local Land Charges Registers of charges created as a result of prohibitions and restrictions imposed under the Town and Country Planning Act, 1947.

Local Land Charges (Amendment No. 2) Rules, 1948 (No. 2471), which came into operation on November 30, 1948, amend the Local Land Charges Rules, 1934 (No. 285) by providing for the registration of charges created by the combined operation of ss. 76-78 of the Town and Country Planning Act, 1947, and the Acts relating to "previous planning control", and of the rights conferred by s. 12 of the Requisitioned Land and War Works Act, 1948 (11 & 12 Geo. 6, c. 17).

- 1878. ARTICLES.** On avoiding misuse of the Land Charges Register: 98 L. J. 339, 353. Indemnity under the Middlesex Deeds Act, 1940: 98 L. J. 569. Land charges and planning conditions: 112 J. P. J. 683. Option granted to yearly tenant—registration as a land charge (founded on *Sharp v. Coates*, § 1875): 206 L. T. 345.

LAND DRAINAGE

- 1879. Catchment boards—transfer of functions to river boards.** See § 1883.

1880. Covenant to maintain watercourse. In *SMITH AND SNIPES HALL FARM v. RIVER DOUGLAS CATCHMENT BOARD* (October 15, 1948), Morris, J., held (1) that a catchment board was free to enter into a contractual obligation to do work of maintaining an existing watercourse in a state of efficiency which it was empowered to do by s. 34 (1) of the Land Drainage Act, 1930. (2) That to do that work by reconstructing the banks of a river, after enlarging it with successful results, at a lesser cost than might have been incurred, owing to the need for economy, so that it could be anticipated that the banks would not stand up to exceptional though foreseeable conditions, was neither negligent on the board's part nor a breach of a contractual obligation to "make good" and "maintain" the banks. (3) That the contractual obligation in question, which had been incurred by the board towards the plaintiff's predecessor in title, was not a covenant running with the land of which the plaintiffs could claim the benefit under s. 78 (1) of the Law of Property Act, 1925. [*Reported by R. C. Calburn, Esq., Barrister-at-Law.*] See also [1948] W. N. 414; 92 S. J. 675.

1881. Drainage orders. SI 1948, Nos. 9 (Rivers Birket and Fender Catchment Board); 959 (Caernarvonshire Rivers Catchment Boards Transfer Scheme); 1185 (Tame, Seamer and Picton); 1214 (West Cumberland Rivers); 1817 (South West Sussex Internal Drainage District); 2124 (West Cumberland Rivers Catchment Board—River Marron Internal Drainage District); 2123 (River Great Ouse Catchment Board—Gaywood Internal Drainage District); 2278, 2279 (River Trent Catchment Board—Kingston Brook Internal Drainage District); 2782 (River Great Ouse Catchment Board—Whittlesey and Kingsland).

- 1882. Lee Conservancy Catchment Board—termination of agency.** See § 3757.

1883. River Boards Act, 1948 (11 & 12 Geo. 6, c. 32). [E.] This Act provides for the establishment of river boards throughout England and Wales (except in the Thames, Lee and London areas) and for the transfer to such boards of the functions formerly exercised by catchment boards, fishery boards and pollution authorities in relation to land drainage, fisheries and river pollution (see s. 1 (1)). The new boards may also be required to exercise certain new functions, including the measurement of rainfall and gauging of river flow (s. 9), and may be empowered to take over navigation functions from existing navigation, conservancy or harbour authorities (s. 8). The definition of river board areas and the constitution of river boards are dealt with in s. 2. Special provisions as to the Thames, Lee and London areas are contained in s. 7. Ss. 10-24 contain financial and administrative provisions, including provisions as to borrowing powers (s. 11), power to acquire or dispose of land (s. 13), power to take samples of effluents (s. 15), powers of entry and inspection (s. 16), power to make bye-laws (s. 18), default powers of Ministers (s. 22) and inquiries (s. 23). The transfer to river boards of the assets and liabilities of catchment boards and other authorities whose functions are transferred under the Act is dealt with in ss. 25-28. S. 29 relates to pension rights and s. 30 relates to compensation of officers and servants. The remaining sections of the Act contain general provisions. There are special provisions in s. 37 as to Border rivers and Solway Firth, but otherwise the Act does not extend to Scotland, nor does it apply to Northern Ireland (s. 38 (2)).

LAND REGISTRATION

- 1884. Assurance to educational charity.** See *Re* No. 12 REGENT STREET, OXFORD, § 423.
- 1885. Fees—cancellation of creditors' notices, etc.** Applications for the cancellation of creditors' notices and bankruptcy inhibitions will, in future, be dealt with forthwith without payment of any expedition fee: *Law Society's Gazette*, February, 1948, p. 33.
- 1886. — land in voluntary areas.** Land Registration Fee Order, 1948 (No. 517) [E.], made under the Land Registration Act, 1925 (15 & 16 Geo. 5, c. 21), s. 145, annulling the Land Registration Fee Order, 1939 (No. 809), and restoring to operation the Land Registration Fee Order, 1930 (No. 220). As a result of this Order the separate scales of fees for first registrations and dealings for value with land in the voluntary areas have been abolished. The Order operates from April 1, 1948.
- 1887. — remission—official search of index map.** The Chief Land Registrar announces that he is able again to exercise the discretion vested in him by the Land Registration Fee Order, 1930, and to remit the fee prescribed by para. XII (6) (a) for an official search of the index map, in compulsory areas.
- 1888. Northern Ireland.** See § 336.
- 1889. Sale of registered land to local authorities.** See §§ 511, 3811.
- 1890. ARTICLES.** Land Registry practice: 92 S. J. 186, 465, 494, 564. Planning control in relation to registered land, by T. B. F. Ruoff: *Journal of Planning Law*, December, 1948, p. 593. Dealings with registered land under the Planning Acts, by Harold Potter: *Journal of Planning Law*, 1949, p. 49. Some priorities in registered estates, by W. J. L. Ambrose: 13 *Conveyancer* (N.S.) 100.
- 1890a. BOOK PUBLISHED.** Potter, H.—Principles of Land Law under the Land Registration Act, 1925. 2nd ed. [15s.].

LANDLORD AND TENANT

- 1891. Agreement for lease.** In *BORTHWICK-NORTON v. LIEBERMAN*, *Estates Gazette*, January 24, 1948, p. 65, the defendant had been let into possession of the premises by licence of the plaintiff landlords after having signed an agreement to take a lease of the premises. The landlords did not deliver their part of the agreement and in the meantime it was discovered that the defendant was using the premises for immoral purposes. Denning, J., held that the licence under which the defendant had possession was determinable at any time by the landlords, and that there was no lease, and made an order for possession.
- 1892. —.** In *TELEPHONE RENTALS v. MUSEUM ESTATES* (March 3, 1948), *Roxburgh, J.*, held that the phrase in a letter, "Will you be kind enough to prepare a draft lease for our consideration on the lines agreed", indicated the conclusion of business negotiations, but not the conclusion of a binding agreement. Agreement was reached in a business sense because there were no financial or major questions outstanding between the parties after that date, but he declined to believe that the parties intended, at the interview that took place the day before the letter was written, to enter into a final and binding agreement. [*Reported by C. M. Schmitthoff, Esq., Barrister-at-Law.*] See also *Estates Gazette*, March 6, 1948, p. 178.
- 1893. —.** In *EWINGS v. COUNTY HOMESTEADS* (April 16, 1948) the Court of Appeal (Lord Greene, M.R., Somervell and Cohen, L.J.J.) held that an agreement to procure a lease of a plot of land and the house to be built thereon was enforceable by the proposed tenant notwithstanding that the agreement had not been signed by the proposed tenant and that no date had been fixed for the beginning of the lease. [*Reported by R. C. Calburn, Esq., Barrister-at-Law.*] See also *Estates Gazette*, April 24, 1948, p. 312.
- 1894. Agricultural holding.** See AGRICULTURE.
- 1895. Assignment—refusal of consent to.** In *SWANSON v. FORTON* (December 10, 1948), the tenancy agreement contained a covenant against sub-letting and assigning without consent of the landlord, such consent not to be withheld unreasonably. The

tenant who was not in possession and consequently not protected, without consent of the landlord, assigned the lease twelve days before its expiration to an assignee who went into possession forthwith, with the result that the assignee, who was a respectable and responsible person, became a statutory tenant. The Court of Appeal (Lord Greene, M.R., Somervell and Evershed, L.J.J.), held, allowing an appeal from the decision of Roxburgh, J. (*Estates Gazette*, May 15, 1948, p. 371), (1) that the landlord had not withheld the consent unreasonably, and (2) that, as the landlord had no intention of selling the house with vacant possession and no rent higher than the standard rent could be charged from another tenant, the damage suffered was only nominal. [*Reported by C. M. Schmitthoff, Esq., Barrister-at-Law.*] See also [1949] 1 C. L. 139.

1896. ——. In order to be able to say that consent to an assignment has been unreasonably withheld in respect of a respectable and responsible tenant it is not sufficient for the assignees to be respectable and responsible. The landlord is still entitled to consider the matter, because there may be reasonable grounds on which he can withhold his consent, however respectable the proposed assignees may be. The personnel of the proposed assignees, and the nature or character of the user are material matters which the landlord should have an opportunity of considering. Moreover, reasonableness does not refer only to something which touches both parties to the lease, but should be read in a general sense. The circumstances of each case must be considered, and, in considering that point, the Court is not confined to the evidence with regard to the construction of the lease, but is entitled to have regard to the understanding that was contemplated by the parties when the lease was entered into.

The lessees had covenanted "not to assign, underlet or part with the possession of the demised premises without the previous written consent of the lessor, such consent, however, not to be unreasonably withheld in respect of a respectable and responsible tenant". They had also covenanted for themselves and their successors or assigns "not to use or permit the premises to be used otherwise than as offices for the purpose of their business". The tenants were chartered accountants, and the landlord, himself a chartered accountant, had for special reasons wanted the premises to be occupied by chartered accountants. The tenants, despite the landlord's refusal of permission, sub-let the premises to a company making kitchen equipment, who were respectable and responsible tenants, and refused to remedy the breach after notice under s. 146 of the Law of Property Act, 1925, had been given. Held, (1) that, while the covenant for user of the premises for the purposes of the business of the tenants or their assigns would not be broken if they or their assigns changed the nature of their business, the business of the sub-tenants was not that of the tenants or their assigns, and the covenant had therefore been broken; (2) although the sub-tenants were respectable and responsible persons, this was a case where the landlord could reasonably withhold his consent; and (3) as the breach had been persisted in the landlord was entitled to forfeiture of the lease: *WILSON v. FYNNE*, 92 S. J. 324; [1948] 2 All E. R. 40, Denning, J. (applying *Tredegar v. Harwood*, [1929] A. C. 72).

1897. ——. Where a lease contains a covenant that the tenant will not assign the premises without the landlord's previous consent in writing, such consent not to be unreasonably withheld, the general principle which applies is—as was stated by the Court of Appeal in *Houlder Bros. v. Gibbs*, [1925] Ch. 575—that the refusal to give consent must be considered in relation to the person or personality of the proposed assignee and must directly affect the subject-matter of the contract.

A lease contained a covenant by the lessee "not without the lessor's previous consent in writing to assign . . . the . . . flat or any part thereof (such consent to an assignment . . . not to be unreasonably withheld) . . ." The lessees of the flat under a seven years' lease were a limited liability company. Three months before the expiration of the lease they asked for the landlord's consent to an assignment of the lease to one of their directors, who was one of the guarantors of the lease and who had been residing in the flat as she was entitled to do under the express provisions of the lease. The landlord refused his consent to the proposed assignment, whereupon the lessees purported to assign the lease to their director. The county court Judge made an order granting the landlord

possession of the flat for breach of covenant. Held, on appeal, although the consequences would not have shown themselves until the expiration of three months from the date of the assignment, and the contractual relationship would have been the same had the landlord consented to the assignment, it was none the less a contractual relationship pregnant with future possibilities, and more than possibilities, which would not have resulted from the previous existing contractual relationship between the landlord and the tenant, because at the termination of the lease, the landlord would have found himself faced with a statutory tenant who could only have been evicted on the special grounds contained in the Rent Restrictions Acts. Consequently, the landlord's consent had been reasonably withheld, and the appeal had to be dismissed: *LEE v. CARTER*, [1949] 1 K. B. 85; [1949] L. J. R. 7, C. A. (applying *Houlder Bros. v. Gibbs*, *supra*; distinguishing *Re Swanson's Agreement*, [1947] C. L. Y. 1617.) (See also § 3154.)

- 1898.** — **writing not under seal.** [Cty. Ct.] See *GLOUCESTERSHIRE C.C. v. BARNES*, § 3198.
- 1899.** **Conveyancing.** See *REAL PROPERTY AND CONVEYANCING*.
- 1900.** **Counterpart as evidence of lease.** See *BARBER v. ROWE*, § 1345.
- 1901.** **Covenant—breach of covenant—increased rent—re-entry.** [Eire.] In *O'NEILL v. MURPHY*, [1948] I. R. 72, the High Court of Eire held that where in a lease an increased rent was payable on the breach of certain covenants, the landlord's right to re-enter for breach of covenant was not taken away whether the increased rent was a penalty or liquidated damages.
- 1902.** — **measure of damages.** In cases which are not breaches of covenant to deliver up in repair, the law has always been and still is that there is no rigid rule that the measure of damages is the cost of reinstating the premises. It depends on the particular case. The real question in each case is: What damage has the plaintiff really suffered from the breach? See *DUKE OF WESTMINSTER v. SWINTON*, § 1907 (applying *Conquest v. Ebbets*, [1896] A. C. 490; explaining *Eyre v. Rea*, [1947] C. L. Y. 1627).
- 1903.** — **particulars in action for forfeiture of lease.** See *DUKE'S COURT ESTATES v. ASSOCIATED BRITISH ENGINEERING*, § 2875.
- 1904.** — **permitting premises to be used for gaming.** (Law of Property Act, 1925 (15 Geo. 5, c. 20), s. 146 (1).) The authorities do not lay down any definite test by which it can be decided whether a breach of covenant is "capable of remedy" within the meaning of s. 146 (1) of the Law of Property Act, 1925, or not. It has been decided that bankruptcy and allowing premises to be used as a brothel constitute breaches which are irremediable. A conviction for allowing gaming to go on in a public place was held to be a breach of a covenant to carry on and conduct a club "in a proper and orderly manner and complying with all legal . . . regulations", and such breach was held to be irremediable by mere cesser of the conduct constituting the breach, because the lessor was entitled to be protected against the slur which is involved in being said to be the landlord of a gaming house, even though no monetary damage ensued from it. Therefore, the landlord's failure to require the tenant, in the statutory notice served under s. 146 (1) of the Law of Property Act, 1925, to remedy the breach was immaterial.
Semble: A notice under s. 146 (1) of the Act of 1925 which merely copies out the words of the section and calls on the lessee to "remedy the breach if capable of remedy" is a good notice.
Quare: Whether a proper test to apply in deciding whether a breach is capable of remedy or not is that any breach involving a criminal offence is a breach which is incapable of remedy:
HOFFMAN v. FINEBERG, [1948] W. N. 109; [1948] L. J. R. 1255; [1948] 1 All E. R. 592, Harman, J. (applying *Rugby School v. Tannahill*, [1935] 1 K. B. 87, and *Egerton v. Esplanade Hotels, London*, [1947] C. L. Y. 1629). (See also § 1905.)
- 1905.** — **relief against forfeiture.** (Law of Property Act, 1925 (15 Geo. 5, c. 20), s. 146 (2).) The Court's jurisdiction to grant relief against forfeiture under s. 146 (2) of the Law of Property Act, 1925, is a purely discretionary jurisdiction, which the Court may grant or refuse "having regard to the

proceedings and conduct of the parties under the . . . provisions of the section, and to all the other circumstances". The conditions laid down by Cozens-Hardy, M.R., in *Rose v. Spicer*, [1911] 2 K. B. 234, on which relief is to be granted, though not to be taken as rules, are useful maxims in general. The most important of these maxims is that "the applicant must come into Court with clean hands, and ought not to be relieved if he avows an intention to continue or to repeat a breach of covenant".

In a case where there had been a long continuance of a breach of covenant by allowing premises to be used for the purpose of gaming for a period of over one year, the Court refused to grant relief under the Act, even though the lessees expressed their willingness to comply with any conditions that the Court chose to impose. See *HOFFMAN v. FINEBERG*, § 1904 (applying *Hyman v. Rose*, [1912] A. C. 623).

1906. — — — **permitting premises to be used for immoral purposes.** In *KOSKY v. THEOHARUS* (February 6, 1948), Birkett, J., found that the defendant tenant knew of and permitted the use of the premises for immoral purposes and held that, as the breach was not capable of remedy the notice under s. 146 of the Law of Property Act, 1925, was not invalidated by reason of the omission from it of a demand that the defendant remedy the breach. [*Reported by R. C. Calburn, Esq., Barrister-at-Law.*] See also *Estates Gazette*, February 14, 1948, p. 120.

1907. — — — **relief against forfeiture—sub-lessees.** Although Atkinson, J., said in *Eyre v. Rea*, [1947] C. L. Y. 1627, that he knew of no case where relief against forfeiture for breach of covenant had been given except on the basis of the breach being at once rectified, the question of relief and the terms of granting it are questions of discretion for the Judge, and each case has to be considered in the light of its own circumstances.

A lease contained a covenant that the premises should be used as a private dwelling-house only, and that no alteration of the premises should be made without the express previous written consent of the landlord. A sub-sub-lessee of the premises on whom a requisition notice had been served, succeeded in obtaining a withdrawal of the requisition notice by falsely informing the council that he required the premises, *inter alia*, for his own occupation. Without applying for the landlord's permission he then converted the premises into six flats which he let to tenants. Held, the basis for the proper order was to put the landlord in no worse a position than he would have been in if the premises had been requisitioned. Therefore, immediate reinstatement was not to be made a condition for granting relief against forfeiture, but the condition of relief imposed on the tenant was to be that within two years, or such further time as the Court might allow, the premises should be restored to their previous condition, and that the user should then revert to that of a private dwelling-house only. The sub-lessee was to have relief on the same conditions, but the sub-sub-lease was adjudged forfeited. In assessing the damages which the sub-sub-lessee had to pay to the sub-lessee the fact that the sub-lessee would get some benefit from the work which had been done on the premises had to be taken into account: *DUKE OF WESTMINSTER v. SWINTON (ADAMS, THIRD PARTY, AND WILLIAMS, FOURTH PARTY)*, [1948] 1 K. B. 524; [1948] 1 All E. R. 248, Denning, J. (See also § 1902.)

1908. — — — **not to assign.** See *WILSON v. FYNN*, § 1896; *SWANSON v. FORTON*, § 1895; *LEE v. CARTER*, § 1897.

1909. — — — **not to underlet.** See *DUKE'S COURT ESTATES v. ASSOCIATED BRITISH ENGINEERING*, § 2875; *MARCHE v. CHRISTODOULAKIS*, § 3237; [*Cty. Ct.*] *FOWLER v. BLUNDEN*, § 3238.

1910. — — — **not to use except as a private dwelling-house.** In *STOKE LANDS v. SEARS* (March 9, 1948), one of the covenants upon which land was conveyed to the defendant, provided: "No building shall be erected . . . except a private dwelling-house . . . not to be used for any purpose except as a private dwelling-house". The defendant promoted the business of a private care hire on the premises. He accepted orders for car hire by post or telephone at the house and garaged the car there. No notice was on the house indicating the defendant's trade, nor did customers call there. The plaintiff asked for an injunction restraining the defendants from carrying on business on the premises. Wynn-

Parry, J., held that by the covenant the property could only be used as a private house; the garage must only be put to a use applicable to a private dwelling-house and a car garaged there could only be used for the owner's private purposes. Injunction granted. [*Reported by C. M. Schmitthoff, Esq., Barrister-at-Law.*] See also *Estates Gazette*, March 13, 1948, p. 196.

- 1911.** — **not to use shop premises otherwise than for a certain trade.** In *WEST WICKHAM SHOPS v. WATERMAN* (February 23, 1948), Birkett, J., held that where there was a covenant not to use the demised shop premises otherwise than for a certain trade and, during the currency of the term, the landlord granted to the tenant a licence to partition the premises into two shops, the restriction applicable to the whole was still applicable to the divided premises, and as there had been a user of one of the shops in the way of another trade, after a subletting of that shop by the tenants without consent, there had been a breach of the restrictive covenant. [*Reported by R. C. Calburn, Esq., Barrister-at-Law.*] See also *Estates Gazette*, February 28, 1948, p. 161.
- 1912.** — **running with land—restriction on right to determine tenancy for three years.** (Law of Property Act, 1925 (15 Geo. 5, c. 20), s. 142 (1).) In order to ascertain whether a covenant touches and concerns the thing demised or, to use the modern statutory expression, refers to the "subject-matter of the lease" within s. 142 of the Law of Property Act, 1925, the proper inquiry should be whether the covenant affects either the landlord *qua* landlord or the tenant *qua* tenant. Applying this test, a limitation on or condition precedent to a right to serve a notice to quit is a covenant which affects a landlord *qua* landlord and must therefore necessarily run with the land.
- S., P., and M. were quarterly tenants of parts of a building held by H. under a long lease. H. agreed with P. to attach a restriction to the quarterly right to give notice by suspending it during the first three years. This restriction was incorporated into P.'s tenancy agreement. By letters H. came to similar agreements with S. and M., but the restriction was never in fact incorporated in their respective tenancy agreements. H. then sold his reversion to the plaintiffs without disclosing the restriction on giving notices to quit. The plaintiffs purported to give notices to quit to S. and M. long before the three years had expired. Held, the composite written agreement, consisting of the formal original and counterpart and the correspondence, constituted an instrument within the meaning of s. 6 (2) of the Law of Property Act, 1925, and the restriction contained therein was not personal and collateral, but referred to the subject-matter of the lease and ran with the land and, consequently, barred the plaintiffs: *BREAMS PROPERTY INVESTMENT CO. v. STROULGER*, [1948] 2 K. B. 1; [1948] L. J. R. 1515, C. A.
- 1913.** — **to repair—sale of leaseholds.** [Eire.] See *Re FLYNN AND NEWMAN'S CONTRACT*, § 3802.
- 1914.** — **liability of undertenant to tenant.** [Cty. Ct.] In *SCINTILLA v. KEABLE PRESS* (1948), 98 L. J. 178, Judge Konstam held that where an undertenant had been granted a lease to take effect after the determination of the tenant's reversion of one day on the undertenant's underlease and the undertenant was in process of executing the repairs for which he was liable on his underlease, the tenant was not entitled to any contribution from the undertenant in respect of damages paid to the head landlord by the tenant for breach of the tenant's own repairing covenant under the head lease, because to hold otherwise would be to stultify the provisions of the Landlord and Tenant Act, 1927, s. 18 (1).
- 1915.** **Duration of term.** A tenancy agreement provided: "The landlord agrees to let and the tenant to take [the premises in question] from January 1, 1944, to June 30, 1945, for the term of one year and so on from year to year until the tenancy be determined at the end of the first or any subsequent year by one of the parties giving to the other of them six calendar months' previous notice in writing". Held, having regard particularly to the phrase "and so on from year to year", the parties had created a fixed term of eighteen months and thereafter a year to year tenancy which could be determined by the requisite notice at the end of any one of those years, whether or not it might have been earlier determined: *ADDIS v. BURROWS*, [1948] 1 K. B. 444; [1948]

L. J. R. 1033, C. A. (applying *Croft v. William F. Blay*, [1919] 2 Ch. 343; distinguishing *Doe d. Robinson v. Dobell* (1841), 1 Q. B. 806). (See also § 1937.)

1916. Estoppel—doctrine that tenant may not question his landlord's title. See *E. H. LEWIS & SON v. MORELLI*, § 1972.

1917. — sale of leaseholds—failure to disclose collateral agreement with tenant. See *OADES v. SPAFFORD*, § 3816.

1918. Fixtures. See *FIXTURES*.

1919. Frustration—application of doctrine to leases. In view of the divided opinion of the House of Lords in *Cricklewood Property and Investment Trust v. Leighton's Investment Trust*, [1945] A. C. 221, the decision of the Court of Appeal in that case, [1943] K. B. 493, that the doctrine of frustration cannot be applied to a lease remains good law. See *DENMAN v. BRISE*, § 3230 (applying *Leighton's Investment Trust v. Cricklewood Property and Investment Trust*, [1943] K. B. 493, and *Simper v. Coombs*, § 1976).

1920. Landlord and Tenant Act, 1927—goodwill. (Landlord and Tenant Act, 1927 (17 & 18 Geo. 5, c. 36), ss. 1, 4, 5.) The decision of the Divisional Court in *Whiteman Smith Motor Co. v. Chaplin*, [1934] 2 K. B. 35, makes it quite clear that the only part of the tenant's goodwill which is the subject of compensation is the net rental value of what "adheres" to the premises in the sense of enuring to the benefit of the landlord in the form of increased rental value after the premises have returned into his possession. The following general principles apply to the Landlord and Tenant Act, 1927:

- (1) Any real ambiguity of language in any particular provision, still apparent even when construed in the light of the whole Act, ought to be resolved in favour of maintaining common law rights.
- (2) Its plain meaning should not be strained in favour of any presupposed intention to enlarge the tenant's or to cut down the landlord's contractual rights.
- (3) The scope of the Act is limited to premises "used for business purposes"; and "improvements" and "goodwill" are treated as strictly parallel subjects for compensation.
- (4) That parallelism is worked out in the two sections which create the right to compensation (ss. 1, 4) in so far as:
 - (a) the operative words of s. 1 (1) down to the word "compensation", dealing with improvements and of s. 4 (1) dealing with goodwill are identical;
 - (b) the restriction of compensation by s. 1 (1), proviso (a), to "the net addition to the value of the holding . . . which may be determined to be the direct result of the improvement" finds its counterpart in s. 4 (1) in the limitation of compensation to the added rental value of the premises in the hands of the landlord as a result of business previously carried on by the tenant, coupled with its proviso (a) that the addition must be proved to be "the direct result of the carrying on of the trade or business by the tenant";
 - (c) in both sections regard must be had to a change of user of the premises intended by the landlord, and in both sections the landlord is not to be called on to pay for any value in his hands, when possession passes to him, which is not solely and directly attributable to the efforts of the tenant;
 - (d) the same procedure is adopted for the assessment of both heads of compensation.

The landlord, a partner in a firm of estate agents, had let the ground floor of the premises to a tenant, who carried on the business of a tea-shop. During her tenancy the tenant had the advantage for the tea-shop of a private bakery nearby which she rented from some other landlord, and which enabled her to build up a trade in the sale of cakes and other articles. On the expiration of the tenancy the tenant made a claim for a new lease under s. 5 and, alternatively, a claim for compensation under s. 4 of the Landlord and Tenant Act, 1927. The landlord was anxious to use the premises for the purpose of expanding his successful business as an estate agent for which they would be highly suitable. Held,

neither the site value, nor the "personal" goodwill attaching to the way in which, and the type of staff with which, the tenant had managed the tea-shop, nor the goodwill value of the bakery rented from another landlord could be taken into account in assessing compensation for goodwill, because they were items of value in the tenant's goodwill which could not have enured to the benefit of the landlord. There was no adherent goodwill in this case. Moreover, the landlord had proved that "he required the premises for his own occupation" under para. (i) of s. 5 (3) (b) and that "the grant of such a lease of the premises would not be consistent with good estate management" under para. (iv) of the subsection. Consequently, the tenant's application should be refused: *CLIFT v. TAYLOR*, [1948] 2 K. B. 394; [1948] L. J. R. 1822, C. A. (applying *Whiteman Smith Motor Co. v. Chaplin*, *supra*, and *Charrington & Co. v. Simpson*, [1935] A. C. 325). (See also § 1925.)

1921. — —. (Landlord and Tenant Act, 1927 (17 & 18 Geo. 5, c. 36), s. 4 (1).) In sub-s. 1 of s. 4 of the Landlord and Tenant Act, 1927, which speaks of "goodwill" which "has become attached to the premises by reason whereof the premises could be let at a higher rent", the words "could be let" cover and include all such persons as may in fact be in a position to let at the determination of the tenancy, *e.g.*, the head landlord where there is only one day left of the mesne landlord's term at the end of the tenant's lease. Thus, the words are apt to cover the case where the letting which is contemplated may require the consent of some person other than the mesne landlord. Therefore, where a tenant, in breach of a covenant in a head lease restricting the user of the premises to user as a private dwelling-house, carries on a trade on the premises, the tenant will not be deprived of the compensation for goodwill under the section merely because, as between the head landlord and the mesne landlord, the head landlord may be in a position to prevent the mesne landlord enjoying that for which he has paid. See *IRELAND v. TAYLOR*, § 1922.

1922. — —. In *Clift v. Taylor*, § 1920, Scott, L.J., stated that "the only part of the tenant's goodwill which can be the subject of compensation is the net rental value of what adheres to the premises in the sense of enuring to the benefit of the landlord in the form of increased rental value after the premises have returned into his possession". This value can usually only be ascertained as stated by Maugham, L.J., in *Whiteman Smith Motor Co. v. Chaplin*, [1934] 2 K. B. 35, by an intelligent guess: *IRELAND v. TAYLOR*, [1948] W. N. 290; [1949] L. J. R. 305; [1948] 2 All E. R. 450, C. A. (Somervell, L.J., doubting whether a landlord can be forced to pay compensation for increased rental value if by reason of an enforceable covenant in a head lease he is prevented from further user of the premises for the trade or business in question; applying *Clift v. Taylor*, *supra*, and *Whiteman Smith Motor Co. v. Chaplin*, *supra*). (See also §§ 1921, 1926.)

1923. — — **created by sub-lessees.** As between tenants and their landlords, it is immaterial in a claim for compensation for goodwill under the Landlord and Tenant Act, 1927, that goodwill may have been built up in part as the result of the operations conducted on the premises by sub-lessees or licensees.

The tenants, who were the organisers of an amusement park to which goodwill attached, had devised the whole lay-out and the scheme of the premises. A subsidiary company wholly owned by the tenants granted licences or sub-leases to the persons who occupied the stalls and ran the sideshows. Held, that on termination of the tenancy the tenants were entitled to compensation for goodwill: *BUTLINS v. FYTCHE* (1948), 92 S. J. 231; [1948] 1 All E. R. 737, C. A. (See also § 1928.)

1924. — — **new lease — consideration for waiver of statutory rights.** [Cty. Ct.] In *LEWIS v. WATNEY, COMBE, REID & Co.*, *Estates Gazette*, July 31, 1948, p. 93, Judge Pugh held that where a tenant did not claim a new lease within twelve months of the expiration of the tenancy but was granted a yearly tenancy on signing a memorandum whereby she agreed to accept the yearly tenancy in full satisfaction of her rights under the Act, there was no adequate consideration for that agreement and therefore it did not operate as a bar to a claim for a new lease or compensation.

1925. — — **occupation by the landlord, premises required for.** There is "occupation by the landlord" within the meaning of s. 5 (3) of the Landlord and Tenant

Act, 1927, where the landlord has a partner or partners, or where the premises are let to a firm and where the landlord is a partner of such firm. See *CLIFF v. TAYLOR*, § 1920.

- 1926.** — — —. (Landlord and Tenant Act, 1927 (17 & 18 Geo. 5, c. 36), s. 5 (3) (b).) The word "required" in s. 5 (3) (b) of the Landlord and Tenant Act, 1927, which provides that "a new lease . . . shall not be deemed to be reasonable . . . if the landlord proves (1) that the premises are required for occupation by himself", does not mean "needed" or "reasonably required". On the contrary, on the true construction of this part of the section the landlord must be the sole arbiter of his own requirements, provided he proves that he, in fact, desires possession and genuinely intends to occupy.

The landlord, a man aged seventy, wanted possession of his house so that he might use the large lounge as a studio for portrait painting, for which purpose it was suitable. The county court Judge considered that this was a "mere whim" of the landlord. Held, if the landlord desired to get possession of his house and genuinely intended to use it for this purpose, he "required" it for occupation by himself within the meaning of s. 5 (3) (b) (i) of the Landlord and Tenant Act, 1927. See *IRELAND v. TAYLOR*, § 1922 (applying *Nuthall v. Entertainments and General Investment Corpn.*, [1947] C. L. Y. 1660).

- 1927.** — — — time limit for notice of willingness to grant by superior landlord. (Landlord and Tenant Act, 1927 (17 & 18 Geo. 5, c. 36), ss. 4, 5 (1), 8 (1).) The scheme of the Landlord and Tenant Act, 1927, is to deal with each relationship of landlord and tenant between that tenant and his landlord, and for that reason the notice of willingness to grant a new lease which gives the landlord the right to free himself from the obligation to pay compensation must be a notice from the tenant's immediate landlord to him, and it is that notice which must be within the limited period of two months from the making of the tenant's claim which is imposed by proviso (b) to s. 4 (1) of the Act. *Quære*: whether a superior landlord might give a notice on behalf of himself and also on behalf of the mesne landlord.

The lease of the mesne landlords was due to expire on May 9, 1949, and that of the tenant on May 8, 1949. On May 10, 1946, a notice was served by the tenant on his immediate landlord, giving notice of a claim, following the terms of s. 5 (1), for a new lease, or, in the alternative, for compensation for loss of goodwill. On July 18, 1946, the superior landlord gave notice to the tenant that in lieu of compensation for loss of goodwill he was willing to grant the tenant a new tenancy. Held, the counter-notice by the superior landlord was not a notice given within the time required by s. 4 (1), proviso (b), and, consequently, the proceedings had to continue on the claim for a new lease made on May 10, 1946: *RACKETT v. ASTON & Co.*, [1948] 2 K. B. 157; [1948] L. J. R. 1803, C. A.

- 1928.** — — — time for proceedings. (Landlord and Tenant Act, 1927 (17 & 18 Geo. 5, c. 36), ss. 4 (1), 5 (3).) It is well settled that:

- (1) a notice under which a tenant claims a new lease under s. 5 of the Landlord and Tenant Act, 1927, and alternatively claims, if he fails to get a new lease, compensation under s. 4, is valid;
- (2) a tenant who is applying for compensation under s. 4 cannot start his claim until he has brought his tenancy to an end and quitted (whereas a tenant claiming under s. 5 for a new lease probably must make his claim before the lease has expired).

Quære: Can a tenant who puts in a claim under s. 5 for a new lease claim at the appropriate time in the alternative for compensation under s. 4? (If the tenant can make such a claim he will have to start a second set of proceedings in which the same evidence will have to be re-called). See *BUTLINS v. FYTCHE*, § 1923 (applying *Simpson v. Charrington & Co.*, [1934] 1 K. B. 64; and *Smith v. Metropolitan Properties Co.*, [1932] 1 K. B. 314).

- 1929.** Lease or licence — discontinuous term. [Aus.] In *RADIO THEATRES PTY. v. CITY OF COBURG*, [1948] V. L. R. 84, the Supreme Court of Victoria considered the question of a single lease for a non-continuous period, but held that in the case in question, where a municipal council had demised premises to the appellants

for a term of three years for the purpose of using the same as a theatre on specified nights in each week, the council had granted a lease and not a licence to the appellants. (*Smallwood v. Sheppards*, [1895] 2 Q. B. 627, and *Ayers v. Hanson* (1912), 56 S. J. 735, considered.)

- 1930. Leasehold tenure reform.** The Lord Chancellor has set up a committee (chairman, Lord Uthwatt) to examine questions relating to leasehold tenure in England and Wales. The terms of reference include leasehold enfranchisement, security of tenure of business premises, control of rents of business premises, covenants to repair, and compensation for improvements.
- 1931. Lodger or tenant—distinction for rating purposes.** See *HELMAN v. HORSHAM AND WORTHING ASSESSMENT COMMITTEE*, § 3090.
- 1932. Mesne profits.** Where the rent represents the fair value of the premises, mesne profits are assessed at the amount of the rent, but, if the real value is higher than the rent, then mesne profits must be assessed at the higher value. See *CLIFTON SECURITIES v. HUNTLEY*, § 2830.
- 1933. Negligence—adjoining occupiers.** See *COURAGE & CO. v. MEAKERS GARAGE*, § 2475.
- 1934. — dangerous premises.** See *NEGLIGENCE*.
- 1935. Notice to quit—agricultural holding.** See *AGRICULTURE*.
- 1936. — covenant not to give notice.** See *BREAMS PROPERTY INVESTMENT CO. v. STROULGER*, § 1912.
- 1937. — day not named.** A notice need not mention the particular day on which the tenant is required to quit. Thus, a notice to quit "at the expiration of the current year of the tenancy which shall expire next after the end of one half-year from the date hereof" is sufficient. As long as the landlord either gives a certain date or supplies the tenant with a formula from which the date can be ascertained with certainty the notice will be good.
- The end of any year of a yearly tenancy was June 30. On June 28, 1945, the landlords sent a notice to the tenant giving "notice to quit and deliver up at the expiration of your tenancy which will expire next after the end of one half-year from the service of this notice possession of the W. premises". Held, this notice validly determined the tenancy on June 30, 1946. See *ADDIS v. BURROWS*, § 1915 (distinguishing *Phipps & Co. v. Rogers*, [1925] 1 K. B. 14).
- 1938. — due date—uncertainty.** [Eire.] In *COLFLX (DUBLIN) v. HENDRON BROS. (DUBLIN)*, [1948] Ir. R. 119, the High Court of Eire held that where the date of commencement and the nature of a tenancy are uncertain, a notice to quit on a stated date, no alternative date being given, must be bad.
- 1939. — during first year of yearly tenancy.** In view of the decisions in *Re Threlfall* (1880), 16 Ch. D. 274, and *King v. Eversfield*, [1897] 2 Q. B. 475, there is no principle of law to prevent two persons agreeing that a yearly tenancy may be determined on whatever notice they like or even that it may be determined within the first twelve months of the tenancy.
- A tenancy agreement provided for a three months' tenancy from July 4, 1935, until October 3, 1935, and for the tenancy to continue thereafter from year to year "but subject to the determination of the tenancy hereby created as herein-after mentioned". It then provided that the tenancy could be terminated "at any time on or after October 3, 1935, on giving to the other of them . . . three calendar months' previous notice thereof in writing without reference to the commencement of the said tenancy any law or usage to the contrary notwithstanding". On July 3, 1947, the landlords gave the tenant notice to quit and deliver up possession of the premises on October 6, 1947. Held, this was a valid notice: *H. AND G. SIMONDS v. HEYWOOD* (1948), 92 S. J. 111; [1948] 1 All E. R. 260, *Lynskey, J.* (applying *Re Threlfall*, *supra*, and *King v. Eversfield*, *supra*; distinguishing *Mayo v. Joyce*, [1920] 1 K. B. 824).
- 1940. — given by statutory tenant.** See *KING'S COLLEGE, CAMBRIDGE v. KERSHMAN*, § 3225.
- 1941. — necessity for, before alteration of terms of tenancy.** [Cty. Ct.] See *CLARKE v. NEWCASTLE CORPN.*, § 1958.

1942. — **service on agent.** [Cty. Ct.] In *BIRCHLAND v. LOAKE*, *Estates Gazette*, February 14, 1948, p. 135, Judge Andrew held that the efficacy of service of a notice to quit on the tenant's agent depended on whether the agent had a duty to deliver the notice to the tenant.
1943. — **service on probate Judge.** See *SMITH v. MATHER*, § 3219; *DONOVAN v. LOUGHER*, § 2001.
1944. — **small tenements recovery.** See *BOWDEN v. RALLISON*, § 1966.
1945. — **tenancy at will.** See *FOX v. HUNTER-PATERSON*, § 1971.
1946. **Option—contract to grant lease to yearly tenant—failure to register.** See *SHARP v. COATES*, § 1875.
1947. — **to purchase—date for exercise.** In *ARCHER v. HANSON* (February 4, 1948), Jenkins, J., held that where there was a provision in a lease which expired in December, 1956, that if, before that date, the tenant gave to the landlord six months' notice in writing he might purchase the freehold, the option to purchase took effect on and not before the expiration of the lease in December, 1956, and therefore was not validly exercised by a notice given in 1947. [*Reported by C. M. Schmitthoff, Esq., Barrister-at-Law.*] See also *Estates Gazette*, February 14, 1948, p. 120.
1948. — **failure to register.** The authority of *Goffin v. Houlder* (1920), 90 L. J. Ch. 488, clearly demonstrates that where a landlord is bound by a contract by which he has given his tenant an option to purchase the freehold reversion, he will be liable in damages to the tenant if he puts it out of his power to perform the contract, and it is further clear from that authority that the damages for which he would be liable might be substantial.

The defendant leased land to the plaintiff and granted him an option to acquire the reversion in fee simple at a specified price. The option was capable of registration as an estate contract under the Land Charges Act, 1925, but was not registered. The defendant sold the reversion to a purchaser, and later the plaintiff exercised his option. It was admitted that the plaintiff could not take effective proceedings against the purchaser, and that he had no claim for specific performance against the defendant; but by this action he claimed damages from the defendant for breach of contract. Held, (1) the defendant remained bound by the option; the option could not be construed as implying that the assignee of the reversion should be bound by it, nor did it run with the land; to bring about such a position, a novation would have been required; (2) the plaintiff was entitled to recover substantial, and not merely nominal, damages: *WRIGHT v. DEAN*, [1948] Ch. 686; [1948] L. J. R. 1571, Wynn-Parry, J. (applying *Goffin v. Houlder*, *supra*, *Hadley v. Bazendale* (1854), 9 Ex. 341, and *Stuart v. Joy*, [1904] 1 K. B. 612; considering *L. & S. W. R. v. Gomm* (1882), 20 Ch. D. 562, and *Worthing Corporation v. Heather*, [1906] 2 Ch. 532).
1949. — **parol evidence.** See *HUTTON v. WATLING*, § 3805.
1950. — **payment of rent after exercise of option.** [Can.] In *KRESGE Co. v. GRANOWITZ*, [1948] 1 D. L. R. 298, the High Court of Ontario held that where a tenant has an option to purchase the demised premises and exercises that option, although the tenancy is then determined, that determination is subject to the completion of the purchase, and a subsequent payment of rent before completion does not operate as a waiver of the notice by which the option was exercised.
1951. **Recovery of possession—effect of stay of execution.** See *CLIFTON SECURITIES v. HUNTLEY*, § 2830.
1952. — **Rent Acts.** See RENT RESTRICTION.
1953. — **small tenements recovery.** See *BOWDEN v. RALLISON*, § 1963; *RAMSBOTTOM v. SNELSON*, § 1965; *SHELLEY v. L. C. C.*, § § 1608, 1609.
1954. — **stay of warrant for possession of house not within Rent Acts.** [Cty. Ct.] See *ANON.*, § 695.
1955. — **warrant obtained fourteen years before application to extend time for execution.** See *DONOVAN v. LOUGHER*, § 2001.
1956. **Renewal of lease by trustee.** See *Re KNOWLES' WILL TRUSTS*, § 3426.

- 1957. Rent — and mesne profits, distinction between.** See CLIFTON SECURITIES v. HUNTLEY, § 1932.
- 1958. — money paid as rent under mistake of law—"lodger rent".** [Cty. Ct.] In CLARKE v. NEWCASTLE CORPN. (1948), 98 L. J. 248, the tenant of the corporation had for many years paid weekly by way of "lodger rent" a sum in addition to the rent which was recoverable from him under his agreement. Judge Tucker held that as the tenancy had not been determined before the extra payment was demanded, it was not legally recoverable by the corporation, and, moreover, the "lodger" in respect of whom it was demanded was not a lodger but the daughter of the tenant residing with him. Nevertheless the tenant had paid the extra "rent" and as the money had been paid under a mistake of law (*i.e.*, the mistaken belief that it was legally due to the corporation) it was not recoverable.
- 1959. — paid after exercise of option.** [Can.] See KRESGE CO. v. GRANOWITZ, § 1950.
- 1960. — payment by posted cheque.** [Can.] In DAVIDOVICH v. HILL, [1948] 2 D. L. R. 613, the Ontario Court of Appeal held that where there was no agreement between landlord and tenant that the rent should be paid by cheque and no course of conduct amounting to such an agreement, the posting of a cheque by the tenant was not payment of the rent unless the posted cheque was received by the landlord.
- 1961. — restriction.** See RENT RESTRICTION.
- 1962. — to be fixed by valuation.** In LONG v. BULLOCK (March 12, 1948), Vaisey, J., held that where the parties to a lease agreed that the rent should be fixed by the valuation of a third person, they were bound by such valuation, except in the cases of fraud, collusion or fundamental error. [*Reported by C. M. Schmitthoff, Esq., Barrister-at-Law.*] See also *Estates Gazette*, March 27, 1948, p. 237.
- 1963. Small tenements recovery—proceedings.** "The Small Tenements Recovery Act, 1838, is full of pitfalls and very technical considerations apply. Parties would be much better advised if they now took advantage of the county court where proceedings for the recovery of houses are much simpler and also they have the advantage that a trained lawyer—a county court judge—hears the case": *per* Lord Goddard, C.J., in BOWDEN v. RALLISON, § 1966.
- 1964. — — by housing authority.** See SHELLEY v. L. C. C., §§ 1608, 1609.
- 1965. — service occupancy.** (Small Tenements Recovery Act, 1838 (1 & 2 Vict. c. 74), s. 1.) If a farm worker is required to live in a house simply as a matter of convenience for all parties, he is in the true sense of the word a tenant, and can, if he holds over after the term of his tenancy has expired, be brought before the justices who have jurisdiction to make an order of ejectment under s. 1 of the Small Tenements Recovery Act, 1838; but where the occupancy is a service occupancy, *i.e.*, where the justices find that the farm worker is required to live there for the proper performance of his duty, just as a chauffeur may be required to live in the flat over his employer's garage or a gardener in a cottage in the garden, the justices have no power to make an order under the Act: RAMSBOTTOM v. SNELSON, [1948] 1 K. B. 473; [1948] L. J. R. 946, D. C. (applying *Dover v. Prosser*, [1904] 1 K. B. 84).
- 1966. — statutory tenancy.** (Small Tenements Recovery Act, 1838 (1 & 2 Vict. c. 74), s. 1, Sched.) A notice of an application to recover possession under s. 1 of the Small Tenements Recovery Act, 1838, requires that the landlord must set out the nature of the tenancy, and show that it has either expired or been determined by notice to quit, and the date of that expiration or determination.
- A landlord let a cottage to a tenant at a weekly rent "subject to six months' notice to quit same on either side". On April 4, 1939, the landlord gave the tenant six months' notice to quit, and asked for possession of the premises on October 11. The tenant, however, remained in possession of the cottage, which was subject to the Rent Restrictions Acts, and continued to pay his rent punctually. On October 31, 1947, a second notice to quit was given demanding possession on November 10. Finally, a notice of an application to recover possession which purported to be in compliance with the provisions of Form 1 to the Schedule to the Small Tenements Recovery Act, 1838, was given in these

terms: "We . . . do hereby give you notice that unless peaceable possession of the . . . cottage . . . , which was held . . . under a tenancy from week to week which was determined by notice to quit from us . . . on November 10, 1947, . . . be given . . . on or before the expiration of seven clear days from the service of this notice, the [landlord] will" apply to the justices. Held, the landlord had failed to show that he had discharged the duty to give a proper notice which was placed on him by the Small Tenements Recovery Act, because he had wrongly described the tenancy, which was a statutory tenancy, and because he had wrongly described the time when the tenancy was put an end to by reason of the fact that, irrespective of whether the first notice to quit was good or bad (and the notice in question was good) the second notice to quit which had been served on the statutory tenant was a mere nullity: *BOWDEN v. RALLISON* (1948), 64 T. L. R. 398; [1948] 1 All E. R. 841, D. C. (See also § 1963.)

1967. Sporting rights—liabilities of landowner in respect of damage to tenant's crops. See *SELIGMAN v. DOCKER*, § 1519.

1968. Surrender—parol—in futuro. [Cty. Ct.] In *ADDIS-PRICE v. LEWIS* (1948), 98 L. J. 430, Deputy-Judge Glazebrook held that where the tenant's agent, who was in possession, wrote to the landlord saying that she wished to give up possession on a stated day later in the same month, but subsequently asked the landlord for leave to remain until a later date, there was no surrender because the letter was not under seal and because there could be no surrender *in futuro*, and therefore the tenant's interest was the same after the stated day as before.

1969. — to mortgagor. [Cty. Ct.] In *BEASTY v. BROOKS* (1948), 98 L. J. 303, Judge Shove held that, apart from the exceptional case provided for by Law of Property Act, 1925, s. 100, a mortgagor could not accept a surrender of a lease without the concurrence of the mortgagee.

1970. — wife of tenant remaining in possession. See *TAYLOR v. McHALE*, § 3239.

1971. Tenancy at will—determination. In deciding whether or not there has been a valid determination of a tenancy at will the principle laid down by Tindal, C.J., in *Doe d. Price v. Price* (1832), 9 Bing. 356, should be applied, namely, "anything which amounts to a demand of possession, although not expressed in precise and formal language, is sufficient to indicate the determination of the landlord's will".

The defendant had been allowed by the plaintiff into possession of a flat in advance of preparation and execution of the fourteen years' lease which had been agreed upon. It was conceded that she was a tenant at will. Two months later when, after protracted negotiations, the lease had still not been agreed, the landlord's solicitors wrote to the tenant's stating "... failing your client's settling this matter satisfactorily this week, we have instructions to take proceedings against her for possession". Held, this letter, which the defendant had contended was too vague, was unambiguous and a valid determination of the tenancy: *FOX v. HUNTER-PATERSON*, [1948] W. N. 399; 64 T. L. R. 541; [1948] 2 All E. R. 813, Birkett, J. (following *Doe d. Price v. Price*, *supra*).

1972. Title of landlord—questioned by tenant. The doctrine that a tenant may not question his landlord's title is familiar law. This is sometimes said to rest on estoppel, and, when a lease is under seal, no doubt this is so. The doctrine, however, has been extended by analogy to written, and even to oral, tenancies. It has been well described as arising by intendment of law from the relationship of landlord and tenant. It does not operate by estoppel strictly so called in cases where there is no writing. The belief of the tenant in his landlord's ability to grant the term is not essential. He may know or have notice of a defect in his landlord's title and yet be precluded, once he has entered and paid rent, from denying it. Thus, an essential feature of an ordinary estoppel *in pais*, namely, reliance on the truth of the representation made, may be lacking. It is, therefore, a special doctrine developed by analogy from leases by specialty and peculiar to the relationship of landlord and tenant. Just as the doctrine exists, so does its converse, namely, a landlord who has by his offer of a tenancy induced a tenant to enter into (or remain in) occupation and to pay rent cannot deny the validity of the tenancy by alleging his own want of title. See *E. H. LEWIS AND SON v. MORELLI*, § 2756.

- 1973. War damage—alterations and additions.** See *HEMNS v. WHEELER*, § 3245; [Cty. Ct.] *LANGFORD PROPERTY CO. v. SOMMERFIELD*, § 3247.
- 1974. — determination of short tenancies.** (Landlord and Tenant (War Damage) (Amendment) Act, 1941 (4 & 5 Geo. 6, c. 41), s. 1 (6).) It is impossible to read into s. 1 (6) of the Landlord and Tenant (War Damage) (Amendment) Act, 1941, a provision that a landlord cannot determine a short tenancy where property has suffered war damage without applying to the Court and satisfying the Court that the circumstances are such as to justify him in determining the tenancy. See *ELLIS & SONS AMALGAMATED PROPERTIES v. SISMAN*, § 3248.
- 1975. — repairs—part of premises retained by landlord.** [Cty. Ct.] (Landlord and Tenant (War Damage) Act, 1939 (2 & 3 Geo. 6, c. 72), s. 1 (1), (3), (5).) In *BROWNLOW TRUST v. KIRBY*, [1947] L. J. N. C. C. R. 273, Judge Earengay, K.C., held that when a landlord is under an obligation to repair the roof of a block of flats, the roof being part of the premises retained by him and not comprised in the lease of the flat the tenant of which has the benefit of the obligation, that obligation is an obligation to do repairs "in relation to the land comprised in the disposition" (as these words are used in s. 1 (1) of the Landlord and Tenant (War Damage) Act, 1939), and the obligation, therefore, does not extend to the imposition of a liability on the landlord to make good war damage which the roof has suffered.
- 1976. — tenant's right to possession of rebuilt house.** (Landlord and Tenant (War Damage) (Amendment) Act, 1941 (4 & 5 Geo. 6, c. 41), s. 1 (2) (3).) It is well settled that the destruction of a house does not by itself determine the tenancy of the land on which it stands. In the case of short tenancies s. 1 (2) and (3) of the Landlord and Tenant (War Damage) (Amendment) Act, 1941, provides that where a house subject to such a tenancy is damaged by enemy action the tenant is treated as having given notice of retention although no rent is payable in respect of the period during which the house is unfit for occupation. It follows that where a house subject to a weekly tenancy has been demolished by enemy action, the tenant, provided his tenancy has never been determined by due notice to quit, continues to be a tenant and is entitled to possession of the house when it is rebuilt: *SIMPER v. COOMBS*, [1948] W. N. 74; [1948] L. J. R. 1080; [1948] 1 All E. R. 306, Denning, J. [Cf. *Ellis & Sons v. Sisman*, § 3248.]
- 1977. — —.** See also *DENMAN v. BRISE*, § 3230.
- 1978. War-time lease.** In *METROPOLITAN GROUND RENTS v. WARWICK GARAGES* (July 16, 1948), a lease dated July 9, 1943, was stated to be "for the period of the present emergency as defined by the Execution of Trusts (Emergency Provisions) Act, 1939, and for a term of six months thereafter". By that Act the period in question is defined as ending on the date declared by Order in Council. An Order (No. 1165 of 1948) declared the date to be May 31, 1948. Lord Goddard, C.J., on the landlord's claim for possession, held that, as the lease was for an indefinite period, it would have been void but for the Validation of War-time Leases Act, 1944, which provided a term for such leases. Nevertheless, regard must be had to the Act of 1939 as the parties had contemplated the period there mentioned. Therefore the agreed term must be taken to expire six months after May 31, 1948, plus one month as provided for by the Act of 1944. The lease, therefore, was still subsisting. [Reported by R. C. Calburn, Esq., Barrister-at-Law.] See also [1948] W. N. 330; 92 S. J. 426.
- 1979. ARTICLES.** Tenancy problems where the spouses are separated: *Solicitor*, January, 1948, p. 13. Damage by frost, by J. T. Plume (rights and liabilities of landlords and tenants in relation thereto): 12 *Conveyancer* (N.S.), p. 118. Surrenders of leases by tenants for life and trustees in consideration of a new lease: 205 L. T. J. 47. Hurst Triumphant?: *Law Notes*, February, 1948, p. 39. Dual relationships (founded on *Ramsbottom v. Snelson*, § 1965): 92 S. J. 108. Recovery of small tenements—some pitfalls: 92 S. J. 118. Unauthorised alterations—relief from forfeiture: 92 S. J. 136. Notice to quit (founded on *Addis v. Burrows* § 1915): 205 L. T. J. 174, 200; 98 L. J. 355. Rights under short tenancies where the premises are demolished by enemy action (founded on *Ellis v. Sisman*, § 3248; and *Simper v. Coombs*, § 1976): 205 L. T. 187.

Control and injunctions (founded on *Bell London and Provincial Properties v. Reuben*, [1947] C. L. Y. 2598): 92 S. J. 191. Requisition and control: 92 S. J. 203. Farm tenants' new security of tenure (founded on Agriculture Act, 1947): 92 S. J. 215. Disappearing tenants and estoppel (founded on *Smith v. Mather*, § 3219, and *Lewis & Son v. Morelli*, § 2756): 92 S. J. 241. Relief against forfeiture (founded on *House Property Investment Co. v. Walker*, [1947] C. L. Y. 1637, and *Duke of Westminster v. Swinton*, § 1907): 98 L. J. 257. The Landlord and Tenant Act, 1927—combined dwelling-house and shop within the Rent Acts—what then?: 92 S. J. 251. Furniture and equipment (founded on *Property Holding Co. v. Mischeff*, § 3149; *R. v. Hampstead and St. Pancras Rent Tribunal*, *ex p. Ascot Lodge*, [1947] C. L. Y. 2615, 2619; *R. v. Blackpool Rent Tribunal*, *ex p. Ashton*, § 3190): 92 S. J. 255. Surrender *in futuro*: 92 S. J. 281. Restrictions on alienation by reference to class: 92 S. J. 294. Fixed equipment on farms (founded on Agriculture Act, 1947): 92 S. J. 306. Statutory notices affecting property of an intestate: 112 J. P. J. 368. Town planning and sub-letting part of dwelling-house (founded on Town and Country Planning Act, 1947 (10 & 11 Geo. 6, c. 51), s. 12): 92 S. J. 333. Restrictions on sub-letting—need for landlord's consent (founded on *Re Swanson's Agreement*, [1947] C. L. Y. 1617, 1678, and *Wilson v. Fynn*, § 1896): 205 L. T. J. 355. Small tenements recovery—procedure (founded on *Bowden v. Rallison*, § 1966): 92 S. J. 347. Unreasonably withholding consent (founded on *Wilson v. Fynn*, § 1896): 92 S. J. 359. Repairs ordered by local authorities (founded on *Daly v. Elstree R. D. C.*, § 1601): 92 S. J. 369. Landlord and tenant—rent restriction (founded on *Hoffman v. Fineberg*, § 6149; *Brown v. Brash*, § 3229; and *Taylor v. McHale*, § 3239): 98 L. J. 397. Notices to quit agricultural holdings (founded on *Re Kendrick's Agreement*, § 39): 92 S. J. 404. Leases under the Town and Country Planning Acts (with form of lease), by Harold Potter: *Journal of Planning Law*, August, 1948, p. 353. Goodwill claims—conditions precedent and defeasant (founded on *Clift v. Taylor*, § 1922): 92 S. J. 420. Status and standard rent (founded on *Insall v. Nottingham Corpn.*, § 3213): 92 S. J. 439. Cases arising out of Regulation 68cn (founded on *Ouzman v. Kennedy*, [1947] C. L. Y. 1634, *Oken v. Perraton*, [1947] C. L. Y. 990, and *Baldwin v. Gurnsey*, § 1158): 92 S. J. 453. The Housing Act, 1936: *Estates Gazette*, August 14, 1948, p. 119. Control and new leases under the L. & T. A., 1927: 92 S. J. 482. Acceptance of rent and waiver (founded on *Oak Property Co. v. Chapman*, [1947] C. L. Y. 2687): 92 S. J. 521. Forcible entry while execution stayed (founded on *Clifton Securities v. Huntley*, § 1932): 92 S. J. 539. Covenant for residence—meaning of "dwelling-house" in the Rent Acts (founded on *Curl v. Angelo*, § 3163): 92 S. J. 550. Covenants (covenants to pay rent) (covenant to pay rates, taxes and outgoings): 98 L. J. 558, 570. Planning control in relation to landlords and tenants: 206 L. T. 212. Damages for breach of lessor's repairing covenants: 92 S. J. 598. Assignment of controlled tenancy—refusal of consent (founded on *Lee v. Carter*, § 1897): 92 S. J. 615; 206 L. T. 270; *Solicitor*, November, 1948, p. 260. Liability in tort (founded on *Travers v. Gloucester Corpn.*, [1947] C. L. Y. 2061, and *Ball v. L. C. C.*, § 2480): 206 L. T. 373. Concurrent leases (founded on *Powell v. Cleland*, [1947] C. L. Y. 2650): 92 S. J. 727.

1980. BOOKS PUBLISHED. Adkin, B. W.—Handbook of the Law relating to Landlord and Tenant. 12th ed. [27s. 6d.]. Foa, E.—General Law of Landlord and Tenant. 7th ed. Edited by His Honour Judge Forbes [75s.].

LIBEL AND SLANDER

1981. **Committee on law of defamation—report.** Report of the Committee (chairman—Lord Porter): Cmd. 7536.
1982. **Defamatory meaning.** In *TURNER v. METRO-GOLDWYN-MAYER PICTURES* (July 26, 1948), the Court of Appeal (Scott, Cohen and Asquith, L.J.J.) held that to state of a film critic that he was out of touch with "the picture-going millions" did not support the innuendo that he was an incompetent film critic, but might be defamatory in the natural and ordinary meaning of the words. Since, while it was unnecessary for a film critic to share the opinions of the "picture-going millions", it might be detrimental to him to say that he did not know what those opinions were. [Reported by R. C. Calburn, Esq., Barrister-at-Law.] See also (1948), 92 S. J. 541.

- 1983. Interrogatories.** In *KORDA v. ODHAMS PRESS* (July 30, 1948), the Court of Appeal (Tucker, Bucknill and Somervell, L.J.J.) allowed interrogatories directed to ascertaining the state of mind of the defendants where the defence in an action of libel was a plea of fair comment. [*Reported by R. C. Calburn, Esq., Barrister-at-Law.*] See also [1948] W. N. 376.
- 1984. — action against journalist employed by newspaper.** See *LAWSON v. ODHAMS PRESS*, § 2845.
- 1985. Privilege—joint tortfeasors.** [N.I.] In *EGLANTINE INN v. SMITH*, § 1995, the High Court of Northern Ireland held that a defendant cannot claim the protection of his joint tortfeasor's privilege and at the same time dissociate himself from that joint tortfeasor's malice, but must take the defence of privilege in its entirety, with all its infirmities. (*Smith v. Streatfield*, [1913] 3 K. B. 764, applied.)
- 1986. — misdirection in summing-up.** See *BRADDOCK v. BEVINS*, § 2867.
- 1987. — newspaper extract from report of commission appointed by Government.** The wide general principle which underlies the defence of qualified privilege was stated by the Privy Council in *Macintosh v. Dun*, [1908] A. C. 390, to be the "common convenience and welfare of society" or "the general interest of society". Reports of judicial and parliamentary proceedings and, it may be, of some bodies which are neither judicial nor parliamentary in character, stand in a class apart by reason that the nature of their activities is treated as conclusively establishing that the public interest is forwarded by publication of reports of their proceedings. As regards reports of proceedings of other bodies, the status of those bodies taken alone is not conclusive and it is necessary to consider the subject-matter dealt with in the particular report with which the Court is concerned. If it appears that it is to the public interest that the particular report should be published, privilege will attach.
- The respondents, who were the printer and publisher and the owners of a newspaper, published in their newspaper extracts from the report of a Bribery Commission set up by the Government of Ceylon. The appellant claimed damages for libel in respect of a passage in the report appearing in the newspaper which stated that: "[The appellant], who gave evidence, was completely lacking in frankness and pretended that he knew very much less about the transaction than he actually did". Held, the public interest of Ceylon demanded that the contents of the report should be widely communicated to the public, and, consequently, the immunity afforded by privilege attached to the publication by the respondents of this report considered as a whole and the appeal had to be dismissed: *PERERA v. PEIRIS*, [1949] A. C. 1; 64 T. L. R. 590, P. C. (dismissing appeal from decree of Supreme Court of Ceylon (1946), 47 C. N. L. R. 49; applying *Macintosh v. Dun*, *supra*; *R. v. Wright* (1799), 8 T. R. 293; and *Davison v. Duncan* (1857), 7 E. & B. 219).
- 1988. — officer of State.** In *CHENARD & Co. v. ARISSOL* (November 30, 1948), the Judicial Committee of the Privy Council (Lords Simonds, Uthwatt, Morton of Henryton and Reid) held that s. 192 (1) of the Seychelles Penal Code, 1904, conferred on members of the Legislative Council of the Colony absolute immunity from prosecution or an action for defamation in respect of everything which they said or wrote in the Council in their capacity as member, that statutory provision being *intra vires* the Governor and Legislative Council of the Seychelles who, under Letters Patent of August 31, 1903, might make ordinances "for the peace, order and good government of the colony". [*Reported by R. C. Calburn, Esq., Barrister-at-Law.*] See also *Times*, December 1, 1948.
- 1989. — —.** [Aus.] For a consideration of the privilege attaching to communications of officers of state, see *JACKSON v. MAGRATH* (1947), 75 C. L. R. 293 (High Court of Australia).
- 1990. — statement by candidate in election address.** Statements contained in the election address of one candidate concerning the opposite candidate, provided they are relevant to the matters which the electors will have to consider in deciding which way they will cast their votes, are entitled to the protection of qualified privilege. Qualified privilege in such a case extends to communications by one elector to another in relation to a candidate at an impending election.

The qualified privilege even extends to cover communications in an election address of relevant matters regarding not only the rival candidate himself, but also a person who is an active and prominent supporter of the rival candidate. Even if it be thought that the candidate making his election address has no common interest with the electors to have what is honestly believed to be the truth communicated, he has a duty towards the electors to inform them honestly and without malice of any matters which may properly affect their choice in using their suffrages. See *BRADDOCK v. BEVINS*, § 1993 (applying *Watt v. Longsdon*, [1930] 1 K. B. 130, *Pankhurst v. Hamilton* (1887), 3 T. L. R. 500, and *Duncombe v. Daniell* (1837), 8 C. & P. 222).

1991. Publication—letter posted abroad. See *BATA v. BATA*, § 2901.

1992. — printer returning publication to author. [N.I.] In *EGLANTINE INN v. SMITH*, § 1995, the High Court of Northern Ireland held that a printer, who returned a defamatory publication (which he had printed) to the author thereof, could not be held, for that reason only, to have published the libel.

1993. Reference to plaintiff—defamation of a class of persons. It is well established that where a plaintiff is not named in an alleged libel he must show that the alleged libel was published of himself. In establishing this there are two stages:

- (1) he must satisfy the Judge as a matter of law that the words are capable of referring to himself as a particular identifiable individual, and
- (2) if he succeeds in this, he must satisfy the jury that the words do so refer to himself.

The alleged libel asserted that the Socialist M.P. for the E. Division "and her friends in A." persistently took sides with the Soviet Government and the British Communist Party. Held, the word "friends" referred to the political supporters in A. and constituted a mere generalisation which could not be referred to any identifiable individual: *BRADDOCK v. BEVINS*, [1948] 1 K. B. 580; [1948] L. J. R. 1278, C. A. (applying *Knapfner v. London Express Newspaper*, [1944] A. C. 116). (See also §§ 1859, 1990, 2867.)

1994. Trade libel—malicious falsehoods. In *Ratcliffe v. Evans*, [1892] 2 Q. B. 524, Bowen, L.J., said: "That an action will lie for written or oral falsehoods, not actionable *per se* nor even defamatory, where they are maliciously published, where they are calculated in the ordinary course of things to produce, and where they do produce, actual damage, is established law". From this judgment the following conclusions may be abstracted: (1) in considering such a possible cause of action the Court is not dealing with an action for fraud; (2) by "maliciously published" Bowen, L.J., meant the wilful and intentional doing of damage without just occasion or excuse.

The defendants owned certain property and, on a part thereof, carried on the business of garage proprietors. They let another part of the property to the plaintiff, a motor service tyre agent, who used their office as a business address for postal and telephone communications. The defendants had a dispute with the plaintiff about the duration of the tenancy and informed tyre manufacturers that the plaintiff was no longer their tenant and was not available on the premises; these statements (which were incorrect) resulted in the plaintiff being struck off the register of motor tyre service agents and being cut off his supplies. Held, that the defendants, who were actuated by an improper motive, acted maliciously, that the statements published by them were malicious falsehoods, and that they were liable to pay damages: *JOYCE v. MOTOR SURVEYS*, [1948] Ch. 252; [1948] L. J. R. 935, Roxburgh, J. (applying *Ratcliffe v. Evans*, *supra*; and *Greers v. Pearman and Corder* (1922), 39 R. P. C. 405).

1995. Trade union—publication by union and defendant jointly—extent of immunity. [N.I.] (Trade Disputes Act, 1906 (6 Edw. 7, c. 47), s. 4 (1).) In *EGLANTINE INN v. SMITH*, [1948] N. Ir. 29, the High Court of Northern Ireland held that where a libel is published by a trade union and another jointly, the immunity conferred on the trade union by s. 4 (1) of the Trade Disputes Act, 1906, affords no defence to the other party, because the union's act is tortious, although not actionable, and the injured party's right to maintain an action against the other joint tortfeasor is unaffected. (*London Motor Cab Proprietors Association v. Twentieth Century Press* (1917), 34 T. L. R. 68 (dictum of Younger, J.) applied). (See also §§ 1985, 1992.)

- 1996. ARTICLES.** Public meetings and free speech: 205 L. T. J. 100. Parliamentary broadcasting and the law of defamation, by A. J. Davis: *University of Toronto Law Journal*, Lent Term, 1948, p. 385. Report of the committee on the law of defamation: 206 L. T. 252; 92 S. J. 610, 626; 98 L. J. 611. Unintentional defamation (founded on the report of the committee on the law of defamation): 206 L. T. 343; *Solicitor*, December, 1948, p. 270.

LIEN

- 1997. Auctioneer's lien.** See *WILSON v. PIKE*, § 3373.
1998. Maritime lien. [Can.] See *HARNEY v. M. V. TERRY*, § 560.
1999. Seller's lien. See *DENNANT v. SKINNER*, § 3377.

LIMITATION OF ACTIONS

- 2000. Acknowledgment—reference in will.** [Eire.] (Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 8.) In *HOWARD v. HENNESSEY*, [1947] I. R. 336, the Supreme Court of Eire held that, since a will is addressed to all the parties mentioned in it, an acknowledgment contained in the will of a debt owed to a named creditor was “given” to that creditor so as to prevent the Statutes of Limitation running in respect of the debt. [Note.—Cp. Limitation Act, 1939 (2 & 3 Geo. 6, c. 21), s. 23 (4).]
- 2001. Action, meaning of—extension of time for enforcing warrant for possession.** (Limitation Act, 1939 (2 & 3 Geo. 6, c. 21), ss. 2 (4), 31 (1).) An application for extension of time for enforcing a warrant for possession is an “action” within the definition contained in s. 31 (1) of the Limitation Act, 1939, and, consequently, under the provisions of s. 2 (4) of that Act such an application will be statute-barred after twelve years from the date of the issue of the old warrant have elapsed. Thus, in a case where the landlord had obtained a warrant for possession in 1933, and where after the death of the tenant in 1937 the landlord had not given notice to quit to the President of the Probate Division under s. 9 of the Administration of Estates Act, 1925, an application by the landlord in 1947 against the widow of the tenant, who had resided in the premises ever since (no rent having been paid since 1932), to extend by three months the time for execution of the warrant for possession was held statute-barred. It was further held that s. 5 (4) of the Rent Restrictions Act of 1920 could not override the express provisions of the Limitation Act: *DONOVAN v. LOUGHER*, [1948] L. J. R. 1383; [1948] 2 All E. R. 11, C. A. (See also § 686.)
- 2002. — leave to issue execution after six years.** See *W. T. LAMB & SONS v. RIDER*, § 2829.
- 2003. Appeal—interlocutory order, time for appeal against.** See *PEEK v. PEEK*, § 879.
- 2004. Arbitration—date from which time runs.** (Railways Act, 1921 (11 & 12 Geo. 5, c. 55), Sched. III.) Sched. III of the Railways Act, 1921, which deals with the position of officers and servants on the amalgamation of railway companies provides “. . . (3) No existing officer or servant so transferred shall . . . be by reason of such transfer in any worse position in respect to the conditions of his service as a whole . . . as compared with the conditions of service formerly obtaining with respect to him. (4) If any question arises as to whether the provisions of the last foregoing paragraph have been complied with, the question shall be referred to a standing arbitrator, and, if the arbitrator . . . consider[s] that those provisions have not been complied with, and that the officer or servant has thereby suffered loss or injury, [he] shall award him such sum . . . as [he] think[s] sufficient to compensate him for such loss or injury”. The effect of these two paragraphs on the question whether or not the claim of an officer or servant is barred by the Limitation Act, 1939, is:
- (1) The substantive provision is in para. (3) and the remedial provision in para. (4), with the result that the cause of arbitration arises when the rights of existing officers and servants are invaded on amalgamation, and not when the question is submitted to arbitration in arbitration proceedings.
 - (2) The material words are the words “by reason of such transfer” in para. (3), with the result that the cause of arbitration arises as soon as

the amalgamated company has settled the conditions of service under it, and the opportunity for comparison envisaged by the paragraph arises, and not when the loss resulting from such a transfer becomes an established fact.

Thus, in a case where, after the amalgamation of railway companies in 1923, the plaintiff's loss of three years' seniority for promotion to the appointment of driver by reason of his transfer was determined by a scheme adopted by the new company in 1924, the plaintiff's cause of arbitration was held to have arisen in 1924 and not in 1937 when, after his appointment as driver, he received the maximum rate applicable to drivers. Consequently, a claim made by the plaintiff under Sched. III in 1942 was barred by the Limitation Act, 1939: *PEGLER v. RAILWAY EXECUTIVE*, [1948] A. C. 332; [1948] L. J. R. 939, H. L. (affirming decisions of C. A., [1947] C. L. Y. 1738; and of Atkinson, J. (1946), 62 T. L. R. 474, *sub nom. Pegler v. G. W. Ry.*). (See also § 2005.)

2005. — — statutory arbitrations. (Limitation Act, 1939 (2 & 3 Geo. 6, c. 21), s. 27 (6).) Although the expression "cause of arbitration"—the matter corresponding to "the cause of action" in litigation—is nowhere to be found in the Limitation Act, 1939, the proper interpretation of s. 27 of the Act is that, just as in the case of actions the claim is not to be brought after the expiration of a specified number of years from the date on which the cause of action accrued, so, in the case of arbitrations, the claim is not to be put forward after the expiration of the specified number of years from the date when the claim accrued. See *PEGLER v. RAILWAY EXECUTIVE*, § 2004.

2006. Carriage of goods by sea—amendment of writ after expiry of limitation period. See *THE FOREST*, § 3437.

2007. Conversion and wrongful detention. (Limitation Act, 1939 (2 & 3 Geo. 6, c. 21), s. 3.) The effect of s. 3 of the Limitation Act, 1939, is that (subject to s. 26) as soon as there has been a conversion or wrongful detention of the plaintiff's goods, time begins to run against him, and, if it continues for six years without his recovering possession, his cause of action is barred not only for that conversion or wrongful detention, but also for any subsequent conversions or wrongful detentions, and, moreover, his title to the goods is extinguished. (The section does not affect a plaintiff's cause of action for breach of contract, if he has one.) The cause of action in conversion is based on an unequivocal act of ownership by the defendant over goods of the plaintiff without any authority or right in that behalf. The act must be an unequivocal act of ownership, *i.e.*, an act such as acquiring, dealing with, or disposing of the goods, which is consistent only with the rights of an owner as distinct from the equivocal acts of one who is entrusted with the custody or handling or carriage of goods. A demand and refusal is not, therefore, itself a conversion, but it may be evidence of a prior conversion. The cause of action in wrongful detention is based on a wrongful withholding of the plaintiff's goods. It depends on the defendant being in possession of the plaintiff's goods. If such a defendant, without any right so to do, withholds the goods from the plaintiff after the plaintiff has demanded their return, he is, for so much time as he so withholds them, guilty of wrongful detention. In both cases, so far as the causes of action in tort and the title to the goods are concerned, time runs from the initial wrong and is not enlarged by subsequent wrongs. Nor can s. 3 of the Act of 1939 be evaded by a mere change in the form of remedy. An owner cannot escape the effect of the statute by assuming to waive the tort of conversion and sue for money had and received.

In 1935, the plaintiff, before going abroad, deposited five packages with the defendants, which she desired them to send to her at a later date and, meanwhile, to hold them in store for her. Early in 1940 she asked the defendants to see if they could send her the packages, but this became impossible as a result of Italy's entry into the war, and, thereafter, communication with the defendants became equally impossible. On August 15, 1940, one of the employees of the defendants examined the five packages belonging to the plaintiff, which had been stored in a bombed area in London, considered their contents worthless and gave them away to the Salvation Army, keeping one empty trunk for himself. On August 22, 1946, the plaintiff called on the defendants and asked for the return of her packages. She now claimed a sum of approximately £3,500, the value of the packages and their contents, as damages for their conversion. The defendants

relied upon the Limitation Act, 1939. Held, the plaintiff's cause of action on all grounds of tort became barred after August 16, 1946, and her title to the goods then became extinguished. Furthermore, neither the conversion by the defendants, nor the retention of an empty trunk by one of their employees was fraudulent, and, consequently, s. 26 of the Limitation Act, 1939, did not apply: *BEAMAN v. A. R. T. S.*, [1948] W. N. 224; 64 T. L. R. 285; [1948] 2 All E. R. 89, Denning, J. (applying *Clayton v. Le Roy*, [1911] 2 K. B. 1031, *United Australia v. Barclays Bank*, [1941] A. C. 1, and *Wilkinson v. Verity* (1871), L. R. 6 C. P. 206; *Spackman v. Foster* (1883), 11 Q. B. D. 99, and *Miller v. Dell*, [1891] 1 Q. B. 468, no longer good law; criticising *Rosenthal v. Alderton & Sons*, [1946] K. B. 374). (See also § 2008.)

- 2008. — action based upon fraud.** (Limitation Act, 1939 (2 & 3 Geo. 6, c. 21), s. 26 (a).) The effect of s. 26 of the Limitation Act, 1939, is to prevent the period of limitation from running in case of fraud, with the important exception, however, that it still runs in favour of an innocent purchaser for value, not merely from the time of his purchase, but from the date when the cause of action accrued for the initial conversion or wrongful detention. (The word "fraud" is not confined to fraudulent misrepresentation but always imports some element of moral turpitude, such as some deliberate untruth, or some dishonesty.) An action of conversion is "based upon the fraud" of the defendant if the wrongful act which constitutes the conversion is done by him with the knowledge that the goods do not belong to him, that he has no authority or right to do the act, and that the true owner is available and would not authorise the act if he knew of it, but it is not "based upon the fraud" of the defendant if the defendant honestly believed himself to be the owner, or to be authorised, or to have the right to do the act, or if he honestly believed that the true owner was not available but would authorise the act if he knew of it, or if he honestly believed that the true owner was not available and that the action was in the best interests of all concerned. See *BEAMAN v. A. R. T. S.*, § 2007.
- 2009. Fraud—action based upon.** See *BEAMAN v. A. R. T. S.*, § 2008.
- 2010. Gas authorities—application of statutes of limitation to.** See s. 14 of the Gas Act, 1948 (11 & 12 Geo. 6, c. 67), § 1535.
- 2011. Inheritance (Family Provision) Act, 1938—time limit under.** See *Re BIDIE*, § 3936; *Re SEARLE*, § 3937.
- 2012. Laches—application to Probate actions.** See *Re COGHLAN*, § 1365.
- 2013. Matrimonial Causes Act, 1937—application of Limitation Act, 1939, to.** See *CHAPLIN v. CHAPLIN*, § 996.
- 2014. Mortgagee in possession.** See *YOUNG v. CLAREY*, § 2247.
- 2015. Personal estate of a deceased person, action in respect of claim to.** (Limitation Act, 1939 (2 & 3 Geo. 6, c. 21), s. 20.) On its true construction, s. 20 of the Limitation Act, 1939, applies not only to claims by an unpaid beneficiary against the executor or administrator to recover his legacy or share, but also to a claim by an unpaid beneficiary direct against one overpaid or wrongly paid. Therefore, in both cases the period of limitation of twelve years begins to run from "the date when the right to receive the share or interest accrued". See *Re DIPLOCK*, §§ 1377, 3547.
- 2016. Prosecution under Finance (No. 2) Act, 1940.** See *R. v. SARAH SILVER*, § 737.
- 2017. Public authorities protection—committee.** The Lord Chancellor and the Secretary of State for Scotland have appointed a Committee (Chairman, Lord Justice Tucker) to report on limitation of actions under the Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), and certain other Acts: [1948] W. N. (Misc.), p. 11.
- 2018. — Milk Marketing Board.** In *JONES v. MILK MARKETING BOARD* (Cardiganshire Assizes, June 22, 1948), the plaintiff was injured by the negligent driving of a lorry belonging to the Milk Marketing Board and carrying milk churns. He brought an action against the Board more than a year after the accident. Denning, J., held the Board not entitled to the protection of s. 21 (1) of the Limitation Act, 1939, on the grounds (a) that the Board—a body elected by milk producers—was not a public authority and so not within the sub-section, and

(b) that, even if it was a public authority, the carrying of churns under its contracts with milk producers was not the "execution of a public duty" within the meaning of the sub-section. [*Reported by R. C. Calburn, Esq., Barrister-at-Law.*] See also (1948), 92 S. J. 443.

- 2019.** — **police officer.** [Scot.] (Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), s. 1.) In *ARMOUR v. SHEPHERD*, 1948 S. L. T. 163, the Court of Session, Outer House, held that an action against a police officer brought more than six months after the acts complained of will be barred unless it can be shown that the acts were outwith his competence. The Act is intended to protect a public officer acting in good faith even when he has acted under a mistaken view of his duties and powers, or even carelessly and rashly. [Cp. Limitation Act, 1939 (2 & 3 Geo. 6, c. 21), s. 21, under which the period is one year.]
- 2020.** **ARTICLES.** Rentcharges and the statutes of limitation: 92 S. J. 315. Limitation of actions (founded on *Beaman v. A. R. T. S.*, § 2007): 92 S. J. 432.

LITERARY AND SCIENTIFIC INSTITUTIONS

- 2021.** **Scientific society, meaning of, for rating purposes.** See *BRITISH LAUNDERERS' RESEARCH ASSOCIATION v. HENDON RATING AUTHORITY*, § 3094; *BATTERSEA B. C. v. BRITISH IRON AND STEEL RESEARCH ASSOCIATION*, § 3095.
- 2022.** **ARTICLE.** Exemption under r. 1 (2) of Schedule A, No. VI, Income Tax Act, 1918: *Taxation*, February 14, 1948.
- 2023.** **BOOKS PUBLISHED.** Hewitt, A. R.—*Law Relating to Public Libraries, Museums and Art Galleries*. 2nd ed. [12s. 6d.]. Hewitt, A. R.—*Summary of Public Library Law*. 2nd ed. [6s.].

LOANS

- 2024.** **Annuity distinguished from loan.** See *I. R. C. v. WESLEYAN AND GENERAL ASSURANCE SOCIETY*, § 1681.
- 2025.** **Local Loans Fund—rates of interest.** Treasury Minute dated January 2, 1948 (SI 1948, No. 15), fixes rates of interest on local loans to local authorities in lieu of the rates fixed by Treasury Minute dated May 30, 1946 (No. 971).
Treasury Minute, dated January 2, 1948 (SI 1948, No. 16) fixes rates of interest on local loans other than loans to local authorities, in lieu of the rates fixed by Treasury Minute, dated November 19, 1946 (No. 1942).
- 2026.** — **repayments in advance.** Conditions for repayment in advance of the due date of loans made from the Local Loans Fund before August 1, 1945, are laid down in a Treasury Minute published in the *London Gazette* of January 2, 1948, p. 84: see 98 L. J. 38.
- 2027.** **Mortgages.** See **MORTGAGES**.
- 2028.** **Public Works Loans Act, 1948 (11 & 12 Geo. 6, c. 43).** This Act received the Royal Assent on July 13, 1948.
- 2029.** **Secured and unsecured loans—release of debts owing to testatrix.** See *Re COGHILL, DRURY v. BURGESS*, § 3915.

LOCAL GOVERNMENT

- 2030.** **Auditor's power to surcharge.** (Local Government Act, 1933 (23 & 24 Geo. 5, c. 51), s. 228 (1) (d).) The provisions of s. 228 (1) (d) of the Local Government Act, 1933, which make it the duty of the district auditor of every county council "to surcharge the amount of any loss or deficiency upon any person by whose negligence or misconduct the loss or deficiency has been incurred", do not extend liability to persons who are not members of the county council, and do not authorise the district auditor to "surcharge" a managing director and majority shareholder of a limited company who, in the course of his contractual relations with the county council has defrauded the latter: *Re DICKSON*. [1948] 2 K. B. 95; [1948] L. J. R. 1119, C. A. (dismissing appeal from decision of Divisional Court, [1947] C. L. Y. 1756; applying *R. v. Roberts*, [1908] 1 K. B. 407; and *Roberts v. Hopwood*, [1925] A. C. 578).

- 2031. Boundary Commission—Annual Report, 1947.** See House of Commons Papers (Session 1947–48) No. 96. The report is summarised in a Ministry of Health circular dated April 8, 1948.
- 2032. — commencement of review.** The Local Government Boundary Commission announced that they intended to begin the review of all county districts in thirteen counties in June and July, 1948. The review would begin in each case with a joint meeting to which the county council and all district councils would be invited to send representatives, after which separate consultations would be held with each council. The counties concerned, with the date of the joint meetings, were: Berks, Devon, Dorset, Northumberland, West Suffolk (June 7); Durham, Northampton, Salop (June 8); East Suffolk (June 17); Oxford (June 28); Buckingham, Wilts, Yorks (N. Riding) (July 5): Press Notice, dated May 10, 1948.
- 2033. Building.** See BUILDING AND ENGINEERING, ARCHITECTS AND SURVEYORS.
- 2034. Children Act, 1948—transfer of functions of local authorities.** See §§ 1705, 1707.
- 2035. Civil defence.** See CIVIL DEFENCE.
- 2036. Conferences.** Local Government (Conferences) Regulations, 1948 (No. 1932), made under the Local Government Act, 1933 (23 & 24 Geo. 5, c. 51), s. 267, as amended by the Local Government Act, 1948, s. 113 (3); came into operation on September 1, 1948. These Regulations replace the Local Government (Conferences) Regulations, 1934 (No. 690).
- 2037. —.** Ministry of Health Circular No. 148/48, dated August 30, 1948, on Local Government (Conference) Regulations, 1948, § 2036.
- 2038. Education.** See EDUCATION.
- 2039. Election—validity of municipal election.** See *Re KINGSTON-ON-HULL ELECTION PETITION*, § 1088.
- 2040. Electoral divisions.** See § 1090.
- 2041. Finance—borrowing by local authorities.** See § 3253.
- 2042. — Local Government Act, 1948.** See § 2051.
- 2043. Fire brigades.** See FIRE SERVICES.
- 2044. Gas undertakings—transfer to Area Gas Boards.** See § 1535.
- 2045. Highways.** See HIGHWAYS AND BRIDGES.
- 2046. Housing.** See HOUSING.
- 2047. Injurious weeds—powers of county borough councils.** See § 95.
- 2048. Land—acquisition of.** The Ministry of Health have issued a Circular No. 129/48 dated June 30, 1948, relating to land transactions under the Town and Country Planning Act, 1947. This circular contains as an annex a Treasury circular relating to transactions in land by government departments and local and public authorities under the Act.
- The Ministry of Health have also issued a Circular No. 132/48, dated August 6, 1948, on the acquisition of land for purposes of waterworks or of sewage disposal.
- 2049. — held by local authority—appropriation of land for new purposes.** See *Re BADOCK'S DEED OF GIFT, BRISTOL CORPN. v. ATT.-GEN.*, § 2548.
- 2050. — — planning provisions.** See §§ 3640, 3653.
- 2051. Local Government Act, 1948 (11 & 12 Geo. 6, c. 26).** This Act contains a number of important financial and other provisions affecting local authorities and in particular makes extensive alterations to the law of rating.

Exchequer Grants.

Part I deals with Exchequer Grants and similar payments as far as England and Wales are concerned. By s. 1 all Exchequer Grants except as provided in the Act are terminated as from the year 1948–49 and the third fixed grant period is terminated at the end of March, 1948. Under s. 2, where the rateable value for a county or county borough is less than the standard rateable value for that county or county borough (as defined in s. 3) a grant known as an "Exchequer

LOCAL GOVERNMENT (LOCAL GOVERNMENT ACT, 1948) CURRENT LAW

Equalisation Grant", being an amount equal to the relevant fraction (as defined in s. 4) of the difference, is payable to the council concerned. S. 5 provides for Exchequer Transitional Grants for the first five years. S. 7 contains provisions as to Health Service Exchequer Grants and s. 8 empowers the Minister of Health to pay a council's contributions to voluntary associations out of sums payable as Exchequer Grants. Ss. 8 and 9 deal with payments by county councils to county districts and by the London County Council to metropolitan boroughs. Ss. 11-15 contain miscellaneous provisions including special provisions as to Exchequer Grants for 1948-49.

Part II contains similar provisions applicable to Scotland.

Valuation and Rating.

Part III (ss. 33-73) relates to valuation and rating procedure, but is not to come into operation until a date to be appointed (s. 72 (1)). By s. 33 future valuation lists are to be made by Inland Revenue officers; and assessment committees, county valuation committees and the central valuation committee will cease to exist. Under s. 34 new valuation lists are to be made in 1952 and the periods for which existing lists are to remain in force will be extended to that date. Ss. 35-37 deal with draft lists, objections and revision, and s. 38 deals with the settling of valuation lists. The duties of rating authorities as respects valuation lists are set out in s. 39. Ss. 40-43 relate to the alteration of current valuation lists and ss. 44-50 relate to appeals. Appeals will in the first place be heard by local valuation Courts and from such Courts appeals will lie to the county court. Alternatively, under s. 50, matters which would otherwise fall to be determined by the local valuation Court or county court may, by agreement, be determined by arbitration. S. 51 provides for the recoverability of rates notwithstanding a pending appeal and s. 52 empowers rating authorities to make amendments in a rate in certain cases. The right of appeal to quarter sessions against a rate is limited by s. 53. S. 54 contains provisions bringing London into line with the rest of the country with respect to the date on which a rate is deemed to be made, the publication of rates and the recovery of arrears from tenants and lodgers. By s. 55 the limit on the rateable value of hereditaments in respect of which owners may be rated instead of occupiers is increased in the case of hereditaments outside London to £18 (or in certain circumstances £25) and in the case of hereditaments in London, to £25. Ss. 58-61 relate to returns, inspection, etc., and include a power of entry by the valuation officer or any person authorised by him. By s. 62 disputes in respect of water rates are to be determined by the county court and not by a Court of summary jurisdiction. The remaining sections of this Part deal with miscellaneous matters. This Part does not extend to Scotland (s. 73).

Valuation of Dwelling-houses.

Part IV (ss. 74-84) deals with the valuation of dwelling-houses for the purpose of making or altering any valuation lists made after the passing of the Act. The method of ascertaining the gross value of a dwelling-house varies according to the date and nature of the premises. Thus under s. 75 the gross values of post-1918 local authority or housing association houses or flats and, to a certain extent, other small post-1918 houses are to be ascertained by reference to the hypothetical 1938 cost of construction and the hypothetical 1938 site cost (as defined in ss. 76, 77). Where the house or flat is a local authority or housing association house, the gross value will ordinarily be 5 per cent. of each of the above sums, in the case of a house other than a flat or maisonette (s. 78) or 5 per cent. of a proportionate amount of each in the case of flats or maisonettes (s. 79). In the case of other small post-1918 houses, except flats or maisonettes, the gross value is 5 per cent. of the hypothetical 1938 cost of construction plus 5 per cent. of the value of the site on April 1, 1949. The gross value of other dwelling-houses is to be estimated by reference to the rents for comparable dwelling-houses in the locality being paid on August 31, 1939 (s. 82). If, however, that method is impracticable then the gross value is to be estimated as if this Part of the Act had not been passed (s. 82 (7)). S. 83 relates to deductions from gross value in certain cases. This Part of this Act does not extend to Scotland (s. 84).

Rating of Transport and Electricity Authorities.

Part V (ss. 85–110) relates to the rating of Transport and Electricity Authorities. Except as provided in this Part of the Act no premises forming part of a railway or canal hereditament (as defined in s. 86) or a hereditament occupied by the British Electricity Authority, an Electricity Board or the North of Scotland Hydro-Electric Board, is liable to be rated, but in lieu of rates the British Transport Commission, the British Electricity Authority and the North of Scotland Hydro-Electric Board are to make certain annual payments for the benefit of local authorities (s. 85). The amounts of the payments so to be made are laid down in ss. 93–99. Other provisions in this Part relate to railway and canal hereditaments partly used for other purposes (s. 87); hereditaments shown as railway hereditaments, but not in fact occupied by the British Transport Commission (s. 90); and dwelling-houses of electricity authorities and boards (s. 91). Certain provisions of the Railways (Valuation for Rating) Act, 1930 (20 & 21 Geo. 5, c. 24), specified in Part III of Sched. II to the new Act, are repealed by s. 88 and the Railway Assessment Authority ceases to exist. The provisions relating to railway and canal hereditaments have effect from April 1, 1948, except certain provisions specified in s. 89 (2) which have effect from the passing of the Act (March 24, 1948). The provisions relating to electricity hereditaments also have effect from April 1, 1948 (s. 92). Miscellaneous provisions connected with the rating of transport and electricity authorities are contained in ss. 104–110.

Allowances to Members.

Part VI (ss. 111–119) deals with allowances to members of local authorities and other bodies. These provisions apply to councils of counties, county boroughs, metropolitan boroughs, county districts and rural parishes, divisional executives for education or for health services, catchment boards, assessment committees, local valuation panels, joint boards and the other bodies referred to in s. 111. They do not apply to the Common Council of the City of London (s. 111 (3)). A member of any of these bodies is entitled to a financial loss allowance where loss of earnings or additional expense is suffered by him for the purpose of performing any approved duty (as defined in s. 115) as a member of that body (s. 112 (1)). There is an exception in the case of parish councils, members of which are not entitled to any allowance in respect of any approved duty performed within the area of the parish (s. 112 (2)). Under s. 113 members are also entitled to travelling and subsistence allowances subject to certain limitations where the duty is performed within the area of the body concerned. S. 114 prescribes the bodies by whom the allowances are to be paid. S. 116 authorises a district council to pay an allowance to its chairman to enable him to meet the expenses of his office. S. 117 empowers the Minister to make Regulations. Ss. 118 and 119 contain provisions relating to Scotland.

Miscellaneous and General Provisions.

Part VII (ss. 120–139) contains miscellaneous provisions. S. 120 extends the provisions of s. 9 (2)–(4) of the Rating and Valuation Act, 1925, as to precepts by county councils, to London with modifications and makes certain other provisions as to precepts. S. 121 deals with precepts for the expenses of the Metropolitan Police. S. 122 amends s. 11 of the 1925 Act as to the rating of and the collection of rates by owners. S. 125 deals with the transfer of stock issued by certain authorities having power to levy rates, tolls or dues. S. 127 provides for the transfer to county councils of property and liabilities relating to county roads. S. 120 authorises local authorities to enter into insurance contracts in respect of accidents to their members. S. 131 amends the Local Government Act, 1933 (23 & 24 Geo. 5, c. 51), s. 76, as to the disability of members of local authorities to vote on account of interest in contracts, etc. S. 132 authorises local authorities to provide or contribute towards the provision of entertainments, facilities for dancing, theatres, bands, etc. S. 133 amends the War Memorials (Local Authorities' Powers) Act, 1923 (13 & 14 Geo. 5, c. 18), s. 1, as to war memorials. S. 134 enables local authorities to arrange for information centres, and s. 135 enables them to publish information on local government questions and arrange for lectures, displays of pictures, exhibitions, etc., or contribute to their cost. S. 136 empowers local authorities, with the consent of the Minister, to contribute towards the expenses of any body carrying on activities in their

area for furthering the development of trade, etc., or for giving advice or assistance to residents or otherwise for the benefit of their area or its residents. S. 137 amends the Health Resorts and Watering Places Act, 1936 (26 Geo. 5 & 1 Edw. 8, c. 48), s. 1, by increasing the amount expendable on advertising.

Part VIII (ss. 140–148) contains general provisions as to compensation to officers, payments and expenses, interpretation, etc. Special provisions as to the application of the Act to Scotland are to be found in s. 145. The Act does not apply to Northern Ireland (s. 148 (2)).

2052. — commencement—rating provisions. See § 3078.

2053. — explanatory circular. Ministry of Health Circular No. 65/48, dated April 30, 1948 (to County Councils, Rating Authorities and Assessment Committees), deals with the provisions of the Act (other than those concerned with Equalisation Grants, with respect to which a separate communication is being sent to County and County Borough Councils).

2054. London. See LONDON.

2055. Members—allowances to members. Local Government Act, 1948 (11 & 12 Geo. 6, c. 26), Part VI, makes provision for the payment to members of local authorities of financial loss allowances in certain cases as well as travelling and subsistence allowances. See § 2051.

2056. — —. Local Government (Members' Allowances) Regulations, 1948 (No. 1784) [E.], made under the Local Government Act, 1948, ss. 113, 117; came into operation on August 16, 1948; prescribe the maximum rates of travelling and subsistence allowances payable to members, the forms of application for such allowances and financial loss allowance and other matters in connection therewith. [2*d.*]

2057. — —. Ministry of Health Circular No. 145/48, dated August 12, 1948, on Allowances to Members of Local Authorities and other bodies, § 2056.

2058. — — bodies to which applicable. Local Government (Allowances to Members) (Prescribed Bodies) Regulations, 1948 (No. 1643) [E.], made under the Local Government Act, 1948, ss. 111, 117; came into operation on August 1, 1948; prescribe standing joint committees, combined police authorities, local fisheries committees and the Metropolitan Water Board as bodies the members of which are entitled to allowances in respect of financial loss, travelling and subsistence under Pt. VI of the Act.

2059. Minister of Health—delegation of functions by. See BLACKPOOL CORPORATION *v.* LOCKER, § 521; CARLISH *v.* EAST HAM CORPORATION, § 522.

2060. National Assistance Act, 1948 — powers and duties of local authorities under. Part III of the National Assistance Act, 1948 (11 & 12 Geo. 6, c. 29), contains provisions relating to the services to be provided by local authorities under the Act. These services are the provision of accommodation for aged and infirm persons and temporary accommodation for persons in urgent need thereof (ss. 21–28) and welfare services for blind, deaf and dumb persons, cripples, etc. (ss. 29–31). The local authorities to be responsible for those services are councils of counties and county boroughs (s. 33).

Further provisions affecting local authorities are contained in Part IV of the Act. In particular, provisions as to the recovery of expenses of maintenance by local authorities are contained in ss. 43–45. S. 47 gives power to remove to hospital or other suitable premises persons in need of care and attention; s. 50 places duties on certain local authorities in regard to the burial or cremation of deceased persons in certain cases; and s. 58 gives powers of compulsory purchase for the purposes of exercising functions under Part III. The new provisions will come into force on a date to be appointed.

As to burial and cremation, see § 394.

2061. National health service. See NATIONAL HEALTH.

2062. Nurses—agency for supply. See MIDDLESEX C. C. *v.* MILLER, § 2199.

2063. Nurseries and child-minders—registration. See § 1718.

2064. Officers—compensation on account of transfer of rating functions. Local Government (Compensation) Regulations, 1948 (No. 1458), made under the Local

Government Act, 1948 (11 & 12 Geo. 6, c. 26), s. 140; came into operation on July 5, 1948; provide for the payment of compensation to persons losing employment or remuneration as a result of the transfer of rating and valuation functions under the Act. [5*d*.]

2065. — **expenses of officers appointed receivers.** See § 2124.

2066. — **superannuation.** Local Government Superannuation (England and Scotland) Regulations, 1948 (No. 1131), made under the Local Government Superannuation Act, 1937 (1 Edw. 8 & 1 Geo. 6, c. 68), s. 38, and the Local Government Superannuation (Scotland) Act, 1937 (1 Edw. 8 & 1 Geo. 6, c. 69), s. 36. These Regulations, which came into force on June 7, 1948, revoke and re-enact with slight modifications the Local Government Superannuation (England and Scotland) Regulations, 1939 (No. 283). [3*l*.]

2067. — **determination of questions.** (Local Government Superannuation Act, 1937 (1 Edw. 8 & 1 Geo. 6, c. 68), s. 35.) S. 35 of the Local Government Superannuation Act, 1937, provides: "Any question concerning the rights or liabilities of an employee of a local authority . . . under any of the provisions of Pt. I . . . of this Act . . . shall be decided in the first instance by the authority concerned, and if the employee is dissatisfied with any such decision . . . shall be determined by the Minister, and the Minister's determination shall be final . . .". The questions which are left to the decision of the local authority and of the Minister under the provisions of Part I of the Act to the exclusion of the Supreme Court include the question whether a contributory employee of the authority "has completed ten years' service and is incapable of discharging efficiently the duties of his employment by reason of permanent ill-health or infirmity of mind or body" and is, therefore, entitled to a superannuation allowance under the provisions of s. 8 (1) of the Act, and also the question whether such an employee has forfeited all right to an annual superannuation allowance under s. 24 of the Act "in consequence of an offence of a fraudulent character or of grave misconduct". The expression "employee" in s. 35 of the Act includes a person who, *e.g.*, by reason of resignation under s. 8 or by reason of dismissal under s. 24, is an ex-employee at the time when the question concerning his rights is determined: *WILKINSON v. BARKING CORPORATION*, [1948] 1 L. J. R. 1164; [1948] 1 K. B. 721, C. A. (affirming decision of *Morris, J.*, [1947] C. L. Y. 1796). (See also § 2764.)

2068. — **National Insurance Act, 1946.** See § 2425.

2069. — **transfer.** See §§ 2643, 2644, 2656.

2070. — **two separate employments.** (Local Government Superannuation Act, 1937 (1 Edw. 8 & 1 Geo. 6, c. 68), ss. 8 (5), 40 (1), (3).) S. 8 of the Local Government Superannuation Act, 1937, which deals with "eligibility for superannuation allowance, and scale of allowances" in the case of local government employees, provides by sub-s. (5) that "the average remuneration of a contributory employee means the annual average of the remuneration received by him in respect of service rendered during the five years immediately preceding" the date of his retirement. The expression "service" in the sub-section must receive the meaning given to it by s. 40 (1), namely, "service rendered to any local authority . . .", and it must include contributory as well as non-contributory service. Therefore, a contributory employee of the Middlesex County Council, on ceasing to be employed as an area public assistance officer, was held entitled, in calculating the amount of his superannuation allowance, to include his remuneration by fees in respect of his office as interim superintendent registrar for a period of two years prior to his retirement, although by virtue of the provisions of s. 12 of the Act he was entitled to reckon the latter service as non-contributing service only. The provisions of s. 40 (3), which in the case of two separate employments treat the other employment as a notional employment with another authority, were held to show no indication to cut down the plain meaning of the other sections of the Act. Furthermore, it was held that the language of s. 40 (1) made it clear that the gross and not the net remuneration of the employee as interim superintendent registrar had to be taken into account: *JOBBINS v. MIDDLESEX COUNTY COUNCIL*, [1949] 1 K. B. 142; [1948] 2 All E. R. 610, C. A. (reversing decision of Divisional Court, [1947] C. L. Y. 1801; applying

Algar v. M.C.C., [1945] 2 All E. R. 243; and *Lysons v. Knowles (Andrew) & Sons*, [1901] A. C. 79). (See also § 3546.)

- 2071.** — — **ultra vires.** [N.Z.] See *WAIMARI COUNTY v. RUTHERFORD*, § 672.
- 2072.** **Open spaces.** See OPEN SPACES AND RECREATION GROUNDS.
- 2073.** **Poor law.** See NATIONAL ASSISTANCE; POOR LAW.
- 2074.** **Public health.** See PUBLIC HEALTH.
- 2075.** **Rating.** See also RATING AND VALUATION.
- 2076.** — **accounting of payments in lieu of rates by transport and electricity authorities.** See § 3080.
- 2077.** — **demand notes and precepts—new forms.** See §§ 3074, 3075, 3081–3085.
- 2078.** — **special and parish rate compensation.** Local Government (Special and Parish Rates) (Third Fixed Grant Period) Regulations, 1948 (No. 613) [E.] made under the Local Government Act, 1929 (19 Geo. 5, c. 17), s. 92 (2). These Regulations, the necessity for which arises from the termination of the Third Fixed Grant Period of the Local Government Acts, 1929 to 1946, by the Local Government Act, 1948, make provision for the application in aid of rates, before the accounts of rural district councils are closed for the year ending on March 31, 1948, of the compensation not already applied under the Local Government (Special and Parish Rates) (Third Fixed Grant Period) Regulations, 1937 (No. 751).
- 2079.** **Representation of the People Act, 1948.** See § 1095.
- 2080.** **Requisitioning of dwelling-houses.** See COMPULSORY PURCHASE AND REQUISITION.
- 2081.** **Scilly Islands.** Isles of Scilly (Local Government) Order, 1948 (No. 2733), made under the Local Government Act, 1948 (11 & 12 Geo. 6, c. 26), s. 146; provides for certain modifications of the Act in its application to the Scilly Islands.
- 2082.** — **diseases of animals.** Isles of Scilly (Diseases of Animals Acts) Order, 1948 (No. 2022), imposes on the Council of the Scilly Isles the functions of county councils under the Diseases of Animals Acts, 1894–1937.
- 2083.** **Solicitors' costs.** See §§ 511, 3811
- 2084.** **Town planning.** See TOWN AND COUNTRY PLANNING.
- 2085.** **Wales and Monmouthshire.** Report of Government Action for the year ended June 30, 1948: Cmd. 7532.
- 2086.** **ARTICLES.** Voting in committee: 112 J. P. J. 180, 196. Delegated powers of local authorities: 205 L. T. J. 170. More trees on highways: 112 J. P. J. 198. Establishment committees: 112 J. P. J. 212. Public assistance institutions and regional hospital boards: 98 L. J. 205. Local government areas and functions: 112 J. P. J. 246, 263, 277. Filling casual vacancies (founded on Local Government Act, 1933 (23 & 24 Geo. 5, c. 51), s. 67 (3)): 112 J. P. J. 275. Removal of disability (of a councillor from taking part in proceedings in which he has a pecuniary interest): 112 J. P. J. 291. Local Government Superannuation Act, 1937—definition of “whole-time” clerk to justices for the purposes of s. 20 of the Act: 112 J. P. J. 306. The nineteenth hole (local authorities golf courses—sale of alcohol in club house): 112 J. P. J. 323. The circulars of Government Departments (founded on *Blackpool Corporation v. Locker*, § 521): 98 L. J. 290. The Local Government Act, 1948—valuation and rating procedure: 98 L. J. 311. Local Government Act, 1948: 112 J. P. J. 369. National Assistance Act—administrative arrangements of local authorities: 112 J. P. J. 370. Mayoral remuneration (founded on the Local Government Act, 1948): 112 J. P. J. 416, 433. Local government members' allowances: 112 J. P. J. 648, 665, 699. Local authority cheques: 112 J. P. J. 762.
- 2087.** **BOOKS PUBLISHED.** Clarke, J. J.—*Local Government of the United Kingdom*. 14th ed. [25s.]. Gladwin, F. H.—*Shaw's Guide to the Local Government Act, 1948* [15s.]. Hadfield, E. C. R. and MacColl, J. E.—*British Local Government* [7s. 6d.]. Hasluck, E. L.—*Local Government in England*. 2nd ed. [15s.]. Jessup, F.—*Local Government in Outline* [2s.]. Keast, H.—*Local Government Service* [7s. 6d.]. Local Government (Annual Current Legislation), 1948 [70s.]. MacNalty, Sir A.—*Local Government* [4s. 6d.]. Millner, R.—*Local Government*

Law in a Nutshell. 2nd ed. [7s. 6d.]. Robson, W. A.—Development of Local Government. 2nd ed. [18s.]. Seuffert, S. and Vaughan, G. H. C.—Local Government Act, 1948 [9s. 6d.]. Simon, R.—Local Councils and the Citizen [5s.]. Warren, J. H.—Municipal Administration [15s.].

LONDON

2088. Agricultural executive committees. See § 73.

2089. Hospitals—teaching hospitals. See § 2302.

2090. London County Council (General Powers) Act, 1948 (11 & 12 Geo. 6, c. liii). Ss. 42–45 contain provisions to giving metropolitan borough councils powers with reference to the maintenance of forecourts to which the public have access and the fencing of dangerous lands in or near streets. S. 48 makes provision as to petty sessional divisions and justices' clerks, and s. 49 makes provision as to the salaries of clerks to the chairman and deputy-chairman of quarter sessions. Under s. 50 the notification of puerperal fever is to cease. Under s. 52 there is power of entry for survey on premises in respect of which a claim for compensation under the Act is made. By s. 60 the Act is deemed to be an enactment passed before and in force at the passing of the Town and Country Planning Act, 1947, for the purposes of s. 13 (4) and s. 118 (1) of that Act.

2091. Metropolitan boroughs—alteration of number of councillors and wards. SI 1948, No. 729 (Hammersmith).

2092. Metropolitan Police. See POLICE.

2093. Open space—transfer of powers of maintenance. SI 1948, No. 1140 (Sayes Court, Greenwich).

2094. Pilotage Committee—representative on. See § 3487.

2095. Polls on promotion of Bills. London Government (Polls on Promotion of Bills) Regulations, 1948 (No. 2355), made under the London Government Act, 1939 (2 & 3 Geo. 6, c. 40), Sched. VI, para. 17; came into operation on December 1, 1948; contains regulations and forms in connection with requisitions for, and the holding of, polls of electors with respect to a proposed enactment or the promotion by a council of a Bill in Parliament. [3d.]

2096. Rating—Local Government Act, 1948. See the Local Government Act, 1948 (11 & 12 Geo. 6, c. 26), ss. 54, 120–123 and § 2051.

2097. — new forms of demand notes and precepts. See §§ 3074, 3075, 3082, 3083.

2098. — product of rates and precepts. See § 3085.

2099. River board areas—exclusion of London. See § 1883.

2100. Street trading. (London County Council (General Powers) Act, 1927 (17 & 18 Geo. 5, c. xxii), s. 30; London County Council (General Powers) Act, 1947 (10 & 11 Geo. 6, c. xlvi), ss. 17, 19 (1).) A person “engages in street trading in or from a stationary position in a street” within the meaning of s. 17 of the London County Council (General Powers) Act, 1947, when he stops perambulating with his barrow for the purpose of serving customers. Consequently, such a person, who was protected by the proviso to s. 30 of the Act of 1927 and did not require a street trading licence under that Act, on giving notice to the borough council, is entitled to be registered as a registered street trader under s. 19 of the Act of 1947: *SOUTHWARK BOROUGH COUNCIL v. NIGHTINGALE*, [1948] W. N. 356; 64 T. L. R. 563; 92 S. J. 557, D. C.

2101. Summons under London Building Acts. In *R. v. ROSE*, *Ex p. LONDON COUNTY COUNCIL* (July 29, 1948), a summons against a builder for breach of the London Building Acts was served at the builder's place of business and not at his abode. The Divisional Court (Lord Goddard, C.J., Singleton and Denning, J.J.) pointed out that in *R. v. Wilson, ex p. Battersea B. C.* ([1947] C. L. Y. 1816) the decision of the Court of Appeal in *R. v. Braithwaite*, [1918] 2 K. B. 319, had not been cited and in view of the dicta of Scrutton, L.J., the Court might be able in a proper case to consider whether or not the requirement of service of a summons at the place of abode under the Summary Jurisdiction Act was sufficiently fulfilled by service at the place of business. [Reported by R. C. Calburn, Esq., Barrister-at-Law.] See also (1948), 92 S. J. 557.

- 2102. Tithes—compensation on extinguishment in City of London.** See *LANGHAM v. CITY OF LONDON CORPORATION*, § 3593.
- 2103. Town and country planning—delegation of functions to Common Council.** See § 3655.
- 2104. Traffic—London Passenger Transport Board—execution of work.** See § 3055.
- 2105. — London Transport Executive and London Passenger Transport Board, difference in powers between.** See *SMITH v. LONDON TRANSPORT EXECUTIVE*, § 3345.
- 2106. — parking places.** Orders made under the London Traffic Act, 1924 (14 & 15 Geo. 5, c. 34), s. 10, as amended: SI 1948, Nos. 467 [2d.]; 1280; 1281.
- 2107. — prescribed routes.** Orders made under the London Traffic Act, 1924, s. 10, as amended: SI 1948, Nos. 553 (Mill Hill); 897 (St. Marylebone); 917 (Sevenoaks); 930 (Woking); 977 (Ealing); 978 (Wembley); 1013 (Wimbledon); 1350 (Finsbury); 1626 (Ewell); 1627 (St. Marylebone); 1699 (Wembley); 2276 (Wood Green); 2844 (Epsom and Ewell, Malden and Combe); 2845 (Kingston-upon-Thames).
- 2108. — restrictions on waiting.** SI 1948, No. 746 (London-Portsmouth Trunk Road), made under the London Traffic Act, 1924, s. 10 as amended; SI 1948, No. 1688 (City of London), made under Reg. 70 of the Defence (General) Regulations, 1939; SI 1948, No. 2543 (Chertsey).
- 2109. — —.** London Traffic (Miscellaneous Provisions) Order, 1948 (No. 2443) [3d.], replaces the London Traffic (Miscellaneous Provisions) Order, 1947 (No. 850). This Order and the London Traffic (Miscellaneous Provisions) (No. 2) Order, 1948 (No. 2444) [2d.], contain provisions as to restrictions on vehicles waiting loading and unloading in various London streets, and as to street trading.
- 2110. — — traffic signs.** SI 1948, No. 2445, amended by SI 1948, No. 2710 (authorising the use of certain signs to indicate streets in which there are restrictions on waiting, etc.).
- 2111. — restriction of through traffic.** SI 1948, No. 2032 (Kensington—revocation of local restriction).
- 2112. ARTICLES.** The regulating of street trading in London (founded on London County Council (General Powers) Act, 1947, Part IV): 98 L. J. 340; 112 J. P. J. 351, 646.

LUNACY AND MENTAL DEFICIENCY

- 2113. Children under care of local authority.** See § 1705.
- 2114. Criminal lunatics—punishment and treatment of.** See ss. 24, 62–64 of the Criminal Justice Act, 1948 (11 & 12 Geo. 6, c. 58), § 714.
- 2115. Insanity—divorce cases.** See *DIVORCE AND MATRIMONIAL CAUSES*.
- 2116. Mental deficiency—certified institutions, etc.—reception of offenders remanded for medical examination.** Mental Deficiency (Amendment) Regulations, 1948 (No. 2553) [E.], made under the Mental Deficiency Act, 1913 (3 & 4 Geo. 5, c. 28), ss. 41, 49; came into operation on December 27, 1948. These Regulations amend the Mental Deficiency Regulations, 1948 (No. 1000), with the object of preventing offenders remanded for medical examination under the Criminal Justice Act, 1948 (11 & 12 Geo. 6, c. 58), s. 26, from being received in a certified institution or certified house already accommodating a full number of patients unless the Minister consents.
- 2117. — defectives in State institutions.** See § 2314.
- 2118. — Mental Deficiency Regulations.** Mental Deficiency Regulations, 1948 (No. 1000) [E.], made under the Mental Deficiency Act, 1913 (3 & 4 Geo. 5, c. 28), ss. 10, 16, 18, 20, 25, 30, 40, 41, 49, 50, 51, 59. These Regulations re-enact the previously existing Regulations with numerous amendments necessitated by the amendments to the Mental Deficiency Acts, 1913 to 1938, effected by the National Health Service Act, 1946 (9 & 10 Geo. 6, c. 81), Part V and Schedule 9. The Regulations thus re-enacted and revoked are the Mental Deficiency Regulations, 1935 (No. 524), the Mental Deficiency (Amendment) Regulations, 1940 (Provisional), the Mental Deficiency (Amendment) Regulations, 1944 (No. 395), and the

National Health Service (Mental Deficiency) Amendment Regulations, 1947 (No. 1359). The new Regulations came into operation on July 5, 1948. [1s. 1d.]

- 2119. — power of Board of Control to make an order applicable to all institutions.** (Mental Deficiency Act, 1913 (3 & 4 Geo. 5, c. 28), s. 11.) The proviso to s. 11 of the Mental Deficiency Act, 1913, provides "that in the case of any institution the Board [of Control] may by order direct that orders that persons be sent thereto shall, unless continued as hereinafter provided, expire on the quarter day next after the [end of one year from this date.]" There are certain statutory provisions for the expiration of orders from time to time. In April, 1915, the Board of Control made an order directing that "the date of the expiration of the order or authority for detention of all persons detained in certified institutions and certified houses shall be extended to the quarter day next after the day on which the said order or authority for detention would otherwise have expired". On an application for a writ of habeas corpus in respect of a mental deficient detained in an institution the validity of the order of April, 1915, was challenged on the grounds (1) that it applied to all institutions, whereas the Board was bound to exercise its discretion in respect of each separate one, and must consider each institution separately, and (2) that the proviso to s. 11 only applied to persons who were detained in institutions at the date when the Act came into force. Held, (1) the Board of Control have power to make an order which applies to all institutions; (2) the order was to be made in respect of institutions and not in respect of individuals, and, therefore, the second contention was also unsound: *R. v. BOARD OF CONTROL (SECRETARY), Re DAWSON, ex p. ABDUL KAYUM*, [1948] W. N. 409; [1948] 2 All E. R. 853, D. C.
- 2120. — summary jurisdiction.** See § 2156.
- 2121. Mental treatment—emergency treatment.** See § 2317.
- 2122. — mental health services.** The Ministry of Health have issued a booklet entitled "Provisions relating to the Mental Health Services" explanatory of the changes arising out of the amendments made in the Lunacy and Mental Treatment Acts, 1890 to 1930 and the Mental Deficiency Acts, 1913 to 1938, by the National Health Service Act, 1946 (9 & 10 Geo. 6, c. 81).
- 2123. — Mental Treatment Rules.** Mental Treatment Rules, 1948 (No. 1071) [E.], made under the Lunacy Act, 1890 (53 & 54 Vict. c. 5), s. 338 (1), as extended and amended. These rules are a revised version of the Mental Treatment Rules, 1930 (No. 1083), the revision having become necessary because of the amendments to the Lunacy and Mental Treatment Acts, 1890 to 1930, by the National Health Service Act, 1946, and the administrative changes resulting from those amendments. The new Regulations came into operation on July 5, 1948, on which date the Mental Treatment Rules, 1930, the Mental Treatment (Emergency Provisions) Rules, 1940 and 1942 (Nos. 1095 and 1908), and the National Health Service (Mental Treatment) Amendment Rules, 1947 (No. 1360) ceased to have effect. [11d.]
- Mental Treatment (Adaptation of Forms) Rules, 1948 (No. 1082) [E.], made under the Lunacy Act, 1890, s. 338 (2), adapting certain of the forms contained in Sched. II to that Act and in Sched. I to the Mental Treatment Act, 1930 (20 & 21 Geo. 5, c. 23), to the changes effected by the National Health Service Act, 1946.
- 2124. Receiver—expenses of officer of local authority.** By s. 49 of the National Assistance Act, 1948 (11 & 12 Geo. 6, c. 29), where an officer of a county or county borough council is appointed a receiver under the Lunacy Act, 1908 (8 Edw. 7, c. 47), s. 1, the council may defray his expenses in so far as they are not recoverable by him from any other source.
- 2125. — liability for rates.** See *ROBINSON v. TAYLOR*, § 3091.
- 2126. Soldiers and airmen of unsound mind.** The Army and Air Force (Annual) Act, 1948 (11 & 12 Geo. 6, c. 28), s. 4, substitutes, as from July 5, 1948, a new section for s. 91 of the Army Act as to the discharge of soldiers of unsound mind and their reception in mental hospitals. By s. 8 of that Act the same substitution is made in the Air Force Act.

MAGISTERIAL LAW

- 2127. Adulteration.** See FOOD AND DRUGS.
- 2128. Affiliation orders.** See BASTARDY AND LEGITIMATION.
- 2129. Blemishing the peace—appeal against order.** (Stat. (1360–1) 34 Edw. 3, c. 1.) It is elementary law that, where an order is made or judgment given by a Court of competent jurisdiction, an appeal will not lie to any Court unless it is expressly given by statute. With regard to orders made by magistrates acting as a Court of summary jurisdiction there are three statutes conferring and regulating the right of appeal from their decisions: the Summary Jurisdiction Act, 1879, s. 17, the Criminal Justice Administration Act, 1914, s. 37, and the Criminal Justice Act, 1925, s. 25. In each case it is necessary that there should be a conviction. The Act of 34 Edward 3 does not create any offence. There is no such offence known to the law as blemishing the peace, and where a person is found by a magistrate to have “acted in a manner whereby the peace is blemished”, and is ordered to find sufficient surety for his good behaviour during the ensuing twelve months by entering into his own recognisances in the sum of £25, the order of the magistrate does not in any way amount to a conviction. It is an exercise of the powers which have been exercised by justices for many centuries as a measure of preventive justice to take security from persons whose behaviour leads the justices to suspect that such persons will cause a breach of the peace, although up to the time they are brought before the Court they have not done anything which could form the subject of a criminal charge. Consequently, no appeal lies against such an order: *R. v. LONDON COUNTY QUARTER SESSIONS, ex p. COMMISSIONER OF METROPOLITAN POLICE*, [1948] 1 K. B. 670; [1948] L. J. R. 472, D. C. (Atkinson, J., dissenting; applying *Willes v. Bridger* (1819), 2 B. & Ald. 278; and *Ex p. Davis* (1871), 24 L. T. 547).
- 2130. Case stated—parties to—appeals under Food and Drugs Act, 1938, s. 83.** See *ELKINGTON v. KESLEY*, § 1470.
- 2131. Costs—point of principle.** “If the police want to get a decision on a point of principle they must get it at their own expense”: *per* Lord Goddard, C.J., in *SAYCELL v. BOOL*, § 3306.
- 2132. — taxation by justices’ clerk.** In *R. v. PWLLHELI JUSTICES, ex p. SOANE*, § 2144, the Divisional Court held, on a prosecution by a fisheries board of a defendant for an offence under the Salmon and Freshwater Fisheries Act, 1923, that the justices, having convicted the defendant, had no power to order him to pay an amount of costs to be taxed by their clerk, because s. 18 of the Summary Jurisdiction Act, 1848, required justices to fix the sum to be paid as costs. [Reported on this point by *R. C. Calburn, Esq., Barrister-at-Law.*]
- 2133. Criminal Justice Act, 1948.** See §§ 714, 715.
- 2134. — commencement.** The Home Office have issued to clerks to justices Circular 265/1948 with reference to provisions of the Act of 1948 brought into force by the Criminal Justice Act, 1948 (Date of Commencement) (No. 3) Order, 1948 (No. 2349) (see § 715).
- 2135. Distress warrant—for non-payment of rates.** See *EAST BARNET U. D. C. v. ALLEN TRENNARY (BARNET)*, § 3076.
- 2136. Evidence—justices’ clerk’s notes—duty to supply copies.** See *BEVENS v. BEVENS*, § 875; *DARRALL v. DARRALL*, § 876.
- 2137. — missing elements of proof supplied by defendant.** [N.Z.] In *DAVIES v. GLOVER*, [1947] N. Z. L. R. 806, the Supreme Court of New Zealand held that the rule in trials on indictment that if, after a submission that there is no case to go to the jury, evidence is called for the defence and the missing elements of proof are supplied from such evidence, the Court is entitled to consider such evidence is applicable to the trial of offences triable summarily. (*R. v. Abraham George* (1908), 25 T. L. R. 66; *R. v. Joiner* (1910), 4 Cr. App. R. 64; *R. v. Fraser* (1911), 7 Cr. App. R. 99; and *R. v. Power*, [1919] 1 K. B. 572, considered).
- 2138. — wrongly admitted—procedure.** Where some evidence is given before justices which ought not to have been given and the admission of which may have

prejudiced the minds of justices, the proper course to adopt is to have the case heard before a different Bench on a subsequent occasion. See *ELKINGTON v. KESLEY*, § 1470.

2139. Indictable offences. See also *CRIMINAL LAW*.

2140. — committal—accused persons called as witnesses for prosecution. The decision in *R. v. Grant*, [1944] 2 All E. R. 311, establishes that it is not competent for the prosecution to call as witnesses persons who are themselves concerned in the charge. If this is done the committal will be bad and the whole indictment will be quashed. The mere fact that the accused called as witnesses for the prosecution are called into the witness box and take the oath as witnesses amounts to “giving evidence” and will invalidate the proceedings: *R. v. SHARROCK* (1948), 112 J. P. 162; [1948] 1 All E. R. 145, Lewis, J. (following *R. v. Grant*, *supra*).

2141. Information—meaning of. See *R. v. SARAH SILVER*, § 737.

2142. — parties—christian name mis-spelt. (Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 1.) Where a defendant is described in the information or in the summons by a wrong christian name (*e.g.*, Rosa instead of Rose) the justices have power to proceed against the defendant, if he has appeared and submitted to the Court, without making any amendment at all, irrespective of whether the error is discovered before the hearing or after the hearing has begun, such defect being irrelevant by virtue of the provisions of s. 1 of the Summary Jurisdiction Act, 1848: *DRING v. MANN*, 112 J. P. 270; 92 S. J. 272, D. C. (applying *R. v. Norkett, Ex p. Geach* (1915), 139 L. T. J. 316).

2143. Jurisdiction—Court differently constituted. See *JOSEPH v. JOSEPH*, § 1020.

2144. — disqualification of justices. (Salmon and Freshwater Fisheries Act, 1923 (13 & 14 Geo. 5, c. 16), ss. 8 (1), 76.) S. 76 of the Salmon and Freshwater Fisheries Act, 1923, provides that “a justice of the peace shall not be disqualified for hearing any case arising under this Act by reason only of his being a member of a fishery board”. The authorities establish that, if a member of a fishery board who is also a justice votes for a resolution authorising a prosecution, he cannot sit on the hearing of the summons because the section does not permit him to do so. However, in a case where a justice was present at the meeting of the fishery board in his capacity as a member of the board, but took no part in the resolution authorising the prosecution, it was held that there was no ground for quashing a conviction for an offence under s. 8 (1) of the Act: *R. v. PWILHELI JUSTICES, ex p. SOANE*, [1948] W. N. 411; 64 T. L. R. 574; 92 S. J. 634; [1948] 2 All E. R. 815, D. C. (distinguishing *R. v. Henley*, [1892] 1 Q. B. 504; *R. v. Lee* (1882), 9 Q. B. D. 394; and *R. v. Milledge* (1879), 4 Q. B. D. 332). (See also § 2132.) [Cf. *R. v. Caernarvon Licensing JJ.*, § 1844.]

2145. Licensing. See *INTOXICATING LIQUORS*.

2146. London—salaries of justices' clerks. See § 2090.

2147. Maintenance order—bigamous marriage. See *SKINNER v. CARTER*, § 1702.

2148. — cessation of order. See *THOMAS v. THOMAS*, § 978.

2149. — constructive desertion as defence. See *WINNAN v. WINNAN*, § 981.

2150. — custody of children. See *HAYES v. HAYES*, § 912.

2151. — concurrent remedies. See *HEWORTH v. HEWORTH*, § 913; *FLOOD v. FLOOD*, § 914.

2152. — non-cohabitation clause inserted in error. See *THORY v. THORY*, § 933.

2153. — res judicata. See *MOLESWORTH v. MOLESWORTH*, § 949; *JAMES v. JAMES*, § 950; *HUDSON v. HUDSON* (*EXELBY CITED*), § 951.

2154. — revival of condoned adultery. See *PEARSON v. PEARSON*, § 889.

2155. — sexual life, materiality of. See *RICE v. RAYNOLD-SPRING-RICE*, § 936.

2156. Mental deficiency. Summary Jurisdiction (Mental Deficiency) Rules, 1948 (No. 1353), made under the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 29, and the Mental Deficiency Act, 1913 (3 & 4 Geo. 5, c. 28), s. 44 (5). These Rules, which came into operation on July 5, 1948, replace the Summary

Jurisdiction (Mental Deficiency Act) Rules, 1933 (No. 1091), in a form designed to give effect to the changes in the law made by the National Health Service Act, 1946. After July 5, 1948, the cost of maintaining a defective in an institution no longer falls upon the local health authority, but the authority is still liable to provide for a defective placed under guardianship and for the cost of conveying a defective to an institution. For these purposes, it is still necessary to determine the defective's place of residence.

2157. Metropolitan Police Courts—alteration of divisions. SI 1948, No. 1842 (Clerkenwell, North London and Old Street).

2158. Probation of offenders—driving without third party insurance. See *GARDNER v. JAMES*, § 3312.

2159. — petrol coupon offences. In *TRAPNELL v. BUSH SERVICE STATION* (November 25, 1948), the Divisional Court (Lord Goddard, C.J., Hilbery and Birkett, J.J.) held that a practice by a motor garage company whereby they contravened the Motor Fuel Orders, 1944 and 1947, by allowing their customers to deposit petrol coupons at the garage and then supplying the customers with petrol against the deposited coupons at the customer's convenience was not an offence which could properly be dealt with by justices under the Probation of Offenders Act, 1907, even though it had been committed only for the convenience of the company's customers and without any motive of gain. [*Reported by R. C. Calburn, Esq., Barrister-at-Law.*] See also 93 S. J. 103.

2160. — probation officers—appointment. Probation Rules, 1948 (No. 1387); came into operation on July 5, 1948; substitute a new rule for r. 31 of the Probation Rules, 1926 (No. 577), as to the appointment of full-time probation officers. The new rules also substitute a new rule for r. 35 of the 1926 Rules as to the grant of sick leave to full-time probation officers.

2161. — — evidence in divorce cases. See *McTAGGART v. McTAGGART*, § 957.

2162. — — sick leave. See § 2160.

2163. — — superannuation—local government scheme. See § 2652.

2164. — — — pensions increase. See § 2653.

2165. Road traffic offences. See ROAD TRAFFIC.

2166. Small tenements recovery. See *RAMSBOTTOM v. SNELSON*, § 1965; *BOWDEN v. RALLISON*, § 1966; *SHELLEY v. L. C. C.*, § 1608.

2167. Summary Jurisdiction Rules—amendment. Summary Jurisdiction Rules, 1948 (No. 2663) [E.], amend the Summary Jurisdiction Rules, 1915 (No. 200), r. 55 and Sched. The amendment to r. 55 relates to the documents to be sent to sessions on the committal of a person for sentence under the Criminal Justice Act, 1948 (11 & 12 Geo. 6, c. 58), s. 20 or s. 29, and the new Rules also contain a number of substituted and new forms relating to the apprehension of a person on his failure to surrender to bail, committal on remand, taking of finger-prints, reception orders, commitment in various cases and other matters. The new Rules came into operation on December 27, 1948. [*3d.*]

2168. Summons—parties—christian name mis-spelt. See *DRING v. MANN*, § 2142.

2169. — service—London Building Acts. See *R. v. ROSE*, § 2101.

2170. ARTICLES. Summary award of costs (a reminder of the powers of Courts of summary jurisdiction in respect of the award of costs): 112 J. P. J. 20. *Sine die* (comments on the practice of adjourning cases *sine die*, founded on *Barnsley v. Marsh*, [1947] C. L. Y. 247): 112 J. P. J. 36. Absent defendants and previous convictions: 112 J. P. J. 37. A question of appeal (founded on *R. v. London County Quarter Sessions*, § 2129): 112 J. P. J. 53. Appeals in probation cases: 112 J. P. J. 116. Justice for reward (the payment of justices): 112 J. P. J. 132. After four years (the Roche Report): 112 J. P. J. 135. Maintenance of children: 98 L. J. 149. The justices and their clerk: 112 J. P. J. 178. Recognisances on appeals: 112 J. P. J. 194. Magisterial law and licensing: 98 L. J. 188. Binding over to keep the peace: 92 S. J. 240. Newly appointed whole-time clerks: 112 J. P. J. 304. Typing the depositions: 112 J. P. J. 335. Juvenile gangs in court: 112 J. P. J. 320. Police courts: 112 J. P. J. 321. Food and Drugs Act prosecution—passing over defence (founded on *Elkington v.*

Kesley, § 1470): 98 L. J. 340. The dilemma of multiple orders (founded on Children Act, 1948, s. 53): 112 J. P. J. 521. Justices' notes and reasons for decisions (founded on *Bevens v. Bevens*, § 875): 98 L. J. 473. Justices of the peace—report of Royal Commission: 206 L. T. 112; 98 L. J. 451; 112 J. P. J. 507, 520. Petty sessional procedure: 112 J. P. J. 583. Evolution of the justices' clerk: 112 J. P. J. 662. Criminal Justice Act, 1948—procedure in summary courts: 112 J. P. J. 630. Probation under the Criminal Justice Act: 112 J. P. J. 678.

2171. **BOOKS PUBLISHED.** Brenchley, A. T. G.—Magisterial Costs and Application of Penalties [30s.]. Stone's Justices' Manual, 1948. 2 volumes. [thick ed. 63s., thin ed. 68s.].

MARKETS AND FAIRS

2172. **Ministers—transfer of functions.** Transfer of Functions (Secretary of State and Minister of Health) Order, 1948 (No. 865), made under the Ministers of the Crown (Transfer of Functions) Act, 1946 (9 & 10 Geo. 6, c. 31), transfers to the Secretary of State the functions of the Minister of Health (1) under the Food and Drugs Act, 1938 (1 & 2 Geo. 6, c. 56), s. 46 (as to the times for holding markets); (2) of confirming bye-laws made under s. 50 of that Act (as to certain bye-laws made by market authorities); and (3) under any enactment in a local Act or provisional order of consenting to, or approving, stallages, tolls, rents or other charges for the purposes of markets or fairs. The order came into operation on July 1, 1948.
2173. **Sale in public market.** See BISHOPSGATE MOTOR FINANCE CORPORATION *v.* TRANSPORT BRAKES, § 3384.
2174. **ARTICLES.** The regulating of street trading in London (founded on London County Council (General Powers) Act, 1947, Pt. IV): 112 J. P. 351, 646; 98 L. J. 340.

MEDICINE

2175. **Consultants.** See § 2285.
2176. **Dentists—national health service.** See §§ 2288, 2289, 2290.
2177. — **negligence.** See *FISH v. KAPUR*, § 2517.
2178. — **residence on premises let solely for business.** [Cty. Ct.] See *PICKFORDS v. WHEELER*, § 3160.
2179. **Dangerous drugs.** Dangerous Drugs Regulations, 1948 (No. 2653), made under the Dangerous Drugs Act, 1920 (10 & 11 Geo. 5, c. 46), s. 7; came into operation on January 1, 1949; amend the Dangerous Drugs Regulations, 1937 (No. 560). Many of the amendments are consequential on statutes passed since the Regulations of 1937, but some introduce new provisions, notably as to the authority of certain persons employed in certain institutions and as to the keeping of drugs in locked receptacles.
2180. — **opium.** Raw Opium Regulations, 1948 (No. 2654), made under the Dangerous Drugs Act, 1920, s. 3, and the Dangerous Drugs Act, 1925 (15 & 16 Geo. 5, c. 74), s. 1; amend the Raw Opium, etc., Regulations, 1937 (No. 559). The principal amendment requires that raw opium, etc., should be kept in a locked receptacle.
2181. **Food and drugs.** See FOOD AND DRUGS.
2182. **Health visitors.** See § 2293.
2183. **Hospitals—deeds of covenant.** See § 424.
2184. — **national health service.** See NATIONAL HEALTH.
2185. — **teaching hospitals—designation under National Health Service Act.** See § 2302.
2186. **Medical practitioners—doctor's evidence.** See *R. v. NOWELL*, § 3300; [Scot.] *REID v. NIXON*, § 3299.
2187. — **medical partnerships—report of committee.** See § 2310.
2188. — **medical practice—compensation.** See § 2311.
2189. — **covenants in restraint of trade.** See *JENKINS v. REID*, § 1269.

- 2190. — Medical Practitioners and Pharmacists Act, 1947.** The Ministry of Health have issued Circular 19/48, dated February 11, 1948, drawing attention to changes affecting the registration in the medical register and pharmaceutical register of medical practitioners qualified elsewhere than in the United Kingdom or Eire, and of pharmacists qualified outside the United Kingdom.
- 2191. — negligence.** In *WHITEFORD v. HUNTER* (July 29, 1948), Birkett, J., held that a surgeon who had wrongly diagnosed cancer of the bladder had been negligent in not making an examination with a cystoscope. [*Reported by R. C. Calburn, Esq., Barrister-at-Law.*] See also *Times*, July 30, 1948.
- 2192. — — criminal negligence.** See *DABHOLKAR v. R.*, § 749.
- 2193. Midwives.** Midwives (Amendment) Rules (No. 2) Approval Instrument, 1948 (No. 2193) [E.], made under the Midwives Act, 1902 (2 Edw. 7, c. 17), s. 3; approving certain amendments to the Rules of the Central Midwives Board which have been necessitated by the coming into operation of the National Health Service Act, 1946 (9 & 10 Geo. 6, c. 81), the National Insurance Act, 1946 (9 & 10 Geo. 6, c. 67), the National Assistance Act, 1948 (11 & 12 Geo. 6, c. 29), and the Children Act, 1948 (11 & 12 Geo. 6, c. 43).
Midwives Rules, Approval (Extension) Instrument, 1948 (No. 2210) [E.], extends the Minister's approval of the Midwives Rules, as amended, for twelve months expiring on September 30, 1949.
- 2194. — fees.** Medical Practitioners (Fees) (No. 2) Regulations, 1948 (No. 1453), made under the Midwives Act, 1936 (26 Geo. 5 & 1 Edw. 8, c. 40), s. 9, as amended; came into force on July 5, 1948; prescribe the fees payable under the Midwives Acts to medical practitioners called in to assist midwives in cases of emergency. The Medical Practitioners (Fees) Regulations, 1948 (No. 695), are revoked.
- 2195. — salaries and conditions of service.** See Ministry of Health Circular 4/48, dated January 26, 1948—Salaries and Conditions of Service of Midwives.
- 2196. — training.** Midwives (Amendment) Rules, Instruments of Approval, 1948 (No. 689) [E.], made under the Midwives Act, 1902, s. 3, amending the Rules framed under the Midwives Acts, 1902 to 1936, Sect. B, r. 33, by dispensing with the obligation requiring certain records kept by a pupil to be sent to the Central Midwives Board before she presented herself for the Second Examination.
- 2197. National health service.** See NATIONAL HEALTH.
- 2198. Notification of infectious diseases.** See § 2972.
- 2199. Nurses—agency for supply of.** (Nurses Act, 1943 (6 & 7 Geo. 6, c. 17), s. 8 (2).) S. 8 (2) of the Nurses Act, 1943, provides that, if certain stipulations are complied with, the local authority shall grant a licence to a person carrying on an agency for the supply of nurses, “. . . subject, however, to such conditions as they may think fit for securing the proper conduct of the agency, including conditions as to fees to be charged by the person carrying on the agency, whether to the nurses or other persons supplied, or to the persons to whom they are supplied”.
- The appellants, who were the licensing authority within the area, had inserted a condition that the respondent, who was the holder of a licence to carry on an agency within that area, should not collect from a patient more than a maximum sum which the appellants had taken on themselves to prescribe quite independently of whether or not the nurse was willing to work for that amount of money. Held, this condition was not in any sense necessary for securing the proper conduct of the agency, and was, therefore, *ultra vires*: *MIDDLESEX C. C. v. MILLER*, [1948] 1 K. B. 438; [1948] L. J. R. 840, D. C.
- 2200. — assistant nurses.** Assistant Nurses (Amendment) Rules, Approval Instrument, 1948 (No. 2714), made under the Nurses Act, 1943 (6 & 7 Geo. 6, c. 17); amend the Assistant Nurses Rules, 1945, as to assistant nurses enrolled in Northern Ireland and as to type of uniform. [2d.]
- 2201. — civil nursing reserve—cessation.** See § 2284.
- 2202. Opticians—national health service.** See § 2324.
- 2203. — profession or business.** See *NEILD v. I. R. C.*, § 1360.

2204. Pharmacists. See §§ 2190, 2309.

2205. Poisons—Poisons List. Poisons List (Amendment) Order, 1948 (No. 839), made under the Pharmacy and Poisons Act, 1933 (23 & 24 Geo. 5, c. 25), s. 17 (5), makes certain amendments in Part I of the Poisons List. Poisons List (Amendment) (No. 2) Order, 1948 (No. 1378), made under the Pharmacy and Poisons Act, 1933, s. 17 (5), add tridione to Part I of the Poisons List.

2206. — Poisons Rules. Poisons (Amendment) Rules, 1948 (No. 840), made under the Pharmacy and Poisons Act, 1933, s. 23, amend the Poisons Rules, 1935 (No. 1239), by inserting a new rule 14A, which replaces with amendments the Poisons (Colouring) Rules, 1936 (No. 363); by making certain amendments in Schedules 1, 4 and 7; and by adding a new Schedule 16. The principal changes effected are that the requirement as to colouring is widened so as to apply to the poisons specified in Schedule 16 when they are intended for the treatment of any infestation, and that lead, arsenic paste and powder are no longer exempted. Poisons (Amendment) (No. 2) Rules, 1948 (No. 1379), made under the Pharmacy and Poisons Act, 1933, s. 23; came into operation on July 5, 1948; make amendments in the Poisons Rules consequent on the coming into operation of the National Health Service Act, 1946 (9 & 10 Geo. 6, c. 81).

2207. Public health. See PUBLIC HEALTH.

2208. Specialists. See §§ 2285, 2327.

2209. Therapeutic substances—penicillin. Therapeutic Substances Amendment Regulations, 1948 (No. 2418), made under the Therapeutic Substances Act, 1925 (15 & 16 Geo. 5, c. 60), ss. 1, 5; came into operation on December 1, 1948; amend the Therapeutic Substances Regulations, 1931 (No. 633), as already amended, by substituting a new definition of "penicillin" for that inserted by the amending Regulations of 1946 (No. 467) and by various other amendments. [5d.]

2210. — streptomycin. Streptomycin Regulations, 1948 (No. 1735), made under the Penicillin Act, 1947 (10 & 11 Geo. 6, c. 29), s. 2; came into operation on August 1, 1948; bring streptomycin within the scope of the control of the sale and supply of substances under the Act.

2211. Veterinary Surgeons Act, 1948 (11 & 12 Geo. 6, c. 52). The main purpose of this Act is to provide further for the teaching of veterinary surgery and to restrict the practice thereof by unqualified persons. Ss. 1–4 contain provisions as to training in veterinary surgery and provide that holders of certain university degrees are to be qualified veterinary surgeons (s. 1). S. 3 provides for the examination by the Royal College of Veterinary Surgeons of students in universities which do not provide veterinary courses. S. 4 imposes certain supervisory functions on the Council of the College. Under s. 5 it is made an offence for any person to practise or hold himself out as practising veterinary surgery unless he is registered in the Register of Veterinary Surgeons or in the Supplementary Register (provisions as to which are contained in s. 6; see also s. 23 and Schedule 2). The meaning of veterinary surgery for this purpose is subject to the exemptions and exclusions set out in Schedule 1 to the Act. The prohibition in s. 5 does not apply to a person holding a licence under s. 7, so far as the terms of the licence permit (s. 7 (2)), nor to persons registered under s. 15 of the Veterinary Surgeons Act, 1881 (44 & 45 Vict. c. 62) (s. 29). Such licences may be granted to employees of animal welfare societies in certain cases. S. 8, which replaces s. 17 of the 1881 Act, makes it an offence for an unregistered person to use the title of veterinary surgeon, but this does not apply to persons registered under s. 15 of that Act (s. 29). Ss. 9–12 contain provisions for the reconstitution of the Council of the Royal College of Veterinary Surgeons and ss. 13–16 deal with the Council's disciplinary powers. S. 20 gives power to give effect to any agreement with Eire as to the registration of holders of degrees in veterinary surgery in Eire and other matters. S. 22 removes the disqualification of a teacher of a veterinary college from appointment as an Examiner of the Royal College of Veterinary Surgeons and s. 24 exempts members of that College and persons registered in the Supplementary Register from jury service while practising. The Act, except certain sections thereof, applies to Northern Ireland.

2212. ARTICLE. Medical partnerships (founded on National Health Service Act, 1946): 98 L. J. 87.

- 2213. BOOK PUBLISHED.** Taylor, A. S.—*Principles and Practice of Medical Jurisprudence*. 10th ed. Vol. 1 by Smith, S., and Cook, W. G. H. [45s.].

MEETINGS

- 2214. Company meetings.** See COMPANY LAW.
- 2215. ARTICLES.** Meetings (companies): *Accountancy*, February, 1948, p. 31. Public meetings and free speech: 205 L. T. J. 100. What constitutes a meeting (founded on *Prain & Sons' Petition*, [1947] C. L. Y. 416): 98 L. J. 118.
- 2216. BOOK PUBLISHED.** Shackleton, F.—*Procedure at and the Law relating to Meetings*. 2nd ed. [30s.].

MINING LAW

- 2217. Coal industry nationalisation—apportionments, documents, etc.** Coal Industry Nationalisation (Apportionments, Documents, etc.) Regulations, 1948 (No. 472), made under the Coal Industry Nationalisation Act, 1946 (9 & 10 Geo. 6, c. 59), ss. 5, 62. These Regulations amend the Regulations of 1946 (No. 1945) with respect to their application to Scotland.
- 2218. — compensation.** See *Re ABERPERGWM ESTATE*, § 508.
- 2219. — — adjustment of interests of members of companies, etc.** Coal Industry Nationalisation (Company Adjustment) Regulations, 1948 (No. 2360), made under the Coal Industry Nationalisation Act, 1946, s. 25; came into operation on November 1, 1948; provide for adjusting the interests of debenture holders and members of companies in their company's assets as affected by the substitution of compensation for interests transferred under the Act. [5d.]
- 2220. — — — tribunal.** The Lord Chancellor has constituted the tribunal established by the Coal Industry Nationalisation (Company Adjustment) Regulations, 1948 (No. 2360): see § 2219. The members of the Chairmen's Panel consist of Mr. H. A. H. Christie, K.C. (administrative chairman), Mr. J. N. Gray, K.C., and Mr. G. R. Upjohn, K.C. The registrar is Mr. R. F. C. Roach, M.B.E., Room 772, Royal Courts of Justice, Strand, London, W.C.2.
- 2221. — — apportionment between life tenant and remainderman.** See *Re BLANDY-JENKINS*, § 509; *Re PARKER'S WILL TRUSTS*, § 510.
- 2222. — — interim income.** Coal Industry Nationalisation (Interim Income) (Rates of Interest) Order, 1948 (No. 2666), made under the Coal Industry Nationalisation Act, 1946, s. 22 (2) (a); provides for the rates of interest on compensation moneys for the purpose of reckoning the amounts payable under that section.
- 2223. — — — railway wagons.** Coal Industry Nationalisation (Satisfaction of Compensation) (No. 2) Regulations, 1948 (No. 2772), made under the Coal Industry Nationalisation Act, 1946, s. 21; amend the Coal Industry Nationalisation (Satisfaction of Compensation) Regulations, 1947 (No. 1946), so as to enable compensation in respect of railway wagons which were under requisition when they vested in the National Coal Board to be satisfied by a money payment.
- 2224. — — — satisfaction.** Coal Industry Nationalisation (Satisfaction of Compensation) (No. 2) Regulations, 1947 (No. 2838), dated December 31, 1947, made under the Coal Industry Nationalisation Act, 1946, ss. 21, 22. These Regulations amend the Coal Industry Nationalisation (Satisfaction of Compensation) Regulations, 1947 (No. 1946), by providing that compensation in respect of stocks of certain products additional to those mentioned in s. 21 (1) (b) of the Act will be satisfied by a money payment; and by adding to the provisions for allowances in the computation of profits and gains for the purpose of revenue payments under s. 22 (3), provisions as to charges and refunds in respect of workmen's compensation.
- Coal Industry Nationalisation (Satisfaction of Compensation) Regulations, 1948 (No. 1703), made under the Coal Industry Nationalisation Act, 1946, s. 22; came into operation on July 30, 1948; amend the Coal Industry Nationalisation (Satisfaction of Compensation) Regulations, 1947 (No. 1946), with the object of clarifying the position with regard to distinct activities begun or discontinued after the beginning of a chosen accounting period and before the primary vesting date.

- 2225. — petition by nationalised colliery company.** See *Re CHATTERLEY-WHITFIELD COLLIERIES*, § 454; [Scot.] *WILSONS & CLYDE COAL CO., PETITIONERS*, § 453; [Scot.] *ALLOA COAL CO., PETITIONERS*, § 452.
- 2226. Coal mines—firedamp detectors.** Firedamp Detectors (No. 5) Order, 1948 (No. 903), made under the Coal Mines General Regulations (Firedamp Detectors), 1939 (No. 322), approving a certain type of detector for the purposes of those Regulations and specifying conditions of use and methods of test.
- 2227. — industrial injuries insurance—colliery workers supplementary scheme.** See § 2365.
- 2228. — pneumatic lighting.** Coal Mines (Pneumatic Lighting Unit) Order, 1948 (No. 1918); made under the Coal Mines (Lighting) General Regulations, 1947 (No. 972), Reg. 11; came into operation on October 1, 1948.
- 2229. — safety lamps.** Safety Lamps (Conditions of Use) (Revocation) Order, 1948 (No. 1997), made under the Coal Mines Act, 1911 (1 & 2 Geo. 5, c. 50), s. 33, as amended; revokes, as from September 15, 1948, the Safety Lamps (Conditions of Use) Order, 1934 (No. 729), which has become redundant in consequence of the provisions of the Coal Mines (Lighting) General Regulations, 1947 (No. 972).
- 2230. — shot-firing.** Explosives in Coal Mines Order, 1948 (No. 181), made under the Coal Mines Act, 1911, s. 61, makes the following amendments in the Explosives in Coal Mines Order, 1934 (No. 6), as it applies to mines where permitted explosives only are allowed to be used: (1) as from February 10, 1948, the firing of shots in certain places is prohibited without written authority, which may only be granted in specified circumstances; (2) as from March 22, 1948, a shot-firer is prohibited from firing a greater number of shots in any one hour or shift than the maximum fixed by the manager in accordance with the Order.
- 2231. — winding and haulage.** Coal Mines (Winding and Haulage) General Regulations, 1948 (No. 302), made under s. 86 of the Coal Mines Act, 1911, modify (as from April 1, 1948), s. 40 (winding apparatus) and s. 44 (refuge holes) of the Act of 1911.
- 2232. — workers below ground—suspension of time limit.** Coal Mines Regulation (Suspension) Order, 1948 (No. 868), made under the Coal Mines Regulation Act, 1908 (8 Edw. 7, c. 57), s. 4. This Order continues the suspension of the time limit during which miners may be employed below ground for the period from the expiry of the Coal Mines Regulation (Suspension) Order, 1947 (No. 2505), to April 30, 1949.
- 2233. Mines (Working Facilities and Support) Acts, 1923–25—riparian rights.** In *Re JOHN BOWES & PARTNERS, Estates Gazette*, July 10, 1948, p. 23, the National Coal Board applied to the Railway and Canal Commission for compulsory powers to acquire the rights of certain riparian owners, on the ground that one such owner, who was the only opponent of the application, had unreasonably withheld consent. The Commission granted the application on the grounds that it was expedient in the national interest, and that the objector would lose nothing if water was taken from the burn in question.
- 2234. Reservation of minerals—what are included.** [Scot.] See *BORTHWICK-NORTON v. PAUL & SONS*, § 3113.
- 2235. Superannuation schemes—settlement of disputes as to payments.** Coal Industry Nationalisation (Superannuation) Regulations, 1948 (No. 2430), made under the Coal Industry Nationalisation Act, 1946 (9 & 10 Geo. 6, c. 59), s. 37; came into operation on November 11, 1948; amend the Coal Industry Nationalisation (Superannuation) Regulations, 1946 (No. 2198) as already amended by substituting a referee or board of referees appointed by the Minister of Labour and National Service for a referee appointed by the Minister of Fuel and Power to settle certain disputes as to payments under superannuation schemes.
- 2236. Working of minerals—town and country planning.** See §§ 3659, 3660.

MONEY

- 2237. Banking.** See BANKING ; SAVINGS BANKS.
- 2238. Finance.** See REVENUE AND FINANCE.
- 2239. Loans.** See LOANS.
- 2240. Meaning of "money" in a will.** See *Re BATES*, § 3924.
- 2241. Money of account.** [Aus.] See GOLDSBROUGH, MORT & Co. v. HALL, § 647; [Aus.] BONYTHON v. THE COMMONWEALTH, § 648.
- 2242. Tracing.** See *Re DIPLOCK*, §§ 1399, 1400, 1401, 1402.

MORTGAGES

- 2243. Building societies.** See BUILDING SOCIETIES.
- 2244. Discharge of mortgage.** In *Re UPLANDS, PORTMORE PARK ROAD, WEYBRIDGE, SURREY* (April 21, 1948), the owners of freehold property subject to a second mortgage had sold the land. They desired, on that occasion, to discharge the second mortgage but were unable to trace the second mortgagee, and applied under the Law of Property Act, 1925, s. 50 (1) (b) and (2), and s. 203 (1) that they might be allowed to pay the money into Court, that a declaration be made that the property was freed from the mortgage and that service upon the second mortgagee be dispensed with. Vaisey, J., held that he had no power to make the declaration applied for until the money was, in fact, paid into Court. He directed payment of the money into Court and granted dispensation with the service on the second mortgagee, and further ordered the case to stand over with liberty to apply for the declaration when the moneys had been paid into Court. [Reported by C. M. Schmitthoff, Esq., Barrister-at-Law.] See also [1948] W. N. 165.
- 2245. Husband and wife.** *Re ROGERS' QUESTION*, § 1625; *MOATE v. MOATE*, § 1626.
- 2246. Mortgage deed—relevant document on application for transfer of licence.** See *R. v. NEWINGTON LICENSING JUSTICES*, § 1850.
- 2247. Mortgagee in possession—sale after twelve years.** (Law of Property Act, 1925 (15 Geo. 5, c. 20), ss. 104, 105, 107, 116; Limitation Act, 1939 (2 & 3 Geo. 6, c. 21), ss. 12, 16.) The effect of ss. 12 and 16 of the Limitation Act, 1939, is that the right of the mortgagor, or a puisne mortgagee, or a person claiming through him, to bring an action for redemption is barred after the first mortgagee has been in possession for twelve years, and that after such period of twelve years has expired the title of the persons whose interest it was to redeem is extinguished, and they have no more right, title or interest in the mortgaged property. It follows that where a first mortgagee who has been in possession for a period of twelve years sells the mortgaged property in the exercise of his statutory powers of sale as mortgagee under s. 104 (3) of the Law of Property Act, 1925, a puisne mortgagee will not be a "person entitled to the mortgaged property" within the meaning of s. 105 of the Law of Property Act, 1925, and will, therefore, not be entitled to be paid any surplus sum of money in the hands of the first mortgagee after principal, interest and costs of the first mortgage have been paid: *YOUNG v. CLAREY*, [1948] Ch. 191; [1948] L. J. R. 812, Harman, J. (distinguishing *Re Alison* (1879), 11 Ch. D. 284; *Locking v. Parker* (1872), 8 Ch. App. 30; and *Re Thomson's Mortgage Trusts*, [1920] 1 Ch. 508).
- 2248. — when rests ordered.** [N.Z.] For a consideration of the general rule that an account taken against a mortgagee should be a continuous account without rests, and of the cases which are exceptions to that rule and where an account with rests should be ordered, see *COUZENS v. FRANCIS*, [1948] N. Z. L. R. 567 (New Zealand Supreme Court). (*Wrigley v. Gill*, [1906] 1 Ch. 165, and *Cockburn v. Edwards* (1881), 18 Ch. D. 449, considered.)
- 2249. Principal and interest—variation of mortgage deed by liabilities adjustment order.** See *Re GINGER*, § 267.
- 2250. Receiver and manager, appointment of.** See *Re NEWPORT CONSTRUCTION CO.*, § 2805.

- 2251. Recovery of possession—application by originating summons.** (R. S. C., Ord. 55, r. 5A). Ord. 55, r. 5A, provides for an application by originating summons for the “delivery of possession . . . by the mortgagor . . . or by any other person in, or alleged to be in possession of the property”. It would not be right to imply the further words “being a person entitled to redeem” in the rule. Thus, an application by originating summons is within the rule, although the defendant mortgagor in possession has been adjudicated bankrupt: *MARTINS BANK v. KAVANAGH*, [1948] W. N. 321; 64 T. L. R. 485; [1948] 2 All E. R. 448, Roxburgh, J. (applying *Temperance Permanent Benefit Building Society v. Nevitt*, [1940] 3 All E. R. 237). (See also § 2252.)
- 2252. — parties to application.** (R. S. C., Ord. 55, r. 5B.) An application by originating summons under Ord. 55, r. 5A, for the “delivery of possession . . . by the mortgagor . . . or by any other person in, or alleged to be in possession of the property”, involves a step in the enforcement of the security which may prejudice the person entitled to the equity of redemption, and, consequently, according to the provisions of Ord. 55, r. 5B, “under the existing practice of the Chancery Division” in the case of a mortgagor in possession, who has been adjudicated bankrupt, the trustee in bankruptcy should be made a party to the application. See *MARTINS BANK v. KAVANAGH*, § 2251.
- 2253. Surrender of lease to mortgagor without concurrence of mortgagees.** [Cty. Ct.] See *BEASTY v. BROOKS*, § 1969.
- 2254. ARTICLES.** Sales by mortgagees where the equity of redemption is barred (founded on *Young v. Clarey*, § 2247): 205 L. T. J. 89. Sub-mortgages—their creation, realisation, transfer and discharge, by H. Woodhouse: 12 *Conveyancer* (N.S.) 171. Attornment clause, by H. R. Gray: 13 *Conveyancer* (N.S.) 31. Registration and consolidation of mortgages: 92 S. J. 726.

MUSEUMS AND MONUMENTS

- 2255. BOOK PUBLISHED.** Hewitt, A. R.—Law relating to Public Libraries, Museums and Art Galleries. 2nd ed. [12s. 6d.].

NAME

- 2255a. Banns published in different name.** See *DANCER v. DANCER*, § 993.
- 2256. Business names registration—failure to register.** (Registration of Business Names Ordinance (No. 5 of 1926), s. 14.) Failure to comply with a Nigerian Ordinance, which deals with the registration of business names, and which is couched in terms similar to British legislation on the same topic (Registration of Business Names Act, 1916 (6 & 7 Geo. 5, c. 58)) only penalises the defaulting firm in respect of claims against third parties, and does not affect the rights of one partner in the firm to bring an action against his co-partners: *STERIOS THOMOPULOS v. JOHN MANDILAS*, [1948] A. C. 12; [1948] L. J. R. 659, P. C.
- 2257. — new forms.** Business Names Rules, 1948 (No. 678), made under the Registration of Business Names Act, 1916 (6 & 7 Geo. 5, c. 58), s. 17, as amended by the Companies Act, 1947 (10 & 11 Geo. 6, c. 47). These rules contain in the Appendix thereto a number of forms which are to be used, from April 12, 1948, in substitution for the forms referred to in the Business Names Rules, 1917 (No. 186), as amended.
- 2258. Error in name of party.** See *ALEXANDER MOUNTAIN & Co. v. RUMERE*, § 2882; *DRING v. MANN*, § 2142.
- 2259. Pleadings—action in firm name.** See *ALEXANDER MOUNTAIN & Co. v. RUMERE*, § 2882.
- 2260. — setting out names of numerous parties.** See PRACTICE NOTE, § 2884.
- 2261. ARTICLES.** “The names that banish care”: 112 J. P. J. 508. Publication of banns (founded on *Dancer v. Dancer*, § 993): 206 L. T. 298.
- 2262. BOOKS PUBLISHED.** Josling, J. F.—Change of Name. 2nd ed. [2s.]. Josling, J. F.—Registration of Business Names. 2nd ed. [4s.].

NATIONAL ASSISTANCE

- 2263. Administration of assistance.** National Assistance (Administration of Assistance) Regulations Confirmation Instrument, 1948 (No. 1482), made under the National Assistance Act, 1948 (11 & 12 Geo. 6, c. 29), s. 63; came into operation on July 5, 1948.
- 2264. — functions of local authorities.** The Ministry of Health has issued to all local authorities in England and Wales a Circular, 87/48, dated June 7, 1948, dealing with the functions of local authorities under Pts. III and IV of the National Assistance Act, 1947, the submission of Schemes under ss. 21 and 29 for the Minister's approval, and transitional provisions.
- 2265. — — — burial.** See § 394.
- 2266. — local education authorities—administration by, in certain cases.** See s. 11 of the Employment and Training Act, 1948 (11 & 12 Geo. 6, c. 46), § 1246.
- 2267. Appeal tribunals—procedure, etc.** National Assistance (Appeal Tribunals) Rules Confirmation Instrument, 1948 (No. 1454), made under the National Assistance Act, 1948 (11 & 12 Geo. 6; c. 29), Sched. 5, para. 6; came into operation on July 5, 1948.
- 2268. Charges for accommodation.** National Assistance (Charges for Accommodation) Regulations, 1948 (No. 1385), made under the National Assistance Act, 1948 (11 & 12 Geo. 6, c. 29), s. 22; came into operation on July 5, 1948.
- 2269. Charities for disabled persons—registration.** See § 422.
- 2270. Determination of need.** National Assistance (Determination of Need) Regulations, 1948 (No. 1334), made under the National Assistance Act, 1948 (11 & 12 Geo. 6, c. 29), ss. 5, 6; came into operation on July 5, 1948. [2*d.*]
- 2271. Inspection—powers of.** National Assistance (Powers of Inspection) Regulations, 1948 (No. 1445), made under the National Assistance Act, 1948 (11 & 12 Geo. 6, c. 29), s. 35 (2) (3); came into operation on July 5, 1948.
- 2272. National Assistance Act, 1948 (11 & 12 Geo. 6, c. 29).** The general objects of this Act, as stated in its long title, are to terminate the existing poor law and provide in lieu thereof for the assistance of persons in need by the National Assistance Board and local authorities; to provide further for disabled, sick and aged persons; to amend the law as to non-contributory old age pensions; and to make provision as to the burial and cremation of deceased persons. The Act is to come into operation on such date or dates as may be appointed. (See § 2273.)

By s. 1 the existing poor law is to cease to have effect and is to be replaced by the provisions of Parts II, III and IV of the Act.

National Assistance.

Part II (ss. 2-20) contains provisions as to the functions of the National Assistance Board (as the Assistance Board is to be called) and the grant of assistance to persons in need. To assist the Board provision is made for the establishment of Advisory Committees (s. 3). Ss. 5 and 6 provide for the making of Regulations for determining the need for assistance. Assistance will normally be given by means of grants of money (s. 8), but it may also be given in special circumstances by gifts in kind (s. 12). Provision is made for disqualifications in certain cases (s. 9) and for prevention of duplication of payments (s. 13). There are also provisions as to appeals (s. 14). Ss. 16-20 relate to re-establishment and reception centres for persons lacking regular occupation or training or persons without a settled way of living.

Local Authority Services.

Part III (ss. 21-36) relates to local authority services. Under s. 21 it is made the duty of local authorities to provide accommodation, both permanent (for old and infirm persons) and temporary (for persons in urgent need) in accordance with a scheme to be made under that section. S. 22 deals with charges for such accommodation, and s. 23 contains provisions as to the management of premises in which accommodation is provided. Ss. 29-31 relate to welfare services for blind, deaf and dumb persons, cripples, etc., and empower local authorities to make use of and contribute to the funds of voluntary

organisations having for their objects such welfare services or the provision of recreation or meals for old people. For the above purposes "local authorities" are the councils of counties or county boroughs (s. 33). Provisions as to local authority schemes are contained in s. 34.

General and Supplementary Provisions.

Part IV (ss. 37-68) contains general and supplementary provisions. Provisions for the registration of homes for disabled or aged persons are contained in s. 37 and further provisions as to the procedure and right of appeal where registration is refused or cancelled, as to the inspection of such homes and as to other matters are to be found in ss. 38-40. S. 41 requires charities for disabled persons to be registered in the same manner as a war charity under the War Charities Act, 1940 (3 & 4 Geo. 6, c. 31), subject to certain modifications. By s. 42, for the purposes of the Act a man is liable to maintain his wife and his children and a woman is liable to maintain her husband and her children (including in each case illegitimate children); and by s. 43 the Board or the local authority concerned may recover from the responsible party such part of the cost of any assistance given as may be awarded by the Court. By s. 44, where assistance is provided for an illegitimate child, the Board or local authority may obtain an affiliation order. S. 45 provides for recovery of expenditure in cases of misrepresentation or non-disclosure. S. 46 makes certain amendments to the Old Age Pensions Act, 1936 (26 Geo. 5 & 1 Edw. 8, c. 31). S. 47 enables certain local authorities to obtain an order for the removal of any person who is suffering from grave chronic disease or who, being aged or infirm, is living in insanitary conditions and is not receiving proper attention to a suitable hospital or other place. S. 48 contains provisions for the protection of the property of any person admitted to hospital or to accommodation provided under Pt. III of the Act or removed under the last section. S. 50 makes it the duty of local authorities to arrange for the burial or cremation of dead persons where no other suitable arrangements have been made. S. 51 makes it an offence for a person persistently to refuse or neglect to maintain himself or any person whom he is liable to maintain, as a result of which assistance or accommodation is provided under this Act. S. 52 prescribes penalties for false statements. Ss. 53-56 contain provisions as to the Appeal Tribunal for the purposes of the Act, inquiries, entry and inspection and legal proceedings. Under s. 57 Regulations may be made authorising the disclosure of the amount of war savings in savings banks, etc. Under s. 58 county and county borough councils may be authorised to purchase land compulsorily for the purpose of any of their functions under Part III of the Act. The Act applies, with modifications, to Scotland (s. 65), and subject to such exceptions, etc., as may be prescribed, to the Scilly Isles (s. 66). There are also special provisions as to Northern Ireland (s. 67).

- 2273. — commencement.** National Assistance Act (Appointed Day) Order, 1948 (No. 1218), made under s. 68 (2), appointing July 5, 1948, as the date for the coming into operation of the Act, except ss. 37-40 thereof.
- 2274. Officers—compensation to persons suffering loss of employment.** National Assistance (Compensation) Regulations, 1948 (No. 1457), made under the National Assistance Act, 1948 (11 & 12 Geo. 6, c. 29), s. 60; came into operation on July 5, 1948. [5d.]
- 2275. Poor law—abolition.** See § 2731.
- 2276. Rates of assistance.** A White Paper published by the Ministry of National Insurance (Cmd. 7423) contains details of proposed increased grants under the new Assistance Regulations.
- 2277. Reception centres.** National Assistance (Reception Centres) Regulations Confirmation Instrument, 1948 (No. 1481), made under the National Assistance Act, 1948 (11 & 12 Geo. 6, c. 29), s. 63; came into operation on July 5, 1948.
- 2278. Scilly Isles.** Isles of Scilly (National Assistance) Order, 1948 (No. 1589), made under the National Assistance Act, 1948 (11 & 12 Geo. 6, c. 29), s. 66; came into operation on July 3, 1948.

- 2279. ARTICLES.** National Assistance Act: 112 J. P. 370, 418. Accommodation and welfare services under the National Assistance Act, 1948: 98 L. J. 444. Magistrates and the National Assistance Act, 1948: 112 J. P. J. 599. National Assistance Act and bastardy law: 112 J. P. J. 664.
- 2280. BOOK PUBLISHED.** Moss, J.—Duties of Local Authorities under the National Assistance Act, 1948 [7s. 6d.].

NATIONAL HEALTH

- 2281. After-care of ex-service personnel.** Ministry of Health Circular No. 146/48, dated August 25, 1948, on the National Health Service Act, 1948 (after-care for ex-service personnel and others, new procedure).
- 2282. Appliances — charges for.** National Health Service (Charges for Appliances) Regulations, 1948 (No. 1505), made under the National Health Service Act, 1946 (9 & 10 Geo. 6, c. 81), s. 3; came into operation on July 5, 1948.
- 2283. Central Health Services Council.** National Health Service (Central Health Services Council and Standing Advisory Committees) Regulations, 1948 (No. 575), made under the National Health Service Act, 1946 (9 & 10 Geo. 6, c. 81), Sched. I, para. 2, prescribing the periods for which members of the Central Health Services Council (other than *ex officio* members) and of any standing advisory committee constituted under the Act are to be appointed.
- 2284. Civil Nursing Reserve—cessation.** Ministry of Health Circular No. 73/48, dated May 14, 1948, states that by virtue of Regulations to be made under s. 68 of the National Health Service Act, 1946 (9 & 10 Geo. 6, c. 81), Civil Nursing Reserve members remaining in employment after July 4, 1948, in hospitals or organisations for which the Minister or the Local Health Authorities become responsible, will be transferred to the appropriate employing authority under the Act, and, subject to the terms of this circular (which deals with action to be taken by local emergency organisations and by employing authorities, travelling concession and uniform), the conditions of service of the ordinary nursing staff will apply to them. Recruitment of all grades of the Civil Nursing Reserve ceases as from the date of the circular.
- 2285. Consultants—remuneration.** Inter-departmental committee on remuneration of consultants and specialists (chairman: Sir Will Spens) report, May 19, 1948. Cmd. 7420.
- 2286. Dental services.** National Health Service (General Dental Services) Regulations, 1948 (No. 505) [6d.], made under the National Health Service Act, 1946 (9 & 10 Geo. 6, c. 81), ss. 32, 38, 39, 40, 44, 45, 74. These Regulations provide for the arrangements which the Executive Councils are required to make under Part IV of the Act for the provision of general dental services. They also provide for the constitution of the Dental Estimates Board.
- 2287. — Dental Estimates Board—financial regulations.** See § 2292.
- 2288. — dentists — conditions of service.** The Minister of Health has issued a Memorandum, dated February, 1948, on the proposed conditions of service, under the National Health Service Act, 1946, of dentists working in their own surgeries.
- 2289. — — remuneration.** National Health Service (General Dental Services) Fees Regulations, 1948 (No. 1297), made under the National Health Service Act, 1946, ss. 40, 41, came into force on July 5, 1948, and provide for the fees and remuneration to be paid to dental practitioners practising elsewhere than at a health centre. The Regulations also prescribe the charges for the supply, replacement or repair of dental appliances of a more expensive type than the standard type, and for special dental treatment. They further amend the National Health Service (General Dental Services) Regulations, 1948 (No. 505), as to the remuneration of practitioners at a health centre, which is to be determined by the Minister. [2d.]
- National Health Service (General Dental Services) Fees (Amendment) Regulations, 1948 (No. 1507), made under the National Health Service Act, 1946, s. 40; came into operation on July 5, 1948.
- National Health Service (General Dental Services) Fees (Amendment No. 2) Regulations, 1948 (No. 2803), made under the National Health Service Act, 1946,

s. 40; came into operation on February 1, 1949; amend the National Health Service (General Dental Services) Fees Regulations, 1948 (No. 1297).

- 2290. — — — Spens Committee.** The report of the Inter-Departmental Committee on the Remuneration of General Dental Practitioners (the Spens Committee) which was appointed in September, 1946, and was asked to recommend what ought to be the range of total professional income of a registered dental practitioner in any publicly organised service of general dental practice, was presented to Parliament on May 14, 1948: Cmd. 7402.
- 2291. Executive councils.** National Health Service (Executive Councils) Amendment Regulations, 1948 (No. 1156), made under the National Health Service Act, 1946 (9 & 10 Geo. 6, c. 81), ss. 41, 79, Sched. V. These Regulations amend the National Health Service (Executive Councils) Regulations, 1947 (No. 889).
- 2292. — financial regulations.** National Health Service (Executive Councils and Dental Estimates Board) Financial Regulations, 1948 (No. 1239), made under the National Health Service Act, 1946, ss. 40, 54, 55, Sched. V. [2d.]
- 2293. Health and tuberculosis visitors—qualifications of.** National Health Service (Qualifications of Health Visitors and Tuberculosis Visitors) Regulations, 1948 (No. 1415), made under the National Health Service Act, 1946 (9 & 10 Geo. 6, c. 81), s. 66; came into operation on July 5, 1948.
- 2294. Hospitals—accounts.** National Health Service (Hospital Accounts and Financial Provisions) Regulations, 1948 (No. 1414), made under the National Health Service Act, 1946 (9 & 10 Geo. 6, c. 81), ss. 54, 55, Sched. 3; came into operation on July 5, 1948. [6d.]
- 2295. — banking accounts.** The arrangements for the closing of banking accounts of voluntary hospitals (other than designated teaching hospitals) which are transferred on July 5, 1948, in accordance with ss. 6, 7 of the National Health Service Act, 1946, are outlined in Ministry of Health Circular 110/48, dated June 24, 1948.
- 2296. — custodian trustees.** See § 3421.
- 2297. — deeds of covenant.** See § 424.
- 2298. — endowment fund—control and management.** National Health Service (Control and Management of Hospital Endowment Fund) Regulations, 1948 (No. 1489), made under the National Health Service Act, 1946, s. 7; came into operation on July 5, 1948.
- 2299. — expenses in attending.** National Health Service (Expenses in attending Hospitals) Regulations, 1948 (No. 1413), made under the National Health Service Act, 1946, s. 3; came into operation on July 5, 1948.
- 2300. — hospital boards.** National Health Service (Functions of Regional Hospital Boards, etc.) Regulations, 1948 (No. 60), made under the National Health Service Act, 1946, s. 12; came into operation on January 21, 1948.
- 2301. — pay-bed accommodation.** National Health Service (Pay-bed Accommodation in Hospitals, etc.) Regulations, 1948 (No. 1490), made under the National Health Service Act, 1946, ss. 4, 5; came into operation on July 5, 1948. [3d.]
- 2302. — teaching hospitals—designation.** National Health Service (Designation of Teaching Hospitals (No. 1)) Order, 1948 (No. 656), made under the National Health Service Act, 1946, s. 11 (8). This Order contains in the schedule thereto a list of groups of hospitals outside the Metropolitan area which are designated as teaching hospitals.
- National Health Service (Designation of Teaching Hospitals (No. 2)) Order, 1948 (No. 979), made under the National Health Service Act, 1946, s. 11 (8), designating certain hospitals and groups of hospitals in the metropolitan area (set out in the Schedule thereto) as teaching hospitals.
- National Health Service (Designation of Teaching Hospitals—Cambridge Hospitals) Order, 1948 (No. 1579), made under the National Health Service Act, 1946, s. 11, and the National Assistance Act, 1948 (11 & 12 Geo. 6, c. 29), Sched. VI, para. 8; came into operation on July 6, 1948.
- Order made under the National Health Service Act, 1946, ss. 11, 75: SI 1948, No. 1920 (the Bethlem Royal Hospital and the Maudsley Hospital).

- 2303. — transfer—apportionment of interests.** National Health Service (Apportionment and Transfer) Regulations, 1948 (No. 888), made under the National Health Service Act, 1946, ss. 6 (5), 7 (9), 9 (8). These Regulations provide for the apportionment and vesting of interests in premises used partly for hospital purposes and partly for other purposes, and of property which, if held solely for the purposes of a single voluntary hospital, would constitute an "endowment" of that hospital. The Regulations also provide for the apportionment of rents and other payments payable in respect of transferred property, and of liabilities incurred partly for hospital purposes and partly for other purposes, and for the transfer to the Minister of interests and liabilities held or incurred for the purposes of two or more voluntary hospitals. [3*d.*]
- 2304. — — general financial arrangements.** Ministry of Health Circular No. 75/48, dated May 25, 1948, deals with the financial arrangements which apply on the transfer of hospitals to the Minister on the appointed day in the case of authorities which are not dissolved by s. 78 of the National Health Service Act, 1946, and in relation to hospitals which, though administered by a body dissolved by the Act, were directly financed by a continuing authority. The Circular deals, *inter alia*, with outstanding loan debt, stores, and sundry debtors and creditors.
- 2305. — — sale of hospital.** [Scot.] In *MONTROSE MATERNITY HOSPITAL, GOVAN, PETITIONERS*, 1948 S. L. T. 470, the Court of Session held that where a hospital was sold between March 21, 1946, and the appointed day, the purchase price did not fall to be transferred to the Secretary of State under the provisions of s. 9 (8) of the National Health Service (Scotland) Act, 1947 (10 & 11 Geo. 6, c. 27) (which corresponds to s. 9 (7) of the National Health Service Act, 1946).
- 2306. Insurance committees—transfer of property.** National Health Service (Transfer of Property and Liabilities of Insurance Committees, etc.) Regulations, 1948 (No. 1237), made under the National Health Service Act, 1946 (9 & 10 Geo. 6, c. 81), s. 69; came into operation on June 20, 1948.
- 2307. Joint Pricing Committees.** National Health Service (Joint Pricing Committee for England) Order, 1948 (No. 1301), dated June 14, 1948, made under the National Health Service Act, 1946 (9 & 10 Geo. 6, c. 81), s. 31. [2*d.*]
National Health Service (Welsh Joint Pricing Committee) Order, 1948 (No. 1488), made under the National Health Service Act, 1946, s. 31; came into operation on July 3, 1948. [2*d.*]
- 2308. Local health authorities—transfer of functions.** National Health Service (Transfer of Local Authority Functions) Regulations, 1948 (No. 567), made under the National Health Service Act, 1946 (9 & 10 Geo. 6, c. 81), s. 69. These Regulations make various provisions consequential on and supplementary to the transfer of functions under the Act from the Common Council of the City of London, the councils of metropolitan boroughs and the councils of county districts to local health authorities. In particular they provide for the transfer to those authorities of property and liabilities held or incurred for the purposes of such functions.
- 2309. Medical and pharmaceutical services.** National Health Service (General Medical and Pharmaceutical Services) Regulations, 1948 (No. 506) [7*d.*], made under the National Health Service Act, 1946 (9 & 10 Geo. 6, c. 81), ss. 32, 33, 34, 35, 38, 39, 45, 74, and Schedules 5, 6. These Regulations provide for the arrangements to be made by Executive Councils under Part IV of the Act with medical practitioners and chemists for the provision of a general medical practitioner service and the supply of drugs, medicines, etc. Terms of service for medical practitioners and chemists are set out in schedules to the Regulations. The Regulations also provide for the appointment, constitution and procedure of the Medical Practices Committee and prescribe the form of certificate to be issued to medical practitioners under s. 35 (9) of the Act that a transaction does not involve the sale of goodwill. These Regulations are amended as from July 5, 1948, by National Health Service (General Medical and Pharmaceutical Services) Amendment Regulations, 1948 (No. 1448), made under ss. 32, 33, 38.
- 2310. Medical partnerships—report of committee.** Report of the legal committee on medical partnerships (chairman, Sir Gerald Slade): Cmd. 7565. The main recommendation in the report is that it should be declared that nothing in

ss. 35-37 of the National Health Service Act, 1946, shall "render unlawful the due fulfilment of obligations or due exercise of options in existing partnership agreements" existing on the appointed day, and the report deals with compensation and consequential matters.

- 2311. Medical practices—compensation.** National Health Service (Medical Practices Compensation) Regulations, 1948 (No. 1506), made under the National Health Service Act, 1946 (9 & 10 Geo. 6, c. 81), ss. 36, 74; came into operation on July 5, 1948. [2d.]
- 2312. Mental health services—explanatory booklet.** See § 2122.
- 2313. — maintenance—divorce proceedings.** See PRACTICE NOTES, §§ 922, 966.
- 2314. — mental defectives in State institutions.** On the repeal on July 5, 1948, of s. 13 of the Mental Deficiency Act, 1913 (3 & 4 Geo. 5, c. 28), by the National Health Service Act, 1946 (9 & 10 Geo. 6, c. 81), Sched. 9, Part II, contributions by relatives and others towards the cost of maintenance of mental defectives in State institutions cease to be payable: Ministry of Health Circular 92/48, dated June 24, 1948.
- 2315. — mental hospitals—superintendents.** National Health Service (Superintendents of Mental Hospitals, etc.) Regulations, 1948 (No. 419), made under the National Health Service Act, 1946, ss. 12, 14, 66. These Regulations, which came into operation on May 1, 1948, provide for the appointment, duties and powers of superintendents of mental hospitals and institutions for defectives administered by Regional Hospital Boards.
- 2316. — — — affidavits by.** See PRACTICE NOTE, § 963.
- 2317. — mental treatment.** National Health Service (Emergency Mental Treatment) Regulations, 1948 (No. 1075), made under the National Health Service Act, 1946, s. 12. These Regulations, which came into force on July 5, 1948, contain provisions for safeguarding the welfare of persons alleged to be of unsound mind, who for their protection or the public safety are removed to hospitals designated for the purpose pending further proceedings for their reception into mental hospitals.
- 2318. National Health Service Act, 1946—appointed day.** National Health Service Act (Appointed Day) Order, 1948 (No. 112) [E.], made under the National Health Service Act, 1946 (9 & 10 Geo. 6, c. 81), s. 79 (1), fixing July 5, 1948, as the appointed day for all the provisions of the Act except ss. 49 and 50 (1) (2) together with certain consequential amending and repealing provisions and repeals which were previously brought into force on July 1, 1947, by the National Health Service Act (Appointed Day) Order, 1947 (No. 983).
- 2319. National insurance.** See NATIONAL INSURANCE.
- 2320. Officers—superannuation—amendment of regulations.** National Health Service (Superannuation) (Amendment) Regulations, 1948 (No. 1474), made under the National Health Service Act, 1946 (9 & 10 Geo. 6, c. 81), s. 67 (1); came into operation on July 1, 1948; amend the National Health Service (Superannuation) Regulations, 1947 (No. 1755). [3d.]
- 2321. — — position of staff.** The Ministry of Health have issued Circular 11/48 to voluntary hospitals to be transferred on the appointed day dealing with the pension expectation of members of the hospital staff. The Ministry have also published an explanatory guide entitled "Superannuation Scheme for those engaged in the National Health Service—an Explanation" [3d.] which is distributed free to all entrants to the service through their present employers.
- 2322. — — interchange of service.** National Health Service (Superannuation) (England and Scotland) Regulations, 1948 (No. 1483), made under the National Health Service Act, 1946, s. 67 (2), and the corresponding section of the National Health Service (Scotland) Act, 1947 (10 & 11 Geo. 6, c. 27).
- 2323. — transfer—compensation.** National Health Service (Transfer of Officers and Compensation) Regulations, 1948 (No. 1475), made under the National Health Service Act, 1946, s. 68, as amended; came into operation on July 5, 1948. [5d.]
- 2324. Ophthalmic services.** National Health Service (Supplementary Ophthalmic Service) Regulations, 1948 (No. 1273), made under the National Health Service Act, 1946 (9 & 10 Geo. 6, c. 81), ss. 41, 42, 44, 45, 74. These Regulations, which

came into force on July 5, 1948, provide for the arrangements which Executive Councils through Ophthalmic Services Committees are required to make under Part IV of the Act for supplementary ophthalmic services. They also contain provisions as to disciplinary matters relating to the provision of those services.

- 2325. Scilly Isles.** Isles of Scilly (National Health Service) Order, 1948 (No. 167), made on January 30, 1948, under National Health Service Act, 1946 (9 & 10 Geo. 6, c. 81), s. 80 (3), extending the Act to the Isles of Scilly subject to certain modifications. The Isles of Scilly (National Health Service) Order, 1946 (No. 2240), which applied part of the Act to those islands, is revoked, and so are certain provisions of the Isles of Scilly Order, 1943 (No. 107).

National Health Service (Executive Council for the Isles of Scilly) Regulations, 1948 (No. 441), made under the National Health Service Act, 1946, Sched. 5, para. 3 (as extended to the Isles of Scilly), providing for the appointment and term of office of members and staff of the Executive Council for the Scilly Isles and for the procedure of the council.

- 2326. Service committees.** National Health Service (Service Committees and Tribunal) Regulations, 1948 (No. 507) [8*d.*], made under the National Health Service Act, 1946 (9 & 10 Geo. 6, c. 81), ss. 32, 33, 38, 40, 42, 74, and Scheds. 5, 7. These Regulations provide for disciplinary matters and the determination of disputes arising in connection with the general medical, dental and pharmaceutical services. They also provide for the constitution of service committees, for their investigation of complaints and for action which may be taken against practitioners. They also contain provisions relating to the procedure before local Medical and Dental Committees and to appeals, and provisions relating to the hearing of representations for the removal of a practitioner or chemist from the list under s. 42 of the Act.

- 2327. Specialists—appointment.** National Health Service (Appointment of Specialists) Regulations, 1948 (No. 1416), made under the National Health Service Act, 1946 (9 & 10 Geo. 6, c. 81), s. 14; came into operation on July 29, 1948.

- 2328. — remuneration.** See § 2285.

- 2329. Standing advisory committees—period of office of members.** See § 2283.

- 2330. Venereal diseases.** National Health Service (Venereal Diseases) Regulations, 1948 (No. 2517); made under the National Health Service Act, 1946 (9 & 10 Geo. 6, c. 81), s. 12; came into operation on December 1, 1948; providing for the treating as confidential of information about persons having treatment for venereal diseases. (See also § 2984.)

- 2331. ARTICLES.** National Health Service Act, 1946; Joint user of hospital premises: 112 J. P. J. 4. Medical partnerships (founded on National Health Service Act, 1946): 98 L. J. 87. The National Health Service—functions of Regional Hospital Boards: 98 L. J. 164. Medical partnerships (founded on the report of the Slade Committee): 206 L. T. 334; 98 L. J. 695. Professional confidence: *Solicitor*, December, 1948, p. 282.

- 2332. BOOK PUBLISHED.** Speller, S. R.—National Health Service Act, 1946 [42*s.*].

NATIONAL INSURANCE

- 2333. Administration of benefits—transfer from approved societies.** National Insurance (Approved Societies) Regulations, 1948 (No. 563), made under the National Insurance Act, 1946 (9 & 10 Geo. 6, c. 67), s. 69. These Regulations empower the Minister to arrange for the transfer from time to time of the administration of the benefits under the National Health Insurance Act, 1936 (26 Geo. 5 & 1 Edw. 8, c. 32), from approved societies to local offices of the Ministry; provide for the payment of such benefits out of the National Health Insurance Fund and the recording of such payments by the Minister; and relieve the societies from the duty of keeping account of such payments. They also provide for the determination by officers in charge of local offices of questions affecting the right to benefits and for appeals therefrom. S. 75 of the Act of 1936 (as to the cost of benefits) is repealed. [2*d.*]

- 2334. Airmen.** National Insurance (Airmen) Regulations, 1948 (No. 1466), made under the National Insurance Act, 1946 (9 & 10 Geo. 6, c. 67), ss. 8 (1) (a), 11 (2) (a) (ii), 29, 43 (5), 52 (2), 58; came into operation on July 5, 1948. See also § 2390.

- 2335. — industrial injuries.** National Insurance (Industrial Injuries) (Airmen) Regulations, 1948 (No. 1469), made under the National Insurance (Industrial Injuries) Act, 1946 (9 & 10 Geo. 6, c. 62), ss. 32, 77; came into operation on July 5, 1948.
- 2336. Approved societies—dissolution of.** National Insurance (Approved Societies and Miscellaneous Provisions) Regulations, 1948 (No. 1394), made under the National Insurance Act, 1946 (9 & 10 Geo. 6, c. 67), s. 69; came into operation on July 3, 1948. See also § 2355.
- 2337. — — compensation for displaced employees.** National Insurance (Compensation) Regulations, 1948 (No. 2729), made under the National Insurance Act, 1946, s. 67; came into operation on December 23, 1948; replace the National Insurance (Compensation) (Temporary Provisions) Regulations, 1947 (No. 2610); provide for the payment of compensation out of the National Insurance Fund for loss of employment, or loss or diminution of emoluments or pension rights, to full-time employees of approved societies and certain other bodies, where such loss or diminution is directly attributable to the operation of the Act. [5*d.*]
- 2338. — financial provisions.** See §§ 2333, 2391, 2393.
- 2339. — staff pensions.** See §§ 2424, 2618.
- 2340. — workmen's compensation—objection to recording of agreement.** See *R. v. REGISTRAR OF PONTYPRIDD COUNTY COURT, ex p. NATIONAL AMALGAMATED APPROVED SOCIETY, ETC.*, § § 3962, 3963, 3964.
- 2341. — — — costs.** See *SEALE v. NATIONAL COAL BOARD*, § 3965.
- 2342. Claims and payments.** National Insurance (Claims and Payments) Regulations, 1948 (No. 1041), made under the National Insurance Act, 1946 (9 & 10 Geo. 6, c. 67), ss. 20 (2) (b), 28, 46, 52 (2); came into operation on June 1, 1948. [3*d.*]
- 2343. Classification of insured persons.** National Insurance (Classification) Regulations, 1948 (No. 1425), made under the National Insurance Act, 1946 (9 & 10 Geo. 6, c. 67), ss. 1, 9; came into operation on July 5, 1948. [3*d.*]
- 2344. Consultative councils under Ministry of Health Act, 1919—dissolution of.** National Insurance (Approved Societies and Miscellaneous Provisions) Regulations, 1948 (No. 1394), made under the National Insurance Act, 1946 (9 & 10 Geo. 6, c. 67), s. 69; came into operation on July 3, 1948.
- 2345. Contributions.** National Insurance (Contributions) Regulations, 1948 (No. 1417), made under the National Insurance Act, 1946 (9 & 10 Geo. 6, c. 67), ss. 2 (5), 4 (4), 5, 8, 61; came into operation on July 1, 1948. [4*d.*]
- 2346. — collection.** National Insurance and Industrial Injuries (Collection of Contributions) Regulations, 1948 (No. 1274), made under the National Insurance Act, 1946, ss. 4 (3), 6, 8, 9, 52, and the National Insurance (Industrial Injuries) Act, 1946 (9 & 10 Geo. 6, c. 62), ss. 3, 5, 65, 67, 80; came into force on June 22, 1948, and contain provisions as to the payment and collection of contributions under those Acts. They also provide for the issue, custody and surrender of insurance cards, and for the recovery by employers of contributions paid on behalf of insured employees. See also § 2422.
- 2347. — self-employed and non-employed persons.** Self-employed persons who were under sixty-five (men) and sixty (women) on July 5, 1948, should apply for a National Insurance card unless they have a 1947/48 Health and Pensions card. Self-employed married women should read Leaflet N.I. 1 (obtainable from National Insurance Office or Employment Exchange). Non-employed men and women aged sixteen (or eighteen if still receiving full-time education), and under sixty-five (men) and sixty (women) should similarly apply. Applications are to be made on Form C.F.6, obtainable from Post Office, Employment Exchange or local National Insurance Office: Ministry of National Insurance Press Notice, No. 36/48, dated May 1, 1948.
- 2348. Contributory pensions—existing beneficiaries.** National Insurance (Pensions, Existing Beneficiaries and other Persons) (Transitional) Regulations, 1948 (No. 55) made under the National Insurance Act, 1946 (9 & 10 Geo. 6, c. 67), s. 65. These regulations came into operation on January 23, 1948. They modify the Act in its application to persons who immediately before July 5, 1948, were

entitled to or had a prospective right to pensions under or by virtue of the Widows', Orphans' and Old Age Contributory Pensions Acts, 1936 to 1941, and to women between the ages of sixty and sixty-five who were then insured for pensions as special voluntary contributors.

The Ministry of National Insurance have issued a descriptive leaflet T.S. 45.

- 2349. — existing contributors.** National Insurance (Pensions, Existing Contributors) (Transitional) Regulations, 1948 (No. 612), made under the National Insurance Act, 1946, s. 65. These Regulations modify the Act in its application to persons who immediately before July 5, 1948, were existing contributors under the existing Contributory Pensions Acts. [5*d.*]
- 2350. — increased pensions for certain widows.** Increased pensions are available from July 5, 1948, for certain widows under the Contributory Pensions Acts who at that date were under sixty and were suffering from some infirmity by reason of which they were likely to be incapable of self-support for a prolonged period. Claims for these pensions are accepted from April 15, 1948, and should be made on Form T.S. 7 which is obtainable from local National Insurance Offices and Area Offices of the Assistance Board. An explanatory leaflet T.S. 45 is available with the form: Ministry of National Insurance Press Notice, No. 26/48, dated April 12, 1948.
- 2351. — increased pensions for men with dependent wives under sixty.** Old age pensioners drawing contributory pensions at the rate of 26*s.* a week on July 5, 1948, when the Act came into full operation, became eligible for an increase of 16*s.* a week for a dependent wife under the age of sixty. Claims for this increase are made on form T.S. 2, which, together with an explanatory leaflet T.S. 35, is available at Area Offices of the Assistance Board and at local National Insurance Offices: Ministry of National Insurance Press Notices, Nos. 28/48, dated April 14, 1948, and 45/48, dated May 27, 1948.
- 2351*a.* Damages—benefits and pensions.** See §§ 816, 2628.
- 2352. Determination of claims and questions.** National Insurance (Determination of Claims and Questions) Regulations, 1948 (No. 1144), made under the National Insurance Act, 1946 (9 & 10 Geo. 6, c. 67), ss. 43, 47; came into operation on June 4, 1948. [4*d.*]
- 2353. — industrial injuries.** National Insurance (Industrial Injuries) (Determination of Claims and Questions) Regulations, 1948 (No. 1299), made under the National Insurance Act, 1946, ss. 36 (1), 38 (3), 39, 41, 42 (2), 43, 46 (1), 47, 48, 51, 52 (2), 86; came into operation on June 24, 1948. [4*d.*]
- 2354. — transitional provisions.** National Insurance (Determination of Claims and Questions) (Transitional) Regulations, 1948 (No. 1311), made under the National Insurance Act, 1946, s. 65; came into operation on June 28, 1948. [2*d.*]
- 2355. Dissolved authorities.** National Insurance (Dissolved Authorities) Regulations, 1948 (No. 1292) made under the National Insurance Act, 1946 (9 & 10 Geo. 6, c. 67), s. 78; came into operation on June 21, 1948 [2*d.*]. See also § 2336.
- 2356. General benefit.** National Insurance (General Benefit) Regulation, 1948 (No. 1278) made under the National Insurance Act, 1946 (9 & 10 Geo. 6, c. 67), ss. 10 (4), 29, 31 (1), 34, 47, 78 (1) (5); came into operation on June 23, 1948. [3*d.*]
- 2357. Guardian's allowances.** National Insurance (Guardian's Allowances) Provisional Regulations, 1948 (No. 1358), made under the National Insurance Act, 1946 (9 & 10 Geo. 6, c. 67), ss. 19, 77 (4); came into operation on June 29, 1948, and remain in force for the limited period prescribed by s. 77 (4).
National Insurance (Guardian's Allowances) Regulations, 1948 (No. 2687), made under the National Insurance Act, 1946, s. 19; came into operation on December 17, 1948; provide for modifications of the conditions for guardian's allowances in relation to adopted and illegitimate children, etc.
- 2358. —** Report of the National Insurance Advisory Committee on the payment of the Guardian's Allowances where the marriage of a child's parents has been terminated by divorce or the child's parents or one of them cannot be traced. House of Commons Papers No. 165 (Session 1947–48).

2359. — decisions of the Commissioner. Selected decisions of the Commissioner on claims for guardian's allowance, maternity benefit and widow's benefit during the period July 5, 1948, to October 31, 1948, have been published: Ministry of National Insurance, Pamphlet G/1.

"Self-support" in Reg. 4 (2) of the National Insurance (Pensions, Existing Beneficiaries and Other Persons) (Transitional) Regulations, 1948, must mean support at a reasonable standard of living, and the reasonable standard of living by which a claimant's capacity for self-support should be measured should be higher than the standard which would be provided by the scales fixed by the National Assistance Board: Case No. C.G. 3/48 (8/10/48) (widow's pension).

Widow's pension—incapable of self-support: Case No. C.G. 4/48 (8/10/48).

The question whether a claimant is incapable of self-support is not the same as the question whether a claimant is incapable of work: Case No. C.G. 4/48 (8/10/48) (widow's pension).

2360. — report. The report of the National Insurance Advisory Committee in accordance with s. 77 (4) of the National Insurance Act, 1946, preceded by a statement made by the National Insurance Joint Authority in accordance with s. 77 (5) of the Act, has been published. House of Commons Papers (Session 1948–49), No. 32.

2361. Industrial injuries—airmen. See § 2335.

2362. — appointed day. The appointed day for the purposes of the National Insurance (Industrial Injuries) Act, 1946 (9 & 10 Geo. 6, c. 62), was July 5, 1948: National Insurance (Industrial Injuries) Act, 1946 (Appointed Day) Order, 1948 (No. 53) made under s. 88 (1) of the Act. The Order is dated January 13, 1948, and came into operation on January 23, 1948.

2363. — benefit. National Insurance (Industrial Injuries) (Benefit) Amendment Regulations, 1948 (No. 1532), made under the National Insurance (Industrial Injuries) Act, 1946, s. 14 (2A) (inserted by the National Insurance (Industrial Injuries) Act, 1948, § 2374); came into operation on July 6, 1948.

2364. — claims and payments. National Insurance (Industrial Injuries) (Claims and Payments) Regulations, 1948 (No. 1362), made under the National Insurance (Industrial Injuries) Act, 1946, ss. 12 (6), 22 (3), 23 (3), 25, 26, 27, 32 (2), 33, 51 (1), 52 (3) (6), 67 (2), 86 and Sched. 4, para. 3 (2); came into operation on July 1, 1948. [3d.]

2365. — colliery workers. National Insurance (Industrial Injuries) (Colliery Workers Supplementary Scheme) Order, 1948 (No. 1794), made under the National Insurance (Industrial Injuries) Act, 1946, s. 83; came into operation on August 2, 1948. [4d.]

2366. — conditions and rates of benefit. National Insurance (Industrial Injuries) (Benefit) Regulations, 1948 (No. 1372), made under the National Insurance (Industrial Injuries) Act, 1946, ss. 12, 14 (5), 15, 18, 19, 23, 29, 30, 32 (1), 33, 34, 35, 79, 82, 86, and Sched. 4, paras. 1, 5, 7; came into operation on July 1, 1948. [6d.]

2367. — contributions. See § 2346.

2368. — determination of claims. See § 2353.

2369. — employers' liability insurance. Employers' Liability Insurance (Modification) Order, 1948 (No. 1839), made under the National Insurance (Industrial Injuries) Act, 1946, s. 89 (3); came into operation on August 6, 1948.

2370. — insurable and excepted employments. National Insurance (Industrial Injuries) (Insurable and Excepted Employments) Regulations, 1948 (No. 1456), made under the National Insurance (Industrial Injuries) Act, 1946, s. 80 (1), Sched. 1; came into operation on July 5, 1948. [2d.]

2371. — Isle of Man. National Insurance (Industrial Injuries) (Isle of Man Reciprocal Agreement) Order, 1948 (No. 2350), made under the National Insurance (Industrial Injuries) Act, 1946, s. 85; came into operation on October 28, 1948.

2372. — medical certification. National Insurance (Industrial Injuries) (Medical Certification) Regulations, 1948 (No. 1262), made under the National Insurance (Industrial Injuries) Act, 1946, s. 51 (1); prescribe the evidence of incapacity

for work required for supporting claims for injury benefit and the form in which and the times at which medical certificates should be furnished; came into operation on June 18, 1948. [2d.] See also § 2388.

2373. — **mariners.** See § 2382.

2374. — **National Insurance (Industrial Injuries) Act, 1948 (11 & 12 Geo. 6, c. 42).** This Act amends s. 14 of the National Insurance (Industrial Injuries) Act, 1946, so as to increase the amount of disablement pension in cases of special hardship. The Act received the Royal Assent on June 30, 1948.

2375. — **circular.** Ministry of Health Circular No. 138/48, dated August 3, 1948.

2376. — **prescribed diseases.** National Insurance (Industrial Injuries) (Prescribed Diseases) Regulations, 1948 (No. 1371), made under the National Insurance Act, 1946 (9 & 10 Geo. 6, c. 67), ss. 55, 56, 57, 86; came into operation on June 30, 1948.

National Insurance (Industrial Injuries) (Prescribed Diseases) Amendment Regulations, 1948 (No. 2723), made under the National Insurance (Industrial Injuries) Act, 1946, ss. 56, 57, 86; came into operation on December 28, 1948.

2377. — **reciprocal arrangements—France.** National Insurance (Industrial Injuries) (Reciprocal Agreement with France) Order, 1948 (No. 1342) made under the National Insurance Act, 1946, s. 85; came into operation on July 5, 1948.

2378. — **Northern Ireland.** National Insurance (Industrial Injuries) (Northern Ireland Reciprocal Arrangements) Regulations, 1948 (No. 1300), made under the National Insurance Act, 1946, s. 84; came into operation on June 24, 1948. [2d.]

2379. — **refund of contributions.** National Insurance (Industrial Injuries) (Refund of Contributions) Regulations, 1948 (No. 1424), made under the National Insurance (Industrial Injuries) Act, 1946, ss. 3, 86, Sched. 2, Pt. III; came into operation on July 5, 1948.

2380. **Local advisory committees.** National Insurance (Local Advisory Committees) Regulations, 1948 (No. 1741), made under the National Insurance Act, 1946 (9 & 10 Geo. 6, c. 67), s. 42; came into operation on July 30, 1948.

2381. **Mariners.** National Insurance (Mariners) Regulations, 1948 (No. 1467), made under the National Insurance Act, 1946 (9 & 10 Geo. 6, c. 67), ss. 8 (1) (a), 11 (2) (a), (3), 29, 43 (5), 52 (2), 58; came into operation on July 5, 1948. [3d.] See also §§ 2416, 2417.

2382. — **industrial injuries.** National Insurance (Industrial Injuries) (Mariners) Regulations, 1948 (No. 1471), made under the National Insurance (Industrial Injuries) Act, 1946, ss. 25, 26, 32, 65 (1), 77; came into operation on July 5, 1948. [2d.]

2383. **Married women.** National Insurance (Married Women) Regulations, 1948 (No. 1470), made under the National Insurance Act, 1946 (9 & 10 Geo. 6, c. 67), ss. 13 (4), 59; came into operation on July 5, 1948. [3d.]

2384. **Maternity benefit.** National Insurance (Maternity Benefit) Regulations, 1948 (No. 1166), made under the National Insurance Act, 1946 (9 & 10 Geo. 6, c. 67), ss. 14 (3) (6), 15, 16; came into operation on June 9, 1948.

2385. — **decisions of the Commissioner.** See § 2359.

2386. — **reciprocal agreement with Eire.** See § 2419.

2387. — **transitional regulations.** See § 2431.

2388. **Medical certification.** National Insurance (Medical Certification) Regulations, 1948 (No. 1175), made under the National Insurance Act, 1946 (9 & 10 Geo. 6, c. 67), s. 43 (5); came into operation on June 9, 1948. [2d.]

2389. — **industrial injuries.** See § 2372.

2390. **Members of the Forces.** National Insurance (Members of the Forces) Provisional Regulations, 1948 (No. 1468), made under the National Insurance Act, 1946 (9 & 10 Geo. 6, c. 67), ss. 57, 63 (5); came into operation on July 5, 1948. [2d.] See also §§ 2334, 2335.

- 2391. National health insurance—administration expenses.** National Health Insurance (Approved Societies) Amendment Regulations, 1947 (No. 2823), dated December 30, 1947, made under the National Health Insurance Acts, 1936 to 1941; amending the National Health Insurance (Approved Societies) Regulations, 1939 (No. 1847). Reg. 2 increases the sums which may be applied for the administration expenses of insurance committees for 1947 and subsequent years; and reg. 3 continues for 1947 the provisions previously applicable as to the maximum amount which may be appropriated by societies for administration expenses.
- 2392. — deposit contributors.** National Health Insurance (Deposit Contributors) Amendment Regulations, 1947 (No. 2824), dated December 30, 1947, made under the National Health Insurance Act, 1936 (26 Geo. 5 & 1 Edw. 8, c. 32), s. 122, as amended. These Regulations amend the National Health Insurance (Deposit Contributors) Regulations, 1938 (No. 1658), by reducing the amount available for cost of medical benefit and administration expenses of insurance committees in respect of deposit contributors in Scotland, and by increasing the amount payable towards the expenses of insurance committees in administering the benefits of certain deposit contributors.
- National Health Insurance (Juvenile Deposit Contributors) Amendment Regulations, 1947 (No. 2825), reduce the amount available for cost of medical benefit and increase the amount for administration expenses of insurance committees in relation to juvenile deposit contributors.
- 2393. — emergency additional benefits.** National Health Insurance (Emergency Additional Benefits) Amendment Regulations, 1947 (No. 2827), dated December 30, 1947, made under the National Health Insurance, Contributory Pensions and Workmen's Compensation Act, 1941 (4 & 5 Geo. 6, c. 39), s. 8. These Regulations amend the National Health Insurance (Emergency Additional Benefits) Regulations, 1942 (No. 2280), as already amended, by extending from five to six years the maximum period for which an approved society or branch may be authorised to continue to distribute additional benefits after the termination of an existing scheme providing such benefits.
- 2394. — insurable employment—scavenging contract between local authority and individual.** [Scot.] (National Health Insurance Act, 1936 (26 Geo. 5 & 1 Edw. 8, c. 32), Sched. I, Part I, para. (f).) In *FIFE COUNTY COUNCIL v. M. N. I.*, 1947 S. C. 629, the Court of Session held that in two cases in which a county council had entered into contracts for scavenging with, in one case, a firm of contractors, one of the partners in which personally executed the work, and in the other with an individual contractor who himself did the work, the employment fell within para. (f) of Pt. I of the First Schedule to the National Health Insurance Act, 1936, and was insurable. The scavenging contracts were contracts for the performance of manual labour which had been entered into for the purposes of the county council's "business".
- 2395. — payments out of Central Fund.** National Health Insurance (Central Fund) Emergency Regulations, 1947 (No. 2826), dated December 30, 1947, made under the National Health Insurance, Contributory Pensions and Workmen's Compensation Act, 1941 (4 & 5 Geo. 6, c. 39), s. 8; provide for the payment out of the Central Fund of contributions to the cost of medical benefit for 1947.
- National Health Insurance (Central Fund) Emergency Regulations, 1948 (No. 1409), made under the National Health Insurance, Contributory Pensions and Workmen's Compensation Act, 1941, s. 8; provide for the payment out of the Central Fund of contributions to the cost of medical benefit between January 1 and July 4, 1948.
- 2396. National health service.** See NATIONAL HEALTH.
- 2397. National insurance scheme—appointed day.** The appointed day for all the purposes of the National Insurance Act, 1946 (9 & 10 Geo. 6, c. 67), was July 5, 1948: National Insurance Act, 1946 (Appointed Day) Order, 1948 (No. 54) made under s. 73 of the Act. The order is dated January 13, 1948, and came into operation on January 23, 1948.
- 2398. — explanatory memorandum.** The press officer of the Ministry of National Insurance has issued an explanatory memorandum of the National Insurance Scheme (Ref. No. 9/48) to replace a previous memorandum (Ref. No. 3/47) issued on January 22, 1947.

The Ministry of National Insurance has published, for national distribution, a family guide to the National Insurance Scheme, which came into full operation on July 5, 1948.

- 2399. — reciprocal arrangements with Northern Ireland.** National Insurance (Northern Ireland Reciprocal Arrangements) Regulations, 1948 (No. 211), made under the National Insurance Act, 1946, s. 63. These regulations give effect in Great Britain to the reciprocal arrangements made with Northern Ireland and modify the Act in its application to persons affected thereby. [2*d.*]
- 2400. New entrants — retirement pensions and widow's benefit.** National Insurance (New Entrants Transitional) Provisional Regulations, 1948 (No. 1426), made under the National Insurance Act, 1946 (9 & 10 Geo. 6, c. 67), s. 71; came into operation on July 5, 1948. [2*d.*]
- 2401. Old age pensions.** Non-Contributory Old Age Pensions Regulations, 1948 (No. 1564), made under the Old Age Pensions Act, 1936 (26 Geo. 5 & 1 Edw. 8, c. 31), s. 12, as amended; came into operation on July 8, 1948; supersede the Non-Contributory Old Age Pensions Regulations, 1947 (No. 526). The amendments were necessitated by the amendments made to the Act by the National Assistance Act, 1948 (11 & 12 Geo. 6, c. 29). [2*d.*]
- 2402. — calculation of means.** By s. 46 (1) of the National Assistance Act, 1948 (11 & 12 Geo. 6, c. 29), in calculating the means of a person for the purposes of the Old Age Pensions Act, 1936, no account is to be taken of any assistance grant or the value of any accommodation provided under the 1948 Act. Sub-s. (2) of that section contain provisions as to persons undergoing treatment in hospital; sub-s. (3) makes certain amendments to s. 8 (1) of the 1936 Act as to the determination of claims; and sub-s. (4) and Sched. IV make certain minor and consequential amendments to the 1936 Act. The new provisions are to come into operation on a date to be appointed.
- 2403. — contributory pensions.** See §§ 2348, 2351.
- 2404. Overlapping benefits.** National Insurance (Overlapping Benefits) Provisional Regulations, 1948 (No. 1244), made under the National Insurance Act, 1946 (9 & 10 Geo. 6, c. 67), s. 30; came into operation on June 21, 1948. [3*d.*]
National Insurance (Overlapping Benefits) Regulations, 1948 (No. 2711), made under the National Insurance Act, 1946, s. 30; came into operation on December 23, 1948; replace, with amendments, Parts II, IV and V of, and the Schedule to, the National Insurance (Overlapping Benefits) Provisional Regulations, 1948 (No. 1244). [3*d.*]
- 2405. Reciprocal arrangements—Eire.** See § 2419.
- 2406. — France.** See §§ 2377, 2415.
- 2407. — Isle of Man.** National Insurance (Isle of Man Reciprocal Agreement) Order, 1948 (No. 1844), made under the National Insurance Act, 1946 (9 & 10 Geo. 6, c. 67), s. 64; came into operation on August 9, 1948.
- 2408. — — industrial injuries.** See § 2371.
- 2409. — Northern Ireland.** See §§ 2378, 2399.
- 2410. Residence and persons abroad.** National Insurance (Residence and Persons Abroad) Regulations, 1948 (No. 1275), made under the National Insurance Act, 1946 (9 & 10 Geo. 6, c. 67), ss. 1, 14, 29, 60, 71; came into operation on June 24, 1948. [2*d.*]
- 2411. Retirement pensions.** National Insurance (Widows' Benefit and Retirement Pensions) Regulations, 1948 (No. 1261), made under the National Insurance Act, 1946 (9 & 10 Geo. 6, c. 67), ss. 18, 21, 23, 25; came into operation on June 18, 1948. [2*d.*]
- 2412. — decisions of the Commissioner.** Selected decisions of the Commissioner on claims for retirement pension during the period July 5, 1948, to November 6, 1948, have been published: Ministry of National Insurance, Pamphlet P/1.
Sums representing National Insurance contributions and fares are, but sums representing life insurance premiums, and the cost of food and rent, are not, permissible deductions from gross earnings for the purposes of Reg. 4 (1) of the

National Insurance (General Benefit) Regulations, 1948: Case No. C.P. 2/48 (1/11/48).

Where a wife is paid by commission alone and the commission is not paid each week, the earnings for any week are "not immediately ascertainable" within the meaning of Reg. 4 (1) of the National Insurance (General Benefit) Regulations, 1948, so that in such a case it is appropriate to average them over a reasonable period: Case No. C.P. 3/48 (1/11/48).

2413. — explanatory leaflet. The Ministry of National Insurance have issued leaflet N.I. 15, entitled "What you need to know about Retirement Pensions".

2414. — new entrants. See § 2400.

2415. — reciprocal arrangements—France. National Insurance (Reciprocal Agreement with France as to Retirement Pensions) Order, 1948 (No. 1341), made under the National Insurance Act, 1946, s. 64; came into operation on July 5, 1948.

2416. Seamen's Special Fund. National Insurance (Seamen's Special Fund) Regulations, 1948 (No. 1423), made under the National Insurance Act, 1946 (9 & 10 Geo. 6, c. 67), s. 69; came into operation on July 5, 1948. See also §§ 2381, 2382.

2417. Share fishermen. National Insurance (Share Fishermen) Provisional Regulations, 1948 (No. 1395), made under the National Insurance Act, 1946 (9 & 10 Geo. 6, c. 67), ss. 1 (3), 8 (1), 9 (1), 52 (2); came into operation on July 2, 1948. [2d.]

2418. Sickness benefit—decisions of the Commissioner. Selected decisions of the Commissioner on claims for sickness benefit during the period July 5, 1948, to October 2, 1948, have been published: Ministry of National Insurance, Pamphlet S/1.

A claimant whose wife had been admitted to hospital in 1933, certified to be mentally deranged three months later, and detained there ever since, was held not to be residing with his wife within the meaning of s. 24 (1) of the National Insurance Act, 1946: Case No. C.S. 6/48 (30/9/48).

There may be an adoption within the meaning of s. 24 (4) of the Act even where there has been no legal adoption under the Adoption of Children Act, 1926, or the Adoption of Children (Scotland) Act, 1930, and the word "adoption" in s. 24 (4) is to be given its ordinary meaning, that is, the assumption by the adopter and the abandonment by the true parent of the rights and duties of parenthood: Case No. C.S. 7/48 (4/10/48).

2419. — reciprocal arrangements — Eire. National Insurance (Reciprocal Agreement with Eire for Sickness and Maternity Benefit) Order, 1948 (No. 2059), made under the National Insurance Act, 1946 (9 & 10 Geo. 6, c. 67), s. 64; came into operation on September 13, 1948.

2420. — transitional regulations. See § 2431.

2421. — unemployment and sickness. See § 2438.

2422. Stamps. National Insurance and Industrial Injuries (Stamps) Regulations, 1948 (No. 1443), made under the National Insurance Act, 1946 (9 & 10 Geo. 6, c. 67), s. 8 (2) (b), and the National Insurance (Industrial Injuries) Act, 1946 (9 & 10 Geo. 6, c. 62), s. 66 (2); came into operation on July 5, 1948. [3d.]

National Insurance and Industrial Injuries (Stamps) (Amendment) Regulations, 1948 (No. 2581), came into operation on December 17, 1948; amend the National Insurance and Industrial Injuries (Stamps) Regulations, 1948 (No. 1443), in consequence of the control of the Minister now exerciseable as to dies, etc., used for impressed stamps. See also §§ 2345-2347.

2423. Students. Students undergoing full-time education at schools, universities, technical colleges and similar institutions and who fall into the class of non-employed persons need not (but may if they wish) pay contributions under the National Insurance Act in that class so long as they are continuing their studies. Students over eighteen should apply for contribution cards on Form C.F.6, obtainable from any post office, national insurance office or employment exchange. Students undergoing paid work in vacations are required to contribute as employed persons. Ministry of National Insurance Press Notice No. 54/48, dated June 4, 1948.

2424. Superannuation—approved societies staff. S. 3 of the Superannuation (Miscellaneous Provisions) Act, 1948 (11 & 12 Geo. 6, c. 33) empowers the Minister to make rules with respect to pensions for former employees of approved societies and certain other bodies who have subsequently become civil servants.

2425. — local government. National Insurance (Modification of Local Government Superannuation Schemes) Amendment Regulations, 1948 (No. 1225), made under the National Insurance Act, 1946 (9 & 10 Geo. 6, c. 67), s. 69 (4). These Regulations amend the Regulations of 1947 (No. 1245).

2426. — teachers. National Insurance (Modification of Teachers Pensions) Regulations, 1948 (No. 889), made under the National Insurance Act, 1946, s. 69 (4). These Regulations modify the Teachers (Superannuation) Acts, 1918 to 1946, and the scheme for independent schools made in 1926 under the Teachers (Superannuation) Act, 1925, s. 21 (1) (a), by providing, subject to certain conditions, limitations and exceptions, for the reduction of the contributions payable thereunder by teachers who are insured persons and by their employers, and for the reduction of pensions payable thereunder by specified amounts according to circumstances. [3d.]

2427. Transfer of assets. National Insurance (Transfer of Assets) Regulations, 1948 (No. 1408), made under the National Insurance Act, 1946 (9 & 10 Geo. 6, c. 67), s. 66; came into operation on July 1, 1948.

2428. Transitional regulations. National Insurance (General Transitional) Regulations, 1948 (No. 1503), made under the National Insurance Act, 1946 (9 & 10 Geo. 6, c. 67), ss. 65, 69; came into operation on July 5, 1948. [4d.]

2429. — contributory pensions. See §§ 2348, 2349.

2430. — determination of claims and questions. See § 2354.

2431. — sickness and maternity benefit. National Insurance (Sickness Benefit, Maternity Benefit and Miscellaneous Provisions) (Transitional) Regulations, 1948 (No. 1276), made under the National Insurance Act, 1946, ss. 65, 69; came into operation on June 23, 1948. [4d.]

2432. — unemployment benefit. See § 2437.

2433. Unemployment benefit—administration by local education authorities. See s. 11 of the Employment and Training Act, 1948 (11 & 12 Geo. 6, c. 46), § 1246.

2434. — decisions of the Commissioner. Selected decisions of the Commissioner on claims for unemployment benefit during the period July 5, 1948, to October 31, 1948, have been published: Ministry of National Insurance, Pamphlet U/1.

A claimant was held to be not unemployed during a period when she was paid a retaining fee of half her wages but not required to perform any services: Case No. C.U. 28/48 (28/10/48).

As it is well established that the fact that a claimant is ignorant of the correct procedure for claiming benefit does not constitute "good cause for failure to make the claim", there is not a "principle of importance involved in the case" to justify leave being granted to appeal where it is on that fact only that the claimant relies: Case No. C.U. 29/48 (29/10/48).

2435. — extension of. National Insurance (Extension of Unemployment Benefit) Regulations, 1948 (No. 1447), made under the National Insurance Act, 1946 (9 & 10 Geo. 6, c. 67), s. 62; came into operation on July 5, 1948.

2436. — increase of. National Insurance (Increase of Unemployment Benefit) Regulations, 1948 (No. 1095), made under the National Insurance Act, 1946, s. 69. These Regulations came into operation on June 1, 1948, and introduce, as from the first payment of benefit on or after June 3, the rates of unemployment benefit under the Act. [3d.]

2437. — transitional provisions. National Insurance (Unemployment Benefit) (Transitional) Regulations, 1948 (No. 1279) made under the National Insurance Act, 1946, ss. 65, 69; came into operation on June 24, 1948. [4d.]

National Insurance (Unemployment Benefit) (Transitional) Amendment Regulations, 1948 (No. 2427), made under the National Insurance Act, 1946, s. 65; came into operation on November 12, 1948; amend the National Insurance (Unemployment Benefit) (Transitional) Regulations, 1948 (No. 1279).

- 2438. — unemployment and sickness benefit.** National Insurance (Unemployment and Sickness Benefit) Regulations, 1948 (No. 1277) made under the National Insurance Act, 1946, ss. 10, 11, 12, 13, 24, 25; came into operation on June 23, 1948. [3d.]
- 2439. Unemployment insurance—decisions of the umpire.** S. 35 (5) of the Unemployment Insurance Act, 1939—whether unemployed: Case Nos. 1099/47, 1146/47, *Minister of Labour Gazette*, January, 1948, pp. 36, 37.
- 2440. — —.** Selected decisions of the umpire on claims for benefit under the Unemployment Insurance Acts, 1935 to 1944, during the six months ended December 31, 1947: U.I. Code 8B, Pamphlet 4/1947.
- 1935 Act, s. 35 (5). A claimant was held not entitled to benefit for a Saturday which fell within a holiday period, Saturday being the normal idle day, and the holiday payment being made in respect of a five-day week: Case 1099/47 D.
- S. 35 (5). Where the interval between the date of a holiday and the date when employment terminates is twelve working days or more the claimant should be treated as unemployed during a holiday period which follows the termination of employment, but if the interval is less than twelve days he should be treated as not unemployed during that period: Case 1146/47 A.
- S. 37 (2) (b) (i). A boy taking a course of training in the training ship *Mercury* is "under full-time instruction in a day school" because a child attending a boarding school may be treated as under full-time instruction in a day school, a day school being distinguished from an evening school: Case 1011/47 A.
- S. 38. Increase of benefit is not payable in respect of a female person who has the care of dependent children of the insured contributor unless that person has reached the age of eighteen: Case 1145/47 D.
- 2441. — —.** Selected decisions of the umpire on claims for benefit under the Unemployment Insurance Acts, 1935 to 1944, during January, 1948: U.I. Code 8B, Pamphlet 1/1948.
- 1935 Act, s. 27. A mineworker who took a lump sum in commutation of weekly payments of compensation, knowing that his acceptance of this would lead to his discharge, was held to have left his employment voluntarily. He had an option to continue on the existing terms, and no prospects of alternative employment, and his decision to commute and not his redundancy was the effective cause of his discharge: Case 23/48 D.
- S. 27. A claim for benefit was disallowed in a case where the claimant had become a mineworker as an alternative to entering military service and had left that employment, with the permission of the Ministry of Labour and National Service, when his group was released from service. He had no prospects of other employment and it was held that he did not show just cause for leaving his employment: Case 52/48 D.
- S. 38. The claimant's wife was held not to be engaged in the occupation of taking in boarders within the meaning of s. 38 (2) (c) in a case where she had never taken in boarders before and had only taken in the two boarders in question at the request of the Minister of Labour: Case 38/48 A.
- 2442. — —.** Selected decisions of the umpire on claims for benefit under the Unemployment Insurance Acts, 1935 to 1944, during February, 1948: U.I. Code 8B, Pamphlet 2/1948.
- 1935 Act, s. 24. To be entitled to benefit the claimant must prove that he is capable of and available for work at the time he makes the claim; the fact that he may or will be capable and available at some future time cannot entitle him to a present payment of benefit: Case 106/48 A.
- 2443. — —.** Selected decisions of the umpire on claims for benefit under the Unemployment Insurance Acts, 1935 to 1944, during March, 1948: U.I. Code 8B, Pamphlet 3/1948.
- 1935 Act, s. 27. Domestic circumstances did not warrant a claimant who was subject to the Control of Engagement Order, 1947, leaving her employment (within travelling distance of her home) in order to work nearer home, and therefore she voluntarily left her employment without just cause: Case 178/48 D.
- S. 28. A claimant was held to have neglected to avail herself of a reasonable

opportunity of suitable employment, because a situation cannot be regarded as unsuitable only because it involves a change of occupation: Case 175/48 D.

- 2444.** — —. Selected decisions of the umpire on claims for benefit under the Unemployment Insurance Acts, 1935 to 1944, during April, 1948: U.I. Code 8B, Pamphlet 4/1948.

1935 Act, s. 37. It was held that the claimant, whose wife obtained a decree absolute of dissolution of marriage and thereafter lived apart from the claimant with two children of the marriage, was entitled to increase of benefit in respect of one of the children he having shown that he was mainly maintaining that child: Case 310/48 A.

- 2445.** — —. Selected decisions of the umpire on claims for benefit under the Unemployment Insurance Acts, 1935 to 1944, during June, 1948: U.I. Code 8B, Pamphlet 6/1948.

1935 Act, s. 35. A claimant was held not to be unemployed during a period of nine days' leave on full pay and subsistence allowances given him in accordance with the Conditions of Employment for Seamen as compensation for the seven-day week which is worked at sea. Case 427/48 D.

Ss. 37, 38. A claimant was held not entitled to increase of benefit in respect of either his wife, whom he maintained in a hospital, or his two children who were in a home, on the ground that he was not wholly maintaining his dependants: the pre-war decisions as to the sums to be regarded as constituting whole maintenance (10s. for an adult and 6s. for a child) being no longer applicable: Case 402/48 D.

- 2446.** — **Eire volunteers.** Unemployment Insurance (Eire Volunteers) Regulations, 1948 (No. 1370), made under the Unemployment Insurance (Eire Volunteers) Act, 1946 (9 & 10 Geo. 6, c. 76), ss. 2, 4. These Regulations came into operation on July 5, 1948, and revoke the Unemployment Insurance (Eire Volunteers) (Benefit in the United Kingdom) Regulations, 1947 (No. 340). The Regulations provide for adapting the Act of 1946 and the Regulations thereunder in consequence of the coming into operation of the provisions of the National Insurance Act, 1946 (9 & 10 Geo. 6, c. 67), relating to unemployment insurance.

- 2447.** — **practice on appeal to the High Court.** See § 2898.

- 2448.** — **special schemes.** National Insurance (Unemployment Insurance Special Schemes) Regulations, 1948 (No. 1325), made under the National Insurance Act, 1946, s. 69; came into operation on June 30, 1948.

- 2449.** **Widows' benefit—and retirement pensions.** See § 2411.

- 2450.** — **decisions of the Commissioner.** See § 2359.

- 2451.** — **new entrants.** See § 2400.

- 2452.** **Widows' pensions.** See §§ 2348, 2350, 2359.

- 2453.** **ARTICLES.** The National insurance scheme: *Accountancy*, May, 1948, p. 100. National insurance (founded on the National Insurance Act, 1946): 205 L. T. J. 354; 206 L. T. 5, 20. Lawyers and national insurance: 98 L. J. 381. Industrial injuries claims: 98 L. J. 409. National insurance—industrial injuries (founded on the National Insurance (Industrial Injuries) Act, 1946): 206 L. T. 97.

- 2454.** **BOOKS PUBLISHED.** Ball, F. N.—National Insurance and Industrial Injuries [50s.]. Gibbs, E. R.—National Insurance and Social Service for Everyman [3s. 6d.]. Newman, T. S.—Digest of British Social Insurance with Supplement No. 1 [14s. 6d.]. Owen, D.—Guide to the National Insurance Act, 1946 [9d.].

NEGLIGENCE

- 2455.** **Bailee.** See **BAILMENTS.**

- 2456.** **Commodore of convoy—liability of.** See **THE SOBIESKI**, § 3455.

- 2457.** — **liability of employers of.** See **THE GLAUCUS AND THE CITY OF FLORENCE**, § 3457.

- 2458.** **Common employment—abolition.** The Law Reform (Personal Injuries) Act, 1948 (11 & 12 Geo. 6, c. 41), s. 1, abolishes the doctrine of common employment. See § 816.

- 2459.** — — — **accidents occurring before.** In *SMEDLEY v. MOIRA COLLIERY* (November 12, 1948), the Court of Appeal (Bucknill, Singleton and Denning, L.JJ.) said that in any cases where the facts occurred before the abolition of the doctrine of common employment by the Law Reform (Personal Injuries) Act, 1948, and that defence was raised, the tendency should be to limit the application of the doctrine and not to extend it. The Court should have regard to the principles enunciated by Parliament as well as to those declared by the Judges. If the law to be applied was quite certain, it must be applied, since the Act was not retrospective; but if the law was uncertain, then it should be determined with due regard to what Parliament had said was just. [*Reported by R. C. Calburn, Esq., Barrister-at-Law.*] See also [1948] W. N. 467.
- 2460.** — — — **injury during rest period.** In *HEALY v. L.P.T.B.* (March 19, 1948), a bus conductress was injured during a rest period by the driver of another bus belonging to the same company negligently backing his bus into her. The Court of Appeal (Scott, Asquith and Evershed, L.JJ.) held that the defence of common employment was not available. [*Reported by R. C. Calburn, Esq., Barrister-at-Law.*] See also [1948] W. N. 132.
- 2460a.** — — — **transferred servant.** See *THE POLARTANK*, § 1256.
- 2461.** — — — **trolley bus colliding with tower wagon.** The now obsolete doctrine of common employment was held not to apply in the case of a man repairing wires, from which trolley omnibuses derive motive power, on the platform of a tower wagon, who sustained injuries as the result of the negligent driving of a trolley bus driver in the employment of the same company. The power of manoeuvre possessed by the driver of the trolley bus, which would have enabled him to steer clear of the tower wagon without any difficulty, was held to be the crucial factor in the case, because the risk from the operations of a trolley bus driver did not differ, either in character or in probability of maturing into an accident, from the risk attaching to the operations of any other driver of a high vehicle in the road: *LANCASTER v. L. P. T. B.*, [1948] W. N. 419; [1949] L. J. R. 94; [1948] 2 All E. R. 796, H. L. (Lord Porter and Lord du Parcq dissenting; reversing decision of Court of Appeal, [1947] C. L. Y. 2040; and of Henn Collins, J. (1946), 62 T. L. R. 718; applying *Glasgow Corporation v. Neilson*, [1947] C. L. Y. 2032; distinguishing *Miller v. Glasgow Corporation*, [1947] C. L. Y. 2039).
- 2462.** **Contributory negligence—boarding moving omnibus.** In *GUINNEAR v. LONDON PASSENGER TRANSPORT BOARD* (April 9, 1948), the driver of the defendants' omnibus, having slowed down to a speed of 3-4 miles an hour in order to pick up the plaintiff on his signal, accelerated while the plaintiff was mounting the vehicle, so that he fell off it and was injured. Lynskey, J., while holding the driver guilty of negligence in accelerating before making sure of the plaintiff's safety, held the plaintiff himself guilty of negligence in boarding a moving omnibus and accordingly awarded him one-half the damages to which he would otherwise have been entitled. [*Reported by R. C. Calburn, Esq., Barrister-at-Law.*] See also (1948), 92 S. J. 350.
- 2463.** — — — **delegation of statutory duty.** [Cty. Ct.] See *HAWKINS v. LINOLEUM MANUFACTURING Co.*, § 1426.
- 2464.** — — — **men working on railway line.** See *DYER v. SOUTHERN RY.*, § 3063.
- 2465.** — — — **pedestrian tripping over debris.** See *ALMEROOTH v. CHIVERS & SONS*, § 2533.
- 2466.** — — — **uncovered hatch.** See *GRANT v. SUN SHIPPING Co.*, § 2482.
- 2467.** — — — **unlighted car on highway.** In *HENLEY v. CAMERON* (November 22, 1948), the defendant's car ran out of petrol during a night in December, coming to rest with the near rear wheel at the near side kerb and the near front wheel about a foot from the kerb, with the front wheels turned out slightly towards the middle of the road. By 1 a.m. the battery of the car was discharged and the car without lights. The defendant left it in that condition, locked, after consultation with two police officers. The car could have been pushed up on to a grass verge five feet wide, or into the mouth of a cart lane twenty yards away. At 6.40 a.m., while it was still dark, the plaintiff's husband was killed as a result of the sidecar of his motor cycle combination, which had normal lighting, striking the off-side front wheel of the car. The Court of Appeal (Tucker and Singleton, L.JJ., Asquith, L.J., dissenting) held that the defendant was negligent in the circumstances in

leaving the car as he had left it; that, as the lights of the deceased's combination were normal, he must be guilty of some contributory negligence in failing to see the defendant's car; and that the damages of £3,000 must be reduced by one-third as representing his share of the responsibility for the accident. *Asquith, L.J.*, while agreeing that the defendant was negligent, held that his negligence had not contributed to the accident since the deceased himself had the last clear opportunity of avoiding it and was therefore solely to blame. [*Reported by R. C. Calburn, Esq., Barrister-at-Law.*] See also [1949] 1 C. L. 164, 165.

2468. — window cleaner falling through roof. See *LAVENDER v. DIAMINTS*, § 1425.
2469. Costs—action against two defendants—**Bullock order**. See *HONG v. A. & R. BROWN*, § 2788; *O'MAHONY v. PRESS & SONS*, § 1424.
2470. Criminal negligence. See *DABHOLKAR v. R.*, § 749.
- 2470a. Damages. See also DAMAGES.
2471. — money paid for expenses incurred as a result of defendants' negligence towards third person. See *METROPOLITAN POLICE DISTRICT (RECEIVER) v. TATUM*, § 2715.
2472. — voluntary payments by third persons. See *DENNIS v. L. P. T. B.*, § 820.
2473. Dangerous goods—sale. [Cty. Ct.] In *WEBBER v. MCCAUSLAND* (1948), 98 L. J. 360, Judge Kingsley Griffith held that where a plaintiff had purchased from a defendant a bottle of hair dye on which were printed conditions which indicated that the dye should not be used without reading the booklet which accompanied the bottle, and the booklet was not supplied by the defendant to the plaintiff with the bottle, the plaintiff, who contracted dermatitis from using the dye, was guilty of contributory negligence in not having read all the conditions on the bottle (having read some of them), but that the defendant was guilty of negligence in selling the bottle without the booklet, and he apportioned negligence between the defendant and the plaintiff in the proportions 2 to 1 and awarded damages accordingly.
2474. Dangerous premises—duty of inspection. [Cty. Ct.] In *STUBBS v. ANTHONY* (1948), 98 L. J. 94, Judge Wethered held that the defendant was liable in negligence for damage caused to neighbouring premises by the fall of his chimney stack, because he had not taken reasonable precautions to keep the chimney in repair, the fact that he was unaware of its dangerous condition being immaterial because he had a duty to inspect his property from time to time and such inspection would have revealed the danger.
2475. — —. In *COURAGE & CO. v. MEAKERS GARAGES* (March 9, 1948), the plaintiff company was the lessee of premises leased to it by the predecessors of the defendant company. The plaintiff company had sub-let the premises but was responsible to its tenant for repairs. The defendant company was in occupation of the adjoining building when a wall of the top floor of that building collapsed owing to percolating water which caused the supporting beams to rot. *Roxburgh, J.*, held that the defendant company was liable in negligence for the damage caused on the premises leased to the plaintiff company by the collapse of the wall because the defendant company's works manager ought, in the ordinary course of managing the property, to have inspected the beams; the defendant company thus had failed to use ordinary care and to realise the risk. [*Reported by C. M. Schmitthoff, Esq., Barrister-at-Law.*] See also (1948), 98 L. J. 163.
2476. — — delegation. [Scot.] In *MACDONALD v. REID'S TRUSTEES*, 1947 S. C. 726; 1948 S. L. T. 113, the Court of Session, Outer House, held that where the duty of inspecting property rests upon the owners thereof, and that duty is not efficiently discharged, with the result that injury is caused to a third party, it is immaterial whether the imperfect inspection was carried out by the owners themselves or by someone else on their behalf, and the claim of the third party (based on that duty of inspection), does not necessarily fail merely because the owners employed a competent firm to inspect the property on their behalf.
2477. — exposed electric cable. He who maintains a dangerous thing owes a duty to take reasonable care to avoid acts and omissions which could be reasonably

foreseen to be likely to injure a person so closely and directly affected by his acts or omissions that he ought reasonably to have had such a person in contemplation as being so affected: *per* Lord Atkin in *Donoghue v. Stevenson*, [1932] A. C. 562, 580. Where the dangerous thing is maintained on the land of another it may be relevant, but will not be conclusive, to determine the relationship in which the injured person stands to the occupier of the land.

The defendants maintained high-voltage electric wires carried on poles across a field on a farm. The line of wires ran above a hedge in which was an oak tree about 90 yards from an unfenced footpath; the tree was easily climbable and, at the time, in dense foliage, so that the wires just above it were difficult to see. The deceased infant, a girl aged thirteen, was staying at a nearby camp, from which parties of children were in the habit of using the footpath in order to visit the farm by arrangement. While straying from the path and not on an arranged visit, the child climbed to the top of the oak tree and was electrocuted. The defendants alleged that the child, (a) was a trespasser to whom they owed no duty of care, and (b) was guilty of contributory negligence. Evidence was given by the farm bailiff that no general permission had been given to the children to use the field in which the tree stood. Held, (1) the child was not a trespasser *vis-à-vis* the defendants; whether, in relation to the occupier, she was a trespasser, which had not been proved, or an invitee, she was a person who the defendants ought to have foreseen would be endangered by their acts or omissions; in carrying live electric wires over a tree which was an allurements to children and in taking no steps to prevent the tree being climbed the defendants failed in their duty of care and were liable; (2) contributory negligence had not been made out: *BUCKLAND v. GUILDFORD GAS LIGHT AND COKE CO.*, [1948] W. N. 488; [1948] 2 All E. R. 1086; *Morris, J.*

2478. — — —. [Can.] In *MAYER v. WINNIPEG ELECTRIC CO.*, [1948] 4 D. L. R. 301, the Court of King's Bench, Manitoba, held that where the tenant of a vendor left an electric cable exposed on quitting the premises, but switched off the current at the main, and the purchaser took possession and switched on the current and his child, coming into contact with the cable, was electrocuted, neither the vendor nor his tenant was liable in damages.

2479. — *injury to child of occupier—action against landlord.* [Scot.] In *M'HALE v. FIFE COAL CO.*, 1947 S. L. T. (Sh. Ct.) 77, the Sheriff Court held that where injuries were sustained by the child of a tenant of certain premises as a result of the child tripping over a projecting spike which was what remained of iron railings which had been removed from the premises in the exercise of emergency powers (the spike constituting a concealed danger), as the child was the invitee of the tenant, his father, the defendant landlords were not, in the absence of a request by the tenant to render the spike innocuous, guilty of any breach of duty towards the tenant's child.

2480. — — —. On the authorities it is plain beyond argument that, if the tenancy or occupation of a house has begun after a dangerous thing has been installed therein, then if that dangerous thing afterwards injures the tenant or occupier, the tenant or occupier will have no remedy against the landlord. However, where, after the tenancy or occupation has begun, a gratuitous obligation is undertaken by the person who happens to be the landlord, then the landlord will be liable if there is negligence on his part in carrying out that obligation. Moreover, in such a case it makes no difference whether it is the landlord or some person other than the landlord who undertakes to render the obligation during the continuance of the tenancy, because the duty depends on the law of tort and not of contract and is a duty owed to the persons who, in the ordinary course of human life, would use the thing.

After the commencement of a tenancy the landlord gratuitously installed a domestic boiler, which was dangerous because it did not have a safety valve. The tenant's daughter sustained severe injuries after she had lit a fire in the boiler. Held, that the landlord was liable in damages for negligence: *BALL v. L. C. C.*, [1948] 2 All E. R. 917, *Stable, J.* (applying *Travers v. Gloucester Corpn.*, [1947] C. L. Y. 2061; *Davis v. Fooks*, [1940] 1 K. B. 116; and *Bottomley v. Bannister*, [1932] 1 K. B. 458).

2481. — invitee—invitation extending to adjoining land. A person who has two pieces of land and invites the public to come to one of them can, if he chooses, limit the invitation to that one, but, if the other is contiguous to that piece and he does not indicate to his invitees that his invitation is confined to the one piece of land, he cannot be surprised if they treat his invitation as pertaining to both pieces. If a landowner is minded to mark out part of his land as a prohibited area, he must indicate to his invitees by appropriate means that it is a prohibited area. Whether or not proper and sufficient steps have been taken to delimit the prohibited area must depend on the facts of individual cases.

The infant plaintiff, a girl aged seven years, paid 1s. for a seat at the defendants' travelling circus. The circus proper and the animals' quarters called the "zoo" occupied adjoining portions of a field. The plaintiff, desirous to relieve herself, there being no public lavatory, crawled through the canvas tent surrounding the circus into the zoo. There was an authorised entrance to the zoo which was controlled by the defendants. The plaintiff then went round the tent but did not find a suitable place. Eventually she found a secluded spot by crawling under a runway near a lion's cage, when a lion put his paws out and mauled her. Held, (1) the mere fact that this was a dangerous animal would not throw on the defendants the burden of proving that they were not liable for the injury if the facts established that the plaintiff was a trespasser at the point in question; (2) a person who, to visit the zoo, entered by some unauthorised entrance could not, in general, be regarded as an invitee or licensee; but (3) on the special facts of the case, as the defendants had not provided a place where the plaintiff could relieve herself, having regard also to her need, her age and her fruitless circuit round the tent, she must be regarded as being rightfully near the lion's cage pursuant to the original invitation which must be taken as extending impliedly to that place, and, consequently, the defendants were liable, as keepers of a dangerous beast, for a breach of their duty to the plaintiff to keep that beast so confined as to be incapable of doing damage. *Quere*: whether the defendants would in the same circumstances have been liable to an adult plaintiff: *PEARSON v. COLEMAN BROTHERS*, [1948] 2 K. B. 359; [1948] L. J. R. 1781, C. A. (applying *Gould v. McAuliffe*, [1941] 2 All E. R. 527; distinguishing *R. Addie & Sons (Collieries) v. Dumbreck*, [1929] A. C. 358).

2482. — stevedore falling through uncovered hatch. (Docks Regulations, 1934 (No. 274), regs. 12 (c), 37, 45.) It is a well-settled principle that, when separate and independent acts of negligence on the part of two or more persons have directly contributed to cause injury and damage to another, the person injured may recover damages from any one of the wrongdoers, or from all of them. If the negligence or breach of duty of one person is the cause of injury to another, the wrongdoer cannot in all circumstances escape liability by proving that, though he was to blame, yet but for the negligence of a third person the injured man would not have suffered the damage of which he complains. There is abundant authority for the proposition that the mere fact that a subsequent act of negligence has been the immediate cause of disaster does not exonerate the original offender.

The pursuer, a dock labourer, was at work on board a steamship rolling drums, when he fell through an uncovered, unfenced and unlighted hatch and was seriously injured. Men employed by the second defendants, ship repairers, had removed hatch covers in the course of their work in the morning. When they left for their meal, the third officer of the first defendants, the shipowners, told the second defendants' men to see that everything was secure and that the hatches were on before they left. It was found as a fact that the second defendants' men had removed the light which illuminated the spot where they had failed to replace the hatch cover and had left that particular spot in complete darkness. Held, (1) Regs. 37 and 45 of the Docks Regulations, 1934, imposed on the second defendants the duty of replacing the hatch-covering and of leaving in place the light which was necessary for the illumination of that part of the ship in which the pursuer was working, and they had plainly committed a breach of these Regulations; (2) the first defendants had failed in their duty under Reg. 12 (c), which provides that when the "processes" (which include the "moving and handling of goods at a quay") "are being carried on all parts of the ship to which persons employed may be required to proceed in the course of their

employment, shall be efficiently lighted", and, in any event, the pursuer was an invitee of the first defenders, and, consequently, irrespective of the Regulations, it was the duty of the officers of the first defenders to see that the place where the pursuer was to work was reasonably safe; (3) the negligence and breach of statutory duty attributable to each of the defenders "partly" and "directly" caused the pursuer's injuries; and (4) the pursuer had not been guilty of contributory negligence, because where the negligence is a breach of Regulations, made to secure the safety of workmen, which may be presumed to be strictly enforced in the ordinary course of a ship's discipline, a workman is not careless if he assumes that there has been compliance with the law. Consequently, both defenders were liable in damages, and the damages should be contributed in the proportion of 25 per cent. by the first defenders and 75 per cent. by the second defenders: *GRANT v. SUN SHIPPING Co.*, [1948] A. C. 549; [1948] 2 All E. R. 238, H. L. (Lord Oaksey dissenting on the question of contributory negligence by the pursuer; applying *Admiralty Comrs. v. North of Scotland, etc., Steam Navigation Co.*, [1947] C. L. Y. 2048; *Burrows v. March Gas Co.* (1870), L. R. 5 Exch. 67; *The Bernina* (1888), 13 App. Cas. 1; and *Gee v. Metropolitan Ry.* (1873), L. R. 8 Q. B. 161).

- 2483.** — — **stevedore injured by falling beam.** (Docks Regulations, 1934 (S. R. & O., 1934, No. 279), Duties, para. (d), reg. 42.) It is well established that invitees using reasonable care for their own safety, are entitled to expect that the occupier will use reasonable care to prevent damage from unusual danger of which he knew or ought to have known. As to traps which, by using reasonable care, the invitees would not be aware of, the inviters are under a duty not to create them, or, if they have created them, to give warning thereof.

Five stevedores claimed damages for personal injuries against their employers. The injuries were sustained by the plaintiffs while they were at work loading bags into a ship, because a beam, which had not been properly secured, fell on them. The employers as defendants admitted liability, but brought in the owners of the ship as a third party claiming indemnity or contribution. It was common ground that the shipowners always handled and secured the beams, and the ship's second officer had assured the defendants' foreman on the occasion in question that the beams were safe. The third party relied on Reg. 42 in Pt. IV of the Docks Regulations, 1934, which provides that "the beams of any hatch in use for the processes shall, if not removed, be adequately secured to prevent their displacement". This regulation is preceded by a regulation which states: "It shall be the duty of every person who by himself, his agents, or workmen carries on the processes, and of all agents, workmen, and persons employed by him in the processes, to comply with Part IV of these Regulations". Held, (1) the third party had created a trap which no reasonable examination would have detected, and as they had voluntarily taken on a duty and performed it and had given an assurance that it had been performed, they were liable, according to the principle stated in *Heaven v. Pender* (1883); 11 Q. B. D. 503; (2) the duty imposed by the regulations did not affect the liability of those who might elect to do the work of securing beams for damage which resulted from the work being done negligently; (3) the principle of *Donoghue v. Stevenson*, [1932] A. C. 562, and *Haseldine v. Daw*, [1941] 2 K. B. 343, could not apply, because the third party knew that the foreman and the plaintiffs would rely and were relying on the third party and the assurance of the third party's officer in charge. Under the circumstances, the defenders were entitled to be indemnified by the third party in respect of nine-tenths of the damages: *JERRED v. T. RODDAM DENT & SON (GLEN LINE, THIRD PARTY)*, [1948] 2 All E. R. 104, Atkinson, J.

- 2484.** — — **warning of outbreak of fire.** [Can.] See *ZAWYRUCHA v. RED LAKE HOTEL Co.*, § 1726.

- 2485.** — — **window cleaner falling through asbestos roof.** See *LAVENDER v. DIAMINTS*, § 1425.

- 2486.** **Decorator—house left in charge of workman.** A decorator, left alone in the house which he was decorating, went out to obtain materials for his work, leaving the front door closed but unlocked. He remained away for two hours. During his absence a thief entered the house and stole valuable property. On previous

occasions the decorator had been reminded by the householder to lock the door when he left. Held:

- (1) The contractual relationship imposed a duty on the decorator to take reasonable care with regard to the state of the premises if he left them during the performance of his work or when he left them at the conclusion of his work;
- (2) there was a breach of such duty by the decorator because it was not acting reasonably or taking reasonable care to leave the empty house for two hours with the front door in the condition in which it was;
- (3) if the decorator was negligent, as he was, in leaving the house in this condition, it was a direct result of his negligence that the thief got in through the door which was left unlocked, and stole the valuable property:

STANSBIE v. TROMAN, [1948] 2 K. B. 48; [1948] L. J. R. 1206, C. A. (distinguishing *Weld-Blundell v. Stephens*, [1920] A. C. 956).

2487. Highway. See also HIGHWAYS AND BRIDGES; ROAD TRAFFIC.

2488. — appeal on question of fact in running down action. See *LOFTHOUSE v. LEICESTER CORPN.*, § 2761.

2489. — danger due to leak in water pipes. See *LONGHURST v. METROPOLITAN WATER BOARD*, § 1579.

2490. — highway authority—non-feasance. See *CHAPPELL v. DAGENHAM CORPORATION*, § 1577; *WILSON v. KINGSTON-ON-THAMES CORPORATION*, § 1578.

2491. — opening car door. See *SHEARS v. MATTHEWS*, § 3344.

2492. — pedestrian crossing. See *ANON.*, § 3346; *LONDON PASSENGER TRANSPORT BOARD, v. UPSON*, § 3347.

2493. — trees. It is a reasonable and proper precaution for the occupier of property on which there are elm trees bordering or near to the road to top or pollard them as an ordinary incident of good estate management.

An elm tree on the defendants' land fell on to the plaintiffs' motor car as they were passing along the highway and injured them. The fall was due to the windy weather, the existence of butt rot in the tree which was not apparent but was of long standing, and the fact that it carried a very heavy crown because it had not been lopped or trimmed for many years. Held, the defendants had failed in their duty to the public and were liable in damages: *CAMINER v. NORTHERN AND LONDON INVESTMENT TRUST*, [1948] W. N. 489; 64 T. L. R. 629; 92 S. J. 720; [1948] 2 All E. R. 1101, Lord Goddard, C.J. (See also § 2537.)

2494. — unlighted car. See *HENLEY v. CAMERON*, § 2467.

2495. Husband and wife—wife's action against husband. See *CURTIS v. WILCOX*, § 1612.

2496. Independent contractor—liability for. See *LAVENDER v. DIAMINTS*, § 1425; *O'MAHONY v. PRESS & SONS*, § 1424.

2497. Innkeeper—liability for guest's property. See *BONHAM-CARTER v. HYDE PARK HOTEL*, § 1729.

2498. — — residential hotel. See *OLLEY v. MARLBOROUGH COURT*, § 1730.

2499. — warning of fire. [Can.] See *ZAWYRUCHA v. RED LAKE HOTEL CO.*, § 1726.

2500. Law Reform (Personal Injuries) Act, 1948. See § 816.

2501. — safe system of work. See *BRISTOL AEROPLANE CO. v. FRANKLIN*, § 2507.

2502. Master and servant—common employment. See §§ 2458–2468.

2503. — factories. See *FACTORIES*.

2504. — master's liability for acts of servant. See *EMPLOYMENT*.

2505. — safe system of working. See *FRANKLIN v. GRAMOPHONE CO.*, § 1414; *DYER v. SOUTHERN RY.*, §§ 3062, 3063; *O'MAHONY v. PRESS & SONS*, § 1424.

2506. — — admissibility of proofs of ship's master and officers. See *BAIN v. MOSS HUTCHISON LINE*, § 1311.

2507. — — effect of Law Reform (Personal Injuries) Act, 1948. In *BRISTOL AEROPLANE CO. v. FRANKLIN* (July 29, 1948), Lord Simon in the House of Lords

remarked that the allegation, in an action of negligence by a workman against his employer, of failure to provide a safe system of working, had in the past usually been made to avoid defeat by a plea of common employment. It might be expected that, since the abolition of that doctrine by the Law Reform (Personal Injuries) Act, 1948, the allegation would lose much of its importance. [Reported by R. C. Calburn, Esq., Barrister-at-Law.] See also [1948] W. N. 341; 92 S. J. 573.

- 2508.** — shiploading operations. See *JERRED v. T. RODDAM DENT & SON*, § 2483.
- 2509.** **Medical practitioner.** See *WHITEFORD v. HUNTER*, § 2191; *DABHOLKAR v. R.*, § 749; *FISH v. KAPUR*, § 2517.
- 2510.** **Negligence, meaning of.** "Negligence consists in taking action which the actor ought, in all the relevant circumstances of the case, to have foreseen was likely to cause harm": per Scott, L.J., in *TOWERFIELD (OWNERS) v. WORKINGTON HARBOUR AND DOCK BOARD*, § 3466.
- 2511.** **Nuisance, negligence in.** See *LONGHURST v. METROPOLITAN WATER BOARD*, § 2539.
- 2512.** **Railways—carriage door—contributory negligence.** [Scot.] In *MURRAY v. L. M. S. RY.*, 1948 S. L. T. (Sh. Ct.) 30, the Sheriff Court held that the railway company was liable in damages where a child standing on a platform was injured by a carriage door which was opened before the train stopped, the child not being guilty of contributory negligence.
- 2513.** — **level crossing.** See *SMITH v. SMITH AND THE RAILWAY EXECUTIVE*, § 3060; [Scot.] *SMITH v. L. M. S. RY.*, § 3059; [Can.] *R. v. HERBST*, § 3052.
- 2514.** — **look-out system.** See *DYER v. SOUTHERN RY.*, § 3063.
- 2515.** **Res ipsa loquitur—article falling from truck.** [Cty. Ct.] See *BARLOW v. ROLLS-ROYCE*, § 1423.
- 2516.** — **boat catching fire.** See *REED v. DEAN*, § 625.
- 2517.** — **dentist fracturing jaw when extracting tooth.** The statement in *Warner v. Payne*, unrep., Apr. 15, 1935, "that the mere fact that the jaw was fractured in the course of an extraction [of a tooth] would [not] be of itself any evidence of negligence against the dentist at all" is a correct statement of the law.
- The plaintiff claimed damages from the defendant, a dental surgeon, on the ground that he had been negligent in extracting one of her teeth as a result of which part of the root was left in and her jaw was fractured. She did not adduce any evidence of negligence, but submitted that the doctrine of *res ipsa loquitur* applied to a case where a qualified dentist extracts a tooth and, where after that extraction, the jaw is found to be fractured. She also alleged that there had been negligence by the defendant in not diagnosing the fracture at a later date. Held, the fact that the fracture was caused in the process of extraction of the tooth was not in itself any evidence of negligence, and, as there was no proof of any damage following on the failure to diagnose, the plaintiff could not succeed in respect of such possible neglect: *FISH v. KAPUR*, 64 T. L. R. 328; [1948] 2 All E. R. 176, Lynskey, J. (applying *Warner v. Payne*, *supra*).
- 2518.** — **motor car—limit of vision at night.** [Scot.] In *WHITE v. M'KEAN & Co.*, 1948 S. L. T. 210, the Court of Session, Outer House, held that there is no rule of law that a person driving a car in the dark is necessarily negligent if he cannot pull up within the limits of his vision, but that the question whether or not he is negligent is one of fact and not of law. (*Tidy v. Battman*, [1934] 1 K. B. 319, 322, and *Morris v. Luton Corpn.*, [1946] 1 K. B. 114, applied.)
- 2519.** — **omnibus mounting pavement.** The rule of evidence known as *res ipsa loquitur* was stated by Erle, C.J., in *Scott v. London Dock Co.* (1865), 3 H. & C. 596, as follows: "... where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from want of care". In a case where *res ipsa loquitur*, the onus starts on the defendant and requires him to prove

affirmatively that he has exercised all reasonable care, but that proof is very greatly facilitated if he can show that the event which caused the plaintiff damage happened through some cause for which no blame can attach to him, even though it cannot be specifically identified, and, if it can be so identified, his task is not only facilitated but achieved. If he thus succeeds in demonstrating positively the probable operation of such cause, whether specifically identifiable or not, the onus is then discharged, and the presumption of fault on his part ceases and the plaintiff is left in the position of having failed to prove his case. Even if he can point to no specific cause, he still discharges it if he can show that he used all reasonable care.

Owing to a burst tyre, an omnibus belonging to the defendants, skidded across the road, mounted the opposite pavement and fell down an embankment killing the plaintiff's husband who was a passenger in the omnibus. There was evidence that the tyres of the defendants' omnibuses, whose life extended to 100,000 miles, were examined internally every 25,000 miles, and that the tyres of this particular omnibus had been examined—though not internally—three days before the accident. Held, (1) if the defendants' omnibus left the road and fell down an embankment, and this without more was proved, then *res ipsa loquitur*; (2) it was no rebuttal for the defendants to show, again without more, that the immediate cause of the omnibus leaving the road was a tyre-burst, since a tyre-burst *per se* was a neutral event; (3) to displace the presumption the defendants had to go further and prove either (a) that the burst itself was due to a specific cause which did not connote negligence on their part but pointed to its absence as more probable, or (b) if they could not point to such specific cause, that they used all reasonable care in and about the management of their tyres. In this case no special need had been proved for examining the tyres internally before 25,000 miles had been run, and as there were no facts which showed that the defendants had not used all reasonable care, the plaintiff's action failed: *BARKWAY v. SOUTH WALES TRANSPORT CO.*, [1949] 1 K. B. 54; [1948] L. J. R. 1921; [1948] 2 All E. R. 460, C. A. (Bucknill, L.J., dissenting; applying *Scott v. London Dock Co.*, *supra*; *Woods v. Duncan*, [1947] C. L. Y. 2083; and *Laurie v. Raglan Building Co.*, [1942] 1 K. B. 152). (See also § 1316.)

2520. Rylands v. Fletcher—natural user of land—flour milling. [Aus.] In *WISE BROS. PTY. v. COMMISSIONER FOR RAILWAYS* (N. S. W.) (1947), 75 C. L. R. 59, the High Court of Australia held that the use of land for the purpose of manufacturing flour was not a non-natural user.

2521. Shipping cases. See SHIPPING AND MARINE INSURANCE.

2522. Sports club—cricket ball hit out of ground. In *STONE v. CHEETHAM CRICKET CLUB* (December 20, 1948), the plaintiff while standing in her garden was struck by a cricket ball hit by a batsman out of the defendants' ground. Oliver, J., dismissed claims for damages in negligence and nuisance for the reason that the hit was altogether exceptional for the ground. [Reported by R. C. Calburn, Esq., Barrister-at-Law.] See also *Times*, December 21, 1948, p. 6.

2523. Statutory duty—breach of—factories. See FACTORIES.

2524. ——— pedestrian crossing. See *ANON.*, § 3346; *L. P. T. B. v. UPSON*, § 3347.

2525. ——— shiploading operations. See *JERRED v. T. RODDAM DENT & SON*, § 2483; *GRANT v. SUN SHIPPING CO.*, § 2482.

2526. Taxi-cab driver—knowledge of locality. [Can.] See *MIZENCHUK v. THOMPSON AND NASH TAXI AND U-DRIVE CO.*, § 3356.

2527. Tramway—driver of. See *CHAPMAN v. KIRKE*, § 3750.

2528. Warehouseman—bonded warehouseman. [Cty. Ct.] In *YOUNG v. SMITH & SON* (1948), 98 L. J. 248; 81 Ll. L. Rep. 274, Judge Ralph Thomas held that a bonded warehouseman was liable, in the absence of express agreement, for the negligence of the person having control of the goods in his warehouse, because there was no trade usage which excluded such liability.

2529. ARTICLES. My neighbour on the road (founded on *Farrugia v. G. W. Ry.*, [1947] C. L. Y. 2030): 92 S. J. 18. Doctor's duty of care: 92 S. J. 138. Accidents to children at school: 205 L. T. 241. New wine in old bottles (founded on *Stansbie v. Troman*, § 2486, and *Metropolitan Police District (Receiver) v. Tatum*,

§ 2715): 92 S. J. 263. A safe system of working: 92 S. J. 277. Contributory negligence of invitees (founded on *Jerred v. Dent*, § 2483; *Grant v. Sun Shipping Co.*, § 2482; and *Lavender v. Diamints*, § 1425); 92 S. J. 415. Liability for dock accidents (founded on *Grant v. Sun Shipping Co.*, § 2482): 206 L. T. 123. Liability to an invitee (founded on *Sutton v. Bootle Corporation*, [1947] C. L. Y. 2075): 206 L. T. 181. Liability to a licensee: 206 L. T. 197. Liability to a trespasser: 206 L. T. 211. The invitor and his independent contractor (founded on *Haseldine v. Daw & Son*, [1941] 2 K. B. 343; *Woodward v. Mayor of Hastings*, [1945] 1 K. B. 174): 98 L. J. 586. *Res ipsa loquitur* (founded on *Barkway v. South Wales Transport Co.*, § 1316): 92 S. J. 607.

2530. BOOK PUBLISHED. Charlesworth, J.—Law of Negligence. 2nd ed. [70s.].

NUISANCE

- 2531. Duty of inspection.** See *COURAGE & Co. v. MEAKERS GARAGES*, § 2475; [Cty. Ct.] *STUBBS v. ANTHONY*, § 2474; [Scot.] *MACDONALD v. REID'S TRUSTEES*, § 2476.
- 2532. Game—owner's liability in respect of excessive number of pheasants.** See *SELIGMAN v. DOCKER*, § 1519.
- 2533. Highway—débris by kerb.** That which does not amount to an obstruction of the highway may nevertheless constitute a nuisance.
The plaintiff, a pedlar, fell over a heap of slates, which did not overtop the kerb of the road, as he was stepping on to the pavement in the dark, to sell some goods from his barrow, and sustained injuries. The defendants, who had been engaged in the repair and demolition of war-damaged property, had left the heap of slates behind. Held, there was no justification for this heap of slates, and, consequently, the defendants were liable for a nuisance and also on the ground of negligence. The plaintiff was not guilty of contributory negligence: *ALMEROOTH v. CHIVERS AND SONS*, 92 S. J. 71; [1948] 1 All E. R. 53, C. A. (distinguishing *Harper v. Haden (G. N.) & Sons*, [1933] Ch. 298).
- 2534. — non-feasance.** See *CHAPPELL v. DAGENHAM CORPORATION*, § 1577; *WILSON v. KINGSTON-ON-THAMES CORPORATION*, § 1578.
- 2535. — obstruction.** See *HIGHWAYS AND BRIDGES*.
- 2536. — obscured by steam from adjoining works.** An occupier of premises adjoining a highway who, for his own profit, floods the highway with an impenetrable cloud of steam is guilty of a nuisance.
The defendant operated a coke oven some fifty yards from the highway from which every hour or so a considerable quantity of steam was emitted. On rare occasions, depending on the weather, the steam formed a dense fog which obscured all vision on the highway for a minute or so. The defendant took no steps to warn traffic that steam was about to be emitted. Held, the defendant was guilty of a nuisance and, in the circumstances, of negligence: *HOLLING v. YORKSHIRE TRACTION CO.*, [1948] 2 All E. R. 662, Oliver, J. (following *Dollman v. Hillman*, [1941] 1 All E. R. 355).
- 2537. — trees.** "It is now well settled that the owner of property on which a nuisance exists, but which has not been caused by him, is not liable for injury caused thereby unless he omits to remedy it within a reasonable time after he became aware or ought to have become aware of the danger". *Per Lord Goddard, C.J.*, in *CAMINER v. NORTHERN AND LONDON INVESTMENT TRUST*, § 2493.
- 2538. Injunction—convenience of the public.** [Eire.] In *BELLEW v. CEMENT*, [1948] I. R. 61, the Supreme Court of Eire granted an interlocutory injunction the effect of which could be calculated adversely to affect building operations throughout Eire, holding that the Court was not entitled to take the public convenience into consideration when dealing with the rights of private parties. Black, J., in a dissenting judgment, examined the authorities on interlocutory injunctions.
- 2539. Negligence—nuisance without—statutory authority acting under statutory powers.** "Even in the case of a private individual, liability for nuisance without negligence or deliberate act is not readily established, apart, of course, from cases of the *Rylands v. Fletcher* (1868), L. R. 3 H. L. 330, type . . . and whatever may be the liability of private individuals, that of statutory authorities

acting under statutory powers has always been held to be more limited": *per* Lord Porter in *LONGHURST v. METROPOLITAN WATER BOARD*, § 1579 (applying *Noble v. Harrison*, [1926] 2 K. B. 332; and *Geddis v. Bann Reservoir Proprietors* (1878), 3 App. Cas. 430).

- 2540. River pollution.** In *BROCKET v. LUTON CORPORATION* (July 30, 1948), Vaisey, J., said that the rights of riparian owners were reasonably well settled; they were conveniently and succinctly stated in *John Young & Co. v. Bankier Distillery Co.*, [1893] A. C. 691, 698. His Lordship granted the plaintiffs a perpetual injunction restraining the defendants from allowing the outfall from their sewage works to pass into the river and to pollute the river adjoining the estate of the plaintiffs, but on the defendants' undertaking to indemnify the plaintiffs, he suspended the operation of the injunction for one year and eleven months to enable the defendants to abate the nuisance. Defendants to pay the costs of the action. [*Reported by C. M. Schmitthoff, Esq., Barrister-at-Law.*] See also [1948] W. N. 352.
- 2541. Rylands v. Fletcher—natural user.** [Aus.] See *WISE BROS. PTY. v. COMMISSIONER FOR RAILWAYS* (N. S. W.), § 2520.
- 2542. Sports club—cricket ball hit out of ground.** See *STONE v. CHEETHAM CRICKET CLUB*, § 2522.
- 2543. Statutory nuisance—house not fit for habitation.** See *SALISBURY CORPORATION v. ROLES*, § 2981.
- 2544. — service of summons under London Building Acts.** See *R. v. ROSE*, § 2101.
- 2545. ARTICLES.** Frozen water-pipes—liability for damage: 206 L. T. 226. Highway—nuisance from smoke (founded on *Holling v. Yorkshire Traction Co.*, § 2536; *Searle v. Wallbank*, [1947] C. L. Y. 96; *Almeroth v. Chivers*, § 2533): 206 L. T. 240.
- 2546. BOOK PUBLISHED.** Steer, W. R. H.—*Law of Smoke Nuisances*. 2nd ed. [3s.].

OPEN SPACES AND RECREATION GROUNDS

- 2547. Commons.** See COMMONS.
- 2548. Public interest in land to be used as open spaces.** (Local Government Act, 1933 (23 & 24 Geo. 5, c. 51), s. 163.) By a deed of gift the donor conveyed several pieces of land to a corporation, subject to certain stipulations. The deed declared *inter alia* that lands edged pink, green and yellow on the plan annexed thereto should be open spaces, and that after the termination of a lease mentioned therein the lands edged pink and yellow should be public open spaces. The corporation, in the exercise of its powers under s. 163 of the Local Government Act, 1933, and with the approval of the Minister, now intended to erect a secondary school on the land edged green. The party to whom the benefit of the restrictive covenant affecting the land edged green had been conveyed consented to its release. The question arose whether any right had been conferred on the public to have maintained or appropriated as an open space the land edged green. Held, the effect of the deed was that all that the corporation did as to the land edged green was to undertake that it should be kept as an open space, as contrasted with a public open space. Consequently, no question of public interest in that land arose: *Re BADOCK'S DEED OF GIFT, BRISTOL CORPORATION v. ATT.-GEN.* (1948), 64 T. L. R. 176; 92 S. J. 232, Jenkins, J.
- 2549. Sayes Court, Greenwich—transfer of powers of maintenance.** See § 2093.

PARLIAMENT

- 2550. Elections.** See ELECTION LAW.
- 2551. House of Commons Members' Fund Act, 1948 (11 & 12 Geo. 6, c. 36).** This Act amends the House of Commons Members' Fund Act, 1939 (2 & 3 Geo. 6, c. 49). By s. 1 the objects of the fund are extended so as to include the making of grants to widowers of past members in certain cases. By s. 2 the amounts of annual payments to past members or to widows or children of past members under Sched. 1 to the 1939 Act are increased. S. 3 permits the variation of maximum payments out of the fund and of deductions from members' salaries by resolution. S. 4 makes provision for cases of special hardship. S. 5 amends the 1939 Act as to the acceptance of property by the trustees.

- 2552. House of Lords—Parliament Bill, 1947.** Agreed statement on Conclusion of Conference of Party Leaders, Feb./April, 1948. Cmd. 7380.
- 2553. Ministers of the Crown—transfer of functions.** See §§ 1482, 1483, 1575, 2172.
- 2554. Statutes.** See STATUTES AND ORDERS.
- 2555. ARTICLE.** The Parliament Bill: 98 L. J. 367.
- 2556. BOOKS PUBLISHED.** Bossom, A. C.—Our House. An Introduction to Parliamentary Procedure [7s. 6d.]. Gordon, S.—Our Parliament. 3rd ed. [8s. 6d.]. Ilbert, C.—Parliament. 3rd ed. [5s.].

PARTNERSHIP

- 2557. Firm name—action by individual.** See ALEXANDER MOUNTAIN & Co. v. RUMERE, § 2882.
- 2558. — registration of business names.** See NAME.
- 2559. — action by one partner against another.** See STERIOS THOMOPULOS v. JOHN MANDILAS, § 2256.
- 2560. Injury to partner—liability of partnership.** [Scot.] In MAIR v. WOOD, 1948 S. C. 83; 1948 S. L. T. 326, the Court of Session held that a firm was not liable at common law for an injury suffered by one partner in the conduct of the partnership affairs and caused by another partner.
- 2561. ARTICLES.** Medical partnerships (founded on National Health Service Act, 1946): 98 L. J. 87. Partnership changes and the effect of Rule 9 (founded on *R. v. City of London Commissioners*, [1942] T. R. 35, and Income Tax Act, 1918, Sched. D, Cases I and II, r. 9); *Taxation*, February 28, 1948, p. 422.
- 2562. BOOK PUBLISHED.** Elman, P.—Partners and the Law [4s.].

PATENTS AND DESIGNS

- 2563. Assignment—contract to assign benefit of letters patent.** See BRITISH CELANESE v. MONCRIEFF, § 1255.
- 2564. Awards to inventors—income tax, excess profits tax and profits tax.** The following information has been issued by the Board of Inland Revenue with regard to the taxation position in the case of awards made under Head I of the terms of reference to the Royal Commission on Awards to Inventors (as to which see the *London Gazette*, May 17, 1946, and *Awards to Inventors*, by J. P. Graham (1946)): 1. Award under Head I in respect of patent owned by an individual—
- (a) who is not carrying on a trading concern:—
 Liable to income tax and surtax at the rates in force at the time of payment (subject to option of having liability reduced to what it would have been if the award had been spread by equal instalments over the years during which the invention was used by the Crown, or over the six years to the date of payment, if that is shorter: s. 41 of the Income Tax Act, 1945).
 Exempt from excess profits tax.
 - (b) who is carrying on a trading concern:—
 Liable to income tax and surtax at the rates in force at the time of payment (subject to option of spreading over not more than six years, as in (a)). Not liable to excess profits tax, unless both conditions (i) and (ii) of 2 below are satisfied.
2. Award under Head I in respect of patent owned by a company—
 Liable to income tax at rate in force at time of payment.
 Liable to profits tax.
 Not liable to excess profits tax unless it is both—
 (i) trading and not investment income, and
 (ii) awarded during an accounting period which began before January 1, 1947.
- An award made after December 31, 1947, will normally, therefore, be exempt from E. P. T.
- 2565. — report of commission.** The Royal Commission on Awards to Inventors (chairman, Lord Justice Cohen) have issued a first report: Cmd. 7586.

- 2566. Breach of confidence—damages.** In *SALTMAN ENGINEERING CO. v. CAMPBELL ENGINEERING CO.* (1948), 65 R. P. C. 203, the Court of Appeal held that where confidential information supplied to the defendants by the plaintiffs to enable the defendants to manufacture machine tools under a contract between the plaintiffs and the defendants was misused by the defendants in that they employed the machine tools in the manufacture of leather punches on their own behalf, the plaintiffs were entitled to damages for breach of confidence.
- 2567. Combination—patent for component parts of.** It is established by authority that a patent for a combination is not a patent which covers the integers or component parts of the combination. Moreover, the authorities seem to suggest that the use of such integers or component parts cannot even constitute a constructive infringement of the patent. See *AMERICAN FLANGE AND MANUFACTURING CO. v. VAN LEER*, § 2568 (applying *Harrison v. Anderston Foundry Co.* (1876), 1 App. Cas. 574; *Clark v. Adie* (1877), 2 App. Cas. 315; and *Dunlop Pneumatic Tyre Co. v. David Moseley & Sons*, [1904] 1 Ch. 612).
- 2568. Crown—use of inventions by.** (Patents and Designs Act, 1907 (7 Edw. 7, c. 29), s. 29 (1), (1A) (as amended to 1946); Defence (Patents, Trade Marks, etc.) Regulations, 1941 (S. R. & O., 1941, No. 1780), reg. 3 (5).) S. 29 (1) of the Patents and Designs Act, 1907 [as amended by the Act of 1919], provides: "A patent shall have to all intents the like effect as against His Majesty the King as it has against a subject: Provided that any Government department, may, by themselves or by such of their agents, contractors, or others as may be authorised in writing by them at any time after the application, make, use or exercise the invention for the services of the Crown on [certain terms] . . .". The authorities of *No-Nail Cases Proprietary v. No-Nail Boxes*, [1944] K. B. 629, and *Foster Wheeler v. Green & Son*, [1946] Ch. 101, justify the following propositions on the interpretation of the section:
1. A licensee from the patentee may be included in the word "others" in the proviso to s. 29;
 2. a patentee is not included;
 3. in considering the section the Court will lean against a construction which deprives the subject of rights without compensation; and
 4. the key to the interpretation of the section as a whole is to be found in the first two lines of the section, and the proviso enables a Government department to do that which would, *prima facie*, be an infringement of a patent.
- All these propositions taken together indicate that the section is dealing with patented and unpatented inventions, and, indeed, the words "after the application" in the section show conclusively that the section applies to a patented invention and to an alleged invention which is the subject of an application for a patent. On the other hand, the word "invention" in Reg. 3 of the Defence (Patents, Trade Marks, etc.) Regulations, 1941, cannot be restricted to a patented invention, because Reg. 3 (4) gives the right to a person to apply for and obtain a patent in respect of an invention notwithstanding that there has been previous publication or use by reason of the compulsory powers given to the Crown and certain Government departments by Reg. 3 (3). Consequently, in a case where the plaintiffs had granted to the defendant licences to manufacture, sell and use sputs and plugs, which were not covered by any British patent, in consideration for royalties to be paid by the defendant to the plaintiffs on each sput and plug manufactured, sold or used, it was held that the defendant was relieved from his obligation to pay the royalties in respect of articles made and sold to the Minister of Supply, by reason of the express provisions of Reg. 3 (5) of the Defence (Patents, Trade Marks, etc.) Regulations, 1941, but that s. 29 of the Patents and Designs Act, 1907, had no application: *AMERICAN FLANGE AND MANUFACTURING CO. v. VAN LEER*, [1948] W. N. 369; [1948] 2 All E. R. 698, Sellers, J. (applying *No-Nail Cases Proprietary v. No-Nail Boxes*, *supra*, and *Foster Wheeler v. Green & Son*, *supra*). (See also § 2567.)
- 2569. Development of Inventions Act, 1948 (11 & 12 Geo. 6, c. 60).** This Act provides for the establishment of a National Research Development Corporation, whose functions are to secure the development or exploitation of certain inventions and to acquire, hold, grant or dispose of rights in such inventions (s. 1). Members of the Corporation are to be appointed by the Board of Trade (see s. 2 and Sched.).

The Corporation is to operate so as to secure as far as possible that the return from its activities will be sufficient to meet the outgoings on revenue account (s. 3). It is required to comply with directions of a general character given by the Board of Trade, and to secure the approval of the Board for certain activities (s. 4). The remaining provisions of the Act relate to borrowing powers, accounts and other financial matters.

2570. Extension of term. In *Re POMIERANIEC'S LETTERS PATENT* (1947), 65 R. P. C. 33, Vaisey, J., granted an extension for seven years of the letters patent in respect of an invention consisting of a mechanical device for transplanting cabbages, etc.

2571. — application by enemy alien. See *LOWENTHAL v. ATT.-GEN.*, § 126.

2572. — expiry of patent before hearing. Vaisey, J., directed that the Gillette Order (see PRACTICE DIRECTION, [1946] W. N. 182) made in the case where an extension of letters of patent was granted after the expiry of a patent for the protection of any infringement committed while the patent was non-existent, should be amended and the following order, to be known as the "New Gillette Order" substituted:

"This Court doth order that new Letters Patent in respect of the matters respectively comprised in the above-mentioned Letters Patent No.[s] . . . for a term of . . . from the expiry of the said Letters Patent respectively be granted to the Applicants:

"Provided that as regards [each of] the said Letters Patent any person not being a licensee thereunder at the date of the expiry thereof who (a) after such date and before the first appearance in the Official Journal (Patents) of the advertisement of the application upon which this order is made has made used exercised or sold the invention the subject of the said patent or has manufactured or installed any apparatus machinery or plant for the purpose of carrying out any process claimed by the complete specification of the said patent and (b) has become qualified as hereinafter mentioned shall be deemed to have so acted with the licence of the patentee under the said patent and shall thereafter be entitled to continue to make use exercise or sell the invention without infringement of the patent to the extent hereinafter specified that is to say: in so far as the complete specification of the patent claims an article and any article so claimed has been manufactured by him during the interim period as hereinbefore defined that particular article may at all times be used or sold: and it is declared that in and for the purposes of the foregoing proviso—(a) a person shall become qualified by applying for entry in the Register of Patents under Rule 96 of the Patent Rules 1939 of his claim to be deemed to have acted with the licence of the patentee as aforesaid, if such application is (i) made within eight weeks from the date of advertisement of this order in the Official Journal (Patents) or (ii) made at a later date and the Court is satisfied in any proceeding in which infringement is alleged that such person acted honestly and reasonably and that having regard to all the circumstances of the case he ought to be excused for the failure to make such application within such eight weeks and (iii) supported by a statutory declaration setting out the nature and extent of the manufacture use exercise or sale upon which his claim is based; (b) the word 'article' shall be deemed to include any substance material apparatus arrangement machine or plant; and (c) 'the interim period' means the period between the date of expiry of the said patent and the date of this order": PRACTICE DIRECTION, July 19, 20, 1948, [1948] W. N. 394.

2573. — form of order—"New Gillette" Order. In *Re BARRS' LETTERS PATENT AND Re POCHIN'S LETTERS PATENT* (1948), 65 R. P. C. 327, Vaisey, J., granted an extension of seven years one month in respect of each patent and having made an order in a form differing from the existing form, directed that the new form should be known as the "New Gillette" order. (*Thompson and Gillette Industries' Patents* (1946), 63 R. P. C. 150, considered.) [For form of the "New Gillette" Order, see § 2572.]

2574. — payment of renewal fee. In *Re ZOTO'S LETTERS PATENT* (1947), 65 R. P. C. 40, the superintending examiner refused to entertain an application for extension until the renewal fee in respect of the last year of the term of the patent had been paid.

- 2575. — royalties to be taken into account.** In *Re MARTIN AND THE DAIMLER COMPANY'S LETTERS PATENT* (1948), 65 R. P. C. 173, Vaisey, J., held that the user during the war years by a licensee who paid no royalties should be taken into account by adding to the royalties actually earned the notional royalties which the licensee would have paid if he had been liable to pay royalties at the rate paid by other licensees, and that some value should be attached to war time user by Government departments (because of testing and advertisement by such user); and granted an extension subject to an undertaking that no application be made for compensation in respect of Government user.
- 2576. — secret patent—inadequate remuneration.** In *Re MOORE AND GALLOP'S LETTERS PATENT* (1948), 65 R. P. C. 220, Vaisey, J., held that, having regard to the fact that the patent had been secret throughout most of its life, the term could not be extended on the ground that the patentee had obtained no remuneration from it, because in such circumstances the patentee could not be said to have been inadequately remunerated.
- 2577. Infringement—invalidity—costs.** In *CLEVELAND GRAPHITE BRONZE CO. v. GLACIER METAL CO.* (1948), 65 R. P. C. 375, Wynn-Parry, J., held, in a case where a counterclaim for revocation succeeded in an action for infringement which failed because the plaintiffs' patent was held invalid on one of several grounds on which it was attacked (the other grounds of attack being unsuccessful), that it was proper to make no order as to costs because the question of invalidity on which the claim for infringement failed would by itself have taken little time to try, and because the circumstance that although there was no infringement in law (the patent being invalid), there would have been infringement had the patent not been invalid, was a circumstance which fell to be taken into consideration.
- 2578. — “substantially as described”.** Infringement is a question of fact. The Court is not precluded from holding that an alleged infringement is “substantially as described with reference to, and illustrated in, the accompanying drawings”, by the absence from the alleged infringement of a feature, shown in the drawings, which is the characteristic feature of one of the earlier claims of the specification. See *RALEIGH CYCLE CO. v. H. MILLER & CO.*, § 2612 (*Submarine Signal Co. v. Henry Hughes & Son* (1932), 49 R. P. C. 149, distinguished).
- 2579. International arrangements — Austria.** Patents, etc. (Austria) (Convention) Order, 1948 (No. 872), declaring Austria to be a Convention country for the purposes of all the provisions of the Patents and Designs Acts, 1907 to 1946.
- 2580. — Germany.** Treatment of German-owned patents. Final Act of Conference, London, July 15 to July 27, 1946. International Accord, London, July 27, 1946. Protocol of amendments, London, July 17, 1947: Cmd. 7359.
- 2581. — — patentee deprived of German nationality.** See *LOWENTHAL v. ATT.-GEN.*, § 126.
- 2582. — — trading with the enemy.** From April 8, 1948, transactions are permitted with persons in Germany in connection with the submission by such persons of applications for the grant of a patent or the registration of a trade mark or design. Transactions in consequence of any such patents granted or trade marks or designs registered are also permitted. Moneys accruing as a result of such transactions are not subject to Board of Trade or Custodian control. The Orders effecting these changes are: Trading with the Enemy (Authorisation) (Germany) (No. 2) Order (No. 725); Trading with the Enemy (Transfer of Negotiable Instruments, etc.) (Germany) Order (No. 726); Trading with the Enemy (Custodian) (Amendment) (Germany) (No. 2) Order (No. 727). German-owned patents, designs and trade marks granted or registered prior to the date of the Orders remain under Board of Trade and Custodian control: Board of Trade Press Notice, Ref. 1913, dated April 10, 1948. See also § 3741.
- 2583. — Japan.** See § 3742.
- 2584. — South Africa.** Patents, etc. (Union of South Africa (Convention) Order, 1948 (No. 104), making South Africa a Convention country for the purposes of all the provisions of the Patents and Designs Acts, 1907 to 1946. The Patents, etc. (Convention Countries) (No. 1) Order, 1938 (No. 767), in so far as it made

South Africa a Convention country for the purposes of some (but not all) of the provisions of the Acts, is revoked.

- 2585. — Spain.** Patents, etc. (Spanish Colonies) (Convention) Order, 1948 (No. 1006), declaring the Spanish Colonies to be Convention countries for the purposes of the Patents and Designs Acts, 1907 to 1946.
- 2586. Licence of patent and assignment of copyright, distinction between.** See *WITHERS v. NETHERSOLE*, § 1677.
- 2587. Practice — discontinuance — co-plaintiffs.** In *MARTIN v. C.B. PROJECTION (ENGINEERING)* (1948) 65 R. P. C. 139, Vaisey, J., held that where, in an action for infringement by three plaintiffs against two defendants, it was desired that the action should continue as between two of the plaintiffs and one of the defendants, the proper order (having regard to the principle that co-plaintiffs cannot sever), was to strike out the plaintiff who was to discontinue and add that plaintiff as a defendant and stay proceedings against the defendants other than the defendant against whom it was desired to continue (*Re Kent Coal Concession*, [1923] W. N. 328, applied).
- 2588. — discretion as to date of specification—appeal.** In *Re FOUNDRY SERVICES' APPLICATION* (1948), 65 R. P. C. 349, Wynn-Parry, J., held that the Patents Appeal Tribunal had no jurisdiction to entertain an appeal from the decision of the Comptroller under Rule 12 of the Patents and Designs Rules, 1939 to 1947, where the Comptroller had not refused to allow the complete specification to proceed, but had merely exercised his discretion as to the date which it was to bear.
- 2589. — originating summons.** In *Re MORTON'S LETTERS PATENT, Re MORTON MACHINE COMPANY'S APPLICATION* (1948), 65 R. P. C. 357, Roxburgh, J., held that where in an application for an extension of a patent the order had provided for the registration of licensees upon application being made by them within eight weeks "or at a later date if he satisfies the court in any other proceeding" as to the omission to apply (the application by licensees being required to be made under r. 96 of the Patents and Designs Rules, 1939), an application to the Court could not be made by originating summons to satisfy the Court as to the reason for the omission to apply under r. 96 within the prescribed eight weeks, because no provision was made by any Act or Rule for such an application being made by originating summons, and therefore the originating summons could not be brought under R. S. C., Order XI, r. 8A, and an order made upon it giving leave to serve outside the jurisdiction had to be set aside.
- 2590. — particulars of objections.** In *WALTON v. HAWTINS* (1948), 65 R. P. C. 69, the Court of Appeal held that particulars should not be ordered under R. S. C., O. 53A, r. 21A, in a case in which under the previous rule particulars would not have been ordered, unless special circumstances are shown. (*American Chain & Cable Co. v. Hall's Barton Ropery Co.* (1938), 55 R. P. C. 287, applied.)
- 2591. — inutility.** In *SYLOW-HANSEN v. JUNE HAIR WATER WAVER AND CURLER Co.*, § 2592, Wynn-Parry, J., held that particulars of the bare allegation that the invention serves no useful purpose should not be ordered unless special circumstances are brought to the notice of the Court, and that the fact that there is a possible overlap between the plea of inutility and the specific plea that the patent was obtained on a false suggestion or representation is not a special circumstance.
- 2592. — true and first inventor.** In *SYLOW-HANSEN v. JUNE HAIR WATER WAVER AND CURLER Co.* (1948), 65 R. P. C. 421, Wynn-Parry, J., refused to order particulars of a plea that the applicant was not the true and first inventor coupled with a statement of the person alleged to be the true and first inventor approving the statement in *Terrell on Patents*, 8th ed., p. 396. (See also § 2591.)
- 2593. — right to begin.** In *PEARSON v. HOLDEN* (1948), 65 R. P. C. 424, Wynn-Parry, J., held that the Court has a complete discretion to determine who shall have the right to begin, that discretion being exercised after consideration of what is the fair mode of trying that which is shown to be the substantial matter in the action.
- 2594. Revocation—amendment of specification.** In *Re MAY AND BAKER'S LETTERS PATENT* (1948), 65 R. P. C. 255, Jenkins, J., held that the patent in suit as

based upon the unamended specification was invalid and that the amendments sought would make the invention claimed by the specification substantially different from the invention claimed by the unamended specification and accordingly were not such as the Court could allow under s. 22. It was ordered (*inter alia*, because the case was a chemical case), that costs should be allowed on the higher scale, and that that order should apply to the scientific evidence and the fees of counsel. (See also § 2601.)

- 2595. — revocation after expiration.** In *SUMMERS & SONS v. COLD METAL PROCESS Co.*, § 2602, Romer, J., held that an order for revocation can be made in respect of letters patent which have already expired, and that proceedings by way of declaration are not the proper way of impeaching the validity of a patent, whether before or after its expiry.
- 2596. Selective invention—prior publication.** In *Re KENDALL AND FRY'S APPLICATION* (1948), 65 R. P. C. 323, the Superintending Examiner held that a prior publication provides an adequate basis for "selection" if it satisfies the following requirements: (a) it is one which clearly and unequivocally contains a broad description of claim covering the whole area within which the selection falls; (b) the broad description or claim it contains is not untrue to any substantial extent; and (c) in the case of the disclosure of substituted compounds in general, it is supported by examples of compounds containing substituents which are representative of the class of substituents to which that present in the selected compound belongs.
- 2597. Specification—alloys.** In *Re MOND NICKEL COMPANY'S APPLICATION* (1948), R. P. C. 123, Wynn-Parry, J., held that the rule that a monopoly may be defined by reference to the result extends only to cases where the result is necessarily referable to the invention disclosed and cannot extend to cases where the result represents or may represent a different invention, and therefore is not applicable to the field of alloys.
- 2598. — amendment.** See *Re MAY AND BAKER'S LETTERS PATENT*, § 2594.
- 2599. — construction—claim to drawings.** A claim to articles "constructed, and arranged substantially as herein described, with reference to and as illustrated in the accompanying drawings", was held to be limited to articles in substance the same as that shown in the drawings, and to be unambiguous. See *RALEIGH CYCLE Co. v. H. MILLER & Co.*, § 2612 (*Tucker v. Wandsworth Electrical Manufacturing Co.* (1925), 42 R. P. C. 531, disapproved; *De Havilland's Application* (1932), 49 R. P. C. 438, discussed).
- 2600. — date.** See *Re FOUNDRY SERVICES' APPLICATION*, § 2588.
- 2601. Subject-matter—chemical patents.** In *Re MAY AND BAKER'S LETTERS PATENT*, § 2594, Jenkins, J., held that if the products of an invention as claimed are useful, then there may be subject-matter if an affirmative answer can be given to the question put by Sir Stafford Cripps in *Sharpe & Dohme v. Boots Pure Drug Co.* (1928), 45 R. P. C. 153, at pp. 161-2.
- 2602. Threats—communication of threats.** (Patents and Designs Act, 1907 (7 Edw. 7, c. 29), s. 36.) In *SUMMERS & SONS v. COLD METAL PROCESS Co.* (1948), 65 R. P. C. 75, Romer, J., held that the words "threatens any person" in s. 36 of the Act do not only mean "communicates a threat to any person" but include also the expression of a threat, by circulars, advertisements or otherwise, in relation to any person; so that a person can be "threatened" for the purposes of s. 36 by documents sent or published to persons other than himself; and also that any person who is threatened with an action for infringement of patent is a "person aggrieved" for the purposes of s. 36 and need not prove actual damage to found a claim for relief. See also § 2595.
- 2603. — interlocutory injunction.** In *SELSDON FOUNTAIN PEN Co. v. MILES MARTIN PEN Co.* (1948), 65 R. P. C. 365, Harman, J., held that an interlocutory injunction should not be granted to restrain threats where an action is pending to determine the validity of the patent in suit and is being duly prosecuted. (*Marks and Young v. Scott's "Keepdrys" Dartboard Co.* (1940), 57 R. P. C. 351, applied; *Stringer v. Platnauer* (1932), 50 R. P. C. 61, considered.)

- 2604. Validity — ambiguity — claim limited by result.** (Patents and Designs Acts, 1907–1946, s. 25 (2) (i).) *Semble*, a patent claim limited by reference to result will be invalid if the attainment of that result can only be judged by reference to a standard which is unknown at the date of the patent, and is not adequately explained in the specification.

Where a patent was based upon the discovery that previously accepted standards of steadiness of light were higher than necessary to cycle lighting, but the standard required for cycle lighting was not explained in the specification, it was held that if the claim was limited to cases where a light was obtained that was steady for purposes of cycle lighting, that limitation was ambiguous and the claim was consequently invalid. See *RALEIGH CYCLE CO. v. H. MILLER & Co.*, § 2612.

- 2605. — certificate that validity has come into question.** (Patents and Designs Acts, 1907–46, s. 35.) A certificate that the validity of a patent had come into question was granted under s. 35 of the Patents and Designs Acts in a case where there had been no pleadings in which the validity of the patent was challenged: *HAMILTON-GREY v. BLUFF* (1947), 64 R. P. C. 141, Pritchard, J.

- 2606. — dismissal of petition.** In *Re VOLPERTAS' LETTERS PATENT* (1948), 65 R. P. C. 355, the parties having agreed a settlement after a hearing extending over sixteen days Wynn-Parry, J., made an order dismissing the petition with no order as to costs to include a certificate that the validity of the patent came in question.

- 2607. — withdrawal of defence.** In *MARTIN v. C. B. PROJECTION (ENGINEERING)* (1948), 65 R. P. C. 361, Jenkins, J., refused to grant a certificate of validity in a case where the defendants, having withdrawn their defence upon a settlement of the action, were not represented at the hearing. (*Gillette Industries v. Bernstein*, [1942] Ch. 45; 58 R. P. C. 271, considered.)

- 2608. — false representation.** (Patents and Designs Acts, 1907–1946, s. 25 (2) (k).) In construing a promise of a result in a patent specification, it is proper to bear in mind the broad purpose of the invention and the utility of the invention in the hands of the actual users.

In a patent specification relating to cycle lighting, a promise of a “steady light” was held to mean a light that appeared steady to a cyclist, and not a light of the standard of steadiness considered necessary by technicians at the date of the patent. See *RALEIGH CYCLE CO. v. H. MILLER & Co.*, § 2612.

- 2609. — indeterminate claim.** (Patents and Designs Acts, 1907–46, ss. 3 (2), 25.) “The fundamental rule of patent law has always been that the monopoly claimed must not go beyond the consideration”. The consideration which the patentee gives is the disclosure which he makes, and his monopoly cannot extend beyond what is necessary to protect what he discloses. This “fundamental rule of patent law”, because it is a fundamental rule, applies equally to cases under s. 3 (2) as it does to cases under s. 25 or any other section of the Act: *Re SHELL DEVELOPMENT Co.'s APPLICATION* (1947), 64 R. P. C. 151, Wynn-Parry, J. (citing and following *Mullard Radio Valve Co. v. Philco Radio and Television Corporation of Great Britain* (1936), 53 R. P. C. 323, at 348).

- 2610. — insufficiency of description.** (Patents and Designs Acts, 1907–1946, s. 25 (2) (h).) It is not necessary (though it may for many purposes be highly desirable) for a patentee to include in his specification a statement of his inventive step. See *RALEIGH CYCLE CO. v. H. MILLER & Co.*, § 2612.

- 2611. — obviousness.** (Patents and Designs Acts, 1907–1946, s. 25 (2) (f).) There may be good subject-matter for the grant of a patent where the only inventive step made by the patentee consists of a discovery, and the means by which the discovery may be carried into effect are obvious in themselves. See *RALEIGH CYCLE CO. v. H. MILLER & Co.*, § 2612.

- 2612. — undue width of claim.** A patent will be bad on the ground that the claim is too wide, if the patentee claims articles that do not embody the inventive step made by him, and *semble* also if he claims articles that do not fulfil a promise made by him in his specification or that are not useful.

A patentee of a patent for cycle generators had discovered that electric bicycle lamps using alternating current would give a light that appeared steady to the

cyclist although the frequency of the current was too low to give a light that was steady for normal purposes. This discovery was inventive, but the mechanical means employed to incorporate this discovery in a practical generator for a bicycle lamp were in themselves obvious. The patentee promised in his specification that generators made according to his invention would give a steady light. His claim included generators which would neither function usefully upon a cycle nor give current of high enough frequency to give a steady light for a cyclist, and also generators giving such a high frequency that it was obvious at the date of his patent that the light they gave would be steady for all purposes. Held, the claim was too wide and so invalid. *RALEIGH CYCLE CO. v. H. MILLER & CO.*, [1948] W. N. 78; [1948] 1 All E. R. 308, H. L. (Lords Thankerton, Morton and MacDermott; Lords Normand and Simonds dissenting, reversing on several points, C. A. (1946), 63 R. P. C. 113). (See also §§ 2578, 2599, 2604, 2608, 2610, 2611.)

- 2613. Vesting order—application for letters patent.** (Trustee Act, 1925 (15 Geo. 5, c. 19), s. 51.) In *Re DEFENSE SUPPLIES CORPORATION'S APPLICATION* (1948), 65 R. P. C. 172, Jenkins, J., made a vesting order, under s. 51 of the Trustee Act, 1925, with respect to the beneficial interest in an application for letters patent.

PAWN AND PAWNBROKERS

- 2614. Pledge of scrip by agent.** [Aus.] See *TOBIN v. BROADBENT*, § 22.

PEERAGES AND DIGNITIES

- 2615. Privilege of peerage in criminal proceedings, abolition of.** See §§ 714, 715.

PENSIONS AND SUPERANNUATION

- 2616. Airways corporations staff.** See § 227.

- 2617. Approved school officers.** See §§ 1703, 2656.

- 2618. Approved societies staff.** National Insurance and Civil Service (Superannuation) (Schemes and Funds) Rules, 1948 (No. 1407), made under the Superannuation (Miscellaneous Provisions) Act, 1948 (11 & 12 Geo. 6, c. 33), s. 3; came into operation on July 2, 1948; make provision with respect to pension schemes and funds relating to certain former employees of approved societies and other bodies, who have become civil servants. [2d.] See also §§ 2337, 2424, 2656.

National Insurance and Civil Service (Superannuation) Rules, 1948 (No. 2434), made under the Superannuation (Miscellaneous Provisions) Act, 1948, s. 3; came into operation on November 16, 1948; make provision with respect to pensions payable to or in respect of certain former employees of approved societies, bodies administering the affairs of such societies and bodies administering special schemes under the Unemployment Insurance Act, 1935 (25 & 26 Geo. 5, c. 8), s. 73. [7d.]

- 2619. Auditors of superannuation funds.** Superannuation and other Trust Funds (Amendment of Interpretation) Regulations, 1948 (No. 2324), made under the Superannuation and Other Trust Funds (Validation) Act, 1927 (17 & 18 Geo. 5, c. 41), s. 8; amend the Superannuation and Other Trust Funds (Interpretation) Regulations, 1928 (No. 175), with respect to the qualifications of "auditor" for the purposes of the above Act.

- 2620. Civil service—public offices—unestablished service in.** Superannuation (Public Offices) Rules, 1948 (No. 997), made under the Superannuation Act, 1909 (9 Edw. 7, c. 10), s. 7 (1), enable unestablished service in one public office to be reckonable in part for retirement pension, subject to certain conditions, when the officer transfers to established service in a second public office.

Superannuation (Public Offices) (No. 2) Rules, 1948 (No. 2571), made under the Superannuation Act, 1909 (9 Edw. 7, c. 10), s. 7 (1), enable unestablished service in one public office to be reckoned in part for the purpose of a retirement pension when the officer concerned has transferred to established service in a second public office. See also § 2656.

- 2621. — reduction of allowances.** National Insurance (Modification of the Superannuation Acts) Regulations, 1948 (No. 498), made under the National Insurance Act, 1946 (9 & 10 Geo. 6, c. 67), s. 69 (4), modifying the Superannuation Acts by providing, subject to specified conditions and limitations, for the reduction

of superannuation allowances payable to established civil servants (other than those exempted under the regulations) after the pensioner has reached pensionable age, as defined in s. 78 (1) of the Act of 1946. There is provision for a maximum reduction of £67 15s. a year. The new regulations came into force on March 31, 1948.

2622. — **transfer from local government.** See §§ 2644, 2656.

2623. — **war service.** Superannuation (War Service) Regulations, 1948 (No. 1255), made under the Superannuation Act, 1946 (9 & 10 Geo. 6, c. 60), s. 1 (2). These regulations provide that where a person subsequently entering the Civil Service has received any non-effective pay, or extra remuneration in lieu of pension in respect of his war service, he must refund that amount in order that his period of war service may be reckonable for purposes of Civil Service pension or gratuity. See also § 2656.

2624. — **war-time interruption of service.** Superannuation (War-time Interruption of Service) Regulations, 1948 (No. 1879), made under the Superannuation Act, 1946 (9 & 10 Geo. 6, c. 60), s. 4 (1) (a)—(e), came into operation on August 31, 1948; authorise the making of superannuation awards for which there would otherwise be no authority owing to interruption or termination of service by war circumstances.

2625. **Coal industry.** See § 2235.

2626. **Contributory pensions.** See §§ 2348, 2349, 2350, 2351.

2627. **Convicted persons—forfeiture and restoration of pensions.** See s. 70 of the Criminal Justice Act, 1948 (11 & 12 Geo. 6, c. 58), § 714.

2628. **Damages—abatement of pensions on award of damages.** In replying to a question in the House, the Minister of Pensions has stated that, as from July 5, 1948, the new practice with regard to disablement pensions, allowances and grants payable to members of the forces, their widows, and dependants, where damages have been recovered by them in the civil courts, will be as follows: (a) In the case of the disablement pensioner the pension will be abated by an amount representing the annuity value of 25 per cent. of the damages; (b) in the case of the war widow the present practice of disregarding 10 per cent. or £50 of the damages, whichever is the greater, will be continued, but in taking account of the balance, the pension will not be reduced below 30s. a week where the widow is over forty or is incapable of self-support or has children, or 20s. in any other case; (c) in the case of children, £150 of the damages in respect of each child will still be disregarded, but the minimum allowance for the first child will be 7s. 6d. a week instead of the present 5s. (See also § 816.)

2629. — **plaintiff under moral duty to repay pension.** See *DENNIS v. L. P. T. B.*, § 820.

2630. **Electricity pension scheme.** See § 1113.

2631. **Fire service.** See §§ 1445, 1446, 2672.

2632. **Foreign service—Senior Inspector of Diplomatic Missions.** Foreign Service Order, 1948 (No. 493), made under the Foreign Service Act, 1943 (6 & 7 Geo. 6, c. 35), s. 6 (2), makes provision for assessment of the pension of a Senior Inspector of Diplomatic Missions on the same basis as of an envoy extraordinary and minister plenipotentiary.

2633. **Governors of dominions.** Pensions (Governors of Dominions, etc.) (No. 1) Order, 1948 (No. 1406), made under the Pensions (Governors of Dominions, etc.) Act, 1911 (1 & 2 Geo. 5, c. 24), s. 2 (1), specifying certain offices as Governorships of Class I for the purposes of that Act.

Pensions (Governors of Dominions, etc.) (No. 2) Order, 1948 (No. 1212), made under the Pensions (Governors of Dominions, etc.) Act, 1911, s. 2 (1), reclassifying the offices the holders of which are entitled to pensions under the Act.

2634. **Greenwich Hospital.** Greenwich Hospital (Dependants) Pensions Order, 1948 (No. 2791), made under the Greenwich Hospital Act, 1883 (46 & 47 Vict. c. 32), s. 2, as amended by the Greenwich Hospital Act, 1947 (10 & 11 Geo. 6, c. 5), s. 2; came into operation on December 24, 1948.

- 2635. Increase of pensions—power to extend grants.** Increase of Pensions (General) Regulations, 1948 (No. 2701), made under the Pensions (Increase) Act, 1944 (7 & 8 Geo. 6, c. 21), s. 3 (5); gives power to extend grants for not more than twelve months so as to facilitate the work of revision of grants
- 2636. Indian service.** See §§ 318, 319, 320, 2656.
- 2637. Judges in India and Burma.** See § 320.
- 2638. Local government—determination of questions.** See *WILKINSON v. BARKING CORPORATION*, § 2067.
- 2639. — England and Scotland regulations.** See § 2066.
- 2640. — national insurance modifications.** See § 2425.
- 2641. — national service.** See § 2656.
- 2642. — officer holding two separate employments.** See *JOBBINS v. MIDDLESEX COUNTY COUNCIL*, § 2070.
- 2643. — policy schemes interchange.** Superannuation (Policy and Local Government Schemes) Interchange Rules, 1948 (No. 1446), made under the Superannuation (Miscellaneous Provisions) Act, 1948 (11 & 12 Geo. 6, c. 33), s. 2; came into operation on July 5, 1948; provide for the preservation of the superannuation rights of persons leaving superannuable service under a local authority and entering employment in which they become participants in a scheme providing benefits by means of insurance policies, and *vice versa*.
- 2644. — transfer to civil service.** Local Government and Civil Service (Superannuation) Rules, 1947 (No. 2809), made under the Superannuation Act, 1946 (9 & 10 Geo. 6, c. 60), Sched. II, para. 8 (1), amending the Local Government and Civil Service (Superannuation) Rules, 1936 (No. 651), in consequence of the amendment of the Superannuation Act, 1935 (25 & 26 Geo. 5, c. 23), s. 9, by the Act of 1946, so as to enable a local government officer who transferred to the civil service to retain his eligibility for a local government pension if he transferred either to any other "public office" or to "approved employment". See also § 2656.
- 2645. — transfer under Children Act, 1948.** See § 1707.
- 2646. — ultra vires.** [*N.Z.*] See *WAIMARI COUNTY v. RUTHERFORD*, § 672.
- 2647. National health service pension scheme.** See §§ 2320, 2321.
- 2648. National insurance.** See NATIONAL INSURANCE.
- 2649. Old age pensions.** See NATIONAL INSURANCE.
- 2650. Police.** See §§ 2717, 2718, 2719, 2720.
- 2651. — widows' special pension.** See *GORDON v. BARNSLEY POLICE AUTHORITY*, § 2721.
- 2652. Probation officers.** Probation Officers (Superannuation) Order, 1948 (No. 1220) [*E*], made under the Probation Officers (Superannuation) Act, 1947 (10 & 11 Geo. 6, c. 38), s. 1, as extended. The effect of this order is to bring probation officers and their clerks, including certain part-time officers, within local government superannuation schemes. The existing superannuation arrangements for full-time probation officers set up under the Probation Officers' Superannuation Rules, 1926 (No. 1354) are superseded and provision is made for the winding-up of the fund established under those rules. The new order came into operation on July 1, 1948. [*5d.*]
- As to the pension rights of probation officers who are seconded to other service, see s. 13 of the Superannuation (Miscellaneous Provisions) Act, 1948, § 2656.
- 2653. — increase of pensions.** Pensions (Increase) Act (Extension) Order, 1948 (No. 1343), made under the Pensions (Increase) Act, 1944 (7 & 8 Geo. 6, c. 21), s. 4, as amended; came into operation on July 1, 1948: applies that Act to the pensions payable to probation officers in consequence of the Probation Officers (Superannuation) Order, 1948 (No. 1220).
- 2654. Retirement pensions.** See NATIONAL INSURANCE.

2655. Superannuation fund—winding up and distribution among members. See JAMESON v. TYPOGRAPHICAL ASSOCIATION, § 436.

2656. Superannuation (Miscellaneous Provisions) Act, 1948 (11 & 12 Geo. 6, c. 33). This Act makes various amendments to the law relating to pensions and deals in particular with persons who are affected by compulsory national service, with the staffs of approved societies and other bodies now transferred to the public service, with persons having performed service in India, and with probation officers and others.

S. 1 authorises the making of rules to provide that national service which interrupts the careers of established and unestablished civil servants and persons within the scope of local government pensions legislation or of teachers' pensions legislation shall count for pension purposes in their respective public services. Trustees of certain superannuation schemes outside the public services are also given power to reckon for pension purposes under their schemes the national service of members of those schemes in similar circumstances. For the purpose of this clause, work or training by conscientious objectors in pursuance of an order by a tribunal is reckoned as national service. S. 2 authorises the making of rules for determining the pensions of persons transferred between the civil service, service within the scope of local government pensions legislation, and service within the scope of teachers' pensions legislation or between any of these employments and other kinds of pensionable employment. S. 3 empowers the Minister of National Insurance to make rules with respect to the pensions payable to staff who have been employed by an approved society or any similar employment. S. 4 enables the Treasury to determine how far service given in certain previous public employments (outside the scope of s. 2) by certain special classes of persons who subsequently become civil servants shall be counted for Civil Service pension purposes. S. 5 relates to pensions in respect of service in India. S. 6 makes special provision with respect to local government superannuation schemes during "periods of emergency", as defined therein. S. 7 gives power to extend the Local Government Superannuation Act, 1937, and the corresponding Scottish Act, to the employees of associations of local authorities and to the employees of associations of local authority officers. Ss. 8-12 make various minor amendments of the Teachers Superannuation Acts relating to England and Wales. S. 13 safeguards the superannuation position of certain probation officers seconded to other services, and s. 14 makes it possible to apply similar arrangements to those envisaged under s. 2 to certain officers of approved schools.

2657. Teachers. See §§ 1080, 1082, 2426, 2656.

2658. Transport workers. See § 3759.

2659. War pensions—civil servants. See § 2623.

2660. — extension of period between medical re-survey boards. The Minister of Pensions stated in the House of Commons on February 17, 1948, that in future the award of a pension to a war disabled person following a re-survey board would normally be for a period of two years, and that that would apply to pensioners of the 1914 war as well as of the 1939 war. He further stated that, as from the first pay day in March, 1948, a disablement pensioner or widow of the 1914 war who had received an allowance for an invalid child up to the age of twenty-one, would continue to receive an allowance or have it resumed on the same conditions as in similar cases of the recent war.

2661. — mercantile marine. War Pensions (Mercantile Marine) (Amendment) Scheme, 1948 (No. 203), made under the Pensions (Navy, Army, Air Force and Mercantile Marine) Act, 1939 (2 & 3 Geo. 6, c. 83), ss. 3, 4, 7, as amended, incorporating certain improvements already made in the scheme applicable to the Royal Navy. The improvements relate to (1) allowances payable in respect of a wife; (2) allowances for wear and tear of clothing caused by the use of an artificial limb; (3) pension rates for orphaned children still incapacitated at eighteen; and (4) awards in respect of disablement or death where the claim is made or death occurs more than seven years after the injury. Provision is also made for higher assessments of disablement in the case of certain specified injuries and increased gratuities in certain cases [2d.].

2662. — Minister of Pensions—how far bound by War Office statement. See ROBERTSON v. MINISTER OF PENSIONS, § 2676.

- 2663.** — **naval auxiliary personnel.** War Pensions (Naval Auxiliary Personnel) (Amendment) Scheme, 1948 (No. 204), made under the Pensions (Navy, Army, Air Force and Mercantile Marine) Act, 1939 (2 & 3 Geo. 6, c. 83), ss. 5 (1), 7, as amended, incorporating certain improvements already made in the scheme applicable to the Royal Navy. These improvements relate to (1) allowances payable in respect of a wife; (2) allowances for wear and tear of clothing caused by the use of an artificial limb; (3) pension rates for orphaned children still incapacitated at eighteen; and (4) awards in respect of disablement or death where the claim is made or death occurs more than seven years after the injury.
- 2664.** — **pensions appeal tribunals—appeal to High Court—jurisdiction—assessment and entitlement.** (Pensions Appeal Tribunals Act, 1943 (6 & 7 Geo. 6, c. 39), ss. 5 (2), 6 (3).) The jurisdiction which the High Court exercises in pensions appeals arises solely under s. 6 (2) of the Pensions Appeal Tribunals Act, 1943, and it is plain that the only appeals that the High Court can deal with are those which arise as to entitlement under ss. 1, 2, 3 and 4 of the Act. The High Court has no jurisdiction in respect of appeals as to assessment under s. 5 of the Act. S. 6 (3) expressly says that, subject to the High Court's jurisdiction under the first four sections, the decision of a pensions appeal tribunal shall be final and conclusive: *MORRIS v. MINISTER OF PENSIONS*, [1948] 1 All E. R. 748, Denning, J.
- 2665.** — **appellants in person.** In *LEE v. MINISTER OF PENSIONS* (May 31, 1948), Denning, J., laid down that, in replying to an application by a claimant for leave to appeal, the secretary of the appeal tribunal whose decision it was sought to challenge must not merely, having set out the relevant statutory provisions and rules, tell the claimant to state the point of law in respect of which it was contended that the decision of the tribunal was erroneous. The request for leave to appeal should be placed before the chairman of the tribunal who should give what assistance he thought proper. He should say so if he thought that no point of law was involved, but should add that if the claimant was dissatisfied with that view application for leave to appeal could be made to the High Court. [*Reported by R. C. Calburn, Esq., Barrister-at-Law.*] See also [1948] W. N. 234; 92 S. J. 324.
- 2666.** — **appellants too infirm to travel.** In a written answer the Attorney-General has stated that appellants who are too infirm to travel to pensions appeal tribunals can be visited in their own homes.
- 2667.** — **assessment appeals.** The Lord Chancellor's Department has issued a fresh leaflet, "Notes for the Guidance of Appellants" (July, 1948), dealing with appeals under the Pensions Appeal Tribunals Act, 1943. [2d.]
- 2668.** — **finding as to condition subsequent to rejection of claim.** [Scot.] In *CAMPBELL v. MINISTER OF PENSIONS*, 1947 S. C. 584; 1948 S. L. T. 50, the Court of Session held that the decision of the tribunal was incompetent in that it included a finding that aggravation of the disability complained of had passed away at a specified date subsequent to the Minister's rejection of the appellant's claim. The tribunal was bound to confine its decision to determining the issue whether the appellant's claim to a pension was rightly rejected by the Minister.
- 2669.** — — — **nominated judge.** See § 2848.
- 2670.** — — — **power to determine duration of aggravation of pre-war disability.** See *ANSELL v. MINISTER OF PENSIONS*, § 2681.
- 2671.** — — — **stare decisis.** "I desire to state . . . that the doctrine of *stare decisis* does not apply in its full rigour to [pensions cases]. The decisions of the Superior Courts (the High Court in England, the Court of Session in Scotland, and the Supreme Court in Northern Ireland) are binding on the pensions appeals tribunals. They are not absolutely binding on the Superior Court itself or on the Courts of co-ordinate jurisdiction, but will be followed in the absence of strong reason to the contrary . . . I lay down for myself . . . the rule that, where the Court of Session have felt compelled to depart from a previous decision of this Court, that is a strong reason for my reconsidering the matter: and if on reconsideration I am left in doubt of the correctness of my own decision, then

I shall be prepared to follow the decision of the Court of Session, at any rate in those cases when it is in favour of the man because he should be given the benefit of the doubt. In this respect I follow the general rule that where there are conflicting decisions of Courts of co-ordinate jurisdiction, the later decision is to be preferred if it is reached after full consideration of the earlier decision": *Per Denning, J., in MINISTER OF PENSIONS v. HIGHAM, § 2674.*

2672. — Personal Injuries (Civilians) Scheme. Personal Injuries (Civilians) (Amendment) Scheme, 1948 (No. 202), made under the Personal Injuries (Emergency Provisions) Act, 1939 (2 & 3 Geo. 6, c. 82), ss. 1, 2, amends the Personal Injuries (Civilians) Scheme, 1947 (No. 183), incorporating the improvements announced by the Minister of Pensions in the House of Commons on March 25 and April 1, 1947, which are as follows: (1) The "period of emergency" is extended for the purposes of war service injuries sustained by members of the National Fire Service; (2) an award may be made in respect of death where it occurs more than seven years after the date of the qualifying injury subject to certain conditions; and (3) provision is made for higher assessments of disablement in the case of certain specified injuries.

2673. — War Pensions (Special Review) Tribunal. Claimants to war pensions whose claims were dismissed before August 1, 1946, have the right to have their cases reviewed by the War Pensions (Special Review) Tribunal (see [1947] C. L. Y. 2226). Denning, J., has outlined a new procedure whereby there will be an ultimate right of recourse to the Court, and under which there will, in effect be, by leave, an appeal to the Court from a decision of a special review tribunal. See *Times*, April 28, 1948, p. 2.

2674. — war service injury—abnormal conditions. (Pensions (Mercantile Marine) Act, 1942 (5 & 6 Geo. 6, c. 26), s. 1 (2) (d); War Pensions (Naval Auxiliary Personnel) Scheme, 1944 (S. R. & O., 1944, No. 499), Sched. I (2) (d).) The definition of "war risk injury" in Sched. I (2) to the War Pensions (Naval Auxiliary Personnel) Scheme, 1944, provides that a war risk injury is a physical injury sustained at sea or in any other tidal water or in the waters of any harbour and attributable to, *inter alia*, "(d) the existence on board ship of any other conditions arising out of [the war] which would be abnormal in time of peace". Para. (d) is not to be restricted by the application of the *ejusdem generis* rule to physical conditions on board ship, but in order to constitute a "war risk injury" the injury must be due to war-time conditions on board ship, e.g., due to the necessity of continuously working long hours owing to the necessity of keeping in convoy or to the exposure to enemy attack, and not due to other conditions which might happen equally in time of peace, e.g., due to climatic or weather conditions. Moreover, the scope of "war risk injuries" is subject to the following limitations:

- (1) the injury must be sustained "at sea or in any other tidal water or in the waters of any harbour", e.g., a coastguard could not claim a pension under the scheme;
- (2) the abnormal conditions must exist "on board ship": the fact that the conditions are abnormal for the man personally is not sufficient;
- (3) although the conditions on board ship may arise out of the war, they must also be "abnormal in time of peace", e.g., the presence of a ship in dock for repairs may be due to war damage, but if the conditions under which she is being repaired are in no way abnormal, accidents happening to men while she is in dock are not "war risk injuries" unless the war damage plays some intermediate part in them:

MINISTER OF PENSIONS v. HIGHAM, [1948] 2 K. B. 153; [1948] L. J. R. 1438, Denning, J. (following *Minister of Pensions v. Ballantyne*, 1948 S. C. 176; explaining *Staynings v. Minister of Pensions*, [1947] C. L. Y. 2228). (See also § 2671.)

2675. — — — — —. [Scot.] In *M. O. P. v. BALLANTYNE*, 1948 S. C. 176; 1948 S. L. T. 242, the Court of Session held that if the necessity to work, not once or twice but continuously, longer than is normal in peace-time is truly occasioned by war-time conditions, and if it results in injury of the nature of organic disease, the requisites of a war risk injury are fulfilled. (Dictum in *Staynings v. M. O. P.*, [1947] C. L. Y. 2228, dissented from.)

2676. — — — attributability—Minister of Pensions bound by War Office statement.

If a Government department in its dealings with a subject takes it on itself to assume authority on a matter with which he is concerned, he is entitled to rely on its having the authority which it assumes. He does not know, and cannot be expected to know, the limits of its authority. The department itself is clearly bound, and as it is thus an agent for the Crown it binds the Crown also; and, as the Crown is bound, so are the other departments, for they also are but agents of the Crown. In the case of a claim for a pension in respect of a war service injury the function of the Minister of Pensions is to administer the Royal Warrant issued by the Crown and he must so administer it as to honour all assurances given by or on behalf of the Crown.

In 1927, the appellant sustained an injury in a train accident. He had a stiff neck and some neuritis, but this cleared up by 1928. He had a second accident in December, 1939, while on military service. On this occasion, he received a severe blow on the chin leaving some stiffness which was later diagnosed as prolapsed intervertebral discs, and he was subsequently found unfit for military service. When the appellant claimed a pension the question arose whether his disability was due to the first injury or whether it was attributable to or aggravated by the second injury or, in other words, war service. After he had been examined by a medical board the appellant was informed by letter from the War Office that his injury had been accepted as "attributable to military service". On the faith of that assurance the appellant did not take any steps to get an independent medical opinion. Subsequently, a pensions appeal tribunal affirmed the decision of the Minister of Pensions that the appellant's disability was not attributable to war service. Held, on appeal, the War Office letter was binding on the Minister of Pensions, and he was bound to accept the disability as "attributable to military service" for the purposes of the Warrant of 1940: *ROBERTSON v. MINISTER OF PENSIONS*, [1948] W. N. 396; [1949] L. J. R. 323; 64 T. L. R. 526, Denning, J. (applying *Central London Property Trust v. High Trees House*, [1947] C. L. Y. 1705; *Bob Guinness v. Salomonsen*, § 1524, and *Reilly v. R.*, [1934] A. C. 176). (See also §§ 573, 601.)

2677. — — — burden of proof — "disablement". (Royal Warrant Concerning Retired Pay, Pensions, etc., 1943 (Cmd. No. 6489), Art. 1 (4).)

There is an onus on a claimant to show a disablement as defined in Art. 1 (4) of the Royal Warrant Concerning Retired Pay, Pensions, etc., 1943. Once he or she shows a disablement, there is no onus on him or her to prove the fulfilment of the conditions in regard to entitlement set out in Art. 4 (1), and the benefit of any reasonable doubt has to be given to him or her. That is provided by Art. 4 (2), but Art. 4 (2) does not come into operation unless he or she first shows a disablement.

A claimant alleged four years after her discharge from the Army that when she was in the Army she had had an injury to her spine and had been admitted to hospital. The records failed to bear out her story. Held, she had failed to discharge the onus of proving a disablement and her claim to a pension, consequently, failed: *ROYSTON v. MINISTER OF PENSIONS*, [1948] W. N. 188; [1948] L. J. R. 1431; [1948] 1 All E. R. 778, Denning, J.

2678. — — — "disablement". (Royal Warrant Concerning Retired Pay, Pensions, etc., 1946 (Cmd. 6489), art. 1 (4).)

Under the Royal Warrant Concerning Retired Pay, Pensions, etc., 1946, in order that there should be an award of entitlement, there must be a "disablement". This existence of "disablement" is a necessary condition of an award of entitlement, but "disablement" in the warrant does not mean disablement in the ordinary sense of "incapacity". It is defined in art. 1 (4) of the warrant as meaning: "physical or mental injury or damage, or loss of physical or mental capacity". Thus, if there is a physical injury or damage, even though it does not cause any loss of capacity at the moment, it is, nevertheless, a "disablement" within the meaning of the warrant. In such a case, an award of entitlement may be granted which will not give rise to the actual grant of a pension unless and until incapacity appears.

When the applicant left the army "arthritis in both ankles" was present and was attributable to war service. There was at present no disability as a result of the arthritis. Held, the applicant should have an award of entitlement, but

the present assessment should be nil: *HARRIS v. MINISTER OF PENSIONS*, [1948] 1 K. B. 422; [1948] L. J. R. 463, Denning, J.

- 2679.** — — — **burden of proof.** See *ROYSTON v. MINISTER OF PENSIONS*, § 2677.
- 2680.** — — — **leukæmia.** (Royal Warrant, 1946 (Cmd. 6489), Pt. II, art. 4 (2).) Leukæmia must be regarded in the same way as cancer. Cancer, as a rule, is not attributable to or aggravated by war service and claims for a pension in such cases have been sustained only where the man has been exposed to radio-active substances or where there has been aggravation by delay in diagnosis or treatment due to war service: *KINKAID v. MINISTER OF PENSIONS*, *STYLES v. MINISTER OF PENSIONS*, [1948] W. N. 204; [1948] L. J. R. 1581; 92 S. J. 426, Denning, J. (applying *Miller v. Minister of Pensions*, [1947] C. L. Y. 2237; *Bourne v. Minister of Pensions*, [1946] K. B. 345; *Finnerty v. Minister of Pensions* (1947), unreported; *Jones v. Minister of Pensions* (1946), 115 L. J. K. B. 211; and *Gillibrand v. Minister of Pensions*, [1947] C. L. Y. 2190).
- 2681.** — — — **pre-war disability—aggravation.** In the absence of special circumstances, it is right and proper that a pensions appeal tribunal should consider not only the question whether aggravation of a pre-war disability by war service remained at the date of discharge, but also the question whether it remained aggravated at the date of hearing, and, if it had passed away, at what date it passed away. There is no legal objection to that course so long as both parties have notice of the case they have to meet: *ANSELL v. MINISTER OF PENSIONS*, [1948] 2 All E. R. 789, Denning, J. (distinguishing *Shipp v. Minister of Pensions*, [1946] K. B. 386).
- 2682.** **ARTICLES.** Superannuation and reputation (founded on *Wilkinson v. Barking Corpn.*, [1947] C. L. Y. 1796, and see § 2067): 112 J. P. J. 384. Service pensions—Pensions Appeal Tribunals Bill: 206 L. T. 351.

PERPETUITIES

- 2683.** **Glass gift—qualification of composition of class.** The principle laid down in *Pearks v. Moseley* (1880), 5 App. Cas. 714, clearly decides that, where there is a gift to a class, that gift is bad as infringing the rule against perpetuities unless the members of the class must necessarily be ascertained within the permitted period.
- By a settlement the settlor provided: "the trustees shall hold . . . 'the trust fund' in trust for all the children of the settlor who being sons shall attain the age of [21] years . . . provided always that if any son of the settlor shall die before attaining the age of [21] years leaving surviving him a child or children who shall attain the age of 21 years such last mentioned child shall take . . . the share to which his her or their parent would have become entitled had such parent attained the age of [21] years". Held, the proviso did not introduce a new gift to a different class. It introduced new members into the class previously described and qualified the composition of that class. Consequently, on the principle of *Pearks v. Moseley*, *supra*, the whole gift was bad as infringing the rule against perpetuities. The income trusts which were settled on the assumption that the capital trusts were validly settled, were ancillary to the capital trusts and likewise invalid: *Re HOOPER'S SETTLEMENT TRUSTS*, *BOSMAN v. HOOPER*, [1948] Ch. 586; [1948] L. J. R. 1455; [1948] 2 All E. R. 961, Jenkins, J. (following *Pearks v. Moseley*, *supra*; and *Re Lord's Settlement*, [1947] C. L. Y. 2241).
- 2684.** **ARTICLE.** Options of purchase and perpetuities by E. O. Walford (founded on *Hutton v. Watling*, [1947] C. L. Y. 2242: see § 3805); 12 *Conveyancer* (N.S.) 258.

PERSONAL PROPERTY

- 2685.** **Ghose in action.** See *CURTIS v. WILCOX*, § 1612.
- 2686.** **Heirlooms—devolution in accordance with rule in *Shelley v. Shelley*.** See *Re STEELE'S WILL TRUSTS*, § 3912.
- 2687.** **Joint banking account—survivorship.** See *YOUNG v. SEALEY*, § 1384.
- 2688.** **Tracing.** See *Re DIPLOCK*, §§ 1399, 1400, 1401, 1402.

PETROLEUM

- 2689. Benzole control.** Benzole and Allied Products (Control) Order, 1948 (No. 1419), revoking and re-enacting with amendments the Control of Benzole and Allied Products Orders, 1945 (Nos. 1064, 1572). The amendments are in part consequential on the dissolution of the Petroleum Board on July 1, 1948. Other amendments relate to licences to supply and maximum prices. [4*d.*]
- 2690. Bisulphide of carbon.** See § 2692.
- 2691. Conveyance by road.** Petroleum-Spirit (Conveyance) Regulations, 1948 (No. 1758), made under the Petroleum (Consolidation) Act, 1928 (18 & 19 Geo. 5, c. 32), s. 6; came into operation on August 2, 1948; amend the Petroleum-Spirit (Conveyance) Regulations, 1939 (No. 1209), as to the containers in which petroleum-spirit may be conveyed by road.
- 2692. — bisulphide of carbon.** Bisulphide of Carbon (Conveyance) Regulations, 1948 (No. 2373), made under the Petroleum (Consolidation) Act, 1928, s. 6; amend the Bisulphide of Carbon (Conveyance) Regulations, 1935 (No. 583), as to the capacity of road tank wagons.
- 2693. Government oil pipe-lines.** The provisions of the Requisitioned Land and War Works Act, 1945 (8 & 9 Geo. 6, c. 43), s. 28 (1), (3) (a), as to the maintenance and use of government oil pipe-lines and works are made permanent by the Requisitioned Land and War Works Act, 1948 (11 & 12 Geo. 6, c. 17), s. 12 (1). Further provisions as to such pipe-lines, including provisions as to compensation, registration of rights, entry on land and the working of minerals, are contained in ss. 12-15 of the last-mentioned Act.
See, also, as to compensation, § 531, and as to registration, § 1877.
- 2694. Petrol restrictions—evasion of rationing.** Report of the committee of inquiry into evasion of petrol rationing control (Chairman: Mr. G. Russell Vick, K.C.): Cmd. 7372. [6*d.*]
- 2695. — Motor Spirit (Regulation) Act, 1948 (11 & 12 Geo. 6, c. 34).** This Act received the Royal Assent on May 27, 1948.
The Act is described in its long title as an Act to create certain offences in connection with the supply and use of motor spirit. By s. 1 a retailer of motor spirit must have his pumps marked "Commercial" or "Private" and it is an offence for any retailer to supply any spirit from a pump not so marked. It is also an offence for him to have commercial petrol in any pump not so marked, or to supply commercial petrol into the tank of a private motor vehicle. It is a defence to prove that the commercial petrol was put into the pump or supplied to the car without his consent or connivance and that he exercised all reasonable diligence. By s. 2 it is an offence for the owner or the person in charge of a private motor vehicle to have commercial petrol in the tank of the car or for any person to acquire commercial petrol for use in a private motor vehicle. In the first case it is a defence to prove that he was not present or in charge at the time and that the petrol was put in without his consent or connivance or that he did not know it was commercial petrol. In the second case it is a defence for the person charged to prove that he did not know it was commercial petrol and did not neglect to take reasonable steps to prevent its acquisition. The penalty for any of the above offences, on summary conviction, is a fine not exceeding £500 or imprisonment not exceeding three months or both (s. 8 (1)). S. 3 sets out a number of other offences, e.g., removing from any commercial petrol any of the prescribed ingredients or adding any ingredients thereto with a view to neutralising or disguising the prescribed ingredients. The section also makes it the duty of a person who discovers commercial petrol in the tank of his private motor vehicle to remove it as soon as practicable, and it is an offence if he fails to do so. The penalty for the last-mentioned offence is the same as for an offence under s. 1 or s. 2. The penalty for the offence of removing or adding ingredients to commercial petrol is the same on summary conviction. But a person guilty of such offence is liable, on conviction on indictment, to a fine not exceeding £1,000 or imprisonment not exceeding two years or both (s. 8 (2)). Retailers who are convicted of certain of the above offences are also to be disqualified from carrying on business for twelve months and to do so is also made an offence (s. 4). Such disqualification may be

suspended on notice of appeal and for that purpose an application for an order of certiorari is deemed to be an appeal (s. 4 (6)). The Court may also, in certain special circumstances, direct that the disqualification is not to have effect, in which case the person concerned is to forfeit a certain sum (s. 4 (7)). Similar provisions are contained in s. 5 for the disqualification of private motorists convicted of an offence under s. 2. If the convicted person is the owner of the vehicle the licence held in respect thereof will cease to have effect and the vehicle cannot be re-licensed for twelve months. The convicted person in any case is disqualified from holding a driving licence for twelve months. Disregard of the disqualification is made an offence under this Act and not under the Roads Act, 1920, or the Road Traffic Act, 1930. S. 6 contains provisions as to appeals by private motorists. S. 7 gives power to Courts of summary jurisdiction to remove the above-mentioned disqualifications after six months for good reason. S. 8 contains, besides the penalties already referred to, special provisions as to penalties where the person convicted is a body corporate. S. 9 relates to the institution of proceedings and s. 10 gives power to duly authorised persons to enter premises, other than private dwellings and take samples of motor spirit. Such powers may also take samples of motor spirit which is in a motor vehicle in any public place. It may be noted that by s. 13 (2) a person is "convicted" under this Act if the Court has found the charge proved for the purposes of the Probation of Offenders Act, 1907 (7 Edw. 7, c. 18), s. 1 (1). The Act applies to Scotland (see s. 14), and with modifications to Northern Ireland (s. 15). The Act came into force on June 1, 1948, and is to continue in force until a date to be appointed.

2696. — private and commercial petrol. Motor Spirit (Regulation) Order, 1948 (No. 1020), made temporary provision for regulating the supply of motor spirit. It came into operation on May 18 and expired on May 31, 1948. It provided for the marking of retailers' pumps and forbade the putting of commercial petrol into a pump marked "private" or into the tank of a private vehicle.

Motor Spirit Regulations, 1948 (No. 1127), made under the Motor Spirit (Regulation) Act, 1948 (11 & 12 Geo. 6, c. 34), s. 12. These Regulations, which came into force on June 1, 1948, deal with matters to be prescribed under the Act. In particular the Regulations define "private motor vehicle" and "motor spirit" and prescribe the ingredient and colouring matter to be used in commercial petrol. They also contain provisions as to the marking of pumps and the service of notices relating to samples.

Motor Spirit (Amendment) Regulations, 1948 (No. 2442), made under the Motor Spirit (Regulation) Act, 1948, s. 12; came into operation on December 1, 1948; amend the Motor Spirit Regulations, 1948 (No. 1127), by substituting a new definition of "private motor vehicles". The new definition adds (subject to certain exceptions) any vehicle, not previously included, in respect of which current E or standard ration coupons have been issued or which has to the rear of the driver's seat roofed accommodation so constructed or adapted that it is, or may be, lit by side windows and is, or may be, furnished with seats for passengers.

2697. — probation of offenders. See *TRAPNELL v. BUSH*, § 2159.

2698. — restriction on car hire. Motor Fuel (Car Hire) Order, 1948 (No. 386), prohibited the use (except in certain cases) of motor fuel in connection with the hiring of a motor car to go more than twenty miles. This Order was revoked as from June 1, 1948, by Motor Fuel (Car Hire) (Revocation) Order, 1948 (No. 1077).

2699. — standard ration. Motor Fuel (Control) Order, 1948 (No. 1125), which came into operation on June 1, 1948, revokes and re-enacts with amendments the Control of Motor Fuel Order, 1947 (No. 2058). The amendments are mainly consequent on the introduction of the standard petrol ration and relate to the value and period of validity of standard ration coupons, the supply of petrol against X, Y, F, W and G coupons and the granting of licences for exceptions. [3d.]

Motor Fuel (Control) Order, 1948 (No. 2526) amends the Motor Fuel (Control) Order, 1948 (No. 1125), arts. 11, 19, so as to enable motor fuel to be acquired against a standard ration during certain months before the month to which it

relates, if they fall within the same rationing period, as well as during the five months following that month.

- 2700. — visitors from overseas—allowances.** Petrol allowances for overseas visitors are obtainable by application to an office of the Royal Automobile Club or the Automobile Association: Ministry of Fuel and Power Circular (P. R. 494, MFP/P/129).
- 2701. — — car hire.** Motor Fuel (Overseas Visitors) (Car Hire) Licence, 1948 (No. 766), authorising the use of motor fuel in any motor car let out on hire outside a radius of twenty miles to an overseas visitor signing a declaration obtainable by proprietors of cars and taxis from the Passenger Vehicle Operators' Association, 146 New Bond Street, London, W.1, or a regional petroleum officer. See now, § 2698.
- 2702. Petroleum Board—dissolution.** Control of Petroleum (Amendment) Order, 1948 (No. 1420), effects amendments to the Control of Petroleum Order, 1944 (No. 171), which have become necessary on the coming to an end of the Petroleum Board on July 1, 1948. It also makes certain other amendments with the object of clarifying the provisions of the Order of 1944. See also § 2689.
- 2703. Propane and butane—prohibition of use.** Motor Fuel (Propane, Butane) Order, 1948 (No. 225), prohibits the use as motor fuel of propane (calor gas) or butane (buta gas) or any gaseous mixture containing either of them, and also prohibits transactions in any such substance for the purpose of its use as motor fuel. The Order, which came into force on February 17, 1948, applies both to motor vehicles and motor boats.
- 2704. Radioactive substances, application of Petroleum (Consolidation) Act, 1928, to.** Petroleum (Radioactive Substances) Order, 1948 (No. 494), made under the Petroleum (Consolidation) Act, 1928 (18 & 19 Geo. 6, c. 32), s. 19, applied s. 6 of that Act (as to the conveyance of petroleum by road) to any radioactive substance as defined in the order. This order is revoked by the Petroleum (Radio-active Substances) (Revocation) Order, 1948 (No. 2580), as being rendered unnecessary by reason of the passing of the Radioactive Substances Act, 1948 (11 & 12 Geo. 6, c. 37).
- 2705. ARTICLE.** Motor Spirit (Regulation) Act, 1948: 112 J. P. J. 598.

POLICE

- 2706. Action against police officer—limitation.** [Scot.] See *ARMOUR v. SHEPHERD*, § 2019.
- 2707. Amalgamated police areas.** Order made under the Police Act, 1946 (9 & 10 Geo. 6, c. 46), ss. 3 (1), 6 (1), 12 (4): SI 1948, No. 565 (Bournemouth). Order made under s. 3 (1): SI 1948, No. 627 (Durham). Order made under ss. 3, 6: SI 1948, No. 1048 (Durham). Order made under s. 4 (1): SI 1948, No. 628 (Mid-Wales).
- 2708. Assignment of tenancy to chief constable.** [Cty. Ct.] See *GLOUCESTERSHIRE C.C. v. BARNES*, § 3198.
- 2709. Civil defence—duties and powers of police authorities.** See § 429.
- 2710. Criminal Justice Act, 1948.** The Home Office have issued to Chief Constables Circular 268/48 with reference to the provisions of the Act of 1948 brought into force by the Criminal Justice Act, 1948 (Date of Commencement) (No. 3) Order, 1948 (No. 2349) (see § 715).
- 2711. Crown servants—loss of service.** As was held in *Fisher v. Oldham Corporation*, [1930] 2 K. B. 364, police officers are servants of the Crown, and therefore it cannot be said that the Receiver for the Metropolitan District has lost the services of a police officer who has been injured through the defendant's negligence because the services were rendered, not to him, but to the Crown. But a claim for wages and allowances during illness paid by the receiver is not based on loss of service but on his right to indemnity in respect of payments which, acting under statutory regulations, he has been compelled to make through the defendant's negligence, and is therefore properly brought by him. See *METROPOLITAN POLICE DISTRICT (RECEIVER) v. TATUM*, § 2715.

2712. Metropolitan Police—Metropolitan Police Courts. See § 2157.

2713. — pensions. See § 2717.

2714. — precepts for expenses. New provision is made as to precepts for the expenses of the Metropolitan Police by the Local Government Act, 1948 (11 & 12 Geo. 6, c. 26), s. 121. See §§ 2051, 3083.

2715. — Receiver—right to recover expenses from third party. (Metropolitan Police Act, 1829 (9 & 10 Geo. 4, c. 44), s. 12; Metropolitan Police (Receiver) Act, 1861 (24 & 25 Vict. c. 124), s. 1.) In *Brook's Wharf and Bull Wharf v. Goodman Bros.*, [1937] 1 K. B. 534, Lord Wright enunciated the principle, that where one man is compelled to pay money which another is legally liable to pay, the person paying it can recover from the person on whom the real liability rests.

By virtue of the provisions of the Metropolitan Police Act, 1829, and of the Metropolitan Police (Receiver) Act, 1861, the Receiver for the Metropolitan Police District, who is a corporation sole, has possession of public moneys on behalf of the Crown and is bound to deal with them in accordance with regulations made by the Home Secretary. Thus, under the provisions of s. 12 of the Act of 1829 he has to pay to persons belonging to the police force salaries, wages, and allowances, and any extraordinary expenses which are necessarily incurred in certain matters, and under the provisions of s. 1 of the Act of 1861 he is given power to sue wherever it is necessary or expedient that he should do so in the course of his duties. In a case where the receiver was bound to pay out of these public moneys expenses in the nature of pay and allowances, repairs to a motor cycle and hospital charges in connection with an accident to a police officer caused by the negligence of the defendant, he claimed that he was entitled to recover these expenses from the defendant. Held, the receiver's claim was good, because he had necessarily incurred expense as a result of the defendant's negligence: *METROPOLITAN POLICE DISTRICT (RECEIVER) v. TATUM*, [1948] 2 K. B. 68; [1948] L. J. R. 1171, Atkinson, J. (applying *Brook's Wharf and Bull Wharf v. Goodman Bros.*, *supra*, and *Att.-Gen. v. Valle-Jones*, [1935] 2 K. B. 209). (See also § 2711.)

2716. Overseas service. Police (Overseas Service) (Greece) Regulations, 1948 (No. 313), made under the Police (Overseas Service) Act, 1945 (9 & 10 Geo. 6, c. 17), s. 1. The Regulations provide (as from February 21, 1948) for the appointment and period of service of members of the Police Mission to Greece, and for their pensions, allowances and gratuities. These Regulations are amended by Police (Overseas Service) (Greece) (Amendment) Regulations, 1948 (No. 1642).

2717. Pensions—Metropolitan Police staffs. Metropolitan Police Staffs (Modification of Superannuation Benefits) (National Insurance) Order, 1948 (No. 2601), provides for the reduction of retirement pensions payable to certain new members of the civil staffs employed by or in connection with the Metropolitan Police.

2718. — Police Pensions Act, 1948 (11 & 12 Geo. 6, c. 24). This Act makes fresh provision as to the pensions to be paid to and in respect of members of police forces and as to the length of the period of their service, and repeals the former enactments relating to those matters (with certain savings). Ss. 1-3 contain provisions as to the making and application of Regulations relating to pensions payable to and in respect of members of police forces; s. 4 deals with forfeiture of pensions; and s. 5 relates to appeals. S. 6 repeals s. 4 (1) of the Metropolitan Police Act, 1933 (23 & 24 Geo. 5, c. 33), which authorised the appointment of short-service constables. Sched. 1 contains a list of the enactments which will be repealed (subject to savings) on the making of new Regulations. The Act does not apply to Northern Ireland (s. 9 (3)).

2719. — regulations. Summary of main provisions proposed for inclusion in Regulations under clause 1 of the Police Pensions Bill, 1948: Cmd. 7312.

2720. — — —. Police Pensions Regulations, 1948 (No. 1531) [E.], made under the Police Pensions Act, 1948, ss. 1, 3, 5; came into operation on July 5, 1948. [1s.]

Police Pensions (No. 2) Regulations, 1948 (No. 2802), made under the Police Pensions Act, 1948, ss. 1, 3; came into operation on January 3, 1949; amend the Police Pensions Regulations, 1948 (No. 1531). [2d.]

2721. — widows' special pension. (Police Pensions Act, 1921 (11 & 12 Geo. 5, c. 31), ss. 3 (6), 33 (3).) Having regard to the definition in s. 33 (3) of the Police Pensions Act, 1921, a "non-accidental injury" must be, or must be *ejusdem generis* with, an injury intentionally inflicted or incurred in the performance of a duty involving a special risk. The "special risk" must be a risk special to the duty which the police officer is called on to perform, and not a risk which is special to the officer.

A police constable died from the effects of heart disease. He suffered from that disease for probably a long time, but it was not known. During the war he was on a heavy beat, which he worked by means of a bicycle. This is known to be a bad thing for a man suffering from heart disease. His widow claimed a special pension under s. 3 (6) of the Police Pensions Act, 1921, on the ground that her husband's death was the result of a non-accidental injury. Held, this was not an injury intentionally inflicted or incurred in the performance of a duty involving a special risk, but it was simply incurred in performing the ordinary duties of a police officer, and, consequently, the widow's claim to a special pension failed: *GORDON v. BARNSELY POLICE AUTHORITY*, [1948] W. N. 229; [1948] 2 All E. R. 79, D. C.

2722. Police doctor, admissibility of evidence of. See *R. v. NOWELL*, § 3300; [Scot.] *REID v. NIXON*, § 3299.

2723. Police regulations. Police Regulations, 1948 (No. 229), and Police (No. 2) Regulations, 1948 (No. 855), made under the Police Act, 1919 (9 & 10 Geo. 5, c. 46), s. 4, amended the Police Regulations, 1947 (No. 1603). Police (Women) Regulations, 1948 (No. 230), and Police (Women) (No. 2) Regulations, 1948 (No. 856), made under the same enactment, made similar amendments in the Police (Women) Regulations, 1947 (No. 1604). Police (Consolidation) Regulations, 1948 (No. 1216) [E.], made under the Police Act, 1919, s. 4, consolidate with amendments the Police Regulations, 1947 (No. 1603), and subsequent amending Regulations, which are revoked. The new Regulations came into force on July 5, 1948 [8d.]. They are amended by the Police (Consolidation) (No. 3) Regulations, 1948 (No. 2734). Police (Women) (Consolidation) Regulations, 1948 (No. 1217) [E.], similarly consolidate the Police (Women) Regulations, 1947 (No. 1604) and subsequent amending Regulations [6d.]. They are amended by the Police (Women) (Consolidation) (No. 3) Regulations, 1948 (No. 2735).

2724. Police War Reserve Rules. Police War Reserve Rules, 1948 (No. 231), Police War Reserve (No. 2) Rules, 1948 (No. 857), and Police War Reserve (No. 3) Rules, 1948 (No. 1476), amend the Police War Reserve Rules, 1945 (No. 361).

2725. Policeman's notebook — order for production on discovery. See *BROOKES v. PRESCOTT*, § 2824.

2726. Special constables. Special Constables Order, 1948 (No. 866) [E.], made under the Special Constables Act, 1914 (4 & 5 Geo. 5, c. 61), as amended. This Order, which came into operation on May 10, 1948, revokes the Special Constables Orders, 1940 (No. 1193), 1943 (No. 1562), and 1945 (No. 323) (which related to the pay, discipline and pensions of whole-time paid special constables), and makes certain consequential amendments in the Special Constables Orders, 1923 (No. 905), and 1942 (No. 1904), and the Special Constables Order (No. 2), 1945 (No. 1640).

2727. Uniform and equipment — modifications in. Police (Consolidation) (No. 2) Regulations, 1948 (No. 1679) [E.], made under the Police Act, 1919 (9 & 10 Geo. 5, c. 46), s. 4; amend the Police (Consolidation) Regulations, 1948 (No. 1216), regs. 81, 82, with respect to issues of uniform and equipment.

Police (Women) (Consolidation) (No. 2) Regulations, 1948 (No. 1680) [E.], made under the same enactment, similarly amend the Police (Women) (Consolidation) Regulations, 1948 (No. 1217), regs. 71, 72.

2728. Women's Auxiliary Police Corps Rules. Women's Auxiliary Police Corps Rules, 1948 (No. 232), Women's Auxiliary Police Corps (No. 2) Rules, 1948 (No. 858), and Women's Auxiliary Police Corps (No. 3) Rules, 1948 (No. 1477), amend the Women's Auxiliary Police Corps Rules, 1945 (No. 362).

2729. ARTICLE. Police pensions: 112 J. P. J. 119.

- 2730. BOOKS PUBLISHED.** Howgrave-Graham, H. M.—*Light and Shade at Scotland Yard* [15s.]. Moriarty, C. C. H.—*Police Law*. 9th ed. [9s.]. Moylan, J.—*Police of Britain*. Rev. ed. [1s.]. Reith, C.—*Short History of the British Police* [3s. 6d.].

POOR LAW

- 2731. National assistance.** Ministry of Health Circular 70/48, dated April 27, 1948, dealing with administrative rearrangements of local authorities required to be made on the replacement of the poor law by national assistance on July 5, 1948.
The existing poor law is terminated and there is substituted therefor assistance by the National Assistance Board and local authorities. See title NATIONAL ASSISTANCE.
- 2732. ARTICLE.** The justices, the vagrants and the poor: 112 J. P. J. 289.

POST OFFICE

- 2733. British Commonwealth and foreign post.** British Commonwealth and Foreign Post Warrant, 1948 (No. 590), made under the Post Office Act, 1908 (8 Edw. 7, c. 48), ss. 2, 3, 4, 12, 16, 17, 82, and the Post Office (Amendment) Act, 1935 (25 & 26 Geo 5, c. 15), ss. 2, 6. This Warrant consolidates with amendments the Regulations relating to postal packets (other than parcels) sent to or received from the British Commonwealth or foreign countries. The principal amendments relate to letters and post-cards sent to or by members of the forces abroad; light-weight air letters (postage now fixed at 6d.) and forces letters; and postal packets sent to or from certain postal agencies at the Persian Gulf. [7d.] This Warrant is amended as from July 1, 1948, by British Commonwealth and Foreign Post Amendment (No. 1) Warrant, 1948 (No. 1293), so as to give effect to the Universal Postal Convention of Paris, the principal changes being an increase in the postal rates on outgoing commercial packets, and an increase of $\frac{1}{2}$ d. for each ounce after the first on letters for the U.S.A. posted on British ships at sea and on outgoing letters for foreign countries or places other than U.S.A., Burma, Egypt, Palestine and Trans-Jordan. [2d.]
- 2734. Foreign postal packets.** Foreign Postal Packets (Customs) Warrant, 1948 (No. 562), made under the Post Office (Parcels) Act, 1882 (45 & 46 Vict. c. 74), s. 14, as extended. This Warrant further extends that section (which renders foreign parcels liable to examination by the Customs) so as to apply to all foreign postal packets (except post-cards and telegrams) for Customs purposes, but does not require a declaration of contents for any packet (such as an ordinary letter) for which a declaration was not required by the Foreign Parcels (Customs) Warrants, 1885 and 1935. The new Warrant also confines the Warrant of 1885 to parcels, and sets out the requirements in the case of insured boxes, small packets and letter packets containing goods or merchandise (which are unchanged). [2d.]
- 2735. Inland post.** Inland Post Amendment (No. 1) Warrant, 1948 (No. 1369); came into operation on July 1, 1948; revokes the additional charge on letters and post-cards to Eire conveyed partly by air mail service, which is now treated as part of the normal transmission.
- 2736. National savings stamps.** See § 3282.
- 2737. Post Office and Telegraph (Money) Act, 1948 (11 & 12 Geo. 6, c. 16).** This Act provides for the raising of further money for the development of the postal, telegraphic and telephonic systems and the repayment to the Post Office Fund of money applied thereout for such development. S. 5 of the Telephone Transfer Act, 1911 (1 & 2 Geo. 5, c. 26) (which relates to audit) is to have effect as if this Act were included amongst the Acts therein mentioned.
- 2738. Postage—added to controlled price.** [Scot.] See *PATTERSON v. CAM'NETHAN OATMEAL*, § 1181.
- 2739. Registered letters.** No compensation will be paid for the loss of money out of any registered letter posted after January 1, 1948, unless the envelope used was one of those sold by the Post Office.
- 2740. Savings bank.** See SAVINGS BANKS.
- 2741. Telecommunications.** See also TELECOMMUNICATIONS.

POWERS

2742. Donee of power, exercise of power of advancement during lifetime of. See *Re BAINBRIDGE*, § 3868.

2743. Fraud on a power. In deciding whether the exercise of a power to select from among members of a class entitled in default of appointment constitutes a fraud on the power, the following propositions may be laid down:—

- (1) One case of a fraud on a power is where the donee of a special power of appointment makes an appointment intended to benefit some person not an object of the power.
- (2) To establish a fraud on a power it is not necessary to prove a bargain between the donee of the power and the appointee.
- (3) What the Court looks to is the intention or purpose of the appointor in making the appointment.
- (4) It is not necessary—
 - (a) that the appointee should be a party to or know of the corrupt intention or purpose, or
 - (b) that the purpose should, in fact, take effect.
- (5) The relevant date as at which the intention of the appointor has to be ascertained is the date of the exercise of the power.
- (6) Evidence is admissible as to the state of mind of the appointor, including statements by the appointor which go to show his or her state of mind at the material date. Such statements may be material though they are not contemporaneous with the date of exercise of the power.
- (7) If a corrupt intention is shown ever to have been entertained, the cogency of the inference drawn from the proof of intention must largely depend on the length of the period that elapses between the date as at which the intention is proved and the date on which the power is exercised, and on what has happened in the meanwhile.

In determining what, short of a bargain, establishes such fraudulent purpose and intention of the appointor the following distinction must be drawn: if the appointor appoints to an object of the power, hoping that the appointee will so dispose of the appointed property as to benefit a non-object, but intending to benefit the object whatever disposition he may make of the appointed property, the appointment will be valid, but, if he makes the appointment to an object with the belief that the object will be subject to strong moral suasion to benefit a non-object, which suasion the object would, in the appointor's opinion, be unable to resist, the appointment will be invalid as a fraud on the power.

The Court had held (§ 3895) that on the true construction of the testator's will and codicil, and in the events which had happened, the trust funds, on the death of the testator's daughter, were held on the trusts declared by the will to take effect on failure of her issue. The daughter had issue by W. living at her death, namely, two children, but those children had been expressly disqualified from taking any benefit under the testator's will by a codicil which excluded the daughter's issue by W. In the circumstances, the trusts in favour of issue of the daughter's brothers and sisters in such shares and proportions as the daughter should by will appoint took effect. The daughter's brothers had executed a deed by which they had assigned to the issue of W. and the daughter any benefit to which they or their personal representatives might become entitled in the testator's settled trust funds. One of the brothers by his will devised his property to his son J. C., subject to a proviso—in the event that the deed entered into by the brothers should be ineffective—that the said J. C.'s interest in the said property should determine and become void if J. C. refused or neglected to assign to the daughter's issue any property which the daughter might appoint to him. The daughter wrote, but did not send, a letter to J. C. in which she stated that she trusted to his honour that he would not deprive her children of their just inheritance, and eventually exercised the power of appointment in his favour. J. C., prior to the exercise of the power of appointment, had already purported to assign to the children of the daughter anything to which he might become entitled under an exercise of the power. Held, the appointment by the daughter constituted a fraud on the power because it was intended to subject the appointee J. C. to strong moral suasion to assign the property appointed to him to non-objects of the power. See *Re CRAWSHAY, HORE-RUTHVEN v. PUBLIC TRUSTEE*,

§ 3895 (applying *Re Marsden's Trust* (1859), 4 Drew. 594, and *Vatcher v. Paull*, [1915] A. C. 372; distinguishing *Roach v. Trood* (1876), 3 Ch. D. 429; doubting *Re Crawshay* (1890), 43 Ch. D. 615; preferring observations of Knight Bruce, L.J., to observations of Turner, L.J., in *Humphrey v. Olver* (1859), 28 L. J. Ch. 406).

2744. Joint power of appointment. See *GLYN v. I. R. C.*, § 1689.

2745. Revocation of appointment. In *Re HAMBRO'S SETTLEMENT*, *HAMBRO v. HAMBRO* (November 22, 1948), donees, in the exercise of a power of appointment, appointed four beneficiaries to specified shares in a settled fund but added a proviso to the effect that "during their joint lives or the survivor of them during his or her life might from time to time by any deed revoke or vary wholly or partially the appointments". The surviving donee, by his will, purported to vary the exercise of the power, by appointing two beneficiaries to equal shares in the trust fund and not making provision for the other two beneficiaries. Roxburgh, J., held that the purported revocation and variation of the original appointment was not within the proviso because the revocation by will was not a revocation during the survivor's life and would result in divesting the beneficiaries of their vested interests. [*Reported by C. M. Schmitthoff, Esq., Barrister-at-Law.*]

2746. ARTICLES. The nature of fraud on a power in the contemplation of equity, by Bertram B. Benas (founded on *Re Crawshay*, [1947] C. L. Y. 3261; and see § 3895): 12 *Conveyancer* (N.S.) 106. Frauds on a power—an opportunity for stocktaking (founded on *Re Crawshay*, [1947] C. L. Y. 3261, and *Re Crawshay* (No. 2), [1947] C. L. Y. 2302; and see § 3895) by H. G. Hanbury: 64 L. Q. R. 221. On powers of advancement conferred by appointments (founded on *Re Bainbridge*, § 3868): 206 L. T. 140. Hybrid powers, by J. G. Fleming: 13 *Conveyancer* (N.S.) 20.

PRACTICE

2747. Admiralty. See SHIPPING AND MARINE INSURANCE.

2748. Affidavit—signature of commissioner. See *PINXTON COLLIERIES v. BURTON HOWARD*, § 1317.

2749. — summons under Crown Proceedings Act, 1947, s. 14. See CUSTOMS AND EXCISE COMMISSIONERS *v.* INGRAM, § 3041.

2750. Alternative claims—election. The Court has jurisdiction to remedy the results of an election due to a *bona fide* mistake where the act of election consists of making use of some process of the machinery of the Courts.

The plaintiffs brought an action claiming damages (a) for loss of profits, and (b) in respect of a sum of £7,600 paid for goods which the defendants had failed to deliver. The pleadings were later amended by adding an alternative claim for £7,600 as money had and received, but, owing to a mistake, the alternative claim was expressed to be alternative to both (a) and (b) instead of to (b) alone. The defendants thereupon paid the sum of £7,600 into Court and the plaintiffs, not realising the mistake, gave "notice of acceptance of this sum in satisfaction of the alternative cause of action in this matter". The defendants then issued a summons to stay the action on the ground that, money having been paid into Court in satisfaction of one of two alternative causes of action, the plaintiffs, by accepting it and taking it out of Court, had made their election, and were not entitled to proceed on the other cause of action. Held, even if there had been an election the Court had a discretion to relieve the plaintiffs from a *bona fide* mistake in the use of legal machinery. The proper order was that the plaintiffs should repay into Court the sum of £7,600 with liberty to the defendants to apply to take it out, and that the plaintiffs should be at liberty to amend their statement of claim: *S. KAPROW & Co. v. MACLELLAND & Co.*, [1948] 1 K. B. 618; [1948] L. J. R. 720, C. A. (applying *Emery v. Webster* (1853), 9 Exch. 242, and *Cannan v. Reynolds* (1885), 5 E. & B. 301; considering *Scarff v. Jardine* (1882), 7 App. Cas. 345).

2751. Appeal—application to set aside decree absolute. See *MEIER v. MEIER*, § 920.

2752. — copies of notes. See *DONOVAN v. LOUGHEE*, § 686; *BEVENS v. BEVENS*, § 875; *DARRALL v. DARRALL*, § 876.

2753. — **costs of parties with identical interests.** In *Re GILLSON, ELLIS v. LEADER*, § 3869, Lord Greene, M.R., said that when appeals were brought to the Court of Appeal and there were several parties in precisely the same interest with precisely the same arguments who, in the Court of first instance, had been separately represented, it was the duty of the solicitors concerned to do everything possible to avoid unnecessary costs in the Court of Appeal. The practice had always been in such a case to allow only one set of costs, certainly where costs were charged on residue, for instance, or on a fund in which the persons interested were either absent or infants and, therefore, were not in a position to consent.

2754. — **county courts, from.** See COUNTY COURT PRACTICE.

2755. — **Court of Appeal, to.** See also §§ 2799–2803.

2756. — **further evidence.** (R. S. C., Ord. 58, r. 4.) The principles which guide the Court in dealing with applications under Ord. 58, r. 4, which provides that “upon appeals from a judgment after trial or hearing of any cause or matter upon the merits, . . . further evidence (save as to matters subsequent as aforesaid) shall be admitted on special grounds only, and not without special leave of the Court”, have been laid down originally in *Shedden v. Patrick* (1869), L. R. 1 Sc. & Div. 470, and have been quoted by Scrutton, L.J. (quoting Lord Chelmsford), in *Nash v. Rochford Rural Council*, [1917] 1 K. B. 384: “‘It is an invariable rule in all the Courts, and one founded upon the clearest principles of reason and justice, that if evidence which either was in possession of parties at the time of a trial, or by proper diligence might have been obtained, is either not produced, or has not been produced, and the case is decided adversely to the side to which the evidence was available, no opportunity for producing that evidence ought to be given by the granting a new trial’”. That principle also applies to the admission of further evidence in the Court of Appeal. The principle even applies, where the evidence, which it is sought to admit, is documentary evidence which is unassailable and conclusive in favour of the party seeking to admit it.

The plaintiff landlords had failed to recover possession of premises which they conceded to be within the Rent Restriction Acts, the trial Judge holding them estopped from denying that they had granted a weekly tenancy to the second defendant, who was thus a statutory tenant. On their appeal, the landlords applied to adduce fresh evidence showing that in fact the rateable value of the premises was such that they were not within the Rent Restriction Acts. Held, to allow the landlords to take a new point not only not taken but expressly disclaimed in the Court below, and to establish it by means of evidence, which could easily have been obtained in time, on a matter such as rateable value which was obviously relevant, would be creating a dangerous precedent and acting far beyond what has been laid down in the authorities. Consequently, the evidence could not be admitted: *E. H. LEWIS & SON v. MORELLI*, [1948] W. N. 442; [1948] 2 All E. R. 1021, C. A. (reversing decision of Denning, J., [1948] L. J. R. 1082; following *Shedden v. Patrick*, *supra*, and *Nash v. Rochford Rural Council*, *supra*). (See also § 1972.)

2757. — **Guardianship of Infants Acts, 1886–1925.** The following PRACTICE DIRECTION by Romer, J., has been approved by the Judges of the Chancery Division. Within ten days of the service of the notice of appeal the solicitors on each side are to notify the Cause Clerk whether or no they desire to adduce further evidence on the hearing of the appeal. If either party does so desire, an appointment will be given for the solicitors (not counsel) to attend the Judge to obtain his directions on the matter. On this appointment the solicitor must be prepared to indicate in outline what further evidence it is desired to adduce, whether it is to be oral or by affidavit, and why it was not given before the justices.

A date for the hearing of the appeal will normally be fixed when the solicitors are before the Judge.

It is the duty of the appellant's solicitors to notify the respondent's solicitors (or the respondent if in person) of this direction when serving the notice of appeal.

If neither party desires to adduce further evidence, the date fixed for the hearing of the appeal will be notified to the solicitors for the party on application to the Judge's clerk: [1947] W. N. 232.

- 2758.** — **order for alimony pendente lite.** See *CAVENDISH-BENTINCK v. CAVENDISH-BENTINCK*, § 873.
- 2759.** — **out of time, leave to.** The granting of leave to appeal out of time is, as is well known, a matter of discretion, and although it would not be right to say that the discretion can never be exercised except where there is evidence to support it, it is a discretion which the Court will exercise only in very exceptional circumstances.
- The plaintiffs had issued a summons in an action applying for leave to proceed under the Courts (Emergency Powers) Act, 1943, and for leave to issue execution notwithstanding that six years had elapsed since the judgment. The master had refused leave under Ord. 42, r. 23. More than two years later the plaintiffs renewed their application, which was again refused as there was no new evidence to support it. On appeal, the Judge affirmed the order of the master, but granted the plaintiffs leave to appeal out of time, although the plaintiffs in their application had not asked for such leave. Held, on appeal to the Court of Appeal, before such leave was granted the plaintiffs should have been required to adduce evidence explanatory of their long delay and the defendant should have been given an opportunity of answering it. In the circumstances of this case there was not before the Judge evidence of new facts sufficient to entitle him to exercise so exceptional a discretion in favour of the plaintiffs. See *W. T. LAMB & SONS v. RIDER*, § 2828.
- 2760.** — **point not taken in Court below.** See *ELVINS v. SLANEY*, § 681.
- 2761.** — **questions of fact in running-down cases.** “[The Court of Appeal] no doubt has a wider power [to interfere with the decision of a Judge in a running-down case] when the matter is tried by a single Judge [than when it is tried by a jury] and [the Court] can reverse the Judge on the facts. But the Court is naturally very slow to do that, because the Judge has an opportunity of seeing and hearing the witnesses and obtaining what in . . . running-down cases . . . is so important—and which can only be obtained at the trial and not at the hearing of the appeal—the imponderable elements which I may call the atmosphere of the case. Although I do not intend to lay down anything which is necessarily exhaustive, I would say that the Court ought not to interfere where the question is a pure question of fact, and where the only matter for decision is whether the Judge has come to a right conclusion on the facts, unless it can be shown clearly that he did not take all the circumstances and evidence into account, or that he has misapprehended certain of the evidence, or that he has drawn an inference which there is no evidence to support. I have known cases where this Court has interfered because it has thought that the Judge who tried the case has decided how the accident happened not on the evidence given, but on how he thought that the accident had happened”: *per* Lord Goddard, C.J., in *LOTHOUSE v. LEICESTER CORPORATION* (1948), 64 T. L. R. 604, C. A. .
- 2762.** — **subsequent matters of fact arising after trial.** See *R. F. FUGGLE v. GADSDEN*, § 3173.
- 2763.** **Appearance.** Ord. 7, r. 2 (6) is amended, as from January 10, 1949, by inserting after the word “appearance” the words “and on the former solicitor”: Rules of the Supreme Court (No. 4), 1948 (No. 2781).
- 2764.** — **unconditional appearance, effect of.** (Ord. 25, s. 2.) It is undoubtedly good law that, where a statute creates a right and in plain language gives a specific remedy or appoints a specific tribunal for its enforcement, a party seeking to enforce the right must resort to that remedy or that tribunal and not to others. No act of the parties can create in the courts a jurisdiction which Parliament has said shall vest, not in the Courts, but exclusively in some other body, and a party cannot submit to, so as to make effective, a jurisdiction which does not exist. Thus, the mere fact that the defendants have entered an unconditional appearance cannot give the Court jurisdiction where it has not any by statute. See *WILKINSON v. BARKING CORPORATION*, § 2067 (applying *Pasmore v. Oswaldtwistle Urban Council*, [1898] A. C. 387).
- 2765.** **Assizes—civil business at.** SI 1948, No. 987 (Hereford and Worcester).
- 2766.** — **Northern Circuit Office.** The address of the Northern Circuit Office is now St. George's Hall, Liverpool.

2767. — **North-western Circuit Office.** As from September 1, 1948, the address of the North-Western Circuit Office is: The Castle, York.

2768. Bankruptcy. See **BANKRUPTCY AND LIABILITIES ADJUSTMENT.**

2769. Barristers—circuit system. The results of the referendum of practising barristers upon the circuit system and special fees on circuit (taken by the General Council of the Bar) have been published. The results show a very heavy majority (nearly four to one) for maintaining the circuit system with regard to barristers, and a heavy majority in favour of retaining some system of special fees or special payments to place restrictions upon barristers practising on circuits to which they do not belong. There was also a heavy majority against the abolition of the existing system of circuit special fees, but opinion was fairly evenly divided as to whether or not there should be any modification.

2770. — **counsel's fees.** See **WRIGHT v. BENNETT** (No. 1), §§ 2784, 2791.

2771. — — **vouching.** See § 2785.

2772. — **etiquette.** The following points are taken from the Annual Statement, 1947, of the General Council of the Bar:

A barrister whose name is not on the list of a quarter sessions kept by the Clerk of the Peace under the Poor Prisoners' Defence Rules, 1931, is not entitled to accept a brief from a solicitor who has been assigned under a defence certificate if barristers on the list are available.

A barrister who is likely to suffer in his practice from the similarity of his name to that of a barrister who has recently retired upon taking an appointment which is reported in the press may be permitted to issue a circular to his clients, the circular being preceded by the words: "With the permission of the General Council of the Bar. . .".

A barrister holding the office of recorder of a borough should not appear on either side at petty sessions of the borough.

A barrister may properly refer in Court to a barrister opponent as "my learned friend" or "my friend" or "Mr. . . .", naming him. Any of the above modes of address may properly be used by a barrister referring to a solicitor opponent or by a solicitor referring to a barrister opponent.

The Council considers that barristers should not be expected to devil without some return, not necessarily financial.

Whether, on circuit, briefs should be returned rather than devilled is a matter for decision by the particular circuit concerned.

Counsel and solicitors may make such arrangements as they think fit with regard to refresher fees in criminal cases either at magistrates' courts or at trial. In the absence of arrangement, refresher fees are payable in magistrates' courts for the second and each subsequent hearing, and at trial at sessions or assizes or the Central Criminal Court in accordance with the five hours' rule prevailing in the High Court. What constitutes a hearing is the calling of a case and treatment of it otherwise than by mere adjournment or postponement.

2773. — **failure to appeal at trial.** See **R. v. KINGSTON**, § 763.

2774. Certiorari—practice on application for order of. See **R. v. NEWINGTON LICENSING JUSTICES**, § 774; **PRACTICE NOTE**, § 775.

2775. Chambers—Judge sitting in. See § 2857.

2776. — — **jurisdiction.** See **CLIFF v. CLIFF**, § 1710; **STONE v. STONE**, § 923.

2777. Chancery Division—witness actions. **PRACTICE DIRECTION**, dated July 7, 1948, by the Judges of the Chancery Division fixing dates for the hearing of Witness Actions in the Chancery Division.

1. On and after October 12, 1948, no cause or matter set down in the witness list in the Chancery Division will be heard unless a date has previously been fixed for its hearing by the Master in Charge of the Chancery Witness List (hereafter referred to as the Master in Charge).

2. On and after July 19, 1948, any party or his solicitor may, at any time after setting down, on giving four clear days' notice in writing to all other parties, attend before the Master in Charge at Room No. 154, Royal Courts of Justice, Strand, W.C.2, to make application to fix a date for trial or to confirm and record a date fixed by a Judge before July 19, 1948.

3. Parties or their solicitors wishing to apply to fix or confirm and record a date for trial should communicate with the Cause Clerk in Room No. 136 (telephone Holborn 7641, Ex. 187) and make an appointment to attend before the Master in Charge. In order not to prejudice parties to actions which are set down before July 19, 1948, appointments to attend before the Master in Charge will be made as far as possible in the order in which those actions have been set down.

4. Upon any such application each party or his solicitor will be required to hand to the Master in Charge a note signed by himself stating the number of witnesses the party proposes to call, his own estimate of the length of hearing in hours and an indication of the quantity of documents in the case. If counsel has already advised on evidence or been briefed, counsel's estimate of the length of hearing shall be included in the said note. Solicitors attending upon any such application will be expected to know which dates are convenient to all persons concerned, including witnesses and counsel.

5. No costs of counsel will be allowed for attending an application to fix a date for hearing.

6. When a date has been fixed by the Master in Charge it will not be altered save in exceptional circumstances upon application being made to him after four clear days' notice in writing has been given to all other parties; and, except by his direction, no application regarding the settling of the Witness List shall be made to any Judge.

7. If any action in which a date has been fixed is settled, both parties or their solicitors are required to notify the Master in Charge in writing as soon as possible and in any case not later than twenty-four hours after settlement.

8. The foregoing paragraphs will apply to all the cases in the Witness List except cases in which dates for hearing have been fixed for this sittings and all such other cases as will be notified for hearing this sittings before July 19, 1948. See also [1948] W. N. 274. (See also § 2778.)

2778. ——. PRACTICE DIRECTION dated November 24, 1948, by the Judges of the Chancery Division, supplemental to the direction of July 7, 1948 (§ 2777).

All available dates down to March 18, 1949, having now been allocated, it is directed that after December 3, 1948, no appointments will be given to attend before the Master in charge to fix a date for the trial of any action. Such appointments will be resumed on and after February 9, 1949.

Paras. 6 and 7 of the PRACTICE DIRECTION of July 7, 1948 (which relate to altering dates already fixed and notifying the settlement of actions) remain unaffected by this direction, and any application for special consideration in cases of exceptional urgency may be made at any time.

2779. Chancery of Lancaster. See § 458, 2359.

2780. Civil judicial statistics. A summary and table of the principal judicial statistics for 1946 has been issued by the County Courts Branch of the Lord Chancellor's Department, Millbank House, 2 Great Peter Street, London, S.W.1, from which further information can be obtained.

2781. Companies, applications by. See § 445.

2782. Costs. See also SOLICITORS.

2783. — appeals by parties with identical interests. See *Re GILLSON*, § 2753.

2784. — counsel with brief to take a note. The phrase "brief to take a note" is, no doubt, a convenient way of describing the duties of counsel who have such a brief, but these duties cannot be regarded as a mere alternative to those of a shorthand writer, and, therefore, the fact that a shorthand note is being taken does not disentitle the successful party to the costs of the refreshers of the counsel with a noting brief. See *WRIGHT v. BENNETT* (No. 1), § 2791.

2785. — counsel's fees—vouching. Ord. 65, r. 27 (52), is amended, as from January 10, 1949, by deleting the words "or by the signature of the Secretary of the General Council of the Bar or of a barrister duly authorised in writing by the barrister entitled to the fee". The result is that the paragraph reads "No fee to counsel shall be allowed on taxation unless vouched by his signature": Rules of the Supreme Court (No. 4), 1948 (No. 2781), art. 3.

- 2786.** — **counsel's right to address Judge on question of.** It is impossible to say that a Judge's refusal to hear counsel on the question of costs in support of a proposition which is untenable involves that the Judge did not act according to reason and justice. See *HONG v. A. & R. BROWN*, § 2788.
- 2787.** — **defendant bringing in third party.** "If a defendant incurs costs reasonably to protect himself [e.g., by bringing in a third party] against a claim by a plaintiff which fails, it seems to me there are good grounds on which a Judge exercising his judicial discretion, should say that those costs incurred by the defendant should be borne by the plaintiff": *per* Hallett, J., in *DENNANT v. SKINNER AND COLLOM*, § 3376.
- 2788.** — **defendant joined when plaintiff in doubt—Bullock order.** (R. S. C., Ord. 16, r. 7.) There is no rule of law that any plaintiff who reasonably avails himself of the power given by R. S. C., Ord. 16, r. 7, to join two defendants where he is in doubt is entitled as a matter of right to a "Bullock order" (*Bullock v. London General Omnibus Co.*, [1907] 1 K. B. 264), i.e., an order against the unsuccessful defendant to pay the costs of the successful defendant. Each case must depend upon its own circumstances and, provided there was material on which the Judge could exercise his discretion, the Court of Appeal will not interfere with his order as to costs: *HONG v. A. & R. BROWN*, [1948] 1 K. B. 515; [1948] L. J. R. 1816, C. A. (explaining *Besterman v. British Motor Cab Co.*, [1914] 3 K. B. 181). (See also § 2786.)
- 2789.** — — —. See also *O'MAHONY v. PRESS & SONS*, § 1424.
- 2790.** — **divorce cases.** See *DIVORCE AND MATRIMONIAL CAUSES*.
- 2791.** — **documents prepared for proceedings in lower Court.** (R. S. C., Ord. 65, r. 1.) The decision in *Masson Templier v. De Fries*, [1910] 1 K. B. 535, lays down the practice "not to allow as costs of a proceeding costs of documents used in a prior proceeding". That decision follows the words of Ord. 65, r. 1. The wording of the rule, coupled with the decision, shows that proceedings in the Court below must be treated for this purpose as proceedings separate from the proceedings in the Court of Appeal.
- At the trial of the action the defendant was represented by junior counsel, who appeared with a counsel who had a brief to take a note. The counsel who had a noting brief was supplied with a number of documents, correspondence, etc. When the case went to appeal, counsel who had conducted the case in the Court below had become a King's Counsel and counsel who had the noting brief had an ordinary junior brief and was given the documents which he had been given in the Court below. The defendant's solicitor sought to charge in the bill of costs in respect of the appeal those items which, because counsel who has a noting brief is not entitled to copies of documents other than the pleadings, had been disallowed as costs of the proceedings below. Held, the costs in respect of these items were costs incurred in respect of the proceedings below, and, therefore, could not be recovered in respect of the Court of Appeal proceedings: *WRIGHT v. BENNETT* (No. 1), [1948] 1 K. B. 601; [1948] L. J. R. 1019, C. A. (applying *Masson Templier v. De Fries*, *supra*; considering *Greaves v. Drysdale*, [1936] 2 All E. R. 470). (See also §§ 2784, 2795.)
- 2792.** — **infant's next friend.** [Can.] In *MORRIS v. WABASH RY. CO.*, [1948] 1 D. L. R. 197, the High Court of Ontario held that an infant's next friend's indemnity for costs is unaffected by the circumstance that the next friend is a co-plaintiff, and that where there is a fund in the hands of the Court to which the infant is entitled, a charge should be made on this fund in respect of the costs of the next friend as such. (*Steeden v. Walden*, [1910] 2 Ch. 393, applied.)
- 2793.** — **proceedings arising out of Rent Acts.** See *JOSLOWITZ v. BURSTEIN*, § 3153; *LEE v. CARTER*, § 3154.
- 2794.** — **security for costs.** There is no authority for the proposition that when a foreign defendant applies for security for costs against a foreign plaintiff it ought to be made a condition that the foreign defendant himself should give security. On the contrary, a defendant who is exercising the right of any defendant to defend himself against attack ought to be allowed to do so and not prevented or hampered by being ordered to give security: *NAAMLooZE VENNOOTSCHAP BELEGINGS COMPAGNIE "URANUS" v. BANK OF ENGLAND*, [1948] 1 All E. R. 465,

C. A. (affirming decision of Wynn-Parry, J., [1948] 1 All E. R. 304; distinguishing *Re La Compagnie Generale D'Eaux Minerales et de Bains de Mer*, [1891] 3 Ch. 451; applying *Maatschappij voor Fondsenbezit v. Shell Transport and Trading Co.*, [1923] 2 K. B. 166; criticising note in *Annual Practice*, 1946-47, p. 1510).

2795. — witnesses. It is a well-settled principle that if witnesses are unnecessarily brought the costs of paying them for attending are inadmissible items. See *WRIGHT v. BENNETT* (No. 1), § 2791.

2796. Counterclaim—default in delivering reply. (R. S. C., Ord. 27, s. 11.) Where the subject-matter of an action and a counterclaim is indivisible, the court will not make an order for judgment on the counterclaim in default of delivery of a reply while the action is still pending. The proper course which a defendant should adopt in such a case is to apply for an order that the action, as distinct from the counterclaim, be dismissed for want of prosecution.

The plaintiffs, who were the purchasers, claimed damages for breach of a contract for the sale of a dwelling-house and repayment of a deposit of £300 with interest. The alleged breach was that the defendants, who were the vendors, either would not or could not give vacant possession. The defendants in their defence alleged that the contract was not a contract to sell with vacant possession and that the plaintiffs were themselves in default in failing to complete on the proper date. The defendants counterclaimed *inter alia*, forfeiture of the deposit paid by the plaintiffs and moved for judgment on the plaintiffs' default to reply to the counterclaim. Held, the court would not make such an order while the action was still pending: *ROGERS v. WOODS*, [1948] W. N. 13; [1948] L. J. R. 802; [1948] 1 All E. R. 38, Roxburgh, J. (applying *Jones v. Macaulay*, [1891] 1 Q. B. 221; distinguishing *Roberts v. Booth*, [1893] 1 Ch. 52).

2797. County court. See COUNTY COURT PRACTICE.

2798. "Court", meaning of. (British North America Act, 1867 (30 & 31 Vict. c. 3), ss. 92, 96; Trade Union Act, 1944, of Province of Saskatchewan, s. 10.) The conception of the judicial function is inseparably bound up with the idea of a suit between parties, whether between Crown and subject or between subject and subject, and it is the duty of the Court to decide the issue between those parties, with whom alone it rests to initiate or defend or compromise the proceedings. Thus, the jurisdiction exercisable by the Saskatchewan Labour Relations Board set up under the Saskatchewan Trade Union Act, 1944, which *inter alia* entitles persons other than an employee, who has been discharged by his employer, and who is seeking reinstatement and payment for the monetary loss which he has suffered by reason of such discharge, to raise a controversy relating to the discharge of such employee without the latter's assent, and possibly even, against the latter's will, for the solution of some far-reaching industrial conflict, does not constitute the Labour Relations Board a superior, district or county court or a tribunal analogous thereto within the meaning of s. 96 of the British North America Act, 1867, and, consequently, the setting up such a Board is not *ultra vires* the Government of Saskatchewan: *LABOUR RELATIONS BOARD OF SASKATCHEWAN v. JOHN EASTON IRON WORKS, ATT.-GENS. FOR CANADA, SASKATCHEWAN, ONTARIO AND NOVA SCOTIA (INTERVENERS)*, [1948] W. N. 386; [1949] L. J. R. 66. P. C. (considering *Martineau & Sons v. Montreal City*, [1932] A. C. 113; *Toronto City Corp. v. York Township Corp.*, [1938] A. C. 415; and *Re Adoption Act of Ontario*, [1938] S. C. R. (Can.) 398).

2799. Court of Appeal. See also §§ 2751-2762.

2800. — new practice. PRACTICE DIRECTION dated November 5, 1948. In order to expedite the hearing of appeals by the Court of Appeal it is proposed to carry into effect the following arrangements provided that there is sufficient demand:—

- (1) Two special divisions of the Court of Appeal, each consisting of two Judges, in accordance with s. 68 (5) of the Supreme Court of Judicature (Consolidation) Act, 1925, will sit during the period between Monday, December 6, 1948, inclusive and the end of sittings, for the purpose of hearing certain final appeals in respect of which the parties file a consent to the appeal being heard by two Judges pursuant to that sub-section.
- (2) These special divisions will hear two classes of appeals, namely, final appeals from county courts and in the Workmen's Compensation cases;

and final appeals from the Probate, Divorce and Admiralty Division (Divorce).

- (3) Two separate lists will be kept, one for each class of appeal which the parties consent to have so heard. Appeals will be entered in these lists by the Appeal Clerk, Room 136, on notice being given to him that necessary consents have been filed but not before.
- (4) Appeals entered in a separate list will not thereby lose their place in the general list, nor shall their hearing be postponed by being so entered. Subject to this, appeals entered in a separate list will be taken in the appropriate special division in the order in which they stand in that list.

For the purpose of the sittings above mentioned and any continuation thereof this notice supersedes the direction of Halsbury, C., and Lindley, M.R., dated June 23, 1899.

It is hoped that it will be possible to continue these sittings in Hilary Term. If considered desirable they may be extended to include other classes of appeal. Due notice will be given. (See also § 2801.)

2801. — —. With reference to the PRACTICE DIRECTION, dated November 5, 1948, § 2800, as there is not at present sufficient demand for the hearing of appeals by Courts consisting of two Judges under s. 68 (5) of the Supreme Court of Judicature (Consolidation) Act, 1925, the sittings of those Courts will be postponed. It is hoped that they may be able to take place early in the next sittings. Due notice will be given. Meanwhile a third special list will be opened in Room 136, Royal Courts of Justice, for appeals from the King's Bench Division (Final and New Trial) List in which parties file a consent to have the appeal heard by two Judges: PRACTICE DIRECTION, December 1, 1948.

2802. — *stare decisis*. See WILLIAMS v. GLASSBROOK BROS., § 2906.

2803. — **Supreme Court of Judicature (Amendment) Act, 1948 (11 & 12 Geo. 6, c. 20)** [E.]. This Act amends the Supreme Court of Judicature (Consolidation) Act, 1925 (15 & 16 Geo. 5, c. 49), s. 68 (3), by substituting the word "four" for the word "three", the effect being to enable the Court of Appeal in future to sit in four divisions at the same time.

2804. **Courts Emergency Powers — appeal out of time.** See W. T. LAMB & SONS v. RIDER, § 2759.

2805. — **appointment of receiver and manager.** (Courts (Emergency Powers) Act, 1943 (6 & 7 Geo. 6, c. 19), s. 1 (2).) S. 1 (2) of the Courts (Emergency Powers) Act, 1943, provides: "Subject to the provisions of this Act, a person shall not be entitled, except with the leave of the appropriate Court, . . . (b) to institute any proceedings for foreclosure or for sale in lieu of foreclosure, . . . Provided that nothing in this subsection shall affect . . . (b) the institution or prosecution of any proceedings for the appointment by the Court of a receiver of any property." Where an indorsement on a writ asking for the appointment of a receiver and manager succeeds in avoiding any claim for foreclosure or sale the Court must still consider whether the action in question is the type of action in which it ought to make such an appointment having regard to the spirit as well as to the letter of the Courts (Emergency Powers) Act, 1943, because the appointment of a receiver and manager is a discretionary remedy.

The debenture holders asked for the appointment of a receiver and manager of a company, which had only three shareholders, of whom two, who had been the directors of the company, had died in an accident. The third shareholder had never taken any interest in the company since the accident. Both deceased directors were debtors to the company for considerable amounts. The company had a large number of creditors. It had contracted to build several houses, some of which were partially completed and rapidly deteriorating owing to exposure to wind and rain. The debenture holders did not ask for foreclosure or sale. Held, as the writ did not include a claim for foreclosure or sale, the Court could in the exercise of its discretion appoint a receiver and manager without contravening the Courts (Emergency Powers) Act. In view of the jeopardy of the security the Court would make the appointment, but the appointment would be for a limited period of three months on the debenture holders' undertaking to apply at once for leave under the Courts (Emergency Powers) Act to amend the writ by adding a claim for foreclosure or sale: *Re NEWPORT CONSTRUCTION Co.*;

BARCLAYS BANK *v.* THE COMPANY, [1948] Ch. 217; [1948] L. J. R. 988, Roxburgh, J. (distinguishing *Gasson and Hallagan v. Jell*, [1940] Ch. 248).

- 2806. — circumstances attributable to the war.** In *NATIONAL PROVINCIAL BANK v. MEYRICK REDMAYNE FARMS*, *NATIONAL PROVINCIAL BANK v. M. R. DRIERS* (November 30, 1948), the bank applied for leave under the Courts (Emergency Powers) Act, 1943, to appoint a receiver in respect of two mortgages and floating charges dated October 28, 1946, and granted by the farm company and the drying company respectively. The respondent companies opposed the applications on the ground that the circumstances that led to the inability of the respondent companies to discharge their liability to the applicant bank were directly or indirectly attributable to the war. The circumstances, on which the respondent companies relied, were the difficulties of obtaining fuel permits, fuel cuts, electricity load shedding and shortage of supplies in 1946 to 1948. Wynn-Parry, J., held that (1) the circumstances relied upon by the respondent companies arose after the making of the contract, the relevant date being October 28, 1946, but (2) that the respondent companies had failed to discharge the onus of proof lying upon them of showing that the reason why they were unable to honour their liabilities to the bank were circumstances directly or indirectly attributable to the war. The four reasons given by the respondent companies were ambiguous in that they might be attributable to causes other than the effect of war. Application of bank to appoint a receiver granted. [*Reported by C. M. Schmitthoff, Esq., Barrister-at-Law.*] See also [1948] W. N. 481.
- 2807. — evacuated areas.** PRACTICE DIRECTION, dated June 30, 1948, by the Judges of the Chancery Division.
The Direction made in March, 1947 ([1947] C. L. Y. 2361), requiring that every Originating Summons issued in the Chancery Division claiming leave under the Courts (Emergency Powers) Act, 1943, to exercise any right or remedy in relation to or affecting premises should contain a statement whether such premises were or were not situate within an evacuation area, and if so situate, specifying the reason why the said premises were excepted from the restrictions imposed by the Defence (Evacuated Areas) Regulations is withdrawn and such statement shall no longer be required: [1948] W. N. 273.
- 2808. — Isle of Man.** SI 1948, No. 1597 (revoking the Courts Emergency Powers (Isle of Man) Order, 1943 (No. 1040)).
- 2809. Criminal cases.** See CRIMINAL LAW; MAGISTERIAL LAW.
- 2810. Cross-examination.** See EVIDENCE.
- 2811. Crown practice.** See CROWN PRACTICE.
- 2812. Crown Proceedings Act, 1947.** See CUSTOMS AND EXCISE COMMISSIONERS *v.* INGRAM, § 3040; *Re BARNATO*, § 2873.
- 2813. Defence—leave to defend.** See *MORGAN & SON v. S. MARTIN JOHNSON & Co.*, § 2855; *CONTRACT DISCOUNT CORPORATION v. FURLONG*, § 2853.
- 2814. — particulars—action for forfeiture.** See *DUKE'S COURT ESTATES v. ASSOCIATED BRITISH ENGINEERING*, § 2875.
- 2815. — striking out—vexatious and oppressive defence.** See *CHARLES OXFORD v. GONSHAW*, § 2914.
- 2816. Discovery—action for penalties.** (Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15), ss. 21, 23; Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), ss. 62, 63.) It must depend on the construction as a whole of the enactment under consideration to decide whether the sums of money which are called "penalties" therein are to be regarded as penalties in the punitive sense or merely as a method of assessing the compensation to which a person is entitled. If the sums of money in question are to be regarded as penalties in the punitive sense, the Court will not order the defendant to file an affidavit of documents.
The Gasworks Clauses Act, 1847, and the Waterworks Clauses Act, 1847, impose a liability to pay penalties on anybody who fouls the water supply of the undertakers. The Gasworks Clauses Act, 1847, also preserves the liability of the undertakers to pay damages. Moreover, both Acts provide for a special period of limitation of six months for the recovery of penalties. Held, the penalties prescribed by the Acts are penalties in the true sense of the word,

and, consequently in an action for the recovery of such penalties the defendant cannot be ordered to file an affidavit of documents: *COLNE VALLEY WATER CO. v. WATFORD AND ST. ALBANS GAS CO.*, [1948] 1 K. B. 500; [1948] L. J. R. 385, C. A. (applying *Saunders v. Wiel*, [1892] 2 Q. B. 321; distinguishing *Adams v. Batley* (1887), 18 Q. B. D. 625). (See also § 2817.)

2817. — —. In a case where there is only one real issue the Court will not order the defendant to file an affidavit of documents where one of the remedies sought by the plaintiff is the recovery of penalties, even though the plaintiff in the action also claims damages and an injunction. See *COLNE VALLEY WATER CO. v. WATFORD AND ST. ALBANS GAS CO.*, § 2816; (applying *Mexborough v. Whitwood U. D. C.*, [1897] 2 Q. B. 111).

2818. — **delivery of accounts and production of books relating to purchase tax.** See *CUSTOMS AND EXCISE COMMISSIONERS v. INGRAM*, § 3040.

2819. — **further and better affidavit of documents.** It is by no means usual to find in an order for discovery an express undertaking under which the party obtaining discovery is not to use documents for any collateral or ulterior purpose. In general the practice is to regard as a sufficient protection the implied obligation, under which each party is, to make no improper use of disclosed documents. The cases in which undertakings have been exacted with respect to particular documents did not concern applications for further and better affidavits of documents, but concerned the production of particular documents. In any event, a party relying on the implied obligation not to make an improper use of documents has his remedy, if he can substantiate improper use in any particular case. He can bring that instance of alleged improper use before the Court either in proceedings for contempt, if he considers that it amounts to contempt of Court, or in proceedings to restrain the conduct complained of. Moreover, on an order for a further and better affidavit of documents, it is always open to the party against whom such order is made to say, with respect to particular documents or a particular class of documents, that those documents are, for this or that reason, especially confidential and that he objects to producing them except on an undertaking by the other party in whatever form he conceives adequate for his protection.

In an action for rescission of a contract for the purchase of a hotel and hotel business and for damages for alleged misrepresentation, the plaintiff applied for a further and better affidavit of documents. In his particulars of misrepresentation the plaintiff had alleged that, during the period for which the defendant had supplied a trading profit and loss account, he had committed various breaches of the food regulations, had bought goods at prices above the permitted prices, had exceeded the permitted prices when he sold a meal, and had obtained more fuel than he was entitled to. After the defendant had filed his original affidavit of documents he received visits and inquiries from representatives of the Ministry of Food and the police. Moreover, the defendant alleged that one of the Ministry of Food officials who visited him was in possession of a copy of the defendant's affidavit of documents as originally filed. The defendant now contended that he ought not to be required to make a further and better affidavit of documents except on an undertaking by the plaintiff that he would not use any of the documents in the action or any documents disclosed under the further affidavit of documents for any ulterior or collateral purpose. Held, to require any undertaking of the sort asked for by the defendant at the present stage would be premature and would be likely to give rise to difficulty: *ALTERSKYE v. SCOTT*, [1948] 1 All E. R. 469, Jenkins, J. (distinguishing *Williams v. Prince of Wales Life, etc., Co.* (1857), 23 Beav. 338; and *Hopkinson v. Burghley (Lord)* (1867), 2 Ch. App. 447).

2820. — **order for inspection of goods.** (R. S. C., Ord. 31, r. 21.) Ord. 31, r. 21, gives specific power to the Court to strike out the defence and to place the defendant in the same position as if he had not defended in certain limited classes of cases, namely, failure to comply with an order to answer interrogatories or for discovery or inspection of documents. But failure by a defendant to comply with an order for the inspection of clothing, the subject-matter of the action, does not entitle the plaintiff to have the defence struck out, because clothing cannot be described as "documents" within the meaning of the phrase

"discovery or inspection of documents": CHARLES OXFORD v. GONSHAW, [1948] 2 All E. R. 229, C. A. (See also § 2914.)

2821. ——— originating summons — application by dissentient shareholder under Companies Act, 1948. (Companies Act, 1948 (11 & 12 Geo. 6, c. 38), s. 209.) In *Re Borthwick*, § 2822, Lord Greene, M.R., said that "the discovery in proceedings in the Chancery Division by originating summons ought only to be ordered in very special cases where the facts are such as to justify such an order being made". Thus, in a case where the dissenting shareholder, who held 3 per cent. of the shares of a company, sought to escape from the obligations of s. 209 of the Companies Act, 1948 (under which the majority of the shareholders sought to sell the company's shares to another company), on the ground that there had been an under-valuation of certain assets of the company, and for this reason made an application by originating summons for discovery under the section, it was held that a dispute as to the value of the assets of a company was not a sufficient ground for ordering discovery, having regard to the nature of the section under which the application had been made: *Re Press Caps*, [1948] W. N. 351; [1948] 2 All E. R. 638, Roxburgh, J. (applying *Re Borthwick*, § 2822).

2822. ——— application under Inheritance (Family Provision) Act, 1938. (R. S. C., Ord. 54r, rr. 9, 14.) R. 14 of Ord. 54r, which contains a series of rules with regard to applications under the Inheritance (Family Provision) Act, 1938, provides that "the ordinary practice and rules in the Chancery Division in so far as they are not inconsistent with the Act or this Order shall apply to proceedings under this Order". The ordinary practice and rules in the Chancery Division referred to in this rule mean the ordinary practice and rules in that Division in relation to procedure by originating summons. Discovery in proceedings in the Chancery Division by originating summons is only ordered in very special cases where the facts are such as to justify such an order being made. Thus, in a case where the applicants under the Act, with a view to testing an estimate of the values which the executors had placed on an estate, sought to obtain an order for discovery in relation to certain shares in a private company, it was held, that the instrument of discovery should not be used for such a purpose, because (1) under Ord. 54r, r. 9, the Judge had ample power, if he was not satisfied or if he thought there was a reasonable ground for doubting the accuracy of the estimate, to require further evidence on the point, to summon the executors before him, to put questions to them and to subject them to cross-examination; and (2) as the Inland Revenue valuation related to the date of the death, and as the value of the estate for the purpose of administering the Act had to be ascertained as at the date of the order which the Court made under the Act, it was always open to the Judge to call on the executors to bring their valuation up to date and to say whether they wished to modify it in any way in the light of what had happened since the death: *Re Borthwick*, *Borthwick v. Beauvais*, [1948] Ch. 645; [1949] L. J. R. 50, C. A. (affirming decision of Roxburgh, J., [1948] L. J. R. 1432).

2823. ——— privilege—communications between Ministry and council. In an action by a local corporation claiming possession of a dwelling-house under a requisitioning notice communications between the Ministry of Health and the town clerk of the corporation on which the cause of action of the corporation rests cannot be privileged. Similarly, correspondence between the various departments of the corporation and copies of reports to and proceedings of various committees of the corporation cannot be privileged. See *Blackpool Corpn. v. Locker*, § 521.

2824. ——— documents relating solely to defendant's case. It is a well-established principle that a party cannot be ordered to produce a document in his possession where such document relates solely to his own case and does not in any way impeach it or assist the case which the other party is seeking to make. However, if, from the nature of the document, it is plain that the deponent, in claiming the privilege which he seeks, must have misconceived the law, the Court will not, of course, accept it as a valid claim against production.

The defendants, five police constables and a police superintendent, who were sued for damages for false imprisonment and assault, objected to the production of their notebooks on discovery, stating in their affidavit: "... the last mentioned documents relate solely to our own . . . case and not to the case of the

plaintiffs, and do not in any way tend to support or prove their case or to impeach our own . . . case". Held, whether or not the notebooks contained the names of witnesses whom the defendants might desire to call they might well in substance contain the evidence which the defendants would give to the Court in support of their defence to the claim and, consequently, the defendants could resist the application for production: *BROOKES v. PRESCOTT*, [1948] 2 K. B. 133; [1948] 1 All E. R. 907, C. A. (applying *Frankenstein v. Gavin's Cycle Cleaning and Insurance Co.*, [1897] 2 Q. B. 62; and *O'Rourke v. Darbishire*, [1920] A. C. 581; distinguishing *Att.-Gen. v. Emerson* (1882), 10 Q. B. D. 191).

2825. Divorce. See DIVORCE AND MATRIMONIAL CAUSES.

2826. Documents construed by the Court—indorsement on deed or probate. PRACTICE NOTE: When hearing a summons (February 10, 1948), Vaisey, J., said that where a document had been construed by the Court, the document should be indorsed by a reference to the order of the Court construing the document, and where the document was a will, the indorsement should be made on the probate: (1948) 205 L. T. J. 116.

2827. Evidence. See EVIDENCE.

2828. Execution—leave to issue six years after judgment. (R. S. C., Ord. 42, r. 23 (a).) The dismissal of a summons for leave to issue execution more than six years after judgment under Ord. 42, r. 23 (a), does not of itself shut the door against a subsequent application for the same relief. On the other hand, the subsequent application should only be granted if founded on material which was not before the Court on the first occasion: *W. T. LAMB & SONS v. RIDER*, [1948] 2 K. B. 331; [1949] L. J. R. 258, C. A. (See also §§ 2759, 2829.)

2829. ——— validity of Ord. 42, r. 23 (a). (Limitation Act, 1939 (2 & 3 Geo. 6, c. 21), ss. 2 (4), 31.) The right to sue on a judgment has always been regarded as a matter quite distinct from the right to issue execution under it and the two conceptions have been the subject of different treatment. Execution is essentially a matter of procedure—machinery which the Court can, subject to the rules from time to time in force, operate for the purpose of enforcing its judgments or orders. A refusal by the Court to place this machinery at a plaintiff's disposal in no way affects his right to sue on the judgment at any time within the statutory limit of time. Thus, the fact that s. 2 (4) of the Limitation Act, 1939, provides that "an action shall not be brought upon any judgment after the expiration of twelve years from the date on which the judgment became enforceable", and that by s. 31 of the Act, "action" is defined as including "any proceeding in a Court of law", cannot have the effect of invalidating Ord. 42, r. 23 (a), which provides that leave to issue execution is required where six years have elapsed since the judgment. See *W. T. LAMB & SONS v. RIDER*, § 2828 (distinguishing *Donovan v. Lougher*, § 2001).

2830. ——— stay of—effect. A stay of execution in an action for possession only prevents the plaintiff from putting into operation the machinery of the law—the legal processes of warrants of execution and so forth—in order to regain possession. It does not take away any other rights which he has. It does not prevent him exercising any right or remedy which he has apart from the process of the Court.

In an action for possession the Court gave judgment for possession forthwith, but granted a stay of execution pending an appeal. The Court of Appeal affirmed the decision of the Court of first instance and ordered the defendants to be out of the premises in fourteen days. The defendants eventually left the premises after a warrant for possession had been issued. The plaintiffs now claimed mesne profits for the period of six months from the date of the action for possession until the date when the defendants quitted. The defendants in their counterclaim alleged that the action of the plaintiffs in cutting off the gas, electricity and water and in putting up barricades was unlawful and gave them a right to damages, because the stay of execution entitled the defendants to remain in undisturbed possession of the premises. Held, this was a complete misconception of the effect of a stay. In this case there was no reason why the plaintiffs should not peaceably regain possession if they could. The plaintiffs did no wrong in cutting off gas,

electricity and water supplies and in putting up barricades. The plaintiffs would only have been liable in damages if they had used more force than was necessary for the purpose of regaining possession: *CLIFTON SECURITIES v. HUNTLEY*, [1948] W. N. 267; [1948] 2 All E. R. 283, Denning, J. (See also § 1932.)

2831. Fees—Supreme Court. Supreme Court Fees (Amendment) Order, 1948 (No. 1269) [E.], amending the Supreme Court Fees Order, 1930 (No. 579), in respect of documents to be produced in a matrimonial or probate cause or matter in certain circumstances.

Supreme Court Fees (Amendment No. 2) Order, 1948 (No. 2704) [E.], amending the Supreme Court Fees Order, 1930 (No. 579), by prescribing a fee for a photographic copy of a Chancery order.

Supreme Court (Non-Contentious Probate) Fees Order, 1948 (No. 1270) [E.], amending the Supreme Court (Non-Contentious Probate) Fees Order, 1928 (No. 972).

2832. Foreign judgment—setting aside registration of. See *SYAL v. HEYWARD*, § 2850.

2833. Guardian ad litem—appointment of Official Solicitor in adoption cases. See *Re A.B. (AN INFANT)*, § 1701.

2834. Inheritance (Family Provision) Act, 1938—discovery of documents. See *Re BORTHWICK* § 2822.

2835. — time for application. See *Re SEARLE*, § 3937; *Re BIDIE*, § 3936.

2836. Injunction—convenience of the public. [Eire.] See *BELLEW v. CEMENT*, § 2538.

2837. — form of order. The reference to servants, workmen and agents in the common form of injunction is open to objection, for as a matter of language it suggests that a direct order has been made against servants, workmen, and agents, whereas it is nothing other than a warning against wrongdoing to those persons who may by reason of their situation be thought easily to fall into the error of implicating themselves in a breach of the injunction by the defendant. If they knowingly assist the defendant in a breach by him of the injunction, they may be committed for contempt of Court, not because they have broken the injunction—they have not done so—but because they have so conducted themselves as to obstruct the course of justice in assisting a breach and have tried to set the process of the Court at naught. The substance of the common form of injunction is that the defendant is to be enjoined whatever method he may use in committing the prohibited acts. In the circumstances it would be better if injunctions assumed the form of restraining “the defendants by themselves their servants workmen and agents or otherwise” from committing the prohibited acts: *MARENGO v. DAILY SKETCH AND SUNDAY GRAPHIC*, [1948] W. N. 92; [1948] L. J. R. 787; [1948] 1 All E. R. 406, H. L. [New forms have now been prescribed. See § 2838.]

2838. — — prescribed forms. In view of the decision of the House of Lords in *Marengo v. Daily Sketch and Sunday Graphic*, § 2837, there have been prescribed for the use of the Central Office under R. S. C., Ord. 61, r. 33, a new form of interim injunction and a new form of summons for receiver with injunction to take the place of the forms at present in Appendix K, No. 66 and No. 61 A.

Forms are also being prescribed for use in the District Registries of the High Court and will appear as statutory instruments in due course.

2839. — interlocutory injunction—threats action. See *SELDEN FOUNTAIN PEN Co. v. MILES MARTIN PEN Co.*, § 2603.

2840. — suspension of, to enable nuisance to be abated. See *BROCKET v. LUTON CORPORATION*, § 2540.

2841. — to restrain husband from entering matrimonial home belonging to wife. See *BOYT v. BOYT*, § 1628.

2842. Inspection—order for inspection of goods. See *CHARLES OXFORD v. GONSHAW*, § 2820.

2843. Interlocutory proceedings—cross-examination on affidavit sworn in. See *LAWSON v. ODHAMS PRESS*, § 1327.

2844. Interrogatories. In *ENDEAVOUR WINES v. MARTIN AND MARTIN* (July 23, 1948), the plaintiff put in evidence the defendant's answers to interrogatories. Birkett, J., held that he was not thereby precluded from adducing oral evidence to contradict those answers. [*Reported by R. C. Calburn, Esq., Barrister-at-Law.*] See also [1948] W. N. 338; 92 S. J. 574.

2845. — libel action against newspaper. The allowing or disallowing of an interrogatory in a particular case is a matter purely within the discretion of the Judge in chambers. It has now become a matter of practice, and, possibly, a matter of law, that an interrogatory asking for the names of persons who supplied the information on which an alleged libel was based will not be allowed to be administered to the proprietor or publisher of a newspaper. It is further established that there is nothing in the authorities to extend this practice to the case of a member of the public writing a letter to a newspaper.

The plaintiff sought to administer such an interrogatory to a sports journalist, who was the paid servant of a newspaper, and who was one of the defendants in a libel action. Held, that if the Judge in the exercise of his discretion disallowed such an interrogatory, the Court of Appeal could not interfere with his decision, though it might have been different if the Judge had disallowed the interrogatory on the ground that he considered that as a matter of law such a defendant was entitled to the protection which has been accorded to proprietors and publishers of newspapers: *LAWSON v. ODHAMS PRESS*, [1949] 1 K. B. 129; [1948] 2 All E. R. 717, C. A. (considering *Plymouth Mutual Co-operative and Industrial Society v. Traders' Publishing Association*, [1906] 1 K. B. 403; and *South Suburban Co-operative Society v. Orum*, [1937] 2 K. B. 690). (See also § 1327.)

2846. — — plea of fair comment. See *KORDA v. ODHAMS PRESS*, § 1983.

2847. Issue—trial. (R. S. C., Ord. 36, r. 8.) [N.I.] In *DELANEY v. EASTWOOD & SONS*, [1948] N. I. 66, Andrews, L.C.J., held that the issue whether a workman had elected to claim compensation under the Workmen's Compensation Acts was not a proper one for the Court to direct to be tried under Ord. 36, r. 8, because the discretion conferred by that rule would only be exercised in those exceptional cases in which the Court has reason to believe that the trial of the issue will put an end to the action. (*Piercy v. Young* (1880), 15 Ch. D. 475, applied.)

2848. Judges' appointments. The Lord Chancellor has nominated Mr. Justice Lewis to be *ex-officio* Commissioner for England under the Railway and Canal Traffic Act, 1888, and Mr. Justice Ormerod to be the Judge for hearing appeals from the pensions appeal tribunals under the Pensions Appeal Tribunals Act, 1943.

2849. Judgment—action on. See *W. T. LAMB & SONS v. RIDER*, § 2829.

2850. — foreign judgment—setting aside registration of. (Foreign Judgments (Reciprocal Enforcement) Act, 1933 (23 & 24 Geo. 5, c. 3), s. 4 (1) (a) (iv).) The cases of *Boswell v. Coaks* (No. 2) (1886), 11 App. Cas. 232, and *Birch v. Birch*, [1902] P. 130, establish that in proceedings to set aside an English judgment a defendant cannot ask for a re-trial of the issue of fraud as between him and the plaintiff on facts known to him at the date of the earlier judgment, but in cases under s. 4 of the Foreign Judgments (Reciprocal Enforcement) Act, 1933, the question is not one of fraud on the plaintiff, but of fraud on the Court, and it is clearly established by authority binding on the Court of Appeal that, if the defendant shows a *prima facie* case that the Court was deceived, he is entitled to have that issue tried even though, in trying it, the Court may have to go into defences which could have been raised at the first trial.

The plaintiff had obtained judgment for rupees 20,000 in an action against the two defendants in India. The defendants had not defended the action. The master had made an order that the judgment be registered as a judgment of the King's Bench Division. The defendants then applied for an order that the registration of the judgment be set aside pursuant to s. 4 (1) (iv) of the Foreign Judgments (Reciprocal Enforcement) Act, 1933, on the ground that the judgment had been obtained by fraud. In support of that application the defendants filed an affidavit in which they alleged that the amount which they had borrowed from the plaintiff was not rupees 20,000, as alleged by him in

the action in India, but only rupees 10,800, the difference being made up in part of commission and in part of the interest, thus concealing from the Court the possibility that the defendants might have a defence under the Indian Usurious Loans Act. The master dismissed that application, but on appeal the Judge ordered that if the defendants paid into Court within fourteen days the amount of the judgment debt and security for costs an issue should be directed to be tried. Held, on appeal to the Court of Appeal, (1) it was plain that the defendants were alleging a fraud on the Court, and it was, therefore, immaterial that to establish their allegation they would have to adduce evidence which was available to them before the date of the Indian judgment; the evidence filed by the defendants was sufficient to entitle them to an issue; (2) the Court had no power to impose terms as a condition of setting aside a judgment, and, consequently, the Judge's order had to be varied accordingly: *SYAL v. HEYWARD*, [1948] 2 K. B. 443; [1949] L. J. R. 337, C. A. (applying *Abouloff v. Oppenheimer* (1882), 10 Q. B. D. 295; and *Vadala v. Lawes* (1890), 25 Q. B. 310).

- 2851. — in default of appearance—discrepancy between writ and statement of claim.** (R. S. C., Ord. 28, r. 1.) Where, on a motion for judgment in default of appearance it was held that the change was a change of substance and, consequence with his writ, it is a matter for the exercise of the Court's discretion whether to make the order asked for or not. Where the plaintiff changes in his statement of claim the basis of the claim which he has made in his writ, and such change is a matter of substance, the Court will refuse to make the order.

The plaintiff in his writ claimed specific performance of a written agreement to buy certain land from the defendant. In his statement of claim the plaintiff relied upon an oral agreement and made no reference to any memorandum or note in writing of the agreement. On a motion for judgment in default of appearance it was held that the change was a change of substance and, consequently, that the motion should be dismissed, but that the plaintiff should be allowed to amend his writ under Ord. 28, r. 1, by pleading an oral agreement and re-serving the statement of claim: *MANN v. PHILLIPS*, [1948] L. J. R. 663; [1948] 1 All E. R. 138, Roxburgh, J.

- 2852. — liberty to sign—distinguished from striking out defence.** See *CHARLES OXFORD v. GONSHAW*, § 2914.

- 2853. — under Ord. 14.** (R. S. C., Ord. 14.) It is quite proper in a case involving an account to give summary judgment under Ord. 14, where a definite sum is admitted by the defendant to be owing. *Semble*: where there is a denial of liability or an admission of liability, but a refusal to admit the amount and a demand to have it checked by the ordinary accounting process, the proper order would be an order for judgment for such an amount as should be found due on the taking of an account.

The defendants were the guarantors of the plaintiffs' principal debtors. The plaintiffs applied for summary judgment for the sum of approximately £30,000. The defendants in a joint affidavit said: "We admit that we are indebted to the plaintiffs, but we say that, to the best of our knowledge, information and belief, such amount will be found, upon full investigation, to be £10,000 or thereabouts". Held, it was impossible to treat this affidavit as a clean admission of liability of £10,000. The defendants were entitled to an allowance by way of margin. The defendants should be given liberty to defend as to the whole of the claim, subject to the payment into Court of £8,000. If this sum was not paid in, the plaintiffs should have liberty to sign judgment for that sum against the defendants who were to have liberty to defend as to the residue of the claim: *CONTRACT DISCOUNT CORPORATION v. FURLONG* (1948), 64 T. L. R. 201; [1948] 1 All E. R. 274, C. A.

- 2854. — — betting transactions.** A plaintiff having claimed a betting debt by specially indorsed writ in which no mention was made of the fact that the sum claimed arose out of betting transactions, Slade, J., said that the plaintiff was wrong in failing to disclose in his statement of claim that the alleged debt was due on gaming transactions and in stating on affidavit that he believed there to be no defence to the action. The summons would properly have been dismissed by the Master under R. S. C., Ord. 14, r. 9 (b): *LOTINE & Co. v. CONN*, [1948] W. N. 330; 92 S. J. 556.

2855. — — — **leave to defend.** (R. S. C., Ord. 14; Judicature Act, 1925 (15 & 16 Geo. 5, c. 49), ss. 38, 39, 40, 41.) In all cases in which before the passing of the Judicature Act, 1925, a Court of equity would have allowed the defendant's claim by way of equitable set-off, the Court will now grant the defendant unconditional leave to defend.

The plaintiffs claimed by specially indorsed writ £353 from the defendants for storage of vehicles. The defendants by affidavit alleged that, while that sum would otherwise have been due, one of the vehicles, worth £375, had been lost by the negligence of the plaintiffs as bailees. Lynskey, J., gave the plaintiffs leave to sign final judgment on their claim under Ord. 14 with a stay of execution pending trial of the defendants' counterclaim. Held, on appeal, as, on the authorities, the case was one in which a Court of equity would have allowed the defendants relief by way of equitable set-off, the proper order was that they should be given unconditional leave to defend: *MORGAN AND SON v. S. MARTIN JOHNSON & Co.*, [1949] 1 K. B. 107; [1948] L. J. R. 1530, C. A. (applying *Piggott v. Williams* (1821), 6 Madd. 95; *Bankes v. Jarvis*, [1903] 1 K. B. 549; *Young v. Kitchin* (1878), 3 Ex. D. 127; *Rawson v. Samuel* (1841), Cr. & Ph. 161).

2856. Jury. See JURIES.

2857. King's Bench Division—chambers. During the latter part of the Trinity Sittings, 1948, the Judge sat in chambers on Monday in each week instead of on Tuesday.

2858. — — — **directions for early trial.** In order to provide for the prompt hearing of cases in which both parties are desirous of an early trial, the Lord Chief Justice has given the following directions as to causes in the King's Bench Division to take effect as from April 6, 1948.

As soon as the parties in any case which has been set down in the Long or Short Non-Jury Lists are ready for trial arrangements will be made to hear the case at an early date irrespective of its place in the full list.

A certificate that the case is ready must be signed by the solicitors for all parties and left with the clerk in charge of the lists at Room 419. The certificate should be left by the solicitors for the plaintiff, unless the trial is of a counterclaim only, when it should be left by the defendant's solicitors.

If a certificate is left by Wednesday mid-day in any week the case will appear at the head of the next week's list; if left later, the case will appear at the head of the list for the following Monday week, in either case subject to any cases left over from the previous Friday's list, and to any cases specially fixed by order.

In Vacation certificates must be left five clear days before the first day of next sittings if it is desired that they should be heard in the first week.

The order in which certified cases if there are several will appear in any week's list will depend upon their numerical order in the full cause list and not on the time of the lodgment of the certificate.

The parties may agree that the case should not be heard before a particular day in the week in which it will be listed for trial, and in that case the certificate must so state, but cases will not be fixed for a definite day without an order of the Judge in charge of the week's list.

Information will be given when the certificate is lodged of the probable day on which the case will be heard, depending on the number of certified cases for any particular week and the number of Judges available.

A certificate may be withdrawn on the written consent of the solicitors for all parties before the case appears in the warned list, and the case will then revert to its original position in the full list, and may not again be certified except by leave of the Judge in charge of the List.

Certified cases will be marked in the warned lists with an asterisk.

Not less than fourteen days' notice will be given in the daily cause list of the dates on which jury actions will be heard.

2859. Lancaster, Chancery of. Chancery of Lancaster (Exchange Control) Rules, 1948 (No. 272). These Rules came into force on February 20, 1948.

2860. — — — **companies.** See § 458.

2861. Legal aid and advice. Summary of the proposed new service to be afforded under the Legal Aid and Advice Bill, 1948: Cmd. 7563.

2862. Long vacation, 1948. During the period September 27 to the end of the Long Vacation, 1948, sittings were fixed as follows: (1) two divisions of the Court of Appeal to sit to hear appeals set down and ready for hearing; (2) three Special Commissioners to sit to hear and determine matrimonial causes: R. S. C. (No. 3), 1948 (No. 1708).

2863. Magisterial law. See *MAGISTERIAL LAW*.

2864. Matrimonial causes. See *DIVORCE AND MATRIMONIAL CAUSES*.

2865. Mortgages—application for recovery of possession. See *MARTINS BANK v. KAVANAGH*, § 2251.

2866. — discharge of mortgage. See *Re UPLANDS*, § 2244.

2867. New trial—misdirection. (R. S. C., Ord. 39, r. 6.) R. 6 of Ord. 39 provides: "A new trial shall not be granted on the ground of misdirection . . . unless in the opinion of the Court of Appeal some substantial wrong or miscarriage has been thereby occasioned. . . ." Whatever the precise meaning of the rule may be—and its application must be considered in relation to each individual case—it cannot be interpreted as an invitation to the Court of Appeal, in circumstances where the question is whether or not the plaintiff is entitled to a verdict, to treat itself as being in the position of the jury.

In a libel action arising out of statements made by a candidate in his election address about the supporters of a rival candidate the defence had been one of qualified privilege. In his summing-up to the jury there had been misdirections by the Judge in that he withdrew from the jury an alleged attack on the political sincerity and political integrity of the supporter of the rival candidate and failed to put properly the case on malice. Held, it was not for the Court of Appeal to speculate on the verdict which the jury might have returned if the plaintiff's case on these topics had been properly put before them, and, consequently, a new trial had to be ordered. See *BRADDOCK v. BEVINS*, § 1993 (applying *Bray v. Ford*, [1896] A. C. 44).

2868. — Rent Act cases. See *SELWYN v. HAMILL*, § 3141.

2869. Next friend. [Can.] See *MORRIS v. WABASH RY.*, § 2792.

2870. Originating summons—application for recovery of possession by mortgagee. See *MARTINS BANK v. KAVANAGH*, § 2251.

2871. — Court's jurisdiction to order discovery. See *Re BORTHWICK*, § 2822; *Re PRESS CAPS*, § 2821.

2872. — incapacity of trustee. See § 2886.

2873. — joinder of Crown as party—future liability to estate duty. (Crown Proceedings Act, 1947 (10 & 11 Geo. 6, c. 44), ss. 13, 23 (2) (b); R. S. C., Ord. 1A, r. 1, Ord. 54A, r. 1A, Ord. 55, r. 3, Ord. 55, r. 5). The summary procedure by way of originating summons is not available against the Crown for the determination of a question of liability to estate duty except in so far as is provided by the Crown Proceedings Act, 1947, and by s. 3 of the Administration of Justice (Miscellaneous Provisions) Act, 1933 (which applies where a "claim has been made by the Crown" or where a claim is apprehended in respect of "duties which have or are alleged to have become chargeable" by reason of the death of any person). The effect of ss. 13 and 23 (2) (b) of the Crown Proceedings Act, 1947, and of Ord. 1A, r. 1, is to make the procedure by originating summons available to the subject against the Crown in any case where it would be available between subject and subject. Thus, in a case where the trustees of property settled by will by originating summons sought to have determined the question whether, if a proposed advance were made to the issue of the life tenant under a power contained in the settlement, they would remain accountable to the Crown on the death of the life tenant for any estate duty exigible in respect of the sum advanced, it was held that that question of the originating summons was not justified, because (1) the trustees were not claiming a "legal or equitable right" within the meaning of Ord. 54, r. 1A, for no claim for duty at present existed and, moreover, the relevant statute might not be in existence at the relevant date; (2) the Crown did not come into any of the categories of the persons to be served which was set out in Ord. 55, r. 5, for there was no jurisdiction to make a declaratory order in a case where a defendant had put forward no present

claim, and, moreover, a person not a beneficiary under a trust could not be brought before the Court on an originating summons for the purpose of deciding a future contingent claim where the alleged claimant had not asserted any right presently enforceable either at law or in equity, and that, consequently, the Inland Revenue Commissioners having been improperly joined as parties ought to be struck out from the originating summons. *Semble*: the trustees would not have been in a better position if the proceedings had been started by writ: *Re Barnato, Joel v. Sanges*, [1949] Ch. 21; [1948] L. J. R. 1947, Harman, J. (distinguishing *Dyson v. Att.-Gen.*, [1911] 1 K. B. 410; applying *Re Clay*, [1919] 1 Ch. 66; and *Re King*, [1907] 1 Ch. 72).

2874. Particulars—adultery, knowledge of. (R. S. C., Ord. 19, r. 22.) Ord. 19, r. 22, provides: "Wherever it is material to allege . . . knowledge . . . it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred".

By her answer to a divorce petition a wife admitted that she had committed adultery, but alleged that her husband, with full knowledge of that adultery, condoned it by living with her and having sexual intercourse with her. Held, the wife could not be ordered to give the source of her information as to the husband's knowledge of her adultery and the date on which he acquired it, as the information the husband sought was in his possession: *HUBBOCK v. HUBBOCK*, [1948] 2 All E. R. 412, C. A.

2875. — forfeiture action. The following principles apply to particulars in an action for forfeiture of a lease:

1. An action of forfeiture has always been regarded as one in which the plaintiff must prove his case with strictness, and, therefore, no assistance is given to him in the way of discovery of documents or interrogatories to help him to prove his case.
2. *Prima facie* the burden of proof in a forfeiture action is particularly laid on the plaintiff.

A covenant in a lease provided that the defendants "... will use the demised premises only as offices in connection with the defendants' business of engineers and/or other businesses in which the defendants and their subsidiary or associated companies may be interested". Paragraph 5 of the statement of claim in an action for forfeiture of the lease for breach of covenant alleged that the defendants had used the premises or permitted them to be used for the purpose of their business by certain companies and persons set out. Paragraph 7 alleged that the several companies and persons mentioned in paragraph 5: "... are not subsidiary or associated companies of the defendants and the businesses carried on by such companies and persons are not businesses in which the defendants and their subsidiary or associated companies are interested". Paragraph 4 of the defence stated: "The defendants deny each and every allegation in para. 7 of the statement of claim". The plaintiffs applied for particulars of the defence. Held, the burden of proof was on the plaintiffs. There was no difficulty in seeing what would be the area of the controversy at the trial. The defence was a mere traverse involving no affirmative allegation, although on the face of it a double negative in a sense involves an affirmative. Consequently, the Court would not order particulars, because to do so would go far towards making the defendants disclose their hand and provide the plaintiffs with material for proving their case, the onus being on the plaintiffs in such an action to prove their case without any such assistance: *DUKE'S COURT ESTATES v. ASSOCIATED BRITISH ENGINEERING*, [1948] Ch. 458; [1948] L. J. R. 1892, Harman, J. (following *Doe d. Bridger v. Whitehead* (1838), 8 Ad. & E. 571, and *Toleman v. Portbury* (1870), L. R. 5 Q. B. 288; distinguishing *Pinson v. Lloyds and National Provincial Foreign Bank*, [1941] 2 K. B. 72).

2876. — state of mind. In *JOHNSON v. AUGARDE* (October 19, 1948), Jenkins, J., held that the allegation in the statement of claim that at the time of the sale one of the defendants was well aware that another defendant was a trustee of the property, pertained to the state of mind of a person, and that by R. S. C., Ord. 19, r. 22, the plaintiff was not required to give particulars thereof. The pleading did not fall within Ord. 19, r. 23, which dealt with notice, and not with knowledge. [Reported by C. M. Schmitthoff, Esq., Barrister-at-Law.] See also [1948] W. N. 395.

- 2877. Parties—action by shareholder.** [Can.] See *GRAY v. YELLOWKNIFE GOLD MINES*, § 444.
- 2878. — action in name of firm.** See *ALEXANDER MOUNTAIN & Co. v. RUMERE*, § 2882.
- 2879. — application by mortgagee for recovery of possession.** See *MARTINS BANK v. KAVANAGH*, § 2252.
- 2880. — Crown, joinder of, to originating summons in respect of future liability to estate duty.** See *Re BARNATO*, § 2873.
- 2881. — guardian ad litem.** See *Re A. B. (AN INFANT)*, § 1701.
- 2882. — misnomer.** (R. S. C., Ord. 16, r. 2.) Where a writ is issued on behalf of a dead man, in the mistaken belief that he is alive, there is no power under Ord. 16, r. 2, to substitute as plaintiff his executor or executrix. However, that rule can have no application in a case where there is no such misapprehension, but where the person succeeding to the business of a dead man has been wrongly described. The latter is a case of misnomer, and in such a case—as is stated in the Annual Practice, 1946-47, p. 10—the Court has power to amend the writ by substituting the right plaintiff. Thus, in a case where the deceased had been carrying on a business, which had been his sole property, under the style of “A. M. and Co.”, a writ intended to be issued on behalf of the person entitled to the business of “A. M. and Co.”, and therefore issued in that name, was allowed to be amended by substituting the name of the deceased's sole executrix, because R. S. C. Ord. 48A, r. 1, does not entitle a single person to sue in the name of the firm, and because this was a case of misnomer: *ALEXANDER MOUNTAIN & Co. v. RUMERE*, [1948] 2 K. B. 436; [1948] 2 All E. R. 482. (C. A. (reversing decision of Lord Goddard, C.J., [1948] 2 All E. R. 144; distinguishing *Tetlow v. Orela*, [1920] 2 Ch. 24; and *Clay v. Oxford* (1866), L. R. 2 Ex. 54).
- 2883. — next friend.** [Can.] See *MORRIS v. WABASH RY.*, § 2792.
- 2884. — setting out names.** PRACTICE NOTE, [1948] W. N. 73. When hearing a summons (February 10, 1948), Vaisey, J., said where there were numerous defendants to a summons and it was difficult to discover in the heading of the summons where the name of one defendant ended and that of the one following began, it would be useful if the name of each defendant were introduced by a number or letter in brackets.
- 2885. — substitution of plaintiff.** See *ALEXANDER MOUNTAIN & Co. v. RUMERE*, § 2882.
- 2886. — trustee—incapacity of trustee.** PRACTICE DIRECTION dated July 7, 1948, by the Chancery Judges. Trustee under Disability. The Chancery Judges have directed that the Practice Note at p. 178 of the *Weekly Notes* for August 18, 1945, as to evidence of the incapacity of a trustee is no longer to be acted upon. In future there must be medical evidence showing incapacity to act as a trustee at the date of the issue of the originating summons and that the incapacity is continuing at the date of swearing the affidavit. The affidavit should also show incapacity to execute transfers where a vesting order of stocks and shares is asked for.
The trustee under disability shall be made a respondent to the summons but need not be served unless he is sole trustee or has a beneficial interest. See also [1948] W. N. 273.
- 2887. Patents.** See PATENTS AND DESIGNS.
- 2888. Payment out of Court—summons by creditors in administration action.** See *Re VISCOUNT ROTHERMERE*, § 1389.
- 2889. Poor persons—order to pay costs.** See *OLDS v. OLDS*, § 1008.
- 2890. Privy council.** See PRIVY COUNCIL PRACTICE.
- 2891. Prize.** See PRIZE LAW.
- 2892. Probate.** See also EXECUTORS AND ADMINISTRATORS.
- 2893. — appointment of administrator pendente lite.** See *Re BEVAN*, § 1367.
- 2894. — fees.** See § 2831.
- 2895. — rules (non-contentious business).** Non-contentious Probate Rules, 1948 (No. 1204), amending the Principal Rules, r. 81, proviso.

2896. Receiver. See RECEIVERS.

2897. Rules of the Supreme Court—amendments. Rules of the Supreme Court (No. 1), 1948 (No. 939), amend Ord. 22 by substituting a new paragraph for para. (3) of r. 1, by inserting a new r. 5A (as to payment of hospital expenses), and by substituting a new form for Form 3 in App. B, Pt. II. The new rules also insert a new r. 5A in Ord. 41 (as to entry of judgment where the Crown sues in respect of death duties or purchase tax) and add a new Form 5B to App. F and new Forms 5B and 6B to App. K. Further a new order, Ord. 54M is inserted, which deals with the procedure on applications under the Middlesex Deeds Act, 1940.

2898. — — —. Rules of the Supreme Court (No. 2), 1948 (No. 1439). These Rules came into operation on July 5, 1948, and make the following alterations:

Ord. 16, r. 28B (poor persons' proceedings conducted by solicitor employed by Law Society)—new paragraph substituted for para. (1).

Ord. 55B (Unemployment Insurance Act, 1935)—rr. 1–38 revoked; new rr. 1–13 inserted in Part I of the Order under the title "National Insurance Acts, 1946".

App. B.—Forms 18A to 18D in Part II of the Appendix deleted; new forms 18B, 18C inserted.

2899. — — — applications by companies. See § 445.

2900. Service out of the jurisdiction—bankruptcy petition served on foreigner out of the country. See *Re A Debtor*, § 265.

2901. — libel posted abroad. In *BATA v. BATA* (July 29, 1948), a libel had been published by posting copies of a circular letter in Switzerland and the receipt thereof by the addressees in London. The Court of Appeal (Scott and Wrottesley, L.J.J., and Wynn-Parry, J.) held that a tort had been committed within the jurisdiction and allowed service of the writ out of the jurisdiction. [*Reported by R. C. Calburn, Esq., Barrister-at-Law.*] See also [1948] W. N. 366; 92 S. J. 574.

2902. — service on Attorney-General of Dominion or Colony. (R. S. C., Ord. 11, r. 1 (g).) *Quere*: whether the relief given in *Dyson v. Att.-Gen.*, [1911] 1 K. B. 410, by way of declaration binding on the Crown, ought to be given where what is asked for is a declaration, not on a matter of general interest, but relating to a particular executive act against a particular individual, the validity of which is challenged by reference to the particular circumstances in which the act was committed.

Quere further: whether the only place where, for the purpose of jurisdiction in an action against an Attorney-General of a Dominion or Colony for declarations affecting and intended to bind the Government to which he belongs, the Attorney-General is deemed to be is the Dominion or Colony of which he is Attorney-General. See *CHANNEY v. MURPHY*, § 2903 (distinguishing *Dyson v. Att.-Gen.*, *supra*).

2903. — stay of proceedings. (Judicature Act, 1925 (15 & 16 Geo. 5, c. 49), s. 41.) The limits within which the Court may exercise its powers under s. 41 of the Judicature Act, 1925, and its inherent jurisdiction to order a stay of proceedings, are summarily stated by Scott, L.J., in *St. Pierre v. South American Stores*, [1936] 1 K. B. 382: "The true rule about a stay under section 41, . . . may . . . be stated thus:

(1) A mere balance of convenience is not sufficient ground for depriving a plaintiff of the advantages of prosecuting his action in an English Court if it is otherwise properly brought. The right of access to the King's Courts must not be lightly refused.

(2) In order to justify a stay two conditions must be satisfied, one positive and the other negative:

(a) the defendant must satisfy the court that the continuance of the action would work an injustice because it would be oppressive or vexatious to him, or would be an abuse of the process of the Court in some other way; and

(b) the stay must not cause an injustice to the plaintiff.

On both the burden of proof is on the defendant."

If a Judge, after a proper review of the facts and without misdirecting

himself, comes to the conclusion that injustice will be caused to a plaintiff by staying his action, the Court of Appeal will not substitute their own opinion for his.

The plaintiff had issued a writ against ten defendants, who were the Governor, the Attorney-General and the members of the Executive Council of the Bahama Islands. In his writ the plaintiff claimed, *inter alia*, damages for interfering with his right to practice as a lawyer in the Colony and a declaration that the Bahamas Immigrants Act, 1926, did not authorise the declaring of the plaintiff to be undesirable and the consequent making of a deportation order. The plaintiff had applied to the Chief Justice of the Bahama Islands for an injunction restraining the Government from causing a deportation order to be made against him, because if he had to leave the Colony he would be deprived of his right to continue his action personally and to appear at the hearing and give evidence. The Chief Justice had dismissed this application. The plaintiff served his writ on the Governor and on a member of the Executive Council when they were in England on a short visit, but the other defendants were at all times out of the jurisdiction. The Governor and the member of the Executive Council applied for a stay of the action against them, and the plaintiff applied for service of a concurrent writ out of the jurisdiction on the other eight defendants. Held, (1) the plaintiff would be placed at a great disadvantage and would suffer considerable additional expense, if he had to prosecute his claim in the Colony, and, consequently, an injustice would be caused by granting a stay of his action; but (2) this was not a case where service of a concurrent writ on the defendants out of the jurisdiction should be allowed because (a) it was not a case for a declaration by the Courts of this country against the Attorney-General in his official capacity and, if the plaintiff obtained the declarations against the other defendants, it would only mean that the declarations would bind nine individuals instead of two; (b) the risk that the two defendants served might fail to satisfy a judgment for damages did not warrant taking the inconvenient course of allowing the other defendants to be served out of the jurisdiction; and (c) the circumstance that the plaintiff would be advantaged from an evidential point of view was not sufficient to outweigh the other considerations relevant to the exercise of the power to allow such service: *CHANEY v. MURPHY*, [1948] L. J. R. 1301; [1948] W. N. 130, C. A. (applying *St. Pierre v. South American Stores*, *supra*). (See also § 2902.)

2904. Set-off and counterclaim—equitable set-off. See *MORGAN & SON v. S. MARTIN JOHNSON AND CO.*, § 2855.

2905. Sheriffs. See *SHERIFFS*.

2906. Stare decisis—Court of Appeal. The very limited class of case in which, under the decision in *Young v. Bristol Aeroplane Co.*, [1944] K. B. 718, the Court of Appeal is entitled to reconsider a previous decision of its own does not include a case where the Court of Appeal has misunderstood a decision of the House of Lords. In such a case the Court of Appeal is still bound to follow its own previous decision and nobody but the House of Lords can put the mistake right. The position is different where a subsequent case in the House of Lords either expressly or by implication in effect overrules an earlier decision of the Court of Appeal.

In a case before the Court of Appeal the facts were indistinguishable from those in *Wilds v. Amalgamated Anthracite Collieries*, [1947] C. L. Y. 3317 (see also § 3986). Counsel for the employers contended that in *Wilds' Case* the Court of Appeal had misunderstood the decision of the House of Lords in *Jones v. Amalgamated Anthracite Collieries*, [1944] A. C. 14, which was inconsistent with it. Held, that argument was not open to counsel for the employers: *WILLIAMS v. GLASBROOK BROTHERS*, [1947] 2 All E. R. 884, C. A.

2907. — pension appeals. See *MINISTER OF PENSIONS v. HIGHAM*, § 2671.

2908. — res judicata. See *ESTOPPEL*.

2909. Stay of execution—effect of. See *CLIFTON SECURITIES v. HUNTLEY*, § 2830.

2910. Stay of proceedings—action against members of colonial government. See *CHANEY v. MURPHY*, § 2903.

- 2911. — authority of foreign plaintiff.** In *ROUYER GUILLET ET CIE v. ROUYER GUILLET & Co.* (December 3, 1948), three interlocutory applications were made with the object of stopping an action brought by the plaintiffs, a French *société à responsabilité limitée*, for passing off their goods in this country; the first two applications were for a stay of the action, the third for an injunction. The main argument on behalf of the applicants was that by French law, which admittedly, was the relevant law, the manager (*gérant*) of the plaintiffs was not authorised to commence proceedings and to instruct solicitors without having first obtained the consent of a three-quarter majority of members of the plaintiff company. Jenkins, J., dismissed the applications. The Court of Appeal (Lord Greene, M.R., Somervell and Evershed, L.J.J.) held that (1) upon the proper construction of art. 24 of the French law of 1925 dealing with the *société à responsabilité limitée* and the articles of the plaintiff company made thereunder the authority of the *gérant* to commence proceedings could not be questioned by third parties, (2) even if the allegation of the applicants that by commencing the action the *gérant* had broken his contract with the members were correct, an injunction could not be granted because that would obviously be an attempt at interfering indirectly with the *gérant's* power to commence actions against third parties, (3) the English Court was entitled and indeed bound to interpret the text of foreign enactments in order to decide as between two sets of expert witnesses. [Reported by C. M. Schmitthoff, Esq., Barrister-at-Law.]
- 2912. — frivolous and vexatious proceedings in Probate Division.** See *Re COGHILAN*, § 1365.
- 2913. Striking out defence—failure to comply with order for inspection of goods.** See *CHARLES OXFORD v. GONSHAW*, § 2820.
- 2914. — vexatious and oppressive defence.** The jurisdiction to strike out a defence or paragraphs of a defence is quite different from the jurisdiction under which the Court gives liberty to sign judgment. Nothing will prevent the Court from adopting the former course where it is satisfied that the defence is vexatious and aggressive. Thus, in a case where a defendant had deliberately flouted an order for the inspection of clothing, the Court in the exercise of its discretion struck out all the matters in the defence which were dealt with in the paragraphs in relation to which inspection had been ordered on the ground that the conduct of the defendant in relation to those paragraphs satisfied the Court that the defence contained in them could only be described as frivolous and vexatious and oppressive. See *CHARLES OXFORD v. GONSHAW*, § 2820.
- 2915. Striking out statement of claim—frivolous and vexatious action.** Where defendants are called on to meet substantially the same charge on which they have already succeeded in a former action, the Court will exercise its inherent jurisdiction to prevent its own process being used in any way which would be an abuse and will order the statement of claim to be struck out on the ground that it is frivolous and vexatious.
- The plaintiff brought an action for damages for fraudulent misrepresentation against two defendants, which he lost. He then brought a second action against the same defendants, in which he relied substantially upon the same facts and in which his cause of action was stated to be fraudulent conspiracy. Held, the plaintiff's action was an abuse of the process of the Court and his statement of claim should be struck out as being frivolous and vexatious.
- Semble:* A plea of *res judicata* by the defendants would also have succeeded: *WRIGHT v. BENNETT* (No. 2), [1948] W. N. 62; [1948] 1 All E. R. 227, C. A. (See also § 2916.)
- 2916. — res judicata.** The plea of *res judicata* is not confined to cases where the issues in the second action are identical with those in the first action. What has to be considered are the issues and facts which are part of the subject-matter of the litigation, and if they are in substance the same, the plea of *res judicata* will succeed. See *WRIGHT v. BENNETT* (No. 2) § 2915 (applying *Greenhalgh v. Mallard*, [1947] C. L. Y. 2434; *McDougall v. Knight* (1890), 25 Q. B. D. 1; and *Green v. Weatherill*, [1929] 2 Ch. 213).
- 2917. Test case—consultative case for opinion of Court.** "It was thought convenient to deal with this as a test case by submitting a preliminary question to the Judge

for his decision framed somewhat in the manner of a consultative case for the opinion of the Court. There were no pleadings, there was no agreed statement of facts in writing, and the question submitted was not very aptly framed. . . . These attempts at short cuts seldom achieve their purpose . . .": *per* Tucker, L.J., in *LANGHAM v. CITY OF LONDON CORPN.*, § 3593.

- 2918. — hypothetical questions.** "No agreement [between the parties] can . . . constrain the Court to decide hypothetical questions, especially when so to do might prejudice arguments which the Attorney-General might wish to advance on behalf of the public if the hypothetical cases actually happened": *per* Roxburgh, J., in *L. N. E. RY. v. YORKSHIRE C. C. (WEST RIDING)*, § 1593.
- 2919. Trial at Liverpool or Manchester.** Ord. 36 is amended, as from January 10, 1949, by the insertion of r. 1c, the amendment of r. 11A and r. 29 (3) and the insertion of r. 29A. The amendments relate to trial at Liverpool or Manchester: Rules of the Supreme Court (No. 4), 1948 (No. 2781), art. 2.
- 2920. Vesting order.** See *Re STRATHBLAINE ESTATES*, § 497.
- 2921. Vexatious and oppressive proceedings.** See *CHARLES OXFORD v. GONSHAW*, § 2914; *CHANEX v. MURPHY*, § 2903; *Re COGHAN*, § 1365; *WRIGHT v. BENNETT* (No. 2), § 2915.
- 2922. Witnesses.** See *EVIDENCE*.
- 2923. Writ—amendment of—substitution of plaintiff.** See *ALEXANDER MOUNTAIN & CO. v. RUMERE*, § 2882.
- 2924. ARTICLES.** The Crown Proceedings Rules, by Sir William Ball: 205 L. T. J. 4. The English circuit system (an address delivered to the Canadian Bar Association by Sir Norman Birkett): *Canadian Bar Review*, November, 1947, 980. County Courts (Crown Proceedings) Rules, 1947: 205 L. T. J. 44. Practice and procedure in 1947: 98 L. J. 60, 89, 117, 159. Service out of the jurisdiction: 92 S. J. 132. Security for costs: *Law Notes*, March, 1948, p. 67. Recent decisions on costs: *Law Notes*, April, 1948, p. 87. Taxation in legal practice, 92 S. J. 134, 173. Taxation in legal practice—insolvency: 92 S. J. 200. Taxation in legal practice—partnerships: 92 S. J. 225. Taxation in legal practice—companies: 92 S. J. 266. Chancery procedure—payment out of court in administration actions: 98 L. J. 227. Orders of Court and garnishee process: 21 *Australian Law Journal* 346. Appearance—separate capacity—parties, by Master Mosse: 98 L. J. 312. Conditional appearance, by Sir William Ball (founded on *Wilkinson v. Barking Corpn.*, § 2067): 205 L. T. J. 326. Representative actions under Ord. 16, r. 9, by Master Mosse: 98 L. J. 395. Police advocacy: 112 J. P. J. 464. Books in Court—some random reflections (citation of text-books and reports): 92 S. J. 399. Legal aid in England, by Robert Egerton: *Canadian Bar Review*, June—July, 1948, p. 950. Practice points of the year: 92 S. J. 489, 517. Practice points of the year—discovery (founded on *Blackpool Corporation v. Locker*, § 521): 92 S. J. 503. A legal information bureau (on the Institute of Advanced Legal Studies): *Solicitor*, September, 1948, p. 214. The law student—some suggestions: 206 L. T. 171, 184. Witnesses' allowances: 112 J. P. J. 600. Tribunals of inquiry (founded on Tribunals of Inquiry Act, 1921): 206 L. T. 268. Legal Aid and Advice Bill: 92 S. J. 667, 681, 716, 728; 206 L. T. 331.
- 2925. BOOKS PUBLISHED.** Annual Practice, 1946-7. Supplement [4s. 6d.]. Annual Practice, 1948.—61st ed. [57s. 6d.]. Bell, R. M.—Crown Proceedings, being a full statement of the law relating to actions by and against the Crown as affected by the Crown Proceedings Act, 1947 [17s. 6d.]. Chitty, T.—Forms of Civil Proceedings in the King's Bench Division of the High Court of Justice. 17th ed. Edited by P. J. Bowie [75s.]. Council of Legal Education Calendar, 1948-49 [3s.]. Current Law Year Book, 1947 [35s.]. Dobie, W. J.—Sheriff Court Practice [63s.]. English and Empire Digest. 2nd Cumulative Supplement, 1947 [57s. 6d.]. Every Man's Own Lawyer. 66th ed. [25s.]. Hastings, Sir Patrick. —Autobiography [15s.]. Glim. Official Organ of the Inns of Court Students' Union. Vol. 1, No. 1 (1948) [1s.]. Humphreys, T. S.—Notes on Registry (High Court of Justice) Practice and Procedure. 7th ed. [7s. 6d.]. Josling, J. F.—Execution of a Judgment [3s. 6d.]. Lawyer's Remembrancer and Pocket Book, 1949 [12s. 6d.]. MacKinnon, F. D.—Inner Temple Papers [2s.]. Mews'

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- 2926.** — OVERSEAS PUBLICATION. Hastings, M.—The Court of Common Pleas in Fifteenth Century England. A Study of Legal Administration and Procedure (U.S.A.) [21s.].

PRESS

- 2927. Defamation.** See LIBEL AND SLANDER.

PRISONS

- 2928. Defence Regulations—expiry.** See § 1136.
2929. Detention barracks. See § 178.
2930. Habeas corpus. See CROWN PRACTICE.
2931. Imprisonment—amendment of law relating to. See §§ 714, 715.
2932. ARTICLE. Prison administration, by R. M. Jackson: *Cambridge Law Journal*, 1948, p. 33.

PRIVY COUNCIL PRACTICE

- 2933. Indian appeals.** The following information has been kindly supplied by Sir Dhiren Mitra, C.B.E., Legal Adviser to the High Commissioner for India.

The Federal Court (Enlargement of Jurisdiction) Act passed by the Legislature of the Dominion of India came into force on February 1, 1948. The Act provides that "No direct appeal shall lie to His Majesty in Council either with or without special leave from any judgment or decree or a final order of a High Court in a civil case", and that appeals from such judgment shall be to the Federal Court of India.

The jurisdiction of the Privy Council in civil appeals from the High Courts has thus been taken away and conferred on the Federal Court, but the Privy Council has jurisdiction, and will continue to have jurisdiction under s. 208 of the Government of India Act, 1935, to entertain appeals from the Federal Court in which leave to appeal to the Privy Council is given by the Federal Court or by His Majesty in Council.

In criminal cases appeals from judgments of the High Courts will continue to come to the Privy Council.

The above Act applies to the Dominion of India only and not to the Dominion of Pakistan. Both civil and criminal appeals from the Federal Court in Pakistan as well as High Courts in Pakistan will continue to come to the Privy Council.

- 2934.** — **consolidation.** See *MADHOLAL SINDHU v. OFFICIAL ASSIGNEE OF BOMBAY*, § 2935.
2935. — **leave to appeal—special leave to cross-appeal.** (Federal Court (Enlargement of Jurisdiction) Act, 1947, ss. 3, 7.) In a case in which leave to appeal had already been granted in India the Board had given special leave to cross-appeal and had made an order that the appeal and the cross-appeal should be consolidated. As the record in the main appeal had not been transmitted to His Majesty in Council before the appointed day named in the Federal Court (Enlargement of Jurisdiction) Act, 1947, the main appeal to the Board had been abrogated under that Act and was to be heard by the Federal Court. The Board now held that, although they had no power to hear the main appeal, the cross-appeal had to take its ordinary course, but that the order previously made would have to be varied so that there would no longer be a consolidation: *MADHOLAL SINDHU v. OFFICIAL ASSIGNEE OF BOMBAY* (1948), 64 T. L. R. 370, P. C.
2936. Palestine appeals. (Palestine (Appeal to Privy Council) Order in Council, 1924 (No. 1243), art. 3 (a)). Art. 3 (a) of the Palestine (Appeal to Privy Council) Order in Council, 1924, provides that an appeal shall lie as of right when the matter in dispute is of the value of £500 or upwards.

A tenant had erected a building on a small piece of land held by him on a

short lease which was subject to a Rent Restriction Ordinance. The landlord had obtained an order for possession and the tenant sought to appeal against the order. Held, the value of the matter in dispute was not the mere value of the lease, but what it was worth to the tenant that the Rent Restriction Ordinance should be held to give him protection against an order to vacate the land leaving a valuable building on it. See *LIPSHITZ v. VALERO*, § 343.

2937. ARTICLE. Indian appeals to the Privy Council: 98 L. J. 242.

PRIZE LAW

2938. **Condemnation.** See *THE BELLAMAN*, § 2945.

2939. **Enemy character of ship—burden of proof.** It is an elementary principle of law that, once probable cause for seizure is established by the captors, the burden of proof lies on the claimants. See *THE UNITAS*, § 2941 (applying *The Sidi Ifni* (1945), 1 Lloyd's Pr. Cas., 2nd Series, 200).

2940. — **claimant's right to damages and costs.** It is well settled that if there was no circumstance of suspicion, or, as it is sometimes put, "no probable cause" justifying the seizure, the claimant to whom the goods are released is entitled to both costs and damages. If, on the other hand, there were suspicious circumstances justifying the seizure, the claimant is not entitled to either costs or damages. See *THE UNITAS*, § 2941 (applying *The Baron Stjernblad*, [1918] A. C. 173).

2941. — **duress.** In English law duress of goods, as distinct from duress of person, does not avail to avoid a contract. In order to avoid a contract by reason of duress, it must be duress of a man's person. Therefore, where the flying of an enemy flag by a ship is alleged to be due to duress of goods there will be nothing to displace the general rule of law that a vessel, sailing under the colours and pass of a nation, is to be considered as cloaked with the national character of that country.

The claimants, who were engaged in the production of raw materials, had subsidiary companies in Germany who had become indebted to them. These debts had become frozen by a decree of the German Government. The claimants thereupon began to place contracts in German shipyards for the building of ships for export in order to recover the debts by means of an "extraction process". When the U. was built in the course of this "extraction process" the German Government insisted that she should be registered under the German flag, that the claimants should have no more than a 50 per cent. interest in the whaling fleet of which the U. was to form part, and that the whaling fleet should not be transferred from the German flag without the consent of the German Government. The German Government also decided to subsidise the construction of the whaling fleet. Moreover, they threatened that they would cut the production quotas of the claimants in Germany if the latter did not agree to their proposals. The U. was seized in prize by the Allies when they invaded Germany in 1945. The claimants contended that the U. was placed under the German flag involuntarily and under duress and asserted that the real ownership of the U. was in them. Held, there were no particular circumstances which took the case out of the general rule that the enemy character of a ship is determined by her flag, and, consequently, the U. was good and lawful prize: *THE UNITAS*, [1948] P. 205; [1948] L. J. R. 1154, Lord Merriman, P. (applying *The Vrow Elizabeth* (1803), 5 Ch. Rob. 2; *The Hamborn*, [1919] A. C. 993; and *Oates v. Hudson* (1851), 6 Exch. 346). (See also §§ 2939, 2940, 2942, 2943.)

2942. — **neutral's locus poenitentiae.** A neutral having a commercial domicile in a country which becomes an enemy is, on the outbreak of war, according to the views held by British Courts, allowed a reasonable interval during which he can discontinue or dissociate himself from the business in question. If he fails to dissociate himself from the taint of enemy character he will be unable to rescue his goods from condemnation, e.g., in the case of a ship from seizure as good and lawful prize. See *THE UNITAS*, § 2941 (applying *The Glenroy*, [1945] A. C. 124).

2943. — **"whole and sole ownership".** There is no authority for applying the principle in *Daimler Co. v. Continental Tyre and Rubber Co.*, [1916] 2 A. C. 307, to the effect that "the whole and sole ownership in a ship in every real

and business sense" may reside in someone other than the enemy whose flag the ship flies, in favour of claimants in prize, though it is clearly applicable in favour of the Crown. See *THE UNITAS*, § 2941 (distinguishing *Daimler Co. v. Continental Tyre and Rubber Co.*, *supra*; applying *The Primus* (1854), 1 Ecc. & Ad. 353; and *The Pedro* (1899), 175 U. S. 354).

2944. Prize Act, 1948 (12 & 13 Geo. 6, c. 9). This Act makes provision for the payment and distribution of any prize money granted out of the proceeds of prize captured in the late war, but extinguishes for the future the prerogative rights to make grants of prize money to captors and to grant prize bounty. S. 1 provides for the transfer of the sums specified therein from the Supreme Court Prize Deposit Account into two separate accounts, one for the Royal Navy and Royal Marines and the other for the Royal Air Force, and ss. 2 and 3 provide for distribution of prize payments out of those two accounts. The forces to benefit are naval and marine forces and air forces raised by the Governments of the United Kingdom, the colonies and protectorates and Burma (s. 4). S. 6 deals with payments out of and into the Supreme Court Prize Deposit Account of amounts due to or received from the Government of any Dominion, etc. The abolition of future prize money and prize bounty is effected by s. 9.

2945. Seizure—ships stranded in captured harbour. (Naval Prize Act, 1864 (27 & 28 Vict. c. 25), s. 16.) In considering whether or not there has been a lawful seizure of ships in a port, when the port has been captured, the words of Sir W. Scott in *The Progress* (1810), 1 Edw. 210, should be borne in mind, namely: "it is not necessary to show that [the captors] had taken formal possession of each individual ship, because they had possession of the port itself; and the taking of that which contained the vessels is in effect the same as taking bodily possession of the ships themselves. It is likewise clear in point of principle, that it is not necessary that it should be primarily the intention of the captor to recover the property". Furthermore, in considering whether there was an effectual seizure, the requirements of the Naval Prize Act, 1864, s. 16, have to be considered.

The claimants, two Italian nationals, were the respective owners of two vessels, which, after having been sunk by Allied action, were lying aground in Tripoli harbour when British troops captured Tripoli and its harbour in 1943. Nothing was done to these vessels until, on February 3, 1947, both were boarded by a lieutenant of the Royal Navy, who hoisted the White Ensign in each of them and signed a certificate that the vessel had been seized in prize. Writs in prize were issued on May 5, 1947. On September 15, 1947, the treaty of peace with Italy came into force. Under art. 76 of the treaty all "claims arising out of the . . . purported exercise of belligerent rights" were barred. The claimants claimed the release of the vessels which were being salvaged, alleging that the Crown had not purported to exercise any rights as captors in prize until such rights had lapsed by the terms of the Italian armistice. Held, (1) the hoisting of the White Ensign and the issuing of prize writs before the treaty came into force made these claims "claims arising out of the purported exercise of belligerent rights", and, therefore, the claimants' rights to sue was barred; (2) the presumption that the vessels had been seized when the port had been captured applied, and the failure to carry out the statutory duties under s. 16 of the Naval Prize Act, 1864, by not placing the vessels seized in prize in the custody of the Admiralty Marshal did not in the circumstances of the case make it possible to draw the inference that no seizure had in fact taken place. Consequently, the vessels were seized when the port of Tripoli was captured and were condemnable as good and lawful prize: *THE BELLAMAN*; *THE AGOSTINO BERTANI*, [1948] W. N. 370; [1948] 2 All E. R. 679, Lord Merriman, P. (applying *The Bathori*, [1934] A. C. 91; *The Progress*, *supra*; *The Edward and Mary* (1801), 3 Ch. Rob. 305; and *The Anichab*, [1919] P. 329).

PUBLIC AUTHORITIES AND PUBLIC OFFICERS

2946. Limitation of actions. See LIMITATION OF ACTIONS.

2947. ARTICLE. Discretionary powers of public authorities—their control by the Courts: 7 *University of Toronto Law Journal* 395.

PUBLIC ENTERTAINMENTS

- 2948. Cinema—films—agreement with U.S.A.** Memorandum of Agreement between H.M. Government in U.K. and the Motion Picture Industry of U.S.A., March 11, 1948, Cmd. 7421.
- 2949. ——— Cinematograph Films Act, 1948 (11 & 12 Geo. 6, c. 23).** The main object of this Act is further to secure the exhibition of a certain proportion of British cinematograph films: it also amends and continues the Cinematograph Films Act, 1938 (1 & 2 Geo. 6, c. 17). S. 1, which is to remain in force until September 30, 1958, provides that exhibitors of registered films must in any quota period include such British films as are required by that section. S. 2 provides for the determination of quotas of British films; and s. 4 contains supplementary provisions as to quotas. Provisions for the exemption and relief of certain theatres and itinerant exhibitors in certain cases are contained in s. 4; and special provisions applicable to circuit theatres, etc., are contained in s. 5. S. 6 relates to rentals payable in respect of registered films. By s. 7 the Acts are not to apply to films other than standard films (*i.e.*, 35 millimetres), unless specially applied by Regulations (s. 7). S. 8 varies the constitution of the Cinematograph Films Council, and s. 9 makes various amendments to the 1938 Act (set out in Sched. I). A reprint of the 1938 Act as amended by the present Act is contained in Sched. II. The Act came into force on April 1, 1948 (s. 10 (5)). It does not apply to Northern Ireland (s. 10 (6)).
- 2950. ——— exhibitors' licences.** Cinematograph Films (Exhibitors) Regulations, 1948 (No. 1831), made under the Cinematograph Films Act, 1938 (1 & 2 Geo. 6, c. 17), s. 40, as amended; prescribe the form and method of application for an exhibitor's licence and make provision with respect to records and the return required to be made by s. 37 (3) of the Act. The regulations of 1928 (Nos. 431, 973), and part of the regulations of 1938 (No. 682) are revoked from August 10, 1948, and the remainder of the 1938 regulations are revoked from October 1, 1948. The new regulations came into operation on August 10, 1948, except the provisions relating to records and returns which came into operation on October 1, 1948. [2d.]
- 2951. ——— film industry—wages.** See *SIMPSON v. KODAK*, § 1278.
- 2952. ——— quotas.** Cinematograph Films (Quotas) Order, 1948 (No. 1687), made under the Cinematograph Films Act, 1948 (11 & 12 Geo. 6, c. 23), s. 2 (1); comes into operation on October 1, 1948. The prescribed percentage for the purpose of s. 1 (2) is to be 45 per cent. and for the purposes of s. 1 (3) is to be 25 per cent.
- 2953. ——— Defence (Cinematograph Quotas) Regulations, 1940.** Regs. 1, 2, 3 and 5 expired on December 31, 1948: Emergency Laws (Miscellaneous Provisions) Act, 1947 (11 Geo. 6, c. 10), Sched. I, Part II.
- 2954. ——— registration.** Cinematograph Films (Registration) Regulations, 1948 (No. 634), made under the Cinematograph Films Act, 1938 (1 & 2 Geo. 6, c. 17), s. 40, as amended by the Cinematograph Films Act, 1948 (11 & 12 Geo. 6, c. 23). These Regulations relate to applications for the registration of films, the maintenance of the register, the notification to exhibitors of the registration particulars of films and statutory declarations in connection with the above matters. The Schedule contains a form of application for registration, a form of evidence of the British nature of a film and other forms. The new Regulations operate from April 1, 1948, from which date the previous Regulations of 1938 (No. 266), 1941 (No. 1854) and 1945 (No. 276), are revoked. [3d.]
- 2955. ——— removal of restriction.** Display of Photographs (Cinematograph Film Industry) (Revocation) Order, 1948 (No. 2638); revokes the Display of Photographs (Cinematograph Film Industry) Order, 1942 (No. 135).
- 2956. ——— renters' licences.** Cinematograph Films (Renters' Licences) Regulations, 1948 (No. 633), made under the Cinematograph Films Act, 1938 (1 & 2 Geo. 6, c. 17), s. 40, as amended by the Cinematograph Films Act, 1948 (11 & 12 Geo. 6, c. 23). These Regulations relate to applications for the issue of renters' licences and contain (in the schedule thereto) a form of application. Previous Regulations of 1928 (No. 131), 1938 (No. 267), 1941 (Nos. 423, 1856), and 1943 (No. 238) are revoked. The new Regulations operate from April 1, 1948.
- 2957. Circus—failure to provide lavatory.** See *PEARSON v. COLEMAN BROTHERS*, § 2481.

- 2958. Entertainments duty.** See the Finance Act, 1948 (11 & 12 Geo. 6, c. 49), ss. 16, 17, Sched. 7, § 789.
- 2959. Local authorities' powers.** New powers as to the provision of entertainments by local authorities are conferred by the Local Government Act, 1948 (11 & 12 Geo. 6, c. 26), s. 132 (§ 2051).
- 2960. Theatre—lease or licence.** [Aus.] See RADIO THEATRES PTY. v. CITY OF COBURG, § 1929.
- 2961. Wireless—broadcasting in Far East.** See § 3587.
- 2962. — relay service installation—damage to reversion.** [Cty. Ct.] See ELLWOOD v. WEST CUMBERLAND RELAY SERVICE, § 3776.

PUBLIC HEALTH

- 2963. Airborne traffic, sanitary control of.** See §§ 235, 243.
- 2964. Buildings.** See also BUILDING AND ENGINEERING, ARCHITECTS AND SURVEYORS.
- 2965. — returns by local authorities—additional information.** Ministry of Health Circular, No. 78/48, dated May 20, 1948, refers to the additional information required in returns from local authorities by s. 14 of the Statistics of Trade Act, 1947, as to the estimated cost of proposed new building works and as to completion, for the purpose of which requirement local authorities should amend their form of application under s. 61 of the Public Health Act, 1936, or, in the case of the L. C. C., under s. 84 of the London Building Acts (Amendment) Act, 1939, to obtain the additional particulars required.
- 2966. Food.** See also FOOD AND DRUGS.
- 2967. — transfer of functions.** See §§ 1482, 1483, 2172.
- 2968. Knackers' yards.** See § 1480.
- 2969. Markets.** See MARKETS AND FAIRS.
- 2970. National Assistance Act, 1948—duties of local authorities under.** See Parts III and IV of the National Assistance Act, 1948 (11 & 12 Geo. 6, c. 29). For further details see § 2060.
- 2971. National health service.** See NATIONAL HEALTH.
- 2972. Notification of infectious diseases.** Regulations made under the Public Health Act, 1936 (26 Geo. 5 & 1 Edw. 8, c. 49), s. 143: SI 1948, Nos. 420 (amending the County of London (Measles and Whooping Cough) Regulations, 1938 (No. 1100) and 1940 (No. 205)); 421 [E.] (amending the Measles and Whooping Cough Regulations, 1940 (No. 204), by increasing the fee payable under s. 145 (1) of the Act in a case occurring in private practice from 1s. to 2s. 6d.). See also § 2090.
- 2973. Nurseries and child-minders—registration by local health authorities.** See § 1718.
- 2974. Radioactive substances.** See §§ 210, 2704.
- 2975. Scavenging—dustbin, provision of.** In DALY v. ASHCROFT PROPERTIES, *Estates Gazette*, January 31, 1948, p. 80, the Divisional Court allowed an appeal against the decision of the justices dismissing an information preferred against the respondents that they had failed to provide a dustbin when required to do so under the Ilford Urban District Act, 1904. The appellant had a right to proceed either under the local Act or under s. 75 of the Public Health Act, 1936, which provided that an owner or occupier might be required to provide a covered dustbin.
- 2976. — —.** (Public Health Act, 1936 (26 Geo. 5 & 1 Edw. 8, c. 49), s. 75 (1); Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 (10 & 11 Geo. 5, c. 17), s. 2 (3).) A decision of the justices under s. 75 (1) of the Public Health Act, 1936 (under which a local authority who have undertaken the removal of house refuse may require the owner or occupier of any building within the district to provide a dustbin or make an annual charge to be added to the general rate if they supply dustbins) allowing an appeal by owners against a notice requiring them to supply dustbins cannot be attacked on the ground that it impliedly disregards the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, s. 2 (3) (which prohibits the transfer of a burden or liability from the landlord to the tenant except on the terms therein mentioned) where the burden is not a contractual one.

The owners of a comparatively new housing estate, when the houses were first let provided the tenants with sanitary dustbins. They were under no contractual obligation to do so. The local authority served on the owners a notice to furnish the houses with dustbins of specified material, size and construction. The justices allowed the appeal of the owners as "persons aggrieved" against the notice on the grounds that the notice was unreasonable having regard to the rents payable and the cost of keeping the houses in repair. Held, the justices were right. The mere fact that they had decided in favour of the landlord did not mean that they had put the burden of supplying dustbins on the tenants: *FIRST NATIONAL HOUSING TRUST v. CHESTERFIELD R. D. C.*, [1948] 2 K. B. 351; [1948] 2 All E. R. 658, D. C. (applying *Croydon Corporation v. Thomas*, [1947] C. L. Y. 2471).

- 2977. — insurable employment.** [Scot.] See *FIFE COUNTY COUNCIL v. M. N. I.*, § 2394.
- 2978. Sewerage—and sewerage disposal—war damage.** See § 3838.
- 2979. — orders.** Orders made under the New Towns Act, 1946 (9 & 10 Geo. 6, c. 68), s. 9; SI 1948, No. 677 (Crawley); 1709 (Aycliffe).
- 2980. Slaughter-house.** [Eire.] (Towns Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34), s. 126). In *DUBLIN CORPORATION v. KEYES*, [1947] Ir. R. 299, the Supreme Court of Eire held that a licence to use premises as a slaughter-house did not attach to the premises and enure for the benefit of successive occupiers thereof. It was personal to the licensee and had lapsed on his death (considering *Goodwin v. Sale*, [1907] 2 K. B. 278).
- 2981. Statutory nuisance—house not fit for habitation.** In *SALISBURY CORPORATION v. ROLES*, [1948] W. N. 412; 92 S. J. 618, the Divisional Court (Lord Goddard, C.J., Humphreys and Byrne, J.J.), adjourned an appeal from an order of the justices dismissing a complaint preferred against the respondent under s. 94 (2) of the Public Health Act, 1936 (26 Geo. 5 & 1 Edw. 8, c. 49) for failing to abate nuisances to certain old houses within the Rent Acts which could not be made fit for habitation at reasonable cost, in order that the appellants might consider whether they would not proceed by way of demolition order under the Housing Act, 1936 (26 Geo. 5 & 1 Edw. 8, c. 51), as the latter Act safeguards house-owners against being obliged to incur unreasonable expenditure.
- 2982. — service of summons under London Building Acts.** See *R. v. Rose*, § 2101.
- 2983. Vaccination and inoculation.** The Minister of Health has issued to local authorities Circular 60/48 dated April 20, 1948, with a view to ensuring that certificates of vaccination or inoculation carried by travellers from the United Kingdom are authenticated in a manner which will make them acceptable by public health authorities abroad.
- 2984. Venereal diseases.** Public Health (Venereal Diseases) Revocation Regulations, 1948 (No. 928) [E.], revoke the Public Health (Venereal Diseases) Regulations, 1916 (No. 467), from July 5, 1948, and thus bring to an end from that date the existing arrangements for the treatment of venereal diseases, which have become the responsibility of Regional Hospital Boards under the National Health Service (see § 2330).
- 2985. Water supply.** See *WATER AND WATERWORKS*.
- 2986. —.** See the Water Act, 1948, s. 12, referred to in § 3855.
- 2987. ARTICLES.** Nuisance from sewage works (remedies: injunction and complaint to Minister of Health): 112 J. P. J. 336. Surviving temporary buildings (founded on Public Health Act, 1936, s. 344): 112 J. P. J. 430. Derelict sites and buildings (founded on Public Health Act, 1936, s. 58): 112 J. P. J. 522.
- 2988. BOOK PUBLISHED.** Lumley, W. G.—Public Health Acts. 11th ed. General Index [42s.].

PURCHASE TAX

- 2989. Chargeable goods.** Notice No. 78 (February, 1948) issued by the Commissioners of Customs and Excise supersedes Notices Nos. 78 (December, 1946), 78c (April, 1947), 78H (July, 1947), 78J (November, 1947), and 78K (November, 1947), and all additions, and amendments issued by the Commissioners up to February 28, 1948. Notices Nos. 78A, 78B, and 78C remain in force, as amended.

- 2990.** —. Notice by the Commissioners of Customs and Excise No. 78L (April, 1948) (revised schedule of chargeable goods). The revised schedule contained in Notice No. 78L takes effect on April 9, 1948. Manufacturers and traders concerned with goods that are now being made chargeable, and who will now be liable to registration for purchase tax purposes subject to the £500 exemption limit, should get in touch with the local Officer of Customs and Excise, whose address can be obtained at the nearest post office: Customs and Excise Press Notice No. 211 dated April 6, 1948.
- 2991.** —. Notice No. 78 (September, 1948) by the Commissioners of Customs and Excise supersedes Notices Nos. 78 (February, 1948) and 78L (April, 1948) (including the Supplement) and all additions and amendments issued by the Commissioners up to September 18, 1948, and also supersedes Notice No. 78c (Stationery and Office Requisites and other Paper Manufactures). Notices No. 78A, 78B and 78M remain in force as amended.
- 2992.** — **alteration of rates.** Notices issued by the Secretaries' Office, Commissioners of Customs and Excise: No. 203, January 5, 1948 (glass bowls and glass dishes; Notice No. 78 amended); No. 204, January 5, 1948 (immersion heaters; Notice No. 78H amended); No. 205 (watch bracelets; scrap-albums and scrap-books; oars; Notices Nos. 78, 78c amended); No. 206, January 19, 1948 (plastic bowls and dishes).
- 2993.** — —. Notice issued by the Secretaries' Office, Commissioners of Customs and Excise: No. 208, March 1, 1948 (crimped paper food cases; accessories for stoves, grates and ranges).
- 2994.** — —. The following orders and directions were issued to enable manufacturers and retailers to recover purchase tax imposed with effect from April 9, 1948, on utility fully fashioned stockings and the increased purchase tax on utility fur garments: SI 1948, Nos. 701 (utility apparel), 702 (fur apparel), 703 (knitted goods).
- 2995.** — —. The Chancellor of the Exchequer gave notice that he proposed on report of the Finance Bill, 1948, to move amendments the effect of which would be: (1) to reduce to 33½ per cent. the rate of tax on utility garments made wholly or mainly of fur skin, on non-utility soft-filled mattresses and upholstered spring-interior mattresses and on non-utility pillows and bolsters, on cupboards and dressers designed for use in kitchens, on wireless receiving sets of the domestic, portable or road-vehicle types, and kits of such sets and valves suitable for use in them, and on clocks and watches of non-precious metals; (2) to exempt from tax paper handkerchiefs and paper towels, parallel sided or taper baths of galvanised iron of 3ft. 6in. size and upwards, and paraffin and other oil-burning lamps (*e.g.*, petrol vapour lamps) and accessories for such lamps, including incandescent mantles specially designed for oil-burning lamps, but not including shades, bowls and similar accessories; (3) to reduce to 66⅔ per cent. the rate of tax on gas-operated space-heating and water-heating appliances; (4) to extend the range of baskets charged at the rate of 33½ per cent. as being made wholly of cane or wicker, apart from external fitments, to include similar baskets having a wooden bottom or bottom of other vegetable material, *e.g.*, pulp board: Customs and Excise Press Notice No. 224, June 11, 1948. See § 3039.
- 2996.** — **amendments to revised schedule.** The alterations which should be made to Notice No. 78L (see § 2990) as a result of legislative amendments of the revised schedule of goods chargeable with purchase tax are set out in Customs and Excise Supplement to Notice No. 78L, July 1, 1948.
- 2997.** — **baskets.** The Chancellor of the Exchequer gave notice that he would move an amendment to the Finance Bill, 1948, which would have the effect of reducing from 66⅔ per cent. to 33½ per cent. the rate of purchase tax payable on baskets, which, except for external fitments, are made wholly of cane or wicker. Furniture made of cane or wicker of descriptions chargeable under Group 11 (b) (i) would not be affected by the amendment: Customs and Excise Press Notice No. 222, May 28, 1948. See § 3039.
- 2998.** — **built-in furniture.** A list of articles which the "exemption" under Group 11 (n) of the Tax Schedule (for articles of kinds ordinarily installed by builders as fixtures) is regarded as covering is published in Customs and Excise Press Notice No. 228, July 6, 1948.

- 2999.** — **children's non-utility chairs and tables.** These articles, unless possessing special features which clearly identify them as for non-domestic use, are chargeable with tax at the rate of $33\frac{1}{3}$ per cent. under Group 11. Amend Notice No. 78 at pp. 25, 26 and 27. Customs and Excise Press Notice No. 247, December 7, 1948.
- 3000.** — **Christmas tree lighting sets.** Christmas tree lighting sets incorporating Group 29 (a) features are chargeable at the rate of 100 per cent. and other sets at $33\frac{1}{3}$ per cent. Amend Notice No. 78 at pp. 24, 33 and 55. Customs and Excise Press Notice No. 246, November 30, 1948.
- 3001.** — **coffee percolators.** Gas or electric coffee percolators and (with exceptions) domestic percolators without heating elements are not chargeable with tax. Amend Notice No. 78 (September, 1948 issue) at p. 30: Customs and Excise Press Notice No. 242, November 9, 1948.
- 3002.** — **domestic clothes boilers.** Clothes and similar boilers of a kind used for domestic purposes which do not incorporate, or provide for the incorporation of, heating elements, are not within the scope of the exemption under Group 12 (f) but are chargeable under Group 11 (a) at the rate of $33\frac{1}{3}$ per cent. of the wholesale value: Customs and Excise Press Notice No. 234, August 31, 1948.
- 3003.** — **draining boards.** On draining boards which are not articles falling within Group 11 (n) of the revised Schedule of Chargeable Goods (see Notice No. 78L) the rate of tax is $33\frac{1}{3}$ per cent. (Group 11 (a)) and not $66\frac{2}{3}$ per cent. (Group 11 (b) (i)): Customs and Excise Press Notice No. 218, dated May 7, 1948.
- 3004.** — **drawing instrument cases.** Both wallet and snap-fastener "box" types of cases for drawing instruments are chargeable with tax under Group 23, at the rate of 100 per cent. if the case is of leather, hide or skin, and at the rate of $66\frac{2}{3}$ per cent. if it is made of other materials: Customs and Excise Press Notice No. 239, October 19, 1948.
- 3005.** — **drugs.** Purchase Tax (No. 1) Order, 1948 (No. 608), made under the Finance (No. 2) Act, 1940 (3 & 4 Geo. 6, c. 48), s. 20 (1), contains a list of drugs which are free of purchase tax, superseding the list given in the Purchase Tax (Exemption) (No. 1) Order, 1941 (No. 1390), as extended by the Purchase Tax (Exemption) (No. 2) Order, 1945 (No. 1263). [2d.]
- 3006.** — —. Notice by the Commissioners of Customs and Excise No. 78M (April, 1948) (exemption of certain drugs and medicines). The Finance Bill, 1948, provided that drugs and medicines (except toilet preparations) complying with the provisions set out in this notice were to be exempted from purchase tax (the exemption being operative on June 1, 1948) under Group 33 of the new Schedule of Chargeable Goods (see Notice No. 78L, dated April, 1948). (Press Notice No. 216, dated April 30, 1948, refers.) See §§ 3008, 3039.
- 3007.** — —. Purchase Tax (No. 5) Order, 1948 (No. 2642), contains a new list of drugs and medicines which are free of tax, superseding the list contained in the Purchase Tax (No. 1) Order, 1948 (No. 608). [2d.]
- 3008.** — —. Purchase Tax (No. 6) Order, 1948 (No. 2720), made under the Finance Act, 1948 (11 & 12 Geo. 6, c. 49), ss. 21, 22, came into operation on January 1, 1949. The Order amends the provisions for the exemption of certain drugs and medicines from purchase tax which are contained in Part II of the Eighth Schedule to the Finance Act, 1948.
- 3009.** — —. Purchase Tax (No. 6) Order, 1948 (SI 1948, No. 2720), necessitates amendments to the provisions printed in heavy type in Notice No. 78M: Customs and Excise Press Notice No. 250, December 29, 1948.
- 3010.** — **electric heating pads.** (Finance (No. 2) Act, 1940 (3 & 4 Geo. 6, c. 48), Sched. VII, para. 7.) In the expression "appliances and apparatus of a kind used for domestic purposes" in para. 7 of Sched. VII to the Finance (No. 2) Act, 1940, the word "domestic" means the house or the home. Articles may be said to be of a kind used for domestic purposes not only because they are necessary for the home, but because they are calculated to contribute to the comfort and well-being of people in the house. The mere fact that any one of such articles may be used for medical purposes does not prevent its being an article of a kind used for domestic purposes. Thus, electric heating pads and blankets which are designed and produced for medical purposes constitute "appliances and apparatus of a

kind used for domestic purposes" within the meaning of the Schedule and are, therefore, liable to purchase tax: *ATT.-GEN. v. MILLIWATT*, [1948] 1 All E. R. 331, Cassels, J.

- 3011.** — **enamelled jugs.** Certain enamelled jugs are to be regarded as within the scope of Group 11 (i) and not subject to tax. Amend Notice No. 78 (September, 1948 issue) at p. 21: Customs and Excise Press Notice No. 244, November 23, 1948.
- 3012.** — **fancy articles.** Information regarding the liability of certain goods to the purchase tax under Group 29 (a) and (b) of the new Tax Schedule (fancy or ornamental articles suitable for personal or domestic use and of a kind produced in quantity for general sale) is published, as supplementary to that given in Notice No. 78L (see § 2990), in Customs and Excise Press Notice No. 221, dated May 25, 1948.
- 3013.** — **felt material.** Underfelt material, whether backed or not, and dyed ("art") felt, is not chargeable with tax unless the goods are fully manufactured, *e.g.*, cut to size and bound on all four edges. Printed felt is in no circumstances entitled to exemption: Customs and Excise Press Notice No. 229, June 13, 1948.
- 3014.** — **floor coverings.** Purchase Tax (No. 3) Order, 1948 (No. 2398) exempts from purchase tax floor coverings in the form of tiles or strips not exceeding 450 square inches in area, irrespective of shape, with effect (as provided) from November 15, 1948. Amend Notice No. 78, p. 17: Customs and Excise Press Notice No. 243, November 16, 1948.
- 3015.** — —. Floor coverings in the form of tiles and strips not exceeding 450 square inches in area (which are exempt, see § 3014) include stair risers and treads, nosings, combined treads and nosings, covings and edging strip. Woven fabric floor coverings remain chargeable. Coverings identifiable as mats (*e.g.*, by reason of bevelled edges, shaped corners, etc.) are chargeable. Customs and Excise Press Notice No. 249, December 17, 1948.
- 3016.** — **furniture.** Purchase Tax (No. 4) Order, 1948 (No. 2511) reducing, as from November 29, 1948, the rate of purchase tax on certain furniture.
- 3017.** — **gramophone records.** Notice to No. 78L, at p. 13, Group 19 (b) should be amended to accord with the exemption conferred by the Purchase Tax (No. 2) Order, 1948 (see § 3018): Customs and Excise Press Notice No. 231, August 10, 1948.
- 3018.** — —. Purchase Tax (No. 2) Order, 1948 (No. 1829), made under the Finance Act, 1948 (11 & 12 Geo. 6, c. 49), s. 21 (1); exempting certain gramophone records from purchase tax.
- 3019.** — **hand-made hosiery.** The Chancellor of the Exchequer gave notice that he would move an amendment to the Finance Bill, 1948, to exempt hand-made hosiery from purchase tax with effect from June 1, 1948: Customs and Excise Press Notice No. 220, dated May 18, 1948. See § 3039.
- 3020.** — **hassocks, safety reins, etc.** Information regarding the liability of hassocks, kneeling pads and children's safety reins and safety harnesses under the revised Schedule of Chargeable Goods (Notice No. 78L): Customs and Excise Press Notice No. 219, dated May 19, 1948.
- 3021.** — **intaglio cut glassware.** Intaglio cut glassware of a kind used for domestic or office purposes is chargeable with purchase tax at the rate of 100 per cent. under Group 11 (d) of the Tax Schedule (see Notice No. 78L). The charge under Group 11 (d) is not regarded as extending to glassware which is engraved, etched or sandblasted and which is liable to tax at the rate of 33½ per cent. under Group 11 (a). Customs and Excise Press Notice No. 234, August 31, 1948.
- 3022.** — —. Articles of glassware which are engraved, etched or sandblasted are chargeable with tax at the rate of 33½ per cent. under Group 11 (a) only if they are not chargeable at a higher rate under another group: Customs and Excise Press Notice No. 238, October 12, 1948.
- 3023.** — **loose covers for periodicals.** Information supplementary to Notice No. 78: articles which are handpainted are chargeable at the rate of 100 per cent. under Group 29 (a); articles which are specially titled and designed for use solely with a particular printed book, periodical or trade catalogue are not liable to tax,

unless handpainted; other loose covers, including those of paper board with internal flaps or a pocket on the inside of either or each cover, are chargeable at 33½ per cent. under Group 34 (b). Customs and Excise Press Notice, No. 234, August 31, 1948.

- 3024. — model aircraft, railways and ships—parts and accessories.** A list of articles chargeable and those not chargeable under Group 20 of the Schedule is published in Customs and Excise Press Notice No. 247, December 7, 1948.
- 3025. — model hat shapes and model dresses.** Information on these articles supplementary to that in Notice No. 78L: Customs and Excise Press Notice No. 235, September 7, 1948.
- 3026. — musical toys.** Toy whistles, drums and similar articles of a type or design commonly sold as children's toys, provided that the wholesale value of the article sold complete does not exceed fifteen shillings, will not be regarded as "musical instruments" chargeable under Group 19 of the Tax Schedule and will therefore be chargeable with tax as toys at the rate of 33½ per cent. of their wholesale value under Group 20 of the Tax Schedule. Customs and Excise Press Notice No. 227, July 6, 1948.
- 3027. — office equipment.** Information concerning the rates of tax on office furniture and office requisites is contained in Customs and Excise Press Notice No. 226, July 1, 1948.
- 3028. — party frocks and bridesmaids' dresses.** The exemption from tax of garments of a kind suitable for young children's wear will in future be deemed to include girls' party frocks and bridesmaids' dresses (ankle length) not exceeding 44 inches length. Note Notice No. 78A at p. 7. Customs and Excise Press Notice No. 250, December 29, 1948.
- 3029. — patterns for making apparel.** The fact that "patterns for making apparel" are intended for trade use and not for retail sale does not affect their chargeability to tax: Customs and Excise Press Notice No. 246, November 30, 1948.
- 3030. — picture frames.** Under the revised Schedule of Chargeable Goods (Notice No. 78L), picture frames and photograph frames not exempt under Group 11 (g) and not subject to a higher rate of tax under another Group, *e.g.*, Group 29 (a), are chargeable with tax at the rate of 33½ per cent. under Group 11 (a): Customs and Excise Press Notice No. 225, June 22, 1948.
- 3031. — plate stacking covers and rings, toilet sets.** Notice No. 78, p. 61, should be noted with information concerning these articles contained in Customs and Excise Press Notice No. 236, September 14, 1948.
- 3032. — public address apparatus incorporating gramophones.** Notice No. 78, p. 44, should be noted to the effect that where a gramophone unit is housed in the same cabinet as an amplifier, purchase tax is payable on the combination as a complete gramophone, and similarly, a cabinet containing an amplifier and also housing a wireless receiving set of the domestic or portable type and a gramophone is chargeable as a whole with tax as a radio-gramophone: Customs and Excise Press Notice No. 215, dated May 4, 1948.
- 3033. — radio communication receivers.** Wireless receiving sets designed, got-up and offered for sale solely for amateur or professional communication reception are to be regarded as not chargeable with tax. Amend Notice No. 78 (September, 1948 issue) at p. 38. Confirmation of non-liability should be obtained from the Commissioners at City Gate House, Finsbury Square, E.C.2, in accordance with Customs and Excise Press Notice No. 244, November 23, 1948.
- 3034. — soft haberdashery.** The Financial Secretary to the Treasury stated that the Chancellor of the Exchequer intended to move an amendment on the Committee stage of the Finance Bill, 1948, which would have the effect of charging fabrics not exceeding three inches wide at the same rate as haberdashery, 33½ per cent. It was intended to make this alteration operative as from May 3, 1948, and registered traders will be accountable accordingly: Customs and Excise Press Notice No. 217, dated April 30, 1948. See § 3039.
- 3035. — stationery, etc.** Notice by the Commissioners of Customs and Excise No. 78C (February, 1948) (stationery and office requisites and other paper manufactures).

This notice supersedes Notice No. 78c (October, 1946) and all additions, amendments and specific rulings with regard thereto published by the Commissioners up to February 28, 1948.

- 3036. — tool sets.** Tool sets are not chargeable with tax under Group 20 of the Schedule. Note Notice No. 78 at p. 42. Customs and Excise Press Notice No. 250, December 29, 1948.
- 3037. — toy construction sets.** The liability to tax of sets for the construction of model aircraft and similar toys has been particularised. Amend Notice No. 78 (September, 1948, issue) at p. 42: Customs and Excise Press Notice No. 241, November 1, 1948.
- 3038. — unbleached sponges.** From August 9, 1948, purchase tax is again chargeable on unbleached sponges. Notice No. 209, dated March 22, 1948, which announced that they would not be regarded as chargeable as from April 1, 1948, is cancelled: Customs and Excise Press Notice No. 230, July 20, 1948.
- 3039. Finance Act, 1948 (11 & 12 Geo. 6, c. 49).** Part II of and Sched. VIII to this Act contain provisions relating to purchase tax. New rates are laid down and are chargeable as from April 9, 1948. Special provisions as to drugs and medicines are contained in s. 22. By s. 23 manufacture is defined as including any treatment of goods which affects their get-up and results in the goods becoming chargeable goods or chargeable at a higher rate.
- 3040. Order for delivery of accounts.** (Finance Act, 1946 (9 & 10 Geo. 6, c. 64), s. 20 (2), (3); Crown Proceedings Act, 1947 (10 & 11 Geo. 6, c. 44), s. 14 (2) (d).) By the Crown Proceedings Act, 1947, s. 14, it is provided that “(2) Subject to and in accordance with rules of Court, the Crown may apply in a summary manner to the High Court . . . (d) for the delivery of any accounts, the production of any books, or the furnishing of any information, required to be delivered, produced or furnished under the enactments relating to purchase tax.” If the Commissioners take advantage of this section and apply for a summary order under it, the Court is limited to that which the section provides in ordering this summary remedy, and cannot, therefore, order the production of records and documents as might be ordered under s. 20 (3) of the Finance Act, 1946. The word “accounts” in the section must include invoices, whether sales invoices or purchase invoices, *i.e.*, invoices for goods supplied to the subject who is liable for purchase tax and invoices made out by him for sales which he makes. It is no objection to an order under the section that the production of documents may incriminate the subject, or that the person against whom an order is sought has not been registered under the provisions relating to purchase tax: *CUSTOMS AND EXCISE COMMISSIONERS v. INGRAM*, [1948] 1 All E. R. 927, C. A. (See also § 3041.)
- 3041. — affidavit in support of summons.** (R. S. C., Ord. 54M.) It is sufficient under Ord. 54M that the affidavit in support of a summons for the delivery of accounts and the production of books under s. 14 of the Crown Proceedings Act, 1947, shows that the person against whom an application is made is a person carrying on the business of an importer or of a dealer in and purchaser of goods. See *CUSTOMS AND EXCISE COMMISSIONERS v. INGRAM*, § 3040.
- 3042. Prosecution—furnishing false returns with intent to deceive—time limit.** See *R. v. SARAH SILVER*, § 737.
- 3043. — uncustomed goods.** See *BECK v. BINKS*, § 804.
- 3044. Recovery by Crown.** See § 2897.

RAILWAYS

- 3045. Crown property—Rent Acts.** [Cty. Ct.] See *TAMLIN v. HANNAFORD*, § 3156.
- 3046. Employees—affected by amalgamation—limitation.** See *PEGLER v. RAILWAY EXECUTIVE*, § 2004.
- 3047. — transfer to British Transport Commission.** See §§ 3758, 3759.
- 3048. Explosives—carriage on private railway.** See § 1408.
- 3049. Fences.** See *CORDINGLY v. GREAT WESTERN RY.*, § 281.
- 3050. Highways—retention of railways over, under or across.** See § 1586.

- 3051. Level-crossing—negligence.** See *SMITH v. SMITH AND THE RAILWAY EXECUTIVE*, § 3060; [Scot.] *SMITH v. L. M. S. RY.*, § 3059; [S.A.] *R. v. HERBST*, § 3052.
- 3052. — right of way.** [S.A.] In *R. v. HERBST*, 1948 (2) S. A. L. R. 201, the Natal Provincial Division of the Supreme Court of South Africa dismissed an appeal by the driver of a public service vehicle against a conviction for a statutory offence in the nature of negligent driving arising from a collision between his vehicle and a train, holding that at a level crossing the railway has a right of way, so that, where there is a competition, it is the duty of the driver of the road vehicle to give way, and the driver of the railway vehicle is entitled to act on the assumption that he will do so.
- 3053. — subsidence.** See *L. N. E. RY. v. YORKSHIRE C. C. (WEST RIDING)*, § 1593.
- 3054. Light railways.** Orders made under the Light Railways Acts, 1896 and 1912, as amended: SI 1948, Nos. 755 (Weston Point); 2007 (Liverpool) [2d.].
- 3055. London Passenger Transport Board—execution of work.** London Passenger Transport Board (Execution of Work) (Revocation) Order, 1948 (No. 2469); revokes the London Passenger Transport Board (Execution of Work) Order, 1940 (No. 386).
- 3056. Merchandise—revocation of restriction on conveyance.** Railways (Acceptance of Merchandise) (Revocation) Order, 1948 (No. 694), revoking the Railways (Acceptance of Merchandise) Order, 1944 (No. 72), which restricted the conveyance of merchandise designated by the Minister of Transport.
- 3057. Nationalisation.** See *TRANSPORT*.
- 3058. Negligence—carriage door.** [Scot.] See *MURRAY v. L. M. S. RY.*, § 2512.
- 3059. — level crossing.** [Scot.] In *SMITH v. L. M. S. RY.*, 1948 S. L. T. 235, the Court of Session held that a railway company has a duty, at every level crossing where members of the public have a right to be, to take all reasonable precautions in train operation (and perhaps in other respects) to reduce the danger to a minimum, the nature of the precautions required and the question whether the duty has been fulfilled depending on the circumstances of each case. (*Cliff v. Midland Ry.* (1870), L. R. 5 Q. B. 258, applied.)
- 3060. — — —** In *SMITH v. SMITH AND THE RAILWAY EXECUTIVE* (June 15, 1948), Hilbery, J., held that a railway company which knew that numbers of people were using a private road crossing without prohibition or objection were under a common law duty to render the crossing safe and in particular to see that there was nothing in the nature of a trap. See [1948] W. N. 276.
- 3061. — — — right of way.** [S.A.] See *R. v. HERBST*, § 3052.
- 3062. — prevention of accidents.** (Prevention of Accidents Rules, 1902, r. 9.) R. 9 of the Prevention of Accidents Rules, 1902, requires railway companies to provide persons or apparatus for the purpose of maintaining a good look-out or for giving warning against any train approaching men repairing the permanent way. Compliance with that rule only takes place when apparatus reasonably effective or persons effective for the purpose required have been provided. See *DYER v. SOUTHERN RY.*, § 3063.
- 3063. — safe system of working.** It is the duty of a railway company to take all reasonable precautions for the safety of the men working on the permanent way. This duty includes—when trains are running—the necessity for maintaining a good look-out for oncoming trains which may endanger the men so working. In such a case the duty of a railway company consists in instituting a system of look-outs which is safe in conditions to be expected at the particular time and place. The duty does not end, though it may begin, with the appointment of suitable persons as foremen. It follows that if there is no way of safeguarding the lives of men working on a particular permanent way when trains are running, such permanent way can only be repaired when trains are not running.
- The deceased was working on a stretch of permanent way outside a tunnel. An experienced look-out man had been placed at the exit of the tunnel. When a train was coming through the tunnel he sounded his whistle, the proper signal for the men to get off the line, but so late that the men were all put in extreme danger, and the deceased lost his life. It was shown that even in the best conditions the look-out man would not be able to see into the tunnel more than

25 yards, and that frequently his visibility was further impaired by fog conditions and smoke from steam trains. For this reason, he had to rely chiefly upon sound, but it was shown that there was often a clattering noise from trains coming in the opposite direction and from traffic on a railway bridge overhead. Held, the accident was due to the failure of the railway company to provide a safe system of working: there had been no contributory negligence on the part of the deceased, and the accident was not due to the casual negligence of the foreman or the look-out man: *DYER v. SOUTHERN RY.*, [1948] 1 K. B. 608; [1948] L. J. R. 963, Humphreys, J. (applying *Hutchinson v. L. N. E. Ry.*, [1942] 1 K. B. 481). (See also § 3062.)

- 3064. Packages by passenger train—revocation of limitation.** Limitation of Packages by Passenger Train (Revocation) Order, 1948 (No. 2699), revokes as from January 1, 1949, the Limitation of Packages by Passenger Train Order, 1942 (No. 159), which restricted the weight of packages which might be carried by passenger train.
- 3065. Railway and Canal Commission—nominated judge.** See § 2848.
- 3066. Rates.** The sum included in the railway rate for station terminal does not include accommodation provided and used at a waterside wharf for the loading of merchandise into barges: *L. N. E. RY. v. MARK MAYHEW* (1948), 28 Tr. Cas. 316, Railway Rates Tribunal.
- 3067. Rating.** Local Government Act, 1948 (11 & 12 Geo. 6, c. 26), Pt. V, contains provisions relating to the rating of railway hereditaments: see § 3761.
- 3068. Securities—date of conversion into British Transport Stock.** See § 3764.
- 3069. Standard charges—owner's risk.** Owner's Risk Standard Charges Modification Order, 1948 (No. 700), made under the Railways Act, 1921 (11 & 12 Geo. 5, c. 55), s. 35, modifying the Schedule of Reductions for merchandise carried under owner's risks conditions as specified in the Schedule to the new Order. The modifications are effective as from February 3, 1948. [4d.]
 Owner's Risk Standard Charges Modification (No. 2) Order, 1948 (No. 2543), modifying the Schedule of Reductions to be made from the standard charges where damageable merchandise is carried at owner's risk.
- 3070. Transport Tribunal—sittings.** The Transport Tribunal announced that it would sit on February 24, March 23, April 20, May 25, June 22, July 20, October 19, November 23 and December 21, 1948, to hear applications for the granting of new, or the reduction of existing exceptional rates for which the Tribunal's consent is required, and for new exceptional rates or for the reduction of exceptional rates. The Tribunal announced that it would also sit on April 27, July 27 and October 26, 1948, to hear applications as to the classification of merchandise, etc., and applications concerning the reductions to be made from standard charges where damageable merchandise is carried under owner's risk conditions. Details of the procedure to be followed in making applications could be obtained from the Tribunal's office, Wellington House, 125-130, Strand, London, W.C.2.
- 3071. Wagons—notification of particulars by private owners.** Railway Wagons (Notification of Particulars and Plating) (Revocation) Order, 1948 (No. 693), revoking the Railway Wagons (Notification of Particulars and Plating) Order, 1939 (No. 1911), which related to the furnishing of particulars by private owners of railway wagons and the restriction of the use of such wagons on certain railways.
- 3072. — vesting in National Coal Board—compensation.** See § 2223.
- 3073. ARTICLE.** The Transport Act, 1947: 40 *Accountants' Journal* 37.

RATING AND VALUATION

- 3074. Demand note—form of.** Rating and Valuation (Forms of Demand Note) Rules, 1948 (No. 653) [E.], made under the Rating and Valuation Act, 1925 (15 & 16 Geo. 5, c. 90), s. 58, prescribing a new form of demand note to be used by rating authorities outside London, to meet the alterations in relation to local government finance and the law of rating made by the Local Government Act, 1948 (11 & 12 Geo. 6, c. 26). The old Rules of 1930 (No. 542) are revoked. [3d.]

- 3075.** — — **London.** Form of Demand Note (London) Rules, 1948 (No. 655), made under the Rating and Valuation Act, 1925, s. 58; came into operation on April 1, 1948; prescribe a new form of demand note for use by rating authorities in London to meet alterations made in relation to local government finance and the law of rating by the Local Government Act, 1948.
- 3076. Distress warrant—application for issue of.** On an application for the issue of a distress warrant for non-payment of rates, it is not open to the ratepayer to allege that a proposal for the amendment of the valuation list was invalid, and, consequently, that there was no power to amend, in pursuance of the proposal, the valuation list or the rate in respect of the premises: *EAST BARNET U. D. C. v. ALLEN TRENARRY (BARNET)*, [1948] 2 All E. R. 583, D. C. (following *Shillito v. Hinchcliffe*, [1922] 2 K. B. 236).
- 3077. Local Government Act, 1948 (11 & 12 Geo. 6, c. 26).** Parts III, IV and V and certain provisions in Part VII of this Act relate to rating and valuation. Part III (ss. 33-73), which deals with valuation and rating procedure, introduces a new system of valuation, which, however, will not have effect until that Part is brought into force until a date to be appointed (s. 72 (1)). By s. 33 valuation lists will then be made by Inland Revenue officers; and assessment committees, county valuation committees and the central valuation committee will cease to exist. Under s. 34 new valuation lists will be made in 1952 and existing lists will remain in force until then. The remaining sections in this Part relate to the preparation of draft lists, objections, revision, the settling of valuation lists, the alteration of current lists, appeals and miscellaneous matters (see § 2051). This Part does not extend to Scotland.
- Part IV (ss. 74-84) contains provisions as to the valuation of dwelling-houses for the purpose of making or alteration of any valuation lists made after the passing of this Act. The method of ascertaining the gross value of a dwelling-house varies according to the date of erection and nature of the premises. Further details are given in § 2051. This Part also does not extend to Scotland.
- Part V (ss. 85-110) relates to the rating of Transport and Electricity Authorities.
- S. 120 contains provisions as to precepts, including a provision extending s. 9 (2) (4) of the Rating and Valuation Act, 1925 (15 & 16 Geo. 5, c. 90), to London. S. 121 deals with precepts for the expenses of the Metropolitan Police. S. 122 amends s. 11 of the 1925 Act as to the rating of and the collection of rates by owners.
- 3078. — commencement.** Local Government Act, 1948 (Appointed Days) (No. 1) Order, 1948 (No. 823) [E.], made under the Local Government Act, 1948, s. 72 (1), brings into effect on May 1, 1948, certain provisions of Part III of the Act in certain specified rating areas as follows: s. 71 (as to regulations) in all rating areas in England and Wales; ss. 45, 46, 47 (as to local valuation panels and local valuation courts) and s. 67 (as to removal of certain disqualifications) in all rating areas in England and Wales other than the Scilly Isles; and s. 72 (3) (as to revision of valuation lists in London) in all rating areas in London.
- 3079. Officers—compensation on transfer of functions from local authorities.** See § 2064.
- 3080. Payments in lieu of rates by transport and electricity authorities—accounting by local authorities.** Transport and Electricity Authorities' Payments (Rate Product) Regulations, 1948 (No. 2194) [E.], made under the Local Government Act, 1948 (11 & 12 Geo. 6, c. 26), ss. 102 (1), 110; came into operation on September 30, 1948.
- 3081. Precept—form of.** Rating and Valuation (Form of Precept—County Councils) Rules, 1948 (No. 652) [E.], made under the Rating and Valuation Act, 1925 (15 & 16 Geo. 5, c. 90), s. 58, prescribing, for use by county councils other than the London County Council, a new form of precept to meet alterations made in relation to local government finance and the law of rating by the Local Government Act, 1948 (11 & 12 Geo. 6, c. 26). The old Rules of 1930 (No. 541) are revoked. [2d.]
- 3082. — — London County Council.** London County Council Form of Precept Rules, 1948 (No. 654), made under the Rating and Valuation Act, 1925, ss. 9 (2), 58, and the Local Government Act, 1948, s. 120; came into operation on April 1,

1948; prescribe a new form of precept to be used by the London County Council. [2*d.*]

- 3083.** — **Metropolitan Police.** Metropolitan Police Precept Rules, 1948 (No. 884), made under the Rating and Valuation Act, 1925, s. 9, as applied by the Local Government Act, 1948, s. 121, and under s. 58 of the Act of 1925. These rules prescribe a new form of precept devised to meet the new method prescribed by the Act of 1948 for the levying of the expenses of the Metropolitan Police.
- 3084.** — **product of rates and precepts.** Rating and Valuation Act (Product of Rates and Precepts) Amendment Rules, 1948 (No. 2713) [E.], made under the Rating and Valuation Act, 1925 (15 & 16 Geo. 5, c. 90), ss. 9, 58; further amend the Rating and Valuation Act (Product of Rates and Precepts) Rules, 1938 (No. 265), as amended, as to recoverable amounts to be included in the "gross rate income".
- 3085.** — **London.** Product of Rates and Precepts (London) Rules, 1948 (No. 883) [E.], made under the Rating and Valuation Act, 1925, s. 9 (4), as extended and applied by the Local Government Act, 1948, ss. 120, 121, and under s. 58 of the Act of 1925. These rules prescribe the method of ascertaining the product of a rate of a penny in the pound for the purpose of, and the amount due under, precepts issued on a poundage basis to rating authorities in London. They are necessitated by the extension to London by the Act of 1948 of the poundage basis of precepting.
- 3086.** **Railway and canal hereditaments.** See § 3761.
- 3087.** **Rateable occupation—agricultural building.** (Rating and Valuation (Apportionment) Act, 1928 (18 & 19 Geo. 5, c. 44), s. 2 (2); Agricultural Rates Act, 1929 (19 & 20 Geo. 5, c. 26), s. 1 (1).) A farm building, used partly for agricultural and partly for other purposes, may be a building "used solely in connection with agricultural operations", and so exempt under the Agricultural Rates Act, 1929, s. 1 (1), if the doctrine *de minimis* can be applied to the non-agricultural user of the building. The question is one of fact in each case.
A farmer used his motor car for the purposes of his farm and also for a variety of domestic and social purposes. The car was kept in a shed on the farm which was claimed to be exempt from rating as being an agricultural building within the meaning of s. 2 (2) of the Rating and Valuation (Apportionment) Act, 1928. Held, a finding that a building which garaged a car used substantially for private purposes was not used solely in connection with agricultural operations was justified on the facts: *PARRY v. ANGLESEY ASSESSMENT COMMITTEE*, [1948] W. N. 484; 64 T. L. R. 635; [1948] 2 All E. R. 1060, D. C.
- 3088.** — **by tenant of the Crown.** See *LONDON COUNTY TERRITORIAL AND AUXILIARY FORCES ASSOCIATION v. NICHOLS*, § 3157.
- 3089.** — **erections at building site.** In *LAING & SON v. KINGSWOOD ASSESSMENT COMMITTEE* (December 20, 1948), the Court of Appeal (Tucker and Asquith, L.JJ., and Jenkins, J.) dismissed an appeal from the decision of the Divisional Court, [1948] 2 K. B. 116, holding that contractors constructing an airfield were in rateable occupation of the huts, canteens, etc., which they erected for the purposes of the work. [*Reported by R. C. Calburn, Esq., Barrister-at-Law.*] See also [1949] 1 C. L. 190.
- 3090.** — **occupation by lodger or tenant.** (Rating and Valuation Act, 1925 (15 & 16 Geo. 5, c. 90), s. 23 (1).) The distinction between a lodger and a weekly tenant is often exceedingly difficult to define and it is a matter of very considerable difficulty where one is to draw the line, but one matter has always been treated, not as conclusive, but never as an element to be ignored, namely, whether the landlord remains resident on the premises himself. If a landlord has a house which is structurally altered, so that there is one floor or two floors converted into a separate flat, often having its own door on a landing, the fact that the landlord occupies the lower part of the house as his own flat would certainly not be in any way conclusive that he did not intend the person who was in the upper part of the house to be a tenant in the true sense of the word and to have an estate in that upper part. But in a house where no structural alteration is made, so that it remains just as it was built and people can walk up and down the stairs freely and go in and out of the rooms freely from a physical point of view, the fact that the landlord is living on the premises raises the presumption that he intends to

retain control of the whole of the premises. And if the landlord intends to retain control of the whole of the premises that *prima facie* at least negatives the fact that the person who is occupying rooms in the other part of the house than that in which the landlord lives is a tenant in the true sense and not a lodger. S. 23 (1) of the Rating and Valuation Act, 1925, in such a case does not give the rating authority power to assess the rooms occupied by the lodger as a separate dwelling.

The owner of a house occupied himself the rooms on the ground floor and a room on the first floor. M, the other occupant of the house, was in occupation of the remaining two rooms and of a kitchenette on the first floor, sharing with the owner of the house the right to use the bathroom and the w.c.s and rights of passage through the front and back door. Held, there was no evidence that the owner had renounced his control over the premises. M was no more than a lodger and was, therefore, not in occupation of a separate hereditament within the meaning of s. 23 (1) of the Rating and Valuation Act, 1925: *HELMAN v. HORSHAM AND WORTHING ASSESSMENT COMMITTEE*, [1949] 1 K. B. 62; [1948] 2 All E. R. 588, D. C. (applying *Bradley v. Baylis* (1881), 8 Q. B. D. 195; *Kent v. Fittall*, [1911] 2 K. B. 1102; and *Allan v. Liverpool* (1874), L. R. 9 Q. B. 180).

- 3091. — order in lunacy.** Whether a person is in occupation is entirely a question of fact but whether a person, who is found as a fact to be in occupation, is in rateable occupation, is a question of law. Once a considerable degree of permanence about the occupation of a person is established, the proposition laid down by Lord Russell of Killowen in *Westminster Corpn. v. S. Ry.*, [1936] A. C. 511, applies, namely: "Where there is no rival claimant to the occupancy, no difficulty can arise . . .".

The respondent's husband was rated as the occupier of a freehold dwelling-house in which he resided with the respondent. In 1944, the respondent's husband became insane, was certified as such, and was removed to a mental institution. In 1946, a master in lunacy made an order appointing a receiver of the estate of the lunatic. No notice of the proposal to apply for the order was given to the respondent. This order declared, *inter alia*, that the respondent was to be allowed the use and occupation rent free of her husband's freehold dwelling-house, but that she was to pay out of her own money the rates in respect thereof. The respondent continued to reside in the house. The rating authority made an assessment for the year 1947-1948 on the husband and wife as joint occupiers, and made a demand on the wife. She refused to pay on the ground that she had never accepted the terms of the order made by the master in lunacy, and that the only person in rateable occupation was the husband through his receiver, her own position in the house as regards liability for rates being no different from that of a caretaker or other servant residing in his master's house. The justices upheld the respondent's contention and dismissed the complaint. Held on appeal, although the terms of the order of the master in lunacy were immaterial, the respondent had been in sole occupation of the house for a period of, at least, two years, and as there was no one else who could be said to have been in occupation, she was liable for the rates as the sole occupier: *ROBINSON v. TAYLOR*, [1948] 1 K. B. 562; [1948] L. J. R. 1585, D. C.

- 3092. — plant and machinery.** In *CARDIFF RATING AUTHORITY v. GUEST KEEN BALDWIN'S IRON AND STEEL CO.* (December 3, 1948), the Court of Appeal (Bucknill and Denning, L.JJ., and Jenkins, J.) on an appeal from the decision of the Divisional Court, [1948] 1 All E. R. 830, allowed the appeal of the occupiers, varied the assessment accordingly, and dismissed the appeal of the rating authority, holding that blast furnaces and structures supporting overhead pipes were not rateable. [Reported by R. C. Calburn, Esq., Barrister-at-Law.] See *Estates Gazette*, December 11, 1948, p. 449.

- 3093. — premises used for election meetings.** See the Representation of the People Act, 1948 (11 & 12 Geo. 6, c. 65), s. 41, § 1095.

- 3094. — scientific research association.** In *BRITISH LAUNDERERS' RESEARCH ASSOCIATION v. HENDON RATING AUTHORITY* (December 3, 1948), the Court of Appeal (Bucknill and Denning, L.JJ., and Jenkins, J.) dismissed an appeal from the decision of the Divisional Court, [1948] 1 All E. R. 277, holding a research institution established for the benefit of the laundry industry not to be exempt from rates. [Reported by R. C. Calburn, Esq., Barrister-at-Law.] See also [1949] 1 C. L. 190a.

- 3095.** ——. In *BATTERSEA BOROUGH COUNCIL v. BRITISH IRON AND STEEL RESEARCH ASSOCIATION* (December 3, 1948), the Court of Appeal (Bucknill and Denning, L.J.J., and Jenkins, J.) came to the same conclusion as in *British Launderers' Research Association v. Hendon Rating Authority*, § 3094. See *Estates Gazette*, December 11, 1948, p. 448.
- 3096.** ——. **special Act.** (Rating and Valuation Act, 1925 (15 & 16 Geo. 5, c. 90), ss. 2 (1), (2), (3), 64 (1) (2), 69 (2).) When the Rating and Valuation Act, 1925, adopted the expression "general rate" in place of the expression "poor rate", Parliament made no change in the heterogeneous character of the imposition on occupiers, but only enlarged the ambit of the area for the administrative convenience of easier collection. It follows that a special privilege or exemption expressed to be perpetual, granted by an enclosure Act of 1777 to the owner of a particular piece of land, *i.e.*, to the vicar of R. in respect of all lands belonging to the vicarage, could not be abrogated or impaired by a subsequent statute unless it was addressed in plain language to that land; for *generalia specialibus non derogant*. There is no such "special" cancellation or abrogation in the Act of 1925. On the contrary, s. 64 (1) (b) of the Act provides for "the continued operation of any such privilege or exemption": *WILTSHIRE COUNTY VALUATION COMMITTEE v. BOYCE*; *SAME v. MARLBOROUGH AND RAMSBURY RATING AUTHORITY*, [1948] 2 K. B. 125; [1948] L. J. R. 1135, C. A. (affirming decision of Divisional Court, [1947] C. L. Y. 2543). (See also § 3097.)
- 3097.** ——. The right of exemption from the payment of all parochial taxes conferred on the vicar of R. by a personal and local Act of 1777 in respect of all lands which shall "belong" to the vicarage does not cease where the vicar has granted a lease, because as he remains the freeholder the lands still "belong" to him. See *WILTSHIRE COUNTY VALUATION COMMITTEE v. BOYCE*, § 3096.
- 3098.** **Rateable value—for purposes of Rent Restrictions Acts.** See *LANGFORD PROPERTY CO. v. GOLDRICH*, § 3159; *AMPHLETT v. DORRELL*, § 3148.
- 3099.** ——. **members' club—profits from sale of liquor.** It is settled law that rent, not profit, is the measure of rateable value. However, profit may very materially affect the rent which a possible tenant would be willing to give. Speaking generally, if the profits depend on the personal skill of the tenant and can be made in any other premises quite as well as in the premises in question, the expected amount of profits will not affect the rent which a tenant will give; but, if the profits can be earned only on the premises to be rated and can be earned there by any ordinary tenant, the expected profit will affect the rent which a tenant will give. Applying this test to a social or working men's club with a limited membership, the motive or object of which is not to make a profit, the profit from the sale of liquor in the bar of the club to members only does not come about from any goodwill attached to the premises or from any inherent quality of the premises and must, therefore, be disregarded for the purposes of ascertaining the rateable value of the premises, because the profit would not affect the rent which the club would pay for such premises as it is personal to the club and could be made wherever it is housed. Similarly, the facts that it would not be possible for such a club to find alternative accommodation and that existing clubs in the district have a virtual monopoly of providing club facilities must be disregarded for the purposes of ascertaining the rateable value, if there is only one hypothetical tenant likely to take the premises.
Quære: whether the same considerations would apply in the case of a proprietary club: *ABERDARE U. D. C. v. PONTYPRIDD AREA ASSESSMENT COMMITTEE*, [1948] 1 K. B. 332; [1948] L. J. R. 357, D. C. (following *Cartwright v. Sulcoates Union*, [1899] 1 Q. B. 667).
- 3100.** **Special and parish rate compensation.** See § 2078.
- 3101.** **Valuation list—proposal to amend—"person aggrieved".** (Rating and Valuation Act, 1925 (15 & 16 Geo. 5, c. 90), s. 37 (1).) A rating authority can be said to be a "person aggrieved" within s. 37 (1) of the Rating and Valuation Act, 1925, so as to entitle the authority to make a proposal for the amendment of the list, although it is not shown that they have applied their minds to every particular hereditament before they make a proposal, because the expression "person aggrieved" covers a case where they consider that, owing to changes

which have taken place, the probabilities are that the whole of the properties of a particular class in their district are under-assessed. See *R. v. SURREY (MID-EASTERN AREAS) ASSESSMENT COMMITTEE*, § 3106.

- 3102.** — — —. (Rating and Valuation Act, 1925 (15 & 16 Geo. 5, c. 90), s. 37 (1).) The expression a "person aggrieved" in s. 37 (1) of the Rating and Valuation Act, 1925, must mean a person who considers that he has a grievance which he wants to bring before a Court. Thus, in a case where it had been argued that a rating authority, who had made a proposal for the amendment of the valuation list in respect of a hotel which had always been rated on the profits basis, could not at the time when they gave notice of the proposal have come to a decision whether, on the profits, the hotel was properly rated, or rated too low or too high, because at that time they did not have the accounts before them, it was held, that they had a *locus standi* as a "person aggrieved" within the meaning of the sub-section, because, as the rating authority for the district, they must be presumed to have knowledge of the properties in their district. See *R. v. EXETER ASSESSMENT COMMITTEE, Ex p. DEVON AND EXETER HOTEL CO.*, § 3108 (applying *R. v. Surrey (Mid-Eastern) Assessment Committee*, § 3101).
- 3103.** — — — **service of notice.** In *CARPENTER v. TWICKENHAM CORPORATION* (April 30, 1948), the Divisional Court (Lord Goddard, C.J., Humphreys and Pritchard, JJ.) held that a proposal to amend the valuation list by rating the occupier of a houseboat and moorings instead of the owner of Taggs Island was validly served although in fact intercepted by the owner of Taggs Island. [*Reported by R. C. Calburn, Esq., Barrister-at-Law.*] See also (1948), 112 J. P. J. 339.
- 3104.** — — — **statement of grounds for.** (Rating and Valuation Act, 1925 (15 & 16 Geo. 5, c. 90), s. 37 (2).) S. 37 (2) of the Rating and Valuation Act, 1925, lays down that a proposal to amend the valuation list must be made in writing and must specify the grounds on which the proposed amendment is supported. A proposal for the amendment of the valuation list which was addressed to the occupier of an industrial hereditament, and which referred to s. 37 of the Rating and Valuation Act, 1925, gave the net annual and the rateable value of the industrial and non-industrial part of the hereditament followed by the words: "To be amended", and gave as grounds for the proposed amendment: "Existing assessment unfair, incorrect and insufficient". Held, the occupier was entitled to know whether the proposed amendment was to be an increase or a decrease of the net annual value or the rateable value, or some change with regard to the industrial or non-industrial part of the hereditament, and what was the reason for any such proposed change, and in the absence of such information the proposal was not in accordance with the statutory requirements and was therefore invalid: *R. v. READING ASSESSMENT COMMITTEE, ex p. MCCARTHY E. FITT*, [1948] 1 All E. R. 194, D. C. (applying *R. v. Thanet and District Assessment Committee*, [1939] 2 K. B. 640).
- 3105.** — — —. A proposal for the increase of the assessment to rates of industrial premises, which had never been treated for rating purposes otherwise than as an industrial hereditament, is not invalidated for non-compliance with s. 37 of the Rating and Valuation Act, 1925, because the part of the printed proposal form relating to the non-industrial parts of premises is left blank, so that the proposal does not in terms state that the rating authority propose to keep the premises wholly industrial. See *R. v. SURREY (MID-EASTERN AREA) ASSESSMENT COMMITTEE, ex p. MERTON AND MORDEN U. D. C.*, § 3106.
- 3106.** — — —. (Rating and Valuation Act, 1925 (15 & 16 Geo. 5, c. 90), s. 37 (2).) It is not necessary in making proposals under s. 37 (2) of the Rating and Valuation Act, 1925, that the actual figures which it is sought to insert in the valuation list should be stated in the proposal. It is enough if the ratepayer is informed that the rating authority propose to increase the assessment on the ground stated. Similarly, where the property affected by the proposal is an industrial hereditament, and where the rating authority have no desire to alter the valuation list by apportioning some part of the value to non-industrial premises, the proposal need not show how much of the

net annual and rateable value is attributable to industrial and how much to non-industrial user, and whether or not it is intended to alter these proportions.

A proposal by the rating authority gave as grounds for a proposed amendment increasing the assessment of a specified hereditament (which was wholly industrial), "That the present assessment is insufficient, incorrect and unfair". Then, after setting out the net annual value and the rateable value of the present assessment it stated: "The precise assessment desired will be notified at a later date". Held, the proposal was good: *R. v. SURREY (MID-EASTERN AREA) ASSESSMENT COMMITTEE, ex p. MERTON AND MORDEN U. D. C.*, 92 S. J. 298; [1948] 1 All E. R. 856, D. C. (following *R. v. West Norfolk Assessment Committee* (1930), 94 J. P. 201; distinguishing *R. v. Reading Assessment Committee*, § 3104). (See also § 3101.)

3107. — — —. (Rating and Valuation Act, 1925 (15 & 16 Geo. 5, c. 90), s. 37 (2) (b).) S. 37 (2) of the Rating and Valuation Act, 1925, provides that a proposal for the amendment of a valuation list must "specify the grounds on which the proposed amendment is supported". The authorities which deal with the meaning which has to be given to the words of this sub-section establish that the proposal must give sufficient information to enable the assessment committee to know:

- (1) whether an increase or decrease is asked for;
- (2) to which of the existing valuations in the rate book the proposal refers; and
- (3) what is the ground of complaint as to the existing valuation on that head, and it is enough to state "incorrect or unfair" unless there is some unusual ground, in which case it ought to be specified.

A proposal for the amendment of a valuation list began with a statement that the rating authority were "aggrieved by the incorrectness or unfairness of the valuation and assessment" of each hereditament in the valuation list. There followed a schedule which gave figures of the present as well as of the proposed gross and rateable value of each hereditament. Opposite the words "grounds of proposal" appeared the words "revised assessments". Held, the words "incorrectness or unfairness" had to be read into the phrase "revised assessments" which imported an intention to ask at the then prospective meeting of the assessment committee for revision, the schedule making it clear that an upward revision was proposed. Consequently, the proposal satisfied s. 37 (2) (b) of the Rating and Valuation Act, 1925: *R. v. WINCHESTER AREA ASSESSMENT COMMITTEE, ex p. WRIGHT*, [1948] 2 K. B. 455; [1948] L. J. R. 1795, C. A. (allowing appeal from decision of Divisional Court (1948), 64 T. L. R. 66; applying *R. v. West Norfolk Assessment Committee* (1930), 94 J. P. 201; *R. v. Heston and Isleworth Rating Authority*, [1941] 2 K. B. 146; and *R. v. Surrey (Mid-Eastern Area) Assessment Committee*, § 3106; distinguishing *Bents Brewery Co. v. Upper Agbrigg Assessment Committee*, [1944] K. B. 524; *R. v. Thanet and District Assessment Committee*, [1939] 2 K. B. 640; and *R. v. Reading Assessment Committee*, § 3104).

3108. — — —. (Rating and Valuation Act, 1925 (15 & 16 Geo. 5, c. 90), s. 37 (2) (b).) In *R. v. Winchester Area Assessment Committee, Ex p. Wright*, § 3107, Scott, L.J., laid down the three criteria which have to be satisfied in order to make a proposal for the amendment of the valuation list comply with the requirements of s. 37 (2) (b) of the Rating and Valuation Act, 1925.

A proposal for the amendment of a valuation list in respect of a hotel stated: "The present assessment is incorrect and should be increased". This proposal was attacked as being too vague and, therefore, as being a bad proposal on the ground that the hotel had been valued on the profits basis, and that it might be that the rating authority were going to ask to change the whole basis of valuation. Held, the proposal satisfied the three criteria which Scott, L.J., had laid down as necessary in *R. v. Winchester Area Assessment Committee, Ex p. Wright, supra*, and was, therefore, good, and that, if when the case came before the assessment committee an unusual ground should be urged, the committee ought to refuse to hear it: *R. v. EXETER ASSESSMENT COMMITTEE, Ex p. DEVON AND EXETER HOTEL CO.*, [1948] W. N. 396; 64 T. L. R. 553, D. C. (following *R. v. Winchester Area Assessment Committee, Ex p. Wright, supra*). (See also § 3102.)

- 3109. ARTICLES.** The Local Government Act, 1948—valuation for rating of dwelling-houses: 98 L. J. 297. Proposals for amendment of valuation lists (founded on *R. v. Surrey (Mid-Eastern) Assessment Committee*, § 3106, and *R. v. Reading Assessment Committee*, § 3104): 206 L. T. 9. The rating of moorings in the River Thames; 112 J. P. J. 510. Appearance by solicitor in rating appeals: 92 S. J. 582.
- 3110. BOOKS PUBLISHED.** Anderson, C. I. V.—Guide to Valuation for Rating under the Local Government Act, 1948 ("Current Law" Guide No. 4) [6s. 6d.]. Crew, A.—Rates and Rating. 11th ed. [20s.]. De-rating and Rating Appeals, Vol. 18, 1947 [27s. 6d.].

REAL PROPERTY AND CONVEYANCING

- 3111. Deeds.** See DEEDS AND BONDS.
- 3112. Easements.** See EASEMENTS AND PRESCRIPTION.
- 3113. Exception or reservation—minerals.** [Scot.] In *BORTHWICK-NORTON v. PAUL & SONS*, 1947 S. C. 659, the Court of Session held that in construing a clause in a conveyance containing a reservation of minerals, the question whether a substance is or is not a mineral is a question of fact and the guiding principles for the determination of that question of fact are: (i) To come within the ambit of the minerals clause the substance must not form part of the ordinary subsoil or substratum of the soil of the district, but must be exceptional in use, character or value; (ii) the substance must at the time of the conveyance have been known as a mineral in the vernacular of mining engineers, commercial men and landowners; and (iii) the exception in the conveyance must not swallow up the grant. (*Waring v. Foden*, *Waring v. Booth Crushed Gravel Co.*, [1932] 1 Ch. 276, considered and approved.)
- 3114. Joint tenancy—continuance of trust for sale on death of one joint tenant.** See *Re COOK*, § 3418.
- 3115. Land charges.** See LAND CHARGES.
- 3116. Land registration.** See LAND REGISTRATION.
- 3117. Legal estate—vesting in shareholders on dissolution of company.** See *Re STRATHBLAINE ESTATES*, § 496.
- 3118. Middlesex Deeds Act, 1940.** See § 2897.
- 3119. Mortgages.** See MORTGAGES.
- 3120. Planning.** See TOWN AND COUNTRY PLANNING.
- 3121. Restrictive covenant—breach by vendor.** [Can.] See *McALEER v. DESJARDINE*, § 3824.
- 3122. — race discrimination.** [Can.] In *Re NOBLE AND WOOLF*, [1948] 4 D. L. R. 123, the High Court of Ontario held that a restrictive covenant prohibiting the alienation or leasing of the land to persons belonging to certain racial groups was valid and enforceable.
- 3123. — release — public interest.** See *Re BADOCK'S DEED OF GIFT, BRISTOL CORPORATION v. ATT.-GEN.*, § 2548.
- 3124. Sale of land.** See VENDOR AND PURCHASER.
- 3125. Settlements.** See SETTLEMENTS AND TRUSTS.
- 3126. Stamp duties.** See STAMP DUTIES.
- 3127. Trustee for sale—power to re-invest in realty.** See *Re WELLSTED'S WILL TRUSTS*, § 3423.
- 3128. ARTICLES.** Statutory conveyances, by J. F. Garner: 12 *Conveyancer* (N.S.) 92. The duration of licences (founded on *Winter Garden Theatre (London) v. Millennium Productions*, [1947] C. L. Y. 1670), by E. O. Walford: 12 *Conveyancer* (N.S.) 121. Disclaimers: 98 L. J. 103. Conveyancing notes—inquiries from persons in possession: 98 L. J. 185. *Non est factum*: 205 L. T. 198. Parties to deeds in various capacities: 205 L. T. 213. Family arrangements: 98 L. J. 214. Grant of right of way on a condition—form of subsequent conveyance: 205 L. T. 228. The Finance Bill and estate duty on policies (founded on *Barclays Bank v. Att.-Gen.*, [1944] A. C. 372, and the Finance Bill, 1948): 205 L. T. 244.

Testamentary provisions and death duties: 205 L. T. 244. Liability of personal representatives in respect of leaseholds: 98 L. J. 243. Some conveyancing points under the Town and Country Planning Act, 1947: 92 S. J. 238. Conditions against alienation (sale of rent-restricted premises reserving a right of pre-emption): 92 S. J. 240. Stamp duty on settlements: 98 L. J. 256. Conditions against alienation: 92 S. J. 254. Exclusion of the family from testamentary benefits (founded on the Inheritance (Family Provision) Act, 1938): 98 L. J. 270. The special contribution: 205 L. T. J. 273. Settlements and surtax (founded on *I. R. C. v. Payne* (1941), 23 T. C. 610, *MacAndrew v. I. R. C.* (1943), 25 T. C. 500, *Wolfson v. I. R. C.*, § 1690): 205 L. T. J. 285. Annuities and taxation (founded on the Finance Bill, 1948, *Cunard's Trustees v. I. R. C.*, [1946] 1 All E. R. 159, *Brodie's Trustees v. I. R. C.* (1933), 17 T. C. 432): 92 S. J. 293. Plans on abstracts of title: 205 L. T. J. 299. Preparing wills and codicils for the dying: 205 L. T. J. 299. Problems for the conveyancer—purchase of the trust property by a fiduciary: 98 L. J. 298. Easements, rights and privileges, by J. F. Garner: 12 *Conveyancer* (n.s.) 202. Sale by heir-at-law: 98 L. J. 326. The taxation of settlement income: *Accountant*, June 12, 1948, p. 453. Acknowledgments for the production of documents by co-owners to one of themselves: 205 L. T. 342. The National Conditions of Sale, 1948 (14th ed.): 206 L. T. 8. The disposition of land by local authorities: 98 L. J. 368. Problems for the conveyancer—testamentary options and pre-emptions: 98 L. J. 383. On assents by the personal representatives of a trustee: 206 L. T. 35. Purchase, resale and restrictive covenants (acquisition of land subject to restrictive covenants by local authorities): 112 J. P. J. 449. Powers of revocation in settlements: 98 L. J. 411. Powers of attorney: 92 S. J. 419. The Agriculture Act, 1947—supervision orders: 206 L. T. 85. Title to property of nationalised bodies: 98 L. J. 438. Acknowledgments for production of documents: 206 L. T. 100. Statutory charges on land (founded on *Lewisham B. C. v. Maloney*, [1947] C. L. Y. 1603) by E. H. Bodkin: 12 *Conveyancer* (n.s.) 273. Rights of support (considering the effect thereon of the powers of public authorities under the Housing Act, 1936, and the Town and Country Planning Act, 1947), by J. F. Garner: 12 *Conveyancer* (n.s.) 280. Further notes on agricultural tenancy agreements, by J. Muir Watt: 12 *Conveyancer* (n.s.) 289. Testamentary gifts to hospitals and the National Health Service Act, 1946: 206 L. T. 124. On powers of advancement conferred by appointments (founded on *Re Bainbridge*, § 3868): 206 L. T. 140. Acknowledgments for the production of documents—grants of administration: 206 L. T. 169. Enforcement of restrictive covenants and equitable relief: 92 S. J. 570. The operation of s. 87 of the Education Act, 1944 (founded on *Re No. 12 Regent Street, Oxford*, § 423): 206 L. T. 229. Covenants of indemnity against road charges: 92 S. J. 630. Title to property of nationalised bodies: 98 L. J. 626. Keeping equities off the title: 92 S. J. 643. Problems for the conveyancer—uncommon tenancies in community: 98 L. J. 640. Recitals of user: 206 L. T. 296. Town and Country Planning Act, 1947—development charges: *Solicitor*, November, 1948, p. 244. Right of way—construction of grant (founded on *Robinson v. Bailey*, § 1034): 206 L. T. 345. “Planned” conveyancing, by Harold Potter: 13 *Conveyancer* (n.s.) 110.

3129. — JOURNAL OF PLANNING LAW. See § 3672.

3130. BOOK PUBLISHED. Prideaux, F.—Forms and Precedents in Conveyancing. 24th ed. Vol. I [60s.].

RECEIVERS

3131. Debenture holders, for—Courts emergency powers. See *Re NEWPORT CONSTRUCTION Co.*, § 2805.

3132. — investigation after appointment of. See *Re MILES AIRCRAFT*, § 475.

3133. Lunacy, in—expenses of officer of local authority. See § 2124.

3134. — liability for rates. See *ROBINSON v. TAYLOR*, § 3091.

REGISTRATION OF BIRTHS, DEATHS AND MARRIAGES

3135. Aircraft—recording of births, deaths, etc., in. See § 229.

3136. Birth certificate—evidence of adultery. See *MAYO v. MAYO*, § 864.

- 3137. Consular officers.** Registration of Births and Deaths (Consular Officers) Regulations, 1948 (No. 2837), made under the British Nationality Act, 1948 (11 & 12 Geo. 6, c. 56), s. 29 (1) (f), (g), came into operation on January 1, 1949. These Regulations replace the Registration of Births and Deaths (Consular Officers) Regulations, 1943 (No. 765), and 1944 (No. 633) [5d.].
- 3138. Official list.** Official List, 1948, corrected to January 1, 1948. Part 1. List of Registration Officers, etc. [5s.].

RENT RESTRICTION

- 3139. Alternative accommodation—accommodation for furniture.** (Act of 1933, s. 3 (1) (b), (3).) In considering suitable alternative accommodation under s. 3 (1) (b) and (3) of the Act of 1933 furniture *per se* must not necessarily always be excluded. However, it is important to distinguish between the special requirements of the tenant with regard to any particular items of furniture and so-called surplus furniture, *i.e.*, furniture which would otherwise have to be stored. See *McINTYRE v. HARDCASTLE*, § 3197.
- 3140. — needs of tenant—family.** [Scot.] In *MACKILLOP v. CAMERON*, 1948 S. L. T. (Sh. Ct.) 49, the Sheriff Court held that in certain circumstances a lodger might be a member of the tenant's family.
- 3141. — new trial.** It is most unsatisfactory that cases under the Rent Restriction Acts should be dealt with by the Court of Appeal without the tribunal to which jurisdiction is given under the Acts having had an opportunity of investigating the facts fully and properly. However, where on the facts of a case it would be impossible as a matter of law for a Judge to find that there was reasonably suitable alternative accommodation within the meaning of s. 3 (3) of the Act of 1933, the Court of Appeal will not send the case back to the county court Judge for a new trial. See *SELWYN v. HAMILL*, § 3143.
- 3142. — same dwelling-house.** [Cty. Ct.] In *GRATTON v. SPENCE*, *Estates Gazette*, June 12, 1948, p. 448, the landlord, who occupied the ground floor of a house as a shop, wished to enlarge it. To do so involved depriving the tenant of access to her flat on the second floor by means of the front door, leaving her a means of access by the back door. He therefore sued for possession of the second floor, offering as alternative accommodation the same rooms but with access thereto only by the back door. Judge Done held that the natural meaning of alternative accommodation was "other accommodation" and that the same accommodation could not be alternative accommodation.
- 3143. — separate dwelling.** (Act of 1933, s. 3 (3) (b).) S. 3 (3) of the Act of 1933, which makes it necessary for the landlord who is claiming possession to satisfy the Court that suitable alternative accommodation was available for the tenant, or would be available for him when the order takes effect, requires that the alternative accommodation shall consist (a) of a dwelling-house to which the Acts apply or (b) of premises to be let as a separate dwelling on terms affording security of tenure reasonably equivalent to that afforded by the Acts. In a case where the alternative accommodation consists of two sets of rooms in two different houses which are separated by a third house, the two sets of rooms cannot constitute a separate dwelling within the meaning of s. 3 (3) (b) of the Act of 1933, and, therefore, such accommodation is not suitable: *SELWYN v. HAMILL* (1948), 92 S. J. 71; [1948] 1 All E. R. 70, C. A. (following *Sheehan v. Cutler*, [1946] K. B. 339). (See also § 3141.)
- 3144. Appeal—admission of further evidence.** See *E. H. LEWIS & SON v. MORELLI*, § 2756.
- 3145. — jurisdiction.** See *COUNTY COURT PRACTICE*.
- 3146. — point not taken in Court below.** See *ELVINS v. SLANEY*, § 681.
- 3147. Apportionment—rooms—scullery.** [Cty. Ct.] In *PALETT v. ANDERSON*, *Estates Gazette*, May 1, 1948, Judge Earengy, K.C., held that for the purposes of an apportionment of rent a scullery might be considered as a room.
- 3148. — tenancy of whole.** (Act of 1920, s. 12 (3).) A tenant of the whole comprising premises cannot claim against his landlord to have an apportionment of its separate component parts under s. 12 (3) of the Act of 1920, because in such a

case it is not "necessary" to apportion either the rent or the rateable value within the meaning of the sub-section: *AMPHLETT v. DORRELL*, [1948] W. N. 348; [1949] L. J. R. 219; [1948] 2 All E. R. 674, C. A. (applying *Rider v. Rollit* (1920), 36 T. L. R. 687, and *Langford Property Co. v. Goldrich*, § 3169; distinguishing *Upons v. Herne*, [1946] K. B. 591).

- 3149. Attendance** — "bona fide let at a rent which includes payments in respect of board, attendance or use of furniture". (Act of 1939, s. 3 (2) (b); Act of 1923, s. 10 (1) (as amended by Sched. I to Act of 1939).) In the phrase "bona fide let at a rent which includes payments in respect of board, attendance or use of furniture" in s. 3 (2) (b) of the Act of 1939, the words "bona fide" govern the whole of the words which follow and amount to a stipulation that the rent to be paid genuinely includes payments in respect of board, attendance or use of furniture.

In the first case, the landlord covenanted to keep the entrance hall, staircases and passages clean, to keep the lift in working order, to provide a supply of hot water and to provide a resident porter to be in charge of the main entrance-door of the flats. The lease also stipulated that the porter should carry up coals to the tenant's flat and should remove refuse therefrom. Held, only the carrying of coal and the removing of refuse could constitute "attendance", and as the tenant's share in respect of this service amounted to only £2-£4 out of a total annual rent of £175 the figure attributable to attendance did not constitute a substantial portion of the whole rent and, consequently, the tenancy was protected by the Rent Restriction Acts.

In the second case, none of the services rendered constituted "attendance" within the meaning of the Act. The lease of the flat included a kitchen cabinet built into the fabric of the flat, a refrigerator which was plugged into the wall but which constituted a loose article if the plug was withdrawn, linoleum and rubber floor covering, and a fitted medicine chest. Held, the trial Judge's finding that all these items with the exception of the kitchen cabinet constituted "furniture" could not be disturbed, but as the annual rent in respect of such furniture amounted to only £23 this did not amount to a substantial portion of the total annual rent of £280 5s. and, consequently, the tenancy was protected by the Rent Restriction Acts: *PALSER v. GRINLING, PROPERTY HOLDING Co. v. MISCHIEFF*, [1948] A. C. 291; [1948] L. J. R. 600, H. L. (affirming decisions of Court of Appeal, [1946] K. B. 631 and 645; reversing decision of *Henn Collins, J.*, [1946] 1 All E. R. 406). (See also §§ 3150, 3189, 3191, 3192, 3193.)

- 3150. — meaning of.** "Attendance" means service personal to the tenant performed by an attendant provided by the landlord in accordance with his covenant for the benefit or convenience of the individual tenant in his use or enjoyment of the demised premises. "Service" is a wider word than attendance. Attendance, being personal in its nature, may be dispensed with by an individual tenant at his pleasure, though it is not on that account excluded from what the tenant pays for when the landlord has covenanted to supply it, but services common to the tenant and others (*e.g.*, the heating of a communal water supply, or the cleaning of passages, halls, etc., outside the demised premises) will not constitute attendance. Thus, the porter of a block of flats does not provide "attendance" in respect of which payment is included in the rent unless the landlord covenants that he shall render personal service to the tenant involving attendance at the individual flat. See *PALSER v. GRINLING*, § 3149 (applying *Engvall v. Ideal Flats*, [1945] K. B. 205).

- 3151. — proportion of rent fairly attributable to.** In arriving under s. 10 (1) of the Act of 1923 at the proportion fairly attributable to attendance one has to have regard to the requirements of the particular individual whose lease is in question. The real crux of the matter is what was contemplated by the parties at the time when the lease was granted.

A tenancy agreement provided for a rent of £15 per annum for service charges in addition to a yearly rent of £170 per annum. The agreement contained a covenant by the landlord that "the service to be provided by the [landlord] shall include keepings the rooms and furniture clean, sweeping chimneys, cleaning windows, lighting fires, valeting and general attendance". Held, that in considering such a clause, one might properly take into consideration the probable extent to which it was contemplated that the tenant was going to call on the

landlord to implement his obligation under such a clause, and, therefore, as in the particular circumstances of this case, the tenant was not likely to avail himself to any considerable extent of the services which the landlord undertook by this clause, and as the sum allocated to those services was one considerably below the sum which would properly be attributable to services supplied to a tenant who required 100 per cent. performance of the obligations under that covenant, there was no reason to interfere with the *bona fide* pre-estimate made by the parties of the proportion of the rent fairly attributable to the value to the tenant of this attendance.

Per Asquith, L.J.: "Where the special needs of the tenant are disclosed before the contract to the landlord, and, therefore, before a value is set in the contract on the right to their satisfaction, there is a very strong presumption that the contractual value is the true value of the right to the tenant". See *ARTILLERY MANSIONS v. MACARTNEY*, § 3152 (applying *Palser v. Grinling*, § 3149).

- 3152.** — "**tenant**". (Act of 1923, s. 10 (1).) For the purpose of determining, in accordance with the provisions of s. 10 (1) of the Act of 1923, whether the amount of the rent (of premises within the Rent Restriction Acts) attributable to services which the landlord has agreed to render, "regard being had to the value of the same to the tenant, forms a substantial portion of the whole rent", the "tenant" referred to in the section means the original tenant who was a party to the formation of the contract made with the landlord and not an assignee of the original tenancy agreement: *ARTILLERY MANSIONS v. MACARTNEY*, [1949] 1 K. B. 164; [1949] L. J. R. 405, C. A. (affirming decision of Denning, J., [1947] C. L. Y. 2596; applying *Palser v. Grinling*, § 3149). (See also § 3151.)

- 3153. Costs of High Court action.** (Act of 1920, s. 17 (2).) S. 17 (2) of the Act of 1920, which lays down that a successful party is not entitled to costs where proceedings "arising out of the Act or of any of the provisions thereof" are taken in the High Court when they could have been taken in the county court, applies to cases where somebody is relying on the statute, or seeking to take advantage of the statute, or claiming rent which has been increased pursuant to the statute. The section can have no application in the case of a common-law action to recover possession of premises and mesne profits at the rent reserved by the original tenancy agreement, where nobody wants to derive any advantage or protection from the statute and where the statute has not been pleaded.

The landlord claimed possession of a dwelling-house on the ground that the tenant had committed a breach of a covenant in the lease by sub-letting the whole of the premises without his consent and so had incurred a forfeiture. The house was subject to the Rent Restriction Acts, but the tenant, having given up possession to a third party, was unable to claim the protection of the Acts, and he did not plead the Acts in his defence. Judgment was given for possession. On a submission that there should be no order as to costs because the proceedings, by virtue of the provisions of s. 17 (2) of the Act of 1920, were proceedings "arising out of the Act or of any of the provisions thereof", it was held that this was not a proceeding arising out of the Act, and, consequently, the landlord was awarded costs: *JOSLOWITZ v. BURSTEIN*, [1948] 1 K. B. 408; [1948] 1 All E. R. 40, Croom-Johnson, J. (considering *Gill v. Luck* (1923), 93 L. J. K. B. 60; *Gunter v. Davis*, [1925] 1 K. B. 124; *Russoff v. Lipovitch*, [1925] 1 K. B. 628; and *A. J. Smith v. Kirby*, [1947] 1 All E. R. 459).

- 3154.** —. (Act of 1920, s. 17 (2).) Jurisdiction under s. 17 (2) of the Act of 1920, which provides that "a county court shall have jurisdiction to deal with any claim or other proceedings arising out of [the] Act . . .", does not depend on the precise stage at which a defendant raises his defence.

In an action commenced by writ in the High Court the landlord sued for recovery of possession of premises the rent of which was £275 per annum, in respect of which, accordingly, a county court would have had no jurisdiction. It was alleged by way of defence that there had been a lawful assignment of the tenancy and that the assignee was entitled to the benefit of the Rent Restriction Acts. The action was thereupon remitted to the county court. The county court decided in the landlord's favour and this decision was upheld on appeal.

to the Court of Appeal: see § 1897. The question then arose whether the landlord was entitled to costs on the High Court scale until the action was remitted to the county court. Held that the landlord, having chosen to uphold a decision of the county court in an action in which the county court had jurisdiction only by virtue of s. 17 (2), could not be heard to say that the consequential provisions of that sub-section with regard to costs did not apply. See *LEE v. CARTER*, § 1897.

3155. Crown property—application of Rent Restriction Acts. The Crown is not bound by the Rent Restriction Acts: *LONDON COUNTY TERRITORIAL AND AUXILIARY FORCES ASSOCIATION v. NICHOLS*, [1949] 1 K. B. 35; [1948] L. J. R. 1600, C. A. (dismissing appeal from decision of Croom-Johnson, J., [1947] C. L. Y. 2613; following *Clark v. Downes* (1931), 145 L. T. 20; *Wirral Estates v. Shaw*, [1932] 2 K. B. 247; *Wheeler v. Wirral Estates*, [1935] 1 K. B. 294; *Rudler v. Franks*, [1947] C. L. Y. 2602; and *Territorial Forces Association v. Philpot*, [1947] C. L. Y. 2603). (See also §§ 3157, 3174.)

3156. — British Railways. [Cty. Ct.] In *TAMLIN v. HANNAFORD* (1948), 98 L. J. 660, Judge Scobell Armstrong held that a house which formerly belonged to a railway company and which was affected by the vesting provisions of the Transport Act, 1947, was, by reason of the transfer of ownership, to be regarded as Crown property and consequently not subject to the Rent Acts, because the provisions of s. 14 (2) of the Act, under which existing liabilities were transferred to the Transport Commission, did not cover liability to the restrictions imposed by the Rent Acts, to which the railway companies were formerly subject.

[*Note.* The British Transport Commission desire to state that neither they nor the Railway Executive on their behalf were parties to the proceedings in question, which were between a tenant and a sub-tenant. The Commission have not pleaded that they are entitled to Crown privilege in relation to their property.]

3157. — territorial association. (Territorial Army Regulations, 1936 (S. R. & O., 1936, No. 1166), reg. 918). Having regard to the provisions of reg. 918 of the Territorial Army Regulations, 1936, a territorial association is, like a Minister or organ of the central government, a direct emanation from the Crown, and not in this respect comparable with local government authorities. For this reason it enjoys Crown status. Moreover, if it is a pre-requisite of enjoying the privilege of Crown immunity that the body concerned should not only enjoy Crown status but be, in the transaction under review, acting in the pursuit of Crown purposes, territorial associations attract Crown immunity, not only in so far as they occupy land or buildings by themselves or their military staff or officers, but also in so far as they exercise the powers granted them by statute of leasing redundant or unused premises to members of the public. Consequently, a tenant of such premises cannot claim the protection of the Rent Restriction Acts, and the fact that where a territorial association lets the premises to a private individual, who is not one of their servants, such individual is not immune from rates is an altogether immaterial consideration. See *LONDON COUNTY TERRITORIAL AND AUXILIARY FORCES ASSOCIATION v. NICHOLS*, § 3155.

3158. Dwelling-house—"dwelling-house let together with land". [Scot.] (Act of 1939, s. 3 (3).) In *PENDER v. REID*, 1948 S. L. T. 474, the Court of Session held that where a coal-yard and a dwelling-house had been let together, the dwelling-house was "let together with land other than its site" within the meaning of s. 3 (3) of the Rent and Mortgage Interest Restrictions Act, 1939, and, therefore, the tenant was not entitled to the protection of the Rent Acts.

3159. — rateable value, date for considering. (Act of 1939, ss. 3, 7.) In a case where two flats had been let as one demise, it was held that if the two flats could be regarded as a "dwelling-house" within the meaning of the Rent Restriction Acts "the appropriate day" for the purpose of ascertaining the rateable value under s. 3 of the Act of 1939 was the value as shown in the valuation list as on April 1, 1939, when the flats were let separately to different tenants, and not the value at a subsequent date when the two flats were let as one demise. See *LANGFORD PROPERTY CO. v. GOLDRICH*, § 3169.

3160. — residence on premises let solely for business. [Cty. Ct.] In *PICKFORDS v. WHEELER*, *Estates Gazette*, February 7, 1948, p. 117, Judge Tylor, K.C., held that where premises had been let under an agreement whereby the tenant agreed to use the premises "solely in connection with his business" as a dentist, the

tenant was nevertheless entitled to live in the premises and the premises were therefore controlled.

3161. — **room without facilities.** In *WRIGHT v. HOWELL* (1948), 92 S. J. 26, the Court of Appeal held that a room, devoid of cooking arrangements and water supply, in which, at all relevant times the tenant no longer slept could not constitute a dwelling-house for the purposes of the Acts.

3162. — **separate dwelling—alternative accommodation.** See *SELWYN v. HAMILL*, § 3143.

3163. — **rooms used as hotel annexe.** (Act of 1920, s. 12 (2).) As was stated by Scrutton, L.J., in *Skinner v. Geary*, [1931] 2 K. B. 546, the object of the Rent Restriction Acts was to protect the person residing in a dwelling-house from being turned out of his home. The question whether premises are the home of anybody, or are "let as a separate dwelling" within the meaning of s. 12 (2) of the Act of 1920, must depend on the facts of each case. The fact that the tenant is sleeping on the premises in question is not in itself sufficient to make those premises properly to be described as a "dwelling".

The landlord let two rooms of his house to the proprietress of a hotel next door, who used the rooms as a mere annexe or overflow of the hotel to enable the accommodation of the hotel to be extended, by way either of finding additional rooms for guests or of accommodating herself and her husband or their servants. The people who used them were normally resident in the hotel in the sense that the bulk of their living activities was concerned with the hotel. The landlord now sought to recover possession of the two rooms. Held, one could not attribute the character of a dwelling to a room where the tenant carried on one only of his many home activities, namely, that of sleeping, while he carried on others in a different tenement altogether. Consequently, the tenancy of the two rooms was not protected by the provisions of the Rent Restriction Acts, and the landlord was entitled to recover possession: *CURL v. ANGELO*, [1948] L. J. R. 1756; [1948] 2 All E. R. 189, C. A. (applying *Wright v. Howell*, § 3161, and *Skinner v. Geary*, *supra*; distinguishing *Vickery v. Martin*, [1944] K. B. 679; distinguishing and criticising *Richmond (Duke) v. Dewar and Cadogan Hotel Co.* (1921), 38 T. L. R. 151).

3164. — **sharing between tenants.** (Act of 1920, s. 10 (as amended by the Act of 1939, s. 3 (1), Sched. I).) It was decided in *Neale v. Del Soto*, [1945] K. B. 144, that where there is a letting of certain rooms in a house together with the right to use the kitchen in common with the landlord, there is no letting as a separate dwelling-house. It is impossible to draw any distinction in principle between the case where part of a house is let to a tenant who has the right to use the kitchen in common with the landlord and the case where the tenant is entitled to use the kitchen in common with another tenant. Thus, in a case of the latter type, it was held that the landlord could not be guilty of the offence of letting a dwelling-house at an extortionate rent contrary to s. 10 of the Act of 1920 (as amended by s. 3 (1), Sched. I of the Act of 1939): *BANKS v. COPE-BROWN*, [1948] 2 K. B. 287; [1948] L. J. R. 1370, D. C. (applying *Neale v. Del Soto*, *supra*; and *Cole v. Harris*, [1945] K. B. 474).

3165. — **sharing between tenants.** (Act of 1933, s. 16 (1).) The gist of *Neale v. Del Soto*, [1945] K. B. 144, and of the Court of Appeal cases following and interpreting that decision is that where what the landlord under the agreement of tenancy parts with to the tenant consists of two things (a) exclusive possession of a room or rooms, plus (b) user, jointly with someone else, of another living room or rooms, then the tenant cannot say that he is the tenant of a "house or part of a house, let as a separate dwelling" within the meaning of s. 16 (1) of the Act of 1933. These decisions limit the operation of the rule to cases in which the room shared is a "living room". However, they bind the Court of Appeal to say that a "kitchen" is a living room, and that even in cases in which the sharing of the kitchen is limited to access to the kitchen for purposes of cooking. Moreover, in a case of shared accommodation of a living room the Court draws no distinction at all between the "sharing" of accommodation between the tenant with the landlord and a similar sharing between the tenant and other tenants: *LLEWELLYN v. HINSON*, [1948] 2 K. B. 385; [1949] L. J. R. 291, C. A. (applying

Neale v. Del Soto, *supra*; *Sharpe v. Nicholls*, [1945] K. B. 382; *Cole v. Harris*, [1945] K. B. 474; and *Kenyon v. Walker*, [1946] 2 All E. R. 595).

- 3166.** — — — **sharing of house for trade purposes.** [Cty. Ct.] In *GALLOWAY v. CALVERT* (1947), 98 L. J. 178, Judge Neal held that where the demised premises were shared by the tenant with the landlord only for the landlord's trade purposes, and not for the purpose of living or dwelling, the letting was protected under the Rent Acts.
- 3167.** — — — **sub-tenant of part of house becoming landlord by purchase.** [Cty. Ct.] In *LITTLEWOOD v. WHITTALL* (1948), 92 S. J. 164, Judge Langman held that where the tenant sub-let part of a house to the plaintiff and the plaintiff subsequently became landlord by purchase of the whole house, although the part retained by the defendant tenant did not constitute a separate dwelling, the defendant's tenancy was still protected and the plaintiff was not entitled to an order for possession because his status as a sub-tenant was not merged in his status as a landlord.
- 3168.** — — — **tenancy and licence.** [Cty. Ct.] In *RAINER v. KERRISON*, [1947] L. J. N. C. C. R. 288, Judge Neal held that where there is a letting which on the face of it is a letting of a separate dwelling and thus within the ambit of the Act, there seems to be no reason for holding that a licence, granted by the tenant to the landlord to use part of the demised premises, even if the licence is contemporaneous with the letting, can alter the nature of the letting so as to deprive the tenant of the benefits of the Act.
- 3169.** — — — **two separate flats let together.** (Act of 1933, s. 16; Act of 1938, s. 7.) From the authorities of *Sheehan v. Cutler*, [1946] K. B. 339, and *Selwyn v. Hamill*, § 3143, it follows that where two separated flats are let together to the same tenant they do not constitute a "dwelling-house" within the meaning of s. 16 of the Act of 1933: *LANGFORD PROPERTY CO. v. GOLDRICH*, [1948] 2 K. B. 423; [1949] L. J. R. 213, Birkett, J. (applying *Sheehan v. Cutler*, *supra*; and *Selwyn v. Hamill*, *supra*). (See also §§ 3159, 3175.)
- 3170.** — — — **use of kitchen used only for cooking.** See *LLEWELLYN v. HINSON*, § 3165.
- 3171.** — — — **use of kitchenette.** The authorities compel the Court to the view that a room which can properly be described as a kitchen is a living-room. Calling it a "kitchenette" simply because it is a small room and used only for the purpose of cooking makes no difference. A room which is used for the primary purpose of cooking is a living-room; it is essential to the life of the occupants of the premises and is a room in which, of necessity, at least one occupant of the premises spends an appreciable portion of his or her life; it is a room which is not merely visited for occasional specific purposes like a water-closet or a bathroom.
- The plaintiff was the tenant of two unfurnished living-rooms in the defendant's dwelling-house and had, in addition, the right to use, in common with the defendant landlord, a room which the County Court Judge called a "kitchenette" measuring 7 ft. by 6 ft. and containing an electric cooker, an "Ideal" water-heating apparatus and a table. Held, the tenancy was not protected by the Rent Restriction Acts: *WINTERS v. DANCE*, [1948] W. N. 317; [1949] L. J. R. 165 (applying *Neale v. Del Soto*, [1945] K. B. 144; *Llewellyn v. Hinson*, § 3165).
- 3172.** **Employment by landlord.** (Act of 1933, s. 3 (1), Sched. I, para. (g).) Where a landlord seeks possession of a dwelling-house on the ground that it is "reasonably required for occupation as a residence for some person engaged in his whole-time employment" within the meaning of para. (g) of Sched. I to the Act of 1933, the language of the section is satisfied where there is a contract for services and the date thereby fixed for the commencement of the services has arrived at the time of the hearing of the case in the county court. The conditions of engagement relating to the new tenant under the provisions of para. (g) do not contemplate or require an engagement of any particular duration, *i.e.*, the right of the landlord to obtain possession is not to be taken away because the very next day the contract of engagement may be brought to an end.

Quære: Whether if at the date of the hearing the man for whom the house is required is under notice given or received determining the engagement, the

County Court Judge would be right in holding that he could not be described as being engaged in the whole-time employment of the employer, and whether in those circumstances it would be reasonable at the date of the hearing to make an order for possession.

On July 11, 1947, the landlords engaged W. to enter their employment and to start work on September 10, 1947. By that time he had freed himself from his previous occupation, but, unfortunately, three days before September 10, he was taken ill. In an action in the county court the landlords claimed possession of a dwelling-house for the occupation of W. under para. (g) of Sched. I to the Act of 1933. The hearing began on October 1. On October 29 the County Court Judge delivered judgment dismissing the claim. W. began work on October 30. Held, on appeal, at the relevant date—the date of the hearing in the county court—W. was engaged in the whole-time employment of the landlords, and, consequently, the appeal had to be allowed and an order for possession had to be made, but, in view of the fact that W.'s employment had since terminated, the proper form of order to make was an order for possession within one month, with a right to either party to apply to the County Court Judge for an extension of the time: *R. F. FUGGLE v. GADSDEN*, [1948] 2 K. B. 236; [1948] L. J. R. 1664, C. A. (distinguishing *Benninga (Mitchem) v. Bijstra*, [1946] K. B. 58). (See also § 3173.)

3173. — termination of contract after order of county court. When s. 3 (1) of the Act of 1933 speaks of the Court being satisfied that it is reasonable to make an order for possession, it means that the tribunal of fact must be satisfied that it is reasonable to make an order. As the tribunal of fact under the Act is the County Court Judge, it follows that if something happens after the hearing before the County Court Judge which, if it had happened before the hearing took place, might have led the County Court Judge to take a different view from that which he did take on the facts, the Court of Appeal cannot take into account such subsequent matters of fact. See *R. F. FUGGLE v. GADSDEN*, § 3172.

3174. Estoppel—premises outside Rent Acts. Statements in a rent book that premises are controlled, if amounting to a representation at all, constitute a representation of law and not of fact. Consequently, a tenant of premises, which as Crown property enjoy the privilege of immunity from the provisions of the Rent Restriction Acts, cannot rely by way of estoppel upon an entry to the effect that the premises are controlled premises. See *LONDON COUNTY TERRITORIAL AND AUXILIARY FORCES ASSOCIATION v. NICHOLS*, § 3155.

3175. — —. The decision in *Griffiths v. Davies*, [1943] K. B. 618, shows that the general proposition to the effect that “the principles of estoppel and of *res judicata* do not apply where to give effect to them would be to go counter to some statutory direction or prohibition” applies to premises which come within the provisions of the Rent Restriction Acts. Consequently, in a case where the landlords sent to the tenant a series of letters and a notice of increase of rent in which they had assumed the applicability of the Rent Acts to certain premises let to the tenant, the landlords were not estopped from denying that the premises in question were not within the provisions of the Rent Acts. See *LANGFORD PROPERTY CO. v. GOLDRICH*, § 3169 (applying *Griffiths v. Davies*, *supra*).

3176. Furnished house — Furnished Houses (Rent Control) Act, 1946 — concurrent application of Rent Acts. (Act of 1946, s. 7.) Once there has been a registration pursuant to the Furnished Houses (Rent Control) Act, 1946, in respect of any premises the rent payable in respect whereof has been reduced under that Act, s. 7 of that Act excludes the application of s. 9 of the Act of 1920 as regards the rent of those premises in respect of any period after the registration. However, an order made under s. 7 of the Act of 1946 cannot have the effect of taking outside the general protection of the Rent Acts premises which prior to the making of the order had been within such protection. See *BOWNESS v. O'DWYER*, § 3186.

3177. — — continuance in operation. The Furnished Houses (Rent Control) Act, 1946 (9 & 10 Geo. 6, c. 34), has been continued into operation until March 31, 1950, by the Expiring Laws Continuance Act, 1948 (12 & 13 Geo. 6, c. 3), s. 1, Sched., Part II.

3178. — **hotel premises.** In *R. v. PADDINGTON RENT TRIBUNAL, ex p. WALSTON HOTELS* (November 25, 1948), the Divisional Court (Lord Goddard, C.J., and Hilbery and Birkett, J.J.) made an order of certiorari quashing the decision of the tribunal reducing a weekly charge for a room and bed and breakfast at a hotel, such premises obviously not being within the Furnished Houses (Rent Control) Act, 1946. [*Reported by R. C. Calburn, Esq., Barrister-at-Law.*] See also *Estates Gazette*, December 11, 1948, p. 449.

3179. — **reduction of rent below standard rent.** (Furnished Houses (Rent Control) Act, 1946 (9 & 10 Geo. 6, c. 34), s. 7.) A reduction by a Furnished Houses Rent Tribunal of a contractual rent to a level below that of the standard rent does "affect" the provisions of the Rent Restriction Acts, namely, the provisions under which the standard rent is determined, and, if need be, apportioned, and under which it may, in certain circumstances, be increased. The language of s. 7 of the Furnished Houses (Rent Control) Act, 1946, sufficiently shows that such was not the intention of the Legislature, which was, on the contrary, that the Act should be supplementary to, but (except as to ss. 9 and 10 of the Act of 1920) in no way destructive of, the Rent Restriction Acts of 1920 to 1939.

Per Romer, J.: "In a loose sense it is not incorrect to say that a lessor is authorised by the Rent Restriction Acts to receive the standard rent, because those Acts impliedly recognise and leave undisturbed his right to exact that rent by contract while eliminating his common law right to contract effectively for anything more. Strictly, however, a lessor's right to receive, and, if necessary, enforce, payment of the standard rent is in no way conferred by the Acts. It arises, and arises only, out of the contractual relations into which he enters with his tenant. We are, accordingly, unable to accept the argument that a tribunal which reduces a contractual rent below the standard rent is *pro tanto* depriving the lessor of rent to which he has a statutory right": *R. v. PADDINGTON AND ST. MARLYBONE RENT TRIBUNAL, Ex p. BEDROCK INVESTMENTS*, [1948] 2 K. B. 413; [1949] L. J. R. 284. C. A. (affirming decision of Divisional Court, [1947] C. L. Y. 2625).

3180. — —. In *R. v. CROYDON RENT TRIBUNAL, ex p. CHALKLEY* (October 21, 1948), a rent tribunal informed the Divisional Court, on an application by the landlord for an order of certiorari, that they had reduced the rent of a certain flat to a figure below that of the standard rent because the tenant, who had referred the tenancy to them, had not told them what the standard rent was. The Divisional Court (Lord Goddard, C.J., Humphreys and Byrne, J.J.), granting the application, refused to lay down rules for the guidance of rent tribunals in the matter of ascertaining the standard rent in any case referred to them, because it was for the Minister of Health to make such rules; but held that it was the duty of the tenant to state the standard rent, and that, as he had failed to do so, he must pay his own costs of the proceedings. [*Reported by R. C. Calburn, Esq., Barrister-at-Law.*] See also [1948] W. N. 413.

3181. — **rent tribunal cases.** See the following pages of 112 J. P. J.: 11 (increased rents before reference—failure to use available rooms); 12 (exclusive occupation); 44 (no provision of furniture or service at date of reference); 76 (slight variation to furnished rooms after reference; sharing rooms; on written contract; tenancy of boarding-house; rent reasonable if terms of contract carried out); 234 (tenant or licensee—broken contracts); 297 (excessive rent for partly furnished room—arrears of rent—reasons for increasing rent); 389 (lessors wrongly named and notice to quit improperly served; notice to quit improperly served; contract terminated; notice to quit waived by acceptance of rent; change of circumstances—application by lessor under s. 2 (3)); 457 (extortionate rent—prosecution of lessor; purchase of furniture by tenant—security of tenure; reduction of rent—subsequently tenant deprived of use of one room—change of circumstances—further reduction; termination of tenancy—reference by sub-tenant—reduction of sub-tenant's rent below that paid by sub-lessor; application by sub-tenant of licensee of requisitioning authority—application dismissed on ground that there could be no contract); 489 (illegal agreement between parties; overcharge by lessor); 574 (sub-letting of requisitioned house; payment in respect of board); 590 (meaning of services, hot water, jurisdiction; furniture actually

provided, contract for unfurnished letting); 659 (loan of room by lessee to lessor and subsequent proceedings under s. 9 (1)—no rent book; 719 ("conditional" tenancy—lessor's attempt to impose condition subsequent to letting; furnished or unfurnished letting—first unfurnished letting—standard rent; licences of Crown—lessor, local authority—requisitioned premises—jurisdiction); 810 (amended contract); 811 ("substantial proportion"—bed and breakfast—weekly tenancy—relative value of board; rent in excess of maximum fixed by Tribunal—prosecution).

See also the following pages of the *Estates Gazette*, 1948: January 3, p. 17 (lessor demands more than registered rent—threat to withdraw services; excessive charges for lessor's personal services—value of service under contract of tenancy—meaning of "furniture"); February 7, p. 115 (council's application for increase of rent on behalf of landlord—"change of circumstances"); March 6, p. 181 (30 Milner St. S.W.3; 63 Pont St. S.W.1); April 10, p. 275 (change of circumstances—rent increased; tenant applies for rent increase); May 8, pp. 365 (rent of block of west-end flats—council's application); 384 (Park-West—tribunal's decision); 403 (rent increased after assessment by tribunal—refunding "not at the end of the matter"; value of board held "substantial"—no jurisdiction); 413 ("landlord liable to £8,000 fine"); June 5, pp. 443 ("agreement full of illegalities"—duty of local authority; "change of circumstances"—result of overflow of water; rents cut £460); 450 (payment of premium and excess rent); June 26, p. 496 (withdrawal of reference before hearing by Tribunal); July 3, pp. 5 (rent fixed by Tribunal lower than that paid by landlord); 27 (purchase of furniture by tenant after assessment by Tribunal—jurisdiction—further reduction); August 21, p. 150 (landlord's failure to repair—further reduction of rent); November 20, p. 402 ("luxury block of flats"); December 4, pp. 425 (bed and breakfast—weekly tenancy—relative value of board); 479 (notice to quit before reference—no jurisdiction).

3182. Furnished letting—excess rent. (Act of 1920, s. 9 (1) (as amended by Act of 1939, Sched. I); Furnished Houses (Rent Control) Act, 1946 (9 & 10 Geo. 6, c. 34), s. 7.) S. 9 (1) of the Act of 1920 (as amended by Sched. I to the Act of 1939) which provides that if, in the case of furnished lettings "it is proved to the satisfaction of the county court on the application of the tenant that the rent charged is yielding or will yield to the landlord a profit in excess of the normal profit . . . , the court may order . . . that the amount of any payment of rent in excess of such sum [as would yield such normal profit] . . . shall be repaid to the tenant", enables a tenant to claim repayment of such excess rent in respect of a period ending before the time when the application is filed. Thus, in a case where a tenant had his rent reduced by a rent tribunal set up under the provisions of the Furnished Houses (Rent Control) Act, 1946, it was held that there was nothing to prevent the tenant from applying afterwards to the county court for repayment of past excess rent under s. 9 of the Act of 1920, although at the date of the application to the county court the rent was no longer excessive within the meaning of s. 9 of that Act. The provisions of s. 7 of the Act of 1946 could not affect the position. See *ROPPEL v. BENNETT*, § 3187.

3183. ———. (Act of 1920, s. 9 (1) (as amended by Act of 1939, Sched. I).) An applicant who applies for repayment of excess rent under the provisions of s. 9 (1) of the Act (as amended by Sched. I to the Act of 1939), does not have to be a tenant at the time he files an application to the county court. The words "on the application of the tenant" in the sub-section mean that he must have been the tenant during the period in respect of which the application is made: *RIORDAN v. MINCHIN*, [1949] 1 K. B. 137; [1948] L. J. R. 1939, C. A. (applying *Roppel v. Bennett*, § 3182).

3184. ———. [Cty. Ct.] In *MAGGI v. DAVIDSON* (1948), 98 L. J. 537, Judge Earengy held that where the letting was a furnished one for the purposes of the Rent Acts, the mere fact that the value of the use of the furniture was "substantial" was no defence to a claim for repayment of excess profit under s. 9 (1) of the 1920 Act.

3185. ——— proportion attributable to furniture. (Act of 1920, s. 12 (2) (i) (as amended by the Act of 1923, s. 10 (1)).) The relevant date on which to compare the part

of the rent attributable to the use of furniture with the whole rent is the time when the original contract of tenancy is made.

The tenant at first paid no rent at all. He then paid £4 a month and subsequently £6 and £10 a month. The first entry in the rent book was £4 a month. The landlord supplied at first furniture worth £75, the annual value of which was found to be £11 or £12, and later on supplied further items of furniture in compliance with the contractual undertaking to provide a furnished letting. Held, the original tenancy was at £4 a month, and as £11 or £12 a year represented a substantial portion of £48 a year this was substantially a furnished letting, but even if £6 or £10 a month was the correct figure, it still remained a furnished letting in view of the landlord's undertaking, and, consequently, the tenant was not protected under the Rent Restriction Acts: *JOZWIAK v. HIEROWSKI*, [1948] W. N. 201; [1948] L. J. R. 1643; [1948] 2 All E. R. 9, C. A. (applying *Palser v. Grinling*, § 3149).

- 3186.** ——. (Act of 1920, ss. 9, 12 (2) (i) (as amended by Act of 1923, s. 10 (1), and by Act of 1939, Sched. I); Act of 1939, s. 3 (2) (b).) In the case of premises which are "*bona fide* let at a rent which includes payments in respect of . . . furniture", within the meaning of the proviso to s. 12 (2) of the Act of 1920, and of s. 3 (2) (b) of the Act of 1939, "the relevant date on which to compare the part of the rent attributable to the use of furniture with the whole rent is"—according to the judgment of Asquith, L.J., in *Jozwiak v. Hierowski*, § 3185—"the time when the original contract of tenancy is made". Consequently, where on an application to the county court under s. 9 of the Act of 1920 (as amended by Sched. I to the Act of 1939), which applies to a dwelling-house let "at a rent which includes payments in respect of the use of furniture", the Court fixes the rent having regard to the "normal profit" to the lessor, the order made under the section does not have the effect of substituting some other figure for the figure of rent provided by the contract. At most so much of the contractual rent as exceeds the "normal profit" is held to be irrecoverable.

Quære: whether s. 9 of the Act of 1920 was only intended to apply to premises let at a rent which includes payments in respect of the use of furniture where the effect of such letting is (by virtue of the proviso to s. 12 (2) of the Act of 1920, as amended by s. 10 of the Act of 1923) to exclude them from the general protection of the Acts.

In 1946, the landlord let the premises, together with the use of certain furniture, to the tenant at a rent of 30s. a week. The proper weekly sum attributable to the use of the furniture was at all material times 3s. 6d. In 1947, a rent tribunal, established under the Furnished Houses (Rent Control) Act, 1946, on an application by the tenant exercised its powers under s. 2 (2) of that Act and reduced the rent payable under the contract to 8s. per week. The tenant then applied to the county court under s. 9 of the Act of 1920 (as amended by Sched. I to the Act of 1939). The County Court Judge held that the "normal profit" in respect of the premises (including the use of the furniture) was 13s. 6d., and ordered, accordingly, that all sums previously paid by the tenant for rent in excess of that sum should be paid by the landlord to the tenant. The landlord then served a notice to quit on the tenant and proceeded to bring an action for possession alleging that the weekly amount of 3s. 6d. attributable to the use of the furniture was a substantial portion of the rent of either 8s. or 13s. 6d. per week and that, accordingly the premises did not enjoy the protection of the Rent Restriction Acts. The County Court Judge held that the figure of 3s. 6d. had to be related not to the rents of 8s. or 13s. 6d. per week but to the contractual rent of 30s. per week and that, consequently, the premises were not excluded from the general protection of the Rent Acts by virtue of proviso (1) to s. 12 (2) of the Act of 1920, or by s. 3 (2) (b) of the Act of 1939. Held on appeal, the decision of the County Court Judge was right: *BOWNESS v. O'DWYER*, [1948] 2 K. B. 219; [1948] L. J. R. 1774, C. A. (following *Jozwiak v. Hierowski*, *supra*; distinguishing *Stone (J. & F.) Lighting and Radio v. Levitt*, [1947] C. L. Y. 2671). (See also § 3176.)

- 3187.** ——. (Act of 1920, s. 12 (2), proviso (i); Act of 1923, s. 10 (1).) As was said by Lord Simon in *Palser v. Grinling*, § 3149, in considering the meaning of s. 10 (1) of the Act of 1923: "In assessing 'the amount of rent which is fairly attributable' to the use of furniture [a number of considerations are

relevant, of which a chief is] that if and so far as the landlord does not provide furniture which the tenant would normally require to use, the tenant would have to provide it himself. It is the value to the tenant of the landlord's covenant to provide furniture which mainly controls the figure to be arrived at, and not the cost of such furniture to the landlord, though the latter in many cases may also be a relevant factor".

Per Tucker, L.J.: "... I think that, generally speaking, it would be desirable in these matters for County Court Judges to indicate in figures their final conclusion with regard to the portion of the rent. I think that that can generally be done by taking a broad view of the matter. I do not think that the mere fact that in the present case the County Court Judge has not stated in black and white the precise arithmetical result at which he has arrived ... invalidates his judgment ...".

The County Court Judge held that the value of the furniture, which included a bed, a chest of drawers, a cupboard, curtains, two chairs and an easy-chair, a table, a gas-fire and a gas-stove, was only 2s. 4d. a week or 10.3 per cent. of the rent payable by the contract of tenancy, but nevertheless arrived at the conclusion that the sum attributable to the use of furniture was a substantial portion of the whole rent within the meaning of s. 10 (1) of the Act of 1923. Held, on appeal, that having regard to the other factors which the County Court Judge had to take into account, he was justified in coming to the conclusion that the amount attributable to furniture came well over what he was entitled to regard as a substantial portion of the rent: *ROPPEL v. BENNETT*, [1949] 1 K. B. 115; [1948] L. J. R. 1929, C. A. (applying *Palser v. Grinling*, § 3149). (See also § 3182.)

3188. Furniture—"bona fide let at a rent which includes payments in respect of board, attendance or use of furniture". See *PALSER v. GRINLING*, § 3149.

3189. — meaning of. The following considerations apply in ascertaining the meaning of the expression "furniture":

- (1) The terms of the contract of tenancy are not conclusive as to the proper application of the term—that is to say, "furniture" has a statutory meaning, and that meaning cannot be extended merely because the landlord stipulates in the lease that certain things are to be regarded as "furniture" when, in fact, they do not fall within the proper interpretation of the word.
- (2) "Furniture" must consist of articles in which the landlord has a proprietary right as against the tenant.
- (3) The expression "use of furniture" in s. 10 (1) of the Act of 1923 refers to articles provided for the use or enjoyment of the dwelling in question. Articles provided for the use or enjoyment of places outside the demise, such as halls and passages used by the tenant in common with other tenants in a block of flats, are excluded.
- (4) "Furniture" cannot include anything which is already paid for by the portion of the rent attributable to the dwelling-house itself. Thus, it is necessary to exclude articles which, at the beginning of the demise, constituted part of the dwelling-house itself.
- (5) Articles belonging to the landlord otherwise entitled to rank as "furniture" for the purpose of s. 10 should, if affixed to the fabric, be regarded as part thereof if they cannot be detached without appreciable damage to or alteration of the fabric or themselves. Otherwise they should be regarded as furniture. In other words, the first question is whether the articles in question are commonly regarded as "furniture"; if so, loose articles are necessarily included in the expression, while articles which are not loose will or will not be furniture according to the nature and degree of attachment.

By way of example, the modern bath fitted into a bathroom, the heavy cellar lid which keeps its position by its own weight, a corner seat fixed solidly into a corner, built-in wardrobes and cupboards and a table affixed to a wall and depending for support on a wall bracket do not constitute "furniture". See *PALSER v. GRINLING*, § 3149 (criticising *Gray v. Fidler*, [1943] K. B. 694).

3190. — — —. (Furnished Houses (Rent Control) Act, 1946 (9 & 10 Geo. 6, c. 34), s. 2 (1).) The provision of services has the same effect as the provision of furniture

in giving a rent tribunal jurisdiction under the Furnished Houses (Rent Control) Act, 1946. But whereas in cases dealing with services the only question is whether the tenant was contractually entitled to receive the services from the landlord, and not whether the landlord, in fact, supplied the same as a matter of grace or convenience, it is quite possible that some different considerations may apply in the case of furniture. For instance, the landlord, merely by omitting all reference to furniture in the agreement, could not prevent the tribunal acquiring jurisdiction if, in fact, what was let was a furnished house, or, to use the words of the Act, a house "in consideration of a rent which includes payment for the use of furniture". At the same time it by no means follows that what was ordinarily an unfurnished letting would be turned into a furnished letting because a chattel, which belonged to the landlord and could be dignified by the name of a piece of furniture, was left on the premises. The question would be whether the letting was in consideration of a rent which included payment for the use of furniture.

On inspecting the tenant's flat the rent tribunal found the following articles, which they classed as "furniture": an electric clock with a plug which fitted into a wall socket connected with the electric supply, curtains in at least two rooms, a gas cooker, and an Ascot water heater. Held, the gas cooker and the Ascot water heater did not constitute "furniture", and the doctrine of *de minimis* applied to the electric clock and to the curtains with the result that the rent tribunal had assumed a jurisdiction which they did not possess and that an order for *certiorari* had to go: *R. v. BLACKPOOL RENT TRIBUNAL, Ex p. ASHTON*, [1948] 2 K. B. 277; [1949] L. J. R. 327, D. C. (applying *Palser v. Grinling*, § 3189; considering *R. v. Hampstead Rent Tribunal, ex p. Ascot Lodge*, [1947] C. L. Y. 2619; and *R. v. Croydon Rent Tribunal*, [1947] C. L. Y. 2621).

3191. — "substantial portion of whole rent". The phrase "substantial portion" in s. 10 (1) of the Act of 1923 which states that "a dwelling-house shall not be deemed to be bona fide let at a rent which includes payments in respect of attendance or the use of furniture unless the amount of rent which is fairly attributable to the attendance or the use of the furniture, regard being had to the value of the same to the tenant, forms a substantial portion of the whole rent", requires a comparison with the whole rent, and the whole rent means the entire contractual rent payable by the tenant in return for the occupation of the premises together with all the other covenants of the landlord. One of the primary meanings of the word "substantial" is equivalent to considerable, solid or big. In deciding whether a portion was or was not substantial it is not possible to lay down percentages of general application. See *PALSER v. GRINLING*, § 3149.

3192. — —. The expression the "whole rent" in s. 10 (1) of the 1923 Act denotes the entire contractual rent payable by the tenant to his landlord. In cases where the landlord covenants to pay rates, it would be an error to deduct the rates from the contractual rent in order to arrive at the whole rent. Whether the landlord pays the rates or not is immaterial in arriving at the whole rent. See *PALSER v. GRINLING*, § 3149.

3193. — "the amount of rent which is fairly attributable to attendance or the use of furniture, regard being had to the value of the same to the tenant". In the phrase "the amount of rent which is fairly attributable to attendance or the use of furniture, regard being had to the value of the same to the tenant" in s. 10 (1) of the Act of 1923 the expression "the tenant" refers to the actual tenant whose lease is under examination and not to the average or normal tenant of that class of property. But it is of the utmost importance to observe that the section directs that "regard shall be had" to the value to the tenant and not that the value to such tenant is to govern the calculation absolutely, *i.e.*, such value must not be overlooked but must be suitably allowed for. Where the parties to the lease have placed a value on various elements which enter into the total rent, the statement of these respective values in the lease is not a conclusive distribution, though it may be strong evidence of what the proper distribution would be. Nevertheless, the amount to be arrived at is the amount which is "fairly attributable" to the item, not the amount which is actually attributed to it in the lease. The phrase "having regard to" etc., appears to

be introduced in order to exclude or discount articles included in the letting which are left on the premises by the landlord either for his own convenience (for example, as a convenient way of storing them without paying a storage charge) or in quantities which, having regard to the size of the accommodation and the tenant's need for furniture, are greater than the tenant wants. In assessing "the amount of rent which is fairly attributable to the use of furniture", a number of considerations are relevant, of which the chief is that if and so far as the landlord does not provide furniture which the tenant would normally require to use, the tenant would have to provide it himself. It is the value to the tenant of the landlord's covenant to provide furniture which mainly controls the figure to be arrived at, and not the cost of such furniture to the landlord, though the latter in many cases may also be a relevant factor. What the judge of fact has to do is to take the furniture as it is and fix a fair rental for it, having regard to its value to the tenant, remembering that old furniture wears out sooner than new and that the landlord (apart from special covenant) does not undertake to repair or renew it. See *PALSER v. GRINLING*, § 3149 (applying *Newport B. C. v. Monmouthshire C. C.*, [1947] A. C. 520).

- 3194. Greater hardship—hardship to third parties.** [N.I.] In *McELROY v. LEONARD*, [1948] N. I. 50, Andrews, L.C.J., held that where the landlord sought possession of a dwelling-house which he required for the occupation of a whole-time employee of his who was residing rent-free in a house belonging to a third party (who required the latter house for the occupation of an employee of his own) the hardship suffered by the third party was not to be taken into account in assessing the balance of hardship. (*Harte v. Frampton*, [1947] C. L. Y. 2642, followed.)
- 3195. Improvements—increase of rent.** [Cty. Ct.] In *BATES v. GRIFFITHS* (1948), 98 L. J. 537, Judge Wethered held that, within the meaning of s. 2 (1) (a) of the 1920 Act, a raising of the main walls of the demised premises was an improvement and not unnecessary, that the removal of the thatch on the house and the replacing thereof by slates was a repair, and that the removal of weather-boarding and subsequent roughcasting was an improvement but unnecessary.
- 3196. Jurisdiction—High Court and county court.** See *JOSLOWITZ v. BURSTEIN*, § 3153; *LEE v. CARTER*, § 3154.
- 3197. Landlord—own occupation—joint owners.** (Act of 1933, s. 3 (1), Sched. I, para. (h).) It was held in *Baker v. Lewis*, [1947] C. L. Y. 2647, that, by reason of the provisions of the Interpretation Act, 1889, s. 1, the word "landlord" in the opening sentence of para. (h) (which gives the Court power to make an order for the recovery of possession of any dwelling-house without proof of suitable alternative accommodation if the dwelling-house is reasonably required by the landlord for occupation as a residence for himself) includes the plural where there is more than one landlord. It follows that on the true construction of the paragraph—as pointed out by Asquith, L.J., in *Baker v. Lewis*, *supra*—the landlords, when they are more than one in number, have to prove that the dwelling-house is required for occupation as a residence for all of them and not for only one or more of the landlords who desires, or desire, to reside in the house: *McINTYRE v. HARDCASTLE*, [1948] 1 K. B. 82; [1948] L. J. R. 1249, C. A. (See also § 3139.)
- 3198. — sale of council house—conversion of uncontrolled into controlled tenancy.** [Cty. Ct.] In *GLOUCESTERSHIRE C. C. v. BARNES* (1947), 98 L. J. 136, a dwelling-house belonging to the city corporation, excluded from control by s. 3 (2) (c) of the 1939 Act, was let to a constable of the county police force. He purported to assign the tenancy by memorandum in writing to the chief constable. The house was later sold by the city corporation to the county council. Judge Wethered held, (a) the assignment not being by deed was invalid, (b) the tenancy was still existing, (c) by reason of the change of ownership the premises were controlled by the Rent Acts.
- 3199. Local authority house—exclusion of Rent Acts.** See *SHELLEY v. L. C. C.*, § 1607.
- 3200. Misrepresentation—order obtained by.** [Cty. Ct.] (Act of 1920, s. 5 (6).) In *HURD v. HICKS* (1948), 98 L. J. 430, Judge Tylor, K.C., held, in an application by a former tenant for compensation for loss caused by a possession order, on the alleged ground that the landlord had obtained the order by misrepresentation,

that there was nothing in s. 5 (6) of the 1920 Act to support a submission that such a charge of misrepresentation could be proved on balance of probability, and held that the applicant had failed to discharge his burden of proof.

- 3201. Parsonage house—residence for assistant priest.** [Cty. Ct.] In *JACKSON v. HILL* (1948), 98 L. J. 537, Judge Rawlins held that the tenant of a house which had been built for the purpose of providing a residence for an assistant priest was entitled to the protection of the Rent Acts because the Pluralities Act, 1838, was concerned with one house in the parish only, namely, the house of residence of the incumbent.
- 3202. Premium—agency of tenant.** [Cty. Ct.] In *CANTOR v. PACEY* (1948), 98 L. J. 603, Judge Earengay held that where the defendant agreed to surrender his tenancy and immediately before the surrender demanded and received from the new tenant (the plaintiff) a premium of £75 (allegedly in respect of decorations and furniture), the landlord well knowing that the demand and payment were made, the plaintiff was entitled to recover the premium from the defendant, who had received it not for an assignment of his tenancy but as agent for the landlord.
- 3203. Rateable value.** See *LANGFORD PROPERTY CO. v. GOLDRICH*, § 3159; *AMPHLETT v. DORRELL*, § 3148.
- 3204. Rent—excess rent, repayment of.** See *RIORDAN v. MINCHIN*, § 3183; *ROPPEL v. BENNETT*, § 3182; *MAGGI v. DAVIDSON*, § 3184.
- 3205. — extortionate.** See *BANKS v. COPE-BROWN*, § 3164.
- 3206. — increase for improvements.** [Cty. Ct.] See *BATES v. GRIFFITHS*, § 3195.
- 3207. — meaning of.** See *PALSER v. GRINLING*, § 3192; *PROPERTY HOLDING CO. v. CLARK*, § 3210.
- 3208. — progressive rent.** In *LANGFORD PROPERTY CO., LTD. v. SOMMERFELD* (June 22, 1948), landlords let a reconstructed flat within the Rent Restriction Acts to a tenant for three years at £120 a year for the first two years and £160 for the third year. There had been no previous letting of the new flat, but, as the tenant was in a hurry to go into occupation, the landlords allowed him in on March 1, writing that "the rent was to start from that day", and charging him £8 rent for the twenty-four days, which worked out at £116 a year. The tenant contended that the twenty-four days' letting was the first letting after September 1, 1939, and that £116 a year was therefore the standard rent. The Court of Appeal (Tucker and Somervell, L.J.J., and Harman, J.), held that there was one letting at a progressive rent of £120 a year for the first two years and twenty-four days and £160 a year for the third year, so that the standard rent was £160 a year. [*Reported by R. C. Calburn, Esq., Barrister-at-Law.*] See also [1948] W. N. 287.
- 3209. — standard rent—apportionment.** See *AMPHLETT v. DORRELL*, § 3148; [Cty. Ct.] *PALLET v. ANDERSON*, § 3147.
- 3210. — contemporaneous agreement to pay additional sums.** (Act of 1920, s. 12 (1) (a).) The word "rent" in s. 12 (1) (a) of the Act of 1920 cannot be supposed to have assigned to it any different meaning from that given to the same word in s. 12 (2), where, for the reasons given by Younger, L.J., in *Wilkes v. Goodwin*, [1923] 2 K. B. 86, the word must necessarily be intended to comprehend separately quantified payments in respect of board, attendance, or use of furniture—payments which from their nature would not normally or naturally be described in terms as "rent". For the purposes of determining whether a payment constitutes "rent" within the meaning of the section, it is immaterial whether the payment is called "rent" in the lease or agreement. It is the substance that matters.
- The landlords let a flat to the tenant for a "rent" (so described) of £110 a year by an agreement in which the tenant covenanted to pay an "additional sum" of £30 a year in respect of the provision by the landlords of certain fittings and an undertaking to perform certain services, etc. Held, the £30 a year was a part of the rent within the meaning of the Rent Restriction Acts, and the standard rent, therefore, was £140: *PROPERTY HOLDING CO. v. CLARK*, [1948] 1 K. B. 630; [1948] L. J. R. 1066, C. A. (approving *Wilkes v. Goodwin*, [1923] 2 K. B. 86, and *Artillery Mansions v. Macartney*, [1947] C. L. Y. 2596

(and see § 3152), distinguishing *Isaacs v. Titlebaum*, [1920] W. N. 29). (See also § 3242.)

3211. — — —. (Act of 1920, s. 12 (1) (a) (as amended by Act of 1939, s. 3 (1), Sched. I.) The decision in *Property Holding Co. v. Clark*, § 3210, lays down the following principles:

1. The term "rent" in the context "standard rent" carries a meaning sufficiently wide to cover additional payments, whether or not some of the benefits to the tenant to which the additional payments are attributable have already been expressly or impliedly included in the main grant; and
2. A covenant to pay a sum of money, an "additional sum", or just "an amount", may be a covenant to pay rent for the purposes of the definition "standard rent" although the payment is not described in the agreement as rent.

For the purposes of s. 12 (1) (a) of the Act of 1920 (as amended by s. 3 (1) and Sched. I of the Act of 1939), it is immaterial whether the rent and the additional payments are contained in the same document or in two documents.

By a document executed in 1934 the premises, which became controlled by the Act of 1939, were let to the tenant, "for the term of seven years from June 24, 1934, . . . yielding and paying therefore during the said term the yearly rent of £175". There was the usual covenant by the tenant to "pay the rent hereby reserved". On the same day a second document was executed by the same parties which, after reciting that the landlords had granted a lease of the premises to the tenant and that the landlords had made considerable decorative and other alterations to the premises, stated that "it [had] been agreed between the parties that the [tenant] in consideration thereof shall contribute the sum of . . . £40 per annum during the period of his lease towards the cost of the aforesaid alterations in addition to the sum of £60 per annum towards the cost of the management of the building". The question arose whether the standard rent of the premises was £275 or £175. Held, both the matters for which the extra sums of £40 and £60 a year were made payable touched and concerned the demised premises, and the intention of the parties was that the premises should be deemed to be enjoyed on the terms and subject to the liabilities of both documents. Consequently, the standard rent was £275: *ALLIANCE PROPERTY CO. v. SHAFFER*, [1948] 2 K. B. 464; [1948] L. J. R. 1808, Slade, J. (following *Property Holding Co. v. Clark*, § 3210; distinguishing *White v. Richmond Court*, [1944] K. B. 576).

3212. — — — **Furnished Houses Rent Tribunals.** See *BOWNESS v. O'DWYER*, §§ 3176, 3186; *R. v. PADDINGTON AND ST. MARYLEBONE RENT TRIBUNAL*, § 3179; *R. v. CROYDON RENT TRIBUNAL*, § 3180.

3213. — — — **letting at uneconomic rent.** (Act of 1920, s. 12 (1) (a) (as amended by Act of 1939, Sched. I.) Provided one has a rent which is a real rent and not a sham, the fact that it does not come up to the true economic rent which might be obtained in respect of the premises, or the fact that it has been reduced for family reasons or in preference for a particular tenant, are matters which must be excluded from the purview of the Court in fixing the standard rent.

G. had sold the premises in question together with other property to the landlords for a sum of nearly £4,000. Part of the arrangement which was come to between the parties in the process of negotiating the sale was that G. should be granted a tenancy of the premises in question at a rental of £50 per annum after the landlords had bought them. It was said on behalf of the landlords that this rent of £50 did not represent the real economic rent of the premises, but was a preferential rent which had been agreed to because G. had supervised and managed the property in the past and had promised to do so in the future, although there was no term to that effect in the tenancy agreement. The premises, which became controlled under the Act of 1939, were still let to G. on Sept. 1, 1939. On the termination of G.'s tenancy the premises were let to a new tenant at a rent of £120 per annum. The new tenant claimed that the standard rent of the premises was £50 per annum. Held, the standard rent of the premises was £50 per annum: *INSALL v. NOTTINGHAM CORPORATION*, [1948] W. N. 286; [1949] L. J. R. 156; [1948] 2 All E. R. 232, C. A. (applying *Chamberlain v.*

Farr, [1942] 2 All E. R. 567; applying and criticising *Davies v. Warwick*, [1943] K. B. 329; distinguishing *Roberts v. Jones*, [1947] C. L. Y. 2673).

- 3214. Requisitioned property.** [Cty. Ct.] In *MINISTER OF AGRICULTURE v. HUNKIN* (1948), 98 L. J. 38, a War Agricultural Executive Committee had requisitioned a farm under reg. 51 of the Defence (General) Regulations, 1939, and had granted to the defendant a quarterly tenancy. Judge Scobell Armstrong held that the tenancy was protected by the Rent Restriction Acts.

- 3215. Statutory tenancy—application of Limitation Act, 1939, to.** See *DONOVAN v. LOUGHER*, § 2001.

- 3216. — burden of proof.** “Where the [county court] Judge makes a clear finding of fact [that a contractual tenancy has not been determined so as to turn the contractual tenant into a statutory tenant] . . . a heavy burden is . . . cast on an appellant to show that there was in fact no evidence upon which he could make it”: *per* Tucker, L.J., in *MOUNT v. CHILDS*, § 3222.

- 3217. — member of deceased tenant's family.** [Cty. Ct.] In *CARTER v. EMSON*, [1947] L. J. N. C. C. R. 291, Judge Shove held that the mistress of a deceased tenant who dwelt with the tenant in the controlled premises and the illegitimate child of that mistress by the deceased tenant were not members of the deceased tenant's “family” within the meaning of that term in s. 12 (1) (g) of the Act of 1920.

- 3218. — —.** (Act of 1920, s. 12 (1) (f) (g).) S. 12 (1) of the Act of 1920 provides that “(f) The expression . . . ‘tenant’ . . . includes any persons from time to time deriving title under the original tenant; (g) the expression ‘tenant’ includes . . . where a tenant leaves no widow . . . such member of the tenant's family [residing with him at the time of his death] as may be decided in default of agreement by the county court . . .” Para. (g) read in conjunction with para. (f), must have been intended to provide that the tenancy thereby created should take effect from the date of the death of the deceased tenant. So read, para. (g) cannot apply where the tenancy which is vested in a contractual tenant at his death has passed by will or on an intestacy to some person other than his widow or a member of his family residing with him at the time of his death, but clearly does apply where deceased tenant was a “statutory” tenant unable to transmit his statutory interest.

The tenant of premises which were within the scope of the Rent Restriction Acts died intestate. Letters of administration were granted to the tenant's sister, Mrs. L., who had not at any time been residing with her brother in the premises. The landlord then gave notice to Mrs. L., terminating the contractual tenancy. Another sister of the deceased tenant, Miss S., who had been residing in the premises with her brother at the date of his death and had been doing so since the commencement of the tenancy, claimed the protection of the Rent Restriction Acts. Held, if Miss S. was a statutory tenant there would have been two tenants and two tenancies. The vesting of the contractual tenancy in the administratrix excluded the operation of para. (g) and Miss S.'s claim consequently failed: *THYNNE v. SALMON*, [1948] 1 K. B. 482; [1948] L. J. R. 506, C. A. (Bucknill, L.J., dissenting).

- 3219. — — administration not taken out.** (Act of 1920, s. 12 (1) (g).) S. 12 (1) (g) of the Act of 1920 provides: “. . . The expression ‘tenant’ includes the widow of a tenant who was residing with him at the time of his death, or, where a tenant dying intestate leaves no widow or is a woman, such member of the tenant's family so residing as aforesaid as may be decided in default of agreement by the county court”. In this paragraph the meaning of the word “tenant” must be restricted to cases in which there is no right of tenancy which can be left by will or descend on intestacy.

A contractual tenant, who died intestate, had residing with her at the time of her death her son and daughter. As no letters of administration had been taken out, the landlord, in accordance with the provisions of s. 9 of the Administration of Estates Act, 1925, served a notice to quit on the President of the Probate, Divorce and Admiralty Division. In an action for possession by the landlord the son and daughter claimed the protection of s. 12 (1) (g) of the Act of 1920. Held, the son and daughter were not entitled to the benefit of the section: *SMITH*

v. MATHER, [1948] 2 K. B. 212; [1948] L. J. R. 1209, C. A. (following *Thynne v. Salmon*, § 3218; dissenting from dictum of MacKinnon, L.J., in *Summers v. Donohue*, [1945] K. B. 376).

3220. — — — **adopted child.** [Cty. Ct.] In *SHEPHERD v. NAYLOR* (1948), 98 L. J. 603, Deputy Judge Sir William Ball, O.B.E., held that an adopted child of the daughter of the deceased tenant, who, apart from a comparatively short interval, had always lived with the deceased tenant, was a member of the deceased tenant's family for the purposes of the Rent Acts. [Cf. *Brock v. Wollams*, § 3221.]

3221. — — — —. [Cty. Ct.] In *BROCK v. WOLLAMS* (September 7, 1948), Judge Tudor Rees held that an adopted daughter who had lived with a statutory tenant for a considerable period up to his death was not a "member of the family" within the Rent Acts. It made no difference whether the adoption was under the Adoption of Children Act, 1926, or otherwise. [*Ex rel. Messrs. Turberville Smith & Co., Solicitors.*] [Cf. *Shepherd v. Naylor*, § 3220.]

3222. — — — **devise to executors.** (Act of 1920, s. 12 (1) (g).) The decision of the Court of Appeal in *Thynne v. Salmon*, § 3218, lays down that "the protection given to the widow, or to a member of the family, of a tenant residing with him at his death by their inclusion in the definition of 'tenant' in s. 12 (1) (g) of the Act of 1920, does not operate if the tenant is a contractual tenant whose tenancy passes, on his death, to his legal personal representatives not being his widow or any member of his family residing with him at his death. It operates where the deceased tenant was a statutory tenant unable, as such, to transmit his statutory interest". The gist of that decision was held to apply in a case where a contractual tenant devised to her executors the whole of her property on trust for sale, with power to postpone the sale, with a trust in favour of her two children, one of whom, her son (not being one of the executors) who had been living with the contractual tenant in the premises in question at the date of her death, claimed to have become a statutory tenant at the expiration of a notice whereby the executors terminated their legal interest in the said premises. It was held, that the son had never been a tenant and that he was merely a person who had an interest, after sale, in a share of the proceeds of the estate which it was the duty of the executors to distribute, and that as he had never been a tenant he could not claim that at the expiration of the notice which put an end entirely to the interest of the executors there suddenly sprang into existence some statutory right from the Rent Restriction Acts whereby he became a statutory tenant. The fact that the notice terminating the interest of the executors was given on the footing that the deceased was a statutory tenant and expressed to be "without prejudice to the statutory rights of any other interested party" was immaterial. *MOUNT v. CHILDS*, [1948] W. N. 284; 64 T. L. R. 559; 92 S. J. 498, C. A. (following *Thynne v. Salmon*, *supra*; and *Lawrance v. Hartwell*, [1946] K. B. 553; distinguishing *Brown v. Draper*, [1944] K. B. 309). (See also § 3216.)

3223. — — — **successive deaths.** (Act of 1920, s. 12 (1) (g); Act of 1923, s. 1 (1).) S. 12 (1) (g) of the Act of 1920 provides that "the expression 'tenant' includes the widow of a tenant who was residing with him at the time of his death, or where a tenant leaves no widow or is a woman, such member of the tenant's family so residing as aforesaid as may be decided in default of agreement by the county court". It has been held that the benefit of s. 12 (1) (g) cannot be exercised on successive occasions. If, for example, when a husband dies, his widow remains in possession by virtue of s. 12 (1) (g), at her death a member of the family residing with her cannot claim the benefit of the section. The widow is not a "tenant" within the relevant words.

The defendants' father became tenant of the house in question in 1904. In 1920 he was served with documents purporting to be notices of increase of rent under ss. 2 and 3 of the Act of 1920. S. 1 (1) of the Act of 1923 provides that a "notice of intention to increase the rent shall have effect and shall be deemed always to have had effect as if it were or had been also a notice to terminate the existing tenancy on the day immediately preceding the day as from which the increase is or was first to take effect . . .". The defendants' father died intestate in 1922. No letters of administration were taken out. His widow continued to reside in the house with the defendants, who were her daughters, and paid rent

which was accepted until her death intestate in 1947. The plaintiff, who was the landlord, refused to accept rent from the daughters and claimed possession. Held, by virtue of the retroactive effect of the Act of 1923, the defendants' father had to be treated as a statutory tenant. It followed that his widow had to be treated as the widow of a statutory tenant, and as such entitled to the protection of s. 12 (1) (g). Consequently, the defendants could not claim the protection of that section and the plaintiff was entitled to possession: *PHILLIPS v. WELTON*, [1948] 2 All E. R. 845, C. A. (following *Pain v. Cobb* (1931), 146 L. T. 13; and *Summers v. Donohue*, [1945] K. B. 376).

3224. — **suspended order for possession.** [Cty. Ct.] In *FOUNDLING ESTATES v. TARNOW*, *Estates Gazette*, November 27, 1948, p. 421, Judge Earengy held that an order for possession not to be enforced for a specified period put an end to a statutory tenancy. The tenant remained in possession thereafter by licence of the Court. It followed that if the tenant died during the period of suspension his widow was not entitled to take over the premises under a statutory tenancy.

3225. — **notice to quit.** (Act of 1920, s. 15 (1).) A tenant who on the expiration of his contractual tenancy chooses to take advantage of the protection given to him by the Rent Restriction Acts, by asserting a statutory tenancy, impliedly or in terms, must take his statutory tenancy with the burden which s. 15 (1) of the Act of 1920 imposes on him, and which is to the effect that he cannot give up possession unless he gives the notice prescribed by the sub-section. The appropriate notice under the sub-section in a case where the question of notice did not arise under the original contract of tenancy is a notice of not less than three months.

On the expiration of the tenancy of a flat for three years the appellant became entitled to the protection of the Rent Restriction Acts. In consequence of domestic differences, the appellant had left his flat, but his wife and his parents-in-law continued to live in it. The appellant, with the intention of complying with the provisions of s. 15 (1) of the Act of 1920, served a notice to quit, which on the face of it was said to expire on June 24. Instead of serving this notice on March 24, the appellant served it only on March 25 or 26. The landlord brought proceedings for possession against the appellant, his wife and his parents-in-law. The county court Judge had held that the appellant's notice to quit was bad and had made an order for possession in three months against the appellant, his wife and his parents-in-law. Held, on appeal, the appellant had failed to prove service in due time so as to make the notice a three months' notice and the county court Judge's exercise of his discretion in giving three months before the landlord should be entitled was perfectly justifiable, albeit by doing so he had extended the legal obligation for rent as against the appellant for three months longer than it would have lasted if the order had been for immediate possession, because the appellant's wife was still in the flat, and because the appellant was bound to maintain her, included in which was an obligation to provide her with a roof over her head. *Quære*: whether the county court Judge could properly have exercised his discretion in the same way in a case where the tenant had gone out and had left a guest behind: *KING'S COLLEGE, CAMBRIDGE v. KERSHMAN*, [1948] W. N. 389; 64 T. L. R. 547, C. A.

3226. — **"occupation" — distinction between Rent Restriction Acts and Defence (General) Regulations, 1939, reg. 63CB.** See *BALDWIN v. GURNSEY*, § 1158.

3227. — **refusal of consent to assignment to prevent—reasonableness.** See *SWANSON v. FORTON*, § 1895; *LEE v. CARTER*, § 1897.

3228. — **status of premises questioned for first time on appeal.** See *E. H. LEWIS & SON v. MORELLI*, § 2756.

3229. — **tenant not in occupation.** A "non-occupying" tenant, *prima facie*, forfeits his status as a statutory tenant. The term "non-occupying" does not cover every tenant who for however short a time, or for however necessary a purpose, or with whatever intention as regards returning, absents himself from the demised premises. Nevertheless, absence may be sufficiently prolonged or unintermittent to compel the inference, *prima facie*, of a cesser of possession or occupation. The question is one of fact and of degree. Assuming an absence sufficiently prolonged to have this effect, the legal result is as follows:—

- (1) The onus is then on the tenant to repel the presumption that his possession has ceased.
- (2) In order to repel it he must at all events establish a *de facto* intention on his part to return after his absence.
- (3) But an inward intention to return after a protracted absence of say five or ten years by itself cannot be enough.
- (4) Notwithstanding an absence so protracted, the authorities suggest that its effect may be averted if he couples and clothes his inward intention with some formal, outward and visible sign of it: that is, installs in the premises some caretaker or representative, be it a relative or not, with the status of a licensee and with the function of preserving the premises for his own ultimate home-coming. It may be that the same result can be secured by leaving on the premises, as deliberate symbols of occupation, furniture. In principle, possession in fact requires not merely an *animus possidendi* but a *corpus possessionis*—namely, some visible state of affairs in which the *animus possidendi* finds expression.
- (5) If the caretaker (to use that term for short) leaves, or the furniture is removed, from the premises otherwise than quite temporarily, the protection, artificially prolonged by their presence, ceases, whether the tenant wills or desires such removal or not.

The plaintiff, who was a statutory tenant, had been sent to prison for two years. When he went to gaol he left his mistress and two illegitimate children in physical occupation of the premises with the intention that she should maintain his home and carry on his business. A few months later the mistress left the premises taking with her the two children and all the plaintiff's furniture with the exception of three items. On his release from prison the plaintiff sought to recover possession from the present occupier who had purchased the freehold. Held, the plaintiffs ceased to possess the premises or to enjoy the protection of the Acts when the mistress and the children left the premises, and nothing which happened after that date could restore his possession or statutory status: *BROWN v. BRASH*, [1948] 2 K. B. 247; [1948] L. J. R. 1544, C. A. (applying *Keeves v. Dean*, [1924] 1 K. B. 685; *Haskins v. Lewis*, [1931] 2 K. B. 1; and *Skinner v. Geary*, [1931] 2 K. B. 546; considering *Brown v. Draper*, [1944] K. B. 309).

3230. ——. The principle that a non-occupying tenant cannot claim the protection of the Rent Restriction Acts does not apply to a case where the tenant is prevented from occupying the premises through the wrongful act of the landlord.

A house, which had been completely destroyed by enemy action, had been rebuilt and was fit for occupation on February 17, 1948. On that date the tenant, whose contractual tenancy was still subsisting, attempted unsuccessfully to get the keys and was thereafter prevented by the landlord from occupying the house. On March 9, 1948, the landlord gave the tenant notice to quit, determining the tenancy on April 30. The tenant claimed possession of the house. Held, (1) there never had been any surrender or abandonment of the tenancy; (2) the landlord could not rely upon the fact that the tenant was not in actual physical occupation and therefore unable to claim the protection of the Rent Restriction Acts; (3) the doctrine of frustration did not apply to a lease. Consequently, the tenant was entitled to possession: *DENMAN v. BRISE*, [1949] 1 K. B. 22; [1948] L. J. R. 1388, C. A. (distinguishing *Ellis & Sons Amalgamated Properties v. Sisman*, § 3248). (See also § 1919.)

3231. ——. The decisions of the Court of Appeal in *Skinner v. Geary*, [1931] 2 K. B. 546, and *Brown v. Brash*, § 3229, clearly establish that a tenant who neither personally occupies premises nor has any intention of ever doing so is precluded from relying on the protection of the Rent Restriction Acts.

Per Tucker, L.J.: "I should reserve for future consideration the position which may arise where the licensee in occupation of premises is at the material time the wife of the tenant. It may be possible that some other test may have to be applied in such cases so that the occupation of the wife may be regarded in law as that of the husband".

A statutory tenant had ceased to occupy the demised premises and had no intention of returning there. His former wife, who had obtained a divorce against him, continued in occupation of the premises together with the child of the

marriage of whom she had been granted custody. The landlord claimed possession of the premises. Held, as the former wife, who was in occupation, was no longer the wife of the tenant, her occupation could not possibly be regarded as occupation by the tenant. Similarly, the presence in the house of the child of the marriage could not amount to, or be equivalent to, actual residence or occupation by him. Consequently, the landlord was entitled to possession: *ROBSON v. HEADLAND*, [1948] W. N. 438; 64 T. L. R. 596; 92 S. J. 718, C. A. (following *Skinner v. Geary*, *supra*, and *Brown v. Brash*, *supra*; distinguishing *Brown v. Draper*, [1944] K. B. 309).

3232. — — — **licensee.** [Cty. Ct.] In *BENSLEY v. WOODS* (1948), 98 L. J. 430, Judge Carey Evans held that a tenant who had not been in physical occupation of the premises for seven years except for a few months, but whose possession had been retained for her by the occupation of the premises by her licensee, was entitled, as that licence had been determined before the expiration of a notice to quit given her by the landlord, to immediate possession of the premises.

3233. — — — **temporary absence abroad.** [Scot.] In *TENNANT v. WHYTOCK*, [1947] S. L. T. (Sh. Ct.) 83, the Sheriff Court held that a tenant who was residing with her husband (who was serving with the British Army of Occupation) in Germany, and who was not in present occupation of the premises in question, was entitled to the protection of the Rent Acts.

3234. — — — **tenant with two houses.** There is nothing in the Rent Restriction Acts to prevent a man having more than one home.

The tenant of a flat in London which was subject to the Rent Restriction Acts also had a cottage in the country where he resided with his wife and family. The flat in London contained the tenant's furniture; he slept there whenever he required to do so for the purpose of his business, which was on an average twice a week; and his friends were residing there with his permission. The county court Judge had held that the tenant was not residing in the London flat or occupying it as his home, and, consequently, that he was not entitled to the protection of the Rent Restriction Acts. Held, on appeal, the tenant was in personal occupation of his London flat and was therefore entitled to the protection of the Acts: *LANGFORD PROPERTY CO. v. TUREMAN*, [1949] 1 K. B. 29; [1948] 2 All E. R. 722, C. A. (considering *Skinner v. Geary*, [1931] 2 K. B. 546).

3235. Sub-tenancy—of part of premises not within the Acts. [Cty. Ct.] In *UNIVERSAL CATERERS (BLACKPOOL) v. DOOLEY* (1948), 92 S. J. 242, Judge Peel held that where a tenant of premises to which the Acts did not apply sub-let a part of the premises to which part the Acts did apply, and, just before the expiration of his own term, determined the sub-tenancy, so that the sub-tenant became a statutory tenant, s. 15 (3) of the 1920 Act did not apply to the determination of the tenant's lease because the tenant was not a tenant of a dwelling-house to which the Act applied, and consequently, the sub-tenant was not entitled to the protection of the Acts against a purchaser of the freehold.

3236. — — — **of uncontrolled house.** In *COW v. CASEY* (December 16, 1948), the Court of Appeal (Lord Greene, M.R., and Wynn-Parry, J.) held that a tenant of a house, the rateable value of which took it outside the Rent Acts, could not by subletting portions of the building create statutory tenancies of those parts valid against the landlord at the termination of the lease. [Reported by R. C. Calburn, Esq., Barrister-at-Law.] See also [1949] 1 C. L. 205, 206.

3237 — — — **sub-letting in breach of covenant—waiver.** (Act of 1920, s. 15 (3).) The decision of the Court of Appeal in *Norman v. Simpson*, [1946] K. B. 158, lays down that, although a sub-tenancy may in its inception be unlawful because the tenant who created the sub-tenancy created it without the consent or knowledge of his landlord, there may come a change, and the time which it is material to consider is the time immediately before the determination of the head lease. If at that time the landlord by his actions or by his forbearance has elected to treat the lease as subsisting and has not exercised his right of re-entry under the lease, he will then have no subsisting right of re-entry, and the sub-lease ought to be regarded as a lawful sub-letting. Consequently, where with knowledge of a breach of covenant not to sublet premises without the landlord's consent

the landlord thereafter continues to accept rent from the tenant, he cannot rely upon this breach of covenant on the expiration of the head lease and the premises are then "lawfully sub-let" to the sub-tenant within the meaning of s. 15 (3) of the Act of 1920: *MARCHE v. CHRISTODOULAKIS* (1948), 64 T. L. R. 466, Pritchard, J. (applying *Norman v. Simpson*, *supra*).

- 3238.** — — —. [Cty. Ct.] In *FOWLER v. BLUNDEN* (1948), 98 L. J. 360, Judge Sir Gerald Hurst held that a landlord who accepted rent from a tenant after the latter had sub-let without consent had waived the tenant's breach of covenant and therefore that the sub-letting was lawful.
- 3239. Surrender—wife remaining in possession.** In *TAYLOR v. McHALE* (May 10, 1948), a protected tenant paid the rent due, removed his furniture, gave up the keys and went away. His wife remained in possession. The Court of Appeal (Scott and Asquith, L.J.J., and Jenkins, J.), held that the wife was a trespasser. [Reported by *R. C. Calburn, Esq., Barrister-at-Law.*] See also *Estates Gazette*, May 15, 1948, p. 371.
- 3240. Tenancy at will.** In *H. S. PLEDGE & SONS v. BARRETT* (June 14, 1948), the Court of Appeal (Tucker, Somervell and Cohen, L.J.J.), held that a house let rent free was not within the protection of the Rent Acts. See *Estates Gazette*, June 26, 1948, p. 482.
- 3241. Transfer of burden—to landlord.** [Cty. Ct.] In *COOPER v. PRANGLEY* (1948), 98 L. J. 136, Judge Dale held that there had been no transfer of burdens in respect of rates, etc., from the tenant to the landlord, as the flat in question had not been in existence in 1939, the whole house having been then let to a tenant who paid rates and other outgoings. That tenant sub-let parts of the house and herself occupied the rooms comprising the flat in question. In 1940 she surrendered her lease of the whole house and the landlords granted a lease of the flat to the defendant, on terms that the landlords paid rates and other outgoings. After an apportionment of the rent of the flat the landlords claimed that these outgoings should be added to the standard rent determined under the apportionment. As these outgoings fell within the class of burdens contemplated by s. 2 (3) of the Act of 1920 and as there had been no transfer of burdens to the landlords, they could not be added to the standard rent thus determined.
- 3242. — to tenant.** (Act of 1920, s. 2 (3).) S. 2 (3) of the Act of 1920 says that a transfer of a burden or liability from the landlord to a tenant shall be deemed to be an increase of rent (*i.e.*, an unauthorised increase), if and to the extent that the terms on which a demised house is held are on the whole less favourable to the tenant than the previous terms. If all the terms of the contract fixing the standard rent appear as terms of the contract under which the application to the Court is made, the possibility of a transfer of burden does not arise. It is only if benefits of potential value in terms of rent are omitted or made less advantageous to the tenant that a transference of burden to the tenant can be said to occur.
- The standard rent of a flat was determined by reference to the terms of a lease made in 1934 at £140 a year. In this lease the landlords contracted (a) to provide for the use of the tenant a gas cooker and certain other articles which would normally be tenant's fixtures or fittings, and (b) to provide for the lighting, cleaning and furnishing of the entrance hall, etc., the use of which the tenant had in common with the tenants of other flats in the building. The benefit of this contract was, by the terms of the lease, valued at £30 a year. The provisions found no place in a subsequent lease made in 1940. Held, the terms on which the flat was held under the lease of 1940 would be less favourable to the tenant within the meaning of s. 2 (3) of the 1920 Act if the landlords were entitled to raise the rent to the standard figure of £140 a year, and such proportion of the figure of £30 a year as was attributable to the liabilities or burdens formerly borne by the landlords which had now in practice to be undertaken by the tenant had to be deducted as an unauthorised increase of the standard rent. See *PROPERTY HOLDING Co. v. CLARK*, § 3210.
- 3243. — — supply of dustbin.** See *FIRST NATIONAL HOUSING TRUST v. CHESTERFIELD R. D. C.*, § 2976.
- 3244. Value of protected tenancy—fixtures included.** See *LIPSHITZ v. VALERO*, § 2936.

3245. War-damaged house—alterations and additions. (Act of 1920, s. 12 (1), (2) (iii).)

The effect of paragraph (iii) of the proviso to s. 12 (2) of the Act of 1920 is that the existence of small plots of land and added premises (provided their rateable value if let separately would be less than one quarter of the rateable value of the house) must be ignored in ascertaining what is a dwelling-house.

A dwelling-house, which came within the provisions of the Act of 1920, suffered bomb damage during the war. It was repaired and at the same time certain structural alterations and improvements were carried out, which included new drains and the addition of a kitchen-living-room. In order to comply with the bye-laws of the local authority the landlord had to acquire a piece of land at the rear of the premises on which he made a yard and erected an outside W.C. It was agreed that the added land was not sufficient in rateable value if let separately to take the dwelling-house out of the Act. The county court Judge had held that the dwelling-house had not been so altered or added to by these alterations and additions as to lose its identity and become a different dwelling-house, and, consequently, that it remained within the provisions of the Act of 1920. Held on appeal, (1) the inference drawn from the facts by the county court Judge, namely, that there had been no substantial change sufficient to make the house a new dwelling-house, was a possible inference resulting in a finding with which the Court of Appeal could not interfere; (2) the added area of land had to be "treated as part of the house" under the provisions of paragraph (iii) of the proviso to s. 12 (2) of the Act of 1920, and, consequently the appeal had to be dismissed: *HEMNS v. WHEELER*, [1948] 2 K. B. 61; [1948] L. J. R. 1024, C. A. (explaining *Ellis & Sons v. Sisman*, §§ 1974, 3248, 3249). (See also § 677.)

3246. — fitness for occupation. [Cty. Ct.] In *WEBB v. ROWLEY* (December 10, 1948), under a local Act it was unlawful to occupy a dwelling-house before the borough surveyor had issued his certificate that such house was in every respect in accordance with the requirements for the time being in force within the borough. Judge Done held that a house which had been built to replace a war-damaged house was not "fit or capable of user as a dwelling-house" so as to fall within the principle of *Ellis & Sons, Amalgamated Properties v. Sisman*, § 3248, until the borough surveyor had issued his certificate. [Reported by James S. Clarke, Esq., Barrister-at-Law.]

3247. — reconstructed flat. [Cty. Ct.] In *LANGFORD PROPERTY CO. v. SOMMERFIELD, Estates Gazette*, January 17, 1948, p. 41, Judge Sir Gerald Hurst, K.C., held that where a flat (part of a large block of flats) had been cut in half by a bomb and the remaining rooms had been radically reconstructed, the reconstructed flat was not the old or part of the old flat.

3248. — tenancy determined. Where a house which was a dwelling-house within the Rent Restriction Acts has been damaged by enemy action to such an extent that it has to be rebuilt, the tenant of the house at the time when the war damage occurred cannot rely upon the protection given by the Acts if he receives notice to quit from his landlord before the new house erected on the site has been completed or is fit for habitation, because in such a case at the date of such notice the house is not only not being used as a dwelling-house, but is not fit for or capable of user as a dwelling-house, and, therefore, at the material date does not constitute a dwelling-house let as a separate dwelling which would be entitled to the protection of the Acts.

Quere: whether if the landlord had built or completed a house on the site before determining the tenancy, the tenant could have claimed to be the statutory tenant of the new house: *ELLIS & SONS AMALGAMATED PROPERTIES v. SISMAN*, [1948] 1 K. B. 653; [1948] L. J. R. 929, C. A. (See also §§ 1974, 3249.)

3249. — —. (Act of 1939, s. 3 (3).) Where a house which was a dwelling-house within the Rent Restriction Acts, has been damaged by enemy action to such an extent that it has to be rebuilt, the tenant of the house at the time when the war damage occurred cannot claim that the protection of the Rent Restriction Acts attached throughout to the plot of land on which the house stood, because a plot of land, which by reason of the provisions of s. 3 (3) of the Act of 1939 has to be treated as part of the dwelling-house, cannot still be regarded as part thereof when the dwelling-house has ceased to exist, and in any event, because a plot of

land with nothing on it cannot be regarded as a dwelling-house let as a separate dwelling. See *ELLIS & SONS v. SISMAN*, § 3248.

3250. — **tenancy subsisting.** See *SIMPER v. COOMBS*, § 1976; *DENMAN v. BRISE*, § 3230.

3251. **ARTICLES.** Furniture and attendance (founded on *Palser v. Grinling*, § 3149): 205 L. T. J. 19. Furnished Houses Rent Control Act, 1946; curtailment of furniture or services; the tenant's remedy: 92 S. J. 33. Control of rebuilt premises (founded on *Ellis & Sons v. Sisman*, § 3248): 92 S. J. 22. Furnished Houses (Rent Control) Act, 1946: "collateral agreements" and a case from the North: 112 J. P. J. 72. Built-in furniture (founded on *Palser v. Grinling*, § 3149): 92 S. J. 64. Conclusions on blitzed houses (founded on *Ellis & Sons v. Sisman*, § 3248): *Law Notes*, 1948, February, p. 41; March, p. 59. The Furnished Houses (Rent Control) Act, 1946; contracting out and its effect: 112 J. P. J. 87. Standard rent; the norm: 92 S. J. 78. Control and devolution (founded on *Thynne v. Salmon*, § 3218): 92 S. J. 93; 98 L. J. 101. The Furnished Houses (Rent Control) Act, 1946—licensees of requisitioned premises: 92 S. J. 117. The Furnished Houses (Rent Control) Act, 1946—1947 in retrospect: 112 J. P. J. 151, 165, 181. Rent Restrictions (payments in respect of attendance or furniture): 98 L. J. 131. Sharing a dwelling (founded on *Littlewood v. Whittall*, § 3167): 92 S. J. 164. Death of contractual tenant (founded on *Thynne v. Salmon*, § 3218): *Law Notes*, April, 1948, p. 85. The Furnished Houses (Rent Control) Act, 1946—"attendance" and "services"—what are and what are not: 112 J. P. J. 214, 229. Sub-tenant or lodger surviving tenant (founded on *Neale v. Del Soto*, [1945] K. B. 144): 92 S. J. 229. Premises destroyed by enemy action—rights of statutory tenants (founded on *Ellis v. Sisman*, § 3248, and *Simper v. Coombs*, § 1976): 205 L. T. J. 259. Furniture and equipment (founded on *Palser v. Grinling*, § 3149; *R. v. Hampstead and St. Pancras Rent Tribunal*, ex p. *Ascot Lodge*, [1947] C. L. Y. 2615, 2619; *R. v. Blackpool Rent Tribunal*, ex p. *Ashton*, § 3190): 92 S. J. 255. Non-occupying statutory tenant (founded on *Brown v. Brash*, § 3229): 92 S. J. 268. Costs—proceedings arising out of the Act (founded on the Rent (Restrictions) Act, 1920 (10 & 11 Geo. 5, c. 17), s. 17 (2), and *Joslovitz v. Burstein*, § 3153): 205 L. T. J. 271. The Rent Control Act, 1946—can a tribunal fix alternative rents: 112 J. P. J. 308. The non-resident tenant (founded on *Brown v. Brash*, § 3229): 205 L. T. 314; 92 S. J. 387. What is and what is not furniture (founded on *Property Holding Co. v. Mischeff*, [1946] K. B. 645 (and see § 3149), and *R. v. Hampstead and St. Pancras Rent Tribunal*, ex p. *Ascot Lodge*, [1947] C. L. Y. 2619): *Solicitor*, June, 1948, p. 136. Tenants sharing house (founded on *Neale v. Del Soto*, [1945] K. B. 144): 92 S. J. 320. Jurisdiction of rent tribunals (founded on *R. v. Blackpool Rent Tribunal*, § 3190): *Law Notes*, June, 1948, p. 133. The Furnished Houses (Rent Control) Act, 1946, and its forgotten section 12 (3): 112 J. P. J. 431. "Substantial portion of the whole rent"—when? (founded on *Jozwiak v. Hierowski*, § 3185, and *Bowness v. O'Dwyer*, § 3186): 92 S. J. 386. The Rent Acts, 1920-1939, and the Rent Control Act, 1946—attendance, services and the use of furniture—their "value to the tenant": 112 J. P. J. 466. Rent restriction—the Crown (founded on *London Territorial and Auxiliary Forces Association v. Nichols*, § 3155): 92 S. J. 467. The jurisdiction of Rent Tribunals (founded on the Furnished Houses (Rent Control) Act, 1946): 92 S. J. 475. Control and new leases under L. & T. A., 1927: 92 S. J. 482. The Rent Control Act, 1946—can tenant's negligence prevent rent approval: 98 L. J. 510. Meaning of "rent" in the Rent Acts (founded on *Alliance Property Co. v. Schaffer*, § 3211): 92 S. J. 496. The Rent Control Act, 1946—a letting with "board": 92 S. J. 507. Decontrol by the Agricultural Holdings Act, 1948 (founded on Sched. VII, para. 1 of the Agricultural Holdings Act, 1948): 92 S. J. 511. Furnished lettings—recovery of "excess profit" (founded on *Bowness v. O'Dwyer*, § 3176, *Roppel v. Bennett*, § 3187, and *Riordan v. Minchin*, § 3183): 92 S. J. 525. The Rent Acts, 1920-39, and the Rent Control Act, 1946 (founded on *Bowness v. O'Dwyer*, § 3176): 112 J. P. J. 586. When can a tribunal increase the rent?: *Solicitor*, September, 1948, p. 208. Death of a tenant and the Rent Acts (founded on *Smith v. Mather*, § 3019): *Solicitor*, September, 1948, p. 200. Home (founded on *Lanyford Property Co. v. Tureman*, § 3234): 92 S. J. 571. Lawfully sub-let (founded

on *Norman v. Simpson*, [1946] K. B. 158, *Maley v. Fearn*, [1947] C. L. Y. 2682, *Wright v. Arnold*, [1947] C. L. Y. 2604, *Watson v. Saunders-Roe*, [1947] C. L. Y. 2686): 92 S. J. 583. Furnished Houses (Rent Control) Act, 1946—alternative rents not stopped yet: 112 J. P. J. 617. Rent control of business and office premises: *Accountant*, October 30, 1948, p. 347. Rent restriction—costs—proceedings arising out of the Act (founded on *Lee v. Carter*, § 1897): 206 L. T. 269. Leases of rent restricted premises—covenants against assignment (founded on *Lee v. Carter*, § 1897): 206 L. T. 270. Nationalisation and decontrol: 92 S. J. 631. Sharing a house (founded on *Banks v. Cope-Brown*, § 3164, and *Llewellyn v. Hinson*, § 3165): 98 L. J. 627. Furnished Houses (Rent Control) Act, 1946—exclusive occupation: 92 S. J. 640. Alternative accommodation for furniture (founded on *McIntyre v. Hardcastle*, § 3139): 92 S. J. 657. Rent Control Act, 1946—small rents but heavy premiums—how to end the evil: 112 J. P. J. 746. Death of a protected tenant (founded on *Thynne v. Salmon*, § 3218, and *Smith v. Mather*, § 3219): 92 S. J. 672. Agreed furniture and/or services not used—what then?: *Solicitor*, November, 1948, p. 253. Exemption by a side wind (rent restriction—vesting in nationalised boards) (founded on *Tamlin v. Hannaford*, § 3156): 92 S. J. 685; 112 J. P. J. 761. Lettings in consequence of employment (founded on *Braithwaite & Co. v. Elliot*, [1947] C. L. Y. 2611): 92 S. J. 687. Value to the tenant (founded on *Artillery Mansions v. Macartney*, § 3151): 92 S. J. 702. Landlord and Tenant (Rent Control) Bill: *Estates Gazette*, December 25, 1948, p. 487; 112 J. P. J. 791.

- 3252.** BOOKS PUBLISHED. Blundell, L. A.—Rent Restrictions Cases. 2nd ed. [30s.]. Law Notes Rent and Mortgage Interest Restrictions. 21st ed. [27s. 6d.].

REVENUE AND FINANCE

- 3253. Borrowing control — borrowing by local authorities.** Treasury Circular dated March 15, 1948, replaces para. 2 of Treasury Circular dated July 3, 1948, and gives consent for the purpose of the Control of Borrowing Order, 1947 (No. 945), with effect until March 31, 1949, in the case of local authorities in England and Wales, and until May 15, 1949, in the case of local authorities in Scotland, and, subject to the conditions of para. 3 of Treasury Circular dated July 3, 1949, to the renewal, replacement or other amendment of mortgages without application for specific Treasury consent.
- 3254. Burma.** Exchange of Notes constituting an Agreement between the Governments of the U. K. and of the Union of Burma to control Burma's expenditure in hard currency areas. Rangoon, October 12, 1948. Treaty Series No. 75, 1948. Cmd. 7560.
- 3255. Ceylon.** Exchange of Letters between United Kingdom and Ceylon, dated April 30, 1948, concerning Ceylon's sterling assets and monetary co-operation between the two Governments. Cmd. 7422.
- 3256. — regulation of payments.** Treasury Direction dated May 29, 1948 (No. 1139), made under the Defence (Finance) Regulation, 1939, Reg. 2A. This direction provides that, except by permission, no order given by a banker carrying on business in Ceylon may be carried out in so far as it requires a person to make any payment or part with any securities or require any change in the persons to whose credit any sum is to stand or to whose order any security is to be held.
- 3257. Colonial Stock Act, 1948 (12 & 13 Geo. 6, c. 1).** This Act modifies and extends the Colonial Stock Acts, 1877 to 1934, (1) by permitting regulations to be made under the Act of 1877 providing that stock to which that Act applies is not to be transferable except by instrument in writing, subject to the condition that authority for making such a regulation has been given by a law of the legislature of the Dominion or Colony concerned (s. 1); and (2) by authorising the making of Orders in Council extending the Acts to stock issued by any Government or authority established for administering services in more than one colony or territory to which the Acts apply or could be made applicable (s. 2). The latter provision would permit, for instance, the East Africa High Commission to issue stocks under the Acts.
- 3258. Consolidated Fund (No. 1) Act, 1948 (11 & 12 Geo. 6, c. 18).** This Act received the Royal Assent on March 24, 1948.

3259. Customs and excise. See CUSTOMS AND EXCISE

3260. Czechoslovakia—monetary agreement. Exchange of Notes prolonging the Monetary Agreement of November 1, 1945, between the Government of the United Kingdom and the Czechoslovak Republic. London, November 4, 1948. (Treaty Series No. 84, 1948.) Cmd. 7585.

3261. — settlement of financial claims. SI 1948, No. 1811 (Treasury Direction fixing June 1, 1948, as the latest date for interest payments under Czechoslovakia (Settlement of Financial Claims) Order, 1940 (No. 308)).

3262. Death duties. See DEATH DUTIES.

3263. Debts clearing offices—Debts Clearing Offices Act, 1948 (12 & 13 Geo. 6, c. 2). The object of this Act is to provide for the position when the Debts Clearing Offices and Import Restrictions Act, 1934 (24 & 25 Geo. 5, c. 31), expires, as it is due to expire, on March 31, 1949. The new Act provides that on such expiry the Clearing Offices will cease to exist and any debt which would otherwise be due to a Clearing Office will become owed to the foreign creditor. The Treasury is empowered to do anything necessary to wind up items of business previously entered into by the Clearing Offices.

3264. — Italy. See § 3278.

3265. Double taxation. Double taxation arrangements have been made with Grenada, St. Lucia, Dominica, St. Vincent, Barbados, Jamaica and the Falkland Islands: 92 S. J. 734. As to the Netherlands, see § 3285. As to the Malayan Union, see § 835. See also § 833.

3266. Excess profits tax. See EXCESS PROFITS AND PROFITS TAX.

3267. Exchange control. The following Orders have been made under the Exchange Control Act, 1947 (10 & 11 Geo. 6, c. 14):

Orders under S. 1:

Exchange Control (Definition of Scheduled Territories) Order, 1948 (No. 284), restricting the list of scheduled territories contained in Schedule 1 to the Act by excluding Palestine and Transjordan.

Exchange Control (Definition of Scheduled Territories) (No. 2) Order, 1948 (No. 2422), excluding the Faroe Islands from the list of Scheduled Territories contained in Schedule 1 to the Act; came into operation on November 10, 1948.

Order under S. 2:

Exchange Control (Specified Currency) Order, 1948 (No. 2424), amending the Exchange Control (Specified Currency) Order, 1947 (No. 2048), by specifying Faroese Kroner as a foreign currency which must be offered to an authorised dealer; came into operation on November 10, 1948.

Orders under S. 5:

Exchange Control (Payments) (Poland) Order, 1948 (No. 449), amending the Exchange Control (Payments) Order, 1947 (No. 3072), by enabling payments from transferable accounts relating to Poland to be made in a larger number of cases without specific Treasury permission, and extending the prescribed manner of payment for exports to Poland.

Exchange Control (Payments) (Syria) Order, 1948 (No. 777).

Orders under Ss. 5, 23, 31:

Exchange Control (Payments) (Union of Soviet Socialist Republics) Order, 1948 (No. 17), amending the Exchange Control (Payments) Order, 1947 (No. 2072), by enabling payments from certain accounts relating to the U.S.S.R. ("transferable accounts") to be made in a larger number of cases without specific Treasury permission, and extending the prescribed manners of payment for exports to the U.S.S.R.

Exchange Control (Payments) (French Franc Area) Order, 1948 (No. 90), amending the Exchange Control (Payments) Order, 1947 (No. 2072), so as to canalise movements of sterling in French hands through accounts closely controlled by the French Government or the government of any other part of the French Franc Area.

Exchange Control (Payments) (Italy, Republic of San Marino, Vatican City and Trieste) Order, 1948 (No. 139), amending the Order of 1947 (No. 2072)

by removing Italy and the other territories mentioned from the list of territories to which the arrangements for "transferable accounts" apply, and so restricting the prescribed manners of payment for exports to those territories.

Exchange Control (Payments) (Japan) Order, 1948 (No. 220), prescribing the manner of payment for United Kingdom exports to Japan following the resumption of private trading with Japan.

Exchange Control (Payments) (China and Formosa) Order, 1948 (No. 221), extending to Formosa the treatment given to China by the Exchange Control (Payments) Order, 1947 (No. 2072), in respect of certain bank transfers and the manner of payment for United Kingdom exports.

Exchange Control (Payments) (Palestine) Order, 1948 (No. 285), and the Exchange Control (Payments) (Transjordan) Order, 1948 (No. 286), applying the Exchange Control (Payments) Order, 1947 (No. 2072) to Palestine and Transjordan, which have ceased to be scheduled territories for the purposes of the Act. The Orders prescribe the manner of payment for exports to Palestine and Transjordan.

Exchange Control (Payments) Order, 1948 (No. 1080), consolidating the Exchange Control (Payments) Order, 1947 (No. 2072) and subsequent Orders relating to various countries, and including among the territories to which the arrangements for transferable accounts do not now apply the Argentine Republic and Brazil; came into operation on May 31, 1948. [3*l.*]

Exchange Control (Payments) (Chile) Order, 1948 (No. 1418), amending the Exchange Control (Payments) Order, 1948 (No. 1080), by varying the arrangements for payments between the U.K. and Chile; came into operation on June 30, 1948.

Exchange Control (Payments) (Peru) Order, 1948 (No. 1736), amending the Exchange Control (Payments) Order, 1948 (No. 1080), by varying the arrangements for payments between the U.K. and Peru; came into operation on August 1, 1948.

Exchange Control (Payments) (Tangier) Order, 1948 (No. 1856), restricting the transfer of sterling from other non-scheduled territories to Tangier and modifying the manner of payment for U.K. exports to that country; came into operation on August 13, 1948.

Exchange Control (Payments) (Faroe Islands) Order, 1948 (No. 2423), amending the Exchange Control (Payments) Order, 1948 (No. 1080), as already amended, so as to apply its provisions to the Faroe Islands; came into operation on November 10, 1948.

Exchange Control (Payments) (Italy, Republic of San Marino and Trieste) Order, 1948 (No. 2628), further amending the Exchange Control (Payments) Order, 1948 (No. 1080), by including Italy, San Marino and Trieste in the list of territories to which the arrangements for "transferable accounts" apply, and by modifying the manner of payment for exports to the Vatican City; came into operation on December 6, 1948.

Orders under S. 42:

Exchange Control (Authorised Dealers) Order, 1948 (No. 218), amending the list of banks and other persons authorised to deal in foreign currency.

Exchange Control (Authorised Depositaries) Order, 1948 (No. 219), amending the list of authorised depositaries with whom certain securities are required to be deposited under the Act.

Order under Sch. III, para. 4:

Exchange Control (Blocked Accounts) Order, 1948 (No. 1663), prescribing the manner in which money on a blocked account may be invested; replacing Exchange Control (Blocked Accounts) Order, 1947 (No. 2038); came into operation on July 20, 1948.

Order under Sch. IV, para. 4:

Exchange Control (Prescribed Courts) (Scotland, Northern Ireland, and the Isle of Man) Order, 1948 (No. 709), prescribing certain Courts for the purposes of that paragraph.

3268. — **Chancery of Lancaster.** See § 2859.

3269. — **education.** The Treasury's currency restrictions as applied to Europe have been relaxed to allow pupils to attend full-time courses in Switzerland; but

applications in respect of pupils wishing to take courses below undergraduate status at schools outside the scheduled territories (and not in Switzerland) cannot yet be entertained: *Times*, May 17, 1948, p. 3.

- 3270. — foreign travel.** The Chancellor of the Exchequer has stated that he is prepared to approve the provision of foreign exchange for moderate expenses of reasonable numbers of individuals attending conferences and meetings of political, economic or cultural significance in any of the countries participating in the European recovery programme: *Times*, April 3, 1948, p. 4.
- 3271. — illegality—cheques on British bank handed over in enemy-occupied territory.** See *BOISSEVAIN v. WEIL*. § 3731.
- 3272. — — transfer to "exchange foreigner".** See *FRANKMAN v. ANGLO-PRAGUE CREDIT BANK*, § 260; *KAHLER v. MIDLAND BANK*, § 259.
- 3273. — inquiries.** Inquiries by solicitors with regard to exchange control should be directed to their own bankers and not to the Bank of England: *Law Society's Gazette*, February, 1948, p. 33.
- 3274. — Palestine.** A Treasury announcement states that as no effective central control authority will for the time being exist in Palestine, it will not be practicable at present to release a fixed amount of sterling in respect of any period after May 15, 1948. In order, however, to meet the situation as far as possible, the government will consider applications from individual banks submitted through their correspondents in the U.K. to the Bank of England, for the release from their blocked accounts of reasonable sums for essential payments in sterling: *Times*, May 15, 1948, p. 3.
- 3275. Finance Act, 1948 (11 & 12 Geo. 6, c. 49).** This Act contains eight Parts which are dealt with in detail under the appropriate headings in this publication. Thus for Part I (customs and excise), see § 789; for Part II (purchase tax), see § 3039; for Parts III and IV (income tax), see § 1654; for Part V (special contribution), see § 3525; for Part VI (profits tax), see § 1356; and for Part VII (stamp duties), see § 3529. Part VIII contains miscellaneous provisions, of which the most important are as follows: s. 76 (estate duty on insurance moneys); s. 77 (relief from double death duties); s. 78 (relief from excess profits duty for terminal expenses); and s. 79 (income tax and profits tax in connection with Electricity Boards).
- 3276. France.** Exchange of Notes between the Governments of the U. K. and the French Republic regarding the exclusion of Syria from the Franc Area as defined in the Anglo-French Financial Agreement of March 27, 1945. London, April 8/19, 1948. (Treaty Series, No. 28, 1948). Cmd. 7408.
Financial Agreement between United Kingdom and France, London, June 1, 1948. (Treaty Series, No. 31, 1948.) Cmd. 7430.
- 3277. Income tax.** See *INCOME TAX AND SURTAX*.
- 3278. Italy — debts clearing office.** Clearing Office (Italy) Amendment Order, 1948 (No. 2091), amends the Clearing Office (Italy) Order, 1936 (No. 696), as amended; provides for the disposal of sums held or to be received by the Anglo-Italian Clearing Office.
- 3279. — Italian Extraordinary Progressive Tax.** H.M. Embassy at Rome report that the Italian Government have agreed that the question of liability of British subjects and corporations to the Extraordinary Progressive Tax shall be referred to the Conciliation Commission constituted under Art. 83 of the Italian Peace Treaty and that, pending the findings of the Commission, an administrative circular has been signed and is now in force suspending payment of this tax for the present by all United Nations nationals, on written application in each individual case (which should be made without delay in cases in which the tax has been claimed) to the local Intendenza di Finanza. The circular covered instalment payments of tax including the instalment of company tax payable in June and the proportional tax on corporations payable in August: Board of Trade Press Notice, Ref. 48, dated June 8, 1948.
- 3280. Money.** See *MONEY*.
- 3281. National defence contribution.** See *EXCESS PROFITS AND PROFITS TAX*.

- 3282. National savings stamps.** The 5s. National Savings Stamp is being withdrawn from sale forthwith and the 2s. 6d. stamp is being withdrawn from general sale but will continue to be available to group secretaries for sale to members of savings groups. Stamps of these values will still be accepted for deposit in a savings bank account or for the purchase of Savings Certificates or Defence Bonds, but persons presenting such stamps for repayment in cash to a value of £2 or over will in future be required to establish their identity by the production of a national registration identity card: General Post Office Press and Broadcast Notice dated March 18, 1948, ref. P. B. N. 2705.
- 3283. Netherlands.** Exchange of Notes between the Government of the U. K. and the Netherlands Government abrogating the Supplementary Monetary Agreement of February 26, 1947, and regulating the availability of sterling. London, March 12, 1948: Cmd. 7381.
- 3284. — British debts.** Board of Trade Press Notice, Ref. 1, dated May 18, 1948, contains a statement put out by the Dutch liquidators of the Deutsche Revisions- und-Treuhand A. G. which concerns British creditors of Dutch persons or concerns whose debts were paid in to the Treuhand during the occupation of the Netherlands.
- 3285. — double taxation.** Two Double Taxation Conventions (that dealing with income tax and profits tax to take effect for the current fiscal year, that dealing with death duties to be effective only as to property passing on deaths occurring on or after July 1, 1948) between the U.K. and the Netherlands were signed in London on October 15, 1948. The texts of the Conventions, which are subject to ratification, will be published shortly.
- 3286. Portugal.** Exchange of Notes constituting an agreement between the Governments of the United Kingdom and Portugal to prolong the Monetary Agreement of April 16, 1946. London, April 14, 1948 (Treaty Series, No. 25, 1948). Cmd. 7401.
- 3287. Purchase tax.** See PURCHASE TAX.
- 3287a. — false returns—time limit for prosecution.** See *R. v. SARAH SILVER*, § 737.
- 3288. Regulation of payments—Ceylon.** See § 3256.
- 3289. Settlement of financial claims—Czechoslovakia.** See § 3261.
- 3290. Special contribution.** See SPECIAL CONTRIBUTION.
- 3291. Stamp duties.** See STAMP DUTIES.
- 3292. United States—loan agreement—Export-Import Bank of Washington.** Loan Agreement between the U.K. Government and the Export-Import Bank of Washington dated October 26, 1948, together with the text of the Promissory Note and a Letter of Notification dated October 22, 1948, addressed by the Economic Co-operation Administrator to H.M. Ambassador at Washington: Cmd. 7550.
- 3293. U.S.S.R.** Exchange of Notes constituting a Payments Agreement between United Kingdom and U.S.S.R., Moscow, December 27, 1947. (Treaty Series, No. 32, 1948.) Cmd. 7431.
- 3294. ARTICLES.** Regulations made under the Exchange Control Act: 98 L. J. 61. The Budget: 98 L. J. 213. Mortgagees of trust property—liability for the special contribution: 205 L. T. J. 329. Bookmakers' licence duty: 98 L. J. 465.
- 3295. BOOKS PUBLISHED.** Howard, F. C.—Exchange and Borrowing Control [21s.]. Lindsay, W.—Finance Act, 1948 [15s.].

ROAD TRAFFIC

- 3296. Accident—appeals on questions of fact in running-down cases.** See *LOFTHOUSE v. LEICESTER CORPORATION*, § 2761.
- 3297. — failure to report.** (Road Traffic Act, 1930 (20 & 21 Geo. 5, c. 43), s. 22 (2).) If a statute contains an absolute prohibition against the doing of some act, as a general rule *mens rea* is not a constituent of the offence, but there is all the difference between prohibiting an act and imposing a duty to do something on the happening of a certain event. In the latter case the absence of *mens rea* will generally constitute a defence. However, the authorities show that, even where the statute imposes what is apparently an absolute prohibition,

an absence of guilty knowledge may, in some cases be a defence. The effect of an omission of such words as "knowingly" and "wilfully" in a statute which replaces an earlier statute may be only to alter the burden of proof. Failing to report a road accident at a police station or to a police constable as soon as reasonably practicable, and in any case within twenty-four hours of its occurring, which is an offence created by s. 22 (2) of the Road Traffic Act, 1930, falls within the general rule that absence of *mens rea* affords a defence to a criminal charge. Thus, where a driver failed to notice that the trailer of his lorry had collided with a stationary vehicle and, therefore, never reported the accident, it was held that ignorance of the accident afforded a defence, because otherwise the motorist would have been called upon to do the impossible: *HARDING v. PRICE*, [1948] 1 K. B. 695; [1948] L. J. R. 1624, D. C. (applying *Nicholls v. Hall* (1873), L. R. 8 C. P. 322; *Sherras v. De Rutzen*, [1895] 1 Q. B. 918; and *Brend v. Wood* (1946), 175 L. T. 306).

3298. Dangerous driving—manslaughter. [Eire.] See *THE PEOPLE v. DUNLEAVY*, § 743.

3299. Drink or drugs—driving under influence of—evidence of police doctor. [Scot.] The High Court of Justiciary has stated that, while no attempt was made to lay down rules of universal application, in normal cases (1) before being examined by a police doctor a person suspected of driving or being in charge of a car under the influence of drink or drugs ought to be charged and cautioned in the usual way by the police, who ought further specifically to ask his consent to medical examination and tests; (2) he should be informed of his right to summon a doctor of his own choosing and afforded facilities for doing so, but the police examination need not be delayed until that other doctor is present; (3) the examination should normally proceed without the presence of police officers; (4) any interrogation of the accused by the doctor with regard to recent events should be directed solely to testing his memory and coherence and not to eliciting information bearing on his guilt; (5) any information bearing on his guilt which might be incidentally elicited must not be communicated to the police; (6) if consent to examination was refused, the fact of such refusal could be proved in evidence but the police doctor, if summoned, should confine himself to observation without examination or test: *REID v. NIXON, DUMIGAN v. BROWN*, 1948 S. C. (J.) 68, *Times*, January 28, 1948, p. 2. [Cf. *R. v. Nowell*, § 3300.]

3300. ———. (Road Traffic Act, 1930 (20 & 21 Geo. 5, c. 43), s. 15 (1).) The evidence of a doctor, whether he be a police surgeon or anyone else, should be accepted, unless the doctor himself shows that it ought not to be, as the evidence of a professional man giving independent expert evidence with no other desire than to assist the Court.

The appellant was taken to a police station on a charge, under s. 15 (1) of the Road Traffic Act, 1930, of driving while under the influence of drink. There the police doctor asked the appellant several times to let him examine him. The appellant did not wish to be examined, but the doctor was a little persistent and explained to the appellant that it might be in his own interest that a doctor should be allowed to examine him. The appellant then agreed to be examined. Held, the doctor's conduct could not be regarded as an inducement to do something so as to bring into operation the law which excludes confessions made as the result of persuasion, promises or threats, and, consequently, the doctor's evidence was admissible.

Semble: if the doctor had used force to examine the appellant, who all the time was protesting against the examination, the doctor's evidence would not have been admissible: *R. v. NOWELL*, [1948] W. N. 154; [1948] 1 All E. R. 794, D. C. (not following *Reid v. Nixon*, § 3299).

3301. Driving licence—disqualification—dismissal of charge under Probation of Offenders Act, 1907. (Probation of Offenders Act, 1907 (7 Edw. 7, c. 17), s. 1 (1); Road Traffic Act, 1930 (20 & 21 Geo. 5, c. 43), s. 35.) In a proper case an offence under s. 35 of the Road Traffic Act, 1930 (using a motor car without there being in force a policy of insurance against third party risks), is an offence which may be dealt with under s. 1 (1) of the Probation of Offenders Act, 1907. In the event of a dismissal of the charge under the Probation of Offenders Act,

1907, the question of disqualification for holding a licence does not arise, irrespective of whether there are any "special reasons" for not ordering a disqualification. However, to enable justices to deal with a charge under s. 1 (1) of the Probation of Offenders Act, 1907, there must be "extenuating circumstances" under which the offence was committed (or other circumstances set out in the sub-section which allow justices to deal with the offence under the Act): *QUELCH v. COLLETT*, [1948] 1 K. B. 478; [1948] L. J. R. 956, D. C. (applying *Blows v. Chapman*, [1947] C. L. Y. 2744). [Cf. *Gardner v. James*, § 3312.]

3302. — — — **Motor Spirit (Regulation) Act, 1943.** See § 2695.

3303. — — — **"special reasons".** (Road Traffic Act, 1930 (20 & 21 Geo. 5, c. 43), s. 35 (1), (2).) The owner of a vehicle who permits it to be driven by a person who is not covered by his own or the owner's third party policy commits an offence under s. 35 (1), notwithstanding that he did not know that the driver was uninsured, and might reasonably have supposed him to have been covered by his own policy. But, such circumstances may provide "special reasons" why the owner should not be disqualified under s. 35 (2).

The owner of a motor-lorry requested a garage proprietor who had repaired the vehicle to deliver it at the owner's premises. The owner's third party policy covered himself and persons in his employ; the garage proprietor had no third party policy to cover his driving of the lorry. The lorry owner made no inquiries. Held, the garage proprietor was not in the employ of the lorry owner; the lorry owner was guilty of an offence under s. 35 (1), notwithstanding his ignorance that there was no policy covering the vehicle. The fact that a garage proprietor might reasonably be expected in the ordinary course to be covered by his own insurance for the purposes of his trade, may provide "special reasons" why the lorry owner should not be disqualified under s. 35 (2): *LYONS v. MAY*, [1948] W. N. 483; 65 T. L. R. 51; [1948] 2 All E. R. 1062, D. C. (distinguishing *Knowler v. Rennison*, [1947] C. L. Y. 2740).

3304. — — — — —. See also *QUELCH v. COLLETT*, § 3301; *GARDNER v. JAMES*, § 3312.

3305. — — — **driving tests and provisional licences.** Motor Vehicles (Driving Licences) (Amendment) (No. 3) Regulations, 1948 (No. 2251), made under the Road Traffic Act, 1930 (20 & 21 Geo. 5, c. 43), s. 30, and the Road Traffic Act, 1934 (24 & 25 Geo. 5, c. 50), s. 6; came into operation on December 1, 1948; further amend the Motor Vehicles (Driving Licences) Regulations, 1947 (No. 925), as already amended. The principal changes relate to applications for a driving test from persons suffering from certain diseases or disabilities; the grouping of vehicles for the purposes of driving tests; the fee payable for a driving test on an agricultural tractor (which is increased from 2s. 6d. to 7s. 6d.); and a requirement that the holder of a provisional licence should drive only under the supervision of a qualified driver. The latter requirement applies in the case of any motor vehicle constructed or adapted to carry more than one person; and in the case of a motor cycle carrying a passenger, the passenger must be a qualified driver.

3306. — — — **driving without licence.** (Road Traffic Act, 1930 (20 & 21 Geo. 5, c. 43), s. 7 (4).) A lorry, owned by the respondent, was standing at the head of an incline. There was no petrol in the tank, and the respondent having released the brake, set the lorry in motion by pushing it, got into the driving seat, and let the lorry go down the hill so as to get into his garage. Held, as the respondent was controlling the lorry by operating the brakes and the steering-wheel, he was "driving" it within the meaning of s. 7 (4) of the Road Traffic Act, 1930: *SAYCELL v. BOOL*, [1948] W. N. 232; [1948] 2 All E. R. 83, D. C. (See also § 2131.)

3307. — — — **form of application.** Motor Vehicles (Driving Licences) (Amendment) Regulations, 1948 (No. 48), dated January 14, 1948. These Regulations came into operation on February 18, 1948 and amend the form of application contained in the Motor Vehicles (Driving Licences) Regulation, 1947 (No. 925).

3308. — — — **members of fire brigades.** Motor Vehicles (Driving Licences) (Amendment) (No. 2) Regulations, 1948 (No. 552), made under the Road Traffic Act, 1930 (20 & 21 Geo. 5, c. 43), s. 30, and the Road Traffic Act, 1934 (24 & 25 Geo. 5, c. 50), s. 6. These Regulations provide for driving tests of members of fire brigades to be conducted by chief officers, instead of by a principal Secretary of

State as provided by the Motor Vehicles (Driving Licences) Regulations, 1947 (No. 925).

3309. Elections—use of cars at. See § 1095.

3310. Highways. See HIGHWAYS AND BRIDGES.

3311. Insurance—third party risks. In *WOOD v. GENERAL ACCIDENT, FIRE AND LIFE ASSURANCE CORPORATION* (November 1, 1948), Morris, J., held that a motor car was not being used for “social, domestic and pleasure purposes” within the meaning of the insurance policy covering it the owner of which, a garage proprietor, was being driven by an employee to London to an interview at which a contract in connection with his garage business would be negotiated. [*Reported by R. C. Calburn, Esq., Barrister-at-Law.*] See also [1948] W. N. 430.

3312. ——— extenuating circumstances. (Road Traffic Act, 1930 (20 & 21 Geo. 5, c. 43), s. 35 (1), (2); Probation of Offenders Act, 1907 (7 Edw. 7, c. 17), s. 1 (1).) Circumstances, such as good character, which would be insufficient to constitute “special reasons” for refusing to impose disqualification under s. 35 (2), cannot justify dismissal of a charge under s. 35 (1) of driving a vehicle which is uninsured.

The respondent had been charged, *inter alia*, with driving an uninsured motor-bicycle, contrary to s. 35 (1). It was proved that he had done so knowingly, but the justices decided that it was a case which could be dealt with under the Probation of Offenders Act, 1907, s. 1 (1), having regard to the character of the respondent and the extenuating circumstances that he had lately been demobilised from the Army where such documents were not required; that he had assembled the machine himself and was over-eager to test it. Held, good character being no reason for refusing to suspend a licence (*Whittall v. Kirby*, [1947] C. L. Y. 2741) much less can it be a reason for refusing to convict; where this class of offence has been deliberately committed it cannot be dealt with under the Probation of Offenders Act, 1907: *GARDNER v. JAMES*, [1948] W. N. 502; 92 S. J. 732; [1948] 2 All E. R. 1069, D. C. (distinguishing *Quelch v. Collett*, § 3301).

3313. ——— ———. See also *QUELCH v. COLLETT*, § 3301; *LYONS v. MAY*, § 3303.

3314. Level crossing. See RAILWAYS.

3315. London traffic. See LONDON.

3316. Motor fuel. See PETROLEUM.

3317. Motor licences—altered condition of vehicle. (Finance Act, 1922 (12 & 13 Geo. 5, c. 17), s. 14 (1) (2); Road Traffic Act, 1930 (20 & 21 Geo. 5, c. 43), s. 26.) If the result of making temporary additions to the structure of a vehicle is to enable larger loads to be carried, such additions are not “loose equipment” within the meaning of the Road Traffic Act, 1930, s. 26. Thus, in the present case loose boards had been temporarily affixed to the sides of an open lorry, by means of slots, so that a load of slack might be carried. The vehicle was licensed as not exceeding 3 tons, unladen weight, but with the boards in position the weight was a little over 3 tons, so that, unless the boards were loose equipment, the lorry was being used in an altered condition which brought it within a class of vehicle to which a higher rate of duty was applicable, contrary to the Finance Act, 1922, s. 14 (1). Held, since the addition of the boards turned the lorry into a vehicle the carrying capacity of which was greater than it would otherwise have been, the boards were not loose equipment and an offence had been committed under the Finance Act, 1922, s. 14 (2): *LOWE v. STONE*, [1948] W. N. 487; 2 All E. R. 1076, D. C. (distinguishing *Darling v. Burton*, [1928] S. C. (J.) 11).

3318. ——— disqualification under Motor Spirit (Regulation) Act, 1943. See § 2695.

3319. ——— reduction of duty. See the Finance Act, 1948, ss. 18, 19: § 789.

3320. ——— registration book as document of title. See *JOBLIN v. WATKINS AND ROSEVEARE (MOTORS)*, § 17; *NORMAN v. PITT*, § 3370a.

3321. Motor vehicles—agricultural vehicles—authorisation of special types—combined harvesters. Motor Vehicles (Authorisation of Special Types) (No. 2) Order, 1948 (No. 1197), made under the Road Traffic Act, 1930 (20 & 21 Geo. 5, c. 43), s. 3, re-enacting with amendments the Motor Vehicles (Authorisation of Special Types) Order, 1944 (No. 661), which authorised the use on roads of combined

harvester machines not complying with the Motor Vehicles (Construction and Use) Regulations, 1947 (No. 670). The principal changes relate to the maximum width, which is increased to 14 feet, the period of notice to be given to the police and the speed limit.

3322. — — **construction and use—land tractors.** Motor Vehicles (Construction and Use) (Amendment) Regulations, 1948 (No. 976), made under the Road Traffic Act, 1930, s. 30, extending for a further year the period during which land tractors first registered on or before June 1, 1947, are exempt from the need to comply with the requirements of the Motor Vehicles (Construction and Use) Regulations, 1947 (No. 670), Reg. 31, as to the tyres of steering wheels.

3323. — — **driving test.** See § 3305.

3324. — — **exemption from licensing provisions.** Use of Vehicles during Harvesting Order, 1948 (No. 1176), exempting from compliance with certain licensing provisions vehicles used for conveying persons to or from agricultural work between June 19 and November 30, 1948.

3325. — — **relief from additional duty.** Agricultural Goods Vehicles (Temporary Relief from Duty) Order, 1948 (No. 1200), made under the Finance Act, 1943 (6 & 7 Geo. 6, c. 28), s. 9, specifying the period during which agricultural goods vehicles may be used for certain purposes in connection with the 1948 harvest without incurring liability to additional duty.

3326. — — **use of tractor for private purposes.** [Scot.] See *HORNEL v. CRUICKSHANK*, § 53.

3327. — — **authorisation of special types—straddle carriers.** Motor Vehicles (Authorisation of Special Types) Order, 1948 (No. 643), made under the Road Traffic Act, 1930, s. 3, authorising the use on certain roads of heavy motor vehicles known as straddle carriers, subject to certain conditions. (See also § 3321.)

3328. — — **evidence by certificate.** See §§ 714, 722.

3329. — — **goods vehicles—change of operating centre.** Goods Vehicles (Change of Operating Centre) Regulations, 1948 (No. 2014), made under the Transport Act, 1947 (10 & 11 Geo. 6, c. 49), s. 58 (6); came into operation on October 1, 1948. These Regulations make provision with respect to applications by holders of A or B carrier's licences for the operating centre of vehicles to be changed, either temporarily or permanently. The Schedule contains a form of application and a form of notice of objection.

3330. — — **licensing of.** Goods Vehicles (Operating Centre) Regulations, 1948 (No. 1284), made under the Transport Act, 1947, ss. 61, 119; came into operation on July 1, 1948; prescribe the appropriate forms for applying to the licensing authority to specify a point to be treated as the operating centre for authorised carriers' vehicles, and the form in which the decision of the licensing authority is to be recorded and notified.

Goods Vehicles (Licences and Prohibitions) (Amendment) Regulations, 1948 (No. 2429), made under the Road and Rail Traffic Act, 1933 (23 & 24 Geo. 5, c. 53), s. 25; came into operation on January 1, 1949; amend the Goods Vehicles (Licences and Prohibitions) Regulations, 1936 (No. 269), as already amended. The principal amendments relate to the power of a licensing authority to issue a new identity certificate in certain cases; the fee payable on the variation of conditions attached to a B licence; revised forms of applications for carriers' licences; and the recording on licences of variations thereof [3*d.*]. (See also § 3335.)

3331. — — **international circulation.** Motor Vehicles (International Circulation) (Amendment) Regulations, 1948 (No. 610), made under the Finance Act, 1920 (10 & 11 Geo. 5, c. 18), s. 13; the Roads Act, 1920 (10 & 11 Geo. 5, c. 72), s. 12; and the Motor Car (International Circulation) Order, 1930 (No. 968), Arts. 5, 7. These Regulations amend the Motor Vehicles (International Circulation) Regulations, 1941 (No. 1219), by providing (1) that international circulation permits may now be issued in respect of vehicles to which the Public Service Vehicles (International Circulation) Regulations, 1948 (No. 609) (see § 3332), apply; and (2) that persons whose vehicles are registered in countries which ratified the Geneva Convention, 1931, on the taxation of foreign motor vehicles are no longer required to, but may if they desire, submit fiscal permits when applying for international circulation permits.

- 3332. — — public service vehicles.** Public Service Vehicles (International Circulation) Regulations, 1948 (No. 609), made under the Road Traffic Act, 1930, s. 94. These Regulations re-enact with amendments the Public Service Vehicles (International Circulation) Provisional Regulations, 1938. The amendments are: (1) the period during which public service vehicles brought into Great Britain may remain in this country is increased from twenty-eight to ninety days, and (2) in addition to carrying temporary visitors, such vehicles may now carry two other persons if employed as driver or as guide, interpreter or organiser.
- 3333. — lighting—avoidance of dazzle.** Road Vehicles Lighting (Amendment) Regulations, 1948 (No. 2015), made under the Road Transport Lighting Act, 1927 (17 & 18 Geo. 5, c. 37); came into operation on December 31, 1948; amend the Road Vehicles Lighting Regulations, 1936 (No. 392), by adding a proviso to Reg. 9 (2) thereof by which on and after January 1, 1949, a lamp (unless used only in conditions of fog or falling snow) is not to be held to comply with the existing Regulations as to lamps with deflected beams unless it is fixed with its centre not less than 2 feet from the ground.
- 3333a. — — limit of vision.** [Scot.] See *WHITE v. M'KEAN & Co.*, § 2518.
- 3334. — — unlighted car on highway.** See *HENLEY v. CAMERON*, § 2467.
- 3335. — public service vehicles — and goods vehicles — extension of authorisation.** Emergency Powers (Defence) Road Vehicles and Drivers (Amendment) Order, 1948 (No. 1226), extending for twelve months the period of any authorisation in force on July 31, 1948, to act as driver or conductor of a public service vehicle, tram or trolley vehicle or hackney carriage, to use a public service vehicle, to operate a road passenger service, or to use a goods vehicle under an A, B or C licence.
- 3336. — — international circulation.** See § 3331.
- 3337. — — standing passengers.** Standing Passengers Order, 1948 (No. 845), made under the Defence (General) Regulations, 1939, Reg. 70, revokes and re-enacts the Standing Passengers (No. 2) Order, 1941 (No. 1680), in so far as that Order was not revoked by the Standing Passengers (Amendment) Order, 1946 (No. 695), authorising Regional Transport Commissioners to permit the use of single-decked vehicles specially constructed or adapted to carry not more than thirty standing passengers. The new Order also authorises the carrying, in certain circumstances and subject to certain conditions, of not more than eight standing passengers on stage carriages, express carriages and trolley vehicles.
- 3338. Negligence.** See also NEGLIGENCE.
- 3339. — appeals.** See *LOFTHOUSE v. LEICESTER CORPN.*, § 2761.
- 3340. — boarding moving omnibus.** See *GUINNEAR v. L. P. T. B.*, § 2462.
- 3341. — degree necessary for conviction.** See *DABHOLKAR v. R.*, § 749.
- 3342. — of husband, wife's action in respect of.** See *CURTIS v. WILCOX*, § 1612.
- 3343. — omnibus.** See *BARKWAY v. SOUTH WALES TRANSPORT CO.*, § 2519.
- 3344. — opening car door.** (Highway Act, 1835 (5 & 6 Will. 4, c. 50), s. 78.) S. 78 of the Highway Act, 1835, which provides that an offence is committed "if the driver of any carriage . . . shall by negligence . . . cause any hurt or damage to any person", is solely concerned with negligence in the driving of a vehicle, and does not apply where the driver is guilty of a negligent act unconnected with driving.
The driver of a motor-lorry, having arrived at his destination, opened the off-side door of the vehicle and struck a passing cyclist. Held, assuming that the driver was negligent, his negligence was not in connection with the driving and no offence under the section had been committed: *SHEARS v. MATTHEWS*, [1948] W. N. 472; [1948] 2 All E. R. 1064, D. C.
- 3345. Omnibus service—British Transport Commission's powers to provide road services.** (Road Traffic Act, 1930 (20 & 21 Geo. 5, c. 43), s. 72 (1); Transport Act, 1947 (10 & 11 Geo. 6, c. 49), ss. 2 (1); 3 (1); 65 (1).) Under ss. 2 (1), 3 (1) and 65 (1) of the Transport Act, 1947, the British Transport Commission has a right to run road services outside the special area (*i.e.*, the London Traffic Area), even though there has been no acquisition of undertakings by agreement (under s. 7 of

the Act of 1947), or by means of a vesting of undertakings (s. 12), or under a road transport scheme (s. 63). The effect of s. 65 of the Act of 1947 is to substitute a different measure of control from that to which the London Passenger Transport Board was formerly subject under the provisions of ss. 72 to 76 of the Act of 1930. Thus, the effect of the Scheme of the Delegation of Functions of December 11, 1947, under which in exercise of their powers under s. 65 of the Act of 1947 the British Transport Commission appointed the London Transport Executive to act as their agent in respect of the functions which under the Act had been transferred to them from the London Passenger Transport Board, is that the powers of the British Transport Commission to run a road service outside the special area in an area where another person holds already the necessary licence to run a service of motor omnibuses from the appropriate licensing authority without being liable to pay any compensation to such person, have been effectively delegated to the London Transport Executive: *SMITH v. LONDON TRANSPORT EXECUTIVE*, [1948] Ch. 652; [1948] L. J. R. 1483, Vaisey, J.

3346. Pedestrian crossing. The Court of Appeal held that if a pedestrian was on a pedestrian crossing when a vehicle approaching the crossing should have slowed down in accordance with the Pedestrian Crossing Regulations, but did not, and the pedestrian subsequently collided with the vehicle on or just off the crossing, the driver of the vehicle was liable if the accident would not have happened if he had complied with the Regulations. [*Reported by R. C. Calburn, Esq., Barrister-at-Law.*] See also *Times*, February 7, 1948.

3347. — controlled by lights. In *LONDON PASSENGER TRANSPORT BOARD v. UPSON* (December 9, 1948), the House of Lords (Lords Porter, Wright, Uthwatt, du Parc, and Morton of Henryton) dismissed an appeal from the Court of Appeal, *sub nom. Upson v. London Passenger Transport Board*, [1947] C. L. Y. 2736, holding a bus driver guilty of negligence who struck a pedestrian on a controlled crossing though the bus had the green light in its favour. [*Reported by R. C. Calburn, Esq., Barrister-at-Law.*] See also [1949] 1 C. L. 217.

3348. Petrol rationing. See *PETROLEUM*.

3349. Road—courtyard. [Scot.] (Road Traffic Act, 1930 (20 & 21 Geo. 5, c. 43), s. 121 (1).) In *PURVES v. MUIR*, 1948 S. L. T. 529, the High Court of Justiciary held that a courtyard which was not on the same level as the adjoining road except at one point, and was not used as a means of vehicular communication, was not a road within the meaning of s. 121 of the Road Traffic Act, 1930 (which defines "road" as any highway and any other road to which the public has access), because the mere fact that the public had access to the courtyard was not itself sufficient to bring it within the statutory definition.

3350. Road haulage—licences. The following decisions of the Road and Rail Traffic Appeal Tribunal have been reported:—

Licensing authorities and the Tribunal have no jurisdiction to determine the class of licence which is necessary under the Act. A deputy licensing authority has jurisdiction to grant a licence to use vehicles from a base or centre in his area to carry goods outside his area: *M. J. SPREADERS, APPELLANTS* (1947), 28 Traff. Cas. 238.

The licensing authority cannot properly grant an A or B licence unless an application has been made in the prescribed form and therefore where an application has been made for an A licence the licensing authority cannot grant a B licence in respect of that application, and similarly an A licence cannot be granted on an application for a B licence. Moreover, the authority cannot grant a B licence for vehicles in excess of the vehicles for which the applicant has duly made application for a B licence, by relying on an application which the applicant may also have made for an A licence: *BREWER v. G. W. RY.* (1947), 28 Traff. Cas. 250.

The onus of proving that other firms could do the work cannot be transferred to the objectors when no evidence has been produced by the applicants that there is a shortage, because to do that would mean that anyone could apply for a licence and automatically get it, unless existing operators proved that it was not necessary: *GLOBE PARCEL DELIVERY Co. v. FORSHAW & Co.* (1947), 28 Traff. Cas. 257.

The fact that certain transport operators had refrained from objecting to an

application for a licence and a report that there had been an agreement not to object are both circumstances which should be excluded from the mind of a licensing authority who is entertaining an application, because applications must be considered from the standpoint of the public generally, due regard being had at the same time to the interests of other transport operators: *PULSFORDS HAULAGE v. VICKERY BROS.* (1947), 28 Traff. Cas. 266.

A haulage operator who hires by sub-contract cannot normally replace hired transport by obtaining a carrier's licence for additional tonnage without proving need. This necessity is not affected by the purchase by the hirer of the business of the operator from whom transport is hired, because such a transaction is an attempt to buy a licence rather than a purchase of the goodwill of a business (the goodwill being the support given to the business by the purchaser). Therefore the ostensible purchase by a hirer of the goodwill of a business which consists mainly of work provided by him is not in itself a ground for the grant of a licence: *L. M. S. Ry. v. BEAUMONT BROS. (HALIFAX)* (1947), 28 Traff. Cas. 284.

The need for a vehicle should be established by some means other than the mere evidence that it has been used under defence permits, even in a case where no other similar vehicle is based in the locality: *HOWARD v. RAILWAY EXECUTIVE* (1947), 28 Traff. Cas. 292.

A licensing authority is not compelled by the Act to attach conditions to a B licence; and therefore he does not act *ultra vires* if he attaches conditions which are in terms wider than those published in *Applications and Decisions*. But it is undesirable that the licensing authority should widen the conditions because other transport operators may thereby be misled. The difficulty can generally be removed by republication; and a licence should therefore not be granted subject to wider conditions than those published unless there are strong grounds for doing so: *BURGESS v. MACK AND NEIL* (1947), 28 Traff. Cas. 301.

If notice has not been given by the objectors or the licensing authority, by way of prior notice of the grounds of objection, that the objectors or the licensing authority, as the case may be, intend to rely on an illegal operation or a breach of conditions of defence permits held by the applicant, the public inquiry should be adjourned if there is any reason whatever for thinking that the applicant may be at a disadvantage as a result of the absence of prior notice: *HUGHES v. RAILWAY EXECUTIVE* (1948), 28 Traff. Cas. 325.

Although regard is to be had to the desirability of enabling pre-war operators to recover their businesses, this is not to be done in such a way as to facilitate the purchase of licences; and the tribunal may take the appropriate steps to enable it to decide whether an application is in substance an attempt by some one other than the applicant to procure the grant of a carrier's licence with a view to purchasing it or an interest in it: *MAC'S MOTOR TRANSPORT v. RAILWAY EXECUTIVE* (1948), 28 Traff. Cas. 311.

The grant to a forwarding agent of a carrier's licence to carry freight to and from airports would only be appropriate on production of the usual evidence of need for additional transport, and not for the purpose of providing those special facilities which are required because of the conditions of air traffic which make reservations of transport desirable, and not because of shortage of transport facilities generally: *GLOBE PARCEL DELIVERY Co. v. LEP AIR SERVICES* (1948), 29 Traff. Cas. 1.

Before the war the appellant operated one vehicle under a B licence in connection with his slaughterhouse which was closed down during the war and had not been subsequently reopened. The tribunal granted a licence for one vehicle for the carriage of building materials, etc., on the ground that since the commencement of the war there had been some change round of work in the area: *MERRICK v. RAILWAY EXECUTIVE* (1948), 29 Traff. Cas. 14.

The tribunal upheld the grant of a B licence in a case where the applicants had for fifty years used a horse and cart as general hauliers, notwithstanding that there was no evidence of need. Manner in which the discretion conferred by s. 6 (2) of the Road and Rail Traffic Act, 1933, should be exercised, considered: *HARVEY & SON v. BENNEY* (1948), 29 Traff. Cas. 18.

The mere fact that there is a dispute about rates is not a ground for authorising additional transport to be available for one of the parties to the dispute. It is not desirable that the tribunal should adopt the strict rules of evidence which are

applied in Courts of law; and the only suitable alternative is to allow all evidence to be admitted: *PATTEN v. POOLE* (1948), 29 Traff. Cas. 23.

Where no evidence of need was adduced, the deputy licensing authority was held properly to have exercised his discretion under s. 6 of the Act, in relying on his own personal knowledge of the locality in deciding the question of need: *MOOR & SON (HAULAGE) v. SPARKS* (1948), 29 Traff. Cas. 35.

The tribunal will not authorise vehicles to be operated in succession to Contract A licence vehicles where there is not only no evidence to show that the work could not be satisfactorily done by existing alternative transport, but it is established on the contrary that alternative transport is adequate: *RAILWAY EXECUTIVE v. LLOYD BROS. (HAULAGE)* (1948), 29 Traff. Cas. 41.

Where the applicant had at the beginning of the war turned over its haulage business to an associated company, it was held that the applicant could only be granted a licence under the conditions under which a licence would be granted to a newcomer, that is, on proof of need: *PYE STORAGE v. RAILWAY EXECUTIVE* (1948), 29 Traff. Cas. 54.

3351. — undertakings — transfer to British Transport Commission — compensation. Road Haulage Undertakings (Payment of Compensation) Regulations, 1948 (No. 1286), made under the Transport Act, 1947 (10 & 11 Geo. 6, c. 49), s. 119; came into force on July 1, 1948, and prescribe the time within which any person to whom compensation is payable in respect of any transfer under Part III of the Act may by notice require payment in cash (up to £2,000) instead of the issue of British Transport Stock.

3352. — — — notice of acquisition. Road Haulage Undertakings (Notices of Acquisition, etc.), Regulations, 1948 (No. 1285), made under the Transport Act, 1947, ss. 61, 119; came into force on July 1, 1948, and prescribe the forms to be used for giving notices of acquisition with respect to undertakings engaged in the carriage of goods for hire or reward and other notices under Part III of the Act, the particulars to be given in such forms, and the manner and time of service of the notices. The functions of the British Transport Commission in regard to these matters were delegated to the Road Transport Executive by a Scheme dated April 12, 1948, and published in the *London Gazette* on April 23, 1948.

3353. — wages. Road Haulage Wages Order, 1948 (No. 11), dated January 9, 1948, made under the Road Haulage Wages Act, 1938 (1 & 2 Geo. 6, c. 44), s. 3. This order, which took effect from January 2, 1948, cancels and replaces the Road Haulage Wages Order, 1947 (No. 352), which fixed the statutory remuneration payable to road haulage workers in Great Britain employed in connection with goods vehicles operating under A or B licences or A or B defence permits, and the holiday required to be allowed to those workers by their employers. The Order applies to milk workers as to all other workers. [6d.]

Road Haulage Wages (No. 2) Order, 1948 (No. 1914), made under Road Haulage Wages Act, 1938, s. 3, the Holidays with Pay Act, 1938 (1 & 2 Geo. 6, c. 70), and the Trade Boards and Road Haulage Wages (Emergency Provisions) Act, 1940 (3 & 4 Geo. 6, c. 7), came into operation on September 6, 1948; amends the Road Haulage Wages Order, 1948 (Order R. H. (24)), which fixed the statutory remuneration payable to road haulage workers in Great Britain employed in connection with goods vehicles operating under A or B licences or A or B defence permits and the holidays required to be allowed to those workers by their employers.

3354. — — Central Wages Board—conversion into wages council. See § 1283.

3355. Stage carriage—meaning of. See *CHAPMAN v. KIRKE*, § 3749.

3356. Taxi-cabs—duty to passengers. [Can.] In *MIZENCHUK v. THOMPSON AND NASH TAXI AND U-DRIVE CO.*, [1947] C. L. Y. 367, Major, J., held that "there appears to be no doubt that taxi-cab companies, as common carriers, are under the same obligations, duties and responsibilities to their passengers as any other common carrier; that in every hiring of a taxi-cab there is an implied contract that the passenger will be carried safely to his destination; that passengers have a right to expect drivers of taxi-cabs to possess a complete knowledge of the locality in which the company operates; that, if through lack of knowledge, mistake of location, or other causes, it is found impossible to reach the passenger's destination,

the driver is bound to exercise every reasonable care for the safety of his passengers; that, if without the exercise of reasonable care by a driver a passenger is subjected to risk and suffers therefrom, the carrier is responsible for damages arising". The Manitoba Court of Appeal affirmed this decision, [1948] 1 D. L. R. 136.

- 3357. — injury by passenger.** In *KING v. LEES* (November 26, 1948), the Divisional Court (Lord Goddard, C.J., Hilbery and Birkett, J.J.) held that a passenger in a taxi-cab who urinated in it, so that it was unfit for use for some hours, had "injured" it within the meaning of s. 41 of the London Hackney Carriage Act, 1831, and was accordingly liable in damages and costs under the section. [Reported by R. C. Calburn, Esq., Barrister-at-Law.] See also [1949] 1 C. L. 225.

- 3358. — plying for hire.** (London Hackney Carriage Act, 1831 (1 & 2 Will. 4, c. 22), s. 35; London Hackney Carriage Act, 1853 (16 & 17 Vict. c. 33), ss. 7, 17 (2).) A cab driver commits no offence by refusing to stop when hailed; he can only be required to accept anyone who chooses to hire him when he is actually on a rank or is stationary in a street.

The appellant, a taxi-cab driver, was driving along Victoria Street, London, with his flag up and, without reasonable excuse, refused to stop when hailed. He was charged under s. 17 (2) of the London Hackney Carriage Act, 1853, with unlawfully refusing to drive to a place within the limits of the Act to which he was required to drive by a person intending to hire him. Held, s. 17 (2) must be construed with reference to s. 7 which imposes this duty on any driver who "shall ply for hire at any place within the limits of this Act". "Place" means a cab-rank and, consequently, no offence was committed.

S. 35 of the London Hackney Carriage Act, 1831, which is unrepealed, provides that a cab "found standing in any street . . . shall, unless actually hired, be deemed to be plying for hire" and it would thus appear that a driver although not on a cab-rank is also bound to accept a fare while he is stationary and not engaged, having, e.g., just set down a passenger. *Per* Lord Goddard, C.J.: "It would seem that an Act consolidating and amending, and, if possible, simplifying, the law with regard to cabs, is very desirable": *HUNT v. MORGAN*, [1948] W. N. 506; 65 T. L. R. 15; [1948] 2 All E. R. 1065, D. C.

- 3359. Third-party insurance.** See *QUELCH v. COLLETT*, § 3301; *GARDNER v. JAMES*, § 3312; *LYONS v. MAY*, § 3303; *WOOD v. GENERAL ACCIDENT, FIRE AND LIFE ASSURANCE CORPORATION*, § 3311.

- 3360. Transport Act, 1947 — British Transport Commission's powers to provide road services.** See *SMITH v. LONDON TRANSPORT EXECUTIVE*, § 3345.

- 3361. — Transport Arbitration Tribunal.** See § 3753.

- 3362. ARTICLES.** Disqualification for a year and a day: 112 J. P. J. 21. Road traffic and kindred cases of 1947: 112 J. P. J. 69. Pedestrians: 92 S. J. 103. Transport Act anomalies: a warning to purchasers: 98 L. J. 115. The Transport Act, 1947: 40 *Accountants' Journal* 37. Dangerous and careless driving tried together: 112 J. P. J. 226, 306. Drunk in charge: 92 S. J. 240. Binding over to keep the peace: 92 S. J. 240. The influence of drink (founded on *R. v. Novell*, § 3300): 98 L. J. 269. *Lex non cogit ad impossibilia* (founded on *Harding v. Price*, § 3297): *Law Notes*, May, 1948, p. 115. Motoring offences and penalties (founded on *Ellis v. Hinds*, [1947] C. L. Y. 2758, *Whittall v. Kirby*, [1947] C. L. Y. 2741, *Knowler v. Rennison*, [1947] C. L. Y. 2740, *Labrum v. Williamson*, [1947] C. L. Y. 2743, *Blows v. Chapman*, [1947] C. L. Y. 2744, *Quelch v. Collett*, § 3301); by C. K. Allen: 64 L. Q. R. 207. Disqualification and endorsement of driving licences (founded on *R. v. Leicester Recorder*, *ex p. Gabbitas* (1946), 90 S. J. 371, *Whittall v. Kirby*, [1947] C. L. Y. 2741, *Knowler v. Rennison*, [1947] C. L. Y. 2740, *Labrum v. Williamson*, [1947] C. L. Y. 2743, *Williamson v. Wilson*, [1947] C. L. Y. 2742, *Blows v. Chapman*, [1947] C. L. Y. 2744, *Quelch v. Collett* (§ 3301)): 92 S. J. 476. The motorist's duty to stop and to conform to signals (founded on Road Traffic Acts, 1930-1934): 92 S. J. 506.

- 3363. BOOKS PUBLISHED.** Kitchin, L. D.—Road Transport Law. 5th ed. [5s.]. Sturge, H. F. R., and Corpe, T. D.—Road Haulage Law and Compensation [35s.].

SALE OF GOODS

3364. Conditions and warranties—implied condition of fitness negated by express agreement. (Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), ss. 7, 14 (2), 20, 55.) In January, 1943, the seller entered into a contract with the Minister of Food, under which the Minister purchased thirty-three tons of Majestic ware potatoes in a certain clamp. Delivery instructions were to be given by the Minister during May, June or July, 1943. Condition 1 of the contract provided: "The seller will exercise all reasonable care in the storage of the potatoes . . . and in the event of any excessive deterioration of the potatoes will notify in writing the appropriate area potato supervisor forthwith of any such deterioration". On June 21 the seller opened the clamp in question and found a seam of rot. On June 22 he received delivery instructions from the area potato supervisor who was acting on behalf of the Minister. On June 23 he gave the first notice of deterioration to the supervisor. On June 25 the supervisor cancelled the delivery instructions. The seller claimed the price of thirty-three tons of potatoes or, alternatively, damages. Held, (1) there was no room for an implied condition under s. 14 (2) of the Sale of Goods Act, 1893, that the potatoes should be of merchantable quality, because the parties to the contract had contemplated that before the giving of delivery instructions there might be not only deterioration, but even excessive deterioration, of the potatoes, and, consequently, by virtue of the provisions of s. 55 of that Act such an implication of law was negated by express agreement; (2) as the potatoes had not ceased to exist and were still in a form that would permit of their being called potatoes, the potatoes had not "perished" within the meaning of s. 7 of that Act, but even if the potatoes had "perished" within the meaning of that section, the section only operated where goods "perish before the risk passes to the buyer", and in this case the risks of deterioration and also of excessive deterioration were with the buyers, provided always that the seller complied with the obligations imposed on him by Condition 1; (3) though under another condition in the contract the property in the potatoes was to pass on delivery, the risk of deterioration, even excessive in extent, was one which, by reason of the express agreement contained in Condition 1, was with the buyer, and, consequently, s. 20 of the Act could not affect the matter. It followed that the seller was entitled to succeed: *HORN v. MINISTER OF FOOD*, [1948] 2 All E. R. 1036, *Morris*. J.

3365. — verbal condition overriding subsequent written condition. To see whether a clause in a subsequent written agreement excludes a previous agreement or a representation or condition clearly made and entered into, the subsequent clause must be construed strictly and literally, and against the person who desires to rely on it.

The defendant was negotiating with the plaintiff's foreman about the purchase of an H. 10 motor car on hire-purchase terms. The plaintiff's foreman said to the defendant: "If you buy the H. 10 we will guarantee that it is in good condition and that you will have no trouble with it". The defendant subsequently signed a hire-purchase agreement which provided *inter alia*: "The hirer is deemed to have examined (or caused to be examined) the vehicle . . . and to have satisfied himself as to its condition, and no warranty, condition, description or representation on the part of the owner as to the state or quality of the vehicle is given or implied any statutory or other warranty, condition, description or representation . . . as to the state, quality, fitness or roadworthiness being hereby expressly excluded . . .". In fact, the motor car was nothing but a mass of second-hand and dilapidated ironmongery. The plaintiff claimed the return of the motor car and payment of the balance of the instalments due. Held, having regard to the present tense in the relevant clause in the hire-purchase agreement, the words of that clause were not sufficiently clear to abrogate a separate collateral agreement constituted by an offer of guarantee and its acceptance by the signing of the hire-purchase agreement by the defendant. Consequently, the County Court Judge's order for repayment of the deposit and of the instalments should be affirmed: *WEBSTER v. HIGGIN*, [1948] 2 All E. R. 127, C. A.

3366. Damages—for breach of warranty—auction sale of pedigree bull. See *BUNTING v. TORY*, § 811.

- 3367.** — **for non-acceptance—award of, on claim for price—future goods.** See *MEDITERRANEAN AND EASTERN EXPORT CO. v. FORTRESS FABRICS (MANCHESTER)*, § 172.
- 3368.** — **for non-delivery.** (Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 51.) The amount of damages recoverable for non-delivery of goods ultimately depends upon whether the party aggrieved has acted reasonably in mitigating the damages. The buyers sued the sellers for damages for non-delivery of a number of Madras snake-skins in London. At the date of the breach there was no available market for such goods in London. In mitigation of damages it was contended on behalf of the sellers that if the buyers had sent out to India they would have been able to buy there. Held, especially in the circumstances prevailing in India at that time, the buyers were under no duty to enter into a contract with some unknown seller in India with a view to obtaining the goods here eight or nine months after the delivery date of their original contract: *LESTERS LEATHER AND SKIN CO. v. HOME AND OVERSEAS BROKERS*, [1948] W. N. 437; 64 T. L. R. 569; 92 S. J. 646, C. A.
- 3369.** — —. See also *VICTORIA LAUNDRY (WINDSOR) v. NEWMAN INDUSTRIES*, § 818.
- 3370.** **Document of title—motor vehicle registration book.** See *JOBLIN v. WATKINS AND ROSEVEARE (MOTORS)*, § 17.
- 3370a.** — — **hire-purchase.** In *NORMAN v. PITT*, [1948] W. N. 270; 92 S. J. 514, C. A., Scott, L.J., expressed the opinion that a reference in a car registration book to any hire-purchase agreement should be required by statute for the protection of the public.
- 3371.** **Fraudulent misrepresentation—buyer's option to retain and claim damages.** In *CLEMENTS v. BAWNS SHIPPING CO.* (1948), 81 Ll. L. Rep. 232, Denning, J., held that the buyer of a boat, who had been induced to buy by a fraudulent misrepresentation, was entitled, on receiving an offer from the seller to refund the purchase money if the boat was returned, to retain the boat and claim damages.
- 3372.** **Memorandum in writing—identification of details by parol.** (Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 4.) It is well settled that a document satisfies the provisions of s. 4 of the Sale of Goods Act, 1893, as well as of s. 40 of the Law of Property Act, 1925, even though details may have to be identified by parol evidence. A document giving the purchaser an option of "purchasing [the business of a road house and country club] lock, stock and barrel" was held not to extend to assets which, though physically on the property, were not assets of or devoted to the purposes of the business. The document was further held to satisfy the requirements of s. 4 of the Sale of Goods Act, 1893, and of s. 40 of the Law of Property Act, 1925. See *ELLIOTT v. PIERSON*, § 3823 (applying *Perry v. Suffields*, [1916] 2 Ch. 187).
- 3373.** — **signature by agent of vendor and purchaser.** (Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 4 (1).) One party to a contract cannot be the agent of the other to make and sign a memorandum on his behalf. But one party to a contract can confer authority on the agent of the other party so to do. T., a licensed auctioneer, at an auction sale which he conducted on behalf of the plaintiffs, a firm of auctioneers, knocked down to the defendant a mahogany table at the price of £20 as a result of a bid made on his behalf by M., an employee of the plaintiff, who had the defendant's authority to bid on his behalf. T. was then supplied by M. with the defendant's name as the buyer and entered the same in the catalogue against the item in question. It was contended on behalf of the defendant that in an action brought by the plaintiffs, as auctioneers, they could not rely on a note or memorandum made by them as agents for the defendant for the purpose of enforcing a contract to which they were themselves parties. Held, assuming that the plaintiffs were suing on a contract for sale, there was no reason why they could not sue on the contract made by T. as agent for them and rely on the memorandum signed by T. as agent for the defendant. The position would have been different if T. had been suing on a contract made by him as principal: *WILSON & SONS v. PIKE*, [1949] 1 K. B. 176; [1949] L. J. R. 17, C. A. (distinguishing *Farebrother v. Simmons* (1822), 5 B. & Ald. 333). (See also § 211.)

3374. — solicitors' letter—term as to delivery. (Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 4 (1).) Where the parties come to an arrangement in regard to delivery which alters what would otherwise have been the legal position, that term must be contained in the note or memorandum in writing in order to satisfy the provisions of s. 4 (1) of the Sale of Goods Act, 1893.

The defendant signed a document which stated: "I agree to purchase the following second-hand furniture and will forward a cheque for £150 in payment for same within three days". The articles of furniture were then set out. The plaintiff's name was not contained in the document. The parties had agreed that the plaintiff would deliver the furniture to a place designated by the defendant. After the defendant had signed the document he informed the plaintiff that he no longer desired to take delivery of the furniture. In answer to a letter from the plaintiff's solicitors giving the plaintiff's name and referring to the purchase of the furniture, the defendant's solicitors wrote: "Your letter of yesterday's date addressed to [the defendant] has been handed to us with instructions to deal with same on his behalf. He informs us that he has no copy of the memorandum signed by him . . .". The defendant alleged that there was no sufficient note or memorandum in writing of the contract, because (1) the plaintiff's name did not appear in the document signed by the defendant, and (2) the term relating to delivery was not to be found in any document or documents signed by the defendant. Held, (1) the letter by the defendant's solicitors was by itself sufficient to supply one deficiency in the original document, in that it contained the name of the plaintiff, but (2) as the term as to delivery, which negatived the provisions of s. 29 (1) of the Sale of Goods Act, 1893, was not contained in any document or documents signed by the defendant, there was no sufficient note or memorandum in writing, and, consequently, the plaintiff's claim failed: *WALFORD v. NARIN*, [1948] 2 K. B. 176; [1948] L. J. R. 1540, *Morris, J.* (applying *Thirkell v. Cambi*, [1919] 2 K. B. 590; distinguishing *Wilkinson v. Evans* (1866), L. R. 1 C. P. 407).

3375. Payment. (Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 28.) The plaintiff sold to the defendant goods on the terms: "terms of payment for goods delivered are: seven days' prompt payment less 2½ per cent. discount". Held, payment was not due until after the seven days had expired; if the defendant paid within the seven days he was entitled to the discount; if he did not pay within the seven days payment was due as soon as the eighth day began and the defendant was not entitled to further credit: *AMOS AND WOOD v. KAPROW*, [1948] W. N. 71; 64 T. L. R. 110, C. A.

3376. Passing of property—sale by auction. On a sale by auction a contract is completed on the fall of the hammer, and *prima facie* the property in the lot knocked down then passes to the bidder. So far as the contract is concerned, and the passing of the property in the object sold, usually the identity of the buyer does not enter into the question any more than it ordinarily does on the sale of an article in a retail shop.

A motor car was knocked down by the plaintiff, an auctioneer, to the highest bidder at a public auction. The buyer, a person unknown to the plaintiff, was then asked for his name and he represented himself as connected with a reputable firm. The vehicle was delivered to the buyer in exchange for a cheque, the buyer undertaking that the ownership of the vehicle should not pass until the cheque had been cleared. The cheque was dishonoured and the buyer was convicted of having obtained the vehicle by false pretences with intent to defraud. Held, (1) as there was no mistake as to the contracting parties at the time the contract of sale was made, the property had passed to the buyer, with the result that a purchaser in good faith from the buyer acquired a good title; (2) by giving delivery of the vehicle the seller had lost his lien and no longer had any right to possession of the vehicle; and (3) the document acknowledging that the ownership of the vehicle should not pass to the buyer could not have any effect on what had already taken place: *DENNANT v. SKINNER*, [1948] 2 K. B. 164; [1948] L. J. R. 1576, *Hallett, J.* (applying *Phillips v. Brooks*, [1919] 2 K. B. 243; distinguishing *Lake v. Simmons*, [1927] A. C. 487; and *Heap v. Motorists' Advisory*

Agency, [1923] 1 K. B. 577; statement in *Anson on Law of Contracts*, 19th ed., p. 158, wrong). (See also §§ 2787, 3377.)

3377. — **right to possession.** (Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), ss. 18 (1), 28, 39 (1), 58 (2).) S. 58 (2) of the Sale of Goods Act, 1893, provides that a contract of sale is concluded in an auction sale on the fall of the hammer. As a general rule, an auction sale is an unconditional contract for the sale of specific goods within the meaning of s. 18 (1) of the Act, and the property in the goods passes on the fall of the hammer. The passing of the property and the right to possession are two different things. Although the property passes on the fall of the hammer, the seller—unless the contract otherwise provides—has a right, under ss. 28 and 39 (1) of the Act, to retain possession of the goods until payment is made. If, when he is ready to deliver the goods, payment is not made, he can sue for the price, or exercise his powers of resale, and he can secure himself by way of lien on the goods for the price, but once he chooses, for reasons good, bad, or indifferent, as a result of statements fraudulent or honest, to part with the possession of the goods by giving delivery of them, he loses his seller's lien and no longer has a right to possession of the goods. See *DENNANT v. SKINNER*, § 3376.

3378. Sale by auction. See *DENNANT v. SKINNER*, §§ 3376, 3377; *WILSON v. PIKE*, § 3373; *BUNTING v. TORY*, § 811.

3379. Sale by description. (Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), ss. 13, 15.) It is settled law that "the only sales not by description are sales of specific goods as such. Specific goods may be sold as such when they are sold without any description, express or implied; or where any statement made about them is not essential to their identity; or where, though the goods are described, the description is not relied upon, as where the buyer buys the goods such as they are".

An agent of the defendants showed the plaintiffs' manager samples of overboots in oilskin. Both parties knew that the overboots were anti-gas equipment from Government surplus stock and that there was nothing in such use to suggest that they were waterproof. They decided to call the overboots "waders". The plaintiffs thereupon ordered a quantity of the overboots from the defendants, but on an attempted resale heard from one of their customers that the overboots were not waterproof and complained to the defendants. Eventually, the defendants repudiated liability and the overboots were sold at a lower price. The plaintiffs sought to recover as damages for breach of contract the difference between the contract price and the price at which the overboots were sold. Held, the plaintiffs bought the overboots such as they were and placed no reliance on any description, although a word had to be used to record the transaction. Consequently, this was not a sale by description, but a sale by sample, to which s. 15 and not s. 13 of the Sale of Goods Act, 1893, applied. The overboots did not have any defect which rendered them unmerchantable within the meaning of sub-s. (2) (c) of s. 15, because any reasonable examination of the sample would have revealed that the overboots were not waterproof. Therefore, there had been no breach of contract by the defendants and the plaintiffs' claim for damages failed: *JOSEPH TRAVERS v. LONGEL* (1948), 64 T. L. R. 150, Sellers, J.

3380. — **"with all faults and imperfections".** See *CHAMPANHAC & Co. v. WALLER & Co.*, § 3383.

3381. Sale by sample. In *E. & S. RUBEN v. FAIRE BROS. & Co.* (December 6, 1948), in an action for the price of goods sold Hilbery, J., held, (1) measurements were words of description, (2) it was not compliance with a contract of sale by sample that some process, however simple, was necessary in order to make the goods accord with the sample, (3) that a direction by the buyers to the sellers to send the goods direct to sub-purchasers amounted to a taking by the buyers of constructive delivery of the goods at the sellers' premises so as to deprive the buyers of their right of rejecting the defective goods. [Reported by R. C. Calburn, Esq., Barrister-at-Law.] See also [1949] 1 C. L. 227, 230.

3382. — See also *JOSEPH TRAVERS v. LONGEL*, § 3379.

- 3383.** — “with all faults and imperfections”. The words “with all faults and imperfections” in a sale by sample may be apt to relieve the seller of the requirement that he should be liable for any defects in the sample which were not apparent on a reasonable examination, but they certainly do not exonerate him from the additional liability of delivering goods which themselves correspond with the sample. Thus, where in the sale by sample of a quantity of government surplus balloons “with all faults and imperfections” the buyer found the sample strong and merchantable, it was held that he was entitled to damages when the bulk, which he accepted, turned out to be perished and unmerchantable; and it was further held that in respect a sale by sample and a sample by description were in *pari materia*: *CHAMPANHAC & Co. v. WALLER & Co.*, [1948] 2 All E. R. 724, Slade, J. (applying *Robert A. Munro & Co. v. Meyer*, [1930] 2 K. B. 312).
- 3384. Sale in market overt.** In *BISHOPSGATE MOTOR FINANCE CORPORATION v. TRANSPORT BRAKES, WINSOR GARAGE, THIRD PARTY* (November 30, 1948), the Court of Appeal (Bucknill, Singleton and Denning, L.J.J.) dismissed an appeal from Humphreys, J., [1948] L. J. R. 1000, holding that a car sold privately at Maidstone market after it had failed to reach the reserve price at one of the customary auction sales was sold in market overt. [Reported by R. C. Calburn, Esq., *Barrister-at-Law*.] See also [1948] W. N. 494.
- 3385. Specific performance.** (Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 52.) S. 52 of the Sale of Goods Act, 1893, which deals with specific performance in the case of a contract for the sale of specific goods, is a section for the benefit of a vendor and has no application as a defence to a purchaser. See *ELLIOTT v. PIERSON*, § 3823.
- 3386. ARTICLES.** Caveat emptor and non-dealers: 92 S. J. 59. Market overt (founded on *Bishopsgate Motor Finance Corp. v. Transport Brakes*, § 3384): 92 S. J. 185. A buyer's fraud (founded on *Dennant v. Skinner*, § 3376): 92 S. J. 341.

SAVINGS BANKS

- 3387. Disclosure of war savings.** Under s. 57 of the National Assistance Act, 1948 (11 & 12 Geo. 6, c. 29), regulations may be made authorising or requiring the Postmaster-General and any officers of a savings bank to disclose holdings of Government Stock and National Savings Certificates and deposits in the bank for the purpose of ascertaining the war savings of any person under Sched. II to the Act.
- 3388. National savings stamps.** See § 3282.
- 3389. Trustee Savings Banks.** Trustee Savings Banks (Superannuation Value) Rules, 1948 (No. 758), made under the Trustee Savings Banks Act, 1947 (10 & 11 Geo. 6, c. 6), s. 3 (5); came into operation on April 24, 1948.
- 3390. BOOK PUBLISHED.** Watt, J. Y.—Law of Savings Banks, Government Annuities and Savings Certificates. 3rd ed. 2 vols. [63s.].

SEA AND SEASHORE

- 3391. Coast protection.** Orders made under the Coast Protection Act, 1939 (2 & 3 Geo. 6, c. 39), s. 1 (1): SI 1948, Nos. 49 (Rock Bay, Cornwall); 50 (Harlyn Bay, Cornwall); 2649 (Happisburgh to Yarmouth); 2650 (Walney Island).
- 3392. Fishing.** See FISH AND FISHERIES.
- 3393. Navy.** See ARMED FORCES.
- 3394. Shipping.** See SHIPPING AND MARINE INSURANCE.
- 3395. ARTICLE.** Coast protection: 206 L. T. 351.

SETTLEMENTS AND TRUSTS

- 3396. Capital and income—apportionment of compensation payable under Coal Act, 1938.** See *Re BLANDY-JENKINS, BLANDY-JENKINS v. PUBLIC TRUSTEE*, § 509; *Re ABERPERGWYM ESTATE*, § 508; *Re PARKER'S WILL TRUSTS*, § 510.
- 3397. — apportionment of compensation payable under Compensation (Defence) Act, 1939.** (Compensation (Defence) Act, 1939 (2 & 3 Geo. 6, c. 75), ss. 2 (1) (b), 2 (3).)

The compensation payable by a government department under s. 2 (1) (b) of the Compensation (Defence) Act, 1939, in respect of dilapidations to leasehold premises forming part of a residuary estate, which had been requisitioned by the government department in question, for the purposes of apportionment between life tenant and remainderman ought to be treated as capital and not as income, because under s. 2 (3) compensation under s. 2 (1) (b) does not accrue until the end of the period, and because such compensation is properly described as dilapidations, i.e., compensation for damage to the inheritance which has been done by the occupation by the Crown: *Re THOMPSON, WESTMINSTER BANK v. THOMPSON*, [1949] Ch. 1; [1948] 2 All E. R. 223, Harman, J.

3398. Class gift—qualification of composition of class. See *Re HOOPER'S SETTLEMENT TRUSTS*, § 2683.

3399. Construction—condition subsequent—"Jewish faith". [N.Z.] See *Re MYERS*, § 3879; [S.A.] *Ex p. PEREL*, § 3880.

3400. ——— "Roman Catholic". [N.I.] In *MCCAUSLAND v. YOUNG*, [1948] N. I. 72, Black, J., held that a condition of forfeiture in the event of a person professing the Roman Catholic religion was not void for uncertainty, and that as such profession was a precondition to becoming a Roman Catholic it was unnecessary to decide whether a condition of forfeiture if a person "shall become a Roman Catholic" was void for uncertainty. (See also § 3402.)

3401. ——— ———. [Eire] See *Re McKENNA*, § 3918.

3402. ——— ——— forfeiture—public policy. [N.I.] In *MCCAUSLAND v. YOUNG*, Black J., held that a condition of forfeiture in the event of a person professing the Roman Catholic religion was not void as against public policy because, as the provision did not operate in the case of an infant until the attainment of majority, or at any rate years of discretion, it did not in any way interfere with a parent's duties or rights in regard to the upbringing of his children.

3403. ——— wills. See *WILLS*.

3404. Constructive trust—oral undertaking by purchaser to let vendor occupy cottage rent free. The equitable principle on which a constructive trust is raised against a person who insists on the absolute character of a conveyance to himself for the purpose of defeating a beneficial interest, which, according to the true bargain, was to belong to another, is not confined to cases in which the conveyance itself was fraudulently obtained. The fraud which brings the principle into play arises as soon as the absolute character of the conveyance is set up for the purpose of defeating the beneficial interest, and that is the fraud to cover which the Statute of Frauds or the corresponding provisions of the Law of Property Act, 1925, cannot be called in aid in cases in which no written evidence of the bargain is available. Nor is it necessary that the bargain on which the absolute conveyance is made should include any express stipulation that the grantee is in so many words to hold as trustee. It is enough that the bargain should have included a stipulation under which some sufficiently defined beneficial interest in the property was to be taken by another. There is no distinction in principle between a case in which property is conveyed to a purchaser on terms that the entire beneficial interest in some part of it is to be retained by the vendor and a case in which property is conveyed to a purchaser on terms that a limited beneficial interest in some part of it is to be retained by the vendor.

The defendant sold two cottages to the plaintiff on the oral undertaking by the plaintiff to let her stay in one of the cottages as long as she liked rent free. The price of £250 paid by the plaintiff was at least £150 below the contemporary value of the cottages. The defendant had been living in one of the cottages rent free since the date of sale. The plaintiff gave the defendant notice to quit, with which she refused to comply. He thereupon claimed possession of the cottage occupied by the defendant on the footing that the tenant had been occupying it as a tenant at will at no rent and that her tenancy at will had been duly determined by notice to quit. Held, (1) the defendant sold and conveyed the cottage on the faith of the oral undertaking and would not otherwise have done so, and the undertaking must be assumed to have been regarded as reserving to her a benefit worth at least £150, and, therefore, it created a life interest determinable on her ceasing to occupy the cottage; (2) the fact that there was no fraud

in this case did not mean that it was not fraudulent in the plaintiff to insist on the absolute character of the conveyance for the purpose of defeating the beneficial interest which he had agreed the defendant should retain; and (3) the want of writing was immaterial for the same reason in spite of the provisions of ss. 53 and 54 of the Law of Property Act, 1925: *BANNISTER v. BANNISTER*, [1948] W. N. 261; [1948] 2 All E. R. 133, C. A. (distinguishing *Buck v. Howarth*, [1947] C. L. Y. 1713).

- 3405. Covenant to settle after-acquired property—action by volunteer.** In *CANNON v. HARTLEY* (November 22, 1948), Romer, J., held that a daughter who was a party and direct covenantee under a deed of separation of her parents, could sue her father for damages at common law for breach of his covenant to bring in after-acquired property although she had not given any consideration for that covenant and was, therefore, in equity in the position of a volunteer. It was well established that in such a case a volunteer could not come to a Court of equity asking the Court to exercise relief of a nature peculiar to the jurisdiction of equity, *e.g.*, specific performance, but in the present case the plaintiff asked merely for monetary compensation for a breach of contract. Judgment for plaintiff. [Reported by *C. M. Schmitthoff, Esq., Barrister-at-Law.*] See also [1948] W. N. 471. (See also § 3913.)
- 3406. Execution of trusts—end of emergency.** Execution of Trusts (Emergency Provisions) Act (End of Emergency) Order, 1948 (No. 1165), made under the Execution of Trusts (Emergency Provisions) Act, 1939 (2 & 3 Geo. 6, c. 114), s. 7, prescribes May 31, 1948, as the date on which the emergency which was the occasion of the passing of that Act came to an end.
- 3407. Implied trust—trust of inventions.** See *BRITISH CELANESE v. MONCRIEFF*, § 1255.
- 3408. Income tax.** See *WOLFSON v. I. R. C.*, § 1690; *MORANT SETTLEMENT (TRUSTEES) v. I. R. C.*, § 1682; *GLYN v. I. R. C.*, § 1689; *LORD HOWARD DE WALDEN v. I. R. C.*, § 1688.
- 3409. Power of appointment.** See *POWERS*.
- 3410. Precatory trust—rule in *Shelley v. Shelley*.** See *Re STEELE'S WILL TRUSTS*, § 3912.
- 3411. Protective trusts—uncertainty.** See *Re ISAACS*, § 3914.
- 3412. Public trustee—custodian trustees—hospitals.** See § 3421.
- 3413. — fees.** Public Trustee (Fees) Order, 1948 (S. R. & O., 1947, No. 2720), made under the Public Trustee Act, 1906 (6 Edw. 7, c. 55), s. 9, rescinding and replacing the Public Trustee (Fees) Orders, 1917 (No. 172), 1920 (No. 475), 1922 (Nos. 62 and 1361) and 1925 (No. 1268). Under the new order the fees mentioned in the Schedule thereto are payable in respect of the duties of the Public Trustee, whether he is acting directly or as agent or attorney. The order also contains various rules with respect to additional, special and other fees and the reduction of fees in certain cases. The new order came into operation on January 1, 1948. [3d.]
- 3414. — —.** Certain annuities bequeathed by a will were payable out of specified annuity funds (which had been rateably augmented by funds set aside for annuities that had fallen in). Certain legacies (which under the terms of the will had to be satisfied only after funds sufficient to meet the annuities had been set aside) had also been partially satisfied when the additional funds had fallen in. Furthermore, a certain balance had been kept in hand. On the appointment of the Public Trustee as trustee of the will the question arose how the income fee payable to the Public Trustee ought to be borne and provided for, in particular, whether the said balance kept in hand ought to be applied in augmenting the annuity funds to provide for the income fee. The annuity funds had again become insufficient owing to the increase in the standard rate of income tax. It was held that part of the balance kept in hand should be added by way of augmentation to the annuity funds. Out of the income thereof the annuities should be paid in full and the Public Trustee was to get his proper income fee. In so far as that income was insufficient to meet those two payments, recourse had to be had to the capital of the particular fund. The rest of the balance kept in hand had to be dealt with under the trusts of the will, the annuitants having

no further claim to or interest in it: *Re EVANS' WILL TRUSTS*, PUBLIC TRUSTEE v. GAUSBY, [1948] Ch. 185; [1948] 1 All E. R. 381, Vaisey, J.

3415. Resulting trust—presumption of advancement. See *MOATE v. MOATE*, § 1626.

3416. *Saunders v. Vautier*, rule in. [Can.] In *Re BERWICK*, CANADA TRUST CO. v. BERWICK, [1948] 1 D. L. R. 139, there was a gift to trustees upon trust to pay the income thereof to the testator's son so long as he survived and at the expiration of ten years to pay the corpus to the son, but if the son predeceased the testator or failed to survive for ten years upon trust as the son might by will appoint, and in default of appointment upon such trusts as would have been applicable thereto at the time of the son's death if the gift had formed part of the son's estate and he had died without owing any debts. The Saskatchewan Court of Appeal held that the rule in *Saunders v. Vautier* (1841), 4 Beav. 115, did not apply and that the son could not call for the corpus within the ten-year period.

3417. Settled Land Act powers of tenant for life—prohibition against exercise. See *Re BURDEN*, § 3874.

3418. Trust for sale—beneficial joint tenancy. (Law of Property Act, 1925 (15 Geo. 5, c. 20), s. 36 (1), (2).) Where a legal estate is beneficially limited to or held in trust for any persons as joint tenants the statutory trust for sale imposed by s. 36 (1) of the Law of Property Act, 1925, comes to an end on the death of one of two joint tenants. The words of s. 36 (2) of the Act which provide that "nothing in this Act affects the right of a survivor of joint tenants, who is solely and beneficially interested, to deal with his legal estate as if it were not held on trust for sale" are not enough to alter the *prima facie* rule that there cannot be a trust existing when nobody is interested under it except the trustee, because nobody can enforce it.

The testatrix and her husband were the purchasers of freehold property on which by reason of the provisions of s. 36 (1) of the Law of Property Act, 1925, a statutory trust for sale was imposed on January 1, 1926, whereby the testatrix and her husband became trustees of the proceeds of sale for themselves jointly. The testatrix survived her husband. By her will she disposed of "all" her "personal estate", but not of her real estate. Held, the freehold property was undisposed of, because on the death of the husband the statutory trust for sale came to end: *Re COOK*, *BECK v. GRANT*, [1948] Ch. 212; [1948] L. J. R. 902, Harman, J. (See also § 3910.)

3419. Trust money—mixing of—tracing. See *Re DIPLOCK*, §§ 1377, 1399, 1400, 1401, 1402.

3420. Trustee—appointment of new trustee. (Trustee Act, 1925 (15 Geo. 5, c. 19), s. 36 (1) (b).) The power to appoint new trustees must be exercised either according to the express power of appointing new trustees contained in the trust instrument or, if there is no such power, by the continuing or surviving trustee under s. 36 (1) (b) of the Trustee Act, 1925. The power of nominating a new trustee is a discretionary power, and the beneficiaries cannot arrogate to themselves or control the exercise of such discretionary power. If they are all *sui juris* they might put an end to the trust and establish a new settlement which repeats the former trusts, but such transaction might *inter alia* (a) attract *ad valorem* stamp duty, and (b) lose them the benefit of the exemption from estate duty given by the Finance Act, 1894, s. 5 (2), and the Finance Act, 1914, s. 14 (a): *Re BROCKBANK*, *WARD v. BATES*, [1948] Ch. 206; [1948] L. J. R. 952, Vaisey, J. (applying *Re Gadd* (1883), 23 Ch. D. 134; and *Re Higginbottom*, [1892] 3 Ch 132).

3421. — custodian trustee—hospitals. Public Trustee (Custodian Trustee) Rules, 1948 (No. 2188), made under the Public Trustee Act, 1906 (6 Edw. 7, c. 55); came into operation on October 10, 1948. These Rules amend Rule 30 of the Public Trustee Rules, 1912 (No. 348) (as subsequently amended) by inserting a new paragraph (2A) enabling Regional Hospital Boards, Boards of Governors of teaching hospitals and Hospital Management Committees to act as custodian trustees for the purpose of any trust relating to hospital services or to the Board's or Committee's functions with respect to research.

3422. — incapacity—practice in Chancery Division. See § 2886.

3423. — **investment — power to re-invest in realty.** (Law of Property Act, 1925 (15 & 16 Geo. 5, c. 20), s. 28 (1).) On the true construction of s. 28 (1) of the Law of Property Act, 1925, the proper meaning to extract from the words of the section is that in relation to and in respect of land held on trust for sale (but not otherwise) the trustees may (1) exercise all or any of what can be succinctly called the Settled Land Act powers, and (2) apply proceeds of sale of land for what may also succinctly be called Settled Land Act purposes, and the section is careful to say that, if there is any capital money in hand as the result of any such dealings which is not applied to a Settled Land Act purpose, then it has to be dealt with under the provisions of the trust itself. The section also contemplates that land may be acquired under its provisions, and such acquisition might be by way of exchange or by purchase, but the acquisition of land as an investment is outside the authority which the section confers, or, in other words, where the trustees are trustees with money to invest they are no longer trustees with land to sell and are outside the section altogether so far as that money is concerned. If land is required for the preservation or protection of the unsold land or for its improvement, the case is wholly different, e.g., an easement or other appurtenance over adjoining land, or a piece of ground necessary to preserve the amenities of the unsold land or to round off an estate, could be acquired either by purchase or exchange within the terms of s. 28. Another example would be the purchase of the reversion in a lease: *Re WELLSTED'S WILL TRUSTS, WELLSTED v. HANSON*, [1948] Ch. 610; [1948] L. J. R. 1611, *Vaisey, J.* (applying *Re Wakeman*, [1945] Ch. 177, *Re Kempthorne*, [1930] 1 Ch. 268, and *Re Stimpson's Trusts*, [1931] 2 Ch. 77).

3424. — **restriction on trustees' powers.** [Scot.] In *THOMSON'S TRUSTEES, PETITIONERS*, 1948 S. L. T. 115, the Court of Session held that, where a testator had directed his trustees not to sell any of certain investments until the same should "be capable of realising such prices as shall show a fair profit in the opinion of my trustees upon the respective prices at which I purchased them", but subject to that direction gave his trustees absolute discretion to deal with the estate, the trustees were not bound to continue to hold the investments after they were convinced that to do so would imperil the safety of the trust estate.

3425. — **profit out of trust property.** It is settled law that a trustee who either uses a power vested in him as such to obtain a benefit, or who procures his co-trustees to give him, or those associated with him, remunerative employment, must account for the benefit obtained. Further, a trustee who has the power, by the use of trust votes, to control his own appointment to a remunerative position, and refrains from using them with the result that he is elected to the position of profit, would also be accountable. On the other hand, it is not the law that every man who becomes a trustee, holding, as such, shares in a limited company, is made *ipso facto* accountable for remuneration received from that company independently of any use by him of the trust holding, whether by voting or refraining from so doing. For instance, A, who holds the majority of the shares in a limited company, becomes the trustee of the estate of B, a holder of a minority interest. This cannot disentitle A to use his own shares to procure his appointment as an officer of the company, nor compel him to disgorge the remuneration he so receives, for he cannot be disentitled to the use of his own voting powers, nor could the use of the trust votes in a contrary sense prevent the majority prevailing: *Re GEE, WOOD v. STAPLES*, [1948] Ch. 284; [1948] L. J. R. 1400, *Norman, J.* (applying and criticising *Re Dover Coalfield Extension*, [1908] 1 Ch. 65; applying *Robinson v. Pett* (1734), 3 P. Wms. 249; *Re Francis* (1905), 92 L. T. 77; *Bray v. Ford*, [1896] A. C. 44; and *Re Lewis* (1910), 103 L. T. 495; distinguishing *Williams v. Barton*, [1927] 2 Ch. 9; and *Re Macadam*, [1946] Ch. 73). (See also § 3428.)

3426. — **effect of renewal of lease.** It is an elementary rule of law that a trustee cannot be allowed to derive a personal benefit from his position of trustee and the opportunities that that position gives him. The rule applies to the case of leaseholds where the trustee, by reason of his advantageous position as trustee, obtains a renewal of the lease. Whether he does that because the lease itself contains a right to call for a renewal or merely because as sitting tenant he is in an advantageous position to obtain a renewal, the result is the same,

and it does not depend on the language used by the testator, although, of course, a testator can say he wishes the rule not to apply, in which case it will not apply. Where the rule applies, the same beneficial trusts as applied to the original entity of the original lease apply to the extension of that entity.

By his will the testator gave his residuary estate to his son and provided a comprehensive trust to carry on the business of his "leasehold farm watercress beds and mills . . . for the residue unexpired of the term of twenty-one years" and to use for that purpose the live and dead stock and so forth. The trust continued "and to divide the net profits of such business . . . between my said son . . . and my [four] daughters . . . share and share alike during their joint lives and upon the death of any of my said daughters to divide such net profits between my said son and the survivor or survivors of my said daughter's share and share alike and upon the death of the survivor of my said four daughters I give and bequeath the said leasehold farm watercress beds and mill for all the residue then unexpired of the said term farming stock implements and all other premises to my said son . . . absolutely". On the expiration of the lease in 1923 a new lease for twenty-one years was granted to the son (which was later renewed for a further twenty-one years). The question arose whether after the expiration of the original lease in 1923 the daughters continued to have any interest in the profits of the business. Held, the effect of the extension of the lease enured for the benefit of those beneficiaries whom the testator intended to benefit and for the time during which he intended to benefit them under the original trust, and, consequently, the daughters (who were all alive in 1923) continued to retain their interest in the profits of the business: *Re KNOWLES' WILL TRUSTS*, *NELSON v. KNOWLES*, [1948] 1 All E. R. 866, C. A.

3427. — remuneration. (Victorian Trustee Companies Act, 1928 (19 Geo. 5, No. 3793), s. 17.) In relation to a business the word "income" means substantially the balance of profits and gains which results from carrying on that business.

The fact that the words "received by the trustee" follow can neither add to nor detract from the meaning of the word "income". Thus, in a case where a trustee company, who had power to carry on the testator's business, were entitled to charge commission on the income of the business, it was held that the remuneration of the trustee company should be calculated on the income of the business after the costs and expenses of working and management had been deducted: *UNION TRUSTEE CO. OF AUSTRALIA v. BARTLAM*, [1948] A. C. 495; 92 S. J. 574, P. C.

3428. — — charging clause, interpretation of. The usual charging clause in a will which authorises "any trustee . . . being a . . . person engaged in . . . business [to] be . . . employed [to] transact any business" . . . and . . . [to] be entitled to . . . be paid all . . . charges for any business . . . done by him . . . in connection with the trust" only applies to remuneration paid out of the trust estate and cannot apply to a payment by a company to the trustee in question which, it is suggested, ought to be added to the trust estate by reason of the position of the recipient as a trustee whose interest conflicts with his duty. See *Re GEE, WOOD v. STAPLES*, § 3425 (applying *Re Chapple* (1884), 27 Ch. D. 584, and *Clarkson v. Robinson*, [1900] 2 Ch. 722).

3429. — — trustees of charitable trust. See *Re COXEN*, § 409.

3430. Variation of settlements on divorce. See *TOMKINS v. TOMKINS*, § 1021; *GUNNER v. GUNNER*, § 1022; *BOWN v. BOWN*, § 1023.

3431. Wills. See *WILLS*.

3432. ARTICLES. The case against the rule in *Howe v. Dartmouth*: 92 S. J. 32. Conditions as to residence (founded on *Re Burden*, § 3874): 92 S. J. 37. The doctrine of *cy-près*: *Solicitor*, January, 1948, 3. Variation of marriage settlements after divorce or nullity, by D. Tolstoy: 12 *Conveyancer* (N.S.) 112. The position of a beneficiary within the marriage consideration under an incompletely constituted trust, by J. G. Fleming: 12 *Conveyancer* (N.S.) 132. Providing a home for the widow: 92 S. J. 79. Employment of agents by trustees: 92 S. J. 81, 92. Provisions inducing a tenant for life not to exercise his powers (founded on *Re Burden*, § 3874): 205 L. T. J. 74, 173. Appointment of new trustees—rights of beneficiaries (founded on *Re Brockbank*, § 3420): 205 L. T. J. 102. Trusts for conversion: *Accountancy*, March, 1948, p. 57. Marriage articles: 98 L. J. 157. Some considerations on trustee investments: 92 S. J. 159. Effect of

divorce on settlements on a future spouse (founded on *Re Slaughter*, [1945] Ch. 355): 92 S. J. 214. Trustees and unauthorised investments: 92 S. J. 237. Settlements and compensation under the Coal Act (founded on *Re Duke of Leeds' Will Trusts*, [1947] C. L. Y. 456): 205 L. T. J. 258. The special contribution and trust income: 92 S. J. 267. Infant settlements, by Desmond Miller: 12 *Conveyancer* (n.s.) 181. Compensation moneys under the Coal Acts (founded on *Leeds (Duke) Will Trusts*, [1947] C. L. Y. 456): 92 S. J. 319. Imperfect gifts (founded on *Re Fry*, [1946] Ch. 312): 92 S. J. 332. The Finance Act, 1939, s. 30: 92 S. J. 346. The taxation of settlement income: *Accountant*, June 12, 1948, p. 458. Tax free annuities: 92 S. J. 358. Trustees and directors' fees (founded on *Re Macadam*, [1946] Ch. 73, and *Re Gee*, § 3425): 92 S. J. 368. Powers of trustees for sale to invest in land (founded on *Re Wellsted*, § 3423): 206 L. T. 21; 98 L. J. 597. Law of Property Act, 1925, s. 28 (founded on *Re Wakeman*, [1945] Ch. 177, and *Re Wellsted*, § 3423): 92 S. J. 403. Powers of revocation in settlements: 98 L. J. 411. Consents to exercise of trustees' powers: 92 S. J. 416. The Judicial Trustees Act, 1896: 98 L. J. 481. Compensation for damage to requisitioned settled land: 206 L. T. 113. Terminable interests as trust assets (founded on *Re Fisher*, [1943] Ch. 377, *Re Payne* (1943), 87 S. J. 406 and *Re Hey*, [1945] Ch. 294): 92 S. J. 504. Trustees and distribution of capital profits (founded on *Re Doughty*, [1947] C. L. Y. 2820): 92 S. J. 519. Statutory power of advancement—necessary consents: 206 L. T. 182. Appointment of new trustees of a will—operation when land settled: 206 L. T. 243. Trustees and company schemes: 92 S. J. 623. Presumption that woman is past the age of child-bearing: 92 S. J. 671. Settlements and wills under the Planning Acts, by Harold Potter: *Journal of Planning Law*, November, p. 547; *ibid.*, December, p. 615. Conveyancers and the Exchange Control Act, 1947: 206 L. T. 361. Gratuitous payments by trustees: 92 S. J. 711. Repairs to trust property: 92 S. J. 714. Appointments of new trustees: 98 L. J. 709.

- 3433-4.** BOOKS PUBLISHED. Lewin, T.—Trusts. Fifth Cumulative Supplement to December, 1947 [6s.]. Potter, H.—Note on the Settlement of the Legal Estate [2s. 6d.]. Rivington, H. G.—Epitome of the 23rd edition of Snell's Equity [15s.].

SHERIFFS

- 3435. Execution.** See PRACTICE.

- 3436.** BOOK PUBLISHED. Templeman, G.—Sheriffs of Warwickshire in the 13th Century (Dugdale Society Occasional Papers, No. 7) [5s.].

SHIPPING AND MARINE INSURANCE

- 3437. Admiralty jurisdiction—amendment of writ.** In *THE FOREST* (1948), 81 Ll. L. Rep. 148, Willmer, J., held that where an objection is taken to the jurisdiction under s. 22 of the Judicature Act, 1925, on the ground that at the time of the institution of the proceedings the shipowner was domiciled in England, leave cannot be given to amend the writ, (1) because the writ is a nullity and incapable of amendment, (2) the effect of amending the writ by striking out the words *in rem* and adding the owners as defendants would be to change the whole character of the action, and that the Court has not power to do, (3) the effect of granting leave to make the amendment would be to enable the Court to hear an action which at the time when leave to amend was sought had become statute barred under the Carriage of Goods by Sea Act, 1924.

- 3438. — practice—assessors.** "It is for the Court to find negligence and not for its assessors, whose function is limited to giving expert advice": *per* Scott, L.J., in *TOWERFIELD (OWNERS) v. WORKINGTON HARBOUR AND DOCK BOARD*, § 3466.

- 3439. Carriage by sea—charterparty—computation of freight.** A charterparty provided: "2. That the . . . steamer . . . shall . . . receive . . . a full and complete cargo of wheat and/or maize and/or rye in bags and/or bulk. 5. 81s. per ton for wheat and/or maize and/or rye. . . . 6. Charterer has the option of shipping other lawful merchandise, . . . in which case freight to be paid on steamer's deadweight capacity for wheat in bags on this voyage at the rate above agreed on for heavy grain, but steamer not to earn more freight than she would if loaded with a full cargo of wheat in bags. . . ." The charterers had loaded

the ship partly with specified and partly with optional cargo. The total cargo loaded filled the carrying space of the ship, but its total weight was 579 tons short of the ship's deadweight capacity for wheat in bags. The charterers, who—contrary to the shipowner—assessed the freight on the several sorts of cargo delivered and not on a notional cargo of wheat in bags, agreed on additional liability in respect of the 579 tons which were short of the ship's deadweight capacity for wheat in bags, but claimed—also contrary to the shipowner—to deduct from the freight the discharging expenses which the shipowner had been saved by the cargo not, in fact, having been shipped, and, therefore, not handled in discharge. Held, both of the charterers' contentions were correct: *HAIN STEAMSHIP CO. v. MINISTER OF FOOD*, [1948] W. N. 326; [1948] 2 All E. R. 523, Sellers, J. (applying *A. & C. Mazarakis v. Bunge y Bord* (1926), 26 Ll. L. Rep. 169; distinguishing *Red "R" Steamship Co. v. Allatini* (1910), 103 L. T. 86). (See also § 3444.)

3440. — — — **default in payment of hire.** In *Bank of New Zealand v. Simpson*, [1900] A. C. 182, Lord Davey stated the following rule about the admissibility of extrinsic evidence in construing a contract: "Extrinsic evidence is always admissible, not to contradict or vary the contract, but to apply it to the facts which the parties had in their mind and were negotiating about".

A charterparty provided: "Payment of the . . . hire is to be made as follows: in cash monthly in advance in London. In default of such payment the owners shall have the facility of withdrawing the . . . vessel from the service of the charterers . . .". It was found as a fact by the arbitrator that: "The accepted method between [the owners and the charterers] during the currency of the charter with regard to the payment of hire had been for the charterers to make the payment of hire in London at the office of H. Bank, by sending a cheque in favour of H. Bank . . . to be placed by them to the credit of the owners . . ., and the payment of hire had been regularly and properly paid in this way during the currency of the charter and had always been paid on its due date [i.e., the 27th of each month] until [the] payment of the hire due on September 27". This payment of hire had been made in the usual manner by sending a cheque by post on September 25, but owing to delay in post caused by war conditions in Venezuela the remittance was not received by the H. Bank until October 3. In the meantime, the owners had cancelled the charterparty and had withdrawn the vessel. On a case stated in respect of the dispute which thereupon arose between the owners and the charterers it was held that (1) "default of payment" in this charterparty meant a failure without excuse to pay hire on the due date; the duty to pay was unqualified so far as the express terms of the charterparty went, and default in payment on the due date was not excused by accident or inadvertence; moreover, if payment on the due date was not excused by special circumstances, payment a day or two late was not timeous enough; but (2) the method of performance of the contracts which could be proved by extrinsic evidence was varied by an arrangement for payment to H. Bank by cheque posted at such time as would in the ordinary course of post reach London on the 27th of the month; although the owners could at any time have insisted on a strict performance of the contract after due notice, they were not entitled suddenly to vary the accepted method of performance without first notifying the charterers in time to enable them to perform the contract in the manner demanded: *A/S TANKEXPRESS v. COMPAGNIE FINANCIERE BELGE DES PETROLES S.A.*, [1949] L. J. R. 170; [1948] 2 All E. R. 939, H. L. (affirming decision of Court of Appeal, [1947] C. L. Y. 2368; applying *Bank of New Zealand v. Simpson*, *supra*, and *Panoutos v. Raymond Hadley*, [1917] 2 K. B. 473; overruling dictum of Bigham, J., in *Nova Scotia Steel Co. v. Sutherland Steam Shipping Co.* (1899), 5 Com. Cas. 106). (See also § 3441.)

3441. — — — **ship not at charterer's disposal.** "I have not been persuaded that a charterer who has agreed to pay a month's hire in advance is absolved from making the payment if, although the owners have not sought to repudiate the contract, the ship is not, in fact, at the disposal of the charterers for some days immediately before and after the first day of the month of the hire. It would surely be more reasonable to argue that, if the hire is not paid 'in advance', the owners are absolved from giving those services in respect of which hire has to be paid": *per* Lord Morton of Henryton in *A/S TANKEXPRESS v. COMPAGNIE FINANCIERE BELGE DES PETROLES S.A.*, § 3440.

- 3442.** — — — **delay due to unseaworthiness.** In *MONARCH STEAMSHIP Co. v. KARLSHAMNS OLJEFABRIKER (A/B)* (December 9, 1948), the House of Lords (Lords Porter, Wright, Uthwatt, du Parc, and Morton of Henryton), held a shipowner liable for the consequences of delay in reaching the port of discharge caused by the initial unseaworthiness of the vessel. The consequences were a diversion on account of war and a costly transshipment. [*Reported by R. C. Calburn, Esq., Barrister-at-Law.*] See also [1948] W. N. 493.
- 3443.** — — — **demurrage.** In assessing the time taken in loading for purposes of demurrage, no apportionment can take place between time taken in stowing and time taken in bringing the goods to the hold, because stowing is part of the loading. Consequently, if by the terms of a charterparty the lay days expire at the moment when wheat in bulk has been put on board ship to the maximum amount permitted by the ship's regulations, any time occupied thereafter either in the process of allowing grain to fall slowly into the 'tween decks of a vessel to be bagged as the port regulations demand, or the time actually occupied in stowing the cargo after the elevators have stopped delivering, must count as loading time in respect of which demurrage can be recovered, provided—if the terms of the charterparty so provide—the delay has occurred “by default of the charterer or his agents”. In such a case it makes no difference whether the vessel is already on demurrage at the time when the final quantity of wheat is put on board or not: *ARGONAUT NAVIGATION Co. v. MINISTRY OF FOOD*, [1949] 1 K. B. 14; [1948] 1 All E. R. 871, Sellers, J. (applying *Harris v. Best, Riley & Co.* (1892), 68 L. T. 76; and *C. Wilh. Svenssons Travaruaktiebolag v. Cliffe Steamship Co.*, [1932] 1 K. B. 490). (See also [1949] 1 C. L. 236.)
- 3444.** — — — — —. A charterparty provided: “13. The steamer shall be loaded at the rate of 500 tons per running day . . . otherwise demurrage shall be paid by the charterers. 25. At destination cargo to be received at the average rate of not less than 1,000 tons per weather working day . . . for bulk cargo. and at the average rate of not less than 750 tons per weather working day . . . for bagged cargo.” The charterer sought to apply to these provisions other provisions of the charterparty which provided for the calculation and payment of freight according to the deadweight capacity of the vessel for wheat in bags. Held, demurrage had to be calculated on the actual quantities loaded and discharged. See *HAIN STEAMSHIP Co. v. MINISTER OF FOOD*, § 3439.
- 3445.** — — — **exceptions.** In *PINCH & SIMPSON v. HARRISON, WHITFIELD & Co.* (1948), 81 Ll. L. Rep. 268, Denning, J., held that the position as to exceptions which affect the shipowner is different from that in regard to those which are inserted in favour of the charterers, because the latter are co-extensive with the charterers' obligations and apply in respect of the time when the charterers were under their duties (*Monroe Bros. v. Ryan*, [1935] 2 K. B. 28, distinguished).
- 3446.** — — — **frustration.** In *A/S E. B. Aaby's REVERI v. LEP TRANSPORT* (July 16, 1948), Sellers, J., rejected a plea of frustration of contract by destruction of the intended cargo by fire, on the grounds that (1) the contract was not for shipping specific cargo, (2) not all the cargo had been destroyed, and (3) there was a possibility of replacing the cargo destroyed. [*Reported by R. C. Calburn, Esq., Barrister-at-Law.*] See also (1948), 98 L. J. 469.
- 3447.** — — — **suspension of hire clause — “deficiency of men”.** The expression “deficiency of men” in a suspension of hire clause in a charterparty was held to apply to a case where a complement of officers and crew for working the ship was not available, e.g., through injury or sickness, irrespective of whether the incapacitated members of the crew were in the ship or in hospital on shore, but was held not to include a case of refusal to work where full capacity to work existed, e.g., where the officers and crew were unwilling to take the ship to sea except in convoy: *ROYAL GREEK GOVERNMENT v. MINISTER OF TRANSPORT; THE ILISSOS*, [1949] 1 K. B. 7; [1948] 1 All E. R. 904, Sellers, J. (See also § 3448; [1949] 1 C. L. 235.)
- 3448.** — — — — — **“or other accident”.** The expression “or other accident” in a suspension of hire clause in a charterparty was held not to apply to a case of wilful refusal by the officers and crew to sail except in convoy. See *ROYAL GREEK GOVERNMENT v. MINISTER OF TRANSPORT; THE ILISSOS*, § 3447 (distinguishing *The Torbryan*, [1903] P. 194).

- 3449. — negligence—admissibility of proofs of ship's master and officers.** See *BAIN v. MOSS HUTCHISON LINE*, § 1311.
- 3450. Collision—blame.** In *THE TAIWAN* (1948), 81 Ll. L. Rep. 168, the Court of Appeal upheld the judgment of Willmer, J., [1947] C. L. Y. 2874, that, in determining the apportionment of blame, the quality of the acts complained of must be considered without regard to their sequence in time.
- 3451. — — costs.** In *THE PENCARROW* (1948), 81 Ll. L. Rep. 225, Pilcher, J., held, in a collision case where blame had been apportioned, that the costs should follow the proportions of blame.
- 3452. — chain of causation.** In *THE CARRICK COAST* (1948), 81 Ll. L. Rep. 447, Willmer, J., held that the defence of inevitable accident was not established because it had not been shown that there was an unbroken chain of causation between the outbreak of fire on the wharf which the defendant ship was alongside and the collision which followed when she shoved off from that wharf, the chain of causation having been broken by the unreasonable action of the officer in charge of the defendant ship.
- 3453. — crossing rule.** In *THE PORTSLADE* (1948), 81 Ll. L. Rep. 395, Pilcher, J., held that under the Thames crossing rule the plaintiff ship was liable for the collision. (*The Bors*, [1926] P. 5, applied.)
- 3454. — damages—registrar's report.** When the Court is reviewing a report of the registrar on the question of damages it will not interfere with the report on the question of *quantum* unless it is satisfied that there is something seriously wrong, or unless it is satisfied that there has been a grave under-estimate or a grave over-estimate in the amount awarded: *THE SWYNFLEET* (1947), 81 Ll. L. Rep. 116, Willmer, J. (*The Athelvictor* (1947), 80 Ll. L. Rep. 33, followed; *The Aizkari Mendi*, [1938] P. 263, considered). (See also § 813.)
- 3455. — escort vessel's duty towards ship in convoy.** A naval officer in charge of an escort with a radar watch was held to owe not only certain public duties to the Crown, but to owe also certain duties towards the owners of ships in the convoy, and was held liable in damages for negligence, because by reason of his failure to advise a ship in the convoy to alter her course that ship sustained damage in a collision with another vessel: *THE SOBIESKI*, [1947] W. N. 314; [1948] 1 All E. R. 78; Pilcher, J.
- 3456. — instructions to ship in convoy.** In *THE SUTHERLAND* (1948), 81 Ll. L. Rep. 472, Willmer, J., held that when a vessel is found in a collision following navigation which, *prima facie* at any rate, would amount to a breach of the collision regulations, if that vessel desires to allege by way of defence that she was bound by convoy regulations to behave in that way, it must be for her to prove affirmatively that the convoy instructions on which she relies did bind her, and bind her at the particular time, to do what she in fact did.
- 3457. — master as commodore of convoy.** The owners of a ship in a convoy cannot be made responsible for any damage occasioned by a negligent order given by the master of their ship who is also acting as commodore of the convoy whilst he is acting within the scope of his authority as commodore of the convoy and in his capacity as such commodore. However, the owners of the ship will be responsible for any such damage occasioned by a negligent order when the commodore in question begins to act in his capacity as master of the ship.
- The master of a ship, who was also commodore of the ships in the convoy, gave an order to alter the course of the convoy twenty degrees to starboard. He failed to effect the alteration in clear weather, did not use wireless, and sounded the prescribed signal three times followed by the sounding of the executive signal before receiving any reply from the column leaders in the convoy. He then gave an order to carry out the alteration of course in two stages of ten degrees. Shortly afterwards a collision occurred between his ship and another ship in the convoy. Held, the owners of the ship were liable for the negligence of the master of their ship from the moment when he was giving the order to carry out the alteration of course in two stages of ten degrees, because from that moment onwards he was no longer acting in his capacity as commodore of the convoy but as master of their ship: *THE GLAUCUS AND THE CITY OF FLORENCE*, [1948] P. 95, Pilcher, J.

- 3458. — port side.** [Scot.] In *THE GEORGE H. HASTIE* (1948), 82 Ll. L. Rep. 82, the Court of Session, Outer House, held that the phrase "off the port side" does not necessarily mean "off the port beam" but may mean also off the port bow or off the port quarter.
- 3459. — ship's log—admissibility in evidence.** [Scot.] See *PALESTINE TRANSPORT AND SHIPPING CO. v. GREENOCK DOCKYARD CO.*, § 1314.
- 3460. Fire appliances.** Merchant Shipping (Fire Appliances) Rules, 1948 (No. 1009), made under the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 427, and the Merchant Shipping (Safety and Load Line Conventions) Act, 1932 (22 & 23 Geo. 5, c. 9), ss. 4, 5. These rules, which came into operation on May 20, 1948, consolidate with amendments the Merchant Shipping (Fire Appliances) Rules, 1932 (No. 1055), 1940 (No. 2170) and 1942 (No. 102). The principal changes relate to the classification of ships for the purposes of these rules, the Merchant Shipping (Life-Saving Appliances) Rules, 1948 (see § 3473), and the Merchant Shipping (Musters) Rules, 1948 (see § 3486), and to the application of the rules to fishing vessels (Class X). [6d.]
- Merchant Shipping (Fire Appliances) (No. 2) Rules, 1948 (No. 1010), which also came into operation on May 20, 1948, provide for the carriage of fire appliances on board ships which carry passengers by virtue only of a certificate issued under the Defence (General) Regulations, reg. 47BB. [2d.]
- 3461. — failure to provide.** See *REED v. DEAN*, § 625.
- 3462. Fishing boats—certificated officers.** Merchant Shipping (Fishing Boats) Order, 1948 (No. 366), made under the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 369. The effect of this Order is that as from March 1, 1948, trawlers of between twenty-five and fifty tons operating within certain limits need carry only one certificated officer instead of two and that as from July 1, 1949, the requirements of the Act as to carrying certificated officers will apply to other fishing boats, as specified therein, of between twenty-five and fifty tons which are not at present required to carry certificated officers.
- 3463. — duty to explain agreement to seamen.** Merchant Shipping (Fishing Boats Agreements) Order, 1948 (No. 1853), made under the Merchant Shipping Act, 1894, s. 369; exempts trawlers of twenty-five tons and upwards registered in the United Kingdom from August 19, 1948, from so much of ss. 401, 402 of the Act as require the skipper or owner to read over and explain the fishing boat's agreement to each seaman and attest his signature to it.
- 3464. Harbours and docks—dock workers.** See *BRIDGES v. PORT OF LONDON AUTHORITY*, § 1244.
- 3465. — harbour-master—powers of.** [Scot.] (Harbours, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), s. 52.) In *MACDONALD v. MACKENZIE*, 1948, S. L. T. 14, the High Court of Justiciary held that a notice by a harbour-master prohibiting the use of fishing vessels for setting nets in Stornoway Harbour was *ultra vires* his powers to regulate vessels in the harbour (applying *Hughes & Co. v. Fowey Harbour Commissioners*, [1927] P. 1.)
- 3466. — negligence—pilot.** (Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 15.) The word "answerable" in s. 15 (1) of the Pilotage Act, 1913, which provides that "... the owner ... of a vessel navigating under circumstances in which pilotage is compulsory shall be answerable for any loss or damage caused by the vessel or by any fault of the navigation of the vessel in the same manner as he would be if pilotage were not compulsory", must not be stretched beyond its natural meaning. There is no justification for extending the section to actions of contract. The section should be read as strictly limited to actions in tort where negligence of the compulsory pilot is alleged, whether the ship be defendant or plaintiff.
- The owners of a steamship claimed damages from a harbour board in respect of damage caused to the steamship when it stranded in the channel leading to the harbour board's dock. The harbour board counter-claimed for damages against the owners alleging obstruction caused by the steamship's stranding. The harbour board had caused the maritime public to be notified of the facilities afforded to shipping by their harbour (on payment of dues and charges), by getting it put on the appropriate Admiralty chart and into a book containing the usual up-to-date information for mariners. Pilotage in the channel leading to the harbour

board's dock was compulsory. At the time of the stranding the channel, which was usually about 250 feet, was only about 155 feet wide, because the harbour board had failed to carry out any dredging operations for ten days and had taken no soundings for four weeks. The harbour master had observed the state of the bank on which the steamship stranded, and had noticed that it had reduced the channel, but nevertheless the harbour board never informed the pilot of this fact. It was contended on behalf of the harbour board that under s. 15 of the Pilotage Act, 1913, the owners of the steamship were answerable for the pilot's navigation for all purposes, whether of asserting or resisting a claim. Held, (1) the advertisement by the harbour board in the form of the entry in the Admiralty chart and in the book constituted an offer of a contract, to be accepted by any shipowner by conduct, namely, by his sending his ship through the channel into the dock; (2) in order to give business efficacy to the harbour board's offer it was necessary to imply a condition of due warning to the effect that the harbour board promised to keep their knowledge of the channel up-to-date and to give warning of any obstruction to the shipowners and to their own pilots; (3) even if the harbour board had informed the pilot, the pilot was not the shipowners' agent for the purpose of receiving information about obstructions, and in contract such information had to be brought personally to the mind of the shipowners; (4) it was not open to the harbour board to charge the pilot with negligence for failing to avoid a hidden danger, of the presence of which they could, and should, have warned him, or, in other words, the harbour board could not avail themselves of their own wrong, and, consequently, the harbour board's defence of contributory negligence (the stranding having occurred in 1941) also failed; (5) in so far as the stranding was caused by the harbour's own failure of duty, the fact that s. 15 of the Pilotage Act, 1913, required the Court to regard the relationship between the shipowners and the pilot as that of master and servant, could not affect the position. Consequently, the shipowners' claim succeeded, and the harbour board's counter-claim failed: *TOWERFIELD (OWNERS) v. WORKINGTON HARBOUR AND DOCK BOARD*, [1949] P. 10; [1948] L. J. R. 1645, C. A. (Bucknill, L.J., dissenting; reversing decision of Willmer, J., [1947] C. L. Y. 2193; applying *The Moorcock* (1889), 14 P. D. 64). (See also §§ 2510, 3438, 3549.)

3467. — — **stevedore falling through uncovered hatch.** See *GRANT v. SUN SHIPPING Co.*, § 2482.

3468. — — **stevedore injured by falling beam.** See *JERRED v. T. RODDAM, DENT & SON*, § 2483.

3469. — — **transfer to British Transport Commission.** See § 399.

3470. **International law—freedom of the seas.** In *NAIM MOLVAN, OWNER OF MOTOR VESSEL ASYA v. ATT.-GEN. FOR PALESTINE*, [1948] A. C. 351, the Judicial Committee of the Privy Council held: (i) that the Immigration Ordinance, No. 5 of 1941 (as amended by Defence Regulations, 1945) was not repugnant to or inconsistent with the Palestine Mandate and was not *ultra vires*; (ii) that it has not been established that such a general agreement exists as to the limits within which a State may, for the purpose of enforcing its revenue or police or sanitary laws, claim to exercise jurisdiction on the sea outside its territorial waters as to satisfy the test of an established rule of international law, which was laid down by Lord Alverstone, C.J., in *West Rand Central Gold Mining Co. v. R.*, [1905] 2 K. B. 391, at 407; (iii) that even if such a principle had been established it would not necessarily apply to a Mandatory Power; (iv) that whatever the freedom of the open sea may mean it is a freedom of ships which fly and are entitled to fly the flag of a State which is within the comity of nations. (*West Rand Gold Mining Co. v. R.*, [1905] 2 K. B. 391, applied.)

3471. — — **International Conference on Safety of Life at Sea.** Final Act of Conference with Annexes including the International Convention for the Safety of Life at Sea (the Convention has not been ratified by His Majesty's Government): Cmd. 7492.

3472. — — **United Nations Maritime Consultative Organisation.** Final Act of Conference with Annexes and Convention establishing the Organisation (with Appendices), Geneva, March 6, 1948: Cmd. 7412.

- 3473. Life-saving appliances.** Merchant Shipping (Life-Saving Appliances) Rules, 1948 (No. 1007), made under the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 427, and the Merchant Shipping (Safety and Load Line Conventions) Act, 1932 (22 & 23 Geo. 5, c. 9), ss. 4, 5. These rules consolidate with amendments the Merchant Shipping (Life-Saving Appliances) Rules, 1938 (No. 1375), the Merchant Shipping (Life-Saving Appliances) Emergency Rules, 1942 (No. 1519), and the Merchant Shipping (Life-Saving Appliances) Emergency (No. 2) Rules, 1942 (No. 1887), which are revoked. The principal amendments relate to (1) the classification of ships for the purposes of these rules and the Fire Appliances Rules and Musters Rules; (2) the fitting of sea-going ships of 150 feet or more in length with mechanical davits and wire rope falls; (3) the carriage of motor boats by foreign-going ships; and (4) the carriage of a portable radio equipment by foreign-going ships for use in lifeboats. The new rules came into operation on May 20, 1948. [8*d.*]
- Merchant Shipping (Life-Saving Appliances) (No. 2) Rules, 1948 (No. 1008), which also came into operation on May 20, 1948, replace the Merchant Shipping (Life-Saving Appliances) Emergency Rules, 1942, in so far as those rules provided for the carriage of life-saving appliances on board ships carrying passengers by virtue only of a certificate issued under the Defence (General) Regulations, 1939, reg. 47BB. (See also § 3486.)
- 3474. Light dues—Bahamas.** Colonial Light Dues (Bahamas) Order, 1948 (No. 109), made under the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 670. This order repeals the light dues in respect of two lighthouses in the Bahamas and increases the light dues payable in respect of the remaining lighthouses and a buoy in the Bahamas.
- 3475. — increase.** Merchant Shipping (Light Dues) Order, 1948 (No. 1340), made under the Merchant Shipping (Mercantile Marine Fund) Act, 1898 (61 & 62 Vict. c. 44), s. 5; came into operation on June 25, 1948; revokes the Merchant Shipping (Light Dues) Order, 1947 (No. 1516) (which increased dues by 200 per cent.), and increases those dues by 300 per cent.
- 3476. Load line convention—Dominica.** Order in Council, 1948, No. 337, made under the Merchant Shipping (Safety and Load Line Conventions) Act, 1932 (22 & 23 Geo. 5, c. 9), s. 65, declaring that the Government of the Dominican Republic has acceded to the Load Line Convention.
- 3477. — Honduras.** Order in Council dated October 8, 1948 (No. 2254), made under the Merchant Shipping (Safety and Load Line Conventions) Act, 1932, s. 65, declaring that the Republic of Honduras has acceded to the Load Line Convention.
- 3478. — increase of fees.** Load Line (Amendment) Rules, 1948 (No. 516), made under the Merchant Shipping (Safety and Load Line Conventions) Act, 1932, ss. 42, 47, 48, 68, amend the Load Line Rules, 1941 (No. 1464), as already amended, by substituting a new schedule for Sched. I to those rules and thereby increasing the standard fees chargeable in respect of the issue or renewal of load line certificates and annual surveys.
- 3479. Marine insurance—arson of yacht.** See *R. v. CLAYTON-WRIGHT*, § 735.
- 3480. — hired motor-launch—duty to insure hirer's property.** See *REED v. DEAN*, § 625.
- 3481. Maritime lien—conflict of laws.** [Can.] See *HARNEY v. M. V. TERRY*, § 560.
- 3482. Mercantile marine—war pensions.** See § 2661.
- 3483. Merchant Shipping Act, 1948 (11 & 12 Geo. 6, c. 44).** The purpose of this Act is to amend the Merchant Shipping Acts in respect of matters affected by certain International Conventions which were adopted at the 28th (Maritime) Session of the International Labour Conference at Seattle in 1946. The texts of the Conventions in question are published in Cmd. 7109.
- Ss. 1-4 relate to crew accommodation, food and catering. S. 1 confers power to make regulations which are to supersede the existing provisions of the Merchant Shipping Acts as to those matters so far as concerns ships to which the Regulations apply. S. 2 specifies the ships to which the Regulations may apply, and s. 3 deals with inspections of crew accommodation. S. 5 contains new provisions as to the certification of able seamen and provides that after a date to

be prescribed a seaman is not to be rated as an A.B. unless he holds a certificate of competency. S. 6 relates to the certificates required to be held by ships' cooks on foreign-going ships. S. 7 deals with social security and extends the previously existing provisions as to the liability of owners in respect of seamen left abroad sick or injured, to the maintenance of such seamen during unemployment after their cure and before their return to a proper return port. The remaining provisions of the Act are supplemental and include power to apply any provisions of the Act to the Isle of Man, the Channel Islands and certain other British possessions. The Act is to come into operation on a date, or dates, to be appointed by the Minister (s. 10).

3484. Merchant Shipping Acts, etc. List of the principal Acts of Parliament, Regulations, Orders, Instructions, etc., relating to merchant shipping issued before January 1, 1947, published by H.M. Stationery Office (55—238—0—47). [6d.]

3485. Moorings—rating—service on occupier of houseboat. See *CARPENTER v. TWICKENHAM CORPORATION*, § 3103.

3486. Musters. Merchant Shipping (Musters) Rules, 1948 (No. 1011), made under the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 427, and the Merchant Shipping (Safety and Load Line Conventions) Act, 1932 (22 & 23 Geo. 5, c. 9), ss. 4, 5. These rules, which came into operation on May 20, 1948, re-enact with amendments the Merchant Shipping (Musters) Rules, 1933 (No. 1202). The principal changes relate to the classification of ships for the purposes of these rules and the rules relating to life-saving appliances and fire appliances; the application of the rules to non-passenger ships (Classes VII to X inclusive); and the nature of the duties to be assigned to members of the crew, etc.

Merchant Shipping (Musters) (No. 2) Rules, 1948 (No. 1012), which also came into operation on May 20, 1948, provide for the keeping of muster lists and the holding of musters, etc., on board ships which carry passengers by virtue only of a certificate issued under the Defence (General) Regulations, 1939, reg. 47BB. (See also § 3473.)

3487. Pilotage—committee, London representative. London Pilotage (Amendment) Order, 1948, (No. 1154), made under the Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 7, increasing the number of pilots' representatives of the London Pilotage District nominating a representative to serve on the Pilotage Committee.

3488. — compulsory pilotage—scope of shipowner's liability. See *TOWERFIELD v. WORKINGTON HARBOUR BOARD*, § 3466.

3489. Prize. See *PRIZE LAW*.

3490. Repair of ships—amendment of Factories Act, 1937. See § 1418.

3491. River boards—powers as to navigation, etc. See § 1883.

3492. River safety rules—Lower Ouse. Order made under the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 421, 738: SI 1948, No. 110 (amending the Lower Ouse Rules, 1910).

3493. Safety convention—Philippine Republic. Order in Council, 1948, No. 338, made under the Merchant Shipping (Safety and Load Line Conventions) Act, 1932 (22 & 23 Geo. 5, c. 9), s. 37, declaring that the Government of the Republic of the Philippines has acceded to the Safety Convention.

3494. Salvage—apportionment among crew. The correct method of apportioning the crew's proportion of a salvage award in the circumstances of a particular case was held to be on the basis of their basic pay to the exclusion of war bonus, because the addition of war bonus, which is paid at a flat rate regardless of rank or status, would produce an award which would be unfairly weighted in favour of the lower paid ratings and against the higher paid officers: *THE EMPIRE GULF*, [1948] P. 168; [1948] L. J. R. 945, Willmer, J.

3495. — costs. In *THE FERRIBY* (1948), 81 Ll. L. Rep. 246, Willmer, J., said that in a salvage action, where *prima facie* the defence will be asked to pay the costs whatever happens, it behoves the plaintiffs to be extra specially careful in not incurring unnecessary costs, and said also that the case might have done a useful service by drawing attention to the fact that the Court has the widest powers to make orders with regard to admissions of facts, the admissions of documents and so forth, if parties come and ask the Court's help in that matter.

3496. — **pillage by salvors.** See § 3497.

3497. — **refusal of salvors to allow master and crew to reboard.** In *THE KEDAH* (1948), 81 Ll. L. Rep. 217, Willmer, J., decided that there was no question, in the case, of the award for salvage services being affected by any misconduct of the salvors (in relation to their refusal to allow the master and crew of the vessel being salvaged to reboard that vessel), holding that the authorities clearly laid it down that the question was one to be decided on the facts of each case. (See also § 3496.)

3498. — **statutory duty.** In *THE MARS* (1948), 81 Ll. L. Rep. 452, Willmer, J., held that the mere existence of a statutory duty cannot automatically and of itself exclude the possibility of any claim for salvage; that although it must be a very exceptional case where an award to the servants of a public authority which is under such a duty is justified, the present (a case in which the crew of three of a small motor vessel salvaged a fleet of eleven barges which had broken from their moorings in the Thames) was such a case, but that the service rendered was a personal service only and fell to be awarded on that basis.

3499. — **towage—danger.** In *THE GLAUCUS* (1948), 81 Ll. L. Rep. 262, Willmer, J., approved the principles stated in *Kennedy's Law of Civil Salvage*, 3rd ed., p. 25 (where dicta from judgments in *The Reward* (1841), 1 W. Rob. 174 and *The Princess Alice* (1848), 3 W. Rob. 138 are cited) and held that, as the defendant ship had at all material times been a damaged ship and had been incapable of any manoeuvres whatever under her own power and consequently had been in a position of danger, the ships which rendered her assistance were entitled to be rewarded on a salvage basis.

3500. **Seamen—national insurance.** See §§ 2381, 2382, 2416, 2417.

3501. — **seamen's lodging-houses.** Merchant Shipping (Southampton Seamen's Lodging-houses Keepers) Order, 1948 (No. 339), made under the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 214, imposing penalties on unlicensed persons keeping seamen's lodging-houses in Southampton.

3502. — **wages—oral agreement.** An agreement can be made orally between a master and a seaman, and such an agreement is enforceable by the seaman, subject to the imposition on the master or owner of penalties by the Merchant Shipping Act, 1894, if the provisions of that Act as to the form of the agreement are not complied with. If an agreement is embodied in the articles a subsequent oral agreement to change that agreement can be made and enforced: *MOORE v. CITY OF MALINES* (1947), 81 Ll. L. Rep. 96, Lord Merriman, P.

3503. **Towage—collision between tug and ship.** (United Kingdom Standard Towage Conditions, cls. (1) (3).) A towage contract between the owners of a tug and the owners of a ship provided that the tug services provided by the tug owners were to be subject to the United Kingdom Standard Towage Conditions. Clause 1 of these Conditions provides: "For the purpose of these conditions, the phrase 'whilst towing' shall be deemed to cover the period commencing when the tug is in a position to receive orders direct from the hirer's vessel to pick up ropes or lines . . .". Clause 3 of the Conditions provides: "The tug owner shall not, whilst towing, bear . . . damage of any description done . . . to the tug . . . and the hirer shall pay for all . . . damage . . .". On the occasion when damage to the tug was caused in a collision with the ship, for which the tug owners claimed damages, the master of the tug, in accordance with usual practice, was ready to receive orders and to heave a line aboard the ship for towing. After the tug had got into that position, the pilot of the ship informed the tug that the ship was not ready to take a line, told her twice to keep off, and, eventually, asked her to proceed elsewhere. Held, the tug was "towing" within the meaning of clause 1 of the Conditions when she had come alongside and was in a position to comply with orders to proceed to pick up ropes, and as the pilot of the ship had not made it clear to the tug before she got into the position to receive orders that he was not ready to give orders, the shipowners were liable for the damage: *GLEN LINE v. W. J. GUY & SONS, THE GLENAFFRIC*, [1948] P. 159; [1948] L. J. R. 1128, C. A. (distinguishing *The Uranienborg*, [1936] P. 21).

3503a. — **common employment.** See *THE POLARTANK*, § 1256.

- 3504. ARTICLE.** Admiralty and prize jurisdiction in the British Commonwealth of Nations, by R. C. Fitzgerald: *Juridical Review*, August, 1948, p. 106.
- 3505. BOOKS PUBLISHED.** Lowndes, R. and Rudolph, G. R.—*Law of General Average and the York-Antwerp Rules*. 7th ed. [63s.]. Scrutton, T. E.—*Contract of Affreightment as expressed in Charterparties and Bills of Lading*. 15th ed. [63s.]. Smith, H. A.—*Law and Custom of the Sea* [12s. 6d.].

SHOPS

- 3506. Offer for sale—price-controlled goods on shelves.** See *PHILLIPS v. DALZIEL*, § 1214.
- 3507. BOOK PUBLISHED.** Redgrave, A. and Owner, J.—*Factories, Truck and Shop Acts*. Supplement to 16th ed. [7s. 6d.].

SOLICITORS

- 3508. Articled clerks.** New arrangements with regard to applications for consent to enter into articles are notified in the *Law Society's Gazette*, April, 1948, p. 67.
- 3509. Barrister and solicitor—etiquette.** See § 2772.
- 3510. Costs.** See also PRACTICE.
- 3511. — claims against bankrupt client's estate.** See *Re BRITISH FOLDING BED CO.*, § 268.
- 3512. — compulsory acquisition.** See § 511.
- 3513. — Law Society's Digest.** The following additions are made in the *Law Society's Gazette*, December, 1947, to the *Law Society's Digest*: 1706 v—Letting of property for three years; basis of costs; 1706 w—Schedule of dilapidations; lessee's liability for costs of lessor's surveyor and solicitor; 1706 x—Landlord and Tenant Act, 1927, s. 19 (1) (b); duty to give notice of assignments. The following additions are made in the *Law Society's Gazette* of January, 1948: 1455 g—Sale of freeholds subject to a fee farm rent—Schedule I, rule (9); 1455 h—Sale of registered and unregistered land; minimum fees; 1746 d—Sale by tenant for life of settled land; acknowledgment for production of vesting deed; whether undertaking for safe custody to be given also; 1746 e—Custody of probate on release of executor. The following additions are made in the *Law Society's Gazette* of February, 1948: 319 e—Sale of registered and unregistered land; one contract; separate titles and conveyances; costs; 572 n—Sub-sale of part of property purchased; same solicitor for all parties; 1455 i—Registered land; part of purchase-money left on mortgage to vendor; costs. The following additions are made in the *Law Society's Gazette* of March, 1948: 215 m—Deducing scale; extra work after completion arising out of outstanding requirements of local authority; 1308 b—Sale and purchase; title derived through personal representatives; endorsement on probate; abstract; 1455 j—Sale by one co-owner of his share to others; costs.
- 3514. — sale of registered land to local authorities.** See §§ 511, 3811.
- 3515. Divorce cases—solicitor's duty in.** See *BARNACLE v. BARNACLE*, § 947.
- 3516. Official Solicitor—appointment as guardian ad litem in adoption cases.** See *Re A. B. (AN INFANT)*, § 1701.
- 3517. Practice rules.** The Disciplinary Committee of the Law Society made a pronouncement upon the meaning of r. 1 of the Solicitors' Practice Rules in the case of a solicitor who had accepted instructions to act for reward from a client who had come to his office as a result of interviewing a representative of his firm at a Poor Man's Lawyer Centre: *Law Society's Gazette*, July, 1948, p. 117.
- 3518. Solicitor's clerk, admissibility of proof of deceased.** See *IN THE ESTATE OF HILL*, § 1312.
- 3519. Solicitor's letter as memorandum of contract.** See *WALFORD v. NAIRN*, § 3374.
- 3520. Solicitor's undertaking as to completion—personal liability.** See § 3799.
- 3521. Stock exchange commission.** See § 3583.
- 3522. ARTICLES.** Solicitors' costs; a new basis: 92 S. J. 5, 19, 34. Duty of solicitors (advising one party after advising the other party to the proceedings): *Law Society's Gazette*, May, 1948, p. 89. Unqualified solicitors (founded on recent summonses under ss. 46 and 47, Solicitors Act, 1932): 98 L. J. 301. Solicitors' accounts: 92 S. J. 535, 547, 563. Acting for a potential bankrupt: 206 L. T. 210.

SPECIAL CONTRIBUTION

- 3523. Assessment and collection.** Special Contribution Regulations, 1948 (No. 2029), made under ss. 55 (6), 60 (12) of that Act; came into operation on September 14, 1948; specify the manner in which assessments to the contribution are to be made and information given to persons interested. The new regulations also deal with the procedure in case of appeal and the machinery for collecting contributions and for claiming repayment in certain cases. [2d.]
- 3524. Explanatory notes.** The Board of Inland Revenue have issued Explanatory Notes explaining the main features of the Special Contribution. These Explanatory Notes are supplied with all notices of assessment for Special Contribution.
- 3525. Finance Act, 1948 (11 & 12 Geo. 6, c. 49).** The special contribution dealt with in Part V is a tax imposed on persons whose total income for 1948-48 exceeded £2,000 and whose aggregate investment income for that year exceeded £250 (s. 47). The rates of tax vary according to the excess of the individual's aggregate investment income over £250 and are set out in a table in s. 47 (1). A person's contribution is not, however, in any case to exceed the amount by which his total income for 1947-48 exceeded £2,000 (s. 47 (2)). A person's total income is to be ascertained in the same way as for surtax (s. 48): subject to certain special provisions investment income is income from any source other than a source of earned income (s. 49). Other provisions in this Part of the Act relate to the ascertainment of aggregate investment income (ss. 50, 51); certain payments and income from the occupation of property (s. 52); trust income payable out of capital, etc. (s. 53); the payment of contributions in advance and interest on unpaid contributions (s. 54); the assessment and collection of contributions (s. 55); the recovery of contributions from trustees and the application of trust property, etc., in payment thereof (ss. 56, 57); liability of husband and wife (s. 58); the undistributed income of a company (s. 59); appeals (s. 60); relief where income attributable to a period of years was received in 1947-48 (s. 61); allowances for maintenance and repairs, etc. (s. 62); limitation of liability of trustees (s. 63); relief where capital subject to death duties (s. 64); relief in respect of error or mistake (s. 65); property held for the National Trust (s. 66); and obligations of officials as to secrecy (s. 67).
- 3526. ARTICLES.** Special contribution: questions of particular interest to trustees—alleviation of the burden (founded on Finance Act, 1948, ss. 47-68): 98 L. J. 493, 507. Finance Act, 1948 (special contribution, trust income): 92 S. J. 565. Special contribution: 205 L. T. J. 273; *Accountant*, October 30, 1948, p. 349. Special contribution by Desmond Miller: 13 *Conveyancer* (n.s.) 113.
- 3527. BOOKS PUBLISHED.** Lindsay, W.—Finance Act, 1948 [15s.]. Mortimer, W. G.—Special Contribution under the Finance Act, 1948 [5s.]. Munkman, J. H.—Special Contribution or Capital Levy under the Finance Act, 1948 [3s. 6d.].

STAMP DUTIES

- 3528. Conveyance or transfer on sale.** The Council of the Law Society state that having taken Counsel's opinion they withdraw Opinion 1923 in *Law Society's Digest*, 1937, as to stamp duty payable on a transfer of land and movables where the movables pass by delivery: *Law Society's Gazette*, November, 1948, p. 196.
- 3529. Finance Act, 1948 (11 & 12 Geo. 6, c. 49).** Provisions affecting stamp duties are contained in Part VII of this Act. S. 72 deals with agreements as to stamp duty on industrial assurance policies. S. 73 gives relief from stamp duty on certain amalgamations of cotton spinning concerns. S. 74 authorises the Treasury to exempt from stamp duty transfers of shares, etc., in connection with certain nationalisation schemes. S. 75 abolishes the stamp duty chargeable on faculties for Lambeth degrees, etc.
- 3530. ARTICLES.** Conveyancer's diary—stamp duties: 92 S. J. 176. Stamp duty on settlements: 98 L. J. 256.
- 3531. BOOK PUBLISHED.** Alpe, E. N.—Law of Stamp Duties. Supplement [2s. 6d.].

STATUTES AND ORDERS

- 3532. Construction—application of principles to events occurring before passing of Act.** See *SMEDLEY v. MOIRA COLLIERY*, § 2459.

- 3533.** — **contract—subsequent legislation affecting.** See *CHESSINGTON DEVELOPMENT CO. v. SURBITON BOROUGH COUNCIL*, § 3650.
- 3534.** — **contra proferentem—private Act depriving persons of income.** “This is a private Act of Parliament which has the effect of depriving certain persons of income formerly enjoyed by them, and the rule of construction to be applied must be that where doubt arises the words must be construed most strongly against him who uses them. The benefit of the doubt is to be given to those who might be prejudiced by the exercise of the powers which the enactment grants and against those who claim to exercise them. To deprive the claimant by a private Act of Parliament of the right to do what he was doing for reward at the passing of the Act requires clear and unequivocal words in the private Act”: *per* Birkett, J., in *LANGHAM v. CITY OF LONDON CORPN.*, § 3593 (applying *Herron v. Rathmines Improvement Commissioners*, [1892] A. C. 498; and *Bournemouth-Swanage Motor Road and Ferry Co. v. Harvey & Sons* (1929), 98 L. J. Ch. 118).
- 3535.** — **Crown—whether bound by legislation.** See *LONDON COUNTY TERRITORIAL AND AUXILIARY FORCES ASSOCIATION v. NICHOLS*, § 3155.
- 3536.** — **delegated powers.** See *BLACKPOOL CORPORATION v. LOCKER*, § 521; *CARLISH v. EAST HAM CORPORATION*, § 522.
- 3537.** — **delegatus non potest delegare.** See *ALLINGHAM v. MINISTER OF AGRICULTURE AND FISHERIES*, § 74; *JACKSON STANSFIELD & SONS v. BUTTERWORTH*, § 1146.
- 3538.** — **different words used in different places.** “In *Evans v. Evans*, [1947] C. L. Y. 886, the Divisional Court were faced with an Act of Parliament which contained different phrases, “reside with” and “cohabit with”, and they applied the well-known rule of construction of legal documents that, if a draftsman uses different words, he presumably intends a different meaning. That, however, is by no means a safe guide to Acts of Parliament, as Blackburn, J., pointed out in *Hadley v. Perks* (1866), L. R. 1 Q. B. 444. The draftsman may change the wording simply to improve the style”: *per* Denning, L.J., in *HOPES v. HOPES*, § 935.
- 3539.** — **discretionary power—Court’s right to interfere.** “It is often a delicate question as to how far the Courts are entitled to interfere with the exercise of . . . a discretionary power, but I apprehend, generally speaking, the Courts are not entitled to interfere unless either (a) the exercise of the discretion has not complied with the conditions provided by the statute for the exercise of the discretionary power, or (b) the power has not been exercised judicially. The first of these grounds involves a question of the construction of the statutory provision, which is open to the Courts on any appropriate occasion; the second ground will arise on a particular exercise of the discretionary power”: *per* Lord Thankerton in *I. R. C. v. ROSS AND COULTER*, § 1349.
- 3540.** — **generalia specialibus non derogant.** See *WILTSHIRE COUNTY VALUATION COMMITTEE v. BOYCE*, § 3096.
- 3541.** — **guilty knowledge, when required.** See *HARDING v. PRICE*, § 3297.
- 3542.** — **heading of sections—effect on section outside group.** “A heading to one group of sections cannot alter the meaning of a section outside the group”: *per* Lord Uthwatt, in *SHELLEY v. L. C. C.*; *HARCOURT v. L. C. C.*, § 1607.
- 3543.** — **imperative or permissive power.** [Scot.] In *FLEMING & FERGUSON v. BURGH OF PAISLEY*, 1948 S. L. T. 457, the Court of Session held that where a statute confers powers on a statutory undertaker in terms that are permissive and not imperative (the word “may” and not the word “shall” being employed) no binding obligation is imposed upon the statutory undertaker to exercise the powers in question.
- 3544.** — **implication of words.** “If there is one rule of construction for statutes and other documents, it is that you must not imply anything in them which is inconsistent with the words expressly used”: *per* Lord Greene, M.R., in *Re A Debtor*, § 265.
- 3545.** — **inconsistency with previous legislation.** “Before the Court would be justified in [departing from the plain meaning of the language used in the

section of a statute] one must find in the previous legislation something so manifestly inconsistent with the section which one is construing, if construed by itself simply in accordance with its ordinary meaning, as to constrain the Court to say that that cannot be what the legislature meant": *per* Jenkins, J., in *Re* No. 12 REGENT STREET, OXFORD, § 423.

3546. — **interpretation section—effect on rights conferred by operative provisions of statute.** "I should not expect to find at the end of an interpretation section a clause which would deprive the persons intended to be benefited by [the Local Government Superannuation Act, 1937,] of one of the principal benefits conferred by it. I should expect any such modification of the general principle of the Act to be contained in a substantive section": *per* Wrottesley, L.J., in *JOBBINS v. MIDDLESEX COUNTY COUNCIL*, § 2070.

3547. — **judicial interpretation of phrase used in statute.** "It is a well established canon of construction of Acts of Parliament (and particularly of consolidating statutes) that phrases used therein which have been the subject of judicial interpretation are used in the sense in which they have been so interpreted": *per* Lord Greene, M.R., in *Re* DIPLOCK, § 2015.

3548. — **new words introduced into existing section.** "The introduction of new words into an existing section may alter the meaning of words already there. But no such alteration can result unless (1) the requirements of the English language demand it, or (2) those requirements permit it and the sense of the section demands it": *per* Lord Uthwatt in *LORD HOWARD DE WALDEN v. I. R. C.*, § 1688.

3549. — **object of statute.** "On ordinary principles of interpretation any residual ambiguity in language should be construed with due regard to the object of the statute": *per* Scott, L.J., in *TOWERFIELD (OWNERS) v. WORKINGTON HARBOUR BOARD*, § 3466.

3550. — **person, meaning of.** See *DAVEY v. SHAWCROFT*, § 1200.

3551. — **present and future tense—application to past period.** See *ROPPEL v. BENNETT*, § 3182.

3552. — **repeal of definition section—effect on defined phrase.** See *CHAPMAN v. KIRKE*, § 3749.

3553. — **statutory obligation—common law principles—application of.** See *L. N. E. RY. v. YORKSHIRE C. C. (WEST RIDING)*, § 1593.

3554. — — — — **estoppel.** See *LANGFORD PROPERTY CO. v. GOLDRICH*, § 3175.

3555. — — — — **exclusion of common law liability.** See *FRANKLIN v. GRAMOPHONE CO.*, § 1414.

3556. — — — — **pedestrian crossing.** See *ANON.*, § 3346; *L. P. T. B. v. UPSON*, § 3347.

3557. — — — — **remedy provided by statute.** See *WILKINSON v. BARKING CORPORATION*, § 2067; *Re* BIDIE, § 1386; *ANON.*, § 3346; [*Scot.*] *MILLAR v. GALASHIELS GAS CO.*, § 1413.

3558. — — — — **factories.** See *FACTORIES*.

3559. — — — — **penalties, action for.** See *COLNE VALLEY WATER CO. v. WATFORD AND ST. ALBANS GAS CO.*, §§ 2816, 2817.

3560. — — — — **statutory authority acting without negligence.** See *LONGHURST v. METROPOLITAN WATER BOARD*, § 2539.

3561. — — — — **taxing provisions.** "There is a maxim of income tax law which, though it may sometimes be overstressed yet ought not to be forgotten. It is that the subject is not to be taxed unless the words of the taxing statute unambiguously impose the tax on him": *per* Lord Simonds in *RUSSELL v. SCOTT*, § 1666.

3562. — — — — **"penal" statute.** "Counsel are apt to use the adjective 'penal' in describing the harsh consequences of a taxing provision, but, if the meaning of the provision is reasonably clear, the Courts have no jurisdiction to mitigate such harshness. On the other hand, if the provision is reasonably capable of two alternative meanings, the Courts will prefer the meaning more favourable to the subject. If the provision is so wanting in clarity that no meaning is reasonably clear, the Courts will be unable to regard it as of any effect": *per* Lord Thankerton in *I. R. C. v. ROSS AND COULTER*, § 1349.

- 3563.** — words and phrases. See § 3951.
- 3564.** Defence Regulations. See EMERGENCY LAWS.
- 3565.** Delegated legislation. See JACKSON STANSFIELD & SONS *v.* BUTTERWORTH, § 1146; ALLINGHAM *v.* MINISTER OF AGRICULTURE AND FISHERIES, § 74; CARLISH *v.* EAST HAM CORPORATION, § 522.
- 3566.** — publication. In BLACKPOOL CORPORATION *v.* LOCKER, § 521, Scott, L.J., pointed out that primary delegated legislation, i.e., such delegated legislation as is made under powers conferred by Act of Parliament, has to be published under the Rules Publication Act, 1893, or under the Statutory Instruments Act, 1946. But for secondary delegated legislation made under powers conferred by a regulation or other legislative instrument not being itself an Act of Parliament there is no general statutory requirement of publicity. [But see §§ 3567, 3580.]
- 3567.** — sub-delegated legislation. The Financial Secretary to the Treasury has stated that so far as Acts passed before January 1, 1948, are concerned, the publication of sub-delegated legislation is governed by the provisions of the Statutory Instruments Act, 1946, and the Statutory Instruments Regulations, 1948, made thereunder. Under these Regulations such legislation is not precluded from being a statutory instrument or from being published by reason solely of the fact that it is made by virtue of powers conferred not directly by an Act of Parliament but by an instrument which is itself made under, or derives from, an Act. So far as sub-delegated legislation under Acts passed after January 1, 1948, is concerned, the point falls to be dealt with in the enabling Act itself: H. C. Debates, March 23, 1948, col. 310.
- 3568.** Effect of legislation. The effect of the legislation of 1948 on the Statute Book is shown in the Table of Statutes at the commencement of this volume.
- 3569.** Expiring Laws Continuance Act, 1943 (12 & 13 Geo. 6, c. 3). This Act received the Royal Assent on December 16, 1948.
- 3570.** King's speech. The following subjects of legislation were included in the King's Speech at the opening of Parliament on October 26, 1948: admission of Newfoundland into the Canadian federation; territorial and reserve forces; amendment of the Parliament Act, 1911; steel nationalisation; national parks; footpaths and access to the countryside; conservation of wild life; legal aid; magistrates' courts and the justices of the peace; payment of jurors and abolition of special jurors; housing; rents of shared rooms, houses and flats let for the first time since the war; nurses; patents and designs amendment and consolidation; coast erosion; producers' marketing boards; white fish industry; milk; safety of life at sea; water supply in Scotland; Scottish criminal law amendment; consolidation and revision of statute law.
- 3571.** Laying of Documents before Parliament (Interpretation) Act, 1948 (11 & 12 Geo. 6, c. 59). This short Act provides by s. 1 that statutory references to the laying of any instrument, report or document before Parliament are ordinarily to be construed as taking the appropriate action during the existence of a Parliament, notwithstanding that such action could wholly or in part be taken otherwise than during the time of a sitting. S. 2 provides for the procedure with respect to notifications to be sent to the Lord Chancellor and the Speaker under the Statutory Instruments Act, 1946 (9 & 10 Geo. 6, c. 36), s. 4 (1) (where a statutory instrument is to come into operation before being laid before Parliament) in a case where such notification is impossible owing to a vacancy in the office of Lord Chancellor or Speaker.
- 3572.** Measures. See ECCLESIASTICAL LAW.
- 3573.** Orders—general order, validity of. See *R. v. BOARD OF CONTROL (SECRETARY)*, *ex p. ABDUL KAYUM*, § 2119.
- 3574.** Revision of statutes—repeal of obsolete enactments. The Statute Law Revision Act, 1948 (11 & 12 Geo. 6, c. 62), by s. 1, repeals a large number of obsolete enactments, which are set out in Sched. I, with a saving in s. 2 as to the application of any such enactment to local and inferior Courts. S. 3 provides that in any revised edition of the statutes published by authority certain words and phrases, including words of enactment, clauses of attestation, etc., may be omitted. S. 4 effects the general repeal in all Acts of words barring the

allowance in any proceeding of any essoin or privilege or protection or wager of law or imparlance or of bail or mainprise or benefit of clergy, and also of the words "that part of Britain called" or similar words where used before "England", "Scotland" or "Ireland". S. 5 and Sched. II prescribe short titles for the purpose of citation of a number of specified Acts: see § 3575.

3575. — **short titles.** By the Statute Law Revision Act, 1948 (11 & 12 Geo. 6, c. 62), s. 5, Sched. II, short titles were given to the following Acts.—

20 Hen. 3:	Stat. Merton, c. 4	Commons Act, 1236.
52 Hen. 3:	Stat. Marl., c. 1	Distress Act, 1267.
13 Edw. 1: Stat.	Westm. II, c. 37	Distress Act, 1285.
	c. 46	Commons Act, 1285.
34 Edw. 3, c. 1 . . .		Justices of the Peace Act, 1361.
5 Ric. 2, stat. 1, c. 7		Forcible Entry Act, 1381.
15 Ric. 2, c. 3 . . .		Admiralty Jurisdiction Act, 1391.
16 Ric. 2, c. 5 . . .		Statute of Praemunire.
13 Hen. 4, c. 7 . . .		Riot Act, 1411.
2 Hen. 5, stat. 1, c. 8		Riot Act, 1414.
8 Hen. 6, c. 9 . . .		Forcible Entry Act, 1429.
20 Hen. 6, c. 9 . . .		Peeresses Act, 1441.
27 Hen. 6, c. 5 . . .		Sunday Fairs Act, 1448.
4 Hen. 7, c. 20 . . .		Collusive Actions Act, 1488.
19 Hen. 7, c. 7 . . .		Ordinances of Corporations Act, 1503.
4 Hen. 8, c. 8 . . .		Privilege of Parliament Act, 1512.
21 Hen. 8, c. 6 . . .		Mortuaries Act, 1529.
22 Hen. 8, c. 5 . . .		Bridges Act, 1530.
23 Hen. 8, c. 9 . . .		Ecclesiastical Jurisdiction Act, 1531.
24 Hen. 8, c. 12 . . .		Ecclesiastical Appeals Act, 1532.
25 Hen. 8, c. 19 . . .		Submission of the Clergy Act, 1533.
	c. 20 . . .	Appointment of Bishops Act, 1533.
	c. 21 . . .	Ecclesiastical Licences Act, 1533.
26 Hen. 8, c. 14 . . .		Suffragan Bishops Act, 1534.
27 Hen. 8, c. 24 . . .		Jurisdiction in Liberties Act, 1535.
	c. 26 . . .	Laws in Wales Act, 1535.
	c. 28 . . .	Suppression of Religious Houses Act, 1535.
28 Hen. 8, c. 5 . . .		Apprentices Act, 1536.
	c. 11 . . .	Tithe Act, 1536.
	c. 16 . . .	Ecclesiastical Licences Act, 1536.
31 Hen. 8, c. 10 . . .		House of Lords Precedence Act, 1539.
	c. 13 . . .	Suppression of Religious Houses Act, 1539.
32 Hen. 8, c. 7 . . .		Tithe Act, 1540.
	c. 9 . . .	Maintenance and Embracery Act, 1540.
	c. 37 . . .	Cestui que vie Act, 1540.
	c. 38 . . .	Marriage Act, 1540.
	c. 40 . . .	Physicians Act, 1540.
	c. 51 . . .	Queen Consort Act, 1540.
33 Hen. 8, c. 9 . . .		Unlawful Games Act, 1541.
	c. 12 . . .	Offences within the Court Act, 1541.
	c. 21 . . .	Royal Assent by Commission Act, 1541.
	c. 27 . . .	Leases by Corporations Act, 1541.
	c. 39 . . .	Crown Debts Act, 1541.
34 & 35 Hen. 8, c. 8		Herbalists Act, 1542.
	c. 20	Feigned Recoveries Act, 1542.
	c. 26	Laws in Wales Act, 1542.
35 Hen. 8, c. 2 . . .		Treason Act, 1543.
37 Hen. 8, c. 1 . . .		Custos Rotulorum Act, 1545.
	c. 4 . . .	Dissolution of Colleges Act, 1545.
1 Edw. 6, c. 1 . . .		Sacrament Act, 1547.
	c. 7 . . .	Justices of the Peace Act, 1547.
	c. 14 . . .	Dissolution of Colleges Act, 1547.

2 & 3 Edw. 6, c. 1 .	Act of Uniformity, 1548.
c. 21 .	Clergy Marriage Act, 1548.
5 & 6 Edw. 6, c. 1 .	Act of Uniformity, 1551.
c. 3 .	Holy Days and Fasting Days Act, 1551.
c. 4 .	Brawling Act, 1551.
c. 11 .	Treason Act, 1551.
c. 12 .	Clergy Marriage Act, 1551.
1 Mary, sess. 1, c. 1 .	Treason Act, 1553.
1 Mary, sess. 2, c. 3 .	Brawling Act, 1553.
1 Mary, sess. 3, c. 1 .	Queen Regent's Prerogative Act, 1554.
1 & 2 Phil. & Mary, c. 10	Treason Act, 1554.
c. 12	Distress Act, 1554.
2 & 3 Phil. & Mary, c. 7	Sale of Horses Act, 1555.
1 Eliz. c. 1 .	Act of Supremacy.
c. 2 .	Act of Uniformity, 1558.
5 Eliz. c. 18 .	Lord Keeper Act, 1562.
c. 23 .	Writ De Excommunicato Capiendo Act, 1562.
13 Eliz. c. 6 .	Letters Patent Act, 1571.
c. 10 .	Ecclesiastical Leases Act, 1571.
c. 12 .	Ordination of Ministers Act, 1571.
c. 29 .	Oxford and Cambridge Act, 1571.
14 Eliz. c. 11 .	Ecclesiastical Leases Act, 1572.
c. 14 .	Hospitals for the Poor Act, 1572.
18 Eliz. c. 5 .	Common Informers Act, 1575.
c. 11 .	Ecclesiastical Leases Act, 1575.
31 Eliz. c. 5 .	Common Informers Act, 1588.
c. 6 .	Simony Act, 1588.
c. 11 .	Forcible Entry Act, 1588.
c. 12 .	Sale of Horses Act, 1588.
39 Eliz. c. 5 .	Hospitals for the Poor Act, 1597.
1 Jac. 1, c. 13 .	Privilege of Parliament Act, 1603.
3 Jac. 1, c. 5 .	Presentation of Benefices Act, 1605.
7 Jac. 1, c. 12 .	Shop-books Evidence Act, 1609.
c. 15 .	Crown Debts Act, 1609.
21 Jac. 1, c. 3 .	Statute of Monopolies.
c. 4 .	Common Informers Act, 1623.
c. 14 .	Intrusions Act, 1623.
c. 15 .	Forcible Entry Act, 1623.
c. 25 .	Crown Lands Act, 1623.
3 Car. 1, c. 1 .	Petition of Right.
16 Car. 1, c. 10 .	Habeas Corpus Act, 1640.
c. 14 .	Ship Money Act, 1640.
c. 16 .	Delimitation of Forests Act, 1640.
12 Car. 2, c. 1 .	Parliament Act, 1660.
c. 24 .	Tenures Abolition Act, 1660.
13 Car. 2, stat. 1, c. 1	Sedition Act, 1661.
c. 5	Tumultuous Petitioning Act, 1661.
c. 12	Ecclesiastical Jurisdiction Act, 1661.
14 Car. 2, c. 3 .	City of London Militia Act, 1662.
c. 4 .	Act of Uniformity, 1662.
15 Car. 2, c. 6 .	Act of Uniformity (Explanation) Act, 1663.
16 & 17 Car. 2, c. 5	Execution Act, 1664.
17 Car. 2, c. 3 .	Augmentation of Benefices Act, 1665.
18 & 19 Car. 2, c. 11	Cestui que Vie Act, 1666.
22 Car. 2, c. 12 .	Bridges Act, 1670.
22 & 23 Car. 2, c. 11	Piracy Act, 1670.
29 Car. 2, c. 8 .	Augmentation of Benefices Act, 1677.
c. 9 .	Ecclesiastical Jurisdiction Act, 1677.
31 Car. 2, c. 1 .	Billeting Act, 1679.

1 Will. & Mary, c. 6	Coronation Oath Act, 1688.
c. 16	Simony Act, 1688.
c. 18	Toleration Act, 1688.
c. 21	Great Seal Act, 1688.
c. 26	Presentation of Benefices Act, 1688.
c. 30	Royal Mines Act, 1688.
2 Will. & Mary, c. 1	Crown and Parliament Recognition Act, 1689.
c. 5	Distress for Rent Act, 1689.
5 & 6 Will. & Mary,	
c. 6	Royal Mines Act, 1693.
c. 7	House of Commons (Disqualification) Act, 1693.
6 & 7 Will. & Mary,	
c. 2	Meeting of Parliament Act, 1694.
7 & 8 Will. 3, c. 7	Parliamentary Elections (Returns) Act, 1695.
c. 25	Parliamentary Elections Act, 1695.
8 & 9 Will. 3, c. 11	Administration of Justice Act, 1696.
9 Will. 3, c. 35 . .	Blasphemy Act, 1697.
11 Will. 3, c. 7 . .	Piracy Act, 1698.
12 & 13 Will. 3, c. 4	Plate Assay Act, 1700.
1 Anne, c. 2 . . .	Demise of the Crown Act, 1702.
c. 12 . . .	Bridges Act, 1702.
2 & 3 Anne, c. 20 .	Queen Anne's Bounty Act, 1703.
4 & 5 Anne, c. 3 .	Administration of Justice Act, 1705.
26 Geo. 2, c. 22 . .	British Museum Act, 1753.
7 Geo. 3, c. 18 . .	British Museum Act, 1767.
17 Geo. 3, c. 11 . .	Worsted Act, 1776.
19 Geo. 3, c. 45 . .	Duchy of Lancaster Act, 1779.
25 Geo. 3, c. 77 . .	Fires Prevention Act, 1785.
27 Geo. 3, c. 34 . .	Duchy of Lancaster Act, 1787.
39 & 40 Geo. 3, c. 86	New Forest Act, 1800.
45 Geo. 3, c. 127 . .	British Museum Act, 1805.
47 Geo. 3, sess. 2, c. 36	British Museum Act, 1807.
52 Geo. 3, c. 161 . .	Duchy of Lancaster Act, 1812.
56 Geo. 3, c. 99 . .	British Museum Act, 1816.
59 Geo. 3, c. 62 . .	Savings Bank (Scotland) Act, 1819.
1 Geo. 4, c. 108 . .	Apportionment Act, 1820.
5 Geo. 4, c. 39 . . .	British Museum Act, 1824.
c. 60 . . .	British Museum (No. 2) Act, 1824.
c. 90 . . .	Church of Scotland Act, 1824.
2 & 3 Will. 4, c. 46 .	British Museum Act, 1832.
3 & 4 Will. 4, c. 85 .	Saint Helena Act, 1833.
1 & 2 Vict. c. 42 . .	Dean Forest (Encroachments) Act, 1838.
c. 75 . . .	Fires Prevention Act, 1838.
c. 101 . . .	Duchies of Lancaster and Cornwall (Accounts) Act, 1838.
5 & 6 Vict. c. 65 . .	Dean Forest Act, 1842.
7 & 8 Vict. c. 65 . .	Duchy of Cornwall Act, 1844.
c. 105 . . .	Duchy of Cornwall (No. 2) Act, 1844.
19 & 20 Vict. c. 43 .	Hereditary Revenues Act, 1856.
23 & 24 Vict. c. 53 .	Duchy of Cornwall Act, 1860.

3576. Royal Assent. The following Acts and Measure received the Royal Assent during 1948:—

- Administration of Justice (Scotland) Act, 1948 (12 & 13 Geo. 6, c. 10), December 16.
- Agricultural Holdings Act, 1948 (11 & 12 Geo. 6, c. 63), July 30, § 31 [1s. 3d.].
- Agricultural Wages Act, 1948 (11 & 12 Geo. 6, c. 47), July 13, § 56 [6d.].
- Agriculture (Scotland) Act, 1948 (11 & 12 Geo. 6, c. 45), July 13 [1s. 6d.].
- Animals Act, 1948 (11 & 12 Geo. 6, c. 35), June 30, § 135 [3d.].
- Appropriation Act, 1948 (11 & 12 Geo. 6, c. 50), July 30 [1s.].
- Army and Air Force (Annual) Act, 1948 (11 & 12 Geo. 6, c. 28), April 29, §§ 178, 973, 2126 [4d.].

- Army and Air Force (Women's Service) Act, 1948 (11 & 12 Geo. 6, c. 21), March 24, § 179.
- Attempted Rape Act, 1948 (11 & 12 Geo. 6, c. 19), March 24, § 703.
- British Nationality Act, 1948 (11 & 12 Geo. 6, c. 56), July 30, § 118 [6d.].
- Children Act, 1948 (11 & 12 Geo. 6, c. 43), June 30, § 1705 [1s.].
- Cinematograph Films Act, 1948 (11 & 12 Geo. 6, c. 23), March 24, § 2949 [9d.].
- Civil Defence Act, 1948 (12 & 13 Geo. 6, c. 5), December 16, § 429 [3d.].
- Clergy Pensions Measure, 1948 (11 & 12 Geo. 6, No. 1), March 24, § 1040 [1s. 3d.].
- Colonial Stock Act, 1948 (12 & 13 Geo. 6, c. 1), December 16, § 3257.
- Companies Act, 1948 (11 & 12 Geo. 6, c. 38), June 30, § 463 [6s.].
- Consolidated Fund (No. 1) Act, 1948 (11 & 12 Geo. 6, c. 18), March 24, § 3258.
- Cotton Spinning (Re-equipment Subsidy) Act, 1948 (11 & 12 Geo. 6, c. 31), May 13, § 3687 [2d.].
- Criminal Justice Act, 1948 (11 & 12 Geo. 6, c. 58), July 30, §§ 714, 1856 [2s.].
- Debts Clearing Offices Act, 1948 (12 & 13 Geo. 6, c. 2), December 16, § 3263.
- Development of Inventions Act, 1948 (11 & 12 Geo. 6, c. 60), July 30, § 2569 [3d.].
- Education (Miscellaneous Provisions) Act, 1948 (11 & 12 Geo. 6, c. 40), June 30, § 1057 [6d.].
- Employment and Training Act, 1948 (11 & 12 Geo. 6, c. 46), July 13, § 1246 [6d.].
- Expiring Laws Continuance Act, 1948 (12 & 13 Geo. 6, c. 3), December 16, § § 3177, 3569.
- Export Guarantees Act, 1948 (11 & 12 Geo. 6, c. 54), July 30, § 3693.
- Factories Act, 1948 (11 & 12 Geo. 6, c. 55), July 30, § 1418 [4d.].
- Finance Act, 1948 (11 & 12 Geo. 6, c. 49), July 30, §§ 789, 833, 844, 1356, 1654, 3039, 3275, 3529 [1s. 6d.].
- Gas Act, 1948 (11 & 12 Geo. 6, c. 67), July 30, § 1535 [2s.].
- House of Commons Members' Fund Act, 1948 (11 & 12 Geo. 6, c. 36), June 30, § 2551.
- Industrial Assurance and Friendly Societies Act, 1948 (11 & 12 Geo. 6, c. 39), June 30, § 1739 [6d.].
- Isle of Man (Customs) Act, 1948 (11 & 12 Geo. 6, c. 61), July 30, § 800 [3d.].
- Judges Pensions (India and Burma) Act, 1948 (12 & 13 Geo. 6, c. 4), December 16, § 320 [2d.].
- Law Reform (Personal Injuries) Act, 1948 (11 & 12 Geo. 6, c. 41), June 30, § § 816, 1236.
- Laying of Documents before Parliament (Interpretation) Act, 1948 (11 & 12 Geo. 6, c. 59), July 30, § 3571.
- Local Government Act, 1948 (11 & 12 Geo. 6, c. 26), March 24, §§ 398, 1114, 1566, 1731, 2051, 2055, 2078, 2714, 2959, 3067, 3074, 3075, 3077, 3081, 3082, 3701, 3761, 3857 [2s.].
- Lord High Commissioner (Church of Scotland) Act, 1948 (11 & 12 Geo. 6, c. 30), May 13, § 1043.
- Merchant Shipping Act, 1948 (11 & 12 Geo. 6, c. 44), July 13, § 3483 [4d.].
- Monopolies and Restrictive Practices (Inquiry and Control) Act, 1948 (11 & 12 Geo. 6, c. 66), July 30, § 3703 [6d.].
- Motor Spirit (Regulation) Act, 1948 (11 & 12 Geo. 6, c. 34), May 28, § 2695 [6d.].
- National Assistance Act, 1948 (11 & 12 Geo. 6, c. 29), May 13, §§ 273, 394, 421, 517, 2060, 2124, 2272, 2402, 3387 [1s. 3d.].
- National Insurance (Industrial Injuries) Act, 1948 (11 & 12 Geo. 6, c. 42), June 30, § 2374.
- National Service Act, 1948 (11 & 12 Geo. 6, c. 64), July 30, § 193 [1s.].
- National Service (Amendment) Act, 1948 (12 & 13 Geo. 6, c. 6), December 16, § 194 [2d.].
- Nurseries and Child-Minders Regulation Act, 1948 (11 & 12 Geo. 6, c. 53), July 30, § 1718 [3d.].

- Overseas Resources Development Act, 1948 (11 & 12 Geo. 6, c. 15), February 11, § 303 [4d.].
- Palestine Act, 1948 (11 & 12 Geo. 6, c. 27), April 29, § 344 [2d.].
- Police Pensions Act, 1948 (11 & 12 Geo. 6, c. 24), March 24, § 2718 [4d.].
- Post Office and Telegraph (Money) Act, 1948 (11 & 12 Geo. 6, c. 16), February 19, § 2737.
- Princess Elizabeth's and Duke of Edinburgh's Annuities Act, 1948 (11 & 12 Geo. 6, c. 14), February 11, § 586.
- Prize Act, 1948 (12 & 13 Geo. 6, c. 9), December 16, § 2944 [2d.].
- Public Registers and Records (Scotland) Act, 1948 (11 & 12 Geo. 6, c. 57), July 30 [2d.].
- Public Works Loans Act, 1948 (11 & 12 Geo. 6, c. 48), July 13, § 2028.
- Radioactive Substances Act, 1948 (11 & 12 Geo. 6, c. 37), June 30, §§ 210, 751 [4d.].
- Recall of Army and Air Force Pensioners Act, 1948 (12 & 13 Geo. 6, c. 8), December 16, § 201 [2d.].
- Representation of the People Act, 1948 (11 & 12 Geo. 6, c. 65), July 30, § 1095 [3s. 6d.].
- Requisitioned Land and War Works Act, 1948 (11 & 12 Geo. 6, c. 17), February 19, §§ 70, 535, 1031, 1437, 1592, 2693, 3646 [6d.].
- River Boards Act, 1948 (11 & 12 Geo. 6, c. 32), May 28, § 1883 [9d.].
- Royal Marines Act, 1948 (11 & 12 Geo. 6, c. 25), March 24, § 203.
- Statute Law Revision Act, 1948 (11 & 12 Geo. 6, c. 62), July 30, §§ 3575, 3576 [2s.].
- Superannuation (Miscellaneous Provisions) Act, 1948 (11 & 12 Geo. 6, c. 33), May 28, §§ 1703, 2424, 2652, 2656 [6d.].
- Supreme Court of Judicature (Amendment) Act, 1948 (11 & 12 Geo. 6, c. 20), March 24, § 2803.
- Veterinary Surgeons Act, 1948 (11 & 12 Geo. 6, c. 52), July 30, § 2211 [6d.].
- Wages Councils Act, 1948 (12 & 13 Geo. 6, c. 7), December 16, § 1283 [3d.].
- Water Act, 1948 (11 & 12 Geo. 6, c. 22), March 24, § 3855 [4d.].
- White Fish and Herring Industries Act, 1948 (11 & 12 Geo. 6, c. 51), July 30, § 1462 [3d.].

3577. Statute of Frauds. See FRAUD, MISREPRESENTATION AND UNDUE INFLUENCE.

3578. Statutes of Limitation. See LIMITATION OF ACTIONS.

3579. Statutory instruments. A complete list of the statutory instruments issued during 1948 will be found at the commencement of this volume.

3580. —. Statutory Instruments (Confirmatory Powers) Order, 1947 (SI 1948, No. 2), made under the Statutory Instruments Act, 1946 (9 & 10 Geo. 6, c. 36), s. 9 (1). This Order subjects to the provisions of the Act and the Treasury Regulations thereunder (1) confirmations of subordinate legislation of a legislative and not an executive character, where the subordinate legislation is required to be laid before Parliament and was not a statutory rule before the commencement of the Act, and (2) the confirmations set out in the Schedule thereto.

3581. ARTICLE. Rules of drafting: *Canadian Bar Review*, October, 1948, p. 1231.

3582. BOOKS PUBLISHED. Chedlow, B.—*Interpretation of Deeds and Statutes in a Nutshell* [5s.]. Chitty, J.—*Statutes of Practical Utility with Notes and Indexes*. Vol. 40, 1946. By H. A. Palmer [60s.]. *Current Law Statutes*. Part I, July, 1948 [30s. per annum]. *Current Law Year Book, 1947* [35s.]. *Directions for Noting the Amendments made by the Acts, Statutory Rules and Orders and Church Assembly Measures of 1947 to the Revised Statutes, 1920, and the Annual Volumes (Official Edition and Law Reports Edition) since that Date* [5s.]. Northern Ireland.—*Chronological Table and Index of the Statutes in force to December 31, 1946*. 2 vols. [45s.]. *Statutory Rules and Orders other than those of a Local, Personal or Temporary Character, 1947*. 3 vols. [£5]. Sweet & Maxwell's *Guide to Law Reports. Statutes and Regnal Years*. 2nd ed. [10s.].

STOCK EXCHANGE

- 3583. Commission.** Changes were made on December 22, 1947, in the London Stock Exchange Rules restricting the number of agents entitled to share commission. The new qualifications for inclusion in the General Register excluded solicitors, accountants, trustee departments of banks and insurance companies and the Public Trustee and others hitherto entitled to share commissions in respect of occasional transactions. The amendments were, however, afterwards rescinded. See the Statement of the Council of the Stock Exchange published in *The Times* on January 26, 1948.
- 3584. Companies Act, 1948—prescribed stock exchanges for purposes of.** See § 491.
- 3585. Pledge of scrip by broker.** [Aus.] See *TOBIN v. BROADBENT*, § 22.

TELECOMMUNICATIONS

- 3586. Post office.** See *POST OFFICE*.
- 3587. Wireless—broadcasting in Far East.** Agreement dated December 7, 1948, between H.M.'s P.M.G. and the B.B.C. has been published: Cmd. 7584.
- 3588. — relay service installation—damage to reversion.** [Cty. Ct.] See *ELLWOOD v. WEST CUMBERLAND RELAY SERVICE*, § 3776.

TIME

- 3589. Limitation of actions.** See *LIMITATION OF ACTIONS*.
- 3590. Summer time.** Summer Time Order, 1948 (No. 495), made under the Summer Time Act, 1947 (10 & 11 Geo. 6, c. 16), s. 1 (2), fixed the period of summer time for 1948 as the period from 2 a.m. on March 14 to 2 a.m. on October 31.

TITHES AND TITHE REDEMPTION

- 3591. Apportionment—instruments of apportionment.** Tithe (Copies of Instruments of Apportionment) (Amendment) Rules, 1947 (No. 2785), made under the Tithe Act, 1936 (26 Geo. 5 & 1 Edw. 8, c. 43), s. 36 (2), amending the Tithe (Copies of Instruments of Apportionment) Rules, 1946 (No. 2091), by substituting a new rule for r. 10 of those rules and a new Schedule for Sched. 3.
- 3592. — liability prior to apportionment.** (Tithe Act, 1936 (26 Geo. 5 & 1 Edw. 8, c. 43), ss. 3 (1), 10 (2), 13 (7), 16 (1).) The effect of s. 3 (1) of the Tithe Act, 1936, is that on the appointed day there comes into existence a charge of an annuity exactly comparable to the old tithe rentcharge as regards the land in respect of which it is charged, subject to the one qualification that the amount will not be the same. Thus, the owner of a part of a plot of land on which a redemption annuity is charged will be liable for the amount of the annuity in respect of the whole of the land until an apportionment has been made, irrespective of the fact that until such an apportionment is made there are several owners who, in the meanwhile, will each be liable for the whole amount: *TITHE REDEMPTION COMMISSION v. BROWN*, [1948] 2 K. B. 9; [1948] L. J. R. 1294, C. A.
- 3593. Compensation on extinguishment in City of London.** (City of London (Tithes) Act, 1947 (10 & 11 Geo. 6, c. xxxi), s. 16 (1).) The City of London (Tithes) Act, 1947, had for its purpose the extinguishment of tithes and tithe rates in the City of London. S. 16 (1) of the Act provided as follows: "Every officer in office at the date of the passing of this Act who suffers substantial detriment to his livelihood by reason of the passing of this Act shall be entitled to compensation from the corporation for that detriment". The claimant, who claimed compensation for loss of salary of £75 a year as clerk to the Commissioners of the Rector's Stipend, St. Andrew's, Holborn, due to the passing of the Act, had refused to supply to the corporation details of his total income to help them to determine whether he had suffered substantial detriment to his livelihood, and, consequently the corporation had disallowed his claim. Held, the statute was taking away something the claimant formerly possessed, and he was entitled to have the section strictly construed. The question for the corporation was whether the loss suffered by the claimant was a thing of substance as distinct from a loss that was trivial and not worth consideration, and that question could well be determined without

knowing the total means of the claimant: *LANGHAM v. CITY OF LONDON CORPN.*, [1949] 1 K. B. 208; [1949] L. J. R. 333, C. A. (See also §§ 2917, 3534.)

- 3594. Redemption—rate of interest.** The Tithe Redemption Commission have issued a Notice, dated February 5, 1948, to the effect that the Treasury have fixed at 3 per cent., as from February 8, 1948, and until further notice, the rate of interest to be adopted in discounting future payments in respect of instalments of an annuity charged by the Tithe Act, 1936 (26 Geo. 5 & 1 Edw. 8, c. 43), for the purpose of determining, in accordance with the Redemption Annuities (Extinguishment and Reduction) Rules, 1937, the amount of consideration money to be paid for the redemption of the annuity.

On the basis of this rate of interest, the amount required to redeem an annuity is approximately twenty-five times the amount of the annuity (or fifty times the amount of the half-yearly instalment).

- 3595. Remission.** (Income Tax Act, 1918 (8 & 9 Geo. 5, c. 40), Sched. B, r. 1 (a); Tithe Act, 1936 (26 Geo. 5 & 1 Edw. 8, c. 43), s. 14 (2).) Chargeability to tax and valuation are two different things. The Tithe Act, 1936, s. 14 (2) does not deal with chargeability. It deals with annual value, and annual value means the annual value for income tax purposes under Sched. B. Consequently, on a valuation in the case of land and a farmhouse occupied by a freeholder and owner, for the purposes of obtaining remission of the excess of a tithe redemption annuity, the total valuation of the farm, estimated in accordance with the rules under Sched. B, must be included, which would include the value of the dwelling-house, although the value of the dwelling-house would be omitted from the charge for the purpose of income tax: *R. v. JORDAN, Ex p. LUTRING*, [1948] 1 K. B. 415; [1948] L. J. R. 269, D. C.
- 3596. ARTICLES.** The Tithe Act, 1936, and change of ownership: 205 L. T. J. 160. A tithe problem (founded on *R. v. Jordan, ex p. Lutring*, [1947] C. L. Y. 2992): 205 L. T. J. 161. Tithe redemption annuities—extent of charge (founded on *Tithe Redemption Commission v. Brown*, § 3592): 206 L. T. 70.

TORT

- 3597. Assault—master's liability for servant's assault.** See *WARREN v. HENLYS*, § 1258; [N.Z.] *PETTERSSON v. ROYAL OAK HOTEL*, § 1259.
- 3598. Conspiracy—trade union.** [Can.] See *FOKUHL v. RAYMOND*, § 631.
- 3599. Conversion.** See *TROVER AND DETINUE*.
- 3600. Damages.** See *DAMAGES*.
- 3601. Defamation.** See *LIBEL AND SLANDER*.
- 3602. Detinue.** See *TROVER AND DETINUE*.
- 3603. Fire—duty of innkeeper to warn guest.** [Can.] See *ZAWYRUCHA v. RED LAKE HOTEL CO.*, § 1726.
- 3604. — in hired motor launch.** See *REED v. DEAN*, § 625.
- 3605. Foreign tort—libel posted abroad.** See *BATA v. BATA*, § 2901.
- 3606. Fraud.** See *FRAUD, MISREPRESENTATION AND UNDUE INFLUENCE*.
- 3607. Husband and wife—action against husband.** See *CURTIS v. WILCOX*, § 1612.
- 3608. Inducing breach of contract—motor car covenants.** See *BRITISH MOTOR TRADE ASSOCIATION v. SALVADORI*, § 630.
- 3609. — trade union.** [Can.] See *FOKUHL v. RAYMOND*, § 631.
- 3610. Injurious falsehood.** *JOYCE v. MOTOR SURVEYS*, § 1994.
- 3611. Joint tortfeasors—liability of shipowners and others in respect of injury to stevedore.** See *JERRED v. T. RODDAM DENT & SON*, § 2483; *GRANT v. SUN SHIPPING CO.*, § 2482.
- 3612. — libel—privilege and malice.** See *EGLANTINE INN v. SMITH*, § 1985.
- 3613. Loss of expectation of life.** See *HART v. GRIFFITHS-JONES*, § 817.
- 3614. Loss of service.** See *METROPOLITAN POLICE DISTRICT (RECEIVER) v. TATUM*, § 2711.

3615. Negligence. See NEGLIGENCE.

3616. Nuisance. See NUISANCE.

3617. Passing off. See TRADE MARKS AND TRADE NAMES.

3618. Rylands v. Fletcher—natural user. [Aus.], See WISE BROS. PTY. v. COMMISSIONER FOR RAILWAYS (N.S.W.), § 2520.

3619. Statutory obligation, breach of. See STATUTES AND ORDERS.

3620. Third party's wrongful act—damages for criminal conviction owing to. It is a principle of English law that the punishment inflicted by a criminal court is personal to the offender, and that the civil courts will not entertain an action by the offender to recover an indemnity against the consequences of that punishment. Furthermore, speaking generally, public policy requires that no right of indemnity or contribution or damages should be enforced in respect of expenses which the offender has incurred by reason of being compelled to make reparation for his own crime.

The plaintiff paid the three defendants large sums for the manufacture of cocktails. The plaintiff resold the bottles of cocktails to retailers at a large profit. The three defendants were found guilty of selling and possessing wine to which methylated spirit had been added. Two of the defendants were sent to prison and all three of them were fined heavily. The defendants assured the plaintiff that the convictions had nothing to do with the liquid which they had manufactured for him, and the plaintiff continued to deal with them on a larger scale than before. Subsequently, the plaintiff himself was found guilty of various offences under the Food and Drugs Act in connection with the sale of cocktails containing methylated spirit. The plaintiff was fined heavily. In consequence of these convictions, all the bottles then in the hands of retailers were returned and the plaintiff had to refund them the amount they had paid him. The plaintiff sought to recover from the defendants the fines and the repayments to the retailers. Held, the plaintiff could not recover either of these payments: *ASKEY v. GOLDEN WINE Co.*, [1948] 2 All E. R. 35, Denning, J. (applying *Colburn v. Patmore* (1834), 4 Tyr. 677; *Leslie v. Reliable Advertising and Addressing Agency*, [1915] 1 K. B. 652; *Haseldine v. Hosken*, [1933] 1 K. B. 822; and *Beresford v. Royal Insurance Co.*, [1938] A. C. 586).

3621. Tortfeasor's liability to repay third person's expenses incurred through his wrongful act. See METROPOLITAN POLICE DISTRICT (RECEIVER) v. TATUM, § 2711, 2715.

3622. Tortfeasor's liability to repay payment made in discharge of moral obligation. See DENNIS v. L. P. T. B., § 820.

3623. Trespass. See TRESPASS.

3624. Trover. See TROVER AND DETINUE.

3625. ARTICLES. The liability of joint wrongdoers—the rule of the last chance to avoid, by Arthur R. Brown, K.C.: 59 *Juridical Review* 185. The Law Reform (Personal Injuries) Bill: 98 L. J. 186, 201. Damages in detinue (founded on *Rosenthal v. Alderton & Sons*, [1946] 1 K. B. 374): 92 S. J. 199. Damages against a bailee for detinue or conversion (founded on *Sachs v. Miklos*, § 18): 98 L. J. 215. Joint tortfeasors—accord and satisfaction—covenant not to sue (founded on *Apley Estates v. De Bernales*, [1947] C. L. Y. 3020): *Modern Law Review*, April, 1948, p. 230. Actions against public authorities: 92 S. J. 303. Act of God: 98 L. J. 396. Indemnity against crime (founded on *Askey v. Golden Wine Co.*, § 3620): 92 S. J. 518. Liability to an invitee (founded on *Sutton v. Bootle Corporation*, [1947] C. L. Y. 2075): 206 L. T. 181. Master and servant—vicarious liability (founded on *Warren v. Henlys*, § 1258): 206 L. T. 358.

3626. BOOKS PUBLISHED. Clerk, J. F. and Lindsell, W. H. B.—*Law of Torts*. 10th ed. with Supplement to December 1, 1947 [70s.]. Potter, H.—*Principles of Liability in Tort*. (Reprinted from 10th ed. of Clerk and Lindsell's *Torts*) [10s.]. Rowland, P. M. B.—*Law of Torts in a Nutshell*. 4th ed. [6s.]. Winfield, P. H.—*Cases on the Law of Tort*. 4th ed. [30s.]. Winfield, P. H.—*Textbook of the Law of Tort*. 4th ed. [40s.].

TOWN AND COUNTRY PLANNING

3627. Advertisements. Town and Country Planning (Control of Advertisements) Regulations, 1948 (No. 1613) [E.], made under the Town and Country Planning Act, 1947 (10 & 11 Geo. 6, c. 51), ss. 31, 32 (2), (3), 111; came into operation on August 1, 1948.

Reg. 3 applies the provisions of the regulations to the display on land in England and Wales of all advertisements except those displayed in the circumstances specified in that regulation. Part II of the regulations requires that any display of advertisements must have consent, granted either by the local planning authority or by virtue of the provisions of the regulations (reg. 5); attaches standard conditions to the display of all advertisements (reg. 6, Sched. I); and allows the display of existing advertisements to continue undisturbed unless, after an initial period of complete exemption and a further stage of minimum control, the consent of the local planning authority is in any particular case required by notice to be obtained (regs. 7, 8). Part III empowers local planning authorities to submit for the Minister's approval orders defining areas of special control (reg. 10, Sched. II) in which the display of advertisements will be governed by the special provisions of reg. 11. Part IV deals with advertisements which may be displayed without the consent of the local planning authority. Advertisements of the descriptions specified in reg. 14 may be displayed subject only to the conditions laid down in that regulation, but the local planning authority may (by virtue of reg. 8 and the proviso to reg. 17 (1) read together with reg. 12) bring under their control advertisements of the classes specified in reg. 12 in order to prevent such advertisements from being displayed in a manner which is considered dangerous or substantially injurious to amenity. Parts V, VI, and VII provide respectively for the submission of applications for consent to the local planning authority and appeals from their decisions to the Minister for the revocation and modification of express consent, and for enforcement of the regulations, and for that purpose apply certain provisions of Part III of the Act in the manner referred to in reg. 33 and Sched. IV. By virtue of subsection (3) of s. 32 of the Act, a person who displays an advertisement in contravention of the regulations is liable to a fine, the amount of which is prescribed in reg. 9. Reg. 30 prescribes the time and manner in which compensation under s. 32 (2) of the Act may be claimed in respect of expenses incurred in the removal of an existing advertisement.

3628. — structures. See *BOROUGH BILLPOSTING CO. v. MANCHESTER CORPORATION*, § 367.

3629. Agricultural land use—Commissioners. See § 42.

3630. Appeals to the Minister. Selected decisions of the Minister of Town and Country Planning: Bulletin of Selected Appeal Decisions, No. 2, December, 1947, Ministry of Town and Country Planning. The following is a summary:—

Permission to rebuild a war-damaged factory in a congested area which was zoned as an industrial area was refused as the rebuilding of the factory would prejudice the authority's plans and tend to perpetuate the pre-war state of congestion. (II/1.)

The Minister held that the use of twenty-two acres of rough pasture land (situated on the bank of a small river in a partly rural and partly industrial area) as an open space for the recreational purposes of the local population would result in greater advantage than the use of the land for pony, cycle, dog-racing and field events which was proposed by the appellant. (II/2.)

Permission was refused for the development of a sports stadium (greyhound racing and speedway tracks, swimming pool, tennis courts, etc.) on nine acres of low-lying pasture land in a small undeveloped area between a residential and an industrial area on the grounds (a) that the site was included in an industrial zone, (b) that the resulting crowds and noise of the tracks would prejudicially affect the adjoining residential area, and (c) that the development would lead to serious congestion on the adjoining main road. (II/3.)

Permission was granted for the establishment of a greyhound racing track on a ten acre vacant site (temporarily used as a War Department stores depot) near the centre of a city. (II/4.)

Permission was refused to develop forty-three acres of pasture land as a meeting place for seventy-three amateur motor-cycling clubs for races, hill-climbs and rallies on the grounds (a) that the weekly meetings would raise transport, refreshment and sanitation difficulties, and (b) that the land, which was in agricultural occupation, and situated in an area of scenic attraction, should be included in a landscape zone in which no development interfering with its agricultural use or detracting from its natural amenities should be permitted. (II/5.)

Permission was granted for the repair of the domestic part of premises which consisted of a shop with living accommodation, permission having already been granted for structural repairs to the business part. The whole had been war-damaged and the Minister held that an imposition of a time limit on the development of the domestic part was not justified, as permission for the development of the business part had been given without limit of time. (II/6.)

An appeal was allowed against a condition that certain shop premises should not be used for fish-frying. The site was part of a suburban area which it was proposed to zone for general business purposes as a local shopping centre. The Minister held that the proposed development was appropriate, that the fact that permission had been granted for the development of another fish-frying establishment on a neighbouring site did not justify the condition, and that the condition should not be imposed; but permission would be subject to the condition that the fish-frying equipment to be used should be to the satisfaction of the council or himself on appeal. (II/7.)

Permission was granted for the building of two (out of a suggested four) houses for agricultural key workers on a farmholding notwithstanding the unsuitability of the site (separated from the village by two trunk roads unprovided with footpaths) and the fact that there was a village centre at little more than a mile from the site. (II/8.)

An appeal for permission to erect six additional houses for agricultural key workers was dismissed and a permission granted in 1938 for the erection of twenty such houses (only four of which had been completed before the war interrupted the building) was revoked because the site was in open country outside the area intended to be zoned for the natural expansion of the two villages between which it lay and because there were already four houses for key workers and there was no reason why further housing should not be provided with the development area close to the farm. (II/9.)

Permission to develop a site which consisted of a brick boathouse as a station for repairing, hiring and berthing motor-craft, was refused on the grounds that this development would constitute the only interruption over a long stretch of river bank of the public's free access to the river; that oil from the site would pollute the nearby municipal swimming pool; and that there were already adequate facilities of the kind proposed. (II/10.)

Permission was granted to rebuild a war-damaged riverside house which was occupied in connection with the appellant's boat-building business, on the grounds that the business had been established for generations; that the proposed building was unobjectionable; and that while the provision of pleasure boats was one of the public amenities of the river the proposed building would not seriously diminish the riverside space available to the public. (II/11.)

Permission was refused for the development of a builder's yard in a pocket of neglected land enclosed by the gardens of houses which fronted surrounding roads. The appellants owned 300 houses within two miles and 400 to 500 houses within five miles of the site, which was within a residential zone. Permission was refused because of the zoning; because the yard would adversely affect surrounding occupiers; and because the yard was an industrial undertaking. The fact that the site was a neglected pocket of land which had been allowed to deteriorate so as to become a nuisance was held not to be a reason for granting permission. (II/12.)

Permission was refused to erect a bungalow on a small piece of surplus land in a residential estate on the ground that the development would constitute an unwarranted intrusion on the amenities of a number of adjacent houses. (II/13.)

The Minister held that it would be a denial of justice to refuse permission for the replacement of an existing bungalow which had not reached the end of its useful life but had been accidentally destroyed by fire, notwithstanding the general unsuitability of the area for further building development. (II/14.)

Permission to convert a modern four-bedroom detached house into two self-contained flats was refused on the ground that the house was suitable for single family occupation and of a type for which there was a considerable demand in the district. (II/15.)

Permission was refused to replace a war-destroyed three-storey Victorian house by a block of eight flats on the ground of excessive density. (II/16.)

An appeal was allowed against the imposition of a condition that the developers should convey to the council free of charge a piece of land being part of the estate with respect to which conditional permission for interim development had been granted, on the ground that the condition was *ultra vires*. (II/17.)

Permission was granted to work an existing gravel pit on condition that further excavations were restricted in certain directions and that a screen of trees was planted to render them as inconspicuous as possible. Permission was also granted for the development of forty acres (out of a proposed 100) as a gravel pit, subject to conditions as to the direction of working and planting of trees. (II/18.)

Permission was refused for an extension of sand working by a brick-making concern, in an area proposed to be reserved as an open space, on the ground that there was no immediate threat to the appellants' production of bricks, and that serious damage to amenity would result from an extension of the sand working. (II/19.)

3631. —. Selected decisions of the Minister of Town and Country Planning: Bulletin of Selected Appeal Decisions, No. 3, April, 1948, Ministry of Town and Country Planning. The following is a summary:—

An appeal against a time limit of fifteen years on permission to erect new buildings to replace war-damaged buildings in connection with a factory, was allowed on the ground that, although the area required redevelopment, there was no likelihood of such redevelopment being carried out at the end of fifteen years or indeed within a much longer period. (III/1.)

An appeal was allowed against a refusal of permission to erect a pottery in the triangle formed by two main road intersections in an area provisionally zoned residential, on the following conditions: (a) the submission of revised plans including proposals for the use of that part of the site which was not required for the purposes of the pottery; (b) that no inter-connecting road between the two main roads should be constructed; (c) that no permanent spoil heap should be permitted on the site. (III/2.)

An appeal against refusal of permission to make alterations to a foundry in a proposed residential zone was dismissed on the ground, *inter alia*, that an undertaking such as a foundry, if surrounded by residential property, must inevitably be a source of injury to amenities. (III/3.)

Permission to redevelop a site was refused on the ground that the greater part of the site was within an area proposed to be incorporated in a new road. (III/4.)

The Minister has no jurisdiction to determine an appeal where the use has been commenced before an application has been made to the Authority for planning permission. (III/5.)

An appeal by an urban district council against the refusal of the neighbouring rural district council of permission to develop some four acres of low-lying meadow land within the latter council's area for light industrial purposes was dismissed, on the ground, *inter alia*, that it would not be in the best interests of the town to provide a special area for the segregation of industry. (III/6.)

An appeal against refusal of permission to convert the ground floor of a detached dwelling-house in a mainly residential area into a non-residential club was dismissed on the ground of injury to residential amenities and of the housing shortage. (III/7.)

An appeal was allowed against refusal of permission to convert a four- or five-bedroom dwelling-house into two self-contained flats, on the ground that, in view

of the housing shortage, considerations of amenity were not adequate to support such a refusal. (III/8.)

An appeal was allowed against refusal of permission for the erection of houses forming part of a specially designed group on the sea coast. (III/9.)

An appeal against refusal of permission to re-erect beach huts was refused on the ground that these would interfere with public enjoyment of the beach. (III/10.)

An appeal was allowed against refusal of permission to convert parts of a derelict factory into a dwelling-house and cottage, the whole being in a landscape zone, on the ground that the residential development was slight and that the factory, being already there, would remain derelict if not redeveloped. (III/11.)

An appeal was allowed against refusal of permission to use land in a proposed rural zone for breeding greyhounds. (III/12.)

An appeal was dismissed against refusal of permission to work gravel in an area in the Outer Country Ring round London which was of great natural beauty and had been recommended by the National Parks Committee as appropriate for inclusion in a conservation area, on the ground that there was no overriding necessity which compelled the use of this particular site. (III/13.)

An appeal was allowed against a refusal of permission to convert two large houses, each standing in about four acres, for use as homes for elderly people, on the ground that the proposed use would not injure amenities. (III/14.)

The business of a firewood dealer involving the use of a circular saw is unsuitably located in a residential area but may be permitted where there is evidence that it serves a local need. (III/15.)

It is improper to grant consent for development subject to a number of conditions, one of which is that the applicant should pay a stipulated annual sum of money to the council as security for the final fulfilment of the aforesaid conditions. (III/16.)

3632. —. Selected decisions of the Minister of Town and Country Planning: Bulletin of Selected Appeal Decisions, No. 4 (including an index to Bulletins 1 to 4), August, 1948, Ministry of Town and Country Planning. The following is a summary:—

The local council granted permission for a period of ten years for the extension of a factory established in the London Green Belt in an area designated as a recreational centre, but refused altogether to give permission for the final plans for the future extension of the factory. The Minister allowed an appeal to the extent of granting permission both for the immediate and final factory extension but in each case for twenty years, taking into account the fact that the plan for the recreational centre would be unlikely to reach fruition within that period. (IV/1.)

The Minister dismissed an appeal against the refusal of permission for a food manufacturing and distributing firm to extend its works in a London borough for the purpose of transferring there the factory of a north country subsidiary with a view to saving transport costs, on the ground that the proposal, although unexceptionable in itself, had to be refused because of the overriding consideration of preventing aggravation of the borough's housing problem. (IV/2.)

The Minister allowed an appeal only to the extent of extending the time limit to twenty-five years, in a case where the council had granted permission for fifteen years for the redevelopment of a war-damaged factory on a site which would eventually require to be replanned in accordance with the council's plan for an industrial area. (IV/3.)

The Minister dismissed an appeal against the refusal of permission for light industrial development in an agricultural area adjoining an urban zone, taking into account the provision of services, labour availability, means of access, and planning proposals for the district. (IV/4.)

The Minister allowed an appeal against the refusal of permission to rebuild six war-damaged terrace houses which had been held eligible for a cost of works payment (that refusal being based on the council's road widening plan), on the ground that the balance of advantage lay with the appellant's proposal to make houses available as against the council's long term road widening plan, the cost

of which would be increased by only a small percentage if the development in question were allowed. (IV/5.)

The Minister allowed an appeal against the council's imposition of a time limit on the rebuilding of a war-damaged house, on the ground that the road widening scheme which occasioned the time limit was unlikely to be put into operation within twenty years, and that the imposition of a time limit even for twenty years would impose financial hardship on the appellant. (IV/6.)

Where permission to develop had been granted subject to a condition that the development should be commenced within twelve months and completed within twenty-four months the Minister held that, as the development was in keeping with the general character of the neighbourhood, the condition as to the time of its execution was unreasonable. (IV/7.)

Having regard to the fact that residential amenities in the neighbourhood would not be disturbed and that the resulting traffic problem could be met by the parking facilities at the site on which the track in question stood, the Minister granted permission for a greyhound racing track to be used as a speedway track, subject to the condition that it should be so used for only one night per week for public meetings and two additional nights for practice, and never on Sundays. (IV/8.)

The Minister refused permission for the development, as a greyhound racing stadium, of an area of back land situated in an urban area which had been formed by the amalgamation of two neighbouring towns, on the ground that the resulting use of the only means of access to the track from the adjoining trunk road would create undesirable and dangerous traffic congestion and that no other means of access was feasible. (IV/9.)

Permission was granted, for a period of five years, for the internal conversion into flats of a house of a type no longer considered suitable for single family occupation, in a case where full conversion would have involved a disproportionate expenditure on the staircase, on the ground that the fullest possible use should be made of all potential living accommodation. (IV/10.)

The local authority was directed not to take action within a period of three years to prohibit the use as a dressmaking establishment of the ground floor of premises in an East London borough which, before suffering war damage, had consisted of a shop with living accommodation above, and which had been reinstated and subsequently used as a dressmaking establishment without planning permission, on the ground that the question whether such a user was to be allowed in a business area (as this was) or confined to an industrial zone, was one which depended on the general character of the neighbourhood. (IV/11.)

Permission was refused for the use as an estate agent's office of a ground floor room in one of a row of four cottages overlooking a green and adjacent to a number of period houses, on the ground that such use (which was to be instituted without any previous structural alteration but merely after redecoration of the room, which was in bad repair), would interfere with the residential amenities of the cottage, the adjoining cottage and the nearby houses, and that no suitable sanitary conveniences were or could be made available. (IV/12.)

Permission was refused for the development as an agricultural implement repair station of a garage situated on a strip of land adjoining a classified "B" road which was forty-nine feet wide and had a gradient of one in thirty-one at the garage and one in ten a little distance beyond, on the ground that the entry and exit of agricultural machines would constitute a danger to fast moving traffic on this considerably used road, and in general, because such a service should properly be provided in a village and not in open country, regard being had to the fact that there was no evidence of need for the provision of the service at the site in question. (IV/13.)

Permission was granted to a brewery company to erect three cottages for employees on a site two miles distant from the nearest village but close to the brewery (where most of the brewery employees were already satisfactorily housed), drainage and other services being available on the site, on the ground that the development was not only unobjectionable but would result in a definite advantage to both workers and employers. (IV/14.)

On an appeal against conditions imposed by the planning authorities in granting permission for the erection of a dwelling-house on the border of one

of the proposed national parks the Minister, in exercise of his powers under s. 6 (4) of the Town and Country Planning (Interim Development) Act, 1943, having ordered an inquiry as to whether permission should be granted, reversed the authority's decision to grant permission, on the ground of the exceptional amenity value of the area. (IV/15.)

The Minister dismissed an appeal against the refusal of permission to develop a 200 acre coastal farm as a holiday camp on the ground that such development would be detrimental to rural amenities. (IV/16.)

The Minister dismissed an appeal and ordered the appellants to pay the costs where it appeared that the land on which the appellants had sought permission to erect an advertisement belonged not to the appellants but to a third party who had not given the appellants any licence and who knew nothing at all of the proposed development. (IV/17.)

3633. Building preservation orders. Town and Country Planning (Building Preservation Order) Regulations, 1948 (No. 1766) [E.], made under the Town and Country Planning Act, 1947 (10 & 11 Geo. 6, c. 51), s. 29; came into operation on August 16, 1948; deal with the form of building preservation orders made under s. 29 of the Act and the procedure to be followed in connection therewith. [2*d.*]

3634. Churches and burial grounds—use of land occupied for. Town and Country Planning (Churches, Places of Religious Worship and Burial Grounds) Regulations, 1948 (No. 401) [E.], made under the Town and Country Planning Act, 1944 (7 & 8 Geo. 6, c. 47), s. 28. These regulations prescribe the terms and conditions governing the use of lands (consecrated or otherwise) acquired or appropriated for the purposes of the Act which are, or were formerly, occupied for churches, places of religious worship or burial grounds.

3635. Depreciation of land values—claims for. Claims for Depreciation of Land Values Regulations, 1948 (No. 902) [E.] made under the Town and Country Planning Act, 1947 (10 & 11 Geo. 6, c. 51), ss. 60, 64 (2), 111. These regulations prescribe the manner and the period in which claims for payment under a scheme made under s. 58 of the Act in respect of interests in land which are depreciated in value by reason of that Act are to be made to the Central Land Board. They also provide for the ascertainment of the development values of interests in respect of which such claims are made. The Central Land Board is the authority to determine the development values. The regulations also provide for the determination of disputes and for practice and procedure. The right to payment is conditional on compliance with the provisions of the regulations as to the making of claims. Finally the regulations prescribe the manner and period in which notice of any assignment of a right to receive payment is to be given to the Board in order to be effective. The regulations came into force on July 1, 1948, when the Act came into force. [3*d.*]

Claims for Depreciation of Land Values (Period of Making Claims) Regulations, 1948 (No. 2822), made under the Town and Country Planning Act, 1947, ss. 60, 111, came into operation on January 1, 1949. These Regulations amend the provisions of the Claims for Depreciation of Land Values Regulations, 1948 (No. 902), by extending the general period for making claims until June 30, 1949, and, consequently, revoke the power of the Central Land Board to grant an extension of time in special cases to that date.

3636. Development charges—agricultural workers' and others' houses. Ministry of Town and Country Planning Circular 62 dated October 20, 1948, deals with proposed arrangements as to development charges on houses for members of the agricultural population, other than houses built by local housing authorities.

3637. — applications to determine, confirm or vary. See § 3641.

3638. — exemptions. Town and Country Planning (Development Charge Exemptions) Regulations, 1948 (No. 1188) [E.], made under the Town and Country Planning Act, 1947 (10 & 11 Geo. 6, c. 51), s. 69 (2) (b); came into operation on July 1, 1948; specify the operations and uses of land which are exempt from development charge. [2*d.*]

3639. — general principles. Town and Country Planning (Development Charge) Regulations, 1948 (No. 1189) [E.], made under the Town and Country Planning Act, 1947, ss. 70 (3), 111; came into operation on July 1, 1948; prescribe the

general principles to be followed in determining the amount of development charge to be paid in respect of any operation or use of land.

3640. — land held by local authority. Town and Country Planning (Local Authorities' Land: Exceptions to Section 82) Regulations, 1948 (No. 1461) [E.], made under the Town and Country Planning Act, 1947, s. 82 (1) (c); came into operation on July 1, 1948; set out the classes of land held by local authorities which are excepted from s. 82 of the Act.

3641. Development permission—application for. Town and Country Planning (Making of Applications) Regulations, 1948 (No. 711) [E.], made under the Town and Country Planning Act, 1947 (10 & 11 Geo. 6, c. 51), ss. 73 (1), 102 (1), prescribing the manner in which application may be made (1) to a local planning authority for permission to develop land, and (2) to the Central Land Board to determine, confirm or vary a development charge.

The Ministry of Town and Country Planning have issued Circular No. 41, dated April 14, 1948, explanatory of the above regulations. The regulations do not prescribe any forms, but deal only with the making of applications. The way in which applications for planning permission are to be dealt with after they are received by the appropriate authorities is governed by the General Development Order (see § 3642). Applications under s. 17 of the Act of 1947 (to determine whether planning permission is required) do not fall within the scope of the regulations, except where they are made as part of an application for planning permission. When they are made separately it is expected that they will normally be made by letter and that no special form will be needed. It is not intended to make regulations at present under s. 102 (2) enabling applications for bye-law consent, planning permission and determination of development charge to be made in a single document. Separate applications are therefore necessary. No arrangements are made for a combined decision on these applications.

3642. — general order. Town and Country Planning (General Development) Order, 1948 (No. 958) [E.], made under the Town and Country Planning Act, 1947, ss. 13, 14, 16, 114. This is a general order dealing with the grant of permission to develop land under Part III of the Act. Art. 3 and Sched. I relate to development permitted by the Order itself, and Art. 4 prescribes procedure for the withdrawal of such permission in certain circumstances. Arts. 5–12 and Sched. II deal with applications for permission to local planning authorities. Special provisions are made as to development near trunk roads (Art. 7, 9). There are also provisions requiring consultation in certain cases with persons and bodies likely to be affected, provisions as to the procedure on reference of an application to the Minister and on appeal to the Minister, and provisions as to the keeping of a register of planning applications. The new Order came into operation on July 1, 1948, the date on which the Act came into operation. [5d.]

3643. — industrial buildings. Town and Country Planning (Erection of Industrial Buildings) Regulations, 1948 (No. 1309) [E.], made under s. 14 (4) of the Town and Country Planning Act, 1947; came into operation on July 1, 1948; prescribe all classes of industrial buildings for the purposes of s. 14 (4).

3644. Development plans—form and procedure. Town and Country Planning (Development Plans) Regulations, 1948 (No. 1767) [E.], made under the Town and Country Planning Act, 1947 (10 & 11 Geo. 6, c. 51), ss. 8, 10, 11, 111; came into operation on August 16, 1948; provide for the form and content of development plans under Part II of the Act and with the procedure to be followed for bringing them into operation. The regulations apply also to alterations or additions to development plans. [3d.]

3645. — preparation of. Circular No. 59 has been issued by the Ministry of Town and Country Planning dealing with the preparation of development plans with an Appendix containing notations for the prescribed maps.

3646. Easements over land acquired under Defence Acts—rights of statutory undertakers. The Requisitioned Land and War Works Act, 1948 (11 & 12 Geo. 6, c. 17), s. 4 (3), makes provision with respect to the rights of statutory undertakers where land over which they have an easement has been acquired under the Defence Acts and the Minister gives notice to discharge or modify such easement.

3647. General regulations. Town and Country Planning (General) Regulations, 1948 (No. 1380) [E.] [2d.], made under the sections of the Town and Country Planning Act, 1947 (10 & 11 Geo. 6, c. 51) noted hereunder, and under the Town and Country Planning Act, 1944 (7 & 8 Geo. 6, c. 47), s. 23.

The regulations provide for the following matters:

Reg. 3—Notices under s. 9 of the Act of 1947 (designated land).

Reg. 4—Claims for compensation under s. 20 (refusal of permission), s. 22 (revocation or modification of permission), s. 27 (discontinuance of authorised uses, etc.), and s. 79 (abortive expenditure on refusal of permission to continue authorised development); purchase notices under s. 19 (obligation to purchase on refusal of permission) or under that section as modified by s. 22 or s. 27.

Reg. 5—Notices to occupiers and persons having an interest in premises: s. 105 (2).

Reg. 6—Application of enforcement provisions to works in contravention of s. 30 (6) (buildings of historical or architectural interest).

Reg. 7—Notices under s. 33 (abatement of injury to amenity).

Reg. 8—Application of Public Health Act, 1936, to enforcement notices under s. 24, s. 30 (8), or s. 33.

Reg. 9—Prescribed period under s. 84 (operational land of statutory undertakers).

Reg. 10—Disputes as to prevailing use: s. 110.

Reg. 11—Concurrent procedure under s. 45 (6) for development plans and compulsory purchase orders.

Reg. 12—Concurrent procedure for acquisition of land and extinguishment of rights of way: s. 38 (compulsory acquisition of land for development).

Reg. 13—Transitory provisions as to the Restriction of Ribbon Development Acts: Act of 1947, Sched. 10, para. 13.

3648. Highways—stopping-up—concurrent proceedings. See § 1590.

3649. Industrial building. (Factories Act, 1937 (1 Edw. 8 & 1 Geo. 6, c. 67), s. 151 (1). The expression “industrial building” in a scheme made under the Town and Country Planning Act, 1932, was defined by reference to s. 151 (1) of the Factories Act, 1937, as premises in which certain work was “carried on by way of trade or for purposes of gain”. In the latter expression the words “for purposes of gain” do not take their colour from the words “by way of trade” but must be construed disjunctively, and the word “gain” does not necessarily mean direct gain arising from the sale of an article in the market. Thus, where an occupier of premises carried on, on those premises, the work of making and breaking up concrete for the purpose of investigating and testing the suitability of materials, he carried on this process “for purposes of gain” within the meaning of the subsection, and none the less so because he made his living by making reports and giving advice to clients. Consequently, his premises constituted an “industrial building”: *STANGER v. HENDON BOROUGH COUNCIL*, [1948] 1 K. B. 571; [1948] L. J. R. 1008, C. A. (affirming decision of Divisional Court *sub. nom. Hendon Borough Council v. Stanger*, [1947] C. L. Y. 3047; applying *Bailey v. Potteries Electric Traction Co.*, [1931] 1 K. B. 385; explaining *Nash v. Hollinshead*, [1901] 1 K. B. 700).

3650. Interim development—agreement between landowner and local authority. (Town and Country Planning Act, 1932 (22 & 23 Geo. 5, c. 48), ss. 10, 34; Town and Country Planning (Interim Development) Act, 1943 (6 & 7 Geo. 6, c. 29), s. 4 (1), (2).) It is settled law that agreements are not necessarily outside the scope of s. 34 of the Town and Country Planning Act, 1932, even though they contain provisions which are not purely restrictive in character.

By an agreement made in 1934 between landowners, a development company, and a local authority which recited that the local authority had submitted to the Minister a planning scheme for their borough, and that the Minister in the exercise of his powers under s. 10 (5) of the Town and Country Planning Act, 1932, had granted permission for the development of certain lands belonging to the landowners in accordance with a lay-out plan, it was provided by clause 1 that the agreement was intended to be made by virtue of s. 34 of the Act of 1932. Clause 3 provided that the lands in question “may be used for the purposes mentioned in and subject to the restrictions set out in Sched. II hereto

and in accordance with the lay-out in plan No. 2 hereto annexed". Clause 4 provided: "Until the scheme shall come into force this agreement shall operate as if the owners and the development company had submitted an amended lay-out plan for the approval of the [local authority] and the [local authority] by this agreement had approved the said plan and had granted permission to the owners and the development company to develop by virtue of s. 10 of the Act and the Town and Country Planning (General Interim Development) Order, 1933". Pursuant to the Town and Country Planning (Interim Development) Act, 1943, s. 4, the local authority, on a direction from the Minister under s. 4 (2) of the Act, agreed to make an order revoking the permission granted by the agreement. The landowners and the development company claimed that this revocation was a breach of the local authority's contractual obligations under the agreement, and claimed damages therefor. Held, the effect which had to be attributed to clause 3 of the agreement, was that the local authority, by virtue of s. 34 of the Act of 1932, contractually debarred itself from interfering, after the scheme came into force, with the specified method of development by requiring the landowners and the development company to pull down or alter buildings erected in conformity with that method. However, it was impossible to spell out of the agreement as a whole an undertaking by the local authority that, however strongly circumstances might require that they should avail themselves of subsequent legislation to cancel the permission which they had given under clause 4 of the agreement, they would not do so, and, consequently, the actions by the landowners and the development company failed: *CHESSINGTON DEVELOPMENT CO. v. SURBITON BOROUGH COUNCIL*, [1948] Ch. 369; [1948] L. J. R. 1089, Romer, J. (applying *Att.-Gen. v. Barnes Corporation and Ranelagh Club*, [1939] Ch. 110). (See also [1949] 1 C. L. 245.)

- 3651. — prohibition of user—jurisdiction of justices on appeal.** (Town and Country Planning (Interim Development) Act, 1943 (6 & 7 Geo. 6, c. 29), s. 5 (2), Sched. I, para. 3). It is unnecessary for the notice of an interim development authority prohibiting the user of certain land to give any reasons why the authority has refused to consent to the use to which it is proposed to put the land. The notice need only state that the authority are satisfied that it is necessary or expedient to prohibit the use and that they have refused to give their consent to its use. Consequently, on an appeal against the action proposed to be taken by the authority under s. 5 (2) of the Town and Country Planning (Interim Development) Act, 1943 (as modified by Sched. I, para. 3), the justices can only decide whether the authority have acted within their jurisdiction, i.e., in respect of land that is comprised within the order, and whether there has been development contrary to the order, and whether the necessary steps requisite to be taken before a notice is given have been taken. This is not an exhaustive category, but it is clear that the Court cannot consider the reasons which have led the authority to come to the conclusion that it is necessary or expedient to prohibit the intent to develop.

On an appeal to the justices the latter decided that the use of the ground would not be injurious to the amenities of the neighbourhood, the interim development authority having refused permission to the use of the ground for this reason. Held, the justices had no power to allow the appeal: *SWINDON CORPORATION v. PEARCE*, [1948] 2 K. B. 301; [1948] L. J. R. 1540, D. C. (applying *Taylor v. Brighton Corpn.*, [1947] C. L. Y. 3070; and *Dormer v. Newcastle-upon-Tyne Corpn.*, [1940] 2 K. B. 204).

- 3652. Local land charges—registration of planning orders and charges.** See § 1877.

- 3653. Local planning authorities—development by.** Town and Country Planning (Development by Local Planning Authorities) Regulations, 1948 (No. 2302), made under the Town and Country Planning Act, 1947 (10 & 11 Geo. 6, c. 51), s. 35 (3); prescribe certain modifications to Part III of the Act which are to have effect where the person wishing to develop land is the local planning authority itself; came into operation on November 1, 1948. The main modifications made by these Regulations are: (1) that such an authority shall notify its intention to develop to the Minister who, unless he considers a formal application unnecessary, may require the application to be made to him for determination; (2) that any other applications for consent or approval by a local planning authority in relation

to any such land shall be made to the Minister, whose decision shall be final; and (3) that compensation in cases of refusal or revocation of permission, and in other kindred cases, shall not be claimed by the authority in respect of such land. [2*d.*]

3654. — — — — — **development charges.** See § 3640.

3655. — — — — — **London—delegation of planning functions to Common Council.** Town and Country Planning Delegation (London) Regulations, 1948 (No. 1459), made under the Town and Country Planning Act, 1947, s. 114; came into operation on July 1, 1948; provide for the delegation by the London County Council to the Common Council of the City of London of planning functions in relation to land in the City.

Town and Country Planning (City of London Applications) Direction, 1948 (No. 1460), made under s. 15 of the same Act, deals with the procedure on applications for permission to develop land in the City in cases of exceptional difficulty.

3656. — — — — — **transfer of property and officers.** Town and Country Planning (Transfer of Property and Officers and Compensation to Officers) Regulations, 1948 (No. 1236) [E.], made under the Town and Country Planning Act, 1947, s. 101. These regulations, which came into force on July 1, 1948, provide for the transfer to local planning authorities under the Act of property held and liabilities incurred by county district councils and joint planning committees, which bodies ceased to exist on that date. There are also provisions for the transfer of officers of those bodies to the service of the new authorities and for the compensation of such officers who lose employment or remuneration as a result of such transfer. [5*d.*]

3657. **London—delegation of functions.** See § 3655.

3658. — — — — — **saving for London County Council (General Powers) Act, 1948.** See § 2090.

3659. **Minerals—working of.** Town and Country Planning Minerals Direction No. 1, 1948 (No. 1437) [E.], relating to applications for permission to win and work any of the minerals specified in the Schedule thereto.

Town and Country Planning (Minerals) Regulations, 1948 (No. 1521) [E.], made under the Town and Country Planning Act, 1947 (10 & 11 Geo. 6, c. 51), ss. 81 (1), 111; came into operation on July 1, 1948; prescribe the adaptations and modifications to which the Act is subject in relation to development consisting of the winning and working of minerals. [2*d.*]

3660. — — — — — **modification of Mines Act.** Town and Country Planning (Modification of Mines Act) Regulations, 1948 (No. 1522) [E.], made under the Town and Country Planning Act, 1947, s. 81 (4); came into operation on July 1, 1948; modify the Mines (Working Facilities and Support) Act, 1923 (13 & 14 Geo. 5, c. 20), as to grants of rights to work minerals.

3661. **New towns — Minister's duties — consultation.** (New Towns Act, 1946 (9 & 10 Geo. 6, c. 68), s. 1 (1).) S. 1 (1) of the New Towns Act, 1946, provides: "If the Minister is satisfied, after consultation with any local authorities who appear to him to be concerned, that it is expedient in the national interest that any area of land should be developed as a new town by a corporation established under this Act, he may make an order designating that area as the site of the proposed new town". The Minister is fulfilling his duty of consultation under the Act, if he puts to the local authorities any point on which he considers they could assist him in the task of deciding whether or not it is in the national interest to designate a particular area, and gives them every opportunity of putting forward any point they think relevant. The Minister need not carry the consultation stage through before he publishes the draft order.

Per Bucknill, L.J.: "In my view, . . . it [consultation] means that, on the one side, the Minister must supply sufficient information to the local authority to enable them to tender advice, and, on the other hand, a sufficient opportunity must be given to the local authority to tender advice".

Before the New Towns Act, 1946, had been passed by the House of Lords, the Minister had a conference with the local authorities as to the desirability of designating the area of C. as the site of a new town. Up to the date when the Minister made his order it was open to the local authorities to put before the Minister any matter which they thought of importance. Held, there had been "consultation" within the meaning of s. 1 (1) of the Act: *ROLLO v. MINISTER OF*

TOWN AND COUNTRY PLANNING, [1948] L. J. R. 817; [1948] 1 All E. R. 13, C. A. (affirming decision of Morris, J., [1947] C. L. Y. 3060).

3662. — sewerage orders. See § 2979.

3663. — water supply. See the Water Act, 1948 (11 & 12 Geo. 6, c. 22), s. 13, referred to in § 3855.

3664. Purchase notice. In *EPSOM AND EWELL B. C. v. STREATHAM PROPERTY INVESTMENT* (October 28, 1948), the plaintiff borough asked for a declaration that it was not bound, in pursuance of s. 10 (6) of the Town and Country Planning Act, 1932, to purchase the defendants' freehold property. S. 10 dealt with the permission for interim development of land and sub-s. (6) provided that "where an appeal to the Minister . . . is dismissed on the ground only that the land to which the appeal relates, though otherwise suitable for immediate development, ought to be reserved by the scheme for a public open space", the freehold owner may require the local authority to purchase the land. In the present case the Minister had dismissed the defendants' appeal on two grounds, *viz.*, first, that the land should be reserved as an open space under Sir Patrick Abercrombie's "Greater London Plan", and secondly, on another ground, and had added, in the notice dismissing the appeal, that in his view the requirements of s. 10 (6) were satisfied. Vaisey, J., held that that view of the Minister was not binding on the Court and that, in the complete absence of indication of the main ground guiding the Minister's decision the conditions of s. 10 (6) were not satisfied and the plaintiff borough was not bound to acquire the property. [Reported by *C. M. Schmitthoff, Esq., Barrister-at-Law.*] See now [1949] Ch. 38.

3665. Ribbon development restriction—enforcement of conditions. Town and Country Planning (Enforcement of Restriction of Ribbon Development Acts) Additional Regulations, 1948 (No. 1126) [E.], made under the Town and Country Planning Act, 1947 (10 & 11 Geo. 6, c. 51), s. 76 (6). These regulations, which came into force on July 1, 1948, apply the provisions of that section (which make enforceable any conditions in permissions granted under the Town and Country Planning Acts, 1932 and 1943) to conditions in permissions granted under the Restriction of Ribbon Development Act, 1935 (25 & 26 Geo. 5, c. 47), ss. 1, 2. There is also a provision in the regulations relating to temporary development.

Town and Country Planning (Enforcement of Restriction of Ribbon Development Acts) Regulations, 1948 (No. 1520) [E.], made under the Town and Country Planning Act, 1947, s. 75 (8); came into operation on July 1, 1948; adapt the provisions of that section so as to make it applicable to breaches, occurring before July 1, 1948, of the control exercised by highway authorities under the Restriction of Ribbon Development Act, 1935, ss. 1, 2.

3666. Sale of land. Precedents are given in 12 *Conveyancer* (N.S.) 337 *et seq.* arising out of contracts made before the appointed day where development value was likely to be important. Precedents are also given for these and other transactions in the *Journal of Planning Law*, see § 3672.

3667. Town and Country Planning Act, 1947—appointed day. Town and Country Planning Act, 1947 (Appointed Day) Order, 1948 (No. 213) [E.], made under the Town and Country Planning Act, 1947 (10 & 11 Geo. 6, c. 51), s. 119, provided that the Act should come into force on July 1, 1948. See Circular No. 38 issued by the Ministry of Town and Country Planning.

3668. Tree preservation. Town and Country Planning (Tree Preservation Order) Regulations, 1948 (No. 1436) [E.], made under the Town and Country Planning Act, 1947 (10 & 11 Geo. 6, c. 51), ss. 28, 111; came into operation on July 1, 1948.

3669. Use classes. Town and Country Planning (Use Classes) Order, 1948 (No. 954), made under s. 12 of the Town and Country Planning Act, 1947 (10 & 11 Geo. 6, c. 51); came into operation on July 1, 1948. This Order specifies twenty-two "use classes". Where a building or other land is used for a purpose of any class so specified, the use of such building or other land for any other purpose in the same class is not to be deemed, for the purpose of the Act, to involve development of the land so as to require development permission under the Act.

Town and Country Planning (Use Classes for Third Schedule Purposes) Order, 1948 (No. 955), made under para. 6 of Sched. 3 to the Town and Country Planning Act, 1947; came into operation on May 5, 1948. This Order specifies the twenty-

two "use classes" in terms identical with those of the preceding Order. Sched. 3 to the Act of 1947 sets out certain classes of development which an owner of land is assumed to have permission to undertake when assessments of compensation or development charge are being made under the Act. Para. 6 of that Schedule provides that one of such classes shall be, in the case of a building or other land which was used on the appointed day (July 1, 1948), or, if unoccupied on that day, was last used since January 7, 1937, for a purpose within any general class specified in a ministerial Order, the use of that building or land for any other purpose falling within the same general class. This Order specifies the general classes accordingly.

3670. War-damaged land—adjustment of compensation. See § 543.

3671. ARTICLES. Declaratory orders under the Town and Country Planning Act, 1944, s. 1 (founded on *Robinson v. Minister of Town and Country Planning*, [1947] O. L. Y. 3064): 98 L. J. 73. The Town and Country Planning Act, 1947: 98 L. J. 129, 144. The Town and Country Planning Act, 1947—some preliminary points for purchasers of land: 98 L. J. 171. Development since the appointed day: 98 L. J. 187. Town and Country Planning Act, 1947—claims for depreciation of land values: 92 S. J. 264, 367; *Solicitor*, October, 1948, p. 20. Interim development conditions: 112 J. P. J. 306. Town and Country Planning Act, 1947—some orders (T. & C. P. (Use Classes) Order, 1948, (Use Classes for Third Schedule Purposes) Order, 1948, and (General Development) Order, 1948): 92 S. J. 277. Contracts for the sale of land—development value payments: 205 L. T. J. 287. Some conveyancing points under the Town and Country Planning Act, 1947: 92 S. J. 289. Town and country planning—use classes: 205 L. T. J. 305. Development charges: 92 S. J. 329, 342; *Solicitor*, November, 1948, p. 244. Town and Country Planning Act, 1947—application to minerals: *Estates Gazette*, July 3, 1948, p. 7. Town and Country Planning Act, 1947—local land charges and registers of planning applications: 92 S. J. 383. Town and Country Planning Act, 1947—preliminary thoughts on practice: 206 L. T. 53. Town and Country Planning Act, 1947—unused planning permissions and uncompleted development (founded on Town and Country Planning Act, 1947, ss. 77–79): 98 L. J. 423. Petty Sessions as appeal Courts against enforcement notices (founded on Town and Country Planning Act, 1947, s. 23 (4)): 112 J. P. J. 481, 497, 524. Has the Town and Country Planning Act, 1947, affected conveyancing?: 92 S. J. 447, 461, 479. Development: *Solicitor*, August, 1948, pp. 171, 196. Town and Country Planning Act, 1947—what development requires planning permission?: 98 L. J. 467. Town and Country Planning Act, 1947, and the sale of land: 92 S. J. 481, 495, 510, 524, 538. Ripe and near-ripe land: 92 S. J. 492. Development charge and monopoly value: 112 J. P. J. 569. Planning permission to take in lodgers?: 206 L. T. 152. The position of the landowner: 98 L. J. 533. The position of the purchaser: 98 L. J. 545. Planning control in relation to landlords and tenants: 206 L. T. 212. Sales over existing use value—the Central Land Board's policy: 92 S. J. 593, 608. Land charges and planning conditions: 112 J. P. J. 683. Caveat emptor—conveyancing under the Planning Acts, by Harold Potter: 13 *Conveyancer* (N.S.) 36. Development value payments—warning to purchasers (right to receive development value payment): 206 L. T. 283. Designation of land as subject to compulsory purchase: 112 J. P. J. 715. Advertisements: 92 S. J. 654; 206 L. T. 294. Town and Country Planning Act, 1947—practical points (vendor and purchaser): 92 S. J. 669. A black market in land (existing use—excessive price): 112 J. P. J. 731. Planning permission for a limited period (founded on s. 23 of the Act): 112 J. P. J. 766. Planning Act and conveyancing—the contract of sale: 98 L. J. 668. Planning appeals procedure: 92 S. J. 682. "Advertise unto others . . ." (founded on the Town and Country Planning (Control of Advertisement) Regulations, 1948): 112 J. P. J. 808. Bureaucratic interference (existing use value—object of the Act): *Solicitor*, December, 1948, p. 267. "Planned" conveyancing, by Harold Potter: 13 *Conveyancer* (N.S.) 110.

3672. — JOURNAL OF PLANNING LAW. April, 1948: Control of land use, by Desmond Heap: p. 7. Planning as affecting interests in and value of land, by E. J.

Rimmer and J. Stuart Daniel: p. 15. Private rights and ministerial action, by T. A. Blanco White: p. 32. Valuation and management, by W. A. Leach: p. 38. Dealings with lands under the Planning Acts (with forms of inquiry), by Harold Potter: p. 48.

May, 1948: Planning law and development permission, by Desmond Heap: p. 63. Compulsory acquisition, by E. J. Rimmer and J. Stuart Daniel: p. 71. Objection to planning, by T. A. Blanco White: p. 86. Effect of planning on property management, by W. A. Leach: p. 92. Contract for sale (with forms), by Harold Potter: p. 104.

June, 1948: Planning restrictions and the recovery of compensation, by Desmond Heap: p. 124. New principles of compensation for compulsory acquisition, by E. J. Rimmer and J. Stuart Daniel: p. 132. Anomalies in the operation of Part V of the Act, by R. D. Stewart-Brown: p. 169. Development of one's own land, by T. A. Blanco White: p. 173. Development right, by W. A. Leach: p. 181. Requisitions on title (with forms), by Harold Potter: p. 188.

July, 1948: Further observations on the meaning of development, by Desmond Heap: p. 208. Claims on the £300 million fund, by E. J. Rimmer and J. Stuart Daniel: p. 222. The local planning authority—constitution and administration, by J. F. Garner: p. 248. Opposition to compulsory purchase, by T. A. Blanco White: p. 257. Development charges, by W. A. Leach: p. 263. Conveyances on sale (with precedent of conveyance), by Harold Potter: p. 273.

August, 1948: Designation, development and disposal of land by local authorities, by Desmond Heap: p. 292. Development charges, by E. J. Rimmer and J. Stuart Daniel: p. 300. The purchaser's solicitor under the Town and Country Planning Acts, by Harold Potter: p. 338. Compensation for planning action other than development, by W. A. Leach: p. 343. Leases (with precedent of lease), by Harold Potter: p. 353.

September, 1948: Advertisements and the preservation of trees, special buildings and amenities, by Desmond Heap: p. 376. Existing use value—a warning, by E. J. Rimmer and E. C. Strathorn: p. 382. Temporary use and normal use, by T. A. Blanco White: p. 385. Planning control in relation to registered property, by T. B. F. Ruoff: p. 388. "Outline" development, by J. Stuart Daniel: p. 391. Control of open ground under s. 33: p. 392. Declaratory orders under s. 1 (1) of the 1944 Act, by J. Muir Watt: p. 393. S. 91 of the Act: p. 399. Compensation for acquisition of land, by W. A. Leach: p. 417. Mortgages (with precedent of mortgage), by Harold Potter: p. 426. Assignments of development value (precedents), by Harold Potter: p. 435.

October, 1948: Advertisements and the preservation of trees, special buildings, and amenities, by Desmond Heap: p. 450. Mineral rights and other special cases, by E. J. Rimmer and J. Stuart Daniel: p. 457. Notes on the general development order: p. 467. War works and planning, by T. Beaumont: p. 471. Disputes about compensation, by T. A. Blanco White: p. 477. Compensation for acquisition of land, by W. A. Leach: p. 483. Contracts for sale—clause applicable to a single private dwelling-house, by Harold Potter: p. 492. Assignments of development value: p. 493.

November, 1948.—Existing use value and the Central Land Board—the legal issue involved, by E. J. Rimmer and J. Stuart Daniel, p. 516. Development charge and the sale of land—a statement by Sir Malcolm Trustram Eve, K.C., chairman of the Central Land Board: p. 522. Planning control and its enforcement, by Desmond Heap: p. 528. Trunk roads and ribbon development, by T. A. Blanco White: p. 538. Compensation for acquisition of land, by W. A. Leach: p. 543. Settlements and wills, by Harold Potter: p. 547.

December, 1948.—The defect in section 23, by Desmond Heap: p. 585. Compensation at existing use value, by T. A. Blanco White: p. 591. Planning control in relation to registered property, by T. B. F. Ruoff: p. 593. Settlements and wills (with forms of clauses), by Harold Potter: p. 615.

January, 1949.—Claims on the global sum—the global sum and the making of claims, by W. F. Oliver: p. 5. Development charges and the Rent Acts, by T. A. Blanco White: p. 16. Alternative development of dead ripe land: p. 18. Occasional use and camping, by T. Beaumont: p. 21. Extension of industrial buildings, by J. Muir Watt: p. 23. The hole in section 23, by T. A. Blanco White: p. 36. Dealings with registered land (with forms of contract, transfer and covenant), by Harold Potter: p. 49.

- 3673. BOOKS PUBLISHED.** Amies, F. A. and Leach, W. A.—Town and Country Planning Law in Practice, 2 vols. in 1. [68s. 6d.]. Charlesworth, J.—Principles of Planning Law, 2nd ed. [12s. 6d.]. Clarke, J. J.—Introduction to Planning [12s. 6d.]. Collier, R.—Valuation for compensation and development charges [25s.]. Doble, R. L. and Mann, H.—Guide to the Town and Country Planning Act, 1947, 2nd ed. ("Current Law" Guide, No. 2) [6s. 6d.]. Fogarty, M. P.—Town and Country Planning [7s. 6d.]. Heap, D.—Introducing the Town and Country Planning Act, 1947 [2s. 6d.]. Hill, H. A. and Kerrigan, D. P.—Town and Country Planning Act, 1947 [25s.]. Journal of Planning Law [subscription for 1948, 22s. 6d.; thereafter 30s.]. Kekwick, J., and Pollard, R. S. W.—Town and Country Planning Law [4s.]. Roberts, J. R. H.—Law of Town and Country Planning [57s. 6d.]. Safford, A., and Neligan, D.—Town and Country Planning Act, 1947 [30s.]. Shaw's Restatement of the Town and Country Planning Act, 1947 [25s.].

TRADE AND INDUSTRY

- 3674. Building.** See BUILDING AND ENGINEERING, ARCHITECTS AND SURVEYORS.
- 3675. Business names registration.** See NAME.
- 3676. Census of distribution.** Census of Distribution (1950) Order, 1948 (No. 2176), made under the Statistics of Trade Act, 1947 (10 & 11 Geo. 6, c. 39), ss. 2, 11; came into operation on October 1, 1948. This Order prescribes the calendar year 1950 as a year in which the Board of Trade is to take a census of distribution and other services.
- 3677. Census of production.** Census of Production (1949) (Returns and Exempted Persons) Order, 1948 (No. 2769), made under the Statistics of Trade Act, 1947 (10 & 11 Geo. 6, c. 39), s. 2; came into operation on December 31, 1948. The Order prescribes the matters about which persons may be required to furnish returns and exempts undertakings carrying on the production of coal, gas, electricity, oil shale, crude or refined petroleum or shale oil products.
- 3678. Channel Islands—exports.** As from November 1, 1948, the Channel Islands are to be treated as part of the home market rather than as an "export market" for United Kingdom goods: Board of Trade Press Notice, ref. 345, November 1, 1948.
- 3679. Check trading.** Control of Check Trading Order, 1948 (No. 2705), supersedes the Check Trading (Control) Order, 1942 (No. 1235), and the Check Trading (Control) (Amendment) Order, 1944 (No. 364); contains provisions relating to the charges which may be made in the business of check trading.
- 3680. Cinematograph industry.** See PUBLIC ENTERTAINMENTS.
- 3681. Coal industry.** See MINING LAW.
- 3682. Cotton industry—control—cloth for export.** Control of the Cotton Industry (No. 88) Order, 1948 (No. 1209), amends the Control of the Cotton Industry (No. 55) Order, 1945 (No. 674), as to cloth supplied for export.
- 3683. ———.** Control of the Cotton Industry (No. 89) Order, 1948 (No. 1210), similarly amends the Control of Cotton Industry (No. 49) Order, 1943 (No. 1725).
- 3684. ——— price control.** Control of the Cotton Industry Orders, 1948 (Nos. 277, 278, 279, 280), prescribe prices at which certain types of cotton yarn and cotton cloth may be sold.
Control of the Cotton Industry (No. 91) Order, 1948 (No. 2084), amends the Control of the Cotton Industry (No. 53) Order, 1945 (No. 669), as amended, by providing for a further increase in the margins used in the determination of the price of doubled yarn.
Control of the Cotton Industry (No. 92) Order, 1948 (No. 2085), amends the Control of the Cotton Industry (No. 54) Order, 1945 (No. 670), as amended, by providing for an increase in the margins used in the determination of the price of "condenser" waste yarns.
SI 1948, No. 2410 (cotton waste—maximum prices) [2d.].
- 3685. ——— raw cotton.** Control of the Cotton Industry (No. 19) (Revocation) Order, 1947 (No. 2699), revoking as from January 1, 1948, the Control of the Cotton Industry (No. 19) Order, 1941 (No. 429), as amended, which required cotton entering the United Kingdom to be held at the disposal of the Board of Trade.

- 3686.** — — — **revocation of controls.** Control of the Cotton Industry (Revocation) Order, 1948 (No. 2690), revokes part of the Control of the Cotton Industry (No. 26) Order, 1941 (No. 1480) and the Control of the Cotton Industry (No. 34) Order, 1942 (No. 1422) and the Control of the Cotton Industry (No. 43) Order, 1943 (No. 513).
- 3687.** — — — **Cotton Spinning (Re-equipment Subsidy) Act, 1948 (11 & 12 Geo. 6, c. 31).** This Act makes provision for the payment of grants out of moneys provided by Parliament in respect of the re-equipment or modernisation of cotton spinning concerns.
- 3688.** — — — **development council.** Cotton Industry Development Council Order, 1948 (No. 629), made under the Industrial Organisation and Development Act, 1947 (10 & 11 Geo. 6, c. 40). This Order establishes a development council to be known as the Cotton Board, 1948, which replaces the Board set up under the Cotton Industry Act, 1940, as from April 1, 1948. The Order also provides for the maintenance of a register of persons carrying on business in the industry, for the collection of information and for the imposition of a levy to meet the Board's expenses. [3*d.*] The chairman of the new Board is Sir Raymond Streat.
- 3689.** — — — **transfer of functions—Cotton Board.** Cotton Board (Termination of Functions) Order, 1948 (No. 869), made under the Cotton Industry Act, 1940 (3 & 4 Geo. 6, c. 9), s. 6, provides that the functions of the Cotton Board established under that Act are to cease on May 1, 1948, and transfers to the Cotton Board, 1948 established under the Cotton Industry Development Council Order, 1948 (No. 629) (see § 3687), all the property, rights, liabilities and obligations of the old Board. The new Order also provides that s. 3 (1) of the Act (as to contributions by cotton spinners) is to cease to have effect from May 1, 1948.
- 3690.** — — — **Cotton Control.** The Raw Cotton Commission has taken over the principal functions of the Cotton Control, which is therefore being wound up. The remaining duties of the Control have been assigned to the Cotton Board (statistics), Raw Cotton Commission (cotton waste), and Cotton Directorate of the Board of Trade (statutory orders).
- 3691.** **Distribution of industry.** Government policy on distribution of industry in the development areas and in the country as a whole and the reasons for the proposal to schedule Merseyside and part of the Highlands of Scotland as two new development areas are outlined in the White Paper "Distribution of Industry": Cmd. 7540. [1*s.*].
- 3692.** **Eire—trade agreement.** Trade agreement between the Government of the United Kingdom and the Government of Eire, Dublin, July 31, 1948. Cmd. 7504.
- 3692a.** **Employment.** See EMPLOYMENT.
- 3693.** **Export Guarantees Act, 1948 (11 & 12 Geo. 6, c. 54).** This Act increases the aggregate limit of liability of the Board of Trade in respect of guarantees in respect of exports and external trade which was fixed at £200,000,000 by the Export Guarantees Act, 1945 (8 & 9 Geo. 6, c. 9). It also increases the subsidiary limits of liability in respect of certain guarantees.
- 3694.** **Factories.** See FACTORIES.
- 3695.** **Fishing industry.** See FISH AND FISHERIES.
- 3696.** **Furniture industry.** Furniture Industry Development Council Order, 1948 (No. 2774), made under the Industrial Development Organisation and Development Act, 1947 (10 & 11 Geo. 6, c. 40); came into operation on January 1, 1949.
- 3697.** **Hungary—registration of shares in Hungarian companies.** Board of Trade Press Notice, No. 204, August 13, 1948, reminded investors of the necessity under various Hungarian decrees of registering equities in Hungarian concerns before August 31, 1948. Investors were advised not to rely on the possibility of an extension of time.
- 3698.** **Jewellery and silverware industry.** Jewellery and Silverware Development Council Order, 1948 (No. 2801), made under the Industrial Organisation and Development Act, 1947 (10 & 11 Geo. 6, c. 40); came into operation on January 1, 1949.

- 3699. Lace industry.** Lace Industry (Levy) Order, 1948 (No. 2775), made under the Industrial Organisation and Development Act, 1947 (10 & 11 Geo. 6, c. 40); came into operation on January 1, 1949.
- 3700. Laundry—research association—rating.** See *BRITISH LAUNDERERS' RESEARCH ASSOCIATION v. HENDON RATING AUTHORITY*, § 3094.
- 3701. Local authorities—power to contribute to bodies engaged in development of trade.** The Local Government Act, 1948 (11 & 12 Geo. 6, c. 26), s. 136, empowers local authorities, with the consent of the Minister, to contribute towards the expenses of any body carrying on activities in their area for furthering the development of trade, etc.
- 3702. Mining industry.** See *MINING LAW*.
- 3703. Monopolies and Restrictive Practices (Inquiry and Control) Act, 1948 (11 & 12 Geo. 6, c. 66).** The object of this Act is to provide for inquiry into the existence and effects of any conditions of monopoly or restrictions prevailing as respects the supply of, or the application of any process to, goods or building, or as respects exports, and for dealing with the mischiefs resulting therefrom. For this purpose s. 1 provides for the constitution of the Monopolies and Restrictive Practices Commission. S. 2 provides for the reference of matters by the Board of Trade to the Commission for investigation and defines the general duties of the Commission; and ss. 3, 4 and 5 define the conditions in which any matter is to be referred in relation to supply, processing and exports respectively. S. 6 deals with the scope of references to the Commission; s. 7 lays down the duties of the Commission on references; and s. 8 deals with the procedure and powers of the Commission on references. S. 10 is the remedial section and gives power to the "competent authority" (being one of certain Ministers or Government Departments as set out in s. 20 (1)), if the Commission find that conditions of monopoly or restrictions prevail, to make one or more of certain orders specified in sub-s. (2) of that section. S. 11 deals with the enforcement of such orders (by civil and not criminal proceedings). Ss. 14-22 contain supplementary provisions. The Act extends to Northern Ireland (s. 21 (1)) and may be extended to the Isle of Man and the Channel Islands (s. 21 (2)).
- 3704. Restraint of trade—medical practice.** See *JENKINS v. REID*, § 1269.
- 3705. Shipping.** See *SHIPPING AND MARINE INSURANCE*.
- 3706. Shops.** See *SHOPS*.
- 3707. Street traders.** See *HAWKERS AND PEDLARS*.
- 3708. Sugar industry—research, etc.** Sugar Industry (Provision for Research and Education in the Growing of Sugar Beet in Great Britain) Order, 1948 (No. 728), made under the Sugar Industry Act, 1942 (5 & 6 Geo. 6, c. 16), s. 6. This order provides for the assessment and collection of contributions in 1948 from the British Sugar Corporation, Ltd., and growers of home grown beet towards the programme of research and education set out in the Schedule thereto.
- 3709. Trade libel.** See *JOYCE v. MOTOR SURVEYS*, § 1994.
- 3710. Transport.** See *TRANSPORT*.
- 3711. ARTICLES.** Monopoly control (founded on the Monopoly (Inquiry and Control) Bill): 205 L. T. 217. Iron and steel (Iron and Steel Bill): 206 L. T. 288; 98 L. J. 635. Free competition and the public interest (common law doctrine of restraint of trade), by S. F. Sommerfeld: 7 *University of Toronto Law Journal* 413.
- 3712. BOOKS PUBLISHED.**—Light, H. R.—*Legal Aspects of Business* [8s. 6d.]. Schmitt-hoff, C. M.—*Export Trade* [17s. 6d.]

TRADE MARKS AND TRADE NAMES

- 3713. German trade marks—trading with the enemy.** See § 2582.
- 3714. Japanese trade marks—trading with the enemy.** See § 3742.
- 3715. Passing off—common field of activity.** It is of the essence of an action for passing off that the plaintiff should show, first, that there has been an invasion by the

defendant of a proprietary right of the plaintiff, in respect of which the plaintiff is entitled to protection, and, secondly, that such invasion has resulted in damage or that it creates a real and tangible risk that damage will ensue. As far as the first part of that proposition is concerned it is established beyond argument that under the law of England a man is not entitled to exclusive proprietary rights in a fancy name *in vacuo*. His right to protection in an action for passing off must depend on his showing that he enjoys a reputation in that name in respect of some profession or business that he carries on or in respect of some goods which he sells. Further, he must show that the acts of the defendant of which he complains have interfered or are calculated to interfere with the conduct of his profession, business or selling goods, in the sense that those acts of the defendant have led or are calculated to lead the public to confuse the profession, business or goods of the plaintiff with the profession, business or goods of the defendant. The element of confusion is essential, but the element of confusion necessitates comparison. Thus, in all those cases in which the Court has intervened there is discoverable the factor that there was a common field of activity in which, however remotely, both the plaintiff and the defendant were engaged and it was the presence of that factor that grounded the jurisdiction of the Court.

The plaintiff had acquired a very wide reputation as broadcaster of children's programmes under the fancy name of "Uncle Mac". The defendants were engaged in producing and marketing puffed wheat under the fancy name of "Uncle Mac". Held, the defendants could not be said to be passing off the goods or the business of the plaintiff: *McCulloch v. Lewis A. May (Produce Distributors)*, [1947] W. N. 318; [1947] 2 All E. R. 845, Wynn-Parry, J. (applying *British Medical Association v. Marsh* (1931), 48 R. P. C. 565, and *Clock v. Clock House Hotel* (1936), 53 R. P. C. 269).

- 3716.** — **confusion.** In *WRIGHT, LAYMAN & UMNEY v. WRIGHT* (1948), 65 R. P. C. 185, Harman, J., granted the plaintiffs an injunction restraining the defendant from applying the name "Wright" or "Wrights" to pharmaceutical and toilet goods not of the plaintiffs' manufacture without clearly distinguishing such goods from those of the plaintiffs. (*Joseph Rodgers & Sons v. Rodgers & Co.* (1924), 41 R. P. C. 277, applied.)
- 3717.** — —. In *MIDLAND COUNTIES DAIRY v. MIDLAND DAIRIES* (1948), 65 R. P. C. 429, Harman, J., granted the plaintiffs (who sold ice cream under the name of "Midland Counties Dairy" and were widely referred to as "Midland Dairies") an injunction restraining the defendants from carrying on an ice-cream vendors' business under the name "Midland Dairies, Limited".
- 3718.** — **form of injunction.** See *MARENGO v. DAILY SKETCH AND SUNDAY GRAPHIC*, § 2837.
- 3719.** — **infringement of mark.** In *AKTIEBOLAGET MANUS v. FULLWOOD & BLAND* (1948), 65 R. P. C. 329, Harman, J., held that where the plaintiffs had granted to the defendants a licence under which the defendants marketed the plaintiffs' goods in this country until the expiration of the licence, and the defendants subsequently manufactured and sold similar machines under the name by which the plaintiffs' goods had hitherto been marketed, the plaintiffs were entitled to an injunction restraining the defendants from selling goods not of the plaintiffs' manufacture under the name in question and from infringing the mark. (See also [1949] 1 C. L. 253.)
- 3720.** **Rectification—deception and confusion.** In *Re PAN PRESS PUBLICATIONS' APPLICATION* (1948), 65 R. P. C. 193, Wynn-Parry, J., held that whether an applicant invokes s. 10 or s. 11 of the Trade Marks Act, 1938, the test is whether at the date of registration there was likelihood of deception and confusion. An entry wrongly remains on the Register within the meaning of s. 32 of the Act only when it can be shown that its continuance thereon offends against the provisions of some other section.
- 3721.** **Registration—business names.** See **NAME**.
- 3722.** — **trade marks.** The mark "Solibrisa" does not so nearly resemble the mark "Summer Breeze" as to be likely to deceive or cause confusion: *Re MARCOS BALB Y HNOS' APPLICATION* (1947), 65 R. P. C. 17, Assistant Comptroller.

- 3723.** ——. In *Re DEMUTH'S APPLICATION* (1948), 65 R. P. C. 342, the hearing officer allowed the registration of the mark "Seda Seltzer", the application being opposed by the proprietors of the mark "Alka-Seltzer".
- 3724.** ——. (Trade Marks Act, 1938 (1 & 2 Geo. 6, c. 22), ss. 2, 11.) In *Re MELLOR (HUDDERSFIELD)'S APPLICATION* (1948), 65 R. P. C. 238, the Assistant-Comptroller held that s. 2, which precludes any person from instituting proceedings to prevent, or to recover damages for, the infringement of an unregistered trade mark, does not prevent a person from opposing the registration of a mark, under s. 11, on the ground that that mark bears an undue resemblance to his own unregistered mark.
- 3725.** ——. In *MINNESOTA MINING AND MANUFACTURING COMPANY'S APPLICATION* (1948), 65 R. P. C. 229, Jenkins, J., dismissed an appeal against the Registrar's refusal to register in Part "A" the mark "Scotchlite", on the ground that the word was not a distinctive mark as defined by s. 9 (2) and on the ground that by reason of its similarity to "Scotch light" there was a probability of deception and confusion.
- 3726.** ——. [Can.] In *GENERAL MOTORS CORPN. v. BELLOWES*, [1948] 1 D. L. R. 375, the Exchequer Court of Canada held that the words "Frigidaire" and "Frozenaire" did not so nearly resemble each other as to be likely to cause confusion.

TRADE UNIONS

- 3727. Dismissal of officer.** In *LEWIS v. NATIONAL UNION OF GENERAL AND MUNICIPAL WORKERS* (July 30, 1948), the plaintiff, who was the London district organiser of the defendant union, claimed a declaration that resolutions whereby he had been first suspended and then dismissed from his office, were void. Jenkins, J., held that the plaintiff was in the position of a salaried employee of the defendant union. The general council of the defendant union was under no obligation to give the plaintiff notice of any charges against him or afford him any opportunity of being heard, but was acting within its powers in dismissing him from office with three months' salary in lieu of notice and confirming the resolution of the national executive to suspend him. Action dismissed. [Reported by C. M. Schmitthoff, Esq., Barrister-at-Law.] See also *Times*, July 31, 1948.
- 3728. Inducing breach of contract.** [Can.] See *FOKUHL v. RAYMOND*, § 631.
- 3729. Libel.** See *EGLANTINE INN v. SMITH*, § 1995.
- 3730. BOOK PUBLISHED.** Samuels, H.—Law of Trade Unions [6s.].

TRADING WITH THE ENEMY

- 3731. Contract in enemy country between British subject and foreigner.** In *BOISSEVAIN v. WEIL* (December 13, 1948), the Court of Appeal (Tucker, Asquith, and Denning, L.J.J.) allowed an appeal from Croom-Johnson, J., [1948] 1 All E. R. 893, holding a debt contracted in enemy-occupied France during the war irrecoverable by the lender. [Reported by R. C. Calburn, Esq., Barrister-at-Law.] See also [1949] 1 C. L. 213.
- 3732. Custodian—appointment.** Sir Henry Gregory, K.C.M.G., C.B., has been appointed Custodian of Enemy Property for England under s. 7 of the Trading with the Enemy Act, 1939 (2 & 3 Geo. 6, c. 89), in place of Mr. R. R. Whitty, C.B.E., the Public Trustee. The Trading with the Enemy Department is merged in the Administration of Enemy Property Department (Address: 7 Crosby Square, London, E.C.3): Board of Trade Press Notice, dated February 24, 1948 (Ref. 1807).
- 3733. — power to require information.** Trading with the Enemy (Custodian) (Amendment) Order, 1948 (No. 1047), made under the Trading with the Enemy Act, 1939, amends the Trading with the Enemy (Custodian) Orders of 1945 (No. 43) and 1946 (Nos. 1039, 2141), by inserting a new article therein giving the Custodian the power provided in s. 7 (1) (f) of the Act to require such information as he considers necessary for the discharge of his functions.
- 3734. Enemy, meaning of—"any individual resident in enemy territory".** (Trading with the Enemy Act, 1939 (2 & 3 Geo. 6, c. 89), s. 2 (1) (b).) "Residence" in s. 2 (1) (b) of the Trading with the Enemy Act, 1939, which defines an

"enemy" as "any individual resident in enemy territory", means nothing more complicated than *de facto* residence irrespective of circumstances, for it would, in most cases, be impossible to investigate the circumstances during a war. See *Re HATCH*, § 3889 (distinguishing *Vandyke v. Adams*, [1942] 1 Ch. 155).

3735. Ex-enemy countries. See also INTERNATIONAL LAW.

3736. — charges on ex-enemy property. The Board of Trade have issued a notice dated February 2, 1948 (Ref. 1775) to the effect that Italian, Rumanian, Hungarian and Bulgarian property in the United Kingdom and Colonies which has hitherto been subject to the control of the Custodian of Enemy Property is now subject to charges imposed by Orders in Council, and dealings are prohibited except with the authority of the administrator appointed thereunder. Orders have been made by which these countries cease to be treated as enemy territory (see § 3737). The office of the administrator is at 7 Crosby Square, London, E.C.3. (See also § 1782.)

3737. — enemy territory cessation. The following orders have been made under the Trading with the Enemy Act, 1939 (2 & 3 Geo. 6, c. 89), s. 1: SI 1948, Nos. 157 (Finland); 158 (Bulgaria); 159 (Hungary); 160 (Italy); 161 (Rumania); 162 (Trieste); 1177 (Albania); 2484 (Siam).

3738. Germany—banking. Trading with the Enemy (Authorisation) (Germany) (No. 3) Order, 1948 (No. 1705), made under the Trading with the Enemy Act, 1939 (2 & 3 Geo. 6, c. 89), s. 1; extending the authority of previous orders to the business of banking.

Trading with the Enemy (Transfer of Negotiable Instruments, etc.) (Germany) (No. 2) Order, 1948 (No. 1706), made under s. 4 of the 1939 Act.

Trading with the Enemy (Custodian) (Amendment) (Germany) (No. 3) Order, 1948 (No. 1707), made under s. 7 of the 1939 Act. The last two of the above-mentioned orders are consequential on the first one.

Trading with the Enemy (Transfer of Negotiable Instruments, etc.) (Germany) (No. 3) Order, 1948 (No. 2087), sanctioning transfers and assignments of choses in action, negotiable instruments, etc.

3739. — insurance. Order made under the Trading with the Enemy Act, 1939, s. 1: SI 1948, No. 135 (providing additional authority to that contained in S. R. & O., 1947, No. 300, by enabling persons to carry on in Germany the business of insurance, subject to a certain prohibition).

Order made under s. 7: SI 1948, No. 134 (removing Board of Trade and Custodian control over money and property accruing in consequence of the authorisation of the carrying on of insurance business in Germany).

3740. — patents, trade marks and designs. See also PATENTS AND DESIGNS.

3741. — — relaxation of restrictions. Order made under the Trading with the Enemy Act, 1939, s. 1: SI 1948, No. 725. Order made under s. 4: SI 1948, No. 726. Order made under s. 7: SI 1948, No. 727. (See § 2582.)

Trading with the Enemy (Authorisation) (Germany) (No. 4) Order, 1948 (No. 2086), authorising applications for the grant of a patent or registration of a design or trade mark in Germany and subsequent dealing therewith.

Trading with the Enemy (Custodian) (Amendment) (Germany) (No. 4) Order, 1948 (No. 2088), removes Custodian control over money and property accruing in consequence of the authorisation of applications for patents, etc., by the Trading with the Enemy (Authorisation) (Germany) (No. 4) Order, 1948 (No. 2086), *supra*.

3742. Japan. Trading with the Enemy (Authorisation) (Japan) Order, 1948 (No. 2485), authorises any person to carry on the business of insurance with the Japanese State and persons in Japan, subject to certain limitations.

Trading with the Enemy (Custodian) (Amendment) (Japan) Order, 1948 (2486), removes Board of Trade and Custodian control over money and property accruing in consequence of the authorisation of insurance business effected by the above Order.

Trading with the Enemy (Authorisation) (Japan) (No. 2) Order, 1948 (No. 2812), authorises applications for the grant of a patent or the registration of a utility model, design or trade mark in Japan and transactions incidental

thereto and subsequent dealings in respect thereof. The Trading with the Enemy (Transfer of Negotiable Instruments, etc.) (Japan) Order, 1948 (No. 2813), and the Trading with the Enemy (Custodian) (Amendment) (Japan) (No. 2) Order, 1948 (No. 2814) are consequential thereon.

3743. Neutral's locus pœnitentiae. See *THE UNITAS*, § 2942.

3744. Winding up of company—claims by Custodian. See *Re PARANA PLANTATIONS*, § 499.

3745. ARTICLES. Civilians in enemy-occupied territory, by Clive M. Schmitthoff (founded on *Boissevain v. Weil*, § 3731, and *Re Hatch*, § 3734): 64 L. Q. R. 485. Enemy property and the Paris Peace Treaties, by F. A. Mann: 64 L. Q. R. 492.

TRAMWAYS

3746. Acquisition of undertaking. (Tramways Act, 1870 (33 & 34 Vict. c. 78), s. 44; Great Orme Tramways Act, 1898 (c. xxvii), s. 57 (1).) The Act of 1898, which was a private Act constituting the Great Orme Tramway Co. as a statutory company, conferred power on the plaintiff council to acquire the undertaking of the Tramway Co.; s. 57 (1) of the Act provided that the purchase price should be "equal to 28 years' purchase of an aggregate dividend or return calculated at the rate of 4½ per cent. on the total capital of the company actually invested in their undertaking at the time of purchase and properly expended on capital account". In 1936, the Tramway Co. sold its undertaking to the Great Orme Railway, the defendants. That transaction was authorised by the provisions of the Tramways Act, 1870, s. 44, which was one of the provisions incorporated in the Act of 1898. In 1947, the plaintiff council exercised its power of acquisition under the Act of 1898. Held, (1) for the purposes of calculating the purchase price, the relevant company was the defendant railway company, and not the original tramway company; (2) the purchase price had to be calculated not on the basis of the paid-up share capital of the defendant company but on the basis of all sums expended by the defendant company in the acquisition of the capital assets of the tramway company less any loss due to depreciation or other causes: *LLANDUDNO U. D. C. v. GREAT ORME RY.* (1948), 112 J. P. 421; 92 S. J. 617; [1948] 2 All E. R. 782, Jenkins, J.

3747. Common employment. See *LANCASTER v. L. P. T. B.*, § 2461.

3748. Light railways. See § 3054.

3749. Stage carriage—meaning of. (Stage Carriages Act, 1832 (2 & 3 Will. 4, c. 120), s. 48.) The mere fact that s. 5 of the Stage Carriages Act, 1832, which defined the phrase "stage carriage", has been repealed by s. 39 of the Customs and Inland Revenue Act, 1869 (32 & 33 Vict. c. 14), does not mean that it is no longer possible to prosecute the driver of a stage carriage under s. 48 of the Stage Carriages Act, 1832 (which is still in force), because there is no means of showing what a stage carriage is. On the contrary, it is quite clear from the decision in *R. v. Ruscoe* (1838), 8 Ad. & El. 386, that "stage carriage" is an expression known to the common law.

Per Lord Goddard, C.J.: "In my opinion, there is no doubt that a vehicle which proceeds from stage to stage at regular, or more or less regular, intervals, and carries passengers who pay separate fares, is a stage coach or a stage carriage, whichever expression is preferred": *CHAPMAN v. KIRKE*, [1948] 2 K. B. 450; [1949] L. J. R. 255, D. C. (applying *R. v. Ruscoe*, *supra*). (See also § 3750.)

3750. — negligent driving of. S. 48 of the Stage Carriages Act, 1832, provides that "if the driver . . . of any stage carriage . . . shall through intoxication or negligence, or by wanton and furious driving, or by or through any other misconduct, . . . injure . . . the property of the owner . . . of such stage carriage . . . , [he]—shall forfeit £5". Before a tram driver can be convicted of anything in relation to the driving of a stage carriage under the section it is not necessary that his driving should amount to wanton or furious driving; negligent driving is sufficient. See *CHAPMAN v. KIRKE*, § 3749.

3751. ARTICLE. A modern stage carriage (founded on *Chapman v. Kirke*, § 3749): 98 L. J. 710.

TRANSPORT

3752. Air. See AVIATION.

3753. Arbitration Tribunal. The Transport Arbitration Tribunal set up under the Transport Act, 1947 (10 & 11 Geo. 6, c. 49), (see [1947] C. L. Y. 3155) has issued a Practice Direction No. 1 governing applications to the Tribunal for confirmation of agreements under s. 108 of the Act. For the text, see [1948] W. N. 135; 98 L. J. 716.

3754. Canals. See also CANALS.

3755. Carriers. See also CARRIERS.

3756. Hotels Executive—appointed day. Hotels Executive (Appointed Day) Order, 1948 (No. 474), made under the Transport Act, 1947 (10 & 11 Geo. 6, c. 49), s. 125, fixed April 1, 1948, as the appointed day for the purposes of s. 5 (3) of the Act, which provides for the establishment of the Hotels Executive as from the appointed day.

3757. Lee Conservancy Catchment Board—termination of agency. Lee Conservancy Catchment Board (Termination of Agency) Order, 1948 (No. 723), made under the Transport Act, 1947 (10 & 11 Geo. 6, c. 49), s. 125 (3), fixing April 12, 1948, as the date on which the Lee Conservancy Catchment Board ceased to act as agents for the British Transport Commission for the purpose of carrying on that part of the Board's undertaking which was vested in the Commission on January 1, 1948.

3758. Officers—compensation to employees of transferred undertakings. Transferred Undertakings (Compensation to Employees) Regulations, 1948 (No. 1700), made under the Transport Act, 1947 (10 & 11 Geo. 6, c. 49), s. 101; came into operation on July 31, 1948; provide the machinery for payment of compensation to officers and servants of railway and canal undertakings who suffer loss of employment or diminution of emoluments, etc., in consequence of any transfer made under the Act of any such undertaking. [3*d.*]

3759. — pensions of employees of transferred undertakings. Transferred Undertakings (Pensions of Employees Losing Employment) Regulations, 1948 (No. 1585), made under the Transport Act, 1947 (10 & 11 Geo. 6, c. 49), s. 98; came into operation on July 31, 1948; provide for the continuation of pension schemes affecting persons who were employees of railway and canal undertakings, etc., and for the preservation of pension rights of any such person who suffers loss of employment as a result of any transfer made under the Act where the cause of such loss arises within ten years of the transfer. [2*d.*]

3760. Railways. See also RAILWAYS.

3761. Rating. Local Government Act, 1948 (11 & 12 Geo. 6, c. 26), Pt. V, contains provisions relating to the rating of railway and canal hereditaments. Generally speaking, the effect is that railway and canal hereditaments are not liable to be rated (except hereditaments partly used for other purposes), but the British Transport Commission is to make certain annual payments for the benefit of local authorities in lieu of rates (ss. 85, 90). The amounts of such payments are laid down in ss. 93-95. By s. 88 certain provisions of the Railways (Valuation for Rating) Act, 1930 (20 & 21 Geo. 5, c. 24), are repealed and the Railway Assessment Authority ceases to exist. Other rating provisions as to railways and canals are contained in ss. 86, 87. The above provisions have effect as from April 1, 1948, except certain transitory provisions specified in s. 89 (2), which have effect as from the passing of the Act (March 24, 1948) (s. 89).

3762. — accounting by local authorities. See § 3080.

3763. Road traffic. See ROAD TRAFFIC.

3764. Securities—conversion date. Orders made under Transport Act, 1947 (10 & 11 Geo. 6, c. 49), Sched. 5, Part II, para. 1: SI 1948, Nos. 306 (fixing March 1, 1948, as the conversion date in relation to London Transport 4½ per cent. L. A. Stock (1975-2023) issued by the London Passenger Transport Board held entirely by local authorities the value of which was determined after January 1, 1948); 433 (fixing March 15, 1948, as the conversion date in relation to the securities specified in schedule thereto, being certain securities of certain railway and canal

companies); 721, 810 (fixing April 19, 1948, as the conversion date in relation to the securities specified in the respective schedules thereto); 988 (fixing May 18, 1948, as the conversion date for the railway securities specified in the schedule thereto); 1172, 1317, 1363, 1653 (fixing conversion dates for the securities specified in the respective schedules thereto); 1852 (fixing August 13, 1948, as the conversion date for the securities specified in the schedule thereto); 2226 (fixing the conversion date for the railway securities specified in the schedule thereto); 2329 (fixing the conversion date for the railway and canal securities specified in the schedule thereto).

- 3765.** — **guarantees.** Treasury guarantees in pursuance of s. 90 (1) of the Transport Act, 1947, of the principal and interest on the stock issued under s. 89 (1) (b) of the Act and in accordance with the British Transport Stock Regulations, 1947 (No. 2686), by the British Transport Commission to satisfy compensation attributable to the following securities:

Dated January 1, 1948: Lee Conservancy Board 3½ per cent. Mortgage Loan; London Transport 3 per cent. Guaranteed Stock, 1967–1972; the securities specified in Part I of the Fourth Schedule to the Act.

Dated March 1, 1948: London Transport 4½ per cent. L. A. stock (1975–2023).

- 3766.** — ——. House of Commons Papers (Session 1947–48) Nos. 119, 128, 139, 184; (Session 1948–49) Nos. 6, 19 (by the Treasury under s. 90 (1) of the Transport Act, 1947, on stock issued by the British Transport Commission under the Act).

- 3767.** — **valuation.** The Transport Arbitration Tribunal has issued orders pursuant to s. 17. (3) of the Transport Act, 1947, determining the value of the following securities:—

Orders dated January 30, 1948: Birmingham Canal Navigation 4 per cent. Perpetual Debenture Stock (£105 per £100 nominal value); Sheffield and South Yorkshire Navigation Co. 3 per cent. Debenture Stock (£85 per £100 nominal value), ordinary shares, fully paid (£5 10s. per £100 nominal value), and ordinary shares, £4 paid (£5 10s. per £100 of capital paid up).

Order dated February 13, 1948: London and North Eastern Railway Company, West Hartlepool “Primary Charges”, Hartlepool and Clarence Class C Preference Shares (£86 per £100 nominal value).

Order dated March 5, 1948: Leeds and Liverpool Canal Co. 3½ per cent. preference stock (£65 per £100 nominal value).

- 3768. Shipping.** See SHIPPING AND MARINE INSURANCE.

- 3769. Tramways.** See TRAMWAYS.

- 3770. Transport stock.** In *Re UNDERGROUND ELECTRIC RAILWAY COMPANY OF LONDON'S TRUST DEED, GLYN MILLS & Co. v. BRITISH TRANSPORT COMMISSION* (November 19, 1948), by the Transport Act, 1947 (10 & 11 Geo. 6, c. 49), Sched. 4, British Transport Stock, issued by the British Transport Commission, replaced London Transport “C” Stock, issued by the London Passenger Transport Board under the London Passenger Transport Act, 1933 (23 Geo. 5, c. 14), s. 393. The issue of the “C” Transport Stock was used to secure Central London (New) Guaranteed Assented Stock in accordance with the provisions of a trust deed that took the place of an old trust deed concluded between the Underground Electric Railway Company and the trustees. Roxburgh, J., held that, on the true construction of the trust deed of 1933, the guarantee given in respect of interest of British Transport Stock arising from Central London (New) Guaranteed Assented Stock, would cease and the liability of the British Transport Commission under that guarantee terminate on redemption of the British Transport Stock. [*Reported by C. M. Schmitthoff, Esq., Barrister-at-Law.*]

- 3771. ARTICLES.** The Transport Arbitration Tribunal (an examination of its constitution and powers): 98 L. J. 17. Transport Act anomalies—a warning to purchasers: 98 L. J. 115.

- 3772. BOOK PUBLISHED.**—Karmel, D. and Beddington, R.—Transport Act, 1947. [21s.]

TRESPASS

- 3773. Assault—master's liability for servant's assault on customer.** See *WARREN v. HENLYS*, § 1258; [*N.Z.*] *PETTERSSON v. ROYAL OAK HOTEL*, § 1259.

- 3774. Cattle trespass.** See *CORDINGLEY v. GREAT WESTERN RY.*, § 281; [*Cty. Ct.*] *COOKE v. SKINNER*, § 153; [*Cty. Ct.*] *MORRIS v. CURTIS*, § 154.
- 3775. Child on dangerous premises.** See *PEARSON v. COLEMAN*, § 2481; *BUCKLAND v. GUILDFORD GAS LIGHT AND COKE CO.*, § 2477.
- 3776. Damage to reversion—wireless relay service installation.** [*Cty. Ct.*] In *ELLWOOD v. WEST CUMBERLAND RELAY SERVICE* (1948), 98 L. J. 660, an action by a landlord against a wireless relay service company which had installed apparatus involving the fixture of cables in two separate demised properties, Judge Allsebrook held that the landlord was entitled to damages in the case where the removal of the apparatus had occasioned special damage, but was not so entitled in the other case in which the apparatus was still installed, because no damage to the reversion had been occasioned by the installation which in itself was a reasonable and tenant-like use of the premises.
- 3777. Pigeons—right to kill.** See *HAMPS v. DARBY*, § 157.
- 3778. Retaking possession of land—during period of stay of execution.** See *CLIFTON SECURITIES v. HUNTLEY*, § 2830.
- 3779. — owner of requisitioned property.** [*Cty. Ct.*] See *ISLINGTON BOROUGH COUNCIL v. BOWNES*, § 529.
- 3780. — wife remaining in possession of house after surrender by husband.** See *TAYLOR v. McHALE*, § 3239.
- 3781. Trespass to goods—form of action in respect of right of property in animal.** See *HAMPS v. DARBY*, § 156.

TROVER AND DETINUE

- 3782. Deposit—owner of shares entitled to possession subject to consent of third party.** See *KAHLER v. MIDLAND BANK*, § 259; *FRANKMAN v. ANGLO-PRAGUE CREDIT BANK*, § 260.
- 3783. Finding.** See *HIBBERT v. McKIERNAN*, § 739.
- 3784. Limitation of actions.** See *BEAMAN v. A. R. T. S.*, § 2007.
- 3785. Measure of damages.** The measure of damages is the same in conversion as it is in detinue where the facts are only that the defendant had the goods in his possession and could hand them over but would not do so, that is to say, where the conversion consists in non-compliance with a demand for return of the goods. The measure of damages, whether the action is brought in detinue or conversion, will be the value of the goods at the date of the judgment, although if the plaintiff has unduly delayed bringing his action, that fact must be taken into account. But where there has been an act amounting to a conversion (*e.g.*, a sale of the goods) prior to the date of the demand, the measure of damages, where there has been a rise in the market price of the goods, may well be different, for it is the plaintiff's duty to mitigate damage. If the plaintiff knew or ought to have known that the goods were going to be sold, he is not entitled to recover more than what the goods fetched at that time, for the damage which he suffered owing to the rise in price is due to his own fault in not removing the goods and not having made his claim straight away. See *SACHS v. MIKLOS*, § 18 (distinguishing *Rosenthal v. Alderton & Sons*, [1946] K. B. 374).
- 3786. —.** The measure of damages in detinue must be similar to, if not the same as, the measure of damages in conversion. The measure of damages in conversion has been stated by *Salmond on Torts*, 10th ed., p. 309, as follows: "If the increase [in value of the property after the date of conversion] is due to the act of the defendant, the plaintiff has no title to it, and his claim is limited to the original value of the chattel."
- The defendant bailee sold a motor car belonging to the plaintiff bailor in circumstances which were held to constitute detinue and conversion. The car was in disrepair and in a dilapidated condition owing to its having stood in the open for several years. The defendant spent £85 to make it saleable, after which it realised £100 at an auction sale. The car was valued at £120 at the date of the judgment. Held, the defendant was entitled to credit for the £85 spent to produce the value of £120. Consequently, the plaintiff was entitled to recover £35. See *MUNRO v. WILLMOTT*, § 19.

- 3787. ARTICLE.** Detinue and conversion—measure of damages: 205 L. T. J. 114.

UNIVERSITIES

- 3788. End of emergency powers.** Universities and Colleges (Emergency Provisions) Act (End of Emergency) Order, 1948 (No. 2262) [E.], made under the Universities and Colleges (Emergency Provisions) Act, 1939 (2 & 3 Geo. 6, c. 106), s. 8 (2), declaring September 30, 1948, to be the date on which the emergency which was the occasion of the passing of that Act came to an end.
- 3789. Franchise—abolition of university vote.** See § 1095.
- 3790. London—advanced legal studies.** See § 1863.
- 3791. Oxford and Cambridge—registration of transfers of land to colleges.** See *Re* No. 12 REGENT STREET, OXFORD, § 423.
- 3792. State scholarships.** See § 1071.
- 3793. Students—national insurance.** See § 2423.

VAGRANCY

- 3794. "Frequenting"—several visits to particular part of racecourse.** (Vagrancy Act, 1824 (5 Geo. 4, c. 83), s. 4; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 7.) In *Airton v. Scott* (1908), 73 J. P. 148, the Divisional Court held, that frequenting meant being in a place long enough for the purposes aimed at.
- The appellant had pushed his way three times through a large crowd of people gathered round a bookmaker's pitch without making a bet. After the finish of the last race the appellant pushed through the crowd twice again, and on the second occasion was seen touching a man's hip pocket. The appellant was convicted of "frequenting" the racecourse with intent to commit a felony contrary to s. 4 of the Vagrancy Act, 1824. Held, on appeal (1) as the appellant had paid several visits in the course of an afternoon to a particular part of a racecourse, he was frequenting that part of the racecourse; (2) s. 7 of the Penal Servitude Act, 1891, provided that the offence of frequenting should be proved if loitering with intent was proved; (3) as the appellant had been long enough in a certain place for the purpose he had aimed at, though he had not been successful in his attempt, he had been "frequenting" that place within the meaning of s. 4 of the Vagrancy Act, 1824. Consequently, the appeal should be dismissed on each of these three grounds: *CLARK v. TAYLOR*, [1948] W. N. 410; 112 J. P. 439; 92 S. J. 634; D. C. (following *Airton v. Scott*, *supra*; distinguishing *R. v. Clark* (1884), 14 Q. B. D. 92).
- 3795. ARTICLE.** The justices, the vagrants and the poor: 112 J. P. J. 289.

VENDOR AND PURCHASER

- 3796. Agricultural unit.** See § 59.
- 3797. Building licence—selling price of house built under.** See *MODERN HOUSING (LEICESTER) v. GUNNING*, § 378.
- 3798. Commission on sale.** See *AGENCY*.
- 3799. Completion—undertakings by solicitors.** The Council of the Law Society consider that the ordinary form of undertaking by a solicitor to facilitate completion "on behalf of" his client imposes a personal liability upon the solicitor: *Law Society's Gazette*, March, 1948, p. 56.
- 3800. — within twelve months from the end of the war.** A contract for the sale of certain lands provided that the completion of the purchase should take place within twelve months from the end of the war between England and Germany as fixed by His Majesty's Government. Held, the document was a commercial document and must be construed with reasonable common sense. The war ended on May 9, 1945, and the end was fixed by the statement made by the Prime Minister in the House of Commons: *TESTER v. BISLEY*, [1948] W. N. 83; 64 T. L. R. 184, Vaisey, J. (applying *Hawtrey v. Beaufront*, [1946] K. B. 280; and *Re Cooper*, [1946] Ch. 109). (Affirmed [1948] W. N. 441, C. A.)
- 3801. Contract for sale—breach—claim and counterclaim.** See *ROGERS v. WOOD*, § 2796.

VENDOR AND PURCHASER (CONTRACT FOR SALE) CURRENT LAW

3802. — **caveat emptor — disrepair of leasehold premises.** [Eire.] In *FLYNN AND NEWMAN'S CONTRACT*, [1948] Ir. R. 104, the High Court of Eire held that where the land sold was leasehold, mere disrepair which might involve an action for breach of covenant by the lessor, but which, in the absence of a proviso for re-entry could not be a ground of forfeiture, was not a defect of title but a defect of subject-matter; and that, provided that the terms of the lease were known to the purchaser before he signed the contract, and that inspection of the property was open to him if he so desired, there was no breach of any legal obligation in the vendor's failure to disclose the state of repair, or that a notice to repair had been received from the landlord.

3803. — **exchanging contracts.** When parties are proposing to enter into a contract, the manner in which the contract is to be created so as to bind them must be gathered from the intention of the parties, express or implied. In a contract for the sale of land, there is a well-known common and customary method of dealing, namely, by exchange, and anyone who contemplates that method cannot contemplate the coming into existence of a binding contract before the exchange takes place.

Quære: whether when an exchange takes place by post and a contract comes into existence through the act of exchange, such a contract comes into existence when the later of the two documents to be put in the post is actually put in the post or when, and not before, the parties or their solicitors receive from their opposite numbers their parts of the contract.

The vendors had signed their part of the contract and the vendors' solicitors had informed the purchaser's solicitors of this fact and had requested that the purchaser should sign his part of the contract immediately and should post it to them. The purchaser did as requested. After he had done so the vendors declined to proceed with the contract. The Court of Appeal, reversing the decision of Vaisey, J. ([1947] Ch. 661), held that there was nothing to suggest that the procedure of contracting by means of exchange was to be departed from, and, as the vendors had refused to put their part of the contract into the post, no contract had come into existence: *ECCLES v. BRYANT*, [1948] Ch. 93; [1948] L. J. R. 418, C. A. (applying *Chillingworth v. Esche*, [1924] 1 Ch. 97. and *Trollope v. Martyn Bros.*, [1934] 2 K. B. 436).

3804. — **oral evidence.** Evidence is, in general, admissible to contradict or vary any document intended by the parties to operate merely as a collateral or informal memorandum of a transaction, and not as a contract or other binding legal instrument. Thus, a receipt will not, even between the parties, unless amounting to an estoppel, exclude extrinsic evidence to contradict the writing.

A document bearing a twopenny stamp with the date and the signature of the vendor together with a sketch plan showing a field of a certain area, stated the purchaser's name and address and "Received from [purchaser's name and address] the sum of seventeen pounds being a deposit for a field situate near the Fox Inn. Sold for fifty pounds". The widow and administratrix of the deceased purchaser asked for specific performance of the agreement for the sale of the land in question. The vendor in his defence pleaded that if there was an agreement, which he denied, it was an express term and condition thereof that the purchaser should erect and complete a bungalow on the land in question and should reside therein as a servant of the vendor and that such agreement should be void in the event of the purchaser failing to erect or complete such bungalow [as was the case by reason of the purchaser's death] and failing to reside therein as servant of the vendor. Held, the document was only a receipt and not a contract, and as the plaintiff had therefore to rely on an oral agreement, it was necessary for him to produce a note or memorandum in writing of it, and it was open to the vendor to prove that the oral agreement was different from that recorded in the document produced. Consequently, the case had to go back to the county court Judge to decide what was the oral agreement between the parties: *BECKETT v. NURSE*, [1948] 1 K. B. 535; [1948] L. J. R. 450, C. A.

3805. — —. The true construction of a document means no more than that the Court puts on it the true meaning, and the true meaning is the meaning which the party to whom the document was handed or who is relying on it would put on it as an ordinary intelligent person construing the words in a proper way in

the light of the relevant circumstances. Thus, where on its true construction a document is capable of being interpreted as a mere memorandum of an informal nature, parol evidence is admissible to prove an antecedent oral agreement which is different in its terms. If, however, the other party to the alleged contract, interpreting the document as a reasonably intelligent person in the light of the relevant circumstances, would naturally take it as being of a contractual nature, that concludes the matter and it is not possible to call oral evidence to prove that it was a mere memorandum.

A document, in which the parties were described as vendors and purchasers, purported to give the so-called purchaser an option to purchase a business property for £450 at any future date. The document further provided for the purchase price of the goodwill of the business, plus stock and fixtures, payment of a weekly rent by the so-called purchaser, and covenants by the so-called vendors to keep the premises in good living order, not to enter into competition, not to increase the rent, and to pay compensation in case of eviction. Held, the document on its true construction was a contract, and parol evidence to prove an antecedent oral agreement different in its terms was inadmissible: *HUTTON v. WATLING*, [1948] Ch. 398; [1948] 1 All E. R. 803, C. A. (affirming decision of Jenkins, J., [1947] C. L. Y. 2242).

- 3806.** — — **identifying details.** See *ELLIOTT v. PIERSON*, § 3372.
- 3807.** — — **request to submit draft, effect of.** See *TELEPHONE RENTALS v. MUSEUM ESTATES*, § 1892.
- 3809.** — — **sale or lease.** In *DENTON v. WICKER* (July 16, 1948), the plaintiff claimed specific performance of an alleged agreement made between him and the defendant for the purchase of a house. The defendant contended that he had merely granted the plaintiff a lease. Wynn-Parry, J., held that the agreement between the parties was that the plaintiff should purchase the property and assume all liability in respect of the house and that he should pay the building society's transfer fee in respect of the mortgage on the house when it was convenient to him, and that on payment of the fee the defendant would convey the house to him. Judgment for plaintiff. [*Reported by C. M. Schmitthoff, Esq., Barrister-at-Law.*]
- 3809. Conveyancing.** See *REAL PROPERTY AND CONVEYANCING*.
- 3810. Costs—compulsory acquisition.** See § 511.
- 3811.** — — **sale of registered land to local authorities.** The Council of the Law Society express the view that where a local authority have elected under para. (1) (m) of the Solicitors' Remuneration (Registered Land) Order, 1925, to be remunerated under Schedule II, they are bound by the election. In the absence of election, costs on sales of registered land are normally under the registered land scale as stated in Opinion 585c in the Law Society's Digest: *Law Society's Gazette*, May, 1948, p. 88.
- 3812. Dangerous premises.** [Can.] See *MAYER v. WINNIPEG ELECTRIC CO.*, § 2478.
- 3813. Development value—precedents.** See §§ 3666, 3672.
- 3814. Husband and wife—purchase in other's name.** See *MOATE v. MOATE*, § 1626; *Re ROGERS' QUESTION*, § 1625.
- 3815. Income tax allowances.** Purchasers are advised to include a stipulation in the contract that the vendor will supply at the purchaser's expense all such information as to capital expenditure as may be in his possession and as the purchaser may reasonably require for the purpose of claiming allowances under Parts I and IV of the Income Tax Act, 1945: *Law Society's Gazette*, May, 1948, p. 88.
- 3816. Innocent misrepresentation—estoppel.** While an innocent misrepresentation by a vendor cannot found a claim for damages or enable the purchaser to claim damages under the guise of a breach of warranty, the purchaser may sometimes succeed in the circumstances in establishing an estoppel. A landlord sold a farm, completion of the contract taking place when the tenant went out. The tenancy agreement imposed the usual obligations on the tenant with regard to dilapidations, but landlord and tenant entered into a collateral agreement that the tenant should not be liable for dilapidations until the landlord had put the premises into repair, which he never in fact did. The purchaser was, during

the negotiations, shown the tenancy agreement but, by an innocent omission on the part of the landlord, not told of the collateral agreement. One of the conditions of sale provided that the amount payable by the purchaser should include "the outgoing valuation due to the tenant". Held, although on a true construction of that condition the parties were contracting in terms of the sum payable, whatever it might turn out to be, as between the vendor and the outgoing tenant, in calculating the amount payable to the vendor by the purchaser, the amount which would have been due from the tenant for dilapidations must be deducted from the amount due to him for tenant right, notwithstanding that set-off in respect of the tenant's liability for dilapidations was excluded by the collateral agreement, because the vendor was estopped from setting up the collateral agreement which he had failed to disclose to the purchaser.

Per SOMERVELL, L.J.: "If . . . the landlord . . . had reason to think that the tenancy agreement was merely wanted in order that the prospective purchaser might look at some particular matter in it . . . then the party looking at it might not be able to rely only on that as a representation with regard to some other part of the tenancy agreement on which, if the attention of the landlord had been drawn to the matter, he might have made some qualification or added some relevant matter": *OADES v. SPAFFORD*, [1948] 2 K. B. 74; [1948] L. J. R. 1201, C. A. (See also § 41.)

3817. — **representation or warranty.** See *GILCHESTER PROPERTIES v. GOMM*, § 1507.

3818. **Option to purchase.** See *LANDLORD AND TENANT*.

3819. **Purchaser constructive trustee for vendor.** See *BANNISTER v. BANNISTER*, § 3404.

3820. **Rectification.** [Can.] See *HALWA v. OLSON*, § 651.

3821. **Specific performance.** See *ELLIOTT v. PIERSON*, § 3823.

3822. **Stamp duties.** See *STAMP DUTIES*.

3823. **Title of vendor.** At law A may contract to sell to B any defined subject-matter and can enforce the contract if by the time when he is obliged to do so he has obtained a sufficient interest or can compel other interested parties to concur in the sale. It matters not at all that at the date of the contract A had no interest if he obtains it in time to fulfil the bargain. To this doctrine equity made a qualification in cases of specific performance of contracts for the sale of land, which is also recognised in the rule as to damages on failure to make a good title (known as the rule in *Bain v. Fothergill* (1874), L. R. 7 H. L. 158). The rule is that if after contract the purchaser discovers that the vendor has no sufficient title he need not wait to see if he can obtain one before the completion date but may repudiate. If a purchaser is to be allowed to repudiate on this ground it is essential that he do so at once. If he begins to seek for explanations or to demand the getting in of outstanding interests he will be deemed to have waived the point. Moreover, the rule does not extend to a case where a vendor has or can compel the assurance of all necessary interests in the subject-matter of the sale. In such a case the law is that the vendor may enforce the contract.

The first plaintiff had sold to the defendant the freehold property in a road house, such property being vested not in him but in a private limited company (the second plaintiff), in which the first plaintiff held all the shares with the exception of one share which was held by his nominee; the company had leased the property to the first plaintiff for forty years. The defendant repudiated the contract and the plaintiffs claimed specific performance. One of the defences raised was that the first plaintiff did not, up to the date of repudiation of the contract by the defendant have any title to the freehold property, nor any legal right as against the company to oblige it to join in the necessary assurance of title. Held, as the first plaintiff was in a position, either by exercising his power as sole director or, if necessary, by winding up the company, to procure it to act as he chose, the defence failed, and the plaintiffs were entitled to specific performance: *ELLIOTT v. PIERSON*, [1948] Ch. 452; [1948] L. J. R. 1452, Harman, J. (applying *Forrer v. Nash* (1865), 35 Beav. 167, *Halkett v. Dudley (Earl)*, [1907] 1 Ch. 590, and *Re Hailes and Hutchinson's Contract*, [1920] 1 Ch. 233; referring to *Chamberlain v. Lee* (1840), 10 Sim. 444, and *Proctor v. Pugh*, [1921] 2 Ch. 256). (See also §§ 3372, 3385.)

- 3824.** — **breach of restrictive covenant.** [Can.] In *McALEER v. DESJARDINE*, [1948] 4 D. L. R. 40, the Ontario Court of Appeal held that where a purchaser contracted to purchase a plot of land subject to restrictive covenants running with the land and it then appeared that the building on the plot had been erected in breach of one of these covenants, the title offered by the vendor was bad and was rightly rejected by the purchaser.
- 3825.** **War damage—preliminary inquiries.** See § 3844.
- 3826.** **ARTICLES.** On sales to protected tenants, protection of the vendor and an agent's power to contract (founded on *Wragg v. Lovett* (1947), unreported): 205 L. T. J. 8. Exchange of contracts (founded on *Eccles v. Bryant*, § 3803): 205 L. T. J. 59; 98 L. J. 59; *Solicitor*, March, 1948, p. 55; 92 S. J. 228. Sales by mortgagees where the equity of redemption is barred (founded on *Young v. Clarey*, § 2247): 205 L. T. J. 89. Preparation of a contract of sale: 92 S. J. 89. Receipts and best evidence (founded on *Beckett v. Nurse*, § 3804): *Solicitor*, February, 1948, p. 31. Options to purchase—an amplification: 92 S. J. 107. Transport Act anomalies—a warning to purchasers: 98 L. J. 115. Sale of houses built under licence: 98 L. J. 116. The protection of purchasers—Law of Property Act, 1925, s. 104 (2) (c): 205 L. T. J. 129. The Town and Country Planning Act, 1947—some preliminary points for purchasers of land: 98 L. J. 171. Contract or receipt (founded on *Beckett v. Nurse*, § 3804): *Law Notes*, April, 1948, p. 84. Conveyancing notes—inquiries from persons in possession: 98 L. J. 185. Damages under rescinded contracts: 98 L. J. 199. Sales of rent-restricted premises: 92 S. J. 190. Innocent misrepresentation by a vendor of land—rights of a purchaser (founded on *Gilchester Properties v. Gomm*, § 1507): 205 L. T. J. 313. Conveyances on sale (under the Town and Country Planning Act, 1947), by Harold Potter: *Journal of Planning Law*, July, 1948, p. 273. The National Conditions of Sale, 1948 (14th ed.): 206 L. T. 8. The purchaser's solicitor under the Town and Country Planning Acts, by Harold Potter: *Journal of Planning Law*, August, 1948, p. 338. Omission of terms from memorandum (founded on *Hawkins v. Price*, [1947] C. L. Y. 3191): 92 S. J. 549. Town and Country Planning Act, 1947—the position of the purchaser: 98 L. J. 545. Planning Act and conveyancing—preliminary inquiries: 98 L. J. 583. National conditions of sale: 92 S. J. 597. Voluntary acquisition of land by local authorities: payment of vendor's solicitor's costs, by H. Woodhouse: 13 *Conveyancer* (N.S.) 9. Caveat emptor—conveyancing under the Planning Acts, by Harold Potter: *ibid.*, 36. Incidence of options to purchase land, by R. A. Holland: *ibid.*, 49. Estate duty under voluntary conveyances: 98 L. J. 626. Expenses of private street works—Birmingham Corporation Act, 1948: 206 L. T. 311. Town and Country Planning Act, 1947—practical points: 92 S. J. 669. Black market in land (existing use—excessive price): 112 J. P. J. 731. Ways of necessity—access to highways and planning permission: 206 L. T. 372. Derogation from grant, by J. F. Turing: 13 *Conveyancer* (N.S.) 89.
- 3827.** — **JOURNAL OF PLANNING LAW.** See § 3672.
- 3828.** **BOOK PUBLISHED.** Williams, W. J.—Law and Practice relating to Contract for Sale of Land and Title to Land [72s. 6d.].

WAR DAMAGE

- 3829.** **Assessment—builder's charges.** [Cty. Ct.] See *WARNER v. BOLTON*, § 362.
- 3830.** **Business scheme—assignment of claims.** The attention of claimants and of their professional advisers is drawn to s. 98 of the War Damage Act, 1943 (6 & 7 Geo. 6, c. 21), which provides that an assignment, whether absolute or by way of charge, of the right to a payment under the business scheme or of any part of such a payment, other than an assignment which does not affect any beneficial interest in such a payment, shall be of no effect until it has been approved in writing by the Board of Trade. Similar restrictions apply under the War Damage to Goods (General) Regulations, 1943, to claims for losses sustained before the coming into operation of the business schemes.
- 3831.** **Claims—notification out of time.** The Financial Secretary to the Treasury stated in April, 1948, that, until a year before, no notification of war damage was rejected because it was too late; but since then the Commission had felt bound,

in the public interest, to become increasingly critical of new notifications which were accepted only in very exceptional circumstances.

3832. Compensation—adjustment. See § 543.

3833. Landlord and tenant—rebuilt house—identity. See *HEMNS v. WHEELER*, § 3245. [Cty. Ct.] *LANGFORD PROPERTY v. SOMMERFIELD*, § 3247.

3834. ——— right to occupy—tenancy determined. See *ELLIS & SONS v. SISMAN*, § 3248.

3835. ——— tenancy subsisting. See *SIMPER v. COOMBS*, § 1976; *DENMAN v. BRISE*, § 3230.

3836. ——— surveyors' certificate. [Cty. Ct.] See *WEBB v. ROWLEY*, § 3246.

3837. ——— repairs. [Cty. Ct.] See *BROWNLOW TRUST v. KIRBY*, § 1975.

3838. Public utility undertakings. The Ministry of Health have announced that it will not be possible to introduce a Bill during the present Parliamentary session to give effect to settlements of claims and contributions in respect of war damage to assets of public utility undertakings. It is proposed to deal with the matter by legislation next session. M. of H. Circulars 57/48 (outside London) and 58/48 (London), deal with the submission of supplementary claims and with adjustments in compensation payments and in contributions in relation to sewerage and sewage disposal undertakings. Circular 59/48 deals in similar fashion with water undertakings.

3839. Temporary works payment. (War Damage Act, 1943 (6 & 7 Geo. 6, c. 21), s. 6 (2).) In the phrase "works reasonably executed for temporarily meeting the circumstances created by [war] damage" in s. 6 (2) of the War Damage Act, 1943, which lays down the conditions for obtaining a temporary works payment, the word "temporarily" does not mean that the works are likely to decay at an early date. The works in themselves may be as permanent as possible. The point is: Were they executed for temporarily meeting the circumstances created by the damage? Or, in other words, were they works of temporary repair or works of temporary precaution in the sense that they were meant to be superseded by works intended to be permanent?

A hospital was severely damaged by enemy action. The only parts of the building which were either not damaged, or damaged to only a slight extent, were twelve wards and other accommodation. In the basement of the undamaged portion a new main kitchen and scullery were constructed, and in a ward on the ground floor, which had also been undamaged, a new operating theatre with X-ray room, sterilising room and so on were built. In both cases the work involved, *inter alia*, the erection and removal of partitions, the laying down of a concrete floor and so forth. The hospital claimed that these repairs were "works reasonably executed for temporarily meeting the circumstances created by [war] damage" within the meaning of s. 6 (2) of the War Damage Act, 1943. Held, the works in question were works carried out to provide alternative accommodation at a distance from the area of the damage. Moreover, these works were not temporary in the sense that they were intended to be superseded by permanent works, nor could they be regarded as works of temporary precaution. Consequently, the hospital was not entitled to a temporary works payment: *Re St. LUKE'S HOSPITAL, CHELSEA, L. C. C. v. WAR DAMAGE COMMISSIONERS*, [1948] W. N. 294; [1948] L. J. R. 1525; [1948] 2 All E. R. 444, Vaisey, J.

3840. Treasury directions. The Financial Secretary to the Treasury has stated in the House of Commons that the following directions have been given by the Treasury to the War Damage Commission (*Hansard*, Vol. 448, No. 74, col. 29):—

1. June 19, 1941: A direction instructing the Commission not to pay the costs of repairs carried out without a building licence where one was required until such time as the works could lawfully have been done or the Licensing Department had decided not to prosecute for the failure to obtain a licence.

2. June 19, 1941: A direction empowering the Commission to pay a cost of works payment where a value payment was appropriate, but reinstatement of the property was certified to be necessary in the public interest for the public safety, defence of the realm, prosecution of the war, or maintenance of essential supplies and services (*cancelled* on August 14, 1945).

3. July 3, 1941: A direction that war damage payments shall be of such a kind subject to such condition as will prevent, so far as possible, any works of reconstruction resulting from war damage, being executed, which are not in conformity with the public interest.

4. September 3, 1941: A direction empowering the Commission to make advance payments for the repair of war damage where the appropriate Government department certifies that the applicant's needs would otherwise have been met by loan under the Housing (Emergency Powers) Act, 1939, or the Essential Buildings and Plant (Repair of War Damage) Act, 1939.

5. October 22, 1941: A direction empowering the Commission to pay, so far as permissible under the Act, for the restoration to a seemly condition of cemeteries, including the repair of tombstones and memorials not extensively damaged, and in other cases the provision of a plain substitute.

6. February 21, 1942. A direction empowering the Commission to make immediate payment of compromise settlements with insurance companies in respect of damage caused by fires of doubtful origin.

6A. July, 1945: A direction empowering the Commission to make immediate payment of compromise settlements in cases where there is a genuine doubt as to the cause of damage or the extent of war damage.

7. October 8, 1942: A direction empowering the Commission to make immediate payment of a value payment or part thereof to meet costs incurred by an owner for the demolition and clearance or repair of a damaged building or the construction of a substitute building.

8. October 25, 1943: A direction empowering the Commission to pay a cost of works payment in respect of: (a) any house built since March 31, 1914, however great the damage; (b) any house built before that date, which before the damage was in sound condition and in design, layout and amenities reasonably similar to houses of the same type built since that date, however great the damage; (c) any houses (other than are condemned under the Housing Act) which in the Commission's opinion only sustained minor war damage; (d) any house (other than a condemned house or a house on a site of very high value for redevelopment) which after the war damage is in such a condition that, in the Commission's opinion, it would have been unreasonable in 1939 to reinstate it in its pre-damaged form.

8A. August 7, 1945: A direction empowering the Commission, in the case of houses for which a value payment was appropriate, to pay for the cost of works executed by a local authority in the exercise of their statutory power to make the houses fit for habitation, and similar works carried out by an owner at the instigation of his local authority.

9. April, 1944: A direction making it clear that the expression "houses" in Direction No. 8 does not include makeshift buildings, licensed premises, hotels and boarding-houses.

10. October 4, 1944: A direction empowering the Commission to pay for the making good of war damage to buildings which the Commission are satisfied are of special architectural or historical importance.

11. May 4, 1945: A direction empowering the Commission, in cases where a value payment is appropriate, to pay the cost of moving unsound or valueless structures and debris.

3841. Valuation appeals—applications for extension of time. War Damage (Valuation Appeals and References) (Amendment) Rules, 1948 (No. 1697), made under the War Damage (Valuation Appeals) Act, 1945 (9 & 10 Geo. 6, c. 8); came into operation on October 1, 1948; amend the War Damage (Valuation Appeals and References) Rules, 1946 (No. 202), so as to enable the Registrar of the War Damage (Valuation Appeals) Panel to deal with applications to extend the time for giving notice of appeal.

3842. — decisions of tribunal. Recent decisions of the War Damage Valuation Appeals Tribunal (set up under the War Damage (Valuation Appeals) Act, 1945, are shown in tabular form in the *Estates Gazette*, May, 15, 1948.

3843. Value payment—interest—surtax. See § 1693.

3844. Vendor and purchaser. The Council of the Law Society advise solicitors acting for purchasers of war-damaged property which has not been fully reinstated to make preliminary inquiries of the purchaser on the draft contract to safeguard

the purchaser's right to obtain payment from the War Damage Commission in respect of the remaining war damage: *Law Society's Gazette*, November, 1948, p. 197.

WATER AND WATERWORKS

- 3845. Central Advisory Water Committee.** Central Advisory Water Committee Amendment Order, 1948 (No. 638) [E.], made under the Water Act, 1945 (8 & 9 Geo. 6, c. 42), ss. 2, 50, amends the Central Advisory Water Committee Order, 1946 (No. 28), art. 4, by providing that a person ceasing to hold office as a member of the committee is to be eligible for re-appointment (omitting the requirement of a lapse of one year).
- 3846. Compensation water.** SI 1948, No. 1972 (Birmingham—River Elan).
- 3847. Highway—leak in pipes.** See *LONGHURST v. METROPOLITAN WATER BOARD*, § 1579.
- 3848. Land drainage.** See *LAND DRAINAGE*.
- 3849. Pollution—action for penalties.** See *COLNE VALLEY WATER CO. v. WATFORD AND ST. ALBANS GAS CO.*, § 2816.
- 3850. — suspension of injunction to allow of abatement.** See *BROCKET v. LUTON CORPORATION*, § 2540.
- 3851. — transfer of functions to river boards.** See § 1883.
- 3852. Riparian rights.** [Can.] In *McKIE v. K. V. P. Co.*, [1948] 3 D. L. R. 201, the High Court of Ontario considered the authorities dealing with the rights of a riparian owner.
- 3852a. — compulsory acquisition.** See *Re JOHN BOWES AND PARTNERS*, § 2233.
- 3853. River boards.** See § 1883.
- 3854. War damage.** See § 3838.
- 3855. Water Act, 1948 (11 & 12 Geo. 6, c. 22).** [E.] This Act amends the Water Act, 1945 (8 & 9 Geo. 6, c. 42), by substituting a new definition of "statutory water undertakers" for the definition in s. 59 (1) of the 1945 Act (s. 1); by making further provision as to the contents of orders made under s. 23 or under s. 9 of the 1945 Act and other matters in connection therewith (s. 2); by permitting orders made under s. 23 or s. 9 of the 1945 Act to authorise the compulsory acquisition of land for the construction or alteration of waterworks (s. 3 and Sched.); by amending s. 12 (1) as to the supply of water in bulk and permitting orders under s. 23 (1) to authorise the supply of water in bulk only (s. 4); by various modifications of the provisions of s. 14 with respect to wells, boreholes, etc. (s. 5); by adding a new sub-s. (5) to s. 16 with respect to the use of hosepipes (s. 6); and by amending s. 42 (1) and (2) as to the preparation and transmission of abstracts of accounts of statutory water undertakers (s. 7). The Act also, by s. 8, gives power to local authorities and statutory water undertakers to survey and search for water on land which they are proposing to acquire, and, by s. 9, authorises statutory undertakers to pay subscriptions to associations of water undertakers. S. 10 amends the definition of "communication pipe" in s. 1 of Sched. III to the 1945 Act and contains other provisions with respect to the laying of service pipes, stopcocks, etc., in certain circumstances; and further amendments to that Schedule are contained in s. 11. S. 12 imposes or authorises certain restrictions on local authorities in the exercise of their powers under the Public Health Act, 1936 (26 Geo. 5 & 1 Edw. 8, c. 49), ss. 116 (3), 127 (2). S. 13 makes s. 24 (4) of the 1945 Act applicable to development corporations established under the New Towns Act, 1946 (9 & 10 Geo. 6, c. 68). S. 14 contains miscellaneous provisions and consequential amendments.
- The Act does not extend to Scotland or Northern Ireland (s. 15 (6)).
- 3856. Water orders.** Orders made under the Water Act, 1945 (8 & 9 Geo. 6, c. 42), s. 9; SI 1948, Nos. 644 (East Worcestershire); 1199 (Manchester); 1907 (Sevenoaks and Tonbridge) [6d.]; 2215 (Prescelly) [5d.]; 2399 (East Shropshire) [3d.]. Order made under ss. 9, 10, 23, 33: SI 1948, No. 2821 (Mid-Wessex) [4d.]. Order made under ss. 9, 23: SI 1948, Nos. 2462 (Eastbourne) [4d.]; 2671 (Great Berkhamstead) [2d.]. Orders made under s. 10: SI 1948, Nos. 940 (Camborne); 1410 (Morley);

1681 (Falmouth); 1882 (Anglesey—Amlwch); 1976 (West Cheshire); 2146 (Stroud); 2168 (Tredegar).

Order made under ss. 10, 32, 33: SI 1948, No. 1517 (Workington).

Orders made under s. 14: SI 1948, Nos. 414 (Goole area); 568 (South Lincolnshire); 763 (Mersey area); 1029 (Cambridge); 1607 (Portsmouth area); 2453 (Nottinghamshire); 2454 (Stafford and Derby); 2567 (Essex area); 2596 (Kent area).

Orders made under s. 23: SI 1948, No. 61 (Winchester); 641 (Brighton); 805 (Wolverhampton); 818 (South Staffordshire); 940 (Camborne); 949 (Staffordshire Potteries); 1718 (Darwen); 1739 (Doncaster); 1757 (Herne Bay); 1858 (Driffield) [2d.]; 1907 (Sevenoaks and Tonbridge) [6d.]; 2489 (Tredegar); 2523 (Crawley and Three Bridges).

Orders made under ss. 23, 26: SI 1948, No. 2135 (Wisbech); 2283 (Bude-Stratton).

Order made under ss. 23, 32: SI 1948, No. 2213 (Cranleigh).

Order made under ss. 23, 33: SI 1948, No. 2190 (Tees Valley).

Order made under s. 26: SI No. 2855 (Leamington).

Orders made under s. 32: SI 1948, Nos. 1938 (Lymm); 2786 (Bucks).

Order made under ss. 32, 40: SI 1948, No. 658 (Horsforth).

Orders made under s. 33: SI 1948, No. 426 (Workington); 906 (Fylde); 915 (Workington); 1523 (Portsmouth); 1551 (Hindley); 1906 (Uckfield); 1907 (Sevenoaks and Tonbridge) [6d.]; 2391 (Chelmsford); 2530 (West Hampshire).

3857. Water rates—appeals. Appeals as to water rates are to be determined by the county court for the county court district in which the property in question is situated: Local Government Act, 1948 (11 & 12 Geo. 6, c. 26), s. 62 (as from appointed day: see s. 72).

3858. Waterworks—damage due to leak in water pipes. (Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), s. 32.) “[S. 32 of the Waterworks Clauses Act, 1847,] appears to me to oblige the Water Board to reinstate and repair such portion of the road as they have taken up in the course of their statutory authority, but to have no bearing on their liability to answer for any other damage to the street”: *per* Lord Porter in *LONGHURST v. METROPOLITAN WATER BOARD*, § 1579.

3859. BOOK PUBLISHED. Kempster, J. W.—Our Rivers [25s.].

WEIGHTS AND MEASURES

3860. Hindering an “inspector”. (Weights and Measures Act, 1889 (52 & 53 Vict. c. 21), s. 29 (3); Sale of Food (Weights and Measures) Act, 1926 (16 & 17 Geo. 5, c. 63), s. 13 (3).) The Sale of Food (Weights and Measures) Act, 1926, is to be read as one with the Weights and Measures Act, 1889. Therefore, s. 13 (3) of the Act of 1926, which provides that “any powers or duties conferred or imposed by this Act on an inspector of weights and measures may . . . be exercised or performed by any other officer . . . appointed . . . to act on behalf of an inspector of weights and measures . . .”, is to be treated as though it were in the Act of 1889, and that makes it clear that “inspector” and “officer” are interchangeable terms in the sense that in respect of the duty of entering a building where coal is kept for sale and weighing it, which is imposed by s. 13 (1) of the Act of 1889, an inspector can act either by himself or by another officer. Consequently, where in a summons a person is charged under s. 13 (3) of the Act of 1889 with obstructing or hindering an officer with the carrying out of his duties under that Act, the summons cannot be bad because the person alleged to have been obstructed is described in the summons as an “officer” and not as an “inspector”: *R. v. SWANSEA JUSTICES*; *Ex p. BROWN*, [1948] W. N. 446; 112 J. P. 444; 92 S. J. 647, D.C.

3861. Standard of length—new denomination—three metres. Weights and Measures (Board of Trade Standard Three Metre) Order, 1948 (No. 2344), made under the Weights and Measures Act, 1878 (41 & 42 Vict. c. 49), s. 8, approving the length of three metres as a new denomination of standard.

3862. ARTICLE. Committee on weights and measures: 112 J. P. J. 744.

WILLS

3863. Alterations—dependent relative revocation—use of infra-red photography. (Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), s. 21.) Where alterations have been made

to a will and there is no evidence that they were made before the will was executed, the doctrine of dependent relative revocation applies and any effective method may be used to ascertain the original state of the document. Photography by the infra-red process is such a method, and, in a proper case, a Court expert will be appointed to carry it out. Obscure words which can be "read" by means of infra-red photography are "apparent" within the meaning of the Wills Act, 1837, s. 21.

The testatrix had, by a codicil in her own handwriting, given certain legacies to the plaintiffs but the amounts of the legacies were written on slips of paper pasted over and obscuring the original words and figures. The attesting witnesses were unable to say whether the alterations had been made before the codicil was executed. Held, this was a case of dependent relative revocation and the legatees were therefore entitled to use any means to ascertain the original amounts. If this could be done by infra-red photography an order would be made for the appointment of a Court expert for the purpose.

In any case if the words could be revealed by infra-red photography they would be "apparent" within the meaning of s. 21 and a similar order ought to be made: *Re ITER, DEDMAN v. GODFREY*, [1949] L. J. R. 265; [1948] 2 All E. R. 1052, Ormerod, J. (applying *In the goods of Horsford* (1874), L. R. 3 P. & D. 211).

3864. Construction accruer "to shares of daughters who shall at the time of the death of such daughter not have been married". By his will the testator provided that his trustees should divide the residue of his Consols and stock "into as many equal parts or shares as there shall be daughters of mine living at my death and shall appropriate one of such parts or shares . . . to each such daughter of mine living at my death and shall stand possessed of the part or share appropriated . . . (hereinafter . . . referred to as the share of such daughter) . . ." upon certain beneficial trusts whereby the income was payable to each daughter who should attain the age of twenty-one years or should marry before or after attaining that age with certain consents as therein expressed during her life, and after her death the share of such daughter was to be held in trust for such daughter's issue. A proviso stated that in default of issue: ". . . any the share of such daughter . . . or so much thereof as shall not have become vested . . . under any of the trusts or powers of this my will shall go over and be added by way of accruer to the shares of the daughters of mine if any who shall at the time of the death of such daughter not have been married with such consent as aforesaid. . . ." There followed a proviso that "in the case of any of my said daughters who shall die without having been married with such consent as aforesaid the share of the one so dying if only one or the shares both original and accruing of the survivor of them so dying if more than one" should be held on trust for the testator's sons. The testator had four sons and eight daughters. Of his eight daughters only two married and neither of those two had any children. At the respective deaths of these two married daughters all the unmarried daughters were already dead. The question arose what happened to the respective shares of the married daughters on their deaths without issue. Held, as a matter of construction there was no justification for confining the accruer to shares of daughters living at the date of accruer in addition to being daughters who had not at that date "been married with such consent", because the accruer was expressed to be "to the shares of the daughters" as opposed to the daughters. Nor did a daughter who had never married cease to come within the definition of a daughter who shall not have "married with such consent as aforesaid" because she had died. Consequently, no question as to the application of the rule in *Lassençe v. Tierney* (1849), 1 Mac. & G. 551, could arise: *Re WALTER'S WILL TRUSTS*; *STUART v. PITMAN*, [1949] L. J. R. 225; [1948] 2 All E. R. 955, Jenkins, J.

3865. — ademption. In *Re OAKES' WILL TRUSTS*, *LLOYDS BANK v. BARKER* (March 9, 1948), the testatrix, in the exercise of a power of appointment given by her mother's will, directed her trustees to "convey or transfer" to X certain specified freehold property that formed part of her mother's investments. Subsequently she directed the executor of her mother's will to sell the property to X, and the sale was duly completed. Jenkins, J., held that the question whether the appointment of realty operated also as an appointment of the proceeds of

sale of that realty or not, was purely a matter of construction of the language used in the appointment. The operative words of the appointment referred to the house as being part of the trust fund created by the mother's will, and an appointment of the house *in specie* would have been beyond the power of the testatrix because the executor of her mother's will might have sold it before the death of the testatrix. The appointment operated, therefore, as an appointment of the proceeds of sale, and no ademption had taken place. [Reported by C. M. Schmitthoff, Esq., Barrister-at-Law.] See also [1948] W. N. 110; 92 S. J. 167.

3866. — — — **rule against double portions.** The principles on which the rule against double portions is based and applied are succinctly stated by Lord Greene, M.R., in *Re Vaux*, [1939] Ch. 465, where he says: "The rule against double portions rests upon two hypotheses: first of all, that under the will the testator has provided a portion and, secondly, that by the gift *inter vivos* which is said to operate in ademption of that portion either wholly or *pro tanto*, he has again conferred a portion . . . Where the word 'portion' is used in reference to the gift *inter vivos*, it has a qualitative significance, in this sense, that it is not every gift *inter vivos* that will cause the rule to come into operation. If a testator gives to a child as pure bounty and by way merely of a present a sum of money, that will not have the character to cause the rule to come into operation. Similarly . . . he may wish to free him from some embarrassment, or something of that kind. In cases of that sort upon the facts a gift may not be a portion at all, in which case, of course, the rule does not apply". In deciding whether or not the circumstances of a particular gift rebut the presumption of double portions the decision of *Re Jaques*, [1903] 1 Ch. 267, is an authority for the proposition "that the presumption against double portions will not prevail where the testamentary portion and subsequent advancement are not *ejusdem generis*", but as the judgments of the Court of Appeal in that case further show, the proposition thus stated has no application where the "subsequent advancement", though not *ejusdem generis* with the testamentary provision, is one on which a money value was set at the time it was made.

The testator, a farmer, had two sons, one of whom had assisted him on his two farms. The testator left his residuary estate in certain shares to both sons, but during his life—as a result of pressure brought to bear upon the testator by the county war agricultural committee, who were dissatisfied with the testator's management of his farms—made to his farmer son a gift of the live and dead stock of his farms, which were valued at the time, granting him at the same time a tenancy at a fair rent of both farms. For the purposes of the farms the farmer son also took over the testator's bank account which was overdrawn at that time, but subsequently showed a credit balance. The question arose whether the gift of the live and dead stock ademed *pro tanto* the gift of the residuary estate in the testator's will. Held, (1) *prima facie*, the gift of the live and dead stock was in the nature of a portion and, as it had been valued at the time of the gift, this gift *inter vivos* was sufficiently *ejusdem generis* with the testamentary provision to prevent the rebuttal of the presumption by reason of a difference in character between the two gifts; (2) the fact that the gift *inter vivos* had an element of liability attached to it, inasmuch as the farmer son was liable for the rents of the two farms, did not prevent the gift from being a portion; (3) the attitude of the war agricultural committee afforded no ground for increasing the provision for the testator's farmer son at the expense of the other son and, therefore, could not affect the presumption. Consequently, in the ascertainment of the shares of the two sons in the testator's residuary estate, the value of the live and dead stock at the date of the gift, less the amount of the overdraft at the same time, had to be brought into account by the farmer son: *Re GEORGE'S WILL TRUSTS*, *BARCLAYS BANK v. GEORGE*, 92 S. J. 689; [1948] 2 All E. R. 1004, Jenkins, J. (applying *Re Vaux*, *supra*, and *Taylor v. Taylor* (1875), L. R. 20 Eq. 155; distinguishing *Re Jaques*, *supra*).

3867. — — — **transfer of shares not registered at time of testator's death.** The testator had made a gift of 5,000 preference shares in a certain company to H, "if such preference shares have not been transferred to him previously to my death". The testator had executed a voluntary transfer of the 5,000 preference shares in favour of H. and had handed the same to him together with the relevant

certificates. The company was a private company, and the right to claim registration of transfer was, therefore, subject to restrictions giving the directors a discretion in the matter. After the testator's death the transfer was passed and H. became registered as proprietor of the preference shares in question. It was argued that at the time of the testator's death the transfer was in the state of being an incomplete or inchoate gift, as it had not been registered in the testator's lifetime. Held, the testator had done everything in his power to divest himself of the shares in question in favour of H., and, consequently, the shares had been transferred to H. previously to the testator's death within the meaning of the provision in the testator's will. See *Re Rose*, § 3893 (distinguishing *Milroy v. Lord* (1862), 4 De G. F. & J. 264; and *Re Fry*, [1946] Ch. 312).

3868. — **advancement.** In the absence of any express provision a power of advancement introduced by the words "from and after the death" of the donee of the power cannot be exercised during the lifetime of the donee.

The testator gave his daughter D. a life interest in a share of his residuary estate and provided that "from and after [her] death" the capital and interest of the share should be held in trust for her issue "with such future or other trusts for their benefit and such provisions for their respective advancement" as D. should appoint; the will further authorised the trustees to raise any part not exceeding one-half of any expectant, presumptive or vested share of any minor. D., by a revocable deed, had made appointments in favour of her two children who were both over twenty-one years old. Held, on the true construction of the will, the power of advancement conferred by any appointment thereunder could not be exercised during the lifetime of D., because the will contained an express power to advance to minors and it would be curious if by a side wind the power could be extended to authorise an advance to adults; further, the words "or during her life with her consent", which were often added to such powers, were missing in the present will: *Re BAINBRIDGE, DARELL v. BAINBRIDGE*, [1948] Ch. 717; [1948] 2 All E. R. 657, Harman, J.

3869. — **"all my bloodstock".** Among those interested in thoroughbred horses the word "bloodstock", used in connection with an owner, has a meaning which covers, or in many ordinary contexts is used as covering, a share in a horse as distinct from full ownership.

By his will the testator gave a legacy of "all my bloodstock". Held, (1) the legacy included a half-share owned by the testator, in a horse kept at the testator's stud; (2) it did not include a fortieth share in a stallion which was neither with the testator's horses at his stud nor in the care of his trainer, but which was managed by a syndicate, the testator's shares in the syndicate conferring on him the right of nominating, free of charge, a mare to be served by the stallion; the share in the syndicate was not included in the legacy because it was in the nature of an investment in a commercial enterprise rather than in the nature of an interest in a racehorse, and it was merely incidental that the subject-matter of the syndicate happened to be a racehorse: *Re GILLSON, ELLIS v. LEADER*, [1948] W. N. 453; 92 S. J. 674; [1948] 2 All E. R. 990, C. A. (distinguishing *Re Sykes*, [1940] 4 All E. R. 10). (See also § 2753.)

3870. — **"all my stocks and shares".** The decision in *Re Everett*, [1944] Ch. 176, does not lay down any general rule as to the meaning of a gift of "all my stocks and shares" in a will. The meaning which has to be attributed to the expression must always depend upon the whole scheme of the will and the surrounding circumstances. Thus, whilst in one will the expression may be confined to "stocks and shares of limited companies", it may be a synonym for the expression "stock exchange investments" in another.

The testator, after giving all his property to his wife, gave a freehold property with its contents and a leasehold property to his brother-in-law and "all [his] stocks and shares" to a hospital. The will contained no residuary gift. The testator's estate consisted—apart from the freehold and leasehold properties—of cash at the bank and elsewhere, preference and ordinary shares and preference stock in limited companies, debenture stocks of limited companies, British and dominion and colonial government stocks and Brighton Corporation stocks, bonds, notes and certificates representing interests in the funded indebtedness or loan capital of foreign governments and municipalities and of railway companies. Held, the scheme of the will and the surrounding circumstances called for the

widest construction of the gift of "all my stocks and shares" which could properly be assigned to that expression. In the present case it denoted all forms of investments commonly dealt in on stock exchanges, and, consequently, all the investments passed under the gift to the hospital: *Re PURNCHARD'S WILL TRUSTS, PUBLIC TRUSTEE v. PELLY*, [1948] Ch. 312; [1948] L. J. R. 1274, Jenkins, J. (distinguishing *Re Everett*, *supra*; applying *Perrin v. Morgan*, [1943] A. C. 399).

- 3871.** — "articles of vertu". The expression "articles of vertu" embraces a very large potential class of articles, and the only common factor possessed by this class is artistic merit of some form or another. Any type of article which a connoisseur or virtuoso might collect for its artistic merit, or the beauty of its workmanship, falls within the category.

By his will the testator bequeathed to his wife "all the furniture plate plated goods linen glass china books . . . articles of vertu motor cars and all other articles of domestic . . . use or ornament". The testator left a chain of office which had been presented to him on his election as sheriff in the City of London, an article of beautiful workmanship. Held, the expression "articles of vertu" included this chain.

Quære: if the testator had left to someone else "all my articles of personal adornment" or had used some other expression capable of including this chain, it would have passed under the expression "articles of vertu": *Re COXEN, MACCALLUM v. COXEN*, [1948] Ch. 747; [1948] L. J. R. 1590; [1948] 2 All E. R. 492, Jenkins, J. (applying *Re Baroness Zouche*, [1919] 2 Ch. 178; and *Re Tomline's Will Trusts*, [1931] 1 Ch. 521). (See also §§ 409, 1380, 3877.)

- 3872.** — child dead at date of will—substitution. [Aus.] In *Re WHARTON, UNION TRUSTEE CO. v. MCMURTRIE*, [1948] V. L. R. 98; [1948] A. L. R. 121, the Supreme Court of Victoria held that where the testator gave his residuary estate to be divided "amongst all my children living at my death in equal shares provided that in case any of my said children should die" and so on, making the usual provision for the substitution of the issue of deceased children, the issue of a child of the testator who was dead at the date of the will took the share of residue which would have been taken by their parent had she survived the testator. (*Loring v. Thomas* (1861), 1 Drew. & Sm. 497, followed.)

- 3873.** — "children". The principles to be applied in deciding whether or not a provision made by a testator in his will for his "children" operates in favour of illegitimate children have been laid down by Lord Cairns in *Hill v. Crook* (1873), L. R. 6 H. L. 265: "... the term 'children' in a will *prima facie* means legitimate children, and if there is nothing more in the will, the circumstance that the person whose children are referred to has illegitimate children will not entitle those illegitimate children to take. But there are two classes of cases in which that *prima facie* interpretation is departed from. One class of cases is where it is impossible from the circumstances of the parties that any legitimate children could take under the bequest. . . . The other class of cases is of this kind. Where there is upon the face of the will itself, and upon a just and proper construction and interpretation of the words used in it, an expression of the intention of the testator to use the term 'children' not merely according to its *prima facie* meaning of legitimate children, but according to a meaning which will apply to, and which will include, illegitimate children". The authorities further establish that the circumstance that a woman to whose children a gift is made and who has had no legitimate children and is past child-bearing is a circumstance which under the first of the exceptions of Lord Cairns can be looked at for the purpose of ascertaining whether the testator by referring to her children in his will meant illegitimate children, and is also a sufficient ground for holding that he did mean illegitimate children. For that purpose there is no distinction in principle between the incapacity of a man and that of a woman.

The only children of the testator were two illegitimate children by his second wife who did not become legitimated on his subsequent marriage to her. In his will he appointed his second wife "guardian of my infant children" and made provision in the usual terms for the "children or remoter issue of myself and my said wife". When making the will, he was sixty-seven years old and, as a result of a bullet shot into his back by his first wife, incapable of begetting children, as

he well knew; he had also been informed by his second wife who was in her fiftieth year at the date of the will, that in view of an operation which she had undergone she was no longer capable of having intercourse with him. Held, the meaning of the word "children" could not properly be extended on the strength of any context found in the will itself, but the unusual circumstances of the case brought it within the first of the two exceptions to the general rule stated by Lord Cairns, and, accordingly, the material parts of the will had to be construed as making provision for the two children of the testator notwithstanding that they were not legitimate children: *Re WOHLGEMUTH'S WILL TRUSTS, THE PUBLIC TRUSTEE v. WOHLGEMUTH*, [1949] Ch. 12; [1949] L. J. R. 231; [1948] 2 All E. R. 882, Jenkins, J. (applying *Hill v. Crook*, *supra*, *Dorin v. Dorin* (1875), L. R. 7 H. L. 568, and *Re Eve*, [1909] 1 Ch. 796; distinguishing *Ward v. Van der Loeff*, [1924] A. C. 653).

3874. — **condition as to residence.** (Settled Land Act, 1925 (15 Geo. 5, c. 18), s. 106.) The testatrix by clause 6 of her will provided: "In the case of each of the six . . . life interests . . . I hereby direct that in any case if the life tenant shall cease to reside in the house . . . devised to him or her for life such fact shall operate as a determination of such life interest and accelerate the operation of the gift to the . . . Hostel of St. L." By clause 7 (a) the testatrix provided: "I direct my trustees to set apart the sum of £1,000 and to hold the same during the lifetime of my . . . sister . . . upon trust to pay thereout the local rates and property tax and the cost of such repairs as they may deem necessary or desirable to the . . . house G. and after her death as regards so much as shall remain unexpended of the said sum and the interest thereof for the said Hostel of St. L." The sister wanted to know what her position would be with regard to this sum of £1,000 in the event of her desiring to exercise her powers of selling under the Settled Land Act, 1925. Held, the deprivation of such an amenity as was conferred on a tenant for life by clause 7 (a) of this will was not within s. 106 of the Settled Land Act, 1925, it being merely an extra benefit conferred on the tenant for life and not one such as to tend to induce the tenant for life to abstain from exercising her Settled Land Act powers of sale. In any event, even assuming that it was avoided by s. 106, the gift over to take effect on her exercising the powers was within s. 106, and there was nothing whatever in the section to convert the trust from a direction to pay outgoings into a direction to pay money out to the tenant for life. Furthermore, the words "after her death" in clause 7 (a) had to be read as meaning "subject to her interest", with the result that, if she sold the houses under her Settled Land Act powers, so much of the sum of £1,000 as at that time remained unexpended would go at once to the remainderman, the Hostel of St. L., by way of acceleration: *Re BURDEN, MITCHELL v. TRUSTEES OF ST. LUKE'S HOSTEL*, [1948] Ch. 160; [1948] L. J. R. 631, Romer, J. (following *Re Simpson*, [1913] 1 Ch. 277, and *Re Patten*, [1929] 2 Ch. 276; not following *Re Ames*, [1893] 2 Ch. 479; distinguishing *Re Eastman's Settled Estates* (1898), 68 L. J. Ch. 122 n.; dissenting from *Re Trenchard* (1900), 16 T. L. R. 525).

3875. — —. In *Re HODSON'S WILL TRUSTS, HODSON v. HORTH* (April 29, 1948), a testator bequeathed a house to his wife "so long as she wishes to reside there". The wife lived in the house for approximately thirty-one years, but then had to reside in a mental hospital, owing to incurable disease. Vaisey, J., held, that her residence in the hospital was not her voluntary act, she had to be deemed still as wishing to reside in the house and her life interest had not determined. The case was distinguishable from one where actual residence was a condition of the gift. [*Reported by C. M. Schmitthoff, Esq., Barrister-at-Law.*] See also (1948), 92 S. J. 271.

3876. — —. "Living with a person" implies personal association with that person and is not satisfied by mere proximity or by anything short of personal contact.

The testator, his sister and the first defendant with her small child lived in the testator's house, the first defendant acting as a housekeeper and companion. By his will the testator directed his trustees to hold his house on trust "to permit [the sister] to have the use and enjoyment thereof during her life . . . and on the death of [the sister] upon trust for [the first defendant] (provided she is living with my said sister at the date of my sister's death) absolutely but if

[the first defendant] shall have predeceased my said sister or shall not be living with my sister at the date of my sister's death", the house should fall into the residue. After the death of the testator, relations between the sister and the first defendant became strained, the sister separated herself from the first defendant, both women retreated to their own apartments of the house and had their meals separately, and the first defendant ceased to clean the room occupied by the sister. The question was whether, on the death of the testator's sister, the defendant was "living with her" and, consequently, qualified for the gift. Held, (1) the expression "living with my sister" did not indicate a condition of mere proximity, but it meant being personally associated with her, and of such personal association there was no evidence; (2) the sister was not obliged for the rest of her days to keep the first defendant in her house, whether she liked it or not, merely to enable the first defendant to comply with the condition in the will. Consequently, the condition on which the first defendant should take the property had not been fulfilled: *Re PASKINS' WILL TRUSTS, UNDERWOOD v. MINNIS*, [1948] W. N. 239; [1948] 2 All E. R. 156, Vaisey, J.

3877. ——. The authority of *Sifton v. Sifton*, [1938] A. C. 656, shows:—

- (1) that the meaning (whether definite or uncertain) of the words "reside" and "residence" in a will depends on the context in which the words are used;
- (2) that in some contexts a perfectly definite meaning can be attached to such words; and
- (3) that the words "reside" and "residence" have different (and less readily ascertainable) implications when used in relation to residence in a particular country from those which they have when used in relation to residence in a particular house.

In deciding whether or not it is possible to attach a sufficiently definite meaning to a condition of "residence" in a particular context so as to enable the Court to hold such condition to be valid, it is necessary to bear in mind the distinction between uncertainty as to the events prescribed by the testator as those in which the condition is to operate (which is, generally speaking, fatal to the validity of such a condition) and difficulty in ascertaining whether those events (sufficiently prescribed by the testator as a matter of definition) have happened or not, which is not necessarily fatal to such validity.

By his will the testator provided that his trustees should hold his house upon trust to permit his wife "to reside therein rent free during her life or for so long as she shall desire to reside therein and . . . from and after her death or if in the opinion of my trustees she shall have ceased permanently to reside therein (whichever shall first happen) . . ." the trustees should hold the house upon the trusts concerning the testator's residuary estate. Held, (1) "reside" meant personal residence; (2) the condition was to operate in the double event of (a) the wife ceasing personal residence in the house, and (b) such cesser being permanent; the latter event involved intention and meant that the wife must have no *animus revertendi*; the double event involved in the condition was prescribed with sufficient certainty and precision; (3) the testator, by making the trustees' opinion the criterion, had removed the difficulties which might otherwise have ensued from a gift over in a double event the happening of which, though in itself sufficiently defined, might necessarily be a matter of inference involving nice questions of fact and degree. Consequently, the condition in question was valid. See *Re COXEN*, § 3871 (applying *Re Wright*, [1907] 1 Ch. 231, *Re Wilkinson*, [1926] Ch. 842, and *Re Talbot-Ponsonby's Estate*, [1937] 4 All E. R. 309; distinguishing *Sifton v. Sifton*, *supra*, and *Fillingham v. Bromley* (1823), Turn. & R. 530).

3878. — condition in restraint of marriage. [Eire.] In *Re McKENNA, HIGGINS v. BANK OF IRELAND*, [1947] Ir. R. 277, Gavan Duffy, P., held that it was the settled policy of equity to restrict within reasonable bounds marriage conditions precedent and subsequent, and that there was no adequate ground for confining that policy, which was applied in mercy to children beneficiaries, to conditions stipulating for marriage with consent. The appropriate rule in the case in question was that where a legacy is to vest or to be paid at a particular age and there is a forfeiture clause on marriage without consent, or (as in the case in question) on marriage to a Roman Catholic, the clause is to be read as relating

to a marriage under that particular age (following *Lloyd v. Branton* (1817), 3 Mer. 108). (See also § 3918.)

3879. — — — “out of the Jewish faith”. [N.Z.] In *Re MYERS, PERPETUAL TRUSTEE ESTATE AND AGENCY Co. v. MYERS*, [1947] N. Z. L. R. 828, the Supreme Court of New Zealand held that a condition subsequent for forfeiture in the event of the beneficiary “contracting marriage out of the Jewish faith” was void for uncertainty. (*Clayton v. Ramsden*, [1943] A. C. 320, followed.)

3880. — — — “outside the Jewish religion”. [S.A.] In *Ex p. PEREL*, 1948 (3) S. A. L. R. 195, the Griqualand West Local Division of the Supreme Court of South Africa held that a defeasance clause in a will containing the words “it is my express wish and desire that none of my said children shall marry outside the Jewish religion . . .” was void for uncertainty.

3881. — — — **cumulative or substitutionary legacies.** In order to decide whether there is sufficient in two testamentary documents, which fall to be construed by the Court, to rebut the presumption that gifts by two testamentary documents to the same individual ought to be treated as cumulative and not as substitutionary, the whole of the two documents must be looked at and the Court must decide in each case as a matter of construction, not weighing probabilities too nicely in order to upset the rule, whether the two documents when read consecutively bring to the mind the conviction that the second was intended as a substitution for the first.

The testatrix had made two wills, one in 1936 and the other in 1943. In the first will, she gave certain legacies and disposed of the residue. In the second will, she provided legacies of the same amounts and in favour of the same persons but did not dispose of the residue. The second will was not described as a codicil to the first, nor did it expressly revoke it, but it was manifestly incomplete, ended without any stop and in the middle of a sentence and was signed by the testator at the bottom of the page leaving a large gap between the last words and the signature. Probate was granted of both wills. Held, (1) though the second will was far removed in date from the first and was not called the “last will”, it was intended, at any rate so far as it went, to take the place of the first will, and, therefore, the legacies given by the second will were in substitution so far as they went for those in the first; (2) an examination of the two documents, did not support the conclusion that the intention of the testatrix, when she executed the second will, was entirely to supersede the earlier instrument, and, consequently, the first will effectively disposed of the residue, and one legacy given in the first will but not repeated in the second will was not revoked by the latter: *Re BAGNALL, SCALE v. WILLETT*, [1949] L. J. R. 1; 92 S. J. 485; [1948] W. N. 324, Harman, J. (applying *Re Michell*, [1929] 1 Ch. 552; *Hooley v. Hatton* (1773), 1 Bro. C. C. 390 n., *Heming v. Clutterbuck* (1827), 1 Bli. (N.S.) 479, *Kidd v. North* (1846), 16 L. J. Ch. 116, and *Jackson v. Jackson* (1788), 2 Cox 35; distinguishing *Wilson v. O'Leary* (1872), 7 Ch. App. 448, and *Re Bryan*, [1907] P. 125).

3882. — — — **death duties on legacies.** See *Re OPPENHEIMER*, § 843.

3883. — — — **division per stirpes or per capita.** There is a *prima facie* rule that words of division in a will denote that the division should be *per capita*. This is, however, only a *prima facie* rule and it is one which may quite easily be displaced by the context. In particular, through the cases there runs this reconciling principle—that cases of capital distribution are cases of distribution between strangers or persons of no corresponding relationship; and that cases of stirpital distribution are cases of family distribution.

The testatrix, after making other dispositions, left “the remainder to be divided equally between my youngest sister May, and my niece Irene and her children”. At the death of the testatrix, four children of Irene were living. Held, having regard to the position of the comma and to the fact that the distribution was a family distribution, the remainder had to be divided *per stirpes* and not *per capita*, and the testatrix's sister May was entitled to one half and the niece Irene and her children to the other half of the remainder: *Re HALL, PARKER v. KNIGHT*, [1948] Ch. 437; [1948] L. J. R. 1430, Harman, J. (following *Re Walbran*, [1906] 1 Ch. 64; distinguishing *Re Alcock*, [1945] Ch. 264).

3884. — — — As was stated by Harman, J., in *Re Hall*, § 3883, there is a *prima facie* rule that words of division in a will denote that the division should be

per capita, but that rule may quite easily be displaced by the context. None of the cases in which there has hitherto been a stirpital distribution has been a case where there was a gift to four persons *nominatim*.

The testatrix by her will after giving a life interest gave her residuary estate at the death of the life tenant "to my brothers Reginald and Alfred S.-J. Also Guy and Ellaline S.-J.—equally". Guy and Ellaline S.-J. were the children of a deceased brother. Held, there was no context here to displace the *prima facie* rule, and, accordingly, the four beneficiaries took in fourths: *Re JEFFREY, WELCH v. JEFFREY*, 92 S. J. 377; [1948] 2 All E. R. 131, Roxburgh, J. (applying *Re Hall, supra*).

- 3885.** ——. The authorities establish that there is undoubtedly a *prima facie* rule that where there is a direction to divide, at any rate among persons of the same generation or standing in the same degree of relationship to the testator or testatrix, the division is to be an equal division, that is to say, a division between the various beneficiaries *per capita*. To decide whether in a particular case there is sufficient to displace the ordinary rule is pre-eminently in the nature of guesswork.

By her will the testatrix directed: "My trustees shall pay and divide the remainder of my residuary estate unto and equally between the daughters of my late brother . . . who are resident in America and who shall be living at the time of my decease and to E . . . the daughter of my sister . . . provided that if any of my said nieces shall have died in my lifetime . . . leaving issue living at the date of my decease who being male attain the age of twenty-one years or being female attain that age or marry such issue shall take *per stirpes* and if more than one equally between them the shares of my residuary estate which such deceased niece would have taken had she survived me and attained a vested interest". The niece E predeceased the testatrix, leaving her surviving three children all of whom attained twenty-one and were still living. The brother had five children, all of whom survived the testatrix and were still living. The question arose whether the testatrix's residuary estate was divisible in equal moieties or into sixths. Held, the curious collocation of words, which appeared to predicate equality only in relation to the children of the brother was sufficient to indicate that the testatrix was thinking about her nieces, not as individuals, but as households, and consequently, the three children of E took one moiety of the residuary estate equally between them, and the five daughters of the brother took the other moiety of the estate in equal shares: *Re JEEVES, MORRIS-WILLIAMS v. HAYLETT*, [1949] Ch. 49; [1949] L. J. R. 317, Vaisey, J. (considering *Re Harper*, [1914] 1 Ch. 70; *Re Walbran*, [1906] 1 Ch. 64; *Re Prosser*, [1929] W. N. 85; *Re Cossentine*, [1933] 1 Ch. 119; *Re Alcock*, [1945] Ch. 264; *Re Daniel*, [1945] 2 All E. R. 101; *Re Hall*, § 3883; and *Re Jeffrey*, § 3884.

- 3886.** — *equivocation—gift to "the wife of my grandson"*. The general principle that, in the absence of a controlling context, the Court favours early vesting applies to the case of a gift to a wife, for—as stated in *Jarman on Wills*, 7th ed., p. 374—"if there be no such person either at the date of the will, or at the death of the testator, it [i.e., the description of 'wife'] applies to the woman who shall first answer the description of wife, at any subsequent period".

The testatrix by a codicil to her will provided: "I bequeath my pearl necklace . . . to my daughter-in-law M. so that she may have the use and enjoyment thereof for her life and at her death I bequeath the same to the wife of my grandson A. absolutely or in the event of my said grandson not marrying then and in that case I bequeath the same to my grand-daughter P." The testatrix died in 1914, and M. was the holder of the pearl necklace until her death in 1946. The grandson A. was unmarried at the date of the will and at the date of the death of the testatrix. He married twice, first in 1919, and that marriage was dissolved. He married again in 1940, survived the tenant for life and died in 1947. The contest was between the former wife and the widow. Held, the early vesting principle applied to the first person who answered the description of being the wife of the grandson. She took the pearl necklace and there was nothing that could divest her of it. This construction was supported by the terms of the gift over which, if they were to be made to fit at all, could only mean that, as soon as the grandson married, the testatrix regarded the necklace as being, as it were at home, and it was not necessary to provide further for

its possible destination: *Re HICKMAN'S WILL TRUSTS*, *HICKMAN v. HICKMAN*, [1948] Ch. 624; [1948] L. J. R. 1500, Harman, J. (applying *Radford v. Willis* (1871), 7 Ch. App. 7).

3887. — **falsa demonstratio.** See *Re O'CONNOR'S WILL TRUSTS*, § 3892.

3888. — **forfeiture clause—assignment of share.** In *Re Brewer's Settlement*, [1896] 2 Ch. 503, Chitty, J., stated the principle that "in construing clauses of cesser or forfeiture such as that before me, the Court is not at liberty to depart from the language of the document". It is not inconsistent with the principle stated in that decision to imply in a proper case in a forfeiture clause operating in the event of alienation by a beneficiary of "his said share" the words "or any part thereof".

The testator gave his sons shares in his residuary estate but subject to a forfeiture clause which provided that "if such son shall at the . . . distribution . . . have done . . . anything whereby his said share . . . would through his act . . . if belonging absolutely to him have become vested in or payable to some other person", there should be a forfeiture. One of his sons by his marriage settlement covenanted to transfer part of his share in the testator's residuary estate to the settlement trustees when the share was paid to him. Held, in executing the marriage settlement the son had committed an act which brought into effect the forfeiture clause and the whole share of the son was forfeited: *Re HAYNES' WILL TRUSTS*, *PITT v. HAYNES*, [1949] Ch. 5; [1948] L. J. R. 1745, Roxburgh, J. (applying *Re Dennis's Settlement Trusts*, [1942] Ch. 283, *Re Gillott's Settlement*, [1934] Ch. 97, and *Re Brewer's Settlement*, *supra*; distinguishing *Re Wightman*, [1947] C. L. Y. 3140; not applying observation of Roxburgh, J., in *Fraenkel v. Whitty*, [1947] C. L. Y. 3139).

3889. — — **if beneficiary "deprived of the personal enjoyment thereof".** The phrase "deprived of the personal enjoyment thereof" in a clause dealing with the forfeiture of a life interest under a will means, in substance, deprived of the right to receive it and hold it or spend it for his own purposes, and such a concept involves a sufficient degree of certainty.

The testator provided that the interest given to one of the beneficiaries under his will should cease if the beneficiary "was deprived of the personal enjoyment thereof". The testator died in 1907; in 1916 the beneficiary made a voluntary settlement under which his interest in the testator's estate was assigned. In 1940 the beneficiary went to Jersey for reasons of health, and soon after his arrival joined the Volunteer Defence Corps; he continued to reside in Jersey during the German occupation, but at no time worked for the Germans or rendered them assistance of any kind. He returned to this country in 1946. Held, (1) the forfeiture clause in the will was not void for uncertainty; (2) during the period of the German occupation the beneficiary was an "enemy" within the meaning of the Trading with the Enemy Act, 1939, s. 2 (1); (3) the forfeiture clause had become operative on two grounds, *viz.*, because the beneficiary was deprived of the personal enjoyment of the gift in consequence of the voluntary settlement in 1916 and during the time when he was an "enemy": *Re HATCH, PUBLIC TRUSTEE v. HATCH*, [1948] Ch. 592; [1948] L. J. R. 1393, Roxburgh, J. (applying *Clavering v. Ellison* (1859), 7 H. L. Cas. 707, and *Clayton v. Ramsden*, [1943] A. C. 320; referring to *Hancock v. Watson*, [1902] A. C. 14). (See also § 3734.)

3890. — **"free of duty" provisions.** See *Re SHEPHERD*, § 841.

3891. — **general or specific legacy.** In *Re CLEMONS, WESTMINSTER BANK v. GREY* (January 28, 1948), Vaisey, J., held that in a will made without professional assistance a gift of specified stock "from my investments" had to be construed as a general, and not as a specific legacy, in accordance with the rules of construction laid down by P. O. Lawrence, J., in *Re Hawkins, Public Trustee v. Shaw* (91 L. J. Ch. 486; [1922] 2 Ch. 569). In the present case, the legacy did not correspond in amount with the investments possessed by the testatrix at the date of the will, and legacies of a pecuniary nature were likewise directed to be made "from my investments". [*Reported by C. M. Schmitthoff, Esq., Barrister-at-Law.*]

3892. — — —. The Court leans strongly in favour of a general legacy.

By clause 5 of his will the testator provided: "I bequeath to my . . . son . . . 10,000 preference shares . . . in the capital of J. & K. C., Ltd." By clause 7 the testator devised and bequeathed on trust for sale the property "not hereby otherwise disposed of", and by clause 8 directed that the trustees out of the moneys arising from such sale were to pay the pecuniary legacies therein-before bequeathed. Clause 6 was introduced by the words "I bequeath the following pecuniary legacies". The testator never had 10,000 such preference shares either at the date of his will or at the date of his death, but only 9,000. J. & K. C., Ltd., was a private company with the usual restrictions on the transfer of shares and its articles contained a provision for the determination of the purchase price by arbitration in default of agreement between the parties. The question arose whether the legacy of 10,000 preference shares was a general or specific legacy. Held, (1) if this was a specific legacy the word "10,000" was a *falsa demonstratio*; if it was a general legacy there was also a *falsa demonstratio*, because the testator had forgotten the bequest in clause 5 within the description of "pecuniary legacy"; therefore, in view of the leaning of the Court in favour of a general legacy, this bequest should be treated as a general legacy; (2) if it was not possible to purchase the additional 1,000 shares before the end of twelve calendar months after the death of the testator then the legatee was entitled to such a sum as at that date would have been required to purchase the shares in question with interest at 4 per cent. per annum from that date, such sum to be determined under the articles of association of the company on the footing that there was a willing vendor and a willing purchaser who were, however, unable to agree as to the price; (3) if the additional 1,000 shares could have been acquired before the expiration of twelve months, the matter should be referred to the Court for further consideration: *Re O'CONNOR'S WILL TRUSTS, WESTMINSTER BANK v. O'CONNOR*, [1948] Ch. 628; [1948] L. J. R. 1606, Roxburgh, J. (applying *Robinson v. Addison* (1840), 2 Beav. 515).

3893. — — —. The Court leans against specific legacies, and is inclined, if it can, to construe a legacy as general rather than specific.

The testator gave certain beneficiaries legacies of ordinary and preference shares in two private companies; he did not refer to the shares as "my" shares, but the total number of shares disposed of (which in the case of the ordinary shares of one private company amounted to the odd figure of 10,489) equalled his total shareholdings at the date of his will, and one of the legacies was clearly expressed as a specific legacy by the use of the words "if such preference shares have not been transferred to him previously to my death". The question arose whether the legacies of the shares were general or specific gifts. Held, the fact that the testator in the case of the preference shares of one company had clearly made a specific gift without thinking it necessary to use the possessive pronoun entitled the Court to find that the legacies of the other shares were also specific in spite of the absence of the possessive pronoun. This conclusion was strengthened by the circumstances that the testator was, in fact, disposing of the exact total number of preference and ordinary shares in the company in question which he held at the date of his will, and that the company was a private company with the usual restrictions on the transfer of shares. Consequently, notwithstanding the leaning of the Court against specific legacies, there were sufficient indications in the will, read as a whole in the light of the surrounding circumstances, to constrain the Court to hold that the testator intended to make specific legacies: *Re ROSE, MIDLAND BANK EXECUTOR AND TRUSTEE Co. v. ROSE*, [1948] W. N. 457; [1949] L. J. R. 208; [1948] 2 All E. R. 971, Jenkins, J. (applying *Re Pratt*, [1894] 1 Ch. 491, and *Re Nottage*, [1895] 2 Ch. 657; distinguishing *Robinson v. Addison* (1840), 2 Beav. 515, *MacDonald v. Irvine* (1878), 8 Ch. D. 101, *Re Willcocks*, [1921] 2 Ch. 327, *Re Gage*, [1934] Ch. 536, and *Re O'Connor*, § 3892). (See also § 3867.)

3894. — gift in event of "armistice". By her will the testatrix directed that one moiety of her residuary estate should be held by her trustees on certain trusts "in the event of an armistice having been concluded between Great Britain and Germany in the present war before the date of my death", but, in the event of no such armistice having been concluded between Great Britain and Germany before her death, she made an alternative disposition of that moiety. The

testatrix died on September 6, 1945. In the view of the War Office no armistice had been concluded between Great Britain and Germany, but Germany had surrendered unconditionally, and seven instruments of surrender were signed in April and May, 1945. Held, there had been a cessation of active hostilities for an indefinite time and in such circumstances as gave rise to a general expectation that they would not be resumed, and, consequently, there had been an armistice within the meaning of the testatrix's will some time in April or May, 1945.

Semle: A cessation of hostilities for a specified limited time or for a specified purpose would not be the kind of armistice of which the testatrix was speaking: *Re ORCHARD, CARPENTER v. LAUER*, [1948] W. N. 54; [1948] 1 All E. R. 203, Vaisey, J.

- 3895.** — **gift over—issue of particular marriage.** The testator by his will gave a life interest in a fund to his daughter and directed that after her death the fund should be held on trust for her issue, if more than one in such shares as she should appoint and, so far as no such appointment should extend, in trust for all her children or child who should attain the age of twenty-one years (or in the case of daughters should attain the age of twenty-one years or marry under that age), and if more than one such child in equal shares. There was a gift over to the children of his brothers and sisters, if there should be no such son who should attain the age of twenty-one years, or being a daughter should live to attain that age or marry. By a codicil the testator declared that his will should read as if every child, children or issue of the marriage of his daughter to a Mr. Williams had been expressly excluded from all benefits in the trust fund, but that nothing therein contained should in any way affect the rights and interests in the trust fund of any child or children of his daughter by any other husband than Mr. Williams. The daughter had two children only who attained the age of twenty-one years and who were both by her marriage to Mr. Williams. Held, by the testator's will every child of the daughter by any marriage was a potential beneficiary and constituted a class, the failure of which was to bring into existence the power of appointment among nephews and nieces. The nephews and nieces, therefore, could only be cut out of an interest under the will by the acquisition of a vested interest by a member of that class of beneficiaries. The effect of the codicil was to cut out the children of the marriage to Mr. Williams as beneficiaries with the result that in the absence of any children of the daughter by any other marriage the nephews and nieces retained their interests: *Re CRAWSHAY, HORE-RUTHVEN v. PUBLIC TRUSTEE*, [1948] Ch. 123; [1948] L. J. R. 586, C. A. (affirming decisions of Vaisey, J., [1947] C. L. Y. 2302, 3261). (See also § 2743.)

- 3896.** — — **Jones v. Westcomb, rule in.** The principle applied in the case of *Jones v. Westcomb* (1711), Prec. Ch. 316, was stated by Romer, L.J., in *Re Fox's Estate*, [1937] 4 All E. R. 664 (citing *Theobald on Wills*, 8th ed., p. 739) in this way: "There is, however, a class of case where, though the exact event upon which the gift over is to take effect does not happen, the gift over must *a fortiori* have been intended to take effect in the event which happens". In applying the principle enunciated in *Jones v. Westcomb*, *supra*, the Courts have considered what was the real contingency guarded against.

By his will the testator gave a life interest to his mother, and after her death he gave his estate to his uncle. He then proceeded: "In the event of my said uncle . . . dying in my mother's lifetime then I give my said . . . estate . . . to his children as tenants in common in equal shares". The testator's mother predeceased him. His uncle survived the mother but died during the testator's lifetime, leaving children. The question was whether, in the events that had happened, the testator's residuary estate was left undisposed of. Held, the plain intention of the testator was that the uncle's children should take if the uncle was dead at the date of distribution. Therefore, the principle of *Jones v. Westcomb*, *supra*, applied, and the residuary estate became divisible equally between the uncle's children: *Re BOWEN, TREASURY SOLICITOR v. BOWEN*, [1949] Ch. 67; [1949] L. J. R. 413, Wynn-Parry, J. (applying *Jones v. Westcomb*, *supra*, *Re Fox's Estate*, *supra*, and *Davies v. Davies* (1882), 47 L. T. 40; distinguishing *Re Graham*, [1929] 2 Ch. 127).

- 3897.** — — **on death under twenty-five.** In *Re ROGOZINSKI'S SETTLEMENT TRUSTS, PUBLIC TRUSTEE v. PALMER* (1947), 205 L. T. J. 37, Romer, J., held that

a gift over "if the son shall die under the age of twenty-five years leaving a wife and a lawful child or lawful children him surviving" failed upon the death of a son under the specified age leaving a wife but no children.

3898. — **gift subject to a charge.** See *Re COXEN*, § 1380.

3899. — **gift subject to a double qualification.** A devise and bequest in favour of the person who becomes Duke of Wellington and Duke of Ciudad Rodrigo is a gift subject to a double qualification. Consequently, if no person exists who fulfils both qualifications the gift fails. See *Re DUKE OF WELLINGTON*, § 564.

3900. — **gift virtute officii to trustees of charitable trust.** See *Re COXEN*, § 409.

3901. — **incorporation of other documents in a will.** It is well established that where an existing document can be identified by the description of it in the will of a testator, such document can be incorporated as a piece of writing into the testamentary disposition. If some of the provisions of the document so incorporated for some reason or another happen to be void, it does not necessarily follow that all the provisions of such document must be ineffective.

The testator by his will provided: "I give all my property . . . to the trustees of a settlement dated October 16, 1936 . . . to be held by them upon the trusts and subject to the powers and provisions therein declared and contained so far as such trusts powers and provisions are subsisting and capable of taking effect". Cl. 2 of the settlement dated October 16, 1936, provided *inter alia*: "The trust fund and the income thereof shall be held upon trust to pay the income and to transfer the capital . . . to such persons or for such purposes as the settlor shall by any memorandum under his hand direct . . .". Cl. 3 of the settlement provided *inter alia*: "Subject to the provisions of the preceding clause the trust fund and the income thereof shall be held upon trust to pay one half of the income of the trust fund to . . . the wife of the settlor during her life and subject thereto the trust fund and the income thereof shall be held in trust for all . . . the children . . . of the settlor . . .". Held, although in view of the provisions of the Wills Act, 1837, it was impossible to give any legal effect to the direction in cl. 2 of the settlement as part of the testamentary wishes of the testator, cl. 3 of the settlement formed a valid part of the will and was not affected by the failure of the provisions in cl. 2. The words "subject to the provisions of the preceding clause" meant in so far as under the provisions of the preceding clause the residuary estate shall not have been effectively dealt with; and the words "so far as such trusts powers and provisions are subsisting and capable of taking effect" extended to a trust which was prevented from operating by a rule of law: *Re EDWARDS' WILL TRUSTS*, *DALGLEISH v. LEIGHTON*, [1948] Ch. 440; [1948] L. J. R. 1364, C. A. (reversing decision of Jenkins, J., [1947] C. L. Y. 3263; not dealing with point referred to in [1947] C. L. Y. 2303; distinguishing *Re Jones*, [1942] Ch. 328).

3902. — **intention—general intention.** [Scot.] In *MACKENZIE'S TRUSTEES v. MACKENZIE'S EXECUTORS*, 1948 S. L. T. 358, Lord Uthwatt, delivering the judgment of the House of Lords, adverted to the proposition that in construing testamentary writings it is legitimate to search in particular dispositions for a general intention and to amplify the dispositions expressed by reference to the general intention discovered; but decided the issue without requiring to consider the validity of the proposition.

3903. — **"investments"—"securities for money".** The phrases "investments" and "securities for money" may mean almost anything within limits according to the context in which they appear.

By clause 2 of his will the testator gave pecuniary legacies amounting to some £1,600. By clause 3 he provided that "subject to the foregoing legacies and duties and to the payment of all my just debts and funeral and testamentary expenses I give and bequeath all my personal property (other than investments, securities for money or leasehold property) including all moneys at my bankers and in Post Office Savings Bank on either drawing or deposit account and all articles of furniture . . . to my niece . . .". At the date of his death the testator had stocks and shares to the value of over £8,000, money at the bank and personal chattels of a value of about £3,000 and two full life policies of assurance with profits amounting to nearly £3,500. The question arose whether the proceeds of

the two life policies of assurance passed under the bequest of the testator's personal property. Held, by "investments" and "securities for money" the testator meant stock exchange investments—stocks and shares—and things which were not stocks or shares but were securities such as debentures. He did not intend to include the policy moneys in that phrase, but more probably intended them to be used for the payment of his debts, legacies and so forth, consequently, they passed under the bequest of the testator's personal property: *Re LILLY'S WILL TRUSTS*, PUBLIC TRUSTEE v. JOHNSTONE, [1949] L. J. R. 270; [1948] 2 All E. R. 906, Harman, J.

- 3904.** — **latent ambiguity—one article available to answer two bequests.** There is a well-established doctrine that if one finds two repugnant provisions in a will—e.g., the same thing given to two different people—the later disposition prevails. However, it is by no means inconsistent with this doctrine, that—as was decided by Lord Brougham, L.C., in *Sherratt v. Bentley* (1834), 2 My. & K. 149—"where the same thing is given to two different persons in different parts of the same instrument, each may take a moiety".

By bequest No. 19 of her will the testatrix gave "my five row diamond bracelet" to Mrs. T, and by bequest No. 31 "my diamond chain bracelet" to Lady L. The testatrix possessed only one article of jewellery which could answer either of those two bequests. It was a diamond bracelet accurately described as a chain bracelet, but containing eight and not five rows of diamonds. There was evidence that in conversation the testatrix referred to the diamond bracelet generally as "my five row bracelet" sometimes as "my chain bracelet" and sometimes as "my diamond bracelet". The testatrix never had any other diamond bracelet. Held, there was a latent ambiguity which made all the evidence admissible, and as on the evidence the same thing had been given to two different persons in different parts of the same instrument each was to take a moiety: *Re ALEXANDER'S WILL TRUST*, [1948] W. N. 220; [1948] L. J. R. 1373; [1948] 2 All E. R. 111, Roxburgh, J. (applying *Sherratt v. Bentley*, *supra*).

- 3905.** — **legacies to creditors of son.** By her will the testatrix provided: "My trustees shall out of the residue of my . . . estate pay to the creditors of my . . . son such sums of money as shall be owing by him to them at the time of my decease and the receipts of such creditors shall be a full and sufficient discharge to my trustees for the same". Held: (1) the aim and object of the testatrix in giving these directions was to clear the son of all his debts and not to confer benefits on the creditors: (2) the direction applied to creditors whether secured or unsecured; (3) the executors, on paying off the secured creditors, would not be entitled to stand in the shoes of those creditors by subrogation for the benefit of the estate, but the effect of carrying out the direction would be to put an end to the debts for all purposes; (4) where the son of the testatrix was indebted under a mortgage jointly with another person, the direction enured not only for the benefit of the son but also for the benefit of that other person; (5) where under one of the mortgages a policy of insurance was brought in by a third party as collateral security for the debt the direction enured for the benefit of the guarantor or surety; (6) the executors ought to pay a sum equal to the amount owing to the creditors by the debtor in respect of principal and interest calculated to the date of the testatrix's death, and such payment ought to be made or considered as having been made to the respective creditors on that date; (7) inasmuch as such notional payment was impossible, the executors ought also to pay or to be deemed to have paid such further interest as should have accrued since the date of the death of the testatrix down to the time of payment to the respective creditors: *Re LEACH'S WILL TRUSTS*, CHATTERTON v. LEACH, [1948] Ch. 232; [1948] L. J. R. 990, Vaisey, J. (See also § 3907.)

- 3906.** — **legacies to employees.** In 1933, the testator by his will provided: "I bequeath to each employee of M. & P., Ltd. . . who shall have been in the service of such company at my death for a period of 5 years and upwards and shall not then be under notice given by them or by the company to quit such service the sum of £10 for each year of such service in excess of 5 years but not exceeding in any event in any one case a legacy of £200". In 1933, the

business carried on by the testator himself under the style of M. & P. had been taken over by M. & P., Ltd. Held,

- (1) no employee could qualify unless he was in the employment of the company at the date of the death of the testator;
- (2) reference to the service of M. & P., Ltd., could not be construed as including the service of the testator as the predecessor in business of that company;
- (3) "service for a period of 5 years and upwards" connoted continuous service for 5 years and upwards and the provision in question was not satisfied by a series of disconnected periods, none exceeding 5 years, but amounting in the aggregate to a period of 5 years and upwards;
- (4) war service could not be treated as a period of service with the company, and as soon as an employee went on full time war service, his employment with the company terminated and he ceased to be in the service of the company;
- (5) apprentices of the testator, who worked for the company during a period of apprenticeship, were entitled to include the period during which they so worked in reckoning the period during which they had been in the service of the company at the death of the testator:

Re MARRYAT, WESTMINSTER BANK v. HOBSCROFT, [1948] Ch. 298; [1948] L. J. R. 1237, *Jenkins, J.* (applying *Re Lawson*, [1914] 1 Ch. 682; *Tyler v. London and India Docks Joint Committee* (1892), 9 T. L. R. 11; *Marshall v. Granville*, [1917] 2 K. B. 87; and *Pomphrey v. Southwark Press*, [1901] 1 K. B. 86; applying and differing from *Re Drake*, [1921] 2 Ch. 99; distinguishing *Re Cole*, [1919] 1 Ch. 218; *Re Feather*, [1945] Ch. 343; and *Horan v. Hayhoe*, [1904] 1 K. B. 288).

- 3907.** — **legacy to creditor predeceasing testatrix—moral obligation.** The principle laid down in *Stevens v. King*, [1904] 2 Ch. 30, is that "where on the true construction of a will the Court finds that the testator's intention in giving a legacy was not merely bounty to the legatee, but to discharge a moral obligation recognised by the testator, whether legally enforceable or not, the legacy will not lapse by the legatee's death in the testator's lifetime".

By a codicil the testatrix provided: "Whereas on the death of my son . . . my said son was indebted to Sir I. P. in the sum of £1000 now I hereby direct my executors and trustees to pay the said sum of £1000 to the said Sir I. P. free of any duties". Sir I. P. predeceased the testatrix. Held, the testatrix made this gift with the intention to discharge a moral duty, and, therefore, the principle of *Stevens v. King*, *supra*, applied. See *Re LEACH'S WILL TRUSTS*, *CHATTERTON v. LEACH*, § 3905.

- 3908.** — **mistake as to.** See *Re DEPLOCK*, § 1377.

- 3909.** — **"next of kin".** In *Re JOSEPHS, MORGAN v. CONNOP* (July 13, 1948), a testator directed his trustees to hold the residue of his estate, if his daughters died without issue and his wife predeceased him, upon trust for the persons "then" entitled thereto under the statutes of distribution of the estates of intestates, and he alternatively directed them, if his daughter died without issue and his wife survived him, to hold the residue in trust for the persons who under the said statutes would be entitled thereto "in case my said wife had then been dead". The wife had predeceased him, none of his daughters had issue, the two elder daughters had survived him but were now dead, and the Court was asked to determine the class of persons who on the death of the third daughter would be entitled to the residue. Vaisey, J., said that when looking for the "next of kin" of the testator, the principle of *Bullock v. Downes* (1860), 9 H. L. Cas. 1, rather than the principle of *Hutchinson v. National Refuges for Homeless and Destitute Children*, [1920] A. C. 794, had to be applied. There was nothing in the relevant provisions of the will to suggest that a class had to be artificially created by reference to a date subsequent to the actual death of the hypothetical intestate as in the last-mentioned case, or in *Re Mellish*, [1916] 1 Ch. 562, or in *Re Hooper*, [1936] Ch. 442. Declaration made that on the death of the last surviving daughter of the testator the personal representatives of the three daughters would be entitled to the residuary estate in equal third shares. [Reported by C. M. Schmitthoff, Esq., Barrister-at-Law.]

- 3910.** — **"personal estate"**. The words "all my personal estate" are words so well known to lawyers that it requires a very strong context to make them include real estate. See *Re COOK, BECK v. GRANT*, § 3418.
- 3911.** — **"personal jewelry"**. In *Re PULLEY, MIDLAND BANK v. CARTER* (March 17, 1948), the testator gave "all my personal jewelry" to his second cousin, a male. The testator's wife, who had pre-deceased him, had bequeathed her own jewelry (which was suitable for women's wear only) to her sister, who, on her death in the lifetime of the testator, had made him the sole beneficiary under her will. Jenkins, J., held that at the date of his death the testator had the right to obtain probate and to receive the ultimate balance of the estate of his wife's sister after due administration, but was not entitled to claim in specie the jewelry which formed part of the estate. Moreover, the word "personal" imported some limitation and meant jewelry personally used or worn by the testator. The word "jewelry" had to be interpreted in the manner indicated in *Allen v. Allen* (1729), Mos. 112 and *Re Whitby; Public Trustee v. Whitby* (113 L. J. Ch. 170; [1944] 1 Ch. 210). Consequently, the jewelry which formed part of the estate of the sister, was not included in specie into the gift of the testator's personal jewelry. [Reported by C. M. Schmitthoff, Esq., Barrister-at-Law.] See also (1948) 92 S. J. 181.
- 3912.** — **precatory trusts—heirlooms**. There is no ground for regarding the authority of *Shelley v. Shelley* (1868), L. R. 6 Eq. 540, as being no longer good, although the trend of modern decisions is to regard precatory trusts as not binding. The testatrix by her will provided: "I give my diamond necklace to my son C. S. to go and be held as an heirloom by him and by his eldest son on his decease and to go and descend to the eldest son of such eldest son and so to the eldest son of his descendants as far as the rules of law and equity will permit (and I request my said son to do all in his power by his will or otherwise to give effect to this my wish)". C. S.'s eldest son was C. R. S. and the eldest son of C. R. S. was D. S. who had a son born after the death of the testatrix. Held, the will was couched in the same language *mutatis mutandis* as that which was considered by Wood, V.-C., in *Shelley v. Shelley*, *supra*, and, therefore, there was the strongest indication that the diamond necklace in question should devolve in the same manner as the jewelry in *Shelley v. Shelley*, *supra*, was directed to devolve by the order made therein. Consequently, the diamond necklace should be held on trust for C. S. for his life, and after his death for C. R. S. for his life, and after his death for D. S. for his life, and after the death of the survivor of them on trust for the eldest son or grandson of D. S., and otherwise in the manner decided in *Shelley v. Shelley*, *supra*, including the ultimate trust (in default of any male issue of D. S. who took an absolutely vested interest) in favour of C. S. absolutely: *Re STEELE'S WILL TRUSTS, NATIONAL PROVINCIAL BANK v. STEELE*, [1948] Ch. 603; [1948] L. J. R. 1888, Wynn-Parry, J. (applying *Shelley v. Shelley*, *supra*, and *Re Hamilton*, [1895] 2 Ch. 370; distinguishing *Re Hill*, [1902] 1 Ch. 537; preferring statement in *Theobald on Wills* (10th ed., pp. 339 and 514) to the statement in *Jarman on Wills* (7th ed., vol. 2, p. 845).
- 3913.** — **"property"**. In *CANNON v. HARTLEY* (November 19, 1948), the defendant entered into a settlement described as a deed of separation with his wife and daughter who was the plaintiff in this action (see § 3405). The defendant covenanted, in the deed, that, if during the life of the wife or daughter he should become entitled by the same event to any money "or property" of the value of £1,000, he would settle one-half of the gift upon them. Romer, J., held that, on the construction of the clause, a reversionary interest of the defendant under his father's will (of the value of more than £1,000) fell within the term "property" in the clause and had to be settled in accordance with the terms of the settlement. [Reported by C. M. Schmitthoff, Esq., Barrister-at-Law.] (See also § 3405.)
- 3914.** — **protective trusts**. In *Re ISAACS, ISAACS v. ISAACS* (May 10, 1948), the testator directed his trustees to hold a share in the residuary estate for one of his sons "upon trust from time to time during the life [of that son] or during such shorter period or periods either continuous or discontinuous as they shall in their absolute discretion think fit to pay all or any part of the income of such share upon protective trusts for [that son] with power at their discretion from time to time to pay or apply any part of the capital thereof for his benefit as if they

were beneficial owners of such income and capital". Judge Peel, Deputy of the Chancellor of the County Palatine of Lancaster, held that the disposition did not fail on the ground of uncertainty. There was a heavy burden on those trying to upset a trust for uncertainty. Dispositions had been held void because they were either unintelligible or ambiguous. The present disposition did not fall into either class; the phrase "protective trusts" used by the testator would be recognised by any conveyancer as incorporating the trusts of s. 33 (1) and (2) of the Trustee Act, 1925. It was irrelevant that the trustees were given absolute liberty to determine what part of the income should be paid or during what periods payments should be made. [*Reported by C. M. Schmitthoff, Esq., Barrister-at-Law.*] See also (1948) 92 S. J. 336.

- 3915.** — **release of debts owing to testatrix.** By a codicil to her will the testatrix provided: "I exonerate all people from the repayment of moneys owing to me at the time of my death". Held, the testatrix meant to forgive personal debts and did not mean to give up securities for money. The dividing line had to be drawn between debts secured and debts unsecured, and the latter, but not the former, were forgiven by the codicil: *Re COGHILL, DRURY v. BURGESS*, [1948] W. N. 80; [1948] 1 All E. R. 254, Harman, J.
- 3916.** — **residuary gift.** Where a testator does not intend to dispose of or deal with Spanish property by his English will because in his words it "is disposed of by my Spanish will", the words "disposed of by my Spanish will" mean "effectively disposed of by my Spanish will", and, consequently, if the Spanish property is ineffectively disposed of by the Spanish will, there is nothing to prevent it from passing under the residuary gift in the English will. See *Re DUKE OF WELLINGTON*, § 564 (applying *Blight v. Hartnoll* (1883), 23 Ch. D. 218).
- 3917.** — **revocation of first will by second will.** See *Re BAGNALL*, § 3881.
- 3918.** — **"Roman Catholic".** [Eire.] In *Re McKENNA, HIGGINS v. BANK OF IRELAND*, § 3878, Gavan Duffy, P., held that the meaning to be attached to the words "Roman Catholic", as used by an ordinary citizen, was unambiguous.
- 3919.** — —. [N.I.] See *McCAUSLAND v. YOUNG*, §§ 3400, 3402.
- 3920.** — **satisfaction—annuity given by deed and by will.** When deciding whether or not the equitable doctrine of satisfaction applies the Court has to look at all the circumstances of the case.
By a deed of covenant entered into in 1932 the testator covenanted to pay a retired servant during his life an annuity of 20s. per week, free of income tax, payable quarterly in advance on the usual quarter days. The tax-free provision was ineffective in view of the provisions of the Income Tax Acts. By his will made in 1936 the testator—apart from several other annuities—left to the same servant an annuity of £52 free of income tax and payable by equal quarterly payments the first whereof should be made three months after his death. The will further provided that the annuity was determinable on any attempt being made by the annuitant to alienate or otherwise dispose of it, that any annuity provided thereafter in the testator's lifetime for any of the annuitants should be applied *pro tanto* in substitution for the annuity given by the will, and that the testator's debts should be paid out of his residuary estate. The question arose whether the annuity given to the servant by will was given in satisfaction of the annuity given by deed. Held, having regard to the provisions dealing with alienation and the time for payment, the annuity under the covenant was different in quality from the annuity provided by will, and, moreover, the direction dealing with annuities provided thereafter by the testator showed conclusively that the servant was entitled to both annuities: *Re VAN DEN BERGH'S WILL TRUSTS, VAN DEN BERGH v. SIMPSON*, [1948] W. N. 177; [1948] 1 All E. R. 935, Romer, J. (applying *Horlock v. Wiggins* (1888), 39 Ch. D. 142).
- 3921.** — — **double portions.** See *Re GEORGE'S WILL TRUSTS*, § 3866.
- 3922.** — — **transfer of shares not registered at time of testator's death.** See *Re ROSE*, § 3867.
- 3923.** — **"securities for money".** See *Re LILLY'S WILL TRUSTS*, § 3903.
- 3924.** — **surplus moneys.** In *Re BATES, BATES v. BATES* (June 11, 1948), the testatrix made a bequest of all surplus "moneys". Approximately a week before her

death, her brother died and left her certain leasehold property. Harman, J., held that after the decision of the House of Lords in *Perrin v. Morgan* (112 L. J. Ch. 81; [1943] A. C. 399) he was not bound by any so-called rule of construction as to the meaning of "money" in a will, and that *Re Mellor*, *Porter v. Hindsley* (98 L. J. Ch. 209; [1929] 1 Ch. 446) and *Re Smithers, Watts v. Smithers* (108 L. J. Ch. 369; [1939] Ch. 1015), so far as laying down such rules of construction, had been overruled. Upon the proper construction of the will, all that passed under the gift was money in the house and in the bank and there was an intestacy as to the other assets. [Reported by C. M. Schmitthoff, Esq., Barrister-at-Law.]

3925. — "surviving" two events. It must be regarded as settled by the decision of the House of Lords in *Elliot v. Joicey*, [1935] A. C. 209, that the *prima facie* and ordinary meaning of "surviving" means "living at and after the event" and requires that the person who is to survive shall be living both at and after a particular point of time. So, *prima facie* a gift to a class of individuals "surviving" an individual means a gift to persons of that class living at the event in question and does not extend to persons coming into existence after that event. However, when the requirement is that two events should be survived, the word can be given proper effect by interpreting it as living at the happening of the last of the two events specified. When the requirement is to survive both the death of the testator and that of another named person, that requirement is met when a person is living at the date of the last of the events which has happened.

Under a will certain shares were held on trust for the testator's nephew "provided always that if the [nephew] shall predecease me or shall be dead upon the happening of the event aforesaid leaving issue of his own surviving me and the happening of the aforesaid event then such issue shall take and if more than one equally between them as tenants in common the share which the [nephew] would have taken had he been then living". Held, a person living on the happening of the aforesaid event, although not born until after the testator's death, was entitled to benefit: *Re Castle, Public Trustee v. Froud*, [1949] Ch. 46; [1948] 2 All E. R. 927, Jenkins, J. (distinguishing *Elliot v. Joicey*, *supra*).

3926. — trust of leasehold property—effect of renewal—renewal of lease by trustee. See *Re Knowles' Will Trusts*, § 3426.

3927. — "widow"—gift of income "provided she shall so long continue my widow". In determining the legal effect which a decree of nullity has on property or rights acquired during or after the subsistence of a void or voidable marriage, a distinction must be drawn between cases where a person is entitled to property or rights after the annulment of the marriage and cases where it is intended to upset transactions, concrete and permanent, entered into while the marriage was current.

By his will the testator gave his residuary estate "upon trust to pay the income . . . unto my . . . dear wife during her lifetime provided she shall so long continue my widow . . .". The testator further provided that on the re-marriage of his wife she should be entitled to one half only of the income of his residuary estate. The testator's widow re-married, but that marriage was annulled five years later. The widow claimed to be entitled to the whole of the income from the testator's estate after the annulment of the marriage. Held, the second "marriage" had to be treated now for all purposes as never having happened and the testator's wife could now say that she was the testator's "widow", and, consequently, she was entitled to the whole of the income from the testator's residuary estate.

Quære: Whether, if the testator's widow had claimed the income during the time between the celebration of her second "marriage" and its annulment, she could have succeeded: *Re Dewhirst, Flower v. Dewhirst*, [1948] Ch. 198; [1948] L. J. R. 912, Harman, J. (considering *Re Garnett* (1905), 74 L. J. Ch. 570; and *Re Wombwell's Settlement*, [1922] 2 Ch. 298; distinguishing *Re Eaves*, [1940] Ch. 109).

3928. — words and phrases. See § 3951.

3929. Death duties. See DEATH DUTIES.

3930. Devisee—right to performance of contract entered into by testator. See *Re RUSHBROOK'S WILL TRUSTS*, § 1372.

3931. Execution of codicil—signatures of testatrix and attesting witnesses. (Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), s. 9.) It is established by authority that where the full testamentary capacity of the testator or testatrix at the time of executing a testamentary document is in issue, the party propounding the document as a testamentary document must satisfy the Court on the following points:—

- (1) The onus of proving the righteousness of the transaction being on him, he must prove that the deceased did really know and approve of the contents of the testamentary document.
- (2) He must prove that the document was intended by the deceased to be a testamentary document and not merely a document making a disposition *inter vivos*.
- (3) He must prove that what the deceased wrote was intended to be his or her signature, and is a sufficient signature to satisfy the statutory provisions. As was pointed out by Lord Campbell, L.C., in *Hindmarsh v. Charlton* (1861), 8 H. L. Cas. 160: "There must either be the name or some mark which is intended to represent the name". Whether or not a signature is sufficient in any particular case must necessarily be a question of degree, and a broad interpretation must be given to Lord Campbell's words in *Hindmarsh v. Charlton*, *supra*, having regard to all the facts of the case.
- (4) He must prove that, assuming that the document was duly executed by the deceased, it was, in fact, attested by the witnesses in the presence of the deceased, not merely his or her physical presence but his or her mental presence. In this connection the authorities establish that once the Court is satisfied that the document was intended to be a testamentary document, and has been properly signed by the deceased, it will allow a certain degree of latitude with regard to the attestation by witnesses. That involves some latitude in the interpretation of what is meant by "in the presence of witnesses" in s. 9 of the Wills Act, 1837.

The deceased knew and approved the contents of a document which she had been invited to sign and intended it to be a testamentary document. She wrote her initials and half of her surname but was unable to complete her signature owing to the morphia which had been administered earlier, and which was inducing drowsiness by a gradual process, making her unconscious. The document was attested by two witnesses immediately after the deceased had written what she wrote. Held, the mark on the document ought to be accepted as the signature of the deceased and up to the conclusion of the attestation the deceased was still mentally present to a sufficient degree to bring the case within the Wills Act, 1837, s. 9. Consequently, the document was a valid codicil: *Re CHALCRAFT, CHALCRAFT v. GILES*, [1948] P. 222; [1948] L. J. R. 1111, Willmer, J. (applying *Hindmarsh v. Charlton*, *supra*; *In the Goods of Kieran*, [1933] I. R. 222; and *In the Goods of Killick* (1864), 3 Sw. & Tr. 578; distinguishing *In the Goods of Maddock* (1874), L. R. 3 P. & D. 169; and *Right v. Price* (1779), 1 Doug. K. B. 241.

3932. Executors. See EXECUTORS AND ADMINISTRATORS.

3933. Family provision—"dependant". (Inheritance (Family Provision) Act, 1938 (1 & 2 Geo. 6, c. 45), ss. 2 (1), 4 (1) (b).) S. 4 (1) (b) of the Inheritance (Family Provision) Act, 1938, merely enables the Court to make, after the expiration of six months from the date on which representation is first taken out, orders in favour of a further dependant where there is already a dependant in receipt of provision under the Act, and the word "dependant" in the subsection means a dependant who is being maintained in pursuance of the Act and not a dependant receiving bounty under the will or otherwise: *Re DORGAN, DORGAN v. POLLEY*, [1948] Ch. 366; [1948] L. J. R. 1217, Harman, J.

3934. — discovery of documents. See *Re BORTHWICK*, § 2822.

3935. — evidence of testator's reasons. (Inheritance (Family Provision) Act, 1938 (1 & 2 Geo. 6, c. 45), s. 1 (7).) S. 1 (7) of the Inheritance (Family Provision) Act, 1938, which provides that "the Court shall . . . , on any . . . application, have regard to the testator's reasons, so far as ascertainable, for making the

dispositions made by his will, or for not making any provision . . . for a dependant . . .", does not mean that, if a testator has made a statement of his reasons in his will, no evidence can be given as to the reasons he had for not making any provision for a dependant. On the contrary, by this subsection, the Court is given express power "to accept such evidence of those reasons as it considers sufficient, including any statement in writing signed by the testator and dated" in, among other things, a will. See *Re SEARLE*, *SEARLE v. SIEMS*, § 3937.

- 3936.** — **time for application.** (Inheritance (Family Provision) Act, 1938 (1 & 2 Geo. 6, c. 45), s. 2 (1).) The expression "representation" in s. 2 (1) of the Inheritance (Family Provision) Act, 1938, which provides that "... an order under this Act shall not be made save on an application made within six months from the date on which representation in regard to the testator's estate for general purposes is first taken out", means that representation the granting of which gives the Court jurisdiction to apply the provisions of the Act, namely, probate and letters of administration with the will annexed, but not the grant of letters of administration *simpliciter*, because it is only when there is a will that the Court has power to do anything. That construction of the sub-section is borne out by the fact that its language contemplates a period of six months during which an application may be made and not a period of six months during which no application could possibly be made. Moreover, the words of the sub-section assume that during the six months limitation period there will be in existence a "testator's estate", and no Court would describe as a "testator" a person in respect of whom there has been a grant of letters of administration which has not been displaced.

Quære: whether in the case where there was a will and probate and then more than six months afterwards another will was found and the probate of the first will was revoked, the six months limitation period would run from the representation granted in respect of the first or second will.

The testator died in January, 1945. In April, 1945, on the assumption that there was no will, a full grant of administration was made to the widow and one of her sons. When, eventually, the testator's will was found, the grant of administration was revoked and in September, 1946, a grant of probate was made to the executor named in the will. In January, 1947, a summons was issued by the widow under the Inheritance (Family Provision) Act, 1938. Held, the widow's application was in time. Consequently, the case was remitted to the Chancery Division for further consideration: *Re BIDIE*, *BIDIE v. GENERAL ACCIDENT FIRE AND LIFE ASSURANCE CORPORATION*, [1948] W. N. 454; [1949] L. J. R. 386; [1948] 2 All E. R. 995, C. A. (reversing on this point decision of Jenkins, J., [1948] Ch. 697). (See also § 1386.)

- 3937.** — —. (Inheritance (Family Provision) Act, 1938 (1 & 2 Geo. 6, c. 45), s. 2 (1); R. S. C., Ord. 54F, rr. 1, 2.) S. 2 (1) of the Inheritance (Family Provision) Act, 1938, provides that: "... an order . . . shall not be made save on an application made within six months from the date on which representation . . . is first taken out". In construing this sub-section the time to look at the matter is the time when the Court is about to make an order, and, consequently, an application which is made before representation is taken out complies with the provisions of the sub-section.

Quære: whether under Ord. 54F, rr. 1 and 2, it is permissible to start an application before probate, provided one can find out who are named as executors in the will, irrespective of whether they ultimately prove the will or not: *Re SEARLE*, *SEARLE v. SIEMS*, [1949] Ch. 73; [1948] L. J. R. 1843; [1948] 2 All E. R. 426, Roxburgh, J. (See also § 3935.)

- 3938.** **Limitation of actions — acknowledgment in will.** [Eire.] See *HOWARD v. HENNESSY*, § 2000.

- 3939.** **Probate.** See **EXECUTORS AND ADMINISTRATORS.**

- 3940.** **Republication — restraint on anticipation.** In *Re HEATH'S WILL TRUSTS*, *HAMILTON v. LLOYDS BANK* (December 21, 1948), the testator, by a will made in 1932, imposed a restraint upon anticipation on a gift to his daughter. The Law Reform (Married Women and Tortfeasors) Act, 1935, s. 2 (1), abolished restraints upon anticipation but provided that restraints contained "in any instrument executed before the 1st day of January, 1936" should remain valid. The testator

made two codicils in 1937 and died in 1939. Harman, J., held that the doctrine of republication, according to which a will had to be regarded as executed at the date of the latest codicil, did not apply. The will, by which the restraint was imposed, had to be regarded as executed prior to January 1, 1936, and, consequently, the restraint was valid, notwithstanding the 1935 Act and the 1937 codicils. [*Reported by C. B. Schmitthoff, Esq., Barrister-at-Law.*] (See also [1949] 1 C. L. 264.)

- 3941. Revocation—dependent relative revocation.** See *Re ITTER*, *DEDMAN v. GODFREY*, § 3863.
- 3942. — joint will.** [Can.] In *Re KERR*, [1948] 3 D. L. R. 668, the High Court of Ontario held that where a husband and wife executed a joint will, constituted by one instrument, the terms of which implied an agreement that the provisions should be irrevocable by either spouse, the executors of a later will executed by the last surviving spouse held such part of the last surviving spouse's estate as would have passed under the earlier will upon the trusts of that earlier joint will.
- 3943. — of first will by second will.** See *Re BAGNALL*, § 3881.
- 3944. Soldier's will—actual military service.** (Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), s. 11.) In determining whether a deceased was "in actual military service" within the meaning of the words in s. 11 of the Wills Act, 1837, so as to entitle him to make a privileged will, the test is not whether the soldier was in danger from enemy action at the time when the will was made. The tests are:—
- (a) was the testator "on military service";
 - (b) was such service "actual"?
- The adjective "actual" in this connection confines military service to such service as is directly concerned with operations in a war which is or has been in progress or is imminent.
- Per Cohen, L.J.:* "Pilcher, J., said that the argument of counsel for the plaintiffs amounted to a contention that in the recent hostilities the whole world should be regarded as a theatre of war. I do not think his argument went quite so far as that. I do not think he was considering the position of a soldier on neutral territory. With that possible limitation, I see no reason to reject the argument".
- In 1942 the deceased, who was in the Royal Air Force, was sent to Canada for training in operational duties. In 1943, while stationed there, he executed a testamentary document which did not comply with the provisions of the Wills Act, 1837. In the same year the deceased met his death while flying on duty in Canada in the course of his training for operational duties. Held, the deceased was "in actual military service" within the meaning of s. 11 of the Wills Act, 1837: *Re WINGHAM, ANDREWS v. WINGHAM*, [1948] W. N. 424; 92 S. J. 660; [1948] 2 All E. R. 908, C. A. (reversing decision of Pilcher, J., [1948] P. 38; applying *In the estate of Gossage*, [1921] P. 194, *Gattward v. Knee*, [1902] P. 99, *Re Booth*, [1926] P. 118, *Re Kitchen* (1919), 35 T. L. R. 612, *In the estate of Spark*, [1941] P. 115, and *In the estate of Howson*, [1944] 2 All E. R. 36; overruling *In the goods of Hill* (1845), 1 Rob. Eccl. 276, *Bowles v. Jackson* (1854), 1 Eccl. & Ad. 294, *In the goods of Gibson*, [1941] P. 118 n., and *In the estate of Anderson*, [1944] P. 1).

- 3945. Testamentary capacity—delusions concerning relatives.** A testator may have a clear apprehension of the meaning of a draft will submitted to him and may approve of it, and yet, if he was at the time, through infirmity or disease, so deficient in memory that he was oblivious of the claims of his relations and if that forgetfulness was an inducing cause of his choosing strangers to be his legatees, the will is invalid.

The testator, who was in the last stages of consumption which had produced a rapid degradation of his memory, executed a will by which he left all his property to two of his debtors. In previous wills he had left his property to his nephews. There was evidence that the testator's mind at the time of executing his last will was clear and logical and sound, but that the particular defect of memory caused by the weakness of disease had made him forget the existence of

his nephews. The testator, when executing his last will, had failed to employ the solicitor who had acted for him on previous occasions or even to ask him to send the previous wills, or copies of them. Held, the last will was invalid, because the testator at the time of execution was without sound mind or memory and the disposition of his property under it was the outcome of the delusion touching his nephews' existence. See *BATTAN SINGH v. AMIRCHAND*, § 3946 (applying *Banks v. Goodfellow* (1870), L. R. 5 Q. B. 549); *Harwood v. Baker* (1840), 3 Moo. P. C. 282; and *Sivewright v. Sivewright's Trustees*, [1920] S. C. (H. L.) 63).

- 3946. — instructions to solicitor.** The case of *Parker v. Felgate* (1883), 8 P. D. 171, decides that, if a testator has given instructions to a solicitor at a time when he was able to appreciate what he was doing in all its relevant bearings and if the solicitor prepares the will in accordance with these instructions, the will will stand good though at the time of execution the testator is capable only of understanding that he is executing the will which he has instructed, but is no longer capable of understanding the instructions themselves or the clauses in the will which give effect to them. The principle enunciated in *Parker v. Felgate*, *supra*, must be applied with the greatest caution and reserve when the testator does not himself give instructions to the solicitor who draws the will, but to a lay intermediary who repeats them to the solicitor. In such a case the Court, before making any presumption in favour of validity, must be strictly satisfied that there is no ground for suspicion, and that the instructions given to the intermediary were unambiguous and clearly understood, faithfully reported by him and rightly apprehended by the solicitor.

The evidence showed that the testator had asked an acquaintance to procure a solicitor to draw up a will for him, but did not show that he had asked his acquaintance to give specific instructions to the solicitor on his behalf. The solicitor only saw the testator on the day before his death when the will was executed. The solicitor, though he had drafted a will on information supplied by the acquaintance, had inserted statements of his own volition and was at pains to put these statements to the testator and to obtain instructions from the testator himself. Held, for the purposes of determining the testator's testamentary capacity the material date was not the date when the testator gave instructions to his acquaintance, but the date when he executed his will: *BATTAN SINGH v. AMIRCHAND*, [1948] A. C. 161; [1948] L. J. R. 827, P. C. (distinguishing *Parker v. Felgate*, *supra*; and *Perera v. Perera*, [1901] A. C. 354). (See also § 3945.)

- 3947. Trusts.** See SETTLEMENTS AND TRUSTS.

- 3948. ARTICLES.** Common sense and the construction of wills: 92 S. J. 135. The Inheritance (Family Provision) Act: 92 S. J. 163. The forgiveness of debts: 205 L. T. J. 143. Performance of conditions of legacies (founded on *Re Goldsmith's Will Trusts*, *Brett v. Bingham*, [1947] C. L. Y. 3254, and *Re Avarad*, *Hook v. Parker*, [1947] C. L. Y. 3270): 205 L. T. J. 256. Exclusion of the family from testamentary benefits (founded on the Inheritance (Family Provision) Act, 1938): 98 L. J. 270, 285. Directions to settle: 92 S. J. 280. Preparing wills and codicils for the dying: 205 L. T. J. 299. Problems for the conveyancer—testamentary options and pre-emptions: 98 L. J. 383. Legacies to servants: 92 S. J. 384. Testamentary gifts to hospitals and the National Health Service Act, 1946: 206 L. T. 124, 255. Conditions as to residence (founded on *Re Burden*, § 3874): 98 L. J. 524. Gifts during widowhood (founded on *Re Dewhirst*, § 3927): 98 L. J. 496. The judgment of Solomon and the diamond bracelet (founded on *Re Alexander's Will Trust*, § 3904): 98 L. J. 559. Imposition and termination of statutory trusts on gifts by will—ademption resulting from the imposition of the statutory trusts—reconversion into land (founded on *Re Harvey*, [1947] C. L. Y. 3248, and *Re Cook*, § 3418): 98 L. J. 653.

- 3949. BOOKS PUBLISHED.** Cosway, A. H.—Handbook on Wills. 3rd ed. [6s.]. Elder, A. H.—Forms of Wills. In accordance with the Law of Scotland [30s.].

- 3950. — OVERSEAS PUBLICATION.** Thompson, G. W.—Wills. 3rd ed. (U.S.A.) [110s.].

WORDS AND PHRASES

3951. Words and phrases.

- Able; "a person able, ready and willing to purchase my property", § 7.
- Accident; "injury by accident", § 3956.
- Accident; "or other accident", § 3448.
- Accounts, § 3040.
- Action, §§ 2001, 2829.
- Actual; "actual income from all sources", § 1687.
- Actual; "in actual military service", § 3944.
- Adultery; "the alleged adultery", § 865.
- Affect, § 3179.
- Agent, § 521.
- Aggrieved; "person aggrieved", §§ 2976, 3101, 3102.
- Agricultural; "agricultural product", § 47.
- Apprentice, § 1433.
- Answerable, § 3466.
- Any; "any person", §§ 1690, 2030.
- Any; "if in any year of assessment", § 1676.
- Any; "the price of any shares", § 1162.
- Apart; "living separately and apart", § 935.
- Apparent, § 3863.
- Arising; "arising out of the Act or of any of the provisions thereof", § 3153.
- Armistice, § 3894.
- Article, § 1422.
- Articles; "articles of vertu", § 3871.
- Associated; "associated operation", § 1691.
- Association; "effected in connection with or in association with any of the said transactions", § 1349.
- Assurance; "any assurance", § 423.
- Assurance; "every assurance of land and of personal estate", § 423.
- Attendance, § 3150.
- At the time; "at the time of transfer", § 1691.
- Banker, § 254.
- Belong, § 3097.
- Bloodstock; "all my bloodstock", § 3869.
- Bona fide; "*bona fide* let at a rent which includes payments in respect of board, attendance or use of furniture", § 3149.
- Borrowed; "borrowed money", § 1352.
- Brief; "brief to take a note", § 2784.
- Burden; "burden or liability", § 2976.
- Business; "for the purpose of their business", § 1896.
- By; "by reason of the transfer", § 2004.
- By means of; "by means of any such transfer", § 1691.
- Capital; "the total capital of the company actually invested in their undertaking at the time of purchase and properly expended on capital account", § 3746.
- Carrying on; "was carrying on business in England", § 265.
- Cart, § 1035.
- Cause; "upon cause being shown", § 914.
- Charged; "rent charged", § 3182.
- Charitable; "for charitable purposes only", § 418.
- Child, § 3895.
- Children, § 3873.
- Cohabit; "cohabit with", § 935.
- Cohabitation; "resumes cohabitation with", § 978.
- Competent; "competent authority", § 521.
- Competent; "competent to give evidence", § 960.
- Concern; "a concern of the like nature", § 1666.
- Condonation, §§ 885, 886.
- Connivance, § 892.
- Consult; "consult with", § 1269.
- Consultation, § 3661.
- Consumer, § 1118.
- Consummate; "wilful refusal to consummate", § 1002.
- Consummation, § 1001.
- Conversion, § 2007.
- Conviction, § 2129.
- Could; "the premises could be let at a higher rent", § 1921.
- Court, § 2798.
- Court; "the Court", § 873.
- Creditors, § 3905.
- Crown; "Crown purposes", § 3157.
- Crown; "the Crown", § 3155.
- Cruelty, § 907.
- Debtor, § 265.
- Decision, § 3976.
- Decrease; "decrease in the means", § 977.
- Default; "in default of payment", § 3440.
- Deficiency; "deficiency of men", § 3447.
- Delegated; "delegated legislation", § 521.
- Delivery, § 1489.
- Dependant; "provision for the maintenance of another dependant", § 3933.

WORDS AND PHRASES (§ 3951)

Desertion, § 935.
Detention; "wrongful detention", § 2007.
Dilapidations, § 3397.
Disablement, §§ 2677, 2678.
Discovers, § 1641.
Discretion; "to be used by him for such purposes as he shall in his absolute discretion think fit", § 415.
Dispute; "every dispute between a member and the society", § 1698.
Divided; "to be divided equally between my sister, and my niece and her children", § 3883.
Documents; "discovery or inspection of documents", § 2820.
Document; "document of title", § 17.
Document; "statement made by a person in a document", § 1316.
Domestic; "appliances and apparatus of a kind used for domestic purposes", § 3010.
Domiciled; "immediately before the desertion domiciled in England", § 929.
Driving, § 3306.
Duties; "release from your duties", § 1255.
Dwelling; "let as a separate dwelling", § 3163.
Dwelling-house, §§ 3164, 3165, 3169.
Earning; "is earning or is able to earn", §§ 3979, 3981.
Educational; "for educational purposes", § 423.
Employed; "employed in the process of sandblasting", § 3974.
Employee, § 2067.
Employment; "out of and in the course of his employment", § 3954.
End; "within twelve months from the end of the war as fixed by His Majesty's Government", § 3800.
Enemy, § 3734.
Engaged; "some person engaged in his whole-time employment", § 3172.
Enjoyment; "deprived of the personal enjoyment thereof", § 3889.
Equipment; "loose equipment", § 3317.
Error; "error of the Court", § 1017.
Estate owner, § 1875.
Evidence; "giving evidence", § 2140.
Exclusively; "wholly and exclusively laid out or expended for the purposes of the trade", § 1673.
Existing; "under the existing practice of the Chancery Division", § 2252.
Exposure; "long continued exposure", § 3970.
Factory, § 1422.

CURRENT LAW

Fairly; "the amount of rent which is fairly attributable to the use of furniture", §§ 3187, 3193.
Faults; "with all faults and imperfections", § 3383.
Fenced; "securely fenced", § 1416.
Fit; "fit for human habitation", § 1601.
Fraud; "based upon the fraud", § 2008.
Frequenting, § 3794.
Fresh; "upon fresh evidence", § 914.
Friends, § 1993.
Funeral; "funeral expenses", § 815.
Furniture, §§ 3189, 3190.
Furnished; "furnished letting", § 3185.
Gain; "carried on by way of trade or for purposes of gain", § 3649.
General rate, § 3096.
God; "for God's work", § 412.
Hardship; "exceptional hardship", § 1006.
Held; "the agreement or other assurance under which the licence is to be transferred and held", § 1850.
Imperfections; "with all faults and imperfections", § 3383.
In connection with; "for any purposes in connection with the church", § 416.
Income; "income received by the trustee", § 3427.
Increase; "increase in the means", § 977.
Indictable; "convicted of an indictable offence", § 473.
Indictments; "all indictments", § 737.
Indirectly; "directly or indirectly", § 410.
Informations, § 737.
Insincerity, § 988.
Inspector, § 3860.
Interested; "person interested", §§ 1310, 1311, 1312, 1316.
Invention, § 2568.
Investments, §§ 1359, 3903.
Investments; "income received from investments", § 1358.
Jewish; "out of the Jewish faith", § 3879.
Jewish; "outside the Jewish religion", § 3880.
Knowingly, § 3297.
Landlord, §§ 1925, 3197.
Lawful; "it shall be lawful", § 1608.
Lawfully; "lawfully sublet", § 3237.
Lender, § 1352.
Let; "*bona fide* let at a rent which includes payments in respect of the use of furniture", § 3186.

- Let; "let as a separate dwelling", § 3165.
- Let; "the premises could be let at a higher rent", § 1921.
- Liabilities; "all liabilities of the company", § 846.
- Liabilities; "contingent liabilities", § 846.
- Licence; "a licence granted by the Minister", § 1148.
- Lifetime; "in my mother's lifetime", § 3896.
- Living; "living with my sister", § 3876.
- Loaded; "to be loaded", § 3443.
- Lock, stock and barrel, § 3372.
- Lodger, § 3090.
- Mainly; "wholly or mainly employed in such work", § 1420.
- Maliciously; "maliciously published", § 1994.
- Management, § 1607.
- Market; "sold in the ordinary course of trade for its full market value", § 1349.
- Married, § 3864.
- Military; "in actual military service", § 3944.
- Minerals, § 3113.
- Misconduct, § 170.
- Mission; "mission work", § 419.
- Money, §§ 1400, 3924.
- Necessary; "where it is necessary to apportion the rent or the rateable value", § 3148.
- Negligence, § 3466.
- Negligent, § 749.
- Non-accidental; "non-accidental injury", § 2721.
- Non-occupying; "non-occupying tenant", §§ 3229, 3231.
- Occupation; "occupation by the landlord", § 1925.
- Occupation; "rateable occupation", § 3091.
- Occupied, §§ 1159, 3090.
- Occupier, § 1422.
- Offence, § 2129.
- Offer; "a firm offer to purchase", § 7.
- Offer; "offer to sell", § 1214.
- Officer, § 3860.
- On; "on the application", §§ 3182, 3183.
- Open space, § 2548.
- Opinion; "in the opinion of the court", § 1217.
- Other; "such future or other trusts", § 3868.
- Others; "their agents, contractors or others", § 2568.
- Otherwise; "full pay, half-pay or otherwise", § 152.
- Ought; "if an election of directors ought to take place", § 472.
- Owing; "I exonerate all people from the repayment of moneys owing to me at the time of my death", § 3915.
- Own; "entitled in his own right to an income", § 1635.
- Parish; "for the benefit of the church and parish", § 413.
- Passing; "property passing on the death", § 845.
- Patients; "patients of the practice", § 1269.
- Payment; "payment in cash in London", § 3440.
- Pecuniary; "pecuniary legacy", § 3892.
- Penalties, § 2816.
- Period; "service for a period of 5 years and upwards", § 3906.
- Perish, § 3364.
- Permanently; "if she shall have ceased permanently to reside therein", § 3877.
- Person, § 1200.
- Personal; "personal estate", § 3418.
- Personal; "personal occupation as a home", § 3234.
- Physician; "physician or surgeon or apothecary", § 1269.
- Pitch; "pitch a stall upon any part of any highway", § 1582.
- Place, § 3358.
- Place; "a place situate within the close, curtilage, or precincts forming a factory", § 1422.
- Plying for hire, § 3358.
- Poor rate, § 3096.
- Porter, § 3150.
- Portion, § 3866.
- Pounds, §§ 647, 648.
- Power; "power under an enactment", § 1607.
- Proceeding; "any proceeding in a court of law", § 2829.
- Proceedings; "costs of and incident to all proceedings", § 2791.
- Profits; "profits from a trade", § 1668.
- Provision; "make provision for", § 841.
- Purchase; "at the time of purchase", § 3746.
- Purchaser; "a purchaser who is able and willing to complete the transaction", § 8.
- Purposes; "for the purposes of the trade", § 1673.

Presence; "in the presence of witnesses", § 3931.
 Rates; "rates of remuneration", §§ 3983, 3984.
 Reasonable; "reasonable cause", § 1608.
 Reasonably; "reasonably executed", § 3839.
 Regard; "regard shall be had", § 3193.
 Relate; "relate solely to own case", § 2824.
 Remedy; "remedy the breach if capable of remedy", § 1904.
 Remuneration, § 2070.
 Remuneration; "rates of remuneration", § 3982.
 Rent, §§ 3210, 3211.
 Rent; "rent or any other consideration for the lease", § 1665.
 Rent; "whole rent", § 3192.
 Representation, § 3936.
 Required; "moneys not required for the purposes of the trade or business", § 1351.
 Required; "the premises are required for occupation by the landlord", § 1926.
 Required; "the price required by me", § 7.
 Reside; "if she shall have ceased permanently to reside therein", § 3877.
 Reside; "reside with", § 935.
 Resident; "any individual resident in enemy territory", § 3734.
 Respect; "action in respect of any claim to the personal estate of a deceased person", § 2015.
 Respondent, § 1012.
 Responsibility; "having regard to the claimant's share in the responsibility for the damage", § 1425.
 Right; "persons claiming a legal or equitable right", § 2873.
 Roman Catholic, § 3918.
 Roman Catholic; "profess the Roman Catholic religion", "become a Roman Catholic", § 3400.
 Same; "the same cause of complaint", § 949.
 Securely; "securely fenced", § 1416.
 Securities; "securities for money", § 3903.
 Sending, § 3440.
 Separate; "let as a separate dwelling", § 3165.
 Separate; "living separate from her husband", § 1679.
 Separately; "living separately and apart", § 935.
 Service, § 2070.

Service; "who shall have been in the service of the company", § 3906.
 Settlement, §§ 1022, 1023, 1690.
 Settlement; "income arising under a settlement", § 1688.
 Share; "his said share", § 3888.
 Shares; "all my stocks and shares", § 3870.
 Shares; "to the shares of the daughters", § 3864.
 Similar; "part of a series of offences of a similar character", § 735.
 Solely; "is solely used for some purpose other than the processes carried on in the factory", § 1422.
 Specify; "specify the grounds on which the proposed amendment is supported", § 3107.
 Special; "special circumstances", § 1141.
 Special; "special reasons", §§ 1701, 3303, 3312.
 Special; "special risk", § 2721.
 Specially; "specially qualified medical practitioners", § 3968.
 Stage carriage, § 3749.
 Stationary; "engaged in street trading in or from a stationary position", § 2100.
 Stocks; "all my stocks and shares", § 3870.
 Structure; "wooden or other structure or erection", § 367.
 Subject; "subject to the provisions of the preceding clause", § 3901.
 Subject-matter; "with reference to the subject-matter of the lease", § 1912.
 Subsisting; "so far as such trusts powers and provisions are subsisting and capable of taking effect", § 3901.
 Substantial; "a substantial portion of the whole rent", §§ 3187, 3191.
 Substantial; "substantial detriment to his livelihood", § 3593.
 Supplied; "information supplied to him", § 1316.
 Supplies; "supplies and services", § 527.
 Surcharge, § 2030.
 Surviving, § 3925.
 Temporarily; "works reasonably executed for temporarily meeting the circumstances created by war damage", § 3839.
 Tenant, §§ 3090, 3183, 3193, 3218, 3219, 3222, 3223.
 Tenant; "regard being had to the value of the same to the tenant", § 3152.
 Termination; "termination of the agreement", § 1255.

Testator; "the date on which representation in regard to the testator's estate for general purposes is first taken out", § 3936.
 Thing in action, § 1612.
 Threaten; "threatens any person", § 2602.
 Towing, § 3503.
 Trade; "for the purposes of the trade", § 1673.
 Transfer; "transfer of business", § 3242.
 Transferred; "the agreement or other assurance under which the licence is to be transferred and held", § 1850.
 True; "true Christian names and surnames", § 993.
 Unreasonably; "consent not to be unreasonably withheld in respect of a respectable and responsible tenant", § 1896.
 Upon; "upon the level", § 1593.

Used, § 1177.
 Valuation; "outgoing valuation due to the tenant", § 41.
 Vertu; "articles of vertu", § 3871.
 War risk injury, § 2674.
 Welfare, § 1712.
 Wholly; "wholly and exclusively laid out or expended for the purposes of the trade", § 1673.
 Widow; "provided she shall so long continue my widow", § 3927.
 Wife; "the wife of my grandson", § 3886.
 Wilful; "wilful refusal to consummate", § 998.
 Wilfully, § 3297.
 Willing; "as between a willing buyer and a willing seller", § 1162.
 Without prejudice: § 3222.
 Year; "and so on from year to year", § 1915.
 Yield; "is yielding or will yield", §§ 3182, 3183.

- 3952.** BOOKS PUBLISHED. Dalrymple, A. W.—French-English Dictionary of Legal Words and Phrases. 2nd ed. [12s. 6d.]. Law Student's Pronouncing Dictionary [8s. 6d.].

WORKMEN'S COMPENSATION

- 3953.** **Abolition.** The appointed day for the repeal of the Workmen's Compensation Acts was July 5, 1948. See § 2362.
- 3954.** **Accident—arising out of and in the course of the employment.** (Act of 1925, s. 1 (1).) The cases which decide that, if a workman employed by a company meets with an accident, not on the company's works, but on a public road leading to or from the works of the company, it cannot be said that the accident arises out of and in the course of his employment, because he is then incurring the same risks as any ordinary member of the public, can have no application where the workman, on his way to work, meets with an accident on the company's premises, the right of way over which has by the courtesy of the company been extended to members of the public for a limited number of years without affecting the exclusive right of property of the company. Therefore, in such a case the workman does not lose his right to compensation: *HILL v. BUTTERLEY Co.*, [1948] 1 All E. R. 233, C. A. (applying *John Stewart & Son (1912) v. Longhurst*, [1917] A. C. 249; distinguishing *Clark v. Stephens, Sutton* (1937), 30 B. W. C. C. 340).
- 3955.** ——. [Cty. Ct.] In *POUPARD v. H.M. POSTMASTER-GENERAL* (1948), 98 L. J. 485, Judge A. H. Armstrong held that where a workman whose employer's headquarters were at A was travelling from his home to P (where he had to report for work at 8.10 a.m.) and was injured in an accident which occurred at a point on the road from A to P, the accident occurring after 7.45 a.m., that being the time at which he would have required to leave A to arrive at P at 8.10 a.m. and the time from which he was paid, the accident was not in the course of his employment.
- 3956.** ——. **silicosis.** (Act of 1925, s. 1 (1).) In *Trim Joint District School Board of Management v. Kelly*, [1914] A. C. 667, it was pointed out by Lord Dunedin that the expression "injury by accident" in s. 1 (1) of the Act of 1925 "must be interpreted according to the meaning of the words in ordinary popular language". No doubt, the ordinary meaning may include a wide range of incidents such as a series of specific and ascertainable accidents followed by an injury which may be the consequence of any or all of them, but it cannot include the growth of incapacity by a continuing process going on substantially from day to day, though not necessarily from minute to minute or even from hour to hour, which gradually and over a period of years produces incapacity. Consequently,

silicosis which is the result of the inhalation of fine granules of quartz by a workman who is employed in the process of slate splitting does not constitute an "injury by accident" within the meaning of the section: *ROBERTS v. DOROTHEA SLATE QUARRIES CO.*, [1948] W. N. 246; [1948] L. J. R. 1409; [1948] 2 All E. R. 201, H. L. (dismissing appeal from Court of Appeal, [1947] C. L. Y. 3301; following *Trim Joint District School Board of Management v. Kelly*, *supra*, and *Williams v. Guest, Keen & Nettlefold*, [1926] 1 K. B. 497).

- 3957. Alternative remedies—conditional payments.** (Act of 1925, s. 30 (1).) The provisions of s. 30 (1) of the Act of 1925, which provide that a workman may take proceedings to recover damages from a third party and compensation from his employer under the Act, but that he shall not be entitled to recover both damages and compensation, do not bar a workman's right to sue for damages at common law where the payment under the Act was expressly made conditionally and expressly had a qualification attached to its receipt. Thus, in a case where it was agreed between workman and employers that in the event of a common law action being brought against the third party which failed, the money received by the workman should be retained by him as workmen's compensation, but that, in the event of a common law action being brought which succeeded it should be regarded as a loan and should be returned by the workman to his employers, the workman was held not to have recovered compensation in such circumstances as to make the bar imposed by s. 30 (1) of the Act of 1925 available to the third party in subsequent common law proceedings for damages for negligence: *ELLIGOTT v. NEBBETT*, [1948] 1 All E. R. 514, Morris, J.
- 3958. — trial of issue.** [N.I.] See *DELANEY v. EASTWOOD & SONS*, § 2847.
- 3959. Appeal—from arbitrator's award—jurisdiction.** See *DYDE v. NATIONAL COAL BOARD*, § 3976.
- 3960. Average weekly earnings.** [Scot.] (Act of 1925, s. 10 (i).) In *FRASER v. HEPBURN*, [1948] S. L. T. 21, the Court of Session held that the average weekly earnings of a married woman who did casual daily work were properly calculated by dividing her earnings during the twelve months before the accident by fifty-two.
- 3961. Award—appeal from arbitrator's award—jurisdiction.** See *DYDE v. NATIONAL COAL BOARD*, § 3976.
- 3962. Compensation—agreement for lump sum in redemption of weekly payments.** (Act of 1925, ss. 13, 23, 25.) Where, in accordance with the provisions of proviso (a) to s. 13 of the Act of 1925, a workman enters into an agreement with his employers for the redemption of a weekly payment by a lump sum before such payments have been made for a period of six months, the duty of the registrar who has to decide whether to record the memorandum of agreement is laid down by ss. 23 and 25 of the Act of 1925. These sections lay down that it is his duty in all cases to satisfy himself as to the adequacy of the amount. He is there to protect the workman and it is for him to satisfy himself that the workman is doing a right and proper thing in accepting a sum of money on which he can put his hands at once. The registrar is not allowed to treat as conclusive the fact that in other cases the employers in question have considered a certain sum as the maximum which they would be willing to pay if a workman wanted a lump sum settlement. On the contrary, it is his duty in every case to satisfy himself that the injured man who is affected by the agreement is receiving a sum, not because other workmen have received it in other circumstances, but because it is a fair and proper sum in his case: *R. v. REGISTRAR OF PONTYPRIDD COUNTY COURT*, *ex p. NATIONAL AMALGAMATED APPROVED SOCIETY, ETC.*, [1948] W. N. 56; 64 T. L. R. 73; [1948] 1 All E. R. 218, C. A. (applying *Russell v. Rudd*, [1923] A. C. 309). (See also § 3963, 3964.)
- 3963. — — —.** (Coal Mining Industry (Pneumoconiosis) Compensation Scheme, 1943 (S. R. & O., 1943, No. 885), arts. 4, 14 (1).) The object of the Coal Mining Industry (Pneumoconiosis) Compensation Scheme, 1943, is to apply the provisions of the Act of 1925 for the determination of any questions and to apply the procedure in relation to compensation (which also includes proceedings in regard to agreements to redeem compensation), to cases arising under the Scheme, as in other

cases. See *R. v. REGISTRAR OF PONTYPRIDD COUNTY COURT, ex p. NATIONAL AMALGAMATED APPROVED SOCIETY, ETC.*, § 3962.

- 3964. — objection to agreement—approved society.** *Quære*: Whether an objection by an approved society to the recording by the registrar of an agreement between employer and workman, has to be drafted in accordance with the forms in the Appendix to the Workmen's Compensation Rules, 1926, or whether a formal letter is sufficient. See *R. v. REGISTRAR OF PONTYPRIDD COUNTY COURT, ex p. NATIONAL AMALGAMATED APPROVED SOCIETY, ETC.*, § 3962.
- 3965. — — — costs.** In *SEALE v. NATIONAL COAL BOARD* (June 2, 1948), the Court of Appeal, Tucker, Somervell and Cohen, L.J.J.) held that an approved society which had intervened to prevent the recording of an agreement between workman and employer might be granted their costs. See (1948) 92 S. J. 390.
- 3966. Evidence—Judge's use of knowledge of local conditions.** It is well established that in assessing a workman's wage-earning capacity a county court Judge is entitled to take into account his own knowledge of general conditions in the neighbourhood. But, as was laid down by Lord Buckmaster in *Keane v. Mount Vernon Colliery Co.*, [1933] A. C. 309, the county court Judge's right to call his own knowledge into play is limited to matters which are within the common knowledge "properly applied and within reasonable limits" of everyone in the district. The county court Judge cannot use his own knowledge of the locality in a very special and individual case requiring some particular knowledge of a highly specialised nature, such as, *e.g.*, the possibility of a man of high degree of skill, who, was a shearer in a tinplate factory, obtaining at the age of sixty-six years, a job at as high a rate of wages as ten guineas a week: *REYNOLDS v. LLANELLY ASSOCIATED TINPLATE CO.*, [1948] 1 All E. R. 140, C. A. (applying *Keane v. Mount Vernon Colliery Co.*, *supra*; *Roberts and Ruthven v. Hall*, [1912] 106 L. T. 769; *Viney v. New Tredegar, Treharris and Troedryhiw Co-operative Society* (1939), 32 B. W. C. C. 264; and *Mothersdale v. Cleveland Bridge and Engineering Co.* (1930), 99 L. J. K. B. 261). (See also § 3985.)
- 3967. Incapacity resulting from accident—novus actus interveniens.** It has been laid down in decisions in the Court of Appeal more than once that in cases where the disability of which a workman complained can be found on proper evidence to be due to some unskilful treatment of an original injury and not to the injury itself, that amounts to a *novus actus interveniens* which breaks the chain of causation between the original accident and the disability. Therefore, in a case where the pain left in the stump of a workman's thumb after an operation is not due to the original accident but is due to a misconceived operation which ought not to have been performed the workman's claim to compensation must fail: *HOGAN v. BENTINCK WEST HARTLEY COLLIERIES (OWNERS)*, [1948] 1 All E. R. 129, C. A. (following with reluctance, *Humber Towing Co. v. Barclay* (1911), 5 B. W. C. C. 142; *Rocca v. Stanley Jones & Co.* (1914), 7 B. W. C. C. 101; *Lakey v. Blair & Co.* (1916), 10 B. W. C. C. 58; and *Rothwell v. Caversall Stone Co.*, [1944] 2 All E. R. 350).
- 3968. Industrial disease—certificate by medical board.** (Silicosis and Asbestosis (Medical Arrangements) Scheme, 1931, arts. 3, 5.) Art. 5 of the Silicosis and Asbestosis (Medical Arrangements) Scheme, 1931, provides: "Any certificate given by the medical board in pursuance of the provisions of this Scheme shall be conclusive evidence of the matters therein certified . . .". The medical board, to whom this very special jurisdiction under art. 5 is given, is a "medical board consisting of specially qualified medical practitioners" as stated in art. 3 of the Scheme. The word "specially" in this connection means specially qualified in relation to the disease in question. Thus, where a sentence is added by the board in a certificate which is of a different kind from that contemplated by the Scheme as constituting the subject-matter of their jurisdiction, like, *e.g.*, "the workman is unfit for any work owing to conditions not associated with the disease", such sentence cannot be given the quality of conclusiveness conferred on statements in a certificate given by them within their jurisdiction: *WILLIAMS v. TREDEGAR IRON AND COAL CO.*, [1948] 1 All E. R. 236, C. A.
- 3969. — certificate by medical referee—conclusiveness against dependants.** (Act of 1925, s. 43 (1) (f).) It is well established that the right of dependants to

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compensation under the Workmen's Compensation Acts is an independent right and is in no way derived from the workman. Thus, the certificate of a medical referee under para. (f) of the modifications set out in s. 43 (1) of the Act of 1925, which on the matters falling within the referee's province is final and conclusive, is final and conclusive only between the employer and the workman, and does not bind the dependants who are not parties to the proceedings. Dependants have only to prove that the workman's death was caused by the scheduled disease and that the disease was due to the nature of any employment in which the workman was employed at any time within the twelve months previous to the date of disablement.

Quære: Whether a decision and certificate of the medical referee that a workman was not suffering from a specified disease at a given date coupled with the admission that, though exposed to it, he did not acquire the disease afterwards, is final and conclusive against the workman: *HUXLEY v. WHARNCLIFFE WOODMOOR COLLIERY CO.*, [1948] W. N. 120; [1948] L. J. R. 976; [1948] 1 All E. R. 572, H. L. (reversing decision of Court of Appeal (1946), 175 L. T. 446; criticising *Young v. Keeble* (1928), 21 B. W. C. C. 294; and *Whitaker v. National Smelting Co.* (1940), 33 B. W. C. C. 161).

- 3970.** — **dermatitis.** (Workmen's Compensation (Industrial Diseases) Consolidation Order, 1929 (No. 2), para. (2).) Para. (2) of the Workmen's Compensation (Industrial Diseases) Consolidation Order, 1929, disentitles a workman suffering from dermatitis produced by dust or liquids to compensation if he was disabled only for employment in the particular process in which the disease was contracted or other processes involving risk of dermatitis, and if he does not satisfy the county court Judge that the disease was contracted through long continued exposure to liquids. Therefore, where the effect of the medical evidence is that the workman can safely work if he keeps away from such dust or liquids, he will not be entitled to a declaration of liability: *SLOMAN v. HARRIS LEBUS*, [1948] 1 All E. R. 133, C. A. (See also § 3978.)
- 3971.** — **nystagmus followed by pneumoconiosis or silicosis.** See *AMALGAMATED ANTHRACITE COLLIERIES v. WILDS*, § 3986.
- 3972.** — **pneumoconiosis.** In *TRIPLETT v. OAKDALE NAVIGATION COLLIERIES* (January 21, 1948), the Court of Appeal (Scott, Bucknill and Somervell, L.J.J.) held that the removal of ashes from a boiler did not amount to employment "on the surface of any coalmine in any of the processes of tipping, screening, breaking, loading, handling or moving of coal or other minerals extracted from the mine" within art. 2 of the Coalmining Industry (Pneumoconiosis) Compensation Scheme, 1943. [Reported by R. C. Calburn, Esq., Barrister-at-Law.] See also (1948) 92 S. J. 140.
- 3973.** — — **abolition of fees for medical examination.** Pneumoconiosis (Medical Arrangements) (Transitional) Regulations, 1948 (No. 1396), made under the National Insurance (Industrial Injuries) Act, 1946 (9 & 10 Geo. 6, c. 62), s. 89 (1); came into operation on July 5, 1948; abolish the fees formerly chargeable in respect of medical examinations and certificates in cases of silicosis and asbestosis.
- 3974.** — **silicosis — authorisation by employers of process employed.** (Various Industries (Silicosis) Scheme, 1931 (S. R. & O., 1931, No. 342), para. 2 (viii) (c).) Para. 2 (viii) (c) of the Various Industries (Silicosis) Scheme, 1931, applies to the case of a workman who contracts silicosis whilst he is employed in the process of sandblasting of metal. The Scheme does not apply where the workman is employed in the process of shotblasting of metal. In a case where the employers alleged that they had never authorised the mixing of sand with the shot, that they knew nothing about it and would not have authorised it if they had, it was held, that in order to decide whether the employers were liable or not the crucial question must be whether there was authority, express or implied, to operate the sandblasting scheme: *BROWNSWORD v. LEY'S MALLEABLE CASTING CO.*, [1948] 1 All E. R. 119, C. A. (See also § 3975.)
- 3975.** — — **employment in the process of sandblasting.** The words "employed in the process of sandblasting" in para. 2 of the Various Industries (Silicosis) Scheme, 1931, are not limited to the man who holds the nozzle of the blasting machine. The question is one of degree as to the point at which a man whose

work is connected with the process can be said to be employed in the process. It was held, that the process of moving castings from a room partitioned off from the sandblast chamber after they had been cleaned in the chamber and inspected would not constitute employment in the process of sandblasting, but that the moving of castings into the sandblast chamber with the door of the chamber left open and the removal when the cleaning process had been applied would be covered by the expression. See *BROWNSWORD v. LEY'S MALLEABLE CASTING CO.*, § 3974.

- 3976. Jurisdiction—appeal from arbitrator's award.** (Act of 1925, Sched. I, para. 4.) The arbitrator's award was: "... Whereas I find the applicant's revised or notional pre-accident average weekly earnings . . . are £8 4s. 6d. per week . . . I order that the [employers] . . .". The employers appealed against the basis of the award that there had been a change in the rate of the workman's remuneration within the meaning of s. 6 of the Act of 1943, but did not appeal against the actual order to pay the workman the sums set out in the award. It was objected on behalf of the workman that the matter complained of in the appeal formed no part of the arbitrator's award. Held, the arbitrator's finding that the workman's revised or notional pre-accident average weekly earnings were £8 4s. 6d. was a "decision" within the meaning of para. 4 of the Schedule and formed part of his award, and was not merely a recital, and, consequently, an appeal lay from that decision. See *DYDE v. NATIONAL COAL BOARD*, § 3983.
- 3977. Notional accident—right to compensation in respect of second.** See *AMALGAMATED ANTHRACITE COLLIERIES v. WILDS*, § 3986.
- 3978. Partial incapacity.** The mere payment and acceptance of money at the rate appropriate to compensation for partial incapacity is not conclusive evidence in every case of the existence of an agreement between employer and workman to pay compensation at that rate. See *SILOMAN v. HARRIS LEBUS*, § 3970 (distinguishing *Lewis v. Cammell, Laird & Co.* (1929), 22 B. W. C. C. 410).
- 3979. —.** (Act of 1925, s. 9 (3) (i).) In *Delta Mill (1919) v. Blakemore (1935)*, 104 L. J. K. B. 459, it was held that the words "is earning or is able to earn" in sub-s. (3) of s. 9 of the Act of 1925 provide two distinct alternatives and that the words "in some suitable employment or business" do not qualify the first alternative, and also that there was no justification for confining the first alternative to full-time employment. Thus, where a workman, who has been partially incapacitated as a result of an injury by accident arising out of and in the course of his employment, is, in fact, earning a wage, the compensation payable to him must be calculated by reference to the reduction in his post-accident wage as compared with his pre-accident wage, notwithstanding that the whole or part of the diminution was due to changes in the economic position of the labour market: *ILLSTON AND ROBSON v. SMITH*, [1948] A. C. 384; [1948] L. J. R. 1138, H. L. (affirming decision of Court of Appeal, [1947] C. L. Y. 3322 (*sub nom. Smith v. Illston and Robson*) following *Delta Mill (1919) v. Blakemore*, *supra*; distinguishing *Jones v. Amalgamated Anthracite Collieries*, [1944] A. C. 14).
- 3980. —.** (Act of 1925, s. 9 (3) (i).) An appeal raising the same question as to the proper construction of s. 9 (3) (i) of the Act of 1925 as was raised in *Illston and Robson v. Smith*, § 3979, was dismissed on the same grounds: *YEOMAN'S AND PARTNERS v. GODDEN*, [1948] A. C. 401, H. L.
- 3981. —.** (Act of 1925, s. 9 (3).) The words "is earning or is able to earn" in s. 9 (3) of the Act of 1925 are not conjunctive, but are true alternatives, and where the partially incapacitated workman is earning wages, his actual earnings must be taken by the arbitrator as the second factor in calculating the difference between his pre-accident earnings and his actual earnings, and economic changes between the date of the accident and the date of the arbitration are irrelevant, the actual earnings being conditioned by the then current economic conditions. The only qualification is that, if the actual earnings are not the result of a *bona fide* attempt by the workman to obtain employment suitable to his then condition, they are not satisfied by the words "is earning", and the arbitrator then has to determine what "he is able to earn": *PATERSON v. WILLIAM BEARDMORE & CO.*, [1948] W. N. 175; [1948] L. J. R. 1146, H. L. (following *Delta Mill (1919) v. Blakemore (1935)*, 104 L. J. K. B. 459). (See also § 3982.)

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- 3982.** —. (Act of 1943, s. 6.) The words "rates of remuneration" in s. 6 of the Act of 1943 are not equivalent to "average weekly earnings", but mean "rates of wages". Thus, in a case where the standard time rate per week, the piece-work rate, and the industrial bonus had remained unaltered, and where the only change which had occurred in the wages was the result of the cessation of overtime, it was held that there had been no change in the rates of remuneration. See *PATERSON v. WILLIAM BEARDMORE & Co.*, § 3981.
- 3983.** — **change in rates of remuneration.** (Act of 1943, s. 6 (1).) There has been a "change in the rates of remuneration" within the meaning of s. 6 of the Act of 1943 (which deals with changes in the rates of remuneration in an incapacitated workman's pre-accident work for the purpose of calculating weekly payments in cases of partial incapacity), in a case where on a reduction of a working week from six to five shifts a week a workman who before the reduction was remunerated at the rate of 25s. per shift for six shifts is now remunerated at the rate of 25s. per shift for five shifts plus a further 25s. by way of bonus, because in such a case the rate has changed to a rate of 30s. per shift: *DYDE v. NATIONAL COAL BOARD (STAFFORD COLLIERY UNIT)*, [1948] W. N. 251; [1948] 2 All E. R. 172, C. A. (Somervell, L.J., distinguishing this case from *Shaw v. Rootes Securities*, § 3984, on the ground that in this case the rate was a rate per shift and not a rate per week). (See also § 3976.)
- 3984.** —. (Act of 1943, s. 6 (1).) There has been a change in the "rates of remuneration" obtaining in the class of employment in which the workman was employed during the relevant period within the meaning of s. 6 of the Act of 1943 (which deals with changes in the rates of remuneration in an incapacitated workman's pre-accident work for the purpose of calculating weekly payments in cases of partial incapacity), in a case where a workman receives the same wage for working a forty-four-hour instead of a forty-seven-hour week and is paid at overtime rates for the extra three hours (so that overtime pay comes into operation so many hours the sooner).
Per Tucker, L.J.: "I would agree that a mere change in the hours of a working week where no question of overtime is involved would not constitute a change in the rate of remuneration": *SHAW v. ROOTES SECURITIES*, [1948] W. N. 263; [1948] 2 All E. R. 168, C. A. (Somervell, L.J., dissenting).
- 3985.** — **earning capacity.** In a case where a skilled precision worker could no longer carry out his precision work owing to an injury to his eye, the Court of Appeal held that the question what such worker would be able to earn in some suitable employment had to be answered by reference to his age, to the high wages he was once able to earn, and to the fact that his partial incapacity obviously affected his ability to do anything in the nature of precision work, and not by reference to some general estimate of the position of the labour market, rates of wages in general, or the rate of wages for workmen of specified capacity of a normal sort of age. See *REYNOLDS v. LLANELLY ASSOCIATED TINPLATE CO.*, § 3966.
- 3986.** — **"notional accident", right to compensation in respect of second.** (Act of 1925, ss. 9 (3), 43 (1); Various Industries (Silicosis) Scheme, 1931 (S. R. & O., 1931, No. 342), para. 9 (2) (a); Coal Mining Industry (Pneumoconiosis) Compensation Scheme, 1943 (S. R. & O., 1943, No. 885), para. 9 (3).) In cases where a workman is claiming compensation for partial incapacity there is no difference in principle between cases where the workman has been the victim of two actual successive accidents and cases where a notional accident follows another, actual or notional. In each case he will receive for the first of these accidents half the difference between the wages he was earning before the first accident, when he was of full working capacity, and what he is able to earn as an injured man after it, but limited, of course, to the maximum sum payable. For the second accident he will receive half the difference between the earning capacity as an injured man before the second accident and his diminished capacity to earn as a further injured man after the second accident. If, however, his earning capacity is not impaired by the second accident he will receive no further compensation in respect of that accident: *AMALGAMATED ANTHRACITE COLLIERIES v. WILDS*; *SAME v. JEREMIAH*, [1948] A. C. 440; [1948] L. J. R. 1442, H. L. (reversing decision of Court of Appeal, [1947] C. L. Y. 3317; overruling *Evans v. Oakdale*

Navigation Collieries, [1940] 1 K. B. 702; distinguishing *Bacon v. Wills*, [1933] 2 K. B. 493; and *Cole v. Amalgamated Anthracite Collieries*, [1944] A. C. 14).

- 3987. "Payment, allowance or benefit"—superannuation fund.** [Scot.] (Workmen's Compensation Act, 1925 (15 & 16 Geo. 5, c. 84), s. 9 (1) (b)) In *SMILLIE v. GLASGOW CORPORATION* 1948 S. L. T. 212, the Court of Session held that a payment out of a superannuation fund to which both employer and workman have contributed is, so far as it arises from contributions by the employer, a "payment, allowance or benefit" received by the workman from his employer, and that it is none the less received by him during his incapacity although it comes out of a fund set up by a prudent employer at an earlier date to meet the contingency of incapacity, and therefore that regard must be had to it under the provisions of the Workmen's Compensation Act, 1925, s. 9 (1) (b) in assessing weekly payments (*Considine v. M'Inerney*, [1916] 2 A. C. 162, and *Watts v. Manchester Corporation*, [1917] 1 K. B. 791 applied).
- 3988. Reference to medical referee—medical reports.** [Cty. Ct.] In *DAY v. CONWAY STEWART & Co.* (1948), 98 L. J. 178, Judge Thomas held that where a workman had been given a certificate by a hospital doctor before the certifying surgeon had found that he was disabled, an application by the employer (for the matter to be referred to a medical referee) which was not accompanied by that certificate was not in accordance with the provisions of reg. 26 of the Workmen's Compensation Regulations, 1932 (which provides that such applications must be accompanied by any available report or reports of any medical practitioner by whom the workman has been examined) and was therefore a nullity.
- 3989. ARTICLE.** Restoration of pre-war trade practice—effect on "earning capacity" (founded on *Sharplin v. Bawn & Co.*, [1947] C. L. Y. 3318): *Modern Law Review*, April, 1948, p. 228.
- 3990. BOOK PUBLISHED.** Butterworth's Workmen's Compensation Cases. Vol. 40 [35s.]. Supplement [21s.].

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