

existing law, counsel for the trust companies said, "I have considered that aspect of the matter, and I think that the most that can be said is that *it would lead to very expensive and protracted litigation.*" The New Zealand Inspectors, in their report on the Investment Executive Trust of New Zealand, in para. 257, say, "We think that if liquidation proceedings are commenced by petition to the Court and if such petition is opposed by the Investment Trust of New Zealand, Ltd., protracted and expensive litigation may ensue."

Nothing is more certain than that if any appeal is made under existing law to the Supreme Court of New Zealand, or to the Supreme Court of New South Wales, the fullest possible advantage will be taken of the difficulties created by the inter-State nature of the problem produced by these directors. If the Court in New Zealand, for instance, is asked to deal with a transaction which originated in Auckland but which was carried to fruition in New South Wales, it may be expected that an objection would be raised immediately to the admissibility even of the sworn testimony of Mr. McArthur himself, in relation to the whole of this transaction as tendered before the Royal Commission in Sydney, and it is probable that our Court would have to uphold the objection. If so, the matter could not be proceeded with further without the expensive procedure of endeavouring to take this evidence over again in New South Wales under a Commission appointed by the Supreme Court of New Zealand.

Conversely, if it should be sought to act in New South Wales before the Supreme Court of that State, objection would be raised to the admissibility of any evidence taken in New Zealand, however logically relevant it might be or however well it might be authenticated. To borrow a phrase from Mr. Justice Halse Rogers, it may be stated that "the jugglery is to keep within the letter of the debentures although the transaction is absolutely contrary to the spirit of the whole thing" (page 513, Official Proceedings of the Royal Commission in Sydney). The next act in the jugglery, and probably a successful act, would be to compel the Courts to keep within the letter of the rules of evidence and the existing law, to protect the original jugglery.

SOME TYPICAL TRANSACTIONS AND THEIR RESULTS.

We shall now examine some of the transactions with a view of noting their effect on the present actual and relative positions of the debenture-holders:—

(1) Salvaging Mr. McArthur's private estate: The extract taken from the interim report of Mr. Justice Halse Rogers shows that practically the first £60,000 subscribed by the debenture-holders of New Zealand to the Investment Executive Trust was passed by that company to the Sterling Investment Co., which was wholly under the control of Mr. J. W. S. McArthur, and this cash was used by Mr. McArthur for his own purposes. In return, the Sterling Co. held properties and securities of Mr. J. W. S. McArthur, who alone decided the amounts to be advanced or paid for such properties. Further amounts were taken from the cash supplied by the Investment Executive Trust to the Sterling Co. for the purpose of improving and extending some of these properties. For example, money was spent on the completion of the yacht, which is now McArthur's, and on the improvement of his home property near Auckland. In March, 1933, Mr. McArthur purported to settle his indebtedness to the Sterling Co. arising out of these transactions and to retake possession of his properties. He effected this by transfer to the Sterling Co. of certain British National Trust debentures charged (in effect) on the Trust building in Sydney. Once again Mr. McArthur alone seems to have fixed the amount of such debentures which were to be handed over in settlement, and the valuations at which he took over his properties so salvaged and improved by the debenture-holders' money. He was not either a director or officer of the Sterling Co. at that time, but he had the transactions put through on his instructions and secured transfers of the properties to himself and to his company, the Wynwood Investments, Ltd., a company owned and controlled by himself. The chairman of directors of the Sterling Co. denies all knowledge of these transactions (see Inspectors' report on Sterling Co.) and, although they represent a deal involving from £60,000 to