# Butterworth's Fortnightly Notes.

*" I make this claim (for the legal profession) that there is no class or profession in our community which has done more,—I will go further, I will say there is none which has done as much—to define, to develop, and to defend the liberties of England."*

*—Asquith.*

**TUESDAY, MARCH 29, 1927.**

## HAWERA'S CLAIM.

The claim voiced in the contributed article in this issue that Hawera should be granted a Sitting of the Supreme Court is one which can hardly be ignored. When it is claimed that eighty per cent. of the litigation engaging the Court at New Plymouth originates in South Taranaki then the position merits investigation. That Hawera is centrally situated and so offers a convenient point for a Court sittings cannot be gainsaid. Accessability to the Court, geographically, is as desirable as is a convenient procedure. The expense entailed in travelling to engage in litigation is considerable and should be made unnecessary wherever possible. In doing this however, the convenience of the Bench should be considered. Hawera, however, presents no objection in this respect. The Minister of Justice can be relied upon to weigh the factors with sympathy towards the proposal and the officers of the Department of Justice, anxious that their Department shall function efficiently, will not be averse to the innovation.

The only ground upon which objections may be founded is that of expense, but this could hardly be maintained. The hearing of causes at a distance involves greater expense to the litigants than would be involved in the Court Sitting at Hawera. Further, when this expense cannot be borne by the aggrieved party it operates as a denial of justice, which is undesirable from every viewpoint.

## SUPERIOR COURT DECISIONS.

The correct attitude for an inferior Court to adopt when it is confronted with decisions of Superior Courts which decisions the inferior Court deems to be erroneous was dealt with by Scrutton L.J. in his Court of Appeal judgment in **Pontypridd Union Guardians v. Drew** (136 L.T. 83). The County Court Judge had (rightly in law) decided the case in face of the authorities. The Divisional Court reversed the decision, in conformity with previous rulings, which decision in turn was reversed by the Appeal Court.

Said Scrutton L.J.: "The County Court Judge looked the authorities in the face, boldly passed on and paid no attention to them. I respectfully think that that was not the position a judge should take toward authorities of courts superior to his own. He may think they are wrong as much as he likes provided he expresses himself in respectful terms, but he is not at liberty to say: 'I think these cases are so wrong that I decline to follow them,' when they are decisions of a Superior Court. The matter came to the Divisional Court, who took what seems to me to be a much more proper course. Salter J. pointed out in a very careful and elaborate judgment the reasons why he had difficulty in understanding how the decisions had been come to; and having through the whole of his judgment pointed out why he thought they were wrong, said he was bound to follow them and must leave it to the Court of Appeal to see whether they could deal with them. That I think is the proper way to deal with them."

Atkin L.J., endorsing this view expressed himself thus: "I think the County Court Judge was quite right in the result he arrived at, but I venture to agree with what has been said by my brother that he was quite wrong in the way in which he arrived at it, because he ought not, I think, with great respect, to have ignored cases which were binding upon him and binding upon the Divisional Court, and I think it was his duty, and the duty of the Divisional Court to follow the decided cases."

## THE STOLEN WIG AND GOWN.

The little misadventure of Captain Ernest Evans, M.P., whose wig and gown were stolen from his car just when he was departing for the Welsh Circuit, has recalled to many denizens of the Temple a somewhat similar episode which happened to Lord Birkenhead, then Mr. F. E. Smith, some twenty years ago, states the "Law Journal." F. E. Smith had just got into Parliament, and was rising into prominence as the daring leader of a new Fourth Party of Tory Democrats, who seemed to have taken the place of Lord Randolph Churchill's once brilliant group. He was staying for a week-end at a country house in Chester where it so happened that one or two prominent figures in the Liberal party were also guests, and speculations were rife as to whether or not he was about to "go over" to the Liberal party. This particular week-end, as luck would have it, a fire broke out and devastated a wing of the mansion, including the room occupied by Mr. F. E. Smith, whose wardrobe was completely destroyed. Next morning he had to appear in Court on the North Western Circuit, but at the commencement of his case he was not forthcoming. His solicitor, however, hastily explained that he had for the moment nothing to wear except a dressing-gown, so that he could not appear, and there had been no time to instruct anyone else in his place. The Bench, after solemnly pretending to consider all the precedents applicable to such cases, finally decided that it had power to adjourn the case *propter necessitatem* until Mr. Smith, "clothed and in his right mind" could appear in wig and gown. It would have been *contra bonos mores*, they held, to insist on counsel appearing in his bath-robe. So the hearing was postponed accordingly.

The Annual Report of the Auckland District Law Society shows the usual increase in membership. During the year, five persons were admitted as Barristers and Solicitors; twenty-five as Solicitors and twenty-four Solicitors were admitted as Barristers and certificates were issued to five hundred and eight (508) Solicitors.

# PRIVY COUNCIL.

The Lord Chancellor.
Lord Shaw.
Lord Wrenbury.
Lord Phillimore.
Lord Blanesburgh.

December 2, 3, 1926;
January 21, 1927.

## DOUGHTY v. COMMISSIONER OF TAXES.

**Revenue—Income Tax—Land and Income Tax Act 1916, s. 85—*Transfer of Partnership Business in globo to Company in which Partners Sole Shareholders*—Supposed Profit on Stock-in-trade—Whether in fact a Profit Accrued to the Partners—If so whether Profit Income—Whether Bookkeeping Entry Conclusive.**

Appeal from judgment of Court of Appeal (1926) N.Z.L.R. 279; 2 B.F.N. 324, reversing the judgment of Stout C.J. The appellant and one George carried on business at Wellington as wholesale soft goods merchants and drapers in partnership. On 25th June, 1920 they converted their partnership into a private company of which they were the only two shareholders. By an agreement of the same date the partners agreed to sell to the company as from 20th January, 1920 the partnership business including goodwill, stock-in-trade, and all the other partnership property. Part of the consideration for the sale was the allotment to the vendors of £76,000 paid-up shares; £30,000 ordinary shares, and £16,000 B preference shares to George, and £30,000 ordinary shares to the appellant. The residue of the consideration was the undertaking by the company to satisfy all the liabilities of the firm. The last balance-sheet of the old partnership showed on the liabilities side "Capital Account "£40,974 12s. 0d.," and on the Assets side "Stock in hand "£43,357 18s. 10d." £76,000 exceeding by £35,025 8s. 0d. the amount standing to the credit of the Capital Account, the item "Stock in hand £43,357 18s. 10d." on the Assets side was replaced by an item "Stock and Goodwill £78,383 6s. 10d." Of this amount £20,000 was regarded as allocated to Goodwill, and consequently £15,025 8s. 0d. was left as the difference between the value of the Stock-in-trade as shown in the partners' last balance-sheet and its value as it might be deemed to be taken over by the company. The Commissioner of Taxes, claiming that this amount was a profit derived from a business in terms of The Land and Income Tax Act 1916, section 85, fixed the appellant's share of such supposed profit at £6,010, and assessed income tax thereon

**Latter K.C., Myers K.C., and Cyril King** for appellant.
**Farwell K.C., Langley, and Miss Clarkson** for respondent.

LORD PHILLIMORE delivering the judgment of the Lords of the Judicial Committee allowing the appeal with costs, said that the appellant put his case in two ways: (1) That if the transaction were a sale there was no separate sale of the stock, and no valuation of the stock as an item forming part of the aggregate which was sold, and (2) That there was no sale at all but merely a readjustment of the business position of the partners by the formation of a private company.

Income-tax is a tax upon income, and it was well established that the sale of a whole concern which can be shown to be a sale at a profit as compared with the price given for the business, or at which it stands in the books, did not give rise to a profit taxable to income tax. It was easy enough to follow out this doctrine where the business was one wholly or largely of production; but where a business consisted, as in the case before their Lordships, entirely of buying and selling it was difficult to distinguish between an ordinary and a realisation sale, the object in either case being to dispose of goods at a higher price than that given for them, and thus to make a profit out of the business. The fact that large blocks of stock were sold did not render the profit obtained anything different in kind from the profit obtained by a series of gradual and smaller sales. That might even be the case if the whole stock were sold out in one sale. Even in the case of a realization sale, if there were an item which could be traced as representing the stock sold, the profit obtained by that sale, though made in conjunction with a sale of the whole concern, might conceivably be treated as taxable income.

But in the case before their Lordships no such separate sale was effected. It was a transfer of all the assets of the firm for 76,000 paid-up shares of £1 each with an obligation to discharge the liabilities of the partnership. If those several items were not worth £76,000 then the shares were not worth their face value. Then as the vendors were the takers of the shares, they would gain nothing. They may have estimated in June that their stock was in the previous January worth more than the sum at which it had been put in their balance-sheet, but they did not, by so estimating it, make it more.

So far as the matter was a question of fact, the judgment of the Chief Justice was conclusive, and if the question were to any extent a question of law, their Lordships desired to express their agreement with the conclusion drawn by the Chief Justice.

His Lordship referred to and explained **Commissioner of Taxes v. Miramar Land Co., Ltd.**, 26 N.Z.L.R. 723; **Californian Copper Syndicate v. Inland Revenue**, 6 Ct. Sess. (5th Ser.) 894, 5 Tax Cases 159; **Tebrau (Johore) Rubber Syndicate v. Farmer**, 5 Tax Cases 658; **Commissioner of Taxation for Western Australia v. Newman**, 29 C.L.R. 484; **Hickman v. Federal Commissioner of Taxation**, 31 C.L.R. 232; **Anson v. Commissioner of Taxes** (1922) N.Z.L.R. 330; **Commissioner of Taxes v. Melbourne Trust Ltd.** (1914) A.C. 1001; and **J. and M. Craig (Kilmarnock) Ltd. v. Inland Revenue** (1914) Ct. Sess. 338; and said that their Lordships would repeat that if a business were one of purely buying and selling, a profit made by the sale of the whole stock, if it stood by itself might well be assessable to income-tax; but their view of the facts was the same as that taken by Stout C.J., viz.: that it was a lump transaction.

The other ground upon which the appellant's case might rest was that the transaction was not a sale whereby any profit accrued to the partners. The case of **Craig** (*sup.*) was authority for saying that a mere bookkeeping entry was not conclusive evidence of the existence of a profit. The two partners made no money by the mere process of having their stock-in-trade valued at a high rate when they transferred to a company consisting of their two selves. If they over-estimated the value of the stock, the value of the several shares became less. The capital of the company would be to this extent watered. They could not by over-estimating the value of the assets, make them more.

Solicitors for appellant: **Shaen Roscoe Massey & Co.**, for **Morison, Smith and Morison**, Wellington.
Solicitors for respondent: **Mackrell, Maton, Godlee & Quincey** for **Crown Law Office**, Wellington.

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Viscount Haldane.
Viscount Finlay.
Lord Wrenbury.
Lord Darling.
Sir John Wallis.

December 6, 7, 9, 10, 1926;
January 27, 1927.

## CROWN MILLING CO. LTD. AND OTHERS v. THE KING.

**Commercial Trusts Act 1910, ss. 3 and 5—Whether s. 3 Applies to Transactions between Principal and Agent—Monopoly—Whether "of such a nature as to be contrary to the Public Interest"—Burden of Proof.**

Appeal from judgment of Court of Appeal (Stout, C.J., Reed and MacGregor, JJ., Herdman and Alpers JJ. dissenting) reversing the decision of Sim J. Sim J. held that section 3 of the Commercial Trusts Act 1910 did not apply to an agreement between principal and agent, and that as to section 5 the Crown had failed to establish that the monopoly was "of such a nature "as to be contrary to the public interest." The majority of the Court of Appeal held, however, that the monopoly was "of "such a nature as to be contrary to the public interest." The facts will be found in the reports of the case in the Court of Appeal (1925) N.Z.L.R. 753; 1 B.F.N. 203; and in the report of the case before Sim J. (1925) N.Z.L.R. 258.

**Myers K.C., Stamp, and Campbell** for appellants.
**Sir John Simon K.C., Langley, and Miss Clarkson** for respondents.

VISCOUNT FINLAY, delivering the judgment of the Judicial Committee allowing the appeal with costs, said that there had been a singular difference of judicial opinion in this case. Of the six judges who had taken part in it one who formed the Court of first instance and five in the Court of Appeal, three had been in favour of the Crown and three in favour of the Appellants. The Crown had to show that there had been an offence either under Section 3 or under Section 5 of The Commercial Trusts Act 1910. In the opinion of their Lordships the facts did not disclose any infraction of Section 3. That section provided that an offence was committed by any person who, either as principal or agent, in respect of dealing in any goods, gives, offers, or agrees to give to any other person any rebate, refund, discount, concession, allowance, reward or other valuable consideration for the reason or on the express or implied con-

dition that the latter person does or does not do any of the things specified under heads (a), (b), (c), (d), and (e) in that clause. The agreement of flourmillers with Distributors Limited did not show an offence under this section.

The position of Distributors Limited was that of mere agents for the millers, who were parties to the dealing in goods in respect of which the provisions of Clause 3 came into play. In the opinion of their Lordships that clause applied only to cases in which the consideration was given or the promise made to another party to the "dealing"; it had no application to the case of an advantage given or promised by or on behalf of one of the parties to the dealing to his own agent. The essence of the offence in Section 3 was that the advantage must have been given or promised to a party to the dealing.

It remained to consider Section 5 dealing with conspiracy to monopolize in New Zealand the demand or supply of any goods, or to control the demand, supply or price, "if such monopoly "or control is of such a nature as to be contrary to the public interest." It was on these last words that there had been in the Courts below so great a difference of opinion. No offence was committed against the enactment unless the maintenance or control was of such a nature as to be contrary to the public interest. The most obvious form of prejudice to the public interest would be if the effect of the monopoly were to cause an unreasonable rise of price in articles which were necessaries of life. Sections 6 and 7 of the Act dealt with unreasonable prices, but the Appellants were not charged with having raised prices to an unreasonable point within the meaning of these sections. The Courts had to ascertain in each case whether the nature of the monopoly or control was contrary to the public interest as a matter of fact, or as a matter of law under some provision of the law, whether common law or statute. The burden of establishing this was on the Crown, the rule that the burden of proof was upon the person who asserted any proposition applying with special force when the commission of crime was in question. In the opinion of their Lordships the Crown had not discharged this burden. The point was one upon which opinions might differ as a reference to the judgments of the Courts below would abundantly show. These judgments revealed great diversity of view, not only as to the answer to be given but also as to the point of view from which the question should be considered. His Lordship quoted passages from the several judgments and said that in the result the case resolved itself into one question, namely: Had the prosecution established that on the facts of the case the monopoly or control was of a nature contrary to the public interest? The question was, of course, such as to lend itself to prolonged discussion and it had been fully and ably argued on both sides. In their Lordships' opinion the question in the circumstances of the case was one of fact and could not be decided merely as a matter of law. Their Lordships, after reviewing and weighing the evidence, had come to the conclusion that the prosecution had not discharged the burden of proof which lay upon it, and that the judgment of Mr. Justice Sim should be restored. The respondent should pay the costs of the appeal.

Solicitors for appellant: **Pontifex, Pitt and Co.** (for **Raymond, Stringer, Hamilton and Donnelly,** Christchurch).

Solicitors for respondent: **Mackrell, Maton, Godlee, and Quincey** (for **Crown Law Office**).

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Lord Shaw.
Lord Wrenbury.
Lord Phillimore.
Lord Blanesburgh.
Sir John Wallis.

December 3, 1926; January 21, 1927.

## GARDNER v. TE POROU HIRAWANU AND OTHERS.

**Landlord and Tenant—Waste—Lease of Uncleared Land Covered with Bush—Covenant on part of Lessee to Cultivate Manage and Use the Land Demised in a Husband-like Manner—Whether Implied Grant or Obligation to Cut Timber.**

Appeal from judgment of Court of Appeal (Stout C.J., Sim, Reed, and Adams JJ.; Ostler J., dissenting). The appellant was assignee of a certain lease dated 20th December, 1919. It was a lease of approximately 288 acres of native uncleared land covered with bush for a term of 42 years from 20th August, 1919, and contained covenants as follows:—

"3. The lessee will at all times during the said term repair "and keep in good and tenantable repair and condition "the said land and all improvements for the time being "thereon and will at the end or sooner determination of the "said term so deliver up the same (fair wear and tear and "damage thereto by fire earthquake or tempest excepted)."

"4. The lessee will during the said term cultivate manage "and use the said land in a husband-like manner and will "at all times keep the same free and clear of noxious weeds "and will comply with the provisions of 'The Noxious Weeds "Act 1908' or any amendment thereof to which an occupier "is liable."

Early in 1923 the appellant sold the millable trees on the land to a firm of sawmillers, who cut and removed the timber in January and February, and in payment for it gave the appellant sawn timber of the value of £600. In the latter part of 1923 the respondent assigned the lease to a third party. The respondents alleged that the act of felling and removal was wrongful; that their reversionary interest was materially and injuriously affected thereby; and they sued for damages for its depreciation. The action having been removed into the Court of Appeal, the majority of the learned judges of that Court upheld this contention and awarded to the respondents £600 and costs.

**Myers K.C. and Stamp** for appellant.
**Farwell K.C. and Langley** for respondents.

LORD WRENBURY, delivering the judgment of the Judicial Committee allowing the appeal with costs, said that the land was uncleared land; until it was cleared it could not be brought under cultivation. The question was whether under the terms of the lease in the facts before their Lordships the reversioner had not imposed upon the lessee an obligation to cut the timber in pursuance of the lessee's covenant to "cultivate manage and "use the land in a husband-like manner." In the case of **In re Rotoiti,** No. 5 Block (1923) N.Z.L.R. 619, Hosking J. pointed out that in New Zealand the clearing of bush country is well known as coming within the class of improvements for the purposes of the Land Acts and the legislation relating to the valuation of land and pointed attention also to the fact that a covenant to comply with the provisions of the Noxious Weeds Act would be fanciful unless clearance of the surface of the land was contemplated. Their Lordships found that, unless all the demised land was cleared it was not a practical farming proposition. The respondents' evidence in fact came to this: not that it would have been wrong to fell the timber at some time, but that to fell it so early and before clearing the bush elsewhere was to fell it, not for the purpose of cultivation, but with a view to making money by its sale, and that this was not justifiable. In their Lordships' opinion this contention could not be supported. The covenant to cultivate, manage and use in a husband-like manner imposed upon the lessee an obligation to cultivate, importing and creating an obligation to improve the land—the whole of the land—by clearance, with a view to cultivation. The lessors could have no grievance if the lessee proceeded to perform his obligation to make clearance at such early time as was most to his own benefit; the lessor might however complain of delay in developing the land by clearance.

In their Lordships' opinion clause 4 of the lease might, in the words of Hosking J. in **In re Rotoiti,** "be substantially described "as that of a grant by implication arising from the nature of the "subject matter in order to give effect to an evident intent "that the tenant shall have the reasonable enjoyment of the "subject matter." Indeed their Lordships went further and said that clause 4 extended beyond the grant of a right, and created in the lessee an obligation to make during the term a clearance of the land, including the felling of the timber in dispute. The very detailed and careful judgment of Hosking J. in **In re Rotoiti** was, in their Lordships' judgment, right. The majority in the Court of Appeal did not dispute the correctness of that decision. They distinguished the case on a ground which was, in their Lordships opinion, erroneous; the learned judges failed to give effect to the covenant to cultivate. It was impossible to cultivate without clearing. The tenant having a right or being under an obligation to fell the timber, was not bound to burn it, as according to the ordinary practice he would burn the bush. He might dispose of it in the best way circumstances permitted. If he cut and sold the timber early in his occupation he did not thereby deprive the reversioner of 42 years later of anything; such act would, no doubt, affect the price which the lessee would obtain for the lease if he sold it, but that was a matter with which the reversioner was not concerned. Their Lordships were of the opinion that the judgment of the minority Judge, Ostler J., was right, and that the appeal should be allowed with costs.

Solicitors for appellants: **Blyth, Dutton, Hartley and Blyth** (for **Harris and Marsack,** Taumarunui).

Solicitors for respondents: **Mackrell, Maton, Godlee and Quincey** (for **Simpson and Bate,** Taumarunui.)

# SUPREME COURT.

Sim J. March 8, 15, 1927.
Dunedin.

BANK OF AUSTRALASIA v. CURTIS.

**Bill of Exchange—Cheque—Obtained from Drawer by Fraud—Whether Holder a Holder in Due Course—Onus on Holder to Prove Value and Good Faith—Impossible to Produce Evidence of Good Faith—Whether Onus Discharged.**

Action to recover £645 on cheque of which plaintiff was holder and defendant the drawer. The defendant had been induced to sign the cheque and part with it to one Sandman, a teller in the office of the plaintiff Bank at Dunedin, by fraud and false pretences on the part of Sandman. To cover certain defalcations Sandman placed the cheque among the cash and credits of the Bank received by him as teller, on 6th August, 1926. No pay-in slip was made out in respect of the cheque and it was not paid in to the credit of any customer of the Bank. On 6th August, 1926, no officer of the Bank, except Sandman, knew of Sandman's thefts or of any of the facts in connection with the cheque. Before the cheque was presented for payment by the plaintiff Bank, the defendant, suspecting fraud on the part of Sandman stopped payment of the cheque.

**Barrowclough** for plaintiff.

**Hay** for defendant.

SIM J. said that the question was whether the plaintiff was the holder in due course of the cheque and therefore entitled to recover on the same notwithstanding that it was obtained from the defendant (the drawer) by the fraud and false pretences of Sandman. The original payee of a cheque could not be "a "holder in due course" within the meaning of the Bills of Exchange Act—**R. E. Jones Ltd. v. Waring and Gillow Ltd.** (1926) A.C. 670. But Sandman was the original holder of the cheque; plaintiff did not become the holder until the cheque was placed by Sandman among the cash and credits of the plaintiff on 6th August. As it had been proved that the cheque had been obtained by fraud the burden of proof was by Section 30 of The Bills of Exchange Act 1908 on the plaintiff to prove: (1) that it took the cheque in good faith; (2) that it gave value for it; (3) that at the time the cheque was negotiated to the Bank it had no notice of any defect in the title of the person who negotiated it—**Tatam v. Haslar,** 23 Q.B.D. 345; **Harris v. Aldous,** 18 N.Z.L.R. 449. As to (3), it was plain that plaintiff had no notice of any defect in Sandman's title for Sandman's knowledge could not be imputed to plaintiff. No other officer of the Bank had any knowledge of the facts in connection with the cheque. As to (2), the cheque was placed by Sandman in the cash and credits of the Bank in performance of his obligation to repay the money he had stolen. **London and County Banking Co. v. London and River Plate Bank,** 21 Q.B.D. 535, was authority for holding that in such circumstances the plaintiff must be treated as having given value for the cheque within the meaning of Section 27 of the Act. As to (1), there was no evidence to prove that the plaintiff took the cheque in good faith or, in other words, that the plaintiff acted honestly. In the circumstances it is obviously impossible for the plaintiff to produce any evidence on the subject, for when the cheque was negotiated to the plaintiff on the 6th of August, no officer of the Bank, other than Sandman, knew anything about the matter. If the circumstances made it impossible for the plaintiff to adduce any evidence to prove honesty affirmatively, and there was nothing to justify a suggestion or suspicion of dishonesty, the plaintiff could not reasonably be required to prove more, and ought to be treated as having proved his honesty. Although the point was not dealt with explicitly in the **London and County Banking Co. v. London and River Plate Bank,** 21 Q.B.D. 535 that appeared to have been the view on which the Court of Appeal acted in that case. His Honour thought therefore that the plaintiff should be treated as the holder in due course and gave judgment for the plaintiff for the amount of the cheque with interest at £5 per centum per annum.

Solicitors for plaintiff: **Ramsay, Barrowclough and Haggitt,** Dunedin.

Solicitors for defendant: **Irwin and Irwin,** Dunedin.

Reed J. March 10, 19, 1927.
Masterton.

RE HAMILL'S LEASE.

**Landlord and Tenant—Arbitration—Provision in Lease for Valuation—Whether a submission—Arbitration Act 1908, section 2—Duty of Umpire to act judicially—Parties not heard—Whether local custom or usage not to hear parties—Award set aside—Basis upon which rent should be assessed—Arbitrator acting in good faith—No order as to costs.**

Motion to set aside an award or, in the alternative, that the award be remitted to the umpire with a declaration as to the principles to be applied. A certain lease dated 1st December, 1905, from the Wellington Diocesan Board of Trustees to Hamill for 42 years at a specified rent for the first 21 years provided, as to the rent for the second 21 years, as follows:—

"A valuation shall be made of the land hereby demised "for letting purposes for the remaining twenty-one (21) years "of the said term of forty-two (42) years irrespective of any "building or permanent improvements thereon which may "have been made by the lessee and such valuation shall be "made by two indifferent persons to be appointed in writing "as follows: one by the lessors and one by the lessee who "shall, should they fail to agree, appoint an umpire and the "decision of such two first appointed valuers if they agree "or of such umpire if they do not agree shall be binding on "all parties."

"The amount awarded by the arbitrators or umpire shall "be the rent reserved for the last twenty-one (21) years of "the term hereby granted and shall be payable, etc."

The parties duly appointed their respective valuers and these valuers, on the 25th August, 1926, appointed their umpire. The valuers, being unable to agree, referred the question to the umpire who made his appraisement on 7th September, 1926. No evidence was taken by the valuers or umpire, no notice of the time and place of hearing was given to the parties, and no opportunity was given to the parties to present their views of the basis on which the rent should be assessed. The lessee claimed that the award should be set aside.

**Blair and Biss** in support of Motion.
**Martin** contra.

REED J. said that the main question was whether the clause in the lease above quoted constituted a submission to arbitration within the meaning of the Arbitration Act 1908. Prior to the Arbitration Amendment Act 1906 the question would have been of some importance, as the authorities made a very clear distinction between an agreement for a valuation and a submission to arbitration. But the Act of 1906 (as also the consolidating Act of 1908) did away with this distinction, and provided that a submission to arbitration included "a written agreement . . . "under which any question or matter is to be decided by one or "more persons to be appointed by the contracting parties or "by some person named in the agreement." This provision had not been brought to the notice of Denniston J. when in 1911 in **Wallace, Smith and Brightling,** 14 G.L.R. 86, he decided that the distinction still existed in New Zealand; see **Bunting & Co. v. Otago Brush Company,** 32 N.Z.L.R. 1057, at 1061, per Denniston J. That there was now no such distinction had been definitely decided in **In re Bryant,** 16 G.L.R. 676, and **Chairman, etc., County of Inglewood v. Controller and Auditor-General** (1922) N.Z.L.R. 32, 43; see also the admission of Counsel acted upon by the Court of Appeal in **D.I.C. Ltd. v. Mayor, etc., of Wellington,** 31 N.Z.L.R. 598. Mr. Martin suggested that, the lease being executed in 1905, before the coming into operation of the Amending Act of 1906, the Act did not apply to the interpretation of the clause in question. That Act however merely affected procedure, and did not alter the rights of the parties and it therefore applied: **Craies on Statute Law,** 3rd Edn. 332.

His Honour held therefore that the clause in the lease constituted a submission to arbitration under the Arbitration Act 1908.

As to the contention that the award should be set aside on the ground that the umpire had misconducted himself in allowing no opportunity to the parties to be heard or to call evidence, His Honour said that arbitrators were bound to act judicially: **Haigh v. Haigh,** 5 L.T. 507, 509. The law in this respect had not been altered by the Arbitration Act 1908. In his opinion an arbitrator, before making an award, must give the parties an opportunity of being heard and of calling witnesses. Certain affidavits had been filed in which it was stated that it was not the custom or usage in the Masterton District in valuations of the nature of that required in the present case to hear the parties or take evidence. Convincing proof of a well-known and established custom or usage might be an answer: **Oswald v. Earl**

**Grey**, 24 L.J. Q.B. 69, 72. The evidence, however, contained in the affidavits mentioned, was quite insufficient to warrant finding that there was any such established usage or custom.

His Honour held that the award must be set aside and that the case should be remitted to the umpire. It would be his duty to give the parties an opportunity of being heard and of calling evidence and, unless the parties should otherwise agree, to deal with the case only on the material put before him by the parties themselves. The umpire must ascertain what a prudent lessee would be willing to pay as a ground rent for the land for a term of 21 years without any buildings or improvements on it, and without any right to compensation for improvements at the end of the term, and subject to the obligation of leaving on the land any buildings which might be erected by the lessee and to the due observance of the other conditions of the lease: **D.I.C. Ltd. v. Mayor, etc., of Wellington** (*cit. sup.*); **Re Lund's Lease** (1926) N.Z.L.R. 541. There having been no dishonesty or want of good faith on the part of the umpire, and he having taken no part in the proceedings, there would be no order for costs: **Lendon v. Keen** (1916) 1 K.B. 994.

Solicitors for Lessee: **Gawith, Logan, Biss and Wilson,** Masterton.

Solicitors for Lessor: **Martin and Martin,** Wellington.

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Skerrett C.J.
Alpers J.

February 11; March 14, 1927.
Wellington.

NAPIER HARBOUR BOARD v. N.Z. TRAWLING AND FISH SUPPLY CO., LTD.

**Harbours—Vessel exempted from dues—Whether Wharfage due for bunker coal for such vessel can be imposed—Harbours Act 1923, Sections 66, 78 (1)(e), 226 (12).**

The defendant Company owned a trawler "employed in fishing "and not conveying goods for hire," and therefore exempted from dues under Section 78 (1) (e) of the Harbours Act 1923. The question in the Special Case for the opinion of the Court was whether the Napier Harbour Board had a right to levy a wharfage due in respect of bunker coal brought on to the Board's wharf and placed from there on to the defendant Company's trawler.

**Weston and Stevenson** for plaintiff.
**Kennedy** for defendant.

SKERRETT C.J. (delivering the judgment of the Court):—We are satisfied that the exemption which has been invoked relates only to dues payable in respect of a ship. No doubt a ship's tackle and equipment may be regarded when placed on board as part of the ship. But it is essential to make them part of the ship that they should be actually placed on board. Bunker coal on its way to the ship cannot be said to be part of it. Dues payable in respect of a ship are payable for some use of the wharves, or the advantages of the Port, or the services of Harbour officials by the compendious thing called a "ship." In the case of such dues it is never necessary to discriminate between what is or is not part of a ship, or between the ship proper and its stores, furniture, equipment, or cargo. Wharfage rates are payable for the use of the wharf and are payable in respect of the bunker coal the moment the wharf is used and before coal is placed on board the ship. The wharfage dues in question therefore become payable by and recoverable from the owner of the bunker coal using the wharf before it formed or could be ragarded as part of the ship. We think that in order to sustain the defendant's contention we should be obliged to read into the statute an exemption from dues payable not only in respect of a vessel employed in fishing but also in respect of all tackle, equipment, bunker coal and stores intended for the use of such vessel. Section 66 does not prescribe or limit the class or kind of dues which might be imposed by Harbour Boards constituted under the Act. The power to levy dues and charges for the use of harbour wharves is given by Sub-section (12) of Section 226, which authorises Harbour Boards by by-law to fix a scale of "dues, tolls, and charges to be paid for the use of "such wharves or docks . . . . or on goods passing over or through the same."

We are therefore of opinion that the Napier Harbour Board has a right by appropriate by-law to levy wharfage rates on bunker coal loaded from the Board's wharf into or for the use of any of the defendant Company's trawlers, and we answer the question accordingly.

(The COURT held however, as a matter of construction, that the existing by-laws of the Board did not enable such dues to be imposed.)

Solicitors for plaintiff: **Sainsbury, Logan and Williams,** Napier.
Solicitors for defendant: **Kennedy, Lusk and Morling,** Napier.

Sim J.

March 1, 8, 1927.
Dunedin.

PERPETUAL TRUSTEES ESTATE AND AGENCY CO. OF N.Z. v. COMMISSIONER OF STAMP DUTIES.

**Revenue—Death Duties—Succession Duty—"Successor"—Death Duties Act 1921, section 16—Gift to Church for Foreign Missionary Work—Whether Church or Foreigners "Successor."**

Case stated under Death Duties Act 1921, section 62. Peter Grant Mackintosh, by his will, directed the Appellant, his executor, to hold the residue of his estate in trust for the Presbyterian Church of New Zealand for the purposes of assisting their foreign missionary work. The residue was valued at £4,418, and the Respondent assessed duty thereon at ten per cent. The Appellant contended that the successors were the individual foreign heathen persons for whose benefit the funds would ultimately be applied and that, as no such person would receive more than £500, no succession duty was payable.

**Brasch and Wilkinson** for appellant.
**F. B. Adams and R. S. M. Sinclair** for respondent.

SIM J.: Mr. Adams contended that the Church must be treated as the beneficial owner of the residue unless there was some other separate person who could be identified as the successor within the meaning of Section 16 of the Act. He did not cite any authority in support of this contention, and I am unable to accept it as sound. The Church takes the residue in trust for the benefit of the foreign heathens and does not itself acquire any beneficial interest therein, although the gift may benefit the Church indirectly by setting free for its general purposes funds which otherwise would have been spent in missionary work. The persons who acquire the beneficial interest in the residue are the heathens for whose benefit the money will be spent, and it is impossible to say that the interest of any one of these persons exceeds in value £500. The case, therefore, does not come within the terms of sub-section (7) of section 17 of the Act, and the assessment cannot be supported.

Solicitor for appellant: **John Wilkinson,** Dunedin.
Solicitor for respondent: **F. B. Adams,** Crown Solicitor, Dunedin.

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Herdman J.

March 7, 9, 1927.
Auckland.

IN RE TAYLOR: TAYLOR V. THOMSON AND ANOTHER.

**Will—Construction—"I wish and trust"—Whether Precatory Trust—"What there is for them when the time comes for them to start in life"—Uncertainty.**

Originating summons for interpretation of will of above testator, providing:—

"I hereby bequeath all my earthly belongings to my dear "wife Emma Marion Taylor, and leave her sole trustee and ex-"ecutor to do just as she thinks best with everything. I wish "and trust that my wife Emma Marion Taylor will see that my "dear children Elva, Brian, Nancy and June are all given an "equal share of what there is for them when the time comes "for them to start in life."

The Court was asked to determine whether the widow took absolutely under this bequest or whether she held the estate in trust for herself and her children.

**Johnstone** for plaintiff.
**McArthur and Hubble** for defendants.

HERDMAN J. referred to Underhill's Law of Trusts, 8th Edn., 26 and pointed out that the first part of the above clause constituted a definite and absolute gift of his whole estate to the widow. It seemed to be perfectly plain that the testator intended to put his estate at the complete disposal of his wife. The concluding sentence of the paragraph amounted to nothing more than an appeal by the testator to his wife to make an equal distribution of what she might be able to spare them when their children were "starting in life"—see **Bayley v. Public Trustee**, 27 N.Z.L.R. 659. Further assuming that the testator intended a gift to his children a gift of "what there is for them when the time comes for them to start in life" was too indefinite and was void for uncertainty: **Mussoorie Bank v. Raynor**, 7 App. Cas. 321, 331.

Solicitors for plaintiff: **Hesketh, Richmond and Clayton,** Auckland.
Solicitors for defendants: **Reyburn, McArthur and Boyes,** Auckland.

# THE N.Z. CONVEYANCER.

(Conducted by C. PALMER BROWN).

## GORSE GRUBBING AND CLEARING CONTRACT.

MEMORANDUM OF AGREEMENT made this day of One thousand nine hundred and BETWEEN A.B. (hereinafter called "the employer") of the one part and C.D. (hereinafter called "the contractor") of the other part whereby it is agreed as follows :—

1. The contractor shall in a proper and workmanlike manner and to the satisfaction of the employer* fell all manuka scrub tutu and other growth and shall grub all gorse now growing on the lands described in the Schedule hereto. The grubbing of gorse shall be done below the first knot of the root and all felling shall be done within two inches of the ground.

2. The work shall be commenced and shall be completed not later than .

3. The contractor shall as often as required go over any area that may have been cut or grubbed and shall cut or grub as the case may be all plants and growth that may have been missed on the previous cutting or grubbing.

4. All plants and growth that may have been cut or grubbed shall be left on the ground in readiness for burning or removal and completely severed from the root.

5. The contractor and any servant he may employ may camp at such place or places on the said land as may be necessary or convenient for the purposes of the work; but all camp equipment food stores supplies and tools shall be provided by the contractor. The contractor shall not be deemed to have acquired by virtue of this agreement any interest in the land. Upon the removal of any such camp the site shall be left free of all debris and rubbish and as nearly as possible in the same condition as when the camp was made. Upon the completion of the contract all such camps shall be removed and the sites cleared as aforesaid.

6. The employer shall pay to the contractor at the rate of per acre for every acre of horizontal measurement† on which the work shall have been completed. Payment shall be made in one sum at the expiration of one calendar month from the completion of the work. If a survey shall be required the cost shall be borne by the parties in equal shares.

7. The contractor shall insure against accident all men employed by him and shall indemnify the employer his estate and effects against any claims under The Workers Compensation Act 1922.

8. The contractor shall throughout the course of the work take all possible precautions to ensure that no fire shall break out on the said land or shall spread thereto from any adjoining land.

9. The contractor shall not injure or destroy any fences gates or hedges on or about the said land Provided that the contractor may cut such fences or hedges and erect gates where convenient for the purpose of carrying out this contract but he shall keep such gates properly closed and fastened and shall remove the same on the completion of the work and shall thereupon restore the fences and hedges to their former condition.

10. The contractor shall not suffer or permit any dogs to be brought on or to remain on the land of the employer.

11. The work of felling and grubbing as aforesaid shall be continued and completed by the contractor notwithstanding any damage or destruction of such scrub and growths by fire in the meantime.

12. In lieu of cutting the contractor may burn small plants of scrub and gorse where the same are difficult of access Provided that he shall prevent such fire from spreading beyond such inaccessible places.

13. In the event of the death of the contractor this agreement shall be deemed to be cancelled and the employer shall pay to the representatives of the deceased the fair value of all work done up to such date.

14. If the contractor shall fail to complete the work in the time aforesaid or shall abandon the work or discontinue the same for more than seven consecutive days at any one time the employer may at his option enter upon the work and complete the same or may let a new contract for the completion thereof and may exclude the contractor therefrom. Upon the completion of the work under this clause the cost of such completion shall be ascertained and deducted from any moneys payable to the contractor hereunder. If such cost shall exceed such moneys payable the difference shall be recoverable from the contractor as liquidated damages. Provided that nothing in this clause shall be deemed to create in the employer any obligation to have the work completed and if he shall determine not to have the same completed then the contractor shall have no claim for any moneys due hereunder.

AS WITNESS the execution hereof.

* In approving or disapproving the employer must act reasonably (**Dallman v. King**, 1837, 4 Bing. N.C. 105).

† It is important to distinguish between horizontal measurement (measurement in one plane within the boundaries) and surface measurement (measurement in the infinite number of planes existing in nature). Contractors naturally prefer the latter; but the difference is not so great as they sometimes imagine and the cost of survey is much more.



# LEGAL LITERATURE.

### DOWELL'S INCOME TAX (9th Edition, 1926).

Butterworth & Co. Price :

The ninth edition of Dowell has been brought up to November, 1926, by Mr. P. M. Smyth, Assistant Solicitor of Inland Revenue. The new edition, comprising over 1,000 pages, is based upon the Consolidating Act of 1918 and the annual Finance Acts. The difficulty which always confronts the compiler of a work on Income Tax, namely, of showing the foundation Act and the amendments which are made by the Finance Acts and other Acts in one place in the book has been conveniently overcome. The method employed has been to set out the Act in full by printing the repealed portion in italics and enclosed in square brackets, with the amendments immediately following and especially underlined. The case law has been well handled, full extracts from the judgments being given in appropriate cases.

The publishers describe Dowell as the official work on English Income Tax Law, and in view of the position held by the author of this edition, this claim appears to be justified.

A new edition of Tyrell on Patent Law has been published in London, and will shortly be available here.

# PECULIARITIES OF THE JURY SYSTEM.

By Sir Ernest Wild, K.C., Recorder of London.
(An address given before the Worshipful Company of Stationers Livery Committee on 23rd November).

The subject of my address is "Peculiaritie o the Jury System." We may say that the dawn of collective responsibility was the dawn of the jury sy tem. There came a time when man ceased to be a cave man, and was divided into various communities. Communities of spirit began to dawn. You had him first of all in the Tithing. Then you had him in the Hundred, or, as it is sometimes called, the Wapentake. The system was a simple one. The system was this. If any wrong took place in a community, and they could not find the offender they all had to pay. That was the origin of the Jury System. Now, supposing it took place in the Hundred. Supposing somebody killed somebody else, or, more important still, somebody stole an ox or an ass, suppose anything of that kind happened, they had to find the offender. If they could not find the offender and present him for trial they all had to pay. That being so, of course, they were all very diligent in finding the offender. That is the origin of the Grand Jury, which was the Jury of Presentment. They were what were called Compurgators, gentlemen who alleged that A. B. or C. D. had committed the murder or had stolen the ox or the ass. There you have the origin of the Grand Jury. Then there came another set of men. The other set of men might be called the rival Compurgators. They said that, from the well-known character of A. B. or C. D. it was quite impossible that he could have committed the murder or have stolen the animal. They were the Petty Jury. You have those two sets of men, witnesses as to character, about as valuable I should think as witnesses as to character are to-day. Then when they got into an absolute muddle, one set of men being as respectable as the other, to get out of the difficulty they resorted to the old German system of Ordeal by Battle. That never obtained very much in our country, although there was some of it. The origin of Ordeal by Battle was this. They could not settle the matter by the oaths of the rival witnesses as to character, the Grand Jury and the Petty Jury respectively, and so they stood up and fought, or they had some other ordeal. If it was a witch they tried Ordeal by Water. If the lady swam she was guilty. If she drowned she was not. That was the way it began. So it came to a time when, in the words of the greatest constitutional historian we have ever had, Bishop Stubbs: "The verdict of the Jury no longer represented their previous knowledge of the case, but the result of the evidence afforded by witnesses of the fact; and they became accordingly judges of the fact, the law being declared by the presiding officer in the King's name." Accordingly, therefore, ceasing to be witnesses of character on the one side or the other they became judges of the fact, and our Jury System was evolved. That is really the interrelation of the Jury System to-day. There are some misguided people who would abolish the Grand Jury as being of no further use. The Grand Jury, in my opinion, is a very great protection to the liberty of the subject. The Grand Jury representing the State, present the accused person for trial. Then the Petty Jury come along, and like their old predecessors, the rival Compurgators, try him. They find out and search out for anything that can be said in his favour. I hope it will be a long time before that ideal system which has stood the test of ages is abolished. Coming to modern time, which interest us most, there is the principle of our Jury System, of the whole of our Criminal Law, which is improperly described as "benefit of the doubt." There is no such thing. I remember one of the greatest advocates who ever lived, Sir Edward Clarke, telling a Jury that that is a phrase which ought never to be used by any judge or advocate, because there is no such thing as "benefit of the doubt." In our Criminal Judicial System the Crown undertakes to prove guilt beyond doubt. The Crown must prove guilt beyond real doubt. If there is real doubt then the prisoner is entitled to acquittal as a matter of right. There is no question of benefit of the doubt. In Scotland it is different. I sometimes wish that we had a verdict of non-proven, which is the Scottish system, because there are a good many cases where the prisoner leaves the Court without a stain on his character where he is a lucky man to leave the Court at all. There are cases where really a verdict of non-proven would be a more satisfactory verdict.

Then there is the question which is often discussed as to whether or not it is desirable in criminal trials, and indeed in civil trials, that the principle of unanimity should be insisted upon. One has known trials rendered abortive by the conscience, or stupidity, or what-not of one juror. The whole of the extent and burden of the matter is sacrificed because some man or woman holds out. Nobody can but admire the one man who holds out in favour of innocence, although I have not much opinion of the one man who holds out in favour of guilt. Under the new Act of Parliament we have got rid of one anomaly. We have got rid of the anomaly that demanded that, supposing a juryman is taken ill during the trial, the trial is rendered a nullity. It is provided by the new Criminal Justice Act that if the number of jurors is not decreased below ten, with the assent of the Crown and the accused the trial can go on with eleven or ten, as the case may be. Also under that Act of Parliament considerable additions are made to the jurisdiction of magistrates. Whether that is wise or unwise it is not for me to argue in this connection. One must remember that those variations are only made with the assent of the accused. Any accused person who is liable to be sent to prison can demand as of right trial by jury.

In civil cases, as you are doubtless aware, it is competent for the parties to assent to a majority verdict. That cannot be done in criminal cases. In criminal cases we must have unanimity. In civil cases that often happens. I had a curious experience in my younger days of a County Court jury. In those days the number of the jury was not eight as it is now, but five. One solemnly addressed five men. I think it was a new trial. The amount in dispute was small, and had a long time before been eaten up by legal expenses. There were five jurymen. The trial took place before that very hale and hearty Judge, Judge Willis. He had gone to catch his train after he had summed up and we waited. We waited a long time, and then we said: We will take the verdict of the majority if there are four to one. The jury sent word to us to say that they were not four to one. Then after waiting another hour and a half we said that we would take the verdict if there were three to two. The jury sent word to say that they were not three to two. Finally, the jury sent word to say that there were two for the plaintiff and two for the defendant and the other man could not make up his mind. I should think that that was a unique experience.

Now I come to women jurors. I was very doubtful when I was in the House of Commons, and when what is called the Sex Disqualification Removal Act (which always sounds more like a surgical operation than an Act of Parliament) was passed, whether women really desired to serve on juries. I never had any doubts as to their competence. Any man who has known any one woman will never have any doubt about that. I have stood publicly on the Bench, and I stand privately now, in a white sheet in regard to women jurors. I think they are really a very great adjunct to the administration of justice, particularly criminal justice. I think it is only right that if you are to have the judgment of the community, and that is what the Jury System is, both sexes should be represented, especially in cases where both sexes are involved. Women are very much harder than men; we all know that; but that is because they have more conscience.

A great deal of discussion has taken place on the question whether the Jury System should be, I will not say, abolished, I do not think anybody has had the temerity to suggest that, but whether the Jury System should be whittled down. I think in this connection, proffering my opinion for what it is worth, that there is a considerable distinction between civil and criminal proceedings. In civil proceedings it is sometimes advantageous that a judge alone should try the case, unless it is a matter which involves character, such as a charge of fraud. I do not think any judge alone should try a case involving a charge of fraud. The same with regard to a charge of defamation. An action of that kind ought to be settled, in my opinion, by a jury. If it is a commercial case it is different. If it is a running-down case, and so many cases are running-down cases, as the Lord Chief Justice wittily remarked the other day, generally between stationary vehicles, there may be a tendency for the jury to sympathise with the plaintiff, whether he is right or wrong, particularly if they have an idea, generally founded upon fact, that the defendant is insured. Without for a moment suggesting that any juror, still less any jury, would find a verdict contrary to their oaths, subconsciously they might side with the poorer, or the injured person. In the Mayor's, and the City of London Court I personally find that we get on very well in cases which are not tried with a jury. Nearly all the cases there are tried without a jury. We find that the parties generally of their own accord prefer to have their cases tried without a jury. Of course, it is much quicker in a commercial community to do it in that way. Supposing you are trying a case with a jury, where you have oath against oath, and a number of documents to consider, it may easily take a day, whereas the same case, before any competent judge might only take an hour or an hour and a half. So in a commercial community it may be better by consent for a judge to take the case alone. But I am convinced that the only tribunal which is really competent to try a criminal case of a grave nature is a judge and jury. No judge is prejudiced, but every judge is, and I hope every judge will be, human. He must have his predilections and his sympathies. He cannot get away from them. If he could get away from them he ought not to be there. I do not agree with the suggestion which I think is made sometimes that there are defendant's judges and plaintiff's judges. In my opinion judges and juries have, throughout the ages of our constitution, acted and reacted healthily upon one another. Whereas judges have kept juries straight, juries have kept judges human. Supposing you were by a stroke of a pen to abolish the Jury System, I question whether judges would be found of the high and unassailable standard we now have. Our judges and juries have helped to create the system which is known as "*Judicium parium*," the right of a man or woman to the judgment of his or her peers, laid down in the Great Charter in these immortal words: "No free man shall be taken, or imprisoned, or disseized, or exiled, or any wise destroyed; nor will we go upon him, nor send upon him, but by the lawful judgment of his peers or by the law of the land. To none will we sell, to none will we deny or delay, right or justice." Those are the thirty-ninth and fortieth clauses of Magna Charta. May it never be in our time, never in any time that we value, that that great palladium of our liberty be destroyed or in any way undermined. We know that during the war we temporarily abolished the Grand Jury, and we whittled down the privilege of suitors in civil actions of having their cases tried by juries. No doubt some men and women who are summoned to juries would be only too glad not to have the labour. It must be an almost intolerable burden upon busy men or women to be called away from their business for a day or a week in order to decide a matter in which they are not in any way interested; but if they will only remember that they are performing a great voluntary service, if they will only remember that some day it may happen to them, that some day they may want a jury of their fellows to decide as to their rights or as to their liberty, I am certain that this great constitutional safeguard will be preserved.

May I quote once more, and lastly, from Bishop Stubbs. Before I make the quotation may I say this. I personally would advocate what I believe they had in Russia, when they had any law at all, and that is a more representative jury. I do not think that our juries are sufficiently representative in their personnel of the community. One is too apt to get a certain class of citizen. I think that juries should represent all classes. Just to show in a phrase, a phrase from Bishop Stubbs, the evolution of the Jury System, it is: "The humble processes by which men had made their by-laws in the manorial Courts and amerced the offenders; by which they had assessed the estates or presented the reports of their neighbours; by which they had learned to work with the judges of the King's Court for the determination of questions of custom, right, justice, and equity, were the training for the higher functions, in which they were to work out the right of taxation, legislation and political determination on national action." I think that is an interesting concluding thought, that really the Jury System is the origin of our representative system of government. It represents the collective sense of the community, the dawn, as I have said, of collective responsibility, that made people not only work out their legal system, but work out their legislative system, work out their taxation system, and everything that appertains to social well-being.

That being so, what is the summing-up? Speaking of the summing-up, I remember that when that splendid delegation of American lawyers, both Bench and Bar, came over here a short time ago, they were immensely impressed by our judicial system. It is something to get a compliment from America. They were particularly impressed by our celerity. I remember one occasion, when our Court was simply crowded with distinguished judges and lawyers, a man had been committed for trial, the Grand Jury found a true bill, he was tried and the case was over in a very short time. They told me that it would have taken them four or five weeks to have empanelled the jury. We did the

(*concluded on page 37.*)

# HAWERA.
# A SUPREME COURT WANTED.

"That the Department of Justice be approached, through "Mr. H. G. Dickie, M.P., by means of a deputation waiting "upon the Minister of Justice, with a view to securing a "regular sitting of the Supreme Court in Hawera, in ad- "dition to the present quarterly sessions now held in New "Plymouth,"

was the text of a resolution passed at the last monthly meeting of the Hawera Chamber of Commerce.

It was at this meeting that the first step was taken although the subject has been much discussed for some considerable time. The matter was there dealt with at length, and strong reasons were advanced in favour of the movement. All were of the opinion that the claims of South Taranaki certainly warranted a sitting of the Court being held in Hawera as urged.

The outcome of the Chamber of Commerce discussion was the resolution above mentioned and the decision to take the matter up with the Hawera District Law Society which was to be asked to appoint a member to wait upon the Minister of Justice in conjunction with the Chamber of Commerce representative. Mr. H. G. Dickie, M.P., who was present as a member of the Chamber promised his strong support, and Mr. F. W. Horner, a local practitioner, who was also a member of the Chamber, undertook to place the matter before the Law Society.

The matter was ultimately discussed at a special meeting of the Hawera District Law Society, where it was gone into at full length, and Mr. F. C. Spratt was appointed to represent the Law Society in the proposed deputation.

The chief grounds of the movement which have been set up at the Chamber of Commerce as at the meeting of the Law Society were firstly that of convenience, meaning that South Taranaki litigants, witnesses and counsel were obliged to undergo long delay and to lose much time through having to attend at New Plymouth during the sessions there. Counsel engaged in cases coming on were faced with the difficulty of keeping in touch with the progress of the list and, as the advice, forthcoming from New Plymouth regarding the same, could never be certain, counsel were obliged to arrange for attendance of parties and witnesses, who in most instances were farmers with onerous ties, in ample time to be in New Plymouth ready and waiting for their case to be called.

From this ground follows the argument of additional cost to which counsel, parties and witnesses are put by reason of having to travel extra long distances and in most cases having to stay a night or nights, and so incurring several pounds each in expenses in addition to having to lose time. The matter of time in certain seasons in view of the farming pursuits in the province was a particularly important one.

Litigation under these circumstances alone was burdened with heavy expense,—expense that in most cases a session held at Hawera would certainly overcome. Remedies, or the pursuit of remedies by means of legal redress, were often abandoned on account of the very heavy expenditure accompanying them under existing conditions. The administration of Justice was, on this account, being considerably hampered.

Regarding the Criminal Jurisdiction of the Court, the course suggested would mean a great saving to the state for obvious reasons. The saving in witnesses' expenses alone would result in a considerable saving.

Even suits which had been commenced were often unavoidably adjourned by reason of the difficulty of going to trial under the existing arrangements.

The general opinion, held by the profession and the public, was that South Taranaki certainly supplied the larger proportion of litigation even under the hardships attaching to it as procedure is at present constituted. A local barrister who is frequently engaged states that at the last (February) session, South Taranaki supplied fully 80 per cent. of the cases brought on, and that no New Plymouth counsel were in Court on that occasion,—except to obtain fixtures for South Taranaki actions.

This was an instance of a specific session, but if any session were taken and reviewed, the comparisons would certainly show that South Taranaki brought the majority of cases.

In one particular case,—an instance of the hardship and expense which commonly accompanies law suits here,—the main issue was the state of repair of leased land in Patea—(over 60 miles from New Plymouth). The action was fraught with very heavy expense and great loss of time and inconvenience, there being numerous witnesses hailing from Patea and beyond, and in most cases their stays in New Plymouth consisted of at least two days and one night, and averaged about £5 per head.

It is understood that the matter was brought forward about six years ago and it was then decided against the proposal, it is believed, on the ground of the expense which would be entailed in establishing a Supreme Court Library, but not on the grounds of paucity of work which would be forthcoming.

At the meeting of the Law Society called to consider the project, mention was made of the utility of, and satisfaction given by, the District Courts as at one time constituted, and it was said that since they had been abolished Hawera had felt the need of a Court with higher jurisdiction than the Magistrate's Court.

Other matters favourable to the establishment of a Supreme bench at Hawera were the facts that that town was very centrally situated in a big district—a distinct geographical advantage and that the Courthouse was originally built to cope with higher business than Magistrate's Court work. There was a large office, a Judges' room, Jury room, Library, and Witnesses' room. The library was not a large one, but the room itself was sufficiently large, and the only expense would be the books and fittings. It was also pointed out that counsel often were obliged to proceed fifty miles to New Plymouth when requiring certain text-books and reports.

Another grievance which was generally felt was the need for a Stamp Duties Office in Hawera, and it was said that, as it was, all documents had to be forwarded to New Plymouth, whereas the appointment of one office at Hawera would justify itself.

Just how the matter will be viewed by the Justice Department is open to doubt, but all South Taranaki is unanimous on the point that the need for such a provision is acute and certainly warranted by the facts.

# FAREWELL.

About 40 members of the legal fraternity of Taranaki attended the complimentary dinner at the Carlton last evening, given by the Hawera members of the profession on the occasion of the approaching departure of Mr. F. C. Spratt, of Hawera, for Wellington. Mr. J. Houston, president of the Hawera Law Society, presided, and associated with him at the head of the table were Messrs. F. C. Spratt, J. S. Barton, S.M., F. E. Wilson and R. H. Quilliam (New Plymouth) and J. H. Thomson (Stratford). Apologies were received from the Mayor of Hawera (Mr. E. A. Pacey), and Messrs. S. Blake and J. S. Murray, J.P.'s.

After the loyal toast the following toast list was honoured: "The Guest of the Evening" (Mr. J. Houston—Mr. Spratt); "The Bench" (Mr. P. O'Dea—Mr. J. S. Barton, S.M.); "The Visitors" (Mr. A. Bennett)—Messrs. R. H. Quilliam and W. G. Walkley).

During the evening items were contributed as follows: Songs, Messrs. L. A. Taylor, B. Malone, D. G. Smart, F. W. Horner, and J. H Thomson, and a musical monologue by Mr. H. L. Spratt. Mr. H. Taylor played the accompaniments.

(*Continued from page 36*)

whole thing in an hour. Then they were impressed by another matter, that is, the right of the judge to express his own opinion, subject to a careful caution to the jury that the jury were not in any way compelled to pay any attention to it on matters of fact. The Americans said that in their country if a judge were to give an opinion of any kind, even incidentally, upon a matter of fact, the whole trial would be a nullity. With us it is recognised that, although the judge, of course, would never be foolish enough to say "I think so-and-so is right," if he is to sum up at all, after telling the jury the law, he cannot help, if the evidence is very largely one way, expressing a view. He must tell the jury that his view on facts is of no value at all, if they choose to disregard it. So much for the summing-up. I believe that with a competent judge and jury, such as usually we get at the Law Courts and the Central Criminal Court, you cannot have a better system to arrive at the right result. It may be rough and ready, but it is the best system of arriving at the true result. That a right result is generally arrived at in probably 99 per cent. of the cases I suppose very few people will doubt. Therefore, let us preserve it because it represents the greatest asset we have, that is, the common sense of the community. It may be rough, it may be ready, but at all events it is fair, and it is honest. It is a real practical attempt on the part of the community, with all the peculiarities of the system, to arrive at justice between man and man.

# LONDON LETTER.

Temple, London.
19th January, 1927.

My Dear N.Z.,—

With the death of His Honour Judge Granger we lose our senior London County Court Judge. His many merits are recorded elsewhere; a little personal memory of him may interest you, the fact that, being a tremendous stickler for propriety, he once caused an uproar among the Bar by prohibiting smoking within the precincts of his court and fining counsel for smoking in the robing room! I know at least one of your counsel who would keep the State in fines paid by him, if this principle was universally imposed. For the rest, I suppose that the "County Court" means little to you, though you may well know it is our comparatively modern and increasingly important court of minor civil jurisdiction; it cannot have for you anything like the significance it has for us, as I realise from the contented way you refer to your New Zealand High Court Judges as "their Honours" and, not unnaturally, apply the same term over here, even to our Lords of Appeal, in unthinking moments. With us, "His Honour" is essentially and only the County Court Judge; and, forgivable as is the slip of calling the County Court Judge "My Lord," it is a crime, amounting at least to a felony, to call anything higher "Your Honour." Hence arises the ruse of the pushing young Junior, who has no other experience than that of the county courts but who would give the reverse impression, of constantly addressing His Honour as His Lordship and hoping that his audience may be impressed thereby.

Curiously enough, all the interesting decisions of the year, so far, are in the Probate, Divorce and Admiralty Division and most of them divorce. **Gilbey v. Gilbey** is recognisable, I think, as a leading case, laying down as it does that, in the words of Chesterton or Bernard Shaw, "the golden rule is that there is no golden rule" when it comes to fixing the amount of a wife's permanent maintenance by taking a proportion of her husband's income. Though the rule of "a third" may well apply in apt circumstances and may even have a claim to first consideration, the assumption of a fixed arithmetical formula and an indispensable process of applying it *simpliciter* is, said the President, erroneous. He referred much to the ecclesiastical law on the point and to **Hulton v. Hulton** (1906), p. 17. In **Welton v. Welton,** which I think I was unable to mention at first instance to your lordships last term because the flow of my eloquence was held up while the printer printed off accumulated arrears, the Court of Appeal (M.R.: Sargant and Lawrence L.JJ.) upheld the decision upholding the order for alimony *pendente lite* to a wife who, though petitioning in this instance for divorce, had in previous proceedings been herself proved guilty of adultery. The Court may give alimony *pendente lite* to a wife so guilty; I confess it was news to me that the Court may not grant alimony (so-called, but being in reality maintenance) after decree absolute to a guilty wife, but the Court of Appeal seems to assume that and I must not be too much impressed by the fact that I have before me as I write (and awaiting action, after I have written) an order of the President's granting such maintenance in an undefended cause. In **Broadbent v. Broadbent** a divisional court of the Probate, Divorce and Admiralty Division commented on the remarkable, not to say undesirable, state of affairs produced by the large jurisdiction of our magistrates to deal with charges of adultery, for a limited purpose, under our Summary Jurisdiction (Separation and Maintenance) Acts, 1895-1925. A man may be so dealt with, practically without notice and certainly by a court of least experience, and there is no redress. I should say this case will lead to remedial legislation.

It may seem that I harp upon matrimonial causes and I should not be altogether to blame if I did, since that peculiar Providence, which selects our employment as lawyers, has seen fit to caste me for matrimonial causes lately, from courts of summary jurisdiction to the Privy Council. Having done me this injury, Providence hastens to make redress, by causing a decision absolutely on point from time to time to be pronounced the morning after receipt by me of papers the night before. **Stone v. Stone,** in which the President found himself unable to divorce spouses who were living in the same house at and after date of petition and who must accordingly be presumed by the Court to be cohabiting, will help me, I hope, to get rid of, without trying, a case in which this end is very desirable; and **Welton v. Welton,** above mentioned, certainly seems to me at least a stout weapon to get rid of or at least reduce my client's obligation to his guilty wife. And I need not blush to publish these matters to you at such length, nor suspect myself an offence against the new Judicial Proceedings (Regulation of Reports) Act, since in **Willis v. Willis** the learned President has, with much wisdom as we all think, deprecated this curtailing of publication as being not always to the public gain.

I suppose that **Hulton v. Attorney-General and Others,** decided early in the term which began, by the way, only a fortnight ago, has a certain interest in that it canvasses anew that critical question as to the liabilities of Crown officials; see **Nireaha Tamaki v. Baker** (1901) A.C. 561. But the interest is somewhat circumscribed and unless you have counties in New Zealand and Lords Lieutenant to control 'em, as I fancy you have not, the decision of Tomlin J. cannot concern you much. There remains our old friend "**The Jupiter**" up before Hill J. for final treatment; no doubt you remember the earlier proceedings with regard to this ship and its estimable owners, the Soviet Republics? In the circumstances, I am happy that the law has not had to stultify itself by making of universal and inevitable application the proposition that "the declarations of a foreign sovereign is conclusive evidence that personal property in this country had been or was the property of the foreign sovereign" in question. If once the Soviet Republics could make our property theirs by declaring it so to be, we may be sure that their Mr. A. J. Cook would now be rushing about England "declaring" as hard as he could declare!

Lastly **Crack v. Holt** reaffirms (cp. **Birmingham Omnibus Co. v. Thompson** (1918) 2 K.B. 105) the definition of what is "plying for hire," the application, in this instance, being to those monsters which are my particular pets, since I adjudicate under section 14 (3) of the Roads Act upon their ways and routes, the motor omnibuses. The decision is interesting to me, since it is usually assumed that an authority's refusal of a license to ply for hire, in its area, may be surmounted by refraining from issuing tickets in the area and by departing from a point which is not a public place. Whether or not this case interests you must depend upon your position as to public vehicles; with my special experience of the growth of motor omnibus traffic in this country, I must suppose that the same phenomenon produces the same legal problems with you as with us. In which context I may express a sympathy, which I am perfectly certain is yours also, with the comments of their Lordships of the Court of

Appeal as to the necessity of limiting, not to say curbing, the tendency to legislate by rules, regulations and orders or, in other words, to make us the slaves and subjects of our Government departments.

I was at the Privy Council yesterday, and heard some half-a-dozen judgments delivered. Many of them were in appeals which were heard very much about the same time as the New Zealand appeals. Judgments in the **Distributors,**, the **Revenue,** and the **Native Land** Appeals should, it therefore seems, soon be available.

Yours ever,

INNER TEMPLAR.

# "BILLY" KEOGH.

The story of the Glenbeigh evictions is well known as recorded in the pages of "New Ireland," where the proceedings taken to save the victims are told. It was years before the feelings aroused by this outrage had died down sufficiently to permit Glenbeigh to be re-visited, but at last our parents took my elder sister and brother and myself (just able to walk alone) for a tour in Donegal, accompanied by some friends. I can call to mind being on a railway platform holding my mother's hand when she led me to where a middle-aged gentleman in a great coat was waiting for a train, and she said to me, "Take a good look at that rascal. He is Billy Keogh." I required to be many years older before I could appreciate this epitome of the shameful and dishonourable means by which this quiet-looking man had purchased the office that he held as one of Her Majesty's judges; and no one could defend the perjury of one who openly abandoned the popular principles which had won for him his place as a leader in public life in order to secure a salaried office from a hostile government. I was, therefore, astonished when I afterwards joined the Bar to find that the memory of the notorious treachery of Keogh was almost obliterated by legends of his toleration and good humour. If he was a rogue, he was a very pleasant rogue. There was an old ballad-monger who used to play his dismal wail outside of the Four Courts, and the judge was accustomed to throw a penny into the extended hat as he passed. One day it occurred to Keogh that his own name was figuring somewhat in the ballad that the singer was droning, so he halted to listen. The ballad-monger, well knowing the identity of his audience, but quite unabashed, continued to chant:

"Lord Norbury of old was something in the style of him:
His rude and vulgar impudence was always such a show.
But Norbury himself lacked the venom and the guile of him,
And neither he nor Jefferies was a patch on Billy Keogh.
But some morning before long you shall surely hear it told of him
That on the previous night, before the cock began to crow,
A sable-looking customer came up and caught a hold of him,
And off to nameless regions ran away with Billy Keogh."

The learned judge put half-a-crown in the hat and passed on.—From "Sergeant Sullivan's Reminiscences."

# AUCKLAND DISTRICT LAW SOCIETY.

The Annual General Meeting of the Auckland District Law Society was held at the Library in the Magistrate's Court, Auckland, on Friday the 4th inst., when there was a fairly large attendance.

The following officers were elected:—President: Mr. J. B. Johnston; Vice-President: Mr. F. L. G. West; Treasurer: Mr. R. P. Towle; Council: Messrs. R. McVeagh, A. H. Johnstone, H. P. Richmond, A. M. Goulding, F. G. Massey, and J. H. Reyburn.

Representatives to the Council of the New Zealand Law Society: Messrs. A. H. Johnstone, R. McVeagh, and H. P. Richmond. Representatives on the Council of Law Reporting: Messrs. R. McVeagh and H. P. Richmond.

The president, Mr. J. B. Johnston, in presenting the Annual Report, expressed the Council's regret that the Government had still done nothing towards extending the library accommodation at the Supreme Court, and hoped that some progress might be made in this matter during the next twelve months.

Mr. H. P. Richmond, on behalf of the profession, spoke in eulogistic terms of the services of Messrs. W. G. Fletcher (late Deputy Commissioner of Stamp Duties at Auckland), A. V. Sturtevant (late District Registrar), and W. S. Fisher (late Official Assignee) who have retired during the year.

In referring to the ability and integrity with which these gentlemen had filled their respective offices, he mentioned how fine a thing it was for this Dominion that men should be found to fill offices of such importance with such satisfaction to their fellows and honour to themselves.

Mr. Northcroft spoke of the importance of bringing the profession into closer touch with the students and teachers of the Law School, and a committee consisting of Messrs. A. H. Johnstone, H. P. Richmond, J. B. Johnston, R. McVeagh, and E. H. Northcroft was appointed to colloborate with the Law Professor for this purpose.

# JUSTICES OF PEACE.

## ANNUAL REPORT.

The report presented at the annual meeting of the Honorary Justices' Association for the City of Wellington, on March 15th, states that many important matters affecting Justices of the Peace had been dealt with during the past year, and that the work of the association had been well maintained and the general interests advanced.

The death of Mr. J. B. Teasdale, a member of the council, was recorded with regret. Mr. Teasdale, it was stated, was very highly esteemed and respected, and his death was a severe loss to the association. The vacancy was filled by the appointment of Mr. W. H. Lloyd, who had manifested a keen interest in the work.

Members would be pleased to know that certain difficulties between the Auckland Association and the Federated Associations were now removed, and appreciation had to be expressed at the result of the visit to Auckland of the president, registrar, and a member of the Christchurch Association.

In view of the early incorporation of the Federated Associations, and a recommendation that all associations should be incorporated, the council was taking the necessary steps to obtain the consent of members to incorporate the Wellington Association. This would ensure a legal standing to the association and the safeguarding of the funds.

An important event in the Dominion had been the appointment of women Justices of the Peace, and the association had to congratulate Mesdames M'Vicar, Corliss, and Fraser, and also Miss Kirk, all of Wellington, upon their appointment.

The council desired to make special reference to the benevolent work of the association in providing Christmas cheer for those unfortunate people in prison, or otherwise under control. Assistance had also been given to men and women after discharge, who were aided and encouraged to make a fresh start in life.

The year closed with a membership of 417, an increase of fifteen. Seven members were lost by resignation, and the following, it was regretted to announce, had died:—Messrs. W. S. Gaworth, R. Brown, E. M'Ewen, M. O'Connell, E. H. Penny, J. Pearce, F. Townsend, and W. G. Haybittle.

# CANTERBURY COLLEGE LAW STUDENTS' SOCIETY

## ANNUAL REPORT 1926.

The Committee has much pleasure in presenting the following report to the members of the Society.

**Annual General Meeting 1926.** The Third Annual General Meeting was held in the Law Lecture Room at Canterbury College on the 26th day of March, 1926. The Annual Report and Balance Sheet showed that the Society was in a healthy condition both as regards its activities and its finance.

Election of Officers resulted as follows: Hon. Presidents: Messrs. A. T. Donnelly, H. D. Acland, W. J. Hunter, and T. W. Rowe. Hon Vice-Presidents: Messrs. A. L. Haslam, A. C. Brassington, M. J. Burns, and L. D. Page. President: Mr. L. J. Hensley. Secretary: Mr. D. F. Laurenson. Treasurer: Mr. J. N. Laurenson. Committee: Messrs. A. N. MacKay, W. B. T. Leete, W. M. Te Awarau, and Mr. F. G. Marrie.

**Lectures.** On the 1st day of May the Opening Lecture of the year was given by Mr. A. T. Donnelly, the Crown Solicitor, on "The Cross Examination of Witnesses." There was an attendance of some 60 members.

Mr. C. S. Thomas delivered a lecture "Concerning Criminal Matters" to a large attendance of members, on July 3rd.

The last lecture of the year, entitled: "Medical Jurisprudence," was delivered on September 25th, by Dr. John Guthrie, and was thoroughly appreciated by the large number of members present.

**Social Activities.** The first faculty dance of the Society was held at "Dixieland," on the eveing of June 8th, and proved most successful.

The most important event of the Society's year, the Annual Dinner, was held on Saturday, August 7th. Mr. T. W. Rowe again occupied the chair. The following toast list was honoured: "The King," proposed by the Chairman; "The Society," proposed by Mr. A. C. Brassington and replied to by the Secretary. "The Profession," proposed by the President and replied to by Messrs. F. W. Johnston, and C. S. Thomas; "The Lecturers," proposed by Mr. L. D. Page and replied to by Mr. A. S. Taylor; "Other Faculties," proposed by Mr. A. L. Haslam and replied to by Messrs. A. Forsythe (Engineering); L. R. Palmer (Arts), and H. C. Kent (Accountancy) and "The Ladies," proposed by Mr. A. N. MacKay and replied to by Mr. F. G. Marrie.

Items were given by Messrs. T. W. Rowe, F. W. Johnston, C. S. Thomas, A. W. Brown, W. M. Te Awarau, F. J. Page, and J. A. Johnston.

A Mock Court was held at the College on the evening of July 31st, to try the case of McStiggins v. Dooem (Breach of Promise of Marriage). This, the first Mock Court arranged by the Society, fully justified its inclusion in the Syllabus.

**Rhodes Scholarship.** Mr. A. L. Haslam, one of the Society's Vice-Presidents, was successful in obtaining a Rhodes Scholarship, and will be leaving New Zealand for Oxford about August next. The Society extends its congratulations to Mr. Haslam, and wishes him every success.

**Athletics, Tennis and Debating.** At the Easter University Tournament held at Dunedin, the Law Faculty was represented by Messrs. E. B. E. Taylor and A. W. Smithson (Athletics), A. B. Loughnan (Tennis), and A. L. Haslam (Debating and Athletics). Mr. Taylor was successful in winning the mile and three mile events, and undoubtedly Canterbury College has never produced a better long distance runner. Mr. Loughnan was in the winning doubles and combined pairs. Mr. Haslam assisted materially in winning the Debating Scroll for the College.

On the 26th January, 1927, a tennis team from the Society met and defeated a team from the Combined Public Services. Law Students were well represented in the Varsity Football and Hockey Teams for 1926.

**General.** The year ended with a membership of 65, practically all of whom are financial members.

The Committee issued a syllabus for the year 1926, giving particulars of the various activities of the Society. This has proved most successful. Particulars of the activities of the Society have also been inserted in the College Hand-book issued to Freshers. The Committee, through Mr. Rowe, has been in communication with the Board of Governors in regard to the purchase of additional books for the hopelessly inadequate Law Section of the College Library, and Mr. Rowe has assured the Committee, that by the time this report is in the hands of members the order will be on its way to England. General satisfaction has been expressed that the Faculty of Law and Commerce has been split and divided up and that Law is not a separate Faculty.

Mr. W. J. Hunter, on behalf of the Canterbury Law Society, has offered the Law Students' Society two medals to be presented to the two best students in subjects to be chosen by the Lecturers. These medals will be presented at the 1927 Dinner. The Committee wishes to record its thanks to the Law Society for the donation of these medals.

Realising the difficulty members have in purchasing and selling Law Books, the Committee has arranged for members to inform Mr. A. N. MacKay what books they desire to buy or sell, and the parties may thus be brought together.

The Committee wishes to place on record its thanks for the assistance rendered to the Society by members of the Christchurch Bar, and in particular to Messrs. A. T. Donnelly and C. S. Thomas, who, together with Dr. John Guthrie, consented to deliver lectures.

A Balance Sheet for the year is submitted herewith.

The Annual General Meeting for 1927 will be held in The Law Lecture Room at Canterbury College, on **Friday, 11th March, 1927 at 8 p.m.**

For the Committee,
D. F. LAURENSON,
Hon. Secretary.

# BENCH AND BAR.

Mr. H. F. von Haast, who has been practising as a barrister only during the last twelve months, and whose recent appearances in the Court of Appeal are commemorated in the law reports in Orbell v. Orbell and Mossman, and In re Carrad, leaves with Mrs. von Haast, on 14th April, for a trip to Europe. Being a member of Lincoln's Inn he is looking forward to foregathering with some of his old companions in "The Devil's Own." Readers of the "Fortnightly Notes" may expect from his pen some entertaining pictures of the administration of justice in England and on the Continent.

Sir John Hosking, who has recently been indisposed, is making satisfactory progress in his health.

Sir Francis Bell, K.C.M.G., K.C., was entertained by the Wellington University Club, on the 24th instant.

Mr. R. R. Scott, Barrister-at-Law, Wellington, is leaving for England on 11th April, on a visit which combines professional business and pleasure.

Mr. A. W. Blair, Barrister, of Wellington, has been appointed Chairman of the Commission to enquire into the Auckland City and District Water Supply.

Mr. J. Oakley who has been associated with Messrs. Harper, Pascoe, Buchanan and Upham, Ashburton, has been compelled to relinquish his legal career in consequence of serious ill health. He is proceeding shortly to Dunedin to place himself in the hands of a Specialist. It is to be regretted so serious a misfortune should befall so promising a young man.

Mr. M. R. Monde, was at Wellington, admitted as a Solicitor by the Chief Justice (Sir Charles Skerrett) on the motion of Mr. H. H. Cornish, on the 18th March.

On the motion of Mr. H. F. von Haast, Counsel for the New Zealand Law Society, the Court of Appeal, on March 17th, made an order striking off the rolls the name of John Munro Gillies, Solicitor, of Dunedin.

Mr. R. R. O'Brien was, on March 16th, admitted by the Chief Justice at Wellington a Solicitor of the Supreme Court, on the motion of Mr. A. M. Cousins.

Mr. E. W. Cave, Registrar of the Supreme Court, Dunedin, is retiring from the Civil Service at the end of the present month.

Mr. W. D. Wallace, Clerk of the Court, Registrar of the Supreme Court, and Official Assignee at Invercargill, will succeed Mr. Cave at Dunedin.

Mr. J. M. Adam, Registrar at Hamilton, will succeed Mr. Wallace, at Invercargill.

Mr. S. L. P. Free, S.M., has been authorised to exercise jurisdiction in Children's Courts at Carterton, Dannevirke, Eketahuna, Featherston, Greytown, Masterton, Martinborough, Pahiatua, Pongaroa, and Woodville,