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"When thou dost get at the heart of crime, be moved to pity, not puffed up with joy."
—*Confucius.*

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First Law Conference in New Zealand.

A special feature of this issue is a full report of the proceedings of the Law Conference, held at Christchurch, on April 11th, 12th and 13th.

The undoubted success of the Conference must be very gratifying to those members of the Canterbury Law Society, who convened the Conference in the face of misgivings as to its success, expressed by many lawyers, and no doubt in part shared by the convenors themselves. The belief, however, that such a Conference would afford useful opportunity for discussion of matters of importance to the profession and to the public not afforded at meetings of District Law Societies and the New Zealand Law Society, has been fully justified.

Reference to the Agenda paper of the Conference shews that of the matters discussed, some were of great interest to the general body of the public as well as to the Profession, and the general interest aroused is proof that the views of the Profession on the questions of Legislation by Order-in-Council and of the right to a jury in civil cases, were being awaited with interest by the public.

On such subjects, which are of more than professional interest and which appeal to the public as well as to constitutional lawyers, the Profession is well entitled and enabled to give a lead to public opinion.

Under the able Presidency of Mr. A. Gray, K.C., discussion was confined within reasonable bounds, and both discussion and conclusions arrived at, should prove of benefit both to the Profession and to the public.

The questions discussed relating more strictly to the interests of the Profession alone, namely, the paper of Mr. W. R. Lascelles, of Christchurch, referring to the serious inroads made on the work of the Profession in various quarters, and other remits of great interest to the Profession, were the source of profitable discussion that should ultimately lead to steps being taken by the Profession as a whole to safeguard from intrusion their legitimate sphere of work and to assist the Profession to maintain the honourable position in the public estimation which it has held in times past.

The value of the Conference as a means of binding the Profession together, extending the influence of its members and increasing its ability to serve and conserve the public weal was generally recognised. Any idea that the Conference would result in the formation of a body subversive of the influence of District Law Societies and the New Zealand Law Society was dissipated when the President, Mr. A. Gray, K.C., announced at the conclusion of the meeting, that the Conference was welcomed by, and taken under the wing of, the New Zealand Law Society, and that this body would make arrangements for the next Conference.

In the result, an Annual Conference is established supplementary to but in harmony with the New Zealand Law Society at which the interests of the Profession and the administration of Justice will be advanced by consideration of matters for which the disciplinary and routine work now carried on by the District Law Societies and the New Zealand Law Society leaves them but little time.

A very gratifying feature of the Conference was the feeling of confidence engendered in members of their ability to continue their Profession in its historic, proud and honourable position, and the knowledge gained in discussion within and without the Conference that members were alive to the necessity of seeing that sufficient energy was devoted to that end.

For ourselves we wish success to future Conferences equal to that attained by the one so successfully launched at Christchurch.

Notes on the Conference.

The social side of the Conference was exceedingly well organised. On the first day the visitors and their wives were tendered a civic reception by the Mayor (Rev. J. K. Archer). In the afternoon the ladies were entertained at an informal afternoon tea at Ballantyne's, about one hundred and fifty being present. The guests were received by Mesdames W. J. Hunter and Maurice Gresson. In the evening a very bright reception and dance was held at the Winter Garden, the Mayor of Christchurch, Mrs. Archer, and Sir Walter and Lady Stringer were present.

On the second day the ladies were taken for a motor drive in the morning, through some of the most pleasant parts of the city, and later were driven to the Winter Garden for luncheon. At night there was a dinner at the Winter Garden and the Social Committee had arranged a Bridge Party at Jellicoe Hall.

On the third day, the afternoon was given up to games, tennis matches being held at Wilding Park, and golf matches at Harewood Links.

The Conference was the means of profitable and useful discussion of matters of great importance to all members of the Profession, and it enabled practitioners from all parts of the country to meet, know one another, and exchange and readjust their views. The social functions, particularly the reception and dance, and the dinner could not have been improved either in plan or execution, and will not readily be forgotten by those who were present. The standard of the speeches at the dinner was very high indeed, and the prohibition against reporting made everyone regret that there would be no permanent record, for example, of the whimsical speech of Mr. J. B. Callan. It is only fitting that due acknowledgement should be made to those who made the Conference the success it was. The heaviest burden was carried by Mr. W. J. Hunter, the Secretary, who was most competently supported by Mr. W. H. Hamilton, the Chairman of the Conference Committee, and Mr. K. Neave, the President of the Canterbury Law Society. All Members of the Committee did most excellent work, but special reference should be made to Mr. W. R. Lascelles and Mr. R. H. Livingstone, who were entrusted with the arrangements for the reception and dinner, and these gentlemen are entitled to the credit for the success of both functions.

Court of Appeal.

Skerrett, C.J.
Sim, J.
Reed, J.
Adams, J.

March 27; April 2, 1928.
Wellington.

BRECHIN v. DRAPERY AND GENERAL IMPORTING CO. OF N.Z. LTD.

Landlord and Tenant—Lease—Term of Fifty-six Years—Reassessment of Rent Every Fourteen Years—Rental—"Fair and Reasonable Rent Calculated on Basis of Unimproved Value"—No Compensation for Improvements—Basis Upon Which Rent to be Assessed.—Arbitration—Special Case Stated by Parties Under Section 20 of Arbitration Act 1908—Award Adopting Opinion of Supreme Court in Special Case—Error of Law on Face of Award—Award Set Aside.

Motion on behalf of the Drapery and General Importing Company of New Zealand Limited (generally known as the "D.I.C.") removed from Supreme Court to Court of Appeal, to set aside and refer back to the umpire his award upon a reference to arbitration upon the ground that an error of law appeared upon its face.

By lease dated 3rd March, 1913, J. D. Brechin and J. E. Brechin leased to George and Kersley, Limited, some lands in Wanganui, for the term of 56 years from and inclusive of 1st February, 1913, at the yearly rental during the first 14 years of the term of £300; and at a yearly rental during the second and subsequent periods of 14 years of the term as should be determined by two arbitrators or their umpire "*as the fair and reasonable rent of the said premises calculated on the basis of the unimproved values of the said lands*" to be determined in manner as thereafter provided. The lease contained a proviso that the rent payable by the lessee for the second and for every successive period of fourteen years for the term thereby created should (subject to the limitation thereinafter mentioned) be determined by two arbitrators one to be appointed by the lessors and one by the lessee or their umpire pursuant to and so as with regard to the mode and consequences thereof to comply with the provisions of the Arbitration Act 1908; and such reference should be entered upon and the rental determined one calendar month before the expiration of such period of fourteen years. It was further agreed and declared that the rental for the second period of fourteen years should not be less than £350 per annum; that the rental of the third period of fourteen years should not be less than that paid for the immediately preceding period; that the rental for the fourth period of fourteen years should not be less than that paid for the immediately preceding period. The lease was a building lease and it was contemplated that the lessee would build upon the land. No provision was contained in the lease for payment of compensation to the lessee for all or any part of the value of the buildings and improvements existing on the land at the time of the termination of the lease. Before the expiry of the first fourteen years of the lease George and Kersley Limited assigned the lease to the "D.I.C." At the expiry of the first fourteen years the then parties to the lease took proceedings to have determined by two arbitrators, one appointed by the lessors and one by the lessee, the rental to be paid during the ensuing period of fourteen years. The arbitrators duly appointed Mr George W. Currie to be the umpire. During the course of the arbitration, the question arose as to what was the proper method upon which the arbitrators should proceed to assess the rental of the land, and the parties concurred in stating a special case for the opinion of the Supreme Court for the purpose of determining the question. The parties treated the case so stated by them as professedly stated under and pursuant to the provisions of Section 20 of the Arbitration Act 1908, and the learned Judge by agreement of the parties treated the special case as if it were stated by the arbitrators or the umpire under Section 20. The question stated for the opinion of the Court was: What was the proper basis upon which the arbitrators should proceed to ascertain the rentals payable by the lessee to the lessors for the period of fourteen years then commencing? Ostler J. decided that the proper basis was to determine from the evidence the unimproved value of the land as on 1st February, 1927, and upon that value to fix the fair and reasonable rent that should be paid so that the lessors obtained a fair and reasonable rent for the value of their property. Following the opinion of Ostler J., the arbitrators agreed in determining the unimproved value of the land as on 1st February, 1927, at £9,916, but were unable to agree upon fixing upon that value the fair and reasonable rent that should be paid so that the lessors obtained a fair and reasonable return for the value of their property. The dispute was therefore referred to the umpire for determination. In his award the umpire set out in full the written judgment of Ostler J., and made it clear that in arriving at the rent he followed the direction or opinion of the Supreme Court and arrived at such rental on the basis of such direction or opinion; on the unimproved value as found by the arbitrators he fixed £495 per annum as the fair and reasonable rent for the second term of 14 years, and found that the lessors would obtain from that rental a fair and reasonable return for the value of their property.

Myers K.C. and Pope in support of motion.

W. J. Treadwell to oppose.

SKERRETT C.J., delivering the judgment of the Court, said that it was to be observed that Section 20 of the Arbitration Act contemplated that a special case should be stated by the arbitrators or the umpire. In the present proceedings the case was agreed upon by the parties and purported to be stated under Section 20; it was by consent of the parties argued before the Supreme Court and dealt with by it on that basis. It was clear that if the special case had been stated by the arbitrators, or by the umpire, under Section 20, then, as the opinion of the Judge upon it was set out in the award, and the award was expressed to be founded on the opinion of the law taken by the Supreme Court, it was open for the Courts to set aside the award as based upon an error of law apparent on the face of the award, if it should find that the opinion of the Supreme Court was erroneous. That was clearly settled by the judgment of the House of Lords in **British Westinghouse Electric Co. v. Underground Electric Railways Co.** (1912) A.C. 673. The mere circumstance that the opinion of the Supreme Court was obtained upon a special case stated by the parties in lieu of upon a special case stated by the arbitrators or the umpire did not prevent the Court in a proper case from setting aside the award. It was a well-settled principle that if a mistake of law appeared on the face of an award that made the award bad and it could be set aside. All that was necessary to give the Court jurisdiction to set aside the award was that on its face it should appear that the arbitrators had acted upon a mistake of law. How that mistake of law arose appeared unimportant.

As to the main question whether the judgment of Ostler J. stated the true principles for ascertaining the rental under the lease, it was properly admitted that the construction of the language of the lease to determine the principles on which the annual rental should be fixed was a question of law. The learned Judge determined in substance that the lease required that the unimproved value of the land should first be ascertained, and that upon that value a fair rental should be calculated so that the lessors obtained a fair and reasonable return for the value of their property. In other words he determined that the unimproved value of the land should be first ascertained and that the rental should be fixed at such a sum as could be obtained by the investment of that sum if it were in hand for investment. Ostler J. excluded entirely from consideration the duration of the term and the conditions of the tenancy. For example, whether the lease did or did not provide for payment of compensation for the value of the buildings and improvements on the land at the expiry of the term, or whether it contained any onerous conditions on the part of the lessee—those were all matters which according to Ostler J.'s view ought not to be taken into consideration in fixing the annual rental for each term. Ostler J. thought that the decision of the Court of Appeal in the **D.I.C. Ltd. v. Mayor of Wellington,** 31 N.Z.L.R. 598, and of the Supreme Court in **In re Lund's Lease** (1926) N.Z.L.R. 541, were not applicable to the present lease. But the Court thought that the true construction of the language of the lease required that the arbitrators or their umpire must ascertain what a prudent lessee would be willing to pay as ground rent for the land for a term of 14 years without any buildings or improvements on it, and subject to the obligations imposed on the lessee including the obligation of leaving on the land any buildings and improvements erected by the lessee. The words "calculated on the basis of the unimproved value of the land" imported only that the arbitrators in fixing the rent were to fix it as a rental of the land alone and not of the land together with any buildings and improvements which might for the time being be upon the land. Clear words would be required to support the construction that the fair and reasonable rental of the lands should be determined only upon the earning power of the unimproved value of the land without reference to the duration or terms and conditions of the tenancy. Although the language

used was not the same as in the leases dealt with in **In re Lund's Lease** (*cit. sup.*) and in **Hamill v. Wellington Diocesan Board** (1927) G.L.R. 197, the principles on which the annual rental was to be fixed were substantially the same.

The Court approved of those decisions and thought that the duty of the arbitrators or umpire was to ascertain what a prudent lessee would give as a ground rent for a lease of the land for the term of fourteen years without any buildings or improvements thereon and subject to the obligations imposed on the lessee including the obligation of remaining the tenant thereof for two further periods of 14 years and the obligation of leaving on the land any buildings and improvements erected by the lessee.

Award set aside and matter referred back to arbitrators and umpire for reconsideration.

Solicitors for Lessors: **Treadwell, Gordon and Treadwell,** Wanganui.

Solicitors for Lessee: **Marshall, Izard and Barton,** Wanganui.

Full Court.

Skerrett, C.J.
Sim, J.
Reed, J.
MacGregor, J.

March 12, 30, 1928.
Wellington.

IN RE HEYTING.

Solicitor—Application for Admission—Alien—Whether Entitled to be Admitted—Necessity of Taking Oath of Allegiance—Effect of Certificate of Naturalization—Notice of Intention to Apply for Admission Given Before Examination Passed—Notice Insufficient—Law Practitioners Act 1908 and Rules—Promissory Oaths Act 1908, Section 10—British Nationality and Status of Aliens (in New Zealand) Act 1923, Sections 5 and 6.

Motion by one Heyting to be admitted as a Solicitor. The applicant was a Dutch subject and had not been granted, and had not applied for, a certificate of naturalization under the British Nationality and Status of Aliens (in New Zealand) Act 1923. At the time when the applicant gave notice of his intention to apply for admission he had not sat for or passed the necessary examinations; the notice was given in anticipation of his passing the necessary examinations with the intention of thereupon at once applying for admission.

Applicant in person.

Meek and Free for New Zealand Law Society.

SKERRETT, C.J., delivering the judgment of the Court, said, as to the question whether an alien was entitled to be admitted as a solicitor that the main contention urged in support of the application was that there were no words in the Law Practitioners Act which required that an applicant for admission as a solicitor should be a British subject, and that an applicant was therefore entitled, upon complying with the other conditions of eligibility, to be admitted. The Court did not think that it could be doubted that the New Zealand Acts regulating the admission of barristers and solicitors to practise in the Supreme Court must be read with reference to the general principles and practice adopted by the English Courts. So if there existed at common law a disability in an alien to become a solicitor in the English Courts that disability would continue on the constitution of the Colony and on the establishment of its Supreme Court; and all Colonial statutes relating to the admission of barristers and solicitors must be construed with reference to such disability. That indeed was not disputed by the applicant. The first permanent statutory provision enacted in New Zealand providing for the admission of legal practitioners was the Law Practitioners Act 1861, and the law had been consolidated and was now expressed in the Law Practitioners Act 1908 and its amendments. That statute did not, nor did any of the earlier statutes, intend to destroy or remove any common law disability relating to admission as practitioners existing at the date of the constitution of the Colony; it was therefore necessary to inquire whether at common law an alien was under a disability to be admitted as a solicitor in England. It appeared clear that such a disability was recognised in England by long continued usage. To paraphrase the language of Swinfen Eady, L.J., in **Bebb v. Law Society** (1914) 1 Ch. 286, there was in Lord Coke's time, and for some 300 years afterwards, no instance of an alien being admitted as a solicitor in an English Court. The question there debated was whether a **woman** was entitled to be admitted as a solicitor. The learned Lord Justices relied upon a statement of Lord Coke in Co. Litt 128 (a) that women could not be attorneys. In the same passage Lord Coke declared that no alien could be an attorney. The quotation so far as material read: "Fems ne poient estre attorneyes . . . . ne nul que n'est a le foy le roy. . . . " It followed from the decision in that case that there was and always had been a disability on the part of aliens to be admitted as attorneys, just as a similar disability existed in the case of women. The same view of the common law was taken in **26 Halsbury's Laws of England,** 710, and in **3 Stephen's Commentaries,** 16th Edn. 285.

There were other reasons which indicated that the statute contemplated that a solicitor must be a British subject. By Section 18 of the Law Practitioners Act every person before he was admitted and enrolled as a solicitor was required to take the oath of allegiance. It was quite clear that that requirement involved the assumption that the applicant must be a British subject. The oath of allegiance contemplated an oath of allegiance to the King as Sovereign of the whole Empire—as one Empire. It could therefore in ordinary circumstances be taken only by a British subject and connoted that an applicant for admission must be a subject of the King. His Honour referred to **Rex v. Francis Markwald** (1918) 1 K.B. 624, and **Markwald v. Attorney-General** (1920) 1 Ch. 348, 371. It was clear that the oath required by the Law Practitioners Act was a general oath, as general as its form. Such an oath could only be modified under the authority of some Royal request, to be found in the present day usually in a statute. In New Zealand that authority was found in the before-mentioned Act of 1923. By that Act authority was given by a certain procedure and under defined conditions to the Minister of Internal Affairs to grant a certificate of naturalisation to an alien. Under Section 5 (3) it was provided that a certificate of naturalisation should not be issued to the applicant or have any effect until the Minister was satisfied that the oath of allegiance in the form set out in the second schedule to the Act had been taken by the applicant before a Magistrate or a Justice of the Peace. The effect of letters of naturalisation when issued was, by Section 6, to declare that the person to whom a certificate was granted should, subject to the provisions of the Act, be entitled in New Zealand, to all political and other rights, powers and privileges, and be subject to all obligations, duties and liabilities to which a natural born British subject was entitled or subject and should have in New Zealand to all intents and purposes the status of a natural born British subject. The result therefore was that upon being naturalised in New Zealand the present applicant would become entitled to take the oath of allegiance but that oath would have the limited implication pointed out in **Markwald's case** and the certificate of naturalisation would have the same limited effect as was mentioned in that case. It was clear that Section 10 of the Promissory Oaths Act 1908 did not, as contended, absolve the applicant from taking the oath of allegiance as a condition to the admission as a solicitor. It need only be said that that Act and the Law Practitioners Act 1908 were both re-enacted in the year 1908; and effect must therefore be given to the requirements of the latter Act.

Apart from the inference to be drawn from the requirement that the applicant should take the oath of allegiance, provisions were contained in the Act for the admission, under certain conditions, of persons admitted as solicitors in any superior or Supreme Court in any part of the British Dominions; and certain Degrees of any University or other body in any part of the British Dominions having power by law to grant such Degrees, were also recognised to the extent mentioned in the statute. There were no such provisions for the recognition of admitted practitioners in foreign Courts; and no recognition of the Degrees of Universities or scholastic institutions outsied the Empire. Furthermore, the selection of persons to be appointed as Judges was confined to barristers and solicitors, of not less than seven years' standing of the Supreme Court, or to barristers or advocates of not less standing in the United Kingdom. For those reasons the applicant was not entitled to be admitted as a solicitor of the Court without acquiring the status in New Zealand of a natural born British subject.

But further Rule XVIII (4) of the Rules made under the Law Practitioners Acts on 23rd April, 1926, provided that every person applying for admission as a barrister or solicitor should, not less than two months before the date on which he intended to apply for admission, give to the Registrar of the Supreme Court at the place at which he intended to apply for admission, a written notice in duplicate, stating the qualifications in respect of which such application was intended to be

made. The Court did not think that the applicant's notice complied with the Rules. In order to do so it should state the qualifications for admission actually possessed by the applicant at the time of giving the notice so that his alleged qualifications if necessary might be inquired into, otherwise the requirement of notice was futile. *Non constat* that the applicant might not have passed his examinations, and it was suggested that the notice might be given at any time (no matter how long) before the applicant acquired the necessary qualifications for admission. That was the logical result of the applicant's contention and could not be sustained. It was as well to add that no person under 21 years of age could properly give the notice until he had attained that age.

Motion dismissed.

Solicitors for Applicant: **Buddle, Anderson, Kirkcaldie and Parry,** Wellington.

Solicitors for N.Z. Law Society: **Meek, Kirk, Harding, Phillips and Free,** Wellington.

Supreme Court.

Skerrett, C.J. March 9, 22, 1928.
Wanganui.

ENDERBY v. SCOTT AND WANGANUI CORPORATION.

Practice—Joinder of Defendants—Action for Damages Arising out of Collision—Collision Alleged to be Due Either to Negligent Driving of one Defendant or to Negligent Refilling of Street by a Local Authority the Other Defendant—Separate Allegation of Joint Negligence of Defendants—Defendants Properly Joined—Separate Trials Not Ordered.

In an action for damages against one Scott, and the Wanganui Corporation, the plaintiff alleged that the defendant Scott while driving a motor car collided with a motor cycle ridden by the plaintiff. It was alleged that the defendant Corporation had previously dug up a portion of the street in which the collision occurred for the purpose of laying a pipe line, and had refilled such portion of the street in such a manner that it was below the level of the rest of the street. The statement of claim alleged the collision to have been due (a) to the negligent driving of the defendant Scott; (b) to the negligence of the defendant Corporation in failing properly to refill the portion of the street referred to above whereby the car of the defendant Scott was caused to skid and, getting out of control, to collide with and injure the plaintiff; (c) to the joint negligence of the defendant Scott and the defendant Corporation in the respective matters before mentioned. The defendant Corporation took out a summons raising the question whether or not the defendants had been properly joined.

Barton for plaintiff.

W. J. Treadwell for defendant Corporation.

Brodie for defendant Scott.

SKERRETT, C.J., said that it was quite clear that the above-mentioned allegations (a) and (b) of the statement of claim were separate and distinct torts against each of the defendants, and that allegation (c) was intended to charge a joint negligence of Scott and the Wanganui Corporation.

Leaving out of consideration for the moment the allegation of joint negligence, in England, before October, 1896, the causes of action, being in the main separate and distinct, could not have been joined in one action against the defendants. The view taken prior to that time of Order XVI Rule (1) was that the Order did not relate to the joinder of different causes of action, but only to the joinder of parties in respect of the same cause of action. Although Rule (4) of Order XVI was not amended it was clear that since the alteration of Rule (1) it had been held that the language of the Rule did not now deal solely with the joinder of parties, but dealt also with the joinder of causes of action. His Honour referred to **Compania Sansinena v. Houlder Bros.** (1910) 2 K.B. 354, and **Payne v. British Time Recorder Co.** (1921) 2 K.B. 1. The circumstance therefore that in the present action there were joined torts which were technically separate and distinct by no means concluded the question as to the propriety of the joinder of the defendants. Separate causes of action, both in contract and in tort, might be joined against several defendants if the right to relief arose out of the same transaction or event, or series of events.

The question then arose whether the causes of action were so related to one another as to justify such joinder. Not much attention had been directed in the argument before His Honour to the question whether the allegation of the joint negligence was a possible cause of action. It might be that the question could not be determined until the hearing of the action and until all the facts were ascertained. While the allegation remained as a cause of action the plaintiff was entitled to have it disposed of in the one action. See **Barnao v. Garguilo,** 31 N.Z. L.R. 1078. Quite apart from the allegation of joint negligence the position remained that the collision complained of had been caused as alleged either by the negligent driving of Scott or by the negligent condition of the road, without negligence on Scott's part. Those were, in His Honour's opinion, the very kinds of questions which the rules were designed to make triable in a single action. His Honour had considered the question whether he should order separate trials of the action against Scott and against the defendant Corporation, but had come to the conclusion that he ought not to do so. In any event it was clear that the allegation of joint negligence would prevent the making of such an order.

Solicitors for plaintiff: **Armstrong and Barton,** Wanganui.

Solicitors for defendant Corporation: **Treadwell, Gordon and Treadwell,** Wanganui.

Solicitor for defendant Scott: **A. D. Brodie,** Wanganui.

Skerrett C.J. March 8, 22, 1928.
Wanganui.

LOMAX v. SAMPSON.

Stock Act 1908, Section 59—Removal of Stock from Land Without Consent of Occupier—Negligent Removal—Mens Rea—Whether Mens Rea Necessary Ingredient of Offence.

Appeal from decision of Stipendiary Magistrate acquitting respondent of an offence under Section 59 of the Stock Act 1908. On 12th October, 1927, one Davey obtained the appellant's permission to graze a blue roan cow and a Hereford cow in a paddock of the appellant's for the night. The respondent was instructed on behalf of Davey to remove the blue roan cow and the Hereford from the paddock in the early morning and to drive them to the Wanganui Abattoirs to be slaughtered. The respondent went to the paddock at 5.30 a.m. on the morning of the 13th October, and found there only a blue roan cow and a Holstein, such Holstein being in fact the property of the appellant; the respondent drove such cows to the abattoirs, and they were slaughtered before 8 a.m. The Magistrate held *mens rea* to be an essential ingredient of an offence under Section 59, and acquitted the respondent because he was not satisfied that the respondent knew the Holstein cow to be the property of the appellant.

C. P. Brown, for appellant.

W. J. Treadwell for respondent.

SKERRETT, C.J., said that question of *mens rea* being an essential ingredient of the offence did not really arise upon the facts of the present case. Clearly the respondent wilfully and intending so to do removed the Holstein cow from the land in the occupation of the informant without his consent. It was assumed that he had authority from the informant to remove a blue roan cow and a Hereford cow from such paddock. As a matter of fact he did not find a Hereford cow there and so removed a blue roan cow and a Holstein cow. It was obvious that the plaintiff could readily have distinguished a Holstein from a Hereford cow. He knew he had no authority to remove the Holstein cow and yet in excess of his authority he removed that animal. It was no answer to say that he removed the Holstein cow by neglect or inadvertence. Even if he did so the doctrine of *mens rea* would afford him no excuse. *Mens rea* was often established by proof of negligence.

His Honour was, however, of opinion that *mens rea* was not a necessary ingredient of the offence created by Section 59. The statute was in a sense one regulating the management of live stock and the offence, though in form criminal, was really in support of a civil right, namely that of trespass. It was intended that stock in a paddock in a person's occupation should not be removed from that paddock without the consent of the occupier

thereof. That consent the person alleged to have removed the animal must obtain at his peril. It appeared to His Honour that the case fell within the class of cases of which **Morden v. Porter,** 7 C.B.N.S. 641; **Lee v. Simpson,** 3 C.B. 871, and **Hargreaves v. Diddams,** L.R. 10 Q.B. 582, were illustrations. It would therefore be no defence for the respondent to show that he had a genuine belief that he had the appellant's permission to remove the Holstein cow from the paddock. The ownership of the Holstein cow was of course quite irrelevant to the offence charged. The question was whether the respondent possessed the appellant's authority to remove that animal. In His Honour's opinion the defendant ought to have been convicted; the matter must be referred to the Magistrate to deal with the information on the basis of His Honour's judgment.

Appeal allowed.

Solicitors for appellant: **C. P. and C. S. Brown,** Wanganui.

Solicitors for respondent: **Treadwell, Gordon and Treadwell,** Wanganui.

Sim, J. February 29; March 17, 1928.
Invercargill.

IN RE MACRAE.

Bankruptcy—Fraudulent Preference—Security Given to Creditor Under bona fide Pressure—Not Spontaneous Act of Debtor—No Substantial and Dominant View to Give Creditor a Preference Although Creditor in Fact Preferred—Giving of Security Not Fraudulent Preference—Bankruptcy Act 1908, Section 82.

In 1927 Macrae was carrying on business as a storekeeper at Edendale. He owed J. M. Brown Limited £509 for goods supplied. On 2nd August, 1927, he gave a mortgage to that company over the leasehold property on which he was carrying on his business to secure the payment on demand of the sum of £509 and any further advances. On 31st August, Macrae sold his business to one Irvine. The price paid for the leasehold property was £400, and the stock-in-trade was taken over at a valuation. The sale was arranged by Mr. Davis, Manager of Royds Brothers and Kirk Limited, one of Macrae's creditors. J. M. Brown Limited declined to discharge the mortgage over the leasehold property unless the amount owing thereunder was paid in full, and in order to complete the purchase Mr. Davis, with the consent of Macrae, paid the sum of £512 7s. 0d. to J. M. Brown Limited and obtained a discharge of the mortgage. Macrae filed his petition in bankruptcy on 5th of October, 1927. The Official Assignee applied for an order declaring that the mortgage given by Macrae to J. M. Brown Limited was null and void as being a fraudulent preference. The bankrupt was not called as a witness; Mr. A. H. S. Brown, managing director of J. M. Brown Ltd. was the only witness who gave evidence as to the circumstances in which the mortgage was given. The following passage from his evidence was quoted by Sim, J., in his judgment: "In April, 1927, Macrae owed "my firm over £400. I wrote Macrae several times to reduce "this amount and also telephoned him. He came in and "saw me and told me he had difficulty in getting in his book "debts. I arranged with him to pay us a substantial cheque "on account and to give us p/ns spread over a period suitable "to him for the balance. In May last he gave us £150 and "p/ns spread over four months. He also gave us a written "statement which I produce, which is dated the 30th May. "It shows a surplus. When the p/ns fell due the first one "was dishonoured, and Macrae told me that if I gave him a "little time it would be met, and that he had some bills falling "due and when they were met he would meet ours. The "second p/n fell due in the meantime and was dishonoured. "I got him on the telephone and told him he must meet the "p/ns. He did not come in and I sent him a letter advising "him I would go out, and this I did about the 21st July. I "told him that the matter had gone far enough and I would "have to take proceedings against him if the two p/ns were not "met. He asked me not to do this, and that they would have "been met if the bills due to him had been met. He said he "was leaving that morning for Invercargill to see Watson and "Haggitt with the idea of raising some money on his property. "I asked to see the deeds and he gave them to me and I examined them and asked him if he would agree to give us the "security. The deed was a lease from the Crown. He said "he was quite willing to do this and I said that any further "dealings with us would have to be paid monthly. He agreed "to this and I got Mr. Tait to prepare the security . . . Macrae "always maintained that he was quite solvent, and given time "he could meet them in full. About the time I got the p/ns "I made some enquiries as to his financial position. I saw "Mr. Hyndman and asked him how Macrae was getting on "with them. Hyndman said that that was an account that he "did not worry about."

H. J. Macalister for Official Assignee.
Tait for J. M. Brown Ltd.

SIM, J., said that it was clear that when the mortgage was given Macrae was unable to pay his debts as they became due from his own money, but, in order to succeed on his motion, the Official Assignee must prove more than that. In order to establish a fraudulent preference it must be proved that the debtor's substantial and dominant view was to give J. M. Brown Limited a preference over his other creditors: **Ex parte Hill,** 23 Ch. D. 695; **In re Reimer,** 15 N.Z.L.R. 198; **Sharp v. Jackson** (1899) A.C. 419. It was not sufficient that the creditor was in fact preferred: **Ex parte Taylor,** 18 Q.B.D. 295, although in some circumstances that fact might establish a *prima facie* case of fraudulent preference: **In re Cohen** (1924) 2 Ch. 515. In order to make the giving of the mortgage a fraudulent preference it must have been the spontaneous act of the debtor: **2 Halsbury,** 282: **Ex parte Tempest,** L.R. 6 Ch. App. 70, 74. That the transaction was not the spontaneous act of the debtor could best be established by proving that it was the result of pressure brought to bear on the debtor by the creditor: **2 Halsbury,** 283. In the present case the evidence of Mr. Brown established that the proposal to give the security originated with the creditor and not with the debtor, and that the mortgage was given as the result of the pressure which for some time the creditor had brought to bear on the debtor. There must be real *bona fide* pressure to save the act from being spontaneous: **Ex parte Hall,** 19 Ch. D. 580, but the case of **Thomson v. Freeman,** 1 T.R. 155, which was referred to with approval by Lord Halsbury in his judgment in **Sharp v. Jackson** (1899) A.C. 419, 424 showed what slight pressure might be sufficient for the purpose. There was real *bona fide* pressure in the present case, and the result was that the motion must be dismissed. It was to be observed that the Company, if necessary, would have been entitled to rely on the provisions of Section 82 of the Bankruptcy Act 1908, as protecting the transaction: **Butcher v. Stead,** L.R. 7 H.L. 839. In dismissing the motion His Honour would not allow the Company any costs. The property mortgaged to the Company realised only £400, but, notwithstanding that, the Company insisted on payment of its debt in full viz.: £512 7s. 0d., before it would discharge the mortgage. That conduct savoured rather of blackmail, and His Honour would treat it as a ground for dismissing the motion without costs.

Motion dismissed.

Solicitors for the Official Assignee: **Macalister Bros.,** Invercargill.

Solicitors for J. M. Brown Ltd.: **W. G. and J. Tait,** Invercargill.

An Attempt to Register under the Land Transfer System a Transfer Creating an Equity of Redemption.

A case of interest to conveyancers has just recently come before the Victorian Courts, *sub. nom.* **Putz v. Registrar of Titles** (1928) V.L.R. 83. In a transfer of land by one Putz, to another, Maddock, the consideration was stated as "the sum of £200 lent to me by John Henry Maddock, which sum is to be repaid within two years from the date hereof, together with interest at the rate of £6 per centum per annum in the meantime." Section 55 of the Transfer of Land Act 1915 (Vic.), provides that the Registrar shall not enter in the register book notice of any trust whether express implied or constructive, and corresponds in effect, therefore, with Section 130 of our own Land Transfer Act. The Registrar of Titles refused to register the transfer, and, on a summons calling upon the Registrar to establish his right to decline to register the transfer, Mann, J., held, upholding the Registrar's refusal, that the statement of the consideration in the transfer was in effect an attempt to register an equity of redemption, and would be a breach of the spirit and of the very words of Section 55.

First Annual Legal Conference.

Held at Christchurch on 11th, 12th and 13th April, 1928.

The Legal Conference held at Christchurch after Easter was by the common voice of all those fortunate enough to have been present, the outstanding event in the history of the Legal Profession in New Zealand during this generation at least. Mr. W. J. Hunter, of Christchurch, first suggested at a meeting of the New Zealand Law Society in Wellington, in 1927, that such a Conference should be held. The proposal received the tepid approval of that meeting chiefly because it did not arouse any dissent or opposition, and after the District Law Societies had been consulted it was decided that, as Christchurch had made the suggestion, Christchurch should carry the proposal through. Mr. Hunter, with great energy and ability and with the assistance of the Council of the Canterbury Law Society, began to make the arrangements. Many Practitioners in Christchurch did not regard the proposal with any great enthusiasm. How well Mr. Hunter and his co-workers succeeded is now a matter of record.

Chairman of Conference Committee: Mr. W. M. Hamilton; President Canterbury Law Society, Mr. K. Neave; Conference Secretary, Mr. W. J. Hunter; Committee: Messrs. H. C. D. Van Asch, W. R. Lascelles, A. F. Wright, R. H. Livingstone, H. D. Andrews, R. Twyneham, R. A. Cuthbert, M. J. Gresson, C. S. Thomas, E. W. White, W. J. Sim, J. D. Hutchison.

The old Canterbury Provincial Council Chamber, in which the Conference was held is a remarkable building. It is an austere, almost ecclesiastical, structure outside. Its interior, however, while maintaining the Gothic with a beautifully arched roof, nevertheless, is relieved to an unusual extent by elaborate relief on the ceilings and tesselations of the walls.

FIRST DAY

Wednesday, 11th April, 1928.

Conference opened at 10.0 a.m.

The President of the New Zealand Law Society, Mr. Alex. Gray, K.C., occupied the Speaker's Chair, and upon the dais with him were the Rt. Hon. F. J. Rolleston (Attorney-General), and Mr. A. Fair, K.C. (Solicitor-General).

The Presidents of the various District Law Societies were accommodated at the table immediately below the dais, and conspicuous in the body of the Hall were two Wellington lady practitioners: Mrs. Down and Miss Hopkins.

The Conference being opened, the Roll was called. The following attended during the meeting:—

Auckland.

AUCKLAND—
W. D. M. Glaister
J. B. Johnston

RUSSELL—
R. S. Florance

WHANGAREI—
N. E. Crimp

Canterbury.

CHRISTCHURCH—
R. C. Abernethy
H. D. Acland
P. P. J. Amodeo
H. D. Andrews
K. G. Archer
H. C. D. van Asch
J. B. Batchelor
G. A. Bell
E. S. Bowie
A. C. Brassington
M. J. Burns
Henry Cotterill
L. D. Cotterill
A. C. Cottrell
J. R. Cuningham
R. A. Cuthbert
J. Dolph
A. T. Donnelly
J. J. Dougall
H. Edgar
J. A. Flesher
L. W. Gee
J. D. Godfrey
H. S. J. Goodman
T. G. Gowan
N. H. Gravestone
K. M. Gresson
M. J. Gresson
W. M. Hamilton
H. H. Hanna
T. De R. Harman
George Harper
R. N. C. Hill
A. B. Hobbs
W. J. Hunter
J. D. Hutchison
A. R. Jacobson
F. W. Johnston
W. R. Lascelles
R. H. Livingstone
G. G. Lockwood
A. J. Malley
S. E. McCarthy
A. A. McLachlan
H. O. D. Meares
T. Milliken
D. S. Murchison
T. A. Murphy
K. Neave
G. P. Purnell
C. V. Quigley
H. J. Raphael
E. W. Reeves
R. L. Ronaldson
G. S. Salter
F. D. Sargent
W. J. Sim
H. P. Smith
A. S. Taylor
C. S. Thomas
W. S. T. Till
W. F. Tracy
R. Twyneham
G. H. M. Walton
G. T. Weston
E. W. White
W. A. White
F. S. Wilding
A. F. Wright

TIMARU—
M. J. Knubley
A. D. McRae
C. W. Webber

WAIMATE—
S. I. Fitch
A. C. Middleton
T. A. Wilson

Hamilton.

HAMILTON—
H. J. Ferguson
D. Seymour

TAUMARANUI—
D. H. Nicholson

Hawke's Bay.

DANNEVIRKE—
R. N. Blakiston
P. W. Dorrington
E. Gibbard
I. L. Knight

HASTINGS—
E. L. Commin

H. DeDenne
C. Duff
H. Holderness

NAPIER—
H. B. Lusk

WAIPAWA—
C. G. E. Harker

Marlborough.

BLENHEIM—
A. A. McNab
A. E. L. Scantelbury

C. T. Smith

KAIKOURA—
R. Gibson

Nelson.

MOTUEKA—
W. Nicholson

NELSON—
J. Glasgow
M. V. Rout

Otago.

DUNEDIN—
F. B. Adams
E. J. Anderson
E. Aslin
C. B. Barrowclough
F. S. Brent
W. R. Brugh
J. B. Callan
H. L. Cook
E. A. Duncan
G. Galloway
W. G. Hay
A. James
C. J. Payne
D. A. Solomon
A. C. Stephens
W. D. Taylor
A. H. Tonkinson
J. Wilkinson

Southland.

GORE—
A. L. Dolamore
D. L. Poppelwell
INVERCARGILL—
F. G. Hall-Jones
J. G. Imlay
C. S. Longuet
S. M. Macalister
M. H. Mitchel
W. A. Stout

Taranaki.

HAWERA—
B. McCarthy
A. K. North
L. A. Taylor
NEW PLYMOUTH—
A. Anderson
T. P. Anderson
H. R. Billing
C. Hughes
L. M. Moss
R. H. Quilliam
I. W. B. Roy
G. M. Spence
OPUNAKE—
C. O. Edmonds
STRATFORD—
S. Macalister
N. H. Moss
P. Thomson

Wellington.

MARTON—
A. Lyon
PALMERSTON NORTH—
G. I. McGregor
M. H. Oram
WANGANUI—
N. R. Bain
M. C. Barton
V. B. Willis
WELLINGTON—
Hon. F. J. Rolleston (Attorney-General)
A. Fair, K.C. (Solicitor-General)
A. Gray, K.C. (President N.Z. Law Society and Chairman of Conference)
H. H. Cornish
Mrs. Annie H. Down
A. M. Dunkley
L. H. Herd
T. C. A. Hislop
Miss H. Hopkins
H. C. Jenkins
Harold Johnston
E. A. R. Jones
R. Kennedy
W. E. Leicester
P. Levi
W. J. McEldowney
J. J. McGrath
D. G. B. Morison
M. Myers, K.C.
C. W. Nielsen
W. B. Rainey
F. C. Spratt
C. H. Treadwell
C. G. White

Westland.

GREYMOUTH—
G. A. Revell
REEFTON—
L. E. Morgan
I. Patterson

Conference.

Reference was made to the death of Mr. Herbert Webb (Dunedin).

Pleasure was expressed at the presence of Mr. George Harper (Christchurch), and Mr. Clinton Hughes (New Plymouth).

The Chairman then called upon the HON. THE ATTORNEY-GENERAL to address Conference.

I would first like to congratulate the Committee upon the excellence of the arrangements which they have made in respect to this Conference. I think that the Committee will find their reward in the large attendance present here and in the good which will come of the Conference.

I appreciate the honour which has been extended to me in asking me to deliver the inaugural address to this historic meeting of the Profession. This is the first occasion on which so many representative practitioners from different parts of the Dominion have gathered together in Conference to discuss matters of interest to the profession and the public. I recognise that this honour has been extended to me in respect to the official position which I hold rather than to any personal qualification of my own. A personal note which I may be permitted to mention is that the room that I came from to address this Conference this morning was the room occupied by my father, as the last Superintendent of this Province over fifty years ago.

The Attorney-General then proceeded to speak on "The Place of the Lawyer in the Community," and "The Relation of the Lawyer to the State." Mr. Rolleston quoted Mr. Baldwin as saying that to build up a broken world, sacrifice and unselfishness were required. Our profession would be required to contribute to the world much unselfish work.

There was one remit which he regretted to see and that was in respect to the Pensions and Salaries of Judges. There was not much chance of increases being made—a Judge does not accept a position on the Bench from mercenary motives. He is generally in a position to accept the post at the salary offered. He did not think, speaking with some knowledge of the subject, that anyone had refused a Judgeship on account of remuneration only. After all, a Judge held the highest position a man could attain to.

MR. HAROLD JOHNSTON (Wellington) moved: "That a vote of thanks be accorded to the learned Attorney-General for his very instructive and excellent address."

MR. K. NEAVE (Christchurch) seconded. Carried by acclamation.

Time Limit on Speeches.

The CHAIRMAN: The Committee has decided on the following time limit of speeches: Mover, ten minutes; seconder, five minutes; mover in reply, five minutes.

Practical Experience of Legal Work.

REMIT: "That practical experience of legal work on the part of all candidates for admission to the profession be ensured by a return to the system of articles, or by the adoption of some other system having the like purpose and effect."
(WELLINGTON).

In moving the Remit MR. R. KENNEDY (Wellington) said it was in the public interest that a man before commencing legal practice should have experience in transacting legal business. It is important that no men should practice without the qualifications to do so. A certain moral training should be insisted upon, and, further, the practitioner should, before he started on his own, assimilate the traditions of the Profession. It should be a profession of gentlemen. Shabby practices, touting, directly or indirectly, should find no place in the practice of a lawyer.

The Law Practitioners' Act made no provision for serving articles compulsory. In New Zealand for twenty years (1861-1882) articles were compulsory, at a time when a solicitor might have only two articled clerks in his office. The Act was swept away by Sir George Grey, upon grounds that were illusory. In those days the profession was attacked even by some of its own

members on the same grounds as it is attacked to-day. It was defended by such men as Weston and Rolleston. A practical training was of the greatest importance. By so legislating criticism of details could be disarmed, with the result that the work of the public would be done efficiently. If the profession was too timid to attempt anything it would achieve nothing.

MR. H. H. CORNISH (Wellington) seconded.

Discussion ensued. Messrs. C. H. Treadwell (Wellington), Mr. George Harper (Christchurch) Mr. F. C. Spratt (Wellington), and others spoke in support. Mr. White (Christchurch) said he was quite sure that the payment of a premium would not be tolerated.

MR. H. S. HUNT urged that a certificate from an employer that the candidate has been employed would not ensure a proper education in the office of that practitioner. A proper test should be made of a candidate's actual knowledge.

THE CHAIRMAN pointed out there were practical difficulties in the way of securing the purpose of the remit. The new regulations in regard to examinations were framed by a committee of the New Zealand Law Society, after discussion with the Judges. Judges could not compel candidates to be trained in an office.

The Remit was unanimously agreed to.

Conference rose in order to attend the Civic Welcome extended by the Mayor of Christchurch, Rev. J. K. Archer, at the City Council Chambers.

Conference resumed at 2 p.m.

THE CHAIRMAN read a telegram from Mr. D. S. Smith (Wellington) Judge-elect, apologising for absence.

Conference was asked for permission for Mr. Herbert Page, of Butterworth & Co., Publishers of the "New Zealand Law Journal," to be present during Conference proceedings, as he had a proposal to submit regarding the publication of the Statutes.

Permission was granted.

Admission of New Zealand Solicitors in England.

REMIT: "That it is desirable that representation be made, through the New Zealand Government, to the proper authority in England, to procure such a modification of the Order-in-Council, made on the 7th day of March, 1904, under 'The Colonial Solicitors Act, 1900,' as will enable a New Zealand Solicitor to be admitted as a Solicitor in England, after six years' practice on his own account, without Service of Articles, and without three years' service as Law Clerk before admission in New Zealand." (HAWKE'S BAY).

MR. I. L. KNIGHT (Dannevirke) moved the remit, MR. R. N. BLAKISTON (Dannevirke) seconded, and discussion ensued.

Remit unanimously agreed to.

The Present Trend of Legislation.

MR. A. F. WRIGHT (Christchurch) read the following paper on "The Present Trend of Legislation Viewed from a Constitutional Standpoint."

It is not my intention, nor would it be in place to attempt to deal with the Trend of Legislation from what might be called the narrower or political aspect. To attempt to approach the subject from such a standpoint would be to leave the realm of law, which is our peculiar province, and to embark upon considerations of political policy, with which, it may be said, a conference such as this has no immediate concern.

I desire, therefore, to deal with this important matter from a much wider aspect than that affecting the mere political policy of the day. I intend to deal with it from the viewpoint of its effect on the liberty and freedom of every section of the community, irrespective of party or sect, or calling or position in society.

The Rule of Law.

The effect of legislation of the past few years, and the present trend of legislation, upon those principles of law which have been the leading feature of the English Constitution for generations are of profound importance to every section of the community, and are especially worthy of the gravest consideration of a conference such as this. For in this the remotest outpost of the Empire, the preservation of that English Rule of Law upon which our freedom and liberty are said to rest is of no less importance to us in New Zealand (where the English Common Law obtains) than it is to the people in England itself. It is a commonplace to state that those principles of English law have come down to us through the ages: they have arisen out of the ideals and the needs of the Anglo-Saxon character; they are to us as a race among our most priceless possessions; they have placed the English nation as regards personal freedom and legal liberty, above all other civilised nations, and have made it at once the envy and admiration of the rest of the world.

Threatened Inroads into the Rule of Law.

That being so, it is pertinent to inquire if the trend of legislation is making inroads into, or damaging or undermining that rule of law upon which those privileges of freedom and liberty rest, and if so, in what respects are those dangers becoming manifest. The Rule of Law, in the sense in which we are discussing it, has been aptly described by Lord Hewart as "the absence of "arbitrary power on the part of the Government" and "equality before the law."

Rule of Law Endangered in Three Ways.

Eminent Judges and Constitutional writers warn us that this Rule of Law is being endangered, and in three ways, each of which tends to place more and more power in the hands of Ministers and State Departments, and to encourage the growth and power of bureaucracy:

Firstly: By removing more and more matters from the realm of the Courts of Law and placing the determination of such matters in the hands of State servants, vesting such servants with judicial and quasi-judicial functions, and leaving many matters to the discretion of a Minister, State Department, or State Official.

Secondly: By enacting, further, that certain actions and powers of a Minister or State Department or State Official, shall be final and binding, and shall not be questioned in a Court of Law by *certiorari*, *mandamus* prohibition, or otherwise, and

Thirdly (and this is probably the most important method by which the Rule of Law is endangered): By the great and rapid growth during recent years of granting powers under the various Statutes to State Departments to issue Regulations having the force of law, thus bringing into being what is usually referred to under the term of "Government by Order-in-Council."

Bound up with each of the above three headings, particularly under the last, is the great and ever-increasing growth in number and in power of civil servants.

Tribute to New Zealand Civil Servants.

May I say, in order that there may be no misapprehension or misunderstanding as to any remarks upon Government Departments and State Officials I may make later on in this paper, that I, and I think all lawyers—who probably more than any other section of the community come into close personal contact with members of the civil service—have the greatest respect for the personnel of our New Zealand public service, and for the able manner in which it carries out the important functions committed to its care. In my reference—my necessary references—to State Departments, it is well to bear in mind that I am dealing with legal principles, and not with individuals nor with the personnel of our civil service, which compares favourably, probably more than favourably, with the civil service of any other portion of our Empire.

Views of Dicey.

Professor Dicey in "The Law of the Constitution," referring to the Rule of Law, says :—

"In almost every continental community the executive exercises wider discretionary authority than is either legally claimed, or in fact exerted by the Government of England, and a study of European politics now and again reminds English readers that wherever there is discretion, there is room for arbitrariness, and that in a republic no less than under a monarchy discretionary authority on the part of the Government must mean insecurity for legal freedom on the part of its subjects. The absence of arbitrary power on the part of the Crown, of the executive and of every other authority in England, has always seemed a striking feature, we might almost say the essential feature, of the English Constitution."—(Pages 184-185).

Remarks of Cozens-Hardy, M.R.

Signs of the encroachment of the executive through State Departments were manifest in England before the war, and were even then causing concern among Judges and constitutional lawyers. The former Master of the Rolls (Lord Cozens-Hardy) as far back as 1911, said :—

"Time was when the great danger against which the judicature had to guard was the encroachment of the Crown. Happily there was no longer that danger, but there was another danger much more real than that, viz., the encroachment of the executive. In recent years it has been the habit of Parliament to delegate very great powers to Government Departments. The real legislation was not to be found in the Statute Book alone. They found certain rules and orders by some Government Departments made under the authority of the Statute itself. He was one of those who regarded that as a very bad system, and one attended by very great danger, for administrative action generally meant something done by a man whose name they did not know, sitting at a desk in a Government office, very apt to be a despot if free from the interference and control of Courts of Justice."—("London Times," May 4th, 1911, p. 10.).

Rule of Law Threatened Before The War.

The danger by which the maintenance of the Rule of Law was threatened before the War, as emphasised by Lord Hewart, Lord Cozens-Hardy, Professor Dicey, and others, was intensified a hundredfold by the outbreak of the War, and by the extension of the principle of Government by Order-in-Council. Government by Regulation and by Order-in-Council was found during the War to be necessary in numberless cases which arose from day to day, and which demanded instant and immediate action, and the maxim of "*salus populi suprema est lex*" applied. To quote Lord Justice Scrutton, in Ronnfeldt v. Phillips (1918) 35 T.L.R. p. 47 : "War cannot be carried on according to the principles of the Magna Carta."

But even during that period of great national crises there were not wanting warning notes against the encroachment of the executive and the extension of bureaucratic rule.

Warning of Lord Shaw of Dunfermline.

Lord Shaw of Dunfermline, in the House of Lords, in his judgment in Rex v. Halliday (1917) A.C. at p. 287, sounded this note of warning :—

"The form in modern times of using the Privy Council as the executive channel for statutory power is measured and must be measured strictly by the ambit of the legislative pronouncement. . . . In so far as the mandate has been exceeded, there lurk the elements of a transition to arbitrary Government, and therein of grave constitutional and public danger. The increasing crush of legislative efforts and the convenience to the executive of a refuge to the device of Orders-in-Council, would increase that danger tenfold were the judiciary to approach any such action of the Government in a spirit of compliance rather than that of independent scrutiny. That way also would lie public unrest and public peril. On all this there is no disputing."

That a Law Lord of the eminence of Lord Shaw considered it his duty to utter such a profound warning even during the height of the War, should surely give us pause when we see greater and ever-increasing powers handed over to the discretion of a Minister or a State Department. Would there not be danger of Ministers approaching questions submitted to them in a "spirit of compliance rather than of independent scrutiny," to quote again the expression of Lord Shaw ?

The Granting of Judicial Authority to Officials.

It is well to remind ourselves that recent Acts in England—and also in New Zealand—have given judicial and quasi-judicial authority to officials who, (to quote Professor Dicey) stand more or less "in connection with and therefore may be influenced by the Government of the day, and hence have in some cases excluded and in other cases indirectly diminished the authority of the Law Courts."—Dicey on the Constitution.

The Defence of the Realm Act.

The War has been over between nine and ten years, but we still find both in England and New Zealand that a considerable portion of legislation, both statutory and delegated, passed under the stress of war conditions, is unrepealed, and is still the law of the land. The tenacity of the State Official for retaining powers granted to him, either by Statute or Regulation, long after they have outlived their usefulness is proverbial. The retention in England of the Defence of the Realm Act and the Regulations thereunder has been the subject of comment in the leading press and reviews of England. This retention has been condemned by politicians irrespective of party. It has been the subject of ridicule and satire by "Punch" and other national institutions—if you will permit the phrase—but still Parliament appears impotent in the "crush of legislative effort" to procure its repeal.

Continuance of War Regulations.

It was in England, in 1923, according to the authority of the Law Journal (53 L.J., p. 442)—and possibly still is—an offence for which a person could be tried by Court Martial, if finding a homing pigeon incapable of flight one failed to hand it over to a military post or police constable, with precise information as to where exactly the pigeon had been found. We are inclined to smile at the absurdity of the retention of such a provision—a striking instance, it is true, to what extent the tenacity of a State Official will extend—but are we in New Zealand without instances of the retention of our Orders-in-Council long after they have outlived their usefulness ? Let anyone read the twenty closely-written pages of War Regulations to the Schedule

of the War Regulations Act 1920, and point to one single regulation which it is necessary to retain. Protest after protest has been made, by lawyers, by Chambers of Commerce, by financial institutions, for their repeal—but without result. In certain instances they work distinct hardship to returned soldiers by the difficulty in which their retention places them in financing their business projects. Not only war regulations, but many statutory enactments passed under war conditions, might well receive careful consideration as to whether they should still continue to find a place upon our Statute Book.

Orders-in-Council on the Increase.

The mischievous propensity for government by Order-in-Council instead of being discontinued or curtailed since the War, seems to have been exaggerated and intensified, and parliaments are more and more in their desire for passing legislation upon a multiplicity of subjects, passing short Acts affirming a principle and delegating to State Departments the task of working out the details—often most important details involving both fine and imprisonment.

Comment on the Danger by Judges and Others.

The three dangers to the continuance of the Rule of Law to which I referred earlier in this paper have recently been the subject of comment in England by eminent Judges, constitutional writers, by the press and by legal reviews, who all regard the dangers as serious and far-reaching in their results.

Activities of State Greater in New Zealand than in England.

I would ask you to bear in mind that the evils complained of in England also exist in New Zealand, and possibly to a much greater degree owing to the multiplicity of matters dealt with by the State in New Zealand as compared with those the subject of State interference in the Older Land. May I be permitted to make one or two quotations in support of what I have said ?

Constitutional Balance.

It is the opinion of many that there is " a real danger lest the ' constitutional balance ' between the executive and judicial functions of the State may be seriously upset by the growing tendency of the legislature to transfer large judicial and even law-making powers to the various Government Departments. . . . It is due in a large measure to the extension of Government interference and control in matters formerly regarded as outside its province. . . . In some matters Ministers have and exercise powers which would have astounded the politicians and constitutional lawyers of the last century."—Law Journal (11th June, 1927) Vol. 63, p. 547.

The Advance of Bureaucracy.

" As long as the Government of this country acts upon principles inimical to the functions of the judiciary and the legislature, protests such as those recently uttered by the L.C.J. Hewart (to some of which I will refer later) will be necessary, but unless backed up by the public—Lord Hewart suggests it is specially a matter for lawyers—even the protest of the most influential Judge may be as a voice crying in the wilderness."—Law Journal (1926) Vol. 62, p. 440.

Dicey on Extension of Powers of Officials.

The late Professor Dicey, author of " Law and the Constitution," " Law and Opinion in England," and many other works of a constitutional nature, says :—

" That the extension given in England of to-day to the duties and authorities of State Officials, or the growth of our bureaucracy, has, as one would naturally expect, produced in the law governing our bureaucrats some of the characteristics which mark the *droit administratif* of France. Our civil servants are not yet beyond the control of the law courts (Professor Dicey was then speaking before the war) ; but in certain instances something like judicial powers have been given to officials closely connected with the Government, and it may not be an exaggeration to say that in some directions the Law of England is being ' officialised,' if the expression may be allowed, by statutes passed under the influence of socialistic ideas."—Dicey on the Constitution. P. xliv.

Sir Lynden Macassey on Executive Encroachment.

This solemn warning was recently uttered by Sir Lyndon Macassey, K.C., LL.D., Editor of " The Journal of Comparative Legislation," and a distinguished constitutional jurist :—

" Englishmen are familiar with the famous struggles by which they won their constitutional rights and liberties and are sometimes inclined to think that only in declared and open struggle can they lose them. This belief is dangerous. It is not in such a way that they are likely to be deprived of them. It will be by a gradual and insidious process of attrition. The great encroacher is the Executive. With ceaseless vigilance its attitude and actions must be watched if our heritage of freedom and security is to be maintained intact. The Executive is eager in its appetite for power. There is no more interesting, nor indeed more necessary, study than to trace out how in recent years, the Executive has secured more and more law-making power ; how it is emancipating itself from the control of Parliament and the Courts of Law ; how it is steadily creating a *droit administratif* ; how it has established itself and its officials in a position of legal immunity for which there is little justification in a democratic community."—National Review, April, 1926, p. 14.

Parliamentary Supervision.

" In the case of Orders-in-Council, there is no effective possibility of Parliamentary supervision over the Executive. In a case before the Court of Appeal this year (the writer is speaking of 1923) two Orders-in-Council were issued during the progress of a trial, and in argument before the Lord Justices were cited by the Crown in support of its case."—Orders-in-Council, 53 L.J. p. 442.

It is hard to conceive a greater disregard of the Rule of Law, or a more pronounced example of the lengths to which bureaucracy is prepared to go to ensure the carrying out of its wishes and powers.

Development of Administrative Law in England.

The late Professor Dicey, commenting upon the Development of Administrative Law in England, following upon the decision of the House of Lords in the cases of The Board of Education v. Rice (1911) A.C., p. 179, and The Local Government Board v. Arlidge (1915) A.C. 120, made this important and arresting statement :—

" The objection to bestowing upon the Government of the day or upon servants of the Crown who come within the control or the influence of Cabinet, functions which in their nature belong to the Law Courts, is obvious. *Such transference of authority saps the foundation of that rule of law which has been for generations a leading feature of the English Constitution.*"—XXXI Law Quarterly Review (1915), p. 150.

Judges' Warnings.

" It may be assumed that the frequent protests of the L.C. Justice—as in a recent case where he pointed out that a Minister could at once nullify the effect of a judgment of the High Court by merely issuing an order under the authority conferred upon him by Act of Parliament—are not without foundation, and it is noteworthy that L.J. Eve, the Senior Chancery Judge, and one extremely unlikely to be stirred by groundless

apprehensions has heartily supported the protests uttered from time to time by the L.C. Justice and others, against attempts of the Executive to invade the territory of the magistracy. 'If the administration of justice,' said L.J. Eve, 'was to be continued in this country upon the principle upon which it had been firmly established, and which alone was acceptable to the people, it was of the utmost importance that the line of demarcation between the executive and the magistracy should be studiously and strenuously maintained. . . . Our Courts offered a more satisfactory arena for the assertion of right and the remedy of wrong than any Government Department, however august, and he hoped every effort would be made to control any insidious attempt of the Legislature to curtail the right of every citizen to have recourse to the Courts.' "—Law Journal (June 11th, 1927), Vol. 63, p. 547.

Delegated Legislation—Suggested Safeguards.

The necessity for some delegation of legislative powers is inevitable, but it has assumed unwarrantable pretensions, and the authoritative enumeration by Mr. C. T. Carr, LL.D., in his recent work upon Delegated Legislation, of the safeguards that are required, is of prime importance. "We want," says that learned writer, "five things particularly: (1) Delegation of legislative power only to trustworthy authorities which command the national confidence. (2) Definite delimitation of the boundaries within which the delegated power is to be exercised. (3) Consultation with interests affected before exercising of delegated authority. (4) Publicity. (5) Machinery for revoking or amending legislation under delegated powers."

"The safeguards (says Sir Lyndon Macassey) are worth careful consideration. Every Government Department naturally considers itself entitled to command public confidence: that some do not succeed is notorious. This safeguard, therefore, though in purpose wholly admirable, is in practice difficult to secure. The second safeguard (delimitation) is emphatically necessary, and one to which Parliament pays but scant attention. Almost invariably much greater powers of subordinate legislation are conferred upon Government Departments than the necessities of the case present or prospective demands, merely because: (a) it is easier in drafting to adopt wide general terms, than to select apt particular words and (b) a Government Department naturally presses for the widest possible legislative powers, contending that the question of how far those powers are to be exercised is an administrative matter to be left to its discretion.

System Bad—No Safeguards Against Inherent Objection.

In spite, however, of all safeguards (continues Sir Lyndon Macassey) a growing number of persons like the late Master of Rolls, regard the increasing delegation of legislative power as "a very bad system and one attended by very great danger." The flood of restrictions and regulations with the force of law that overspread the country during the War opened the eyes of the public to the extent to which liberty may be imperilled by such a system. *No safeguard can provide against the chief inherent objection.* Government Bills are forced through Parliament under the pressure of the Government Whips, and there is little time for discussion of their provisions either in the House or in committee. Legislation is passed in the most general terms, and left to some Government Department to apply it under machinery or rules to be made by it. The Cabinet is, therefore, in a position through its member as the head of a Government Department, to embark on a particular policy which has never in any detail been discussed in Parliament, or communicated to the public. If the action of the Department is challenged, the Government can say, as has been done, that the action of the Department is fully within the powers conferred upon it by the Legislature. Not merely in Great Britain *but in the Dominions*, there is a rising feeling of hostility to legislation by Government Departments, except in cases plainly necessary—a sentiment to which undoubtedly some attention is overdue. There are many weighty reasons against making legislation the handmaid of administration instead of mistress.—"Lawmaking by Government Departments," by Sir Lyndon Macassey, in the "Journal of Comparative Legislation and International Law," Vol. 5, Pt. 1, p.p. 77, 78 (Feb., 1923).

Comparison Between Star Chamber and Legislation by Order-in-Council.

In drawing comparison in a recent work between the legislative functions of the Star Chamber at the time of the Stuarts, and the present inordinate legislation by Order-in-Council, His Honour Mr. Justice Parry, made this arresting statement:—

Remarks of Judge Parry.

"The tendency of tired nations to hand over their liberties to officials accountable to no one but themselves, the craze in our country for legislation by Order-in-Council, which, during the War, became a menace to our ancient liberties, the general decay of Parliamentary institutions, and the widespread evidence of unrest, are movements not wholly dissimilar from the social currents that swept over our country at the time of Laud. . . . Every Order-in-Council that gives to unknown officials, power to interfere with the works and doings of the common citizen is inflammable matter in the wrong place. We shall be sinning in the light of history, and running grave risk to the State if we continue to lower the currency of our Acts of Parliament by an undue alloy of Orders-in-Council."—"What the Judge Thought," by His Honour Judge Parry, p. 256-7.

Pickthorne on Extent of Delegated Legislation.

Mr. Kenneth Pickthorne, another Constitutional writer, in a recent work entitled "Some Historical Principles of the Constitution" (at p. 134) made the following statement:—

"How much of our Legislation is of this secondary, or only indirectly Parliamentary kind, is seldom noticed. In the year 1920, for instance, there were ten times as many statutory orders and rules, as statutes, containing together five times as many words as all the Statutes together, and certainly affecting common life not less intimately or directly. Here there is no theoretical, but there is a real practical danger to the twin principles of Parliamentary sovereignty, and the rule of law, that the law should be supreme and should be unchangeable except by Parliament."

Lord Hewart, L.C.J., on Threatened Danger to the Rule of Law.

Lord Hewart, L.C.J., of England, was last year the honoured guest of the American Bar Association, and in an eloquent address referred to one of the mischiefs which in his opinion threatened democratic institutions in England. In the course of such address he said:—

"It is a commonplace to say that the Rule of Law involves two things. One is the absence of arbitrary power on the part of the Government. The other is equality before the law. In other words every man whoever he may be, and whether he

be an official or not, is subject to the ordinary law of the land, administered by the ordinary tribunals. That is our system—the system which we owe to the common law. The other and opposite system, which is familiar on the Continent of Europe, implies and requires what is called *droit administratif*. Pleasantly enough we have not even a name for it. But it is, as you know, that body of rules and regulations which has to do with the position and liabilities of State officials, the rights and liabilities of private individuals in their dealings with officials, as representing the State, and finally the special procedure by which those rights and liabilities are enforced. Under that system the rights of the State are determined by an extraordinary code: the consequential case law is made by Government officials, the Law Courts properly so-called, have no jurisdiction in matters concerning the State; and, on the contrary, questions concerning the State are decided by administrative bodies which have an official character and are composed exclusively of official persons. That is the exact opposite, the negation, the antithesis of the system we proudly call our own. But is it certain," asks Lord Hewart, "that this system of ours—the Rule of Law—equality before the law, and the exclusion of arbitrary power—is quite free from the risk of invasion and diminution? No doubt there is not, and there is not likely to be, any open return to certain notions that were current in the 16th and 17th centuries, from the time of the accession of the Tudors to the time of the expulsion of the Stuarts. But has there not been during recent years, and is there not now, a marked and increasing development of bureaucratic pretensions, the essence and aim of which are to withdraw more and more matters and topics from the jurisdiction of the Courts, and to set them apart for purely official determination?"

Warnings Applicable to New Zealand.

If the solemn warnings and apprehensions of the eminent authorities I have quoted were considered by them to be necessary in regard to the trend of legislation in England, and its effect upon the Constitution, have not these warnings an added significance to us in New Zealand, where the State activities are so pronounced, and where the Government engages in a hundred-and-one matters that are definitely ruled out of the sphere of the State in the older land?

It should be remembered, too, that our State activities are daily becoming not less, but greater. That is patent to all.

The promulgation of legislation by Government Departments, particularly that brought down in the dying hours of the session, when it can receive no proper publicity and no effective Parliamentary criticism, should be discontinued.

It would not be out of place if this Conference were to enter a most emphatic protest against the continuance of this most objectionable practice.

It is unnecessary for me to mention in any detail instances by which discretion is transferred from the Courts to Government Departments. Numbers of such instances will at once spring to the minds of all present—where judicial and quasi-judicial functions have in New Zealand been conferred on State Departments.

Conclusion.

The remedying of the state of things to which I have drawn attention is of the utmost importance, if the Rule of Law to which I have referred is to continue in this country as a safeguard of the liberties and legal freedom of the people.

Lawyers, by reason of their calling, and by the fact that they see these forces at work at their very inception, and are able to judge of far-reaching effects, owe a duty and have a responsibility to the community to help to guard it against such threatened invasion.

The fact that the aggressor may be a powerful Government Department, whose patronage and influence are very great, should not deter lawyers from pointing out and condemning the vicious system of bureaucratic government to which I have called attention. They should remember the traditions of the past, and watch carefully those dangers which threaten our Democratic Constitution—a Constitution which was won by strenuous effort, and which must not be lost as the result of mere inertia.

Lawyers are apt to take too narrow a view of their duty to the community. There is the duty to our clients; but there is also the duty to our country, in a broader sense, to help to guide it amid the pitfalls and dangers of a changing age.

Though details of government may change, those important principles upon which the rights and liberties of the people rest should remain unchallenged and should be earnestly and vigorously defended.

Lord Birkenhead in his masterpiece "Fourteen English Judges," stated:—

> "To Coke is largely due those constitutional principles upon which the Government and the Empire rest. His stand for the independence of Judges and the rule of law made him famous among his contemporaries."
>
> "To-day," says Sir Lyndon Macassey, "the danger is not the claims of the prerogative, but as Lord Cozens-Hardy has said, the encroachment of the Executive. There is growing need of a modern Coke."

It is thought by many that such a leader has arisen in Lord Hewart, L.C.J., from whose utterances I have already quoted. May I conclude by making a further quotation from a speech he made last year, before the American Bar Association:—

> "After all, the price of liberty is unceasing vigilance, and it would indeed be a strange and distasteful paradox if, while we look askance at *droit administratif* under that name, we were to permit these restless pretentions of bureaucracy to establish in our midst a more arbitrary *droit administratif*, unfettered even by the tribunals, such as they are, which form part of the Continental system.
>
> "The name 'self-government' would be a mockery and an irritating mockery, if it should come to mean government by a vast army of anonymous officials, hidden from view, but placed above the law, and administering a topsy-turvy system whereby the servants of the public had made themselves its master."

[NOTE:—I did not wish to burden the above Paper with specific instances of discretionary power granted to Government Departments or to Ministers, nor to deal in detail with regulations so far as New Zealand is concerned, not because there were not numerous instances to which attention could properly be called, but because I recognised I was addressing a conference of lawyers who, it must be presumed, were fully acquainted with many instances that daily arise in their own practices.

A perusal of the Land and Income Tax Act shows many matters left to the discretion of the Commissioner, some of them of a particularly far-reaching nature. See particularly Sections 88 and 98.

The Board of Trade Act 1919, Section 26, gives powers to make regulations of such a wide-sweeping nature that one wonders how such a Statute ever passed the House in the first place, and how it still retains a place. It must be remembered that the Board of Trade is now the Minister of Industries and Commerce, and the Governor-in-Council can, upon his recommendation, make regulations. Section 26 Sub-section (c) empowers regulations to be made for the establishment of "Fixed or maximum or minimum prices or rates for any classes of goods *or services*," etc. Clause (d) provides for regulations to be made for the prohibition regulation or control of differential prices or rates for goods or services *or differential treatment of different persons or classes of persons* in respect of goods or services. "In-

dustry" includes a profession. This would enable regulations to be made not only fixing the fees of lawyers, but also the fees of doctors, nurses, architects, and every other profession or calling, and there would be no appeal. As to the manner in which these regulations—which may involve fines up to £1,000 and imprisonment up to three months—are fortified, see Sections 27 and 28.

The Public Trust Office Amendment Act, 1921-22, is another Act where many powers and discretions are conferred on a Government Department.

As to regulation by Order-in-Council, it may be interesting to point out that since the passing of the Education Act of 1914 (a consolidating measure), a number of regulations have been issued, and there are now in force some 56 sets—some small it is true, but in the main elaborate—of regulations under that Act.

Anyone who has endeavoured to tread the labyrinth of those regulations must admit that a great many of those things could be dealt with by Statute direct. In the multiplicity of these regulations it is difficult to know what the law really is.—A.F.W.]

MR. W. J. HUNTER (Christchurch) in moving a hearty vote of thanks to Mr. Wright for his eloquent and inspiring paper, said that government by regulation is undesirable, and the case put forward by him was unanswerable. The paper should be printed, and he would talk to the leaders and see whether this could be done and the paper circulated. If the Conference was a mere debating place it would be of little use, but he hoped that something practical would be achieved. Mr. Wright drew attention to the passing of legislation in the dying hours of the Session, and Mr. Hunter thought that a resolution against that practice would strengthen the hand of the Attorney-General, who was our very real friend.

MR. W. G. HAY (Dunedin) seconded the motion. Under the Party System Parliament had no time for legislation, or to consider laws. The result was the delegation to executive officers of unrestricted and indefinite power, subject to no court of justice. He urged that the education of lawyers should include a course in constructive jurisprudence, as was required in the United States of America.

MR. E. W. WHITE (Christchurch) said it must be admitted that there must be delegation of powers. Protest should be made against the delegation of jurisdiction. Lord Shaw had pointed out that where jurisdiction was delegated the Courts had no authority over the authorised executives, even though they did not comply with our national ideas of the exercise of the jurisdiction.

MR. D. L. POPPLEWELL (Gore) thought it would be desirable to appoint an executive of the Conference to carry out the work resolved. He advocated the reading of papers on public questions at the quarterly meetings of the District Law Societies to educate the younger members, and stated that the Southland Society had decided to do this. Mr. Popplewell recalled the incident of the Government Statistician writing to the Law Societies asking them to advise on the regulations in regard to the registration of documents. The Societies reported against these regulations, nevertheless they were gazetted. Immediately the protests appeared in the public press, however, they were withdrawn. He felt that much good could be done if the Law Societies were to combine with other bodies and thus give added weight to the expressed opinion of practitioners.

MR. L. A. TAYLOR (Hawera) thought too many matters were being dealt with by legislation which were not submittted to the public of the country. Neither were they referred to the people who were to administer the laws. Never before the Children's Welfare Act was there any outcry against the administration of the Magistracy. The Act was passed without reference to the Magistrates.

The Motor Regulations Act stated that every car owner was entitled to registration, yet the regulations required that the license must be taken out in the district where the car was garaged. That might involve hardship to a commercial man who was usually home only for limited periods. There was no provision in the Act for the appointment of a guardian for infants between the ages of sixteen and twenty-one, in certain circumstances, for the purpose of assenting to their marriage. If this Act had been first referred to the Magistrates the omission would have been pointed out.

MR. F. B. ADAMS (Dunedin) said that the whole subject was one of very great public importance, and he considered that the Conference might be able to record one or two points of view in the form of a resolution. He moved :—

"That this Conference expresses its strong disapproval of the growing practice of legislating by regulation in important matters, and also of the tendency of recent legislation to entrust to officials wide powers not subject to control by the Courts and, in particular, the power of deciding questions affecting private rights, without allowing the constitutional right of appeal to the Courts."

MR. H. D. ANDREWS (Christchurch) seconded Mr. Adam's motion, remarking that, if agreed to, it would bring Mr. Wright's paper to a practical conclusion.

MR. A. FAIR, K.C. (Solicitor-General) was applauded on rising to speak. He said that with the general tenor of Mr. Wright's paper he thought all would agree. As Lord Hewart had emphasised, "The Price of Liberty is Eternal Vigilance." He had followed Mr. Wright's paper closely and noted that practically all the criticism of legislation by Order-in-Council emanated from English judges and English law journals. He knew quite well that in New Zealand there had been some criticism, but he thought that some might be misled to the extent of thinking that the criticisms quoted by Mr. Wright applied to conditions in New Zealand.

MR. FAIR thought if every member of the Assembly considered the question dispassionately he would admit that that criticism, though it may serve as a warning for the future, did not apply in any serious degree to the legislation passed by Order-in-Council in New Zealand. (Cries of dissent).

The main complaint of the articles in English law journals and those made by Lord Hewart was that Orders-in-Council usurp the function of the Law Courts. Apparently Orders-in-Council of that nature had been issued in England, but not one of that kind had been issued in New Zealand during the past five or six years. As to the references by some of the speakers to the powers of the Commissioner of Taxes and of the Commissioner of Stamps, the powers they possessed were not given by Order-in-Council, they were powers especially conferred by Parliament. Referring to the safeguards set out by C. T. Carr, he submitted that in the case of New Zealand Orders-in-Council all those conditions almost invariably had been followed. The Order-in-Council was an extremely useful method of legislation, particularly in matters where expert knowledge was required. He cited certain regulations under

the Shop and Offices Act regarding tailor-made garments, and said that the Labour Department put them first to the ready-made tailors for their opinion, and then to the regular tailors, then brought both together and finally the regulations were issued. It was recognised by leading authorities on legislation that Parliament could not function unless a large portion of its legislative powers was delegated. As to the Motor Bus Regulations, they were issued first to get people interested in them and to discuss them and put the Government in possession of all information possible before legislation was brought down. They came out, and there was a great discussion, but not many objections were raised. Then they were gazetted and there were many objections. The Motor Bus Regulations were put forward to provoke discussion, which it did, and thus put the Government in possession of all the facts. It was an exceptional use of the Order-in-Council, but it worked, and was justified, and he thought, was successful. As to the regulations issued by the Government Statistician, referred to by Mr. Popplewell, the speed with which they were revoked indicated one of the advantages of that kind of legislation. (Laughter). He understood those regulations were issued by mistake—even Government officials made mistakes; but they could correct their mistakes. If it had been in an Act everybody would have had to put up with the mistake for six months. He thought that the last sentence in Mr. Adam's motion was too sweeping. If Conference agreed to it, it would be disapproving of something that, as far as he was aware, had never happened.

MR. W. J. SIM (Christchurch) gave a concrete example from the Highways Act under which the provisions made by the Public Works Act for boroughs to be included in the allocation of the cost of a bridge, or of the maintenance of a road, had been restricted to counties. By an amendment of the Highways Act the Minister if he so chose, could make the section of the Public Works Act apply. It would be seen that in that case it depended on the Minister whether or not a borough should be called upon to contribute.

MR. I. PATTERSON (Reefton) referred to Departmental inroads in connection with both the Coal Mines Act and the legislation affecting gold-mining. The previous provisions giving power of appeal from decisions of Warders or Commissioners to the Supreme Court, had been almost eliminated.

The motion was unanimously agreed to.

Salaries of Judges.

REMIT: "That the present salaries and pensions of the Supreme Court Judges are quite inadequate and require revision."

(WELLINGTON).

MR. H. H. CORNISH (Wellington), in moving the Remit, said he thought as a matter of abstract justice the salaries of the Supreme Court Judges should be increased. The remit was put forward in an obviously disinterested manner as the majority there would never be elevated to the Bench. (Laughter). They were interested, however, as a strong Bench was of great assistance to the Bar. The salary should therefore be such that it would entail no great sacrifice. Sir John Simon had made a fortune at the Bar, and his acceptance of the Chairmanship of the India Commission involved no sacrifice, but that would not apply to a poorer man. He did not agree with the Attorney-General's argument, that individuals should sacrifice themselves in the interests of the public. Judges' salaries were not proportionately large enough when compared with the salaries received by bank managers, and people connected with commercial concerns. He urged that if the Justice Department's accounts respecting civil litigation showed a credit balance, some of the credit balance should be devoted to increasing the salaries of Judges.

MR. R. KENNEDY (Wellington) said that at present there was an agitation to increase the salaries of Judges in England, as it was recognised that £5,000 was inadequate.

MR. M. H. ORAM (Palmerston North) urged that practitioners in the important provincial centres should on proper occasions be raised to the Bench.

THE HON. ATTORNEY-GENERAL, in the course of the discussion, stated that no judge of the Supreme Court received any addition to his salary for serving on a commission.

Further discussion ensued in which Mr. P. Levi (Wellington) and Mr. W. G. Hay (Dunedin) took part.

The Remit was unanimously agreed to.

Vacancy on the Bench.

The Chairman said that the following Remit would be abandoned, an appointment having been made:—

"That it is imperative that the present vacancy on the Bench of the Supreme Court should be filled at once."

(WELLINGTON).

It was accordingly discharged from the Agenda Paper.

Publication of Evidence in Capital Cases in Lower Court and of Divorce Proceedings.

REMIT: "That it is desirable that the law should be amended—

(1) To forbid the publication of evidence in the Lower Court in all capital cases;

(2) To restrict the publication of evidence in divorce cases to the names of the parties, the grounds of the petition and the result." (CANTERBURY).

In moving the Remit MR. M. J. GRESSON (Christchurch) submitted that the publication of evidence in capital cases before the Supreme Court stage was reached, though intended for the protection of the accused, operated to his disadvantage, as it was impossible to expect jurymen not to have been influenced by the case for the prosecution when there was no cross-examination of the witnesses. Few people realised that the Lower Courts were in the interests of the accused. That hearing had, however, been so altered that it had a changed significance and operates to the detriment of the accused. In a recent case the Crown Prosecutor actually opened his case. This was reported in the papers and prejudiced the accused. Jurymen cannot disassociate their minds from what they have read in considering the evidence brought at the trial. He felt that evidence in indictable cases should not be published.

In regard to our Divorce Law: that was a product of the Victorian Era, when divorce was considered to be something to be whispered about. Divorce was the business of the parties. People would not stop committing adultery by the fear of publicity.

MR. R. S. FLORANCE (Russell) seconded.

MR. C. S. THOMAS (Christchurch) strongly objected to the remit and expressed the hope that the Conference would not be led away by the specious arguments of a civil advocate. In those days of modern journalism the real trouble was caused by the newspapers during

the period before the case reached the Police Court. The proposal in the remit would not prevent the newspapers publishing all the tittle-tattle referring to the charge, and it was by that that the harm was done. The publication of the Police Court evidence frequently brought forward important evidence in the accused's favour. As far as reports of divorce proceedings were concerned, he thought that the extent to which the evidence was published should be left to the discretion of the newspapers.

Discussion was interrupted by the adjournment for the day.

SECOND DAY.

Thursday, 12th April, 1928.

On the Conference being resumed at 10.0 a.m., several new delegates registered.

THE CHAIRMAN announced that all reports appearing in the newspapers were censored before publication.

Publication of Evidence.

Discussion was resumed on this Remit.

MR. M. J. GRESSON, mover of the remit, suggested that discussion should be taken first on part 1 of remit (evidence in capital cases in Lower Court).

This was agreed to and the discussion proceeded.

MR. L. M. MOSS (New Plymouth) said that it was preferable, in the interests of the accused, that instead of the case being prejudiced by rumour, the evidence on which the Crown relied should be carefully reported, as, generally, it was, at the hearing of the Lower Court. He cited two cases that had happened in his own experience where, as the result of the publication of the evidence for the prosecution, further evidence was forthcoming that influenced the acquittal of the accused persons. The Conference should not ask for an alteration so drastic. The Press of the Dominion was, upon the whole, of a very high standard, and had not reached such a stage of commercialism as called for the passing of the remit.

MR. F. C. SPRATT (Wellington) remarked that it seemed to him that the temper of mind that would produce such a proposition as was contained in the remit was of the same kind that opposed the granting of the right to parties to civil or criminal cases to give evidence on their own behalf. The speaking of the truth and the publication of facts were not detrimental to the cause of justice.

MR. W. J. HUNTER (Christchurch) said that Conference should be slow to pass any resolution which would reduce the power of the Press to report proceedings in a Court of law. As far as he read the spirit of the Conference, it was that there had been too much legislative interference with the ordinary rights of trial.

MR. M. MYERS, K.C. (Wellington), said he agreed with the views expressed the previous day by Mr. Thomas. It was not the publication of evidence that prejudiced the accused, but the publication of other matter that, in his opinion, was absolutely improper. Accused persons also were prejudiced by the opening speeches in the Lower Court, in some instances by Crown Prosecutors, or police officers. They would be doing a public service if they could induce the Attorney-General to issue a pronouncement that this practice should be abolished. He then moved the following amendment :—

"That the practice that has grown up, in recent years only, of Crown and Police Prosecutors, in certain places, making an opening address in the Lower Court in indictable cases is, in the opinion of this Conference, a wrong one and not in the interests of justice, and that the Attorney-General be respectfully requested to direct the cessation of the practice."

MR. R. KENNEDY (Wellington) seconded the amendment.

MR. M. J. GRESSON asked leave to withdraw part 1 of his remit, and permission was granted.

Mr. Myers's amendment became the matter before Conference.

MR. A. T. DONNELLY (Christchurch) said that he agreed with those who opposed the remit. Persons accused of a spectacular crime—one that carried news value—did not get the same fair trial as the person charged with a minor crime. That result was brought about by the activities of the newspapers. The difficulty which confronted counsel defending an accused person was the difficulty of disassociating rumour and gossip of the street and newspapers from the evidence which was legally admissible against the accused. If the remit were agreed to, he feared that the publication of rumour and gossip would be increased, to the prejudice of the accused, and the real problem was whether it was possible to restrict in any way the activities of the newspapers as far as the general discussion of a spectacular crime was concerned. There was no use taking an impracticable view of these things, and he could not quite see how the operations of the newspapers were to be restricted without interfering with their proper liberty and sphere of action. If carried, the remit would add to the responsibility and difficulties of counsel defending accused. He agreed with the view expressed by Mr. Myers, that the making of opening speeches by the prosecution was very improper. He had not himself done so.

MR. F. B. ADAMS (Dunedin) said he wished to refer to the abuse of the Prosecutor addressing the Lower Court. He did not think it existed in Dunedin, Invercargill, or Christchurch. It seemed to him that Conference might pass a sweeping resolution which may not be desirable.

MR. H. B. LUSK (Napier) said he did not address the Lower Court in Napier.

The motion was agreed to, some dissent being shown, but no division was called for.

MR. K. NEAVE (Christchurch) suggested that there should be no publication of the text of the resolution, so that the Attorney-General's first notification would be from the letter from the Conference.

THE CHAIRMAN put the suggestion to Conference, and it was negatived.

Publication of Evidence in Divorce Proceedings.

Discussion ensued on part 2 of Mr. M. J. Gresson's remit.

MR. W. M. HAMILTON (Christchurch) did not think the meeting should consider deterring divorce or not.

MR. L. H. HERD (Wellington) opposed the restriction of publicity.

MR. M. MYERS, K.C. (Wellington), expressed the opinion that publication of evidence was desirable.

MR. R. KENNEDY (Wellington) opposed the remit because it was unnecessary. He said he would be sorry to see the profession standing against the freedom of the Press.

MRS. A. H. DOWN (Wellington), who was greeted with very hearty applause, said that she agreed with the remarks of previous speakers that the newspapers (with one exception) did not publish a great deal of the details of divorce cases. Her main objection to the publication of evidence in divorce cases was that, out of consideration to the family—the unfortunate family—publication should be forbidden.

MR. A. K. NORTH (Hawera) thought the resolution altogether too drastic. He agreed that the publication of lurid details in certain papers was to be deplored. On the other hand most papers gave reasonable details, and that right should not be interfered with.

MR. T. C. A. HISLOP (Wellington) said that what cut across the social life of the country were the acts which constituted the grounds for divorce and not the publication of the evidence. He was in favour of the liberty of the Press, and he thought that was being attacked by the resolution before Conference.

MR. F. C. SPRATT (Wellington) said he did not suggest that Conference should adopt the English procedure just because it had been adopted in England. He considered it would be well to wait for a year or two to see how it worked out. Conditions in New Zealand differed from those in England.

MR. W. E. LEICESTER (Wellington) said the only branch of divorce which need be considered in the discussion was that which dealt with adultery. Fear of publicity of evidence of adultery was a deterrent. Were evidence suppressed in adultery, it would lead to collusive divorce. There had been an increase in divorce cases in England since the coming into effect of the law prohibiting publication of evidence. In some instances British newspapers were becoming concerned, and were asking whether some of the petitions granted would have been granted if publicity had been given to the evidence.

On the Remit being put, a division was called for and was taken by a show of hands.

THE CHAIRMAN (after counting the hands for and against) stated the remit was lost, and the remit was accordingly negatived.

The Jury System.

MR. HAROLD JOHNSTON (President, Wellington District Law Society) read the following paper on "The Present Provisions of the Supreme Court Code Dealing with Juries":—

The Bill before Parliament last session asking for restoration of the right to a jury in civil cases previously enjoyed seems to indicate that a certain section of the public is waking up to the fact that a great constitutional change in the administration of justice has been effected by the jury rules made in December, 1924. I am not in a position to say whether the inquiry is general, or whether it is the result of the protest of some lawyers disgruntled because in actions for negligence where the relation of master and servant exists they cannot now obtain a jury. If it is true that the protagonists for revision can be "labelled" so that the real question at issue is obscured and the particular question of the jury in employer and employee actions substituted for it, it is high time in my opinion that the profession as a whole should enter the lists, define the true question involved, and make its views known.

In an article published in Butterworth's "Fortnightly Notes," on the 1st September, 1925 (Vol. 1, No. 14, p. 158) Mr. H. F. O'Leary described the change effected by the new rules, and, after drawing attention to the important effects involved by the change expressed his opinion that members of the profession should devote serious consideration to the questions involved. I am very much indebted to Mr. O'Leary's able article, and I agree with him that the matter is one which the profession should consider, and one on which the public have a right to know the views of the profession. Mr. O'Leary's article should have aroused the apparent apathy of the profession unless it happens that the leaders of the profession are quite content that the change effected is in the interests of the administration of justice. If, however, acquiescence in the change is induced by the fact that the change is to the advantage of important clients, and that, therefore, whatever their views as constitutional lawyers they should not in the interest of such clients object to the change, then I think such an attitude is to be deprecated, and redounds neither to the credit nor intelligence of the profession.

Broadly speaking, the question is, to what extent is it an advantage to the administration of justice that the jury should be displaced from its historic part as arbiter on disputed questions of fact in the trial of civil actions, and if the jury is displaced can its part be satisfactorily performed by the Trial Judge?

The jury has always played an important part in the civil litigation of Great Britain, an equally important part in Ireland, the British Dominions, and the United States of America, and a somewhat less important part in Scotland, but it has no part in the civil litigation of foreign countries, although juries play a part in the criminal administration of France and, to a limited extent, in the criminal administration of Germany.

The jury is in legal theory absolute as to matters of fact, it is in practice largely controlled by the judges, and it is no good proceeding to any discussion of the cases in which juries should be given a place, on an assumption of absolute right in the jury to determine facts when in practice they are subject to control. The discussion should proceed on the basis of a controlled jury. Not only does the judge at the trial decide as to the relevancy of the evidence tendered to the issues to be proved and as to the admissibility of questions put to a witness, but he also advises the jury as to the logical bearing of the evidence admitted upon the matters to be found by the jury.

The rules as to the admissibility of evidence, largely based upon scholastic logic, sometimes difficult to apply and almost unknown in Continental jurisprudence, coupled with the right of an English judge to sum up the evidence (denied to French judges), and to express his own opinion as to its value (denied to American judges), fetter to some extent the independence but limit the chances of error of the jury, and it is this constitutional jury subject to these checks and to the jurisdiction of the Court to interfere with its verdict if the Court is satisfied that the jury have not acted reasonably upon the evidence, but have been misled by prejudice or passion, that we have to deal.

The process by which the use of the jury in civil actions has been limited is not by statute but by the exercise of rules made under Section 51 of the Judicature Act, 1908, which allows the Governor-in-Council, with the concurrence of any two or more of the Judges, to revoke the rules contained in the Code and make such additional rules touching the practice and procedure of the Court in all causes and matters within the jurisdiction of the Court as may be deemed advisable. I do not intend to discuss here the question as to whether

under that power to make rules, power is included to alter the substantive rights of litigants, although I think that question is open. In England I do not think such power by virtue of a general power to make rules has been assumed because in the Judicature Consolidation Act of 1925, Section 99 (1.h) special provision was made for the rules to include "the prescribing" in what cases trials in the High Court are to be with a jury and in what cases they are to be without a jury, and prior to that statute any prescriptions of this nature had been made by statute, and not rule, under the general power given to the Rules Committee.

The present position in England is that by special power under the Judicature Consolidation Act of 1925, rules can be passed prescribing in what cases trials are to be with a jury and in what cases they are to be without a jury. But such rules have to be made by the Rules Committee, which consists of the Lord Chancellor, the Lord Chief Justice, the Master of the Rolls, the President of the Probate Division, and four other Judges, with two practising barristers, being members of the General Council of the Bar, and two practising solicitors, of whom one shall be a member of the Council of the Law Society and the other a member of the Law Society and also of a Provincial Law Society, the judges, barristers and solicitors to be appointed by the Lord Chancellor, and in all cases the rules have to be submitted to each House of Parliament. But whether the change is made under a special power as in England or under a general power to make rules, as in New Zealand, it comes to most of us as somewhat of a shock to learn that by the use of rules, which most of us have, whether rightly or wrongly, regarded as available for procedure only, a constitutional right of such importance as the right to a jury can be abolished. Where by this process but with express statutory provision a similar though not so radical a change in the right to a jury was effected in England, Lord Justice Banks, in Ford v. Blurton, an action (1922) where the right to a trial by jury was raised (38 T.L.R. 801) said :—

"Most people probably assume that rules made by the Rules Committee deal with machinery merely, and are unaware that by means of these rules what is in effect a great constitutional change may be effected. That such a change has been effected or is in process of being effected is made clear by the discussion which has taken place during the hearing of these appeals. What was once an undoubted right, and, in the opinion of many persons, myself included, a most valuable right, has been gradually eaten into until at last, if the recently issued provisional rule is to be made permanent, it has been entirely taken away. It is in the hope that on further consideration of the matter the right may be restored and the necessary limitation upon the right clearly defined that I am calling attention shortly to the steps by which the present position has been brought about."

The new rules have, however, been made, and my purpose is not to criticise the method of change but the wisdom of the change, but it has been necessary to draw attention to the process or method, because from discussion of the method there emerges the importance of the right affected.

Mr. O'Leary, in his article, summarises correctly enough the effect of the change as follows :—

"Under the rules now revoked a litigant, if his claim were the payment of a debt or damages or the recovery of chattels, had an absolute right to have his case tried by a jury, which might be a jury of four or twelve according to the value of his claim. Under the substituted rules the litigant has the right to a jury where the relief claimed is in respect of a cause of action not exclusively a breach of contract. If a cause of action may be regarded as arising out of a breach of contract or out of tort it shall be deemed for the purposes of the rules to arise exclusively out of a breach of contract. All actions other than those for which there is the right of trial by jury shall be tried by a judge alone unless it appears to the Court that the action or any issue therein can be more conveniently tried by a jury, in which event the Court may direct that the action or such issue be so tried. The result is that a litigant has only the right of trial by jury in actions founded purely on tort."

The effect is, in fact, far-reaching. The right of trial by jury is taken away in a large number of actions which have hitherto been determined by judge and jury. Put in another way, the general principle of English law that common law actions should be tried by a judge and jury has been abolished, and to a litigant the right to a jury has been confined to merely a part of common law actions, namely, actions arising out of pure tort. The judge has in effect displaced the jury as the criterion of truth in English law.

We are entitled to believe the change would not have been made unless the judges making it had some good reason for so doing. We have not, however, been supplied with the reasons.

The article on "The Jury" in the Encyclopædia Brittanica contains certain criticisms of the value of the jury in civil cases and on the assumption that such reasons may possibly be well founded, and have appealed to the judges and because I have found no other authoritative reasons against the jury I propose to refer to them. The article in question is written by J. W. Craies, editor of "Archibold's Criminal Pleadings." Adverting to the value of the jury system, he says :—

"The value of the jury in past history as a bulwark against aggression by the Crown or Executive cannot be overrated, but the working of the institution has not escaped criticism. Its use protracts civil trials, the jurors are usually unwilling and are insufficiently remunerated, and jury trials in civil cases often drag out much longer and at greater expense than trials by a judge alone, and the proceedings are occasionally rendered ineffective by the failure of the jurors to agree."

The author, continuing his article, says :—

"But apart from any incidental defects, it may be doubted whether, as an instrument for the investigation of truth, the jury system deserves all the enconiums that have been passed upon it. In criminal cases, especially of the graver kind, it is perhaps the best tribunal that could be devised. There the element of moral doubt enters largely into the consideration of the case, and that can best be measured by a popular tribunal, but in civil cases where the issue must be determined one way or the other on the balance of probabilities, a single judge would probably be a better tribunal than the present combination of judge and jury. Even if it could be assumed that he would on the whole come to the same conclusion as a jury deliberating under his directions, he would come to it more quickly. Time would be saved in taking the evidence, summing up would be unnecessary, and the addresses of counsel would inevitably be shortened and concentrated on the real point at issue."

I do not find the arguments of the learned author of the article very compelling. Disagreement in a jury in civil cases is not common and is not always ineffective and a waste of time and money. It may and does, on occasions accurately illustrate the divergent views ordinary people take of the rights of the parties in contested cases and to parties who are faced with proof of the difficulty others find in reconciling their conflicting claims and the testimony given in support, a settlement which before trial the parties would not consider, may well and does in fact, recommend itself. The remuneration of jurors is a matter of adjustment and can be made commensurate with the duties discharged and is borne by the parties. With the view that the use of a jury involves waste of time I do not agree. The jury more than either judge or counsel has its eye on the clock, and however inconsiderate counsel may be of the time of the judge he dare not

be, in the interests of his client, inconsiderate of the time of the jury. The jury is as useful a corrective to waste of time as it is to bad manners and oppressive methods. Mr. Craies' opinion that where the issue is to be determined on the balance of probabilities a single judge is better than a jury is unsupported by argument, and members will form their own opinion as to whether it is justified in face of more reasoned opinions to which I shall presently refer. In my view much more substantial arguments than those advanced by Mr. Craies are needed if the change in the rules is to be justified and if general reasons influenced the authors of the change it is to be hoped they were stronger than those put forward by Mr. Craies. If on the other hand one assumes that no such general reasons influenced the minds that directed the change, but that one should look to the exact limitation imposed by the rule on jury trial and seek the reason there. I again fail to find any substantial ground justifying the change. Assuming that the rule says jury for tort but not for contract, is there anything in the nature of an action for breach of contract that makes it wise after all these years to exclude the jury ? It is true that frequently the understanding of a contract renders it necessary to instruct the jury in the law, but questions of law arise in tort as well as in contract and their presence is reason for, not against, leaving the issues of fact to the jury, the questions of law to the judge. If it be said that in many contracts the damages have to be assessed according to legal rules, that there is difficulty in explaining these legal rules to jurors, and that even when they are explained the jury, if they understand them, disregard them, such argument is met, I think, by the general observation that it is because of the tendency of the Courts to make rules of this character, which become stereotyped and inappropriate to changing circumstances that a jury from outside is necessary, and the further consideration that if it is clear that the jury have departed from the instructions given by the judge, and those instructions were rightly given, the verdict of the jury can be set aside. But generally questions of damages do not involve very special or difficult rules. In the majority of cases the damages are practically at large, and there is no difficulty that makes a judge better able to assess them than a jury. Damages has always been in particular a matter for the jury under directions from the judge as to the true measure, and I can find no reason whatever why a jury should not decide disputed questions of fact, credibility, reputation, and damages in cases arising out of contract as well as in cases of tort. If such reason does exist to-day, did it not exist for the past two centuries or more ?

If, however, by reason of the authorship we are bound to assume there were good reasons for the change, it will have to be admitted that the great balance of authority we generally resort to is against the change, and we have to start with the fact that in England, at anyrate, the change was tried, the agitation against the change was immediate, and the whole bent of the English Judiciary seems to be averse to the change.

It is relevant, therefore, to trace the history of the controversy in England and to capitulate the authoritative reasoning given in England which caused the new rules adopted there to be abandoned and the old ones restored. I do not, however, assume that because the change was abandoned in England it necessarily should be abandoned in New Zealand. Our ideas and our community are much the same in New Zealand as in England. However, the difference in population and the consequently different circumstances under which the administration of justice is carried on may make the change here wise, if not so in England. If it be said that New Zealand is too small for juries, that there is not sufficient population to get juries who are unacquainted with the parties or with counsel concerned and who will be free from bias, it can be urged that juries in England are supported because they know a district or county, know the reputation of the parties and know the customs and circumstances pertaining to an industry in a particular county, and if knowledge of parties, witnesses and circumstances in a jury is reason against the use of a jury the same reason applies with perhaps greater force against the advisability of throwing on a judge the odium of being arbiter of facts in such circumstances—the arbiter of credibility and the arbiter of reputation. I do not find in the size of the two communities sufficient reason for acknowledging the use of the jury in the one and discarding it in the other ; but I admit it may be a reason, and practitioners in the assize towns will speak with considerable authority on this question.

In England then up to and since and by the Judicature Act of 1875, generally speaking all common law actions have continued to be tried by a judge with a jury, Chancery actions continued to be tried by a judge alone, with leave to apply for a jury where disputed questions of fact were likely to arise. Admiralty questions continued without juries, and suits under the Matrimonial Causes Act continued to be tried by a judge and jury. No invasion was made upon this position until the War rendered it impossible to obtain jurors, with the result that the Juries Act, 1918, actually prescribed the cases which could be tried before a judge with a jury. That Act made all cases triable by a judge alone without a jury except in cases of libel, slander, malicious prosecution, false imprisonment, seduction or breach of promise of marriage, contested matters under the Matrimonial Causes Act, and in an action by the heir-at-law in a probate action. That legislation was only to last during the War and for six months thereafter. In 1920 the Administration of Justice Act was passed and provided that common law actions should be tried by a judge alone, if the Court was satisfied that the matter could not be tried with a jury as conveniently as without a jury. In such cases the Court could order trial without a jury but still there was no power to dispense with a jury in cases : (1) where there was an allegation of fraud, and in cases of libel, slander, malicious prosecution, false imprisonment, seduction, or breach of promise of marriage, and (2) contested matters of fact under the Matrimonial Causes Act.

The War legislation need not be considered. It was an emergency measure, passed for reasons other than those which we are entitled to consider to-day. The Act of 1920, however, has to be considered because it was that Act and the rules under that Act, which raised the protest and the judicial comment that led to a reversion to the old system and the complete restoration of the right to a jury as defined by the Judicature Act of 1875. It is important to observe, therefore, that the Administration of Justice Act went by no means so far as our rules. By it a common law action continued to be before a jury (except that libel, slander, malicious prosecution, etc., and cases where fraud was alleged, must always be tried before a jury) unless a party could prove that it could not be tried conveniently with a jury. That is to say, with a jury was the rule, without a jury the exception, whereas in our case the

rules make (except in pure tort) with a jury the exception and without a jury the rule. In the English case the onus was thrown on the person asking that the jury be dispensed with; in our case the onus is thrown on the person asking for a jury, a position so different that it needs no comment.

I have already referred to Lord Justice Banks' remarks as to the constitutional change effected and its importance. In the case referred to, Lord Justice Banks said that it was in the hope that on further consideration the right to a jury should be restored that he referred to the matter and called attention to the steps upon which the position there referred to had been brought about, and he went on in the later part of his judgment :—

"I trust, however, that the other aspect of the case may also be considered, namely, whether the right to a trial by jury is not sufficiently important to be restored and maintained, subject always to exceptions which should be precisely indicated. The standard of much that is valuable in the life of the community has been set by juries in civil cases. They have proved themselves in the past to be a great safeguard against many forms of wrongs and oppression; they are essentially a good tribunal to decide cases in which there is hard swearing on either side or a direct conflict of evidence on matters of fact, or in which the amount of damage is at large and has to be assessed."

In the same case Lord Justice Atkin said :—

"Trial by jury, except in the very limited class of cases assigned to the Chancery Court, is an essential principle of our law. It has been the bulwark of liberty and shield of the poor from the oppression of the rich and powerful. Anyone who knows the history of our law knows that many liberties of the subject were originally established and are maintained by the verdicts of juries in civil cases. Many will think that at the present time the danger of attack by powerful private organisations or by encroachments of the Executive is not diminishing. It is not without importance that the right now taken away is expressly established as part of the American Constitution."

These views apparently prevailed. It apparently was no answer there, as it is submitted it is no answer in our case, to say: "Well, surely the judges who had a discretion to grant a jury would do so in proper cases, and could safely be left to grant juries in cases where they were really necessary and could be of assistance." The discretion of a judge to grant or withhold a right enjoyed by common law litigants for many years, although it may at first seem sufficient protection, is not really a protection to the litigant that appeals to judicial and constitutional authorities.

In a note to Fern's Contingent Remainders (10th Edn., 1844, p. 534) Lord Camden is reported as saying :—

"The discretion of a Judge is the law of tyrants. It is different in different men. It is casual and depends upon constitution, temper, and passion. In the best it is oftentimes caprice; in the worst every vice, folly and passion to which human nature is liable."

In Gibbon's "Roman Empire," a similar view is expressed. After contrasting the summary methods adopted in other countries with our own more deliberate procedure, he says :—

"Our calmer reflection will suggest that such forms and delays are necessary to guard the person and property of the citizen. With the discretion of the Judge is the first engine of tyranny, and the laws of a free people should foresee and determine every question that may possibly arise in the exercise of power and the transactions of industry."

These references I have taken from the Presidential Address of the President of the Law Society in England, Mr. C. A. Coward, at the annual gathering of the Society held at Sheffield, on the 26th September, 1927, where he was referring to the evil effects of that class of legislation which left the decision of matters to the discretion of a judge, he saying that certainly the duties of the judges should be confined to administer the law, and no greater burden should be cast upon them.

An instance of the extent to which the discretion in granting a jury or withholding it under the rules made under the Administration of Justice Act, 1920, can really whittle away substantive rights is afforded in Calcroft and Another v. London General Omnibus Company (1923) 2 K.B.D., 608). In this action a County Court judge held that it was a sufficient ground for the exercise of the power conferred upon him by The Administration of Justice Act, 1920, of ordering the trial of an action without a jury that the cause list in his Court was so congested that if the action were tried with a jury the trial of the action would thereby be postponed or delayed. On appeal to a Divisional Court it was held such a ground could not support such a use of the judges' discretion. Lush, J., says in his judgment :—

"The safeguarding of the right to trial by jury is an extremely important part of the administration of justice."

It is unnecessary to give instances of the use of the discretion in New Zealand. It is safe to say that except in cases of tort, it is difficult to obtain a jury. My point is that the right is too important to be at the discretion of the judge, and the references to discretion are to shew the limited class of question that can be left to discretion, and that the important nature of the change effected does not come within that class.

It is safe to assume that because of these judicial utterances the new rules under the Judicature Consolidation Act of 1925 restored the position, so that in future common law actions without exception retain the right to trial by jury, and in Chancery actions the onus lies on the party desiring the jury to obtain one. The end of the controversy in England is, at any rate, clearly good ground for examining closely into the advisability of a change in New Zealand, and I think, therefore, we are forced despite the excellent authority underlying the Order-in-Council to make our own examination of the general question of the benefit of a jury in civil cases.

Lawyers, in the past at anyrate, have thought highly of the jury. Any attempt to eliminate it would, if one might expect a continuity of the reasoning and thought we have inherited, be stoutly resisted. In English law the method almost universally employed by the common law to ascertain the truth about disputed facts is the jury. The jury is, as Blackstone terms it, the principal criterion of truth in the law of England. The jury as employed in England is the most distinctive and, in the opinion of those who have had much experience of its working, the most valuable part of the common law system. (Holdsworth's History of English Law, pp. 298, 299). Its elimination, therefore, must have an important effect on the administration of justice, and may produce effects unlooked for and unexpected, may likely seriously impair the effectiveness of our system of legal administration and reduce it to one of arbitration, and our judges to arbitrators. On the other hand, it may improve it, but this one thing is certain, that its elimination will bring our system more into line with Continental systems and remove a mark of distinction which our authorities have always considered to be a feature giving to the administration of English justice peculiar virtues, and safeguarding it from what we consider weaknesses attendant upon systems of justice in force in Continental

countries where the jury system does not obtain. If this is so, and if conformity with Continental ideas renders our system liable to some of the abuses we consider prevalent in Continental systems, we should do well indeed to retain the jury in spite of its obvious defects.

One of the most obvious effects of the elimination of the jury system, and even partial elimination, is to increase in civil actions the power of the judge and decrease the usefulness and independence of counsel, and one would expect as a natural corollary that the objectionable system of cross-examination by judges which obtains in Continental countries would soon arise and thrive in our system.

The legal and political effects of the jury system is aummarised in Holdsworth's History of English Law (pp. 347 to 350), as follows :—

"The defects of the jury system are obvious. They are twelve ordinary men—'a group just large enough to destroy even the appearance of individual responsibility.' They give no reasons for their verdict. The verdict itself is not subject to any appeal; and it is apt, in times of political excitement, to reflect the popular prejudice of the day. Experience shows that they are capable of intimidation. It is said that they are always biassed when a pretty woman or a railway company happen to be litigants. Though a good special jury is admitted to be a very competent tribunal, the common jury may be composed of persons who have neither the desire nor the capacity to weigh the evidence, or to arrive at a conclusion upon the facts in issue. But in spite of these obvious defects, distinguished judges, who have spent many years working with juries, have combined to praise the jury system. Fortescue, Coke, Hale, Blackstone, and Stephen are witnesses whose evidence should be conclusive. We may add to these names that of Chalmers, whose experience in the new country courts led him to the same conclusions. In fact, the jury system works well from the point of view of the litigant, the judge, the jury itself, and the law.

"The litigant gets a body of persons who bring average commonsense to bear upon the facts of his case. 'A jury,' says Chalmers, 'is a far better tribunal than a judge for dealing with questions of fact. The more I see of juries the higher is the respect I have for their decisions. . . . They have a marvellous faculty for scenting out a fraud.' Their findings create no precedent; and thus they can decide hard cases equitably without making bad law. Litigants are generally contented with the measure of justice which they mete out; and this is no small gain to a legal system.

"Judges have, as we have seen, from the earliest times appreciated the relief from responsibility which the jury system affords to them. Both Hale and Stephen emphasise this fact. And not only does the collaboration of the jury relieve the judge from the responsibility of deciding simply upon his own opinion, it also helps him to take as the adviser and director of the jury a more truly judicial attitude. Thus it helps to preserve the dignity of the Bench; for, if the judge preserves this judicial attitude, no odium can attach to him whatever be the verdict of the jury. And so, as De Tocqueville has said, 'the jury which seems to diminish the power of the magistrate really gives *it its pre-eminent authority.*'

"The jury itself is educated by the part which it is required to take in the administration of justice. The jury system teaches the members of the jury to cultivate a judicial habit of mind. It helps to create in them a respect for law and order. It makes them feel that they owe duties to society, and that they have a share in its government. It is this education of the members of the jury that De Tocqueville regarded as the most valuable consequence of the system. 'We should regard it as a school which gives instruction gratuitously and continuously. *Where each juryman can learn his rights, where* he mixes day by day with the best educated and most enlightened of the upper classes, where the law is taught to him in the most practical way, and is explained in a manner which he can understand by the efforts of the Bar, by the direction of the judge, and even by the passions of the parties.'

"The effects of the jury system upon the law are no less remarkable and no less beneficial. It tends to make the law intelligible by keeping it in touch with the common facts of life. The reasons why and the manner in which it thus affects the law are somewhat as follows: If a clever man is left to decide by himself disputed questions of fact he is usually not content simply to decide each case as it arises. He constructs theories for the decision of analogous cases. These theories are discussed, doubted, or developed by other clever men when such cases come before them. The interest is apt to centre, not in the dry task of deciding the case before the Court, but rather in the construction of new theories, the reconciliation of conflicting cases, the demolition or criticism of older views. The result is a series of carefully-constructed, and periodically considered rules, which merely retard the attainment of a conclusion without assisting in its formation. It is only the philosopher, or possibly the professor of general jurisprudence, who can pursue indefinitely these interesting processes. Rules of law must struggle for existence in the strong air of practical life. *Rules which are so* refined that they bear but a small relation to the world of sense will sooner or later be swept away. Sooner, if, like the criminal law or the commercial law, they touch nearly men's habits and conduct; later if, like the law of real property, they affect *a smaller class, and affect them less nearly. The jury system* has for some hundreds of years been constantly bringing the rules of law to the touchstone of contemporary commonsense. The beneficial effects of this process can be best illustrated by a comparison with some of the rules evolved by the Court of *Chancery which never worked with a jury.* 'One finds oneself,' says Chalmers, 'in a rarified atmosphere of morality and respectability in which life is hardly possible. Look at the equitable doctrines of constructive notice and constructive fraud. Look at the impossible standard of duty laid down for trustees.' *The legislature has recently done something to remedy these* things. Most perhaps was done by Sir George Jessel who was a profound equity lawyer with the mind of an acute juryman. He did much to bring the rules of equity to the touchstone of commonsense; and his influence has been felt by all his successors.

"Judges must explain the law to the jury. They must separate the rule of law from the question of fact. This produces both precision in the statement of the rule, and a clear outside judgment on the facts. Nagehot said of the Parliamentary head of a government office, 'his function is to bring a representative of outside sense and outside animation in contact with the inside world. No man is a perfect representative of outside sense . . . that many-sided sense finds no microcosm in any single individual.' The jury is to the inside technical world of our common law system a representative of that outside sense, and outside animation.'

I make no apology for including in this paper the lengthy extract I have just read. Apology may be due for my own matter, but the conclusions set forth in the extract just read based on the experience and dicta of famous and experienced judges, correctly reflect, in my opinion, the true place and importance of the jury in our administration of justice, and in my opinion, a heavy onus is on those supporting the change to prove that time, place and circumstances in New Zealand are so different that what is true in England is not true here. I am satisfied the conclusions arrived at by the learned authorities relied upon will commend themselves to members of the profession in New Zealand at the present time, and that before the change adopted in New Zealand can be supported a very pointed and pungent answer must be made to those conclusions. I have no doubt that members approving the change can go some way in this direction, but I venture to point out that the obvious defects of a jury were as obvious to the authors of those conclusions as they no doubt are to those in support of the change, and that the conclusions were reached in spite of not in ignorance of the patent defects of trial by jury. It is clear further that the conclusions retailed by Holdsworth are held to-day as strongly as they were in the past. I have already referred to the dicta of Lords Justices Banks and Atkin, and it is easy to find other dicta to the same effect by other judges now sitting.

Mr. O'Leary, in his article to which I am so much indebted, and to which I have already referred, says that Lord Russell of Killowen had a great preference for a jury, and is said to have told a friend of his who wished to abolish trial by jury that if he only knew His Majesty's Judges as well as he, Lord Russell, knew his judicial colleagues, he would not be so keen in getting rid of juries.

The present Lord Chief Justice, Lord Justice Hewart, when asked quite lately his views on the jury system disclosed himself as a stout defender of juries, and said that in order to reinforce his own opinion he has asked one of the Lords of Appeal who had had a very great experience of juries, his opinion, and that Judge—Lord Phillimore, I think—had told him that in his opinion juries were never wrong.

But it is not only in general statements and well-rounded periods that English judges are accustomed to speak well of juries. The language used in the extracts I have read, may from its very perfection, create in the minds of hearers an impression that grandiloquent language is being used to embody the somewhat tenuous matter of constitutional theorists, who by the use of language, have in reality either magnified their premises or distorted or avoided the real facts. Such, however, is not the case. The views expressed are the views of workers in the law, of men who can sit down in an armchair and tell just as good stories about juries and their methods as anyone in this room. By way of illustration take the story told by Chalmers which is set out in a note to Holdsworth as follows: "Chalmers tells us of a jury who came to a speedy decision for the plaintiff in a doubtful case where there had been hard swearing on both sides; on his asking a juryman how they managed it, he replied, 'I don't know the plaintiff, but the defendant is a friend of mine, and I know he is a d———d liar.'" Take again Lord Justice Lindley in Jenkins v. Bushby (1891), 1 Ch. 484, an action brought in the Chancery division for an injunction to restrain the trespass in mines, and for an account of minerals obtained, a jury after argument was given on the ground that it was important that a view should be held, although Mr. Justice Stirling had refused a jury on the ground that the case would involve the examination of many documents. Lindley, L.J., in that case said, at page 491:—

"Judges not accustomed to working with juries are apt to underrate their power of dealing with questions involving an examination of maps, plans and accounts. No doubt when it is necessary to go through a long disputed account item by item it is very difficult if not impossible to do so with a jury at the Assizes, but to suppose that there is any real difficulty in getting a special jury to see and appreciate the result of accounts, or to apply their minds to and appreciate ordinary maps and plans is to make a great mistake. Questions of boundary involving an examination of maps are constantly tried satisfactorily without difficulty by judges with juries at Assizes."

The fact that judges may find difficulty in explaining matters to juries and in directing juries is no argument for the elimination of juries. If the question of prejudice and passion can be eliminated, no one would doubt but that on disputed questions of fact a jury of twelve men are the best tribunal. Judges are fairly hardly worked. If, in addition to their duties of explaining the law, they have to themselves determine as to the credibility of various witnesses and as to the proper deductions to be made from ascertained facts, a very considerable additional burden is thrown upon them. Are they better fitted to do this work than a jury? A judge goes on to one case after another; he is necessarily tired, his attention must at times wander, he must of necessity feel the irksomeness of the trial, he must want to hurry the trial through, and it is impossible not to expect him to show signs of irritability. If he does the parties feel aggrieved. If in his judgment he misquotes evidence or has made a wrong note of what was said, the parties again feel aggrieved. The necessity of taking notes becomes burdensome; the inferences he draws from evidence, and the meanings he gives to terms of an industry which he may not thoroughly understand must at times lead to conclusions which the public can well disagree with.

Reasons are not given by a jury, and it is well that they should not be given. A judge's verdict must give reasons, and those reasons will at times be wrong. An appeal on facts is very costly, involving a large amount of printing. On the balance of convenience and in pure effectiveness the verdict of a jury on disputed facts is best and gives most satisfaction. The continual decisions of judges on facts are bound to lead to dissatisfaction and want of respect for the judiciary.

If in the past it can be said that juries have acted as a bulwark for the rights of the people, is it true that they are less required to-day? The answer to this question is, I think, fully made, at anyrate from one aspect and that the aspect referred to by Lord Justice Atkin by the very able paper read to this Conference by Mr. Wright, shewing the tendency towards bureaucracy and the establishment of a "*droit administratif*."

In my opinion, if it is advisable, and it may very well be, that there should be some limitation on the common law actions which can be tried with a jury as of right, I think that limitation should be precisely defined. I do not think that anyone can defend our present rule. It does not meet any tenable position. Our rules want revision in many cases: they want overhauling, and I think it is high time a Rules Committee be set up with a constitution similar to that in England, containing some practising barristers and solicitors as well as the judges. I am quite prepared to be told when I leave this room that I have been beating the air, and that I should know the real object of the rule was to exclude from juries the employer and employee class of action, and that the criticism I have directed against the change made is only sound so far as it directs attention to the generality of the rule that brings in its scope other forms of ex-contractual actions. I am not prepared to say that there are not nowadays good reasons for excluding the employer—employee class of action referred to, but if there are such reasons they should be carefully examined. I can well imagine that modern legislation relating to workers' compensatoin imposing on the employer further liability than was imposed by the Common Law, and taking from him certain defences which were available to him at Common Law together with statutory methods of assessing damages may well remove such actions from the purview of a Jury with liberty to displace statutory provisions for damage by their own view. Such arguments, however, even if they are available do not justify the general change made by the present rules. The right in many cases is too important to be lost in the wake of a particular class of action from which the jury may rightly be eliminated. Lord Balfour is reported in a speech delivered but a week or two ago to have said: "In place of a slogan: 'Make the world safe for democracy,' I will give you another, and in my opinion, a better, it is 'Make democracy safe for the world.'" It is only lately that by reason of the great attention that has been given to legal history and the history of legal institutions in England it has been recognised how the growth of English democracy has been influenced by the growth of English legal institutions. The life blood of the King's Bench Division seems to have been the jury system, and the jury is one of the channels through which democracy flows. English democracy has been made safe as much by the jury as by any other constitutional body, and to my mind, it is sheer lunacy

to drop one of the component parts of our complicated system of Government which includes the administration of justice as perhaps its most important part, without the fullest enquiry as to the effect its loss will have on the working of the other parts.

MR. A. FAIR, K.C., (Solicitor-General) moved a vote of thanks to Mr. Johnston for his very brilliant paper, in which all had been keenly interested. The subject had been dealt with in a way that would open up a discussion that could not help being of the greatest benefit.

MR. W. NICHOLSON (Motueka) seconded, and hoped that the paper would be given the widest possible publicity.

The motion was carried by acclamation.

MR. A. C. MIDDLETON (Waimate) remarked that the legal profession was most conservative, and possibly it was because of that tendency that it clung to the jury system. In small centres juries were influenced by local prejudice, sympathy, or some other such thing.

Discussion ensued on Mr. Johnston's paper.

MR. H. H. CORNISH (Wellington) moved :—

"That this Conference respectfully requests the Attorney-General to promote legislation to repeal The Jury Rules of 1924."

MR. M. H. ORAM (Palmerston North) seconded.

Discussion ensued.

MR. C. G. WHITE (Wellington) as an amendment, moved :—

"That this motion be discussed this time next year when the next Conference meets."

MR. F. B. ADAMS (Dunedin) seconded the amendment. He said that preparation and time were necessary to reply to Mr. Johnston's very able paper. He took an opposite view to that taken by Mr. Johnston. There was no question that the new jury rules were the greatest change in procedure that the present generation had seen. He agreed that the jury system was fundamental to our jurisprudence. In criminal cases there could be no question that the maintenance of the jury system was required. It was also important as a safeguard against possible inroads of the executive government. In actions for tort the jury should be the tribunal; the present rules protected litigants in that respect. Personally he did not see why a jury should be needed in contract cases, though some contract cases were analogous to equity cases.

MR. W. J. SIM (Christchurch) opposed the motion, and asserted that the majority of Mr. Johnston's observations were divorced from time and place—they applied to England fifty years ago, and not to New Zealand in 1928. The rules agreed upon by the Judges were the result of their experience, and should not be brushed aside as of no account. The jury system, in many cases, was an instrument of injustice. Generally the jury started off with an inherent prejudice against a party if that party happened to be wealthy. The Mayor of Christchurch, in his remarks at the civic reception to the delegates, upheld the jury system because it was democratic, but he had not examined the merits of the jury system.

MR. A. T. DONNELLY (Christchurch) opposed Mr. Sim's views. He said he had acted against Mr. Sim on certain occasions, and in his opinion the verdict of the jury had been right. (Laughter). As the result of the considered views of some of the Judges they had this purely artificial restriction of the right of trial by jury. Most of the cases in which miscarriages of justice had been alleged when tried by juries were those cases in the region of tort, but such cases still remained triable by a jury.

MR. W. A. STOUT (Invercargill) supported the motion, but expressed the view that trial by jury of four was unsatisfactory, as it generally meant the dominance of one man.

MR. M. J. GRESSON (Christchurch) said he thought that the Judges were not the best judges as to whether they were the best judges of fact—legal practitioners of experience were the best judges of that.

The discussion was continued by Messrs. McCarthy (Christchurch), R. Kennedy (Wellington), Macalister (Invercargill), T. C. A. Hislop (Wellington), E. W. White (Christchurch), and A. A. McNab (Blenheim).

Further discussion ensued, and the luncheon adjournment was then taken.

On resuming at 2.30 p.m., THE CHAIRMAN said that he had conferred with Mr. Cornish as to the form of the motion and he had agreed to the substitution of the following :—

"That this Conference affirms the principle that it is desirable to revert to the former rules as to the trial by juries of civil actions."

Discussion proceeded on the substituted motion.

The amendment was negatived.

The motion was agreed to.

(ED. NOTE :—The Taranaki Remit was then fully discussed, and it was decided to deal with the matter further through the N.Z. Law Society. It has been considered advisable to omit this part of the proceedings from our report, but District Law Societies can obtain full particulars of the discussion and decision arrived at by Conference from the Conference Secretary, Mr. W. J. Hunter, Christchurch).

The Outlook of the Profession.

MR. M. MYERS, K.C. (Wellington), gave an address on "The Outlook of the Profession," of which the following is a condensed report of some of the matters to which reference was made :—

Mr. Myers said that what was wanted from him were facts and figures. Anyone who would could read the writing on the wall, and see that the Profession of the Law was greatly overcrowded. If he could make the position clear that everyone could not be a lawyer, at least he could claim to have done some service. (Mr. Myers cited from an article in the Law Journal of 27th May, 1927. After referring to the vast incomes of the Attorney-General and Solicitor-General, he referred to the hard times for the others).

The overcrowding of the profession in New Zealand was more serious, because in England there were a great many families desiring their sons to become barristers, without any idea of ever practising. We had no such wealthy class to send their sons to the Law to give them a profession without their intending to practise. It was interesting to compare the number of solicitors with that of the population :—

Year.	No. of Solicitors.	Population.
1861	571	626,600
1921	1,234	1,218,900
1926	1,636	1,304,384

The ratio of solicitors to population increased from 1.01 to 1.022 in the last period of five years. What

was going to be the position if the Profession increased by about four hundred every five years? With a lessening volume of business available those present could quite agree that the Profession was very much overdone.

Mr. Myers turned to the tendency as to the volume of business. In 1921 the number of deeds recorded under the Deeds Registration Act totalled 38,122. In 1926, 28,784. The transfers registered under the Land Transfer Act in 1921 were 55,746, and in 1926, 36,038—a decrease of 19,700, and taking the same years, the mortgages registered per individual solicitor in 1921, amounted to 46.5, whereas in 1926 they amounted to only 29.8.

Taking another test, namely, the volume of exports, the volume of exports per member of the Profession in 1921, was £21,400 and in 1926, £18,000.

One had to consider also the encroachments from outside. Taking the increasing practice of accountants preparing Memoranda and Articles of Association of companies; it was not a difficult matter to overcome that, if the Attorney-General was willing. It could be done by passing an amendment of the Companies Act that no company should be registered without a solicitor's certificate that the Memorandum and Articles of Association had been prepared by him or a member of his firm. It was understood that the accountants were not prepared to give up the right to prepare Memoranda and Articles unless lawyers were prepared to give up the keeping of accounts relative to trust estates by the accountants in their own offices, and the preparing of income tax returns for clients. That attitude was entirely unreasonable, and the matter was one where the Profession was entitled to expect assistance from the Attorney-General.

Mr. Myers believed that the competition of the Land Broker was a more serious matter to solicitors in the South Island than it was in the North Island; but it would grow unless it was checked, because in a short period the whole of the land in New Zealand would be under the Land Transfer Act. Again, the Profession was entitled to ask the Attorney-General for all the protection and assistance within his power.

As to the most formidable opposition, which was that of the Public Trust Office, the speaker wondered how many had any idea of the growth of that Office. In 1915 there were 7,844 wills on deposit in the Public Trust Office. At the 31st March, 1928, there were 58,065. During that period they had had Mr. Herdman (now Mr. Justice Herdman), Sir Francis Bell, and the present Attorney-General in the office of Attorney-General. Either those gentlemen thought that the expansion of the Public Trust Office was in the public interest, or else it was part of the policy of the Government of the day and they were powerless to prevent it. Mr. Myers dealt also at some length with other aspects of the growth of the Public Trust Office, and invited those present to visualise what was going to be the position in the next decade or so, when 58,000 estates went to the Public Trustee which might have gone to the offices of the Legal Profession! Did they wonder that one who had given consideration to the facts and figures was not optimistic of the future of the Profession? But attacks in the Press and otherwise upon the Public Trust Office would avail nothing. The Public Trust Office was established and it was there. He believed that it was possible for the Profession to work reasonably harmoniously with the Public Trustee, and he thought it should endeavour to do so. That was Mr. Myers' own personal opinion.

It was not without reason that he said that they might receive little or no assistance from Government or Parliament, because the Profession was not popular with Parliament. When a Bill relating to the Profession went on to the floor of the House it would seem that every effort was made to injure the Profession. Look at the history of the past! The abolition of Articles, which must sooner or later lower the standard of the Profession. Mr. Myers rejoiced that the Profession had not so far descended to a trade. The opening of the back-door entrance to the Bar!

It was very necessary that they should do all they could to maintain the standard of the Bar. If they did not maintain the standard of the Bar how could the old standard of the Bench be maintained? He regretted the statement by the Attorney-General that the Government would do nothing to improve the emoluments of the Bench. If that attitude was maintained, a second-rate or even third-rate Bench was inevitable.

MR. GEORGE HARPER (Christchurch) moved: "That Mr. Myers be accorded a vote of thanks for his very able address."

MR. C. B. BARROWCLOUGH (Dunedin) seconded.

Carried by acclamation.

Inroads on the Work of the Profession.

MR. W. R. LASCELLES (Christchurch) read a paper on "Inroads on the Work of the Profession," of which the following is the introduction:—

The complexities of twentieth century civilisation, with its hustle and hurly-burly, its distractions, its revolt against individualism, its haphazard tendency to level, to conglomerate and to standardise have disturbed notions of the fixity and permanence of things dear to the conservative instinct of the lawyer.

Spheres of action and thought which for a long age were the very property of particular classes of individuals have been boldly intruded upon by other adventurous, enterprising, or usurping classes.

To-day is an opportune time for reflection upon this state of general flux; an important time for the consideration of "why," and "whither."

In the general drift and confusion no profession or calling is more affected than our own—the legal profession. While it is going too far to say, that the existence of the profession is in any way threatened, it is, perhaps, fair to say that such serious inroads upon its work are being made as to demand immediate enquiry in the present and increased vigilance in the future. Rudyard Kipling is no longer correct when he says:—

> "I tell this tale which is strictly true
> Just by way of convincing you
> How very little since things were made
> They have altered at all in the lawyers' trade."

Things for our profession HAVE altered and ARE altering every day, and it is pertinent to enquire in what directions.

We are entitled to be proud of the contributions to mankind and to the State which are definitely attributable to the lawyer. We are entitled to be proud of an ancient and honourable calling. There is, as has been stated by a learned judge, something in the practise and study of the law that tends to produce a frame of mind which in many respects is admirably constituted for sharing in the conduct of public affairs. The history of all great countries and empires is the proof of this. As one learned Law Society President has pointed out, the Great Charter was the work of

Stephen Langton—a lawyer. Bracton, in his day, championed the rights of the common people against the Crown; Coke, Seldon, and Pym were all lawyers, and all champions of popular liberty; the roll of greatest legislators, statesmen and philosophers abounds in the names of eminent lawyers.

Because service to the community is our highest ideal and has been our constant practice, we have a right to demand something from the community in return. The modern State more than ever requires the service of men skilled in the knowledge, exposition and making of the law. If, therefore, the profession is a necessary one, as the Hon. the Attorney-General, yesterday affirmed, there must be sufficient inducement to follow it. The State, realising the technical nature of the service rendered, has, in its wisdom, insisted upon the possession not only of character, fitness, and capacity, but also of a standard of academic qualification before permitting practice of the profession. Primary and secondary education are followed by years of university study with little or no accompanying financial return. In such circumstances one might expect to reap some reasonably lucrative reward. So serious, however, have been the inroads on the work of the profession that the young practitioner, in particular, often finds himself at a marriageable age earning the same wage as a butcher's shopman. Under New Zealand conditions, the academic or opinion side of law, save in exceptional circumstances, can only be pursued with reasonable financial return if the conveyancing side is fairly remunerative; the conveyancing side for itself must rely not upon high charges for intricate work affecting small transactions, but upon a steady flow of ordinary property transactions, the charge for which is sufficiently high to permit more technical services being given when required at a reasonable fee.

Throughout New Zealand to-day, in some parts worse than others, practically every simple remunerative legal transaction is being negotiated and completed by persons lacking in the qualifications of which the legislature has insisted the lawyer be possessed. The speaker then proceeded to deal in detail with the various agencies making inroads into the work of the profession.

MR. M. J. GRESSON (Christchurch) moved: "That a hearty vote of thanks be accorded Mr. Lascelles for his interesting paper."

MR. A. F. WRIGHT (Christchurch) seconded.

Carried by acclamation.

Discussion ensued on Mr. Myers' address and Mr. Lascelles' paper.

MR. N. E. CRIMP (Whangarei) moved: "That this Conference appoint a Committee to tabulate the matters that unjustly affect the profession."

MR. A. F. WRIGHT (Christchurch) seconded *pro forma*, and said the setting up of the Committee could be postponed till general resolutions were being proposed.

MR. CRIMP was given leave to withdraw the motion.

The discussion closed, and the Conference was adjourned for the day.

THIRD DAY.
Friday, 13th April, 1928.

Conference resumed at 9.0 a.m.

Method of Issue of N.Z. Statutes.

MR. HERBERT PAGE, representing Butterworth & Co. (Aust.) Ltd., with permission granted, addressed the Conference on a scheme to provide an improved method of supply of N.Z. STATUTES.

After dealing with the present delays and inconvenience caused through having to send to the Government Printer at Wellington, for copies of such individual Acts as may be required by practitioners throughout the year, and through the Annual Volume not being delivered until, in many cases, some time after the new Acts come into force, the suggested new method was outlined to the meeting.

It is proposed that in future, copies of individual Acts and an Annual Volume be supplied to practitioners, post free, on an inclusive subscription basis. Immediately an Act has been printed by the Government Printer a copy will be despatched to each registered subscriber, and a copy of the bound Annual Volume will follow at the end of the year. Butterworth's will receive bulk supplies from the Government Printer, and be responsible for the quick despatch to subscribers. By this method practitioners will always have the new legislation before them and will be fully equipped at all times to deal with any matters which may arise in connection with it. A special file to keep the loose individual Acts in order will be supplied. The probable cost of this complete service will be 50/- where the annual volume bound in half-calf is ordered, and 46/- where the cloth volume is required. The present cost of the Annual Volumes only is 25/- half-calf and 21/- cloth.

Mr. Page made it clear that it was not suggested his firm should have a monopoly in regard to the supply of all Statutes, as those practitioners who desired to adhere to the present method of buying only such Acts as they urgently required, in addition to separate annual volumes, could still do so. Where local Booksellers attend to their requirements for them, this practice could be continued as Butterworth's would supply through the Booksellers from their bulk stock.

The proposals had been carefully considered by the Wellington District Law Society, and at a special meeting of the Council of the New Zealand Law Society and delegates from the District Law Societies, both meetings unanimously approving of the scheme.

Several questions were answered, and the Chairman then moved that: "This Conference approves of the proposal outlined for an improved method of issue of the New Zealand Statutes." This was seconded by Mr. J. B. Johnston (Auckland) and unanimously agreed to.

Law Journal.

MR. W. J. HUNTER (Christchurch) asked permission to substitute for Remit (a) which read:—

> **"That it is desirable that the profession in New Zealand should have its own Law Journal,"**

the following:—

> **"That the proposal of Messrs. Butterworth & Co. (Australia) Ltd., to set aside a portion of each issue of the 'New Zealand Law Journal' for matter to be supplied by or on behalf of the profession as a whole, be referred to a Committee for favourable consideration and report to the New Zealand Law Society."**

Permission was given.

Mr. A. F. Wright (Christchurch) seconded.

Mr. Hunter then read the following letter :—

11th April, 1928.

The Secretary,
Legal Conference,
Christchurch.

Dear Sir,—

I understand "the desirability of the Profession in New Zealand commencing a Law Journal of its own" will be discussed at a meeting of the Conference, on Thursday afternoon. In connection with this question I should like to submit a few facts which may not be known to some of the members, and in addition to make an offer on behalf of my firm, Messrs. Butterworth & Co. (Aus.) Ltd., who own and publish the "New Zealand Law Journal," which may be of interest to the Conference.

The Law Institute of Victoria publishes a monthly journal at a cost to subscribers of £1 1s. 0d. (One Guinea) per annum. I am not certain at the moment if this charge is made in the form of a levy on all members of the Profession, or if subscription to the journal is at the option of the practitioners. The journal consists of ten pages of text per month, made up of special articles, solicitors' notes, etc., in addition to Court lists and fixtures.

This publication may be taken as a useful guide when considering what advantages are to be derived here if a similar procedure to Victoria was adopted. Apart from the financial loss which I venture to suggest would ensue (unless an annual charge was levied on all members of the Profession) very considerable difficulties would have to be overcome to keep such a paper alive and full of interesting and useful matter.

It seems to me that some arrangement should be possible whereby the Profession could obtain all it requires, and without cost, through the re-organised and rapidly improving "New Zealand Law Journal." If desired to do so my firm would be willing to set aside, say, four pages per issue for the use of practitioners in the Dominion, free of charge; the responsibility for the matter printed in these pages to rest with the New Zealand and/or District Law Societies, provided the publishers are indemnified against actions for libel, if any, arising out of the publication of such matter.

On account of the larger size of page of the "New Zealand Law Journal" the suggested four pages per issue would be equal to twelve pages per month of the size of the Victorian Law Institute Journal, and I think for some time to come this reservation would more than adequately cover the needs of the Profession in New Zealand.

I suggest that if this offer is acceptable to the Conference, the appointment of a practitioner resident in Wellington, to act as Editor of the Lawyers' own section of the Journal be considered.

Yours faithfully,
HERBERT PAGE,
Australasian Manager of
BUTTERWORTH & Co. (AUS.) LTD.

As the Conference had already exceeded the time allotted for the discussion of the Papers and Remits on the Agenda Paper—it was decided to refer this remit and offer to the Conference Committee for report to the New Zealand Law Society.

Remit Discharged.

THE CHAIRMAN said he was informed that it was not proposed to go on with the following remit :—

"That a motor license should not be issued to anyone who does not produce a receipt for an insurance premium covering third party risks."

(CANTERBURY).

The remit was discharged from the Agenda Paper.

Proposed Executive.

MR. W. J. HUNTER (Christchurch) moved :—

"That Messrs. Gray, Neave, Hamilton, Hunter, Spence, Lusk, J. B. Johnston, and Brough be a Committee to carry into effect the resolutions of Conference, and meet in Wellington when the New Zealand Law Society meets."

The motion was not seconded.

MR. G. M. SPENCE (New Plymouth) moved :—

"That the members of the Conference Committee, Messrs. W. M. Hamilton, K. Neave, W. J. Hunter, H. C. D. van Asch, W. R. Lascelles, A. F. Wright, R. H. Livingstone, H. D. Andrews, R. Twyneham, R. A. Cuthbert, M. J. Gresson, C. S. Thomas, E. W. White, W. J. Sim, and J. D. Hutchison, be a Committee to carry into effect the resolutions of Conference."

MR. J. B. JOHNSTON (Auckland) seconded.

The motion was agreed to.

Votes of Thanks.

MR. H. D. ANDREWS (Christchurch) moved :—

"That there be included in the Minutes an expression of the Conference's very keen appreciation of the work done by the Chairman, Mr. A. Gray, K.C., President of the New Zealand Law Society."

MR. W. M. HAMILTON (Christchurch) seconded.

Delegates carried the motion by very warm applause.

MR. P. LEVI (Wellington) moved :—

"That a vote of thanks be accorded to the Canterbury Committee for the work done in preparing for Conference."

MR. C. HUGHES (New Plymouth) seconded.

The motion was agreed to.

On the motion of THE CHAIRMAN, votes of thanks were accorded to: The Entertainment Committee (special reference being made to Messrs. Lascelles and Livingstone); The Ladies' Committee; The Government, for the use of the Provincial Council Chamber; The Press.

Next Conference.

MR. C. J. PAYNE (Dunedin) asked if it would be possible to fix where the next Conference would be held.

MR. M. J. GRESSON (Christchurch) suggested that the matter should be left to the New Zealand Law Society.

This was approved.

THE CHAIRMAN stated he would see that the question of determining the meeting place of next Conference be placed on the Order Paper for the next meeting of the Council of the New Zealand Law Society.

Conference rose shortly after noon.

A Matter for the Moots.

The following ancient case has again been reported as one suitable for the moots. Euathlus, a law student, received lessons from Protagoras, and it was provided in the agreement that the tuition fee should be payable if and when the pupil succeeded in his first law case. Time passed and the first law case of Euathlus did not occur. Thereupon Protagoras sued him for the amount of the fee; and Euathlus appeared for the defence. Said Protagoras: "If you lose you will have to pay me by virtue of the judgment; and if you win you will have to pay me under our contract." To which Euathlus replied thus: "Not so; for if I lose nothing is due by virtue of our contract; and if I win, by the sentence of these righteous judges, I shall be free." *Cur. adv. vult.*

L.J., 17/3/28.

Mr. Alexander Gray, K.C. (Conference President).

Mr. Gray after serving his Articles in the firm of Izard and Bell was admitted as a Barrister and Solicitor in 1881. He practised in Greytown for some five years, afterwards coming to Wellington where he has since carried on his profession.

Mr. Gray was granted a Patent as King's Counsel in 1912. In March, 1918, he was elected Vice-President of the N.Z. Law Society retaining that position until March, 1926, when on the retirement of Sir Charles Skerrett he was elected President of the Society.

Mr. Gray has for some years commanded a large practice, having acted in many important cases and having long been recognised as one of the leaders of the Profession.

It is not, however, of Mr. Gray's professional career that this note is designed to speak, but rather of his Chairmanship of the recent Legal Conference in Christchurch. To say that he discharged his duty in an admirable method would be to epitomise the action of Mr. Gray in the Chair. A very large amount of business was put through in an expeditious way and on no occasion was there ever the slightest friction. Firmness and courtesy restrained what might have been the exuberance of younger members of the Conference, while to all of us the fact that the business brought before the Conference was controlled by Mr. Gray was a source of very great pleasure. The Conference, which in the opinion of many attending it, is likely to mark a new era in the history and standing of the Profession in the Dominion, was undoubtedly a very great success, and its success was in no little degree contributed to by the excellence of Mr. Gray's Chairmanship. While Mr. Gray is to be congratulated on the method in which he controlled the Conference the Profession is to be congratulated on having had Mr. Gray in the Chair.

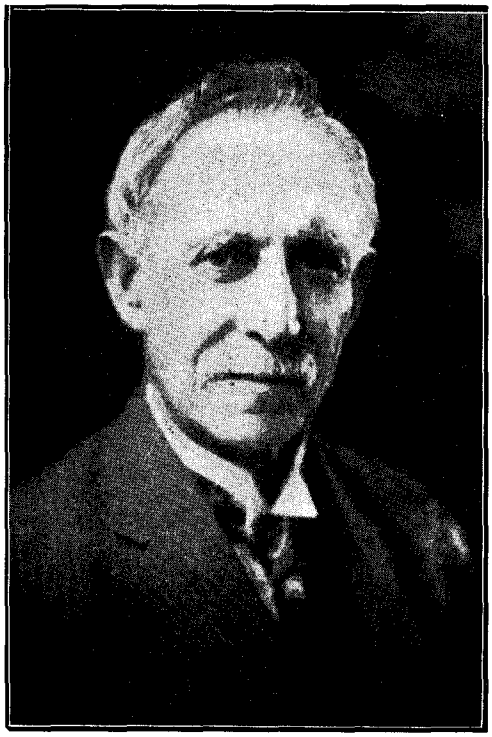
—C. H. T.

Mr. W. J. Hunter (Conference Secretary).

Mr. W. J. Hunter, LL.B., the Secretary of the Law Conference, was admitted to the legal profession by the Honourable Mr. Justice Chapman, at Gisborne, in 1907, and was shortly afterwards taken into partnership in the firm of Kippenberger and Franks, of Christchurch. For some twenty years he has practised in Christchurch and is now senior partner in the firm of Hunter and Ronaldson. Mr. Hunter has all along followed the common law side of the profession, and has an extensive practice in cases dealing with the law relating to master and servant. From his earliest years in the Profession Mr. Hunter has devoted much time and thought to its welfare as a whole. He was Honorary Secretary to the Canterbury District Law Society in 1912 and 1913, and for many years had a position on the Council of that Society, being President in 1925 and 1926. In his successful advocacy of the desirability and practicability of a New Zealand Law Conference, and in carrying out with such success the arduous secretarial duties in connection with the first Conference. Mr. Hunter has indeed rendered good service to the Profession.

Mr. K. Neave (President Canterbury Law Society).

We regret we have not been able to obtain a photograph of Mr. Neave for reproduction in this issue. Tribute must be paid to the active interest displayed by him in the effort to bring this first Conference into being, and in the planning required to make it the success which it undoubtedly was. Mr. Neave, admitted in March, 1900, practices as a Barrister and Solicitor in Christchurch, being a partner in the firm of Messrs. Lane, Neave and Wanklyn.



Mr. W. M. Hamilton (Chairman of Conference Committee)

Mr. W. M. Hamilton, the Chairman of the Law Conference Committee, was born in Geelong, Victoria, came to New Zealand in 1866, attended Wellington College, and was subsequently articled to Mr. T. M. Macdonald, Crown Solicitor at Invercargill. Mr. Hamilton was admitted to the Bar in 1886, and for the next two years remained upon the staff of Macdonald and Russell. In 1889 he commenced practice on his own account at Waimate. When, in 1916, Mr. C. A. Stringer who was in partnership with Mr. S. G. Raymond, K.C., left on Active Service, Mr. Hamilton went to Christchurch to temporarily take his place. On Mr. Stringer's return, Mr. Hamilton was taken into partnership, the firm of which he is a member being known now as Raymond, Stringer, Hamilton and Donnelly, Mr. A. T. Donnelly joining the firm on the retirement from practice of Mr. Raymond. For many years Mr. Hamilton has taken a keen interest in educational matters. One-time Chairman of the South Canterbury Education Board, he afterwards held a seat on the Canterbury Board, and is at present a member of the Board of Governors of Canterbury College. Mr. Hamilton was elected President of the Canterbury District Law Society in 1927.

With the concurrence of the Conference Committee, The Hon. The Attorney-General's address, Mr. Lascelles' paper on "Inroads on the Work of the Profession," Mr. Myers' address on "The Outlook of the Profession," and the Taranaki Remit and ensuing discussions, are not reported in full.

We welcome correspondence on matters arising out of the Conference, as we feel that in this way the views of the various districts in the Dominion can be made known to one another.

Forensic Fables.

THE OLD STAGER AND THE EXCHEQUER SUIT ON THE INFORMATION OF THE ATTORNEY-GENERAL ISSUING OUT OF THE PETTY-BAG.

ONE day an Agitated Solicitor Waited upon an Old Stager. The Latter was Replete with such Learning as is to be found in the Third Edition of "Bullen & Leake." The Agitated Solicitor Wanted the Old Stager to Advise him. There was a Firm of High Standing which Owed his Clients a Lot of Money. Though the Firm of High Standing had not a Leg to Stand upon, Order Fourteen was No Good, as they could Easily Put Up some Rotten Sort of Defence. His Clients must Have the Money forthwith as they were in a Wobbly Financial Condition. What was he to Do?

The Old Stager said it was Clearly a Case for an Exchequer Suit on the Information of the Attorney-General Issuing out of the Petty-Bag. He Promised to Prepare without Delay the Necessary Formal Documents. When the Agitated Solicitor had Withdrawn the Old Stager got to Work on the Draft. It Began with the Observation, "Oyez, Oyez, Oyez," and Recited that the Right Honourable the Attorney-General had been Informed by his Trusty and Well-beloved Thomas Binks and Thomas Binks the Younger (Trading as Binks and Company) that the Firm of High Standing Owed them the Sum of £3,921 4s. 8d. It Proceeded to Warn the Firm of High Standing that by Declining to Pay the said Moneys they had Rendered themselves Liable to the Pains and Penalties Made and Provided by 1 & 2 Ric. II, c. 4, 18 Eliz. c. 25 and Divers Acts Amending the Same, the Provisions whereof were reserved and Maintained by and Incorporated in the Judicature Acts of 1873 and 1875 (36 & 37 Vict. c. 66 and 38 and 39 Vict. c. 77). It then Summoned Each and Every of the Members of the Firm of High Standing to Attend at Twelve O'Clock (Midday) on Monday (*Die Lunae*) next after the Morrow of All Souls at the Bar of the House of Lords and there Show Cause in Person why they should not be Committed to the Clock-Tower of his Majesty's Palace of Westminster or to his

(*Continued on page 67.*)

London Letter.

Temple, London,
18th January, 1928.

My dear N.Z.,—

The event of the year is, already, the retirement of Sir John Simon from the Bar, officially announced today. It is the happiest consideration, in this event, that in the series of Appeals to the Judicial Committee of the Privy Council, which you saw fit to prosecute a little over a year ago, he took his part. For he was, indeed, no ordinary man: Simon the Aloof, I should label him; aloof but always, as a matter of one of his many high principles, striving to descend from his aloofness and to associate with intellects which, in law, were less than his own. These descents are not always effective; indeed, we may attribute his failure to achieve in Parliament the heights which he has achieved in the forum, to the fact that he has no natural Humanity emanating from him and his scrupulous determination to be human does not always produce the most agreeable effect. But that he is a great man in our profession let no other man deny; from his earliest days, wherever he spoke and whomever he addressed, he instantly made his deep mark. I well remember the not very distant past, when he and F. E. Smith were comparatively young and comparatively new young men: the latter, with his enormous vitality, was making his mark, but it was almost an insignificant mark to that which Simon, by his brilliance, was making. Humour and humanity have, perhaps, outstripped sheer intellectual brilliance, but not by much as I think will appear in contemporary history of the Bar. It remains to be said that be he ever so aloof, we are all well aware of his remarkable virtues as a man: and these the inner history of the war reflects. Though it is the fact that I had a Red Bag from him, and this indicates my little recommendation from him, my fervent recommendation of him is entirely impersonal and I do not think it is over fervent.

He sails, apparently, for India on Thursday next; and it is said (for all I know it may have been reported in the newspapers without my seeing it) that Sir Leslie Scott, K.C., M.P., sails at about the same time, to advise the Indian Princes, during the commission, and to advise them at a fee running into five figures the first of which is neither a one nor a two! The Brief, and what a Brief to miss, was apparently to have been offered to Simon himself: I can only hope that my estimate is an entirely wrong one and that the Princes will have something like value for their money in his substitute. It is said that the latter's Clerk's fee amounts to something over two thousand pounds, and does not involve a single stroke of work except the writing out of the receipt for it. Dear me, after rehearsing all these great events and dabbling in all these electrifying figures, I find the utmost difficulty in getting down seriously to the minor business of noting the term's cases, so far as there has yet been a term or have yet been cases.

There was an interesting judgment of Sankey J., last week in a solicitor's costs case. You are no doubt familiar with the incident of a wife's solicitors' claims upon a husband for their costs in her divorce litigation with him, always, to me, one of the bitterest ironies of litigious life? The name of the case was **Arnold, Weaver and Co. v. Amari** (citing **Durnford v. Baker** (1924) 2 K.B. 587) and the interest of it is that it affords another instance in which such a claim, being made at common law and not (you must note) arising upon any order or taxation in the matrimonial cause itself, failed. I will not dwell unduly on the subject: I fancy I have plagued you at unconscionable length upon a recent occasion with this aspect of the law, *a propos* an affair in the Courts of my own. If you are interested in the subject, however, I recommend Sankey's judgment to your attention; it brings out the main principle that the whole business is but an illustration of the law of a wife's necessaries and that, the rules of the Divorce Court being irrelevant, a wife's solicitors must succeed upon her agency of necessity or not succeed at all.

There was next a Workmen's Compensation case, of wide enough interest, I am sure, to be of interest to you. The Master of the Rolls deals at some length, in **Lee v. S. and J. Brechnan,** with the incident of a workman who, during the carrying out of his master's business, gets involved in a quarrel with another and suffers injury at that other's hands. Is this a matter "arising out of" . . . .? It all depends upon the circumstances attending that other: thus a foreman employed to control rough workmen, a master employed to handle dangerously unruly boys, or a ship's officer controlling a savage crew, if they suffer injury, suffer it in the course of the employment and as a matter arising thereout. But in this case the County Court Judge was held to be within his rights, in law, (and, it was observed, *obiter*, probably correct in fact) in holding that the workman, bent upon collecting parcels, was in no sense employed to be in contact with others who might probably strike him!

There has been a renewal of the indisposition of Greer, L.J., who so far has rarely been well enough, since his elevation to the Appellate Bench, to sit on it. Eve, J., was hurried into the Court of Appeal and has there remained ever since. The sueing of Lady Hardinge by moneylenders, and the dealing with the suit by McCardie J.; the entertaining defence, in **Harker v. Britannic Assurance Company,** before the Divisional Court on a Case Stated, that no offence had been committed against the provision forbidding insurance of children above a certain amount (our Industrial Assurance Act, 1923) because the law forbade the assurance purported to be made and the assurance purported to have been made was therefore void; the comments of Lord Justice Scrutton upon the unforgivable delay in revenue cases, made in an appeal which he himself had caused to be set down (neither side moving to that end) in order to make the comment; and the Spy trial at the Old Bailey with all its attendant thrill and all its attendant comic element—these be matters which I can hardly record in my Notes on Cases and which I can only mention in passing.

In **Coleshill v. Manchester Corporation,** a Court of Appeal comprising Scrutton and Atkin, L.JJ., and Eve, J., made some very important and interesting observations upon the law which hangs upon the peg labelled "Bare License." The complainant had incurred an accident using a pathway not definitely intended, nor yet very definitely forbidden, for the use of pedestrians. This being the narrative of a case in law, you will be less surprised than he was to learn that a trench was cut across the path and that he fell into it. I need do no more than refer you to Lord Sumner's earlier observations in **Mersey Docks v. Proctor** (1923) A.C. 253. The same Court (substituting Sargant, L.J., for Atkin, L.J.)

made its pronouncement in the Rent Restrictions Act case, **Roe v. Russel,** which raises the point as to the power of the Statutory Tenant to sublet. The Court of Appeal upset the Divisional Court and, Scrutton, L.J., being intimately given to criticism of the cruder kind, also went out of his way to try to upset the Parliamentary Counsel. The learned Judge made a great joke about his wish to make the draftsman of the Act pay the costs of the appeal: I am glad to see in this morning's "Times" that a Mr. Bertram Cox, who has apparently known all the Parliamentary Counsel since Sir Henry Jenkyns, makes a short, sharp and very effective retort, the gem of which is his reference to the humourist Judge and "the law-court laugh." With the merits or demerits of our Parliamentary Counsel past, present or future you will not be overmuch concerned: but you will thank me for having called your attention to that "law-court laugh," all promoters of which all of us would gladly assist in burying alive, would we not? There is this little touch to add, that the drafting of the particular Act which has so much disturbed the learned Judge, was, by a special arrangement, assisted in fact by another learned Judge who shall be nameless here! This is not generally known.

Two further interesting judgments of Clauson. J., may be mentioned. The name of the first is **Wing v. Burn,** though I believe that those ubiquitous Others were involved in one side or the other and possibly both. The subject matter of the discussion was the occasions on which an injunction may be granted and occasions on which it may not be granted; compare such cases as **Rigby v. Cornish,** 14 C.D. 482, and **Markt and Coy. v. Steamship Company Ltd.** (1910) 2 K.B. 1021. The Second case to which I refer was **Farr v. Ginnings,** and in this Clauson, J., dealt with the assignment of a lease by an assignor who neither had obtained a consent nor had even done repairs which he had been called upon to do. This reminds us of the later provisions of our recent Landlord and Tenant Act, which the more studious of you may now already be studying, though I doubt it. Still more, no doubt, it reminds you of such cases as **Goldstein v. Sanders** (1915) 1 Ch. 549, of which m'Lud was carefully reminded but from which he was able to distinguish the facts of the case before him by reason of their very much less "outrageous" nature. Whether or not **Tattersall v. Sladen** interests you and whether or not you are all agog to learn what rules our Dental Board can validly make under the Dentists Registrations Acts, I hesitate to guess. Possibly you are not concerned, and possibly the name of **Betterley v. Heyworth** (1910) A.C. 376, which deals with these matters, is not a household word with you. To be frank with you, I would not be too aggressively sure that I myself have got the first part of the name right: and I am typing too late at night to verify. Why on earth, I ask myself, why on earth have not barristers stenographers, so that we may write this type of letter in a lazy way at a convenient time of day. But perhaps barristers have stenographers in New Zealand? Then would to heaven I was in New Zealand, too! Not only should I have the stenographer to take down the letter, but I should also, being there, be spared the necessity of writing the letter at all.

Which reminds me, that our Law Society has once more taken pains to turn down any suggestion of fusion here of the branches of the profession: no doubt you, the fused, hear much of the pride of the Bar here and certainly the Solicitors in England emphasise the tale of it. Believe me, the Solicitor's complaint against our aloofness is nothing compared to his determination not to share his profession with us! And lastly, also a matter touched upon by the Law Society, the two Judges are, it seems, going to be appointed after all: or, I should say, the House of Commons is going to be hotly canvassed by the Attorney-General on that behalf, soon after its reassembly. It remains to be seen whether the Economy Brigade of the Conservative Party, not an unworthy body nor an insignificant one, puts up a fight and a strong enough fight to get the project abandoned for want of unanimous love of Justice and of passion for more of it, day by day.

Yours ever,

INNER TEMPLAR.

Divorce Practice.

In **Re Winter, ex parte Williams** (43 T.L.R. 41), decided a short but important point of divorce practice. A petitioner in the divorce court had been awarded damages and costs against the co-respondent, and on the latter's failure to pay, the petitioner took out two judgment summonses against the debtor, one in respect of the damages, and the other in respect of the costs, and the point arose whether the applicant was entitled to obtain an order against the debtor in respect of the costs in priority to an order in respect of the damages. Mr. Justice Clauson, sitting in bankruptcy, held that such an order should be made, directing that the future practice of the Court would be that the order should go in respect of the payment of costs first, since, as the learned Judge pointed out, "the husband was liable to his own solicitor for the costs, and it would be hard, when he was so liable, that he should in the first place only be able to obtain an order against the debtor in respect of the damages."

"The Solicitors' Journal and Weekly Reporter,"

December 24, 1927.

Forensic Fables.

(*Continued from page 65*).

Majesty's Keep or Tower of London and there be Imprisoned until Further Order. In a few Closing Sentences it Pointed out that if they Desired to be Assoilzied, Purged and Acquitted of the said Debt and Relieved from the Obligation of Attending at the said Bar of the said House of Lords, the Firm of High Standing must Cause the said Sum of £3,921 4s. 8d. to be Paid in Cash to the said Thomas Binks and Thomas Binks the Younger (trading as Binks & Company) within Twenty-four Hours. At the end the Old Stager added the Devout Aspiration, "God Save the King." He also Penned in the Margin a Note to the Effect that this Imposing Document should be Engrossed on Parchment and Served upon the Defendants by a Mounted Policeman. The Firm of High Standing (who were Hoping for a Government Contract in the Near Future) were so Terrified by the Old Stager's Screed that, without Consulting Their Solicitors they Cashed up at once. When the Agitated Solicitor Subsequently Enquired of the Old Stager where he had Unearthed this Most Satisfactory Procedure, the Old Stager Modestly Confessed that he had Invented it.

Moral: Try it on.

Rules—Appeals to Privy Council.

(*Continued from page 37*)

Examination of proof of Record and striking off copies.

26. The Registrar of the Privy Council shall, as soon as the proof prints of the Record are ready, give notice to all parties who have entered an Appearance, requesting them to attend at the Registry of the Privy Council, at a time to be named in such notice, in order to examine the said proof prints and compare the same with the certified Record, and shall for that purpose furnish each of the said parties with one proof print. After the examination has been completed the Appellant shall without delay lodge his proof print, duly corrected and (so far as necessary) approved by the Respondent, and the Registrar of the Privy Council shall thereupon cause the copies of the Record to be struck off from such proof print.

Number of copies of Record for parties.

27. Each party who has entered an Appearance shall be entitled to receive, for his own use, six copies of the Record.

How costs of printing Record are to be borne.

28. Subject to any special direction from the Judicial Committee to the contrary, the costs of and incidental to the printing of the Record shall form part of the costs of the Appeal; but the costs of and incidental to the printing of any document objected to by one party, in accordance with Rule 18, shall, if such document is found on the taxation of costs to be unnecessary or irrelevant, be disallowed to, or borne by, the party insisting on including the same in the Record.

Petition of Appeal.

Times within which Petition shall be lodged.

29. The Appellant shall lodge his Petition of Appeal—

(*a*) Where the Record arrives in England printed, within a period of four months from the date of such arrival in the case of Appeals from Courts situate in any of the countries or places named in Schedule B hereto and within a period of two months from the same date in the case of Appeals from any other Courts;

(*b*) Where the Record arrives in England written, within a period of one month from, but not before, the date of the completion of the printing thereof:

Provided that nothing in this Rule contained shall preclude the Appellant from lodging his Petition of Appeal prior to the arrival of the Record, or the completion of the printing thereof, if there are special reasons why, in the opinion of the Registrar of the Privy Council, it should be desirable for him to do so.

Form of Petition.

30. The Petition of Appeal shall be lodged in the form prescribed by Rule 47 hereinafter contained. It shall recite succinctly, and, as far as possible, in chronological order, the principal steps in the proceedings leading up to the Appeal from the commencement thereof down to the admission of the Appeal, but shall not contain argumentative matter or travel into the merits of the case.

Service of Petition.

31. The Appellant shall, after lodging his Petition of Appeal, serve a copy thereof without delay on the Respondent, as soon as the latter has entered an Appearance, and shall endorse such copy with the date of the lodgment.

Withdrawal of Appeal.

Withdrawal of Appeal before Petition of Appeal has been lodged.

32. Where an Appellant who has not lodged his Petition of Appeal desires to withdraw his Appeal he shall give notice in writing to that effect to the Registrar of the Privy Council, and the said Registrar shall, with all convenient speed after the receipt of such notice, by letter notify the Registrar of the Court appealed from that the Appeal has been withdrawn, and the said Appeal shall thereupon stand dismissed as from the date of the said letter without further Order.

Withdrawal of appeal after Petition of Appeal has been lodged.

33. Where an Appellant who has lodged his Petition of Appeal desires to withdraw his Appeal he shall present a Petition to that effect to His Majesty in Council. On the hearing of any such Petition, a Respondent who has entered an Appearance in the Appeal shall, subject to any agreement between him and the Appellant to the contrary, be entitled to apply to the Judicial Committee for his costs; but where the Respondent has not entered an Appearance, or, having entered an Appearance, consents in writing to the prayer of the Petition, the Petition may, if the Judicial Committee think fit, be disposed of in the same way *mutatis mutandis* as a Consent Petition under the provisions of Rule 56 hereinafter contained.

Non-prosecution of Appeal.

Dismissal of Appeal where Appellant takes no step in prosecution thereof.

34. Where an Appellant takes no step in prosecution of his Appeal within a period of four months from the date of the arrival of the Record in England in the case of an Appeal from a Court situate in any of the countries or places named in Schedule B hereto, or within a period of two months from the same date in the case of an Appeal from any other Court, the Registrar of the Privy Council shall, with all convenient speed, by letter notify the Registrar of the Court appealed from that the Appeal has not been prosecuted, and the Appeal shall thereupon stand dismissed for non-prosecution as from the date of the said letter without further Order, and a copy of the said letter shall be sent by the Registrar of the Privy Council to any Respondent who has entered an Appearance in the Appeal.

Dismissal of Appeal for non-prosecution after Appellant's Appearance and before lodgment of Petition of Appeal.

35. Where an Appellant who has entered an Appearance—

(*a*) Fails to bespeak a copy of a written Record, or of part of a written Record, in accordance with, and within the periods prescribed by, Rule 22; or

(*b*) Having bespoken such copy within the periods prescribed by Rule 22, fails thereafter to proceed with due diligence to take all such further steps as may be necessary for the purpose of completing the printing of the said Record; or

(*c*) Fails to lodge his Petition of Appeal within the periods respectively prescribed by Rule 29—

the Registrar of the Privy Council shall call upon the Appellant to explain his default, and, if no explanation is offered, or if the explanation offered is, in the opinion of the said Registrar, insufficient, the said Registrar shall, with all convenient speed, by letter notify the Registrar of the Court appealed from that the Appeal has not been effectually prosecuted, and the Appeal shall thereupon stand dismissed for non-prosecution as from the date of the said letter without further Order, and a copy of the said letter shall be sent by the Registrar of the Privy Council to all the parties who have entered an Appearance in the Appeal.

Dismissal of Appeal for non-prosecution after lodgment of Petition of Appeal.

36. Where an Appellant who has lodged his Petition of Appeal fails thereafter to prosecute his Appeal with due diligence, the Registrar of the Privy Council shall call upon him to explain his default, and, if no explanation is offered, or if the explanation offered is, in the opinion of the said Registrar, insufficient, the said Registrar shall issue a Summons to the Appellant calling upon him to show cause before the Judicial Committee, at a time to be named in the said Summons, why the Appeal should not be dismissed for non-prosecution: Provided that no such Summons shall be issued by the said Registrar before the expiration of one year from the date of the arrival of the Record in England. If the Respondent has entered an Appearance in the Appeal, the Registrar of the Privy Council shall send him a copy of the said Summons, and the Respondent shall be entitled to be heard before the Judicial Committee in the matter of the said Summons at the time named, and to ask for his costs and such other relief as he may be advised. The Judicial Committee may, after considering the matter of the said Summons, recommend to His Majesty the dismissal of the Appeal for non-prosecution, or give such other directions therein as the justice of the case may require.

Restoring an Appeal dismissed for non-prosecution.

37. An Appellant whose Appeal has been dismissed for non-prosecution may present a Petition to His Majesty in Council praying that his Appeal may be restored.

Appearance by Respondent.

Time within which Respondent may appear.

38. The Respondent may enter an Appearance at any time between the arrival of the Record and the hearing of the Appeal, but if he unduly delays entering an Appearance he shall bear, or be disallowed, the costs occasioned by such delay, unless the Judicial Committee otherwise direct.

Notice of Appearance by Respondent.

39. The Respondent shall forthwith after entering an Appearance give notice thereof to the Appellant, if the latter has entered an Appearance.

Form of Appearance where all the Respondents do not appear.

40. Where there are two or more Respondents, and only one or some of them enter an Appearance, the Appearance Form shall set out the names of the appearing Respondents.

Separate Appearances.

41. Two or more Respondents may, at their own risk as to costs, enter separate Appearances in the same Appeal.

Non-appearing Respondent not entitled to receive notices or lodge Case.

42. A Respondent who has not entered an Appearance shall not be entitled to receive any notices relating to the Appeal from the Registrar of the Privy Council, nor be allowed to lodge a Case in the Appeal.

Procedure on non-appearance of Respondent.

43. Where a Respondent fails to enter an Appearance in an Appeal the following Rules shall, subject to any special Order of the Judicial Committee to the contrary, apply :—

(*a*) If the non-appearing Respondent was a Respondent at the time when the Appeal was admitted, whether by the Order of the Court appealed from or by an Order of His Majesty in Council giving the Appellant special leave to appeal, and it appears from the terms of the said Order, or Order in Council, or otherwise from the Record, or from a Certificate of the Registrar of the Court appealed from, that the said non-appearing Respondent has received notice or was otherwise aware of the Order of the Court appealed from admitting the Appeal, or of the Order of His Majesty in Council giving the Appellant special leave to appeal, and has also received notice or was otherwise aware of the despatch of the Record to England, the appeal may, if all other conditions of its being set down are satisfied, be set down *ex parte* as against the said non-appearing Respondent at any time after the expiration of three months from the date of the lodging of the Petition of Appeal :

(*b*) If the non-appearing Respondent was made a Respondent by an Order of His Majesty in Council subsequently to the admission of the Appeal, and it appears from the Record, or from a Supplementary Record, or from a Certificate of the Registrar of the Court appealed from, that the said non-appearing Respondent has received notice or was otherwise aware of any intended application to bring him on the record as a Respondent, the Appeal may, if all other conditions of its being set down are satisfied, be set down *ex parte* as against the said non-appearing Respondent at any time after the expiration of three months from the date on which he shall have been served with a copy of His Majesty's Order in Council bringing him on the Record as a Respondent :

Provided that where it is shown to the satisfaction of the Registrar of the Privy Council, by Affidavit or otherwise, either that an Appellant has made every reasonable endeavour to serve a non-appearing Respondent with the notices mentioned in clause (*a*) and (*b*) respectively and has failed to effect such service, or that it is not the intention of the non-appearing Respondent to enter an Appearance to the Appeal, the Appeal may, without further Order in that behalf, and at the risk of the Appellant, be proceeded with *ex parte* as against the said non-appearing Respondent.

Respondent defending Appeal *in forma pauperis*.

44. A Respondent who desires to defend an Appeal *in forma pauperis* may present a Petition to that effect to His Majesty in Council, which Petition shall be accompanied by an Affidavit from the Petitioner stating that he is not worth £25 in the world excepting his wearing-apparel and his interest in the subject-matter of the Appeal.

Petitions generally.

Mode of addressing Petitions.

45. All petitions for orders or directions as to matters of practice or procedure arising after the lodging of the Petition of Appeal and not involving any change in the parties to an Appeal shall be addressed to the Judicial Committee. All other Petitions shall be addressed to His Majesty in Council, but a Petition which is properly addressed to His Majesty in Council may include, as incidental to the relief thereby sought, a prayer for orders or directions as to matters of practice or procedure.

Orders on Petitions which need not be drawn up.

46. Where an Order made by the Judicial Committee does not embody any special terms or include any special directions it shall not be necessary to draw up such Order, unless the Committee otherwise direct, but a Note thereof shall be made by the Registrar of the Privy Council.

Form of Petition and number of copies to be lodged.

47. All Petitions shall consist of paragraphs numbered consecutively, and shall be written, typewritten, or lithographed on brief paper with quarter margin, and endorsed with the name of the Court appealed from, the full title and Privy Council number of the Appeal to which the Petition relates, or the full title of the Petition (as the case may be), and the name and address of the London Agent (if any) of the Petitioner, but need not be signed, except as provided by Rule 3. Unless the Petition is a Consent Petition within the meaning of Rule 56 at least five copies thereof shall be lodged.

Caveat.

48. Where a Petition is expected to be lodged, or has been lodged, which does not relate to any pending Appeal of which the Record has been registered in the Registry of the Privy Council, any person claiming a right to appear before the Judicial Committee on the hearing of such Petition may lodge a Caveat in the matter thereof, and shall thereupon be entitled to receive from the Registrar of the Privy Council notice of the lodging of the Petition, if at the time of the lodging of the Caveat such Petition has not yet been lodged, and, if and when the Petition has been lodged, to require the Petitioner to serve him with a copy of the Petition, and to furnish him, at his own expense, with copies of any papers lodged by the Petitioner in support of his Petition. The Caveator shall forthwith after lodging his Caveat give notice thereof to the Petitioner, if the Petition has been lodged.

Service of Petition.

49. Where a Petition is lodged in the matter of any pending Appeal of which the Record has been registered in the Registry of the Privy Council, the Petitioner shall serve any party who has entered an Appearance in the Appeal with a copy of such Petition, and the party so served shall thereupon be entitled to require the petitioner to furnish him, at his own expense, with copies of any papers lodged by the Petitioner in support of the Petition.

Verifying Petition by Affidavit.

50. A Petition not relating to any Appeal of which the Record has been registered in the Registry of the Privy Council, and any other Petition containing allegations of fact which cannot be verified by reference to the registered Record or any certificate or duly authenticated statement of the Court appealed from, shall be supported by Affidavit. Where the Petitioner prosecutes his Petition in person the said Affidavit shall be sworn by the Petitioner himself, and shall state that, to the best of the deponent's knowledge, information, and belief, the allegations contained in the Petition are true. Where the Petitioner is represented by an Agent the said Affidavit shall be sworn by such Agent, and shall, besides stating that, to the best of the deponent's knowledge, information, and belief, the allegations contained in the Petition are true, show how the deponent obtained his instructions, and the information enabling him to present the Petition.

Petition for Order of Revivor or Substitution.

51. A Petition for an Order of Revivor or Substitution shall be accompanied by a certificate or duly authenticated statement from the Court appealed from showing who, in the opinion of the said Court, is the proper person to be substituted or entered on the Record in place of or in addition to a party who has died or undergone a change of status.

Petition disclosing no reasonable cause of appeal or containing scandalous matter to be refused.

52. The Registrar of the Privy Council may refuse to receive a Petition on the grounds that it discloses no reasonable cause of appeal, or is frivolous, or contains scandalous matter, but the Petitioner may appeal, by way of motion, from such refusal to the Judicial Committee.

Setting down Petition.

53. As soon as a Petition and all necessary documents are lodged the petition shall thereupon be deemed to be set down.

(To be continued)

Bench and Bar.

Mr. David S. Smith, LL.M., senior partner in the firm of Messrs. Morrison, Smith & Morrison, has accepted the offer of the Attorney-General (Hon. F. J. Rolleston) to a seat on the Supreme Court Bench. Mr. Justice Smith is a graduate of Victoria University College, and has been in practice in Wellington during the whole of his career with the exception of that period when he was at the war. He has for some years been prominent in Commercial Cases, the most recent being that of George & Doughty v. Commissioner of Taxes which went to the Privy Council, where Mr. Smith's client succeeded. Mr. Smith's appointment meets with general approval because he has proved himself to be a sound lawyer. His social qualities are evidenced by the fact that he was this year elected President of the Wellington Rotary Club.

Mr. J. R. Herd has been taken into partnership in the firm of Messrs. Tripe & Herd, Wellington. Mr. Herd was a student at Auckland University College. For some years he was attached to the Justice Department, being on the Registrar's Staff of the Supreme Courts at Wellington and Gisborne. He joined the staff of Messrs. Stanton, Johnstone & Spence, Auckland, in 1921, linking up with the office of which he has now become a partner, about two years ago.

A new Hawke's Bay partnership is that of Messrs. Campbell & White. Mr. C. C. Campbell has been lately Managing Clerk to Messrs. Webb, Richmond, Cornish and Swan, of Wellington, and Mr. J. R. White has been for some time associated with Mr. W. E. Leicester, of Wellington, and lately with Mr. John O'Shea, Solicitor to the Wellington City Corporation. Under the style of Campbell & White the new firm will practise at Napier.

Mr. Ian W. B. Roy, partner in the law firm of Messrs. Roy, Nicholson & Bennett and Mr. Clement White, of the staff of that firm have commenced practice in partnership, at 93 Brougham Street, New Plymouth. Mr. Roy graduated LL.B. at Victoria University College, and was admitted to practice in 1922. For some years he was associated with Mr. M. Myers, K.C., but on the death of Mr. Roy, senr., returned to New Plymouth to take his father's place in the practice. In addition to his professional interests Mr. Roy is greatly interested in the study of the Polynesians. Mr. Clement White was educated at New Plymouth Boys' High School and joined the staff of the firm of Roy, Nicholson and Bennett, with whom he remained for some seven years. He qualified as a Solicitor in 1924, and was admitted in the same year. He has an intimate knowledge of Native Land Work.

Mr. D. W. Russell, Solicitor, of Christchurch, who has been associate to Mr. Justice Adams for the last three years, has joined the staff of Slater, Sargeant, Dale and Connal. He has been succeeded as Judge's associate by Mr. W. R. Teape.

Mr. Joseph Snell, M.A., LL.B., has been appointed Deputy Commissioner of Rural Intermediate Credit. Mr. Snell holds the degrees of M.A. (with honours in Mental and Moral Philosophy) and Bachelor of Laws in the N.Z. University, and was admitted as a Solicitor of the Supreme Court in 1921, and as a Barrister in the following year.

The duties of the new position will be carried out by Mr. Snell in conjunction with his duties as Controller of the Mortgage Division of the Public Trust Office.

Mr. A. G. Anderson, who has been managing clerk for Messrs. Moss and Spence, Solicitors, of New Plymouth, for the past five years, has been admitted into partnership in the firm. Mr. Anderson received his education at the Otago Boys' High School, Dunedin, and studied law at the Otago University. He began his professional career with the firm of Moore, Moore and Nicholls, of Dunedin, and remained with them until a short time before going to New Plymouth. Mr. Anderson was admitted as a Solicitor in 1925. The new firm will continue to practice under the name of Moss and Spence.

Consequent upon the appointment of Mr. D. S. Smith to the Supreme Court Bench, Mr. F. C. Spratt, LL.B., late of Halliwell, Spratt, Thomson & Horner, of Hawera and Stratford, where he had practised for twelve years before recently commencing practice on his own account at Wellington, and Mr. D. G. B. Morison, LL.B., who since 1920 has been in partnership with Mr. D. S. Smith, have amalgamated their practices under the style of Morison, Spratt and Morison.

Rules and Regulations.

In Gazette No. 26, issued on 27th March, 1928:—

General Regulations under the Explosive and Dangerous Goods Amendment Act 1920.

In Gazette No. 27, issued on 29th March, 1928:—

Amendments to Rules and Regulations under Magistrates' Court Act 1908.

Amended Table of Fees to be taken in respect of proceedings in the Magistrates' Courts.—Imprisonment for Debt Limitation Act 1908.

Rates of Interest Payable on Deposits in the Post Office Savings Bank.—Post and Telegraph Amendment Act 1927.

In Gazette No. 28, issued on 30th March, 1928:—

Additional Regulations under the Valuation of Land Act 1925, and the Valuation of Land Amendment Act 1927.

Motor-lorry Regulations Amendment No. 1.—Motor-vehicles Act 1924.—Public Works Amendment Acts 1924, 1927.

District Valuation Rolls for certain Districts to be revised as at 31st March, 1928.—Valuation of Land Act 1925.

In Gazette No. 29, issued on 5th April, 1928:—

Amended Regulations under Discharged Soldiers Settlement Act 1915.

Additional Regulations under Census and Statistics Act 1926 re Statistics to be furnished weekly by General Managers of Banks carrying on business in New Zealand.