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" *And do as adversaries do in law,*
Strive mightily, but eat and drink as friends."
—TAMING OF THE SHREW, vii, 2. (The Heading of the Menu-cards at the Conference Bar Dinner.)

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The Legal Conference at Dunedin.

WHEN the first Dominion-wide Legal Conference at Christchurch in 1928 was followed in successive years by similarly successful gatherings at Wellington and at Auckland, it seemed as though this valued and valuable annual gathering had become an established feature of our professional life.

The Third Legal Conference was held in 1930. Then, through causes not within the control of practitioners, six years went by; anticipation became dulled, and it was doubted if the series would ever be continued. Some, however, did not lose hope of its resumption, and, this year, with the appearance of more favourable conditions, came realization. For, as a result of the infectious enthusiasm which optimism infused into the careful preparations made by the members of the Law Society of Otago, and of the resulting trust created in their brethren in other parts of New Zealand, unprecedented success attended the Fourth Legal Conference which took place at Dunedin in Easter week.

In the following pages, in this issue of the JOURNAL which is devoted to the Conference in all its aspects, the success to which we have referred leaps to the eye. It is not our purpose to anticipate in any way the records of achievement so unfolded. We propose, therefore, to confine ourselves here to a broad outline of the features which made the representative foregathering at Dunedin a valuable contribution to the corporate well-being of the profession as a whole.

Those who were privileged to take part in the Conference are unanimous in the chief impression left with them at its conclusion: the very happy nature of the whole proceedings which took place in an atmosphere of friendliness and co-operation that was a joy to everyone. Rivalry of any kind was forgotten, and seniors and juniors of both branches of the profession met as brothers. In the Conference Hall there was grave and dignified deliberation. Without its walls, there was cameraderie, perhaps not so studious, but none the less fraternal. Everyone shared in this happy consummation; and nothing but good to the profession as a whole must result from a gathering of practitioners thoroughly representative as was this one, and inspired with the spirit of a happy family reunion.

Good solid work was done at the business sessions of the Conference. The question of Law Reform was paramount; it was considered in each of the prepared papers, and formed the subject of the principal remits. All the discussions maintained a high level, and the presence of an Attorney-General who appreciated the need for the reforms outlined gave importance and added value to the proceedings.

We have said that the Conference was a representative one. Herein lay its greatest value. Members of the Judiciary did not forget that they were still members of the profession, and, in the various social events of the programme, took their part right heartily, gaining thereby in the respect of those still in the ranks. The titular head of the Bar told his brethren of hopes of achievement in the interests of the profession, and, consequently, of the wide public which it serves. The leaders of the parent Law Society rubbed shoulders with members to whom theretofore they had been but names on a printed page; and the parties of both parts profited by the daily contact, and gained in understanding of one another's viewpoints on matters of common interest. Leaders and others from the cities and towns met, and learned to know and to make themselves known to their brethren within the ranks; and, through the very ably-written papers read at the Conference and the equally valuable discussions which followed those readings and the moving and explanation of remits, a general mutuality of endeavour became strikingly apparent. The common aim, the administration of justice in the most effective manner, was seen to be an actuality, and not a mere academic abstraction: the members of the Conference knew it had a real purpose, and at once they settled down to make it as workable in as practical a way as lay within their power.

This must in common fairness be said: In the past it has appeared to some that the objective of our profession as a corporate entity was the conservation of its own interests, or the interest of its members. However much or little truth there may have been in such an observation, we say emphatically as a result of close contact with the Conference as a whole, and with its individual members of all ranks, that the profession's present ideal is service to the public at large. Whatever else may be the effect of a Legal Conference, such as that at Dunedin, it was obvious in every hour of its existence that the public must be the ultimate beneficiary of its deliberations.

Finally, this review of the Conference must not end with the Conference itself. From the moment the visitors from the outer world arrived in Dunedin, they were made to feel that they were coming home. Many from northern latitudes had heard of Dunedin hospitality, which, unlike most travellers' tales, soon proved to have been an under-estimation. Most found, after having experienced it for several days, that home had nothing to offer in comparison with the welcome of the good folk of the Southern provinces. The members of the Law Society of Otago, their wives, their sisters—and maybe their cousins and their aunts, so universal did the welcome and the hospitality appear—have set a fresh standard for future Legal Conferences: but few who sampled their achievement expect to live to see a new record established. There was a pervasive charm about the whole of the arrangements made for the visitors, so permeated were the days with the kindness and cheeriness of their hosts and hostesses, and this was something that had to be experienced to be appreciated at its full worth, but is impossible of description with any hope of adequate expression. But we know that those who took part in the Conference at Dunedin now understand how happy memories can become the most cherished of life's possessions.

THE FIRST DAY.

The Fourth Dominion Legal Conference.

Opening Proceedings.

THE President of the Law Society of the District of Otago (Mr. A. N. Haggitt) took the chair at 10 a.m.

In welcoming the visitors to the Conference, Mr. Haggitt said it gave the local Society great pleasure to receive them after the lapse of so many years. He expressed gratification at the wide representation from all parts of the Dominion, and said they would all be glad to welcome among them His Majesty's Attorney-General, the Hon. H. G. R. Mason, and His Majesty's Solicitor-General, Mr. H. H. Cornish, K.C. He congratulated the Hon. Mr. Mason on behalf of the profession on his attainment of so prominent a position in the Government of the country, and expressed pleasure at the fact that one of their number should again have assumed so important a portfolio. The speaker regretted, however, that the Hon. Mr. Mason was not going to be with the Conference members as long as they had hoped. His duties necessitated his returning to Wellington by air on the morrow. Mr. Haggitt drew attention to the fact that there was present a very old practitioner in the person of Mr. H. D. Andrews, of Christchurch, who had completed no fewer than fifty-four years of active practice.

Webster, Photo.

Mr. A. N. Haggitt, President of the Otago Law Society.

"This Conference," the Otago Society's President continued, "marks a great mile-stone in the history of the legal profession. The pleasure we have to-day is one that has been denied us for five years, and I hope that, whatever may be the history of Conferences in the future, we shall not have them again held in abeyance through the same causes that have operated during the past five years.

"The Conference has two aspects—the business aspect, and the social aspect—and I do not doubt that we shall all derive very great advantage from the papers which will be read and the discussions which will take place. But, for our part, we of Dunedin have an ambition to make the social side the greatest success. We hope the functions arranged for your entertainment will prove to be as adequate and enjoyable as the Dunedin Committee intends them to be."

Mr. Haggitt said his duty was simply formally to welcome the visitors, because in the short space of an hour and a half they would be called upon to face a more elaborate function; and he concluded:

"I formally welcome you as the guests of the Otago Law Society, and I now move that Mr. O'Leary do take the Chair so that we may get on with the business of the Conference."

The President of the New Zealand Law Society, Mr. H. F. O'Leary, K.C., then took the Chair. Before giving his formal address, he tendered an apology for the non-appearance of Mr. A. H. Johnstone, K.C., Vice-President of the New Zealand Law Society. "He had intended being here to-day, but he has been very heavily engaged in the Court of Appeal and has to commence again immediately after the holidays are over, and with it all he has not been enjoying robust health. So he has asked me to tender you his apology," Mr. O'Leary said. He then remarked that it was useful to have a Vice-Chairman. "And so," he announced, "in virtue of the powers I do not possess, I appoint Mr. A. N. Haggitt as Vice-Chairman of the Conference."

The Concert Hall of the Dunedin Town Hall, where the Conference sessions were held, now appeared as if a Lawyers' Parliament were in session. The cross-benches on either side of the President's table and those in the body of the Hall facing it were well filled with an assemblage that was thoroughly representative of the Profession in the Dominion.

The President of the Conference next called upon the Secretary, Mr. J. G. Warrington, to read the roll-call, which was as follows:—

The Hon. the Attorney-General, Mr. H. G. R. Mason.

The Solicitor-General, Mr. H. H. Cornish, K.C.

AUCKLAND DISTRICT LAW SOCIETY.

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A. C. A. Sexton, M.P. — A. R. Wilson.

HAMILTON DISTRICT LAW SOCIETY.

Messrs.
A. R. Brown. — W. McPherson (Morrinsville).
J. C. Carroll (Te Aroha).

TARANAKI DISTRICT LAW SOCIETY.

Messrs.
W. C. Deem (Inglewood). — L. M. Moss.
D. Hutchen. — R. H. Quilliam.
W. Middleton. — J. H. Sheat.

HAWKE'S BAY DISTRICT LAW SOCIETY.

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WELLINGTON DISTRICT LAW SOCIETY.

Messrs.

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W. H. Cunningham.
A. E. Currie.
J. A. Grant (Palmerston North).
E. P. Hay.
O. C. Mazengarb.
H. F. O'Leary, K.C.
P. J. O'Regan.
David Perry.
Hon. W. Perry, M.L.C.
H. J. Thompson, Secretary of the New Zealand Law Society.
N. M. Thomson (Levin).
C. H. Weston, K.C.
C. G. White.

NELSON DISTRICT LAW SOCIETY.

Messrs.

W. T. Churchward (Blenheim).
W. Vernon Rout (Nelson).

WESTLAND DISTRICT LAW SOCIETY.

Messrs.

J. W. Hannan (Greymouth).
F. A. Kitchingham (Greymouth).

CANTERBURY DISTRICT LAW SOCIETY.

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J. T. Brady (Timaru).
G. H. Buchanan.
L. G. Cameron (Timaru).
W. D. Campbell (Timaru).
A. H. Cavell.
L. A. Charles (Ashburton).
J. R. Cunningham.
R. A. Cuthbert.
C. G. de C. Drury (Ashburton).
J. Emslie (Timaru).
L. E. Finch (Timaru).
A. C. Fraser (Rangiora).
L. W. Gee.
K. M. Gresson.
M. J. Gresson.
T. A. Gresson.
H. H. Hanna.
A. L. Haslam.
L. J. H. Hensley.
H. W. Hunter.
J. D. Hutchison.
R. Kennedy (Ashburton).
W. B. T. Leete.
R. H. Livingstone.
A. McRae (Timaru).
T. Milliken.
H. D. Muff.
D. S. Murchison.
M. A. Raymond (Timaru).
R. L. Ronaldson.
W. A. Scott (Timaru).
W. J. Sim.
E. D. R. Smith (Rangiora).
H. P. Smith.
A. S. Taylor.
N. E. Taylor.
G. H. R. Ulrich (Timaru).
C. E. Wacher.
G. J. Walker (Timaru).
W. H. Walton (Timaru).
G. T. Weston.
A. F. Wright.

SOUTHLAND DISTRICT LAW SOCIETY.

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G. M. Broughton.
A. L. Dolamore (Gore).
F. G. Hall-Jones.
B. W. Hewat.
J. G. Imlay.
W. B. Johnston (Gore).
A. M. Macdonald.
T. V. Mahoney.
M. H. Mitchel.
J. Crichton Prain.
J. Robertson.
H. E. Russell.
R. Stout.
J. Tait.

OTAGO DISTRICT LAW SOCIETY.

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F. B. Adams.
H. S. Adams.
W. G. Aitken.
E. J. Anderson.
P. S. Anderson.
J. T. Armstrong (Oamaru).
I. A. Arthur (Heriot).
R. R. Aspinall.
C. B. Barrowclough.
G. T. Baylee.
R. S. Brown.
W. Brown.
W. R. Brugh.
A. W. Buchler.
C. L. Calvert.
M. A. Clower.
H. L. Cook.
J. A. Cook.
F. C. Dawson.
J. B. Deaker.
E. A. Duncan.
R. L. Fairmaid.
G. W. Ferens.
W. F. Forrester.
R. S. Frapwell.
J. I. Fraser (Ranfurly).
G. Gallaway.
R. Gilkison.
H. J. S. Grater (Oamaru).
A. N. Haggitt.
R. B. Hamel.
A. C. Hanlon, K.C.
W. A. Harlow (Clyde).
N. G. Hay.
R. D. Jamieson (Ranfurly).
A. H. Jeavons.
M. Joel.
G. J. Kelly (Balclutha).
G. M. Lloyd.
S. D. Macdonald (Balclutha).
R. McKinnon.
J. S. Monro.
W. L. Moore.
J. C. Mowat.
A. G. Neill.
P. H. W. Nevill.
J. B. Nichol.
J. C. Parcell (Cromwell).
J. M. Paterson.
B. A. Quelch.
D. Ramsay.
J. C. Robertson.
H. S. Ross.
K. G. Roy.
R. C. Rutherford.
R. M. Rutherford (Milton)
G. M. Salmond.
T. K. S. Sidey.
J. A. Sim.
L. R. Simpson.
R. H. Simpson.
J. S. Sinclair.
R. G. Sinclair.
E. J. Smith.
D. A. Solomon.
A. C. Stephens.
D. J. Sumpter (Milton).
T. E. Sunderland (Alexandra).
W. D. Taylor.
W. M. Taylor.
G. H. Thomson (Milton).
J. B. Thomson.
J. W. Thomson.
I. L. Turnbull.
H. H. Walker.
J. P. Ward.
J. G. Warrington.
A. I. W. Wood.

THE LADIES' RECEPTION.

At the Art Gallery.

While the foregoing proceedings had been taking place at the Town Hall, the visiting ladies were being received by the Otago ladies at the Dunedin Art Gallery. Motor-buses were provided to take them there, and to bring them back in time for the Civic Reception at the Town Hall at noon.

Miss Downie Stewart, on behalf of the Dunedin ladies, in a charming speech welcomed the visitors, and expressed the delight of all those locally connected with the legal profession at the opportunity given by the Conference of meeting the ladies of similar interests from other parts of the Dominion.

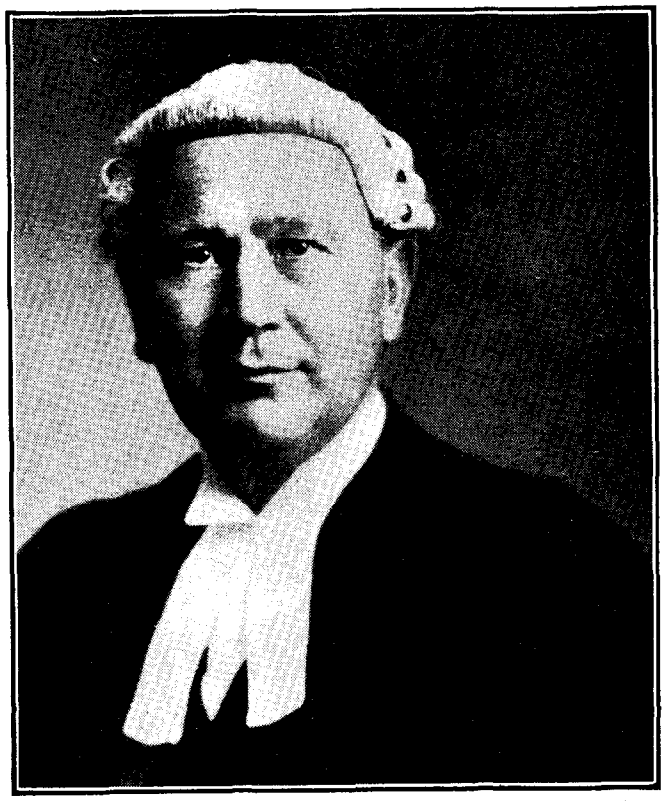
The opportunity was taken to introduce the visiting ladies to the Ladies Committee of the Conference, and thus an excellent beginning was made in the progressive sociability of the week. After a view of the pictures, which form a collection of which Dunedin is justly proud, morning tea was provided. By bus and private cars, the gathering then proceeded to the Town Hall.

The Presidential Address.

Mr. O'Leary, K.C., describes the Law Society's Work.

THE President of the New Zealand Law Society, Mr. H. F. O'Leary, K.C., gave his address at the conclusion of the calling of the roll. He said that it was at one time hoped that His Excellency the Governor-General, Viscount Galway, would be present to open the Conference, as Sir Charles Fergusson, the then Governor-General, had done in 1929 at Wellington; but unfortunately His Excellency could not attend. The duty of opening the proceedings had therefore devolved on the speaker, as President of the New Zealand Law Society.

"In opening the Conference, I express my pleasure at the revival of our Conferences, the last of which was held in Auckland in 1930," Mr. O'Leary said. "It was then decided to hold the next in the following year at Dunedin. During 1930, however, the financial difficulties that had arisen made it clear that it would be unwise, if not impossible, to proceed, and so the holding of the Conference in 1931 was abandoned, and its revival had to be left over indefinitely; but we are meeting to-day, six years later, and it is to be hoped that nothing will in the future interfere with the holding of the Conferences at whatever interval of time it may be decided to hold them. The work and the cost of this Conference are not inconsiderable, and it speaks much for our brethren in Dunedin that they are the first who could undertake the task after the difficult and lean times which we have all experienced in the last few years. Consequently I desire to congratulate them on their work, and their initiative and their confidence in arranging this gathering for us.



S.P. Andrew Studios.

Mr. H. F. O'Leary, K.C., Conference President.

"During the intervening years much of importance has happened," the speaker continued. "Some who were with us then have left us, alas! for ever, and amongst them some of our most distinguished brethren. A few days ago I looked at the photograph of those who attended the Auckland gathering—the last held—and in the front row standing together were Sir Francis Bell, Sir Thomas Sidey, and Sir Alexander Gray. The three have gone, and it is fitting that I should pay a tribute to their memories. Sir Thomas Sidey was at that time Attorney-General, and in him the profession remembers an Attorney-General who gave great help to the profession—the best Attorney-General from the profession's point of view we had had for many years. Sir Francis Bell, to whose memory touching and sincere tributes have so recently been paid throughout New Zealand, was indeed our most distinguished lawyer—the Nestor of the profession—and his work for the profession and the Law Society can never be surpassed, if indeed equalled. Sir Alexander Gray was at that time our President: a lovable character who left us all too soon, and whose place in the profession it is impossible to fill. It is fitting that I should mention these, and express regret at their passing along with other less distinguished but no less respected members of our profession throughout New Zealand.

"The question may be asked, and is indeed sometimes asked, what is the value of these Conferences, revived in our gathering this year? To my mind their value is great and varied," said the President.

In the first place they provided an opportunity for practitioners from all over New Zealand to meet in conference, he continued. They enabled those who practised in different parts of the country to get to know each other, and this was a decided benefit in any business or profession. One of the disadvantages under which practitioners laboured was that the great majority of lawyers were widely scattered and rarely if ever able to meet, though they had perhaps corresponded for years and knew one another well—on paper—but they had not actually met. These gatherings, therefore, provided a unique opportunity for the making of acquaintances and friendships too long unmade, and for a free exchange of views upon matters in general as well as those of professional interest—an opportunity of which those present might and, the speaker was sure, would take the fullest advantage.

"Then I think a Conference is a time when opportunity can be taken of acquainting the general body of practitioners with some of the work—some of the activities, of the Council of the Law Society, the body which administers the affairs of practitioners—and concerning which our lawyers in general are without any information," Mr. O'Leary continued.

"Of course, too, there is the general business of the Conference, the most important work we are concerned with, and the social events, all of which add greatly

to the value of these gatherings, and so I think it can be claimed, and justly claimed, that we do not meet without achieving something of material as well as social benefit to our profession."

The Work of the Law Society.

The speaker went on to say that he had mentioned the work of the Law Society, and it was as well that he should take the opportunity of saying something on this—indeed he thought it was his duty as President to do so. He proceeded:

"I am sure that few outside those who are directly concerned with the New Zealand Society realize the amount of work done annually by the Council in the control and for the welfare and the advancement of the profession. One has only to look at the reports of the quarterly meetings to see for himself the large amount of work done and the endless number of subjects with which the Council has to deal, but the work is gladly and willingly done by the various members of the Council throughout New Zealand. In passing, I may say that it is a matter for congratulation that at our most recent meeting every District Society was directly represented by a full representation from its own members. As you know, proxies from outside the individual societies are not now permitted, because of the amending legislation recently passed.

"The past year has been one of the greatest importance to the profession because we promoted and were responsible for the placing on the Statute-book of an amendment to the Law Practitioners Act which brought about a radical change in the difficult and distasteful duty of disciplining our own members. I am bound to say that we were met very well by the legislators, and assisted in every way by the majority of them. My experience in connection with the passing of our Bill emboldens me to say that we need not fear asking Parliament in the future for any reasonable provisions which we may think desirable in the interests and for the protection of the profession.

"I think I may add, too, that in the minds of politicians and the general public we have greatly advanced and strengthened our position by the self-imposition of the Solicitors' Fidelity Guarantee Fund. That Act provided by us showed those outside our ranks that we had regard as lawyers not only for our own interests but also for the interests of the public. In support of this view I quote a letter from the late Prime Minister and Attorney-General which he wrote to the Society in November last in answer to a letter of thanks to him for his assistance in the passing of our measure. It is as follows:

Wellington,
November 11, 1935.

Dear Sir,—

I thank you for your letter of the 29th ultimo relative to the passing of the Law Practitioners Act, 1935.

I may say that it gave me much pleasure to bring forward a Bill that benefited not only the profession of law but also, I believe, the public at large.

By voluntarily creating a guarantee fund out of levies upon its members your profession has furnished convincing proof that it is not selfishly concerned only for its own interest, but has regard also to that of the public. In so doing, it showed itself worthy of the increased power of domestic discipline which the Act has conferred upon it.

I have the honour to be, etc.,
G. Forbes."

Mr. O'Leary said that, incidentally, he might without breach of confidence with the gentleman concerned tell of an interesting incident which bore out the view taken by some that the legal profession was one of the ideal trade-unions in the country.

The Best Trade-union Principles.

"When our legislation was coming forward we thought it wise as well as courteous to see the then Leader of the Opposition to tell him of our difficulties and to enlist his aid, if he would give it, in securing the passing of the measure. We saw him along with two of his colleagues who were lawyers, and we explained the Bill to him—it contained, as you know, other provisions than those dealing with discipline. At the end I thanked Mr. Savage, for it was the present Prime Minister whom we were seeing, for his meeting and hearing us. He said, in reply, that he thanked us because if people who promoted legislation took the course we had taken he and his party would understand the measure when it came before the House and would be in a position to discuss it and help with its passage. And then he added:

'I do not pretend at the moment to understand all the provisions of the Bill, but I understand sufficient of it to realize that it contains the very best principles of Trade-unionism.'

"Unfortunately we did not get through the strongest trade-union provision—that which would ensure that legal work would be done only by members of the legal profession—but we did succeed with other provisions which must be of great advantage, particularly that which requires three years' practical experience before a person is entitled to commence practice on his own account."

The President added that he regretted to say that the Disciplinary Committee had already had to function; but, as against the publicity and notoriety that a striking-off proceeding necessitated in the past, the Committee was able, thanks to the new Act, quietly and privately to strike off a practitioner who had made application to it to do so.

The Society's Variety of Duties.

The work during the year was very varied, the President stated; and, as he had said, the Council of the parent body were called on to deal with an endless variety of subjects. They watched legislation and made representations when they thought that any of it affected the profession, or when they thought the Council were particularly able to offer advice as to the wisdom or otherwise of legislation affecting the public generally. They made representations, too, for the removal of anomalies in or injustices caused by legislation as it stood, and the speaker was sure the profession had an Attorney-General at the moment who was alive to many of the anomalies that existed and who would deal sympathetically with any requests they might make. It was worthy of note that he had lost no time in introducing legislation to place the law based on the maxim *actio personalis moritur cum persona* in line with the modern English law on the subject.

"We endeavour to create friendly and remunerative relations with bodies and Departments with which the profession is concerned," said Mr. O'Leary. "As an example of this I think we can claim some credit for obtaining from the Mortgage Corporation an arrangement concerning its work which at once created a most friendly spirit between the Corporation and ourselves, and which will undoubtedly be to the benefit of the profession as a whole.

"I need only, in passing, refer to the never-ending questions of scales of costs and interpretations of same, and adjustments between practitioners which are referred to us from time to time, and matters of minor importance, infinite in number, that we deal with.

"We endeavour to satisfy everybody; and, whilst we know we must expect some criticism, I think in the main we are more commended than condemned.

An Important Year Commencing.

"This present year is an important one for us," the President said. It was felt that the time had come for the reconstituting of the Council of Law Reporting, which, he stated, was an anomalous body which had without doubt done great work in the past, but which must be remodelled to meet the wishes and requirements of the general body of practitioners. Within a month there would be a meeting at which representatives of the Law Society would meet the Council of Law Reporting, when, no doubt, a modern and comprehensive scheme for the administration of Law Reporting would be successfully evolved.

"I have referred to the loss during the passage of our Bill through Parliament of one amendment designed to ensure that legal work would be done by those entitled to do it—*viz.*, the legal profession," Mr. O'Leary continued; "but it is intended, if not this year, at least in the near future, to bring forward this very desirable provision when I hope that the recognition that it is a sound trade-union principle will ensure its successful passage through Parliament.

"A matter of growing concern is the upkeep of many of our libraries in the lesser centres where sittings of the Supreme Court are held, and this question must be dealt with and put on a proper footing in the near future. We find that individual practitioners—apart from the heavy calls that they are obliged to pay by statute—are voluntarily contributing no inconsiderable amount to the upkeep of their libraries. This should not be—and the position must, if possible, be remedied.

"I trust you will forgive me for so prominently referring to the activities of the Society—what has been done, what will be done—but I assure you that what I have said was in pursuance of my view that a gathering of this kind is one at which the profession should learn something, are entitled to learn something, of the work of the Council which administers their affairs. The profession may thereby be encouraged to take a more active interest in the Society's work, and when an occasion arises for action we will then have a well-informed and a united body to support us."

The Last Six Years.

Mr. O'Leary now passed on to say a few words about the profession in general:

"Looking back since we last met, one is tempted to ask what have the last six years meant for us.

"They have indeed been years of difficulty—lawyers no less than others have had to share in the financial stress of the times. It is to be hoped that we are now emerging from our difficulties, and that from now onward the profession will be concerned with profitable and attractive work.

"I think we can claim that during these years of difficulty the profession has not been lacking in public spirit, nor in sympathy for those in distress. If anyone has any doubt as to this, I would advise him to peruse the journals and accounts of any average practitioner and see for himself the amount of gratuitous and inadequately remunerated work that has been done.

And the Future.

"And what of the future? What it will bring to us materially is a matter of uncertainty, but, as I have said earlier, I trust that we are emerging from difficult to more prosperous times. But, whatever the future may have for us in this respect, we can go on—we must go on—never deviating from this rule, that our conduct and practice should at all times maintain and enhance the honour and integrity of the profession to which we belong.

"We are officers of the Court and servants of the public, and the trust reposed in us must be faithfully discharged if we are to justify and retain the confidence placed in us.

"Unfortunately these rules have not always been adhered to, and it is a matter for regret that over the last few years the lapses of some of our own professional brethren have been a cause of shame to the rest of us. Yet, as is acknowledged by the public, we have done our best to put right the wrongs that have been done or may be done by the members of our profession, but we should not year in and year out be obliged by our defaulting members to meet this considerable burden.

"How are these unfortunate happenings to be avoided? In many ways, but particularly by the most scrupulous exactitude in money matters, and the strictest integrity in handling the property of others. That is the basis of the confidence we seek to win—and the observance of those rules, together with the taking of suitable care and attention in our businesses, will avoid the difficulties and confusion which are often the forerunners of dishonesty, at first neither anticipated nor designed."

The President concluded his address by saying that while lawyers contended that the services of their profession played a necessary and integral part in the functioning of a democratic state and that such services were indispensable, yet a responsibility which could not be evaded rested on them, both individually and collectively, as to the manner in which these services were discharged.

"Our profession—which is a useful profession—cannot hope to escape at all times misunderstandings and perhaps abuse; but a close adherence to the highest standards of conduct and practice, a spirit of fellowship and co-operation, and mutually helpful dealings amongst ourselves, will enable us to withstand all misunderstandings and criticism, and will leave us properly to fulfil to our own and the public's satisfaction the responsibilities which rest on us."

The President, who was frequently applauded during his address, received an ovation from the Conference on resuming his seat.

The President then began the formal business of the Conference by extending a very hearty welcome to the Attorney-General, the Hon. H. G. R. Mason, M.P. Mr. O'Leary said that they were all glad to have the new Attorney-General with them at the Conference. Mr. Mason had come to Dunedin at considerable personal inconvenience, and, while his duties required his returning to Wellington by air on the morrow, the speaker knew that his presence at the Conference would add to the value of its deliberations.

The Attorney-General's Address.

Legislation by Order in Council.

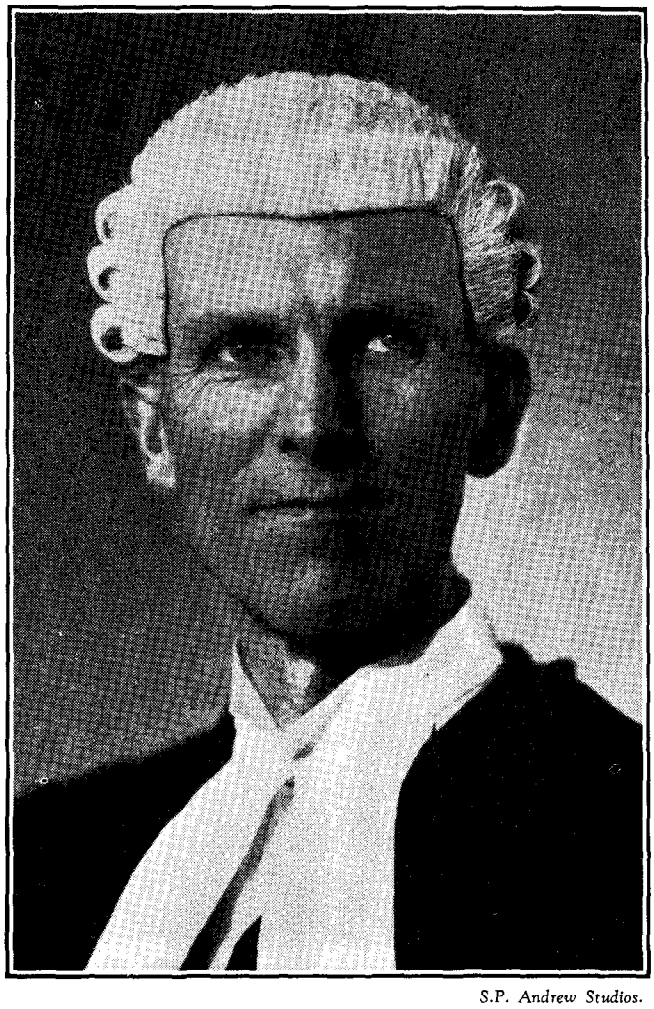
THE Attorney-General, the Hon. H. G. R. Mason, was called upon by the President to address the Conference.

The Hon. Mr. Mason said that, first of all, he joined with the President in acknowledging the work done by their brethren in Dunedin in reviving the Conferences.

"One cannot be here for even the few hours we have been without realizing the immense amount of work and trouble that has been taken, and also the immense zeal, faith, and enthusiasm which has inspired our Dunedin brethren," he said.

"We are all, I am sure, appreciative of the good work they have done, and are doing.

"I also wish to acknowledge the kind references made to myself," the Attorney-General continued. "I would be a very ungrateful person if I were not moved by the goodwill of the Profession and the very kind assurances of support which have been poured out since I became Attorney-General. I feel that there is an immense amount of goodwill, and I can assure the Profession that I am most anxious to justify the hopes they express and the good thoughts they hold of me. I do not want to talk about what I hope to do, except that one realizes that it is through the Attorney-General that the Profession, very largely, must hope to make its accumulated knowledge and experience available to the Government and to the public."



S.P. Andrew Studios.

The Hon. H. G. R. Mason.

Mr. Mason said he was not going to touch upon the question of law reforms, nor the details of the work before this Conference. There was, however, one matter to which he would like to refer.

"In reading over the proceedings of previous Conferences, I notice mention is made of the matter of delegated legislation, concerning which I will say a few words," he proceeded. "There has been much said as to whether that is a good thing or a bad thing. I do not propose to discuss that aspect at all. It seems to me that the tendency to embody much of our legislation in rules and regulations or other forms of delegated legislation is inevitable. If a thing is inevitable and has a tendency to increase, I think we must cease from asking ourselves whether it is good or bad, and rather ask ourselves how shall we best use this inevitable thing? How may we best adapt ourselves to this change? That, I think, is the best course to adopt. When I say it is 'inevitable' I am not putting forward any idea of my own, of course. In an address given at the first Conference, one speaker quoted these words (referring, of course, to conditions in England):

'In the year 1920, for instance, there were ten times as many statutory orders and rules as there were statutes, such orders and rules containing five times more words than all the statutes.'

And that speaker at the Conference at Christchurch said:

'It should be remembered that our Government activities are daily becoming greater and not less.'

"Under the circumstances it is recognized that more of our law will be found in rules and regulations than has formerly been the case. And who is to say what proportion of legislation should be found in the statutes and what in the regulations? After all, whatever may be said upon the matter, with the increasing complexity of modern life and the increasing necessity for regulating many details of statutory legislation which did not previously exist, it is not so much a change of sentiment as a change in our mode of life; and we must find an increasing importance attaching to rules and regulations. If this be so, I think the first step of an Attorney-General is to see that those rules and regulations are made more accessible, and published in some handier form than at present. That is a work to which I can give my attention at an early date.

"It would be better, it seems to me, if such rules were not published in the *New Zealand Gazette*. Who reads the *Gazette*? Who even takes it? What is one to do with these books cumbering up the shelves? The *Gazette* is a most cumbersome, unwieldy volume, containing a great volume of specific references to land. There is no need to enlarge on that. Everyone knows how difficult it is to find the regulation one wants by hunting through the *Gazettes*.

"If the rules and regulations were published in a

form as easily accessible as the statutes, how much better it would be! Arrangements might be made for booksellers or publishers of law-books to supply such volumes to the practitioners. I think it is quite possible to arrange for the publication of regulations in a form which would give as little trouble as the statutes now give—in a form which could be kept up to date, perhaps by some form of annotation service. I do not want to say that that is the end of the problem, but it at least facilitates the task of finding out what the law is in one department—a great department—of legislation. And when we can find out what the law is, we can more conveniently discuss what modifications should take place. I do not know to what extent the discussions in New Zealand are mere repetitions of those which have taken place in England, or to what extent delegated legislation is found to be a New Zealand problem. I propose to try to make the regulations more accessible. At any rate, it struck me that, if that body of law can be made accessible, an improvement will be found. I cannot see any difficulties in the way and, as a practising lawyer, I feel that my proposal will benefit the profession.

"I do not want to delay the Conference longer further than to say again that we are indebted to our friends of Dunedin for the happy nature of this gathering, and to thank the speakers for the kind remarks about me, and to say that I shall do my best to justify the kind thoughts the profession has expressed towards me."

The Attorney-General was heartily applauded at the conclusion of his address.

THE PRESIDENT: "In the ordinary course of events the motions of thanks will be moved at the conclusion of the Conference; but, as the Attorney-General will not be here after to-day, may I move a very hearty motion of thanks to him now for his eloquent and cordial remarks."

The motion was carried by acclamation.

THE FIRST REMIT.

Workers' Compensation Act, 1922: Proposed Amendments.

MR. P. J. O'REGAN (Wellington) read what he termed a series of resolutions:

That it be a recommendation from this Conference to the Government that any amendments to the Workers' Compensation Act should include the following provisions:—

(1) *That insurance against the liability in respect of injury by accident be made compulsory.*

(2) *That the provisions of s. 63 of the statute be extended to include such work as the fencing and draining of land, the cutting of firewood and fencing material, and generally any farming-work done by contract.*

(3) *That in every case where the employer pays travelling-time, or though not paying travelling-time provides the means of conveying workers to and from work, compensation should be payable in respect of accidents happening to workers in transit.*

(4) *That provision be made for the payment in non-fatal cases of a reasonable amount by way of hospital and medical expenses.*

(5) *That the defence of common employment be altogether abolished.*

MR. O'REGAN then referred to each of the above paragraphs. He said:

"1. With regard to the first, I can assure you that very distressing cases have arisen by reason of the insurance of workers not being compulsory. In practice, I have found cases where men have suffered severe and permanent injuries, but have been denied compensation because the employer failed to insure. The cases I have in mind are where the employer is in a small way of business, and, although you can take action and judgment will probably go against him, the practical effect is that the worker has to go without compensation. *Ex nihilo nihil fit.* That has been particularly evident during the depression.

"Of course, the great majority of employers already insure, and, if insurance were made compulsory, the provision would only be applicable, after all, to a very small number indeed. I think the workers of this country may reasonably claim the same protection which members of the public generally have conferred upon them by the Motor-vehicles Insurance (Third-party Risks) Act, 1928.

"2. As to this second resolution, I think it is not less important. Originally, the Workers' Compensation Act had no application where the relation of master and servant did not exist; and all of you know that the Courts were interminably exercised on drawing the distinction between piece-work and contract.

"Early in the history of the statute the Legislature solved the problem to some extent by providing that mining contractors should be deemed to be workers. As the greater part of mining-work underground is done on contract, this provision helped a great deal; and, later on, this principle was extended to bush-fellers.

"So we now have it that both these classes of workers are protected by s. 63 of the Act. But my experience is that an increasing volume of work of a more general nature is being done by contract, and particularly is this so with a great deal of farm-work, such as the fencing and draining of land, the cutting of firewood and fencing materials, and so on. It is becoming a common practice for farmers to have work of this sort done by contract. I would not, however, suggest that this is due to any intention on the part of farmers to evade the statute. Indeed, farmers generally think they are covered by insurance under the Workers' Compensation Act, and only learn that they are outside the statute when an accident occurs. Generally, of course, it is the insurance company which brings this fact to their notice, and no one can reasonably complain of insurance firms taking advantage of the protection the law gives them. In my experience, both the farmer and the worker honestly believe they are protected by the statute until an accident occurs and a claim is made.

"3. The proposal in the third resolution is really to restore the law to what it was originally believed to be. Until the House of Lords gave its decision in *Hewitson* v. *St. Helens Colliery Co., Ltd.*, [1924] A.C. 59, 16 B.W.C.C. 230, it was believed to be well settled that accidents happening to workers in transit were within the statute, and there were many reported decisions to that effect. That decision in *Hewitson's* case unfortunately introduced an element of confusion, and the Courts have now to inquire closely into the question whether, in travelling to and from his work, the worker was performing a service in the course of his employ-

ment. This is a most difficult question to settle in most cases. I suggest that all accidents happening to workers in transit, where the employer pays travelling-time, or though not paying travelling-time provides the means of transit, should be within the statute.

"4. In regard to this proposal for payment of medical and hospital expenses, it will appear to you as an interesting anomaly that while for many years the statute has provided £50 for funeral and medical expenses in cases of fatal accidents, in non-fatal cases the only amount recoverable for hospital and medical expenses is £1. That appears, I think, in s. 5. We know that amending legislation is due this session, and it is quite possible that this will be provided for, but I appeal to this Conference to set the seal of its approval on this suggestion to have the law rationalized by the allowance of adequate hospital and medical expenses in non-fatal cases.

"5. The fifth resolution deals with the defence of common employment. Here let me say that for sixty years past the rule has been abolished in mining cases. I think it was first abolished by the Regulation of Mines Act, 1874, and the provision then introduced has been continued in both the existing Mining Act and Coal-mines Act. It is also well-settled law that the defence is inapplicable wherever the right of action is founded on breach of a statutory duty, and we have the authority of the Privy Council in *Robin* v. *Union Steam Ship Co. of New Zealand, Ltd.*, [1920] A.C. 654, for saying that since the passing of s. 62 of the Workers' Compensation Act, 1908, the defence of common employment has been completely abolished in cases of fatal accidents. But in a limited number of non-fatal cases, where the maximum recoverable is limited to £1,000, the rule still prevails.

"As a profession, we have a duty to set our seal of approval upon this resolution, so that the last may be heard of this barbarous rule which, I have no hesitation in saying, is a blot upon the Common Law of England. It is not available in mining accidents, in cases based on breach of statutory duty, or even in cases of fatal accidents; but still it remains available as a defence in certain non-fatal cases. I appeal to this Conference to make an end to this indefensible defence of common employment. I would remind you that we are the servants of the public as well as members of a profession, and, remembering that this is a country of universal suffrage, let us do something to allay the suspicion, quite unwarranted suspicion I am first to add, that our profession shows no activity in the public interest."

MR. H. D. ANDREWS (Christchurch) formally seconded the resolutions, which were then declared open for discussion.

MR. O. C. MAZENGARB (Wellington) asked whether Mr. O'REGAN had considered with regard to para. 1 the difficulty of providing for compulsory insurance in the case of local bodies and large companies, which made a practice of carrying their own risks and which had assets well able to provide for any compensation which might be claimed. As to para. 4, a few years ago the statute was amended and the amount of compensation was increased to 66⅔ per cent., because of representations made to the Government of the day about the amount of the allowance for hospital and medical expenses. In the course of a case, the late Sir Robert Stout expressed surprise that only £1 was available, and, when he found that that was so, he made representations to have the law amended. When the matter of an increase was gone into, difficulties arose; and finally, as a concession, the amount of compensation was increased to 66⅔. This was a very liberal concession and should not be overlooked when considering the payment of any increased benefit for hospital and medical expenses. The speaker said that, as to paras. 4 and 5, he was in agreement with Mr. O'REGAN; and he suggested that the remits be put separately.

MR. A. C. A. SEXTON, M.P. (Auckland), asked Mr. O'REGAN whether he had given consideration to what steps could be taken to ensure that the provisions suggested in para. 1 would be carried out. The practical difficulties must be considered: In motor-insurance the premium must be paid before the number-plates were obtained; but with farmers, for instance, there might be great difficulty in enforcing compulsory insurance. As to para. 3, it was questionable whether an employer should be further liable. It seemed that industry could be asked to pay only the actual risks inherent in the employment itself. Where a man was travelling, whether provision was made by the employer or not, the risk should be met elsewhere than by industry, because it was a risk to which all the public was liable, and one that should be provided for from some other quarter. The speaker thought that the third resolution imposed a load upon industry which it should scarcely be called upon to bear.

MR. G. T. BAYLEE (Dunedin) was inclined to agree with Mr. SEXTON in regard to para. 1, and questioned whether an effective check could be designed to ensure observation of its provisions. Employment might be of relatively short duration, and it would not be known there was a breach until the accident occurred, in which case the worker would be so much the worse off, as the statutory penalty would probably come first. The indigent employer would have even less with which to pay. Otherwise, the speaker was in agreement with Mr. O'REGAN.

MR. W. D. CAMPBELL (Timaru) thought it a mistake to attempt to use the Conference as a medium for what he termed "political propaganda." Members of the profession were officers of the Court, and their duty was to assist in the administration of the law as it was. He had always agreed, when reading of attacks upon legislation by regulation, with what the Attorney-General had said that morning: that they were concerned with what the law was, not with what it ought to be. While the speaker agreed with Mr. O'REGAN that his resolutions covered a number of deficiencies in the law, he thought that members of the Conference should direct their attention in a different direction, and not attempt to use the Conference to advocate any schemes, however desirable they might be. It was a well recognized feature of the Constitution that the functions of the Legislature and of the Judiciary were separate, and the Bar was, in a way, part of the Judiciary. He thought it wrong, therefore, to attempt to usurp the work of the Legislature, as wrong as if a barrister introduced suggestions of reform in an argument in Court. The only difficulty the speaker saw was in para. 1 of the resolution, as he thought it would be difficult to enforce. It was a different case with motor-insurance, where, if a man had his car number-plates, it was almost certain that he was insured; but it was a different matter when dealing with employers, and the omission to insure could not be ascertained until the accident happened.

MR. M. J. GRESSON (Christchurch) wished entirely to dissociate himself from the last speaker's remarks.

After all, lawyers were the people who ought to know what the law should be. Particularly, he agreed that it ought to go forward from this Conference that the defence of common employment should be abolished.

MR. J. A. GRANT (Palmerston North) joined Mr. GRESSON in expressing the view that the day had passed when members of the legal fraternity should regard themselves as such only, and not also as members of the public as a whole. It was quite right that, as members of the profession, if they saw a wrong, they should point it out. As to para. 1, the difficulty over compulsion was merely a matter of machinery, and could be overcome by deducting from the compensation which would be paid the amount of the premium, leaving it to the worker to collect it, if possible, from his impecunious employer. The speaker was certain the worker would prefer to receive compensation, even if he could not recover the amount of the premium so deducted.

MR. H. D. ANDREWS (Christchurch) said he wanted to express in the strongest way possible his entire dissent from the views put forward by Mr. CAMPBELL: if he were right, the whole object of the Conference would be gone. He continued: "Surely we meet here in the fullest sense as citizens, as well as members of the Profession; and I hope this Conference and any other Conference will take the wide view and disassociate themselves from the very narrow view expressed by Mr. CAMPBELL. The whole matter was brought before us and expressed so ably by Mr. O'REGAN that I do not want to say anything beyond the fact that he entirely convinced me. He is enunciating principles and, I think, principles which the majority of members present will cordially accept as citizens, whatever they may think as lawyers."

MR. F. B. ADAMS (Dunedin) suggested, in regard to para. 1, that at least it would be wise to limit that to a "trade or business" as defined by the Act, otherwise it would apply to everyone who employed a maid in the house. Unless prepared to face the possibility of persons being criminally dealt with in cases where even lawyers had not the prescience to protect themselves, the Conference should insist upon the limitation of this provision to a "trade or business." As to para. 2, he suggested that the resolution in its present form might be too stringent. He recalled a case involving the cutting of timber on a farm, where the work was done under contract; but as the people who did the work were going to dispose of the firewood, and had paid for the privilege of so doing, it would seem hardly fair to deem them workers for the farmer. He suggested to Mr. O'REGAN that something might be done to meet a case of that character. As to para. 5, the speaker took the view that where protection was given to workers by a system of insurance with a liability which did not depend on negligence, the defence of common employment ought to be the exclusive defence open to an employer. He believed that the Workers' Compensation Act remedy should be a liberal one, but it appeared to him that if the question of negligence were dispensed with, common employment should be the sole defence available.

MR. R. H. SIMPSON (Dunedin) suggested, with regard to para. 4, that in any case the insurance company should have some rights with regard to the doctor appointed. A compromise was made between political parties when the question of amendment had previously arisen, because it was felt that there would be a big temptation on the medical man to charge up to the limit. It was some fear of that kind which made the Legislature raise the amount of compensation in preference to increasing the allowance for medical and hospital expenses. If the insurance companies appointed their own doctors, there would be some check on risks of that sort.

MR. K. M. GRESSON (Christchurch) said it was no part of practitioners' duty to sit in judgment on proposed legislation, and they should proceed warily. The present resolution was distinguishable: here was a statute which was failing because of certain defects, and members of the Conference, because of their special knowledge, were under a duty to point out the defects.

MR. C. G. WHITE (Wellington) thought the Conference was greatly indebted to Mr. O'REGAN for bringing the matter up. Paragraph 3, however, did not create a fair position: where an employer paying travelling-time was to be placed in the same position as one who provided conveyance. If an employer paid travelling-time, the mode of conveyance was in the worker's hands. He might take a dangerous mode; and yet, if he suffered an accident, the employer had to pay compensation. On the other hand, where the employer provided the conveyance, there might be some merit in the suggestion that the workers should be protected; but, where the worker was conveying himself to the place of employment, he should travel at his own risk. Then it should be remembered that travelling-time was included in the amount of wages for the assessment of compensation if a worker suffered injury during his employment: the travelling-time was added to his wages in assessing compensation. Consequently, he got it both ways: he got travelling-time added to his wages, and now travelling-time was to be included as employment. The speaker suggested that the paragraph should be amended by excluding the payment of compensation if the worker were paid travelling-time.

The speaker agreed with Mr. SIMPSON as to para. 4, as he could visualize some very difficult questions arising as to the quantum of medical expenses to be paid. Members of the Conference had had experience of the differences of doctors in evidence in compensation cases, and there had been room for the suggestion that there was a possibility of a real difficulty arising in the assessment of medical and hospital expenses. The other parts of the remit had a great deal of merit, and there was no reason why Mr. CAMPBELL'S views should be adopted. The machinery might be difficult to devise, but what interested the speaker particularly was that Mr. O'REGAN had not thrown the whole of the burden on the land.

THE PRESIDENT, MR. H. F. O'LEARY, K.C., thought that the difficulty suggested by Mr. CAMPBELL disappeared when s. 63 of the Law Practitioners Act, 1931, was considered:

> (1) The general functions of the Society shall be to . . . consider and suggest amendments of the law . . . and generally to protect the interests of the legal profession and the interests of the public in relation to legal matters.

And by s. 57, the District Law Societies had given to them the same functions and powers as those given to the New Zealand Society by s. 63.

Mr. O'REGAN was a practitioner who had specialized in Workers' Compensation law, and the President said he had found him so fair and reasonable that he would accept as fair and reasonable any suggestion he might make for the amendment of this branch of the law. He would like Mr. O'REGAN, in replying, to consider the suggestion made that this be a recommendation to the New Zealand Law Society.

MR. P. J. O'REGAN (Wellington), in reply, thanked all his critics. Every speaker had convinced him that there were more than two sides to every question. First, with reference to Mr. CAMPBELL'S remarks, he did not know that it was necessary to say much after the convincing argument put forward in the Chairman's quotation from the Law Practitioners Act. After all, lawyers were the experts, and therefore the duty lay on them to take a leading part in the shaping of reforms.

The first suggestion that the speaker met was that, instead of this being a recommendation to the Government from the Conference, it should be in the form of a recommendation to the New Zealand Law Society. That was very proper, and he accepted that suggestion at once. Messrs. Mazengarb, Sexton, Campbell, Baylee, and Adams had referred to compulsory insurance. This remit was not entirely Mr. O'REGAN'S own responsibility: he had the honour to be invited by the Law Society of Otago to bring this remit before the Conference. He quite agreed with what Mr. MAZENGARB had said. It would be a little absurd to compel, say, the Dunedin City Corporation or the Wellington City Corporation or the Union Steam Ship Co. to insure, as everyone knew that it was not necessary for them to be compelled to insure. After all, that was only a machinery suggestion, and he was sure that the framers of legislation of this sort would make provision for proper exemptions. With regard to Mr. ADAMS'S remarks, the speaker agreed that insurance must be limited to cases to which the Act was applicable. There again he might fairly say it was not possible in a remit of this sort to find an answer to every possible objection, and the Conference must trust to the good sense of those responsible for drafting the legislation to provide for these objections. He would point out, however, that domestic servants had been within the statute since 1911, so there would be nothing strange in householders being compelled to take out insurance for a maid. As to the difficulty about enforcing compulsory insurance, practitioners could rely on their friends the insurance companies to canvass with assiduity.

MR. O'REGAN admitted that Mr. WHITE had struck a weak point in para. 3. The speaker had had in mind the Queensland statute, which had a provision that everyone should be insured when travelling to and from work. He was not prepared to go that far, and thought to restore the law as it stood before the decision in *Hewitson* v. *St. Helens Colliery Co., Ltd.*, [1924] A.C. 59, 16 B.W.C.C. 230. He was prepared to accept the amendments suggested.

THE PRESIDENT then put each proposition separately. Following the first amendment, the remit then read :—

That this Conference requests the New Zealand Law Society to recommend to the Government that any amendments to the Workers' Compensation Act should include the following provisions :—

(*1*) *That insurance against the liability in respect of injury by accident be made compulsory.*

(*2*) *That the provisions of s. 63 of the statute be extended to include such work as the fencing and draining of land, the cutting of firewood and fencing material, and generally any farming-work done by contract.*

These were put to the vote and carried, the former with some dissent, the latter unanimously.

MR. O'REGAN moved that the third proposition be amended by the striking out of all words from " pays " in the first line to " travelling-time " in the second line. The amendment was accepted, and the resolution was carried with unanimity in the following terms :—

(*3*) *That in every case where the employer provides the means of conveying workers to and from work, compensation should be payable in respect of accidents happening to workers in transit.*

He then moved adoption of the remaining paragraphs.

(*4*) *That provision be made for the payment in non-fatal cases of a reasonable amount by way of hospital and medical expenses.*

(*5*) *That the defence of common employment be altogether abolished.*

This was put to the vote and carried, with one dissenting voice.

Some Personalities at The Conference.

The Conference President, Mr. H. F. O'LEARY, K.C., was born at Blenheim in 1886 ; educated at St. Patrick's and Public Schools, Masterton, and at Wellington College ; secretary, executive member, and president Victoria University College Students' Association ; winner of Union Debating Prize, Plunket Medal, and (with Mr. B. E. Murphy) Joynt Scroll, 1906 ; College cricket and football captain ; member New Zealand University fifteen against Australian Universities, 1909 ; LL.B. 1908 ; in practice, Wellington, in partnership and on his own account, and, later, partner in Messrs. Bell, Gully, Mackenzie, and O'Leary ; King's Counsel, 1935 ; member, treasurer, vice-president, and president of Wellington District Law Society, 1918–35 ; council member of the New Zealand Law Society, 1921–36, and President, 1935–36 ; member Council of Law Reporting, 1929–33, 1935–36 ; member Victoria University College Council, 1934–36.

Mr. C. H. WESTON, K.C. (*Development of the Law of Real Property in England*), was born at Hokitika in 1879 ; educated Christ's College, Christchurch, first eleven and fifteen (captain), and Canterbury College ; LL.B., 1902 ; in practice at New Plymouth, 1902–31 ; Crown Solicitor, 1912–31 ; member and president Taranaki District Law Society ; Captain Taranaki Rifle Volunteers, 1901 ; war service in Gallipoli, Egypt, and France, Lieutenant-Colonel, Wellington Regiment ; D.S.O., desp. ; Judge Advocate-General, New Zealand Military Forces, 1934–36 ; Commandant New Zealand Command Legion of Frontiersmen ; King's Counsel, 1934 ; author of *Three Years with the New Zealanders*, and *Workmen's and Contractors' Liens* (in second edition).

Mr. W. J. SIM (*Law Reform in New Zealand*), son of the late Hon. Sir William Sim, Judge of the Supreme Court, 1911–28, was born at Dunedin in 1890 ; educated Otago Boys' High School, Wanganui College, and Victoria University College ; LL.B., 1913 ; served with Samoan Expeditionary Force ; Commissioner of Police and Crown Prosecutor, Samoa, 1914 ; served with Argyll and Sutherland Highlanders in France, 1915–19 ; M.C. ; member of firm of Messrs. Duncan, Cotterill, and Co., Christchurch ; Christchurch City Council, 1925–27 ; Editor of *Stout and Sim's Supreme Court Practice*, and *Sim on Divorce*.

(*Continued on p. 95*).

The Civic Reception and Welcome.

The Mayor and the Dunedin Bar.

THE Mayor of Dunedin, the Rev. E. T. Cox, entered the Conference Hall at noon, to extend the Citizens' Welcome to the visitors. By this time His Honour Mr. Justice Kennedy had been welcomed, and was seated at the right of the President. A large number of visiting ladies had also arrived to take their part in the Civic Welcome.

The City's Greetings.

His Worship the Mayor, who was very cordially received, said :

" I am conscious that I am offering the greetings of the city, not only to one of the greatest professions of the realm but also to one of the closest fellowships. In proof of the former statement I would remind you of the great services the profession of law has rendered to the British Crown. It is not an exaggeration to suggest that no profession has done as much to define, to develop, and to defend the liberties of England. Sir Thomas More, Lord Coke, Selden, Somers, and Camden are a few names taken from a host of great exponents of the law. They were all bred in the Common Law of England, which, I would remind you, is not a compendium of mechanical rules written in fixed and indelible characters, but a living organism which has grown and moved in response to the larger and fuller development of the nation. The Common Law of England is at once the organ and safeguard of English justice and freedom.

" In proof of my second point, that of fellowship—may I suggest that although the necessities of your profession involve you in constant and unceasing conflict, yet, as the late Lord Oxford and Asquith said in an address to the English Bar on his becoming Prime Minister, ' the arduous struggle, the blows given and received, the exultation of victory, the sting of defeat, far from breeding division and ill-will, bind you more closely together by the ties of comradeship, for which you would look in vain in any other arena of the ambitions and rivalries of men.' "

His Worship then gave some homely illustrations of this fellowship as portrayed by *Punch* and other " authorities." He concluded an interesting address as follows :

" It is my very great privilege to extend to you the greetings of the City of Dunedin—a city which has been known to produce renowned members of the Judiciary and distinguished members of your profession. I need not delay you by dilating on the deeds and wonders and glories of this city, because I know you are all anxious to get on with the work of the Conference ; and I know all your wives and sweethearts are waiting for you. When I came up the steps of the Town Hall and saw how many of your womenfolk were waiting there, I said to a reporter who happened to be present : ' This looks to me like the law without the prophets.'

" Gentlemen, I give you the greetings of the city, and I hope your deliberations will be for the advantage of your profession, and that you will have a very happy time during your stay with us."

The Welcome of the Dunedin Bar.

Mr. F. B. Adams (Dunedin) said he had been called upon unexpectedly, as he had imagined that there would be another speaker before him, and he expected to pick up a few of the things that he ought to say during the course of those remarks. He said that all the members of the Conference had listened with great pleasure to the remarks His Worship had made. They were pleased he had already observed the ladies who were attending the Conference, and he did not doubt that the Mayor was right in saying " their wives," but as to " their sweethearts " there, they could not commit themselves.

" My purpose is to speak on behalf of the Law Society of Otago supporting the Mayor in his welcome to visiting delegates," Mr. Adams continued. " Before I say anything serious in the way of welcome I think I ought to say something about the weather. You know, where two or three Dunedinites are gathered together you will always find the talk turn on the weather. Our weather is not always like this—slightly foggy. When the sun shines, Dunedin is a very fair place to look upon, and even when it does not shine we hope there is something good to look upon.

" I heard a story some years ago about a Dunedin member of the Bar—whom I shall not name—who went to fight a case in Christchurch, and there his learned friend from Wellington occupied the whole of the first day in discussing various problems in the case. On the next day the Dunedin barrister arose and said he had observed from the papers that the city had experienced one of the worst fogs for years, and he said he attributed that to the fact that the windows had been left open the previous day while his friend was addressing the Court."

Mr. Adams added that he noticed that the Conference Hall was practically without windows, so the Dunedin Bar hoped there would be no serious fogs while the visitors were with them. At any rate, they hoped the Dunedin public would not attribute them to the visiting members.

" Now, the Otago Law Society takes upon itself the very happy position of hosts, and regards you all as our guests. By far the greater expense is upon you in coming from far afield, so that to some extent we are running under false pretences ; but, nevertheless, we extend to you our welcome as our guests, and we sincerely hope you have a very happy and profitable time in this city," the speaker proceeded.

Dunedin's High Legal Tradition.

" We have here a very high legal tradition. We take and have always taken the law fairly seriously. There are and have been names associated with the local Bar which are known throughout the Dominion, so that we have no sense of shame in welcoming you as a body of lawyers to our city. The tradition of the law is the highest of all professions : it involves integrity and straightforwardness, plain dealing between man and man, and a high sense of justice. In that tradition, we are all one ; and one of the main purposes of this

Conference is to foster that tradition in which we are all brethren."

Mr. Adams then said he could do no more than repeat that all the members of the Law Society of Otago were delighted to have the visitors in their city and to meet with them in the Conference. It was now some years since such a Conference had been held, and the delay was a matter of regret. But it was Dunedin's turn to have their professional brethren as guests, and it was a great pleasure to see so many. He concluded:

"I do not know the figures, but I believe that this gathering comprises the greatest number of visitors who have ever attended a legal Conference. Ladies and gentlemen, we of the Otago Law Society welcome you to our midst."

MR. W. R. BRUGH (Dunedin) said that the Otago President, with his usual modesty, had asked him to say a few words where perhaps Mr. Haggitt should have said them. The speaker said he followed Mr. Adams who had already said pretty nearly everything that could be said—even about the fog. Mr. Brugh had his own thoughts about the fog, but he believed the clarity of the papers would dispel it.

"I just want to say this, that Dunedin does know how to welcome the stranger within our gates," the speaker continued. "I am quite sure Dunedin will extend the same hospitality which we received in other centres. It has been a delight and a pleasure to visualize practitioners drawn from all parts, their wives and sweethearts, all gathered in our city; and if you can derive one-half of the pleasure which Mr. Haggitt, Mr. Smith, and the Council of the Law Society and all the other local practitioners, including the Conference Secretary, the indefatigable Mr. Warrington, have had—if you can derive one-half the pleasure which they have derived in planning and carrying out the arrangements made for you, then our efforts have not been in vain."

THE PRESIDENT'S HAPPY REPLY.

The President of the Conference, MR. H. F. O'LEARY, K.C. (Wellington) said that the visitors' very best thanks were due to His Worship the Mayor and to the citizens of Dunedin for the kindly welcome that had been given on this visit to the city. Mr. O'Leary expressed their thanks for the hospitality of its citizens. He included in his words of thanks not only the members of the profession who were there, but also the ladies who had accompanied them.

The President then thanked the Law Society of Otago for their work and enthusiasm in renewing the legal Conferences, and he widened those words to include the Mayor and citizens of Dunedin for having in their midst those members of the profession who could do what no other city had had the courage to do in the last five years. He proceeded:

"I feel it is particularly appropriate, Mr. Mayor, that you should extend your words of welcome to us, because I understand that when you are not engaged in your civic duties you are engaged in the pursuit of a gentleman who is handed over to us without competition for our patron. And I think it shows a wide magnanimity on your part that you can extend a welcome to 'The Devil's Own.' In fact, I feel confident that at any time you desire to take the position, we could appoint you to the onerous office of *advocatus diaboli*.

"Now, it is a matter of congratulation that we should be welcomed by gentlemen of the profession who have such local traditions behind them. One need not go through the long list of those promoted to the Bench from Dunedin—I do not know with what name it commenced: Mr. Justice Richmond or Mr. Justice Gillies, perhaps—right down to the latest, Mr. Justice Callan. I look around for him, but regret to see him not; because I want to say that we in Wellington make some little claim to him. You see, in that last twelve months he spent in Wellington we gave him just that last little polish which makes the Judge. I should like to refer to His Honour Mr. Justice Kennedy, whom we are pleased to see is with us this morning. He did not practise here so far as I know, but he also is an Otago boy.

"In conclusion, I do wish to thank you for your welcome, your hospitality, and your conviviality—I am just a little afraid of it; I am a little worried as to how we shall look when we get on the train on Saturday morning. But I know this, we will take away with us the pleasantest memories of our stay in Dunedin."

THE DISTRICT SOCIETIES.

MR. A. S. TAYLOR, President of the Canterbury District Law Society, said a few words on behalf of the visiting members of that district.

If things proceeded in the course of the visitors' entertainment as they had begun, they would have to see to their going home on Saturday with some anxiety. Mr. Taylor concluded by saying:

"I would like to say on behalf of the Canterbury ladies how much they have appreciated the welcome already given them, and how much they look forward to the happy time that will be given them in the next few days. I would like to refer particularly to the gracious and thoughtful action of those responsible for the surprise each visiting lady received, when on reaching her place of lodging, she found a posy of flowers and a box of chocolates."

MR. D. PERRY, President of the Wellington District Law Society, said that it fell to his lot to add to the tributes of thanks and praise a few words on behalf of the unfortunates who lived in the North Island. Some of them had had the advantage of tasting the hospitality of Dunedin before this, and they were looking forward with feelings of anticipation and trepidation.

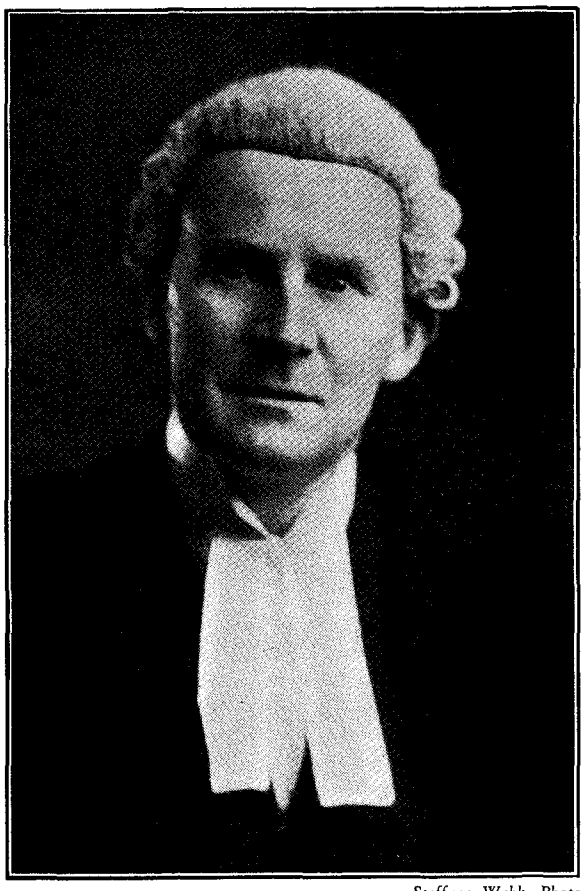
"As our President says," Mr. Perry proceeded, "Dunedin holds a high place in legal tradition. It has been known for many years as a nursery for lawyers and as a nursery for Judges—though in the latter respect its reputation has been 'slipping' a little of late. It has, nevertheless, produced great lawyers and great Judges, but it has done something more—because it has added something to legal education. The motto of the Wellington City is *Suprema a situ*. Law students throughout New Zealand would be prepared to admit that even Wellington must yield the palm to Dunedin, because it is the *locus situs* of Speight's Brewery."

Mr. Perry concluded by thanking His Worship the Mayor, and, through him, the citizens of Dunedin for the welcome extended to the visitors. He also thanked the lawyers of Dunedin and the wives of the lawyers of Dunedin for the welcome that had been given, and the hospitality to which all the visitors were so confidently looking forward. More he could not say, more it was unnecessary to say; but the speaker could assure their brethren of Dunedin, and its citizens generally, that all would go away with the happiest memories of their stay in that city.

Law Reform in New Zealand.

By W. J. Sim, LL.B.

THE subject of Law Reform, whether in New Zealand or elsewhere, is a large one, and it is not intended in the present paper to follow a certain political association in Australia which made recommendations for reform to its parent body. The following immediate changes were recommended: (*a*) Codification of laws; (*b*) Simplification of procedure; (*c*) The writing of all laws and legal documents in a language that would be plain to a man of average intelligence; (*d*) Dispensation of natural justice as distinct from legal justice by the Courts. Other recommendations equally expansive and optimistic followed. The scope of this paper will be to direct attention generally to the subject of reform, and at the same time to enclose a certain area of the large field of possible reform, to which practical attention may be given.



Steffano Webb, Photo

Mr. W. J. Sim.

An approach to the subject may be made through the words of Mr. Justice Alpers in a case heard by him in Nelson in the year 1928. The question under consideration was whether an ancient prerogative of the Crown applied in New Zealand in the winding-up of a limited liability company—that is to say, whether the Crown was given a preference for a Crown debt as against other trading creditors in the liquidation. His Honour, in the course of the judgment (*Tasman Fruit-packing Association, Ltd.* v. *The King*, [1927] N.Z.L.R. 518, 520), asked the question:

> Is this ancient prerogative, originally applied to "Crown debts" as that term was used centuries ago, still applicable in modern times, when the expression embraces sums of money owing to the numerous Government departments, trading and industrial, which have been called into existence by a new and radically different conception of the sphere of State activity?

Lord Shaw on a previous occasion had called attention to the fact that as the prerogative of the Crown extended with the growth of state enterprise this preference over the rights of the ordinary citizen would in a greater and greater measure extend. The question was enormously important, he said, and, unless Parliament interposed to clarify the situation, it would have to be decided some day.

Parliament did intervene in England shortly afterwards, but Mr. Justice Alpers in New Zealand found himself obliged to hold, with apparent reluctance, that the preference did exist, although it was out of place under present modern trading-conditions wherein State Departments freely took part.

It happened, however, that at the time an influential expert Committee had in hand the long-promised consolidation and amendment of our Companies Act, and the force of the learned Judge's remarks was immediately recognized. Section 280 of the new Act gave full legislative effect to the recommendation.

This speedy rectification of an anomaly or uncertainty in the law does not, however, always follow. For instance, the liability of public hospital authorities for the negligence of nurses or doctors has always been a source of perplexity in practice, and on this subject Sir Michael Myers found it necessary to make the following observations in the recent hospital case, *Logan* v. *Waitaki Hospital Board*, [1935] N.Z.L.R. 385, 421, 422:

> The case is admittedly a very difficult one. As long ago as 1892 Mr. Justice Williams, delivering the judgment of the Court of Appeal in *District of Auckland Hospital and Charitable Aid Board* v. *Lovett*, (1892) 10 N.Z.L.R. 597, where the alleged negligence was that of a medical superintendent, spoke of the question as being one not only of *extreme difficulty but of great public importance, and he* suggested the desirability of legislation to define precisely the liability of Hospital Boards in all cases. During the forty-three years that have elapsed since then, the statute-law relating to hospitals has been many times amended and has thrice been consolidated, but no effect has ever been given to the suggestion made by the Court. I need only add that the question is certainly of no less importance to-day than it was when the original suggestion was made in 1892.

The Necessity for Vigilance.

The main purpose of this paper is to urge the necessity for vigilance and energy on the part of the Legislature in clarifying obscure and difficult parts of the law and also in assisting the law to evolve in keeping with the requirements of changing times. Two fundamental characteristics of our law are, first, that it is governed by precedent, and, secondly, a characteristic in a measure at variance with the first, a readiness to reflect and give effect to the common sense and general sense of fairness of the day. The law of a people should express the spirit of a people. Occasions are, however, numerous where Judges have given decisions based upon precedent, but with reluctance, and the law can, in effect, by its adherence to precedent find itself in a position where

it cannot reflect the thought of the day. The occasion then arises for Legislative assistance. For instance, about the middle of last century public opinion had advanced beyond the set ecclesiastical ideas on matrimonial matters, as administered in the Ecclesiastical Courts. The result was the Divorce and Matrimonial Causes Act, 1857, creating new Courts with the power of granting divorce *a vinculo matrimonii* which had been possible up to that date only by a private Act of Parliament. For the preceding 150 years the number of such divorces had been only 184. This changed point of view could only express itself and override precedent through Parliament, and it may be noted that a Royal Commission had been appointed in 1850 to inquire into the state of the law relating to matrimonial offences. It took three years to do its work and bring down its report. Later in the century changing public opinion on the position of married women became effective in the Married Women's Property Acts. The effect of these latter Acts was that rules which had previously existed in Equity where property was conveyed to or settled upon a woman for her separate use were extended by legislation to the property of all married women whether with or without a marriage settlement. This is a case of the extension not the destruction of precedent, but it could only be done by legislation. It is worth noting also that both the Acts, Divorce and Married Women's, brought within reach of the poor what had hitherto been privileges available only to the rich.

It is a commonplace that the times are changing, but it is not so widely recognized that the rate of change has accelerated greatly in the recent years. It must follow, as a matter of course, that much of our law, founded as it is upon the prevailing views and conditions of the past, needs constant supervision and amendment by authority, not shackled by precedent. There is scope for the inquiring mind that can look at the law afresh and with new energy. The question arises whose duty is it to consider from time to time how far the law in any particular respect is out of step with modern conditions? In England, as it will be seen, an answer has been found to the question. In New Zealand we have been too busy with more pressing matters to give it attention.

I should like to make it clear that in this paper no reflection is intended upon our legislators. They are very busy people, and are subject to pressure on every side. Moreover, most of the subjects of the kind referred to are of a special nature and unsuited for discussion on the floor of the House. If, after consideration, the conclusion is come to that New Zealand has lagged in matters of reform, we must, as a profession, take our share of the responsibility. I take leave to quote the following words of Sir J. G. Latham, Chief Justice of Australia, addressed on another subject to the last Australian Legal Conference:

> We should, I suggest, actively realize that we are living in a rapidly changing world. Law should be dynamic not static. . . . There should be a real and continuous endeavour to improve the legal instruments with which the profession works . . . It should never be forgotten by the members of the legal profession that the justification of the existence of the profession as a profession is to be found in the value of the service they render to the people.

Ten Year's Legislation Examined.

A review of the legislation in New Zealand since the year 1925 down to the present moment shows that in all 587 Public Acts and 227 Personal and Private Acts have been passed, an average of 74 per session. It may be instructive to give an analysis which, though not claiming to be exhaustive or final, will serve to show what the Legislature has been doing. A first group of Acts includes legislation aimed directly at the improvement of social conditions and advancing the general welfare—Child Welfare, Pensions, Housing Amendments, Destitute Persons, Education, Rent Restriction, Dangerous Drugs, Motor-vehicles Insurance, Poisons—varied legislation of a desirable nature for the general welfare. For the period under review some 50 Acts may be referred to this class. There is a group including what might be called occasional subjects—Maori Arts and Crafts, Oil on Territorial Waters, British Nationality and Status of Aliens, Hawke's Bay Earthquake, Mountain Guides, Native Plants Protection, and so forth. About 25 Acts may be classified in this group. A third group, however, compels more attention, one which may be referred to as legislation relating to the State, its assets and responsibilities, and including in this class legislation relating to Local Bodies and other corporate institutions discharging public functions. To this heading at least 300 Acts can be assigned—Customs, Reserves, National Parks, Various Settlements of Public Lands, Post and Telegraphs, Public Service, Crown Leases, Transport Departments, Public Works. All have their original legislation or amendments. Similarly Counties, Municipal Corporations, River Boards, Agricultural Colleges, Electric-power Boards, Institute of Horticulture, Savings-banks, Hospital and Charitable Institutions, Drainage Boards, Incorporated Societies, Harbours, Town-planning, and numerous other subjects of a like nature. This type of legislation seems endless and without finality when passed.

There is another class about equal in its tax on the time and energies of the House, which may be conveniently referred to as the Supervision and Control of Industry, Agriculture, and Private Services. To this class approximately 100 Acts can be referred. In trade and industry the widest range of subjects has been given attention. Coal-mines, Iron and Steel Industries, Weights and Measures, Cinematograph-films, Mining, Slaughtering and Inspection, Scientific and Industrial Research, Trading-coupons, Industrial Conciliation and Arbitration. In Agriculture—Kauri-gum, the Dairy Industry and its exports, Apiaries, the Introduction of Plants, Noxious Weeds, Orchards, Seeds Importation, Stock, Rabbit Nuisance, Fruit-control, Pig-marketing, Poultry-runs, Tobacco, and numerous other matters. In the supervision or regulation of what might be called private services, all sorts and conditions of people and service have taken the attention of the Legislature, all with their own special Act or Acts—Apprentices, Electrical Wiremen, Nurses and Midwives, Dentists, Veterinary Surgeons, Shop Assistants, Auctioneers, Opticians, Music-teachers, Seamen, Masseurs, and we ourselves have had our measure of attention in the two Law Practitioners Acts.

If the legislation is traced to its source it will be found in most cases that it was conceived and fostered through the House by some special interest either of a public or private nature having some concern to see its passage through the House. The absence of any such interest having a definite objective may explain the diminutive output in a final class which I now wish to touch upon and make the centre of this paper. This is, legislation affecting the Administration of Justice, including the procedure and despatch of business in the Courts, and legislation affecting rules of substantive law.

During this period, routine but satisfactory attention has been given to the Courts and Administration of

Justice. The already extinct District Courts were formally abolished, the Magistrates' Courts Acts and Justices of the Peace Acts overhauled and consolidated, the Divorce jurisdiction and law consolidated and in some respects brought into line with England. The Judicature Act of 1930 established the Rules Committee—an original and progressive step, so far as New Zealand was concerned, bringing us into line with the English practice established five years previously. Minor amendments were made to the Coroners Acts and the machinery relating to Destitute Persons. A useful Act was passed for the Reciprocal Enforcement of Judgments.

In the field of substantive law, however, there is little to note. The new Companies Act at last reached the statute-book after years of labour ; Chattels Transfer, Bankruptcy, Evidence, and the Laws of Libel have minor but necessary amendments ; the mortgagee in possession was given the right to lease, following long-established English practice ; the guardianship of infants is effectively treated.

England's Surprising Legislative Energy.

If we look to England and review the same period it will be found that original thought, and the legislative energy following upon it, have been of a surprising nature. Outside the special field which has been outlined, passing reference may be made to such monumental works as the Statute Law Revision Act of 1927 which addressed itself to spent Legislation, and repealed wholly or partially at one stroke 755 Acts. This Act is typical of an energetic spirit of reform which is determined to revitalize the law.

Coming to the Administration of Justice, the Judicature Act of 1925 completely overhauled the Administration of Justice, including Probate and Matrimonial practice. Striking innovations appear, including the Rules Committee, or, as it is called there, the Rule Committee. By one section of the Act a Council of Judges is established and enjoined to assemble once at least in every year for the purpose of considering the operation of the Act and of any rule of Court ; and also of inquiring into and examining any defects which may appear in the system of procedure or the administration of the law in the High Court or the Court of Appeal. Substantive law was dealt with in the great Law of Property Act also passed in 1925, repealing 43 Acts including the two statutes of Elizabeth, 13 Eliz. and 27 Eliz., which are re-enacted in modern language. The Trustee Law, Administration of Estates, Landlord and Tenant, Third-party rights against insurers in motor claims, and other matters of substantive law have also progressed in desirable directions. For instance, when the Court is asked to approve of a trustee exceeding his powers, we have still to rely on the doctrine of *In re New*, [1901] 2 Ch. 534. In England the Judge has now the widest power to permit any transaction which is in the opinion of the Court expedient.

Lord Hanworth's Committee.

These advances are themselves noticeable, but it is from the year 1932 onwards that surprising changes began to take place, and of which it is submitted more notice should be taken in New Zealand.

It can only be speculation whether the depression led to a decrease in litigation, and this led to an examination of causes. It is certain that towards the end of the year 1932 opinion both within and without the profession had come to the conclusion that the Administration of Justice and the law itself were getting out of step with modern conditions. At the end of 1932 the Lord Chancellor took active steps to ascertain the practicability of drastic and far-reaching changes whereby litigation processes might be rendered simpler, cheaper, and more expeditious. The Committee which was set up was known as " Business in the Courts Committee " and its personnel commands attention—The Master of the Rolls, Mr. Justice Swift, Mr. Justice Talbot, Mr. Justice Clauson, the Hon. S. O. Henn-Collins, K.C., and other eminent names in the profession. The Committee was enjoined to consider and report whether greater expedition in the dispatch of business or greater economy in the administration of justice in the Court is practicable and would be effected by any, and, if so, what, rearrangements in the Constitution of the Supreme Court, and of the Divisions comprised in the High Court of Justice. Consideration was to be given to alterations of days of sitting, vacations, elimination and restriction of appeal, alteration of Grand Jury system, etc.

In a very short time this Committee made its first report, and brought in many recommendations, some of a drastic nature. Relating mostly to procedure, it cannot interest us very much, save perhaps that it recommended the abolition of Grand Juries, with reservations as to two counties, and considerable limitations on the right to trial by jury in civil cases. With equal dispatch there followed the passing of rules by the Rule Committee where this was the course to be adopted and legislation in other cases. The Administration of Justice (Miscellaneous Provisions) Act, 1933, was the result. By this Act, Grand Juries are abolished, with certain small reservations, and the right to a trial by jury is in very small compass indeed. The *Law Journals* show that the subject generally was treated by Law Societies, the Bar Council, and the London Chamber of Commerce as of first importance. The determination to bring the Administration of Justice into step with modern requirements is further shown by the setting up of another inquiry, this time by Royal Commission, in the month of February, 1935. It worked continuously throughout last year and reports of its proceedings show that Judges, King's Counsel, and eminent members of the public attended at the various places of sitting and took an active interest in its work. The subjects discussed seem without limit, but are mostly of a nature that cannot interest us here. The Report has recently been brought down, and deals mostly with improvements in organization of the King's Bench Division, Fusions of Divisions of the Supreme Court, Retiring Ages of Judges, etc. What is more interesting are the recommendations with regard to procedure for shortening the length of trials, including the giving of a discretion to Judges to admit evidence now rigorously excluded as inadmissible, and, as it is put,

> a wider character should be given to the summons for directions in order to reach the essentials of the dispute and arrange for proof in the shortest and cheapest manner.

So much for the progress in England towards more effective administration of justice. Are we to accept the view in New Zealand that because our system works, it is therefore all that could be desired. I venture to suggest that most practitioners of experience could make some contribution towards improvement, did a constituted body exist whose duty it was to receive and consider such suggestions. One such suggestion comes to mind, should Justice be one of the revenue-making

Departments of the State, as is now the case. On the present results, are not Court fees too high, and should litigants be so taxed. Another suggestion is that Judges might be relieved of much routine Chamber work which could be entrusted to Registrars, who in the cities should occupy a position equivalent to the Masters in England. As occasion arose, this would necessitate the appointment of qualified barristers to the positions. The routine work of the Supreme Court office should not, it is submitted, dominate the appointment.

It is sufficient to call attention to the fact that at the present time there is no avenue of approach to reform, should it be needed.

Going back to England, it is in the field of substantive law that more unexpected results have been achieved. This is the result of the labours of another Committee, known familiarly as Lord Hanworth's Committee, or, according to its official title, "The Law Revision Committee." This was established by the Lord Chancellor as a standing Committee to consider how far such legal maxims and doctrines as he may from time to time refer to it require revision *in modern conditions*. Again the personnel is impressive, the Master of the Rolls, Lord Justice Romer, Mr. Justice Swift, Mr. Justice Goddard, four King's Counsel, and several other members eminent in the legal world. What is more arresting is the subjects committed to it. It began with four, all bristling with time-honoured difficulty: (*a*) The doctrine of no contribution between joint tort-feasors; (*b*) the maxim of *actio personalis moritur cum persona*—a question now of first importance with the growth of motor traffic and deaths on the road; (*c*) the liability of a husband for his wife's torts, the subject which divided the House of Lords in 1924 in *Edwards* v. *Porter*, [1925] A.C. 1; and (*d*) the state of the law relating to the right to recover interest in civil proceedings—a question beset with peculiar difficulty and one of every day importance to the commercial community.

Within the space of a few months the Committee made two reports and their recommendations were forthwith embodied into statute-law in the Law Reform (Miscellaneous Provisions) Act, 1934, and the Law Reform (Married Women and Tort-feasors) Act, 1935. The present position in England to-day is that claims are not defeated by the death of an offending defendant, or of a potential plaintiff, and death itself may be a cause of action contrary to long-established precedent. Contribution between joint tort-feasors exists and upon a common-sense basis as to each party's contribution to the common wrong. Married women have now a complete responsibility of their own in contract and tort. In property the idea of separate estate and the restraint on anticipation have disappeared with retrospective reservations. Interest has been committed to the discretionary powers of Judges.

The work of this Committee can be obtained in published form, and indicates research and learning that command immediate respect. The recommendations passed the House almost without discussion; and, if amended, the amendment showed a penetrating understanding of the question involved.

The Committee continues as a standing Committee, and has already received another batch of questions for consideration in the light of modern conditions. To many lawyers the mention of such matters will almost appear iconoclastic. The Committee is asked to consider with a view to amendment or repeal (*a*) the Statute of Frauds, s. 4, and the Sale of Goods Act, 1893, s. 4, both affecting time-honoured principles on the necessity of written documents, (*b*) the doctrine of consideration in English Law and generally the doctrine that the payment of a lesser sum is no satisfaction; that a promise to perform an existing debt is no satisfaction; the rule that consideration must move from a promise and generally the need for consideration to make simple contracts enforceable; (*c*) whether the statutes and rules of Law relating to the Limitation of Actions require amendment or unification, and the Committee is asked to consider specially the rules relating to acknowledgments, part payments, disabilities of plaintiffs, the circumstances affecting defendants which prevent time from beginning to run.

Surely a formidable array and furnishing ground where even legal angels might fear to tread, but the Law Revision Committee goes steadily on its way. We can have little doubt that shortly the requirements of modern conditions will lead to the abolition of much that is obsolete, and out of keeping with the times. Shortly put, it means that in many and important respects Common Law and Equity are being brought up to date, and the question cannot be ignored further—what is New Zealand going to do in the matter? Soon new editions of text-books will be unsuitable for use in New Zealand if we do not keep abreast of English legislative changes. I notice that the Commissioner of Transport in his annual report dated July 31, 1935, remarks

> Action has not yet been taken to overcome the disability under which a party injured by an accident finds himself when the person responsible—*e.g.*, driver of motor-vehicle—subsequently dies. The subject is one of general law rather than motor-vehicle law particularly, and the Justice Department now has the matter under consideration.

The Task Ahead in New Zealand.

Since this paper was drafted the Hon. the Attorney-General has intimated that legislation on this subject is under consideration. It is respectfully observed that a further question has already arisen as to whether the English statute has not gone too far, and the position requires very close consideration. The question arises—addressed to the subject in its widest aspect: Is the Reform of Law and the Administration of Justice one that can be treated otherwise than by a Committee and of the highest legal eminence, and with time and capacity for research. No doubt much of the work done by Lord Hanworth's Committee in England need not be repeated in New Zealand, but the applicability of the new doctrines to New Zealand conditions raises questions, it is submitted, of too responsible a nature to be committed to a Department of State, which has many functions to perform. Changes were expeditiously made in England, because they were fostered by an independent body of the highest authority, incidentally constituting that special interest which seems necessary to drive legislation through under modern conditions. Apart from the Hanworth results there is a large field of inquiry as to where in other respects our law has lagged behind England, or is in need of improvement. In some respects we will be found to have led the way, but there is much left for us to consider and adopt. Have we not also scope for research in local questions? Why, for instance, should a litigant bear the cost of ascertaining whether a certain English statute is in force in New Zealand—*e.g.*, the Carriers Act, 1830—as occurred in 1921 in *Andrew Lees, Ltd.* v. *Brightling*, [1921] N.Z.L.R. 144. The question of costs in claims under the Public Works

Acts needs expert re-examination. The present law, it is submitted, is harsh on the claimant, and out of keeping with England and Australia.

It may be said, I think, with some justification that little or no legal research is going on in New Zealand. In the present state of the Universities they can give it no encouragement, although it may be noted that, in recent years, at least three New Zealand students have achieved distinction at English Universities in this direction.

A significant feature of the last Australian Legal Conference was the fact that four out of a total of nine papers were read by Judges. But be it said, with all respect, what time or energy does our present organization of the Courts leave to New Zealand Judges for work of the nature done by Lord Hanworth's Committee. The round of Criminal work and Civil work in the cities and on Circuit, Nisi prius, Banco, Chambers with regular Court of Appeal work thrown in—with such a burden of administering the law as it is, the Judges cannot feel great concern with what the law might or should be, except where occasionally a point occurs before them in a specific case. If the work has to be done, and my submission is that there is much in New Zealand calling to be done, then means must be found to free from other pressure the minds that are capable of doing it. The Hon. the Attorney-General and the Crown Law Office have their full responsibility and in any event cannot in the special nature of the matters under consideration have the necessary weight of authority.

I close this paper by pointing out that the practice in England is to have a Committee of weight and learning to determine and shape the very difficult matters that are brought before it. The Legislature is then in matters of law more or less merely the enacting authority; in matters of procedure the passing of the necessary rules is done by the Rule Committee under the Judicature Act. The submission is made in conclusion that the time has arrived for the constitution in New Zealand of a Standing Committee along the lines of Lord Hanworth's Committee. This Committee should have entrusted to it the consideration of all matters affecting the Administration of Justice and the Reform of the Law.

MR. H. H. HANNA (Christchurch) referred to the retention of a husband's obligations in respect of his wife's torts and some contracts as anomalies which were the result of the old Roman conception of the legal unity between husband and wife; and it was time that the vicarious responsibility of the husband for his wife's torts was abolished. If, for instance, a man's wife, after an unsuccessful night at bridge, struck down a policeman on her way home, why should her husband be responsible? The removal of that anomaly should be given early attention.

MR. J. P. WARD (Dunedin) said that Mr. SIM was to be congratulated on his excellent paper, which brought to light in collected form many of the things which practitioners had noted from time to time. Mr. SIM was aware of one important matter which affected particularly those who, like the speaker, lectured on procedure. They endeavoured to teach students the law of procedure, but were forced to use obsolete rules. It was an unenviable task to try to explain to students how two entirely different methods of procedure might both be right. Again, the Government had never seen fit to bring the rules in divorce up to date with the latest Divorce and Matrimonial Causes Act. There was need in the public interest for a Committee to sweep aside a number of anomalies.

MR. P. J. O'REGAN (Wellington) felt personally indebted to Mr. SIM for his paper, not so much for what it contained as for what it suggested. The subject was so large that it would be impossible to cover the whole ground in a paper read before the Conference; but Mr. SIM's paper suggested a very good reason for the Conference, because such a gathering was pre-eminently qualified to suggest amendments. The speaker instanced, as a subject for reform, the varying periods of limitation of actions against local bodies contained in several statutes, and suggested that one statute should have application to all local bodies in this regard. Then, there was the extraordinary confusion which existed with respect to the liability of local bodies for acts done or omitted in respect of highways—questions of malfeasance and nonfeasance, and so on. The position could be simplified only by statutory amendment. Again, since the legislation of 1875 abolished the provincial administration and divided the country into sixty-five counties, every private member had been able to introduce a private Bill cutting up existing counties into smaller pieces, until to-day there were no less than 135 of such bodies. The time had arrived when something practical and effective should be done to bring the law up to date and to remove these inconsistencies and anomalies. In particular, the law of evidence should be overhauled, and some of its anomalies abolished. The matters touched upon by Mr. SIM were questions of great interest and advantage, not only to the profession but to the country generally.

MR. A. F. WRIGHT (Christchurch) considered that Mr. SIM had made out an overwhelming case for the setting-up of a Committee such as he had advocated. He recalled the paper read by Mr. ZIMAN at the Legal Conference held in Auckland on "The Crown in Business," and the resolution then passed to the effect that the Crown as litigant should be subject to the same rules which govern private litigants. This was a question which had provoked considerable discussion in Great Britain, and the late Lord Birkenhead set up a Committee to go into the matter. At a later stage, Lord Haldane was so impressed by the increasing gravity of the situation that he directed that the Committee should bring in its report and should prepare a Bill to place the Crown on the same footing as private litigants. Although the report was presented, and a Bill—the Crown Proceedings Bill—was drawn, nothing further was done in England owing, possibly, to the opposition which came from Whitehall. Now, it had been pointed out by the ATTORNEY-GENERAL that while there were many subjects on which the State, in England, showed its activities, there were many more such subjects for State activity in New Zealand; so that really the problem of the Crown's prerogatives was more important and pressing in this country than it was in England.

An indictment in regard to the matter of Crown prerogatives was launched some years ago by Professor J. H. Morgan, in which he pointed out how difficult it was and what considerable number of obstacles a litigant had to surmount before he could get anything like justice in a claim against the Crown. For instance, there was no right to counterclaim.

[MR. O'REGAN: And no right of discovery!]

That injustice was illustrated in a case in Auckland a few years ago where an individual was sued by the Forestry Department. He had a legitimate counterclaim, which he could not put forward in a separate action as he was unfortunately out of time. The case came on before Mr. Justice Stringer, who was so impressed with the justness of the defendant's counterclaim that he took time to consider. Eventually, he had regretfully to decide that a counterclaim did not lie against the Crown and judgment went for the Department.

As Mr. O'REGAN said, there was no right of discovery against the Crown. There was no right to interrogate the Crown. It was true that, as a matter of practice, Departments generally permitted their files to be perused. But, as the late Mr. Justice Alpers pointed

We are not asked to deal with the question of the remedies of a litigant against the Crown, but we point out that even if the whole of our recommendations were given effect to there would still be a lacuna in the rule of law which can only be filled by the enactment of the Crown Proceedings Bill or other similar provision.

As another instance of piecemeal legislation, the speaker referred to the various "Washing-up" Acts passed in almost every session since 1915. He had found that there were no less than between 1,100 and 1,200 cases in which the law had been altered by those Acts, which legislated for specific instances, and, in many cases, effected fundamental changes in the law. He referred also to the Finance Acts, which would be thought to deal with finance, but are found to deal with the Masseurs Registration Act, the Trustee Act, the Juries Act, the Marriage Act, and so on. In short,

Some of the Members of the Conference. *Phillips, Photo.*

FRONT ROW (from left): Messrs. H. D. Andrews (Christchurch), J. G. Warrington (Conference Secretary), W. D. Campbell (Timaru), C. H. Weston, K.C. (Wellington), Hon. H. G. R. Mason, M.P. (Attorney-General), H. F. O'Leary, K.C. (President of the Conference), A. N. Haggitt (President of the Law Society of Otago), A. C. Hanlon, K.C. (Dunedin), A. S. Taylor (Christchurch), Hon. W. Perry, M.L.C. (Wellington), W. T. Churchward (Blenheim), E. J. Smith (Dunedin), and E. S. Bowie (Christchurch).

out in the case Mr. SIM had mentioned, when a claim was made against the Crown and it was a matter either of saving a Department from loss or of enabling it to gain, those prerogatives were pleaded. That was a matter in which such a Committee as Mr. SIM suggested might do very good work indeed.

Another influential Committee was set up in England by the present Lord Chancellor as a result of the publication of Lord Hewart's *New Despotism*, which caused considerable uneasiness in the public mind as to whether the rule of law enunciated by Dicey was being endangered by the exercise of judicial powers by ministerial officers. A most able and influential Committee was constituted to deal with the problems of delegated legislation, and ministerial and quasi-judicial tribunals. This Committee concluded its report with these striking words:—

there was a wilderness of legislation with no guiding principle. If a Committee were set up, they would strengthen the hands of the Attorney-General in bringing about long-needed reforms.

THE ATTORNEY-GENERAL, the HON. H. G. R. MASON, M.P., said that this was a subject that interested him particularly. He felt doubly indebted to Mr. SIM for his paper. First, in calling attention to the need for law reform; and, secondly, in the mere catalogue of matters requiring reform, his paper was very valuable. Mr. SIM had done most admirable work indeed; yet it rather impressed the speaker as negativing one of his propositions—namely, the necessity for a Committee—as Mr. SIM had performed his task rather better than any Committee would have done it. Whether the suggestion came from a Committee or from an individual, so far as the Government was

concerned the recommendations would receive every consideration. The New Zealand Law Society was a convenient body through which such recommendations could be transmitted. The speaker wished, however, to refer more to law reform than to questions of machinery. He proceeded :

" Reference has been made to Lord Hanworth's Committee. Now, naturally, I am considering that matter ; and legislation following the English precedent has already been roughly drafted, covering not merely the rule *actio personalis moritur cum persona*, but also those other rules concerning interest, husband's vicarious liability, and joint tort-feasors. Legislation under those and other headings, following the English Act, has been included. I will point out, however, that, when a new Government comes in, and particularly at a time when attention is so centred on economic problems, the Parliamentary Law Draftsman's attention must necessarily be first concentrated on legislation dealing with economic matters. But, in any case, one cannot rush these things ; for instance, the abolition of the rule *actio personalis moritur cum persona* may mean an increase in insurance premiums, and it may well be desirable to discuss some aspects of the question with the insurance companies.

" Referring to statute revision, I have long felt that all those rules common to local bodies should be abstracted from the particular statutes in which they are now to be found and put into one general Act. There is no need for the minor discrepancies now existing, and one section in one Act could surely be made to apply to all local bodies. And so with the question of limitation of actions. So also with the question of the formalities for a special resolution. One statute could cover all those things and many other incidental matters also.

" I do not wish to go through the catalogue of possible law reforms, but I do wish to indicate that these matters will not escape attention, and to say that work is now being done on these subjects. Some may say it is an indolent way of doing things ; but matters with which one can easily deal will get first attention. It seems to me better to start on matters in respect of which there is complete agreement, rather than to block the whole line with some more complex question on which there is great divergence of opinion.

" Now, with reference to the Crown : it would not be right for me to say anything that might indicate in any way that I can promise any diminution in the prerogatives of the Crown. But I can say this : inquiries are being made as to the practice in other parts of the Empire, and it may be possible to make some improvements on the existing position. Although one must maintain the prerogatives of the Crown, one does not want to retain anything which operates unfairly.

" There is just one thing more. I think the subject of law reform will always be with us. We will not come to the end of law reform, because society is constantly changing ; so we should always be vigilant to rectify anomalies which may be found. I promise that I will use my best endeavours to facilitate this work."

The ATTORNEY-GENERAL received the ovation of sustained applause at the conclusion of his speech.

MR. W. G. TAIT (Invercargill) said that Mr. SIM'S valuable paper referred not only to law reform in substantive law, but also to the administration of justice. For several years litigation was initiated in one of two Courts—the Magistrates' Court or the Supreme Court—but it appeared to the speaker that there was room for an intermediate jurisdiction. After the abolition of the old District Court Judges, the Government had found it necessary to extend the jurisdiction of the Magistrates to allow for the hearing of cases in which an amount up to £500 was involved by the consent of parties in the lower Court. This provision was rarely invoked, and it might well be a recommendation that the relieving of the Judges of a great deal of routine work should be a matter for immediate attention. No doubt the suggestion of placing this work on Registrars might be suitable in the main centres, but it would be more difficult in the smaller centres. The speaker doubted whether the Justice Department could supply sufficient men with suitable qualifications, but he suggested that consideration should be given to the suggestion of appointing some intermediate officer, such as an associate-Judge, to deal with the less important work in the circuit towns.

THE PRESIDENT, MR. H. F. O'LEARY, K.C., spoke of the anomalous position of the Crown in litigation, a matter which had been discussed and dealt with by the New Zealand Law Society since Mr. ZIMAN read his paper in 1929. Within the last two years a sub-Committee raised the matter with the then Prime Minister, Mr. Forbes, and repeated representations had been made on previous occasions. Mr. Forbes said that inquiries were being made in Australia, and the Law Society would be told later of the view the authorities took on the matter. Then, at a meeting of the New Zealand Law Society held since the new Government had assumed office, a sub-Committee of Auckland practitioners was set up to wait on the new Attorney-General and repeat the representations.

As to the wider question of law reform, Mr. O'LEARY thought he was right in concluding from the Attorney-General's remarks that the profession now had in the Hon. Mr. Mason an Attorney-General who was sympathetic with this subject. It was quite evident that he was cognizant of the need for law reform in various directions. But it appeared from his remarks that a Committee on law reform was really unnecessary, and that an individual was as competent to point out where reform was necessary. The speaker thought that the matter might be left on that basis, namely, that any one—once there should be any reform promoted in any particular direction—should request the New Zealand Law Society to hand on his suggestion to the Attorney-General. Then perhaps, when these things had been dealt with, it would be time for a Committee to be set up to deal with more complicated matters, and to go to the Government with definite recommendations.

THE ATTORNEY-GENERAL, the HON. H. G. R. MASON, said there was one point on which he might have given a wrong impression. As Attorney-General, the first thing which occurred to him was law reform. If he considered only his own Department, he would instruct the Law Draftsman to concentrate on it. But there were other subjects to be considered, and the Attorney-General's Department must take its turn. That, of course, did not mean that there would be long delay. The work would go forward steadily, and he hoped that, at a very early date, he would have provision made by statute for a special Drafting Office, which would see to the drafting of all statutes coming under the heading of revision and compilation of statutes. The speaker was very anxious to get on with the work, and he was sorry if he had given an impression that any one should hold back. If a Committee were constituted, he would

welcome it: but he would not like a mere formal Committee to be set up, but an enthusiastic and active one; and he would welcome all co-operation, whatever be the form.

THE SOLICITOR-GENERAL, MR. H. H. CORNISH, K.C., thought it ought to be made clear that reform of the law was going on all the time, even though no individual member of the profession brought it up. For instance, last year the last Government passed the Trustee Amendment Act, providing that some non-charitable and invalid purpose included in a will should not be construed to avoid a charitable intention. Even Government Departments thought of reforms. The speaker knew of suggestions made by Mr. A. E. CURRIE, some of which had been carried out. The ATTORNEY-GENERAL had not given the whole of the matter: he had not told of the work he had been doing. In the last three months he had been very busy indeed. He had had a fully qualified barrister, a Master of Laws, on the task all the time.

Inquiries had been made with regard to the question of the prerogatives of the Crown, and there was a bulky file in the Crown Law Office which was now being sifted.

THE SOLICITOR-GENERAL did not think a British Dominion should go ahead faster than England herself was doing. (Cries of "Yes," "Yes," "Of course we should.") He asked if a colonial Legislature should be the first to throw away any of the Crown's prerogatives. He referred to a recent case in which Mr. SIM wanted discovery. It was a proper case, and he got discovery as soon as the matter was referred to the Crown Law Office. The ATTORNEY-GENERAL and the Crown Law Department would always be found sympathetic, so the speaker questioned whether the prerogatives of the Crown should be discarded. In the meantime, use would be made of whatever might be found in the file he had mentioned likely to prove helpful.

MR. W. J. SIM (Christchurch), in reply, thanked the ATTORNEY-GENERAL and members of the profession for their kindly reception of his paper. He had noticed with the greatest pleasure that the ATTORNEY-GENERAL said that it was a matter for work, and if that was the key-note he thought he might have achieved something. The time would come when the ATTORNEY-GENERAL would appreciate the weight and authority of a first-class Committee behind him.

THE PRESIDENT said he would not close the discussion on the point of a Committee just then. He suggested that Mr. SIM, Mr. WRIGHT, and Mr. O'REGAN should draft a suitable motion to be submitted to the Conference.

Subsequently, Mr. SIM reported to the Conference, and read the following motion which had been drawn up by the sub-Committee:

That this Conference recommends the establishment of a Standing Committee along the lines of the Law Revision Committee in England, to consider and report on all matters committed to it relating to the Administration of Justice and the Reform of the Law; and the Honourable the Attorney-General be asked to bring before the Honourable the Acting Chief Justice the proceedings of the Conference and to confer with him on the establishment of the above Committee.

MR. SIM formally moved the resolution, which was put to the Conference and carried unanimously.

THE PRESIDENT at this stage vacated the Chair, which was taken by Mr. A. N. HAGGITT for the presentment and discussion of the next remit.

THE SECOND REMIT.

Amendment of the King's Counsel Rules.

MR. D. PERRY (Wellington) proposed the following remit:—

That the present rules preventing King's Counsel from practising as Solicitors should be abolished.

He said that he felt some diffidence in proposing this remit, because it seemed to him, coming as it did at that stage of the Conference, that they were descending from a matter of great general importance to a small matter which merely affected themselves. However, this remit had been put forward by the Wellington District Law Society because it was felt that the matter was one of some importance to members of the profession, and there was a very sharp division of opinion on the question. When the Law Practitioners Amendment Act, 1935, was first drafted, it contained a provision abolishing the existing rule which prevented King's Counsel practising as solicitors or in partnership. That provision was approved by the Council of the New Zealand Law Society before being submitted to the Government. The Rt. Hon. Mr. Forbes, then Attorney-General, indicated that he was not prepared to sponsor the Bill if that provision remained in it. The matter was further considered, and the New Zealand Law Society asked for the views of the District Societies. At Wellington, there was sharp conflict of opinion; and it was felt that no steps should be decided upon till the profession had had an opportunity of discussing it.

MR. PERRY went on to say that although the remit was in his name he did not agree with it. The arguments in its favour could be summarized as follows: That the two branches of the profession were not separated in this country, and, while that was so, there was no reason why a barrister, because he also practised as a solicitor, should be prevented from applying for the patent of King's Counsel on that account. There were, no doubt, many arguments against that view. It might lead to the situation in Canada, where no less than five King's Counsel were all members of one firm.

The speaker interestingly recalled that the present statutory rule which prevented King's Counsel from practising as solicitors had been enacted in 1915, and the matter had been the subject of considerable prior discussion. It was discussed at considerable length in 1913, and, as a result, the principle of the Bill which became law in 1915 was then approved. Circumstances might have changed since 1913; but Mr. PERRY said, speaking personally and against the remit he was supposed to be moving, he could not see any essential change in the circumstances which would justify a change in the rule.

MR. W. H. CUNNINGHAM (Wellington) seconded the remit *pro forma*. He explained that this remit had been sent forward by the Wellington Society, as it had been felt that it affected members of the profession personally rather than the profession as a whole. As that Society was so divided in its opinion, he had suggested that it would be a welcome subject for discussion by the Conference; but, personally, he was against the remit. Perhaps it did not affect practitioners in country towns, but it was a matter for serious consideration for those practising in the main centres.

His own experience on going to Wellington was that it was a great advantage to have senior members free from partnership ties. Opinions could be obtained without any embarrassments, and that was one of the outstanding advantages of the present system. Only members of the Bar who had reached eminence and could afford it took silk, and he for one should be very sorry to see the present rule abolished.

MR. P. J. O'REGAN (Wellington) said that unconditionally he opposed the remit. He thought the present situation might be called, not inaptly, a concordat; and it would be very unwise for the order of King's Counsel to reopen the question. He was surprised that this remit should have come from Wellington, because he took leave to say that it did not reflect the intelligence of the rank and file in Wellington.

The speaker referred to the history of the rule, beginning with an amendment to Mr. Hindmarsh's Bill in 1924, which was brought into the Upper House by Sir Francis Bell. He (MR. O'REGAN) thought he was quite wrong in this connection. A general meeting of the Wellington Society was convened for the express purpose of considering the proposed amendment emanating from Sir Francis Bell, and a great majority voted against the amendment. Now it had been reopened after a general meeting of the profession in Wellington: he almost said a "stop-work meeting of the union." It would be exceedingly unwise to endorse this remit.

MR. H. F. O'LEARY, K.C. (Wellington), from the Hall, said he thought the history in connection with the present position was something which the Conference should know. King's Counsel were first appointed in 1907: four in Wellington and two in each of the other centres. They were, of course, permitted to practise as barristers and solicitors. In 1913 a meeting was called in Wellington to discuss the matter of junior briefs handed out by King's Counsel who then favoured either one particular junior or what were called "freezing juniors," those called late at night by a King's Counsel's clerk who would say: "Mr. X. has a case in Court to-morrow, would you go over and sit with him." There was a fee commensurate with the work involved. A meeting was held in Messrs. Bell, Gully, and Co.'s office where it was suggested that, following the practice in England, fees for juniors should be put on a definite basis. At this meeting the discussion took a wider turn, and certain older counsel present took exception to King's Counsel practising as solicitors at all. They said that if a person was embarking on litigation and contemplated briefing a King's Counsel, he would naturally go to the King's Counsel's firm for the solicitor work. This led to the meeting to which MR. PERRY referred, and which was held in Wellington. A resolution was passed that the practice of King's Counsel practising as solicitors should not be continued. Mr. Hindmarsh, a practitioner who was also a Labour member for one of the Wellington seats, was at this meeting. Then in 1915 a Bill was before the House, and, in the course of a debate, Mr. Hindmarsh took the opportunity to propose an amendment to carry into effect the resolution of 1913. Last year, when the Law Practitioners Amendment Bill was before Parliament, it was suggested that the 1915 amendment should be repealed and the old rule restored; and that matter was discussed by the Statutes Revision Committee. As President of the New Zealand Law Society, the speaker had sent out notices of this to all District Societies, and asked them to discuss the matter and send their views to him. Many Societies did not send in their views, others did; and the great majority were against the amendment. The matter came before the Wellington District Society, and Mr. CUNNINGHAM suggested that it was a matter which might well go before the Conference. That was an explanation which might help the Conference.

There being no further discussion, MR. HAGGITT put the motion to the meeting. It was declared lost on the voices.

MR. HAGGITT then vacated the Chair, and MR. O'LEARY resumed charge of the Conference.

The Proper Attire of Barristers.

A Dunedin Remit.

MR. A. N. HAGGITT (Dunedin) moved the following remit:

That it is desirable that the proper attire of barristers at the outer Bar be defined.

He said it was indubitable that the dress of outer barristers should be defined, as there was no regulation in the matter which was left to custom, unlike the forensic attire of King's Counsel which was defined. The matter affected the dignity of the profession, and, even though the subject might give rise to some degree of levity, he did not mind, as his submission was that it was desirable that, if there were a proper gown, it should be defined. If necessary, the matter might be referred to the New Zealand Law Society with the object of having a Committee set up to give effect to the proposal. The speaker said the remit had been placed on the Conference agenda because a letter had appeared in the NEW ZEALAND LAW JOURNAL pressing for information on this matter, and he was impressed by the fact that there was not one reply. Everyone knew, of course, the general rule that a barrister had to wear a wig and gown, a dark coat, and bands; but that was too general. What was the proper size of the bands? he asked. Some wore them long, some wore them short, others had them starched and many left them limp. The late Mr. Justice Alpers had something to say about it in his book, *Cheerful Yesterdays*:

> I have never been able to understand why so many counsel in New Zealand find it too much trouble to keep a morning-coat in their robing-locker for use in Court.

But many could not afford to keep a morning-coat in their lockers for use in Court. Then he said:

> They sometimes appear in a dark blue or brown sac suit. That is bad. But infinitely worse is the slovenly habit one notices in some Courts of compromising with the colour convention by wearing a black alpaca coat under their gowns.

Mr. Justice Byles intimated that he could derive no pleasure at all from seeing the ends of a pair of gray trousers peeping out from below the gown, and the speaker at least twice had seen a very honoured Judge refuse to see counsel who appeared improperly robed. The English Bar Council had done something toward what was wanted in New Zealand; but their decision, made in 1922, affected women barristers only. It would be a simple matter for an appropriate Committee of the New Zealand Law Society to lay down rules that could do no harm, and might do a great deal of good and provide authoritative information for many

young members of the profession who had no proper knowledge of this and other matters touching the etiquette of the profession.

MR. G. T. BAYLEE (Dunedin) seconded the remit *pro forma*. It was not clear from the remit whether the garb to be regulated was to be limited to the Supreme Court. It might be that attention should be drawn to the fact that practitioners continued to appear in the lower Court wearing their overcoats. Due precautions must be taken to ensure that the local conditions were taken into account. Those who practised in more genial climes might not be affected, but there was such a thing as an "official Winter" and an "official Summer," and curiously enough "official" winter began in Dunedin at the same time as "official" winter began in Auckland, so it was hoped that if a Committee were set up it would not consist entirely of Wellington members but would include a sprinkling of South Island members who could advise on local conditions.

MR. J. P. WARD (Dunedin), in supporting the remit, said he thought rules as to forensic dress were desirable, not only for the younger members but even for the older men.

MR. J. D. HUTCHISON (Christchurch) opposed the remit. In every centre there were leading members of the Bar who could give an example which would be a lead to the other members of the profession in regard to Court attire, and, without saying anything, they could lay down the standards which should guide everyone. If the standard was not all that was desired, the senior members should give the example.

MR. W. D. CAMPBELL (Timaru) related some humorous experiences of lack of care in Court attire.

MR. G. M. LLOYD (Dunedin) supported the motion. He referred to the controversial question of the nature of shirt to be worn in Court. Shirts varied considerably in design and hue at the present time, and many barristers could not produce a plain white shirt. Provided they were permitted to wear checked and striped patterns in shirts, or coloured shirts, the remit should be of value.

MR. P. J. O'REGAN (Wellington) said he had heard it remarked that Parliament would carry more prestige if it paid more attention to its dress. He recalled Mr. Seddon's saying that something should be done in our Parliament along the lines of the Swiss Parliament, where all the members have to dress in a special uniform. There should be a defined attire for barristers appearing in Court.

MR. W. H. CUNNINGHAM (Wellington) supported the remit. Where there was a proper dress, it should be properly defined. A happy precedent was provided in the attire of army officers, as every item of military dress was laid down in regulations even to the clock on the socks.

MR. A. N. HAGGITT (Dunedin), in reply, said that there was nothing about rules in the remit, which suggested that the professional attire should be defined, and that would give a guide to those who desired, as he did, to follow it.

On being put to the vote the remit was carried in the following form :—

That it is desirable that the proper attire of barristers at the outer Bar be defined by the New Zealand Law Society.

This closed the business of the Conference for the first day.

Some Conference Personalities.

(*Continued from p. 83.*)

Dr. A. L. HASLAM (*The Trial of Collision Cases*) was born at Christchurch in 1904 ; educated Waitaki High School and Canterbury College ; LL.B., 1924 ; LL.M. with first-class honours, 1925 ; N.Z. Rhodes Scholar, 1927 ; at Oxford, represented Oriel in rowing and athletics ; D.Ph., B.C.L.(Oxon.) ; author of *The Law Relating to Trade Combinations* ; since May 1, in practice on own account, Hereford St., Christchurch.

The Conference Vice-President, Mr. A. N. HAGGITT, was born in Dunedin, in 1894, son of the late Mr. B. C. Haggitt, Crown Prosecutor, Dunedin ; educated Anderson's Bay School, Otago Boys' High School, and University of Otago ; served with N.Z. Field Artillery, Egypt, Gallipoli, France, 1914-18 ; Associate to the late Hon. Sir Alexander Sim, 1920-21 ; LL.B., 1921 ; captain, Otago Golf Club, 1929 ; president, Otago Lawn Tennis Club for several years ; president, Law Society of Otago, 1936 ; partner in Messrs. Ramsay and Haggitt, a firm founded in 1864.

Mr. J. G. WARRINGTON was born at Dunedin, 1910 ; educated Caversham School (Dux, 1921), Otago Boys' High School, and University of Otago ; president Law Students' Debating Society and secretary Law Faculty ; University debating representative ; LL.B., 1931 ; Lieut., 12th Field Battery, N.Z. Artillery ; Vice-president, Dunedin Operatic Society ; hon. secretary, Fourth Dominion Legal Conference, 1936 ; partner in Messrs. Simpson and Warrington.

THE LADIES' LUNCHEON.

At the University.

On the second day of the Conference, the visiting ladies were entertained at luncheon at the University. A buffet luncheon was served in the Allen Hall, where guests, to the number of over a hundred, were waited upon by the white-clad students of the Home Science School, who produced a hot meal to be followed by sweets and ices. The centre table was covered with a maize-coloured cloth, set with green and yellow dishes, the decorations comprising scarlet and yellow begonias. The efficient and artistic manner in which the luncheon was served, as well as the varied nature of the menu, created considerable interest among the visitors who had not previously seen the Home Science faculty's work at close quarters.

After luncheon, the visitors were shown over the Home Science School by the Principal and members of the staff. They were conducted by lady doctors through the laboratories, and then they inspected the cooking and dressmaking departments, and took particular interest in the work of the travel department, in which much assistance is given to country housewives.

THE SECOND DAY.

The Development of the Law of Real Property in England.

By Claude H. Weston, K.C.

The work of recasting the Law of Property (mainly real property) in England and Wales was begun by the late Mr. Wolstenholme as far back as 1895, was taken up by Lord Haldane in 1911, and by him with the assistance of Sir Philip Gregory and Sir Benjamin Cherry nearly carried to a conclusion at the outbreak of war in August, 1914. In 1920 Lord Birkenhead gave it his support, and under the inspiration of Sir Arthur

S. P. Andrew Studios.

Mr. C. H. Weston, K.C.

Underhill and of the Acquisition of Land Committee presided over by Sir Leslie Scott, now Lord Justice Scott, many of the suggested reforms were embodied in the Law of Property Act, 1922. That, however, simply marked a stage in the scheme. Before it could have practical effect, further consideration of its provisions was necessary and the work of consolidating it with the earlier cognate legislation had to be done. This was performed by a Commission presided over by Mr. Justice Romer, as he then was, and consisting of Mr. A. F. Topham, K.C., Sir Arthur Underhill, Mr. J. E. H. Benn, Sir Benjamin Cherry, Sir Frederick Liddell, and Mr. A. E. Russell. The Commission was appointed by Lord Cave in November, 1923, and the legislation was passed in 1925, coming into effect on January 1, 1926. The Statutes comprising the legislation were :—

The Law of Property Act, 1925.
The Settled Land Act, 1925.
The Administration of Estates Act, 1925.
The Trustee Act, 1925.
The Land Charges Act, 1925.
The Land Registration Act, 1925.

I can only use a broad brush in my attempt to paint the picture before us to-day. The general rules are subject to exceptions, the details of which would, in a paper of this length, tend to obscure such rules, and the main principles only can be outlined. And, as may be imagined where startling changes have been made with such detailed thoroughness, the profession itself has not yet completely mastered the position. Indeed, it was found necessary to pass amendments in 1926, 1929, and 1932 in order to remove certain difficulties that arose in practice when the Statutes came into force. The new Acts are very voluminous and detailed, and many members of the profession in England were considerably alarmed at the prospect of having to study what they assumed to be an entirely new and unfamiliar system of law ; but while the law is, in many instances, new, it can hardly be said to be unfamiliar.

Evolution and Revolution in Reform.

The steps taken were evolutionary and revolutionary, and one can only admire the spectacle of a great problem met with amazing courage and skill. In the early part of the nineteenth century, six most important statutes had been passed, but they had been directed towards the simplification of conveyancing and the extension of the landowners' powers of enjoyment of their land. No comprehensive effort was then made to smoothen the path by abolishing the substantive defects which had settled on the main body of the law. So when the question of reforming or drastically modifying the law came before Parliament in the twentieth century, as Sir Arthur Underhill says,

> the result of 600 years of development from a feudal origin was found to be that the law of real property contained many antiquated rules and useless technicalities and that additional and unnecessary impediments had come into being to hinder the facile transfer of land. The real property law as it existed in 1925 might justly be described as an archaic feudalistic system which, though originally evolved to satisfy the needs of a society based and centred on the land, had only by considerable ingenuity been twisted and distorted into a shape more or less suitable to a commercial society dominated by money.

The situation with which the reformers were faced was indeed a difficult one. There existed two great tenures of freehold land complicated by the existence of gavelkind, borough English, and ancient demesne and the entirely different tenure of leasehold. The two freehold tenures were those of socage and copyhold. As copyhold has been abolished by the 1925 legislation there is no need to attempt to describe it except to say that it served no particular social need and certainly stood in the way of a simplified system of conveyancing, being nothing more nor less than a rather bad and

exceedingly inconvenient form of ordinary tenure. It is, however, of interest to us in New Zealand in that it involved a system of registration of title akin to our Land Transfer system. Socage tenure was that form of tenure which represented the new aspect that the economic life of England began to wear in the fourteenth century. It was essentially non-military. It cannot be defined in positive terms, but can be described negatively as being that species of tenure which was neither spiritual (frankalmoign), military (knight-service or in sergeanty), nor villeinage (copyhold). Sir Arthur Underhill in *The New Conveyancing* said of these tenures :

> They flourish side by side without the least advantage to anyone except a few specialists like the writer who have spent a lifetime in acquiring the lean and wasteful learning which overhangs them.

Leasehold land was not regarded in the same category as freehold. It was personal, not real, property, was conveyed in a different manner, and descended on death as chattels did under entirely different rules of descent. A comparison of the law relating to real and personal property, respectively, was from the point of view of convenience and reason very much to the advantage of the law of personalty.

In addition to the rules of descent attached to gavelkind and borough English there were in existence a large number of other methods of customary descent. The expense of conveyancing was exceedingly heavy : lengthy investigation of title was required, and, accordingly, much of a conveyancer's duty consisted in tracing the history of the land under review and in perusing the various documents affecting it during the last generation or so, in order to ensure that his client acquired a good title.

Most of the land in England and Wales was held under strict settlement, thus involving, in the case of a majority of titles, freehold estates in succession. Unless the services of the Settled Land Acts could be utilized to enable sales to be made, the consent and signature of several owners of estates *in futuro* had to be obtained.

Further, the existence of undivided legal interests impeded conveyancing. The experience of most practitioners in England was that settlements on persons in succession with all their complexities gave less trouble in the investigation of titles than tenancies in common. Tenancy in common, after all, is really a settlement on persons concurrently, instead of successively. Sir Arthur Underhill said that

> tenancy in common is a far worse impediment to " free trade in land " than settlements are.

He stated that

> it was by no means uncommon to find the title split up into fifty or sixty undivided shares, most of them mortgaged, and some of them settled. Where this was the case, nothing less than an action would suffice to cut the Gordian knot and when (as frequently happened) the property was small, the costs of the necessary inquiries left little to be divided between the unfortunate co-owners.

The capacity of infants to hold land, but not to convey, except under certain conditions, did not assist in the free and inexpensive alienation of land.

A complete system of registration, even as we knew it in New Zealand before all land came under the Land Transfer Act, did not exist. Registration of title similar to the systems used by the Roman-Dutch lawyers for some three centuries and to-day in force in Germany, Australia, and New Zealand existed in the County of London and the Boroughs of Hastings and Eastbourne, it being compulsory in those districts to this extent, that whenever a sale of land was made, the purchaser was obliged to register his title : registration of deeds, like our former Deeds registration system, existed in the Counties of Middlesex and Yorkshire ; and there was in London a Land Registry Office in which certain transactions could be registered, such as *lites pendentes* and judgments. Otherwise the deeds of title to the land in the greater part of England were unregistered.

The doctrine of constructive notice, although modified by the Settled Land Acts and by the doctrine confirmed as to trusts for sale, by *In re Soden and Alexander's Contract*, [1918] 2 Ch. 258, was still very much in evidence. Legal interests were, of course, carried forward on to the title whether they were the subject of notice to the purchaser or not, and the purchaser was also burdened with equitable interests if he or his solicitor did have, or as diligent business men should have, had notice of them. In many cases, as a result, he was concerned to investigate the duties of a vendor trustee and to what extent they had been properly performed. Law and Equity, in fact, placed upon a purchaser the duty of seeing that the vendor, if a trustee, carried out the obligations of his trust.

Facilitation of the Transfer of Land.

The broad purpose of the draftsmen of the legislation was to facilitate and cheapen the transfer of land, but the achievement of that purpose involved the execution of many subsidiary ones. In particular the draftsmen found themselves aiming to—

(1) Increase alienability ;
(2) Make conveyancing more simple ; and
(3) Lessen the obligation cast upon the purchaser to share the responsibilities of the vendor with regard to the particular land.

Confining myself for the moment to these three aims I may remind you that throughout the centuries in which law has existed in England the Courts have been swayed by an unconscious inhibition to keep land freely alienable. This leaning has been contrary to the wishes of the landowners, whose ambition has always been to prevent its alienation after their death. Nor was this inhibition encouraged by the majority of the lawyers, and the 1925 legislation which represented a triumph for the enlightened few was not received with much enthusiasm by most of the conveyancers. The legislation has ensured alienability by giving every owner of a legal estate in land the right to sell. A trustee for sale and a tenant for life under a strict settlement (under certain conditions) already possessed the power to sell. This power is now given to every trustee, provided there are in existence two trustees appointed with the approval of the Court or a trust corporation be the trustee. Further, joint tenants, executors until the debts are paid, and administrators are deemed to be trustees for sale. Practically, therefore, every owner of a legal estate in land to-day in England has the power to sell it : in most cases those who own beneficial interests therein must look to the proceeds of its sale for their shares.

To carry out their aim of making the conveyance of land more simple, two chief means were employed : first, to reduce the number of legal estates to two—an estate in fee-simple absolute in possession and a term of years absolute ; and, secondly, to abolish legal tenancies in common. Thus, with one stroke of the pen, legal estates in succession and concurrent legal

estates were abolished. Only one absolute owner or at the most four joint tenants need be sought out to sign the conveyance. All other interests were made equitable, and the difficulties arising from the existence of a chain of owners of legal undivided interests were dispersed. Thirdly, the Commission set out to complete the result of a tendency that had shown itself for some time past, to remove from the shoulders of a purchaser the burden of protecting a *cestui que trust* against his trustee who sells the land that is the subject of the trust. When considered from a dispassionate point of view the necessity for a stranger to the trust interfering between a trustee and his *cestui que trust* seems uncalled for. To-day, in England, no *bona fide* purchaser for value where the vendor is acting as a trustee shall be bound or concerned to investigate the trust, but shall be entitled to assume that the vendor has full power and authority to carry out the transaction and the remedy of a beneficiary shall only be against his trustee and the purchase-money. This has been largely effected by the use of the " curtain principle " to which ss. 197 and 198 of the Land Transfer Act, 1915, have accustomed us in New Zealand. The law, when it wishes, draws a curtain between the purchaser and any facts behind the vendor, of which it desires the purchaser shall have no actual or constructive notice. As Mr. Cheshire describes it in his *Modern Real Property* :

> the legal estate held by the trustee is a curtain which obscures from the sight of the purchaser the equities that lie behind and thus secures for him the bliss of ignorance.

The principle was exemplified in the device known as a " trader's settlement," which was adopted by conveyancers in England many years ago in connection with trusts for sale although it received no judicial confirmation, I believe, until Mr. Justice Younger (now Lord Blanesborough) decided the case of *In re Soden and Alexander's Contract* (*supra*). By this device the purchaser was excused from taking notice of the provisions of a collateral Deed of Trust although specifically referred to in the Deed of Conveyance. However, the Legislature has made concessions to the frailty of human nature, and enacted that, where the testator or settlor has not given his trustee a direction to sell, before a sale can be made there must be in existence two trustees appointed by or with the approval of the Court or the trustee must be a corporation. It is significant that the English Legislature regards one corporation trustee as equivalent to two private trustees.

The Commission's aim was to endeavour to make land as easily transferable as the shares in a company. The transfer of shares seemed to them an ideal method of conveyance, and that became their goal : to attach the incidents of personal property to land and transfer it, as sharebrokers transfer their clients' holdings in, we will say, Woolworth's, Ltd., or any other limited liability concern.

To accomplish these principal and subsidiary purposes the Legislature had to make many changes.

By the Property Law Acts of 1922 and 1925 it converted copyhold and ancient demesne into socage tenure and abolished frankalmoign, gavelkind, and borough English, and all other modes of customary descent. The honorary services incidental to sergeanty were, however, retained : they are thus the only survivors of personal services, which in post-feudal times were commuted to money payments, such payments in turn becoming entirely insignificant and ultimately forgotten through the fall in money values. As we know, a few shillings per annum in those days was a substantial rent. Escheat, which was the right of the Lord to take the land of a tenant who died intestate without heirs, was abolished and replaced by a right in the Crown to take the land as *bona vacantia*, in the same way as it takes chattels.

A subsidiary part of the general scheme for the simplification of land transfer was the abolition of certain real property rules and doctrines which, although they had originally been introduced to preserve principles of importance in feudal days, were nothing more than obstructive anachronisms in 1925.

The law as to personal property was also modified ; amongst other things, by allowing personalty to be entailed and by converting certain troublesome forms of leasehold—namely, the perpetually renewable lease and the lease for a life or lives into terms for a fixed number of years : two thousand years and ninety years respectively. The rules for granting leases to commence at any time in the future were clarified.

Real Property law was in the beginning widely different from that which regulated personal property, but there has been a tendency ever since an early age to make both these departments of the law subject to the same legal rules, and in the main the rules which have been adopted by the 1925 legislation are those which relate to personal property. Thus the legislation of 1925 was concerned to complete a process of assimilation which was already far advanced.

Perhaps the most striking difference between realty and personalty in 1925 was in the rules which regulated their descent or distribution when an owner died intestate. These rules were abolished and new distributive rules introduced which apply to both real and personal property. The old canons of descent were, of course, retained as regards entailed interests.

When an owner of property makes a will which contains gifts to a number of beneficiaries, it is essential to have rules that settle the order in which such beneficiaries must be deprived of their interests for the benefit of unpaid creditors. The old rules on the matter represented another difference between real and personal property, for they required that the personal estate must be exhausted before recourse was had to the real estate. The old rules have now been replaced by fresh statutory provisions which, from this point of view, have put realty and personalty on the same footing.

I now refer again to the most startling change made by the legislation : the reduction in the number of legal estates.

The Law of Property Act, 1925, enacted that the only legal *estates* which can now be created are the fee-simple absolute in possession, and the term of years absolute ; one a freehold, the other a leasehold. The statutory description of a person who holds one or other of these two legal estates is *estate owner*.

In addition, however, to these two *legal estates*, it is permitted to create five *legal interests* in land :—

(1) An easement or profit if held by the owner either in perpetuity or for a term of years.

(2) A rent-charge in possession if held by the owner either in perpetuity or for a term of years.

(3) A charge by way of legal mortgage.

(4) Land-tax, tithe-rent charge, or any other similar charge which is not created by an instrument.

(5) Rights of entry exercisable in respect of a legal term of years or of a legal rent-charge.

All other estates interests and charges in or over land can only exist as *equitable interests*. Thus the interests which may exist in land became subject to a new technological classification, being either *legal estates*, *legal interests*, or *equitable interests*. The effect of the provision that the fee-simple absolute in possession shall be the only legal estate of freehold is that many interests which under the old law were legal estates are now only equitable interests. Life estates and estates tail are examples of this and to-day can only exist as equitable interests.

The distinction between the legal estate or interest and the equitable interest has been more sharply defined and elaborated by other statutory provisions. The object of these is to preserve inviolate the legal fee-simple, and to ensure that, notwithstanding settlements, mortgages, and other similar transactions, the owner of the legal fee-simple shall always be kept separate from the owners of all partial and equitable interests, so that in every case there is a legal owner from whom a purchaser can take a conveyance of the legal estate without being under the necessity of dealing with the subsidiary owners. For example, a life tenant under a strict settlement has the legal ownership of the fee-simple: when he dies the trustees of the settlement, who are deemed to be his personal representatives for the purpose, transfer the fee-simple of the land to the owner of the equitable interest next in succession and so on.

Overcoming Conveyancing Difficulties.

As has been mentioned above, serious conveyancing difficulties occurred under the old law when land was vested in two or more persons as tenants in common. In such a case there was not one title that could be transferred to a purchaser, but two or more separate titles held by various tenants. A purchaser was obliged to investigate the title of each separate owner, a task when the original owners had died, and had left their shares in the land divided amongst others, that sometimes necessitated the consideration of a score of titles or more. Joint tenancy has always been superior in this respect to tenancy in common, for it is characterised by unity of title and, though there may be many joint tenants, there can only be one title for the vendors to prove. The Law of Property Act, 1925, has therefore provided that it shall no longer be possible to create a *legal* tenancy in common. The grant of land to tenants in common automatically vests the legal estate in the first named four who hold it as joint tenants upon trust for sale, while the beneficial interests of the grantees as tenants in common continue to exist as equitable interests. A purchaser investigates the one title of the joint tenants and does not concern himself with the equitable interests that lie screened behind the legal estate. Those equitable interests are the concern of the trustee and his *cestuis que trust* and are no longer involved in the actual conveyance of the land. They, no doubt, present difficulties to the trustee and his beneficiaries, but the purchaser and his solicitor are not concerned with them.

A maximum number of four *legal* owners has been established. There cannot be more than four joint tenants, four trustees, or four administrators.

Under the new law, it is impossible for an infant to hold legal estate nor can an infant be made a trustee under a settlement. Land held in trust for an infant is regarded as settled land. It follows that an infant can hold an equitable interest in land and can convey it subject to the conveyance being voidable by him unless it is made under the English Infant Settlements Act, 1855.

We have seen how the English conveyancers developed the curtain principle in connection with conveyances by trustees for sale. The legislators of 1925 extended the use of the trust for sale in two directions.

In the first place, trusts for sale which, as is well known include a power to postpone sale at discretion, were extended to include joint tenancies and ownership of land held under an intestacy: also ownership of land by executors until debts are paid. So, automatically, joint tenants, administrators, and executors until the debts are paid are deemed to be trustees for sale. Further, any legal owner of land of which he is not beneficially the full owner—*e.g.*, a tenant for life—can sell the trust lands provided there are in existence either two trustees appointed with the approval of the Court or a corporation trustee, to whom the purchase-money can be paid. The idea was that, notwithstanding the creation of equitable interests in the land, the legal estate should always be vested in some person who is capable of making title thereto. It was deemed desirable, however, that the estate owner should as often as is possible be the person who either is in actual fact the true owner or, as in the case of a tenant for life under a strict settlement, is most naturally and conveniently regarded as the true owner.

In the second place, when a sale is made by a legal owner in such a position—*i.e.*, having in existence two trustees appointed with the approval of the Court or a trust corporation—the purchaser now takes the land freed not only from the equitable interests created by the trust instrument, but also, with certain minor exceptions, from all other equitable interests. This was intended by the draftsmen to supplement alienability. They aimed at allowing every owner as far as possible to pass an unfettered fee-simple to a purchaser. The minor equitable interests which could not be removed from the title by these means were—

(1) Equitable mortgages protected by a deposit of title deeds;

(2) Restrictive covenants if registered;

(3) Equitable easements if registered; and

(4) Estate contracts—*e.g.*, contracts for sale—if registered.

Amongst other variations it was found necessary to alter the method by which legal mortgages of freeholds were created. Although the purpose of effecting a mortgage is simply to afford security to the lender, the basis of the transaction was obscured by the former method of creating legal mortgages. The legal fee-simple was conveyed to the mortgagee, and it followed that the mortgagor, though he had an absolute right in equity to recover his ownership upon payment of the amount owing, was left with nothing but an equitable interest in the land. This has now been altered. It is forbidden to create a mortgage by the conveyance of the legal fee-simple to the lender. A legal mortgage of the fee-simple can only be created either by the grant of a term of years (usually three thousand years) or by the equivalent grant of a legal charge: the legal estate in fee-simple thus remains in the mortgagor. A legal mortgage of a leasehold is created by a sub-demise. It will be noted that both the term of years and the charge give the mortgagee the right to convey to a purchaser a larger interest in the land than he himself possesses—namely, the fee-simple. This is, of course, analogous to the right of a mortgagee of land in New

Zealand under the Land Transfer system to sell the fee-simple although he is the proprietor of only a charge over the land. Our constant indebtedness to the past in human affairs is exemplified by the fact that the designers of the mortgage by way of a grant of a term of years followed the precedent of a similar form of mortgage used in England in the eleventh century.

The Registration System Extended.

Obviously, an extension of the system of registration was demanded, and the scope of the Land Registry Office in London was widened. It was made allowable to register estate contracts, restrictive covenants, equitable easements, puisne mortgages, and general equitable charges to secure the payment of money: registration has the effect of notice, and a purchaser for value can ignore unregistered registrable interests, even with notice. Sections 197 and 198 of our Land Transfer Act invite comparison with this. Curiously enough, legal estates and interests, excepting puisne mortgages, are not registrable.

The registration systems of Middlesex and Yorkshire were not altered to any extent.

Land Title Registration in the County of London and Boroughs of Hastings and Eastbourne, also, was not greatly modified, but power was given to the Government to introduce the system into any County by Order in Council after January 1, 1936. The consent of the local authority is not now required, but consultation with the people concerned is made a safeguard. It is interesting to note that what are termed overriding legal interests in England, such as easements, etc., are not registrable under that system also. The question naturally arises, Why did not England carry her reforms to their logical conclusion and introduce compulsory registration of title? This was considered, but it was thought that to legislate for the registration of titles without, as a preliminary step, simplifying the titles to be registered was to begin at the wrong end. No doubt, registration of title will be gradually extended under the present powers: the County of Middlesex is to have it this year.

It can be readily understood that with the real property law receiving such thorough examination at the hands of experts, not many anachronisms would survive, and, as a result, very many individual improvements were made. I shall not attempt to enumerate them, but to give some examples of the kind of such alterations, I mention the amendment to the Wills Act, by which a will made in contemplation of a definite marriage is not revoked by that marriage; a modification of the rule against perpetuities by which if the ascertainment of a person or class of persons to take under the gift is made, in error, to depend on their attaining an age of more than twenty-one years, and the gift thereby fails, the gift may be construed as if the age specified had been twenty-one years; and s. 57 of the Trustee Act which empowers the Court to confer on trustees power to carry out any transaction if they have not got such a power under their trust and the Court thinks it would be beneficial that that transaction should be carried out: *Cf. In re New*, [1901] 2 Ch. 534.

The Moral to be Drawn.

In conclusion, we see that the work of the English conveyancers, assisted by a sympathetic Government amongst whose members were several eminent lawyers, has resulted in bringing the real property law of England and Wales abreast of the times. And the result affords us lawyers in New Zealand food for thought, as to whether we should not give some concentrated attention to the position of our own law. As far as registration of title is concerned, we cannot do much to improve the system, except perhaps to make it more elastic; but we can well consider reforms in the direction of increasing the alienability of land, of reducing the number of legal estates, of abolishing legal tenancy in common, and of assimilating the law of real and personal property. The repeal of part of the Property Law Act might also be considered. There are, of course, many isolated improvements which can be made, and these in themselves are quite sufficient in number and importance to warrant such work being undertaken.

The moral to be drawn for New Zealand, as I see it, is the necessity for constant vigilance. Law is a progressive art and comparative jurisprudence is its handmaiden. From a constitutional point of view the more we lose the common basis of similar laws, the farther apart we drift from England and our sister Dominions. Moreover, when the preservation of our association goes hand in hand with a gratuitous use of the greater minds of England and elsewhere, it rather suggests a lack of astuteness in those who are popularly credited with being astute, in not taking advantage of the opportunities given by others. We have at our disposal the intellectual efforts of the best brains of the Empire.

Mr. H. D. Andrews (Christchurch) warmly congratulated Mr. Weston on his exceedingly interesting paper. The Conference was not a suitable place in which any critical examination of so technical a subject could be made, but those interested, both as lawyers and as citizens, would be grateful for an opportunity of studying the improvements outlined in the paper, which the speaker found extremely interesting. He was sure that improvements could be made if it were followed up, and he would move later that the question of considering adoption of some of the improvements in Property Law made in England be referred to the New Zealand Law Society.

Mr. M. J. Gresson (Christchurch) supported Mr. Andrews's suggestion, if only for the reason that actually within the last three weeks he had had to advise on a case which would have to go to Court, and it would not have been necessary to take it to Court if some of the reforms mentioned by Mr. Weston had been carried out in this country.

Mr. J. R. Cunningham (Christchurch) congratulated Mr. Weston on his interesting paper on a difficult subject, and referred to tithes, which the Government in Great Britain was trying to capitalize, so as to shift such charges as rent-tithes off the title. These were Church tithes, which existed on the land and had been handed down in the same family for generations; and, as the descendants became more numerous, the task of apportioning the tithes among those entitled became very complicated indeed.

Mr. H. S. Adams (Dunedin), speaking as a practitioner whose work lay considerably in conveyancing, said he would like to see a widening and a greater flexibility than the present Land Transfer Act allowed. The forms under the Land Transfer system were strictly prescribed by the Act. The land could be transferred or easements could be created by transfer, but unless the

ingenuity of the draftsman were equal to the task there was no other method of dealing with the land. In the bigger centres, particularly, considerable difficulty had been felt by conveyancers in trying to provide for easements of light and of flight. In order to protect access of light, easements of flight as well as easements of light had had to be created. It had long been felt that greater facility should be provided regarding the creation of easements under the Land Transfer system. It was interesting to know that a joint tenancy was ceasing to be possible in England. The speaker's own experience showed that a joint tenancy was often the only method by which some transactions—such as a right of way—could be carried out.

MR. C. H. WESTON, K.C. (Wellington), in reply, said that Mr. ADAMS had raised a very important point with regard to the inelasticity of the Land Transfer Act. It would seem that the analogous system in England was more elastic, not least in its provisions as to forms of documents. In New Zealand practitioners might be only at the beginning of their difficulties with the Land Transfer forms: for instance, there was a debenture deed which had no collateral mortgage: the debenture-holder under the Land Transfer system was only an equitable mortgagee and his rights over the land were for that reason somewhat restricted. The difficulties in Great Britain arose from the problem of fitting in old titles with the new legislation. The new legislation itself had been very well received, and was working out extraordinarily well in practice.

THE PRESIDENT then asked Mr. ANDREWS to put his motion in writing, and this was read by the Conference Secretary in the following terms:—

That this Conference recommend to the New Zealand Law Society that early consideration be given to possible methods of improving the Law of Real Property in New Zealand, and, to facilitate its doing so, that the paper read at this Conference by Mr. C. H. Weston, K.C., be brought to the knowledge of the New Zealand Law Society.

MR. M. J. GRESSON (Christchurch) seconded the motion, which was then put to the meeting and carried.

The Law Society and Public Affairs.

A Wellington Remit.

MR. S. J. CASTLE, on behalf of the Wellington Law Society, then moved the following remit:

That the Law Society should take a more active part in public matters.

Mr. W. H. CUNNINGHAM (Wellington) seconded the remit *pro forma*.

An animated discussion then took place in which a great divergence of views was expressed. Messrs. P. J. O'REGAN (Wellington), F. B. ADAMS (Dunedin), who, as an amendment, moved that the words "but without entering into matters of a purely political or economic nature," be inserted, T. K. S. SIDEY (Dunedin) who seconded the amendment, K. M. GRESSON (Christchurch), J. P. WARD (Dunedin), the HON. W. PERRY, M.L.C. (Wellington), E. D. R. SMITH (Rangiora), P. S. ANDERSON (Dunedin), E. S. BOWIE (Christchurch), W. D. CAMPBELL (Timaru), J. A. GRANT (Palmerston North), J. R. CUNNINGHAM (Christchurch), H. D. ANDREWS (Christchurch), C. B. BARROWCLOUGH (Dunedin), W. J. SIM (Christchurch), and J. G. IMLAY (Invercargill).

THE PRESIDENT, Mr. H. F. O'LEARY, concluded the debate by saying he did not think it necessary to pass a resolution. He thought the discussion had been most beneficial, and it could safely be left to the judgment of those for the time being in control of the affairs of the New Zealand Law Society to deal with any particular matter or not. He suggested that Mr. CASTLE should accept Mr. F. B. ADAMS's amendment, but thought it preferable to leave the position as it was.

Mr. S. J. CASTLE (Wellington) said he did not think the remit should be put to the vote. The Wellington Law Society had put it forward merely for discussion. He accordingly asked leave to withdraw it.

The remit was accordingly withdrawn.

Amendment of Land Transfer Act.

As to Claims for Forgery of Documents.

MR. WARRINGTON TAYLOR (Dunedin) moved the following remit:

That the provisions governing the Land Transfer Assurance Fund should be extended to satisfy claims for loss due to forgery of Land Transfer documents.

He explained that this was not an official remit, but an idea of his own, which he had had in mind for some time. To establish his submission that the amendment was desirable, he proceeded to make a few observations about the principles of the Land Transfer Act as to indefeasibility of title. The persons needing protection against forgery were purchasers and mortgagees, but he used the term "purchaser" to include both classes.

The purpose of the Act was to make dealings in land simple, expeditious, and secure. Under the old Deeds system the duty of the conveyancer could be divided into two main parts: first, to investigate the title of the vendor, to check over the whole chain of deeds back to the Crown Grant, or for the statutory period in England make sure that no defect existed in any of them and that the estate in question was really vested in the vendor; secondly, to prepare and obtain a valid conveyance of that estate, properly signed by the vendor himself and not by a forger, and free from any defects such as lack of capacity. The first duty was no doubt the greater burden so far as efficiency was concerned; but, if the solicitor failed in either part of his duty, the client might lose the property he had bought. Thus, there were two different ways in which the Land Transfer Act might have been applied to improve the old system. First, it might merely have relieved the purchaser of the duty of investigating a long chain of title deeds, but still throw on him the onus of obtaining a valid transfer from the vendor; or, secondly, it might have relieved the purchaser of the whole duty, and provided that once he had a transfer duly registered he would have an indefeasible title. It seemed from the earlier cases that this was the first principle on which the Act worked. In *Gibbs* v. *Messer*, [1891] A.C. 248, the leading Australian case concerning forged documents, the headnote says:

> The . . . statute protects those who derive a registered title *bona fide* and for value from a registered owner.

> Accordingly, they need not investigate the title of such owner, for they are not affected by its informalities. But they must ascertain at their own peril his existence and identity, the authority of any agent to act for him, and the validity of the deed under which they claim.

A similar conclusion had previously been arrived at in the New Zealand case of *Ex parte Davy*, (1888) 6 N.Z.L.R. 760. The speaker referred to the facts in that case as being rather typical of the forgery cases. Then a later decision of the Privy Council in *Assets Co., Ltd.* v. *Mere Roihi*, [1905] A.C. 176, seemed to extend the principle of the Act to cover both parts of a conveyancer's duty and protect a purchaser even against defects in his own transfer. This decision seemed to be based on ss. 58 and 59, making the registered certificates conclusive evidence of title rather than the sections conferring protection on purchasers, on which the earlier decisions had rested. The effect of this decision was defined by a majority of the Court of Appeal in *Boyd* v. *Mayor, &c., of Wellington*, [1924] N.Z.L.R. 1174, as follows :—

> Any person who without fraud succeeds in procuring himself to be registered as proprietor of land under the Land Transfer Act has an indefeasible title, whether he is a purchaser for value or not, and although the documents which form the basis of his registration are absolutely inoperative in themselves.

This wording was quite general, and would appear wide enough to cover a forged transfer ; but neither the *Mere Roihi* case nor *Boyd's* case involved questions of forgery. In both cases, the existing Privy Council decision in *Gibbs* v. *Messer* (*supra*) was distinguished, and it was held that a forged document was not validated in favour of the transferee by registration, on the ground that " Forgery is more than fraud and gives rise to considerations peculiar to itself."

It was unfortunate that practitioners were not left with a clear rule covering all kinds of invalidity, especially as the two Judges who dissented in *Boyd's* case (Sir John Salmond and Mr. Justice Stringer) both expressly stated that they could see no rational distinction between a transfer void on account of forgery and one void for any other reason. Yet the Act, as at present interpreted, conferred a benefit in one case but not in the other.

Finally, it was held in *Gibbs* v. *Messer* (*supra*) that as the registration of the forged transfer conferred no estate on the purchaser, he suffered no deprivation when his transfer was struck off the Register, and therefore he could have no claim against the Assurance Fund. So that, as the matter stood at present, absolute liability was thrown on the purchaser of making sure the document was signed by the person whose name was really on the Register.

The question, therefore, arose as to what practical steps could be taken to guard against loss from forgery. Some of the other grounds of invalidity were more readily checked, such as the sufficiency of a power of attorney, the capacity of a vendor on account of infancy or senility, &c., but to establish the identity of the vendor or mortgagor in all cases involved certain practical difficulties. A practitioner acting for both parties was in direct contact with the vendor and could see him sign the transfer. If he was known personally, there was no further question, but he might come as a stranger, introduced perhaps by an agent, as happened in *Ex parte Davy*. He handed in the title, and said he had sold his property. If outside inquiries were made, delay, expense, and irritation might be caused to genuine parties in numberless instances, without any certainty of detecting forgery in the rare cases where it existed. The difficulty was greater where separate solicitors were acting for the two parties to the transaction. The purchaser's solicitor did not see the vendor at all ; in a great many cases, even the purchaser did not meet the vendor during the transaction, and would not know him if he did. Section 15 of the Property Law Act, 1908, gave certain rights as to witnessing the vendor's signature, but of these advantage was not often taken, and even if it was, the purchaser's solicitor would merely see an individual signing a name corresponding with that on the title, without having any check that he was the real proprietor. It was true that in most cases there was some fact connected with the circumstances of the vendor and his possession of the property and so on that sufficed to show his identity ; but, on the other hand, very ingenious methods were adopted by forgers, and it was more than likely that a carefully worked impersonation would escape detection.

Mr. S. I. Goodall, in his recent book on *Conveyancing in New Zealand*, said :

> The solicitor will see that everything necessary is tendered to him ; in the case of a sale the Certificate of Title, discharges of all prior encumbrances and a duly executed transfer.

But the learned author did not mention that the vendor's identity need be specially checked or inquired into. In most cases solicitors take the risk that the signatures are genuine, because inquiries elaborate enough to protect would be so burdensome as partly to defeat the object of the Act, in securing simplicity and cheapness.

It might be said that the risk was infinitesimal. Yet the Reports in New Zealand and Australia showed a surprising number of instances of forgery ; and, if only one case in a lifetime were to befall a solicitor or client, it might well be absolutely ruinous to the parties concerned. The speaker suggested, therefore, that the matter was an ideal one for the principle of insurance. There was the remote possibility of isolated heavy loss to be borne by small contributions from the large number of transactions involved, on similar lines, say, to the Mortgagees Indemnity Fund with its levy of 1s. on each mortgage. But instead of creating a new fund and adding to the existing multiplicity of fees and duties, the thought occurred to him that the Assurance Fund already accumulated under the Act could be used.

When he came to look into the matter, he discovered what he had not realized before : that the Assurance Fund no longer existed. In 1930 by the Finance Act, it was transferred to the Consolidated Fund and spent with the revenue of that year, no doubt helping to tide New Zealand over the depression, while claims formerly payable out of the Assurance Fund were now made payable out of the Consolidated Fund. When the Fund was transferred, it amounted to just on £87,000. During the last few years, the sums paid to claimants under the assurance provisions had been only about £15 or £20 a year, and the Act now worked so smoothly that it seemed most unlikely that the Government would ever be called on to pay out of the Consolidated Fund anything like the £87,000 received. As this sum was contributed by private persons when buying their land under the Land Transfer system, it seemed equitable that they should be given advantages commensurate with the size of the fund they had provided. The speaker, therefore, suggested that the provisions for compensation under the Act should not be extended, on a kind of analogy with the *cy près* doctrine, by making the Consolidated Fund liable for

loss suffered by innocent parties on account of forgery of documents; or, failing that, that a new Fund should be started by an additional registration fee of say 1s. on each transfer of mortgage.

In suggesting the amendment, Mr. WARRINGTON TAYLOR cited a precedent in the English Law of Property Act, where a similar provision was introduced in 1922. Section 83 of the Land Registration Act, 1925, the statute in force, provided that a proprietor claiming in good faith under a forged disposition should, where the Register is rectified and his transfer or mortgage struck out, be entitled to indemnity under the Act. He did not want to rely merely on the English precedent, but hoped he had satisfied his hearers that there was need of some protection against the risk, and that such an amendment would bring the matter of forgery more into line with the recent attitude of the Courts towards other informalities in documents, especially in view of the comments by Sir John Salmond and Mr. Justice Stringer that there was no rational distinction between forgery and other grounds of invalidity.

If it were thought that such a provision would involve the Government in undue liability or promote carelessness in guarding against fraud, the statutory amendment could provide that in no transaction should a person recover more than, say, £2,000 compensation. That would protect the parties in all small transactions, where the expense and trouble of adequate private investigations at present rendered them impracticable; but in the larger dealings, it would still throw on the purchaser the onus of checking the vendor's identity and signature.

Finally, the speaker suggested that the amendment should be made a real insurance, to protect the solicitor as well as the client, and, consequently, where a claim was paid, the Land Transfer Office should have no right of reimbursement against the solicitor concerned, unless, of course, he had been guilty of dishonesty. Otherwise, if the risk was still to fall indirectly on the solicitor, solicitors would be no better off but would still have, for their protection, to undertake the task of verifying the signature. He also suggested that the amendment should not cause the Land Transfer Office to insist on verifying all signatures, as this would cause more inconvenience and delay than their having to verify them themselves, and practitioners would be out of the frying-pan into the fire. The idea was that the insurance should take the risk in the very few cases where forgery occurred, to save all parties from the unnecessary burden of having to investigate in numberless genuine cases.

MR. P. J. O'REGAN (Wellington) seconded the remit.

MR. M. J. GRESSON (Christchurch) said that Mr. TAYLOR had mentioned that this might not be a very practical question, but the speaker had a very vivid recollection of a case of the sort. In his first year of practice, one Mary T. approached him to arrange a mortgage, and she produced a title in the names of Mary T. and John T. He arranged the loan, prepared the documents, and, in due course, Mary came into his office bringing a man whom she introduced as John T. They both then signed the mortgage, and the money was handed over to Mary T. A few weeks later the real John T. came into his office and told him all about it. It appeared that he was living apart from Mary. Of course, the speaker at once got Mary to call, and she quite frankly admitted that she had got her gentleman friend to forge John's name. He did manage eventually to get the matter settled, but he related the story to show that the risk was a very real one, and, if there had been any insurance fund at that time, he would have been saved a good many sleepless nights.

MR. H. S. ADAMS (Dunedin) made the suggestion to Mr. TAYLOR that he might accept an amendment to the remit, which he outlined. He was of opinion that the chief difficulty at present was the non-existence of the Assurance Fund, which he was afraid had gone beyond recall. The only method by which the loss could be absorbed now was either by a form of taxation or by the Government accepting responsibility. He was not sure the Government would be prepared to do that, without putting some responsibility on to the officers of the Department. There was provision in England to cover losses due to forged documents, but under the relevant statutes there was a general Assurance Fund. In New Zealand the Land Transfer title was regarded as a guaranteed title; but, as a matter of fact, it was not a fully guaranteed title at all.

MR. A. E. CURRIE (Wellington) said that the abolition of the Assurance Fund had not made any difference to landowners in regard to their claims. Their claims were examined in the same way, and resisted, or certified for payment, as before; and if a claim was resisted, it was a matter for compromise exactly as it used to be. Documents were certified correct for purposes of the Land Transfer Act in most of the Australian States by the purchaser or mortgagee, or other the party taking the interest. In New Zealand, where that was done by the solicitor, the system was more convenient in practice but it prevented the Department's having that check upon forgery which was given by the possession of a specimen signature. The risk of forgery would be substantially reduced if, whenever a person got on the title for any interest, his specimen signature were deposited. If the Crown were to incur further risk, it might not unreasonably ask for this protection.

MR. WARRINGTON TAYLOR (Dunedin), in reply, accepted Mr. H. S. ADAMS'S suggested amendment. He did not altogether agree with the objection that gentleman suggested—namely, that because the Land Transfer Title was not fully guaranteed no attempt should be made to improve it in some respects. As far as the other possible defects were concerned—adverse possession and so on—they were quite easily determined by simply looking at the property; but the difficulty of detecting forgery was much greater because it was done deliberately with intent to conceal. As to the points mentioned by Mr. CURRIE, the speaker said he had not meant to imply that claims were not still paid. The difficulty with regard to his suggestion of obtaining a specimen signature of the registered proprietor was that, if the specimen signature were open to inspection by intending purchasers, an intending forger could find means of getting inspection, too. Then, again, dealings with land did not take place every day as was the case with bank cheques. A man might not deal with his land for twenty years, his signature might change in that time, and he might find himself quite embarrassed in trying to satisfy the Registrar as to the genuineness of his later signature.

THE PRESIDENT then called upon the Conference Secretary to read the resolution in its amended form:

That it be a recommendation to the New Zealand Law Society that it should consider whether the provisions governing the Land Transfer Assurance Fund should be extended to satisfy claims for loss due to forgery of Land Transfer documents.

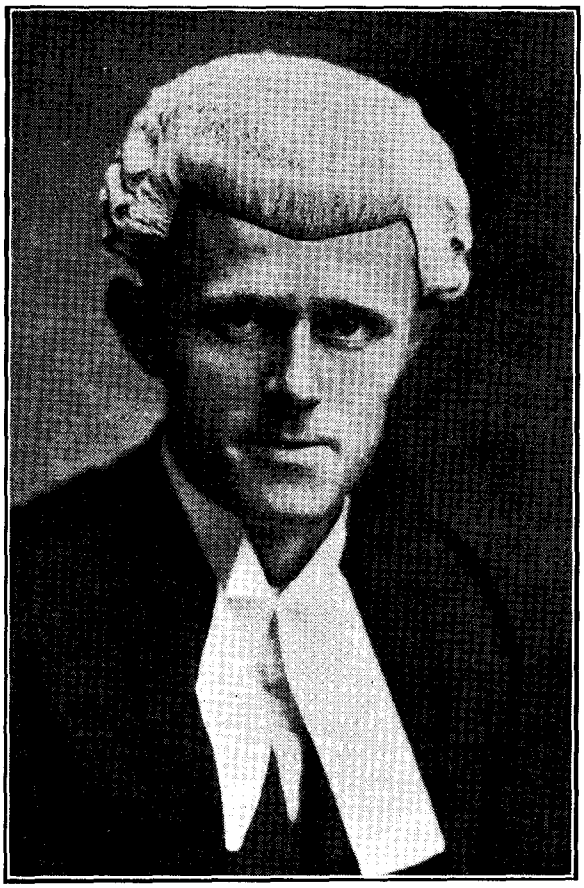
On being put to the Conference, the resolution was carried.

Trial of Collision Cases.

By A. L. Haslam, B.C.L., D.Ph. (Oxon.), LL.M. (N.Z.).

"MY LORDS," said Viscount Hailsham, L.C., in *Swadling* v. *Cooper*, [1931] A.C. 1 at p. 8, "The law in these collision cases has long been settled." As it is reserved for only a fortunate few of our profession to attain to the dignity of Woolsack, we can resign ourselves to envy the happy occupant of that exalted position who can take so Olympian a view of this branch of the law.

Time will not permit us to trace the earlier development of the legal principles relating to this topic. It is sufficient to say that the element of negligence has



Steffano Webb, Photo

Dr. A. L. Haslam.

long been recognized as an essential ingredient of the cause of action in a collision case, and that for a very lengthy period the defence of contributory negligence has also been available. (*Holdsworth History of English Law*, Vol. III, 379-82, and Vol. VIII, 459-62.) In *Davies* v. *Mann*, (1842) 10 M. & W. 546, 152 E.R. 588, the first refinement arose like a Phoenix from the ashes of the celebrated donkey, which shares with Rylands' reservoir and Pearce's brougham the rare quality of immortality. This comparatively simple decision, which on the face of it is but the purest common sense, is the origin of all the complications which beset practitioners to-day. The principle underlying the donkey case is usually posed in the question "whose negligence was last?"; but, as Salmond has warned us, this clumsy phrase is "clearly elliptical" (*Law of Torts*, 8th Ed., p. 477). He himself has bequeathed to us the more apt term "last opportunity." Unfortunately, as we know, the trouble does not end there, for in *British Columbia Electric Railway Co., Ltd.* v. *Loach*, [1916] 1 A.C. 719, the late Lord Sumner gave us yet another of his brilliant opinions, the subtlety of which occasionally leaves posterity speculating as to their exact purport. Jurists may indulge in endless debate on the precise meaning of *Loach's* case, but lawyer and layman are alike concerned with the wider problem of whether or not the law in its present state meets the requirements of a modern community. The chief problem is that of simplifying for the benefit of "the greengrocer on the jury" the involved network of principle which entangles even the skilled advocate. Learned Judges, with meticulous reference throughout to the onus of proof, have to direct juries that, before the plaintiff can recover, he must prove negligence on the part of the defendant; that if the plaintiff has himself been proved to have been guilty of contributory negligence, then he cannot recover; but that there is a further exception if the plaintiff at some time prior to the impact resembled a donkey with its legs tied. If there is any question of defective brakes, a pinch of *Loach's* case must be thrown in for good measure. The jury is then handed a bundle of issues, and told to consider its verdict. Is it any wonder then, as Mr. H. F. O'Leary, K.C., pointed out at a previous Conference, that juries are prone subconsciously to apply the Admiralty rules and leave it to counsel to uphold the verdict if he can?

In many instances Judges have attempted to avoid these complications by asking the jury to find the "effective" or the "proximate" or the "real" or even the "substantial" cause of the accident. In the case of the Leyland truck and the mangled pedestrian the jury naturally feels that the big battalion must have been the substantial cause. Nevertheless, in *Swadling* v. *Cooper*, [1931] A.C. 1, the House of Lords approved the single issue: "Was the plaintiff not equally but substantially to blame for the accident?" Perhaps a conscientious juryman of literary tastes, after hearing for the first time this exposition of the law of his country, might be tempted to recall Gibbons' strictures on the law of Justinian's day: "A mysterious science and a profitable trade—the innate perplexity of the study was involved in tenfold darkness by the private industry of the practitioners" (*Decline and Fall of the Roman Empire*, ch. 44).

The Possibility of Reform.

We may be inclined to think that it is now too late for the common law to purge itself unaided of the deep-laid complications at present under reveiw. We have Bentham's vigorous remarks on the disability of the common law in this respect, in his *Comment on the Commentaries*, where he says:

> Should there be a Judge who, enlightened by genius, stimulated by zeal to the honest work of reformation, sick of the caprice, the delays, the prejudices, the ignorance, the malice, the fickleness, the suspicious ingratitude of popular assemblies, should seek with his sole hand to expunge the effusions of traditionary imbecility and write down in their room the dictates of pure and native justice, let him but reflect that partial amendment is bought at the expense of universal

certainty; that partial good thus purchased is universal evil; and that amendment from the judgment seat is confusion.

We are therefore forced to consider the possibility of reform by means of Bentham's favourite remedy of legislation. How many of us after a nerve-racking search through Tennyson's "wilderness of single instances" have not sighed for the codified simplicity of the Admiralty rules? By this, we mean the enactment relating to the recovery of property damage sustained at sea which is to be found in our Shipping and Seamen Amendment Act, 1912, s. 2, the relevant portions of which read:—

> (1) Where, by the fault of two or more ships, damage or loss is caused, . . . the liability to make good the damage or loss shall be in proportion to the degree in which each ship was in fault: provided that
> (a) If, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability shall be apportioned equally . . .

At first blush this section can be reduced to three simple propositions of law:—

(1) To recover, the plaintiff must prove negligence on the part of the defendant.

(2) If the defendant establishes contributory negligence on the part of the plaintiff, then damages must be reduced in proportion to the degrees of fault.

(3) If it is impossible in the circumstances to define the respective degrees of blame, the total loss must be apportioned equally between the parties.

A distinct caveat, however, must be lodged against premature enthusiasm. Was it not Lord Haldane who predicted that a flood of litigation would arise from the words "arising out of and in the course of his employment" when this phrase first appeared on the statute-book? In a later age we have seen that prophecy amply fulfilled. As lawyers we are hardly worth our salt if we are unable to detect in advance any obvious weaknesses in proposed legislation. Leaving aside for the moment all questions of last opportunity, we are familiar enough with the principles of negligence and contributory negligence. The difficulties that arise in applying them are, in general, matters of fact, not of law. In other words, the real problem is one of weighing the evidence in a given case; but under Admiralty rules an additional question will arise. After ascertaining the facts, the degrees of fault must be apportioned. Here we have a test which, in the ultimate analysis, is not a legal principle at all, but purely a question of opinion. Two motorists collide at an intersection after both have travelled at equal speeds to the point of impact, and it transpires that the plaintiff "A" cut the corner and the defendant "B" failed to give way in accordance with the offside rule. On a snapshot view we might say that the parties were equally to blame, but would a jury say so if the plaintiff "A" was maimed for life and the defendant "B" escaped uninjured? I might be permitted to mention an actual case where two insurance companies were both liable to make contribution in a damages claim, and submitted the matter to the arbitration of an eminent barrister with instructions to him to decide the proportions which each should bear in accordance with the Admiralty rules. The learned counsel, who is very experienced in collision matters, debated the problem with himself over a long period of time, and finally gave a decision which he said he would gladly reverse if he had to reconsider the problem. Nor did he have the cold comfort of having satisfied either of the companies involved.

Secondly, one presumes that the whole object of abrogating the common-law rules is to jettison all questions of a last opportunity, of *Loach's* case, and allied refinements. It is submitted that we would have but little desire for reform if the whole question were bound up in the two simple issues of negligence and contributory negligence. It must be borne in mind, however, that the rule in *Davies* v. *Mann* (*supra*) (and presumably the decision in *Loach's* case) applies to collisions at sea under the Maritime Conventions Act, 1911 (which corresponds to our Shipping and Seamen Amendment Act, 1912). As an example, one need only refer to the speeches in the House of Lords in *Anglo-Newfoundland Development Co., Ltd.* v. *Pacific Steam Navigation Co.*, [1924] A.C. 406; see, in particular, Lord Atkinson's opinion. Apart from that decision we cannot escape the difficulty that in apportioning degrees of fault the party who had the last chance of avoiding the accident must in strict logic be held solely to blame. By adopting the Admiralty rules we will, therefore, find ourselves substituting for the well understood principles of negligence and contributory negligence the uncertain yardstick of degrees of fault with all the complications of "last opportunity" left untouched.

A Tempting Analogy.

An alternative reform is the suggestion that absolute liability should be introduced in running-down cases. Mr. von Haast told us, (1933) 9 N.Z.L.J. 296, that in the United States that particular remedy has been suggested, with the even more drastic proposal of a statutory scale of compensation. The latter provision would, I think, meet with disfavour from most of us, unless in these enlightened days we regard a junior law clerk as the economic equal of a King's counsel.

It is tempting on occasion to draw an analogy from the Workers' Compensation Act, but it is submitted that the two types of accident are in essence dissimilar. The Workers' Compensation Act is designed for claimants in humble circumstances, whereas the hupmobile is no respecter of persons. A plaintiff in the Arbitration Court is a workman who has sustained injuries in the discharge of his duties to the defendant and the accident arose out of his contract of service, but a negligent plaintiff in a running-down case is not necessarily a poor man, and in any case is, *ex hypothesi*, at least the part author of his own injury. As the law stands to-day, the careful user of the highway who is the victim of another's negligence can recover full damages and, as we know, in practice it is only the palpably negligent plaintiff who fails to recover anything. In these days, however, when ownership of a motor-vehicle is no longer synonymous with wealth, it must not be forgotten that the introduction of liability without fault in cases of this type must increase the annual burden of all motorists. Again, would such a reform tend to raise the standard of care exercised on our roads? Would it not be productive of a number of dishonest claims and meritless litigation? Should anybody, even an insurance company, have to pay damages to a motor-cyclist who, after a convivial lunch, crashes into a stationary lorry parked in broad daylight on the correct side of the road? Is there any reason why the common law rules of negligence should be abolished in collision cases and left unaffected in the law relating to invitees?

The Jury: Pro and Con.

I now pass on to the constitution of the tribunal itself. Much has been said and written for and against juries in general, and we are all respectfully indebted to the Hon. Mr. Justice Johnston for his address to the Conference in 1928, when he gave the profession a clear warning against the abolition of juries in civil cases. A change in the law of this country in that year may justify a few additional comments on their presence in collision suits. Although during the trial no reference to the Motor-vehicles Insurance (Third-party Risks) Act, 1928, must be breathed, nowadays compulsory insurance is a matter of common knowledge.

Instances are known where jurors have pointedly asked the Registrar (or the constable protecting them against interference during their deliberations) whether or not an insurance company will have to meet any verdict which is awarded. It must, I think, also be borne in mind that in many of the smaller communities in this country (described by the late Mr. Justice Alpers as "the smalls") there is a type of perverted local patriotism which makes for large verdicts.

In England, where juries were for so long retained in all types of litigation, the Administration of Justice (Miscellaneous Provisions) Act, 1933, s. 6, has reduced the right to claim a jury to a few specific types of case which need not concern us here, and apparently the overriding discretion of the Court to order a jury in any event is exercised most sparingly, (1934) 78 L.J. 297. Although there was a loud outcry from the Bar in England when the change was first mooted, the profession and the public alike seem to have grown accustomed to it. At this point, I think we may usefully examine what I submit is the chief cause of dissatisfaction with this branch of the law.

If there is one trend that has been comparatively uniform right along the weary road of the collision cases, it is the increasing reluctance of Judges to set aside a jury's verdict. One need only compare the position in this country twenty years ago with the attitude which our Courts have taken since *McLean* v. *Bell*, (1932) 147 L.T. 262, and *Benson* v. *Kwong Chong*, [1934] G.L.R. 145. As Lord Blanesburgh remarked in the latter case: "If freedom of judgment in relation to the reliability of such a witness is to be denied to jurors, trial by jury has become an outworn survival. It would be more candid that, in civil cases at all events, it should be done away with altogether": *Ibid.*, 150.

Is it too much to assert that nowadays the defendant can get a new trial on the main issue only when he establishes perversity three times over? Although I make the suggestion with, I hope, due diffidence, would it be revolutionary to assume the candour recommended by His Lordship and abolish juries altogether? Under the present system the jury awards its verdict by the rushlight of rough common sense, and its decision is upheld or upset on the basis of a fiction that it was guided to its conclusion by the lamp of *Salmond on Torts*. Need those of us who have an anti-insurance practice necessarily fear smaller verdicts from a Judge alone? It is contended that the development of a clear and consistent set of legal principles has been hampered by the necessity in every case of expounding the law to the jury in simple and therefore not always in very accurate language, and later deciding after the event whether their verdict can be justified. Is there not ground for suggesting that the confusion over the last opportunity, which has never been adequately defined, is due to the fact that in most cases there is an entirely different problem bound up with and confusing the argument—what precisely is the province of the jury? In applications for a new trial we are in danger of getting back to Maine's celebrated dictum, "Substantive law has at first the look of being gradually secreted in the interstices of procedure."

A Judge and Two Assessors?

It was suggested some years ago by the Right Honourable the Chief Justice that perhaps a special tribunal consisting of a Judge and two assessors might be set up for the purpose of hearing running-down cases. This matter was thoroughly canvassed amongst the profession at the time, and the majority appeared to be against the proposal. The chief objection was that assessors would be nothing more than advocates for the party appointing them. This contention would have particular force if assessors were appointed *ad hoc* in each case, even if they all came from a special panel. If permanent assessors were set up, one is left wondering on what principle their selection could be based. In the Arbitration Court the contending forces of capital and labour have their representatives on the Bench, but is there a "road-hog class" or "collision-victim class" in our community from which two permanent representatives could be appointed? It is suggested, however, that uniformity in practice both as to the application of principles and as to the measure of damages may be attained if one Judge sitting alone tried all Supreme Court cases of this type throughout the Dominion. To him could be referred appeals in such matters from the Magistrates' Court. I have proposed this reform because I feel that amongst its competitors it affords the most promising solution of our problem, and because the respect in which our Supreme Court Bench is rightly held by all sections of the community would offset a great deal of the uneasiness that might be caused by the abolition of the jury.

It is submitted that a radical change in the common law would, in the end, leave us no better off than we are to-day, but that an alteration in procedure would at least alleviate our difficulties. Is it too much to hope that a Court consisting of a Judge who specialized in motor-collision cases might be the means of clarifying the set of principles which at present only perplexes us? The common law, with all respect to Bentham, has a great deal of progressive vitality and cannot be dismissed as a static nor, much less, as a defunct organism. Troublesome authorities in the law reports are not infrequently distinguished as depending on particular facts and in time pass into oblivion: see decision of the English Court of Appeal in *Tidy* v. *Battman*, [1934] 1 K.B. 319. As Dodderidge remarked three centuries ago when appearing in *James* v. *Powell* (1628) Palm. 526: "The law is like apparel which changes with the times."

Mr. P. J. O'Regan (Wellington) said he was prepared to hear a very acrimonious discussion after the very spirited arguments of the previous day, but a sudden bashfulness on the part of others forced him to speak for fear of seeing judgment go by default. He congratulated Dr. Haslam on his humour, which reminded him of the Pickwick trials—the address of Buzzfuzz to the jury, for instance. And Gibbon, whom Dr. Haslam had quoted, provided much entertainment, for he wrote on everything from the Decline and Fall of the Roman Empire to the conjugal vigour of Mahomet.

But Dr. HASLAM had concluded his paper with a rather surreptitious attack on the jury system. The jury system was regarded as part and parcel of the heritage that was enjoyed under the British Constitution, and it came as a surprise when in 1924 a far-reaching alteration was effected—not by Act of Parliament, but by Order in Council. As appeared from the *New Zealand Gazette* of September 11 of that year, His Excellency the Administrator, Sir Robert Stout, acting with the advice and counsel of Sir Robert Stout, the Chief Justice, and the Judges, made a very serious inroad on the right to trial by jury. In every case involving contract the right to a jury was thenceforth left to the discretion of the Judge; so that a member of the Bar might have to take his case before a Judge after telling him indirectly that a jury would be preferred, a most improper situation. The people of this country had submitted to that insidious attack on their liberties with surprising complacency. He believed he was the only person who dared, through the Press, to attack the attack. He had the greatest respect for juries. So had the Judges in England, as the Reports showed, but the *New Zealand Law Reports* would be read in vain to find anything of that kind. There was nothing so correct, so fundamentally sound as the instinct of the multitude of the people. The jury system should be cherished for several reasons. It was an institution bound up with the tradition and custom of the nation, and for that reason alone everyone should be jealous to preserve it. They would be surprised to hear him say with Edmund Burke that everything should be done as though we were standing in the presence of canonized forefathers. The jury system enabled the mass of the public to play an honourable part in the administration of the law. Another reason, a selfish one perhaps, was that the greatest part of the chances of a young man in the legal profession came from his opportunities of addressing juries. In any case, one way of preventing the legal profession from becoming a caste apart from the people was by maintaining an institution which permitted members of the public to take part in the administration of the law and to come into contact with members of the profession in the course of their work. If the jury system was to be attacked, it should be done in a straightforward manner, as in England, by Act of Parliament and not by an underhand way through Orders in Council. He would like the opportunity of challenging the validity of the regulation, introduced in 1924, in the highest Courts.

The speaker said that he had recently acted in a case where the defendant admitted he was driving at twenty-five miles an hour when visibility was bad and a woman was killed. In Court the plaintiff was confronted with *Wakelin's* case. He submitted that that was a different case from a running-down case. That case involved a level-crossing accident to which different considerations applied. The problem was most urgent, and he suggested that the way to deal with it was to make the liability absolute and to limit the amount of compensation which might be claimed. If that principle were adopted, he would be agreeable to such cases being tried before a Judge alone.

MR. J. D. HUTCHISON (Christchurch) said he preferred to have a jury in any case involving issues of fact, particularly so where the quantum of damages was more or less settled; but, if acting for a plaintiff where a fairly large amount was claimed, he preferred to go before a Judge alone, as juries were too meagre when they gave a verdict for the plaintiff.

(Dr. HASLAM in reply to a question by the speaker said that in England Judges were, as a matter of practice, sparing with permission to have juries, and the cases were generally tried before a Judge alone. Judges were now awarding very heavy damages.)

If counsel's cause of action was clear and he was acting for the plaintiff, the proper course was to go before a Judge alone, because a Judge was better able to fix on the proper amount to be allowed, whereas the ordinary juryman failed to take into account the fact that in many cases a man's livelihood had gone. Mr. O'REGAN's suggestion, of making the liability absolute, would be a very serious thing indeed, for it would not tend to reduce the recklessness of drivers. If drivers had the knowledge that an insurance company stood behind them in any event, the number who drove with care would gradually become fewer. To have one Judge travelling round hearing all running-down cases would not work very well. The great majority were settled before trial, and a Judge so engaged might come to Dunedin only to find that all but one of the cases were settled, and similarly in the other cities. The method of trying such cases could well be left as it was for the present.

Mr. A. C. FRASER (Rangiora) said he did not propose to discuss the jury question, but considered the present state of the law relating to negligence to be unfair. He suggested that the maritime rule should be applied. It would not be any more difficult in operation than the present law of negligence.

Mr. R. H. SIMPSON (Dunedin) disagreed with Mr. HUTCHISON'S view that an absolute liability would make motorists more careless. He doubted very much whether a man's driving was affected to any extent by his view of his legal liability. On the other hand, there were at present a large number of "try-on" cases, and the careful motorist who had had an accident would have his path considerably relieved if there were an absolute liability. Usually, the present check was rather the risk of injury to a motorist's reputation than anything else.

With regard to the limitation of compensation, it was recognized that insurance companies did not want to pay out on every claim: they were not in business to promote suicides. He suggested that the test should be, not whether there was contributory negligence but whether a man's negligence was the effective cause of the accident or his negligence was of a particularly gross type. That would delete many of the present refinements.

Mr. O. C. MAZENGARB (Wellington) considered there was nothing wrong with the jury system, but the law had developed along unfortunate lines, particularly with regard to the putting of issues to a jury. As an English Judge said: "After all, it all boils down to this: 'Whose fault was it?'" That was the one point juries did consider, even though seven or eight issues might be submitted to them.

The law had also unfortunately developed along the lines of negligence, when perhaps it would be better to consider it as an extension of the law of trespass. Historically, it ought to have been, and would be better as, an extension of the law of trespass. Trespass on a neighbour's garden involved no question of negligence; and so if a motor-car were driven into a person, it was a trespass irrespective of any question of negligence. That would have been a more logical development.

The difficulties were largely due to the fact that the Judges had overstressed the law which might arise. The speaker had noticed in an Italian town outside the law-court two figures. One was inscribed with the word "Lex," and the other with the word "Jus," no doubt indicating that both were administered inside. Barristers had observed the Judges stressing "lex" and the juries stressing "jus"; so that there arose a conflict between what the Judges thought was the law, and what the juries thought was the right. There should not be such a conflict, and there would not be one if some system could be devised whereby absolute liability attached to any person who imposed personal injuries. Until some such system was adopted, let them stand four-square behind the historic right of trial by juries.

There was no formal motion, as the President pointed out that Dr. HASLAM'S paper did not call for any formal resolution.

Deaths by Accidents Compensation.

Proposed Amendments.

MR. P. J. O'REGAN (Wellington) moved the following remit:

That it be a recommendation from this Conference to the Government that the Deaths by Accidents Compensation Act, 1908, be amended as follows:—

(1) *The right of action conferred by s. 3 of the principal Act shall be available in every case where the deceased himself (if he had survived) would have been entitled to maintain an action for personal injury.*

(2) *The right of action shall not be lost by reason of the death of the wrongdoer, but shall enure, and the action may be commenced or continued against his personal representative.*

(3) *In the event of the wrongdoer dying insolvent or becoming bankrupt, or, if the wrongdoer is a body corporate, in the event of that body corporate being wound up, then and in such case the right of action shall lie against his or its insurer, if in fact the wrongdoer held or holds a policy of indemnity against the liability to pay damages in respect of any accident.*

(4) *That medical and funeral expenses be recoverable as special damages.*

(5) *That where the deceased had a policy of insurance, any moneys coming thereunder to the plaintiff, should not abate the liability of the defendant.*

MR. O'REGAN said it was hardly necessary for him to remind his readers that the Common Law of England, unlike the law of Scotland, allowed no claim for death by accident. The Deaths by Accidents Compensation Act, 1908, giving a right of action to the wife, husband, parent, or child of a person killed through the negligence of another, was really a transcript of the Fatal Accidents Act, 1846, usually called Lord Campbell's Act; and s. 3 made the right of action depend on the wrongful act, neglect, or default of the defendant. The law had been developed very much since 1845; indeed, the rule in *Rylands* v. *Fletcher*, (1868) L.R. 3, H.L. 330, was unknown until twenty years later, and it was now well settled that action for personal injury might be founded on the breach of an absolute duty. For example, in *Miles* v. *Forest Rock Granite Co., Ltd.*, (1918) 34 T.L.R. 500, the plaintiff was awarded heavy damages for personal injury by reason of his being struck by a fragment of rock ejected by an explosion from a quarry some considerable distance away. The case was taken to the Court of Appeal on the ground that there was no evidence of negligence, but that tribunal held that there was no need to rely on negligence because the principle of *Fletcher* v. *Rylands* (*supra*) applied. Now, supposing that the plaintiff in that case had been killed instead of injured, it must surely have followed that, as death had not been due to negligence but to breach of an absolute duty, there was no right of action under Lord Campbell's Act. Paragraph 2 of the remit met the case, by providing that a right of action for damages should lie in every case where the deceased himself might have claimed damages, had he been merely injured and not killed. Accordingly the proposed amendment must commend itself to the Conference.

As to para. 2, its purpose could be illustrated by *Smith* v. *New Zealand Express Co., Ltd.*, (1914) 16 G.L.R. 602. The facts in that case were that A. sold his farm to B. who procured C., a carrier, to convey his furniture to the new home. During the night, A. murdered B. and Smith, the servant of C., and then committed suicide. The Court of Arbitration held that the widow of Smith the driver had no right to compensation, inasmuch as the risk of being murdered was not incidental to his employment, the case being different from that of *Nisbet* v. *Rayne and Burn*, [1910] 2 K.B. 689; hence the widow had no redress. A. left an estate valued at £15,000, but, as he was dead, there was no right of action against his personal representative. The point had been further illustrated since the passing of the Motor-vehicles Insurance (Third-party Risks) Act, 1928, by the case of owner-drivers killed by accident through their own negligence, the other parties injured having no right of action: *Trickett* v. *Queensland Insurance Co., Ltd.*, [1932] N.Z.L.R. 1727.

Paragraph 3 spoke for itself. It contained a provision similar to that in s. 48 of the Workers' Compensation Act, that, in the event of the bankruptcy of the employer, proceedings might be taken against his indemnifier.

MR. O'REGAN said he need not delay the Conference with para. 4, providing that medical and funeral expenses might be recovered as special damages; the decision given early in the history of Lord Campbell's Act, that such expenses were not properly recoverable, had been severely criticized, but could be corrected now only by legislation.

Finally, as to para. 5, this had been the law of England since 1910, when a statute was passed providing that, in assessing damages under Lord Campbell's Act, no account should be taken of insurance-moneys coming to the plaintiff in respect of the death. The speaker pointed out that such was also the law in this country where the relation of master and servant existed between the deceased and the defendant: Workers' Compensation Act, 1922, s. 14. A right of action under Lord Campbell's Act, however, did not depend upon the relation of master and servant, and so it was desirable that the amendment indicated should be passed into law. He felt sure that the whole remit would commend itself to the favourable consideration of the Conference, since it was the obvious function

of the profession to point out to the Legislature any amendments necessary to bring the law into line with the plain principles of justice and common sense.

MR. O. C. MAZENGARB (Wellington), in seconding the motion, expressed the hope that the remit would go direct from the Conference to the Government as an urgent matter, rather than go through the Council of the New Zealand Law Society. He took the view that members of the profession should be conservative in their demands; but when they found that matters had been discussed from time to time, and the law had been altered in England but not here, and Judges had drawn attention to the state of the law, then they were entitled to make a recommendation to the Government in the hope that the amendment might be carried out without further delay. He illustrated the difficulties that might be avoided by the third proposal made by MR. O'REGAN by a case in which he had appeared, and which involved a collision with a motor-car driven by a Maori. The driver of the car died soon after the accident, but not as a result of injuries received in the accident. Then it was found that the car was registered in the names of two Chinamen, one of whom had gone to China and the other had become insolvent. The situation thus arose that the car was insured under the third-party risks provisions, the driver was dead, the owners absent from the country or insolvent, and the victims could get no redress. He hoped the remit would be carried in the form in which it had been proposed.

MR. W. J. SIM (Christchurch) asked Mr. O'REGAN if the subject-matter of the remit was now the law of England, with the exception of para. 4.

MR. P. J. O'REGAN replied that, while he was not certain as to para. 1, the rest, except para. 4, was certainly now the law of England.

MR. C. H. WESTON, K.C. (Wellington), said that, as he understood it, the English statute provided for the right of action accruing a moment or two before the death of the person, and that had been found to give rise to certain difficulties. He doubted whether Mr. O'REGAN'S resolution defined clearly enough when the right of action arose.

MR. M. J. GRESSON (Christchurch) said that Mr. WESTON was referring to cases involving damages for loss of expectation of life. That was an extremely difficult and technical point, and was in issue in a case before the House of Lords at the present time.

MR. F. B. ADAMS (Dunedin) said that, as he understood para. 1, it did not raise the question dealt with in the English cases, which cases dealt with the abolition of the rule *actio personalis moritur cum persona*. As Mr. O'REGAN raised it, he undestood the resolution dealt with the question of negligence.

THE PRESIDENT, MR. H. F. O'LEARY, K.C., asked if he might take a motion affirming the principles expressed in the resolution, and, if carried, leave it to Mr. O'REGAN and Mr. WESTON to put the amendment into proper shape.

MR. P. J. O'REGAN thought that para. 1 was quite simple. Section 1 of Lord Campbell's Act (the Deaths by Accidents Compensation Act, 1908, s. 3) provided that the right of action depended on "wrongful act, neglect, or default." To meet that case he had provided that a right of action should lie wherever the deceased himself had a right of action, thus intending to get over the fact that liability for damages since Lord Campbell's day attached irrespective of negligence.

MR. W. J. SIM (Christchurch) thought if there was a Bill in preparation by the Government, and if it covered the case, there was no occasion for the remit. The position was that they had a general attitude of goodwill towards the proposals, but were a little hesitant to affirm the remit in all its contents. Could they not express a general approval.

MR. M. J. GRESSON (Christchurch) then moved that the Conference express its general approval of the principles set out in Mr. O'REGAN'S remit, and requested the Attorney-General to give effect to those principles in legislation.

The motion, as so framed, was put to the Conference, and carried unanimously.

Conference Committees.

The General Conference Committee comprised Messrs. A. N. Haggitt (President of the Law Society of Otago), A. C. Hanlon, K.C., P. S. Anderson, F. B. Adams, A. I. W. Wood, C. L. Calvert, H. L. Cook, J. B. Thomson, R. G. Sinclair, E. J. Smith, J. M. Paterson, E. J. Anderson, W. R. Brugh, F. M. Hanan, A. C. Stephens, G. Gallaway, A. W. Buchler, W. D. Taylor, R. R. Aspinall (Treasurer), and J. G. Warrington (Secretary).

The Finance Committee consisted of Messrs. R. R. Aspinall (Convener), F. B. Adams, P. S. Anderson, and A. N. Haggitt.

The members of the Papers and Remits Committee were Messrs. J. M. Paterson (Convener), P. S. Anderson, A. N. Haggitt, H. L. Cook, F. B. Adams, A. I. W. Wood, and J. S. Sinclair.

The Accommodation Sub-Committee were Messrs. E. J. Smith (Convener), G. M. Lloyd, and G. M. Salmond.

The names of the members of the Entertainment Committee and of the Ladies' Committee appear elsewhere.

A LADIES' EVENING.

At the Otago Women's Club.

While the Bar Dinner was in progress, the ladies were entertained at the Otago Women's Club, where a delightful evening was spent. Mrs. A. C. Stephens was responsible for arranging a programme of music and drama, of which the guests speak with enthusiastic appreciation. The first half of this programme comprised songs by Madame Winnie Fraser and Mr. Arthur Macdonald, pianoforte selections by Mrs. M. E. Donnelly, and original mimes by Miss Eileen Service. In addition, there were two amusing one-act plays. The first, *Old Moore's Almanac*, was produced by Mr. A. C. Stephens, the performers being Miss Elsie Stephens, Isobel Seelye, and Sybil Henderson, and Messrs. Sydney Lock and Pat. Jacques. The second, *Things Are Not What They Seem*, was produced by Mrs. Oswald Stephens, with Miss Roemer Gair and Messrs. A. C. Stephens, Oswald Stephens, and Michael O'Sullivan as performers. At the conclusion of the programme an enjoyable supper was served, and the remainder of the evening was spent in happy converse.

Concluding Business.

THE NEXT CONFERENCE.

THE PRESIDENT, Mr. H. F. O'LEARY, K.C., said there was one matter not on the Agenda Paper which he proposed to have discussed, the matter of the next Conference. At his request, the Secretary read a letter from the Taranaki District Law Society in this regard.

It was then unanimously agreed that it was the view of the Conference that further Legal Conferences should be held.

THE PRESIDENT, continuing, asked when such Conferences should be held. From informal discussions, it seemed to him that the general view was that to hold them annually was too frequent.

There was considerable assent to this proposal.

THE PRESIDENT then tested the Conference's views as to the frequency of further Conferences.

There was unanimous assent to his proposal that the Conference be held every two years.

THE PRESIDENT next asked where the next Conference should be held. It had been suggested, he said, that some of the smaller Societies thought of promoting a Conference, and he asked for an expression of opinion by some one from the smaller centres.

Mr. L. M. MOSS (New Plymouth) said that Taranaki practitioners had discussed this matter at length, and had gone into the figures, but they found it would be very difficult to hold a Conference outside the main centres. He moved that it be left to the New Zealand Law Society to settle the location of the next Conference.

Mr. A. S. TAYLOR (Christchurch), who seconded the motion, said that in rotation Christchurch should be the venue of the next Conference, and, though he had no instructions, he was sure the Christchurch Society would be very pleased to welcome the Conference to their City.

THE PRESIDENT then referred to the suggestion that future Conferences should be the responsibility of the New Zealand Law Society.

Mr. J. H. SHEAT (New Plymouth) explained that members of the Taranaki Society felt that, once the present Conference had concluded, the profession would have received entertainment at the hands of their brethren in each of the four main centres, and that the time had then come when that responsibility should not fall on members of the profession in the centre where the Conference might be held; in other words, that those who went to Conferences should themselves bear the expenses. They all appreciated very greatly the entertainment they had received from time to time, but they felt in Taranaki that too great a burden had been placed on their brethren in the main centres.

THE PRESIDENT asked if Mr. SHEAT meant that the New Zealand Law Society should bear the responsibility.

Mr. SHEAT said that was not his intention; possibly the District Law Societies might send accredited representatives and pay their expenses.

Mr. C. G. WHITE (Wellington), as a member of one of the Societies in the main centres, thought the feeling of them all had been that they were only too delighted to have visitors from the other provinces and to have the privilege of entertaining them. He did not think any of the Societies in the main centres would appreciate the suggestion that the visitors should bear part of the cost: that was the view, he was sure, which was taken in Wellington.

Mr. E. A. DUNCAN (Dunedin) added that, with all due respect to the wish of Christchurch to entertain the profession, he suggested that the next Conference should be held in either Wellington or Auckland. He thought it was a mistake not to bring the profession together as much as possible, and, if two Conferences followed each other in the South Island, quite a lot of North Island men might not attend. If there was any question as to who should bear the expenses, he had no hesitation in suggesting that those who did not attend should pay.

THE PRESIDENT concluded the discussion. His own view was that the Conference should alternate between the two Islands. Probably the next should be held in Wellington. The question of cost could be left to future arrangements; if a Conference could not be carried through by a District Society, then the matter could be gone into.

THANKS AND APPRECIATION.

THE AUTHORS OF THE PAPERS.

Mr. M. J. GRESSON (Christchurch) expressed the appreciation of the Conference for the papers they had heard and he did this with very genuine pleasure. He did so with the deeper pleasure because he was on the stool of repentance. When Conferences were first mooted, he was one who thought that they would gain nothing from the academic side, whatever might be the success of the social side. He could only say that the academic fare provided at the present Conference had been so absorbing in interest and stimulating in quality as to dissipate all doubts of that sort. The speaker went on to say that Mr. O'REGAN knew they were always glad to hear him on any subject, and, particularly, on Workers' Compensation, on which he was an acknowledged master. Mr. WESTON, K.C., had earned special thanks for giving them so helpful and illuminating a picture of the development of the law of Real Property. It was too technical to be an easy subject for a Conference of this sort, but Mr. WESTON was quite equal to the task of provoking their attention and holding their interest. As far as the Christchurch men were concerned, they were naturally much gratified by the papers written by Mr. SIM and Dr. HASLAM.

He then moved a most cordial vote of thanks to those who read papers or sponsored remits at the Conference.

Mr. W. H. CUNNINGHAM (Wellington) said he had very much pleasure in formally seconding the motion. The comment had been passed that the order paper, when it was circulated, looked rather thin; but such doubts had proved most happily false, and they had had a very interesting and profitable time, wholly due to the papers which had been read.

The motion was carried by acclamation.

Mr. C. H. WESTON, K.C. (Wellington), on behalf of those who had prepared papers, thanked the mover and seconder of the resolution for their appreciative remarks. Any trouble to which the three who had prepared the papers had gone had been very amply repaid by the kindness with which they had been received.

APPRECIATION OF THE LAW SOCIETY OF OTAGO.

The HON. W. PERRY, M.L.C. (Wellington), then said that on the previous morning the representatives of the visitors had thanked His Worship the Mayor for the civic reception accorded to them, and also the Otago Law Society. It was now his pleasure to express the thanks of the visitors to the Otago Law Society in a more intimate way, and particularly to the Conference Committee, for the very excellent arrangements made for the Conference and for the entertainments, particularly for the families of visiting practitioners.

Everyone knew, he said, the tremendous amount of work that must have been put into the Conference, and he wanted particularly to mention Mr. HAGGITT and Mr. WARRINGTON. He was glad to see that Mr. WARRINGTON'S services would be recognized in a tangible way on the morrow. In particular, he expressed appreciation of the very happy thought which resulted in the fact that, when the ladies arrived, they had found in their rooms a delightful posy of flowers.

Mr. PERRY assured their hosts that they would carry away very pleasant and enduring recollections of the Fourth Legal Conference, and he had very much pleasure in moving a hearty vote of thanks to the Law Society of Otago, and particularly to the Conference Committee.

Mr. A. S. TAYLOR, President of the Canterbury Law Society, said that it gave him very great pleasure, on behalf of the Canterbury visitors, to second the motion. Mr. HAGGITT, Mr. WARRINGTON, the Conference Committee, and the rank and file of the Otago Law Society had left nothing undone to make their visit enjoyable and memorable. He also mentioned appreciatively the very active and hospitable Ladies Committee, and the excellent work they had done to make the stay of the visitors most enjoyable.

The motion was carried with acclamation. Three cheers, led by the President of the Conference, were given for the Otago Law Society, the Conference Committee, and the Ladies Committee, followed by hearty singing of "They are Jolly Good Fellows." Three further cheers concluded these expressions of appreciation.

Mr. A. N. HAGGITT, President of the Law Society of Otago, said he was sure that all members of his Society were overcome by the vote of thanks they had just been given. Anything he had done, anything the Executive had done, or that their Committees, both male and female, had done, had been a labour of love. Some of those little touches which had been appreciated had been the thought of the ladies, as they might expect. He said they had had most marvellous Committees, and the ladies in particular had been most enthusiastic in carrying out their duties to ensure that everything possible should be done for the comfort and entertainment of the visitors.

When the proposal for the Conference was first made it had been suggested that the Southland Law Society might join their brethren of Otago in the role of hosts. That suggestion was put to them, but they preferred not to do this; and so the reception had been given by the Otago Law Society as the hosts. Mr. HAGGITT desired to say, however, that they had received financial assistance from them even though they did not desire to be named as hosts for the Conference.

THE PRESIDENT, in concluding the Conference, remarked that they had run remarkably to time, the town clock was just striking 4.30 o'clock—the time fixed by the programme for the concluding remarks.

THE PRESIDENT.

Mr. A. C. HANLON, K.C. (Dunedin) asked the Conference to carry with acclamation a most hearty vote of thanks to the PRESIDENT, who had conducted proceedings at the Conference in such an excellent manner. He had just commented that they had finished up just on the stroke of the clock. That was taking the credit to himself; and he deserved it. The speaker said he had never been at any Conference which was so admirably conducted. Mr. O'LEARY had been able to keep talkative members in check without offending, he had kept everyone's interest lively, and their humour bright. It had been an inspiration just to watch him and see how a meeting should be conducted. At Mr. HANLON'S suggestion the members of the Conference rose and passed a hearty vote of thanks to Mr. O'LEARY with great enthusiasm, cheers, and musical honours.

Mr. H. F. O'LEARY, K.C., said that Mr. HANLON had been too complimentary to him; and the other gentlemen had been too enthusiastic. He did not deserve their thanks, but it had been a pleasure and a delight to preside at the Conference. Mr. O'LEARY added that at a function he had attended in Dunedin that week, the wife of one of his professional brethren cross-examined him as to what was his hobby. She had asked if he played golf. He said "No." Did he play bowls? "No." So he interrupted by asking her when she got her law degree. She wondered why he had said that, and, of course, he complimented her on her ability to cross-examine. "But had she gone on I would have had to admit that my hobby is Law Society work," Mr. O'LEARY added amid cheers. "I like to think I am able to do something for the profession to which I am attached, and for its members to whom I am devoted. It has been a pleasure and a delight to preside over you all."

The Conference then ended.

THE NEXT CONFERENCE.

Unofficial Views.

In the course of his remarks regarding the venue of the next Conference, the President, Mr. H. F. O'Leary, K.C., expressed the view that the Conference should alternate between the two Islands. Mr. A. S. Taylor (Christchurch) suggested that the next Conference should be held in Christchurch, while Mr. E. A. Duncan (Dunedin) was of opinion that it should be held in Wellington or Auckland. The matter was left to the New Zealand Law Society to settle.

Judging from unofficial opinion expressed after the Conference had terminated, it seemed to be the wish of many that future Conferences should follow the sequence of the University Tournaments—*viz.*, Dunedin, Wellington, Christchurch, Auckland. On the other hand, the opinion was frequently expressed that provision should be so made that the Conference of 1940 will be held in Wellington. As that will be the New Zealand Centennial year, most national gatherings will then take place in the capital city.

The Bar Dinner.

A Feast of Reason and a Flow of Soul.

AT THE FERNHILL CLUB.

Owing to the difficulty of finding a suitable place in which all wishing to be present at the Bar Dinner could be accommodated, the Conference Committee decided with regret to hold the Dinner in two parts, one at the Fernhill Club and the other at the Grand Hotel.

AN assembly of over sixty gathered at the Fernhill Club as one section of the Bar Dinner. The President of the Law Society of Otago was in the chair, having on his right the Hon. Mr. Justice Kennedy and on his left the Hon. Mr. Justice Callan, while the Solicitor-General, Mr. H. H. Cornish, K.C., and the President of the New Zealand Law Society, Mr. H. F. O'Leary, K.C., supported them on either side. In addition to representatives of every District Law Society, Mr. J. W. Bartholomew, S.M., and Mr. H. W. Bundle, S.M., were among the guests.

"THE GUESTS."

After justice had been done to an excellent repast, and the loyal toast duly honoured, the health of "Our Guests" was proposed by the Chairman, Mr. A. N. Haggitt, President of the Law Society of Otago, who welcomed those present, and said that the pleasure of seeing them had been denied for some considerable time. He extended a special welcome to Dunedin's own Judge, Mr. Justice Kennedy, and also to Mr. Justice Callan, so long a member of the profession in Dunedin, who was paying his first visit to his native city since his high appointment.

With sincere regret the speaker apologised for the absence of the Hon. the Attorney-General, who had literally flown away from the Conference that morning. He welcomed the Hon. Mr. Downie Stewart, the Solicitor-General, Mr. H. H. Cornish, K.C., and the President of the New Zealand Law Society, Mr. H. F. O'Leary, K.C., who had so ably conducted the affairs which had brought them together in the last few days.

Mr. Haggitt referred particularly to one of the members of the Christchurch Bar who was present, Mr. H. D. Andrews, who had told him with justifiable pride that fifty-four years of his life had been spent as a member of the profession. But Mr. J. A. Cook, of Dunedin, was present with them on that evening, and as he had practised in Dunedin for sixty years, the local Bar had outdone Christchurch in respect of that record.

It was very encouraging to members of the Law Society of Otago to welcome practitioners from all parts of New Zealand, even from that city of whom Kipling wrote that it was "last, loneliest, loveliest, exquisite, apart," as Mr. Sexton, M.P., was with them on that evening. There were lawyers, too, from most of the North Island centres and the South Island, down to representatives from the oyster-bedded shores of Southland.

Mr. Haggitt concluded by saying that he hoped it would be possible to echo in the hearts of his hearers the panegyric on Dunedin which they would find in the works of Thomas Bracken. And he would ask them also to observe the sound advice placed at the top of their menu-cards, and especially the last exhortation they would there find: "to eat and drink as friends."

The Solicitor-General, Mr. H. H. Cornish, K.C., who was the first to reply for the Guests, said he need hardly say how delighted he was to acknowledge the welcome which had been so heartily extended to the visitors. While all who had come to the Conference had been made to feel that it was good to be in Dunedin, a special feeling of pleasure was reserved for those of the delegates who were old Otago men. To them it gave peculiar delight just to walk once more along the streets of Dunedin, and through the Octagon, and to gaze again on such beautiful buildings as the Otago Boys' High School and the Otago University. They belonged to a long line of exiles whose mother, Otago, having nourished and educated them, had gently but firmly urged them forth to push their fortunes elsewhere. Among them were the names of the late Sir Robert Stout, Sir John Findlay, Sir John Salmond, and Sir Francis Bell, of Mr. Justice Callan and of their own Judge, Mr. Justice Kennedy, a returned exile. Over a long period Dunedin had specialized in the export of Judges. He believed that the Otago Bar was just as great as in former days, comprising men capable, if given the opportunities and the volume of litigation, of showing themselves the equals of their great predecessors. Associated with him in responding to the toast was Mr. C. H. Weston, K.C., who in days gone by, as Captain of Christ's College, had been feared on the football and cricket fields by the young gentlemen of the Otago Boys' High School. Since those days he had become known to all as a gallant soldier as well as a sound lawyer. He would respond on behalf of those who really were visitors and not merely Otago men come home.

Mr. C. H. Weston, K.C., said he was glad to follow his friend the Solicitor-General in attempting to thank their hosts for the extraordinary kindness which had been shown to them since they arrived in Dunedin. It had been a very happy Conference, and conducted in an atmosphere of friendliness that Dunedin seemed to have the capacity of creating. She would have her reward in a host of hungry lawyers, always ready to accept further invitations to lunches, dinners, dances, and other entertainments.

Mr. Weston said that the occasion gave him the opportunity of expanding an idea which might be of use to the younger if not to the older men who were destined to be guests among such profuse hosts. "Looking around the shelves of a law library, one sees books such as *Jelf on Innkeepers* and *Mather on Bailiffs* and *Oliphant on Horses*, but the most intensive search would disclose no text-book on *Guests*," he continued. "There is still a text-book to be written on that subject, with its chapter headings dealing with, *inter alios*, The Paying Guest, The Gentleman Lodger, The Uninvited Guest or Gatecrasher, The Guest with whom the spoons were not safe, and The Parting Guest. As regards the uninvited guest, the classic authority in New Zealand is Sir Frederick Chapman's judgment in *Locke* v. *McRorie*, [1922] N.Z.L.R. 1137, which no doubt is well known to my friend, Mr. "Bill" Perry, who is understood to be more expert in the licensing law than the Book of Genesis. That case decided the status of the

lodger's guests satisfactorily from the point of view of the hotelkeeper, but rather unsatisfactorily on the broad question of guest or gatecrasher."

As to Gatecrashers, Mr. Weston said there was the English authority to be found in the case of Lady Ellesmere. Seventeen hundred guests attended her party, and she decided to make an example. The result was that two bright young things and three waiters were given in charge for being uninvited guests. Lady Ellesmere had also given her name to a leading case on The Guest who Pinches the Silver; the Amir of Afghanistan's suite being concerned. Her device of giving two footmen to each guest, one to watch and the other to wait, earned the soubriquet of the "watch and wait" system. That case was to be found in the *Home Science Journal* under "Hints to Hostesses," and in the *Patent and Copyright Journal*, Lady Ellesmere having unsuccessfully attempted to protect the idea. The final chapter of the book could be appropriately entitled "Speeding the Parting Guest."

"I can only add," said Mr. Weston in conclusion, "that you have made us think we are very welcome guests; and we shall all leave, filled with kindly feelings towards you of and at the Bar of Dunedin."

"THE BENCH."

The Hon. Mr. W. Downie Stewart, in proposing the toast of "The Bench," said how pleased they all were to see Mr. A. N. Haggitt in the Chair that evening, because he bore a name that was one of the oldest and most honourable in the legal annals of Otago. When the speaker was a law-clerk, the office of Haggitt Brothers and Brent was an old-world, dignified sort of place in which everything moved quietly, with low voices and low lights, and everything was low, as far as he remembered, except the costs.

"I do not know," the speaker continued, "why I have been asked to propose this toast. Perhaps it is because I am unaware of any defects or shortcomings or deficiencies that may have arisen in the Judiciary since I gave up practice and left them to their own resources. On the other hand, it may be that since I have retired from Ministerial office, which has been described as a 'form of slavery mocked by the name of power,' I can speak without raising any false hopes in the galaxy of legal talent I see before me that I can appoint any of them to the Bench.

"But I remember that all the counsel with whom I served as a junior went on to the Bench; and, whether this is a case of cause or effect, it is not for me to say. However, having launched all these men successfully, I betook myself to politics where I thought it would be easier to promote leading counsel to the Bench without all the labour of having to prepare their cases for them."

Mr. Downie Stewart, who was interrupted by constant laughter, said that it appeared to him that our Judges and Magistrates enjoyed certain minor advantages and suffered certain disadvantages compared with their colleagues overseas. For instance, he saw in a newspaper on the previous day that a Judge had been shot in Spain, a fact which indicated some slight disappointment in some unknown litigant. And again he saw during the week that someone had sent a Judge in Europe two pounds of cyanide of potassium, a quantity which might seem to members of the profession in New Zealand unnecessarily large for the purpose it was intended to effect; although he had seen lawyers in our Courts who would have liked to emulate that precedent. Amongst the disadvantages, it was admitted on all sides that our Judges and Magistrates were underpaid; but a light gleamed on the horizon, as, under the new dispensation, it appeared that one had only to strike the rock like Moses and "plenty" of money would gush forth. Consequently, they might or might not see in the not too distant future a minimum wage for Judges, with the added compensation of a forty-hour week; and, since Judges might only be removed from office by a joint vote of both Houses of Parliament, they, at least, could not be given their "running shoes."

"One problem of the Judiciary is that if the Bar is extremely competent it is difficult for the Judges to maintain their bluff that they know more law than the counsel; while, on the other hand, if the Bar is not sufficiently competent and puts up bad law, the Judges are certain to be overruled on appeal," the speaker continued. "But on the other hand the Bench has one advantage. If a strong Bar is a real help, then I am informed by Mr. W. D. Lysnar that we are fortunate, judging by his stories of the inadequacy of the English Bar."

After recalling some of Mr. Lysnar's experiences, Mr. Downie Stewart proceeded, "I still watch with a benevolent eye the activities of our Courts, but I regret that the friendly feelings which used to exist between Bench and Bar in my younger days are not so apparent now as then. For instance, I have to rely on the daily newspapers for the information that a Judge, who, before he was elevated to the Bench, had, I thought, the friendliest of feelings towards me, had declared that a beautiful young heiress was entitled to the sum of £95,000 from her late father's estate. I thought this would not have happened in the old days; surely the learned Judge, remembering his bachelor friends, might have taken time to consider his judgment and written a letter commencing, 'Dear Downie,'—And he might have gone on to say 'I have reserved judgment sufficiently long to enable you to reach Auckland, so that you can start even with your competitors.' But no such letter reached me.

"I have read that a certain Lord Chancellor, speaking of his appointments of Judges, said that he always selected a gentleman, and, if he knew a little law, so much the better. My generation in Otago was fortunate enough to be trained under that perfect gentleman, great scholar, and humane Judge, whose memory we venerate—Sir Joshua Williams. I remember his exquisite courtesy to juniors, and his perfect deportment to nervous witnesses, to hardened criminals, and to first offenders, which was the acme of good taste, wisdom, and mercy. In fact, he was the supreme ideal of what a perfect Judge should be, and I am happy to believe that his benign influence has permeated the rising generation of Judges and Magistrates."

The speaker remembered that one day Sir Francis Bell said that the best Judge in history was Gallio, who drew the exact distinction of a Judge's duty. He read,

> If it be a matter of wrong or wicked lewdness, reason would that I should bear with you: but if it be a question of words and names, and of your law, look ye to it; for I will be no judge of such matters.

Mr. Downie Stewart added that he had ventured to suggest that perhaps Gallio was only lazy. For he remembered on one occasion many years ago much correspondence passing between the Solicitor-General and the Minister of Justice, who was urging the Chief Law Officer of the Crown to initiate some legal reform.

After he had been urged to reply and state the law on the subject, the following minute was placed by the Minister on the file as the final record of his opinion: "Let the appropriate authorities take the necessary action." This was not a hint for Mr. Solicitor, who was with them that evening.

The Hon. Mr. Downie Stewart continued his brilliant and witty speech as follows: "Without jingoism or cant one may say that the British Empire never appeared in all its long and glorious history in more august splendour than in these days when despotism, autocracies, and loss of freedom are rampant in so many lands. And the reason is that through our vast orbit of Empire we have maintained the fundamental rule of law and order, justice, and liberty. Despotism is peculiarly to be dreaded in democratic ages. De Toqueville says, 'Freedome is less necessary in great things than in little ones.' When the eye and the finger of government are constantly upon the minutest details of human action, the strength of the Courts of law has ever been the greatest security which can be offered to personal independence. And this is more especially the case in democratic ages. The late Sir John Salmond had said, 'Society can only exist under the charter of the State, and law and justice is a very necessary condition of peace, order, and civilisation.'"

The speaker said that he remembered once in London speaking with a barber who had been back to his country to perform his military service after some years in England. He asked him how he had felt on return. He said that when he had landed in England he had felt he should kiss the soil of his adopted country.

Mr. Downie Stewart concluded: "May it be said in New Zealand that, through the genius of our Courts and the maintenance of law and order, those who come to our shores will ever be ready to kiss the soil of their adopted country, because of the preservation of the principle of law and justice and liberty which is the sacred trust of our Courts of law."

The speech, which was punctuated with laughter and cheers, was followed by the enthusiastic toasting of the Judiciary.

Mr. Justice Kennedy.

The Hon. Mr. Justice Kennedy, in replying to the toast, said he desired in the first place to acknowledge the justice of the tribute paid by the Hon. Mr. Downie Stewart to the memory of their distinguished predecessor, Sir Joshua Williams. "I had the honour," he said, "as I believe my brother Callan had also, to be admitted by that learned Judge and my first appearances in the Supreme Court were before him. I will, however, at once pass, if you will permit me, to another place.

"I well remember, many years ago, my first appearance in the Magistrates' Court in this City, where I went to take judgment in some undefended debt cases. The benches in that Court, appropriately enough, were like the forms in infant schools; because, as you know, Dunedin was then the nursery of Judges. They held, probably they still hold, only two. Weighed down with responsibility, I pushed into a front bench and found myself sitting beside a solicitor who charmed me with his friendliness and delighted me with his stories. 'This Court,' I thought before the learned Magistrate had something to say to me which I need not mention, 'is a pleasant place.' That was the first occasion on which I had the pleasure of meeting the proposer of this toast, and I may tell you that he has not changed in all these years—except, of course, for the better—if that be possible, which, as you might say, I deny."

His Honour continued that at this stage and later, he was tempted shamelessly to borrow his words from authority without acknowledgment. When Pickwick left the Court after a certain famous trial, he met in the precincts of the Court, as they knew, Dodson, of the firm of Dodson and Fogg. 'Well?' said Mr. Pickwick. 'Well, Sir!' said Mr. Dodson, 'for self and partner.'

"You have drunk the good health of the Bench," His Honour continued, "to which I reply for the Bench, including Mr. Justice Callan, who will more graciously say what I should have said: 'Well, thank you, for my colleagues and myself.'

"As long as the Bench is recruited from the Bar the profession must be conscious of the volume of work which the translation of any of its leaders would release, and, as in that happy event each behind moves up one, the effect must spread wider and wider until the beneficent increase in work reaches the furthest office," said the speaker. "Perhaps those below the rank of King's Counsel may be forgiven if they say of the Judges, as a distinguished Judge said of his colleagues: 'They all look disappointingly healthy.' It is, of course, merely one way of looking at the Bench to regard its members as removable obstacles. I need not add that that is a view which is scarcely likely to be favourably received by the Bench.

"When last I had the honour to acknowledge this toast in this room, I had come so shortly to the Bench that I had scarcely forgotten that I was a barrister and it was almost too soon to realize that I was a Judge," Mr. Justice Kennedy proceeded. "For five years at least the judicial family remained unaltered. Then came 1934, which brought us, in one fruitful year, Mr. Justice Johnston and Mr. Justice Fair. And then 1935, a marvellous year, produced, at one birth, Mr. Justice Callan and Mr. Justice Northcroft. We have not so far had the crowning joy of receiving four Judges into the family in a single year; but this we do know from recent experience in this City: that if Judges were made in Dunedin even that would not be impossible. We are never likely to be burdened with too large a family. Every addition is welcomed. The present Lord Russell of Killowen said: 'At the Bar you have a dog's life with a gentleman's remuneration, but on the Bench you lead a gentleman's life for a dog's remuneration.' I am not concerned with the absolute truth of that observation; but this I may say for my brothers, that, if it is a gentleman's life they lead, then a gentleman's life does not contain too many of what in forensic fables are called 'Leisure Moments'."

His Honour went on to say that it had often been pointed out that no better instrument had yet been framed for the protection of the liberty of the person and the freedom of opinion than the hearing of both sides in open Court with judgment by independent Judges. The independence and power of the Bench would depend upon the independence and learning of the Bar as long as Judges sprang from the Bar. It was, he hoped, unthinkable that either should cease to command the confidence of the people of this country. The administration of justice demanded not only technical equipment but the growth in a man's being of what might be termed a passion for justice. Some people might think it might be found anywhere; but that was an error. A Grand Jury in England made,

and it was entitled to make, this presentment to Mr. Justice Mathew: that the High Court Judge no longer visit the town, that civil cases should be tried in the County Courts, and criminal cases by the Mayor. The Judge received this pronouncement with due gravity, and he said he particularly approved the suggestion that crime should be tried by the Mayor, "for," said he, "as we all know, the object of punishment is to deter; how much greater the deterrent effect will be if a few innocent persons are convicted instead of only the guilty."

The truth was that the Bench and the Bar were very closely connected. Sound argument begot sound decision. Both Bench and Bar worked in the same arena. The one strove to secure right, the other to do justice; and His Honour said he could not help but think, as Mr. Justice Eve expressed it, that the attainment of those purposes might always be attended with a respect which was mutual and by a sympathy which was fraternal. Perhaps on the Bench one came to think of solicitors and counsel more and more as officers of the Court, while at the Bar that aspect, though not forgotten, was submerged in the idea of duty to the client.

"This is not the occasion to single out one's predecessors for mention," His Honour concluded. "There have been only six Chief Justices in New Zealand, of whom I have known three, and have seen the fourth, Sir James Prendergast, after his retirement. So rapid have been the changes that I have myself appeared before no less than fifteen Judges who are no longer upon the Bench. Great names and great men pass before the mind when one reviews their number. The present Bench is heir to the traditions left by eminent Judges in England and by those who have gone before us in this country, and, in these gentler times, we do but strive in all humility to follow in their footsteps."

Mr. Justice Callan.

Mr. Justice Callan, in supporting the reply by Mr. Justice Kennedy, said that the Hon. Mr. Downie Stewart had reminded those who were Dunedinites and those who were not that the name of Haggitt was an honoured name in this city and province.

"I was glad to learn from Mr. Justice Kennedy that replying to this toast is a difficult task for him. For me it is impossible," said His Honour. "This is the scene of my schooldays, the place of my youth, of my early manhood, and my professional life—it is my 'home-town' in every sense; and I cannot think of myself as one upon whom has devolved the duty of replying to the toast of the Judiciary. I do not feel like a Judge. As yet, I can do no more than give an intermittent imitation of a Judge. And even that I find impossible in these surroundings.

"I have, in my brief experience, often remembered a remark once made by a distinguished member of the Dunedin Bar when speaking of the legal systems in British and continental countries. He remarked that, whereas in some countries Judges were set to judging early in life, and passed from judging small things to judging greater matters, the British system was to recruit the Bench from the Bar. But advocacy and judging required and developed very different faculties. It was, this gentleman said, a curious thing that when a man had shown some facility in self-expression, he was taken and put in a place where his greatest virtue was to be able to hold his tongue."

His Honour added that he was afraid he had not yet mastered that lesson, but he hoped to do so.

The speaker went on to speak of the happy days he had spent among his fellow-members of the Bar in Dunedin, and, later, when he had made the acquaintance of the Bar at Wellington. When he had been appointed to the Bench, he had gone to take the Sessions at New Plymouth. He said that he had been cast forth alone upon his own resources; but he could speak with nothing but gratitude of the way he had been assisted by the members of the Bar at New Plymouth. Of the members of the Bar at Auckland, where his duties lay, he could again speak with nothing but gratitude. Their only fault was the almost unanimity with which they had stayed away from the Dunedin Legal Conference.

Mr. J. R. Bartholomew, S.M., added the thanks of the Magistracy for the way in which their inclusion in the toast had been received.

"The Legislature."

Mr. H. F. O'Leary, K.C., President of the New Zealand Law Society, proposed the health of the Legislature. He said that it was an unfortunate word to put into his mouth at so late a stage of the proceedings, and he humorously referred to the various ways of pronouncing it as used by prominent members of the Bar. For his part he had decided to refer to the Legislature as "Parliament," for short.

Mr. O'Leary went on to describe the change which came over the environment of a member of the Bar when he became a member of Parliament. He said that on the previous Tuesday morning he had walked up and down the railway-station at Christchurch seeking for a carriage bearing a letter corresponding with his reserve ticket, but apparently that carriage was not on that particular train, so disconsolately he sat on his pile of luggage with the gloomiest forebodings that he would not be able to arrive in Dunedin to take his place at the Conference. And as he sat upon this pile of luggage, he saw approaching him a procession. First of all came a man wearing a white band round his cap leading the way, then two men wearing red caps bearing luggage, and then followed an individual resplendent in a frock coat and gold-braided cap, and then, bringing up the rear of this formidable array, he saw his old boyhood friend, the Honourable Mr. William Perry, M.L.C. Timidly, the speaker had followed at some distance, and when he was recognized by the honourable gentleman, whom he had for so long known as "Bill," one of the procession detached himself and said, "Are you a friend of the Honourable Mr. William Perry, M.L.C.?"; and, on his replying "yes, he had some acquaintance with the honourable gentleman," he was asked if anything could be done for him, and he mentioned the difficulties regarding his reserved seats. Whereupon the resplendent individual in gold lace had said, "If you are a friend of the Honourable Mr. William Perry, M.L.C., then the train is yours." And later when the guard had come round at a time when he was privileged to occupy the same compartment as the Honourable Mr. William Perry, M.L.C., and had taken the speaker's ticket and his wife's ticket and his son's ticket—for all of which good money had been paid—and had punched holes in those documents, and as an afterthought had torn them in half and had retained one-half, then he turned to Bill—he should say the Honourable Mr. William Perry, M.L.C.—and that gentleman had held up a magic talisman, where-

upon the guard took off his hat, bowed most deferentially, and said : " Thank you, Sir."

The speaker went on to say that, apart from the Hon. Mr. William Perry, M.L.C., and Mr. A. C. A. Sexton, M.P., who had so recently been elected to Parliament, they had with them Mr. O'Regan, who was a member of the House of Representatives over forty years ago, at a time when he was a very young man indeed. It was a great regret that the Hon. Mr. Downie Stewart no longer adorned the Legislature, and this regret was shared by everyone, no matter to which party he may or may not have belonged.

" Parliament in New Zealand has maintained the standard of honesty and integrity which seems inseparable from British Government throughout the British Empire," Mr. O'Leary continued. " We have always had an excellent representation of lawyers in Parliament, and, irrespective of party alliances, they remained brethren of the Bar. My own experience is that the lawyers in Parliament have been of great assistance to the profession. There should always be a strong bond between members of the Bar and members of Parliament. In the earlier days, some of our leaders were afraid of Parliament, but, if we conduct our business in a proper and straightforward way, we need never be afraid to approach Parliament and ask it for reasonable assistance and protection."

Finally, the speaker wished to congratulate Mr. A. C. A. Sexton, M.P., of the Auckland Bar, who was the most recent member of the profession to be elected ; and he felt sure that Mr. Sexton would follow the fine tradition of members of the profession who had been honoured throughout the years of New Zealand's history as valuable acquisitions to the ranks of its Legislature.

The Hon. Mr. Perry's Reply.

The Hon. Mr. William Perry, M.L.C., in reply, said that it was perhaps appropriate that a member of the New Zealand " House of Lords " and a member of the New Zealand " House of Commons " had been chosen to reply to the toast. In England the House of Lords was comprised of Lords Spiritual and Lords Temporal. Although it was not generally known, New Zealand's Upper House also contained Lords Spiritual and Lords Temporal. Those who frequented " Bellamy's " belonged to the former class ; those who did not, to the latter. " Lest there should be any misapprehension as to which class I belong," said the speaker, " I would have you know that I am ranked as a senior Archbishop." Members of the Legislative Council, he continued, sometimes irreverently referred to the members of " another place," represented that evening by his friend Mr. Sexton, as the " Proletariat."

Mr. Perry proceeded :

" Not long ago an English visitor to New Zealand inquired about the constitution of our Legislature. It was explained to him that we had two Houses—the Legislative Council and the House of Representatives—and that their functions were similar to those of the House of Lords and the House of Commons in England. 'Ah,' said the Englishman, 'I think I perceive the distinction between your Legislative Council and our House of Lords. In our House of Lords stupidity is hereditary '."

The speaker went on to say that considerable misconception existed as to the powers and functions of the Legislative Council of New Zealand. It was not the function of the Legislative Council as a nominated body unnecessarily to obstruct policy legislation passed by the elected representatives of the people. This principle had guided the Council for more than fifty years and had been re-stated by the late Sir Francis Bell as late as 1928. The Legislative Council Act, 1914, sharply defined and limited the powers of the Council. For instance, the Council might not amend proposed laws imposing taxation or appropriating revenue for the ordinary annual services of the Government. It might suggest amendments which the House of Representatives might in its wisdom accept or reject. In the case of a Money Bill, so certified by the Speaker of the Lower House, if the Council did not pass it without amendment within one month after it had been sent to the Council, it became law without the concurrence of the Council. In the event of the rejection by the Council of a Government policy measure, the Bill was shelved until the following session, and, if it were again passed by the Lower House and rejected by the Council, its fate was decided by a joint sitting of the members of both Houses.

The powers of the Legislative Council were principally revisory and corrective, and it was in that respect that the Council was able to render valuable service to the Country.

Mr. Perry then remarked that " the *Otago Daily Times* of the previous day had quoted the Marquis of Salisbury, as follows :—

> The professions of statesmen or clergymen or doctors do good. But the barrister is at best a tolerated evil. He derives his living from the fact that law is unintelligible, and in proportion as modern legislation succeeds in making it accessible and simple he will disappear.

As a legislator, the speaker said he could not claim that modern legislation had made the law so very accessible or so very simple. After a Bill prepared by the Law Draftsman had been mauled about by the Statutes Revision Committee of " another place," and later emasculated by the Statutes Revision Committee of the Legislative Council, it found its way to the Statute-book in such a form as often provided a very neat or even very intricate problem for the Court of Appeal.

" In recent times there has been a tendency in democracies to deride and decry our Parliamentary institutions," Mr. Perry concluded. " I think that is a pity, but if the people of New Zealand in particular would only realize that during the past fifty or sixty years there has not been a single major scandal involving graft or corruption on the part of any member of our Legislature, they would have a greater respect for Parliament. The legal profession, particularly, should support the great system of Parliamentary Government which has been handed down to us for centuries ; and it should support the great principle of freedom of speech and the right of all the people to choose their own rulers at the polls."

Mr. A. C. A. Sexton, M.P., in supporting the Hon. Mr. Perry, said that it should not be forgotten that Parliament was a human institution and a cross-section of the people. Members of the House of Representatives were keenly desirous of doing what they considered best for the people as a whole. It could be claimed that great attention was paid by the public to what members of the legal profession said, and the citizens, generally speaking, gave careful and unbiassed attention when the profession expressed its considered opinion on matters of public interest. Members of Parliament, too, were grateful for any criticism of legislation or

for any helpful lead which the Law Society or practitioners gave from time to time.

At the conclusion of the Bar Dinner, it was announced that the Fernhill Club had placed its amenities at the disposal of those present. Some hours were spent in social converse and in games by a number of the visitors before the evening's gathering was concluded.

AT THE GRAND HOTEL.

It had been rumoured that the Grand Hotel section of the Bar Dinner was likely to be characterized by a spirit of easy conviviality in keeping with the selective methods employed in allocating places, and, in this instance, "Dame Rumour" earned an unprecedented reputation for modest veracity.

As the guests gathered in the lounge, the rising tide of levity was somewhat checked by the discovery that the Chairman, Mr. E. J. Smith, Vice-President of the Law Society of Otago, had met with a misfortune on the bowling-green which necessitated the use of crutches to aid an injured leg. However, the brave and cheerful demeanour of the sufferer, aided by the sympathetic necessity of toasting his speedy recovery, soon dispelled all traces of gloom, and over a hundred guests took their seats with ardent promise of just appreciation to the menu of choice viands, delectable liquids, and witty eloquence set before them.

The speeches throughout the evening were marked by a discursive progression—or retrogression—from the serious to the facetious; and the many good stories told or perpetuated broke the general level of conviviality into frequent steeps of unrestrained hilarity. The guests' enjoyment of the evening was further heightened by the admirable singing of Mr. Arthur Macdonald, and the humorous recitations in character contributed by Mr. G. M. Salmond, both of Dunedin.

"Our Guests."

In proposing the toast of "Our Guests," the Chairman, Mr. E. J. Smith, Vice-President of the Law Society of Otago, begged his hearers not to jump to conclusions because he was unable to stand up straight, and made humorous reference to "that dangerous pastime of bowls" in the playing of which he had met with his injury. He regretted that the Otago Law Society had been unable to hold the Bar Dinner as a united gathering, but owing to lack of suitably large accommodation they had been compelled to split the function into two sections. He pointed out that their Honours the Judges, the Solicitor-General, several King's Counsel, and many senior members of the Bar had been allocated to Fernhill Club; and this accounted for the absence from the list of the toasts of "The Bench" and "The Legislature." Those present with him had their consolations: he was sure they were all delighted to have their very highly respected and much beloved Dunedin King's Counsel, Mr. A. C. Hanlon, with them, as he had refused to go with his fellow silks, though his modesty had refused to allow him to take the chair at their own gathering, as he had been asked to do.

Reminding his hearers of Mr. Justice Goddard's reflections upon his elevation to the Bench, which recently appeared in the New Zealand Law Journal, entitled "A Judge's Future," the Chairman expressed the hope that the guests would not get bitter that evening because they were not dining under the eyes of the Judiciary "in another place." He said he should like to tell them how pleased the Otago practitioners were to have their guests with them on that occasion. They were greatly gratified to have visitors from all over New Zealand, and hoped they would all thoroughly enjoy themselves. He wished particularly to refer to the mutual benefits which might be gained from a social gathering such as the present dinner. "We can do much for our guests and more for ourselves," Mr. Smith continued. "It was never more necessary than at a time like this for solicitors and lawyers generally to stand together—I had almost said 'hang' together, but that might be open to misconstruction." The speaker went on to discuss the present situation facing the profession, making reference to the filching away of conveyancing work and the tendency of Government Departments to employ their own solicitors and their law officers instead of outside counsel, and regretting the apathy to this so generally displayed throughout the profession, despite the splendid work of the New Zealand Law Society and the District Societies. He thought that the older men might perhaps be excused their indifference, because, after all, there was work enough to see them out their lifetimes; but he appealed strongly to the younger men to take concerted action in promoting the interests of the profession. He pointed out that a gathering of the kind they were enjoying offered an admirable opportunity for them to get to know one another, and he hoped that many old friendships might be cemented and new ones formed.

Expressing the hope that visitors had approved of Conference arrangements, Mr. Smith told the story of a man who had been taken for a ride in a friend's car and driven over the bank. When they returned home again, rather shaken, the guest thanked his host for the two rides. When the owner asked what he meant, the passenger in explanation had mentioned that he had been taken for his first ride and his last ride. This was the first legal Conference for six years, the first ever held in Dunedin. "I know," he added, "that you will thank us for this the first Conference after many years; but I trust, when Saturday morning arrives, you will be able to say sincerely that you hope it will not be our last."

In a humorously phrased welcome to guests from an arid region like Southland, the Chairman cited the pitiable case of the Scotsman who had got a splinter in his tongue because he had spilt his whisky, and begged the Dunedin men to see that none of their Invercargill friends met with a similar mischance. But wherever they came from, those present were brothers in a proud and honourable profession, and were welcomed accordingly.

Finally, the Chairman asked to be permitted to couple the name of Mr. David Perry, President of the Wellington Law Society, with the toast, and said what great pleasure it gave them to welcome him, not least as a brother of Dr. Arnold Perry, of Dunedin, a very famous Otago "five-eighths" and present President of the Otago Rugby Union.

The toast was thereupon duly honoured, and Mr. Perry was acclaimed in the singing of "For He's a Jolly Good Fellow," followed by three hearty cheers.

The Chairman then called on Mr. Arthur Macdonald to give a song, and the company vigorously joined in the rousing choruses of "The Legionary's Farewell" and "The Legion of the Lost."

Mr. D. Perry, President of the Wellington District Law Society, then replied. He said that he found words inadequate to express how much he appreciated the honour and privilege of replying to the toast or to express the thanks of the guests. No words could possibly express the appreciation which the visitors felt at the hospitality extended to them by their Otago brethren. Mr. Smith had regretted that the evening had to be split, but the speaker gathered that the feeling of the meeting was that that regret was not shared by them all. He went on to say that now that the unimportant business of Conference was over, they could settle down to a little quiet enjoyment, and he had no doubt that the high-light of the Conference would be the next afternoon at Balmacewan. He concluded by thanking their hosts on behalf of all the visitors, who hoped that in the not very far distant future they would all enjoy the privilege of coming back to Dunedin. He called upon his fellow-visitors to steal a march on their hosts, and drink an unannounced toast: "Our Hosts," which was duly done.

"Our Clients."

Seizing an opportunity provided by a general lull to regain breath, the Chairman introduced Mr. W. R. Brugh with some appropriate references to the high position occupied by him in local professional circles and in public affairs generally.

"When a young fellow starts in practice," said Mr. W. R. Brugh, in sponsoring the toast of "Our Clients," "he offers up a short prayer: 'Oh Dear Lord, send me a few clients.' And a few years later when his practice has grown he utters another short prayer: 'Oh Dear Lord, take a few of these clients away from me and give them to the other fellow'." With this promising start the speaker proceeded to classify "clients" under an interesting set of subheadings, each of which was then dealt with in an extremely witty vein. Speaking of the advantages of sending in a bill of costs, he said: "There is a man in this city now whom I saved from going to the wall, and I think I may say I saved the British nation from going to disaster. He spent all his time hanging round my office to the neglect of his business and his family until I sent him in a bill of costs, and you should see the way he has avoided me for the last twenty years. He has kept to his affairs in most exemplary way ever since, and I am sure someone should tell him the Statute of Limitations has barred the account."

Deprecating the talk one sometimes heard of the competition from Government Departments, the speaker suggested it would be a most admirable thing and most beneficial to the profession if something were done to increase the efforts of those Departments. "What a simple matter it would be," he suggested, "if we were to pass every fencing dispute over to them." Mr. Brugh then said he thought they could all tell much funnier stories than he, because his clients were all excellent people; and he then proceeded to convulse his hearers with stories of clients he had had. In conclusion, Mr. Brugh said "We owe a lot to our clients. They are the business end of things. We owe our dinner to-night to them."

"Our Clients" were then duly honoured in liberal bumpers of burgundy, and their virtues acknowledged in song.

Mr. G. M. Salmond than gave a recitation in character "The Scotch Chairman at the Village Annual Meeting," with "The Foreign Trade of the Country," from *The Meanderings of Monty*, as an encore.

"Ourselves."

Mr. A. C. Hanlon, K.C., then rose to propose the toast of "Ourselves," and, when the tumultuous applause which greeted him had subsided, he was heard to say: "I would like to take this opportunity of saying how gratified I am to be with you all here. It is true that the Committee gave me the opportunity of accompanying my fellow King's Counsel to the 'other place,' but they gave me my option, and I exercised it in favour of coming here to be with young fellows of my own age. My reason was that I thought we would have a pleasant party, whereas in the other place the grey beards would hold the floor."

After detailing his reasons for the arrangements made for the dinner which he was attending, Mr. Hanlon proceeded:

"I think I ought to commiserate with our Chairman in the horrible accident he met with through his gallantry in playing that dangerous game—bowls. My reason for mentioning this is because I gave up golf on account of my age and took to bowls—which I was assured was an easy and safe game. Now, I am afraid I will have to give up bowls; and the Lord only knows what I will take up next."

This was really the most important toast of the evening, in the speaker's opinion, because it included the visitors as well as hosts. It was very difficult to say anything about this toast, as it was not the correct thing to applaud themselves, and, in this connection, he remembered that they were all lawyers, and anything in praise of themselves savoured somewhat of trying to paint the lily. Then in a humorous commentary on laudatory references made in the course of the Conference, Mr. Hanlon provided that touch of salt necessary to savour the sweets of professional self-praise, and, finally, he gave a strong rebuttal to any suggestions that the profession was not popular amongst the public, in the course of which he pointed out that in Dunedin there was hardly an office in public affairs which was not occupied by a member of the profession.

The applause which followed this speech was accompanied by a storm of requests that Mr. Hanlon should continue speaking, and should tell some stories. In the midst of these enthusiastic demands Mr. A. G. Neill (Dunedin) rose and said: "I do not think we can let this occasion pass without mentioning the great tribute paid to Mr. Hanlon by the late Sir Joshua Williams, a tribute never paid before or since to a member of the Bar. You have all read about the *Minnie Dean* case. Hanlon made a brilliant speech for the defence, which began in the morning and finished in the late afternoon. When Mr. Hanlon had sat down, the great old Judge said: "Gentlemen of the Jury, I know you are anxious to return to your homes. You have heard the evidence and it had been my wish to let you return home to-night. But in view of the brilliant speech you have listened to from counsel for the defence, in the interests of justice, Gentlemen, I must postpone my summing-up till to-morrow morning."

Mr. Arthur Macdonald then sang *Stout-Hearted Men*, *Road to the Isles*, and *Here is my Song*.

Mr. E. A. Duncan then proposed the toast of thanks and appreciation to the performers of the evening.

Mr. E. J. Smith proposed a very hearty vote of thanks to the Dinner Committee, which consisted of Messrs. E. A. Duncan, A. C. Hanlon, K.C., P. S. Anderson, and J. G. Warrington, and voiced the assembly's

appreciation of their efforts. The toast was enthusiastically honoured.

For an hour or so, Mr. Hanlon, K.C., regaled the company with stories and reminiscences, a feature which the visitors voted one of the "high lights" of Conference week.

The Chairman subsequently indicated that he would formally close the evening, but he thought it possible that some of the members might care to remain for discussion of various matters, while no doubt Mr. Hanlon might be prevailed upon to give further samples from his rich store of reminiscences.

All joined in "Auld Lang Syne" and the National Anthem, and a most enjoyable feast of wit and joyfulness adjourned *sine die*. It is rumoured, however, that gossip continued in and about the precincts and at private houses until well on in the morning, while at a convenient place a certain King's Counsel continued to regale an untiring audience with new stories until cock-crow.

Lady Sidey's "At Home."

An Afternoon at "Corstorphine."

When it was proposed to hold a Legal Conference in Dunedin six years ago, the late Hon. Sir Thomas Sidey, M.L.C., who, as Mr. O'Leary, K.C., said in his Presidential Address at the 1936 Conference, was one of the best Attorney-Generals the profession had known, invited the members of the projected Conference to spend an afternoon at his home. Unfortunately, he did not live to see the Conference held at Dunedin. But Lady Sidey renewed the invitation, and asked all present at that Conference to an "At Home" on the Thursday afternoon.

Set in beautiful and spacious grounds, "Corstorphine," Lady Sidey's charming home, was the scene of a delightful party, to which everyone visiting Dunedin for the Conference was made most welcome. His Honour Mr. Justice Kennedy and Mrs. Kennedy and His Honour Mr. Justice Callan were among the several hundred guests. A mild afternoon of sunshine added to the pleasure of all. The lovely garden and long drive with their autumn flowers and colouring were much admired. During the two hours and a half spent at Lady Sidey's, the guests wandered through the grounds or inspected the treasures within, for which "Corstorphine" is famous. They admired particularly the handsome old French furniture with its rich brocade set off by gilt frames. Bowls of fuchsia-coloured dahlias, gold chrysanthemums and red flowering-gum, clusters of red-maple leaves, and a bowl of deep-red sweet peas under red-shaded lights and flanked by green candles, formed the decorations of several of the rooms. Afternoon tea was served in the "old" drawing-room, the den, and the dining-room. Throughout the reception, an orchestra added to the afternoon's pleasure.

The hostess was warmly thanked for her thoughtful kindness, and the visitors retain happy memories of the delightful afternoon spent at "Corstorphine."

Lady Sidey's kindness was again in evidence on the Saturday morning, when she was at the railway-station to say goodbye to the visitors from the North.

The Law Journal Cup.

For Conference Golf Competition.

The NEW ZEALAND LAW JOURNAL CUP, which formed the subject of a four-ball bogey competition on the last day of the Conference at the Balmacewan Links, was given by Messrs. Butterworth and Co. (Aus.), Ltd., after the first legal Conference at Christchurch. The Cup is within the control of the New Zealand Law Society, and is to be competed for at each Conference.

The first winners of the Cup were Messrs. S. A. Wiren and A. M. Cousins (Wellington) during the Second Legal Conference held at Wellington in 1929. In the following year, during the Conference at Auckland, Messrs. A. M. Goulding and R. H. Mackay (Auckland) returned the best card.

The District Law Society to which the winners belong is entitled to hold the Cup until the next Conference.

The Law Journal Cup and Miniatures.

The winners receive miniatures of the Cup outright, and their names are engraved on them and on the Cup itself by the donors.

UNOFFICIAL GATHERINGS.

Every Hour Occupied.

In addition to the various functions which formed part of the Conference programme proper, or the special programme for the visiting ladies, numerous unofficial social gatherings were held in all parts of the city.

The invitation of Messrs. Speight and Co. to visit their works was received with great joy when announced at the Conference on the last afternoon. Many members availed themselves on the morrow of the opportunity given. About half-way around the extensive premises, they were halted to sample the clear spring water that gushes up towards the centre of the site. At the nineteenth, before departure, the wine of the country was duly honoured.

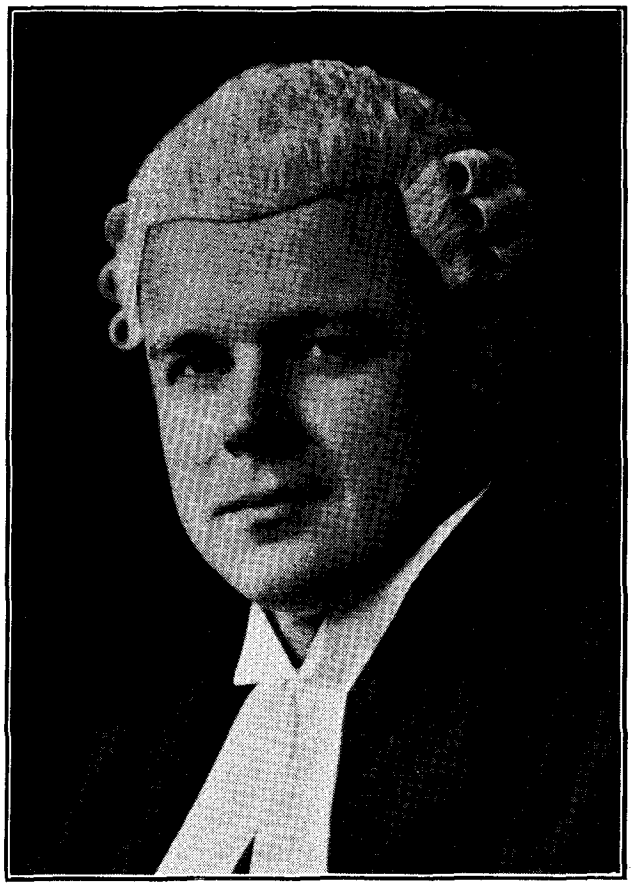
The Final Day's Events.

Outdoor Competition and Good Fellowship.

FRIDAY was devoted to outdoor recreation. The weather, which had been fine but varying from foggy to dull, had responded to the genial example of Dunedin hospitality and the day was one of azure sky and bright sunshine, under which Dunedin basked like the "windless bower" of the poet's dream. On the lawns, the greens, and the fairways of Balmacewan conditions were ideal, and the sports programme cheered, revitalized, and delighted even the weary among those who had submitted cheerfully to the prevailing entertainments. It is said that even those who had accepted a cordially-phrased welcome to Speight's Brewery during the morning received a most welcome and healthful surprise: when their intimation of thirst was responded to by the proffer of a tankard of pure spring water.

On the bowling-green and lawn-tennis courts, friendly matches were played throughout the day but no scores were recorded.

At the Balmacewan Links the programme provided for a stroke-handicap competition during the morning for a trophy presented by Mr. A. N. Haggitt, followed by a four-ball bogey handicap for the NEW ZEALAND LAW JOURNAL Cup during the afternoon. The links were in perfect order, greens being almost billiard-tables for smoothness, the fairways crisp and dry, and even the "rough" more subdued than usual. Over sixty contestants "devilled" the long ridges and laid their submissions before Bogey, J.; and, although here and there counsel were observed to accept a non-suit on various points, all cases reached amicable settlement at the nineteenth.



Webster, Photo.

Mr. J. G. Warrington, Conference Secretary.

The Stroke Handicap, played for Mr. A. N. Haggitt's trophy, was won by Mr. J. D. Hutchison (12), Christchurch, with a net score of 71. Other good cards were: J. E. Matheson (1), (Dunedin) 73; R. G. Sinclair (20), (Dunedin) 75; R. R. Aspinall (10), (Dunedin) 75; O. C. Mazengarb (24), (Wellington) 76; R. S. Browne (9), (Dunedin) 79; and R. R. Ronaldson (12), (Christchurch) 81.

Thirty pairs entered for the contest for the LAW JOURNAL Cup. The best cards were turned in by J. B. Deaker (Dunedin) and S. D. Macdonald (Balclutha), and W. D. Taylor (Dunedin) and G. M. Lloyd (Dunedin), each pair returning a score of 5 up. On the count back the verdict went to the former pair, who were declared the winners of the cup. Other good scores were: G. Gallaway (9) (Dunedin) and A. N. Haggitt (5) (Dunedin), 2 up; R. M. Rutherford (Milton) and D. J. Sumpter (Milton), 2 up; O. C. Mazengarb (18) (Wellington) and W. H. Cunningham (11) (Wellington), 1 up; J. R. Bartholomew (Dunedin) and H. W. Bundle (Dunedin), 1 up; R. S. Brown (9) (Dunedin) and J. E. Matheson (1) (Dunedin), all square; R. G. Sinclair (15) (Dunedin) and E. J. Anderson (18) (Dunedin), all square; J. D. Hutchison (Christchurch) and R. L. Ronaldson (Christchurch), all square; H. H. Walker (14) (Dunedin) and D. A. Solomon (Dunedin), 1 down; R. R. Aspinall (8) (Dunedin) and P. S. Anderson (11) (Dunedin), 2 down; W. C. Deem (Inglewood) and A. R. Wilson (Auckland), 2 down; W. T. Churchward (Blenheim) and W. V. Rout (Nelson), 3 down; R. H. Quilliam (New Plymouth) and W. Middleton (New Plymouth), 3 down; W. H. Walton (Timaru) and A. I. W. Wood (Dunedin), 3 down; G. T. Weston (Christchurch) and J. S. Monro (Dunedin), 4 down; E. D. R. Smith (Rangiora) and R. D. Jamieson (Ranfurly), 4 down; H. J. Grater (Oamaru) and L. A. Charles (Ashburton), 4 down; L. G. Cameron (Timaru) and W. J. Sim (Christchurch), 6 down; T. Milliken (Christchurch) and A. H. Cavell (Christchurch), 6 down.

Afternoon tea was served in the Club House at 4.30 p.m., by which time a large concourse (including many ladies) had gathered from the tennis-courts and bowling-green and other parts of the city.

As a number of the players were late in returning, some excitement prevailed until well past five o'clock as Messrs. Taylor and Lloyd, who had been among the first home, for some time appeared likely to be the winners. However, when all players were home and the tie had been decided in favour of Messrs. Deaker (Dunedin) and Macdonald (Balclutha), Mr. A. N. Haggitt addressed the assembly from the Club House veranda. He said that the Hon. Mr. Justice Kennedy had very kindly consented to present the trophies won that afternoon. The winners of the NEW ZEALAND LAW JOURNAL Cup were Messrs. Deaker and Macdonald. He explained there was a tie between those two and Messrs. Taylor and Lloyd, each pair returning the very

creditable score of 5 up; but, on the count back, Messrs. Deaker and Macdonald had won. The stroke competition held that morning was won by Mr. J. D. Hutchison (Christchurch) with a score of 71. He asked His Honour to present the trophies.

The Hon. Mr. Justice Kennedy said he could not think why he should have been asked to present the trophies unless it was because he could only stand aside and admire in others the possession of a skill which he himself could never hope to acquire. He had very much pleasure in presenting the Cup and the two miniatures to Messrs. Deaker and Macdonald, whom he congratulated.

His Honour then presented the Cup and miniatures to the winners, and afterwards presented Mr. Haggitt's trophy to Mr. J. D. Hutchison.

PRESENTATION TO CONFERENCE SECRETARY.

MR. H. F. O'LEARY, K.C., President of the New Zealand Law Society, then said that he had had many pleasant duties to perform during the Conference, but none that gave him greater pleasure than the duty he had then to perform on behalf of the visitors to Dunedin, in showing their very cheerful and efficient Conference Secretary what they thought of the work he had done. "It is quite plain that an immense amount of work has been done by you all, but it is equally obvious how very much work Mr. Warrington has put in," the speaker continued. "It was quite evident to us outside Dunedin, when we received various communications in connection with the Conference, that you had a very efficient Secretary, and that view was well borne out when we came to Dunedin and came into contact with and saw his work, and experienced the courtesy and attention with which he met all our demands upon him. Therefore, we have thought it fit that a suitable presentation should be made to him to indicate our appreciation. The arrangements in connection with this matter have been the work of our very energetic and capable Mr. D. Perry.

"We inquired whether Mr. Warrington was married. We were told 'No, but he soon would be.' Therefore, we thought it well to give him something which would adorn his sideboard in his future home, and give pleasure both to himself and his future wife. Accordingly we have very great pleasure in giving him this canteen of cutlery, which we hope he will find very useful in carving the ducks and turkeys and other good things which you, no doubt, will be giving him from time to time. Then, having some funds left over, it occurred to us that he might like something for his own personal use, and we therefore purchased this desk-stand and fountain-pen."

Mr. O'Leary then presented these gifts to Mr. Warrington, and asked him to give their compliments to his fiancée, and wished them both a long and happy life.

MR. J. G. WARRINGTON, who was received with cheers, said that he had thought after the past few weeks that he had become impervious to surprises and shocks, but on the previous afternoon when the Hon. Mr. W. Perry had mentioned this presentation he (the speaker) was afraid he was at his most nervous stage.

"About the beginning of this week I thought the ideal Conference secretary should be a cross between a robot and a clairvoyant; and, had I then been asked for advice from a would-be Conference secretary, I would have given the advice *Punch* once gave to those about to marry. But were I asked now, I could readily urge the inquirer to take on the task," Mr. Warrington continued.

Everyone, he said, had been most kind and helpful. Everyone had really shown far more than adequate appreciation for the very smallest acts of attention. He had appreciated those kindnesses during the week, but he felt that, in giving him those presents, most of the credit was going to him when it should have gone to the Committees.

"I have been most fortunate in having the support and help of energetic and capable Committees, who have really been responsible for all the difficult work of preparation and organization, so that my own task has really been made very easy," he added. "However, I am not going to copy the policy of sharing out enunciated by the new Government.

"In conclusion, I would say that everyone has been most helpful, and everything has conspired to help us—even the weather—so I think the old principle may still operate, that 'the Devil is good to his own'."

A very happy gathering concluded with cheers for Mr. Warrington, whose attention and kindness to everyone had made him a most popular personage, even among a galaxy of hosts whose equal it would be difficult to find anywhere in the Dominion.

The last evening was spent in gatherings of a social nature in various parts of the city. These differed in kind, but not in their degree of hospitality and good-fellowship; and, in many cases, only the necessity of having some time for packing before the trains should bear the visitors away, terminated happy gatherings of Dunedin friends and visitors from other parts. For sheer expertness in sociability, the members of the profession in Dunedin were unanimously voted by all the visitors as having no superiors anywhere.

THE LADIES' AFTERNOON TEA.

At Larnach's Castle.

The final social gathering arranged for the ladies consisted of a motor-drive to Larnach's Castle on the Friday. After inspection of the building and its valuable contents, the period furniture being a special feature, afternoon tea was served in the ballroom.

In a graceful speech, Mrs. H. F. O'Leary, Wellington, wife of the Conference President, expressed to the Dunedin ladies the thanks of the visitors for the interesting and enjoyable time they had spent during the Conference week. Mrs. O'Leary stressed the value to be derived from meeting the wives of other practitioners from all parts of the Dominion, and said how greatly the visitors had appreciated the arrangements which had been so thoughtfully made for everybody by their hostesses. Mr. A. S. Taylor, president of the Canterbury Law Society, and Mrs. Taylor, supported Mrs. O'Leary's remarks, and expressed the thanks of the Canterbury ladies.

The day was sunny and warm, and the trip to the Castle was enjoyable in every way. A detour was made on the return journey to view the beautiful gardens of Mr. and Mrs. Barling at Macandrew Bay.

The Conference Ball.

A Brilliant and Enjoyable Gathering.

On the evening of Wednesday, the Conference Ball took place in the Tudor Hall of the Savoy. It was soon observed that the Entertainment Committee had left nothing undone to ensure the enjoyment of their guests. Except for a few official guests, invitations had been strictly limited to members of the profession and their wives, daughters, or fiancées. The programme was not unduly lengthy, and when everyone joined in *Auld Lang Syne* at its conclusion, they had the happy feeling that comes from complete enjoyment and from those lingering doubts as to whether it could not have been prolonged. But everyone was charmed with the arrangements made by the Committee, and glad to have been included in such a congenial company.

The Entertainment Committee responsible for the great success achieved comprised : Messrs. A. N. Haggitt (Convener), A. C. Hanlon, K.C., A. C. Stephens, C. J. Payne, R. S. Brown, C. B. Barrowclough, C. L. Calvert, G. Gallaway, J. B. Deaker, G. M. Lloyd, E. J. Smith, E. A. Duncan, R. L. Fairmaid, and J. B. Thomson.

The Ladies Committee, part of whose duties included the Ball arrangements, were Mesdames G. Gallaway (Convener), R. R. Aspinall, J. M. Paterson, A. C. Stephens, W. D. Taylor, A. W. Buchler, R. S. Brown, Y. Bell, P. S. Anderson, A. N. Haggitt, F. B. Adams, R. G. Sinclair, E. J. Smith, and H. L. Cook, and Miss Downie Stewart.

The dark-panelled Hall was festooned with garlands of greenery, through which shone cleverly concealed multi-coloured lights. The great bowls of autumn flowers in the lounge and on the deep window-seats were much admired, and provided one of the loveliest features of the decorations for the evening.

At supper-time the curtains were drawn back, and the guests flocked through into the brilliantly-lighted Warwick room, where supper was served at small tables, the decorations being autumn blooms. The supper-room had bunches of green and yellow balloons, that shone and bobbed in the brilliant light.

The President of the Law Society of Otago, Mr. A. N. Haggitt, and Mrs. Haggitt, received the guests.

The guests of honour were Mr. Justice Kennedy and Mrs. Kennedy and Mr. Justice Callan.

Among other guests were the Attorney-General (Hon. H. G. R. Mason) ; the President of the New Zealand Law Society, Mr. H. F. O'Leary, K.C., and Mrs. O'Leary ; the Solicitor-General, Mr. H. H. Cornish, K.C., and Mrs. Cornish ; the Mayor of Dunedin, Rev. E. T. Cox, and the Mayoress ; Mr. J. W. Bartholomew, S.M., and Mrs. Bartholomew ; and Mr. H. W. Bundle, S.M., and Mrs. Bundle.

There were two debutantes at the Ball : Miss Joan Quilliam, daughter of Mr. and Mrs. R. H. Quilliam, New Plymouth, and Miss Eileen Hannan, daughter of Mr. and Mrs. J. W. Hannan, Greymouth.

In addition to the members of the Entertainment Committee, and those already mentioned, those present included Mr. G. C. Broughton and his sister, Mrs. L. J. Thomas, Invercargill ; Mr. and Mrs. G. M. Broughton, Invercargill ; Mr. and Mrs. A. R. Brown, Hamilton ; Mr. and Mrs. Leslie G. Cameron, Timaru ; Mr. and Mrs. A. H. Cavell, Christchurch ; Mr. and Mrs. W. D. Campbell and the Misses Campbell, Timaru ; Mr. and Mrs. J. C. Carroll, Te Aroha ; Mr. and Mrs. S. J. Castle, Wellington ; Mr. and Mrs. L. A. Charles, Ashburton ; Mr. and Mrs. W. T. Churchward and Miss Churchward, Blenheim ; Mr. and Mrs. Eric L. Commin, Hastings ; Mr. and Mrs. J. R. Cunningham and Miss Joan Cunningham, Christchurch ; Mr. and Mrs. W. H. Cunningham, Wellington ; Mr. and Mrs. A. E. Currie, Wellington ; Mr. and Mrs. R. A. Cuthbert, Christchurch ; Mr. and Mrs. L. E. Finch, Timaru ; Mr. and Mrs. L. W. Gee, Christchurch ; Mr. M. J. Gresson and Miss B. Gresson, Christchurch ; Mr. K. M. Gresson and Mr. T. A. Gresson ; Mr. and Mrs. J. W. Hannan and Miss Hannan, Greymouth ; Mr. and Mrs. E. P. Hay, Wellington ; Mr. L. J. H. Hensley, Christchurch ; Mrs. G. Hall-Jones, Invercargill ; Mr. A. C. Hanlon, K.C., and Miss Hanlon ; Mr. and Mrs. Brian Hewat, Invercargill ; Mr. and Mrs. H. W. Hunter, Christchurch ; Mr. and Mrs. J. D. Hutchison, Christchurch ; Mr. and Mrs. David Hutchen, New Plymouth ; Mr. and Mrs. J. G. Imlay, Invercargill ; Mr. W. B. Johnston, Gore ; Mr. and Mrs. F. A. Kitchingham, Greymouth ; Mr. W. B. T. Leete, Christchurch ; Mr. and Mrs. R. H. Livingstone, Christchurch ; Mr. and Mrs. O. C. Mazengarb, Wellington ; Mr. and Mrs. W. Middleton, New Plymouth ; Mr. and Mrs. M. H. Mitchel, Invercargill ; Mr. and Mrs. T. Milliken, Christchurch ; Mr. and Mrs. J. F. Montague, Timaru ; Mr. and Mrs. L. M. Moss, New Plymouth ; Mr. and Mrs. D. S. Murchison, Christchurch ; Mr. and Mrs. H. D. Muff and Mrs. Gormby, Christchurch ; Mr. W. H. Nichols, Wellington ; Mr. and Mrs. P. J. O'Regan, Wellington ; Mr. and Mrs. Isaac Patterson, Reefton ; Mr. and Mrs. David Perry, Wellington ; Hon. W. and Mrs. Perry, Wellington ; Mr. and Mrs. J. Crichton Prain, Invercargill ; Mr. and Mrs. R. H. Quilliam, New Plymouth ; Mr. and Mrs. M. A. Raymond, Timaru ; Mr. and Mrs. J. Robertson and Miss L. Robertson, Invercargill ; Mr. and Mrs. R. L. Ronaldson, Christchurch ; Mr. and Mrs. W. V. Rout, Nelson ; Mr. H. E. Russell, Invercargill ; Mr. and Mrs. R. M. Rutherford, and Miss Betty Rutherford, Milton ; Mr. and Mrs. W. J. Sim, Christchurch ; Mr. and Mrs. E. D. R. Smith, Rangiora ; Mr. and Mrs. R. Stout and Miss M. Elliott, Invercargill ; Mr. and Mrs. A. S. Taylor, Christchurch ; Mr. and Mrs. H. J. Thompson, Wellington ; Mr. and Mrs. N. M. Thomson, Levin ; Mr. C. E. W. Wacher, Mrs. B. C. Wacher and Miss Eileen Wacher, Christchurch ; Mr. and Mrs. W. H. Walton and Miss Walton, Timaru ; Mr. and Mrs. G. T. Weston, Christchurch ; Mr. and Mrs. A. F. Wright, Christchurch ; Mr. and Mrs. T. E. Finch, Mr. and Mrs. E. P. Hay, Wellington ; Mr. and Mrs. A. R. Wilson, Auckland ; Mr. and Mrs. H. S. Adams, Mr. and Mrs. W. G. Aitken, Mr. and Mrs. E. J. Anderson, Mr. and Mrs. M. A. Clower, Mr. and Mrs. G. W. Ferens, Mr. and Mrs. N. G. Hay, Mr. and Mrs. J. S. Monro, Mr. and Mrs. D. Ramsay, Mr. and Mrs. H. S. Ross, Mr. and Mrs. K. G. Roy, Mr. and Mrs. T. K. S. Sidey, Mr. and Mrs. J. A. Sim, Mr. and Mrs. L. R. Simpson, Mr. and Mrs. J. S. Sinclair, Mr. and Mrs. O. Stevens, Mr. and Mrs. R. G. Smith, Mr. and Mrs. D. A. Solomon, Mr. and Mrs. W. M. Taylor, Mr. and Mrs. I. L. Turnbull, Mr. and Mrs. H. H. Walker, Mr. J. G. Warrington, Mr. and Mrs. Dawson, Mr. and Mrs. Sutherland, Misses Joan McLeod, Doris Ramsay, Gwen Gallaway, Molly Birch, Violet Livingston, Cicely Ramsay, Alma Browne, Iona Irwin, Annan, Patsy Stephens, Margaret Bartholomew, and Vera Finlayson.

Mirabile Dictu*

—How the impossible was achieved: the direction of irresistible Celtic exuberance from the floor by immovable Celtic urbanity from the Chair. *Expressio unius est exclusio alterius.*

—How the Conference Committee sent the visiting wives to the cooking-school of the Otago University's Home Science faculty. *Ex abundanti cautela.*

—How some saw a distinction and/or a difference in the Mayor's unguarded reference to "sweethearts and wives." *Generalia specialibus non derogant.*

—How a B.C.L. struggled gleefully with what the late Sir John Salmond described as "the unsolved riddle of the doctrine of contributory negligence": unsolved in New Zealand, but America has supplied the answer, "*Hic, hike, hug.*"

—How continued was the keen interest in legal education shown by a certain well-known Dunedin institution. *Consuetudo loci est observanda.*

—How there was an ever-present denial of the apostolic injunction to "pursue hospitality," and an intermittent struggle on the part of visitors to keep themselves "unspotted from the world." *Communis error facit jus.*

—How a well-known King's Counsel conducted a seance and called up tangible and intangible spirits from the vasty deep. *Cuilibet in sua arte perito est credendum.*

—How a District Law Society's President dreamt he was in Rotorua, and slept blissfully on till the approach of noon. *Vigilantibus non dormientibus conferentia subveniunt.*

—How obtuse the wearers of silk can sometimes be; and how disappointed a mere stuff-gownsman may be on occasions. *Volenti non fit injuria.*

—How rabbiters dealt with the ends of justice in the days of the Otago gold boom. *De minimis non curat lex.*

—How still they gazed and still the wonder grew that one small head could carry all that Wellington barrister knew, and could remember in such detail. *Cessante rationale legis cessat ipsa lex.*

—How the blood-pressures of unnamed practitioners were taken in the surgery of an athletic medico in the blue of a Dunedin dawn. *Acta exteriora indicant interiora secreta.*

—How wise it was that the proprietors of a certain pie-cart in the Octagon did not record the names of visiting celebrities to their peripatetic emporium. *Sic utere tuo ut alienum non laedas.*

—How a new record for the half-mile was established by some members of the Bar between the Fernhill Club and the finishing post at the Grand Hotel, there to be met by the weaker members who had exercised their right of stoppage *in transitu*. *De mortuis marinis nil nisi bonum.*

—How Cargill's Castle was taken over, without the formality of a deed. *Sic itur ad astra* . . . and . . . *res ipsa loquitur.*

—How a jury vainly suppressed its emotions over the shortcomings in the forensic attire of a visiting barrister, during a breach of promise action, owing to his gesticulatory manner; and how the Judge found out the reason. *Mobilia sequuntur personam.*

* Being extracts from the annotated log of an itinerant journalist, *circa* 936.

Summary of Recent Judgments.

COURT OF APPEAL
Wellington.
1936.
Mar. 27; April 27.
Reed, J.
Blair, J.
Kennedy, J.

WRIGHT AND ANOTHER
v.
ANDERSON AND ANOTHER.

Practice—Trial—Jury Notice not Delivered in accordance with Rule—Action set down by Defendants—Court's Refusal to Enlarge Time for Delivery of Notice—Whether Discretion exercised on Judicial Principles—Whether any Jurisdiction to Enlarge or Abridge Time appointed by Rules—Code of Civil Procedure, RR. 254, 594.

Appeal from a judgment of *Ostler*, J., refusing leave to enlarge the time for delivering to the Registrar a notice requiring an action, in which appellants were the plaintiffs, to be tried before a jury and for delivering a copy of the said notice to such defendants.

A writ, claiming damages for injuries received by W. allegedly due to her being run down by a motor-car driven by A. and owned by M., was issued on December 19, 1935, and delivered to respondents on January 3, 1936, and it limited ten days after service as the time for filing a statement of defence at Wanganui and called on the defendants to attend the first sittings of the Court thereafter twenty days from service. The statement of defence was filed on February 5, 1936, out of time. The sessions at Wanganui began on February 17. Appellants did not deliver a jury notice in accordance with R. 254 of the Code of Civil Procedure, and respondents set the case down under R. 250 on February 10, and it was placed on the list for trial by a Judge alone.

The statement of claim alleged special damage, and contained a paragraph to the effect that the plaintiffs were unable to make up a complete list of the special damages sustained, but would file and deliver to the defendants a bill of particulars thereof prior to the hearing of the action. These particulars had not been delivered and the medical examination of the appellant had not been completed when the sessions commenced. Appellant's solicitor alleged the case could not be ready for trial at the sessions for which respondents had set it down, and that that was his reason for not giving the necessary notice for a jury.

The learned Judge refused to enlarge the time for applying for a jury on the grounds that the failure to set down the case for trial by a jury was due to the negligence of appellant or her solicitors and that such failure had enabled respondents to obtain the advantage of having the case tried by a Judge, of which it would be unjust to deprive them. On appeal from this order,

O. C. Mazengarb, for the appellants; **G. G. G. Watson,** for the respondents.

Held by the Court of Appeal (*Reed*, *Blair*, and *Kennedy*, JJ.), allowing the appeal, 1. That where the Legislature has contemplated that the case is one to be tried by a jury if one of the parties wishes it to be tried by a jury, no mere slip in giving notice should result in a litigant's being deprived of his right.

Smith v. Otago Presbyterian Church Board of Property, (1896) 14 N.Z.L.R. 568, and **Dunn v. Nelson,** (1902) 4 G.L.R. 389, applied, and *dicta* of *Williams*, J., therein approved.

Collins v. Vestry of Paddington, (1880) 5 Q.B.D. 368, and **Cusack v. London and North Western Railway Co.,** [1891] 1 Q.B. 347, considered.

2. That the discretion of the Court given by R. 594 of the Code of Civil Procedure to enlarge or abridge the time appointed by the Rules of the Code extended to a case where by one rule one act must be done before another.

In re Pilcher, Pilcher v. Hinds, (1879) 11 Ch.D. 905, distinguished.

Lloyd v. Great Western Dairies Co., [1907] 2 K.B. 727, referred to.

3. That no hard and fast rule for the exercise of discretion under R. 594 can be laid down, as each case must be considered solely on its merits.

Dictum by *Bowen*, L.J., in **Cusack v. London and North Western Railway Co.** (*supra*) approved, and dictum of *Jessel*, M.R., in **In re Pilcher, Pilcher v. Hinds** (*supra*) considered no longer acceptable.

Solicitors: Mazengarb, Hay, and Macalister, Wellington, for the appellants; **A. D. Brodie,** Wanganui, for the respondents.

Case Annotation: *Collins v. Vestry of Paddington*, E. & E. Digest, Vol. 2, p. 459, para. 1054; *Cusack v. London and North Western Railway Co., ibid.*, Vol. 13, p. 536, para. 878; *In re Pilcher, Pilcher v. Hinds, ibid.*, Vol. 38, p. 772, para. 1050; *Lloyd v. Great Western Dairies Co., ibid.*, p. 772, para. 1053.

SUPREME COURT
Christchurch.
1936.
March 9, 31.
Northcroft, J.

CANTERBURY UNIVERSITY COLLEGE v. WAIREWA COUNTY.

Statute—Setting apart Land for particular Trust and providing for Default in Performance of such Trust, and Warrant thereunder vesting Land in Local Body for Purpose—Repeal of Statute—Constitution of New Local Body including said Land in its Boundaries—Whether Land still affected by Trust—Lake Forsyth Drainage Act, 1894, s. 2—Lake Forsyth Lands Vesting Act, 1896, Preamble—Statutes Repeal Act, 1907, s. 2—Wairewa County Act, 1909, s. 2 (1)—Acts Interpretation Act, 1924, s. 20 (*e*) (i), (ii), (iii)—Land Transfer Act, 1915, Appendix I (4).

By the Lake Forsyth Drainage Act, 1894, a parcel of land was set apart for the purpose of letting out Lake Forsyth into the sea in times of flood, and power was given to the Governor to grant such land to the Akaroa County Council for the purposes aforesaid. A certificate of title, issued to that body under Warrant of the Governor under the said Act, stated that the said land was in the said Warrant expressed to have been originally acquired under the said Act.

The Lake Forsyth Lands Vesting Act, 1896, recited the intention of the Akaroa County Council to erect drainage works in connection with Lake Forsyth and vested in it certain other lands.

The Statutes Repeal Act, 1907, repealed, *inter alia*, the Lake Forsyth Drainage Act, 1894.

The Wairewa County Act, 1907, constituted the defendant Corporation, the boundaries of which included the lands already referred to, but while it expressly transferred from the Akaroa County the lands affected by the said Act of 1896, it made no reference to the lands acquired by that county under the said Act of 1894.

The District Land Registrar recorded upon the certificate of title of these last-mentioned lands a memorial that by virtue of the Wairewa County Act, 1909, the above land had become vested in the defendants.

On an originating summons taken out by the plaintiff for a declaratory order that the said land was held by the defendants upon trust as an endowment to provide funds for the purpose of letting out Lake Forsyth into the sea in times of flood.

M. J. Gresson, for the plaintiff; **A. F. Wright,** for the defendants.

Held, 1. That by virtue of the Land Transfer Act, 1915, Appendix I (4), the reference in the certificate of title to the Act of 1894 had the effect of impressing the land in question with the trusts referred to in that Act.

2. That by virtue of the Acts Interpretation Act, 1924, s. 20 (*e*) (i), (ii), (iii), whatever the character of the title possessed by the defendants or their predecessors at the date of the repeal of the Lake Forsyth Drainage Act, 1894, the trusts affecting these lands were preserved and the same character still attached to the title after the repeal as it did before.

Quaere, What was the appropriate remedy for failure to carry out the said trusts, the provisions in the event of default by the county in the performance of its duty contained in the said Act of 1894 having been repealed?

Solicitors: Garrick, Cowlishaw, and Co., Christchurch, for the plaintiff; **Duncan, Cotterill, and Co.,** Christchurch, for the defendants.

NOTE:—For the Acts Interpretation Act, 1924, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 8, title *Statutes*, p. 568, Land Transfer Act, 1915, *ibid.*, Vol. 7, title *Real Property and Chattels Real*, p. 1162.

SUPREME COURT
Napier.
1936.
Feb. 20; Mar. 18.
Myers, C.J.

IN RE BEAMISH (DECD.), GUARDIAN TRUST AND EXECUTORS COMPANY OF NEW ZEALAND, LIMITED v. BIDDLES AND OTHERS.

Will—Construction—Absolute Gift of Share—Engrafted limiting Trusts whereby Interests in event which happened became Part of Residue—Whether Trusts Failed, and whether Absolute Gift or Intestacy—Whether Residuary Clause made a Disposition of Share—In what Shares remaining Residuary Legatees took.

By cl. 5 of his will the testator directed his trustees, *inter alia*, to hold portion of a certain fund upon trust for William Beamish

> "subject however as to the respective shares of the said William Beamish . . . to the trusts and restrictions of and concerning such respective shares hereinafter declared and contained."

The residue of the estate was disposed of by cl. 6, which was in the following terms:—

> "I direct that my trustees shall stand possessed of the residue of my estate upon trust for the said William Beamish Margaret Angela Beamish Henry Evanson Beamish Jane Wallis and Fanny Lowry Barcroft in the proportions of two-fifths thereof to and between such of the said Jane Wallis and Fanny Lowry Barcroft as shall survive me in equal shares and of three-fifths to and among such of the said William Beamish Margaret Angela Beamish and Henry Evanson Beamish as shall survive me in equal shares but subject as to the respective shares of the said Fanny Lowry Barcroft William Beamish and Margaret Angela Beamish to the trusts and restrictions of and concerning such respective shares hereinafter declared and contained."

The trusts and restrictions referred to in cls. 5 and 6 (so far as William was concerned) were contained in cl. 9, which was as follows:

> "I direct with reference to the share of the said William Beamish in the said trust fund and with reference to all other moneys falling to the said William Beamish either directly or indirectly under the provisions of this my will that the same shall not vest absolutely in the said William Beamish but my trustees shall invest the same in their own names in any of the investments hereinbefore authorized and shall pay the annual income and profits thereof to the said William Beamish during all the days and years of his life with power however to my trustees to make such payments or allowances to the said William Beamish from the capital so invested as my trustees shall in their absolute discretion think proper and subject to the foregoing provisions in favour of the said William Beamish shall stand possessed of all the interests of the said William Beamish under this my will upon trust for such of the children of the said William Beamish (if any) as shall attain the age of twenty-one years or being female shall attain that age or marry under that age in equal shares absolutely and failing any such children then such interests shall form part of the residue of my estate and be disposed of accordingly."

All the residuary legatees survived the testator. William died on September 15, 1935, without ever having had issue.

On an originating summons by the plaintiff, the trustee of the will, for its interpretation,

A. L. Martin, for the plaintiff; **Duff,** for all the first defendants, except Olive Isabel Humphries; **Hallett,** for the second defendants; **M. R. Grant,** for the third defendant; **Bate,** for the fourth defendant; **L. W. Willis,** for the fifth defendant; **Green,** for the sixth defendant.

Held, 1. That the trusts engrafted on the absolute gift had not failed; and that there was no intestacy as to William's share.

2. That on the death of William what was left of his share went to the other residuary legatees in accordance with cl. 6 of the will, subject to the trusts and restrictions imposed by the will in respect of the interest of any particular legatee.

3. That on the testator's death each residuary legatee was entitled to one-fifth, and that as each of the settled shares fell into residue, that share (with accruals) was divisible equally amongst the survivors. Hence, on William's death, each of the survivors was entitled to one-fourth of his share with its accruals.

In re Hamilton Gilmer (deceased), [1922] N.Z.L.R. 411, **In re Cohen, Cohen v. Cohen,** [1915] W.N. 361, and **Lassence v. Tierney,** (1849) 1 Mac. & G. 551, 41 E.R. 1379, distinguished.

In re Palmer, Palmer v. Answorth, [1893] 3 Ch. 369, and **In re Allan, Dow v. Cassaigne,** [1903] 1 Ch. 276, applied.

Method of application of **In re Wand, Escritt v. Wand,** [1907] 1 Ch. 391, discussed.

Solicitors: **Carlile, McLean, Scannell, and Wood,** Napier, for the plaintiff.

SUPREME COURT
Auckland.
1936.
March 9, 12.
Fair, J.

POOLEY v. POOLEY.

Divorce and Matrimonial Causes—Alimony and Maintenance—Permanent Maintenance—Husband Respondent making Regular but Diminishing Periodical Payments during Four Years—Wife's Petition for Permanent Maintenance Four Years after Decree Absolute—Whether within a Reasonable Time after such Decree.

Petition for permanent maintenance.

A wife obtained a decree absolute of divorce and custody of the child of the marriage in a suit against her husband in September, 1931. About the time of the decree respondent agreed to pay £2 a week towards the maintenance of the child. He subsequently reduced this to £1 10s., and, in January, 1936, to £1. In January, 1936, the petitioner filed a petition for permanent maintenance.

Singer, for the petitioner; **Sullivan,** for the respondent.

Held, That looking at the facts that she was receiving periodical payments from her husband regularly for over four years, that the respondent was not prejudiced by the delay, and that the petitioner took steps to file her petition within four days from the reduction of the weekly payment below £1 10s., the application was made within a reasonable time after the pronouncing of the decree.

Scott v. Scott, [1921] P. 107, and **Legge v. Legge,** (1928) 45 T.L.R. 157, referred to.

Solicitors: **R. A. Singer,** Auckland, for the petitioner; **J. J. Sullivan,** Auckland, for the respondent.

Case Annotation: *Scott v. Scott,* E. & E. Digest, Vol. 27, p. 510, para. 5486; *Legge v. Legge, Ibid.,* Supplement No. 10, Vol. 27, No. 5487a.

SUPREME COURT
Greymouth.
1936.
Feb. 25; Mar. 5.
Northcroft, J.

COGSWELL v. WALKER.

Licensing—Offences—Sale of Liquor—Liquor supplied by Licensee to a Lodger for Consumption by Lodger's Guest—Whether Lodger's previous personal Knowledge necessary to constitute him a *bona fide* Guest—Licensing Act, 1908, s. 190.

A Stipendiary Magistrate convicted a licensee of (*a*) selling liquor, (*b*) opening her premises for the sale of liquor, (*c*) exposing liquor for sale, all during the time her premises were required to be closed. The defence raised was that the liquor was sold to a lodger for consumption by a guest of that lodger. The learned Magistrate found that the purchase of the liquor was genuinely by two persons who had the qualifications of lodgers, but that Burrows who came in with Balkind, a guest of one of the lodgers, was not a *bona fide* guest of either lodger, as neither Burrows nor either of the lodgers claimed that he was a guest of either of them, although Burrows was invited to drink by both lodgers.

On appeal from the conviction,

Kitchingham, for the informant; **Hannan,** for the defendant.

Held, 1. That this was not a case as in *Leslie v. Clark,* (1903) 22 N.Z.L.R. 967, of the qualification of a lodger being used to justify a sale which was really to a person who was not a lodger, and it was unimportant that the lodger and his guest were not previously known to each other; and the licensee was authorized to make the sale.

Locke v. McCrorie, [1922] N.Z.L.R. 1137, followed.

Leslie v. Clark, (1903) 22 N.Z.L.R. 967, distinguished.

Semble, That the Magistrate's view would have justified a conviction under s. 194.

Solicitors: **F. A. Kitchingham,** Greymouth, for the informant; **Hannan and Seddon,** Greymouth, for the defendant.

SUPREME COURT
Blenheim.
1936.
Mar. 11; April 21.
Smith, J.

IN RE CONWAY (A BANKRUPT).

Bankruptcy—Order and Disposition—Reputed Ownership—Goods held by Bankrupt, a Retail Trader, as Agent, on Consignment for Sale or Return—Other Goods held as Agent on Consignment for Sale on Terms as Directed by Principal—Whether such Goods held by Bankrupt "in the ordinary course of his business"—Bankruptcy Act, 1908, s. 61 (c).

Where a trader becomes the agent of a principal for the sale of goods on consignment, without authority to buy for himself but with authority to sell retail to the public, and they were on sale or return in the sense that he was to return them if not sold but was not to buy them, but there was nothing, except one vague and limited advertisement in the course of seven years' trading on his own account, to lead creditors or customers to think that the goods were other than the property of the trader, such goods (not being goods in respect of which any custom existed whereby the owners left them on consignment in retail shops or comprised in any of the classes described in the Seventh Schedule to the Chattels Transfer Act, 1924, which can be the subject of customary hire-purchase agreements) were held by him at the commencement of his bankruptcy under such circumstances that he was "the reputed owner thereof."

Ex parte Bright, In re Smith, (1879) 10 Ch.D. 566, **Weiner v. Harris,** [1910] 1 K.B. 285, and **Ex parte Watkins, In re Couston,** (1873) L.R. 8 Ch. 520, applied.

In re William Watson and Co., Ex parte Atkin Brothers, [1904] 2 K.B. 753, distinguished on the facts, and considered.

Whether consignment goods are exempted from the operation of s. 61 (c) by s. 61 (c) (iii), both of the Bankruptcy Act, 1908, as being "held by the bankrupt in the ordinary course of his business," is a mixed question of fact and law to be determined upon the circumstances of each case.

Where the business is carried on by an open offering of goods to the public through a shop in the retail trade, the ordinary course of business must include the nature of the representation of that business to the public, as well as its internal organization and arrangements, and the nature of the representation must include the signs on the business premises, the advertisements issued, and the nature of the goods dealt in, all these being facts capable of being generally known.

If the trader be dealing in goods which are not his property but the property of the person for whom he acts as agent, then, if neither the trader nor his principal takes any steps to correct the impression drawn by customers or creditors from the facts relating to the ordinary course of business which can be generally known, neither the trader nor his principal can complain if the "ordinary course of business" for the purposes of s. 61 (c) (iii) be judged objectively by reference to those facts and not subjectively by reference to facts which are not capable of being generally known—*viz.*, those facts which are privately known to the trader and his principal.

Counsel: **Churchward,** for the Official Assignee; **J. T. Watts,** for the objecting creditors.

Solicitors: **Burden and Churchward,** Blenheim, for Assignee; **Hunter and Watts,** Christchurch, for creditors.

Case Annotation: *Ex parte Bright, In re Smith,* E. & E. Digest, Vol. 5, p. 798, para. 6818; *Weiner v. Harris, ibid.,* Vol. 39, p. 509, para. 1262; *Ex parte Watkins, In re Couston, ibid.,* Vol. 5, p. 808, para. 6898; *In re William Watson and Co., Ex parte Atkin Brothers, ibid.,* p. 787, para. 6746.

NOTE:—For the Bankruptcy Act, 1908, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 1, title *Bankruptcy,* p. 466.

London Letter.

By Air Mail.

Temple, London,
March 2, 1936.

My dear N.Z.,

This has been a dull month in London from all points of view. Not only has there been a slackening of legal work, partly, perhaps, owing to the absence of many of the King's Bench Judges on circuit, but also the weather has contributed to the general drabness of things by being alternately cold and wet with a generous sprinkling of fog. The Inner Temple Garden, which usually heralds the coming of Spring by a fine display of crocuses at this time of year, has so far been able to produce only a few snowdrops and winter aconites.

The New Silks.—Sixteen members of the Junior Bar have this month been appointed to be His Majesty's Counsel learned in the law. They might perhaps be described, not disrespectfully, as a good lot, and are representative of almost all branches of legal work at the Bar. Probably the best known to you is Cyril Asquith, son of the late Earl of Oxford and Asquith, who has practised to a considerable extent before the Judicial Committee of the Privy Council. Amongst the others, there are, of the Common Law Bar, Harold Murphy, son of Murphy, J., St. John Field, an expert in libel cases, and Tristram Beresford, well known in running-down cases; of the Divorce Bar, Noel Middleton; of the Chancery Bar, Wynn Parry; of the Patent Bar, K. R. Swan; and of the Admiralty Bar, St. Clair Pilcher, one time Secretary of the Pegasus Club, and Hayward, whose practical experience at sea fits him peculiarly for his work in the Admiralty Courts. The usual ceremony of calling within the Bar, which I think I have described to you before, was observed, and the new silks, having put away their knee-breeches, lace frills, and full-bottomed wigs, are now, we hope, successfully pursuing their ways in the high estate to which they have been called. It is of course recognized as a decided risk to take silk, but the new appointees are, I think without exception, of such tried merit and ability, that one can hardly doubt their success.

Cases of the Month.—Apart from one or two cases which the newspapers call sensational, but which possess little legal merit, there has, I think, been no case of outstanding interest during the past month. There were, however, in the early part of the month, several cases of an unusual type, in which common informers sued for penalties under the Sunday Observance Act, 1780. In one of these, proceedings were brought in respect of Sunday boxing at The Ring, the famous old boxing stadium in Blackfriars Road, and £400 penalties were claimed and awarded against the general manager. In another the defendants were the *Evening Standard* Company, the alleged breach of the statute in this case being the advertising of All-in Wrestling competitions at Hammersmith. The defence to these latter proceedings was that admission was free, and that, in view of the finding in *Williams v. Wright*, (1897) 13 T.L.R. 551, the holding of such competitions on a Sunday created no offence; but the Court held that since, although admission was free, a charge was made for seats, the competition was clearly run for private profit, and that in any case the statute said nothing about this, and judgment was given against the defendants for £850.

Another case of mild interest was a County Court action in which a local authority was sued for damages for injury caused by a traffic-stud at a pedestrian-crossing in the roadway, which came loose, was kicked up by a car, and bounced off against the plaintiff's bicycle. Naturally the defendant contended that this was a case of non-feasance for which it, as a local authority, was not liable, but the County Court Judge held that the local authority, having placed the traffic-stud on the roadway, was under a duty to see that it was properly fixed there, and that, having failed in that duty, it was liable for the damage caused by such failure.

A reminder as to the position of the Judicial Committee of the Privy Council as a Court of Criminal Appeal was given by the Board the other day in the case of *Nazier Ahmad v. The King-Emperor*, on a petition from India for special leave to appeal. Lord Blanesburgh said that the Board wished to reaffirm the rule that special leave to appeal in a criminal case would be granted only in very exceptional circumstances. In that case the Board would advise the granting of leave because the case turned on the construction of a section in the Indian Code of Criminal Procedure, which was of vital importance to accused persons, and about which there had been a difference of opinion in the High Courts in India, and it was therefore a matter of importance that this question should be settled; but this was not to be taken as weakening the rule that the Judicial Committee was not a Court of Criminal Appeal, and that special leave to appeal in a criminal matter would not ordinarily be given.

Divorce Reform.—Mr. A. P. Herbert, whose return to Parliament last election as a representative of Oxford University caused something of a sensation, has introduced what he calls a Marriage Bill to reform the Divorce Law. The Bill provides that there should be no divorce within the first five years of marriage, but after that period the grounds of divorce should be considerably extended. There is also a provision for a Court of Conciliation, composed of selected Judges who should inquire into the circumstances of persons seeking a divorce. The general opinion seems to be that the Bill is not likely to have rapid, or any, success. Many previous attempts have been made to alter the divorce laws of this country, but all have met with failure, in recent years at least. Why this should be so is somewhat of a mystery, since there would appear to be few persons who do not readily admit that the present condition of affairs is anything but satisfactory. It may be that the difficulty is to reach an agreement as to the kind of reform to be carried out. I, personally, would recommend an adaptation of your divorce laws, and it would not be the first time that you have given a lead to the Old Country.

Judicial Humour.—Lord Darling is known, I suppose, the world over as one of the outstanding judicial humourists of recent years, and many are the stories that have been told of him. The following, which was told to me the other day, was new to me, and is, I hope, new to you. One day a well-known silk, who had a reputation for indulging in long and not entirely relevant speeches whenever an opportunity occurred, was waiting in his Court during the hearing of the preceding case, when Darling, J. (as he was then), said to him, "Would you tell me, Mr. So-and-So, without undue prolixity, if you are in the next case?"

Yours ever,
H. A. P.

Legal Literature.

The All England Law Reports (Annotated). Consulting Editor, ROLAND BURROWS, K.C., Recorder of Cambridge, Managing Editor of Halsbury's Laws of England, Hailsham Edition; General Editor, W. J. WILLIAMS, B.A., of Lincoln's Inn, Barrister-at-Law.

A REVIEW BY J. D. WILLIS, LL.M.

Of the many new works brought out for the benefit of the legal profession within recent years, the *All England Law Reports* (*Annotated*) represent one of the greatest advances in legal publishing. Recognizing that the busy practitioner requires reports of new decisions as soon as practicable, the proprietors of the *Law Journal* (London) have introduced this new series of High Court Reports, which has several novel and unique features. All cases are reported in full within a few days after delivery of the judgment, with the usual edited headnote. In addition, each weekly part of the *Reports* contains a short digest of cases reported for that week.

Important as it is to have such a speedy system of reporting, the feature of the new *Reports* which will probably appeal most to the ordinary practitioner, is the Editorial Note under the headnote, explaining the effect on the existing law of the judgment reported. The publishers justly claim that this invaluable feature is unique in the history of Law Reporting and its usefulness cannot indeed be over-estimated. The cases referred to in the judgment are conveniently tabulated underneath the Editorial note together with "Keyed up references" giving direct reference to Halsbury and the English and Empire Digest. The result therefore is that one can see at a glance the headnote, the Editorial comment on the effect of the judgment, and the cases referred to. The judgment itself follows at full length. The Consulting Editor is Mr. Roland Burrows, K.C., Recorder of Cambridge, and Managing Editor of Halsbury's Laws of England (Hailsham Edition). The Reports are of cases decided in the House of Lords, the Privy Council, and all divisions of the Supreme Courts of Special Jurisdiction.

The excellence of the new *Reports* is so apparent that one feels diffident about offering even a small criticism, but this reviewer feels that the publishers might with advantage consider the use of thinner paper on which to print them, as a full year's *Reports* will otherwise become rather bulky. That, however, is a slight criticism, and the publishers are to be heartily congratulated on the new work. Of the many excellent legal publications which have been published, this must certainly be deemed one of the best. These latest *Reports* can therefore be confidently recommended to practitioners, who will find the judgments reported with truly remarkable celerity, with the most useful Editorial comments, and the other features already explained. There seems little doubt that the *Reports*, to be cited "[1936] 1 All E.R.," will find their way into every practitioner's library.

Tactics in Court.

By WILFRED BLACKET, K.C.

A Personal Question.—It should be unnecessary to tell readers of the JOURNAL that the first rule of cross-examination is: "Never ask a question the answer to which may bring a damaging reply." It was a disregard of this rule that led to loud laughter in Court when a solicitor of West Maitland was cross-examining the plaintiff in a trespass case. The latter was a stolid country man who gave his answers very slowly and emphatically: the solicitor was notoriously not a brilliant person, and his head was of great breadth where his ears occurred. He was questioning the witness very minutely as to the thickness of a top rail that a trespassing bull had broken. He found that it was thicker than his own thumb, his wrist, his forearm, and his upper arm, and then asked very fiercely, "Well now, was it as thick as my head?" and the witness, looking intently at him, very slowly said, "Oh no, it was not nearly so thick as that." And if you think over the question you will see that an affirmative answer would not have suited the solicitor much better. It was a thick-headed sort of question anyhow.

Terrors of Hell.—David Buchanan crashed once even more badly than the other man who had a thick head, but in his case he brought his own client down to disaster by his question. She was respondent in divorce, and she gave her evidence very well and with convincing indignation denied the misconduct alleged against her. David was highly elated, and in much triumph put the comprehensive question whether she ever in her life had been guilty of adultery with this man and she gave the desired answer without hesitation. But still he was not satisfied, and so he called upon her on the oath she had taken, and he said: "As you hope to escape the flaming fires of eternal torture that are waiting in Hell for all liars,"—oh, he was a good Presbyterian, was David—"did ever you commit that terrible sin?" And when it was put that way she thought that perhaps maybe sometime she might have done so—once.

"**Not Understood.**"—This truthful tale will conclude with a moral, so you had better look out. At Newcastle, New South Wales, Judge Wilkinson was trying a District Court jury case. It was a serial. Counsel on each side had not the smallest respect for one another, and the Judge seemed to agree with all their criticisms of each others learning, intelligence, and conduct. The contest was under "all in" rules, and as the Court sat till ten o'clock every night, the local nightly variety-entertainment was poorly attended. The facts which obtruded persistently, but not frequently, during the course of the altercation, related to an action brought by a doctor against a Friendly Society for wrongful dismissal. Some of the evidence was distinctly humorous. For instance, at the Society's Dispensary there were two doctors in attendance and each had his name on one of the pair of swing doors and when he went out he would pull back the other man's half of the door so that the name would not be seen by inquisitive passers-by, and would leave his own half closed so that the public generally would know what his name was. They went in and out, as it was said, very frequently, and so the day's business seemed largely to consist of a procession of two doctors passing through a door with one of them going the other way. You see what I mean? As a defence to the action the defendant

set up among other footling complaints that the plaintiff, upon being asked to dress the wounded thumb of one Jones, had turned a rich shade of olive green with horror, and had been so greatly agitated that he could scarcely perform the work. Counsel for the defendant exhausted all his full hand of Hibernian imagery and oratory in describing the incident, and in reply plaintiff's counsel played the joker by producing the following verses :

There was a doctor stout and strong
Who could without alarm
Cut off a foot, or hand, or leg,
Or amputate an arm ;
And yet when Jones besought his aid
He was quite overcome,
Because he saw some drops of blood
Bedewing Jones's thumb.

" Let me go home," he sadly cried,
" This sight I can't endure.
Some other doctor must be found
This patient's ills to cure.
I walked the Hospitals for years
And ne'er was overcome,
But ask me not to look again
At Jones's bloody thumb."

The jury disagreed, two and two, and the defendant's pair were against the plaintiff because they had never heard of sarcasm ; did not, in fact, know that there was such a horse in the race, so to speak, and thought that the lines contained the plaintiff's own account of the facts of the matter. And the moral of this tale is : " Don't be too flash with your sarcasm at Newcastle, New South Wales."

They Meant Well.—The first time I went to Cobar, New South Wales, I was briefed in a very heavy criminal and also had a Crown brief to defend " Billy the Black," an aboriginal. The solicitor who had briefed me took me around the day before the Court " to see the place," and incidentally introduced me to nearly all the jurors on the Quarter Sessions panel for next day. They all of them said quite frankly that they would convict Billy of any crime the Crown alleged against him. He was clearly not a popular fancy. The facts of his case were in a nutshell, and could be kept there. On the outskirts of Cobar there was a cottage where there lived an elderly woman who was popular, in a way, so to speak. At midnight she was awakened by some sound and saw Billy standing beside her bed. She took a rifle from beside her bed and Billy got out at the window by which he had broken and entered. No food or other property was missing. The first count of the indictment was for breaking and entering with intent to assault : the second charged an intent to steal. I feared the second count because all the jury knew of his previous convictions for stealing. It was a difficult case for the Crown, and also for me : because if they had convicted on either count it could not well be said that there was no evidence to support the conviction, and so I, stressing the uncertainty of the intent, several times, sadly admitted that on the facts he undoubtedly was guilty of being illegally on the premises. The jury above all things anxious to make a certain and reliable conviction, free from all points of law, convicted him of being " illegally on the premises," and so of course that night the children of Billy the Black " ran to greet their sire's return and climbed his knee the envied kiss to share," and the disconsolate jurors had to put up with what seemed to them a very regrettable practical joke.

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