New Zealand
Law Journal
Incorporating "Butterworth's Fortnightly Notes."

"We are living in days when much fear is expressed for the stability of our institutions because of what we see is happening in other countries. I believe that events in other countries have little significance so far as concerns our own institutions. The practical genius of our people will insist that we retain our institutions for the all-sufficing reason that they are suited to our own genius, whether or not others may consider them logical. The jurisprudence which we have evolved, and the profound and instinctive respect of our people for it, form the most significant element in our Empire to-day, and the surest pledge of its greatness in the future."

—HON. H. G. R. MASON, Attorney-General, at the opening of the new Law Library, Auckland.

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"Adjustable Debts" of a Home Applicant.

SECTION 55 of the Mortgagors and Lessees Rehabilitation Act, 1936, makes it unlawful, except with the leave of the Court, for any mortgagee, lessor, creditor, or any other person whomsoever to do in respect of the mortgagor, lessor, creditor, or lessee, or of any guarantor under a mortgage or lease, or in respect of any property of the mortgagor or lessee or of any such guarantor, any of the acts referred to in subs. 3 of the section, or to continue or complete the doing of any such act (*a*) while an application for the adjustment of the liabilities of any mortgagor, lessee, or guarantor under any mortgage or lease is pending under the Act, or (*b*) until after January 31, 1937, with respect to every such mortgagor, lessee, or guarantor under a mortgage or lease to which the Act applies, in respect of whose liabilities no application has been filed under the Act.

Among the acts detailed in subs. 3 of s. 55 are the commencement or continuation of proceedings in any Court for the enforcement directly or indirectly of any adjustable debt secured by an adjustable security; the issue or proceeding with any process of execution in pursuance of any judgment, decree, or order of any Court obtained in respect of an adjustable debt or in respect of a debt secured by an adjustable security, or the issue or proceeding with any judgment summons in respect of any such judgment (except where fraud is alleged) against the judgment debtor; and the filing or proceeding with a bankruptcy petition or a winding-up petition in respect of any adjustable debt or of any debt secured by an adjustable security.

A judgment of importance to practitioners was recently delivered by Mr. Justice Blair in relation to the protection given to certain debtors by s. 55: *Re Calcinai (a Debtor), Ex parte Calcinai*, [1936] N.Z.L.R. 1022. For the convenience of our readers we propose to summarize this judgment as the report will not be available to them within the coming fortnight.

The facts may be stated briefly. In 1923 the debtor purchased a house property subject to two mortgages. In 1932, the debtor having made default in his payments under the second mortgage, his father (to whom we shall refer as "the creditor") advanced to him an amount sufficient for the repayment of that mortgage. The creditor, aware of the purpose for which he advanced the money, paid it directly to the mortgagee. The loan to the debtor was not secured. The debtor still occupies the property.

The creditor petitioned for an order for adjudication of the debtor, the act of bankruptcy alleged being a return of *nulla bona* on a distress warrant issue in respect of a judgment for the amount of the loan and costs. There was no dispute as to the debt, the act of bankruptcy, or the formalities necessary to make an order of adjudication. But opposition to an order of adjudication was based on s. 55 of the Mortgagors and Lessees Rehabilitation Act, 1936, because, if the debt was an "adjustable debt" as defined by s. 5 of that Act, no order for adjudication could be made. That definition is as follows:

> "'Adjustable debts' means unsecured debts or liabilities, present or future, certain or contingent, arising out of any liability or obligation under an adjustable security or adjustable lease or under any guarantee in respect thereof; and, in the case of a farmer applicant, includes all his other unsecured debts or liabilities; and, *in the case of a home applicant*, includes such of his other unsecured debts or liabilities as arise directly out of the acquisition, extension, improvement, or maintenance of the premises occupied by him as a dwelling."

A "home applicant" means an applicant, as defined by s. 4, who is the mortgagor under a home mortgage, to which the Act applies, *i.e.*, a mortgage granted over any premises that on October 1, 1936, were used by the mortgagor, not being a farmer, exclusively or principally for his own occupation as a dwelling; or is the lessee under a home lease to which the Act applies, "home lease" having a meaning corresponding to that of a "home mortgage."

(The incidental words "adjustable security," "adjustable lease," "guarantee," "farmer applicant," "applicant," "mortgage," "mortgagor," "farmer," and "lessee," appearing in the above definitions, are themselves respectively defined in s. 4 of the Act, to which reference can be made.)

The debt in question, being an unsecured one, was not within the definition unless the debtor were a "home applicant," which, without deciding the point, the learned Judge in debtor's favour assumed he was.

For the debtor, it was submitted that the concluding sentence of the definition of "adjustable debts" covers a new unsecured debt created for the purpose of discharging an encumbrance existing or created on the property when it was first acquired. But, for the creditor, it was strongly submitted that the second mortgage, having been discharged and thus being non-existent since 1932, was not an "adjustable security" within the definition of those words in s. 4 of the Act.

The short question to be decided was, therefore, whether, the new unsecured debt having been incurred to a stranger to the original acquisition of the property, the payment made by way of loan by such stranger to the purchaser of that property for the purpose of discharging an original encumbrance on the property constituted an unsecured liability *arising directly* out of the acquisition of the property. His Honour could not so construe the payment made by the creditor. In his opinion:

> "There can be no doubt that the mortgage (quite outside the fact that it was on the property when acquired) would be an adjustable debt because it was secured; and likewise

any unsecured advance for the purpose of acquiring the property or of effecting improvements to it would be within the concluding words of the definition of 'adjustable debts.' ... Had the advance been made by [the creditor] for the purpose of helping his son to acquire the property when it was acquired, it would have been an unsecured liability arising directly out of the acquisition."

The liability of the creditor had no existence at the time when the property was acquired, and, at the very most, it could only be claimed that it arose indirectly out of the acquisition.

However useful the application of the foregoing decision in *Calcinai's* case may be in relation to other judgments sought to be enforced in relation to the unsecured debts of a mortgagor or lessee under a "home mortgage" or a lessee under a "home lease" within the meanings given to those words respectively by s. 4 of the Act, His Honour's construction of s. 55 in its relation thereto is of great assistance at the present time. He said:

"In my view, for the purpose of ascertaining the liabilities covered by or entitled to the benefit of s. 55 of the 1936 Act, we are confined, when we are considering liabilities relating to the acquisition of the property, to such liabilities as came into being when the property was acquired. A different point of time is looked at when we are considering liabilities incurred for improvements."

And he added,

"The statute gives a benefit in the case of unsecured debts only to liabilities directly arising, and, inferentially, excludes indirect liabilities."

In the matter before him, the learned Judge held that the particular unsecured liability was unquestionably an indirect one, and, that being so, s. 55 had no application; and an order for adjudication was accordingly made.

The Season's Greetings.

THE tenseness and anxiety of the days through which the peoples of the British Commonwealth are passing as this, the last issue of the JOURNAL for the year, goes to press, render it inopportune for us to regale our readers with the more seasonable fare with which we have provided them in the corresponding numbers in recent years. And it is not our intention to comment on the present constitutional situation, since we (in common with the rest of the world, outside strictly official circles, at this time of writing) have none of the facts which will form the basis of any history that is now being made.

Nothing, however, can deny us the pleasurable duty of thanking all our contributors and all others, who, with them, have made the task of the Editor so congenial during the year now closing. We are happy to know that the profession in general is looking towards the coming year's work in more comfortable anticipation than has been their lot at the end of each of the recent depressing years.

There remain to us the privilege and the happy duty of wishing all our readers, our contributors, and the members of the profession as a whole, a very enjoyable respite from their daily tasks during the coming vacation, and, in addition, all the present joys and prospective happiness and prosperity that are summed up in the age-old but ever comprehensive wish:

A MERRY CHRISTMAS AND A HAPPY NEW YEAR.

Summary of Recent Judgments.

JUDICIAL COMMITTEE.
1936.
July 27, Oct. 15.
Lord Russell of Killowen
Lord Macmillan
Lord Alness
Sir Lyman Poore Duff
Sir George Rich.

VINCENT
v.
TAURANGA ELECTRIC-POWER BOARD.

Electric-power Board—Injury suffered by Workman—Alternative Causes of Action—Breach of Implied Contract and of Statutory Duty—Action commenced Twenty-two Months after Accident—Whether Power Board protected by Statutory Limitation of Six Months for Commencement of Action—Electric-power Boards Act, 1925, s. 127.

V. claimed against the Power Board for general and special damages by reason of personal injuries sustained while he was working as the Board's employee, upon a transformer operated by the Board in connection with its electric-power lines. His claim was in respect of two causes of action, *viz.* (*a*) that in breach of the implied terms of his contract of employment, the Board did not provide the necessary safeguards required thereby, and, in particular, the necessary safety apparatus and disconnection from the source of supply of the transformer upon which he was working at the time of the accident, to render it effectually safe as required by Reg. 178 of the Electric-power Supply Regulations 1927; and (*b*) that the Power Board was under an absolute statutory duty to comply with each and all of the said regulations made under the Public Works Act, 1908, as amended by s. 2 of the Amendment Act, 1911, and that by reason and in consequence of its non-compliance with Reg. 178 he received the injury and suffered the damage in respect of which he sued.

The action was not commenced until twenty-two months after the accident.

In the Supreme Court, it was held by *Smith*, J., that in so far as V.'s claim rested upon the Board's omission to fulfil a statutory duty, s. 127 of the Electric-power Board's Act, 1925, was a complete bar to such an action; and, that, if, at the trial of the action, V. could succeed in establishing the implied contract pleaded by him, then, in such a case, s. 127 would not operate as a bar to the action.

From the first part of the judgment, V. appealed; and, from the second part, the Board cross-appealed.

The Court of Appeal, dismissing the appeal and allowing the cross-appeal, held that, however the action might be framed, the substance of what was complained of was the breach of a statutory duty; and, as s. 127 of the Electric-power Board's Act, 1925, applied, the action was time-barred.

On appeal *in forma pauperis* to the Judicial Committee of His Majesty's Privy Council,

W. N. Stable, K.C., **J. Buckley**, and **J. Platts-Mills**, for the appellants; **Hon. S. O. Henn-Collins**, K.C., and **Alexander Ross**, for the respondent.

Held, 1. That on the proper construction of s. 127 of the Electric-power Boards Act, 1925, subs. (1) was negative and forbade an action of the character there described, unless the plaintiff had complied with the three conditions precedent therein set forth; and subs. (2) was positive and provided that every action described in subs. (1) should be commenced within six months after the cause of action first arose.

2. That, the action was against the Board for something done or omitted to be done in the execution or intended execution of the Electric-power Boards Act, 1925, and it mattered not whether appellant's claim be regarded as based on implied contract or on tort, as both sounded alike in breach of Reg. 178 of the Electrical Supply Regulations, 1927.

3. That, placing the terms of s. 127 of the Electric-power Boards Act, 1925, *vis-a-vis* of the proceedings in this case, appellant's case was out of time.

Judgment of the Court of Appeal, reported [1933] N.Z.L.R. 902, affirmed.

Solicitors: T. E. Crocker and Son, London, for the appellants; **Wray, Smith, and Halford**, London, for the respondent.

COURT OF ARBITRATION
Auckland.
1936.
Aug. 19, Nov. 19.
Page, J.

EDWARDS v. AUCKLAND CITY CORPORATION.

Workers' Compensation—Average Weekly Earnings—One Day's Work in each Week—Ratepayer working for Corporation in Liquidation of Arrears of Rates—Injury in Course of such Work—Basis of Computation of Compensation—Workers' Compensation Act, 1922, s. 6.

Plaintiff, who was indebted to the defendant for arrears of rates, availed himself of a scheme whereby ratepayers in arrears with their rates were enabled to work out their indebtedness by being given one day's work in each week, the money earned by each such ratepayer to be credited to his account for rates. Plaintiff was to be credited with 15s. 8d. for each day on which he worked. He was to work on a day in each week selected by himself, and, save for the two weeks in which the Christmas and New Year holidays occurred, he carried out this arrangement over six weeks. While doing the work given him, he was injured.

The question arising for the Court's determination was the basis on which plaintiff's average weekly earnings were to be assessed.

North, for the plaintiff; **R. H. Mackay,** for the defendant.

Held, That the employment of the plaintiff under the arrangement made between him and the Corporation constituted one continuous period of employment, and not a series of casual unconnected engagements; and his average weekly earnings were accordingly 15s. 8d. per week.

Vogel v. Paparua County, [1932] N.Z.L.R. 436; **Wallwork v. Greymouth Borough Corporation,** [1935] N.Z.L.R. s. 77; and **Dunn v. O'Neill,** [1936] N.Z.L.R. 957, followed.

Solicitors: Earl, Kent, Massey, and North, Auckland, for the plaintiff; **J. Stanton,** Auckland, for the defendant.

SUPREME COURT.
Palmerston North.
1936.
Nov. 7, 13.
Ostler, J.

HANCOCK v. MUIR AND OTHERS.

Contract—Breach—Joint Contract alleged with three Joint Owners to transfer Share in Joint Property—Damages for Breach claimed from all three jointly—No Partnership established—Proof of Contract with two of the three Joint Owners—Judgment entered for Plaintiff following Jury's Verdict Awarding damages—No evidence to support Finding that alleged Contract was made—Judgment set aside and New Trial ordered.

In an action for damages, H. alleged a joint contract with M., McD., and C. who were partners in certain patent rights, to transfer to him a three-sixteenths share in such joint property, and claimed damages from all three jointly for its breach. It was proved that the three defendants were part owners of such patent rights, but no partnership between them was proved or admitted. Plaintiff gave evidence which the jury accepted, that M. and McD. made the alleged contract with him, but he did not prove that C. joined in the contract or authorized M. or McD. to make it, or that C. subsequently ratified it, although there was evidence from which ratification by him could have been inferred, but there was no evidence from which a Court or a jury could have inferred that C. was a party to the contract alleged.

Following on the verdict of the jury awarding damages against M., McD., and C., who were sued jointly, judgment was entered against them for the amount of the verdict and costs with leave reserved to move for a new trial.

On motion for a new trial on the ground that the verdict was against the weight of evidence,

A. M. Ongley, for the defendants, in support; **J. M. Gordon,** for the plaintiffs, to oppose,

Held, 1. That the finding of the jury that a contract had been made by the defendants with the plaintiff to transfer to him a three-sixteenths share in the patent rights had no evidence to support it, as the plaintiff had proved no more than a contract with two of the three joint owners, whom he had jointly sued for breach of the joint contract alleged to have been made by all of them.

2. That the judgment could not be amended by striking out C.'s name, and leaving it to operate against M. and McD., as any right of action against them must be on a cause of action different from that alleged in the statement of claim.

3. That, after judgment had been pronounced in plaintiff's favour, subject to the right reserved to defendants to move for a new trial, it was too late to nonsuit plaintiff.

The judgment was accordingly set aside, and a new trial ordered.

Solicitors: J. M. Gordon, Palmerston North, for the plaintiff; **Gifford, Moore, Ongley, and Tremaine,** Palmerston North, for the defendants.

SUPREME COURT.
Wellington.
1936.
Nov. 19.
Reed, J.

THE KING v. RODLEY.

Criminal Law—Practice—Committal for Sentence—No Offence disclosed by Information—Plea of Guilty set aside in Supreme Court—Justices of the Peace Act, 1927, s. 181.

Where a prisoner pleads guilty under s. 181 of the Justices of the Peace Act, 1927, and is committed to the Supreme Court for sentence, and it is found there that the information does not disclose an offence, the plea must be set aside and the conviction quashed.

R. v. Reyland [1919] N.Z.L.R. 252, applied.

COURT OF ARBITRATION.
Auckland.
1936.
Aug. 17, Nov. 5.
Page, J.

DUNN v. O'NEILL.

Workers' Compensation—Liability for Compensation—"Trade or business carried on by the employer"—Rents of Houses and other Properties Employer's sole Source of Income—Worker killed as result of Accident while working on one of such Houses—Worker also employed by Unemployment Board—Concurrent Contracts of Service—Computation of Compensation—Workers' Compensation Act, 1922, ss. 2, 3 (2) (*a*).

Plaintiff's husband, while in O'N.'s employ, was killed as a result of a fall from a building or from a ladder leaning against a building, which was one of a number of houses, shops, and properties owned by O'N., whose sole source of income was the rents therefrom. Deceased, a plumber, was employed to carry out repairs to such properties at an hourly wage. During the twelve months prior to his death he had been so engaged in forty-five weeks, and earned in that period a total sum of £61 18s. 3d. In addition to the money so earned, he had received £1 11s. per week during the period October 5, 1935, to March 7, 1936, in the employ of the Unemployment Board. He met with the accident which caused his death on March 9, 1936.

Spring, for the plaintiff; **Mahony,** for the defendant.

Held, 1. That the defendant's operations in respect of the houses, shops, and premises owned by him constituted a business venture carried on for profit and had reached such dimensions as to amount to the carrying-on of "a trade, business, or work" within the meaning of the words "trade or business" in s. 3 (*a*) of the Workers' Compensation Act, 1922, as defined in s. 2 of that statute.

In re Dombroski, [1930] G.L.R. 30; **Christie v. Will,** [1929] G.L.R. 262; and **Smith v. Anderson,** (1880) 50 L.J. Ch. 43, applied.

Manton v. Cantwell, [1920] A.C. 781, 13 B.W.C.C. 55, followed.

2. That the deceased had entered into concurrent contracts of service, one with defendant and one with the Unemployment Board and his average weekly earnings must be computed as if his earnings under both contracts were earnings in the employment of the defendant.

Vogel v. Paparua County, [1932] N.Z.L.R. 436; and **Blenkiron v. Westport-Stockton Coal Co., Ltd.,** [1934] N.Z.L.R. 474, and **Dewhurst v. Mather,** [1908] 2 K.B. 754; 1 B.W.C.C. 328, applied.

Solicitors: W. J. Spring, Auckland, for the plaintiff; **Mahony, Dignan, and Foster,** Auckland, for the defendant.

Case Annotation: *Smith v. Anderson,* E. & E. Digest, Vol. 9, p. 72, para. 255; *Manton v. Cantwell, ibid.,* Vol. 34, p. 245, para. 2090; *Dewhurst v. Mather, ibid.,* Vol. 34, p. 256, para. 2190.

NOTE:—For the Workers' Compensation Act, 1922, see THE PUBLIC ACTS OF NEW ZEALAND (REPRINT) 1908-31, Vol. 5, title *Master and Servant,* p. 559.

SUPREME COURT. Wellington. 1936. May 26, 29; Nov. 13. *Blair, J.*

HOLE v. HOLE.

Husband and Wife—Maintenance—Separation Agreement made orally providing for Weekly Payment for Maintenance and support of Wife and Child—Subsequent Decree Absolute granted Wife on Ground of Three-years' Separation—Order made for Permanent Maintenance of Weekly Payment of sum less than provided by the said Agreement—Whether Agreement binding on Husband for Life—Whether Agreement affected by Divorce and Maintenance Proceedings—Compliance with Court's Order a *pro tanto* discharge of the agreement.

In July, 1929, parties, then wife and husband, entered into an oral agreement for separation, which provided for payment of £5 per week for the maintenance and support of the plaintiff and their youngest child. In December, 1933, plaintiff sued defendant in the Magistrate's Court for £300 which she alleged were arrears of maintenance up to November 19, 1932, under the said agreement, and the action was settled by a cash payment; but the payment of part of the overdue maintenance did not affect the subsistence of the said agreement. In May, 1934, a decree absolute was made on the wife's petition based on mutual separation subsisting from July, 1929. An order was made for permanent maintenance at the rate of £3 per week, without prejudice to any rights the wife might have as to past maintenance, At the time of the making of such order, defendant, a sheepfarmer, was suffering from the effects of the depression which had greatly reduced his income. In his answer on oath to the petition for permanent maintenance, he admitted the allegation that he had agreed to the said payment of £5 per week as from July, 1929.

In the present action to recover arrears of maintenance, under the agreement, plaintiff alleged that the said agreement was still subsisting, except that she admitted that the weekly payment of £3 payable in pursuance of the order for permanent maintenance was *pro tanto* a discharge of the same.

On the question as to whether the agreement was binding on the defendant for life, or whether it was in any wise affected by the divorce and maintenance proceedings,

Leicester, for the plaintiff; **Hon. W. Perry,** for the defendant.

Held, That notwithstanding there was no express covenant by the husband, the agreement to pay maintenance was in no wise affected by the divorce proceedings and the maintenance proceedings, except that compliance with the order for permanent maintenance made in those proceedings must be taken as in *pro tanto* discharge of the agreement between the parties.

Lodder v. Lodder, [1923] N.Z.L.R. 785, and **May v. May,** [1929] 2 K.B. 386, referred to.

Reid v. Reid, [1926] P. 1, applied.

Case Annotation: For *Reid v. Reid*, see E. & E. Digest, Vol. 27, p. 503, para. 5384; *May v. May*, Supplement No. 11, title *Husband and Wife*, para. 2039 a.

Solicitors: Leicester, Jowett, and Rainey, Wellington, for the plaintiff; **Perry, Perry, and Pope,** Wellington, for the defendant.

SUPREME COURT. Wellington 1936. Nov. 27. *Blair, J.*

RE CALCINAI (A DEBTOR), EX PARTE CALCINAI.

Mortgagors and Tenants Relief Acts—Mortgages—Home Applicant—"Adjustable Debts"—Judgment for Unsecured Debt created for Purpose of discharging an encumbrance existing when Property first acquired—Whether Enforceable by Creditor—Mortgagors and Lessees Rehabilitation Act, 1936, ss. 4, 55.

An unsecured debt of a home applicant is not within the definition of "adjustable debts" in s. 4 of the Mortgagors and Lessees Rehabilitation Act, 1936, if it arises indirectly out of the acquisition, extension, improvement, or maintenance of the premises occupied by him as a dwelling.

For the purposes of ascertaining a home applicant's liabilities covered by or entitled to the benefit of s. 55 of the Mortgagors and Tenants Rehabilitation Act, 1936, debts or liabilities arising directly out of the acquisition of the property are confined to such as came into being when the property was acquired.

Counsel: Pringle, for the petitioner; **McCormick,** for the debtor, to oppose petition for adjudication.

Solicitors: Pringle and Gilkinson, Wellington, for the petitioner; **McCormick and Tracey,** Wellington, for the debtor.

SUPREME COURT. Hamilton. 1936. Aug. 20. *Fair, J.*

SHALFOON AND ANOTHER v. McKINLAY.

Stock Acts—Branding of Stock—Owners of Cattle-brand—Earmarking of another's Calves with their Earmark and subsequently cutting and removing same—Whether such calves "branded"—Stock Act, 1908, ss. 61, 74.

The definition of "brand" in s. 61 of the Stock Act, 1908,

"a distinct and plain mark, burnt with a branding-iron "into the skin, of not less than two inches in length; to "which may be added an earmark made by cutting splitting "or punching the ear . . ; or a tattoo-mark imprinted "on any part of the skin, or a metal clip affixed to the ear,"

implies that a mark by a branding-iron is an essential feature of the brand, although it may be supplemented by the other marks mentioned. An earmark alone does not satisfy the definition.

There is nothing inconsistent with attaching to the word "brand" in s. 74 of the Act the meaning given to it by s. 61, *viz.*, a mark burnt with a branding-iron, plus the additional mark which may be added.

The appellants, who were registered owners of a brand and an earmark for cattle, were charged with altering the brands of four calves of which they were not the lawful owners, contrary to s. 74 of the Stock Act, 1908. The evidence showed that they earmarked with their registered earmark two calves of which they were not owners, and on the following day they cut out and removed such earmark from the calves.

Hodgson, for the appellants; **Fitzgerald,** for the respondent.

Held, allowing an appeal from a conviction by a Magistrate, That, they could not be convicted of the offence as they did not place their brand upon the calves, as s. 74 provides no penalty for the destruction or alteration of a portion of a brand such as was placed on the calves by them.

Semble: Protection is given by the statute to brands that are registered, *i.e.*, a composition of two marks, one by branding and the other by earmarking; and a brand falling within the definition of s. 61 (*supra*), which has been used, obtains protection.

Solicitors: Potts and **Hodgson,** Opotiki, for the appellants: **Gillies, Tanner, and Fitzgerald,** Hamilton, for the respondent.

SUPREME COURT. In Chambers, Auckland. 1936. Nov. 9. *Fair, J.*

NAIRN v. NAIRN AND WILSON.

Divorce and Matrimonial Causes—Practice—Defended Suit—Tentative Agreement before Trial between Petitioner and Co-respondent to accept stated Amount in satisfaction of Damages claimed and Costs—Court's Power to sanction such Agreement—Divorce and Matrimonial Causes Act, 1928, ss. 30, 31.

N. petitioned for divorce on the grounds of adultery, and claimed the sum of £200 as damages from the co-respondent, W. The petition was set down for trial before a Judge and a jury of twelve. Before the trial, a tentative agreement was made between N. and W., whereby W. agreed to pay by instalments the sum of £100 in full satisfaction of the damages claimed, and costs. The agreement was subject to the sanction of the Court, and to N.'s proving to the satisfaction of the Court, in an undefended suit, that the co-respondent had committed adultery with the respondent.

A. K. Turner, for the petitioner; **Bone,** for the respondent and co-respondent.

Held, That the Court had power to make an order sanctioning the draft agreement as to the payment of damages and costs, striking out the claim for damages contained in the petition, and directing the case to be removed from the list of jury cases, and to be heard before a Judge alone.

Winstanley v. Winstanley, [1920] V.L.R. 123, followed.

Solicitors: A. K. Turner, Auckland, agent for **Connell, Trimmer, and Lamb,** Whangarei, for the petitioner; **Sellar, Bone, and Cowell,** Auckland, for the respondent and co-respondent.

The Auckland Law Library.

Seventy Years' Vicissitudes.

By N. H. Good, Secretary of the Auckland District Law Society.

In considering the history and growth of Law Libraries in New Zealand, and of the Auckland Law Library in particular, it is necessary to consider, first, the Law Practitioners Act, 1861, which was the first New Zealand statute to deal comprehensively with members of the legal profession. In addition to providing for their examination and admission, the serving of articles, and the taxation of costs, it gave Judges of the Supreme Court power to make rules dividing the two branches of the profession, upon the making of which practitioners would be bound to elect to which branch they would belong. For the purpose of our present inquiry, the most important sections, however, are ss. 56 and 57. The former section, for the first time, made it necessary for practitioners to pay practising fees; and s. 57 directed that these fees were to be applied, in such a manner as the Supreme Court, or a Judge thereof, should from time to time direct, to the purchase and maintenance of a Law Library at the capital town of the Province in which they should be respectively received.

At the time of the passing of the Law Practitioners Act, 1861, the business of the Supreme Court in Auckland was carried on in a building situated at the corner of Victoria Street West and Queen Street. Conditions in this building became so bad that it was no longer possible to conduct the business of the Court there. It was finally decided to hold the sittings of the Supreme Court in the old Provincial Chambers; and a sitting of the Provincial Council was postponed to enable this to be done. The first sitting of the Supreme Court in these Chambers was held in August, 1864. The building in question was that which formerly stood a little to the north of the present Supreme Court building. In its earliest days it had housed New Zealand's first Parliament. Later, it was used by the Auckland University College, and, subsequently, it was demolished to make way for the Anzac Avenue outlet from the city.

It has not been possible to ascertain what library provision (if any) existed in the Court in Queen Street. It is on record, however, that in October, 1864, there was not available a single book for the guidance of the various Courts. There were apparently, however, a number of law books in the Customs House. It is not clear whether these books represented the library which had previously been in use in Queen Street and which had been stored in the Customs House building owing to lack of space elsewhere, or whether they were volumes that had been ordered from England, and, owing to lack of accommodation in the Court premises, had not been unpacked. Presumably the latter was the case.

Fees payable under the Law Practitioners Act, 1861, first became due in January, 1862, and by October, 1864, sufficient money to purchase books would only then have accumulated. As a result of complaints that had been made, accommodation for these books was provided temporarily pending the building of the present Supreme Court building, negotiations in respect of which were then being carried on. In these new premises a room twenty-two feet square, situated at the north-west corner of the building was reserved for library premises, and when in 1868 the new building was finally ready for occupation, the library, comprising about 3,000 volumes, was transferred to this room. A catalogue issued in 1870 shows that a fairly good collection had been obtained, and by 1877 approximately 6,000 volumes were available.

To Sir George Arney the Auckland Library owes its very fine collection of histories, speeches, biographies, and letters, which it now possesses. The early Judges must have been men of exceptionally wide learning and culture. If any further proof of this is required, it may be seen so far as Sir George Arney is concerned from a perusal of comments written in his own hand concerning papers submitted by candidates for admission to the profession in those days. Examinations were then conducted by the Judges personally, and the comments by Sir George Arney on some of the Latin papers submitted by the candidates show how extensive must have been his knowledge of the classics.

In the late 'seventies there was agitation amongst members of the profession for the formation of Law Societies in the different judicial districts. In the year 1878 there was passed a District Law Society Act, which empowered the solicitors in any Judicial District to form a District Law Society. This came into force in November, 1878, and it was not long before the Auckland solicitors took the necessary proceedings. Notices convening a meeting for April 28, 1879, were sent out to all the solicitors in the Auckland District over the signature of Messrs F. M. P. Brookfield and Frederick Whitaker, and advertisements were inserted in the daily press of March 19 and 20 of that year. At that time there were forty-six solicitors in the Northern District, which included Hamilton; but by then Taranaki was excluded. Of them there are now surviving only Mr. Samuel Hesketh, who is still practising in Auckland, and Mr. A. E. Whitaker. The meeting unanimously resolved to take the necessary steps to form a District Law Society under the title of the Law Society of the District of Auckland.

Mr. Frederick Whitaker, later the Hon. Sir Frederick Whitaker, was elected the first President and Mr. F. M. P. Brookfield the first Vice-President. Mr. Whitaker may justly be regarded as the father of the legal profession in Auckland. He commenced practice in Russell in April, 1840 (two months after the signing of the Treaty at Waitangi) and removed to Auckland when the capital was established there in 1841. He was the first solicitor enrolled under the provisions of the Law Practitioners Act, 1861; as Superintendent of the Province he laid the foundation-stone of the present Supreme Court; and his name heads the list of the past Presidents of the Society on the wall of the main library room.

In pursuance of s. 14 of The District Law Societies Act, 1878, one of the first acts of the new Council was to obtain an order from Mr. Justice Gillies (who had succeeded Sir George Arney at Auckland in 1875) directing that the law library at Auckland and the monies then in the library account be handed to the Auckland Society. The application was made by Mr. E. Hesketh, the first secretary, and the successor to Mr. Frederick Whitaker as President. As time went on, more and more space was required for the books added to the library. Nearer and nearer to the ceiling the shelves extended. By 1898 no more space was available in the original premises. Extra accommodation was obtained on the west side of the Supreme Court building. Relief, however, was temporary only.

In 1902 it was reported in the *Cyclopedia of New Zealand* that while the Court-room was very large, "the library and other adjuncts were inadequately provided with space."

Members of the Society were well aware of this, and realized fully the present need for further accommodation. In 1905 it was reported that the Public Works Department was about to vacate the rooms occupied by it in the Supreme Court Building, immediately above the library. A committee was accordingly set up to go into the matter with a view to obtaining these rooms. The Department did not, however, vacate the building until the end of 1909, and the Society was successful in obtaining the use of the premises early in 1910. For a short while there was sufficient accommodation, but soon the position was as bad as it had previously been.

In 1920, following the formation of the Anzac Avenue outlet from the City, a resolution was passed urging the acquisition by the Crown, for library extension, of Parliament Street, which had just been closed. Representations were also made that the site of the old Parliament building should be obtained. Several Ministers of the Crown were interviewed and shown the existing library conditions. Negotiations proceeded for some time with a view to obtaining further accommodation, but without success. In 1922, as space was required for an additional Court-room, the Society was forced to relinquish the rooms then occupied by it on the upper floor of the Supreme Court. This, of course, made the position worse than ever. From that day until the end of 1933, Minister after Minister was seen, resolution after resolution was passed, and letter after letter was written with a view to obtaining satisfactory accommodation. Hardly a month passed without a further report or a further letter. All who saw the conditions under which the members of the profession had to work in Auckland were impressed by the urgent need. On one occasion a sum was placed on the Estimates.

In 1933, a deputation waited upon the Minister of Justice, the Hon. Mr. J. G. Cobbe, who later inspected the premises. The Society expressed itself as willing to contribute £2,000 towards the cost of a new library. The Minister promised to take the matter up on his return to Wellington. As a result of this meeting, negotiations were set in train, and the prospect of obtaining a new law library seemed much brighter. Eventually plans were drawn up, after much discussion; and, finally, in June, 1934, the necessary authority was given by the Cabinet. In July, the Society vacated that portion of the Supreme Court Building originally occupied by the library, and a large number of the books were stored in boxes pending completion of the building.

The building of the new library was commenced at the end of July, 1935, and, for the rest of that year and almost the whole of 1936, the work of the Society and of practitioners generally was carried on under the utmost difficulty.

In July, 1936, the premises were practically completed, and the work of furnishing them was then undertaken by the Society. In November, the work was so far advanced as to allow of the transfer of books into the new premises. This work occupied exactly three weeks; and probably now, for the first time in its history, the Auckland Law Library is housed in a manner worthy of what is undoubtedly a very fine collection, indeed.

Cautionary Verses.

(Designed primarily for Law-students whose Leisure has been usurped by the Extra Time required to work the Forty-hour Week.)

On Accident Avoidance.

The normal user of a city street
  Should pause and translate seconds into feet;
A driver emulating, if he can,
  The manners of a little gentleman.

Re Catherine Smith, Deceased.
[1935] N.Z.L.R. 299. (Aff. on Appeal).

Sweet are the uses of "benevolent"—
  A term the State regards as heaven-sent,
Unless, as here, the Privy Council's view
  Prevents the savage grab at residue.

On Family Maintenance.

The Court will never make another's will.
  Lie quiet, testators! But still
There's such a thing as breach of moral duty
  When better judges subdivide the booty.

Robertson v. Ling Sing, [1936] N.Z.L.R. 653.

The person most entitled to immunity
  Is he who lacks the later opportunity,
The other is entangled in the tissues
  That lie within the compass of the issues.

On the Jury System.

This Solomon and bulwark of the law,
  Wifeless, but lacking otherwise in flaw,
Is now restored to all its former power
  The coffers of the workman to endower.

Trickett v. Queensland Insurance Co., Ltd.,
[1936] N.Z.L.R. 116 [J.C.]

A motor-car is not a ship at sea
  Between the two is no analogy;
Nor is a ship at sea a motor-car.
  We all know now exactly where we are.

On Crime.

Crime never pays. It has not for some years.
  Hinc illis lacrimis. One rather fears
That police inaction leads us to conceive
  It better far to give than to receive.

Fussell v. Amos, [1936] N.Z.L.R. 254.

A stack of bottles falling on the head
  Which sends the drinker several weeks to bed
Is very unexpected in a Club.
  This has to foot the bill. And there's the rub!

On Section 10 (i).

You must not say, "We said we'd separate,"
  And merely give the time and place and date.
You'd better let the lady tell the story
  Though this be commonplace or even hoary.

Alliance Assurance Co. v. Auckland City,
[1936] N.Z.L.R. 413; and the articles of the Rev. J. A. Higgins [1936] N.Z.L.J. 189, 203, 218.

The British and Dominion pound,
  That used to be a lot around,
Make head nor tail of such research
  Conducted by the Court and by the Church.

—WELEX.

Australian Notes.

By WILFRED BLACKET, K.C.

Sky-bosh.—There was trouble in every Court in the Melbourne Metropolitan area recently, for suddenly and without any warning loud voices were heard advising all men to drink more whisky, and to use more soap, and to do other things that Courts are not in the regular habit of doing. Police and Court officials were sent forth in hot haste with orders to stop the noise instantly and to bring the offenders before the Court, but they presently made return of *nil capiat* for they had caught no one, and *nulla bona*. It was no good trying, so to speak, for the offenders were hundreds of feet nearer the moon than the Courts are, and were speaking through amplifiers of the largest size and fiercest description. What these "loud speakers" did was not an offence known to the law; but although it is an offence to fly low it is not an offence to make noise that will reach from wherever you are to the ground. However, it is promised that the offence will not be repeated to the "same form and effect" for it is intended in future only to use this form of advertising over race-courses and sports grounds where multitudes are assembled, and over the suburbs in the evening hours. The prospect, therefore, is that the raucous cry of Duckworth will be blacked out by a voice from the skies exhorting the multitude to "buy Buggins's toothpaste" and the "busy housewife's" lullaby to her babe will be lost in tumultuous tidings of the bargains in bedspreads and biege now displayed at Rag and Muffin's Emporium. But surely these abominations will not be permitted; if they are allowed, no pious mother will ever be able to persuade her child that Heaven is above us.

A Municipal Point.—An interesting point came up for decision in *Pidgeon v. the Council of Enfield* (N.S.W.). Mr. Pidgeon is a builder—as indeed most pigeons are at the proper season—and he lodged with the Council and obtained its approval of a plan showing two semi-detached cottages with a garage twenty feet away from them. He then erected the cottages but did not build the garage and did not conceal the fact that he did not intend to do so. Section 317 of the Local Government Act provides as follows:—

> "If any person does or causes to be done any work in connection with the erection of a building without the approval of the Council or not in conformity with such approval, he shall be liable to a penalty not exceeding £50, and a further penalty not exceeding £10 for each day during which such work is done after notice from the Council."

The Council then prosecuted Pidgeon for having "done work not in conformity with the approval of the Council. The Magistrate convicted and inflicted a penalty of £20. Mr. Pidgeon then moved for a prohibition. For him it was argued that the approval was of two buildings shown on one plan and that there was no obligation upon him to erect either of them, and further that the work in fact done was in accordance with the plan, and that the omission to build the garage did not bring the approved work within the prohibition of the section as work not done in conformity with the approval. The argument that seems to arise from the concluding words of the section—that the penalty only attaches to something done at the time it is being done and not to a case where the work is properly done at that time but becomes objectionable by reason of failure to do something else that was promised—a contention that the facts presented a *casus omissus* which could not be supplied by the Court, was not raised. His Honour Mr. Justice Owen, in refusing prohibition and sustaining the conviction, put the case of a plan showing a lavatory apart from the residence; but this, besides being an *idem per idem* case, seems to be rather to be an appeal to popular prejudice than an argument on the construction of the section; and he also put a suppositious case where the builder had, perhaps from inadvertence, omitted to put the roof of a dwelling. But he held that the approval was given to the proposed work of erecting two buildings and that the erection of one of them only was not in conformity with such approval.

"**A Miserable Sinner.**"—Robert Oliver was a churchwarden of St. David's Church, Sydney, and he evidently had read Deuteronomy 25, 4, and therefore thought it was not right to "muzzle the ox when he treadeth out the corn," and so after he had taken up a collection he took 2s. of it for himself. Unfortunately for him it was a marked coin, for at St. David's there had been some dissension and scandal and the police had been called in to help with the service and see who was getting away with the money. Mr. Oliver was convicted of the theft, but the Magistrate merely bound him over, thinking, no doubt, that he never again would be able to get any regular enployment as a churchwarden, and that he would be sufficiently punished by the comments of his friends, and by the publication of paragraphs like this one.

Molesting Poppies.—We often read of things done to the annoyance of His Majesty's lieges, but a charge of "molesting" poppies is a new one to me. The facts supporting the charge were that Eva Richards and her husband Cyril were at Hurstville Oval, N.S.W., and Eva picked a number of poppies when she thought no one was looking, and thereby, as it was alleged by the local authorities, "molested" them. She was fined £3. It was sworn that Eva was incited to do this wrongful act by her husband, but he denied that he had played the part of the serpent in Paradise. However, the fine of £3 ends the incident, and we may well regret that Eve was not fined £3 for "molesting" the apple and a satisfactory ending thus made to a somewhat unpleasant incident.

Slandering the Police.—Within the last three months in Victoria and New South Wales there has been a strange succession of complaints by prisoners of brutal treatment by the police. Generally the complaint is made when two prisoners are jointly charged; sometimes the charge is made to account for the fact that evidence of a confession has been given, but sometimes, and I think generally, it is put forward merely as an interesting narrative. Only in one case within my memory did there seem to be any probability of truth in the recital, and in most cases the charge was obviously false. But why should there be this prevalence of slander of the police? That is a question to which I can find no answer. If the complaints had been credited by juries one might find a reason for similar complaints in later cases, but no jury has ever yet shown any sympathy with a prisoner who says he was "knocked about something terrible" or otherwise injured. It is a strange fashion but will probably fade out in a little while, for in New South Wales the police have won a high renown for truthfulness and straightforward conduct, and in Victoria they are notoriously doing their best to redeem the lost reputation of some of their number.

The New Auckland Law Library.

The Opening Ceremony.

The ceremony of the opening of the new Law Library at Auckland took place on Friday, December 4. The day was brilliantly fine, and a large gathering of members of the profession, mostly robed, and their wives and friends, assembled on the terrace near the entrance to the old Law Library. There were present their Honours Mr. Justice Reed, Mr. Justice Smith, Mr. Justice Fair, and Mr. Justice Callan; the Attorney-General, the Hon. H. G. R. Mason; the Hon. Sir Alexander Herdman; the Mayor of Auckland, Mr. E. Davis, and the Town Clerk, Mr. J. S. Brigham; the President of the New Zealand Law Society, Mr. H. F. O'Leary, K.C.; Mr. A. H. Johnstone, K.C., who represented the Taranaki District Law Society; the President of the Hamilton District Law Society, Mr. J. F. Strang; Mr. F. K. Hunt, S.M., Mr. Wyvern Wilson, S.M., Mr. W. R. McKean, S.M., Mr. F. H. Levien, S.M.; Judge McCormick, of the Native Land Court; members of the Auckland Bar, and many practitioners from Hamilton and neighbouring districts. Among the ladies present were Lady Reed, Mrs. Callan, Miss Fair, and Mrs. Munro. At 3 p.m., Mr. L. K. Munro, President of the Auckland District Law Society, conducted the Judges to their seats on the terrace, and senior counsel and members of the Council of the District Law Society took the chairs behind their Honours.

The President of the Auckland District Law Society, Mr. L. K. Munro, in commencing his address, said that the day's opening ceremony was the culmination of the efforts of the Auckland District Law Society over a long period of years to obtain a building worthy of its library, and adequate for the needs of the profession.

"On such an occasion we are delighted to have with us our guests who may witness what is in a great degree the consummation of our labours," the President continued. "In particular I refer to their Honours the Judges: Mr. Justice Reed, whom we welcome as a former leader of the Auckland Bar, Mr. Justice Smith, Mr. Justice Fair, and Mr. Justice Callan. We are glad to welcome the Hon. Sir Alexander Herdman with that respect and affection which he has always received from the members of our Bar. We are also honoured by the presence of the Attorney-General, the Hon. Mr. H. G. R. Mason; of Mr. H. F. O'Leary, K.C., the President of the New Zealand Law Society; and of His Worship the Mayor." These gentlemen, and all the other guests, he sincerely welcomed on the Society's behalf.

Mr. Munro then said that he had received a letter from the Rt. Hon. the Chief Justice, Sir Michael Myers, who greatly regretted his inability to be present, and extended to the Society his felicitations on the occasion. The Presidents of other Law Societies apologized for not being present. The Auckland Society gratefully acknowledged their congratulations and good wishes.

The speaker went on to say that the members of the profession over many years had been labouring under the gravest disadvantages in the work which they should carry out in their library.

"As long ago as 1861, it is true, there was provision for a library for practitioners, and the Judges were authorized to direct that certain fees could be used for the maintenance of a library. But that proved to be no more than a vain hope," the President proceeded: "In that year, the Supreme Court sat in a building at the corner of Victoria and Queen Streets. What was the condition of the law library, if any existed in these days, can only be a matter of surmise; but some idea can be obtained if it is remembered that a local paper in 1864 referred to the 'piggery in Queen Street known as the Supreme Court,' and that Mr. Justice Johnston referred to the 'disgusting den' in which the Court had hitherto been held; and the illness of the then Chief Justice apparently resulted from the vile conditions under which he had to labour.

"In 1864 the sittings of the Court were held in the old Parliament House. The plight of the library was, however, little better. There were, indeed, a number of legal works in the Customs House; but these were not available for use in the Courts.

"In 1865 the foundation-stone of the present Supreme Court Building was laid by the late Sir Frederick Whitaker, who was the Superintendent of the Province, and the first President of this Society. Indeed, he may be called the father of the legal profession in Auckland. He commenced practice in Russell, in 1840: and, in 1841, he came to Auckland when it became the capital city. I rejoice to say that his son, Mr. A. E. Whitaker, is alive and active to-day. Sir Frederick, speaking from a place not very far from where I am now standing, referred to the fern and tea-tree with which, in his memory, the site had once been covered."

The First Library.

Mr. Munro then traced the history of the Law Library at Auckland. He said:

"On the opening of the present Supreme Court building in 1868, the library was there installed in a room twenty-two feet square. By 1870, although there were probably only some fifty-two solicitors practising in the Northern District (which then included Taranaki, Gisborne, and Hamilton), the catalogue for that year shows that a collection of some 3,000 books had been obtained. It would appear that in those days law libraries were controlled by the Judges, and generally the librarian was the Judge's associate. The Judge to whom this library in its infancy owes so much is the late Sir George Arney, successor in 1858 to the office of Chief Justice previously held by Sir William Martin. Photographs of these two gentlemen you may see on the walls of the new library. The energy and wide intellectual interest of Sir George Arney resulted in the acquisition by the library, in addition to many books on legal topics, of a great many historical and biographical works, many of them richly bound.

"In 1879 the Auckland District Law Society was formed as a result of a unanimous resolution of a meeting of practitioners, one of whom was Mr. Samuel Hesketh, who is still practising in this city, and is, I am glad to say, with us to-day. Mr. A. E. Whitaker, to whom I have already referred, was represented by proxy. As a result of the formation of the Society, and in accordance with a statute passed in 1878, the late Mr. Justice Gillies made an order vesting the law library, and the moneys in the library account, in the Auckland Law Society.

"The library continued to expand. The premises became more and more inconvenient. The Public Works Department in 1909 vacated the premises which it had occupied in the Supreme Court buildings; and, until 1922, the Society there housed some of its books.

Of these premises, however, the Society was deprived; and, from 1922 down to the present time, the library has been housed in premises which I can only describe as disgracefully inadequate."

ENDEAVOURS TO OBTAIN A NEW LIBRARY.

The Society's Council used every endeavour to obtain buildings of a size and a dignity adequate to house a collection of books which has been described as one of the best of its kind in Australia and New Zealand. In 1920, during the Presidency of Mr. H. P. Richmond, a resolution was passed on the motion of Mr. A. H. Johnstone, following the formation of Anzac Avenue, that the Crown should acquire Parliament Street, and that, with the use of this, a suitable site should be obtained.

"My predecessors have all laboured to procure a suitable building," Mr. Munro continued. "Presidents and other members of the Council of this Society have repeatedly interviewed Ministers of the Crown. The desirability of obtaining the site behind the Supreme Court and enclosing Parliament Street were emphasized; but, unfortunately, we did not succeed. Our pertinacity at length succeeded; and, finally, in 1933 the Society secured the sympathy of the Hon. Mr. J. G. Cobbe, who was then Minister for Justice. This Society owes him a deep debt of gratitude for his assistance.

"As a result of Mr. Cobbe's active intervention in 1933, during the Presidency of Mr. G. P. Finlay, the building was commenced on the present site. The building was erected at the cost of the Government; and the Society provided the necessary furnishings, at the cost to our funds of some thousands of pounds. We desire to thank the Attorney-General, the Hon. H. G. R. Mason, for his assistance during the course of the building's erection. To-day it is complete."

In concluding his interesting address, the President said:

"I think I may say that the proper administration of justice is one of the glories, as indeed, it is one of the chief sources of the strength of our Commonwealth. A good library housed in proper conditions is almost as great a necessity for the administration of justice as a good Judge. Here we possess, enshrined in the Law Reports, the wisdom of the Judges over centuries of English history. A law library is a treasury, not only of mere legal learning, but of the observations of many of the acutest minds of every century on problems concerning the state and its citizens. But such a library does not alone garner the wisdom of the past. It is an indispensable source for the development of the law of the future. As law grows with the State and with the changing requirements of its citizens, a law library furnishes in hosts of instances the precedents for new decisions shaping the Commonwealth; it is an indispensable laboratory for law-making, whether it arises directly from the activities of the legislature, or indirectly from the labours of the judiciary.

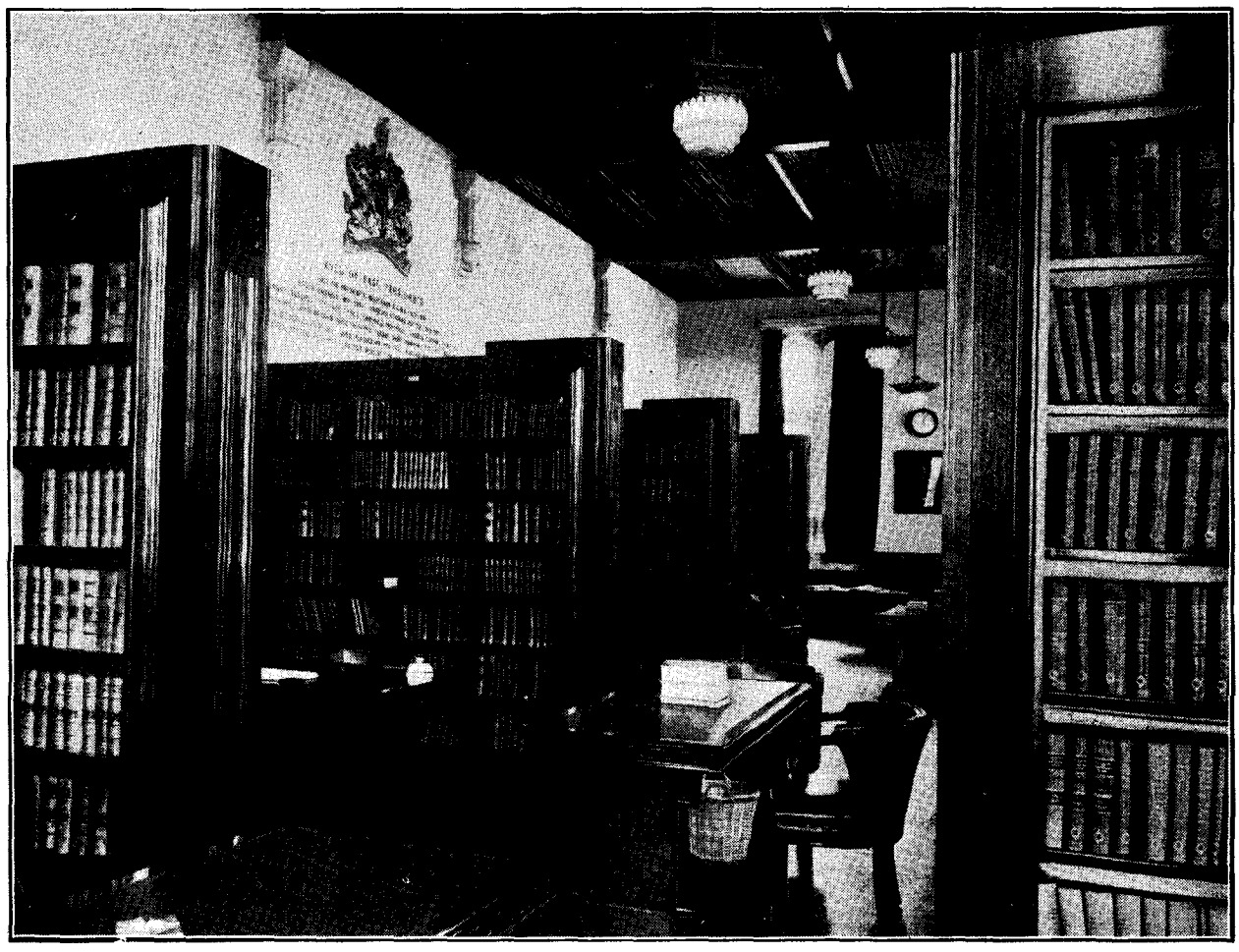

Photo by courtesy "New Zealand Herald" (Auckland).

A Corner of the new Law Library, Auckland.

"In the words of the late King George V, it is a workshop of new knowledge and a storehouse of reasoned wisdom. We rejoice that at long last the law library of this Society is housed in a building worthy of its great importance."

The Attorney-General.

The Attorney-General, the Hon. H. G. R. Mason, who was introduced by Mr. Munro, said that it was a very great honour indeed which his fellow-practitioners of Auckland had done him in asking him to open their splendid library building, which is the culmination of those long years of effort which the President had described.

"The files of the Justice Department show that for a whole generation there has been dissatisfaction with the conditions that existed, and a persistent effort to secure better accommodation for the Supreme Court Library at Auckland," the speaker proceeded. "All those who have endeavoured to work in the cramped quarters of the old library will rejoice at the facilities which we are now to have. Those cramped quarters caused one to reflect on the ever-increasing number of books dealing with the law, and to wonder sometimes whether or not the trouble is in the multitude of authorities which it is necessary for us to consult.

"I was reading recently of the foundation of another great Library, the Bodleian Library at Oxford; and the founder seems to have been impressed in much the same way with the fact that there was a danger of the multitude of books becoming too great for the space of the library. Sir Thomas Bodley established certain rules which should govern the admission of books to his library. He was especially severe in respect of the admission of dramatic works, holding that scarcely one in forty of them was worthy of space in a library. I do not know what proportion of reported judgments may be considered of value, nor am I quoting the words of Sir Thomas Bodley, as a binding precedent. After all, our system of law suits the genius of our people. That is its supreme justification. That system depends upon precedent, and strange though it may seem to some critics it is that very fact which enables it to evolve.

"Critics of our jurisprudence complain that it lacks scientific method. It has what may be described as a certain untidiness. The greater part of our law is not codified. This may call upon us the criticism of such men as Bentham, who would like to see all law codified, and all commentary forbidden. There would then be no danger of our books becoming too many for the space of the library. Had anything of this sort been attempted, it is difficult to see whence we should have derived our modern law of Contract, for example. That law has been recently evolved, because it is only recently that it has been required. Until the modern industrial era, each local community was more or less self-sufficing, and there was little trade. The development of modern industry has brought about an enormous increase in trade, and requires, consequently, a highly-developed system of contract law. This development has been entirely the work of those Judges who have administered the Common Law of England, and they have found the Common Law capable of evolution to meet the requirements of a progressive society. It is exceptional to find intervention of the Legislature necessary to remove a rule which the march of time has shown to be anomalous.

"Our legal methods then are suited to the genius of our people, which is above all things practical. We are entitled to take pride in our legal system, and to look upon it as one of the elements in the greatness of our people. I believe we take our legal system for granted, and therefore perhaps do not sufficiently realize the glory of its tradition. We are a law-abiding people having a great respect for the law. It is not too much to say that in this respect we are the world's teachers; but it has become so natural with us that we take for granted the binding force of the law of the land in very much the same way that we take for granted the inviolability of the laws of nature.

"I believe that this ingrained respect for law is the true secret of the strength of our people. It is in all of us. It is not incompatible with the fiercest passion for amendment and reform. Bradlaugh, for example, had a respect for the law of the land as intense as that of any man that lived.

"We are living in days when much fear is expressed for the stability of our institutions because of what we see is happening in other countries. I believe that events in other countries have little significance so far as concerns our own institutions. The practical genius of our people will insist that we retain institutions for the all-sufficing reason that they are suited to our own genius, whether or not others may consider them logical. The jurisprudence which we have evolved, and the profound and instinctive respect of our people for it, form the most significant element in our Empire to-day, and the surest pledge of its greatness in the future."

In conclusion, the Attorney-General congratulated his fellow-practitioners of Auckland most sincerely, and the people of Auckland, on the completion of the fine Library building, and to express his pride, as well as his pleasure, in having the honour of opening the new Library for use.

His Honour Mr. Justice Reed.

The Hon. Mr. Justice Reed remarked, when he rose to address the gathering, that, as everyone must be feeling the heat, he would endeavour to be as brief as possible. He said that he regretted that the Chief Justice, the Rt. Hon. Sir Michael Myers, could not be there for this function; but unfortunately he was detained in Wellington. He had asked the speaker particularly to express to the practitioners in Auckland his hearty congratulations on the erection of the Library building, and his good wishes for the future of every one of them.

"I feel that after the interesting addresses of those who have preceded me, particularly that of your President, Mr. Munro, in which he dealt with the history of the library, and in the preparation of which a great deal of research must have been involved, there is very little I can add," His Honour proceeded. "My knowledge of this library has extended over a period of more than fifty years. When I was first called to the Bar we had that small room that has been described to you, and it was ample in those days because we had not the books to fill much more space. Upon the revenue of the Society, it was as much as we could do to pay our Secretary and keep up current Reports, with an occasional new text-book. Then we had a stroke of good fortune. Our Honorary Treasurer—a well-known lawyer—had a dishonest bookkeeper who fled the country. An examination of the books revealed that not only had he misappropriated his employer's moneys, but for some time, he had been

preying on the finances of the Law Society. The result was that his unfortunate employer had to make good, and the Society were thus enriched by a substantial nest-egg; and this was the basis of the substantial financial position in which it now is."

His Honour then referred to the need for a Judges' Library at Auckland, and said that at Auckland, there was no real Judges' Library, although a number of books have been supplied from time to time by the Council of the Law Society for the Judges' use. This matter of supplying books for the personal use of the Judges started when a Judge, objecting to having to send to the general library for certain books to which constant reference was required to be made, asked that copies should be supplied for his own use. The Council demurred; but, upon being informed that in the event of his request not being complied with the Judge proposed to lock up those books in his own room, the Council gave way; and thus the precedent was established.

"The present position with regard to the supply of books for the use of the Judges has substantially improved on the conditions then existing," His Honour added; but I do urge upon the Attorney-General and the Council, first, that the necessary addition to house a Judges' Library should be proceeded with, and, secondly, that a reasonably-sufficient number of books should be supplied." The speaker said that he had not conferred with the resident Judges on this point, and he was not authorized by them to make any representations in the matter. He spoke from his general experience of the increased difficulties imposed on Judges by having to resort to the general library, those difficulties being diminished in proportion to the facilities provided by a reasonable supply of books. The inconvenience to practitioners must also be considered by books being temporarily withdrawn for use by the Judges, and that did not apply only to authorities actually cited.

His Honour then referred to a statement of Lord Esher that Judges should not depend entirely on the arguments of Counsel but should do independent research, and he instanced the necessity for this by referring to a recent judgment based on a case not cited by Counsel in a case in which a large number of authorities were cited on both sides. He concluded by saying:

"May I express my pleasure that you have achieved at last the completion of this fine library after so many years of hard toil. Every President of the Society in Auckland has tried to get the Government to erect this building. Promises have been made over and over again, and have not been fulfilled. I think you are very much to be congratulated for having obtained at last the reward of your labours. As one whose whole work at the Bar lay in this district, I thank you, Mr. President, for the opportunity to be present at this opening ceremony."

At the conclusion of His Honour's speech, the members of the Society formed a procession. Led by their Honours the Judges, the Magistrates, and senior counsel, they moved through the Supreme Court gates and along the street at the side of the grounds to the Library entrance. The Library was then declared open by the Attorney-General, and the procession passed within. The visitors next entered the Library; and afternoon tea was provided in the Common Room, which is included in the accommodation provided in the new building for the members of the profession.

Hon. Mr. Justice Reed.

Complimentary Bar Dinner at Auckland.

The Complimentary Dinner given by the Auckland District Law Society to the Hon. Mr. Justice Reed, on the evening of the opening of the new Law Library, was attended by several of the Judges and nearly one hundred members of the Bar. Mr. L. K. Munro, President of the Society, was in the chair, with Mr. Justice Reed on his right, and Mr. Justice Smith on his left. The others at the upper table were Mr. Justice Fair and Mr. Justice Callan, the Hon. Sir Alexander Herdman, Mr. H. F. O'Leary, K.C., President of the New Zealand Law Society, and Mr. A. H. Johnstone, K.C. Mr. F. K. Hunt, S.M., Mr. Wyvern Wilson, S.M., Mr. W. R. McKean, S.M., Mr. F. H. Levien, S.M., Mr. W. F. Stilwell, S.M., Judge McCormick, and senior counsel of the Auckland Bar also occupied seats of honour.

After a dinner that was complete to the last detail, and after the loyal toast had been honoured, the Chairman proposed the toast of the evening: "His Honour Mr. Justice Reed."

The Guest of the Evening.

The President said that the Auckland Law Society found that evening an occasion for especial rejoicing. They were still in some measure celebrating the opening of their library—long-sought and now happily entered—and they were entertaining guests whom they esteemed, and whom they confidently call their friends. He would shortly speak of him whom they were met especially to honour: Mr. Justice Reed. As well, they welcomed Mr. Justice Smith, for some time one of Auckland's resident Judges; and Mr. Justice Fair and Mr. Justice Callan. The Chief Justice, the Rt. Hon. Sir Michael Myers, had written regretting that he was unable to be with them and extending his congratulations and his wishes for their prosperity in the future. It was a great regret that Sir Walter Stringer could not be with them; he was recovering from an illness, and all rejoiced in his reviving health. Age could not wither him, nor custom stale his infinite variety. The Auckland Bar welcomed to its midst one of its best-loved friends, Sir Alexander Herdman, secure in their respect and affection.

Mr. Munro expressed regret that the Attorney-General, through some unforseen developments, had been obliged to return to Wellington, and was not with them this evening, as he had wished to be. All were delighted that Mr. O'Leary, the President of the New Zealand Law Society, had come to Auckland for the function, at some personal inconvenience to himself. The President added that those who were present would like him to make some reference also to one who has been a respected member of the profession in Auckland for very many years, and who has always been deeply interested in the development of their library. He referred to Mr. Robert McVeagh.

"Now, gentlemen, I come to the toast of the evening—that of Sir John Reed," the speaker continued. "Although for some years we have not seen as much of Mr. Justice Reed as we should have liked, we can almost claim him as our own. It is true that Sir John was not born a New Zealander, but for some time he was at the Auckland Grammar School, the Alma Mater of so many of us. Later Sir John went to other parts

of this country, and then completed his studies at Cambridge University. He then came back to Auckland, and was articled to Messrs. Devore and Cooper. In 1887 he was admitted to the Bar, and, later, he practised in the Bay of Islands.

"In those strenuous times the local Courts sat late at night to enable you, Sir, to complete all the work you had undertaken," said Mr. Munro, addressing His Honour, Mr. Justice Reed.

The speaker recalled a story told of one occasion when Mr. Reed (as he then was) was addressing the Bench; and after he had carried on for some time he noticed that something was amiss, and he turned to his learned friend and said, "You know, I think the old boy's asleep." The answer came immediately, from the Bench: "No, Mr. Reed, he is not. You may proceed!" But the story did not end there. The hour grew late; and, in the course of his friend's argument, Mr. Reed himself went to sleep.

"Fresh from his triumphs in the North, His Honour came, in 1896, to Auckland and speedily acquired the prominence which his talents deserved," the President proceeded. "In 1913 he received the patent of King's Counsel. In a short time he became the leader of the Auckland Bar, and for some years was President of this Society. But Sir John was not content merely with the distinction that attended his position at the Bar. In military affairs our distinguished guest attained the high rank of Colonel, and that of Judge-Advocate-General. In 1919 he was honoured by the King with the Companionship of the British Empire; and, finally, in 1921 Sir John was elevated to the Bench.

Essentials for Judicial Office.

"Sir John's elevation to the Bench was greeted with respectful approbation by us all. It was felt that his preferment fulfilled admirably all those essentials for judicial office enunciated by Lord Brougham: that the Bench should be filled with men taken from the most learned lawyers and most accomplished advocates; men who have knowledge of the principles of jurisprudence, and the sagacity to apply it; men who from experience as advocates possess the power of taking large and enlightened views of questions and of promptly seizing the bearing of a case.

"I say with confidence that all those essentials are united in our guest of this evening. Of all his qualities as a Judge, it would not be fitting for me to speak this evening. But this I can say with conviction: his judgments are in the *Law Reports*, and will live there as a tribute to his learning, with those of our greatest Judges."

His Honour Mr. Justice Reed: "And be buried there too!"

When he could be heard again, Mr. Munro proceeded: "No matter how young or how inexperienced counsel may be, he can always rely on a courteous and attentive hearing before your Honour. That, gentlemen, is a characteristic which has endeared him to us all.

"In 1936, when senior puisne Judge, as we rejoice to say you still are, you, Sir, received from His Majesty the well-deserved honour of Knighthood, and we rejoice to think that you will still be a member of the Bench during the ensuing year. You have, Sir, deserved, and won, high distinction. We in this room to-night honour the man whom they adorn, and pay tribute to the essential qualities that underlie his character—to one whose wide experience of men, infinite patience and courtesy, serene judicial temperament, complete absence of prejudice, and sincere desire to do justice, will always live in our memories."

His Honour's Reply.

His Honour Mr. Justice Reed responded with a charming speech that abounded with anecdote and reminiscence. He began by saying that he could not properly express his sincere gratitude for the kind way in which the toast of his health had been received. "I cannot altogether live up to the description given by your President, but I suppose I am as I am; and if I have satisfied the profession I am well content with that," His Honour proceeded: "As it has occurred to me on two other occasions, in Wellington and in New Plymouth, where the Bar were good enough to give me a dinner, I think it may be of interest to you to hear something of the conditions that existed in New Zealand at the time when I was admitted.

"It is nearly fifty years since I was admitted to the Bar. At that time in New Zealand there was a slump over the country—much the same sort of slump as we had recently. I might say that I came out to New Zealand in 1885 and on board the same ship was the Honourable Mr. Walter Johnston, an uncle of our present Mr. Justice Johnston. He said to me one day, 'Young man, are you going into the law in New Zealand?' I said I was; and he replied, 'Then study the Bankruptcy Act!' That was the condition of affairs in 1887 when I started practice. There were no paid positions in offices open and to start on one's own account in Auckland appeared pretty hopeless, and I decided to explore the surrounding districts. The North was very different then from what it is now, and I found that north of Whangarei there was but one lawyer, who appeared to have a thriving practice; but, whether it was earned money or whether it was trust money, it all went in liquor. I judged that there were possibilities there. During that time a lawyer was looked upon as rather an acquisition to the district, a distinct sign that the place was going ahead. I do not know whether that is the case now.

"Amongst those who had suggested that I should go there was the owner of a property in Kawakawa. He was most enthusiastic about the possibilities of the district, so much so that he had a case for me the day I arrived there. I took the case that day, and as it was before Justices of the Peace, I succeeded. So I earned my first guinea—and I thought it was an excellent thing."

His Honour went on to describe the conditions under which he practised in the far North, and related numerous delightful anecdotes of his varied experiences. He mentioned the difficulties of transport over a wide district, and the need for self-reliance and enterprise.

"One had to be pretty hard physically in those days," His Honour concluded; "but it was not a bad training and one learnt a certain amount of human nature. I think I have had a fair experience of human nature, and that has always been helpful."

The Judiciary.

The toast of the Judiciary was to have been given by the Attorney-General, who unfortunately was called to Wellington that evening. In his absence, Mr. H. M. Rogerson, Vice-President of the Auckland Law Society, assumed this responsibility, at short notice, and ably fulfilled it.

After saying that up to the afternoon he had looked forward with pleasurable anticipation to the evening's function. Suddenly, that afternoon, he had been

peremptorily elevated to his present position, from the position at the other end of the room where he had anticipated enjoying with carefree abandon the amenities of that locality. But, he added, his position had its compensations, because there he had the privilege and the honour to propose the toast of His Majesty's Judges.

"We in New Zealand, and in all parts of the Empire, are so accustomed to finding the Supreme Court Bench occupied by men of learning and ability, and, above all, of the highest integrity, that we are perhaps brought to accept our good fortune in that respect as a matter of course, and perhaps to value it too lightly," the speaker continued. "When we look round on the countries of to-day, and find Communism triumphant in one, and Fascism, dictatorships, or civil war in others, we may be pleased, and we may be proud, that the peoples of the British nation have always followed some form of democratic government. We may go further and search for the reason for our immunity from those ills; and, if we do, it may be found, I think, that the respect and confidence in our judicial system that springs from a Bench of able Judges contribute to that freedom from ills that afflict other countries.

"We in New Zealand are deeply sensible of the gratitude which we owe to the judicial system; and those Judges, whose toast I have the honour to propose, themselves have upheld in a worthy manner this high tradition that has been set for them by their predecessors in office."

Their Honours Mr. Justice Fair and Mr. Justice Callan replied with witty and amusing speeches.

Mr. Justice Fair.

His Honour Mr. Justice Fair said that before replying to the toast which Mr. Rogerson had so eloquently proposed, he took the opportunity of offering to the Council of the Law Society, and its members, his very sincere congratulations on the successful achievement that that day marked. It was indeed a red-letter day in the annals of the legal profession. For many years Auckland practitioners had possessed the essentials of a very fine library—a collection of legal literature, which, His Honour thought, was not equalled in this Dominion. Over may years they had built up a law library which was as nearly complete as anyone could wish, and of which they had good reason to be proud.

"You will, I am sure, agree that, with the aid of the invaluable *Halsbury*, and the text-books, you can obtain from the treasure-house of the Law Reports, in almost every case, some jewel to adorn the most unattractive argument, or some piece of wisdom to guide you through the new problems that—happily for us all—constantly demand your attention," His Honour proceeded. "Those researches into case-law, and the sifting of the cases, make us realize not only how little human nature has changed, but also how far and how widely we have gone in our search for precedent and principle.

"That is illustrated by a judgment which I recently had to consider. The case is *Curius v. Caponius*. It was a decision upon the interpretation of a provision in a will, the form of which is not uncommon in modern times; and it was delivered in Rome when Julius Caesar was a quaestor in Spain—in the year 68 B.C.! It was reported by Cicero; and he even reported the names of counsel engaged in the case—Scaevola and one Crassus—and nearly 2,000 years later it was followed in the Court of Chancery, and approved by the House of Lords. Lord Mansfield paid a tribute to it, in the case of *Frogmorton v. Holyday* when he said, 'The Roman tribunals at once, and the English at last, finally determined the point. . . .' But this is by the way.

"You will all have vivid recollections of the difficulty and discomfort that once attended your efforts to gather this wisdom of the past—the hard seats, the dim light, and conditions generally that were medieval in their discomfort. It speaks well for the good nature and patience of the Auckland Bar that it submitted to them for so long, without more active protest against the apathy of the authorities. One President after another, one Council after another, strove in vain to induce successive Ministers of Justice to improve the position. The Ministers, occupied, no doubt, with their problems of more immediate urgency, and rejoicing in the knowledge that the Library in the Parliamentary Buildings was quite adequate and very comfortable, could not for many years be persuaded to assist this very Cinderella of law libraries. Hamilton obtained a fine library, and a splendid building; and Auckland's modest claims were still disregarded.

"It was left to a Minister of Justice, who was not a member of our profession, but a layman, to remedy the position. The Hon. Mr. Cobbe, who was then the Minister of Justice, paid a personal and informal visit to the rooms which had been used for so many years. He was at once convinced of the necessity for the provision of better accommodation, and induced Cabinet to agree. I think the profession should remember also the efforts of Mr. B. L. Dallard, the Under-Secretary, who has been of great assistance throughout, and particularly in securing the site."

His Honour went on to say that those present had, on that afternoon, seen the result of the profession's labours. He thought that everyone would agree that Auckland now possesses a library which is a model in every respect. "Not only is it comfortable and convenient, spacious, airy, and well-lit, but it shows that careful attention to detail which marks a work that is a labour of love." The placing above the arch of the names of Presidents of the Law Society who have served the profession so well in the past, the coat-of-arms, the adornment of its walls with the stone-heads by, he thought, Hilgendorf, together with pictures of former members of the profession and the Bench—all these gave the library an individuality and a dignity that was as welcome as it was becoming. All were under a debt of gratitude to those who had given their time and energies so ungrudgingly to achieve that fine result. As an Aucklander by adoption, His Honour might say that they have added another attraction to the many beauties of this beautiful city.

"The members of the Bench, by the stern rule of necessity, may have to avoid making frequent use of the library," Mr. Justice Fair continued; "but we are happy to think that the practitioners at long last have received the reward of their patience, and will be able to meet the exacting demands of their profession—and their fellow-practitioners—in pleasant and congenial surroundings. The new Library is larger, better, and brighter than the old; and one can feel confident that the arguments of counsel will be, as a result, better, brighter, and longer! We are glad to know also that the library has not neglected the lighter side of learning. Barristers, weary of legal learning, may turn with relief to *Wellington's Despatches from the Peninsula*; and, if they are not satisfied with those twenty volumes, they may turn to the fifteen volumes of his *Further*

Despatches, Gibbon's Roman Empire, or *Hume's History of England.*

In responding to the toast of the Judiciary, His Honour said he felt somewhat at a loss. "What can one say who has had so short an experience on the Bench that he even feels disposed on some occasions to join in the argument rather than listen to it. There are others here who are much more fitted to deal with this toast than myself. We are happy to have with us, Sir Alexander Herdman. It is hard to believe that we are not to see him again on the Bench which he occupied for some eighteen years. Sir John Reed, with his fifteen years of judicial work, and his well-earned honours fresh upon him, and my brother Smith, whose youthful appearance conceals nine years of strenuous service, are well qualified to respond to the toast. You must look to my brother Callan, who, I am happy to think, is to follow me, to deal with it adequately in his usual happy vein. As for myself, I wish to say that I recognize—as, indeed, anyone who thinks seriously must—the great traditions handed down to us by the Judges of the past.

ADMINISTRATORS OF JUSTICE.

"No one occupying the position of a Judge of the Supreme Court can fail to appreciate that high honour, and the obligations which it imposes, although he may not attain the standard which he hopes for. We have only to mention the names of those who have occupied judicial office in the past, to realize how fortunate the Dominion has been in having men of great capacity and high character to administer justice in its Courts. One thinks of Chapman the elder, and the son, Sir Frederick Chapman, who has so lately passed from us; of the four Chief Justices who have held office: Sir William Martin, Sir James Prendergast, Sir Robert Stout, and Sir Charles Skerrett. And then there occurs to one's mind those three great Judges, Mr. Justice Richmond, Sir Joshua Williams, and Sir John Salmond. All these—and there are many others, too—were characterized not only by profound learning and great capacity, but by the patience and good humour that are essential if the exacting demands of legal work are to be lightened.

"Most counsel recognize that the Bench is not really a bed of roses. There are some matters, nevertheless, that they may be reminded of. I am sorry that the Attorney-General is not here this evening to give them his consideration. From the short experience I have had, it appears to me that the Bench, at least those members of it in the Northern District, are expected to work too continuously, and under a constant pressure of work." (Applause from His Honour Mr. Justice Callan.)

"The late Sir Frederick Chapman said to me, shortly after my appointment, 'It is a great honour; but you know that it means you will have to work every week-end, some holidays, and most evenings!' Those of us in the Northern District have had no cause to doubt the truth of this observation. It means that we are not in a position always to give to those matters that require consideration the time that they deserve; and, if there is one office that should carry with it sufficient leisure to consider the many problems that confront it, it is the office of a Supreme Court Judge. It means also that the cases cannot always be conducted in the way that is both the most pleasant and the most efficient way, by discussion at the hearing. Surely it would be better if the Judges had rather more time than they actually required for their work, than that they should have less! It has been said that in these days 'everyone talks and no one listens.' But that cannot, I believe, be said of the Supreme Court Judges here."

His Honour again expressed his thanks for the way in which the toast had been honoured.

MR. JUSTICE CALLAN.

His Honour Mr. Justice Callan said that like his brother Fair, he was grateful to Mr. Rogerson for the eloquent way in which he had proposed the toast. He had discussed rather serious philosophic and national questions. It must have been at the lower end of the table that he had acquired the capacity to discuss them so late in the evening. "At this stage of the evening," His Honour added, "my own feeling about Communism and Fascism is that they are both things well forgotten." He continued:

"I share with my brother Fair, in a degree increasing with the degree of my being junior to him, a sense of regret that this task falls to Judges as junior as ourselves, particularly as there are present persons who ought to have spoken, and who have not spoken, although they were asked to speak! When this matter came to be considered a short time ago one Munro was reported to have said that all three of us were to speak. When I was still at the Bar I always regarded a conference of Judges as a body that could be depended upon to arrive at a direct and clear understanding on the matters at issue. But, having sat through one session of the Court of Appeal, I realize the possibility of misunderstanding or mistake; and so I must not blame my brother Smith. My recollection is that the understanding between us was that neither of us wanted to speak, but that each of us would do his duty!"

His Honour said it was a very great privilege to be present that evening, because only on the previous day he was in terror that it would not happen. He was at Hamilton earning his pay.

"Though there are many consolations for one in this office, one has one's neck in a halter," he proceeded. "Yesterday at Hamilton it was decided that, owing to the unfortunate circumstances, a certain Hamilton case would be much more conveniently heard in Auckland. I am very grateful to those gentlemen who arranged that. It is a very happy thing that our interests coincided; because it would have been a very great deprivation not to have heard those two excellent speeches from Mr. President, nor to be present when the Bar honours Sir John Reed in the way which he so richly deserves."

His Honour referred to his own association on the Bench with Mr. Justice Reed, and said that he had the pleasure of sitting in the Court of Appeal under the presidency of Sir John Reed; and he might say that what had been said of his kindness and consideration was characteristic of him in his treatment of the juniors of the Bar; and he had been equally kind and considerate to "the boys on the Bench."

Referring to the work of the Bar, His Honour said that his experience in Auckland seemed to show that a comparatively small number of litigiously-minded people there were enough to keep members of the profession pleasantly and profitably busy. "I know," he added, "that they keep sufficiently busy the insufficient number of Judges who reside there.

OTHER LAW LIBRARIES.

"It is a great gain that this important city is now possessed of a law library that is worthy of itself," His Honour continued. "I happen to be familiar with the libraries of other centres. I know the Dunedin,

Christchurch, and Wellington libraries sufficiently well; and I have no hesitation in saying that, until to-day, yours was not only the worst; but until to-day one hesitated to call it a library at all! I know that, in order to get to my rooms at all, I had to traverse the library, which was really only a passage through which there seemed to be traffic at all times of the day; and I may say I always traversed that passage with rapidity."

His Honour proceeded to describe in graphic terms the discomforts to which the users of the library had been subjected, and the possible effect on arguments "stewed up in such an unpromising laboratory." He continued: "My brother Fair, with the optimism for which he is noted, thinks that the arguments of counsel in future are to be better and brighter, but I am not at all sure that we can look forward to such a happy result: because one of the two arguments has to be wrong. The job of the man with the better argument is to make the truth clear, and the job of the other man is to bury the truth deep, and I think that other man will always be the bother." He doubted whether the advice of a famous Lord Chancellor, "Never to hoodwink a Judge who is not over-wise," was generally accepted; and, he added, "Still less do I believe he never did it, but I think perhaps he never tried!"

His Honour then returned to a consideration of the new library, and amid frequent laughter compared its linoleum-covered floors with the heavily-carpeted Dunedin library. He passed on to relate how the Dunedin library became possessed of its carpet, and mentioned the incredible folly of one of the members of the District Council who boasted of it to his wife and committed the grave error of revealing how much it had cost. The questions from all their wives, which this revelation later brought forth, were sometimes difficult to answer. He warned members of the profession of the problems that might arise from their new possession, and hoped that they would be able to dispose of them suitably according to the new conditions, and their own temperaments.

MR. JUSTICE SMITH.

At the conclusion of Mr. Justice Callan's speech, the Chairman rose and declared that he thought "a case had been established," and that the remarks of Mr. Justice Callan called for some reply. He then called on Mr. Justice Smith.

His Honour Mr. Justice Smith, expressed his deep appreciation of the invitation that had been extended to him as a Judge who had for some years been associated with the district. With reference to Mr. Justice Callan's remarks, he said: "I have at least enjoyed my dinner without the thought that I would have to make any speech at all. It is quite true that I had a consultation with my brother Judges as to which of us should speak to-night; but I obtained a dispensation on the ground that it was *your* dinner; and the Auckland Judges, therefore, are the ones that should reply to your toast.

"As regards your Library I would say that you always had a very good library—in my experience it was the best library one could have—and now you have the best housing for it. And so, at this late hour, let me just say that for the pleasure I have had in being present at your functions to-day, I thank you."

The company then adjourned to spend what was left of the evening in the informal ways in which members of the Bar traditionally express their sociability towards one another.

New Judges' Libraries.

The Government's Intentions,

In his address at the opening of the new Law Library at Auckland, His Honour Mr. Justice Reed, as reported on another page, stressed the importance and necessity of making provision for a Judges' Library for their Honours of the Northern District. His Honour was apparently unaware at the time of his speaking that plans for such a library have been prepared, and that its construction was authorized by the Minister of Justice, the Hon. H. G. R. Mason, almost three months ago. It was considered more suitable to their Honours' convenience that the construction of the Judges' Library should be deferred until the commencement of the long vacation. The Under-Secretary for Justice, Mr. B. L. Dallard, authorizes the statement that it is hoped that the work will be completed before the new legal year commences. It is his Department's intention also to make provision for a Judge's Library at Whangarei, the new circuit town in the Northern District, and also at Invercargill and at Christchurch in the new Court buildings in those cities.

New Zealand Conveyancing.

By S. I. GOODALL, LL.M.

Assignments by Sheriff of Interests of Judgment Debtor under Will.

(*Concluded from p. 328.*)

2. Deed of Assignment by Sheriff in pursuance of Writ of Sale of equitable Estate or Interest in Remainder of Execution Debtor in Land expectant on Death of Life Tenant.

THIS DEED made the day of 19 BETWEEN A.B. Sheriff of in the Judicial District (hereinafter called "the Sheriff") of the one part AND C.D. of &c. (hereinafter called "the assignee") of the other part

WHEREAS by a certain deed (being a deed of marriage settlement) bearing date the day of 18 all that piece of land more particularly described in the Schedule hereto was conveyed to E.F. and G.H. therein named upon trust for M.N. during her life without impeachment of waste and after her death in trust for O.P. during his life without impeachment of waste and after the death of the survivor of the said M.N. and O.P. in trust for all such one or more of the issue of the marriage of the said M.N. and O.P. for such estates or estate and in such manner as the said M.N. and O.P. should by deed appoint and in default of appointment with remainder over as in the said deed of settlement provided

AND WHEREAS by deed of appointment bearing date the day of 19 M.P. (formerly the said M.N.) and the said O.P. did irrevocably appoint the said land to be held after the death of the survivor of them in trust for all the issue of the said marriage then living that is to say J.P. K.P. and L.P. (the last named being hereinafter called "the execution debtor") as tenants in common in equal shares

AND WHEREAS by charging order nisi dated the day of 19 and made in the Supreme Court

of New Zealand at in the said Judicial District in an action No. /19 wherein one X.Y. is plaintiff and the execution debtor is defendant it is ordered that until sufficient cause is shown to the contrary the estate right or interest of the execution debtor in the said land by virtue of the trusts of the said deed of settlement and deed of appointment do stand charged with the payment of the sum of £ being the amount for which the plaintiff has entered judgment in the said action

AND WHEREAS by charging order absolute dated the day of 19 and made on the said charging order *nisi* in the Supreme Court as aforesaid it is ordered that the said estate right or interest of the execution debtor do stand charged with the sum of £ being the amount for which the said plaintiff has entered judgment in the said action

AND WHEREAS in pursuance of a writ of sale dated the day of 19 to the Sheriff directed and issued out of the Supreme Court of New Zealand at aforesaid in the said Judicial District in the said action the Sheriff has by public auction sold to the assignee the said estate right or interest of the execution debtor in the said land for the sum of £

NOW THIS DEED WITNESSETH as follows:

1. IN PURSUANCE of the said writ of sale and to effectuate the said sale made thereunder and IN CONSIDERATION of the sum of £ paid to the Sheriff by the assignee (the receipt whereof is hereby acknowledged) the Sheriff DOTH HEREBY CONVEY ASSIGN TRANSFER AND SET OVER unto the assignee All That the said recited estate right or interest of the execution debtor in the said land by virtue of the trusts of the said deed of settlement and deed of appointment TO HOLD the same unto the assignee absolutely.

2. IT IS HEREBY DECLARED that no covenants whatsoever shall be implied herein on the part of the Sheriff.

SCHEDULE.

ALL THAT &c.
SIGNED &c.

3. Memorandum of Transfer by Sheriff in pursuance of Writ of Sale of vested Estate in Remainder of Execution Debtor in land expectant on death of Life Tenant.

Under the Land Transfer Act, 1915.

MEMORANDUM OF TRANSFER.

WHEREAS A.B. of &c. (hereinafter called "the life tenant") is registered as proprietor of an estate for life in possession subject however to such encumbrances liens and interests as are notified by memoranda underwritten or endorsed hereon in ALL THAT &c. WITH remainder in fee-simple therein expectant on the death of the life tenant to C.D. of &c. (hereinafter called "the execution debtor")

AND WHEREAS in pursuance of a writ of sale bearing date the day of 19 to E.F. the Sheriff of directed and issued out of the Supreme Court of New Zealand at in the Judicial District in an action No. /19 wherein one G.H. is plaintiff and the execution debtor is defendant the said Sheriff has caused the said estate or interest of the execution debtor in the said land to be sold by public auction to J.K. of &c. (hereinafter called "the transferee") at the price of £

NOW THEREFORE IN PURSUANCE of the said writ of sale and to effectuate the said recited sale thereunder and IN CONSIDERATION of the sum of £ paid to the said Sheriff by the transferee (the receipt whereof is hereby acknowledged) the said Sheriff DOTH HEREBY TRANSFER unto the transferee ALL THAT the said recited estate and interest of the execution debtor in the said land.

AND IT IS HEREBY DECLARED that no covenants whatsoever shall be implied herein on the part of the Sheriff,
IN WITNESS &c.
SIGNED &c.
SIGNED &c.
CORRECT &c.

Rules and Regulations.

Primary Products Marketing Act, 1936. Dairy-produce Export Price Order, 1936, Amendment No. 1.—*Gazette* No. 75, November 12, 1936.

Law Practitioners Act, 1931. Solicitors' Guarantee Fund Rules, 1936.—*Gazette* No. 77, November 19, 1936.

Health Act, 1920. Health (Importation) Regulations, 1936.—*Gazette* No. 77, November 19, 1936.

Board of Trade Act, 1919. Board of Trade (Raw Tobacco Price) Regulations.—*Gazette* No. 77, November 19, 1936.

Shipping and Seamen Act, 1908. Marine Engineers' Examination Rules, 1936.—*Gazette*, No. 79, November 26, 1936.

National Provident Fund Act, 1926. National Provident Fund Regulations, 1927, Amendment No. 5.—*Gazette* No. 79, November 26, 1936.

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