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" As eternal vigilance is the price of liberty, so it is the price also of justice administered according to law, for if the latter falls into a state of disrepair or lags behind the needs of society, justice must of necessity suffer. Some means, therefore, constant in its operation, must be devised to ensure against the obsolescence of law or its disconformity with social requirements."

—HON. H. G. R. MASON, Attorney-General, at the inaugural meeting of the New Zealand Law Revision Committee.

Vol. XIII. Tuesday, September 7, 1937. No. 16

Covenants in Restraint of Trade.

II.—The Old Doctrine of Severance.

THE most difficult part of this developing branch of the law relates to the doctrine of severance as applicable to covenants in restraint of trade. In its simplest terms, in the general law of contract, this doctrine may be stated as follows :—

When a contract contains several distinct promises, or a promise which, by its terms, is divisible into distinct promises, some of which are illegal and others legal, the Court will enforce those which are legal and refuse to enforce those which are illegal.

This doctrine of severance, which is applicable to all contracts, was stated in general terms by Willes, J., in *Pickering v. Ilfracombe Railway Co.*, (1868) L.R. 3 C.P. 235, 250, as follows :—

> " The general rule is that, where you cannot sever the illegal from the legal part of a covenant, the contract is altogether void ; but, where you can sever them, whether the illegality be created by statute or by the common law, you may reject the bad part, and retain the good."

For a number of years this doctrine received a somewhat wide application, when the reasonableness of contracts in restraint of trade came for consideration. In *Baines v. Geary*, (1887) 35 Ch.D. 154, North, J., referred to the cases in which the Courts had seen their way to treat a covenant in restraint of trade as divisible as regards space. (In one of these, a defendant had covenanted not to carry on the trade of a perfumer within the cities of London or Westminster, or within a distance of six hundred miles from the same respectively ; the Court of Exchequer held the restriction as to the six hundred miles was unreasonable, and enforced the covenant to the extent of the two cities : *Price v. Green*, (1847) 16 M. & W. 346, 153 E.R. 1222.) Following *Nicholls v. Stretton*, (1847) 10 Q.B. 346, 116 E.R. 134, North, J., held that a covenant which restrained the defendant from serving any of the customers served or belonging at any time to the employer after he had quitted the latter's employment, was severable. The part as to persons who had become his employer's customers before he left was enforceable. This decision was followed by a similar carving out of new covenants, until Kekewich, J., in *Davies, Turner, and Co. v. Lowen*, (1891) 64 L.T. 655, added words limiting the time of the covenant's operation, which were not in the covenant itself ; but this decision has been adversely commented upon ever since.

In *Baker v. Hedgecock*, (1888) 39 Ch.D. 520, Chitty, J., said that he did not think that North, J., in *Baines v. Geary* (*supra*), intended to lay down any such principle as that the Court can create or carve out a new covenant for the sake of validating an instrument which would otherwise be void for unreasonableness. Thus, if the covenant were not to carry on a business in any part of the world, the Court could not be asked to uphold it by construing it as a covenant not to carry on business within, say, a limit of two miles : this, in effect, would be making a new covenant, which would not be that to which the parties had agreed. Consequently, effect could not be given to a void covenant by rejecting the general restraint, and limiting the agreement for the purposes of the action to the employer's business, when the covenant specified " any business whatsoever."

So far, the principles of severability do not seem to have been clearly enunciated. One rule, however, may be deduced from the decisions, and that is, where there was a series of distinct obligations in separate and clearly defined divisions in a covenant and not merely one obligation framed in alternative manners, the Court applied the principles of severability. In those circumstances, the doctrine was applied as to subject-matter in *Davies, Turner, and Co. v. Lowen* (*supra*), *Rogers v. Maddocks*, [1892] 3 Ch. 346, *William Robinson and Co., Ltd. v. Heuer*, [1898] 2 Ch. 451 ; and *Bromley v. Smith*, [1909] 2 K.B. 235 ; as to area, in *Mallan v. May*, (1843) 11 M. & W. 653, 152 E.R. 967 (by striking out the restriction against practising as a dentist in an area outside London from a contract which restricted the defendant from practising in London and the area outside it) ; and as to the customers, as in *Dubowski and Sons v. Goldstein*, [1896] 1 Q.B. 478 (by striking out " future customers " from a contract restricting the defendant from dealing with plaintiff's customers during the term of employment and those who might become future customers after the employment ceased). In the majority of these cases, the Courts had before them the words of Sir George Jessel, M.R., in *Printing and Numerical Registering Co. v. Sampson*, (1875) L.R. 19 Eq. 462, 465 :

> " You have the paramount public policy to consider—that you are not lightly to interfere with freedom of contract."

In *Continental Tyre and Rubber Co. v. Heath*, (1913) 29 T.L.R. 308, Scrutton, J., as he then was, said that *Baines v. Geary* (*supra*) and *Baker v. Hedgecock* (*supra*) could not be reconciled, and that the view expressed in the latter was the correct one. He added, *obiter*, that, as the decisions then stood, there seemed to be no difficulty as to severing a covenant when there were other words in the covenant to which the restriction could apply ; but he felt great difficulty, when there was only one word in the covenant to which the restriction could apply, in saying that the Court could

insert other words in the covenant in order to cut down the meaning of the words used in the covenant.

He also remarked, at p. 310,

> " While it might be of public interest that a person should not be unreasonably restrained, it was not to the public interest that persons should be allowed lightly ro break contracts which they had entered into."

This judgment anticipated the tightening of the doctrine of severability which reversed the prior tendency to preserve the covenant, if possible, by severance in one mode or another. Later McCardie, J., in *Express Dairy Co. v. Jackson*, (1929) 99 L.J.K.B. 181, 184, referred to this as the " somewhat broad and liberal application of the doctrine of severability," on which, he said, much had been said since 1896.

A change in the viewpoint of the Courts began with *Mason v. Provident Clothing and Supply Co., Ltd.*, [1913] A.C. 724, 745, where Lord Moulton explained the applicability of the doctrine of severance to contracts in restraint of trade. This was a case relating to a contract of service. He said :

> " It was suggested in the argument that even if the covenant was, as a whole, too wide, the Court might enforce restrictions which it might consider reasonable (even though they were not expressed in the covenant) provided they were within its ambit. My Lords, I do not doubt that the Court may, and in some cases, will, enforce a part of a covenant in restraint of trade, even though taken as a whole the covenant exceeds what is reasonable. But, in my opinion, that ought only to be done in cases where the part so enforceable is clearly severable, and even so only in cases where the excess is of trivial importance, or merely technical and not a part of the main purport and substance of the clause.
>
> " It would, in my opinion, be *pessimi exempli* if, when an employer had enacted a covenant deliberately framed in excessively wide terms, the Courts were to come to his assistance, and, by applying their ingenuity and knowledge of the law, carve out of this void covenant the maximum of what he might validly have required . . . The hardships imposed by the exaction of unreasonable covenants by employers would be greatly increased if they could continue the practice with the expectation that, having exposed the servant to the anxiety and expense of litigation, the Court would in the end enable them to obtain every thing which they could have obtained by acting reasonably."

Lord Shaw expressed the same opinion in his speech, where he said, at p. 742 :

> " Courts of law should not be astute to disentangle such contracts and to grant injunctions or restraints which are not justified by their terms."

In the following year, in *S. V. Nevanus and Co., Ltd. v. Walker and Foreman*, [1914] 1 Ch. 413, 423, Sargant, J., refused to apply the remarks of Lord Moulton in *Mason's* case, which, he said, were *obiter*, and not intended to be applied to cases where the two parts of a covenant were expressed in such a way as to amount to a clear severance by the parties themselves, and as to be substantially equivalent to two separate covenants. He added :

> " I think that Lord Moulton was not intending to deal with the numerous cases of high authority in which the good part of such a covenant was held to be enforceable, notwithstanding its collocation with a bad part, but was only thinking of those cases in which some severance had been effected by the Court, and the covenant has not been held bad merely because it might work unreasonably in certain exceptional cases not with its main principle purpose and meaning."

Then in *Godsoll v. Goldman*, [1915] 1 Ch. 292, the Court of Appeal refused to accept Lord Moulton's view. This was a commercial contract in which an agreement was entered into by Goldman, who covenanted that he would not carry on or be interested in the business of a vendor or dealer in real or imitation jewellery in London, in the United Kingdom and the Isle of Man, or in France, the United States of America, Russia, or Spain, or within twenty-five miles of Potsdamerstrasse, Berlin, or St. Stephans Kirche, Vienna. Neville, J., in the Court of first instance, found the covenant unnecessarily large, and severed it in regard to space by limiting it to the United Kingdom and the Isle of Man, which Lord Cozens-Hardy, M.R., in the Court of Appeal, said was in accordance with authorities nearly two hundred years old. The Court of Appeal held that the doctrine of severability was applicable to the part of the covenant, " the business of a dealer in real or imitation jewellery " ; and held that the covenant was good in so far as it operated to restrain the covenantor from carrying on business in imitation jewellery, which was the business in respect of which both parties had entered into the agreement. What afterwards became known as the " blue-pencil rule " was applied in both instances : to delete the words after " Isle of Man," and to strike out the words " real or."

For some years, the Courts hesitated between applying the blue-pencil rule of the Court of Appeal in *Goldsoll's* case and applying the passage in Lord Moulton's judgment in *Mason's* case. In *Konski v. Peet*, [1915] 1 Ch. 530, a service contract, Neville, J., refused to apply the blue-pencil rule to future customers, and held that the covenant as to customers during and after the term of employment was too wide, not severable, and consequently bad. In *Horwood v. Millar's Timber and Trading Co., Ltd.*, [1917] 1 K.B. 305, the Court of Appeal held the contract for a loan then under consideration was illegal, as contrary to public policy ; and, as the consideration must be considered as one and entire, to say this was a case in which the doctrine of divisibility of parts of a deed should be applied was distinctly contrary to what Lord Moulton had said in *Mason's* case (*cit. supra.*), a passage which Scrutton, L.J., at p. 318, said he had read with the greatest sympathy and delight.

However, the Court of Appeal had to reconsider the whole doctrine of severability in 1920. In *Atwood v. Lamont*, [1920] 2 K.B. 146, the Divisional Court, on appeal from a County Court, held that a covenant in a service contract was wider than was reasonably necessary for the protection of the plaintiff's business ; and, from the passage relating to " the trade or business of a tailor, dressmaker, general draper, milliner, hatter, haberdasher, gentlemen's, ladies', or children's outfitter within a radius of ten miles " of Kidderminster, Bailhache and Sankey, JJ., struck out all the words other than " tailor " and limited the operation of the restraint to the trade or business of a tailor. In the opinion of Bailhache, J., the Courts had not acted on the principles laid down by Lord Moulton in *Mason's* case, and, though he thought that his Lordship's observations were of the greatest weight, they were not the judgment or *ratio decidendi* of *Mason's* case ; and the principles of severability still obtained as *Godsell v. Goldman* (*supra*) showed. His Lordship expressed the doctrine as he understood it, as follows :

> " The Courts will sever in a proper case where the severance can be performed by a blue pencil, but not otherwise. To give an illustration—a covenant ' not to carry on business in Birmingham or within one hundred miles ' may be severed so as to reduce the area to Birmingham, but a covenant ' not to carry on business within one hundred miles of

Birmingham' will not be severed so as to read 'will not carry on business in Birmingham.' The distinction seems artificial, but is, I think, settled."

Sankey, J., as he then was, agreed as to this application of the doctrine, and refused to apply Lord Moulton's *dictum*; and he also stressed the necessity for preserving the contracts entered into by parties.

When *Atwood v. Lamont* (*supra*) reached the Court of Appeal the decision of the Divisional Court was reversed, and the modern doctrine of severability in covenants in restraint of trade was stated. With this important decision, and the present viewpoint of the Courts, we propose to deal in our next issue.

Summary of Recent Judgments.

SUPREME COURT. Nelson. 1937. July 22, 23. *Myers*, C.J. — **BYDDER v. BETHUNE.**

Landlord and Tenant—Rent Restriction—Recovery of Possession—Refusal of Order by Magistrate—Subsequent Action for Ejectment in Supreme Court—Whether Plaintiff estopped from Recovery—Premises used for Maternity Hospital—Monthly Tenancy—Notice to Quit given by Purchaser—Whether Tenancy protected—Fair Rents Act, 1936, ss. 2, 3, 20.

The refusal by a Stipendiary Magistrate of an order for the possession of premises is not a decision, determination, or order made under the provisions of the Fair Rents Act, 1936; and there is nothing in that statute which affects the right of a party to bring a new action in the Supreme Court when he had failed to obtain an order of ejectment in the Magistrate's Court.

Aitken v. Smedley, [1921] N.Z.L.R. 236, applied.

The Fair Rents Act, 1936, does not apply to premises used as a maternity hospital licensed under s. 129 of the Hospitals and Charitable Institutions Act, 1926.

Counsel: Rout, for the plaintiff; **Cheek,** for the defendant.

Solicitors: Rout and Milner, Nelson, for the plaintiff; **Glasgow, Rout, and Cheek,** Nelson, for the defendant.

SUPREME COURT. Wellington. 1937. July 16, 19. *Ostler, J.* — **QUIN v. THE KING.**

Crown Suits — Jurisdiction — Common Employment — Whether Part VI of the Law Reform Act, 1936, retrospective—Validity of Notice and Claim for Higher Damages than those to which the Suppliant limited by Law—Whether any Jurisdiction to amend Claim—Crown Suits Amendment Act, 1910, s. 9—Law Reform Act, 1936, s. 18—Workers' Compensation Act, 1922, s. 67.

Section 18 of the Law Reform Act, 1936 (repealing and replacing s. 67 of the Workers' Compensation Act, 1922, and abolishing the limit of £1,000 damages in an action by a servant against his employer in respect of the negligence of a fellow-servant), is not retrospective, and does not impliedly repeal s. 9 of the Crown Suits Amendment Act, 1910, providing that

"No claim shall be made against His Majesty . . . for a larger sum than two thousand pounds in respect of the death of any person or in respect of personal injuries suffered by any person."

Therefore, a notice of intention by a servant of the Crown to claim the sum of £2,500 in respect of personal injuries sustained by him owing to the negligence of a fellow-servant before the date upon which the Law Reform Act, 1936, came into force was bad in law, the suppliant having no right to claim more than £1,000.

Semble, The Court had no jurisdiction to amend a claim in a petition for the same amount as the notice.

Dagnall v. Huddart Parker, Ltd., [1937] N.Z.L.R. 510, and **Official Assignee v. The King,** [1922] N.Z.L.R. 265, applied.

Barber v. Pigden, [1937] 1 All E.R. 108, and **Wright v. New Zealand Shipping Co., Ltd.,** [1917] N.Z.L.R. 232, distinguished.

Counsel: W. H. Cunningham, for the Crown, in support of motion to strike out petition; **O. C. Mazengarb,** for the suppliant, to oppose.

Solicitors: Crown Solicitor, Wellington, for the respondent; **Mazengarb, Hay, and Macalister,** Wellington, for the suppliant.

SUPREME COURT. In Chambers. Wellington. 1937. August 6, 10. *Ostler, J.* — *Re* **CALCINAI (A BANKRUPT),** *Ex parte* **CALCINAI.**

Bankruptcy—Official Assignee—Power to Lease for fixed Term or to grant Temporary Lease—Right to Notice from Official Assignee of Bankrupt who is Tenant where no Term fixed—Bankruptcy Act, 1908, ss. 63, 64—Bankruptcy Amendment Act, 1927, s. 4.

The Official Assignee in Bankruptcy has no power to grant a lease for a fixed term, but he has power to grant a temporary lease until he is ready to sell.

If he makes an oral arrangement with the bankrupt for occupation of land vested in the Official Assignee without fixing any term, the bankrupt is entitled to one month's notice in writing of the termination of the tenancy in accordance with s. 16 of the Property Law Act, 1908.

Hamilton v. Bank of New Zealand, (1904) 24 N.Z.L.R. 109; **In re Batey, Ex parte Emmanuel,** (1881) 17 Ch.D. 35, referred to.

Counsel: Pringle, for the Official Assignee; **McCormick,** for J. M. Calcinai and Jessie Mary Calcinai.

Solicitors: Pringle and Gilkison, Wellington, for the Official Assignee; **H. McCormick,** Wellington, for the bankrupt.

Case Annotation: *In re Batey, Ex parte Emmanuel,* E. and E. Digest, Vol. 4, p. 213, para. 1976.

SUPREME COURT. Christchurch. 1937. May 14; July 20. *Northcroft, J.* — **GRICE v. THE KING.**

Deaths by Accidents Compensation—Dangerous Occupation—Deceased engaged in Quarrying with Explosives—No Negligence alleged—Whether Employer liable for Damages—*Volenti non fit injuria.*

Where a person is engaged to perform a dangerous occupation —*e.g.*, quarrying with explosives—and undertakes to do work that is intrinsically dangerous, and care has been taken to render it as little dangerous as possible, he voluntarily subjects himself to the risk; and those claiming through him cannot be permitted to complain that a wrong had been done when he was killed as the result of engaging in such occupation.

Smith v. Charles Baker and Sons, [1891] A.C. 325, followed.

Attorney-General v. Cory Bros. and Co., Ltd., [1921] 1 A.C. 521, mentioned.

Rylands v. Fletcher, (1866) L.R. 1 Ex. 265, aff. on app. (1868) L.R. 3 H.L. 330, and **Miles v. Forest Rock Granite Co. (Leicestershire), Ltd.,** (1918) 34 T.L.R. 500, distinguished.

Counsel: P. J. O'Regan, for the suppliant; **A. Brown,** for the respondent.

Solicitors: P. J. O'Regan and Son, Wellington, for the suppliant; **Raymond, Stringer, Hamilton, and Donnelly,** Christchurch, for the Crown.

Case Annotation: *Smith v. Baker and Sons,* E. and E. Digest, Vol. 13, p. 527, para. 789; *Attorney-General v. Cory Bros. and Co., Ltd., ibid.,* Vol. 42, p. 976, para. 71; *Rylands v. Fletcher, ibid.,* Vol. 36, p. 186, para. 304; *Miles v. Forest Rock Granite Co., (Leicestershire), Ltd., ibid.,* p. 192, para. 336.

Law Revision Committee.

THE ATTORNEY-GENERAL'S INAUGURAL ADDRESS.

The first meeting of the New Zealand Law Revision Committee was held on August 26, and a report of its deliberations appears elsewhere in this issue. The following is the text of the inaugural address delivered by the Attorney-General, Hon. H. G. R. Mason, at whose invitation the Committee met.

As eternal vigilance is the price of liberty, so it is the price also of justice administered according to law, for if the latter falls into a state of disrepair or lags behind the needs of society, justice must of necessity suffer. Some means, therefore, constant in its operation, must be devised to ensure against the obsolescence of law or its disconformity with social requirements.

The need for machinery such as is provided through the present Committee whereby the law may be continuously revised and reformed has for some time past been felt in this country, and has been voiced by lawyers both of the Bench as well as of the Bar, by the Press, Chambers of Commerce, and other thoughtful and well-informed citizens whose desire it is that the criteria of justice shall be as free of fault as reason and commonsense can make them. This need has not been fully satisfied by the appointment of the English Law Revision Committee, valuable though the results of its research and deliberations have been. It would not be enough for us in New Zealand to adopt *in toto* the recommendations of that Committee, or merely to transcribe into our statute-book such English legislation as embodies them. New Zealand conditions are not necessarily identical with those obtaining in England. It will be necessary for us to consider to what extent English reforms are applicable in New Zealand, although as a rule it will be desirable to adopt them as far as possible so that our general law may conform with that of England. Only by that means will the English decisions and text-books be of greatest value in this Dominion. It is to be remembered also that New Zealand law has certain distinctive features of its own and that reform in respect of these, or some of them, may become necessary.

It will, of course, be agreed that our attention should be addressed to the reform or improvement of the common law. Perhaps I should say the general law. Statutes which embody some particular aspect of State endeavour and are administered by Government Departments, will, of course, be amended from time to time to meet the changing ideas of policy. We need not, I think, concern ourselves—primarily at any rate—with them, for public opinion and Departmental efficiency will ensure their amendment, as and when it becomes necessary.

The Aims and Object of Law Reform.

But the general law—that which affects or may affect all citizens whatever their occupation or interests—that branch of our law is, I think, the proper field of our endeavour. Our aim should be to make this branch of law—*e.g.*, contract, tort, property law—as just as possible, removing anomalies that cause loss, hardship, or inconvenience to some people without any justification in reason for their continuance. Some of these have already been removed—*e.g.*, the *actio personalis* rule.

The purpose of amending this type of law is not so much to give any particular group of citizens advantages which it previously did not enjoy, as to free all citizens who happen to enter into certain relations or undergo certain experiences from burdens, inconveniences, or embarrassments that experience has shown to be unnecessary and vexatious. Among the aims and objects of reform in this division of the law is the creation, as far as human fallibility will permit it, of a condition of affairs in which, among other essentials of a healthy and just society, honest dealing between man and man is increasingly ensured, and where loss or injury sustained by any person having merit is compensated upon rational principles that commend themselves to the common sense of well-informed men and women.

Reform of this type arouses perhaps no great public enthusiasm. None the less, it is of the first importance to the whole of the community and cannot, without detriment to the public interest, be long neglected.

In the main (though not exclusively) reform of this kind must be the work of lawyers, of those whose vocation it is to work the law, by ascertaining, stating, and applying it, and who thus come to know it in its strength and weakness as no one else—however well-informed and well intentioned—can possibly do. Every practising lawyer of experience knows that in the main the law is the instrument of justice, but he knows also that it is not, and perhaps cannot be, a perfect instrument. His experience must on occasion have brought to his notice cases where law and justice seemed to diverge. That is perhaps inevitable because in our system of administering justice we seek also to attain the object of certainty, so that the canons by which all Courts are guided may be known beforehand, and conduct shaped accordingly.

But though the quality of certainty (so essential in a juristic system) may from time to time demand some sacrifice of ideal justice, it does not demand that the same sacrifice shall be repeated again and again. Once it is established that new conditions render the existing law inadequate to meet the needs of justice, the inadequacy can be, and should be, promptly corrected. The correction must, of course, take the form of statute law, because neither new legal fictions nor a new equity are to-day possible.

The Co-operation of the Profession.

I trust, and I believe, that in this work of law reform we shall have the co-operation of the whole legal profession. This Committee has been set up as a result of a recommendation of the profession carried at the Dunedin Conference of 1935; and its success will, in large measure, depend on the assistance that it gets from the profession. For our part we of the Committee will all, I am sure, welcome and carefully consider any suggestions that our brethern in the law care to make. From the collective experience and

learning of the profession much valuable material should surely be forthcoming.

But, as I have suggested previously, law reform, though it is primarily the concern of the legal profession is not exclusively such, nor does the profession seek to have it so regarded. Many intelligent men and women in different walks of life are competent to form and express an opinion on the adequacy or inadequacy of some branch or other of the law with which they are especially familiar. Such institutions as the Press, the University, Chambers of Commerce, and all who desire to see our law brought into as complete accord as may be possible with the needs of present-day society will, I trust, communicate to us any suggestions that, in their considered opinion, will contribute to the result that we all desire.

The law touches and concerns all who live together in the same community. It is to the interest of all that it should be rendered as perfect as possible.

Before we proceed to the agenda that I have had prepared for your consideration, I should like to express to the members of the Committee the Government's appreciation of their having consented to take part in this useful and important work of law reform. The circumstance that the Judiciary (represented to the great satisfaction and pleasure of us all, by the Rt. Hon. the Chief Justice, Sir Michael Myers) chosen representatives of the legal profession, and of the public teachers of law, and public officials who are most closely associated with the administration of justice, have voluntarily combined for the purpose of effecting reform where necessary in the means by which justice is sought to be achieved, furnishes to my mind convincing evidence of the vitality of our legal system, on the health of which the permanence of a free democracy so greatly depends.

Cautious Progressiveness.

For the initial meeting of the Committee it might appear at first sight that the agenda is somewhat ambitious. This has been presented designedly in this form to give the Committee an indication of the exceedingly large number and diverse nature of the matters that will be considered. I strongly believe in a policy of cautious progressiveness, particularly in the consideration of matters pertaining to the common law. This Committee will have the advantage of the reports of the English Law Revision Committee from time to time, and I suggest that a convenient method of procedure would be to refer to special sub-committees these reports for a comparison of our law with the English law and for a report to be brought down for consideration by a Committee as a whole as to the practicability of the adoption of the English proposals. I suggest also that it would be convenient to defer legislative action in New Zealand until we have had an opportunity of perusing such legislation as may have been introduced in England relating to such matters.

As a matter of practical convenience, and possibly to make for greater expedition, I suggest a departure from the order in the agenda and recommend that we proceed to the section dealing with the miscellaneous amendments of statutes largely of a machinery and procedural character. The matters have been brought up for review as a result of representations made from time to time to the Department of Justice. Their adoption will, in some cases, make a material alteration not only in procedure but also in the substantive law. For this reason it is considered that it would be desirable to submit them to the Committee.

A Pooling of Specialized Knowledge.

With regard to the revision of New Zealand statutes, possibly a convenient method will be to co-opt, for the purpose of securing reports, members of the profession who have made special study of particular subjects. By this means there will be a diffusion of interest throughout the members of the profession, the desire being to pool as far as practicable the specialised knowledge for the common good.

As we proceed through the agenda, dealing with a consideration of the adoption of Imperial statutes, it may be found that a somewhat similar procedure will be the most satisfactory way of dealing with the matters for consideration.

Where matters have been referred for report from co-opted members, these reports in the first instance should be referred to the Secretary. Copies will then be circulated to the individual members of the Committee and their comments will be collated and a completed report be made available for consideration at the next meeting of the Committee as a whole.

The Department of Justice will be the co-ordinating authority responsible for the marshalling of the matters dealt with and their due presentation for legislative action. When the stage of legislation is reached I hope to be able to arrange for draft Bills to be submitted to the members of the committee for their comments.

I propose to issue a general invitation for suggestions as to law reform, and will refer such as are received to the Law Revision Committee for consideration. It will be understood, of course, that Government reserves to itself the right to introduce, independently of the Committee, any legislative measures concerning matters of policy, notwithstanding that such legislation might involve an alteration or modification of common law. I assure you, however, that the greatest use will be made of this Law Revision Committee to ensure that the general law of the land shall be kept abreast of modern needs, and be adequate to the demands of an ever-widening justice.

Taking Books into Court.—In a recent issue of the *Solicitors' Journal* (London), there is recalled the sarcasm credited, or debited, to George III, that lawyers do not know the law any better than other people, they only know where to find it. This brings to mind the story of a member of the Bar, who was seen by a friend taking into Court a number of text-books and Reports, and to whom his friend said, "I thought you barristers knew all the law." "So we do," the barrister replied; "these are for the Judges!"

Hearsay Evidence.—Counsel, to establish lack of testamentary capacity, called an old friend of the deceased, a woman addicted to spiritualism. She proceeded to depose that she had visited the testator's grave, and he had appeared to her and said that his first will contained his true intention, the second having been . . .

At this stage the learned Judge, irritable at so gross a violation of the rules of evidence, hissed at the unlucky counsel,—

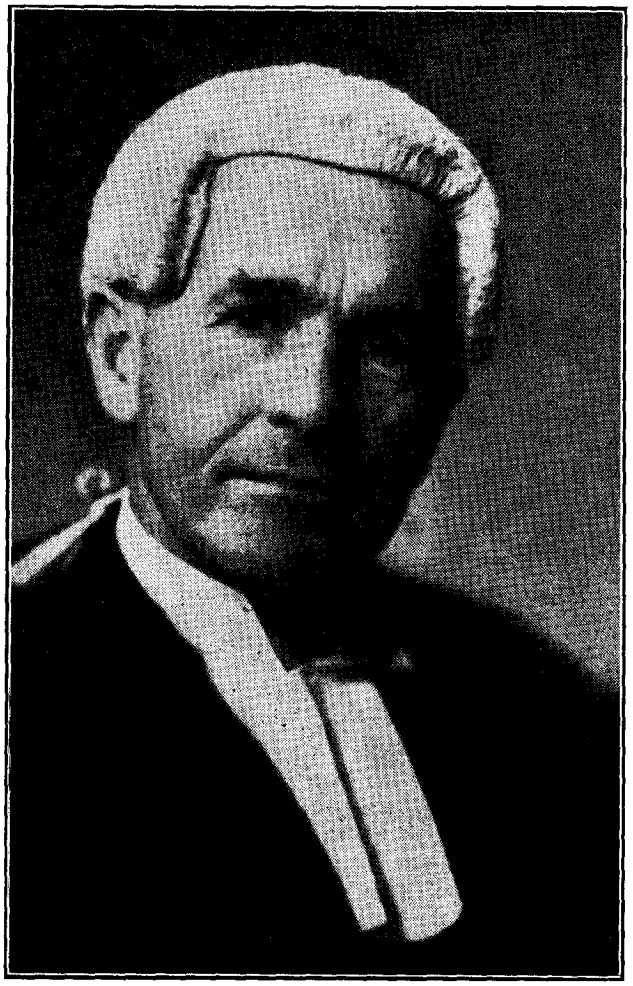
"You must restrain your witness, Mr. Buzfuz; you know the rules:—we can't have evidence like this—it's hearsay; it's *hearsay*!"

The Late Mr. Justice Page.

"A TRUE AND FAITHFUL SERVANT OF THE PUBLIC."

The news of the death of Mr. Justice Page, President of the Court of Arbitration since April, 1935, caused profound sorrow among the members of the Supreme Court Bench and the practitioners of Wellington, when it was learnt that he had passed away in the early hours of the morning of August 31.

Although the notice was very short, the Supreme Court was filled with members of the profession when the Chief Justice, The Rt. Hon. Sir Michael Myers, Mr. Justice Reed, and Mr. Justice Smith took their places on the Bench to pay a tribute of respect to the memory of the late Judge. In addition, the locally-resident Stipendiary Magistrates, Messrs. E. D. Mosley, J. H. Luxford, and W. F. Stilwell, were present, as was the Under-Secretary for Justice, Mr. B. L. Dallard. Mr. R. F. Page, of Wellington, a brother of the late Mr. Justice Page, represented his family.



S. P. Andrew, Photo.

The Late Mr. Justice Page.

The Chief Justice's Tribute.

Addressing the assembled members of the Bar, His Honour the Chief Justice said:

"It is with the deepest regret, to the Judges as well as to you all, the news has come of the death of one, who, by his lovable and manly qualities, his inflexible integrity, his unbiassed fairness, and his great courage and fearlessness, has gained the confidence of all sections of the public whom we serve, and endeared himself to all who were privileged to come into contact with him. To some of us, Mr. Justice Page was an intimate friend. I, myself, have known him as a boy and man, as a member of the profession, and finally as Judge of the Court of Arbitration, in which capacity he enjoyed the status of a Judge of this Court. He was always the same honourable and courteous gentleman.

"The public has lost a true and faithful servant. Those of us who enjoyed the privilege of his friendship have lost a true and loyal friend. To the members of his family I would like, on behalf of my colleagues as well as myself, to offer our sincere and respectful sympathy in their great loss."

The Attorney-General.

The Attorney-General, the Hon. H. G. R. Mason, said that the members of the Bar joined Their Honours in mourning the loss of the late Mr. Justice Page, and in expressing sympathy with those he had left behind him.

"I would mention only one among the qualities for which members of the Bar especially remember him: the great courage which has caused him to struggle in the later months under a very heavy burden of work while suffering from the illness which finally resulted in his death." Mr. Mason continued, "His courtesy, Your Honour has mentioned, and his other qualities, too. All these have caused him to be highly regarded and endeared him to the Bar, as to the members of the Bench. Your Honours, the members of the Bar join with you in the expressions that have been used concerning him."

The New Zealand Law Society.

The President of the New Zealand Law Society Mr. H. F. O'Leary, K.C., spoke on behalf of the practitioners throughout the Dominion.

"I join with you in expressing our very deep regret at the passing of Mr. Justice Page," he said. "In every phase of his life he has had the respect of all those who had the pleasure of knowing him. But, in particular, in the performance of his judicial duties he had the esteem and the confidence of all those who had the privilege of appearing before him, whether laymen or lawyers. As a Magistrate, as a Judge of the Arbitration Court, Mr. Justice Page performed his duties with a courtesy, an impartiality, and at the same time a fairness, which, while endearing him to us all, commanded our universal respect. There are many of us who hold the opinion that he would have adorned the Supreme Court Bench had his services in that high office been available.

"I would like to say, too, with the Attorney-General, that for long months before laying down his duties he carried on in a most heroic manner. When the illness which finally carried him off was making itself manifest, his courage, his resignation in adversity, was an example to us all. Your Honours, we, with you, regret his death, and with you we tender our respectful and deepest sympathy to those he has left behind."

THE WELLINGTON LAW SOCIETY.

On behalf of the members of the Wellington District Law Society, Mr. P. B. Cooke, K.C., asked permission to add a few words of sympathy and respect.

" We feel that he was peculiarly our own, and that his loss is very personal to each one of us," the speaker said. He continued : " Your Honours, he was admitted in this district, he practised in this district. He occupied for many years a seat on the Magisterial Bench in Wellington, and, it is a commonplace to say with what discretion he occupied it and how he earned the affectionate regard of everybody who appeared before him. Then when he was appointed to the Arbitration Court, and took to the Bench of that Court the great qualities that he possessed, he often sat in our district and we felt that he was still our friend and one of us.

" Some of the great qualities in him that the Wellington Society will always remember were, first of all, that he was a man in every sense of the word, and secondly, we shall not forget the patience and the consideration that he showed to all who appeared before him. Added to this, your Honours, was a devotion to duty, which, when he was suffering from illness, as we all know, despite the exhortations of his colleagues and his friends, he carried to a length that was nothing short of unselfish sacrifice. But your Honours we shall not forget him, and we ask his relatives to accept our respectful tribute to his memory and our sympathy in their loss."

There was an exceptionally large attendance of members of the profession at the service at Karori Cemetery, on September 2.

In the Court of Arbitration.

The Court of Arbitration, of which the late Mr. Justice Page was President at the time of his death, was sitting in Auckland when the news of his passing was received. The Acting-President, Mr. Justice O'Regan, paid a feeling tribute to his memory.

" Mr. Justice Page won a high place as a magistrate," His Honour said, " and his brethren of the legal profession acclaimed his promotion to the Court of Arbitration as an honour well merited. Soon after his acceptance of that onerous office he was stricken with an illness to which he has now succumbed. My colleagues, Messrs. Monteith and Prime, were also his colleagues, and they bear testimony of the unflinching courage with which he strove to do his duty despite the terrible handicap of physical infirmity.

" My own relations with the deceased Judge were always of the most cordial character, and none regretted more than I that illness made his retention of the office no longer possible. I would hope that each one of us when he is called upon to obey the inexorable decree of death will evince the same degree of fortitude, patience, and resignation which has characterised the deceased Judge."

Mr. Julius M. Hogben, on behalf of the legal profession, paid a respectful and humble tribute to the late Mr. Justice Page. In concluding a feeling address he said, " The late Judge was fair and he was strong in character, and personally he was generous and friendly. We feel that we have lost a friend, and we, too, pay a tribute to the great strength that he has been both to the Magistracy and to this Court, and pay our respects to him for the services that he has given to the community."

Court of Review.

Summary of Decisions.*

By arrangement, the JOURNAL is able to publish reports of cases decided by the Court of Review. As decisions in this Court are ultimately determined by the varying facts of each case, it is not possible to give more than a note of the actual order and an outline of the factual position presented. Consequently, though cases are published as a guide and assistance to members of the profession, they must not be taken to be precedents.

CASE 68. Motion for an order restraining a lessee company from cutting and milling green-leaf flax until the hearing of an application for adjustment. The lessee company was greatly in arrear with its rent, was continuing to cut flax, sell it, and pay the managing director a large salary. The lessor contended that his security for the rent was being greatly depreciated and the proceeds from the sale of flax disbursed.

Motion adjourned upon the lessee's solicitors undertaking to hold in trust the profits of the company without deduction of director's fees, including managing director's salary.

CASE 69. Appeal by mortgagees against an order of a Commission fixing the value of applicant's interest in certain Crown leasehold lands. The applicant held from the Crown on lease in perpetuity mortgaged to appellants, who contended that, in calculating the applicant's interest in the leasehold, the Commission should have based its figures upon the net rental paid by the applicant.

Held, dismissing the appeal, That, having regard to subss. (2) and (4) of s. 123 of the Land Act, 1924, any rebate allowed was discretionary, and could be refused at any time, and the Commission's order was confirmed.

CASE 70. Appeal by a mortgagee against an order of a Commission. The mortgagee submitted (*a*) that, as the mortgagor had failed to file a statement of assets and liabilities and list of creditors with his application there was, in law, no application before the Commission or the Court ; and (*b*) that under s. 29 (3) the filing of statements is an essential preliminary to jurisdiction ; and he referred to ss. 71, 28 (2), and 30 (3) and (4). It was admitted that the statements were filed before the actual hearing by the Commission.

Held, dismissing the appeal, That the failure to file statements contemporaneously with the filing of the application was not a bar to the jurisdiction of the Court of Review.

CASE 71. Appeal by a first mortgagee against an order of a Commission remitting interest owing to him by applicant while there was still a sufficient equity in the property for the second mortgagee to retain some part, at least, of his second mortgage. It was submitted that, so long as the basic value, as fixed by the Commission, provided sufficient security for the principal and interest due under the first mortgage, the Commission had no power to remit interest to the advantage of the second mortgagee.

(*Continued on p. 236*).

* Continued from p. 218.

Blenheim's New Supreme Court Building.

FOUNDATION-STONE LAID BY THE ATTORNEY-GENERAL.

Tuesday, August 17, was a memorable day in the community life of Blenheim, when the foundation-stone of the long-awaited Supreme Court building was laid by the Attorney-General and Minister of Justice, the Hon. H. G. R. Mason, who was accompanied by Mrs. Mason. The business premises closed for the afternoon, and great public interest was shown in the proceedings.

The capital of the Province of Marlborough is fortunate in the beautiful surroundings of the new building, which is in close proximity to the business centre of the town, while, at the same time, it is situated where the administration of justice can be carried on without the distractions of noise or excessive traffic. It faces Seymour Square, which is one of the beauty-spots of a town which bears many marks of the civic pride of its people. Blenheim is justly proud of its war-memorial, a handsome and well-designed clock-tower built of local stone, and surmounting the district's roll of honour inscribed in relief on bronze tablets in a shrine on the ground-level. The new Courthouse faces this splendid memorial, which is in the centre of the Square, and the new Municipal Buildings will be built nearby on an adjoining street, and will similarly face the memorial and the park in which it stands.

Among those present at the laying of the foundation-stone were the Mayor of Blenheim, Mr. J. Stevenson, who presided; the Under-Secretary of Justice, Mr. B. L. Dallard; Mr. T. E. Maunsell, S.M.; Mr. J. T. Mair, Chief Government Architect; Mr. E. P. Meachen, M.P., Wairau; the President of the Marlborough District Law Society, Mr. C. T. Smith; and all the members of the profession practising in Blenheim.

The Realization of a Long-deferred Hope.

The Mayor, Mr. J. Stevenson, in extending a welcome to the Minister of Justice, said that he was proud to take part in a memorable event in the history of Blenheim, and to share the rejoicing of its people that at long last their hopes of having an adequate building in which justice could be administered with dignity and in comfort were now on the way to becoming an accomplished fact. The site had been purchased fourteen years previously, and now a handsome addition to the town's architectural features, and a great advance in its public amenities, gave the utmost satisfaction to the people of the town and province.

Mr. E. P. Meachen, M.P. for Wairau, added his congratulations on the accomplishment of the erection of a building which would be the best in Blenheim for many years to come, notwithstanding that already Blenheim could hold its own, in respect of both its buildings and its beautiful surroundings, with any town of similar size in the Dominion. He expressed the thanks of the people of the district to the Minister of Justice for the great interest he had taken in making the Blenheim Courthouse a reality.

Mr. T. E. Maunsell, S.M., said that it was fourteen years since he had assisted the late Mr. C. E. Matthews, Under-Secretary for Justice, to purchase the site of the new Court buildings. Various reasons had prevented the commencement of the building itself, since misfortunes never come singly. In the meantime, justice had been administered under great difficulties, as would be realized when it was remembered that a Judge and a Magistrate into one room would not go. Both Bench and Bar looked forward to their deliverance from an unhappy state of affairs, and were unanimous in giving to the present Minister of Justice full credit for setting out to remedy the existing state of affairs as soon as it had been brought to his notice.

The Law Society's Appreciation.

Speaking as president of the Marlborough District Law Society, Mr. C. T. Smith said that he wanted publicly to express the thanks of the Society to the Minister for the many kindnesses he had shown to the Society, and for the consideration he had always given to any requests made. He also desired to express the Society's admiration of the enthusiasm and up-to-date methods displayed by Mr. Mason in connection with the portfolio of Minister for Justice and the high office of Attorney-General.

"When an application was made to the Minister of Justice for a new Courthouse, no attempt had been made to draw a red herring across the trail," said Mr. Smith. "On the contrary, on demonstrating its need, Blenheim received its due without any argument or delay."

After thanking the Minister for his action in allowing the plans of the new building to be submitted to the local Law Society for its approval, Mr. Smith said that no doubt when, in a hundred years time, in the second century, the history of New Zealand was written, the name of the Hon. H. G. R. Mason would go into that history as the Minister who had introduced the Law Reform Act, 1936, and had set up a Law Revision Committee to make further improvements in our legal system. And when the history of Blenheim was being written his name would be entered as that of the Minister who laid the foundation-stone of the Courthouse on August 17, 1937.

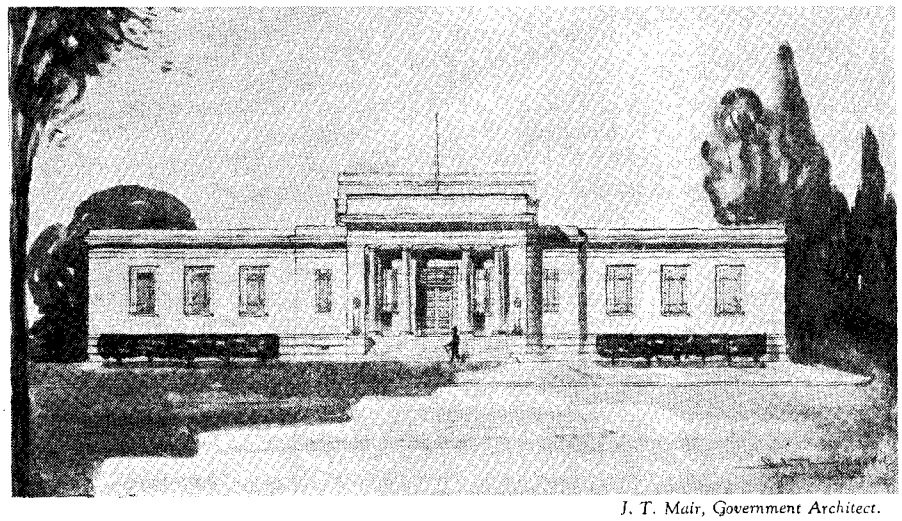
A Hundred Years of History.

"It is nearly one hundred years since justice was first administered in Marlborough," said the Attorney-General (Hon. H. G. R. Mason), in commencing his address. He proceeded: "In 1840 Queen Victoria by Royal Charter created New Zealand a Colony and made provision for a Legislature. The newly-formed Legislature proceeded in 1841 to establish Courts, the first Courts being Courts of General and Quarter Sessions and Courts of Petty Sessions. By a Proclamation dated May 3, 1841, the Governor, Captain Hobson, appointed Gilbert Francis Dawson to be itinerant Magistrate in Charge of the whaling-stations in Cook Strait, and, on July 10, 1841, the *Gazette* establishing

Courts of Petty Sessions included Courts at Cloudy Bay and Queen Charlotte Sounds.

"It was in 1849 that a retired Indian Army officer, Henry Godfrey Gourland, who had previously taken up land at Riverlands, removed to Spring Creek and erected his home on a site where the Ferry Hotel now stands. In that same year he was appointed a Justice, and thereupon became the first resident administrator of justice in Marlborough. He had as his assistant, an old soldier named 'Marengo' Watson, who was never appointed Constable, but who assumed the duties of that office.

"In 1857 the first paid Magistrate was appointed. Dr. Muller, who, besides being an able lawyer was an eminent man of science, was sent over from Nelson, and Mr. John Barleyman was appointed Clerk of the Court. The first Courthouse was a small wooden building on the banks of the Opawa River. This building stood near where Messrs. Parker and Co.'s grain store now stands, and was built by Mr. James Sinclair some time before 1857. The first Provincial Court met in this building on May 1, 1860.



J. T. Mair, Government Architect.

The new Supreme Court, Blenheim.

"With Dr. Muller came Joseph McArtney as Sergeant of Police, and Mr. B. Earll as Constable. Mr. John Ewart was another constable of those days, and later came Montague B. Adams. Dr. Muller continued to act as Magistrate until 1878, when he retired to pursue his scientific studies. In recognition of his many fine qualities, his portrait has been hung in the Court-room at Blenheim.

"The Court was next removed to the first Provincial Buildings and these were burnt down on November 1, 1876. While the new Provincial Buildings were being built (the present Government Buildings), the Court was removed to the Immigration Barracks, which stood near where Redwood's Flour-mill now is. The Woodgate murder trial took place in that building on December 4, 1876, and it is interesting to note that the only other murder trial to take place in Marlborough was the Tarrant trial held in 1932. On completion of the new Provincial buildings the Court was removed there, and has remained there continuously to this day.

"Blenheim was constituted a Registry of the Supreme Court on January 12, 1866, the Clerk of the Court, Mr. John Barleyman being appointed Deputy Registrar of the Supreme Court. Sittings of the Supreme Court commenced in 1872, and Dr. Muller was appointed the Registrar in July, 1876. Mr. Barleyman having retired, William Henry Eyes was appointed Clerk to the Bench, and Deputy Registrar of the Supreme Court in July, 1868.

"Dr. Muller was succeeded by Mr. Hartly McIntyre on January 1, 1879. The succeeding Resident Magistrates and Registrars of the Supreme Court were Messrs. W. Stuart (appointed 1881); J. Allen (1884); T. Scott-Smith (1902); R. S. Florance (1910); F. O'B. Loughnan (1913); and P. L. Hollings (1919).

"In 1922 Blenheim was merged in the Nelson-Marlborough District, and since then the Nelson Magistrate has been in charge of the Nelson as well as the Marlborough District.

"Clerks of the Court and Deputy Registrars of the Supreme Court in succession to John Barleyman were Messrs. W. H. Eyes (appointed 1868); J. Green (1878); J. S. Hickson (1879); J. L. Carey (1882); W. G. O'Callaghan (1887); W. A. Hawkins (1894); J. B. Stoney (1895); J. Terry (1901); F. W. Hart (1908); and A. F. Bent (1913).

"On October 1, 1922, Mr. Bent was appointed Registrar of the Supreme Court, and he has since then been continuously in office as Registrar of the Supreme Court at Blenheim and Sheriff of Marlborough, in addition to his duties as Clerk of the Court at Blenheim. Mr. Bent, who is a qualified solicitor, has been a tower of strength to the Justices of the Peace and a great help to the legal profession of the district. His record of twenty-four years' continuous service in Blenheim is a memorable one."

Mr. Mason said he took this opportunity to declare the great respect and esteem in which Mr. Bent is held by the Department of Justice, and, also, he believed, by the people of Marlborough by reason of his high character and his able and conscientious service.

The Minister then continued with his historical summary:

"Mr. Morrison, who is Bailiff and Court Crier, has been a member of the Blenheim Court Staff since 1903.

"The first solicitor in Marlborough appears to have been Mr. C. H. Moffit, who died in 1866. An eminent Marlborough lawyer, Mr. Edward Tennyson Connolly, was appointed a Judge on August 19, 1889. He resigned in 1903 and died in 1908. Mr. Richard McCallum is the present doyen of the legal profession of the Province, having been in the practice of his profession since 1885."

The Highest Function of the State.

The existing building had become inadequate, the Minister continued, but the foundation-stone of the new building should not be laid without paying a tribute to those who built the existing one.

"I like and admire the simplicity and straightforwardness of its architecture," he added; "it has a dignity which compels respect for the pioneer who built it. In the new building, the foundation-stone of

which we are now laying, I believe that that same dignity will not be lacking. I believe it will worthily represent what justice is, as one of our Judges recently mentioned, namely, 'the highest function of the State.'

"It is fitting indeed, that the Court building should grace the Square with its beautiful memorial which commemorates the noble sacrifice made in the War by the men from this district. This Square, with the buildings surrounding it, will be hard to parallel in our country, even in much larger towns. The local people are to be congratulated on the grand thought that conceived it.

"The new building will remind us of that respect for the law which is traditional with our people. It is that tradition of respect for the law, I firmly believe, which gives our Empire that stability which in much of the outside world, where unhappiness reigns, is not to be found. To maintain that respect for the law the law must show itself capable of being adapted to changed circumstances. Lawyers to-day, both in England and New Zealand, are alive to the need of adapting the law to the changing needs of a rapidly-changing world.

"Viscount Sankey, formerly Lord Chancellor, had this thought in mind when he recently stated: 'The object of the law being to ascertain the truth and to do justice between man and man, its practice and procedure should endeavour to achieve this end, and at the smallest possible cost of time and money.' And Lord Hewart, the present Lord Chief Justice of England, has said: 'The real triumph of the Courts of Law is when the universal knowledge of their existence and universal faith in their justice reduces to a minimum the number of those who are willing so to behave as to expose themselves to their jurisdiction.'"

In conclusion, Mr. Mason, on behalf of his fellow-practitioners of the legal profession in New Zealand, gave the assurance that they have the same eagerness as their brethren in England to see that the law fulfils all the requirements of the modern world. At the last Law Conference held at Dunedin much activity was displayed in that direction. Some of the results of that activity have already been seen, and further fruits of it were soon to be expected.

The Minister then laid the foundation-stone of the new building, in the erection of which considerable progress was to be observed.

The Law Society then entertained its guests at afternoon tea, at which the local ladies had the opportunity of meeting Mrs. Mason and the other visitors.

The Law Society's Dinner.

A very enjoyable gathering took place in the evening when the local Bar entertained the Attorney-General, the Hon. H. G. R. Mason, to dinner, over which Mr. C. T. Smith, the President of the Marlborough Law Society presided. The Mayor of Blenheim, Mr. J. Stevenson; Mr. E. P. Meachen, M.P.; Mr. T. E. Maunsell, S.M.; Mr. B. L. Dallard, Under-Secretary for Justice; and Mr. J. Bent, the local Registrar, were guests of the Society. In addition, Messrs. A. D. Lawton and P. J. Lyster, of the South African Rugby Football team, which was playing a combined Marlborough-Nelson team on the following day, were invited to join their professional brethren.

After the loyal toast had been proposed by the President, he called on Mr. A. E. L. Scantlebury, Vice-President of the Society, to propose the toast of the Attorney-General, which was the only toast arranged.

The Guest of the Evening.

"The Society is happy to be in a position to entertain an Attorney-General who is one of themselves, and who has shared the vicissitudes of the life of a practitioner," said Mr. Scantlebury. "Moreover, the Society has great pleasure in having as its guest a Minister to whom honour is rightly due for his general work in the Departments he administered; and one to whom the practitioners of Marlborough are especially grateful, since they now find themselves well on the way to realization of an ambition to overcome the disabilities under which they had been labouring for so long."

The administration of justice, Mr. Scantlebury proceeded, is one of the corner-stones of our civilization, and it is due and proper that it should function in surroundings in keeping with its dignity. He could not say that the requisite dignity had been observable in the surroundings of the Courts in Blenheim in the past; and Judges and Magistrates, as well as the legal profession and the public, had suffered great inconvenience accordingly. But the difficulties under which they had laboured so long would now soon be merely a memory. This happy culmination of the hopes of many years was due to the Attorney-General, who, in his capacity as Minister of Justice, had realized their plight, and the new Court buildings had been commenced through his good offices. The Society wished to tender to him, and to his able Under-Secretary, Mr. Dallard, the sincere thanks of every member of the profession. Mr. Mason had said that the work should be done; and he had seen to it that it was done, with expedition and with adequate consideration for the needs of all whose business would take them to the Court.

"The manner in which the needs of Blenheim in regard to the proper administration of justice have been appreciated, and quickly met, is an endorsement of the profession's view that the Attorney-General should always be a lawyer. And it is satisfactory to know that at last a Government has realized not only that this responsible office should be held by a member of the profession, but that it should be held by a practising lawyer. It was even more gratifying to know that the present Attorney-General is well fitted for his high office, both academically and practically," said the speaker amid applause.

"When Mr. Mason took office, he had found a big task ahead of him," Mr. Scantlebury continued. The legal system in New Zealand, despite representations by the profession, had not received the overhauling that changing conditions made necessary in the public interest. There were accumulations of years to be tackled; and, in Mr. Mason, they knew they had a man with the proper knowledge and qualifications to tackle it. The Law Reform Act, 1936, had been referred to by the President of the Society at the afternoon ceremony as a monument to the present Attorney-General, and this was no overstatement. He had also done a great deal in his Statutes Amendment Act, 1936, to clear away a number of anomalies. Now, the setting up by Mr. Mason of a representative Law Revision Committee was another forward move. Law revision was a matter which required skilled attention for a long time as many intricate questions were involved.

In addition, the speaker said that the simplification of procedure was of urgent importance to the profession and the public, and he hoped the Attorney-General in his zeal for reform would give that his early attention.

"The Marlborough Law Society joins with members of the profession throughout the Dominion in appreciation of the Attorney-General's devotion to the work of his responsible office," said Mr. Scantlebury, in conclusion; "and we wish to show by this gathering that we are aware of the singleness of purpose which animates him, and of the ready attention he gives to anything touching the administration of justice which needs remedying and of the despatch with which, for the common good, he has dealt with any such matters when brought before him."

Requisites for Efficiency in Administering Justice.

The Attorney-General, in replying to the toast of his health, after thanking the Society for the way in which they had assisted in the day's functions, and for their entertainment of their guests, said that he appreciated the way in which the members of the profession in Blenheim had assisted the scheme of building the new Courthouse. It was always said that cases were "heard," but, when he had visited many Courts throughout the Dominion, he found that the last thing noticeable was provision for proper acoustics. Moreover, the heating and lighting of a number of Courts were sadly deficient.

"If justice is to be administered properly, it must be administered in suitable conditions so that the work will be done to the best advantage. This cannot be achieved unless the conditions of work are congenial. The Court buildings must be efficiently lighted, heated, and ventilated, and rendered in every way suitable for their purpose," Mr. Mason continued. "Although there are several towns in New Zealand which require more modern buildings for the proper administration of Justice, there could scarcely be a more urgent case than that of Blenheim."

The Law Revision Committee.

The Attorney-General then spoke of his hopes for the work of the Law Revision Committee, which would be holding its first meeting later in the month. He knew that the profession was intent on law reform, so that the law could be brought up to date to suit modern requirements. He felt that, in this work, he was sure of the general co-operation of the profession throughout the Dominion; and he would do his utmost to see that their desires to make the law a living and efficient thing, fully adapted to the needs of the public, would be realized as soon as this work could be accomplished. His main wishes for the Law Revision Committee, therefore, were for results that could be put into statute-form at the earliest opportunity.

Lawyer-Springboks.

A further toast was added, before the gathering concluded, Mr. A. A. Macnab proposing the toast of "Our Fellow-lawyers from South Africa." In a happy speech, Mr. Macnab expressed the pleasure of the Blenheim practitioners in having with them, in the persons of Messrs. Lawton and Lyster, a barrister and a solicitor from the Union of South Africa, a country to which the eyes of lawyers often turned when they remembered the gold that was there. He commiserated with their guests in having to learn and practice Roman-Dutch law, as he supposed their researches took them back much further than the days of Magna Charta, and they sought for precedents in the days of Nero. He wished them a happy time in the Dominion, and suggested that if Marlborough won the match on the following day the already cordial ties which bound that province with the Union of South Africa would be strengthened and the event would be commemorated in the pages of history.

Mr. A. D. Lawton (Capetown), in his reply, said that although their first duty was to play Rugby, the lawyer members of his team had taken every opportunity to visit the Courts, in Australia and here, and to observe the manner in which justice was administered. Everywhere they had been, members of the Bar had shown them great hospitality. He said he was particularly interested in the Attorney-General's desire to make the Courts convenient and comfortable, and he gave an interesting explanation of the differences in practice obtaining in his own country.

Mr. P. J. Lyster (Durban) said that he had found the contacts made with members of the profession during the tour most enjoyable. He said that the Chief Justice, Sir Michael Myers, had been exceptionally kind while they were in Wellington, and in Mr. Justice Ostler they felt at home as with a fellow-South-African. They were very fortunate in being in Blenheim when the local Bar was celebrating an important event in their history, and he took the opportunity of congratulating them on it, as well as of expressing his thanks to all the members of the profession who had been so good to them since they arrived in the Dominion.

The remainder of the evening was very pleasantly spent, and the guests were unanimous in their appreciation of the very enjoyable day provided for them by the practitioners of Blenheim.

Legal Appointments.

In the Colonial Service.

Some years ago, the Colonial Office opened the Colonial Service to graduates of the New Zealand University, and a Board of Selection was set up in New Zealand for the purpose of recommending suitable candidates. One of the branches of the service was the Legal Branch, but a difficulty was found that many of the Colonies required appointees to be members of the English Bar, and that it would be necessary for New Zealanders to become members of the English Bar if they wished to obtain the full benefit of the service.

Mr. H. D. Acland, of Christchurch, who is one of the members of the Board of Selection, has for some years urged the rectification of this matter with the Colonial Office through the Board; and word has now been received that persons who have obtained their professional qualifications in New Zealand are eligible to apply for appointment in the Service. Candidates must have had four years' practical experience in their profession. In this Service, vacancies are filled as they occur.

It is gratifying to know that for this purpose, the qualifications of our New Zealand barristers are now recognized as equivalent to that of those in England.

New Zealand Law Revision Committee.

The Work of the First Meeting.

The personnel of the Law Revision Committee set up by the Government, as announced by the Attorney-General (the Hon. H. G. R. Mason), is as follows:

The Attorney-General is chairman, and the other members are the Chief Justice (the Rt. Hon. Sir Michael Myers); the Solicitor-General (Mr. H. H. Cornish, K.C.); two members representing the New Zealand Law Society, Messrs. K. M. Gresson and W. J. Sim, both of Christchurch; one member representing the Public Teachers of Law in the Law Faculties of the New Zealand University, Mr. A. C. Stephens, of Dunedin; Mr. B. L. Dallard, Under-Secretary for Justice; and Mr. James Christie, the Parliamentary Law Draftsman.

The first meeting of the Committee was held in the Minister's office at the Parliamentary Buildings, on August 26.

The Attorney-General, after thanking the members of the Committee for their attendance, said that he wished specially to thank His Honour the Chief Justice for being present. He added that he thought it would be in accordance with the wish of them all if he asked His Honour to take the chair for the initial meeting.

The Chief Justice, the Rt. Hon. Sir Michael Myers, said that he took the chair to inaugurate the proceedings. He thought the best course to adopt was to ask the Attorney-General to make his observations, which would be an apt commencement of the business of the Committee.

The Attorney-General then gave his inaugural address, which is reproduced on p. 224 , *ante*.

His Honour the Chief Justice.

The Chief Justice, in addressing the meeting, said that he felt very much interested in the fact that this Committee had been set up, and very much interested in the observations that the Attorney-General had just made. His Honour proceeded:

"As will be known to some of you, particularly the Solicitor-General and the Under-Secretary of Justice, I have always taken a keen interest in matters of law reform. It will be known to the Solicitor-General, particularly, and probably to the Under-Secretary of the Department, that, for several years, I have advocated the setting-up of a Committee of this nature. I do not mean to say with particularly this personnel, indeed I do not think I ever attempted to develop my ideas there to any great extent; but I do think now that the thanks of the legal profession and of the public are due to the Attorney-General for the course that he is now taking, for his setting-up of this Committee and for the useful purposes which I have no doubt this Committee will serve.

"Now, when I was asked if I would accept membership of this Committee, I said at once that I would. But for various reasons I think it is better that I should not attend your meetings, and take part in your ordinary deliberations. One thing I want to say, and that is this, that I shall always be available whenever the Committee desires to consult me upon anything that they are doing, upon any recommendation that they propose to make or any report that they draft and propose to adopt. I think probably that I can best and most usefully serve the Committee in that way, and I think that the Attorney-General agrees with me that that will be quite satisfactory, and that is perhaps the best way in which I can be of most use."

His Honour then retired, and the Attorney-General took the chair.

The Committee then proceeded to consider the agenda, the first matters to be discussed being miscellaneous amendments of statutes which were under the consideration of the Minister of Justice.

Statutory Amendments.

Magistrates' Courts Act, 1928.—(1.) Authority to be given to Magistrates to order the taking of accounts. (At present litigants who desire this remedy must seek it in the Supreme Court.)

This was referred to Messrs. Sim and Gresson to consider and submit a draft of the proposed amendment.

(2.) Modification of the provisions that an unsuccessful defendant who wishes to appeal must give security for the amount of the judgment entered against him.

The principle was affirmed, and Mr. H. Jenner Wily was asked to prepare a report on the simplification of the present provisions for appeal, and to consider the question of pauper appeals in this connection.

(3.) Provision to be made that the assignment of a debt is not to be deemed part of a cause of action. (At present an assignment forms part of the cause of action, and this entitles the assignee to sue at the town at which the assignment took place.)

This was affirmed, for the purpose of determining the place of jurisdiction.

Destitute Persons Act, 1910.—(1.) At present a Magistrate cannot cancel a guardianship order. It has been suggested that Magistrates be given that power.

Affirmed.

(2.) Magistrates when making guardianship orders are not empowered to make an order giving to a father access to his children. (This power could be given by making the provisions of s. 6 of the Infants Act, 1908, applicable on the making of an order for guardianship under the Destitute Persons Act.)

Affirmed.

Marriage Amendment Act, 1933. Under the provisions of s. 2 of the Marriage Amendment Act, 1933, marriage of any person under sixteen is void. A similar provision in England has received some adverse comment, and it is considered that the matter should receive reconsideration here with a view to providing for errors in age.

Mr. T. P. Cleary is to be requested to furnish a report.

Legitimation Act, 1908.—Section 2 of the Legitimation Act, 1908, provides that a child born before the marriage of his parents is deemed to be legitimated from birth "on registration of such child" as provided in the Act. In England, s. 1 of the Legitimacy Act, 1926, provides that then marriage itself legitimates such children.

This was affirmed, subject to the legitimation relating back to date of birth, in accordance with the present policy of the statute; and the parliamentary Law Draftsman was asked to submit a draft Bill for the Committee's consideration.

Justices of the Peace Act, 1927.—(1.) Rehearings under s. 122 of the Justices of the Peace Act, 1927. Any Justice before whom an information was heard may grant a rehearing. This remedy is now unavailable if the Justice dies; and it is suspended if he is absent

from New Zealand, or cannot be located, or has ceased to be a Justice. It is proposed to provide that, in any such case, any Magistrate may grant a rehearing.

Affirmed.

(2.) The abolition of all minimum penalties. It is considered unnecessary to restrict the discretion of the Courts by specifying minimum penalties.

Principle affirmed, subject to any comments that any Departments of State think fit to make.

(3.) Simplification of procedure on the hearing of indictable offences punishable summarily. Under s. 238 of the Justices of the Peace Act, 1927, certain more serious offences may be dealt with summarily after regard is had " to the character and antecedents of the person charged, the nature of the offence, and all the circumstances of the case." This involves consideration of the character of the accused before conviction. The option is given *after* hearing evidence ; and the procedure contrasts with that under s. 124, where the option of trial by jury is given before hearing any witnesses : see *McDonald v. Dyer*, [1917] N.Z.L.R. 795. It is suggested that offences dealt with under Part V be made punishable summarily under Part II, which would bring into force the provisions in that Part relating to the right to a trial by jury, rehearing, &c. A number of consequential amendments would necessarily be involved.

The Solicitor-General, Mr. H. H. Cornish, K.C., and the Under-Secretary for Justice, Mr. B. L. Dallard, are to prepare a report for the Committee.

(4.) Appeal Procedure.—At present there is no power to waive errors in appeal procedure, or to extend the time within which to appeal. It is proposed that the procedure should be generally simplified, and that either the Magistrate or the Supreme Court should be given power to extend time.

A report by Dr. N. A. Foden is to be made available to the Committee.

Crimes Act, 1908.—(1.) A provision that a bench, or other similar, warrant may be issued where an accused, who has pleaded guilty in the lower Court and has been released on bail, fails to appear for sentence. Section 412 provides that a bench-warrant may issue only in respect of a person against whom an indictment has been preferred. See also ss. 175, 176 of the Justices of the Peace Act, 1927.

Approved.

(2.) Section 421 (9) of the Crimes Act, 1908, provides that the prosecutor may direct any number of jurors not peremptorily challenged to stand aside until all the jurors have been called. Although it is said that this privilege extends to the accused, the right, if it exists, is not exercised in England. It has been suggested that this right should be granted to the accused by statutory amendment.

Mr. O'Leary, K.C., is to be asked for a statement on the matter, which will then receive further consideration.

Adaptation of Imperial Statutes.

It is a matter for consideration whether all or any of the following enactments of the British Parliament should be re-enacted, wholly or in part, in New Zealand :—

(*a*) Arbitration Act, 1934. (*27 Halsbury's Statutes of England*, 27).

The Attorney-General reported that a draft Bill had been prepared. Messrs. P. B. Cooke, K.C., and H. J. V. James are to be asked for a report on the amendments required in the existing statute as in Bill form.

(*b*) Administration of Estates Act, 1925. (*5 Halsbury's Statutes of England*, 306).

(*c*) Trustee Act, 1925. (*20 Halsbury's Statutes of England*, 94).

Mr. K. M. Gresson will prepare a report as to what extent these two statutes can be usefully adapted in New Zealand.

(*d*) Public Authorities Protection Act, 1893. (*13 Halsbury's Statutes of England*, 455).

Principle affirmed, the Parliamentary Law Draftsman to prepare and submit draft Bill.

(*e.*) Public Authorities Protection Act, 1893 (*13 Halsbury's Statutes of England*, 455). This statute generalized the provisions previously inserted in various statutes for the protection of persons acting in the exercise of statutory or other public duties, established a uniform method to supersede all then-existing provisions to the same effect, and removed the necessity for special provisions in the future. In New Zealand, different periods during which notice must be given to, and action brought against, local authorities, &c., appear in many statutes ; and a uniform statutory provision, applicable to all, would standardize the limitation of time for taking proceedings, venue, notice of action, tender of amends and payment into Court, costs, &c.

The principle was affirmed, and the Parliamentary Law Draftsman was requested to prepare a draft Bill for consideration.

(*f*) Landlord and Tenant Act, 1927 (*10 Halsbury's Statutes of England*, 375.) Section 19 (*a*) of this statute has been re-enacted as s. 19 (1) of the Law Reform Act, 1936 (*1936 New Zealand Statutes*, 285). It is suggested that the law of landlord and tenant should be consolidated in one statute, and that other sections of the English Act, with or without modification, could with advantage be re-enacted in it.

Mr. S. I. Goodall was asked to report.

Revision of New Zealand Statutes.

The next series of matters to be considered were those relating to the revision of certain New Zealand statutes :—

Wages Protection and Contractors' Liens Act, 1908.—Considerable comment has been made from time to time on the cumbersome procedure fixed by this statute, and its recasting has been suggested.

Mr. C. H. Weston, K.C., was requested to prepare a report for the Committee.

Juries Act, 1908.—The abolition of grand juries has been suggested. The grant jury system was abolished in England by s. 1 of the Administration of Justice (Miscellaneous Provisions) Act, 1933.

After discussion, this matter was deferred for future consideration by the Committee as a whole.

Land Transfer Act, 1915—The Committee might consider the necessity of amending the Act, so that provision may be made that, on registration of renewals of leases, holders of existing encumbrances become entitled to register against the new lease.

A report of a sub-committee of the New Zealand Law Society, Messrs. Weston, Hadfield, and Webb, had been prepared, and, in view of its recommendations, instructions were given to prepare a draft Bill.

Enactment of a List of Imperial Statutes in Force in New Zealand.—This would follow a course adopted in Victoria and in other Australian States, and would avoid the necessity of a litigant bearing the cost of ascertaining whether an English statute is in force in New Zealand, as occurred in *Andrew Lees, Ltd. v. Brightling*, [1921] N.Z.L.R. 144.

Mr. A. C. Stephens will be responsible for a detailed report on this matter, which requires very careful research and consideration.

Statutes of Limitation.—Amendment and unification of the statutes and rules of law relating to the limitation of actions: See Fifth Interim Report of the Law Revision Committee (England).

Each member of the Committee was supplied with a copy of the Report, in order that it might be considered in the light of any differences in the New Zealand statutes; no action to be taken until English legislation giving effect to the Committee's recommendations is available.

COMMON-LAW MATTERS.

Apportionment between Capital and Income on Sale of Stock, Bonds, &c.—As a general rule, on a sale of investments, no apportionment is made between a tenant for life and remaindermen of the proceeds of sale on account of income accrued, but not payable, at the time of sale. The New Zealand Law Society has urged that provision be made for such apportionment.

The report prepared for the New Zealand Law Society, together with Departmental reports, are to be submitted to Mr. G. G. Rose, Solicitor to the Treasury, and the Committee will have his considered opinion as to the legislation required to give effect to the recommendations made.

Legal Aid for the Poor.—In England, since 1926, the work of inquiring into and reporting on the cases of persons who want to be admitted as parties to legal proceedings is administered by the Law Society and by Provincial Law Societies, in London and in eighty provincial towns, by means of "Poor Persons Committees"; and proceedings by or against poor persons are regulated by Rules of Court: See O. 16, rr. 22-31 H; O. 35A, rr. 1-7: *1937 Yearly Practice*, 232 *et seq.*; 564 *et seq.* Other systems of legal aid are operating in Australian States and in many foreign countries: for details, see *Legal Aid for the Poor*: League of Nations, Geneva, (Legal, 1937, V. 27).

It has been suggested that the institution in New Zealand of some voluntary system of legal aid might be considered by the Committee, with the view to its making representations to the New Zealand Law Society by means of a report with recommendations.

Messrs. F. C. Spratt, W. P. Rollings, and the Secretary of the New Zealand Law Society, Mr. H. J. Thompson, were appointed a sub-committee to confer and submit a report, with recommendations.

Protection of Purchasers of Land.—Complaint has been made that the purchaser of a section to which he is to be given a clear title is frequently deprived of this right by the vendor's inability to discharge existing encumbrances on a larger area, which includes the section sold. It is a matter for consideration whether some statutory modification of the present unrestricted right to sell encumbered land should be made so that, without limiting sales by honest vendors, protection should be given intending purchasers from the moment of their entering into an agreement to purchase, as unencumbered, land then subject to existing encumbrances.

Messrs. D. R. Hoggard and D. Perry were asked to report, with suggestions as to the necessary legislative provisions.

Damages.—Statutory abrogation of the rule, existing in New Zealand and the other Dominions, but not in Great Britain, that proof of physical impact or lesion is necessary as a ground of liability for damage. This follows the decision of the Judicial Committee in *Victorian Railway Commissioners v. Coultas*, (1888) 13 App. Cas. 222, which is binding on the Courts of the Dominions. The House of Lords has held that the *Coultas* case is not a decision of binding authority in England, Scotland, and Ireland: *Coyle or Brown v. John Watson, Ltd.*, [1915] A.C. 1.

It has been suggested that the law in New Zealand should be made uniform with that in Great Britain in this respect.

The Committee approved the principle, and asked Dr. A. L. Haslam and Mr. L. J. Hensley to report, with recommendations as to the form of the proposed statutory provision.

Conclusion.—A vote of thanks was passed to the Secretaries for their work in the compilation of the detailed agenda paper, and acknowledgment was made of the research work carried out by them.

The date settled for the next meeting of the Committee is Friday, October 29.

Any member of the profession having a suggestion as to any matter of law requiring revision is requested to forward a note of same, as soon as may be convenient, to the Secretaries, Law Revision Committee, Department of Justice, Wellington, for submission to the Committee.

The Late Mr. Justice Page.

Auckland Tributes.

A tribute to the memory of the late Mr. Justice Page was paid in the Auckland Supreme Court. Mr. Justice Ostler, Mr. Justice Fair, Mr. Justice Callan, and Mr. Justice O'Regan were on the Bench.

Mr. L. K. Munro, president of the Auckland Law Society, said that Mr. Justice Page was one of the Dominion's most distinguished citizens. In all his duties his displayed tact, courtesy, and kindliness, and his outstanding ability was early appreciated by the Bar. He showed a thorough grasp of the principles of law and served the State by presiding over various Royal Commissions. As President of the Arbitration Court, he exhausted himself in its service. The legal profession desired to express the fullest sympathy with his relatives.

"He was a man of unusual talents, richly endowed with judicial qualities," said Mr. Justice Ostler, speaking for members of the Bench. His Honour referred to Mr. Justice Page's unfailing courtesy, quick grasp of fact, sound knowledge of law, and knowledge of men, which gave him that priceless gift of going to the heart of a case and ascertaining the truth." "Such lives are all too few," His Honour concluded. "And the premature death of such men is a severe loss, for he, I say, was one of that bright company this sin-stained world can ill afford to lose."

New Zealand Conveyancing.

By S. I. GOODALL, LL.M.

Agreement between a Sawmilling Company and Scow-owners for Carriage by Sea of Output of Mill at Port of Loading to alternative named regular Ports of Discharge, with Provision for Casual Ports of Discharge—a "Freighting Agreement."

(*Concluded from p. 214.*)

25. (1) In the event of the company's holding of bush near the port of loading being destroyed by fire or in the event of there being no further output from the said sawmill then and in any such case this agreement shall cease and determine PROVIDED HOWEVER that the ship-owners shall complete the carriage and delivery of all sawn timber required to be carried from the port of loading.

(2) In the event of the company's said holding of bush being only partially destroyed by fire then the company may at its option suspend or determine this agreement.

26. In the event of the said sawmill being destroyed or damaged by fire inevitable accident or any other cause then and in any such case the company may at its option suspend or determine this agreement PROVIDED that the ship-owners shall complete the carriage and delivery of all available sawn timber.

27. In the event of this agreement being suspended in terms hereof then and in such case the ship-owners shall be at liberty to enter into temporary contracts for the loading carriage and delivery of cargo of any kinds whatsoever including timber with any other person or persons during the term of such suspension.

28. The company shall pay to the ship-owners in respect of all sawn timber duly loaded carried discharged and delivered by the ship-owners at the ports of discharge as the company may from time to time direct the freight price or sum of [*two shillings and sixpence*] per hundred superficial feet sawn measurement of such timber as consists of [*rata*] and [*two shillings and threepence*] per hundred superficial feet sawn measurement of all such timber other than [*rata*].

29. The ship-owners shall forward to the company full and proper calendar monthly accounts setting forth full details of the sawn timber discharged from their vessels at the ports of discharge during each calendar month and the company shall pay to the ship-owners the amount of each previous month's correct account on or before the [*twentieth*] day of the month following less any amounts which the company shall be authorized by this agreement to deduct therefrom :

PROVIDED that if the company shall make advances to the ship-owners from time to time the said advances shall be taken into account and set-off against the said calendar monthly payments.

30. (1) If the ship-owners shall make default in delivery of sawn timber in terms of this agreement or shall fail to comply with any of the conditions of this agreement then and in any such case or cases the ship-owners shall pay to the company the amount of loss and/or damage which shall be sustained by the company as a result of such default or defaults and the company shall be at liberty to deduct the amount of such loss or damage from the amount of freight due and payable to the shipowners by the company in terms hereof.

(2) If the ship-owners shall continue to make default as aforesaid or shall neglect or refuse to load carry or discharge cargoes of the said sawn timber with reasonable dispatch after receiving [*fourteen*] days' written notice from the company requiring the ship-owners to perform their obligations hereunder specifying the default complained of then the company shall be at liberty by further written notice to the ship-owners to determine this agreement and recover from the ship-owners all damages which shall have been sustained by the company as a result of the default on the part of the ship-owners without prejudice to any other remedies the company may have.

31. In the case of any difference or dispute arising as to anything herein contained or implied or as to the construction of this agreement or arising in any way in respect hereof such difference or dispute shall be decided by an arbitrator if the parties can agree upon the appointment of one person and if otherwise then by the arbitration of two different persons one to be appointed by each of the parties hereto or by an umpire to be chosen by the arbitrators before entering on the consideration of such difference or dispute and if in any dispute arising herein either party shall neglect to appoint an arbitrator or shall appoint an arbitrator who shall refuse to act then the arbitrator appointed by the other party shall make a final decision and every such arbitration shall be subject to the provisions in that behalf contained in the Arbitration Act 1908 or any then subsisting statutory modification thereof.

As witness &c.

SCHEDULE.

BILL OF LADING.

No. Port of [*loading*].

E. Brothers, Date : 193 .

Owners [or *charterers*] of Vessel/Scow " ."

and/or the Master/Captain .

RECEIVED from A. B. & C. Limited for shipment per the vessel/scow " " in apparent good order and condition subject to the terms and stipulations more particularly set out in the sea carriage agreement dated the day of 193 between the company of the one part and the owners [or *charterers*] of the other part the undernoted cargo of sawn timber from the company to be forwarded to the Port of [*discharge*].

Consigned to :

at

Freight payable in terms of the afore-mentioned agreement.

Marks and Numbers.	Sizes.	Number of Pieces and Lengths.	Superficial Feet.
Special instructions (*if any*).		TOTAL	

Signature and address of Consignor .....

SIGNED &c. Master [or *Chief Officer.*]

Court of Review.

(*Continued from p. 227*).

Held, dismissing the appeal, That, having regard to s. 38 (3), it appeared that s. 42 (5) was an instruction relating to the capital sum secured; otherwise the Court would have no control over the rate of interest charged by first mortgagees in the past or be able to remit interest charged on first mortgages at penal rates. It is within the discretion of the Commission, having regard to the facts of each case, to decide whether the whole or part of such interest should be remitted.

CASE 72. Appeal by a Commissioner of Crown Lands against an order of a Commission remitting rent owing by applicant who had mortgaged his leasehold interest. It was submitted that no remission of rent should have been made while there was money owing to the lessor of the leasehold; and that, the arrears of rent being a prior charge to moneys due under a mortgage of lease, s. 42 (5) applied.

Held, dismissing the appeal, That the Court regarded remissions of rent not as a capital reduction but in the same light as remissions of interest (see Case 72).

CASE 73. Appeal by a mortgagee against an order of a Commission discharging original mortgagor. The original mortgagee had sold to the present owner, but there was no existing covenant to pay as between the present owner and the mortgagee. Although it was admitted that the original mortgagor had no assets, it was submitted that it was unreasonable to discharge the original mortgagor, and leave the mortgagee without the benefit of any personal covenant.

Ordered, varying the order of the Commission, That the discharge of the original owner be conditional upon his assigning his right of indemnity against the transferee (the present owner) under s. 88 of the Land Transfer Act, 1915, to the mortgagee at the mortgagee's expense.

CASE 74. Motions by unsecured creditors for an order granting priority under s. 50 of the Mortgagors and Lessees Rehabilitation Act, 1936, for their debts. The unsecured creditors were wage-earners who had been engaged in agricultural work on the farm of the applicant during the twelve months last past, and had not been paid.

The motions were adjourned pending the hearing of the application for adjustment, when the Commission would determine the question of priority having regard to the value of the claim of each of the creditors at the time of the hearing.

NOTE: It appears that an order granting priority should only be made prior to the hearing of the application for adjustment when moneys are being actually advanced to enable the farmer-applicant to make provision for the matters referred to in s. 50.

NOTE to CASE 66 (p. 217, *ante*). The report of this case correctly reflects what was said by the Court, but, owing to some incorrect inferences having been drawn therefrom, it should be made quite clear the Court has not decided that it has no power to fix a term for a stock mortgage; and it seems clear, from what has been said, that in certain cases it may be forced to do so. If the Court does so decide, it seems, from observations made, that payment under the stock mortgage will be deferred only under an order similar to a stay-order made under the authority of the Rural Mortgagors Final Adjustment Act, 1934-35. There have, of course, been other cases, but the Court has not yet made a stock-mortgage for a fixed term.

New Zealand Law Society.

Council Meeting.

(*Continued from p. 213*).

Solicitor acting as Money-lender.—The following report was presented:—

"We have to report that the circumstances present in the case upon which we are to report are that a solicitor who commenced practice at the beginning of this year is acting also as secretary of a money-lending company, said to be a 'Family Affair;' that the registered office of the company is at rooms 9 and 10 of a certain building; that these rooms and adjacent and communicating and each has a separate door to the main corridor. No. 9 has outside a sign giving the name of the company and No. 10 has the name of the solicitor with the words 'Inquire next door' and an arrow pointing to No. 9. In the directory No. 9 is shown as being occupied by the company and No. 10 by the solicitor. Access to the solicitor's room appears to be through room No. 9. The solicitor occupies the whole of room 10, and in room 9 there is a typist and a clerk and provision for waiting clients. The telephone number appears in the directory in the name of the company (its address being given as room 9) and in another place under the name of the solicitor (the address of the latter being given as rooms 9 and 10). The company is an incorporated body.

"The solicitor commenced practice only at the commencement of this year. An auditor has been approved, but no report has been received. The solicitor admits the books of the company are kept on the premises and that he is the secretary of the company, which, he states, is really a family affair. He states that he carefully refrains from handling any trust moneys and has therefore no trust account of trust-account books.

"We are of opinion;,

"1. That the Council's ruling No. 29 that it is improper and unprofessional for a solicitor to act as or advertise himself as a money-lender is not, strictly speaking applicable.

"2. That ruling No. 29 should be enlarged to cover not only the case of a solicitor in practice carrying on business himself as a money-lender, but cases such as the present where a solicitor practises in close association (whether as secretary or otherwise) with the business of a money-lending company."

It was decided that the report should be adopted as an addition to Ruling No. 29 and that the Canterbury Committee should settle the rule which would then be circulated for consideration by the District Law Societies and brought before the next meeting.

Encumbrances on Leases.—Ten Societies furnished reports on this matter. On the motion of the President it was decided to refer to the Committee (Messrs. Weston, K.C., Hadfield, and Webb) all the comments received for their further consideration and report. A letter from Mr. F. B. Adams of Dunedin, dealing with certain aspects of this subject, was also referred to the Committee for their consideration.

Land Transfer Assurance Fund: Extension to Cover Forgery.—Four reports were received on this subject and it was decided to take the same action as in the last paragraph, the Committee in both cases being the same.

Restitution of Conjugal Rights: Setting Down for Trial.—The lengthy letter forwarded by the Wellington District Law Society urging that an alteration should be made to the rules to permit of a petition for restitution of conjugal rights being set down at any time was referred to the Rules Committee for their consideration.

Deposit Regulations.—The Management of the Solicitors' Fidelity Guarantee Fund reported as follows :—

"The Management Committee of the Solicitors Guarantee Fund desire to report that pursuant to instructions given at the last Council Meeting, they have considered the Deposit Regulations and comments of the different Societies thereon. They have now prepared a draft of proposed new regulations, which includes the provision suggested by several Societies that unsecured loans should also be brought within the scope of the regulations.

"After considering the suggestion by the Canterbury Society that a definition of "deposit" should be made, the Committee decided that it could not recommend such an attempt. It will be noted from the draft which follows that provision has been made for a penalty in case of breach of the regulations.

"The Solicitors' Deposit Rules, 1937.

"1. These Rules may be cited as the Solicitors' Deposit Rules, 1937, and shall come into force on the day following notification in the Gazette of the making thereof.

"2. Whereas the receipt by a solicitor of moneys on deposit or by way of loan without security unless there be proper evidence of the nature of the contract, may lead to claims upon the Solicitors' Fidelity Guarantee Fund that are not valid, no solicitor shall receive any money on deposit or by way of a loan without security over any property except under the following conditions :—

"(*a*) Contemporaneously with the making of any such deposit or loan the solicitor shall secure the signature of the depositor or lender to a written acknowledgment in the form set out in the Schedule hereto.

"(*b*) The signature thereto of such depositor or lender shall be attested by the Secretary of the District Law Society of the district in which the solicitor practises, or by an independent solicitor. It shall be the duty of such Secretary or of such independent solicitor to satisfy himself that the depositor or lender fully understands the nature and effect of the proposed deposit or loan and of the said acknowledgment.

"(*c*) Duplicates of the said acknowledgment shall forthwith be lodged with the said District Law Society and with the Council of the New Zealand Law Society or its delegated Committee of Management, as the case may be.

"(*d*) The deposit or loan shall be made and the Solicitor's receipt therefor shall be given contemporaneously with the signing of the said acknowledgment. The receipt shall contain such particulars of names, amounts, and dates as shall clearly identify the deposit or loan with the deposit or loan acknowledged in the said acknowledgment.

"3. Every solicitor or member of a firm of solicitors who commits a breach of these Rules shall be liable to a fine not exceeding £50

"4. The additional Rule concerning Solicitors Recovering Money on Deposit gazetted on page 3165 of the Gazette of 30th November, 1933, is hereby revoked as from the date of the coming into force of these Rules."

"SCHEDULE.

"Form of Acknowledgment.

"(Altered to include "loan.")

"It was pointed out that it might be as well to state how and by whom the penalty for breach was to be enforced."

It was decided to adopt the report, and the Management Committee were empowered to settle the point concerning the enforcement of the penalty and then to take the necessary steps to have the regulations approved and gazetted.

Scale of Costs for Company Formation.—Eight of the District Law Societies sent in reports on this matter. It was pointed out that the chief criticism came from two Societies, and that the main point raised was that the Registrars of the Supreme Court should be asked to approve the Scale before its adoption.

The Auckland Society thought that the Scale should be treated in the same way as the estate scale and should never be considered as more than a guide, as the work varied so much with different companies of the same nominal capital. It was further stated that the suggestion as to the scale came from the Registrar of the Supreme Court at Wellington, it was thought most desirable that it should be referred to Registrars before final approval.

After some further discussion it was decided that the Auckland Committee should be asked to consider all the reports which had been sent in and that they should draw up and submit a final scale for the approval of the next meeting.

The President and Mr. Watson were asked to see the Wellington Registrar and inform him of the decision.

"A—R" Letters.—The Secretary reported as follows :—

"I have to report getting into touch with the Assistant Principal of the Postal Division of the G.P.O. in connection with this matter and bringing to his attention the points raised in the letter from the Wellington Society which came before the last meeting of the Council. He informed me that it had never been the practice of the Head Office of the Post Office to insist on the A.R. Cards being signed by the addressee personally, though there has been a certain amount of misapprehension among the Postal Branches as to whether or not this should be done. Some Branches had attempted to obtain the addressee's signature in every case, but this was not the general practice.

"Though the Post Office would like to furnish this service if it possibly could, it found it quite impracticable to undertake to do so owing to the obvious difficulty of trying to trace the addressee who might be away at business or out of town. As a matter of fact the whole situation was governed by international agreement, the arrangement being that the A.R. Card was simply treated as an acknowledgment of delivery and not of receipt by the addressee personally. There seemed therefore no chance of any alteration in the present system being made by the Post Office here."

It was decided that no further action should be taken.

Difference Between Supreme Court Rules and Rules under Divorce and Matrimonial Causes Act.—The Wanganui Society forwarded the following letter :—

"A great deal of inconvenience is caused to practitioners owing to the difference between the Supreme Court Rules and the Rules under the Divorce and Matrimonial Causes Act regarding the period at which a cause is ripe for setting down. Under the Supreme Court Code an action can be set down for trial although the time for pleading has not expired, provided such time will expire before the date of the *commencement of the sittings* (*Stout and Sim's Supreme Court Practice*, 193). On the other hand, a divorce suit can be set down *only when the pleadings are concluded* (R. 51, *ibid.*, 4th Ed., p. 69 and note on p. 70). The position was brought to my notice very pointedly before the last sittings of the Supreme Court at Wanganui. Such sittings commenced on Monday May 17, so that the last day for setting down both civil and divorce suits was Monday, May 10. In a civil action in which I was acting for the plaintiff, the writ was served on May 3. As the defendant resided within twenty miles of the Wanganui Registry, the minimum time of seven and ten days applied accordingly, the last day for filing a statement of defence was Tuesday May 11, and, as the ten days expired on Friday, May 14, I was able on Monday, May 10, to set the action down for trial.

"I was also acting for the petitioner in a suit for nullity of marriage in which the repondent resided more than fifty

miles from the Wanganui Registry, so that the respondent was allowed twenty-eight days in which to file an answer. The citation and petition were served on April 12, so that the time limited did not expire until Tuesday, May 11. Accordingly I could not, as of right, set the suit down for hearing at the sittings commencing on May 17. No appearance, however, was filed by the respondent, and accordingly I applied for leave to set down and such leave was granted on the authority of *Estall* v. *Estall*, 30 N.Z.L.R. 466. This application of course involved my client in additional expense. If, on the other hand, the respondent had filed an appearance, I could not have obtained leave to set down (*Hayne* v. *Hayne and Another*, [1923] N.Z.L.R. 55).

"I have mentioned the matter to several members of the profession, and they inform me that they have also experienced the same difficulty, and they agree that they can see no reason why the two rules should not be made uniform. There would appear to be no reason for the distinction, especially in view of the fact that the wording of the 'summoning' documents, the writ and the citation are though not precisely similar, to the same effect.

"I would ask that the members of your Council give the matter their consideration with a view to forwarding a remit to the Rules Committee that the Rules be amended. My personal view is that R. 51 of the Rules under the Divorce and Matrimonial Causes Act, should be brought into line with the Supreme Court Rule as this would be of greater assistance, by reason of the saving of expense to litigants, than making the Supreme Court Rule correspond with the Divorce procedure."

Mr. Levi expressed the opinion that the time had arrived for modification of fixed sittings in the main centres,, while Mr. Watson thought that sittings might be continuous with fixtures made once a month. On the motion of the President it was decided to forward the letter to the Rules Committee and to point out that this question opened up the general matter of setting down cases at any time and the abandonment of the present system of fixed sittings in the chief centres.

Undertakings by Solicitors.—The following letter from the Secretary to the President was brought to the attention of the meeting:—

June 16, 1937.

"The following comments by the English Law Society on undertakings given by solicitors appear on Page 107 of the Law Society's '*Gazette*' for May, 1937, and should be of interest to our Council:—

"The Council have recently had to consider to what extent a solicitor incurs personal liability when giving an undertaking on behalf of a client.

"The Council are of the opinion and indeed it is obviously desirable, that it should be made clear in the undertaking itself, whether or not the solicitor is intending to accept personal liability.

"It is common knowledge that in order to facilitate completion of a sale or purchase, a solicitor will give an undertaking, which nearly always the solicitor on the other side knowing nothing of the client would not accept unless he thought he was getting an undertaking from the solicitor himself. In such cases the Council are of the opinion that the use of words such as 'on behalf of my client' or 'on behalf of the vendor' does not make the intention sufficiently clear, and they consider that further or different words are necessary if the solicitor does not intend to accept personal liability.

"Accordingly, where, on the completion of a sale or purchase of property, a solicitor gives an undertaking 'on behalf of' his client without any further qualification, then, in the Council's view, the solicitor should himself implement it, and if he fails to do so the Council will bring pressure to bear upon him to give effect to the undertaking as a matter of professional etiquette."

It was decided to circulate the letter among the District Law Societies and to ask the Auckland delegates to frame a ruling on the matter for submission to the next meeting.

Hamilton Law Society.

Bar Dinner.

The first Bar Dinner to be held for a number of years in Hamilton attracted a large attendance of members of the profession from Rotorua, Te Kuiti, Cambridge, and Morrinsville on the evening of August 7. The guest of honour was the Attorney-General, the Hon. H. G. R. Mason.

The President of the Hamilton District Law Society, Mr. C. L. McDairmid, who presided, proposed the toast of the Bench. In reminiscent mood, he recalled the first Bar Dinner at Hamilton, held on the occasion of the opening of the District Court by Judge Kettle in 1912. Mr. S. L. Paterson, S.M., replied.

The toast of the Bar was proposed by Dr. N. C. Tod, president of the local branch of the British Medical Association.

In rising to reply on behalf of the profession of which he is the titular leader, the Hon. the Attorney-General stressed the importance of the Bar in the life of the community. He said that he could not help commenting on the not infrequent expressions of pessimism as to the future of the law and the legal profession. He thought that most of the opinions expressed on this topic tended to be misleading, for he felt assured there would always be need for law, and for its exponent, the lawyer.

"Society in these days is becoming more and more complex, and so there will be less room for mere sentimentality and more need for high-principled men at the Bar to continue to assist the Courts in the dispensation of impartial justice; and on the conveyancing side to maintain the stability and, as far as possible, the simplicity of the law. Even now, a wave of pessimism is sweeping through the world; but respect for law can counteract this and make for general stability," Mr. Mason added.

To the frequent plea that the law is too conservative and lags behind the times, the learned Attorney-General said that the lawyer cannot be blamed for that, for he found that it is the lawyer who pushes the law on, and it is the layman who is the obstacle—the civilian who has to be converted to improvements in the law. New Zealand was keeping abreast of all modern developments in the improvement of law, and it was the Dominion Conference of the legal profession which urged early attention to improvements in the law. This had led to the establishment in this country of the Law Revision Committee, which would shortly hold its first meeting. This representative body, he felt confident, would do invaluable service when it is once properly under way.

The Attorney-General was warmly acclaimed at the conclusion of his speech.

A very cheerful gathering continued, from time to time whetted with stories of earlier practitioners and former Judges, with many a reminiscence of curious people and places, and with tales of strange cases and far-wandering men, until the National Anthem brought the conclusion. It was a highly successful function.

Practice Precedents.

Interrogatories.

The object of interrogatories is to enable a party to obtain from his opponent information as to facts material to the questions in dispute between them, and to obtain admissions of any facts, which he has to prove on any issue which is raised between them—*Attorney-General v. Gaskill*, (1882) 20 Ch.D. 519; but no interrogatories will be allowed unless they are necessary either for disposing fairly of the cause or matter or for saving costs. The fact that interrogatories sought to be delivered would or might tend to incriminate the party interrogated is no ground for objecting to leave being given to deliver them—*Allhusen v. Labouchere*, (1878) 3 Q.B.D. 654. Interrogatories seeking to find out some cause of action or defence other than that specifically alleged, will not be allowed—*Barham v. Huntingfield*, [1913] 2 K.B. 193; similarly interrogatories which are prolix or oppressive will be disallowed—*Oppenheim v. Sheffield*, [1893] 1 Q.B. 5. They must not be scandalous: *Kemble v. Hope*, (1894) 10 T.L.R. 254; as to the meaning of "scandalous," see *1937 Yearly Practice*, 328.

The making of an order is discretionary: *Codd v. Delap*, [1906] W.N. 57.

A party is entitled to interrogate his opponent with a view to ascertain what case he has to meet and the facts relied on, and to limit the generality of the pleadings and find out what really is in issue: *Saunders v. Jones*, (1877) 7 Ch.D. 435. Interrogatories put with a view to ascertaining whether some person other than the defendant is liable will not be allowed: *Sebright v. Hanbury*, [1916] 2 Ch. 245.

A party may interrogate his opponent as to facts which tend to support the case of the party interrogating, or to destroy his opponent's case—*Hooton v. Dalby*, [1927] 2 K.B. 18; but it seems that he may not interrogate as to facts which support his opponent's case—*Ibid.* The interrogatories must be confined to relevant facts—*Nash v. Layton*, [1911] 2 Ch. 71; and must be material at the stage of the action at which they are sought to be delivered—*Fennessy v. Clark*, (1887) 37 Ch.D. 184. They will not be allowed if they relate to communications between the party and his legal advisers—*Wheeler v. Le Marchant*, (1881) 17 Ch.D. 675. A party may not interrogate as to the evidence which the opposite party intends to adduce in support of his case, or the contents of his brief, or as to the names of his witnesses—*Hooton v. Dalby* (*supra*); neither may he interrogate as to expert opinion—*Rofe v. Kevorkian*, [1936] 2 All E.R. 1334.

(The words "opposite parties" mean parties between whom there is some right to adjust in the action: *Molloy v. Kilby*, (1880) 15 Ch.D. 162.)

For a discussion of the difference between the English and New Zealand procedure as to interrogatories, see *O'Neill v. New Zealand National Creditman's Association (Wellington) Ltd.*, [1933] N.Z.L.R. 144, (action for damages for libel.)

Either party may at any time after the commencement of an action, by leave of the Court, deliver interrogatories for the examination of the opposite party, with a note at the foot thereof stating which of such interrogatories each of such parties is required to answer: R. 155 of the Code of Civil Procedure. Such interrogatories may be in the Form No. 10 in the First Schedule to the Code.

According to the Rule, the application is to the Court. In practice, confusion arises as to the mode of approach. The Right Honourable the Chief Justice has directed that application be made on summons to a Judge in Chambers and not on Notice of Motion. In this connection, attention is directed to *Rhodes's Practice Precedents*, 154, where similar procedure (but relating to Discovery) is discussed. In regard both to Discovery and Interrogatories, application is by summons.

Leave to deliver interrogatories must be made upon an affidavit of the party proposing to interrogate, or his solicitor or agent, if from absence or other unavoidable cause such party is unable to make the affidavit himself: R. 156; and see, also, R. 186, regarding the affidavit by a corporation.

If the party to an action is a body corporate, company, or body of persons empowered by law to sue in the name of a public officer, any opposite party may, by leave of the Court, deliver interrogatories for the examination of any member or officer of such body corporate, company, or body of persons: R. 157.

Interrogatories must be answered by affidavit in the Form No. 11 in the First Schedule to the Code, to be filed within ten days, or such other time as the Court may direct: R. 158. The affidavit in answer to interrogatories must set out above or opposite to each answer the interrogatory to which it relates: R. 158A.

If any person interrogated omits to answer or answers insufficiently, the party interrogating may apply to the Court for an order requiring him to answer or to answer further, as the case may be. And an order may be made on such application, or at any subsequent time, requiring him to answer or answer further, either by affidavit or to attend at such place before the Court, Registrar, or such other person as the Court may appoint, to be orally examined as to the matters he has omitted to answer or answered insufficiently: R. 159.

The proposed interrogatories should not be attached to the summons or affidavit. For convenience they should be filed independently. They are served with the summons. If the proposed interrogatories are amended or altered by the Judge, a copy of the interrogatories as altered should be served with the copy of order allowing the same.

The following are forms appropriate to an action for breach of promise.

STATEMENT OF CLAIM.

IN THE SUPREME COURT OF NEW ZEALAND.

.....District.

.....Registry.

No.

BETWEEN A. B. etc., plaintiff

AND

C. D. etc., defendant.

Statement of Claim.

day the day of 19 .

The plaintiff by his solicitor E. F. says as follows:—

1. That the plaintiff was formerly a ladies' hairdresser carrying on business in the City of and depended upon such business as her means of maintaining herself: and the defendant was and is a retired public servant possessed of considerable property living in the City of .

2. That in the month of 19 the plaintiff and the defendant agreed to marry one another and the engagement between them continued until the refusal by the defendant mentioned in the next paragraph hereof.

3. That on the day of 19 the defendant refused ever to marry the plaintiff and wrongfully repudiated renounced and determined the said agreement on his part.

4. That the plaintiff until such refusal and wrongful repudiation and determination was at all times ready and willing to marry the defendant.

5. That the plaintiff in view of the then intended marriage between herself and the defendant and at the defendant's express request in the month of 19 sold her said business of ladies' hairdresser and the stock and furniture belonging thereto and the goodwill therein for the sum of £ being a sum much below its value to herself.

6. That the plaintiff prior to the said day of 19 in contemplation of the then intended marriage between herself and the defendant incurred an expense of over £100 in preparing her trousseau for the then intended marriage.

7. That in consequence of the above conduct of the defendant the plaintiff lost the said marriage and the benefit of the said business as carried on by her for the purpose of maintaining herself and the benefit of the expense incurred as aforesaid.

8. Wherefore the Plaintiff claims from the defendant :—

(*a*) £400 damages for loss in connection with the sale of the said business.

(*b*) £100 expenses incurred byr he as aforesaid.

(*c*) £1,000 for loss of the said marriage and injury to her feelings.

(*d*) The costs of and incidental to this action.

(*e*) Such further and other relief in the premises as to this Court shall seem just.

SUMMONS FOR INTERROGATORIES.

(*Same heading.*)

LET the plaintiff her solicitor or agent attend before the Right Honourable Sir Chief Justice of New Zealand at his Chambers Supreme Court House at on day the day of 19 at 10 o'clock in the forenoon or so soon thereafter as the parties can be heard TO SHOW CAUSE why an order should not be made that the defendant be at liberty to deliver to the plaintiff interrogatories in writing (a copy of which is filed herein) AND that the plaintiff do within days answer the said interrogatories in writing by affidavit and that the costs of and incidental to this application be reserved.

Dated at this day of 19 .

Registrar.

This Summons is issued by E. F. of the City of solicitor for the defendant, whose address for service is at the office of the said E. F., solicitor, Street, in the City of .

AFFIDAVIT IN SUPPORT OF SUMMONS FOR INTERROGATORIES.

(*Same heading.*)

I C. D. of the City of retired public servant make oath and say as follows :—

1. That I am the defendant in the above action.

2. That I am advised that I have a good defence upon the merits in this action.

3. That I am further advised that I shall derive material benefit from the discovery which is sought from the interrogatories to be administered to the plaintiff herein.

4. That the application for leave to administer such interrogatories is not sought for the purpose of delay.

C. D.

Sworn &c.

INTERROGATORIES.

(*Same heading.*)

INTERROGATORIES on behalf of the above-named defendant C. D. for the examination of the above-named plaintiff, A. B.

1. With reference to the matters alleged in para. 3 of the statement of claim was the alleged refusal to marry and the alleged wrongful repudiation renunciation and determination oral or in writing ?

2. If oral

(*a*) In what place was such refusal and repudiation spoken ?

(*b*) What was as nearly as the plaintiff can remember the form of words containing such refusal and repudiation ?

(*c*) At what time of the day was such repudiation spoken ?

(*d*) Were such words spoken in the presence of any person other than the plaintiff and the defendant and if so of whom ?

(*e*) What circumstances led up to such words being spoken ?

3. If in writing, what was the date and nature of such written refusal and repudiation ?

The plaintiff is required to identify the document containing such refusal and repudiation.

The plaintiff A. B. is required to answer all the above interrogatories numbered 1 to 3 inclusive.

ANSWER TO INTERROGATORIES.

(*Same heading.*)

THE ANSWER of the above-named plaintiff to the interrogatories for her examination by the above-named defendant :—

IN ANSWER to the said interrogatories I the above-named C. D. make oath and say as follows :—

1. That with reference to the matters alleged in para. 3 of the statement of claim was the alleged refusal to marry and the alleged wrongful repudiation renunciation and determination oral or in writing ?

Answer : Oral.

2. If oral—

(*a*) In what place was such refusal and repudiation spoken ?

(*b*) What was as nearly as the plaintiff can remember the form of words containing such refusal and repudiation ?

(*c*) At what time of the day were such words spoken ?

(*d*) Were such words spoken in the presence of any person other than the plaintiff and the defendant and if so of whom ?

(*e*) What circumstances led up to such words being spoken ?

Answer :

(*a*) At the house of X. Y. in the City of .

(*b*) Defendant said " I have made up my mind to end everything between us." I said " Do you mean that you are going to turn me down after all that has passed between us." Defendant said " Yes I am finished. It was all a mistake " : and defendant then left the room in which we had been sitting.

(*c*) About 6 o'clock at night.

(*d*) No.

(*e*) Defendant took me to task about a visit I had recently paid to my cousin at and then used the words above mentioned.

3. If in writing what was the date and nature of such written refusal and repudiation. The plaintiff is required to identify the document containing such refusal and repudiation.

Answer : Not in writing.

Sworn &c.

C. D.

ORDER FOR INTERROGATORIES.

(*Same heading.*)

day the day of 19 .

UPON READING the summons sealed herein and the interrogatories filed herein and affidavit filed in support of the said summons AND UPON HEARING Mr. of Counsel for the defendant in support of the said summons and Mr. of Counsel for the plaintiff consenting IT IS ORDERED by the Honourable Mr. Justice that the defendant have leave to deliver to the plaintiff the interrogatories filed herein AND IT IS ORDERED that the plaintiff do answer the said interrogatories in writing by affidavit within seven days from the date of service of this order AND that the costs of and incidental to this order be reserved.

Registrar.