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

" It is important that there should be at least that degree of unity in the legal profession which will make us realize that we are members, one of another, and that we have professional interests which are not divorced in any manner from the interests of the community, the combination of which will, in a real sense, and the best sense, really profit the community.

—Rt. Hon. Sir John Latham,
Chief Justice of Australia.

Vol. XIV. Tuesday, April 5, 1938. No. 6.

The Coming Legal Conference.

THE aim and purpose of a Legal Conference, such as the one that will happily be assembling in Christchurch on April 20, was well summarized recently by the Chief Justice of the High Court of Australia, Sir John Latham, in opening the Australian Law Convention. He said :

> " In the first place, we meet for an exchange of ideas, for an increase of our own knowledge. We are concerned with the maintenace of the ideals of the profession. We want to see a progressive improvement in law, and in the administration of law ; and it is a good thing that members of the profession should have the opportunity of meeting one another socially as well as forensically, in order that we should become aware of ourselves as a profession."

The Committee in charge of the forthcoming Dominion Legal Conference have expended much thought and real hard work to put into practice these ideals of a nation-wide gathering of members of the profession. As will be seen on another page, the Conference papers and remits deal with a variety of subjects that are of general interest, not only to the profession as such, but also to the public whom it serves. " The progressive improvement in law, and in the administration of justice," to which Sir John Latham referred, are put in the forefront of the deliberations of the assembled practitioners from all parts of the Dominion. But the Good Thing, in his view, the social foregathering of professional brethren, has by no means been overlooked. The Conference of 1938 promises to be enjoyable, as well as instructive, in the best traditions of past Dominion Legal Conferences.

An interesting feature of Conference week will be the laying of the foundation-stone of the new Law Courts by His Excellency the Governor-General, Viscount Galway. The public interest taken in this event, which will be graced by the presence of several members of the Judiciary and by the leading representative citizens of Christchurch, will be enhanced by the attendance of members of the Bar from all parts of the Dominion in forensic attire. This function is not of the Conference proper, but it will assuredly focus the attention of the public at large on the professional gathering which will immediately follow, and to its deliberations and results. The welcome presence of the representative of His Majesty the King, surrounded by the leading members, as well as the rank and file, of the legal profession, will give the ceremony a national significance, and will remind us all that the administration of justice is the first duty of the State.

It was Gibbon who said of the study of the law that " few men without the spur of necessity have resolution to force their way through the thorns and thickets of that gloomy labyrinth." This mistaken (though unfortunately popular) view of the law, receives a rude shock at a time of a Dominion Legal Conference. Men whose days are spent in the pursuit of this study have, in this country, two vacations in the year. Popular misconceptions to the contrary, it is a refreshing thing to know that their interest in their professional work, their desire to augment their knowledge of it, and their endeavour to increase their opportunities of serving the public, prompt them to devote the greater part of that brief vacation in attending in conference with their professional brethren to discuss such matters as the reform of the Jury System, the principle of absolute liability in motor-collision cases, the law of vendor and purchaser, and amendments to the Workers' Compensation Act. In these subjects, as individuals, they have no more interest than any other member of the community ; but, with the advantage of professional training and experience, they are devoting their brief leisure to discussing improvements in the existing law that affect the whole of the public of the Dominion. In this, practitioners from all parts of New Zealand will be sharing in the fullness of citizenship, which, as Aristotle defined it, is the right to take part in legislation and in the administration of justice.

But all work and no play inevitably puts the wisest of lawyers in the category of dull dogs. Far be it from us to suggest that such is anyone's experience of legal practitioners in this country. Lest, however, their concentration on the affairs of daily professional lives may appear to overshadow their assiduity to relax, the adopted motto of the Conference Committee may be taken to be *Dulce est desipere in loco.* They have spiced and seasoned the seriousness of the Conference business with such a variety of entertainment and recreation that the citizens of Christchurch will have no misgivings as to any decline in the vigour of those who practise law in this country.

Women's best part is to inspire men's work. In full acknowledgment of all the connotations of this fast-disappearing medieval idea, the Conference Committee are providing a special series of entertainments for the ladies who will be accompanying members of the profession on their Christchurch pilgrimage.

Taken all in all, in its public aspects or in more domestic opportunities for the exchange of views with brother-practitioners in social surroundings, the Dominion Legal Conference of 1938 shows great promise. The Committee have done their part, and done it nobly There remains the co-operation of the members of the profession from the other cities and towns in New Zealand, by their attendance principally, to make doubly sure the assurance that the coming Conference will be an outstanding event. Most heartily, we wish it every possible success. And we hope, in our next issue, to record that success, and, in so doing, to provide another memorable chapter in the history of the profession in our land.

Summary of Recent Judgments.

JUDICIAL COMMITTEE.
1938.
Jan. 31; Feb. 14.
Lord Wright.
Lord Romer.
Sir Lancelot Sanderson.
Sir Sidney Rowlatt.
Sir George Rankin.

DE BUEGER
v.
J. BALLANTYNE AND COMPANY, LIMITED.

Contract—Performance—Contract made in England to be performed in New Zealand—Payment in "Pounds sterling"—Whether English or New Zealand currency.

The word "sterling," if used in any business document in London, means "British sterling" and nothing else.

The word "sterling" was added in the agreement of service made in London between the parties in order to define what means of discharge—*i.e.*, what currency—was being stipulated, because the unit of account (the word "pound" or symbol "£") was the same in England and in New Zealand. The term "sterling" was an express term intended to exclude, and in fact excluding, the *prima facie* rule according to which the currency of New Zealand, the place of payment, would be meant.

Adelaide Electric Supply Co., Ltd. v. Prudential Assurance Co., Ltd., [1934] A.C. 122, distinguished.

Payne v. Deputy Federal Commissioner of Taxation, [1936] A.C. 497; **Auckland City Corporation v. Alliance Assurance Co., Ltd.,** [1937] N.Z.L.R. 142; and **King Line, Ltd. v. Westralian Farmers, Ltd.,** (1932) 48 T.L.R. 598, 43 Ll.L.R., *mentioned.*

Quaere, Whether the construction of the service agreement would have been the same if it had been entered into in New Zealand.

So held by the Judicial Committee of His Majesty's Privy Council, reversing the judgment of the majority of the Court of Appeal, (*Ostler, Blair,* and *Kennedy,* JJ., *Reed,* A.C.J., dissenting, [1936] N.Z.L.R. 511, G.L.R. 410; and restoring the judgment of *Northcroft,* J., [1935] N.Z.L.R. 1043, [1936] G.L.R. 4.

Counsel: J. D. Casswell and **A. Lloyd,** for the appellant; **Alexander Ross** and **Paul Tyrie,** for the respondent.

Solicitors: Lloyd and Lloyd, London, agents for **Bell, Gully, Mackenzie, and Evans,** Wellington, for the appellant; **Wray, Smith, and Halford,** London, agents for **Raymond, Stringer, Hamilton, and Donnelly,** Christchurch, for the respondent.

Case Annotation: *Adelaide Electric-supply Co., Ltd. v. Prudential Assurance Co., Ltd.,* Supp. to 35 E. and E. Digest, *Money and Moneylending,* para. 17*h*; *Payne v. Deputy Federal Commissioner of Taxation, ibid.,* p. 13, para. *sf.*

COURT OF ARBITRATION.
Wellington.
1938.
Feb. 24.
O'Regan, J.

STEWART
v.
WELLINGTON CITY CORPORATION.

Workers' Compensation—Assessment—General Neurasthenia—Policy of Court not modified—Workers' Compensation Amendment Act, 1936, s. 9.

Section 9 of the Workers' Compensation Amendment Act, 1936, requires no modification of the policy of the Court of Arbitration that in normal cases of neurasthenia, prompt settlement being the remedy most appropriate and effective, there should be full weekly compensation to date of settlement and three months, in addition, by way of lump sum. The plaintiff will refuse at his peril an offer of such settlement.

Adam v. Westport Coal Co., Ltd., [1927-28] N.Z. W.C.C. 17, and **Jones v. The King,** [1933] G.L.R. 437, referred to.

Counsel: F. W. Ongley, for the plaintiff; **O'Shea,** for the defendant.

Solicitors: Ongley, O'Donovan, and Arndt, Wellington, for the plaintiff; **J. O'Shea,** Wellington, for the defendant.

SUPREME COURT.
Auckland.
1938.
March 7, 21.
Callan, J.

AUCKLAND CITY CORPORATION
v.
KING'S SCHOOL, AUCKLAND.

Rating—Rateable Property and Exemptions—School carried on exclusively for Pecuniary Gain or Profit—Whole Control entrusted to Creditor of School for payment of his Debt—Rating Act, 1925, s. 2 (*g*).

Where a company owning a school has entrusted its whole control to its creditor in order that he may be paid and the school enabled to continue so long as the debt and the control last, it is carried on for the pecuniary gain or profit of such creditor. Consequently, the land and buildings used for the purposes of the school are not exempt from rates under s. 2 (*g*) of the Rating Act, 1925, as "lands and buildings used for a school not carried on exclusively for pecuniary gain or profit."

This conclusion cannot be disturbed because the company has obtained such an Order in Council as is authorized under s. 31 of the Companies Act, 1933, in respect of an association formed for promoting commerce, art, science, religion, charity, or any other useful object, and intending to apply its profits (if any) or other income in promoting its objects, and to prohibit the payment of any dividend to its members.

Mayor, &c., of Christchurch v. Riddell, (1914) 34 N.Z.L.R. 226, 17 G.L.R. 159, applied.

Christchurch City Corporation v. Christ's College, [1920] N.Z.L.R. 662, G.L.R. 449, distinguished.

Counsel: Stanton, for the plaintiff; **Gray,** for the defendant.

Solicitors: J. Stanton, Auckland, for the plaintiff; **T. H. Dawson,** Auckland, for the defendant.

SUPREME COURT.
Auckland.
1938.
March 4, 18.
Fair, J.

HOWIE v. DRYDEN AND ANOTHER.

Landlord and Tenant—Rent Restriction—Recovery of Possession—Month's Notice determining Tenancy—No "Address for Service"—Jurisdiction—Fair Rents Act, 1936, s. 12—Property Law Act, 1908, s. 16.

Section 12 (2) of the Fair Rents Act, 1936, requiring a notice under that section to contain an address for service, does not apply where the landlord has given the tenant a month's notice in writing duly determining his tenancy.

Bethune v. Bydder, [1938] N.Z.L.R. 1, [1937] G.L.R. 665, referred to.

Counsel: Fleming, for the plaintiff; **Greville,** for the first-named defendant.

Solicitors: N. R. W. Thomas, Auckland, for the plaintiff; **R. H. Greville,** Auckland, for the defendant.

SUPREME COURT.
Wellington.
1938.
March 9, 29.
Northcroft, J.

JACKSON v. MANSON.

Contract—Formation—Agreement for Lease—Offer and Acceptance—Lessee not named—Specific Performance—Statute of Frauds, 1677 (29 Car. 2, c. 3), s. 4.

An offer to take a lease of an hotel addressed to the husband of the owner thereof, beginning "I agree," and containing no mention of the lessee or any reference to him by which he could be identified, was signed by the owner in the place intended for signifying the acceptance and later signed by the intended lessee.

Held, That the document was not an agreement in writing within the Statute of Frauds so as to entitle the lessee to have the same specifically performed, as (*a*) the signature of the owner operated as a written offer to an unnamed and unidentified person; and (*b*) parol evidence was not admissible to prove that the later signature was that of the person whom the owner expected to sign.

Williams v. Lake, (1859) 2 E. & E. 349, 121 E.R. 132, and **Williams v. Jordan,** (1877) 6 Ch.D. 517, applied.

Counsel: **F. W. Ongley,** and **O'Donovan,** for the plaintiff; **S. A. Wiren,** for the defendant.

Solicitors: **Ongley, O'Donovan, and Arndt,** Wellington, for the plaintiff; **Tate and Thompson,** Greytown, for the defendant.

Case Annotation: *Williams v. Lake*, E. and E. Digest, Vol. 12, p. 144, para. 976; *Williams v. Jordan, ibid.*, para. 978.

COURT OF ARBITRATION.
Wellington.
1938.
March 10, 18.
O'Regan, J.

NATTA
v.
WELLINGTON HARBOUR BOARD.

Workers' Compensation—Liability for Compensation—Scheduled Injury to Right Forefinger—No loss of Earning Capacity—Whether "Permanent loss of the use of" damaged Finger-joint—Workers' Compensation Act, 1922, s. 8, Second Schedule.

A worker whose injured right forefinger is still capable of fulfilling its natural and normal functions to an appreciable degree—weight of medical opinion opposing amputation of a phalanx thereof—is not entitled to the compensation provided in the Second Schedule for the permanent loss of the use of such finger.

Counsel: **F. W. Ongley,** for the plaintiff; **J. F. B. Stevenson,** for the defendant.

Solicitors: **Ongley, O'Donovan, and Arndt,** Wellington, for the plaintiff; **Izard, Weston, Stevenson, and Castle,** Wellington, for the defendant.

SUPREME COURT.
Dunedin.
1937.
July 17.
1938.
Feb. 23.
Kennedy, J.

BUTTERWORTH BROTHERS, LIMITED
v.
COMMISSIONER OF STAMP DUTIES.

Public Revenue—Stamp Duty—"Carry on business"—Annual License—Soft-goods Company in Liquidation—Premises let by Liquidator after Sale of Stock—Whether carrying on Business—Stamp Duties Act, 1923, s. 184.

Where a company, whose business was that of soft-goods merchants, let certain of its property prior to liquidation merely incidentally to such business and went into voluntary liquidation,

Held, on the facts set out in the judgment, That the subsequent letting by the liquidator (after he had sold the stock) of premises, which he tried to sell and could not sell, and the subletting of a part of a leasehold warehouse, was not a carrying-on of any business which the company had carried on; nor had the company "carried on business" since the sale of stock within the meaning of that term in s. 184 of the Stamp Duties Act, 1923.

Joshua Brothers Proprietary, Ltd. v. Federal Commissioner of Taxation, (1923) 31 C.L.R. 490, referred to.

Counsel: **Allan,** for the plaintiff; **H. S. Adams,** for the defendant.

Solicitors: **Cook, Lemon, and Cook,** Dunedin, for the plaintiff; **Adams Bros.,** Dunedin, for the defendant.

COURT OF ARBITRATION.
Wellington.
1938.
March 11, 25.
O'Regan, J.

ARMSTRONG
v.
NEW ZEALAND SHIPPING COMPANY, LIMITED.

Workers' Compensation—Assessment—Worker suffering a Non-fatal Accident—Continued Effect of Disease and Injury—Compensation Allowed only for Shortened Period of Claimant's Working Life—Workers' Compensation Act, 1922, s. 3.

Where a worker, suffering disease, meets with an accident in his employment owing to the exceptional strain imposed on him by his work, that exacerbates his condition, so as to permanently disable him for all but the very lightest work, such a case must be decided on a principle different from one of the same class in which death has occurred, and compensation can be allowed only for the period by which the claimant's working life has been shortened.

Hutton v. Stonex Bros., [1930] G.L.R. 27, followed.

Clover, Clayton, and Co., Ltd. v. Hughes, [1910] A.C. 242, 3 B.W.C.C. 275; **Muir v. J. C. Hutton (N.Z.) Ltd.,** [1929] N.Z.L.R. 249, G.L.R. 140; and **Macfarlane v. Hutton Bros. (Stevedores), Ltd.,** (1926) 96 L.J. K.B. 357, 20 B.W.C.C. 222, distinguished.

Counsel: **Hardie Boys,** for the plaintiff; **Shorland,** for the defendant.

Solicitors: **Hardie Boys, and Haldane,** Wellington, for the plaintiff; **Chapman, Tripp, Watson, James, and Co.,** Wellington, for the defendant.

Case Annotation: *Clover, Clayton, and Co., Ltd. v. Hughes*, E. and E. Digest, Vol. 34, p. 273, para. 2316; *Macfarlane v. Hutton Bros. (Stevedores) Ltd. ibid.*, Supplement, para. 2317*b*.

The Grand Jury.

Abolished in Twenty-five American States.

"At common law an indictment by a grand jury was an essential preliminary to a trial for felony. In 1789 each State of the Union used a grand jury in the trial of serious crimes. But during the nineteenth century men began to question its utility, and California shortly after the Civil War, in 1879, dispensed with a grand jury, even in the prosecution of capital offences. This then-novel procedure was in due course challenged as amounting to a denial of privileges and immunities, and due process of law. The Supreme Court held, however, that it was within the power of a State to abolish the grand jury entirely and to proceed by information: *Hurtado v. California*, (1884) 110 U.S. 516, 520, 538.

"To-day, it can no longer be contended that in proceeding by information instead of indictment there is any violation by the State of the requirement of due process of law: *Brown v. New Jersey*, (1899) 175 U.S. 172, 175; *Maxwell v. Dow*, (1900) 176 U.S. 581, 602; *Graham v. West Virginia*, (1912) 224 U.S. 616, 627; *Jordan v. Massachusetts*, (1912) 225 U.S. 167, 176; *Frank v. Mangum*, (1915) 237 U.S. 309, 340; *Gaines v. Washington*, (1928) 277 U.S. 81, 86; *Palko v. Connecticut*, (1937) 5 *U.S.L. Week* 342. Furthermore, the prosecuting attorney may file the information pending an investigation by the Coroner: *Gaines v. Washington*, (1928) 277 U.S. 81, 86. In fact, the filing of the information may even precede the arrest or preliminary examination of the accused: *Lem Woom v. Oregon*, (1913) 229 U.S. 580, 586.

"Justice Cardozo has recently said that immunity from prosecution except as the result of an indictment by a grand jury may have value and importance, but even so it is "not of the very essence of a scheme of ordered liberty. . . . Few would be so narrow or provincial as to maintain that a fair and enlightened system of justice would be impossible without [it]: *Palko v. Connecticut*, (1937) 5 *U.S.L. Week*, 342, 343. In not less than twenty-five States, the Legislatures have substituted information for indictment, either entirely or partially. In States such as California, Montana, and Washington a grand jury is seldom used even in capital crimes."

—*Georgetown University Law Journal.*

Fair Wear and Tear.

The Landlord's Liability.

By C. N. Armstrong, LL.B.

Of the greatest interest to conveyancers is the decision of the Court of Appeal in England in the case of *Taylor v. Webb*, [1937] 1 All E.R. 590, on the interpretation of that clause customarily inserted in leases exempting from the covenant to repair, liability for dilapidations due to "fair wear and tear."

In the old case of *Gutteridge v. Munyard*, (1834) 1 M. & Rob. 334, 174 E.R. 114, Tindal, C.J., laid down the principles of construction of this clause; and, from then down to modern times, such principles have been applied and developed, in some cases explained and made clearer, but never repudiated, and upon this basis conveyancers have made use of the wear-and-tear clause. Now by virtue of the Court of Appeal's decision, it seems clear that the use of the clause in its old form, so far from limiting in a minor extent the liability for certain dilapidations under the covenant to repair, will result in considerable difficulty being experienced in enforcing the covenant to repair at all. Certainly conveyancers in the past never realized that they were binding the tenant to so little.

The exception is considered under two heads. One, wear and tear by normal human user, and, the other, wear and tear by normal natural causes such as the wind and the rain. It is to the liability to repair under the latter head in which *Taylor v. Webb* has made such a radical change, the law on the former being unaffected.

The position, as it has been understood for so many years, is clearly set out in *20 Halsbury's Laws of England*, 2nd. Ed. 211:

> "If 'reasonable wear and tear' are excepted, the tenant is not bound to make good dilapidations caused by the friction of the air, and by exposure and ordinary use; but it must be shown that such dilapidations were caused by normal human use or the normal action of the elements, and that they were reasonable in amount having regard to the contract to repair and the other circumstances of the case. If the passage of time and the operation of the elements has a more deteriorating effect than usual owing to the original unsoundness of the premises, the tenant will not be liable for the resulting dilapidations, but *he is liable for such repairs as become necessary through his failure to prevent the consequences of wear and tear from causing further damage.*"

In an interesting and exhaustive article in *The Conveyancer*, September, 1937, Mr. Lionel A. Blundell, LL.M., traces the trend of judicial decisions on this point from the dicta of Tindal, C.J., in his direction to the jury in *Gutteridge v. Munyard* to the latest decision in England, *Haskell v. Marlow*, [1928] 2 K.B. 45, which was overruled by *Taylor v. Webb*. Tindal, C.J., is reported as follows, at p. 336:

> "What the natural operation of time flowing on effects, and all that the elements bring about in diminishing the value, constitute a loss, which, so far as it results from time and nature, falls upon the landlord. But the tenant is to take care that the premises do not suffer more than the operation of time and nature would effect; *he is bound by seasonal applications of labour to keep the house as nearly as possible in the same condition as when it was demised.*"

In *Haskell v. Marlow* (*supra*), Talbot, J., at page 59, said:

> "It [reasonable wear and tear] does not mean that if there is a defect, originally proceeding from reasonable wear and tear, the tenant is released from his obligation to keep in good repair and condition everything which it may be possible to trace ultimately to that defect. *He is bound to do such repairs as may be required to prevent the consequences flowing originally from wear and tear from producing others which wear and tear would not directly produce.*"

Down to the time of this decision the law was perfectly clear that while the tenant was not liable for the dilapidations caused by ordinary wear and tear of the elements, he was nevertheless bound "by seasonable applications of labour" to ensure that "the premises did not suffer more than the operation of time and nature would effect."

In *Taylor v. Webb*, a landlord covenanted in an underlease to keep the outside walls and roofs in tenantable repair as he was required by the headlease to do. The covenant in the headlease contained an exception of damage by fire and fair wear and tear. Owing solely to the effect of wind and rain, certain roofs and skylights became defective, and, as they were not repaired, certain rooms in due course became uninhabitable. The whole of the disrepair was due to the elements, coupled with the absence of any steps by anybody to prevent further progress of the decay. The Court held that the question whether wear and tear is fair and reasonable is not affected by the amount of the dilapidations. Slesser, L.J., concluded:

> "In the circumstances I am unable to see how, if he was under no obligation to repair, he can be held responsible for the consequential damage which flowed from an obligation to repair walls and roofs when that obligation was not his."

The effect of this decision is that, where fair wear and tear is excepted from the repairing covenant, the covenantor is exempted from liability for all disrepair caused by normal operation of natural causes without regard to the reasonableness or otherwise of allowing such natural causes to continue producing those results unchecked. By this decision he is excused from any disrepair which can be traced back to natural causes, and in effect is excused from his obligation to repair at all because the dilapidations which fall outside this class are negligible.

It is curious that *Gutteridge v. Munyard* was not considered by the Court of Appeal. Mr. Blundell, in his article, says:

> "There was no discussion as to the authority of Tindal's words, or as to the great length of time during which they have been followed and applied by the Courts and relied on by conveyancers inserting the time honoured clause in their leases. It is a recognized principle that, where for a long time conveyancers have in reliance on past decisions used a particular form of words to express a particular meaning, the very strongest of reasons will be needed to induce the Courts to reverse the old-established decisions which have been so acted upon by the profession."

Whatever may be the merits of the decision, there is no doubt that the clause has lost the meaning which it has held for so long and it therefore behoves conveyancers to re-draft the clause for future documents.

It is interesting to note the two cases in which the clause in question has been under consideration by the New Zealand Judges. In *Baker v. Johnston and Co., Ltd.* (1901) 21 N.Z.L.R. 268, the appellant occupied hotel premises under a lease containing a covenant to keep the premises in good and tenantable repair, reasonable wear and tear excepted. It was

established that the iron on the roof was dilapidated through the operation of time and the elements, and was so far worn out as to be past repairing effectively, and that new iron was necessary to place it in proper repair. The action against the tenant for the cost of the new roof came before Edwards, J., who held that the tenant was not liable under his covenant to repair. At page 275, His Honour said:

> "I may add that, after over twenty years experience as a conveyancer, I am satisfied that the common understanding of conveyancers is that a tenant exempted from liability for reasonable wear and tear is not liable for the results of time and the elements. In my opinion, therefore, the tenant was not under the covenant to repair, liable to renew the iron upon the roof. He was no doubt under an obligation to patch the old roof, so as, if possible, to keep the rain out."

This judgment was in full accordance with the principles of *Gutteridge v. Munyard* and the subsequent English decisions. Edwards, J., gave judgment against the tenant on another ground, and this ground was upheld in the Court of Appeal. Stout, C.J., however, held that the tenant was also liable under his covenant to repair because, although he was under no liability to put on a new roof, he was bound to put the roof in such a state of repair as to prevent its leaking and, as he had acquiesced in the architect's statement that the only way to make it watertight was to put on new iron, he was liable for that cost. It was, he considered, not a "new roof" but "new iron." While, by this very fine distinction, he was able to find against Edwards, J., he still applied the principles of *Gutteridge v. Munyard*. At page 286, he said:

> "But I know of no case that goes the length of saying that because through the elements a roof became leaky the house is to be left uninhabitable."

Although the other Judges in the Court of Appeal did not deem it necessary to decide or even consider this question, all, except Conolly, J., who agreed with Edwards, J., concurred with the Chief Justice that the tenant was responsible for the cost of the new roof.

The other case, that of *Puihi Maihi v. McLeod*, [1920] N.Z.L.R. 372, also came before Edwards, J., who held in a similar covenant that the tenant was liable to repair dilapidations caused by the elements. He held, at p. 249:

> "That view [of Stout, C.J. (*supra*)] has since been supported by the decision of the English Court of Appeal in *Lurcott v. Wakely and Wheeler*, [1911] 1 K.B. 905. This case has a very far-reaching effect, and it should be carefully studied by all conveyancers. The principles upon which Tindal, C.J., acted in *Gutteridge v. Munyard*, and which have been referred to with approval in subsequent cases, have been set aside and it seems now to be established law that however ruinous a building may be, . . . the tenant must from time to time replace all such parts as fail to serve their purpose or make the structure dangerous, so that if the term granted is for a long period a tenant may during its course be compelled to reconstruct the entire building."

This judgment goes to the other extreme altogether from *Taylor v. Webb*, and renders the protection of the fair wear-and-tear exception of no effect whatever, but it is curious that a Judge of Edwards, J.'s, legal standing should have given such a decision when in the covenant to repair under consideration in *Lurcott's* case there was no exception of fair wear and tear and in England it has never been considered that *Gutteridge v. Munyard* was overruled by this decision.

All these cases are, however, of historical interest only, for so long as the decision in *Taylor v. Webb* stands the tenant is under no liability whatever to repair dilapidations due to ordinary natural causes.

Mr. Blundell suggests that it would be advisable for conveyancers to avoid the use of the "fair wear-and-tear" clause as it has been worded in the past, and gives a precedent drawn by him which he suggests will avoid the difficulty caused by *Taylor v. Webb*, and will express what has always been intended by conveyancers when using the old form. The exception in his precedent runs as follows:

> "Damage by fire, earthquake, enemy action, or tempest, and fair wear and tear to be excepted: Provided that the lessee shall take all reasonable measures and precautions to ensure that any damage, defect, or dilapidation which has been or at any time shall be occasioned by fair wear and tear shall not give rise to or cause or contribute to any substantial injury to the said demised premises."

With the greatest of respect to the learned author, it is submitted that while *Taylor v. Webb* extended the meaning of the fair wear-and-tear exception so much in favour of the tenant that his obligation to repair is rendered almost nugatory, this suggested proviso goes too far in favour of the landlord and places an obligation to repair on the tenant which never existed under the old-established meaning of the "fair wear-and-tear" clause.

When the tenant was exempted from the repair of dilapidations caused by fair wear and tear, it seems to have been clearly established that he was not liable to repair dilapidations caused by the effect of time and the elements, but it was also made clear in the cases prior to *Taylor v. Webb*, that he was responsible for preventing damage caused indirectly by wear and tear due to the elements. This, however, contemplated minor repairs only, and was reasonable because the tenant, being on the premises, was in a position to notice the requirements and to give them immediate attention. The performance of large and expensive structural repairs was never contemplated, otherwise the whole purpose of the fair wear-and-tear exception would have been avoided and no benefit received from its inclusion.

Talbot, J., in *Haskell v. Marlow*, employs the illustration of a tile falling off the roof, which is fair wear and tear due to the action of the elements. "But," he said, "if the tenant does nothing and in the result more and more water gets in, so that great damage is done and even the whole house becomes uninhabitable, he cannot say that it is due to reasonable wear and tear." It is only reasonable that the tenant should replace the tile, which is only a minor repair and one that was clearly contemplated by the parties. If, however, a roof becomes so decayed that it is past repairing, such as occurred in *Baker v. Johnston and Co., Ltd.*, it would clearly be a hardship on a tenant, protected by this clause from his obligation to repair, to have to renew the whole roof. Such a situation is covered by the words of Edwards, J., quoted above, that the tenant could not be held liable for the complete renewal of the roof because when protected by the fair wear-and-tear clause he was not responsible for the results of time and the elements.

Under Mr. Blundell's suggested clause, the tenant would be held liable for the replacement of the tile, which would be proper and in accordance with the old decisions, but he would also be obliged to renew the whole roof, which would be manifestly unfair and not in line with the law prior to *Taylor v. Webb*.

Again, one of the piles of a house may have become weakened, and its reinforcement, at a small expense, necessary to prevent the house from collapsing. This is a proper liability of the tenant. But if all

the foundations were in such a condition of decay that entirely new foundations were required at a huge expense, the cost of this should rightly fall on the landlord, and the tenant should be protected under his fair wear-and-tear exception.

It is submitted that there should be a distinction made between minor repairs at small cost and expensive structural repairs, the line of demarcation being assessed in a figure which should be easily susceptible of settlement when the lease is being drafted. With respect, it is suggested that Mr. Blundell's precedent should be amended as follows:

> "Damage by fire, earthquake, enemy action, tempest, fair wear and tear, and *depreciation by age* to be excepted: Provided that the lessee shall take all reasonable measures and precautions to ensure that any damage defect or dilapidation which has been or at any time shall be occasioned by fair wear and tear *or deterioration by age* shall not give rise to or cause or contribute to any substantial injury to the said demised premises: *And provided also that if in taking any such measures and precautions it shall be found necessary to replace or renew any of the material forming part of the said premises and fixtures then if at any one time the cost of providing and fixing such material shall exceed the sum of £ such cost shall be borne by the lessor.*"

New Magistrate.

Law Society Entertains Mr. R. C. Abernethy.

Members of the Canterbury Law Society recently entertained Mr. Rex C. Abernethy, who has been appointed to the Magistracy, at a congratulatory luncheon at Beath's. Seventy-five members attended and Mr. J. D. Hutchison presided.

The high regard in which Mr. Abernethy was held in Christchurch was expressed by the President, who emphasized that the appointment had met with the universal approval of the profession. The Society's members recognized that the new Magistrate possessed all the qualifications which would ensure the upholding of the judicial prestige and the dignity of the Bench.

Mr. W. R. Lascelles also spoke of the popularity of the appointment, and he reviewed the association of Mr. Abernethy with the profession in Christchurch from his law student days.

On behalf of the senior members and particularly the conveyancers, Mr. H. D. Andrews said that the extreme popularity of the appointment with the younger lawyers was shared by the Magistrate's contemporaries and those who were of an older generation.

An informal gathering of returned soldier members of the profession also entertained Mr. Abernethy. Mr. J. K. Moloney, who was in the chair, recalled that Mr. Abernethy had given distinguished military service and had been awarded the Military Cross while in France. His appointment gave a special pleasure to returned soldiers.

Mr. Abernethy was sworn in at the sitting of the Magistrate's Court at Christchurch on March 21, by the senior Magistrate, Mr. H. A. Young. On the Bench also were the other Christchurch Magistrates, Mr. E. C. Levvey and Mr. F. F. Reid. All joined in congratulating Mr. Abernethy, who later sat with Mr. Levvey during the session of the Court.

Dominion Legal Conference.

The Complete Programme.

The following is an outline of the programme arranged by the Conference Committee, and it includes the ceremony of the laying of the foundation-stone of the new Law Courts, which is in charge of the Department of Justice.

Wednesday, April 20—

9.20 a.m. Practitioners assemble at the Radiant Hall, Kilmore Street.

9.45 a.m. Civic Reception by the Mayor of Christchurch (Mr. J. W. Beanland).

Ceremony of laying the foundation-stone of the New Law Courts—

10.20 a.m. All barristers, having robed in the Supreme Court, will proceed together to the site of the function on the river-frontage of the Supreme Court Building.

10.30 a.m. Arrival of His Excellency the Governor-General, Viscount Galway.

Address of welcome by the Mayor of Christchurch.

Address by the President of the Canterbury Law Society, Mr. J. D. Hutchison.

Address by the Minister of Justice, the Hon. H. G. R. Mason.

Address by His Excellency the Governor-General.

At the conclusion of the ceremony, Mr. E. J. Howard, M.P., will thank His Excellency.

(The proceedings will be broadcast by 3YA Christchurch.)

Dominion Legal Conference—

11.45 a.m. Opening of the Conference at the Radiant Hall, Kilmore Street.

Address by the President of the New Zealand Law Society, Mr. H. F. O'Leary, K.C.

2.30 p.m. Paper: *The Jury System: Is Reform Desirable?* by Mr. A. H. Johnstone, K.C.

3.45 p.m. Discussion of a remit (to be announced).

Ladies: Morning Tea at the Botanical Gardens, following the laying of the foundation-stone.

Afternoon: The afternoon is free.

9 p.m. Conference Ball at Beath's. His Excellency the Governor-General will attend.

Thursday, April 21—

10. a.m. Paper: *The Relationship between the Public and the Profession*: Mr. A. C. Stephens.

11.15 a.m. Remit: That this Conference approves of the principle of absolute liability in motor-collision cases with provision for assessment of damages by a Judge and two assessors: Mr. W. J. Sim.

12 noon. Remit: Amendment to s. 9 of the Workers' Compensation Act, 1936, giving the employer right to apply to the Court: Mr. W. H. Cunningham.

2.30 p.m. Paper: *Some Aspects of the Law of Vendor and Purchaser*: Mr. D. Perry.

3.45 p.m. Remit: That the New Zealand Law Society consider the new regulations for the admission of barristers and solicitors: Mr. W. D. Campbell.

4.30 p.m. Concluding remarks.

6.45 p.m. (for 7 p.m.) Bar Dinner at the Winter Garden. His Honour the Chief Justice, the Rt. Hon. Sir Michael Myers, will be present.

Ladies: Morning: Garden Party at the residence of Mr. and Mrs. C. S. Thomas.

Afternoon: The afternoon is free.

Evening: Ladies' Dinner at Beath's.

Friday, April 22—

All Day: Golf at the Shirley Links.
Tennis and bowls, as arranged.
Afternoon tea at the Shirley Links.

Ladies: Morning: Motor drive around the new Summit Road, and morning tea at the Takalie, Cashmere Hills.

Afternoon: Afternoon tea at the Shirley Links.

General.

His Excellency the Governor-General has informed the Conference Committee that he will be pleased to attend the Conference Ball to be held on the evening of the opening day of the Conference, and His Honour the Chief Justice will be present at the Ball and at the Bar Dinner.

* * *

All barristers attending the Conference are reminded to take their forensic attire, which will be worn at the ceremony of the laying of the foundation-stone of the new Law Courts by His Excellency the Governor-General.

* * *

Fares.—Reductions of 10 per cent. on return saloon fares for practitioners on the inter-Island steamer service, and of approximately 20 per cent. on first-class return fares for practitioners and members of their families, have been arranged. To take advantage of these concessions an authority is needed, this can be obtained on application to the Conference Secretary.

* * *

Accommodation.—Accommodation in Christchurch, though heavily taxed, is still available; but, in order to save any delay or disappointment, the Conference Secretary should be advised immediately as to the accommodation required, and will arrange it accordingly. It will make for the convenience of all concerned if prompt application is made.

* * *

The Conference Executive is pleased to report that the replies already received from all parts of the Dominion, show that there will be a large number of practitioners visiting Christchurch to take part in the deliberations and social gatherings of the Conference.

It will be of great assistance to the Conference Committee if practitioners who intend being present at the Conference, will immediately return their questionaire slips to the Secretary, Box 189, Christchurch.

Special Issue of the "Journal."

The next issue of the JOURNAL will contain a full account of the proceedings at the Dominion Legal Conference to be held in Christchurch during Easter Week, details of which appear above.

The JOURNAL, which will be an enlarged issue, will contain the full text of papers read at the Conference, and reports of the discussions following them, as well as a detailed description of the various gatherings which form part of the Conference programme.

In the Far North.

Bar Dinner at Kaeo.

On March 28, the new Courthouse at Kaeo was officially opened by the Minister of Justice and Attorney-General, the Hon. H. G. R. Mason, in the presence of a gathering of members of the Bar in North Auckland. Kaeo, pleasantly situated amid enfolding hills, not far from the upper reaches of Whangaroa Harbour, has many historical associations with the early days of colonization. But new history was made, when, on the evening of the day on which the new Courthouse was opened, practitioners of the Far North held their first Bar Dinner north of Auckland City.

In addition to the Attorney-General, the following practitioners were present: Messrs. A. Logan (Kaitaia), chairman; J. B. Reynolds, Lloyd Peace, H. S. Bannister, and R. Kelly (Kaitaia), H. F. Guy and K. Harold (Kaikohe), C. F. C. Miller and D. A. Williams (Kawakawa). Mr. G. N. Morris, S.M., was also present. The visitors included Mrs. H. G. R. Mason, and Mrs. Morris, Mr. G. F. Dixon, Private Secretary to the Minister, Mr. D. McCarroll, Child Welfare Officer, North Auckland District, and the Clerk of Court, Kaeo, Constable E. Buckley. Apologies for non-attendance were received from Messrs. W. C. Wily (Kaikohe) and W. G. Broadbent (Kaeo), and Mr. J. N. McCarroll, of the North Auckland Adjustment Commission.

The gathering was a very happy one, and was greatly enjoyed.

After the chairman, Mr. A. Logan, had proposed the customary loyal toast, which was duly honoured, he called on Mr. Miller to propose the toast of the guest of the evening, the Hon. H. G. R. Mason, Minister of Justice and Attorney-General.

THE OLDEST PROFESSION.

Mr. Miller said that there were two sides to the Minister's office: that of the Minister of Justice which pertained more to the political side, and that of Attorney-General which pertained more to the legal side. He then told the story of the surgeon, the architect, and the politician, who were arguing as to whose profession was the oldest. The surgeon spoke first and said: "At the time when Eve was made out of one of Adam's ribs, that was a very delicate operation, and surely I can fairly claim that the profession of the surgeon is the oldest in the world." The architect said: "Not at all. In the Scripture we are told there was chaos, and from chaos was made the order of the world. Now it would take a very clever and skilled architect to make order out of chaos, and therefore I claim that the architect's profession is the oldest profession in the world." The politician merely said: "Ah, but who made the chaos!" (*Laughter.*)

But speaking more to the political side of the toast entrusted to him, Mr. Miller said that he happened to be looking up a very old book published in the eighteenth century which for the most part depicted the character of the kings of Britain, and as footnotes it gave laws which had been passed during the reigns of the various kings. He was interested to realize

that the pioneering of price-control did not start in 1936 but in 1543, and what was controlled then was the price of beef, pork, mutton, and veal. The price of beef and pork was a half-penny per pound, and mutton and veal was three farthings per pound. "Now I believe some of my fellow-practitioners here dabble in farms; need I say more to them?" he added amidst laughter. "I would like to mention also that by another law at that time the price of labour was fixed at 4d. a day with diet, or 6d. a day without diet. So much for the political side."

"I really address myself more to the fact that our guest is Attorney-General, and, as such, is the official head of our profession," Mr. Miller continued. "We feel distinctly honoured that he has been able to spare the time to be present at this gathering. Such gatherings have a very real value. I should like to say that we greatly appreciate the work Mr. Mason has done as Attorney-General. He has grappled with problems that appeared to have been sidetracked for a great many years—problems the solution of which has had the result of making the law more of a living entity, binding us more closely to the life of to-day, and that is the real object of the law—to reflect the life and social usages of the society in which we live; and it is that, more particularly, which we so greatly admire in the work he has done as Attorney-General.

"Coming closer home, we are grateful to him for the fact that he has given us a home, from a local point of view, by establishing an office of the Supreme Court in North Auckland—at Whangarei. I feel quite certain that a very few years will justify the wisdom of the step that he has taken in that direction."

The toast was drunk with musical honours.

The Attorney-General's Reply.

The Hon. Mr. Mason, in reply, after thanking the chairman, and the ladies and gentlemen present for the cordial way the toast of his health had been proposed and received, said in reference to the occasion which had brought them together, that it was new in his experience in that the Kaeo Courthouse opened that afternoon was the first Courthouse he had managed to get completed since he became Minister of Justice.

"There are a number of Courthouses on the way, and I hope to have them opened soon. It is astonishing when one thinks of it, how far behind our Court buildings are lacking in essentials such as acoustics, ventilation, &c. We shall see improvements, not quite so quickly as I had hoped, but still we shall quite steadily get them all improved. Those ambitions are in the future, and this Kaeo Courthouse is the first actually begun and completed during my administration. To-night's is a happy occasion, particularly because of the way you have gathered here—more especially after the opening had, of necessity, to be deferred because of my inability to attend on the dates previously fixed for the function; but after treating you like that I did not expect to be treated as you have treated me to-night. I appreciate your kindness very much."

The Conservative Layman.

Mr. Mason then recalled the reference that had been made to the political aspect as well as the legal aspect. "There are difficulties in both, of course," he said. "As far as concerns the legal aspect, and those references to improving the law, I find the difficulty is to get the layman to understand. When it comes to convincing the layman, he is the most conservative and the hardest to move. The legal profession I find generally willing and anxious to see the law made better. But there are difficulties, of course, in politics as well as in law, and one who goes in for politics has to have, I suppose, certain qualities. I suppose it will be said the chief quality he requires is that of being able to answer questions. I suppose you will tell me that the most promising politician at school was the boy who was asked 'Where are elephants found,' and he scratched his head a long time, but, being of the sort politicians are made of, he answered the question all right by saying, 'Elephants are so large they are seldom lost!' So a politician requires a certain amount of ingenuity of that sort.

"Whatever we may say of the difficulties that confront our profession, and that confront politicians, I think our political system suits us. Hitler or Mussolini may have certain advantages on occasions but I will not enlarge on those. I believe in the form of Government such as we have, where all the people are interested or concerned and where they have liberty of expression. Other countries seem to like other forms.

"Now, considering the advantages we have in our form of Government, it is to be remembered that it is our common law that preserves those things for us and hands them down to us, and I believe the lawyers have a proud position in the evolution of our country. When one thinks that the common law which preserves to us most of our liberties is the framework on which most of our society is constructed, that is very much the work of the eminent lawyers who have been the Judges of England—those who have practised at the Bar, and who have maintained, developed, and handed down those traditions.

"So the legal profession, with all deference to the other gentlemen Mr. Miller has mentioned, in competing for the oldest profession—our profession should hold its head high and recognize the important position it has had in framing our modern constitution, which really is a great blessing to us. I think we cannot sufficiently realize what a great blessing it is that we have the priceless gifts of freedom of speech, freedom of expression, and freedom of meeting, which they do not have in many other countries. They may get something in other countries which give them certain advantages; but no advantages to be mentioned could compare for an instant, we shall all agree, with those priceless gifts of freedom I have mentioned. These are no mere idle words in the development of individual character and freedom. There is nothing at all worth while, it seems to me, without them. For these reasons, we can all of us respect and honour our profession.

"I am a long way from Wellington and from Auckland, but it does rejoice me to meet fellow-practitioners here at the end of New Zealand and to receive a warm welcome and to see such good-fellowship among them. I cannot tell you how glad I am to see you gathered here and to see such friendship, good-will, and happiness in the Far North. So far away, I had not expected that you would gather from such distances as you have come to this township, and I greatly rejoice to see it and greatly thank you again for the kind way you have received me and have drunk my health."

The chairman called on Mr. Guy to propose the toast of Mr. G. N. Morris, S.M., the Magistrate for the district.

THE MAGISTRATES' COURTS.

Mr. Guy said that they had gathered to open a very fine building, not built for ornamentation, but for a purpose. They knew that, studded throughout the length of the land, there are small Courts. Those who were not very conversant with the administration of law and justice may wonder what they are all for.

"But we in the North realize what an influence law and justice can be in any particular district," the speaker continued. "In the cities, we have the Supreme Court and its regular sittings; but in a rural population we endeavour to get the people to come and live in the outskirts and settle the land, and nothing would hamper that more than a feeling of insecurity. Never mind how far they settle from the main centres, if the people know their affairs will be straightened out in the Law Courts, it is a very fine thing.

"The system in New Zealand is a very convenient one. The Magistrates' Court is the peoples' Court to which they can all come with confidence. They feel they are not trammeled in any way; they have now experienced its benefits for so long that the same justice that can be had in the Supreme Court can be had in the smaller Court in the particular district in which they live.

"There is no question that the foundation of British justice has largely been built up on the respect the British Court has had from its citizens. Americans admire the British in their veneration for the Law Courts and the practices that have developed therein. In New Zealand we have begun to develop in the same way that reliance on the Magistrates' Court. We feel inclined to ask the legislators to increase the jurisdiction of the Magistrates' Courts, and we would not do that if we did not in the long run feel that the law is safe in the hands of the Magistrates. It has not always been so. Magistrates were once appointed in a very different way. We can think over some of them and we wonder what particular qualification they had to sit in judgment on their fellow-men or to weigh the weighty problems that came before them. Because, after all, we do realize that it is not the amount of the claim that matters so much—sometimes the principle is just as important as though it had been brought before the Supreme Court in Auckland. So it is necessary the public should feel that when their claims come before the Court they are going to be justly dealt with. We feel in the last twenty years there has been an elevation in the standard of our Magistrates' Court, and that the public are quite satisfied with the way in which cases are dealt with by the Magistrates.

"In our particular district we are well served. We have our Magistrate who comes round and makes contact with practitioners and is so regular in attendance that there is not the accumulation that would happen if we had to take all our work to the larger centres, so that the Government of the day is doing a lot to enable the people to establish and settle their claims with every confidence. We know there is a feeling in some districts that Justices of the Peace could do more than they do now, but it is often a very difficult thing for a man to deal with a problem arising amongst neighbours and friends and it is a great advantage to have a Magistrate who can come in untrammeled by those associations and deal with the problems. So far as North Auckland is concerned we have been very fortunate in our Magistrates, and each succeeding gentleman who has been Magistrate here has left his own particular mark on the district." Mr. Guy said he thought they were fortunate in the case of their present Magistrate that he had had experience of Native life in the Islands, which had greatly helped him in dealing with the Native problem in the North.

"We practitioners in the country depend on the Magistrates to make up for some of the things we miss through not practising in the larger centres, where they have facilities associated with a Supreme Court in the district. It is a great help to us to have friendly chats with the Magistrate, and I can assure you that our Magistrate has proved a most approachable Magistrate indeed. He has made himself one with the profession."

After the toast was drunk with musical honours, Mr. Morris, S.M., in reply, after thanking Mr. Guy for his eloquent speech, though he discounted some of the kindly expressions he had used, said:

"The Minister has sensed from his few hours with you that there is a very fine social spirit here. I agree. But it is not only a social matter. I know when I came here nine years ago, the job was a new one to me and there were endless things I did not know. However defective my knowledge of law may be now, it was more defective then; and I feel that I owe quite a debt of gratitude to the various solicitors who were practising throughout North Auckland for the way in which they assisted me and for the help they were able to give me. Whatever Mr. Guy has said about me, at least 50 per cent. of it should go back to the legal profession for the help they have given me."

Mr. Morris recalled Mr. Miller's mention of a Supreme Court coming in Whangarei. He would like to add that that did not finish the work done by the present Minister of Justice. After detailing the improvements made in the Dargaville Courthouse, the speaker said that the Hon. Mr. Mason put the emphasis on the right place: Justice is better done in good surroundings. It was better for the Magistrates and for the legal practitioners who come to that Court.

"Now as far as North Auckland is concerned, there is one disability under which the profession is working," said Mr. Morris in conclusion. "Mr. Guy has said very truly there is a disinclination to take a case to the Supreme Court in Auckland if it can be avoided. Therefore, solicitors here cannot specialize here as they do in the city. They cover a very wide field and they have a further disability, because they have no law library. The only libraries are those gathered together by private solicitors; but I must say I have every respect for the way in which they have carried out their job. If I have carried out my job, it has only been possible to have done so with the co-operation of the profession."

After the toast of the Clerk of Court had been enthusiastically drunk and replied to in a neat speech, a similar compliment was paid to the chairman on the motion of Mr. McCarroll.

The remainder of the evening was spent in social foregatherings, at which the success of the first Bar Dinner in the Far North was a subject of frequent and delighted comment.

London Letter.

By Air Mail. Strand, London, W.C.2,
March 14, 1938.

My dear EnZ-ers,

The most striking news for weeks has been the notification that Lord Hailsham has retired from the office of Lord Chancellor to take the post of Lord President of the Council, and he is succeeded in the Chancellorship by Lord Maugham. The burden of the Chancellorship has often been commented on; the variety of the duties it involves—legislative, judicial, and administrative—which Lord Haldane in his autobiography graphically described, task the strongest constitution. Lord Hailsham, suffering from recent illness, has found it necessary to exchange the office for one imposing less strain, but as Lord Chancellor he has continued the reforms, specially in legal procedure, which were initiated by Lord Sankey, and he has added to tasks already sufficiently great the editorship of the new edition of the *Laws of England*. In resigning the Great Seal he has the grateful recognition of the legal profession of his labours in the office.

Lord Maugham, L.C.—It was Lord Birkenhead who, in outlining the scheme of reform with which he commenced his Chancellorship, noted the continuity in the office. The Lord Chancellor takes up the work of legal and administrative reform as his predecessor left it, and hands it on, carried somewhat further, to his successor. It may be anticipated that Lord Maugham, at last instance a Lord of Appeal in Ordinary, will perform this function with special success. His interest in the simplifying and quickening of legal procedure is well known, and the time is ripe for more extensive changes even than those which have already been accomplished. It may be an advantage that he has not hitherto been engaged in politics. It has been objected to the Lord Chancellor's office that its holder is a party politician rather than a Minister of Justice. No such criticism can be made of Lord Maugham. He brings to the Woolsack a singularly great reputation for learning and ability, and his Chancellorship is likely to prove fruitful in legal and administrative reform.

Our Legal System.—The Master of the Rolls made a pithy little speech this week when he was dining at the Mansion House with the City Solicitors' Company and responding to the toast of "The Legal Profession." He said that our legal system and its administration and principles were one of the great achievements of the human race, and that by maintaining them at their present standard we were holding up something to the world which might change, or help to change, the course of history. Perhaps this was putting the matter rather high. It is certainly not too much to say that foreigners do admire our legal system, though few of them understand it. They have a conviction, the result of experience in the past, that they will get a fair hearing and impartial justice. The point most admired is, of course, the complete independence of the Judges and their readiness to support a citizen against constituted authority if, in their judgment, constituted authority has gone wrong. Is there any other country where the police would have to pay damages because they kept a suspected thief under duress for an hour or two?

Costs.—Perhaps, if the Master of the Rolls had dined a day later and had read the report of *Wyndham v. Jackson* (*Times*, March 9), he might have spoken with less confidence about the excellence of our legal system. This case has now got to the Court of Appeal and has already been before a Chancery Master, two Chancery Judges, a King's Bench Judge and three Lords Justices of Appeal. The whole sum involved is less than £92 and the costs must have already mounted up to many times that sum. It was a dispute between two ladies, one of whom, the plaintiff, acted for the other, the producer, in a play on tour. The actress bought, for cash down, a half-share in the "net profits" of the venture. Disputes arose as to what was to be taken off from the gross profits in order to ascertain the net. More than two years ago the plaintiff issued her writ in the Chancery Division claiming an account. By consent an order was made directing an account. A Chancery Master rather reluctantly went into it after suggesting arbitration by somebody who knew the theatrical world better than he did. His subsequent order, the two applications to vary, the reluctance of two Chancery Judges, Mr. Justice Goddard's bold but erroneous attempt to solve the matter (53 T.L.R. 921), and the final, or semi-final, decision of the Court of Appeal are not cheerful reading. We only hope that the parties like litigation for its own sake, for these protracted proceedings seem to us a misuse of our Courts' time.

Returned Soldiers.—There was evidence at the Solicitors' dinner at the Mansion House, when decorations were required to be worn, that first-class lawyers may also be first-class soldiers. There were Sir Wilfrid Greene, M.R., Hodson, J., and the Attorney-General, each with medals beyond the ordinary for fighting men. Unless my eyes deceive me, Sir Donald had won no less than six war-medals, while the miniatures glittering on the breast of the Master of the Rolls were no less than eight. In each case the M.C. was one of the number.

The popularity and success of the Master of the Rolls as an after-dinner speaker is undiminished. On Tuesday he disclosed the fact that his military duties during the War included, on one occasion, the unsuccessful defence of a soldier charged before a court martial. His submissions of law and fact were treated by the "dug-out" President of the Court with scant respect; and there were some acid interchanges. In the result the future M.R.'s client was sentenced to two years' imprisonment. He was not in the circumstances expecting a show of gratitude from the prisoner. But the condemned client was delighted. "It was well worth the two years," he declared, "to hear the way you told off the ——," meaning the President of the Court Martial.

Hotel or Inn.—A County Court Judge had an interesting point before him last week: *Marsdon v. Holland* (*Times*, February 26). He had to decide whether a licensed hotel was an inn within the common-law meaning. The hotel proprietor was defendant, the plaintiff suing her for the loss of articles which were left in a motor-car and stolen. The car itself was left by the plaintiff, while she was (as we read the short report) at a dance, in a "park" at the hotel. If this place was an inn the defendant was under the common-law liability; otherwise not. It seems that though the defendant's premises were called the "Surrey Arms" and were described in the case as an hotel, they contained no bedrooms which were "held out" to visitors as sleeping-places. This fact decided the learned Judge in the defendant's favour. On the old authorities he was, if we may say so, plainly right.

The learned Fitzherbert, collecting the common law in Henry VIII's day, concluded that innkeepers are those who are bound to keep their guests, goods, and chattels safe *absque subtractione seu amissione die et nocte*. In the leading cases from *Calye's* case onwards, sleeping-rooms seem to be an essential feature of the common-law inn. Yet a plaintiff may recover on the common-law claim though he has not slept at his defendant's inn. On this point *Aria v. Bridge House Hotel (Staines) Ltd.*, (1937) 137 L.T. 299, may be cited.

Stay of Costs of Appeal.—This may, or may not, have been decided already in Maoriland; but "we are here, amongst other things, to make precedents," observed Greer, L.J., in answer to a submission that the order proposed was unheard of in these parts: "probably those in charge of the practice books," he opined, "will take a note of it": *Stevens v. Economic House Builders, Ltd.*, [1938] 1 All E.R. 654. The point arises with great frequency; this decision lays down a new rule upon the stay of costs of an appeal. Action for negligence; ruling by the Judge that there was no case to go to the jury; verdict for the defendants; order for a new trial on the ground that there was evidence for the jury; when should the costs of appeal be paid? The plaintiff, unable to pay the costs of the first trial, had been served with a bankruptcy notice with which he had not complied. His appeal he had won, with costs; but should he lose the second trial he might be unable to pay the costs of that trial. Accordingly, the respondents asked that the costs of appeal be paid over to the plaintiff's solicitors with an undertaking that if, in the second trial, the defendants succeeded, the costs which they would be allowed should be set off against the costs of the appeal, and that the plaintiff's solicitors should refund the difference. The Court of Appeal, however, ordered that costs of the appeal be stayed until after the new trial; if the defendants succeeded, there would be an opportunity of a set-off of the costs to which they would be entitled against the costs which they would have to pay.

A Running-down Case and the Code Napoléon.—I was casually looking through the 1937 volume of the *Mauritius Law Reports*, and was interested to learn that, in this bi-lingual island where the *Code Napoléon* prevails, as at home, "running-down" cases loom large. "It is worthy of note," said Le Conte, J., in *Mangroo* v. *Dahal*, that in this little island [thirty-nine miles long by twenty-nine miles wide] . . . motor-car accidents are unfortunately fairly frequent, and numerous actions are brought by pedestrians who are knocked down or run over by such vehicles."

This case, in which Nairac, C.J., and Le Conte, J., delivered judgments, is the most interesting and important in the volume, and it is one which lawyers in Britain and France might peruse with interest and profit. The Judges had to apply Articles 1382 to 1386 of the *Code Napoléon* to a very modern motoring story; and to find the relationship, if any, in the case, between *le fait de la personne* in Article 1382 and *le fait des choses* in Article 1384. Le Conte, J.'s, critical examination of the doctrines of Josserand and M. Lalou, the *Théorie du Risque*, and his reasons for coming to the conclusion that "for so long as Articles 1382 and 1383 stand as they are and where they are there can be no damageable wrong unless it is founded on *faute*," make excellent reading. Liability must depend, in the Court view, on the personal act or omission of the wrongdoer; the behaviour of the person and not the act of the "thing."

Nairac, C.J., indicated the cause of difficulty in applying the law: "Attempts were made in France to establish by law the nature of the responsibility attaching to the owners or custodians of motor-vehicles; these attempts never matured into legal decree and the Courts assumed to do what the Legislature would not do; what, to my mind, the Legislature alone could do. What the Courts did led to serious conflicts of opinion amongst themselves, amongst learned judicial commentators, and showed the gropings of all towards a solution."

The facts of the simple story which ended in judgment for the defendants were briefly summarized in the report:

On January 28, 1935, it reads, "Ah-Kwong hired the defendant's motor-car, which was then under the charge of his chauffeur Mamode Auliar, and proceeded from Montagne Blanche, where he resides, to Quartier Militaire. On the way Mamode Auliar stopped at the top of a hill in order to inflate one of his tires that had got slack. After doing so he went into the neighbouring cane field to satisfy a call of nature; one Jaykarran, the defendant's son, who was also in the car, had alighted shortly before, leaving the boy Ah-Kwong, aged 14, alone in the vehicle. Ah-Kwong set the car in motion, and drove it zigzag along the road in such a way that within a few seconds it ran over the victim, who was proceeding on foot in the same direction as, and in front of, the car on the right-hand side of the road, sliced off the bark of a jack tree also on the right of the road, and ended its short but eventful journey in a neighbouring bush."

The Immortality of Dickens.—As was fitting, the law was well represented at the Dickens Fellowship Dinner, held at the Trocadero the other evening, to commemorate the 126th anniversary of the birth of the great novelist. Lord Hewart, L.C.J., was in the chair. "The Immortal Memory" was proposed by Mr. Norman Birkett, K.C., while Mr. A. S. Comyns Carr, K.C., also made a speech apt to the occasion. A letter from the White House in Washington from the wife of the President was read by Mrs. Enid Dickens Hawksley, grand-daughter of Dickens. Mrs. Roosevelt wrote of "many happy years spent reading your grandfather's books when I was young. Now that I am older I realize what a great crusader he was—one of the earliest crusaders for social welfare."

Norman Birkett did not speak of Dickens as the legal historian, observer, and reformer of his time, but of the conflicting views, as expressed in the *Dictionary of National Biography* half a century ago regarding his literary merit. He, like Mrs. Roosevelt, had no doubt as to the judgment of posterity: his "permanent place is now unalterably secure." He thought it was the "common touch" which above all other qualities distinguished Charles Dickens and won him immortality. "It defies all analysis, all definitions, but unerringly, truly, and finally, it spoke because he possessed it."

Yours as before,
APTERYX.

A Fellow-feeling.—In a recent action heard before Sir Michael Myers, C.J., a carpenter was being cross-examined as to the extent and possible duration of the disablement of his injured arm. "When one goes to the bench, there is no telling what sort of jobs may be given you," he said. "I have found that out for myself," the learned Chief Justice interposed.

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 No. 110. Motion for an order determining whether a certain debt of £300 owing by the applicant to the W.F.C.A., Ltd., was an adjustable debt within the provisions of s. 4 of the Mortgagors and Lessees Rehabilitation Act, 1936.

In April, 1930, one M.M. and H.I.M., his wife, were indebted to the W.F.C.A., Ltd., to the extent of £685, and the company held, in respect of this indebtedness, a guarantee, up to £400, executed on April 14, 1930, by H.M.M., the applicant, and one W.B.C. On June 6, 1932, M.M. became bankrupt, and his wife also became financially embarrassed. Upon these events, a new arrangement was entered into between the company, H.I.M., and the two guarantors, H.M.M. and W.B.C. The terms of this new arrangement were reduced to writing in the form of an agreement, dated July 27, 1932, the material parts of which were as follows:—

"2. The guarantors in consideration of the cancellation of their guarantee and of the reduction of their total liability arising thereout to £300 jointly and severally acknowledge to the association that they are indebted to the association in the sum of £300 together with the costs of these presents £2 3s. 3d. which is to be due and payable to the association *without interest by June 8, 1932.*

"3. The guarantors for the considerations aforesaid acknowledge that they have no right of contribution against or indemnity from the said H.I.M. or her husband in respect of the liability of £300. . . .

"6. The association in consideration of the foregoing acknowledges that the said H.I.M. has no further responsibility outside of this agreement in respect of the said indebtedness of £685 and that the guarantors have no further responsibility under their original guarantee."

On January 23, 1937, H.M.M. filed an application as an "other" applicant, for an adjustment of his liabilities, and disclosed as a liability a debt of £302 3s. 3d. as owing by himself to the company describing it, in his list of liabilities, as an agreement guaranteeing payment of amounts due by M.M. and H.I.M. aforesaid.

The application for adjustment of H.M.M.'s liabilities was considered by an Adjustment Commission on July 16, 1937, and the Commission ordered, *inter alia*, that the application so far as it concerned the agreement of July 27, 1932, should stand adjourned until the further order of the Commission. The Court was informed that this course was taken, pending the determination of the Court upon the matter of the present motion.

* Continued from p. 68.

It was agreed by counsel for both parties to these present proceedings that the debt of £685 originally owing to the W.F.C.A., Ltd., by M.M. and H.I.M. was secured originally by an instrument by way of security over stock and chattels and that the guarantee, up to £400, given by H.M.M. and W.B.C. was a guarantee in respect of that security.

Such being the facts of the case counsel for the applicant for adjustment, H.M.M., submitted that the latter's liability to the company for the £302 3s. 3d. mentioned in the agreement was an "adjustable debt," as defined in s. 4 (1) of the Mortgagors and Lessees Rehabilitation Act, 1936, arising out of an obligation under a guarantee given in respect of an "adjustable security"—*i.e.*, in respect of the said instrument by way of security—and, as an adjustable debt, could be discharged by the Adjustment Commission should the Commission think it proper so to do.

Counsel for the company, contended that whilst, admittedly, H.M.M. had originally been liable to the company under a guarantee given in respect of a stock mortgage, that liability had been completely altered both as regards amount and character by the subsequent agreement of July 27, 1932, and that, since that date, the obligation was a simple contract debt involving no elements of suretyship whatever. He further submitted that, at the time of the filing the application for adjustment by H.M.M., there was no mortgage in existence in respect of which any guarantee could be connected, the company having exercised its power of sale many years previously.

In reply, counsel for the applicant referred to s. 6 (3) of the Act, and submitted that the exercise of the power of sale and consequent liquidation of the mortgage security did not, in view of s. 6 (3), preclude the applicant from having his liability to the company adjusted in terms of the provisions of the Act.

Held, dismissing the motion, That the present liability of the applicant to the company arose out of the agreement of July 27, 1932, which expressly provided, in paras. 2 and 6, for the cancellation of the original guarantee and of the £400 liability thereunder, and substituted a new liability for a lesser amount, £300, as the joint and several liability of H.M.M. and W.B.C. Further, it removes, by cl. 3, all the elements of suretyship, thitherto existing, which were essential in any contract of suretyship or guarantee together with the quondam surety's rights of indemnity by the principal creditors.

In the course of its judgment, the Court said:

"In the opinion of the Court the determination of the question raised in these proceedings presents no difficulties. 'Adjustable debts' and 'adjustable security' are defined by s. 4 (1). . . . These definitions are stated herein because counsel for the applicant appeared to rely strongly upon them in support of his submission that the obligation of his client was an 'adjustable debt' and should have been so teated by the Commission.

"It seems unnecessary to consider the effect of s. 6 (3). It is admitted that the stock mortgage has been realized and is no longer existent, but whether the effect of s. 6 (3) would be to keep such mortgage notionally 'alive,' or not, is not the question. The applicant's original liability arose under the guarantee, not under the stock mortgage. The question is not whether the mortgage is alive, or in existence, but whether the guarantee is alive, and, as to that, there appears to be no doubt that it went out of existence five years ago.

"The liability of the applicant to the company arises out of a simple contract debt and not under a guarantee in respect of a mortgage."

New Zealand Law Revision Committee.

February Meeting.

The third meeting of the New Zealand Law Revision Committee was held at Wellington on February 25. The Attorney-General (the Hon. H. G. R. Mason) was in the chair. The members present were the Solicitor-General (Mr. H. H. Cornish, K.C.), and Messrs. W. J. Sim, K. M. Gresson, and A. C. Stephens, and the Under-secretary for Justice (Mr. B. L. Dallard).

NEW BUSINESS: PROPOSED STATUTORY AMENDMENTS.

Bankruptcy Act, 1908.—(1.) Various amendments were suggested by Mr. F. C. Spratt for consideration by the Committee.

(2.) A suggestion had been made that the provisions contained in s. 149 of the County Courts Act, 1934 (England), *27 Halsbury's Statutes of England*, 158, be re-enacted in New Zealand.

It was reported that the general revision of the Bankruptcy legislation was under consideration by the Department of Justice. The suggestions were referred to that Department for comment; and this comment, with a progress report on the general amendment of the statute, will be considered at the Committee's next meeting.

Property Law Act, 1908.—It had been suggested that a general provision similar to s. 7 of the Mortgagors and Lessees Rehabilitation Amendment Act, 1936, be added to the provisions of the Property Law Act, 1908, to give a Court power to prevent the arbitrary exercise of a power of sale in any mortgage (*cf.* ss. 93–96, dealing with relief against forfeiture of leases).

It was decided that the Law Draftsman be asked to submit a draft of an amendment of the statute on the lines indicated, and that, on receipt of the draft, the matter be fully considered.

Shorthand Reporters Act, 1908.—The Committee was recommended to consider an amendment of s. 9 to modify the requirement of payment in all cases for a longhand transcription.

A draft amendment of the statute, as indicated, will be prepared, and then considered by the Committee.

Bequests of Government Securities.—It was suggested that there is need for a statutory provision, of general application to Government securities, to declare that a bequest of named Government securities converted before the testator's death into other Government securities (no alteration being made in the will) is not adeemed by such conversion.

Reference is made to the article, *Bequests of Government Securities*, in *177 Law Times Journal*, 307; and to *In re Gage, Crozier v. Gutheridge*, [1934] Ch. 536, and the comments therein on s. 11 (1) (*a*) of the Finance (No. 2) Act, 1931: *24 Halsbury's Statutes of England*, 397.

After discussion, it was resolved that Mr. G. G. Rose, Solicitor to the Treasury, be asked to make a report on the proposed amendment.

CONSIDERATION OF REPORTS.

The Committee then proceeded to consider the various matters that had been submitted to co-opted members.

Legal Aid for the Poor.—Messrs. F. C. Spratt, W. P. Rollings, and H. J. Thompson, who had been asked to confer and submit a report on the proposal that some voluntary system of legal aid for the poor be considered by the Committee, furnished an extensive report on the systems operating elsewhere, and recommended that the English system of voluntary aid be instituted. After consideration, the report was adopted with the extension of the proposals to inferior Courts, including Warden's Courts, and to non-indictable offences, when an application for legal aid is remitted by a Magistrate or Warden.

The Sub-committee was asked to draft rules, and to suggest the form of the legislation necessary to give effect to their recommendations. When these have been considered by the Committee, the report and recommendations will be sent on to the New Zealand Law Society for its consideration and approval.

Arbitration Act, 1908.—The draft Bill amending the statute on the lines of the Arbitration Act, 1934 (Eng.), was the subject of a report by Messrs. P. B. Cooke, K.C., and H. J. V. James. Mr. Cooke, K.C., attended the meeting and explained the recommendations made.

The report was adopted, and, with the recommendations, was referred to the Parliamentary Law Draftsman.

Right of Support to Land.—A report by Messrs. E. F. Hadfield, J. O'Shea, and J. H. Marshall was considered.

It was decided to have a draft Bill prepared, and that the matter be further considered by the Committee at a later meeting.

Divorce and Matrimonial Causes Act, 1928.—It had been suggested to the Committee that provision should be made for the retention of legitimacy by children born to the parties to a marriage that is annulled subsequent to their birth. At present, a decree of nullity bastardizes the offspring of an annulled marriage, from the date of the annulment. The principle has been adopted in regard to the children of marriages annulled on certain, but not all, grounds of annulment by the Matrimonial Causes Act, 1937 (Eng.).

The Committee adopted a report by Mr. T. P. Cleary, recommending that no action be taken, owing to the rarity under New Zealand law of cases indicated in the suggestion.

The Committee had been asked to consider if a declaratory provision should be enacted to declare void and unenforceable any contract or promise to marry made by a married person before a decree absolute is sealed: this would nullify the majority verdict of the House of Lords in *Fender v. Mildmay*, [1937] 3 All E.R. 402, and restore the position established in New Zealand in *Lambert v. Dillon*, [1933] N.Z.L.R. 1059.

A report by Messrs. J. M. Paterson, J. B. Thompson, and J. C. Mouat was adopted, and the Law Draftsman was asked to prepare the legislation recommended by the Sub-committee.

Mining Act, 1926.—A report by Mr. H. J. Dixon, S.M., and Mr. F. B. Adams recommended

that appeals on questions of fact should be by way of re-hearing, and that the procedure in appeals generally should be simplified.

The Committee adopted the report and arranged for the proposals to be put in legislative form.

Public Works Act, 1928.—(1.) Section 45 of the Public Works Act, 1928, provides that no claim for compensation under the statute may be made in respect of damage done after a period of twelve months after the execution of the work out of which such claim has arisen. For the purposes of claims for injurious affection, the term "execution of the work" means the completion of any portion of a work where such portion of itself (and without reference to any other part of the work) causes the damage.

It had been suggested that this section should be amended, for the allowance of claims to be made for injurious affection first arising after the expiry of twelve months: for an instance of this, see *Lyttle v. Hastings Borough*, [1917] N.Z.L.R. 910, and see also the remarks of Mr. Justice Edwards as to the need for amendment of this drastic limitation of claims: *Palmerston North Borough v. Fitt*, (1901) 20 N.Z.L.R. 396, 405, and of Sir Robert Stout, C.J., in *Farelly v. Pahiatua County Council*, (1903) 22 N.Z.L.R. 683, 684.

An extensive report by Messrs. J. O'Shea and C. H. Taylor, and a minority report by Mr. E. K. Kirkcaldie were considered by the Committee. After some discussion, it was decided to ask the Law Draftsman to prepare a draft amendment to give the Court power to extend the period of limitation in proper cases.

(2.) Section 84 of the Public Works Act, 1928, provides that, if the compensation awarded does not exceed one-half of the amount claimed, the claimant is disentitled to recover any costs. This is different from the English practice and the Australian practice with either of which, it was suggested, the New Zealand practice should be made to conform, in the interests of justice to claimants. For a general review of the present position, see (1934) 10 N.Z.L.J. 216.

A Sub-committee, consisting of Messrs. John O'Shea, E. K. Kirkcaldie, and C. H. Taylor, was asked to report on both these matters. After consideration of this report, and the opinions expressed, the Committee decided to adopt the English rule with the modification in the event of the claim being excessive, having regard to the amount actually recovered, that the Court may disallow the claimant all or any part of the costs. The matter was then referred to the Law Draftsman.

Contracts of Service: Work done on Agreement to make Testamentary Provision as Remuneration.—When work has been done on the understanding that it is to be remunerated by a legacy, a claim is not maintainable against the estate of the person for whom the services were rendered, if no testamentary provision has been made in fulfilment of the contract or promise: see *14 Halsbury's Laws of England*, 2nd Ed. 407, para. 764.

It was suggested to the Committee that this principle should be modified by statute, as being inequitable: see the observation of Mr. Justice Ostler in *Sutherland v. Towle*, [1937] G.L.R. 509, 511.

The Committee adopted the suggestions made in the report made by Mr. E. P. Hay, to the effect that when a claimant, whilst unable to prove an express or implied promise on the part of the deceased to pay for the rendering of services or the performance of work done for the deceased in his lifetime, establishes the existence of an understanding or agreement between himself and the deceased for the remuneration of such services or work by a provision in the deceased's will, then such understanding or agreement should be deemed in law to be a sufficient consideration moving from the deceased to create a contractual obligation on the part of his estate to pay for such services or work according to the terms of the understanding or agreement, or in the absence of specific terms then upon a *quantum meruit*, and the estate should be liable accordingly to the extent to which the deceased may have failed to make testamentary provision for such remuneration. This is subject to the proviso that nothing should be deemed to affect the operation of the law relating to limitation of actions or the equitable doctrine of the satisfaction of debts by legacies. The powers conferred on executors and administrators by s. 2 of the Trustee Amendment Act, 1924, should extend to any such claim as aforesaid.

The Committee adopted the report, and asked the Law Draftsman to make it the basis of an amendment for consideration at the Committee's next meeting.

Imperial Statutes in Force in New Zealand.—In a very comprehensive and careful report, Mr. A. C. Stephens set out a list of statutes passed by the Imperial Parliament before the year 1840, each of which had been the subject of judicial decision in New Zealand; but he pointed out that such a list could not be declared to be an exclusive list of Imperial Statutes in force in the Dominion, and, further, that subsequent local legislations may have repealed or modified the provisions of some of them. He, therefore, did not recommend the enactment of a declaratory statute.

Members expressed the view that Mr. Stephens had done a very helpful work, and one of practical benefit to the legal profession. The Committee resolved to request the NEW ZEALAND LAW JOURNAL to publish Mr. Stephen's report for the assistance of practitioners generally.

Other Business.—A number of other reports were considered by the Committee; but, owing to the intricate nature of some of the issues involved, it was decided to defer final consideration until the next meeting of the Committee, which was fixed for May 27.

Law Examinations.

Syllabus Changes.

Attention is drawn to an advertisement appearing in this issue in regard to the work of all law students, and advising the issue in the University Calendar of 1938 of revised prescriptions for both the degree and the professional courses. It is understood that the essential changes are:—

(*a*) The unification of the examination requirements for barristers and solicitors.

(*b*) The addition to the course of certain subjects of a cultural nature.

(*c*) The requirement of University terms for all students, either degree or professional, with exemption from lectures in the case of degree students at the discretion of the Professorial Board of the College and in the case of professional students at the discretion of the Minister of Education.

New Zealand Law Society.

Annual Meeting of Council.

The Annual Meeting of the Council of the New Zealand Law Society was held at the Supreme Court Library, Wellington, March 25, 1938.

The President, Mr. H. F. O'Leary, K.C., occupied the chair, and welcomed to the meeting those who were attending the Council for the first time.

The following Societies were represented: Auckland, Messrs. J. B. Johnston, L. K. Munro, and H. M. Rogerson; Canterbury, Messrs. K. M. Gresson, and J. D. Hutchison; Gisborne, Mr. A. T. Coleman; Hamilton, Mr. C. L. Macdiarmid; Hawke's Bay, Mr. H. B. Lusk; Marlborough, Mr. W. T. Churchward; Nelson, Mr. J. Glasgow; Otago, Messrs. R. G. Sinclair, and A. I. W. Wood; Southland, Mr. M. M. MacDonald; Taranaki, Mr. R. Quilliam; Wanganui, Mr. A. D. Brodie; and Wellington, Messrs. H. F. O'Leary, K.C., G. G. G. Watson, and S. J. Castle (proxy).

Mr. P. Levi, Treasurer, was also present.

Apologies for absence were received from Messrs. A. H. Johnstone, K.C., and H. W. Kitchingham.

Annual Report and Balance-sheet.—The President briefly referred to the matters covered by the annual report, referring particularly to the finances of the Society and to the gratifying position of the Guarantee Fund.

On his motion, seconded by Mr. Munro, the Annual Report and Balance-sheet was unanimously adopted.

Election of Officers.

(*a*) *President*: Mr. Lusk stated that, as the oldest member of the Council, he had pleasure in moving the election as President of Mr. H. F. O'Leary, K.C., whom he complimented on his handling of the business of the meetings and on his care of and attention to the Society's work.

Mr. O'Leary was unanimously re-elected.

(*b*) *Vice-President*: Mr. A. H. Johnstone, K.C., was unanimously reappointed Vice-President.

Mr. O'Leary said that he desired to take the opportunity of paying a tribute to Mr. Johnstone, to whom no matter concerning the Society was too great a trouble, and who was prepared at any moment to come to Wellington on any business which needed his attention.

(*c.*) *Treasurer*: Mr. P. Levi was unanimously reappointed Treasurer.

(*d.*) *Management Committee of Solicitors' Fidelity Guarantee Fund*: Messrs. P. Levi (chairman), E. P. Hay, A. H. Johnstone, K.C., and D. Perry were unanimously re-elected.

(*e.*) *Audit Committee*: Messrs. P. Levi (chairman), C. A. L. Treadwell, C. H. Weston, K.C., and S. A. Wiren were unanimously re-elected.

(*f.*) *Disciplinary Committee*: As nine nominations were received for the seven places on the Committee, a ballot was held, as a result of which Messrs. H. F. O'Leary, K.C. (chairman), W. T. Churchward, A. T. Donnelly, A. H. Johnstone, K.C., H. B. Lusk, C. H. Weston, K.C., and G. G. G. Watson were declared elected.

(*g.*) *Library Committee*: *Judges' Library*: Messrs. G. G. G. Watson and P. Levi were unanimously re-elected.

Mortgagors and Lessees Rehabilitation Act.—The Commissioner of Stamp Duties wrote on December 8, 1937, as follows:—

"*Agreements for Voluntary Settlements.*"

"In reference to the interview with Mr. Richmond yesterday regarding the question raised by Mr. C. L. MacDiarmid of Hamilton in his letter to you dated October 14, 1937, as to the liability to stamp duty of agreements for voluntary adjustments, I have to advise that these agreements which are embodied in orders of the Court of Review are regarded as being exempt from stamp duty under s. 74 of the Mortgagors and Lessees Rehabilitation Act, 1936.

"I may state that it is considered that the exemption from stamp duty contained in the above-mentioned Act does not extend to instruments which are executed pursuant to an order of the Court of Review but which have not been executed for the purpose of varying or replacing any adjustable security."

Scale of Fees for Company Debentures.—Replies were received from the Taranaki, Southland, Otago, Auckland, and Canterbury Societies in connection with the proposed Scale of Fees for Company Debentures.

On the motion of Mr. O'Leary it was decided that all these reports should be referred back to the Wellington Council to draft a final report for submission to the District Law Societies and to the next Council meeting.

Agency Costs on Stamping and Registration of Releases.—The following letter was received from the Auckland Society:—

"We are asked to prepare a report on the desirability of an amendment of the ruling of the New Zealand Law Society to the effect that where on settlement of a purchase of an unencumbered title the vendor's solicitor hands over to the purchaser's solicitor releases of existing mortgages on the title, the latter should stamp and register such releases without charge even although, being resident in a country town, he may find it necessary to employ and pay an agent to do so.

"The first ruling on the subject (No. 151 of October 9, 1925) decided that any charge for stamping and registering such releases is really included in the scale fee allowed for preparation, stamping, and registering the transfer, and by a ruling of September 25, 1936, the same principle was extended to apply to the case where the charge for stamping and registering was in fact a disbursement to an agent. It is to be noted that the first ruling is laid down not upon a consideration of the respective rights of the parties, but (to use its own words) as a matter of convenient practice, and goes on to say that 'the practice of not making a charge is followed in many districts, and is a convenient one.' We agree that where no question of payment of an agency charge arises (and the first ruling appears to have dealt only with such cases) the practice is convenient and not unreasonable or burdensome to the solicitor receiving the documents, but we respectfully submit that where a country solicitor must pay agency charges on the stamping and registration of documents which the vendor must obtain in order to perfect his title, then the question might well be determined in the light of the respective rights of the parties, because inasmuch as the country solicitor cannot recover the agency charges from his client (the client not being concerned with the particular documents) it is obvious that his scale fee may be seriously reduced, as for example, in the case of a purchase for a comparatively small consideration where he is handed a number of releases or other documents.

"In the great majority of cases where the vendor of encumbered land has contracted to give an unencumbered title he requires the purchase-money to clear his title, hence his inability to have the releases registered prior to settlement; but that is not the concern of the purchaser, who is not bound

to accept unregistered documents necessary to perfect the vendor's title. The acceptance of such documents is an accommodation of the vendor's solicitor on the part of the purchaser's solicitor, the alternative to which is settlement at the Land Transfer Office. In the case of settlement at the Land Transfer Office the vendor himself can effect stamping and registration of any documents required to perfect his title.

"We therefore consider that if the vendor's solicitor elects to settle in such a way as to make it necessary to hand over unregistered documents to the purchaser's solicitor any agency charges which will be necessarily incurred by the latter should be treated on the same footing as disbursements for stamp duty and registration fees and should be paid by the vendor. We can see no reason why the purchaser's solicitor should pay these charges out of his own pocket. The same reasoning applies when the position is one of mortgagor and mortgagee.

"We are, therefore, of opinion that the ruling of September 25, 1936 (which has not yet been circulated), should be reviewed, and a ruling made and circulated in conformity with our conclusions."

The position as set out in the Auckland letter was then explained and a member also pointed out that the trouble was a very real one in the Auckland District, where it was quite possible that most of one's profit costs could be eaten up by agency costs.

Mr. Wood pointed out that he had been one of the sub-commitee which had prepared the ruling of September 9, 1936, but this had been a specific case and the ruling applied to it alone, and was not intended to be adopted as a general rule.

On the motion of the President, it was decided that the Auckland members of the Council should consider the rulings, and, if the position needed clarifying, they should draft a ruling incorporating the desired amendment and submit this to the next meeting.

Bankruptcy Law.—The Associated Chambers of Commerce wrote, stating that they were anxious to obtain the revision of the Bankruptcy Law in New Zealand, and asking that the Society should assist in this direction.

Mr. Gresson pointed out that the revision of the Bankruptcy Act was being considered by the Law Revision Committee; but, as this Committee was faced with a tremendous volume of work, it was not likely that the Act would be altered in the near future.

It was resolved to inform the Chambers of Commerce accordingly.

Short Titles of Acts Passed in "Divided" Sessions.—The following letter, of February 10 last, was received from the Solicitor-General:—

"The view of your Society on the point discussed in this correspondence would be welcomed:

"1. It is a very great convenience that the Short Title of an Act should include as part of it the figures representing the calendar year. For instance, the absence of this practice in the statutes of Canada is calculated to cause inconvenience, at least to readers outside the Dominion.

"2. It is convenient that all Acts bearing the same date in their title should be included in the same bound volume. For instance, the fact that the Finance Act, 1928 (first session, twenty-third Parliament), is not bound with the rest of the statutes for 1928, but with those for 1929, is apt to put at a loss people who are not familiar with the statute-book.

"3. It is also a convenience if all the Acts in the same bound volume bear the same date. For instance, in the sessional volume for 1921–22, the first seventeen Acts include '1921' in their short titles. The next Act has the date '1921–22.' Then follow five more with '1921' and the rest have '1921–22.' There is nothing in the page headings or index to show which year is a part of the name of any particular statute. One has to turn up s. 1 of every Act to make sure of the title. The result is that I frequently find Acts published in this volume cited by a wrong Short Title.

"4. The two foregoing desiderata may be summed up as 'one date one volume.' If the Acts for the whole of the session that has now started are to be bound in one volume, then there is really no reason why Acts passed in 1938 portion of the session should not bear '1937' as part of their title, the justification being the calendar year in which the session commenced. If this is thought too novel, then at least '1937–38' helps to point the inquirer to the proper bound volume.

"5. If Acts passed in the 1938 part of the current session bear the date 1938 and are included in the same volume as those bearing the date 1937, then confusion will arise in connection with Acts passed in the regular session of 1938 which will presumably commence about the end of June. If these contain the date 1938, then the inquirer will not know in which of the two volumes to look for Acts bearing that date. The only way of distinction would be to adopt for Acts of the session to start in June next some additional distinction besides the date. I am inclined to think it would be difficult to find a way of distinguishing such Acts which would be explanatory without being cumbrous.

"6. If such a device for distinction could be discovered, then it might be worth while considering whether the Acts for the two years should not be bound in three volumes: one for that part of the session which has already elapsed; a second for the continuation of the current session; and a third for the session to start in June. The Acts already passed would with title page make a volume of 394 pages, which is only 50 pages shorter than the sessional volume for 1935 and appreciably bigger than those for 1929 and 1930. It would be a distinct convenience to the public not to have to wait for their bound volume till the end of the session which is to be resumed in March. It would appear that the legislation in prospect for the resumed session will be sufficient to make a sizable volume by itself.

"7. On the particular point raised, I conclude that if the statutes for 1937 and 1938 are to appear in two sessional volumes, it will lead to permanent inconvenience if statutes bearing the date 1938 are included in the first sessional volume and other statutes bearing the same date in the second sessional volume—*i.e.*, that for the session to open in June next—but there will be little or no inconvenience if all Acts passed in the session that started in 1937 be called '1937,' provided the bound volume is not to come out till the session is over."

On the motion of Mr. Watson, it was unanimously decided to inform the Solicitor-General that the Council was of opinion that the only convenient method where there was a "divided session" was to have one volume only and that this and all Acts included in it should be dated with the year in which the session began.

Stamp Duty on Transfers of Mortgages.—The following letter, dated January 20, 1938, was received from the Commissioner of Stamp Duties:—

"Further to my letter of December 18, 1936, I have to advise that the Hon. the Minister of Stamp Duties has given his attention to the representations contained in your letter of November 8, 1934, and that after careful consideration of the whole matter he has arrived at the conclusion that he is unable to recommend the promotion of legislation along the lines suggested by the Society."

It was decided that no further action should be taken in the matter.

Adjustment of Mortgages—Valuation for Death Duties Purposes.—Mr. D. R. Richmond wrote as follows:—

"The Commissioner of Stamp Duties has sent me the enclosed memorandum by him in connection with the above. It occurs to me that it is a matter of general interest to the profession and that it might be desirable to circulate the memorandum accordingly."

MEMORANDUM ENCLOSED.

"My attention has been drawn to an article which appeared in the *New Zealand Herald* at Auckland on the 18th instant. The writer makes the statement that Auckland solicitors consider a serious anomaly exists between the practice of the Stamp Duties Department and the principles underlying the

whole body of mortgage adjustment legislation. He also endeavours to explain where the anomaly exists.

"There is in reality no conflict of policy or practice in the administration of the two sets of Acts. Many adjustments are made by the Commissioners, but every facility and encouragement is given to the parties to effect voluntary settlements and thus save time and expense. The Government is anxious that as many voluntary adjustments be made as is possible.

"Mortgages in which adjustment may be involved will fall under three headings.

"The first case will be that of mortgages which are finally adjusted prior to the date of death. These are accepted for duty purposes at the adjusted figures.

"The second case is that of mortgages which have been adjusted after death, but before the estate accounts have been certified. The Commissioner uses his discretion in placing a value upon these mortgages. More than likely he will accept the adjusted values, but in any case the difference, if any, will be small.

"The third case, and that of greatest difficulty, occurs where adjustment has not been made when the accounts are certified. In such cases the Commissioner endeavours to avoid anomalies in valuations by calling for copies of the applications for relief and supporting evidence, and he considers these in conjunction with the Government valuations.

"The chief ground of complaint put forward by the writer of the article in question seems to be in connection with voluntary settlements made between relatives where the Commissioner forms the opinion that the mortgagees have given a greater concession to the mortgagors than they would be obliged to give under the Relief Legislation. If, in such transactions, the mortgagees bestow what under the Death Duties Act may be termed gifts, the Commissioner has no option but to make assessments of gift duty. He does not notify the parties that gift duty is payable unless he feels sure that gifts have, in fact, been made.

"Where the mortgagees and mortgagors entering into voluntary adjustments are strangers or at arms' length the question of gift rarely arises and the circumstances would require to be exceptional before the Commissioner would attempt to say the transaction attracted gift duty. The personal covenant in the mortgage complicates the position in isolated cases, but they are usually cases of adjustments between relatives.

"The author of the article has probably had an unusual case brought before his notice and from it has wrongly inferred that the Commissioner of Stamp Duties ignores the principles underlying the Mortgagors and Lessees Rehabilitation Act and Relief Legislation generally. This is not so. With adjustments between relatives, however, he must be interested in seeing that taxable gifts are not made under cover of the Rehabilitation Act, and in all cases that the value of the assets is ascertained as at the date of death and not at some other time when the position might be different."

It was decided to thank Mr. Richmond for forwarding a copy of the Commissioner's memorandum, the contents of which were noted.

Guarantees: Suggested Reform.—The following letter was received from the Otago Society:—

"Enclosed herewith is a copy of a letter setting out a suggestion for reform with regard to guarantees.

"I am instructed to forward it to the New Zealand Society with the recommendation of my Council that legal effect be given to it."

LETTER ENCLOSED.

"For some time I have felt that certain reforms are desirable in regard to guarantees.

"In my practice I have frequently been consulted by people whose integrity was beyond question, and who laboured under the belief that they had been deceived either innocently or otherwise as to the effect of the document which they had signed. On such occasions they foolishly did not obtain legal advice before undertaking liability as sureties against the default of third parties.

"Many forms of guarantees required a keen legal brain to appreciate their nature and effect. Practitioners are often confronted with most difficult guarantees which their clients have foolishly signed without seeking legal advice. How often after his solicitor has explained the extent of liability the client has replied that, if he had been aware of this, he would never have signed the document.

"The average guarantor is unaware of his rights even under a partial guarantee to participate, in certain circumstances, to a share in the securities held by the principal. Still less can he be expected to discern in a guarantee presented for his signature that this right (as is often the case) is taken away from him.

"I mention this illustration to show the real need for some reform in this direction of the law ensuring that a person who agrees to become a surety is fairly apprised of the nature and extent of the liability he is undertaking before he pens his signature to what often may subsequently involve him in very serious embarrassment.

"I think that the law should insist, just as is done in certain Workers' Compensation Discharges, that no guarantee creating a prospective liability of say £20 or more shall be valid and enforceable without a certificate on the same certified to by the guarantor's solicitor that he has explained its nature and effect to his client.

"I suggest that representations on this subject be made to the Council of the New Zealand Law Society."

Mr. Wood pointed out that some banks in Dunedin already adopted the practice suggested, but other members stated that this practice was by no means general.

Mr. Hutchison mentioned that one remit at the Annual Conference had been cancelled owing to a recent alteration in a statute, and suggested that a discussion concerning guarantees might be substituted.

It was decided that the matter should be held over pending a possible discussion at the Conference.

Appointment of Assistant.—The appointment of Mrs. D. Gledhill was confirmed as from July 19, 1937.

Distribution of Annual Report to all Practitioners.—Mr. Lusk stated that the Hawke's Bay Society in its Annual Report had suggested that it would be a good idea to distribute copies to all practitioners throughout New Zealand, as the New Zealand Law Society's Annual Report included a number of matters which had not received much publicity in any other way, and would be of great interest to practitioners.

The President pointed out that at the annual meeting of each Society, the chairman should bring to the attention of the meeting the main points in the Annual Report of the New Zealand Law Society, and it was decided than an effort should be made to ensure that all District Societies should receive the Annual Report of the New Zealand Society in time to enable this to be done.

Solicitor Acting as Money-lender.—Messrs. Gresson and Taylor reported as follows:—

"We have considered this matter in relation to the practice which exists and to which no exception can be taken, of a company incorporated to be associated with a legal firm for the purpose of assisting purchasers of properties by lending them upon second mortgage. We agree that a ruling should not be given so wide in its terms as to condemn association by a practitioner with such a company. We approve the adoption of a proviso (as suggested) to the effect that the ruling does not apply with regard to any company the business of which is substantially limited to the lending of money on real or leasehold security at rates of interest not exceeding 10 per cent. and the business of which is conducted in accordance with proper professional standards.

"We recommend, therefore, the addition of such a proviso."

It was decided that the original report and proviso in the new report should be adopted subject to the alteration of "10 per cent." to "8 per cent."

This concluded the business of the meeting.

Wellington District Law Society.

Annual Meeting.

The Annual Meeting of the Wellington District Law Society was held on February 28, 1938, at 8 p.m., in the Small Court-room, Supreme Court Buildings, Wellington, some sixty practitioners being present.

The retiring President, Mr. D. R. Richmond, who occupied the chair until the election of his successor, expressed his pleasure at the presence at the meeting of Mr. J. W. Rutherfurd of Palmerston North, Mr. N. M. Thomson of Levin, and Mr. F. Kelly of Hastings.

Report and Balance-sheet.—The President, in moving the adoption of the Report and Balance-sheet, referred to the application for a Dominion Clerical Workers' Award, and he urged employers to see that there was faithful compliance with the terms of the agreement. Mr. Richmond further stated that there had been an enviable freedom from complaint in the district during the year and trusted that this state of affairs would long continue. He thanked the members of the retiring Council for their assistance, and especially mentioned the help given him by the Secretary.

Mr. Castle, Treasurer, seconded the motion and covered in some detail the figures given in the Revenue Account and Balance-sheet.

The motion was then put to the meeting and carried unanimously.

Election of President.—Mr. P. B. Cooke, K.C., the only nominee, was then declared duly elected, and on taking the chair expressed his appreciation for the honour accorded to him. He stated that all members of the Council were extremely grateful to Mr. Richmond for the untiring way in which he had given his services to the Society during the year, and he called for a vote of thanks by acclamation for these services. This was carried with hearty applause. Mr. Cooke also expressed the great thanks of the Council to the two members who were retiring under the longest service rule—Messrs. D. Perry and W. H. Cunningham.

Election of Vice-President and Treasurer.—Mr. A. T. Young and Mr. S. J. Castle, the only nominees, were declared duly elected to the positions of Vice-President and Treasurer respectively.

Election of Council.—(*a*) Members elected by Branches. The following members nominated by the Branches were declared duly elected: Feilding, Mr. J. Graham; Palmerston North, Mr. J. W. Rutherfurd; and Wairarapa, Mr. C. C. Marsack. (*b*) Wellington members. As only eight nominations had been received for the eight places on the Council, no ballot was required, and the following were declared elected: Messrs. H. E. Anderson, A. B. Buxton, T. P. Cleary, E. P. Hay, H. J. V. James, P. Keesing, D. G. B. Morison, and D. R. Richmond.

Delegates to the New Zealand Law Society.—Messrs. H. F. O'Leary, K.C., P. B. Cooke, K.C., and G. G. Watson, the only nominees, were declared duly elected.

Mr. O'Leary expressed the thanks of his co-delegates and himself for their election, and gave an outline of the work done by the New Zealand Law Society during the year. He desired to pay a special tribute to the Secretary, whose work had been of immense value both to himself as President and to the profession at large in New Zealand. The labours of the Councils of the New Zealand and Wellington Societies were very considerably lightened owing to his efforts.

Mr. O'Leary said that the thanks of all legal practitioners were due to the Attorney-General, the Hon. H. G. R. Mason, for his accessibility and for his willingness to assist in every possible way in aiding law reform.

Delegates to Council of Law Reporting.—Mr. P. B. Cooke, K.C., and the Hon. W. Perry, the only nominees, were declared duly elected.

Auditors.—Messrs. Clarke, Menzies, Griffin, and Co. were appointed auditors for the forthcoming year.

Easter Holidays.—On the motion of Mr. A. T. Young, seconded by Mr. Castle, it was unanimously decided, without discussion, that the Easter Holidays should be from the usual closing-hour on Thursday, April 14, to the usual opening hour on Tuesday, April 26.

Christmas Holidays.—On the motion of Mr. Castle, seconded by Mr. Richmond, it was unanimously decided, also without discussion, that the Christmas holidays should be from the usual closing-hour on Friday, December 23, 1938, to the usual opening-hour on Wednesday, January 11, 1939.

Amendment to Rules: Membership.—Notice of the following motion had been given on behalf of the Council:—

> Rule 3. "That Rule 3 of this Society's rules be amended by adding after subclause (*c*) the following further subclause:—
>
> "'Every other practitioner elected to membership by the Council who is for the time being engaged in the District otherwise than on his own account'."

Mr. Richmond, in moving the motion, explained that the Society's present rules did not provide for admission of qualified clerks as members. The Council thought it was fair and reasonable that qualified clerks should be eligible for election.

Mr. D. Perry seconded the motion, which he pointed out restored the rules as they were prior to 1936. Clerks would have to apply for membership and be elected, and it was clear that there could be no discrimination.

Mr. Wiren moved as an amendment that the motion should be, "every other person in the District who is the holder of a practising certificate and who is elected to membership by the Council." This amendment was seconded by Mr. Von Haast, Messrs. Richmond and Perry agreeing to accept Mr. Wiren's motion, and the original motion was therefore withdrawn. On being put to the meeting, Mr. Wiren's motion was carried unanimously.

Legal Conference.—Mr. O'Leary drew attention to the Legal Conference being held at Christchurch during Easter, 1938, and urged that everybody who could possibly go should do so. Mr. Cooke stated that the Conference was short of remits and that the Conference Committee would be very pleased to have any suggestions from practitioners. He also pointed out that the accommodation question in Christchurch during Easter would be a serious one, and that those thinking of attending the Conference should make arrangements immediately with the Conference Secretary for accommodation.

Mr. Justice Ostler.—Mr. Cooke said that very good news had been received concerning the health of Mr. Justice Ostler, and it was unanimously decided to send him a message of good wishes for his speedy recovery.

Practice Precedents.

Special Jury in a Civil Action.

The right to trial by a special jury was formerly given by s. 71 of the Juries Act, 1908 : see, also, R. 259 of the Code of Civil Procedure.

Now, by s. 4 of the Judicature Amendment Act, 1936, it is provided that in any action or issue that may be tried before a Judge with a jury of twelve or of four persons as hereinbefore provided may, on the application of either party at the discretion of the Judge, be tried before a special jury of twelve or of four persons respectively. This is subject to the proviso that, except with the consent of all the parties, no application for trial before a Judge with a special jury shall be granted unless in the opinion of the Judge a knowledge of business, mercantile, or banking matters is required on the part of the jury. (See, again, R. 259 of the Code of Civil Procedure.)

Section 40 (2) of the Statutes Amendment Act, 1936, provides that the Sheriff must keep in his office the lists sent and delivered to him by the Jury Officers as provided by s. 25 of the Juries Act, 1908, and he must take from such list consecutively, and enter in a book consecutively, the names in the order in which they stand thereon of all men who are known to him to be or appear from their description to be acquainted with business, mercantile, or banking matters so as to make up such a number of special jurymen as he considers necessary. In *New Zealand Creditmen's Association (Wellington), Ltd.* v. *Dun's Agency (Wellington), Ltd.*, [1937] N.Z.L.R. 1209, Myers, C.J., stated that it would appear that the law as it existed prior to 1936 has been altered in two respects : (1) Except where the parties consent, it limits the cases in which a special jury may be granted to those in which in the opinion of the Judge a knowledge of business, mercantile, or banking matters is required ; and (2) such knowledge must be required on the part of the jury. It seems that a special jury should not be ordered merely on the ground that expert evidence will be given, and, also, that the fact that expert evidence is necessary must remain an important factor for consideration because it may well be that knowledge of business, mercantile, or banking matters is required on the part of the jury in order to appreciate such evidence in its relation to the case. The learned Chief Justice said in the *New Zealand Creditmen's Association* case that there are two classes of cases still in which a special jury may be ordered : either (*a*) where it is apparent, on the pleadings, or on affidavits filed upon an application for an order for trial before a special jury, that the case is one where, irrespective of any question of expert evidence, a knowledge of business, mercantile, or banking matters is required on the part of the jury ; or (*b*) where it appears that expert evidence will be given for the proper appreciation of which a knowledge of business, mercantile, or banking matters is required on the part of the jury.

Where a special jury is required in an action in which the party requiring it is a company linked up commercially with a number of other companies or individuals, a condition may be attached to the grant of a special jury similar to that in the recent judgment in *New Zealand Creditmen's Association* case, at p. 1213.

For a discussion of the earlier cases in New Zealand, see *Wilkins and Field v. Wright*, (1900) 19 N.Z.L.R. 278 ; *Coghill v. Wilkinson*, (1903) 5 G.L.R. 431 ; *Archer v. New Zealand Times Co., Ltd.*, [1922] N.Z.L.R. 90 ; and the judgment of the Court (Ostler and Blair, JJ.) in *O'Neill v. New Zealand National Creditmen's Association (Wellington), Ltd.*, [1932] N.Z.L.R. 685.

SUMMONS FOR SPECIAL JURY.

IN THE SUPREME COURT OF NEW ZEALAND.

.....District.

.....Registry.

BETWEEN A. B. &c. plaintiff

AND

C. D. &c. defendant.

LET the above-named C. D. his solicitor or agent attend before the Right Honourable Sir Chief Justice of at his Chambers Supreme Court House on day the day of 19 at the hour of 10 o'clock in the forenoon or so soon thereafter as Counsel can be heard TO SHOW CAUSE why an order should not be made that this action be tried before a Judge and a special jury of twelve persons and that the costs of and incidental to this application be costs in the cause UPON THE GROUNDS that a knowledge of business or mercantile matters is required on the part of the jury for a proper determination of the matters in issue in this action AND UPON THE FURTHER GROUNDS appearing in the affidavit of filed in support hereof.

Dated at this day of 19 .

Registrar.

This summons is issued by E. F., solicitor for the above-named plaintiff, whose address for service is at the office of the said E. F., at Street, in the City of .

AFFIDAVIT IN SUPPORT OF SUMMONS.

(*Same heading.*)

I A. B. &c. of the City of accountant make oath and say as follows :—

1. That I am the plaintiff in the above-mentioned action.

2. That the cause of action herein relied upon by the plaintiff arises from the publication by the defendant of a circular which the plaintiff claimed to be libellous of him. The said circular is set out in para. of the statement of claim filed herein.

3. That the defences raised by the defendant to the claim of the plaintiff and set forth in his statement of defence are :—

(*a*) A general denial of the plaintiff's allegations except as to the writing or publication of the said circular which is admitted.

(*b*) That the occasion of publication is privileged on the ground that the said circular was published solely to clients of the defendant who had a common interest with the defendant in the matters therein referred to and under a sense of duty and/or on the ground that such publication was for the fair and reasonable protection or furtherance of its own interest.

(*c*) That the said circular is a fair comment made in good faith and without malice upon matters of public interest.

4. That on the above-mentioned pleadings the questions of fact in issue and for determination by the jury are :—

(*a*) Whether the wording of the said circular is defamatory or not.

(*b*) Whether the said circular was published maliciously by the defendant.

(*c*) Whether the comment made by means of the said circular was "fair" or not.

(*d*) The amount of damages.

5. That in my opinion a knowledge of business or mercantile matters is required on the part of the jury for the proper determination of the questions of fact set out in the preceding paragraph hereof in that there will be involved in such determination a consideration of the following matters, *inter alia* :—

(*a*) The meaning of various business or mercantile phrases and expressions contained in the said circular.

(*b*) The business organization and methods of the plaintiff.

(*c*) What is an honest proper or efficient manner in which to conduct such a business as that of the plaintiff.

(*d*) The credit in which the plaintiff is held in the commercial community and the extent to which such credit might be injured or destroyed by the circular.

Sworn &c.

ORDER FOR SPECIAL JURY.

(*Same heading.*)

IN CHAMBERS.

day the day of 19 .

UPON READING the summons for special jury issued herein and the affidavit of A. B. filed in support thereof AND UPON HEARING Mr. of Counsel for the above-named plaintiff and Mr. of Counsel for the defendant IT IS ORDERED by the Honourable Mr. Justice that this action be tried before a Judge and a special jury of twelve persons AND IT IS FURTHER ORDERED that the costs of and incidental to the said summons be fixed at £ together with disbursements and the costs in the cause.

Registrar.

Recent English Cases.

Noter-up Service
FOR
Halsbury's "Laws of England"
AND
The English and Empire Digest.

BOUNDARIES.

Party Wall—Severance—Right of Support and User—Law of Property Act, 1925 (c. 20), s. 38 (1).

Party walls are treated as severed vertically, and the owner of each part has such rights of support and user as if a tenancy in common had been created.

UPJOHN *v.* SEYMOUR ESTATES, LTD., [**1938**] **1 All E.R. 614. K.B.D.**

As to extent of right of support: see HALSBURY, Hailsham edn., vol. 3, pp. 159, 160, par. 275, and for cases: see DIGEST, vol. 7, pp. 305–310, Nos. 269–315.

CHARITIES.

Charitable Purposes—Gift to Vicar and Churchwardens for Parish Work.

A gift to a vicar and churchwardens of a parish for parish work is not a charitable gift.

Re ASHTON'S ESTATE; WESTMINSTER BANK, LTD. *v.* FARLEY, [**1938**] **1 All E.R. 707. C.A.**

As to religious purposes: see HALSBURY, Hailsham edn., vol. 4, pp. 118–122, pars. 155–160; and for cases: see DIGEST, vol. 8, pp. 248–254, Nos. 74–160.

COMPANIES.

Winding up—Contributory—Calls on Shares—Payment in Money's Worth—Deferred Payment Certificates—Companies Act, 1929 (c. 23), s. 157 (1) (*d*).

Calls on shares must be paid in money or money's worth.

Re WHITE STAR LINE, LTD., [**1938**] **1 All E.R. 607. C.A.**

As to rights of contributories: see HALSBURY, Hailsham edn., vol. 5, pp. 669–671, pars. 1104–1107; and for cases: see DIGEST, vol. 10, pp. 936–939, Nos. 6416–6439.

DISTRESS.

Distress for Rent—Bailiff in Possession—"Walking Possession"—Whether any Charge can Legally be made for Bailiff's Expenses—Distress for Rents Act, 1737 (c. 19), s. 10—Distress (Costs) Act, 1817 (c. 93), ss. 1, 2—Distress (Costs) Act, 1827 (c. 17)—Law of Distress Amendment Act, 1888 (c. 21), s. 8—Distress for Rent Rules (S.R. & O., 1920, No. 1712), r. 22, appendix 2.

An arrangement by a bailiff to charge fees when only in walking possession is invalid.

DAY *v.* DAVIES, [**1938**] **1 All E.R. 686. C.A.**

As to walking possession: see HALSBURY, Hailsham edn., vol. 10, p. 520, pars. 713–715; and for cases: see DIGEST, vol. 18, p. 426, No. 1635.

HIRE-PURCHASE.

Agreement amounting to Guarantee between Finance Company and Dealer—Undertaking to Collect Goods and Repurchase should Hirer Default—Default of Hirer—Disappearance of Goods—Meaning of "Collect."

When a dealer guarantees to collect and purchase goods seized for default under a hire-purchase agreement, his liability is conditional upon the finance company's indicating where the goods may be collected.

WATLING TRUST, LTD. *v.* BRIFFAULT RANGE CO., LTD., [**1938**] **1 All E.R. 525. C.A.**

As to financing agreements: see HALSBURY, Hailsham edn., vol. 16, pp. 512, 513, par. 755; and for cases: see DIGEST, Supp., Bailment, Nos. 244a–268a.

MASTER AND SERVANT.

Limitation of Actions—Specialty—Right of Action conferred by Statute—Civil Procedure Act, 1833 (c. 42), s. 3.

A packer is engaged in manual labour under the Truck Acts, and the period of limitation for a claim under those Acts is twenty years, as for a specialty.

PRATT *v.* COOK, SON AND CO. (ST. PAUL'S), LTD., [**1938**] **1 All E.R. 555. K.B.D.**

As to deductions from wages: see HALSBURY, Hailsham edn., vol. 14, pp. 654–658, pars. 1237–1241; and for cases: see DIGEST, vol. 24, pp. 934–941, Nos. 229–284.

NUISANCE.

Principle of *Rylands* v. *Fletcher*—Chair-o-plane—Detached part of Revolving Apparatus causing Injury—Passenger larking.

A machine dangerous in itself comes within the principle of Rylands *v.* Fletcher, *even though there is no danger if it is properly used and is not subject to any latent defect.*

HALE *v.* JENNINGS BROS., LTD., [**1938**] **1 All E.R. 579. C.A.**

For the doctrine in *Rylands* v. *Fletcher*: see HALSBURY, Hailsham edn., vol. 23, pp. 614–622, pars. 865–871; and for cases: see DIGEST, vol. 36, pp. 187–199, Nos. 311–388.

SALE OF LAND.

Sale by Builder of New House—House Completed at Date of Sale—Implied Warranty—Fitness for Habitation—By-laws—Structure of Floors on Ground Floor.

There is no implied warranty of fitness for human habitation upon a purchase of a new house from a builder, if the house is completed at the time of the contract for sale.

HOSKINS *v.* WOODHAM, [**1938**] **1 All E.R. 692. K.B.D.**

As to implied warranty on sale of property: see HALSBURY, 1st edn., vol. 25, Sale of Land, p. 297, par. 504; and for cases: see DIGEST, Supp., Sale of Land, Nos. 2922a–2922c.

As to building regulations: see HALSBURY, Hailsham edn., vol. 26, pp. 335–351, pars. 676–693; and for cases: see DIGEST, vol. 38, pp. 180–185, Nos. 211–246.

Rules and Regulations.

Industrial Efficiency Act, 1936. Industrial Licensing (Motor-spirits Sale No. 3) Notice. March 17, 1938. No. 1938/40.

Motor-vehicles Insurance (Third-party Risks) Act, 1928. Motor-vehicles Insurance (Third-party Risks) Regulations, Amendment No. 3. March 23, 1938. No. 1938/41.

Industrial Efficiency Act, 1936. Industrial Efficiency (Motor-spirits Licensing) Regulations, 1938. March 23, 1938. No. 1938/42.

Orchard and Garden Diseases Act, 1928. New Zealand-grown Fruit Regulations, 1938. March 23, 1938. No. 1938/43.

Fruit Control Amendment Act, 1932. Fruit Control Act Variation Order, 1938. March 23, 1938. No. 1938/44.