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

"These Conferences are very valuable. They bring men together; they bring their wives together in social intercourse; and they bring the members of the profession together to discuss matters which are of importance to the profession and also to the general public."

—The Rt. Hon. Sir Michael Myers, Chief Justice, at the Conference Bar Dinner.

Vol. XIV. Tuesday, May 24, 1938. Nos. 7-10.

The Fifth Dominion Legal Conference.

WE are faced with an impossible task in this issue of the Journal. For it is beyond our powers to recreate in these pages many of the factors which contributed to the unalloyed enjoyment of all who were present at the recent Dominion Legal Conference in Christchurch.

Pride in the profession of the law, with its attendant spirit of camaraderie, grew as the Conference Committee proceeded with its programme through a succession of busy days and strenuous nights. This was an intangible thing, a thing of the spirit. For, even when some experience is lived through again, as on the motion-picture screen, or when its happenings are recalled by the written word, there comes a feeling of unreality and disappointment. The colour, and the atmosphere, are lacking. And, above all, the senses which were touched by the many facets of the changing scene cannot again be stimulated to the same extent, because the human personalities who gave life and form to the events as they happened are missing from the record.

We—and our readers with us—have accordingly to content ourselves with the account of the Conference to which the following pages are devoted. These tell, as faithfully as may be, of the days, and nights, of the Conference's more formal programme. But much, necessarily, remains unsaid.

The coincidence of the laying of the foundation-stone of the new Courts of Justice, and the attendance of His Excellency the Governor-General, Viscount Galway, gave distinction to the record assembly of practitioners. Moreover, the appreciated presence of the Chief Justice and two of the Judges at the social functions of the Conference, from the viewpoint of the Bar, made those gatherings complete.

The magic touch of the Christchurch practitioners piled triumph upon triumph. The Ball, one felt, was unsurpassable; but, on the following evening, the Bar Dinner disclosed glories that were all its own. Other gatherings, unheralded in the Conference programme, which needs must remain unrecorded, were no less important, and no less enjoyable. The kaleidoscopic nature of the many events, both public and private, prepared for the visitors, was almost dazzling in its variety and in its quickly-changing interest.

We make no excuse for giving precedence to the social side of the Conference: for those who attended it, that *was* the Conference. As speaker after speaker, from His Honour the Chief Justice and the Hon. the Attorney-General downwards, emphasized, the opportunity afforded for making social contacts among the usually widely-scattered members of the legal profession in the Dominion was the Conference's outstanding benefit. They met at Christchurch—men from the Far North and the Farthest South, and others from the cities and towns between—and they learned to know one another. And the efficacious solvent, to which all influences of time or place or distance yielded, was provided by the unwearied hospitality and limitless goodfellowship of their welcoming brethren of the Canterbury Law Society, and their ladies.

The deliberations at the Conference Hall were valuable, and timely. All the papers, remits, and discussions were instructive; and, in them, the interests of the public were the paramount consideration. They had their part in the general ensemble. But, when the mixture was shaken up, the thoughtful and kindly attention to detail in the preparations made by the Conference Committee for their guests' enjoyment rose to the top, and stayed there. This remains in the memory of every participant as the happiest feature of what, in the opinion of many, was the most enjoyable Conference of the series.

This year's Conference Committee were fortunate in their setting. Christchurch always exercises a subtle fascination on its visitors from the sister cities of the Dominion. And this permeated even the autumnal gloom that greeted, and remained with, the visitors until the sun broke through the clouds on the final afternoon at the Shirley Links. The natural beauties of Christchurch might have been dampened, but they could not be obscured: and every visitor's pleasure was enhanced by the charm of the surroundings in which he found himself.

Again, the Conference was most happy in its official host, Mr. J. D. Hutchison, the President of the Canterbury Law Society. He had much to do in the course of his varied duties; but all occasions found him ready, and his quiet dignity and his versatility enhanced the general success. The Conference Secretary, Mr. V. G. Spiller, notwithstanding his modest unobtrusiveness, could not disguise the great amount of detailed hard work that he had accomplished so well. And that the various Sub-committees must have had a very busy time indeed before the Conference was obvious from the smoothly-running machinery they had created.

The least that can be said of the Conference as a whole—the combined result of the preparations made by the members of the Christchurch Bar, and the co-operating appreciation of the visitors—is that the realization was superior to the anticipatory feelings of everyone. And it can now be said that the anticipations of those visitors who had previously enjoyed a Legal Conference at Christchurch were set in no minor key.

It remains for us, on behalf of all the visitors, and in our own behalf as well, to congratulate everyone concerned in the outstanding success that was achieved by the Conference Committee; and to them all, to express our thanks for the happy time they gave us. The days of the Conference have now passed into our legal history; but the thoughtful kindness and the unbounded hospitality of our Christchurch colleagues remain among the memories which time and distance are powerless to efface.

THE FIRST DAY.

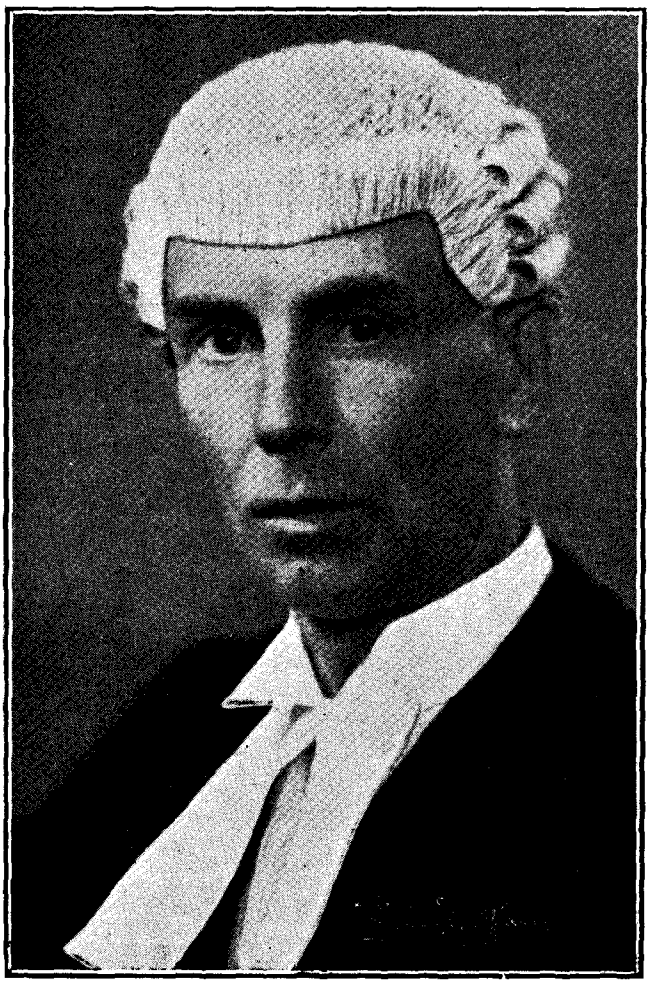
The Civic Reception and Welcome.

The Mayor and the Christchurch Bar.

THE morning of the opening day of the Conference was a very busy one for everybody. First of all, the Civic Welcome was to take place at the Radiant Hall at 9.30 a.m. Then the prospect of an adjournment to the site of the new Courts of Justice for the ceremony of the laying of the foundation-stone there within the hour, with attention to robing in the meantime, did not leave much time for speeches in reply to the very cordial welcome to Christchurch which was extended by the Mayor of the city, Mr. J. W. Beanland.

Before His Worship entered the Hall, the coming success of the Conference was made evident by the large assembly of visiting practitioners and their wives. Time was all too short for greetings and renewal of old friendships; but there was ample opportunity to come for reunions in the spaces between the formal functions. That full advantage was taken of these occasions is now part of Conference history.

The Mayor was accompanied to the platform by Mr. J. D. Hutchison, President of the Canterbury Law Society. They were joined by Mr. H. F. O'Leary, K.C., President of the New Zealand Law Society, and Messrs. M. M. Macdonald and R. H. Quilliam, Presidents of the Southland and Taranaki Law Societies respectively. The Attorney-General, the Hon. H. G. R. Mason, was present.



Standish & Preece, Photo.

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

On taking the chair, His Worship the Mayor of Christchurch, Mr. J. W. Beanland, who was cordially greeted, said:

"It is my pleasure this morning to extend a welcome to the gentlemen representing the law in this Dominion. It is very nice indeed to see so many gathered together here in anticipation of the ceremony which will take place later on—that is, the laying of the foundation-stone of our new Courts of Justice. To see so many of our legal friends here, and knowing the place they take in the community, is very nice indeed.

"Someone said some little time ago 'members of the legal profession only speak when they are paid to speak'; but I can contradict that, as I have many friends who will not accept payment, and yet do a great deal of work for which they do not receive any payment whatever.

"I am very pleased that the Conference is taking place in Christchurch this year. Since I have been Mayor, this is the first time that I have had the pleasure of extending a welcome to the members of the legal profession; and I trust your stay in our city will be a very pleasant one. I know our legal friends here in Christchurch will do their utmost to make your stay very pleasant. You have the added pleasure of being able to see the start of something that is going to be a great improvement in our Law Courts.

"I know, and a good many of our people know, the difficulties that have to be put up with in connection with the present Court buildings on the riverbank, and the other buildings there. We realize that these disabilities will be done away with. I know there has been some talk in connection with these new buildings; but I am very pleased to say that the Hon. the Attorney-General did try to help us out in some of our difficulties. Now, our citizens are able to see that there will be an elevation in keeping with the beautiful surroundings of the Law Courts. We have been able to see this for ourselves, and we recognize that the right thing has been done, and that we will have something worth while.

"This meeting has to be fairly brief, as you are soon going over to the laying of the foundation-stone of the new building. But the shortness of the welcome will not in any way interfere with the warmth of the reception you are getting this morning. While you are here, you will be debating many points that are going to help the legal fraternity, and the public generally; yet, I trust that a good many hours will be spent in a social way that will make your visit very pleasant indeed. I understand that you are going to have a ball to-night and a dinner to-morrow night and golf on Friday. Unfortunately, we have had a stretch of bad weather, and I sincerely trust that the

balance of the week will be pleasant. Some of you may have been here for the races, but a good many of you will be able to go out to the Trots to-morrow and the following day perhaps (*laughter*), and spend some of the money you have brought with you. I think, too, that the business people of Christchurch hope to get something out of you. Whether you are as close as people say the legal profession is, I am not going to say. I am quite sure you are going to enjoy yourselves, and I hope our people will get something out of you.

"On behalf of the city, I extend to you that welcome that we give to our visitors, and I hope that your stay here will be very pleasant indeed."

The Christchurch Practitioners' Welcome.

The Mayor then called upon Mr. J. D. Hutchison, President of the Canterbury Law Society, who, in his opening remarks, said that it was ten years ago since the members of the Canterbury District Law Society were privileged to be hosts for the Dominion Legal Conference on April 11 and 12, 1928. This year their Committee had been working very hard in preparing for the Conference, but their work, even the most strenuous labours, had been a labour of love; and they hoped that the pleasure that the visitors were going to get would be just one small part of the pleasure the local practitioners had in preparing for them.

"My Committee is very pleased at the wide representation of members of the profession," the speaker continued. "There is at least one from North Auckland and a number from Invercargill, and all the other districts are represented. We are very pleased to have the Attorney-General and Solicitor-General here, particularly the Hon. Mr. Mason, who will be here for both the working-days of the Conference.

"As His Worship has said, a Conference comprises social functions as well as working-days. Perhaps the social gatherings are the more important part; and, in this connection, we are particularly pleased at the large number of ladies who have come to the Conference. The actual figures, I think, appear to be that there are one hundred and two practitioners and seventy-five ladies from outside the Canterbury District, and twenty-one practitioners and eleven ladies from Canterbury towns outside Christchurch City. These last are, of course, among your hosts; but from the point of view of the city itself they are from outside.

"The continual increase in the numbers attending the Dominion Legal Conferences from year to year shows very well the result of the benefit and pleasure we have had from them in the past. A very high standard of hospitality was set in Dunedin at the Conference there in 1936. We do not expect to rival that, but we do hope that you will all have a very enjoyable time.

"His Worship the Mayor has referred to the weather; and it did seem that, while we had catered for dryness within, the weather intended to cater for it without. We hope, however, that our city will now be able to show her best face. As citizens of Christchurch, we listened to the jocular remarks of His Worship the Mayor. Like the Scotsman, all we can say is that we are used to being the butt of jokes, but realize that they are only meant as jokes.

"On behalf of the members of the Canterbury District Law Society I join with His Worship in his welcome to our visitors to Christchurch."

New Zealand Law Society's President Replies.

The President of the New Zealand Law Society, Mr. H. F. O'Leary, K.C., on behalf of the legal profession throughout New Zealand, thanked His Worship the Mayor and Mr. Hutchison for the warm and courteous welcome that they had extended to the visitors to Christchurch at the commencement of this, the fifth Legal Conference.

"I know, too, Mr. Mayor and Mr. Hutchison, that your words are sincere," Mr. O'Leary proceeded. "I have said, Mr. Mayor, that they are warm; and to say that it is a courtesy on your part to come and welcome us is superfluous. We have particular cause to remember Christchurch and to be grateful to Christchurch or rather Canterbury, because it was through the efforts of the Canterbury Law Society and the activities of the Canterbury practitioners that this Conference, now such an integral part of the profession in New Zealand, was inaugurated. I do not think I am doing anyone an injustice when I say that the activities of the gentleman who is now Mr. Justice Hunter were the greatest in bringing about that very successful first Conference in Christchurch.

"Now, Mr. Mayor, as you know, I am limited in time. Thank goodness for that! I read last night in the leading article in your afternoon paper that the writer considered that, of our professions, the legal profession was most zealous in guarding the liberties and rights of the public. It added, with the modesty for which the Press is noted, 'except, perhaps, with the exception of journalism.' I am prepared to concede to journalism that it is ahead of us. It has more opportunity, and a wider range. But we are thankful to the Press for its references to the matter, because it is true we are at all times most anxious to preserve the rights and liberties of the people of New Zealand. Linked with the Press, we can do anything.

"I was rather embarrassed with your remarks, Mr. Mayor, in your address of welcome suggesting that we should go to the Trots to-morrow. You do not realize that we have a large order-paper for to-morrow, and I can see myself faced with a motion such as this: 'I move that the Conference do now adjourn to Addington.' I think you are also under a misapprehension. If you think that, by getting us to the Trots, Christchurch is going to get away with our money, we (as always) will have your money. But I think it was unwise of you to put temptation in the way of my brethren, so that our work may be seriously interfered with.

"We are indeed grateful to you for your welcome. We will have later an opportunity of again thanking Mr. Hutchison and the Canterbury practitioners for what they are going to do, and I would now ask you to hear my friends, who represent more intimately the District Law Societies of both Islands."

The District Societies' Thanks.

Mr. R. H. Quilliam, New Plymouth, then said that on behalf more particularly of the District Law Societies of the North Island, he desired to endorse what the President had just said. Unfortunately, Mr. O'Leary had completely covered his subject; and,

as many of the speaker's learned friends would agree, Mr. O'Leary, after a long experience at the Bar, had earned a reputation for saying all there was to be said on a subject.

He added that when Mr. O'Leary said that if the members of the Conference had gone to the Trots, they would not be leaving any money at Addington, he was speaking with experience, as he himself had already been to Riccarton and had taken away some money.

Mr. Quilliam continued: "I would like to add that I was privileged in 1928 to be present at the Conference, and I have carried ever since most happy recollections of that Conference. It is no wonder therefore that anyone here then has made a point of returning, and, although we have only been here a short time, we can see that the standard of hospitality is going to exceed even that of 1928. I should also like to refer to some evidence of the hospitality of the people of Christchurch when I was here with a football team to play Canterbury University College some years ago. For some reason or other it was found that my return was not necessary that night, and the hospitality was such that some of your citizens kidnapped me and I was not able to return until the following Monday.

"Mr. Mayor and Mr. Hutchison, we are very grateful indeed for the cordiality of the welcome that has been accorded us."

Mr. M. M. Macdonald, of Invercargill, was the concluding speaker.

He said he wished to join also in expressing thanks for the enthusiastic welcome which had been extended to the visitors that morning, and he did this particularly on behalf of the visiting members of the profession from the South.

"I express also the hope that this Conference will arrive at decisions which are of value," he continued. "Each profession may render some service to the community, and I think I will be expressing the views of all present if I express the hope that, from the deliberations of to-day and to-morrow, decisions may be crystallized which will result in the improvement of the laws of the land. That is the main object of a Conference of this nature as far as its serious side is concerned.

"As visitors, we cannot help being struck with the beauty of your buildings and natural surroundings. Those buildings exemplify a contribution made by those who have had the development of this city in their hands. They exemplify a contribution which may be rendered by each in his individual way. As citizens of Christchurch you may be happy in a city built upon the plains, with the hills at your doors. You may justly be proud of the new Summit Road, which gives you a drive above the city and a series of views which are quite unequalled in other parts of the Dominion. I again, Sir, thank you and Mr. Hutchison for the welcome which has been extended to the members of the legal profession visiting this Conference from other centres."

The gathering concluded, after cheers for the Mayor and citizens of Christchurch, with the National Anthem.

Practitioners then robed, and proceeded to the site of the proposed new Courts of Justice on the river-bank.

The Roll-call.

A Representative Assembly.

The following is the roll-call of practitioners present at the Conference:—

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

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

Auckland District Law Society.

Messrs.

H. E. Barrowclough (Auckland).
E. H. Burton.
M. M. Flynn.
A. H. Johnstone, K.C.
C. G. McDavitt.
L. K. Munro.
H. M. Rogerson.
O. R. Thomas.
H. F. Guy (Kaikohe).

Canterbury District Law Society.

Messrs.

H. D. Acland (Christchurch).
B. A. Abbott.
P. H. T. Alpers.
P. P. J. Amodeo.
H. D. Andrews.
K. G. Archer.
B. A. Barrer.
R. Beattie.
A. T. Bell.
R. E. Booker.
N. S. Bowie.
E. S. Bowie.
G. S. Branthwaite.
A. C. Brassington.
J. A. Bretherton.
A. W. Brown.
M. S. Brown.
D. A. Buchanan.
G. H. Buchanan.
A. H. C. Cavell.
E. C. Champion.
H. S. Clark.
L. D. Cotterill.
A. C. Cottrell.
F. I. Cowlishaw.
F. W. M. Cowlishaw.
J. R. Cuningham.
R. A. Cuthbert.
S. R. Dacre.
F. E. S. Dale.
L. A. Dougall.
C. G. de C. Drury.
H. Edgar.
H. de R. Flesher.
L. W. Gee.
J. D. Godfrey.
H. S. J. Goodman.
K. A. Gough.
M. J. Gresson.
K. M. Gresson.
T. A. Gresson.
J. R. Hampton.
H. H. Hanna.
T. D. Harman.
A. D. Harman.
A. L. Haslam.
L. J. H. Hensley.
R. Hepburn.
D. J. Hewitt.
R. N. C. Hill.
A. B. Hobbs.
C. H. Holmes.
H. W. Hunter.
J. D. Hutchison.
J. A. Johnston.
W. R. Lascelles.
E. T. Layburn.
W. B. T. Leete.
T. A. Leitch.
R. H. Livingstone.
R. J. Loughnan.
J. H. Macdonald.
K. J. McMenamin.
H. O. D. Meares.
T. Milliken.
J. K. Moloney.
H. D. Muff.
D. S. Murchison.
J. A. Niblock.
A. S. Nicholls.
W. R. Olliver.
T. K. Papprill.
A. C. Perry.
J. H. Polson.
C. E. Purchase.
C. V. Quigley.
E. W. Reeves.
J. H. Rhodes.
R. L. Ronaldson.
D. W. Russell.
G. S. Salter.
W. J. Sim.
M. W. Simes.
H. P. Smith.
G. W. C. Smithson.
V. G. Spiller.
C. A. Stringer.
A. S. Taylor.
N. E. Taylor.
C. S. Thomas.
H. W. Thompson.
R. Twyneham.
H. C. D. van Asch.
I. M. Walton.
G. H. M. Walton.
J. T. Watts.

G. T. Weston.
E. W. White.
F. S. Wilding.
E. P. Wills.
P. H. Wood.
A. F. Wright.
Isobel Wright.
R. A. Young.
L. A. Charles (Ashburton).
R. Kennedy.
G. C. Nicoll.
V. W. Russell.
E. J. Corcoran (Kaiapoi).
J. W. M. Dart (Methven).
A. C. Fraser (Rangiora).
E. D. R. Smith.
L. G. Cameron (Timaru).
W. D. Campbell.
L. J. O'Connell.
M. A. Raymond.
F. J. Rolleston.
R. Stout.
G. J. Walker.
W. H. Walton.
C. W. Webber.
W. F. Boland (Waimate).
S. I. Fitch.
M. Gresson.
N. L. Knell.
G. R. Watters.

GISBORNE DISTRICT LAW SOCIETY.

Mr. C. J. Jeune.

HAMILTON DISTRICT LAW SOCIETY.

Messrs.
H. J. McGregor.
H. J. McMullin.
D. H. Hall (Taumarunui).
C. O. Edmonds (Te Awamutu).
S. S. Preston.

HAWKE'S BAY DISTRICT LAW SOCIETY.

Messrs.
W. T. Dobson (Napier).
T. H. R. Gifford.
F. J. Green (Hastings).

MARLBOROUGH DISTRICT LAW SOCIETY.

Messrs.
W. T. Churchward (Blenheim).
G. M. Spence.

NELSON DISTRICT LAW SOCIETY.

Messrs.
W. J. Glasgow.
W. V. Rout.

LAW SOCIETY OF OTAGO.

Messrs.
F. B. Adams (Dunedin).
P. S. Anderson.
R. R. Aspinall.
J. B. Deaker.
A. J. Dowling.
E. A. Duncan.
G. Gallaway.
H. S. Ross.
A. C. Stephens.
R. H. Simpson.
R. G. Sinclair.
E. J. Smith.
D. A. Solomon.
W. M. Taylor.
J. B. Thomson.
K. W. Walton.
A. I. W. Wood.
J. E. Farrell (Oamaru).
J. H. Main.

SOUTHLAND DISTRICT LAW SOCIETY.

Messrs.
G. C. Broughton (Invercargill).
B. W. Hewat.
H. J. Macalister.
M. M. Macdonald.
T. R. Pryde.
J. Robertson.
H. E. Russell.
R. B. Bannerman (Gore).
H. W. Hunter (Riverton).

TARANAKI DISTRICT LAW SOCIETY.

Messrs.
M. J. Burns (Hawera).
L. C. Hughes (New Plymouth).
S. F. Fookes.
D. Hutchen.
R. H. Quilliam.
P. Thomson (Stratford).

WANGANUI DISTRICT LAW SOCIETY.

Messrs.
C. P. Brown.
T. C. Kincaid (Taihape).

WELLINGTON DISTRICT LAW SOCIETY.

Messrs.
H. E. Anderson.
K. S. Blair.
S. J. Castle.
T. P. Cleary.
P. B. Cooke, K.C.
R. L. A. Cresswell.
A. E. Currie.
C. Evans-Scott.
R. E. Gillon.
J. S. Hanna.
E. P. Hay.
L. H. Herd.
A. C. Jessep.
W. E. Leicester.
A. C. W. Mantell-Harding.
F. M. Martin.
A. J. Mazengarb.
O. C. Mazengarb.
H. Mitchell.
T. G. Morgan.
H. F. O'Leary, K.C.
D. Perry.
J. H. Reaney.
D. R. Richmond.
A. B. Sievwright.
F. C. Spratt.
J. Stewart.
H. M. Thomson.
H. J. Thompson.
R. H. Webb.
C. H. Weston, K.C.
J. C. White.
H. R. C. Wild.
G. A. Wylie.
A. T. Young.
C. F. Atmore (Otaki).
R. R. Burridge (Masterton).
H. H. Daniell.
J. A. Grant (Palmerston North).
G. I. McGregor.
N. McN. Thomson (Levin).

WESTLAND DISTRICT LAW SOCIETY.

Messrs.
J. W. Hannan (Greymouth).
F. A. Kitchingham.
E. B. E. Taylor (Westport).
W. D. Taylor.
H. G. Lovell.
A. A. Wilson.

The Conference Committees.

The General Conference Committee comprised Messrs. J. D. Hutchison (Chairman), R. A. Young, G. G. Lockwood, W. R. Lascelles, R. H. Livingstone, A. C. Perry, R. L. Ronaldson, G. S. Salter, H. P. Smith, A. L. Haslam, R. J. Loughnan, A. H. Cavell, J. D. Godfrey, P. P. J. Amodeo, A. S. Taylor, E. S. Bowie, and V. G. Spiller (Hon. Secretary).

The Ladies Committee were: Mesdames G. T. Weston (Chairwoman), J. D. Hutchison, W. R. Lascelles, H. C. D. Van Asch, F. S. Wilding, A. L. Haslam, R. L. Ronaldson, R. A. Young, V. G. Spiller, J. D. Godfrey, E. S. Bowie, J. R. Cuningham, K. M. Gresson, R. H. Livingstone, A. H. Cavell, T. A. Leitch, C. S. Thomas, and W. J. Sim, and Miss J. Donnelly.

The Papers and Remits Sub-committee were Messrs. J. D. Godfrey (Chairman), J. D. Hutchison, L. D. Cotterill, A. T. Donnelly, L. W. Gee, K. M. Gresson, W. J. Sim, and V. G. Spiller.

The members of the Reception and Accommodation Sub-committee were Messrs. G. S. Salter (Chairman), A. C. Perry, J. D. Godfrey, R. J. Loughnan, A. S. Taylor, M. J. Gresson, J. D. Hutchison, and V. G. Spiller.

The Ball and Dinner Sub-committee were Messrs. G. G. Lockwood (Chairman), R. H. Livingstone, W. R. Lascelles, G. S. Salter, A. H. Cavell, J. K. Moloney, H. P. Smith, A. L. Haslam, J. D. Hutchison, H. McDonald, T. A. Gresson, and V. G. Spiller.

The Sports Sub-committee consisted of Messrs. R. L. Ronaldson (Chairman), R. A. Young, L. A. Dougall, E. A. Lee, P. H. Wood, J. D. Hutchison, and V. G. Spiller.

The New Courts of Justice, Christchurch.

Foundation-stone laid by the Governor-General.

ALTHOUGH the laying of the foundation-stone of new local courts was not a Legal Conference event, it was a happy thought that synchronized the laying of the foundation-stone of the new Courts of Justice at Christchurch with the opening of the Conference on the morning of April 20.

The Site.

The site of the new Courts of Justice is an unusually suitable one. It is near the centre of the city, yet sufficiently removed from the business area to allow the Courts to remain uninterrupted by the noises of a modern city. Occupying the whole of one end of Victoria Square, the new Courts will be situated upon a rise that slopes gently down to the quiet-flowing Avon set in a series of terraced lawns.

In the foreground, the dark foliage of those English trees which are one of the glories of Christchurch assist in providing an air of tranquillity. Beyond the river, the spacious grassed square, with its gardens and plashing fountains, lends a pleasing variety, as, through the streets which intersect it, the constant passing of vehicular and other traffic gives a sense of life and movement. Distance mutes the rattle of a tram crawling thinly, and the faint mutter of motor-horns calling and answering; so that, in the vicinity of the Courts, the clamour of the city is sensed only in dim echoes.

The beauty of the vista, as seen from the platform, which was erected under the protecting shade of a wide-spread chestnut tree, was enhanced by the murmurous sound of a nearby fountain, and the idle stir and twitter of birds. Visitors to Christchurch were surprised and delighted with the whole prospect.

It was unfortunately a morning of autumnal mist, with an occasional light shower; but, nevertheless, the charm of the scene, and the suitability of the site, were not to be dimmed.

Bench and Bar.

There had never previously been such numbers of barristers gathered together in New Zealand. And, coming robed to the site of the new Courts, they gave a distinctive note to the ceremony that earned the appreciation and gratitude of the people of Christchurch.

Their Honours the Judges, too, wore their scarlet ceremonial robes to the function; and great interest was taken in them, for, outside the capital city, Judges so resplendently arrayed had not previously been seen. His Honour the Chief Justice, the Rt. Hon. Sir Michael Myers, G.C.M.G., was accompanied by His Honour Mr. Justice Kennedy and His Honour Mr. Justice Northcroft. Some spectators regretted the absence of javelin men and trumpeters, which contemporary fiction and autobiography associate with the presence of "Red Judges." But the Sheriff of the Canterbury Judicial District, Mr. W. D. Wallace, robed for Court, preceded their Honours to the platform. They were followed by Mr. Justice Hunter, in the black silk of a Judge of the Court of Arbitration.

Members of the Bar, who were also joined by their wives on the platform and in the seats provided for them, included the Solicitor-General, Mr. H. H. Cornish, K.C.; Mr. F. Wilding, K.C.; Mr. A. H. Johnstone, K.C.; Mr. C. H. Weston, K.C.; Mr. H. F. O'Leary, K.C., President of the New Zealand Law Society; and Mr. P. B. Cooke, K.C., President of the Wellington District Law Society. Mr. J. D. Hutchison and Mr. J. D. Godfrey, President and Vice-President of the Canterbury District Law Society, were also on the centre platform, as was the Under-Secretary for Justice, Mr. B. L. Dallard, to whose careful preparation the great success of the arrangements and the ceremony itself was chiefly due.

Other guests were the local Magistrates, Mr. H. A. Young, S.M., Mr. E. C. Levvey, S.M., and Mr. F. F. Reid, S.M., as well as Mr. R. Ferner, S.M., Greymouth, and Mr. R. C. Abernethy, S.M., Invercargill.

Other Guests.

The guests of the Minister of Justice, Hon. H. G. R. Mason, and his Department, found, on arrival, a crescent-shaped dais, for which they had numbered seats, a detail of a ceremony in which every feature had been the subject of careful study.

In addition to the practitioners, the guests included the Hon. Sir R. Heaton Rhodes; the Hon. W. Hayward, M.L.C.; the Rt. Hon. G. W. Forbes, M.P.; Mr. H. S. S. Kyle, M.P., Mayor of Riccarton; Mr. E. J. Howard, M.P. (Christchurch South); the Christchurch Town Clerk, Mr. J. S. Neville; the Government Architect, Mr. John T. Mair; the District Engineer, Public Works Department, Mr. F. Langbein; the Superintendent of Police, Mr. Allan Cameron; the Inspector of Police, Mr. H. Martin; the District Public Trustee, Mr. A. R. Jordan; the Commissioner of Crown Lands, Mr. N. C. Kensington; and the Chief Postmaster, Mr. F. W. Furby; the Mayors of New Brighton and of Sumner, and the Chairman of the Heathcote County Council; the Bishop of Christchurch, Bishop West-Watson; the Chairman of the Canterbury College Council, Mr. C. T. Aschman; the Rector of Canterbury College, Dr. J. Hight; the Dean of the Faculty of Law, Mr. K. M. Gresson; and the Presidents of the Canterbury Pilgrims' Association, the Justices of the Peace Association, and the Canterbury Chamber of Commerce, and other representative citizens of Christchurch.

There was also a very large attendance of the general public.

The Mayor of Christchurch, who was to preside, welcomed the Minister of Justice, Hon. H. G. R. Mason, and Mrs. Mason when they arrived on the platform. Lady Myers and the Mayoress of Christchurch were also seated on the centre dais.

Arrival of His Excellency.

Shortly before the time appointed for the commencement of the ceremony, a splash of colour in the direction of the present Supreme Court drew attention to the procession of the Judges. Their Honours were

received at the steps of the dais by the Hon. the Minister of Justice, and escorted by him to their seats.

The band of the Christchurch Boys' High School Cadets, and a guard of honour from the Special Territorial Reserve, Burnham Military Camp, had already taken up their positions.

His Excellency the Governor-General, Viscount Galway, then arrived, accompanied by his Aide-de-camp, Lieutenant S. R. le H. Lombard-Hudson, R.N., and was met by the Officer Commanding the Canterbury Military District, Colonel P. H. Bell. After the guard had been inspected, the Minister of Justice came down from the dais and welcomed His Excellency, whom he then accompanied to his seat.

The proceedings then commenced.

THE MAYOR OF CHRISTCHURCH.

The Mayor of Christchurch, Mr. J. W. Beanland, presided. In welcoming His Excellency the Governor-General, the Chief Justice, and the other visitors, His Worship said that the city had been suffering a long time from lack of accommodation for the administration of justice. Although the old buildings, which were a monument to the pioneers, would be missed, there was comfort in the knowledge that the new Courts would be an adornment to the city. He was glad that His Excellency and the Judges had associated themselves with the gathering, and the foundation-stone about to be laid would be the first stage in the erection of the Courts of Justice, the design of which, through the courtesy of the Minister of Justice, the citizens had wholeheartedly approved.

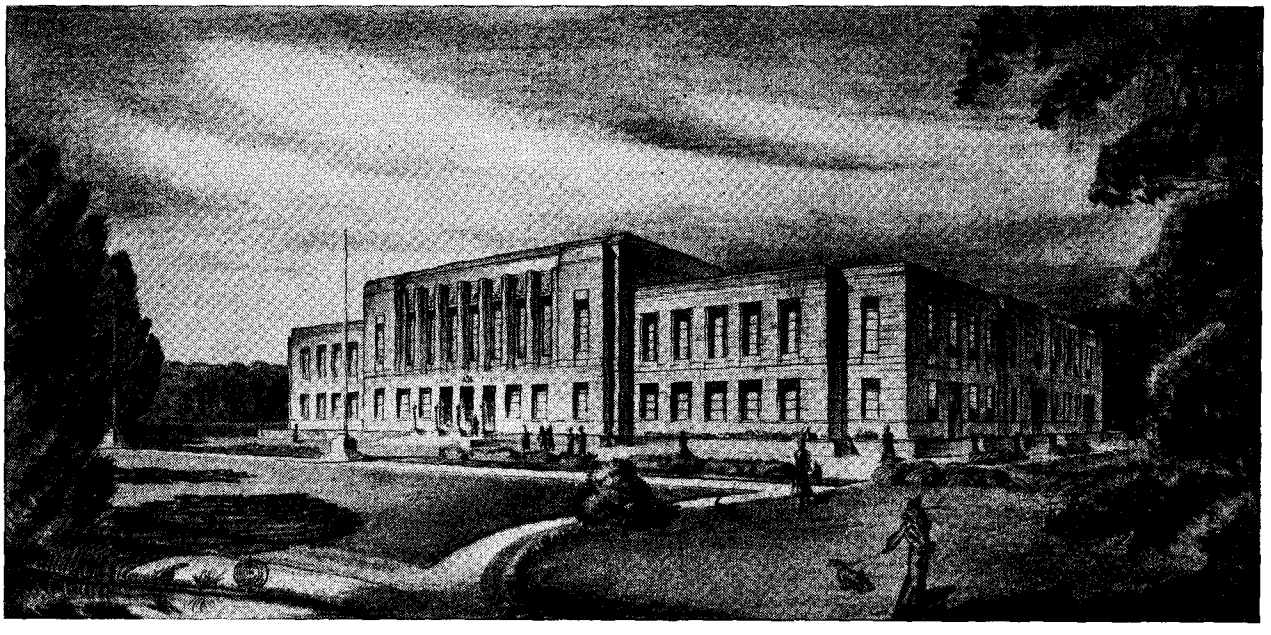
CANTERBURY LAW SOCIETY'S PRESIDENT.

MR. J. D. HUTCHISON, President of the Canterbury Law Society, then addressed the gathering. He said that it was his privilege, at the invitation of the Hon. the Minister of Justice, to speak on behalf of the members of the legal profession in Canterbury, at a ceremony the last counterpart of which took place just over sixty-nine years previously.

"The foundation-stone of the present Supreme Court building was laid on January 15, 1869; on that occasion the ceremony being performed by His Excellency the Governor, Sir George Ferguson Bowen, as on this occasion it is to be performed by His Excellency the Governor-General," the speaker proceeded.

"The gathering on that occasion, apart from His Excellency the Governor himself, was a purely local one, the Supreme Court Bench being represented by His Honour Mr. Justice Gresson, who presided for many years, both before and after the change to the new Court-house, over the Supreme Court in Christchurch, and the profession being represented by about thirty practitioners.

"Now, owing to its being happily arranged that the ceremony take place during the Easter vacation and at the time of the Dominion Legal Conference, we are privileged to have here, besides our resident Judge, Mr. Justice Northcroft, and the local Magistrates, the Hon. the Minister of Justice, and the Rt. Hon. the Chief Justice, Sir Michael Myers, Mr. Justice Kennedy, and Mr. Justice Hunter, and very many representatives of our profession and their wives from all parts of New Zealand."



The Proposed New Courts of Justice, Christchurch.

EARLY COURT HISTORY.

"Prior to the opening of the present Supreme Court-house, the sittings of the Supreme Court were held in the old Town Hall which used to be on the site now occupied by Strange's buildings in Lower High Street, and it must have been most inconvenient," Mr. Hutchison said. "In the September Sessions of 1863, one found from the files of the *Lyttelton Times* a presentment was made by the grand jury to Mr. Justice Gresson that neglect of proper provision for sittings of the Supreme Court had become a great public grievance. The then new Supreme Court House was first used on December 1, 1869; it was then in an unfinished condition, so much so that the newspaper reporters had to be put in some out-of-the-way place, with the result that the newspaper report of the following day said that Mr. Duncan on behalf of the Bar was under-

stood to make some congratulatory remarks with regard to the opening of the new Court-house, but the reporters could not hear anything of what he said, nor what His Honour said in reply.

" During the sixty-nine years, there have been only seven resident Judges of the Supreme Court in Christchurch who presided in this Court, starting with Mr. Justice Gresson, though, of course, from time to time other non-resident Judges have sat here," the speaker continued.

" A few months ago we met in this Court to pay our respects to the memory of one who had just passed away, Mr. Justice Adams, and I think it fitting that we, most of whom practised before him, should take this opportunity, before the Court-house disappears in which he sat during practically the whole of his judicial career, to say again how much we loved him for the possession of all those qualities that enabled him to carry on so well the traditions of the high office he graced.

Builders of British Justice.

" Such an occasion as this affords an opportunity to those of us who follow the profession of the law and take a humble part in the administration of justice to express our respectful gratitude to those legislators, Judges, and others who through the years have built the edifice of the British system of justice under which we are proud to live ; the corner-stone of which edifice is the independence of the Judiciary.

" The new Court-house will give greater convenience and better facilities to those whose duties or needs take them to the Courts as litigants, Judges, counsel, witnesses, or officers of the Courts, but the opening of the Courts will mark no change in the system itself.

" The system will from time to time be altered in detail to suit changing circumstances, but in its essentials it will remain as our forefathers in their great wisdom have made it."

In conclusion, Mr. Hutchison expressed the keen gratification of the members of the Canterbury District Law Society that His Excellency had been able to undertake the duty of laying the foundation-stone, and their great pleasure in being associated with the ceremony.

The Minister of Justice.

The Minister of Justice and Attorney-General, the Hon. H. G. R. Mason, was the next to address the gathering.

" For many years past representations have been made to successive Governments, both directly and through the newspaper Press, as to the inadequacy and unsuitability of the accommodation in the present law court buildings. Inspection reveals that these buildings are dingy, sunless, and inconveniently laid out for the proper administration of justice. Not without justification, they were described in the Press a year or two ago as ' a series of rabbit warrens.'

The Courts and Every-day Life.

" I would not go so far as to suggest that a jury's verdict might be influenced by physical discomfort ; but I did observe in a recent English legal periodical a commentary in point, which concluded with the phrase : ' When draughts come in at the window, justice flies out of the door.' Or put more shortly, ' Draughty courts make bad judgments.'

" Realizing the important part played by the Courts of Justice in the every-day life of the community, the Government is conscious of the necessity and the duty of providing more modern and more convenient buildings for the transacting of this important branch of public business."

After a careful survey, the Minister proceeded, experts had reported that the design and general layout of the existing buildings would not permit of essential modification and extension. The erection of an entirely new building was therefore strongly recommended, and in this proposal the Government had concurred. The present buildings had been in constant use for nearly three-quarters of a century. They had rendered a wonderful service to the people of Christchurch and to the Province of Canterbury. The old grey buildings were a monument both to the pioneers who planned and built them, and to the soundness of the laws which, during all these years, had been administered within their walls.

" There are some amongst us, I doubt not, who will regret the decision to demolish the old buildings, but the fact remains these buildings have served their day and generation," the speaker continued. " They were designed for a past age and are neither conveniently nor comfortably suited to modern requirements. Reverence for what has so many associations, going back into the past is a sentiment in which I fully share, and it is only with reluctance that I have had to accept the fact that present and future necessities have made the demolition of the present buildings inevitable."

History of Christchurch Courts.

The Hon. Mr. Mason then referred to the history of the Courts in Christchurch. He said that the earliest record of sittings of the Supreme Court in Canterbury were at Lyttelton, in 1852, when the first sitting of the Supreme Court was held in the temporary schoolroom and church, and was presided over by Mr. Justice Stephens. It was on record that this learned Judge on one occasion imposed a fine of £20 upon a solicitor for giving wrong advice to a client. Such a situation in respect of a Christchurch solicitor would, of course, be unthinkable to-day.

The first sitting of the Supreme Court in Christchurch was presided over by Mr. Justice Wakefield of Wellington, and was held in the Town Hall, in 1857. In the same year, Mr. Gresson, the only practising barrister in Christchurch, was elevated to the Bench and thus became the first resident Judge in Canterbury.

Following Mr. Justice Gresson's retirement in 1875, Mr. Justice Alexander Johnston was appointed. He was followed in turn by Mr. Justice Denniston, Mr. Justice Herdman, Mr. Justice Adams, Mr. Justice Harold Featherston Johnston, and Mr. Justice Northcroft.

The Minister recalled the fact that, when exchanging felicitations at the first sitting in the new Court-house, the presiding Judge, the Hon. Mr. Justice Gresson, in congratulating those assembled on the fact that they at last had a building designed for the business of the Court, wittily observed : " The existence of a Supreme Court House at Christchurch hitherto has been a legal fiction." It was also recorded that when the architect, Mr. Lean, with some degree of self-satisfaction asked the Judge what he thought of his " symphony in stone," Gresson, J., retorted " Too many crotchets in it."

THE NEW COURTS.

" From my own experience I realize that it is difficult to please everybody in the matter of architecture," the speaker proceeded, " and it is interesting to observe that when the plans of the first building were before the Provincial Council it is recorded that Mr. Maude, the member for Rangiora, remarked, ' If these plans were adhered to all I can say is that the building will not add to the architectural beauty of the public buildings in Christchurch.' His observation was greeted with applause, and he stated that he looked upon the plans as 'a double-distilled atrocity.'

Star-Sun. Photo.

(*Above.*) **His Excellency the Governor-General is received by the Hon. the Minister of Justice and Attorney-General (Hon. H. G. R. Mason).**

(*Right.*) **Their Honours returning from the Ceremony: His Honour the Chief Justice** (*centre*), **Hon. Mr. Justice Kennedy** (*left*), **and the Hon. Mr. Justice Northcroft** (*right*).

" When one compares the simplicity of design of a modern building with the existing Supreme Court building, one is rather struck by the change of viewpoint with changing times, as is reflected in the newspaper description of the early plans. The *Press* (Christchurch) report states: ' The whole structure is designed with a careful avoidance of elaborate ornamentation.'

" I am pleased indeed that the plans of the proposed new buildings have been favourably commented upon and approved of by a widely representative Citizens' Committee, including your leading architects and those interested in art. I am grateful to Mr. Mayor for having convened that Committee, for when one considers the splendid site upon which the buildings will be erected one has need of the best assurance that they should be worthy of their location. I am happy in having that assurance."

In conclusion, the Hon. Mr. Mason assured his hearers that the new building was planned to meet the needs of the community for at least three-quarters of a century. It would be in modern design, but harmonizing with both Classic and Gothic buildings in the vicinity. The whole would be faced with white marble, which, in its green setting of lawn and trees, could scarcely fail to produce an effect of great beauty.

THE GOVERNOR-GENERAL'S SPEECH.

The next speaker was His Excellency the Governor-General, Viscount Galway, who was received with rounds of applause. His Excellency said:

" As I glance around this unique and representative assemblage to-day, I am reminded of a line from Gay's *Beggar's Opera*: ' The lawyers are met, the Judges all ranged.'

" When you honoured me, Mr. Minister, by asking me to lay the foundation-stone of the new Courts of Justice for the City of Christchurch, I had occasion to give some thought to our legal system, its traditions, and its purpose. As I understand it, the object of the law and the Courts is to ascertain the truth and to do justice as between man and man.

" I think it will be conceded by every thinking man in a civilized community, whether layman or member of the legal profession, that the administration of justice and the maintenance of law and order is the primary function of the State. Legal rights are a *sine qua non* of a healthy social development and are the foundation of personal liberty.

" I am deeply conscious, therefore, of the national importance of the public duty I am performing to-day, and I feel it was a particularly happy suggestion that I, as representative of our King who is the Fountain-head of Justice, should lay the first stone of these new Courts of Justice.

" It is a tradition of our race that justice shall be administered openly in the face of all men: ' It must not only be done, but must be seen to be done.' This

is the corner-stone of the freedom which we British people enjoy, and the handsome edifice to be erected upon this beautiful site will provide every facility for the maintenance of this tradition. Lord Atkin in a judgment delivered in the Privy Council, which is the highest Court of law this country knows, said 'Justice is no cloistered virtue.' It should be administered where all men may observe its functions, and it is important that it should be administered in surroundings that will command the respect and attract the attention of the people.

"When the early pioneers of Canterbury came from the Homeland to settle this wonderful province, which has been so aptly described as the 'Britain of the South,' they brought with them, as portion of their imperishable inheritance, the Common Law of England. They realized, as was so well stated by Lord Buckmaster in Canada a few years ago, 'You cannot, without the influence of the law, enable a mere group of buildings to be a great city throbbing with life'; and, secure in the protection given by the just and fearless administration of the law, they pursued their great work of colonization and the building of this beautiful city in full confidence in the liberty and unmolested enjoyment of their property that British justice affords.

The Guardians of Liberty.

"Our legal system is a great structure evolved from a foundation laid by primitive tribes and raised by Roman jurists to the respect of modern times by the toil of many builders—men practical, men idealistic, and visionaries imbued with reformatory zeal. Its efforts throughout its long evolution to adapt itself to changed and changing conditions are a romance. Our judicial system is the fruit of the age-long effort of mankind to link truth and justice in the relations springing from human affairs.

"We all feel that liberty is our most precious heritage, but without justice liberty cannot endure. Our Courts are charged to see that every subject is given justice. They are bound by the injunction of the Great Charter which prescribes: 'We will sell to no man, we will not deny or defer to any man, either right or justice.' The Courts of this land are the guardians of this liberty, and these new Courts of Justice will be a citadel and a rampart against any aggression on the liberty of the people of this city and province.

"This country has been fortunate in always having a fearless and impartial justiciary, the members of which have carried out their tasks without fear or favour, being concerned solely with the historic and sacred duty entrusted to them by the Constitution. The universal respect with which they have ever been regarded is a tribute to the purity and the impartiality of the administration of the law.

Site Hallowed by High Tradition.

"The new buildings are being erected upon a site which is hallowed by the high tradition maintained by the Judges of the past—Gresson, Johnston, Williams, Denniston, Adams, to name those who are no longer with us—and by at least three generations of able and fearless advocates. The site is easily accessible so that all may view the Courts, and be conscious of their great protecting and beneficient influence.

"To-day, I join with the people of Christchurch, and with this representative assemblage of Ministers of the Crown, Judges, members of Parliament, ministers of religion, Magistrates, civic dignitaries, and representatives of the legal profession, in inaugurating a new chapter in the administration of justice in this city. I congratulate the Honourable the Minister of Justice on the commencement of this great work. I felicitate the people of Christchurch on their obtaining a commodious, convenient, and monumental hall of justice. I feel that these new Courts, the foundation-stone of which I now proceed to lay, will long be a stronghold of justice and a bulwark of liberty."

The Mayor, on behalf of the Hon. the Minister of Justice, then presented to His Excellency a miniature gold trowel, suitably inscribed, as a memento of the occasion.

His Excellency, accompanied by the Minister, then laid the foundation-stone amid applause.

Thanks to His Excellency.

The last speech was that of Mr. E. J. Howard, M.P. (Christchurch South), in whose electorate the new Courts are being erected. He said that the Mayor had suggested that he was to give an address; and he thought he would meet the wishes of all if, because of the rain, he made it very short.

"I desire to join with all those present to-day in thanking Your Excellency for consenting to lay this foundation-stone," Mr. Howard continued. "We are pleased that a part of your excellent record as the King's representative in this country is commemorated on that stone and will be visible to the thousands that will follow after us.

"We have seen the plans and we like the idea of the building which is going to be erected. We like the idea of lawns 40 ft. long at either end of the building. We also like the idea that the entrance to the Courts will be from Durham Street. And further, we are sure that 'Mother of Ten' and 'Pro Bono Publico' could not have picked a better site in any part of this city than they have chosen for the new building."

The Purpose of Architecture.

Mr. Howard then quoted Ruskin's definition of Architecture as being the art which so disposes and adorns the edifices raised by man—for whatsoever uses—that the sight of them contributes to his mental health, power, and pleasure.

Addressing His Excellency, the speaker proceeded: "Sir, to-day you have laid the foundation-stone of a series of Courts. Perhaps it is as well that we cannot see the human dramas that will be unfolded within those walls, but at least we can so build that those persons who stray from the narrow path will be made to feel that we were not actuated by a spirit of revenge.

"It has been said that all good architecture is the expression of the national life and character. This being a young country, and this being a young city, we have naturally many and varied types of architecture. We have still with us a few of those people who came over the Port Hills and saw the site of this city in tussock and fern. In many respects the pioneers left us buildings we are proud of. They favoured the English Gothic of which we have an example in our Supreme Court.

"To our right we have a real gem of the English Gothic type, and, if our visitors can spare the time, I invite, nay, I urge them, especially our legal friends, to pay a visit to that beautiful little building referred to by the Attorney-General, the Provincial Council Chambers. You will see and hear much that you may forget during your visit to Christchurch, but I give you my guarantee that if you look at that building the memory will never leave you as long as you possess a memory.

"We also have a few examples of the Moorish type, and one or two of the Chinese, and of course we have some, I regret to say, of the Mary-Ann type.

"I understand that this building is going to be of the classical type, which means that we have grown up. It is to be a building that will lend tone to the city and be in keeping with its surroundings.

"In the name of Parliament and the people of New Zealand, we thank you for your services here to-day."

The function was a brilliantly successful one. It terminated within half a minute of the time allowed in the carefully-prepared programme which had been so meticulously arranged by the Under-Secretary of Justice, Mr. B. L. Dallard. To him, and to his temporary representative in Christchurch, Mr. J. Gifford, who attended to the local arrangements prior to the week of the ceremony, great credit is due for the completeness of those arrangements and their happy fruition on the day itself.

The proceedings were broadcast by Station 3YA, assisted by the Editor of the NEW ZEALAND LAW JOURNAL.

THE NEW COURT BUILDINGS.

Located on the site of existing buildings, the new Law Courts will have a river frontage, and at either end there will be approximately 40 ft. of lawn between the respective streets and the building.

The new building will be constructed of reinforced concrete and will be fire and earthquake resisting. It is proposed to face the building externally with a light-coloured marble, or other suitable stone.

In the planning of the building full advantage of the site has been taken. The public offices are on the ground floor and the Court-rooms and Law Library are on the first floor. The planning has been carried out with a view to practical and economical administration.

The exterior of the building is to be of dignified treatment and of monumental proportions. The bold treatment of buttresses—a Gothic feature of somewhat classic proportions—will, in contrast to the simpler pylons and wings, give force and character to the building, at the same time paying some tribute to the present Gothic buildings which have been for so long held in veneration. The sculptured panels in the upper part of the central feature will as a motif represent the various phases of Justice, and give scope for the skill of New Zealand sculptors. Two free-standing flagstaffs with bronze bases will stand in front of the building. The application to the higher portion of a copper roof, chemically treated to produce a strong green colour, is contemplated. This would reflect in the structure the natural green of the park-lands in front, and assist to make the building sympathetic with its magnificent setting.

The building will be heated and ventilated throughout by the latest methods. An air-conditioning plant will be installed, and the Court-rooms particularly will receive special consideration in this respect.

Christchurch Comment.

On Conference Topics.

In leading articles, the Christchurch newspapers devoted attention to Conference topics:

PUBLIC AND THE LAW: *Star-Sun*, April 19.

A glance at the subjects to be discussed by the Law Society in Christchurch this week, beginning to-morrow, is a reminder that no profession protects the liberties and rights of the people more jealously than law, with the possible exception of journalism. The most interesting subjects are an examination of the need for reform of the jury system, and the consideration of a phase of the same subject in the form of a remit on the appointment of Judges and assessors in civil claims arising out of motor collisions. No examination of the jury system is likely to propose the abolition of juries in criminal cases, or at least lawyers would never put forward such a proposal. The criminal jury has humanized the administration of criminal law and helped to give British people the fairest and most efficient police system in the world, for the slightest officiousness or hint of persecution by the police in criminal trials creates a sense of resentment in the minds of the jury which is usually expressed in a verdict of "Not guilty." The value of juries in criminal cases, in fact, is their bias in favour of the liberty of the individual, and this bias is encouraged by the constant reminders of Judges and prosecuting counsel that all reasonable doubts must be resolved in favour of the accused. But there is no such guiding principle where civil claims arise, and whereas injustice inflicted on the Crown may be no great matter where a man's liberty is at stake, very grave injustice may be done by a civil jury where bias may be expressed in indefensible verdicts. To some extent the readiness of juries to give damages in collision cases merely because there is an insurance corporation to pay has been checked by the submission of certain questions to the jury, but the law as to contributory negligence has never been satisfactory and along this line the influence of the Law Society will be thrown on the side of justice.

THE NEW LAW COURTS: *The Press*, April 21.

The laying of the foundation-stone of the new Law Courts yesterday by His Excellency the Governor-General was an event of no small importance in the history of the city; and it was marked by a ceremony of proper dignity, not without touches of splendour. A touch of humour, however, supplied by the Attorney-General, the Hon. H. G. R. Mason, was no less appropriate. It was truly applied to the occasion. "Draughty Courts," he said, "make bad judgments." It would be taking him too literally to search records or memory for examples and proofs of this uncomfortable aphorism, though the labour might not be wholly fruitless. But if cramped, inconvenient, poorly furnished, and wretchedly ventilated buildings do not hinder the right process and fulfilment of the law by afflicting its servants, it can only be because they are more heroic in patience and perfect in self-control than even blind Justice herself can require them to be. Their patience has not been of that order which makes no complaint and seeks no relief. Successive Governments have been petitioned to provide at least those extensions and improvements which would facilitate the business of the Courts and mitigate the discomforts of transacting it. But old disabilities remained unremedied, becoming worse as the buildings aged to the close of the third quarter of a century, until the present Government announced its sweeping plans of rebuilding. Their extent and magnificence have not yet ceased to astonish a public which had been used to disappointment and had expected, when expectations were raised again, nothing so elaborate. The Government is entitled to the thanks of the city for its complete answer to an appeal, often renewed but never exaggerated. . . .

Throughout the week, as extracts from their leading columns here reproduced show, the two Christchurch dailies, *The Press* and the *Star-Sun*, gave considerable prominence to the Conference. The profession, as a whole, appreciated the manner in which the various Conference topics were dealt with in the news-columns of both papers. In the result, the public, from day to day, obtained some idea of the interest taken by practitioners in matters of law affecting the general welfare of the community.

The Presidential Address.

Matters of Professional Interest.

THE Fifth Dominion Legal Conference opened at 11.45 a.m. on Wednesday, April 20, 1938, in the Radiant Hall, Christchurch. Mr. J. D. Hutchison, President of the Canterbury Law Society, was in the chair.

Mr. Hutchison, in commencing the proceedings, said that there was no need for him to say anything more, as he had made at the Civic Reception the few introductory remarks that he would have essayed to make at this time. The only thing he then need do was to move that the President of the New Zealand Law Society, Mr. H. F. O'Leary, K.C., take the chair; and he moved accordingly.

The President then took the chair amidst applause, and said that, in opening the proceedings of this, the fifth Legal Conference, he desired to congratulate the members of the Canterbury Law Society on the success of their work, evidenced by the splendid attendance of practitioners numbering 227, coming as they did from as far north as Kaikohe, and as far south as Invercargill.

"The working of the Conference happily synchronizes with the important event which we have just assisted at—the laying of the foundation-stone of the new Law Courts in the city; and it has been a privilege as well as a pleasure for us visitors to partake in this event so important to our brethren in the Cathedral City," Mr. O'Leary continued.

"I congratulate our Canterbury friends, and I trust that the new building will not only be a splendid architectural addition to this already fine city, but it will also truly be a fitting place, where, in surroundings comfortable and at the same time in keeping with the dignity which must accompany the true administration of justice, they can work and strive in legitimate but friendly encounter to their own personal advantage and to that of their clients."

The President, continuing, said he saw that according to the Conference programme he was to give an address. "Address" was a somewhat indefinite term, and it was not his intention to give the Conference members anything in the nature of a discourse on a particular legal or professional matter. Rather he intended to say to them a few brief words on a variety of topics of general interest to the profession, considering that this was an opportune and appropriate time to state them.

"But, first, I must not proceed without reminding you that since we last met the hand of death has been busy, and many with whom we have practiced at the Bar, and two on the Bench before whom we have appeared, have left us to return no more." Mr. O'Leary said.

Eileen Deste, Photo.

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

"My predecessor in the office of President—Mr. C. H. Treadwell—died shortly after the last Conference, and I gratefully pay a tribute to the work he did over many years in all branches of legal activities in the Dominion. In particular, his work on the Council of Law Reporting was invaluable, and, without doubt, he was solely responsible for the splendid state of the finances of that body to-day.

"Of the Bench, Mr. Justice Page died, and indeed it can be said he died all too soon. Those of us who had the privilege of practising before him as Magistrate and as a Judge know that he possessed the highest judicial attributes, and his death was indeed a tragic loss to the community.

"Mr. Justice Adams, too, died in honourable retirement after a full and useful career on the Bench.

"Others of lesser eminence, but no less beloved in the profession, have also gone, and it is fitting that I should express the regret of us all at their passing."

Tribute to the Attorney-General.

The President said they were all happy to have with them to-day the Attorney-General, the Hon. Mr. H. G. R. Mason. He added:

"Two years ago the Attorney-General attended the Conference at Dunedin. He was then in office but a few months, but his address at that Conference, and his views expressed during the limited time he was able to remain with us, led us to think that we had an Attorney-General to whom the profession could look with confidence for a sympathetic consideration of any matters affecting the profession that might be placed before

him, and also with the feeling that on any subjects on which the profession was competent to express an opinion that opinion would be given due weight. In no way have we been disappointed in these expectations. We have found the Attorney-General accessible at all times, helpful always, sympathetic with and mindful of our views and opinions, which, indeed, he has not waited for us to express but has of his own motion approached us on. We are lawyers. We as a profession know no politics, know no party. We should and do, I feel sure, express our thanks to our Attorney-General who has throughout his term of office remained one of us, while at the same time he has, I have no doubt, remained perfectly loyal and helpful to his colleagues."

Council of Law Reporting.

Dealing with general Society matters over the last two years, the President had to report that matters had moved somewhat slowly with the Council of Law Reporting.

"It took some time," he said, "though it was not a matter of great difficulty, to arrive at a decision in which the Council of Law Reporting and the New Zealand Law Society concurred, but eventually this was attained, and a Bill has been drafted constituting the Council a separate entity, the main representation on which is in the appointment of the New Zealand Society; and I do hope that during the coming session, regardless of such comparatively unimportant matters as national superannuation and the like, the necessary legislation will be passed."

The Disciplinary Committee.

Referring to the Disciplinary Committee, Mr. O'Leary said that it had now been functioning for two years, and they could not but be thankful for the powers of self-discipline conferred on the profession itself. The Committee had met frequently, but there had only been one really large matter to be dealt with.

A number of lesser matters had been concluded, mostly by consent. An increase in the number of members of the Committee was necessary, so as to make it less difficult to get the necessary quorum, while, at the same time, ensuring representation on the Committee from all over New Zealand, and legislation would be promoted to attain this object. In the meantime, the thanks of the whole of the profession was due to those members of the Committee resident outside Wellington, who had devoted so much time and care to the Committee's work, often at considerable inconvenience to themselves.

Fidelity Guarantee Fund.

"The Fidelity Guarantee Fund is in a healthy condition, the best since its inception," Mr. O'Leary continued. "I hope that with a continuance of freedom from claims the fund will before long be in a flourishing condition, though I am afraid it is a far cry to the attainment of such a position as was the hope of the inaugurators that the fund would before many years be such that we could decrease the levy. That was the ideal. It is a long way off, but it is an ideal which each practitioner having the welfare of the profession at heart can help to attain to, and it is not beyond the powers of attainment within a reasonable time.

Broadcasting.

"A matter which I deem of some importance dealt with last year resulted in the expression by the Council of the Society of its views on particular matters concerning broadcasting and kindred subjects to which the attention of the Council had been drawn," the President proceeded.

"These views are based on the fundamental principle that practitioners should not either directly or indirectly seek to advertise themselves in their professional capacity.

"The Wellington Society had some time previously affirmed these views or rules and the New Zealand Society thought it wise to adopt them as views which might well be used as a guide to practitioners throughout New Zealand.

"I do want to say that these rules were not intended to be in any way directed at any particular individual. If conduct which would now be a breach of these rules was in any way adopted, I have no doubt that it was done thoughtlessly and heedlessly, and practitioners had only to have their attention directed to it and there would be no cause for complaint.

"We should at all times look upon it as a duty to maintain a high standard in all matters affecting the profession, and in this particular matter whether the standard is maintained depends on how far each individual upholds it.

"A breach of professional etiquette should be as serious a matter to a practitioner as any impropriety in the practice of his profession."

Poor Persons' Divorces.

There was a matter of which the President said he wished to speak. It had not been before the Society in any way, but, because of information which had been conveyed to him, it was a matter to which he should draw attention. It was the question of divorce *in forma pauperis* or what is shortly termed a "pauper divorce."

"Now I do not wish for a moment to discourage any practitioner from taking and willingly taking poor persons' work," he continued. "As a matter of information the subject of introducing rules for the conduct of poor persons' causes is one which has been considered by the Law Revision Committee, and a report has been made on the matter.

"In due course it is likely that poor persons' rules, analogous to the English rules, will be adopted, and, when adopted, acted on. When that time comes I have no doubt that every practitioner from King's Counsel to the most recently admitted junior will willingly undertake any work allotted, thereby bringing credit to himself and honour to his profession, and by doing so refuting the accusation that is sometimes made that we are a selfish profession unwilling to do anything except it is certain to bring us gain or emolument.

"But that is not quite what I want to speak about: these pauper divorces which at least in some places have become somewhat of a scandal. During the depression period, the work was willingly done, whenever a genuine case was presented. I have reason to believe that this is not so now. In many cases, only through the false swearing of the petitioner as to means are the rules complied with. There is, too, a suspicion that at times the practitioner has aided the petitioner. One example which has come to my notice is that a client of a firm of solicitors who uplifted £150 from them, then suggested they should institute divorce proceedings *in forma pauperis*. They refused, whereupon he went to another solicitor, who did as he desired, and his divorce went through as a pauper one.

" By all means act in genuine cases. But be honest with yourselves and with your fellow-practitioners, and see to it that you do not willingly or carelessly aid in cases that are not genuine.

JUDICIAL APPOINTMENTS.

" We have at various times affirmed the principle that judicial appointments should be made from the ranks of the practising Bar, and it is pleasant to record that in the appointments made during the last two years this principle has been adhered to," said Mr. O'Leary.

" The common breach of the rule was the appointing of Civil Servants to the Magistracy, but it is a matter of congratulation that in the appointments of the present Administration to the Magistrates' Bench these have been made of active practitioners. If one may be permitted with due respect to say so, these are excellent appointments, and are of men of the outlook of character which we desire to perform our judicial functions."

The President then referred to the recent appointment to the Magistracy of Mr. A. M. Goulding, who was joint secretary of the Dominion Legal Conference at Auckland in 1929. In mentioning this excellent appointment, Mr. O'Leary said, amid laughter, that he did not wish to be taken as holding out any hopes to the secretary of the present Conference, Mr. V. G. Spiller.

TEMPORARY JUDGES.

" On the question of judicial appointments there is another aspect to which I desire to draw your attention," the President continued.

" By the Judicature Act, 1908, the retiring-age of a Judge is seventy-two. There is provision in the same statute for the appointment of a temporary Judge for periods not exceeding twelve months.

" One of the Judges reached the age limit at the end of 1936, when he was duly farewelled in Court and out of Court by members of the profession. He, however, did not retire ; by appointing him as a temporary Judge his period was extended for a year, and in 1937 it was again further extended. Now I venture to suggest that this course should only be followed for very good reasons, otherwise it might be suggested that the effect of the statute was being nullified.

" I have no doubt that there were very good reasons in the present case, but I do suggest that it is a course that should not become habitual.

" The profession have an interest in the matter—the only preferment members can get is to the Bench—either Magisterial or to the higher Court. Rising practitioners are entitled to expect that leaders in due course will move on ; leaders are entitled to expect that they in due time will be considered for appointment.

" The retiring-allowance of a Judge might be a matter of some consideration for a barrister invited to take a seat on the Bench—retiring-allowances can only be secured by sitting for at least ten years, and a delay of a year or two years in being offered an appointment might make it impossible or undesirable for a practitioner to accept. We do know of cases in the past where the offer of an appointment has been delayed too long to make it desirable for the barrister concerned to accept.

" It is also not without moment to remember that a temporary Judge cannot sit on the Court of Appeal. This fact is having at the present time the result that one at least of the puisne Judges is a member of both divisions of the Court.

" All these are matters in which the profession is interested, and I make no apology for mentioning them, while at the same time I wish to make it perfectly clear that there is in my remarks no suggestion or imputation as to the competency of the learned Judge whose term of office has been extended—whose worth is known to all of us and to appear before whom it is always a delight.

' While on the matter of judicial appointments, it is to be noted that there appears to be a reluctance in New Zealand to appoint a temporary Judge from the ranks of the practising Bar.

" We hear at times of Judges being overworked—that they could do with assistance which is not available. What would be simpler than to appoint a temporary Judge from the Bar ? It is done in Australia. It is done in England : not under the title Acting-Judge, but as a Commissioner of Assize.

" I should think that there is much to recommend such a course. It would give those in whose hands appointments lay the opportunity of seeing whether the Acting-Judge is worthy of permanent appointment whilst, on the other hand, it would enable him to make up his mind whether the position is such that he would desire it permanently.

COMMISSIONS OF INQUIRY.

" Another field in which the authorities appear to be reluctant to use our services is in connection with Commissions of Inquiry and analogous tribunals which are set up from time to time," the speaker said.

" I know there are one or two very expert gentlemen whose services are frequently used, and who without doubt preside at such tribunals with great ability and with credit to themselves and satisfaction to others. But they are not always available, and one sees Magistrates being taken from their ordinary sittings, no doubt at the cost of upsetting existing arrangements and perhaps throwing an undue amount of work on to their brother Magistrates.

" In England and in Australia the services of barristers are quite frequently used, and I commend the suggestion to those concerned that barristers of standing might well be used. And I have no doubt they would give every satisfaction.

" In the scope of many of these inquiries and commissions, political questions and matter of public controversy often arise ; and it is not right that any Judge of the Supreme Court should be placed in the position of hearing and commenting upon them, as he would necessarily have to do. When the important income-tax inquiry, involving the Rt. Hon. J. H. Thomas, became necessary in England recently, three practising barristers formed the Commission appointed to hear evidence and report to the Government. Their expedition and their findings were noted with great satisfaction by the public at large.

JUDGES' SALARIES.

" Finally, as we are considering matters relating to the Judiciary, I think it not out of place to remind those whom it may concern that, in my view, the salaries of Judges is due for reconsideration," Mr. O'Leary added.

" Prior to 1920, the Chief Justice received an annual salary of £2,000, and the puisne Judges, £1,800. In 1920, these amounts were increased to £2,250 and £2,000 respectively, and they have remained so since.

" It is the fact that barristers have made a very large sacrifice in accepting an appointment, and that others have delayed in accepting, or, indeed, refused to

accept, because of the financial sacrifice it would involve. It is submitted that these positions, amongst the most important in the land, should be adequately remunerated.

" It would not be proper for me to make comparisons, but I could do so ; but I can point out that the salary of a puisne Judge, after deducting income and employment tax, would for the year 1936–37 net approximately £1,600.

" I respectfully suggest that the salary is inadequate for the position."

In conclusion, the President said that, in the course of his remarks, he had touched on a number of disconnected and diverse subjects, but they were such as he considered it his duty to mention or as the Conference would find of interest to discuss.

" Let it be understood that so far as they are views or opinions they are my own," Mr. O'Leary emphatically said. " No one else is responsible for them. Nevertheless, for what they are worth, I have expressed them."

He added that at 2.30 p.m. the Conference would resume, and it would embark on the hearing of, and discussion on, papers to be read and remits to be moved. He trusted they would have animated, intelligent, and fruitful discussion. He trusted, too, that all who had thought it worth while to attend the Conference would benefit by it, and would enjoy, too, the social side which had been so thoroughly catered for by their Canterbury friends.

The President was heartily applauded at the conclusion of his address.

Some Personalities at the Conference.

The Conference President, Mr. H. F. O'Leary, K.C., was born at Blenheim in 1886 ; educated at St. Patrick's and Public Schools, Masterton, and at Wellington College ; secretary, executive member, and president Victoria University College Students Association ; winner of Union Debating Prize, Plunket Medal, and (with Mr. B. E. Murphy) Joynt Scroll, 1906 ; College cricket and football captain ; member New Zealand University fifteen against Australian Universities, 1909 ; LL.B., 1908 ; in practice, Wellington, in partnership and on his own account, and, later, partner in Messrs. Bell, Gully, Mackenzie, and O'Leary ; King's Counsel, 1935 ; member, Treasurer, Vice-President, and President of Wellington District Law Society, 1918–35 ; Council member of the New Zealand Law Society, 1921–36, and President, 1935–38 ; member Council of Law Reporting, 1929–33, 1935–38 ; member Victoria University College Council ; chairman of the Disciplinary Committee of the New Zealand Law Society since its inception ; Conference President, 1936, 1938.

Mr. A. H. Johnstone, K.C. (*The Jury System : Is Reform Desirable*) was born at Milton, Otago ; educated at the Tokomairiro District High School and Victoria University College ; first fifteen ; Bachelor of Arts, 1903 ; Bachelor of Laws, 1904 ; President Taranaki District Law Society, and, later, of the Auckland District Law Society of which he has been Council member, Vice-President, or President, since 1921 ; Council of Law Reporting, 1933 ; Vice-President of the New Zealand Law Society, 1933 to the present time ; King's Counsel, 1934 ; member of the Auckland University College Council ; foundation member of the Council of Legal Education, of the Management Committee of the Solicitors' Fidelity Guarantee Fund, and of the Disciplinary Committee of the New Zealand Law Society ; Vice-President, Dominion Legal Conference, 1938.

The Attorney-General, Hon. H. G. R. Mason, was born at Wellington, in 1885 ; educated at Clyde Quay School, Wellington College (Dux, 1902), and Victoria University College ; M.A., hons. ; LL.B. ; in practice at Pukekohe (1911) and Auckland (1924) ; Mayor of Pukekohe, 1915–1919 ; M.P. for Eden, 1926–28 ; M.P. for Auckland Suburbs since 1928 ; Member of Auckland Transport Board, 1931, and present Chairman ; Attorney-General and Minister of Justice, 1936 ; Chairman, Law Revision Committee.

Mr. J. D. Hutchison, President of the Canterbury District Law Society for 1938, was born in Dunedin in 1894, son of Mr. (now Sir) James Hutchison ; educated Otago Boys' High School, Otago University, and Victoria University College ; served with the New Zealand Field Artillery, 1914–16, 1917–19, Egypt, Gallipoli, Western Front ; LL.B., 1919 ; represented New Zealand University at football, 1920, represented Wairarapa, 1922–23 ; middleweight boxing champion New Zealand University, 1920–21 ; early legal experience and practice Dunedin, Wellington, Carterton ; since 1926 member of firm of J. J. Dougall, Son, and Hutchison, Christchurch.

Mr. A. C. Stephens (*The Relations between the Legal Profession and the Public*) was born at Dunedin in 1892 ; son of the late Mr. J. C. Stephens ; educated Mornington School, Otago Boys' High School, and the University of Otago ; member first fifteen and Dux of Otago Boys' High School, 1910 ; Junior University Scholar, 1910 ; member Otago representative soccer team, 1913 ; LL.B., 1915 ; Lecturer on Contracts at University of Otago, 1916 ; War service, 1916–1918 ; resumed Lecturership on Contracts, 1920 ; in 1921 was admitted to partnership in the firm of Mondy, Stephens, Monro, and Stephens, successor to firm founded by Mr. (later Sir) Robert Stout and Mr. George Mondy in 1887 ; member, Vice-President, President or Treasurer of Council of the Law Society of Otago from 1925 to 1934 ; LL.M., 1925 ; Lecturer on Jurisprudence at University of Otago, 1932 ; Dean of the Law Faculty, and member of Professorial Board, University of Otago, 1935 ; member of the Law Revision Committee, 1937 ; author of *Stephens's Testator's Family Maintenance* and assistant author of *Stephens's Supreme Court Forms*.

Mr. David Perry (*Some Aspects of the Law of Vendor and Purchaser*) was born at Wellington in 1896 ; educated at Wellington College and Victoria University College (first fifteen, 1916) ; served with First Battalion of the Wellington Regiment in France, 1917–18 (wounded) ; LL.B., 1921 ; joined his brother (now the Hon. W. Perry, M.L.C.) in practice, 1923 ; member of the Council of the Wellington District Law Society, 1931–1937, and President, 1936 ; member of the Committee of Management of the Solicitors' Fidelity Guarantee Fund.

(*Concluded on p. 121.*)

The Attorney-General's Address.

The Place of Law in the Community.

AT the conclusion of the President's address at the opening of the Conference, the Attorney-General, the Hon. H. G. R. Mason, was called on by Mr. O'Leary, and he addressed the Conference as follows:

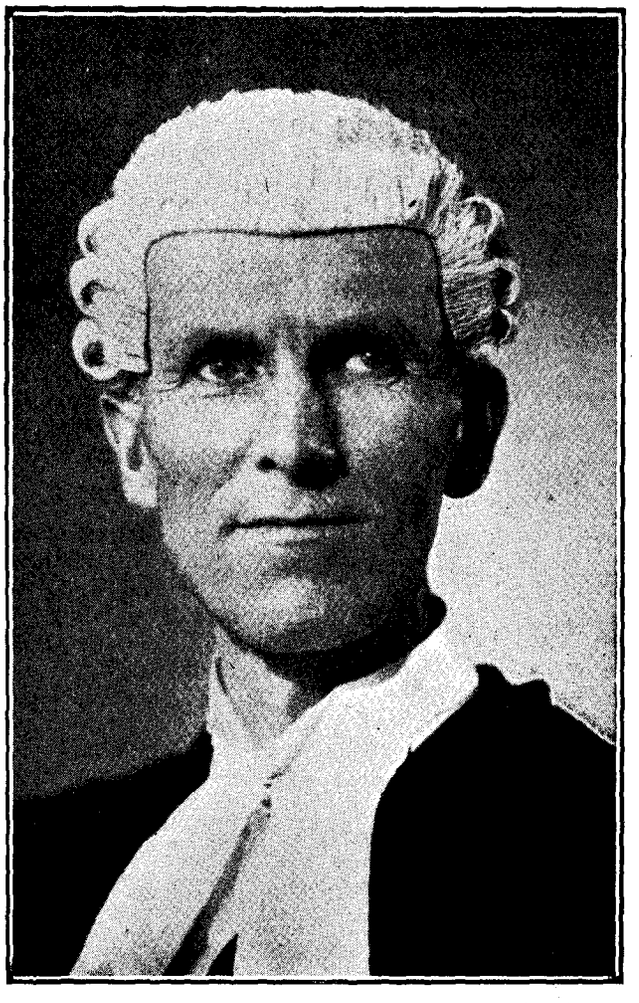
"I am put down for an address, or so it is said. I do not know that there is anything very special that I have to say, but it is sometimes considered that members of Parliament are very fond of hearing themselves talk, and consequently it was thought, I suppose, that I should be offended if I were not asked to say something. Actually I am very pleased to hear the views your President has been expressing, and one or two of his observations have furnished me with some thoughts on which I should like to say a little.

A LIVING PERSONALITY.

"First, however, I want to join with you in thanking our friends of Christchurch for what they have done in respect of this Conference. It is to be remembered that the first Conference was held here; and, in commencing these Conferences a great thing was done by the profession in Christchurch. The different Conferences have been very interesting and valuable in bringing the members of the profession from the furthest ends of the Dominion into contact with one another. What was merely a name before has become a living personality, and that is a very big thing.

"I pass from that to one or two things that you, Sir, have mentioned. With respect to the Council of Law Reporting, I will say that the Bill will have my full support. Of course, I have not charge of the whole mechanism of Parliament, but as far as I have any power I will undertake to see that 'trivialities' do not stand in the way.

"With regard to the appointment of Magistrates, I agree thoroughly as to the expediency of appointing Magistrates from the practising Bar. I must qualify that, however, by saying that is the method to be greatly preferred; but that appointments need not be exclusively confined to such candidates. In making that reservation, I am not in any way attempting to minimize the proposition that appointments from the Bar are in general much to be preferred.



S. P. Andrew Studios

The Hon. H. G. R. Mason.

THE APPOINTMENT OF TEMPORARY JUDGES.

"Concerning the retirement of Sir John Reed," I say without any reservation that I very sincerely believe every syllable you have uttered with respect to him, and as to the inexpediency of such a temporary appointment. It is a practice which is highly objectionable, and one only to be followed in particular circumstances justifying it. In the present case the temporary appointment was made to fill a blank, which, at the time, would have been difficult to fill otherwise. Apart from the general considerations which I have mentioned, there have been cases in this country of temporary appointments of those who have really passed the time when they have been fully efficient. That has given me a strong opinion in the matter, quite apart from the general considerations you have mentioned, and no one could approach the matter with a stronger prejudice than I. In the present case we have temporary work continuing in the form of applications under the Mortgagors and Tenants Rehabilitation legislation. It was not known how long that would take, and possibly the estimation which was made at the time was a little on the optimistic side. There was, however, the prospect of that work terminating, thus setting free another Judge. In that event there was no need to appoint one more Judge, and the position was filled temporarily in what seemed the only possible way. Certainly I agree it is a good thing to have a temporary Judge appointed from the practising Bar. I am very glad indeed to hear your statement, Sir, as to the eagerness with which such an office would be sought. I confess that my impression was the reverse; and I thought that to get a member of the Bar to undertake the work temporarily would have been exceedingly difficult. Whether I was right or wrong, I do not know. I looked upon the matter as quite hopeless; and, if I am wrong, it will at any rate be interesting to know in case another similar position should arise. I should have been very thankful indeed had I thought it possible to find such a solution, Sir, as you have suggested. No one can more sincerely echo every word you have spoken as to the general regard and esteem in which Sir John Reed is held.

That affection and esteem was not in any way a matter for consideration in filling the gap. It was simply the other consideration that I have mentioned.

"I am glad to have the suggestion from you, Sir, as to the appointment of practising barristers for commissions of inquiry, &c. It is a suggestion which can doubtless be used to advantage. I think it is one which may practically solve a problem which has been solved only with some inconvenience hitherto.

POINTS OF FUNDAMENTAL IMPORTANCE.

"Referring now to the Conference itself, I congratulate the members of the profession for continuing the Conference begun in Christchurch ten years ago. It is an important thing to the profession. What has been done at Conferences has resulted in attention being called to defects in our law which have subsequently been remedied. That has been an important work of the Conferences.

"Another, an even more important aspect of the Conferences, I believe, is that they do a great deal to remind the public and the profession itself of things which people are likely to forget. The first thing is the importance of the law to our people generally in their daily activities. It constitutes, moreover, the necessary basis for the evolution of all our institutions. I think we can get great consolation from this reflection. To-day there is a great deal of fear abroad in many quarters concerning the changes and fear of changes respecting governments in other countries, and people sometimes fear for our country and our form of government. A just appreciation of the place of law in our community will guard us against too easily giving way to these fears. Different nations have their different characteristics, but it is true to say that our nation is that one which above all others has a respect for, and attaches a high importance to, the law. This means that our nation must be that one which has the best and most democratic government. It is not an accident that our country has developed along democratic lines from the period when the dominance of law was most definitely asserted. When the question of the Divine Right of Kings was a practical question in England, had the dominance of the law not been the doctrine that finally triumphed there could not have been that confidence upon which our democratic institutions have since been built.

"Secondly, one would expect to find democracy most highly developed in that country which had most respect for the law. I think, then, that we may look upon ourselves as in a far stronger position than the Governments of other less fortunate countries, and I feel that we may quite well put aside those misgivings which are sometimes entertained that the forms of government in other countries are a cause for fear in our country. It is unfortunate that these fears exist, because they are the cause of bad feeling, for fear is related to hate while confidence is related to good-will.

"Thus the law is related to the stability of our institutions, and upon it depends the assurance of happiness to our people. Little reflection indeed is required to realize the necessity of law to our peace and happiness, and to realize also the importance of the law and the lawyer in the community. That the good effects of these Conferences are numerous few will gainsay, and not the least of their beneficial results is that they remind both ourselves and the public of those points of fundamental importance to which I have briefly referred."

The PRESIDENT then announced the luncheon adjournment.

The Conference resumed at 2.30 p.m., when MR. A. H. JOHNSTONE, K.C., of Auckland, delivered the paper on "The Jury System: Is Reform Desirable?" which appears on the next page.

Visiting Ladies Entertained.

Morning Tea at the Botanical Gardens.

On their arrival at their places of residence while in Christchurch, each visiting lady was delighted to receive a posy of flowers from the Canterbury Law Society. In addition to their printed programme of events, they received a personal-name badge engrossed on parchment, and to be suspended by green legal tape. This was a pleasing innovation, as it enabled everyone to see who the other ladies were and took the place of a series of introductions. These were the work of the artistic hands of Mrs. V. G. Spiller, the wife of the Conference Secretary.

The visiting ladies' first appointment was the Mayoral Reception, which they attended in large numbers. Thence, to the site of the laying of the foundation-stone of the new Courts of Justice, where their numbered seats were awaiting them. They preceded the robed members of the Bar to the function, and were there joined by them. It is said that many of the wives of practitioners had not previously seen their husbands in forensic attire; and, it is also said, that some were apprehensive lest the curl should come out of the wigs by reason of the light rain. As a result, there was unfamiliar concern for the preservation of the immaculate panoply of the male members of the family; and much covert pride in their appearance from isolated family groups.

There was much interest on the part of the ladies in the representative of their sex in wig and gown. This was Miss Isobel Wright, daughter of Mr. A. F. Wright, Christchurch; and after her recent admission, with a brilliant scholastic and University career, she was about to conclude her studies at Oxford University, whence she was setting out at the conclusion of the Conference.

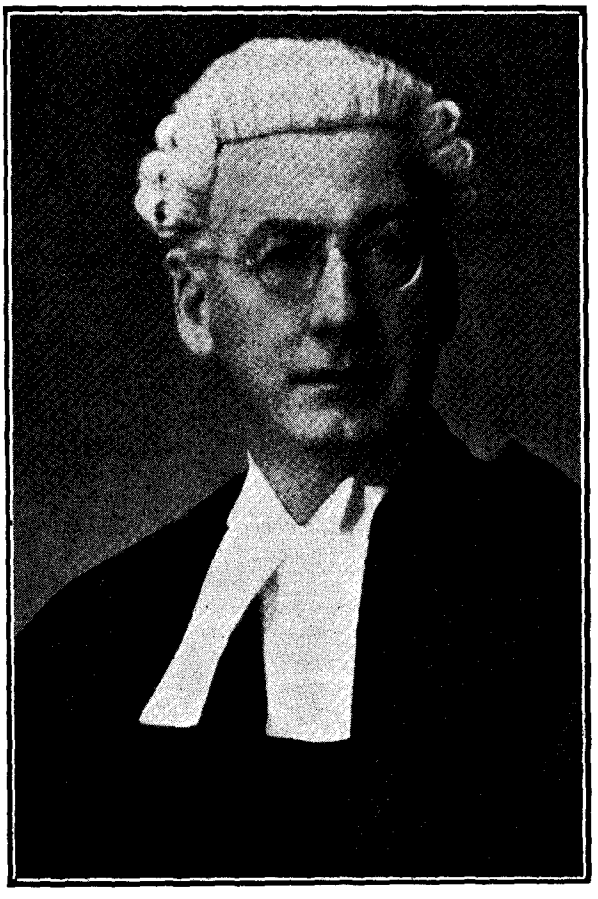
After the ceremony, the ladies were conveyed by cars to the Botanical Gardens, and, in this charming setting, they were entertained at morning tea in the Kiosk. The members of the Conference Ladies' Committee received their guests. After tea had been served, Mrs. George Weston, on her Committee's behalf, welcomed to Christchurch all those ladies who had accompanied practitioners. She emphasized the desire of the Christchurch ladies to do everything possible for their guests' pleasure during the days of the Conference. She hoped that every minute of their stay would be enjoyable, and that, when the Conference ended, they would take away memories of a happy holiday.

The opening day of the Conference was a joyous introduction to many pleasures to come. All the ladies' gatherings were very happy affairs. The Conference Ladies Committee was assiduous at all times in their attention to the comfort of the visitors; and, in their good work, the wives and daughters of the local practitions generally industriously assisted them.

The Jury System: Is Reform Desirable?

By A. H. JOHNSTONE, K.C.

IT may not be altogether unprofitable if, before proceeding to discuss the question of reforming the jury system, we first consider for a little the institution to which reform is to be applied, how it came into being, and how over a period of centuries it evolved into its present form. No part of our social polity has been more extolled by Judges and writers upon



Alan Blakey, Photo.

Mr. A. H. Johnstone, K.C.

constitutional questions than the jury system. Blackstone, writing in the middle of the eighteenth century says:

> "Its establishment and use in this island . . . though for a time greatly impaired by the introduction of Norman trial by battel, was always so highly esteemed and valued by the people that no conquest, no change of government could ever prevail to abolish it. In Magna Carta it is more than once insisted upon as the principal bulwark of our liberties."

And again:

> "The more it is searched into and understood, the more it is sure to be valued, and this is a species of knowledge most absolutely necessary for every gentleman in the kingdom, as well because he may frequently be called upon to determine in this capacity the rights of others—his fellow-subjects—as because his own property, his liberty, and his life depend upon maintaining in its legal force the constitutional trial by jury."

Forsyth, in the opening paragraph of his book, *History of Trial by Jury*, published in 1852, refers to it as one of the most remarkable of "the institutions of England, and until recently a distinctive feature of our jurisprudence." Great Judges, such as Fortesque, Coke, Hale, and Sir James FitzJames Stephen, have lavished praise upon it, and foreign writers have been hardly less enthusiastic. It is the "palladium of British liberty" and the "most democratical of juridical institutions."

HISTORICAL.

In its origin intimately connected with the kingly power, the jury system was changed in the course of time into a popular institution, so that to-day it is the representative of the public in the administration of justice. In this way it has become an important feature of organized society, for by their verdicts juries in effect set standards of conduct for the community, and fix the limits of the liberty which members of the public are to enjoy. Acquittals by juries in the face of clear evidence have not infrequently brought about changes in the law. Forsyth, writing in this connection (p. 427), suggests that the freedom of the Press is "chiefly indebted to the jury for its vigorous existence." He says, at p. 427:

> "Every State trial for seditious libel in this country, is an appeal from the government to the people. They, by their representative twelve, determine in each case under the guidance of a Judge the degree of license which is allowable in the discussion of public questions, and their liberty is thus placed directly in their own hands."

And Lord Justice Atkin, as he then was, in *Ford v. Blurton*, (1922) 38 T.L.R. 801, 805, recently used these memorable words:

> "Trial by jury except in the very limited classes of cases assigned to the Chancery Court, is an essential principle of our law. It has been the bulwark of liberty, the shield of the poor from the oppression of the rich and powerful. Anyone who knows the history of our law knows that many of the liberties of the subject were originally established and maintained by the verdict of juries in civil cases. Many will think that at the present time the danger of attack by powerful private organizations or by encroachments of the executive is not diminishing."

Historians are not agreed as to the origin of the jury system. Some, including Forsyth, regard it as indigenous to England. They would date it back at least to the time of Alfred the Great. Others express the view that it grew out of the inquest by sworn recognitors imported into England from Normandy at the time of the Norman Conquest. But, as Taswell-Langmead succinctly puts it:

> "Whether we regard the institution as a modification of the old English judicial system, or with far greater reason as an inheritance derived through the Normans from the Carolingian Kings, two points are in any case clear. First, the system of inquest by sworn recognitors, even in its oldest and simplest form, appears for the first time in England subsequently to and shortly after the Norman Conquest; secondly, the system was, in England, from the first, worked in close combination with the previously existing procedure of shire moot, and in its developed form trial by jury is distinctively and exclusively an English institution."

Thus it was not the creature of positive law. It arose out of the usages of an early society, and was adapted from time to time to meet the changing needs of the English people.

In almost all systems of law the public or a selection from their number has taken an important part in the administration of justice. The *judex* of the Roman Law was in fact a private citizen empowered to try issues of fact and law under the directions of a Magistrate. He was not a lawyer. He was not paid. He was compelled to act if selected, and was called in for a single case only. And in Teutonic countries the freemen or a representative number of them performed many important duties both in civil disputes and in criminal trials. Thus in early England there were the compurgators, usually twelve in number, who testified to the trustworthiness of the person on whose behalf they came forward. They were witnesses as to character. There was also the system of trial in local Courts by the whole body of the shire or hundred, and there were the laws of Ethelred promulgated about the year 997 included among which was the provision :

> " That a gemot be held in every wapontake and that the twelve senior thegns go out and the reeve with them and swear on the relic that is given them in hand that they will accuse no innocent man nor conceal any guilty one."

Some historians find in this institution the direct progenitor of the grand jury, but the better opinion seems to be that this was not a law of any generality, and that the true origin of the jury is Frankish and not English.

At the Conquest there was no sweeping change in the laws and institutions of England. Changes and innovations were undoubtedly made, but they were mainly such as adapted the old institutions to the polity of the Normans. The characteristic features of the Anglo-Saxon jurisprudence were retained, and amongst them the methods of trial by compurgation and ordeal. Moreover, the period between the Conquest and the reign of Henry II was one in which the two nations " not yet blended by the effects of intermarriage did not altogether fall into a common law " : *Hallam's History of the Middle Ages*, ii, 386.

But the Conqueror established amongst other things the *curia regis* and appointed justiciars to preside in it. And what is more germane to our discussion he introduced the inquest of sworn recognitors. The recognitors or jury according to Maitland

> " were in essence a body of neighbours summoned by some public officer to give upon oath a true answer to some public question."

They were at first used by the King to obtain information upon matters which had nothing to do with the administration of justice ; for instance, the information from which the Domesday Book was compiled was obtained in this way. But, occasionally, strictly legal matters were decided by the recognitors, and, gradually, as the advantages of the system became apparent, the jury was more and more used until the older methods of trial were superseded. Ordeal was abolished in 1215. Compurgation died out, and combat—a Norman importation—though not abolished until the time of George III, fell into disuse.

It is the use of the recognitors or jury in judicial matters which is peculiar to English law. By the time of Henry II trial by jury was in common use both in criminal and in civil cases. Reference is made to the jury as an established institution in the Constitutions of Clarendon, 1164, and it seems that the regular use of the grand jury or jury of presentment dates from about the same time. The first clause of the Assize of Clarendon enacts that

> " for the preservation of the peace and the administration of justice inquiries be made throughout each county and hundred by twelve legal men of the hundred and four legal men from each township, under oath to tell the truth if in their hundred or their township there be any man who is accused or generally suspected of being a robber or murderer or thief."

These grand juries could present either from their own knowledge or from the information of others just as at the present time the grand jury may present matters which they themselves have observed. The grand jury of to-day still retains several of the characteristics of the original grand jury. They consider evidence in secret, they hear witnesses for the Crown only, they may act if they please on their own knowledge.

At first the grand jury was the only jury in criminal cases. Presentment was in those earliest times followed by the water ordeal ; but, after the abolition of the ordeal, the jury which presented an accused person also tried him. At a later date additions were made to the presentment jury of special jurors selected for the case in hand, and, lastly, a jury of twelve chosen from the juries at the Court were elected for each case. In this way the petty jury emerged out of the grand jury. There are many explanations of the use of the number " 12 "—" a group just large enough to destroy even the appearance of individual responsibility." Lord Coke's view was that

> " the law in this case delighteth herself in the number twelve, for there must not only be twelve jurors for trial of matters of fact, but twelve Judges of the ancient time for the trial of matters of law in the Exchequer Chamber, also for matters of state there were in ancient times twelve Councillors of state. He that wageth his law must have eleven others with him which think he says true. And that number of twelve is much respected in Holy Writ, as twelve apostles, twelve stones, twelve tribes : *3 Coke*, 155 (*a*).

The jury for the trial of civil actions was directly descended from the inquest of sworn recognitors.

It must be remembered, however, that the function of the jury in both civil and criminal cases as established in the twelfth and thirteenth centuries was widely different from that of the modern jury. The jurymen were still sworn recognitors founding their verdict upon their own knowledge or upon tradition and not upon evidence. If all were ignorant of the facts, a fresh jury was summoned. If some were ignorant or they could not agree, others were added—a process known as afforcing the jury—until the unanimous verdict of twelve witnesses could be obtained. But as time went on stress was laid more upon their judicial functions than upon their functions as witnesses. By the middle of the fifteenth century the practice of giving evidence *viva voce* before the jury was firmly established, but juries continued to rely upon their own knowledge in addition to evidence down to the reign of George I, when it was established that they must find their verdict in accordance with the evidence alone.

Thus, from earliest times until now it is as a representative body of twelve persons—a quasi-corporate body—that the jury is called upon to give its verdict. It represents the common voice or the common sense of the community ; and that is why having a jury was called putting oneself on the country.

The freedom of the jury was not won without many struggles. In the days when they acted as witnesses they might well be guilty of perjury if they gave a wrong verdict. Such a perjurer or even reputed perjurer was liable to imprisonment and to have his lands and chattels forfeited under writ of attaint. This writ gradually fell into disuse and was abolished in the

time of George IV, but for centuries it was the principal method of setting aside a verdict improperly obtained. Again jurors were frequently punished for various kinds of misconduct associated with their office. And under the Tudor and Stuart Kings they were often illegally punished by the Court of Star Chamber when they acquitted persons charged with conduct which did not find favour with the Crown. The immunity of juries was finally established in 1670 by the Chief Justice Vaughan in *Bushell's Case*, (1670) Vaughan 135, 124 E.R. 1006, and fining and imprisonment of jurors for their judicial acts came to an end.

Such, in barest outline, is the history of the jury system. I have ventured, at the risk of being tedious, to remind you of it because I wish to emphasize the following points: First, that it is the result of some eight centuries of human experience; secondly, that it is an English institution evolved to meet the aspirations of our own race, our love of liberty, of justice and of fair play; and, lastly, that despite its imperfections it still works well, and is still a great constitutional safeguard. It may be added, as some proof of its value, that it has been adopted with or without modifications into many foreign systems of jurisprudence.

It has never been a fixed and rigid system like the laws of the Medes and Persians which alter not. Changes may be, and possibly now are due, but lawyers are traditionally conservative folk who will, it is thought, hesitate long before they countenance any substantial change in, or partial abolition of, a system, which, with all its faults, has played so important a part in our social organization.

In the year 1841, by an order of the General Legislative Council of New Zealand, provision was made for the introduction of the jury system into New Zealand, and from thenceforth it has formed an integral part of our legal institutions. It is recorded, however, that in 1838, two years before the proclamation of British Sovereignty in these Islands, a Maori was tried at Hokianga for murder by a jury of six Europeans and six Native chiefs. He was found guilty and executed. The authority for this proceeding is not stated. By an Ordinance of 1844 it was provided that a Maori, whose capacity had been certified under regulations, should be qualified to serve on a mixed jury for the trial of any case, civil or criminal, in which the person or property of a Maori might be affected. That provision has been re-enacted in subsequent legislation, and is in force at the present time. Further, since the passing of the Jury Law Amendment Act, 1862, where, in criminal cases, a Maori has been committed for an offence against a Maori, or, in civil cases, where both parties are Maoris, the trial may be had before a jury consisting of Maoris.

The kinds of jury contemplated by the Juries Act, 1908, are: (*a*) The grand jury or jury of presentment; (*b*) the common jury in criminal cases; (*c*) the common jury in civil actions; (*d*) special juries; (*e*) Maori juries; and (*f*) mixed juries. There is no property qualification for jurors in New Zealand.

The Grand Jury.

The functions of the grand jury in New Zealand are substantially the same as those of the English grand jury which, until 1933, formed an essential part of the English system of justice in criminal cases, but which except as to a few special cases was abolished in that year. The jurors are merely to inquire whether there is sufficient ground for putting the accused on his trial. They may not present an indictment against anyone on their own motion, but they may, though they seldom do, make presentments upon other matters. For many years it has been urged that the grand jury should be abolished on the ground that it has outlived its usefulness. Forsyth, writing in 1852, says that:

> "Of late years the opinion has been frequently expressed that the preliminary proceeding by grand jury is useless and ought to be abolished. And with respect to the district within the jurisdiction of the Central Criminal Court the idea is perhaps well founded. The legal knowledge and practised vigilance of the Magistrates of the metropolis render it almost superfluous to subject their committals to the supervision of another tribunal before a prisoner is put on his trial, and it is a great hardship that busy tradesmen should be taken from their avocations and detained for several days at a time upon an inquiry which is followed by no useful results as far as respects the jurymen themselves."

This argument has been frequently advanced as a reason for the abolition of the grand jury in New Zealand, but so far without result. In my judgment it would be a mistake to abolish the grand jury. In the first place, it is a very serious matter to place a fellow-citizen upon his trial before a Judge and common jury. It may be correct to say that, as a general rule, trained Magistrates do not commit where the evidence is insufficient to put a man on his trial, but it should be remembered that a great many accused persons in New Zealand are committed by Justices with no legal training. Moreover, trained Magistrates at times send on cases for trial which they should have dismissed.

When this happens, the presiding Judge is able to do justice by indicating to the grand jury the weakness of the evidence, and by inviting them to throw out the bill of indictment.

Then it is sometimes said that the attendance on the grand jury involves considerable loss of time to the jurors. That may be true, but, in my submission, the general public should be encouraged to give up some of their time to public affairs. By serving upon the grand jury they take a small part in the administration of justice and obtain some insight into the working of the judicial machine. Further, they themselves may make presentments to the Court upon matters to which they think the attention of the Judges should be called. We learned to-day that in 1869 the Christchurch grand jury presented that a Supreme Court was required at Christchurch, apparently successfully. The presiding Judge, in his charge to the grand jury, is given an opportunity of making pronouncements upon matters affecting the administration of justice which he would find it difficult to make in any other way, and thus to call the attention of the public to matters which, in his view, may affect their welfare.

Lastly, it should never be forgotten that, as Forsyth puts it, there have been times in our history when

> "it was very necessary that the shield of the grand jury should be interposed between the Crown and the subject."

Who can tell whether those times have for ever gone by? Sir Francis Bell said:

> "There may come a time when a person who is indicted may need that great advantage of the grand jury—its absolute impartiality. There may be occasions when a grand jury is moved by the sympathy of a certain number of influential persons to take a course favourable to the prisoner, but you will never find a case where the grand jury is influenced against the prisoner . . . The grand jury is after all the Assize of the country." (*Downie Stewart's Life and Times of the Rt. Hon. Sir Francis Bell*, p. 165.)

Notwithstanding its abolition in England and its slight use in Australia the grand jury should be retained in this country because it is still one of the constitutional safeguards of the liberty of the subject.

The Common Jury in Criminal Cases.

The argument for the retention of the common jury in criminal cases is overwhelming. No one will seriously contend that the issue of guilty or not guilty should be left to a Judge, however eminent. What is said in regard to this jury is that the verdict of a majority should be accepted, and that the age-long requirement of unanimity should be done away with. It is urged that under the unanimity rule disagreements and consequent miscarriages of justice are not infrequent, and that such disagreements are in most instances brought about by the dishonest behaviour of one or two of the jurors. The case for the majority verdict has been urged for over a century by many writers, and has been supported by many Judges. A Commission which sat in 1818 to report upon the Courts of Common Law in England said that it was difficult to defend the wisdom and justice of the rule of unanimity, and proposed that the jury should be kept in deliberation not longer than twelve hours, and at the end of that time, if nine agreed in a finding, it should be taken as a verdict. Hallam, writing about the same time, refers to the rule as "a preposterous relic of barbarism" and Bentham, one of the greatest law reformers, in his pamphlet, published in 1809, *The Art of Packing as Applied to Special Juries*, observes:

> "If the work of forming verdicts had been the work of calm reflection working by the light of experience in a comparatively mature and enlightened age some number certain of affording a majority on one side—*viz.*, an odd number—would on this as on other occasions have been provided; and to the decision of that preponderating number would of course have been given the effect of the conjunct decision of the whole."

In New Zealand many attempts have been made to obtain statutory authority for the acceptance of a verdict given by a majority of ten to two, but without success. The rule of unanimity grew up out of the practice already referred to of afforcing the jury—that is, of adding new members in the case of disagreement until twelve were found who agreed on a verdict, the accused being considered "Not guilty" unless twelve of his countrymen found him guilty.

It must be remembered, however, that until comparatively recent times the jury were not allowed to separate, nor were they allowed meat, drink, or fire until agreement was reached, although it is said candles were allowed. In this way weaker jurors were bullied into submission, and Hallam was right when he spoke of this method of obtaining agreement as "a relic of barbarism."

Cockburn, L.C.J., in delivering judgment in *Winsor v. The Queen*, (1866) L.R. 1 Q.B. 289, 305, had this to say concerning the unanimity rule:

> "Our ancestors insisted upon unanimity as the essence of the verdict, but were unscrupulous as to the means by which they obtained it; whether the minority gave way to the majority, or the reverse, appeared to have been a matter of indifference. It was a struggle between the strong and the weak, the able-bodied and the infirm, which could best sustain hunger, thirst, and the fatigue incidental to their confinement. . . . But . . . we now-a-days look upon the principles upon which juries are to act, I hope, in a different light. We do not desire that the unanimity of a jury should be the result of anything but the unanimity of conviction."

The conditions of jury service have greatly improved since the Lord Chief Justice gave expression to these views. Jurors, instead of being kept together indefinitely, may now be discharged after they have remained in deliberation for a reasonable time, being not less than four hours. They are allowed fire, light, and other reasonable refreshment at the expense of the State. The principal complaints at the present time seem to be that their seats are too hard and their pay inadequate, both of which are capable of easy remedy. There seems therefore to be now no reason arising out of the conditions of jury service why unanimity should not be insisted on. The contumaceous juror has always been a problem, and unquestionably his behaviour does from time to time put the country to the expense of a second and, sometimes, of a third trial. His refusal to act upon clear evidence does not however always result from entirely dishonest motives. In many cases disagreements are brought about because some of the jurors in their rough-and-ready way feel that a conviction even upon clear evidence would be unjust—*e.g.*, that to convict a bookmaker would be unjust whilst those who bet with him go unpunished, or to convict an abortionist whilst those who resort to him go free. In these cases the difficulty may not always be got over by accepting a verdict of a majority of, say, ten to two, or even nine to three, for disagreements take place in countries where majority verdicts are accepted—for instance, in South Australia. The remedy seems to lie in effecting a change in public opinion concerning the kinds of offences I have mentioned. However that may be, the advantages of unanimity are so great that the rule should be retained even if occasional miscarriages of justice result. These advantages were summarized by an American writer—Proffatt, *Trial by Jury*—in 1877 as follows:—

> "1. As each member of the jury is sworn to declare the truth according to his conscience a single member, if conscientiously impressed different from the others, is as much entitled to have that view considered as the view of the majority.
>
> "2. Where unanimity is required, the facts of the case are more thoroughly and fully investigated with a view to bringing unanimity about. For if a majority are agreed at first consultation there would be no necessity to deliberate and reason together with a view to a unanimous verdict.
>
> "3. When a unanimous verdict is required, each member, however insignificant, has a right to explain his views and to compel the majority to listen to them, for, it has been well said, truth is established by investigation but falsehood prospers by precipitancy.
>
> "4. The verdict of twelve men, if rationally obtained, is more likely to be correct than that of nine out of twelve.
>
> "5. It is calculated on the doctrine of probability that the probability of error in a verdict when a majority of nine out of twelve is sufficient for a decision is about one to twenty-two, while if unanimity is exacted it is one to eight thousand.
>
> "6. That a decision of twelve men when unanimous will command more respect and weight than nine out of twelve, or than the decision of a mere majority."

The same writer, at p. 117, adds:

> "It is a safe and most valuable principle in criminal law that before a person can be convicted of an offence and deprived of the most sacred rights a man can enjoy—life and liberty—there should be proof of his guilt beyond all reasonable doubt. And if when the facts are placed before twelve men who, we must presume, are conscientious a single one of them has a doubt of the person's guilt, this ought to be sufficient to prevent a conviction. It is true that there may be a possibility of corruption and a failure of justice, but better a thousand times this than that anyone should ever be unjustly stigmatized and punished with ignominy as a criminal."

I respectfully adopt this statement of the position, and submit it to you for your earnest consideration.

The Common Jury in Civil Actions.

Widely divergent views are held concerning the use of the jury in civil actions. There are those who hold the view that it should be abolished altogether. These abolitionists urge that jurors resent being called upon to arbitrate between people whose affairs do not con-

cern them, also that the verdicts of juries are frequently based upon the sympathies of the jurors and not upon the proved facts of the case. What chance, they say, has a wealthy corporation against a poor man seeking damages for personal injuries? Others insist that the jury should be more extensively used than it is at present. They point to the fact that in New South Wales trial by a jury of four is the normal procedure in all common-law actions—98 per cent. of such cases are so tried. And yet others would confine its use strictly to certain kinds of action where the issues for consideration are mainly of fact. It is submitted that the third view is the soundest. Beyond question, the tendency in England for many years has been to make less and less use of the jury in civil actions. Down to the 'sixties of last century it was the practice in England to try all common-law actions before a Judge and jury. On the other hand, juries were not used at all in the Courts of Chancery prior to 1858, and after that year they were used very sparingly. The law relating to juries was not altered by the passing of the Judicature Acts which brought about the fusion of law and equity into one system. Nevertheless, after these Acts came into force, the number of civil actions tried before a jury steadily declined, not by reason of any amendment of the law, for there was none, but because of the predilections of litigants and their advisers and, perhaps, the influence of the Judges. It was found by experience that the jury was a hindrance rather than a help in many classes of civil action.

Since 1933 there has been no absolute right to trial by jury in England either in the King's Bench Division or in the Chancery Division, but in the King's Bench Division, unless the Court is of opinion that the action cannot be conveniently tried by a jury, there is a right to a jury where a charge of fraud is in issue, or where there is a claim in issue in respect of libel, slander, false imprisonment, malicious prosecution, seduction, or breach of promise of marriage. In other actions in the King's Bench Division trial may be ordered with or without a jury at the discretion of the Court; but, unless otherwise ordered, such actions, and also all actions in the Chancery Division, are heard before a Judge alone.

In New Zealand for over fifty years the right to trial by jury in civil actions has been strictly limited. From 1882 to 1924, where the only relief claimed in the action was payment of a debt or recovery of damages exceeding £500, or the recovery of chattels exceeding £500 in value, the action was triable by a Judge and jury of twelve. If the debt or damages or value of the chattel exceeded £50 but did not exceed £500, either party had a right to have the action tried by a Judge and jury of four. Other actions were heard before a Judge alone unless the Court otherwise ordered. By rules introduced in 1924 the right to a jury was restricted to cases in which the only relief claimed was for damages in respect of a cause of action not being exclusively a breach of contract, and then only if eight days' notice were given by one of the parties that he required the action to be tried before a jury, and where, as in master-and-servant cases, the cause of action might be regarded as arising out of breach of contract or out of tort it was deemed to arise out of contract and therefore not to be triable by a jury. The trial was before a jury of twelve if damages claimed exceeded £200, and a jury of four if the damages claimed did not exceed this sum.

The rules of 1924 were repealed by the Judicature Amendment Act, 1936, which in substance restored the provisions in force prior to 1924.

Hence the right of a litigant to a jury of twelve or of four is now confined to cases where the only relief claimed is payment of a debt or damages or recovery of a chattel, and where the amount involved is over £500 for a jury of twelve, or over £50 and not more than £500 for a jury of four. It is submitted that this right is not founded upon any satisfactory basis. The true function of a jury in a civil action is to make findings of fact, and, if necessary, to assess damages. If they are not required for these purposes, they merely add to the cost of the trial and unnecessarily prolong it.

There is therefore no justification for the employment of a jury where the questions involved in the action are pure questions of law, or even where they are mixed questions of law and fact, or where elaborate directions on the law are required. And it is difficult to see of what value a jury can be in most cases of debt or damages for breach of contract or for recovery of chattels. On the other hand, whereas in many actions in tort, the main question is whether upon the evidence the defendant is liable in damages, and, if so, for how much, or where the character and reputation of one of the parties is involved, trial by jury should be granted as of right.

Further, since questions of fact which may conveniently be tried by a jury may arise in any kind of action, provision is necessary to enable the Court to order these questions to be tried by a jury should the Court consider it proper in the interests of justice to do so. It is therefore thought that the present English rule, based as it is upon experience obtained in the working of the Courts, is preferable to ours, and should be adopted here.

No one claims perfection or infallibility for the common jury. Lord Justice Pickford (afterwards Lord Sterndale, M.R.) is credited with having expressed the view that juries were never wrong, and the present Lord Chief Justice of England is said to have agreed with him; but the most ardent supporter of the jury system must concede that, in New Zealand at any rate, juries occasionally do go wrong. But, notwithstanding the defects of the system, the case for abolition has not, it is submitted, been made out. The jury represents the common sense of the community. It sets standards of conduct; it provides the reasonable man in the tribunal. In *Ford v. Blurton*, (1922) 38 T.L.R. 801, 803, Bankes, L.J., said:

> "The standard of much that is valuable in the community has been set by juries in civil cases. They are essentially a good tribunal to decide cases in which there is hard swearing on either side, or a direct conflict of evidence on matters of fact, or in which the amount of damages is at large, and has to be assessed."

For these reasons the jury is essentially a good tribunal to try the kind of action to which reference has been made. The Judge is then relieved of the invidious and responsible task of making decisions upon disputed questions of fact—a task for which he is not always well fitted. Moreover, what the litigant wants, and is entitled to, is not a finding of fact by a Judge, but a verdict of twelve of his fellow-citizens. Hence, trial by a Judge alone cannot be regarded as a satisfactory substitute for trial by a Judge and jury in this type of case.

It is admittedly a difficulty that juries are apt to be swayed by sympathy for an injured person, and to award damages where the right to them has not been clearly made out. The tendency to do so is most marked in motor-accident cases, because jurors know that the defendant is usually insured against liability. It has

been suggested that these cases would be better tried before a Judge with assessors. The most obvious objection to a tribunal so constituted is that the assessors are usually advocates more concerned to establish the view of the party they represent than to act impartially.

It is therefore by no means clear that justice would be better done between the parties by a tribunal so constituted than by a Judge with a jury. It is submitted that a common jury, especially since in these days most jurors commonly handle motor-vehicles, is better fitted to set and apply the standard of care than assessors. The jurors directly represent the public and not the parties, and it may well be that when they go wrong they are attempting to give effect to the view held by a section of the public that damages should be awarded in these cases whether the parties or one of them has been guilty of negligence or not. It is submitted further that juries are not always to blame because their verdicts do not meet with the approval of the Courts. Their duty is to investigate the proved facts and to decide who in the last resort was responsible for the accident; but it must be remembered that in a great many cases the problem for the jury is complicated by the defence of contributory negligence. The presiding Judge does not tell them to go out and find whose fault it was, because the law is not so simple as that. Instead, these lay-persons are directed often in great elaboration concerning the law of negligence, the burden of proof, the doctrine of last opportunity in regard to collisions with fast-moving vehicles; and when there is no room for that doctrine, then upon the doctrine of proximate cause; and, if one may say so, with great respect these judicial expositions are not always models of clarity. In the result, the jurors are more "afflicted than instructed" by these learned dissertations, and it is not to be wondered at if in their bewilderment and confusion they give the plaintiff the "benefit of the doubt." The law relating to contributory negligence is badly in need of authoritative restatement. To sum up, it is submitted that the common jury is the best tribunal to try the kinds of action referred to in the English statute of 1933, and that it should be in the discretion of the Court to permit trial by jury in other cases which may be conveniently so tried.

The Right of Challenge.

It is obviously desirable that fairness and impartiality on the part of the jury should be obtained as far as possible. Accordingly, from the earliest times, both in criminal cases and in civil actions, challenges to the competency of jurors have been permitted. In civil actions each party is entitled to six peremptory challenges—that is, challenges for which no reason need be assigned—or challenges "on his own dislike," and this is so even where the Crown is a party. In criminal cases it is different. Either the prosecutor or the accused may challenge the array on the ground of misconduct on the part of the Sheriff, or may challenge any juror for cause, or may challenge six jurors peremptorily. In England the prosecutor has no right of peremptory challenge, nor had he in New Zealand until he was given one by an amendment in the law made in 1898: Juries Act Amendment Act, 1898.

But both in England and in New Zealand the prosecutor has the right to stand any number of jurors aside without challenging them. The accused has no such right. If, however, the panel is exhausted before a jury is empanelled, the jurors who have been ordered to stand aside may be called again, and they may not again be ordered to stand aside, although presumably they may be challenged in England, for cause, in New Zealand, for cause or peremptorily.

Prima facie, this arrangement gives an unfair advantage to the prosecutor. The history of the practice of standing aside is stated by Cockburn, C.J., in *Mansell v. The Queen*, (1857) 27 L.J.M.C. 4, as follows:—

> "The question turns upon the statute 33 Edw. I, which, though repealed, has been re-enacted by the statute 6 Geo. IV, c. 50, s. 29. Previous to that statute the Crown exercised, either by legal prerogative, or by usurpation, the power of challenging peremptorily. The statute restrained that right, and took away the right of challenge on the part of the Crown without showing cause. But it appears that on that statute became engrafted the practice of allowing the challenge, and directing the person challenged to be put on one side until the panel should be gone through; and, if there were not sufficient without him, it then became unnecessary to show cause of challenge, and cause was not shown. The books, I think, show that this practice was not at first confined to the Crown. *Fitzharris's Case* seems to show that the accused had the same right as the prosecutor. It is conceded on all the authorities that where the Crown proposes to challenge, the counsel for the Crown has a right to have the juryman objected to set on one side till the panel is gone through, and it is not until the panel is thus gone through that cause need be shown."

Historically, then, the right of standing aside was a preliminary step in the challenge for cause, but in practice it operates to give the Crown the equivalent of the widest right of challenge. It is difficult, therefore, to see why it was thought necessary in 1898 to give the prosecutor the right to six peremptory challenges as well. In the case of *Reg. v. Bourke*, (1900) 19 N.Z.L.R. 335, it was strenuously argued that the amending Act of 1898, by conferring on the prosecutor the right to six peremptory challenges, impliedly repealed the old right to order jurors to stand aside. The Court of Appeal held, however, that the prosecutor was entitled to both rights.

Obviously, then, the rights of the prosecutor in regard to selecting a jury in criminal cases are immensely wider than those of the accused, for not only has the prosecutor the right to stand aside as many jurors as he pleases but when these jurors are called a second time he may exercise six peremptory challenges. There appears to be no justification for this discrimination against the accused in the normal criminal trial. The right of ordering jurors to stand aside is usually justified nowadays upon the ground that circumstances may and occasionally do arise which may make it difficult to obtain an impartial jury, for instance, where owing to civil disorder or sectarian strife public feeling has been roused either in favour of or against the accused. In such circumstances it is quite properly argued that the right if honestly used may be of great value. This argument, however, has no application to the vast majority of criminal trials. The suggestion is, therefore, made that the present Crown practice should be reversed; that the Crown in normal cases should use its right of peremptory challenge only, and that the right of ordering jurors to stand aside should not be resorted to except in those rare instances where its use is necessary in order to obtain an impartial jury.

Other Matters.

(*a.*) Attention is drawn to the provisions of s. 4 of the Judicature Amendment Act, 1936, the effect of which is to restrict, it is submitted unduly, the right of a litigant to have his case tried by a special jury. The right to a special jury has always been discretionary and has always been sparingly granted, but there can be no doubt about the value of this kind of jury where

the questions for consideration are beyond the understanding of the average juryman. Prior to 1936 a special jury could not be granted unless in the opinion of a Judge expert knowledge was required. Since that date it may be had only when a knowledge of "business, mercantile, or banking" matters is required. Since the object of having a special jury is to ensure that the jurors will understand the evidence, there appears to be no sound reason for restricting its use to these very circumscribed branches of knowledge: It is, therefore, submitted that the law should be amended to give the Court discretion to grant a special jury in all cases where expert scientific or technical knowledge is necessary to the understanding of the evidence.

(*b.*) The mixed jury seems to have been modelled upon the ancient *jury de medietate linguae.* This and the Maori jury have largely fallen into disuse, but since these are constitutional privileges which have been enjoyed by the Maoris almost from the foundation of the Dominion it would be unwise to abolish them without the consent of the Maoris.

(*c.*) The last matter to which reference is made is the pay of jurors. The labourer is worthy of his hire. It is a distinct hardship to a working-man that he should be inadequately remunerated for the services which he gives to his country. At present his pay is 10s. 6d. per day, from which the employment levy is deducted. It is too small. It should be increased to make it equal to his average daily earnings.

Now I have done. Little that has been said is original; much may not have been even helpful. It is hoped that it will prove at least provocative.

The jury is not an ideal institution, but it is human; it is fair and honest, and it is not without nobility inasmuch as its object is to do justice between man and man.

At the conclusion of the paper, a short intermission was taken.

Following the interval, the President said that after discussing the matter it was thought desirable to have the discussion on MR. JOHNSTONE'S paper, and this would be done with the concurrence of MR. F. B. ADAMS, whose remit would be taken next day.

The discussion on MR. JOHNSTONE'S paper then took place.

PAYMENT OF JURORS.

THE ATTORNEY-GENERAL, THE HON. H. G. R. MASON, was the first speaker. He wanted to say very little concerning the paper because he realized it covered so much ground. He would, however, mention one thing concerning the payment of jurors. It was realized by the Government that the present fees were too small, and steps were being taken to adjust the matter. He had forgotten whether the Order in Council had yet gone through, but certainly a motion had been signed and the fee would soon be altered from 10s. to 13s. 4d. a day.

"That, of course, does not in most cases represent a full day's wages," Mr. Mason added; "but the position is that, for an ordinary working-man, it partly indemnifies him but still leaves an element of service.

"In these days when there is so much cultivation of the spirit of getting most, and giving least, it is perhaps just as well that in certain parts of our lives we are reminded of the fact that we owe a duty of giving as well as having a right of getting, and that service on a jury is a duty as well as a privilege. We must not impose upon the juror, but at the same time that element of service does come into the matter, and it is not extraneous. The sum that has been fixed is a reasonable indemnity, and it seems to be a reasonable attempt at being fair. It is intentionally not designed to be full wages.

THE GRAND JURY.

"I feel we are very much indebted to MR. JOHNSTONE for the very complete historical survey of the jury system which he has given us in his paper. When it comes to other matters, however, I am one of those who are unable to see the value of the grand jury. I confess quite frankly that I agree with what I read long ago that the grand jury did again what had already been done, and did imperfectly what had already been done well, and that all that could be said for it was that it might prove a safeguard on some occasions. In answer to this last statement we may ask, what about the ordinary common jury? And after all is said and done it would seem to be always at the instigation of the Judge that the grand jury throws out a bill of indictment. Then might not the issue be determined directly by the Judge? Further than that, they may throw out bills improperly, bills which may later be brought again and returned as true bills by another grand jury, upon which a common jury may find a verdict of guilty.

"The grand jury has been abolished in England; and I believe it has never existed in Australia, and its absence has caused no difficulty. It has been abolished in more than half the States of America. These facts are a fair test. They are considerations leading one to think that the grand jury is somewhat unnecessary. Now, I have an affection for old institutions; but if we have something in our system which pretends to be useful and is not, that tends to the diminution of the efficiency of, and therefore the respect for, the judicial process which we ought to maintain. That raises the question whether we should not prune away something, which through a change in circumstances, has become nothing more than dead wood."

MR. A. B. SIEVWRIGHT (Wellington) then requested leave to ask the HON. THE ATTORNEY-GENERAL what the effect of the Order in Council would be, particularly with reference to civil cases, in which, up to the present, £8 (or 13s. 4d. per juror) had been paid per day.

THE HON. H. G. R. MASON replied that the fees in civil cases were statutory, and were consequently unchanged.

MR. R. H. SIMPSON (Dunedin) said, in regard to the ATTORNEY-GENERAL'S reference to the abolition of grand juries in America, that in many cases it was proving invaluable. In the eighteenth century England passed through a period of graft and corruption, which proved incidentally that we as a race were not necessarily free from such possibilities. The United States of America is now passing through such a period, when graft, corruption, and crime are rampant; and it would appear that the grand jury had proved invaluable in initiating prosecutions in most of the big political cases.

MR. H. H. CORNISH, K.C., SOLICITOR-GENERAL, then said that he thought MR. A. C. STEPHENS had gone into that aspect of the matter, and would probably have some useful information on the subject.

MR. A. C. STEPHENS (Dunedin) said he had only a somewhat general knowledge of the matter, but what the previous speaker had said was quite correct. In some of the States of America, the grand jury is carrying out a vital function. There, they form a completely impartial body for the presentation of evidence and initiation of proceedings on those occasions when administrative officers are not above suspicion. Apart from this power to initiate prosecutions against gangsters and others, grand juries have the power to initiate investigations into the financial affairs of local bodies and the administration of public funds. There is no immediate likelihood of this need in British communities, but, the speaker thought, the grand jury in New Zealand has that power of initiating prosecutions. It may not be a necessary function just now, but no one can tell what the future holds. He thought that it would be a great mistake to abolish the grand jury at the present time. The present Lord Chief Justice of England, Lord Hewart, has said that grand juries may be reintroduced in England before very long: a very important statement from one in a position of authority in England, which should be put before the Conference.

MR. H. E. BARROWCLOUGH (Auckland) said that he was sure everyone was much indebted to MR. A. H. JOHNSTONE for his very interesting paper. He felt, however, that the value of that paper would be largely lost if the Conference did not pass a resolution covering a number of specific points where such a strong case for amendment had been made out. The first point was that the suggested alteration of the law to provide for a restriction of the right to trial by jury in civil cases, many of which cannot be adequately dealt with by juries. The law recognized this by protecting the unsuccessful litigant before the jury with the right of a new trial or judgment *non obstante veredicto*. The expense, too, of such extra proceedings made necessary by the mistakes of juries would be largely saved if the right to trial by jury were limited to some extent. Another instance of the law recognizing the fallibility of the juries was to be found in the rule that no mention of the fact that a defendant was insured could be made to the jury, which indicated that a jury is deemed to be unable to perform its duty if it is shown some irrelevant fact. It is also well known that matters are raised in the jury-room which are irrelevant, though dealt with quite honestly, and contrary to their oaths. The following motion was then moved by MR. BARROWCLOUGH:—

That the reforms suggested in Mr. Johnstone's paper in regard to the limitations to the cases in which jury trials may be had, and the alterations which have been suggested in regard to special juries, are approved by this Conference.

MR. F. C. SPRATT (Wellington) seconded the motion. He thought it ought to be said in fairness that the recent amendment to the Judicature Act was passed in order to remedy what members of the profession thought was a mistake on the part of the Judges in their rule-making capacity. He considered that New Zealand should follow the English practice, which would still allow juries to be had in cases that might lie either in contract or in tort. The increasing complexity of modern conditions, and the questions arising out of them, limit the value of the jury in a great number of cases. Hard and fast rules cannot be laid down—for example, to have juries in cases of tort and not in cases of contract. He thought that one class of case in which the jury would be most valuable arose in contract—namely, the action for a breach of promise to marry.

MR. L. K. MUNRO (Auckland) suggested that MR. BARROWCLOUGH should add to his motion that the Conference was opposed to the abolition of the grand jury, or that it be moved as a separate motion.

THE PRESIDENT said that, as MR. JOHNSTONE'S paper touched on such a number of vital questions, it would probably be better not to have a comprehensive motion, and he thought there was quite enough in MR. BARROWCLOUGH'S motion.

MR. H. H. CORNISH, K.C., SOLICITOR-GENERAL, said that, although the Conference was aware that the paper was being given, it was not aware of the actual points MR. JOHNSTONE was going to make. Each of the recommendations should, he thought, be taken and considered with the respect to which they were entitled; and that no motion should be passed by the Conference one way or the other. Taking one question, that of introducing the English Jury Rules, they had not been before the Conference and, therefore, a considered opinion could not be given. A motion passed by the Conference would be of little real value and would add little weight to what had been put forward by MR. JOHNSTONE.

At this stage the PRESIDENT asked MR. K. M. GRESSON whether any of the matters touched on by MR. JOHNSTONE had been considered by the Law Revision Committee.

MR. K. M. GRESSON (Christchurch), a member of that Committee, replied that a number of them had been considered by the Committee, but no final conclusion had been reached.

MR. E. J. SMITH (Dunedin) then moved, as an amendment,

That Mr. Johnstone's paper should be referred, in the first instance, to the Law Revision Committee for consideration.

MR. M. J. GRESSON (Christchurch) seconded the amendment, and said that the Conference could rely on that body to give it a proper consideration.

MR. F. C. SPRATT (Wellington) then spoke to the amendment. He considered that the practitioners present at the Conference would have made up their minds whether it was a good thing or not to provide that all civil cases involving debt, damages, or the recovery of chattels should go automatically to a common jury; and could not be removed therefrom without the consent of both parties. He thought that that was MR. BARROWCLOUGH'S point, and the Conference should be able to express an opinion whether that was right or wrong. Rather than see the matter go entirely without an expression of opinion, he would like to see it come before the Law Revision Committee with a recommendation from the Conference that there should be some limitation to trial by jury in civil actions. In short, MR. BARROWCLOUGH'S motion meant that the Judicature Act had gone too far, and that the steps taken should be retraced.

MR. K. M. GRESSON (Christchurch) said there were two suggestions before the Conference, that the Conference should be invited to pass resolutions, or alternatively that the paper should be sent forward to the Law Revision Committee. It was undesirable for the Conference to pass any motions; but, on the other hand, to send it forward to the Committee without further discussion or without some expression of opinion would not be very helpful. The Committee would like to hear the views of the members of the profession. If it were sent forward, as at present suggested, then—taking the one question of the grand jury—while the

paper recommended its retention there was little expression of opinion in the other direction. The speaker said he would be prepared to consider whether the grounds on which the retention is urged are sufficient. There was the argument that it enabled the ordinary citizen to take part in the administration of justice; and though he may do so in this way, he is extraordinarily scathing as to the extent he regards it as a privilege. No doubt the grand jury performed a function when it threw out bills of indictment brought as a result of the mistakes of Justices. That, no doubt, is real, although it does not occur very frequently. But that difficulty could be met if provision were made so that the accused could move before a Judge for an order that no *prima facie* case had been made out against him. That was one point on which the speaker took a different view from the author of the paper; and he should be interested to hear the views of other members of the profession, so that the Law Revision Committee could judge whether any particular view predominated at the Conference.

MR. H. E. BARROWCLOUGH (Auckland) said he wished to clarify the effect of his motion. It did no more than seek the opinion of the Conference. "I realize," he said, "that we all come here without the detailed knowledge of MR. JOHNSTONE on this subject, but we all realize the points at issue and have some view on the position of the jury and its usefulness; and I hoped that an expression of opinion would be of some use to the Law Revision Committee. I do not see how we are going to express a view unless we pass motions; and, by doing that, I contend we are asking members to do nothing more than express an opinion. Obviously, everyone could not express an opinion by speaking, and it should not be lost sight of that the only way of expressing an opinion was by passing a resolution."

THE HON. H. G. R. MASON, ATTORNEY-GENERAL, then supported MR. GRESSON in his view that no motion should be passed. He said that he was fairly ignorant on many of the matters which had been raised, and he felt that the most useful contribution would be reasoned statements for or against some of the propositions which had been made. That would be the kind of guidance which the Law Revision Committee would find most valuable.

MR. F. B. ADAMS (Dunedin) said he was very much in sympathy with what had been said about passing resolutions, because a resolution of a Legal Conference has behind it very great weight. In this case, the Conference would be in danger of passing a resolution which could not have been fully considered previously, and he thought no resolution should be passed when no specific proposal had been before the Conference (such as was the case in a remit). In the case of this paper he would be averse from passing resolutions on the more debatable parts of the paper; but he thought the position was different as far as the two matters covered by MR. BARROWCLOUGH'S motion were concerned. The Legislature had certainly gone too far in restoring so sweepingly the jury to civil cases, and the same applied to special juries. An alteration was desired for the reasons given to MR. JOHNSTONE. He would prefer to see a motion passed to the effect that the Conference expressed the view that the amendments made to the Judicature Act with regard to civil juries or juries in civil cases should be restricted.

THE PRESIDENT then said that he thought that little good would be done by sending this very comprehensive paper to the Law Revision Committee. That Committee has been overwhelmed with all sorts of matters; and he thought that, if it were asked to consider this paper, nothing very much could be done. He knew that some of the matters raised by MR. JOHNSTONE had been considered by the Law Revision Committee.

MR. K. M. GRESSON: "The question of standing aside of jurors."

THE PRESIDENT, continuing, said that, at the same time, he agreed with those speakers who said that on a paper such as this the Conference should not come forward with definite resolutions. He did not think it was ever intended that resolutions of very great moment, such as MR. BARROWCLOUGH'S, should be passed at this or any Conference. It was another matter, of course, with remits which are in the form of definite motions, but where there is a paper such as MR. JOHNSTONE'S, covering such a variety of matters, very great care should be taken before passing resolutions.

THE PRESIDENT proceeded to say that he realized it was a very difficult thing to get a better expression of opinion than by a resolution at a meeting such as the Conference. Some of the matters which had been mentioned called for very urgent attention. If the Conference dealt with MR. BARROWCLOUGH'S motion, they might still have to deal with all the other matters—such as the grand jury, standing aside of jurors, and so on. Would it not be better for members to move through their District Law Societies to the New Zealand Law Society, and then, in the ordinary course of events, any question would be decided after a full and proper consideration?

As to whether the matters should be referred to the Law Revision Committee, MR. O'LEARY said he did not like sending this one to the Committee. It was not fair to its members. He did not think that it was desirable that important matters should be passed on to them, where such a comprehensive variety of subjects had been discussed in a paper such as MR. JOHNSTONE'S. He thought that the matter should be left to the individual Societies in the way he had mentioned. However, there was an amendment before the meeting. He would put the amendment—that is, That the paper read by MR. JOHNSTONE should be referred, in the first instance, to the Law Revision Committee for consideration.

MR. E. J. SMITH (Dunedin), the mover, rose before the amendment was put, and said he agreed with the PRESIDENT'S suggestion. With the consent of his seconder, he said he would be willing to withdraw his amendment. The reason he had made the suggestion of referring the paper to the Committee was that he understood the Committee was there to lead the profession.

MR. P. THOMSON (Stratford) suggested that where there are debatable matters arising in papers, any particular points should be dealt with at the next Conference in the same manner as remits. This practice was followed in the Presbyterian Church, and it allowed due consideration for all matters which were not of great urgency.

The amendment being withdrawn, the PRESIDENT asked if there were any further discussion.

MR. G. I. MCGREGOR (Palmerston North) made a further suggestion—namely, that as the matter was of considerable importance and urgency at the present time, it might be better to have it referred to the New Zealand Law Society, who could appoint a Committee

to deal with the questions raised and give the District Law Societies something to work on.

The motion was then put and lost.

MR. F. C. SPRATT (Wellington) said he thought MR. THOMSON (Stratford) had been on the track of a right idea, and it was the idea shared by MR. ADAMS—namely, that they would like to see some expression of opinion. "I take it," he added, "that the proper body to set the consideration going would be the Council of the New Zealand Law Society. I should not like it to go forth that this meeting has disapproved of the suggestions made by MR. JOHNSTONE. I think it is quite in order that the matters referred to by MR. BARROWCLOUGH should be referred to the Council for consideration. He accordingly moved

That the questions of changes in connection with juries in civil cases and the provisions as to special juries be considered by the Council of the New Zealand Law Society for appropriate action.

MR. A. B. SIEVWRIGHT (Wellington) seconded the motion.

THE PRESIDENT said he took it that there would be no objection to that motion.

Arising out of a question by MR. O. C. MAZENGARB (Wellington) a discussion took place as to whether the matter should or could be properly referred to the Law Revision Committee or the New Zealand Law Society.

MR. G. M. SPENCE (Blenheim) was able to point to precedents when such a reference had been made to the New Zealand Law Society. He thought that if it were referred to the Law Revision Committee, that step should be taken by the New Zealand Law Society.

MR. H. H. CORNISH, K.C., SOLICITOR-GENERAL, thought the New Zealand Law Society should refer it to the ATTORNEY-GENERAL, who, in turn, should refer it to the Law Revision Committee.

In answer to a question by MR. E. P. HAY (Wellington) as to an ambiguity in the motion, MR. SPRATT said when he used the words "appropriate action," he contemplated the possibility of the New Zealand Law Society deciding to take no action in the matter.

This motion was then put, and carried.

MR. L. K. MUNRO (Auckland) said he considered the question of the abolition of the grand jury was the most important raised in MR. JOHNSTONE'S paper. The stage might be reached in the history of this country, when every protection that can be given to the citizen may be necessary. It had been said that there was not sufficient time for consideration, but the question was of such importance that consideration should be given to it by the Conference. It was a matter which had been discussed in the newspapers, and a matter for general consideration. In order to test the feeling of the Conference he moved the following motion:

That this Conference places on record its emphatic opposition to any proposal for the abolition of the grand jury.

MR. L. M. HERD (Wellington) seconded the motion *pro forma*.

MR. F. C. SPRATT (Wellington) questioned the advisability of passing a resolution, especially as there was actually no proposal for the abolition of the grand jury. It was a case of putting themselves on the defensive, and it was only when the matter was brought into the realm of practical politics that it would be right to give an opinion.

The motion was then put and lost.

The Conference then adjourned until 10 a.m. on Thursday, April 21, 1938.

Some Personalities at the Conference.

(*Concluded from p. 109.*)

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

MR. W. D. CAMPBELL (*Remit: Legal Education: The New Regulations*) was born at Chertsey, 1876; educated at Chertsey, Christchurch Boys' High School, and Canterbury College; M.A., 1898; LL.B., 1912; on Staff of Brisbane Grammar School, 1898–1899; member of editorial staffs of the *Lyttelton Times*, *Taranaki Herald*, and the *Press* (Christchurch); correspondent with British Army in South Africa for New Zealand newspapers, 1900; editor *Timaru Herald*, 1904–09; member of the firm of Messrs. Raymond, Raymond, and Campbell, Timaru, since 1912; Crown Solicitor, Timaru; member of the Board of Governors of the Timaru High Schools.

MR. F. B. ADAMS (*Remit: The Protection of Guarantors*) was born at Dunedin, 1888; son of the late Hon. Mr. Justice Adams; educated at Otago Boys' High School and University of Otago; B.A.; LL.M.; served in France with the First Battalion, Otago Infantry (wounded); member of the firm of Messrs. Adams Brothers, Dunedin; Vice-President of the New Zealand Alliance; member and former President of the Law Society of Otago; Crown Solicitor, Dunedin, since 1921.

MR. V. G. SPILLER, Secretary, Fifth Dominion Legal Conference, was born at Christchurch in 1909; educated at the Christchurch Boys' High School (1921–1926, school monitor) and Canterbury University College; LL.B., 1931; secretary, Christchurch Swimming Centre for ten years, now vice-president; secretary, Christchurch Savage Club, North Beach Surf Club, and Christchurch Businessmen's Club for two years; Committeeman many public and social committees; in practice as barrister and solicitor since May, 1931.

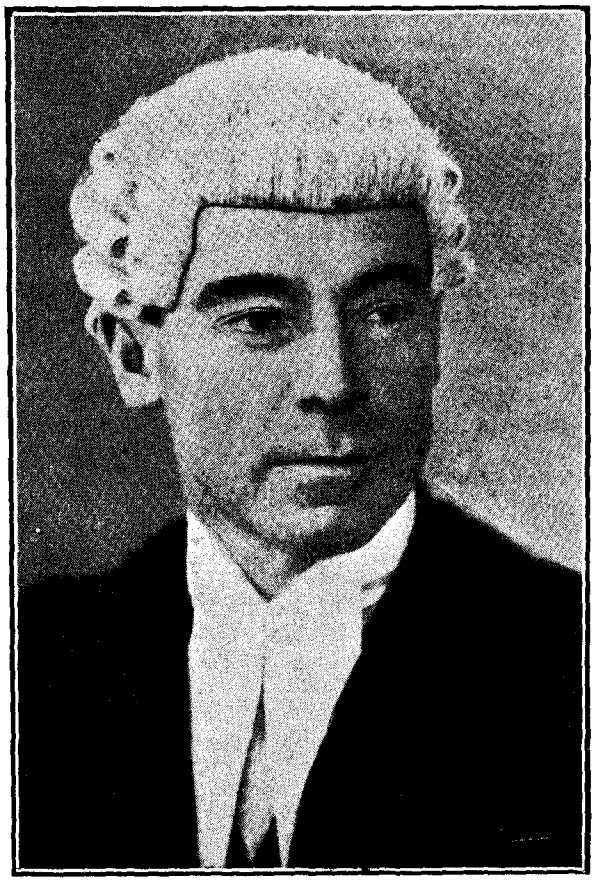
THE SECOND DAY.

The Relations Between the Legal Profession and the Public.

By A. C. Stephens, LL.M.

THE main aims of a Conference of the Legal Profession are threefold. The first aim may be called altruistic, the initiation of major reforms in the law. The second aim is educational, the study of the more difficult branches of the law. Thirdly, we have what may be called a selfish aim, the material interests of the members of the profession.

In the past the third has been somewhat neglected at Legal Conferences. It is time to take stock of our position in the community, and devise means for its improvement, if improvement is required. The matter is one



The Nevill Studio, Photo.

Mr. A. C. Stephens.

of particular importance to the younger men, but it should also be of interest to senior members of the profession, who have a trust to perform—namely, to hand on to their successors conditions in the practice of the law which are at least as good as those to which they succeeded. I ask therefore that this Conference should give the matter a calm and careful consideration, and I hope that a constructive criticism may be forthcoming so that something practical may be hammered out.

For the purposes of this paper I propose to deal with the subject under two heads. First, what does the lawyer owe the community; and, secondly, what does the community owe the lawyer?

What the Lawyer Owes to the Community.

What does the lawyer owe the community? In the first place, he has a duty of service within the law. He must be efficient. On this aspect of the matter there have been great advances on the old conditions of admission to the profession which existed sixty to seventy years ago, and in recent years there have been some important changes. The Law Practitioners Amendment Act, 1935, provides that three years' experience in a legal office shall be necessary before a person can commence in practice. Then, by virtue of the latest University Regulations, the law course has been lengthened to provide for a more general grounding in non-professional subjects. This should not be taken as final, but as a basis on which to work towards further improvements. The aim should be to turn out every member of the profession with a fully developed mind, a sound grasp of general principles and ability to apply them, and a sufficient knowledge of detail.

The lawyer must also be honest and honourable. The Guarantee Fund gives security to the public against dishonesty, but, as in the case of every profession, a small proportion adopt tactics which are unfair to the client. These must be discouraged by every possible means. Under this head fall practices which, though not immediately to the disadvantage of the public, will prove to be so in the end. The practices to which I refer are touting for business, sharing profits, and undercutting. These things arise from the overcrowding of the profession which always results in deterioration in the quality of the service.

Continuity of Service.

Finally, under this head of service within the law, let me mention the question of continuity of service. The profession should be available when needed. Duty to the public is not the only reason, for our competitors are available when our doors are closed. There is a certain amount of complaint from commercial men against the length of our Christmas holidays. I agree that principals and staff require a good spell, but offices should be open on January 3 for any urgent business. In large offices only one principal or a responsible clerk need be present, but a difficulty of course arises with regard to the small offices. The general public, however, think that we make a living far too easily, and that, as we can afford to take long holidays, our charges for the work we do must be too high. Actually, our holidays are no longer than those of Government servants, employees of banks, insurance offices, and other commercial undertakings, and wholesale and retail establishments, who have the statutory holidays at Christmas and Easter and enjoy an annual leave in addition.

Gratuitous Service.

The next thing I wish to mention which the lawyer owes to the community is gratuitous service. We should be prepared to give assistance to those who require it in legal matters and are genuinely too poor to pay. The medical profession has built up a high tradition in this respect, and dentists also do a certain

amount of work without payment. No genuine cases of distress should go without redress.

There are two courses open to the profession in dealing with this matter. We follow one of them now, and a considerable amount of work is done for nothing, and costs are also reduced in suitable cases by individual practitioners. A second method is the organized legal aid which is given in England under the Poor Persons Procedure. There is a movement to introduce similar provisions in New Zealand at the present time.

General Service.

We now come to the lawyer's duty to the public outside the law. Members of our profession are peculiarly fitted by training to give general service to the community. In this we fail and the reproach that we are selfish and self-centred is justified. How many of us to-day give a part of our time in voluntary service to the community, in national or local Government, on charitable organizations or youth-welfare associations. Some may act as honorary solicitors, but that is not enough. We say we have to work too hard to make a living, but we can always find time to do things we want to do, things that amuse or interest, or give us recreation. There is no need to go to the other extreme and become interested in too many outside activities, but there is a duty resting on every member of the profession to serve the community in some direction.

What the Community Owes to the Lawyer.

We now come to the question of what the community owes the lawyer. What are we entitled to receive from the public in view of the importance of our functions? We hold positions of great responsibility, we help our fellow-citizens to retain their property, reputation, and family rights—things which come next only to life itself. What should we receive in return, always assuming that we give the measure of service outlined above?

I submit there are two things we are entitled to receive: first, the esteem of the community; and secondly, a remuneration sufficient for a reasonable standard of comfort. With regard to the former, if we do not have the respect of the community, we should earn it by individually paying constant and earnest attention to the points of service to the community which I outlined under the previous headings. With regard to the latter, the profession has been very adversely affected during the past quarter of a century by such features as overcrowding, the depression, and competition from various external agencies. We cannot adopt a "dog-in-the-manger" attitude, and claim to hold what we have always enjoyed on that ground alone.

We must show ourselves worthy to retain our privileges. If we do so, the public will see that we have no real cause for complaint.

Mr. Stephens's paper was received with applause.

The President then spoke as follows:

"I would like to hear any comments or discussion that any practitioner may have following the excellent paper that Mr. Stephens has just given us. But there is such an amount of matter in Mr. Stephens's address that I think every consideration should be given to many of the suggestions. I would suggest that someone moves that his paper should be brought to the notice of the Council of the New Zealand Law Society to take what steps it thinks feasible, or otherwise to carry into effect the suggestions or some of the suggestions made by Mr. Stephens."

Mr. P. Thomson (Stratford) then moved accordingly.

Mr. E. J. Smith (Dunedin) seconded the motion and congratulated Mr. Stephens on the work he had put into his most excellent and practical paper, and for the very able way he had presented it.

The motion was then put without further discussion and carried.

The President then asked leave to vacate the chair and moved that his place be taken by Mr. A. H. Johnstone, K.C., Vice-President of the New Zealand Law Society. This was carried by acclamation and Mr. Johnstone took the chair and called on Mr. W. J. Sim to read his paper and move a remit in respect of the principle of absolute liability in motor-collision cases with provision for the assessment of damages by a Judge and two assessors.

"Culling the Jury List."

Press Comment on the Jury System.

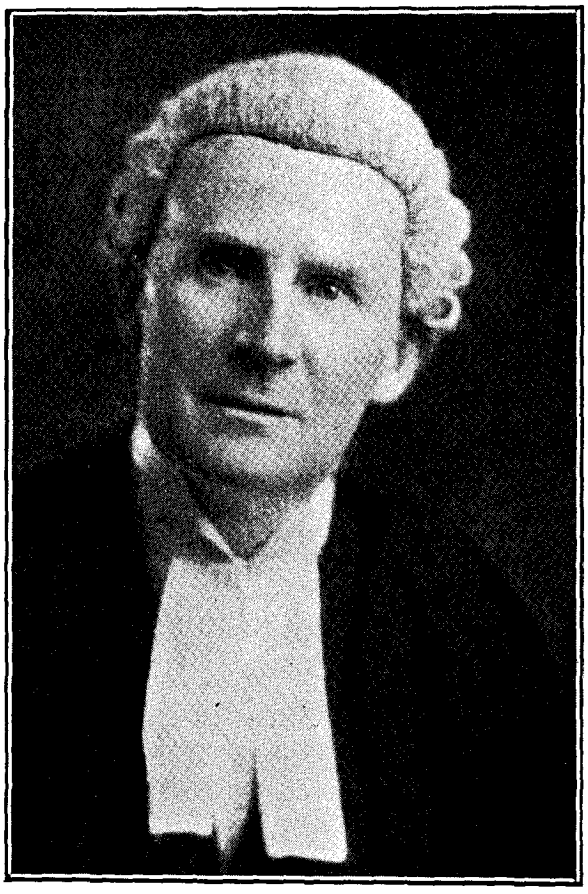
In a leading article, *The Press* (Christchurch), April 23, makes the following comment on the jury system, as discussed at the Conference:—

The case for the retention of the grand jury cannot rest very securely, if at all, on the argument of a speaker at the Law Society's Conference that a higher intelligence than that of a common jury ought to stand between the prisoner and the Crown. That argument, indeed, has lately been abandoned in favour of the idea that grand juries familiarize a number of "leading citizens" with Court procedure in criminal trials, and invest the proceedings with a little more awe and majesty. The second argument raises an ingenious question of compulsory adult education—among unwilling pupils, it may be said—but it is wholly irrelevant to the vital question, "Has the prosecution proved that the prisoner is guilty according to law?" That question is never put to the grand jury, whose function is merely to hear a brief presentation of the case for the prosecution, and to say whether it thinks the Magistrate was right or wrong in sending the case for trial. But it often happens that grand juries, suspecting the intelligence of common juries, have found No Bill where a very strong case has been made out for the prosecution, and in doing so have interfered with the course of justice. It is not enough to reply that grand jurors are presumed to have more intelligence than common jurors. Strictly speaking that is no longer a legal presumption, if it ever was. Up till 1936 grand jurors were drawn from a special-jury book, which was prepared by copying from the common jury list "the names in the order in which they stand therein of all men who are described in such lists as 'esquires, gentlemen, merchants, managers of banks, civil engineers, and architects,' and also such other persons whose names appear on such lists as are known to him (the Registrar) to be of the best condition . . . " But this archaic section was repealed in 1936, and replaced by an instruction to the Registrar, in preparing the special-jury book, to copy from the common jury list only the names of those acquainted with "business, mercantile, or banking matters.' It will be seen, therefore, that grand jurors can now be summoned only from among those who are acquainted with business, mercantile, and banking matters, and this may not be such a bad thing as the esquires and gentlemen may think. It cannot be wrong—that is to say, to have more and more of the intelligentsia in the ranks of the common jurors, which are already thinned by the exemption of members of Parliament, Judges, Magistrates, doctors, clergymen, and all preachers, school masters, dentists, lawyers, gaolers, civil servants, and a multitude of others down to modest railway employees.

The Principle of Absolute Liability in Motor-collision Cases.*

By W. J. Sim, LL.B.

IT is, I expect, well known to members of the Conference that the subject embodied in this remit has been under consideration for some time past by the Honourable the Attorney-General and others closely interested in the matter. The view was expressed that it would be desirable to obtain some expression of opinion from this Conference on the subject, and I have been requested by the Committee to bring forward the remit.



Steffano Webb, Photo.

Mr. W. J. Sim.

An investigation of the subject shows it to be so wide that it is impossible to deal with it in the time from notes, and I have compressed what appear to be some of the major arguments into a short paper. The forbearance of the Conference is asked to its being read.

The remit has been purposely expressed in plain terms, so that the Conference may consider the affirmation of a principle, disassociated from detail, which can obscure effective consideration. "Motor-collision cases" is intended to cover generally personal injuries caused by motor-cars, and so that any discussion may not spend itself in side-tracks, let me suggest that it take place upon certain tacit assumptions. These are:—

(*a.*) That any Bill dealing with the matter must contain well-defined exceptions from the general principle of absolute liability. It will be found, I think, that the discussion in all countries, as soon as it is proposed to depart from the principle of negligence, centres largely around the exceptions or defences which are to be available to the motorist, notwithstanding the admission of the principle of absolute liability. I understand that the Bill, as prepared by the learned Attorney-General, made provision for such exceptions as suicide, intoxication on the part of the plaintiff, and also disallowed claims by passengers in the offending car against the driver of the same, as is the case at present under the Motor-vehicles Insurance (Third-party Risks) Act, 1928.

(*b.*) That behind the law there must be an effective workable insurance scheme—in other words, that the present scheme be extended and be found workable.

(*c.*) The actual personnel of the Court at this stage of the matter is a minor consideration. Whether it should be a permanent peripatetic body such as the Arbitration Court, presided over by a Judge, with the status of a Supreme Court Judge, or whether the Judges would hear claims in their districts, assisted by permanent assessors, are details which could be settled at the Committee stages of any Bill on the subject.

(*d.*) The question of adjustment of contributory negligence as between two vehicles is a matter requiring special attention; but, as all questions arising in such cases would necessarily be between two insurance companies, all such questions, whether of fact or law, might well be committed to trial by a Judge alone.

Present-day Difficulties.

To lead up to the subject, a convenient starting-point would be a paper read to the Conference in Dunedin two years ago by Dr. A. L. Haslam of Christchurch† in which, in lighter vein but very effectively, he called pointed attention to the difficulties which at present exist under the common law of negligence and contributory negligence as affecting motor-vehicles. We are all aware of the, at times, impossible task Judges have in explaining to common juries the law on the subject, and we can surmise further that common juries have more difficulty still in understanding what it is all about. There is no need to enlarge on this subject. The plain fact is that the common law of negligence and contributory negligence evolved in times of slow-moving horse-drawn traffic is inapplicable in the circumstances of to-day where fast-moving vehicles meet at intersections and the whole affair is a matter of seconds only. Not only is it not possible fairly to apply such laws, but the reproduction of such rapid events by observers not specially skilled to make their observations, many of whom become identified for

* This was read as a paper, in support of the 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.*

† See (1936) 12 N.Z.L.J. 104.

obvious reasons with one or other of the vehicles, produces an atmosphere of uncertainty and unreality which is far from satisfactory.

Dr. Haslam's paper suggested that trials should take place of all issues, both the fact of negligence and the damages, before a Judge and two assessors. The suggestion, however, was regarded by certain members of the Conference as being a veiled attack upon the jury system as a whole, and no formal motion was put to the Conference. The paper did, however, call attention to something in the administration of justice calling for a remedy. It is significant also that Mr. (now Mr. Justice) O'Regan, who vigorously took up the cudgels for the jury, observed that the problem was most urgent. He suggested that the way to deal with it was to make the liability absolute, and to limit the amount of compensation which might be claimed.

Trials have continued before a Judge and jury, and one inescapable fact which has to be faced in the present situation in New Zealand is that any suggestion that juries be dispensed with in the trial of common-law matters is futile. With democratic feeling as it is, there is a strong sentiment in this matter, both inside the profession and outside it, and the jury is here to stay, for the time being, at all events. A further result has followed from this, that, by reason of the compulsory insurance scheme behind motorists, every jury approaches a trial as a matter between the plaintiff and the insurance company, not as between plaintiff and defendant, with the further result that it is now, I submit, almost a foregone conclusion, in any case, that the plaintiff must win, succeeding not only on the question of liability, but also recovering damages, which, in many cases, are excessive.

The Present Legal Position Unaltered.

Had the claim for loss of expectation of life been allowed to continue on the statute-book, it could have rendered our insurance scheme very difficult to administer, but fortunately that excrescence on the legal system has been removed by prompt amending legislation.

The point I wish to emphasize is that we have reached a stage where insurance companies have practically to accept the position that they must admit liability in all cases.

No official figures are available, but it may be submitted with some confidence that approximately 90 per cent. of *bona fide* claims are settled with or without a writ. Of the remaining 10 per cent. a contest takes place on damages only in possibly 9 per cent., while only in rare cases are both the liability and the damages fought out.

This means that while we have one law written in the books, another law is being applied by the juries in the practical administration of justice. Who knows but that in doing so the juries are only reflecting what the common sense of the community demands, showing us lawyers the way in which the public expects the law to develop. But the prestige of our Courts will, it is submitted, not be enhanced if juries, consciously or unconsciously, take the law into their own hands, regardless of what the learned Judge has to say in directing them on the subject. The situation affects the integrity of the jury system itself, whereas the jury is probably performing a commendable public service in emphasizing the necessity for change.

This leads on to the first point that I should like to bring prominently to the mind of the Conference. To declare absolute liability in New Zealand is not to make a change in the law, but it is only to declare truly the law as it is being practically administered at present. To affirm absolute liability is only to affirm in writing a state of affairs that substantially exists in fact.

The writing of the law as absolute liability would, no doubt, represent some concession by the insurance companies, the true defendants, but in return for this there would be the balancing factor that damages would be assessed upon logical, and not sentimental, principles. Their cause, in this respect, would become committed to a Judge and two assessors, who investigate the medical and economic question in an atmosphere freed from undue sympathy, and who, no doubt, in a short time, would affirm standards which would be known to the profession, and furnish a fair guide for the settlement of cases. Broadly put, whereas the common belief is that the new measure would confer unlimited benefits on plaintiffs, I think, if it is seen in its true light, it is essentially a defendant's measure, being, at the same time, no wide departure from the existing state of affairs, and bringing about a situation which is consonant with the proper administration of justice.

Advantages of the Change.

One may summarize some of the main advantages which would follow from the change:

(*a.*) The anomalous situation will be ended whereby juries declare what they think is negligence, not what the law says on the subject.

(*b.*) The time of the Supreme Court and the Court of Appeal, which, at present, is very largely taken up by the trial of these cases, and subsequent reinvestigation of jury verdicts in various forms, can be saved. This would, no doubt, permit the remaining work of the Court to be carried out in the unhasting spirit which is essential to the administration of justice. (We have it on the authority of the Under-Secretary for Justice that over 50 per cent. of the time of the Supreme Court is at present taken up by this class of case.)

(*c.*) The saving of delay and cost in litigation.

(*d.*) Uniformity in the declaration of damages, enabling settlement to take place when the principles of damage applied by a Judge and assessors came to be known, as they would.

(*e.*) The removal of the present matters from the jurisdiction of juries will in the final result restore the jury to its honoured place in the community.

The question, however, will be asked: "What, is the motor-car to be placed in the list of things dangerous in themselves, and be classified in the future in law within the doctrine of *Rylands v. Fletcher* (1868) L.R. 3 H.L. 330)?" The answer to that question is "Yes," and it is a fact which is overdue for recognition.

As long ago as 1880 when traction-engines first began to be propelled by steam along the highway, scattering sparks and causing fire in cornfields and hay-stacks, the same question was then brought to light, and we find Bramwell, L.J., in *Powell v. Fall*, (1880) 5 Q.B.D. 597, 601, using the following words:

> "It is just and reasonable that, if a person for his own advantage uses a dangerous machine, he should pay for the damage that it occasions; if the reward which he gains for the use of the machine will not pay for the damage, it is mischievous to the public and ought to be suppressed, for the loss ought not to be borne by the community or the injured person. If the use of the machine is profitable, the owner ought to pay compensation for the damage."

If in the year 1880 a traction-engine should be classified as a dangerous thing and be subject to absolute liability because it scattered destruction across the fence among inanimate things, how much the more should a motor-car be so recognized to-day, travelling as it may at fifty or sixty miles per hour, scattering destruction on the highway itself, in the way of human life.

Modern confirmation of this view is to be found in a recent utterance of the Lord Chancellor taking part in the second reading in the House of Lords of the Road Traffic Compensation for Accidents Bill in the year 1933. The Lord Chancellor (Viscount Sankey), after discussing the question of negligence, added:

> "There is another principle in our law which says that a person who keeps a savage animal, such as a tiger or a lion, does so at his own peril, and if he brings such an animal on to the highway, and if the animal escapes or gets out of control, the owner is liable for the consequences, apart from any negligence on his part.
>
> "This is not a new principle, but a principle which has been in our law for generations, and it does not seem to be an alarming or revolutionary change of applying it to a potentially dangerous machine, like a motor-vehicle."

Another authority may be quoted—namely, the opinion of the Select Committee of the House of Lords reporting on the same Bill. Such Committee, no doubt, would comprise some eminent legal minds. It said, *inter alia*:

> "By reason of the precedents referred to above the Committee have regarded themselves as free to consider entirely on its merits the question of whether in the cases with which the Bill deals good reason was shown for making a further departure from the general principles of the law of negligence. The Committee have come to the conclusion that some such departure is justified. They think, on the other hand, that a motor-car on the road, especially in view of the fast and constantly increasing volume of motor-traffic, may be regarded to some extent as coming within the principle of liability defining *Rylands v. Fletcher* ((1868) L.R. 3 H.L. 330)."

It may be said that it is a fundamental principle of British justice that a defendant is made to pay only when he is at fault. Again, as a general principle, this is not correct. The most familiar instance of absolute liability irrespective of negligence is the workers' compensation scheme whereby an employer is made to pay merely by reason of the fact that the workman has been placed in a dangerous situation. Again, in a wider field, the vicarious liability of employers for their servants and of principals for their agents is not founded upon negligence. As a general principle this objection cannot be sustained.

Surprise was expressed, I think, when the Attorney-General framed his Bill, and the general opinion seems to have been that he was going to an extreme. But when one looks at the research that has been given to this subject in other countries, and the recognition there given to the fact that the law of negligence and contributory negligence is inappropriate to modern conditions, the view may be expressed that it is the Attorney-General who had the right to express surprise—at our surprise.

It will be found that the matter has been given attention in Germany, Austria, Holland, Poland, Czecho-Slovakia, France, England, America, Italy, Hungary, Denmark, and Sweden. Possibly there are other countries as well.

Time does not permit discussion upon what has been done or proposed in these different countries, and in any event they have all to be read subject to their special qualifying background of, first, what kind of tribunal tries motor cases; and, secondly, what form of compulsory insurance exists in the particular country.

Generally speaking, changes have taken place in the direction of placing the onus upon the defendant motorist, but there is a wide range of what he is permitted to prove by way of defence.

Experience Overseas.

In Germany, Austria, Holland, Poland, and Czecho-Slovakia motorists by recent legislation have been made to pay compensation to injured pedestrians whether the motorist has been guilty of negligence or not, subject to the exception that the motorist can prove that the accident is caused by the fault solely of the victim himself or by *force majeure*. In France a general law was passed making a person liable to damage caused by a chattel under his care capable of causing injury or damage, whether he had been guilty of negligence or not, and a case came before the Courts as to whether a motor-vehicle is such a chattel. It was held that a motor-vehicle is such a chattel, and the consequence is that in France a motorist who injures a pedestrian has to pay compensation, unless he can show that the accident was brought about solely by the victim or by *force majeure*.

No change seems yet to have taken place in the law of England, but reference has been made to passages from the first report of the Select Committee in the House of Lords appointed to consider the Road Traffic Compensation for Accidents Bill and the Road Traffic Emergency Bill in the year 1933. One may summarize by saying that the principle to be embodied in the proposed Bill was the shifting of the onus of proof on to the motorist, and the discussion mainly took place with regard to the exceptions to be permitted. The Bill only sought to legislate as between motorists and pedestrians.

The classic document on the whole subject is a report brought down by the Columbia University Council for research in Social Sciences, and the special Committee dealing with the matter is stated to be "A Committee to study compensation for automobile accidents." The report was made in the year 1932, the Committee having taken three years on its work. The report is an exhaustive one, and runs into approximately three hundred pages. For the present purpose let me call attention to the fundamental conclusions at which this Committee arrived. At p. 212 it discussed the question of "Liability without fault." Presumably "fault" is the equivalent American expression for negligence:

> "*The committee believes that the principle of liability for* fault only is a principle of social expediency and it is not founded on any immutable basis of right. The Committee has further tried to learn what actually happens when this principle of fault is utilized, and to estimate so far as possible what would happen if the principle of liability without fault were applied. The value of either principle is to be tested by its results rather than by *a priori* moral considerations. The principle of liability without fault is to-day applied in motor-vehicle cases in Sweden, Denmark, Finland, and in France, at least, in pedestrian cases."

And further, at p. 216:

> "The generally prevailing system of providing damages for motor-vehicle accidents is inadequate to meet existing conditions. It is based on the principle of liability for fault, which is difficult to apply and often socially undesirable in its application. Its administration through the Courts is costly and slow, and it makes no provision to ensure the financial responsibility of those who are found to be liable."

It will thus be seen that the English-speaking body which has given the most searching attention to this modern problem has arrived at the conclusion that liability founded upon negligence is unsatisfactory.

We have in New Zealand already remedied one of the weaknesses to which this valuable report calls attention—namely, the financial responsibility of the defendant. By the Motor-vehicles Insurance (Third-party Risks) Act, 1928, this source of anxiety to claimants in motor-collision cases and those advising them was removed. In this respect, I think, we lead the world. It only remains now for us to look at the other side of the question with an open mind—*i.e.*, the question of liability.

At the time of the Columbia University Report, Massachusetts was the only State which had then passed the compulsory liability insurance law, and the report went on to say:

> "The Committee strongly approves of requiring every owner of a motor-vehicle to insure against whatever legal liability may be imposed upon him for personal injuries or death caused by its operation.
>
> "The Committee believes, however, that the remedy must go further than the compulsory insurance law and that no system based upon liability for fault is adequate to meet existing conditions."

The Committee then went on to recommend a plan of compensation with limited liability analogous to that of the workers' compensation laws.

It may be doubted whether such a compensation plan would be a satisfactory remedy in New Zealand, and one may adopt the reasoning of the House of Lords Committee, above quoted, when it addressed itself to this particular branch of the subject.

The Report states that the Committee had heard the evidence of one of the greatest experts in the Government on the working of the Workers' Compensation Acts, and then added:

> "They are satisfied from his evidence that although it would be possible to work out a scheme of this kind applicable in the case of motor accidents to weekly wage-earners it would not be possible to work out any satisfactory scheme applicable to the large proportion of the general public who either are paid salaries or who have private incomes. Any such scheme would necessarily have a purely arbitrary basis and the Committee do not recommend its adoption."

I understand that the Honourable the Attorney-General has also thought fit to adopt this line of reasoning, and considers that the damages should be subject to the control of a body such as a Judge and two assessors, who would view the matter in a judicial and scientific spirit.

The Standards of Care.

Time will permit to touch upon only one other possible objection to the principle now advocated—namely, that if motorists have no responsibility for negligence, this may lead to a general depreciation in the standards of care.

The answer seems to me to be, first, that they bear little or no liability at the present moment by reason of the compulsory insurance scheme, and, in any event, the criminal liability will continue to exist for careless driving.

On this subject, the report of the Committee of the Columbia University may again be cited as some guide. On the subject of accidents it says:

> "The Committee can find no satisfactory evidence that compulsory liability insurance has increased accidents and sees no reason to suppose that a compensation plan would in itself affect the problem of safety."

As mentioned above, their compensation plan involved the principle of absolute liability.

The attention given to this matter in other countries leads to the conclusion that in New Zealand we are not awake to the situation produced by the combination of the common law administered by the common jury with a compulsory insurance scheme behind it, and, as attention is drawn to the subject, it may be surmised that the conviction will grow that the time has arrived for a change. It is suggested that when the Bill is regarded in its true light as a defendant's and not a plaintiff's measure, there will be an open-minded examination of its principles.

A paper such as the present (addressed to a Legal Conference) naturally gives attention to the aspect of the matter which particularly concerns lawyers—namely, the removal of an anomaly from the administration of justice. There is, also, of course, the insurance point of view which is essentially a matter of figures, but attention may be called to the fact that, under the existing system, claims paid last year amounted to £320,621, which was approximately £90,000 in excess of the sum received from the licensees.

We cannot adopt the American compensation plan; but is it going too far to suggest that to a Court giving a balanced consideration to all the factors in the situation the amount available for compensation as a whole could be a factor exercising some control over the amount awarded? In other words, regard might be had not to the plaintiff's claim *simpliciter*, but as a claim in relation to a comprehensive compensation scheme of which insurance is also a part. Or is it inconceivable that a true pooling scheme could be evolved under which awards are satisfied up to, say, three-fourths, and the balance remain in abeyance pending the results of a certain period? Claimants cannot expect the gift of absolute liability without making some concession to the scheme.

There is also the point of view of the motorist, but this consideration, it is submitted, becomes important, and entitled to dominate the question, only when the charges to maintain the insurance scheme become excessive. There is no sign of that as yet, and it requires carefully compiled figures upon which to found a conclusion. Attention may be called to the fact that last year the licenses numbered in round figures 231,000, indicating that a lift of say 5s. means approximately another £57,500 available for compensation.

Even from leaders of motoring organizations one hears admissions made that with proper safeguards the Bill has many virtues.

Mr. Sim's paper was given continued applause.

The Chairman, Mr. A. H. Johnstone, K.C., then said he was sure they were all extremely grateful to Mr. Sim for his lucid and exhaustive exposition of the case for a change in regard to the law of negligence. This, however, was a very controversial subject. He was asked first to read a letter from the President of the Hamilton District Law Society.

The following letter was then read:—

> "At the Annual General Meeting of this Society the proposed remit by Mr. Sim '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' was considered and discussed, after which it was unanimously resolved that this Society disapproves of the principle of absolute liability in connection with compensation for personal injuries arising out of motor accidents and sees no reason for any alteration to the present law.
>
> "The meeting passed a further resolution that its views as above expressed be communicated to you with a request that such views be announced to the members present at the Conference when the aforesaid remit is brought forward for consideration."

THE CHAIRMAN then said he could only ask the Conference to express its opinion.

MR. L. G. CAMERON (Timaru) seconded the remit, saying that he, personally, had always been favourable to the idea of absolute liability.

In answer to a question from MR. M. J. GRESSON (Christchurch), MR. SIM said that the remit referred to personal injuries only.

MR. H. J. MCMULLIN (Hamilton) was the first speaker. He said that he had no idea he would be present at the Conference when his Society had been considering the remit, but it was an added pleasure to be able to oppose it in person. He then paid a tribute to MR. SIM for his able handling of the question. Endorsing the terms of the letter which had been read, he said that the remit embodied a violent change in the common law for which there was neither need nor justification. He referred to the stigma attaching to motorists who brought about injury, something which could only be removed effectively by a verdict of not guilty. The thought of this stigma in the past had raised the standard of driving, and improved road courtesy. It was a dangerous principle which was suggested, due perhaps to the ever-increasing desire to be magnanimous to the afflicted and injured, particularly when the payment was being made out of "somebody else's" pocket. The present was not the time for such a change, and it could only properly be introduced with a system of social justice which regardless of the personal element reposed the burden not on the guilty but on the person most able to pay.

Another objection to the remit was that the actual reading of it would give the matter undue publicity. If passed by the Conference, it would go forth to the Press of New Zealand as the considered view of the legal profession. While there were representatives of many districts present any resolution passed by the Conference could not be taken as a consensus of opinion of the legal profession. The speaker hoped that this remit would be opposed from all quarters, and that it would receive little or no support.

MR. R. TWYNEHAM (Christchurch) spoke against the remit. He said that MR. SIM's remarks had given the impression that the proposal had received some favourable consideration from the motor organizations in this country. The position was the contrary, and both the North and South Island Motor Unions had maintained their emphatic objection to the new proposals. MR. TWYNEHAM also challenged MR. SIM's assertion that the proposal merely placed in the statute-book a state of affairs which in fact existed at the present time. There were many cases which had been overlooked by MR. SIM, where without any action at all it had been found that there was no liability and that the accident was solely due to the fault of the person injured. Hundreds of such cases where the claims are rejected were dealt with by the insurance companies. Another matter was the added cost to the motorist, one factor contributing to the rise being the added cost of settling these rejected claims.

It was unnecessary, the speaker thought, to impress upon the Conference the need for the restriction of this resolution, for the reason that if it were passed or received full support, then it would not be very long before it would be found on the statute-book. He then referred to the allegation that the motor-car is an inherently dangerous thing as being incorrect and based on false premises. So also the attempt to bring it within the doctrine of *Rylands v. Fletcher* and *Grant v. The London Insurance Company* was wrong. It is the driver not the car which causes the damage, while in *Rylands v. Fletcher* it was a reservoir itself which was inherently dangerous; and, in the other case, it was the fuel that was being used. The analogy would only apply if motorists were to be held absolutely liable for the escape of petrol fumes or petrol itself. He maintained that a motor-car is no more inherently dangerous than a bicycle or a perambulator.

The speaker then asked why the motorist should pay everyone who is injured. He took the case of a person falling and hitting his head against a stationary car. In such a case the owner would be liable, but if he hit his head on the roadway he would not be liable. In conclusion he said: "The consequences to the motorist will be serious, the cost is going to be higher, and we are infringing a principle of the common law which has long been looked upon as sacred—*viz.*, that only the guilty should pay. Here the innocent pays for the guilty. I hope this Conference will reject this remit by an overwhelming majority."

MR. F. J. ROLLESTON (Timaru) was the next speaker. He said that, before the opposition to this remit gathered any more strength, he would like to say a few words in its support. He then told the Conference that he had in 1928 had the pleasure, while holding office as Attorney-General in the Reform Government, of placing the Motor-vehicles Insurance (Third-party Risks) Act on the statute-book. Many of the arguments of the last speaker had been familiar to him then because the whole principle of compulsory insurance had been considered on that occasion. He added that had the Government of the day waited any longer they would probably not have got the Bill through, because an insurance representative from England came to New Zealand to protest against the principle of compulsory insurance. That was one of the objections then raised which has now disappeared. The present proposal takes the matter a step further. This was called in 1928 "the workers' compensation liability." "At that time," MR. ROLLESTON proceeded, "it was just a toss up whether the Bill which was brought down would contain this principle of absolute liability or not, and the only reason that it did not was that the whole subject was new, and we felt that we must proceed on safe lines and treat the law as it stood and not introduce the principle of absolute liability until we had a little experience of the working of the system."

It was interesting to hear the different views; and the former Attorney-General said he would like to hear from those opposing the motion in what respects the principle of liability in the Workers' Compensation Act differed from that of the remit before the Conference. The answer to the "stigma" argument was that no stigma attached to an employer liable under the Workers' Compensation Act for an accident on his premises. With regard to the suggestion that the Court to be appointed would consist of a Judge and two advocates, he considered the Court would be quite different from the ordinary Compensation Court that is associated with the Public Works Act. There would be a peripatetic Court available to hear all claims, and the two assessors would not be appointed by the different parties. It would be a Court like the Court of Review or the Adjustment Court which sat after the Hawke's Bay Earthquake, and there would be no reason why it would not function satisfactorily.

The point of extra expense had been raised by MR. TWYNEHAM. It was surely realized that in New Zealand there is a cover for a cheaper rate than has been dreamed of anywhere else in the world. Before 1928 it was £7 to £10. In 1928 it was reduced to £1. In the first years after the passing of the Act, that had been more than enough to meet the claims for accidents, but the position had altered in the last few years. The insurance companies, however, would have made sufficient profits in the good years to offset more than present losses. The position was that if the premium were raised to double or even treble, it would still be much smaller than it was in England; and £3 a year would not be excessive to pay compared with the enormous waste of time and labour and energy in fighting these claims. If, as it is said, 50 per cent. of the time of the Supreme Court is taken up with these claims, surely the saving of that time would be a saving, a benefit to the community? He hoped the remit would be carried. It was one of those occasions when people were inclined to think there would be a lot of trouble, but after a year or two of working it would be seen to be quite satisfactory. He thought the Conference was indebted to MR. SIM for his remit and for the opportunity of discussing this important question.

MR. F. C. SPRATT (Wellington) said he would like to express his admiration for the speech which had just been given, and suggested that MR. SIM might accept an addition of a word to clear up a question of the constitution of the Court. He suggested that the words "non-representative" should be added before "assessors."

MR. SIMPSON (Dunedin) then spoke. He was one of those against whom a successful claim had been made. His case had been before a Magistrate, but that did not do much good; and he understood that conditions were even worse before a jury. The provision for absolute liability would mean greater protection, and the actual fact was that absolute liability did exist to-day. There is no doubt that costs will rise, but possibly not much above £1 10s., and in any case premiums up to £3 would be worth it.

MR. H. D. ANDREWS (Christchurch) considered the effect of the remit was wider than MR. SIM had intended. The remit no doubt covered injuries received by pedestrians being injured by cars, but it seemed also to cover injuries received in the case of collision between two cars. He had much more sympathy with the idea of absolute liability in the first case, but he could not consider supporting the remit in its wider form.

MR. F. D. SARGENT (Christchurch) thought that it would be agreed that the proposed remit contained two propositions: First, that they should agree that the principle of absolute liability be accepted; and, secondly, that the question of damages should be referred to a tribunal for assessment. As to the tribunal, he referred to the proposed Court as "a Judge and jury of two," whether they were representative assessors or not. That would be the ultimate result of the idea, and whether he appeared for plaintiff or defendant he would prefer his cases to go before a Judge and jury of twelve. He adopted the opinion contained in MR. A. H. JOHNSTONE'S paper on the previous day, that questions of negligence can more properly be dealt with by a jury.

On the question of accepting the doctrine of absolute liability, he supported MR. TWYNEHAM whose views he thought deserved the particular attention of the Conference owing to his knowledge of the subject. The North and South Island Motor Unions were very strong and representative bodies, with men of wisdom at their head, and the Conference could safely assume that the considered opinion they had given was the result of a very careful consideration. The letter from the Hamilton Society showed the feeling of another body of the profession, and the Conference should not allow a remit of this nature to go forward without a very substantial majority being in its favour. "I cannot see why we should not have a simple formulation of rules on the question of liability in motor-collision cases instead of the principle of absolute liability," said MR. SARGENT. He pointed to experiments of this kind in the past, the Criminal Code and the Bills of Exchange Act, both of which had proved very satisfactory. The success of the latter is exemplified by the almost complete absence of amendments since the Act was passed. MR. SARGENT said he did not like either part of the remit, but in any case he considered they should be considered separately.

MR. A. E. CURRIE (Wellington) referred to the application of the absolute liability principle to damage caused by aircraft. He said, "I suggest that those opposing the remit should shoulder the onus of explaining why there should be one rule for aircraft and another for the ground."

MR. O. C. MAZENGARB (Wellington): "People do not walk about up in the air."

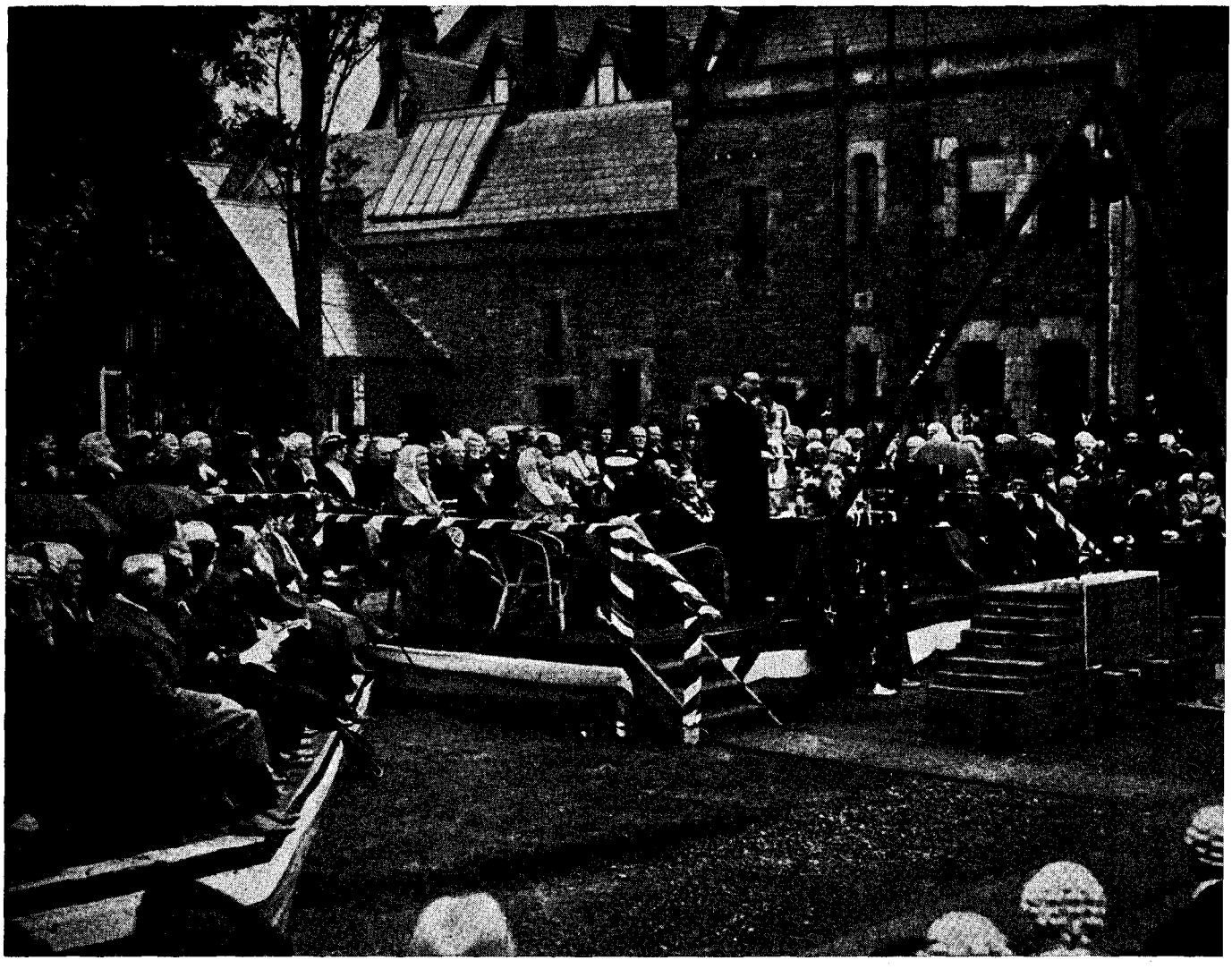
A VOICE: "Except when you are addressing a jury, MR. MAZENGARB."

MR. CURRIE (continuing): "Aircraft do come down to the ground."

MR. H. E. BARROWCLOUGH (Auckland) considered the Conference should not lose sight of the point made by MR. ANDREWS as to the apparent scope of the remit, and that, in his opinion, there were three respects in which the remit required redrafting. This should be done by MR. SIM if he would agree to do so. The points were, first, that the principle should be introduced subject to safeguards and exceptions; secondly, that it referred to personal injuries only and not to accidents between two cars; and, thirdly (as MR. SPRATT had said), the Conference should emphasize that the nature of the two assessors should be clarified. "I think," said MR. BARROWCLOUGH, "that if those three points could be clarified, then the remit would be more in accord with the paper and also more in accord with a good many of us."

THE CHAIRMAN then said: "The object of the remit is really to obtain a full discussion upon this very important question. MR. SIM has himself suggested to me that perhaps his purpose has been served as a result of the discussion which has taken place. It would, I think, be necessary to redraft the remit so as to provide for the matters which have been mentioned by various speakers, and it may be that it would be sufficient if we did not proceed to pass the remit at all, but merely contented ourselves with expressing our own opinions about it. To pass a remit, not perhaps drafted in the form that will meet with the approval of us all, would be an unfortunate thing to do. It has been moved and seconded, and it is before the meeting, and it will be for you to say whether you will proceed to a decision or whether you would like MR. SIM to withdraw his motion."

MR. H. H. CORNISH, K.C., SOLICITOR-GENERAL, agreed with the CHAIRMAN'S suggestion. He considered the purpose of the remit had been served by the discussion which incidentally was not yet over. In his opinion no good purpose would be served either by passing or rejecting the motion since the Conference sat as a Parliament and not as an Executive. It was a discussion which was of value, and no more was needed.



AN HISTORIC CEREMONY: THE LAYING OF THE FOUNDATION-STONE OF THE NEW COURTS

MR. M. M. MCDONALD (Invercargill) said that since the matter was so controversial and no resolution passed could be unanimous he agreed that it would be undesirable to let the question go to a vote. Any resolution passed might be interpreted outside as a unanimous opinion of the Conference. As to the suggested parallel of the Workers' Compensation Act, there was an important difference. A worker is employed for the profit of the employer, and there is a direct interest between them which, of course, did not exist in the case of accidents with pedestrians. The speaker thought that the cost to the motorist should certainly be considered, and he thought it was not correct to compare the £1 premium for personal injury alone with the pre-1928 premium which was comprehensive and varied according to the horse-power of the car. When the 1928 Act was passed what happened was that £1 was fixed as the premium under it, and that was deducted from the amount of the premium payable on the other policy. He disagreed that absolute liability was an established fact to-day as there were a great many claims which never reached the Courts and a great many instances in which the matter never came to the stage of a claim. "I do recognize that some reform is necessary," he said, in conclusion. "The principles of negligence and contributory negligence are not working in the way they used to work for slower moving vehicles. But is not the reform required to remedy this the alteration of the principle of negligence so far as motor-collision cases is concerned? This might be done by introducing the Admiralty Rules. He had no objection to the suggested tribunal as the two assessors would be appointed under a statute and be fully qualified advisers.

THE HON. H. G. R. MASON, ATTORNEY-GENERAL, said that he was very much interested in this proposal.

"I want first of all to thank MR. ROLLESTON for his instructive speech," MR. MASON continued. "I have one regret in particular, and that is that I did not know what he told us long before I became interested

in this matter. Clearly, in putting through the 1928 Act, he showed a much greater political wisdom that I have manifested."

THE ATTORNEY-GENERAL next dealt with the position of the executives of motor organizations who had been referred to. He had not recogized their position clearly before, but putting it quite frankly he saw in them "a very limited point of view." It was impossible to get from them any constructive discussion, and, if the matter was looked at frankly, it would be found that their attitude was "this will cost us a little."

THE HON. MR. MASON then interpolated his opinion that no vote should be taken on this issue by the Conference unless it represented a great preponderance of feeling. He thought that otherwise a vote would be a mistake, and would possibly lead to a wrong impression being created outside.

He went on to refer to the benefits of absolute liability in a case where a child was injured or killed through running from between stationary vehicles in front of an oncoming vehicle. Under the present system the parents of that child would have to bury it because the motorist, not having been negligent, was not liable under the common law. And yet under a system of absolute liability the parents would be indemnified at a cost represented by a trivial amount in the insurance premium paid by the motorist. It was a well-known fact that many solicitors who had to advise on cases of this kind felt their position rather acutely. The arguments put forward by the motorist organizations were those of crowd psychology, and were so frivolous that an individual realizing that he was taking the responsibility of the statements would not make them.

TICE AT CHRISTCHURCH BY HIS EXCELLENCY THE GOVERNOR-GENERAL, VISCOUNT GALWAY.

The reference made to the stigma which it was alleged would attach to motorists liable for compensation under the absolute liability rule was a case in point. Under the rule of absolute liability everyone would know that there was not necessarily a stigma. Further than that the ATTORNEY-GENERAL indicated that the converse was true—namely, that a stigma was often wrongly affixed under the present system owing to the liberal mindedness of the present day jury. He mentioned this to show "the unreasoning position that is reached when a prejudice is aroused first and people then look round for arguments. They bring in the reference to stigma when all the arguments in that respect are the other way, and I think you will find too that each of the arguments they raise is of that character."

Pointing out that the scope of the remit made it impossible for him to deal with every part of it, he said he confined his remarks to one or two of its aspects.

First, with regard to the added liability cast on the motorist, it should be remembered that the case of two motorists in collision would be covered, and the increased premium would therefore in many cases compensate the motorists themselves. The motor organizations had only one point of view, and it was very little use arguing with them when they only looked on the loss side. The ATTORNEY-GENERAL said he had been quite careful when he had seen the increased premium coming along, which incidentally should have been more than 3s., as he knew, from the statements the motor organizations were making, they would put the whole of that increased premium down to the change in the law.

The Workers' Compensation Act refuted the argument based on the sacredness of the common law. The speaker said he wished also to refer to another instance, the Dogs Registration Act. The owner of the dog was once in the position of the motorist, and he did not think the change in the law brought about by that Act had resulted in a world-shaking revolution. But, of course, there had not been an organization to go round the country working up a great deal of crowd psychology about the dog-owner.

Finally, the ATTORNEY-GENERAL reminded the Conference that to pass the remit was only the beginning of the investigation. There were all sorts of adjustments that would have to be considered. These would be essential, and the principle would have to be accepted with some reservations so that the difficulties arising could be overcome.

MR. E. P. HAY (Wellington) said he had attended the conferences of the North Island Motor Union when the new principle was discussed. He considered an injustice had been done to those bodies by the HON. THE ATTORNEY-GENERAL in his speech, and he wished to correct the impression that the organizations had adopted an obstructive attitude. The subject was given the most exhaustive consideration by men from all parts of New Zealand, and he said he could refute the suggestion that it was purely on the monetary consideration that it was turned down: that was absolutely incorrect. The position was that the unions thought they could not accept the principle of absolute liability. The reason for turning the proposal down was certainly not the question of financial burden, that being one of many factors. A great deal of consideration was given to possible alternative schemes which might be brought into force to meet the very unsatisfactory position.

MR. F. B. ADAMS (Dunedin) said that he held a very strong view about this matter and he was anxious that there should be a resolution passed following this discussion, along the lines of the remit; but he felt some amendment was required. He, therefore, proposed the following amendment:

That the words "for personal injuries" be inserted after "absolute liability."

That, MR. ADAMS explained, was the agreed meaning according to MR. SIM. Secondly, as the remit did not mention the question of insurance, and as he thought it should, he moved

That after the words "collision cases" the words "such liability to be covered by compulsory insurance" should be added.

As it appeared that MR. ADAMS had concluded his speech, MR. C. H. WESTON, K.C. (Wellington), interrupted him inadvertently. He agreed that the motion should not be put to the Conference, as its passing would possibly have consequences which the Conference did not realize. He appreciated also the undesirability of coming to no conclusion, and he, therefore, moved

That the remit be not proceeded with.

MR. F. B. ADAMS then continued. He had a third amendment with regard to the concluding words of the remit, his motion being that the following be substituted for the method suggested in the remit for the assessment of compensation:

That compensation to be assessed in such a way as to ensure that it be kept within reasonable limits.

In answer to the chair, MR. ADAMS said he wanted his third amendment included.

MR. A. C. STEPHENS (Dunedin) seconded the amendments.

MR. G. T. WESTON (Christchurch) said he thought the members of the profession present should be frank with themselves in answering the question: "Is the question of absolute liability not the natural corollary of our compulsory insurance legislation?" In his opinion, it had to come. He hoped, however, that even with MR. ADAMS'S amendments the Conference would not vote upon it.

MR. S. S. PRESTON (Te Awamutu) referred to the practical difficulty which sometimes arose in country districts, where people drove cars without an insurance cover. It was just a question whether the Motor-vehicles Insurance (Third-party Risks) Act should not have been amended to cover property damage as well as personal.

MR. P. THOMSON (Stratford) referred to the President's words on the first day of the Conference when he said that resolutions would be expected on the remits though not on the papers. Was it to go forth that the Conference would not pass a resolution, and that no conclusion could be reached on these matters?

MR. A. B. SIEVWRIGHT (Wellington) moved

That this matter be adjourned to the next Conference.

MR. A. W. BROWN (Christchurch) seconded the motion. With regard to the proposed safeguards and exceptions comparisons had been made between the Workers' Compensation Act and the doctrine of absolute liability. In his opinion that was a false analogy. In the first case there is a contractual relationship which does not exist in the second.

THE CHAIRMAN at this stage pointed out that MR. ADAMS'S amendment was before the Conference and would have to be put, but before doing so MR. SIM wished to speak.

MR. W. J. SIM, the mover of the remit, said: "When I took up this subject it was on the request of the Committee, and I brought it forward in a form which was intended to be provocative. It is a vital question, and I think the remit has satisfied that purpose. It has shown the ATTORNEY-GENERAL that a section of the legal profession is behind him, and also that there is another section against him; and I think that if we get as far as that we have done a very good morning's work. It is impossible for this Conference to dream

of coming to a conclusion on the details of this matter when we remember that a highly qualified Commission appointed by the Columbia University took some three years to report upon it. The safeguards and exceptions which are to apply cannot be considered at a Conference such as this. We can only consider the matter and express our opinions, as much as we can, in the time available. I suggest that you are not ready to vote on the subject, and quite candidly I did not expect you would be, but I would like to see the whole thing discussed carefully from one side and the other. There is just as much danger in closing down the discussion without doing anything, and I think the matter could be examined further. I think the principle of absolute liability is coming. It is in the air. The juries and general public are ready for it. If it is at that stage, it will not be stopped by a Conference or fifty Conferences. That is my own opinion."

MR. SIM then asked leave to amend the motion with an amendment of his own as follows:

That in view of the time for consideration this Conference prefers not to vote on the subject.

MR. SIM thought that would satisfy everyone unless MR. ADAMS wished to go on with his amendments.

MR. R. TWYNEHAM (Christchurch) seconded MR. SIM'S amendment.

THE CHAIRMAN asked MR. ADAMS if he intended to press his amendments.

MR. ADAMS replied that he considered the proper course was for his amendments to go to the Conference. It was an important matter, and there had been a long debate which in his opinion gave ample time for consideration.

A discussion then ensued as to the proper form in which to put the amendments to the meeting. A further suggestion by MR. SIM that he should withdraw the remit was not accepted, and the Conference adjourned for luncheon without reaching a decision.

The Conference reassembled at 2.15 p.m., the PRESIDENT, MR. H. F. O'LEARY, K.C., resuming the chair. MR. ADAMS was then asked to restate his amendments, which he did in the following words:

That this Conference approves of the principle of absolute liability for personal injuries in motor-collision cases, such liability to be covered by compulsory insurance, and that compensation be assessed in such a way as to ensure that it be kept within reasonable limits.

The speaker, however, now wished to substitute the following words to follow the word "assessed," "in some suitable manner."

THE PRESIDENT: "I understand that MR. SIM will accept as part of his motion the two earlier amendments, so I will take from you an amendment in the full form you have just repeated to us on the understanding that the first two variations are accepted and the third is not accepted."

MR. A. I. W. WOOD (Dunedin) seconded the amendment, which was then put and carried.

The amendment then became the substantive motion.

MR. F. D. SARGENT (Christchurch) then moved

That the discussion now close and no vote be taken on the remit.

MR. H. J. MCMULLIN (Hamilton) seconded the amendment.

MR. F. B. ADAMS (Dunedin) said he had not really spoken before, but had merely moved his amendments. He now asked the Conference to confirm the principle of absolute liability. They have had the matter before them for weeks, and they had amongst them sufficient experience to express a view. He did not think the discussion should be stultified. As a member of a motor-union, the decisions of the organizations did not express his own views; and he considered that the Conference was better able to form a reasonable judgment than those unions.

"In view of the damage done by motor-cars we should affirm the principle of absolute liability," said MR. ADAMS, "and, in my opinion, the matter should not be one for Judge and jury. The trial of these matters in our Courts has become what is practically a scandal. I am tired of telling insurance companies that they have a good case, but that it is quite useless to fight. I am tired of reading reports of cases involving points of negligence and contributory negligence and all that sort of thing. The adoption of the principle might result in the loss of a certain amount of work for the profession, but we would be well rid of these cases. In my opinion, a vote should be taken and the debate should not be allowed to come to an entirely inconclusive end."

The amendment,

That the discussion now close and no vote be taken on the remit,

was then put and lost.

THE PRESIDENT: "The substantive motion remains, and I shall now put it."

The motion was carried in the following form:

That this Conference approves the principle of absolute liability for personal injuries in motor-collision cases, such liability to be covered by compulsory insurance, and that compensation be assessed in some suitable manner.

As will have been observed, this was the most animated of the Conference discussions. There was a notable change of opinion in the afternoon, as it appeared at the luncheon interval that it was the general wish that no resolution should be put.

A short interval was taken, and, on resuming, the President asked MR. D. PERRY (Wellington) to read his paper on "Some Aspects of the Law of Vendor and Purchaser," which appears on the next page.

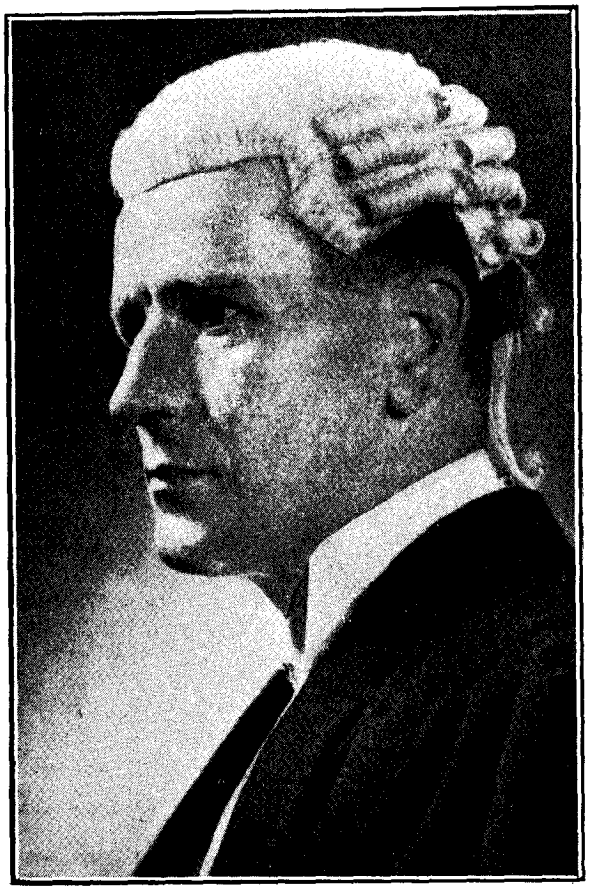
Told at the Conference.—One of the Conference speakers, in order to emphasize a point, told the story of the accountant, the doctor, and the solicitor who, on the same day, sought entrance to Heaven. The accountant, who was the first called upon, was asked what he had done that would prevent his immediate entry. He said that he had falsified two income-tax returns. "That is very bad," said St. Peter, "before you can enter Heaven you will have to walk around Hell twice." The doctor was then sent for. In answer to a similar inquiry, he confessed that he had given about four death certificates, which were not strictly accurate. "That is worse still," remarked St. Peter. The doctor was sentenced to walk around Hell eight times before he could enter the pearly gates. St. Peter then sent for the solicitor. There was no appearance. "What has happened to him?" asked St. Peter. He was told that the solicitor had gone back to earth to get his bicycle.

Some Aspects of the Law of Vendor and Purchaser.

By D. Perry, LL.B.

WHEN, in a moment of weakness, or enthusiasm—weakness is, I think, nearer the truth—I promised the President of the Canterbury District Law Society to write this paper, I appreciated in some small degree the magnitude of the task I had set myself. But full realization was to come later. I looked at the backs of the two bulky volumes of *Williams on Vendor and Purchaser* and shuddered at my temerity.

My first problem was, of course, what aspects? In the process of elimination which followed, I flirted with various ideas. Being by nature of a practical



S. P. Andrews & Sons, Photo.

Mr. D. Perry.

rather than a theoretical turn of mind, I was impelled to fasten, if possible, upon some "aspect" of the law on this particular subject which in my humble view left room for improvement, because, although I realize fully the place which academic discussions should hold at Conferences such as these, my own personal preference was to endeavour to extract from this vast subject and open for discussion some aspect which occasioned more than ordinary difficulty to the practitioner with the idea that the collective brain of the assembly might thereout be able to evolve some improvement in the law. For, as the Attorney-General said quite recently, the average layman is the most conservative person imaginable when it comes to the questions of law reform, while the average lawyer, for all his training in and reputation for conservatism is generally prepared to rush in where angels—I apologize—I find I am paraphrasing the Honourable Minister a little too freely.

To advocate the abolition of the Statute of Frauds appeared to be perhaps too iconoclastic apart from the fact that the statute does not belong entirely to our subject. To discuss the extent to which the force of the statute has been whittled away by Courts of Equity would be an incursion into the purely academic field. A discussion on representations and warranties and an attempt to draw a distinction between the two which would not depend upon the state of a Judge's digestion seemed a barren field for constructive suggestions, and a subject again not entirely our own. To advocate the abolition of the anomalous rule in *Flureau v. Thornhill*, (1776) 2 Black W. 1078, 96 E.R. 635, was tempting, as a subject entirely our own, but after re-reading the able article by Mr. J. Glasgow in (1928) 4 New Zealand Law Journal 159, 174, and 191, I was persuaded that the rule had its merits, merits which doubtless greatly outweighed its disadvantages.

The Purchaser in Default.

These, and other, aspects of the law of vendor and purchaser were considered and rejected, and I came at length to the conclusion that I could do no better than adopt a suggestion made by the President of the Canterbury Society. He reminded me that the Law Revision Committee had under consideration the question of legislation for the protection of purchasers from dishonest and impecunious vendors who were unable when the time came to give title. What then of the honest vendor who could not get his purchaser to complete? Some aspects of the problems which arise in such cases, and possibly some suggestions for the solution of some of them, might be of some practical value.

All of us have, I suppose, been confronted at various times with the difficulties that so often face a vendor whose purchaser is in default. Let us briefly consider the common case of an open contract, containing all the essential terms, but conferring no remedies on the vendor in case of default, contract to be completed by transfer or conveyance before possession is given. Where a substantial deposit has been paid by the purchaser, difficulty seldom arises—first, because such a purchaser seldom defaults; and, secondly, because the vendor is normally quite happy if he does, because he forfeits the deposit. But this is, of course, not the only case. What of the vendor's other rights if he should desire to put them in force?

In the fourth edition of *Williams on Vendor and Purchaser* no less than ninety-four pages are devoted to the subject "Remedies for Breach of the Contract." Much of the material contained in this chapter I do not propose to touch upon, but before any of it is considered it is necessary first to determine whether although the purchaser has failed to complete he has committed a breach entitling the vendor to take some action. This, of course, involves, apart from the question of repudiation, a consideration first of all of the question as to whether time is of the essence of the contract. If it is not, it must be made so. So far everything is plain sailing.

THE VENDOR'S REMEDIES.

But what now? Let us assume, either that the purchaser has repudiated, or that time having been made of the essence he has still failed to complete.

> "Where the stipulation broken goes to the whole root of the consideration—as on breach of one of the main duties of the contract—the injured party's remedies are either to rescind the contract and sue for restitution to his former position, or to affirm the contract and sue either for damages for the breach or for the specific performance of the agreement." (*Williams on Vendor and Purchaser*, 4th Ed., 1003.)

Here is the germ of our first difficulty. The vendor here does not want rescission and restitution to his former position, even if he be, nevertheless, entitled to forfeit the deposit, which may or may not be sufficient to cover his commission (an item which he cannot recover in addition as damages, leaving him the deposit as a clear profit). He wants the benefit of the bargain he has made.

Accordingly, he is left to his equitable remedy of specific performance or his legal remedy of damages. He is advised that he can claim both in the alternative in the same action, and issues his writ accordingly.

But the sittings of the Court are three months away, possibly more. Can he abandon his claim for specific performance and resell the property now, or must he hold it, possibly producing no revenue and costing a considerable sum in outgoings, until his case is heard? He seeks advice, and his adviser seeks again the aid of *Williams*, and finds apparently the answer to the problem at p. 1031.

> "When judgment has been obtained by or against the vendor for damages for breach of one of the main duties arising under the contract, his obligation to convey the land sold to the purchaser is merged and extinguished in the judgment. He is therefore restored to his former position of full owner of the land, and may thenceforth freely deal with it as his own. . . . But the vendor suing or sued for damages for breach of his contract to sell land cannot safely make any disposition thereof contrary to the agreement until judgment has been recovered, for until then the purchaser is not estopped from suing for the specific performance of the contract. But we have seen that the vendor may lawfully exercise his powers of disposition where the purchaser has committed such a breach of the contract as unquestionably discharges him from his obligation thereunder, and he elects to *rescind* and not to affirm the contract."

If this is to be accepted, the vendor must do nothing with the property until the case is heard. Suppose the property is a house property, vacant, and he has agreed to give vacant possession to the purchaser. He dare not let a tenant in, as that tenant may well be able to resist his efforts to eject him. He must, therefore, accept the certainty of three month's loss of revenue against the uncertainty of ever being able to enforce his judgment (if he gets one) against his purchaser; and in any event, why does he have to keep the property available for the purchaser when the purchaser has made such default as deprives him of all rights which he ever possessed under the contract?

SPECIFIC PERFORMANCE AND DAMAGES.

In search of further enlightenment the vendor's adviser looks for some guide from the Law Reports and reads the case of *Michie v. Drummond*, (1913) 32 N.Z.L.R. 632. Here he finds that a vendor claimed against a defaulting purchaser specific performance; after the purchaser had filed his statement of defence admitting his refusal to complete, the vendor resold the property and amended his statement of claim to include a claim for damages. Stout, C.J., had no difficulty in arriving at the conclusion that he was entitled to damages, and awarded £50 because the property had been sold for less, commission had had to be paid on the sale, and interest had been lost as the property had not been used since the first sale.

His misgivings aroused as to the infallibility of *Williams*, he seeks further, and studies the case of the *Wellington Brick Co., Ltd. v. Jansen*, [1931] N.Z.L.R. 991. There again a vendor sued a defaulting purchaser for specific performance and damages in the alternative. At the trial he abandoned his claim for specific performance and asked for damages. The late MacGregor, J., found himself in considerable doubt which he expressed, at p. 994, thus:

> "I had some difficulty in seeing how the plaintiff company could recover damages accruing as on a total repudiation or renunciation of the contract on a claim professing to keep the contract alive for purposes of specific performance"

and passed the problem on to the Court of Appeal. MacGregor, J., appeared to think that a vendor suing a defaulting purchaser for damages treated the contract as at an end, while the statement in *Williams*, already quoted, said the very opposite. The Court of Appeal had no doubt that the plaintiff was entitled to damages, so little doubt in fact that it delivered an oral judgment, and Blair, J., in the course of his judgment expressed himself, at p. 996, in these words:

> "I was under the impression that the plaintiff claimed to be able to retain his right to specific performance and also to recover damages at common law. That is not so. He admits that, if he elects to claim damages at common law, this constitutes an election to treat the contract as ended and he cannot then ask for specific performance as well. To do so would be both approbating and reprobating the existence of the contract. When a plaintiff in an action for specific performance asks for damages in case specific performance cannot be obtained, this is a claim based upon a subsisting contract, and is a different claim from one for damages at common law which treats the contract as determined by breach committed by the party in default."

The only conclusion that can be drawn from the expressions of opinion of MacGregor and Blair, JJ., in this case and the judgment of Stout, C.J., in *Michie v. Drummond*, (1913) 32 N.Z.L.R. 632, is one entirely at variance with the statement of the law in *Williams* already quoted. He says, on the one hand, that if a vendor claims damages for the purchaser's default he affirms the contract, and if he rescinds for the purchaser's default his right to damages is gone because the contract is at an end. The New Zealand cases referred to, on the other hand, appear clearly to indicate that a vendor who sues a defaulting purchaser for damages does so on the footing that the contract is at an end.

RESALE?

There can be little wonder that our vendor's adviser finds himself in very grave doubt as to how he should answer his clients question "Can I resell?"

To make confusion worse confounded he reads the case of *Botherway v. Stinson*, [1921] N.Z.L.R. 403. The facts there were that a purchaser repudiated. The vendor resold the property at a profit (there was no express power of resale) and then sued the purchaser for damages. Salmond, J., in the course of his judgment, having found that the purchaser had repudiated without justification, said:

> "He thereby entitled the plaintiff to treat the contract as cancelled, but without prejudice to his right to sue for damages as for a breach of it. In *Johnstone v. Milling* (16 Q.B.D. 460, 467), Lord Esher says:
>
> "'When one party assumes to renounce the contract—that is, by anticipation refuses to perform it—he thereby, so far as he is concerned, declares his intention then and

there to rescind the contract. Such a renunciation does not, of course, amount to a recission of the contract, because one party to a contract cannot by himself rescind it, but by wrongfully making such a renunciation of the contract he entitles the other party, if he pleases, to agree to the contract being put an end to, subject to the retention by him of his right to bring an action in respect of such wrongful rescission. The other party may adopt such renunciation of the contract by so acting upon it as in effect to declare that he, too, treats the contract as at an end, except for the purpose of bringing an action upon it for the damages sustained by him in consequence of such renunciation.'

"This being so, the defendant has no defence to this action, and the sole question remaining for consideration is the measure of damages."

So far so good. Salmond, J., apparently disagrees entirely with the troublesome passage in *Williams*. But the learned Judge then goes on to consider the question of damages, and in the course of his judgment, at p. 407, says this:

"There remains, however, a further question for consideration. When the plaintiff resold the land . . . he sold it not at a loss but at a profit. He had sold to the defendant at a price of £95 per acre. He resold . . . at a price of £97 15s. an acre. He made a profit, therefore, of £2 15s. per acre . . . I think that in the circumstances of the present case this profit must be set off against the loss which in other respects the plaintiff suffered from the defendant's breach of contract. It is true that when on the rescission of a contract for the sale of land the vendor resells the property, otherwise than in exercise of some express provision in the contract in that behalf, he resells as owner on his own account, for his own profit, and at his own risk, and not on account of the defaulting purchaser. The purchaser cannot make the vendor account to him for the profits of resale as money received to his use, nor can the vendor claim as of course that any deficiency on the resale shall be made good by the original purchaser. In *Williams on Vendor and Purchaser* it is said: 'If the vendor resell after he has elected to rescind the contract, he resells in the capacity of owner of the land and for his own benefit and at his own risk exclusively. If the land realize a higher price than at the sale rescinded, he is entitled to keep the surplus; and if the price were lower he has no right of action against the former purchaser for the difference'."

Then Salmond, J., goes on, at p. 408, to say:

"*I do not doubt the accuracy of this statement of the law, but it does not determine the question now under consideration.*"

The learned Judge then proceeds to state the ordinary rule as to damages for breach of contract, and in the result holds that the plaintiff must set off against his proved loss the profit on the resale.

Caught in such a welter of conflicting opinions and expressions of judicial doubt, it is little wonder that the practitioner concerned is himself in more than considerable doubt as to how he shall advise his client. Notwithstanding the reports he has studied, there is still the difficulty that a resale by his vendor client involves necessarily a rescission of the contract, and he knows that well-established rule of law that one cannot have both rescission and damages.

That there is a thread to lead him through the maze seems reasonably clear. But the only clue to the discovery of the thread that he has so far seen lies in the judgment of Salmond, J., in the case just referred to, in which, while assenting to the proposition in *Williams* that a vendor rescinding for a purchaser's breach and then reselling does so as owner, and according reaps the profit or stands the loss himself, yet proceeded in assessing the damages which he awarded to take into consideration the profit which in that case the vendor had made on the resale.

Let us now leave our sorely-puzzled practitioner and consider for a moment the remedy which his client wanted to abandon in favour of damages—the remedy of specific performance. To a purchaser this remedy may be a valuable and effective one, because if he obtains his decree, and the vendor refuses to perform it, he can in an appropriate case get the Court to appoint someone to execute an assurance in his favour in place of his defaulting vendor. But what of the remedy in a vendor's suit?

Rescission Difficulties.

Let us take the case where a vendor has sued his defaulting purchaser for specific performance and damages. He gets a decree and an award of damages to compensate him for the delay. The purchaser fails to obey the decree—What is he to do now? The idea of applying for the other's attachment for contempt of Court does not appeal. He is not so much interested in his purchaser's corporal punishment as in obtaining the benefit of his bargain. What then? The only remedy left to him is to rescind the contract. Having done so, can he now have damages for the loss of his bargain? Here, again, we meet with a considerable conflict of judicial opinion.

First of all, it is plain that if he has not claimed in his writ damages for loss of his bargain he is too late to claim them now: *Dillon v. Macdonald*, (1902) 21 N.Z.L.R. 375. But let us suppose that he has done so; and that he goes back to the Court in the same action and asks for a decree of rescission and an inquiry as to damages. In *Henty v. Schroder*, (1879) 12 Ch.D. 666, Sir George Jessell, M.R., apparently considered that the plaintiffs could not at the same time obtain an order to have the agreement rescinded and claim damages against the defendant for breach of the agreement. On the other hand, in *Sweet v. Meredith*, (1863) 4 Giff. 207, 66 E.R. 680, a vendor who had obtained a decree for specific performance which the purchaser failed to obey, obtained in the same suit an order for rescission and an award of damages.

Turning to our own Reports, we find the case of *Coombes and Connor v. Edwards*, (1915) 34 N.Z.L.R. 984. In this case a purchaser had obtained against his vendor an order for specific performance and damages. The vendor having failed to obey the decree the purchaser came to the Court again (in the same action) asking for an order for rescission and seeking to retain his judgment for damages. Holding that the principle with regard to damages on rescission applied equally in a purchaser's suit as in a vendor's, Cooper, J., at p. 986, said:

"The defendant, up to the time this action was commenced, persistently refused to carry out the provisions of clause 10 of the agreement. This refusal went to the root of the contract, and from the time the decree was made he has refused to obey the decree. The plaintiffs can therefore, in my opinion, ask the Court to order that the contract be rescinded, but I am also of the opinion that they cannot, if the order is made, retain the judgment for £100 damages. These damages were assessed as compensation to the plaintiffs for the defendant's wrongful delay . . . ; they are damages for a breach of the contract; and the earlier cases in which the plaintiffs were allowed to retain the judgment for damages—namely, *Sweet v. Meredith* (4 Giff. 207) and *Watson v. Cox* (L.R. 15 Eq. 219)—have been disapproved in the later cases: *Henty v. Schroder* (12 Ch.D. 650), *Hutchings v. Humphreys* (54 L.J. Ch. 650); and *Jeffrey v. Stewart* (80 L.T. 17). The reason, I think, is obvious. The damages are awarded on the basis that the contract is in existence, *and if the contract is rescinded nothing remains to support them.*"

The facts of this case are, I think, worthy of some notice. The purchasers had bought the land in question for the purpose of subdividing and reselling it. They had spent money on subdividing and roading. Their contract with their vendor provided for an

apportionment of the purchase-money over the sections so that title to one section could be obtained on payment of the part of the purchase-money apportioned to it. It was this apportionment that the vendor had refused or failed to agree to. The result was that contracts of resale of various sections made by the purchasers had to be cancelled.

Cooper, J., went on to indicate that if the plaintiffs accepted a rescission of the contract as asked for by them, their only remaining remedy was to claim in a subsequent action based not upon the breach of the contract but upon the rescission of it the moneys paid by them under the contract. Thus they stood to lose the cost of the subdivision and roading—and perhaps other money as well. I venture to suggest that if that is the law, then in some cases it works a manifest injustice.

It has been suggested, and I think rightly, that the key to the confusion of these conflicting decisions lies in the loose use of the word rescission, and the failure to draw a distinction between rescission of a contract on account of, for example, misrepresentation, which involves a complete *restitutio*, and rescission of a contract for the other party's renunciation or breach, which entitles the injured party to damages for the loss of his bargain; and I would recommend to the consideration of practitioners a study of an able and lucid article on this question by Mr. H. Walker published in the *Australian Law Journal*, Vol. 6, at p. 48. And if the position be, as it undoubtedly is, that an injured party can recover damages for the other's breach or repudiation, is there any reason in principle why a party cannot recover damages after an order for rescission based upon the other's failure to obey a decree for specific performance?

Let us now consider for a moment another aspect of this troublesome question of rescission.

Long-term agreements for sale have been very widely used in New Zealand. Probably their popularity arose in the first place from the fact that prior to 1915 contracts for the sale of land did not attract conveyance duty. Proportionately they are much more extensively used in this country than in England and they create certain problems apart altogether from those we have been discussing.

As a general rule such agreements confer upon the vendor certain rights and remedies in the event of the purchaser's default. A common enough provision is one entitling the vendor, on the purchaser's default, to rescind the contract and forfeit all moneys theretofore paid by the purchaser thereunder.

Here on the face of it may be an entirely effective remedy. The purchaser may have paid, in addition to his initial deposit, substantial sums in reduction of the purchase-money, which the unsuspecting vendor is inclined to regard as further security for the performance of the balance of the purchaser's obligations. But, as we know, that security may well prove an illusory one.

To take a simple example: A purchaser has in 1929 bought a house property for £1,000, has paid a deposit of £100, and by 1934 has by paying instalments covering principal and interest reduced his balance of purchase-money to £750. He then makes default. By this time the value of the property has fallen to £750. The vendor, having first been careful to give the necessary notice under s. 94 of the Property Law Act, 1908, requiring the purchaser to remedy the breach complained of, on default of compliance with that notice gives his notice rescinding the contract and forfeiting all moneys paid thereunder.

The Defaulting Purchaser's Position.

The defaulting purchaser now commences an action against the vendor claiming the refund of all purchase-money paid by him over and above his deposit; and he relies in support of his claim on the following passage in *Williams on Vendor and Purchaser*, 4th Ed., p. 1006:

> "As any party rescinding the contract for the other's breach is entitled to be restored to his former position, so, it is conceived, he is in general bound to return to the other any property or profit which he himself has received under the partial execution of the agreement. It is thought that in every case in which a party to a contract lawfully rescinds it, whether for the other party's breach of some stipulation, which goes to the root of the whole consideration, or for the other's renunciation of the contract, for non-fulfilment of some condition subsequent, under an express power to rescind, or for misrepresentation, duress, or undue influence, the rule is that he shall not enjoy the advantage of rescission without yielding up every benefit he has taken by the previous part-performance of the contract.
>
> "But an exception to this rule occurs, with regard to a deposit paid on a sale of land to the vendor, or his agent, where the vendor lawfully rescinds the contract for the purchaser's breach or renunciation of it."

He is met with the following passage from *Salmond and Winfield on the Law of Contracts*, p. 284:

> "Rescission for breach is different . . . from rescission for fraud. It has been already stated that rescission for fraud is rescission *ab initio*. The election to rescind in such a case relates back to the date of the contract, and operates retrospectively, with the effect that after rescission the contract is deemed by law never to have been in force. . . . But it is otherwise with rescission for supervening breach of a valid contract. This is not retrospective rescission *ab initio*, but prospective rescission *in futurum*. It is merely the determination of the contract as to the future, not the constructive abolition of it as from the time it was made."

Continuing at p. 286, the learned authors say:

> "From this conclusion it follows that on the rescission of the contract for breach neither party possesses any such right of *restitutio in integrum* as exists in the case of rescission for fraud. This right has its source in the retrospective operation of rescission *ab initio*, whereby the contract is deemed never to have been in force, and each party is accordingly entitled to recover back whatever money he has paid or property he has transferred in pursuance of that contract while it remained in existence. But in rescission for breach the contract remains operative as to the past, and therefore precludes any such claim for *restitutio* in respect of acts of performance prior to rescission. *Money which has been transferred by either party to the other prior to such rescission must stay where it is and cannot be recovered.*"

The question so arising has been many times discussed, and it would appear doubtful whether either of the passages just quoted can be accepted without qualification. *Williams* suggests that the rescinding vendor must return instalments of purchase-money other than the deposit. *Salmond and Winfield*, on the other hand, say quite definitely that such instalments must stay where they are and cannot be recovered.

It would appear that the defaulting purchaser has two strings to his bow. If the vendor has rescinded, whether pursuant to his ordinary legal right or pursuant to a stipulation in that behalf contained in the contract, then, unless the stipulation provides for the forfeiture of the instalments, the purchaser has a legal right to the return of his instalments. Whether the vendor is entitled to counter-claim for damages is another matter, depending, it would appear, upon whether he has rescinded (using that word in its strict sense) or has—to paraphrase the words of Lord Dunedin in delivering the opinion of the Judicial Committee in *Mayson v. Clouet*, [1924] A.C. 980, 985—

elected to hold the contract as at an end—*i.e.*, no longer binding upon him—while retaining the right to sue for damages for the breach committed. If, however, there be an express provision for the forfeiture of all moneys theretofore paid, the purchaser can have no legal claim for the return of his instalments; but, in such a case, can invoke the aid of a Court of Equity to give him relief against their forfeiture; and in such a case it is apprehended that the Court, to do justice between the parties, must inquire as to the vendor's damages, if any, and permit him a set off. If this be the true position, the purchaser in the example quoted could recover nothing because in the meantime the value of the property has fallen to an amount equal to the balance of purchase-money due by him: Example of cases in which relief has been granted in equity are *In re Dagenham (Thames) Dock Co., Ex parte Hulse*, (1873) L.R. 8 Ch. 1022; and three in the Privy Council, namely, *Kilmer v. British Columbia Orchard Lands, Ltd.*, [1913] A.C. 319; and *Steedman v. Drinkle*, [1916] 1 A.C. 275; and a case in which the defaulting purchaser was apparently held entitled to succeed at law was *Mayson v. Clouet*, [1924] A.C. 980.

It is not, however, my intention to attempt to answer the difficult questions raised. Such an attempt would be presumption on my part. I raise them as examples of some of the many difficulties that face the conveyancer.

Standard Conditions of Sale.

The question I should rather ask is, can anything be done to remove these difficulties, or at any rate some of them? And not only the difficulties touched upon, but others with which practitioners are familiar. I think it can. There are, I think, a number of good reasons and good precedents for the suggestions which follow. Whether the difficulties which I have so briefly touched upon furnish sufficient reason in themselves may of course be open to very considerable doubt. They surround only one aspect of the matter, but other problems relating to requisitions, possession, insurance pending completion, payment of the deposit, and so on might be cited and will possibly commend themselves to practitioners as affording a sufficient justification, even if only on grounds of convenience, for the adoption of these suggestions or some of them.

So far as I am aware there has never been adopted by any responsible body in New Zealand a standard set of Conditions of Sale, capable of being imported into a contract by appropriate words. This has been done in other countries. Under s. 46 of the Law of Property Act, 1925 (Eng.), (*15 Halsbury's Statutes of England*, 227), the Lord Chancellor was empowered to prescribe and publish forms of contract and conditions of sale of land, and these apply to contracts made by correspondence, subject to any modification or contrary intention expressed therein, and may, but only by express reference thereto, be made to apply to any other contracts. The Conditions of Sale so prescribed are published in *14 Butterworth's Encyclopædia of Forms and Precedents*, 2nd Ed., at p. 348. In Victoria, the Transfer of Land Act prescribes a set of Conditions of Sale applicable to sales of land under that statute, capable of being adopted into contracts by the insertion of words applying them, and these conditions can of course be adopted with or without modifications. The Real Estate Institute of New South Wales and the Real Estate Association of Victoria have their own conditions of sale, and sets of conditions have been adopted by other bodies in Australia and Great Britain, including most of the Provincial Law Societies in England.

It should not be a task of great magnitude for the New Zealand Law Society to undertake the preparation of a set of Conditions of Sale applicable generally to sales of land in New Zealand. If this were done, these conditions could be imported into contracts by appropriate words. But I doubt whether this would go far enough. My own view is that legislation should be sought, empowering the New Zealand Law Society to prescribe a set of conditions of sale, with power from time to time as thought necessary to vary these conditions. (This power of variation is probably necessary to cover the cases in which the Courts will hold that the conditions mean something they were never intended to mean!) The proposed legislation should provide that these conditions should form part of every contract, except in so far as they may be excluded by express words or may be inconsistent with the express terms of the contract itself. Thus we would bring agreements for sale in line with mortgages, into which various covenants, powers, and remedies are imported by statute. And I suggest that a properly drawn set of conditions would remove many of the doubts and difficulties that now confront conveyancers asked to advise on an open contract.

If this course be adopted, I would make this further suggestion—that the legislation provide that no power of rescission, resale, or re-entry should be exercisable until adequate notice of the breach complained of had been given to the purchaser, and that if such breach be remedied within the time limited by the notice (or perhaps such further time as the Court on the purchaser's application might fix) the vendor's right arising on such breach should lapse. It is, I understand, proposed that legislation be passed making applicable to all mortgages some such provision, which at present applies only to mortgages which have been adjusted under the Mortgagors and Lessees Rehabilitation Act. As a necessary corollary to this it would seem that s. 94 of the Property Law Act, 1908, should be amended to exclude from its provisions agreements for the sale of land.

I remember reading somewhere of a great English statesman, who, when any new legislation was proposed by any of his colleagues, examined it with one question uppermost in his mind. Not "What good will it do?" But "What harm can it do?"

Even if this test be applied, I feel fortified because there is ample authority for the proposition that the inclusion in contracts of express powers does not exclude the exercise of rights and powers which exist independently of the contract. I venture, therefore, the modest suggestion that the legislation here proposed, while it may be of some value, cannot do any harm.

The President said he did not think Mr. Perry had any need to apologize for his paper. It was on new lines for papers at this Conference, which would no doubt be very useful for reference, perhaps not for discussion, unless there was anyone who would like to refer to any particular aspect of the paper.

There was no discussion.

The President then thanked Mr. Perry, and he added that the thanks of the Conference would be extended to him and the other gentlemen at a later stage.

Legal Education.

The New Regulations.

MR. W. D. CAMPBELL (Timaru) spoke on the following remit in his name.

That the New Zealand Law Society consider the new regulations for the admission of barristers and solicitors.

He said that he had dictated over the telephone from Timaru the title of this remit, and it wanted some amplifying. The remit invited attention to a new set of regulations governing the syllabus of subjects for the examination of candidates for admission as barristers and solicitors which appears in the *New Zealand University Calendar, 1938.*

"It is the result of about six years of consideration by the Council of Legal Education, a body the constitution of which is calculated to create confidence and respect, which consists of two Judges, two persons recommended by the New Zealand Law Society, and two professors of Law in the University Colleges," MR. CAMPBELL proceeded. "In 1934 this Council produced a report on legal education, and after they had done their work the product of their labours was considered by the Academic Board, which recommended them to the University Senate, and at its meeting in January of last year the Senate passed these regulations after they had been considered by the legal members of the Senate. They are now in force, and constitute the conditions which must be complied with by students in the future."

It was with considerable diffidence that a practitioner, and especially a country practitioner, presumed to criticize such a set of regulations after the consideration they have received from such eminent bodies as have produced this syllabus, the speaker added. With diffidence then, he submitted four propositions to the Conference.

(1) That the Syllabus requires an excessive number of subjects.

(2) That it unduly emphasizes certain subjects which I personally regard as unessential by making them compulsory.

(3) That it fails to require the study of certain subjects which I personally regard as essential by making them optional.

(4) That it misplaces certain subjects in the course.

"There are now eighteen subjects plus conveyancing, which is not counted as a subject," MR. CAMPBELL continued. "These are divided into four divisions, each of which must be completed before the next is begun, and not more than four subjects can be taken at one examination. That means that a five years' course is necessary. I have no objection to that as it brings the law course into line with medicine, dentistry, and engineering, and it does not seem unreasonable that anyone who is going to practise the profession of the law should undergo a training at least equal in length to the other professions I have mentioned.

"Another notable change in the syllabus which was referred by MR. Stephens in his paper is that solicitors are now required to take the same course as barristers. I consider that is very necessary. Solicitors, in point of fact, do much more of the legal work of the community than do barristers, and come into a more intimate relationship with the public than barristers. I understand that it is one of the joys of the life of a K.C. that he does not come into contact with the client.

"In 1934 the NEW ZEALAND LAW JOURNAL published a number of articles dealing with the law syllabus, and one of these contained a statement about the position of the solicitor which has since remained in my scrap-book. It is as follows:—

> 'He will be called upon to deal with vital confidences—confidences which go to the basis of our domestic, social, and economic life; to accept trusts; to give advice in which his client's interest must come before his own, even without recourse to the Courts, to weigh and determine causes and administer justice.'

I do not think it is necessary at this Conference to stress the importance of the proper training of those who are to undertake that class of work.

"It has been emphasized to-day and yesterday that the lawyer must necessarily be a man of wide knowledge outside of his technical subjects, and of continually flexible mind and outlook. I need do no more than quote Lord Atkin in regard to the necessity for a legal practitioner having more than a practical training and knowledge. This is what Lord Atkin said:—

> 'The merely practical lawyer to-day, however able, is not enough. The Courts are becoming more and more concerned with great social experiments. Law joins hands as never before with problems in economics, problems in political science, problems in technique of administration. It is important that the curricula of our law schools shall send out lawyers trained to appreciate the meaning of these relationships. They must shape the mind to a critical understanding of the foundations of jurisprudence.'

"Last January in Sydney there was held the third Convention of the lawyers of Australia, and a paper was read then on Legal Education. The author of the paper said that the purely technical lawyer would not do and he quoted the following dictum:—

> 'A lawyer without history or literature is a mechanic, a mere working mason; if he possesses some knowledge of these, he may venture to call himself an architect.'

Without considering that point any further, I agree entirely that the promoters of this new syllabus were justified in requiring a good education among the men who are to practise the law in one branch or the other. I endorse in that respect all the excellent work that has been done.

"The law course is now certainly a full-time job. To do these eighteen subjects, and to do them to a reasonable standard, I suggest to you that a young fellow should have nothing to do but to attend to his course in the same way as a medical student spends the whole of his time at the University until the end of his course. It is an exacting course, and, if he is to work in an office during the day and work again hard at night, students cannot do justice to the academic side of their training. He will undermine his health, and cannot possibly assimilate the subjects in the way he should do. Therefore, it means, I think, for the future that law students are going to be for a period of five years or more full-time students and nothing else. The regulations require that every candidate shall be a matriculated student and keep terms in his subjects.

"If he cannot attend the lectures, he must pass the annual examination of the College to which he is attached. I do not see any prospect of that being done away with, and in another respect the requirement

of attendance is undoubtedly a good thing. The community life at the University will help to train the student in the social qualities or the human qualities, which are no less necessary to success than legal knowledge.

"You will remember how Lord Haldane in his Autobiography describes how on arriving in London from Scotland with his head full of philosophy and law he found it necessary to cultivate these human qualities; and how he got his foot on the ladder of success through being invited to a dinner party by an elderly and prosperous solicitor who prided himself on his cellar and treated his guests to bottle after bottle of wine, each better than its predecessor. When the last and most excellent bottle was reached Haldane was the only guest able to attack it. He swallowed the whole bottle himself with a complimentary reference at every glass. The solicitor host a few days later sent him his first substantial brief—one of the most agreeable ways of establishing a practice that I have come across.

"But, while I support the academic requirements, I do not think they should run to extremes. After all, the pass degree is only the beginning of a lawyer's life. His preliminary training and his admission to the profession are not meant to put the seal on him for the rest of his days. It is only the foundation of his legal career, not the finished structure which is built upon the foundation through years of practice. Even in five years it seems to me that a student of average ability could only learn in his course those habits of study which he must continue right up to the day he gives up practice.

"The qualification that admits a man to practise is not meant to guarantee that he knows the whole law. At the age of ninety-seven Lord Halsbury said: 'God forbid that I should know the whole of the law.' It is absurd then to think that every student of twenty-one who has his degree knows the law—it is often, however, necessary to disabuse the minds of some of them of the idea that they do know it all.

"But, of course, there is no doubt that the cultivation of habits of study is most valuable. I think also there should be some reasonable grounding in the principles of law, but not, I think, in too many details. You do not want to bring up a student so that he cannot see the wood for the trees. He should also be introduced to those branches of learning and study known as the social sciences to which the law is allied. To overload the course either with a variety of subjects or with details of a particular subject will defeat these objects, and it is my criticism that the course is open to serious objection under the four heads I have mentioned.

"With regard to the first—namely, that an excessive number of subjects is required. As I said there are eighteen altogether, excluding conveyancing. I think the new course errs on the side of undue comprehensiveness for a purely pass qualification. For a five-year course I think that the first division, which is intended to be mainly of a cultural nature, is overloaded. There are seven subjects in this division, although by duplication you can make five do. But you must take at least five subjects; and if only five are taken, then two of them must be duplicated, by taking history, for example, for two years. In the first division there are five cultural subjects and no law subjects except Roman Law, which I think ought to be excluded. Three of these are compulsory. The three compulsory subjects are Latin, Roman Law, and Jurisprudence, and of these three I think it is a mistake to make Latin and Roman Law compulsory. To do any good at Latin the ordinary person has to spend years and years at it, and then after that he leaves it alone.

"Bruce Lockhard, in his latest book, *My Scottish Youth*, says:

> 'I never brought my classics to the point where I could read them for pleasure. Ten years of intensive study of Latin and Greek never made those subjects familiar to me as languages.'

And I think Bruce Lockhart's experience is the experience of the average student who is taking the pass degree.

"Incidentally, I would prohibit examiners in the professional subjects from testing a candidate's knowledge of Latin. Mr. Rolleston may have forgotten this incident, but some years ago when he was an examiner in criminal law he told me that he set as one question, 'Translate and explain the maxim, *Non est reus nisi mens sit rea.*' One candidate translated it, 'The thing is not unless the mind is the thing,' and he went on to explain it to the extent of four pages. His study of Latin had certainly not done him much good.

"I would remove Latin from the compulsory list and put it in the optional list.

"I would also send Roman Law to join Latin as an optional subject as its only value to us is as a subject of comparative study—comparing something different with the thing with which one actually has to deal. It is a huge subject covering the whole range of the Roman system of law, and yet it has to be taken as one subject of seven by a student who is not yet allowed to approach the law of his own country, which when it is taken is separated into seven different sections. If Roman Law has to remain as one subject, I would make it optional and put it at the end of the course when the student would be familiar with legal ideas and phraseology, through having been through the various sections of our own law, and then, if he had enough industry, he might reap some advantage from comparing the Roman way of dealing with a certain problem with the English way. The late Mr. Justice McCardie, while he had a high respect for Roman Law, once quoted the following passage from Professor Trevelyan:

> 'The Common Law has always appealed to the past of England and not to the past of the Roman Empire.'

To demand that a pass student should be required to take Roman Law does not give him an adequate return for the labour he must expend upon it. I would then make these two subjects optional, and put Roman Law later in the course. I should, in fact, remove Roman Law from the pass degree, and with it Conflict of Laws and International Law. To my mind, the time devoted to these subjects would, as regards the rank and file of the profession, be better spent on the remaining subjects of the course, and, after all, it is the rank and file we have to consider in the purely pass qualification. Those few super-lawyers who will provide the Judges and K.C.'s and Attorney-Generals will be sorted out in the testing of practice and need not be sorted out at the entrance to the profession.

"I now come to the third submission, that certain subjects which should be compulsory have been made optional. It seems to me a most extraordinary thing that while Latin is made compulsory English is made optional. I would certainly make English compulsory.

Whether a man is to be a conveyancer or an advocate the ability to phrase his documents or his arguments in correct, clear, and convincing language is surely essential.

"I would also make that branch of philosophy, covered in the Calendar by the terms Logic and Ethics, compulsory. The two basic qualifications of a lawyer are the ability to reason and to be able to distinguish subtle distinctions which are none the less real because they are subtle. My father in the law, Mr. S. G. Raymond, who will be remembered by many Christchurch practitioners, used to say that it was the man who could get on to the knife-edge of a legal problem who is the real lawyer. I suggest that a training in logic would be a good training for attaining that standard. Logic, then, with English, which is necessary to express correctly the results of one's reasoning, should, I think, be two of the essential subjects.

"With regard to the professional subjects, there are seven of them—Property, Contracts, Torts, Crimes, Evidence, Procedure, and Companies and Bankruptcy. I think these ought to be studied on broad principles and along general lines, and not in too much detail. I would cut out practice and procedure. It has always seemed to me a most abominable thing to require students to memorize the Code of Civil Procedure. If it is to be retained as a subject, then I suggest that the candidates should be permitted to take books to the examinations with them, books without which no practitioner would think of doing his work. That practice is adopted in military examinations; and if it is to be kept as a subject, then the system of examination should be altered.

My fourth submission is that some of the subjects have been misplaced. Jurisprudence appears in the first division. Instead of coming before the professional subjects it should come after them. The late Sir John Salmond, who was a teacher of law before he was Solicitor-General and later a Judge, once told me that trying to study Jurisprudence, the science of law, before knowing something about a legal system was like trying to study the science of cookery before one knew anything about cooking. That view is supported by Professor Algie of Auckland, until recently Professor of Law at Auckland University College, and also by one or two of the articles in the NEW ZEALAND LAW JOURNAL. I think Jurisprudence is a subject which should be postponed until a student has been through the various divisions of the New Zealand law, when he can gather up his studies with this final study of the science of law. In the last division appears the interesting subject of constitutional history. That could quite easily go into the first division when it could be one of the optional subjects.

"That completes the criticism I make, with very great deference to the more able men who drew up the syllabus. I suggest now that if our Board of Directors (his Lordship the President and his learned brethren on the Council of the New Zealand Law Society) has time to consider the matter during the next two years, and undertake some research into what should be the proper curriculum for law students and bring a report to the next Conference in the Capital City, it would be a very suitable time to overhaul the course for admission to the legal profession which admittedly occupies a very important part in our social system.

"When I was listening to Mr. Stephens this morning, and heard his suggestions for improving the position of the profession, I could not help feeling myself that the one way in which the profession can retain or regain (whichever is necessary) and deserve the confidence of the community is to be equal to the work to be able to deliver the goods. If we can do that, and give our service honestly, the profession is all right although its scope will be very much circumscribed in the future. I agree in that respect with an article written by Mr. Claude Weston, K.C., that in the past lawyers were jacks of all trades and very often last and least of all lawyers. Now we must be lawyers first and foremost. That means that a higher standard of education is required.

"I shall move my remit in the following form:

That it be a suggestion from this Conference to the Council of the New Zealand Law Society that it take into consideration the new regulations published in the New Zealand University Calendar for 1938, at p. 166, for the examination of candidates for admission as barristers and solicitors of the Supreme Court of New Zealand.

In that connection, if you pass this remit and the Council sees fit to act upon it, it would be valuable to obtain the opinion of practitioners throughout New Zealand. This could be done by issuing a questionnaire to every barrister and solicitor on the roll which would be designed to elicit opinions as to the subjects both cultural and professional in which candidates for admission should be examined. We could get help in doing this from the New Zealand Council for Educational Research. A friend of mine, Mr. Thomas, late headmaster of the Timaru Boys' High School, is conducting some inquiries for that Council among a number of the different professions, but not the legal profession, as to the value of secondary education, and he tells me that the Council would be glad to circularize the lawyers on the lines I have indicated and classify the results. I mention that, because I think that in the two years that will elapse between now and the next Conference a valuable expression of opinion could be obtained in that way and it would perhaps be of assistance to the Council of Legal Education should they decide to move in the matter at all."

MR. CAMPBELL then moved his remit.

That it be a suggestion from this Conference to the Council of the New Zealand Law Society that it take into consideration the new regulations published in the New Zealand University Calendar for 1938, at p. 166, for the examination of candidates for admission as barristers and solicitors of the Supreme Court of New Zealand.

The following discussion then took place:

MR. A. C. STEPHENS (Dunedin) seconded the remit, despite the fact, as he said, that he disagreed with roughly 75 per cent. of what MR. CAMPBELL has said. But as Dean of the Law Faculty of Otago University, he felt he should say something, but briefly, as time was short. The new course had come before the Law Faculty in Otago some years ago, it being approximately five years since the Council was constituted. They had not entirely agreed with it, but they felt that if they had put up any important objections it might be another five years before anything concrete was done. The course had accordingly been passed as it stood, in the hope that it would furnish a basis for further improvement.

"I think the syllabus has gone too far," said MR. STEPHENS, "and it is too long. It is quite reasonable

to say that it will take anything up to seven years for an average student to complete, and that is far too long. In my opinion, the cultural subjects should be cut down by one, and the law subjects should be carefully considered so that some of the detail work could be removed.

"At the present time, the syllabus contains requirements for an unnecessary knowledge of detail. Examples of this were the inclusion in the syllabus of the Sale of Goods Act and Bills of Exchange Act, on which questions involving the details were often set. I hope to see a great deal of unnecessary detail eliminated. What is needed is a thorough grasp of principles and a training in the application of them. I hope the remit will go forward as an authoritative expression of opinion, so that it will be used as a basis for further improvement. There are a great many things yet to be done, and I hope they will come in the future."

MR. L. K. MUNRO (Auckland) then said: In the first place, there was a very great deal of MR. CAMPBELL'S remarks with which he agreed. As Director of the Law School at Auckland University College, he wished to say something on the remit.

"There has already been a discussion of this particular course by the New Zealand Law Society," MR. MUNRO continued. "You will remember the proposed course came up for report, and the report which was prepared by MR. J. B. JOHNSTON and myself was adopted and sent to the Council of Legal Education. It is now some years since it was prepared, and I am not sure what was adopted, but a good deal was not adopted. I agree with a good deal of what MR. CAMPBELL has said, but there are one or two things in his address with which I do not agree. He has touched on the matter of jurisprudence. No doubt it will be agreed that the average first-year student has not the slightest capacity to grasp the principles of this subject. Normally he is much better to take it at the end of his course. In Australia they take it at the beginning of the course and also take it at the end in a more advanced form. The question of Latin and English had been referred to by MR. CAMPBELL. I agree with him that the latter should be compulsory, but I consider Latin should be compulsory also. It is true that a great many of us in later years forget all our Latin; but that is true of a great many cultural subjects, and no one will presume to suggest that it does not improve a student's English. As to English as a groundwork it is indispensable. Roman Law has been mentioned as a subject which should be dispensed with. I suggest that it should be taken at the end. It has a value as a mental training; but, if it is to be taken at the end, then normally the student will have been finished with his Latin for some years, and may not be so familiar as he was at the outset. That must be taken into consideration.

"There is one important defect about the present course, and the framers recognized the difficulty, and that is the amount of detailed knowledge which the student is expected to have. That is particularly the case with the Bills of Exchange Act, for instance. There is no doubt that more emphasis should be laid on the inculcating of principles and less on the acquisition of detail."

Finally, MR. MUNRO referred to the examiners and said that, in his opinion, there was room for improvement. There were some who had no right to be examining in certain subjects.

MR. G. GALLAWAY (Dunedin) said he wished to add a few words. These regulations seemed to have been framed from the point of view of the barrister, and without regard for the conveyancing solicitor. In his opinion, the course was far too long. He said he was not a University man, and in practice he had done the conveyancing work of his firm as he had a common law partner. For men who were going to do conveyancing work, the course was far too long. The old training which used to begin in an office as soon as a boy entered was over, and now no student would enter an office at all until he was twenty. Conveyancing clerks who know anything about conveyancing could not be found to-day. The reason is not that the young men of to-day are not so good as the young men of a few years back, but that classes and examinations take far too long; and clerks have no time or energy to give to learning the practical work of the office.

The speaker said he would like to see the constitution of the Council of Legal Education altered by increasing it to eight in number, four of whom would be appointed by the New Zealand Law Society, two being barristers and two being solicitors—practical conveyancing solicitors. If that were done, a course which would suit the solicitors might be framed. He admitted that longer training is an advantage for a barrister; but a solicitor's training—assuming the student has a good knowledge of English—is mainly found in practical work.

MR. K. M. GRESSON (Christchurch), who is Dean of the Law Faculty of Canterbury University College, said he did not intend to speak at length on the subject of the new course, because there were so many factors apart from the course itself which had to be considered for the purposes of an adequate review. Such things as facilities for students attending lectures, methods of teaching, and the conduct of examinations are all interlocked with the consideration of the matter before the Conference. The last speaker had referred to the possible improvement of the constitution of the Council. MR. GRESSON agreed that it might be improved upon; but, in his opinion, what was needed was machinery whereby the four law schools could meet in conference. If a method were found whereby the Deans of the four law faculties could meet around a table and discuss the matters which arise much could be done, such a body, consisting of men who had a knowledge of both the practising and teaching side of the argument, would be competent to lay down an adequate course of training which would not overburden the student.

THE PRESIDENT said that if there were no more discussion, he would put the remit.

The remit was then put, and carried.

Naming the Conference Members.—The success of the personal-name badges supplied by the Conference Committee to the ladies was apparent. The wearing of the badges served as mutual introductions, and this Conference innovation was much appreciated. The opinion was freely expressed that future Conference Committees could, with advantage, extend the same attention to the men. Although none of the practitioners attending a Conference waits for an introduction to his fellow-members, still it is a distinct advantage, where men from such distantly situated places meet together for a few days, if the identity of each were easily discernible. The interest of future Conferences would be enhanced by an adoption of the suggestion.

Proposed Protection of Guarantors.

Statutory Safeguards.

MR. F. B. ADAMS (Dunedin) proposed the following remit:

That statutory provision should be made for the protection of persons signing guarantees.

He said that he had been reminded during the day of a story, and while it had "nothing to do with the case," he asked leave to tell it.

Eminent counsel from Dunedin, who was afterwards Mr. Justice MacGregor, met in Christchurch equally eminent counsel from Wellington, and they debated the very important question whether alarm clocks should be sold for 3s. 6d. or 4s. 6d. The gentleman from Wellington addressed the Court all the first day. That night there was a dense fog in Christchurch; and, the next day, Mr. MacGregor began his address by saying that he understood the fog was the densest that had been experienced for twenty years—undoubtedly it was due to the fact that the windows of the Court had been left open during his learned friend's address!

"I did think at an earlier stage that Christchurch was likely to have a very heavy fog to-night," said Mr. Adams; "but I have come to the conclusion that there is nothing to fear except from the immense clouds of tobacco-smoke radiating from this hall."

Mr. Adams said that the remit was brought before this Conference at the suggestion of the New Zealand Law Society, to whom the question was referred by the Otago Law Society. The mover had been asked to bring it forward, and he did so, not as one advocating a change, but as one called upon to bring forward a debatable question for discussion. He had been considerably impressed both with the practical difficulties attending the question, and with the general desirability of conferring some sort of protection upon persons signing guarantees which are afterwards found to mean more than they intended.

As to the practical side, the only suggestion Mr. Adams had heard worthy of consideration was that in all cases where the prospective liability under the guarantee might exceed a given sum, the guarantee should be unenforceable unless the guarantor had received independent advice. This followed the lines of s. 18 (2) of the Workers' Compensation Act, 1922, providing for independent advice to a worker.

THE NEED FOR SAFEGUARDS.

Much need not be said as to the desirability of safeguards for guarantors, Mr. Adams continued. The contract of guarantee is frequently an improvident contract, and also frequently involves a heavier or different liability from that which the person signing it really intended. The Merchant of Venice was not the first nor the last to sign a contract the exact significance of which he did not realize, and which he never contemplated being called on to fulfil. The contract is one also with regard to which promisors generally are very unwilling when it comes to performance; but, when one considers the law of guarantees, the conclusion is almost forced upon one that the law tends rather to favour the guarantor than the creditor. It provides him with various ways of escape, such as discharge by the giving of time; and it is not unnatural that the reaction against such forms of relief for guarantors should result in the use of stringent contracts in which the guarantor is called upon to waive all rights as to the giving of time and other matters with reference to which he might find a way of escape from his obligations. Generally speaking, the effect is to destroy the legal rights which the surety would otherwise have.

All present would be familiar with the printed forms of guarantee in use by banks and stock and station agents, and the clauses which these usually contain to restrict or destroy the legal rights to which the speaker had referred. One form of guarantee which is particularly difficult for a layman to understand is the limited guarantee under which the guarantor's liability is limited to a certain sum. When the document comes to be examined—when the crash comes—it will be found that he has not guaranteed a debt of [say] £500, but has done something vastly different; and that the guarantee does not limit the amount of the debt which the principal debtor may incur, but merely limits the liability of the guarantor so that the guarantee of £500 may be found annexed to a debt of £10,000, and instead of guaranteeing a debt of £500 it guarantees the debt of £10,000 with a limit of £500 on the guarantor's liability. The point is one of grave import. The creditor becomes entitled to absorb the whole of the securities in order to make up the remaining £9,500 of the debt, and may leave the guarantor without recourse or remedy in respect of his £500. Even rights of proof in bankruptcy or under a deed of assignment will usually be found to be covered by these provisions. Such a guarantee is peculiarly apt to be misunderstood though it is a more or less typical form.

PRACTICAL DIFFICULTIES.

When one seeks a solution, one is met by difficulties. The first practical difficulty is that, after all, the lender or creditor controls the situation. A bank will not lend without the guarantee it wants, and the guarantor cannot dictate the terms of his guarantee.

A second practical difficulty is that guarantees are multifarious in form. They do not all take the form of printed contracts, but may be entered into in other ways; for example, by endorsed promissory note. This militates against reform, but does not make reform impossible.

It appeared to the speaker that any change must be limited to formal contracts of guarantee. There is already the requirement of the Statute of Frauds that guarantees shall be in writing. Limiting any change to formal contracts of guarantee must, of course, leave the door open to evasion in some cases. It might be possible to impose a restriction as to guarantees given to banks and other lending institutions; and, as such bodies may be supposed to be familiar with the law, there would be no hardship in requiring them to comply with a statutory standard. If the reform were so limited, there would be no danger of rendering void a layman's guarantee. A provision applicable to formal contracts and following the lines of the proviso to s. 18 (2) of the Workers' Compensation Act, 1922, seemed to be the best method of dealing with the situation. The proviso reads:

> "Provided that an agreement between an employer and a worker . . . shall not be binding on such worker, . . . unless before making the agreement he had competent and independent advice as to any legal . . . questions arising in connection with the claim for compensation, and understood the agreement; and in

any case where such an agreement is challenged the onus shall lie on the employer of proving compliance with this subsection."

This clause, however, is open to some criticism, at any rate as a provision to be applied to guarantees. In the first place, the word "competent" in the phrase "competent and independent advice" is ambiguous. Does the word mean merely a qualified adviser or must one be able to prove he is not only qualified, but equal to the task? Is it open to a worker to say in a case under this section that he took a qualified lawyer's advice, but that the lawyer was not competent? Possibly the word can be limited to the strict sense of the word "qualified."

In dealing with guarantees, however, the word would be better left out. One does not like to think of the situation of members of this profession if they had to be cross-examined on such an issue. The speaker could well imagine an unfortunate practitioner entangled by the President of the Conference to the point of showing that the solicitor himself did not understand the nature of the guarantee, and that, accordingly, his client could not have understood it under such incompetent guidance.

Then, again, there was the requirement that the worker must "understand" the agreement. This went too far, if it was to be applied in the case of guarantees. No one can tell what a man understands, and it is too much to require proof of understanding.

Onus of Proof.

Finally, there is the question as to who should bear the onus of proof. The provision in the Workers' Compensation Act is too stringent for this purpose.

Accordingly, the speaker suggested that, if something along the lines of that section were to be used, the proper course would be to require merely independent qualified advice, the onus to be on the creditor; but with a provision that the certificate of an independent qualified adviser should be conclusive in his favour. This provision should apply only in cases where the prospective liability equals or exceeds £100.

In conclusion, Mr. Adams said that he had endeavoured to place before the Conference the two sides of this matter as he saw it. The reasons mentioned seemed to render some change desirable; and he had made one or two suggestions which might perhaps assist in the passing of a resolution to give effect to this remit.

The following discussion then took place.

Mr. H. D. Andrews (Christchurch) suggested that the proposed reform would confirm the liability of the guarantor as it would give him no protection in practice. "It does not seem possible to protect the guarantor at all unless you prohibit guarantees," he said. "Supposing a man wants to arrange an overdraft with a bank or stock firm for another person. He knows that he cannot get that without signing a guarantee. He has got to go to a competent adviser who points out an objection. He cannot get the form altered, and he must either sign or the account will not go on. That is the position a person is placed in, and, if he really desires to bring about the overdraft, he has no option except to sign; and, if he signs, then under the proposed statutory provisions he is not protected at all.

Mr. G. M. Spence (Blenheim) moved:

That Mr. Adams's proposition be forwarded to the New Zealand Law Society for its consideration and appropriate action.

In answer to the last speaker, he pointed out that the suggested protection was only to give the guarantor advice. If the guarantor signed the guarantee with his eyes open, nothing could be done. A solicitor can do no more than advise him. All that was suggested was designed to prevent a person signing a guarantee without any advice at all, and it seemed to the speaker that such protection should be given.

Mr. W. J. Glasgow (Nelson) seconded the motion. He disagreed with Mr. Andrews when he suggested that the giving of advice would be useless. "I had an experience not long ago," he said, "where a customer of a bank wanted an extra £3,000 and signed a guarantee for it. He was surprised to find that when the original overdraft was brought back to its limit he was still liable for the original amount. If he had had advice, the bank would have been asked, and would have agreed to it without that result; but, as they were not asked, they were quite pleased. It is, therefore, not correct to say that in no case will the advice be any good. The result would be in many cases that a more satisfactory overdraft would be entered into."

Mr. F. C. Spratt (Wellington) thought the banks were more careful now than they had been in the past as far as seeing that the guarantees were understood before they were signed. In the case of a woman some of the banks will not take a guarantee unless she has been independently advised. "Cases have come under my observation," he said, "where real hardship has been inflicted; but they have not been cases affecting a bank or well-established lending institution.

"Two thousand five hundred years ago it was written, 'He that goeth surety for his neighbour will surely smart for it'; and he will smart for it whether he is independently advised or not. The only thing is to advise clients not to sign guarantees. At the present time the public has learnt the danger of guarantees, and business men at least have a horror of giving them. They have learnt from experience, and I do suggest that this provision would be too difficult to formulate, and at any rate there is not an urgent necessity for it as there would have been ten to fifteen years ago."

Mr. C. P. Brown (Wanganui) said that he thought that most of the cases of hardship under guarantees arose not so much from lack of knowledge of the contents of the documents as from lack of appreciation of the effect of the numerous clauses that encumber them nowadays.

"What I have in mind as a suggested improvement to present conditions is something analogous to the statutory provisions regulating bills of lading," Mr. Brown continued. "Our Mercantile Law Act (copying the English Railway and Canal Traffic Act) enables the Court to inquire whether the conditions of a bill of lading are just and reasonable, and to disallow them if they are not. This was enacted because standard forms of bills of lading had become hopelessly involved. Our standard forms of guarantee negative every conceivable equitable right, and the result is that, especially in bankruptcy, guarantors have to wait until everyone else is paid. If the provision I have quoted could be made to apply to guarantees, and the form of the contract standardized, the position would be much improved. The printed forms would be reformed and made fair to both parties. I think that if this course were adopted many of the difficulties and objections would be overcome."

The motion was then put and lost.

Concluding Business.

Thanks and Appreciation.

NEW ZEALAND CENTENNIAL.

THE PRESIDENT: "Before concluding matters there is one matter which the Solicitor-General has asked me to bring before the Conference."

THE PRESIDENT then read the following letter from the Department of Internal Affairs:—

April 13, 1938.

MEMORANDUM for
H. H. CORNISH, Esq., K.C.
Solicitor-General, Wellington.

Centennial History of the Legal Profession.

On the eve of the approaching Legal Conference at Christchurch I am taking the opportunity of broaching a subject which has long been in my mind—namely, the celebration of the Centennial by members of the New Zealand legal profession.

As a member of the National Historical Committee you are aware that at the Government's request the Committee has drawn up proposals for a series of historical surveys to be issued during the Centennial year. This series will necessarily be limited in its scope, and it has occurred to me that it might be supplemented by a volume commemorating the administration of justice over the first hundred years—a subject which could not be given adequate treatment in a short historical survey.

The publication of such a volume by the New Zealand Law Society would, I suggest, form a most appropriate memorial to the Centennial, and I should accordingly be glad if you would introduce the proposal at the coming Conference. I need scarcely remark that as Solicitor-General and also in your capacity as a member of the National Historical Committee you are in a particularly favourable position to raise the matter.

I may cite here as a parallel example that the Newspaper Proprietors' Association has agreed to publish a history of the New Zealand Press over the first hundred years. This publication will be accorded official status as a Centennial publication, and similar recognition would be extended to a volume undertaken by the New Zealand Law Society.

(*Signed*) J. W. HEENAN,
Under-Secretary.

THE PRESIDENT then moved:

That the letter be sent forward to the New Zealand Law Society for consideration and appropriate action.

MR. L. K. MUNRO (Auckland) seconded the motion, and said it seemed very desirable to have the matter considered by the New Zealand Law Society.

The motion was then put and carried unanimously.

THANKS TO SPEAKERS.

MR. L. K. MUNRO (Auckland) then spoke as follows: "During the last two days we have listened to speeches and to remits which have been characterized by common sense, clarity, and learning. It is a matter for congratulation that the gentlemen who have addressed us, and who are all eminent men in the profession, should be willing to devote such a great deal of time in the preparation of the speeches we have heard during the past two days. Anybody who is acquainted with the nature of the labours which must have been necessary in connection with these papers will be able to appreciate the debt of gratitude which we owe to the various gentlemen who have addressed us. I have pleasure, therefore, and move accordingly,

"*That we place on record our deep appreciation of the speeches we have heard, and our thanks to those gentlemen who were responsible for them.*"

MR. W. T. CHURCHWARD, President of the Marlborough District Law Society, said that as a country practitioner he had very much pleasure in supporting the motion which had just been moved by MR. MUNRO.

"The judicial and thorough way in which the various subjects have been presented by the authors of the papers has resulted in much profit to us all, and we appreciate that greatly," MR. CHURCHWARD proceeded. "I would also like to pay a tribute to the movers of the various remits. The arguments they have presented have been interesting, and they have rendered us a great service. They have also provoked much discussion, some of it humorous, and some of it foggy! But there is no doubt that, when the remits and papers receive a more mature consideration after the Conference, their true value will be appreciated. I have much pleasure in seconding this motion."

The motion was carried by acclamation.

VISITORS' APPRECIATION.

MR. R. G. SINCLAIR, President of the Law Society of Otago, said: "Not only have we listened to some very learned speeches, but we have also during the last two days been compelled, I feel I must put it that way, to do many other things—all of them very pleasant indeed. I am like MR. GALLAWAY not a barrister, but a conveyancer, and if I had been given a little more time I could have done better by deed than I can do *viva voce*. But I say with all sincerity that we are deeply grateful to the Canterbury Law Society. I know personally what a tremendous amount of effort has been put into this Conference by the Committee, the Executive, especially the Secretary, MR. SPILLER, and the Ladies Committees. I think we owe a great debt of gratitude for all the courtesy that MR. SPILLER has shown to all the visiting members to the Conference. I am speaking for all the visiting members when I say that we are having an extremely enjoyable time.

"I have great pleasure in moving on behalf of the visiting members, their wives and relatives, a hearty vote of thanks to the Canterbury Law Society for their hospitality, kindness, and consideration."

MR. H. J. McMULLIN, President of the Hamilton District Law Society, said it gave him much pleasure to associate himself with MR. SINCLAIR and second the motion he had moved.

"It gives me a particular pleasure for this reason, that this is my first visit to Christchurch after twenty-five years' absence," MR. McMULLIN continued. "We realize as visitors, Sir, the tremendous amount of work this Conference entails. We realize that the success of the Conference is due to the work of the Executive and the Secretary, and I am sure I am voicing the views of every visiting practitioner when I say that we fully appreciate everything that has been done. I am very glad to be associated with a motion expressing the thanks of the visitors for the kindness and hospitality which has been shown to each and everyone of us."

The motion was carried by acclamation.

THE PRESIDENT: "I want to say this, that the visitors will in addition to expressing to the Secretary and the

other Canterbury practitioners our appreciation, so far as the Secretary is concerned, do something more tangible at the final function to-morrow afternoon."

THE ATTORNEY-GENERAL THANKED.

THE PRESIDENT then proposed what he termed "the final motion," which was that the Conference members express their thanks to the HON. THE ATTORNEY-GENERAL for his courtesy in attending the Conference and for the interest he has shown in the proceedings. "*Unfortunately he has not been able to be present this afternoon*," MR. O'LEARY continued; "but apart from that he has been present at all sessions of the Conference. In moving this motion, I want to say this, that it has also been a matter of special pleasure to have with us a former Attorney-General, Mr. F. J. Rolleston, of Timaru, who, as you have heard, contributed to the important discussion which took place this morning. Would you please carry a vote on this motion by acclamation."

The motion was carried by acclamation.

APPRECIATION OF THE PRESIDENT.

MR. J. D. GODFREY (Christchurch), then said that the motion just passed was not the last motion. "We have just thanked the readers of papers and movers of remits for their contributions, and the Canterbury practitioners have been thanked, but we all know that there is a third factor—the Conference Chairman," he said. "Those of you who attended the Dunedin Conference will know just what it meant in Canterbury when we knew that MR. O'LEARY was able to take the chair here. We knew that half our difficulties were over. He has a happy knack of being able to judge the feeling of a meeting. Just how he does it, I do not know. He has that knack, and he knows, without my saying anything, what we think of him. I propose to leave it at that."

MR. GODFREY then moved:

That this Conference places on record its appreciation of Mr. O'Leary's chairmanship, and tenders to him our very warm thanks for what he has done towards making this Conference a success.

MR. F. B. ADAMS (Dunedin) said that he should like to have the privilege and pleasure of seconding that motion.

The motion was carried by acclamation.

THE PRESIDENT, in reply, said: "I am very grateful to you for proposing and seconding the vote of thanks to me. I appreciate it very much indeed. I am afraid that my chairmanship on this occasion has not been the means of running the deliberations quite so well as at the last Conference; but you will no doubt have been struck by the way in which I remained in the chair while all the difficult matters were being discussed, and only gave up the chair to Mr. Johnstone during the easiest part of the chairmanship. I am very grateful to him for taking my place during that time.

"As to MR. GODFREY'S remarks, I could sympathize with MR. JOHNSTONE yesterday. And that just reminds me of a little story which might not be inappropriate.

"A good many years ago now I had a practice which necessitated my advising in domestic disputes. One day a man came in with a summons under the Destitute Persons Act. He was quite a decent fellow, by name of Job, and he had an old uncle in Wellington whose name also was Job. He gave me my instructions, and I found he had been getting advice from one and another. He had been talking to his old uncle too, and amongst other things had said, 'Humphrey O'Leary said I should do so and so with her,' meaning his wife. The old uncle's reply was 'Everyone can manage a troublesome woman except the poor ———— who has got her.' I am glad to know that, though no one could describe the Conference at any time as troublesome, I was able to manage it to your satisfaction."

The Conference then closed.

Ladies' Events.

The Second Day.

A garden-party at the home of Mr. and Mrs. C. S. Thomas was the event of Thursday morning. The beauty of the gardens was a topic of conversation among the ladies on the previous morning, and there was keen anticipation to stroll amid their spacious pleasances. Unfortunately, rain prevented the guests from enjoying their anticipated treat, and their entertainment was confined indoors.

The ladies were received by Mrs. C. S. Thomas, Mrs. George Weston, and Mrs. F. I. Cowlishaw. Autumn flowers adorned the hall and the three reception-rooms in which the large number of guests congregated. Misses Mary and Helen Thomas assisted the hostesses. Cars provided by the Christchurch ladies took the visitors to and from the reception. Notwithstanding the rain, everyone agreed on the great enjoyment of the morning's party.

Thoughtfully, the Ladies Committee had made no arrangements for the Conference afternoons.

LADIES' DINNER.

By a happy thought, the ladies were not deprived of a "Bar" Dinner of their own. Synchronizing with the men's dinner at the Winter Garden, the ladies dinner party was held at Beath's. The only comment on the arrangements, which were in the excellent taste devoted to all the works of the Conference Ladies' Committee, was that the function ended all too soon; in fact, the ladies did not have the satisfaction of finding their men-folk at home before them on this occasion.

Lady Myers, wife of His Honour the Chief Justice, in a very graceful speech, thanked the Christchurch ladies for their kindly and generous hospitality. On behalf of all the guests, she complimented their hostesses on the completeness of their arrangements for the visitors' enjoyment, and on the remarkable success which had attended all the functions in which the Ladies Committee had been associated. Lady Myers assured the Committee of their guests' appreciation and gratitude for the manner in which the Christchurch ladies had enhanced the enjoyment of their visit to Christchurch by the complete arrangements made for their entertainment.

After dinner, the lounge was filled with an appreciative audience, when the visitors were treated to a short musical and dramatic entertainment. Piano solos were played by Mr. Peter Cooper, and an amusing one-act play, produced by Miss Phyllis Brass, was presented by Misses Brass, Grace Fuller, and Barbara Cowie, and Messrs. Selwyn Davies and Alexander Gale.

The Bar Dinner.

Memorable Speeches.

THE BAR DINNER was held on the evening of Thursday, April 21, at the Winter Garden. The Subcommittee in charge had made the most detailed arrangements in preparation for what was to prove a record social gathering of members of the profession, and no one present will forget the great and outstanding success that rewarded those efforts.

Every member of the profession present at the Conference attended the dinner, at which no less than 245 sat down together. This was easily a record attendance for Bar Dinners in the Dominion.

Mr. J. D. Hutchison, the capable and ever-ready President of the Canterbury Law Society, presided. On his right was His Honour the Chief Justice, Sir Michael Myers, and, on his left, the Attorney-General, Hon. H. G. R. Mason. The Hon. Mr. Justice Northcroft, Mr. Justice Hunter, and the Solicitor-General, Mr. H. H. Cornish, K.C., were also at the top table, in addition to the speakers of the evening. Dr. P. A. Ardagh, D.S.O., M.C., President of the Canterbury Branch of the British Medical Association, was, as is customary, in evidence of the reciprocal good feeling between the legal and medical professions in Christchurch, a guest of the Canterbury Law Society. The local Magistrates were also present.

The happiest feature of the dinner was the spirit of friendly equality and good-fellowship which permeated the whole gathering. The necessities of the occasion placed some at the top table, but, otherwise, everyone sat where he liked, as all were treated on the same footing as members of a common brotherhood.

IN ABSENTIA.

The loyal toast having been honoured,

Before commencing the toast-list, the Chairman read a radiogram from members of the profession on the s.s. *Maunganui, en route* for Sydney, with part of the New Zealand Returned Soldiers' Association delegation to the Anzac Day celebrations in Sydney. The O.C. of the ship was Colonel R. F. Gambrill (Messrs. Nolan and Skeet, Gisborne). The radiogram was as follows :—

Admiralty Jurisdiction.
In Chambers.
Extra-Strong Territorial Waters.

Hearty Greetings In Absentia from Strong Bar on *Maunganui. Cur. adv. vult.* E. J. Anderson (Dunedin), C. O. Bell (Wellington), C. Stanley Brown (Wanganui), A. G. T. Bryan (Thames), J. L. Calder (Dunedin), C. L. Calvert (Dunedin), G. Findlay (Petone), W. F. Forrester (Dunedin), L. B. Freeman (Christchurch), R. F. Gambrill (Gisborne), B. P. Hopkins (Dannevirke), A. Milliken (Auckland), A. C. A. Sexton (Auckland), and J. T. Walter (Balclutha).

The reading of the message was received with cheers.

THE GUESTS.

The toast of "Our Guests" was then proposed by MR. M. J. GRESSON, who, in that delightfully easy after-dinner style of his, entertained his listeners with a speech, during the course of which, he said: "I esteem it a great honour to be entrusted with the toast of 'Our Guests.' I am rather ashamed (as I pointed out to the Chief Justice) that ten years ago when this toast was being proposed at the first Legal Conference I also proposed it, and I think it is quite time someone else came along. Nevertheless, I am delighted to have this toast associated with the names of the Attorney-General and Mr. Rogerson, of Auckland.

"I am glad to pay a tribute to the work which the Attorney-General has done in the interests of law reform. Not only has he been instrumental in having the English Law Reform Act passed in New Zealand, but he has done more, he has improved it, and I venture to say that New Zealand, which is the first part of the Empire which has altered the Law Reform Act, will be followed by other parts of the Empire. It is not only in passing the Law Reform Act that credit is due to the Attorney-General. That, after all, was not a very great achievement, because he was adopting an Act which had already been passed in other parts of the Empire, but what I wish to pay a tribute to is this, that he has set up a Committee which reports to him on law reform and which may easily be the means of remedying and altering injustices in our law. That Committee is permanent, and I feel that it will be of assistance to the Attorney-General. It certainly marks a very great advance, and I do not mind saying now, though possibly we may sit on opposite sides of the political table, that I venture to predict that he will go down to history as the Attorney-General who during the past decade did most to influence law reform in New Zealand.

"And now, gentlemen, what about our guests. All I can say is this. In Canterbury we have many faults, but there is one we have never been accused of and that is lack of hospitality. And I say for one and for all that every one at the Bar to-night is proud and honoured to have you here as our guests, and let me pay a special tribute to those friends of ours who have endured the Main Trunk from Auckland and the midnight express from Invercargill. To them I extend my heartfelt sympathy."

Mr. Gresson then proceeded in humorous vein to recount some of the peregrinations of the statue of John Robert Godley, the founder of Canterbury.

THE ATTORNEY-GENERAL'S REPLY.

THE ATTORNEY-GENERAL, THE HON. H. G. R. MASON, replied on behalf of the guests. He thanked the Canterbury practitioners sincerely on behalf of all the visitors for the kind way in which the toast of the visitors had been proposed and responded to.

"All the visitors feel gratitude to their colleagues in Christchurch for the fine way in which arrangements have been made for this Conference," the Attorney-General continued. "We know that although it is a very happy Conference and no signs of effort appear on the surface—one does not see the work of preparation—but one knows that a Conference of this description is not carried out without an immense amount of preparatory work, and for all that labour which has been necessary to produce this happy Conference we are very grateful indeed. I thank Mr. Gresson for

certain references to myself, but Mr. Gresson failed, perhaps, to emphasize the point that the question of law reform has been less a matter of my effort than it has been of the very willing and courteous co-operation of the profession. It has been a most striking thing to find the willingness with which men of the highest eminence, leading the busiest lives, have responded to every request to engage in laborious research for the Law Revision Committee, and my thanks, and the thanks of the Committee, and the thanks of all of us, are due to those members of the profession who have devoted themselves so willingly to that work. That research shows the defects and the mistakes that may be made.

"Now, again, I want to thank our Canterbury friends also for their co-operation in connection with the laying of the foundation-stone of the new Law Courts and for what they did to assist in that connection. We all sympathize with Mr. Gresson in his statements referring to Christchurch as a beautiful city. It is so at all times, and now we are seeing it at this Autumn time when it has a beauty that is hard to match in the part of the Dominion from which I come, and that helps to make it very pleasant here. One has learnt also that our Christchurch friends are men of their word, because, in connection with the laying of the foundation-stone, I particularly inquired about making arrangements for unforeseen weather, and arrangements were made for holding the ceremony in adjacent rooms, if necessary. But I was told that, however adverse the prospects might appear, the weather would definitely be all right—and they were men of their word and the ceremony was duly carried out. There is one point Mr. Gresson mentioned which I should refer to. The fame of Christchurch has spread abroad, and we have heard about the Godley statue and other relevant circumstances to such an extent in fact that I was informed that it would be absolutely essential if we were to please the public here that the foundation-stone should be so laid as to be resting upon wheels. I pray, however, forgiveness for the oversight that was made in that connection!

"It is not necessary for me to say more except again to thank you all very much. I notice that I am to be followed by Mr. Rogerson, who comes from Auckland, and is well known to those of us who come from that City. Although I have left unsaid much that one would wish to say, it is well for me to give way to Mr. Rogerson, for we who come from Auckland know that when he rises to his feet the ground will be well covered."

The Auckland President.

Mr. H. M. Rogerson, President of the Auckland District Law Society, supported the reply of the Hon. the Attorney-General. Speaking in a very effective and charming manner, he said: "I have listened with interest to the very flattering remarks with which the Attorney-General has just referred to me. Let me say that when I first learnt that I was to have the honour of being associated with this toast I did appreciate that the occasion was one which warranted some inquiry as to the proper reference to visitors and visits. With that end in view I consulted a standard English authority, and under the heading of 'visits' I found three quotations. One was colourless, and I will not trouble you with it, but a gentleman by the name of Mr. Nicoli described 'visits' thus: 'Visits are for the most part neither more nor less inventions for discharging upon our neighbours somewhat of our own unendurable weight.' It struck me that that was hardly complimentary to the visitors whom I have the honour to be representing, but it was politeness itself beside the comment of Mr. Franklin who said: 'Fish and visitors smell in three days.' This is the evening of the second day! Let me say that I immediately ceased my researches, and let me also say, with all the emphasis I can and that particularly on behalf of the visitors, that I consider these two statements as gross libels and actionable. I say that on behalf of the visitors, because, as far as the attitude of our hosts is concerned, their actions speak much louder than any words. Most of us have had the pleasure of being in Christchurch for two or three days, of viewing and enjoying the beauties of your city, and enjoying still more the warmth of your welcome. I have listened with interest to the remarks of Mr. Gresson, and to his description of what I might describe as the composite architecture of one of your public buildings. The story of the involuntary peregrinations of the founder of Canterbury tells of a journey so long and distressing that it may be described as almost 'ungodly.'

"Whenever I have the good fortune to be in Christchurch, I am struck, as I am sure all your visitors are, with the delightful architecture of your buildings, and with the serenity and the calm of your city. I say that quite sincerely, and I think it arises from the magnificent buildings you have here, from your quiet flowing Avon, and from your beautifully wooded parks. I really feel when I walk round the environs of Christchurch that it might be said that there is a constant observance of the covenant of quiet enjoyment.

"The Hon. the Attorney-General has already expressed to you the very deep appreciation which all your visitors feel for the very cordial welcome which you have extended to us, and, if I may, with his permission I should like to associate myself with his remarks.

"I feel that it is fitting that in my present position I should say that in general there is nothing that I can usefully add, but in particular may I extend to you on behalf of the visiting ladies their very grateful thanks for the very cordial welcome which you have extended to them. Your wives and daughters have been kindness itself, they have expended care and thought on what I may term the official programme, but they have done more. They have added to it that delightful personal interest without which no one away from home can feel at home. Gentlemen, to you and to them on behalf of the visitors and the visiting ladies I extend our grateful thanks."

"The Bench."

The President of the Conference, Mr. H. F. O'Leary, was entrusted with the toast of "The Bench," His sparkling speech was frequently interrupted by the laughter and applause of his delighted audience.

"I give you the toast of the Bench," he began. "This is a delightful moment for me when I have the prospect of speaking to the Bench in the presence of the Bench without the fear of being interrupted by the Bench. When I say that this is a delightful moment for me I have overstated the position, because I recollect, as some of you must recollect, the brilliant and witty speech made by the Hon. Mr. Downie Stewart in proposing the toast of the Bench at the Bar Dinner of the last Conference at Dunedin. When I recollect that speech I am conscious of my own limitations in proposing the toast, and I have been apprehensive lest I should not adequately do justice to it.

"I feel, however, that I cannot do better than by taking you into my confidence at the start, and telling you that when I get some leisure I am going to write a book—a kind of text-book—the title of which will be 'Advice to the Bench.' After all, we have text-books for students, and text-books for practitioners. Why not a text-book for the Bench? Whether I will write it under my own name or whether it will be done anonymously will depend upon just what stage I am in in practice, whether I am about to retire or not.

"Now the point I want to make is this, that that book will contain many of the things I would like to say to-night.

"Well, on consideration and seeing that we have excluded the Press—and if the editor, or rather the reporter, of the LAW JOURNAL is here, I would ask that he be ejected at once—and seeing that we are meeting the Judges on a different footing from that on which we ordinarily meet them, I feel I can go further and tell you some of the things I propose to say in that book.

A PROPOSED TEXT-BOOK.

"The first important thing will be the opening, and to get a suitable quotation I have been looking through various authorities. At the moment I am torn between two openings for this text-book of mine. The first, a serious one, that I am considering is taken from John Maxey Zane's 'Essay on the Five Ages of the Bench and Bar of England.' It is in an essay in this book of *Select Essays in Anglo-American History*, Vol. 1, p. 711, where Zane said:

> "Through all judicial history, it is apparent that the true judicial mind, which hears the whole case before it decides, which is capable of suspending judgment until in possession of every consideration of value, which is absolutely unaffected by mere temporary or irrelevant matters, which looks at every case both from the standpoint of the general, fixed, and settled rules of law, but at the same time with an acute sense for right and a real desire to advance justice, is the rarest type of human intellect.

"Now, I have an alternative, and I may quote from that very readable book by Judge Parry, *What the Judge Saw*. He tells there that shortly after he was elevated to the Bench he was greatly heartened by hearing a conversation between an unsuccessful litigant, against whom he had just given judgment, and one of his witnesses. One said 'How the hell did he arrive at that decision?' And the other one said 'He is a fool.' And the first one said, 'He is a damn fool.' Then as he was getting out of earshot, His Honour heard the concluding remark, 'Yes, he is a damn fool, but he did his best.' Judge Parry concludes by saying that a Judge might rest under a less kindly epitaph than 'He was a damn fool, but did his best.'

"Well, having decided upon the opening, I shall proceed to go on to give advice, and I will give you a few samples of what I may put in—not in any particular sequence, but just as it occurs to me. I will say, 'Do not forget too quickly that you were once an advocate.' I am afraid I shall have to feature in this part of the advice that it is somewhat of a tendency on elevation to forget rather quickly that the elevated one has been an advocate. It results in my experience, and that of friends with whom I have conferred upon the matter. I have consulted one or two in such situations as these: 'What, Mr. Cooke, you have taken two briefs for one day! That never occurred when I was at the Bar.' 'What, Mr. Weston, you are not ready to go on; you want an adjournment, we were always prepared; we never asked for adjournments.' 'Mr. Thomas, you are wasting the time of the Court!' Gentlemen, I cannot avoid saying that this comes from gentlemen, who were good advocates—some of them very good advocates.

A DESERT GOLD OF THE BAR.

"I was reminded of all this when I was at Riccarton on Tuesday last. I remember the last time I was there, Desert Gold was running and that reminded me of something that happened some years ago. There was a case in Wellington regarding a racehorse. A hard-headed racing gentleman wanted to get a particular horse and had entered into a contract for the purchase of that horse but subsequently delivery was refused, and it was said that the vendor was not the real owner and he had no authority to sell. The case was heard and the purchaser failed. I was not then a member of the firm of Bell, Gully, Myers, and O'Leary. Shortly after I joined the firm this unsuccessful litigant came in to me for advice. Remembering his case I said to him that the last time he had some business the firm had acted against him. He said, 'Yes.' He did not seem very keen to carry on the conversation, but I said, 'You lost.' Then he said, 'Yes, of course we lost, they had Myers and we had so-and-so—it was like running my hack against Desert Gold.'

"Then, proceeding, I may say, 'Let counsel have their say, particularly young counsel.' It may not be that what they are saying is at all relevant. But they have to get accustomed to hearing their voices, and may be they are in the position of counsel whose clients expect them to ask questions and say the things they request him to say. It reminds me of the story of counsel who was always asking irrelevant questions, and getting into conflict with the Bench and so on and losing his cases. Someone said to him, 'You lose a lot of cases through asking irrelevant questions, and through your conflict with the Bench.' He said, 'Yes, that is quite right, I admit that is quite true, but, do you know, I never lose a client.'

"And then there will be a very important bit of advice: 'Do not express a view too soon, otherwise you may be putting your money on the wrong horse.' I apologize for using so many racing terms, but it is, perhaps, due to the fact that at the present time there is a dispute between the Chief Justice and myself as to whether I backed Arctic King, last Tuesday, on my own judgment or whether because of the advice he gave me. He says he gave me the tip, but I think I backed the horse on my own judgment, particularly because I had purchased the tickets both ways and had them in my pocket before I met the Chief Justice. But he will not have it, and there the matter rests. It is only another example of the saying that it is not hard to speak the truth, but the difficulty is in getting it believed.

"Even if counsel are late, even if you have to wait for them, do not be impatient, because while you are waiting you may get from Mr. Saunders or some of our other legal wits some such shaft as came from Mr. Tim Healy while he was waiting with the Judge for the arrival of opposing counsel. While they were waiting they heard a loud rasping noise outside, and the Judge said, 'Whatever was that?' The irrepressible Tim then replied, 'I think, Your Honour, that must be my learned friend *filing* his affidavits.'

REVERSES ON APPEAL.

"Just one other matter of advice that I am able to refer to at present, but it is very important: 'Do not have a morbid fear of being reversed on appeal.' I

read some time ago about the time Mr. Justice McCardie was writing his famous judgments. A Lord Justice of Appeal was responding to the toast of the Bench. He said you may think the office of Lord Justice is very nice, but I want to tell you we have our vicissitudes—sometimes we are reversed by the House of Lords and sometimes by Mr. Justice McCardie.

"Magistrates in New Zealand are writing very learned judgments at the present time, and it may be a vicissitude of a Judge that sometimes he may be reversed by the Court of Appeal and sometimes by Mr. Blank, S.M. I would say be a Jessel: 'I may be wrong, no doubt I sometimes am, but I have never any doubts.' It is said that a Judge's fifteen years—in England, the time of qualifying for a retiring-allowance—can be divided into three parts, like Gaul. During the first five he is always afraid he is wrong, in the next five he is always certain he is right, and during the last five he does not care a damn whether he is right or not. I would at some stage conclude my advice with a quotation from Lord Bowen: 'Be blind to your own imperfections but deeply conscious of your brother's deficiencies.'

Past and Present Judges.

"Now, what I have said up to the present is not to be taken seriously, but merely as banter and pleasantry. We feel we may so express ourselves on an occasion like this, when we meet together, with the Judges, to eat and drink and talk as friends. But it would not be my true mind if I concluded my remarks without paying a sincere tribute and compliment to the Bench of the past and of the present in New Zealand. You have heard recalled time and again the names of eminent lawyers who have acted as Judges in this country, going away back to the time of Arney and the first Chapman, coming down through the years so far as Canterbury is concerned with Gresson, Johnston, Denniston, and the others; coming down, as far as Chief Justices are concerned, through Prendergast, Stout, and that most beloved of men, Charles Perrin Skerrett, to the present holder of that high office. Of the present Bench I say they are worthy of the great men who have preceded them. Upholding the best traditions, pursuing a course of courage, integrity, and independence, never forgetting that the business of a Judge is a grave one, always remembering that their commission comes from the King himself, that they are His Majesty's Judges.

"It has been said that an independent and courageous Bench has in the past played an important if not a decisive part in maintaining the freedom of the subject, and in these times, when we see liberty disappearing all around us, a free, independent, and courageous Bench is as necessary as at any time in history, I have no doubt that at all times these qualities will be there to be used for the maintaining of the freedom and independence of the English-speaking countries.

"We of the Bar desire at all times to be on the most harmonious relations with the Bench. Only when these relations are harmonious does the course of justice run smoothly and properly. It will always be harmonious if there is mutual trust existing between the Bench and the Bar, not only a mutual trust, but a realization on both sides that there are obligations of the Bar towards the Bench and obligations of the Bench towards the Bar.

"I have occupied too much time and been too long [*cries of "No, no"*], but I give you this toast, and I wish to express to their Honours our sincere affection and regard for them and I ask you to rise and drink."

The toast was drunk with musical honours.

The Chief Justice Replies.

Long and enthusiastic applause greeted the rising of His Honour the Chief Justice, the Rt. Hon. Sir Michael Myers, to reply to the toast of the Bench. His Honour was in brilliant form, and his speech was received with many marks of appreciation. He said:

"Mr. President, Mr. Attorney-General, Mr. O'Leary, and gentlemen of all branches of the legal profession: and in that category I include Judges of the Supreme Court, Judges of the Court of Arbitration, and Stipendiary Magistrates, because we are all members of different branches of the great profession to which we have the honour and the privilege to belong.

"Now, Mr. O'Leary, if you or any other gentleman expect from me to-night a homily or sermon, you will be either disappointed or pleased according to temperament. I have listened with great interest and delight to Mr. O'Leary's homily or sermon, which I have no doubt was addressed in all seriousness to the Judges of the Court of Arbitration and the Stipendiary Magistrates.

"Mr. Gresson has told you how ten years ago in this hall at a similar gathering he proposed the toast of 'The Guests.' On that occasion I had the privilege of proposing the toast of 'The Bench.' Thank the Lord I have forgotten everything I then said! It is bad enough to have to avoid blushing at Mr. O'Leary's encomiums.

"Before I pass on, I want, if I may, to pay a compliment to your President, Mr. Hutchison, for his excellent and dignified speech at the laying of the foundation-stone—a speech, if I may say so, which was delivered with the characteristics of the best traditional style of our profession.

The Attorney-General Complimented.

"I would like to say also how pleased I am to see here with us the Attorney-General, and to congratulate him and the Christchurch profession and the Christchurch public upon the new Courts of Justice which are now to become an accomplished fact. I would suggest that the Attorney-General go one step further. As you know, or as you will readily believe, it is necessary that the Chief Justice should reside at the seat of Government, and I can only say, after seeing the sketch of the new Court, that if he will only move and move hard to have the seat of Government removed from Wellington to Christchurch he may have the cordial support of the present Chief Justice. Seriously I would like to say this, and, saving the Attorney-General's presence, that his conduct as Attorney-General, his services to the profession, his accessibility and kindness always have won for him from the profession throughout New Zealand a feeling of something more than mere respect.

"The profession during the last few years has improved in status in many respects, and one thing I am particularly glad of is that at least since 1935 the profession has been master in its own house. I cannot help thinking how ironical it is that the profession which by tradition and training should have been the very first to have conferred upon it and to be entrusted with disciplinary jurisdiction over its own members has been the very last to be given that jurisdiction. However, now you have that jurisdiction, I am perfectly

sure it will be exercised with absolute fairness and justice.

"I am also pleased to see here to-night Mr. Justice Hunter, who by a happy conception has become the father of these Legal Conferences. I want also, if I may, to congratulate the Law Society of Canterbury upon the success of this Conference. I do not propose to dilate upon the value of such Conferences, but they are very valuable. They bring men together, they bring their wives together in social intercourse, and they bring the members of the profession together to discuss matters which are of importance to the profession and also to the general public.

MR. JUSTICE OSTLER.

"And I want, on behalf of myself and my colleagues of the Bench present and the Magistrates, to thank the Canterbury Law Society for its gracious and generous hospitality. I bring to you a message from those Judges who unfortunately cannot be present here, an expression of their hearty good-will and best wishes.

"I want particularly to bring to you such a message from Mr. Justice Ostler, who, unfortunately, for the last three months, has been on a bed of serious sickness. I saw Mr. Justice Ostler last Saturday evening, and I am glad to be in a position to tell you that he is now showing progress, though his recovery will be slow. We want him back in his place on the Bench. His services are of great value to the country, and I can assure you that he is to me a very valued colleague. The Judges have had a good deal of difficulty owing to one Judge being away from New Zealand, on leave, and owing to the illness of Mr. Justice Ostler, in maintaining the schedule of work throughout New Zealand; but I want to thank the profession for their co-operation in helping to keep the work going. Now, may I take back to Mr. Justice Ostler a message of sympathy and encouragement and good-will from you? That he will appreciate it, and that it will hearten him and tend to his rapid recovery, I feel perfectly sure. [*At this point, long and continued applause greeted the Chief Justice's kindly reference.*]

RELATIONS OF BENCH AND BAR.

"Mr. O'Leary has referred to the relations between the Bench and Bar, and notwithstanding his facetious remarks I do believe that on the whole the relations between Bench and Bar are satisfactory. I can assure you that the Bar has the respect of the Bench, and the Bench expects to have and it has the respect of the Bar in return. It is only upon mutual confidence and respect that we can do our work harmoniously together. There is no justification for any Judge ever to be rude or discourteous to counsel. There are ways of avoiding anything of that kind; but human nature has its infirmities, and sometimes a Judge may have a bad headache, or his breakfast may not have agreed with him. The same thing happens to counsel, and, in such circumstances, we may possibly have our little differences; but so long as good-will exists on both sides, there is no reason why the work of the Courts should not go on harmoniously in the future as it has done in the years gone by. Some patience, of course, is required by the Bar just as much as by the Bench.

"While on the subject of patience, I was, as you know, at the Bar for a great many years, and I often used to think after a long argument, and I have thought so more often on the Bench, that after all the cases have been cited they are sometimes very much like the Chinese gods. You want to know why! Well, it used to be said of the Chinese gods that there were about three hundred of them and not one of them worth a damn. Gentlemen, please do not take that observation too seriously. I can assure you I have had my experiences.

The Bar Dinner.

At the Top Table: MR. R. G. SINCLAIR, MR. C. H. WESTON, K.C., MR. M. J. GRESSON, MR. P. B. COOKE, K.C., HON. MR. JUSTICE NORTHCROFT, MR. H. H. CORNISH, K.C., Solicitor-General, THE RT. HON. THE CHIEF JUSTICE, MR. J. D. HUTCHISON (Chairman), HON. H. G. R. MASON, Attorney-General, MR. H. F. O'LEARY, K.C., MR. JUSTICE HUNTER, MR. J. B. THOMSON, MR. H. M. ROGERSON, AND DR. P. A. ARDAGH.

I will tell you one of them. I believe it is unique. I was young at the time, and I was appearing in the Court of Appeal for the respondent on an appeal from the then Chief Justice. I felt very strongly that the judgment was one which my friend Mr. Arthur Donnelly would call a 'wrong-un.' Nevertheless, I had to support it to the best of my ability. Well, there were five Judges sitting, everyone of them asking me questions such as Mr. O'Leary objects to, and I did my best to answer them one after another. In the course of my answers I submitted a proposition which I felt was pretty hopeless, but I did not appreciate how until I heard the shrill whistle which it elicited from Mr. Justice Denniston: and I fancied I heard a sigh from Mr. Justice Williams, and I imagined him saying, inaudibly, 'Oh my God.' I call Mr. O'Leary to witness that he has never heard a whistle from any member of the present Bench, though I will not dispute that he may have had reason to imagine the sigh and the inaudible expression.

A Word to the Iconoclasts.

"I want to say a word or two now to the iconoclasts. Some of my friends will tell you that when I was at the Bar I was somewhat of an iconoclast myself, and to tell you the honest truth I believe I am still. But there is such a thing as too much iconoclasm. I am interested in this subject because it was in consequence of a suggestion of mine that the present Attorney-General set up his Law Revision Committee. I was at the first meeting, and, when I saw the agenda paper, I made a few observations the burden of which was *festina lente*—do not be in too much of a hurry. Do not hack away the roots of the common law without the gravest consideration. Remember that bound up with the common law is the independence of the Bench and Bar, and the hacking-away without the gravest consideration of the roots of our common law is, in my opinion, liable to lead to serious mischief. It is all very well to pass resolutions at a Conference such as this, but I beg you beware—*festina lente*. Whenever there is a suggestion made that means hacking or cutting away the roots of the common law, I venture to suggest that before any final recommendation is made by the Law Revision Committee they should refer the matter to the New Zealand Law Society and let it take the considered opinions of the District Law Societies. A full consideration of the matter could then be given. I say that iconoclasm may well go too far. On this subject I would like to say that after all there is still a certain amount of wisdom and knowledge in the old heads. I do not say that you should necessarily adopt the views of the old heads, but their advice upon grave questions such as those being dealt with at the present time should be obtained and at least considered carefully.

"One subject is the question of the abolition of the grand jury. Now, I say to you, and I have behind me the unanimous opinion of the Judges, that it would be a grave misfortune to have the grand jury abolished. Is it, or is it not, a matter of importance that there should be occasionally a pronouncement by a Judge or by Judges on matters of grave public importance? I ask you to remember that a Judge has no right to take to the public platform. He has no right to write Press articles or letters to the newspapers. Such vehicles of publicity are by tradition barred to him, and very properly barred. The only way in which he may speak with propriety is *ex cathedra*—from his seat on the Bench. What opportunities has he for that? The proper opportunity is at the opening of the quarterly sessions in the cities and circuit towns in his address to the grand jury. Now you know sometimes suggestions have been made by Judges on important matters which have resulted in the amendment and amelioration of the law. It is not the Judge's privilege, it is a privilege of the public that a Judge should have that right, and a Judge must be trusted to exercise it with discretion. If you abolish the grand jury, you will take that right away, and you will reduce the opportunities of the Judges of helping in the settlement of questions of public importance, upon which they may have the right in that way, and that way only, to express their opinions. It matters not the least to me personally whether the grand jury is abolished or not, but I do say, and I speak for every other Judge, that its abolition would be a misfortune.

"Then there is the question of the standing-aside of jurors. There is probably no one in New Zealand at present who has had a more varied experience than I have had myself on both sides, appearing for the Crown and the defence, and I have seen the working of the jury system from the Bench. The Judges are again unanimous, though one qualifies his opinion in saying that it would be a grave misfortune to interfere with the right of the Crown to stand aside. There may be the possibility of that right or any other right being abused, but it should not be abused so long as the conduct of the prosecutions for the Crown is in the hands of honourable and competent men. These are the opinions of the Judges, and it is just as well that you should know them on this important question.

"On the question of absolute liability in motor accidents, I do not propose to touch, except to say this: *festina lente*. Consider the matter very carefully. I do not think it has been considered as carefully as it should be. Is there no *via media*? Personally, I believe there is, but it is not for me to make any contribution at the present time—or perhaps at all.

"That completes all I have to say except one thing, and that is this: I would like it to go forward through the President to one who is a friend of everyone of us, and who has been my personal friend for many years, Mr. Arthur Donnelly, that we sympathize with him in his illness, and that we hope for his speedy recovery. (*Great applause.*)

"Once again, gentlemen, on behalf of the Bench of the Supreme Court, the Judges of the Arbitration Court, and the Magistrates, I thank you and Mr. O'Leary, for the way in which he proposed the toast, and you for the very courteous and generous way in which it has been honoured."

"The Litigant."

Characteristically, Dunedin was asked to provide a member of the local Bar to propose the toast of "The Litigant." The selection of Mr. J. B. Thomson (Dunedin) was a happy choice, as the following speech shows.

"I call your attention to the toast list," Mr. Thomson began. "The first toast is 'Our Guests.'—We are present. The next toast is 'The Bench.'—We are honoured by its presence. The last toast is 'The Litigant.' Is he here?—He is not. It falls to his lot to be represented by Mr. P. B. Cooke, K.C., who, presumably on this occasion, appears *in forma pauperis*.

"I have received a letter from 'the litigant'; he expresses very cordial sentiments towards this gathering. He says he is fully aware of the hard-worked and ill-paid nature of our profession, and of what he owes to

it. He thinks it is due to us to amuse ourselves at our own expense on this occasion.

"I want to make one trifling observation before I go on to the subject of my toast, which I hope to reach in due course.

"Two years ago there was a Conference in Dunedin at which you all were, or should have been, present. On that occasion, for domestic reasons, it was necessary to divide the dinner into two parts. On this occasion the difficulty does not arise. That seems to be as well, in view of papers and remits apparently heralding the demise of the profession. It is pleasing to know that in death we are not divided.

"It is, of course, a matter of deep personal regret to me that I have been called upon to propose this toast, but, apart from that aspect, it might have been much more appropriate if someone other than a Dunedin lawyer had been asked to propose the toast, for between ourselves we do not know much about litigants—except by hearsay. It is difficult to say why this should be so. Some have suggested that owing to the climate in the North the populace suffers from chronic inflammation of that part of the brain which controls the desire for civil process. I do not hold with this. I consider that the solution must be found in a closely-reasoned analysis of 'the relation of the public to the profession.' As Mr. Stephens did not deal with this matter in his paper, I am compelled to deliver what may be regarded as a subsidiary paper on the same subject.

Dunedin Experiences.

"We were not always troubled with a lack of litigation in Dunedin. We are proud to remember that fifteen or twenty years ago it could be said that out of nine members of the Supreme Court Bench five had been busy practitioners in Dunedin. Some people, with an irreverence which I cannot too strongly condemn, might say that they fished the stream out and that it will take a generation to restock itself.

"I will not demean myself by further developing such an argument. It could not have been the legal profession of other days which caused the trouble. One feels constrained rather to ask what is wrong with the profession to-day that we have no litigants. Some say that we are brutal and unkind to prospective litigants, and that we turn them away with gloomy accounts of what may happen to them if they are so foolish as to take their cases into Court, and that they may even be prosecuted for perjury if they tell to the Court what they have told us.

"Now, it should be remembered, of course, that there is in the South a totally different disposition from that in the North. We are of a much more frank and candid disposition, and generally less of a go-getting type of mind, and we suffer for it, I am sorry to say. It does not apply only to the profession, but applies to Bar and litigant alike. You cannot make a litigant out of a man who admits with pride that he is guilty of whatever he has been charged with, and says that he was quite justified in doing it and that he wants to do it again. The same applies to members of the profession. I have heard of one member, who, holding firmly to the ideas suggested by Mr. Stephens in his paper this morning, says that one should always tell the truth and the whole truth. He never gets the same client twice; but he says that that does not matter, because both they and he suffer in the cause of justice.

"Then in Dunedin there is also this question of modesty. For a Dunedin barrister to unburden himself in the way that Mr. O'Leary has to-night is simply unthinkable; in fact, I think we can say that all members of the Dunedin Bar simply trembled while those words were being uttered. We feel, indeed, that for us to submit to the members of the Bench—gentlemen of such deep erudition and vast learning—such poor arguments as we are capable of, is a presumption that we cannot contemplate. Of course, there is always the element too, that we like to see the other fellow's point of view; but the difficulty is that, having seen it, we settle at once.

Litigants Classified.

"I said I was following on Mr. Stephens's address this morning, and repeating words which have been repeated several times in the last few days. I now come to what I may term the second part of my paper. It appears to be necessary in all serious discussions to include a classification of one's subject-matter. I, therefore, attempt to classify litigants.

"There is an obvious classification: litigants *in forma pauperis*, and all other litigants. In practice, this classification is not very helpful, as the two classes have such a tendency to merge into one another. Any reference to the standard of 'the ordinary reasonable man' is, of course, definitely out of place. One is compelled to resort to a classification based on the classification of contract, whereby litigants may be divided into two classes: First, litigants by deed who appear in the Criminal Courts; and, secondly, simple litigants who proceed by civil process. Having settled that, which I must do as a matter of form, one can proceed a step further.

"Most litigants, of course, are inexperienced. That may be why they are litigants. They know no law, but they venerate what they do not understand. They are certain of the rectitude of their own cause, are confident that their counsel by the simplest exercise of his powers of cross-examination will demolish the lying evidence of the other side, and, if there are any trifling difficulties in the law, that also will be disposed of by that same earnest worker for truth and justice. The real difficulty about this type of litigant is that when he loses his case, as he so often does, he is inclined to blame his counsel, when, of course, he should blame the Judge.

"Of experienced litigants, I will forbear to speak, largely on account of their rarity.

"In endeavouring to bring this discourse to a close, which will be on a par with the lofty thoughts and moral elevation to which we have grown accustomed in the past few days, I should like to close with some pious aspirations in the same lofty tone.

"May I express the hope that all our clients may be litigants; may they all be born out of wedlock, and thus provide us with work from their earliest days; may their lives be full of trouble; and may they, when their earthly career is drawing to its close, make their own wills; and, lastly, may they ever be satisfied with their counsel.

"Gentlemen, I give you the toast of 'The Litigant.'"

The Litigants' Opportunity.

The toast having been appropriately honoured, the large audience of practitioners then beheld the amusing spectacle of a King's Counsel, who is tradition-

ally and practically remote from the lay litigant, replying on his behalf to the toast proposed by Mr. J. B. Thomson.

MR. P. B. COOKE, K.C., delighted everybody with his speech, which was as follows:

"On behalf of all litigants I thank Mr. Thomson for his very entertaining and very witty speech.

"My position as a layman among a large number of members of the profession is positively overwhelming; but it is seldom that a client has the opportunity of speaking to a body of lawyers, and it is more seldom still that he has the opportunity of speaking to such a distinguished body of lawyers as this. And I am sure you will agree that when that opportunity does come it is only natural that he should want to get some of his own back, and to make one or two observations to you that the complacent satisfaction that has followed this dinner will allow to go unanswered.

"But, first, Mr. President, let me say that I have observed that no one has referred to the obligation under which you lie to us litigants for assisting to furnish the means whereby the Canterbury members of the profession have provided the comforts and the hospitality that have been continuous throughout, I think, the last two or three days, although I am not sure that I am able myself to remember exactly for how long. It gives us very great pleasure to feel that as a result on some occasions of our supine attitude towards your 'bills of costs,' and as the result on some occasions of the size of the estate, and as the result on other occasions of a rule that ought to be a rule of book-making rather than a rule of law, and that is known as the one-sixth rule, your Canterbury brethren have been assisted to disregard all the normal and prudent limits of hospitality and in the language of my fellow-litigants to 'make a welter of it.'

UNGENEROUS ACKNOWLEDGMENT.

"But, gentlemen, can it be—I am afraid it can—that we who do so much for you so often lose our identity in your hands and so often in your eyes become mere ciphers or letters of the alphabet. It seems to us that when we enter the fields of litigation we cease to be 'Mr. So and so' or 'Bill So and so,' and we find ourselves described as for instance, 'A., who is a second mortgagee,' or 'B., who is a lunatic'; and, more than that, we find perhaps that our property, which in the words of the land-agents gets all the morning sun and all the afternoon sun as well, is described as Blackacre. Indeed in this connection I remember that only last winter—it happened to be a very cold and frosty morning—a friend and I had occasion to consult a practitioner of considerable eminence. He, himself, was grossly and extravagantly overdressed, and you can imagine our feelings when after he had heard certainly not more than half the facts he looked straight at us in weather like that, and said that in his opinion we were nothing more or less than bare licensees. Mr. President, I suggest to you that that sort of language does not improve the relationship between the profession and those who support it.

"Mr. President, the lot of the litigant is a hard one. By a pretty fiction, inherited perhaps from the Romans, every one of us is presumed to know the law. There was some rather tricky business indulged in by Caligula in this connection. He, you will remember, caused the laws of Rome to be written in small characters, and stuck up so high that many of the citizens could not read them. The result was that only the higher classes could acquaint themselves with the edicts. Nothing like that goes on here: we should have no difficulty in ascertaining our law. It is preserved in a few thousand volumes of reports and statutes, which can be readily and cheaply purchased and still more cheaply borrowed, and all we have to do is to compare the different decisions and statutory provisions and apply them to our own case, when we shall be either right of wrong and, in due course, we shall find out which.

"But we are not equal even to this task, and we have to resort to you and to depend on you. It is to you that we look to find out what the law is, and it is to you that we look as the protectors of our security, although I am bound to confess that at the present time most of this seems to belong to the mortgagor.

PRO AND CON.

"But you have the foresight and wisdom to see how much we mean to you. You realize that we are worth preserving and worth caring for, and in this you are abetted and assisted by no less a person than your distinguished Attorney-General himself. He has demonstrated his desire for our preservation, and, therefore, his regard for your welfare in two striking ways in his plans for the new buildings in Christchurch. He has seen to it that in those buildings no draught will threaten or imperil our health, and he has provided in them for all our wants and comforts under one roof by placing the offices of the Official Assignee in Bankruptcy in close proximity to the Courts themselves. You will, I am sure, forgive us if we are a little suspicious of these small attentions, and if you find that to some extent we share Dr. Johnson's view of the profession when, on being asked who some man was who had just left him, he said: 'He did not care to speak ill of any man behind his back but he believed the gentleman was an attorney.'

"But, Mr. President, there is another side to all this, and some of us who become involved in litigation sometimes have cause when it is all over to take stock of the position. And, when we have done so, we have always come to the same conclusion. Whether that litigation has ended in success or ended in failure, and whatever knocks we have had to take as it went on, we have always felt at the end that we were glad to have had a member of the New Zealand Bar there to fight for us. We have always felt that we had there to represent us someone who had the courage to stand up to us, and, if necessary, give us unwelcome advice, and, what is more important, someone who had the courage to stand up to the tribunal, someone who disregarded what anyone outside his own profession might think, and someone whom no outside consideration could influence. Those, Sir, are the sort of things, that in spite of the temptation to belong to other nations, make each one of those for whom I speak prefer to remain an Englishman."

THE HOSTS.

An unannounced toast was then proposed by MR. C. H. WESTON, K.C., who said: "Humphrey O'Leary has asked me to remedy an omission in the toast list and on behalf of those of us who are visitors here to-night I give you the toast of 'Our Hosts.' It is an easy one to propose in the midst of a happy Conference where we see everywhere proof of the very hard work that has been done by our friends in Christchurch and their ladies. Mr. Hutchison and Mr. Spiller and every one of the members of the Canterbury Law Society's Conference Executive have laboured for our

entertainment and we indeed feel grateful to them. No doubt there is a good deal of expense, which we are glad to say can be passed on to P. B. Cooke and his litigious friends. We have enjoyed, too, the lovely surroundings of Christchurch; and it is rather surprising that such a battle of the sites could have taken place in such a classical city."

Mr. Weston then went on in humorous vein to describe a battle of sites in another part of the Dominion.

Continuing, he said, "With the toast of our hosts I want to include a toast to Mr. O'Leary himself. A peripatetic host he certainly is—a host in himself. That he is an inimitable chairman we all agree, and sitting under him for two days (before he made his speech to-night) I could not help thinking that like the cream in milk the humour is very near the top. Should he be elevated to the Bench he runs the risk of being another Lord Darling, and from my very small acquaintance with that very illustrious Judge I can assure you we could do with one on the Bench."

Mr. Weston then described his visits to Lord Darling's Court in London. He said: "My wife and I haunted the Law Courts and much appreciated Lord Darling's wit. In one case we listened to we heard Mr. F. E. Smith, as he then was, objecting to his opponent's questions. It was just a few minutes before 1 o'clock and he said, 'My friend is trying to draw a red herring across the track,' and Mr. Justice Darling replied, 'Well, gentlemen, that reminds me of lunch.' Another recollection was this: A witness was referring to a telephone call he had made to the 'Elephant and Castle,' and then came, like lightning, an observation from the Bench, 'I suppose it was a trunk call.'

"I have very much pleasure indeed in asking you to drink the toast of 'Our Hosts' and with that I couple a toast to Mr. O'Leary," Mr. Weston said, in conclusion.

Enthusiasm marked the honouring of this toast by the visitors.

Christchurch Appreciation.

Mr. W. J. Sim, called upon unexpectedly to reply to this uncharted toast, spoke in a very happy vein. He said: "The hour is very late, and if I may put it that way, this toast has been introduced *contra proferentes*. I am sure also that by now you are well saturated . . . with words. I shall therefore content myself with thanking Mr. Weston for his very kindly remarks about our hospitality, and thanking you for your generous response to the toast.

"Speaking as a member of the Committee which organized these functions, but one who has looked on and seen the others do all the hard work, I can say, I think, that they have worked very hard to make the Conference a success. But they would have me say also, I am sure, that all they did was to build the framework of the Conference; it is you, by your presence and enthusiasm, who have animated it and made it the living thing it has turned out to be.

"We do not forget also that some of you have come a great distance to attend, and this is not one of the occasions when there are costs as from a distance.

"There is one further short observation I should like to make. Some of you have made kind remarks about the beauty of our city, and of this we are proud. Mr. Rogerson mentioned, I think, the quietness of the Avon. I should like to make an addition to that; there are occasions when the close association of the Cathedral and the Avon bring to mind that sad story of the exiles which the Psalmist tells us about. You will remember how they sat down by the waters of Babylon and wept, and 'As for our harps, we hanged them up upon the trees that grew thereon.'

"Well, I think you have been for a few days exiled from your homes. It is good to know that neither the Conference itself, nor the waters of the Avon have induced in you any tendency to weep, and as for your harps it was not expected that you would hang them up on our willows, because the harp is the last thing you would expect to find in the kit of a peripatetic lawyer. And the more of an exile he becomes in this life, and eventually out of it, the probability of finding such an instrument in his hands becomes more and more remote.

"Just let me thank you again for this kindly toast," he said, in conclusion. "I understand the next Conference is to be held in Wellington. Let those in the Capital City rest assured that the Canterbury Bar will be there in strength, once again to emphasize that we are of a unity—the legal profession of New Zealand, of which we are rightly very proud."

The gathering concluded with the singing of *Auld Lang Syne*, which proved one of the memorable features of the evening.

Musical items were interspersed with the several toasts, the performers being Messrs. Allison, A. H. Cocks, and the Campbell brothers; and Mr. Barnard entertained the company with some lightning sketches.

The Ladies' Final Day.

At the Sign of the Takahe.

A motor-drive, arranged by the Ladies Committee, was enjoyed by the ladies on Friday morning. Unfortunately, owing to conditions caused by the recent heavy rain, the route of the planned drive had to be curtailed so as to exclude part of the Summit Road, which is one of the glories of Christchurch.

The splendid view from The Sign of the Takahe, where there was a halt for morning tea, greatly delighted the visitors who were impressed by the wide sweep of landscape afforded by that vantage-point. They were charmed, too, with the Takahe itself; and their interest was enhanced by the information given by Mr. J. A. Thomson, in a short address, about the Summit Road and the aspirations of the founders of the Takahe, and its history.

In the afternoon, the ladies were entertained at the Shirley Golf Links, where they were joined by the practitioners in a combined conclusion to the social events of the Conference.

It must not be supposed that the ladies' events which are recorded in these pages exhausted the capacity for enjoyment of the visitors, or marked the extent of the local ladies' versatility in entertainment. In between the scheduled events, a great amount of entertaining took place. The generosity and hospitality of the hostesses, the wives and daughters and sisters of members of the profession in Christchurch, seemed inexhaustible. On Friday evening, and Saturday, various private parties gave further opportunities for happy foregatherings.

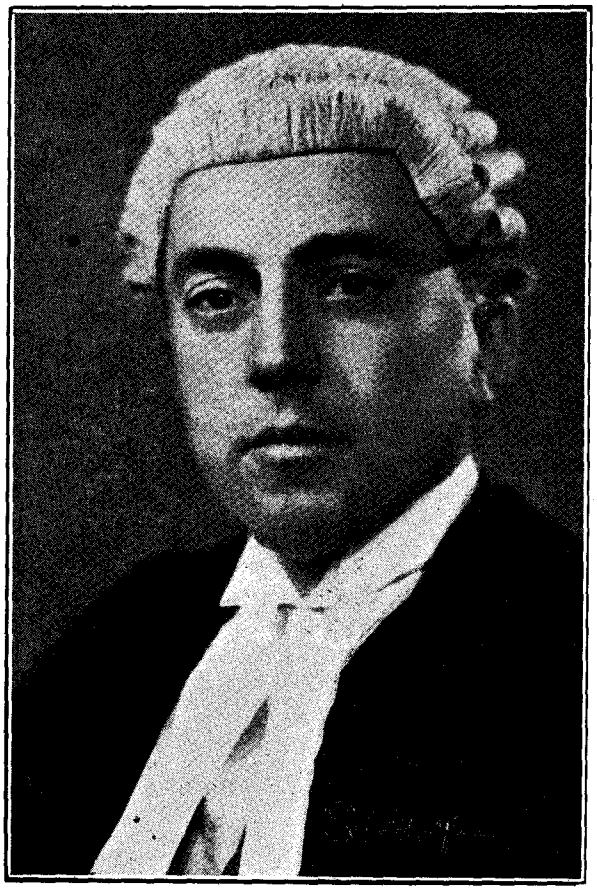
As His Honour the Chief Justice said at the Bar Dinner, these Legal Conferences are valuable, not least for bringing the wives of practitioners together. The visiting ladies, unanimously appreciative of this aspect of the Conference, were full of gratitude to their hostesses for the very enjoyable days spent in Christchurch with them.

The Final Events.

An Afternoon at Shirley Links.

THE final day of the Conference dawned all too soon for the visitors. Unfortunately, the weather conditions during the week were not up to the standard of the rest of the hospitality of Christchurch during these unforgettable days. Consequently, owing to ground conditions, the bowlers had to forgo their contests, and the golf programme, which was to have included a bogey competition for a trophy given by Mr. J. D. Hutchison (who won the President's trophy at the Dunedin Conference), had necessarily to be curtailed, and that match abandoned. Nevertheless, Christchurch had kept its best weather for the final day, and the afternoon was full of sunshine.

The traditional Conference-time competition for the LAW JOURNAL Cup, a four-ball bogey handicap open to all New Zealand practitioners, took place. The winners were Messrs. L. A. Dougall (Christchurch) and V. W. Russell (Ashburton), 1 up. This was a very popular success, as everyone was delighted to see the Cup remain in Christchurch for the coming two years. It will adorn the mantelpiece of the Law Library of the Law Society to which the winners belong, and will serve to remind studious practitioners of the success of their efforts during the Conference of 1938 and of the complete enjoyment afforded to their guests during the strenuous days of many foregatherings.



Standish & Preece, Photo.

Mr. V. G. Spiller,
The Conference Secretary.

Other scores were as follows: J. E. Farrell and T. A. Gresson, all square; G. I. McGregor and G. S. Branthwaite, all square; E. D. R. Smith and M. W. Simes, 1 down; J. B. Deaker and H. L. Ross, 2 down; N. S. Bowie and K. J. McMenamin, 2 down; A. T. Young and D. R. Richmond, 3 down; R. Twyneham and A. B. Sievwright, 4 down; E. S. Bowie and W. T. Dobson, 5 down; and A. T. Bell and E. J. Corcoran, 5 down.

The putting competition for practitioners' wives was won by Mrs. R. R. Burridge (Masterton), with Mrs. L. G. Cameron (Timaru) in second place.

The winners of the tennis doubles, played on hard courts, were B. A. Barrer and I. M. Walton (Christchurch).

There was a large attendance of visitors and local members of the Bar, with their wives and lady relatives, at the Shirley Golf House at the conclusion of the competitions. The weather had cleared, and the delightful surroundings of the Christchurch Golf Club's links formed a beautiful setting to the concluding function of the Conference programme.

Afternoon tea was served to everybody. At their table, the President of the Canterbury Law Society, Mr. J. D. Hutchison, and Mrs. Hutchison entertained the Hon. Mr. Justice Northcroft; Mr. Justice Hunter and Miss Eileen Hunter; the Mayor of Christchurch, Mr. J. W. Beanland and the Mayoress; Mrs. A. S. Adams; Mr. H. F. O'Leary, K.C., the Conference President, and Mrs. O'Leary; Mr. C. H. Weston, K.C., and Mrs. Weston; Mr. P. B. Cooke, K.C., and Mrs. Cooke; Mr. H. A. Young, S.M., Senior Magistrate at Christchurch, and Mrs. Young; Mrs. E. S. Vernon, President of the Christchurch Ladies' Golf Club; Miss Jessie Wilkin, Acting-captain; and Miss Mabberley Beadel and Mary Enright, members of the Club's Committee; and Mrs. George Weston, Chairwoman of the Conference Ladies Committee.

When afternoon tea was over, the presentation of prizes took place before the Golf House.

His Honour Mr. Justice Northcroft, in a happy speech, greeted the winners of the various competitions, who were given the tribute of hearty applause as they came up in turn to receive their prizes and acknowledge His Honour's congratulations.

The winners of the LAW JOURNAL Cup received solid silver miniatures of the handsome Cup, on which all winners' names are inscribed, which is held by the Law Society of the District in which the winners reside until the next Conference. The miniatures are engraved similarly to the Cup itself. The other successful competitors received suitable trophies.

Cheers for the winners brought this function to a close.

Presentation to the Conference Secretary.

The Conference President, Mr. H. F. O'Leary, K.C., at the conclusion of the presentation of prizes, took charge of the proceedings. The presentation to be made to Mr. V. G. Spiller, the Conference Secretary,

was then brought forward. It consisted of a solid silver tea-service and tray.

MR. O'LEARY said that before he performed the particular duty that he had come forward to perform, he had one other matter to mention. He then drew attention to the "Devil's Own" Golf Tournament, which he termed "the best Golf Tournament that is held every year," which would take place as usual in Palmerston North during the Dominion Day week-end. On behalf of the profession in the North Island, he issued a challenge to the "Dougalls" and "Russells" and all practitioners from the south.

He then called for Mr. V. G. SPILLER, the Conference Secretary, and Mrs. Spiller, without whom they could not proceed. On Mr. and Mrs. Spiller's appearance beside him, the President said that the most pleasant function that he had had to perform was to present the beautiful tea-service to Mr. and Mrs. Spiller from the visitors to the Conference.

"It is almost superfluous for me to remind you of the immense amount of work that has been entailed in the preparation and carrying out of this most successful of the five Conferences which have been held," MR. O'LEARY continued. "It is only those who have had to do all the work of the Conference who can realize the immense amount of work that falls on the Secretary. We all know how the President of the Canterbury Law Society (Mr. J. D. Hutchison) has performed his duties to the satisfaction of everyone, and we realize that both he and his Committee have worked very hard. But it always remains for the poor Secretary to carry out an immense amount of detailed work of the Conference. MR. SPILLER has been as successful as the secretaries of previous years, almost as successful as Mr. Justice Hunter who was the Secretary here ten years ago. MR. O'LEARY said that Mrs. Spiller had greatly assisted her husband in his labours, and informed his hearers that Mrs. Spiller's skill and craftsmanship had gone into the making of the skilfully-prepared name-cards worn by all the visiting ladies.

"We could not let this opportunity pass without showing our appreciation and making some recognition of their services," the President concluded. "I have the greatest pleasure now in presenting them with this tea-service. I was going to make a pun in presenting it to a married couple with the name of "Spiller," but I remembered, in time, that my small boy always tells me it is the lowest form of humour."

MR. O'LEARY then handed a handsome solid silver tea-service to MR. SPILLER on behalf of the visitors to the Conference.

MR. V. G. SPILLER, the Conference Secretary, who was received with cheers, after thanking MR. O'LEARY for his very kind remarks concerning the work which he had been privileged to do as Secretary to the Conference, said:

"It has given me a great deal of pleasure to have been able to do this work. I would also like to express my appreciation of the happy thought behind this presentation, and to thank the visitors for their kindness in arranging it.

"It is inevitable, I suppose, that at the conclusion of a Conference such as this a certain amount of the credit must be given to the Secretary, and, as in this case, he is the one who receives the thanks. It would, however, have been absolutely impossible for me to have carried through with the work without the very able and willing assistance of the various Sub-committees. All these Sub-committees worked splendidly, and to them a large amount of the credit must go. I would like to make special mention of the Ladies Committee who have so ably looked after the social side so far as the visiting ladies are concerned.

"However, despite all the work and effort which has been put in before and after the Conference, there would after all be no Conference but for the co-operation of the visitors, and I would like to express my appreciation of the way in which the visitors have supported the functions. I would like also to express my personal thanks for the courtesy and co-operation of all the visitors when they arrived in Christchurch. It is inevitable that when the visitors arrive a certain amount of the work has to be done in the way of issuing tickets, invitations, and so forth; but all the visitors have gone out of their way to be helpful and to ease this burden as far as possible. I have appreciated also their friendliness and courtesy to me at all times.

"In conclusion, I would like to express my personal appreciation and the appreciation of the Conference itself to all those persons who in any way whatever have helped to make the Conference the success, which, apparently, it has been."

MR. J. D. HUTCHISON, President of the Canterbury Law Society, then addressed the gathering.

"I have just one thing to say, and that is how very pleased we have all been to have you here. I hope you have enjoyed yourselves, and I think you have, from what has been said," he began.

"I join with MR. O'Leary in his remarks concerning the work of the Committee and of the Secretary, Mr. Spiller. Many people have congratulated me on the success of the Conference, but I do want to say now that, while I had to stand and accept these congratulations, the work, as in all these Conferences, had been done by the Sub-committees who have done their jobs thoroughly and well, and of the Secretary who has been responsible for all the detailed work entailed in the Conference," the President continued.

MR. Hutchison said they were all very sorry that the Conference was over. He himself proposed to use his leisure in reading a pile of newspapers to see what had been happening during the week.

Cheers were then given by the visitors for the members of the Canterbury Law Society, and by the Canterbury practitioners for the visitors.

This completed the official activities of the Conference.

The Next Conference.

In accordance with the resolution of the Fourth Dominion Legal Conference at Dunedin, in 1936, the Conferences are held every two years. The next Conference will be held at Easter, 1940, at Wellington.

No time is being lost by the Wellington District Law Society in making preliminary arrangements for the Conference it is sponsoring in the Dominion's centennial year.

In 1940, there will be an International Exhibition in the capital city, in association with other events marking the completion of New Zealand's first hundred years. It is, therefore, anticipated that the Legal Conference, which will be a major event of the year's celebrations, will attract a record number of practitioners.

The Conference Reception and Ball.

A Brilliant Gathering.

The Conference Reception and Ball was held at Beath's on the evening of Wednesday, April 20. Everyone present agreed that it was one of the happiest and, at the same time, most brilliant functions of the kind they had ever attended. The dignified setting of the large hall and lounges, and the music of Fritz Seymour's Orchestra, contributed to its outstanding success.

The guests were received by Mr. J. D. Hutchison, President of the Canterbury Law Society, and Mrs. Hutchison.

The gathering was honoured by the presence of His Excellency the Governor-General, Viscount Galway, who was attended by his Aide-de-camp, Lieutenant S. R. le H. Lombard-Hobson, R.N. His Honour the Chief Justice, the Rt. Hon. Sir Michael Myers, G.C.M.G., and Lady Myers; the Hon. Mr. Justice Kennedy and the Hon. Mr. Justice Northcroft; Mr. Justice Hunter and Miss Eileen Hunter; the Attorney-General, the Hon. G. H. R. Mason; Mrs. A. S. Adams; the President of the New Zeland Law Society, Mr. H. F. O'Leary, K.C., and Mrs. O'Leary; and the Vice-President of the Society, Mr. A. H. Johnstone, K.C., were also of the official party.

Among those present were Mr. H. A. Young, S.M., and Mrs. Young; Mr. E. C. Levvey, S.M., and Mrs. Levvey; Mr. F. F. Reid, S.M., and Mrs. Reid; and Mr. R. C. Abernethy, S.M., and Mrs. Abernethy (Invercargill); Mr. B. L. Dallard, Under-Secretary for Justice, and Mrs. Dallard.

The wearing of service and other decorations enhanced the interest and brilliance of the gathering.

The arrangements for the Ball were in the capable hands of the Ladies Committee, assisted by the members of the Ball and Dinner Sub-committee of the Conference executive. The two supper-rooms were charmingly decorated with autumn flowers; and, here, again, the expert touch of the Ladies Committee ensured the enjoyment of a supper that was served in a particularly dainty manner.

Altogether, the Reception and the Ball set a standard that other Conference Committees will have immense difficulty in emulating. In the lounges of the hotels, where many animated parties subsequently discussed the great success of the gathering, it was evident that everyone had had a most enjoyable time. The opinion was generally expressed that the Conference Ball at Christchurch would remain one of the happiest memories of the whole series of Legal Conferences.

Among the guests, in addition to those already mentioned, were the following: From Auckland: Mr. H. E. Barrowclough, Mr. and Mrs. E. H. Burton, Mr. A. H. Johnstone, K.C., Mr. L. K. Munro, Mr. C. M. G. McDavitt, Mr. and Mrs. H. M. Rogerson, Mr. M. M. Flynn, and Mr. and Mrs. O. R. Thomas. From Blenheim: Mr. and Mrs. W. T. Churchward and Miss Churchward, and Mr. and Mrs. G. M. Spence. From Nelson: Mr. and Mrs. W. J. Glasgow, and Mr. and Mrs. W. V. Rout. From Dunedin: Mr. and Mrs. F. B. Adams, Mr. and Mrs. P. S. Anderson, Mr. and Mrs. R. R. Aspinall, Mr. and Mrs. G. Gallaway, Mr. and Mrs. E. A. Duncan, Mr. and Mrs. J. B. Deaker, Mr. and Mrs. H. S. Ross, Mr. and Mrs. A. C. Stephens, Mr. and Mrs. E. J. Smith, Mr. and Mrs. D. A. Solomon, Mr. and Mrs. R. G. Sinclair, Mr. R. H. Simpson, Mr. and Mrs. J. B. Thomson, Mr. and Mrs. A. I. W. Wood, Mrs. Raynor Bell, and Mr. and Mrs. A. J. Dowling. From Invercargill: Mr. and Mrs. R. B. Bannerman, Mr. and Mrs. G. C. Broughton, Mr. and Mrs. B. W. Hewat, Mr. and Mrs. M. M. Macdonald, Mr. and Mrs. H. J. McAlister, Mr. T. R. Pryde, Mr. and Mrs. J. Roberston and Miss Robertson, Mr. H. E. Russell, Mr. H. W. Hunter (Riverton). From Westland: Mr. and Mrs. J. W. Hannan and Miss Eileen Hannan, Mr. and Mrs. F. A. Kitchingham, Mr. and Mrs. H. Lovell, Mr. E. B. E. Taylor, Mr. and Mrs. W. D. Taylor, and Mr. A. A. Wilson. From other South Island towns came: Mr. and Mrs. W. H. Walton, Timaru, Mr. and Mrs. S. I. Fitch, Waimate; Mr. M. Gresson, Waimate; Mr. and Mrs. W. F. Boland, Waimate; Mr. L. A. Charles, Ashburton; Mr. and Mrs. L. G. Cameron, Timaru; Mr. and Mrs. W. D. Campbell, Timaru; Mr. and Mrs. E. J. Corcoran, Kaiapoi; Mr. and Mrs. J. W. M. Dart, Methven; Mr. and Mrs. A. C. Fraser, Rangiora; Mr. R. Kennedy, Ashburton; Mr. and Mrs. N. L. Knell, Waimate; Mr. G. C. Nicoll, Ashburton; Mr. L. O'Connell, Timaru; Mr. and Mrs. M. A. Raymond, Timaru; Mr. and Mrs. F. J. Rolleston, Timaru; Mr. and Mrs. R. Stout, Timaru; Mr. and Mrs. E. D. R. Smith, Rangiora; Mr. G. J. Walker, Timaru; Mr. and Mrs. G. R. Watters, Waimate; Mr. and Mrs. C. W. Webber, Timaru; Mr. V. W. Russell, Ashburton; Mr. C. G. de C. Drury, Ashburton; Mr. and Mrs. J. E. Farrell, Oamaru; and Mr. and Mrs. J. H. Main, Oamaru. From Wellington: Mr. and Mrs. H. E. Anderson, Mrs. M. O. Barnett, Mr. K. S. Blair, Mr. and Mrs. P. B. Cooke, Mr. T. P. Cleary, Mr. and Mrs. S. J. Castle, Mr. and Mrs. A. E. Currie, Mr. and Mrs. H. H. Cornish, Mr. and Mrs. B. L. Dallard, Mr. C. Evans-Scott, Mr. and Mrs. E. P. Hay, Mr. and Mrs. J. P. Kavanagh, Mr. and Mrs. W. E. Leicester, Mr. and Mrs. F. M. Martin, Hon. H. G. R. Mason and Mrs. Mason, Mr. and Mrs. A. C. W. Mantell-Harding, Mr. and Mrs. T. G. Morgan, Mr. and Mrs. A. J. Mazengarb, Mr. and Mrs. O. C. Mazengarb, Mr. H. Mitchell, Mr. W. H. Nichols, Mr. and Mrs. H. F. O'Leary, Mr. and Mrs. D. Perry, Mr. and Mrs. J. H. Reaney, Mr. and Mrs. D. R. Richmond, Mr. and Mrs. F. C. Spratt, Mr. and Mrs. A. B. Sievwright, Mr. and Mrs. J. F. Stewart, Mr. H. M. Thomson, Mr. and Mrs. H. J. Thompson, Mr. and Mrs. C. H.Weston, Mr. and Mrs. A. T. Young, Mr. H. R. C. Wild, Mr. J. C. White, Mr. R. H. Webb, Mr. and Mrs. J. S. Hanna, Mr. R. E. Gillon, Mr. A. C. Jessep, Mr. and Mrs. G. F. Dixor, Mr. G. W. Wylie, and Mr. L. H. Herd. Others from the North Island towns were: Mr. C. F. Atmore and Dr. Gertrude Atmore, Otaki; Mr. and Mrs. R. R. Burridge, Masterton; Mr. and Mrs. M. J. Burns, Hawera; Mr. C. P. Brown, Wanganui; Mr. and Mrs. H. H. Daniell, Masterton; Mr. and Mrs. W. T. Dobson, Napier; Mr. C. O. Edmonds, Te Awamutu; Mr. E. F. Fookes, New Plymouth; Mr. T. H. R. Gifford, Napier; Mr. F. J. Green and Miss F. T. Green, Hastings; Mr. and Mrs. J. A. Grant, Palmerston North; Mr. H. F. Guy, Kaikohe; Mr. and Mrs. D. H. Hall, Taumarunui; Mr. and Mrs. D. Hutchen, New Plymouth; Mr. and Mrs. G. J. Jeune, Gisborne; Mr. T. C. Kincaid, Taihape; Mr. and Mrs. G. I. McGregor, Palmerston North; Mr. H. J. McGregor, Mr. E. B. E. Taylor and Mr. H. J. McMullin, Hamilton; Mr. S. S. Preston, Te Awamutu; Mr. and Mrs. R. H. Quilliam, New Plymouth; Mr. and Mrs. P. Thomson, Stratford; Mr. and Mrs. N.

M. Thomson, Levin; and Mr. and Mrs. L. Hughes, New Plymouth.

Christchurch residents included Mr. P. H. T. Alpers, Mr. and Mrs. H. D. Acland, Mr. H. D. Andrews, Mr. P. P. J. Amodeo, Mr. and Mrs. K. G. Archer, Mr. B. A. Abbott, Mr. and Mrs. B. A. Barrer, Mr. and Mrs. A. C. Brassington, Mr. R. Beattie, Mr. and Mrs. G. S. Branthwaite, Mr. and Mrs. E. S. Bowie, Mr. D. A. Buchanan, Mr. J. A. Bretherton, Mr. and Mrs. A. T. Bell, Mr. G. H. Buchanan, Mr. and Mrs. M. S. Brown, Mr. and Mrs. R. E. Booker, Mr. N. S. Bowie. Mr. and Mrs. L. D. Cotterill, Mr. and Mrs. E. C. Champion, Mr. and Mrs. H. S. Clarke, Mr. and Mrs. E. B. Corcoran, Mr. and Mrs. R. A. Cuthbert, Mr. and Mrs. J. R. Cuningham, Mr. A. C. Cottrell, Mr. and Mrs. F. I. Cowlishaw, Mr. and Mrs. F. W. M. Cowlishaw, Mr. and Mrs. A. H. C. Cavell, Mr. A. T. Donnelly and Miss Donnelly, Mr. and Mrs. L. A. Dougall, Mr. S. R. Dacre, Mr. F. E. Dale, Mr. and Mrs. H. de R. Flesher, Mr. and Mrs. L. W. Gee, Mr. T. A. Gresson, Mr. M. J. Gresson, Mr. and Mrs. J. D. Godfrey, Mr. K. A. Gough, Mr. and Mrs. H. S. J. Goodman, Mr. and Mrs. K. M. Gresson, Mr. R. Hepburn, Dr. A. L. Haslam, Mr. and Mrs. R. N. C. Hill, Mr. D. J. Hewitt, Mr. and Mrs. H. H. Hanna, Mr. and Mrs. L. J. H. Hensley, Mr. and Mrs. C. H. Holmes, Mr. and Mrs. J. R. Hampton, Mr. T. D. Harman, Mr. and Mrs. A. D. Harman, Mr. and Mrs. H. W. Hunter, Mr. and Mrs. H. Edgar, Mr. J. A. Johnston and Miss K. Johnston, Mr. and Mrs. G. W. C. Smithson, Mr. A. W. Brown, Mr. and Mrs. J. D. Hutchison, Mr. and Mrs. A. B. Hobbs, Mr. J. A. Johnston, Mr. W. B. T. Leete, Mr. and Mrs. T. A. Leitch, Mr. and Mrs. W. R. Lascelles, Mr. and Mrs. R. H. Livingstone, Mr. and Mrs. R. J. Loughnan, Mr. E. T. Layburn, Mr. and Mrs. Crosby Morris, Mr. and Mrs. D. S. Murchison, Mr. and Mrs. H. D. Muff, Mr. and Mrs. J. H. Macdonald, Mr. K. J. McMenamin, Mr. and Mrs. J. K. Moloney, Mr. H. O. D. Meares, Mr. and Mrs. T. Milliken, Mr. A. S. Nicholls, Mr. and Mrs. J. A. Niblock, Mr. and Mrs. W. R. Olliver, Mr. A. C. Perry, Mr. and Mrs. J. H. Polson, Mr. C. E. Purchase, Mr. and Mrs. T. K. Papprill, Mr. and Mrs. C. V. Quigley, Mr. J. H. Rhodes, Mr. E. W. Reeves, Mr. and Mrs. D. W. Russell, Mr. and Mrs. R. L. Ronaldson, Mr. F. D. Sargent and Miss H. Sargent, Mr. and Mrs. W. J. Sim, Mr. C. A. Stringer, Mr. and Mrs. H. P. Smith, Mr. G. S. Salter, Mr. and Mrs. M. W. Simes, Mr. and Mrs. V. G. Spiller, Mrs. L. C. Stephens, Mr. and Mrs. N. E. Taylor, Mr. and Mrs. C. S. Thomas, Mr. and Mrs. R. Twyneham, Mr. and Mrs. H. W. Thompson, Mr. A. S. Taylor, Mr. H. C. D. van Asch, Mr. I. M. Walton, Mr. G. H. M. Walton, Mr. and Mrs. G. T. Weston, Mr. J. T. Watts, Mr. and Mrs. P. H. Woods, Mr. and Mrs. E. P. Wills, Mr. A. F. Wright and Misses Isobel and Helen Wright, Mr. E. W. White, Mr. and Mrs. F. S. Wilding, Mr. and Mrs. R. A. Young, and Misses E. Denniston, A. Upham, C. Reese, J. Hart, G. Grance, M. Irwin, D. Ayson, R. Turner, J. Cranstone, L. Lindon, J. Cooper, S. Tennant, C. Hannigan, Y. Levvey, M. Taylor.

From the Italian Archives.—The Dominion Legal Conference, 1938, in Four Acts (but no scenes). *Act I.* Wednesday, April 20. Bombardo commenco. *Act II.* Thursday, April 21. Bombardo crescendo. *Act III.* Friday, April 22. Bombardo intensivo. *Act IV.* Saturday, April 23. Packo portmanteaux.

Peeps at the Conference.

A Page from the Past.

April 20th. This day to Christchurch by boat and train, vexing about foul weather and fog-signals all night which made me sleep but ill. Then to inn, and after eating some victuals felt a growing content. Donned my robes and periwig. That being done, away to Radiant Hall to hear the Mayor make speech of welcome and others discourse upon the coming Conference; and thence to the ceremony of laying the foundation-stone of the new Law Courts, whither comes by invitation my lord Viscount Galway with Mr. Attorney-General, and heard several mighty good speeches. J. Hutchison who doth preside over the Canterbury Law Society did speak, and all the world that was within hearing were overjoyed in it and did cry up his speech as the best thing they ever heard. I find by discourse J. Hutchison and his friend, M. Gresson, to be men mightily well read in ancient Canterbury history which is very pleasing. And Mr. Howard, member of Parliament, did dwell upon the polyglot and Mary-Ann architectural contraptions of the present buildings, and to the great merriment of all how the site of the new Courts would be to the liking of "Mother of Ten" and "Pro Bono Publico." With A. Haslam walking back to Radiant Hall, he telling me of much trouble with unions and play-acting, and at the hall many good things discoursed on by H. O'Leary who doth preside over the New Zealand Law Society, concerning the ways of lawyers and great confusion in the Judiciary by the over-work of the Judges; but I hope we shall fall into greater order. Then to the Club where R. Livingstone did entertain a number of visitors to luncheon and in the business of victualling did show the cunning hand of the connoisseur. Alas, did drink not wisely but too well, and in the afternoon wearying of further discourse and finding R. Lascelles and D. Solomon of similar mind to Addington with them to see the trotting, but neither the hot tips of the one nor the judgment of the other were to our benefit and I the poorer to my great sorrow. To J. Hutchison's to take wine with His Majesty's Judges, and my wife much disappointed that they had doffed their morning robes of office which she believed to be of red velvet and ermine and it frets her much that they do not even wear a black cap. To R. Young's, by appointment, where we find good company for dinner, and then to the Ball where several did ask me, did I partake of sillibub and answering nay, did tell me that they had gone to dinner at A. Donnelly's and were mightily well content, and that they had there been served with sillibub made with curds and wine and this was much better than beer which I doubt greatly. The Ball well worth my going, being never likely to see more gallantry while I live, the clothes and the sight of persons were indeed very pleasant, and upon the whole matter, the business of dancing itself extraordinary pleasing. At about two in the morning it broke up, and thence to welcome soup and discussion. After this, I and my wife back to the inn, finding the lounge full of companions, all in pretty good humour.

April 21st. Up pretty betimes, though not as soon as I intended, and to bathroom where beyond all possible expectation and so amazing as I never saw, I confess, nor could have believed, D. Solomon

asleep under the shower; and him awaking with much mirth we got ready and ate our breakfasts; and then to hear A. Stephens give his paper on what the profession owed to the public and what the public owed to the profession, which, to my mind, is a sad theme for any Conference. Therein he tells how we should all do more for less and wear finer clothing. Spoke with many and hear address well commended, also R. Twyneham for his speech to his brief for motor-unions, but am sore troubled to hear his innocent clients assailed by Mr. Attorney-General as miserable people, short-sighted and thick-skinned, to boot. Mr. Rolleston, former Attorney-General, did praise plan of Honourable Mr. Mason and paper of W. Sim that we should pay for those who walk into our vehicles. I find those present of two minds of the wisdom of it. There is much talk about absolute liability: though, when all is done, the exceptions are such that none knows how to recognize this illegitimate offspring of the common law. After this discourse, motions and counter-motions are so thick and sway so from one to the other that they did make all groggy and I did repair for a tankard of cool drink with C. Thomas, and we congratulated ourselves on what we might have said if we had spoken to the remit which we did not lest what we did say were better left unsaid. So away to the inn to find the world rings with the discourse of A. Stephens and I tell my wife my views upon it to her good content. Then towards Radiant Hall again where there is talk by D. Perry upon vendor and purchaser but, without much haste, since to my mind these terms are almost obsolete and soon we shall know them no more. This discourse being well received, the Conference is concluded and I to prepare myself for the Bar Dinner. I was vexed that my wife did show me the tally for new clothes she had bought in town, answering, to my questions, that she had understood A. Stephens to maintain that the clothes of lawyers' *wives* should be more fine, and that, if misunderstanding there were, the fault lay in the slurred speech of lawyers occasioned by the hospitality of the local profession. I fear I did correct her sharply, poor wretch, but the dinner had scarce begun when it became so well and merry I did forget my vexation; but, Lord! how we did enjoy the wit of H. O'Leary proposing the toast of the Judiciary and making reference to his book "Advice to the Bench" and to the things that are to be spoken of therein. I must call upon my bookseller and tell him to make a note upon it. We thought the speaker a pretty subtle man, but Sir M. Myers not a whit amiss saying he had but little doubt that H. O'Leary's admonitions were directed to the Judge of the Arbitration Court and to the Magistracy which laughed mightily nobly. From the discourse of H. Rogerson upon the duties of visitors did derive much quiet enjoyment. The wonder of it to find such wisdom among the dwellers of the remote cities of the North. Much in praise of himself and his fellow-litigants is spoken of by P. Cooke; but I am mightily surprised at it for how shall the solicitors wax and grow fat if King's Counsel know too much of their own litigants. Am resolved to speak to my Lord Coke of my friend Cooke. At table praising R. Livingstone on his taste in wines and music he did invite me to the Club to play at Slippery Sam; but I was sore troubled to get my coat as the usher seemingly having suffered at the hands of some miscreant lawyer was suspicious of our profession and required some proof of our *bona fides* before handing us our belongings. To the Club and there found our hosts amongst the gamesters and I, refusing to venture, though J. Moloney pressed me hard, and tempted me with saying that no man was ever known to lose the first time, I did wager all against the bank and, my card being the higher, did win three shillings and the bank to the great excitement of all. I stayed until the bell-man came with his bell under the window and cried, "Past two of the clock, and a cold, wet, windy morning! Trots postponed again, and going at Shirley likely to be heavy!" One final noggin in honour of Colonel Bogey on the morrow and knowing full well that, with all this hospitality, I would be under par, took a taxi to the inn—and so to bed!

—WELEX.

London Letter.

BY AIR MAIL. Strand, London, W.C. 2,
May 1, 1938.

My dear En-Zers.

An attack of 'flu, with which the brief Easter vacation had probably something to do, prevented my attending, on Monday last, the Anzac Day service to which I had been looking forward in order to give you a first-hand account of it. Now, with the commencement of the Easter term, we are in the throes of work again, which, with the brief intermission of the Whitsuntide holidays, will run on until the Long Vacation which begins at the end of July.

The Surgeon's Duty.—If I remember rightly you had one of those difficult cases about responsibility in the operating-theatre. [*Ingram v. Fitzgerald*, [1936] N.Z.L.R. 905: ED.] Well, there was one here the other day, at the Manchester Assizes (*Times*, April 27): *Mahon v. Osborne*. This was an action by a deceased person's mother, in which the jury found that a surgeon did not make sufficient search for "swabs" at the end of the operation. On the other hand, they found a second defendant who had acted as "theatre sister" not guilty of negligence causing death. The operation took place in a hospital at Manchester of whose exact status the report does not tell us. We must presume that nothing at all either in law or fact could be said against its owners. The question of the responsibility for removing swabs—and of how it should be apportioned between the surgeon and those who assist at the operation—is still not satisfactorily settled. The latest edition of *Taylor* quotes *Van Wyk v. Lewis*, [1924] App. Div. (S.A.) 438, a South African decision, as the leading case. [This was applied in *Ingram's* case: Ed.] It held that the theatre sister, or whatever she be called, is a party independent of the surgeon and that her negligence in not counting is something for which he is not answerable. *James v. Dunlop*, which is reported only in the B.M.J. for 1931 (vol. 1, p. 730), tends in the other direction and holds the surgeon—at least on the facts of the case—responsible. Probably it is best to refrain from attempts to lay down a fixed rule for these cases. Much must depend on the actual facts of appointment of nurses and so forth.

Yours as ever,

APTERYX.

New Zealand Conveyancing.

By S. I. Goodall, LL.M.

Escheat, Reverter, and Bona Vacantia.

1.—Introductory.

The above title is, it is hoped, misleading in that it savours of the academic, and perhaps even the archaic, whereas it is really proposed hereunder to discuss some of the practical questions arising out of the dissolution of modern trading companies without prior realization and disposal of all their assets, and to place a proper construction on the comparatively recent piece of legislation, s. 283 of the Companies Act, 1933.

For various reasons, a company commonly goes out of existence leaving items of its property undisposed of and intact. Property overlooked or regarded as of no commercial value by the liquidator, or the creditors, may later be found or prove to be worthy of realization.

> " . . . The dissolution of a corporation does not exterminate every asset that the liquidator may have failed to get in or realize. Should he by some oversight have failed to dispose of the office table it is obvious that the office table still exists. And what is true of the office table must, as it seems to me, be true of the office lease " : *In re Wells, Swinburne-Hanham v. Howard*, [1933] Ch. 29, 61, per Romer, L.J.

2.—The Doctrine of Escheat.

It is not here necessary to dwell at length upon escheat. Suffice it to say it was an incident of feudal tenure by which heritable land went back in terms of the Statute *Quia Emptores* to the lord of the fee if the tenant died intestate and without heirs : *27 Halsbury's Laws of England*, 2nd Ed. 582. The English law of escheat for want of heirs (in the Mother-country abolished by the Administration of Estates Act, 1925 (Eng.), s. 45 (1)) applies to New Zealand ; and, there being no mesne or intermediate lords, all escheat must be to the Crown : *Garrow's Real Property*, 3rd Ed. 20, 21. In *Veale v. Brown*, (1868) 1 C.A. 152, a woman of illegitimate birth died intestate without lawful issue, and seized of land in New Zealand granted from the Crown and previously duly conveyed to her. It was held that the land passed to the Crown on her death, the law of escheat being in existence in the Colony, whether that term were regarded as applicable to seignorial right as lord of the fee, or to prerogatival right as *ultimus haeres*. It may be interposed that the right to escheat of lands in these circumstances is seignorial, not prerogatival.

The doctrine of escheat applied to land in fee, for want of heirs ; on the death of the donee of a limited interest or estate which was not of inheritance the land went back to the donor in accordance with the intention of the gift. This passing by operation of law was described not as escheat, but as reverter : *27 Halsbury's Laws of England*, 2nd Ed. 582.

3.—Reverter *versus* Escheat.

A wider doctrine of reverter, however, has found favour not only with text-writers, but even with the Courts themselves in respect of succession to the property of a dissolved corporation including a limited liability company. In short the supposed and oft-recited rule of the common law says that the land, whether in fee or for any less estate, of a dissolved corporation does not escheat to the Crown, but reverts to the donor : See, *e.g.*, *Cheshire's Modern Real Property*, 4th Ed. 844, citing *Co. Litt.* 13b ; *1 Blackstone's Commentaries*, 484–85 ; *Hastings Corporation v. Letton*, [1908] 1 K.B. 378 ; *In re Woking Urban District Council (Basingstoke Canal) Act, 1911*, [1914] 1 Ch. 300, C.A. ; and see, also, *8 Halsbury's Laws of England*, 2nd Ed. 89, 124.

All enunciations of the rule, however, seem to have their origin in the statement of Lord Coke :

> " If land holden of J.S. be given to an abbot and his successors, in this case if the abbot and all the convent die, so that the body politique is dissolved, the donor shall have againe this land, and not the lord by escheat. And so if land be given in fee simple to a deane and chapter, or to a maior and commonalty, and to their successors, and after such body politique or incorporate is dissolved, the donor shall have again the land, and not the lord by escheate. And the reason and the cause of this diversity is, for that in the case of a body politique or incorporate the fee simple is vested in their politique or incorporate capacity created by policy of man, and therefore the law doth annex the condition in law to every such gift and grant, that if such body politique or incorporate is dissolved, that the donor or grantor shall re-enter, for that the cause of the gift or grant faileth " (*Co. Litt.* 13b).

So again, *Blackstone* said :

> " The body politic may also be dissolved in several ways : which dissolution is the civil death of the corporation : and in this case their lands and tenements shall revert to the person, or his heirs, who granted them to the corporation ; for the law doth annex a condition to every such grant, that if the corporation be dissolved the grantor shall have the lands again, because the cause of the grant faileth. The grant is indeed only during the life of the corporation ; which *may* endure for ever : but when that life is determined by the dissolution of the body politic, the grantor takes it back by reversion, as in the case of every other grant for life " (1 *Comm.* 484–85).

So great was the reverence induced by the repetition of the rule and so great the veneration for antiquity, that, in 1914, the English Court of Appeal assumed its application to freehold land on the dissolution of a statutory canal company : *In re Woking Urban District Council (Basingstoke Canal) Act, 1911* (*supra*). A similar point had arisen with reference to leasehold land in *Hastings Corporation v. Letton*, [1908] 1 K.B. 378, where the rule was assumed to apply on the dissolution of a trading company under the Companies Act, 1862 (Eng.).

It is necessary to consider the *Basingstoke Canal* case in brief. Certain persons shortly after 1777 conveyed land to a statutory canal company. After many vicissitudes in the company's affairs and purported dispositions of the land, the company was dissolved in 1878, up to which time the land remained vested in the company, a conveyance meanwhile to one St. Aubyn having been held *ultra vires*. Cozens Hardy, M.R., Swinfen Eady, L.J., and Phillimore, L.J., were unanimous in applying the doctrine of reverter, although the Master of the Rolls qualified his remarks by " assuming that the law is as stated." In the circumstances, it was held that a right of entry arose upon the dissolution of the company in 1878 in favour of persons claiming through or under those who had conveyed to the company shortly after 1777. The right of entry by the time of action, 1913, was said to be statute-barred. But neither the Crown or any other lord of the fee, nor any heir of the original grantors under the conveyance of 1777, was a party to the proceedings.

(*To be continued.*)

Summary of Recent Judgments.

SUPREME COURT.
Dunedin.
1937.
November 22.
1938.
January 20.
Kennedy, J.

ELLIS v. MITCHELL.

Mortgagors and Tenants Relief Acts—Mortgages—Action for Sale or Partition of Mortgaged Land—Appeal to Court of Review from Adjustment Commission's Decision pending—Whether Supreme Court precluded from hearing such Action—Mortgagors and Lessees Rehabilitation Act, 1936, ss. 55, 82.

The plaintiff was a tenant-in-common in equal shares with the defendant in land upon which there was a licensed hotel. The defendant was the holder of a publican's license, and carried on the business of an hotelkeeper, paying the plaintiff rent in respect of her interest. The plaintiff's undivided share in the land was subject to mortgages. The Adjustment Commission that heard plaintiff's application to have her liabilities adjusted in accordance with the Mortgagors and Lessees Rehabilitation Act, 1936, ordered that she was not entitled to retain her interest in the said land but was to sell her interest thereon before a certain date, failing which any mortgagee might sell the same by public auction. She appealed to the Court of Review against this order, and, while such appeal was still pending, commenced an action in the Supreme Court against the defendant for sale of the said land or in the alternative for partition.

On motion to dismiss the action or alternatively to stay proceedings therein,

Paterson, for the defendant, in support; **F. B. Adams,** for the plaintiff, to oppose.

Held, That there was no provision in the Mortgagors and Lessees Rehabilitation Act, 1936, to preclude at that stage the Supreme Court from hearing such action, but that it might well appear that the convenient course might be to adjourn the hearing of the action pending the decision of the Court of Review, and that any mortgagee of the plaintiff's undivided share might apply at the appropriate time for a stay of proceedings.

Solicitors: Adams Bros., Dunedin, for the plaintiff; **Lang and Paterson,** Dunedin, for the defendant.

SUPREME COURT.
Auckland.
1938.
March 3;
April 4.
Fair, J.

In re **WESTNEY (DEC'D.) GUARDIAN TRUST AND EXECUTORS COMPANY NEW ZEALAND, LIMITED v. HALSE AND OTHERS.**

Mortgagors and Tenants Relief Acts—Mortgages—"Mortgage"—Whether Supreme Court should decide whether a Document is a "Mortgage" within the Meaning of the Mortgagors and Tenants Relief Act, 1933, even if it has Jurisdiction so to do—Mortgagors and Lessees Rehabilitation Act, 1936, ss. 10 (2) and 55 (3).

It is undesirable that a position should arise where two Courts of concurrent jurisdiction might give conflicting decisions.

Therefore, whether or not proceedings in the Supreme Court for the determination of the question whether a document is a "mortgage" within the meaning of the Mortgagors and Tenants Relief Act, 1933, are prohibited by the provisions of ss. 10 (2) and 55 (3) of the Mortgagors and Lessees Rehabilitation Act, 1936, the Court should not—where the "mortgagor," assuming such a document to be a mortgage, has made an application (not yet determined) for adjustment of her liabilities thereunder—give a decision upon such a question which must arise upon an application to an Adjustment Commission or the Court of Review.

In re Pike (a Debtor), Ex parte Richards, [1937] N.Z.L.R. 481, G.L.R. 302, applied.

Counsel: G. A. White, for the plaintiff; **R. S. Burt,** for the defendant, R. Roberts; **P. H. Watts,** for the defendant, A. Newby; **North,** for the defendant, E. W. Halse.

Solicitors: Peak, Kirker, and Newcomb, Auckland, for the plaintiff; **Earl, Kent, Massey, and North,** Auckland, for E. W. Halse; **Watts and Armstrong,** Hamilton, for A. Newby; **R. S. Burt,** Auckland, for R. Roberts.

COURT OF ARBITRATION.
New Plymouth.
1938.
March 7, 31.
Hunter, J.

WILEY v. TOPLESS.

McKENZIE v. TOPLESS.

Workers' Compensation—Liability for Compensation—Workers engaged in moving Balance of House to new Site and in making Additions thereto—Whether "the erection or demolition of any building or structure"—Workers' Compensation Act, 1922, First Schedule.

Where plaintiffs were injured while engaged in work that involved moving two rooms of an old and partly-demolished house to a new site, re-erecting it, putting on a lean-to roof, and doing certain new work to a wall and the floor,

Held, That the operation being more than removal and re-erection, was within the words "erection or demolition of any building or structure" in the First Schedule to the Workers' Compensation Act, 1922.

Wendon v. London County Council, [1894] 1 Q.B. 812, applied.

Counsel: Prichard, for both plaintiffs; **R. H. Quilliam,** for the defendant.

Solicitors: I. Prichard, Waitara, for both plaintiffs; **Govett, Quilliam, Hutchen, and Macallan,** New Plymouth, for the defendant.

Case Annotation: *Wendon v. London County Council,* E. and E. Digest, Vol. 26, p. 501, para. 2092.

COURT OF ARBITRATION.
Wellington.
1938.
March 8; April 6.
O'Regan, J.

BRINDLE v. WELLINGTON HARBOUR BOARD.

Workers' Compensation—Practice—Nonsuit—Powers of Court—Workers' Compensation Regulations, (*1909 New Zealand Gazette,* 717), R. 124.

The Court of Arbitration has the same jurisdiction in matters of nonsuit as has the Supreme Court.

O'Meara and Son v. Mayor, &c., of Wellington (1899) 18 N.Z.L.R. 103, 2 G.L.R. 22; and **Readford v. Nathan and Co., Ltd.,** [1920] N.Z.L.R. 383, G.L.R. 199, referred to.

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

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

COURT OF ARBITRATION.
Auckland.
1937.
September 23;
October 15.
1938.
April 6.
O'Regan, J.

EAGLE v. LEONARD AND DINGLEY, LIMITED.

Workers' Compensation—Accident Arising out of and in the Course of Employment—Coronary Thrombosis—Angina of Effort—Contradictory Medical Evidence—Report of Medical Referee—Distinguishing Characteristics Explained—Workers' Compensation Act, 1922, s. 3.

Where a plaintiff fails to show that the work he was doing at the time of the effort which caused his disablement affected in any way the coronary artery disease from which he was suffering, but merely induced an attack of angina pectoris, which could not account in any way for his subsequent incapacity, he must be held as not having been injured by accident arising out of and in the course of his employment.

Counsel: Sullivan, for the plaintiff; **Hore,** for the defendant.

Solicitors: Sullivan and Winter, Auckland, for the plaintiff; **Buddle, Richmond, and Buddle,** Auckland, for the defendant.

SUPREME COURT, Auckland. In Chambers. 1937. June 2. *Fair, J.*

In re **A PETROL-STATION COMPANY, LIMITED.**

Company Law—Practice—Reduction of Capital—Consent of "Creditors"—Requirements of Affidavits in Support—"Special circumstances"—Companies Act, 1933, s. 68 (2), (3).

Where a company is solvent, and all creditors, other than those for monthly supplies, consent to a reduction of capital involving a refund to shareholders, these are "special circumstances" within the words of s. 68 (3) of the Companies Act, 1933, and the Court will direct that s. 68 (2) should not apply in respect of the current trading liabilities.

Re Unifruitco Steamship Co., Ltd., [1930] S.C. (Ct. of Sess. 1104; **Re Cadzow Coal Co., Ltd.,** [1931] S.C. (Ct. of Sess.) 272; and **In re A. Lesser and Co., Proprietary, Ltd.,** [1929] V.L.R. 316, referred to.

Counsel: North, for the company.

Solicitors: Earl, Kent, Massey, and North, Auckland, for the company.

Case Annotation: *Re Unifruitco Steamship Co., Ltd.,* E. and E. Digest, Supplement, Vol. 9, *Companies,* 834*a* (*i*); *Re Cadzow Coal Co., Ltd., ibid.,* 834*a* (*ii*); *In re A. Lesser and Co., Proprietary, Ltd., ibid.,* 961 (*i*).

SUPREME COURT. Auckland. 1938. March 17, 31. *Fair, J.*

In re **ALEXANDER MacLEAN, (DEC'D.), DEVERY v. MacLEAN AND ANOTHER.**

In re **ISABELLA MacLEAN, (DEC'D.), DEVERY v. BELL.**

Will—Devises and Bequests—Interest Passing—Vesting of Legacies—Whether at Testator's Death or at Distribution.

A testator after giving his wife a life interest in his estate, directed that upon her death his trustees should convert his trust estate and pay thereout the respective legacies specified to certain named children and grandchildren.

The will proceeded:

"I direct that in the event of any of my said children dying before obtaining a vested interest in my said trust estate under the terms hereof leaving a child or children who shall attain the age of twenty-one years then such child shall take and if more than one equally between them the share to which his her or their deceased parent would have been entitled had such parent lived to obtain such vested interest as aforesaid. I declare that in the event of any of my said children dying before obtaining such vested interest as aforesaid and without leaving issue surviving him or her who shall attain the age of twenty-one years then the share of such child or children so dying as aforesaid shall go to and be divided among the survivors of my said children in the same shares and proportions as my said trust estate is divided among my said children as aforesaid or go entirely to the survivor thereof."

On an originating summons for the interpretation of such will,

North, for the plaintiff; **Hubble,** for Mrs. R. Gibbs; **Ritchie,** for D. D. MacLean and A. MacKenzie; **Stanton,** for Mrs. C. Wall; **R. McVeagh,** for Mrs. A. Bell; **Wallace,** for D. C. A. G. MacLean.

Held, That such legacies vested in the named beneficiaries upon the death of the testator's wife.

Young v. Robertson, (1862) 4 Macq. 314, followed.

Reid v. Wishart, (1897) 16 N.Z.L.R. 39; on app., *ibid.,* 218, discussed and distinguished.

Solicitors: Nicholson Bennett, and Kirkby, New Plymouth, for the plaintiff; **Meredith, Hubble, and Meredith,** Auckland, for Mrs. R. Gibbs; **Harris, Tansey, and Ritchie,** Raetihi, for D. D. MacLean and A. MacKenzie; **McGregor and Lowrie,** Auckland, for Mrs. A. Bell; **Croker, McCormick and McLean,** Opunake, for Mrs. C. Wall; **H. L. Yunken and Yunken,** Melbourne, for D. C. A. G. MacLean.

Case Annotation: *Young v. Robertson,* E. and E. Digest, Vol. 30, p. 187, para. 547; and Vol. 44, p. 577, para. 3963.

SUPREME COURT. Auckland. 1938. February 25; March 3. *Fair, J.*

TAYLOR v. NEW ZEALAND NEWSPAPERS, LIMITED AND ANOTHER.

Practice — Interrogatories — Whether Answers Insufficient as Irrelevant or Embarrassing Matter—Code of Civil Procedure, R. 159.

In an action for libel against the proprietors of two newspapers, interrogatories were administered to the plaintiff in which he was asked whether the words complained of were not a fair and accurate report of judicial proceedings. If the answer were in the negative, then he was asked in what respects he alleged those words were an unfair or inaccurate report.

The plaintiff in his answer said that the words referred to in the whole report were unfair and inaccurate, as the report was garbled, part of the evidence omitted, and other parts suppressed. He gave reasons for his assertions setting out the portions of the evidence he claimed were omitted, and pointing out the inferences to be drawn from the report.

Hall-Skelton and Skelton, for the plaintiff; **Towle,** for the first defendant; **Richmond,** for the second defendant.

Held, That the answers to the interrogatories were not insufficient as being irrelevant or embarrassing.

Peyton v. Harting, (1873) L.R. 9 C.P. 9, applied.

Franklin v. Daily Mirror Newspapers, Ltd., (1933) 149 L.T. 433; **Lyell v. Kennedy,** (1884) 27 Ch.D. 1, 27; and **Malone v. Fitzgerald,** (1886) 18 L.R. Ir. 187, referred to.

Solicitors: Skelton and Skelton, Auckland, for the plaintiff; **Towle and Cooper,** Auckland, for the first defendant; **Buddle, Richmond, and Buddle,** Auckland, for the second defendants.

Case Annotations: *Peyton v. Harting,* E. and E. Digest, Vol. 18, p. 234, para. 1786; *Franklin v. Daily Mirror Newspapers, Ltd., ibid.,* Supplement, *Discovery,* para. 1523*a*; *Lyell v. Kennedy, ibid.,* Vol. 18, p. 55, para. 123; *Malone v. Fitzgerald, ibid.,* p. 230 (*b*).

SUPREME COURT. Auckland. In Chambers. 1938. February 25; March 3. *Fair, J.*

TAYLOR v. NEW ZEALAND NEWSPAPERS, LIMITED, AND ANOTHER (No. 2).

Practice—Trial—Special Jury—Action for Libel—Newspaper Account of Earlier Trial—Whether Knowledge of Business or Mercantile Matters required—Judicature Amendment Act, 1936, s. 4.

In the course of actions for libel against the proprietors of two newspapers arising out of the publication of Court proceedings the defendants applied for a special jury of twelve upon the grounds that knowledge of business and mercantile matters was required. In support, they stated that the trial would involve questions of business conduct and the meaning of business terms, such as "adjuster" and "insurance adjuster" and "agent"; the nature and conduct of business carried on by such persons; the question of damages, if any, sustained by a person so described; consideration of the business of reporting and publishing in the daily Press, and the conduct thereof; the meaning and effect of certain legal terms; and the meaning and effect of certain allegedly defamatory statements published by defendants in their newspapers.

Hall-Skelton and Skelton, for the plaintiff; to oppose; **Towle,** for the first defendant, in support; **Richmond,** for the second defendant, in support.

Held, Dismissing the summons, That none of the considerations relied upon by the defendants, nor all of them considered cumulatively, showed that business knowledge was required by the jury in order properly to appreciate any expert evidence or the general evidence and issues, in the action, including the assessment of damages.

New Zealand National Creditmen's Association (Wellington), Ltd. v. Dun's Agency (Wellington), Ltd., [1937] N.Z.L.R. 1209, G.L.R. 657, distinguished.

Newell v. Lyttelton Times, Ltd., (1913) 32 N.Z.L.R. 1125, 16 G.L.R. 117, and **Mills v. Kirkpatrick,** [1921] G.L.R. 320, applied.

Solicitors: Skelton and Skelton, Auckland, for the plaintiff; **Towle and Cooper,** Auckland, for the first defendant; **Buddle, Richmond, and Buddle,** Auckland, for the second defendant.

SUPREME COURT. Auckland. 1938. March 24. *Fair, J.*

TAYLOR v. NEW ZEALAND NEWSPAPERS, LIMITED, AND ANOTHER (No. 3).

Evidence—Action for Libel—Whether Publication of Reference to Evidence given in Absence of Jury, which was held to be inadmissible, prohibited—"Question"—Effect of Statutory Rule—Evidence Act, 1908, s. 15.

In an action for damages brought by J. against D., J. was cross-examined as to negotiations for T., settlement alleged to have taken place between an insurance adjuster as J.'s agent, and the representative of an insurance company. J.'s counsel claimed that the negotiations were without prejudice and the evidence with regard to them inadmissible. *Callan,* J., decided that no further questions should be asked with reference to the negotiation. On the following day, in the absence of the jury, he heard the evidence of two witnesses, one of them T., who denied on oath that he had endeavoured to settle J.'s claim for an inadequate sum and was cross-examined with reference to such negotiations. *Callan,* J., decided that such negotiations should be treated as having been "without prejudice" and that cross-examination as to them was not permissible.

Two newspapers, the *Auckland Star* and the *New Zealand Herald,* included in the report of the proceedings on the first day of trial, published before the learned Judge's decision on the second day, the questions in cross-examination referred to above and the answers given. That series of questions and answers related to T., an insurance adjuster, and was, *inter alia,* alleged by him to mean (*a*) that he had collected money and failed to account for it; (*b*) that he was so incompetent and negligent in the conduct of his business that without the authority of T. he endeavoured to settle J.'s claim for an inadequate sum; and (*c*) that he was afraid to face cross-examination whilst upon oath relating to his business dealings with J.

T. brought actions for libel against the proprietors of the two newspapers. In para. 8 of each of his statements of claim he alleged that he had upon oath denied that he had endeavoured to settle J.'s claim for £24 6s., but the defendants did not publish that fact nor the fact that he had given evidence upon oath and was cross-examined. The defendants pleaded, *inter alia,* that the words complained of were a fair and accurate report of proceedings of the Supreme Court published *bona fide* for the benefit of the public without malice.

They also pleaded that any evidence given by T. was in the absence of the jury and was held inadmissible.

Before counsel addressed the jury on the trial of the libel actions, defendant's counsel submitted that s. 15 of the Evidence Act, 1908, prohibited the publication of any statement that the questions and answers on the first day reported in the newspapers had been disallowed as inadmissible, or that T. had denied on oath that an offer of £24 6s. had been made by him to a representative of the insurance company.

In a ruling upon the point by the trial Judge before counsel had addressed the jury,

Hall-Skelton, for the plaintiff; **Johnstone,** K.C., and **Towle,** for the first defendant; **Richmond,** for the second defendant.

Held, That ss. 13, 14, and 15 of the Evidence Act, 1908, referred only to any "question," and were directed more particularly to the protection of witnesses and of the public interest by the prohibition of indecent or scandalous matters, and were not concerned with the interests of the parties as litigants. Hence, s. 15 did not prohibit the publication of the statement as contended by defendant's counsel.

Solicitors: Skelton and Skelton, Auckland, for the plaintiff; **Towle and Cooper,** Auckland, for the first defendant; **Buddle, Richmond, and Buddle,** Auckland, for the second defendant.

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. 111. Appeal by a mortgagor against the determination of an Adjustment Commission as to the basis of the valuation made by it in respect to livestock subject to the security given by him to a bank, and against the valuation of the land, the rate of interest (5 per cent.) payable to the stock-mortgagee.

Held, referring the valuation of the stock back to the Commission for consideration, That strict observance of the direction in s. 38 of the Mortgagors and Lessees Rehabilitation Act, 1936, does not demand an obligation to disregard the practical necessity of observing the usual distinction between capital stock and surplus or income stock.

Owing to the importance and general interest of the issues involved, the whole of the judgment of the Court is given, as under:—

"So far as the Mortgagors and Lessees Rehabilitation Act, 1936, is concerned the matter is dealt with by subs. (2) of s. 38, which provides that 'In determining the value of any property of any applicant other than his interest in farm lands, the Adjustment Commission shall have regard to the values subsisting at the passing of this Act [*i.e.*, October 1, 1936], but shall make such increases or reductions in those values as it deems necessary in order to make them fair values to serve as a fair basis for the adjustment of the liabilities of the applicant in accordance with this Part [*i.e.*, Part III] of this Act.' Strict observance of the direction to have regard to values as at the passing of the Act does not demand, in our opinion, an obligation to disregard the practical necessity of observing the usual distinction between capital stock and surplus or income stock.

"It so happens that sheep are usually at their maximum value on October 1, as at that date they are carrying practically the whole year's growth of wool and the ewes have either their lambs at foot or are on the point of lambing. It is distinctly to the advantage of the stock-mortgagee that the stock subject to his security should be valued under those circumstances as the debt owing to him would thereby be secured to a maximum amount. The date fixed by the Act, however, October 1, cannot be taken as an implication that the Legislature had any such intention, as, though it is true that sheep would usually at the said date be at their highest seasonal value, the same is not the case as regards cattle, particularly dairy cattle. In the North Island, in which the largest dairying districts are situated, dairy cows and heifers are at peak values, as a general rule, between the middle of July and the end of August, just prior to calving. Once a dairy cow has calved, her market value falls to a marked degree, and after she has been milked for a few weeks there is a further very decided drop in her value, so that at October 1 she is far below peak value.

"The selection of October 1 as the date referred to in s. 38 (2) was probably, therefore, merely coincidental with the date of the passing of the Act, and the necessity for wider and more general consideration of the value which is to be the basis of the Act is covered by the general words of s. 38 (2). In our opinion, no niggardly view should be taken of their effect. It appears they were in to meet the predicted complexities of a novel situation and give latitude to the tribunal solving questions within it.

* Continued from p. 84.

"For the mortgagee, however, it may be contended that as his ordinary contractual rights at common law were abrogated by the passing of the Act on October 1, 1936, his security should be maintained at the value actually supporting it on that date and which he could have realized at that date had he been left a free agent. This view, however, in the opinion of the Court, must be subordinated to the qualifications, regarding values, expressed in s. 38 (2) and also to the general purposes of the Act.

"Before discussing these qualifications and general purposes, it will be as well to consider the point of view of the mortgagor with regard to the basis of valuation which should be adopted as regards his livestock. The mortgagor points out that he depends upon his annual wool clip and his lambs to provide his yearly income for working and living expenses, and that if he is not free to dispose of the wool and lambs it becomes impossible for him to carry on his farming operations. He claims the wool and stock increase as income, and says that they do not form part of the mortgagee's security unconditionally, except, possibly, in certain cases where a specific advance has been made upon an express security over the next ensuing clip. If the mortgagor is to be deprived of his income, and it is to be regarded unconditionally as part of the mortgagee's security, the farmer's ability to pay current obligations is in most cases non-existent, and credit given him misled. The moral and legal position of the farmer, if such is the effect of a chattel security and he asks for credit elsewhere, seems dubious.

"It seems to the Court that the view expressed on behalf of the mortgagor is the correct one. It is supported by the words of s. 38 (2). The subsection provides that though regard must be had to values subsisting as at October 1, 1936, nevertheless such increases or reductions shall be made in those values in order to make them fair values to serve as a basis for the adjustment of the applicant's liabilities. The section, therefore, in our opinion, relieves this Court at any rate of consideration of the important general questions of law that have been adverted to. The basis of adjustment is fair which renders it possible for an efficient mortgagor, worthy of relief, to carry on. The paramount object of the Act is to rehabilitate mortgagors and retain them in the occupation of their lands as efficient farmers, and this cannot be done if the value of their surplus stock and their freedom to regard it as available for current purposes is negatived.

"The Court is of the opinion that in valuing stock the Commission should have regard to values subsisting as at October 1, 1936, and in the case of sheep, at least, should not close their eyes to the fact that part of the value must at that date represent seasonal income. This does not necessarily mean that the whole of the value of the lambs, or added value of the ewe owing to her being in lamb, should be deducted and treated as income, as before income can be ascertained provision must be made, first, to make good flock wastage arising through deaths, other losses, and depreciation owing to age, &c.; and, secondly, for the maintenance of the numbers of different classes originally covenanted by the mortgagor, in the instrument of security, to be kept on the property. The second provision is, in the majority of cases, merely an alternative expression of the first. It is only after such wastage, depreciation, and deficiencies in numbers have been made good that what may be called the 'income' stock can be ascertained.

"Consequently, it will be seen that considerable adjustments on the valuations subsisting as on October 1 must be made in order to ascertain the value of the stock security required to meet the purposes of the Mortgagors and Lessees Rehabilitation Act, 1936.

"This view appears to be in conformity with the fundamental conception of a stock security and with the control of the owner over his surplus stock adopted by the Court of Appeal in *National Bank v. Dalgety and Co.* [1925] N.Z.L.R. 250. How far alterations by the parties to the covenants contained in the Schedule of the Chattels Transfer Act may be made without risk of removing the document from the protection afforded by that Act to such instruments is not a matter for this Court.

"Our inquiry is limited to a valuation that shall meet the purposes of an Act designed to rehabilitate the farmer. We cannot, with the purpose we must always have in view, adopt valuations made on principles that would defeat those purposes. Generally speaking, stock-mortgagees do not ask for a valuation on the basis contended for by appellant. If we were compelled to adopt such a basis, the feature of such securities, which stock-agents universally demand should be retained—namely, their 'upon demand' character—would have to be abandoned and such securities be fixed for a term of years at a rate of interest according to the circumstances of each case.

"The only questions relative to the valuation of stock in this case which remain are, first whether the Commission, which purported to distinguish between the capital stock and income stock, has done so upon the principles above stated; and, secondly, whether in actual fact any of the stock were 'income stock.' It is not clear to our minds what method the Commission adopted to find the content of the £902 17s., which it found to be the value of the revenue stock. The parties in this case are quite competent, once they apprehend the principle to be observed, to reach an agreement.

"The matter is, therefore, referred back to them for consideration. If they cannot agree, the Commission will be asked to supply this Court with an analysed statement of the grounds upon which they formed their determination as to the value of the stock, and the Court will then determine the question.

"The appeal is dismissed so far as it relates to the basic value of the land, which therefore remains at £2,700 as found by the Commission. The appeal against the rate of interest, 5 per cent. allowed to the stock-mortgagee is also dismissed. The rate of interest in respect of the land mortgage is increased from 4½ per cent. to 4½ per cent. The Commission's apportionment of the applicant's debt between the farm property and the livestock is dependent on the value ultimately placed on the livestock. The extension of the term of the mortgage is confirmed and that portion of the debt apportioned to the stock-security is to be payable on demand. The balance to the credit of the working account must be paid into the No. 1 account in reduction thereof. Leave reserved to all parties to apply."

Legal Literature.

For Lawyers and Others, by THEOBALD MATHEW. Edinburgh: William Hodge and Co., Ltd.

So far we have known Mr. Theobald Mathew in his lighter moments as the author (and illustrator) of *Forensic Fables*. Here, he gives us, in serious vein, the fruit of "researches made during those periods of enforced leisure which members of my profession enjoy." He illustrates his pages with drawings in his well-known style.

There is considerable variety in the topics which are the subjects of Mr. Mathew's research and comment. For instance, he has a delightfully interesting opening chapter on the legal background of *Bardell v. Pickwick*, which provides new grounds of interest in the procedure and personalities in that famous suit. Reminiscences figure in "Legal Ghosts," while constructive proposals for a supreme Empire-wide appellate tribunal, incorporating the House of Lords and the Judicial Committee of the Privy Council, are found in the chapter bearing the names of those two high judicial institutions.

Other chapters brimful of interest are "The Number, the Robes, and the Vacations of the Judges," "Judicial Salaries" (from the days when £6 13s. 4d. was paid to members of the Judiciary in the reign of Henry III as an annual emolument, to the £5,500 paid to George III's Judges); "The Order of the Coif," "Extinct Tribunals"; and "The Decline and Falls of the Sergeants-at-Law."

In all, there are twenty chapters on subjects of the diverse interest already indicated. Mr. Mathew is a keen antiquary, who, nevertheless, has both feet well planted on the soil of the modern legal world. His essays, whether they be read for profit or for pleasure, place us under a debt already rendered formidable by his witty "Fables," which we all so thoroughly enjoyed.

Practice Precedents.

Summons for Determination of Question of Law before Trial.

Rule 154 of the Code of Civil Procedure provides that, if at any time in the course of the proceedings in an action it appears to the Court that the matter in dispute is one of law only, or that a substantial question of law is involved which ought to be decided before the trial of the action, the Court may order that such matter or point of law be argued before the Court before the trial of the action, and that the trial of the action stand adjourned pending the decision of the Court thereon.

If the Court is satisfied that a substantial question of law has been raised which dominates an important phase of the action, it will order that such question of law be decided before the trial: *Loughnan v. Scott*, [1920] G.L.R. 207; and see also *Scott v. The King*, (1907)10 G.L.R. 77.

Procedure for an order to argue a question of law is by way of Summons.

The procedure in New Zealand differs from that in England in respect of the trial of questions of law: see *Chitty's King's Bench Forms*, 16th Ed., 859.

It is important to note that questions of law should not be brought under R. 154 unless they can be satisfactorily disposed of and the decision of them will mean a definite end to the action: see *Horne v. Dalgety and Co., Ltd.*, (1913) 33 N.Z.L.R. 405, 16 G.L.R. 202; and *Soler v. Public Trustee*, [1923] N.Z.L.R. 869, G.L.R. 135. In *Guest v. Holland*, [1935] G.L.R. 34, an order for argument of question of law was refused, it being not clear whether the answer would decide the matter in issue.

SUMMONS FOR ARGUMENT OF QUESTIONS OF LAW BEFORE TRIAL.

IN THE SUPREME COURT OF NEW ZEALAND.

.....District.

.....Registry. No.

BETWEEN A. B. &c. plaintiff

AND

C. D. & Co., Ltd., &c. defendant.

Let the above-named company its solicitor or agent appear before the Right Honourable Sir Chief Justice of New Zealand 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 certain questions of law should not be argued before the trial of this action, such questions of law being as follows:—

1. [*Set out question—as, for example*] Upon the facts admitted is the plaintiff's liability to pay to on account of bodily injury to its servant the sum of £ mentioned in para. of the statement of claim and payable under the judgment mentioned in para. of the admissions of facts agreed on by the parties a liability on the part of the plaintiff to pay damages on account of bodily injury to a person within the meaning of s. 6 (1) of the Motor-vehicles Insurance (Third-party Risks) Act, 1928?

2. If the previous question be answered in the negative upon the facts admitted is the plaintiff's said liability to pay to on account of bodily injury to its said servant the said sum of £ under the said judgment a liability at law for damage to property within the meaning of those words in the para. intituled (2) Third-party Property Risks in the Policy of Insurance numbered mentioned in para. of the said admissions of facts. AND FURTHER TO SHOW CAUSE why the trial of this action should not stand adjourned pending the decision of the Court thereon UPON THE GROUNDS that the said questions are substantial questions of law which ought to be decided before the trial of the action AND UPON THE FURTHER GROUNDS appearing in the affidavit of filed herein AND FURTHER why the costs of and incidental to this summons should not be costs in the cause.

Dated at this day of 19 .

Registrar.

This summons was issued by solicitor for the defendant whose address for service is at the office of &c.

AFFIDAVIT IN SUPPORT OF SUMMONS.

(*Same heading.*)

I E. F. of the City of solicitor make oath and say:—

1. That I am the solicitor for the above-named A. B.

2. That this action was issued on the day of 19 at and is brought to determine whether the plaintiff is entitled to be indemnified by the defendant either under &c. or in the alternative under &c. from liability to pay certain damages amounting to £ payable by &c.

3. The parties have agreed to admit as facts for the purposes of this action the facts set out in the statement entitled "Admission of Facts agreed on by the Parties" hereto annexed and marked "A."

4. That the parties are agreed that substantial questions of law are involved in the action the determination of which should render a trial unnecessary.

[NOTE.—If the parties are unable to agree as to the form of the questions, set out the plaintiff's contentions and also the defendant's.]

Sworn, &c.

Exhibit "A."

The plaintiff and the defendant agree to file and admit for all the purposes of this action as facts the facts set forth hereinunder AND AGREE to be bound by the same as if such facts had been given in evidence and proved at the trial and found as facts by the Court which tries the action. The said facts are as follows:—

1. That the plaintiff whilst driving a motor-car of which was at all material times the registered owner in Street in the City of on the day of 19 collided with a motor-car owned by etc.

2. [*Set out facts in like manner as in* (1).]

ORDER THAT QUESTION OF LAW BE ARGUED BEFORE TRIAL.

(*Same heading.*)

In Chambers.

day the day of 19 .

UPON READING the summons sealed herein on the day of 19 and the affidavit filed in support thereof AND UPON HEARING Mr. of Counsel for the plaintiff and Mr. of Counsel for the defendant IT IS ORDERED by the Honourable Mr. Justice that the following matters or points of law be argued before this Honourable Court before the trial of the action namely:—

1. Upon the facts admitted is the plaintiff's liability to pay to on account of bodily injury to its servant the sum of £ mentioned in para. of the statement of claim herein and payable under the judgment mentioned in para. of the admission of facts agreed upon by the parties or liability on the part of the plaintiff to pay damages (inclusive of costs) on account of bodily injury to a person within the meaning of s. of the Motor-vehicles Insurance (Third-party Risks) Act, 1928.

2. If the preceding question be answered in the negative upon the facts admitted is the plaintiff's said liability to pay to on account of bodily injury to its said servant the said sum of £ under the said judgment a liability at law for damages to property within the meaning of those words in the para. intituled (1) Third-party Risks in the Policy of Insurance numbered mentioned in para. of the said admission of facts AND IT IS FURTHER ORDERED that the trial of this action DO STAND ADJOURNED pending the decision of the Court thereon AND IT IS FURTHER ORDERED that the costs of and incidental to the said summons be costs in the cause.

Registrar.

Recent English Cases.

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

BANKERS AND BANKING.

Payment of Pension—Receipt of Certificate—Forged Receipt—Liability of Bank.

A bank, by paying a pension on presentation of a form which is prima facie *correctly certificated, does not thereby warrant that the pensioner is still alive.*

GOWERS AND OTHERS *v.* LLOYDS AND NATIONAL PROVINCIAL FOREIGN BANK, LTD., **[1938] 1 All E.R. 766. C.A.**

As to money paid to bank by mistake: see HALSBURY, Hailsham edn., vol. 1, pp. 838–840, pars. 1361–1363; and for cases: see DIGEST, vol. 3, p. 179, Nos. 330–333.

BANKRUPTCY.

Fraudulent Preference—Bank Overdrafts Secured by Mere Deposit of Documents of Third Party Without any Agreement to Pay Sums Owing—Account Put into Credit and Documents Released Immediately Before Bankruptcy—Absence of Contractual Relationship Between Depositor and Creditor—Surety or Guarantor—Bankruptcy Act, 1914 (c. 59), s. 44.

There need be no personal liability to constitute a "surety or guarantor" within the meaning of the Bankruptcy Act, 1914, s. 44.

Re CONLEY (trading as CAPLAN AND CONLEY); *ex parte* THE TRUSTEE *v.* BARCLAYS BANK, LTD; SAME *v.* LLOYDS BANK, LTD., **[1938] 2 All E.R. 127. C.A.**

As to guarantors and fraudulent preference: see HALSBURY, Hailsham edn., vol. 2, pp. 368, 369, par. 498; and for cases: see DIGEST, vol. 5, pp. 855–857, Nos. 7174–7185.

BUILDING CONTRACTS, ENGINEERS AND ARCHITECTS.

Payment by Instalments When Architect's Certificate Given—Arbitration Clause Appointing Architect as Arbitrator—Architect's Decision to be Binding in Case of Disputes—Refusal of Architect to Issue Certificate or to Act as Arbitrator—Whether Absence of Certificate a Bar to Recovery.

Where an architect who is to act as arbitrator under a building contract refuses to arbitrate or to issue a certificate for payment of the final instalment, that is no bar to the builder's right to recover the money due.

NEALE *v.* RICHARDSON, **[1938] 1 All E.R. 753. C.A.**

As to dispensing with certificate: see HALSBURY, Hailsham edn., vol. 3, pp. 254–256, pars. 445–449; and for cases: see DIGEST, vol. 7, pp. 356–361, Nos. 94–112.

CHARITIES.

Subscriptions in Response to Appeal—For Assistance of Widow—Whether Trustees can Insist on the Purchase of an Annuity.

Where funds are collected for relief of a particular person they will belong to that person absolutely unless there is a sufficient expression of a trust in the appeal.

Re JOHNSON; PEARSON *v.* JOHNSON, **[1938] 2 All E.R. 173. Ch.D.**

For the law on the point: see HALSBURY, Hailsham edn., vol. 4, pp. 209, 210, par. 300; and for cases: see DIGEST, vol. 8, p. 334, Nos. 1202, 1203.

CRIMINAL LAW.

Demanding with Menaces with Intent to Steal—"Steal"—Claim of Right—Whether Honest Belief in Right Sufficient—Larceny Act, 1916 (c. 50), s. 1 (1), 30.

A claim of right is within s. 1 (1) *of the Larceny Act,* 1916, *if it is an honest assertion of a belief in a lawful claim, even though unfounded in law or fact.*

R. *v.* BERNHARD, **[1938] 2 All E.R. 140. C.C.A.**

As to claim of right: see HALSBURY, Hailsham edn., vol. 9, pp. 497, 498, par. 856; and for cases: see DIGEST, vol. 15, pp. 888–890, Nos. 9755–9768.

DIVORCE.

Collusion—Monetary Agreement—Husband's Previous Attempts to Bribe Wife—Secret Acceptance of Sum for Costs—Wife's Change of Attitude towards Divorce — Absence of Bargain—Full Disclosure—Matrimonial Causes Act, 1937 (c. 57), s. 4.

Acceptance by one spouse of money from the other to pay costs of divorce proceedings does not necessarily make them collusive if there was a previous and unconnected intention to bring a petition.

BEATTIE *v.* BEATTIE, **[1938] 1 All E.R. 74. P.D.A.**

As to collusion: see HALSBURY, Hailsham edn., vol. 10, p. 678, par. 1002; and for cases: see DIGEST, vol. 27, pp. 333, 334, Nos. 3133–3144.

INCOME TAX.

Bank Interest—Loan Account—Interest Added to Loan Each Half-year—Whether Interest Paid—Income Tax Act, 1918 (c. 40), s. 36.

Where a bank each half-year adds the interest on a customer's overdraft to the principal debt, that is not in fact payment of the interest by the customer within the meaning of s. 36 of the Income Tax Act, 1918.

PATON (FENTON'S TRUSTEE) *v.* INLAND REVENUE COMMISSIONERS, **[1938] 1 All E.R. 786. H.L.**

As to Income Tax Act, 1918, s. 36 (1): see HALSBURY, Hailsham edn., vol. 17, p. 334, par. 671; and for cases: see DIGEST, vol. 28, pp. 97, 98, Nos. 580–585.

Interest on Debentures—Payable in Foreign Currency at Fixed Rate of Exchange—Deduction of Income Tax—Income Tax Act, 1918 (c. 40), All Schedules Rules, r. 21—Finance Act, 1924 (c. 21), s. 33 (1)—Finance Act, 1927 (c. 10), s. 26.

"Interest of money" in All Schedules Rules, r. 21, where the holder of an interest warrant has a right to cash it in foreign currency at a fixed rate of exchange, means interest in sterling.

RHOKANA CORPORATION, LTD. *v.* INLAND REVENUE COMMISSIONERS, **[1938] 1 All E.R. 51. H.L.**

As to deduction of tax upon payment of interest: see HALSBURY, Hailsham edn., vol. 17, pp. 229–231, pars. 464–468; and for cases: see DIGEST, vol. 28, p. 82, Nos. 463–468.

LANDLORD AND TENANT.

Tree on Landlord's Ground with dead branch overhanging Tenant's Land—Death of Workman employed by Tenant caused by fall of branch—Whether Landlord liable apart from Negligence—Negligence—Advice of Forestry Expert as to best method of dealing with trees.

The employee of a lessee is entitled to no greater protection than the lessee himself from dangers existing on the demised property.

SHIRVELL *v.* HACKWOOD ESTATES CO., LTD., **[1938] 2 All E.R. 1. C.A.**

As to overhanging trees: see HALSBURY, Hailsham edn., vol. 1, pp. 432, 433, par. 738; and for cases: see DIGEST, vol. 2, pp. 64–66, Nos. 403–418.

NEGLIGENCE.

Highway—Vehicles Approaching Light-controlled Crossing—Speed of Approach—Disobedience to Traffic-lights—Highway Code.

A driver entering a crossing in obedience to traffic lights is entitled to assume that there is no traffic entering the crossing against the lights.

JOSEPH EVA LTD. *v.* REEVES, **[1938] 2 All E.R. 115. C.A.**

As to negligence on the highway: see HALSBURY Hailsham edn., vol. 23, pp. 637–644, pars. 894–904; and for cases: see DIGEST, vol. 36, pp. 59–62, Nos. 366–389.

PRACTICE.

Action Against Several Defendants—Judgment Against all Defendants—Appeal by One Defendant Only—Whether Notice of Appeal Should be Served on all Defendants.

Where one defendant appeals in an action for negligence, the co-defendants should properly be served with notice of the appeal.

HOPGOOD *v.* WILLAN, **[1938] 2 All E.R. 196. C.A.**

As to parties to be served with notice of appeal: see HALSBURY, Hailsham edn., vol. 26, p. 118, par. 233; and for cases: see DIGEST, Practice, pp. 772, 773, Nos. 3370–3379. See also YEARLY SUPREME COURT PRACTICE, 1938, p. 1257.

PRACTICE AND PROCEDURE.

Payment into Court—Several Causes of Action—Payment in of Lump Sum—Discretion of Court—Copyright—Damages for Infringement and Conversion—R.S.C., Ord. XXII, r. 1 (1), (2).

A claim for damages for infringement of copyright and conversion may be met by payment into Court of a lump sum without allocation.

TALLENT *v.* COLDWELL AND TAILOR AND CUTTER, LTD., **[1938] 2 All E.R. 107. Ch.D.**

As to payment into Court: see HALSBURY, Hailsham edn., vol. 26, p. 62, par. 100; and for cases: see DIGEST, Practice, pp. 478–484, Nos. 1590–1637.

SALE OF LAND.

Restrictive Covenants—Benefit of Land Unsold—Annexation of Benefit—Touching or Concerning the Land.

The benefit of a restrictive covenant may be validly annexed to the land of the covenantee if it is expressed to be for the benefit of the whole or any unsold part of the land.

ZETLAND (MARQUIS) AND ZETLAND ESTATES CO., LTD. *v.* DRIVER AND ANOTHER, **[1938] 2 All E.R. 158. C.A.**

As to restrictive covenants: see HALSBURY, 1st edn., vol. 25, Sale of Land, pp. 454–458, pars. 827–832; and for cases: see DIGEST, vol. 40, pp. 310–314, Nos. 2648–2675.

STREET AND AERIAL TRAFFIC.

Driving Round Bend Outside a White Line—Whether "Failing to Conform to an Indication Given by a Traffic Sign"—Road Traffic Act, 1930 (c. 43), ss. 48 (9), 49.

A white line is not a traffic sign or device within the meaning of the Road Traffic Act, 1930.

EVANS *v.* CROSS, **[1938] 1 All E.R. 751. K.B.D.**

As to traffic signs: see HALSBURY, Supp., Street and Aerial Traffic, par. 583; and for cases: see DIGEST, Supp., Street and Aerial Traffic, Nos. 5*c*–31*b*.

WORKMEN'S COMPENSATION.

Industrial Disease—Workman Recovered but Liable to a Relapse—Whether Still Incapacitated.

Where recrudescence of a disease is practically certain to occur within so short a time that the workman is prevented from following his employment, the workman is entitled to compensation for partial incapacity.

REES *v.* POWELL DUFFRYN ASSOCIATED COLLIERIES, LTD., **[1938] 1 All E.R. 743. C.A.**

As to recurrence of industrial disease: see HALSBURY, 1st edn., vol. 20, Master and Servant, p. 183, par. 394; and for cases: see DIGEST, vol. 34, pp. 469–471, Nos. 3838–3846. See also WILLIS'S WORKMEN'S COMPENSATION, 31st end., pp. 543–547.

Rules and Regulations.

Customs Amendment Act, 1921, and the Trade Arrangement (New Zealand and Belgium) Ratification Act, 1933. Trade Arrangement (Belgium) Order, 1938. April 6, 1938. No. 1938/45.

Employment Promotion Act, 1936. Employment Promotion Act Regulations, 1936, Amendment No. 1. April 4, 1938. No. 1938/46.

Board of Trade Act, 1919. Board of Trade (Raw Tobacco Price) Regulations, 1938. April 12, 1938. No. 1938/47.

Motor-spirits (Regulation of Prices) Act, 1933. Motor-spirits (Auckland Provincial) Regulations, 1938. April 12, 1938. No. 1938/48.

Chattels Transfer Act, 1924. Chattels Transfer (Customary Hire-purchase) Order, 1938. April 12, 1938. No. 1938/49.

Land and Income Tax Amendment Act, 1935. Income-tax: Exemption of Traders Resident in or Nationals of Japan. April 12, 1938. No. 1938/50.

Customs Act Amendment Act, 1934, and the Customs Act, 1913. Cook Islands Customs Order, 1938. April 12, 1938. No. 1938/51.

Payment of Jurors Act, 1919. Payment of Jurors Regulations, 1938. April 21, 1938, No. 1938/52.

Agricultural Workers Act, 1936. Agricultural Workers Extension Order (No. 2), 1938. April 21, 1938. No. 1938/53.

Motor-spirits (Regulation of Prices) Act, 1933. Motor-spirits Prices General Regulations, 1938. April 14, 1938. No. 1938/54.

Stock Act, 1908. Stock (Agricultural Seeds) Amending Regulations, 1938. April 26, 1938. No. 1938/55.

The Motor-spirits (Regulation of Prices) Act, 1933. The Motor-spirits Prices General Regulations, 1938, Amendment No. 1. May 3, 1938. No. 1938/56.

Trade Agreement (New Zealand and Belgium) Ratification Act, 1933; Trade Agreement (New Zealand and Germany) Ratification Act, 1937. The Trade Arrangement (New Zealand and Switzerland) Order, 1938. May 3, 1938. No. 1938/57.

Motor-vehicles Act, 1924. Motor-vehicles (Registration-plate) Regulations, 1934, Amendment No. 5. May 3, 1938. No. 1938/58.

Plumbers Registration Act, 1913. Plumbers Regulations, 1931, Amendment No. 3. May 3, 1938. No. 1938/59.

Customs Act, 1913. Customs Import Prohibition Order, 1938, No. 3. May 11, 1938. No. 1938/60.

Board of Trade Act, 1919; Cinematograph Films Act, 1928; Cinematograph Films Amendment Act, 1934. Cinematograph Films (Issue of Exhibitors' Licenses) Regulations, 1937, Amendment No. 1. May 11, 1938. No. 1938/61.

Law Examinations.

Qualification as a Barrister.

The Registrar of the University of New Zealand draws attention to the enactment of a new statute providing for changes in the examination of solicitors for qualification as barristers.

The statute provides that candidates entitled to apply to be admitted as barristers are required to complete their examinations at or before the examinations of 1942. They are required to have passed the prescribed examinations in Latin, Roman Law, and International Law; and a candidate who has already passed in Latin must pass in English or Philospohy.

The new statute will appear in the *New Zealand University Calendar*, 1939, and, in the meantime, may be inspected at the University office.

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