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"There is no more arduous enterprise for lawful men and none more noble, than the perpetual quest of justice laid upon all of us who are pledged to serve our lady the Common Law."

—The late SIR FREDERICK POLLOCK in *Genius of the Common Law* (Colombia University lectures).

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The Skidding of Motor-vehicles.

IN an earlier number of the JOURNAL, (1933) Vol. 9, p. 305, we considered this subject and the relevant cases up to the time of that writing. And we then concluded that the *res ipsa loquitur* rule does not apply to accident arising out of a skid where no specific defect is either suggested or discovered to account for the accident, and the occurrence is not of an unusual nature requiring explanation. The driver is not liable where the accident arose out of a circumstance which could not reasonably have been foreseen, or from a defect in the motor-vehicle or its equipment which could not reasonably be held to have put the defendant on his guard against the possibility of accident: that is to say, out of an emergency in no way due to the driver or to any faulty condition of the vehicle or its equipment. In brief, the skid calls for some explanation, since it is not a fact but a deduction from facts.

We are reminded of these principles applicable to skidding motor-vehicles by a recent decision of the Court of Appeal in England—*Hunter v. Wright*, [1938] 2 All E.R. 621—where the authorities are reviewed in the judgments of Slesser and Clauson, L.JJ., and Goddard, J. The facts were simple. The plaintiff, who was walking on the pavement, stopped and awaited an omnibus. A motor-car, owned by the defendant, was being driven by a Mrs. Grasty. She had passed a pedestrian crossing, and, before doing so, had practically or entirely come to rest. The road was free of traffic at the time. She passed a police-stand, where a policeman was standing to direct the traffic; and, having reached a point just beyond the police-stand, she got into a skid. The result of the skid was that the car, after swerving to the right, shot across, mounted the pavement, and seriously injured the plaintiff and another person standing beside him. The plaintiff brought an action for damages, alleging the negligence of the driver and of the owner of the car, who was travelling in it at the time of the accident. Lewis, J., in the Court below, found that the skid was not caused by any negligence on the driver's part.

On appeal from this decision, Slesser, L.J., said that the law of the matter was not in dispute, though this had proved a difficult case. The pre-motor-car case of *Hammack v. White*, (1862) C.B. (N.S.) 588, 596, was authority for the principle that, where a rider is on a pavement, he has to explain his situation in a place where *prima facie* he is not entitled to be. This principle was applied in *Ellor v. Selfridge and Co., Ltd.*, (1930) 46 T.L.R. 236, where it appears as if the accident was caused by a skid, though the report does not clearly say so. Scrutton, L.J., in delivering the judgment of himself and Romer, L.J., referred to the much-quoted statement of principle by Erle, C.J., in *Scott v. London and St. Katherine Docks Co.*, (1865) 34 L.J. Ex. 220, 222:

> "There must be reasonable evidence of negligence. But where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from want of care."

Scrutton, L.J., went on to say, at p. 236:

> "The fact that in the present case the motor-van appeared on the pavement, where it had no business to be, and injured the plaintiffs on the pavement, and the further fact that the defendants offered no explanation why their van was there, seemed to be more consistent with negligence than with the exercise of reasonable care."

It will be noted that the defendants called no evidence and consequently did not discharge the onus upon them to explain how the motor-van got on the pavement. This judgment was approved shortly afterwards by the Court of Appeal (Scrutton, Lawrence, and Slesser, L.JJ.) in *Halliwell v. Venables*, (1930) 99 L.J. K.B. 353.

In *Hinton v. Gilchrist* (*Times*, March 8, 1930), there was evidence that the car had skidded some 34 yards away from the point of the accident which took place on the pavement, where the car came to a standstill by being stopped by a shop doorway. Lord Hanworth, M.R., and Romer, L.J., sitting as a Divisional Court, distinguished this case from *Ellor v. Selfridge and Co., Ltd.* (*supra*), on the grounds that there was evidence called by the defendants to show there was no negligence on the part of the driver, and this evidence negatived the suggestion of want of care.

So far, the law appears to be this: If a car is found in a situation in which it has no right to be, the fact of the accident occurring there is relevant to infer negligence on the defendant's part. But if the defendant can show a way in which the accident could have occurred without any negligence on his part, the cogency of the fact of the accident by itself disappears, and the plaintiff is left as he began: he has to prove negligence. In other words, the appearance of a car on a place reserved exclusively for pedestrians is *prima facie* evidence of negligence, but the defendant's explanation of inevitable accident rebuts that presumption. Thus, a skid, in itself, is not evidence of negligence; and, once it is established that a skid took place, and, it was, as the result of the skid, that the car mounted the pavement, the burden of proof changes. It is then for the plaintiff to prove affirmatively that the skid was due to the defendant's negligence, or to his lack of skill in correcting the skid and so preventing the car from mounting the pavement and causing the damage complained of.

In *Hunter's* case the trial Judge found as a fact that the skid was not caused by the driver's negligence; so that, at the moment when the skid began, the state of affairs then obtaining was not produced by any

want of care on her part. He also found that the effect of the skid was that the car got out of control, and remained out of control until it had hit the plaintiff while he was standing on the pavement.

Hunter's case differs from the earlier cases in that the plaintiff accepted the resulting challenge to prove affirmatively that the accident was due to the plaintiff's in-skid or post-skid negligence. He contended that there were two factors, due to the action or inaction of the driver, which occasioned the mounting of the pavement. The first was that the driver turned her wheel the wrong way (*i.e.*, against the direction of the skid) when the skid had occurred; and that, if she had not done that, the accident would not, or might not, have happened. The second was that the car was in a state of acceleration—either because it was being accelerated at the time when the skid took place, or because the accelerator was pressed so as to increase the speed and to force the wheels to revolve again after the skid.

In reply to these submissions Slesser, L.J., said:

> "The space where this accident occurred is a very confined space. It is not necessary here to mention the actual dimensions, but the fact remains that, on any view, after this skid had taken place, and the position of the car is taken into account, to avoid the pavement there was not in time more than half a second in which to do anything. That is on the view that the car was travelling at sixteen miles an hour. It is said by some witnesses that the car was travelling twenty miles an hour, in which case there was a period of only two-fifths of a second in which anything could be done. It might have been that evidence might have been produced to show that this lady had pressed the accelerator at the moment of the skid, and so caused the car to go on to the pavement, where the skid would not have taken it, but, in my view, no such evidence appears in the present case."

Clauson, L.J., took the same view. An explanation was forthcoming to overcome the driver's *prima facie* negligence: that the car ran on to the pavement because of a skid, which was not caused by the driver's negligence. There was no ground for upsetting the finding of the trial Judge to that effect; and there was no evidence on which he could have held that anything occurred in regard to the accelerator which had any effect on what happened, or that anything which could have been done at that moment by the driver would have prevented the accident. The turning of the wheel, if indeed it took place, had no material effect upon what occurred.

The principle to be deduced from *Hunter's* case seems to be expressed in the judgment of Goddard, J., at p. 623:

> "Once it has been decided that the car in which the lady was driving got into a skid through no fault of her own, it is absolutely impossible to say that she had either the time or the space in which to correct the consequences of that skid. At the worst for her, it is a second; at the best for her, it is about two-fifths of a second. When one says that, if she had turned the car one way, she might have done something, or, if she had turned the car another way, some other consequence might have happened, I think that one is reduced to an element of speculation."

His Lordship then contrasted the conditions of a driving test and those in which the defendant found herself. He continued:

> "In this case, the human mind has to grasp the fact that something has gone wrong, and has to decide how to act. When one has got less than a second, and not more than 15 ft., or possibly 20 ft., before the accident happens, it seems to me impossible to say that, once the lady has shown that she skidded without any fault, any fault remains on her, or that any possibility of any fault remains on her."

It follows from these judgments, that, broadly put, where a car injures any one who, at the time of his injury, is in a situation where the car has no right to be, because of a skid which is not due to the driver's negligence, there is no fault or possibility of fault for which the driver is responsible, and no action will lie at the suit of the person injured as the result of such skid.

While this result may be satisfying to motorists, the position of the injured party is particularly unfortunate. In the course of his judgment in *Hunter's* case, Goddard, J., recalls the words of the late Mr. Justice Swift, who, he said, had an unrivalled experience of these cases. On more than one occasion that learned Judge, using the vigorous language which characterized him, said that, if Parliament allowed such potentially dangerous things as motor-cars to run on the public streets, it ought also to provide that people who were injured by them through no fault of their own should receive compensation, though not necessarily compensation from the driver if the driver had been guilty of no negligence. The only way, it seems to us, in which to ensure that ample justice may be done in such circumstances is to establish some statutory form of absolute liability whereby such innocent sufferers could be properly compensated without putting the blameless driver under the imputation of having negligently caused grievous injury to a fellow-citizen. This result would be achieved, in both ways, by the learned Attorney-General's proposed bill for compensating all persons injured in motor-car accidents. Of this, we hope to hear more in the coming year.

Summary of Recent Judgments.

COURT OF APPEAL.
Wellington.
1938.
June 29, 30; July 1; Oct. 7.
Myers, C.J.
Blair, J.
Johnston, J.
Fair, J.

In re **WATKINS (DECEASED), GUARDIAN, TRUST, AND EXECUTORS COMPANY OF NEW ZEALAND, LIMITED v. WATKINS AND OTHERS.**

Insurance—Life—Protected Policy—Bank given Equitable Unregistered Transfer of Policy to secure Overdraft—Additional Security given over Shares—Mortgage of "Policy completed and registered after policyholder's death"—Whether Protection of Policy subject to Equities—Bank's Resort to Policy-moneys only—Marshalling—Subrogation of Person entitled to Policy to Bank's Rights against Shares—Life Insurance Act, 1908, ss. 60, 65—Life Insurance Amendment Act, 1925, s. 3 (1) para. (a).

The opening words of s. 65 of the Life Insurance Act, 1908, "subject to the provisions of this Act" apply to the whole section; and that section, which deals with the protection of policies and policy-moneys, must be read with and subject to s. 60 which provides for the enforcement of equities.

The equitable principles on which marshalling is based should, where necessary, be applied in favour of a person entitled to policy-moneys under a policy protected as against creditors by virtue of the special statutory provision in s. 65 (2).

W., at the date of his death, was indebted to a bank which held the following securities for advances to him, shares in a company deposited with equitable mortgage, a guarantee by W.'s wife, and a "protected" life policy of which he was the policyholder. This policy had a statutory form of transfer endorsed upon it which was dated and signed by W., but otherwise left blank. It was accompanied by the required notice

of assignment to the bank; but, at W.'s request, the bank did not complete or register the transfer and deliver the notice to the insurance company. After his death the bank completed the transfer and notice of assignment, endorsed upon the policy a discharge, and handed the policy and relevant documents to the insurance company, which registered the transfer and paid the policy-moneys to the bank. The bank applied these moneys towards payment of W.'s indebtedness, made a demand for the payment of the balance under the guarantee, and was paid off by the plaintiff to whom probate had been granted of W.'s will, which left the whole of his estate to his wife. The bank handed the plaintiff the shares, and notified the widow that her guarantee had been cancelled. The plaintiff sold the shares, and held the money pending the Court's decision on an originating summons issued to ascertain the right of the parties, and removed into the Court of Appeal for determination by the Court of Appeal.

Parry, for the plaintiff; **Leicester** and **McCarthy**, for the first defendant; **Powles**, for the second defendant; **Young**, for the third defendant; **Foot**, for the fourth defendant.

Held, 1. That there was a good equitable assignment of the policy, which had been completed after death to make it a legal assignment.

2. That the protection afforded to the policy by s. 65 was subject to "any equities which may exist as between the parties to any transaction or matter relating to any policy or any interest therein, or to any moneys payable thereunder."

3. That the equitable principle on which marshalling is based should be applied by allowing the widow to exercise the right of subrogation to the bank's rights against the fund not called upon by the bank, the proceeds of the shares, to the extent to which the policy-moneys had been exhausted by the bank.

Public Trustee v. Bank of New Zealand and Staples and Young, (1888) 6 N.Z.L.R. 680; **Riddlie v. Government Insurance Commissioner**, (1888) 7 N.Z.L.R. 79; **In re Frankish**, (1896), 14 N.Z.L.R. 711; **Public Trustee v. Wallis**, (1911) 30 N.Z.L.R. 592, 13 G.L.R. 503; and **In re Guthrie**, (1900) 2 G.L.R. 333, followed.

In re Tremain, Tremain v. Public Trustee, [1934] N.Z.L.R. 369, G.L.R. 320; and **In re Ainge, Wheeler v. Bank of Australasia**, [1935] N.Z.L.R. 691, G.L.R. 485, distinguished.

Anstey v. Newman, (1870) 39 L.J.Ch. 769, referred to.

Solicitors: Buddle, Anderson, Kirkcaldie, and Parry, Wellington.

Case Annotation: Anstey v. Newman, E. and E. Digest, Vol. 20, p. 501, para. 2316.

SUPREME COURT. Dunedin. 1938. September 5, 28. *Myers, C.J.*

TILLARD v. COMMISSIONER OF TAXES.

Public Revenue—Income-tax—Widow entitled to Whole Income of Residuary Estate—Deed of Family Arrangement limiting her Income to £3,000 and assuring her that Sum, any Deficiency from Income of Estate to come out of Capital—Whether £3,000, or excess paid over amount of actual income to make up that sum, an "annuity" or "income derived from any other source whatsoever"—Whether Payment out of Corpus Assessable Income in Hands of Widow—Whether Income "derived . . . from New Zealand"—Land and Income Tax Act, 1923, s. 79 (1), 84 (2), 87.

The widow of the testator, by his will and the operation of the Thellusson Act, was entitled to the whole of the income of his residuary estate subject to certain provisions in favour of his children. By a deed of family arrangement between the widow and the said children, the widow was to receive an income from the estate of only £3,000, the surplus being surrendered for the benefit of the children. If the estimated value of the trust estate on a 5-per-cent. basis would give the widow an income of less than £3,000, she was still to have £3,000, the difference being made up out of the actual income of the estate, or, if necessary, out of the capital of the estate.

Paragraph 5 of the deed provided that payments made to the Government of New Zealand for assessment should be charged in gross against the annual income of the trust estate in the year in which payments were actually made, and such should not be chargeable to or recoverable from any of the said beneficiaries individually.

In some years since execution of the deed the widow received payments in excess of the actual income of the estate. These were made out of capital, and the trustees paid sums for income-tax on her account under para. 5 of the deed. The widow was domiciled in England, where the children were permanently resident, and the deed was executed there. The income of the estate was derived from the carrying-on of the testator's sheep-farming business in New Zealand.

On a case stated to determine whether certain assessments of income-tax were properly made,

N. W. Allan, for the appellant; **F. B. Adams**, for the respondent.

Held, confirming the assessments, 1. That a payment out of corpus may properly be assessable income in the hands of the recipient.

2. That the testator's children by the deed undertook in effect to pay his widow £3,000 a year; and that was an annuity.

3. That the money representing the difference between the actual income of the estate and the higher amount paid under the deed was still income so far as the widow was concerned; and, if it did not come under one of the other paragraphs of s. 79 (1) of the Land and Income Tax Act, 1923, it came within para. (*h*) as "income derived from any other source whatsoever."

4. That the moneys received by the widow as income were "income derived directly or indirectly from any other source in New Zealand," within s. 87 (*n*) of the Land and Income Tax Act, 1923, as the preceding paragraphs in that section are not exhaustive.

Consequently, the moneys received as income by the widow were income derived from a source in New Zealand, and the payments made on behalf of the widow by way of income-tax were properly included in her assessment of income-tax.

Semble, Section 79 of the statute may be resorted to, if necessary, for the ascertainment of the classes of income coming within the general expression "income derived directly or indirectly from any other source in New Zealand" in s. 87 (*n*).

Williamson v. Ough, [1936] A.C. 384; **Brodie's Trustees v. Commissioners of Inland Revenue**, (1933) 17 Tax Cas. 432; and **Lindus and Hortin v. Commissioners of Inland Revenue**, (1933) 17 Tax Cas. 442, applied.

Levin v. Commissioner of Taxes, (1912) 31 N.Z.L.R. 717, 14 G.L.R. 604, referred to.

Solicitors: Cook, Lemon, and Cook, Dunedin, for the appellant; **Adams Bros.**, Dunedin, for the respondent.

Case Annotation: *Williamson v. Ough*, E. and E. Digest, Suppl. Vol. 28, para. 321b; *Brodie's Trustees v. Commissioners of Inland Revenue, ibid.*, para. 349a; *Lindus and Hortin v. Commissioners of Inland Revenue, ibid.*, para. 349b.

COURT OF ARBITRATION. Auckland. 1938. Aug. 30; Sept. 20. *O'Regan, J.*

WATTS v. WATCHLIN.

Workers' Compensation—Liability for Compensation—"Person employed otherwise than by way of manual labour whose remuneration exceeds £400 a year"—"Remuneration"—Value of Board and Lodging—Permissible Proof of Excess over Usual Allowance—Workers' Compensation Act, 1922, s. 2.

For the purposes of ascertaining the amount of "remuneration" of a person employed otherwise than by way of manual labour for the purposes of s. 2 of the Workers' Compensation Act, 1922, it is permissible for the employer to prove that in fact the value of board and lodging provided by the employer is in excess of the usual allowance of £1 per week.

Counsel: A. J. Moody and **Henry**, for the plaintiff; **J. B. Elliott**, for the defendant.

Solicitors: A. J. Moody, Auckland, for the plaintiff; **Russell, McVeagh, Macky, and Barrowclough**, Auckland, for the defendant.

SUPREME COURT. Auckland. 1938. September 21; October 4. *Quilliam, J.*

NEWTON v. EDUCATION BOARD OF THE DISTRICT OF AUCKLAND.

Settled Land—Lease by Tenant for Life—Covenant for Renewal—Invalidity—Agreement to give Right to New Lease not to "take effect in possession"—"Without impeachment of waste"—Permissive Waste—Settled Land Act, 1908, s. 34 (1).

An agreement by a life-tenant of land purporting to be a lease for a term of five years, contained the following clause:—

"The lessee has the right to lease the said land at the expiry of this lease for a further term of five years rent not to exceed two pounds a week."

The agreement contained an express exemption from "accident by fire and reasonable wear and tear"; there was a covenant by the lessor to provide materials for repair, but no covenant by the lessee to repair; and the implied exemptions under s. 84 (*b*) of the Property Law Act, 1908, were not negatived.

Griffiths, for the claimant; **Towle,** for the respondent.

Held, That the agreement was invalid as it was not authorized under s. 34 (1) of the Settled Land Act, 1908, in that the life-tenant had purported to confer upon the lessee the right to commit "permissive waste," which was included in the term "without impeachment of waste" in para. (*b*) thereof; and, further, in that the agreement purported to give a right to a new lease that did not "take effect in possession."

Davies v. Davies, (1888) 38 Ch.D. 499; **Yellowly v. Gower,** (1855) 24 L.J. Exch. 289; **In re Farnell's Settled Estates,** (1886) 33 Ch.D. 599; and **McKinnon v. Glen Afton Collieries, Ltd.,** [1929] N.Z.L.R. 202, G.L.R. 106, applied.

In re Cartwright, Avis v. Newman, (1889) 41 Ch.D. 532, distinguished.

Solicitors: Webb, Ross, and Griffiths, Auckland, for the claimant; **Towle and Cooper,** Auckland, for the respondent.

Case Annotation: *In re Cartwright, Avis v. Newman,* E. and E. Digest, Vol. 40, p. 648, para. 1870; *Yellowly v. Gower, ibid.,* p. 721, para. 2538; *In re Farnell's Settled Estates, ibid.,* p. 760, para. 2901; *Davies v. Davies, ibid.,* Vol. 31, p. 357, para. 5016.

FULL COURT. Wellington. 1938. Sept. 23; October 11. *Myers, C.J. Blair, J. Callan, J. Northcroft, J.*

A. AND T. BURT, LIMITED v. BLAIR.

Factories Acts—Holidays—"The occupier of a factory shall allow" certain named Holidays—Such a Holiday falling on a Saturday or Sunday—Whether Factory Employees entitled to Wages therefor—"Allow"—Factories Act, 1921-22, s. 35—Factories Amendment Act, 1936, ss. 13, 14.

Where any one of the holidays named in s. 35 of the Factories Act, 1921-22, as amended by s. 13 (1) of the Factories Amendment Act, 1936, falls on a Saturday or Sunday, being a non-working day, a holiday cannot be "allowed" by the occupier to the persons employed in a factory, and, therefore, neither by express enactment nor necessary implication are those persons entitled to wages for that day at the same rate as for an ordinary working-day.

Cathie and Sons, Ltd. v. Kinsman, [1938] N.Z.L.R. 49, G.L.R. 9, disapproved.

Counsel: J. F. B. Stevenson and **Alderton,** for the appellant; **Cooke,** K.C., and **Dickson,** for the respondent.

Solicitors: Lisle, Alderton, and Kingston, Auckland, for the appellant; **J. F. W. Dickson and Norris,** Auckland, for the respondent.

Restrictive Covenants.

The Application of the Doctrine of *Tulk v. Moxhay* to New Zealand.

By E. C. ADAMS, LL.M.

Three recent English cases on restrictive covenants *White v. Bijou Mansions, Ltd.,* [1937] 3 All E.R. 269, affirmed on appeal [1938] 1 All E.R. 546; *In re Ballard's Conveyance,* [1937] 2 All E.R. 691; and *Marquis of Zetland and Zetland Estates Co., Ltd. v. Driver,* [1937] 3 All E.R. 795, reversed on appeal, [1938] 2 All E.R. 158, have prompted me to write a few notes to supplement Mr. S. I. Goodall's excellent article, which appeared in (1935) 11 NEW ZEALAND LAW JOURNAL, 291.

GENERAL.

In *Strahan's Digest of Equity,* 5th Ed. 483, the rule in *Tulk v. Moxhay,* (1848) 2 Ph. 774, 41 E.R. 1143, is stated as follows:—

"Where the owner of one parcel of land covenants for value with the owner of another parcel of land not to use his land for some specified purpose, then the Court will, on the application of the covenantee or his assigns, restrain not merely the covenantor and his heirs, but persons purchasing his land for value with notice of the covenant for using the land for that purpose, unless the covenantee or his successors in title have by their conduct disentitled themselves from obtaining the injunction."

Mr. Goodall, citing *Carter v. Williams,* (1870) L.R. 9 Eq. 678, and *Wilkes v. Spooner,* [1911] 2 K.B. 473, says that the doctrine is narrow, in that it prevails not against all the world, but against those merely who have notice. That is still the position in New Zealand, but it would appear that in England the restrictive covenant will often be effective against purchasers for value, although they had no notice of it: *13 Halsbury's Laws of England,* 2nd Ed., p. 126, para. 111; *White v. Bijou Mansions, Ltd. (supra).*

In England, if the servient land is unregistered, the covenant, to be effective against purchasers, must be registered (if entered into after December 31, 1925) under the Land Charges Act, 1925; if the land is registered land, the covenant is registered against the title to the land under the Land Registration Act, 1925. When duly registered, all persons are deemed to have notice of it. Therefore it appears to the writer that in England the interest in land conferred by the rule in *Tulk v. Moxhay,* where its registration is compulsory for its efficacy, is now tantamount to a legal interest, for, if duly registered, purchasers of the servient tenement are bound by it whether or not they had notice of it. But although the rule has been so extended by rendering the continued existence of a restrictive covenant more certain than any purely equitable interest could possibly be, the English Courts in other respects refuse to extend the rule; on the contrary, it might be argued that the modern English tendency is to narrow down the doctrine. In *In re Ballard's Conveyance (supra),* the dominant tenement was about 1,700 acres in extent, and the covenant by the servient proprietor was not to build houses other than brick houses of a value at least of £1,500. It appeared to the Court that while a breach of the covenant might possibly affect a portion of the 1,700 acres, by far the largest

part of that area could not possibly be so affected; the Court refused to sever the covenant, and held, therefore, that the owner of the dominant tenement, who was not the original covenantee, could not enforce it. *Marquis of Zetland and Zetland Estates Co., Ltd. v. Driver* (*supra*) followed *In re Ballard's Conveyance*, and was decided in the Court of first instance on exactly the same principle. The alleged dominant tenement was a large area, and some of it was more than a mile away from the servient tenement. The servient owner commenced a restaurant on his premises, which was "not a place patronized by people of fashion," presumably because he fried fish thereon for consumption on the premises and sold thereon "chip potatoes." The servient tenement was subject to a restrictive covenant entered into with the plaintiff's predecessor in title not to allow to be done on the land any act or thing "which in the opinion of the vendor may be a public or private nuisance or prejudicial or detrimental to the vendor and the owners or occupiers of any adjoining property or to the neighbourhood." The Court held that the attempted annexation of the covenant to the land of the covenantee had failed, because the covenant did not purport to affect the land of the covenantee as regards its occupation, and because the value of the greater part of the alleged dominant tenement, as at the date of the covenant, could not possibly be affected by anything done on the servient tenement. But the decision of the Court of first instance has now been upset by the Court of Appeal, [1938] 2 All E.R. 158. The Court of Appeal pointed out that the plaintiff was the successor in title to the original covenantee, the first Marquis of Zetland, who died on March 11, 1929, when thereupon the appellant became entitled to possession as tenant in tail male. The covenant in question was one of that class which could be enforced only for so long as the covenantee or his successor in title retained some part of the land for the benefit of which the covenant was imposed. Farwell, J., in delivering the judgment of the Court of Appeal, said:

> "The covenant is restrictive. It is expressly stated in the conveyance to be for the benefit of the unsold part of the land comprised in the settlement and such land is easily ascertainable, nor is it suggested that at the date of the conveyance the land retained was not capable of being benefited by the restrictions, and lastly the appellant is the successor in title of the original covenantee and as such is the estate owner of part of the land unsold which is subject to the settlement. That being so, the appellant is the person now entitled to the benefit of the covenant and, *prima facie*, is entitled to enforce it against the respondents who, although not the original covenantors, took their land with notice of the restrictions and are, therefore, bound by them."

In the judgment of the Court of Appeal, the learned Judge in the Court of first instance was wrong in thinking that *In re Ballard's Conveyance* was an authority in this case:

> "It is not necessary for us, and we do not propose, to express any opinion as to that decision beyond saying that it is clearly distinguishable from the present case if only on the ground that in that case the covenant was expressed to run with the whole estate, whereas in the present case no such difficulty arises because the covenant is expressed to be for the benefit of the whole or any part or parts of the unsold settled property."

The Court of Appeal was careful to point out that the covenant was not one which was intended to pass to a *purchaser* of the dominant tenement without express assignment and accordingly the injunction sought by the plaintiff was confined to a period during which "the appellant or some other successor in title of the vendor retains *unsold* any part of the settled property."

Leave to appeal to the House of Lords was granted.

Restrictive Covenants in New Zealand affecting Land not Subject to the Land Transfer Act.

Restrictive covenants are freely registrable under the Deeds Registration Act, 1908. But registration under the Deeds Registration Act, 1908, is not *per se* notice; nor is it apparently the duty of a purchaser to search. This is strikingly illustrated by the case of *Bishop v. Hunt*, (1907) 26 N.Z.L.R. 950, where the plaintiff, who had not troubled to search the Deeds Register, was of all persons a solicitor; yet his claim was preferred to that of a second mortgagee, who had duly registered his mortgage before the plaintiff's claim originated, because the plaintiff solicitor had managed to get in the legal estate without notice of such second mortgage. It is, however, the practice in New Zealand to search the Deeds Register, and, if it was proved that a search had been made, there probably would be a presumption that the search extended to *all* the contents of the Register: *Hodgson v. Dean*, (1825) 2 Sim. & St. 221, 57 E.R. 330. Moreover, if the land was under the "old system," the restrictive covenant would probably be set out in the title deeds of the servient tenement, and any person claiming title under such title deeds could not allege that he had no notice of the covenant: s. 115 of the Property Law Act, 1908.

When the servient tenement is being brought under the Land Transfer Act, the covenantee has no right to register a caveat restraining the bringing of the land under the Act, nor has he the right, when a certificate of title is issued, to have his covenant noted thereon. But the bringing of the servient land under the Land Transfer Act does not destroy the covenant; it still subsists, but its continued existence is rendered most precarious on account of the difficulty of giving subsequent transferees of the servient tenement notice of the covenant. Soon all land alienated from the Crown for an estate in fee-simple will be subject to the Land Transfer Act by operation of the Land Transfer (Compulsory Registration of Titles) Act, 1924; therefore one of the effects of that statute will be to render more precarious the continued existence of restrictive covenants which may have been validly created whilst the land was held under the "old system," and which, under that system, were amply protected.

Restrictive Covenants in New Zealand affecting Land Subject to the Land Transfer Act.

The only restrictive covenants that may be registered under the Land Transfer Act so as to inhere to freehold estates are fencing covenants under the Fencing Act, 1908, and even these were not registrable until the coming into operation of the Fencing Act, 1904. But, as Mr. Goodall in his article points out,

> "If, however, a restrictive covenant be validly created between the parties by means of unregistered documents, it may be binding *inter partes* and, just as under the Deeds System, so here again it may be binding in equity upon a purchaser with notice."

The reason why it is binding in equity upon a purchaser with notice, is that s. 197 of the Land Transfer Act, 1915, does not apply to any interest which is not capable of being registered under the Land Transfer Act: *Carpet Import Co., Ltd. v. Beath and Co., Ltd.*, [1927] N.Z.L.R. 37, 59. Section 197 reads as follows:—

"Except in the case of fraud, no person contracting or dealing with or taking or proposing to take a transfer from the registered proprietor of any registered estate or interest shall be required or in any manner concerned to inquire into or ascertain the circumstances in or the consideration for which such registered owner or any previous registered owner of the estate or interest in question is or was registered, or to see to the application of the purchase-money or of any part thereof, or shall be affected by notice, direct or constructive, of any trust or unregistered interest, any rule of law or equity to the contrary notwithstanding, and the knowledge that any such trust or unregistered interest is in existence shall not of itself be imputed as fraud."

To surmount the practical difficulty of giving all subsequent purchasers of the fee-simple notice of a restrictive covenant, attempts are sometimes made to register a caveat purporting to protect such restrictive covenant. Despite a strong dictum and opinion that such caveats are permissible—Salmond, J., in *Wellington City Corporation v. Public Trustee, McDonald, and District Land Registrar*, [1921] N.Z.L.R. 423, 434, and *Hogg's Registration of Title Throughout the Empire*, 185—the better opinion undoubtedly is that, with the exception of trusts, caveats can be lodged under the Land Transfer Act to protect only those interests or estates which can be converted into registrable ones, either at present or in the future: see, for example, *Baird's Real Property*, 195. *Staples and Co., Ltd. v. Corby and District Land Registrar*, (1900) 19 N.Z.L.R. 517, 536 (a decision of the New Zealand Court of Appeal), must be taken to have definitely decided that a restrictive covenant will not support a caveat under the Land Transfer Act. And, apart from authority, it does not seem right that a person claiming a purely equitable interest in land which, from its nature, can never be transformed into a legal one, should have the right in perpetuity to prevent all dealings with the legal estate in fee-simple without that person's consent; and that would be the position, if restrictive covenants supported caveats under the Land Transfer Act.

But it is confidently submitted that there is one way in which restrictive covenants may enjoy full protection under the Land Transfer Act, and that is by taking advantage of the ruling of the Australian High Court in *Mahony v. Hosken*, (1912) 14 C.L.R. 379, which appears to be applicable to New Zealand. It was held that a rent-charge, securing an annuity (on hotel property) defeasible on compliance with the usual tied-house provisions, could be embodied in a registered instrument of charge. Therefore a restrictive covenant could, in New Zealand, be secured in a similar manner—*e.g.*, let the servient land be duly charged with a yearly rent-charge of £20 per annum, with a provision in the memorandum of encumbrance (in the Form F, Second Schedule to the Land Transfer Act, 1915) that it would be reduced to one peppercorn if the provisions of a restrictive covenant were not broken. With each change of ownership of the dominant tenement the memorandum of encumbrance would have to be transferred to the new owner to secure continuity of benefit of the restrictive covenant.

It may be argued that, if it is possible to secure restrictive covenants under the Land Transfer Act by such an indirect method, why not bring the New Zealand law into force with the English in this respect, and make restrictive covenants freely registrable and, when registered, notice to all the world. But the writer of this article is against such a proposal, for the following reasons:—

1. The securing of restrictive covenants by these indirect methods has not become very common in New Zealand and is not likely to become so, because to be fully effective the memorandum of encumbrance would have to be a first mortgage, and that would embarrass the servient proprietor in securing the necessary finance. One cannot imagine a solicitor advising his client to sign such a memorandum of encumbrance, unless the client had legally bound himself so to do.

2. The device of a memorandum of encumbrance appears unsuitable in the case of a *building scheme*, where there are mutual restrictive covenants by many proprietors of land.

3. The doctrine of restrictive covenants appears alien to New Zealand conception of rights in property. Any contract tending to restrict the free transfer of land and the full use thereof is distinctly against public opinion in these newly settled countries, whatever may be the position in older settled and more thickly populated countries like England. Be it remembered that in 1894 the New Zealand Legislature thought fit to pass the Light and Air Act, preventing tenements from becoming servient to others in respect of the access of light and air by prescription.

Judicial Changes in England.—This year's Judicature (Amendment) Act increased the number of ordinary Lords Justices of Appeal from five to eight, with power to sit in three divisions either permanently or at intervals as may be required. The new Lords Justices and all ordinary Judges of the Court of Appeal may be called upon to sit as Judges of the High Court.

The appointment of Mr. Justice Finlay, Mr. Justice Luxmoore, and Mr. Justice Goddard to the Court of Appeal has just been announced. The successor to Lord Justice Greer, who is on the eve of resignation, has yet to be appointed.

The vacancies in the King's Bench Division created by promotion of Mr. Justice Finlay and Mr. Justice Goddard, have been filled by the appointment of Mr. Roland Oliver and Mr. Croom-Johnson. Mr. Croom-Johnson took silk in 1927. He is Recorder of Bath, as well as the Member of Parliament for Bridgewater since 1929; and Mr. Roland Oliver, who took silk in 1925, is Recorder of Folkstone. The practice of Croom-Johnson, K.C., was for many years general, large, and lucrative in the Supreme Court; while that of Oliver, K.C., who some years ago chiefly shone in criminal trials, has for a long time been mainly in civil actions in the Supreme Court, including the Court of Appeal, and he has won notable victories in the House of Lords itself.

Their judgeships are in accordance with general expectation, as both have to their credit forensic merit, achievement, and prestige. Their appointments have been particularly well received by their colleagues at the Bar. In the opinion of some of them, both were overdue for promotion. What is more, that appears to be the view of greater authorities, that is to say, of the barristers' clerks, who rarely err in their estimate of the quality of those who work for them; and their opinion is fortified by those of other persons hardly less authoritative, namely, the managing clerks of solicitors who do business in litigation.

Greer, L.J., is about to retire—a regrettable event—for he is beyond dispute one of the best and most generally and justly esteemed of post-war Lords Justices. His retirement will mean another promotion and another appointment to the Bench.

—APTERYX.

Evidence Wrongly Admitted.

Its Effect on the Judge's Mind.

An interesting guide to practice emerges from the decision of the Privy Council in *Sockalingham Chettiar v. Ramanayake*, [1937] A.C. 230, in an action to recover moneys due under a bond given to secure, *inter alia*, liability on promissory notes, the Court of first instance gave directions as to how an account was to be taken. The Privy Council having held that certain promissory notes, given in breach of a local Ordinance were neither enforceable nor admissible in evidence to prove the loans, went on to direct that a further account should be taken, and then added the following words :—

"It will be in the discretion of the Supreme Court to make such orders as are necessary for carrying out this direction, but their Lordhips are of opinion that the further account should not be taken by the District Judge who took the account in the first instance. It is, of course, not intended to make any reflection upon the learned Judge, but he, having seen the promissory notes and admitted them in evidence, might be placed in a difficult position if he were asked to take the account again" : *ibid.*, 247.

The practical difficulty that any one finds in excluding inadmissible facts is always present to the mind in legal proceedings. In jury trials the jurymen may be directed to disregard something that has come before them irregularly, such as newspaper reports of a preliminary investigation of a criminal charge, or inadmissible statements by a witness uttered before they could be stopped. Nevertheless, there is often an uneasy doubt as to whether, once heard, the irrelevant matter has not left its mark on the minds of its hearers.

In extreme cases the jury may be discharged : as where they have been improperly informed of the amount of damages claimed (*Watt v. Watt*, [1905] A.C. 115, 118) ; or of previous convictions of an accused person (*Phipson on Evidence*, 7th Ed. 38) ; or that the defendant in an action for damages for personal injury is covered by insurance (*Gomar v. Hales*, [1928] 1 K.B. 191) ; or where the prisoner's not having given evidence is commented upon (*R. v. Neary*, [1916] N.Z.L.R. 518).

Where, however, the tribunal is a Judge sitting alone, it has hitherto been generally assumed that the legally-trained mind is capable of forgetting or disregarding irrelevancies ; that a Judge is in no way impeded in doing justice because there have been brought to his notice facts that morally may but legally do not bear upon the issue which he has to decide. There has indeed been occasional recognition of the difficulty of regarding even the judicial mind as fitted with watertight bulkheads. O'Connor, L.J., said in *Maguire v. Browne*, [1921] 1 I.R. 148, 172 : "After all, a Judge is human, and it is possible that his mind may be influenced by a document which he should not have seen at all." Sometimes, of course, it is unavoidable. In cases of retrials it ought generally to be avoidable, if the Bench were prepared to assist in making arrangements to avoid it.

The recognition of the position by the Court of highest authority may be welcomed as a valuable step forward, raising the hope that whenever the course of procedure makes it possible a fresh judicial mind shall be brought to a case where a rehearing proves necessary either on the express ground of improper admission of evidence, or on some other ground if at the first hearing inadmissible evidence of any materiality was brought forward, even though it was properly rejected.

Wanganui District Law Society.

Annual Meeting.

It is the custom of the members of the Wanganui District Law Society to observe the day of the Annual General Meeting of the members of the Society as a close holiday. The morning is devoted to business, and the rest of the day is given over to social reunion, usually a golf match in the afternoon and a dinner in the evening.

On this occasion the Society accepted the invitation of the Marton members to hold the meeting and reunion at Marton, on Thursday, October 20.

The Annual General Meeting of the members was held in the morning.

After the adoption of the annual report and balance-sheet, the election of officers was held. The results are as follows : President, Mr. A. D. Brodie ; Vice-President, Mr. F. J. Christensen (Marton) ; Treasurer, Mr. G. W. Currie ; Council, Messrs. W. R. Brown, J. H. Cowdell, (Waverley), P. L. Dickson, C. F. Treadwell, E. B. Tustin, R. S. Withers ; Representative on New Zealand Law Society, Mr. A. D. Brodie ; and Auditor, Mr. C. H. Clinkard.

Christmas holidays for 1938-39 were fixed at from Saturday, December 24, to Wednesday, January 11, both days inclusive. It was decided to observe the same holidays at Easter, 1939, as in past years.

After the Annual Meeting a meeting of employer practitioners was held, when a request from the Law Clerks' Union for a variation of the Industrial Agreement to provide for a five-day week for the Wanganui District was considered. Those present were not in favour of varying the agreement, but seeing that the country practitioners who would be most affected by the proposed variation were not adequately represented it was decided to submit the proposal to a postal ballot of all practitioner employers.

In the afternoon the usual golf match—President *v.* Vice-President—was played on the Marton Golf Club Links, kindly put at the disposal of the members ; and, true to tradition, no one has been able to discover which team won.

In the evening the Annual Dinner was held in the White Hart Hotel, Marton. The guest of honour was the Hon. Mr. Justice Reed.

On Trial.—An English newspaper recently referred to an incident in which Mr. Justice Lewis figured. The case before him turned on the behaviour of a cart-horse. His Lordship had the animal brought to the quadrangle of the Law Courts, where, after riding it, he had it harnessed to a cart and tested it in that manner. The horse was on its best behaviour and judgment went its way. It appears, however, that it was a better witness than cart-horse, for it is alleged that, once out of sight of the Court, it behaved as badly as ever it had done.

New Zealand Law Society.

Council Meeting.

(*Concluded from p. 313.*)

Audit Regulations.

(*a*) **Joint Audit Committee.**—The New Zealand Society of Accountants wrote as follows :—

It has been suggested that a sub-committee should be set up consisting say of two members of your Society and two members of this Society to deal with any cases calling for interpretation of the Solicitors' Audit Regulations. The suggestion has been approved by my Council, and I should be glad if you would bring it under notice of your Council and let me know their decision in due course.

All members were in favour of the suggested joint Committee, which was accordingly approved.

It was pointed out that some of the matters concerning the Audit Regulations were so important that it might be well to have the decisions of the Committee reviewed by the Council prior to their adoption.

It was accordingly decided that Messrs. H. E. Anderson and P. B. Cooke, K.C., should be appointed the Council's representatives on the joint Committee, but that the decisions of the Committee should be submitted to the Council for confirmation.

(*b*) **Audit Regulations (II) 6.**—The Audit Committee reported as follows :—

With reference to your letter of June 14, herein, I beg to inform you that the matter was referred by my Council to the Audit Committee, the members of which, after consideration of the question, have reached the following decision :—

> "That in the case cited, the firm of accountants cannot be auditors of the Solicitors' Trust Account, and, at the same time, write up the books of the general account."

The following letter was received from Otago :—

Enclosed is a copy of a letter from a practitioner which I have been instructed to forward to you.

My Council is aware of the fact that the same point has been referred to the New Zealand Society by the Society of Accountants and is under consideration by the Audit Committee.

Enclosure :—

I desire to obtain from the New Zealand Law Society a ruling on the interpretation of a paragraph in the above regulations.

Subsection (6) of Reg. 2 (Qualifications of Auditor) provides as follows :—

> (6) Notwithstanding anything herein contained, no auditor shall be deemed qualified to audit any trust account of a solicitor if he is or at any time within one year of his engagement by the solicitor has been a clerk, servant, or partner of such solicitor, or if he is himself a practising solicitor, or if he or a member of his firm or staff is or at any time within the said period has been *engaged or concerned in keeping the books of such solicitor.*

My auditor possesses the necessary qualifications for his office as prescribed by the other subsections of this regulation. In a dition to auditing my trust account, however, I have engaged his services each year to carry out the annual balance of my business account. My business books are kept throughout the year by myself personally, and my auditor's duties are limited to the annual production of a profit and loss account and balance-sheet, and the preparation of the necessary income-tax return and employment-tax declaration.

Immediately the new regulations were issued, he informed me that on his interpretation of them he could no longer perform this work for me.

The point upon which I desire a ruling is as follows :—

> "Is it a breach of the regulation, or in any way improper for Mr. , as my auditor, to carry out annually the limited tasks which I have specified ?"

(*c*) **Audit Regulations—List of Securities—**

(1) The following letter and report was received from the Secretary of the Wellington District Law Society :—

Prior to the last meeting of my Council a letter, to the following effect, was received from a local firm of accountants :—

> "In pursuance of Reg. 5, cl. 12, of the above regulations, a firm of solicitors has prepared for us the list of securities required under this section, but has certified to it in the following manner :—
>
> > "It is thought possible that the foregoing list of documents and securities is not complete. The firm holds in its strongroom for safe custody some 28,000 documents which have not been individually examined."
>
> "We should be pleased to know whether this list, certified as above, can be accepted as satisfying the requirements of the regulations."

The above letter was referred to a Committee, whose report is attached hereto. My Council adopted the report and decided that as the matter was one of some importance it should be brought to the attention of the New Zealand Law Society with a recommendation that it should be referred to the audit committee of your Society for consideration and decision.

Would you kindly place the matter on the agenda for the next meeting.

Report :—

The opinion of the sub-committee appointed to report on the letter received from Messrs. Watkins, Hull, Wheeler, and Johnston is :—

1. The list to be prepared by the solicitor in so far as it relates to documents must include—

(*a*) All securities and documents of title of every kind whatsoever held by the solicitor in his own name for or in trust for any person, whether or not such securities have come into his possession by an operation on his trust account or have been lodged with him for safe keeping :

(*b*) All negotiable securities, bearer debentures, or deposit receipts held by the solicitor for or in trust for any other person, and whether or not such securities come into his possession by an operation on his trust account or have been lodged with him for safe keeping.

2. The certificate mentioned in the letter of Messrs. Watkins, Hull, Wheeler, and Johnston does not comply with the regulations, because it shows that the solicitor has not satisfied himself that the list includes all documents of the kind mentioned in cls. 1 (*a*) and (*b*) above.

3. The solicitor's certificate refers to "documents and securities," and it is not clear whether this is meant to refer to "securities and documents of title in the name of the solicitor" or "negotiable securities, bearer debentures, or fixed deposit receipts." In either case it is the duty of the solicitor to go through all his documents and prepare a list to comply with the regulations. This list would be prepared once only, and could thereafter be kept up to date without any difficulty.

4. From inquiries made among solicitors and auditors the regulations do not seem to be interpreted uniformly. Some consider that as the regulations expressly refer to what an auditor is to inspect on his periodic examinations of a trust account, his duty is limited to inspecting those negotiable securities, bearer debentures, or deposit receipts which are disclosed by the trust account during the period of the audit, and does not include the inspection of such securities as are purchased by a client and then lodged with the solicitor for custody, and consequently not brought to the auditor's notice by his examination of the trust account.

5. The regulations seem to be clear, but in view of this diversity of opinion it is suggested that an explanatory circular might be issued by the proper authority.

(2) The following letter was received from the Canterbury District Law Society :—

Re Trust Account Rules, Reg. No. 5 (12).

The regulation says " That upon making any examination of a trust account the auditor shall certify under his hand and deliver to the solicitor a statement which shall be prepared by the solicitor setting forth in detail as on the last day of the period to which the examination relates the following particulars, &c.

An auditor here, in a big way of business, states that on applying for the statement when he made the examination in August, solicitors refused to give the statement, saying that they had never done it before and it was only necessary to produce the statement when the *audit* was made at the end of the yearly period.

A letter from the auditor was read at the last meeting of my Council asking for a ruling as to whether these statements were to be produced at each examination as well as at the audit or only when the audit was made.

My Council discussed the matter and then it was decided to ask the Council of the New Zealand Law Society to give a ruling on the matter.

Would you therefore be so good as to get a ruling on the question.

(3) The following letter was received from a Wellington firm of accountants :—

During the course of our July visit in connection with the audits of the trust accounts of a number of our solicitor clients, the following points respecting the interpretation of the Solicitors' Audit Regulations, 1938, have given rise to a difference of opinion in several quarters.

Regulation 5, cl. 12, provides for the preparation of a list of the securities, &c., held by the solicitor. Sub-clause (*c*) of this provides that such list shall include " all negotiable securities, bearer debentures, or deposit receipts held by the solicitor *for* or in trust for any other person." You will note that the words " in his own name " used in both the preceding subcls. (*a*) and (*b*) have been omitted in (*c*).

The points in doubt are whether or not this clause of the regulation covers :—

(1) Instruments and documents, such as title deeds, debentures and share scrip, and deposit receipts in the name of the client, but held by the solicitor in such circumstances that he could deal with them under a power of attorney.

(2) Negotiable securities, bearer debentures, and deposit receipts, &c., left with the solicitor for safe custody.

It has been contended that the wording of cl. 6 of the same regulation would also make the listing of the documents mentioned above necessary when they are held by a solicitor holding a power of attorney enabling him to deal with them.

When convenient, we shall be pleased to have the opinion of the Council of your Society on these points.

It was decided to refer the foregoing matters to the Joint Audit Committee for their decision.

Chattels Transfer Act, 1924.—The Hawke's Bay Society forwarded a copy of a letter which had been brought to the attention of the Attorney-General in 1934.

It was decided to draw the attention of the Law Revision Committee to the matter, Mr. Lusk undertaking to forward particulars to that body.

Bills before Parliament.—Reports which had already been circulated among the District Societies, dealing with efforts made to secure amendments of sections to the Surveyors Bill and the Social Security Bill, were received.

Public Trust Office: Constable as Agent.—The President reported that he had seen the Commissioner of Police, who had informed him that there was only one case in New Zealand of a constable acting as agent for the Public Trust Office, and said that care would be taken to see that he did not exceed his duties in this connection.

Motions for New Trials.—Ten District Societies forwarded replies to the President's letter. As no Society favoured the suggestion made, it was decided that no action should be taken.

History of Administration of Justice in New Zealand for Past One Hundred Years.—Prior to the meeting the following circular letter and report had been sent to each District Law Society :—

July 28, 1938.

DEAR SIR,—

Centennial Celebrations.

I am directed by the President to forward you the enclosed report of what took place between the Society's representatives and the Under-Secretary of Internal Affairs at the meeting on June 24, last.

It will be seen that if the Society undertakes the publication of a volume it will itself be obliged to meet the cost, which it is thought will be considerable.

However, the President is anxious that the proposal be fully considered by each Society before a decision is arrived at, and he therefore requests that your Council give consideration to the matter and that the opinion of the members be communicated to me.

It is hoped that each District Society will forward the views of its members in time for the next meeting on September 23, next.

Report :—

In accordance with the resolution passed at the Council meeting of June 24, a deputation, consisting of the President (H. F. O'Leary, K.C.), Messrs. L. K. Munro, K. M. Gresson, R. G. Sinclair, and the Secretary, waited on the Under-Secretary of Internal Affairs (Mr. J. Heenan) and the Solicitor-General (Mr. H. H. Cornish, K.C.) in connection with the letter received from Mr. Heenan suggesting the publication in the Centennial year of a volume by the New Zealand Law Society commemorating the administration of justice over the first hundred years.

Mr. Heenan explained that it was proposed to prepare a number of similar volumes, and that the newspaper proprietors, the shipping companies, and other similar bodies had promised to undertake at their own expense the publication of a volume covering their history.

In reply to a question from the President, Mr. Heenan stated that the Government did not propose to assist financially in the preparation of these volumes, though it was possible that, seeing that the New Zealand Law Society had been asked to cover the administration of justice, some help might be obtained to cover what it would have cost the Government to prepare a short historical survey of such administration.

During the course of the discussion, Mr. Heenan suggested that every effort should be made to make the 1940 Legal Conference a Centennial celebration, and intimated that the Government had in mind the matter of inviting one or more world figures in law to be present.

He therefore suggested that if the Society thought after consideration that the preparation of a volume was impracticable, it would at least consider the advisability of giving the papers to be read at the Conference a historical bias, and these in themselves would then serve as a useful record, and would to some extent fill the place that an individual volume would take.

Replies were received from six District Societies, opinion being divided as to the advisability of undertaking the preparation of the proposed history.

The President read the following letters which he had received from Mr. J. P. Kavanagh and from Messrs. Butterworth and Co., respectively :—

September 20, 1938.

DEAR SIR,—

I understand that the question of the feasibility of publishing a history of the Legal Profession and the Administration of Justice in New Zealand during the past century is under consideration by your Council. May I, therefore, now amplify the suggestions I made to you personally, and which you asked me to commit to writing for you.

The question of cost is a formidable obstacle to publication by your Society; but, if this can be overcome, I am assured by the Under-Secretary for Internal Affairs that a satisfactory compilation of the standard of other centenary publications would be given the status of an official Centennial record. An adequate treatment of the history of the Legal Profession would run to at least four hundred pages of readable type: and this implies the preparation of the material, its editing, preparation for the printer, printing, proof-reading, finalizing, publication, and distribution by sale.

If your Society could undertake the preparation of the manuscript by voluntary co-operation of members of the profession, a considerable part of the expense and difficulties facing your Council would, I think, be overcome. The task is not as formidable as any one unused to this work might think; but the earliest possible beginning should be made.

In this regard, I think, it would be necessary for your Council to appoint a Publication Committee, whose duty would be to approve the method of treatment, and to give the Council's authority to the work generally. The duties of this Committee would not be onerous, provided an experienced editor has the handling of the material. The Committee would approve the persons to be asked to assist, and give a final decision in any matters requiring it. I suggest your Society's Standing Committee, with the addition of Mr. E. F. Hadfield (who is qualified to represent the longest term practitioners by his extended period of practice) and Mr. H. J. V. James (who has experience in estimating the quality of prospective assistants, as well as some practical working knowledge). The Committee would, no doubt, appoint local representatives in the various Judicial Districts to assist it.

If my assistance be required in any way, I might be able to help the Committee with suggestions as to possible writers and the scope and methods of their research; and I would willingly, in the general interest, undertake the editing of the material, if so desired.

Assuming that the voluntary compilation of material, and its presentation in a form suitable for printing, is accepted as a working-basis by your Council, the question of printing (and all that it involves), publishing, and distribution remains. After putting the matter to the New Zealand Manager of Messrs. Butterworth and Co. (Aus.), Ltd., he has agreed to submit a proposal which would relieve your Council of any financial obligations in respect of the printing and publication. He informs me that he is writing direct to you.

If you desire any amplification of the foregoing, I shall be pleased, at any time convenient to yourself, to supply such information as you may desire.

Yours faithfully,

J. P. KAVANAGH.

September 20, 1938.

SIR,—

The Editor of the *New Zealand Law Journal* has suggested to us that we should consider the publication, under your Society's direction, of a Centennial History of the Legal Profession and the Administration of Justice in New Zealand.

On going into the matter, we found that to undertake such a publication would involve us in considerable loss. We wish, however, to assist your Council in its desire for such a record of the profession during New Zealand's first century, and we have pleasure in submitting a modified proposal.

If your Council would undertake the preparation and supervision of the manuscript of the proposed work and supply it to us in a form ready for printing, free of cost to us, then we should be pleased to attend to the printing and publication without any financial obligation of any kind on the part of your Council. The work should not exceed four hundred pages, and the manuscript should be in edited form, for which, both as regards to matter and suitability for publication, your Council would take complete responsibility.

Owing to the limited number of persons directly interested in the history of the law in New Zealand, we cannot anticipate a great number of sales: in fact, we estimate that we shall suffer a loss on the publication. Be that as it may, we still desire to show our co-operation in the profession's work and interests, and the responsibility as to whether we can make sufficient sales shall be ours.

It is understood that in making this offer, the publication will conform to the standard laid down by the Centennial Historical Committee, and also, so far as publication is concerned, be in accordance with the standard required to gain it official recognition as a Centennial record.

The matter of the published price will depend upon the size of the book, but what we have in mind is for the selling price to be about 10s. 6d. or 12s. 6d., so as to give every member of the profession an opportunity of obtaining a copy.

If your Council accepts our proposal, the terms can be embodied in greater particularity in a letter or memorandum to be signed on behalf of your Council and ourselves. If there is any point on which you would like further information, please let us know.

In brief, the proposal is that, whether it result in a loss or a gain, we are prepared to publish the material prepared by or on behalf of your Council, and submitted to us in finished form, without any financial obligation on your Society's part.

Yours faithfully,

W. H. NICHOLS,

New Zealand Manager.

After some discussion as to the value of the book when published and as to its probable cost, it was decided on the motion of Mr. Rogerson, to ask Mr. N. H. Good, Secretary of the Auckland Society, to prepare an outline of the proposed book and to submit these with suggestions as to how the preparation of the book should be carried into effect, and with an estimate of the expenses which would be involved.

It was further decided that the Standing Committee should deal with the report when received, and if necessary, circulate it among the District Law Societies for their comments prior to the next Council meeting.

Next Legal Conference — Finance.—The following circular letter had been sent to each District Society before the meeting:

At the meeting of the Council of the Society held on the 24th ultimo, a letter to the President, set out on pages 3 and 4 of the order paper for the meeting, suggesting a Dominion-wide contribution towards future Conferences was considered. The following motion was carried:—

"That this Council approves the principle of a Dominion-wide contribution to finance future Conferences."

It was further decided that each District Law Society should be informed of this resolution, and be asked if they supported or opposed the principle, and, if agreeable to the suggestion, that they should be asked to make any comments desired concerning the amount of the contribution and the method of collection.

Would you kindly let me know in due course the opinion of your Society on the matter.

Replies were received from twelve Societies, all of which, with one exception, approved of the proposed system of finance.

It was pointed out that the Wellington Society had suggested that in addition to the annual contribution of 5s. per practitioner, there should be a Conference charge for all attending the Conference, with the proviso that Canterbury practitioners should be exempt from this charge at the 1940 Conference. Other members expressed their disagreement with this proposal, which was dropped.

It was unanimously decided that future Conferences should be financed by each District Law Society contributing annually the sum equivalent to 5s. per practitioner in its district.

Income-tax—Legal Costs.—The Hawke's Bay Society forwarded the following letter for the information of practitioners:—

As a meeting of my Council cannot conveniently be held for some days yet, I shall be glad if you will consider the subject-matter of the enclosed copy of a letter from a firm

at Napier, and decide whether or not it is suitable or proper for consideration by your Standing Committee or Council at the next meeting of either of those bodies. If you regard it, as I am inclined to do, as a matter for individual taxpayers and not for the Law Societies to concern themselves about, please let me know.

Enclosure :—

DEAR SIR,—

When the Income-tax Inspector was in our office last week checking a client's income-tax return for the year ended March 31, 1938, with his account in our books, he struck out a deduction which we claimed on his behalf for the legal expenses incurred in taking his case before the Mortgagors' Relief Court. Although we pointed out that his Department had all along allowed such costs as a deduction for tax purposes, he replied that under a recent ruling of the Assistant Commissioner all Inspectors had been instructed to disallow such claims as from April 1, 1937.

He further told us that the ruling also applied to legal expenses incurred in renewals of leases, mortgages, &c., and so far as he could see the only legal expenses which would now be allowed as a charge against the year's income would be the costs involved in the collection of a debt. The Assistant Commissioner contends that the other legal expenses cannot be applied to any particular year's working.

We understand that these instructions will be adhered to rigidly by the Department unless some amendment to the taxation legislation is made before the assessments are issued.

The writer has discussed the matter with some of the members of your Society and they have suggested that the facts should be placed before the Society in order that its members may have early advice of the Department's new attitude, and the foregoing is, therefore, accordingly submitted by me.

Swearing as to Amount of Estate in Applications for Probate.—The following letter was received from the Hamilton Society :—

I am enclosing a memorandum which was considered by my Council at its last meeting and when I was asked to bring the report before you with a request that it be sent on to the Rules Committee :—

Report :—

Under R. 518 of the Code every applicant for probate must file an affidavit in form No. 34. That form provides that a maximum figure must be placed upon the estate in the affidavit. The only use to which the figure sworn at was originally put was to fix the amount of sealing fee of the probate. However, the present rules and practice provide that the sealing fee upon probate is only fixed after information is received from the Commissioner of Stamps as to the final balance of the estate. Accordingly, the reason for placing a value upon the estate in the executor's affidavit has disappeared. Applications for probate are usually made within a few days of the death of the deceased. Any value then placed upon the estate must necessarily be a very approximate and haphazard figure seeing that no exhaustive investigation is possible before lodging application for probate. Application for probate may be searched by any person upon paying the appropriate search fee. Newspapers have made it a practice to make periodical searches, and to publish lists of estates and of the amounts under which they are sworn. This gives unnecessary and very often painful publicity to the amount of deceased estates, and it appears quite unnecessary that such public information should be given. It is to be noted that the above does not apply in the case of applications for letters of administration either with or without a will annexed. In such cases the amount at which the estates are sworn fixes the amount of the bond to be given under s. 22 of the Administration Act, 1908.

It was decided that the suggestion was a good one, and that the letter should be referred to the Rules Committee with a recommendation that action should be taken to rectify the position.

Apportionment on Sale of Government Stock.—The Secretary reported that this matter had now been dealt with by ss. 56–58 of the Statutes Amendment Act, 1938.

New Zealand Statutes and Gazette—Delay.—The Attorney-General wrote as follows :—

July 5, 1938.

I am in receipt of your letter of the 4th instant, and note the views of your Council in relation to delays on the part of the Government Printer in issuing bound volumes of statutes and also of the *New Zealand Gazette* for 1937.

I am taking this matter up at once with my colleague, the Hon. Mr. Webb, Minister in Charge of the Printing and Stationery Department, and will communicate with you again later when I have anything definite to report.

July 15, 1938.

Further to my letter of the 5th instant, I have now received a reply from the Minister in Charge, Printing and Stationery Department, who states that he has inquired into your complaints as to the delay in issuing bound volumes of statutes and of the *Gazette* for 1937.

As a result, my colleague states that there has certainly been a delay in the issue of the *Gazette* in certain cases, and the question of speeding up the work is now being looked into. Regarding the statutes, however, it is stated that there has been no delay and that the 1937 volume was actually issued some three weeks earlier than was the 1936 volume issued last year. It is pointed out that the 1937 volume contains Acts passed in 1938 and the inclusion of these Acts delayed the commencement of the volume until after the last Act had been printed on March 28.

The Minister adds that the Government Printing Office is working to full capacity at present, but special steps are being taken to minimize delays in this class of work.

The President pointed out that the bound copies of the *Gazette* had now been received, and that no further action seemed necessary.

Appeals from Magistrates' Decisions.—Replies were received from ten Societies. These being unanimously against the proposal, the matter was accordingly dropped.

Multiplicity of Returns Due between April 1 and June 1.—The Wanganui Society wrote as follows :—

For some time past my Society has been considering the great inconvenience caused by the multiplicity of returns falling due between April 1 and June 1, more particularly for land-tax, income-tax, and unemployment-tax purposes.

I am now directed to forward to you the following resolution passed by my Council :—

> "That the New Zealand Law Society be asked to move in the direction of rearranging the present unsuitable and extremely inconvenient dates for sending in land-tax, income-tax, and unemployment-tax returns, and that it is suggested that more suitable dates would be as follows: Land-tax returns, May 1; unemployment and income-tax returns, July 1.

As to land-tax, it is sometimes quite impossible to get land-tax returns out by April 8—*e.g.*, it often happens that the whole period between March 31 and April 8 falls within the Easter vacation.

As to unemployment returns, the last day falls on the last day for car registration and drivers' licenses. This fact causes immense congestion, especially in the smaller towns. Dairy farmers' returns cannot be completed till after April 20 as the Department requires the inclusion of returns for milk supplied up to March 31. These figures are not available till April 20.

Income-tax : Two months are allowed for preparation of returns April and May. The position of dairy farmers' returns is the same as under the unemployment returns. In 1938, the Easter vacation extended till April 26. Out of the remaining thirty-six days, eleven were Saturdays and Sundays.

The matter was held over to enable the Wanganui Society to forward a list setting out the various returns referred to.

Obituary.

Mr. W. A. Stout, Invercargill.

Mr. William Anderson Stout, the senior partner in the firm of Messrs. Stout, Lillicrap, and Hewat, died suddenly on September 16, at the age of seventy-five years. He was born in Lerwick, Shetland Islands, and came to New Zealand in 1878 to join his half-brother, the late Sir Robert Stout. He studied law at the University of Otago and took the degrees of B.A. in 1884 and LL.B. in 1887.

He practised with the firm of Messrs. Sievwright and Stout, Dunedin; but, for health reasons, he gave up the practice of law for some years and took up farming at Redan, near Wyndham. In 1898 he resumed practice on his own account in Invercargill, being later joined by the late Mr. J. F. Lillicrap. This partnership continued until 1901 when they were joined in partnership by the late Mr. W. Y. H. Hall. For many years the firm was known as Hall, Stout, and Lillicrap. Mr. Hall died shortly after the War; and about eight years ago, Mr. B. W. Hewat was admitted as a partner. Mr. Lillicrap retired, and Mr. Robert Stout joined the firm, but, for health reasons, last year he went to Timaru to practise. Mr. Lillicrap died in November last.

The late Mr. Stout who held office in the Southland District Law Society for many years, and served as its President, was associated with the public library ever since he went to Invercargill, first as a member of the Athenaeum for a period. From 1917, when the Athenaeum was taken over by the City Council, Mr. Stout continued to serve as an associate member of the Library Committee up to the time of his death. He was for a time President of the Southland Acclimatization Society and was an active member of the Southland Automobile Association. He was a keen sportsman, being an enthusiastic fisherman, a golfer, and a bowler. He was a past President of the Queen's Park Golf Club and a member of the Waihopai Bowling Club.

Mr. Stout is survived by his widow and four sons and seven daughters.

Tributes from Bench and Bar.

Members of the Southland District Law Society and representatives of the Justices of the Peace Association, Southland Adjustment Commission, and of the Police Force, met at the Magistrates' Court on September 22 to honour Mr. Stout's memory.

Mr. M. M. Macdonald, President of the Law Society, referred to Mr. Stout's long association with the Bar. After a short interval in Dunedin, Mr. Macdonald said, Mr. Stout had practised in Invercargill for forty years and had come to be looked on as the senior member of the Bar. He was a man of wide reading and deep learning, and because of the sound knowledge of the law that he possessed his opinion was regularly sought. Mr. Macdonald referred to the universal respect in which Mr. Stout had been held and the keen interest he had taken in public matters.

"On behalf of the Law Society I wish to express to his widow and his sons and daughters the deep sympathy of all members," continued Mr. Macdonald. "His death is a matter of profound regret, but his memory, which we honour to-day, will remain fresh for many years."

Mr. H. J. Macalister said that, while every one felt deep regret for the occasion of the gathering, he was glad to have an opportunity of honouring the memory of Mr. Stout who was first and foremost a sound lawyer—a man who devoted practically the whole of his life to the law, which was his first and predominant interest. He had a marked capacity for work, and that industry together with a sound knowledge of legal principles made him an outstanding member of the profession and an opponent to be respected. He was held in the highest respect and esteem by all members of the legal profession, and, although he did not court publicity or attempt to win popularity, he was a man of kindly disposition. The profession had lost an outstanding member and Mr. Hewat, his partner, a valued colleague.

Tribute was also paid by Mr. J. L. McG. Watson, who mentioned the many years of friendly business association which he had enjoyed with Mr. Stout. In expressing sympathy with the relations and the extreme regret of the members of the profession at the loss of such an honourable member, Mr. Watson stated that the best tribute to pay to his memory was to follow his fine example.

The Chairman of the Southland Adjustment Commission, Mr. E. M. Russell, mentioned the great loss which the profession had suffered. On behalf of the members of the Commission he expressed deep regret at the death of Mr. Stout and extended sympathy to the members of his family and his partner.

The Magistrate, Mr. R. C. Abernethy, said there must always be a note of triumph in that a man of seventy-five had lived his life's full cycle and had performed his task. So often, he continued, lives were broken too early, but in Mr. Stout they had an example of a man who had lived a full life to the end and had done his duty to the profession and the public as adviser, counsellor, and servant of the law.

"His ideals," Mr. Abernethy said, "were of the highest and he performed his duty in such a way that it could be said that his life was one of service rather than of self-attainment. He was a toiler who worked to the end, and should serve as an example for those of us who are younger. I feel it a duty and a privilege to speak not only on behalf of those who had served on the Bench before him, but on behalf of the Higher Court, which, no doubt, would have felt it a privilege to be represented at the gathering."

Mr. E. J. Chrisp, Gisborne.

Mr. Edmund James Chrisp, who died in his sleep on the night of September 8–9, after a short illness, had been a resident of Gisborne for sixty years and had been a barrister for well over half a century, his admission to the Bar dating back from 1884. Born in Auckland in October, 1863, he was the eldest son of Captain Thomas Chrisp, and was inclined to take up a sea career as a youth. He was educated in England, and, in his teens he sailed before the mast in the *Lochnagar* to New Zealand. The law claimed him, and he became articled to Messrs. Rogan and Nolan, one of the earliest established legal firms, and he qualified with honours for admission to the Bar, when still well under the minimum age for admission. He entered into partnership with Mr. Hugo Finn for a time, and subsequently practised on his own account.

There followed several years as a partner in the firm of Chrisp and Coleman. He then established a family firm comprising his brother, Mr. Ernest Chrisp, and his two sons, Messrs. E. T. Chrisp and H. D. Chrisp.

Throughout his long life in the community he had won and retained the warmest esteem of all who came in contact with him. He had suffered only a short illness.

In 1896 Mr. Chrisp was appointed solicitor to the Gisborne Borough Council and the Gisborne Harbour Board, appointments which he held until his death.

During his early youth, he was a fine swimmer and won a number of trophies. Later he took up rowing and football in Gisborne, and achieved lasting prominence in both sports.

The late Mr. Chrisp is survived by his wife, his three sons (Captain Arthur Chrisp, now Harbourmaster at Lyttelton, and Messrs. E. T. and H. D. Chrisp, Gisborne), and five daughters, and Messrs. W. H. and Ernest Chrisp, Gisborne, his surviving brothers.

Tributes from Bench and Bar.

"I regret that I had not the opportunity of knowing the late Mr. E. J. Chrisp, but it is gratifying to hear that he was so highly esteemed by the Bar and by the business community in which he lived. I am glad to associate myself with the expression of sympathy for his family and his business colleagues," said Mr. E. L. Walton, S.M., concluding a brief ceremony in the Magistrates' Court on September 12, when all the members of the Gisborne Bar attended to pay tribute to the late Mr. E. J. Chrisp.

When the usual sitting of the Court was opened, the President of the Gisborne Law Society, Mr. A. T. Coleman, with the Magistrate's leave, said that the late Mr. Chrisp had not been so well known to some of the younger members of the profession as to those who now considered themselves its elders. He was the oldest practitioner in the district. Most of those now regarded as the seniors of their profession were mere boys at school when he began to practise, and he had practised continuously right up to the time of his death. He had a sound knowledge of the law, and an equally sound sense of business.

"The late Mr. Chrisp practised in this Court and also in the Supreme Court for many years, and was also solicitor to two leading local bodies, having a recognized mastery of the law affecting local government," the speaker continued. "During his lifetime he built up one of those businesses which are the best exemplars of the honour and tradition of the law in this Dominion."

The President went on to say that Mr. Chrisp was extremely kindly by nature, and was always willing to assist in a quiet and unostentatious way, where his experience and knowledge could be of help. The speaker had recollections of his keen satisfaction when, many years ago, Mr. Chrisp had undertaken to tutor a number of aspirants for their legal examinations and had seen most of them successful. He was a man who would be remembered not so much for what he had accomplished—though he had accomplished much—as for what he was; those who knew him best would remember him as a kindly and honourable gentleman who held the esteem of all.

On behalf of the Gisborne Law Society, Mr. Coleman tendered the deep sympathy of members of the Bar to Mrs. E. J. Chrisp and the members of her family.

The President was supported by Mr. H. E. Bright, who said that the late Mr. Chrisp, by his integrity, his legal knowledge, and his sound common sense, had built up his practice and had established a reputation of which any one might be proud. Those who had been his contemporaries in Court practice had known him as a doughty opponent, indefatigable in the interests of his clients, and always fair and honourable. Younger members of the profession had seen him in a quieter role, content to remain in the background. Even in his comparative obscurity, however, he had given evidence of the force of his character; and his sound legal knowledge and wise counsel must have been of inestimable value to his family colleagues in the firm of which he was the head.

"Mr. Chrisp had had many interests apart from his professional practice," said Mr. Bright, "and whether successful or unsuccessful in his enterprises, he had remained the same kindly, genial soul his colleagues had always known. He had considered himself rich in the loyalty of his family and the affection of his friends, and he would be remembered by the profession for his long and honourable career, by his clients for his sound and wise guidance, and by the public for his honourable career as a good citizen."

Mr. D. C. Chalmers, Auckland and Fiji.

A Friend's Tribute.

On September 28, there passed away at Auckland, one of Fiji's outstanding sons, the late Mr. Douglas Charles Chalmers, in his fifty-eight year. The following sketch, however inadequate, is intended—by a fellow-countryman and lifelong friend—as a tribute to the memory of one of Nature's gentlemen.

To give, first, the deceased's career in barest outline: He received his primary education at Levuka Public School; was five years in the Fiji Civil Service; studied and qualified in law at Auckland University College (LL.B., 1908: LL.M., 1912); practised in Fiji, 1909–10; Law Lecturer at Auckland University College, 1911–17; practised in New Zealand, 1917–30; was Mayor of Whakatane, Bay of Plenty; as the Labour Party's candidate, contested Tauranga seat in the Parliamentary Elections, 1928; returned to Fiji in 1930, and established the legal practice now known under the name of Messrs. Chalmers and Rice, of Lautoka, Nadi, and Ba.

Douglas Chalmer's career as a law student was a very brilliant one, culminating in his attainment of the degree of Master of Laws with the equivalent of First-class Honours. Until 1911, there was available at Auckland University College tuition only in a few subjects of the law course. Following the decision to establish in that year a proper Law School at the College providing tuition in all subjects, Douglas Chalmers was, out of several candidates with high qualifications, selected and appointed as the first head of the school. Working with great energy and enthusiasm he soon attracted to his lectures large classes in all subjects. His old pupils number hundreds. Their examination successes, taken on a fair basis, compared favourably with those of the pupils of the much older Law Schools at Otago University and Victoria University College. A very good teacher, Douglas Chalmers was never at a loss for an apt

illustration to clarify a principle, or for a humorous story—always picturesquely told—to brighten a dull topic.

Such were a few of his qualities as a law teacher. Of his qualities as a law practitioner the Bench and Bar of Fiji and his clients have doubtless formed just opinions. I feel sure that I am only echoing those opinions in a general way when I say that quick, cultured, eloquent, and brilliantly intelligent, he brought to the exacting work of his profession a striking combination of talents.

Douglas Chalmers had the great gift of friendship: his loyalty, once given, never failed. He was loyal to those with whom he worked, and loyal equally to those whom he served and to those who served him. He was ever generous of praise for the legitimate efforts of others—whether colleagues or opponents. His affectionate loyalty to his native country, naturally strong in boyhood, remained with him always: it was partly owing to it that he finally returned to Fiji in 1930, and lived there for the rest of his life.

Primarily equipped with the education which his parents provided, Douglas Chalmers made his own way, unaided by wealth or influential connections. His spirit of independence was very strong. Strong, also, was his sense of personal responsibility towards others. Throughout his life he habitually worked with unsparing industry. Although told by his medical advisers eighteen months ago that he should conserve his physical strength, his lifelong habit of working hard kept him in full harness. And in full harness he remained to the end.

A great fighter, he loved fair play. He abhorred all forms of injustice and tyranny. On at least one important occasion in his professional career he struck a blow against a form of tyranny peculiarly oppressive but, fortunately, very rare in a British country; and the blow was completely successful, and has become part of the history of the law of Fiji.

Of success in the worldly and merely materialistic sense Douglas Chalmers had a fair share, ample for his personal needs and responsibilities. But that share was not the measure of the man. He was a profound student, intent upon finding answers—to his own satisfaction, at least—to the questions "Whence?" "Why?" and "Whither?" concerning Man and his journey called "Life." Douglas Chalmers read history and philosophy widely and analytically. To spend a leisure evening with him was perhaps to accompany him into an analysis of the root causes of the fall of the Roman Empire; or perhaps to be taken along the high road of Human Thought back to Aristotle, Plato, and Socrates; and to Gautama Buddha and the Author of the Sermon on the Mount. Douglas derived the greatest enjoyment from his studies concerning the mind and the spirit of man. He revelled in abstract concepts. He reduced the outward actions of men and the events of history to patterns of Thought.

I recall his strong philosophical bent as I think of our last conversation: it was only three days before his death. As I think of that conversation, I am reminded of a story he told me many years ago (he carried in his capacious memory a vast collection of human stories—gem-like in beauty, vivid with the drama of the strivings of the human spirit). The story goes: On his last day on this earth the Emperor Marcus Aurelius—Stoic philosopher and Commander-in-chief of his own armies—lay dying in his tent on the field of war. Just before sunset the captain of the guard entered and asked the Imperial Commander for the password for the night. The Stoic philosopher replied: "Aequinimis" ("Serenity of mind").

Serenity of mind was Douglas's quest; and, I believe, is now his reward. The earthly places that saw him will not see him again as in earthly life. But to us who knew him and loved him well—his infinitely kind heart, his unselfishness, his steadfast faith in a wise and loving Dispensation in the Hereafter—the vivid flame of his spirit is not quenched, but burns brightly for evermore.

Ready for the Worst.—We have all heard or experienced something of what the Inns of Court did in the Great War, and I feel constrained to record that, in the greater war which has just been eluded, cancelled, or postponed, the Inns were second to none in what is now known to all as A.R.P. Preparations described as well advanced in the newspapers on September 28 were in effect almost complete on October 1, the date provisionally fixed for the commencement of hostilities. And those preparations, well and truly made, are available for any future emergency. Here is what was written of the Middle, the Inner, Lincoln's and Gray's on September 28, when preparations were well advanced.

Lincoln's and Gray's, if we may judge by the comparatively meagre account of the position on 28th, were more optimistic or more uncommunicative than the Temple; and of these the record was:

"Lincoln's Inn has a number of cellars which are expected to give ample accommodation for its 200 residents. Trenches will be dug if these are considered necessary. All the residents are being fitted with respirators, and emergency supplies of handbags and medical and surgical outfits have been laid in.

"The Benchers of Gray's Inn are meeting to-day to decide what further steps they shall take. Shelters are already being prepared, and men are available for service by day or night as air-raid wardens."

Of the Temples much more was recorded:

"Eight underground shelters giving accommodation for about 1,000 persons have been prepared at the Middle Temple, where every workman on the works department staff is engaged on putting the final touches to A.R.P. measures. Gas masks were distributed yesterday to every resident.

"In addition to shelters, a fully equipped first-aid room has been prepared. It contains seats, a bed, drinking utensils, anti-fire appliances, and emergency dressings. Fresh air is drawn into the chamber through a disused chimney shaft by means of an electrically driven fan, which, should the current fail, can also be operated by means of a bicycle.

"Cellars in fire-resisting buildings have already been converted into splinter-proof and gas-proof shelters. There are fire extinguishers on every staircase and fire escapes on every roof. Porters have been trained as air-raid wardens; resident barristers with a knowledge of the work have been asked to take charge. The Inn has its own firemen. The adapted cellars are at 3 and 4 Temple Gardens; 5 Essex Court; 4 Brick Court; 1 Garden Court; 3 and 4 Elm Court; and at Goldsmith Buildings.

"In the Inner Temple shelters have been prepared under Temple Gardens and Hare Court. These will be sufficient to accommodate the night population. Men have been trained as air-raid wardens and for decontamination work."

And from the Temple, last week-end, an A.R.P. balloon ascended successfully.

—APTERYX.

Practice Precedents.

Confirmation of Reduction of Share Capital of Limited Company.

(*Concluded from p. 316.*)

AFFIDAVIT IN SUPPORT OF PETITION.

(*Same heading.*)

E. F. of the City of company secretary make oath and say as follows :—

1. That I am the secretary of the Company Limited (hereinafter referred to as "the company") and have been secretary of the said company since its incorporation and as such I have knowledge of the matters hereinafter set forth by reason of the fact that the records of the said company are in my custody as such secretary or by personal knowledge thereof.

2. That the company was incorporated as a public company on the day of 19 under the Companies Act 1933 with a capital of £20,000 divided into 20,000 shares of £1 each. Certificate of incorporation is attached hereto marked "A." The registered office of the company is situate at No. : Street in the City of .

3. That the objects for which the company was incorporated are set forth in detail in the memorandum of association a copy whereof is hereto annexed and marked "B."

4. The capital of the company is wholly paid up.

5. That annexed hereto and marked "C" and "D" are copies of the articles of association and the memorandum of association respectively of the company including therein the alterations duly made from the date of the incorporation of the company down to the present date.

6. The company has carried on business continuously since its incorporation but the volume of the business of the company has greatly fallen off owing to the development and perfection of certain apparatus in the manufacture of .

7. That large sums of money for outstanding debts have been got in due in part to the improved conditions of the country.

8. Annexed hereto and marked "D" are copies of the company's balance-sheet as at March 31 1938 and its profit and loss account for the period March 31 1938 down to the present time.

9. The company is desirous of reducing its capital from £20,000 in 20,000 shares of £1 each to £10,000 in 20,000 shares of 10s. each by returning to each shareholder the sum of 10s. for every share held by him the £10,000 by which the capital would be so reduced being paid-up share capital which is in excess of the requirements of the company.

10. The shares in the company are at present held as follows :—

Name &c. of Shareholders.	Set out Number of Shares held by each Shareholder.

11. That as regards reduction of capital the company is regulated by clause of the regulations appearing in the articles of association of the company copy of which is attached hereto and marked "D." The company has thereby power pursuant to s. 67 of the Companies Act 1933 subject to confirmation by this honourable Court to reduce its share capital by special resolution.

12. That on the day of 19 an entry as under was made in the minute-book of the company—

"It is resolved &c."

13. That the said entry in the said minute-book has under s. 300 of the Companies Act 1933 the effect of a special resolution.

14. That a copy of the said entry in the said minute-book was duly forwarded to the Registrar of Companies on the day of 19 and recorded by the said Registrar in accordance with the provisions of s. 126 of the Companies Act 1933.

15. That the only creditors of the company are creditors for monthly accounts which accounts amount to the sum of £ . The accounts are paid monthly and regularly on the twentieth day of the month following that on which they are incurred and the debts included in the said sum of £ owing on the said day of 19 will be paid in accordance with the company's practice of payment on or about the twentieth day of the month following that in which they were incurred. The monthly accounts of the company do not usually exceed the sum of £ .

16. The company has no unliquidated claims for damages existing or pending against it and has no other contingent liabilities.

17. It is submitted that in the special circumstances hereinbefore described it would be proper for this Honourable Court to direct that subs. (2) of s. 68 shall not apply.

Sworn &c.

AFFIDAVIT VERIFYING PETITION.

I of the City of company secretary make oath and say as follows :—

1. That I am the secretary of the above-named petitioner company and as such have custody of its minute-book and other official records and am aware of the matters set forth in the foregoing petition.

2. That such of the allegations contained in the foregoing petition as related to my own acts and deeds or to the acts and deeds of the petitioner company are true and such of the same as relate to the acts and deeds of others I believe to be true.

Sworn &c.

MOTION FOR DIRECTIONS.

(*Same heading.*)

Mr. of Counsel for the petitioning company to move in Chambers before the Right Honourable Sir Chief Justice of New Zealand at the Supreme Court House on day the day of 19 at 10 o'clock in the forenoon or so soon thereafter as Counsel can be heard FOR AN ORDER giving directions with reference to the proceedings to be taken in the petition filed herein for confirmation of reduction of capital presented by the petitioning company and directing that in the special circumstances of the case the provisions of subs. (2) of s. 68 of the Companies Act 1933 shall not apply to the petition filed herein as regards any of the creditors of the company UPON THE GROUNDS that the creditors of the company are creditors for monthly account which are regularly paid and the total amount due to them is considerably less than the amount of cash which will be available to the said company after reduction of its capital in the manner referred to in the said petition.

Dated at Wellington this day of 19 .

Certified pursuant to the rules of Court to be correct.

Solicitor for the said company.

His Honour is respectfully referred to—

1. Rule 11 of the Supreme Court (Companies) Rules, 1934 (*1934 New Zealand Gazette*, 3700).

2. *In re Meux's Brewery Co., Ltd.*, [1919] 1 Ch. 28.

3. *In re A Petrol-station Co., Ltd.*, [1938] N.Z.L.R. 196.

4. *Re Unifruits Steamship Co., Ltd.*, [1930] S.C. (Ct. of Sess.) 1104.

5. *Re Cadzow Coal Co., Ltd.*, [1931] S.C. (Ct. of Sess.) 272.

6. *In re A. Lesser and Co. Ppty, Ltd.*, [1929] V.L.R. 316.

And see *Buckley on the Companies Acts*, 11th Ed. 126, 809; *Palmer's Company Precedents*, 14th Ed. 1078–79; and *5 Halsbury's Laws of England*, 2nd Ed. 178, para. 318.

MEMORANDUM.—As appears from the petition and affidavit the company has capital in excess of requirements. There are no creditors other than monthly creditors. It is respectfully suggested no useful purpose would be achieved by applying s. 68 (2) of the Companies Act 1933 but that an order be made under subs. (3) of that section.

Counsel for petitioning company.

MOTION IN SUPPORT OF PETITION FOR CONFIRMATION OF REDUCTION OF CAPITAL.

(*Same heading.*)

Mr. of Counsel for the petitioning company TO MOVE in Chambers at the Supreme Court House before the Right Honourable Sir Chief Justice of New Zealand 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 FOR AN ORDER for confirmation of reduction of capital in terms of the prayer of the petition filed herein and approving the minute showing the amount of capital after the said reduction and for such order in the premises as to this Honourable Court shall seem meet UPON THE GROUNDS that the capital of the company is in excess of the requirements of the company and such confirmation is desirable and that the steps for the said reduction of capital have been duly taken by the company and that the interest of the creditors of the company are adequately protected AND UPON THE FURTHER GROUNDS appearing in the petition and affidavit of filed herein.

Dated at this day of 19 .

Solicitor for petitioning company.

Certified pursuant to the rules of Court to be correct.

Counsel moving.

MEMORANDUM FOR HIS HONOUR.—The petition is present under ss. 67 to 72 of the Companies Act 1933.

It is respectfully suggested that in respect of s. 69 (2) (*a*) and (*b*) there are no circumstances requiring the use of the words "and reduced." It is respectfully suggested that notice of registration of the order and minute be published once in the *New Zealand Gazette*.

Counsel moving.

ORDER GIVING DIRECTIONS.

(*Same heading.*)

day the day of 19 .

Before the Honourable Mr. Justice .

UPON READING the petition of the above-named company for confirmation of reduction of its capital and the affidavit of filed in support thereof and the motion filed herein for directions in support of the said petition AND UPON HEARING Mr. of Counsel for the said company (*or*, upon the application of [*as the case may be*]) IT IS ORDERED that having regard to the special circumstances disclosed in the said petition and in the said affidavit the provisions of subs. (2) of s. 68 of the Companies Act 1933 shall not apply as regards the creditors of the said company.

By the Court.

Registrar.

ORDER CONFIRMING REDUCTION.

(*Same heading.*)

day the day of 19 .

Before the Honourable Mr. Justice .

UPON READING the petition filed herein and the motion in terms of the prayer of the said petition and the affidavit of filed in support thereof and the order this day made by this Court directing that having regard to the special circumstances disclosed in the said petition and affidavit the provisions of subs. (2) of s. 68 of the Companies Act 1933 shall not apply as regards the creditors of the said company AND UPON HEARING Mr. of counsel for the petitioning company this Court doth hereby confirm the reduction of capital resolved in and effected by the special resolution passed at the meeting of the said company held on the day of 19 which resolution is in the words and figures following that is to say:—

[*Set out resolution.*]

"The capital of A. B. and Co. Ltd. henceforth is £ divided into &c."

AND THIS COURT DOTH ORDER that notice of the registration of this order and of the said minute be published once in the *New Zealand Gazette* not later than the day of 19 in a form to be approved by the Registrar.

By the Court.

Registrar.

ADVERTISEMENT.

IN THE MATTER of the Companies Act 1933

AND

IN THE MATTER of A. B. and Co. Ltd.

NOTICE IS HEREBY GIVEN that an order of the Supreme Court of New Zealand dated the day of 19 confirming the reduction of the capital of the above-named company from £ to £ and the minute approved by the Court showing with respect to the capital of the company as altered the several particulars required by the above-mentioned Act was registered by the Registrar of Companies on the day of 19 . The said minute is in the words and figures following:—

"The capital of the company henceforth is pounds (£) divided into shares of [*shillings*] each instead of the former capital of pounds divided into shares of one pound (£1) each &c."

Dated the day of 19 .

X. Y.

Solicitor for the company.

Rules and Regulations.

Secondary Schools Regulations, 1924. Amendment No. 15. October 19, 1938. No. 1938/136.

Stock Act, 1908. Stock (Conveyance of Sheep) Regulations, 1938. October 19, 1938. No. 1938/137.

Combined Schools Regulations, 1938. October 19, 1938. No. 1938/138.

Dairy-produce Export Prices Order, 1938. October 19, 1938. No. 1938/139.

Manual and Technical Instruction Regulations, 1925. Amendment No. 16. October 19, 1938. No. 1938/140.

Air Force Act, 1937. Royal New Zealand Air Force Regulations. September 1, 1938. No. 1938/141.

Health Act, 1920. Drainage and Plumbing Regulations Extension Order, 1938, No. 4. October 25, 1938. No. 1938/142.

Health Act, 1920. Camping-ground Regulations, Extension Order 1938, No. 2. October 25, 1938. No. 1938/143.

New Books and Publications.

Stevens' Mercantile Law. 10th Edition. 1938. By Herbert Jacobs, B.A., of the Inner Temple, Barrister-at-Law. (Butterworth and Co. (Pub.) Ltd.) Price 15/-.

Crew's Company Law for Commercial Students and Business Men. By Albert Crew, of Gray's Inn and Middle Temple, Barrister-at-Law, and W. G. H. Cook, LL.B. (Lond.). (4th Revised Edn.) 1938. (Butterworth and Co. (Pub.) Ltd.) Price 10/6.

Macmillan's Local Government, Vol. 10. 1937. (Butterworth and Co. (Pub.) Ltd.) Price 83/-.

Halsbury's Laws of England Supplement 28. 1938. Old Style and Hailsham Edition.

Phillips's Practice of the Divorce Division. By E. A. Phillips, LL.B. 2nd Edn. 1938. (Solicitors Law Stationers Society). Price 50/-.

Evidence Act, 1938. By Roland Burrows, K.C. (Sweet and Maxwell). Price 5/-.

Newport and Staples on Income Tax. 11th Edn. (Sweet and Maxwell). Price 15/-.

Jordan's How to Form a Company. By H. W. Jordan. 21st Edn. (Jordan and Co., Pub.) Price 3/6.

Income Tax and N.D.C. under the Finance Act, 1938. (Solicitors Law Stationers Society). Price 21/-.

A.B.C. Guide to Practice, 1939. (Sweet and Maxwell). Price 10/6.

Some Makers of English Law. By Sir William Holdsworth. A Tagore Lecture, 1937/8. (Cambridge University Press). Price 21/-.