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Incorporating "Butterworth's Fortnightly Notes."

"The thing that has impressed me more than anything else is that when you are in the domain of the Common Law of England, you are in a domain where there is a universality that you find nowhere else in the world."

—PROFESSOR ROSCOE POUND, former Dean of the Harvard School of Law, in an address at Wellington.

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Modification of the Doctrine of Contributory Negligence.

I.

THE English Law Revision Committee* has now made a report in pursuance of the following reference made to it on May 3, 1937: "Whether, and if so, in what respect the doctrine of contributory negligence requires modification, and in particular to consider the following enactments bearing upon that doctrine:—

"(*a*) In so far as the provisions of the Convention for the unification of certain rules of law respecting collisions, signed at Brussels on September 23, 1910 may permit, the rule applicable to collisions at sea in s. 1 of the Maritime Conventions Act, 1911.

"(*b*) The Rule contained in s. 6 of the Law Reform (Married Women and Tortfeasors) Act, 1935 (s. 17 of our Law Reform Act, 1936), regarding contribution between joint tortfeasors."

Section 1 of the Maritime Conventions Act, 1911 (which is re-enacted in New Zealand as s. 2 of the Shipping and Seamen Amendment Act, 1912), is as follows:—

"1. (1) Where, by the fault of two or more vessels, damage or loss is caused to one or more of those vessels, to their cargoes or freight, or to any property on board, the liability to make good the damage or loss shall be in proportion to the degree in which each vessel was in fault:

"Provided that—

"(*a*) if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability shall be apportioned equally; and

"(*b*) nothing in this section shall operate so as to render any vessel liable for any loss or damage to which her fault has not contributed; and

"(*c*) nothing in this section shall affect the liability of a person under a contract of carriage or any contract, or shall be construed as imposing any liability upon any person from which he is exempted by any contract or by any provision of law, or as affecting the right of any person to limit his liability in the manner provided by law."

Section 2 (s. 3 of the corresponding New Zealand statute) is as follows:—

"2. Where loss of life or personal injuries are suffered by any person on board a vessel owing to the fault of that vessel and of any other vessel or vessels, the liability of the owners of the vessels shall be joint and several:

"Provided that nothing in this section shall be construed as depriving any person of any right of defence on which, independently of this section, he might have relied in an action brought against him by the person injured, or any person or persons entitled to sue in respect of such loss of life, or shall affect the right of any person to limit his liability in cases to which this section relates in the manner provided by law."

Save in so far as it varies the proportion in which damages may be divided, the Act does not alter the old Admiralty rule under which, if a collision resulted from the negligence of two parties, the damage done to each was added together and was shared between them equally.

In this the Admiralty rule differed from the old common-law rule under which if the fault of each party contributed to an accident neither party could recover from the other (however little the one and however greatly the other was to blame) for the damage which was done, provided always that there was negligence on the part of both which to some appreciable extent could be said to be a cause of that damage.

The common-law rule has often been criticized; perhaps the best known example is contained in the judgment of Lindley, L.J., in *The Bernina*, (1887) 12 P.D. 58, 89, where he says, "But why in such a case the damages should not be apportioned, I do not profess to understand."

In the course of its Report, the Law Revision Committee comments, as follows:

"Whatever its shortcomings, the common-law rule has long been established and its origins are to be found in the historical developments of the English law. Until comparatively recent times the question which arose when a plaintiff sued a defendant was not 'Has the defendant broken any duty which he owed to the plaintiff?' but 'Has the plaintiff any form of action against the defendant; and, if so, what form?' Most forms of action in tort began in trespass and developed through trespass on the case and an action on the case. To such a writ the proper plea in defence was 'not guilty.' Under such a plea the defendant must be found guilty or not guilty; it was not possible for him to be partly guilty and partly not guilty, and therefore there was no method by which liability could be divided between plaintiff and defendant. It was all or nothing—the plaintiff must wholly succeed or wholly fail."

A somewhat similar rule—*viz.*, that no contribution should be allowed between tortfeasors—existed in England up to the year 1935, and in New Zealand until 1936, although it had for some time been felt to be unfair that it should be possible for one wrongdoer out of two or more to be required to answer for the damage for which the others were also responsible without any right of recovery against his fellow-wrongdoers. The Law Reform (Married Women and Tortfeasors) Act, 1935, while leaving a plaintiff free to bring his action against one or all of the wrongdoers, remedied this injustice by providing in s. 6 (1) (*c*) and (2) that:

"6 (1) Where damage is suffered by any person as a result of a tort (whether a crime or not)—

* Lord Wright (*Chairman*), Lord Romer, Lord Porter, Lord Justice Goddard, Mr. Justice Asquith, Professor A. L. Goodhart, D.C.L., LL.D., Professor H. C. Gutteridge, K.C., Messrs. H. C. Haldane, O.B.E., A. D. McNair, C.B.E., LL.D., and W. E. Mortimer, Sir Claud Schuster, G.C.B., C.V.O., K.C., Judge Topham, K.C., Messrs. W. T. S. Stallybrass, O.B.E., D.C.L., and H. U. Willink, K.C., and Professor P. H. Winfield, LL.D.

"(c) Any tortfeasor liable in respect of that damage may recover contribution from any other tortfeasor who is, or would if sued have been, liable in respect of the same damage, whether as a joint tortfeasor or otherwise, so, however, that no person shall be entitled to recover contribution under this section from any person entitled to be indemnified by him in respect of the liability in respect of which the contribution is sought.

"(2) In any proceedings for contribution under this section the amount of the contribution recoverable from any person shall be such as may be found by the Court to be just and equitable having regard to the extent of that person's responsibility for the damage; and the Court shall have power to exempt any person from liability to make contribution, or to direct that the contribution to be recovered from any person shall amount to a complete indemnity."

(This is re-enacted as s. 17 (1) (c) and (2) of the Law Reform Act, 1936.)

From the mention of these two Acts in the reference to the Committee it is clear that it was asked to consider whether it would not be advisable that the plaintiff and defendant, if both are responsible for causing the damage, should, as in Admiralty practice, share the liability in proportion as they are at fault rather than that in accordance with the common-law rule neither should be able to recover against the other. The Committee was also asked to consider how far, if at all the Admiralty rule should, or consistently with the Brussels Convention of 1910, could be modified.

The Committee, in its Report, said that the members were of opinion that the Admiralty rule is the fairer and should be adopted in common-law cases, but the matter is not without its complications and its development is worth some consideration.

In dealing with the question referred to the Committee, it was found desirable in the first place to define the exact sense in which contributory negligence is used. The Report proceeds:

"Negligence may be said to consist in a failure to exercise due care in a case in which a duty to take care exists.

"In criminal law a person may expose himself to a prosecution for failure to exercise due care—*e.g.*, for driving a motor-car negligently or carelessly though no accident was caused by his negligence. But in civil proceedings, in order to give rise to liability, in addition to the negligence there must have been some injury to the plaintiff, and that injury must have been caused by the defendant's negligence. However negligent a defendant may have been, no liability exists if that negligence was not the cause of the accident—*e.g.*, a motorist driving at a negligently fast pace may be involved in an accident owing to the carelessness of a foot passenger who steps off the pavement immediately in front of him. If in the circumstances a motorist driving carefully and at a reasonable speed would still have been involved in the same accident, the excessive speed cannot be said to have caused the accident, and the motorist, though negligent, would not be liable. In a civil action causation as well as injury is a necessary element in liability, though negligence may exist apart from liability.

"Just as the expression 'negligence' may be used of a failure to use due care even where it gives no cause of action against a defendant, so the words 'contributory negligence' are sometimes used even in cases where its existence affords no defence to a defendant when sued by a plaintiff. If the phrase used had been 'negligence in the plaintiff,' no difficulty would arise, but the use of the word 'contributory' would seem to indicate that the negligence contributed to something. The use of the word 'contributory' ought to mean that the negligence is part of the cause of the accident.

"In fact, however, the phrase 'contributory negligence' has not been confined to such cases. In *Spaight v. Tedcastle*, (1881) 6 App. Cas. 217, 219, Lord Selborne, L.C., uses the words in the more exact sense. 'Such an omission,' he says, 'ought not to be regarded as contributory negligence if it might in the circumstances which actually happened have been unattended with danger but for the defendant's fault and if it had no proper connection as a cause with the damage which followed as its effect.'

"Whereas in *Radley v. London and North Western Railway Co.*, (1876) 1 App. Cas. 754, 759, Lord Penzance uses them in the looser sense. His words are: 'Though the plaintiff may have been guilty of negligence and although that negligence may, in fact, have contributed to the accident, yet if the defendant could in the result, by the exercise of ordinary care and diligence, have avoided the mischief which happened, the plaintiff's negligence will not excuse him'."

Where an accident has happened and a plaintiff has been negligent, that negligence may exhibit itself at different times and in different ways. (1) The plaintiff may have been negligent prior to the accident, but his negligence may have ceased to exist and may have played no part in causing the accident. (2) The plaintiff's negligence may have continued up to the moment of the accident and but for that negligence the accident might not have happened, but the defendant though having a reasonable opportunity of avoiding the result of that negligence may have failed to avail himself of that opportunity. (3) Both the plaintiff's and the defendant's negligence may have continued to operate throughout and both may have been causes of the accident.

Liability for negligence and contributory negligence depending as it does upon questions of causation gives rise to the type of difficulty which is always to be found where questions of causation have to be considered. It is a commonplace to say that the law has found it necessary to confine itself to those causes which at different times have been described as direct, proximate, the *causa causans*, efficient, effective, real decisive, or immediate. It was at one time thought that cause might be considered in relation to time, and that what was nearest in point of time was the operating cause, but that theory if it ever existed in an unqualified form can no longer be said to be current legal doctrine: *Samuel and Co., Ltd. v. Dumas*, [1924] A.C. 431, and *Admiralty Commissioners v. S.S. "Volute"*, [1922] 1 A.C. 129.

The Committee came to the conclusion that it is not, therefore, possible to define what will be regarded as the cause of an accident; it is rather left to the individual decision of the tribunal to determine what, in their view, was in a real sense the cause. Some antecedent events, such as negligence which brought the defendant to a particular place at a particular time have been ruled out as being collateral and not, to use a neutral phrase, an operative cause, but there is a large number of actions in which it must be left to the common sense of the tribunal trying the case to say whether those events were the cause of the accident or not.

So far as the Committee is aware the expression "contributory negligence" has never been used of negligence of the plaintiff which had come to an end before the accident occurred. It has, however, been used both of his negligence which led up to and existed at the time of the accident but was not held to be a cause of it, and also of his negligence which has been held to be part of its cause.

For practical purposes the history of contributory negligence may be said to have begun with two cases decided early in the nineteenth century. In the first, *Butterfield v. Forrester*, (1809) 11 East 60, 103 E.R. 926, the plaintiff was held disentitled to recover because though the defendant had been negligent in placing an obstruction in the street down which the plaintiff was riding, yet the plaintiff himself, had he taken reasonable care, could have avoided the obstruction, and it was

his negligence and not that of the defendant which was held to be the cause of the accident.

On the other hand, in *Davies v. Mann*, (1842) 10 M. & W. 546, 152 E.R. 588, the plaintiff, though guilty of negligence in hobbling a donkey and turning it loose on the highway, was held entitled to recover when it was injured as a result of the defendant driving his horses without due care.

It is not clear from the report in the former case, the Committee says, whether the plaintiff did or did not see the obstruction though he ought to have seen it, or in the latter case whether the defendant did or did not see the donkey; but in each case the question which the Court put to itself was in the one case "could the plaintiff" and in the other case "could the defendant by the use of ordinary care have avoided the consequence of the other party's negligence?" and the difference in result was due to the different answers given to this question.

In *Butterfield v. Forrester* it does not appear with certainty whether the Court held the plaintiff alone to blame, or whether it held that he could not recover because he was partly to blame.

> "'The plaintiff,' said Bayley, J. (at p. 61), 'was proved to be riding as fast as his horse could go, and this was through the streets of Derby. If he had used ordinary care he must have seen the obstruction; so that the accident appeared to happen entirely from his own fault.'
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> "'A party,' said Lord Ellenborough, C.J. (*ibid.*), 'is not to cast himself upon an obstruction which has been made by the fault of another, and avail himself of it, if he do not himself use common and ordinary caution to be in the right. In cases of persons riding upon what is considered to be the wrong side of the road, that would not authorize another purposely to ride up against them. One person being in fault will not dispense with another's using ordinary care for himself. Two things must concur to support this action, an obstruction in the road by the fault of the defendant, and no want of ordinary care to avoid it on the part of the plaintiff'."

In *Davies v. Mann*, the plaintiff succeeded in spite of his own negligence, not because his negligence had ceased to exist at the time of the accident, but because it was not even in part a cause of the mischief. The plaintiff's negligence "was no answer to the action, unless the donkey's being there was the immediate cause of the injury": Parke, B., at p. 549.

In neither case was the phrase "contributory negligence" used.

In two of the early cases in which the word "contributory" or some variant of it is used, the more precise meaning is adopted, but not without some indication that the looser use is recognized. Both were shipping cases and both, curiously enough, were tried at common law. In the first, *Dowell v. General Steam Navigation Co.*, (1855) 5 E. & B. 195, 206, 119 E.R. 454, 458, Lord Campbell, C.J.:—

> "If it [the plaintiff's fault] was a proximate cause of the collision, however much the steamer [owned by the defendants] might be in fault, this action cannot be maintained. According to the rule which prevails in the Court of Admiralty in a case of collision, if both vessels are in fault the loss is equally divided: but in a Court of common law the plaintiff has no remedy if his negligence *in any degree contributed* [the italics are ours] to the accident. In some cases there may have been negligence on the part of a plaintiff remotely connected with the accident; and in these cases the question arises, whether the defendant by the exercise of ordinary care and skill might have avoided the accident, notwithstanding the negligence of the plaintiff as in the often quoted donkey case: *Davies v. Mann* (10 M. & W. 546). There, although without the negligence of the plaintiff the accident could not have happened, the negligence is not supposed to have contributed to the accident within the rule upon this subject: and, if the accident might have been avoided by the exercise of ordinary care and skill on the part of the defendant, to his gross negligence it is entirely ascribed, he and he only proximately causing the loss. But in the present case the jury appear to have concluded (as they well might have done upon the evidence) that the negligence of the master of the collier, in not properly complying with the Admiralty regulation, directly contributed to the accident, although there was negligence on the other side, and 'the preponderance of blame' was 'with the steamer'."

It will be observed, the Committee notes, that Lord Campbell, C.J., seems to have felt the difficulty of causation and consequently used the words "is not supposed to have contributed" and "directly contributed," recognizing apparently that the words "contributory negligence" may be used of an act which is not in law a cause.

In the second case, *Tuff v. Warman*, (1858) 5 C.B. (N.S.) 573, 585, 141 E.R. 231, 236, Wightman, J., delivering the judgment of the Exchequer Chamber said:—

> "It appears to us that the proper question for the jury in this case, and indeed in all others of the like kind, is, whether the damage was occasioned entirely by the negligence or improper conduct of the defendant, or whether the plaintiff himself so far contributed to the misfortune by his own negligence or want of ordinary and common care and caution, that, but for such negligence or want of ordinary care and caution on his part, the misfortune would not have happened. Mere negligence or want of ordinary care or caution would not, however, disentitle him to recover, unless it were such, that, but for that negligence or want of ordinary care and caution, the misfortune could not have happened; nor, if the defendant might by the exercise of care on his part have avoided the consequences of the neglect or carelessness of the plaintiff."

The Committee says that it appears that at the trial, Willes, J., like Lord Campbell, C.J., used the expression "directly contribute" (at p. 575), and it was argued that whether the plaintiff directly or indirectly contributed was immaterial if he contributed to the collision by his negligence or at all. Wightman, J., however, pointed out that for the defendant to succeed it must be shown that the plaintiff's negligence was a direct cause of the injury in the sense that without it the accident would not have happened.

If the accident was in a legal sense caused by both parties, the consequences differed according as the case was tried at common law or in Admiralty—in the former the plaintiff could not recover, in the latter the liability was shared—but, in determining whether the accident was so caused, the same principle was followed in each Court.

The four cases quoted above were all tried at common law, but the same principle was laid down as applicable in Admiralty by Lord Selborne, L.C., in *Spaight v. Tedcastle* (*supra*), at p. 219:

> "Great injustice might be done, if, in applying the doctrine of contributory negligence to a case of this sort, the maxim *causa proxima, non remota, spectatur* were lost sight of. When the direct and immediate cause of damage is clearly proved to be the fault of the defendant, contributory negligence by the plaintiffs cannot be established merely by showing that if those in charge of the ship had in some earlier state of navigation taken a course, or exercised a control over the course taken by the tug, which they did not actually take or exercise, a different situation would have resulted . . ."

And in *Cayzer, Irvine, and Co. v. Carron Co.*, (1884) 9 App. Cas. 873, 882, Lord Blackburn pointed out that there is no difference between the Rules of

Admiralty and the Rules of common law as to what amounts to a fault occasioning the accident. He continues :—

> " The nature of the thing of course requires that in applying those rules you should look to what the nature of the accident is and to what the neglect is. If it is two ships, they are to be governed by the same rules of law and evidence as if it was two carts in the street ; but when you come to apply that you must remember that a ship is a thing which cannot be stopped in an instant like a cart, and cannot be moved from one side to the other like a cart ; and when you have to look out for miles instead of looking out for yards, the application of the rules becomes very different."

The Committee remarks that the distinction is in the application and not in the principle. The rule itself is set out in tabular form by Lindley, L.J., in *The Bernina*, (1887) 12 P.D. 58, 89 (which was affirmed in the House of Lords (1888) 13 App. Cas. 1), where he says :

> " 1. A. without fault of his own is injured by the negligence of B., then B. is liable to A. 2. A. by his own fault is injured by B. without fault on his part, then B. is not liable to A. 3. A. is injured by B. by the fault more or less of both combined, then the following further distinctions have to be made : (*a*) If, notwithstanding B.'s negligence, A. with reasonable care could have avoided the injury, he cannot sue B. : *Butterfield v. Forrester* ; *Bridge v. Grand Junction Railway Co.* ; *Dowell v. General Steam Navigation Co.* ; (*b*) if, notwithstanding A.'s negligence, B. with reasonable care could have avoided injuring A., A. can sue B. : *Tuff v. Warman* ; *Radley v. London and North Western Railway Co.* ; *Davies v. Mann* ; (*c*) if there has been as much want of reasonable care on A.'s part as on B.'s, or, in other words, if the proximate cause of the injury is the want of reasonable care on both sides, A. cannot sue B. In such a case A. cannot with truth say that he has been injured by B.'s negligence, he can only with truth say that he has been injured by his own carelessness and B.'s negligence, and the two combined give no cause of action at common law. This follows from the two sets of decisions already referred to."

The principle has been exemplified and developed under the common law in a series of cases of which *British Columbia Electric Railway v. Loach*, [1916] 1 A.C. 719 ; *Swadling v. Cooper*, [1931] A.C. 1 ; and *McLean v. Bell*, (1932) 147 L.T. 262, [1932] S.C. (H.L.) 21, may be taken as examples.

In the first case, the appellants were held liable for their negligence in failing to keep the brakes of their train in proper order and therefore being unable to stop in time to avoid an accident, although the necessity for doing so was due to the subsequent negligence of the respondent. In spite of the respondent's negligence the appellants were held solely in fault because had it not been for their previous failure to provide efficient brakes they could have avoided the accident. They had thereby prevented themselves from avoiding the result of the respondent's negligence.

In the second case it was pointed out that the principle must not be applied too narrowly. The defendant must have had a reasonable opportunity of avoiding the plaintiff's negligence if he is to be held to have caused the accident.

In the last case, the defendant was held liable because he could, or ought to have, avoided the consequence of the plaintiff's negligence.

In all these cases the principle is acknowledged, though its application differed in accordance with the facts established in each case. To ask whose fault was it or who was to blame, or even who had the last opportunity of avoiding the accident throws no further light on the matter. The question must ultimately be : Who caused the accident—the defendant, the plaintiff or both ?

The later cases in the Admiralty Division have also followed the same principle.

In *The Monte Rosa*, [1893] P. 23, 30, Gorell Barnes, J., held the defendant tug alone to blame because it could in the end have avoided a collision, though the ship with which it collided was herself negligent in carrying her anchor at the hawse-pipe.

In *Admiralty Commissioners v. S.S. " Volute,"* [1922] 1 A.C. 129, 136, Lord Birkenhead, L.C., said :

> " In all cases of damage by collision on land or sea, there are three ways in which the question of contributory negligence may arise. A. is suing for damage thereby received. He was negligent, but his negligence had brought about a state of things in which there would have been no damage if B. had not been subsequently and severably negligent. A. recovers in full ; see among other cases *Spaight v. Tedcastle*, and *The Margaret*.
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> " At the other end of the chain, A.'s negligence makes collision so threatening that though by the appropriate measure B. could avoid it, B. has not really time to think and by mistake takes the wrong measure. B. is not held to be guilty of any negligence and A. wholly fails : *The Bywell Castle* ((1879) 4 P.D. 219) ; *Stoomvaart Maatschappy Nederland v. Peninsular and Oriental Steam Navigation Co.* ((1880) 5 App. Cas. 876).
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> " In between these two termini come the cases where the negligence is deemed contributory, and the plaintiff in common law recovers nothing, while in Admiralty damages are divided in some proportion or other."

In *Anglo-Newfoundland Development Co., Ltd. v. Pacific Steam Navigation Co.*, [1924] A.C. 406, 419, 420, Lord Shaw reaffirmed the same principle. He said :

> " The principle does not apply to shipping law alone, but to all the law of contributory negligence, from *Davies v. Mann* downwards. And I take the principle to be that, although there might be—which for the purpose of this point I am reckoning that there was—fault in being in a position which makes an accident possible yet, if the position is recognized by the other prior to operations which result in an accident occurring, then the author of that accident is the party who, recognizing the position of the other, fails negligently to avoid an accident which with reasonable conduct on his part could have been avoided. Unless that principle be applied, it would be always open to a person negligently and recklessly approaching, and failing to avoid a known danger, to plead that the reckless encountering of danger was contributed to by the fact that there was a danger to be encountered. There is a period of time during which the causal function of the act or approach operates and it is not legitimate to extend that cause backwards to an anterior situation. The anterior situation may be brought about either innocently or by some mistake ; but if it has nothing to do with the subsequent operations which contributed to produce the accident or collision, it is not legitimate to treat it as a contributory in liability for the result thus produced."

Finally, in *The Eurymedon*, [1938] P. 41, the Court of Appeal while recognizing that the subsequent negligence of one vessel might be the sole cause of a collision though there had been antecedent and continuing negligence on the part of another, yet held that in the circumstances both parties were to blame. In that case the S.S. *Corstar* was anchored at night in the river Thames nearly athwart the channel and in such a position that she was obstructing a large part of the fairway. She was exhibiting effective lights which might have been seen by the S.S. *Eurymedon*. In that sense the latter vessel had the last opportunity of avoiding a collision, but those on board her were partially deceived as to the risk involved owing to the unexpected position of the former vessel in the river and therefore both vessels were held to blame. Greer, L.J. (at pp. 49, 50), formulated the law arising out of what he calls the *Davies v. Mann* principle, as follows :—

> " (i) If, as I think was the case in *Davies v. Mann*, one of the parties in a common-law action actually knows from

observation the negligence of the other party, he is solely responsible if he fails to exercise reasonable care towards the negligent plaintiff.

"(ii) Rule No. (i) also applies where one party is not in fact aware of the other party's negligence if he could by reasonable care have become aware of it, and could by exercising reasonable care have avoided causing damage to the other negligent party.

"(iii) The above rules apply in Admiralty with regard to collisions between two ships as they apply where the question arises in a common-law action.

"(iv) But if the negligence of both parties to the litigation continues right up to the moment of collision, whether on land or on sea, each party is to blame for the collision and for the damage which is the result of the continued negligence of both.

"(v) If the negligent act of one party is such as to cause the other party to make a negligent mistake that he would not otherwise have made, then both are equally to blame."

The cases so cited by the Committee, in its opinion, support the statement of the law contained in the first three of these headings. The first states the effect of *Davies v. Mann*. The defendant is liable not because the plaintiff's negligence has ceased but because it is not the cause of the accident. The second follows the reasoning of Bayley, J., in *Butterfield v. Forrester*. The third is supported by the Admiralty cases quoted above. The fourth rule appears, to the Committee, to be somewhat too widely stated:

"It overlooks the fact that in all the cases quoted, the negligence of the other party continued up to the moment when the accident occurred, though at that moment he was not guilty of any fresh act of negligence. The negligent act had taken place some time before. If for the words 'which is the result' were substituted the words 'provided it is the result,' the statement would, we think, be more accurate. Rule 4 would then read: 'But if the negligence of both parties to the litigation continues right up to the moment of the collision, whether on land or on sea, each party is to blame for the collision and for the damage provided it is the result of the continued negligence of both'."

The fifth heading is an example of the working of the principle in the facts of the case then under consideration and contains no general doctrine.

In our next issue, we shall show how the Committee came to its recommendation, after a consideration of the Admiralty decisions, and of Colonial and Continental law, that in cases where damage has been caused by the fault of two or more persons, the tribunal trying the case (whether the tribunal be Judge or jury) should apportion the liability in the degree in which each party is found to be at fault.

The Students' Supplement.

IN this issue we are again glad to offer hospitality to the work of our Law Students. Last year, in their first appearance, the apprentices of the Law created a most favourable impression that extended far beyond the confines of the Dominion. This year, we think our readers will agree, they have exceeded, in learning, in interest, and in variety, the merits of their first offering. It augurs well for the future of the profession in New Zealand that the traditions in which our practitioners take pride are in the hands of such competent and careful students as those who have contributed to this year's Supplement. We thank them for their ready co-operation, and congratulate them on their achievement.

Summary of Recent Judgments.

COURT OF APPEAL.
Wellington.
1939.
June 28; July 14.
Myers, C.J.
Blair, J.
Johnston, J.
Northcroft, J.

THE KING v. TAIT.

Criminal Law—Motor-vehicles—Accident arising from Use of Motor-vehicle resulting in Death — Whether Driver of Motor-vehicle can be convicted of Failure "to render all practicable assistance to the person injured," where latter killed outright—Count of Driver failing "to ascertain whether he has injured any person"—Direction to Jury where Accident took place at Night and Body of Person killed lying some Distance from Point of Impact—Motor-vehicles Amendment Act, 1936, s. 5 (1).

Where in a collision with a motor-vehicle a person is killed outright, the driver of the motor-vehicle cannot be convicted under s. 5 (1) of the Motor-vehicles Amendment Act, 1936, of failing "to render all practicable assistance" to such person.

The King v. Bowden, [1938] N.Z.L.R. 247, G.L.R. 156, distinguished.

A collision took place at night between a motor-vehicle and a motor-cycle with two riders, both of whom were killed outright. The driver of the motor-vehicle, returning to the scene of the collision, saw one of the riders dead, but failed to notice the body of the other which had been thrown some distance away from the motor-cycle.

On case stated by the learned trial Judge for the determination of certain questions by the Court of Appeal,

Solicitor-General, Cornish, K.C., for the Crown.

Held, per totam Curiam, 1. That a mere direction to the jury on a count that the driver of the motor-vehicle had failed "to ascertain whether he has injured" such second rider was insufficient, and the fact that such second rider was killed does not absolve the accused person from the duty to ascertain whether he had injured him.

2. That the jury should have been directed to consider whether, on the evidence, there was a reasonable excuse for the failure to ascertain that a second person had been injured.

Solicitors: Crown Law Office, Wellington.

COURT OF APPEAL.
Wellington.
1939.
March 17; June 7.
Myers, C.J.
Ostler, J.
Smith, J.
Fair, J.

BOYES v. CARLYON.

Public Service—Commissioners' Powers—New Zealand Police Constable temporarily appointed Chief Police Officer at Cook Islands—Inquiry by Public Service Commissioner into Charges of Misconduct there—Whether such Officer subject to Control by Public Service Commissioners—Officer's Statutory Right to Representation by Counsel denied—Appeal—Jurisdiction declined by Public Service Appeal Board—Certiorari to Commissioner—Public Service Amendment Act, 1927, s. 11 (3) (a), (7)—Cook Islands Act, 1915, ss. 29, 50—Finance Act, 1931 (No. 2), s. 19—Finance Act, 1937, s. 41.

An inquiry held by a Commissioner under s. 11 of the Public Service Amendment Act, 1927, with respect to charges made against an officer of the Public Service is of a judicial character, and the provision in subs. 7 of that section, that at any such inquiry, the officer charged "shall be entitled to be represented by counsel or agent," is a statutory condition of a due inquiry, the non-fulfilment of which amounts to a denial of justice, an act by the Commissioner in excess of his jurisdiction, in respect of which certiorari to such Commissioner will lie.

The Resident Commissioner and Acting Chief Judge of the Cook Islands at Rarotonga had a case for abduction pending before him, and the respondent, the Chief Police Officer there,

conceiving that there might be a miscarriage of justice owing to the way in which he alleged that the Resident Commissioner was conducting criminal trials, (*a*) communicated by radiogram with the Commissioner of Police in New Zealand, and (*b*) having obtained a search-warrant from the Registrar of the High Court of the Cook Islands, searched the private office of the Resident Commissioner and took possession of certain papers. The Resident Commissioner suspended him, and charged him in writing with insubordination in both such acts. The respondent replied that he desired to be given audience, and asked for reasonable notice to enable him to obtain advice.

On April 6 the Resident Commissioner notified the respondent that it was probable one of the Public Service Commissioners would be coming to Rarotonga in the next steamer from New Zealand and that respondent's case would be heard on April 28. On April 25, at 7.30 a.m., the respondent was notified in writing to attend the inquiry at 10 a.m. the same day. On the opening of the inquiry the respondent asked to have it placed on record that he had not been given an opportunity of availing himself of the provisions of the Public Service Act, which relate to the right of representation by counsel, and that he desired such an opportunity; that he had sent his papers to a solicitor at Wellington by the first boat after the making of the charges, but she was not due at Auckland until Easter Monday; that solicitors' offices were closed from before that date until April 26, and that he had not been able to arrange for representation by counsel or to obtain legal advice. The Joint Commissioner making the inquiry however said: "Well, we are going on with the case," proceeded with the hearing, and sustaining the second charge, ordered the deduction of one week's salary by way of penalty and the respondent's transfer to New Zealand.

After respondent had appealed to the Board of Appeal, which held it had no jurisdiction to hear the appeal, the respondent applied to the Court for a writ of certiorari to quash the Joint Commissioner's determination; and this was granted by *Reed*, J., [1938] N.Z.L.R. 873. On appeal therefrom,

Currie, for the appellant; **Rollings**, for the respondent.

Held, per totam Curiam, That the respondent as a member of the Cook Islands Public Service was under the control of the Public Service Commissioner.

Held, by *Myers*, C.J., *Ostler* and *Smith*, JJ. (*Fair*, J., dissenting), That the respondent had been prevented from exercising his statutory right and that certiorari must issue.

On the grounds,

Per *Myers*, C.J., That the Joint Commissioner had refused the respondent a reasonable adjournment.

Per *Smith*, J., That counsel could have been obtained only from New Zealand, and that neither notice was a due notice under the statute, the first because it was not a definite notice, and the second because it was so short as to deny to the respondent the right to obtain the presence of counsel, and, on the facts, the respondent had not waived his right to be represented by counsel.

Per *Ostler*, J., That the Joint Commissioner held the inquiry without giving the respondent a reasonable opportunity of being represented by counsel, and that the respondent had not waived his said right.

Fair, J. (dissenting), That the respondent was not entitled to the issue of a writ of certiorari on the ground that the notice was sufficient, that the respondent's failure to require more definite notice amounted to acquiescence in its form that precluded him from relying on it, as depriving the Joint Commissioner of jurisdiction to conduct the inquiry and give his decision, and that under the circumstances that there had been no denial of justice.

Reynolds v. Attorney-General, (1909) 29 N.Z.L.R. 24, 12 G.L.R. 53; **The King v. Electricity Commissioners,** [1924] 1 K.B. 171; **R. v. County Clare Justices,** [1918] 2 I.R. 116; and **R. v. Hallchu,** [1918] 1 D.L.R. 731, applied.

Reg. v. Biggins, (1862) 5 L.T. 605, (*sub nom.* **Ex parte Biggins, Reg. v. Lipscombe,** (1862) 26 J.P. 244); distinguished.

Stockwell v. Ryder, (1906) 4 C.L.R. 469; **Everett v. Griffiths,** [1921] 1 A.C. 631; **Federal Commissioner of Taxation v. Munro,** (1926) 38 C.L.R. 153; **Ex parte Mullen, Re Hood,** (1935) 35 N.S.W. S.R. 289; **Leeson v. General Council of Medical Education and Registration,** (1889) 43 Ch.D. 366; **R. v. Dominion Drug Stores, Ltd.,** (1919) 44 D.L.R. 382; **Ex parte McQuellin,** (1929) 29 N.S.W. S.R. 346; **The Queen v. Smith,** (1875) L.R. 10 Q.B. 604; **Osgood v. Nelson,** (1869) 10 B. & S. 119, aff. on app. (1872) L.R. 5 H.L. 636; **In re Hazlett,** [1930] N.Z.L.R. 777, aff. on app. (*sub. nom.* **Hazlett v. Buttimore (No. 1)**) [1931] N.Z.L.R. 17; [1930] G.L.R. 642; **Pilkington v. Platts,** [1925] N.Z.L.R. 864; G.L.R. 535; **The Queen v. Assessment Committee of St. Mary Abbotts,** [1891] 1 Q.B. 378; **Rex v. Board of Appeal, Ex parte Kay,** (1916) 22 C.L.R. 183; and **Reg. v. Cambridgeshire Justices,** (1880) 44 J.P. 168, referred to.

Appeal from the order of *Reed*, J., [1938] N.Z.L.R. 873, dismissed.

Solicitors: **J. M. Tudhope,** Crown Law Office, Wellington, for the appellant; **W. P. Rollings,** Wellington, for the respondent.

Case Annotation: *The King v. Electricity Commissioners*, E. and E. Digest, Supp. Vol. 16, para. 2303; *R. v. County Clare Justices, ibid.*, Vol. 16, p. 477, note n.; *R. v. Hallchuk, ibid.*, Supp. Vol. 33, p. 27, note 556iii; *Reg. v. Biggins, ibid.*, Vol. 33, p. 345, para. 556; *R. v. Dominion Drug Stores Ltd., ibid.*, p. 346, note c.; *R. v. Smith, ibid.*, p. 330, para. 434; *Reg. v. Cambridgeshire Justices, ibid.*, p. 331, para. 347; *Everett v. Griffiths, ibid.*, Vol. 38, p. 78, para. 551; *Federal Commissioner of Taxation v. Munro, ibid.*, Supp. Vol. 17, p. 59, note oii.; *Leeson v. General Council of Medical Education and Registration*, Vol. 34, p. 544, para. 30; *Osgood v. Nelson, ibid.*, Vol. 13, p. 450, para. 18; *The Queen v. Assessment Committee of St. Mary Abbotts, ibid.*, Vol. 1, p. 277, para. 90.

SUPREME COURT. Auckland. 1939. July 14, 17. *Ostler, J.*

TRUSTEES OF THE FOUNTAIN OF FRIENDSHIP LODGE FRIENDLY SOCIETY (No. 349) v. TAIT AND OTHERS.

National Expenditure Adjustment—Contract—Implied Term—Whether Landlord has a Right under Statute to make more than one Application for Relief—"Contract"—Interpretation—Agreement for Reduced Rent for the Period of the Operation of the Act—Legislature making permanent an originally temporary Statute—Rescission of Agreement—National Expenditure Adjustment Act, 1932, ss. 30 (*b*), 31, 32 (1) (*b*), 34, 38—Finance Act, 1934, s. 14—Mortgagors and Lessees Rehabilitation Act, 1936, s. 84.

The plaintiffs leased land to lessees for fifty-three years from July 2, 1921, at increasing weekly rentals. After the enactment of the National Expenditure Adjustment Act, 1932, the plaintiff agreed with assignees of the lessees to accept a reduction of the rent, which was then £54 12s. per week, to £46 per week, "for the period of the operation of the National Expenditure Adjustment Act." Section 34 of that statute enacted that the reductions in interest and rent provided for by the Act would terminate on April 1, 1935. Section 14 of the Finance Act, 1934, prolonged the provisions of the statute until April 1, 1937; and s. 84 of the Mortgagors and Lessees Rehabilitation Act, 1936, prolonged them indefinitely.

On a motion by the lessors for an order under s. 38 of the National Adjustment Expenditure Act, 1932, granting relief from its operation to the lessors, or for an order under s. 32 fixing the rent that would have been payable had the lease been entered into on January 1, 1930.

Leary, and **Simpson,** for the plaintiff; **Stanton,** for the defendants.

Held, 1. That s. 38 of the National Expenditure Adjustment Act, 1932, does not provide for more than one application for relief by a landlord; and a landlord, who has contracted to receive a reduced rent for the period during which that statute is in force, has no right to relief thereunder.

2. That s. 30 (1) (*b*) of the National Expenditure Adjustment Act, 1932, relates only to contracts for the payment of interest or rent which were originally entered into after April 1, 1932, and has no application to contracts made because of the passing of the statute for the temporary reduction of rent or interest payable under contracts that were affected by the statute.

3. That as the Legislature, by the conversion of a temporary measure into a permanent Act, had destroyed the basis of the contract between the lessors and lessee, which was the understanding that the statute was a temporary measure, the doctrine of implied term applied, and the contract was rescinded.

F. A. Tamplin Steamship Co., Ltd. v. Anglo-Mexican Petroleum Products Co., Ltd., [1916] 2 A.C. 397; **Metropolitan Water Board v. Dick, Kerr and Co., Ltd.,** [1918] A.C. 119; and **Krell v. Henry,** [1903] 2 K.B. 740, applied.

Dictum of *Pollock*, C.B., in **Oswald v. Berwick-upon-Tweed Corporation,** (1854) 23 L.J.Q.B. 320, aff. on app. (1856) 5 H.L. Cas. 856, 10 E.R. 1139, referred to.

Solicitors: **L. G. Simpson,** Auckland, for the lessors; **J. Stanton,** Auckland, for the lessees.

SUPREME COURT. Auckland. 1939. July 10. *Fair, J.*

SMITH AND SMITH, LIMITED v. SMITH, STATE ADVANCES CORPORATION, AND OTHERS.

Prerogatives of the Crown—State Advances Corporation—Whether entitled to Crown's Immunities and Privileges—State Advances Corporation Act, 1936, ss. 8, 17 (4) (5), 21, 24 (1) (2), 25 (3).

The State Advances Corporation is not entitled to the immunities granted by common law and by statute to the Crown, as it is a separate and distinct entity.

McCallum v. Official Assignee of Sagar and Lusty, [1928] N.Z.L.R. 292, G.L.R. 243; **Southland Boys' and Girls' High School Board v. Invercargill City Corporation,** [1934] N.Z.L.R. s. 22, G.L.R. 51; and **Christchurch City Corporation v. Canterbury Education Board,** [1931] N.Z.L.R. 881, 902, G.L.R. 425, followed.

A. Goninan and Co., Ltd. v. South Australian Harbour Board, [1931] S.A.S.R. 128, referred to.

Counsel: Henry, for Winstone Ltd.; **Buisson,** for Henderson and Pollard, Ltd., and J. N. McLeod; **Wilson,** for Smith and Smith, Ltd.; **F. C. Jordan,** for Peet's trustees; **Ball,** for the State Advances Corporation.

Solicitors: Goldstine, O'Donnell, and Wilson, Auckland, for Smith and Smith Ltd.; **H. L. M. Buisson,** Auckland, for Henderson and Pollard, Ltd., and N. J. McLeod; **Duigan, Armstrong, and Jordan,** Auckland, for William Peet's trustees; **The Solicitor,** State Advances Corporation, for the State Advances Corporation, Wellington.

SUPREME COURT. Wellington. 1939. June 6, July 20. *Myers, C.J.*

In re **GOUGH (DECEASED), GOUGH AND ANOTHER v. GOUGH.**

Friendly Society—Funeral and Death Benefits—Whether same form Part of Member's Estate—Whether Member of Society "entitled from the funds thereof" to such Moneys—Friendly Societies Act, 1909, ss. 57, 58 (1).

Two of the objects of a friendly society registered under the Friendly Societies Act, 1909, were thus expressed:

"(*c*) To provide a certain sum on the death of a member or his wife, and also, in certain cases, the widow of a late member, for the purpose of paying the burial expenses:

"(*d*) To provide a further certain sum on the death of a member for the benefit of his nominee widow or next-of-kin as hereafter provided."

Rule 32 of the society provided that should any benefit male member who has been fifty-two weeks in the order, and was entitled to benefits in accordance with the rules, die, his nominee or widow, children, step-children, father, mother, brother, or sister shall, on the authority of the Board, be entitled to receive from the sick and funeral fund the sum of £20, and from the death benefit funds the amount provided in R. 30, which, in the present case, was £100.

A member of the society died intestate, having made no nomination under s. 57 of the Friendly Societies Act, 1909.

On originating summons to determine whether the funeral and death benefits formed part of his estate, and, if not, to whom was the sum payable,

Virtue, for the plaintiffs; **Hanna,** for the defendant.

Held, That, under the rules, the member did not die entitled to anything which could be distributed under s. 58 (1) of the Friendly Societies Act, 1909, and such moneys did not form part of his estate; and that the society was entitled to pay the funeral and death benefits to the member's widow *qua* widow.

In re the Will of William Johnson, (1912) 32 N.Z.L.R. 166, *sub. nom., In re Johnson, Kilpatrick v. Johnson,* 15 G.L.R.17, distinguished.

Ashby v. Costin, (1888) 21 Q.B.D. 401; **Hannay v. Horner,** (1916) 32 T.L.R. 240; **Tinkler v. London General Omnibus Co.'s Death Levy, Distress, and Sick Friendly Society,** (1918) Chief Registrar of Friendly Societies Annual Report (Cmd. H. of C.: Oct. 28, 1919), applied.

Symington v. Galashiels Co-operative Store Co., Ltd., (1894) 21 R. (Ct. of Sess.) 371, mentioned.

Solicitors: Young, Courtney, Bennett, and Virtue, Wellington, for the plaintiffs; **Duncan and Hanna,** Wellington, for the defendant.

Case Annotation: *Ashby v. Costin,* E. and E. Digest, Vol. 25, p. 312, para. 169; *Hannay v. Horner, ibid.,* para. 171; *Symington v. Galashiels Co-operative Store Co., Ltd., ibid.,* Vol. 28, p. 125, note p.

SUPREME COURT. Napier. 1939. June 21, July 31. *Smith, J.*

SCHAEFFER v. COMMISSIONER OF STAMP DUTIES.

Public Revenue—Death Duties—Mortgagors and Tenants Relief—Debt "contingent or . . . incapable of estimation"—Application for Adjustment by Adjustment Commission pending at Death—Method of Treatment by Commissioner of Stamp Duties—Death Duties Act, 1921, ss. 9 (2) (*d*), (3)—Mortgagors and Lessees Rehabilitation Act, 1936, s. 60.

Where, at the death of a testator or an intestate person, an application for adjustment of his liabilities under the Mortgagors and Lessees Rehabilitation Act, 1936, is pending, the Commissioner of Stamp Duties is justified in assessing the value of the deceased's land at the Government valuation, and in regarding the unpaid purchase-money as constituting "a contingent debt or . . . other debt, the amount of which is, in the opinion of the Commissioner, incapable of estimation," and, as such, subject to s. 9 (2) (*d*) of the Death Duties Act, 1921.

On the adjustment of the deceased's liabilities, the Commissioner should, under s. 9 (3) of the statute, reduce the value of the land to its basic value as fixed by the Adjustment Commission, and the debt constituted by the unpaid purchase-money to the amount to which it has been reduced by such Commission.

Beamish v. Commissioner of Stamp Duties, [1937] N.Z.L.R. 217, G.L.R. 228; and **Cotton v. Commissioner of Stamp Duties,** [1938] N.Z.L.R. 698, G.L.R. 401, applied.

In re E.J.D., [1938] G.L.R. 293, 14 N.Z.L.J. 194 (No. 113), mentioned.

Counsel: Mason, for the appellant; **Lusk,** for the respondent.

Solicitors: Mason and Dunn, Napier, for the appellant; **Crown Law Office,** Wellington, for the respondent.

SUPREME COURT. Wellington. 1939. July 10, 21. *Reed, J.*

COOK v. NEW ZEALAND INSURANCE COMPANY, LIMITED.

Settlement—Restraint on Anticipation—Life Interest in Income without Power of Anticipation—Power of Appointment in respect of Trust Funds—Appointment of Corpus by Married Woman with Life Interest in Income derived therefrom—Whether Restraint can be destroyed by such Appointment.

A married woman, restrained by a deed of settlement during her coverture from anticipating the income thereof settled upon her, cannot make herself owner of the corpus, or of part thereof, by exercising the power of appointment of the settled funds contained in the said deed so as to affect the said income and destroy the said restraint. Such an appointment can only be to take effect upon the extinction of the restraint on anticipation.

In re Dawbin, Dawbin v. Henty, (1896) 22 V.L.R. 477, followed.

Cooper v. Macdonald, (1877) 7 Ch.D. 288, mentioned.

Counsel: A. M. Hollings, for the plaintiff; **Cleary,** for the infants and unborn children.

Solicitors: Ronayne and A. M. Hollings, Wellington, for the plaintiff; **Barnett and Cleary,** Wellington, for the infant and unborn children of the plaintiff.

Case Annotation: *Cooper v. Macdonald,* E. and E. Digest, Vol. 27, p. 118, para. 946.

The Visit of Dr. Roscoe Pound.

"The Doyen of Anglo-American Jurists."

Dr. Roscoe Pound, the eminent American jurist and former Dean of the Faculty of Law, and now University Professor at Harvard University, and Mrs. Pound, were the guests of honour at a morning reception held in the old Legislative Council Chamber, Parliament Buildings, on August 8. The Attorney-General (the Hon. H. G. R. Mason) and Mrs. Mason were the hosts. Those present included Lady Myers, the Hon. Mr. Justice Blair, the Hon. Mr. Justice O'Regan, the Minister of Defence (the Hon. F. Jones) and Mrs. Jones, the Minister of Housing (the Hon. H. T. Armstrong), the Minister of Public Works (the Hon. R. Semple), the Minister of Agriculture (the Hon. W. Lee Martin) and Miss D. Martin, the Rt. Hon. G. W. Forbes, the Rt. Hon. J. G. Coates, the Hon. Mark Fagan, M.L.C., the Hon. W. E. Barnard and Mrs. Barnard, the President of the New Zealand Law Society (Mr. H. F. O'Leary, K.C.) and Mrs. O'Leary, Mr. C. H. Weston, K.C., Mr. P. B. Cooke, K.C., the Leader of the Opposition (the Hon. Adam Hamilton), legal members of the House of Representatives, the Solicitor-General (Mr. H. H. Cornish, K.C.) and Mrs. Cornish, Judge McCormick, of the Native Land Court, Mr. C. M. Bothamley, Clerk of Parliament, Mr. T. D. H. Hall, Clerk of the House of Representatives, the Consul-General of the United States of America (Mr. L. C. Pinkerton), Mr. T. D. M. Stout (Chairman of the Victoria University College Council), members of Victoria University College staff, the President of the Wellington District Law Society (Mr. A. T. Young) and Mrs. Young, permanent heads of State Departments, and a large number of senior members of the legal profession in Wellington.

The Attorney-General's Welcome.

The Attorney-General, Hon. H. G. R. Mason, in welcoming Dr. Pound to New Zealand, on behalf of the Government and of the legal profession, said that those present had met to bid welcome, and do honour, to a very distinguished visitor, the doyen of Anglo-American jurists.

"As Dean of the Harvard Law School for a quarter of a century, Dr. Roscoe Pound has, by his lectures and his writings, influenced legal thought profoundly," Mr. Mason proceeded: "In the opinion of the late Justice Cardozo, of the Supreme Court of the United States, Dean Pound's writings did more than those of any other man to cause thinkers to realize the need of a philosophy that would mediate between the conflicting claims of stability and of progress, and would supply a principle of growth. If law is to be a help and not a trap to the community, it must be certain and stable. In other words, people must be able to ascertain what it is, and to rely on its being the same to-morrow as it is to-day. Yet life itself is full of change. Ideas, habits, tastes—these are constantly altering. How then can we expect the law to remain unchanged from generation to generation? Of necessity it must change also, for

New occasions teach new duties
Time makes ancient good uncouth.

It would seem, therefore, as if there was an irrepressible conflict between two essentials of law—those of stability and growth? How is it to be appeased?

Social Utilitarianism.

"Dean Pound taught that the true way of reconciling these conflicting requirements of the law was by continuously subjecting every rule to the test of present social sufficiency. Rules or principles that satisfied this test should be retained. Those that did not should be rejected and make way for those that did. Dean Pound said:

> 'Let us think of jurisprudence as a science of social engineering. Engineering is a process, an activity, not merely a body of knowledge or a fixed order of construction. The engineer is judged by what he does. His work is judged by its adequacy to the purpose for which it is done, not by its conformity to some ideal form of a traditional plan. We are beginning, in contrast to the last century, to think of jurist and Judge and lawyer in the same way.'

"This, of course, is the merest fragment of Dean Pound's teaching; and I have no intention of abusing his kindness in coming to us today by weakly restating, and perhaps distorting and mutilating, his own doctrines. But may I say this: that we recognize in him one of the great masters—and servants—of the common law, that bond of spiritual union, which can never be broken, between his great country and our own British Commonwealth of Nations.

"Dean Pound will perhaps be interested to know that there was in this city an early appreciation of the significance of his work. Professor Adamson, Dean of the Law School at Victoria University College during the same period as Dr. Pound was Dean at Harvard, was quick to realize the importance of Dr. Pound's work and saw to it that the various books and articles written by him were, as they appeared, made available to and read by the students of Victoria."

It was a matter of very great regret, Mr. Mason added, that Professor Adamson was unable to be present owing to ill-health. He continued:

"I will not go so far as to say that Dean Pound has taken all knowledge for his province, but his interests are many and varied. He is an authority on Botany and is deeply interested in the Humanities. Indeed, I believe that as soon as he returns to America he is to deliver a course of lectures on the work and teaching of Lucretius."

In conclusion, the Attorney-General said: "Dr. Pound is, at present, paying us literally a flying visit only; but perhaps what he has seen of our country from the air will have interested him sufficiently to induce him at no distant date to study it on the ground. In any case, we take this opportunity of his being in our midst to extend to him and Mrs. Pound a very cordial welcome and our best wishes for a safe and pleasant return to his native land."

Dr. Pound's Reply.

Dr. Roscoe Pound, who was received with applause, said: "I feel with Mrs. Gradgrind who on her death bed was asked whether she was in pain. She said there was a pain somewhere in the room but she did not know whether she had it. I did not come with any manuscript. There may be a speech in the room, but I do not know whether I have it.

"I always remember the first occasion on which I had to speak in public. I had been admitted to the Bar just six days. I was sent down to a County Court to perform a difficult operation—namely, to take judgment by default. I looked at the Code of Civil Procedure, and it told when a default could be taken, but it did not tell how to take it; and the only thing I could do was to sit around the Court-room and hope some one would take one and then I would know what to do. While I was waiting it chanced that the minister of a coloured congregation which had built and was about to dedicate a new meeting-house applied to the presiding Judge to designate a lawyer to speak at the dedication. I do not need to tell you that occasions that involve glory but no pay are the perquisite of the junior member of the Bar present, and, this occasion being of a glorious but non-remunerative character, the Circuit Judge deputed me to speak at the dedication. I said I had come down on very important business, and did not feel justified in leaving the Court-room until I had attended to it. The Judge asked what that business was, and I told him it was a judgment by default. The Judge took down a docket and scratched a few words. I took it the default had been entered but I had yet to learn how my part was to be done. There was nothing for me to do but to go to the new meeting-house. I told the Minister I had no preparation and would have to speak off-hand, and he said he would explain that to the congregation, and he did. At the appropriate period in the proceedings he said 'Brethern and sistern, through the courtesy of the presiding Judge of the Circus Court, we are honoured this afternoon by the presence of the Honourable Roscoe Pound, who has kindly consented to deliver to us some promiscuous and edificationary remarks of a strictly extemporoarious character.' I can guarantee the entire promiscuity of what I may have to say this morning, but as to its edificationary character, that will have to be at consignee's risk.

The Outstanding Feature of English Justice.

"Something was said by the Attorney-General about the reconciling of two principles of stability and change. Dickens had something the same idea. In one of his shorter stories he tells of a foreigner who said that the English had reconciled two fundamental principles, right and justice and pounds, shillings, and pence. Having gone around the world once and part way around again and visited many lands, the thing that has struck me has been how thoroughly the British have succeeded in every part of the world in reconciling economic development with right and justice; right and justice and pounds, shillings, and pence.

"As you go about the English-speaking world you see great economic development, people who are on the whole free to assert themselves and do things and do them wonderfully, and at the same time in equilibrium with that ideal of human relations that is what we mean by justice. Anywhere in the English-speaking world the two things that stand out are economic development and legal institutions—institutions that have justified themselves in conflict with almost every type of opposition in insisting upon using experience of the administration of justice as a basis of decision and subjecting all action, official and unofficial, to the scrutiny of reason. That is the outstanding feature, it seems to me, of English justice and its derivatives throughout the world.

"I feel very much at home in New Zealand. An American feels at home anywhere where they speak English. An American lawyer feels at home anywhere where they administer the common law. A man who was brought up on the prairies feels particularly at home in a jurisdiction where there is that same freedom of spirit and free intercourse and absence of restraint between man and man as I see it peculiarly here; and that would make any Western American particularly at home in this Dominion. They have a jingle in the part of America where I now come from. John and Sebastian Cabot, as probably every one who has studied geography in the old days—that is, when you obtained information from the study of geography—knows, discovered New England. The Lowells have been great in a century and a half of the history of Massachusetts. The jingle runs:

I'm from Boston, the town of the bean and the cod,
Where a Lowell may speak to a Cabot
But a Cabot speaks only to God.

"That, of course, is not an atmosphere of a community which is near to pioneer days, and we certainly are where I was brought up. You date from the 'forties of the last century and we date from the 'fifties. Mrs. Pound, who is a Kentuckian, tells me I must not be always talking about the part of the land I come from, so I say no more.

The Universality of the Common Law.

"The thing that impresses me more than anything else is that when you are in the domain of the English Law, the common law of England, you are in a domain where there is a universality that you find nowhere else in the world. I suppose wherever the common law is taught in any English-speaking jurisdiction anywhere in the world *Salmond on Torts* is the book put into the hands of students. And that is something to think about that a book coming from this Dominion should be used in England, America, Canada, and I have seen it in use in India.

"Wherever you go in the English-speaking world you find a common legal technique, common legal institutions, common legal doctrines. Changes in rules are inevitable. But the social utilitarianism that I have been preaching for more than a generation is simply an attempt to adjust those principles that have been tried through experience of the administration of justice to the special problems of a particular jurisdiction, requiring rules to be moulded to the social exigencies of the time.

The Fundamental Problem of the Law.

"I had to speak at the American Bar Association meeting at San Francisco, just before I left America, and I looked up the Law Reports of one hundred years ago in the United States, and I find that the word 'negligence' did not appear in the index to a single report of 1839, while now it is the most important title in the index of every report. It is nothing but an adjustment to an age of motor-vehicles of a principle that you find very well recognized back in the 17th century, the principle of responsibility for fault: a principle of adjusting one's relations and scrutinizing his actions with reference to reason, and because of that the law as to negligence is a requirement in a man's conduct that he operate reasonably in regard to time and place. You get that adjustment between stability and change which is the fundamental problem of the law.

"I think of an old-time practitioner of the short-grass country. He was in the habit of exhorting juries with a great deal of freedom and delivering himself on the law as well as the evidence. The Judges soon found they could not hold him in, but they could correct what he had to say in their charge. He came down before the Supreme Court and delivered himself of some extravagant statements. Finally the Chief Justice interrupted him, and said: 'Upon reflection are you prepared to stand by that last statement of yours?' He said, 'If Your Honours please. It may not infrequently happen in the course of argument, in the heat of debate, that incidentally, and by way of illustration I make statements which on mature reflection I might wish to modify or perhaps at times withdraw; but, your Honours, when I holler it's law!'

"Ladies and gentlemen, I am not going to 'holler' this morning. I am here only to say how very much indeed I appreciate this opportunity of meeting you and saying something about the subject that is very dear to me indeed—this common law of England of which we are all the fortunate as well as proud inheritors. It has maintained itself all over the world, and that I think, is itself on the whole more than can be said of any other institution that we can name, not merely the thing that binds the English-speaking peoples together, but the thing that more than any other institution meets that ideal of the balance, of the equilibrium, between stability and change—the problem of justice.

"I thank you very much, and very much appreciate this opportunity of meeting these members of the legal profession."

Recent English Cases.

EXECUTORS.

Actions Against Personal Representatives—Judgment by Default—Return of *Nulla Bona* on Execution—Presumption of *Devastavit*—Rebuttal of Presumption—Order for Administration and Appointment of Receiver of Estate.

The return of nulla bona *on an execution on a judgment by default against personal representatives is only* prima facie *evidence of a* devastavit.

BATCHELAR *v.* EVANS AND ANOTHER, **[1939] 3 All E.R. 606. Ch.D.**

As to judgment by default against personal representatives: see HALSBURY, Hailsham edn., vol. 14, pp. 437, 438, pars. 832–834; and for cases: see DIGEST, vol. 24, pp. 744, 745, Nos. 7731–7743.

MISTAKE.

Price of Subject-Matter of Transaction—Goods Offered at Certain Prices per pound instead of per piece—Offeree's Knowledge of Mistake—Whether Acceptance of such Offer a Binding Contract.

In a contract for the sale of goods an intending purchaser is not permitted to snap up an offer which he knows to have been made under a mistake.

HARTOG *v.* COLIN AND SHIELDS, **[1939] 3 All E.R. 566. K.B.D.**

As to mistake in price offered: see HALSBURY, Hailsham edn., vol. 23, p. 138, par. 195; and for cases: see DIGEST, vol. 35, pp. 108, 109, Nos. 132–140.

Bills Before Parliament.

Land Transfer Amendment.—Cl. 2. Qualifications for appointment to certain offices altered. Cl. 3. Removal of easements and *profits à prendre* from Register. Cl. 4. Extention of lease by memorandum of extension. Cl. 5. Provision for bringing down incumbrances on registration of new leases. Cl. 6. Variation of priority of mortgages. Cl. 7. Sections 109 and 115 (2) of principal Act amended. Cl. 8. Application of provisions of Property Law Act, 1908, to mortgages under the principal Act. Cl. 9. Section 130 of principal Act (as to entry of trusts on Register) amended. Cl. 10. Removal of fencing covenants from title. Cl. 11. Sections 137–144 of principal Act (as to registration abstract) repealed.
Cl. 12. Section 152 of principal Act (as to removal of caveats) amended. Schedules.

Legitimation.—Cl. 3. Legitimation by marriage of parents. Cl. 4. Rights of legitimated persons and persons claiming under them to take interests in property. Cl. 5. Registration of legitimated person as lawful issue of his parents. Cl. 6. Failure to register not to affect legitimation. Cl. 7. Regulations. Cl. 8. Exemption from stamp duty of declarations under this Act. Cl. 9. Repeals.

Meat.

New Zealand Federation of Funeral Directors.

Property Law Amendment.—Cl. 2. Application of Act to mortgages. Cl. 3. Restriction on exercise by mortgagee of his power of sale. Cl. 4. Power to authorize land and minerals to be dealt with separately by mortgagee. Cl. 5. Power of sale in mortgage includes certain powers incident thereto. Cl. 6. Mortgagee in possession may cut and sell certain trees. Cl. 7. Application of last two sections.

LOCAL BILLS.

Auckland Transport Board Rating Exemption.
Auckland City Empowering.
Bluff Borough Council Empowering.
Bluff Harbour Board and Bluff Borough Council Empowering.
Christchurch City Council Empowering.
Lower Clutha River Improvement Amendment.
Napier Harbour Board Loan Amendment.
New Plymouth Borough Land Exchange and Empowering.
Papanui Memorial Hall Enabling.
Wanganui Harbour District and Empowering Amendment.

Acts Passed.

1. Imprest Supply. June 3.
2. Industrial Conciliation and Arbitration Amendment. July 18.

Rules and Regulations.

Motor-spirits (Regulation of Prices) Act, 1933. Motor-spirits Prices General Regulations, 1939. Amendment No. 3. August 1, 1939. No. 1939/98.

Customs Act, 1913. Customs Export Prohibition Order, 1939. No. 3. August 2, 1939. No. 1939/99.

Industrial Efficiency Act, 1936. Industry Licensing (Soap-manufacture) Notice, 1939. Amendment No. 1. August 4, 1939. No. 1939/100.

Cook Islands Act, 1915, and the Post and Telegraph Act, 1928. Radio (Cook Islands Amendment) Regulations, 1939. August 2, 1939. No. 1939/101.

New Zealand Centennial Act, 1938. Centennial Exhibition Order 1939 (No. 2). August 9, 1939. No. 1939/102.

Cook Islands Act, 1915. Cook Islands Immigration Regulations, 1939. August 2, 1939. No. 1939/103.

Samoa Act, 1921. Samoa Customs Order, 1939. August 9, 1939. No. 1939/104.

Social Security Act, 1938. Exempting the New Zealand Centennial Exhibition Company, Ltd., from Payment of Social Security Contribution. August 9, 1939. No. 1939/105.

New Zealand Centennial Act, 1938. Remission of Income-tax leviable upon the New Zealand Centennial Exhibition Company, Ltd. August 9, 1939. No. 1939/106.

Students' Supplement

TO

The New Zealand Law Journal.

No. 2. TUESDAY, AUGUST 22, 1939.

" Members of the legal profession may think themselves clever fellows, but they have to rely on other people as much as less capable persons. Solicitors, barristers, and Judges all rely on their clerks, and are fortunate in being able to rely on a body of men who never let them down. The law clerks perform the task of Atlas in supporting the legal world."

—LORD TOMLIN.

The Law Course and the Lawyer.

THE urgent problem for law students in New Zealand to-day is that of legal education; and being vital to the lawyers of to-morrow, it is just as pressing to those of to-day, whose duty it is to see that law students are being adequately trained to take their part in the complex legal processes of the modern State. One doubts whether the profession as a whole is fully aware of that duty.

Comparatively few members of the profession are giving much thought to the question. Those who have done so deserve our thanks, but in general they have failed to put first things first by making a full inquiry into whether our law course and the working of it achieve their purpose in training men to perform a distinctive function in the community.

Any institution must be susceptible to change if it is to satisfy the increasing demands which a living and growing society makes upon it. The law course is a piece of machinery constructed to meet certain needs, and when those needs take new forms, or present fresh aspects, the machine must be adapted. The scientific study of the structure and processes of society as an organism has given us new knowledge, in the light of which we have attained a fuller understanding of the place of law, and of the role of lawyers. As a group of experts we must take the responsibility of seeing that the law fits the needs of society. Our training must therefore be adequate to our responsibility.

Law is being studied more and more, in the words of Professor Roscoe Pound, as a "highly specialized social control in the modern State," capable of being improved with reference to its end by conscious, intelligent effort. Every social science is concerned with the conflict of human impulses and desires, and with the material consequences of that conflict. Law, in particular, is a specialized method of controlling and giving effect to the whole scheme. Thus the basis of our approach to the science of law must be broader than it was in the past.

The law course may have satisfied the needs of an earlier time. It is natural that while the education system as a whole was dominated by the motive of personal wordly success, the special branches of teaching, particularly legal teaching, should be cast in the same mould. This personal motive must remain important to a varying degree in the future, but the needs of to-day call for an altered emphasis and a different approach.

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

We must be something more than knowledgeable mechanics. As the demands upon our knowledge and skill become broader and more exacting, we are called upon to be social engineers, to understand the purpose of the machine, and to see that it fulfils that purpose in broad design and in detailed working. No law course can completely train us to this end. But the present course fails almost entirely in laying the foundations.

The recent grafting on to the syllabus of certain optional and compulsory subjects was no doubt due to a partial realization of this failure. But a careful study of the changes leads to the conclusion that there was lacking a full awareness of its extent, and of the new needs. The aim seems to have been to give a little more of what is vaguely called "culture" in an attempt to meet new conditions. Not enough has been done to bar the assumption that the aim of personal wordly success still dominates legal education.

As an example, let us take Jurisprudence as a subject of study. In the past fifty years new ferments have been working. Jurists have seen the analytical method first combining with the historical and comparative methods, and then, as a broader vision became imperative, dallying with the metaphysical. Once again positive law flirts with "natural" law. To-day we have the juristic realists, the economic determinists, and a host of other skirmishers. More important is the sociological school, in America and on the Continent, approaching law from a new angle which has all the appeal of modernity in its preoccupation with social sciences.

Yet with Jurisprudence in the melting-pot, with its conceptions and values (at any time abstruse and difficult for the immature mind to master) in dispute, the first subject the boy fresh from school is asked to study is still Jurisprudence. Most men who are

studying the subject for the Master's degree will agree that on the ground of complexity alone it should be the last. Apart from this, the new emphasis on the lawyer's role in the community makes it futile to leave this subject in its present place in the course.

However, the reforms that may be desirable, in the way of having a central Law School, of rearranging the position of subjects, of eliminating detail from their content, of altering teaching methods and the examination system, are beyond the scope of this article, the purpose of which is to reiterate that we must reach some broad agreement on the spirit, aims, and purpose of legal education before we tinker with the means of achieving them.

Here we are in an unmapped region. Surely, however, the first aim of legal teaching should be to give some knowledge both of the origins of society, and of its existing structure and the workings of social processes. Secondly, it should create an awareness of the vital function of the lawyer in perfecting and maintaining the legal machine. Lastly, it should give a broad knowledge of legal rules and principles, and competence in the elementary technique of the profession. This knowledge and this competence can only be developed by years of practice when university days are over.

This statement of aims is not exhaustive, nor is it perfect. It is put forward with diffidence, but in the realization that we must first decide where we are going before we try to get there.

—D. A. S. Ward, B.A., LL.B.

The Students' Supplement.

With this issue the Students' Supplement to the New Zealand Law Journal attains its second number.

The first Supplement, published on August 23 of last year, attracted favourable comment from America and from Australia. It was a little disconcerting that apparently only three or four members of the profession in New Zealand recognized its existence or thought it worthy of mention. We would much rather hear of our deficiencies than simply be ignored.

It should once more be explained that although, for lack of a better name, this production is called a "Students' Supplement," those eligible to contribute include, as well as students, all persons who have qualified in law within the last seven years.

This year the Editorial Board comprises three persons who were members of the Board last year—namely, Professor Williams, of Victoria University College, who represents the teaching staffs of the four Colleges; Mr. I. H. Macarthur, representing the profession; and Mr. E. K. Braybrooke, representing the Auckland Supplement Committee. Mr. E. M. Hay has been appointed by the Christchurch Committee to represent the South Island in place of Mr. J. C. White, who is absent in England. For the advice of these gentlemen and for their willing services, all those who are interested in the continuance of the Supplement have much reason to be grateful.

Pedagogues and the Law.

By K. A. Gough, LL.B.

As the writer is eligible to contribute to this section of the Law Journal, it may be presumed that it is not so very long ago since he was *in statu pupillari*. His interest in his subject can, therefore, be understood. He hopes that it may furnish something of general interest as well.

Most of the cases reviewed arise from circumstances of danger to which the reaction of the child, because of his age and necessarily limited experience, was wholly different from that of the adult, and from alleged failure on the part of the teacher to appreciate this, and to discharge his duty of taking reasonable precautions. In *Williams v. Eady*, (1893) 10 T.L.R. 41, the Court of Appeal defined a schoolmaster's duty as one of exercising "such care of his boys as a careful father would take." In that case a schoolmaster had negligently left a bottle of phosphorus in a conservatory. A boy, named Scypanski, had taken the bottle. He put a match into it, and was playing with it when "it flew about." As a result, plaintiff was injured. The defendant's evidence showed that Scypanski obtained the bottle surreptitiously. The Court of Appeal upheld the trial Judge's direction to the jury, that, if a man keeps dangerous things, he must keep them safely, and must take such precautions as a prudent man would take, and to leave such things about in the way of boys would not be reasonable care.

The same principle relating to a schoolmaster's duty was applied by Darling, J., in *Shepherd v. Essex County Council*, (1913) 29 T.L.R. 303. The learned Judge appears to have considered it reasonable and the act of a careful father, to expect that previous "parental" warnings would be remembered. (Concurring fathers please advise.) On February 21, 1912, the chemistry class at Ilford County School was engaged in producing ozone. Plaintiff had secreted a piece of phosphorus in his trousers' pocket. There the phosphorus ignited and he was badly burned. Mr. Justice Darling, reviewing the evidence, said that the only negligence relied on was an alleged failure to warn the boy of the behaviour of phosphorus, but that warning had been given two days before. The boy knew that phosphorus was always kept in a jar of water, and, if he had thought at all, he must have known why. Moreover, plaintiff admitted that the year before another master had warned him particularly as to the danger of phosphorus. He said he had forgotten that. The jury found the defendants were not guilty of negligence in failing to warn plaintiff on the day of the accident.

To be a careful father, or parent, there is, it seems, no obligation to exercise incessant and unwinking vigilance, and Bailhache, J., does not appear to have had much difficulty in deciding *Chilvers v. London County Council*, (1916) 80 J.P. 246, 32 T.L.R. 363. A boy, Palmer, was playing in school with toy soldiers. While he was so doing, the plaintiff fell on them and injured his eye. The teacher admitted reading a book when the accident happened. Negligence was alleged in allowing Palmer to bring the soldiers to school, and in not supervising the class properly. It was held

there was no evidence of negligence to go to the jury. The accident might have happened in a nursery where several nurses were in attendance. Also, schoolmasters will be relieved to know that, in giving an oil-can to a pupil's keeping, they are not committing to his care an inherently dangerous article. At least, so held the Court of Appeal in *Wray v. Essex County Council*, [1936] 3 All E.R. 97. A master had given a boy, Biggs, an oil-can to take to another master. Biggs run into plaintiff "trotting" into an entrance and the spout struck him in the eye. Lord Wright, M.R., in giving his judgment, said danger was not, as it might be in the case of a bottle of phosphorus, essential to an oil-can's ordinary nature. In giving the can to Biggs the master had not committed a breach of his duty of exercising the care of a careful father.

Well-established educational practice was held by the Court of Appeal in *Fryer v. Salford Corporation*, [1937] 1 All E.R. 617, not to be reasonable. One writer has, however, commented that, in this case, "the reasonable man received another blow." The facts of the case concerned the cooking of puddings at a domestic training centre at Salford. It is not recorded that the Court availed itself of the opportunity to accord judicial approval to the maxim "that the proof of the pudding is in the eating." Perhaps, if the Court had proceeded to do this, the reasonable man (and, incidentally, educational practice) might not have been so badly bludgeoned. The facts are that some twenty little girls were congregated around their teacher to receive their puddings which she was taking from a steamer. The plaintiff was standing near a stove, her apron caught alight, and she was badly burned. In Lord Slesser's view, it was quite clear that that what had happened was that which a reasonable man should have foreseen. Although it was stated in evidence that it was not educational practice to provide guards for the stoves, he thought, as did the other Judges, that it was an allurement for young children to witness "the final transfiguration of their own puddings," and they would naturally crowd around the stoves. Guards should, therefore, have been provided.

Upon consideration of these authorities then, it seems only fair to say that schoolmasters do, generally, take reasonable precautions to protect their charges. With, however, the increasing use of materials, equipment, and transport facilities in educational practice, it may be that the schoolmaster will, like the modern parent, find his duty demanding increasing watchfulness and care. That being so, the writer suggests (not however, with the idea that every schoolmaster should become his own lawyer!), that students in education might find it to their advantage, as medical students and others do, to study the law relating to their profession.

Elements of Advocacy.

A Strange Interview.

By K. L. Sandford, LL.B.

I have met him and spoken to him. He sat there, across my desk, not more than four feet from me. He was dressed well, quietly and carefully. His voice was smooth and pleasant, his language simple. About him, he carried an air of modest culture, and of great sincerity. When he spoke, he fixed those keen level eyes of his on mine, claiming my attention to each quiet word as it fell from his smiling lips. *He is this world's greatest advocate.*

Would he tell me a little of his greatest cases, and of the methods he so successfully adopted?

"Methods?" he queried, with a quizzical smile, "There you have the advantage of me, for how can there be any fixed methods? They must vary with every case you handle. But, in general, I should imagine the first principle of method to be to try to anticipate the atmosphere of every action in which you are engaged, and adapt your attitude accordingly. Sometimes you must face the over-frank and over-confiding opponent with an air equally ingenuous and artless; sometimes you must be just as piteous as your piteous adversary, sometimes just as crafty, just as righteous. Sense the emotions that will arise, and act an appropriate part. You know, particularly in jury cases, you must be rather a good actor, in a subdued way. Juries watch counsel for the great part of any trial, and any unusual reactions on your part are registered vividly on their minds.

"But I should tell you that the broad principles of method are an urgent concern to you young men—young lawyers making your first bows in the Courts. Your first few years are of more importance than all that lie beyond—it is now that your general methods are developed and the characteristics of technique acquired. Guard yourself well, examine your style critically, before age and repetition bind your faults to you."

"Well, what do you suggest for us?" I replied, "What did you do?"

He smiled suddenly. "I'm afraid I didn't keep to the rules all the time, but mind if I smoke?"

"You may think," he continued, "that a deal of this is self-evident, but time and again do you see the young advocate missing even the simplest rules. For example, I should think a great danger to be avoided is that of waxing too enthusiastic in your client's cause. You know, he cannot always be right. It might not be wise to take a full brief of his evidence on the first occasion you see him. At that interview, he will almost certainly give you a rather picturesque tale, which you will whittle down later. It is an experience for the ordinary man to visit his lawyer, and you can take it that human frailty makes him anxious to create an impression. So, if it is possible, dismiss him soon, and then check his story from independent sources. What do his neighbours think of him, and of his complaint? And keep an ear open to hear what is asserted by the opposite party. Only then—when you know what you are opposing, prepare your man's case. Thrash his story from every angle, cross-examine him as ruthlessly as later you will his opponent. Spare him nothing—you must know

everything, every detail. You cannot be too familiar with your own case. Tramp the farm to see the ploughing, watch the machinery at work (could you get your own fingers under that belt ?), see the intersection.

"It is dangerous to leave it to your client to bring in his witnesses. You will be fortunate if you see them a day before the hearing, and then he may produce only his cousins. Watch this point—if there may be bias, bring it out in examination. It should make no difference really, but it sounds bad to have an awkward admission extracted in cross-examination. Do not spare expense in obtaining the best evidence—have the most authoritative experts on your side if you can. Take no chances with doubtful, hesitant, or very reluctant witnesses—they might ruin you.

"Choose your witnesses (if you have any choice) with an eye to their absence of interest, their demeanour, and the conviction their words will carry. But do not let your client decide whose evidence is to be offered. He is always a poor judge of his own case.

"Then, in preparation for trial, endeavour to visualize it: what the other side will say; what allegations you will have to meet; what you will have to prove; what admissions your witnesses might make—and beyond all try to anticipate the atmosphere. A good test is to assume that your opponent will prove his case; how, despite that, can you succeed ? Nothing is really so important in preparation as a conception of the opposition's case. Deliberate over it. Imagine that you are acting there instead of here. What weaknesses would you try to cover ? What would you leave unsaid ? But, I warn you, do not tie up your own case, and your opponent's also, for that matter, into too tight a satchel. The case may take such a turn that you will be required to make a complete change of front. Over-preparation can be a clog on your adaptability.

"You fail in your responsibility if your law is unsatisfactory. Know it, and, if necessary, quote it without hesitation.

"So the day comes. Your client and his witnesses should be able to repeat their stories clearly and modestly. They should have been tested on all the dangerous questions that might be expected in cross-examination. Warn them of their bearing in the box, and see that they will be dressed passably well. In particular, your lady client should be discouraged, from her summer blue and be confined to her discreet brown with, preferably, a small hat.

"In Court, and with the ball in play, be quiet as a rule, but interrupt if your interests demand it. A loud voice can soon irritate—a quiet tone (but with enough force to carry conviction) commands attention. Listen to your voice; keep it pleasant. There may be times, but seldom, when the attitude of outrage will succeed. Control your well-assumed indignation, though a glimpse of it here and there might help your case. If you must make a long speech, hold attention by variation in pitch, change of tempo and timbre. Monotony will damn you. Be deferential to the Court, but assert your client's rights with an independent spirit.

"Sir John Simon, Rufus Isaacs, McCardie—'an air of imperturbable assurance'—they all had it—might I suggest you follow their example. Above all, nothing will sway verdicts more in your favour than the very earnestness and sincerity with which you submit your case. Make the Court and the jury believe you; your proposition must be so simple and genuine that opposition to it seems preposterous.

"Simplicity, assurance, honesty, sincerity—I will leave you those four words as the foundation to your methods in advocacy. Train yourself on these lines, that later the more easily you can grasp the greater technique required for successful cross-examination, the technique of poise, of the tactics in making advocates of your jurymen—there is a very host of new studies laid open to you."

With that he rose, and a few moments later, after shaking my hand, had gone. I sat for a long time, thinking over what he had told me.

"His name ?" you ask, "Who is he ?"

I cannot tell you yet. He may be any one of the young lawyers that I see around me.

Retirement of Professor Adamson.

Students at the Law School of Victoria University College will miss the familiar figure of Professor Adamson who, on his doctor's advice, has resigned his chair.

For thirty years Professor Adamson has guided law students through Jurisprudence and the bewildering maze of Roman Law (in which some become so lost as to emerge only in a later year); and then, after they had sojourned some while in the desert of more practical studies, has led them through the portals of International Law and Conflict of Laws into the promised land of a completed degree.

All over New Zealand there are men who in their student years took their problems to him, and who will remember gratefully the practical advice given with such dry humour. We are sure they will join with those who are following them in wishing Professor Adamson happiness and better health in his retirement.

Prize Awards.

The Editorial Board have made the following awards:—

1. Mr. C. H. Weston's prize of £3 3s. for the best paper on any legal subject of a non-technical nature, to Mr. D. A. S. Ward, B.A., LL.B., for the editorial entitled "The Law Course and the Lawyer."

2. Mr. W. P. Rollings's prize of books to the value of £3 3s. for the best contribution of a humorous or topical character, prose or verse, to Mr. J. E. Moodie, LL.B., for verse entitled "Malum in Se."

3. The Wellington Law Students' Society's prize of £3 3s. for the best paper on any strictly legal subject, written by any financial member of the Wellington Law Students' Society, to Mr. H. J. Evans, LL.B., for his article entitled "Corroborative Evidence in Criminal Cases."

The Distinction Between Libel and Slander.

By E. K. Braybrooke, LL.M.

It affords the average student of the Law of Torts great pleasure to correct the layman's ignorance of what is, to the student, an elementary distinction drawn on the first page of every chapter and text book relating to Defamation. Sooner or later the student will hear a layman refer to some insulting remark or some piece of gossip as "Libel." Whereat he will, if he be of that obnoxious turn of mind which delights in correcting others' mistakes, inform the speaker, with some glee, that it is *no such thing*. If pressed, he will reveal that it is merely Slander; and, if pressed still further, he will (if he has recently consulted his text-books) elaborate the distinction.

Here our student will find himself on thin ice if he is speaking to an intelligent layman with an inquiring turn of mind. For the layman's next question will probably be: "Why the distinction?" If the student does not know, he will have some difficulty in maintaining the reputation as a sage that he has been trying to build up; and if he does know, he will probably show some reluctance and experience more difficulty in explaining to the layman just how a mere accident of history could bring so troublesome a distinction into our law.

For the fact that the distinction is due to an historical accident cannot be disguised. Like so many other rules of our law, it has grown up "without rhyme or reason." In this, as in so many other cases, the law has reached its ultimate destination by sailing a tortuous course, following the coastline of precedent and expediency, instead of navigating boldly by the aid of principle and reasoning.

The following is intended as a brief sketch of the history of the law, and is in no way comprehensive. But it shows clearly the trend of events which led to the formulation of the distinction, and shows too that the charge that it is "without rhyme or reason" is not without foundation.

During mediaeval times the King's Courts took at first no cognizance of Defamation. Gradually, however, there evolved an action on the case for Defamation, both written and spoken. As in all such actions, proof of special damage was essential to the plaintiff's success. Here we see the origin of one essential feature of the modern tort of Slander.

In the development of the law relating to this action a rule began to crystallize out that certain imputations were so likely to cause damage to the person defamed that special damage might well be presumed without being proved. So we find the origin of the modern rules as to the three classes of slanderous imputations which are actionable *per se*.

While these rules were developing, other rules were gradually being evolved to restrict the scope of the action in general and so relieve the Courts of the flood of such actions, which, at times, threatened to bring ordinary business to a standstill. These latter rules included the stringent rules as to the kinds of temporal damage necessary to support an action, and the non-liability of the original utterer of defamatory words for their unauthorized repetition, which still characterize the modern law of Slander.

It must be remembered that all the above rules applied not only to spoken Defamation, but also to written Defamation. The tort of Libel was, as yet, unknown. But written Defamation, particularly printed Defamation, was not only actionable in the common-law Courts, but also came within the purview of that august body known as the Star Chamber. This, in the exercise of its control over the new invention of printing, treated as a crime the printing of any defamatory matter, whether it referred to the State and its officers or to a private person. Moreover, in the case of the latter, it frequently allowed him to recover damages in respect of his good fame.

Malum in Se.

Alone, where the billows were beating
The sands of a desolate shore,
He sat, reading *Marsh versus Keating*,
A scholarly Student of Law;
Deep, deep, was the throb of their thunder,
And deep was the thrill of the thoughts
That plumbed the mysterious wonder—
Of *Winfield on Torts*.

She came with a cry on the water,
Borne down to the breakers in front,
The Student's Professor's fair Daughter,
Marooned in a derelict punt!
O Death! Wouldst thou take her unheeding?
Could no one Thy summons revoke?
The roar of the bar drowned her pleading—
The Student awoke.

"A rescue! Hold tight!" cried the scholar,
And rose to encounter his fate;
Then thought, as he took off his collar,
Of Winfield, at page thirty-eight.
The claim for his suit! *Haynes v. Harwood*
Was plainly distinguished—to wit,
The Court could reply (as her pa would)—
"*Volenti non fit.*"

Of *Wilson* he thought, and *Regina*—
He'd safeguard himself with a pact—
In vain; for the girl was a minor,
Bereft of the power to contract:
"'Tis true that the principle varies,
But if I must sue her in Tort,
There's *Cutler v. Unity Dairies*—
And I'm out of Court."

A flash of the brain! And the Student
Stepped forth with a gleam in his eye,
Removed such attire as was prudent,
And went out to conquer or die.
The punt is capsizing! She's filling!
The maiden has clung to a spar!
Oh, never had counsel more thrilling—
A call to the Bar.

The child of the Student's Professor
Was snatched from the *locus in quo*;
The Student made haste to caress her,
(A bold *juris praesumptio*).
Then praised he St. Austin, St. Bentham,
The saints whom all jurists adore,
For Salvage is fifty per centum—
By Admiralty Law.

—J. E. Moodie, LL.B.

During the seventeenth century the Star Chamber was abolished; and after the Restoration some of its jurisdiction, including that in cases of libel, was taken over by the common-law Judges.

Here we may see how the course of the law was again set by expediency. Hitherto it had endeavoured, by every means in its power, to restrict the scope of the action of Defamation; and the action had in consequence been so hedged about with rules as to be largely ineffective. The times were rude, however, and blood ran hot; so men, deprived of effective recourse to the Courts, settled their differences and avenged insults to their character at the point of the sword and the muzzle of the pistol; a practice which the law strove by every means to check. But an alternative to duelling had to be found; and it was eventually provided by an extension of the Star Chamber crime of libel to provide an action for damages. The case of *Thorley v. Kerry*, (1812) 4 Taunt. 355, 128 E.R. 367, finally settled the distinction between Libel and Slander in its modern form. Libel had now become a separate tort, actionable *per se*. The tort of written Defamation was of course merged with Libel; and the tort of Slander remained.

That, in brief, is the historical explanation of the distinction; an explanation from which no rational principles can be drawn. Attempts have been made to justify the distinction on the grounds that Libel is in most cases more serious than Slander; the printed word, it is argued, is more permanent than the spoken word, is spread wider, is more deliberate and hence more malevolent, and has a more powerful effect on the mind of the receiver. I do not propose to elaborate the demonstrable fallacy of these arguments; those who are interested will find ample refutation in Mr. Spencer Bower's delightful appendix (No. V) to his book on *Actionable Defamation*.

When the distinction was first introduced, its application presented little difficulty. Defamation was either written, or presented in some other permanent and unmistakable form, or else spoken, or presented in some equally transitory form. But of late years the distinction has become increasingly difficult to apply clearly. The business man dictating to his typist; the radio artist reading from a script; and the "talkie super-spectacle" have all found their way into the Law Reports; the gramophone-record and the over-enthusiastic sky-writer have invaded the realms of the examination-room. I understand that there is at present *sub judice* a case wherein the defamatory words were uttered by a parrot which had been trained to repeat them; I believe that the report will appear contemporaneously with this article. *

The difficulty in application alone is a potent argument for its abolition. It shows that the law is lagging behind the times and that it is not keeping pace with modern developments. But a still more potent argument is the injustice the distinction not infrequently produces. There is nowadays no rational basis for a distinction whose effect is, in the extreme case, to protect a man who, addressing a crowd of perhaps thousands, utters statements in the highest degree defamatory of another, on the grounds that the harm done to the other's reputation is not assessable in money values according to the narrow rules regarding temporal damages; while the man who casually, perhaps even inadvertently, makes a more or less defamatory statement in a private letter may be mulct in damages at the suit of the person defamed. There never was any rational basis for the distinction; the historical survey above shows that clearly; and if more proof be needed, the weak and specious attempts that have been made to justify it speak for themselves without needing any pointed comment.

The very kinds of damage which are inadmissible as special damage to support an action for Slander are yet fully admissible to aggravate damages in Libel. A Slander which has no more effect than the blasting of a man's reputation is not actionable, however obvious the harm he has suffered. A Libel which has the same effect is actionable, however; and on proof of his loss of reputation he may recover substantial damages. The same consideration applies to all other kinds of damage which are insufficient to support an action for Slander. Our intelligent layman may well ask "Why?" And we, as lawyers, must confess that we can give him no satisfactory answer.

The remedy is clear. The distinction between Libel and Slander should be abolished, and the new consolidated tort of Defamation should be made actionable *per se*. Once make the insult, and not the damage, the gist of the action, and the law is placed on a rational footing. Then let the distinction between the written and the spoken, between the permanent and the transitory, weigh only in the determination of the magnitude of the insult, and the consequent extent of the damage suffered. Only then will the lawyer be able to give the layman, who is, after all, the beneficiary of the law, a satisfactory answer to his insistent "Why?"

* *Lights v. Liver*, (1939) 15 N.Z.L.J. 212, *passim*.

Appreciation.

The Editorial Board, on behalf of the law students and clerks, desires to thank Messrs. Butterworth and Co. (Aust.), Ltd., for again undertaking the publication of this Students' Supplement; and the Editor of the JOURNAL for the assistance which he has at all times so willingly afforded to the Supplement Committee. The Board would also like to express its appreciation of the generosity of Messrs. C. H. Weston, K.C., and W. P. Rollings in offering prizes for competition.

Many persons have helped to make this Supplement a success, but the Board feels that special reference should be made to the work of Mr. D. A. S. Ward, who has acted as Secretary to the Supplement Committee and the Board. The larger part of the not inconsiderable burden of organization and correspondence which is involved in such a production as the present has fallen on him.

JAMES WILLIAMS,
For the Editorial Board.

A Recipe for Success at the Bar.—The late Mr. Justice Maule had a recipe for success at the Bar. It was as follows: In the first place, high spirits; in the second place, high spirits; and if young men will also learn a little law it will perhaps not impede them in their career.

Corroborative Evidence in Criminal Cases.

A Matter for Reform.

By H. J. Evans, LL.B.

The danger of relying upon the uncorroborated evidence of an accomplice is one which has long been recognized in English law, and will, presumably, require no emphasis here. The ground of the danger is not, of course, far to seek: the fact that a witness is an accomplice is, of itself, sufficient seriously to impair his credibility. It is not surprising, therefore, that some importance is attached by the law to the rule of practice whereby the Jury's attention is drawn to the danger, nor that the conception of corroboration itself should have been, at times, the subject of contention. It is proposed in this article to consider the law of New Zealand, first, in relation to this rule of practice, and, secondly, in relation to the meaning of corroboration. It will be submitted that in respect of both these matters there exists a serious need for reform.

The New Zealand authorities on the subject are few but weighty. *R. v. Weston*, [1912] 32 N.Z.L.R. 56, was an appeal from a direction given by Denniston, J., in an abortion trial at Christchurch. The learned Judge, having warned the jury of the danger of relying upon the uncorroborated evidence of the two chief witnesses for the Crown, who were accomplices in the crime, proceeded to leave to the jury the question whether certain of the exhibits amounted to corroboration of the story told by those witnesses. Some of the exhibits might and some might not have been used for unlawful purposes. It was argued for the accused in the Court of Appeal that, in so far as the possession of the articles by the accused did not establish a definite connection between him and the crime charged, the question of corroboration was not for the jury; in other words, that the Judge ought to have told the jury that unless the evidence which was tendered as corroboration connected the accused with the charge, it was not corroboration in law. In the result, Denniston, J.'s, direction was upheld. The principles thus established would appear to be two: first, that it is a rule of practice and not a rule of law for the Judge to warn the jury of the danger of relying upon the uncorroborated evidence of an accomplice; and secondly, that the question whether a proper direction has been given on the subject of corroboration does not raise any question of law within ss. 442 and 443 of the Crimes Act.

These principles were acted upon by the Court of Appeal in *R. v. Johnston*, [1931] G.L.R. 565. In that case the learned trial Judge had directed the jury that the following matters, *inter alia*, might be regarded by them as corroboration: (*a*) Evidence of the prosecutrix's father regarding her distress on returning home on the day of the alleged offence; (*b*) the prosecutrix's torn garments; and (*c*) evidence that the prosecutrix was thrown into a state of terror when she accidentally met the accused in the street. The appeal was dismissed. The *ratio decidendi* of the decision may be found in a citation made by Herdman, J., from an earlier case—*viz.*, that such evidence was admissible as "corroborating the credibility of the person making the charge and as evidence of the consistency of such person's conduct": per Herdman, J., at p. 569. As in *Weston's* case, it was held that no question of law was raised within ss. 442 and 443 of the Crimes Act. It may, however, be added that the learned Chief Justice suggested that the prisoner might avail himself of the provisions of s. 447; this section will be referred to below.

With the principles established by the foregoing decisions may be compared the following two propositions, which are intended to sum up the present law of England on the subject: (1) The practice of warning the jury is virtually a rule of law, and, in the absence of its being observed, the accused is at liberty to appeal under the Court of Criminal Appeal Act, 1907. (2) The kind of corroboration required is some independent evidence which affects the accused by tending to connect him with the crime. Such independent evidence, to amount to corroboration, must confirm in some material particular not only the accomplice's evidence that the crime has been committed, but also the evidence that the accused committed it: *R. v. Tate*, [1908] 2 K.B. 680 and R. *v. Baskerville*, [1916] 2 K.B. 658. It seems that in Australia, too, a similar position obtains. Under s. 6, for instance, of the Criminal Appeal Act, 1912 (New South Wales), an appeal will be allowed in any case where the Court of Criminal Appeal is of the opinion that, on any ground whatsoever, there has been a miscarriage of justice; nor is evidence corroborative which does not connect the accused with the crime charged: see *Hicks v. The King*, (1920) 28 C.L.R. 36.

When the position in New Zealand is thus compared with that in England and Australia, the conclusions, it is submitted, should be somewhat disturbing. In the first place, the presiding Judge may warn the jury or not, as he thinks fit; and, secondly, the jury may, as was pointed out by counsel for the accused in *Johnston's* case, actually be directed that they are entitled to use evidence against the accused which does not implicate him with the crime. In the present state of the law, the direction can in neither case be the subject of review.

It is true that s. 447 of the Crimes Act, which empowers the Governor-General in Council to direct a new trial instead of interfering with the sentence, may be invoked. But it may fairly be doubted whether the Governor-General in Council, however well qualified for the reviewing of sentences, is the proper tribunal for the exercise of so important a judicial function as is contemplated by s. 447. A proper amendment to the Act, it is suggested, would be the addition of two provisions—one declaring that the rule of practice in question shall be deemed to be a rule of law for the purposes of ss. 442 and 443, and another providing that no evidence shall be deemed corroboration which does not in some material particular tend to show that the accused committed the crime charged against him.

It is realized that certain of the arguments here adduced will be applicable to a more general question—*viz.*, whether it is not desirable to establish in New Zealand a Court of Criminal Appeal, with powers similar to or more extensive than those conferred upon the Criminal Appeal Courts in England and Australia. Whatever ultimate answer the Legislature may give to that more general question, it is submitted that no time need be lost in providing some such safeguards as the amendments here suggested would provide. For, in the words of Sir Isaac Isaacs in *Hicks v. The King* (*supra*), the question of corroborative evidence "concerns a highly important branch of the criminal law—namely, the proper precautions to which an accused person, and particularly one on trial for his life, is entitled, in order to guard against his being unjustly convicted."

The Internal Management of a Legal Office.

By J. T. Sheffield, A.R.A.N.Z.

The average solicitor is a notoriously bad business man. This factor, added to the conservatism of professional practice, has tended to hinder in legal offices that growth of efficiency in internal management which has characterized commercial practice in recent years. There are some practitioners who consider their profession above these material considerations, but any one who would acquiesce in waste from such idealistic motives would appear to lack the practical outlook essential in a lawyer.

The business of a law office is to render services in return for money benefits. This necessitates a systematic recording of services rendered, together with adequate methods of costing and rendering accounts. As in the course of business, considerable sums of money are handled for clients, a proper system of accounting is necessary. We may therefore subdivide the work of a legal office into three main heads: (1) The actual rendering of services; (2) The recording and costing of such services; and (3) Accounting.

The Rendering of Services.

This, of course, depends upon individual ability, but there are a number of ways in which goodwill may be built up and clients given the opportunity of appreciating the value of work done. In this connection, first impressions are important. The way your junior answers the phone, or the counter, the neatness of your staff or the tidiness and brightness of your waiting-room are all factors which can make or mar your business.

No matter how successful you may be personally, your clients' impressions of your office are going to depend upon these things. Are your letters and documents neatly and accurately typed, or are they a jumble of misspellings and erasures. Is your desk cluttered up with the accumulated correspondence of years, and does the dust lie thick on your bookshelves. All these considerations will be reflected in the balance of your Profit and Loss Account.

Your letters should be filed daily, and your filing system permit of instant locating of files. In my opinion, the card-index system, with each file indexed under the names of all parties, is difficult to improve on. If each client's card also contains references to all deeds held on his behalf, the system becomes almost perfect, although in this case a register of deeds arranged chronologically in order of receipt is also desirable.

Correspondence should be attended to daily if efficiency is to be maintained. The constant shelving of letters is usually a sign of procrastination or inertia, and contributes nothing to the interests of your client or yourself.

The work of the office should be divided among your staff in such a way that each member is doing that part of the work for which he is most suited. On no account should a responsible clerk have to perform duties which could be carried out equally well by the junior. A clerk who shows a willingness to take responsibility should be given the opportunity, as this will give you greater time to devote to the more important aspects of the business.

One last word about Magistrates' Court, Supreme Court, and similar forms. If these are filed away in cardboard envelopes and indexed, they are readily accessible when required, and it is very easy to tell at a glance when stocks are low.

Costing of Services.

The main difficulty here lies in ensuring that all work done is adequately recorded. A day-book is helpful, in which the names of all persons calling or ringing is recorded by the clerk answering the phone or the counter. Each principal should have in addition a desk diary to make notes of interviews and phone calls, and the registration clerk should also have a record of all documents filed or registered by him. Records should also be kept of the engrossment of documents, and from these sources the principals' diaries should be written daily. The good habit of exhaustive diarizing can only be acquired by practice, but it is a habit which unfortunately is not very often formed. In too many cases are accounts completed from a review of the file, and such a practice, while providing a useful check on diary entries, is a very poor substitute for them.

The compilation of the clients' accounts from the diary can be done in a number of ways, and consists merely of aggregating under the client's name the entries which appear in the diary chronologically. As soon as a matter is finalized however, the account should be prepared immediately and rendered. Delay is often the cause of bad debts; and if a client receives a bill some months after the work is completed, he is rather apt to discount the value of the work done. If an account is not paid immediately, accounts should, in my opinion, be rendered every month, and if the amount is not forthcoming in a reasonable time, a

letter should be written requesting payment. It is only by a careful check on these matters that bad debts can be avoided, and these should be reduced to a minimum for the benefit of the clients who do pay promptly.

ACCOUNTING.

The systems used should be kept in line with modern commercial practice. Loose-leaf ledgers are essential in most offices, and there is usually room for improvement in the systems of recording of interest, debt, and rent collections. The system followed in these latter cases will depend to a large extent on the volume of the transactions, but they should be kept rigidly up to date and should ensure that immediate notice is given of payments falling into arrear.

With regard to the office books, I have found that most systems are unduly cumbersome, involving as they do the use of a bulky Fees Transfer Journal and a Debtors Ledger. If the books are kept on what is known as the Cash Journal system, the amount of work entailed is appreciably diminished. Under this system the Debtors Ledger is replaced by filed carbons of the accounts rendered. As these are paid the amount is credited straight to Fees Account, and the corresponding account removed from the Fees Account file. At the end of the year one transfer of the total of the rendered but unpaid accounts brings the books into line for income-tax purposes. The system adopted, however, will differ from business to business, depending on the special characteristics of each. There is a tendency, however, in most offices to continue using an antiquated system merely because the accounts have always been kept that way, and with no regard at all to its adequacy for the work in hand.

On the whole then, the efficient management of a legal, like that of any other office, resolves itself into the common-sense application of the fundamental rules of business economics, and the practitioner who plans his business on such rules will in the long run have no cause for regrets.

The Solicitor's Song.

(With the usual apologies to Sir W. S. Gilbert.)

I am the very model of a modern young solicitor—
I'm deferential and polite to every lady visitor;
I've mastered Jurisprudence, and the nature of Reality
And learned by heart the theories of Abstract Personality;
I've studied Pound and Salmond in a mood severe and critical,
And shattered all their arguments with logic analytical;
I know the awful defects which in *summum jus* are resident;
I know the nature of a Right — I've analysed a Precedent:

Chorus:
He knows the nature of a Right — he's analysed a Precedent.

I've read Locke, Maine, and Korkunov, aghast at their stupidity,
And Kokourec and Hohfeld I've demolished with avidity;
But, deferential and polite to every lady visitor,
I am the very model of a modern young solicitor:

Chorus:
But, deferential and polite to every lady visitor,
He is the very model of a modern young solicitor.

I know the rules applying to contractual capacity;
On *Rylands* versus *Fletcher* I can argue with sagacity;
I quote the proper Statutes as to Infants and Annuities,
And render in hexameters the Law of Perpetuities;
I gabble of *jus tertii* and *trespass ab initio*,
And revel in Justinian on *furtum* and *traditio*;
I've read all Coke on Lyttleton, and written on his premises,
And know what the distinction between *themistes* and *themis* is:

Chorus:
And knows what the distinction between *themistes* and *themis* is.

I know exactly what the law relating to Estoppel is,
For I'm the finest lawyer you will find in the metropolis;
But, deferential and polite to every lady visitor,
I am the very model of a modern young solicitor:

Chorus:
But, deferential and polite to every lady visitor,
He is the very model of a modern young solicitor.

In fact, when pleading doesn't seem to be an utter mystery,
And when I know a little law instead of lots of history;
When I have learned a smattering of ethics and of etiquette;
When I know more Procedure than a coolie in Connecticut;
When I can write opinions that are short and comprehensible;
When I can take on actions that appear quite indefensible;
In short, when I've forgotten what I've learned, you'll shout: *Feliciter!*
And say you've never met with such a promising solicitor:

Chorus:
And say you've never met such a promising solicitor.

For I have now discovered that the scope of legal knowledge is
A little wider than we learn in textbooks and at colleges;
But, deferential and polite to every lady visitor,
I am the very model of a modern young solicitor:

Chorus:
But, deferential and polite to every lady visitor,
I am the very model of a modern young solicitor.

—RONALD L. MEEK, LL.M.

A Certified Case.

LIGHTS v. LIVER.

Reported by RONALD L. MEEK, LL.M.

Judgment was delivered to-day in the celebrated Parrot Libel Action. Mr. Justice *Codd* (delivering judgment).

In this case, none of the facts are in dispute, but the questions of law are of such intense difficulty and complexity that already two Magistrates, four barristers, and three barristers' clerks have perished miserably under the strain. You must understand that I have been engaged solely on this awful case for three weeks, and that I have only been able to continue by the constant application of stimulants, internal and external, and I know that you will forgive me if my judgment is not marked by my customary lucidity and brilliance.

The facts, which I am now able to repeat with ease either backwards or forwards, are as follows :—

James Liver, a butcher of Middletown, for some unaccountable reason had an animosity towards another butcher, a Mr. Ham, who carried on business in the same town. Also practising this reputable and ancient trade in the locality was a certain William Lights, the custom of the populace being almost equally divided among these three traders. Now Mr. Liver formerly had a virtual monopoly in " small goods "—a species of food of the nature of which I confess I was ignorant before this case came before me—but owing to an unfortunate incident in the village, alleged to be due to the age of a sausage sold by Mr. Liver, the latter's trade in " small goods " was being gradually transferred by the inhabitants of Middletown to Mr. Ham.

Mr. Liver, whose subtlety I admire but deprecate, conceived an ingenious plan to recapture this trade in " small goods " from Mr. Ham. From a seafaring man he purchased a cockatoo of repellent aspect, which he trained, according to Sir Egbert Bludd, who appeared on behalf of the plaintiff, on the lines used by a certain Pavlov when training his dogs. I am unable to certify that this is so, as Mr. Pavlov was unfortunately not called. In any case the result was that the parrot, which Mr. Liver kept hanging in his shop among the forequarters, when the name " Ham " was mentioned by a customer in the shop, would say in a loud and inelegant voice : " His meat is bad, but ours delights."

Incontrovertible evidence has been given of this fact ; the parrot itself was unable to give evidence owing to its recent demise in rather mysterious circumstances—which I strongly suspect Mr. Ham, who is not a party in this case, could elucidate.

Now Mr. Liver's scheme might have succeeded had not the parrot made a slight mistake of diction, in the presence of six witnesses, on the morning of May 6, 1939. The parrot, instead of its usual words, " His meat is bad, but ours delights," uttered when a customer in the shop compared the " small goods " of Liver unfavourably with those of Ham, stated clearly : " His meat's as bad as Mr. Lights's." In consequence of this statement, Mr. Lights has brought the present action against Mr. Liver, alleging defamation and claiming astronomical damages.

And now with great trepidation I turn to the legal questions involved. Among the innumerable defences raised by the defendant's counsel was the assertion that the parrot's statement was true—that Mr. Ham's meat was as bad as Mr. Lights's. The jury has examined samples of the meat sold by both Mr. Ham and Mr. Lights, and has come to the conclusion that neither is bad, so that the first defence fails.

So we have to decide whether the parrot's statement is libel or slander. Under the incredible libel laws by which I have the misfortune to be bound, a distinction is made between slander, which is defamation by word of mouth, and libel, which is defamation by words reduced to some permanent form. The point is material in this case, as Mr. Lights has suffered no damage—indeed, his takings have lately been doubled owing to the extraordinary publicity afforded by this ridiculous action—and thus, if the defamation be slander, the plaintiff's case must fail.

Counsel for the defendant argued that the words were spoken by the parrot as Mr. Liver's agent, that Mr. Liver had carefully instructed the miserable bird what to say, that the defamation was thus plainly slander, and that the plaintiff's case must accordingly fail.

But Sir Egbert Bludd also pointed out several facts :—

(*a*) That by training the bird to reproduce given words at will, Mr. Liver was putting these words in a permanent form.

(*b*) That the words could be reproduced at any time by saying the word " Ham."

(*c*) That this procedure is analogous to turning on a gramophone, *Youssoupoff v. Metro-Goldwyn-Mayer Pictures* applied, and the defamation is accordingly libel.

This reasoning I consider faultless, and I hold the defamation to be libel. The fact that on the occasion in question the parrot did not in fact reproduce the words taught to it, I discounted, as it was clear that, if I endeavoured to consider any further complications, something awful would happen. For the same reason I did not listen to the metaphysical experts produced by both sides, who proved to me first that parrots do not possess a free will, and then that they do.

We now come to another important question : Was the parrot in uttering the libel acting in the course of its employment ? This question is confused by another : Is a parrot an animal *ferae naturae* or not ? And another : Was the parrot's remark *ultra vires* the parrot ?

I have considered these questions at great length, and have weighed all the possibilities. If the parrot was not acting in the course of its employment—assuming for the moment that a parrot can be employed—the parrot would be liable, but Mr. Liver would not unless the parrot were an animal *ferae*

naturae, in which case he would be liable for all damage caused by it—but it hasn't caused any damage—and if the parrot was not an animal *ferae naturae* Mr. Liver would not be liable unless the parrot had shown previous tendencies to utter libellous remarks about Mr. Lights—which it hadn't—and if the words were *ultra vires*, they wouldn't be libel, but slander—and —oh damn ! Let's Toss up !

(The Clerk of Court handed a penny to Mr. Justice Codd, who was obviously deeply affected. His Honour spun the coin with trembling fingers.)

Mr. Justice Codd: Heads Liver—Tails Lights. It's heads—judgment for the defendant !

(The Clerk of Court regained his penny with difficulty from Mr. Justice Codd, and was seen to examine it carefully.)

The Clerk of Court: Your Honour—it is a double header !

(Here Mr. Justice Codd fainted, and was carried out.)

An Historical Interpretation of Magna Carta.

By A. R. Perry, LL.M.

That historic document, Magna Carta, was recently sent to America for exhibition at the World Fair. Please don't be alarmed. The event does not mark the denial of what are regarded as fundamental British liberties. The document will be returned to London in due course.

This news item must have excited considerable interest throughout the British Commonwealth of Nations. We have all been taught somewhat along the lines that Magna Carta established the freedom of the British people, their right to trial by jury, and other liberties inherent in the British Constitution. Let us hope that our freedom rests on a more secure foundation, for Magna Carta established no such principles.

What were the circumstances that brought King John to Runnymede on June 15, 1215 ? This able and most unscrupulous Angevin monarch had fallen foul of every power in the land. His endeavour to tax and limit the power of the Church brought forth the papal interdict from Pope Innocent III. He alienated the barony by new fines and aids, and by attempting to go beyond the whole system of property relations lying at the root of the feudal system. On top of this, he conducted an unsuccessful foreign policy, culminating in the loss of Normandy. For many of the English barons this meant the loss of huge ancestral estates—and what Englishman does not regard his colonies as sacred ?

The King still had one trump card to play in his struggles with the barony—to call out the fyrd. But the towns for the previous century or more had been growing conscious of their corporate rights and keenly resented the monarch's impositions. The result was the defalcation of the fyrd: King John stood alone. It is this fact which has always been taken, somewhat erroneously, as indicating that the revolt against the Crown was a popular rising. Admittedly it had a wider base than any previous struggle, and the importance of that must be appreciated. But neither the Church, nor the barons, nor the burgesses really represented the mass of the people.

The powers which brought King John to brook did not consciously endeavour to set up a system of law and justice in England. The Charter was not a constitutional document. It did not, and could not, guarantee parliamentary government, because such did not then exist. It did not establish the right to trial by jury: the jury was a monarchical institution to which the barons took the strongest exception.

The reader will be thinking of the clause: "No freeman shall be taken or imprisoned or disseised or exiled or in any way destroyed, nor will we go upon him or send upon him except by the lawful judgment of his peers and the law of the land." But the word "freeman" had a special significance in those days, and its use excluded from any possible benefit the overwhelming mass of the people who were still in villeinage.

What then was the importance of Magna Carta ? Just this: the Charter set out the ways in which King John had exceeded his rights as a feudal overlord and demanded that these unlawful practices should stop. But this statement was extracted by the barons in alliance with the merchants of London; in this combination, and in the setting up of the permanent committee of twenty-four barons, the feudal lords went far beyond the previously conceived bounds of feudalism. The method of their victory, and not primarily what they achieved, was, without their realizing it, to lead to Simon de Montfort's first Parliament.

Runnymede marked a turning-point in Britain's history. It was the pinnacle of feudal achievement. But it was both a culmination and a point of departure. Thenceforth the feudal system was on the decline. Every sovereign from John to Henry VI solemnly reaffirmed the Charter; then with the decay of the feudal system it faded into oblivion till the period of Stuart unrest when it was resurrected to perform duties never intended of it. It is interesting to note that Shakespeare in his *King John* never mentions the Charter. Quite possibly he had never heard of it.

To regard Magna Carta as the foundation of rights in the present age is to interpret its terms without reference to the circumstances surrounding its signature. Yet that is the interpretation given to it from the Stuart period practically down to the present time. Clearly, at the present time the Charter possesses no positive value. What lesson are we to draw from the popular misconception ? The lesson is two-fold.

A keen research student (I do not claim to be one) will probably find in ancient statutes provision enough

for the restriction of many of the liberties we regard as fundamental, if such statutes are not interpreted in the light of the circumstances and purposes of their enactment. Probably many War-time statutes, the declared purpose of which has long since passed, are still on the statute-book. Just as Magna Carta is regarded as a charter of liberties in an age when it cannot apply, so an endeavour will be made to use these statutes for purposes never intended by Parliament. The profession must act as a guardian of the people's rights in preventing such abuse.

The second point is this: justice can never rise superior to the economic conditions of society and the cultural developments conditioned by them. The law will always be one step behind public opinion. If we feel that our law is deficient in any respect, we shall find that the remedy is usually conditional upon a change in society. The law cannot anticipate progress.

The Great Charter used language which in our present society would be regarded as a charter of liberties; but the State, or rather the make-up of society in 1215, shows that the document did not effect such a purpose.

The law is directly affected by "the economic conditions of society and the cultural developments conditioned by them." The lawyer cannot divorce himself from the problems of that society. If the student is interested only in the law as it stands, is interested only in providing an income, let him disregard the society around him. But if he is interested in the dispensing of justice between man and man, he must direct his attention to the problems of that society.

Before the profession can adequately fulfil its mission, a much greater awareness of these problems is required. If that awareness is to exist in the future, a radical change in legal education is called for. This is not the place to examine the question of legal education in detail, but the thesis is obvious. Let us cease training students in the memorisation of abstract provisions of our law. The law is a reflect of society: the study of law should be a live study, the study of progress, not merely a ritual preparation for earning a living.

Per Judicia ad Astra.

Those who were present at Grace's nativity
Noted her bump of judicial proclivity;
Even before She could crawl on the floor
She amassed an unusual knowledge of law;
She spoke of her comforter as a Retainer,
And burbled of *Jura in re aliena*,
She'd constantly prattle, of Blackstone and Vattel
And whether a leasehold is really a chattel.
"The girl will go far," said her puzzled papa,
As he watched her devouring the N.Z.L.R.—
And straightway allowed her to read for the Bar.

Gracie prepared for the legal profession,
But into her life came a second obsession—
Though all of her thought, was on Contract and Tort,
Her feet in a tangle of rhythm were caught;
She found that the optimum method of swotting
Was reading a Garrow while softly fox-trotting;
In Conflicts, the lassie evolved a new *chassée*
To *Cables and Wireless ats. Haile Selassie*,
And when, in Degree, she had topped LL.B.,
Her parents were palpably worried, till she—
Gyrated and sang in a confident key:
I'm Gracie,
The racy,
You may see me a K.C.—
I'm up to anything:
From dancing I will wean myself,
And preen myself,
Demean myself
Like all the "silks" I've seen myself—
Though I Do Like Swing.

When she descended on legal society,
All were astonished at Gracie's propriety;
Charming decorum She showed in the forum—
Susceptible J.P.'s were thrust *in terrorem*,
While juries who heard her were always unanimous;
(Not that you'd dare to accuse them of *animus*—
Who would be fractive, with counsel so active,
So learned in law, and so very attractive?)
Such pleas she invented, so neatly presented,
That soon, at an age that was unprecedented—
The lady was called to the Bench, and consented.

Picture yourself as you struggle to stammer a
Plea to Miss Justice, when sitting *in camera*;
Counsel can tell, how they trembled and fell—
It was worse than proposing (I hear that that's Hell!)
And though their confusion Her Honour could mitigate,
She, who as counsel could cheerfully litigate,
Now with vexation, found every citation
Enslaving her feet in the old syncopation.
With stern self-command She would oft reprimand
The subtle temptation she sought to withstand—
But then—Came the case of the Rhythm Boys' Band!

Gracie was startled, but lulled to security.
Soothed by the barrister's blushing obscurity,
Till, looking guileless, embarrassed, but tireless,
He quoted *Selassie v. Cables and Wireless*!
Whoop! With the Usher the learned Judge grappled,
And Tango'd, and Rumba'd, and even Big Apple'd!
They had to remove her, and, scared to reprove her,
They sent her away on a trip to Vancouver—
The Film of the Year's, a delight to the ears,
The Merchant of Venice, or, *Swing Gondoliers*—
And this is the theme-song, when Portia appears:
Let Gracie,
Ex-K.C.,
Requiescat in pace,
'Cos Gee, I gotta sing;
I reckon Law is play for girls,
O.K. for girls,
Just hay for girls;
But sure, I guess I'll say, for girls
You Can't Beat Swing.

—J. E. Moodie, LL.B.

The Legal Profession To-day.

By G. C. C. Sandston, LL.M.

It is a strange fact that while in English constitutional development lawyers have exercised a dominating influence and occupied a position almost unique, an influence which is exerted and a position which is held to this day, there is little public recognition of the fact. Indeed, despite the profession's long and distinguished service to society and to the State, one cannot escape the impression that the average citizen does not regard lawyers as essential members of the social fabric, but accepts them without enthusiasm as a useful necessity—one had almost said an unwelcome necessity. The reason is not far to seek—like the League of Nations their successes arouse no comment, their failures are apparent to every one.

It is hardly to be wondered at, however, that the public fails to grasp the significance of a great body of men in its midst, highly specialized, trained to an understanding of state-craft but detached from political discussion when most lawyers themselves miss the larger implications of their great tradition. The main feature of English history from the first awakening of a political conscience to the present day has been the slow and steady evolution of a system of government so just and so efficient that it would have excited the admiration of the Greeks and which (even greater tribute) is the chief target for the anger of the children of political despair—the Fascists. That this instrument of government should have come to us through evolution and not revolution is due in no little part to the effective co-operation of a proud, powerful, and, on the whole, intelligent body of lawyers. Professor H. A. L. Fisher, speaking of English lawyers, said: "It is common knowledge that lawyers in a parliament of amateurs exert more than their fair share of influence. A mediaeval parliament was full of men learned in the law: and our statute-book, which is singularly free from idle rhetoric or hysteria, bears the imprint of the most cautious, the most conservative, and the most insular of professions." Strange that in a world of blaring trumpets and martial ardour the greatest political system should be the product of an unromantic, cautious, and superficially uninteresting body of men, of whom lawyers comprised the most influential element! Perhaps therein lies the moral. The great triumphs of history have in large part been wrought not upon the battlefields, but by unremitting toil, by patience and foresight, and by attention to detail.

At this point the reader may be tempted to ask "What has this to do with the Legal Profession to-day?" Simply this—that if the trained experience of lawyers was necessary to build up our political system; how much more necessary is it to-day to preserve that system when the central fact of public life, if one cares to heed it, is that this is an era of government by experts? Things have become so complicated that none but experts can handle them, and we are in the ultimate resource really dependent upon the expert for guidance in such matters as economics, science, health, and, indeed, in nearly everything else. But surely the most important of all is the expert not in one special branch of social life, but the expert who is concerned with the correlation and control of all branches of it so that freedom and liberty and society itself may survive? Does it not occur to one that the stresses and strains of the modern world are due very largely to the fact that the experts in the special sciences have outstripped the experts in the science of life and of living? Knowledge has come, but not wisdom. And if the lesson of English history is read aright, then our salvation lies not in grand ideals, and empty flourishes or in philosophical disputations, but in careful and painstaking toil, in unremitting vigilance, and in sound common sense. And these are exactly the virtues which the lawyer has supplied in the past, and which he can and should supply to-day.

How then can the lawyer assist to-day? What has already been said supplies in part the answer. Lawyers should assist more actively in the running of the community than they do at present. By that, one does not infer that they should rush into politics—far from it. As Cardinal Bourne observed, influence is none the less effective because it works in silence and it is imponderables which count in the long run rather than arid dialectics. By intelligent criticism, by constructive comment, and even by efficiency in their everyday life, lawyers, by virtue of their training and their unique position, can and should exercise a more beneficial influence in the community than they do. In a democracy, lawyers occupy an essential place—new and subversive influences should be treated not as a threat, but as a challenge. There is not, for instance, as full an appreciation in the public mind as one could wish of the importance of the dignity and independence of the Bench. The necessary immunity from criticism of the Judiciary is an important respect in which lawyers can exercise a beneficial influence. Let us cultivate a healthy and vigorous corporate spirit—it should not be difficult.

Above all, the legal profession can combat a new menace which has arisen to threaten society. I refer to the deliberate and systematic perversion of the truth, which is known as propaganda. It is perhaps not generally realized that propaganda is now as much a science in its way as chemistry or physics. It is a recognized instrument of state-craft with the accent on the "craft." To the incredulous I would point out that probably the most important man in Germany after Herr Hitler is Dr. Goebbels—and he is Minister of Propaganda. To combat this real menace the lawyer in singularly well equipped. He deals with facts all day—he is used to reading between the lines. Any lawyer to whom one side of a question is sacrosanct and who ignores the other side is riding for a fall. In this one respect, then, the lawyer can render great service on a question not of trifling importance but of profound gravity.

The burden of this article then is this: The world has had a surfeit of idealists with a stammer in their thoughts. Our salvation, if there is one, lies upon the road of trial and error, and the signposts are prudence and foresight, patience and care. To none more than the lawyer should these signs be of greater meaning. We are all decided upon the end—the greater happiness of man. The dispute centres upon the means of attaining that end, and none is better equipped than

the lawyer to decide upon ways and means. It is not that democracy has been tried and found wanting, but rather that it has been found difficult and not tried. It is so much easier for one man to talk wildly and govern ill than for many to talk wisely and govern well. In the ultimate analysis, the responsibility for the acceptance or rejection of democracy rests more heavily upon lawyers than upon any other class of the community with the single exception of the statesmen themselves.

The Day's Work.

By The Office Junior.

A law clerk is a hard worked and much maligned individual. We have all heard that very old and true saying: "A successful member of the Bar would probably ascribe his success to genius, or (if modest) to charm and personality. His fellow-lawyers would ascribe it to the inscrutable vagaries of Providence. Only his clerk would know to whom it was really due."

And talking about hard work calls to mind my own daily routine at the Office. Of course, as I've been trained in a Law Office, I naturally want to define the terms that I intend using in order to dispel any doubts that you may have about certain mystic symbols used so frequently by myself in the course of a day.

The most popular and useful symbol is "L.T.O." This refers, of course, to the Land Transfer Office (not as you may have thought to "long time out"). A note left on my table to that effect signifies an absence varying from fifteen minutes to sixty minutes, dependent upon whether the University Capping festivities are under way or whether local or international politics are particularly active and merit a walk to the *Evening Post*. "S.D.O." (Stamp Duties Office) is much akin to L.T.O. and is difficult to distinguish. However, it is used only in an emergency, as, for instance, when one of the partners happens to be L.T.O.'ing at zero hour (see *post*). "G.P.O." signifies an absence from all official duties, and on a G.P.O. excursion documents and files are not expected to be conspicuously displayed under the arm as when L.T.O.'ing or S.D.O.'ing. "G.P.O.", indicates a social outing (in the more refined sense of the term) when all office worries and responsibilities should be put aside and completely forgotten. It is used mainly on festive occasions such as when the family come down from the country and free morning and afternoon teas are going begging at some of the high-class tea-rooms. Examination results usually lead to a surfeit of such outings, and we have quite a happy tradition that the newly fledged graduate should stage a G.P.O. morning. Experience has taught me that the symbol "G.P.O." always signifies an element of risk which, though admittedly making the successful venture more enjoyable, nevertheless may cause some embarrassment. The partners, particularly the more socially inclined, like to frequent the superior eating-houses, and as you can well imagine, unless a discreet get-a-way can be staged, explanations have to be made later in the day. Here, again, the training in the Law comes in useful.

I have referred to one of the traditions of the Law Clerk and that reminds me of others which have grown up with the profession. The unwritten code of Law Clerks provides that there must be absolute trust and honesty in their mutual dealings. Say for instance I'd forgotten to produce a Certificate of Title. I'd tell my brother Law Clerk quite truthfully and openly that I had been careless and had forgotten to do this. Of course, I would expect him (and never yet in my own experience in vain) to tell his employer that there had been an unforeseen but inevitable delay through no fault of mine. Which all tends to show that we Law Clerks are getting excellent experience for the practice of the profession at some later date. I could tell you of many other traditions, but perhaps in the telling I might be a little indiscreet and reveal a thing or two which it would be to my advantage to leave untold.

One's principals, of course, have to be considered in the course of the day's work. The technique required will probably come in useful when considering, at some remote date, the vagaries of the plaintiff in a breach-of-promise action. Their interests must be safeguarded with care; hence, impetuosity in the firm's interests is not always appreciated, as it is not considered unalloyed merit in a Law Clerk to devise ways and means of winding-up a deceased estate which has kept two generations in the firm in comparative affluence. Again, part of a Law Clerk's duty is to gain glory for his office, such as taking part in the annual extravaganza, or acting as "counsel" in the Moot series, or giving of his best to the Students' Supplement. The reflected glory on his principals will be a sufficient *quid pro quo* for the loss of their time spent on such extraneously helpful activities.

A considerate employer will arrange for all his running-down cases to be in course of preparation during the season when the Law Clerk's Annual Snooker Tournament is in progress. This will allow his clerks plenty of time to take part in their necessary visits to the *locus in quo*.

My own office day can be divided into four phases—namely, from 9 a.m. approx. (and I mean approx.) till morning tea-time (first zero hour—see *ante*); from first zero hour till 1 p.m.; from 2 p.m. till afternoon-tea time (second zero hour—also see *ante*); and from second zero hour till 5 p.m. (again approx.). So you see that the day could not possibly drag, and in fact could almost be called a very full day. Office work, routine and appointments, are made to fit into the framework of this planned day, and I may say that by tactful use of the symbols which I have already explained to you I can usually manage to keep to my scheme. Which all goes to show that a Law Clerk is quite a decent chap, and, when you come to think of it, all lawyers at some stage were Law Clerks although in some cases you mightn't think so. Yes, the profession of law is not so bad after all, and, as you can see, it has its points.