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

"*The Judges and the lawyers, from the highest to the humblest throughout the Empire, have a single philosophy and a single creed. They stand for the ancient traditions of law and justice. These are the ultimate reasons for their existence, and they must of necessity make every effort and every sacrifice to retain these traditions unimpaired.*"

—LORD MAUGHAM, L.C., at the Lord Mayor's Dinner to the Judiciary, July 4, 1939.

Vol. XV. Tuesday, September 5, 1939. No. 16.

Modification of the Doctrine of Contributory Negligence.

II.

THOUGH the principles of causation are the same in Admiralty and at common law, the resultant finding as to liability has not in fact always been applied in exactly the same way.

In *Admiralty Commissioners v. S.S. "Volute,"* [1922] 1 A.C. 129, 144, Lord Birkenhead, L.C., said:

> "Upon the whole I think that the question of contributory negligence must be dealt with somewhat broadly and upon common-sense principles as a jury would probably deal with it. And while no doubt, where a clear line can be drawn, the subsequent negligence is the only one to look to, there are cases in which the two acts come so closely together, and the second act of negligence is so mixed up with the state of things brought about by the first act, that the party secondly negligent, while not held free from blame under the *Bywell Castle* rule, might, on the other hand, invoke the prior negligence as being part of the cause of the collision so as to make it a case of contribution. And the Maritime Conventions Act with its provisions for nice qualifications as to the quantum of blame and the proportions in which contribution is to be made may be taken as to some extent declaratory of the Admiralty rule in this respect."

And in *The Eurymedon*, [1938] P. 41, 57–58, Scott, L.J., said:

> ". . . in my view the broad feature which results from the cases is, alike in Admiralty and at common law, that the final question is one of fact, to be decided by the tribunal of fact, with due regard to all the circumstances of the case, as Bucknill, J., pointed out at the end of his judgment. I confess to a feeling that much of the litigation which has taken place in the past upon this type of question has arisen through a tendency to substitute a too philosophical analysis of causation for a broad estimate of responsibility in the legal sense."

Similar observations have been made by the Judicial Committee of the Privy Council in *Loach's* case, [1916] 1 A.C. 719, 727, in a judgment delivered by Lord Sumner, when he said:

> "Many persons are apt to think that, in a case of contributory negligence like the present, the injured man deserved to be hurt, but the question is not one of desert or the lack of it, but of the cause legally responsible for the injury . . . It [the inquiry] is in search not merely of a causal agency, but of the responsible agent . . . there may be a considerable sequence of physical events, and even of acts of responsible human beings, between the damage done and the conduct which is tortious and is its cause."

And by Lord Wright in *McLean v. Bell*, (1932) 147 L.T. 262, 264:

> "In one sense but for the negligence of the pursuer . . . in attempting to cross the road, she would not have been struck, and as matter simply of causation her acts formed a necessary element in the final result, since without them no accident could have occurred. The decision, however, of the case must turn not simply on causation but on responsibility; the plaintiff's negligence may be what is often called '*causa sine qua non*,' yet as regards responsibility it becomes merely evidential or matter of narrative, if the defendant acting reasonably could and ought to have avoided the collision."

In both cases stress is laid upon the necessity for finding the cause which the law regards as having brought about the mischief, not necessarily regarding the act last done as having alone to be regarded, nor taking too narrow a view in determining what the cause is.

But the Admiralty Court has always to some extent and since the passing of the proportional rule under the Maritime Conventions Act, to a greater extent, had an advantage over the common law. Owing to their ability to apportion the blame, the Judges of that Court have not felt themselves obliged to make too meticulous an analysis of the causes from which an accident happens. At common law, on the other hand, where the plaintiff's negligence has been slight in comparison with that of the defendant, juries have been inclined to find the defendant solely in fault, and Judges to have recourse to a refinement of reasoning in order to support the verdict and prevent the failure of an action which in substance deserved to succeed.

Where, however, the liability can be apportioned to the fault "the question," as Lord Birkenhead says, "of contributory negligence can be dealt with somewhat broadly and on common-sense principles as a jury would probably deal with it."

For these reasons, while the Committee recommends that the principle of apportioning the loss to the fault should be adopted at common law, it does *not recommend any change in the method of ascertaining whose the fault may be, nor any abrogation of what has been somewhat inaptly called the "last opportunity rule.*"

The Committee adds:

> "In truth there is no such rule—the question, as in all questions of liability for a tortious act, is not who had the last opportunity of avoiding the mischief, but whose act caused the wrong? Sometimes the answer may be found as in *Davies v. Mann*, (1842) 10 M. & W. 546, 152 E.R. 588, by answering the former question, but in other cases, as in *The Eurymedon* (*supra*), such an answer is not conclusive.
>
> "No doubt the search for the cause in this sense is at times difficult and the result uncertain but that is not the fault of the law or of the decisions, it is rather the result of the fact that the events which lead up to an accident are often complicated, and the law which cannot take account of every cause must do its best to choose that which seems most consistent with what it regards as common sense and common fairness. If the necessity for causation in this sense is abandoned, it is difficult to see to what matters the causes of an accident can be limited, or why what Lord Wright described as matters of evidence or narrative should not be included.

"Moreover to make the further change would involve the difficulty of either (i) altering the Admiralty Rule also and for that purpose amending an Act which has been passed to give effect to an International Convention, or (ii) making the common law again inconsistent with the Admiralty Rule. Our recommendation as it stands assimilates the common law to that of the Court of Admiralty."

The effect of the change suggested by the Law Revision Committee would be not only to bring the common-law rule into line with that of the Admiralty Courts in England, but to assimilate English law to that of many European countries and of some of the Canadian Provinces and North American States.

It is true that in countries which have derived their legal system from the common law of England, the English common-law rule is apt to prevail. This is true in general of Canada, India, Australia, New Zealand, and the United States of America. South African law, though founded on Roman Dutch law, follows the same principles. In certain of the Canadian Provinces, however, the change suggested—*viz.*, to adopt the Admiralty principle, has been effected by legislation, and in a number of States in the United States of America the right to recover damages, where there has been contributory negligence, has been made dependent on the amount of negligence attributable to each party.

So, too, in Continental law the general principle is that the Court has a discretionary power to reduce the damages, or to extinguish them altogether in proportion to the degree in which the plaintiff has contributed to cause the accident. In some instances this rule is firmly established by case law—*e.g.*, in French law; in others it is embodied in the Codes—*e.g.*, Art. 254 of the German Civil Code and Art. 44 of the Swiss Code of Obligations. It has also been taken over by the more recent Codes such as the Turkish and Chinese Codes. The common-law rules of contributory negligence have no counterpart in any system other than the Anglo-American systems of law.

The Committee is fully aware that no doubt it is possible to conceive objections to the change which it proposes, but its members doubt if they have any substantial foundation. It is, for example, possible to suggest that the result of apportioning the damages may be to cause a great increase in litigation. Possibly the expectation of a pedestrian that he will be able to obtain some compensation when he is injured by a motorist, even though he himself may be to some extent to blame, may incite him to bring an action which at present would be likely to fail. If, however, the fault is only partially his, the Committee thinks that justice rather than injustice will be done even if some increase in litigation takes place, but indeed, it does not think that any startling increase will result. The experience in Ontario where such a rule has been in existence since 1924 is that the total amount of damages recovered by plaintiffs is not increased to any marked extent. The increase in the number of cases in which damages have been obtained is said to have been offset to a large extent by the decrease in the amount of damages awarded in those cases where the plaintiff's negligence has contributed to the result, and this contention seems to be borne out by the fact that the Canadian insurance rates have not increased in recent years.

It may also be objected that it will be difficult for a jury to determine the degree of blame attributable to each party and to apportion damages accordingly. In the Committee's view, it will be less difficult for them to do so than it is to determine the cause to which the accident must be attributed, and if, as is suggested, the matter is to be dealt with on broad lines, it thinks that any reasonable jury can assess the damages with sufficient accuracy.

The Admiralty Court has no difficulty in apportioning the damages under its rule, and though in that case the decision is that of a Judge and not of a jury, the experience of the Courts in Canada seems to show that a jury is also capable of making the required apportionment. Assuming that the principle of apportionment of damages is to be accepted, the further question arises whether the principle is to be applied to all torts and not merely to damages resulting from the tort of negligence.

Negligence may be either an independent tort, or one of the possible modes in which certain other torts may be committed—*e.g.*, it is possible to commit trespass or defamation negligently as well as intentionally. In some of these torts—*e.g.*, certain trespasses to land and to goods and defamation—it is immaterial whether the tort be committed intentionally or negligently, and in such cases contributory negligence would be impossible as a defence; but in others—*e.g.*, accidental harm arising from trespasses on or from the highway—negligence is relevant and, consequently, so is contributory negligence.

In the Committee s opinion, there seems to be no reason why apportionment should not be allowed in all torts in which contributory negligence is a relevant defence. The principle ought undoubtedly to apply where negligent injury to the person or to property occurs; but ought it also to apply where the injury results in death? Again there seems to be no theoretical reason why it should not.

If the change is to apply where death occurs, the further question arises whether any consequential amendment of the statutes dealing with injuries resulting in death would be required. These are (*a*) the Fatal Accidents Act, 1846-1908 (in New Zealand, the Deaths by Accidents Compensation Act, 1908), (*b*) the Employers' Liability Act, 1880 (repealed in New Zealand by the Workers' Compensation Act, 1908 (No. 248), s. 60), (*c*) the Carriage by Air Act, 1932, (*d*) the Law Reform (Miscellaneous Provisions) Act, 1934 (our Law Reform Act, 1936, ss. 3, 5, 6) and (*e*) the Road Traffic Act, 1934, and similar statutes enacted in New Zealand.

None of these Acts would be affected by the introduction of the principle of apportionment, since they deal with the incidence of liability arising from wrongful acts, and not with the apportionment of damages between parties who have both been negligent. Nor would the Maritime Conventions Act, 1911, be affected. The change suggested would, as indicated above, merely bring the common law into line with that enactment.

On the other hand, the Workmen's Compensation Act, 1925, deals with an exceptional position. The claimant is disabled from recovering if he is guilty of serious and wilful misconduct, unless the injury results in death or serious and permanent disablement, in which case the claim is allowable, even if the claimant was contravening some statutory or other regulation or an order of his employer, provided his act was done for the purpose of his employer's business. Puzzling questions as to apportionment might arise if that

principle were applied unless the statute were amended; and, as the Legislature had a clear purpose clearly expressed in the Act, as to the method of dealing with the question of serious and wilful misconduct, the Committee thought it better to except that statute from any projected amendment, and suggested that no change should be made in it.

The Committee summarizes its recommendations as follows:

That in cases where damage has been caused by the fault of two or more persons the tribunal trying the case (whether that tribunal be a Judge or jury) shall apportion the liability in the degree in which each party is found to be in fault.

A Distinguished Contributor.

IN this issue we are privileged to publish an article on Legal Education by that eminent jurist, Dr. Roscoe Pound, formerly Dean of the Harvard Law School, who has written it, at our request, for the information of the legal profession in New Zealand.

Dr. Pound, as head for over twenty years of a law school with an annual average of fifteen hundred students, is especially fitted to discuss the subject of Legal Education, in the development of which he has taken so prominent a part in his own country. As one of his colleagues, Professor-Emeritus A. Lawrence Lowell, said in the *Harvard Law Review* for December, 1936: "So far as any educational institution can be molded by one man, the development of the Harvard Law School during the last twenty years reflects Pound's ideas."

We are proud to have received the article, which Dr. Pound so kindly wrote for us during his recent crossing of the Tasman. We take this opportunity of expressing to him our thanks and appreciation.

Summary of Recent Judgments.

COURT OF APPEAL.
Wellington.
1939.
April 17; July 14.
Myers, C.J.
Ostler, J.
Smith, J.
Johnston, J.
Fair, J.

IRVINE AND COMPANY, LIMITED
v.
DUNEDIN CITY CORPORATION.

Municipal Corporation—Nuisance—Water escaping from Pipes of Waterworks System under Street and flooding Goods in Basement—Whether "Nuisance" includes private as well as public Nuisance—Liability of Corporation where no Negligence—Municipal Corporations Act, 1933, ss. 2, 168, 171, 173, 244 (1), 245.

The defendant Corporation, as part of its waterworks system, constructed and maintained under statutory authority, carried water in a pipe under the surface of a street. The water escaped from the pipe, entered the basement of the plaintiff's premises (below the levels of the street and of the mains), and damaged the plaintiff's goods therein. The plaintiff sued to recover the amount of such damages, basing his claim solely upon nuisance. Negligence was not alleged.

Brash, for the plaintiff; **Haggitt,** for the defendant.

Held, by the Court of Appeal (*Myers*, C.J., *Smith*, *Johnston*, and *Fair*, JJ., *Ostler*, J., dissenting), in an action removed from the Court for argument,

1. That s. 173 of the Municipal Corporations Act, 1933, applies to a private as well as a public nuisance, but not to a nuisance which is necessarily or inevitably involved in the construction and maintenance of an authorized public work and which would found a claim for compensation under s. 171 of the said Act.

Bank of New Zealand v. Blenheim Borough, (1885) N.Z.L.R. 4 S.C. 10; **Lyttle v. Hastings Borough,** [1917] N.Z.L.R. 910, G.L.R. 553; **Fortescue v. Te Awamutu Borough,** [1920] N.Z.L.R. 281, G.L.R. 214; **O'Brien v. Wellington City Corporation,** [1928] N.Z.L.R. 215, [1925] G.L.R. 129; **Kirkcaldie v. Wellington City Corporation,** [1933] N.Z.L.R. 1101, G.L.R. 719, overruled, in so far as the dicta and decisions therein that the "nuisance clause" in Municipal Corporations Acts applied only to public nuisances.

Shelfer v. City of London Electric Lighting Co., [1895] 1 Ch. 287; **Jordeson v. Sutton, Southcoates, and Drypool Gas Co.,** [1899] 2 Ch. 217; **Midwood and Co., Ltd. v. Manchester Corporation,** [1905] 2 K.B. 597; **Charing Cross Electricity Supply Co. v. Hydraulic Power Co.,** [1914] 3 K.B. 772; **North-western Utilities, Ltd. v. London Guarantee and Accident Co., Ltd.,** [1936] A.C. 108; and **Collingwood v. Home and Colonial Stores, Ltd.,** [1936] All E.R. 200, applied.

London, Brighton, and South Coast Railway Co. v. Truman, (1885) 11 App. Cas. 45; **Green v. Chelsea Waterworks Co.,** (1894) 70 L.T. 547; **Cox Bros. (Australia), Ltd. v. Commissioner of Waterworks,** [1934] S.A.S.R. 101, aff. on app. 50 C.L.R. 108; **Burniston v. Bangor Corporation,** [1932] N.I. 178; **Robinson Brothers (Brewers), Ltd. v. Durham County Assessment Committee,** [1938] A.C. 321; and **Barras v. Aberdeen Trawling and Fishing Co., Ltd.,** [1933] A.C. 402, distinguished.

D'Emden v. Pedder, (1904) 1 C.L.R. 91, and **In re Otago Clerical Workers' Award,** [1937] N.Z.L.R. 578, G.L.R. 388, referred to.

As to necessary or inevitable nuisance:

St. Kilda Borough v. Smith, (1902) 21 N.Z.L.R. 215, 4 G.L.R. 342; **Manchester Corporation v. Farnworth,** [1930] A.C. 171; **Fullarton v. North Melbourne Electric Tramway and Lighting Co.,** (1916) 21 C.L.R. 181; **Fitzgerald v. Kelburne and Karori Tramway Co.,** (1901) 20 N.Z.L.R. 406, 4 G.L.R. 42; **Wood v. Taranaki Electric-power Board,** [1927] N.Z.L.R. 392, G.L.R. 235; and **London, Brighton, and South Coast Railway Co. v. Truman,** (1885) 11 App. Cas. 45, applied.

As to maintenance and compensation:

Colac Corporation v. Summerfield, [1893] A.C. 187; **Metropolitan Water, Sewerage, and Drainage Board v. O. K. Elliot, Ltd.,** (1934) 52 C.L.R. 134; **Lyttle v. Hastings Borough,** [1917] N.Z.L.R. 910, G.L.R. 553; **Aitcheson v. Bruce County,** (1896) 15 N.Z.L.R. 483; and **Farrelly v. Pahiatua County,** (1903) 22 N.Z.L.R. 683, 5 G.L.R. 294, applied.

Rickards v. Lothian, [1913] A.C. 263; **Western Engraving Co. v. Film Laboratories, Ltd.,** [1936] 1 All E.R. 106; **Price's Patent Candle Co., Ltd. v. London County Council,** [1908] 2 Ch. 526; and **Jones v. Festiniog Railway Co.,** (1868) L.R. 3 Q.B. 733, referred to.

2. That the doctrine of **Rylands v. Fletcher,** (1868) L.R. 3 H.L. 330, applied to the case of water carried by the Corporation in pipes under the street.

3. That a nuisance within s. 173 of the Municipal Corporations Act, 1933, had been created, and the plaintiff was entitled to recover.

The principle of **Rylands v. Fletcher,** (1868) L.R. 3 H.L. 330, applied and its application explained.

Solicitors: Brash and Thompson, Dunedin, for the plaintiff; **Ramsay and Haggitt,** Dunedin, for the defendant.

Case Annotation: *Shelfer v. City of London Electric Lighting Co.*, E. and E. Digest, Vol. 19, p. 185, para. 1356; *Jordeson v. Sutton, Southcoates, and Drypool Gas Co.*, *ibid.*, p. 167, para. 1164; *Midwood and Co., Ltd. v. Manchester Corporation*, *ibid.*, Vol. 38, p. 50, para. 288; *London, Brighton, and South Coast Railway Co. v. Truman*, *ibid.*, p. 48, para. 282; *Green v. Chelsea Waterworks Co.*, *ibid.*, p. 23, para. 125; *Charing Cross Electricity Supply Co. v. Hydraulic Power Co.*, *ibid.*, Vol. 36, p. 189, para. 315; *Rickards v. Lothian*, *ibid.*, p. 194, para. 353; *Rylands v. Fletcher*, *ibid.*, p. 187, para. 311; *Colac Corporation v. Summerfield*, *ibid.*, Vol. 11, p. 149, note 323*i*; *Price's Patent Candle Co., Ltd. v. London County Council*, *ibid.*, Vol. 13, p. 400, para. 1229; *Jones v. Festiniog Railway Co.*, *ibid.*, p. 402, para. 1237; *North-western Utilities, Ltd. v. London Guarantee and Accident Co., Ltd.*, *ibid.*, Supp. Vol. 25, para. 80*a*; *Collingwood v. Home and Colonial Stores, Ltd.*, *ibid.*, Supp. Vol. 36, para. 316*b*; *Robinson Brothers (Brewers), Ltd. v. Durham Assessment Committee*, *ibid.*, Supp. Vol. 30, para. 562*a*; *Barras v. Aberdeen Trawling and Fishing Co., Ltd.*, *ibid.*, Supp. Vol. 41, para. 685*c*; *Manchester Corporation v. Farnworth*, *ibid.*, Supp. Vol. 38, para. 263*a*; *Western Engraving Co. v. Film Laboratories, Ltd.*, *ibid.*, Supp. Vol. 36, para. 330*b*.

SUPREME COURT. Auckland. 1939. April 24, 26, 27; May 1, 22. *Callan, J.*

F. E. JACKSON AND COMPANY, LIMITED v. COLLECTOR OF CUSTOMS.

Trade and Commerce—Import Control Regulations, 1938—Invalidity—"Any"—"Generally"—Customs Act, 1913, ss. 46, 309, 311—Reserve Bank of New Zealand Amendment Act, 1936, s. 10, 16—Import Control Regulations, 1938 (Serial No. 1938/161).

While the Court has no concern with the reasonableness of regulations made by Order in Council nor with the policy of the Government responsible for the promulgation, its duty being to search for the intention of Parliament, to support regulations that keep within that intention, and to disallow such as do not, the first and often most decisive step in discovering that intention is to ascertain the true scope of the measure impugned and the legal effect it would produce. Judged by this consideration, the Import Control Regulations, 1938, if valid, surrendered the whole field of importation to the uncontrolled discretion of the Minister of Customs unguided by any settled principles. Section 46 (2) of the Customs Act, 1913, merely empowered the Governor-General in Council to prohibit the importation of classes of goods specified in the prohibitory Order in Council, while s. 46 (7) only amplified the power conferred earlier in that section.

The word "any" in s. 46 (2) does not include among its meanings "all."

Section 47 does not empower the Governor-General in Council to prohibit the importation of all goods collectively.

If there were such a power of total prohibition, it could not be validly exercised subject to a "condition" that a license to import in each particular case must be obtained from the Minister of Customs or from one of his delegates, as the Customs Act, 1913, does not confer on the Governor-General in Council a power to select for prohibition or reduction not merely classes of goods but particular importing transactions. Nor was the Governor-General in Council empowered to delegate his powers and responsibilities in accordance with the advice tendered him by the Executive Council to the Minister of Customs or to any one else.

Hence, the making of the Import Control Regulations was not authorized by the Customs Act, 1913.

Assuming that Parliament had by s. 10 (2) of the Reserve Bank of New Zealand Amendment Act, 1936, empowered the Governor-General in Council to make such regulations as to importation as he considered necessary to enable the Bank to fulfil its function of giving effect to the monetary policy of the Government, to limit exchange, the decision of what imports shall be excluded in consequence of a monetary policy of exchange control is not a decision as to a "monetary policy" to be communicated to the Bank by the Minister of Finance.

Assuming the power given to the Governor-General in Council to choose the fields as to which he might legislate by regulation, in the absence of any express power of sub-delegation in s. 10 (2) of the Reserve Bank of New Zealand Amendment Act, 1936, the Governor-General in Council could not sub-delegate the power given to him by Parliament, and, instead of regulating the field chosen by him in which to legislate, hand it over to be regulated or controlled by some one else.

Moreover, the attempted assumption or bestowal of power to deal with all cases in a certain field by a series of particular exercises of discretion is not a valid exercise of a power to make regulations concerning that field.

Further, the powers conferred upon the Minister of Customs by the Import Control Regulations were so great that much clearer language than Parliament had employed was required to justify the attempt to confer them.

Therefore the Import Control Regulations, 1938, could not be supported under the Customs Act, 1913, or under the Reserve Bank of New Zealand Amendment Act, 1936, or by the combined effect of both statutes, and were invalid.

Carroll v. Attorney-General, [1933] N.Z.L.R. 1461, G.L.R. 890; **Swan Hill Corporation v. Bradbury,** (1937) 56 C.L.R. 746; **Geraghty v. Porter,** [1917] N.Z.L.R. 554, G.L.R. 181; **Godkin v. Newman,** [1928] N.Z.L.R. 593, G.L.R. 323; **Abbott v. Lewis,** (1902) 22 N.Z.L.R. 552, 5 G.L.R. 274; and **Parker v. Bournemouth Corporation,** (1902) 86 L.T. 449, applied.

Radio Corporation Proprietary, Ltd. v. The Commonwealth, (1938) 59 C.L.R. 170; **Liddy v. Kennedy,** (1871) L.R. 5 H.L. 134; **Taratahi Dairy Co., Ltd. and Mangorei Co-operative Dairy Co., Ltd. v. Attorney-General,** [1917] N.Z.L.R. 1, [1916] G.L.R. 754; **Bhagat Singh v. King-Emperor,** (1931) L.R. 58 Ind. App. 169; and **Hackett v. Lander and the Solicitor-General,** [1917] N.Z.L.R. 947, G.L.R. 48, distinguished.

Baxter v. Ah Way, (1909) 8 C.L.R. 626; **Kerridge v. Girling-Butcher,** [1933] N.Z.L.R. 646; **In re Sooka Nand Verma,** (1905) 7 W.A.L.R. 225; **Special Income Tax Commissioners v. Pemsel,** [1891] A.C. 531; **Marlborough Education Board v. Blenheim School Committee,** (1896) 15 N.Z.L.R. 551; **Campbell v. Macdonald,** (1902) 22 N.Z.L.R. 65, 4 G.L.R. 503; **The Queen v. Burah,** (1878) 3 App. Cas. 889; **Welsbach Light Co. of Australasia, Ltd. v. The Commonwealth,** (1916) 22 C.L.R. 268; **Staples and Co., Ltd. v. Mayor, &c. of Wellington,** (1900) 18 N.Z.L.R. 857, 2 G.L.R. 384; **Melbourne City Corporation v. Barry,** (1922) 32 C.L.R. 174; and **Country Roads Board v. Neale Ads Proprietary, Ltd.,** (1930) 43 C.L.R. 126, referred to.

Counsel: **Johnstone,** K.C., and **Munro,** for the plaintiff; **Solicitor-General (Cornish,** K.C.) and **V. R. S. Meredith** and **N. I. Smith,** for the defendant.

Solicitors: **Oliphant and Munro,** Auckland, for the plaintiff; **Meredith, Meredith, and Kerr,** Auckland, for the defendant.

Case Annotation: *Liddy v. Kennedy,* E. and E. Digest, Vol. 31, p. 454, para. 5738; *Bhagat Singh v. King Emperor, ibid.,* Supp. Vol. 17, para. 31a; *Special Income Tax Commissioners v. Pemsel, ibid.,* Vol. 42, p. 649, para. 563.

COURT OF APPEAL. Wellington. 1939. April 3; July 14. *Myers, C.J. Ostler, J. Smith, J. Fair, J.*

PUBLIC TRUSTEE v. GUARDIAN, TRUST, AND EXECUTORS COMPANY OF NEW ZEALAND, LIMITED.

Probate and Administration—Executor—Distribution of Moneys of Estate by Executor under a Will Probate whereof subsequently revoked—Whether protected from Liability if acting in Good Faith — "Good faith" — "Notice"— Whether "Creditors and others" includes Persons claiming as Next-of-kin attacking a Will—Administration Act, 1908, ss. 4 (2), 26—Judicature Act, 1908, s. 16—Trustee Act, 1908, s. 74—Aged and Infirm Persons Protection Act, 1912, s. 26—Guardian, Trust, and Executors Company Act, 1883, ss. 4, 7, 8—Court of Probate Act, 1857 (20 & 21 Vict. c. 77), ss. 77, 78.

The executor who first obtains a grant of probate is protected from liability—in respect of his distribution of the estate—to the later executor or administrator on the revocation of the first grant, provided that such grant has been obtained without impropriety or irregularity and that the payments made by the former executor and challenged by the later executor or administrator have been otherwise made in good faith.

The respondent company, whose business was to act as executor and trustee, owing to the inability of E. S. (hereinafter called the "testatrix") to manage her own affairs, first obtained an irrevocable power of attorney from her and later a protection-order under the Aged and Infirm Persons Protection Act, 1912, protecting the testatrix and appointing the respondent manager of her estate. The respondent did not apply to the Court for directions under s. 26 of that statute as to any will of the testatrix, but arranged for her to make her will whereof the respondent was appointed executor, and she executed it in the presence of a solicitor and a medical practitioner.

Immediately after the death of the testatrix an application was made for and granted of probate of this will in common form, and the grant was made to the respondent. The Court was not informed that the testatrix was a protected person and that her will was made after the date of the protection-order. Soon after probate was granted inquiries were made as to the circumstances of the making of the will and it was indicated that steps might be taken to challenge its validity.

The respondent then, with a view to exclude possible attacks upon the will, applied for, and, on December 10, 1935, obtained an order under s. 74 of the Trustee Act, 1908, calling on "creditors and others" to send in their claims by January 31, 1936, the executor's year within which to pay legacies having still some six months to run. Notice was to be advertised once only in each of the two Christchurch newspapers, as the

petition for the order, verified by the affidavit of respondent's manager, stated that all creditors and other persons having claims against the estate would be found in the neighbourhood of Christchurch. It was known to the respondent's officers that there were next-of-kin in various parts of New Zealand, in England, and in Australia.

After the notice had appeared in a Christchurch newspaper, the respondent's Christchurch manager was notified by a letter from a firm of solicitors on December 18, 1935, that inquiries were being made and counsel's opinion being taken with a view to revocation of probate and that they would advise him, before the end of January, of the course it was proposed to take. Hearing nothing further from that firm, the respondent on February 20, 1936, issued cheques to the legatees to the total amount of £8,450, which were presented and paid on divers dates in February and March. On February 20 the said solicitors wrote to the said Christchurch manager that they had received instructions to take proceedings for the revocation of the probate. The respondent made no attempt to stop payment of the cheques.

The will of the testatrix was pronounced invalid and probate thereof recalled. The appellant became administrator of the estate of the testatrix under an order to administer and commenced an action against the respondent claiming judgment for the said sum of £8,450 and interest. The circumstances bearing upon the question of " good faith " are set out in the judgments of the members of the Court of Appeal.

On appeal from the judgment of *Northcroft*, J., giving judgment for the respondent,

O'Leary, K.C., and **Cleary,** for the appellant; **Richmond** and **Barrowclough,** for the respondent.

Held, by the Court of Appeal (*Myers*, C.J., and *Smith* and *Fair*, JJ., *Ostler*, J., dissenting, on the ground that the respondent acted in good faith throughout), That the appeal should be allowed,

On the following grounds respectively :—

Per *Myers*, C.J., That the probate was irregularly and improperly obtained, and that the payments to the legatees were made with knowledge and notice on the part of the respondent of facts and circumstances which should have made it plain to any prudent man of business that the payments should not have been made; that these payments would not have been made but for the order under s. 74 of the Trustee Act, 1908, which order was irregularly and improperly obtained, and that, in all the facts and circumstances of the case, the payments could not be regarded as having been made in good faith, the lack of good faith being " constructive or equitable fraud," as defined by Lord Haldane in **Nocton v. Lord Ashburton,** [1914] A.C. 932.

Per *Smith*, J., That in making in the petition under s. 74 of the Trustee Act, 1908, the untrue statement that all creditors and other persons having claims against the estate would be found in the neighbourhood of Christchurch and in verifying that untrue statement by affidavit, respondent's manager was reckless and careless whether what the respondent and he were stating was true or false, and therefore that the respondent did not obtain the order under s. 74 *bona fide*.

Per *Fair*, J., That the respondent was liable for the loss caused by its negligence in failing, upon receiving notice of intended proceedings for the recall of probate, to stop the cheques issued by it to the legatees; such loss, in the absence of any evidence by the respondent to show circumstances entitling it to mitigation of damages, such as that any of the amounts paid could have been recovered or that no attempt had been made by the appellant to do so, was the amount claimed.

The questions (*a*) whether ss. 77 and 78 of the Court of Probate Act, 1857 (Imperial), are in force in New Zealand as coming within the provisions of s. 6 of the Supreme Court Act, 1860, or (*b*) whether they were declaratory of the common law; and (*c*) whether under an order under s. 74 of the Trustee Act, 1908, barring claims, excludes the claims of a testator's next-of-kin to attack his will, discussed.

Woolley v. Clark, (1822) 5 B. & Ald. 744, 106 E.R. 1363; **Duane v. Lee,** (1884) 14 L.R. Ir. 56; and **Hewson v. Shelley,** [1914] 2 Ch. 13, discussed.

In re Hunter, Hunter v. Hunter, [1932] N.Z.L.R. 911, G.L.R. 530; **Assets Co., Ltd. v. Mere Roihi,** [1905] A.C. 176, N.Z.P.C.C. 275; **Packman's case,** (1596) 6 Co. Rep. 18*b*, 77 E.R. 281, Cro. Eliz. 459, 78 E.R. 698; **Allen v. Dundas,** (1789) 3 T.R. 125; 100 E.R. 490; **Parker v. Kett,** (1701) 1 Ld. Raym. 658, 91 E.R. 1338; **Semine v. Semine,** (1684) 2 Lev. 90, 83 E.R. 464; **Blackborough v. Davis,** (1701) 1 P. Wms. 41, 91 E.R. 1355; **Boxall v. Boxall,** (1884) 27 Ch.D. 220; **Fitzpatrick v. McGlone,** [1897] 2 I.R. 542; **Thomson v. Harding,** (1853) 22 L.J. Ch. 448; **Nocton v. Lord Ashburton,** [1914] A.C. 932; **Butcher v. Stead,** (1875) L.R. 7 H.L. 839; **Mogridge v. Clapp,** [1892] 3 Ch. 382; **In re Handman and Wilcox's Contract,** [1902] 1 Ch. 599; **Dowager Duchess of Sutherland v. Duke of Sutherland,** [1893] 3 Ch. 169; **In re Jukes, Ex parte Official Receiver,** [1902] 2 K.B. 58; **In re Kay, Mosley v. Kay,** [1897] 2 Ch. 518; **Neale v. Davies,** (1854) 5 DeG. M. & G. 258, 43 E.R. 869; and **Wright v. Chard,** (1859) 29 L.J. Ch. 82, aff. on app., *ibid.*, 415, considered.

Newton v. Sherry, (1876) 1 C.P.D. 246; and **Derry v. Peek,** (1889) 14 App. Cas. 337, applied.

Hoffman v. Norris and White, (1805) 2 Phill. Ecc. 230 (*b*), 161 E.R. 1129; **In the Goods of Topping,** (1853) 2 Rob. Eccl. 620, 163 E.R. 1434; **Bell v. Armstrong,** (1882) 1 Add. 365, 162 E.R. 129; **Merryweather v. Turner,** (1844) 3 Curt. 802, 163 E.R. 907; **Hardoon v. Belilios,** [1901] A.C. 118; **Bence v. Shearman,** [1898] 2 Ch. 582; **Roper v. Johnson,** (1873) L.R. 8 C.P. 167; **James Finlay and Co., Ltd., v. N.V. Kwik Hoo Tong Handel Maatschappij,** [1928] 2 K.B. 604; and **In re H. Linney and Co., Ltd.,** [1925] N.Z.L.R. 907, G.L.R. 425, referred to.

Solicitors: Barnett and Cleary, Wellington, for the appellant; **Russell, McVeagh, Macky, and Barrowclough,** Auckland, for the respondent.

Case Annotation: *Woolley v. Clark*, E. and E. Digest, Vol. 23, p. 60, para. 399; *Duane v. Lee*, *ibid.*, p. 434, note *f.*; *Hewson v. Shelley*, *ibid.*, p. 60, para. 402; *Packman's case*, *ibid.*, p. 249, para. 3065; *Allen v. Dundas*, *ibid.*, p. 229, para. 2779; *Parker v. Kett*, *ibid.*, p. 75, para. 605; *Semine v. Semine*, *ibid.*, Vol. 30, p. 434, para. 944; *Blackborough v. Davis*, *ibid.*, Vol. 23, p. 238, para. 2901; *Boxall v. Boxall*, *ibid.*, p. 250, para. 3069; *Thomson v. Harding*, *ibid.*, p. 75, para. 608; *Assets Co., Ltd. v. Mere Roihi*, *ibid.*, Vol. 38, p. 753, note (*o*); *Nocton v. Lord Ashburton*, *ibid.*, Vol. 32, p. 536, para. 1894; *Butcher v. Stead*, *ibid.*, Vol. 4, p. 528, para. 4831; *In re Kay, Mosley v. Kay*, *ibid.*, Vol. 23, p. 330, para. 3963; *Neale v. Davies*, *ibid.*, Vol. 24, p. 594, para. 6273; *Newton v. Sherry*, *ibid.*, Vol. 23, p. 224, para. 2715; *In the Goods of Topping*, *ibid.*, p. 118, para. 1152; *Bell v. Armstrong*, *ibid.*, p. 117, para. 1127; *Merryweather v. Turner*, *ibid.*, p. 112, para. 1066; *Wright v. Chard*, *ibid.*, Vol. 32, p. 516, para. 1748; *Mogridge v. Clapp*, *ibid.*, Vol. 40, p. 745, para. 2761; *Dowager Duchess of Sutherland v. Duke of Sutherland*, *ibid.*, p. 759, para. 2887; *Re Handman and Wilcox's Contract*, *ibid.*, p. 760, para. 2902; *In re Jukes*, *ibid.*, Vol. 4, p. 57, para. 491; *Derry v. Peek*, *ibid.*, Vol. 35, p. 27, para. 185; *Hardoon v. Belilios*, *ibid.*, Vol. 43, p. 761, para. 2405; *Roper v. Johnson*, *ibid.*, Vol. 17, p. 127, para. 351; *Bence v. Shearman*, *ibid.*, Vol. 8, p. 486, para. 546; *James Finlay and Co. v. N.V. Kwik Hoo Tong Handel Maatschappij*, *ibid.*, Supp. Vol. 17, para. 347*a*.

SUPREME COURT. Dunedin. 1939. May 29, July 31. *Blair, J.*

PORTERFIELD v. PENINSULA COUNTY AND SEATON.

Rating—Rates and Rate-book—County—Ter-per-cent. Penalty—Whether part of Original Rate—Disqualification from voting of Ratepayer whose Rates or Part thereof unpaid—Whether Non-payment of Rates for one Riding disqualified Ratepayer from Voting in another Riding in respect of which his Rates are paid—Rating Act, 1925, s. 76—Counties Act, 1920, ss. 4, 57.

The additional charge of ten per centum (to be added according to s. 76 of the Rating Act, 1925, as the penalty for non-payment of rates), when added, becomes together with the original rate one indivisible rate as if included in the original demand, and default in payment of such charge is default in payment of part of the rate.

The disqualification imposed by s. 57 (1) of the Counties Act, 1920, on a ratepayer, whose rates or any part thereof have remained unpaid for not less than six months from voting at an election or poll, applies to an election in any riding in the county, even if the elector has paid his rates in that riding but made default in the payment of rates in some other riding.

Quaere, Whether a county clerk placing a ratepayer on the defaulters' list under s. 57 of the Counties Act, 1920, is acting in a quasi-judicial capacity, so as, in the absence of proof of express malice, not to be liable for drawing a wrong conclusion of law.

Counsel: J. A. Robertson, for the appellant; **Solomon,** for the respondents.

Solicitors: Ramsay and Haggitt, Dunedin, for the appellant; **Solomon, Gascoigne, Solomon, and Sinclair,** Dunedin, for the respondents.

Training for the Bar in the United States.

An Historical Review.

By Dr. Roscoe Pound, University Professor, University of Harvard, and sometime Dean of the Harvard Law School.*

[Specially written for the New Zealand Law Journal.]

Particularly in the Puritan colonies in New England, there was, in the beginning, much hostility toward law and lawyers in colonial America. The Puritans, who had had unhappy experience of the law in the Mother-country, considered law "a dark and knavish business." Cromwell had given up a contest with the lawyers, saying "the sons of Zeruiah are too hard for us," and Luther's diatribes against lawyers were part of the stock-in-trade of the clergy, dominant in the seventeenth century. It was not until the eighteenth century that the development of trade and commerce and general economic growth called for Courts and a uniform, stable law; and, so, for lawyers. By the time of the Revolution many of the colonies had set up a judicial organization with lawyer Judges and a Bar of trained lawyers.

After the Revolution there had to be a new start. It was not easy for the common law to overcome the odium attaching to its English derivation. In the bad economic conditions which prevailed in the first decades after independence, the lawyers alone seemed to prosper; and, in an era of imprisonment for debt and strict foreclosure, naturally the profession became very unpopular. Every ambitious young man sought to engage in so lucrative a calling, and in the era of Jeffersonian democracy it seemed undemocratic to impose any restrictions upon the choice of such a calling. All money-making employments, it was felt, should be on an equality in a free land. Moreover, the pioneer had an abiding and unbounded faith in versatility. Any man was equal to any thing, and it was unreasonable to demand of him special training. The motto on the great seal of the United States, *Novus Ordo Saeclorum*—a new order of the ages—speaks for itself. Historical continuity was an outworn idea of an effete old world. In the new world we were rejecting outmoded institutions and beginning afresh.

On the eve of the Revolution more than one colony had a strong Bar. Many of the lawyers had been trained in the Inns of Court. Then and for a time after the Revolution there were often Bar Associations with good regulations as to the taking of apprentices, the training of the apprentices, and admission to practice. Often these regulations were well administered. But the lawyers were largely loyalists, and the Revolution decimated the profession. Legislation began to make admission to practice easy and even to throw the practice of law open to every one. Admission was in the hands of the local Courts, and these fell into lax practices.

In the meantime, along with apprentice training, training in law schools began a parallel development, the latter improving as the former declined.

Blackstone's Commentaries had a wide sale in America. Some twenty-five hundred copies were bought in the colonies, it is said, and there was an American subscription edition in 1723–24. Law lectureships and professorships on the model of Blackstone's Chair of English Law at Oxford were endowed in the eighteenth century in Virginia, New York, Pennsylvania, and Massachusetts. The lectures, like Blackstone's, were intended for students generally, as part of their liberal education, and not merely for law students. They covered a wide field of philosophical introduction to ethics, politics, and law, but might take a rapid survey of the law as well.

The first American Law School was set up at Litchfield, Connecticut, in the ninth decade of the eighteenth century. It was in origin a law office in which teaching students had become the primary, instead of being an incidental, activity. Other schools of this type followed, and in 1817 Harvard set up such a school, conducted by a practitioner, added to and more or less combined with a professorship of Blackstone's type. In 1829 this school was endowed, and Joseph Story was put at the head of it. Out of his professorship grew a series of text-books, some of them still standard, which had much to do with firmly establishing the reception of the common law in all but one of the States.

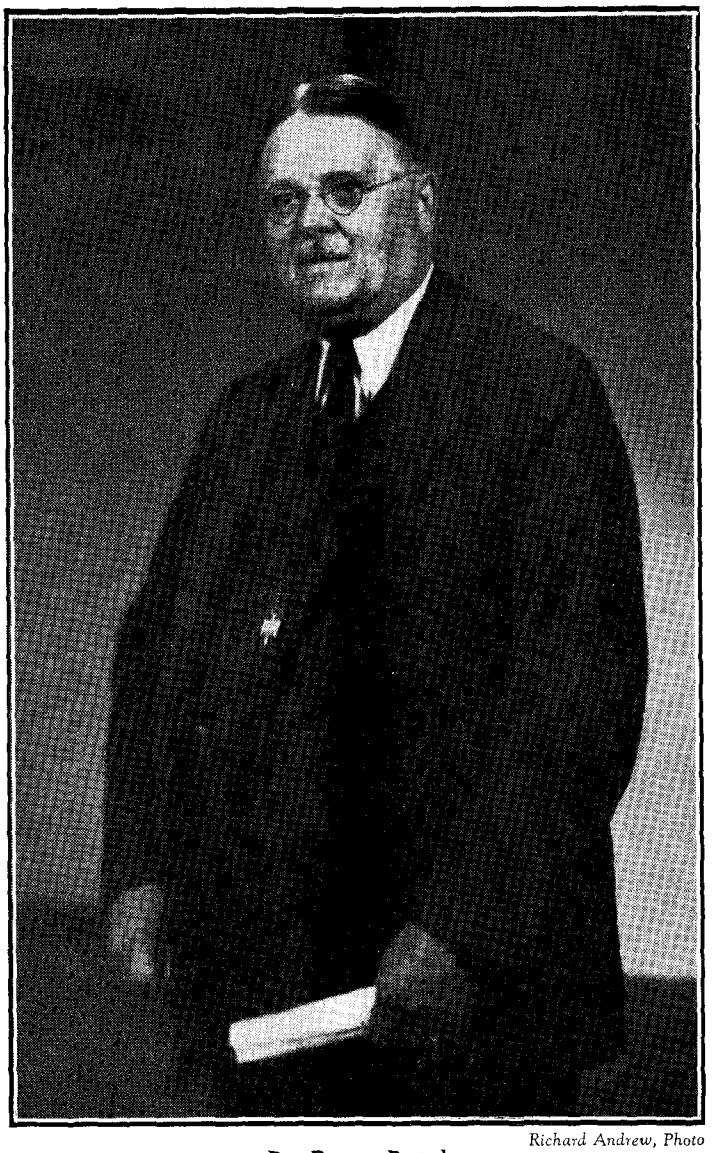
After Story's school there was a gradual development of academic law schools, more and more departing from the apprentice type. But the apprentice type persisted. Moreover, the bulk of the profession continued to be trained in law offices down to the present century.

Apprentice training in law offices steadily declined in quality. All that was required in most jurisdictions was the certificate of a practising lawyer that the candidate had "read law" under his direction in his office for a certain time—two or three years, depending on State legislation. There came to be the greatest laxity in giving these certificates, which in many localities were thought of as a mere form. Also, especially where the system of examination of candidates by a special committee of members of the Bar appointed *pro hac vice* by a trial Judge obtained and fell into decay, examinations became lax and perfunctory. Where better conditions prevailed there were often means of "back-door admission." It was usual for legislation to provide for admission on motion when a candidate had been admitted in some other Court. One who had been rejected at home or feared to take the examination at home would seek a Court elsewhere, which, finding he did not intend to practice in that locality, would not scrutinize his preparation or qualifications carefully and would admit him on a mere pretence of examination. As one State, by its constitution, provided that any person of good moral character should be admitted to practice without more, there was a wide-open back door in its vicinity.

* A.B., Nebraska, 1888; A.M., 1889; Ph.D. 1897; LL.M., D.C.L., LL.D., Carter Professor of General Jurisprudence, 1910–1936; Dean, 1915–1936, Harvard Law School.

All this had a bad effect upon the law schools, especially those of the apprentice type. Being mostly unendowed and dependent on tuition, they felt unable to impose and maintain proper requirements as to admission or graduation; and short courses, lax examinations, and evening classes or classes arranged so as not to interfere with a day's work at some occupation became very general. Development of the academic type of school was held back by the competition of these institutions. The lowest point was reached, taking the country as a whole, about 1891.

Instructions took the form of lectures and quiz on text-books. A series of great text-books had come from Harvard—the writings of Story, Greenleaf, Parsons, and Washburn. Students' books began to be written also, and in the last quarter of the nineteenth century instruction by lectures and quiz on texts reached a high development, particularly under Dwight at Columbia. But there was much to do toward a systematic curriculum and proper provision for promotion from one year to the next. Often the same lectures were given to the whole school, the second-year student hearing over again what he had heard the year before.



Richard Andrew, Photo

Dr. Roscoe Pound.

Langdell, in 1870, began a radical change in the academic type of school. He instituted a system of examinations for promotion and for graduation. He organized a systematic curriculum, progressing from foundation subjects in the first year to specialized subjects in the third. He extended the course to three years. Also he introduced teaching from the primary authorities rather than from text-books. He demonstrated that requirements far in advance of those required by law would be maintained in spite of the competition of schools with low standards and short courses. He set up a faculty of full-time teachers teaching full-time students, expected to give their best energies to the study of law. Presently Harvard came to require a full college-training in arts or its equivalent as a prerequisite of admission, long before legislation or rules of Court prescribed any serious preliminary education. Langdell's coming to Harvard as a Dane Professor and Dean marks an epoch in American legal education as definitely as the appointment of Story four decades before him.

Columbia appointed a pupil of Langdell's in 1890, and set up a school of his type. Chicago soon followed, and gradually his reforms and his method of teaching spread over the land. His "case system," as it has been called, was a return to study of the sources, as it had gone on before the era of modern text-books and under the apprentice system at its best. The basis of instruction in any subject is a selection of reported cases, systematically arranged and annotated. Partly by lectures but mostly by questions as to the reasons of the decision, putting of questions varying the facts and comparison with other cases, and discussions between teacher and student in which it is sought to make the student try out the reasoning of the case on a variety of states of fact, the subject is developed on the basis of the selected cases so that in the end the student has made his own text-book. Examinations take the form of hypothetical cases, raising points analogous to those discussed in class, on which the student is to write an opinion giving his solution and his reasons therefor. By the time of the World War this system of law-teaching had superseded the text-book system in almost all the important schools.

In the meantime, the Bar had been taking an active part in bettering the general requirements for admission to practice. When the American Bar Association was organized in 1878, legal education was one of the first subjects to which it directed its attention. It set up a Standing Committee on the subject and the reports of that Committee year after year gradually moved State Bar Associations to bestir themselves, and in time made the profession conscious of the need of improvement. Later a section of legal education was organized. In 1904 the teachers in the leading academic law schools organized the Association of American Law Schools, prescribing and maintaining standards of admission, of graduation, of instruction, and of library facilities. Its standards were far in advance of those required by law, but, with the backing of the American Bar Association and of many State Bar Associations, it was able to add school after school to its membership; and in time the Bar Associations

were able to overcome the long and persistent opposition of Legislatures. The American Bar Association now has the same standards substantially as those of the Association of American Law Schools. It publishes annually a list of approved schools and satisfies itself by inspection that the standards are maintained. State legislation or rules of Court in the States have increasingly come to or approached these standards.

More than anything else, what the law schools and the Bar Associations have had to contend with in the course of this development has been the hostility and later the apathy of Legislatures. Happily the matter is not wholly under legislative control. Under the doctrine of separation, or perhaps better, distribution of powers which has been provided for in all American constitutions since the Virginia Bill of Rights of 1776, and the Massachusetts Constitution of 1780, the Judiciary is an independent and co-equal department of government. The powers which belonged to the Courts in England at the time of colonization are guaranteed to the American Courts by the constitutions, State and Federal. Moreover, any power of doubtful classification, analytically or historically, may be assigned to an appropriate department of government by legislation. On this basis, an adjustment between legislation and the rule-making power of the Courts has come to be reached in most jurisdictions. The Courts, to which historically the power over admission to practice appertained, may not be compelled by legislation to receive as practitioners ill-trained and incompetent persons. Hence, by rule of Court, the Courts may fix the educational requirements, both preliminary and professional, for admission. But the Legislatures, under their general power to protect the public from fraud, imposition, and injury from want of skill, may fix minimum requirements below which the Courts cannot go. But few Courts to-day are content with the legislatively-prescribed minimum. The movement to adopt the standards of the American Bar Association and the Association of American Law Schools has had its chief support from the Courts.

As things are to-day, in what may be regarded as the standard system, there is a central examination in each State by a permanent Commission appointed by the highest Court of the State or by the organized Bar, where there is one. Minimum requirements for taking this examination are fixed either by statute or by rule of Court or of the organized Bar. In general, at least two years of the arts' course in an approved college, and, succeeding that, three years' study in an approved full-time law school or four years' study in an approved part-time law school, are required. To be approved, a law-school must have a certain number of full-time teachers, a minimum law library, and must maintain a minimum course in point of time—usually twelve hours of lectures a week, and a school year of at least thirty-six weeks exclusive of recesses and vacations.

As one looks back from 1939 to 1891, almost fifty years, it is evident that great progress has been made. The academic law schools, with high standards of admission and graduation, strong faculties, and ample facilities have substantially superseded the cram-schools and money-making schools. Office study, which had decayed a generation ago, has been superseded by law-school study. The local examinations, which had been loose and perfunctory, have been replaced by an adequate and well-organized central system. The Bar is committed to the setting-up and maintaining of high standards. For the most part, the Legislatures have given up their insistence on low standard and loosely-administered examinations. The pioneer faith in versatility has lost its hold. On every side, the need of the best practicably-possible training, both preliminary and professional, has come to be recognized.

Wellington Law Society's Diamond Jubilee.

Bar Dinner in Celebration.

The Wellington Law Society's Bar Dinner this year marked the sixtieth anniversary of the Society's foundation. Among those present in the large assemblage were the President of the Society, Mr. A. T. Young, who presided; the Rt. Hon. the Chief Justice, Sir Michael Myers: the Hon. Mr. Justice Reed; the Attorney-General, the Hon. H. G. R. Mason; the President of the New Zealand Law Society, Mr. H. F. O'Leary, K.C.; the President of the Hawke's Bay District Law Society, Mr. H. B. Lusk; the local Magistrates; and the Under-Secretary for Justice, Mr. B. L. Dallard. Apologies for non-attendance were received from Mr. Justice Ostler, Mr. Justice Blair, Mr. Justice Smith, and Mr. Justice Johnston.

After the loyal toast had been honoured, Mr. Young explained the object of the gathering. After welcoming the Chief Justice, the Attorney-General, and the President of the Hawke's Bay District Law Society, he said that the presence of the Society's guests demonstrated the close relationship which exists between all branches of the law: the enactment of the law, the interpretation and administration of the law, and the pleading and application of the law.

"You will have gathered from the summons to attend this function that the occasion is an auspicious one, being the Diamond Jubilee of the Society," Mr. Young continued. "In the circumstances, I propose touching briefly on the history of the Society and of the profession in Wellington. A jubilee may seem a small affair in this year of preparation for Centennial celebrations; but, after all, the Jubilee is peculiarly our own affair, and is of the more importance accordingly.

"The first reference I can find to anything like concerted action being taken by members of the profession in Wellington is, curiously enough, a combination of the Bar against the actions of the Bench. In Jerningham Wakefield's book, *Adventure in New Zealand*, published in 1845, he relates that in 1841 Mr. Justice Martin came from Auckland to preside at the first Criminal Session in Wellington, and he refused to hear a certain Mr. William Fox. Mr. Fox was a qualified English barrister, but (perhaps because he had come *via* Australia) Mr. Justice Martin insisted that he should make a declaration that since leaving England he had not done anything discreditable to a barrister. Mr. Fox considered it degrading to be called upon to make such a declaration, and the whole of the Wellington Bar addressed a protest to Governor Hobson. The whole of the Wellington Bar at that time consisted of two. One would have thought that these two would have been content to share all the briefs and exclude a third, but apparently

the profession has always been unselfish, in spite of what some people say. The objectionable requirement does not appear to have been dispensed with until the appointment of Wellington's own Judge, Mr. Justice H. S. Chapman, who took office in 1843.

"It is interesting to note that the same Mr. Fox became Attorney-General in 1856, and later Prime Minister.

"In passing, I note that in 1844 a duel was fought in a gully off Sydney Street between two lawyers, one of whom died of his wounds. Whether that again reduced the ranks to two is not recorded."

The Founding of the Society.

The speaker went on to say that presumably from 1841 onwards there were informal gatherings of the profession, but the first statute relating to Law Societies was the New Zealand Law Societies Act, 1869. Apparently that Act did not lead to the formation of a workable Society, and it was not until the years 1877–78 that the earlier Act was extended to enable the formation of District Societies. On that legislation, the foundation of the Wellington Society rested; and it was fitting that the same should have been promoted by the same Mr. Fox, who stood for the rights of the profession in 1841. Mr. Fox was later Sir William Fox.

In the *Gazette* of 1879 appeared the following:—

"In the matter of the District Law Societies' Act 1878.

"Notice is hereby given that at a meeting of the solicitors of the Supreme Court of New Zealand residing and practising in the Judicial District of Wellington, held at the Supreme Court House, Wellington, on the 26th day of August, 1879, and duly convened under and by virtue of the above-mentioned Act, the following resolution was passed:

"'That a District Law Society be established for the Wellington Judicial District, to be called "The Law Society of the District of Wellington".'

"(*Signed*) A. de B. Brandon,
"Chairman."

(Mr. Brandon was the father of Mr. A. de B. Brandon, who died last year at the age of eighty.)

"There are no records available of the general meeting constituting this Society," Mr. Young said; "but we have the minutes of the first meeting of the Council, which was held on Tuesday, September 23, 1879. Those present were Mr. Brandon, Mr. Gordon Allan, Mr. Bell, Mr. Buckley, Mr. Evans, and Mr. Ollivier.

"It is interesting to note that the very first business dealt with by the Council was a letter from the Secretary of the Auckland Law Society, enclosing a complaint made against a Wellington solicitor. Incidentally, the Auckland District Law Society was incorporated at the same time as the Wellington Society, and under the same Act, so it looks as if their first act must have been a complaint against Wellington.

"A further interesting point, which is still topical, was that at a meeting in March, 1880, a letter was received from the Legal Association of Taranaki, asking the Society to co-operate in a boycott of banks who prepared their own securities.

"Reference to the foundation of the Society brings me to the names of some of the earlier members, who happily are with us still. The first list of members on record is dated 1893, and in that list appear the names of E. T. D. Bell, E. F. Hadfield, P. Levi, and L. O. H. Tripp. Incidentally, Mr. Tripp was in that year a member of the Council, and he is to-day the senior living Council member. It is, therefore, particularly fitting that he should reply to this toast this evening and we will ask him to tell us something of the earlier members of the Society.

"I now propose to refer to the rules and objects of the Society, I am not going to read them all. Rule 2 will do. Rule 2 is as follows:

"Object and powers of the Society.

"(*a*) To promote good feeling amongst members of the legal profession."

"How better could we carry out that object than by the holding of a function such as this?

"During my inquiries into the early history of the profession, I came across a titbit, which interested me. It ran somewhat as follows:—

"22nd October, 1840.

"Dicky Barrett's Hotel on Lambton Beach was formally opened, the occasion being celebrated by the holding of a banquet, with over eighteen toasts, which were duly replied to."

"This just goes to show that the holding of banquets in Wellington to mark special occasions is not new, but I doubt whether in these days we could get through a toast-list like that and get home before the milk. Perhaps the explanation was that there were only two lawyers in Wellington in those days. I propose to take my queue from that and sit down now; but, before doing so, I should tell you that His Honour the Chief Justice, who was President of the Society so early as 1906, has very kindly consented to propose the toast of the evening."

The Wellington Law Society.

His Honour the Chief Justice, in proposing the toast of the Wellington District Law Society, said that, if he had known that Mr. Lusk was coming down from Napier, he would have liked to leave the toast in his able hands. There was some appropriateness, however, in the fact that from 1909 to 1929, he, the Chief Justice, had been a member of the Society's Council, and its Vice-President and President on at least two occasions.

"Although no longer of the Wellington Law Society, I am proud of the Society; as I am proud of the members of the profession in Wellington," His Honour proceeded; and he then gave some lively reminiscences, of prominent members of the Bar in Wellington, dating from the year 1892, when as a boy, he himself entered Bell Gully's office.

"This Society has now been in existence for sixty years," the Chief Justice continued. "During all those years, no Society's record could have been better. At the head, it has always had men of integrity, knowledge, and wisdom. Its foundations were well laid, its traditions have been well maintained, and its members have always done their best to maintain the liberty and privileges of the individual. The whole world has changed and is changing. Are your privileges worth maintaining in the future years of the Society's existence? Are the rights and privileges of the individual worth maintaining? Of course they are. I know they are, and you all know it. But I want to utter a word of warning. My memories of the law go back to 1897. Occasionally I have seen indications of a departure from the strict maintenance of those rights and privileges, which, if not carefully preserved, will in due time disappear. I refer more particularly to the rights and liberty of the ordinary

individual, which it is your duty to maintain, and that of the Judges to preserve."

His Honour then went on to deprecate the practice of opening speeches by those appearing on behalf of the Crown in indictable cases in the Lower Courts, whence nothing should go forth to affect subsequently the rights of an accused person when he appears on his trial before a jury in the Supreme Court. His Honour said he did not care what the practice might be elsewhere: it is wrong wherever it appears, and it should not be tolerated anywhere.

The Chief Justice then referred to the questioning by Police officers without a caution of persons who, to the knowledge of the Police, would be charged with crime. This was a practice which should not be permitted.

In conclusion, His Honour said that it was the duty of the Judges and of the profession to see that any abuse that affected the rightful liberty of the individual was not tolerated. If the members of the Law Society desired to maintain—and they did—the rights and privileges of the individual, their watchword should be "Incessant Vigilance," in respect of all that they stood for, and should stand for.

The toast was enthusiastically honoured.

Great Men of the Society.

The oldest living member of the Council of the Society, Mr. L. O. H. Tripp, replied.

He said he was very pleased that His Honour the Chief Justice was able to be present, he thanked him for his excellent speech. He was also pleased that Mr. Young, as President, was presiding because his father, a past President of the Society, was an old friend of the speaker, who knew him when he was in Mr. Bell's office, and, later, when he founded the firm of which the President was a member. He thanked the President for his interesting account of the history of our Society.

"The President has been delving into the archives of the Society and, unfortunately for you, has dug me out and found that I am the oldest surviving member of the Council of the Law Society," Mr. Tripp proceeded. "My only qualification for responding to the toast is I think that the Almighty has favoured me and blessed me with a good constitution and allowed me to live so long for which I am indeed, thankful—thankful that I have lived to attend and enjoy this excellent dinner and celebrate the sixty years of the Wellington Law Society.

"I came to Wellington and started practice in 1888, and I should like to say a few words about some of the members of the profession who were practising then. I will refer particularly to three members to whom I owe so much. I refer to H. D. Bell, afterwards H. D. Bell, K.C., and then Sir Francis Bell, K.C.; Martin Chapman, afterwards Martin Chapman, K.C.; and C. P. Skerrett, afterwards C. P. Skerrett, K.C., and then Sir Charles Skerrett, Chief Justice.

"When I came to Wellington, H. D. Bell was the leader of the Bar as he was, as you all know, when he died three years ago. You knew him as the grand old man of New Zealand, and one of the greatest men New Zealand has produced. You know what a great lawyer he was. I want to show to you what a great interest he took in helping the young practitioner, and to do so I must give you some account of my start in Wellington and how I first got to know Mr. Bell. I was called to the Bar at the Inner Temple, and after returning to New Zealand I spent some six months in Mr. George Harper's office in Christchurch and he had an important case, *Shaw, Savill, and Albion Co. v. Timaru Harbour Board*, which eventually came before the Court of Appeal. As I had worked up the case for Mr. Harper, he took me to Wellington with him so that I could hear the case argued in the Court of Appeal. Mr. H. D. Bell appeared with Mr. Harper before the Court of Appeal. Before the case was heard, which lasted six days, Mr. Harper had many conferences with Mr. Bell, and during my visit to Wellington I also met Mr. Arthur Cooper who was then in the Supreme Court Office.

The Generosity of Sir Francis Bell.

"A few months later I had to decide where I would start practice, and I chose Wellington. I came here only knowing two men, H. D. Bell and Arthur Cooper. I took rooms in Lambton Quay, advertised for an office boy, and had my first piece of good luck when I chose Jorgensen, and we have been together ever since. My second piece of good luck was when after I had been in Wellington about a month H. D. Bell sent for me and told me that he was acting for the Attorney-General who was interested in a Wanganui estate as a portion of the estate was left to charity and that the trustee was playing ducks and drakes with the estate, and the Attorney-General wanted to have the estate administered by the Court, also that there was an action pending by the trustee, and the Attorney-General wanted to have the conduct of the suit. Bell asked me if I would take the matter up under his supervision, do all the work, and he would give me half the costs, he said he had no solicitor's clerk in his office who could do the work. Of course, I willingly agreed. This meant going to Wanganui, collecting evidence, and much work in connection with the various applications to the Court.

"The first proceeding was to have the estate wound up by the Court and the second to have the conduct of a suit then pending. Before these summonses came on, Bell sent for me and told me I was to argue the case for the Attorney-General, but he would be present to make any points I missed; the two summonses lasted three afternoons before Mr. Justice Richmond. Bell explained to the Judge that I would argue the case and he would reply. As the case proceeded and Bell saw that the Judge was with me and that we must win, he practically let me do all the work. You can realize what it meant to me, and what a generous, large-hearted man Bell was. Here was I the youngest member of the Bar, and the leader of the Bar made me argue his case while he took a back seat, but was present to help and encourage me. The Judge, of course, appreciated Bell's generosity, and he too was very kind to me and patient.

"Then Bell was also responsible for doing me another great kindness. After I had been here about nine months, I was approached by another practitioner and asked if I would go into partnership with him. I, of course, consulted Mr. Bell, he said the man I should be in partnership with was Martin Chapman (Mr. Chapman's partner, Mr. Fitzgerald, had died just before I came to Wellington). And Bell said Chapman badly wanted some one to look after his office and the conveyancing side because he was losing business and some was coming to him (Bell). This again shows

what a generous man Bell was. Bell said 'You leave it to me.'

MR. MARTIN CHAPMAN, K.C.

"A short time afterwards, Chapman sent for me and offered me a partnership, and I remained in partnership with him for twenty-three years. In 1909 Chapman and I and Skerrett and Wylie amalgamated our firms, Chapman retiring three years later. Chapman was a very fine man, a sound lawyer, and a very able one. Chapman was a reporter for the *New Zealand Law Reports* from 1876, and became editor of the *Reports* from 1888 until about 1906, when he retired, and Mr. Justice Ostler was appointed editor. Chapman was a man of many parts, a very keen yachtsman, a good botanist, a first-class mathematician. He had studied French and German when a young man and kept up these languages; and, though he could not speak them, he could read them both with ease, and before he died he had taught himself to read three other foreign languages.

SIR CHARLES SKERRETT'S GENIUS.

"When I started in Wellington, Sir Charles Skerrett had been practising in Wellington for three years, and shortly after I arrived he had his first case in the Supreme Court before Mr. Justice Richmond. The Sunday after the case was heard Mrs. Richmond asked me to supper, Mr. George Harper was also present, and after supper Mr. Justice Richmond told Mr. Harper that he had been hearing a Native case that week and one of the counsel was young Skerrett. He said he was much impressed with his ability and he predicted a great future for him at the Bar. He said he reminded him of Mr. Macassey who had been a leading barrister in Dunedin, and the next year Skerrett had another case before Judge Richmond, who remarked 'What a lot of law will be in that little head before it is done.'

"Skerrett was a keen sportsman, fisherman, a good shot and stalker, and in the old days when they had a hunt club and they had a drag hunt, he used always to follow the hounds. The meetings were generally held at Porirua and one or two at Miramar. In those days many who were in touch with Skerrett thought that, as he was giving so much time up to pleasure, he must be a genius at the law and did not have to work like others. There never was a greater mistake. Skerrett was a great worker, and no one knows better than I do, because I knew him intimately during practically his whole career at the Bar, and was his partner for seventeen years from 1909 until he was appointed Chief Justice in 1926. Skerrett believed in working hard and playing hard. He had an extraordinary power of concentration and I will explain what I mean.

"In the 'nineties a polo club was formed in Wellington of which I was a member. Skerrett, of course, became a member and was at once elected captain. When he had learnt something of the game, it was decided to hold a tournament in Wellington and invite other teams. This, of course, meant that Skerrett was for many afternoons very busy either playing polo or entertaining the visitors, and on the last day we decided to have a dinner for all visitors at the Wellington Club. There was a patent case fixed for the day after the dinner. Skerrett was appearing for the defendant. It was a Christchurch case and I was acting as agent for a Christchurch firm and instructing Mr. Quick as counsel for the plaintiff. The day before the case came on I knew that Skerrett had not had time to look at his brief, so I went and reminded him that the case was coming on the next day. He said 'you must get it adjourned because I have not had time to get up my case.' I told him I had tried to get an adjournment, but, as the witnesses were coming from Christchurch, it was impossible. Skerrett was on the polo ground all the afternoon; we had the dinner at night, and he was in great form; and the next day the case came on and I was amazed at Skerrett's knowledge of the case. At the adjournment I said to Skerrett 'how in the world did you get such a grasp of the case since our dinner last night.' He said he left the Club at 10.30, went home, had a cold bath, worked until four in the morning, then had a good sleep and a late breakfast, and was in the Court at 10.30.

"The Chief Justice has referred to Skerrett winning the Hunt Club Steeplechase on Halicore. I am able to tell you the full details. Martin Chapman was appearing against Skerrett in the Court of Appeal. It was obvious that the case could not finish on the morning the steeplechase was to be run, so before the case started that day Skerrett told Chapman how anxious he was to ride in the race that afternoon, and Chapman said 'you see the Judges in their Chambers before the Court opens and ask them to adjourn at 12.30 and say I agree and tell them the position.' Skerrett saw the Chief Justice and other Judges, and they laughed at his application, but granted it and wished him luck. Skerrett rode in the race, and won it, and he put one pound on himself on the totalizator. As he was the only one who backed his horse, he got over £50 by way of a dividend.

OTHER LEADERS OF THE PAST.

"Besides Bell, Chapman, and Skerrett, I should not forget to mention Hugh Gully. Skerrett, as you will have gathered, very soon made his name at the Bar and for some years you found Gully and Skerrett continually opposed to one another, especially in jury cases. Gully was a charming man, very witty. He, Skerrett, and Arthur Cooper, who was Registrar of the Supreme Court (then a Magistrate), were great friends, and generally they met at five o-clock at the Occidental Hotel (which was then situated where Kirkcaldie and Stains is now) and had some refreshment. I remember Gully amusing me very much—it was nearly five o'clock, and I wanted Skerrett urgently; he was not at the Court or his office, so I telephoned to Gully and asked if he knew where Skerrett was and he said 'No'; I said 'do you think he will be at the Occidental Hotel,' and he said 'No, the Court is not sitting there now.'

"Then there were many others practising, but I have not time to refer to them all: A. de B. Brandon, the son of the founder of his firm, a keen Volunteer, A. Gray, and C. B. Morison, afterwards K.C., Sir Patrick Buckley, Mr. Stafford, Mr. Edwards, and the oldest practitioner, Mr. Travers, who started practice in Nelson in 1849, and was many years in Parliament representing Nelson, Christchurch, and Wellington at different times. Mr. Quick, a captain in the Volunteers, was a popular man, known by everybody; he had a grey moustache and mutton-chop whiskers. On one occasion he went to a levy at Government House (he, of course, was in uniform), he gave his name to the man at the door, and, when he started to walk towards the Governor, the announcer said in a loud voice "Captain Cook," much to the amusement of those present.

"I have been referring to many friends who have passed away. I should like to say how proud I am of being a member of the Wellington Law Society for so many years whose members have always done their part to keep up the tradition and honour of their profession. I am proud of the fact that so many members played their part so nobly in the Great War when many unfortunately paid the Supreme Sacrifice.

WELLINGTON'S CONTRIBUTION TO THE BENCH.

"I think we can congratulate ourselves that we have supplied so many able men to the Supreme Court Bench and the Arbitration Court. The following members of the Society were appointed to the Bench: Sir Patrick Buckley, Mr. Justice Edwards, Mr. Pennyfeather, Sir Charles Skerrett, Sir Michael Myers, Mr. Justice Ostler, Mr. Justice Blair, Mr. Justice Johnston, Mr. Justice Smith, Mr. Justice Kennedy, and Mr. Justice Fair; and to the Arbitration Court, Mr. Justice Page, and Mr. Justice O'Regan. It has been my privilege to have been associated in my office with four of these gentlemen I have mentioned—namely, Sir Charles Skerrett, Mr. Justice Blair, Mr. Justice Fair, and Mr. Justice Page.

"We have a Judiciary to-day of which we may be proud, and it is right that we should be so, we know that any one, be he rich or poor, who comes before a Judge or Magistrate, will to the best of the Judge's or Magistrate's ability get justice, and, if mistakes are made, an appeal lies to a higher Court. It is the same in any portion of the British Empire for which we have much to be thankful for. We have inherited the love of fair play and justice from our Motherland. It is our duty to pass on this love of fair play and justice to those who come after us."

The evening concluded with social foregatherings, games, and happy converse until a late hour.

Acts Passed, 1939.

3. Finance Act, 1939. August 25.
4. Land and Income Tax (Annual) Act, 1939. August 25.

Bills before Parliament.

Adhesive Stamps.—Cl. 3. Creation, custody, and disposition of adhesive stamps. Cl. 4. Consequential amendments of Stamp Duties Act and Post and Telegraph Act. Cl. 5. Disposition of Stamps. Cl. 6. Application of revenues derived from stamps. Cl. 7. Licenses to deal in stamps. Cl. 8. Certain persons may sell stamps without license. Cl. 9. Special stamps. Repeals. Cl. 10. Discontinuance of dies. Repeal. Cl. 11. Allowances for stamps destroyed by accident. Cl. 12. Saving. Cl. 13. Regulations. 14. Validation of acts done in anticipation of this Act. Cl. 15. Stamps for Cook Islands and Samoa. Commencement of this section.

Domestic Proceedings.—Cl. 3. Proceedings to be filed in Magistrates' Courts. Cl. 4. Sittings of Courts for domestic proceedings. Cl. 5. Reference of matrimonial cases to a conciliator. Cl. 6. Interim maintenance orders. Cl. 7. Newspaper reports of domestic proceedings. Cl. 8. Part III of principal Act to apply for benefit of married men. Repeals. Cl. 9. Dissolution of marriage not to affect maintenance order. Cl. 10. Section 38 of principal Act (as to rehearings) amended. Cl. 11. Place for filing applications for rehearing, variation, &c., of orders. Cl. 12. Section 43 of principal Act (as to attachment orders) may be extended to bind the Crown. Cl. 13. Place of hearing of informations for failure to pay maintenance-moneys. Cl. 14. Section 78 of principal Act (as to costs) extended. Cl. 15. Section 79 of principal Act (as to taking evidence) extended. Cl. 16. Extension of Magistrates' jurisdiction as to orders for maintenance made by Supreme Court. Repeal. Cl. 17. Powers of Maintenance Officers enlarged.

Pharmacy.

Summary Penalties.—Cl. 3. Means of offender to be taken into consideration. Cl. 4. Default for non-payment of fine, &c., not to be fixed at time of hearing. Cl. 5. Restrictions on imprisonment of persons under twenty-one years of age. Cl. 6. Payment of or security for fines, &c. Cl. 7. Supervision of defendant where time for payment is allowed. Cl. 8. Service of notice of conviction or order. Cl. 9. Warrant of distress. Cl. 10. Immediate execution. Cl. 11. Report to be made on *nulla bona* return of distress warrant. Cl. 12. Imprisonment of defendant in default of sufficient distress. Cl. 13. Scale of imprisonment for non-payment of money. Cl. 14. Remission of part of sentence of imprisonment for nonpayment of money on partial payment. Cl. 15. Defendant refusing to obey order may be imprisoned. Cl. 16. Warrant of commitment where punishment is imprisonment in first instance. Cl. 17. Power to impose cumulative terms of imprisonment. Cl. 18. Alteration of warrant of commitment in respect of the prison named. Cl. 19. Forms. Cl. 20. Repeals and savings.

Transport Law Amendment.—Cl 4. Motor-drivers' licenses to be issued by Registrar or Postmasters. Cl. 5. Application of fees for motor-drivers' licenses. Repeal. Commencement. Cl. 6. Application of other fees and charges. Cl. 7. Disqualification of intoxicated drivers. Cl. 8. Names of intoxicated drivers not to be suppressed. Cl. 9. Offence to take intoxicant in public vehicle. Cl. 10. Arrest of intoxicated drivers. Repeal Cl. 11. Traffic districts. Cl. 12. Borough Councils may arrange for enforcement of traffic laws by Transport Department. Cl. 13. Abolishing minimum limit for heavy-traffic license fees, and providing for refunds and remissions. Cl. 14. Minister may prohibit closing of roads to heavy traffic. Cl. 15. Provisions as to extraordinary traffic. Repeals. Cl. 16. Extending power to make regulations. 19. Applying principal Act to town carriers and taxicabs. Commencement. Cl. 20. Certain services declared to be goods-services. Cl. 21. Defining proper Licensing Authority to grant passenger-service licenses or exercise jurisdiction in respect thereof. Repeals. Cl. 22. Additional matters to be considered before determining applications for passenger-service licenses. Cl. 23. Extending power to make regulations. Cl. 24. Provisions that may be applied to goods-services.

LOCAL BILLS.

Christchurch Metropolitan Milk.
Christchurch Tramway District Amendment.
Lower Clutha River Improvement Amendment (No. 2).
Lower Clutha River Improvement Amendment (No. 3).
Otago Harbour Board Empowering.

Rules and Regulations.

Building Societies Act, 1908. Building Societies Fees Regulations, 1939. August 9, 1939. No. 1939/107.

Industrial and Provident Societies Act, 1908. Industrial and Provident Societies Fees Regulations, 1939. August 4, 1939. No. 1939/108.

Stock Act, 1908. Stock (Agricultural Seeds) Importation Regulations, 1939. Amendment No. 1. August 16, 1939. No. 1939/109.

Judicature Act, 1908, and the Judicature Amendment Act, 1930. Court of Appeal Amendment Rules, 1939. June 9, 1939. No. 1939/110.

Industrial Efficiency Act, 1936. Industry Licensing (Rope and Twine Manufacture) Notice, 1939. Amendment No. 1. August 9, 1939. No. 1939/111.

Fisheries Act, 1908. Fresh-water Fisheries Regulations, 1936. Amendment No. 2. August 16, 1939. No. 1939/112.

New Zealand Centennial Act, 1938. Centennial Exhibition Order, 1939. Amendment No. 1. August 23, 1939. No. 1939/113.

Primary Products Marketing Amendment Act, 1937. Primary Products (Potatoes) Order, 1939. August 23, 1939. No. 1939/114.

Post and Telegraph Act, 1928, and the Master and Apprentice Act, 1908. Post and Telegraph (Staff) Regulations, 1925. Amendment No. 13. August 23, 1939. No. 1939/115.

Coal-mines Act, 1925. Coal-mines Regulations, 1939. Amendment No. 1. August 23, 1939. No. 1939/116.

Fisheries Act, 1908. Trout-fishing (Waitaki) Regulations 1937. Amendment No. 3. August 23, 1939. No. 1939/117.