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"There is and can be no such thing as finality about the administration of the law. It changes, it must change, it ought to change, with the broadening wants and requirements of a growing country, and with the gradual illumination of the public conscience."

—LORD BOWEN.

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The Work of the Law Revision Committee in 1939.

DURING the year now drawing to its close, the usefulness of the work undertaken by the New Zealand Law Revision Committee has received striking acknowledgment in the additions made to the statute-book during the last session of the Legislature. A perusal of the Statutes Amendment Act, 1939, alone gives ample justification for such a body as the Law Revision Committee; but that enactment is only one of its recent achievements. It also promoted the much-needed amendment of the Patents, Designs, and Trade-marks Act, 1921-22; and statutes amending the Land Transfer Act, and the Property Law Act, while the new Wages Protection and Contractors' Liens' Act, the Legal Aid Act and the Legitimation Act were also the result of the Committee's deliberations.

The Committee held four meetings during the year. Its active personnel comprises the Attorney-General, Hon. H. G. R. Mason; chairman; the Solicitor-General, Mr. H. H. Cornish, K.C.; the Parliamentary Law Draftsman, Mr. H. D. C. Adams; the Under-Secretary for Justice, Mr. B. L. Dallard; Messrs. W. J. Sim, K.C., and Mr. K. M. Gresson, representing the New Zealand Law Society; Mr. A. C. Stephens, representing the Law Faculties of the University Colleges; and, a new member, Mr. F. W. Schramm, M.P., who is the chairman of the Statutes Revision Committee of the House of Representatives.

The Committee's procedure may be broadly described by a reference to the agenda of any of its meetings. Suggested amendments of the law come from practitioners in all parts of the Dominion, and from or through the Justice Department. The Committee considers each suggestion, and, if the question is one of a technical nature requiring a considered opinion, it is referred to one or more practitioners for a report. Sometimes a Government Department is concerned, and in those cases the departmental head is asked for his views. Matters directly affecting the profession, or branches of its activities are referred to the New Zealand Law Society for an expression of its opinion as to the desirability of the proposed change in the existing law. These reports, when received, are carefully considered by members of the Committee before a meeting, and discussed at it. If the Committee decides that a statutory amendment is desirable, or a new enactment is required, it settles the outline of its requirements to give effect to its decision, and the Law Draftsman, who is a member of the Committee, is asked to prepare a draft and submit it for the Committee's perusal. At every meeting, the introduction of new business, the discussion of reports, or the consideration of draft legislation occupy the members' attention.

An example of the Committee's expeditious manner of dealing with urgent matters is illustrated by this year's legislation relating to trade-marks. A firm, with wide experience in practice of trade-mark law, wrote suggesting the introduction into New Zealand legislation some important amendments in trade-mark law now embodied in the consolidating measure passed in England in 1938. The matter was a highly technical one, and appeared to require urgent consideration, so the Committee, for its guidance, asked a practitioner who is expert in this branch of law to come before it on the afternoon of the day on which such letter was received. He duly attended and showed that the question raised concerned a problem of frequent occurrence, and that, as the existing law presented very real and unnecessary difficulties, an amendment of the Patents, Designs, and Trade-marks Act, 1920-21, was urgently desired to meet the needs of the commercial community. The Committee was impressed by the representations made, and by the urgency of solution of the problem disclosed. Immediate arrangements, with the concurrence of the Minister in charge of the Patents Office, who is its chairman, were made for the Law Draftsman to prepare an amending Bill; and the Patents, Designs, and Trade-marks Amendment Act, 1939, which consolidated our law regarding trade-marks with the addition of the latest English provisions, was the speedy result.

The Property Law Amendment Act, 1939, embodies the Committee's recommendations that limitations on the exercise of a power of sale should be assimilated to the provisions relating to re-entry by a lessee, with similar safeguards of the mortgagee's rights; that there should be adopted the convenient powers in the English legislation authorizing a mortgagee whose power of sale has become exercisable to deal separately with lands and mines and minerals, and extending existing powers relative thereto; that a mortgagee in possession be empowered to cut and sell timber and other trees ripe for cutting; and that improved provisions be substituted for s. 116 of the principal Act relative to the giving of required or authorized notices.

The Land Transfer Amendment Act, 1939, deals with the removal of entries of *profits à prendre* and easements which have been determined or extinguished: a much-needed authority. It also enacts a provision for the bringing-down of encumbrances on the registration of new leases, a reform which was instituted by the New Zealand Law Society. An innovation that will prove of great convenience is the application to leases of the method of extending the term by a

memorandum of extension; while the priority of mortgages may be varied by a simple memorandum of priority.

The Legitimation Act, 1939, is the result of the Committee's careful attention to the improvement of existing statute law.

Improvement of the law relating to workers' and contractors' liens was referred to Mr. C. H. Weston, K.C., for a report, and his recommendations were embodied in the new Wages Protection and Contractors' Liens Act, 1939, which, as from January 1 next, replaces the legislation now existing. The new statute will, it is thought, be found thoroughly workable.

The Statutes Amendment Act, 1939, apart from a few departmental amendments, is a monument to the Law Revision Committee's labours; and practitioners will find therein the removal of many anomalies and difficulties which have confronted them in practice. Among these may be mentioned the apportionment of executor's commission; a needed clarification of the application of the Chattels Transfer Act, 1924, to book debts; the prevention of the use of a proposal for insurance as an application for shares in or membership of a company; the giving of successive interests in damages recovered under the Deaths by Accidents Compensation Act, 1908; the giving of powers as to the taking of oaths and the doing of notarial acts outside New Zealand by national representatives; the recovery of remedies for trespass on unfenced land in certain cases; an amendment of the existing law relating to special juries; and an enlargement of the time for claiming compensation under the Public Works Act, and improvement in the method of awarding costs in the Compensation Court. Almost every one of these amendments has originated in a suggestion made to the Committee by a practising lawyer, and follows a report by a member or members of the profession co-operating with the Committee. While all these and other provisions of the statute are important, attention must be drawn to one of the outstanding results of the Committee's work in this connection. This is found in ss. 22 and 23, where the provisions of Part II of the Family Protection Act, 1922, is applied to intestate estates: a feature that every practitioner will appreciate at its true worth.

Before we leave the Statutes Amendment Act, it is only right that we should remind our readers of the utility of an "omnibus" enactment such as this. It will be within their recollection how painful a task it was to follow fugitive amendments of substantive importance into Finance Acts and "Washing-up" statutes. Now, this is changed; and it is due to the Law Revision Committee that amendments of the present year or within the two previous years are sought with safety in an amending statute of similar title, or, failing that, if the change is within the compass of a few sections, in a Statutes Amendment Act. This alone proves the usefulness of close co-operation of the profession with the law-making authorities, which is made possible by the Law Revision Committee set up by the present Attorney-General.

Finally, the Legal Aid Act, 1939, makes an important contribution by the legal profession as a whole to community service. This measure had its origin in the Law Revision Committee, which referred the whole question to a subcommittee consisting of Mr. F. C. Spratt, Mr. W. P. Rollings, and the Secretary of the New Zealand Law Society, Mr. H. J. Thompson. On their report, the Law Revision Committee, after consultation with the Council of the New Zealand Law Society, promoted the draft of the Bill now passed into law. Its purpose was succinctly described by the Leader of the Legislative Council, Hon. D. Wilson, when, in introducing it, he said:

> "This Bill gives the necessary authority for establishing in New Zealand a legal-aid scheme similar to that which has so successfully been operating in England since 1926, and provides for members of the legal profession to give voluntarily their services. The general idea is that the district law societies shall themselves undertake and manage the service. They will form committees to which applications for legal aid may be addressed. Any person who can show that he has a right of action and that he cannot pursue his remedies because of lack of means will be given a legal-aid certificate, and that certificate will entitle him to the remission of Court fees and to the assignment of counsel free of charge. It will be noted that the Bill authorizes the issue of regulations providing for the setting-up of committees and empowering the New Zealand Law Society to require counsel to undertake the work. Experience has shown that under a complete voluntary scheme the 'willing horse carries most of the load' and in the opinion of the New Zealand Law Society some authority by way of regulation is necessary to ensure that the work is borne equitably in due proportions by all practising members of the legal profession. The rules will provide for the setting-up of panels and the obligation of practitioners in respect of legal aid. It will be noted, also, that it is specifically set out that the regulations will not require the approval of the Rules Committee. That committee was set up in 1930 to approve rules relating to the practice of the Supreme Court. The rules contemplated under the present Bill relate not so much to the practice of the Supreme Court as to certain functions that will be exercised by the law societies. Further, although in England legal aid is available only, in respect of proceedings in the Supreme Court, it is intended in New Zealand to make the service available for proceedings in all Courts, and whereas the Rules Committee functions only in respect of the rules of the Supreme Court, the incidence of litigation is such that 87 per cent. of proceedings are heard in the lower Courts. It is considered therefore, that the rules should not require the approval of the Rules Committee. The Bill has simply an empowering clause providing for the formulation of regulations prescribing the details under which the district law societies shall undertake legal aid."

The drafting of the necessary rules is now receiving the attention of the subcommittee in conjunction with the Council of the New Zealand Law Society.

The foregoing is by no means an exhaustive account of the Committee's work in the past year. For instance, it has already in draft form a revision of the Land Transfer Act and amendments, and a consolidation, with amendments, of the Property Law legislation. These are the outcome of a request by the Committee to Mr. S. I. Goodall, who has placed the Committee and all practitioners under a debt of gratitude for the great amount of valuable work he has done in drafting these Bills. The trustee law of New Zealand has lagged behind that of Great Britain, so the Committee decided on a consolidation of the statutes dealing with the law of trusts, with an incorporation of up-to-date provisions adopted by the British legislature. The onerous task of drafting a Bill on these lines was entrusted to Messrs. K. M. Gresson and S. I. Goodall, who completed their work with a general report on their subject. These three draft Bills, as will be seen from the report of the last meeting of the Committee which appears on another page, have been sent to sub-committees of members of the profession, with the addition of the Registrar-General of Lands and the Law Draftsman. A revision of the Magistrates' Courts Act and the preparation

of consequental regulations was recommended by the Committee. This work has been entrusted to Mr. H. Jenner Wily in co-operation with the Justice Department. As reported, discussion of the new draft Bill and draft regulations will be the Committee's first consideration in the new year.

Enough has been said to show the immensely practical value to the profession and to the community of the Law Revision Committee. The fruition of its work during the present year in the statutes passed during the last session of Parliament was the subject of congratulations to the Attorney-General by Mr. W. J. Sim, K.C., on behalf of the members of the Committee at its November meeting; and another member, Mr. F. W. Schramm, M.P., was also felicitated on the manner in which the bills sponsored by the Committee had been received by the Statutes Revision Committee of the House of Representatives, of which he is chairman.

In the happy results achieved by the Law Revision Committee, the profession as a whole, and individual members of it, have played an important part. If the Committee is to continue its valuable work, this co-operation must be maintained. We quote a letter, dated November 24 ulto., and written by the Under-Secretary for Justice, on the Committee's behalf, to the New Zealand Law Society and read at the meeting of the Law Society's Council on Friday last:—

> "At to-day's meeting of the Law Revision Committee appreciative comment was made concerning the valuable assistance rendered by individual members of the legal profession in preparing special reports on particular phases of the law for the Committee.
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> "Members of the profession will doubtless have observed with interest the large number of matters dealt with by the Committee which have been translated into legislation. Although gratified at the progress made, the Committee feels that there is still ample scope for useful work in the matter of law reform, and in furtherance of this I have been directed to ask you to be good enough to bring under the notice of the members of the Law Society the fact that suggestions, at any time, for improvement in the substantive law will be welcomed by the Law Revision Committee.

In congratulating the Law Revision Committee on its excellent work during the past two and a half years, the profession will bear in mind that its own co-operation is essential to the continuation of this success. Remarkably fine work, some of it involving months of hard work, has been willingly done by individual practitioners at the Committees request; and the Committee feels it has the goodwill of the profession as a whole. If this co-operation of the Committee and the profession continues in an ever-increasing degree, so too, the value of their combined work will be further enhanced in the field of law reform in the years to come.

Seasonable Greetings.

ALTHOUGH our readers are entering upon their annual vacation under the shadow of war, we still wish them all a pleasant and healthful holiday in their brief respite from the daily round. None of us knows what sacrifices may be asked in the coming year, but, in the fast-approaching holiday weeks, all can take heart and so fit ourselves for whatever the future has for us.

We take this opportunity of thanking all who have assisted us in the JOURNAL in the past year. Without the ready and helpful co-operation of members of the profession, our task would have been a fruitless one. Of them, and of all our readers, we ask acceptance of the season's greetings.

Summary of Recent Judgments.

SUPREME COURT. Dunedin. 1939. August 18; October 2. *Smith, J.*

DANIEL HAYNES TRUST, LIMITED v. DRAPERY AND GENERAL IMPORTING COMPANY OF NEW ZEALAND, LIMITED.

National Expenditure Adjustment—Lease—Successive Rents to be fixed by Agreement or Arbitration subsequent to April 1, 1932—Whether Act applies—National Expenditure Adjustment Act, 1932, ss. 30 (*b*), 31, 32 (1) (*a*), 34 (1).

The rentals affected by s. 31 of the National Expenditure Adjustment Act, 1932, are those rates of rent which were in force immediately prior to April 1, 1932. If a contract in force at the passing of the Act contains provisions for the fixing of rentals which come into force on or after April 1, 1932, the provisions of Part III of the statute do not apply to such rentals.

Therefore, where a lease for thirty years from December 8, 1929, provided for a fixed rent during the first ten years of the term, and the rent for the second and third periods of ten years respectively was to be settled by agreement or failing such agreement by arbitration, the Act applied to the rent for the first period of ten years, but not to that for the two subsequent periods which were payable in full.

Counsel: Calvert, for the plaintiff; **Mowat,** for the defendant.

Solicitors: Brugh, Calvert, and Barrowclough, Dunedin, for the plaintiff; **Gallaway and Mowat,** Dunedin, for the defendant.

SUPREME COURT. Dunedin. 1939. November 16. *Ostler J.*

In re **BELL (DECEASED), PERPETUAL TRUSTEES ESTATE AND AGENCY COMPANY OF NEW ZEALAND, LIMITED, AND ANOTHER v. BELL AND OTHERS.**

Trusts and Trustees—Company Law—Shares and Shareholders—Discretion and Duty of Trustees in voting on Company Resolution authorizing capitalizing of Reserves, affecting relative Rights of Life Tenants and Remaindermen—Perpetual Debenture representing their Share of Capitalized Reserves, issued to Trustees of Will—Retention of Debenture not authorized by Will—Whether Court justified in empowering Trustees to retain it as authorized investment of Trust fund—Whether Debenture to be treated as Capital in Administration of Estate—Whether Income from Debenture to be applied as Income of Trust Fund—Statutes Amendment Act, 1936, s. 81.

Testatrix at her death held a large number of fully-paid shares in the B. Co., Ltd., which had accumulated a large reserve fund from undistributed profits. The plaintiffs were appointed executors and trustees of the will, whereby the net balance of the residue of her estate was to be divided into quarters. One-quarter was to be paid to her son, one-quarter to her daughter, Mrs. B., one-quarter was to be invested, the income paid to her son for his life and after his death to his children for life with remainder to Mrs. B.'s children. The income of the remaining quarter was to be paid to Mrs. B., for life with remainder to her children. Both children of testatrix were of age at the date of the death of the testatrix. The son had two daughters and the daughter one son, all three being infants. The trustees retained the shares of the B. Co., Ltd., as authorized by the will, and transferred a quarter of them to the son and another quarter to the daughter in satisfaction of the gift to each of them of one-quarter of the residuary estate. The trustees were then left with 11,439 shares, which they held upon the foregoing trusts.

The B. Co. having no power by its articles to distribute its reserve trust except by way of dividend passed a special resolution adopting a new article enabling the company to capitalize and distribute undivided profits standing to the credit of the reserve fund and to apply such capitalized fund in paying up any unissued shares or debentures or debenture stock of the company which should be distributed accordingly.

The trustees, having applied to the Court for directions as to how they should vote on the special resolution, and having received a direction from *Kennedy*, J., that as long as, in voting for or against or refraining therefrom, they exercised a *bona fide* discretion they would fulfil their duty as trustees, voted in

favour of the resolution which was carried. Under the powers given thereby a perpetual debenture for £11,439 was given to the trustees bearing interest at 4 per cent.

On an originating summons for the determination of the question, *inter alia*, whether the debenture was to be treated as capital or income by the trustees,

F. B. Adams, for the plaintiff; **J. S. Sinclair,** for N. H. Bell; **J. M. Paterson,** for D. L. H. Barton and her children; **A.N. Haggitt,** for the University of Otago and Joan and Jacqueline Bell.

Held, 1. That, on the facts set out in the judgment, the trustees had committed neither a breach of trust nor a mistake of law.

2. That the debenture must be treated as capital by the trustees in the administration of the trusts of the will.

3. That, although there was no power given by the will to retain debentures given by the company after the death of the testatrix, in view of the indication in the will, the Court was justified under s. 81 of the Statutes Amendment Act, 1936, in empowering the trustees in their discretion to retain the debenture as a duly authorized investment of the trust fund upon the conditions set out in the judgment.

4. That the whole of the income arising from the debenture should be applied by the trustees as income arising from the trust fund.

Commissioners of Inland Revenue v. Fisher's Executors, [1926] A.C. 395; and **Commissioner of Income Tax, Bengal v. Mercantile Bank of India, Ltd.,** [1936] A.C. 478, applied.

Hill v. Permanent Trustee Company of New South Wales, Ltd., [1930] A.C. 720, 31 N.S.W. S.R. 32, distinguished.

Solicitors: Adams Bros., Dunedin, for the plaintiff; **J. S. Sinclair and Stevenson,** Dunedin, for N. H. Bell; **Lang and Paterson,** Dunedin, for Mrs. Barton; **Ramsay and Haggitt,** Dunedin, for Joan and Jacqueline Bell.

Case Annotation: *Hill v. Permanent Trustee Co. of New South Wales, Ltd.*, E. and E. Digest, Supp. Vol. 9, para. 1990a.

SUPREME COURT. Wellington. 1939. October 9; December 5. *Blair, J.*

MEEK AND ANOTHER v. BENNIE.

Trusts and Trustees—Contract—Option given to purchase Trust Property—Duty of Trustee in connection therewith—Principle applicable.

Trustees, on whom is cast the duty of getting the best price for the trust estate, must sell it under such conditions as will assure the best price. A condition giving to a lessee for a long term of years an option to acquire the estate at a fixed price, there being nothing binding the lessee to buy at that or any price, is not such a condition.

Clay v. Rufford, (1852) 5 De G. & Sm. 768; **Oceanic Steam Navigation Co. v. Sutherberry,** (1880) 16 Ch.D. 236; and **Greenwell v. Porter,** [1902] 1 Ch. 530, considered.

Fels v. Knowles, (1906) 26 N.Z.L.R. 604; 8 G.L.R. 627, distinguished.

The giving by a trustee of an option to purchase the trust estate is not bad in every case, as where an option is given for such time as would enable a purchaser to satisfy himself that it would be profitable to acquire the property and to arrange his finances.

Thus trustees, who were careful not to tie up the trust property for long periods, though from time to time they extended the options and received consideration for the giving of them, had not departed from their duty as trustees.

Binnie v. Broom, (1889) 14 App. Cas. 576, applied.

Counsel: Harding, for the plaintiffs; **Hadfield,** for the defendant.

Solicitors: Meek, Kirk, Harding, and Phillips, Wellington, for the plaintiffs; **Hadfield, Peacock, and Tripe,** Wellington, for the defendant.

Case Annotation: *Clay v. Rufford*, E. and E. Digest, Vol. 43, p. 903, para. 3455; *Oceanic Steam Navigation Co. v. Sutherberry, ibid.*, para. 3456; *Greenwell v. Porter, ibid.*, Vol. 24, p. 611, para. 6418; *Binnie v. Broom, ibid.*, Vol. 43, p. 857, para. 3041.

In Europe To-day.

Visits to Various Courts.

By J. C. WHITE, LL.M.

As the Editor has asked me to say something about my recent visit to Europe, it seems that practitioners will be most interested in experiences which have a legal atmosphere about them.

On the Continent, I saw little and understood less concerning the administration of Justice apart from examining Courts both ancient and modern. In Germany, permission had to be obtained from the Department of Justice at least, if not from the All Highest himself. Further, a visit to a Court in Germany would take time, as it was apparently the rule that a spectator must remain in the Court-room until the end of the hearing. The customary moving population in the back of Court-rooms was not permitted in the Reich. This information I received from a layman; perhaps, if I had had a letter to a lawyer, I might have been more successful.

In Italy, needless to say, we were greatly impressed by the staggering magnificence of the great judgment halls of Venice where the Doges administered justice when that great City "held the East in fee." From the Courts we walked across the Bridge of Sighs to grim dungeons below water-level, and past the window where malefactors said farewell for ever to their friends. Florence, like Venice, has marvellous golden ceilings and murals by the great masters in the halls where Lorenzo the Magnificent dealt with his enemies according to Medici law. In Rome, a solicitor showed us over a part of the Royal Courts of Justice, a magnificent modern building on the banks of the Tiber. The outstanding features were the facade with statues of great lawyers from the days of Cicero downwards, and the courtyard within surrounded by lofty cloisters with a fine group of statuary in the centre.

Unfortunately, I was in Europe during the legal vacation and did not see a Court in session except in Paris. There, I was lucky enough to have a barrister, who spoke English, to show me the Palace of Justice. He had spent some time in England, and was able to point to the differences in the respective systems. The Palace of Justice is in the old City near Notre Dame. It is old and rather rambling, but full of historical interest. The Court-rooms, as elsewhere, were very like our own; but there were no wigs for Judges or Counsel, the former wearing velvet caps. I regret that whatever French I remembered helped me not at all to understand the voluble witnesses we heard. Two very fine Court-rooms were set apart for an Appellate Court, and the highest Court in France—La Cour de Cassation. In these palatial rooms royalty had walked before the Revolution. Certainly, the Palace of Justice witnessed many a stirring and ghastly scene during the days which saw the birth of the First Republic. We stood on the spot where Louis XVI, and later Marie Antoinette, faced that grim tribunal; and we went through the crypt-like prisons below where the Queen herself and hundreds of aristocrats awaited execution in the name of Liberty, Equality, and Fraternity.

It was in the United Kingdom that I had my most interesting experiences. I missed seeing the Scottish Courts owing to the War, but saw many of the Courts in England, Ulster, Eire, and the Isle of Man. In the Isle of Man I was told that the well-known Manx name of Quilliam had filled *all* the important roles in the Deemster's Court.

The Court-house in Belfast is a splendid edifice, and, like its big brother the magnificent Houses of Parliament, is a present from the British Government. The view of the front reminded me of the architect's drawing of the new Supreme Court at Christchurch. Inside, like the new "Old Bailey" and the Royal Courts of Justice in England, there is a fine central hall, the Court-rooms, library, and other rooms being entered from it. Except for slight differences of arrangement in furniture, any of the cases I heard might have been taking place in New Zealand.

The "Five Courts," which is the way the Civil Courts at Dublin are described, is another fine building on the banks of the Liffey, rebuilt since 1922 when it was blown up. Despite the attempts of Eire to break away from English institutions and traditions, even to the extent of exhuming Gaelic to be reinstated as the national language, the Law Courts retain their essentially British characteristics. Perhaps this is the greatest possible compliment to the British system of justice. The final Court of Appeal, however, for Ireland is now the Irish Court of Appeal, and no more red bags—sign of a King's Counsel's participation in a House of Lords Appeal—will adorn the desks in the Barristers' Library. The Library was interesting in that each barrister has his or her appointed desk to work at. The amount of talking going on was reminiscent of our own Supreme Court Library at its noisiest, and very different from the libraries I visited in England. I listened to a case before the Court of Appeal where a kind-faced Chief Justice was endeavouring to persuade a fiery counsel that no further burning eloquence would carry the matter any further. The Criminal Court, some distance away and near some of the worst slums in Europe, was like pictures of the Old Bailey, the jury-box being like a small gallery raised even higher up than the Judge. The whole layout indicated age and discomfort, while the acoustics were dreadful. My impression of the Irish Courts was that they were considerably livelier than the more sedate Courts in England. There was a difference in dress, too. Black or blue suits often sufficed in Ireland, while, in England, striped trousers and black coats are the customary attire of the entire profession, plus of course the "Anthony Eden" hat. And there is no doubt the English barrister looks very well in Court.

In the Old Bailey and the Royal Courts of Justice in England, one can usually find something of interest. The Central Criminal Court, still known as the Old Bailey, is an imposing modern block, its most conspicuous feature being its copper-covered dome surmounted by a large bronze figure of Justice. I think there are four Court-rooms there. I saw part of two murder trials, but unfortunately none of the leaders of the criminal bar was in action. Though the Court-rooms are most modern and clean, the ancient precautions against gaol fever are still taken in the shape of dried herbs sprinkled about the Court. And the Judge is still protected from possible unpleasant odours from the witness-box by a posy of fresh flowers. It was strange to see the Judge sitting alone on the Bench, but not in the central chair. This is the Lord Mayor's chair, sometimes occupied by him and sometimes by an Alderman, relic of other days when the Lord Mayor in person administered justice in the Old Bailey.

The Royal Courts of Justice in the Strand are also modern, though somewhat rambling. The type of architecture is known as Monastic Gothic, and certainly the main central hall with its mosaic floor and lofty arches has the atmosphere of a cathedral about it. It was suggested to me that the hall was rather a waste of space since it is only used on the opening of the Law Courts each year apart from the one occasion when Mr. Justice Darling sat there as a protest against some defect in his Court. It was interesting to hear that this building, which cost nearly a million pounds, was paid for almost entirely from unclaimed funds in Chancery. A walk through the maze-like corridors reveals the three Courts of Appeal, the Court of Criminal Appeal, and the King's Bench, Chancery and Probate, Divorce, and Admiralty Divisional Courts. As there are twenty-three Court-rooms, the choice of entertainment is wide; but there are scores of attendants who, for a consideration, will direct you to the "popular" choice, usually in the Divorce wing, or to the deepest legal argument.

The differences in our system and methods of procedure, the shorthand-reporting system, the style and ability of the leaders of the Bar, and seeing in the flesh the Judges whose opinions appear in the Reports—these things were all of absorbing interest. As I watched the shorthand reporters at work, it occurred to me that if the system were introduced in New Zealand in a modified form to work in conjunction with our associate-typist system, present defects would be remedied and at the same time all the benefits of the dictaphone apparatus would be obtained.

Watching the deliberations of the House of Lords and the Judicial Committee of the Privy Council was perhaps the most interesting thing of all, for there one saw men whose opinions have often directly affected the law of New Zealand.

The Privy Council Court-rooms are quite simple but the Law Lords hear United Kingdom appeals in the chamber of the House of Lords itself and they actually give judgment by passing a resolution of the House of Lords in the ordinary way. The Chamber of the House of Lords makes a magnificent Courtroom. I was also lucky enough to see the Committee rooms and the wonderful Library, which overlooks the Thames.

At the House of Lords I was given a seat in a place like a dock; and, on one occasion, I noticed a visitor on a tour of inspection of the House of Parliament pointing at me and asking her guide in a loud whisper, "Is that the prisoner?" The informality of the proceedings is certainly striking. Of the Law Lords only the Lord Chancellor wears robes, but counsel robe and Kings' Counsel wear full-bottomed wigs. The hearing often develops into a discussion, as after counsel has made a point their Lordships will talk in conversational tones across the table to one another—obviously, of course, they are masters of principle. I could not help feeling that counsel at the lectern looked like a parson addressing rather a small but select and critical congregation. Another example of the informality in the greatest Court in the world was afforded by Lord Macmillan when counsel

(Sir Stafford Cripps) wished to refer to a report which Lord Macmillan had at his desk. His Lordship himself walked with the report to the Bar of the House and handed it over. It may be that the Lords will not see Sir Stafford "for the duration," as it was reported in the Press that he has offered his services to the Government and returned his briefs.

Lord Blanesburgh, Lord Wright, and Lord Justice Clausen (to whom I was introduced through the kindness of Mr. Justice Ostler) were extraordinarily kind to me, and through them I had the privilege of seeing closely some of the great institutions of England and of meeting quite a number of other great men of the law. Their manner is so charming that although nervous to start with I was surprised to find that I was soon quite at ease.

As the guest of Lord Justice Clausen, I dined at Lincoln's Inn which was a privilege indeed, and I also had the pleasure of lunching with barristers in the halls of Gray's Inn and the Middle Temple. The halls of the Inns with their magnificent carved-oak ceilings and heraldic stained-glass windows are wonderful dining-rooms, and of course great meeting-places for the barristers of the Inn. The halls, chapels, and chambers which make up the Inns have seen the growth of the English Bar—they alone have the power of calling to the Bar—and they are full of historical interest both legal and otherwise. Treasures vary. There are oak tables of great antiquity, one presented by Queen Elizabeth, another made out of the timbers of Drake's ship, the "Golden Hind," there are wonderful masterpieces and portraits of the great Benchers and even unexploded bombs dropped during the last Great War. Each of the Inns has a splendid library: Lincoln's Inn is the finest Law Library in London. Founded in 1497, it contains over seventy thousand volumes and many valuable MSS. There is an atmosphere almost like that of a University town in the Inns; and, even now, amidst the noise and bustle of the great City of London, the barristers work within their Inns in a quietness never experienced in our City offices. They often look out from possibly rather dingy chambers on to lovely green lawns which in Spring are bright with daffodils and tulips. The gardens of Gray's Inn were laid down by Francis Bacon who was Treasurer in 1608.

I must mention the old custom at Lincoln's Inn of drinking the King's health sitting down. It apparently dates from the time of Charles II who was dining there one evening and decided that it would be wiser in the circumstances if the barristers there assembled did not try to stand to drink his health.

So far, the War has made little difference to the Law Courts and the Inns except for the presence of the annoying square boxes containing gas masks which add to the collection of books and papers in front of counsel, and indeed are a part of every one's impedimenta in these days. Overhead, too, are the silver balloons, a not unimportant part of defences which every one hopes will keep the bombers from destroying, *inter alia*, the sacred places of the law.

These impressions are probably not enough to show what a wonderful experience it was to see the places where throughout the centuries our law has gradually evolved. Though the institutions are old, and criticism of parts of the system may be fully justified, the fact remains that the English system continues to develop with the times and retains the confidence of the community. There is an undoubted thrill about it all.

New Zealand Law Revision Committee.

November Meeting

The ninth meeting of the New Zealand Law Revision Committee was held at Parliament Buildings, Wellington, on Friday, November 24, 1939.

The members present were the Attorney-General, the Hon. H. G. R. Mason, Chairman; the Parliamentary Law Draftsman, Mr. H. D. C. Adams; the Under-Secretary for Justice, Mr. B. L. Dallard; and Messrs. W. J. Sim, K.C., K. M. Gresson, F. W. Schramm, M.P., and A. C. Stephens.

At the commencement of the meeting, Mr. W. J., Sim, K.C., on behalf of the members of the Committee, congratulated the Chairman and Mr. Schramm, M.P. on the inclusion in the session's legislation of so much of the work of the Committee, which, he said, had given great satisfaction to the legal profession; and the Committee took pleasure in seeing that the work had gone through to such an effective stage.

The Chairman replied, thanking the Committee for their approval, and expressing his own satisfaction at the passing of the legislation. He also paid a tribute to the work of Mr. Schramm, M.P., as Chairman of the Statutes Revision Committee of the House of Representatives, in facilitating the passing of the several statutes in which the Committee had been interested.

Juries Act, 1908: *Exemptions from Jury Service.*—Mr. B. L. Dallard reported that the Minister had written to the Director-General of the Post and Telegraph Department and the General Manager of the Railways Department, and had also conferred with the Public Service Commissioner, with a view to obtaining and indication from these gentlemen as to the particular classes of individuals who could be made available for jury service, without incommoding the work of the Government Departments concerned. Their reports would be available for the Committee's next meeting. The matter was accordingly held over.

Justices of the Peace Act, 1927: *Publication of Evidence in Lower Court.*—The Committee considered the report by the Secretary of the New Zealand Law Society, and the opinions of the various District Law Societies.

After discussion, it was resolved that the Attorney-General be asked to seek the views of the Judges on the matter.

Damages: *Protection of Infants and others to whom Damages are Payable.*—After discussion of a letter from the Right Honourable the Chief Justice and a report by Messrs. O. C. Mazengarb and W. E. Leicester, the Committee resolved that the Law Draftsman and Mr. K. M. Gresson should draft a clause dealing with the question of the protection of persons to whom damages are awarded, as raised in the letter and report, and submit the preliminary draft for the Committee's consideration at its next meeting.

Soldiers' Wills.—(*a*) The Committee resolved that the Law Draftsman prepare regulations under the Emergency Regulations Act, 1939, to provide to the effect—

(i) That every member of a military, naval, or air unit, from the date of receipt by him of orders to proceed overseas to the seat of war or otherwise, is to be deemed to be "in actual military service" within the meaning of s. 3 of the Wills Act, 1837; and

(ii) That provision be made to give sailors and mariners the same status as soldiers "in actual military service."

(iii) The Law Draftsman was asked to include, if possible, a provision regarding the wills of Native soldiers, after consultation with the Native Department.

(*b*) The Law Draftsman was also asked to draft an amendment to the Wills Act to the effect that, with the leave of the Court, any person who has attained the age of eighteen years may make a valid will.

Negligence: *Road Collisions.*—After consideration of a report by Mr. O. C. Mazengarb on the suggested adoption of the Admiralty Rules, it was resolved that the Attorney-General be asked to set up a committee to consider further, and report upon, the adoption of the principle of absolute liability; and, if such adoption be recommended, upon such limitations as may be necessary.

Evidence.—The Committee approved in principle the adoption of the Evidence Act, 1938 (1 & 2 Geo. 6, c. 28); and it was resolved that Dr. A. L. Haslam (Christchurch), and Mr. C. J. L. White (Dunedin) respectively be asked to submit a report as to the application and adoption of that statute, as an amendment of the Evidence Act, 1908.

Chattels Transfer Act, 1924: *Securities over Fishing-launches.*—It was resolved that the matter raised in the letter of Messrs. Bisson and Moss as to the registration of securities over fishing vessels, be referred to the Justice Department for inquiries from the Departments concerned, and for a report to the Committee's next meeting.

Statutes of Limitation.—It was resolved that the Law Draftsman be asked to submit a draft Bill adapting to New Zealand conditions the provisions of both the Limitation Act, 1939 (2 & 3 Geo. 6, c. 21), and the Public Authorities Protection Act, 1893 (56 & 57 Vict., c. 61).

Evidence Act: *Proof of Formal Documents, etc.*—The Law Draftsman was asked to include in a convenient Bill a clause incorporating suggestions made as to the proof of formal documents.

Land Transfer Bill, and Property Law Bill: It was resolved that these draft Bills, which had been drafted for the Committee, be referred to a committee consisting of Messrs. C. H. Weston, K.C., E. F. Hadfield, and R. H. Webb, with the Registrar-General of Land and the Law Draftsman, for a critical examination of the provisions contained therein; and that the Committee be asked to report before the next meeting so that their report can be circulated to members of the Law Revision Committee.

Trustee Bill: It was resolved that the draft Bill prepared for the Committee be referred to a Committee consisting of Messrs. E. P. Hay, H. E. Evans, and J. H. Carrad, with the Law Draftsman, for a critical examination of the provisions contained therein, and that the Committee be asked to report before the next meeting.

Poor Persons Legal Aid.—It was resolved that the New Zealand Law Society be asked to draft rules under the new Act, and that it be suggested that the English rules be adopted so far as may be thought desirable.

Magistrates' Courts Bill.—Mr. Dallard reported the progress made on the new draft Bill, and said that it would be available for the consideration of the Committee at its next meeting.

Around New Zealand with the Court of Review.

Some Recollections and Reflections.

By. W. W. KING, late Associate-Registrar.

"As the births of living creatures at first are ill-shapen, so are all innovations which are the births of time."—*Essay on Innovations*: LORD BACON.

After a month in the tranquillity and quiet solemnity of the Court of Appeal and the comparatively dignified atmosphere of the Supreme Court, the ever-present sensation, during the past four years, of movement, the rumble of speeding wheels, the perpetual klick-klick, klick-klick, of the railway, and the swish of street hoses and the clamorous complaint of disturbed dustbins each night, become a past memory; and, in retrospect, one is enabled to pass on certain definite impressions silhouetted on the maze of daily detail and the spontaneous banter from both Bench and Bar.

When the enveloping mantle of the Rural Mortgagors Final Adjustment Act, 1934-35, and, subsequently, the Mortgagors and Lessees Rehabilitation Act, 1936, was laid upon the Court of Review, it took a great deal of thought and consideration to determine how the Court should proceed. Should it immediately issue, in its judicial capacity, rules and regulations, not only covering its own procedure but that of the Adjustment Commissions, and in addition, in its administrative capacity, issue instructions guiding and binding the Commissions in the narrow groove of centralization; or should the Court allow Commissions to overcome their own difficulties, having regard to the peculiarities of their respective separate districts? Those were the fundamental procedural and administrative problems to be solved.

Well, as is now commonly known, the Court decided on the latter course, and perplexed practitioners had the unique experience of confronting a Court circumscribed only by the Act creating it, five regulations, and no precedents. That this policy was wise, has been exemplified by the passing of time. It was found, when the Court visited various parts of New Zealand, each different Commission had its own local difficulties, and any attempted formulation of rules and directions would have been abortive.

The Rural Act and the Rehabilitation Act were fundamentally different in that the former provided for a budgetary period of five years before adjustment was to be made, whereas the latter required that adjustment should be made forthwith if rehabilitation could reasonably be provided for; or, if not, that the application be dismissed.

The great advantage to the country of budgetary control over a period by a Commission of three was the education of the financially unsuccessful mortgagors in the ways of business, and it would appear that some farmers were sorry to see that system end. The budget was made up for them by the Commissioners at the beginning of the year, and the farmer knew exactly what he had to do and what to spend. Books

of account became a necessity, and the farmer was advised in regard to the sale of his produce to the best advantage. Under this system, there was no provision for yearly rests with regard to interest and no power in the Court to remit until the end of the five-year period. In some parts of the South Island, financial institutions are returning to budgetary control in cases where farmers are again in financial difficulties; and the farmers appreciate this consideration. These financial institutions appoint a farmer, successful from the dual point of view of production and the sale of farm products, to supervise the mortgagor in his farming and advise him upon business aspects.

However, from the other point of view, it was necessary in the interests of the country to establish mortgagors on a reasonably firm footing as soon as possible. With this in view, immediate adjustment on a productive basis was substituted, based upon average prices for produce during the past eight to ten years. It is a little too early yet to estimate whether it was wise to expose the average efficient practical farmer, who had been previously demonstrated as financially unsuccessful, to the extended, waiting, and helping hand of business finance.

To pass on to the actual work itself, the Court under the Rehabilitation Act found it necessary to fix for each district throughout the whole of New Zealand the average price of produce from land and stock in order to give the Adjustment Commissions a basis upon which to fix the productive value of land. This was a tremendous task, and, if it had not been for the valuable assistance rendered by the various stock companies throughout the Dominion in making available their records and tabulating the results shown, it would have been well nigh impossible.

The order specifying these prices having been made and issued, the Adjustment Commissions were then ready to commence the great task of hearing 34,000 applications.

However, before the Commissions actually commenced work it was decided that a meeting of all the chairmen of Adjustment Commissions would be advantageous to all concerned, and such a meeting was held in Wellington, presided over by the Minister of Justice, Hon. H. G. R. Mason, who welcomed the chairmen and addressed the meeting upon the policy actuating this particular Legislation. Mr. Justice Johnston also addressed the meeting upon the broad guiding principles of the Act and the procedure that should be adopted by Commissions when hearing applications; but, apart from reminding them that they were chairmen of judicial bodies and enjoining them to observe the general legal principles applicable to all Courts of Law with regard to procedure and hearings, the Commissions were left free to find solution of their own problems and difficulties, subject, of course, to review by the Court after hearing contending parties.

Although the Court may be deemed one of limited jurisdiction, yet s. 71 gave it full power and jurisdiction to make any order which, in the circumstances of the case, seemed to it just and equitable, saving only the limitation that those orders made should not be inconsistent with the Act. It is hoped that on some future occasion this aspect of the subject, and Courts of like circumstance, may be considered.

Some Commissions, without deciding the facts, put hypothetical cases to the Court, or, on deciding the facts, asked the Court to decide the law; but the Court refused in each case to deal with these, making each Commission determine its own difficulties. Then the matter could, on appeal by a dissatisfied party, if any, be determined by the Court after having the assistance of argument from counsel on both sides. This principle worked out well in practice, as it left the Court quite unfettered when any matter came before it for hearing.

Although jocular remarks were often made out of Court about the position of mortgagees under the Act, yet it must be remembered that the policy of the Act was *rehabilitation of mortgagors*: but the Court never consciously lost sight of the rights of other parties and their respective priorities. Where the mortgagor was so involved that his ultimate rehabilitation was very doubtful, or a controlling order for a period would be necessary for his rehabilitation and other parties would be deprived of their just rights, the Court refused to make an order and left the matter to be straightened out by agreement or bankruptcy. Happily most of such matters were eventually settled by agreement.

To some who were taken unawares, it must have appeared that the Court flitted from place to place for no rhyme or reason, but the fact is that a great deal of time was spent in organization. First of all, the fifty-two Registeries under the control of the Court were asked to send all appeals and applications for hearing by the Court to certain specified central Registeries (usually centres where the Supreme Court sat), which made a monthly return to the Court of matters pending. The Court, after considering these returns, then decided, having regard to the number and urgency of the cases, which district would be visited. Travelling arrangements had to be made; tickets obtained; compartments, seats, or berths had to be reserved; taxis and carriers ordered; hotel accommodation reserved: and this had to be done sometimes three or four towns ahead and always at least one town ahead. In the meantime, the daily hearing of cases was proceeding, minutes written, fixtures arranged and the various requirements of counsel attended to and information given, and behind the scenes one struggled on with necessary Public Service and Treasury *impedimenta*.

As much notice of sittings as possible was given to counsel; and, when it was decided to go to a certain district, Registrars were advised that the Court was to be in the district and to let counsel know, and that they would be later definitely advised of the exact time the Court would sit. But the great difficulty with fixtures was the estimation of the time that would be necessary to complete the work in one place before proceeding to the next. Cases were all the time being settled (or partially so), and obliging counsel were always ready with another, as the Court could not afford to lose any time as it was urgently required elsewhere. So, at times, a sitting finished much earlier than expected, or perhaps a case of unusual difficulty would take longer than estimated, and this would put the Court back and cause a tremendous amount of rearrangement of fixtures at that sitting, and the sitting at the next town, with corresponding travelling arrangements and hotel accommodation.

I understand there is a good deal to be said both for and against ambulatory Courts. To exercise jurisdiction over some-thirty thousand applications from all parts of the country, the Court of Review had of

necessity to be an ambulatory Court, although the word "ambulatory" seems a somewhat poor description of the pace with which the Court had to move from one end of the country to the other. Constant travel may or may not have been a strain on members of the Court who invariably sat almost immediately after arrival at a town, and continued sitting till the time of departure.

The task of looking after one Judge on circuit is quite sufficient for most Associates, but it is a mere incident compared with the formidable task of looking after three Members of a Court on continual circuit.

Wherever the Court happened to be, work came to it through headquarters at Wellington from all parts of the country. Almost before the Court had started, it was inundated with hundreds of motions for extension of time within which to file applications; and, thereafter, the work of receiving, considering, recording, and dispatching applications and incidental motions was a matter of magnitude that continued up to quite recently. Even now the disposal and dispatch of *ex parte* applications is considerable.

While referring to these matters, one must acknowledge the sterling and unbegrudged assistance received from the respective Registrars and staffs of the Court, who unfailingly used their initiative in cases of urgency or novelty. Their help and faithful assistance undoubtedly expedited and facilitated the smooth working of the Court.

Having all this in mind, it is interesting to observe that the Court in four years dealt with some eight-thousand appeals and applications; and, considering only the cardinal points of the compass, visited Whangarei twelve times, Invercargill nine times, New Plymouth nine times, and Gisborne eight times. Naturally, Wellington was visited most—namely, twenty-five times—with Palmerston North a close second, twenty times. All this, at first sight, may not appear much in the way of travelling; but it may be of interest to mention that on one occasion the Members of the Court did not sleep in the same bed twice for twelve nights, and worked meantime at each town visited.

From the inception of the Court in May, 1935, the personnel of the Court remained unchanged; namely, Mr. Justice Johnston, Mr. Alfred Coleman, formerly of Stratford, but now Stipendiary Magistrate at Wanganui, and Mr. R. S. Chadwick of Dannevirke, a sheepfarmer and the Managing Director of the Hawke's Bay Farmers' Co-operative Meat Co., Ltd.

Although the doings of the Court of Review have been recited above, one must not lose sight of the fact that the Adjustment Commissions did yeoman service in making the working of the statute a success, and were most helpful to the Court in all matters. After reading the judgments in the *Law Reports* of some of the appellate Courts' criticism of the methods and working of the Courts below, it was very refreshing to see the mutual confidence between the Court of Review and the Commissions. Although the Commissions might not agree with the final determination of the Court, they knew that their view had been treated by the Court with great respect, and that the Court assumed, not without good grounds, that the Commissions had made their investigations with care, thoroughness, and honesty of purpose.

London Letter.

By Air Mail. Somewhere in England,
November 16, 1939.

My dear EnZ-ers,—

This war has its compensations. Trivial compensations that have belonged to no other war. They are not likely to be appreciated fully by any one with an empty stomach. But they are there if you want to see them.

There are the balloons. You want to see them, of course. They reassure, riding serenely above the chimney-pots and spires. You look up at them, silver in the morning, dark in the evening. They turn slowly among the clouds, drawing the light to them, magic clouds of our own making. And when occasionally they are wound down, there is a sense of nakedness in the streets.

In the nights when there is a moon it is good to walk in the familiar streets. It is quiet. There are few motor-cars. You can hear the footsteps of people, and the moonlight, not frustrated by the lamps and the advertisement lights, changes the appearance of things, alters the emphasis of houses and statues and trees.

It is dark in the railway-carriage. You cannot read. But yet you are not distracted by the beauty or vacuity, ugliness, laughter, ill-temper, ordinariness, meekness, or despair of the faces of your fellow travellers. The naked glare of the electric light is absent. You cannot see the grimy floor strewn with matches or cigarette ends, or the scratched woodwork, or the places where people have carved their names. Instead you see just the grey roofs soaking in moonlight, and the bright steel rails reflecting the brilliant signal reds and greens.

In the day-time, in chambers, it is quieter than it ever was in peace time. One can throw up the windows, yet telephone with ease. No voice is obscured by the noise of the traffic in the street. It is more pleasant to walk about. The air is not choked with the fumes of long blocks of motor-cars, and it is comparatively safe to cross the road.

These are some of the trivial compensations of this war.

Wartime Miscellany.—The bus jerked efficiently along our main road, we all sat in the silence of a "British Reserve." Suddenly a newsboy's voice was heard calling out "German air raid."

My neighbour turned to me and said with the confidence born of knowledge, "I have made complete preparations. I know exactly what I shall do. Directly there is an air raid I get up and cover the parrot."

A cousin is going up for his first term at Oxford. In the midst of general advice being given him by experienced relations, the question of his being called up was discussed. His mother, naturally, expressed her fears on this subject. An uncle, who was once caught, changing the subject, said to the young man: "Whatever you do, don't let anyone sign you up for rowing." "Why not," exclaimed the mother, "would that mean you'd have to join the Navy?"

A friend of mine who is the "big pot" in a small town "somewhere on the East Coast" was much disturbed by rapidly spreading rumours that he was

a German spy. The rumours were firm and apparently based on concrete evidence.

At last he got to the bottom of the affair. His wife, who keeps a kennel of pugs, found it difficult to manage their entrances and exits in the black out. What she did was very rapidly to open the door to let them out one by one and let them in again. From a distance the effect was like Morse signalling, and as the house looked on to the watery vastnesses where German ships might lie, the inference was obvious, if unfortunate.

There is a touch of pleasant human folly about the true tale from Weston super Mare, of the woman who left her billet because there was no "pub." within a mile, and about the other woman (encountered by an Editor himself on a railway platform) who was going home with two children because country people were so ignorant. The London children (this also comes from a Somersetshire rector) who would not touch beef steak and demanded fish and chips can presumably be educated. Those sent into good homes without being house-trained, as a medical correspondent aptly put it, have provided a host of Rabelaisian stories, but in a few months will have learnt the puppy's elementary lesson.

In a broadcast last week, an account was given at first hand of experiences in a Scottish reception area. Readers of *No Mean City*, that appalling but well-vouched-for story of the Glasgow slums, published by Longmans some five years ago, do not need to be reminded (as the Scots broadcaster told us) that "dirt and lice are as much part of our social heritage as freedom."

Some good at least will have come out of the war, if the present compulsory mixing of social strata, and of town and country, stirs the consciences of those of us for whom washing is a habit, till we realize that no child is free until it is free from vermin, no home free so long as it harbours bugs.

I trust that an Englishman's dream will come true before Christmas. It is reported that an air-raid warden in the provinces dreamt that peace would come to Europe on the day when Ribbentrop's widow told Stalin on his deathbed that Hitler had been assassinated at the funeral of Mussolini.

International Law.—I have just seen the report of the Fortieth Conference of the International Law Association at Amsterdam in 1938. It is almost painful reading in the light of present events.

Pitt, when Napoleon was having his will in Europe, is credited with crying out that the map of Europe should be rolled up. In the same way we are much tempted, in a time when so much is happening which is the negation of international law, to put such volumes as this on a high shelf as having very little relation to the hard realities of life as we are living in.

This is going too far, though it is not possible to coin a draft convention for the protection of civil populations without a wry smile, so soon after Nazi frightfulness has wreaked its cruelties upon Polish civilians, and when we are all carrying about gas masks because we know we cannot trust the pledged word of a great nation not to make gas attacks on civilians.

Neutrality, too, is another subject for sour reflection. In this shrunk world there can be no true neutrality. If the United States legislates in one form she favours one side, if in another she favours the other side. There are in fact all degrees of neutrality, but many of them are a sham. Russia, for instance, professes neutrality in the present war, but she completed the ruin of Poland, whether with the best intentions, as she professes, or not.

National Registration.—The enumerators have by now all completed their work and the Registrar-General has the material for the register he is required to construct. With the experienced and efficient body of officers he has in his department, used to juggling with population statistics, digesting and tabulating "particulars" of all sorts, including the queerly unreliable one of feminine age, we do not doubt that everything will run smoothly.

Each of us has now an identity card with the direction to "do nothing with this part until you are told." We are told that "this is there as a reserve provision for a certain kind of contingency which may or may not arise." When and if the contingency does arise what has to be done looks to be simple, but perhaps is not. Even if it be simple some people cannot be trusted without elaborate directions. When they get the directions, they will either not con them or will misunderstand them. Nothing is more surprising than to note the complicated methods of going wrong which can be evolved by the unintelligent. The answer may be that there is only one right way and an immense, unknown, number of wrong ones of doing anything.

A Warbling Note.—The Control of Noise (Defence) Order, 1939, orders that:

> "no person shall, within the hearing of the general public, sound, or cause or permit to be sounded, any siren, hooter, whistle, rattle, bell, horn, gong, or other like instrument except in accordance with such directions as may be given by the local authority or the chief officer of police of the district for the purpose of giving warning of an air raid or of the cessation of an air raid or of the presence of poisonous gas or of the fact that danger from poisonous gas is ended."

And that

> "no person shall, within the hearing of the general public, fire or cause or permit to be fired, any maroon or other similar firework fired from a mortar."

This is of course directed to preventing the lieges being stampeded into dugouts and other holes by sound which might be taken for warnings by authority. It helps to turn a darkened world into a silent one. But for the sinister implications the darkness and the silence would be an excellent nerve cure for urban dwellers with over stimulated sensory nerves.

The *Punch* autumn number, with the right war-time touch, has a delightful picture of an air-raid warden (a fine cockney type) entering upon a small boy with a tin whistle. "Hi! You mustn't do *that*—that's a fluctuating or warbling signal of varying pitch!"

Even the wood bird's wild notes may startle; and what about the hooting of the owls still to be heard in Denmark Hill?

Perhaps the most comic air-raid warning was given at Southend-on-sea early in the last war. The local gas works was to have its siren blown on the approach of hostile aircraft. The aircraft approached and did their bit of frightfulness, but as the head of steam had dwindled too much to sound the whistle no warning could be given. A conscientious employee stoked up the fire got steam and sounded his whistle simultaneously with the bugle call "all clear" given by the boy scouts of the period.

Non-actionable Negligence.—Not every piece of negligence furnishes a cause of action. In *Davis v. Foots*, (1939) C.A., October 6, a newly married couple went to sleep in the flat which was to be their home. They were both gassed and the husband died. The escape of gas was due to the son of the persons who let the flat, no doubt acting on their instructions, who in removing the gas fire removed the tap union so producing an escape of lethal dimensions.

There was, said the Court of Appeal, no constructional relation between the tenants and the landlords by which the latter were bound to exercise care and skill with regard to the removal of the gas fire, which the tenants had said they did not wish to have there.

The result is that the landlords who employed what seems to have been an amateur workman, and, in any case, one who conspicuously failed to exercise care and skill, are not responsible for his mistake. The wife who has survived has lost, after the briefest of married lives, the man she had just married, and was no doubt very ill herself, has to accept as a stroke of fate what was really a stupid blunder for which no one can be made to answer.

Criminal Justice Bill dropped.—On the ground of the one controversial proposal to abolish capital punishment, the Criminal Justice Bill is not to be forced through in defiance of the "party truce." *The Times* regrets the decision as a waste of the Parliamentary work already done. It says, "War, which creates so great a need for economy in all directions, should not, if it is in any way avoidable, become the occasion for waste of good work already done in time of peace."

Experto Crede.—The state of emergency law provides us with reading-matter these dark nights. Though the tide of statutes has risen to its highest point, the flood of rules, regulations, orders, and directions goes on. When reading through them, one is struck by the underlying implication that it is expertness which is accorded the greatest reward.

Whether it be the efficient air-raid warden; the diligent insurance collector; the local government economist; or a dictator who chooses the psychological moment to inplement his desires—all are beneficiaries under a rule of competence. As to whether this is always a just result I make no comment here, preferring to leave you readers to cogitate on the matter in relation to a following story from the September issue of the *Bombay Law Journal*.

A machine had gone wrong in a large factory. The factory mechanics all tried to start it again—but all their efforts were of no avail, and finally an expert was called in.

He went over the machine carefully, and eventually asked for a hammer. When the tool was brought to him, he gave a smart tap, and the machine started.

Shortly after he sent in his bill—£20 5s. The factory manager thought this amount rather heavy and asked for a detailed statement. When this came, it read:

To tapping machine with hammer	£0	5	0
To knowing where to tap ..	£20	0	0

Quite a useful story to paste in your fees book, because we all know that, in the common-law field, as in every branch of law, it is "knowing where to tap" that brings home the bacon, as it were. And useful, too, for reference, on a taxation,

Yours as ever,
APTERYX.

Conveyancing Notes.

Collateral Securities.

Contemporaneous collateral securities are not so frequently required as when part of the same property might not infrequently be held under Land Transfer title and the balance by deeds title. The rule still applies however that a dealing to be registered under the Land Transfer Acts must not comprise other property: *Horne v. Horne*, (1906) 26 N.Z.L.R. 1208. When the security comprises, besides a registered interest in Land Transfer land, property of any other kind—*e.g.* chattels, shares in a company, or an equitable interest in land—two or more documents are still necessary. In addition, where registered interests in land are all the security, but lie in two registration districts, the use of collateral documents, one for each registry, is better practice than a single instrument prepared in duplicate, with the risks attending delay in presentation for registration at the second of the registries.

It is not satisfactory merely to say at the end of each document, "this instrument is collateral with a certain (identifying it) of even date herewith made between the parties hereto." To avoid complications in mortgage accounts if default occurs, each instrument should purport to secure all moneys secured by the other, not merely the principal and interest. For instance, if the Fourth Schedule to the Land Transfer Act, 1915, is implied, paragraph (6) thereof secures on the land insurance premiums paid by the mortgagee. The collateral security, say a chattel security, should accordingly declare that such moneys (or, preferably, all moneys charged on the land in the mortgage) are also secured by the chattel security and charged on the chattels thereby mortgaged. Sometimes there are sums lawfully expended by the mortgagee to protect his security, and recoverable in equity from the mortgagor, which for lack of apt words such as those of paragraph (6) just cited, are not legally charged on the land. To avoid questions of how far such moneys are recoverable under a collateral security, each of the instruments to be made collateral with each other should contain a charge of all moneys that may be owing under the other collateral instrument.

All provisions of the two instruments that are *in pari materia*, particularly the financial clauses, should of course be in identical words. Implied provisions must therefore be handled with caution. For instance, the powers of sale in the Fourth Schedule to the Land Transfer Act, 1915, and the Fourth Schedule to the Chattels Transfer Act, 1924, differ in detail; if the former is allowed to be implied in the Land Transfer mortgage (with the necessary modifications), it should by apt words be introduced into the chattel security. (*Wilkin v. Deans*, (1888) 6 N.Z.L.R. 425, whilst it might not be followed in full at the present day, makes the converse course inadvisable.) Again, the covenant for insurance in the Fourth Schedule to the Land Transfer Act and that implied by using the words "will insure" in a chattel security, differ materially.

The power of sale requires special attention. A power of sale is generally made exercisable on default not only in payment of moneys secured, but also in performance of covenants directed to the upkeep of the property, neglect of which may depreciate the security. Even if the breach, when it occurs, extends

to the covenants of one only of the collateral instruments, the mortgagee should be put in the position of being able to exercise his powers against all the assets in his security. Each power of sale should be therefore declared to be exercisable on breach of a covenant contained whether in the instrument that confers, expressly or by implication, that power of sale, or in an instrument collateral therewith.

Further, it should be made possible to dispose of all the assets in one sale, without the need to make separate sale contracts with a purchaser. Where one of the instruments is a chattel security, s. 46 of the Chattels Transfer Act, 1924, provides that on a sale through the Registrar of the Supreme Court (provided the moneys secured by a mortgage of land and a mortgage of chattels are identical—it is noted above that careful drafting is necessary to ensure this), the land and chattels can be sold together or separately. Section 46 commences with a reference to ss. 78 to 82 of the Property Law Act, 1908, which authorize a mortgagee to sell through the Registrar of the Supreme Court land in general. These sections, it is generally accepted, do not however extend to the sale of a registered interest in land held under the Land Transfer Act; because in that Act other express provision is made in the premises, in ss. 110 to 115, which, though almost identical with those of the Property Law Act, are nevertheless not the sections cited in s. 46. Section 46 should therefore not be relied on, but express provision should be inserted in the deeds. In any case s. 46 does not go far enough for the conveyancer, as it relates only to sales through the Registrar of the Supreme Court. The provision inserted should cover sales made by the mortgagee, whether by public auction or private treaty, in which the assistance of the Registrar of the Supreme Court is not invoked. It should be noticed too that s. 46 has no application where the security consists of something more than land and chattels.

What is said of the power of sale applies equally to the power of leasing conferred by the Property Law Amendment Act, 1932.

Where one of the collateral securities is a chattel security, the other must be identified therein, or in a schedule thereto, by the particulars called for by s. 25 (2) of the Chattels Transfer Act, 1924.

Where a single security is taken in the first instance, but there is a reasonable prospect that a collateral security may be taken at some time in the future, the precautions outlined above can and should still be taken in the first-drawn instrument. The only difference is that references to "the said collateral security" will become references to "any future security collateral herewith."

—A. E. C.

"**Quarrels and Calamities of the New Zealand Judiciary.**"—An article of a centennial flavour, bearing this title, has been written for the JOURNAL by Mr. Robert McVeagh, the well-known and highly-respected Auckland counsel. The author has delved deeply into past records, and his article brings to light some forgotten happenings which caused a great stir at the times of their occurrence. It will appear serially in the new volume of the JOURNAL commencing with the next issue.

New Zealand Law Society.

Council Meeting.

A meeting of the Council of the New Zealand Law Society was held at the Supreme Court Library, Wellington, on Friday, December 8, 1939.

The following societies were represented: Auckland, represented by Messrs. A. H. Johnstone, K.C., J. B. Johnston and H. M. Rogerson; Canterbury, Messrs. J. D. Godfrey and J. D. Hutchison; Gisborne, Mr. J. V. W. Blathwayt; Hamilton, Mr. H. J. McMullin; Hawke's Bay, Mr. H. B. Lusk; Marlborough, Mr. W. T. Churchward; Otago, Mr. A. I. W. Wood; Southland, Mr. T. R. Pryde; Taranaki, Mr. C. E. Monaghan; Wanganui, Mr. A. A. Barton; Westland, Mr. W. D. Taylor; and Wellington, Mr. A. T. Young.

The Vice-President, Mr. A. H. Johnstone, K.C., occupied the chair, and welcomed Messrs. Barton and Taylor.

Apologies for absence were received from Mr. H. F. O'Leary, K.C., Mr. J. Glasgow, Mr. P. Levi, and Mr. G. G. G. Watson.

History of Legal Profession: Editorial Committee.—The following letter was received from the Secretary of the Auckland District Law Society (Mr. N. H. Good):

"I do not think that the Committee will be called on to function for some time yet, so its actual appointment is not perhaps of supreme urgency.

"I do not know what idea the Council of the New Zealand Law Society had regarding the functions and scope of the Committee, and without this information it is a little difficult to discuss its composition. Subject, however, to the opinions and wishes of the Council it appears to me that the main function of the Committee would be as follows:—

"(1) To make arrangements with Messrs. Butterworth and Co. (Aus.) Ltd., and to supervise generally the printing and publication. This would best be done by members appointed from amongst the Wellington practitioners.

"(2) To decide generally on the scheme and form of the work and to determine matters of policy generally—*e.g.*, whether or not certain matters should be included. It would be of great assistance to me if Auckland would be fairly well represented on the Committee. Matters I would like to discuss with the Committee may arise quite frequently, and it would obviously be very convenient if I could meet a number of the Committee in Auckland as occasion arose.

"(3) It may well be that it is desirable to make the Committee more representative, and that members should be appointed in addition from the South Island. It is possible, too, that members so appointed may be of service in obtaining local information that may be required or in obtaining access to local sources of information. I do not think at present that much would be involved in this connection, though at this stage one cannot be definite.

"Subject to the above, I would suggest that the Committee be kept as small as possible. If its members, or at any rate the members from the South Island, were chosen from the Council of the New Zealand Law Society it might be possible for me to meet them and the Wellington members from time to time in Wellington at the time of the meetings of the New Zealand Law Society Council. It will be necessary for me to visit Wellington on a number of occasions in any case for the purpose of inspecting records there and doubtless these visits could be made at the time of Council meetings.

"The actual choice of members I think I would prefer to leave to the New Zealand Law Society.

"It will probably be unnecessary for me to point out that it would be advisable to make definite arrangements with Messrs. Butterworth and Co. as soon as possible. In this connection there are one or two matters I should like to raise before the terms are actually settled—that is, if this has not already been done."

It was decided that two Committees should be appointed: (*a*) Editorial Committee, comprising Wellington and Auckland representatives; and (*b*) Information Committee to collect historical data in various centres. The District Societies to be asked to supply the names of practitioners suitable for this work.

Audit Regulations: Standard Form of Audit Certificate.—The following letter was received from the Secretary of the Auckland District Law Society:

"I am enclosing a form of audit report verified by declaration and with accompanying letter as approved by Auckland members of the Council of your Society."

FORM OF REPORT.

19

The Secretary,
District Law Society.

Dear Sir,—

Audit of Trust Account of .

Pursuant to the provisions of the Solicitors Audit Regulations, 1938, I forward herewith my report on the trust account of the above-named solicitor/s for the year ended 31st March, 19 , together with statutory declaration verifying the same.

Yours faithfully,

.....

NOTE.—The auditor is required to sign personally the above letter.

IN THE MATTER of the Solicitors Audit Regulations, 1938
and
IN THE MATTER of the trust account of
solicitor
solicitors of

I, , of , Public Accountant, do solemnly and sincerely declare:—

1. That I am a member of the New Zealand Society of Accountants incorporated under the New Zealand Society of Accountants Act, 1908.

2. That in accordance with s. 47 of the Law Practitioners Act, 1931, and the regulations made thereunder, I have with the assistance of my employees, audited the trust account of , solicitor (solicitors) of the Supreme Court, practising at , for the year ended on the 31st day of March , and in the course of such audit I did complete interim examinations of the said account of the following dates:—

(*a.*)
(*b.*)

and did complete the final audit of the said account on the day of 19 .

3. That the paper-writing hereto annexed marked "A" which is dated the day of 19 and signed by me, is a true and correct report of the result of such audit.

4. That I am not, and have not at any time within two years before the date of the aforesaid report been a partner, clerk, or servant of the said solicitor [solicitors] and that I was not at the time of such audit and am not now a practising solicitor, or the clerk or servant of a practising solicitor, and that I have not neither has a member of my firm or staff been engaged or concerned within the previous two years in keeping the books of the said solicitor [solicitors] nor am I so closely related by blood or marriage to the said solicitor [solicitors] as to be ineligible to act as his [their] auditor.

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the Justices of the Peace Act, 1927.

Declared at this day of 19 , before me— .....

.....
Justice of the Peace.
Solicitor.

NOTE.—This declaration should be stamped with the necessary duty before being forwarded to the District Law Society. The declaration should not be made before a solicitor whose trust account is being reported on, nor before his clerk.

"A."

This is the paper-writing marked "A" referred to in the annexed declaration of made this day of 19 before me—

.....
Justice of the Peace.
Solicitor.

I, , of , Public Accountant, being the auditor of the trust account of of solicitor [solicitors] do hereby report pursuant to Reg. 5 (9) as follows:—

(*a*) The said trust account has, in my opinion, been kept regularly and properly written up.

(*b*) The said solicitor has [solicitors have] forwarded each month to me a certified list of the balances of the said trust account for the previous month within the periods prescribed by the said regulations except that the lists for the following months were received on the dates stated below:—

month date received

(*c*) The said trust account has been ready for examination at the appointed periods.

(*d*) The said solicitor has [solicitors have] complied with my requirements.

(*e*) The said trust account is, in my opinion, in order.

(*f*) The said solicitor has [solicitors have] produced all unused receipt forms which, according to advice received by me, have been issued to him [them].

(*g*) In my opinion the following matters or things in relation to such trust account should be communicated to the Council of the District Law Society, namely:—

Dated at this day of , 19 .

.....
Auditor.

NOTE.—If all lists of trust balances have been received within the specified times, delete all words in para. (*b*) after the words "the said regulations."

If there are no matters or things to be communicated to the District Law Society under para. (*g*), insert the word "nil" in this paragraph.

For filing purposes it is preferred that this report and declaration be typed on quarto-size paper.

The report was adopted. It will be printed and circulated.

Solicitors: Debt Collecting.—The following letter was received from the Secretary of the Auckland District Law Society:—

"It has recently been brought to the notice of the Council of this Society that certain solicitors are or have been carrying on the business of debt collecting in such a way that the accounts of such business have not been subject to audit.

"In one case the solicitor carried on this business under a trade name. Separate books were kept and the business was treated by the auditor as a separate concern. This solicitor has now ceased to carry on the debt collecting business.

"In other cases companies have been formed wherein the solicitor or his wife owns the bulk of the shares. The solicitor acts as managing director or a director of the company.

"My Council is of opinion that the practice whether carried on by a solicitor personally under a trade name or through the medium of a company is most undesirable. In either case the actual debt collecting is done either by or under the supervision of a practising solicitor.

"The audit regulations do not apply to the accounts of a company, and possibly not to those of a business carried on by a solicitor separately from his practice, but if default is made it may be difficult to convince a client who in fact has always dealt with the solicitor that he has in law been dealing with a company.

"I shall be glad if you will submit the matter to the Council of the New Zealand Law Society at its next meeting for consideration. Attention is called to *In re a Solicitor*, [1912] 1 K.B. 302, where it was held that a solicitor who was party to a debt collecting company, financed it, and controlled its affairs with a view to its employment by him as an adjunct to his business as a solicitor, was guilty of professional misconduct."

This matter was referred to the District Societies for expression of their views.

The Courts Emergency Powers Regulations, 1939.—*The following letters were received.*

(*a*) From the Secretary of the Gisborne District Law Society.

"I enclose a copy of a letter I have received from a local practitioner and a copy of a letter I have sent to the Minister of Justice.

"I ask that the correspondence be included in the Order-paper for consideration of the regulations at your next meeting.

"In the common case where leave is granted for the enforcement of a judgment for debt followed by a judgment summons under which the debt is either paid before hearing or an order made for payment what reason at all can there be for the judgment debtor's not having to pay the costs and disbursements incurred in obtaining leave to enforce the judgment—costs and disbursements occasioned by the judgment debtor's default?"

Letters enclosed.—(i) To the Hon. the Minister for Justice:—

"I enclose a copy of a letter which I have received from a local practitioner relating to these regulations.

"I understand that forms for giving notice of application under the regulations to enforce judgments are being prepared by the Justice Department and are to be printed.

"The enclosed copy letter has not yet been considered by my Council but meantime I am directed by the President of this Society to suggest that, as there is a large Maori population in this District, the Justice Department could also conveniently prepare and have printed a general form of Maori translation.

"It is hardship that a person who has lawfully recovered a judgment should have to bear his own costs of the preparation of the application, his solicitor's fee on appearance, the mileage and translation fees incurred without being able to recover any part of the expense from the person against whom he has obtained judgment.

"It is understood that amended regulations are now being drafted and it is suggested that provision might be made for allowing costs and disbursements on the application.

"A copy of this letter is being forwarded to the Secretary of the New Zealand Law Society, Wellington, but I have taken the liberty of communicating direct with you in order to bring the matter to your notice in the shortest possible time."

Enclosure (ii).—Letter from Gisborne practitioner:—

"I shall be obliged if some advice can be forwarded to the New Zealand Law Society protesting at the position that has arisen under the above regulations.

"When the regulations were first issued it appeared from same and we were informed by the local Court that it was necessary to apply for leave before a judgment summons application or other form of enforcement of judgment could be issued. Many applications for leave to issue judgment summonses were accordingly filed and as no forms were provided this entailed a considerable amount of typing. When the first applications were dealt with three weeks ago, Mr. Luxford, S.M., granted leave in certain cases. At his next sitting here last week he indicated that the recent judgment given by Mr. Goulding, S.M., in which he concurred, did away with the necessity of applying for leave on the issue of judgment summonses but nevertheless Mr. Luxford allowed disbursements on any applications that had been made but he allowed no solicitor's fees. When Mr. Freeman, S.M., came here this week, he stated that applications were necessary but that there was no power in the regulations for any fees whatsoever and that he could not allow even disbursements against the debtors.

"This ruling is working considerable injustice. In my case under instructions from a client at Tolaga Bay who is desirous of finalizing a considerable number of judgments this present summer, I lodged thirteen applications for leave to proceed in various ways and paid out on same £3 5s. translations. These were yesterday dealt with at the Tolaga Bay sitting and mileages thereon totalled £4 3s. Mr. Freeman declined to add these disbursements to the various judgments, with the result that my client has to bear the considerable expense of £7 8s. in connection with these applications while he now has the usual heavy disbursements on translations issue and service of judgment summons application.

"It appears that first of all the regulations must be clarified and made more simple immediately and that provision must be made for disbursements and solicitors' fees on the applications to be given against the debtors. In all cases that I have had to date, the debtors are entirely unaffected by the war and the whole procedure appears cumbersome and expensive.

"I understand that further regulations are now being drafted and I would request that our Society takes steps immediately to obtain a more simple and more equitable form of procedure."

(*b*) Letter from the President of the Canterbury District Law Society:—

"Solicitors have pointed out to me various matters arising from the Courts Emergency Powers Regulations, 1939, and I suggest that representations might be made by the New Zealand Law Society to the Attorney-General to have the regulations amended to meet the following points:—

"1. There appears to be no need for the regulations to apply to the issue of a judgment summons and to the making of an order thereon as a debtor's ability to pay is inquired into by the Court quite apart from the regulations.

"2. It should be possible at the time of service of a summons to notify the defendant of the plaintiff's intention to apply at the hearing for leave to enforce any judgment that may be given. The notice could then be served with the summons.

"3. Service of notice by registered post should be allowed."

After discussion, it was decided to place the matters raised in the hands of the Wellington District Society to confer with the Under-Secretary for Justice with a view to the simplification of rules to be made for the carrying-out of the regulations.

Judge's Summing-up and Oral Judgments—Keeping Proper Record.—*The following letter was received* from the Secretary of the Taranaki District Law Society:—

"I enclose herewith a letter I have received, which I have been instructed by my Council to forward to you so that the New Zealand Law Society may express an opinion on the matters raised.

Enclosure:

"I have recently had experience of an important matter of practice which seems to need alteration—namely, the proper recording of a Judge's summing-up and of his oral judgments.

"I recently had occasion to move for a new trial of a jury action on the ground of misdirection by the Judge, who himself heard the motion for a new trial. I had previously engaged a competent and experienced shorthand reporter to take a note of the Judge's summing-up; but when this was presented to the Judge for his approval immediately after the summing-up, he stated it was not entirely accurate, and I was later supplied with a note of the summing-up prepared by the associate. This did not agree in certain particulars with my own reporter's note of the summing-up. My complaint is not that the notes differed in this particular case, but that the present system should allow any doubt whatever to arise as to what the Judge actually did say. I notice that recently another barrister had a similar difference of opinion with a Judge as to what he said in his summing-up on a criminal charge.

"It seems to me that it is most important that an accurate record should be made of the summing-up, recorded in shorthand as the Judge speaks it; because otherwise it places both Judge and counsel in a most invidious position if there is afterwards a difference as to what the Judge actually did say. Counsel particularly is placed in an impossible position if he afterwards differs with what the Judge says he said. The matter should in justice be placed beyond all doubt.

"It occurs to me, therefore, that provision might well be made whereby in all cases the summing-up should be taken down by at least one competent shorthand reporter and signed as correct by the Judge and both counsel immediately afterwards. This would obviate any difficulty such as I have experienced. It would not be unduly difficult to arrange for the appointment in each town where the Supreme Court sits of one or two duly licensed shorthand reporters who could be available for the purpose. If this is not feasible, the associate could take the note, but this is not entirely desirable.

"The Judge dismissed my application for a new trial in an oral judgment on the 31st May; and as I was contemplating appeal, I then asked the associate to let me have his note of the oral judgment for the case on appeal. The associate did not provide this at the time and finally after requests in writing, he sent me the note on the 26th August—nearly three months afterwards—with a covering letter saying that his note-book was not available and that consequently he had had to get the Judge to dictate the judgment again. He explained that the Judge could not now remember the words he had used at the time but what the Judge has dictated sets out the reasoning he had in his mind at the time.

"The result is that I now have a note of an oral judgment which under the Court of Appeal rules has to be printed as part of the case on appeal, but which is entirely different from the actual words of the judgment. The Judge has in his present note taken a completely new and different line from his original oral judgment, and it does not bear the remotest resemblance to what he said at the time. The result is I have solemnly to print in my case on appeal an oral judgment which the Judge himself admits is not what he said at all.

"This is nothing less than a farcical situation, and gives me further grounds for suggesting that the matter of having proper records kept of both summings-up and oral judgments should be placed on a proper basis. I definitely feel that the matter is of sufficient importance to go before the New Zealand Law Society for its attention, and I should be obliged if your Society would consider the matter and, if it thinks fit, take up the question of a remedy."

It was resolved to take up the matter of shorthand reporting with the Hon. the Attorney-General.

Appointment of Temporary Treasurer.—Mr. A. T. Young was appointed to act as temporary treasurer during the illness of Mr. P. Levi, to whom a message of sympathy is to be sent.

Soldiers' Wills.—The District Societies reported the provision of free service in the various mobilization camps for the making of wills and giving legal advice.

Law Revision Committee.—The following letter was received from the Committee:—

"At the meeting to-day (November 24) of the Law Revision Committee, appreciative comment was made concerning the valuable assistance rendered by individual members of the legal profession in preparing special reports on particular phases of the law for the Committee.

"Members of the profession will doubtless have observed with interest the large number of matters dealt with by the Committee which have been translated into legislation. Although gratified at the progress made, the Committee feels that there is still ample scope for useful work in the matter of law reform, and in furtherance of this I have been directed to ask you to be good enough to bring under the notice of the members of the Law Society the fact that suggestions, at any time, for improvement in the substantive law will be welcomed by the Law Revision Committee."

Centennial Legal Conference.—A letter was received from the Mayor of Wellington, Mr. T. C. A. Hislop, suggesting reconsideration of the Society's decision to postpone the Conference, and for ascertainment of the views of practitioners.

It was unanimously decided to adhere to the decision to postpone the Conference.

As the Examiner Got it:—"*Ex nudo pacto non oritur actio*" means Out of a *bear* or a naked agreement no action shall arise.—A translation *bearly* justifiable.

This is equalled by a letter received by a Wellington firm last week: "I want you to act for me in my divorce as I am a former pauper." This naturally got the practitioners into a very perplexed frame of mind: they did not know whether to be sorry or glad.

Correspondence.

Magistrates' Notes of Evidence.

The Editor,
NEW ZEALAND LAW JOURNAL.

SIR,—

A circumstance which occurred to-day sent me back to the discussion of this subject at the Annual Meeting of the New Zealand Law Society held on March 10 last: *ante*, p. 78. Though belated, I would make one or two observations on the matter. The Society, in its wisdom, decided to do nothing in the matter, and I have no great quarrel with them thereanent. The leading opinion, apparently, was that the notes taken by Magistrates were their own property, but that they were available if appeal be lodged. There would seem to be an anomaly implicit in this statement, or, to put it in another way, the property of the Magistrates in their notes is cut down by the obligation to make them available. Their dominium over the notes is incomplete.

One remembers the quarrel which occurred between the late Sir Henry McCardie and the Lords Justices of Appeal, wherein the Justice withheld his notes from the Lords Justices, he taking the ground that the notes were his: and he found law to support his contention. But pressure was brought to bear upon him and, finally, the notes were handed over for the use of the superior Court.

The late Mr. Justice Edwards in *Allison v. Wills* said "that it was the duty of Magistrates to take full notes" and, inferentially, I take it, to make these available in appealable cases. I suppose that a refusal on the part of a Magistrate to make his notes available might, these days, be more than his job was worth.

I surmise—with due respect to the learned members of the Society who debated the matter—that, practising as most of them do, in loftier altitudes, few of them have been bothered in relation to the matter. But the members of the Taranaki Law Society must have thought that there was something in it.

I, for my part, think that, somehow, the legal position should be known to be that the Magistrates take notes as part of their duty of trying causes, and that these notes should be available for perusal by parties and their advisers as of right. I can think of no analogous case where servants are required to record facts, and where these records do not belong to the employers.

The learned Magistrate who commented on the Taranaki Law Society's letter mentioned the practice of some Magistrates of withholding their notes until notice of appeal has been given. Every practitioner will agree that this can be a very vexing circumstance to an appellant, where, as is so often the case in the lower Court, the Magistrate's notes are the only notes. Especially is this so in cross-examination. It may be that a party's advisers are at a loss to advise on an appeal until the actual wording, perhaps of an answer, can be seen in the Magistrate's notes: or, an appeal may be advised, and, after the expenditure of fees, be seen to be useless in view of the notes. It is next to impossible to get in on an appeal anything controverting the Magistrate's notes.

I remember a case which I carried to appeal, and, after giving notice of appeal, I stumbled upon the Magistrate (since deceased) dictating his notes to the Clerk of Court! But this happened a long time ago.

For my part, I think that the administration of Justice should postulate, without dubiety, the taking of full notes in appealable cases by our Magistrates and that these notes should be, with no less dubiety, the property of the Court; or, to fix the point beyond doubt, the property of the Minister of Justice as representing the people.

I am, &c.,
L. A. TAYLOR.

Hawera.

Recent English Cases.

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

CRIMINAL LAW.

Evidence—Admissibility—Indecent Postcards Found in Possession of Prisoner Charged with Gross Indecency.

In a case of gross indecency postcards found in the possession of the accused may be admitted in evidence as things which a man intending to commit such an offence might well have about him, and might use as an adjunct to assist him in the commission of the offence. They are not admissible merely to show that he had a dirty mind.

R. *v.* GILLINGHAM, **[1939] 4 All E.R. 122. C.C.A.**

As to evidence of character: see HALSBURY, Hailsham edn., vol. 9, p. 188, par. 270; and for cases: see DIGEST, vol. 14, pp. 401–403, Nos. 4216–4233.

DIVORCE.

Gift of Money by Wife's Father in Contemplation of Marriage—Joint Account in Names of Husband and Wife—Marriage Taking Place and Subsequently Dissolved—Whether Gift Made to Parties Jointly—Married Women's Property Act, 1882 (c. 75), s. 17.

Where money is placed in a banking account in the joint names of a daughter and a prospective son-in-law who afterwards marry, the gift is to them jointly, and if a divorce is obtained each is entitled to half the money.

KELNER *v.* KELNER, **[1939] 3 All E.R. 957. P.D.A.D.**

As to inquiries as to ownership of property: see HALSBURY, Hailsham edn., vol. 16, pp. 740, 741, par. 1211; and for cases: see DIGEST, vol. 27, pp. 260, 261, Nos. 2296–2305.

Summary Jurisdiction — Maintenance Order — Allegation of Wife's Adultery—Previous Finding of Adultery in County Court in Action to Enforce Separation Agreement—*Res Judicata*—Summary Jurisdiction (Married Women) Act, 1895 (c. 39), s. 6.

A finding of adultery by the county court in proceedings to recover arrears of maintenance under a separation agreement is binding upon magistrates when a application is made to them for a maintenance order under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895–1925.

WHITAKER *v.* WHITAKER, **[1939] 3 All E.R. 833. P.D.A.D.**

As to *res judicata* and divorce: see HALSBURY, Hailsham edn., vol. 10, pp. 670, 671, pars. 991, 992; and for cases: see DIGEST, vol. 27, pp. 324–326, Nos. 3026–3051.

NEGLIGENCE.

Children—Allurement—Child Injuring Itself upon Obvious Danger not Part of the Allurement.

Those in control of premises are not liable to child licensees for obvious dangers.

MORLEY *v.* STAFFORDSHIRE COUNTY COUNCIL, **[1939] 4 All E.R. 92. C.A.**

As to allurement: see HALSBURY, Hailsham edn., vol. 23, pp. 584–586, par. 836; and for cases: see DIGEST, vol. 36, pp. 69, 70, Nos. 445–453.

Defence—*Volenti Non Fit Injuria*—Watchman Returning to Burning Premises.

A night watchman, having left burning premises to give the alarm and then re-entered them, is presumed to have done so in the course of his employment.

D'URSO *v.* SANSON, **[1939] 4 All E.R. 26. K.B.D.**

As to *volenti non fit injuria*: see HALSBURY, Hailsham edn., vol. 23, pp. 715–719, pars. 1006–1009; and for cases: see DIGEST, vol. 36, pp. 92–97, Nos. 608–649.

Negligence Causing Death—Damages—Possibility of Death in War as Combatant or Civilian.

In assessing damages under the Fatal Accidents Act, 1846, it is proper to take into account the possibility of the man being killed in the war, as a member of the fighting forces if he is of military age, or as a result of air raids. This deduction is to be made although the man was killed before the commencement of the war.

HALL AND ANOTHER *v.* WILSON AND ANOTHER, **[1939] 4 All E.R. 85. K.B.D.**

As to damages under Lord Campbell's Act: see HALSBURY, Hailsham edn., vol. 23, pp. 698, 699, par. 986; and for cases: see DIGEST, vol. 36, pp. 138–141, Nos. 916–944.

Rules and Regulations.

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Emergency Regulations Act, 1939. Purchase of Wool Emergency Regulations, 1939. December 13, 1939. No. 1939/269.