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THE SPIRIT OF THE CONFERENCE.

THE Seventh Dominion Legal Conference, which took place in Auckland on April 20, 21, and 22, was in every way an unqualified success.

The Conference was signally honoured by the presence of His Excellency the Governor-General, Sir Bernard Freyberg, V.C., at its opening; and his address on that occasion was both helpful and encouraging to the legal profession as a whole. Her Excellency Lady Freyberg, too, charmed the Conference ladies by being with them at the ladies' morning-tea. Their Excellencies graciously received the Conference members and their wives at an afternoon party at Government House; and they honoured the Conference Ball with their company, and so contributed in great measure to the success of that brilliant function.

Following the pattern of its predecessors, the Conference, at the business sessions, gave its attention to the expression of the lawyers' viewpoint on matters of general interest, and devoted the remainder of the available time to the social gatherings, which are wisely—and in an increasing degree—becoming so important and necessary a feature of these biennial meetings in the encouragement of a community of interest and a spirit of brotherhood among the members of the profession, scattered as they normally are throughout a sparsely-populated country.

Elsewhere in these pages, we make detailed reference to the features of the social side of the Conference. In this place, we propose to consider the spirit of the Conference as shown by its proceedings in session at the University Hall.

I.

In brief, the theme that ran through all the Conference addresses and papers was "Service to the community of which we lawyers are a part." And by the word "community" was meant, not merely the inhabitants of the locality in which individual practitioners are daily engaged in their professional duties, but the general body of the people of the Dominion; and, by the word "service," the continuance of our assistance to the State and to the public in the directions outlined by Mr. Cooke in his closing address, and, where possible, an extension of the breadth and force of that help which those who practise law may give in furtherance of the onward progress of human affairs everywhere.

The keynote of this theme of service was struck in the inaugural address of His Excellency, who spoke to the assembled lawyers of the Dominion as the guardians of the rule of law, and reminded them of their particular function in its maintenance in the international arena as well as in the home domain. For, as he said, the rule of law is indeed the foundation of any civilized State.

Then the Guest Speaker, the Hon. Sir David Smith, after giving a detailed exposition of the development of the legal system to its present state, showed that, as a consequence, the lawyer has to-day a wider, if not a higher, destiny than he has ever had. This necessitates an informed outlook with which to equip himself to make a special contribution in the interest of society generally in the unfolding of the complex future. And the speaker concluded: "There is no profession, except perhaps the teaching profession, which can make a greater contribution than the legal profession to the ideal of a society which adjusts its pressures through peaceful evolution."

In his paper, "Law and the Public Conscience," Mr. A. K. North, K.C., spoke of the particular contribution which the legal profession can make in that field of social relations which implies the fostering of the idea of faith in our way of life and a deep regard for our legal institutions—in short, the maintenance of respect for the rule of law itself. He indicated where danger signals may be observed; and he postulated three necessary vigilances on the part of the lawyer in the face of the dangers that menace the public conscience. He stressed the necessity for keeping before all people of good will the principle that it is immoral to break the law. He pointed to the duty of the legal profession to see that the law is adequate to meet new conditions and emergencies. And, in conclusion, Mr. North drew attention to the consequent type of public service that lawyers, to whom the community is entitled to look for a lead, may perform, since the whole of a legal training encourages lawyers to seek the truth in a practical way, without fear or favour; and, if the members of the profession are satisfied that they know the truth, they have a duty to stand firm and "hold the pass."

Mr. Quentin-Baxter, in discussing the War Trials at Tokyo, gave a practical illustration of the manner in which the rule of law may be enforced by judicial process, with the aid of strength possessed to impose the will of peace-loving peoples on those who schemed to act otherwise.

In his informative address, Mr. A. H. Johnstone, K.C., carried us beyond the confines of the Dominion, and showed us how, in a practical way, New Zealand practitioners can, as members, share in the work of the International Bar Association, which, he said, has immense potentialities for good in promoting the administration of justice under law among the peoples of the world. He urged upon his hearers, as lawyers, to use their weight and their influence, "so that, together with the lawyers of other lands, they may help to bring abiding peace to this sorely troubled world."

As the Conference began, so did it end.

As we have indicated, His Excellency the Governor-General impressed upon his hearers the part which lawyers should play in maintaining the rule of law, and in extending their corporate activities in the wider sphere of international human relationships.

In his final address, the President of the New Zealand Law Society pointed the moral that lawyers have duties as well as privileges; and their desire to promote the welfare of the community at large must be the mainspring activating those duties. Mr. Cooke first referred to the lawyers' duties to their clients and to the Court, and reminded them that they should so conduct themselves that the people of this country were left in no doubt that they are continually conscious of those duties, and so that everyone may be aware that, in matters relating to the maintenance of the rule of law, they, whatever may be their individual political beliefs, would strive to uphold those inherited elementary principles of justice that are the foundations upon which our democratic institutions are built.

The President then emphasized the lawyers' wider duties, which may be described as the giving of assistance to the State, through the medium of the New Zealand Law Society as the profession's mouthpiece, by assistance and by criticism, in the promotion of legislation affecting the general law of the land or the administration of justice. While those duties have for many years been performed faithfully and well, Mr. Cooke urged us to continue to retain the confidence of the Government of the day in feeling that the legal profession is a constructive force at hand and ready to continue to give our corporate service in connection with matters relating to the general law of the country or the administration of justice, and that it can trust us to continue to give the State disinterested but active assistance in all those matters.

In conclusion, the President expressed the spirit which animated the Conference sessions when he said:

"The more we can do in those directions, the more will our profession grow in stature and in dignity; and, what is so very much more important than that, the greater will be our contribution to the welfare and stability of the democracy in which we are fortunate enough to live."

II.

The recent Conference at Auckland was the second post-War gathering of the series. It has proved a valuable reminder to the profession of its duties—to its clients, to the community it serves, and to mankind generally. The members of the human family, be they residents of scattered cities and towns in the North or South Island of our own Dominion, or of the remote villages of India or Africa, or of the great cities of London or New York or Sydney, do not live in static conditions of association with one another, or with other communities of human beings. Every advance in the progress of human affairs brings with it, not only new legislation, but also a widened application of the concept of justice; for, strictly speaking, the principle of justice, in its abstract sense, is unchangeable. Inseparable from the application of that principle to the process of living is the constant duty to observe and respect the rule of law; but the idea of justice is differently applied to-day in comparison with its application of a century ago. For example, in Western countries, the idea of justice is now receding from the concept of a man's being a mere unit of working capacity, and is coming nearer to the basic common-law concept of the citizen as a "free and lawful man" (*liber et legalis homo*)—the old recognition of the dignity of human personality and of the inalienable rights of man recognized in Christian jurisprudence. For the spirit of our times is strongly against any perpetuation of the indifference of recent centuries to the welfare and well-being of the needy, the illegitimate, or the innocent victim of the ills which beset mankind, as it is also against the intrusion of the State into matters not within its province.

A true concept of justice cannot be left merely to be admired as a worthy academic theory: it must enlist resolute and unfaltering hearts and minds to translate it into that practical reality which alone promotes the progress that is the fruition of any worthwhile idea. And the human family, when seeking to apply the principles of justice to the regulation of human relationships, should be able, with confidence, to seek guidance from the members of the legal profession, individually and in their nationally and internationally corporate capacity.

Justice, as Daniel Webster reminded us, is the great interest of man on earth. It is for the lawyer, as the informed specialist among his fellow-men, to strive that justice may not anywhere be frustrated or diminished in its God-given purpose of serving as the ligament which holds civilized beings and civilized nations together. The idea of liberty, as well as the idea of justice which safeguards it, connote the practice of self-discipline and the constant and unfailing endeavour by trained minds to promote the general welfare by the resolute application of the lessons of history to the maintenance and enforcement of the rule of law in all the manifold and altering phases of human relations.

That is the spirit which animated the recent Legal Conference at Auckland. That is the lesson there taught us, by implanting in the minds of members of our profession an appreciation of our duties and responsibilities in a wider, and increasingly wider, sphere. It is for us to apply that lesson practically by doing everything possible to extend our individual and corporate assistance for the benefit and happiness of our fellow-men. And the reward will be great indeed. For, again to quote the great American lawyer of a century ago:

"Wherever the temple of justice stands, and so long as it is duly honoured, there is a foundation for social security, general happiness, and the improvement and progress of our race. And whoever labours on this edifice with usefulness and distinction, whoever clears its foundations, strengthens its pillars, adorns its entablature, or continues to raise its august dome still higher in the skies, connects himself, in name, and fame, and character, with that which is and must be as durable as the frame of human society."

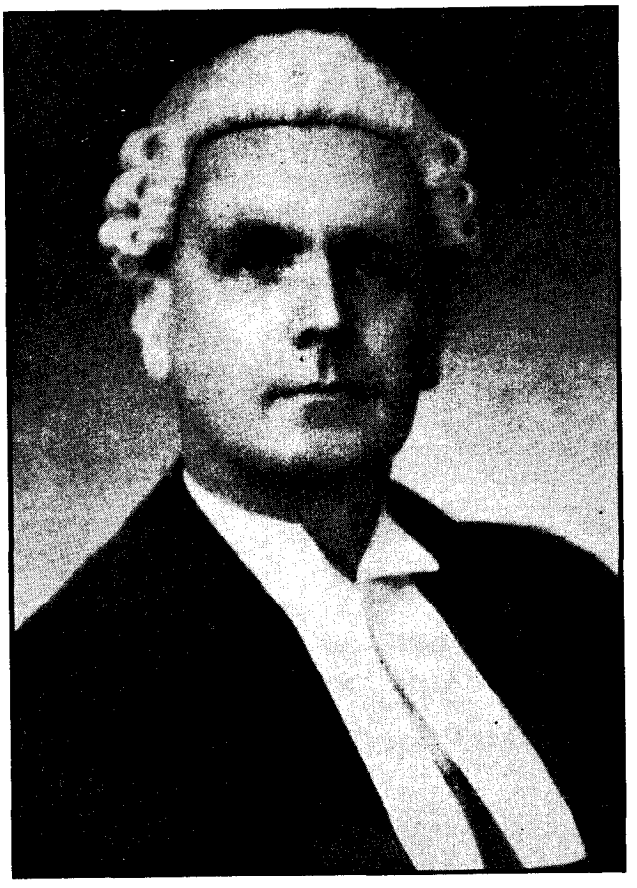
THE FIRST DAY.

THE CIVIC RECEPTION AND WELCOME.

ON the morning of Wednesday, April 20, the visiting practitioners and their wives, and the members of the profession resident in Auckland and their wives, filled the Conference Hall of the Auckland University College for the opening of the Seventh Dominion Legal Conference.

His Honour the Chief Justice (the Rt. Hon. Sir Humphrey O'Leary) occupied a seat on the platform, from the time of his delayed arrival owing to his train being late until the close of the inaugural address by His Excellency the Governor-General.

In addition, there were present the Judges resident in Auckland: Mr. Justice Callan, Mr. Justice Finlay, and Mr. Justice Stanton. Others who attended were the Hon. Sir Alexander Herdman, for many years a Judge of the Supreme Court. and Mr. J. H. Quilliam, who, after many years of practice in New Plymouth, served for a term as a Temporary Judge, Deputy-Judge Dalglish, of the Court of Arbitration, and Judge Goldstine, chairman of the Counties Commission, were present at most of the Conference functions. The local Magistrates attended the opening of the Conference.



Alan Blakey, Photo.

Mr. V. N. Hubble,
President of the Auckland District Law Society.

The assembly filled the Conference Hall to overflowing. The platform and its surroundings were tastefully decorated with living plants and shrubs, which the Auckland City Council had lent the Conference Committee and which had been arranged by the Council's staff.

The Chair was taken by Mr. V. N. Hubble, President of the Auckland District Law Society. He was accompanied to the platform by the Deputy-Mayor of Auckland, Mr. Leonard Coakley, the Attorney-General, the Hon. H. G. R. Mason, K.C., the President of the New Zealand Law Society, Mr. P. B. Cooke, K.C., and its Vice-President, Mr. A. H. Johnstone, K.C.

The President of the Auckland District Law Society, Mr. V. N. Hubble, said that he wished to welcome Mr. Leonard Coakley, the Deputy-Mayor, who, in the absence overseas of His Worship the Mayor (Mr. J. A. C. Allum), would address the Conference on behalf of the City of Auckland.

THE CITY'S WELCOME.

The Deputy-Mayor then addressed the Conference. He said: "I count it a pleasure, on behalf of the Corporation and the citizens of Auckland, to extend to you all this morning a very cordial welcome. In particular, I would mention the visitors to our City; I trust that they will all spend a happy time during their sojourn amongst us, and take away with them pleasant and enduring memories. May you all make new friendships and cement the old ones. I sometimes think that in the busy stress of life we overlook the value of these things, but a Conference such as this does give that opportunity. It is not, in my view, the least important part of any Conference.

"I observe from your list of members that you have a representative attendance from other parts of New Zealand. That is good. There is one thing I can say about the inhabitants of the North—they are always willing to sit at the feet of those who come from the great seats of learning in the nether regions of the Dominion. Beyond that, I can offer no assurances or guarantees on behalf of the Auckland members of the Conference. I am informed, and verily believe, that you will find them anxious to contribute to your discussions, and so, I must assume, to the enlightenment of this Conference in particular, and the legal profession in general.

"We citizens of Auckland are glad to see assembled with the Conference this morning the Attorney-General, the Hon. H. G. R. Mason, the President of the New Zealand Law Society, Mr. P. B. Cooke, K.C., Mr. Justice Callan, Mr. Justice Finlay, and Mr. Justice Stanton. To them—and, indeed, to the whole Bench—the legal profession and the rest of the Dominion are under a deep debt for their contributions to the administration of justice in this land of ours. And while I am at

this juncture—' on the Bench,' so to speak—I would like to mention the particular pleasure the elevation of Mr. Justice Stanton gave to the citizens of Auckland. Mr. Stanton had served the City as its City Solicitor for nearly thirty years, succeeding the late Mr. Thomas Cotter, K.C., in that office when but twenty-nine years of age. In his opinions the City Council placed the greatest confidence, and he won for himself a place in the respect and esteem of a long succession of City Councillors.

" Mr. President, I notice from your Conference Programme that the lighter side will not be neglected. You will have, in addition to other highlights, a Conference Ball and a Bar Dinner. Such things are an integral part of any well-arranged Conference. The Ball this evening will appropriately enable homage to be rendered to the ladies, and then, having, as it were, rendered to Caesar the things that are Caesar's, the Bar Dinner to-morrow evening will afford the gentlemen a haven of refuge for one evening of the Conference. Apparently, at this Conference everything, as in the Army, is done with a reason.

" I do not propose to extend my remarks any further. I am ignorant of the law, and, although I understand that is no excuse, it is an adequate reason why I should hesitate to touch upon any aspect of your profession. I again extend to you all a hearty welcome and most cordial felicitations, and I commend you all for your attendance at this Conference, if for no other reason than that given by Kipling, which I will quote, definitely without prejudice, in closing :

> ' Now this is the law of the jungle,
> As old and as true as the sky ;
> And the wolf that shall keep it may prosper,
> And the wolf that shall break it must die.
> As the creeper that girdles the tree-trunk,
> The law runneth forward and back—
> For the strength of the pack is the wolf,
> And the strength of the wolf is the pack.' "

The Auckland Practitioners' Welcome.

Mr. Hubble then addressed the Conference. He said :

" I have first to thank you, Mr. Deputy-Mayor, for giving us a civic welcome on behalf of the City of Auckland. We deeply appreciate the honour. I wish to thank you on behalf of the whole profession, and also to express the appreciation of the Auckland practitioners for the great assistance the City Council has given with the decorations. I am not sure whether I like the reference to the wolves, but I am sure that it was meant in good part.

" On behalf of the Auckland practitioners, I wish to extend a very sincere and hearty welcome to all visiting practitioners, and especially to their wives. We have not had a legal Conference in Auckland since 1930. The reasons for that are well known. It was not that we did not wish to entertain you—we would welcome you at any time ; but, because it has been so long, our welcome is all the more sincere.

" The activities of the Legal Conference fall into two main groups—the serious side of the Conference, and the social side. That division does suggest as a parallel two thoughts : first, on the serious side, the rule of law, and, on the other side, the brotherhood of the law. The rule of law is so wide a subject that all I say is this to indicate the place of law in the community—that, magnificent as are the triumphs of science and the medical profession, the achievements in the arts throughout the world, and the lessons of history, none of those could be attempted if there had not been law and order and the rule of law. When the Roman Empire crumbled after a thousand years of law and order, darkness and chaos descended on Europe. Because of the achievements of science, there has never been a greater need for the rule of law in the world. As to the brotherhood of the law : law is a contentious matter. In the Courts, I have seen the most urbane and polite men get heated in discussion ; and have even seen them arguing with the gentlemen on the Bench. But those little differences are never carried past the Court Room or office.

" On the social side, we will possibly have Mr. A. of Auckland say about Mr. B. of Wellington : ' He is really quite a nice chap, even though they do get things done in Wellington.' And Mr. X. of Christchurch will say about Mr. Y. of Auckland : ' After all, there are one or two nice chaps among them, even though they did get the Empire Games.' So much about the brotherhood of the law.

" Looking round the hall, I should also say a word of thanks to the sisterhood of the law. Many a practitioner from Christchurch, Wellington, or Dunedin, who was delicately toying with the idea of trout-fishing or golf found one morning that he was not going, but that he had been booked in for the Auckland Conference.

" I hope all the legal practitioners will have some benefit and profit on the serious side of the discussions, and I hope that you all will enjoy the social side. I end by saying to you one and all : ' Welcome.' "

The Visitors' Thanks.

Mr. G. M. Lloyd, Vice-President of the Otago District Law Society, on behalf of the visitors, said :

" It falls to the lot of a Southerner to thank you, Mr. Deputy-Mayor and Mr. President, for the sincerity and warmth of your welcome to us and our ladies. It gives us great pleasure to be here in this warm, large, and beautiful city. Those of us who came a little earlier were taken along to a very beautiful place, the Ellerslie Racecourse. One of the local practitioners kindly put us on to a winner. We thoroughly enjoyed the initial part of our stay, although the horses appeared to run the wrong way round, and some of them were not fast enough.

" Mr. President, we appreciate your welcome and the brotherly and friendly way in which you issued it. We are really very united as a body ; occasionally we think a little unkindly about one another, but in the main we are very happy indeed as one united body.

" I have been asked to give one or two undertakings on behalf of the Southern practitioners. First, the Otago and Southland practitioners will not in these proceedings mention the Ranfurly Shield. The Canterbury delegates wish me to say that there will be no reference to the Empire Games, and the practitioners from Marlborough, Nelson, and the West Coast will make no reference to those words of doubtful origin, ' Mainland ' and ' Mainlanders.' I feel that the welcome has been most sincere, and we thank you very cordially."

Mr. Hubble, before vacating the Chair, said that, as this was a Dominion Conference, he would ask Mr. P. B. Cooke, K.C., President of the profession throughout the whole Dominion, to take the Chair and preside over the rest of the Conference.

INAUGURAL ADDRESS.

By His Excellency the Governor-General.

HIS Excellency the Governor-General, Sir Bernard Freyberg, V.C., who was attended by Lieut. A. G. Tait, R.N., was welcomed on arrival at the Conference by the joint Secretaries. He was accompanied to the platform by the Attorney-General, the Hon. H. G. R. Mason, K.C., Mr. V. N. Hubble, the Auckland President, and the Deputy-Mayor of Auckland, Mr. L. J. Coakley.

When His Excellency reached the platform, he was received by the Chairman, Mr. P. B. Cooke, K.C., President of the New Zealand Law Society. In greeting His Excellency, Mr. Cooke said :

" We are very sensible of the honour you have conferred on us by coming here to speak to us. We are proud to think that many of those who are here to-day served under your command in the war.

" We know you are no stranger to our profession. Over twenty-five years ago you received the honorary degree of Doctor of Laws from the University of St. Andrews in circumstances not entirely unconnected with your courage ; and since then the honorary degree of Doctor of Civil Law has been conferred on you by the University of Oxford.

" We ask you to allow us to express to you respectfully our gratitude for your visit here to-day, and to say how keenly we are looking forward to hearing your address."

His Excellency then addressed the Conference as follows :

" I deem it a privilege and an honour to have been invited to be present to-day at this important assembly of members of the legal profession of New Zealand. The presence in Auckland on this occasion of so many of your representatives is in itself ample testimony of the importance which is attached to this Conference. I hope your stay here in Auckland will be a pleasant and a profitable one. My wife and I are looking forward to meeting a large number of the delegates and their wives at Government House this evening.

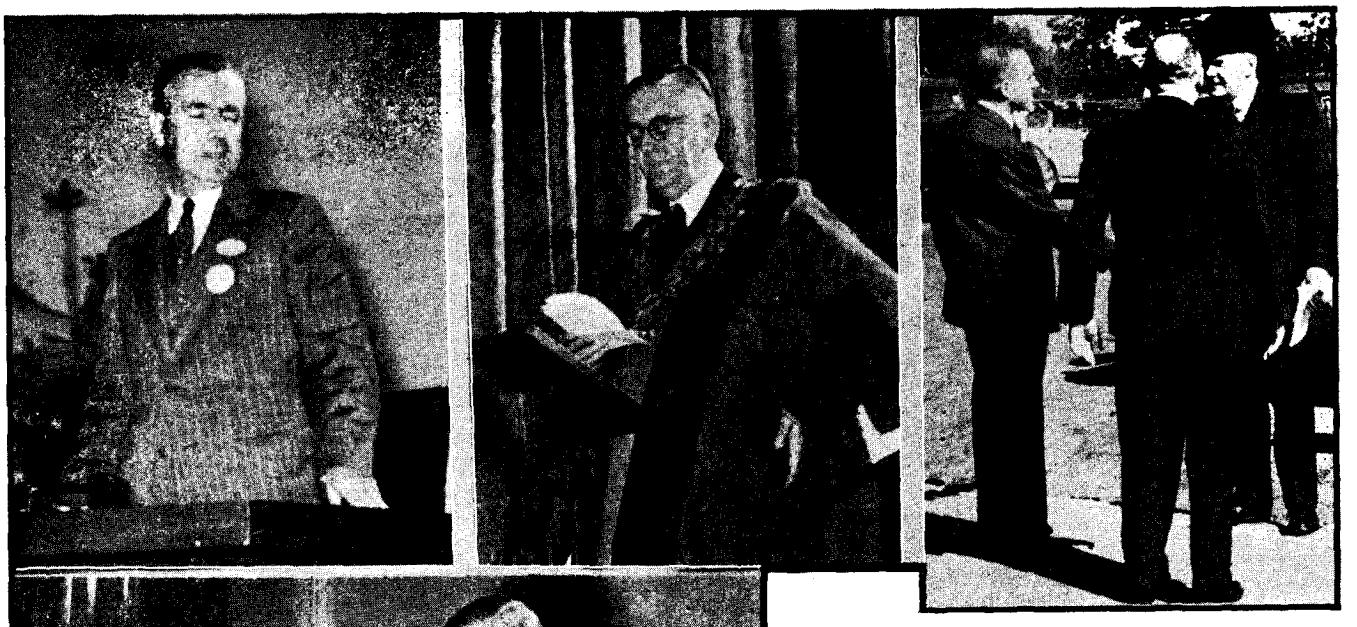
" In opening this Conference, I agree that my claim to address this gathering to-day appears, on the surface, to be a slender one. But it is not really as weak as at first it may seem, because for six years, when I had the honour to be General Officer Commanding the Second New Zealand Expeditionary Force, I was the final legal authority with the New Zealand Forces in the Middle East. Therefore, together with my legal advisers, I was responsible for the establishment of the administration of justice with our Forces, the smooth running of which, as I hope to show, is of the greatest importance to a Force in the field. I doubt if anyone besides myself realizes the important part played by our Legal Service overseas. Their knowledge of the *Manual of Military Law*, rules of procedure, and the Army Act was impressive. When a case was finally disposed of and the notes of the proceedings found their way back to New Zealand, they could not be faulted. Only one verdict was reversed. The case was quite a small and unimportant one, late in the war, and I believe the decision which was finally given in New Zealand was, to say the least, hotly disputed by my Legal Staff.

" In dealing with crime overseas, it must be understood that the almost complete absence of serious military crime in our Forces was due, in the main, to the stamp of man that we had overseas and to the fact that we never had failures in battle. But it is important that the legal profession in New Zealand, and especially the young men, should know the legal system that was adopted overseas and the results that were achieved. I see that many of my Legal Staff, as well as learned counsel who defended our guilty prisoners so successfully, are here this morning. I shall therefore have to be careful in what I say.

" As a further claim to your indulgence, I can urge that two great Universities in the United Kingdom conferred Doctorates of Law upon me. In 1922, at St. Andrew's University, in company with a distinguished gathering of intellectuals and military men, I was awarded an honorary Doctorate of Law by Field-Marshal Earl Haig ; and at Oxford, in 1945, an Honorary Doctorate of Civil Law. In Scotland, all went well, but at Oxford I suffered a setback. A friend—needless to say, a woman—struck the blow. I should explain she had a real veneration for Oxford ; both her father and several brothers had taken the highest Classical degrees there. She looked on a Doctorate of Civil Law (Oxford) as the reward only given to the few. She came up to me after the investiture and said with amazement : ' Fancy you, Bernard, being made D.C.L., Oxford.' I quite agreed. Nobody knew less about the laws of England than I did ! But I understand that the Senate, in their great wisdom, based my entitlement to a high law degree upon the fact that the true rule of law is not purely a matter of academic or legal interest, but rather one which concerns the whole nation, whether at work in peace-time or on the field of battle upholding the rule of law. That is a logical conclusion.

" These learned University Senates realize that, unless you are prepared to uphold the rule of law, by force of arms if necessary, democracy is but a misleading and empty word, for the contrast between a democracy and the totalitarian State lies in the reliance by peoples wedded to democratic ideals on the rule of law. An Empire such as ours, which voluntarily submits to rules of its own devising and upholding, will not easily fall a prey to hasty theories, and will not readily adopt such principles as would place the whole community under the domination of a sectional interest.

" I want now to tell you something about the rule of law in war in our Forces overseas, and how it worked. I have always held that, in an organized body of men such as an Army overseas—and especially in one from a small country such as New Zealand, where there is so much goodwill and so little crime—the important consideration is that crime should be detected and investigated. Investigation is a great deterrent. Punishment,



Before and at the Opening Ceremony.

Top left: The Auckland President (Mr. V. N. Hubble) commences the Proceedings.

Top centre: The Deputy-Mayor of Auckland, Mr. L. J. Coakley, welcomes the Visitors.

Above: The Conference Secretaries (Messrs. Sheffield and Cox) greet His Excellency the Governor-General.

Top left: The New Zealand President (Mr. P. B. Cooke, K.C.) takes the Chair to preside over the Conference.

Lower left: The President welcomes His Excellency.

Below: The Attorney-General, Hon. H. G. R. Mason, thanks the Governor-General for his Address.

Photocraft, Photo.

although salutary, is not by any means as important. Only undetected crime does harm, because it encourages the criminally-minded.

"Nevertheless, the administration of justice in an Army overseas, composed of civilians under arms, presents difficulties, because these soldiers come out of civil life, where they have been subject to civil law, and, without any instruction, find themselves under military law. It is a big change, which, unless watched, may cause avoidable trouble. There is a further consideration: the *Manual of Military Law* and the Army Act in a Regular Army are applied by men who have had wide experience of military law. In a citizen Army, during the change-over from civil to military law, the administration of justice is often in inexperienced hands, and, through that inexperience, there may be an increase in what are purely military crimes.

"Let me give you an example. Take the simple case of arresting a man who is 'under the influence.' If private soldiers are sent to apprehend him and he resists, even with violence, it is resisting arrest—a simple crime, punished summarily. But, if the Sergeant or the Officer of the Guard in his zeal tries to arrest the man, and he is struck, it is a very serious offence—striking a superior officer when on active service—for which he must be tried by court martial, and punished, if found guilty, by imprisonment.

"I will give you an actual case. When we arrived in Egypt, I was handed the reports of several courts martial and asked to confirm their findings. The first one I looked at was a serious case, which concerned a man who was found guilty of striking a superior officer while on active service. I straightaway examined the man's documents—his conduct sheet and attestation papers. He was a professional man, married, with two children. According to his conduct sheet, his character was exemplary; further, he was a volunteer, with only three months' service. The men from his home town gave him an excellent character. I have always held that nothing discredits a Service more than this sort of thing. It is no recommendation for the Army if it turns a good man into a bad one.

"When I went closely into the case, the facts that were disclosed were these. The man's unit was on board ship coming up the Red Sea in convoy. The temperature was 108° in the shade, and tempers were getting short. For some quite unimportant lapse the man was placed under arrest and marched before his Commanding Officer. He had never been under arrest before, and he resented the whole incident so much that he lost his temper with his Commanding Officer. The Commanding Officer should have said: 'March this man out until he calms down.' The man was a very nice fellow, and would have been ashamed of himself when he regained his temper. He would have been admonished, and all would have been well. But not at all. The Commanding Officer decided to reason with him, and it went something like this:

> Commanding Officer: But did you not join to fight for your King and your country?
>
> Prisoner: ——— the King and ——— the country!

"The Commanding Officer then had no option but to punish him for a most improper remark. The man was given detention and marched away to the cells by the Provost Sergeant. When they came to the companionway, he got the order, 'Keep to the right,' and he, of course, immediately kept to the left. When he got to the bottom of the ladder, the Provost Sergeant said: 'Now go back and come down properly.' By this time, the prisoner was seeing red, and answered him in the vernacular. The sergeant placed hands on him, and the prisoner struck the blow. The proceedings were naturally quashed. But that case was a godsend. It enabled me to make everyone laugh at a big conference of Commanding Officers, and at the same time teach the vital lesson that a superior officer must always keep away from anyone who has had too much to drink or who has lost his temper.

"I tell you of this case because you must all realize how easy it is to manufacture crime, which would lead to miscarriage of justice, and you can all realize the effect of that. It breeds centres of unrest and discontent, which lead to a lowering of morale, and may eventually cause insubordination and even mutiny.

"Our morale was good, and there was never a single incident in the Second New Zealand Expeditionary Force in the whole six years, even at the end of the war, when many other troops were refusing to get on ships or were marching on Naples or Cairo, and there was never a single financial scandal. I put this down in a great measure to the fact that the men were well looked after, but also to the fact that our legal system worked smoothly and well.

"The establishment of the rule of law, civil and military, both in the limited sense used by a Judge and in the wider sense also, owes a great deal in peacetime—and especially in the early days—to the courage and independence of advocates who have fought for its recognition, often with the consequence of reprisals and at the risk of personal danger. The right of fair trial is a fundamental requirement of a civilized state. It is, therefore, of first importance, if civilization is to endure, that there should be in every country a body of men trained to the art of advocacy, and bound by their membership of that body to a loyal, courageous, and honourable service in the Courts of justice.

"When I was considering what I would say to you at this Conference, I asked what were the objects of your Society. I was given some. Drafted more than seventy-five years ago, they are briefly as follows:

> To preserve and maintain the honour and integrity of the legal profession.
> To promote the administration of justice.
> To consider and suggest amendments of the law.
> To perform and exercise the functions and powers conferred upon the Society by statute and otherwise.

"The objects for which you have worked have now been achieved. The legal profession of New Zealand has for many years been a body whose voice is respected throughout the country. If you had to re-draft those objects to-day, you would no doubt be tempted to add to them a further object:

> To make your opinions felt in the wider sphere, and, in doing so, to strive to implement the Covenant of the League of Nations, whose principal aim was stated to be:
>
> > The promotion of international peace and security by the firm establishment of the understanding of international law, as the actual rule of conduct among Governments.

"Law is recognized now as one of the great bonds of civilization: it is the chief bond which links free nations together. We must, therefore, strive to support and enforce the provisions of national and international law which brand as criminals all those who plan and wage aggressive war.

" May I quote to you an extract from the speech of John Philpot Curran on the Right of Election in 1790 :

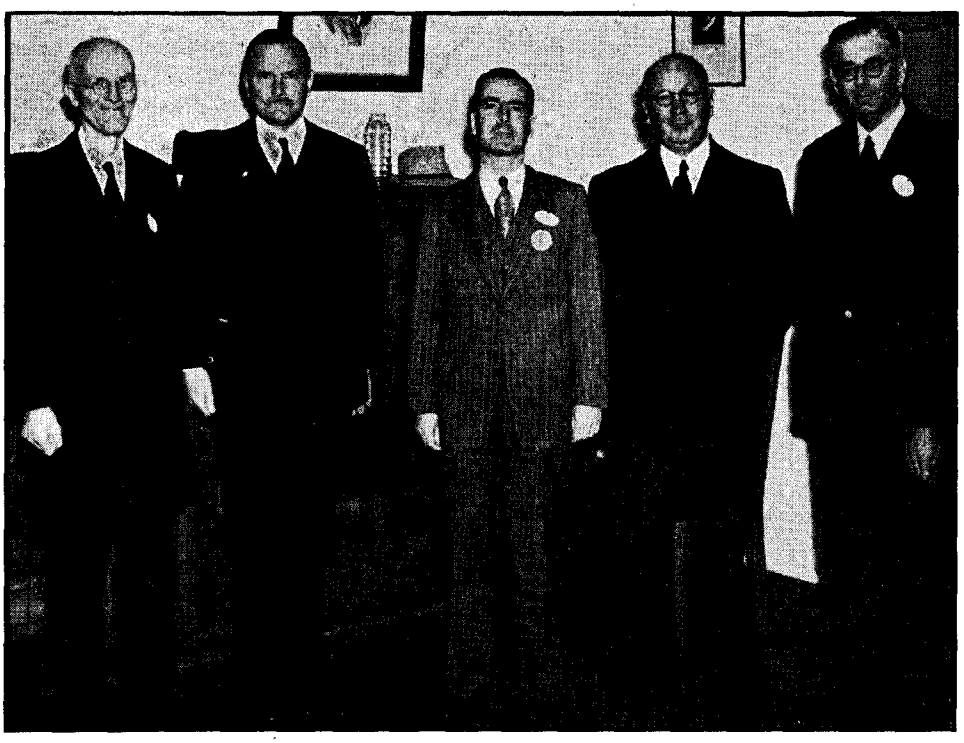
> It is the common fate of the indolent to see their rights become a prey to the active. The condition upon which God hath given liberty to man is eternal vigilance.

This is even more true to-day. We see what is happening in every trade union.

" Free nations such as ours must have a code, a code which involves vigilance—to let no breach of the law go unchallenged, and to possess the strength to impose the will of peace-loving peoples on those who plan to act otherwise.

" In other words, the rule of law is the most important principle in the world to-day, and we must see to it that it is enforced within our country and in the world as a whole. In these difficult days, we must be prepared to fight, if necessary, to defend it. The rule of law is indeed the foundation of any civilized State.

" I now have great pleasure in declaring this Conference formally open. I wish you all success in your deliberations."



After the Opening Ceremony. *New Zealand Herald, Photo.*

From left : The Attorney-General, Hon. H. G. R. Mason, K.C. ; His Excellency the Governor-General ; Mr. V. N. Hubble, President of the Auckland District Law Society ; the Chief Justice, the Right Hon. Sir Humphrey O'Leary ; and Mr. L. J. Coakley, Deputy-Mayor of Auckland.

The Profession's Thanks to His Excellency.

The Attorney-General, the Hon. H. G. R. Mason, then expressed to His Excellency the profession's thanks for his address. Mr. Mason said :

" The words we have heard this morning give special emphasis to your association with the profession of the law. On behalf of every legal practitioner in the Dominion, I have the honour to thank you for coming to open our Conference of 1949. In particular, I want to express to you, for us all, our gratitude for your inspiring address and for your kindly words of encouragement.

" We all feel how fitting it is that Your Excellency, as the personal representative of our beloved Sovereign, should share our deliberations, because His Majesty the King and Her Gracious Majesty the Queen are Benchers of two of the Inns of Court, and, in that capacity and in that right, are themselves members of our profession. Furthermore, we are the members of the only profession —outside the profession of arms, of which you are our most distinguished member—which prescribes that, before entering on his duties in the profession, a person seeking admission must take the oath of allegiance to His Majesty. On both these grounds, you yourself, sir, are attached to us by more than ordinary bonds of respect and affection.

" Members of the profession have come from all parts of New Zealand to attend this Conference in the hope that, by meeting freely together and with open and unafraid discussion, we shall reach decisions which will make for the happiness of the people among whom you occupy the supreme position in the country. I am sure, in ordinary justice, that I will not be accused of exaggeration when I say that the underlying and basic motive of these Conferences is to ensure the greatest good to the community as a whole, and not to seek any particular advantage to ourselves.

" Experience has shown that these Conferences have been of much service. While I can assure Your Excellency that adequate steps have been taken to ensure that the health of our members attending here will not

be impaired by undue strain or want of seasonable diversions—which, I assure Your Excellency, will be wise, moderate, and diverse—we anticipate the Conference will result in benefit to the people of New Zealand generally. It is quite true that, as a Conference, we have no power to promote legislation. That is reserved for a still more serene atmosphere. But I can assure you that the conclusions arrived at here will always receive the cordial and sympathetic consideration of my colleagues in another place.

"Your Excellency, your very kind invitation to your home, and your desire to meet the rank and file of our profession there, will always be the most treasured memory of the second Legal Conference to be held in Auckland. Once again, may I thank you for your coming amongst us to-day, and for the great interest you have displayed in the proceedings which you have so kindly opened."

In introducing the Guest Speaker, the Hon. Sir David Smith, the President said:

"There could be no such thing as 'introducing' our Guest Speaker to you to-day. I feel rather that I should begin with the words 'If your Honour pleases,' and then hope, as you and I have often done in the past, that His Honour will please. Although I cannot use those words to him now, I can ask you to express to him your respect and affection for him."

A LAYMAN'S VIEW OF THE CONFERENCE.

[The following, by "CYRANO," as his usual weekly article, appeared in the *Auckland Star* on the Monday of the Conference week. It represents an informed layman's view of the legal profession in the Dominion.]

This week, beginning on Wednesday, lawyers from all over New Zealand will meet in Auckland for the Dominion Conference of the Law Society. Not since 1930 has the Conference been held in Auckland. There are two reasons for this long gap, the depression of the 'thirties and the war. Those people who imagine all lawyers to be affluent may be surprised that the depression produced this effect. Really, the depression hit lawyers pretty hard. A lawyer friend of mine put it in this homely way: "It had always been my ambition to have a pair of braces for each pair of my trousers. By working hard at my profession I achieved this. Then came the depression, and I found myself with several pairs of braces but only one pair of trousers."

A UNIVERSAL SOLVENT.

In these better times, we may imagine lawyers with quite a wardrobe of trousers, and braces to go with them. The Conference will be quite an event. Many leaders of the profession from other districts will attend. One hopes not only that our visitors will enjoy Auckland, but that Auckland will benefit by contact with men who live under skies and general conditions somewhat different from Auckland's own. Professional conferences serve the two main purposes of pooling knowledge and experience, and rubbing angles off the individual. Despite the enormous advance in communications, this thousand-mile-long country of ours retains traces of William Fox's "Six Colonies of New Zealand." Provincialism is still too strong. We laugh at the English villager who regards a man from the next county as a "foreigner," but there is a touch of this suspicion between New Zealand cities and provinces.

The law, universal in its principles and practice within a country, should be a powerful solvent of such feeling. Since law enacted by freely-elected Parliament is the cement of our democratic society, it is vital that those who practise and administer it should be learned, experienced, and incorruptible. Wisdom in the law does not proceed from books alone, but is nourished by contact with one's fellows.

"The life of the Law," said the great American jurist, Oliver Wendell Holmes, "is not logic, but experience." Law, said John Buchan, himself trained in it, should coincide as nearly as possible with the growth of society. "So it is the Judge's duty to be in touch with contemporary life, to be awake to the emergence of new facts and forces, and to bring the new facts inside the circumference of the law."

THE GOOD LAWYER.

This week's Conference provides an opportunity for saying something in praise of lawyers, and of explaining what the Law Society does for the public's good. The truth is that throughout history the profession has never been popular. "The first thing we do, let's kill all the lawyers," proposes one of Jack Cade's followers in Shakespeare. "I would be loath to speak ill of any person who I do not know deserves it," said Dr. Johnson, "but I am afraid he is an attorney." The picture of two litigants fighting for possession of a cow, while the lawyer milks it, represents a common view. The law does give unrivalled opportunities for serving the letter and not the spirit, bemusing the uninitiated, and sharp practice generally. But let us remember the client's share. We go to a doctor to get well. We go to law to fight somebody, and often enough when we call in the lawyer our hands are not as clean or our consciences as clear as they might be. It's the lawyer's job to do his best for us. The worst of us are entitled to justice.

A civilized society without lawyers is inconceivable. Were all men their own lawyers, there would be legal chaos. Throw in Dickens's Court of Chancery, which was justified by facts, and all the other delays and heavy costs in the law's processes, and it remains true that a trained profession of law expedites legal business, and produces in the end infinitely more justice than injustice. We hear very little of the many cases that never come to Court, or the work that lawyers do for nothing.

Passing over the more spectacular services of the barrister, I would put in a word for the solicitor, to whom we go for advice on business or family matters. Uncounted millions have had good cause to be grateful for the wisdom and sympathy of such practitioners. They are first cousins to the physician. A portrait of "An Honest Lawyer" written in old times runs thus: "A trusty pilot, a true priest of Justice, one who wears the conscience as well as the gowne, weighs the cause as well as the gold, and knows but never uses, the nice snapperadoes of practice."

THE LAW SOCIETY.

The law is not perfect, and never will be. We may congratulate ourselves, however, that we live to-day, and not when the criminal law of England was "a mere sanguinary chaos," and the civil law was "befogged with procedure and with pleadings inexplicable and interminable." The law itself and its administration have been enormously improved. The citizen is much better protected.

This week's Conference embodies the protection furnished, not only by the law, but also by the lawyers' own corporate body, the Law Society. This Society, acting locally and through a central body, has statutory powers. Barristers and solicitors are not merely attenders at the Courts, but officers of those Courts, and the Law Society has to see that they conduct themselves accordingly.

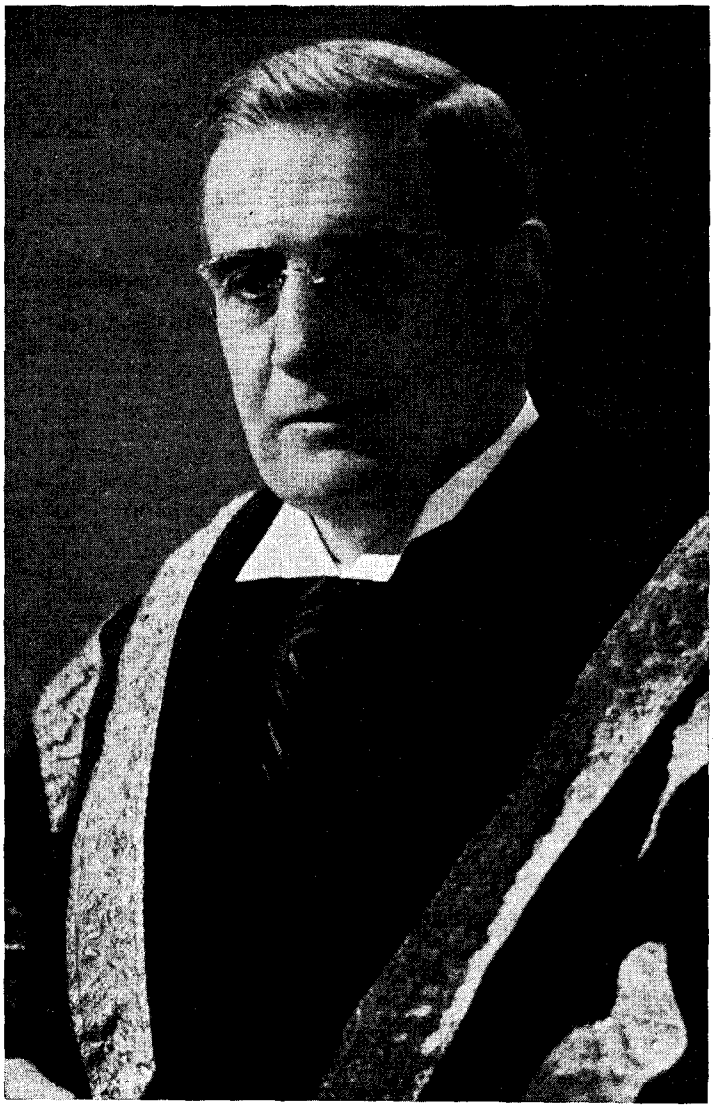
But this is by no means all. The Standing Committee of the Law Society in Wellington spends a good deal of time perusing, in the general interests, Bills before Parliament, and puts its views before the Minister concerned or the Statutes Revision Committee. It can also recommend amendments to legislation, or new legislation, to the New Zealand Law Revision Committee, on which it has two permanent seats. So the citizen is served not only by his personal lawyer, but by the profession as a whole, which has a watching brief for him and acts as a Court of Appeal.

THE DEVELOPMENT OF THE LEGAL SYSTEM.

The Chosen Agency of Social Reform.

ADDRESS BY THE HON. SIR DAVID SMITH, LL.M. (N.Z.), D.C.L. (OXON.).

I should like, if I may, to congratulate you all upon holding this Conference. It is a good thing to meet to exchange views and to make friendly social acquaintance. It is a good thing, too, to be able to indulge altruistic instincts and, at least once in two years, to be able to give free advice. Each of you, of course, knows how to view that kind of advice, but every speaker, I am sure, will be able to rely on a more kindly attitude than that shown by F. E. Smith towards his examiner. At Oxford, "F. E." relied on his brilliance rather than on hard study to get him a first class. In the end, wise people thought that he would not get a First, and that it was a pity that such a brilliant man should miss a First. Accordingly, they advised him not to sit. But he did. At the close of his viva, his examiner said: "And now, young man, let me give you a piece of advice. The next time you take an examination in the English Law of Real Property, you might, at least, first read a text-book on the subject." And candidate F. E. Smith replied: "And the next time, if I want your advice, I shall ask for it." Well, I take it you will be conferring in a more receptive spirit.



S. P. Andrew, Photo.

The Hon. Sir David Smith, D.C.L.,
Chancellor of the University of New Zealand.

Last year, I went overseas on University business, and did not primarily seek contacts with our professional brethren. However, I soon met them. I met the officers of the English Law Society, who were making arrangements for the British delegation to the Conference of the International Bar Association at The Hague. They were very kind and helpful to me. The Society occupies an imposing building in Chancery Lane, which contains spacious and dignified dining-rooms and reading-lounges. There is also a fine library, with pictures and busts in stone of great lawyers of the past.

I visited also the Inns of Court, or what was left of them after the bombing. Lincoln's Inn is practically untouched. The other Inns, Gray's Inn, the Middle Temple with its beautiful Hall, the Inner Temple, and the Temple Church, are in ruins. The marble effigies of the Knights Templar lying on their backs facing the open sky seemed very lonely and forlorn without their church to cover them. The destruction of these lovely buildings conveyed to me, even more than the devastation of wide areas of ordinary brick and mortar, a feeling of the insensate cruelty of aggressive man when his passions outstrip the control of law.

Next, I attended, with Mr. A. H. Johnstone, the opening of the Institute of Advanced Legal Study at the University of London. Lord Macmillan presided, and the Lord Chancellor delivered the Address. The Institute is to be a School of Legal Research. The School needed a set of New Zealand statutes and statutory regulations, and I am happy to tell you that, when this need was brought to the notice of our Minister of Justice, he decided to supply free to the Institute an annotated set of our statutes, also a set of our statutory regulations, and to keep them both up-to-date. Any voluntary act of this kind is deeply appreciated in England to-day, and this gift was deeply appreciated by the authorities of London University.

My next meeting with lawyers was at a Conference of the teachers of Public Law at Oxford, where I met the leading academic lawyers of England. The late Dr. Stallybrass of Brasenose, the very learned editor of *Salmond on Torts*, was my host, and a fellow-guest was his learned rival, Dr. Winfield. Another guest was Lord Justice Evershed, who read the principal paper at the Conference. Also attending were Professors Goodhart, Gutteridge, and Cheshire, and many other well-known legal editors

and authors. This Conference was a pleasant experience. At the dinner—and no Conference is ever held in England without a dinner—I took occasion to tell the text-writers that Judges were, after all, pragmatic people. They applied the judicial process in order to keep the law soundly practical, and, for the most part, left to the really learned and erudite text-writers the task of elucidating the underlying general principles. This sentiment, I thought, was not altogether unacceptable to my audience.

At The Hague.

Save for a few social occasions, I did not otherwise make acquaintance with our professional brethren in Great Britain. I had the honour, however, to go, with Mr. A. H. Johnstone, to represent the New Zealand Law Society at the Conference of the International Bar Association at The Hague, but he will tell you about that experience. I wish to mention only two points. The first is that lawyers from fifty-five countries were present. The official languages were English, French, and Spanish, but the fact was that, if you could use both English and French with sufficient fluency, you could speak personally with every delegate. Neither language, without the other, was sufficient. The lawyers from the Middle East and from South America knew French rather than English, but the South Americans, of course, spoke Spanish as well. The second matter concerns the fame of one of our own lawyers. Seated beside me on a trip through the canals of Amsterdam was a young lawyer from Iran. He wanted to know what I could tell him about a lawyer of New Zealand, "Sir Salmond," as he called him, who had written a book on Jurisprudence which was so strong and clear and good. It was obvious that the young Persian admired not only the erudition of the author but his strong doctrine that the primary function of the State is the administration of justice. I had pleasure in telling him a good deal about a teacher, lawyer, and Judge whom I revered.

Canadian Law Schools.

In Canada, I visited the Law Schools at Toronto and at Vancouver. At Toronto, the house of law has for many years been divided against itself. The Benchers of Upper Canada maintain a Law School at Osgoode Hall. They insist that only those trained there may practise in Ontario. The University of Toronto has a Law School also, but, when I was there, it had only 150 students against Osgoode's 300. If the University graduates in law wish to practise in Ontario, they must take a further course at Osgoode Hall and get some practical experience. Otherwise, they practise in other Provinces or go into the Government service. The training at the University is very good, and the present division causes irritation and waste. The Dean of Osgoode Hall himself told me that he hoped the present separation would be ended. The proposal was that, when the Dean of the University School retired, at the end of 1948, the Dean of Osgoode Hall should take his place, and that the two schools should be fused. The difficulty lies with the Benchers of Upper Canada. They very kindly gave me lunch in one of the oldest buildings in Toronto, and I could well appreciate their respect for their own School and its tradition. (I do not know whether the fusion has occurred.)

At Vancouver, the University of British Columbia has a thriving School of Law, which is only three years old. Like a great part of the University, it occupies temporary buildings. The Dean was inclined to doubt whether there would be suitable openings for practice or for employment in the law for all the graduates.

Law and Law Schools in United States.

When I was in the United States, I visited the Supreme Court and had a talk with Chief Justice Vinson. He is a gentleman of wide experience in the law and in politics. He told me that he just did not know how the Justices of the Supreme Court got through their work. In the States, in both the Federal and the State jurisdictions, the appellate work is so heavy that the arguments of counsel on both sides are printed in the case on appeal. The Judges read the cases, and counsel are then allowed in open Court about half an hour in which they may speak in support of their written argument. Very often counsel do not take half an hour. Only in exceptional cases is the time extended. This procedure shortens the work in Court, but it means an enormous amount of concentrated reading for the Judges.

I visited the Law Schools of the Universities of Harvard, Yale, and Duke, and of the University of California at Berkeley. In the leading American Universities students cannot enter the professional School of Law until they have taken a degree after a four years' course in Arts. There is much to be said for this requirement, because the study of the law does require some maturity of mind. On the other hand, there is a good deal to be said on the other side. Some University administrators, including those in the University of Chicago, think that, in the circumstances of to-day, a young person should be able to begin his professional studies at 20 years of age instead of 22 years. They think, as we do here, that some cultural subjects should be made an integral part of the law course itself.

Some leading American Law Schools require that their students shall study some of the subjects comprised in the social sciences—history, economics, political science, or sociology. Yale particularly requires its young lawyers to undertake some study in the social sciences.

It is this emphasis upon the social sciences in the training of the young lawyer in America which prompts me to offer you some reflections of a more general character. In many countries to-day, including our own, the legal system is the chosen agency of social reform or reconstruction. It may, therefore, be useful to outline the process of development of our legal system to its present stage so that we may better appreciate its nature and its tendencies. In attempting this historical outline, I wish to express my indebtedness for much of the material to the writings of Roscoe Pound, who was once the Dean of the Harvard Law School (see, in particular, *27 Harvard Law Review*, 195).

Early Anglo-Saxon Law.

First of all, our Anglo-Saxon system, like the Roman system, had its early or primitive stage. This began some fourteen hundred years ago, after the Romans had left Britain. The early Anglo-Saxon laws were simply devices for keeping the peace. Through a system of composition or bot, they regulated self-help, the blood feud, and private war. There were

some nice adjustments. One of the laws of Ethelbert was:

> If the bruise be black in a part not covered by the clothes, let bot be made with 30 scaetts. If it be covered by the clothes, let bot be made for each with 20 scaetts.

A Welsh law ran: "A person's foretooth is 24d. in value." A law of Ine's ran:

> If anyone take revenge before demand of justice, let him give up what he has taken and pay and make bot with thirty shillings.

In this stage of the law, the State was very weak. It grew in strength by limiting its field to the public peace and by devising, as was permitted by the superstitious thought of the time, modes of trial which were mechanically certain rather than rational—for example, carrying the red-hot iron, being thrown into a pool of water, or the ordeal by battle. Personally, I think the test of the red-hot iron was a little too certain. The verdict was never delayed, and no one had to worry over the question of a new trial or the quashing of a conviction.

The Stage of Strict Law.

In the next stage, which may be called the stage of Strict Law, the keeping of the peace is improved. Justice is administered in the King's Courts. Judges go on Circuit. The jury system is developed. Evidence is given, and reason is applied to the question of guilt. The criminal law is complemented by a civil law, which develops formal procedures to provide remedies in respect of certain transactions. *Ubi jus, ibi remedium.* Much depends on form and ceremony. So, as Coke tells us: "Estates in land begin in ceremony and end in ceremony." The remedies depended on the strict forms of actions of Covenant, Debt, Detinue, or Trespass. If you got within the form, you could have a good case. If you did not, you could not have a good case. You could not get amendment subject to costs. Trusts were ignored. No allowance was made for mistake or undue influence. The full performance of the bond was required. An equity of redemption did not exist.

By way of digression I might add that during this period the lawyers did very well for themselves. They became separated into Church lawyers and lay lawyers. The former carried on the Courts of the Church, and continued therein the ecclesiastical jurisdiction. The latter practised in the Courts of King's Bench, Common Pleas, and Exchequer, which had been established by the reign of Edward I (1272—1307). In the fourteenth century also, the lay lawyers established their Inns of Court, which, in England, took the place of the Universities for the study of English law. But do not imagine that our legal forebears were popular. There is a passage in *Green's Short History of the English People* concerning the character of the great King Edward I which is indicative of the legal spirit of the time. Says Green, of Edward:

> He was never wilfully unjust, but he was captious in his justice, fond of legal chicanery, prompt to take advantage of the letter of the law. He was never wilfully untruthful; his abhorrence of falsehood showed itself in the words of his motto "Keep Troth." But he often kept his troth in the spirit of an attorney . . . Of rights or liberties unregistered in charter or roll, Edward would know nothing.

Nevertheless, this strict period of our law was a necessary step in its development. The rigid forms, though they operated harshly in particular cases, prevented arbitrary action by the State itself. The litigant could have some confidence in equality of treatment.

The Spirit of Equity.

The third stage is that of Equity. This is the stage which corresponds with the Jus Gentium of the Roman Law. In the reign of Edward I, the Chancellor, who was the Clerk of the King's Council, came to sit in his own Court to deal with grievances not remedied in the ordinary Courts—for example, the misconduct of Government officials. The Chancellor then extended his jurisdiction to the Wardship of Infants, to Dower, Rentcharges, and Tithes; later, to relief for fraud, mistake, or abuse of trust. The Chancellor's jurisdiction was based on the principle that the law of man should be according to the law of God. In the Year Book of 4 Henry VII 5 (Henry VII 1485-1509), counsel argued to the Chancellor:

> That there is the law of the land for many things, and many things are tried in Chancery which are not remediable in the common law, and some things are only a matter of conscience between a man and his confessor.

The Chancellor answers:

> I know that every law is or ought to be according to the law of God. And the law of God is that an executor who is badly disposed shall not waste all the goods, &c.; and I know well that if he does so and does not make amends, if he has the power, unless he repents he shall be damned in Hell.

Obviously, under the influence of this spirit, Equity would go far. One result was the establishment of rules for the conduct of trustees so exacting that they had to be modified by legislation. Nevertheless, during this period, great ideas became a permanent part of our system of law. According to Roscoe Pound, four main conceptions were introduced—*viz.*, (i) legal personality should extend to all human beings; (ii) the spirit, not the letter, of the law should be recognized—*e.g.*, the equity of redemption was established, and contracts could be reformed or rescinded on account of mistake; (iii) good faith should be supported; a person who became a trustee must not disappoint reasonable expectations; this obligation was extended to all fiduciary relationships; (iv) one person may not enrich himself unjustly at the expense of another. This is the doctrine behind quasi-contract, constructive trusts, and the remedy of the tracing order in respect of property passing under an *ultra vires* contract.

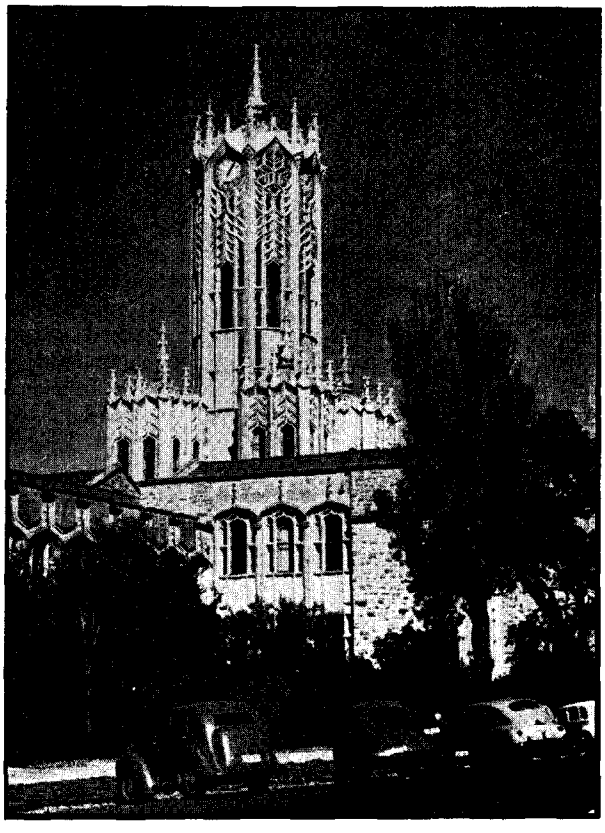
These shining conceptions were due to the bright consciences of high-minded Chancellors, but conscience is a variable quantity, and the workaday world required definite rules. So the Court of Chancery developed its own set of principles, and became subject to precedent.

The Maturity of The Law.

We come next to the stage which has been called "The Maturity of the Law," the law of the eighteenth and nineteenth centuries. It comprises Common Law (including the Law Merchant, incorporated in the Common Law) and Equity. At this stage, the law has progressed, as Sir Henry Maine said, from status to contract. It is regarded as the finished system of a political society. It is regarded as complete and without gaps, needing only the logical development of its existing rules and of the conceptions implied in those rules. Property and contract reign supreme. Every man, regardless of his economic circumstances, is treated as being fully free to make his own contracts, for employment or otherwise, and to own and use all property which comes to him in any lawful way, by work, by gift, or by inheritance. Each person is assumed to have an equality of will, notwithstanding his social

or economic conditions. Though Bentham and the other Utilitarians achieved much mitigation of the criminal law, they were great supporters of this view in the civil law. They conceived of law as securing the greatest good of the greatest number, but they saw no inconsistency between the general good and individual self-assertion, because they assumed that the greatest happiness was to be obtained through the greatest individual self-assertion. The idea was expressed by Sir George Jessel in *Printing and Numerical Registering Co.* v. *Sampson*, (1875) L.R. 19 Eq. 462, when he said, at p. 465 :

> It must not be forgotten that you are not to extend arbitrarily those rules which say that a given contract is void as being against public policy, because if there is one thing which more than another public policy requires it is that men of full age and competent understanding shall have the utmost liberty of contracting, and that their contracts when entered into freely and voluntarily shall be held sacred and shall be enforced by Courts of justice.



Photocraft, Photo.

The Auckland University College.

Under this system of law, Great Britain extended her trade and her Dominions to the far ends of the earth. She made enormous industrial strides, though at heavy cost to the quality of life of her industrial populations. It was this system of law which we received in 1840.

The Spirit of Humanity.

Yet, while this stage of the law seemed to many, including leading lawyers and writers on jurisprudence, to be the perfection of law, the influence of ideas never ceases. Outside legal circles, a new spirit of humanity and philanthropy began to make itself felt. Its origin was largely due to John Wesley, who for forty years, riding on horseback, carried on his religious campaign throughout Great Britain. Writing of him, Augustine Birrell says that Wesley's *Journal* is the most amazing record of human exertion ever penned or endured ; and he concludes his essay with these words :

> No man lived nearer the centre than John Wesley, neither Clive nor Pitt, neither Mansfield nor Johnson. You cannot cut him out of our national life. No single figure influenced so many minds, no single voice touched so many hearts. No other man did such a life's work for England.

To the new spirit of humanity which arose may be largely ascribed the abolition, in 1807, of the slave trade, upon which Bristol merchants had grown rich, and the abolition, in 1832, of slavery itself in the British Dominions. Out of this new attitude came Lord Shaftesbury's Factory Acts, which limited the terms of employment of women and children, and provided for the fencing of machinery and the ventilation and inspection of factories.

Other influences, of course, contributed to the sense of the responsibility of society for individual welfare. There were physical factors. The speed of steam transport on land and sea mingled various classes of people. Clothing styles ceased to be distinctive. Under the influence of Rousseau, who taught that the equality of men should extend even to their clothes, people of good position gave up their wigs, abandoned their swords, and, in place of their knee breeches, silk stockings, and shoes, adopted pantaloons and boots. Much must be attributed to the writings of novelists like Charles Dickens, and to the works and speeches of Socialists like Robert Owen. Karl Marx, too, had his influence. Later came the establishment of national systems of education. The result was that, after the end of the second half of the nineteenth century, the legal system of England and of New Zealand was beginning to serve a very different society from that which it had served previously. The quality of life of each individual was beginning to appear more important than freedom of contract or the right to do what one willed with one's own. Although the law had progressed from status to contract, it was widely thought that it should progress still further by qualifying the claims of contract, to some extent, by the claims of human personality. Legal justice was being contrasted with social justice ; but not by the lawyers themselves. During the nineteenth century, they reformed procedure and brought about the fusion of law and equity, but they remained devoted, for the most part, to the "twin gods," of property and contract.

During the second half of the nineteenth century and the early years of the twentieth century, legislation moulded the legal system to give effect to the new conception. As between employer and employee, the Employers' Liability Act modified the doctrine of common employment, and the Workers' Compensation Acts imposed upon the employer liability without fault. He could insure against it, but, if he did not, he was liable without fault. Statutes regulated still further the hours and conditions of labour. The Truck Acts required the payment of wages in cash. As between debtor and creditor, the Imprisonment for Debt Abolition Acts imposed severe restrictions upon imprisonment for debt. In the field of domestic relations, it became possible to effect life-insurance policies for the benefit of wife or husband and children which were protected from creditors, and, in New Zealand, the Courts were enabled to adjust testamentary dispositions in order to make adequate provision for the proper maintenance and support of the surviving

wife or husband or children. A family home protected from creditors could be created. Thus, towards the end of the nineteenth century, and during the early years of the twentieth century, rights were conferred upon the weaker members of society by the imposition of obligations upon the stronger to the end that the economic position of the weaker members, regardless of a right to make contracts as they pleased, might be safeguarded. The idea of the justice secured by the legal system was achieving a new content. It was further extended when society as a whole undertook the responsibility for small pensions to limited classes of aged people.

During the succeeding years of the first half of the twentieth century, the idea of the justice which should be comprised in the legal system has been extended to such an extent as to amount almost to a difference in kind. As the result of much writing and discussion, it began to be accepted that there were events and contingencies of the human lot which the individual of full age and understanding could not control, but which the whole of society might alleviate. The obvious events and contingencies were old age, infirmity, disease, and the loss of a job without individual fault. The First World War, and the subsequent general economic depressions, materially helped to spread and to impress this idea. The result was an advance from the view that particular classes of people, like employers, creditors, or testators, should be made subject to burdens in the interests of the standard of life of their weaker employees, debtors, or dependents, and from the view that society should provide small payments for limited classes of aged people, to the view that the whole of society should, through its legal system, undertake burdens for the benefit of a minimum standard of life for every member, even though he were of full age and understanding.

The Changing Concept of Justice.

At every stage, our legal system may be described as existing to do justice. But justice is a relative idea, the content of which changes with time and circumstance. As we have seen, justice in our Anglo-Saxon system meant, at first, merely keeping the peace. Then it provided civil remedies through strict procedures in limited fields, which might work harshly but which tended to work equally, even against the Crown and the nobility. There followed the additions of Equity, which regulated rights according to the dictates of good conscience. Then came the shaping of the law round the concepts of property and contract, in order to permit full freedom for the operation of the wills of individuals of full age and understanding, each of them being regarded as equally competent to exercise his will notwithstanding his economic circumstances. Finally, there has ensued the legal control of this freedom for extensive social purposes.

These developments constitute a great extension in the function of the legal system. They go far beyond the view, which has long been part of our system, that persons under some disability of age or mental faculty are entitled to special protection. I have wondered, myself, what is likely to be the influence of these new legal rights for social purposes upon the development of other branches of the law. To think about this, we need to determine what is the underlying interest (value, it might be called) which these rights serve and secure. In my view, this interest may be described as the interest of society in the welfare of the individual, upon the basis that human beings of full age and understanding are of equal value as moral units, but that they are unequal, without their fault, in their ability to meet the needs and the contingencies of human life. I do not know whether anyone will agree with this general statement, but, assuming it to be correct, what is its significance for lawyers? Will the knowledge of this interest affect the judicial process? In some lectures which he gave, the late Mr. Justice Cardozo, of the United States Supreme Court, has gracefully described the operation of the process which is involved in the decision of cases in Court. The process is affected by the philosophy of the Judge. It is affected by the weight which he gives to "logic, and history, and custom, and utility and the accepted standards of right conduct."

Legal Justice for Social Purposes.

Is it possible, then, that this new interest which is served by the law will have an effect, beyond the Social Security legislation itself, in the administration of the law in the Courts? I am not myself sure that this interest of doing honour to human equality and of protecting lack of ability has not been operative for some time past. Being no longer clothed with an official mantle, I may, perhaps, indulge in some thoughts which may be no more than speculative fancies. I wonder whether this interest has not already had an effect, subconsciously, in the view adopted in the highest Courts upon the question whether the plaintiff in a motor-collision case is entitled to hold his verdict. The expressed legal principle is, of course, that the verdict stands if the jury might reasonably have found as they did. The test of reasonableness can vary. To-day, it has been established that it is reasonable to think that a plaintiff may hold his verdict even if he steps from behind a tram in front of an oncoming vehicle (*M'Lean* v. *Bell*, (1932) 48 T.L.R. 467), or walks across the street into an oncoming tram (*Williams* v. *Commissioner for Road Transport and Tramways (New South Wales)*, (1933) 50 C.L.R. 258). Does this show the influence of an underlying conception that human beings of full age and understanding are equal as moral units, but, in the absence of the clearest proof, unequally constituted, through no fault of their own, in their ability to take care of themselves? Is the way opening up for blanket insurance for everyone in the field of tort, and, if so, is it desirable?

Consider the field of domestic relations. Will the underlying interest secured by legal justice for social purposes come to affect decisions under the Family Protection Act? Will the conception of what is "adequate provision for proper maintenance and support" be influenced by it? Will it invade the field of permanent maintenance in the Divorce Court? These are but questions designed to bring out the possible effects of a new interest of a powerful kind, which is secured by one branch of the law, and which is, in my view, capable of affecting the climate of legal opinion. If it does so, no one can tell how quickly it may operate. Think of the change in the attitude of the law in the lifetime of many of us, on the legal effect of illegitimacy. That is an example, I consider, of the operation of the principle of the moral equality of human beings.

The Type of Adjustment Required.

The important thing is to realize the full implications of the new interest. In this respect, the lawyer is concerned as a citizen as well as a lawyer. The principle of the equality of human beings of full age and understanding as moral units can be treated as justifying a classless society in which all property, other than personal belongings, is owned by the State on behalf of all. The Russians have taken this view. Quite apart from the frightful methods which they have adopted to realize their objective, the thesis is open to question. One question is whether the type of government and administration needed to work the system permits sufficient freedom for the individual. Another is whether it will produce sufficient material goods for the needs of all. If the sense of human equality moved every worker to work hard, no doubt it would. But, if not, if special inducements are required to bring about sufficient production, then the questions arise whether, in fact, all human beings, or at least all those of responsible age, are really equal as moral units, and whether, even if they are, special inducements will not produce classes. It is a reasonable conclusion, I think, that, if the implications in the two elements in the new interest which is secured by the legal rights to social security—namely, human equality and the means required to obtain sufficient production from human beings—are pushed to an extreme, they will conflict. In practice, these elements will be found to require adjustment in order to produce the best results with the least friction and the least waste. Adjustment of this kind is nothing new in human affairs. We are continually engaged in reconciling freedom with authority, co-operation with competition.

An American view of the type of adjustment required, put forward by President Conant of Harvard University, is that you may have a classless society in the only sense in which it is effective if you have a society so constituted that any person of full age and understanding, of whatever race, colour, or creed, may freely move, by his own ability, honesty and hard work, from any one position in that society to any other. What adjustment the British or the New Zealand people will work out remains to be seen. I am confident myself that the legal mind can make a substantial contribution to the solution. For the legal mind is part of the salt of society. It assumes orderly, not violent, development. It is governed by relevance, proceeds by logical steps, has regard to the practical situation and seeks workable solutions. It is a mind which is admirably adapted to assist the stable evolution of society.

The Lawyer's Wider Destiny.

So the lawyer has a wider, if not a higher, destiny than he had before. The legal system has become an agency of social reform, and he has become something of a social engineer. To enable him to submit, as occasion offers, sound solutions in aid of the judicial process, he, as well as the Judges, should understand something of the processes of society. His education should give him, not only a technical knowledge of the law, but a broader culture, which should include an understanding of the development of human society. He should know something of the ways in which men have made a living, of the way in which they have lived together, of the progressive steps they have taken in the understanding of their world, and of their long and hard ascent to the mountain-tops of liberty of expression, of assembly, and of worship. He should know, also, something of the philosophies and institutions which are significant to-day. With this equipment, when issues arise in the Courts which affect the stability or independence of individual or family life, he should be the better able to assist the judicial process. With this equipment, he should be the better able to play his part in the wider world where are bred the root ideas which, sooner or later, come into flower as parts of the legal system. In that wider world, he should be able to promote the ideal of the peaceful development of society, so that it may retain what is good in its tradition while it makes room for the alterations which are suggested by the activities of thought or the operations of conscience. Particularly, if he has the time and the aptitude for work in that great formative agency, the educational system, he may materially assist in a task of basic importance to the common weal.

Let me say, then, in conclusion, that in my view the properly trained lawyer has a special contribution to make to the unfolding of the complex future. His work may be done day by day, but, done with equanimity and judgment, in the light of a long view of human affairs, it is likely to be of an abiding quality. There is no profession, except perhaps the teaching profession, which can make a greater contribution than the legal profession to the ideal of a society which adjusts its pressures through peaceful evolution.

The speaker was greeted with prolonged applause at the conclusion of his address.

Mr. Cooke then said:

"As Chairman of this Conference, I thank Sir David Smith on your behalf for his address. We regard it as but another indication of his interest in the profession that he should lay aside his public duties to come up here to speak to us. His address has been of absorbing interest, and will be of great value to us. We shall be proud to include it in the proceedings of the Conference, and we are glad to think that it will thereby become available to those members of our profession who are unfortunate enough to be present to-day. Sir David, I thank you."

AT ELLERSLIE.

Ellerslie at its loveliest, under a warm autumn sun and cloudless skies, the gardens in all their famed beauty, and interesting programmes with Southern interest to make any decisions by the visitors difficult, with no benefit of a right of appeal: such was the delightful offering of the Auckland Racing Club at its Easter meeting, when it extended its hospitality to visitors to the Conference.

To the Club, and in particular to Mr. W. S. Spence, its perennial and most efficient Secretary, go the thanks of the visitors who were the Club's guests. They will long remember those pre-Conference days at Ellerslie.

THE LADIES' MORNING-TEA.

THE wives of those attending the Conference were present at its official opening in the University Hall. After His Excellency's inaugural address, about 250 of the ladies were entertained at a reception in the Cafeteria of the Auckland University College, which was attractively decorated with bowls of gaily-coloured autumn flowers.

The gathering was honoured by the presence of Her Excellency Lady Freyberg, who was accompanied by her lady-in-waiting, Miss Rosemary Eley. Lady Freyberg was received by Mrs. V. N. Hubble, wife of the President of the Auckland District Law Society, and by Mrs. H. R. A. Vialoux, the Vice-President's wife. Among the guests of honour were Lady O'Leary, Mrs. J. B. Callan, Mrs. G. P. Finlay, Mrs. H. G. R. Mason, and Mrs. H. E. Evans. Flowers were presented by Mrs. Hubble to Lady Freyberg.

In welcoming Her Excellency and the visiting ladies, Mrs. Hubble, in the course of a charming little speech, said:

"We are honoured and privileged to welcome to our function this morning Her Excellency Lady Freyberg. I wish to express sincere appreciation, on behalf of this truly representative gathering of the wives of the legal profession of the Dominion, of your interest in our Legal Conference. It is our sincere wish that your association with us will be a very happy one."

Spencer Digby, Photo

Her Excellency Lady Freyberg.

Mrs. Hubble expressed the regret of the Auckland ladies at the absence through indisposition of Mrs. P. B. Cooke, wife of the President of the New Zealand Law Society.

In the course of an amusing reply, Lady Freyberg said she had been really delighted to receive an invitation to the morning-tea:

"At first, when I heard of the Legal Conference opening to-day, I thought it was to be a 'boys' own' party. I was quite pleased to learn that the ladies were to have their own party." Referring to the Ball to be held for those attending the Conference, Her Excellency said: "I have not been to a dance for quite a long time and, if one has ever liked dancing, it does not matter that the years roll on; one still likes it.

"In June, we will have been here three years," said Lady Freyberg, referring to the kindness they had experienced everywhere they had been. She did not wish her stay in New Zealand over, and looked forward to the two remaining years.

"The years seem to be rolling by too fast," she said. "I find myself thinking of the times I used to take my small sons back to school after a day out, and say: 'Well, it's been a lovely day, hasn't it?' And a wistful voice would reply: 'Oh, but Mummy, it's not over yet!'"

Her Excellency recalled an occasion when His Excellency had taken part in the ceremony of unveiling a memorial tablet erected by the Law Society in Auckland. She had realized then how fortunate she had been in forming overseas links with New Zealand during the war years. The Service people she had met had included many members of the legal profession.

Lady Freyberg then spoke of the invitation to the Conference guests to attend a cocktail party at Government House before the Ball, and added:

"It is always a pleasure to us to come to Auckland—which the visitors will see at its best in the perfect weather they are having — and tolive in such a lovely old house. I am sorry you will not see the alterations, which had been planned for the Royal visit, completed; but, if you have had experience of builders—and I am sure you all have—you will know that nothing is ever finished when it is supposed to be. We have lived in Wellington with builders and a chorus of hammers for many a long month. In Auckland, we have not

room to share the house with them, so the work has to be done as best it can be."

Above: Arrival of Her Excellency, accompanied by her lady - in - waiting, Miss Rosemary Eley, and Mrs. Hubble. (Mrs. H. R. A. Vialoux obscured.)

Above: Her Excellency, Lady O'Leary, and Mrs. G. P. Finlay.

The gathering was a very happy one, as it was the first meeting of many of the ladies since the Wellington Conference in 1947. Old friendships were renewed and new ones were begun as the recognitions and introductions proceeded apace.

Surprise at the beautiful weather seemed to be shared by the visitors, whose anticipations of Auckland in the latter part of April were dissipated by the brilliant weather that favoured Auckland during the Conference functions.

After refreshments had been served, four songs were sung by Mrs. W. Duncan.

This initial ladies' function, held in such beautiful surroundings and in brilliant weather, merited all the success which it achieved, and for which the Ladies' Committee, who had for months worked so hard, had hoped.

At Government House.

In the late afternoon of the same day, their Excellencies the Governor-General and Lady Freyberg entertained the members of the Conference and their wives at a cocktail party at Government House. The Chief Justice and Lady O'Leary, the Hon. H. G. R. Mason and Mrs. Mason were the only other guests.

Their Excellencies received their guests in the ballroom, where the tables were decorated with autumn flowers and foliage. A very happy time was spent by everyone. The visitors, in particular, greatly enjoyed the reception, while all present appreciated their Excellencies' kindly thought and delightful entertainment, which was the outstanding feature of the Conference days.

The beautiful grounds of Government House under their spreading oak-trees gave the visitors a delightful introduction to the historic building, which holds such memories of Royal visits and of successive Governors and Governors-General and their ladies for the last eighty or more years. It was a most enjoyable party.

At foot: At the University Cafeteria during Morning Tea. Mrs. J. Morling (Auckland) and Mrs. J. H. Luxford (Auckland).

Photocraft, Photo.

LAW AND THE PUBLIC CONSCIENCE.

By A. K. North, K.C., LL.M.

I am not quite sure that my paper will not be thought, by some of you, to be a trifle provocative, particularly if it follows, as it necessarily does, Sir David Smith's very delightful exposition on the evolution of the law. I have chosen as my subject 'Law and the Public Conscience,' and that, I think, in these days must necessarily be a little provocative.

I selected this subject because it seemed to me that in these critical days it was desirable that this Conference should devote part of its time to a consideration of larger issues affecting the nation. Mr. Churchill recently said:

> We are now faced by perils both grave and near and by problems more dire than have ever confronted Christian civilization even in this twentieth century of storm and change.

Most of us are overwhelmingly aware that this is so.

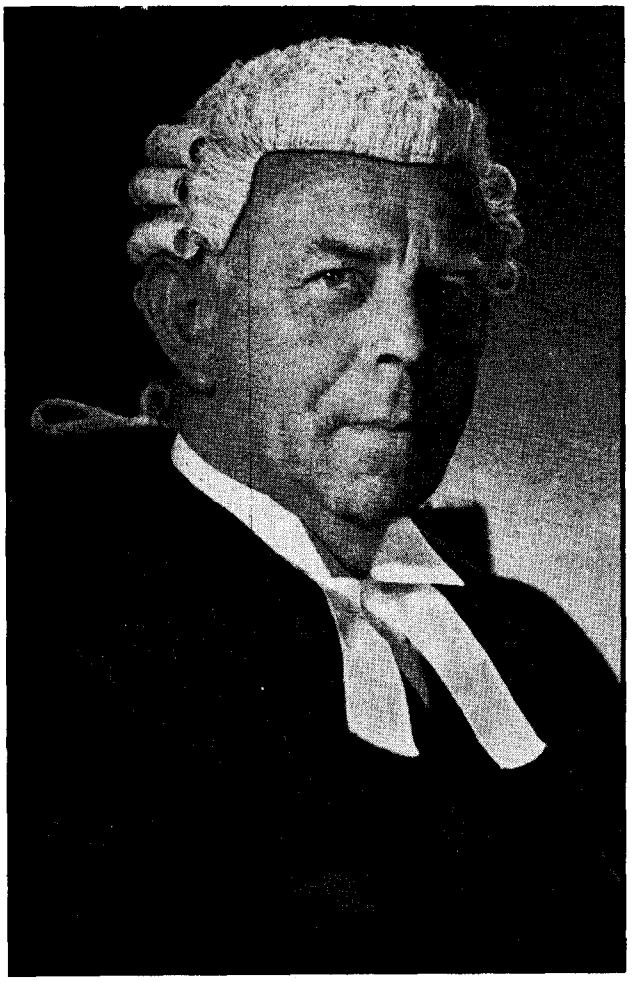
It is now perfectly clear that a gigantic struggle between the forces of democracy and the forces of Communism has begun. It is difficult to see the end. Some things are, however, plain; we must be prepared to meet the challenge from whatever quarter it may come; and, if we are to be adequately prepared, we must renew our faith in our own way of life, and cherish and respect our own institutions. The legal profession has a contribution it can make. A fundamental characteristic of our race has been the Englishman's respect for law. That great legal historian, Professor Holdsworth, has written:

> Ever since Sir Edward Coke applied the medieval principle of the rule of law to the government of the modern English State and made it a fundamental principle of the constitution of that State, this principle has run like a golden thread through the complexities of governmental machinery, and has in the democracies of England and United States been a main preservative of the liberty of the ordinary man against the various sorts of tyrannies which have from time to time risen up against him. In England that principle has done more than anything else to create a law-abiding habit in the nation by making respect for law instinctive.

Every lawyer, I think, would agree that respect for law is on the decline. The process has, indeed, been going on for a number of years. I observe, for instance, that Dicey in the introduction to *Law of the Constitution* said:

> The ancient veneration for the rule of law has in England suffered during the last thirty years a marked decline. The truth of the assertion is proved by actual legislation, by the existence among some classes of a certain distrust both of the law and of the Judges, and by a marked tendency towards the use of lawless methods for the attainment of social or political ends.

We have travelled a considerable distance since those days. Few would contend that our condition has improved. There was a time, within living memory, when most people would have agreed that a breach of law was also an act of immorality. To-day in almost every country in the democratic world some citizens are openly saying things which fall, or nearly fall, within the definition of "treason." Even within our own gates, we see disruptive elements at work intent on undermining the State. On all sides, we see people who either hold certain laws in actual contempt or decline to obey laws which they find irksome or with which they are not in agreement. All lawbreakers in some measure imperil the rule of law.



S. P. Andrew, Ltd., Photo.

Mr. A. K. North, K.C.

Lenin explained the dictatorship of the proletariat in these terms:

> The scientific concept of dictatorship means neither more nor less than unrestricted power absolutely unimpeded by laws or regulations and resting directly on force.

The importance that our leaders attach to the maintenance of the rule of law is emphasized in the Preamble to the North Atlantic Treaty:

> The parties to this treaty . . . are determined to safeguard the freedom, common heritage, and civilization of their peoples, founded on the principles of democracy, individual liberty, and the rule of law.

It is the purpose of this paper to examine some of the causes for our present situation and to suggest some remedies. The active and aggressive lawbreaker can only be dealt with in the criminal Courts. If he is not promptly and effectively disciplined, then we may shortly be living in a state of anarchy. If there be no inclination to deal with him, then law and the public conscience have ceased to be in any way related. I suggest three things are necessary:

First, all people of good will must once again accept the principle that it is immoral to break the law.

Secondly, we must see that the law is adequate to meet new conditions and emergencies.

Thirdly, Parliament must itself recognize limits to legislation.

It is in respect of these two latter matters in particular that the views of the lawyer may be of assistance. Most of us will agree that the Crimes Act is, on the whole, effective to deal with the ordinary criminal. Some people, no doubt, regret a tendency in these days unduly to emphasize the reformative, at the expense of the deterrent, aspect of punishment, but this is a comparatively small matter, in respect of which opinions may reasonably differ. In the field of industrial affairs, on the other hand, matters have reached a sorry state. This is not a matter of politics : it is a national issue.

Modern society is so dependent on the smooth running of business and services that trade-union officials wield enormous power. We have seen over the last few years the most bare-faced attempts to bring about a combination between the great unions with the object of bringing the nation to its knees, so that demands resting solely on force, and not on law, would have to be met. It is gratifying to observe a reaction against these methods. The unions have to a considerable extent begun to take matters in hand. The general good sense of the average man has commenced to assert itself. This is all to the good, but, in itself, provides no adequate safeguard. Anyone who has read anything about Communism knows that it is part of the policy of the Communist Party to gain control of the trade unions. If economic conditions deteriorated, the trade union offers a most encouraging field for the spread of Communism. We could be destroyed—or, at all events, softened—from within.

Many lawyers regard the passing of the Trade Unions Act in England as a grave constitutional mistake, which has impeded the natural development of the common law and rendered it impotent to meet the needs of a new age. It has been called " the triumph of legalized wrongdoing." Be that as it may, we in New Zealand should be in a particularly favourable position to meet the challenge of the Communist. We have adequate machinery in our industrial legislation to settle all industrial disputes. The Industrial Conciliation and Arbitration Act, 1925, had its birth in 1894. It was the first legislation of its kind in the world. As its name indicates, it was intended to substitute in industrial disputes the peaceful methods of conciliation and arbitration for the bitterness, waste, and misery resulting from strikes and lockouts. It gave great power and privileges to industrial unions of workers. For fifty years, as experience called for it, the Act has been amended and enlarged. All political parties have sought to make the Act and the Councils and Court which administer it a perfect piece of machinery for the adjustment of industrial differences.

This statute is the " great charter " of trade unionism. It makes all strikes and lockouts illegal. Yet it has not prevented strikes. To-day, we see some union officials brazenly defying the law and exerting in public every effort to prevent law-abiding union members from going to their work. There are two reasons for this lamentable state of affairs. First, there is a strange reluctance to put into force the existing sanctions provided in the Act, and, secondly, in my view, the existing sanctions are inadequate. The Act, as it at present stands, contains these provisions :

> 123. (1) . . . every worker who is or becomes a party to the strike . . . shall be liable to a penalty not exceeding ten pounds.
>
> (2) . . . every employer who is or becomes a party to the lockout . . . shall be liable to a penalty not exceeding five hundred pounds.
>
> 124. (1) Every person who incites, instigates, aids, or abets an unlawful strike or lockout . . . or who incites, instigates, or assists any person to become a party to any such strike or lockout, is liable, if a worker, to a penalty not exceeding ten pounds, and if an industrial union, industrial association, trade union, employer, or any person other than a worker, to a penalty not exceeding two hundred pounds.
>
> (2) Every person who makes any gift of money or other valuable thing to or for the benefit of any person who is a party to any unlawful strike or lockout . . . shall be deemed to have aided or abetted the strike or lockout . . . unless he *proves that he so acted without the intent of aiding or abetting the strike or lockout.*
>
> (3) When a strike or lockout takes place, and a majority of the members of any industrial union or industrial association are at any time parties to the strike or lockout, the said union or association shall be deemed to have instigated the strike or lockout.

When, one might reasonably ask, was a trade union last prosecuted ? When was a trade-union official last prosecuted for inciting a strike ? When was any union prosecuted for giving financial aid to strikers ? Personally, I have the greatest sympathy for the rank and file of the unions. Their prosecution would achieve little save the very necessary vindication of the law. I suggest that the problem requires to be attacked at its source.

The tremendous power of the union officials must be curbed, in the public interest, just as, in the earlier days, the King was obliged to clip the wings of the great nobles :

> Every man whatever his rank or condition must be subject to the ordinary laws of the realm and amenable to the jurisdiction of the ordinary Courts.

The present law is not adequate to deal effectively with the union official. The Crown Prosecutor in any district will know of the difficulty in securing the necessary evidence, and the penalty in any case is wholly inadequate to act as a deterrent. Some of these individuals have become aggressive lawbreakers, truculent, offensive, and contemptuous of the public interest. I suggest that the time has arrived when the law requires to be altered so that a trade-union official shall be held responsible for the unlawful acts of the union he controls, unless he can establish that he was personally free from responsibility. The onus of proof must be shifted, and the penalty must provide for imprisonment in proper cases. It may be said in criticism that such a provision would offend the rule of law. I do not consider that this is so. Unions can only act by their agents, and, if the union commits an unlawful act, it is not unreasonable that the ostensible agents of the union should be required to exculpate themselves from responsibility. There are ample precedents for such an amendment. Section 124 itself provides one. Section 2 of the Industrial Conciliation and Arbitration Amendment Act, 1943, provides another. In England, it has been found necessary in certain cases to shift the onus of proof in respect of directors of corporations. Regulation 91 of the Defence (General) Regulations, 1939, reads as follows :

> Where a person convicted of an offence against any of these Regulations is a body corporate, every person who, at the time of the commission of the offence, was a director or officer of the body corporate or was purporting to act in any such capacity shall be deemed to be guilty of that offence unless he proves that the offence was committed without his knowledge, or that he exercised all due diligence to prevent the commission of the offence.

Sir Hartley Shawcross, Attorney-General of England, mentioned this change in the law in an address delivered to French Judges and lawyers a year or so ago:

> Hitherto it has been the law of England that before a director or officer of a company could be made criminally responsible for acts committed by the company it had to be shown that he personally had a hand in it—a difficult thing. In Parliament the other day we discussed an alteration which would have the effect in certain cases of making directors guilty unless they proved that they had not been involved. It was suggested that this reversal of the usual onus of proof should be restricted to offences of dishonesty, and not applied to breaches of regulations. But I think my submissions were generally accepted that breaches of regulations established by the State in the interests of the community—black-marketing, for instance—were morally as reprehensible as offences of dishonesty against the individuals.

Only by firm action can the future of the country be safeguarded in time of war, or our personal rights and liberties maintained in times of peace. Sir Frederick Pollock fifty years ago wrote:

> But the State is on the whole prepared to compel its members to obey the law and does on the whole exercise an effective compulsion; that is to say, it will, and can, make compliance with the law preferable to disobedience for most men on most occasions. If this much cannot be affirmed in a given society at a given time, that society is in a condition of political anarchy for the time being, or at least the functions of the State are suspended.

A new form of tyranny has arisen in the community, and steps must be taken to control it. Respect for law must be restored. The law must be made uncomfortable for the Communist or those who walk with him. The State must show its ability to exact obedience to sit laws.

The problem of the citizen who declines to obey laws with which he disagrees presents special difficulty. It is due to many causes, and I cannot within the limits of this paper do more than touch on some of them. There is in the community to-day a changed attitude to law. People of good will and general probity are beginning to argue a case for breaking particular laws which they contend press unfairly upon them. It is plain to most people, and to the lawyer in particular, that some laws no longer bind the public conscience. It has been said that, in a perfect state, conscience and the law would be coincident, the one subjective, the other objective. The common law in the main achieves this desirable result. It is in the realm of statute law that difficulties arise. In earlier days, whatever tyranny existed came from the King. To-day, the quarter has changed. It is now liable to come from party politics—from majority rule supported by an ever increasingly powerful executive. Once upon a time, as the story-book goes, it was true to speak of statutes being passed by the "common consent" of the people. To-day, one or other of the great parties is in a position to impose legislation on a rebellious minority. Dicey in his *Law of the Constitution* has this to say on the matter:

> The justification of lawlessness is also in England at any rate suggested if not caused by the misdevelopment of party government. The rule of a party cannot be permanently identified with the authority of the nation.

I do not wish to be understood to be opposed to party politics or majority rule. The first seems inevitable. The latter is democracy. Both, however, do present peculiar dangers to the preservation of the rule of law. Mr. Attlee recently recognized this when he said:

> The British brand of democracy is not just majority rule. It is majority rule with due regard to the rights of minorities. It means toleration for opposition opinion.

Some of our troubles, so it seems to me, come from paying no more than lip service to this principle.

The times are too perilous for experimental legislation. One of the most impressive things I have read on the function of the democratic state comes—curiously enough, some of you may think—from the pen of Professor Laski, who, in his introduction to Leon Duguit's *Law and The Modern State*, said:

> What then is the State in fact performing? Its function is to provide for certain public needs which are growing each day more various, more imperative, and more numerous . . . A statute is simply the legislative settlement of such a function—the determination that some public need shall be served by government in a certain fashion. Administrative Acts are simply the fulfilment of the statute—the creation of a special situation corresponding to the social need therein satisfied. These are not political in character—that is rather their corruption. They are simply technical operations, which, like any other social act, are submitted for their general validity to the rule of law whence their necessity is ultimately derived.

The first point, then, that I think can be made is that all legislation should be closely examined to see whether it reasonably measures up to the current sense of what is fair and just. If it does not, then it is the corruption of legislative power. Parliament, which is supreme, and "could decree that all blue-eyed babies in the community be destroyed at birth," must itself recognize limits to its right to legislate in a democratic state. To my mind, a striking example of legislation offending against this principle is the Coal Act, 1948. The State, not unnaturally, decided that the time had come when the mineral resources of the country should be State-owned. The State was, however, in an unusual position. It already owned a number of coal-mines. At the very moment the Act was being passed, it was completing the acquisition of still more. It had itself entered into mining leases and covenanted to pay rents and royalties. Yet it flatly refused to pay compensation according to the accepted principles of the Public Works Act. It determined its own price, fixed a formula for a global sum, and left the unfortunate coal-owners to fight it out among themselves for their fair share of the price. I do not think any lawyer, or, for that matter, any well-informed citizen, could justify such legislation.

A second point is that greater care should be taken to see that prohibitory legislation is really necessary in the public interest, and, if necessary, whether over a period of years it continues to be fair. The Land Sales Legislation is a case in point. It is now nearly six years since the Act was passed. In the meantime, prices and wages have risen, in spite of stabilization. Property-owners, in result, as everyone knows, regard the legislation as unfair and discriminating, a situation which is not improved when it is known that the State itself has not hesitated from time to time to acquire for its own purposes properties in excess of Land Sales prices. Sir Hartley Shawcross has claimed that he can see "a developing social sense which makes individuals realize that those things which the State finds it expedient to make *mala prohibita* become therefore *mala in se*." I must confess that I see few signs of a similar attitude in this country. If it is ever to be realized, then plainly prohibitory legislation must be kept within reasonable bounds and be submitted "for its general validity to the rule of law whence its necessity is ultimately derived."

A third point which I suggest can also be made is that there is too close a link between the State and quasi-judicial tribunals. There is still a strong tendency to

avoid the ordinary Courts of the land. Special tribunals seem to be often preferred. Ministers from time to time have to make judicial decisions. Tribunals are set up, the constitution of which cannot be regarded as wholly satisfactory. The Strike and Lockout Regulations provide an example. If they ever were justified, then it was only as a war measure. By their provisions, workers are encouraged to believe that their unlawful acts may pay handsome dividends. In at least one case, a tribunal set up under these regulations made what amounted to a new award during the currency of an existing award, to the embarrassment of the Arbitration Court.

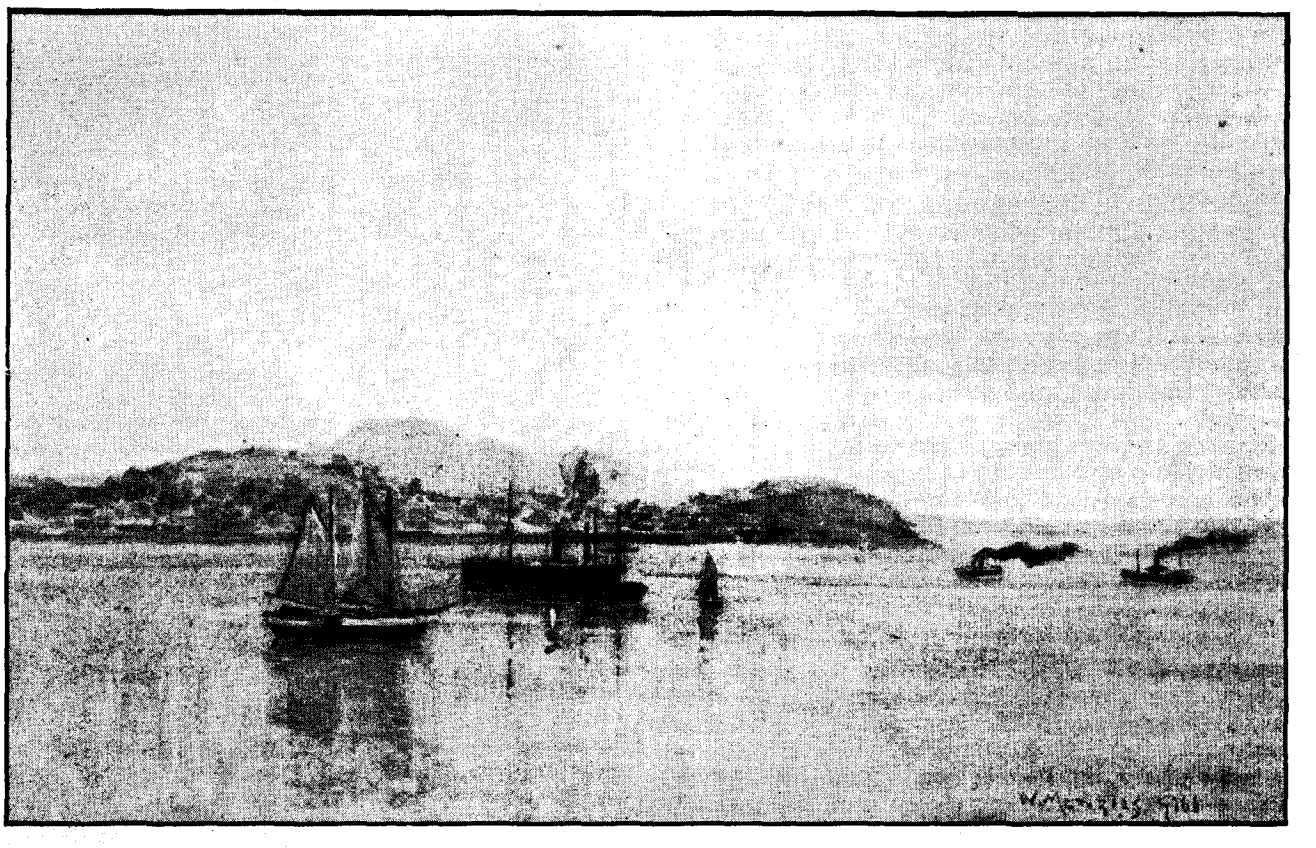
Lawyers are naturally suspicious of administrative law. Most of you will recall that in 1929 Lord Hewart, while still Lord Chief Justice of England, felt so strongly about the matter that he wrote his *New Despotism*, and in final result made himself look mildly ridiculous. Indeed, even that doughty warrior Dr. Allen, in his *Law and Orders*, has felt obliged to say:

> His *New Despotism* was a severe indictment of administrative methods. It attracted a good deal of attention but was marred by several regrettable defects—a tendency to rhetorical exaggeration, and a disposition to find the whole root of evil in an insidious conspiracy by the Civil Service to engross illicit power.

I think it must now be accepted, whether we altogether like it or not, that there are some matters where judicial decisions have to be made in which special technical knowledge is essential. On the other hand, there are grave dangers to liberty and freedom involved. It is plain, in my view, that the lawyer must be for ever watchful to see that matters are kept within reasonable bounds, and outspoken when abuses occur.

The present Lord Chief Justice of England, Lord Goddard, only two months ago, when proposing the toast of "The Law" at a gathering in Edinburgh, said:

> It is on the rule of law that our lives, liberties, and properties depend, but there is at this time, and has been for some time past, a danger that the rule of law will be pushed into the background and administrative action substituted.
>
> I am not speaking in any political sense, because I am far divorced from politics. Each party has been guilty of producing legislation which has that effect, and I recognize it is inevitable in a changing world that some measure of administrative action must be substituted for the decisions of the Courts.
>
> There is a tendency nowadays towards the setting-up of all manners of tribunals—they certainly cannot be called Courts. They do not consist of lawyers, but generally have a clerk who is a lawyer to guide them. They know nothing of the theory of law, and have no experience about evidence.
>
> Unlike the Magistrates' Courts in England, these tribunals are not controlled by methods of appeal. The High Court cannot control them, and no provision for appeal is made. They administer a law and procedure of their own, and I think there is a great danger in them.



From the watercolour by W. Menzies Gibb in the possession of Mr. J. P. Kavanagh.

At Auckland: The Conference City.

This well-balanced statement by his Lordship puts the position, if I may say so with respect, in true perspective.

No possible good will accrue from a wholesale condemnation of administrative laws. The times are against us. The business of Government has become much more complex, and these new trends inevitably will continue, if they do not expand. Recognition of the dangers attendant on this new age, however, is of the gravest importance to the community. Government and Departmental regulations are not so far removed from the decrees of dictators that we can afford to be complacent. If administrative law is to continue to

expand, then the time must shortly arrive when it will be necessary to insist on the appointment of an appellate tribunal of independent status, so that citizens may be assured that their matters are dealt with fairly, and without political bias. It is not sufficient that justice should be done; it is equally important that justice should appear to have been done.

It will not be easy to stem the tide in restrictive legislation. The planners seem to be upon us, "with their insatiable appetites to control other people's affairs." It is to the lawyer that the community is entitled to look for a lead. I believe that, if we are so disposed, we can perform a real service to the nation. It is difficult to see how democracy can long flourish in a strait-jacket. The price of liberty, it has often enough been said, is eternal vigilance. I invite you to consider these matters. Our whole training encourages us to seek the truth in a practical way, without fear or favour, and, if we are satisfied that we know the truth, then we have a duty to stand firm and "hold the pass."

The President said: "I am sure we are all gratefu[l] to Mr. North for his forthright and courageous paper. It is now open for discussion."

A discussion on Mr. North's paper then took place.

MR. H. E. BARROWCLOUGH (Auckland): "If I venture to address this gathering, it is not, I hasten to assure you, due to any sense of provocation from my friend, Mr. North. On the contrary, I find myself in strong agreement, and I only rise to emphasize and, if I can, to support him in his contention that, after all, it is the public conscience that is so important in the matters which he discussed. It seems to be in the nature of the human kind that, whenever anyone attains supreme power, there is an almost irresistible tendency to abuse it.

"As Mr. North mentioned, at one stage the tyranny came from the King, and it was restrained in the long and glorious pages of British history by successive risings of the people. The insurrection of the Barons that resulted in the Magna Carta was not only activated by the wishes of the Barons, but was supported by the rank and file. That is the only solution, the only safeguard or check, on the unhappy tendencies which have been so ably reviewed in the address just given. This is a most important thing. We have no longer any fear of tyranny from the Throne, but we have a fear of tyranny from some of our more democratic institutions.

"I want to give one or two instances. It is well known to everybody in this room that, although some of our industrial legislation enacts penalties and sanctions for those who instigate or carry out a strike, yet in many cases a prosecution for that offence cannot be laid by the ordinary individual, even by a person who is very grievously injured by the illegal strike. Members of this body will know that in many cases the only way in which a prosecution can be brought is by the leave of the Inspector of Factories or some such official, and the granting or withholding of his leave is dependent on instructions from the Government. This is an appalling state of affairs. In most criminal matters, the ordinary citizen can himself instigate proceedings, although he may run the risk of being called a common informer. But in that particular branch he cannot do it without the prior consent of a Government official, and that is dangerous.

"I notice in this morning's *Herald* that some gentlemen who hail from the West Coast of the South Island are perturbed lest the law as to closing hotels may, for some reason, be enforced there. I am not concerned about whether the West Coast miners should be able to get a drink after hours, but with the fact that the rest of the community tolerates this sort of thing without a feeling of indignation. If this were based only on the very selfish motive of 'Why should they have privileges?', or 'What is sauce for the goose is sauce for the gander,' it would not be so bad; but I find no public conscience protesting against it, and that, it seems to me, is a regrettable feature, because the law can never stand, and can never be maintained, unless the public conscience supports it.

Sparrow Industrial Pictures, Ltd., Photo.

Mrs. V. N. Hubble,
Hostess at the Conference.

"That state of affairs is not limited to our domestic sphere alone. We have instances of it in the international sphere. I might remind members of the number of lawless acts committed in the international realm: the occupation by the Germans of the Rhineland, a demilitarized zone—there was no public outcry against it; the intervention of Japan in China in what was called 'the China affair'; the rape of Abyssynia. As I read current history, all those facts were appreciated by the politicians who were supposed to guide the destiny of the country, and they failed to take the appropriate action. And why? The real reason was because there was no public outcry from the people. The public conscience was not shocked. The gross unpreparedness for the war that has now supposedly ended was

due also to a failure of the public conscience to recognize what was morally right and what was morally wrong.

"That is ample support for the theme which Mr. North so ably developed. He said that the State must enforce obedience to the laws, and, with great respect, I heartily agree. But by what means can we compel the State to do this? I suggest that one of the most important ways of enforcing that obedience of the State to its own laws is the existence of a public conscience, and it is the function of the lawyer in the community to investigate and to inform that public conscience. It is notable that in the Courts that public conscience is always maintained. There have been no occasions when the public doubted the strict morality of the Court's decisions. It is unfortunate that so many matters that would be simply, lawfully, and rightfully dealt with by the Courts are so often delegated to other tribunals, who have not behind them the traditions they should have, or the independence of thought that the Courts have, and as a result we have often suffered. I suggest that we could not do better than support wholeheartedly the suggestion that is implicit in the title of the address: 'Law and the Public Conscience.' It is the public conscience that is the only upholder of the law."

MR. F. C. JORDAN (Auckland): "I have heard with great interest the paper read by Mr. North, and I agree that the law should be upheld. But the question does arise whether it was wise for the Legislature to enact that, whenever a decision of the Arbitration Court has been given, the parties must, in all cases, continue the relationship of employer and employee. After all, the general principle of contract is that parties shall be bound only by mutual consent to continue the relationships of employer and employee. In our profession, we do generally exercise the right of saying whether or not we will undertake particular legal work. In all industrial disputes there are three parties concerned—the employer, the employee, and the public. If, instead of making all strikes and lockouts illegal, the State had the right or power of saying to every section of the community, 'There is a minimum service which you must render,' then we might have a principle more acceptable to the public conscience. If an obligation of rendering only services essential in the public interest was placed upon workers in every sphere of industrial and social life, we might avoid much industrial strife, as well as act on a principle more consistent with British liberty.

"As to the new tribunals of which Mr. North spoke, some of them are not an unmixed blessing. Many of them—the industrial Courts, for example—are far less formal, and the public are less fearful in appearing before these Courts than before the ordinary Courts of the land. In the latter Courts, there is the publicity that is so alarming to many people. It may be that, if in the Courts of the land there was publicity only when required in the public interest, the public conscience would be much more at ease."

DR. A. M. FINLAY, M.P. (Auckland): "We have been very fortunate to-day in being able to listen to two remarkable addresses, remarkable both in themselves and for their contrast. Someone said to me that Sir David Smith's address must have been the product of long hours of work. That is probably right. It is even more the product of a life-long devotion to a liberal philosophy. Mr. North's paper, again, is the expression of his particular social philosophy. It would describe Sir David's philosophy as democratic liberalism, and Mr. North's as democratic conservatism. Unlike the people of less fortunate countries, particularly in the Northern Hemisphere, I think about 95 per cent. of our population would be able to accommodate their political beliefs within the limits of these two philosophies. Apart from a lunatic fringe, we do not range from far right to far left. To discuss the merits of this would carry me too far into politics, but it struck me as significant of Mr. North's outlook and approach that the two cases he cited as being ones where a harsh law justified opposition were ones affecting property, and the one where he called for more rigorous application of the law affected workers.

"I should like to have the opportunity of commenting on three phrases I jotted down as Mr. North was speaking. Mr. North said that New Zealand should be particularly suited to combat Communism. I would go further, and say that New Zealand is particularly suited to combat Communism because there are a number of people whose basic philosophy is that of Sir David Smith's, who see the law as a social instrument to be moulded and bent to the changing needs of the times. We are a fortunate group of people; in addition to being materially well-endowed, our whole history has been in the hands of men who, for over a hundred years, have been willing to make changes. Which leads me to my second point.

"Mr. North said that the times are too perilous for experimental legislation. The times are always perilous for experimental legislation, but no time is too perilous for it. If we are to wait for normality—or normalcy, as the Americans call it—before any legislation of an experimental nature is embarked on, it will never happen. The more extraordinary the times, the greater the need for experimental legislation. We have a name for experimental legislation, and I am very proud of it. No legislation has been more experimental than the Social Security scheme. That, I believe, is now firmly embedded in the framework of our life, and I do not think even Mr. North will say that it, or something of its kind, was not a wise move. The times were not too perilous for that. Had the Act not been passed then, the times would have been even more perilous, and such legislation tends to make the times less perilous. One more quotation from Mr. North's paper: he reminded us that the price of liberty is eternal vigilance. But vigilance for what? Surely not just vigilance to preserve old and outmoded forms. I would say that the vigilance we must exercise is to see that our legislation is gradually moulded to the needs of the time, and that the law is in truth a social instrument to be used in the social science of which it is part."

The President declared the discussion closed, and said: "We are all very anxious to hear what Mr. Dacre has to say to us about tenancy."

An Appreciated Gesture.—The visiting ladies had much to say of their initial welcome to Auckland. As each visitor arrived at her hotel room, she found awaiting her a large sheaf of flowers, the gift of the Conference Committee. This thoughtful gesture was as delightful as it was unexpected. It was greatly appreciated.

COMMENTARY ON TENANCY LAW.

By S. R. Dacre, LL.M.

THE importance of tenancy law in the social progress of our country cannot be questioned, yet no other subject at the present time is fraught with difficulties so many and so varied. Last year Mr. Justice Gresson in *Bilderdeck* v. *Manson and Barr, Ltd.*, [1948] N.Z.L.R. 58, 61, aptly quoted Lord Justice Greer (in *John Lovibond and Sons, Ltd.* v. *Vincent*, [1929] 1 K.B. 687, 694), in reference to our Fair Rents legislation. Greer, L.J., said :

> There seems to be no end to the conundrums suggested by the . . . Acts, and I suppose that there will be no end to them until those Acts disappear from the statute book.

The Fair Rents legislation, and in that term we can include all the statutes and rules from which the Tenancy Act, 1948, has evolved, is uppermost in the minds of lawyers and laymen alike when they think of tenancy law. Indeed, it is the source of a great part of the litigation on the subject, but there is a wider cause—namely, the fitting of old conceptions to a new way of life generally—that has given rise to this legal unrest.

There are from forty to fifty cases a year being reported from superior Courts in England and about fifteen or sixteen a year from our Supreme Court, and as many from the Magistrates' Court. That is a very high incidence, and warrants thought on the part of lawyers at a time such as this.

Claude King, Photo.

Mr. S. R. Dacre.

The long and varied history out of which tenancy law has evolved has made it what it is—a mass of separate rules capable only of arbitrary classification, as Foa found when he compiled his work on the subject in 1891 : see *Foa on Landlord and Tenant*, 1st Ed., Preface.

My first point is that without a knowledge of the history of the rules we cannot proceed certainly or safely. The relationship of landlord and tenant is a foster-child of feudalism. It has been recognized in the common law in a more or less precise form since our first classical writer on English law, Ranulph de Glanvil, administered justice for King Henry II. In those days, it was only a covenant for a term in land. There were undoubtedly, outside the free tenures, tenancies of uncertain duration also, but the precarious nature of such interests found but vague expression in recorded litigation or legal writings. Within about half a century of Glanvil's death, Henry de Bracton was able to describe a new writ that had been invented by a Judge Raleigh to enable the termor, ousted from land, to recover that land against the covenantor, and, more dubiously, against others. Although it took two and a half centuries to perfect the termor's rights, from Bracton's time we can regard the lease as consisting of the two elements, covenant and an estate in land—a chattel real.

Let us see how important this early history can be. Seven hundred years later (1945), the House of Lords in *Cricklewood Property and Investment Trust, Ltd.* v. *Leighton's Investment Trust, Ltd.*, [1945] A.C. 221 ; [1945] 1 All E.R. 252, was able to distinguish the two elements, but it is significant that the Law Lords did not agree as to their relative values and implications. The effect of the judgments of the Lord Chancellor (Viscount Simon) and Lord Wright was that the contract in a lease was so far distinct from the tenure that it could possibly be subject to the doctrine of frustration. In one of the two dissenting judgments, Lord Russell of Killowen states (at pp. 233 ; 258) :

> The contractual obligations . . . of each party are merely obligations which are incidental to the relationship of landlord and tenant created by the demise.

And later (at pp. 234, 235 ; 259) :

> The cesser or suspension of some contractual liability under the lease will not destroy the estate in land which is vested in the lessee, unless the lease provides that in that event the term of years shall cease.

Frustration could not apply, as the contract was merged in, and subsidiary to, tenure. Lord Wright's judgment is to an opposite effect. He says (at pp. 236, 237 ; 260, 261) that the estate in land is :

> limited and determined by the *contractual terms* of the lease and is governed by the agreement between the lessor and the lessee.

It would appear from this language that he regarded as separate the two legal conceptions, contract and

tenure, but he immediately qualifies his view as follows (at pp. 237 ; 261) :

> It may be that in earlier days the element of covenant bulked sometimes more largely in the eyes of the law than the question of tenure.

And he fixes the era to which he refers by citing *Paradine* v. *Jane*, (1647) Aleyn 26 ; 82 E.R. 897.

The Relationship of Landlord and Tenant.

We thus have, at this late stage in the development of the relationship of landlord and tenant, a lack of unanimity as to the first and fundamental principle underlying that relationship. Apart from the reference of Lord Wright to *Paradine* v. *Jane*, the historical background of the lease was not mentioned. If it had been, the two legal rights would have stood out separately, and I feel that the judgments of Viscount Simon and Lord Wright would have been strongly fortified against the two dissenting judgments. It is interesting to note that, even up to late last century, H. W. Challis, the authority on Real Property Law and its history, deemed that " tenure " was not the proper word for a leasehold interest : (1890) *6 Law Quarterly Review*, 69. The relationship of landlord and tenant has travelled through the ages in a borrowed vehicle, but it has not always travelled well.

The *Cricklewood* case shows that the first move to reduce the chaos to order is to understand the history of the law. I am prepared to go further : I will submit that useful criticism of the law on the subject involves a knowledge of the social conditions which form the background of that law and the individual rules that comprise it.

I realize that in making this statement I may be disturbing the sensibilities of those more technical lawyers, if any there still be, who, in the spirit of John Reeves, the legal historian of the late eighteenth century, may believe that little is to be acquired by travelling out of the record—and by record he meant the Statutes, the Year Books, the Parliament Rolls, and the law tracts. The Reports were then too naked new to be considered for legal history.

My historical inquiry, legal and social, to be answered fully, would involve a recapitulation of the different kinds of tenancies in recorded history, and the social background involves the purposes they served. It will suffice to recall that, from the time that the term of years had ceased to be used by the Christian moneylender in order to escape the earthly ignominy and purgatorial tribulation of dying in usury, it became the fair holding of the farmer tenant. To the moneylender we can ascribe the real cause for the lease being a chattel interest. He paid the imperious landowner a sum of money and took a term in possession of land to recoup the advance. The lease represented capital, and was the forerunner of the mortgage.

" Capital," " chattel," and " cattle " all derive from Latin *capitale*. But from the thirteenth century, when agricultural terms became common, both the term of years, or lease, and the tenancy of indefinite duration have come hand in hand down the ages, serving the fundamental purpose of satisfying a *contract* between landlord and tenant, whereby the tenant has a time in the land for agricultural and pastoral purposes in consideration of something rendered—a rent—in return. I leave aside the special uses of the term of years as at present irrelevant. Until statutory tenancies arose, without the element of agreement, a person was a trespasser, not a tenant.

In detail, the agricultural tenancy in England has been the subject of much statutory law and litigation, and it is not without reason that the modern farmer tenant has been dubbed the darling of the Legislature. He certainly was receiving statutory assistance while the Plornish family remained at the *entire* mercy of the patriarchal Christopher Casby. Plornish, you will recall, was the creation of that inimitable legal historian, Charles Dickens, in *Little Dorrit*. Plornish's plight was a direct legacy of the Industrial Revolution, and his tenancy in Bleeding Heart Yard is the direct and humble ancestor of the dwellinghouse of our Tenancy Act. Plornish muddled along in his slum while Baron Parke spluttered over the niceties of lease by estoppel. Casby is the calm, unruffled, and detested investor, whose interests the law fully protected.

Statutory Restrictions.

If the question were asked now, " What is the purpose of tenancy legislation ? ", the answer would assuredly be : " To keep a satisfactory roof over the head of every person in the State ; to assist a continuity of employment to every person who works independently or as an employee." That is the general purpose. Some might call it an ideal.

To this end, the law of landlord and tenant, sired from analogies to feudal tenure out of agreement, nourished by doctrines of individualism and *laisser-faire*, and nursed in a cradle of outworn procedure, has had superimposed on it a cloak—I could almost say a shroud—of statutory restrictions. But, like the old soldiers, the common law never dies. It lies dormant, to be resurrected, welcome or unwelcome, to fill the interstices which the Legislature has left unnoticed. The observation is elementary, and applies to general as well as to particular legislation. As an example of a general amendment to tenancy law, s. 16 of the Property Law Act, 1908, is interesting.

In 1883, the tenancy from year to year was abolished in New Zealand. A tenant who held over on termination of a lease, and paid rent, became a true common-law tenant at will. That was a step back to the sixteenth century. A knowledge of the social cause for tenancies at will being superseded by yearly tenancies would have saved that mistake. In 1885, a further amendment stipulated for one month's notice in writing to terminate the indefinite tenancy, and the Court in 1899 in *Tod* v. *McGrail*, (1899) 18 N.Z.L.R. 568, held that the statutory provision abolished all tenancies by implication of law, and substituted one definite rule for determination. A later alteration of the wording by introducing the words " at the will of either of the parties " when the Property law was consolidated in 1905, was held in *Heron* v. *Yates*, (1911) 31 N.Z.L.R. 197, not to affect the position. Why were these words added ? They have kept alive the argument, if not the opinion, that the implied monthly tenancy carries with it attributes of a common-law tenancy at will. That is not the general result. By attraction, no doubt, to the more usual form of contractual period tenancy, the implied monthly tenancy follows the pattern of the former, which consists of a springing interest, determinable only by a proper notice to quit. The analogy, in face of the wording of s. 16 of the Property Law Act, 1908, is based more on expediency than on logic. Judicial sense for several generations, both here and in England, appears to have made no distinction between a continuing tenancy, determinable on notice at any time, and the succession of springing interests, determinable by notice expiring

on a rent-day. This development is sound in the light of social application. Section 16 as it has been interpreted is general in its application, and has been absorbed into the common law. And yet some elements of the old tenancy at will seem to cling—*e.g.*, on assignment of an implied tenancy without the landlord's consent.

The law as to notice to quit is a fine example of how unassailable legal reasoning can o'ervaunt itself and lose touch with life. Originally, such a notice had to be reasonable. Later, we find that, to be reasonable, it must be of a certain length, acknowledged by law, and, in the case of a yearly tenancy, expiring on a particular day. As applied to a farm let from year to year, the rule is reasonable enough. The farming programme and seasonal work made the rule necessary, and that was the cause of its origin. Without the rule, difficulties as to emblements and other matters arose. But the application of the same rule, without considering the social purpose, to a monthly and also a weekly tenancy marks an outlook which future generations must regard as quaint. Judicial authority as to short tenancies was not settled until the famous *Queen's Club Gardens Estates, Ltd.* v. *Bignell*, [1924] 1 K.B. 117, but that case appears to hinge entirely on a technical view. The decay of the institution is certain. Section 16 of the Property Law Act, 1908, which allows the notice to be given at any time, has been found satisfactory in practice, and parties frequently contract to the same effect. The entire replacement of the rule for short tenancies by one similar to that set down by s. 16 would, I submit, clear the air for all practical purposes. But that is now a matter for the Legislature. The date of determination of the tenancy should be certain, but the certainty is more notional than actual under a notice to quit in the inelegant alternative form that has been approved by judicial authority both here and in England. A closer regard to the social purpose which the law served when the rule was introduced might have led the current of judicial thought along more realistic lines.

It is difficult, yet, to say if the general trend of social life from individualism to collectivism will find some permanent expression along the lines of our Tenancy Act. Mr. Jenner Wily says in his little book, *The Tenancy Act, 1948*, that the Act is no longer temporary legislation. He is there referring to the absence of a time-limit in the Act itself. That concerns the practitioner in the office, but in conference we are concerned with the future as well. Whatever the future has in store, it is important for lawyers to bear in mind that the Tenancy Act, affecting as it does particular tenancies, can never be anything but a superstructure on the common law. It does not sweep away common law, but merely makes it unenforceable in part. Out of this state of law has arisen the statutory tenancy held by a statutory protégé, who depends, not on contract —he does not agree with the landlord or the landlord with him—but on his statutory status of irremovability : *Bilderdeck* v. *Manson and Barr, Ltd.*, [1948] N.Z.L.R. 58. Thus, a statutory tenancy needs a contractual tenancy outside the Act to support it. This conception obtains by social facts even in the apparent exceptions under ss. 40 (sub-tenants) and 41 (on death of a tenant).

The method of fitting the tenancy law to the national needs demands some attention in its details.

Access by the Landlord.

I submit that the legislation, including the Tenancy Act, 1948, has been prepared to some extent without due regard to pre-existing law and the necessity that the law should be certain. There has been too great a tendency towards trial-and-error legislation, from our point of view. Certainty is lost through short-sighted provisions. Here is an example. In 1938, a curious amendment was passed, making it a condition of a tenancy to which the Fair Rents Act, 1936, applied:

> that the tenant should afford to the landlord access to the dwellinghouse and all reasonable facilities for executing therein any repairs which the landlord was entitled to execute.

This amendment was copied from the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 (10 & 11 Geo. 5, c. 17), overlooking the fact that in 1923 the British Parliament found it necessary to define what repairs the landlord was entitled to execute. The effect of our amendment would appear merely to remove the old bar to the landlord entering on the premises: *Barker* v. *Barker*, (1828) 3 C. & P. 557 ; 172 E.R. 544. The amendment thus opened up an uncertainty that had been latent since a lease became an estate in land. Given the right to enter on the premises, the landlord could well argue that he had a right to do all repairs which the tenant was under no obligation to do, or, being under obligation, had failed to do. One point here is that carelessly enacted legislation left a matter in doubt which should not have been left in doubt. Another is that a knowledge of legal history is necessary to perceive the discrepancy. The question arose in one unreported case in the Magistrates' Court, giving rise to a dictum that the landlord could only affect repairs under statutory obligation. On the other hand, it has been widely assumed that the landlord could effect any repairs, as distinguished from improvements. The matter is not entirely closed. Under s. 43 (1) (*c*) of the Tenancy Act, 1948, in every tenancy the following condition is implied :

> *The landlord . . . shall be entitled to enter the premises* . . . for the purpose of inspecting the premises or effecting repairs or renovations thereto.

No definition is given of repairs and renovations. This is an example, too, of how disappointingly vague the provisions are. The point is a practical one, since, after doing repairs and renovations, the landlord may apply for an increase of rent, and, with the aid of persuasive counsel, might renovate his tenant out of the property.

Abatement of Nuisance.

Again, in s. 43 (1) (*c*), the landlord is required to abate any nuisance within the meaning of the Health Act, 1920. The nuisance complained of might be caused by the tenant, so that both landlord and tenant could be in the position of having broken the conditions of a tenancy through the same state of facts. No provisions could have been more calculated to set landlord and tenant at one another's throats. May the conveyancer enter a caveat against s. 43.

It is regrettable that the Tenancy Act imposes such petty obligations of commission, as opposed to omission, and that thereby whole sections of the community are affected, in order to eliminate the transgressions of a small minority. May I mention, in passing, the obligation to keep a rents register, and also to enter the dates up to which rent is paid, on receipts. The first is almost a dead letter, in my experience, and the second merely shows up the average accident complex in those writing receipts. These are no doubt matters of Government policy, but we see how trivial they are in practice, and how productive they can be of petty and needless dissension.

Vagueness of Expression.

In too many cases, when we come to grips with a problem under the Fair Rents Act and the Economic Stabilization Emergency Regulations, we experienced *vagueness* of statutory expression, sheltering behind an ever-extending discretion of the Bench. We had hoped to find in the Tenancy Act some respite from the everlasting difficulty which we share with our clients: lack of uniformity throughout the country, no means of assessing the value of a set of facts, finally taking the case to Court and hoping to goodness for a Bench with whose decisions we are acquainted.

In a very recent case (*Jewellers' Chambers, Ltd.* v. *Red Seal Coffee House, Ltd.*, [1949] N.Z.L.R. 204), the Supreme Court considered s. 9 of the Tenancy Act, 1948. The headnote as it appeared in the New Zealand Law Journal sounds like something from *Alice in Wonderland*:

> The direction in s. 9 (1) that, on the hearing of any application to fix the fair rent of any dwellinghouse or property (not being licensed premises), the Court must have regard to the general purpose of the Economic Stabilization Act, 1948, is merely a general direction, subordinate to the more precise directions given to the Court by the other provisions of that section . . . Apart from that general and subordinate direction, the requirements of s. 9 of the Tenancy Act, 1948, with respect to the hearing of applications to fix the fair rent of business premises are as follow: The Court must determine what, in the circumstances of the case, are "relevant matters." Even if, in its opinion, the relative circumstances of the landlord and the tenant are, in the case before it, within the category of "relevant matters," it must exclude those circumstances from its mind. If, on a consideration of all relevant matters which it is permitted to consider, it is of opinion that the "fair rent" should exceed the basic rent, it must then proceed to classify the relevant matters into (*a*) special circumstances (if any); and (*b*) other relevant matters. Having distinguished the "special circumstances" from the other relevant matters, it must then, on evidence produced by the landlord, assess the value of those special circumstances and determine whether they justify any increase above the basic rent, and, if so, the amount of the justifiable increase. The term "special circumstances," as used in s. 9 (2) of the statute, are those circumstances of a case that are peculiar to if; and, in relation to applications to fix the fair rent of business premises the term is used to distinguish such peculiar circumstances from the normal or ordinary circumstances common to such tenancies.

All that to be taken into consideration, to arrive at a "fair rent"! Or is it to tell the landlord he cannot have a rent that is fair?

Practical Difficulties.

A burning question which is not without difficulty is the effect of s. 19 of the Tenancy Act, 1948, on the admission of a partner into a business where a premium is paid. Is the consent of the Land Valuation Court required? It has been suggested that, as among legal gentlemen, the problem is purely academic. But a gentleman does not induce another gentleman to do an unlawful act, except it be in the cause of honour, perhaps. The point could arise on a prosecution for an offence under s. 19 of the Act, or a claim for return of the premium paid. It could also be raised as to a Land Valuation Court application, if jurisdiction were questioned. The answer is to be found in a consideration of what mischief the section was intended to remedy—the spirit of the legislation. Some change in a tenancy is contemplated. On admission of a partner, there need be no change in a tenancy. The new partner need have no *locus standi* as tenant, and, when the time comes that he must take the responsibilities of a tenant, it will be on another "occasion." Even if there is an assignment of the tenancy, or a new tenancy, the words "any business" in the section must be construed. Do those words also include a "share in a business"? If they do not extend to a share in a business, then the section does not apply. I submit that the admission of a partner to a business was not contemplated. Had the Legislature considered that partnership interests could be abused to circumvent the section, they would—or, rather, should—have been more explicit.

One more example of the working of the Act in practice: Section 25 (1) re-enacts the provisions as to alternative accommodation and hardship when, *inter alia*, a landlord claims possession of premises for his own occupation. The proviso states that the subsection does not apply to an application for an order in respect of a dwellinghouse on the ground stated, made by a landlord who has owned the dwellinghouse throughout the period of five years immediately preceding the date of the application. Before the passing of the Tenancy Act, the landlord could recover possession on offering satisfactory alternative accommodation. The effect of the indulgence to landlords, as it was intended to be, has been to throw the issue back on to the consideration of comparative hardship alone. Again there is vagueness, and, wherever that attribute is, injustice is hard on its heels.

Conclusions.

So far, I have given destructive criticism of our tenancy legislation. This has been with a constructive purpose in mind. But, before I submit my purpose, by way of conclusion, I hasten to add that the Tenancy Act is a definite improvement on its predecessors, but is still in the experimental stage. There has been some careful attention to the existing and imposing body of case law that has collected round it. No small part of the credit for the improvement goes to the Council of the New Zealand Law Society, but the Council deserves more credit than has been expressed in the Act. With these comments, I submit my conclusions:

(i) To maintain the fundamental strength of the common law in tenancy cases, lawyers must, in treading virgin soil, go beyond the record to a consideration of the social purpose served by any rule of law; and, to this end, the history of the rule, and also its historical social background, are relevant.

(ii) By such an attitude in the development of the common law, the sequence of principle and the art of the Bench can be in closer touch with the needs of society. If the common law remains technical and uncertain in these fast-moving times, it must, in great part at least, succumb to experimental philosophies which are for the most part gropings in the dark for a better way of life. We should not undervalue philosophies outside the law, as indicated by Sir David Smith this morning, but ideas emanating from them are, and should always be, in our system of law, absorbed through the purging influence of detailed practical application.

(iii) The Law Society should place on the agenda of the Law Revision Committee the question of amending the property law affecting tenancies in general, in order to remove the many uncertainties that now exist. The house is not in order, but it is not a new idea to put it in order by a well-considered statute.

(iv) Many unjust results of the Fair Rents legislation indicate that the Legislature has not made the fullest use of the assistance available from the legal profession through the medium of the New Zealand Law Society. It is not within our power to demand that the assistance be accepted, or even sought, but the cause of justice demands it, and we should show our willingness to give the assistance.

The President said: "I know you all wish me to express to Mr. Dacre our thanks for his thoughtful paper on a troublesome subject." There was no discussion.

REMIT.

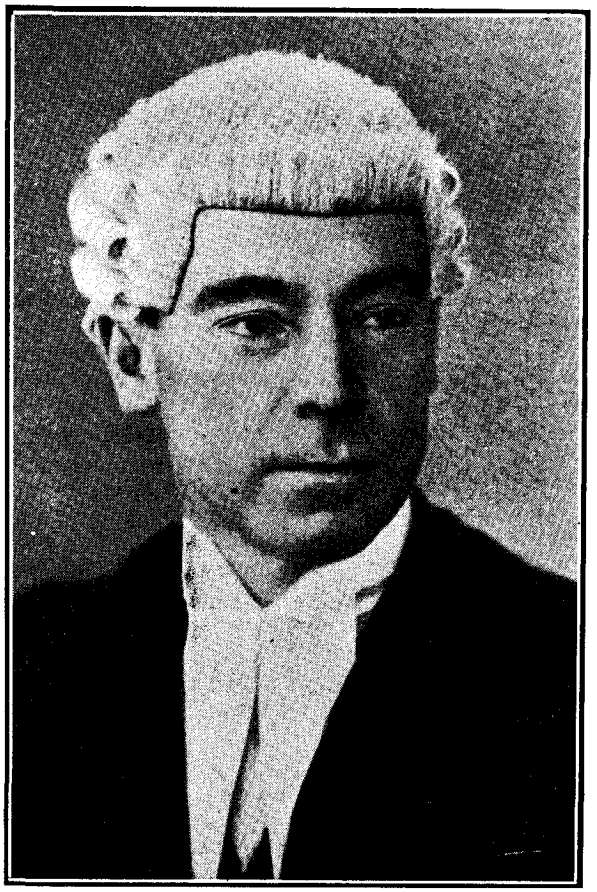
THE CONDUCT OF LAW EXAMINATIONS.

MR. A. C. STEPHENS (Dunedin), Dean of the Faculty of Law, University of Otago, proposed the following remit:

This Conference recommends that the Council of the New Zealand Law Society take steps to ensure that effect be given to the views of the profession in regard to the conduct of the New Zealand University Examinations in the law subjects of the courses for LL.B., LL.M., and admission as barrister or solicitor.

He said: "The remit will be seconded by Mr. L. W. Gee, Dean of the Faculty of Law of Canterbury University College, hereinafter referred to as 'the Dean of Canterbury' — without any religious significance.

Some of you will remember the paper read by Professor McGechan at the Wellington Conference two years ago. There was a very good discussion following that paper. Mr. F. L. G. West said during that discussion that we are not sufficiently interested in the production of the new members of the profession, and I believe that, in the main, that is perfectly true. It is the duty of all of us to maintain our standard of efficiency, and, if possible, to raise it, and so effect an improvement in the service given to the public. New members of the profession are produced by the system of teaching and examination as practised by the University Colleges and the New Zealand University. Of this system, the examinations constitute the final test. They are, therefore, matters of great importance, and matters on which the profession should have the last word, because it knows the requirements for actual practice of the law.



The Nevill Studio, Photo.

Mr. A. C. Stephens.

"Until recently, the salient features of these examinations have been two: first, they have been purely external—*i.e.*, the papers have been set, not by a Professor or lecturer on the staff of one of the Colleges, but by someone outside; secondly, there has been one examination for all the Colleges, for the purpose of maintaining a common standard.

"These features are now challenged. The Law Professors for Auckland and Victoria have been pressing steadily for control of examinations, their idea being to pass their own students into the practice of the profession. A further point of importance is that an increasing measure of autonomy is being secured by University Colleges. In the Faculties of Arts and Science, all subjects up to Stages I and II are examined purely internally. We cannot see how far this process is going. It is at the present time only gathering momentum, so that it becomes urgently necessary for the profession to decide whether it desires to retain the measure of control it has. The aim of this remit is to give the Conference a knowledge of recent events on this subject, and to strengthen the hands of the New Zealand Law Society.

"The law examinations were, at the outset, in the hands of the Judges. By the Law Practitioners Act, 1861, it was provided that the Court or a Judge must be satisfied that the applicant was duly qualified to act as a barrister or solicitor, and the Judges were empowered to appoint examiners, and make regulations as to examinations, which were to be in Law and General Knowledge. This provision was repeated in the Acts of 1882 and 1908. The last Regulations were made by the Judges in 1926.

In 1930, there was a fundamental change. Under the Law Practitioners Amendment Act, 1930, the examination of candidates was handed over to the University of New Zealand. It was provided that the Senate should prescribe the nature and conditions of examinations and the educational and practical qualifications of candidates, and might prescribe such courses of study and practical training as it thought fit. It became a prerequisite for admission that the candidate should have a certificate from the Registrar of the New Zealand University that the requirements of the New Zealand University Senate had been satisfied. These provisions were repeated in the Law Practitioners Act, 1931. Up to 1930, therefore, examination requirements were fixed by the Judges; since then, they have been under the control of the New Zealand University Senate.

"In 1930, a new body was set up, the Council of Legal Education, under the New Zealand University Amendment Act, 1930, which provided that, for the

purpose of enabling the University to discharge its functions under the Law Practitioners Amendment Act, 1930, there should be a Council of Legal Education, consisting of two Judges of the Supreme Court, two persons appointed on the recommendation of the New Zealand Law Society, and two persons, each being a Professor of Law or a lecturer in law, appointed on the recommendation of the University Senate. Power was given to this Council to make recommendations to the Academic Board of the University with respect to any matter relating to legal education. It was laid down that the Academic Board should not make any recommendation to the Senate with respect to legal education without the prior recommendation of the Council, and that every recommendation from the Council to the Academic Board must be forwarded by the Board to the Senate. The general picture is, therefore, that the Senate controls the examinations, the Council of Legal Education can make recommendations, and the Academic Board is not to send any recommendation to the Senate until the matter has been discussed by the Council.

" A reference to the staffing of the Law Schools is necessary to complete this introductory survey. In Auckland, there are one Professor and five lecturers, certain of whom are practising members of the profession. In Wellington, there are two Professors and four lecturers, one or two practising. In Christchurch, there is no Professor, but there are ten lecturers, all practising members. In Dunedin, there is no Professor, but there are fourteen lecturers, all practising. Thus, there are no Professors in the South Island, and three in the North Island.

" For some years, the Professors have been working with the definite objective of examining and passing their own students, and, in so doing, they have shown a persistence which is worthy of a better cause. They made their first advance by securing the right for Professors and lecturers to suggest questions to the external examiners, and do preliminary marking of the scripts, the external examiners remaining responsible for setting the papers and passing the candidates. This practice was adopted by Victoria and Auckland, but not by Canterbury or Otago. The Professors gained a second step in 1948, when the Senate decided to make the internal-external system optional in respect of all subjects for the LL.M., and certain subjects for the LL.B.

" This system requires a little explanation. There are two examiners, one internal and the other external. The internal examiner is the teacher of the subject in the particular College ; the external examiner is not a teacher of the subject in that College. The external examiner is responsible for seeing, first, that the papers are of an adequate standard, and, secondly, that an adequate standard is maintained in the marking. This is what happened : Auckland and Victoria adopted that system ; Canterbury and Otago did not, but retained the purely external system. Further, Auckland and Victoria worked together, so that the lecturer on Jurisprudence at Victoria was the external examiner for Auckland, and Victoria appointed the Auckland lecturer to be its external examiner. They took in each other's washing, so to speak. This intention was not explained when the matter was before the Council of Legal Education.

" Having moved so far, the Professors attempted to go further, but this time they failed. At a meeting of the Council on December 4, 1947, a motion was moved for the application of the internal-external system to the rest of the LL.B. subjects. There were to be internal and external examiners, the external examiner in this case being a practising barrister or solicitor, and there was to be only one external examiner for all four Colleges. The motion was defeated. The Council would have none of it. After having heard the representations of the New Zealand Law Society, the Council passed the following resolution on the motion of Mr. Justice Callan :

> That, after considering the foregoing scheme of examinations put forward by the Professors and discussed in conference with the Law Society, the Council is not prepared to make recommendations upon that scheme to the Academic Board ; the Council is divided in opinion as to the merits of the proposals, but, in view of the established fact that the profession as a whole is opposed to the proposals, some members of the Council who are inclined to favour them are not prepared to recommend the adoption of those proposals.

The next meeting of the Council was held on October 6, 1948, when the examination system was not on the agenda. But on October 7 a sub-committee of the Academic Board, with Professor Gordon as Chairman, met and prepared a report on law examinations. That report went before the Academic Board and was adopted. It is a strange thing that that report contains the internal-external system as applied to the law subjects which had been proposed and turned down by the Council in 1947. The Senate met in January, 1949, when letters from the New Zealand Law Society and the Dean of Canterbury on this matter, together with the recommendation of the Academic Board, were referred to the Council for report. There the matter now stands, but it is pertinent to inquire how this committee of the Academic Board came to be appointed. Was it a scheme to short-circuit the Council ? It looks like it. The Committee consisted of Professor Gordon, two Law Professors, and the Dean of Canterbury, who was outvoted on everything, so that he did not have much chance. It is interesting, also, to remark that, if the Senate had accepted the recommendation of the Academic Board, it would have acted *ultra vires*, as there was no recommendation from the Council.

" The end is not yet reached. There are two more steps before the Professors reach their objective. The first is the application of the internal-external system to the rest of the subjects for LL.B., and the second is the adoption of the purely external system for the whole course. Candidates for the profession would then be passed into the practice of law by teachers, some of whom are not practising lawyers. Do we wish such a state of affairs to arise ? If not, how can we stop it ? How can the New Zealand Law Society ensure that effect may be given to the views of the profession ? One method would be, I think, to add the Law Deans of Canterbury and of Otago to the Council of Legal Education. If this were done, there would be on the Council two teachers who are also practising, and who would be able to look at all matters affecting legal education from both points of view. In such circumstances, it is unlikely that any proposition which was not acceptable to the whole of the profession would be passed by the Council. There may be other methods of securing the desired end. I merely make this suggestion as one possibility.

" I would be sorry if anything I have said were taken as a reflection on the teaching-methods in Auckland and Victoria. From every indication it appears that

the staff teaching law there are thoroughly earnest and capable. I am prepared to give them the highest praise by conceding that the standard of the students they turn out approaches reasonably closely to that of the students of Canterbury and Otago. They want to run their whole shows. This is understandable when men are keen on their job, but the profession must have a voice also. I believe that the statement made by Mr. L. P. Leary in Wellington at the last Conference in regard to Professor McGechan's paper represents the true view :

> Before we resign control of the entrance to our profession wholly to the University, a good deal more propaganda for the provision will have to be made than the very able and eloquent speech we have heard this morning.

I move the remit."

MR. L. W. GEE (Christchurch), Dean of the Faculty of Law, Canterbury University College, in seconding the remit, said :

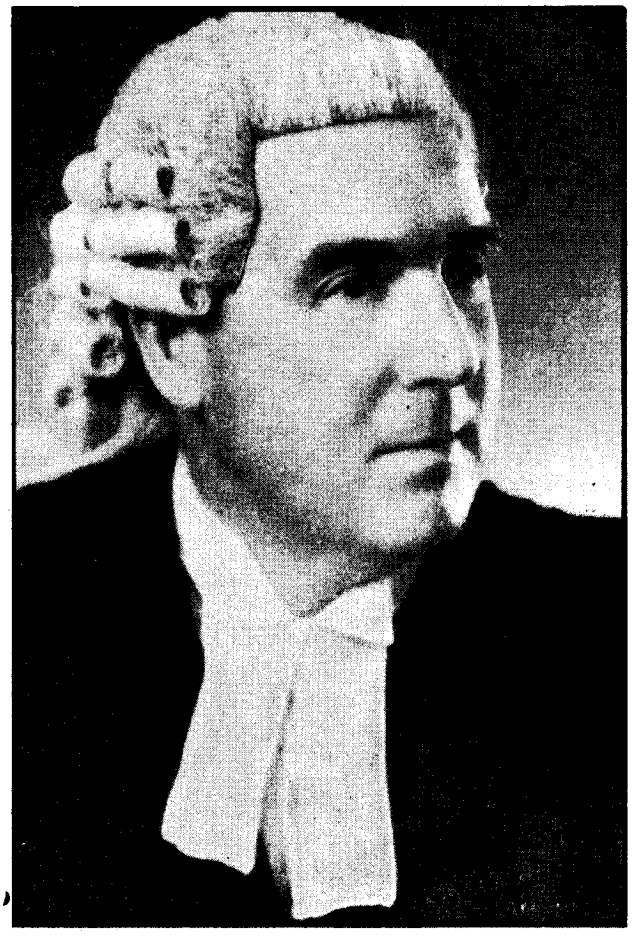
" As the ground has already been extensively covered, I shall not delay you long. I just wish to say that the view of the Canterbury College Law Faculty is that, as far as the law subjects are concerned, the practitioner, who is in daily touch with the public and in daily touch with the student as clerk, is the best person to fix the standard that will entitle that student-clerk to practise on that public. Secondly, I want to emphasize that, up to the present, neither Otago nor Canterbury has had direct representation on any of the three important bodies, although for a short time I was on the sub-committee that has been referred to. Therefore, in order to get the views of Canterbury before these bodies, I had to chase the subject of internal-external examination from the Council to the Academic Board and to the Senate by means of memoranda. I think the subject is so important—and we have a view that we wish to put before this body—that we should have representation on the Council of Legal Education. I therefore have much pleasure in seconding this remit."

MR. A. C. A. SEXTON (Auckland) : " I do not think the remit goes far enough. I wish to move an amendment : the omission of the words ' conduct of the ' in the fourth line, and ' law ' in the fifth line. I do that for the reason that I believe our law course has now been unduly loaded with subjects other than law. There are nineteen subjects ; of these, nine are law subjects, the other ten are not subjects, with very minor exceptions, that you need to earn your living as a lawyer. No other profession insists that those who wish to enter it should undertake the leaping of such a hurdle. The medical profession does not require it ; nor does the accountancy profession or the profession of dentistry.

" As a profession, we have rather slipped in the place that we hold in the life of this country. Years ago, the legal profession was, probably, with the medical profession, the leading profession. But I question whether we hold that position now. I think accountants have come ahead of us, and also the dental profession, at least financially.

" I think that the time has arrived when the profession should examine the powers that the University holds in regard to our legal examinations, and particularly in regard to the treatment of returned servicemen who are seeking to enter our profession. The whole of the decision as to what should be done with these law students seems to lie in the hands of a small committee, of which no member is a lawyer, practising or otherwise. These men do not have any real appreciation of the difficulties. They regard the passing of examinations as the be-all and end-all of existence. These returned servicemen have not only the burden of their examinations, but they have also to learn their law; and they can only learn that by practising in a law office. These men, who are now twenty-five years of age and upwards, have that double burden. They have been working for the past three years every month in the year. The University teachers failed to appreciate the necessity for these students to get down to real practice of the law. They granted them one credit of an Arts subject for each complete year of service. Then, for the first two years, they granted them certain marks concessions—up to 45 per cent. in Law subjects, and more in other subjects ; but, at the end of two years, those concessions were withdrawn. Some have been restored in a measure, but marks concessions have not been restored. These servicemen students are definitely feeling the effects of the strain. They are not asking for much. The marks concession is not a big one. In regard to non-law subjects, I want to remind members that, whereas most of us got through when we were required to pass fourteen subjects, the maximum concession that has been allowed to ex-servicemen students is a concession of four Arts subjects, which still leaves

The Conference Secretaries.



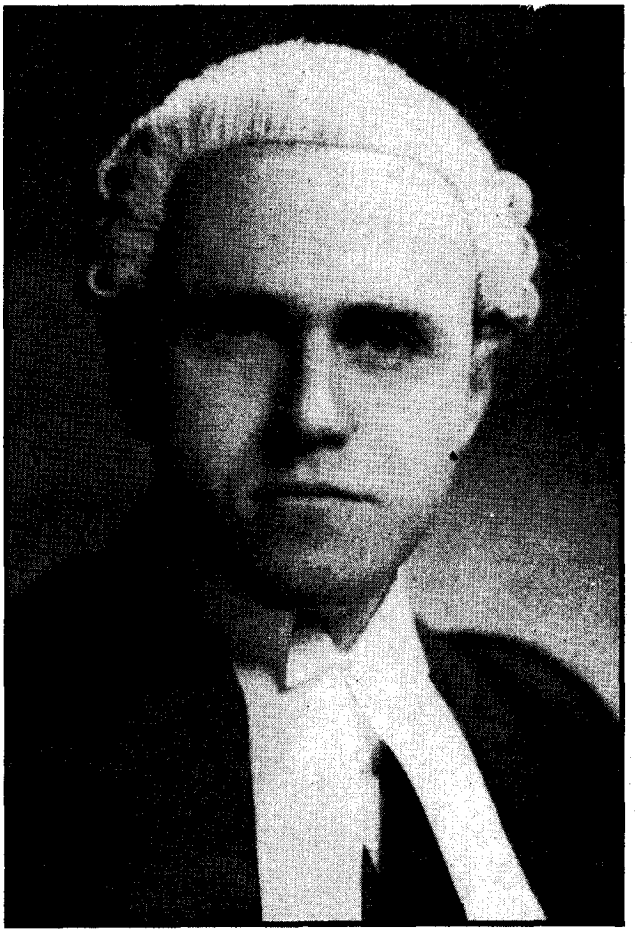
Alan Blakey, Photo.

Mr. F. J. Cox.

fifteen subjects. Although we had to get 50 per cent. of our marks in the Law subjects, we only had to get 40 per cent. in the non-Law subjects, whereas the returned men now are asked to get 50 per cent. They could be very materially assisted. Whatever may be the value of Latin for schoolboys, it is absolutely useless to mature men. They do not want to know it, or to learn it. It is stopping them from getting into the profession wherein they have fairly earned a place."

The President declared the amendment accepted.

MR. W. H. COCKER (Auckland): "In New Zealand, the question of examination in law has, for many years, been a very difficult one; and those difficulties arise from two considerations: (*a*) A law degree in this country is a double-purpose degree—(i) a University degree for academic qualification, and (ii) a qualification for practice. Therefore, the position is unique. In England, you may pass as many degrees as you like in law without getting any qualification in practice. That means that examination becomes more difficult. (*b*) The second difficulty arises from the fact that there are four Colleges. Difficulties arise in the cases of Architecture and Medicine, and are overcome by arranging for an internal examiner and a professional examiner. That is easy, because there is only one Architectural School and only one Medical School.



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Mr. J. T. Sheffield.

"My view is that, in respect of the subjects we call the professional subjects, the same rule ought to be applied as nearly as possible—*i.e.*, an internal and an external examiner participating equally in examinations. It would not be sufficient that the external examiner should simply read some of the scripts to see that the standard is all right; in view of the double purpose of the degree, the two ought to have equal powers, and both should be satisfied before a pass is allowed.

"As to other subjects, I do not agree that it is wrong to include cultural subjects in the course, though, as far as non-professional subjects are concerned, there is not the same need for the participation of the profession in examinations.

"I repeat that, in respect of professional subjects, the proper course is to have the internal and the external examiner, each with equal powers. On the question of what happened in the Senate at the last meeting: the proposals were sent back, not only for the reasons given by Mr. Stephens—namely, that there was no evidence before the Senate that they had been recommended by the Council—but also because the document submitted was in such a form that—so, at least, the legal members of the Senate felt—it would be a very bad example to students if it appeared in the statutes in that form.

"In respect of Mr. Sexton's submission, all the cases of the ex-servicemen were placed before the Senate; the War Concessions Committee was asked, and reported that the decisions were proper; and the Senate adopted the report of that committee. The War Concessions Committee has done a very good job."

The remit in its amended form was then put to the Conference as follows:

> "*This Conference recommends that the Council of the New Zealand Law Society take steps to ensure that effect be given to the views of the profession in regard to the New Zealand University Examinations in the subjects of the courses for LL.B., LL.M., and admission as barrister or solicitor.*"

The President declared the remit, as amended, carried. He adjourned the Conference until ten o'clock on Thursday morning.

MR. QUENTIN-BAXTER'S ADDRESS.

The address on "The Task of the International Military Tribunal at Tokyo" by Mr. R. Q. Quentin-Baxter (p. 133) was to have been delivered by him in person on the Thursday morning. He is on the staff of New Zealand's "Foreign Office," the External Affairs Department. After preparing his paper, he was instructed to represent the Dominion at Geneva, at the International Conference for the Protection of War Victims. Consequently, he had to leave New Zealand about a week before the Conference opened.

The enterprise and versatility of the Conference Committee came to Mr. Quentin-Baxter's, and to the Conference's, aid. They enlisted the services of an electrical-recording expert. When the intended speaker was in Auckland for a few hours on his way to Geneva by air, he gave his address to his unseen audience by way of a record.

When the time came for Mr. Baxter's paper to be heard, it was relayed from the platform through a loud-speaker.

The result was eminently satisfactory, and Mr. Quentin-Baxter's voice was listened to with close attention and great interest. As the President, Mr. P. B. Cooke, K.C., said, great foresight had been shown by the Conference Committee.

THE ROLL-CALL.

Practitioners present at the Conference.

AUCKLAND DISTRICT LAW SOCIETY.

Messrs.

H. Ah Kew.
J. S. Alexander.
C. H. Amies.
H. A. Anderson.
T. W. M. Ashby.
M. C. Astley (Dargaville)
R. E. Baeyertz.
H. E. Barrowclough.
B. S. Barry (Whakatane).
E. L. Bartleet.
D. S. Beattie.
R. Bell.
W. R. Bell.
A. F. Bennett.
G. H. Benton.
A. A. Bodley.
D. L. Bone.
C. D. Bowler.
M. A. Brook.
H. J. Butler.
H. R. Chapman.
M. F. Chilwell.
C. E. Clarke.
G. Clarke-Walker.
S. Cleal.
B. Clendon.
M. A. Clowes.
A. A. Coates.
D. M. Coates.
W. H. Cocker.
C. Coleman.
R. M. Collins.
R. C. Connell.
F. J. Cox.
C. S. Craig.
N. E. Crimp.
R. K. Davison.
A. A. Dignan.
A. E. L. Dodd (Thames).
G. J. Donne.
D. N. Drower.
J. R. Drummond.
L. J. Drummond.
W. R. Edge.
S. J. Elliott.
F. C. Ellis.
S. C. Ennor.
A. M. Finlay, M.P.
T. H. Fleming.
T. J. Fleming.
A. V. P. Ford.
C. J. Garland.
R. T. Garlick.
N. H. Good.
A. M. Gould.
F. C. Gould (Kaikohe).
J. M. Gould.
T. J. Gould (Hong Kong).
W. Grandison (Pukekohe).
R. M. Grant.
A. G. Gray.
A. M. M. Greig.
M. R. Grierson (Pukekohe).
P. C. Griffiths.
W. I. Gunn.
H. F. Guy (Kaikohe).
H. W. V. Haddow.
C. A. Hamer.
G. P. Hanna.
J. C. Hare (Tauranga).
B. C. Hart.
E. W. Henderson.
T. Henry.
C. A. Herman.
H. R. Hesketh.
P. G. Hillyer.
N. V. Hodgson (Opotiki).
J. Hogben.
B. Hopkins.
J. B. Horrocks.
V. N. Hubble.
L. B. Inch.
D. S. Jecks.
C. F. Jenkins.
P. Jenkins.
L. A. Johnson (Whangarei).
G. B. Johnston.
J. B. Johnston.
J. L. Johnston.
T. R. Johnston.
A. H. Johnstone, K.C.
F. C. Jordan.
R. V. Kay.
J. L. H. Kayes.
C. T. Keegan.
R. H. Kelly (Kaitaia).
B. A. Kennedy.
V. W. Kerr.
A. P. King (Pukekohe).
R. King.
W. H. Kirkpatrick (Kohukohu).
F. N. Laurie.
L. P. Leary.
T. A. Mackin.
R. H. Mackay.
R. B. G. Mahon.
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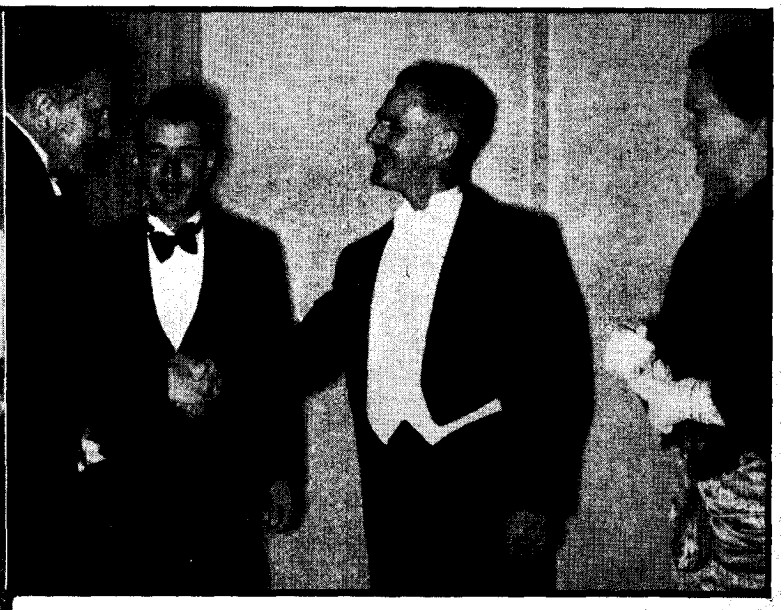
Completed on p. 132.

THE CONFERENCE BALL.

The Conference Ball, held in the Peter Pan Cabaret on the Wednesday evening, was an outstanding success, and reflected great credit on the Ball Sub-committee. It was attended by Their Excellencies the Governor-General, Sir Bernard Freyberg, V.C., and Lady Freyberg, who were met on arrival by Mr. and Mrs. V. N. Hubble, the Conference host and hostess. They were then escorted to the official cubicle, which was decorated with bowls of autumn flowers. Accompanying Their Excellencies were the Naval aide-de-camp, Lieut. A. G. Tait, D.S.C., R.N., the Official Secretary, Mr. D. E. Fouhy, and Her Excellency's lady-in-waiting, Miss Rosemary Eley. They were received by the official party which comprised the Chief Justice, Sir Humphrey O'Leary, and Lady O'Leary, the Deputy Mayor, Mr. Leonard Coakley and Mrs. Coakley, the Attorney-General, the Hon. H. G. R. Mason, and Mrs. Mason, Mr. Justice Callan and Mrs. Callan, the President of the New Zealand Law Society, Mr. P. B. Cooke, K.C. (Wellington), the Vice-President of the Auckland District Law Society, Mr. H. R. L. Vialoux, and Mrs. Vialoux, and Mr. and Mrs. L. P. Leary.



Left : Their Excellencies on their way to the ballroom, accompanied by Mr. and Mrs. Hubble.
Above :. The official host and hostess, Mr. and Mrs. Hubble, receive His Excellency.

Photocraft, Photo.

Above : Mr. and Mrs. Hubble receive the guests. (Mr. and Mrs. Lance Tompkins (Hamilton.)
Right : Two Wits Forgather : Mr. Justice Callan (right) and Mr. Bryce Hart (Auckland).

The ballroom had been tastefully decorated by the members of the Ball Committee, and included panels on which were drawn barristers' wigs. The ball was enjoyed by over 500 guests.

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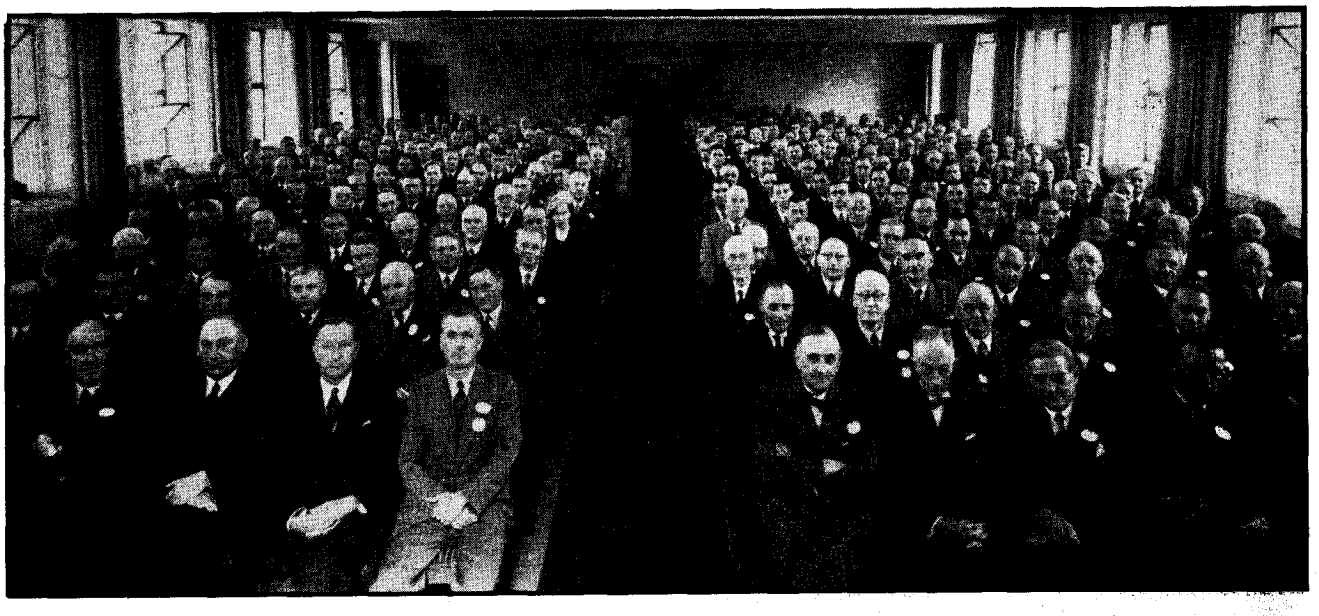
G. E. Rowe (Palmerston North).



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THE CONFERENCE IN SESSION.

Front row (from left): Mr. F. J. Cox (one of the Conference Secretaries), Judge Goldstine, Hon. Mr. Justice Fair, Mr. V. N. Hubble (President, Auckland District Law Society), Mr. P. B. Cooke, K.C. (President, New Zealand Law Society), Hon. Mr. Justice Callan, Hon. Sir David Smith, Mr. H. Jenner Wily, S.M. (Auckland).

Second row (from left): Mr. S. C. Childs (Pukekohe), Mr. A. C. Stephens (Dunedin), Mr. L. W. Gee (Christchurch), Mr. W. J. Sim, K.C. (Wellington), Mr. B. C. Haggitt (President, Wanganui District Law Society), Hon. Mr. Justice Finlay, Mr. A. H. Johnstone, K.C. (Vice-President, New Zealand Law Society), Mr. J. B. Johnston (Auckland), Mr. J. H. Luxford, S.M. (Auckland), Mr. W. E. Leicester (President, Wellington District Law Society), and Mr. A. K. North, K.C. (Auckland).

Third row: On aisle (left): Mr. H. E. Evans, K.C., Solicitor-General; (right): Hon. H. G. R. Mason, K.C., Attorney-General.

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P. T. Young.
Mrs. Annie Down.

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THE SECOND DAY.

THE TASK OF THE INTERNATIONAL MILITARY TRIBUNAL AT TOKYO.

By R. Q. QUENTIN-BAXTER, B.A., LL.B.

WHEN the leaders of the United States, China, and Great Britain met at Potsdam on July 26, 1945, they issued jointly a Declaration offering terms of surrender to the Government of Japan. "Japan," they declared, "shall be given an opportunity to end this war." The terms of surrender offered, which were later supported by the Soviet Union, were accepted by Japan on August 14, 1945.

In the Potsdam Declaration, these words were used:

> We do not intend that the Japanese people shall be enslaved as a race or destroyed as a nation, but stern justice shall be meted out to all war criminals, including those who have visited cruelties on our prisoners.
>
> There must be eliminated for all time the authority and influence of those who have deceived and misled the people of Japan into embarking upon world conquest.

We may first consider the questions of law which are implicit in these terse phrases.

In the Charters which established the jurisdiction and authority of the Nuremberg and Tokyo Tribunals, the intentions set forth in the Potsdam Declaration were given effect. The Tribunals were directed to try, not only those men charged with responsibility for breaches of the established laws of war, but also those charged with responsibility for the planning, preparation, and waging of wars of aggression or in breach of treaty obligation. The Tribunals were directed that for such crimes individuals were responsible.

Spencer Digby, Photo.

Mr. R. Q. Quentin-Baxter.

There was a practical need for such a direction. In criminal as in other matters, international opinion crystallizes slowly. In the years between the Wars, the League of Nations had condemned those States which embarked upon armed conquest. Japan, Germany, and other nations which subscribed to the Pact of Paris had solemnly renounced recourse to war as an instrument of national policy. In a world which was striving to achieve and maintain an ordered community of nations, war, except in self-defence, was an act of anarchy.

The aftermath of the Second World War provided the testing-time. A jurisdiction to punish those responsible for preparing and launching an aggressive war had never before been invoked. There *was* no international Court before which such a charge could be laid. If this new jurisdiction was to be asserted, there was a need for prior agreement among the nations who would assume responsibility for its exercise. If acts of aggression were not criminal, there would be no trial; but the general issue of their criminality could not be permitted to await the outcome of the proceedings taken. The prior agreement that such acts are criminal was embodied in the Charters of the Nuremberg and Tokyo Tribunals.

Many people who would readily acknowledge that war is the greatest of evils, and that those who deliberately encompass it are the most guilty of men, have nevertheless doubted the validity of this direction. They have seen in it proof plain that a new and retrospective law was established by victorious nations as an act of vengeance rather than of justice.

Yet this ground of criticism is a seeming, not a real, one. The Nuremberg and Tokyo Tribunals have each stated in their judgments that they are bound by the directions of their Charters, from which alone they derive their jurisdiction. They have each stated that they find the directions therein contained to be in accordance with the existing state of international law. They have each added plainly that no nations may lawfully exercise or delegate powers which international law does not provide. In so doing, the members of the Tribunals have assumed responsibility for the correctness of the principles of law applied as fully and as directly as if they themselves had first enunciated those principles.

The two Tribunals each held that the nations which signed or adhered unconditionally to the Pact of Paris had condemned for the future resort to war, and had expressly renounced it. They held further, in the words of the Nuremberg judgment which the Tokyo Tribunal

adopted, that:

> The solemn renunciation of war as an instrument of national policy necessarily involves the proposition that such a war is illegal in international law; and that those who plan and wage such a war, with its inevitable and terrible consequences, are committing a crime in so doing.

Those who deny that aggressive war is a crime are driven to maintain that no compact between nations creates an enforceable obligation; that, in the final resort, international law acknowledges no distinction between right and wrong, and knows no arbitrament but war. If this view be a tenable one, its supporters cannot be heard to complain that the nations which established the Nuremberg and Tokyo Tribunals have abused their power. If might be right, there can be no abuse of power.

The Punishment of War Criminals.

It may, nevertheless, be contended that the punishment of war criminals is a permissible act of power, and that the fault of the victorious nations lies, not in exercising this power, but in purporting to endue its exercise with the forms of law. This can mean only that victorious nations, in applying canons of law other than that of mere expediency, have voluntarily circumscribed their own right of punishment. Furthermore—and this is the paramount consideration—no standard of substantial justice can be maintained unless the facts which warrant punishment have been ascertained in a judicial manner.

There is, however, an intermediate view, which, while acknowledging the criminality of an aggressive war, denies that responsibility for such a criminal act or purpose may be attached to individuals.

As long as States are willing to adhere to their international obligations, the most convenient method of redressing international grievances is by negotiation between State and State. The efficacy of this method depends upon the assumption by States of responsibility for the actions of those individuals who exercise the State's authority. It is in deference to that assumption of responsibility that States have accorded certain immunities from their domestic jurisdictions. States have, furthermore, as an aid to the amicable settlement of their differences, created judicial or quasi-judicial bodies. In proceedings before such tribunals, States themselves are the parties, and the means of redress available are in the nature of civil remedies.

Yet for centuries there has been an international jurisdiction which asserts the liability of individuals. Its commonest application has been against pirates, whose criminal activities render them the enemies of all nations. This jurisdiction developed also in other classes of case in which the individuals accused came within the power of the State aggrieved—notably in the case of breaches of the laws of war. The Nuremberg and Tokyo Tribunals asserted, not a new principle of individual responsibility, but the authority of a particular criminal law which had not previously been invoked.

Nor does this new law conflict with the principle of the unity, or integrity, of the State. *That* precept asserts the responsibility of the State for the actions of those individuals who exercise its authority. It does not purport to invest individuals with immunity for those crimes which they perpetrate in the name or on the behalf of the State.

The Nuremberg and Tokyo trials have established that punishment may be visited, not only upon subordinates who violate the laws of war, but also upon those senior officials who bear the chief responsibility for all the evils which war entails. With the essential justice of this principle there can be no quarrel. Men instrumental in launching an aggressive war or in violating solemn international obligations know that their action in so doing is wrongful. If the state of the law be uncertain, wrongdoers may on that account hope that their crimes will go unpunished; but such uncertainty can afford neither pretext nor excuse for their wrongdoing. If the hope of evading punishment prove vain, justice triumphs.

Practical Problems.

These, then, are considerations of principle. We must next consider the problems to which their practical application gives rise. If the principles of law asserted are to have value or significance, the proceedings taken must be manifestly just. Victorious nations may protect themselves against the allegation that such trials as these are acts of vengeance only if they are willing to submit their own course of conduct to examination. If this criticism is to be met, nations must accord to the tribunals which they establish complete freedom to find the facts in issue. This freedom the Tokyo Tribunal enjoyed. Much evidence, seeking to prove that Japan's conduct was attributable to the actions of the nations against whom she fought, was received and considered. Much time was spent in an examination of the intentions and actions of the very nations which established the Tribunal.

The scope of such an inquiry is necessarily great. The International Military Tribunal for the Far East was assisted by a large administrative and linguistic staff. The prosecution contained representatives of each of the eleven nations which took part in the trial. Each accused was represented by at least two Japanese counsel, and also by American counsel, whose primary function it was to furnish technical advice. The Tribunal received evidence during a period of rather more than nineteen months. A little more than two months was taken in the delivery of final addresses. The twelve-hundred-page judgment of the Tribunal was delivered between November 4 and 12, 1948.

Inevitably, the Tribunal's investigation was more extensive and more protracted than that which took place at Nuremberg. The difficulties of the Japanese language, which reflect the fundamental differences between Japanese and Western thinking-processes, themselves constituted a formidable obstacle to an expeditious prosecution of the trial. Furthermore, whereas the Nuremberg Tribunal was concerned with a clearly delimited period of time, beginning with the rise to power of the Nazis in 1933, the Tokyo Tribunal was faced with longer, more gradual, and more complex developments taking place within and without the existing framework of the Japanese Constitution. Thirdly, the Nuremberg Tribunal had presented to it important and comprehensive records of the German Government; and the significance of these records was not really contested. In Japan, upon the other hand, such records had almost without exception been destroyed. Matters which might have been placed beyond doubt by the production of a single official document had, therefore, to be proved by lengthy documentary and oral evidence. In this way, the Prosecu-

tion's task was greatly lengthened; and the defence, which contested almost every fact in issue, was provided with a vastly greater field within which to attack the prosecution's case by producing countervailing evidence. These were causes of delay inherent in the Tribunal's task.

It is, of course, the primary duty of a judicial tribunal to determine the guilt or innocence of those individuals arraigned before it upon the specific counts of the indictment. Nevertheless, in order that that duty might be performed, it became necessary for the Tokyo Tribunal to conduct a wider and more general inquiry. The accused were, in each case, charged with conspiring to wage, or with planning and preparing to wage, or with waging, a war or wars of aggression. Each such charge depended upon proof of the existence and nature of a conspiracy; for in every case proof of participation in, or knowledge of, a conspiracy was an essential ingredient of the offence charged.

The Background of History.

As at Nuremberg, so also at Tokyo, it became the Tribunal's major task to examine a period in a nation's history. The Tokyo Tribunal was obliged to ascertain both the nature of Japan's activities abroad and the events within Japan itself which lent meaning to these activities. It was obliged to examine with particular care the parts played in every such event by those individuals now put upon their trial.

It may be urged—and it was urged strenuously before the Tokyo Tribunal—that, since the causes of war are complex, any attempt to lay the blame upon one participant nation or upon its leaders is necessarily unjust. To assess the merits of that objection, it is necessary to survey in broad outline the Tribunal's general findings of fact.

From the immense mass of material received in evidence there emerges in clear definition a pattern of conduct which forms the basis of these general findings.

In the years before 1930, Japanese publicists proclaimed the aim of territorial expansion as Japan's "divine mission." The Kwantung Army, established in Manchuria under the provisions of the Portsmouth Treaty, defied the Japanese Cabinet's policy of expansion through negotiation. The Army caused the downfall of Cabinets which opposed its purpose.

In September, 1931, the Kwantung Army, with the connivance of military leaders in Japan, launched at Mukden the attack which led to the conquest of Manchuria. Two further Cabinets fell before this act of armed annexation was fully accepted as Japanese Governmental policy.

In the years between 1930 and 1935, those who supported the Army's plans consolidated their position. The Kwantung Army penetrated further into Mongolia and the provinces of Northern China. War with Soviet Russia came to be regarded as an inevitable corollary to Japanese expansion on the continent of Asia. The Army proclaimed itself to be, and was regarded as, the instrument of the Emperor's cause. Great popular fervour was aroused in support of the policy of aggrandisement through force of arms. Japan renounced her membership of the League of Nations, and refused to become a party to other international agreements. In breach of her obligations under the League Covenant, she began secretly to fortify her mandated Pacific Islands.

In February, 1936, elements of the Army revolted against the existing Cabinet. After a fortnight of insurrection, Hirota became Premier, with the Army's support. During the year his Cabinet remained in office, the basic principles of the Army's planning became the settled policy of the Japanese Government. It was decided that Japan would achieve the domination of China and of the adjacent areas of East Asia. A compact was made with Nazi Germany against the day when the Soviet Union would be attacked. It was decided also that Japan would extend her influence into south-east Asia. She would, however, act circumspectly, lest the Western Powers be provoked prematurely to war. In order that these aims might be achieved, it was decided that a vast new war potential would be developed. The entire Japanese nation, its resources and its manpower, would be mobilized for war.

The conspirators, through whose efforts Hirota had gained the premiership, swept him once more from office. Under Prince Konoye, the necessary steps were taken to prepare Japan for further wars. In July, 1937, the war in China was renewed. Under the pressure of actual fighting, the whole economic and industrial framework of Japan and Manchukuo was placed upon a wartime footing. Even while the war in China continued to absorb materials and manpower, new programmes of military and naval expansion proceeded without interruption. The Japanese people were warned repeatedly that a critical hour was at hand, and that their country's plans were menaced both by the Soviet Union and by the Western Powers. The last vestiges of civil liberties were suppressed.

From this time forward, Japan's immediate policies were shaped by the pressure of events; but the goals of the conspirators' planning underwent no change. Military leaders became convinced that, while the war in China continued, a trial of strength with the Soviet Union must be postponed. In this decision they were fortified by the unexpected conclusion of the 1939 German-Soviet Neutrality Pact.

Meanwhile, the war in China, and the repeated violation by Japan of her treaty obligations and solemn assurances, had led to a marked and progressive deterioration in Japan's relations with the Western Powers. These considerations prompted the Japanese to seek a closer accord with Germany and Italy, and to concentrate their attention upon the prospect of a move southward into the Asiatic territories of the Western Powers. When the Netherlands were overrun by Germany, and French resistance had collapsed, Japan invaded French Indo-China, and exerted increasing pressure upon the Netherlands East Indies. It then remained only for Japan to strike a bargain with Germany for the division of the world.

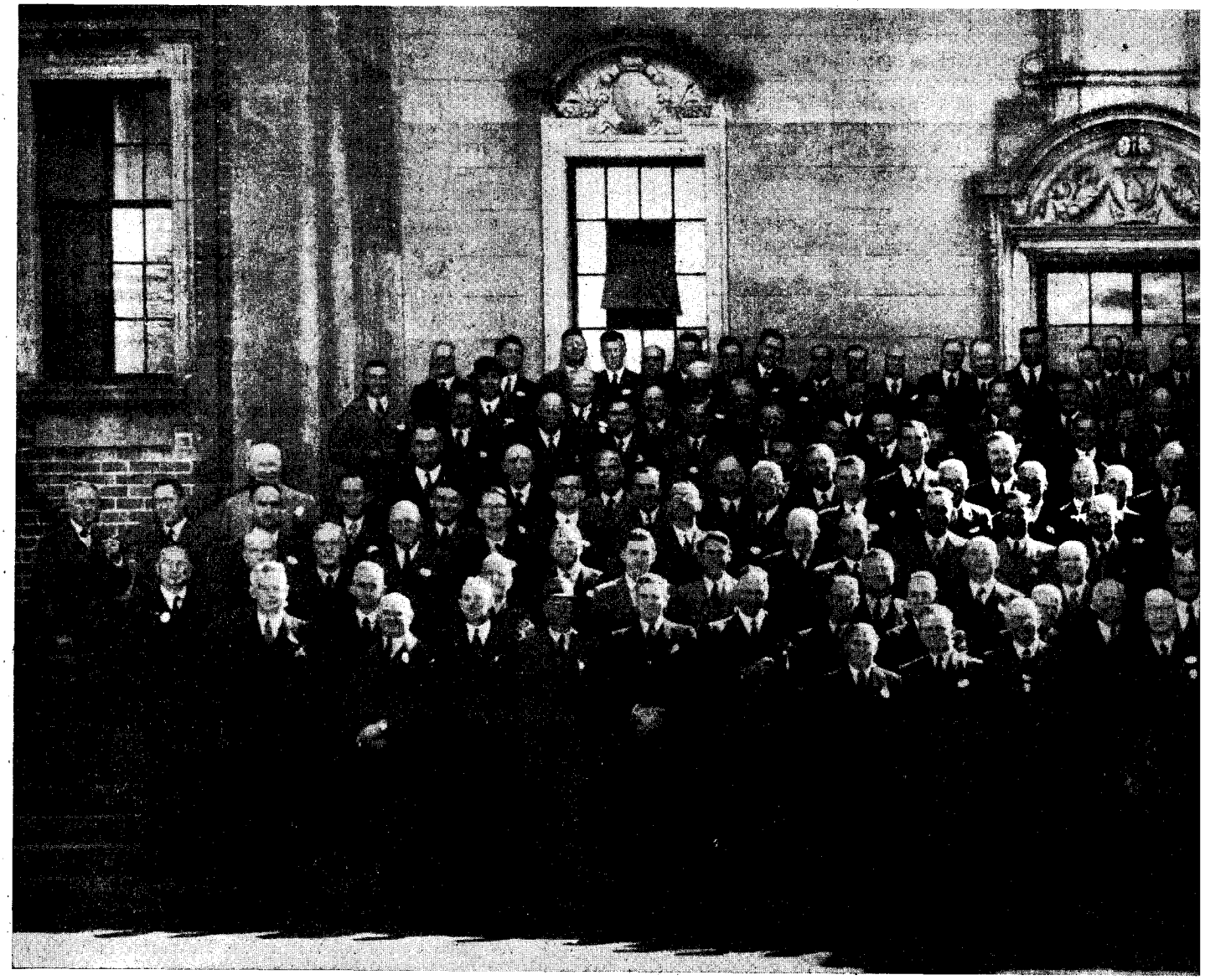
In September, 1940, the Tripartite Pact was signed. It was a compact made between aggressor nations for the furtherance of their aggressive purposes. Those who signed and ratified it contemplated with certainty a war between Japan and the Western Powers. They anticipated also that, when the Western Powers had been defeated, Japan and Germany would turn upon the Soviet Union. They were resolved in the meantime to consolidate their position, and to strike when the moment was most auspicious. More than a year

later, on December 7, 1941, the attack was made.

Findings of Fact.

In the result, the Tribunal found that Japan's warlike activities, beginning in the years before the attack upon Manchuria, and culminating in the outbreak of the Pacific War, formed part of a single scheme of aggression, the objects of which never changed, though the means to their attainment constantly varied. The Tribunal found, further, that the central scheme of aggression was conceived and promoted through the years by a group within the Japanese Army and by its naval and civilian supporters. Although the membership of this group was a changing one, its activities were continuous and its principal aims undeviating. The Tribunal's judgment traces the steps by which the members of this group obtained control of the Government of Japan and assumed the dictation of Japanese national policy. It shows that Japan's aims and actions flowed directly from the activities of the members of this group. It is noteworthy that, although certain members of the Tribunal differed from the majority, both in the application of the law to the facts and in their assessments of individual guilt, these general findings stand unchallenged, and command the full support of ten of the Tribunal's eleven members.

In addition, the Tribunal found that the Japanese forces had systematically violated the laws and customs of war in every country which they had occupied, and in every theatre in which they had been engaged. The Tribunal placed upon record circumstantial and representative accounts of atrocities committed by the Japanese and of the methods of maltreatment which they employed. The Tribunal found that this pattern of barbarous conduct was known to, and sanctioned by, the highest and most responsible officers of the Japanese State.



The Members of the Se

The general findings of the Tribunal are based upon evidence produced at public hearings and preserved in the records of the trial. They disclose the part played by each individual in the development of the general scheme. The guilt or innocence of each accused in relation to crimes against peace depended, not upon a single act or circumstance, but upon the cumulative effect of all evidence showing the membership of that

individual in a conspiracy to wage aggressive war, his knowledge of the purposes of that conspiracy, and the part which he played in promoting it. Thus there was established a chain of reasoning and a standard of objective inquiry which refute the allegation that the nations which established this Tribunal have made an improper use of their power.

The Value of the Trials.

It remains to attempt an assessment of the general value of the trial. The Nuremberg and Tokyo Tribunals have for the first time asserted the right of nations to bring to justice individuals responsible for violating the peace of the international community. They have, in short, asserted that, where there is power, there is responsibility, and that, where there is an illegal use of power, there is criminal liability. It must, however, be recognized that developments in international law can place no limits upon the unscrupulous conduct of nations which have the power and the will to repudiate that law.

The Nuremberg and Tokyo trials provide no legitimate pretext for an unscrupulous use of power. Yet it must be recognized that nations which may in the future invoke as precedents the authority of these trials may behave less scrupulously. As long as there is no permanent international criminal Court, armed with the power and the authority to try such charges, this danger will remain.

The Nuremberg and Tokyo trials have shown that war is not merely a natural catastrophe, which creeps irresistibly upon the world. They have provided convincing proof for all who care to examine the records of the trial that the immediate and effective causes of war may be traced to the deliberate wrongdoing of individual men. Thus it has been demonstrated that a permanent international criminal Court is a necessary instrument of peace.

If war is to be banished, its causes must be understood and ascertained. There is no place either for the sentimentalist who proclaims the injustice of any attempt to apportion war guilt or for the implacable and undiscriminating hatred which war engenders. It is, therefore, one of the most important results achieved by setting up the Tokyo Tribunal that it conducted an historical inquiry into the actions of

Dominion Legal Conference. *Sparrow Industrial Pictures Ltd., Photo.*

Japan and ascertained the proximate causes of those actions. There is set upon its findings a seal of authority and impartiality which cannot attend the work of any historian of recent events; for the Tribunal's decision was reached upon all the available evidence, and after the fullest opportunity had been afforded for the presentation of opposing views.

The judgment is not without its message to the peoples of the countries which conquered Japan. It is not easy for anyone to forget the duplicity and barbarity which characterized Japan's warlike career. Yet blind hatred can foster only hatred; and hatred and ignorance are the harbingers of war.

The Tokyo Tribunal did not attach a criminal liability to the Japanese nation; nor did it inflict punishment upon that nation. It found liable, and ordered the punishment of, certain individuals who knowingly used the resources of the Japanese nation to further a course of criminal conduct. In the course of its inquiry, the Tribunal has recounted the struggle which went on within Japan itself for more than a decade. It has shown that in the course of this struggle statesmen were assassinated, and teachers and journalists were threatened and intimidated, because they dared to oppose openly the aggressive aims of the conspirators. It has revealed that, even in a country where liberal and democratic doctrines had never become firmly established, they were not overcome without resistance. In this way, the trial has furnished some assistance to the cause of international understanding.

Finally, the Tribunal has placed in the hands of the occupation authorities a document which can be of substantial value in the re-education of the Japanese nation. It has provided an account, so circumstantial that it must carry conviction, of the methods by which Japan's military and political leaders encompassed the destruction of their own people. It narrates the devious methods by which those leaders gained power, and the ruthless measures by which they suppressed all those among their own countrymen who opposed their aggressive aims. It explains how they fostered a warlike spirit in the Japanese nation by misleading the people about the intentions of other nations. It recounts, step by step, the manner in which every phase of Japanese life and every section of the Japanese people were made to subserve the aims of the conspirators and to contribute to the preparation for, and conduct of, aggressive wars. It shows how these wars were engineered by Japan's military leaders, and relates the barbarous conduct of Japanese soldiery in every theatre of war and in every occupied country. The judgment of the Tokyo Tribunal does not purport to absolve the Japanese people from responsibility for their country's conduct, but it does show where that responsibility chiefly lies. In so doing, it makes a constructive contribution to the task of rehabilitating the Japanese nation.

Mr. Baxter was enthusiastically thanked.

THE DOMINION LEGAL CONFERENCES, 1928-1949.

The first suggestion for the holding of a Dominion Legal Conference was made by Mr. W. J. (now Judge) Hunter, of Christchurch, at a meeting of the New Zealand Law Society in Wellington in 1927.

Christchurch, 1928.

The first Conference was held at Christchurch on April 11, 12, and 13, 1928. The Chairman of the Conference Committee was Mr. W. M. Hamilton. The Conference Secretary was Mr. W. J. Hunter. The Committee consisted of Messrs. H. D. Andrews, R. A. Cuthbert, M. J. Gresson, J. D. (now Mr. Justice) Hutchison, W. R. Lascelles, R. H. Livingstone, W. J. Sim, C. S. Thomas, H. C. D. van Asch, E. W. White, and A. F. Wright. Mr. (afterwards Sir) Alexander Gray, K.C., President of the New Zealand Law Society, presided over the Conference.

Wellington, 1929.

The Second Conference was held in Wellington on April 3, 4, and 5, 1929. The Chairman of the Conference Committee was Mr. C. G. White, and the Conference Secretary was Mr. W. E. Leicester. The Conference Committee comprised Messrs. H. H. (now Mr. Justice) Cornish, H. E. Evans (now Solicitor-General), L. H. Herd, H. F. (now the Hon. Sir Harold) Johnston, P. Levi, M. M. F. Luckie, A. J. Mazengarb, M. Myers, K.C. (now the Rt. Hon. Sir Michael Myers, former Chief Justice), H. F. O'Leary (now the Chief Justice), D. Perry, W. Perry, F. C. Spratt, C. A. L. Treadwell, H. F. von Haast, G. G. G. Watson, and A. A. Wylie. This Conference was honoured with a visit from His Excellency the Governor-General, Sir Charles Fergusson, who addressed the Conference. Mr. (afterwards Sir Alexander) Gray, K.C., President of the New Zealand Law Society, was the Conference President.

Auckland, 1930.

The first Conference to be held in Auckland took place on April 22, 23, and 24, 1930. The Chairman of the Conference Committee was Mr. R. P. Towle, and the Conference Secretaries were Professor R. M. Algie (now M.P.) and Mr. A. M. Goulding (now S.M.). The Committee comprised Messrs. J. Alexander, E. L. Bartleet, E. C. Blomfield, A. St.C. Brown, W. H. Cocker, G. P. Finlay (now Mr. Justice Finlay), J. M. Hogben, T. M. Holmden, J. B. Johnston, A. H. Johnstone, L. P. Leary, F. G. Massey, L. K. Munro, R. McVeagh, J. H. Reyburn, H. P. Richmond, H. M. Rogerson, J. Stanton (now Mr. Justice Stanton), F. L. G. West, Miss G. M. Hemus, and Miss E. Melville. The inaugural address on that occasion was delivered by His Honour the Chief Justice, Sir Michael Myers. This was the first Conference over which Mr. H. F. O'Leary, as President of the New Zealand Law Society, presided.

Dunedin, 1936.

Dunedin was the scene of the Fourth Conference, which was held on April 15, 16, and 17, 1936. The Chairman of the Conference Committee was Mr. A. N. Haggitt, Mr. J. G. Warrington (now S.M.) was Secretary, and Mr. R. R. Aspinall was Treasurer. The following were the members of the Committee: Messrs. F. B. Adams, E. J. Anderson, P. S. Anderson, W. R. Brugh, A. W. Buchler, C. L. Calvert, H. L. Cook, G. Gallaway, F. M. Hanan, A. C. Hanlon, K.C., J. M. Paterson, R. G. Sinclair, E. J. Smith, A. C. Stephens, W. D. Taylor, J. B. Thomson, and W. I. W. Wood. Mr. H. F. O'Leary, K.C. (as the Chief Justice then was), presided over the Conference.

Christchurch, 1938.

The Fifth Conference was held at Christchurch on April 20, 21, and 22, 1938. The Chairman of the Conference Committee was Mr. J. D. (now Mr. Justice) Hutchison, and the Secretary was Mr. V. G. Spiller. The Committee comprised Messrs. P. P. J. Amodeo, E. S. Bowie, A. H. Cavell, J. D. Godfrey, A. L. Haslam, W. R. Lascelles, R. H. Livingstone, G. G. Lockwood, R. J. Loughnan, A. C. Perry, R. L. Ronaldson, G. S. Salter, H. P. Smith, A. S. Taylor, and R. A. Young. His Excellency the Governor-General, Viscount Galway, attended the Conference Ball, and, on the opening day of the Conference, laid the foundation stone of the Courts of Justice at Christchurch. Mr. H. F. (now Sir Humphrey) O'Leary, President of the New Zealand Law Society, presided over the business sessions of the Conference.

Wellington, 1947.

The Conference series was resumed with the Sixth Conference, held at Wellington on April 9, 10, and 11, 1947. The Chairman of the Conference Committee was Mr. J. R. E. Bennett, and the Secretaries were Messrs. H. R. C. Wild and J. C. White. The Conference Committee consisted of Messrs. H. R. Biss, E. D. Blundell, R. C. Burton, S. J. Castle, T. P. Cleary, P. B. Cooke, K.C., W. H. Cunningham, E. P. (now Mr. Justice) Hay, W. E. Leicester, N. H. Mather, D. Perry, G. C. Phillips, E. F. Rothwell, W. P. Shorland, W. J. Sim, K.C., F. C. Spratt, R. E. Tripe, and A. T. Young. The business sessions of the Conference were held under the chairmanship of Mr. P. B. Cooke, K.C., President of the New Zealand Law Society.

Auckland, 1949.

The story of the Seventh Conference is told in these pages.

SOME ASPECTS OF OFFICE ORGANIZATION.

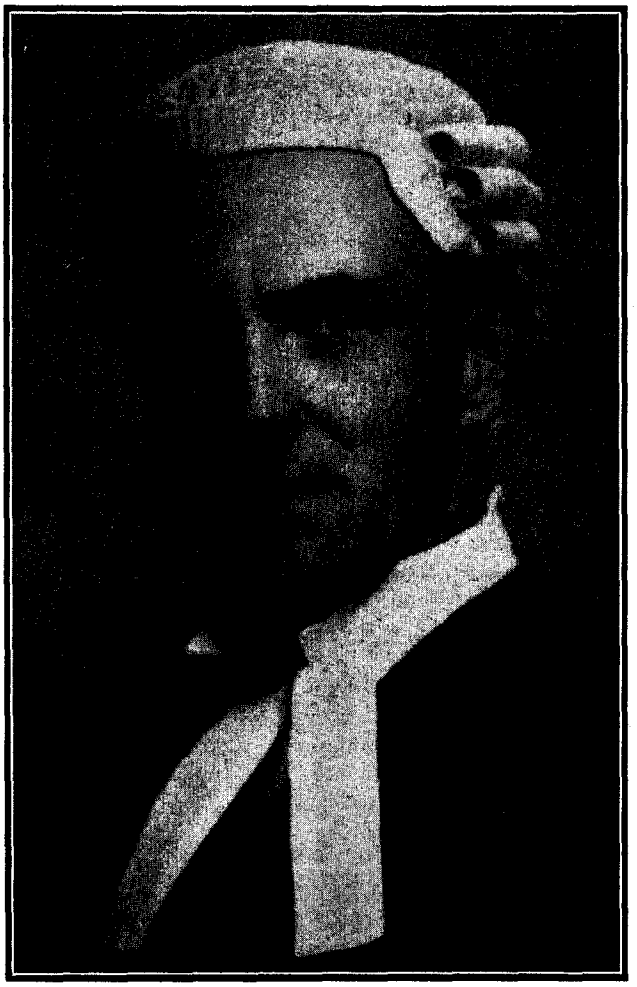
By H. R. C. WILD, LL.M.

AFTER listening to the splendid addresses which we so much enjoyed yesterday and this morning, you will find it something of an anticlimax to be asked now to bring your minds down from the high plane of pure legal thinking and international law, and to consider a mere matter of mechanics and machinery in our professional work. But, while keeping our eyes on the higher things in the law, I think we should not forget in our discussions some consideration of the daily round and common task of our professional life.

I am well aware that anyone bold enough to read a paper before a Conference of lawyers is liable to the charge that he is holding himself out as an authority on his subject, and I therefore begin by saying that my remarks are without prejudice, and that I do not take this stand before you as an expert witness. Those who look for a peaceful end to their office worries will get no comfort from me. I cannot tell you how to woo a typist into your office, still less how to hold one.

But the problem of office management is one which confronts us all, and it is rather my hope that at a gathering of this kind we might pool our ideas and, by discussion, help each other.

Broadly speaking, I suppose the function of the solicitor is to make his clients' affairs run smoothly, and his success depends on the efficiency and promptitude with which his services are rendered; and the object of office management is to make the office work smoothly, so that this efficiency and promptitude can be achieved with the least worry and waste of time and money.



Spencer Digby, Photo.

Mr. H. R. C. Wild.

In any undertaking, real success, whether it is sheer monetary profit or the peace of mind that comes from a worry-free existence, depends largely on careful administration. Those who were in the Army will remember the somewhat heavy-handed insistence of the military on the importance of administrative planning. Alexander claimed that he beat Rommel in the Desert because that dashing commander did not understand the need for a sound administrative plan. I think the same rule applies in campaigning in the field of law. No single system meets all requirements. Each office must be organized according to its particular needs: its situation, the nature of its practice, and, not least, the idiosyncracies of employees and principals. The big firm, with its accounting problems and large staff, probably raises more problems; the smaller office should be easier to run. The King's Counsel, alone in his silken seclusion, probably has only the administrative problem of marking briefs and writing receipts. So that, if I speak most of the problems in a medium or large firm, it is because I believe those problems will include those of the smaller office.

Administration needs an administrator. In some offices, the practice is to share the duties, one principal attending to personnel and another to quartering and equipment. No doubt the bright common-law man looks after the typists, while the conveyancer is left with the stationery. I would suggest that it is better to have one man as a sort of Adjutant and Quartermaster-General to whom all problems will go, with, of course, the advice and approval of his partners. He can, if convenient, make the accountant or senior clerk a sort of R.S.M. The engagement of staff, the supervision of their work, and the adjustment of their salaries, the provision of stationery and equipment, the supervision of accounts, the opening of mail and distribution of work, will then be the care of one man, and will take up no small part of his time—but it is, I think, the most economical arrangement. Provided your manager does not fall into the error of thinking his system more important than his clients, he may still get a little legal work done, and his partners may even be shamed into giving him a change in a year or two. I certainly think the service should be remembered in the office pension plan.

Now I propose to discuss under headings a number of the problems that arise. Many of you will be able to improve on my suggestions: with some of them some

of you will not agree. In particular, I want to say that none of them is to be taken as certified correct by my own or any other firm.

Layout and Approaches.

First, I stress the importance of making the office as attractive as you can with the material the good landlord has given you. The average client, it is to be remembered, approaches a legal office with some trepidation. To make him—or, more important, her—feel at home, so that he or she will be ready to return, is not only courtesy: it is good business.

The first approach of many a client is by telephone. I do not think it is possible to over-emphasize the importance of a good telephone operator: it is certainly easy to minimize the difficulty of getting good service, for it is a dulling job for a girl who wants to move on to higher things. I recently congratulated a friend whose telephone girl had frequently impressed me. "She's no girl," he told me. "She's a grandmother." I do not want to give away trade secrets, but I believe he has hit on the solution of a problem which, I am sure, troubles most of us.

Piles of dust-covered files and masses of unanswered correspondence will not persuade anyone that yours is the smartest office in town, and may even give an unjustified impression of inefficiency. I do not suggest that we need emulate the supercharged precision of the attorney's office in an American film, but, on the other hand, the modern client is entitled to expect that his solicitor will receive him in surroundings more attractive than those of the late Uriah Heep.

Another way in which we are judged is by our correspondence, and, at the risk of being thought critical and even impertinent, I would say that we need to strive continually to have our letters neatly and accurately typed, well expressed, and not too full of words.

Diaries.

A diary is a fundamental requirement, not only to ensure that the worth of your work is reflected in your bill of costs, but also to keep a record of events which may some day spring forth from long-dead files into lively and profitable importance. But the difficulty is to find a system which is efficient without being cumbersome. I think the only safe way is for each person to record every action, so that there is a complete record of office work for each day. If a separate sheet is made out for each day, there is the difficulty of transcribing the entries under the title of each particular matter. A means of overcoming this is for the person concerned to indicate on his diary-sheet the matters (such as straightforward conveyancing transactions) where scale costs will be charged, and the entries need not be transcribed. Another method is to make the original diary entries on separate sheets under the heading of the appropriate matter. Although a self-contained daily record is not then available, this system has the advantage that the diary entries can readily be retyped to form the bill.

It is one thing to ensure that complete diaries are compiled, but you must not allow your diary-sheets to remain diary-sheets for ever. They must ultimately emerge as bills of costs, and the system must provide for a periodical round-up of long outstanding matters. One way of doing this is to issue diary-sheets for a period of, say, six months, on paper of one colour, and to change the colour for each succeeding period. Your Adjutant-General, on his tour of inspection, can then tell at a glance what matters have been too long winding round the slow wheels of the law, and collect the names of defaulters.

Reminder System.

Probably the greatest worry of the conscientious practitioner is the fear that the last day for stamping a document or issuing a notice will slip by unnoticed. An efficient practitioner-proof reminder system is essential. For the man who can rely on his own orderliness enough to mark down a matter when he deals with it, an ordinary daily appointment desk calendar is probably the simplest system. It is sufficient, but it suits only the methodical mind. A more complex system, but one which to some extent overcomes human frailty, is to have an extra coloured carbon made of every letter, memorandum, instruction, or note that is made in the office. The author of that paper then pencils on the carbon the date when the matter is to be brought up again. The copies then go to a junior, whose job it is to place them, according to date, in the appropriate one of thirty-one compartments in a concertina folder. The junior's first job each day is to bring out the reminders for that date and distribute them. When you get your morning reminders, you can then act upon them, destroy them, or return them to be brought up again, according to circumstances.

The reminder system does not end with the individual. A well-organized office would no doubt include a system of reminders for interest notices, renewals of leases, distributions of trust funds, and so on.

Records and Deeds.

Whatever other records are kept, I think a letter-book, with copies of all outgoing correspondence, is an essential, and a record of costs and statements rendered is also invaluable. When opinion work is regularly done, it is useful to keep copies indexed according to subject-matter. As to deeds and other valuable papers, it may be desirable to keep wills and negotiable securities in some special place of custody, but, for the rest, I suggest a universal system of filing under a card index. The card-index system is easy to work, and saves the office space. It is infinitely to be preferred to the old Deeds Register system.

Costing System.

The matter of legal costs could itself form the subject of a paper. I mention it now because we must in our own office systems ensure that our fees are fixed, so as to do justice to ourselves as well as our clients. The overhead cost of running an office has increased, I estimate, by something like one-third in the past ten to twelve years. From inquiries I have made, I find that from 55 per cent. to 60 per cent. of the costs earned in the larger city offices disappear in overhead charges—a figure which corresponds almost exactly with figures quoted in a paper on this subject given at the 1948 Australian Law Conference. I imagine the proportion is lower in certain country districts, where office rentals by comparison are nominal, and where certain scales of costs, judging by statements made at the Wellington Legal Conference, are fixed by local practitioners on what might be called a "knock-for-knock" basis. However, it is nothing less than the truth to say that the

average practitioner works for his staff from Monday morning till Tuesday afternoon, for the landlord till well into Wednesday, for the sundry creditor until Thursday morning, for Mr. Nash till the evening of the fourth day, and gathers his failing strength to win some bread for his own family on Friday.

In these circumstances, it is important to see that we get value for the goods and services we have to sell. The goods we sell are hours and minutes; the services are our skill and knowledge; and, within the limits of the law, we must see that we are fairly remunerated.

A man on a salary of £1,000 a year and a forty-hour week earns 10s. per hour. But, if that man is a solicitor, and it costs him 55 per cent. of his gross receipts to run his office, every hour of his working-day must be made to return £1 2s. if he is to receive the same income. I say *every* hour, because we all know that in a practitioner's practice every hour cannot be a working-hour, and what you lose in studying the law, plain hard thinking, or even having morning-tea, must usually be made up after hours.

This is a simple kind of analysis, which each of us can make according to his own estimate of what he is worth, and his overhead expenditure. It shows, in my submission, two things:

(*a*) The need for a constant watch to be kept by our Society on our scales of costs.

(*b*) The need for the solicitor's costing system to ensure that the value of his time is reflected in his bill of costs.

Disbursements.

There is no need to emphasize the importance of proper records of disbursements. Apart from the need for keeping clients' accounts up-to-date, your profit on a particular transaction can easily be turned into a loss if disbursements are not collected. In a small office, a petty cash imprest account, from which disbursements are debited straight to a client's account or diary-sheet, is adequate. But, in a larger office, separate accounts must be arranged for registration fees, Court fees, and so on. I could not hope, even if time permitted, to outline the various systems which can be adopted, but I think many of us are operating on antediluvian methods which are cumbersome as well as inefficient. In my opinion, the best arrangements for any particular office are a matter for the advice of a professional accountant. Book-keeping methods have not stood still, as some say legal methods have, for the past many years, and our brethren the accountants can help us a great deal.

Bills of Costs.

Having mentioned costing systems and disbursements, there are, I think, only two points I desire to add under this heading. The first is a plea that, as a profession, we should try to give up the old system of rendering detailed bills, except where they are expressly asked for, or necessary for taxation by the Registrar. Clients do not want long, detailed fees if the fee is reasonable. The second point is the importance of sending out accounts regularly and promptly. If a job has been well done, the client expects to be charged for it as soon as it is ended.

Firm Accounts.

Our auditors or accountants can assist us in planning a system of office accounts which enables us to tell our position from time to time, and helps us to meet the tax demand by saving as we go. I suggest that a good policy in any firm—and it is one widely adopted—is to pay a fixed minimum sum each month from your general office account into a partners' drawing account. The sum so paid should cover a fixed monthly drawing by each partner for his normal living-expenses, and allow a surplus which, in a twelve-month period, will more than cover income tax and Social Security charge. If the office account is buoyant at the end of a given month, then the instalment paid to the drawings account can be increased, and it is amazing how quickly that account will build up. From such an account, the withdrawal of tax is a comparatively painless extraction, and any partner can draw whenever he likes against his share of profits in hand, if any.

Two other accounts may be useful, at least in a large partnership. The first is a general reserve fund, which is a very useful cushion against a sudden pay-out for the goodwill of a retiring partner, a set of new typewriters, a mistake that has to be paid for, or just plain hard times. The second is a disbursements reserve account—a fund from which an unusually large disbursement may be paid, without embarrassing the general account, for a client from whom, for one reason or another, you do not wish to ask spot cash.

Monthly Statements.

The system of accounts should provide for a regular review of the financial position. Overheads being what they are, a large firm is like a battleship, and can quickly founder under heavy pressure. A good scheme is a simple monthly analysis showing costs rendered, disbursements, costs received, and expenditure, under the various heads. With such a statement, your Adjutant-General, in his capacity as Paymaster-General, can immediately detect trends good and bad, and to some extent this can take the place of an audit of your general office account.

Insurance.

A complete system of office management must take into consideration the need for various kinds of insurance for the benefit of the firm—fire, employer's liability, and general risks insurance, life and accident policies on individual partners, and negligence insurance against the possibility of a mistake by a clerk or a principal for which the firm must answer.

Meetings.

In a firm of any size, a regular meeting of partners to discuss office matters is no doubt desirable. Most practitioners, though willing enough to discuss problems which obtrude themselves, dislike giving up time to a regular meeting, but I think these meetings quickly prove their value.

An American writer, Mr. Heber-Smith, tells that he holds regular meetings of his firm every week. To three out of the four monthly meetings the juniors also are invited, and take their turn in presiding. The agenda includes, first, suggestions for office management; secondly, the calling of cases, in which every man tells what new work he has received and the meeting pools solutions for any difficult problems; thirdly, bills, the amounts of which are fixed after opinions have been offered; fourthly, "trouble," when the members of the firm are invited candidly to confess their sins, and, no doubt, absolution is granted

or penance exacted; and, finally, new decisions, in which changes in the law are discussed for the benefit of all. No doubt in New Zealand this last heading would include a recital of the new regulations gazetted during the week.

Such a programme may be too much for the stomach of the conservative British lawyer; but there is no doubt that partners' meetings have their value, and it is a pleasant thing in any office to have some opportunity when all get together on equal terms, even if it is only a Christmas party. One firm I know has afternoon-tea *en masse* every day, and the saving of time spent by law clerks in coffee-housing around the town is not the only value of that arrangement.

Staff.

Everyone knows that the greatest asset in a legal office is a good staff, and I think we should continually remind ourselves that our obligations to our staffs are not discharged only by paying them proper salaries. There are many ways in which we can show consideration to the purely administrative staff, and, as to the law staff proper, I think we have a duty to train our law clerks well. Not everyone is good at delegating, nor patient enough to give guidance whenever it is needed, but, if we think back to our own experience, we will remember that the employer for whom we did the most was the one who appreciated our work and encouraged us most.

Conclusion.

I cannot claim in these remarks to have given you much practical assistance in your administrative problems, and some of you may feel that I have overstated my case. But we should not deceive ourselves. We are thought by the general public to be poor business men; the accountants joke amongst themselves at our clumsy fumbling with figures; and modern business firms do not understand our methods. And yet we ought to be good administrators. In the recent war, many of our practitioners and clerks did good service as orderly-room clerks and Staff Officers. Indeed, I suspect that the average lawyer is more handy with a fountain-pen than he is with a bayonet.

Many of our firms are now very old, and I suggest that some of our methods have not advanced with modern requirements. It is not easy to make changes, but it takes courage to practise the law, and we must take courage to make changes where necessary.

Two years ago, in a forthright address at the Wellington Conference, Mr. D. W. Virtue spoke of the need for the profession to organize if it is to survive in the modern community. My respectful suggestion to you to-day is that one of the ways in which we can safeguard our position is by putting our own houses in order. It is probably not inconceivable that a good part of the work now done by solicitors for their clients could, in an advanced system of State control, be taken in hand by the State.

But, apart from such considerations, our position as professional men requires that we should do well that which we profess to be able to do.

Even in our own self-interest, and in the interests of our clients, we must take the time to make our offices as efficient as possible. A famous Judge has said that the two greatest faults of the profession are its delays, and the pettifogging of those who practise it. With the pettifogging I am not now concerned—it is probably one of the secrets of our craft—but I suggest that as a profession we can ourselves do much to shorten the law's delays. We are fond of telling our clients that the delays are the fault of the Legislature, and we are quick to blame Government Departments, but I suggest that for a large part of them we ourselves are responsible. And an efficient organization of our own offices is the first step in putting all these matters right.

For those who like to have authorities, I append a bibliography on which I have drawn in the preparation of this material.*

The President declared Mr. Wild's paper open for discussion.

The following discussion then took place:

Mr. A. S. Tonkin (Coromandel): "I wish to speak for those of us on whom the advancing years have placed the penalty of lack of personal magnetism, and therefore inability to attract and, what is even more important, hold a typist. From personal experience and view of legal offices, I am surprised at the lack of mechanical machinery in the average solicitor's office. I have lately purchased one of the dictaphone equipments. I know that many solicitors are against them, or do not understand them; but I consider that it is a partial solution of the typist problem, because you can very often get a typist when you cannot get a shorthand-typist. Even if you can get one or more shorthand-typists, the use of mechanical recording devices saves their time. Another advantage of the dictaphone is on the question of diaries. Most of us are frightfully lazy in making notes; but with a mechanical device you make a recording of small things like telephone conversations, &c. I should suggest to members interested that they investigate the possibility of using that equipment as a partial solution to the typist problem."

Mr. R. A. Ramsay (Auckland): "On the mechanical side, I wish to say how few practitioners use rubber stamps. There are many things which they write out in an undecipherable hand, whereas rubber stamps would be much more efficient."

The President declared the discussion closed. He said:

"I am sure you all wish me to say to Mr. Wild how much we have appreciated his paper. We come now to Mr. White's remit, which is not on the printed programme, but which he will disclose to you in a moment. The remit will be seconded by Mr. Lloyd."

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*Addresses on Law Office Administration by R. Heber-Smith to the American Bar Association, *Law Institute Journal (Victoria and Queensland)*, July, August, September, 1947.

Article on Law Office Organization by R. N. Vroland, (1948) *22 Law Institute Journal*, 96.

Woodman on Solicitors' Offices and Accounts.

Internal Management of a Legal Office: J. T. Sheffield, (1939) 15 New Zealand Law Journal, 210.

Solicitors' Accounts: Accountants Journal, October, November, 1938.

Practical Office Organization. G. C. Carnie. *Contemporary Practice in Commerce*, published by the Committee of the Combined Refresher Course in Accountancy, 1946.

Auckland Star, Photo.

Around and About the Conference.

Top left: Mr. H. E. Evans, K.C., Solicitor-General, Mrs. Evans, Mrs. A. T. Young, and Mr. A. T. Young (Wellington), Treasurer of the New Zealand Law Society.

Top right: Mr. L. P. Leary (Auckland) and Mr. S. C. Childs (Pukekohe). (*Photocraft, Photo.*)

Lower left: Mr. P. B. Cooke, K.C., President of the New Zealand Law Society, proceeds to the Conference Hall.

Lower right: Messrs. K. W. Low (Te Kuiti), R. Hardie Boys (Wellington), and P. Gilchrist (Te Aroha).

REMIT.

A PUBLIC RELATIONS ORGANIZATION.

MR. J. C. WHITE (Wellington) proposed the following remit:

That with the object generally of enhancing the prestige of the law and the profession it be a recommendation to the New Zealand Law Society that a sub-committee be appointed to investigate and report on Public Relations, the sub-committee's terms of reference to include the following:

(*a*) *An investigation of public-relations systems in other parts of the British Commonwealth.*

(*b*) *The question of bringing before the profession and the public important matters in which the New Zealand Law Society or its Standing Committees have taken action in the interests of the community.*

(*c*) *General Press liaison and Press releases on questions involving fundamental principles of law and the administration of justice.*

He said: "This is the final item on this morning's agenda, and I shall not ask you to bear with me for very long. The remit will be seconded by Mr. Lloyd, of Dunedin, and I feel emboldened to address this assembly when I know that I am to be supported by someone from my native heath.

"I have two apologies to make. First, that the joint Secretaries of 1947 should be so Conference-minded that they should both wish to address you. You have just listened to Mr. Wild, and now you have to listen to me. I am afraid it is inevitable that I should be following in the footsteps of Dick Wild. Since University days, he has always seemed to be a step ahead of me. Indeed, only in one sphere of human endeavour have I kept clear of his influence, and that was when I decided to find a wife. And I have no doubt I only succeeded in avoiding him then by wooing and marrying his sister! Secondly, I have to apologize because this remit is not in the Conference programme. It was late in being sent to the Secretaries, and they are not to blame. There were a number of reasons for the delay, none of them weighty enough to advance in mitigation; but one was that the remit is the result of many discussions and considerable argument in Wellington.

"I had hoped that the remit would be moved by Mr. Denis Blundell or Mr. Tom Birks, who have been protagonists of public-relations schemes in Wellington, but unfortunately they were unable to come to the Conference. I acknowledge their help to-day, and also the help of those who have made suggestions and criticisms.

"The remit is somewhat lengthy, but, in a sentence, it is that this Conference should recommend the appointment of a sub-committee to investigate and report on Public Relations.

"It is important that what we mean by 'public relations' should be defined precisely. In the minds of some, it conjures up that abhorrent term 'advertising.' That is not the intention of the framers of this motion. It is not the purpose of this remit to suggest the advertising of the profession's wares, assuming that that were necessary. We are not such arch-heretics as that. We have a much wider, a much more important, and, we hope, a much higher, aim than that. Put quite shortly, we interpret public relations as our relationship with, and our influence upon, the community generally; and, when I say *our* influence, and *our* relationship, I mean the relationship and influence of the New Zealand Law Society, which is responsible for our corporate opinion and speaks for the profession. I maintain that that relationship and that influence would be improved and strengthened by the appointment of a Public Relations Officer or Committee, whichever is the more feasible.

"I want to make it quite clear now that this remit must not give the impression that it is in any way a criticism of the New Zealand Law Society. We are most conscious, particularly so in Wellington, of the work done by the New Zealand Law Society, and particularly by our President, and I should like to pay a special tribute to him for what he has done. I also pay a special tribute to the Standing Committees for the great work they do for the profession. You have all read the Annual Report, and we can see there what has been achieved during last year. Our suggestion is intended to help, and we consider a public-relations organization would be an aid to the New Zealand Law Society. At the same time, we envisage such an organization undertaking new functions which we certainly could not expect the already overburdened Standing Committees to undertake.

"I wish to refer to the three points which have been set out in the remit as terms of reference. I refer first to the investigation of public-relations systems in other parts of the British Commonwealth. It is clear that Public Relations has become a live issue in other parts of the Empire. Last year, the *Canadian Bar Review* published two articles showing that public-relations schemes have been adopted in British Columbia and Manitoba. These schemes might not appeal to New Zealand any more than the present brand of Canadian matches on sale here, but we may be able to learn a great deal from what has been done in other places.

"Secondly, there is the question of bringing before the profession and the public important matters in which the New Zealand Law Society or its Standing Committees have taken action in the interests of the community. That is a résumé of the resolution moved by Mr. Blundell in Wellington, dealing with the assistance given by the New Zealand Law Society's Standing Committees in what amounts to the drafting of statutes. At the time he moved the resolution, no publicity had been given to this matter at all, although we heard in the House of Representatives from time to time some very glowing tributes paid by Ministers of the Crown to the help they had received from Standing Committees of the Society. Since we have been in Auckland, however, I have noticed that this matter has been given some prominence in the local Press, probably because it became worth mentioning in connection with this Conference. Undoubtedly, there has been a strong feeling almost of frustration among 'the men in the street' of the profession that, when the profession, through the New Zealand Law Society,

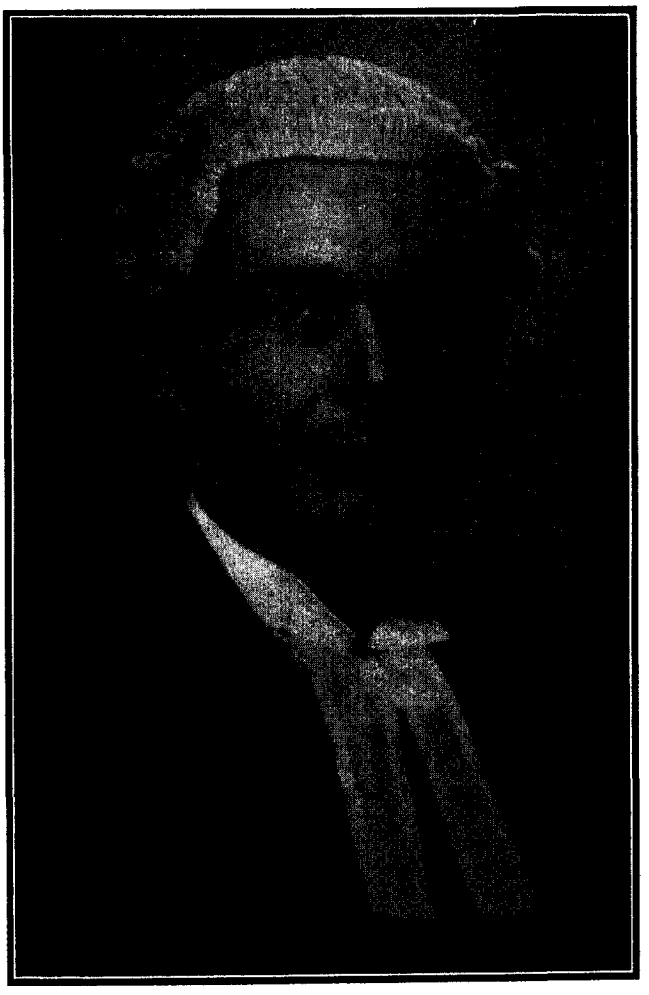
performs what must be one of its highest services, our light should be hidden under a bushel. The feeling was that the public should know how it was served. I submit that it could not be termed advertising to remind the community that the profession performs great services in this and other respects.

"Thirdly, there is the question of general Press liaison and Press releases on questions involving fundamental principles of law and the administration of justice. That is a wide term of reference. But, again, let me make it clear that it is not intended to suggest 'pure advertising.' The opening words of the remit make that clear—'with the object . . . of enhancing the prestige of the law and the profession.'

"No doubt, had this remit been drafted after listening to yesterday's addresses by His Excellency the Governor-General, the Chancellor of the New Zealand University (Sir David Smith), and Mr. North, a much better objects-clause could have been drafted. I maintain that those great addresses underline the need for a proper and adequate public-relations organization. Addresses on that plane, which may be heard at these Conferences, show us that we have a mission which is above the ordinary day-to-day service to the public. That mission must be performed by the New Zealand Law Society; but I feel that it is quite fantastic to suggest adding to the work already being done by the busy men who serve the Society on its Standing Committees.

"I am under no illusion, since to bring in a public-relations system of any kind presents practical difficulties. It is easy for me, standing on the side-line, to make suggestions which may not be practicable, and it would not be wise for me to attempt to be specific. I venture to suggest, however, that the best solution would be an enlarged executive organization of the New Zealand Law Society itself, with a General Secretary at the head. If we had that, the question of public relations would be largely solved. Such a General Secretary would have to be paid a salary on a scale which would attract someone from among the best in the profession. This would cost money. But why not? There are important and far-reaching matters at stake. If I understand yesterday's addresses correctly, respect for the rule of law itself in this country may well depend largely on the influence of the New Zealand Law Society. We live in an epoch when not only industrial unions and trades, but the professions themselves must be organized if they are to make their influence felt, and I submit that an organized public-relations system, under the direct control of the New Zealand Law Society, would do much to assist that Society in making the profession's proper contribution to the progress of human affairs.

"I move the remit."



Spencer Digby, Photo.

Mr. J. C. White.

MR. G. M. LLOYD (Dunedin) seconded the remit. He said:

"I did not think it would be my privilege to get up again at this Conference, as it is not my habit. But I do on this occasion take great pleasure in supporting Mr. White in his well-argued remit. The Otago District Law Society—perhaps strangely enough—is a rather conservative body; yet that Society favours wholeheartedly and unanimously the adoption of the remit so ably expounded by Mr. White. He apologized for the absence of two Otago representatives — our President (Mr. C. B. Barrowclough), and Mr. J. B. Deaker. These two gentlemen strongly favour something being done along the broad lines put forward by Mr. White. I need not repeat that, as a Society, we do support the remit, and it gives me great pleasure to second it.

"I think that, when we are really thinking about the subject, we should try to visualize the type of public-relations officer that was mentioned. He needs to have all the aptitude of a lawyer, combined with first-class reporting experience, and he must be a diplomat of the first order. He must have no political bias, but must be able to assist us to get alongside the public.

"While I am speaking to you, I want to compare the South and the North in one matter. When you arrive in Auckland, you visualize Aucklanders taking their liquid refreshment by the bottle. In the South, we search for the elusive spirit which explodes slowly down the bloodstream; and we take it in small quantities. There are lots of you who know *The Doctor Tells*: that does the medical profession no harm. Similar legal subject-matter in the newspapers would be beneficial. You may think that this is a young men's remit. It is. It is an attempt to march with the times. I therefore have much pleasure in seconding it."

DR. A. M. FINLAY, M.P. (Auckland): "I can speak with little personal experience on the matter. I refer to the second of the objects, and I can say that there is need for action to be taken on the lines advocated in the remit. Acknowledgments of the value of the work done by the New Zealand Law Society have been made in the House of Representatives, and those tributes were no more than deserved. Many people on both sides of the House, however, still believe that the mainspring of action is the immediate financial self-interest of the Law Society's members. Some are very hard to persuade that there is a higher aim. And that in spite of the fact that Members themselves see the work carried out. It is much more so with the man in the street. We have a tradition of willingness to reform the law, which compares more than favourably with that of any other body; but that is not appreciated. I for one would be very glad to see action of this nature taken."

MR. HAMILTON MITCHELL (Wellington): "In support of the remit, there are three matters to which I wish to draw attention. First, Mr. White did not claim unjustly that this remit has the wholehearted support of at least the younger generation. Secondly, I refer to the Annual Report of the New Zealand Law Society, published this year for the first time. It is an admirable step in the right direction. It circulated among members of the profession only, but it gave, for the first time, some idea of the scope of the work done. It was a disadvantage that the news was then twelve months old. Thirdly, I wish to recall some phrases from yesterday's addresses. His Excellency said that he had read the very lengthy and wordy objects of the constitution, and that he would add a further object. His words were: 'to make your opinions felt in the wider sphere.' That is the very object of this remit. Other matters were raised in the address by Mr. A. K. North, K.C., spoken to by Mr. Barrowclough. Mr. North drove home the lesson of the public conscience. Mr. Barrowclough spoke to us on the education of the public conscience. That is the very purpose of this remit, and I would ask for your wholehearted support for it."

MR. R. J. LARKIN (Matamata): "I should be very happy to see this remit passed, because it was at the 1947 Conference that I suggested that this Society should take steps to inquire into the possibility of a Public Relations Committee. I should be very pleased indeed if all members of this Conference would pass this remit unanimously. But in the minds of some members there are suspicions regarding the phrase 'public relations.' To my mind, there has not yet been given a definition of the phrase. If I may attempt one, it is: 'The fostering, the retaining, and the maintaining of goodwill amongst the public by commonsense methods.' 'Commonsense' is the word used, because common sense is so exceedingly rare. Public Relations is not streamlined publicity; it is simply selling our work—and we have wares and work to sell—to the public, so that we are an inspiration to them, and, as other speakers have said, so that we take our proper place as leaders in the community in which we live and serve."

MR. J. E. FARRELL (Oamaru): "I rather think that Mr. White and Mr. Wild are like so many Pilgrims climbing up the Hill of Difficulty. As I see the remit, it is only playing with the subject. There was a remit passed some twenty years ago stating that we should have a full-time Secretary of the New Zealand Law Society—a qualified and experienced practitioner. That remit set out his duties. The solution of the difficulty is not so much a Public Relations Committee as an experienced full-time Secretary, preferably a man well above the average in the profession, to whom the Society would pay a good salary. Then we could surmount some of the difficulties which seem to beset our friends in the cities. I might suggest that, if we are looking for a suitable man, we go to the country, and then we could introduce a 'knock-for-knock' system into the cities. As far as I can gather, there is no chance in the city unless one has a decent sideline. I go further: I believe it is true. Mr. Wild told us that, in the week, only the fifth day is given to breadwinning. Something will have to be done about the profession, and the best way is to get a really experienced man as Secretary. I am told that we are the worst-paid profession in the country. In Invercargill, a man has left the profession to take over an hotel. In Dunedin, solicitors become pastrycooks. I really think that the remit, as phrased and put before this Conference, is not entirely satisfactory. It does not go far enough."

MR. A. C. A. SEXTON (Auckland): "Most of us find ourselves in a peculiar position as to the public. As far as clients are concerned, I think we command a reasonable amount of respect; but, when the public views us as a corporate body, I doubt whether we hold the same position. It is not that they think anything about the New Zealand Law Society; but I believe something in the nature of a public-relations officer is very necessary. The mover and seconder have both put forward a possible scheme. As the position has been put to us, it looks as though a workable scheme can be evolved."

The remit was put to the Conference and carried, with one dissentient.

THE INFORMATION BUREAU.

No Conference record would be complete without an honourable mention for the Information Bureau at the Auckland University College. The presiding genii were Messrs. R. K. Davison and R. T. Garlick.

It was difficult for visitors to take in the variety of services available at the Bureau. The Chairman of the Conference certainly said from the platform that aspirins were available there for the sorely-pressed among the members. It is on record that "hair-do" appointments were speedily and efficiently arranged at convenient intervals on the afternoon of the Ball. Whether or not it is true that a clothes-pressing service was also available, is not recorded, as the tact and discretion of the Managing Directors were exemplary.

But there was little left for a visitor to Auckland to find out for himself. Maps of the city, with indicated routes to the venue of each Conference fixture, and guides to places of interest, were available. Sports entries were arranged and recorded. Personal assistance in multifarious directions was most courteously placed at the disposal of any inquirer during business hours. In fine, "Personal Service" was there for all to see—and sample.

The Information Bureau did a great job, and its Directors have earned large dividends of thanks and appreciation.

THE INTERNATIONAL BAR ASSOCIATION.

By A. H. JOHNSTONE, O.B.E., K.C., B.A., LL.B.

THOSE of you who have read the recently published Annual Report of the New Zealand Law Society will have noticed that early last year that Society enlarged its activities by becoming a Charter Member of the International Bar Association. The report goes on to say that the annual membership fee was $150, and that the Society was represented by two delegates at the Conference held in August, 1948, at The Hague. These delegates have reported to the Society, but it was thought that the present gathering would provide a convenient opportunity for giving members generally a brief account of the International Bar Association, its history, its ideals, aims, and objects, and some assurance that the $150 has not been entirely misspent. What I have to say is purely factual; I am not introducing any controversial matter, or anything which is even mildly provocative.

Sparrow Industrial Pictures, Ltd., Photo.

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

The Association, as its name indicates, had its origin in the United States of America, and, indeed, is the infant child of the American Bar Association. It is unnecessary for me, speaking to a body of lawyers, to explain that the American Bar Association is a very influential institution. Its members number well over 30,000. They are lawyers representing all branches of the legal profession, and not merely members of the Bar in the sense in which we are accustomed to use that term.

Owing to its size, it necessarily works largely through committees and what are called sections, one of the sections being the Section of International and Comparative Law.

Some time ago, that Section was allotted the task of investigating the possibility of creating an organization which would comprise all organizations of the legal profession everywhere throughout the world upon a non-political basis.

The Section reported to the American Bar Association at its meeting held at Cincinnati, Ohio, on December 23, 1945, when it was resolved (i) that the American Bar Association approves in principle co-operation among the units of the organized Bar of the respective nations of the world : (ii) that the Section of International and Comparative Law, through its appropriate committee, should continue its study and inquiry respecting the desirability of creating an International Bar Association composed of units of the organized Bar, and that, if, upon careful study, it appears that an International Bar Association can be formed on sound and durable lines, the Section should prepare and submit for consideration a draft constitution for such Association; (iii) that the endorsement or rejection of any existing or proposed organization in the international legal field, constructed upon the basis of individual members of the organized Bar, is beyond the scope of the proper activity of the American Bar Association.

Early in 1946, the Chairman of the Section wrote to the President of this Society, enclosing copies of the resolution which I have just read and a draft of the proposed constitution. He invited the comments of the Society on the draft constitution, and invited also suggestions regarding the whole project. The Society approved the draft constitution in October, 1946, but took no step towards becoming a member pending the receipt of further information.

Correspondence ensued between this Society and the Section, and also between the Society and the Law Council of Australia, and, also, between the Society and The Law Society in London. The English Society, whilst recognizing difficulties in securing attendance of an adequate number of truly representative members at meetings of the proposed Association, were very sympathetically disposed towards the movement. They hoped that the New Zealand Law Society would become a member.

Meanwhile, events were moving rapidly in the United States. In August, 1946, the President of the American Bar Association wrote to our President inviting him to

attend a meeting to be held in New York in October. He expressed the hope:

> that we may, through the creation of a mutually acceptable organization, marshal the lawyers into a powerful instrument for peace through law and justice.

The October meeting was duly held. This Society was not represented at that meeting, but representatives of twenty-one nations attended.

A draft constitution for the International Bar Association was submitted, discussed, and amended. It was resolved to send the amended draft to qualified national Bar associations throughout the world, and to convene a meeting to be held in New York on February 17, 1947. The New Zealand Law Society was invited to send representatives to this meeting, but did not do so. At this stage, the Society had not decided to apply for membership.

It was at the February meeting of the American Bar Association that the International Bar Association came into being. The purposes of the Association are set forth in the constitution as follows:

> To advance the science of jurisprudence in all its phases, and particularly in regard to international and comparative law.
>
> To provide uniformity in appropriate fields of law.
>
> To promote the administration of justice under law among the peoples of the world.
>
> To promote in their legal aspects the principles and aims of the United Nations.
>
> To establish and maintain friendly relations among the members of the legal profession throughout the world.
>
> To co-operate with, and promote co-ordination among, international juridical organizations having similar purposes.

To these purposes is appended the statement: "This is a non-political organization."

While the question of applying for membership was still under consideration in New Zealand, the new Association held its first Conference in New York in October, 1947. That Conference was attended by delegates from national organizations of lawyers from twenty-three countries, and among those present was the Secretary of The Law Society in England, representing both The Law Society and the General Council of the Bar of England. The list of member organizations appended to the report of this meeting includes the New Zealand Law Society, which circumstance perhaps explains how, when later we applied for membership, we were accepted as a Charter Member. The Committee appointed to advise the New Zealand Law Society reported favourably, and at its meeting in December, 1947, the Council decided to seek enrolment as a Charter Member of the International Bar Association. Soon afterwards, an application was made for Charter Membership, and in due course granted. The Society was invited to send a delegate or delegates to the second Annual Conference, to be held at The Hague in August, 1948, and also to send papers for consideration at the Conference, the suggested subjects being "Aeronautical Law" and "Administration of Law in New Zealand."

It was appropriate that an early conference of the new Association should be held at the Hague. Hugo Grotius, founder of modern public international law, was born at Delft, only five miles away. The International Peace Conferences of 1899 and 1907—both, by the way, convened by Nicholas II, Czar of Russia—were held there. It was due to a decision taken at the 1907 Conference to found a Permanent Court of Arbitration that the Palace of Peace at The Hague was erected. To its construction, Andrew Carnegie contributed $1,500,000. The Palace of Peace itself has been used since 1922 by the Permanent Court of International Justice, and more recently by the International Court of Justice. The building is well adapted for the holding of the Conference. It contains a Great Court Room, capable of accommodating the whole of the delegates, and many smaller rooms suitable for the consideration and discussion of symposia. Externally, the Palace is not a very handsome building, but the surrounding gardens are very lovely. Internally, it is rather too ornate to be altogether pleasing. Several nations have contributed to its adornment, but the most beautiful room in the building is the Japanese Room.

Our Society invited the Hon. Sir David Smith to be its delegate to the Conference, and at a later date the Vice-President was also appointed. Early in August, Sir David went to Utrecht to attend a meeting of U.N.E.S.C.O., and his co-delegate left London by air on August 15, arriving at The Hague via the great air port of Schiphol on the same afternoon. All hotel accommodation had been taken before the New Zealand delegates arrived, so we were allotted rooms with private families. I pay tribute to the kindness and consideration which I received from my Dutch host and hostess. In the evening, the delegates, with wives and friends, attended at the Kurhaus Hotel as guests of the Bar of Amsterdam. This large gathering comprised people from many countries, speaking many tongues. They were from Aruba and Siam, Finland and New Zealand. One was reminded of Dr. Johnson's celebrated behest:

> "Let observation with extensive view
> Survey mankind from China to Peru."

It was a convivial assembly. Healths were drunk, introductions made, programmes distributed, and badges issued. It was noticed that no Russians were there, and no Japanese.

On the following day, the delegates met at 10 a.m. at the Palace of Peace for despatch of business. The form of the programme followed closely that which had been found satisfactory at the first Conference, held in New York. The proceedings were opened at a short plenary session held in the Great Court Room. Mr. J. Drost of Rotterdam presided, and with him on the Bench were a number of delegates selected to represent various countries. The remainder of the delegates were accommodated in the body of the Court. Mr. Drost made an appropriate speech of welcome, after which the selected delegates responded. Sir David Smith responded on behalf of Australia and New Zealand. At this session, some 300 delegates, representing over fifty countries, were present. At the close of this session, delegates dispersed to the rooms in which symposia were to be discussed. These discussions took up the rest of Monday, and almost the whole of Tuesday. The subjects of the symposia were:

Progressive Development of International Law (in which no fewer than thirty-three papers were submitted).

Immigration and Naturalization and Loss of Nationality (six papers).

Administration of Justice (eleven papers).

Admiralty and Prize Law (three papers).

International Air Law (nine papers).

Legal Education and Admission to the Profession (seven papers). One of these papers was submitted by Mr. W. R. Edge, of Auckland, who had been nominated as patron, so that he might submit such a paper.

The Status of Lawyers and of their Organizations and Legal Aid (sixteen papers).

Uniformity in Negotiable Instruments and Similar Documents (two papers).

European Legislation on Declaration of Death (three papers).

Principles to be followed in the Protection of Industrial Property, such as Patents, Trademarks, and Copyright (twelve papers).

Business and Social Law (six papers).

International Fiscal Law (nine papers).

European Recovery Programme (two papers).

International Penal Law (five papers).

Renvoi (three papers).

Human Rights (three papers).

Comparative Law (eleven papers).

A very formidable list, you will be saying. If you choose to add them up, you will find that no fewer than 141 papers were submitted for consideration. Delegates were not expected to attend more than, say, four of the symposia, but, in the time allowed, it was impossible to read all these papers, much less give them adequate consideration. Nevertheless, I believe all the symposia were the subject of discussion, and, later, of resolutions to be forwarded to the meeting to be held later of the House of Deputies.

On Wednesday, August 18, the Conference took a day off. Delegates were driven to Amsterdam, where the Bar of Amsterdam sponsored a motor-boat excursion through the canals and harbour of that city. They were also entertained at lunch by the Bar of Amsterdam. In the afternoon, they were received by the Municipality of Amsterdam.

On Thursday and Friday, two plenary sessions were held. The subjects for discussion were :

(i) Restoration of the Law and Property Rights after World War II.

(ii) An International Code of Ethics for Lawyers.

With respect to the first of these subjects, the number of papers submitted was twenty-two. Again, it was quite impossible to read these papers, so abstracts were made of a selection of them, and these abstracts were read. Even so, the time left for discussion was much too short, especially as the representatives of those countries which had been overrun by the Germans regarded the subject as of paramount importance.

As to the International Code of Ethics for Lawyers, certain delegates—notably those from North America —were anxious that such a code should be adopted, and a code prepared by the Mexican Bar for the Inter-American Bar Association was put forward for consideration by the Conference. May I refer to just two of the articles of this code. The first reads :

> 1. The lawyer should always bear in mind that he is a servant of justice and a collaborator in its administration, and that the essence of his professional duty is to defend his clients' rights to the best of his ability and in strict accordance with moral law.

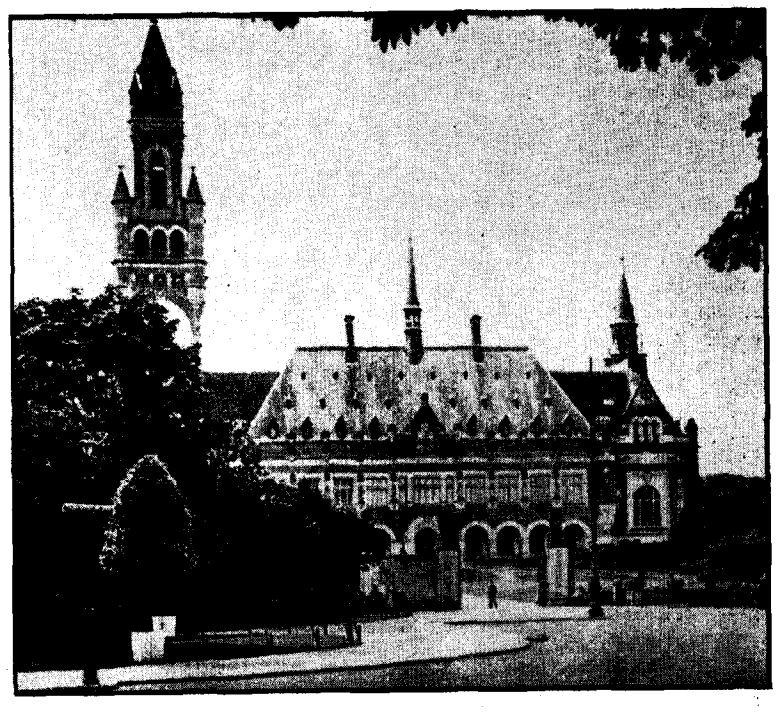
Some representatives were inclined to think that it had better be " in accordance with the law of the land."

The other article reads :

> 13. In order to build up a clientele in a dignified manner, the lawyer should establish a reputation for professional capacity and trustworthiness, and scrupulously avoid the direct or indirect solicitation of clients. The publication or distribution of business cards bearing the name, address, and specialization of the lawyer is a matter of local custom, but the solicitation of business through advertisements or circulars, or through interviews not warranted by personal relations, is contrary to professional ethics. All publicity, directly or indirectly provoked by the lawyer for profit or in self-laudation, defies the traditional dignity of the profession.

This is a very useful statement, which might be kept in mind when considering the proposed propaganda to be issued by the profession, which was discussed this morning.

In the end, it was resolved that the fundamental principles underlying existing codes should be ascertained, and that the member bodies should consider the framing of a suitable code. I am inclined to think that such a code might be helpful to students in New Zealand, and, after some experience on the Disciplinary Committee, I think it might be useful to some practitioners also.



The Palace of Peace, The Hague.

On Saturday, August 21, a meeting of the House of Deputies was held. It was still in full swing when, at six o'clock in the evening, the New Zealand delegates were compelled to leave. The chief items of business were (i) the consideration of resolutions passed at the various symposia, and (ii) the election of officers. The first item took up a good deal of time, but all the resolutions were put into final form and adopted, either at that meeting or at a meeting of the Executive Committee held shortly afterwards. The resolutions are in course of publication, and will be circulated to member bodies very shortly.

At the elections, the President of the New Zealand Law Society was made a Vice-President of the Association. Sir David Smith was signally honoured ; he was one of those elected to sit with the President on

the Bench of the Great Court Room at the inaugural session. His response on behalf of Australia and New Zealand on that occasion marked him as one of the important personalities of the whole Conference. He was appointed Chairman of Symposium No. 6, which related to Legal Education and Admission to the Profession; and at the meeting of the House of Deputies he was elected a member of the Executive Committee, Chairman of the Drafting Committee, and a member of the Nominating Committee, which selects suitable persons to be put forward at elections. The Conference ended that day.

But, before passing away from it, some mention should be made of the various social functions held during Conference week. In addition to the reception at the Kurhaus Hotel and the delightful holiday at Amsterdam, delegates took lunch together every day at the Palace of Peace. They were also received by the Netherlands Government at the Ridderzaal, a thirteenth-century building, formerly the Hall of the Knights, and now used for parliamentary purposes. They were received, too, by the Municipality of The Hague; a cocktail party was given by the American delegation; and an official dinner was given at the Kurhaus.

At the official dinner, the Rt. Hon. R. G. Menzies, K.C., Leader of the Opposition in the Federal Government of Australia, was selected to speak on "No real world order unless based on justice." He made a most excellent speech. He had been told that he would be permitted ten minutes in which to deliver it. He spent seven of them in showing how neither he nor anybody else could deal adequately with such a topic in the allotted time; then, in the remaining three minutes, he said all that there was to be said about it.

These social gatherings had immense value. Delegates got to know one another; they represented over fifty nations, some great and powerful, others small and weak, but each with its social and legal system, its own way of life. The social functions provided a friendly forum for exchange of views, and this, in turn, tended to promote understanding and to establish good relations.

What of the future? Two conferences of the International Bar Association have already been held, and a third will be held in the year 1950. At the second Conference, far too much was attempted, with the result that the proceedings were rather hurried, and discussions in some instances lacked thoroughness. Papers were not available to delegates until after the Conference opened, and too little time was allowed for consideration of them. It might be better in future if member organizations were to select from their own members persons competent to write authoritatively upon subjects which might be suggested to them; or it might be better still if papers were submitted to a revising committee charged with the duty of selecting those most suitable for Conference purposes. In either case, papers ought to be submitted to Conference members a reasonable time before the opening of the meeting.

Possibly other criticisms might be offered; but, if we bear in mind that the Association is just over two years old, that it must gain experience and wisdom as it grows up, and that improvements are bound to be brought about as the result of such experience, there is no need to be fearful of the future. In my opinion, the Association has immense potentialities for good. One of its objects is to promote the administration of justice under law among the peoples of the world. It would be difficult to conceive any higher ideal than this. Yesterday we heard of the importance of the maintenance of the rule of law based on justice among ourselves. The new Association aims at establishing the rule of law based on justice for the nations of the earth. We in New Zealand have much to learn from people who have lived and worked under systems of law different from our own. On the other hand, without thinking more highly of ourselves than we ought to think, we can make a not unworthy contribution to international deliberations. New Zealand cannot afford to be out of this Association, for, if, as Mr. Baxter in his admirable address this morning remarked, "hatred and ignorance are the harbingers of war," friendship and understanding are surely among the harbingers of peace. The lawyers of New Zealand are, or ought to be, a very influential body. Let them use their weight and their influence, so that, together with the lawyers of other lands, they may help to bring abiding peace to this sorely troubled world.

The President, Mr. P. B. Cooke, K.C., at the conclusion of the address, said:

"May I, for you all, express to Mr. Johnstone our thanks for his address, and may I say, to both him and Sir David Smith, as the Council of the New Zealand Law Society has already done, how proud the profession is to have been represented by them at the Second Conference of the International Bar Association at The Hague.

"I should like to add, before I ask you to pass that proposal by acclamation, that I have received a letter from the Secretary of The Law Society at Home which shows that not only Sir David Smith, but also Mr. Johnstone, rapidly became personalities at the Conference."

AFTERNOON RECEPTION AT HERNE BAY.

After the conclusion of the business session of the Conference on the Thursday afternoon, Mr. J. B. Johnston (who has for many years been an Auckland representative on the Council of the New Zealand Law Society) and Mrs. Johnston entertained about one hundred of the visitors at a reception at their home at Herne Bay.

The home of Mr. and Mrs. Johnston presented a very animated scene. They received the guests, among whom were the Chief Justice and Lady O'Leary, Mr. Justice Callan and Mrs. Callan, Mrs. G. P. Finlay, Mr. Justice Stanton and Miss Stanton, the Attorney-General, the Hon. H. G. R. Mason, K.C., and Mrs. Mason, the Solicitor-General, Mr. H. E. Evans, K.C., and Mrs. Evans, Sir Alexander Herdman, Deputy-Judge Dalglish and Mrs. Dalglish, Judge Goldstine, Mr. A. H. Johnstone, K.C., Mr. P. B. Cooke, K.C., Mr. W. J. Sim, K.C., and Mrs. Sim, Dr. O. C. Mazengarb, K.C., and Mrs. Mazengarb, and Mr. A. K. North, K.C., and Mrs. North. The other guests were the local Magistrates and their wives, the Under-Secretary of Justice, Mr. B. L. Dallard, and Mrs. Dallard, and past and present members of the Council of the New Zealand Law Society.

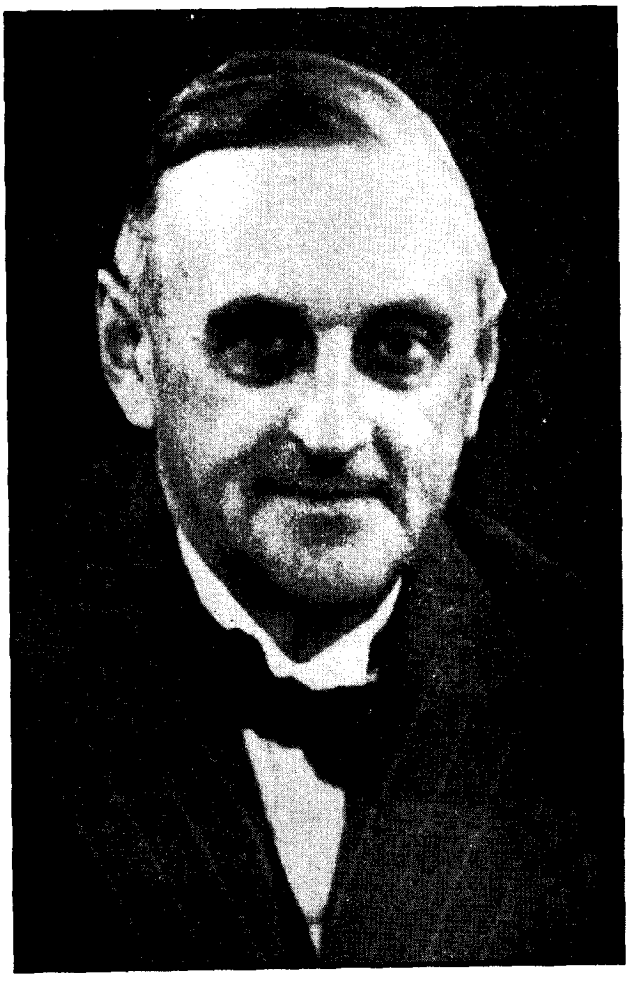
Those privileged to attend the reception will always remember the hospitality shown by Mr. and Mrs. Johnston, the lovely reception-rooms, the gardens, and the beautiful panoramic harbour views.

—*D. I. G.*

THE PRESIDENT'S CLOSING ADDRESS.

IN formally closing the business sessions of the Conference, the President of the New Zealand Law Society (Mr. P. B. Cooke, K.C.), who had presided over the proceedings, addressed the Conference members as follows :

"I notice that the Conference programme says that I am to make a closing address. That is a gross exaggeration on the part of the Committee, because I am in possession of documentary evidence that my contract with them was not to make an address, but only to add some observations at the end. I cannot believe that at this stage of the proceedings, when you have heard so much of absorbing interest from so many distinguished men, you could possibly want to hear anything like an address from me.



Sparrow Industrial Pictures, Ltd., Photo.

Mr. P. B. Cooke, K.C.,
President of the Conference.

The Kindness of Auckland Practitioners.

"My first thought is this. I want first to express my admiration of the wonderful arrangements that the Conference Committee have made for this Conference, and my gratitude to the whole of the legal profession in Auckland for their kindness. The arrangements that have been made by the Conference Committee show the enormous amount of time and thought that Mr. Hubble and his men must have given to everything. They have provided for every detail; nothing has been overlooked, and nothing has gone wrong. The hospitality of the Auckland practitioners has been continuous, relentless, and terrific. I should, too, very much like to say that no one can have come to this Conference without appreciating the great work that has been done by the two untiring and unselfish joint Secretaries.

"Another thing that has struck me so much about this Conference is the beauty of the surroundings in which we have done our work. I have often wondered why it should be that there really are better lawyers in Auckland than there are anywhere else in New Zealand; but I have now come to the conclusion that at least part of the reason is that they have learnt their first principles in buildings the beauty and the surroundings of which breathe the very traditions of the law.

"I suppose it is generally expected that, when your President for the time being has an opportunity of speaking to you, he should say something about the New Zealand Law Society. There are one or two matters relating to the functions and the work of that Society as to which I had intended to say a few words; but there are serious reasons, in the shape of further large and imminent instalments of hospitality, that make me disinclined to prolong these proceedings for more than a few minutes. I therefore pass those matters over, and confine myself to a totally different topic about which I wish to say something.

Duties as well as Rights.

"None of us is likely to forget the address of His Excellency the Governor-General. His Excellency spoke to us of the rule of law and of the part that the lawyer plays in the maintenance of the rule of law. When I heard his words, I could not help thinking how important it is that, in playing that part, we as a profession should never forget that we have our duties as well as our rights. The assertion of those rights is sometimes timely, sometimes it is even desirable, and sometimes it is absolutely essential. But it is not of them, but rather of our duties, that I want to speak to-day.

"It seems to me that those duties really fall into two main groups.

Duties to Clients and the Court.

"There is first the familiar group of duties that we owe to our clients and to the Court. Throughout the years, a great deal has been written and spoken of these, and of them I will say but little. We all know that most of us, if not all of us, practise our profession for the purpose of making a living for our families and ourselves. To suggest that we practise it purely from altruistic motives would be sheer hypocrisy, sheer refusal to face the facts. But let us always remember that it is our duty to practise our profession in such a way as to uphold the rule of law, and in such a way as to help the State to keep the administration of justice free from reproach. Let us, moreover, practise in such a way as to let it be seen that, in the doing of our

work, it is not the prospect of monetary reward that is uppermost. Those are not new thoughts among us. They are but a description of what our profession has always done. But it is important that we should never lose sight of them, and that we should so conduct ourselves that the people of this country are left in no doubt that we are continually conscious of them, and are left in no doubt that in matters relating to the maintenance of the rule of law we, whatever may be our individual political beliefs, will strive to uphold those elementary principles of justice that we have inherited from our mother country, and that are the foundations upon which our democratic institutions are built.

ASSISTANCE TO THE STATE.

"The other group of duties that rest on us is of a somewhat different nature, and may, speaking generally, be described as the giving of assistance to the State by promoting, or assisting in the promotion of, and by criticizing, legislation affecting the general law of the land or the administration of justice. Those duties are duties that can obviously be performed more conveniently through the Council of the New Zealand Law Society, as the mouthpiece of the profession; and, in fact, that is the course that is in practice adopted. But to say that those duties are performed in that way is but a partial statement of the position, because, as everyone knows, that Council, in performing them for you and for the whole of the profession, receives invaluable help from District Law Societies and their members all over New Zealand, and from special or permanent Committees set up to investigate the various matters that arise from time to time. We must not forget that this service that we give, and gladly give, to the State and to the public is to-day an integral part of our vocation, an essential constituent of our professional obligation.

"The profession in New Zealand has, I think it may fairly be said, for many years performed those duties faithfully and well; but what I want to put to you is that we must go on doing it. We must not let our feet grow weary or our hearts grow faint merely because one suggestion or another that we make is criticized or rejected, or because we find that the Government of the day does not agree with us about this or that. On the contrary, we must so act that the Government of the day will be assured that we are not a band of diehards fighting to retain forms and usages known to be archaic, cumbersome, or perhaps even useless. We must act in such a way that the Government will feel that we are a constructive force at hand and ready to continue to give our corporate service in connection with matters relating to the general law of the country or the administration of justice, and will feel that it can trust us to continue to give the State disinterested but active assistance in all those matters.

"The more we can do in those directions, the more will our profession grow in stature and in dignity, and, what is so very much more important than that, the greater will be our contribution to the welfare and stability of the democracy in which we are fortunate enough to live.

"This concludes the proceedings, but we still have some happy hours to come in Auckland. I only wish to say now how honoured we have been by the presence of some members of the Bench, and to add that it only remains for me formally to close the Conference, which I now do."

A VOTE OF THANKS.

Mr. A. K. NORTH, K.C. (Auckland) then asked leave to say a few final words. He addressed the Chairman, Mr. P. B. Cooke, K.C., as follows:

"Speaking, as I hope I do, on behalf of all members of the Bar present, I wish to say that we are extremely grateful to you for the able, efficient, and expeditious way in which you handled the proceedings of this Conference." The speaker added: "I am sure all of you would wish to join me in saying: 'Thank you, Mr. President,' and to carry this by acclamation."

The members of the Conference showed in no uncertain manner their appreciation of Mr. Cooke's chairmanship.

The business sessions then concluded.

CONFERENCE COMMITTEES.

The GENERAL CONFERENCE COMMITTEE comprised Messrs. V. N. Hubble (Convener), E. L. Bartleet, H. J. Butler, C. J. Garland, R. M. Grant, M. R. Grierson, T. E. Henry, A. H. Johnstone, K.C., J. B. Johnston, L. P. Leary, A. Milliken, A. K. North, K.C., H. M. Rogerson, H. C. Rishworth, R. P. Towle, G. H. Wallace, F. L. G. West, H. R. A. Vialoux, and the Joint Secretaries, F. J. Cox, and J. T. Sheffield.

The LADIES' COMMITTEE consisted of Mesdames V. N. Hubble (Convener), F. J. Cox, C. J. Garland, R. M. Grant, M. R. Grierson, T. E. Henry, J. B. Johnston, L. P. Leary, A. K. North, G. H. Wallace, H. R. A. Vialoux, and the Honorary Secretary, Mrs. N. H. Good.

The members of the SPORTS COMMITTEE were Messrs. E. L. Bartleet, S. A. Cleal, C. J. Garland, M. R. Grierson, R. T. Garlick, and H. A. Steadman.

The PAPERS AND REMITS COMMITTEE consisted of Messrs. A. H. Johnstone, K.C., H. J. Butler, W. H. Cocker, L. K. Munro, A. K. North, K.C., H. P. Richmond, H. M. Rogerson, R. P. Towle, and F. L. G. West.

The BALL COMMITTEE comprised Mr. H. R. A. Vialoux (Convener) and Mrs. Vialoux, Mr. and Mrs. P. C. Griffiths, Mr. and Mrs. T. E. Henry, Mr. and Mrs. W. W. Meek, Mr. and Mrs. C. P. Richmond, and Mr. and Mrs. S. W. W. Tong.

The DINNER COMMITTEE consisted of Messrs. L. P. Leary (Convener), R. K. Davison, R. M. Grant, B. C. Hart, A. Milliken, and G. H. Wallace.

The INFORMATION BUREAU was in the hands of Messrs. R. K. Davison and R. T. Garlick.

LADIES' FUNCTIONS.

THE SCENIC DRIVE.

On the morning of the second day of the Conference, the visiting ladies were taken by their Auckland hostesses for a scenic drive. Leaving the University College, the convoy of buses proceeded to the top of Mount Eden, whence Auckland's most famous view was enjoyed for some minutes. The beautiful autumn day lent additional beauty to the wide vista spread before the visitors, who were breathless in their admiration of the glorious panorama of Auckland, its suburbs, its harbour, and the Gulf beyond.

The next call was made at Cornwall Park, where morning-tea was served in beautiful surroundings. Nearby was the Acacia Cottage, now re-erected in the park. This, the first residence of Dr. (afterwards Sir John) Logan Campbell, was built in Shortland Street, in what is now the centre of the City, in the year 1841. Sir John, it will be remembered, gave the huge area of Cornwall Park to the people of New Zealand in 1901.

The visitors were then taken to the Waitakere Ranges, where they were delighted with Auckland's Centennial Scenic Drive. At many vantage points, stops were made to view the Waitemata and Manukau Harbours, and the isthmus that separates them. The varied bush scenery and the high altitude of the Waitakere Ranges were greatly enjoyed.

A different route was taken on the way back to the City, and the visitors were able to see at closer quarters some of the park-like suburbs of Auckland.

Above : Mesdames R. L. A. Cresswell (Wellington), L. A. Johnson (Whangarei), D. I. Gledhill, Secretary of the New Zealand Law Society, (Wellington), H. N. Burns (Wellington), S. C. Childs (Pukekohe), M. Robinson (Auckland), and R. H. Mackay (Auckland)
Left : Enjoying the party.

Top left : Mesdames E. C. Champion (Christchurch), D. Sheath (Auckland), C. F. Hart (Christchurch), and E. S. Bowie (Christchurch).
Top right : Mesdames G. J. Jeune (Gisborne), A. Marsden Woods (Whangarei), A. M. Cousins (Wellington).

Photocraft, Photo.

THE SHERRY PARTY.

While practitioners were engaged in attending the Conference Dinner at the Trans-Tasman Hotel, their wives were enjoying a sherry party held in the reception hall of Messrs. Milne & Choyce, Ltd. About 150 ladies were entertained by the Conference Ladies' Sub-committee, being received on arrival by Mrs. V. N. Hubble, wife of the President of the Auckland District Law Society, and Mrs. H. R. A. Vialoux, whose husband is the Vice-President.

The hall was delightfully decorated with bowls of flowers, and the tables with autumn flowers and silver candelabra. The scene was a very gay one, and one long to be remembered. A function such as this could not, at this stage of the Conference, be other than enjoyable, as friends of other similar gatherings had now made up parties among themselves, and new friends were added as the days went by.

After the sherry party, all the visitors were taken to the Embassy Theatre, where a large block had been reserved to enable them to see the film *The Winslow Boy*. The legal atmosphere surrounding this picture, and the knowledge of its background which had been dutifully relayed to them by their husbands, added greatly to the enjoyment of the evening.

All these functions were splendidly organized, and the Ladies' Sub-committee are to congratulated on the enjoyable nature of the functions they had provided for their guests.

THE CONFERENCE DINNER.

THE accommodation available in the large dining-room of the Trans-Tasman Hotel was taxed to its limit for the Conference Dinner, which took place on the Thursday evening of the Conference week. Annexes to the dining-room were also fully occupied by the great gathering of practitioners from all parts of New Zealand, including a representative attendance of the Auckland men.

The President of the Auckland District Law Society, Mr. V. N. Hubble, presided. On his right was the Chief Justice, the Right Hon. Sir Humphrey O'Leary, Mr. Justice Callan, the Hon. Sir Alexander Herdman, Mr. Justice Stanton, and Mr. A. H. Johnstone, K.C., Vice-President of the New Zealand Law Society. On the Chairman's left were the Attorney-General, the Hon. H. G. R. Mason, K.C., Mr. P. B. Cooke, K.C., the President of the New Zealand Law Society, and Mr. L. J. Coakley, Deputy-Mayor of Auckland. Guests of the Conference Committee were Dr. Percy Spencer, President of the Auckland Division of the British Medical Association, Mr. H. M. McElroy, President of the Accountants' Society, Auckland, Deputy-Judge Dalglish of the Court of Arbitration, Judge Goldstine, Chairman of the Local Bodies' Commission; as well as Mr. J. H. Luxford, S.M., Mr. F. H. Levien, S.M., Mr. F. Jenner Wily, S.M., and Mr. F. McCarthy, S.M. Others at the official table were the Presidents of the District Law Societies: Canterbury, Mr. E. S. Bowie; Hamilton, Mr. E. H. Clayton-Green; Wellington, Mr. W. E. Leicester; and the Vice-President of the Otago District Law Society, Mr. G. M. Lloyd.

An excellent dinner was provided, and was stated by those who have lived overseas to be equal to the standard set in pre-war times in London and on the Continent.

After the loyal toast had been honoured, the Chairman said:

"I would like to mention that we have a very large number of apologies, far too large a number to read in the time at our disposal, but I have two letters here which I am sure you would like me to read to you. One is from Sir Michael and Lady Myers, who regret that their arrangements will not permit of their being present at the Conference.

"The other apology which I am sure you would like to hear is from our old friend in Auckland—and, indeed, in the profession all over New Zealand—Sir John Reed, who unfortunately had a severe accident some weeks ago, which has prevented his being with us to-night. His letter is as follows: 'I am in receipt of the invitation of the President and members of the Auckland Law Society extended to Lady Reed and myself to attend the Seventh Legal Conference. I very much appreciate the thoughtful consideration that has prompted the invitation, which would have been gratefully accepted had circumstances permitted. Unfortunately I am confined to the house suffering from a fractured thigh, which effectually negatives my attendance or participation. My wife, on her part, whilst expressing her sincere thanks, feels that in all the circumstances she will be unable to avail herself of the kind invitation. May I express the hope that the Conference and the various functions incidental thereto may be very successful, and I send my kind regards to all my brothers in the law.'

"Sir David Smith, our Guest Speaker of yesterday, would have liked to be with us to-night, but he had to return to Wellington this afternoon. Mr. J. B. Johnston, of Auckland, has asked me particularly to express his regret that he is unable to attend this evening.

"Now, gentlemen, there are a number of other expressions of regret, but they are too lengthy a list to read, although we appreciate having received them.

"I will now ask Mr. W. J. Sim, K.C., to propose the first toast on the list, 'The Judiciary.'"

"THE JUDICIARY."

In proposing the toast of "The Judiciary," MR. W. J. SIM, K.C. (Wellington), said:

"When the suggestion was made to me that I should have the honour of proposing this very responsible toast, given to me as 'The Judges of the Supreme Court,' and when, in a moment of impulse, I accepted the same, I did expect to find myself ranged with a number of distinguished speakers on the toast-list and somewhat out of my class, and this proves to be the case. But I did not expect to find at the foot of the toast-list the words *De minimis non curat lex*, which seem to me a left-handed compliment which the compilers of the toast-list appear to have paid to such speakers as Sir Humphrey O'Leary, Mr. Leonard Leary, and Mr. Wilfred Leicester, in tying them all together in a bundle, as it were, and dismissing them out of hand with that well-known maxim. This I should regard as the only blot to date on an otherwise perfect Conference, and merely pass it to the last speaker whose name appears on the toast-list, to remove it as best he may.

"After accepting the responsibility of the toast, I confess that my mind immediately began racing for inspiration, and the first thought that rose up was, 'After all, you are a by-product of the judiciary yourself'; and that was summarily dismissed out of hand as a matter of no account. Then, with the idea of human origin, my mind raced off at a tangent (with that sense of relevancy which more than one speaker during the Conference has attributed to the legal mind) to no less a party than Aphrodite. She was the person whom you might remember is supposed to have risen full-born from the foam, and, if one remembers correctly, unadorned. As a source of inspiration on the subject of the Judiciary, that also turned out to be a blind alley. Lest there should be a note of alarm in the room, let me say that I have no intention this evening of getting into deep waters with Aphrodite. In fact, she was also dismissed out of hand, as she and I have nothing in common except that we both originated somewhere. But a substantial point of difference emerged, in that, whereas she ought to have been thoroughly ashamed of herself for the manner in which she appeared before the world, I have always entertained a restrained and, I hope, humble satisfaction that Providence cast my lot as it did.

THE JUDGES OF LONG AGO.

"You must forgive me, then, if I am prompted to indulge an odd reminiscence of the halcyon days when Judges functioned in leisurely atmosphere—or what appeared to be leisurely atmosphere—when, for instance, the Dunedin Judge would never have approached the Court of Appeal in one day, but would break the journey at Christchurch and spend an entertaining evening in comfort there.

"It is in connection with that great Judge, Mr. Justice Williams, who was held in such high respect throughout the whole of New Zealand, and in Dunedin revered and loved, that there comes to mind to-night something which impressed upon me for all time how deeply the Supreme Court Bench was rooted in courtesy. Our homes were adjoining, and linked up by a quiet country lane. On one occasion, at the age of ten or twelve years, I found myself coming up the lane when the Judge came out from his drive, setting out for his Sunday morning walk. At the appropriate distance, I lifted my cap, and received from the old Judge a smile which was in itself a benediction, and he himself lifted his hat in return.

One can only feel that the sparrows in the leaves twittered their appreciation of a great gesture, one instancing how lightly the Judges carried their great learning. On another occasion, this time at a picnic beside a stream, a summer picnic in Otago, unfortunately it was raining, an unpleasant Scotch-misty rain, and there sheltering sat Mr. Justice Salmond, Mr. Justice Sim, and Sir John Findlay, who was at the time Attorney-General. It was true that a small portion of the stream had been diluted with another Scottish element, so that there was a sense of inward warmth, although outwardly things were not so cheerful. There, by way of relieving the tedium, Salmond propounded some hypothesis which was picked up by the others and combated with the vigour of a Court of Appeal argument; and, conceivably, in those circumstances, another of Salmond's illuminating chapters was fashioned into shape. One can have little doubt that we lawyers of to-day—I leave the Judges out of any such unworthy suggestion—would probably fill in the time by doubling-up on the Scottish element and turning our attention to the All Blacks or to some local problem such as why Tauloch has never yet been known to win a weight-for-age race.

THREE PHASES OF THE JUDICIARY.

"These are only odd snapshots, but one regrets that much of value relating to the Judiciary is slipping into the past for want of adequate record, and one would hope that a chronicler might arise for the task. Should he even now be about and sharpening his pencil, I pass to him a suggestion that may be worth noting, that during the present century we have had three phases of the Judiciary, each with distinctive features, and each having its own basis of distinction. It begins with the appointment of Sir Robert Stout as Chief Justice in 1899, when the Bench was essentially southern in its composition; a Bench schooled at the feet of preceding masters—Prendergast, Richmond, and Williams—learned, serene, and rock-like, and appearing to those of us who remember the time as one of the unalterable parts of the social system. It was in fact a reflection of the long peace; they were given an opportunity of carving their record in letters of stone, and they took it.

"This combination of Judges continued until roughly in the early twenties, when a new phase began—at about the time of the appointment as Chief Justice of Sir Charles Skerrett, whose reign was all too regrettably short—and was carried on until after World War II by his brilliant successor, Sir Michael Myers. The Chief Justice's colleagues were very essentially from the Wellington Bar—Mr. Justice Blair, Mr. Justice Smith, Mr. Justice Kennedy, Mr. Justice Johnston, Mr. Justice Fair. Wellington College used to boast, I think, that it had at one time six old boys sitting as Supreme Court Judges—fortified, one must not overlook, by the strength of Mr. Justice Callan from Dunedin and Mr. Justice Northcroft from Auckland. And there was also one of the pillars of the time whom we are all delighted to see with us to-night, Sir Alexander Herdman. I think one may say that no incident which has occurred at this very pleasant Conference has given more satisfaction to those attending than the delight at seeing their old friend Sir Alexander Herdman again.

"This Bench carried the responsibility of changing and difficult times, a different picture from that of its predecessor. Post-war unrest, social dis-ease, disturbance of time-honoured legal conceptions made it altogether not an easy time. But the administration of justice proceeded evenly on its way, and, at the end of the period, we can acknowledge that the administration of justice still remained our proudest social institution.

"Now a new phase opens up before us, this time again with the appointment of a Chief Justice, Sir Humphrey O'Leary. Six very recent appointments have taken place, geographically spread, two from Auckland, two from Wellington, and two from Christchurch, and this new Bench has associated with it the mellow influence of several Judges whose time of retirement may be not out of sight. Nothing is getting easier; social conditions are becoming more disturbed, and it is conceivable that the Bench of 1949 faces the toughest judicial task of the century. I came across a passage recently in one of the poets which read:

> 'Stretched on the rack of a too easy chair
> We hear they everlasting yawn confess
> The pains and penalties of idleness.'

It may well be that the Judiciary of 1949 may find itself at times stretched on the rack, but it is the rack of overwork and of not too congenial conditions of work, and, if we hear an occasional yawn escape (which the defendants will, of course, deny), we accept the full responsibility of that as due to the tedium of our arguments.

"The point I would like to make is that there seems to be no easy judicial time ahead, and we know it; but I would like to say to Sir Humphrey O'Leary and his colleagues, with my humble respect, to go forward with confidence, resting on their own gifts and their wide experience, and thus to add, as we hope and expect, further lustre to the judicial story; resting also on

the assurance that the traditional loyalty of the Bar still runs strongly, and on our affectionate esteem.

"Working together in such conditions, we can look for nothing but good results, and, if the chronicler of whom I spoke is one who knows how to observe men and events together, he will, I am sure, have much to record that is true and much that is genuine, and also much that will be of a piece with the greatness of our legal past.

"Gentlemen, I have the honour to propose the toast of 'The Judiciary.'"

The Chief Justice Replies.

The Chief Justice, Sir Humphrey O'Leary, who was received with long-continued cheers, replied to the toast. He said:

"Let me at once express, on behalf of the judiciary, our sincere and warm appreciation of the honour that has been done us by the toast you have heard from Mr. Sim. And may I also at this stage express our appreciation of the kindness and the hospitality extended to us at all times during this splendid Conference of the legal profession. May I tender my personal and particular thanks for the honour that you have done us, and I think an apology is due from me to the practitioners of Auckland for the fact that at first I declined the invitation to attend this Conference. What prompted me were one or two matters such as these: I was feeling rather tired, and I thought that ten days in the country would probably do me more good than attending your Conference. That was a delusion. I also thought that it was high time the senior puisne Judge had the burden I have had for the last three years of replying to the toast of 'The Judiciary,' if for no other reason than that I have replied to it so often I am rather running out of material. However, I could not resist the request made to me by the Auckland members of the New Zealand Law Society who called on me. I felt it had been churlish to decline, and would be still more churlish if I did not come. I am very pleased indeed that I have done so, and I count it an honour to reply on this occasion on behalf of the Judiciary for my colleagues as well as for myself.

The Brotherhood of the Law.

"Now, this gathering singularly emphasizes the brotherhood of the law, the brotherhood that exists between the Bench and the Bar, the brotherhood that *should* exist, because, after all, we are engaged in the same main objects—the administration of justice and the pursuit of truth. After all, what is, or who is, a Judge? He is merely a barrister who has left the drudgery of the Bar to undertake the slavery of the Bench, and, on an occasion like this, we can meet on a common and a convivial footing, when the restraints that are necessary and proper on other occasions may be laid aside, and when the isolation which is expected of a Judge, but which I am finding it very difficult to impose on myself, and which I hope my friends are finding it equally difficult to impose on me, also can be placed aside.

"I could not help thinking, when Mr. Sim was proposing this toast, that it was appropriate, perhaps, that he should do so, because he is a son of a most distinguished member of the Supreme Court Bench, one of our great Judges, the late Mr. Justice Sim, a man who decided what he had to decide and nothing else. He was always fair and impartial. He wasted no words in adulation on the one hand or undue censure on the other. He decided what he had to decide, and left it at that. I am reminded of his methods when I think back to a divorce sitting in Wellington some years ago, when counsel in the case was Tom Neave, who died prematurely, and who would, I am sure, have reached the Supreme Court if he had lived. He could always look very wise when there was not very much wisdom available, and he could wrap up what he had to say in a number of words; he would not use one word where ten would do the job! He had a divorce case this day before Mr. Justice Sim, and, when he had finished his evidence, the question of domicil was sticking out a mile. Mr. Justice Sim said: 'Mr. Neave, the question of domicil is fatal to you, is is not?' Tom looked his wisest, and said: 'I apprehend there may be some difficulty in that direction, Your Honour.' 'None whatever,' said Mr. Justice Sim. 'The petition is dismissed.'

Some Members of the Judiciary.

"I should like to take this opportunity of saying how much I welcome back to the activities of the Bench, Mr. Justice Callan and Mr. Justice Northcroft. I had had no experience of working with Mr. Justice Northcroft before his return from Japan—where, as you know, he took a part with distinction, and, I have no doubt, with dignity, in proceedings that will go down in history—and I found, associating with him in the recent sitting of the Court of Appeal, that his robust common sense and his drive resulted in the early determination of all, and the writing of judgments in most, of the cases in which we were concerned.

"I am delighted, too, to welcome back Mr. Justice Callan, though probably not more so than is the Bar of Auckland. I understand that he has already commenced work, and on a difficult case, too. He seems to be reanimated, and in fact rejuvenated, and I am hopeful that he will have such a flair for work that, instead of giving you an extra Judge in Auckland, I may, because of his activities and efforts, be enabled to withdraw one. I am not unmindful that his return may mean that the Press will take a little more notice of our doings than they have during his absence.

"Brother Callan, we have been sadly neglected during your absence. What has happened in the Court of Appeal or in the Supreme Court has meant nothing to the Press compared with the weight of the pronouncements of, say, Mr. Carrol Harley in the Auckland District, or the profundities of Mr. A. A. McLachlan in a southern city. So I feel that, with your return, the Press will take some notice of what is happening in the higher Courts. And I also feel that the laughter that is expected and always dutifully given when any judicial joke or quip is perpetuated will return to the old building in Waterloo Quadrant. I would not like you to think that I was neglected by the Press during your absence. I was not at all, either editorially or photographically. But, to use a legal term we quite frequently hear now in Wellington from some of our classical jurists, the references to me were *déhors* the Supreme Court.

"I would also at this juncture like to make mention of appointments since I came to the Bench. We have an excellent set of men, who are industrious and courteous, and who I am sure all come up to the standard of Judges of earlier days. I do not like to mention any particular name, but I do think I should mention to

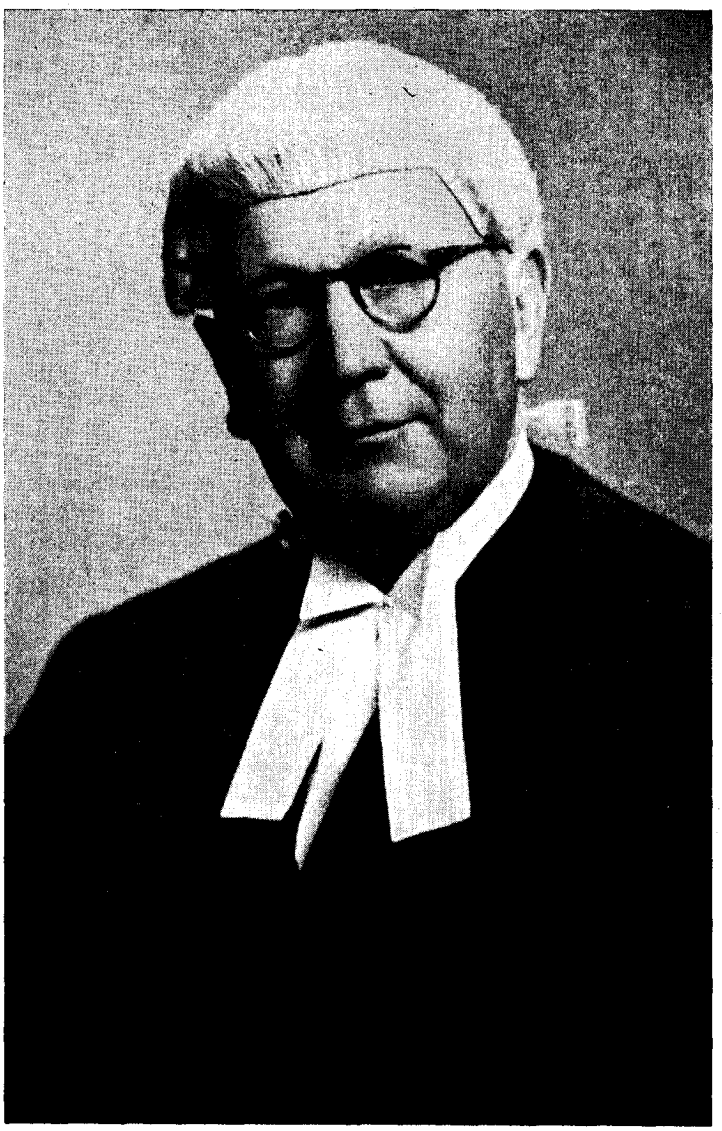
the Aucklanders their own Joseph. You will remember that I attended a complimentary dinner to him last year. It was rather a sad gathering, in a way, because you seemed to think that something dreadful was going to happen to Joseph when he left his beautiful Auckland and went down to the wild men of the southern parts of the island; and, to comfort you, I said: 'Don't worry about Joseph; we will look after him.' I have been associated with him now during two sittings of the Court of Appeal, and his industry, and the quality of his work, and his promptness with his judgments have led to a reversal of the statement I made earlier: I can assure you that it is now the case that Joseph is looking after *us*.

THE WORRIES OF OFFICE.

"I have on previous occasions referred to the Bar as the constituents of the Bench—of course, different constituents from those of Professor Algie, Mr. Webb, or Dr. Finlay, because *their* constituents can, if they do not like them, turn them out, whereas you cannot do that with me. As my constituents, there are a few things I would like to say seriously about the worries and difficulties with which one has had to contend, but, before that, on the question of worry, I wish I could get rid of worry as an American girl is said to have got rid of it. This I read in the recently published *White House Papers* of Mr. Harry Hopkins, confidant of the late President Roosevelt. The story goes like this. There was a young girl aged eighteen who had, in the American idiom, a 'date' with a young man. When her father learnt of this, he sent for his daughter, and said: 'You are going out for the first time with a young man. There are certain things you should know. First of all, the young man will probably want to take you by the hand. That is all right. Then he will want to put his arm around you, and that is all right. Then he will probably ask you to put your head on his shoulder. You must not do that, because your mother will worry.' So the young girl went out, and next day her father asked her how the evening went, and she replied: 'Just as you said, Father. He first took me by the hand. Then he put his arm round my waist. Then he wanted me to put my head on his shoulder. I said: "Hell, no! You put *your* head on *my* shoulder, and let *your* mother worry!"'

"However, I am afraid I cannot get rid of worry as easily as that. But there are some matters of comment concerning common interests I would like to mention to you, matters of common interest on questions of delays in getting work done, delays in judgments, and so on. I ask, when there is comment, or, indeed, criticism, in matters of that kind, has anyone ever taken the trouble to ascertain the difficulties under which the Supreme Court Bench has worked over the last four years? I would like to mention some of them. I came on the Bench in August, 1946. The full statutory complement of Judges was then ten, it being understood that one was usually on leave, although none had taken leave for some time. At that time, Northcroft was in Japan, and Smith was on the Licensing Commission, and, when I took over, Sir Michael Myers had been functioning with himself and seven others. When I came on, we had eight. Smith came back fairly soon, but, on his return, Blair went on the Onakaka case, the one that was launched in the Supreme Court in 1939 and which was being disposed of in 1946, and which took Mr. Justice Blair five months of exclusive work in hearing and preparing the award, so that we were functioning with eight Judges including myself. Two temporaries were appointed in February, and Mr. Justice Finlay went on to the Gaming Commission. We then had seven permanents—and you must remember that it is only permanent Judges who can sit in the Court of Appeal. Mr. Justice Johnston's term ended in April, 1947. No one was appointed to his place until October, 1947.

"During that time, I had six puisne Judges, along with myself and two temporaries, to do the work, but (I repeat) the Court of Appeal can be occupied by permanent Judges alone. So it went on, until Northcroft



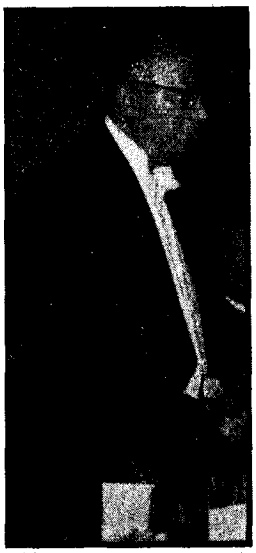
Spencer Digby, Photo.

The Chief Justice of New Zealand.
The Rt. Hon. Sir Humphrey O'Leary, K.C.M.G.

came back in December last year, and then, for the first time, I had a full complement of permanent Judges for the work of the Supreme Court. Well, you may, when I tell you of these facts, agree that it is more than likely there would be congestion, and there was congestion, which is now being got rid of, and the lists are being cleared.

Clearing the Lists.

"Another matter I would mention. There has been criticism at times of the inability of practitioners to get their cases disposed of. Sometimes this criticism is justified and sometimes it is not. Just recently, I heard there was an accumulation of cases in Christchurch, where they had the exclusive services of a temporary Judge for the last two years. I told Mr. Justice Northcroft of this, and he was astounded, and said he had appointments for the two weeks before Easter, and would dispose of what work there was. I received a letter just before I came here saying he had sat all days but two, and had practically cleared the list. I found complaints in Wellington that fixtures could not be got because, it was said, Judges were not available. I had two weeks after the conclusion of the recent Court of Appeal—not that I would be kept in idleness—which I could give to fixtures. There were, it was said, two big cases for disposal. I sent out word through the Registrar that I would take both of them before Easter, and I received word that in neither case were counsel ready to proceed, in one case I do not know the reason, and in the other case it was because the other side was not ready for a hearing and wanted to file further affidavits. The case is not ready yet. That is getting into details I would prefer not to mention, but, when one hears of criticism, and gets an opportunity of addressing one's constituents, I think it just as well to tell you of the difficulties under which we have laboured in the last four years, and of the absence of grounds for criticism in many cases. We now have eleven Judges, and already the effect of the additional Judge is manifest in the way the work is being cleared up. Mr. Justice Hay has been in Dunedin, and there is nothing awaiting hearing there. I have told you the position in Christchurch. In Wellington, cases that could have been taken if counsel were ready have been mentioned, and in Auckland there has been a great clearance, due to an extra Judge being available. The effect of the extra Judge is already evident, and opens up the possibility of a re-arrangement of the work in the Court of Appeal, to facilitate its disposal and lessen the burden on the Judges.



The Judicial Temperament.

"I cannot conclude without a word in lighter vein on this matter of the law's delay. This delay has been a perennial subject in the law over many years, and I thought I might, by a perusal of the text-books, get some help from some of the recognized authorities like Roscoe Pound, Pollock, and Maitland; but I found no writing on it at all except an article by my old authority, Finlay Peter Dunne. Forty or fifty years ago, he was a well-known writer who wrote under the pseudonym or *nom de plume* of 'Mr. Dooley.' His article is against me, but, with the candour one expects from counsel in putting forward for the assistance of the Court any cases against him, I am bound to put forward the authority of Dooley as an alleged reason for the law's delays. In one of his essays, 'The Law's Delays,' he takes up the subject and opens his essay with these words: 'Hennessey, if I had my job to pick, I would be a Judge. I have had a look at all the others, and that is the one that suits me best. I have got the judicial temperament. I hate work.'

"Then this defamer of the New Zealand judiciary goes on to say: 'And what Court would I pick? I would pick a Court of Appeal. That is where I would like to sit, dreamin' the happy hours away.' He must have had in mind the separate Court of Appeal. 'I believe with Lord Coke,' he said, 'the more haste, the less sleep, and the higher the judicial station, the more it is like a dormitory.' He does give some helpful advice as to getting through the work quicker, such as: 'Why waste all this time summing up to the jury in a criminal case? All the Judge need say to the jury is: "Be fair to the prisoner, but remember he did it."' In all seriousness, though, in years gone by I have sat under some summings-up in New Zealand which did not differ very much from Dooley's; but that could not happen to-day.

"And finally Dooley says: 'And all this trouble about doubt. When in doubt, do the right thing.' On second thoughts, I think that came from Mark Twain, and I don't think it was original.

"The Old Chief."

"I think, however, putting aside this badinage, you will agree with me that it is not a case of New Zealand Judges hating work. That has not been the reason that the lists have been slow at times in being cleared. However, I must conclude. I fear I have been rather garrulous, but I suppose this is because I am getting old. It is one of the things that saddens me that, not only am I getting old, but people are beginning to refer to me as old. I hear the expressions 'the old Chief,' and 'the old man,' and I have no doubt that, when the gentlemen I sentence to a term of imprisonment go below and get their breath, they say of me: 'The old ——.'

"To illustrate what I say, recently I received a spate of invitations to go to gatherings on board Home liners, and, as in about seven years' time I am entitled to a year's leave of absence, I thought I had better go on board and see what the accommodation would be like. So I went. After being about an hour on board, I came off, feeling anything but old, and, as I was walking along the wharf with a sprightly and perhaps springy step, I passed a knot of waterside workers, and one of them said, when I approached: 'Ah, here comes the old gentleman himself!' I was indeed saddened and chastened.

"Thank you, Mr. Sim, for the terms in which you have proposed the toast of 'The Judiciary.' The old gentleman is very pleased to have been with you this evening. Thank you all very much for listening to the relevancies and irrelevancies with which he has treated you."

Mr. Hubble said: "I am sure you would like us to assure the Chief Justice that, if we ever do refer to him as 'The old Chief,' we do so in terms of genuine affection." He then called upon MR. L. P. LEARY (Auckland) to propose the toast of "The Visitors."

THE VISITORS.

Mr. Leary said:

"It is a pleasure to me, after the consistently high standard of eloquence throughout the Conference, deliberately to pull the plug out and come down to the vernacular. We have with us to-night a number of distinguished guests, Dr. Spencer, President of the local branch of the B.M.A., Mr. McElroy, who represents the local branch of the Accountants Society, and our old friend Leonard Coakley, the Deputy-Mayor; and in due course I will deal with all of them.

THE ATTORNEY-GENERAL.

"Amongst the guests who have already been toasted are the Judges, and with them is included the Magistracy. They have already been welcomed. The next is our old friend the Attorney-General. At a previous assembly, I made a list of all the more outstanding measures for which he had been responsible, and said he was one of the best Attorney-Generals New Zealand has ever seen. I omitted from that list the fact that, early on, when there was a suggestion that there would be a State branch for advising Poor Persons, he obtained its postponement in favour of a scheme of the profession which is in course of preparation. Recently he has steered through the Magistrates' Courts Act, which, apart from a satisfactory consolidation of that Court, has placed the Magistracy itself upon such a footing that those already in will be adequately remunerated, while those who propose to enter will find the conditions reasonably attractive. Further than that, he has removed the doubt that hung over them that they were there only at the pleasure of the Government, and now they are there on terms of good behaviour. You may laugh at that, but those terms are exactly the same as those on which the august personages on the Supreme Court Bench hold their office. These are most important matters. Mr. Mason has steered these measures through, and I think it only right we should pay him a tribute for it. Indeed, whenever I look at his somewhat ascetic features, I am reminded of the story of the Chaplain in the House of Commons, who, being in the precincts one morning, was noticed by a visitor. The visitor asked a policeman if that were the Chaplain of the House, and the policeman said: 'Yes.' The visitor asked: 'Does he pray for the Members?' 'Lord bless you, no, sir! He doesn't pray for *them*. In the mornings, he comes down, takes one look at them, and then goes and prays for the *country*.' I would point out that those were the days when the Conservatives were in power!

OTHER PROMINENT VISITORS.

"Then we have with us the Solicitor-General, our old friend Bertie Evans, and, if I might say so, for modesty of demeanour in a man with the rank of King's Counsel, and for clarity of argument, he is a model for all younger men.

"Then there is the President of the New Zealand Law Society, Phil Cooke. He came from my native town and suffered the same disability as I did, a State education, but *he* made good!

"Those of you who were at the last Legal Conference in Wellington two years ago may remember that there were some observations made that we were very tough on the New Zealand Law Society. As at that time I was a member of that body, I did not worry about it, because I knew how wrong those remarks were, and I regarded them as a joke. But, as I found many people were taking them seriously, I had hoped that in his final remarks to-day Mr. Cooke might have said something about the work of the Society. But, with the modesty which I am sure is the result of art, he refused to say anything about it, and so it falls to me, now that I have left that body, to say something on that point. The New Zealand Law Society is a heavily engaged body, and the work it does may fairly be termed encyclopaedic. Its work is performed through Committees, and only those who have seen the work done by the various sub-committees in Wellington can realize the tremendous amount of industry that is put into these questions that Mr. Cooke mentioned this afternoon. He himself has had delegated to him all the more disagreeable tasks, calling for the greatest tact, energy, and acumen. Judging from results, the amount of pressure he has put into these tasks shows him to combine all the higher qualifications of Samson, Solomon, and Job.

"I pass from him to the next one of our distinguished guests, our old and excellent friend, Sir Alexander Herdman. As you all remember, he has been a statesman, lawyer, and Judge, and, now that he has passed to what the Romans called *otium cum dignitate* (which *he* translates as basking at Rotoiti, and coming up to the Races), we are overjoyed to see him here again, and hope that this will not be the last time he comes.

"Then there is Mr. Sim, K.C., who spoke to you earlier. Mr. Sim's real qualification is that when he was young he was known as 'Curly.' Times change. The fact that he is the head of a great political party at the moment I pass over entirely, but here again I am delighted to see him with us, and in this sentiment I am sure you join with me.

THE RANK AND FILE.

"Now I should like to mention the rank and file of legal visitors. They have been very well behaved indeed. I say this because the Conference Secretaries came to me during the afternoon-tea recess at the Cafeteria and said: 'We cannot get these boys to move into the Assembly Hall.' I went out and asked them to move, and nothing happened. I then shouted, 'Time, gentlemen, please,' and everybody, from Silks downwards, moved out automatically.

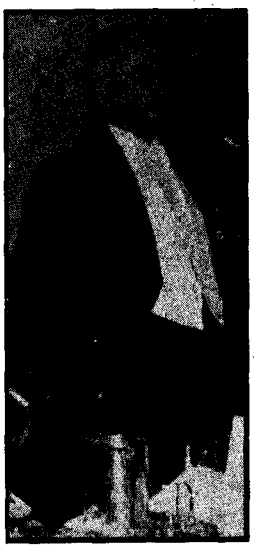
"With regard to our legal guests, I feel a deep sense that I am talking to something that is bigger than just our own assembly. Individually, looking round without my glasses, I am prepared to concede that you are not all oil-paintings; but collectively you represent the sturdy independence of the law we have heard spoken of yesterday. It would not be hard to find the counterpart of Dunning (the man who proposed the famous resolution that the power of the Crown has increased, is increasing, and ought to be diminished), of Pym and Hampden, and you remember what happened to them—James tore the records of their work out of the Journals of the House—and of Thomas More, another lawyer, who fought Henry VIII very bitterly about the propriety of the latter's marriage

with Anne Boleyn. (I heard recently they spell it *Bullen*, and it might be better.) I look round these hatchet faces from the South, and I see men here who are perfectly prepared to die for their principles, as More did, when and if the Communists take charge of this country. I can see forty or fifty lawyers whose skins will be nailed to the wall, and that is the greatest compliment I can pay them. We will never get back to the good old days of Queen Victoria, when everything went so well that Sarah Bernhardt could play Cleopatra, get news of Anthony's death, and turn on a scene never seen on the stage since—stabbed the slave who brought the news, wrecked the hangings, and writhed on the floor in a fit. And one dear old Victorian lady said to another: 'How different, how *very* different is the home life of our own dear Queen.'

"Having dealt with the gentlemen of the long robe, I will now turn to our guests.

The Medical Profession.

"The first is Dr. Spencer, the President of the local branch of the B.M.A., and I would point out to you gentlemen that he belongs to a profession the antiquity of whose ideals goes back almost to the invention of writing. Seven hundred years before Christ trod this earth, there was a general practitioner named Hippocrates, who made a collection of a hundred different observations that are still preserved, and amongst these is the Hippocratic Oath. For the information of those who are not fluent Greek scholars, I will read it in English:



> I will look upon him who shall have taught me this art even as one of my parents. I will share my substance with him and I will supply his necessities if he be in need . . . I will impart this art by precept, by lecture, and by every mode of teaching, not only to my own sons but to the sons of him who has taught me and to disciples bound by covenant and oath, according to the law of medicine. The regimen I adopt shall be for the benefit of my patients according to my ability and judgment, and not for their hurt or for any wrong. I will give no deadly drug to any, though it be asked of me, nor will I counsel such, and especially I will not aid a woman to procure abortion. Whatsoever house I enter, there will I go for the benefit of the sick, refraining from all wrongdoing or corruption, and especially from any act of seduction, of male or female, of bond or free.

So you will appreciate that the doctors early limited their scope. The quotation goes on:

> Whatsoever things I see or hear concerning the life of man in my attendance on the sick, or even apart therefrom, which ought not to be noised abroad, I will keep silence thereon, counting such things to be as sacred secrets.

"It is an inspiring thing, gentlemen, to realize that these things were written 700 years before Christ. It has always been a tradition of our profession that, when we hold a *tangi* like this, we have quacks present. I remember as a boy in Wellington our late Chief, Sir Charles Skerrett, was in the Chair, and Dr. Izard was the honoured guest on behalf of the medical profession. I have never seen such a flow of wit and/or alcohol. Izard said the lawyers had the advantage, because, of course, the doctors had nowadays given up *bleeding* their patients; but in due course the rejoinder came, and Skerrett said: 'You know, doctors have it all their own way. When they make a failure, the spade hides it. When we lawyers make a failure, it is blazoned abroad.' Whereupon Izard came back with: 'And some of *your* failures swing in the air.'

The Accountants.

"Now we will turn to the accountant. Poor old McElroy represents them, and must take the knock. They are of great antiquity too. One of the first records of accountancy comes from Mesopotamia, and concerns two shekels of silver, which, so runs a Babylonian document: 'have been borrowed by Mas-Schamach . . . from the Sun-priestess Amat-Schamach. He will pay the Sun God's interest. At the time of the harvest he will pay back the sum and the interest upon it.' This document is of even earlier date than Hippocrates. It was engraved on something we now call a brick, and it had the advantage that, when you presented your note-of-hand, you had a sanction behind it. It was the precursor of our Bill Writ.

"Roman accountancy was a tough thing. Two X's stood for twenty, and it is difficult to add another two X's and get anything but beer as the answer. So they invented the abacus, or calculating-machine. It is difficult to describe, but its modern prototype is the adding-machine. Some of you boys may think it is just another excuse for a blonde in the office, but I understand they actually use these things. It would have been much better for accountancy had we had six fingers on each hand. We have only five, hence the decimal system, and one half should have been represented by ·6 when it is only represented by ·5. When it comes to quarters, it would have been ·3 instead of ·25, and so on. The accountants had a strong movement to develop a race with an extra finger, so as to establish a proper duo-decimal system, but all they have succeeded in doing is to encourage the growth of a third hand, which they have constantly in the pockets of the lawyers, for they have taken all the loose company business away.

The Deputy-Mayor.

"The last of my victims is, of course, Mr. Coakley, Deputy-Mayor of Auckland, a man of very long civic experience. Just on twenty years has he served his city, and in addition he is a man of great business experience, while in his official capacity he represents the great god Public—Auckland itself. As a matter of fact, some man from the South (who shall remain nameless) in a very charming speech referred to Auckland as large, warm, and lovely. I suppose he must have met a girl in Queen Street!

"Mr. Coakley's climate has only two forms—perfect, and unusual. Auckland grows one-third in every ten years. As a matter of fact, it was the capital once, but in 1885 they transferred the capital to Wellington, and then Wellington took the motto *Suprema a situ*, which, interpreted freely, means 'Important only because of its geographical position.' As I have said, Mr. Coakley represents the public, and the three professions here all have a paradoxical impact upon him. The doctors have a free medical service for you, sir. It will cost you 1s. 6d. in the £, or £200 a year, if you have a reasonable income, but it is still 'free'! And, if you want your tonsils out, it will still cost you twenty

guineas. But it is still free. The accountants will cater for you ; they will open your books and take out your monthly balance, and they are passionately accurate. It is an inspiring thing to see an accountant chasing threepence in an account, and charging you a tenner to do it. He will put you right in income-tax matters, and his brethren in Wellington will put you wrong. You need him in life, and more in death ; he gets you coming and going, and that is described as ' double entry.' Then we have the lawyers. They are at your elbow all your life ; they will see you through all the intricacies of lunacy, bankruptcy or bastardy ; they will also unloosen the bonds of matrimony, and this is often accomplished by a process called restitution. This restitution has been the subject of an important work about to be produced by Butterworths, entitled *Robinson on Sincerity*, and the essence of this doctrine is that, if you really want to get rid of your wife, you must really want her back. Judges understand this doctrine perfectly, the profession but dimly, and the public not at all, except that the lawyers get double money, because it means going to Court twice.

" I have perhaps been a little satirical, but, if I might strike a serious note for a moment, we in Auckland have had such great hospitality at your hands when we have been south that it gives us the greatest pleasure to have you here. We cannot say how much we have enjoyed meeting you. We hope to see you here many times again. Now, having said this to you, we who come from Auckland are going to take our glasses—and there is a good selection of these to choose from—and drink your health."

The Visitors' Reply

Mr. W. E. Leicester (Wellington) replied to the toast, " The Visitors." He said :

" It gives me great pleasure to reply to my old friend Len Leary, who, in these parts, has brought the art of the *non sequitur* to its finest flowering. Yet, behind all the seeming irrelevancies and inconsequential ramblings of Auckland's forensic Charlie Chaplin, I have every reason to believe there beats a warm and friendly heart. In this, his anecdotal stage, he seems to me to display towards us, his visitors, the same affection as that of a porcupine which demonstrates its love for the human race by rubbing its quills up and down the bare legs of a child.

" I have been reliably informed since I have come to Auckland that my old friend is shortly to retire from the law and go to his Sabine farm, so I can only hope he will interpret these remarks *ad hoc*, and not *anti-hic*. I may point out that amongst those mentioned to-night in the course of his very short address was a certain Mr. Dunning, described as an old lawyer. But, if my recollection of history is correct, Dunning was not a lawyer, and it is clear that my old friend's memory is slipping back to those early days when ' dunning ' formed the greatest part of his practice, and when, within the limits of the ' equity and good conscience ' clause of the Magistrates' Courts Act, his earliest triumphs were founded.

The Visitors' Thanks.

" Gentlemen, on behalf of the visitors, I want to say how grateful we are to you for the trouble you have taken to entertain us at this Conference, and for the care and attention you have bestowed upon us. Not since Cleopatra threw a party for her boy friend Anthony in Asia Minor, in those glorious pre-rationed days, had there been hospitality equal to yours. Indeed, at times it has been so overwhelming that some of us have been made to feel as if we were the actual organizers of the next Empire Games, and you could not possibly have devoted more time to us had we appeared before you, phalanx-like, a mile wide, and in the more striking role of wasps.

" To a Law Society possessing the sensitivity which that of Auckland has, the selection of one who in responding to this toast could be relied upon to give the due meed of praise to the peculiar characteristics of its members was no doubt a matter of some difficulty. I can only hope that, in selecting me, the basis of the selection was not that which was used recently in the entertainment of some English Naval officers in a small town in Western Australia. At the conclusion of the luncheon, the King's health was proposed, and you can imagine their surprise when a burly and uncouth individual arose to reply for the King. ' This is new to us,' said the guests afterwards. ' We've not seen the King's health responded to in that manner before.' ' Oh, its quite all right,' said the hosts. ' We had quite a bit of discussion about who was the proper person to answer the toast. We thought the man you have just listened to had the best claim to respond on behalf of the King, because he has just received the King's Pardon.'

Auckland, The Conference City.

" In pursuance, then, of an implied understanding with the Conference Committee that, if I am to be critical, the criticism will be in the right direction, I want to say how much I have been reminded over the last few days of a lithograph drawing that adorned the walls of my old school. Not only were the walls old, but they were dirty as well, and the drawing, being a welcome relief, achieved thereby a distinction it scarcely merited as a work of art. It was in the languid and dying-duck tradition of the pre-Raphaelite school of painting, and depicted a gawky and pasty-faced youth reclining upon a couch. In the modern conception of 1 ZB, he was a clear case of night starvation. In the background, tall buildings of a classical design arose like the blurred and mystical angels of William Blake. The drawing of this splendid civic vision was entitled ' The Dream's Fulfilment.'

" Gentlemen, to those of us who have come from the mere hamlets and villages of both Islands, our fulfilment is this city of dreaming spires and wide-awake people. Life would not have been complete for us had we not seen Auckland. Counsel have often told us how, when they have endured the rigours of the train journey to come here to take litigation, nothing could exceed the old-world courtesy with which they are treated in your Courts. Local practitioners, they tell me, eschew the coldly impersonal ' my learned friend ' in favour of the warm-hearted ' my friend from Wellington '—or Hamilton, as the case may be—flavoured with a sunny smile, not at visiting counsel, but, to spare his embarrassment, at the jury themselves.

"It seems that nothing is too good for your visitors. Only yesterday afternoon, when some of us made a hasty and anxious visit to your library to see where we stood, whether we were democratic liberals or, like Mr. North, democratic conservatives, we were taken by the Librarian down into the very archives of the building, and there he produced to us from his safe a most old and interesting-looking tome, which he said was the repository of jests taken from caverns in the Paleolithic Age. 'And how,' he added thoughtfully, 'are my good friends Mr. Leary and Mr. Bryce Hart to-day?'

"Now, gentlemen, it must be admitted that to us the tempo of life here in Auckland is alarming; we find it simply terrific the speed at which you rush from job to job and overtake arrears of work. And this is especially noticeable to those of us who prefer the more leisurely work of bringing compensation claims for the Maori race against the Government. One thing that impresses us is the number of writs you manage to issue in this district, and we marvel at this, because we realize the amount of work in which you must subsequently be involved in finding facts to support them. This spirit of urgency was very manifest to an Irish practitioner who came to this Conference, and this morning was watching your traffic. He is a man of some position in the county town he comes from; in fact, in such a position that, when he crosses the road, traffic has to give him precedence. He was fascinated by your traffic-lights. For several minutes he watched the transient yellow and the more enduring green. Then he turned to me and said: 'I see they don't wait so long for Protestants here.'

A Lesson for the Wives.

"I would like to take the opportunity of congratulating the Conference Committee on the excellent programme that it has provided for our womenfolk. In particular, I was much impressed by the superlative tact which led the Committee to send the ladies to see the film *The Winslow Boy*. As you know, this picture is a thinly-disguised dramatic presentation of the famous Archer-Shee case, and must inevitably be an inspiration to all of us, because, on a brief that involved the alleged theft of a 5s. postal-note, Sir Edward Carson was able to obtain from the Treasury Department no less than £7,000 for costs! I pause for a moment while the Under-Secretary of Justice takes a note of that. But the film seeks to inculcate the dreadful lesson that, while daily our wives are listening to such radio serials as *My Husband's Love*, we, their husbands, are engaged in wresting justice from a harsh bureaucratic world. Whether the acting of the dashing lead, Robert Donat, is good or bad I cannot say, as, personally, I know little of the films of Hollywood. However, I am informed that the finest acting there is on the part of those female stars who present the annual Motion Picture Academy Awards to the other female stars.

"In conclusion, I want to remind you that, in addition to replying for the visitors, I am also replying for the guests—Dr. Spencer, Mr. McElroy, and Mr. Coakley—who, through circumstances of misfortune rather than discredit, are not members of the legal profession. I have a vivid recollection of the delightful introduction of Mr. Coakley, the Deputy-Mayor, at the commencement of the Conference, rather a subtle introduction that had a sting in the tail. Well, I'm proud to be the one who has to-night kept this municipal 'wolf' from the floor. I do not think I am committing myself to too definite a prognosis if I say that they have enjoyed the gathering as much as we have. In fact, until the roseate glow has diminished, I am sure that Mr. Coakley would give us all the freedom of the City; Mr. McElroy would gladly adjust an immediately required profit-and-loss account; while Dr. Spencer would offer, for those of us who have dined not wisely but too well, and whose frames are a little bent, to give them the necessary panel beating.

"Mr. Leary, on behalf of all the visitors, I thank you once again for this most delightful Conference. We have all thoroughly enjoyed ourselves, and I can assure you that in nineteen years' time we will be here again."

"De Minimis."

Mr. Hubble then said: "Gentlemen, you will see at the foot of the toast list, '*De minimis non curat lex.*' That takes some explaining. I will call on our old friend Mr. Bryce Hart to explain it."

Mr. Bryce Hart: "If I were to go through the correct titles, I would miss my last boat, so I address myself to the Chairman alone, and your Honours. If this were a Shakespearian tragedy, and not a meeting of the legal profession, we would expect to see in brackets: 'Enter the village half-wit.' However, gentlemen, before I start to discuss this very erudite subject, I have a note here, handed to me by Mr. L. P. Leary, and I shall read it. It says: 'Dear Bryce, Please remove the impression that I am to retire from practice. The farm is only an investment.' Gentlemen, I can assure you that this is absolutely true. He *intended* to retire from his practice, but I am credibly informed that, as a result of a circular letter signed by both of his clients, he has decided to continue in practice.

"I note it is getting very late, and I am deeply conscious of it, and also that I have listened to most wild and wonderful speeches. This man on my right (W. E. Leicester) I think referred to me as a porcupine, but Auckland with its faults, unlike Wellington, has its points! I have had two days and two nights of what I call speeches, sweets, stimulants, and stomach-powders. I prefer the last.

"There is one curious feature about these reunions or Conferences. One writes to solicitors down south on agency work, and I have a mental picture of the man to whom I am writing. I have made many mistakes in this respect. One man to whom I had been writing for some time I pictured to be lean, gaunt, and very intelligent. Two years later, I met him, and he was very square, fat, and had no brains whatever! Similarly, someone said to me during this Conference, 'I always imagined you as being very short and fat.' I have always been 'short,' and still am, but I am not fat.

Morticians at Play.

"Now, gentlemen, what I wanted to talk about was the circular letters we have received from the respective Law Society Secretaries. We get them all. Ninety per cent. are about the Land Sales Act and the regulations thereunder, being in duplicate, triplicate, quadruplicate, or what have you. Flat mortgage, table mortgage, or under-the-table mortgage! I must confess that many of these letters I cast aside with a cursory glance, sometimes with a glance followed by a curse. They have a picture of me in *Truth* which they persist in publishing, and which makes me look like a love-sick Abyssinian bookmaker.

"The only letter that really intrigued me recently was one sent by the Undertakers' Association to our Secretary, on its pictorial but macabre letterhead. Theirs was a very simple request, couched in layman's language, and ran thus: 'Will solicitors who are administering deceased estates please pay the funeral expenses promptly.' I gather from this that they have not adopted the slogan that is so common just now with some business houses in Auckland, the 'lay-by' system. There are other business houses in Auckland, and I think undertakers (or morticians, as they are called here) prefer the cash-and-carry system.

"I do not know why, gentlemen, but undertakers and their ghoulish ways have always fascinated me, and I am afraid I have fascinated them. It may be my cadaverous look. I appear to be a good case for them. There is one in Auckland (I do not know him very well) who persists in talking to me. One day he said: 'How tall are you, Mr. Hart?' I knew what he meant. He meant: 'How long are you?' I do not know the man intimately, but I am informed by other members of his Association that he does what he calls, in their own jargon, 'a beautiful job.' Be that as it may, he has the charming habit of sending me annually his business calendar, adorned with a beautiful picture of a

Before and at the Dinner. *Photocraft, Photo.*

Top left: A Quiet Corner. Mr. V. N. Hubble, the Conference Host, with the Chief Justice and Deputy-Judge Dalglish.

Top right: Mr. A. C. Stephens (Dunedin), Mr. T. H. Fleming (Auckland), Hon. Sir Alexander Herdman, Mr. H. E. Barrowclough (Auckland), and Mr. B. C. Haggitt (Wanganui).

Centre left: Mr. W. W. Meek (Auckland), Mr. E. L. Pocock (Otorohanga), Mr. J. J. Garbett (Wellington), Mr. J. H. Luxford, S.M. (Auckland), Mr. F. P. Kelly (Hastings), Mr. A. K. North, K.C. (Auckland). At back: Mr. A. Marsden Woods (Whangarei).

Centre right: Enjoying themselves: Mr. N. P. Wyatt (Whangarei), Mr. L. A. Johnson (Whangarei), Mr. R. H. Mackay (Auckland).

Lower left: Mr. W. J. Sim, K.C. (Wellington), Mr. F. L. G. West (Auckland), and the Solicitor-General, Mr. H. E. Evans, K.C. (Wellington).

Lower right: A Corner of the Dining-room.

cemetery and embellished with all the ghastly accoutrements of his trade. I may be super-sensitive, but on closer examination I believe I can decipher 'You may be the next,' written in invisible ink near one of the coffins. The pictures themselves are suggestive: in one there was a picture of a big flower-garden, suggestive of wreaths: in another, two fishermen had their arms stretched out like this. Gentlemen, next year, when I receive one of his delightful productions, I shall not be at all surprised if it shows the Cricket Test-match at Lords, with the caption: 'We bring home the Ashes.'

"I think I should at this stage get on to a more cheerful subject. I would suggest to this particular man that he might get some suitable slogans for his business, such as: 'You keep what you earn: we urn what we keep.' This man must have special qualifications, for he is not only an undertaker but an embalmer. I have not had occasion to invoke his aid as yet, because many of my clients have met their deaths as the result of many years of self-embalming, and any interference after death by another embalmer would be quite abortive. At any rate, a friend of mine, a well-known Auckland solicitor, had an aunt, a great-aunt, and sundry other aged relatives on his hands, and a certain old undertaker 'did the job' for every aunt except one, and, because of some hitch, a rival got that one. My friend was very annoyed at this, and sent his old undertaker friend a letter saying: 'Auntie eighty-five. Rallied this morning, but I am afraid she won't last a week. You will have the job.' Every day after that, my learned friend at his office was rung up at nine o'clock regularly by this gruesome undertaker, whose inquiry ran thus: 'What do you know?' He did not know anything for about three weeks, but eventually the said business happened, and he rang up his undertaker friend, who, within an hour, rushed into his office and said: 'I have got her all ready.'

"Now, down South, they had a very popular undertaker, the Chairman of the Carpenters' Union, an ex-serviceman, lay-reader at the Church, and also the local bookmaker—a very popular man! While at a funeral one day, he had a heart seizure and dropped dead. The local paper reported this *in toto*, and said: "This sad event cast a gloom over the whole proceedings.' Incidentally, during the early days of the War, we had an undertaker who appealed against service, and, without a smile, the members of the Board allowed him out of the Army, but said he would have to be available in a grave emergency. One time, a man went to see his friend named Joe! He called at the house, and Joe's wife said he had gone on a fortnight's holiday. The man said he would return in a fortnight's time, and did so, and knocked again at the door. The woman came and said Joe was back all right, but was dead. She said: 'He is upstairs now in his coffin.' The man went upstairs and saw Joe in his coffin, and said: 'Poor old Joe. This is shocking. His face is very brown?' 'Oh, yes, of course,' said the wife, 'his holiday did him a lot of good.'

"Gentlemen, I speak to you from the South and the North. You are going back home shortly. You have been blessed with good weather. If you think that Auckland has a good climate, Auckland is a damned liar. We have been blessed with good weather while you have been here; that is all. I sincerely hope and trust that, when you go back to your respective homes, you look well, but that you do not look too 'brown in the face.'"

The Dinner ended at a reasonably early hour. From any point of view, it was a brilliant success. The Dinner Sub-Committee received deserved congratulations on the perfection of their arrangements, and on the thoroughly enjoyable evening they had provided.

THE CONFERENCE PRESIDENT: A Profile.

Had he looked hard enough, the discerning physician would have discovered in Philip Cooke's mouth at birth at least traces of the law's golden spoon. Son of the Crown Prosecutor at Palmerston North, he set from early years a legal course from which only the exigencies of war have caused him to deviate. The average student would have considered it frustrating to be a Bachelor of Laws at nineteen and not permitted to practise, but he made full use of the period of waiting between graduation and the outbreak of World War I by serving for a year as Associate to the then Chief Justice, Sir Robert Stout. Amongst his most fervent admirers, he has been able to count the late Phineas Levi—a lovable character and a great academic lawyer—who liked Cooke's flair for incisive expression, and used to declare that his examination papers were the best he had ever had to mark. But the possession of a keen analytical mind can be a disadvantage as well as an advantage, as Cooke has at times found to his cost; allied in an individual who conscientiously rejects the tempting lure of short cuts, it leads to ingrained habits of dissection that impose a wearisome burden upon the flesh. In this instance, the fortunate beneficiary has been the New Zealand Law Society, the affairs of which have never had more detailed and skilful attention than they receive to-day from the hands of the President.

The youngest barrister to become a King's Counsel in this country, Philip Cooke is an example of the saying that genius consists in the infinite capacity for taking pains. In banco matters, he has, it is commonly agreed, no peer at the Bar: indeed, he makes little pretence at being a leader in those *nisi prius* spheres where achievement rests upon cruder and more down-to-earth methods.

Major in the 1914-1918 War, Lieutenant-Colonel and Director of Personal Services in the last one, are achievements, as well as necessary (if tedious) interruptions in a career; but the facility to do well what has to be done at all manifests itself in the field of sport, where Cooke has shown himself to be proficient and enthusiastic at tennis and badminton, and a first-rate golfer, suffering from the disability of not having time for sufficient practice.

Lord Birkenhead, writing of the Earl of Halsbury, recalls an occasion when he attended a meeting of Cabinet to consider certain proposals put forward by Lord Lansdowne for the reform of the House of Lords. He listened closely for two hours without saying a word, and at last rose with this observation: "I must leave now, but, before I go, make it plain that I disagree with every suggestion that has been made." In a similar situation, Phil Cooke might well have taken the same attitude, but he would have phrased it more politely, and flavoured it with a dash of his characteristic humour. Nevertheless, it would have expressed his pertinacity of view, that, if occasion so demands, can be at once stubborn and unconquerable.

SCRIBLEX.

SPORTS DAY.

Presentation to the Secretaries.

THE beautiful weather of the Conference week continued on the Friday to allow the various sports competitions to be carried out in ideal conditions.

The golf tournament, which began at the Middlemore Golf Links at 11 a.m., drew a record entry of competitors. From early morning, the bowlers carried on their contests at the Remuera Bowling Club's beautiful greens. A Mixed Yankee Tennis Tournament was held at the West End Tennis Courts, at Herne Bay. At each of the sports centres, the Conference Committee supplied lunch and refreshments for the contestants.

As the hour of 4 p.m. drew near, everyone attending the Conference began assembling at the Club House of the Middlemore Golf Links, the bowlers and tennis players being conveyed from their respective grounds by bus. A very dainty afternoon-tea was supplied at the Club House, and considerable refreshments were always available. The hospitality of the Auckland Committee was shown in its finest flowering on the final day in this memorable open-air gathering.

Solicitor-General, Mr. H. E. Evans, K.C., Photo.

At Middlemore Golf Course: Mr. V. N. Hubble speaks before the Presentation of Trophies. Standing, from left: Mr. P. B. Cooke, K.C., Mrs. Hubble, Mr. J. T. Sheffield, and Mr. F. J. Cox.

The final function, the announcement of the sports winners and their receipt of their trophies, and the presentation to the Secretaries, together with the final speeches, took place in front of the Club House in beautiful surroundings in the late afternoon of a delightful day.

THE CONFERENCE HOST RETURNS THANKS.

MR. V. N. HUBBLE, the President of the Auckland District Law Society, commenced the formal proceedings by addressing the assemblage. He said:

"On behalf of the Auckland District Law Society, I wish to thank all our visitors for their great co-operation throughout the days of the Legal Conference. The only thing I claim some credit for is that I arranged for the weather; all the rest was done by the joint Secretaries.

"I wish, first, to pay a very sincere tribute to the Wellington Conference of two years ago, and in particular to the joint Secretaries, Mr. White and Mr. Wild. That was the first Conference held after the War, and Wellington had to break new ground. When I went to them in Wellington about May or June, they handed over to all of us in Auckland a very carefully prepared set of precedents. You know how lawyers love precedents, and I acknowledge at once—and Mr. Cox and Mr. Sheffield do so more than I—our great indebtedness to the Wellington Conference Committee for the great help they gave us. They criticized their own mistakes, if any, and we were able to carry out our task a great deal more easily because of their help.

"Next, I wish to thank the Committee and members of the Auckland Golf Club for their great courtesy and kindness in extending the use of the course to us. I know that this was to have been Ladies' Match Day at Middlemore, but the Club Captain, Mr. Edgar Bartleet, by great persuasiveness, was able to secure the day to us; and I express, on behalf of the legal visitors and the Auckland members, our appreciation to this Club.

"I also wish to express the appreciation of the Auckland members to the Auckland University College Council for the use of the hall, common-room, and tea-room. It was most convenient to have everything under one roof, and we were very fortunate in that respect.

"Further, I wish to thank the Auckland City Council for their help with the decorations, the West End Tennis Club for the use of their courts for the tournament, and the Remuera Bowling Club.

"Again, I wish to express our appreciation to our visitors. No matter how carefully a Conference is organized, it cannot succeed unless the visitors co-operate. We have had nothing but co-operation and praise—perhaps too much praise. But it is very encouraging, and I know the Auckland Committee and members have appreciated greatly the wholehearted co-operation of all visitors and their wives.

"I wish to say one or two words about the Ball the other night. I think perhaps a man may be judged by his wife, and when I looked round the beautiful assembly of women, and saw how beautifully gowned

they were, and how beautiful they looked, I thought: 'These lawyers must have a little bit of judgment somewhere.'

"I might mention that Dr. Pat Spencer was a bit late. His wife came in and said: 'I have a message for you, but I can't understand it. Pat said: "Noel will understand."' The message was: 'Pat said: "Tell him I have got a summons for delivery of seven."' I said: 'I don't know what that means.' She said: 'He said you would know.' I disclaimed all connection with it. He said afterwards that the message was that he had 'a summons for delivery of seisin.' He did arrive.

"One very attractive young lady came up to me and said: 'Would you introduce me to the Secretary?' I said: 'To Mr. Cox?' And she said: 'No; I don't mean that one, but the young, dark, handsome one.'

"I might also express my appreciation of the unfailing courtesy and assistance of the President of the New Zealand Law Society, Mr. Cooke. But he has not altogether wasted his time. When I rang him up at his hotel, the lady attendant's voice over the telephone said: 'Oh, you mean Cookie.' I do not know whether this was due to the 'e' at the end of his name.

"I shall now ask Mr. Cox to announce the winners of the various trophies, which my wife will present."

The Sports Winners.

Mr. F. J. Cox, one of the joint Secretaries, then announced the sports results as follows:

Golf:
Law Journal Cup.
Winners: W. K. L. Dougall (Christchurch) and C. T. Keegan (Auckland).
Runners-up: T. H. I. Fleming and Martyn Uren (Auckland).
Single Stableford.
Winner: B. Cahill (Wellington).
Runner-up: T. H. I. Fleming (Auckland).

Tennis:
Yankee Tournament.
Women: Mrs. S. W. W. Tong (Auckland).
Men: H. N. Burns (Wellington).
Consolation Prizes:
Women: Mrs. Vautier (Auckland).
Men: J. H. Holderness (Hastings).

Bowls:
J. K. Johnston (Auckland), Lead.
D. G. Sinclair (Paeroa), No. 2.
R. E. Baeyertz (Auckland), No. 3.
T. W. McCown (Rawene), Skip.

Mr. Cox continued: "I never thought I should have to announce that Keegan [C. T. Keegan (Auckland)] has won something. He is the winner, with W. K. L. Dougall (Christchurch) of the Law Journal Cup and trophies presented by Messrs. Butterworth and Co. (Aus.), Ltd."

Mrs. Hubble then presented the Law Journal Cup and the accompanying trophies to the winners, and the trophies for each of the other competitions to those already named.

Presentation to the Joint Secretaries.

Mr. W. E. Leicester (Wellington) said that, on behalf of the visitors, he had a very pleasant function to perform, and that was to make a presentation to the two very able Secretaries of the Conference.

"I think you will all agree that this has been a delightful Conference," the speaker continued, "and this is due in no small measure to the efforts of Mr. Cox and Mr. Sheffield. Mr. Cox was selected to provide worldly wisdom and tact, Mr. Sheffield to provide staff-work and virile charm. Together, the two have made an excellent effort. I regard myself as something of an expert on Conferences. I was at the 1928 Conference, and I have been at every one since (except Dunedin). Here, we have had the best care, attention, and weather, the most lavish entertainment, the finest papers, the prettiest and most sensible women, although, apart from these things, the other Conferences have had a slight edge on this one.

"Mr. Hubble said that the Auckland Conference Committee were fortunate in having precedents from the monumental work of the Wellington secretaries written after the last Conference. I looked that up, and I see that in Vol. 4, at p. 1068, it says: 'Do not copy the Auckland President; he spoke for half an hour.'

"Mr. Leary is most anxious for me to say that at the Dinner some unlearned and slightly intoxicated individual mentioned that he (Mr. Leary) was going farming and giving up practice. He wants me to say that some even more intoxicated individuals took that seriously. You will be glad to know that he will be at his office—as usual at 8 a.m.—next Tuesday. He thanks those here to-day who have shown renewed confidence in him, and the printer, who expects to have his new professional cards ready in a day or two.

"I have asked Mr. Ian Macarthur (Wellington) to come forward, and I would request visitors to take a close look at him in case they have overlooked the financial implications involved in his stewardship of these two trays, both the same, which, it may be thought, is very tactful on the part of the visitors. I must say that we have had no time to have them engraved; but if Mr. Cox and Mr. Sheffield will go to Messrs. Walker and Hall, Ltd., this firm will put on the engravings free of expense to them."

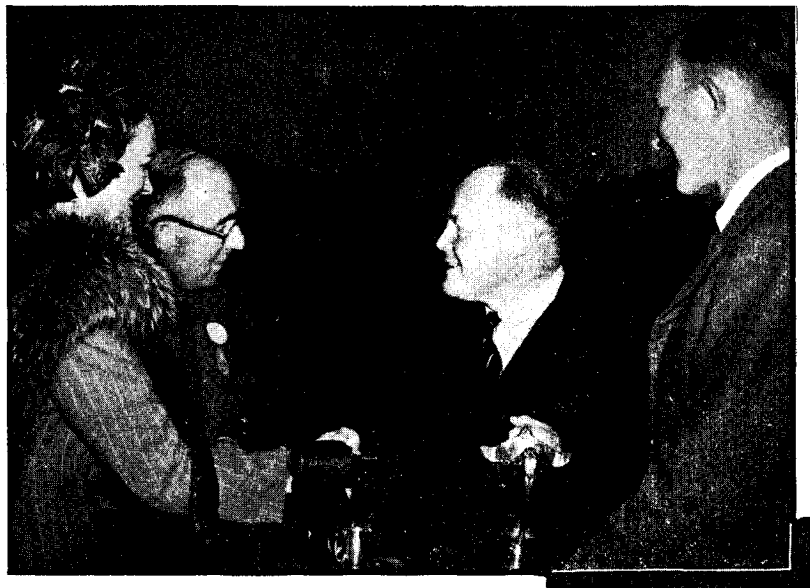
Mr. Leicester then presented each of the Secretaries with identical silver salvers.

The Secretaries Reply.

Mr. F. J. Cox, one of the joint Secretaries, said that he had been taken by surprise. "But," he continued, "as one joint of the Secretaries—and, may I say, the lesser of the two as far as hard work is concerned—I should like to thank you very much indeed. This is a little embarrassing to me, as I did not expect it; but I thank you all, and accept it in the very kind spirit in which it is offered.

"When I was first appointed to this job, Mr. Leary said to me: 'Well, old man, you have not got much hair left now. I don't know how much you will have when you have finished with the Conference.' I do not know whether that observation has come to fruition, because my tonsorial artist this week said I was holding on to both of them. Perhaps he was only flattering me, and trying to justify the charge of 1s. 9d. That is not to say that we did not have our little trials and tribulations, but we brought these on ourselves, in the form of questionnaires.

"I wonder whether a Conference is possible without questionnaires? A number of local chaps answered them all right, but did not sign them. One of the brethren, who shall remain nameless, but whose habit it is to keep Judges waiting, said to me that a Conference of this nature could run successfully as long as there were two Secretaries, one of whom was doing the hard work. Sheffield, my brother in crime, has done the lion's share of the secretarial work, and, indeed, the whole of the work of a treasurer. Sometimes, even *my* conscience pricked me as to the unequal task; but I consoled myself with the thought that his fiancée is away in England, and I know of no better solace for a lover separated from his fiancée than hard work.



New Zealand Herald, Photo.

Above: Mrs. Hubble presents the LAW JOURNAL Cup to the winners, Messrs. C. T. Keegan (Auckland) and W. K. L. Dougall (Christchurch).

Right: Mr. H. N. Burns (Wellington), the winner of the Men's Tennis Tournament, receives his Trophy.

"We have had a bit of fun in the arranging of this Conference. One of our greatest disappointments was that Mr. and Mrs. Hookey of Te Puke, after we had installed them in a twin-bedded room, did not come. We have met everyone's cousins and aunts, and all the other good people here, and it has been a great pleasure to meet you all.

"I do not want to conclude without paying a tribute to the work done by the Sub-committees. They have all done yeoman service. I ought to mention the two dozen balloons blown up by "Kip" Richmond. This was breathtaking even for a lawyer dealing in hot air. Edgar Bartleet has been a tower of strength; also Stan Cleal and Max Grierson, and also Mr. and Mrs. J. B. Johnston. In addition to the very delightful party they gave us, Joe alone knows the number of times we have been to him with little problems. I should like to pay a tribute to him.

"It would be wrong if I did not say something about the wonderful work done by the Ladies' Committee. I have been associated with committees for many years, but never have I been associated with a committee that has been so hard-working and, may I say, so charming. I do want to thank them very much. Do you boys remember, when we were young, the verse:

'Fee simple, and the simple fee,
And all the fees in tail,
Are nothing when with thee compared,
Thou best of fees—Female.'

I think this is most applicable to the Ladies' Committee. If the Conference has been a success, then I think some ninety per cent. of the credit must go to our ladies. I thank you all for coming. We have loved having you here. There have been imperfections; we thank you for overlooking those. And we thank you for your co-operation and help, and for making this Conference the success you say it has been."

MR. J. T. SHEFFIELD, the other joint Secretary, said: "Unfortunately, as Fred Cox has told you, my fiancée is in England and cannot be here. I hope that she is still my fiancée, because at Government House my then partner was introduced to the Governor-General as my wife. I had to cable a hurried explanation in case the news should reach her before the explanatory memorandum.

"In a Conference of this sort, there is always a lot of work to be done, and in this Conference the work has been done by those people behind the scenes. Fred Cox and I have been to the fore because our names appeared at the bottom of circulars. But the bulk of the work was done by people whose names you are not aware of. We tried to keep the circulars to a minimum, because, in the book of precedents we had sent up to us from Wellington, they said: 'You will have difficulty in getting practitioners to reply to circulars.' I should like to take to task one of the former Conference secretaries: he gave us no reply at all to any circulars, and I feel he should have known a little better.

"I am very happy indeed to be here, particularly as I was unfortunate enough to-day to become caught up

with the Traffic Department. I was driving towards Grafton Bridge. The lights changed, and I applied my brakes; but they did not seem to work. Half the Traffic Inspectors in Auckland descended upon me; I was wheeled away and marched down to the Town Hall. It took me three-quarters of an hour to talk my way out of that. In the meantime, the people playing tennis had no liquids of any sort.

"As Fred Cox has said, he and I enjoyed the work, and we have been assisted in a very large measure by the co-operation of the visitors and the Auckland members of the profession. I should like to thank you all very much for your many kindnesses to us."

So ended the last official function of the Seventh Dominion Legal Conference.

Although it was late afternoon, there was no inclination to disperse on the part of those who were present at Middlemore. Groups changed and re-changed as visitors and Auckland practitioners and their wives engaged in conversation. And, in the evening, many informal parties were arranged by the Aucklanders for their visitors' final entertainment.

SOME PERSONALITIES AT THE CONFERENCE.

The President of the Seventh Dominion Legal Conference, Mr. V. N. HUBBLE, President of the Auckland District Law Society, was born in Auckland in 1901; educated at the Northcote Public School and the Auckland Grammar School, where he held Junior and Senior Scholarships. For two years, he was Vice-President of the Old Boys' Association. Entering the Auckland University College in 1918, with a University Scholarship, he graduated LL.B. in 1921, LL.M. in 1922, and B.A. in 1925. He was Vice-President and Secretary of the Law Students' Association, and represented the College in tennis and shooting. He was an executive member of the Auckland Lawn Tennis Association for some years, and Vice-President of the Auckland Orphans' Club for seven years. For twelve years, Mr. Hubble was a partner with Mr. V. R. Meredith, Crown Solicitor at Auckland, and was acting Crown Prosecutor during Mr. Meredith's absence in England in 1935. Since 1938, he has practised on his own account. He has been a member of the Council of the Auckland District Law Society since 1939, and is now in his second year as President of that Society. He has been a member of the Council of the New Zealand Law Society for four years.

MR. F. J. COX, one of the Joint Secretaries, Seventh Dominion Legal Conference, was born in Auckland in 1892; educated at the Auckland Grammar School, where he was a member of the First Fifteen and Tennis Team, and he is now Vice-President of the Old Boys' Association. He graduated LL.B. in 1919 at Auckland University College, where he was President of the Students' Association, the first Secretary of the Law Students' Association, and a College Blue in Athletics. He served in the First World War as a Lieutenant in the 2nd Auckland Battalion, and in the Second World War he was Crown Representative and Deputy Chairman of the Armed Forces Appeal Board, Auckland. He is now a Vice-President of the Auckland Officers' Club. He has been a member of the Council of the Auckland District Law Society since 1946, and its representative on the Legal Rehabilitation Committee, and one of its representatives on Select Committee under Industrial Agreement with Legal Employees. He is a member of the firm of Rennie, Cox, and Garlick, Auckland.

MR. J. T. SHEFFIELD, one of the Joint Secretaries, Seventh Dominion Legal Conference, was born in Auckland in 1917. He was educated at Mount Albert Grammar School and Auckland University College; LL.M. (First Class Honours); B.Com.; Senior Scholar and Hugh Campbell Scholar in Law, and Member of the New Zealand Society of Accountants. He is a member of the Executive of the Auckland Junior Chamber of Commerce, and lecturer in Commercial Law at the Seddon Memorial Technical College. Mr. Sheffield served with the Second N.Z.E.F. as a Captain in the Artillery from 1942 to 1946. He has been a partner in the firm of Kalman and Sheffield, Auckland, since 1946.

The Chairman of the Conference sessions, MR. P. B. COOKE, M.C., K.C., was born at Palmerston North in 1893. He was educated at the Wanganui Collegiate School and at Victoria University College, where he graduated in law in 1913, taking only three years for his degree course. He was Associate to the then Chief Justice, Sir Robert Stout, in 1913; and, at the end of that year, he became a member of the staff of Messrs. Chapman, Skerrett, Tripp, and Blair. He left New Zealand in 1914 as an officer of the New Zealand Engineers, and saw service in Egypt, France, and Flanders. He rose to be Officer-in-Charge of Artillery Signals, and before the end of the war commanded the New Zealand Divisional Signal Company, with the rank of temporary Major. He was awarded the Military Cross, and returned to New Zealand in 1919. Shortly afterwards, he was admitted as a partner in the firm of Messrs. Chapman, Skerrett, Tripp, and Blair, with whom he remained until 1936. It was the only firm with which he had in any way been connected during his professional career. In January, 1936, he was the youngest barrister to receive the patent of King's Counsel in New Zealand. In the war of 1939-45, Mr. Cooke, on offering his services, was posted to the Adjutant-General's Branch at Army Headquarters in Wellington. He held the rank of Lieutenant-Colonel, and was later Director of Personal Services. Mr. Cooke was a member of the Council of the New Zealand Law Society as representative of the Marlborough District Society for some years before representing the Wellington District Law Society on that body. He was President of the Wellington District Law Society in 1938. Since 1946, he has been President of the New Zealand Law Society. He has been a member of the Council of Law Reporting for thirteen years, served on the Joint Audit Committee for several years, and is Chairman of the Standing Committee and of the Disci-

Sports Day Presentations.

Top left: Golf. The winners of the LAW JOURNAL Cup, Messrs. C. T. Keegan (Auckland) and W. K. L. Dougall (Christchurch), receive their trophies.

Top right: Bowling. The winning rink: Mr. D. G. Sinclair (Paeroa), Mr. R. E. Baeyertz (Auckland), Mr. J. K. Johnston (Auckland), and Mr. T. W. McCown (Rawene).

Centre: Part of the scene at the presentations.

Lower left: Mr. T. H. I. Fleming and Mr. M. Uren receive their trophies.

Lower right: Mr. W. E. Leicester, the Wellington President, gives the Secretaries tokens of the visitors' appreciation. From left: Mr. P. B. Cooke, K.C., Mr. J. T. Sheffield and Mr. F. J. Cox, the Joint Secretaries, and Mr. Leicester.

plinary Committee. He presided over the Legal Conference in Wellington in 1947.

MR. A. H. JOHNSTONE, O.B.E., K.C. (*The International Bar Association*), has been Vice-President of the New Zealand Law Society since the year 1933. He was born in Milton, Otago, and was educated at the Tokomariro District High School. Having entered the Public Service at Wellington, he read his course for his Arts and Law degrees at Victoria University College, where he graduated in 1904, and he was admitted as barrister and solicitor in April, 1905. He joined the firm of Messrs. Malone, McVeagh, and Anderson at Stratford, and later removed to New Plymouth, where he practised until 1919, in which year he joined Mr. J. (now Mr. Justice) Stanton in practice in Auckland, the partnership continuing until Mr. Johnstone took silk in 1934. In New Plymouth, Mr. Johnstone was a member of the New Plymouth Borough Council and of the High School Board. He has been President of both the Law Societies of Taranaki (1913) and Auckland (1924 and 1925). He had been a member of the Council of the New Zealand Law Society for many years before he became Vice-President in 1933. He was Vice-President of the Auckland University College Council, and a member of the Senate of the University of New Zealand. He has been a member of the Council of the Auckland District Law Society since 1920. He is a foundation member of the Disciplinary Committee and of the Council of Legal Education. He has also represented Auckland on the Council of Law Reporting. During the War years, Mr. Johnstone served as the Aliens' Authority in Auckland. He received the O.B.E. in the New Year Honours in 1946.

MR. A. K. NORTH, K.C. (*Law and the Public Conscience*), was born in Christchurch in 1900; and was educated at the West Christchurch District High School and Christchurch Boys' High School. He graduated LL.B. in 1923, and LL.M. in 1924, at Canterbury University College. With Mr. (now Judge) Archer, represented Canterbury College in the Joynt Scroll contest. He practised in Christchurch and Ashburton with Messrs. Wilding and Acland, and also at Hawera as a member of the firm of Horner and North. In 1935, Mr. North joined the Auckland firm of Earl, Kent, Stanton, Massey, North, and Palmer, and continued practice with that firm until he took silk in 1947. He is a past President of the Auckland Rotary Club, and present Chairman of the Crippled Children's Society, Auckland, and a member of the Council of the Auckland District Law Society.

MR. A. C. STEPHENS (*The Conduct of Law Examinations*) was born in Dunedin in 1892, and was educated at the Otago Boys' High School, of which he was dux and a Junior University Scholar in 1910. He studied law at the University of Otago, and obtained his LL.B. in 1915 and LL.M. in 1925. At the Otago Boys' High School, he played in the Association Football First Eleven, and in the Rugby First Fifteen, and was a member of the College Shooting Team for four years. Later, he attained provincial honours in Association Football. In 1911, Mr. Stephens joined the staff of Messrs. Mondy and Stephens, Dunedin. He was lecturer in Contracts at the University of Otago before he served with the New Zealand Rifle Brigade in the 1914-18 War, and has been since. On his return, he became a partner in the firm of Mondy, Stephens, Monro, and Stephens. In 1930, Mr. Stephens was President of the Otago Boys' High School Old Boys' Society, and Vice-President of the Dunedin Athenaeum. Also in 1930, he was President of the Otago District Law Society; and in 1933 he was President of the University Club and Chairman of the Dunedin Repertory Society. Since 1937, Mr. Stephens has been a member of the New Zealand Law Revision Committee. In 1947 and 1948, he was a member of the Council of the Associated Chamber of Commerce, and served last year as President of the Dunedin Chamber. He is the author of *Teststors' Family Maintenance*, and joint author of *Supreme Court Forms*. Since 1935, he has been Dean of the Faculty of Law at the University of Otago.

MR. S. R. DACRE (*Commentary on Tenancy Law*), was born at Christchurch in 1909, and is the only son of the late T. S. Dacre, Solicitor, of Christchurch. He was educated at Linwood North School, Christchurch Boys' High School, and Canterbury University College; was admitted as a barrister and solicitor in March, 1934; and received the LL.M. degree in 1935. From 1936 to 1943, he practised his profession at Christchurch in partnership with his father, and has since continued on his own account under the firm name of T. S. Dacre and Son. Mr. Dacre has taken a keen interest in social history, and in particular postal history, and was a contributor to *The Postage Stamps of New Zealand*, published by the Royal Philatelic Society of New Zealand in 1938. He is President and an Honorary Life Member of the Christchurch (N.Z.) Philatelic Society (Inc.). He is also President of the Christchurch Beautifying Association, a body founded in 1897. The Association is largely responsible for Christchurch being known as "the garden-city of New Zealand."

MR. R. Q. QUENTIN-BAXTER (*The Task of the International Military Tribunal at Tokyo*) was born in 1922; graduated B.A. in 1945; LL.B. in 1946. He spent three years in the Army, and three years gaining practical experience in common law while pursuing his University course at Canterbury University College. He was awarded the New Zealand University's Senior Scholarship for ex-servicemen in Law in 1947 (Constitutional Law, International Law, and Private International Law). During 1947 and 1948, he was Legal Assistant to Mr. Justice Northcroft, the New Zealand member of the International Military Tribunal for the Far East in Tokyo. While in Tokyo, he was a member of the New Zealand Department of External Affairs. He left New Zealand early in April to represent the Government at the International Conference for the Protection of War Victims now being held in Geneva.

MR. J. C. WHITE, M.B.E. (*A Public Relations Organization*), was born at Dunedin in 1911, and was educated at John McGlashan College, Dunedin, and Victoria University College. He was Associate to the Hon. Mr. Justice Ostler, and, later, the Hon. Mr. Justice Quilliam. He served with Second N.Z.E.F., 1940-1945, and was Personal Assistant to Lt.-General Sir Bernard Freyberg, V.C., 1940-1945. He was honoured with the M.B.E., and mentioned in Dispatches. He was one of the joint Secretaries of the Conference in Wellington in 1947. He is now a member of the Dominion Executive of the R.S.A. He is a member of the firm of Messrs. Young, Courtney, Bennett, and Virtue.

MR. H. R. C. WILD (*Some Aspects of Office Organization*) was born at Blenheim in 1912. He was educated

at Feilding Agricultural High School and Victoria University College, and was the College's nominee for the Rhodes Scholarship in 1934. He was President of the Students' Association, represented Victoria University College and the University of New Zealand at Rugby, and was a member of the New Zealand University team which toured Japan in 1936. He practised in Wellington on his own account in 1939, and then served with the Second N.Z.E.F., 1940-1945, and was mentioned in Dispatches. He was one of the joint Secretaries of the Legal Conference in 1947. He is Chairman of the Victoria University College Students' Union Building Appeal Committee. He has been a member of the firm of Messrs. Bell, Gully, and Co., Wellington, since 1945.

Two ladies answered the practitioners' roll at the Conference, and attended all the sessions. MRS. ANNIE DOWN (Wellington) was one of the first students to attend law classes at Victoria University College, and her association with that College goes back to the day when she was one of the small band of young people who met the first four Professors on their arrival. Temporarily, she relinquished her law studies, and obtained her Master of Arts degree. She then gave some years to the teaching profession. After her marriage, and when she had a young daughter, Mrs. Down resumed her reading for her law degree. She is the only married woman yet to achieve her LL.B. In 1927, she was admitted as barrister and solicitor, and, in that year, attended the first Dominion Legal Conference at Christchurch. The other lady practitioner was MISS GERTRUD MARTON (Auckland), who, after obtaining her Doctorate of Laws at the University of Vienna, spent two years in England. She came to New Zealand in 1940, under the auspices of the Federation of University Women. She obtained her Bachelor of Laws at Auckland University College in 1946. She is a member of the staff of Messrs. Nicholson, Gribbin, Rogerson, and Nicholson.

THE AUCKLAND PRESS.

The Conference received a wonderful Press. The Auckland newspapers contained something about the proceedings in their issues of each day of the Conference Week. On another page is reproduced the tribute of "Cyrano" to the legal profession, which appeared in the *Auckland Star* of the Monday. The leading article in the *Star* of the Tuesday was as follows:

LAW AND THE LAW SOCIETY.

"Of law," said the saintly and majestic Richard Hooker three and a half enturcies ago, "of law there can be no less acknowledged than that her seat is in the bosom of God, her voice the harmony of the world; all things on heaven and earth do her homage, the very least as feeling her care, the greatest as not exempt from her power." That is the ideal. The real in law is the everyday business of men and women who are mortal and therefore fallible, but above them, as an inspiration and guiding principle, rises this peak of immortal prose. The Law Society, which is to meet in Dominion Conference in Auckland to-morrow, is the corporate body of those who practise law.

The Conference may be looked at from three angles—the local, the national, and the world. It is nearly twenty years since such a conference assembled here, and Auckland is glad to be host to lawyers from other districts of New Zealand. Its hospitality, we feel sure, will be warm, but it is also necessary that there should be understanding. For law touches every citizen; in Hooker's words, "the very least as feeling her care, the greatest as not exempt from her power." It is essential that laws should be justly made and justly administered, that practitioners should be men of honour, learning, and experience. The Law Society serves not only the profession, but also the public, and in two main ways. It has statutory powers to maintain professional standards, and it watches legislation.

The Standing Committee of the Law Society, which consists of Wellington members of the Council, looks at all general Bills before Parliament. If it considers that clauses are oppressive or not easily applicable, it expresses its opinion in the appropriate quarter, and the pages of "Hansard" of last year contain several tributes by different Ministers to the assistance so given in the public interest. Moreover, if the Committee considers that existing legislation should be amended or fresh legislation introduced on lines adopted elsewhere, it makes recommendations to the Law Revision Committee, on which the Law Society has two permanent seats. "As eternal vigilance is the price of liberty, so it is the price also of justice according to law, for if the latter falls into a state of disrepair and lags behind the needs of society, justice must of necessity suffer." So, said the Attorney-General, the Hon. H. G. R. Mason, at the first meeting of this Law Revision Committee. "Some means, therefore, constant in its operation, must be devised to ensure against the obsolescence of law or its disconformity with social requirements." Such recommendations by the Standing Committee of the Law Society, with others received from individual lawyers and members of the public, have found their way on to the Statute Book. In these times, when the State tends to widen its activities and the Executive of government to exercise more power, it is particularly important that some such watch should be kept. These developments in government are not found only in New Zealand.

The third point of interest in the Conference is its connexion with the basic principles of Western civilization. The democratic system we have inherited is founded on law established. No government can act except by law, and the law is interpreted by Courts independent of the government Executive. The citizen has the right of appeal to these Courts. This foundation on the reign of law goes back to the Greeks, who distinguished the barbarian by his lack of it. The tyrant could act as he pleased. In totalitarian States the sisters truth and law are the first casualties. It has been laid down in Russia that there is no such thing as abstract justice, but only socialist justice. There and in satellite States, the principle of *habeas corpus* does not apply, and the Courts are instruments of the ruling party. It was announced some months ago that in Czechoslovakia, lawyers, who with us are officers of the Courts of law, had been turned into civil servants, and no doubt it is much the same everywhere behind the Curtain. There can be no real freedom without the reign of law, and this difference between Russia and the Western democracies is fundamental and inescapable.

On the Wednesday morning, the leading columns of the *New Zealand Herald* contained the following editorial comment:

THE LAW CONFERENCE.

To-day the lawyers of our city are hosts to a gathering of their brethren from the four corners of the Dominion. Auckland is glad to welcome them. Some three hundred and fifty years ago Sir Edward Coke, a great if somewhat cantankerous Chief Justice, prescribed certain golden rules for the profession: "Give six hours to sleep; as many to the study of righteous laws; for four hours pray; devote two to meals; and what is over bestow upon the Sacred Muses." The programme of entertainments for the members of the present Conference casts some doubts on the likelihood of their enjoying the quota of sleep which ordinary mortals frequently exceed. But they will have the opportunity of hearing learned discourses to-day and to-morrow, and in this respect, provided some of them do not succumb to the blandishments of golf, they will observe the injunction of Sir Edward. The time they will devote to prayer is a mystery into which it would be indecent for a merely lay paper to intrude. The fact that there is to be a Bar dinner affords some assurance that the lawyers now in our midst will observe the third of Sir Edward's wise counsels. As for

the Sacred Muses, the members of the Conference may believe, with an English solicitor, that they are "sacred because nowadays they are never touched." But the barristers and solicitors present in Auckland, honoured as they are by the attendance of the Chief Justice and some of his brother Judges, will have time to devote to serious matters and will indeed do so. They may possibly reflect on the observation of Sydney Smith, made something over a hundred years ago, that "a truly free Englishman walks about covered with licences." The public will welcome the views of the most eminent members of the legal profession upon the present state of the rule of law and upon the reconciliation of the modern State with the normal rights and privileges of the subject.

On the remaining days of Conference Week, lengthy extracts from the addresses and papers were given to the public in the columns of the Auckland newspapers, with appropriate editorial references in some cases. Pictures of Conference personalities and incidents at various functions were also given prominence.

The profession is grateful to the Auckland newspapers for their lively interest and generously-bestowed space.

POSTSCRIPT.

We feel an obligation to all who attended the Seventh Dominion Legal Conference at Auckland to say here what they all expressed in private conversations—namely, their sincere and whole-hearted congratulations to their Auckland brethren, and, in particular, to the Conference Committee of the Auckland District Law Society, on the great success of that notable gathering.

Those congratulations are based on a number of grounds. Without careful and detailed planning, the smoothness and efficiency with which events followed one another in their variety could not have been. The results reflected real hard work, animated by many happy inspirations, on the part of the Conference Secretaries, Messrs. F. J. Cox and J. T. Sheffield. This success, too, was due to the careful attention to detail given by the Conference Committee itself, and by its several sub-committees.

The weather during Conference week reflected the sunny nature of the welcome given to the visitors by their Auckland brethren. For all such gatherings, a little luck goes a long way. And it is pleasant to recall the fact that those responsible for the planning of the Conference arrangements reaped their reward with the assistance of cloudless skies and warm and delightful days and nights. And every gathering was held in beautiful surroundings.

The addresses given and the papers read at the Conference were of a very high order indeed, and, on an average, they probably reached a standard that it will be difficult to excel in further gatherings of this kind. One particularly pleasing feature was the combination, in those who addressed the Conference, of old and experienced practitioners with those others on the threshold of their careers, whose papers and support of remits were valued contributions to a common fund of knowledge, experience, and desire for improvement of professional methods, as well as for an advancement, in the general interest, of the law itself.

But, as we have often said in these pages, by no means less important were the social gatherings, which have happily—and, we may add, properly—become an integral part of Dominion Legal Conferences. The intermingling and social forgathering of practitioners and their wives from all parts of New Zealand necessarily fosters a spirit of *esprit de corps* that lives on long after a Conference has ended. The effect of this feature of earlier Conferences is obvious when people who have not met for two years or more greet one another as old friends. As the aggregate of such Conferences grows, and because the contribution of a large local social group changes with each gathering, the effect in bringing about a real corporate life in the profession necessarily increases with the years.

Allied to the social gatherings of the earlier Conference days are the sporting events—the golf, bowling, and tennis competitions among local and visiting practitioners. These contests combine to provide an informal conclusion to each Conference programme. At Auckland, there were record entries. Each contest was splendidly arranged and conducted by the Sports Sub-committee. Favoured by beautiful weather, these more intimate groupings added to the pervading friendliness, and provided—as our photographs show—happy meeting-grounds for practitioners from different cities and towns, who revelled in the sporting atmosphere and general hospitality provided for them.

There is a third feature of the recent Legal Conference that must not be forgotten, and that is the unofficial side, the events which are not arranged by the Conference Committee itself. The private hospitality to which visitors to Auckland were treated began with the very kind invitation with which His Excellency the Governor-General and Lady Freyberg honoured the rank and file of the profession (to use the Attorney-General's words) by receiving them at their home, the historic and beautifully-situated Government House at Auckland. The other private hospitality that followed leaves many happy memories in the minds of those who were privileged to enjoy it.

We thank the profession in Auckland for their welcome, their kindness, and the intellectual and social feast which they spread before us. In particular, our gratitude is due to the Auckland President, Mr. V. N. Hubble, and his charming wife, our official host and hostess, and to the everpresent solicitude of the two Secretaries, Messrs. Cox and Sheffield, who thoroughly deserved all that was said of them by and on behalf of the visitors.

Auckland, we thank you.

THE EDITOR.

Top left: Mr. A. M. M. Greig, Mr. Justice Stanton, Mr. R. E. Baeyertz, Mr. H. M. Wheaton (all of Auckland).

Top right: Messrs. P. B. Cooke, K.C., W. P. Shorland (Wellington), and L. C. Hughes (New Plymouth). *Mr. H. E. Evans, K.C., Photo.*

At the Closing Function, Middlemore. *Photocraft, Photo.*

Centre left: Messrs. A. C. Stephens (Dunedin) and G. J. Jeune (Gisborne).

Centre right: Of the Council of the New Zealand Law Society: Mr. H. R. A. Vialoux (Vice-President, Auckland), Mr. W.E. Leicester (President, Wellington), Mr. G. M. Lloyd (Vice-President, Otago), Mr. E. S. Bowie (President, Canterbury), and Mr. J. H. Holderness (President, Hawke's Bay).

Lower left: Mr. and Mrs. G. J. Foy (Te Aroha), Mr. M. B. James (Hokitika), Mrs. C. O. Bell (Wellington), Mrs. M. B. James, and Mr. C. O. Bell.

Lower right: Two Secretaries: Mr. N. H. Good, Secretary of the Auckland District Law Society, and Mrs. D. I. Gledhill, Secretary of the New Zealand and Wellington Societies.

IN YOUR ARMCHAIR—AND MINE.

By Scriblex.

Conference Note.—Whatever may be done in the future, the two days of racing at Ellerslie immediately preceding the 1949 Auckland Conference did much to ensure that many, if not most, of the visitors arrived at the Wednesday opening in a mellow spirit of tolerance and good humour. Nature herself was a willing ally: a week of warm sunny weather displayed Auckland in a charming setting of russet-brown autumnal tints, and placed the seal of enjoyment upon the extensive social programme that was so well prepared. No Conference got away to a better start than this one did, with the appropriate welcoming speeches and their light moments and subtle thrusts. It was another happy inspiration that led His Excellency the Governor-General to speak of the legal side of military law—a human and engrossing subject in the hands of an acknowledged expert. No doubt such assemblies as these tend to place more emphasis on the entertainment than the business side. Scriblex can remember the time when discussions on papers far outran the time given to the paper itself, but the plethora of *obiter dicta* that accumulated (as one speaker who had little to say was followed by another who had less) served to obscure, and not to illuminate, the merit of the addresses. Curtailment of discussion within strict limits is the course that appears to meet with general approval: rightly so, since all the papers delivered gain little from hasty discussion and much from the opportunity of later study in print. And the practitioners themselves, a little greyer and more gaunt, the eye less quick—in sport, at all events—and the reactions more delayed, but still finding immeasurable satisfaction in the endless flow of "shop" or in basking in the golden glow of University memories, or in being members of the friendliest profession of them all!

Farewell, My Lovely!—Some years ago, the writer of a number of cautionary verses (designed primarily for law students whose leisure had been usurped by the extra time required to work the forty-hour week) included one on *Robertson* v. *Ling Sing*, [1936] N.Z.L.R. 653, which ran:

> "*The person most entitled to immunity*
> *Is he who lacks the later opportunity.*
> *The other is entangled in the tissues*
> *That lie within the compass of the issues.*"

The doctrine of "last opportunity" and its American counterpart (nurtured in particular by Cardozo and Stone, JJ.), "the last clear chance," was as unfamiliar to the medieval lawyer as Stabilization and the Fair Rents Act. Having no application where two sets of negligence were contemporaneous, its fault was that it laid too much emphasis upon the time factor where they were not, although many plaintiffs have ridden it successfully when the actual opportunity of avoidance on the part of the defendant, even if invisible to the naked eye, was detected by the jury apparently through their sixth sense of justice in common-law actions. In *Lewis* v. *Stewart*, [1934] N.Z.L.R. *s.* 89, Myers, C.J., and MacGregor and Kennedy, JJ., indicated a degree of nervous apprehension that the doctrine, as the result of being spoilt by too much adulation during the hectic 'twenties, had got a trifle out of hand. Their judgment, delivered by the Chief Justice, said, at p. *s.* 91:

> In our opinion, there was evidence requiring the submission of a third issue. It may well be that this is a case where, if issues are to be submitted on the retrial, the third issue should in form be directed not to the question of last opportunity, but to the question of whether—if both parties were negligent—the effective and substantial cause of the accident was the negligence of the plaintiff or of the defendant, or the combined negligence of the two. An issue so submitted would, of course, require from the trial Judge any necessary explanation of the doctrine of last opportunity.

In 1938, Scott, L.J., in *The Eurymedon*, [1938] P. 41; [1938] 1 All E.R. 122, rode to the lists on a somewhat ungainly charger. He said, at pp. 57, 58; 131:

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

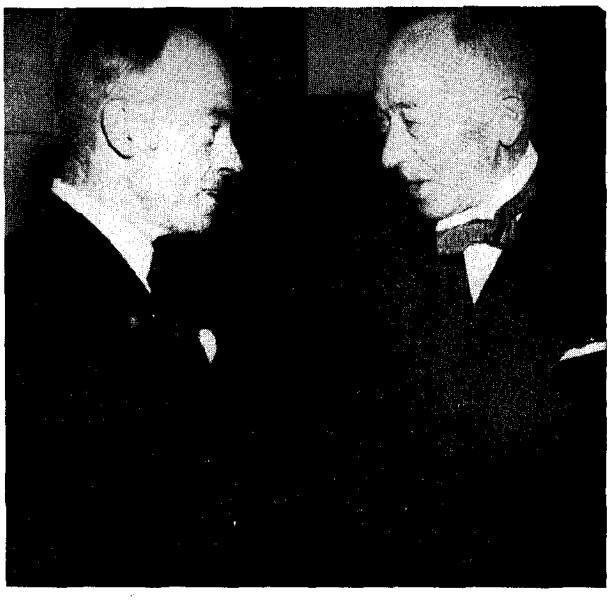
The matter then fell to be considered by the Law Revision Committee set up in England to consider, *inter alia*, whether, and in what respect, the doctrine of contributory negligence required modification; and, in a report in which such authorities as Professor Winfield and Dr. Stallybrass joined, no change was recommended of "what has been somewhat inaptly called 'the last-opportunity rule.'" In truth, it said, there is no such rule, the question—as in all questions of liability for a tortious act—being, not who had the last opportunity of avoiding the mischief, but whose act caused the wrong.

Finally, however, the rule, like Don Quixote on his Rozinante, maintained its position with uncertainty, and has now received its *coup de grace*. In *Davies* v. *Swan Motor Co.* (*Swansea*), *Ltd.* (*Swansea Corporation and James, Third Parties*), [1949] 1 All E.R. 620, Denning, L. J., says, at pp. 629, 630:

> The doctrine of contributory negligence was based on causation. If the plaintiff's negligence was one of the causes of his own damage, he could not recover anything: see *Caswell* v. *Powell Duffryn Associated Collieries* ([1939] 3 All E.R. 722, 730), per Lord Atkin. To resolve the question of causation the Courts used to apply the so-called doctrine of "last opportunity." That was not a principle of law, but a test of causation. It was a fallacious test, because the efficiency of the causes do not depend on their proximity in point of time, but it held sway for many years because it enabled the Courts to mitigate the harshness of the doctrine of contributory negligence. After the decision of the House of Lords in *The Volute* ([1922] 1 A.C. 129) and *Swadling* v. *Cooper* ([1931] A.C. 1) the doctrine of "last opportunity" fell into disrepute and was superseded by the simple test: What was the cause, or what were the causes, of the damage?

Many years ago, one Lee White wrote for *The New Yorker* a panegyric on the passing of the Model T Ford. It was a miracle, he said, that God had wrought; mechanically uncanny, it was like nothing that had come to the world before. He called the article "Farewell, My Lovely!" Much the same might be said for the "last-opportunity" rule, which, as a vehicle, rode many rough roads, but generally managed to arrive, battered but victorious.

Keeping One's Temper.—Mention was made in these columns some weeks ago of W. O. Danckwerts, K.C., a fearsome figure of Victorian days, of whom no less than Lord Alverstone, L.C.J., at times professed himself afraid. Another story of "Dancky" is contained



Top left : Lady Freyberg receives flowers from Mrs. Hubble at the Ladies' Morning-tea.

Top right : Dunedin is the Topic : Mr. A. C. Stephens (Dunedin) and Hon. Mr. Justice Callan. (*Auckland Star, Photo.*)

Centre : Arriving at the Ball.

Lower left : Mr. A. H. Johnstone, K.C. (Auckland), at the Dinner.

Lower centre : A Glimpse of the Ball.

Lower right : Mr. F. J. McCarthy, S.M., the "baby" of the Magisterial Bench, at the Opening of the Conference. (*Sparrow Industrial Pictures, Ltd., Photo.*)

Photocraft, Photo.

Conference Days and Nights.

in *The Barrister*, by Sir Harold Morris, K.C., in the "Life and Work" Series (Geoffrey Bles). The author relates that one day Danckwerts, a Boer by extraction, came into the robing-room from the Court of Appeal; his face was purple, his eyes were bulging, he was foaming at the mouth, and, picking his wig off his head, he hurled it to the far end of the room and shouted at the top of his great voice: "Thank God! I didn't lose my temper with them."

Sharing the Brief.—Lord Cairns, on his appointment to the Bench, told a story of a friend of his, a member of the Junior Bar, who went from Edinburgh to take part in a case that was to be decided by the House of Lords. On his return, his friends desired to know how he had got on. "Did you make a speech, Alexander?" asked one of them. "No, I didna make a speech; but I made a remark." "Indeed, and what was that?" "Well, ye see, my leader was away for a minute or two, so I got up and I said: 'Oh, my Lords, Sir Francis will be back directly; he has just gone out to wash his hands.'"

From My Note-book.—"With this background the words 'results from' ought not, in my opinion, to be interpreted in a technical or narrow fashion or with undue regard for common law rules. I think they must be read in the light of common experience and prevailing conditions and as applicable to the sort of world which the ordinary injured workman has to face. They must be wide enough to span changes brought about by the conjoint effect of the injury and natural processes, whether anticipated or not": per Lord MacDermott in *Hogan* v. *Bentinck West Hartley Collieries (Owners), Ltd.*, [1949] 1 All E.R. 588, 599.

"Treatment by a doctor whose skill had never been of the highest order, whose methods were rather out of date and who had no access to elaborate equipment, might well be much less efficient than the treatment which would have been given by a first-class specialist equipped with every modern discovery and invention, and the difference might easily lead to the prolongation of an incapacity which would otherwise have been completely cured. I do not think that such a degree of inefficiency has ever been held to be *novus actus interveniens*": per Lord Reid, at p. 607.

At the last Quarter Sessions at Leeds, one of the accused admitted charges of attempted burglary and possessing house-breaking implements by night. He was ninety-four years old, his first conviction at fourteen being visited with twelve strokes of the birch. The Recorder, after perusing a long list of convictions, said that apparently only one thing had never been tried: he had never been let off, and this time he could go free. The old man was overcome with emotion at the decision, and immediately obtained work as a cobbler.

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