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SIR MICHAEL MYERS.

IN the hundred and ten years' span of the history of the law in New Zealand, seven Chief Justices have served at the head of our judicial system. Of those who are now no longer with us, each has left his individual mark on the development of the law and has added to the legal traditions of a young and growing country. Each, in his own way, either adapted himself to the times in which he held high judicial office or was particularly fitted to hold such office during the particular period in which he was Chief Justice. With one lamented exception, they all gave many years of devoted service: Sir William Martin (1842–1857), Sir George Arney (1858–1875), Sir James Prendergast (1875–1899), Sir Robert Stout (1899–1926), Sir Charles Skerrett (1926–1929), and Sir Michael Myers (1929-1946), who died suddenly on April 8, aged seventy-seven years.

Sir Michael Myers took his place on the Bench and remained Chief Justice of New Zealand during a difficult period of our social and economic development as a nation and as a people. Furthermore, it was a time of transition in the history of the law in this Dominion. He was well fitted, by his training and his experience, to hold office then. The older men of the law—men who remembered the first Chief Justice and the earliest Judges of the Supreme Court—had been the mentors of his youth in the law. At their feet, in his formative years, he had eagerly absorbed their practical exposition of those legal traditions which, after centuries of development in the older lands, had been brought by them and their fathers to our shores to begin a new continuance. But, when he came to the Bench, these elders of the law had either passed away or were nearing the end of their allotted span. The younger men, destined to become leaders in their turn, some of them eventually to become Judges, had not yet reached the maturity that was awaiting them.

Sir Michael could not look back to the pioneering days. His years of practice began only in the days of the third Chief Justice, Sir James Prendergast, whom he always remembered as a great lawyer. He was in middle life, and in extensive practice at the Bar, at the time of the first World War. During the very difficult period of the universal economic depression and of the Second World War, he was in office as Chief Justice. He lived to take part in the effort that was being made towards the maintenance of universal peace. He was present at the birth of the United Nations Organization. Thus, his life's work extended over fifty eventful years.

Many of the men who are the giants of our legal history in New Zealand had been the familiars of the late Chief Justice. He had had the privilege of observing some of the greatest of them in their daily work. Moreover, he always acknowledged the advantages he had received when, as a young man, he visited England and appeared before such great Judges as Lord Macnaghten, Lord Shaw of Dunfermline, Lord Mersey, Lord Villiers, and Lord Robson.* In the full maturity of his powers as an advocate, when, overseas, he earned respect for the New Zealand Bar, he was impressed by such judicial celebrities as Viscounts Cave, Dunedin, Haldane, and Finlay, and Lords Blanesburgh, Atkinson, Carson, Merrivale, and Darling.† It may be recalled, too, that he himself successfully crossed swords with some of the most prominent members of the English Bar.

While on vacation, while he was Chief Justice, he sat on the Judicial Committee of the Privy Council, its first New-Zealand-born member.‡ In his latest years, he was sustained in his admiration and affection for the English judicial system by his correspondence with great Judges and with fellow-members of the Judicial Committee on whose Board he had sat, and who had become his intimate friends. That correspondence, which he welcomed, kept him in close relation with the spirit of the development of the law in the mother country of our legal system, and enabled him to apply what he thus learnt to its development here. Thus, at the time when he came to office as Chief Justice, and later, he had close association with the best of both worlds of judicial eminence and forensic prominence, New Zealand and Great Britain.

Sir Michael Myers was thus the living link in our legal history between our first beginnings as an organized community and the new era of development—and unrest—in which were born the youngest members of the profession whom, as Chief Justice, he admitted to practice. It was inevitable that he should come to be considered as the living repository of the legal

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* In *Allardice* v. *Allardice*, (1911) N.Z.P.C.C. 156.

† *Crown Milling Co., Ltd.* v. *The King*, (1927) N.Z.P.C.C. 37, *Bissett* v. *Wilkinson*, (1926) N.Z.P.C.C. 93, *Gardner* v. *Hirawanu*, (1927) N.Z.P.C.C. 365, *Doughty* v. *Commissioner of Taxes*, (1927) N.Z.P.C.C. 616, and *Wright* v. *Morgan*, (1926) N.Z.P.C.C. 678.

‡ *E.g.*, *Browne* v. *Moody*, [1936] 4 D.L.R. 1 (Lords Atkin, Russell of Killowen, Macmillan, and Alness, and Sir Michael Myers), and *Magee* v. *Magee*, [1936] 4 D.L.R. 81 (Lords Atkin, Russell of Killowen, and Macmillan, Sir Lyman Poore Duff (Chief Justice of Canada), and Sir Michael Myers).

traditions in which he had been brought up. It was human, too, that he came to regard himself, during his term as Chief Justice, as the custodian of those traditions. And none was more fitted. He knew those traditions to be sound, and he realized the need for their preservation. His high sense of duty impelled him at all times to rebuke the least infringement of them. He was quick to observe any abuse or unfairness. His pronouncements on such occasions were fearless and to the point. He was invariably right, though his expression of them was sometimes not as tactful or as well-timed as it might have been. But, once any feeling of injustice was aroused in him, he did not hesitate to condemn its cause, and he did not modify his condemnation. Great individualist as Sir Michael was, he had a passion for service to the law and to lawyers: he gave of his best to the fellow-members of his profession, not only to his contemporaries, but to those who would follow them. For this service, New Zealand lawyers must ever hold his memory in respect and in high regard.

At the Bar, the future Chief Justice showed that he had exceptional gifts. Those gifts with which nature had endowed him were assiduously cultivated, and disciplined; and throughout his career at the Bar, and in his judicial duties, he applied himself with unremitting industry. He had an acutely analytical mind, and anyone who observed him on the Bench was struck with his uncommonly quick perception. Painstaking in method, he possessed in large measure the power of sifting the modicum of relevance from the mass of irrelevance, and of arriving at conclusions with a minimum of delay.

It was characteristic of Sir Michael Myers, as a Judge, that he was always anxious to right any error that he thought he had made. He was properly difficult to persuade that any considered decision of his—such as what issues should be put to a jury—had been a wrong decision. But, once convinced of that, he admitted it freely, and wished only to see it corrected. On the other hand, if convinced he was right, no one could be more tenacious.

Sir Michael was a manly man. He had many human qualities. He was always a fighter, with a keen fighter's attributes. He had great responsibilities in his later years. Yet no one could be more sympathetic to anyone in trouble or in illness. Then, he was kindness itself. He liked being with the younger members of the profession, and, particularly in his days of retirement, he was always ready to assist them. Wherever he was, or whatever task occupied his attention, his intensely active mind was centred on his profession, which was, indeed, his life. After his retirement as Chief Justice, he was more active than ever. Removed from the burdens and the responsibilities of high office, he could give free expression to his views and to his feelings. Often, their expression was neither judicial nor judicious; but, such as it was, it was given rather in the carefree mood of a schoolboy on holiday. Apart from those human manifestations, many are the richer for knowing him in his full flowering. Then, even more than formerly, his mind, untrammelled, was devoted to encouraging his young brethren to pursue the highest standard of legal practice and to apply legal principles accurately and in undiminished purity and effect.

We like to recall how Sir Michael, through this JOURNAL, sometimes endeavoured to influence a wider audience of the profession than those with whom he came in personal contact. He was always a good friend of the JOURNAL, and, through its pages, the friend of every member of the profession that it aims to serve. From its earliest days, he was always available to give its editors the benefit of his experience and his advice. Ever a critic, he was a helpful one. He did not expect his advice on minor matters always to be accepted; and, in fact, he was at his best when an opposite view was expressed and maintained. But he never lost an opportunity of reminding us of the great responsibility that is ours, to foster, so far as we are able, the love and the observance of the high traditions of the Bar. Furthermore, he hoped that the JOURNAL would ever keep before the eyes of the profession the splendid history of the continuation and expansion, in our own land, of those traditions.

When occasion required, Sir Michael could write first-rate English prose. As examples, we have only to recall his addresses on obituary occasions, and the clarity of his judgments. It was, however, almost impossible, even in his days of retirement, to persuade him to write anything for publication. Many pressed on him the profession's desire that he would record his reminiscences of the law. But he always refused. It may well have been a sense, a feeling, that the permanence of the written word restricted a forthright expression of his views of men and affairs; anything less would be out of character. Or, maybe, he preferred the charity of silence. If he were not a writer, then he was essentially a teacher, a tutor. And many of us are the better for his lessons.

Sir Michael was a great New Zealander. His sudden death, when he appeared so active and so vigorous in mind and body, shocked us all. He had become an institution. We felt at the time that, with his passing, an era had come to an end. But, on reflection, we know that that is not necessarily so. There are men among us, on the Bench and at the Bar, who knew not the elders of the law who were the leaders when Sir Michael was a boy or a young practitioner; but they knew him. They have had before them the example of a fearless and tireless advocate of the maintenance of the dignity of the law and of the essential greatness of the traditions of our Bench and Bar. Sir Michael will not have lived in vain if those men, and those to whom they hand on his example, keep before them the ideals which were close to his heart. That, we think, is the monument he himself would have desired.

SUMMARY OF RECENT LAW.

AGENT.

Commission—Estate Agent—Instructions to find "Purchaser"—Purchaser bound by Law to purchase. The defendant instructed the plaintiff, an estate agent, to "find a purchaser" for his (the defendant's) house at a price of £3,000. *Held*, That, to earn his commission, the plaintiff had to produce a purchaser who was bound in law to buy the property at the price agreed. (Dicta of *Lord Russell of Killowen* and *Lord Romer* in *Luxor (Eastbourne), Ltd.* v. *Cooper*, [1941] 1 All E.R. 44, 64, applied.) (*Jones* v. *Lowe*, [1945] 1 All E.R. 194, *E. H. Bennett and Partners* v. *Millett*, [1948] 2 All E.R. 929, and *Murdoch Lownie* v. *Newman*, [1949] 2 All E.R. 783, approved.) *Fowler* v. *Bratt*, [1950] 1 All E.R. 662 (C.A.).

As to Agents' Rights to Remuneration, see *1 Halsbury's Laws of England*, 2nd Ed. 257-263, paras. 432-436; and for Cases, see Second Digest Supp.

BANKRUPTCY.

Sheriff's Liability in Bankruptcy of Execution Debtor. *100 Law Journal*, 185.

COMPANY LAW.

Points in Practice. *100 Law Journal*, 200.

CONFLICT OF LAWS.

Points in Practice. *100 Law Journal*, 186.

CONVEYANCING.

Partnership: Deed between Husband and Wife. (Precedent.) *3 Australian Conveyancer and Solicitors Journal*, 40.

Per stirpes and per capita. *100 Law Journal*, 201.

Perpetually Renewable Leaseholds. *100 Law Journal*, 187.

Powers of Attorney by Co-owners. *100 Law Journal*, 173.

COSTS.

Allowances for Printing. *94 Solicitors Journal*, 42.

CRIMINAL LAW.

Appeal against Conviction—Appeal against Sentence dismissed—Subsequent Appeal against Conviction not to be rejected on That Account—Criminal Appeal Act, 1945, s. 3. An application under s. 3 (*b*) of the Criminal Appeal Act, 1945, for leave to appeal against conviction may be made, either concurrently or consecutively, with an application under s. 3 (*c*) for leave to appeal against sentence. An application for leave to appeal against conviction is not to be rejected merely because leave to appeal against sentence, the subject of an earlier application, has been refused. *The King* v. *Banks*. (C.A. Wellington. March 27, 1950. Northcroft, Finlay, Gresson, JJ.)

Appeal against Conviction—Trial Judge's View of Conviction—Responsibility for Verdict with Jury—Test of Unreasonableness of Verdict—Criminal Appeal Act, 1945, s. 4. The responsibility for decision upon matters of fact in a criminal trial is that of the jury, and not of the Judge. A verdict is not to be regarded as unsatisfactory merely because the trial Judge or the Judges of the Court of Appeal would not, or might not, have come to the same conclusion as the jury, provided that the verdict is one which twelve reasonable men could reasonably and properly find upon the evidence before them. (*R.* v. *Ross*, [1948] N.Z.L.R. 167, applied.) *The King* v. *Kira*. (C.A. Wellington. March 27, 1950. Northcroft, Gresson, Hutchison, JJ.)

DIVORCE.

Adultery—Standard of Proof. In 1942, the wife divorced the husband, and the husband was ordered to pay her a certain sum for the maintenance of herself and their child. In August, 1945, the wife and child began living at the same address as C., a married man living apart from his wife, and thereafter the wife and C. moved together to various addresses, taking the child with them, until December, 1949, when C. went to live away from the wife. Evidence was given that at one address the landlord knew the wife as Mrs. C., and that at another the wife and C. occupied one bedroom. The husband sought to have the amount which he had been ordered to pay the wife reduced, and on the issue as to the wife's misconduct, *Held*, That it had been proved beyond any reasonable doubt that the wife and C. had committed adultery. Per *Denning*, L.J., I do not think that this Court is irrevocably committed to the view that a charge of adultery must be regarded as a criminal charge, to be proved beyond all reasonable doubt. The Supreme Court of Judicature (Consolidation) Act, 1925, s. 178 (2), as substituted by the Matrimonial Causes Act, 1937, s. 4, which simply requires the Court on a petition for divorce to be "satisfied on the evidence that the case for the petition has been proved," lays down a standard and puts adultery on the same footing as cruelty, desertion, or unsoundness of mind. So far as the Act of 1925 is concerned, no valid distinction can be drawn between the standard of proof of cruelty and adultery, nor does public policy require any such distinction. (*Ginesi* v. *Ginesi*, [1948] 1 All E.R. 373, criticized and doubted.) *Gower* v. *Gower*, [1950] 1 All E.R. 804 (C.A.).

As to Adultery, see *10 Halsbury's Laws of England*, 2nd Ed. 660-665, paras. 972-978; and for Cases, see *27 E. and E. Digest*, 293-304, Nos. *2695-2813*.

Maintenance—Wife entitled to Maintenance under Order made by Justices—Application to Divorce Court for Maintenance while Justices' Order still in Force—Election by Wife—Waiver of Right to Order by Divorce Court—Supreme Court of Judicature (Consolidation) Act, 1925 (c. 49), s. 190 (2). On May 4, 1949, the wife obtained a decree *nisi* of divorce from the husband. At the conclusion of the hearing of her petition, counsel stated on her behalf that she would not ask for maintenance, as she proposed to rely on a maintenance order, dated August 30, 1945, which she had obtained from a Court of summary jurisdiction on behalf of herself and her child, on the ground of the husband's desertion and wilful failure to maintain. The decree was made absolute on June 17, 1949, and on August 15, 1949, the wife filed an application for maintenance under the Supreme Court of Judicature (Consolidation) Act, 1925, s. 190 (2), without having applied to the Justices to discharge their order of August 30, 1945. On October 26, 1949, she took out a summons for arrears due under the order of the Justices, and on October 27 she applied to the Justices to discharge their order, but her application was adjourned *sine die* pending the hearing of her application to the Divorce Court. It was contended by the husband that the application under the Act of 1925 could not be entertained, as the wife had made an irrevocable election to rely on the order of the Justices. *Held*, (i) That, on the facts of the case, there was no evidence of an irrevocable election by the wife in favour of the order of the Justices; but *Semble*, The doctrine of election could not apply where the wife had only one remedy open to her—*viz.*, an order for maintenance against the husband—but a choice of Courts in which she might pursue that remedy. (ii) That, assuming that, by the statement of her counsel at the conclusion of the hearing of her divorce petition, and by her subsequent conduct, she had purported to make an irrevocable election not to apply for maintenance under the Act of 1925, the wife could not renounce or waive her right to maintenance under the Act of 1925 and the Matrimonial Causes Rules, 1947, r. 44 (1), by any unilateral statement or conduct on her part, as such a purported election would offend against the principles laid down in *Hyman* v. *Hyman*, [1929] A.C. 601, and would not be binding on her. (iii) That the Court would not make an order for maintenance while the order of the Justices was still in force, and the wife would have to decide whether she would rely on the order of the Justices or whether she would apply to them to discharge their order and would then apply to the Divorce Court for an order under the Act of 1925. (*Kilford* v. *Kilford*, [1947] 2 All E.R. 381, followed.) *Ross* v. *Ross*, [1950] 1 All E.R. 654.

As to Permanent Maintenance, see *10 Halsbury's Laws of England*, 2nd Ed. 785-787, paras. 1244, 1245, and Supplement; and for Cases, see *27 E. and E. Digest*, 500-502, Nos. *5355-5378*, and Supplements.

Nullity—Wilful Refusal to consummate Marriage—Coitus interruptus—*Cruelty.* In 1935, the parties went through a ceremony of marriage. Against the wishes of the wife, and in spite of frequent protests by her, the husband practised *coitus interruptus*. A doctor who examined the wife warned the husband that the practice was having a serious effect on the wife's health, but he persisted in the practice, maintaining that he could not allow his wife to have a family, because her parents were first cousins. The wife petitioned for a decree of nullity, on the ground of her husband's wilful refusal to consummate the marriage, and, in the alternative, for a divorce on the ground of cruelty. *Held*, (i) That the marriage had been consummated, and, therefore, the wife was not entitled to a decree of nullity. (*White* (*otherwise Berry*) v. *White*, [1948] 2 All E.R. 151, followed.) (*Grimes* (*otherwise Edwards*) v. *Grimes*, [1948] 2 All E.R. 147,

not followed.) (ii) That the husband's conduct, which was persisted in, notwithstanding the wife's repeated protests, and which, to his knowledge, was having an increasingly adverse effect on her health, constituted cruelty, and the wife was entitled to a decree of dissolution on that ground. (Observation of *Lord Jowitt*, L.C., in *Baxter* v. *Baxter*, [1947] 2 All E.R. 892, referred to.) *Cackett (otherwise Trice)* v. *Cackett*, [1950] 1 All E.R. 677.

As to Wilful Refusal to Consummate Marriage, see *Halsbury's Laws of England*, 2nd Ed. 1949 Supp., Title "Divorce"; and for Cases, see *E. and E. Digest*, Second Supp.

EXECUTORS AND ADMINISTRATORS.

Executor—Fund for Payment of Legacies and Legacy Duty—Whether Payable out of Residue or primarily out of Lapsed Share of Residue. By her will, dated April 3, 1947, a testatrix, who died on August 26, 1948, gave certain specific and pecuniary legacies free of duty, and further provided: "I give devise and bequeath all my real estate and all my personal estate not hereby otherwise disposed of . . . unto my trustees upon trust that my trustees shall sell call in and convert into money the same . . . and after payment of all my funeral and testamentary expenses and debts shall stand possessed of the residue thereof in trust to pay and transfer the same equally between [A., B., C., and D.] absolutely." A. predeceased the testatrix, and her share, therefore, lapsed, but B., C., and D. survived her. *Held*, That, as the Administration of Estates Act, 1925, s. 34 (3), and Sched. I, Pt. II, did not provide for the incidence of legacies and the duty payable in respect of legacies given free of duty, the law in that respect which was applicable before 1926 had not been altered, and the legacies and the duty in respect thereof were payable out of the residuary estate before its division into four shares, and not primarily out of the lapsed share. (*Re Thompson*, [1936] 2 All E.R. 141, considered.) *Re Beaumont's Will Trusts, Walker and Another* v. *Lawson and Others*, [1950] 1 All E.R. 802.

As to Order of Application of Assets of Solvent Estates, see *14 Halsbury's Laws of England*, 2nd Ed. 375-380, paras. 704-708; and for Cases, see *23 E. and E. Digest*, 473-486, Nos. *5425-5534*.

FOOD AND DRUGS.

Food marketed as "Lemon cheese spread"—Margarine used in Preparation and not Butter contrary to Prescribed Standard—Statement "calculated or likely to deceive a purchaser"—Test to be applied—Food and Drugs Act, 1947, s. 9 (1) (c)—Food and Drug Regulations, 1946 (Serial No. 1946/136), Regs. 26, 151. The appellant company marketed certain food in glass jars labelled "Excello Lemon Spread," and in cartons labelled "Excello Lemon Cheese Spread." The food was in accordance with the standard prescribed for lemon cheese by Reg. 151 of the Food and Drug Regulations, 1946 (Serial No. 1946/136), except that it was prepared with margarine in lieu of butter, in breach of that Regulation and of Reg. 26. The company was convicted, as the seller, of publishing a statement relating to that food which was calculated or likely to deceive a purchaser with respect to its properties, in breach of s. 9 (1) (c) of the Food and Drugs Act, 1947. On appeal from that conviction, *Held*, 1. That, in applying the test under s. 9 (1) (c) of the Food and Drugs Act, 1947—whether the statement was "calculated" or "likely" to deceive any ordinary reasonable person with respect to the properties of the food—the Court must attribute to the ordinary reasonable person a knowledge of the requirements of Reg. 151, and, in particular in the present case, a knowledge that the standard for lemon cheese requires butter as an ingredient, and excludes margarine. 2. That the word "spread" in relation to food has so wide a meaning that its reference to some particular food is indicated mainly, if not almost entirely, by the words used as adjectives in conjunction with it. 3. That the description "Lemon Spread" would not deceive any ordinary person into thinking he was getting the article of food known as lemon cheese; but the use of the full phrase "Lemon Cheese Spread" was likely to deceive the ordinary person with respect to the properties of the food described, even if some grocers, and perhaps some housewives, might think they were getting an inferior article, and might not be likely to be deceived. *Burch and Co. (New Plymouth), Ltd.* v. *Hughes.* (S.C. New Plymouth. March 21, 1950. Smith, J.)

GAMING.

Offences—Advertisement inviting Bets on Horse-racing—Charges against Printer and Publisher of Sports Journal—Competition to pick Eight Winners at Race-meeting—Publication Full Value for Purchase Price—Transactions between Purchasers of Publication and its Proprietor not "Bet" or "Wager"—Gaming Act, 1908, ss. 30 (2), 63 (c). Bettle was the publisher of a sporting publication, *Bettle's Budget*, in which he conducted a competition. In each copy of the publication there was printed a coupon on which it was stated that a prize of £100 would be awarded to the person who selected the eight winning horses at a named race-meeting. A consolation prize of £5 was to be awarded to the person who scored the most points week by week. Points were stated as: first horse, three points; second horse, two points; and third horse, one point. The purchase price of the publication was 6d., and at least one purchaser had sent in answers and gained a prize of £5. On informations charging the defendant Bettle, as publisher, with a breach of s. 63 (c) of the Gaming Act, 1908, and defendant Billens, who was the managing director of the company which printed the publication for the other defendant, with a breach of s. 30 (2) of the statute, *Held*, 1. That, on the facts, no money was risked, as the buyer of the publication got full value for the purchase price; and there was insufficient proof that there had been any gain in circulation, or that the competition was continued with that object. (*McLennan* v. *France*, [1938] N.Z.L.R. 391, and *Police* v. *Bettle*, (1947) 5 M.C.D. 334, distinguished.) (*Sir W. C. Leng and Co. (Sheffield Telegraph), Ltd.* v. *Sillitoe*, [1929] 1 K.B. 366, and *Baker* v. *Sillitoe*, (1931) 145 L.T. 635, referred to.) 2. That the transactions, as between purchasers of the publication and its proprietors, did not amount to a "bet or wager," as those terms are used in ss. 30 (2) and 63 (c) of the Gaming Act, 1908. (*Caminada* v. *Hulton*, (1891) 64 L.T. 572, followed.) *Police* v. *Bettle*: *Police* v. *Billens.* (Palmerston North. April 17, 1950. Herd, S.M.)

HIRE-PURCHASE.

Conversion—"Owners may terminate hiring" on Default of Hirer—Right to Immediate Possession of Chattel hired—Need of Notice. On May 8, 1947, the plaintiffs let a motor-car on hire-purchase to C. The hire-purchase agreement provided, *inter alia*, that during its continuance the hirer should not loan or part with possession of the vehicle or attempt to sell, pledge, charge, assign, sub-let, or otherwise dispose of it. The agreement further provided by cl. 7: "(i) If the hirer shall fail to pay any sum due hereunder or to observe or perform any stipulation on his part herein contained, the owners may terminate the hiring; and thereupon the hirer shall pay to the owners the whole of the sums specified under the heading 'Terms of Hire' in the schedule hereto . . . (ii) If this hiring be terminated for any reason appearing at the beginning of this clause the owners may by written notice to the hirer and subject to similar stipulations put an end to the hiring under any other agreements subsisting between them and the hirer." In June, 1947, C. instructed the defendant, an auctioneer, to sell the car for him; on July 2, 1947, the defendant sold the car; and the plaintiff now sought damages for its conversion. *Held*, That, on the true construction of the hire-purchase agreement, the plaintiffs acquired a right to immediate possession as soon as any breach of cl. 7 (i) occurred, without giving any notice to terminate the agreement, and, therefore, they were entitled to sue in conversion. (*Jelks* v. *Hayward*, [1905] 2 K.B. 460, applied.) *North Central Wagon and Finance Co., Ltd.* v. *Graham*, [1950] 1 All E.R. 780 (C.A.).

As to Termination of Hire-purchase Agreement, see *16 Halsbury's Laws of England*, 2nd Ed. 513, 514, para. 756; and for Cases, see *3 E. and E. Digest*, 95-98, Nos. *256-266*.

INCOME-TAX.

Income of a Trust Estate. (J. A. L. Gunn.) *3 Australian Conveyancer and Solicitors Journal*, 37.

LAND TRANSFER.

Title by Adverse Possession in Relation to Land Transfer Land. (L. A. Harris.) *3 Australian Conveyancer and Solicitors Journal*, 45.

LICENSING.

Offences—Drinking Intoxicating Liquor in Taxicab—Ingredients of Offence—Licensing Amendment Act, 1948, s. 112 (1). The defendant was charged with drinking intoxicating liquor in a taxicab in breach of s. 112 (1) of the Licensing Amendment Act, 1948. The defendant was a taxi-proprietor in a country town. He responded to calls only at his own premises. On the evening concerned, he was engaged to drive a private party comprising five friends, all visitors to the district, to a neighbouring hamlet where a public dance was in progress. On arrival there, the party attended the dance. During the evening, the defendant was approached by the Police with regard to a quantity of beer in bottles found in his taxicab. He explained

this as the remains of a dozen bottles which his patrons had brought with them, and he added that he had had some of the beer which had been opened and drunk on the journey. *Held*, That no offence had been committed by the defendant, as it is not an offence under s. 112 (1) of the Licensing Amendment Act, 1948, to consume intoxicating liquor in a taxicab except at a time when it is actually carrying fare-paying passengers. The words "members of the public," as used in s. 112 (1), exclude a private party in sole and undistributed occupation of a taxicab, so long as the driver has genuinely engaged himself to one party, and to one party alone, at any given time; and the word "taxicab," as so used, is limited in meaning and application to a taxicab which, at the material time, is engaged in the performance of two or more concurrent but independent hirings. *Semble*, The consumption of alcohol by a taxi-driver in the course of his driving is an offence under s. 43 of the Transport Act, 1949. *Police* v. *Cook*. (Lumsden. February 17, 1950. Harlow, S.M.)

MISREPRESENTATION.

Innocent Misrepresentation—Sale of Goods—Misrepresentation as to Quality of Article Sold—Rescission of Contract—Acceptance by Buyer of Delivery—Claim to rescind Contract after Five Years. In March, 1944, the buyer bought from the sellers an oil painting of Salisbury Cathedral, which was represented to him as a painting by Constable, a representation which was held to be one of the terms of the contract. In 1949, he found that the picture was not a Constable. On a claim by the buyer for the rescission of the contract, on the ground that there had been an innocent misrepresentation, *Held*, That, assuming that, in a proper case, a contract for the sale of goods passing by delivery could, after its completion by the delivery of the goods, be rescinded on the ground of innocent misrepresentation as to the quality of the chattel sold, the present claim was not competent, because the buyer had lost the right to reject on that ground when he accepted delivery of the picture, or, at least, when a reasonable time had elapsed after his acceptance, and five years was more than a reasonable time. (*Seddon* v. *North Eastern Salt Co., Ltd.*, [1905] 1 Ch. 326, considered and criticized.) *Leaf* v. *International Galleries*, [1950] 1 All E.R. 693 (C.A.).

As to the Right to Rescind Contracts Generally, see *23 Halsbury's Laws of England*, 2nd Ed. 96-118; and for Cases, see *35 E. and E. Digest*, pp. 55, 56, Nos. *494-510*, and pp. 65-68, Nos. *616-647*, and Digest Supp.

For the Provisions of the Sale of Goods Act, 1893, see *17 Halsbury's Complete Statutes of England*, 612.

NEGLIGENCE.

Contributory Negligence—"Fault"—Plaintiff's Negligence part of Effective or Operative Cause of Accident—Common Law unaltered—Contributory Negligence Act, 1947, s. 3. Section 3 of the Contributory Negligence Act, 1947, does not alter the common-law principle that the Court must look only at negligence which is causal and operative, and not at negligence which does not fall into that category. The words "partly of his own fault and partly of the fault of any other person or persons" mean part of the effective cause or operative cause. (*McLaughlin* v. *Long*, [1927] 2 D.L.R. 186, *Whitehead* v. *North Vancouver*, [1939] 3 D.L.R. 83, *Towne* v. *British Columbia Electric Railway Co.*, [1943] 3 D.L.R. 572, *Canadian Pacific Railway Co.* v. *Fréchette*, [1915] A.C. 871, and *Davies* v. *Swan Motor Co. (Swansea), Ltd.* (*Swansea Corporation and James, Third Parties*), [1949] 1 All E.R. 620, followed.) *Griffin* v. *F. T. Wimble and Co. (N.Z.), Ltd.* (S.C. February 2, 1950. O'Leary, C.J.)

Licensee—Licensor's "Actual knowledge" of Danger—Knowledge of Potential Danger—Public Convenience—Injury caused by Children tampering with Grille—Liability of Local Authority. The plaintiff entered a public convenience provided by a borough council by passing through an outer gate at street level and down a flight of stairs to a roofed enclosure. On leaving, he mounted the stairs, and, as he reached the topmost steps, his head came into contact with part of an overhead grille or grid which had been drawn forward while the plaintiff was in the convenience by the action of children swinging thereon, and he thereby suffered injury. The council, through their servant, the attendant, knew that children were in the habit of swinging on the grille, and it would have been possible to prevent anyone from drawing the grille forward by padlocking it, but that was not done. In an action by the plaintiff against the council for damages for personal injuries, *Held*, (i) That a licensor was not liable to a licensee for injury caused by dangers of which the licensor did not actually know, but of which he ought to have known, for, if it were otherwise, there would be no difference between the liability of an invitor and that of a licensor. (Dicta of *Lord Atkinson* and *Lord Wrenbury* in *Fairman* v. *Perpetual Investment Building Society*, [1923] A.C. 86, 96, and *Lord Hailsham*, L.C., in *Robert Addie and Sons (Collieries), Ltd.* v. *Dumbreck*, [1929] A.C. 365, considered.) (ii) That, to have "actual knowledge" of the danger, a licensor need not know of the actual presence on the premises at the time of the accident of the physical object which causes the injury, but it is sufficient if he knows that there is present a physical object capable of being put into a dangerous condition by the action of third persons who are quite likely to act in such a way, having regard to their past behaviour or inherent qualities. (*Coates* v. *Rawtenstall Borough Council*, [1937] 3 All E.R. 602, applied.) (iii) That, on the facts, the defendants knew of the danger from which the plaintiff sustained his injury, notwithstanding that they could not foresee the precise manner in which the dangerous condition might cause personal injury to users of the convenience, because, by their servants, they knew that children were in the habit of tampering with the grille. Accordingly, they were liable to the plaintiff as a licensee, and *a fortiori* if he were an invitee. *Pearson* v. *Lambeth Borough Council*, [1950] 1 All E.R. 685 (C.A.).

As to Occupier's Duties to Invitees and Licensees, see *2 Halsbury's Laws of England*, 2nd Ed. 600-612, paras. 851-863; and for Cases, see *36 E. and E. Digest*, 35-49, Nos. *208-306*, and Digest Supp.

PRACTICE.

Supreme Court Amendment Rules, 1950 (Serial No. 1950/58). The amendments are explained on p. 126, *post*.

PROBATE AND ADMINISTRATION.

Points in Practice. *100 Law Journal*, 172.

TENANCY.

Dwellinghouse—Possession—Tenant not in Occupation of Premises—Test as to whether Tenant reasonably requires Premises for Occupation as Dwellinghouse—Tenancy Act, 1948, s. 24 (1) (f). The test, under s. 24 (1) (*f*) of the Tenancy Act, 1948, whether a non-occupying tenant reasonably requires the premises for occupation as a dwellinghouse is: Do the premises, even though the tenant is absent from them, constitute the tenant's home? If the answer is "Yes," then he reasonably requires them for use as a dwellinghouse. (*Wigley* v. *Leigh*, [1950] 1 All E.R. 73, applied.) (*Skinner* v. *Geary*, [1931] 2 K.B. 546, referred to.) *Coulthard and Co., Ltd.* v. *Lucas*. (Auckland. April 4, 1950. Spence, S.M.)

TRANSPORT.

Disqualification and "Special reasons." *94 Solicitors Journal*, 41.

Transport Licensing Regulations, 1950 (Serial No. 1950/28).

TRUSTS AND TRUSTEES.

Trustee Investments. *3 Australian Conveyancer and Solicitors Journal*, 33.

WAGES.

Minimum Weekly Wage—Suspension by Employer of Working Operations in Terms of Award—No Cause attributable to Worker—Computations of Wages of Shift-worker—Amount of Wages received in Excess of Minimum Wage under Minimum Wage Act, 1947—Statute not Applicable to Rates of Remuneration higher than Rates prescribed—Minimum Wage Act, 1945, ss. 2 (5), 3 (1)—Minimum Wage Amendment Act, 1947, s. 2. Subsection 5 of s. 2 of the Minimum Wage Act, 1945, which was amended by s. 2 of the Minimum Wage Amendment Act, 1947, applies to the statutory rates of wages only, and it has no application to higher rates under awards which fix the rates of remuneration in excess of those fixed as minima by s. 2 as amended. Consequently, if a worker in fact receives during a working-week a sum in excess of that which he would have received had he been working on the terms prescribed by the Minimum Wage Act, 1945, that statute has no application. (*New Zealand Forest Products, Ltd.* v. *Craike*, [1949] N.Z.L.R. 128, not followed.) (*Hopper* v. *Rex Amusements, Ltd.*, [1949] N.Z.L.R. 359, referred to.) *Mickell* v. *Whakatane Board Mills, Ltd.* (S.C. Auckland. December 16, 1949. Finlay, J.)

WAR SERVICE GRATUITIES.

War Service Gratuities Emergency Regulations, 1945, Amendment No. 4 (Serial No. 1950/49). These Regulations provide that, except where, in special circumstances, the Minister of Defence otherwise directs, the three annual bonuses of 5 per cent. on the balances in War Gratuity Post Office Savings-bank Accounts will not be allowed where application for the gratuity is made later than four years after the date of entitlement; and on and after April 1, 1950, all payments on account of war service gratuities (including supplementations) must be made by direct payment or into an ordinary Post Office Savings-bank account and not into a War Gratuity Post Office Savings-bank account.

THE LATE SIR MICHAEL MYERS.

Tributes to His Worth and Work.

The Rt. Hon. Sir Michael Myers, G.C.M.G., who was Chief Justice of New Zealand from May 3, 1929, until August 7, 1946, died at Wellington on April 8, aged seventy-seven years.

Almost every member of the profession in Wellington and a number of country members were present at the Supreme Court on April 17 to honour the memory of the late Chief Justice.

Besides His Honour the Chief Justice, the Rt. Hon. Sir Humphrey O'Leary, who presided, there were with him on the Bench Mr. Justice Kennedy, Mr. Justice Finlay, Mr. Justice Gresson, Mr. Justice Hay, Mr. Justice Hutchison, Mr. Justice Smith, and two former members of the Bench, the Hon. Sir Archibald Blair and Mr. H. H. Cornish. There were also present Lady Myers and her son Mr. Maurice Myers, Mr. P. Myers, brother, and other members of the family of the late Chief Justice. The Magisterial Bench was represented by Mr. A. A. McLachlan, S.M., Mr. H. J. Thompson, S.M., and Mr. J. S. Hanna, S.M. The Under-Secretary for Justice, Mr. S. H. Barnett, the Commissioner of Police, Mr. J. Bruce Young, and the former Under-Secretary for Justice, Mr. B. L. Dallard, also attended.

The Chief Justice.

His Honour the Chief Justice, addressing the assembled members of the profession, said:

"Before the business of the day is entered upon, it is my duty—my sad duty—to refer to the lamented and unexpected death of Sir Michael Myers, who for over fifty years, either as counsel or Judge, was a familiar figure in this Court, and who for forty years was in the forefront of the legal life of the Dominion.

"It is fitting that we—the members of the Bench and the legal profession—should for the moment put aside our several duties and tasks and remember together our common loss and pay our united tribute to the memory of one whose public services and personal legal merit have ensured him an eminent place in the national biography of this country, and at the same time publicly express our sympathy to Lady Myers and her sons in their very great loss.

"Already in the public Press, and by public men, Sir Michael's life story and his public services have been adequately recounted, and it is as an advocate and a Judge that we particularly wish to speak of him this morning and publicly record our appreciaton of his worth.

"His career at the Bar is well known, for quickly after his entry into the profession his active zeal for the interests of his clients, his learning, his laborious research and preparation, his sound judgment, and his knowledge of the world of business deservedly obtained for him a very high reputation, and he earned the confidence of suitors, the public, and his own profession.

"He was a successful leader in the golden age of advocacy in this Court, when such men as Sir Francis Bell, Sir Charles Skerrett, and Sir John Findlay led and dominated, and when scarcely less renowned leaders, Martin Chapman, C. B. Morison, and Sir Alexander Gray, regularly appeared. In Mr. Myers they found a strenuous fighter and an unsparing antagonist.

"Then, in 1929, he was appointed Chief Justice, and I think I am correct in recording that he was the first New Zealand born to attain that office.

"His very extensive practice, and (perhaps more important still) the manner in which he conducted it and worked at it, gave him a sound and comprehensive knowledge of law, both in principle and in detail, and, with this equipment and his combination of unusual gifts, he ascended the Bench to be the successful and efficient Judge he is universally acclaimed to have been.

"He was never unmindful of the fact that Judges are entrusted with a solemn authority and duty—he always had before him the fundamental doctrines of the independence of the judiciary: that the integrity of the Courts must always be sustained, that the judicial office exists primarily and fundamentally to administer justice independently and impartially, and that Judges must hold the balance of justice between man and man and between the State and the subject.

"He was fearless in the performance of his judicial duties; he was absolutely independent in judgment, and unsparing of himself in the labour which he devoted to forming right conclusions upon the infinitely various questions that come before the Court for decision.

"He was essentially fair, and I think an outstanding quality was his genuine sympathy, which never failed him with the lot—the unfortunate lot—of those who in one way or another fell victims to the stress and strain of our social and industrial life, and who came before him maimed and broken, or claiming for the loss of dear ones.

"If at times it might appear that he was straining to bring about a result favourable to one side, or that he unduly leaned to one party rather than to the other—a not uncommon judicial fault—this was, in my opinion, due to the fact that he was convinced that justice lay in the direction of the party he favoured, and his view of fairness necessitated his leaning to that side. But his judicial faults were few, and the prestige and reputation of our Courts were enhanced, and their high traditions were maintained, by and during the term of Sir Michael Myers as Chief Justice.

"He had a happy private and domestic life, sustained as he was over fifty years by a helpmate, cheerful and devoted, to whom and to whose sons our deep sympathy goes out in the unexpected loss of husband and father.

"And so on this occasion—the reopening of the Sittings of the Court of Appeal where he presided so often—this tribute to his memory is expressed by me on behalf of the members of the Bench, some of whom over many years were colleagues of his, all of whom were at one time or another associated with him as counsel, and all of whom for many years were his friends."

The Attorney-General.

The Attorney-General, the Hon. T. Clifton Webb, then addressed their Honours:

"The inevitable hand of death has taken from us Sir Michael Myers, and here, in this Court-room which for so many years was familiar to him, and in which for long he was such a familiar figure, members of the

Bar have assembled for the purpose of paying their humble respects and tribute to his memory.

" It is hardly an exaggeration to say that, having lived for nearly seventy-seven years, of which seventy, I understand, were spent in Wellington, and having lived such an active and busy life and attained such eminence, he had become almost an institution here. His outstanding intellectual gifts, his great force of character, and, not least, his seemingly boundless capacity for sustained effort and intensive application enabled him at an early age to reach the forefront of the profession. Indeed, one might say, he was borne irresistibly to the forefront of his profession, and, in due course, gravitated almost naturally to the highest pinnacle in the judicial life of this country.

" My friends Mr. Leicester and Mr. Spratt are far better qualified than I to recount in detail his achievements at the Bar and on the Bench, and, therefore, I leave that privilege to them. I speak now of Sir Michael in other fields, for his talents were not by any means exclusively devoted to the law. He was an able administrator, and, over the years of his long and busy life, he acquired a wealth of knowledge and experience, political as well as legal, which, combined with his rare gifts, both judicial and administrative, rendered him of invaluable assistance to Governments of all shades of political opinion ; his advice and services were therefore eagerly sought and as freely given, without regard for the political colour of the Government which sought his aid, for he jealously guarded the wholesome tradition of which we are all so proud—that politics must never be allowed to intrude upon the Bench. Even at the time of his death he was Chairman of a commission which has been set up to advise the Government on a complex problem concerned with the question of compensation payable to lessees of certain Maori lands ; and only last Wednesday week, when I visited Sir Michael at the hospital—for the last time, as it turned out to be—he talked freely of the intricacies of the problem with all the logic, clarity, and cogency of reasoning to which we had grown accustomed.

" No survey of Sir Michael Myers' life would be complete without reference to his work in the international sphere. With Mr. Peter Fraser, then Prime Minister of New Zealand, he represented us at the Conference of Allied Nations at San Francisco in 1945. That was the conference which laid the foundation of the United Nations Organization ; and there Sir Michael, not less than Mr. Fraser, raised the already-high name of New Zealand still higher in the Council of Nations. I always remember one remark which he passed in the course of a speech he was chosen to make in answer to the opening address of welcome ; it was so characteristic of his outlook. ' Either we go forward together in a spirit of co-operation,' he said, ' or we go back to barbarism.'

" Sir Michael took a prominent part in the framing of the constitution of the International Court of Justice, the tribunal which, if the nations would only carry their disputes to it and abide its decision, could play such an important part in the baffling problem of ridding the world of the scourge of war, and, worse still, of rumours of impending wars which hardly ever happen. He might have been appointed a member of that commission but for the fact, as he himself acknowledged to me, that Palestine was too much in the news at the time.

" In Commonwealth family matters, Sir Michael saw clearly the value of the Judicial Committee of the Privy Council, not only as a final Court of Appeal for the Dominions and dependencies of the Crown, but also, and more especially, as a connecting link in the sentimental ties that bind us to the mother country. He watched with disappointment the decline in the Privy Council's popularity with some of the other constituent members of the Commonwealth. He saw with dismay that some had banished it entirely from their judicial systems. And so reluctantly, very reluctantly, he had come to the conclusion that, in this phase of its activities, the doom of the Privy Council was sealed. He therefore cast about for an alternative, and was already enlisting support for a proposal to establish one common Court of Appeal for the whole Commonwealth. This may not have been his original idea, but at least he had adopted it. It may interest the Bench and the Bar to know that I had determined that, so far as in me lay, I would endeavour to have an address by Sir Michael on the agenda of the Commonwealth Parliamentary Association Conference, to be held here, we expect, towards the close of this year. That address, unfortunately, cannot now be.

" Speaking for myself, I gratefully acknowledge that, in the short time during which I have been a Member of Parliament, and in the very much shorter time during which I have been a Minister of the Crown, Sir Michael had already become a guide, philosopher, and friend to me.

" Finally, and best of all, he was a devoted husband and father. To Lady Myers and the sons we extend our deepest sympathy. Nothing, we know, can compensate her for the loss of the love and companionship of a devoted life-partner, but we hope and pray that she and the sons may be able to derive some consolation from the knowledge that her husband and their father has left behind him an imperishable record of long, able, and distinguished service to his fellow-men. I believe it is true to say that in those many and varied fields in which Sir Michael's lot was cast he was a great man ;

> ' *So, when a great man dies,*
> *For years beyond our ken*
> *The light he leaves behind him lies*
> *Upon the paths of men.*' "

New Zealand Law Society.

The Attorney-General was followed by Mr. W. E. Leicester, who spoke on behalf of the New Zealand Law Society, in the unavoidable absence of the acting President, Sir Alexander Johnstone. Mr. Leicester said :

" In the absence of our acting President, Sir Alexander Johnstone, prevented only by recent accident from being in Court to-day, I am privileged to say on behalf of the New Zealand Law Society that its members, throughout the Dominion, mourn the passing of a great and learned lawyer, jurist, and Judge, and associate themselves with this tribute to his memory. It is fitting that the tribute should be paid in these surroundings, where so many of his conspicuous successes were attained, and where later he was to occupy the office of Chief Justice with dignity, resolution, and impartiality that were the admiration of his profession, and that brought honour to him and credit to the land of his birth.

"From the time of his admission to the Bar until his death—a period of fifty-three years—the record of the late Sir Michael Myers was one of achievement, developed and fostered by great natural gifts, tireless energy, and strong force of character—achievement that made him the acknowledged leader of the Bar and subsequently one of the most outstanding Judges in the history of this country. He touched nothing legal that he did not adorn. This genius in law was an infinite capacity for taking pains, an inborn talent for hard work. To a mind of keen analytical power, he harnessed a phenomenal industry that has always been an inspiration to those who practised with him, and will remain an example to the generations to come. No task was too steep for his endeavour: he gave to the demands of his profession an earnest and entire devotion, just as he gave a deep and abiding love to the law. In his busy life, even when calls upon his time were heaviest, he found himself able to attend to the interests of his fellow-practitioners. He spent in the aggregate sixteen years on the Council of the Wellington District Law Society, of which he was twice President; he was eight years on the Council of Law Reporting, and for long periods of time he served upon the Rules Committee and the Council of Legal Education. In the performance of these duties, which can be both arduous and exacting, he showed that administrative ability which was so signal a feature of his career upon the Bench.

"In 1929, he was appointed Chief Justice. His tenure of that high office was for no less than seventeen years. He brought to it those qualities of intellect and energy of which I have already spoken, but above all he brought to it a love of justice that enabled him to leave an imperishable record as a wise and fearless administrator of the law. His wide experience as Crown counsel, his commercial knowledge, his Parliamentary, Royal Commission, and Admiralty work are reflected in his judgments. The intricacies of the equity side, the ever-changing facets of negligence, and the little-known and difficult field of patents—all these he took in his stride, not as a specialist in some of them, but as a master of them all. As head of the judiciary, he determined to see that legal principles were observed, that the independence of the Bench was ever championed against any possible encroachment by the Executive, and that at all times its prestige was maintained. He had an unshaken fidelity in the axiom that not only must justice be done but it must also seem to be done; and, imbued with this belief in the necessity to preserve the rights and liberties of the individual, he advocated and brought about humanitarian reform in our criminal procedure. In the execution of his judicial tasks, unbounded courage and compassion were enjoined.

"In his willingness, after his retirement, to place himself at the disposal of the Government, he rounded off a life well and worthily spent. It has fallen to the lot of few men to accomplish so much, but much that he *did* accomplish has been due in no small measure to the unceasing care and understanding he received from his wife, so long a gracious companion by his side. To her and to her two sons we tender these expressions of our sympathy in their loss."

Wellington District Law Society.

The last speaker was the President of the Wellington District Law Society, Mr. Campbell Spratt, who said:

"It is for me to speak more especially on behalf of practitioners in the city and district with which Mr. Myers, as he then was, was peculiarly associated in his long and successful career at the Bar. Of the Council of that Society he was for many years a member, and for two terms he served it as President.

"Born in the pleasant country town of Motueka, Michael Myers received his early schooling, and pursued his academic and professional training, in Wellington, save for a brief excursus to Canterbury University College, where he graduated Bachelor of Laws in 1894.

"There is no need to speak of his school days, except to say that, in the light of his subsequent attainments, there is nothing astonishing in the fact that, at the age of twelve years, he won in open competition the first of his many scholarships and exhibitions, including the Turnbull Scholarship. His was no early flowering, doomed to fade. It was rather the burgeoning of a brilliant intellect, destined to attain to fullest fruition in the most exacting and competitive of all professions.

"Michael Myers would have succeeded whatever scanty training might have come his way, but he was fortunate in that, in the practical affairs of the law, he came under the tuition and guidance of two such men as Hugh Gully and Sir Francis Bell—how fortunate he himself more than once has publicly acknowledged. With the firm of which Sir Francis was the head he was associated as student and clerk for seven years and as partner for twenty-three years, severing his connection in 1922 in order thenceforth to practice as one of His Majesty's Counsel learned in the law.

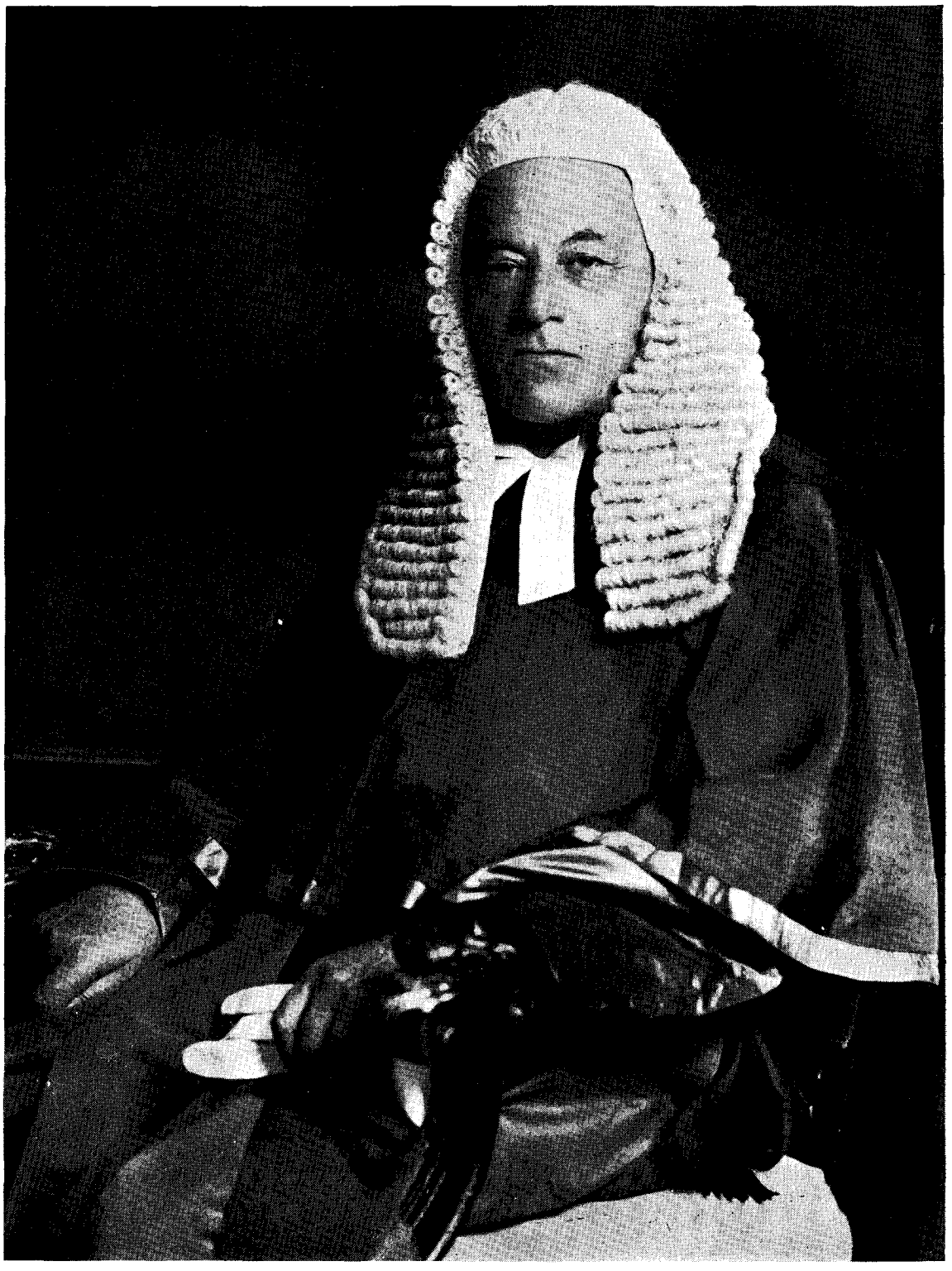
"When in 1929 he was appointed Chief Justice, he was at the zenith of his career at the Bar. We have been told of his noteworthy appearances in 1926 before their Lordships of the Judicial Committee of the Privy Council, when, taking or appearing in six appeals, he was successful in all. But that was only the seal of his success. He was at home in all classes of work that fall to the lot of the barrister in New Zealand; in common-law actions, in criminal trials, in Banco matters; before Courts, Parliamentary Committees, and Royal Commissions; he was a master in every field.

"In view of what your Honour has said and what your Honours have already heard from Mr. Attorney and Mr. Leicester, I shall abstain from any reference to Sir Michael's work as a Judge. Nor will I speak of his judicial services to this country overseas, save to say that I respectfully support all that has been said.

"Apart from the late Sir Michael's undoubted brilliance of intellect, what was the secret of his success? First, there was his devotion to the law. Older practitioners will recall his address to the first New Zealand Legal Conference—that held in Christchurch in 1928—in which he confessed his debt to the law and to the profession.

"Secondly, there was his capacity for hard and unremitting work. Had he been called upon to frame for himself a motto for his professional life, it might well have been founded on the ancient aphorism, 'Seest thou a man diligent in his business: he shall stand before kings.'

"Of his intellectual grasp and his mastery of detail his professional brethren were well aware. What a testing experience it was to appear against him, and, later, how stimulating to take part in argument before



National Portrait Gallery, London. *J. Russell & Sons, Photo.*

THE RT. HON. SIR MICHAEL MYERS, G.C.M.G.

Chief Justice of New Zealand (1929-1946).

him! Nothing slovenly or ill-prepared could stand against or before him.

"On Sir Michael's retirement from his high office of Chief Justice, there were expressed sincere wishes that he would enjoy a well-earned rest. But a life of ease could not hold his tireless spirit. After his retirement, he rendered great and valuable service to the State as Chairman of a series of Royal Commissions on major difficult and intricate Maori land claims. His work, indeed (as we are reminded by Mr. Attorney), was brought to a close only by his death.

"One who had the privilege of appearing before him can testify to the unabated vigour, the wide grasp, and the meticulous care displayed by him in these matters.

"Indeed, one document (there are others), his report on the West Coast Settlements Reserves, made in his seventy-fifth year, stands as a monument to his capacity and industry at an age when most men have left their labours behind them. This report, printed as a Parliamentary Paper, displays a breadth of view and acuity of judgment, framed in clear and virile English. The bold proposals therein set forth were subsequently accepted and enacted by Parliament, with no substantial alteration and with the consent of all parties.

"Turning for a brief moment to matters apart from the practice of the law, we may note that the late Sir Michael Myers fully shared the belief that the family is the natural and enduring institution of human society, the purity and integrity of which it is for every true man to preserve. To him, love of home and of family was a prime virtue, yielding as its reward lasting satisfaction and happiness.

"So, whilst we mourn the passing of a great Judge, we remember those bound up with him in family life. Especially do we have in mind his widow and their two sons. To them we respectfully tender our sympathy in their bereavement. May the esteem in which his professional brethren bear his memory and the many public tributes to his life and worth in some degree at least assuage their grief. This is our sincere wish."

At the conclusion of the ceremony, His Honour the Chief Justice said that the Court of Appeal, as a mark of respect to the memory of Sir Michael Myers, would not sit that morning, and he adjourned that Court until the afternoon.

THE AUCKLAND GATHERING.

There was a representative gathering of both branches of the profession in Auckland on the morning of April 19 to pay tribute to the life and work of the late Sir Michael Myers.

His Honour Mr. Justice Callan presided, and with him on the Bench were Mr. Justice Stanton, Judge Tyndall, and the Hon. Sir Alexander Herdman. Mr. Justice Callan read a message from the Hon. Sir John Reed, who greatly regretted, as all present did, that the state of his health did not permit him to be present that morning. Sir John served as a Judge for some years with Sir Michael, and knew his worth, and he desired to be associated with the tribute of the Bench and Bar in Auckland.

There were also present the following Stipendiary Magistrates: Messrs. T. Morling, H. Jenner Wily, W. S. Spence, and M. C. Astley.

Mr. Justice Callan.

In his address to the Bar, His Honour Mr. Justice Callan said:

"The news of the death in Wellington of Sir Michael Myers during the Easter Vacation came to all of us with a shock of surprise, because he was so recently apparently still in possession of a strength and vigour beyond what is usual in a man of his years.

"It is fitting that we should assemble to honour him. The office of Chief Justice is an honourable, an onerous, and an important one. For some seventeen years Sir Michael held this office in a manner which did great credit to himself and conferred great benefit on our country.

"He was a man bountifully equipped by nature. He had a strong, penetrating, and quick intellect, great force of character, and immense energy and industry. Throughout a long life he put all of this remarkable equipment unreservedly at the disposal of his chosen profession, the law. His career illustrates two truths. The first is that the law is a hard taskmistress, and brooks no rivals. Whoever would attain her highest honours would be well advised to do as Sir Michael Myers did, and devote himself entirely to her service. The second is that, given the right equipment and the will to use that equipment, ours is a profession in which unaided merit will earn the highest distinction.

"For some eleven years I served as a Judge while Sir Michael Myers was Chief Justice, and thus had opportunities of becoming intimately acquainted with the way he performed his high and important duties. A Chief Justice has a multitude of duties from which other Judges are exempt. On him falls the responsibility of organizing the judicial work of the Dominion. He must take the lead in all matters affecting the Judges and their work. He must, where necessary, be the spokesman for the Judges. He has also to try to secure unanimity of practice on doubtful and difficult points which continually arise. Matters such as these constantly engage the attention and time of a Chief Justice and add to his labours. These tasks Sir Michael performed throughout his tenure of office, in addition to a heavy share of the ordinary judicial work of the Supreme Court and the Court of Appeal.

"In his judicial work he displayed the virtues of thoroughness, courage, promptitude, and clarity of expression. In the years to come, other generations of New Zealand practitioners who never knew Sir Michael Myers will, I am sure, recognize, from the study of his reported decisions, in what an eminent degree he possessed and exercised these qualities.

"He never lost sight of the fact that it is from England that we derive the system of jurisprudence of which we are justly proud. In all matters, he was eager to consider what was the English practice and to set himself to maintain it, and to check at the outset

any tendency to depart from it. In this, in my view, his instinct was sound. The system we inherit is a noble and imposing edifice. It is admired even by many of those who do not possess it. It would ill become us to tamper with any of its component parts

" Before he became a Judge, Sir Michael, during a long and distinguished career at the Bar, accumulated a wealth and variety of experience which have rarely been rivalled in New Zealand. In the result, none of his judicial duties plunged him into strange or unknown spheres. He had been accustomed to argue every department of the law, and he was familiar with juries in both civil and criminal matters long before he became a Judge. In the administration of the criminal law he always insisted strongly on the maintenance of those British traditions which are designed to secure fair treatment for accused persons. He exerted himself to secure the prompt trial of those who were to be tried and the prompt sentencing of those who were to be sentenced. In his own sentences, his inclination was to leniency. He was quick to detect and suppress anything that looked like departure from the British conception of fairness to an accused person. He also recognized that an accused person might, at times, suffer from a mistake or oversight in a trial in which everyone concerned desired to be absolutely fair, and for years he advocated the establishment in New Zealand of a Criminal Appeal jurisdiction. While in office, he saw this accomplished by the statute of 1945.

" Now that he has gone from amongst us, I ask myself what judicial quality of his has made upon me the deepest impression. I think it was the speed and certainty of his intellectual processes. No one could habitually practise before him without recognizing that Sir Michael Myers had an extraordinarily quick and penetrating mind ; and the Judges who sat with him in the Court of Appeal soon became aware of the assistance they had from a mind which so quickly stripped a case of its confusing intricacies and irrelevancies and exposed for consideration the real kernel of the matter.

" To the end of his judicial career he worked very hard, with credit to himself and advantage to the community in which he had attained such high office. We had hoped he would have lived to enjoy years of leisure ; but that was not to be. To our expressions of admiration of his qualities and his services we wish to add the expression of our deep sympathy with Lady Myers and Sir Michael's family."

Auckland District Law Society.

On behalf of both branches of the profession in the Auckland district, the President of the Auckland District Law Society, Mr. R. A. Vialoux, in addressing the Bench, said they were grateful to the Court for affording them the opportunity of respectfully associating themselves with the Bench in paying a tribute to a distinguished jurist who was for many years of their own ranks, and whose untimely death they all mourned. Mr. Vialoux proceeded :

" The members of both branches of the profession in the Auckland District are grateful to the Court for affording us the opportunity of respectfully associating ourselves with the Bench in paying a tribute to a distinguished jurist who was for many years of our ranks, and whose untimely death we now mourn.

" As a young man, Michael Myers, by winning many scholarships, made his way to the front rank amongst his fellows, a position he maintained until the date of his death.

" Nurtured in a faith that fostered in him those fundamental principles of natural justice laid down in the Mosaic Law and the law of the prophets—a faith that inculcated the moral virtues, not the least of which are fearlessness, prudence, endurance, and tenacity, a faith that venerated the wisdom and the practical judgments of King Solomon—it is not surprising to find that, against that background, he was wont to throw into relief the salient facts of those cases upon which he was called to advise, or, later, those upon which he was called to adjudicate.

" When, added to that, he had the unique opportunity of being associated with that great man who afterwards became Sir Francis Bell, it is no wonder that we find ingrained in him the Bell tradition, and an unswerving devotion to his conception of justice, which in his last and final judicial pronouncements he defined as that based upon reason, commonsense realities, and reasonable inferences, and not upon sentimentality, expediency, speculation, or fanciful theories.

" As an advocate, he appeared successfully and with distinction before every Court, Tribunal, and Authority which held jurisdiction over Dominion affairs, from Police Court to Privy Council.

" In matters pertaining to the Empire, he was a member of the Judicial Committee of His Majesty's most Honourable Privy Council, whilst in matters international, he assisted with his contributions to the United Nations Committee of Jurists, at Washington and subsequently at San Francisco.

" The profession will be eternally grateful to him for his services.

" For sixteen years he laboured, first as a member and subsequently as President of the Wellington Law Society, and also for some time as a member of the Council of the New Zealand Society.

" For eight years he served upon the Council of Law Reporting. He was also a member of the Rules Committee.

" Notwithstanding his busy life, he gave of his time, wisdom, and energies to the work of the Council of Legal Education.

" He was perhaps the ablest and most fearless champion of the rights and privileges of the profession.

" For all these his services to his profession, his country, the Empire, and the world, he was thrice honoured by His Gracious Majesty the King.

" Now he has gone, but his spirit lives on. This illustrious man has left in the records a model and exemplar for all those who would seek the privilege of practising the profession of the law.

" To Lady Myers and the members of her family, we offer our sincere and heartfelt sympathy, and express the hope that, despite the shadow that darkens their path, they may find some consolation in the assurance that their many friends are with them in spirit at this time, and in the knowledge that Sir Michael has spent a full and useful life and has now been called to the Final Bar, there to receive that reward we believe his life of service so richly merits."

EASEMENTS AND THE RULE AGAINST PERPETUITIES.

By E. C. ADAMS, LL.M.

It is not only when tying up property in a deed of settlement *inter vivos* or in a testamentary instrument that the draftsman must have regard to the rule against perpetuities; the conveyancer, when drawing an easement to operate in the future, may easily fall foul of this remarkable rule of English law, and invalidate the whole grant. In at least two cases, which I have read carefully and endeavoured to understand, the rule was invoked to invalidate the grant, and, although in both instances it was held that the rule did not apply, from these two cases may be gleaned the very fine distinctions which the Courts have drawn when applying the rule against perpetuities to easements. I refer to the Australian case of *Commonwealth* v. *Registrar of Titles for Victoria*, (1918) 24 C.L.R. 348, and to the decision of the New Zealand Court of Appeal in *Wellington City Corporation* v. *Public Trustee, McDonald, and Wellington District Land Registrar*, [1921] N.Z.L.R. 1086.

Let us consider first the Australian case, which was decided by the highest Court in Australia. In that case, pursuant to the Lands Acquisition Act, 1906, the Commonwealth had acquired a block of land in Victoria, together with full and free right to the uninterrupted right, access, and enjoyment of light and air to the doors and windows of the buildings erected or *to be erected* on the block of land over a strip of land adjoining it. It was held that the right so acquired over the adjoining strip of land was an easement at common law. It is to be particularly observed that the easement was expressed to be in favour, not only of buildings erected on the dominant tenement, but also of those *to be erected*. Obviously, the Commonwealth of Australia, like all other human Governments, might take its time in the erection of buildings, and future buildings might be erected more than twenty-one years after the creation of the grant. But the important point appears to be that the owner of the servient tenement had no say in the erection of future buildings on the dominant tenement. The *existence* of an easement is not the same as the *present enjoyment* of an easement: see also the English Court of Appeal case, *Todrick* v. *Western National Omnibus Co., Ltd.*, [1934] Ch. 561, where the dominant and servient tenements were not contiguous, and, consequently, the enjoyment of the right-of-way was suspended until such time as a grant was obtained over the intervening tenement.

Before considering at length the New Zealand case, *Wellington City Corporation* v. *Public Trustee* (*supra*), we may conveniently refer to the English case of *South Eastern Railway Co.* v. *Associated Portland Cement Manufacturers* (*1900*), *Ltd.*, [1910] 1 Ch. 12, which is referred to in the recent English case *Hutton* v. *Watling*, [1947] 2 All E.R. 641, and in the New Zealand case above cited, and which conferred the right to make a tunnel, and thus resembled in its nature the easement created in the following precedent. In *Hutton* v. *Watling* (*supra*), Jenkins, J., said, at p. 644:

> In *South Eastern Railway Co.* v. *Associated Portland Cement Manufacturers* ([1910] 1 Ch. 12) the right in question was a right to make a tunnel through land of the plaintiff company at a point to be selected by the grantee of the right, and was thus capable of being regarded as conferring an easement as opposed to a future interest in the land, which was the view taken by *Swinfen Eady*, J., but having regard to the reasoning on which the judgment proceeded, I do not think this distinction is material for the present purpose. [*Hutton* v. *Watling* was an option which offended against the perpetuity rule.] *Swinfen Eady*, J., said ([1910] 1 Ch. 24): "The second point was that the provision was void for perpetuity according to *London and South Western Railway Co.* v. *Gomm* ((1882) 20 Ch.D. 562). But the conveyance reserves an immediate right or easement of tunnelling. *It is not a right to arise at some future time, it is an immediate right* . . . That is not like *Gomm's* case ((1882) 20 Ch.D. 562) where the covenant was to re-convey on the happening of a future event which might not arise within the period of time allowed by the rule against perpetuities."

It is to be observed that the point was to be selected only by the grantee alone: it did not require the consent of the grantor or of any other person. There was no condition precedent to happen before the right to tunnel could be acted upon. The *South Eastern Railway Co.* case, therefore, is in principle indistinguishable from the Australian case we first considered, *Commonwealth* v. *Registrar of Titles for Victoria*.

In *Wellington City Corporation* v. *Public Trustee, McDonald, and Wellington District Land Registrar* (*supra*), the instrument (which, by the way, the Court of Appeal held was a deed) was as follows:

> the parties hereto of the first, second, and third parts do and each of them for himself, his heirs, administrators, and executors and assigns doth agree with . . . the Corporation . . . that should the Corporation . . . desire at any time hereafter to widen Grant Road or Park Street across the said gully to their respective full widths or less he will permit the Corporation at any time hereafter to continue the said culvert so far as is sufficient for that purpose, the ends of the culvert in every case to extend six feet beyond the batter on both ends, and will allow the natural batter or slope of the earth deposited over the said culvert or otherwise in making or widening the said streets to lie on his land.

In the Supreme Court ([1921] N.Z.L.R. 423), Salmond, J., in his usual clear, forthright manner, brushed aside the objection that the grant was void as infringing the rule against perpetuities. He said, at pp. 429, 430:

> It is contended further by the defendants that the agreement, although enforceable as a mere personal contract between the parties, cannot run with and bind the land in the hands of the assignees, inasmuch as it is an attempt to create an easement *in futuro* and in breach of the rule against perpetuities. The basis of this contention is that the agreement does not relate to any immediate or present right of support, but is merely a licence to use the servient land for that purpose if at any future unspecified date the plaintiff Corporation desires to widen the road in question. The grant of an easement *in futuro*, whether legal or equitable, is doubtless subject to the rule against perpetuities: *Gray on Perpetuities*, s. 316; *South Eastern Railway Co.* v. *Associated Portland Cement-manufacturers* ([1910] 1 Ch. 12, 27), per *Farwell*, L.J. In the present case, however, the agreement seems to me to be the grant of a present equitable easement of support, and not of an easement *in futuro*, notwithstanding the fact that no present or immediate exercise of the right was contemplated by the parties. The grantee acquired an immediate and presently existing right to exercise and enjoy its easement at any time when it thought fit.

In delivering the judgment of the Court of Appeal, [1921] N.Z.L.R. 1086, Hosking, J., dealt with the topic in more detail, and explained very clearly how and when the rule against perpetuities will and will not invalidate the grant of an easement. He said, at pp. 1088, 1089:

> There was, or is, no act or event provided for in the shape of a condition precedent or otherwise postponing the taking effect of the grant to the future. In *South-Eastern Railway Co.* v. *Associated Portland Cement Manufacturers, Ltd.* ([1910] 1 Ch. 12, 25) *Swinfen Eady*, J., relies upon the point that there was immediate right to make the tunnel directly the

conveyance was executed. In *Woodall* v. *Clifton* ([1905] 2 Ch. 257, 266), where an option to purchase land was in question, *Warrington*, J., pointed out that the interest which the holder of the option was to get as purchaser did not vest at the moment at which it was granted, but depended on "the happening of a future event—namely, the exercise of the option and the payment of the purchase-money"—which might happen beyond the limit. In *Sharpe* v. *Durrant* (55 Sol. Jo. 423) the same learned Judge had before him a reservation contained in a conveyance of a tramway, the effect of which was stated to be that it reserved to the vendors, their heirs and assigns, a right of passage over the tramway at two points to be selected, without specifying the time within which the selection was to be made. The learned Judge said: "Until the selection is made there is no easement. The reservation is of an easement *in futuro*, which may come into force at a time beyond the period allowed by the rule against perpetuities." It is to be observed that until the selection was made the *locus in quo* of the two points was undetermined. The selection of them was therefore obviously a condition to the easement of a passage arising. *Smith* v. *Colbourne*, ([1914] 2 Ch. 533) is relied upon as a retractation by Lord Justice *Swinfen Eady* of his opinion in the *Associated Cement Co.'s* case ([1910] 1 Ch. 12, 25), and as governing the present case. In *Smith* v. *Colbourne* ([1914] 2 Ch. 533) the Lord Justice stated that if the right to enter and stop up windows, in question in that case, was not a licence but amounted to an easement it would be void under the rule as to perpetuities. But the right to enter and stop up in that case *was to arise on the happening of a precedent condition*—namely, notice to stop up, and default in doing so—and there was no limit of time within which the notice was to be given.

Now, the relevance of these cases to the following precedent will be immediately apparent to the real-property lawyer. A municipality is transferring certain land to a private person, but desires the right at some future time to excavate a tunnel beneath a part of the lands sold for the purpose of diverting a flow of surface water and conveying the same through and beyond the tunnel. The right desired to be reserved undoubtedly is in the nature of an easement; in principle, it is indistinguishable from the rights reserved in *South Eastern Railway Co.* v. *Associated Portland Cement Manufacturers (1900), Ltd.* (*supra*) and the *Wellington City Corporation* case (*supra*). But there is this vital distinction. In the precedent, the formation of the tunnel, &c., shall be in accordance *with specifications to be agreed upon by the municipality and the purchaser*. The exercise of the easement, therefore, is subject to the happening of a condition precedent—namely, the agreement by both parties on the specifications. It was, therefore, necessary to guard against the rule against perpetuities by an express provision in the instrument, and this the draftsman has done in cl. (*d*), which appears to be effective for the purpose: *In re Villar, Public Trustee* v. *Villar*, [1929] 1 Ch. 243.

Note the provision in cl. (*e*) that the easement is to be an easement in gross. This is permissible in New Zealand (s. 13 of the Property Law Act, 1908), but would not be so in England: under English law, therefore, the instrument would have to be construed as a mere licence, and not as an easement.

PRECEDENT.

GRANT OF EASEMENT IN GROSS. RIGHT TO CONSTRUCT TUNNEL AND CONVEY WATER. CLAUSE GUARDING AGAINST PERPETUITY RULE.

MEMORANDUM OF TRANSFER.

WHEREAS THE MAYOR COUNCILLORS AND BURGESSES OF THE BOROUGH OF a body corporate with perpetual succession having its offices at (hereinafter called "the transferor") is registered as proprietor of an estate in fee simple subject however to such encumbrances liens and interests as are notified by memorandum underwritten or indorsed hereon in all those pieces of land situate in the Land Registration District of containing FIRST [*set out here area*] be the same a little more or less being situate in the Borough of and being part Section of Block Survey District and being also Lot on Deposited Plan No. and being all the land in Certificate of Title Volume Folio ( ) AND SECONDLY [*set out area*] be the same a little more or less being situate in the Borough of being part of Section of Block Survey District and being also part of Lot on Deposited Plan No. and being all the land in Certificate of Title Volume Folio (Registry)

AND WHEREAS A.B. of grocer (hereinafter called "the transferee") has requested the transferor to transfer to him the transferee the lands above described

AND WHEREAS the transferor is also the registered proprietor of certain lands and a roadway adjoining the lands above described and desires to secure the right at some future time to excavate a tunnel beneath a part of the lands above described for the purpose of diverting a flow of surface water and conveying the same through and beyond the said tunnel

AND WHEREAS details of the said tunnel formation its course depth nature and extent have not yet been decided upon

AND WHEREAS for the respective considerations hereinafter appearing the transferor has now agreed to transfer the lands above described to the transferee and the transferee has agreed to grant to the transferor the rights hereinafter set forth NOW THEREFORE

1. IN CONSIDERATION of the sum of twenty-five pounds (£25) paid to the transferor by the transferee (the receipt of which is hereby acknowledged) the transferor doth hereby transfer to the transferee all its estate and interest in the said pieces of land above described.

2. IN CONSIDERATION of the foregoing transfer the transferee DOTH HEREBY TRANSFER AND GRANT unto the transferor the right to excavate form and complete a tunnel beneath the surface of the lands above described TOGETHER WITH the right to convey through the said tunnel a flow of surface water only TOGETHER WITH the further right to the transferor its agents servants or workmen to enter upon the lands above described for the purpose of making surveys ascertaining levels and the like SUBJECT ALWAYS to the following conditions:

(*a*) The said tunnel shall be excavated formed completed and maintained without removing or letting down the surface soil and generally shall be constructed in such a manner as will not in any way whether during its formation or afterwards interfere with or cause interference with the occupation and enjoyment of the surface land.

(*b*) The formation of the tunnel its course depth and extent shall be in accordance with specifications to be agreed upon by the transferor and the transferee and for this purpose the transferor wil previously submit specifications to the transferee for his approval in writing and shall allow a reasonable time for due consideration thereof.

(*c*) In the event of any dispute or difference arising between the transferor and the transferee touching or concerning any matter herein to be determined or agreed upon or touching or concerning the construction of these presents such dispute or difference shall be referred to arbitration in accordance with the terms of the Arbitration Act 1908 or any Amendment thereto or re-enactment thereof.

(*d*) It is hereby expressly agreed and declared that the various matters and details as set out herein to be determined and/or agreed upon by the transferor and the transferee shall be determined and/or agreed upon at any time during the life of the last survivor of the issue now living of His Late Majesty King George the Fifth and within twenty-one years after the death of such survivor AND failing such determination and agreement within the period aforesaid then the foregoing grant shall be void and of no effect.

(*e*) The rights hereby granted by the transferee are expressly declared to be in the nature of an easement in gross.

IN WITNESS WHEREOF the parties hereto have hereunto subscribed his name and affixed its seal respectively this day of one thousand nine hundred and fifty (1950).

THE COMMON SEAL OF THE MAYOR COUNCILLORS AND BURGESSES OF THE BOROUGH OF was hereunto affixed as transferor in the presence of: } L. S.

C.D., Councillor.
E.F., Councillor.
G.H., Town Clerk.

SIGNED on the day above named by the said A.B. as transferee in the presence of: } A. B.

I. J.,
Solicitor,

OF WRITING BY LAWYERS.

By G. V. V. Nicholls, Editor of the *Canadian Bar Review.*

(*Continued from p. 108.*)

The difficulties caused by abstract words have been explored by most of the recognized authorities on the writing of English. Many lawyers will be familiar with the sound sense and gentle humour of *The King's English* by H. W. and F.G. Fowler.[9] After advising readers to "Prefer the familiar word to the far-fetched," the Fowlers state as their second rule in the domain of vocabulary: "Prefer the concrete word to the abstract." Sir Arthur Quiller-Couch was even more emphatic. In his charming lectures to the students of Cambridge, published as *On the Art of Writing*, he advised them, "Always always prefer the concrete word to the abstract." The same principle is put in the latest, and to the lawyer most useful, brief study of writing, the *Plain Words* of Sir Ernest Gowers:

> Use words with a precise meaning rather than those that are vague, for they will obviously serve better to make your meaning clear; and in particular prefer concrete words to abstract, for they are more likely to have a precise meaning.[10]

To these books the reader should turn for illustrations of the obscurity that results from the excessive use of abstract words. Here a few examples, from my own experience, must suffice:

> Such expressions as "shooting war" and "cold war" are creeping into common usage and the influence of their significations is making itself felt in legal aspects of the conditions they reflect.
>
> Apart from the question whether a person is an independent contractor, other problems have come before the Board in this connection.
>
> Having already considered the position in respect of an agency between the parties, it remains to consider whether the situation under discussion . . .
>
> As long as the situation exists as at present the matter must be most embarrassing and confusing to the Police . . .
>
> This condition of affairs has led all those vitally interested to raise the question whether it would not now be opportune to restate both the substantive and administrative law in the light of modern conditions.

Even in their contexts passages like these make the reader pause and ask himself what is meant. Some of them may be open to other objections, but the chief cause of the obscurity of all is the use of such abstract, and therefore vague, words as *significations, aspects, conditions, question, problems, connection, position, situation, matter, affairs.* "Questions" and "problems" are always arising in law, and it is difficult to avoid these and like words, but the writer who makes the attempt will find his writing improving in precision.

Be precise; omit all words, particularly adjectives and adverbs, that are not essential to communicate the intended meaning. Adjectives and adverbs, properly used, add life to writing; superfluous adjectives and adverbs contribute to obscurity. Among the adjectives most commonly abused by lawyers are *clear, considerable, definite, due, essential, necessary, qualified, real, reasonable, serious, substantial, such,* and *undue*; among the adverbs, *clearly, comparatively, completely, considerably, definitely, duly, essentially, necessarily, perfectly, really, relatively, quite, somewhat, substantially, unduly,* and *very.* A few living examples will illustrate the point:

> This table will be *very* useful to a beginner but, with respect, would be *more* useful if the exact date were given, and not merely the year. [What is the difference between "*very* useful to a beginner" and "useful to a beginner," and if there is a difference then what is "*more* useful"?]
>
> A study of certain sections of the Unfair Competition Act makes it *perfectly* clear that a trade-mark must be used in Canada or made known in Canada as a *necessary* prerequisite for valid registration. [Every schoolboy knows about "*most* unique" and so I make no comment on "*necessary* prerequisite," but is there enough difference between "clear" and "*perfectly* clear" to justify another word?]
>
> He said to me that the *Canadian Bar Review* has such a high standard that *very* few have the time to give to the question of studying and getting up polished articles that would be acceptable. [What did the writer's informant mean—I mean where precisely did he intend the line to be drawn between "few" and "*very* few"?]
>
> In *due* time provision was made for a Judge of the Supreme Court to sit as Deputy for the Governor. [If the writer of this intended to say that "At the *appropriate* time provision was made . . .," the italicized adjective serves a purpose, but if, as is more likely, he intended to express no opinion on the length of time that elapsed, *due* should have been omitted.]
>
> The conference was *in every way* an *unqualified* success. [Did the writer mean that "The conference was *in every way* a success," that "The conference was an *unqualified* success," or merely that "The conference was a success"?]

Adjectives and adverbs used over and over again in this way give an atmosphere of school-girlish breathlessness to a composition that annoys the fastidious reader. They are meaningless, and therefore superfluous, unless a standard of comparison is expressed or implied in the context. Their authors appeared to offer no standard and the italicized words should have been omitted, as they might well have been in the following passages also:

> Moreover the present state of the law leaves collateral issues in a *completely* unsatisfactory state.
>
> Mr. Doe's book is *considerably* livened by the *liberal* use of striking metaphors and similes.
>
> In all cases the time limits should be *carefully* observed since the Board tends to be *rather* strict in the matter.
>
> *Considerable* light is shed on the status of employers of less than three employees by . . .

The adjective *such* so pervades legal writing that it deserves separate treatment. To avoid repetition that would otherwise be necessary, *such* is sometimes legitimate in legislative drafting where its noun has previously been used with a series of qualifying adjectives or a long qualifying clause. The following subsection, taken at random from the Statutes of Canada for 1948, is a good illustration:

> (2) Whenever it is made to appear to the satisfaction of a Judge of any Superior or County Court that any person who resides out of Canada is able to give material information relating to an offence for which a prosecution is pending under this Part, or relating to any person accused of *such* offence, *such* Judge may by order under his hand, appoint a commissioner or commissioners to take the evidence, upon oath of *such* person.

Of the three uses of *such* in this subsection, the first is probably legitimate, the second is superfluous, and the third is doubtful. Be that as it may, the lawyer who is tempted to use the word should always pause to ask

[9] The surviving of the two brothers, H. W. Fowler, was the author of another useful book, *A Dictionary of Modern English Usage* (1926).

[10] *Plain Words*: *A Guide to the Use of English* (London: His Majesty's Stationery Office, 1948).

himself if it is necessary. Many of us seem to tack it automatically to any noun we have already used in the same passage :

> I therefore take it that the informant, Constable Doe, laid the information and attended at the prosecution in the Magistrates' Court, in performance of his duties as *such* constable. [Substitute *a* for *such*.]
>
> This is an attempt to remedy the situation already outlined, whereby it was held in the *Doe* case and in *Roe* v. *Brown* that the mortgage clause was of no effect if the insurance clause was void *ab initio*. But *such* attempt would only succeed if *such* invalidity arose from anything contained in, or omitted from, the application or proposal for insurance. [Substitute *the* for *such* in both cases.]

Such are some of the objectionable uses of *such*.

The excessive use of the relative *which* seems to be an endemic disease among lawyers. Relative clauses are common in our writing, perhaps inevitably, but it is not inevitable that they should all be introduced with *which*. " Whichitis " is a troublesome rather than a fatal disease ; sentences like the following are certainly ungraceful, though perhaps they cannot be called incorrect :

> Whether this provision is a wide one and one *which* should be retained in the law is a question *which* I shall discuss later.

The Fowlers recommend a cure while conceding that it is not always easy to apply. The problem is to decide when to introduce a relative clause with *that* and when with *which* (or *who*). For this purpose they[11] divide relative clauses into what they call " defining " and " non-defining." A defining clause, they say, should be introduced, generally, with *that*, and a non-defining clause, always, with *which* (or *who*). The function of a defining clause is to limit the application of the antecedent ; of a non-defining clause, to give independent comment, description, explanation, anything but limitation of the antecedent. A defining clause is essential to and inseparable from its antecedent ; on the other hand, a non-defining clause can always be rewritten as a parenthesis or lifted out and made a separate sentence without disturbing the truth of what remains. Here is the test : if when you detach a relative clause from its sentence the remaining part is left either with no meaning or a wrong meaning, the clause is a defining clause. In the spoken language, add the Fowlers, a relative in the objective case can be dropped at the beginning of a defining clause, though never of a non-defining clause ; I should add that it can often be omitted with advantage from a defining clause in the written language too.

The sentence last quoted could, therefore, and I think should, be rephrased as :

> Whether this provision is a wise one and one *that* should be retained in the law is a question I shall discuss later.

Both relative clauses here are defining. So is the relative clause in the sentence, " There are other criteria *which* can be offered," which should be rephrased, " There are other criteria *that* can be offered " (or better still, perhaps, " Other criteria can be offered "). Similarly, " An innocent person might be prevented from making a statement *which* might assist to clear him of the charge . . ." becomes " An innocent person might be prevented from making a statement *that* might assist to clear him of the charge . . .," and " The board has from time to time laid down the general principles *which* it follows in deciding the appropriate unit " becomes " The board has from time to time laid down the general principles it follows in deciding the appropriate unit."

[11] *The King's English*, pp. 75ff. Their explanation is not as clear as it might be, perhaps, but the numerous illustrations will assist the reader.

THE NEW SUPREME COURT AMENDMENT RULES.

The Supreme Court Amendment Rules, 1950 (Serial No. 1950/58), came into force yesterday, May 1. Below will be found the principal alterations to the Code of Civil Procedure effected by these Rules.

Counterclaim.—In *White* v. *White*, [1941] N.Z.L.R. 445, 446, Fair, J., held that the Rules then and since existing limited the right to counterclaim to proceedings against the plaintiff alone, so that a defendant could not in a counterclaim, add as a defendant thereto a person against whom he alleged an independent or alternative claim arising out of the same series of transactions as that on which the counterclaim was based. In the course of his judgment, His Honour observed that it would seem desirable that a defendant filing a counterclaim should be entitled to add as defendants to the counterclaim parties other than the plaintiff where the causes of action alleged arose out of the same transactions or series of transactions. Rules 134 and 135 are now revoked, and the substituted R. 134 and RR. 135 to 135H are intended to give effect to that recommendation. A new form, No. 8B, is added to the First Schedule (Notice to accompany Counterclaim against Persons other than Plaintiff).

Costs in Default Actions.—Notwithstanding s. 4 of the Judicature Amendment Act, 1923, it was held in *State Advances Superintendent* v. *Harwood*, [1934] N.Z.L.R. 828, that, in entering judgment in an undefended suit for the recovery of possession of land, the plaintiff cannot be awarded costs under R. 227 ; and the same principle may well apply under R. 228. These Rules are amended so as to bring them into line with R. 226, by giving express power to allow costs. Rule 340 is consequentially amended.

Execution.—The exemption from distress of household effects, tools, &c. (hitherto standing at £50), is raised to £100, so as to bring R. 362 into line with the corresponding provisions of the Bankruptcy Act, 1908 (as amended), and the Magistrates' Courts Act, 1947.

Translations into Maori.—Rule 588 has been revoked, and the new RR. 588 to 588D are substituted. The effect of this amendment is that the provision of the Code relating to translations for Maori parties, which has been a Rule of the Supreme Court since 1856, is assimilated to that of the Magistrates' Courts Rules, 1948. It is believed that at the present time no one is literate in Maori who is not also literate in English ; but the right of a Maori party to a translation is still given subject to his asking for it.

Transfer of Magistrates' Courts Proceedings.—Rule 596A, relating to the transfer of proceedings from a Magistrates' Court, has been revoked. New RR. 596A to 596M are substituted. The new provisions are

necessitated by the provisions of the Magistrates' Courts Act, 1947, which altered the law to which the previous Supreme Court Rules applied.

Witnesses' Allowances.—A fresh Table E (Witnesses' Allowances and Interpreters' Fees and Allowances) is enacted, bringing the amounts into line with those allowable in civil proceedings in a Magistrates' Court and in criminal cases. The adjustment of terminology required in this Table is attended with consequential recasting of the wording of Item 36 of Table C, to which Table E is an appendage.

IN YOUR ARMCHAIR—AND MINE.

By Scriblex.

Sidelight.—Impressive and deserved tributes have been paid to the great and enduring qualities of the late Sir Michael Myers, both as a practitioner and as a Judge. Nevertheless, in common with the rest of mankind, he was not wholly free from imperfections: he was inclined to be over-critical of his contemporaries, and, when roused to righteous anger, too unrestrained in his comments and observations. But were not these minor failings completely eclipsed by his judicial brilliance and by a lifetime of devotion to his profession? Especially towards the younger members he could be tolerant and helpful, expecting none of the wisdom that comes with experience. Scriblex remembers how, on one occasion, when the jury were awaiting the beginning of a defended adultery suit, counsel for the petitioner discovered that a motion to dispense with the two co-respondents had been overlooked. They had returned to America with the U.S. Forces, and were, at the time of issue of the proceedings, out of the jurisdiction. Counsel proceeded to Chambers, where the sad story of his oversight (for which he took full blame) was laid bare. "Had the application to dispense with service come before me in the ordinary way, you could not have opposed it, could you?" Sir Michael asked counsel for respondent. He agreed that this would be so. "Very well," said the Chief, "let's waste no more time. I'll take the will for the deed and tell the jury that the co-respondents are out of the picture now." And he added, with a twinkle of amusement, "Even if counsel have what they regard as a 'sitter,' it is never wise to refrain from looking through the pleadings until two minutes before the trial."

Bees in the Bonnet.—When a farmer was charged in the Kaikohe Court with having used indecent language at a railway station, the Magistrate (W. C. Harley) held that the two words involved ("b— b—") might be insulting, but were not indecent, as they were commonly and frequently heard all over the country. He may, indeed, be right, although his reasoning seems open to question. "It may even be indecent in Invercargill, but it is certainly not so here in the North." This seems to Scriblex to contain the seeds of legal heresy—namely, that there is one law for the Scots and another for the Croats or the Jugo-Slavs. And, as to the first of the two "b's," Sir Edward Parry recalled that on one occasion, when he telephoned Ernest Benn, his publisher, in regard to his forthcoming book, *The Bloody Assize*, he had scarcely got beyond reference to the title when the telephone girl said: "If you're going to be indecent over the phone, I'll cut you off." He was—and she did!

Bail Note.—On being requested the other day by a prisoner if he would dispense with sureties, the Magistrate asked whether he had a friend who would act as surety for him. "The Almighty is my friend," he replied. "Yes, yes," said the Magistrate, "but can't you give us the name of a friend living near?" "The Almighty is everywhere," was the answer. "That is so," replied the Magistrate, "but I'm afraid we shall have to find somebody of more settled habits."

Pour le Sport.—A practitioner informs Scriblex that he has just had occasion to reprimand his typist for inserting in an agreement for separation a covenant that the husband would provide so much weekly for "the *sport* and maintenance of the wife." Professing to see nothing Miltonic or equivocal in the term, the young lady pointed out that, what with female cricket, tennis, badminton, basket-ball, soft-ball, and golf-ball players, she saw no reason why the husband should not weigh in a trifle on this issue, as his adherence to the "sport of kings" had, according to the correspondence, accounted for a considerable part of the family income. As is customary these days in law offices, the typist had the last word, and the practitioner retired sullenly to lick his wounds.

Note on Crime.—"To tell you the truth, I propose suggesting to the Home Secretary that he should have crime nationalized. It seems the only way of ensuring that it doesn't pay": Sir David Maxwell Fyfe, under cross-examination as to his views on penal reform.

The Chinese Touch.—It is perhaps surprising, when one considers the large number of Chinese in New Zealand, how rarely they figure in litigation. But, when they do, they are generous and grateful clients, even if, as witnesses, they are a little on the dumb side. The story is being told of a Chinese laundryman who so impressed one member of the Bar by his courtesy and consideration during the year that the member, on depositing his holiday washing early in January, left with it a ten-shilling note in an envelope marked "Happy New Year." The laundryman expressed great pleasure at the gift. A few weeks ago, when our friend was in the premises for the first time since the Chinese New Year, he was handed an envelope that contained a card reading "And Happy New Year to you!" It also contained two ten-shilling notes.

Police Statements.—"It is a very dangerous thing to cross-examine with regard to credit unless there is material upon which to cross-examine, and with which the witness can be confronted, but it is entirely wrong for counsel to make charges against the Police that a statement has been obtained by improper means if

he does not intend to call his client to give evidence in support of the charge. The Court hopes that notice will be taken of this and that counsel will refrain, if they do not intend to call their clients, from making these charges which, if true, form a defence, and which, if there is nothing to support them, ought not to have been pursued": per Lord Goddard, L.C.J., in *R.* v. *O'Neill*, C.C.A., April 3, 1950.

LAND VALUATION COMMITTEES.

New Districts and Membership.

The Minister of Justice (the Hon. T. C. Webb) has announced that, consequent upon the removal (by the Servicemen's Settlement and Land Sales Regulations, 1949, Amendment No. 1 (Serial No. 1950/15)) of urban properties from the control of the Servicemen's Settlement and Land Sales Act, 1943, new Land Valuation Committees have been established to exercise jurisdiction in respect of sales and leases of rural properties, and to undertake the other functions prescribed for Land Valuation Committees by the Land Valuation Court Act, 1948, and other enactments. The rearrangement is to be effective from May 1.

The new Committees each comprise a Stipendiary Magistrate as Chairman, and one other member who has been appointed for his practical knowledge of farming and of land values generally. As nearly as possible, the districts in which the new Committees will act are conterminous with the districts of the Magistrates who have been appointed Chairmen.

Although the districts in which the Committees will function have been rearranged in this way, it is not at present proposed to constitute different or additional Registries of the Court. For the convenience of the public, however, arrangements have been made that documents for filing in the Land Valuation Court may be left for that purpose at any office of a Magistrates' Court of civil jurisdiction for forwarding to appropriate Registries. Any document so lodged with the Registrar of a Magistrates' Court will be forwarded by him to the proper office of the Land Valuation Court; but it is necessary to add that, for procedural purposes, the date of filing will be the date when it reaches the latter office.

The following is a list of the new Land Valuation Committees, showing the districts in which they will operate, and the Registry at which documents relating to properties in those districts will be filed:

North Auckland.—Members: Mr. J. W. Kealy, S.M., Auckland (Chairman), D. G. Morrison, Whangarei, and Mr. W. C. Harley, S.M., Whangarei (Deputy Chairman).
District: The land north of the Oruawhero River, and north of a line from the sources of that river to Te Arai Point, and including the coastal region north of the entrance to Kaipara Harbour.
Registry Office: Auckland.

Auckland No. 1.—Members: Mr. M. C. Astley, S.M., Auckland (Chairman), H. O. Mellsop, Auckland, Mr. J. W. Kealy, S.M., Auckland (Deputy Chairman). and J. J. Shallue, Mangaiti (Deputy Member).
District: From the southern boundary of the North Auckland District to a line from the Waitakere River mouth to Swanson, to Te Arai Point, to the centre of Waitemata Harbour, to south of Brown's Island, to the middle of Tamaki Straits to the south of Pahiki Island.
Registry Office: Auckland.

Auckland No. 2.—Members: Mr. H. J. Wily, S.M., Auckland (Chairman), H. O. Mellsop, Auckland, Mr. J. W. Kealy, S.M., Auckland (Deputy Chairman), and J. J. Shallue, Mangaiti (Deputy Member).
District: The remainder of the land in the North Auckland Land District, plus Onewhero Parish where the community interest is centred in Papakura.
Registry Office: Auckland.

Waikato No. 1.—Members: Mr. S. L. Paterson, S.M., Hamilton (Chairman), G. A. Walsh, Monavale, Cambridge, Mr. J. W. Kealy, S.M., Auckland (Deputy Chairman), and J. J. Shallue, Mangaiti (Deputy Member).
District: The district covered in Mr. Paterson's Magisterial circuit.
Registry Office: Hamilton.

Waikato No. 2.—Members: Mr. W. H. Freeman, S.M., Tauranga (Chairman), G. A. Walsh, Monavale, Cambridge, Mr. J. W. Kealy, S.M., Auckland (Deputy Chairman), and J. J. Shallue, Mangaiti (Deputy Member).
District: The district covered in Mr. Freeman's Magisterial circuit.
Registry Office: Hamilton.

Gisborne.—Members: Mr. E. L. Walton, S.M., Gisborne (Chairman), I. F. Watt, Arero, and Mr. W. H. Freeman, S.M., Tauranga (Deputy Chairman).
District: Gisborne Land District.
Registry Office: Gisborne.

Hawke's Bay.—Members: Mr. L. G. H. Sinclair, S.M., Napier (Chairman), and C. H. Loughnan, Otane.
District: Hawke's Bay Land District exclusive of Counties of Weber, Woodville, and Dannevirke.
Registry Office: Napier.

Taranaki-Wanganui.—Members: Mr. S. S. Preston, S.M., Wanganui (Chairman), and L. D. Hickford, Okato.
District: Taranaki Land District plus Counties of Wanganui, Waitotara, Patea, and Waimarino, and cities, boroughs, and towns within the limits of that area.
Registry Office: For land in Taranaki Land District, New Plymouth. For land in Wellington Land District, Wellington.

Palmerston North.—Members: Mr. A. Coleman, S.M., Feilding (Chairman), and J. Linklater, Milson's Line, Palmerston North.
District: Counties of Rangitikei, Kiwitea, Pohangina, Dannevirke, Weber, Woodville, Oroua, Manawatu, Kairanga, and all cities, boroughs, and towns within the limits of that area.
Registry Office: For land in Hawke's Bay Land District, Napier. For land in Wellington Land District, Wellington.

Wellington.—Members: Mr. A. A. McLachlan, S.M., Wellington (Chairman), A. W. Bissett, Mangahao Road, Pahiatua and Mr. J. Hessell, S.M., Wellington (Deputy Chairman).
District: The remainder of the land in the Wellington Land District.
Registry Office: Wellington.

Nelson.—Members: Mr. H. J. Thompson, S.M., Nelson (Chairman), and A. R. Edwards, Motueka.
District: Nelson Land District.
Registry Office: Nelson.

Marlborough.—Members: Mr. H. J. Thompson, S.M., Nelson (Chairman), and J. H. Dick, Spring Creek.
District: Marlborough Land District.
Registry Office: Blenheim.

Westland.—Members: Mr. R. M. Grant, S.M., Greymouth (Chairman), and M. Wallace, Lower Kakatahi.
District: Westland Land District.
Registry Office: Hokitika.

North Canterbury.—Members: Mr. F. F. Reid, S.M., Christchurch (Chairman), B. S. Robertson, Christchurch, and Mr. R. Ferner, S.M., Christchurch (Deputy Chairman).
District: That part of the Canterbury Land District which is north of the Rakaia River.
Registry Office: Christchurch.

South Canterbury.—Members: Mr. E. A. Lee, S.M., Timaru (Chairman), and A. J. Davey, Timaru.
District: That part of the Canterbury Land District which is south of the Rakaia River.
Registry Office: Christchurch.

Otago.—Members: Mr. J. D. Willis, S.M., Dunedin (Chairman), W. J. Crawford, Dunedin, and Mr. J. G. Warrington, S.M., Dunedin (Deputy Chairman).
District: Otago Land District.
Registry Office: Dunedin.

Southland.—Members: Mr. W. A. Harlow, S.M., Invercargill (Chairman), and D. McPherson, Invercargill.
District: Southland Land District.
Registry Office: Invercargill.

It is provided by the Order appointing the personnel of Committees that, at any sitting of a Committee, the Chairman or Deputy Chairman will be a quorum: see Land Valuation Court Act, 1948, s. 19 (2).