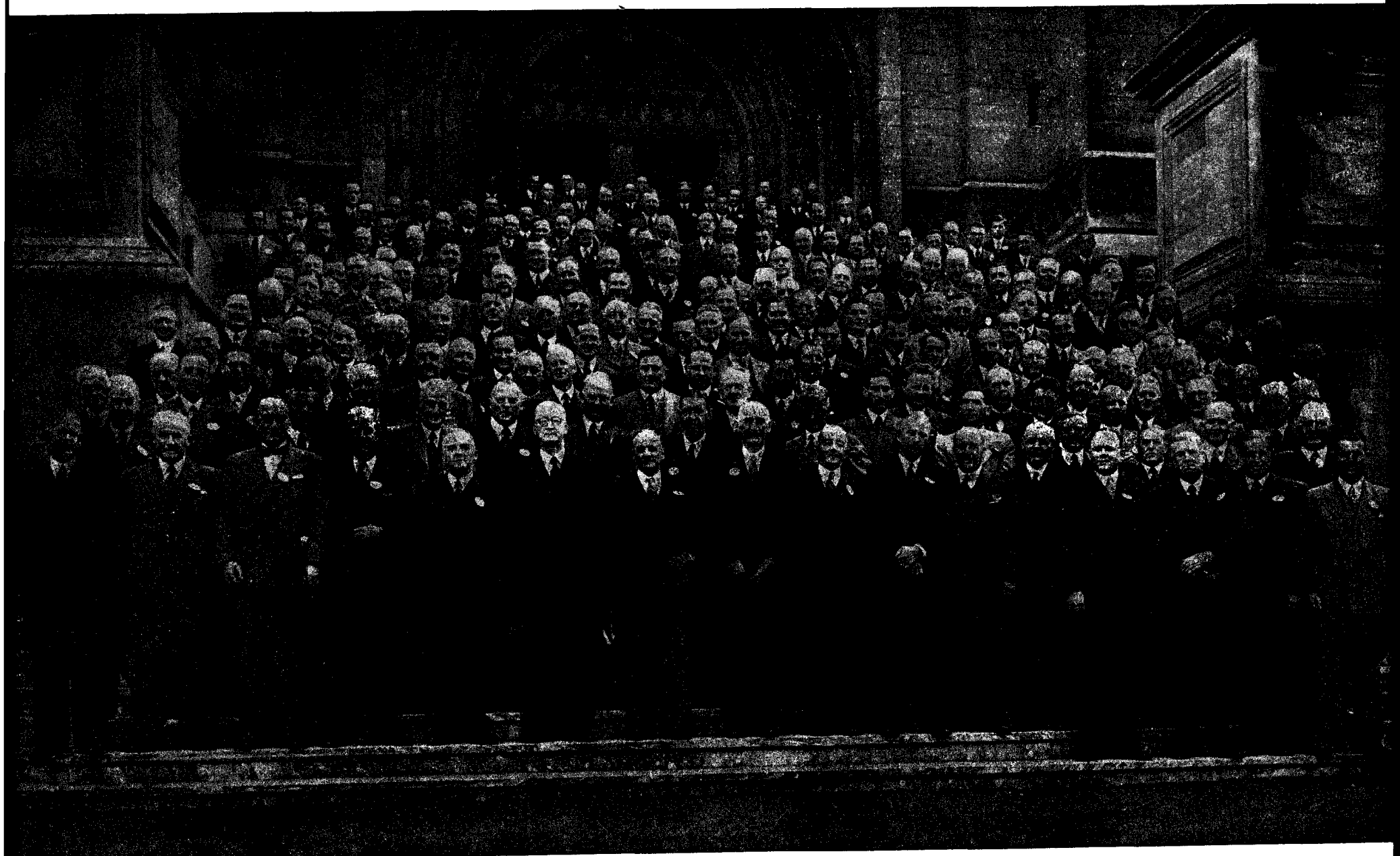
The Proceedings

OF

The Eighth Dominion Legal Conference, Dunedin.

March 27-30, 1951.



THE MEMBERS OF THE EIGHTH DOMINION LEGAL CONFERENCE.
Dunedin, Easter, 1951.

E. A. Phillips

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THE EIGHTH LEGAL CONFERENCE.

EASTER week, 1951, in Dunedin, will long be remembered by those members of the profession who were privileged to be there. From every viewpoint, the Eighth Dominion Legal Conference was an outstanding success; and it set a standard for future Dominion-wide gatherings that others will find hard to excel. The careful and detailed planning of the Conference Committee was evident everywhere. And the hospitality of our Southern brethren was as all-pervading as the warmth of sunlight and the friendly sparkle of the moonlit skies that graced the days and nights of the Conference week.

Excellent as were the papers and addresses that occupied the attention of the business sessions, the most notable feature of the whole gathering was the responsive spirit of brotherhood of practitioners from all parts of the Dominion, some meeting one another for the first time, others renewing friendships made at earlier Conferences and cherished during the years between.

The profession as a composite whole was in evidence at Dunedin. The Conference was honoured by the presence of three of our Supreme Court Judges, who, like all their judicial brethren, do not forget that they are still of the profession. The titular leader of the practising lawyers in this Dominion, the Attorney-General, was there; and he took his part with the others in all the activities of the week, in the business sessions as well as in the many social gatherings of Conference days and nights. There, too, were men grown old in the law, "those good grey heads whom all men know," and young practitioners meeting for the first time men whose names had become familiar in their recent student days in Law Reports and in text-books. And the wives of practitioners, there in force, showed a lively interest in all that pertained to their husbands' profession, and gracefully took their share of the charming hospitality and friendliness of their Dunedin friends.

The Conference Committee had made some excellent innovations in the usual week's programme. The bringing together of everyone on the Tuesday afternoon at the Dunedin Club was a happy thought. That bright gathering was a splendid incentive to friendliness, and, in this way, it struck the keynote of the theme of all that was to come. Then the introduction of the law clerks of Dunedin as willing, and most efficient, waiters at the Conference Dinner was a new idea that received instant commendation from everyone, including, we feel sure, the capable young men themselves. Again, there was time given to a "General Discussion," in which, in five-minutes speeches, any matter of interest to the profession could be brought up. This feature admits of development in future Conferences, perhaps with simultaneous, but separate, general discussions by the conveyancers and the common-law men.

A feature of the Conference well worth fostering is the concentration on at least one discussion that can give the public a lead such as only the legal profession is capable of providing. Mr. Riddiford in his paper "A Second Chamber for New Zealand" provided such a topic, and, though the discussion on it was somewhat unexpectedly curtailed, he was asked by the Conference to deliver it again in the following week before the Constitutional Committee of the General Assembly appointed to hear representations on the very subject of the paper. Moreover, the quick reaction of the metropolitan newspapers in support of Mr. Riddiford's proposals showed, in the interval between the Conference and the sitting of the Parliamentary Committee, the general public interest that can be evoked by such a lead from the ranks of the profession.

The other papers read were also of a high quality, and were much appreciated by the lawyers who heard them; but, in the atmosphere of a Conference, it is difficult for men to discuss the topics dealt with in such papers without having before them the appropriate reports or statutes or text-books. The method of presentation of those papers was a sheer delight; and their hearers savoured them in appreciative enjoyment. Major-General Inglis's address on his experiences in the Courts of occupied Germany reminded his fellow-practitioners of the great contribution to the general welfare the profession has made in this and other lands, not only in the war years, but also in the period of reconstruction that has followed.

The lasting value of the social side of the Conference is beyond estimation. And paramount always among our memories of it will be the generosity of the hospitality of our Dunedin brethren. To them, one and all, our sincere and abiding thanks.

FIRST DAY.

THE EIGHTH DOMINION CONFERENCE.

Civic Reception and Welcome.

THE President of the Law Society of the District of Otago, Mr. A. J. H. Jeavons, took the chair at the Concert Chamber of the Dunedin Town Hall at 10 a.m. on Wednesday, March 28.

On the platform were the Mayor of Dunedin, Mr. L. M. Wright; the Attorney-General, Mr. T. Clifton Webb; and the President of the New Zealand Law Society, Mr. W. H. Cunningham.

The Concert Chamber was filled with visitors to the Conference and Dunedin practitioners and their wives. Among them were Mr. Justice Adams; the Solicitor-General, Mr. H. E. Evans, K.C.; Sir Alexander Johnstone, K.C. (Auckland); Sir Wilfrid Sim, K.C., and Dr. O. C. Mazengarb, K.C. (Wellington); and Mr. A. G. Neill, K.C. (Dunedin); Mr. J. D. Willis and Mr. J. G. Warrington, the Stipendiary Magistrates at Dunedin, and two former Dunedin Magistrates, Mr. J. R. Bartholomew and Mr. H. W. Bundle. Others present were the Mayoress of Dunedin, Mrs. L. M. Wright, Lady Sidey, the Secretary of Justice, Mr. S. T. Barnett, the Registrar of the Supreme Court, Mr. C. Mason, the District Land Registrar, Mr. E. B. C. Murray, the Assistant Commissioner of Stamp Duties, Mr. R. J. Stewart, the District Public Trustee, Mr. A. Bell, and the Registrar of the Magistrates' Court, Mr. F. Stoop.

Mr. Justice Stanton (Auckland) and Mr. Justice Hutchison (Wellington) arrived in Dunedin later in the day.

Mr. Jeavons said he was very pleased to have on the stage with them that morning His Worship the Mayor of Dunedin, Mr. Wright, who had come to offer a welcome to all the visitors from towns other than Dunedin on behalf of the city. He then called upon His Worship to address the gathering.

The Mayor of Dunedin, MR. L. M. WRIGHT, then addressed "the illustrious guests, visitors, and members of the legal fraternity of Dunedin, without any distinction." He said:

"When I was asked to say a few words to you this morning, I was unfortunately asked before Easter, and I had the whole Easter recess to think over what I would say. I realized that in speaking this morning it was not like opening a flower show. I was talking to the cream of New Zealand's orators, and I felt that, rather than make an ass of myself, I should perhaps say 'Welcome, scale fee, ten guineas, say twenty-five guineas.' But, not being a wise man, I have been induced by the chairman to meander for one or two moments.

"I felt much more at home down on the wharf this morning than I do talking to the guests here; but the gentlemen down on the wharves were not the usual aristocracy of the waterfront.

"Dunedin, as you know, is a small town, and Mayors are supposed to act as propagandists, in the hope that, when they point out the sights of the city, guests will stay a lot longer and spend a lot more—and we ask you to do that.

"If I may be permitted for one or two moments to touch on the background of the contribution that Dunedin has made to law and order and justice over the years, I hope I will be excused from being called parochial. I think that in 1914 only one Judge, Mr. Justice Cooper, was not of Dunedin. Times, of course, have changed. The first one, Mr. Justice Stephen, who was appointed in 1852, sat for two years without a case and then retired, and was shortly after tried for assault himself—so that we can say that he wanted to keep in touch with the law. Later on, in 1875, Mr. Justice Williams was appointed, and sat until 1913. He was appointed at a time when no right-thinking man would take on the job. The good Scots came and settled here. The land was divided—one part for the individual and two parts for the Church About 1862, they could not see any future in Church settlement, and, being Scots, some of them found gold; and from that point onward we have had a lot of legal men. As a consequence, the legal fraternity of Dunedin have a fairly firm background to act upon. Following that, we had Mr. Justice Sim, and later Mr. Justice Kennedy.

"Mr. Attorney-General, may I, as a humble layman, say that we are still waiting to hear of a permanent appointment in Dunedin in place of Mr. Justice Kennedy. I mention this without expert knowledge ——."

"Without prejudice," said Mr. Webb, amid laughter.

"As soon as you get your Emergency Regulations fixed up, I hope we shall receive priority," continued Mr. Wright.

"I must not speak too long: my wife is in the audience. You are here for your Legal Conference. I hope you enjoy it. The weather, as you see, has been settled for some months. (I take it that no one arrived before last Saturday.) Those who are unfortunate enough not to live in Dunedin I do hope will enjoy themselves here. We have representatives from two of the three Islands—I do not know about Stewart Island, but the Middle (or muddle) Island, and the North (or neurotic) one. Stewart Island is the ideal place; the boarding-house keeper is the Judge, Magistrate, and solicitor; reserves and parks are kept by the bell-birds; and, consequently, they have peace in Stewart Island.

"I wish your Conference every success, and I hope it is the most successful you have ever had. These yearly conferences are becoming a habit. I have just returned from a conference in Christchurch. We sat for five days, and during the twenty minutes we discussed business . . . (Laughter).

"I wish all visitors here a very happy time, and hope you go away saying that Dunedin is a good place, that the people are friendly, and that you hope to come back some day."

Mr. A. J. H. JEAVONS, President of the Law Society of the District of Otago, addressing His Worship the Mayor, said: "I think I hardly need to tell you that your words have been deeply appreciated, but I would like to say that we are deeply indebted to you for your gesture in coming here to-day."

Then, addressing the assemblage generally, Mr. Jeavons said: "If, on behalf of the Otago Law Society, I may add to the words of welcome that have already

been spoken to you, first of all, I would like to say that it gives me the keenest pleasure to see such a large and representative gathering. I know and have met already people from the north of Auckland and from the other extreme end of that Island, and I know that there are representatives from most areas of both Islands.

"I would like, also, if I might, to welcome some of our visitors. In using the word 'visitors,' I mean those other than the everyday members of the profession. I would like to mention first the Hon. the Attorney-General, and to say to him that we are very indebted to him for coming here. We know that it is a considerable sacrifice to him. He has arduous duties of office, and I know that those duties are particularly onerous at the moment. We therefore appreciate all the more that he and Mrs. Webb saw fit to come down here and pay us the compliment of their presence. Then I would like to mention Mr. Justice Adams, who for the moment is our only judicial representative, though there will be reinforcements later in the day, I understand. I would also like to mention our Dunedin Magistrates, Mr. J. D. Willis and Mr. J. G. Warrington, and particularly two former Dunedin Magistrates, Mr. J. R. Bartholomew and Mr. H. W. Bundle, the last having come all the way from Nelson. I would like to mention the presence of Mr. H. E. Evans, K.C., the Solicitor-General, and Mrs. Evans, and we are glad to have them with us too. There are other notable visitors: there are the Registrar of the Supreme Court, Mr. Charlie Mason, and the Registrar of the Magistrates' Court, Mr. F. Stoop. We also have our Assistant Commissioner of Stamp Duties, and, as there was no duty on him to be here at all, it is obviously a novel occasion for him. We have the Public Trustee. I would also like to welcome Lady Sidey, who, as you know, is the widow of a former Attorney-General. I do not intend to name any other person, except that I would like to mention one member, because I am very pleased to see him here, because he is the oldest, and unquestionably the senior, member present, and because I am very pleased that he has taken the trouble to come down to see us. I refer to Sir Alexander Johnstone, K.C.

"Now, ladies and gentlemen, I address myself to you. There was a suggestion that this Conference in future should be held triennially, and not biennially. That would have meant that this Conference would have been held in 1952. At the time, I knew that I should be President in Otago in 1951. I spoke strongly in support of the Conference, and we voted. But, after having seen you all and met you, and having seen how gracious and kind you have been already, I must confess I am no longer in the minority, and I can say that you are really deeply and sincerely welcome.

"There is, of course, little one can do to make one Conference different from another, and I suppose the only really great difference that there can be is in the temperature of the weather and of the welcome. We cannot do anything much about the weather, but we can do something about the temperature of the welcome, and I can assure you that everything that can be done will be done. I hope that you have a pleasant and profitable Conference, and I hope that, when you do find it necessary to leave us, you will say that it was worth while going to the Dunedin Conference."

Campbell Photo.

Mr. A. J. H. Jeavons
President of the New Zealand Law Society.

Mr. C. G. PENLINGTON, President of the Canterbury District Law Society, said: "I have the privilege and the honour of replying to this very warm and sincere welcome that has been extended to us this morning. I received a letter just a week ago from the Conference Secretaries, asking me if I would kindly reply on behalf of the visitors, and I can say that I am very happy to do so. I thought perhaps, Mr. Mayor, as you mentioned that we had the cream of orators here, this reply might have come better from the cream than from a bit of sour milk, like myself. Nevertheless, we are very indebted and thankful to you for your very warm welcome this morning.

"Dunedin, as you know, has a reputation for its hospitality. We all remember the last Conference that was held in Dunedin some years ago and the wonderful time we all had here. I am sure, looking at the programme and all the bundle of tickets we got in the mail for all these function that are going to be held, that we are all going to have a wonderful time. The weather has been kind, and I am sure it will remain so. Dunedin, as you know, has enjoyed during this summer more hours of sunshine than Auckland even. I think we can be assured of having good weather;

even if the weather does fail, the warmth of your welcome this morning will surely keep us warm.

"I was told yesterday on very good authority that the Dunedin practitioners were going to experience some difficulty, owing to the fact that they were unable to get supplies of liquor for the Conference. I have heard that they have got the Army, the Navy, and the Air Force working on the vessels. Judging by that enjoyable party held last night, it would appear that there are ample supplies.

"When one looks at the programme, it seems as though we have got a full time ahead of us. There is one thing I have noticed—they are going to have the ladies at the Ball fifteen minutes before the men. Something sinister about that! My wife has told me that she is going to stick to me.

"I do not want to extend this any further, but I do wish, on behalf of the visitors, to thank you very much indeed for this very warm welcome. I am sure we are going to have a most enjoyable Conference. It will not be our fault if we do not. We are looking forward to our sports on Friday, and my partner has told me that he is not drinking at all, as he hopes with my help, if possible, to take the Law Journal Cup back to Canterbury again this year. I wish to thank you again, sir, on behalf of your visitors, for your very warm welcome."

Mr. JEAVONS said: "I had a telegram yesterday from Mr. Justice Hay, who has sent his best wishes to you all.

"Now, with your permission, I desire to hand over the chair of the Conference, for the rest of the Conference to more capable and worthy hands than mine, and I am going to ask the President of the New Zealand Law Society, Mr. Cunningham, to take the chair."

The Conference President, Mr. W. H. CUNNINGHAM, thanked the Conference for doing him the honour of asking him to take the chair. He added that lawyers in the bulk were a well-disciplined body, and he had no misgivings that during the Conference they would get out of hand.

The President continued: "This is the Eighth Conference, and Dunedin has had to wait fifteen years in order to get its second turn at running a Conference. I had the pleasure of being here at the fourth Conference, and thoroughly enjoyed myself, but I regret that I saw practically nothing of Dunedin, and I assure you, Mr. Mayor, that it is a place which is well worth taking a little trouble to look round and to discover. This year I made no mistake. My wife and I arrived on Saturday, and since then I think we have seen most of the glorious sights that one can see in Dunedin, and the weather has held. She has worn out a pair of shoes, because we decided that the best way to see Dunedin was to do some walking. I have been up High Street and along to the Queen's Drive, and along the Eglinton Road, and then we had the pleasure of coming down Snake Gully."

[The Mayor: "Serpentine Avenue."]

"Then, too, by courtesy of your President, we have been up to the Centennial Monument on the top of the hill, and, if you get a fine morning, I can assure the visitors who have not been to Dunedin before that that is a drive well worth making—with a careful driver.

"Mr. Mayor, I would like to add my little tribute of thanks to you for the warm welcome to Dunedin which you have given to us, and I am quite sure that, if the weather stays as it is, we are all going to enjoy our stay here thoroughly, as those who were here in 1936 thoroughly enjoyed their stay.

"I had heard that Dunedin was short of tea, and that the ship had not arrived, but I am glad to have the assurance of the Conference Secretaries that there will be morning and afternoon tea throughout the Conference, served in these convenient rooms, and, with the sanction of the President, I now invite you all to morning-tea."

The Conference then adjourned for morning-tea.

On resuming, the President said that, before he called on the Hon. the Attorney-General to address the Conference, there were two small matters that he would like to dispose of. He said: "In the first place, in making my speech of thanks for appointing me Chairman of the Conference, I omitted to ask your permission to appoint Mr. Jeavons as Deputy Chairman, and I assume I have your consent to that.

"The other matter is that I have a telegram from the Right Hon. the Chief Justice, from Levin: 'Best wishes for a highly successful and beneficial gathering. My kind regards to all.'

"I now have pleasure in calling on the Hon. the Attorney-General to deliver the Inaugural Address."

THE COCKTAIL PARTY.

A very happy Conference innovation was the holding of a Cocktail Party on Tuesday afternoon, before practitioners got down to the serious business of the Conference proper. This was held in the charming setting of the Dunedin Club, but even its spacious rooms were all too small for the great gathering of visitors and their wives and the whole strength of the profession in Dunedin itself and their ladies.

The guests were received by the host and hostess of the Conference, Mr. A. J. H. Jeavons, the President of the Law Society of the District of Otago, and Mrs. Jeavons, who introduced them to the President of the New Zealand Law Society, Mr. W. H. Cunningham, and Mrs. Cunningham. Mr. Justice Adams attended this function; the other members of the Judiciary who were to take part in the Conference had not yet arrived.

This gathering was greatly enjoyed. But its value was also of a practical nature. It gave visiting and local practitioners an opportunity to see who were in Dunedin for the Conference. It also enabled the visitors to meet their fellow-practitioners who were to be their hosts in the days to come.

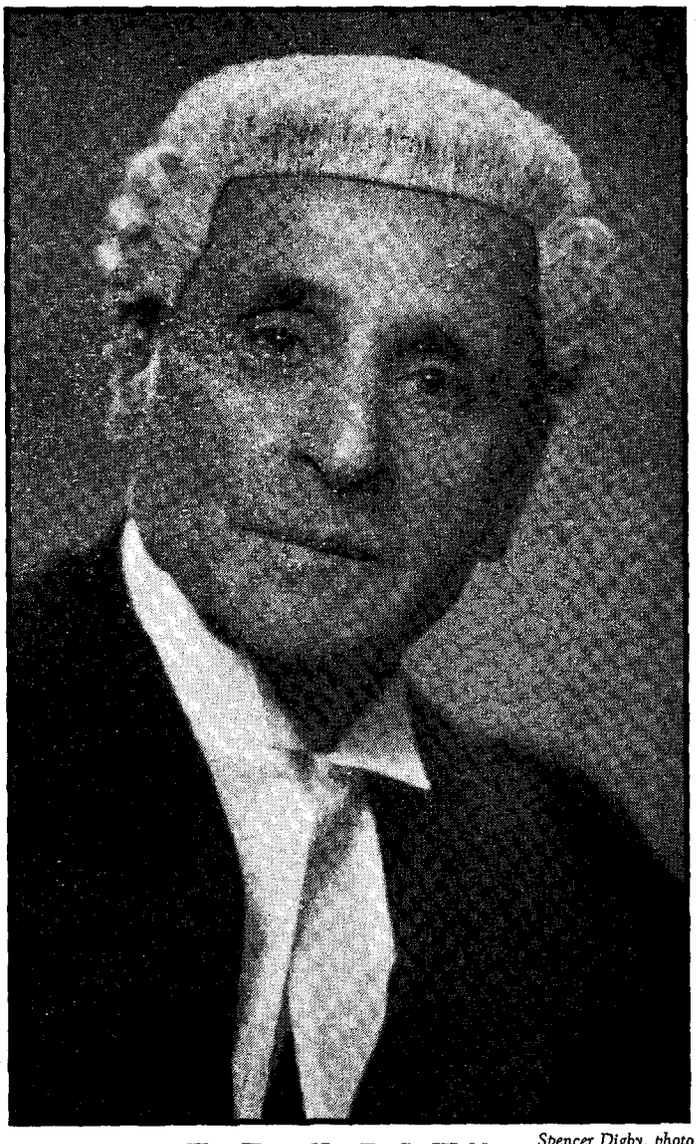
From the purely social aspect, this happy "get together" provided a grand commencing-point for all that followed. And everyone present will agree that the great success of the social events of the Conference days owed much to this initial function, which was such an outstanding feature that it is safe to predict that a preliminary social gathering will be included in all future Conference programmes.

INAUGURAL ADDRESS.

By The Hon. The Attorney-General,
Mr. T. Clifton Webb.

THE Hon. the Attorney-General addressed the Conference as follows :

" It is good that the members of the profession should from time to time meet in general conference like this to discuss matters of common interest to the profession, and also—and perhaps more especially—to get to know one another and, by an interchange of views, learn to take a Dominion-wide outlook upon their problems. The value of a Conference such as this does not lie in practical results. Even if no practical results were to emerge from this Conference, it would, I am sure, still prove to have been worth while. As we go through life, we realize more and more that, just as the spirit of the law counts for more than the letter, so the intangible things often count for more than the tangible ones. I am sure that much good can emerge from the creation of new friendships and the renewal of old ones, from the strengthening of existing ones, and from the exchange of views that can take place, not only in the formal conference here, but also in the informal discussions that invariably take place at the social gatherings that the good folk of Dunedin have been kind enough to prepare for us.



Spencer Digby, photo.

The Hon. Mr. T. C. Webb.
Attorney-General for New Zealand.

" I have had the privilege of attending two conferences under the auspices of the Commonwealth Parliamentary Association. One was a meeting of the General Council of the Association—that is, the Executive Committee—which was held in Ottawa almost two years ago, when I met delegates from other parts of the Empire and created lasting friendships. We have since been corresponding with each other, and I could not help noticing just the day before yesterday, when I was answering a letter which I had received from Senator Roebuck, K.C., from Canada (he was one that I met there, and also later here), that in the course of just answering his letter and talking about personal matters I was expressing my views about the projected Japanese Peace Treaty.

" Then, recently, we had the general conference of the Commonwealth Parliamentary Association. That was held in Wellington in November, 1950, and we had something like eighty delegates from all parts of the Commonwealth and Empire. We had delegates from England, Northern Ireland, and Canada, Federal delegates and delegates from most of the Provinces ; we had delegates from Jamaica, the British Indies, British Guiana, St. Lucia, Northern Rhodesia, Southern Rhodesia, South Africa, Ceylon, India, and Malaya ; delegates from Australia ; and, of course, delegates from New Zealand. And we realized that in that way we could get to know and understand each other in a way that was not otherwise possible, and we felt—and still feel—that, by a frank and free exchange of views, we promoted goodwill and understanding, and so tended to strengthen the bonds of Empire — or Commonwealth and Empire, as we now call it. That is the basic idea underlying the formation of the Empire Association, as it was called originally when formed in 1911 at the time of the Coronation of King George V.

" And so it will be with this Conference, which we begin this morning, and I think we do well to acknowledge early in the proceedings that we are meeting in a city which has contributed in such a large measure to every branch of scholarship. We do well to remember that the administration of justice owes much to the men who were born here and educated here, or to the men who, if they were not born in this city, at any rate received their education in its schools and its University, that sound and comprehensive education which gave them that love of learning. We do well to remember the pioneers like Sir Joshua Williams, Prendergast, Sim, Sir John Salmond, and Sir John Hosking, all of whom were closely identified in so many ways with this city. We honour, too, the memory of Sir Francis Bell. And last, but by no means least, we honour the memory of that able man the late Mr. Justice Callan, who has been so recently taken from us by that deadly scourge which the doctors cannot cure. I think it safe to say that history will

rank him as one of the ablest, and certainly one of the most popular, of the Judges who have graced our Supreme Court Bench.

" As we look back over the generations that are gone, we realize that the profession is as old as New Zealand itself. Sir William Martin, our first Chief Justice, was appointed, on the recommendation of Bishop Selwyn, away back in September, 1841. His famous colleague, the late Mr. Justice Henry Samuel Chapman, took up his duties a little over two years later. And, when we consider the difficulties which confronted them and the disadvantages under which they laboured, especially the fact that everything had to be written by hand, we marvel that they were able to achieve so much, and it is a tribute to their ability, energy, driving force, and sterling character.

A Fit Time for Retrospect.

" Now, we are meeting at the beginning of the second half of the century, and that, I think, is a fit time for retrospect. We rejoice to think that our Courts of justice are living witnesses of the worth and efficacy of a legal system which has stood the test of time. In so many lands established institutions are being challenged, and, now that law and justice have almost lost their validity, we have cause to be thankful that our people have remained faithful to their old-time loyalties. I think it is true to say that we in New Zealand are as deeply attached as any of the other Dominions to the institutions that form the fabric of the British Commonwealth and Empire. We cherish a deep and abiding loyalty to the Crown, and our relationship to the Crown and to the Commonwealth needs no written constitution to give it form, because it is inscribed in our hearts, and it derives its strength from those intangible, but nevertheless irrevocable, ties of blood and kinship, and from the bonds of sentiment and tradition. It has stood the test of time and the strain of two world wars. We are looking forward to the Royal Tour next year, and the profession, in common with other sections of the community, will welcome the opportunity of affirming, or perhaps I should say reaffirming, their loyalty and affection for Their Majesties the King and Queen. The Crown is the symbol of the unity, continuity, and solidarity of this widely scattered territory now known collectively as the British Commonwealth. We are heirs to the British tradition, and the debt is a continuing one, as constant reference to the volumes of *Halsbury* and the English Law Reports serves to remind us.

" England is undoubtedly our legal home, and we glory in the English common law. One illustration will always remain in my memory. At this same Commonwealth Parliamentary Association Conference to which I have alluded, there was a fair proportion—in fact, a substantial proportion—of the members of our profession—over a quarter of the eighty delegates were members of our profession—and I made it my business, as far as my circumstances would allow, to provide them with the opportunity of meeting our Judges and fellow-practitioners. One group met the Chief Justice and several of our Judges, and one of the group rang me up afterwards to say that he was thrilled at the thought that at that meeting a member of the English Bar and four coloured members of the Bar from the West Indies on the shores of the Caribbean Sea and three or four New Zealand Judges could sit down together and discuss legal topics as freely as if they were from the same place; he said it made him realize what a wonderful system the English common law is.

" While we are about it, we might as well recall that it was England which gave to our great sister nation and partner in world affairs, the United States of America, her law, her legal principles, and her basic concepts of justice.

The Purity of English Justice.

" I have a theory, which, as far as I am concerned, is entirely my own, although I do not doubt that many others have thought the same thought. If I read history aright, one trait that stands out prominently in English character is that you can always trust the race in a crisis. They seem to have an underlying instinct for taking the right course, and I am convinced that that is due in no small measure to the purity of our administration of justice. That may sound like a far-fetched idea, but let us examine the point. Our Judges are impartial. A well-established wall removes them from illegal control or influence, or from any suspicion of it. The new despotism, as it has been called, has no terrors for them. They dispense justice with an even hand, not only between man and man, but also between man and the State. We dignify the individual, rather than deify the State, and in that respect we are in striking contrast with countries like Hitler's Germany and Stalin's Russia, where the administration of justice, which may be dispensed impartially as between man and man, is loaded in favour of the State when it comes to a contest between man and the State. I believe, and I am firmly convinced, that the fact that in British countries all men are equal before the law—the same law for the rich as the poor, the same law for the individual as there is for the State—has helped to weave into the warp and woof of our national character a steadiness of disposition and a balanced outlook, a sense of proportion and a sense of humour, that has enabled us to laugh at ourselves; and all those characteristics, I believe, have combined to build up an ethical code which, as I say, has become part and parcel of our national character. And, if at times it has led us into complacency, in times of crisis it has stood us in good stead and seen us through the crucial test.

The Basic Concepts of English Law.

" The basic concepts of English law as it has been handed down to us are the liberty of the subject and the equality of all men before the law; and I always think it is a pity that those same principles cannot be applied in our international relations. What a great advance towards the establishment of world peace would be made if only those same concepts could be applied by the nations to the settlement of their affairs. It is a logical step that still awaits practical application, but I am afraid it is a step that is still some distance away from achievement. But it is a step, nevertheless, towards which we must all strive if the pen is ever to supersede the sword. As Mr. Churchill in his memoirs has said, the human tragedy reaches its climax in the fact that, after two world wars, we have not found either peace or security, and that we lie in the grip of worse perils. We live in a changing world, in a world that has been changed by the march of science and invention to a degree far greater than at any period in the world's history. Modern inventions like the aeroplane and the atom bomb have virtually annihilated space and distance. Relatively speaking,

the world has shrunk, and old geographical barriers have almost ceased to exist. We have reached the stage where economic circumstances and the needs of mankind demand one world. And it seems to me that some such idea was present in the minds of the two great statesmen who, less than a decade ago, sat on that warship's deck in the Atlantic Ocean and set down their articles of faith in what came to be known as the Atlantic Charter. One of the principles of that Charter was that all nations, great or small, victorious or vanquished, should have access to the raw materials and the trade that are necessary for their economic advancement. The tragedy of it all is that a world that should be one is split asunder by rival and seemingly irreconcilable ideologies.

" In the United Nations we see an honest attempt to establish a better world order, but its progress has been slow and halting, partly owing to the use or misuse of the veto and partly—let us be frank enough to confess—owing to the unwillingness, or at any rate the reluctance, of member nations to put principles into practice where their own vital interests are not seriously involved. A welcome change, however, has come over the scene in regard to Korea, where several of the member nations, including New Zealand, have demonstrated that they are prepared to take up arms and make sacrifices in defence of a principle. That, I believe, has given the United Nations a new lease of life.

" Now, you might say, ' What has all this got to do with the Legal Conference ? ' Just this—that the times call aloud for clear thinking and plain speaking. Too many people, I am afraid, are influenced by impulse. They are swayed by passion and prejudice, ignorance and emotion, rather than by reason and logic and dispassionate enlightenment. That might sound in conflict with what I have already been saying, but the point I want to make is that the very ease and speed with which news is now disseminated through the Press and the radio may not be an unmixed blessing. In the spate of information that is poured out to us daily, it is often no easy matter to sift the chaff from the oats, and it is little wonder that the common man feels bewildered, and, in a spirit of resignation, and perhaps even of despair, seems content to leave the thinking to the other fellow. I saw there is a call and a challenge to people who have read more widely and thought more deeply than the vast majority of people have been able to do, or will take the trouble to do. And who are better qualified to take up the challenge, or should be better qualified to take up the challenge, than our profession ?

Some Self-examination.

" I want to indulge in a little bit of self-examination here—I am speaking of the profession now, and not of myself as an individual. Since I have been a Member of Parliament, I have had to sit with laymen on various committees, particularly the Statutes Revision Committee, and I can tell you they are very valuable members of it. They are the people able to see the wood, where we lose ourselves amongst the individual trees. And I have the impression that we are not as close to the layman as we ought to be. Somehow or other, he treats us with a bit of reserve. We do not meet him on quite common ground, and I am tempted to think that to some extent we are responsible. We speak in cryptograms. We talk about ' the *locus in quo*,' where ' the scene of the accident ' would do quite as well. We use too many superfluous words. Some of us still talk about the residue and remainder, at or for the price or sum of so much. I remember quoting that particular example to one of my partners years ago. If you walked into a shop and the assistant said, ' I will sell you this article for the price or sum of so much,' you would look at him and say : ' There is a special institution for men like you.' I am afraid that that has engendered in the mind of the layman a certain distrust of the law. I do not mean that we as lawyers are distrusted. I think we stand high in public esteem, higher than another profession that I could name. Nevertheless, though we have not encouraged the layman in thinking, we have not discouraged him from thinking, that there is something recondite and mysterious about the law, and that none but the initiated few should dare to penetrate its hidden recesses. I am quite mindful of the modern maxim that " The man who is his own lawyer has a fool for a client," but I think that we should do more than we have done to assure the layman that, although the application and the interpretation of the law are best left to those who are trained in it, nevertheless the law is nothing more or less than applied common sense.

" That is just my own idea, and perhaps my fellow-practitioners here may not think there is much to it. If so, I will just say, as I say to my wife sometimes when she disagrees with me : ' Very well, my dear, those are my opinions, and, if you do not like them, they can be changed.'

The Profession's Duty in Difficult Times.

" To get back to my theme, the point that I wanted to make is that I believe that the profession is able to demonstrate, and is qualified by its very training to demonstrate, that it has a contribution to make towards the vital problem of guiding the community in the difficult times that beset us. I am not thinking of local affairs. I am thinking of world affairs. While the United Nations strives to acquire the position of authority that its founders marked out for it, I believe that much progress towards ridding the world of the scourge of war could be accomplished by voluntary arbitration, if only the nations would resort to it. In the settlement of the famous Alabama and Florida claims after the American Civil War, the world, I think, received its most striking example of international arbitration. I am pleased to see that Great Britain at least is endeavouring to have her dispute with Persia over the oil concessions referred to the International Court of Justice. I am convinced that that Court will win its spurs.

" In a more limited sphere, but in one not too far removed, the late Sir Michael Myers was working on a plan to establish a Commonwealth Court of Appeal to take the place of the Judicial Committee of His Majesty's Privy Council, which, much to his regret and mine, and, I am sure, yours, seems doomed to become a moribund institution, if it has not become such already. It seems to me that one single Court of Appeal for the whole Commonwealth, comprising Judges from the Dominions as well as from Britain, would strengthen the bonds of Empire, and perhaps through the Empire, or rather through the Commonwealth, strengthen the International Court of Justice itself, and I would welcome any ideas that this Conference or the profession may choose to express upon

it. The idea may not be a new one. I have the impression that the germ of it was mooted at a Legal Conference in Auckland away back in the early 1930's, but a lot that has happened in the last twenty years may cause us to view the project differently to-day. At any rate, if we give it some thought, that will show that we are not so unresponsive to new ideas as to be unwilling even to consider it.

THE PROFESSION'S SERVICE TO THE COMMUNITY.

" I must not conclude without a word of well-merited thanks to the legal profession for the valuable help and assistance its members have so willingly given to the Government. The Standing Committee of the Law Society works in the closest harmony with us, and from time to time tenders to the appropriate Minister or to the Statutes Revision Committee criticism and comment and advice and suggestions on Bills that are on the stocks or have actually been introduced into the House. As Attorney-General and Minister of Justice, I would like you to know that the help that comes from the profession is as welcome as it is beneficial to us as a Government in the task of law-making. I cannot speak too highly of the Law Revision Committee, on which the profession is directly represented by Sir Wilfrid Sim, K.C., Mr. R. H. Quilliam, and your own Mr. A. C. Stephens. That Committee, for the establishment of which my predecessor, the Hon. Mr. Mason, deserves every credit (and I am pleased to say he is still a member of it), has been an unqualified success. As one of its members who is present here this morning recently said to me, it probably came to its finest hour when the Limitation Act, 1950, and the Crown Proceedings Act, 1950, reached the statute-book after several years of patient work on the part of the Law Revision Committee. To the members of that Committee I tender the thanks of a grateful Government for the assistance which they are rendering to it.

" An old friend of mine, a member of the profession, has drawn my attention to the fact that the profession is as old as New Zealand itself. Our first Chief Justice Sir William Martin (I think I have told you this, perhaps, but I may as well repeat it), took up his duties away back in September, 1841, and was assisted by Mr. Justice Henry Samuel Chapman, who followed him a little over two years later. He drew my attention to the fact that the history of the administration of justice in New Zealand still remains to be written, at any rate in a connected form, and he suggested that the Law Society might take the centennial year of 1952 as a convenient point of time from which to make a survey and tell our story. He has informed me that the rules for the practice and procedure of our Supreme Court of New Zealand were drafted by Martin, Swainson, and Outhwaite—our first Chief Justice, our first Attorney-General, and our first Registrar, respectively—while they were on their way out to New Zealand to take up duty here. Over 110 years have passed, and during that time distinguished jurists and Judges have laid the foundations of law and justice in this country, but the story has not been worthily written, and I throw out the hint that perhaps some New Zealand Holdsworth, steeped in history and in law, will tell of the men by whom, and the measures by which, law and justice in this country have been so firmly established.

" I have not delivered an oration. I have not tried. Those heights are beyond my reach. I have sought to give a homely fireside chat, and, if I have done no more than stimulate your interest, I shall feel amply rewarded. I am looking forward to the privilege of listening to, and perhaps taking part in, as many of your discussions as my other engagements will allow. I wish you all a successful Conference, and I am sure, that that is what it will be. I now have pleasure in declaring the 1951 Legal Conference open."

THE CONFERENCE'S THANKS.

The President of the New Zealand Law Society, Mr. W. H. Cunningham, expressed to the Attorney-General the Conference's thanks for his address. Mr. Cunningham said :

" I was very glad indeed to have from the Attorney-General his reference to the work which is done by the Council of the New Zealand Law Society and the Standing Committee in reference to impending legislation, and I can assure him, on behalf of the Council, that that work will continue, and will be even more efficacious in the future than it has been in the past. We are on excellent terms with the Attorney-General, and, although it is arduous work, great interest is taken by the Standing Committee in helping to polish the statutes and to call attention constructively to the improvement of sections in various Acts.

" On behalf of the Conference, I would like to tender to you our grateful thanks, first of all (for I know your situation in Wellington) for finding the time to come down here and be amongst us, and again for your very eloquent and thoughtful address this morning, which, I am sure, will have the effect that you desire—that is, it will make us think, and quite a lot of good will come of thinking of the matters that you have put before us. I would ask you now by acclamation to thank Mr. Attorney for his very eloquent address."

The Attorney-General thanked the Conference for the way in which it had received his address.

THE ROLL-CALL.

Practitioners present at the Conference.

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WESTLAND DISTRICT LAW SOCIETY.

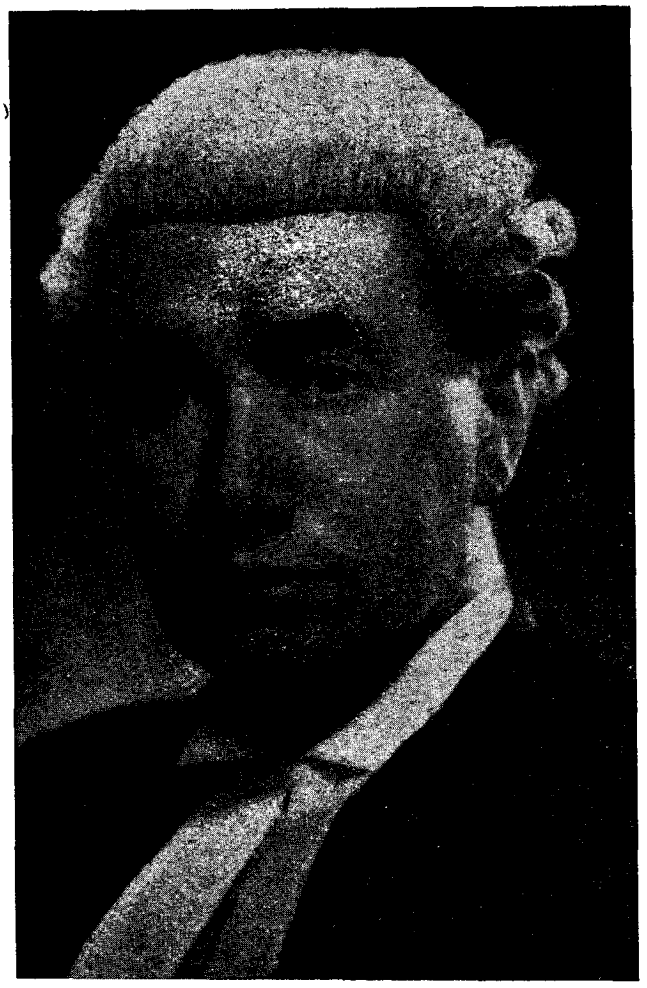
Mr.

J. K. Patterson (Reefton).

SOME REFLECTIONS UPON THE DEVELOPMENT OF THE DONOGHUE *v.* STEVENSON PRINCIPLE.

By W. E. Leicester.

ON August 26, 1928, during the early part of the evening, a Mrs. Donoghue, formerly Miss M'Alister, accompanied by a friend, entered the milk-bar of a Mr. Minchella, of Paisley, a city situate about eight miles from Glasgow and regarded, much to the annoyance of many of its residents, merely as a suburb of the larger place. The friend "shouted" Mrs. Donoghue an ice-cream and a bottle of ginger-beer. This act was the first of a number of unusual incidents that fell to be considered in 1932 by the House of Lords in *Donoghue* v. *Stevenson*, [1932] A.C. 562, a case that was to have an even more revolutionary effect in the law of torts than *Gilmour* v. *Coats*, [1949] 1 All E.R. 848 (which brought such distress to the Catholic Hierarchy), has had in the law of charitable trusts. Surprised by the suddenness of the gift to an extent that led to a temporary loss of good manners, Mrs. Donoghue, much to her subsequent discomfiture, poured her half of the ginger-beer over the ice-cream and proceeded to consume the resultant mess before her friend had had an opportunity to do likewise. A moment or two later, when that opportunity *did* arise, there appeared from the murky, opaque depths of the remaining portion of the bottle the decomposed body of a snail, very indecently interred.



John Barraud Photo.

Mr. W. E. Leicester.

In Scotland, both shell-bearing and shell-less land molluscs are known as "snails," and form part of 125 different varieties that are to be found in the British Isles. It is a reasonable assumption—at least, if ultimate events are taken into account—that this particular specimen was a "snail-slug" belonging to the well-known class *testacella*. At all events, it was not one of the species recognized by conchologists as *Paludestrina jenkinski*, which has the habit, when safely ensconced and hidden from public view, of reproducing itself profusely and parthenogenetically, without any fertilization at all.

Now, the actual financial loss from the state of affairs which I have described was clearly upon the donor of the gift. It was not on her, however, but on Mrs. Donoghue, that the blow fell. Appalled by the then contents of her stomach and the disastrous failure of her friend's investment, she quickly became ill from shock, and developed gastro-enteritis. But, by one of those coincidences which introduce into the life of legal counsel a distressing note of chance, it so happened that in April of the year before one Francis Mullen, an iron-worker of Coatbridge, claimed damages in the Sheriff Court at Glasgow for injury sustained by his children through drinking brewed ginger-beer from a bottle that contained the body of a mouse; and, in the following month, one Jeanie M'Gowan (formerly Oribine) made a similar allegation in the Sheriff Court at Greenock in respect of *her* child. Both actions were brought against the same manufacturer, Barr and Co., who used dark green bottles, which were not kept hanging on the wall, but were allowed to be recumbent in the bottling store, where mice were thus encouraged to act as rodent squatters and make the bottles their future homes. The defenders had guaranteed to members of the public by representation on their label that each bottle described as "Barr's Perfect Stone Ginger Beer" contained nothing but the very finest of ingredients. Their unchallenged evidence was that the system of cleaning and inspection employed by them was the best known in the trade, that their annual output was almost two million bottles, and that for thirty-five years they had never known of an instance of a mouse being found in a bottle. The Mullen and M'Gowan claims reached the Court of Session in March, 1929—a few months after Mrs. Donoghue's mishap—and here (Lord Hunter dissenting) the majority decided that no fault had been proved, and that, as the defenders neither knew that the bottles were dangerous nor were they dealers in articles *per se* dangerous, they owed no duty to the pursuers, who had not contracted with them. To adopt the language of this hardy race of ginger-beer drinkers, the defenders fell to be assoilzied—in other words, they were not required to pay.

Continued from cover i.

LEGAL ANNOUNCEMENTS.

MESSRS. G. S. GORDON and C. F. TREADWELL who have hitherto carried on practice as BARRISTERS AND SOLICITORS AT WANGANUI under the firm name of TREADWELL, GORDON AND TREADWELL, wish to announce that as from the 1st April, 1951, they have been joined in partnership by Mr. W. G. CLAYTON, LL.B., formerly of Dunedin. The practice will be carried on in future under the name of TREADWELL, GORDON, TREADWELL AND CLAYTON.

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With this background, it took considerable courage and pertinacity on the part of Mrs. Donoghue and her advisers to pursue any claim against the manufacturer, although she may well have taken solace in the "gang agley" aspect of the best laid schemes of mice and men. Be this as it may, she took the matter to the Outer House, winning the ear of the Lord Ordinary (Lord Moncrieff), who held that goods, if tainted in manufacture, should be classed as "dangerous goods," and that, in any event, the sale of manufactured goods which had been exposed to a risk of contamination was a wrong for which the manufacturer was liable in damages to the consumer. From this decision, the defender Stevenson reclaimed, and the appeal was heard before the Second Division of the Court of Session on November 12 and 13, 1930. On the second of these days, the majority recalled the interlocutor of the Lord Ordinary and allowed the appeal. I mention the date of the judgment and the speed with which it was given because Mrs. Donoghue's counsel must have experienced a somewhat torrid time, in view of the decision of the same Court in *Mullen* v. *Barr and Co., Ltd.* [1929] S.C. (Ct. of Sess.) 461, which was, in fact, held to be indistinguishable. If there is anything more difficult for counsel to contend with than a Judge who tells him that the point has already been decided against him by the Court, it is two or more Judges telling him the same thing, and often indignantly at the same time, although in this case Lord Hunter was again prepared to form a dissenting minority. Nevertheless, you cannot easily squash a Donoghue, especially if she happens to be born a M'Alister, and we find her gallantly riding *in forma pauperis* into the House of Lords, where she secured a narrow but decisive victory at three to two. It was no mean contest. She had enlisted the services of Mr. George Morton, K.C., of the Scottish Bar, as her counsel, and she had this much in her favour—the ginger-beer-logged mouse had emerged from the bottle in Tennessee before it had done so in Scotland, and had finished up in the New York Court of Appeals (*MacPherson* v. *Buick Motor Co.*, (1916) 217 N.Y. 382), where that eminent Judge, Mr. Justice Cardozo, had held the manufacturer to be liable. On the other hand, the defender's solicitors, Messrs. Niven, Macniven, and Co., of Glasgow, and Messrs. Macpherson and Mackay, of Edinburgh, were not to be put down easily either. They persuaded Mr. W. G. Normand, the Solicitor-General for Scotland, to come along and argue the case for their client.

With the opinions of the minority in the House of Lords (Lord Buckmaster and Lord Tomlin) I am not at present concerned. Time may show them to be right, as it appears to be doing in the case of Lord Atkin's dissenting judgment in *Liversidge* v. *Anderson*, [1942] A.C. 206; [1941] 3 All E.R. 338. It is the majority (Lord Atkin, Lord Thankerton, and Lord Macmillan) who have opened up new vistas in this legal terrain. The headnote in *Donoghue's* case, [1932] A.C. 562, is as follows:

> By Scots and English law alike the manufacturer of an article of food, medicine or the like, sold by him to a distributor in circumstances which prevent the distributor or the ultimate purchaser or consumer from discovering by inspection any defect, is under a legal duty to the ultimate purchaser or consumer to take reasonable care that the article is free from defect likely to cause injury to health.

Of the sixty-one pages of the report, no fewer than forty-five constitute the opinions of the majority, which extend considerably beyond the précis, excellent though it is, which forms the headnote. The proposition contained in it is one which Lord Atkin ventures to say no one in Scotland or England who is not a lawyer will for one moment doubt, and he thinks it an advantage to make it clear that the law in this matter, as in most others, is in accordance with sound common sense. He says ([1932] A.C. 562, 582):

> A manufacturer puts up an article of food in a container which he knows will be opened by the actual consumer. There can be no inspection by any purchaser and no reasonable preliminary inspection by the consumer. Negligently, in the course of preparation, he allows the contents to be mixed with poison. It is said that the law of England and Scotland is that the poisoned consumer has no remedy against the negligent manufacturer. If this were the result of the authorities, I should consider the result a grave defect in the law, and so contrary to principle that I should hesitate long before following any decision to that effect which had not the authority of this House.

Who is My Neighbour?

It is, however, with *these* classic words of Lord Atkin, at p. 580, in which he formulates his doctrine of foreseeability, that I am primarily concerned:

> The rule that you are to love your neighbour becomes in law, you must not injure your neighbour; and the lawyer's question, Who is my neighbour? receives a restricted reply. You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who, then, in law is my neighbour? The answer seems to be—persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question.

In the sense in which it is used in this extract, neighbourly proximity is not mere physical proximity: the Court is unfettered in its power to grant or refuse a remedy for negligence in instances of relationships that have not previously been the subject of judicial decision. "The action on the case for negligence has no limits set upon its territory save by previous decision upon such specific relationships as have come before the Courts."

It has to be remembered, of course, that the majority founded their judgment on the legal relations resulting from the proximity between manufacturer and consumer, a relationship that was brought about by the fact that the manufacturer sent out his goods in such a dark stoppered container that no one could discover the defect until the consumer had commenced to drink the ginger-beer, since the appearance of the snail was as belated as it was obnoxious. There was no opportunity of independent examination between manufacturer and consumer, unless either wholesaler or retailer elected to remove the tops of the bottles and peer closely into their contents, a procedure that would inevitably render such contents flat, stale, and unpalatable, especially to the connoisseur of this type of beverage.

For his part, Lord Macmillan regards the control of the manufacturer as remaining effective until the article reaches the consumer and the container is opened by him, the intention being to exclude the intervention of any exterior agency. Nevertheless, he sounds a more cautious note than Lord Atkin, although he emphasizes "the breadth and elasticity of the conception of actionable negligence in our law." He says, at p. 619:

> In the daily contacts of social and business life human being are thrown into, or place themselves in, an infinite variety of relations with their fellows; and the law can refer only to the standards of the reasonable man in order to determine whether any particular relation gives rise to a duty to take care as between those who stand in that relation to each other. The grounds of action may be as various and manifold as human errancy; and the conception of legal responsibility may develop in adaptation to altering social

conditions and standards. The criterion of judgment must adjust and adapt itself to the changing circumstances of life. The categories of negligence are never closed.

He points out that the appellant has asked that her case should be treated as one of tort, and not as one of breach of contract, but he prefers to regard it as a special instance of negligence, where the law extracts a degree of diligence so stringent as practically to amount to a guarantee of safety.

Lord Atkin's Test.

On the other hand, Lord Atkin does not find it nesessary to discuss at length the cases dealing with duties where a thing is dangerous, or, in the narrower category, belongs to a class of things which are dangerous in themselves. He regards the distinction as an unnatural one, so far as it is used to serve as a logical differentiation by which to distinguish the existence or non-existence of a legal right. He agrees (at pp. 595, 596) with what was said by Lord Justice Scrutton in *Hodge and Sons* v. *Anglo-American Oil Co.*, (1922) 12 Ll.L.Rep. 183, 187 :

> Personally, I do not understand the difference between a thing dangerous in itself, as poison, and a thing not dangerous as a class, but by negligent construction dangerous as a particular thing. The latter, if anything, seems the more dangerous of the two ; it is a wolf in sheep's clothing instead of an obvious wolf.

Lord Atkin's test, establishing the general concept of reasonable foresight as the criterion of negligence, involves a finding as to who ought reasonably to have been foreseen as likely to be injured by the act or omission, and who are so closely and directly affected by the defendant's conduct that he ought to have had them in contemplation as being so affected when directing his mind to the acts or omissions which are in issue. I crave leave to cite the case of the prophetess Cassandra, in Greek mythology the daughter of Priam and Hecuba. Having had his improper advances rejected, Apollo punished her by causing her prophecies to be rendered a mockery, through the simple Olympian trick whereby those who listened to her never believed what she prophesied. Such a fate may ultimately befall the judiciary in its administration of Lord Atkin's doctrine. I am afraid that it sets the Judge a problem of prophetic omniscience, and sets it without any precedent as to the extent of the particular duty in the case that comes for trial before him. It may well be, as Lord Macmillan has observed, that the common law has not proved powerless to attach new liabilities and to create new duties where experience has proved that it is desirable ; but that would appear to be a very different thing from substituting, for some general conception of relations giving rise to a duty of care, a " good neighbour " policy, the limits of which extend, not so much to the acts or omissions of the defendant judged by the standard of the reasonable man, as to the degree of foresight which the tribunal *ex post facto* considers he should have exercised.

Applications of The Principle.

The principle of *Donoghue* v. *Stevenson*, [1932] A.C. 562, was applied by the Privy Council in *Grant* v. *Australian Knitting Mills, Ltd.*, [1936] A.C. 85, in which a doctor contracted dermatitis from underpants which he had purchased and in which free sulphite, an irritating chemical, had been allowed to remain. The appellant, after a trial before Sir George Murray, Chief Justice of South Australia, that had lasted twenty days, had been awarded £2,450 damages, but, on appeal to the High Court ((1933) 50 C.L.R. 387), the judgment was set aside by the majority. The Board was at pains to point out that the principle of *Donoghue's* case, [1932] A.C. 562, can be applied only where the defect is hidden and unknown to the consumer, although an obligation on a user of woollen underpants to search for excess sulphites every time he put them on would add a new terror to winter dressing, especially under restrictive conditions as to heat and light. It is intriguing, however, to speculate upon the possibility, had the case been more recent, of the manufacturer's obtaining some reduction under the Contributory Negligence Acts, since the plaintiff doctor knew that, as a result of tuberculosis, his skin was allergic, and he could have avoided, or greatly minimized, the danger of doing what prudent mothers of young children invariably do —namely, he could have washed out the new garments before putting them on. The correct crease in an outer garment may be a sign of social standing : in an inner one, it is altogether immaterial. Then, again, the answer may be, as Lord Wright tersely says, that it is not contemplated that they should be first washed. In the *Donoghue* case, there was clearly no opportunity of examination : in the dark stoppered bottle, the snail pursued his claustrophobic ways without fear of detection. The more difficult question of " probability of examination " was one with which their Lordships were not concerned. But in *Grant's* case, [1936] A.C. 85, four years later, their judgment has seemingly been read as meaning that the defect was not discoverable by such a reasonable examination as ought, in the circumstances, to have been anticipated. Upon this interpretation, it is difficult to uphold the judgment in *Dransfield* v. *British Insulated Cables, Ltd.*, [1937] 4 All E.R. 382, in which it was held that the widow of a workman who had been killed when using a " bull-ring " which had been negligently manufactured by the defendants could not recover against them because there had been an opportunity to examine the ring immediately, and this was sufficient to defeat the rule in *Donoghue's* case. The defendants had not tested the ring before they delivered it to the Bournemouth Corporation (by whom the deceased was employed on overhead trolley-wires), because they had never known of a case of a bull-ring's breaking. The Corporation did not test after purchase, as they relied upon the skill of the defenders, whom they recognized as the best makers of overhead apparatus in the world. Yet, as the Corporation had a machine with which it could have been tested, the manufacturers who were negligent in their particular product were held not liable, simply because the intermediate purchasers had the opportunity of making an examination which the manufacturers themselves, in the belief that their goods were perfect, had deemed to be unnecessary.

It is not difficult, of course, to support the application of the doctrine of foreseeability in circumstances, for example, where a Water Board takes no steps to warn domestic consumers that the water, if passed through lead pipes, is liable to be dangerous to health : *Barnes* v. *Irwell Valley Water Board*, [1938] 2 All E.R. 650 ; where a motor-cyclist, having offered to lead another motor-cyclist along a road with which he alone was familiar, carelessly drives into a ditch, luring his follower to a similar fate and injuring the follower's pillion-rider : *Sharp* v. *Avery and Kerwood*, [1938] 4 All E.R. 85 ; where a freshly-repaired motor-cycle parts suddenly with its bracketed mate, the side-car : *Malfroot* v.

Noxal, Ltd., (1935) 51 T.L.R. 551; or where the newly-assembled flange of the wheel of a motor-lorry, as the lorry is being driven along the road, bowls along on its own, mounts the pavement, and injures a pedestrian: *Stennett* v. *Hancock and Peters*, [1939] 2 All E.R. 578. In the main, cases of this sort simply illustrate the duty of care owed by a repairer where no intermediate examination can reasonably be expected between the completion of the repairs and the use of the article.

In *Ball* v. *London County Council*, [1948] 2 All E.R. 917, the defendants gratuitously installed a new boiler in a dwellinghouse which, as landlords, they had previously let to the plaintiff's mother. The boiler had no safety valve, and, when the plaintiff lit a fire in it at a time when the pipes were frozen, it exploded, and seriously injured her. Mr. Justice Stable held that the defendants had been negligent in installing a boiler without a safety valve, and that they were liable for this negligence even though the installation had been done gratuitously; but the Court of Appeal considered that the defendants, whether acting gratuitously or not, owed the plaintiff no duty of care in the circumstances. In a comment upon this judgment ((1949) *65 Law Quarterly Review*, 518, 521), Professor A. L. Goodhart contends that the fact that a steam boiler has not previously been found to be a dangerous thing is not a strong argument for refusing to recognize at the present time that, if it is not properly fitted or constructed, it may explode. He observes, at p. 521:

> If we may say so with all respect, a category of dangerous things which includes a naked sword but omits a steam boiler is more consonant with the gracious days of the sedan chair when gentlemen fought duels and the only steam generated was in a lady's tea kettle than it is with the machine society of modern times.

The principle of *Donoghue* v. *Stevenson*, [1932] A.C. 562, he adds, had been applied to woollen underwear, which is certainly less dangerous than a steam boiler; and it is not limited to manufacturers, but applies to repairers, assemblers, and distributors. Those of you who practise in the divorce jurisdiction will note that the adjective which the learned Professor applies to woollen underwear is "dangerous," not "costly." At all events, he has no hesitation in arriving at the view that, if a contractor who negligently installs a defective boiler ought reasonably to have foreseen that third persons might be injured by an explosion, then he ought to be liable to them if they are injured by his negligent act.

It will be a relief for manufacturers' federations and similar organizations to know that the law, once it has found in the manufacturer a legitimate quarry, has been keen to give him adequate opportunities to duck for cover. The Court has refused to hold that there was any lack of diligence or any blame upon a manufacturer where a maggot that required less than one-hundredth of an inch to effect an entry had found a breeding-place in a bar of chocolate: *Natchoff* v. *Cadbury Brothers, Ltd.*, (1938) *85 Law Journal*, 85; where a safety-glass windscreen broke suddenly and for no apparent reason, and the break might have been caused by something other than defect in manufacture: *Evans* v. *Triplex Safety Glass Co., Ltd.*, [1936] 1 All E.R. 283; and where the suppliers of explosive chemicals for school experiments did not warn the science mistress that a test should first be made: *Kubach* v. *Hollands*, [1937] 3 All E.R. 907.

The "Neighbour."

Who, we may ask, is the "neighbour" that a motor-cyclist, driving at an excessive speed, should have in contemplation as a person likely to be affected by his omission to use care? Not, says the House of Lords, a pregnant fishwife, who did not see the impact of the motor-cycle with a motor-car, but who overheard the crash, and sustained nervous shock: *Bourhill* v. *Young*, [1943] A.C. 92; [1942] 2 All E.R. 396. Should the manageress of a tea-room, granting permission to children at a church picnic to crowd into the narrow passage of the room, have anticipated that several would be injured when a large urn of scalding tea was being carried past them? Again, the House of Lords thinks not, and on this occasion seems to apply the more mythical standard of a reasonable woman: *Glasgow Corporation* v. *Muir*, [1943] A.C. 448; [1943] 2 All E.R. 44. In both these instances, it is held that the doctrine of foreseeability has no application. Let us see then how the doctrine fares in the tragic case of the *Thetis*: *Woods* v. *Duncan*, *Duncan* v. *Hambrook*, *Duncan* v. *Cammell Laird and Co., Ltd.*, [1946] A.C. 401; [1946] 1 All E.R. 420. Here, a firm of ship-builders were building a submarine for the Admiralty, and they employed subcontractors who blocked the test-cock of a torpedo tube with bitumastic paint, so that water would not pass from it, with the result that, during diving trials, the ill-fated vessel sank, and, of the 103 men aboard, only four survived. In an action by the widows of two of the men, Viscount Simon finds that the failure of the builders (Cammell Laird and Co., Ltd.) was the "cause" of the injury in the proper sense of that term, but that they could not reasonably have had in contemplation that those on board during the trial dive would be put in mortal peril if the test-cock was blocked. Lord Russell, in his speech, asks whether, assuming the builders to have been negligent and that negligence to have caused the accident, they could reasonably be expected to foresee that the blockage would cause the events which happened. In his opinion, no such foresight could have been expected of them. Lord Porter considered that the action against Cammell Laird and Co., Ltd., failed, because they had not been guilty of any negligence towards the deceased men, and an examination of his judgment shows that he reached this conclusion because he considered that neither builders nor painters could have anticipated that the blocking of the test-cock would be an element of danger to anyone on the ship. Thus, each of their Lordships differed materially as to the point in law at which the case for the plaintiffs broke down. Each took a distinctly different legal ground for defeating the claims. One held that there was a duty of care towards the plaintiffs and that there was negligence, but that this negligence did not cause the loss. Another held that there was a duty of care, and that the defendant's conduct was indeed the cause of the loss, but that the defendant was not negligent. And the third held that, though there might have been negligence, and though in law that negligence might have caused the loss, still the plaintiffs could not succeed, since the defendant owed them no duty of care.

What Lord Atkin failed to foresee was the varying concepts of duty which his judicial "neighbours" have since thought that they owed to him. His general proposition was almost immediately declared (by Lord Justice Scrutton in *Farr* v. *Butters Brothers and Co.*, [1932] 2 K.B. 606) to be wider than necessary, and to

need qualification. He considered that a " new view " was involved in the decision. Lord Atkin himself, in a later case, supplies the qualification, when he says :

> every person . . . is under a common law obligation to some persons in some circumstances to conduct himself with reasonable care so as not to injure those persons likely to be affected by his want of care.

One group of cases proceeds upon the assumption that the principle, being wider than necessary for the decision, is merely *obiter*. In another group, of which *Otto* v. *Bolton and Norris*, [1936] 2 K.B. 46 ; [1936] 1 All E.R. 960, is an illustration, the principle is rejected as a universal rule of law, and is limited to chattels. In *Otto's* case, a nervous woman purchaser was assured that the house was new and reached modern perfection in building. It did, too, until the ceiling collapsed and fell on her. Mr. Justice Atkinson, however, finds nothing whatever to indicate that the law relating to the building and sale of houses is the same as that relating to the manufacture and sale of chattels. It has since been held that *Donoghue's* case has no application to a landlord who lets a house in such a dangerous state that an accident occurs to the tenant's customers or guests. This line of cases is in conflict with the decisions relating to side-cars, flanges of lorry wheels, and the like, which are plainly chattels. Mr. Justice Wrottesley considers that the doctrine should be confined to cases in which the negligence of which complaint is made results in danger to life, limb, or health. In *Barnett* v. *H. and J. Packer and Co., Ltd.*, [1940] 3 All E.R. 575, a confectioner scooping his hands in a box of milky drops impaled his finger on a piece of wire inside one of the sweets. Mr. Justice Singleton held that it was his duty to see, as far as he could, that the *Donoghue* v. *Stevenson* doctrine was not extended one inch beyond the length to which that case had gone. This view incurred the wrath of the *Law Quarterly Review* ((1940) *56 Law Quarterly Review*, 436), which apparently disliked seeing the opinions of so eminent a jurist as Lord Atkin measured by the " one-inch standard." Lord Justice Scott, in *Haseldine* v. *C. A. Daw and Son, Ltd.*, [1941] 2 K.B. 343, 362 ; [1941] 3 All E.R. 156, 174, accuses Professor Stallybrass in his *Salmond on Torts*, 9th Ed., of unfairly criticizing Lord Atkin's exposition of principle. The learned Professor, in the last edition, embarks upon the process of vindication. In practice, it is frequently difficult to choose between the determination of the existence of a duty and the determination of its violation. The former is for the Judge, the latter for the jury. To apply the criterion of Lord Atkin, there must obviously be a creative choice by the Judge : yet as recently as 1946 Lord Justice du Parcq, in *Deyong* v. *Shenburn*, [1946] K.B. 227 ; [1946] 1 All E.R. 226, observes that one has first to find a breach of some duty which the law recognizes, and, in order to see what the law recognizes, one can only look at the decisions of the Courts. Lord Atkin does not hold this view at all. The particular cases found in the books are, he considers, merely instances of the general conception of relations giving rise to a duty of care. I am indebted to the editor of the NEW ZEALAND LAW JOURNAL for a reference to *Candler* v. *Crane Christmas and Co.*, [1951] 1 All E.R. 426, in which the Court of Appeal in England, in a majority decision given on January 26, 1951, declined to apply the principle of *Donoghue* v. *Stevenson*, [1932] A.C. 562, to a case of negligent misstatements in accounts prepared by a firm of auditors. Lord Justice Asquith questions the assumption that the two Law Lords who agreed with the result arrived at by Lord Atkin necessarily accepted the broad formula about one's duty to one's neighbour. Lord Thankerton's judgment, he contends, does not travel outside the narrow ambit of a consideration of the authorities in their application to a manufacturer's liability, to chattels, and to physical injury, while what Lord Macmillan envisaged was ([1951] 1 All E.R. 426, 441) :

> the addition of another slab to the existing edifice, not a systematic reconstruction of the edifice on a single logical plan.

Apart altogether from these differences of interpretation of Lord Atkin's famous judgment, the problem which it poses involves us in a world of undefined boundaries, in which it is by no means easy to discover who is a neighbour within his criterion. Decision upon cases inside the area may well depend upon judicial background or outlook, or even upon the ruthless persistence of worldly or unworldly counsel.

NEW ZEALAND AND AUSTRALIAN CASES.

In New Zealand, *Donoghue's* case has had a rather chequered career. It was distinguished in *Maindonald* v. *Marlborough Aero Club and New Zealand Airways, Ltd.*, [1935] N.Z.L.R. 371, upon the ground that a defective cotter pin in an aeroplane is discoverable on reasonable inspection. In *Grant* v. *Cooper, McDougall, and Robertson, Ltd.*, [1940] N.Z.L.R. 947, the Court rejects the suggestion that a practical farmer, however skilful as such, can learn of the potential danger of poisonous sheep-dip merely by seeing the container opened and the contents poured into the dipping-bath. Where a nineteen-year-old farm-labourer, taking refuge from the rain in a disused house on the farm, finds a small tin containing live detonators, and proceeds to clean out one of them with a needle, in order to use it as a top for his pencil, it is difficult to see why his farmer employer should have foreseen so remote a possibility and should have included this nitwit rustic within the range of persons to whom, in the circumstances, a duty was owed. To the extent that it so holds, it is submitted, with respect, that the decision in *Marcroft* v. *Inger*, [1936] N.Z.L.R. 121, is open to doubt.

The High Court of Australia has declined to apply the principle to the case of nervous shock sustained by a mother whose seven-year-old son was found drowned in a deep trench excavated by a municipal council, upon the ground that the injury to her was not within the reasonable anticipation of the defendant : *Chester* v. *Waverley Corporation*, (1939) 62 C.L.R. 1. The Court of Appeal in England has refused to decide that the proprietor of a zoological garden near London should have foreseen that his Arabian camel would have been ungrateful enough to eat, not only the plaintiff's apple, but his hand as well : *Mc Quaker* v. *Goddard*, [1940] 1 K.B. 687 ; [1940] 1 All E.R. 471. In startling contrast, the Court in Canada has held that the Governors of the University of Alberta, upon Lord Atkin's test, are under a duty to take reasonable care to protect freshmen from injuries at initiation ceremonies : *Pawlett* v. *Alberta University*, (1934) 2 W.W.R. 209. On the other hand, in America, (1938) *52 Harvard Law Review*, 844, has a comment to the effect that :

> In cautious retreat, Courts have hesitated to apply the test of foreseeability of risk, and have adopted arbitrary rules limiting recovery to certain factual situations.

On the assumption that the comparison which these cases afford shows the doctrine of foreseeability to be both inconsistent and illogical in its application, the

question still to be answered is whether we have the right to expect that English law should be developed on principles of mere consistency and logic. In the House of Lords, in *Read* v. *J. Lyons and Co., Ltd.*, [1947] A.C. 156; [1946] 2 All E.R. 471, Lord Macmillan expresses his opinion in no uncertain terms that we have not. He does not say whether he agrees with Emerson's dictum that a "foolish consistency is the hobgoblin of little minds, adored by little statesmen and philosophers and divines." What he does say is (p. 175; 478):

> Your Lordships' task in this House is to decide particular cases between litigants and your Lordships are not called upon to rationalize the law of England. That attractive if perilous field may well be left to other hands to cultivate. It has been necessary in the present instance to examine certain general principles advanced on behalf of the appellant because it was said that consistency requires that these principles should be applied to the case in hand. Arguments based on legal consistency are apt to mislead for the common law is a practical code adapted to deal with the manifold diversities of human life and as a great American Judge has reminded us "the life of the law has not been logic; it has been experience."

For my own part, in this paper which I am about to conclude I lay no claim either to consistency or to profundity. There is nothing novel, nothing that has not been said more concisely and accurately by many text-book writers and by many more lecturers. The incident which gave rise to it has been described by Lord Macmillan as of a trivial character. So it is; but upon such trivia much of our case-law, with its ever-changing facets, has been constructed. Great oaks from little acorns grow. The pertinacious pursuer of Paisley has a defined place in legal history. She is a symbol of the law, of the constant procession throughout the years of humble people who have taxed the ingenuity of Judges and counsel with the multiplicity of their problems, and have found in the Courts sympathy, understanding, and the unfailing desire to find some solution to their troubles. At the meeting-place of two rival principles of law, each of which has contended for supremacy—the one, that none other than a party to a contract can complain of its breach, and the other, that negligence apart from contract gives a right of action to the party injured by that negligence—the little man has emerged triumphant. This is justice as he understands it, and as he thinks it ought to be. Mrs. Donoghue and her snail or, if you prefer it, Mr. Stevenson and his bottle, illuminate not only one of the many duty situations which the common law has recognized, but also the never-ending fascination of the practice of our profession. When we see reflected in the judgments of *Donoghue* v. *Stevenson* the expression of some of the keenest intellects of our times, we cannot be other than impressed by the workings of our system of justice, or be other than conscious of the necessity of preserving it intact from the pressure of small groups who, desirous of taking the settlement of disputes into their own hands, would inevitably tend to destroy it, and, with it, much that is important and precious to our democratic way of life.

The President then said: "I think the first duty we owe is to carry a very hearty vote of thanks indeed to Mr. Leicester for his very excellent paper. The paper is open for discussion, and at the end of the discussion I will ask Mr. Leicester to deal with the comments."

MR. C. A. L. TREADWELL (Wellington): "We are always delighted to hear anything that Mr. Leicester may deign to give us. It is always wise. It is always happy, and it is always delightful, and to-day he has solved a problem which has been worrying me for a very long time.

"I think that it must have been about 1930 that I had a proposition before me. The Court must just have given a decision, and the other learned counsel had seen the copy and I had not. These were the facts, and Mr. Leicester has provided the answer to-day in a way which never occurred to me before. I had a client and his wife, a young married couple. They had gone into a beer shop and bought two bottles of stout. Now, what a young married couple wanted with two bottles of stout is perhaps not a matter that you need concern yourself about very much.

"Some of you apparently know the answer. I, however, was not concerned with that aspect of the matter, because of the dreadful tale that was related to me about it. These two young married people went home and solemnly opened the two bottles of stout, and they consumed one. Having consumed the one with obvious satisfaction, they then started to consume the second; and the husband, being a perfect gentleman, as husbands inevitably are, poured the first glass for his wife, and she started to drink it when she noticed that there seemed to be something other than stout in the bottle. She stood back and emptied it out, and a very deceased mouse dropped out.

"Now, the lady, with her husband, very wisely consulted me the next morning. What surprised me about the matter was this. Perhaps I had read *Donoghue* v. *Stevenson*. At any rate, I wrote to the firm of stout-makers at once in great indignation about the shock, the terrible shock, that the wife had suffered by tipping this mouse out of her stout, and the husband by the shock that had occurred to his wife. The shock of drinking the second bottle of stout never occurred to my innocent mind at all, so I claimed damages, and I assessed them at once. And, to my horror, I got a cheque for that amount the next day. They knew more, apparently, about the effect of stout than I did.

"But, passing from that aspect of the matter—and I know how reasonable I was in my demand—I am always interested in what Mr. Leicester tells me. Some of the development that he anticipates will come true, as you will see, and perhaps *Donoghue* v. *Stevenson* may later become somewhat big. At any rate, with the experience I had and the moderation of my original demand (I know now how moderate it was), I feel we owe a debt of gratitude to Mr. Leicester for his delightful talk."

An Appreciated Gesture.—On the day on which the visiting ladies arrived in Dunedin, they were charmed to find in their rooms, wherever they were staying, a vase of flowers. An attached card conveyed to them individually a welcome to Dunedin from the Conference Ladies' Committee. This kindly and hospitable gesture was very much appreciated, and will long be remembered by the visitors.

REMIT.

THE SALARIES OF THE JUDGES.

MR. G. M. LLOYD (Dunedin) proposed the following remit :

That in the opinion of the members of the legal profession present at this Conference the salaries of Judges of the Supreme Court should be substantially increased.

He said : " This remit has possibly been entrusted to me because I shall never be concerned with the substance of the remit, and it could not be in safer hands from that point of view.

" It is most fitting that such a remit should be sponsored by the Otago District Law Society, a well-known and conservative body of gentlemen, who are not prone to suggest higher rates of salary or rash expenditure of public money without just cause. Perhaps our Scots ancestry has something to do with out general financial outlook. Be that as it may, we feel the time has arrived to bring the salaries of our Judges into line with the salaries of executive of certain institutions and companies—for example, the manager of the Totalizator Board is to receive £3,750 per annum.

" In considering higher salaries for our Judges, the following matters require to be given full and careful consideration :

" It is essential that gentlemen of undoubted integrity and standing in the profession and in the community, lawyers of the highest calibre, be appointed to such high office. The salary must, therefore, be adequate to attract those in this outstanding category. Despite labour and other office problems, a practitioner might think twice, because of the remuneration offered, about accepting a Judgeship, assuming, of course, that he had the ability and the inclination.

" The salaries of our Judges must also be in keeping with the high qualities and the exacting duties expected of them.

" In this regard I would like to quote Francis Bacon (1561-1626), the great English philosopher, statesman, lawyer, and essayist, in his charge to Mr. Justice Hutton. It is said in *2 Encyclopaedia Britannica*, 884 :

> Bacon was a lawyer of the first order with a keen scientific insight into the bearings of isolated facts and a power of generalization which admirably fitted him for the self-imposed task, unfortunately never completed, of digesting or codifying the chaotic mass of the English law.

In his charge to Mr. Justice Hutton, Bacon described the ' lines and portraitures of a good Judge ' :

> The first is, that you should draw your learning out of your books, not out of your brain.
>
> (2) That you should mix well the freedom of your own opinion with the reverence of the opinion of your fellows.
>
> (3) That you should continue the studying of your books, and not to spend on upon the old stock.
>
> (4) That you should fear no man's face, and yet not turn stoutness into bravery.
>
> (5) That you should be truly impartial, and not so as men may see affection through fine carriage.
>
> (6) That you be a light to jurors to open their eyes, but not a guide to lead them by the noses.
>
> (7) That you affect not the opinion of pregnancy and expedition by an impatient and catching hearing of all counsellors at the bar.
>
> (8) That your speech be with gravity, as one of the sages of the law; and not talkative, nor with impertinent flying out to show learning.
>
> (9) That your hands, and the hands of your hands (I mean those about you), be clean, and uncorrupt from gifts, from meddling in titles, and from serving of turns, be they of great ones or small ones.
>
> (10) That you contain the jurisdiction of the Court within the ancient merestones, without removing the mark.
>
> (11) Lastly that your carry such a hand over your ministers and clerks, as that they may rather be in awe of you, than presume upon you.

" The contemporaries of Lord Bacon, Lord Chancellor of England, spoke in the highest praise of his eloquence, but few of his speeches have been preserved. The above words, used in his charge to Mr. Justice Hutton over three hundred and fifty years ago, have equal force to-day. We all have our own ideas of the qualities of a good Judge, but Lord Bacon has covered most of the points that you or I would wish to make at the present time. His ninth charge—' That your hands, and the hands of your hands (I mean those about you), be clean, and uncorrupt from gifts, from meddling in titles, and from serving of turns, be they of great ones or small ones '—has an important bearing on the very topic under discussion to-day. It is imperative that our Judges be free from political or any other bias. Our Judges are, and must always be, beyond reproach. It is fitting, therefore, that their salaries should at all times be adequate and commensurate with the particularly high standard of the qualities required of them.

" What salaries are being paid to Judges in the Commonwealth of Australia, our closest neighbour and a worthy member of the British Empire ? (As a matter of fact, the further away you go from New Zealand, the higher the salaries of Judges become.) In 1947, the population of the Commonwealth of Australia was 7,579,358 persons, while the number of High Court Judges there is seven. The Chief Justice receives £4,500 per annum, and each puisne Judge £4,000 per annum. Supreme Court Judges in the various States of that Commonwealth receive the following salaries :

State.	Population.	Number of Judges.	Chief Justice.	Puisne Judges.
New South Wales	3,025,319 (1948)	12	£4,000	£3,100
Victoria	2,106,315 (1948)	8	£4,000	£3,500
Queensland . .	1,106,415 (1948)	8	£3,000	£2,700
South Australia. .	632,609 (1946)	5	£3,000	£2,500
Western Australia	522,330 (1948)	4	£2,600	£2,300
Tasmania . .	274,482 (1948)	3	£2,500	£2,000
Northern Territory	10,868 (1947)	1	. .	£2,000

The position in New Zealand is as follows :

New Zealand . .	1,873,301	11	£2,500	£2,250

These figures are from *1950 Whitaker's Almanac.*

" On the basis of the above figures, our Judges should surely be in receipt of salaries more in keeping with that of the State of Queensland, or even that of New South Wales. (Incidentally, the puisne Judges in South Africa receive £2,750.) Admittedly we have more Judges per capita of population than the individual States of Australia, but our Judges comprise the personnel for our higher Court—that is, the Court of Appeal —in this country. Generally speaking, our Judges are fully occupied, and have to travel extensively to different parts of the Dominion in the exercise of their duties. A glance at the *New Zealand Official Year Book, 1947-49*, proves that the volume of work in the Supreme Court and in the Court of Appeal is increasing as the years go by. (The salaries of English Judges, of course, are approximately double those of our Judges. The Chief Registrar of the Probate Registry receives £2,200, the Director of Public Prosecutions £3,000,

and his Deputy £1,850; the Chief Metropolitan Magistrate £3,300, and other Magistrates £2,200.)

"It is interesting to record that, under the Judicature Act, 1908, the Governor, in the name and on behalf of His Majesty, appointed the Chief Justice and such other Judges as the Governor from time to time appointed. Before the year 1913, there were appointed a Chief Justice and seven other Judges, but an additional Judge was appointed in each of the years 1913, 1923, and 1948, so that to-day we have the Chief Justice and ten puisne Judges of the Supreme Court of New Zealand.

"In so far as the salaries paid to Judges are concerned, the Civil List Act, 1908, provided for a salary to the Chief Justice of £2,000 and a salary of £1,800 to each of the other Judges. These salaries were embodied in s. 3 of the Judicature Amendment Act, 1913. In 1920, the salaries of the Judges were increased, the Chief Justice receiving £2,250 and each of the other Judges £2,000: see s. 3 of the Judicature Amendment Act, 1920. By s. 19 of the Finance Act, 1946, we find the salaries increased: the Chief Justice is to receive £2,500, and each of the other Judges is to receive £2,250. These increases took effect from April 1, 1946. Another five years have elapsed, and economic considerations alone now warrant the question of Judges' salaries being favourably reviewed.

"In considering the text of this remit, I am not unmindful of the fact that our Judges are entitled to a superannuation allowance. Section 12 of the Judicature Act, 1908, as amended by s. 4 (1) of the Judicature Amendment Act, 1913, provides as follows:

> Every Judge holding office during good behaviour who resigns his office after having attained the age of sixty years, or who in the opinion of the Governor-General in Council becomes incapable of performing the duties of his office by reason of any permanent infirmity, shall be entitled to a superannuation allowance in proportion to the amount of his annual salary at the time of resigning or becoming incapable, after the following rate, that is to say:—
>
> After he has held office for not less than ten years, to an annual allowance of six twenty-fourths of such salary increased by one twenty-fourth of such salary for each complete year (if any) during which he has held office in excess of ten years, but not exceeding in any case an allowance of sixteen twenty-fourths of such salary.

The retiring age for a Judge is seventy-two years.

"Nor must the tax angle be overlooked at this juncture. The Full Court in 1925 in *Edwards* v. *Commissioner of Taxes*, [1925] G.L.R. 247, decided that a Judge's superannuation allowance is taxable as a pension, and not as earned income.

"The fact that a Judge is entitled to a superannuation allowance as above stated has a direct bearing on the salary so paid. Were it not for such an allowance, the present salary of a Judge of the Supreme Court could quite fairly be stated as being completely inadequate. But, after due consideration of all aspects of this matter, including the superannuation allowance already discussed, it is submitted with confidence that the present salaries of our Judges are inadequate. I do not propose to deal at length with such considerations as the increased cost of living, the devaluation of the pound, and the upward trend of wages generally, but these factors, well known to us all, give silent testimony in favour of the remit now under discussion.

Campbell Photo.

Mr. G. M. Lloyd.

"A search of the appropriate Acts dealing with this particular subject reveals a short and effective section which appears consistently in the Judicature Acts: I refer to s. 10 of the Judicature Act, 1908, which reads as follows:

> The salary of a Judge shall not be diminished during the continuance of his commission.

"Since 1882, these effective words have appeared in our statutes, but a diligent search has not revealed any amendment to this section. I have not been able to find any provision anywhere which prevents the carrying of this remit now before you.

"I move the remit."

Mr. C. A. L. TREADWELL (Wellington), President of the Wellington District Law Society, in seconding the remit, said:

"Mr. Lloyd was good enough to send me advice of this motion, I think because he knew that Wellington had already discussed this problem. It was not because there will be any question about the wisdom of passing this remit; it was because it is necessary that it should be seconded.

"The view I take with reference to Judges' salaries is that they should be placed, so far as monetary matters are concerned, beyond any anxiety or concern whatsoever. After all, as the Hon. the Attorney-General told us this morning, the very basis of the safety of the civilized community lies in the administration of the law, and the great administrators are, of course, the Judges, who reveal to us what the law is on any particular application. Now, the Judges themselves should never be placed in such a position that any possible anxiety may come upon them with regard to their financial position.

I personally do not pay a great deal of attention to the fact that they themselves are the recipients later of a pension. Nor do I regard the fact that we would approve of an increase of their salaries as an inducement to those barristers who earn a very large salary to make themselves applicants for such positions. In point of fact, a great many barristers who earn very large salaries do so from a particular type of legislation, which does not necessarily require a profound knowledge of the law. Whatever the position may be, it is the philosopher of law who is the man who becomes the great Judge, and he may not be the man who, in actual practice, is the recipient of a very large salary.

" The mover of the proposition has, in no uncertain measure (and as would be expected from this city), concerned himself very concisely with the realities of the position. Although Lord Bacon, that profound and wonderful philospher of his time, who spoke so strongly (as was revealed to-day) against judicial impropriety, was himself fined £40,000 for corruption, does that in any way reduce the value of his theoretical prudences ? I imagine there is no one here who will question the propriety of his wisdom and the logic of his remarks. Those days are not days which we can understand to-day, and the unfortunate Lord Chancellor of the time, when he was fined £40,000 for corruption, was, I suppose, subjected to temptations into which most of us, if we had lived in those days, would have been very apt to have fallen. The logic of his remarks is indisputable. But to-day, when one looks at the disbursements as far as the New Zealand Judges are concerned, all that Mr. Lloyd says is that they should be considerably increased. He does not say to what extent, and I think he is very wise. I do not think it would be proper for Mr. Lloyd to say that the salary should have been such-and-such, or that it should be free of tax. I do not think, either, that Mr. Lloyd would have helped us if he had concerned himself with the value of the pound. He told us what Australian Judges get. He told us what South African Judges get. One is a very soft currency, and one is a very tough currency, but the money is spent in the country at the time, and I have no doubt that the cost of living is proportionate to the softness or the hardness of the particular currency. In any event, to-day we have Judges living on salaries which we believe—and I think I speak for the whole of this Conference—are not commensurate with the great responsibilities and the exactitudes that are enforced of Judges. Here in New Zealand, for example, they are rushed from pillar to post.

" Now, Judges in New Zealand have got to know every phase of the law. In Australia, they have their equity and their other lawyers. But here they have got to know everything for a salary which, in my submission, is quite an inadequate salary, one which does not measure up to a standard that a High Court Judge should expect to receive from a grateful country. And remember, as I have said, what the Attorney-General said this morning about the position of the law in a civilized country.

" I second with great confidence Mr. Lloyd's remit which stands on the records to-day."

DISCUSSION.

Mr. H. MITCHELL (Wellington) : " I would like to raise one matter. I have no quarrel with the remit itself, but I do not think that it goes far enough, and I would suggest to this Conference that we should include the learned Magistrates in the remit as well. Everything that has been said to-day applies equally to our Magistrates. I do feel that they, in turn, are grossly underpaid, and I would suggest that this Conference is equally concerned with the Magistrates as with the Judges.

" I would move that, after the words ' the Judges of the Supreme Court,' there should be included the words ' and Stipendiary Magistrates.' "

Mr. D. R. RICHMOND (Wellington) said that he had much pleasure in seconding the amendment.

Mr. W. E. LEICESTER (Wellington) : " If I have some hesitation, it is only with a desire to be a little informative. I wonder whether we should have a discussion on this matter, because in England at the present time they are proceeding with the reading of the Pensions Bill, which deals with the pensions for Judges' widows and children. As perhaps you know, the present position is that, on the death of a Judge, his pension ends. To cite the recent case of Mr. Justice Callan, I understand that his widow received no more than a cheque for the amount of salary due up to the date of his death.

" It does seem to me that some consideration might be given to the wider issue of a pension for Judges' widows and children. With regard to children, I understand that in England they are to have a pension not exceeding in the aggregate the amount of the widow's pension. In introducing the matter into the House, the Attorney-General (Sir Hartley Shawcross) pointed out that the reason for the amendment was that a very large number of people were affected ; a secondary object was that a Judge should be able to make provision for his relatives.

" In view of the possibility of this legislation's going through in England, it occurs to me that it might be worth while to have some further consideration of the wider issue of this matter."

THE PRESIDENT, Mr. W. H. Cunningham (Wellington), said : " During the tea adjournment, we discussed the last remit and the amendment to it, and I feel that the wisest way of disposing of this matter—we know what your feelings are—would be to refer the whole matter to the New Zealand Law Society for action. If that is your wish, we do not want to vote either on the amendment or on the remit, and any further discussion might be an embarrassment both to the Judges and to the Magistrates. So, having prepared your remit, is it your wish that the whole matter be referred to the New Zealand Law Society ? "

This proposal was carried unanimously.

The Conference Weather.—Visitors from the North Island, who were listening with unwonted assiduity, and with some misgivings, to the weather forecasts during the Easter week-end, were overjoyed to find the Dunedin climate so much warmer than they had been led to believe. Every day of the Conference was bright and sunny, more like Spring than Autumn. The nights, too, were clear and moonlit. No better weather than that of Friday could have been experienced for outdoor sports. Altogether, Dunedin, in the eyes of those who were at this year's Conference, is a delightful place, in its scenery, in its setting, and in its climate.

GENERAL DISCUSSION.

Mr. G. T. BAYLEE (Dunedin): "I should like to explain first the idea behind this term 'general discussion.' I feel myself the term is not apt. It is not what we intended to convey at all when we put the matter on the agenda. I should explain that, when the agenda were being discussed by the committee of the District Law Society of Otago, they came to the conclusion that they should indulge you in highly technical and learned papers and give you a limited but very choice selection, and that the rest of the Conference would consist of social affairs; and then it was suggested that there are a number of small matters, small in themselves, that we as lawyers know are wrong; and the Chairman suggested 'an Irish Parliament,' as he called it, the idea being that there should be only one rule, that the speaker should speak for only five minutes. If you have any matter that you think should be brought to the attention of the powers that be for immediate action, then, coming as it does from the Conference, there might be a prospect of the matter's being met."

BAILIFFS' FEES.

Mr. G. T. BAYLEE (Dunedin): "I would like to mention one very small matter. If you have to put a bailiff in, all you are allowed to charge for the services of your bailiff is 4s. per day. No bailiff, self-respecting or otherwise, will work for 4s. And you have the anomaly that, in the Magistrates' Court, if the Court bailiff is put in, they charge you the sum of £1 4s. per day for his services. That is just by way of illustration for a start.

"Having got rid of the illustration, I propose to bring before you one matter of interest, I think, generally, relating to costs and covering costs. By chance I opened a copy of *The Solicitors Journal* and read an address by the President of the Law Society of England. I found that he was seeking additional powers for the Law Society, and it surprised me what powers they already had. They had the power of bringing a solicitor who undercuts before them on the grounds of professional misconduct, and they were actually asked to endorse that the Law Society should be given the power to place the onus of proof on the solicitor.

"The New Zealand Law Society should inquire from similar bodies at home and abroad as to whether at any time the decisions of this body as to what constitutes professional misconduct have ever been collated, and, if so, request that copies should be obtained and circulated to our Law Society."

THE CROWN'S STANDING-ASIDE OF JURORS.

Mr. A. G. NEILL, K.C. (Dunedin): "There is one matter on which I would like to have your opinion, and that is the question of the Crown's right to stand by or stand aside. You will remember that, when this right was first granted, it was in the days when there were political upheavals, and it was necessary for the Crown to stand by some of these prejudiced gentlemen. That no longer exists, and I submit to you that that right is now anomalous. The Crown should not have the scales loaded so heavily in its favour. The Crown has the same rights of challenge as the accused. Surely that is sufficient for the Crown. You may not experience it in the north, but we have had occasions here where as many as twenty-nine jurors have been stood aside. What chance has the accused got?

"Looking at the matter from a serious point of view, I think it is a matter whih should now be revised. It appears to me that its existence is no longer required. The Police have many ways of finding out the views of jurors when they are preparing a jury list. I understand that, when the jury is summoned, the Police find out about the juror from his wife, and also the Detectives and the other Police officers engaged already have special knowledge of the previous history of the gentlemen of the jury, which I have no doubt is passed on to the Crown Prosecutor. If you see his list, there are all sorts of hieroglyphics there.

"I feel, as I have said before, that the road of the accused is already a hard one, and I think we should have this anomaly removed; and, if there are any steps that we can take, I would move in that direction.

"There is another, and a worse, anomaly, and that is that, when in a case you follow the Crown Prosecutor, when he appears for the plaintiff, he at least is consistent in his challenges."

Mr. W. H. CUNNINGHAM (Wellington): "Just a word in defence on behalf of the Crown Prosecutor. When the array is opened at a criminal session in Wellington, we have a week without civil Courts; but, if you have got a new array on Monday morning and there are several accident claims by workmen in the civil Court, it is surprising the interest that the counsel take in your standing aside a carpenter or waterside worker. All these standing asides of the Crown are not necessarily in the interests of the Crown itself."

STAMP DUTIES DEPARTMENT'S DELAYS.

Mr. A. J. MAZENGARB (Wellington): "I have been asked to raise a matter which has been raised before, the question of the inordinate delays in the Stamp Duties Department. The matter was raised by the Society quite recently, and a reply was given by the Minister in charge, stating that more staff had been engaged in the Stamp Duties Department and that there were no delays.

"I have knowledge of one estate in which practically the only estate was the sum of some hundreds of pounds in the Post Office Savings Bank; and, when complaint was made after a period of weeks that the probate was not released, some requisitions were made by the Stamp Duties Department, and among the requisitions was one: 'What happened regarding the proceeds of the sale of a property some years before?' Two other requisitions came under my notice, and one of them was this: 'State the reason the deceased was brought to Wellington for burial.' That would have no relation to the amount of duty. The only reasons I could suggest were, first, because he was dead; second, because he would not be seen dead in Auckland.

"In one case, I saw: 'State the reason why the deceased did not leave anything to her husband.' What can that have to do with the amount of stamp duty? And the list of requisitions was startling.

" I think that it would be a good thing if the Society could ask practitioners to furnish a list of the requisitions that they consider unnecessary and oppressive, and if the list could be sent to the Minister in charge of the Department."

The " Black Cap."

Mr. P. Thomson (Stratford): " As we all know, the death penalty has been recently reintroduced, and, although the penalty has been fixed by Act of Parliament, and the decision of whether or not the accused is guilty rests with the jury, I have been assured by the Judges that the imposition of the death penalty is painful to them. Why should we continue to make it more painful by asking that they assume the black cap ? I spoke to one Judge about it, and he said it was simply a theatrical gesture.

" I was asked to say to this Conference that we should respectfully suggest to their Honours the Chief Justice and the Judges that, when they are passing the death sentence in future, the use of the black cap be discontinued.

" The use of that cap reminds me of my earlier days, when we used to watch the black hearses drawn by the black plumed horses, and I think the time is overdue for that little relic of what you might call barbarism to be dispensed with in future."

Mr. C. A. L. Treadwell (Wellington): " Two of my clients were hanged. One was in 1923 and the other was in 1931. And I can quite assure you that the scene is such you do not care whether the Judge is wearing a black cap or not. I really do not think it matters. I think it adds a little dignity and solemnness to the scene.

" One terrible experience I had, when I was Associate to a Judge. We went off to Timaru to try a man for murder. It was a frightful case. I think the gentleman who was charged with the murder chopped the other man's head off. At any rate, it was some definite act like that, and there did not seem to me to be any question about it that the fellow was going to be sentenced to death all right. I opened the Judge's bag, and I found to my horror that I had forgotten to bring the black cap; but the jury was very good and it found him guilty of manslaughter, so that saved me a great deal of anxiety."

Public Relations.

Mr. A. C. Stephens (Dunedin): " There is one point I should like to bring forward. I have been to all Conferences but one, and, as the result of this lengthy experience, I just want to know this. There seems to be a special pigeon-hole in the office of the Law Society in which resolutions of the Law Society are put. That pigeon-hole is then closed. Several times resolutions have been passed which do not seem to have produced any result.

" There was a resolution passed in Auckland at the last Conference on the matter of public relations; one remit adopted by the Conference was that a sub-committee should be appointed to investigate. If nothing has been done, perhaps I have your permission to move a very mildly worded motion."

The President said: " I have here the minutes of the Law Society meeting of June, 1949. On the matter which you mention, it was resolved that a sub-committee be appointed for the purpose of making inquiries in other parts of the British Empire and producing a report to the New Zealand Law Society. This Committee consisted of Messrs. A. T. Young, G. C. Phillips, and I. H. Macarthur. I cannot find any trace of a report. However, I will inquire into that."

Mr. Stephens: " Might I move that this Conference respectfully call the attention of the New Zealand Law Society to the remit in regard to public relations passed at the last Law Conference ? "

The motion was seconded and was carried unanimously.

Grant of Probate by Registrars.

Mr. M. J. Poole (Dannevirke): " This is more in the nature of an inquiry. In 1947, with the approval, I think, of all the Judges of the time, Parliament passed a section in the Statutes Amendment Act whereby power was to be delegated to Registrars to grant probate. In 1948, some draft Rules were drawn up and circulated to the District Law Societies. Among the Rules that were then drawn up was one which I was very pleased to see, and that was one abolishing the difference between a notice of motion and a summons by a Judge. I have no knowledge as to what fate befell those Rules, and, if any member could enlighten me, I should be very grateful."

The President said: " The Rule that you spoke about (allowing the use of just one form, a summons) and the Rules regarding probate have been drafted. They have been approved by the New Zealand Law Society, and I think they have gone back to the Rules Committee, and should be enacted very shortly." *

Death of Mortgagee after Payment.

Mr. J. G. Imlay (Invercargill): " A few weeks ago, there was in the " Practical Points " column of the New Zealand Law Journal [*Ante*, p. 32] a question as to the discharging of a mortgage which had been paid off, the mortgagee having died. The answer was, as would be expected, that there is a section in the Land Transfer Act, 1915, which deals with payments to the Public Trustee, and that action would have to be taken.

" My own firm had occasion some few months ago to deal with a similar matter, in which the second mortgage had been paid off long ago to a mortgagee who had died. We were able to prove to the satisfaction of the trustee that that mortgage had been paid off, and, by submitting those declarations both to the Public Trustee and to the District Land Registrar, we were able to get a discharge, which is not perhaps strictly in accordance with the Land Transfer Act, but was the common-sense way of dealing with the matter.

" What I wish to suggest to this Conference is that an amendment should be made to that section of the Land Transfer Act, 1915, which provides that, if a mortgagee is absent, dead, &c., and payment is made to the Public Trustee, then a provision exists there

* See Supreme Court Amendment Rules, 1951 (Serial No. 1951/75), enacted on April 3, 1951.

for the discharge ; that that section should be amended in some way to provide that on payment to the trustee, or on proof to the satisfaction of the trustee and the District Land Registrar that payment has been made, then discharge may be executed by the Public Trustee, or a certificate may be given.

" It may not be felt worth taking up, but I think that in the case of particularly small mortgages, it is a heavy imposition to have to meet the costs of obtaining a Court order to get a mortgage discharged. There may be no other assets in the estate which would make it worth while taking out letters of administration.

The Conference Broadcast.

DUNEDIN: THE NURSERY OF THE PROFESSION.

The Profession's Work for the Public.*

By THE EDITOR.

To-day, the legal profession began its Eighth Dominion Legal Conference, the second of the series to take place in your city.

These Conferences were originally designed to be held every other year ; but their regular sequence was interrupted, first by the depression of the early 1930's, and later by the war years. Consequently, while the Conference in Dunedin at Easter, 1936, was the first to be held after the depression, this year's Conference is the third since the end of the war. Again, it is Dunedin's turn.

We lawyers who practise or live in that part of New Zealand that manages to exist beyond the Waitaki River have looked forward with pleasurable anticipation to coming to this Conference in Dunedin. All of us have learnt to regard Dunedin as the nursery of our profession. And, more important still, the highest traditions of the profession of the law in New Zealand were cradled and nurtured in this city. Here, too, from the earliest days have practised some of the greatest men who have adorned the Bench and Bar of New Zealand. Their names form a galaxy of stars in our legal firmament.

I recall some who spent their years of active practice wholly in Dunedin. Mr. Justice Gillies, Mr. Justice Richmond, Sir Robert Stout, C.J., the two Chapmans, father and son, Sir John Denniston, Sir John Hosking, and Sir William Sim are amongst our most venerated Judges. The greatest of them all, Sir Joshua Williams, presided over your Supreme Court throughout his distinguished judicial career, until his deep learning and high judicial quality were recognized by his being called to a permanent place in the Judicial Committee of the Privy Council, the highest Court in the British Commonwealth and Empire. Then, the late Mr. Justice MacGregor was for many years one of your leading lawyers. And I do no forget Sir James Prendergast, who was Chief Justice and one of the greatest Judges we have known. He spent his early years of practice here, and was the Otago Provincial Solicitor and Crown Prosecutor.

In the first century of the establishment of our judicial system, Dunedin gave us both a father and son as Judges, in the persons of the Chapmans, H. S. and F. R. This record stood unchallenged until recently, when, with the appointment of Mr. F. B. Adams, another son of Dunedin, that record was again equalled by Dunedin, since his father (Mr. Justice A. S. Adams), too, received his legal training and gained his wide experience in this city and Province.

* Broadcast from 4YA, Dunedin, March 28, 1951.

A son of the South, Sir Robert Kennedy, another great lawyer who first appeared in Court here, returned to you from the north as your resident Judge for nearly twenty years. Now we have Mr. Justice Hay on our Supreme Court Bench, and we remember that he was born in Lawrence, as was many another notable in our national story. And his colleague, Mr. Justice Hutchison, is a son of Dunedin itself.

This Conference, I would remind you, meets under the shadow of a great sorrow in the death of your Dunedin-born and practising lawyer, the late Mr. Justice Callan, whose high worth as a man and as a Judge was extolled by Bench and Bar when he died a few weeks ago. One recalls that he himself said of this city, during the last Dunedin Conference : " This is the scene of my schooldays, the place of my youth, of my early manhood, and my professional life—it is my ' home town ' in every sense." And, when he died, his loss was recognized as that of the people of the Dominion as a whole.

Then there are great names among those who practised law here but did not attain judicial office. I remember Sir Frederick Chapman telling me that, in his judgment—which was the fruit of a more extended experience than most men have enjoyed—Macassey of Dunedin was the greatest lawyer who has ever practised in New Zealand. The names of W. G. Hay, Woodhouse, " Darkie " Smith, John McGregor, Allan Holmes, Saul Solomon, K.C., B. C. Haggitt, Alf Hanlon, K.C., J. C. Stephens, George and J. A. Cook, J. F. M. Fraser, the Downie Stewarts (father and son), and others (like them) now no longer with us, are familiar ones, though some of those men had died before we were born.

But the legal talent which Otago gave to this country was not confined to this city. Eminent lawyers practised in your country districts, and their names were household words to their generation. Among them were Sir Alexander Herdman of Naseby, the Turtons of Queenstown, Brodrick of Cromwell, Gilkison of Clyde, and Sir John Findlay of Palmerston.

And, apart from giving to the law some of its greatest men, Dunedin has always fostered the best traditions of the legal profession. These involve integrity and straightforwardness, plain dealing between man and man, and the constant endeavour to maintain the rule of law by upholding the inherited principles of justice that are the foundations upon which our democratic institutions, and our very liberty, are built.

The pursuit of those ideals involves great moral integrity, hard and persevering work, and clarity of reason-

ing and expression. In all those attributes, your Dunedin men of the past were an example to all who have followed them in their profession everywhere in New Zealand. And may I add, with respect, and with conviction, that the lessons handed down to us by those great men of the past have been well learnt by the present generation of lawyers practising in your midst. I hope they will not mind my saying that; but we from afar all recognize that they are well worthy of their great traditions.

Those of us who, like myself, were fortunate enough to have been present at the Legal Conference held in Dunedin in 1936 have not forgotten experiencing another appreciated tradition of the people of this part of New Zealand. I refer to your really marvellous sense of hospitality and of friendliness, which is a joy to all your guests. While we look forward—I confess with some slight trepidation—to being the willing subjects on which your Law Society will exercise Dunedin hospitality this week, our happy memories of Easter, 1936, in Dunedin, are among our most cherished possessions.

* * * *

Now, when you heard of the combined forces of the legal profession meeting in Conference, you probably (and understandably enough) thought that there would be something of self-interest in such a gathering of lawyers. It may have appeared to you that the object of our profession in its combined capacity would be the conservation of its own particular interest, or the promotion of the interests of its individual members. But nothing could be further from reality.

When the legal profession meets, as it does this week, you will find that its main objective is service to the public as a whole. Whatever else may be the effect of a Legal Conference such as that which began to-day, it will be clear in every hour of its formal meetings that the public will be the beneficiary of its deliberations.

Let me explain this to you. The Conference was opened this morning by the Hon. the Attorney-General (Mr. Clifton Webb), who, by virtue of this office, is the titular leader of the legal profession in this country. Then follows, each day, the reading of carefully compiled papers—papers prepared by men selected for their expert knowledge of their subjects. As in every one of these Dominion Legal Conferences, the sole purpose of each paper and discussion is the improvement of the law for the benefit of the people of the Dominion generally.

The subject of the first of these papers is " A Suitable Second Chamber for the New Zealand Parliament." Constitutional Law thus has its place; and the reading of this and of all other papers is followed immediately by discussion and helpful criticism by the lawyers who are best fitted to discuss them.

The general law of evidence affects many people, sometimes in Court, and sometimes in everyday life out of Court. A paper will be read on suggested reforms in this branch of law. Another paper will deal with some aspects of the general law of negligence, and recent developments of the common law affecting it. And both papers will attract a great amount of comment and many helpful suggestions.

There will, too, be a general discussion on the question of the inadequate salaries which, for so many years, have been paid to our Supreme Court Judges. These salaries, as every thinking man will agree, are very shabby indeed; and, in the public interest, they should be substantially increased. I remember that a great English Judge once observed that at the Bar you have a dog's life for a gentleman's remuneration, but on the Bench you lead a gentleman's life for a dog's remuneration. Whether or not that is now so, I do not think I could quote over the air what he could have said of the much lower salaries paid to New Zealand Judges who so ably and so laboriously serve the community. But the fact remains that our Judges' work has no limitation of a forty-hours week for their minimum rate of pay: and they have no chance of receiving overtime for their long hours of unremitting toil outside Court hours.

There is nothing self-seeking in any of these papers and discussions. They serve the public as a whole, by striving to bring the law up to date to meet the needs of the public in these changing times. And, I can assure you, these are the only subjects which the Conference will discuss.

Finally, the Conference will be treated to a paper by one of its distinguished soldier members, Major-General L. M. Inglis, C.B., C.B.E., D.S.O., M.C., who since the war has been, until recently, the Chief Judge of the Occupation Courts in Germany. He will tell us something about the law as administered by those tribunals.

As for the rest of our time in Dunedin, well, I think we shall follow high authority and " use hospitality one to another without grudging." But good fellowship was a characteristic of lawyers as long ago as Shakespeare's day; for, you will remember, he spoke of what " adversaries do in law: strive mightily, but eat and drink as friends."

* * * *

From what I have said, you may now have come to realize that the legal profession in this country is deeply conscious of its duty to the community. One way of fulfilling this duty is to help the State. It does this year in and year out, through the medium of the New Zealand Law Society as its mouthpiece. Whatever Government may be in office, the Law Society's criticism of new legislation has always been found helpful and valuable. Moreover, the Society itself often promotes legislation serving the interests of the public.

The present Conference is, therefore, a reminder that the legal profession, as the informed juridical specialists among their fellow-men, form a constructive force, readily available, for consideration of any matters relating to the general law of the country and to the administration of justice. The very papers to be read and discussed this week are witnesses of the profession's constant endeavour to give the community disinterested and active assistance in the improvement of the law.

But, apart from all that, the Conference that began to-day serves as a valuable reminder to the profession itself of its duties to its clients, to the community it serves, and to mankind generally. The profession's duty in that regard can be summed up (briefly, though inadequately) by saying that it must observe and foster due observation of the rule of law; it must respect and administer the common law which recognizes the dignity of the human personality and safeguards the

inalienable rights of man; and it must always resist the intrusion of the State into matters not within its province. The legal profession must strive always to ensure that justice may not anywhere be frustrated or diminished in its purpose of serving as the ligament which binds civilized beings together in all the manifold and altering phases of human relations.

That is the spirit that has animated all our Dominion Legal Conferences. Those are the lessons they have taught us. And I can assure you that this Conference at Dunedin will continue to implant (and renew) in the minds of the members of the legal profession an appreciation of our duties and responsibilities in a wider sphere, so as to continue to extend our individual and corporate assistance for the benefit and happiness and security of our fellow-men. That must be the legal profession's very real contribution, through these Conferences on a national basis, to the welfare and stability of the democracy to which we are fortunate, in these times, to belong.

THE CONFERENCE BALL.

DUNEDIN hospitality was again in evidence before the Ball on the Tuesday evening. As a preliminary to that function, the visitors were entertained at the homes of Mr. and Mrs. Mark Hanan, Mr. and Mrs. G. M. Lloyd, and Mr. and Mrs. C. B. Barrowclough. In these delightful settings, the visitors spent a happy hour before going to the Ball.

The spacious Tudor Lounge of the Savoy, with its dark-panelled walls and softly-shaded lights, with large clusters of hydrangeas and Australian red gum flowers enhancing the scene, formed a perfect setting for the Conference Ball.

The guests were received by the Conference host and hostess, Mr. and Mrs. A. J. H. Jeavons, and the President of the New Zealand Law Society, Mr. W. H. Cunningham, and Mrs. Cunningham.

The Ball was an outstanding success, and the Ball Committee received many tributes to their perfect arrangements.

Dunedin Star, photo.

The Conference Ball: The Official Party.

From left: Mr. A. G. Neill, K.C.; Mrs. W. H. Cunningham; Mr. W. H. Cunningham (President of the New Zealand Law Society); Mrs. H. E. Evans; Mrs. H. W. Bundle; Mr. A. J. H. Jeavons (President of the Otago Law Society); Mrs. T. C. Webb; Mr. H. W. Bundle; Mrs. Jeavons; the Attorney-General, Mr. Webb; the Mayoress, Mrs. Wright; the Mayor, Mr. L. M. Wright; Lady Sidey; Mrs. J. D. Willis; Mr. J. D. Willis, S.M.; and Mr. Justice Hutchison (*standing*).

Lost and Found.

THE Conference Secretaries are anxious to find the owner of some golf clubs which remained unclaimed at the end of the golf match at the St. Clair Golf Club on the Friday of the Conference week. Mr. J. K. Patterson's set was evidently taken by mistake for a set which was somewhat similar.

The descriptions of the clubs are as follows:

Mr. Patterson's clubs comprise Slazenger "Greensite," woods Nos. 2 and 3 with leather covers on heads, and irons Nos. 2 to 9, all in a leather golf bag.

The unclaimed clubs comprise woods, driver, and spoon, irons, Sportsply "Greenfinder" Nos. 2 to 9, all in a brown leather bag.

If the owner of the unclaimed clubs will write to Mr. J. P. Cook, P.O. Box 26, Dunedin, arrangements will be made for an exchange.

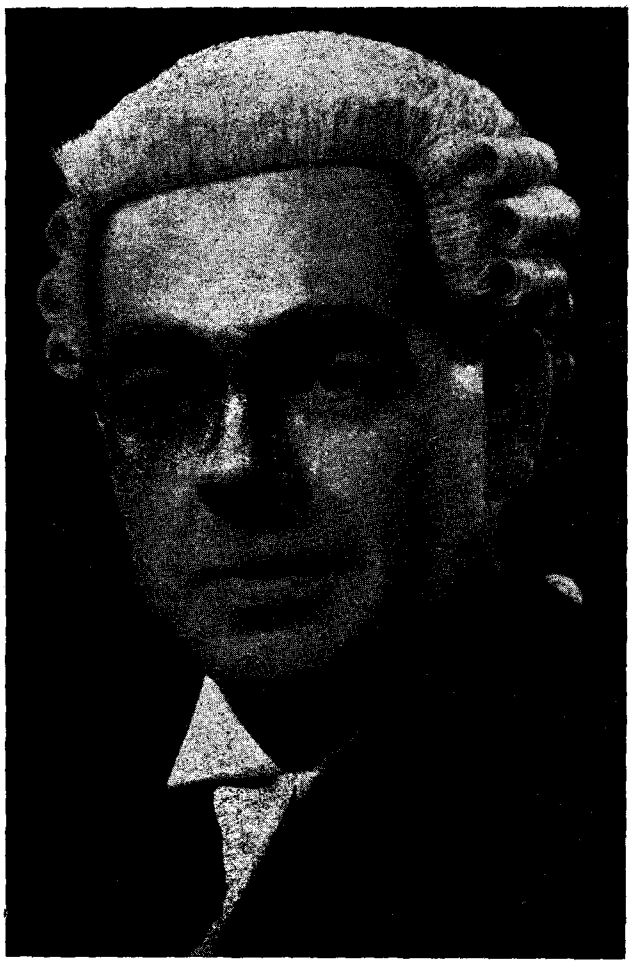
THE SECOND DAY.

A SUITABLE SECOND CHAMBER FOR NEW ZEALAND.

By D. J. RIDDIFORD, M.C., M.A. (Oxon.).

THE need of and the arguments for a second Chamber appeal to lawyers as a class perhaps more strongly than to other sections of the community.

The majority of property owners, who are unenlightened by any more refined understanding of the real purpose of a second Chamber, regard it as of value only if it is capable of acting as a bulwark against the all-too-human desire of the mass of the people to despoil them. The Legislative Council had long ceased to perform this role; so they viewed its abolition with indifference. The mass of the people are for the most part oblivious to the abstract, long-term, but fundamental reasons requiring a second Chamber, and naturally see no merit in it as a check on spoliatory propensities. A lawyer, because of his training, looks at the question from a different point of view. The idea of a second Chamber appeals to his conviction that justice cannot be assured unless there is an impartial tribunal independent of both parties to an action, and unless there is a right of appeal. The word equity suggests the picture of scales held by a goddess, who weighs the evidence presented by the parties, and carries a sword to smite down an over-enthusiastic plaintiff or defendant who tampers with the celestial weighing-machine. But if the goddess herself were a party to a cause the scales would certainly have to be held by some other deity. It would have to be a male god, for she would never submit to the judgment of a female one, and, as Paris's unfortunate experiences show, a mere mortal would not be able to protect himself against the vengeance of an unsuccessful party.



John Barraud Photo.

Mr. D. J. Riddiford.

The history of our Courts, going back for hundreds of years, shows that, for justice to prevail, not only must the judiciary be independent, but there must also be a right of appeal; human failings affect even Judges, and the only corrective is the right of appeal. For Parliament to consist of one Chamber, with the unlimited powers of Parliament to-day, is to violate both the principle of the impartiality of the tribunal and that of the necessity for a right of appeal.

This is similar to what may be called the classical argument for a second Chamber—as stated, for instance, by J. A. R. Marriott in his book *Second Chambers*—that it is necessary to curb the despotic tendencies of a single unchecked assembly, and the argument is fundamentally correct, granted the truth of the text-book doctrine of the absolute supremacy of Parliament. But in New Zealand to-day a high-spirited and vocal electorate constitutes a very real practical check on the despotic tendencies of Parliament; no Government dare run counter to a strongly held opinion of the people. This check, which is more of a reality in New Zealand than in most countries, is not, however, by itself sufficient. Electors in the mass are sometimes wayward and capricious, but, even if one believes that the voice of the people is indeed the voice of God, they have neither the time nor the opportunities of knowledge to be able to scrutinize every detail of government. Often, as experience has shown, small things which pass unnoticed at the time have had the most disastrous effects on a nation. An independent council of vigilant and experienced men is necessary to see that none of those subtle harmonies which constitute so much of the happiness and well-being of a nation are interfered with. Such a council is necessary to warn the Government and the people that mischief is afoot; it must by its constitution and the character of its members be capable of doing both. At the same time, no second Chamber which could be a rival to the House of Representatives is now likely to be accepted by any Government. Its function should be rather that of a watch-dog standing ready to warn the Government, and if necessary the people, that "There is something rotten in the State of Denmark," without being a rival to the throne.

To have the necessary prestige to be an effective body, the Council must be independent; it must be capable of standing up to the Government on really important issues; otherwise it will become like the defunct Legislative Council. At the same time, its powers must not be so extensive as to prove a serious embarrassment to the Government of the day in carrying out its first duty,

which is to govern. Apart from this essential constitutional function of tutor to the electorate on vital issues, which might otherwise pass unnoticed, the council I propose would be qualified to advise the Government on the intricate economic problems of the day. It would also be able to share the load of the colossal volume of work which has become such a strain on a modern Parliament. Thus it would be able to establish itself as an indispensable co-worker with the Government of the day, but as far as possible without party affiliations. Only by being independent of parties could it establish such a position, for, as soon as party politics dominated its deliberations, its extinction would not be far off, because it could never sustain a conflict on purely party issues with the House of Representatives.

The Legislative Council since 1852.

The Legislative Council which was created by the Constitution Act, 1852, was doomed from the outset. Nearly all the adult colonists of the day, apart from the comparatively limited progeny of missionaries, whalers, and escaped Australian convicts, were born in Great Britain, so they saw no reason for disagreement when the Imperial Parliament presented them with an Upper House modelled as far as possible on the House of Lords. But it is impossible to create a House of Lords without Lords; such can never be done unless there is an hereditary nobility respected by the community. A nobility exists in New Zealand only among the chiefs of the Maori people. A nobility is a growth of centuries or the result of conquest; a nobility cannot, except in name, be created by an Act of Parliament. In the equalitarian atmosphere which almost at once developed in New Zealand, the basis of a House of Lords evaporated. The Canadian experience of a similar type of Upper House has not been very different from our own. Appointment being in the hands of the Prime Minister, faithful party supporters alone are appointed. Disagreements with the Lower House occur only when there is a change of Government and the Prime Minister has not yet had time to appoint enough supporters to out-vote the Opposition; there is usually a time-lag, as the members of the Upper House are limited in number, but, as a rule, the Canadian Senators vote just as the Prime Minister tells them to, In New Zealand, there was not even this slight check on the Lower House, due to a limitation of numbers in the Upper House, with the result that the Legislative Council practically confined itself to detecting the flaws in the drafting of legislation.

Sir Francis Bell's Act.

A real attempt was made by the Reform Government to institute an effective Upper House. The Legislative Council Act, 1914, commonly called Sir Francis Bell's Act, only narrowly, so it would seem to the superficial observer, failed to be put into effect. The original date for it to come into operation (January 1, 1916) was postponed on account of the war. The Legislative Council Amendment Act, 1918, provided for its commencement on a date to be appointed by Proclamation. A Proclamation was gazetted on January 8, 1920, but was promptly cancelled by the Legislative Council Amendment Act, 1920, which adjourned the matter *sine die* to be brought on immediately by a further Proclamation. The further Proclamation was never issued, and the Act has now been repealed by the Legislative Council Abolition Act, 1950.

The electorates, as in Australia, were to be larger than in the Lower House, the whole of New Zealand being divided into four electorates. The eventual number of members was to be forty, and the term of office was designed to be twice as long as the term of the Lower House. The Legislative Council, with respect to Money Bills, was to have a delaying power of one month only, but it was to have a right to reject Public Bills. If both Houses disagreed, a joint sitting was to be convened, and, if the Bill was not then affirmed by a majority of those sitting, there was to be a double dissolution.

Sir Francis Bell's Act demands the respect and the attention due to an Act as lucid, as logical, and as well thought out as any produced by that masterly draftsman, Sir Francis Bell, a man with many years' experience as a Minister. With respect, I submit that the machinery is an improvement on the Commonwealth Senate. It clearly establishes the second Chamber as an independent body, but it also affirms the primacy of the Lower House. The device of the double sitting, to be followed automatically by a double dissolution if the majority in the Lower House was not sustained in the double sitting, is clear-cut and final. On the other hand, the mode of election and the rest of its constitution is too like that of the Commonwealth Senate to be likely to command support from our generation.

The Commonwealth Senate is elected from larger electorates than the Lower House and by a *scrutin de liste*, each voter having as many votes as there are places to be filled, a system which favours well-organized party machines. The term of office is for six years, while that of the House of Representatives is for three, so that it can happen that the majority in the Upper House differs from the Lower. Stability has not resulted from the swing of the pendulum being counteracted by another set going at a different time, and little more than exasperation has been experienced. In fact, only in three comparatively short periods has the Senate, as at present, had a majority of a different party from the Lower House. As the members of the Commonwealth Senate differ hardly at all in type from the House of Representatives, the disputes between the Houses are regarded as unseemly wrangles by the electorate. Far different, at least to an outside observer, are the interventions on Constitutional issues of the High Court of Australia. When it makes its pronouncement, it seems as if a voice from a different world is speaking. The Australian Senate possesses one acknowledged merit: it is the guardian of State rights, as, regardless of population, there is equal representation for all the States. In a Federal Constitution, the Senate has a clearly recognized function as the protector of State rights against the inroads of the national Government. This function may, in the end, keep the Commonwealth Senate in being, but, lacking this essential *raison d'être*, Sir Francis Bell's Act would, I think, have brought into being a second Chamber which would have failed to retain the nation's respect.

I cannot deal with all the other alternative schemes without keeping you here till the next Legal Conference. The system of indirect election by Municipal Corporations and County Councils should be mentioned, if only in passing, because it was in use in France under the Third Republic and is the present method in Sweden. In both countries it met with approval. It, however, inevitably infects local bodies with the virus of party politics, by which New Zealand local bodies are not at

present completely dominated. Whatever may be the theoretical merits of this system, as expounded at some length by Lord Bryce in *Modern Democracies*, there would seem to be little prospect of its being adopted in New Zealand. The mere fact that it has been abandoned in France under the Fourth Republic, although this was largely because the Communists feared it might frustrate a revolutionary policy, must, illogically enough, cause a slump in the idea everywhere else. In England, the idea has usually made people laugh, because few Englishmen can regard senior town councillors as an improvement on hereditary peers where national questions are concerned. However, I will leave it to the Commission at present sitting on a new form of Upper House to go into this system of indirect election.

The Corporate Chamber.

To-day, throughout the western world, except in countries such as America, where the Presidential system prevails, thought has been tending towards the establishment of a council or councils of experts possessed of the technical qualifications and independence to enable them to remedy the defects of a popularly elected Assembly. I have read L. S. Amery's *Thoughts on the Constitution*, in which he sets out what these defects are. Christopher Hollis, being younger and no doubt rasher, has written a still more recent book, which he goes so far as to call *Can Parliament Survive ?* When one reads these books, it is quite clear that many of the defects of the House of Commons also affect our House of Representatives. To-day, the calls on the time of Members of Parliament are so numerous, due to the clamant demands of democratic electorates, that they are unable to give the time and attention to the public issues which in theory they determine. This very falling-off from the old standards has occurred when never was it more necessary for Members of Parliament to be of the highest calibre ; yet few men to-day possess the monumental learning and brilliant talents of the politicians of the last century. Winston Churchill, who spent his early years surrounded by the leading Victorian politicians, is illustrious in splendid isolation among the lesser men of to-day. Sir Francis Bell in New Zealand, although he lacked Churchill's qualities as a popular orator, also lived on into an age of men far less qualified than himself to deal with public questions. In Victorian times, the annual legislation consisted of a mere handful of Bills, which were debated endlessly. The House of Commons resounded with the thunderous periods of Gladstone and was illuminated by the wit and the penetrating political wisdom of Disraeli, but the measures it debated for months would perhaps to-day not even get into an Act of Parliament, but would be covered by half a dozen Orders in Council. This spate, this torrent, this flood of legislation has also become the rule in New Zealand.

Parliament cannot cope with the tasks it is called upon to tackle ; in fact, it does not attempt to do so. Nowhere is this more apparent than in the economic field, where Parliament has to decide questions of the most far-reaching importance. Our Budget, in common with the Budgets in other countries, has swollen to a stupendous size ; banking and finance are subjected to rigid control ; international and inter-Commonwealth trade is subject to import controls, and Governments, including our own, through the bulk purchase agreements, have taken the place of private traders, with the most far-reaching repercussions. Although there has been such an extension of the Government's activities, there is no guarantee whatever that Parliament will contain men capable of handling the complex problems thereby created.

It may be of interest to give one example of the inadequacy of our present system of representation ; it is the matter of the bulk purchase agreements, covering our meat, our butter, and our cheese. The germ of the bulk purchase idea came from the fertile brain of Dr. Schacht, Hitler's Minister of Finance. In the 'thirties, bilateral trading agreements were entered into with Balkan countries, whereby those countries sold the whole of their export of a raw material to Germany, and by way of payment Germany exported manufactured goods to the countries concerned. The arrangement had much to offer the primary-producing country ; it guaranteed a market for the disposal of the whole of its produce and in return the supply of the manufactured goods it required. What only later appeared was that the manufacturing country had a bargaining position of greater strength than the primary-producing country, because, while the manufacturing country could dispose of its goods elsewhere, the primary-producing country, either then or in a short time, would have no alternative market. As a result, Germany was able to demand and get an ever-increasing price for its manufactured goods. The present bulk purchase agreements for our meat, butter, and cheese are a refinement of that scheme. The pros and cons of this controversial topic are not for this paper, but it is pertinent to ask how many Members of Parliament in New Zealand knew, or took the means to find out, when the agreements were continued after the War, where the bulk purchase idea originated and what were its implications. This throws a spotlight on the need for persons in Parliament qualified to advise on economic issues of such unprecedented magnitude.

It used to be thought that the Civil Service was capable of keeping Ministers on the right track, and the function of Ministers was merely to announce what their Departments advised. Sir William Harcourt put it cynically when he said that " the value of political heads of Departments is to tell the officials what the public will not stand." With our greater experience of the power of the large modern Civil Service—and what I am about to say applies particularly, I think, to New Zealand—we have lost confidence in its omniscience. Its faults are not those of its individual members, but are those of their environment. Loyalty to their Department tends to supplant all other loyalties, and the policy they recommend is what will preserve, and if possible expand, that Department. The larger the Civil Service, the more difficult becomes its supervision, and the more reluctant are the politicians to recognize that the Civil Service is a good servant but a bad master. According to the text-books, finance in England is under the exclusive control of the House of Commons, but, according to L. S. Amery, this idea is to-day quite erroneous. It is the Treasury which exercises the real control. In his book *Thoughts on the Constitution*, he insists that a body should be set up capable of exercising an effective control over the Treasury. I cannot help feeling that his comments would apply very nearly equally to New Zealand. The comments of Amery, a man of such rare distinction for his academic attainments, his long experience at the centre of things, his courageous independence, and his life-long friendship with Churchill, deserve our serious consideration. He writes :

The tradition under which the field of monetary policy and taxation, profoundly affecting the whole economic life of the nation, has been treated as a special Treasury preserve, with which Cabinet colleagues have not been supposed to meddle, is incompatible with that object. We cannot afford a repetition of the disastrous policy of deflation pursued after 1919 in order to screw sterling up to the old gold parity or allow the immense possibilities of our export trade in motor-cars to be paralysed by Treasury insistence that no change in the basis of motor taxation can be sanctioned which involved an immediate reduction in the revenue from that particular tax.

L. S. Amery proposes to establish an adequate direction and control of the Civil Service by means of standing committees :

for the study of policy in the main field of External Affairs, Economics, and Social Welfare, each with its own adequate research and planning staff. These staffs should not be self-contained bodies, but, like the Joint Intelligence and Planning Staffs, developed in the last war, should be manned by members of the Intelligence and Planning staffs of the several offices at what is known in Government circles as " the official level."

I agree entirely with Amery's proposal.

As it seems clear enough that only from a reformed second Chamber could enough persons be found with the qualifications and, above all, the time to form similar committees in New Zealand, the application of Amery's proposal to our Civil Service is intimately bound up with the institution of a new second Chamber. On the subject of a new second Chamber, Amery's proposals are so cogent that I make no apology for quoting him at length. He supports the idea of the occupational or functional basis of representation. On p. 65 *et seq.*, he writes as follows :

The time has come, I believe, for a new and far-reaching Reform Act which will recognize the ever-growing economic organization of the national life as a necessary basis of representation. The conception of the " corporative " or " functional " basis of representation has, indeed, already been, not only widely advocated in other countries, but to some extent tried out. The German Federal Economic Council established in 1920 would seem, for a time at least, to have enlisted the zealous co-operation of the best elements on both sides of industry and to have been regarded as a valuable co-adjutor by the Cabinet and by the Reichstag in the field both of investigation into facts and of preliminary work on social and commercial legislation, but to have fallen into the background in the economic and political confusion of subsequent years. The corporative system established by Mussolini inevitably suffered from subordination to the exigencies of totalitarian dictatorship and from its artificially devised structure. But the impression I derived from some study of its working in the immediately pre-war period was that, apart from a good deal of eyewash, it had, in fact, achieved useful results which might still merit investigation. Portugal has a Camera Corporative or Functional Assembly sitting parallel with a Chamber based on geographical representation. In France the creation of a separate functional advisory Chamber seems to be one of the few generally agreed features of the new Constitution.

This conception of functional representation has, however, its own independent history in this country. It was the recognition in the debate on the Address in February, 1919, of the need for utilizing the wealth of practical knowledge and creative suggestion embodied in our industrial organizations which led to the National Industrial Conference and to the project of a permanent National Industrial Council of four hundred members, representative in equal numbers of employers' organizations and trade unions, which was recommended in April, 1919, by a Provisional Joint Committee. That project was dropped in the general reaction against all creative reconstruction which followed the economic depression at the end of 1920. Mr. Churchill's advocacy in his 1930 Romanes lecture [was for] a House of Industry empowered, in a preparatory and advisory capacity, to deal with social and industrial problems. Such a body might embody its conclusions in resolutions or in draft Bills for consideration by the Government.

The advantage of setting up a separate " House of Industry " or " Sub-Parliament " is that the new principle of functional representation can in this way be tried, without destroying the existing geographical principle, which has its value, not only on historical grounds, but as the instrument, through the party system, of general national policy. The new Chamber would be one in which the great economic problems of the day could secure practical and responsible discussion, free from abstract party catchwords and programmes as well as from purely partisan manoeuvring for power.

Such a body would, I believe, soon attract the best elements on both sides of industry, which would be willing to find the time for practical and congenial business which they will not give to the House of Commons under present conditions. It would, in particular, give a new and valuable scope to the activities and responsibilities of the trade-union movement and of employers' associations in their own appropriate field. Linked in this way with the actual control of the laws that governed them, both employers and employed generally would tend to acquire a more national point of view ; to regard industry as a constituent element in the national life, directly contributing to, as well as dependent upon, the strength and health of the whole, and not merely as a collective phrase for a number of competing firms, on the one hand, and of workmen marshalled against them, on the other, each only concerned with immediate results in profits or wages.

In any case, the scope of the new Chamber would be definitely limited, and there could be no question of its attempting to compete with the House of Commons. The House of Commons would still remain the central and predominant element in the Parliamentary system, the point of junction between the Government and a politically organized nation, the pivot of our system of responsible government.

Amery's Scheme as applied to New Zealand.

This type of second Chamber seems to me what is required in New Zealand. Amery, be it noted, proposes that it should be a third House of Parliament in Britain, so essential does it seem to him to establish such a council of the most significant forces in the national life. Here in New Zealand, in the vacuum abhorred by nature caused by the abolition of the Legislative Council, we have an unrivalled opportunity for establishing a corporate Chamber without danger of offending established ideas by the revolutionary conception of a third House. Men's minds in other countries have for some time been working along these lines ; France, for instance, in 1946 established an Economic Council, vested by the Constitution with a right to formulate a report on all the Government's legislative proposals.

It is not by slavish imitation of plans and formulas worked out overseas by men, however able, who are considering different conditions, that we can hope for lasting success. The principles, however, of the aid to good government of a corporate Chamber are of general application, and I, for one, hope that a practical scheme will be worked out by which they may be effectively applied in New Zealand.

As to the details of the scheme, it would be presumptuous to do more than offer suggestions. There are a number of associations in the country which might well be given the right of electing members, whether singly, or in rotation, or grouped together in panels. At the head of my list I would put the constituent Colleges of the University of New Zealand, the graduates of which should each be entitled to elect one member. The graduates of British Universities have, for many years, sent to Parliament Members of the greatest value. It is ironical that one of the two last Members for Oxford was A. P. Herbert, whose wit, learning, and energy made him the most astonishing legislative " one-man band " ever to sit in Parliament. The Federation of Labour and the major unions, or

groups of unions, the Medical Association, the Counties Association, the Municipal Association, the Associated Banks, the Sheep-owners' Federation, the Employers' Federation and similar bodies, and last, but not least, the Law Society, have all, among others, strong claims to be represented.

The representatives selected should be men of energy as well as possessing the special qualifications fitting them for a seat in the corporate Chamber, as they would come, not merely to deliberate, but to take an active part in framing policy, subject to the final decision of Parliament.

The corporate Chamber should have power to delay all legislation, including financial Bills, for long enough to show the House of Representatives and the country that it has a mind of its own, but not long enough to tempt the House of Representatives to reduce it to the status of a rubber stamp. Its powers, since there is no Upper House, should be greater than in Amery's Sub-Parliament, but not so great as to cause the Government to try to fill it with party henchmen. The form of the second Chamber should be incorporated in a written Constitution which could be altered only be a referendum, but machinery should be devised for reviewing the electoral panels from time to time to ensure that the most significant forces in the national life are always represented. It should have certain rights to time on the air for the broadcast of its debates, and everything should be done to enhance its dignity and prestige.

The creation of such a Chamber depends on the determination of sufficient people in the community that it be brought into existence, but its effectiveness, when created, will depend on the public spirit of its members. Let us hope that both these expressions of political health will enable New Zealand to show the world an admirable example of what many leading men in other democratic countries are looking for.

THE PRESIDENT said: "I am going to ask you to carry by acclamation a hearty vote of thanks to Mr. Riddiford for his very thoughtful and interesting paper, and after that the paper will be open for discussion."

DISCUSSION.

Mr. A. C. STEPHENS (Dunedin): "This subject is obviously one of the greatest importance. It is one of the most important that has ever come before the Conference. It is one on which we are particularly fitted to express an opinion, and I feel that the New Zealand Law Society should give a considered statement on the matter at the earliest possible moment.

"The practical consideration of a second Chamber in New Zealand can be dealt with under four headings, by asking four questions. Those questions are: (i) Do we need a second Chamber? (ii) What should be its composition? (iii) What should be its powers? Finally, and most important of all, (iv) How should we maintain its continuity?

"There can be no answer to the first question except one, and that is that we do need a second Chamber.

"As to the second question, Mr. Riddiford has dealt quite fully with this. I feel myself that any second Chamber should be fully representative of all classes of people in the community, not only the learned, but also the technically or academically unlearned, because the latter are sometimes wise. I do not think a second Chamber could function satisfactorily without Labour members. One has some basis for the hope, particularly in view of the events that have taken place in the last four or five weeks, that organized labour is becoming more alive to the importance of taking the long view instead of the short one. The composition of the second Chamber should be representative of the whole people, so that it can give balanced views on every subject that comes before it.

"The third point is: What should be its powers? Mr. Riddiford has also dealt with this matter. You could not have a second Chamber with absolute power. It should have only a delaying power, and possibly power to refer disputes on fundamental matters to a referendum of the electors.

"There is another practical point that I wish to mention. It seems to me that the second Chamber could justify its existence by controlling or supervising the Regulations which are brought out by Government Departments. There is no control of Regulations at the present time.

"Finally comes the difficult question of maintaining continuity. We have the events of the last few years before us. The old practice was for the Government to introduce into the Legislative Council sufficient members of the right colour to ensure that the Government had complete control of the legislative machine. Now the Legislative Council has been swept out of existence altogether. How can we be assured that a new second Chamber, which we hope will be set up, will not be swept away? If the present Government establishes a new second Chamber and no special steps are taken to safeguard it, any subsequent Government can abolish it. A sovereign body cannot impose a permanent limitation on its law-making power. No independent Government can make it impossible for a subsequent Government to change the law. The most that can be done is to make it difficult to make a change. Such is the position under the Federal constitutions of the United States and Australia. I am not in a position to offer an answer to this question. It would be a matter on which authorities on constitutional law should advise.

"I hope that there will be a good discussion on Mr. Riddiford's paper. Perhaps the Conference may pass some resolution later, so that the matter may not be left in the air."

The Hon. T. CLIFTON WEBB: "I feel that I ought to take some part in the discussion on the very interesting, thoughtful, and instructive paper that Mr. Riddiford has just delivered to us. Mr. Riddiford is carrying out one of the ideas that I had in mind when I spoke yesterday—that is, he is giving thought to this question, and there cannot be too much of that in these days.

"I am bound to say that, as the result of my experience in Parliament, I am not by any means convinced that there is room for a second Chamber. When I first entered Parliament, I thought there was. I said that the second Chamber as constituted ought to be ended or mended, and I was in favour of mending it, not of ending it. My difficulty has been to find a workable alternative to the second Chamber as it was constituted up to the time of its abolition, and I may mention here that, although the Committee set up in 1948 to consider alternatives (and I happen to be a member) received contributions from a number of people, and although almost without exception they were in favour of a

second Chamber, they differed widely when it came to the question of an alternative.

" Mr. Riddiford has referred to Sir Francis Bell's proposal for an elected Upper House. Sir Francis Bell's Act was passed in 1914, but not one Parliament in the whole of the thirty-six years which have elapsed since that Act was passed has seen fit to put it into operation. I do not think I am doing Sir Francis Bell an injustice when I say that his principal object in pressing for an elected Upper House was to prevent a Labour Government from gaining control—that is, to prevent what in point of fact happened. There should be no system devised to prevent the people from electing the Government that they want, and I am afraid that some people have that object, and that object only, in view when they talk about a second Chamber.

" Mr. Riddiford has said, and rightly said, that what we want are men of energy and ability and independence. The difficulty is to get them. But I want to say this : when, in my young days, I played a fair bit of football, I discovered that the best players were always on the side line, and somehow they never came under the selector's eye.

" The trouble is, to a great extent, that the right type of person does not offer himself ; and my own idea is that there is more to gain by trying to raise the calibre of the Lower House than there is by imposing a second Chamber, because you are up against something that is too constricting or is too complacent.

" In the whole of the six years that I have been a Member of Parliament, the second Chamber has never at any time imposed any limitations on the work of the Lower House. The example that I have always used is the abolition of the country quota, and we can speak of that now without being accused of any party bias. At the time in question, one in my position might have been accused of speaking from selfish motives, because we felt that the abolition of the country quota would keep us out of office. We were open to that accusation at the time ; but we got there, and it is now almost of academic interest.

" I am not indulging in party politics here. The country quota was abolished for no other purpose than to enable the Labour Government to obtain control of the Treasury Benches. The Bill was introduced out of the blue. There had never been any hint of it. There was a chance for the Legislative Council to prove its mettle and to say : ' Here is a Bill that has never been before the people. It is not in any party's legislative programme. They have never even said that they have been thinking of it.' It had the opportunity of showing that it could exercise the right that it had, and the right that it ought to have exercised, to say : ' This is a measure which must be submitted to the people in some form or other before it is passed through the House.' So far as I am concerned, that Legislative Council, at any rate, lost any regard that I had for it when it adopted the complacent course of just passing the measures through.

" There have been references to the written Constitution. Mr. Stephens has emphasized that one of the difficulties is that there is no written Constitution in New Zealand, no means of tying things up in such a way that they cannot be altered by Parliament. It is different in the United States, Australia, and Canada, where the Courts have power to declare legislation invalid because it infringes on State rights. We have nothing like that here ; and, if a measure is passed through Parliament, I see no way in which the Courts could declare it invalid. That would apply even if we had a provision that stated : ' This Act shall not be abolished without a referendum of the people.' I pause here to say that—theoretically speaking, at any rate—there would be nothing to prevent the Legislature from saying that the vote had to be 100 per cent. in favour ; but I suppose nothing so extravagent as that would be introduced. I see no way of preventing a subsequent Parliament from saying that that section is hereby repealed. The Governor-General would accept the advice of his Ministers, and the Act would be signed by him and would become law.

" It has been said—Mr. Stephens particularly has said—that we do need a second Chamber. I am not sure that that is quite correct. Queensland has been without a second Chamber since, I think, 1922. Will anyone say that legislation there is in any way inferior to the legislation in New South Wales or Victoria or South Australia ? They have no second Chamber in Finland, and, so far as I know, their legislation is no worse (no better, perhaps) than anywhere else. I am not convinced by any means that that is the answer to our problem.

" Our problem is that perhaps 90 per cent. of the people are actuated by very little more than selfishness, The difficulty is to get people who will take an independent view. And that has a bearing, and a very important bearing, on what, in my view, would happen if we had a second Chamber composed of functional representatives, as I think Mr. Riddiford called them. In passing, let me say that that savours a little bit of Fascism. I think that was more or less the outline I had.

" The difficulty would be that someone would have to elect the members of the second Chamber, or the Government would have to appoint them, and party politics would come into it ; and party politics has really sounded the death knell of the second Chamber. We ought, of course, to appoint people irrespective of their political views. Supposing Mr. Nash retired and there was a proposal to appoint him to the Upper House, I want to ask you what would be said by most people, by our supporters ? What would be said by you gentlemen here, for example ?

" You are up against party politics, which has become so ingrained in our system that people, somehow or another, will not tolerate the appointment of men from the other side, or perhaps only a few.

" Then, again, that leads me to another point. It is generally agreed that the Government must have sufficient of a majority in the Upper House to ensure that it can get its legislation through, and it seems to me that it does not matter whether the majority is four or forty. In all the proposals that were suggested to us in 1948, everyone was agreed that the Government needed to be sure of a sufficient majority to enable it to get its legislation through, and no one came forward with what appeared to those present to be a practical alternative. There were a few who suggested a completely elected House. Some suggested a nominated one, but the members were to be nominated for life. Then, if you elect the members for a term of years, they are only human, like the rest of us, and what looms large in their minds is retaining their seat in the Upper

House ; and, when the end of the term of their appointment is drawing nigh, in my experience they become concerned to see that they do not give any offence to those who are controlling things in the Lower House. You might say I am cynical—I hope I am not—but that, I think, is the difficulty with any second Chamber.

" At the present time, a Constitutional Committee is sitting in accordance with a promise that we made to devise, if we could, some alternative to the Legislative Council that has just been abolished. Mr. Algie is Chairman. I would like to say that Mr. Riddiford should go before that Committee and testify.

" I am very glad that you are taking an interest in this matter. You must go along and put it before that Committee, and stand there to be cross-examined by it. That is the only way in which any good at all will come of your resolution. Otherwise, it will just be consigned to the limbo of forgotten things. Those are just a few thoughts that have occurred to me.

" I commend Mr. Riddiford again for his thoughtfulness, and for the work that he has put into his paper. It shows that he is concerned about the future. He feels that there is a danger of an unbridled second Chamber getting out of hand. I am not so sure that that is so. I put my trust in the people ; and I can tell you that every Member of Parliament keeps his eye on the ball, as we say, and the ball is the people. Every Member thinks of his own seat in Parliament, and he watches the political barometer pretty closely, and endeavours, so far as he can, to keep in line with public opinion. Let me emphasize a point that was made by Mr. Stephens. Do not let us run away with the idea that education and political wisdom necessarily run hand in hand. They do not. I make no apologies for quoting my own father. He came out from England as a boy of twelve. He had a third or fourth standard education, and then he taught himself. My father had far more political wisdom than many a man who had more education. A lot of my political education I learned from my father when we were milking the cows. I do not want to decry education for a moment. One of the troubles is that some people who concentrate on education do not think politically, and it is necessary to think politically for a long time ; otherwise I am afraid we are liable to get a stereotyped view.

" Let me also say that wealth and position do not necessarily go hand in hand with political wisdom. Some of the humblest citizens have been the wisest politically, and I have discovered in my comparatively short period in Parliament that some of the men there whom we might think anything but educated have a good deal of broad common sense, and, as I said yesterday, law is nothing but applied common sense.

" I am glad of the opportunity of speaking to the Conference this morning on this question. I hope I have not thrown a spanner into the works. As I say, I have spoken just as I thought, and I hope that nothing that I have said to Mr. Riddiford indicates that I belittle in any way the valuable contribution that he has made to the discussion this morning. I do hope that you take my advice and do not let the matter rest where it is. You should go along to that Committee and allow yourself the opportunity of being cross-examined, because it is only in that way that you will be able to sustain the point."

THE PRESIDENT said : " We are very grateful to have your views, which put the practical side from the inside of the House on this difficult question. Now, we have another paper, and I would like to finish the discussion on Mr. Riddiford's paper. If necessary, we could adjourn the discussion until this afternoon."

Mr. M JOEL (Dunedin), Lecturer in Constitutional Law at the University of Otago, continued the discussion :

" The overwhelming majority of writers on constitutional law and science are very firmly of the opinion that legislation on the point is desirable. I do feel that those who differ from these writers, in this country at least, are perhaps inclined to attach too much weight to the unfortunate practical example that has just passed away. However, I do agree that constitutional theory and political possibilities must be closely linked.

" At the same time, the difficulties of the problem of creating an effective Upper House should not, I think, deter us from making the attempt. There are many problems associated with it. Mr. Riddiford dealt with the method of constituting a suggested Upper House. It seems to me that, before proceeding with that, in order to make the thing practical at all, we would need to have some assurance that an Upper House would be given proper opportunities. People of sufficient standing could be induced to become appointed or elected to it. The recent method adopted in New Zealand is scarcely satisfactory on a permanent basis. But, when the problem is being considered, I think it would be necessary to have an assurance that the members of the Upper House, at least, as well as those of the Lower House, will be given plenty of responsible work to do and a certain amount of power—power to delay."

THE PRESIDENT said : " The Attorney-General made a practical suggestion that Mr. Riddiford should put his paper personally before the Committee that is sitting. It is the wish of the Conference that he should."

The Conference by acclamation signified that such was their wish.

SPORTS DAY.

THE RESULTS.

The results of the various sporting contests held on the concluding day of the Conference were as follows :

GOLF.

The main event of the Golf Tournament, the LAW JOURNAL Cup, was won by Messrs. J. G. Imlay (Invercargill) and H. H. Walker (Dunedin). The runners-up were Messrs. S. A. Wiren (Wellington) and J. E. Matheson (Pahiatua).

The Single Stableford was won by Messrs. J. R. Mills (Invercargill), L. F. Rudd (Auckland), E. A. Cleland (Christchurch), and G. S. Branthwaite (Christchurch).

TENNIS.

The Ladies' Tennis Tournament was won by Mrs. J. T. Dixon (Ranfurly).

The Men's Doubles were won by Messrs. B. J. Petrie (Timaru) and I. W. Gallaway (Dunedin). The runners-up were Messrs. W. E. Leicester (Wellington) and P. D. Rennie (Dargaville).

BOWLS.

The winning skip of the progressive pairs was Mr. R. A. King (Dunedin), the winning lead being Mr. J. R Bartholomew, the former Dunedin senior Magistrate.

The runners-up were Messrs. P. S. Anderson and C. Mason, both of Dunedin.

THE OCCUPATION COURTS IN GERMANY.

By MAJOR-GENERAL L. M. INGLIS, C.B., C.B.E., D.S.O., M.C.,
Chief Judge of the Occupation Courts in Germany.*

I THINK I should open with a confession and an apology. There is no paper. I was asked by one of the secretaries whether there would be; but I have not had time to prepare it.

The Courts about which I intend to talk this morning must first of all be distinguished altogether from those War Crimes Courts which have been trying breaches of the laws and customs of war and breaches of the International Conventions regarding prisoners of war and sick and wounded. Those Courts were set up under Royal Warrant and were administered by the Judge-Advocate-General's branch of the Army, and their rules of procedure were laid down by Army Council Instructions. They had nothing whatever to do with the ordinary Occupation Courts.

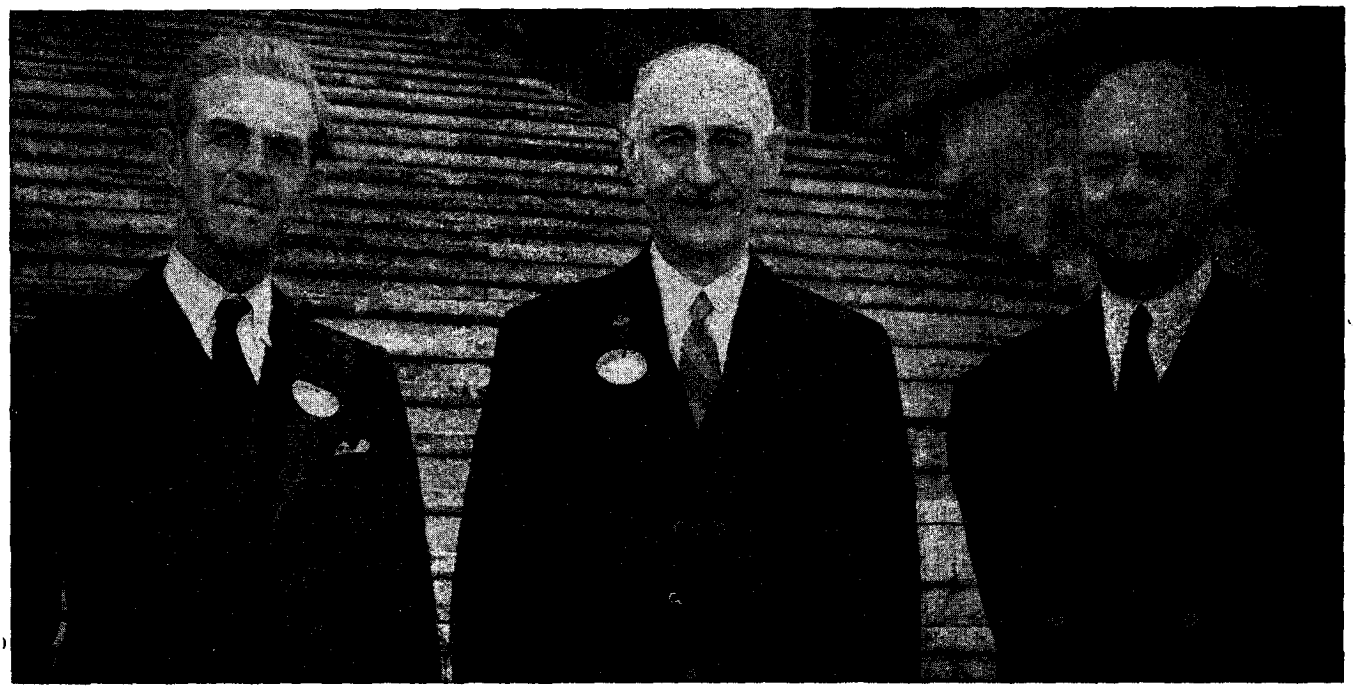
Long before the Second World War, it was well established that a belligerent in temporary occupation of enemy territory had the right to set up its own Courts to protect the security of its Forces and to maintain public order. Therefore, before the invasion of Europe, a legal committee at the Supreme Headquarters of the Allied Expeditionary Force had prepared two Ordinances. Ordinance No. 1 set out forty-three different offences against Allied Forces. Nineteen of them could be capital offences. Ordinance No. 2 established Military Government Courts.

When the Allied Armies first occupied German territory on September 15, 1944, and as they progressively secured possession of German territory, these Ordinances were proclaimed in the name of the Supreme Commander and were put into operation behind the advancing Armies. The Courts were set up, and the Ordinances relating to offences came into force, and remained in force until the final surrender of the German Forces.

MILITARY GOVERNMENT COURTS.

The next step, of course, was the division of occupied Germany into four zones of occupation and the city of Berlin; and, when the zones were set up and the British, French, and Americans adopted and repromulgated Ordinance No. 1 and Ordinance No. 2 as their own. So that at the beginning of the complete occupation, the French, British, and Americans were all working to the same occupation criminal law, and had the same kinds of Courts. The Russians played to other rules; we still do not know what they are.

The jurisdiction that the Military Government Courts had was over all persons in occupied territory except members of the Allied Forces not being civilians who were subject to military law and were serving under the Commander in Chief. That meant that the soldiers, sailors, and airmen did not come within the jurisdiction of the Occupation Courts. All the camp



THREE OF OUR LAWYER-GENERALS IN WORLD WAR II. *Dunedin Star, Photo.*

From left: Major-General H. E. Barrowclough, C.B., D.S.O. and Bar, M.C., New Zealand Commander in the Pacific Area; Major-General W. H. Cunningham, C.B.E., D.S.O., who earlier commanded in the Pacific; and Major-General L. M. Inglis, C.B., C.B.E., D.S.O., M.C., who commanded the New Zealand Division in the Middle East for a period, and who gave the address at the Conference, "*Occupation Courts in Germany.*" The other lawyer-general, Major-General Sir Howard Kippenberger, K.B.E., C.B., D.S.O. and Bar, who is the Editor-in-Chief of the Official War Histories, was unable to be present at the Conference.

* This is an abbreviated record of this address. The full text will appear in an early issue of the JOURNAL.

followers did, and soldiers who came merely casually to occupied territory were also under the jurisdiction of the Military Government Courts. The law they applied was occupation law or German law, and they were also empowered to try war crimes, although the ordinary war crimes were not tried by them at all. English criminal law was made applicable to British subjects in Germany, by a British Ordinance—something very similar to what is done by s. 41 of the Army Act.

Roughly, I would say that the business of these Courts was to try all offences against Allied occupation law, and also to try all Allied nationals. They tried all cases in which the several occupying powers had any interest. It might even be a case where only Allied property was affected by the crime. We will take the question of murder. If a German murdered another German with a brick, that was their own business entirely; but, if he had shot him, that was our business, because it was a very serious criminal offence either to possess or to use a fire-arm. If a German stole another German's watch, that was their business; if he stole mine, that was ours.

Ordinance No. 2 provided for three kinds of Courts—general Courts, intermediate Courts, and summary Courts—and they were distinguished from one another by their composition and by their powers. The general Courts originally had to be composed of no fewer than three Allied officers; the sky was the limit; they could impose any punishment, any sentence. Intermediate Courts and summary Courts had to consist of one Allied officer or more. Intermediate Courts had power to impose imprisonment up to ten years and fines up to £2,500. Summary Courts had power to impose imprisonment up to one year and fines up to £250. In practice, British general Courts were always presided over, even from the beginning, by a Colonel, immediate Courts by a Lieutenant-Colonel, and summary Courts generally by a Major or a Captain.

The procedure of the Courts was laid down. They were not very satisfactory rules, in some ways. The designers had tried to mix accusatorial and inquisitorial procedure. If a Court proceeded to interrogate an accused, by the time it had finished the prosecutor did not know what was left for him to prove. We issued instructions that interrogation was not to be used by the Courts except to clarify a plea.

While the Army was controlling the occupation—that is, up to the advent of the Control Commission—it had on its staff at the Headquarters of the British Army a Civil Affairs Branch, which was a branch of the staff responsible for the administration of the occupied territory. The Americans had a similar organization.

The Control Commission.

The next step, of course, after the surrender of Germany, with regard to the control and administration of Germany, was that the Control Commission took over the government from the Army. As soon as possible after June 5, 1945, the four Powers agreed on the control machinery for Germany, and the Control Commission went to Germany in July, 1945.

At this stage, I had better point out that the position was that the Control Council, which consisted of the four Commanders in Chief, should control Germany in all matters affecting Germany as a whole. Each of these Commanders was also the Commander of his own zone of occupation, where he had supreme authority, subject only to the instructions of his own Government. Berlin was differently constituted. There was a special arrangement. It was like an island right in the middle of the Russian zone, divided into four sectors, and it was supposed to be administered by an Allied Kommandatura. The Berlin Courts derived their authority from a source different from that of the Courts in the British zone. They had jurisdiction only in the British sector of Berlin. So that it did not matter very much in the days of military government, of course. Later on, the Berlin Courts were a different set of Courts.

The Control Commission had been devised to take over the control of occupied territory. Some time early in 1944, it commenced to collect its personnel and prepare itself for its task at the end of the war, and it eventually became a very large and complex organization. It had branches to deal with every department of German occupation and administration, the disarmament of Germany, reparations, and the restitution of Allied property. In fact, it had all the departments competent to see that the conditions of the surrender were actually carried out and that the British zone of Germany was governed and administered properly in the meantime.

Military Government Courts Branch.

The Control Commission contained a legal division with a branch known as the Military Government Courts Branch. The first Director of that Branch organized the Branch and prepared it in England, and he steered it during its first few months. He was an ideal man for the job. He had had very long administrative, legal, and judicial experience, and his personal characteristics, which gained the affection of everybody who worked under him, established in the Branch sound principles of administration of justice and a very lasting zeal and loyalty in the Court's service. I was his deputy for the first few months, and then I took over the Branch.

When we arrived in Germany on July 9, 1945, decided to use the rest of July for reconnaissance, and not to take over the administration of the Courts until August 1. I was deputed to travel over the zone to see what people were doing and generally to help us to make up our minds what we were going to do. We found at that time that, for the purpose of military government, the British zone of Germany was divided into Corps Districts. What we found was that at each Corps Headquarters there was a Civil Affairs Staff, and each had its own legal officer. The whole of the Court administration was the responsibility of the legal officer. He had many duties. The records of every Military Government Court case were subject to review. The findings became effective immediately on promulgation in Court, but they had to be reviewed. All this was falling on the legal officer.

On the Commission's taking over, Corps Districts disappeared altogether, and the zones were divided into five regions, which correspond with the states in Germany to-day. There were regional legal officers. As a matter of fact, the personnel who had been working under the Civil Affairs Branch of the Army were being taken over by the Control Commission.

Another thing we had to estimate was what the volume of work was going to be. It was very heavy.

During the sixteen or seventeen months that the Military Government Courts Branch existed, there were nearly 14,000 cases in the two higher grades of Courts, and something like ten times that number in the summary Courts. It was obviously going to be impossible for the Military Government Courts Branch to undertake the review of all these cases.

The general conditions that we found, of course, were such as to generate a great deal of crime. I think our record month for murder was 167. That was not regular, but the rate was high all the time. There were tens of thousands of dwellings destroyed by bombing during the war, and the population was being augmented all the time by refugees, without housing and without employment. Food was getting extremely scarce, and so was fuel, and that was leading to all sorts of black-market operations—illegal slaughtering of stock, and so on. There was a large displaced persons population, consisting of Allied nationals who had been uprooted. There were about 300,000 Poles alone. Many of them had been brought to Germany for forced labour during the war. A lot of them had been boys of fifteen or sixteen years of age. They were not far from savages. They hated the Germans. Once the war was over, the majority of them were placed in camps and given rations, but they were not given any work to do. They used to go out at night and commit armed raids on isolated German farmhouses. They would shoot the farmer, rape the women, take all the food and valuables, and then shoot the whole family, so that the offenders would not be identified. This was occurring with very considerable frequency, and it tempted the farmer to keep his arms, which was a very serious offence.

Then, the German seemed to have an attachment to his pistol, and that, too, led to some quite curious effects. A lot of the German wives had formed other attachments while the husbands had been away. When the husbands came back, it was rather a problem, as the divorce Courts were not open. The wife would know where the husband kept his pistol, or she would plant one, and then she would tell the Police where it was, and hope that the result would be as effective as the divorce Courts. We did not like it, but there was not much we could do about it.

I think that is enough to say about general conditions. They were such as to cause an enormous amount of crime. Perhaps it was not so excessive in the circumstances, because the whole of the German set-up had dissolved pretty well into chaos at the end of the war. All the Nazis had gone out, their servants had deserted, and new organizations had to be set up.

The Military Government Courts Branch had six permanent presidents of general Courts, and all the presidents were barristers of considerable experience. We also had a prosecuting section. We decided to employ the permanent presidents and the prosecutors, so that they could deal with the majority of the general Court work. Prosecutions in the time of the Army had all been conducted by Public Safety Officers, whose real task was the reconstruction and supervision of the German Police. We wanted it done by legally-qualified people. In the intermediate Courts and the summary Courts, all the prosecutions were still conducted by Public Safety Officers, because there were not enough legal officers to do the work.

The prosecuting section we did not interfere with at all. In the early days, transport was very difficult to get, and the permanent president had to cart the prosecutor, the secretary, and the interpreter round the country in his car. The appearance was bad.

These Military Government Courts were probably reasonably satisfactory instruments for the administration of justice in the period immediately following the cessation of hostilities. They were a reasonable solution of the problem, but they were not suited for any prolonged occupation. There was no appeal from any decision of a Military Government Court. There was a provision for review and for petitions. Petitions would be lodged with the appropriate reviewing authority. There were no pronouncements of the law. The rules of evidence were very loose. Anything oral, written, or physical that the Court thought relevant to the issue before it was admissible in evidence, subject to the one qualification that the best evidence available should be adduced, and, in practice availability was a very elastic thing. One found that even qualified lawyers began working under loose rules of evidence of that kind, and began to forget the sound principles of evidence. That was a serious defect, the existence of which could not be prolonged.

There there was the question of Court administration. The administration, because the Military Government Courts Branch had not the manpower to take it over, had to be distributed among the various regional staffs, and that led to all sorts of delays, and it also meant that the responsibility for things could not be pinned on any particular official. It was distributed much too widely. But perhaps the worst feature of the Courts was that they did not have the appearance of being independent of the Executive. They were in fact, but their independence existed only because of the personal handling of the matters involved.

In October, 1945, there had been a Control Council Proclamation No. 3 on the fundamental principles of the administration of justice, in which the four Powers, or the four military governments, had emphasized the necessity for the independence of the German judiciary, and it seemed that we should have some system which would clearly divorce our own Courts from the executive side of military government.

Control Commission Courts.

That is an indication of the reason why I started, as soon as I took over the control of the Branch, to work actively to substitute another system of Occupation Courts altogether; and, after some months, Control Commission Courts were set up, and replaced the Military Government Courts on January 1, 1947. There was a great deal of work to be done to bring this about. The arrangement was novel. It had not existed previously. We ourselves had to plan the Courts and had to draft the initial legislation.

The Control Commission Courts consisted of a Supreme Court and summary Courts, which were presided over by Magistrates. We wanted permanent and instructed Magistrates. The Supreme Court commenced with eight Judges. Three of us, to begin with, had commissions as Judges of the Supreme Court and of the Control Commission Court of Appeal. The powers of the Court of Appeal were wide. We could set aside any judgment or sentence of the Courts. We could not increase a sentence unless there was an appeal against sentence. We could order new criminal trials. The work of the Court was very heavy, about 800 cases the first year, 700 the next, and 580 in 1949.

We did not have to hear every appeal. It was sufficient for two Judges of the Court of Appeal to read the paper and to give a judgment in Chambers if they thought it did not require to be heard, and we got through a great deal of the work by doing that. If it was perfectly clear that relief should be granted, we simply granted it by a written judgment in Chambers; otherwise, we set it down for hearing by the Court.

A measure of civil jurisdiction was also given to the Control Commission Courts. This necessitated a lot of organization. The Germans were not allowed to interpret occupation law. Such cases had to be transferred to the Control Commission Courts, which usually dealt with the point and sent it back to the German Court to complete its judgment in the light of ours. There was another thing, too. We got into the Court Ordinance a provision that a Judge of the High Court, on petition to him, could make an order in the nature of habeas corpus.

The French and Americans also reformed their Military Government Courts. The French set up a Court of Appeal not very long after we did. They retained most of the features of the Military Government Courts. The Americans, some months later, decided to reform theirs, and they set up a system very similar to ours. They sent over a Judge, who came down to see us, borrowed our Ordinances, and went back and turned them into American. Also, we got a more centralized system of Court administration. It took us a year.

I suppose that, among the major difficulties which we encountered, there was, first of all, the language. The official language of the Court was English, but of course a great many other languages were used. Most of the interpreters were not good enough to deal with any legal argument; they could deal with evidence. These language difficulties required us to use a great deal of care. Then there was the difference between German procedure and ours, both in civil and in criminal jurisdictions. The German substantive law was devised to be administered through their own procedure, and we were administering it through ours. Their idea was that the criminal Court should discover the whole truth about the case. We were asked whether the onus of proof was to be thrown on the defence in our Court. The burden of proof, the charge, always rests with the prosecution. Then there was law reporting. We reported the decisions of the Court of Appeal. The Germans did not in theory adopt the rules.

Finally, it is extraordinary that we had no legal guarantee of our independence, not even for a year after the Control Commission Courts came into existence. Early in 1948, a committee was sent over. One of its recommendations was that the Lord Chancellor or the Secretary of State for Foreign Affairs should have the authority in his hands; it should not be in the hands of the Military Government. In the end, it was decided that the appointment and dismissal of Judges should be put into the hands of the Lord Chancellor.

What we achieved I do not know—I think perhaps something. When Lord Jowitt, L.C., came over, he told the Judges that he considered the main object was to demonstrate to the Germans the rule of law and the impartial administration of justice. That we always tried to do, and I think the Germans realized that. They wrote a good deal in their legal periodicals about the control of the Courts.

On the whole, I think that we did leave an impression, because we very carefully refrained from preaching. We never suggested that our methods were better. We adopted our procedure, rather than the Germans', because it was the procedure in which our Judges and Magistrates had been trained, and the one by means of which they would best arrive at the truth. The result was that the general body of opinion among German lawyers was that they would sooner appear in our Courts than in the German Courts, and they did on occasion press for reforms to bring theirs into line with ours.

The President said: "I think we must carry by acclamation a very hearty vote of thanks to Major-General Inglis for his informative and interesting account of the jurisdiction in Germany, and at the same time I should like to express to him on your behalf our pride in the fact that his military experience plus his legal training enabled him to take such a high place. We are proud of him as a New Zealander who has achieved judicial status in the Occupation Courts at such a high level."

CONFERENCE COMMITTEES.

The GENERAL CONFERENCE COMMITTEE comprised Messrs. A. J. H. Jeavons (Chairman), G. M. Lloyd (Vice-Chairman), C. B. Barrowclough, J. B. Deaker, F. M. Hanan, H. S. Ross, and the Joint Secretaries, J. P. Cook and D. L. Wood. The Accommodation Secretary was Mr. I. W. Gallaway, and the Treasurer was Mr. A. I. W. Wood.

The members of the SPORTS COMMITTEE were Messrs. H. S. Ross (Chairman), W. G. Aitken and H. S. Ross (Golf), J. C. Robertson and K. W. Stewart (Tennis), and I. L. Turnbull, E. J. Anderson, and W. F. Forrester (Bowls).

The PAPERS AND REMITS COMMITTEE consisted of Messrs. A. G. Neill, K.C. (Chairman), C. B. Barrowclough, G. T. Baylee, F. W. Guest, A. N. Haggitt, J. M. Paterson, A. C. Stephens, and J. B. Thomson.

The BALL COMMITTEE comprised Messrs. F. M. Hanan (Chairman), W. H. Carson, A. J. Dowling, M. Joel, J. E. K. Mirams, W. J. Meade, B. A. Quelch, and C. G. Wilson.

The DINNER COMMITTEE consisted of Messrs. J. B. Deaker (Chairman), N. W. Allan, W. Lang, J. S. D. More, A. G. Neill, K.C., H. S. Ross, and H. H. Walker.

The LADIES' COMMITTEE consisted of Mesdames A. J. H. Jeavons (Chairman), N. W. Allan, W. G. Aitken, C. B. Barrowclough, W. H. Carson, J. B. Deaker, A. J. Dowling, M. Joel, G. M. Lloyd, J. E. K. Mirams, J. C. Robertson, H. S. Ross, and T. K. S. Sidey.

SUGGESTED REFORMS IN THE LAW OF EVIDENCE.

By A. L. HASLAM, B.C.L., D. Phil. (Oxon.), LL.M. (N.Z.).

IN 1936, when the Conference was last held in this City, delegates supported the creation of permanent machinery for law reform. It may not be inappropriate on this occasion, therefore, to advocate certain modifications of form and content in a branch of the law which was once aptly described as "the neglected product of time and accident." It will be submitted—it is hoped with pardonable temerity—that the Law of Evidence has now reached a stage of development which justifies complete codification. Further, it will be suggested that, with a view to possible amendments, advantage be taken of this process critically to re-examine certain aspects of this subject.

In the year 1873, on the instructions of Lord Coleridge (the Attorney-General), Sir James Fitzjames Stephen completed a comprehensive draft code of the Law of Evidence. He closely followed the scheme of his Indian Evidence Act, 1872, which had been enacted a year earlier. Despite the industry and learning of the author, the code was destined to receive no more than a formal introduction to the House. It has not been resuscitated in the intervening years. *Stephen's Digest of the Law of Evidence*, with which we are all familiar, is founded upon the ill-fated draft code. His *Digest*, which presents the existing law in statutory form, is accordingly an available foundation for a modern enactment of the subject.

If we are discouraged by Stephen's experience in the Victorian England of some eighty years ago, we may take comfort that, through the Law Revision Committee and the Law Society itself, the profession can now influence and direct legislative changes in many fields. Further, as in the instances of the Limitation Act, 1950, and the Crown Proceedings Act, 1950, the experience of members can be called upon in shaping legislation bearing directly on matters of everyday practice. Should an Evidence Code prove generally acceptable in principle, and should its details be settled in the course of preparation, it is hoped that such an enactment would not fall beyond the limits of legislative possibility. Perhaps the learned Stephen was considering only contemporary England when he said, in his *Digest of the Law of Evidence*, 12th Ed. xix:

> It would be as impossible to get in Parliament a really satisfactory discussion of a Bill codifying the Law of Evidence as to get a committee of the whole House to paint a picture.

Steffano Webb Photo.

Dr. A. L. Haslam.

While old doctrines have been clarified and restated, the basic principles in the Law of Evidence have undergone but little change for the greater part of a century. The major alterations of a radical character during that period have taken the form of statutory amendment. While the limitations of codification as a jurist's panacea are now fully appreciated, it is suggested that a province of the common law that has withstood change for so long may be safely codified in a systematic fashion. In their day, Sale of Goods, Negotiable Instruments, and Partnership were comparable examples. For simplicity, arrangement, and accessibility the governing statute in each of these topics needs no justifying comment. As a science, the law has been thereby enriched. For the practitioner, much needless research has been avoided.

This subject—we were told as students—is part of our adjective law. The allied topic—*viz.*, Procedure, both civil and criminal—has long since been codified. By periodical amendments, the Law of Procedure is revised and kept up to date. To cite Criminal Law as a further example, would any of us prefer to revert to the confusion of the old common law before Stephen's masterly hand had tidied this field for posterity? Do we covet the English criminal law of to-day, where the common law in part survives, amidst a medley of statutory grafts? Again, Real Property was at one time the ungodly jumble against which Cromwell declaimed. Both here and in the United Kingdom, statute law has given this vast subject some semblance of system and cohesion, and has excised from conveyancing a great deal of the obscure verbiage of earlier times.

Each of the above instances illustrates the advantage of uniform terminology. In the Law of Evidence, text-book writers are by no means in agreement in this respect, and at times differ in the meaning to be attached to particular terms of art. To the student, and even to the practitioner, unnecessary confusion results.

Perhaps an eminent Canadian writer, Mr. C. A. Wright, was recording only first impressions of this subject when he said:

> At the present time it all becomes a matter of rubric rather than reason; of rule rather than principle; of categories and precedent rather than logic and fairness ("The Law of Evidence—Present and Future," (1942) *20 Canadian Bar Review*, 714).

Certainly the uninitiated visitor to this field finds

the solid ground of governing principle concealed beneath a forest of exceptions. Myriads of particular cases obscure by their very numbers the broad doctrines of admissibility. There are many text-books on the Law of Evidence, and some are of considerable bulk and erudition. The historical growth of the subject seems to deter the average editor from a drastic revision of the text. Many of the earlier cases, in this as in other subjects, have long since become outmoded. Nevertheless, the latest edition of *Phipson on Evidence*, for example, preserves many of thes ancient authorities with a meticulous reverence. The admissible are ruthlessly segregated from the inadmissible in a manner with which every student is acquainted, not infrequently to his eternal confusion. A code would relegate to the limbo of legal history this formidable mass of redundant authorities, and even bury them so deep that the spade of the legal resurrectionist could not disinter them.

Some Archaisms.

Again, there are some archaisms in this subject which could safely be swept away. It is submitted that the "best-evidence rule" is now nothing better than a confusing rhetorical slogan. Would we mourn the passing of that notional category called "conclusive presumptions of law"? Again, Sir Frederick Pollock, with a most undonnish vehemence, wrote to his friend Mr. Justice Holmes (*2 Pollock-Holmes Letters*, 284, 285) with reference to the decision of Lord Tomlin in *Homes* v. *Newman*, [1931] 2 Ch. 112, and termed it:

> a case on the damnable pretended doctrine of *res gestae*. I wish some high authority would prick that bubble of verbiage; the unmeaning term merely fudges the truth that there is no universal formula for all kinds of relevancy.

In the case referred to, Lord Tomlin said, at p. 120:

> I suspect it of being a phrase adopted to provide a respectable legal cloak for a variety of cases to which no formula of precision can be applied.

In a note to that case, Sir Frederick Pollock reminds us that part of the *res gesta* (singular or plural) means neither more nor less than part of the story. So long as the tag survives, it will continue to masquerade as a legal principle in its own right, and will afford specious grounds for the admission of evidence which may call for much closer analysis.

If, despite our local traditions, we are cautious pioneers, let us find encouragement from Canada, where a Uniform Evidence Bill has been prepared and apparently awaits enactment after receiving the approval of the Law Society ("The Law of Evidence, 1923." (W. F. Bowker.) (1947) *26 Canadian Bar Review*, 246). The American Law Institute has also produced a comprehensive code: (1942) *20 Canadian Bar Review*, 271. May we not, therefore, respectfully agree with Lord Wright when he says in his *Legal Essays and Addresses*, 338:

> The rules of evidence are almost entirely the creation of the Judges and are part of the common law, but now they might be codified.

It is now proposed to consider a few aspects of the Law of Evidence which might advantageously be altered by systematic legislation. We have an Evidence Act and sundry amendments dealing with a number of minor and unrelated aspects. It is "a thing of shreds and patches, and resembles a kind of statutory Joseph's coat": per Rich, J., in *The King* v. *Federal Commissioner of Taxation, Ex parte King*, (1930) 43 C.L.R. 569, 574. Many of the sections in the Evidence Act illustrate the inability of the Courts to modify or overturn established precedent which no longer conforms to modern requirements. An example is s. 15 of the Evidence Amendment Act, 1945, which abolished in its entirety the obscurantist doctrine formulated in *Russell* v. *Russell*, [1924] A.C. 687. A celebrated murder trial in 1887 (*Reg.* v. *Hall*, (1887) N.Z.L.R. 5 C.A. 93) gave rise to what is now s. 23 of the 1908 Act, and thereby engrafted onto the already difficult topic of similar fact a special principle relating exclusively to alleged poisoners. No attempt has apparently been made to enlarge this amendment to include every type of homicide from murder by violence to more recent refinements—*e.g.*, disposal of the victim through a porthole or by immersion in an acid bath. Are we all content with the form given to s. 3 of the Evidence Amendment Act, 1950, relating to confessions in criminal cases? Might we not accept the recent suggestion of a learned writer, Mr. P. B. Carter, and amend s. 7 of our Evidence Act so that, in divorce suits based on misconduct, witnesses should be liable without reservation to answer questions tending to establish their adultery ("Compellability of Witnesses." (1950) *66 Law Quarterly Review*, 511)?

To turn to the undefined area that the Evidence Act does not touch, most of us would be reluctant to lay violent hands on the main foundations of the Law of Evidence. The Law of Evidence as an elaborated distinct subject is peculiar to the legal systems of English-speaking peoples. The main principles have become so firmly established that, as Sir Alfred Denning tells us in *Freedom under the Law*, 90:

> It is not possible to dispense with rules of evidence . . . altogether. Rough justice may become so rough that it ceases to be justice.

The hearsay doctrine, for example, may be false to the philosopher and absurd to the layman. Yet the practitioner can usually give several good practical reasons for its retention. For a recent examination of the doctrine, see (1951) *67 Law Quarterly Review*, 111. For many, life in the Services dispelled whatever academic doubts they may have cherished on the depreciation of truth in the process of repetition. We must, however, remember that legal subtleties are not an end in themselves. At the worst stage of the recent war, the learned author of the last edition of *Phipson's Law of Evidence*, 8th Ed. iv, had sufficient faith in the future to warn his readers:

> it is a matter for serious consideration whether . . . the subject of evidence ought not to be reconsidered with a view to securing that it shall better conduce to the only object that justifies its existence, *viz.*, the due ascertainment of the truth in the administration of justice.

Where Reform is Overdue.

At the risk of provoking opposition, three instances will now be discussed wherein it is alleged that reform is overdue. In the first place, should we not by statute rationalize the law on admissions by agents in civil cases? In tort, express authorization is not the basis for determining the masters' liability. Should it still be indispensable in connexion with the admission of the servant's statement? A truck-driver by his manner of handling a vehicle on his master's business can render his employers liable without limit. Even unqualified prohibitions of a particular method of driving will not save them. Is there any reason of logic or convenience which demands the rejection of the servant's admission on the circumstances of the accident, even including his sworn testimony at the inquest of his victim? The

fine distinction between the power of a subordinate to bind his principal in what the servant does *qua* servant, but not necessarily in what the servant says, may stimulate the jurist, but is surely an unnecessary obstruction to the due ascertainment of the truth in the administration of justice. As *Wigmore* comments:

> This rule as now universally administered makes a laughing stock of Court methods.*

Horrific Photographs.

A relatively recent development in trials involving crimes of violence is the introduction of a series—and at times even of an album—of horrific photographs to illustrate the injuries inflicted. Far more than the spoken words of a witness, these grim pictures must tend to rouse indignation, where a dispassionate survey of the evidence is called for. The average medical witness should be quite capable of describing physical injury with precision, and even simplicity. The Police camera adds unnecessary emphasis to such testimony, and must surely stir and confuse the more emotional juryman in a manner that defending counsel cannot overtake. Such contentions are not an attack on present-day methods of criminal detection. It is not the motives of the prosecution that are now in issue; it is the effect of such material on a lay tribunal. The film and the camera can give horror a disturbing permanence. A pictorial record of brutality tends to appeal, not to the reason, but to the baser instincts. The Court may reject evidence of this class in exercise of its general discretion in criminal cases where it considers that the prejudicial effect of legally admissible testimony will outweigh the probative value: *R.* v. *Christie*, [1914] A.C. 545, 559. Would it not be fairer to the accused to limit such photographs to cases where a verbal description would be inadequate, and to place on the Crown as a matter of law the burden of establishing the indispensability of such a debatable method of proof? (See also "The Use of Photographs in Evidence." (T. A. Gresson.) (1940) 16 New Zealand Law Journal, 37).

We have not yet finally decided in this country which Caesar shall be paramount when the House of Lords and the Judicial Committee of the Privy Council expressly differ from each other. To resolve the conflict of competing infallibility, it seems logical for us to follow the latest decision, especially if delivered by the House of Lords. We were informed by the Attorney-General of the time that the Crown would adopt this course in the matter now under discussion: (1944) 20 New Zealand Law Journal, 3. In *Robinson* v. *State of Australia* (*No. 2*), [1931] A.C. 704, a strong Judicial Committee decided that a claim of privilege by the executive head of a Government Department in respect of State documents was subject to review by the Court, and that the Court had power to inspect the documents and to decide, notwithstanding the Minister's attitude, whether the claim was well founded. In that case, a Minister had objected to the production of files from the office of a State trading Department. Their Lordships declared, at p. 714: "the privilege is a narrow one, most sparingly to be exercised." The case was remitted to the Supreme Court of South Australia, to inspect the documents and to decide whether, in any justifiable sense, production would be prejudicial to public welfare. In *Gisborne Fire Board* v. *Lunken*, [1936] N.Z.L.R. 894, our Court of Appeal applied *Robinson's* case, [1931] A.C. 704, remarking at pp. 900, 901:

> there are but few considerations of greater importance to the public interest than the even-handed administration of justice.

Before *Robinson's* case [1931] A.C. 704, the trend of authority in England had not been entirely consistent, and this decision was itself only a persuasive authority in English Courts. Finally, against the background of war, the House of Lords refused to question the objection of the First Lord of the Admiralty to the production of plans, correspondence, and reports relating to the submarine *Thetis*: *Duncan* v. *Cammell, Laird and Co., Ltd.*, [1942] A.C. 624; [1942] 1 All E.R. 587. Two of the Law Lords who had sat in *Robinson's* case, [1931] A.C. 704 (Lord Thankerton and Lord Russell of Killowen), concurred in the single judgment of their Lordships' House. They held that in all instances the Court should uphold an objection taken by a political head of a Government Department on the grounds of public policy, and that the Judge must treat an objection so taken as conclusive. Viscount Simon, L.C., concluded with an exhortation to Ministers to exercise their powers with restraint and on proper grounds. But, now that the Courts have voluntarily forgone whatever supervisory jurisdiction they might once have exercised, this warning seems of little value or comfort to the humble litigant. In *Liversidge* v. *Anderson*, [1942] A.C. 206; [1941] 3 All E.R. 338, earlier in the same year, Lord Atkin (at p. 244; 361) had viewed:

> with apprehension the attitude of Judges who . . . show themselves more Executive-minded than the Executive.

Had he sat on *Duncan's* case, [1942] A.C. 624; [1942] 1 All E.R. 587, would his formal concurrence necessarily have followed? No doubt most executive heads of State Departments would be loath to place unwarranted obstruction in the way of a suppliant for justice and to invoke privilege as a protection against criticism or possible liability. In time of total war, the paramount need of defence requires no elaboration; but such a situation can be met by emergency legislation. In the meantime, the many activities of the modern State give this problem a peculiar urgency. Can we not formulate a clarifying section which would protect the State in matters pertaining to defence but otherwise would restore the powers of the judiciary to determine the admissibility of State documents where privilege is claimed? It is submitted that, in a community where we habitually boast of our freedom, no Minister should be able to resist the production of State documents in civil litigation, whether between private citizens or against the Crown, unless the trial Judge, after due examination, considers the objection justified on the grounds of public policy.

At time, we all submissively endorse the philosophy of a certain royal Duke, who remarked: "All change, at any time, for whatever purpose, is to be deprecated." The greater part of the Law of Evidence is fortified by history and mellowed by experience. Nevertheless, as has been well said, antiquity is not a reason. It is only by periodically subjecting our law to the test of doubt that we can ensure its adequacy in the latter half of the twentieth century.

The President said: "Before I ask for discussion, I would like to move a hearty vote of thanks to Dr. Haslam for his very delightful paper. He has given us papers on other occasions, and they are all marked with the mark of the skilled tradesman. The paper is now open for discussion."

* See the note in (1939) *50 Law Quarterly Review*, 490.

DISCUSSION.

Mr. C. A. L. TREADWELL (Wellington): "The paper divides itself, as I heard it, into two aspects: (i) the wisdom of codification into statutory form, and (ii) the amendments that were suggested by Dr. Haslam.

"I do not know if Dr. Haslam ever read Sir John Salmond's lecture to the Bar Association of New York when he was there in connection with the Disarmament Conference in 1923. He had been through the libraries of New York and was horrified. And, in a most delightful lecture, he said that the time was coming when a codification was becoming a measure of some urgency. That is one aspect of it, and, as Dr. Haslam tells us, certain of our laws have been codified, and there probably is not much to be objected to. But there may be a substantial objection to the variation of long-established rules of evidence which, even if antiquated, is not a justification, and it is open to doubt whether that statement is correct. It certainly is an explanation of their long continuance, and personally I should be sorry to see any of the long-established rules of evidence altered at all, unless some hardship, indeed a considerable hardship, could be proved to have resulted from the continuation of a long-established practice.

"We had an interesting discussion recently in the Law Society relating to the admission of documents which would work a forfeiture, and it was decided there—and, I think, very properly decided—that, although it was impossible to see the original justification for that rule, it was so wrongly established that, unless it could be satisfactorily established that it was working a wrong on the individual, there was no justification for a remit.

"I just mention those two aspects of Dr. Haslam's most interesting and fascinating paper, as they occurred to me as he read it."

Mr. A. G. NEILL, K.C. (Dunedin): "Personally, I think there is an unanswerable case for the codification of the law of evidence. I only wish the Attorney-General was here to have heard that case.

"Besides the instances which Dr. Haslam gave, there is one that occurs to me, and that is the rule under our Evidence Act where persons are jointly indicted. But the Crown can get over that very easily, as you know, by severance; and that, to my mind, is only evading the point. It was raised in England in *The King* v. *Grant*, [1944] 2 All E.R. 311, where persons were severally and jointly indicted. Two witnesses were called, and the presiding Judge said that, in his opinion, justice was not fairly administered where a person who was charged with an offence, and who had not been tried, should be compelled to be a witness for the prosecution. It would be better that the law should be altered in the interests of justice. The law does not go far enough. Severance would have got over the difficulty, but I feel personally that severance is not a wise step. If a person is charged with an offence, and at the same time another person is charged with the same offence, neither person should be a compellable witness for the prosecution."

Mr. W. H. CUNNINGHAM (Wellington): "Following what you have said, Mr. Neill, there is another difficulty under s. 5 of the Evidence Act, 1908, and that is where three persons are jointly indicted for the same offence. Then each is a compellable witness, not for the defence, but for himself only. The wording of our statute is different from that of the English Act. Thus, in New Zealand you have the spectacle of one of the three with no convictions (and a little bit of a mother's darling, perhaps) who tells the story of the other two not being there, thus generally providing an alibi, and the Judge is in duty bound to inform the jury that that evidence is only evidence for the prisoner who gave it, although that prisoner has in fact provided the defence for the other two. That seems an anomaly that ought to be straightened out."

THE LADIES' OWN FUNCTIONS.

THE visiting ladies were kept busy during their stay in Dunedin, thanks to the detailed arrangements made by the Conference Ladies' Committee for their entertainment.

They were present at the Mayoral Reception and Welcome at the Town Hall, which preceded the business sessions, and were afterwards entertained at morning-tea. They were at the Cocktail Party on Tuesday afternoon, and at the parties before the Ball on Wednesday evening.

On Thursday afternoon, the visiting ladies were taken for a scenic drive, and they enjoyed ever-changing views of the beautiful environs of Dunedin. A stop was made for afternoon-tea at the Brown House, whence they could see a wonderfully extensive panorama of land and sea.

The ladies were entertained at a Theatre Party on the Thursday evening. They were taken to see last year's Command Performance picture, *Odette*. Afterwards, at the Vedic, a supper-party ended a busy day. At its conclusion, Mrs. W. H. Cunningham said:

"I think that we, as visitors, ought to thank the ladies of Dunedin for all they have done for us, and for the wonderful hospitality which has been showered upon us.

"We appreciate all the work that has gone into organizing the entertainments and trips which we have enjoyed so much, and they have set a very high standard for us to live up to in the Conferences held in our own cities."

The visitors showed their appreciation of these efforts by giving the Dunedin ladies a round of enthusiastic applause.

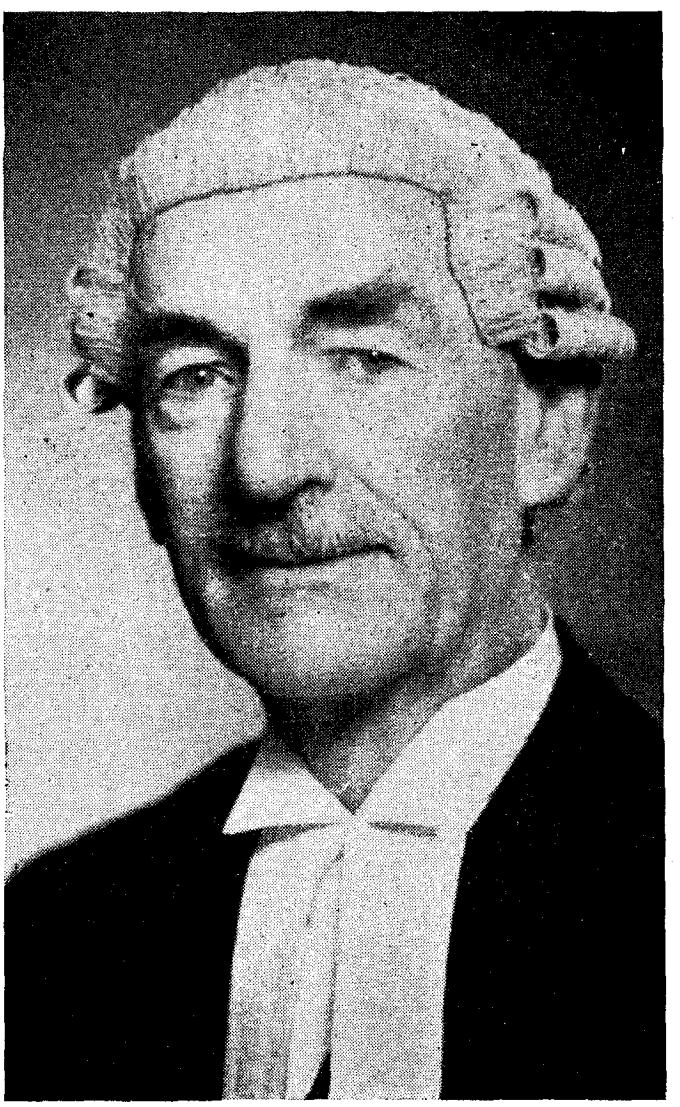
Friday morning was occupied with a visit to the School of Home Science at the University of Otago. Welcomed by the Dean of the Home Science Faculty, Dr. Elizabeth Gregory, the ladies were able to see at first hand the scientific teaching of cooking, housekeeping, clothes-designing, and all that leads to good home-making. This, the ladies said, was one of the week's highlights. Mrs. Jeavons, in a short speech, expressed their thanks.

THE PRESIDENT'S CLOSING ADDRESS.

THE proceedings of the business sessions of the Conference were closed by the Conference President, Mr. W. H. Cunningham, C.B.E., D.S.O., the President of the New Zealand Law Society, who addressed the assembled practitioners as follows:

"The only other business on this order paper that I see is an address by the President, and, when the Chairman of the Conference Committee wrote to me, he put it this way. He said: 'We are very desirous that the Conference should finish on a high note, and not just fizzle out.' His Dunedin friends know he is musical, and no doubt that was what appealed to him, but why he should put the high note in the other part of the building I do not know. [The National Orchestra was, at the time, practising in the Town Hall.]

"I was haunted by an expression that was frequently on the lips of my learned predecessor in this office, Mr. Justice Cooke. Those of you who know him fairly well will recall his frequent reference to what comes after the Lord Mayor's Show; and I could not help thinking of that when I found my place on the agenda.



John Barraud, photo.

Mr. W. H. Cunningham, C.B.E., D.S.O.
President of the Conference.

The Conference Committee's Success.

"There are just one or two disjointed topics that I should like to refer to. First of all, as we are about to finish the Conference, I should like to say something about the Conference arrangements and the work done by the Conference Committee under the chairmanship of the Deputy Chairman of the Conference. You will probably agree with me that their work shows grand organization; a lot of minute details have been meticulously attended to, and the whole Conference has gone smoothly and well. That can happen only where the detail has been attended to. We are very grateful indeed. No doubt in another place something additional may be said to you, Mr. Jeavons, and to your Committee, for the grand work that you have done, and I am quite sure that your wife, who is the Chairman of the Ladies Committee, has done equally good work. We were delighted to see our wives being taken out of the city, and I must say we are very grateful indeed for the foresight of the Committee in keeping them fairly busy and away from the shops.

"The hospitality that we have received here is characteristic, I think, of the Otago Law Society, both the general hospitality which has been extended by clubs and so on, and the particular hospitality which has been extended by individuals to visitors to this particular Conference.

"The thanks of the Conference are also due, and have been recorded individually, to those who go to the trouble to prepare papers and to put in the work required to produce a paper which can be read at a Conference like this. We are very grateful indeed to them for the work they have done.

The Value of Legal Conferences.

"The Attorney-General referred to the value of these Conferences, and he certainly did not underrate their real significance. Although I have been practising in a city for over twenty years, I am a country practitioner at heart, and I was delighted to see how many of the country practitioners and those from lonely outposts, where they have brought the law to inhabitants of isolated districts, are present here at this Conference. They live a very lonely professional life, and it is a pleasure to the city practitioners, to meet them to discuss problems informally in sundry places other than the Conference room, and generally to make them feel that they are the scouts, as it were, of the organization to which we all are proud to belong.

The New Zealand Law Society.

"Now, there are one or two matters, New Zealand Law Society problems, that I want to refer to briefly. If you have read your balance-sheet for the current year, you will see that the Law Society has not had a very profitable year. There are probably improvements in the organization we may have to make in the future. This brings up the question of whether the financial side of the New Zealand Law Society is sufficiently organized. We have assets, of course, but the revenue is not really sufficient, as appears from the balance-sheet. That is just a thought that I will leave to you, that in the near future the whole financial aspect may have to be gone

into by the District Societies.

" Our Solicitors' Fidelity Guarantee Fund is in quite a healthy position. Within five years, probably, if we have no misfortune, that fund may reach the statutory limit. Recently, the question of reduction of subscriptions was raised. We are at the statutory limit now, or very near it, but the whole question of its future may come up for decision; but I think that, while we have the present Management Committee, on which I am delighted to know that Sir Alexander Johnstone remains—although he has, as you know, severed his active participation in the work in Auckland and with the New Zealand Law Society, he remains on that Committee—you can be quite sure that, until Sir Alexander has seen that Fund reach its statutory limit, the policy recommended by the Management Committee will be entirely conservative. The Act allows for the introduction of a policy for refunds to practitioners who have ceased to practice actively, or to their estates if they are dead; and, broadly speaking, the Fund has been produced by the practitioners over the years. The personnel of many of the firms has changed, but no doubt the interest in the Guarantee Fund has remained an asset. But, when we reach the stage when the statutory limit is reached, then possibly the Guarantee Fund Committee may be able to devise a policy for making the Fund gradually change, so that the practising lawyers will continue to contribute something to the maintenance of that Fund.

" We are members of the International Bar Association still, and, two years ago, Sir Alexander Johnstone and Sir David Smith attended, while last year Mr. James Christie (formerly Mr. Justice Christie) was one of our representatives, and Mr. Macalister from Invercargill. I think it is wise for us to take an interest in the International Bar Association, and recently we had a letter regarding improvements which our members thought desirable in the method of conducting the Conference.

Australian Law Convention.

" There is a Convention being held in Australia, starting on August 8, in Sydney. It is the Seventh Law Convention organized by the Law Council of Australia, and it is intended to be the profession's celebration of the Jubilee of the Federation of the Australian Commonwealth. I will read you parts of a letter which I received from the President of the Council:

> In order that the legal profession should play its part in the Jubilee celebrations, my Council has decided that our 1951 Seventh Law Convention shall be held in Sydney and to invite guests from the United Kingdom, Canada, New Zealand, South Africa, India and Pakistan, and Ceylon (all of which countries are members of the British Commonwealth of Nations), and from the United States. As you will see from the names or status of the guests on the enclosed list of those to whom invitations are being sent as we send this invitation to you, this event will not only be of national importance to Australia, but of great influence from the British Commonwealth point of view and, in the present circumstances, might well have some international significance . . .
>
> The Convention will open on August 8. That date was fixed to enable our guests from the United Kingdom to fly to Australia after the end of term and arrive two or three days before the Convention opens.
>
> The High Court of Australia has altered the usual arrangement of its year so that it will not sit at all in August. The New South Wales and Victorian Supreme Courts—and probably others—will so arrange their years as to enable everyone to attend the Convention.
>
> The Convention will continue from Wednesday, August 8, until Friday, August 17, in Sydney.
>
> On each of only five mornings, a paper on a specially selected topic of general interest (which will have been printed and distributed in advance) will be the subject of a discussion which will be led by lawyers nominated beforehand.
>
> The afternoons, nights, and week-ends will be free for social purposes under the guidance of my Council. There will not be too many formal occasions nor too many lengthy speeches. To tell the truth, we are pleasurably concerned as to whether we shall be able to find suitable opportunities for all of our important guests to deliver the speeches which we shall want to hear and which the majority of them may want to deliver.
>
> We expect that we shall have about five hundred visitors from States outside New South Wales, in addition to those of the 2,250 practitioners in New South Wales who can attend. Some will come literally thousands of miles to be present. We also expect that all the Justices of the High Court of Australia and that many of the Judges from the several States will come to Sydney to be present at such a Convention . . .
>
> The visit will be a holiday, but it will be much more than that. The success of the Convention will have a big Australian and Commonwealth influence, and may, we hope, be the forerunner of similar gatherings in other countries of the British Commonwealth . . .
>
> If any Judge or lawyer from your country would like to come at his own expense, he will be made a very welcome visitor, and will be included in the general arrangements for our overseas guests. We shall be pleased if you can and will make that known in your circles.

Then I received another letter just before I came down here, in which the following information is contained:

> The following are coming definitely:
>
> Lord Jowitt, the Lord Chancellor, and Lady Jowitt.
>
> Sir Raymond Evershed, the Master of the Rolls, and Lady Evershed.
>
> Sir Hartley Shawcross, the Attorney-General, and Lady Shawcross.
>
> Sir Leonard Holmes (English Law Society).
>
> The Hon. T. Rinfrit, Chief Justice of Canada, and Madame Rinfrit.
>
> Mr. E. G. Gowling, K.C., President of the Canadian Bar Association.
>
> Sir Harilal Kania, the Chief Justice of India, and Lady Kania.
>
> Mr. C. Setalvad, the Attorney-General of India, and Mrs. Setalvad.
>
> The Hon. Albert van de Sandt Centlivres, the Chief Justice of South Africa, and Mrs. van de Sandt Centlivres.
>
> Mr. B. A. Ettlinger, K.C., the Chairman of the General Bar Council of South Africa, and Mrs. Ettlinger.
>
> Sir Abdur Rahman, the Senior Judge of Pakistan, and Mrs. Rahman.
>
> Mr. Justice Finlay and Mrs. Finlay.
>
> Mr. Cody Fowler, the President of the American Bar Association.
>
> Dean Erwin Griswold, of the Harvard Law School, and Miss Griswold.

So you will see that a general invitation, addressed to the Law Society, was sent. It was resolved at the last meeting of the Council that that invitation should be sent out to individual practitioners, so that, if any of you are contemplating a spring holiday in Australia, you will no doubt find ample to encourage you to make your visit commence round about August 8. The official guests' programme I have not mentioned to you, because it is probably limited to them, but it includes a three-day official visit to Canberra and a three-day visit to Melbourne.

" That, I think, deals with the few topics of general interest, and I would like to conclude with a few remarks as regards the impressions I have gathered during my short period as President of the New Zealand Law Society.

THE PROFESSION'S ESPRIT DE CORPS.

"In the first place, I have been struck by the extraordinary loyalty and sense of cohesion which animates the members of the profession throughout the country, and by the generous way in which the District Law Societies and their members on the Council of the New Zealand Law Society give their time and energy to furthering the interests of this profession of ours. It is a really Herculean task to cope with all the work, but members of the profession undertake it ungrudgingly, and, I know, at the sacrifice of their private time. I would say that undoubtedly the legal profession possesses *esprit de corps*.

"I feel tempted to liken our profession to a good regiment. We are all interested in it, and it has very many similar qualities. For instance, everybody has to go through a very rigid period of recruit training before he can be sworn in at all as a member of the profession. In the Army, the process is reversed; you are sworn in first, and then you get your recruit training afterwards. Then we have the thoroughly democratic principle that all the officers rise from the ranks and are subject to the process of election by their fellows—a principle which existed in the old days of the Volunteers, when the officers had to be elected by the company. Then, I find it a bit difficult, of course, to place our Judges. As you know, they all belong to us, and so do our Magistrates, but I hope I will not seem facetious if I refer to them as the brass-hats of the ranks. They still belong to us, and, on occasions when we gather like this in Conference, and when we go to our Dinner to-night, we know and they know that they are delighted to be back amongst us, and I do hope that they will emulate the example set by senior officers in the Army, for, when they come back to dine with their regiment, their only anxiety is to show how it was done in their day.

"There are qualities which a lawyer is expected to possess (the Attorney-General alluded briefly to them) quite apart from his learning. He cannot acquire these qualities by study. He must possess sound common sense, a knowledge of human nature, an acquaintance with business principles, and some qualities of leadership. Now, active service in the Forces is probably the quickest, but probably the most unpleasant, way of acquiring some of these qualities. Ruskin in his address to the cadets in 1865 on 'War' used these words:

> The habit of living light-hearted in daily presence of death always has had and must have power both in the making and testing of honest men.

They are the men whom we wish to have in the profession.

"I mention this because recently the Council of the New Zealand Law Society was anxious to obtain for servicemen from the last war some rather minor concessions in their studies, and unfortunately the concessions were determined a little before the Law Society thought they rightly should be. There are servicemen now who are unable to obtain admission to the profession because they cannot get these concessions. One of them is, I think, Latin. But these servicemen have been honest triers, and the Council of the New Zealand Law Society is not letting the matter go by the board. I am hopeful that in the near future the University Senate may see fit to reverse its previous decision and grant those concessions to these servicemen, because, as you know, we are going to be in difficulties in the near future for recruits to the profession, and, in my opinion, a man who has seen service to any extent has gained qualities which will be invaluable to him in the practice of the profession, and is a man whom we ought to see rehabilitated in professional life.

"Those are all the remarks that I have for you, and I do thank you for the way in which you have made my task in conducting the Conference so easy. I thank you very heartily indeed."

THE CONFERENCE DINNER.

THE President of the Law Society of the District of Otago, Mr. A. J. H. Jeavons, presided, and, in a few prefatory remarks, introduced Mr. A. G. Neill, K.C. Mr. Neill proposed the toast of "The Bench."

THE BENCH.

Mr. Neill said that to propose this toast was a pleasant task. "Few opportunities are given the profession to pay a tribute to the active Bench, and, when an occasion arises such as this, we can, through one, express the thoughts of all," he continued. "When you heard the Attorney-General, in his opening address, pay a tribute to the British system of justice, I am certain you felt proud, and prouder still do you feel to be a part of that British system of justice. Now, that British system of justice has the Bench as its mainspring and could not function as a system without it.

"You know, and I know, what are the outstanding qualities of the Bench, the integrity of the Bench, and the independence of the Bench. These make the Bench what it is. Realizing that integrity, we know that at no time would the Bench succumb to any suggestion of personal advantage in dealing with its judgments, and, no matter how opinions may differ regarding the part played by political influence in appointments to the Bench, there can be no doubt whatever that, once appointed, members of the Bench are free from political influence. You have that very well illustrated in the last few years. You have the case of the Labour Government in Australia, with its Bank nationalization Bill held invalid by the High Court and the Privy Council, and now you have the Menzies Government, with its anti-Communist Bill held invalid by the High Court of Australia—striking instances, showing how independent the Bench is.

"We in New Zealand in a century of history have been most fortunate in the choice of those who comprise the Bench. We realize that there are many great men who have served on our Bench, and to-night I wish to refer in particular to two. I have a personal interest in both, for I commenced my association with the law in the time of Sir Joshua Williams, and Mr. Justice Callan was my friend. But, apart altogether from those personal considerations, I have to say in those two men we had outstanding champions of the cause of justice.

"Of Sir Joshua much has been written, much has been said. He has become an ideal, an exemplar, and

although he has been gone many years, his memory ias as green to-day as ever.

" Of Mr. Justice Callan you have recently heard much. I would like to add this. In the days when the great Irish patriot Daniel O'Connell lay in prison, he was visited by a Dr. Callan. It was O'Connell's wont to inquire each day from Dr. Callan: 'What advance has the cause made to-day?' One morning, Dr. Callan, when asked this question, replied: 'The cause has gained two recruits to-day, for this morning I became the father of twins.' Now, if I am correctly informed, one of those twins was the father (himself a lawyer) of Mr. Justice Callan. So it can truly be said that Mr. Justice Callan was cradled in the cause of justice and law.

" Not the fact that these two men were courteous gentlemen, not the fact that they were learned in the law, not the fact that they were endowed with wisdom as such, but the fact that they shared that which was King Solomon's greatest attribute—namely, an understanding heart—elevated them beyond their brother Judges and beyond their fellow-men, and was the true mark of their greatness.

" The Judges are many, and it would delight me to recall others, but I must content myself with mentioning one as an example of perseverance. He was a man who came to this country a foreigner, who spent only a few short years on the Bench, but who realized how he had to bridge the gap. And how he must have driven himself, how by unflinching industry and application he merited and achieved a place on the Bench! How fitting were the words of Wordsworth he chose as a foreword to his work: 'A man he seemed of cheerful yesterdays and confident to-morrows.'

" The Judges have great power, but we do not always realize what they mean to a jury, and I am sure that their Honours will acquit me in advance of any intention to read them a homily if I read to them a little note I came across recently of the jury's idea of the Judge: 'The twelve average people who occupy a jury are generally a quarter proud, three-quarters apprehensive, and desperately anxious for guidance from the law. To them the law is embodied in the Judge. Counsel with their wigs and gowns and sprucely starched white bands inevitably rank as superior beings, but they are identified with the fortunes of a side. His Lordship has a pure and godlike quality, placed physically and spiritually above the sordid strife. His lightest word reverberates around Mount Sinai. It follows that in the overwhelming majority of cases juries follow the Judge when he gives a definite lead. There are exceptions. Occasionally a Judge will overdo it—he will espouse one party's cause so heatedly and fiercely that the jury find against him because they don't think it fair play. Even this happens only with a panel of strong jurors—or one strong juror who dominates the rest. For the most part Judges get the verdicts they want.' After reading that, I am certain that the Attorney-General will have no difficulty in the selection of Judges, for all he will have to find is a Judge who will want the right verdicts.

" But, gentlemen, there are other sides to this subject. I would like to re-echo the thoughts already expressed about the desirability of writing a book on the Judges, a book on the Bench—and, when I refer to the Bench, I include also the Magisterial Bench. When we think how much work is saved to the Supreme Court Bench because we have a competent Magisterial Bench, we are grateful. But the side I refer to is more the humorous and human side of our Judges' lives. If such a book were written, it would record some of the incidents which have occurred during the passing of the years, such as the Magistrate who was induced by astute counsel to give a verdict on the assertion that the matter was governed by the maxim *Omnis Gallia in tres partes divisa est.* It is a far cry from that, gentlemen, to one of our Judges in the Court of Appeal limericking '*ex abundanti cautela.*'

" Then, gentlemen, there is the story of an eminent counsel appearing before the Court of Appeal in a case in which he had been shot at all day long with forensic questions. As he was finishing, he electrified the Court by saying: 'I am finished, your Honours, but, before I sit down, I would like to ask, in the immortal words of Sam Weller: "Is there any other gentleman would like to ask me anything?"' There is also the story of the late Sir John Denniston, who had a case of nuisance before him, where it was alleged a man had buried some dead bodies alongside the boundary. The witness in cross-examination was asked: 'What were the dead bodies?' 'Bottles.' Sir John interposed: '*Obviously* dead marines.' That is the class of story we would like to see recorded, as well as the biographies of the Judges.

" There is also the story of the gentleman who had just been appointed to the Bench. He said it reminded him of what it was like getting into Heaven. He looked around and was surprised to see some there whom he did not expect to be there and surprised to note some not there whom he did expect to be there, but most surprised of all was he to be there himself.

" We are delighted to have present to-night Mr. Justice Stanton, Mr. Justice Hutchison, and Mr. Justice Adams. We welcome them all. We are proud to acclaim Mr. Justice Adams and Mr. Justice Hutchison as from Dunedin. We know that Mr. Justice Stanton is of Auckland, but I am sure that he had no choice in the matter. Had he had the choice, he would be from Dunedin, unless he is like the Irishman who, asked what he would be if he was not an Irishman, replied he would be ashamed of himself. We have a glorious heritage in New Zealand. It has been built up by the Judges in the past, and is being maintained by our present Bench. In asking you to drink the toast of 'The Bench,' I think we could not do better than remember and apply to the Bench the words of King David, as paraphrased by Mr. Kipling:

> '" *Let us now praise famous men*"—
> *Men of little showing—*
> *For their work continueth,*
> *And their work continueth,*
> *Broad and deep continueth,*
> *Greater than their knowing*!'"

The toast to " The Bench " was then honoured.

Mr. Justice Stanton.

The Hon. Mr. Justice Stanton began his reply by apologizing for the absence of the Chief Justice, who charged him with delivering to the Conference a message that it was impossible for him to attend, but that he hoped it would be a successful Conference. " As far as I can hear, his wishes have already been realized," His Honour continued.

"I feel quite unequal to the task of representing the 'god-like beings' to whom Mr. Neill referred in such choice and generous terms, but, on behalf of my brethren of the Supreme Court, and on behalf of all Magistrates, I wish to thank him for the kind things that he has said concerning us.

"May I say also that I welcome the opportunity of saying just a brief word about the late Mr. Justice Callan, who, of course, was so well known in Dunedin. But we knew him very well in Auckland too. I think it is to be regretted that Mr. Justice Callan spent so much time in Auckland that it left him little time to visit other centres. His work might have been even more fruitful than it was had he had the opportunity of serving for longer periods in other Courts. But, as one who welcomed him on his arrival in Auckland some sixteen years ago, and then served with him as a colleague, I should like to say how very deeply we all did appreciate his character and quality. As a colleague, he was perfection. He was always ready to do the uninteresting part of the daily grind. Quite frequently, if I was taking more time on a case than I had expected, he would go into my room and take away some of my work. In completeness of co-operation it would have been impossible to have a better colleague. And then he possessed qualities which are not so common among Judges. He made the hearing of his cases as enjoyable as possible to counsel, parties, and juries. May I be allowed to tell you one instance, in which I took part with H. E. Barrowclough. We represented two local bodies, he the Harbour Board and I the City Council. The dispute concerned an area of land reclaimed from the Waitemata Harbour. I explained to the Judge how the jurisdiction of local body areas bounded by the sea or harbours was limited to the boundaries of the harbour or seashore, and I was moved to quote: 'Man marks the earth with ruin, His domain stops with the shore.' The Judge said to my opponent: 'You will tell your client of the high level this argument reached.' Turning to me, he said: 'Roll on, Mr. Stanton.'

"There are now more Judges than there have ever been in the history of New Zealand, and it might be thought that, since we had to have so many members, it might not be possible to maintain the quality. But, speaking with all humility, but also with all sincerity, I doubt if New Zealand has at any time had a better Bench than it has to-day. In the first place, they are abreast of modern thought and outlook. While appreciating the basic values of the past, they understand the modern approach and reactions. Even old nursery rhymes can be given a modern dress:

'The man was in the kitchen washing out his shirt,
His wife was in the bathroom grubbing out the dirt,
The maid was in the parlour eating bread and honey;
In popped a neighbour and offered her more money.'

Also some of the old poetry:

'The curfew tolls the knell of parting day,
A line of cars winds swiftly o'er the lea,
The pedestrian plods his absent-minded way,
And leaves the world quite unexpectedly.'

Then, too, they are human and approachable. The position of a Judge, who steps from a pleader of cases to a dispenser of decisions, involves a considerable change in many aspects. A Judge may feel as Mr. Pepys did when he first got a letter addressed to 'S. Pepys, Esq.,' when, as he says: 'God knows I felt more than a little proud.' If our Judges feel proud, they do not show it. Finally, they are considerate and courteous to an extent that is more marked than it has ever been.

"It may be asked what is the outlook for the future. To this, I make two replies. In the first place, we are fortunate in having a Minister of Justice and Attorney-General in whom we all have great confidence; and, in the second place, we hope, as Pope has said, that our sons will be wiser than ourselves."

The Guests and Visitors.

The Chairman said: "We heard something yesterday of the iniquitous practices of the Crown; standing aside was the chief trouble. I would like to call on Mr. J. B. Deaker, known to those nearest and dearest to him as 'Gandhi' (and not because of his spiritual qualities), to propose the toast to 'The Guests and Visitors.'"

Mr. J. B. Deaker said: "It is an honour in Dunedin to be privileged to propose the toast of 'Guests and Visitors,' because in this fair city we like to do honour to those who are prepared to brave the trials and tribulations of our climate and come here. I am very conscious of the honour to-night.

"It is fifteen years since we had the pleasure of being the hosts at an Easter Conference. In that fifteen years, there have been many changes. Many of those who were with us on that previous occasion are no more. Many of those who in those days were thinking of being engine-drivers and so forth are now prominent in our profession. There have been changes, too, in our provincial life. Since we had you here last we have lost the Ranfurly Shield. We now hold the Plunket Shield.

"If one can believe all that one reads in the legal text-books—including in that term, as I do, all those publications by Butterworths—there should be little love lost between a host and his guests and visitors. Any host who has anything whatever to do with guests and visitors is, according to the legal text-books, buying himself a packet of trouble. Unless a host is prepared to treat his guests and visitors as helpless babes, he is 'for it.' If you cared to consider the law concerning guests and visitors, you might find this: it is a peculiar thing, and whether or not it is significant I leave to you, but the whole of the law concerning guests seems to be wrapped up with hotel-keepers, inn-keepers, and publicans. *Stroude's Judicial Dictionary* gives this definition: 'Guest—an inn-keepers' guest.' He gets them straightway, you see, into the licensed premises. Then he goes on: 'An inn-keeper's guest is a wayfarer, passenger, traveller, or suchlike person who has been accepted to and remains within the hospitality of an inn. When he has had his food and rest he loses his character—and the peculiar privileges of a guest.' The peculiar privileges of a guest, so far as I can see, seem to be to sit up and demand food and refreshment. From a consideration of *Stroude's* definition, a guest is either going somewhere or else he is coming back, and all he wants to do is sleep and drink. Now, take visitors. If you look at the index to *Halsbury's Laws of England*, you will find that the only reference to visitors is: 'Visitors to Borstal institutions, prisons, workhouses, and lunatic asylums.' The question arises immediately: 'Whom do they visit?' The answer would

seem to be: 'Their quondam hosts.' *Halsbury* also has further reference to visitors, and discusses the question of when they are bare licensees. That chapter might be revealing. I should have thought it would have been better discussed last night at the ball.

"Guests and visitors seem to be the most careless and gullible persons imaginable. The hosts seem to spend their time setting booby traps while the guests and visitors spend theirs falling for them. In other words, the law says guests and visitors are simply suckers.

"The law would have us believe that guests and visitors are unable to prevent themselves from falling downstairs, tripping over carpets, swallowing foreign substances in their beer, and then losing their luggage. According to Mr. Kavanagh in his monthly radio round-up, and according to the English Court of Appeal, a guest is not even responsible for the safety of his motor-car when he parks it in the backyard of an hotel after hours, even if the hotel-keeper does not know it is there.

"There are two differences, according to legal text-books, between guests and visitors. First, guests pay; visitors do not. There is one exception to guests' paying—the guests of His Majesty do not pay, and no doubt a great many here to-night have had a good deal to do with that type of guest. The second difference is that visitors are expected to take some little care of themselves, whereas guests are expected to take none. Even when the host is insane, the law says he is more capable of looking after his guests than they are of looking after themselves, and he is held responsible if he does not so look after them.

"When one gets to that stage, one realizes that all I have said refers to guests and visitors in the abstract, and that the toast should be amended to read '*Our* Guests and Visitors'—in other words 'Guests and Visitors in the concrete.' Anything derogatory I have said concerning guests and visitors in the abstract has no application to our guests and visitors in the concrete.

"Speaking of our visitors—and definitely not including our guests—I understand that they have been proud if, after a day at the Conference, they have been able to climb the stairs of their hotels, even if they have fallen down them after that.

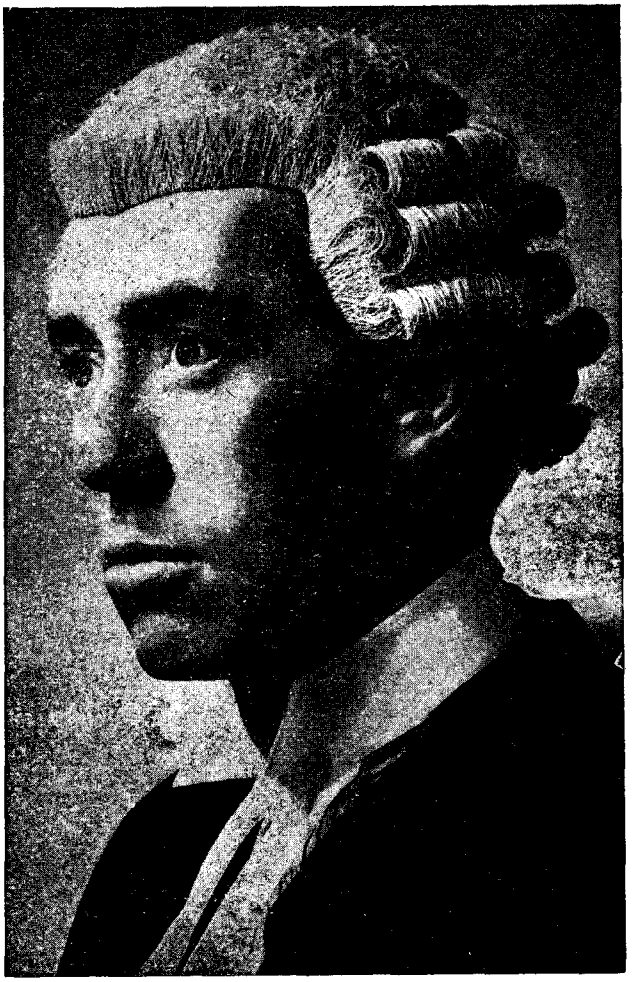
"This toast is subdivisible, and I propose to deal with our guests first. The toasting of the Bench (and in that toasting the Magistrates were included) has already been dealt with by Mr. Neill. No one would suggest that they were underdone, or that there is any reason to toast them on both sides. We are pleased to have three Judges and two Magistrates with us to-night.

"On his first official visit to Dunedin is the Attorney-General (Mr. Clifton Webb). We have heard it said on many occasions that Dunedin progresses slowly, but I was shocked to find that eighteen months after the last election there is still a placard in the Octagon which says: 'Mr. Clifton Webb in,' and, underneath, the comments from this local Labour stronghold: 'For Heaven's Sake!' But he is in, and he is 'Sitting Pretty.' We have been delighted to have him here and to have him make the useful contributions he has made to the business side of our Easter Conference.

"The Attorney-General's office is no sinecure. He had a tremendous spate of Bills under his name during his first session as Minister of Justice. If you remember what I said earlier concerning guests, you will not be surprised to hear that one of the first Bills of which he was in charge dealt with trust control of licensed premises. In 1936, at our last Conference, a speaker at the Grand Hotel here reminded the profession that it must stand together. He confessed at that time to having nearly said 'hang together.' The Attorney-General has now made that possible, by the introduction of the Capital Punishment Bill.

"We looked forward to the visit of the Attorney-General for two reasons. First, from the outset, he showed that he did know there was a city of Dunedin on the mainland of New Zealand. I believe his first act on taking office was to sign the papers necessary to enable Mr. Neill to become a K.C. One of his next acts was to have Mr. F. B. Adams appointed as Mr. Justice Adams. Secondly, we wanted him here to enlist his sympathy and support in our long-standing endeavours to have our Supreme Court buildings renovated and modernized. Being wise, he forestalled us by one week. One week ago, we read in the daily papers that the work was in hand, and we hope it will be finished before he leaves office. We

The Conference Secretaries.

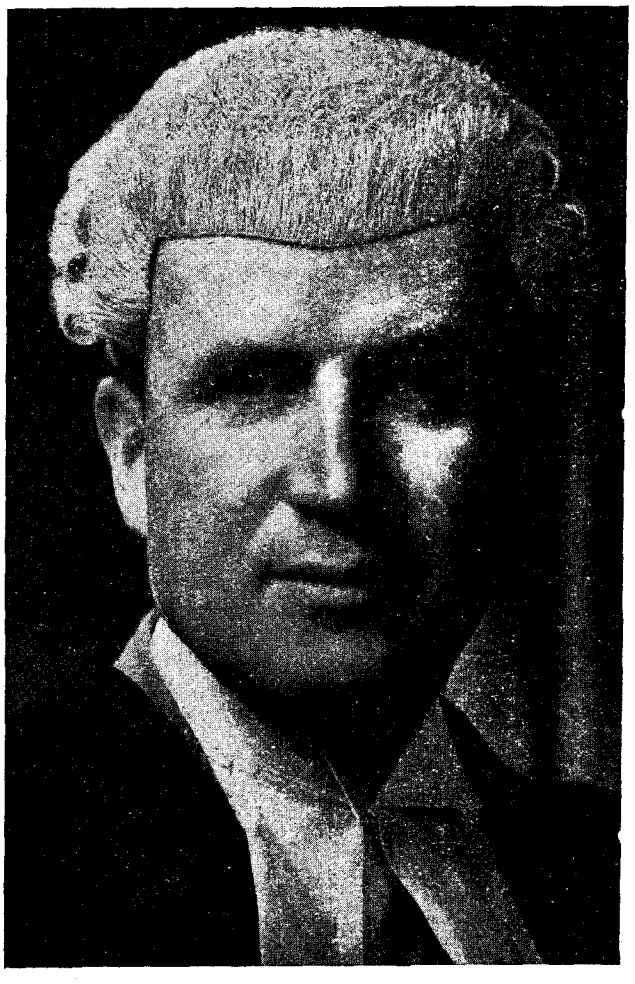


Campbell Photo.

Mr. J. P. Cook

wish him well during his first term of office. We are delighted also to have Mr. Evans, the Solicitor-General. We realize that this is a busy time for him, and we are delighted that he is able to spare the time to grace this Conference with his presence. We welcome also Mr. Mason, the Registrar of our Supreme Court, who represents the Registrars of all the Supreme Courts and Magistrates' Courts throughout the country. They are of inestimable value to our profession, and we are grateful to them for their assistance to us always.

" We welcome especially two of our former revered Magistrates—Mr. Bundle and Mr. Bartholomew. ' Barty ' and ' Harry,' as we affectionately knew them, were an excellent team. We do see Mr.



Campbell Photo.

Mr. D. L. Wood.

Bartholomew occasionally in our play. Mr. Bundle comes to us from Nelson, the land of apples, and, if he has not brought apples with him, he has brought a flush of health in his face which shows that his retired days are doing him good. We assure them that their successors are good, and that they are carrying out the old standards—but with differences! In the old days, it was customary, after a Bar dinner, for some of the profession to take the Magistrates home. But now the members of the profession do not even take themselves home. They are not game to.

" Now, who are our ' Visitors ? ' One out of every two originally came from Otago. I must not particularize, but we do especially welcome Mr. Cunningham, the President of the New Zealand Law Society. It is sometimes a much maligned body, but we were very grateful yesterday to hear the Attorney-General expressing the thanks of the Government for the wonderful assistance the New Zealand Law Society, and particularly the Standing Committee in Wellington, gives to the Government.

" We welcome amongst our visitors three local boys who have made good, and are King's Counsel. I refer to Sir Alexander Johnstone, Sir Wilfrid Sim, and Dr. Mazengarb. We should have been very disappointed if Sir Alexander Johnstone had not been able to be present, and are glad that he changed his plans and is with us. It is interesting to know, too, that, of the three Judges present, two are local boys who have made good.

" We welcome also the many Presidents of District Law Societies who are with us. I am not going to name them all, but Mr. Treadwell's name is coupled with this toast. He is the President of the Wellington District Law Society, and will reply on behalf of all the District Law Societies.

" This is a unique gathering, because we have five Generals here, the Attorney-General, the Solicitor-General, and three Major-Generals. We were told today that the profession was something like the Army. I quite agree. We have dealt with the tops. Now let us turn to those who, in our profession as well as in the Army, keep the show going. Let us come to the rank and file. Without them there could not have been a Conference. We needed their presence, and we needed their contributions towards their entertainment. Gentlemen, we are glad and privileged to have had you here, and to have had the opportunity of spending your money on your entertainment. Gentlemen, I give you the toast ' Our Guests and Visitors.' "

The Guests' Reply.

The Attorney-General (Mr. T. Clifton Webb) said: " On behalf of the guests and visitors, I want to thank Mr. Deaker for his kindly remarks in proposing the toast, and you for the hearty way in which you responded. I take this early opportunity of saying that we have felt very welcome here. We came here as strangers, and, in true Biblical style, you took us in. However, you have been very nice about it.

" We feel more welcome than the stranger did on one occasion at the annual cricket match between Yorkshire and Lancashire. This stranger, having nothing better to do on the Saturday, and being an enthusiastic cricketer, decided to go and see the annual match. Like all other enthusiastic cricketers, he could not refrain from passing those comments that are so common. As the game progressed, he would say, ' Good stroke, sir,' ' Well fielded, sir,' ' Neatly bowled, sir,' and so on. This went on for some time, until one of the local yokels sidled up and said: ' Dost tha come from Lancashire, lad ? ' ' No, I don't.' ' Well, dost tha come from Yorkshire ? ' ' No, I don't.' ' Well, mind your own bloody business.' Since I have been in Dunedin, I have not been able to detect anyone at any rate who felt like that towards me, and I think I can say the same of my fellow-guests and visitors.

" Mr. Deaker has referred to the fact that I have a namesake, and I would like to tell you that sometimes it is difficult and sometimes it is not. Sometimes,

when I go to an hotel and am announced as Mr. Clifton Webb, the girls in the office get all agog. As soon as they discover that I am not the film star, my name is mud. As a matter of fact, a public man has to take all sorts of rebuffs like that. Mr. Jordan, the High Commissioner, tells of the little boy who stuck him up and asked for an autograph. 'Where is your book?' asked Mr. Jordan. 'I haven't a book. Would you write it on paper?' said the boy. So Mr. Jordan wrote it on a piece of paper. Then he was asked for another autograph. 'I want to change two of yours for one of George Formby's,' said the boy.

"When I was in Canada about two years ago, the Clerk of the House was Dr. Beauchesne, who was a Companion of the Order of St. Michael and St. George. On one occasion, he went to an investiture and handed in his card, 'Dr. Beauchesne, C.M.G.,' and the flunkey announced him as 'Dr. Beauchesne, General Motors Corporation.'

"I want to thank you for the welcome that has been extended to the guests and visitors. I am sure I voice the opinion of all when I say that we have thoroughly enjoyed our stay here. The Conference has been a success from every standpoint, including the social one, and that is largely due to the effort and thought put into it. Of course, at the head of the guests and visitors we have the Judges. Someone has said that they are 'god-like.' I suppose it is correct that, when they are appointed to the Bench, they are entitled to have what we might call the Order of Purity. But, as a matter of fact, that can be a doubtful compliment. Dr. Beauchesne, whom I was telling you about, told us that at the same investiture medals of all kinds were being worn, including a strange one worn by a woman. 'So,' said Dr. Beauchesne, 'I asked her what it was. "That was given to me by Queen Wilhelmina," said the woman, adding: "It is the Order of Purity." So I asked what Class. "Oh, Second Class."' I think I can say in all sincerity that our Judges are entitled to the Order of Purity, First Class.

"In serious vein, I would like to take up a point made by Mr. Justice Stanton, which should not be allowed to pass even at a convivial function like this. He made comparisons—not exactly odious, but not flattering—between present-day Judges and those of the past. I think the Judge is quite right when he says that we have a system to-day of which we have every reason to be proud. I get a bit hot under the collar over this tendency to glorify the past. You get it in all directions. We have not the footballers we had in the past, we have not the cricketers, we have not the runners. Lord Birkenhead dealt with this point in connection with orators. In Gladstone's day, he said, they talked about the orators of the past. When we ourselves grow up and get closer to them, it is the same old story of familiarity to some extend tending to breed contempt. I am satisfied that the Judges to-day have every reason to say, as I was pleased to hear Mr. Justice Stanton imply, that the Judges to-day have no need to lower their colours in comparison with the Judges of former days.

"I will just say again, on behalf of the guests and the ladies, that we have enjoyed this Conference immensely. The people of Otago have stepped themselves out well. This Conference will be remembered. You are competing against yourselves, because those at the last Dunedin Conference have been telling others about it. I hope it will not be the last time that I will have the opportunity to be present at your gathering."

The Chairman said: "Gentlemen, I think we might have been guilty of gross pride in selecting the second speaker. We did not know at the time that he had lived in Otago for a while. That was our oversight."

MR. C. A. L. TREADWELL (Wellington) said: "I served and loved a Judge here before the First World War, and I left him to go to that War. That was my association with Otago, and I think it did me good. The Law is such fun if you have only the capacity to enjoy it. It is not a profession for Jeremiahs. I want to start by telling you a story about Judges. I am not to be taken as giving any lead for your opinion. When I received this brief some time ago, and went to look through my books, I came across a story about a Judge, and I said: 'Do stories grow out of date?' I want you to answer that. Do they continue to be apposite? Would this particular story I am about to tell you still have any pertinence? This is the story. A few decades ago, when motor-cars were just coming in, a Judge was driving his gig down a country lane. In the distance were two men talking to each other. As the Judge came along, he found one was a barrister and the other was the local roadman. As the Judge arrived, they saluted each other, and the Judge went on his way. The roadman turned to his companion and said: 'Who is that man?' The barrister replied: 'That was Judge So-and-so. Did you know that?' 'Him a Judge!' said the roadman. 'Why, I have known that man, man and boy, for forty years, and I have never seen him worse for drink. *Him* a Judge!' Whether or not the story is apposite to-day is entirely a matter for your individual opinion.

"In recently considering this matter, I came across a criticism of one of my literary favourites, Marcel Proust, in which the critic said that Proust of all had 'those two great qualities, an understanding and a heart.' But those two qualities are the precise qualities that belong to lawyers, because, if lawyers do not have understanding, if they do not have a kindness of heart, then they will not succeed in their profession. But the critic thought it extraordinary that that author should have had those qualifications.

"The Law is fun, provided you are prepared to enjoy it. Even solicitors, with whom I have very little connection, have their moments of fun, and I want to tell you a story about an Auckland solicitor. He is here now. He and I were away at both wars, and he is a very human man—Laurie Rudd. A few years after the slump, one of Laurie Rudd's pet clients, an old spinster of remarkable virtue and of absolute purity, came into his room, and he showed her to one of his deep chairs. But she sat upright on the one high-backed chair, and dictated to him instructions for the making of her will. She selected the executors, arranged for the revoking of the old wills, and the gift of personal properties, and then this dear old soul said to Laurie: 'And now I want £5,000 set aside in trust for the establishment and maintenance of a brothel.' Laurie looked back at her. He was always a shy sort of man. So he murmured: 'Do you know what you are saying? Do you know what a brothel is?' 'Not quite,' she said, 'but isn't it some kind of soup kitchen?'

"It is barristers who have most fun in the profession, and I remember one case particularly well. A young Chinese, called Peter Wong, decided he wanted to get married. And so his parents sent the intermediaries, as they do, and ultimately a marriage was arranged with Lily King. It all came out in Court. Now, Lily was a very sophisticated young girl, born in New Zealand. Very shortly after they were married, Peter Wong began to be suspicious of his wife. To some extent, that suspicion was allayed, because she very shortly manifested that she was to become a mother. And, in due course, she became a mother, but the mother of a beautiful little blonde child, with blue eyes and a pink and white skin. The matter came before Mr. Justice Stanton, and I had hardly started when he said: 'You need go no further, Mr. Treadwell. Take your decree, for, after all, two Wongs don't make a white.' These are the light patches of the profession. All stories, of course, are true; or are they?

"Thirty-six or thirty-seven years ago, when I came to Dunedin, I was, as the Attorney-General said, taken into the hearts of these people, but I was never taken down. The kindliness of the Otago people is proverbial. We have had evidence of that to-day, and of their natural inclination to receive visitors, to help them, and to emphasize the brotherhood of the law.

"I was very much affected by what was said this morning by my old colonel, now General Cunningham. He said that the law is like a good regiment; and so it is. We are a great band of brothers, and, so long as we have Conferences like this, we meet people we have only written to before and, perhaps, even written to crossly, for our infernal clients. We meet them here, and in the future we can deal with them better, in that brotherly spirit that belongs more to the law than to any other profession. He referred to the fact that we were soldiers. There are three Major-Generals here, and quite a lot of Brigadiers and Colonels. (Interjections: 'And Corporals.' 'Privates.' 'Bombardiers.') The legal profession has contributed physically to the war-effort as no other profession in New Zealand has done. I knew very well my young friend the President of the Otago Law Society. When he was shot through the chest and taken back to Egypt, he used to come and see me and cheer my daily life. His memory is phenomenal. It is the fact that a young man like that and an older man like myself can meet all the time as brothers that makes this profession worthwhile. I resume my seat thanking our hosts for their hospitality, the proposer of this toast for the eloquent terms he employed, and you for your enthusiastic reception of it."

The Chairman said that in normal times, when Conferences were not in progress, he made his living in a most convenient building and in most convenient surroundings. Immediately above him in the building in which he made his living and operated among Law Reports and Regulations, there were two curious coves who worked out a very happy partnership. Both were very interested in singing, and one was also a poet. It was nothing at all to be listening to the woes of Mrs. Smith or Mrs. Brown and to hear "Mi-mi-mi" from upstairs. However, these men came in handy, and he would like to introduce Peter Anderson, poet and songster, and his junior partner, Ken Stewart, "songs only," as the speaker had never thought of him as a poet.

Messrs. Stewart and Anderson, to the latter's accompaniment, then delighted the assembly with the following topical verses:

CONFERENCE DAYS—AND NIGHTS.

Air: *Much-Binding-in-the-Marsh.*

"*Wi h rhyme and some jollity*
Set to a tune you may have heard with pleasure,
We'll try—and without a fee—
To introduce some humour to our measure.
We are so very dignified—or so appear to-night—
So let's cast off our worries, even get a little tight.
The only thing we're scared of is a breach of copyright
Of Much-Binding-in-the-Marsh.

"*We're glad to welcome here to-night*
Our Judges, visitors to our fair City.
We trust they'll perceive our plight:
We have no resident—a grievous pity.
We used to be the hub of all the business in N.Z.
We furnished all the Judges—and finances, too, 'tis said.
Now they think that we are moribund, if not already dead,
We can't have a resident.
No crimes to try here.
Don't need a resident.

"*Since last we have thus conferred*
We'v made a move that was a bit belated.
Delay seemed a bit absurd,
We promptly dumped a scale quite antiquated.
With ever-mounting overhead we can't afford to laugh,
We hand a lot of our increase right over to the staff
And can't exactly state our taxes have been cut in half,
In our false prosperity.

"*With more profit than the law,*
Our farmers have much cause for jubilation.
They've told us in time of yore
They are the very backbone of the nation.
With wool at higher prices than it's ever been before
They'll buy new motor-cars and chase the wolf far from the door.
Our only hope is prosecutions, motor claims galore,
To share their prosperity.

"*In our smug security,*
Where many things are furnished on a platter,
In our smug security,
We've found some simple things that really matter.
The rule of law must be preserved no matter what the cost.
We're tired of hearing fellow-travellers, mostly Stalin-bossed.
If we yield to Barnes and Hill we'll most assuredly be lost,
In our smug security.

"*In our Law Society*
We only now and then can get together.
We think you will all agree
We have some better topics than the weather.
We'd like to see another Chamber in the House appear,
The time to codify the law of evidence is near,
And quite a lot emerges from a pot of ginger-beer
Through our Law Society
With able papers—
In our Law Society."

In response to a vociferous encore, the entertaining duo then had something to sing about the then-present

industrial troubles, to the air of *Mr. Gallagher and Mr. Sheen*. But the audience wanted more. So Messrs. Anderson and Stewart obliged with the following, sung to the air of Offenbach's *The Gendarmes' Duet*:

THE TAXGATHERERS' DUET.

Air: *The Gendarmes' Duet* (Offenbach).

S.: "*I am a crazy Stamp Commissioner,*
I never do a thing that's rash."
T. "*I am an ardent Tax Commissioner,*
I merely rake in all the cash."

Both: "*We never miss an opportunity*
To sock 'em all, both small and great,
We sock 'em all, We sock 'em all, We sock 'em all,
We disregard their hymn of hate.
We sock 'em all, We sock 'em all, We sock 'em all.

S.: "*I tax 'em all while still they're living.*
My operations make 'em cry."
T.: "*My efforts fill them with misgiving,*
They're jolly well afraid to die."

Both: "*But we must ne'er be moved by sentiment—*
The public coffers we must fill.
We squeeze 'em dry, We squeeze 'em dry, We squeeze 'em dry.
We issue our assessments, till
We squeeze 'em dry, We squeeze 'em dry, We squeeze 'em dry.
We spread no sugar on the pill.

"*Our curiosity arises*
About transactions big and small
In operations between spouses.
We will investigate them all.
We never have been quite consi tent,
We always take a different view—
I separate—I aggregate, I separate—I aggregate,
I separate—I aggregate.
We get results and shekels too.
I separate—I aggregate, I separate—I aggregate,
I separate—I aggregate.
We often get confused—don't you?"

S.: "*The sages of old would have us believe*
'Tis better to give than—just to receive.
But one gets neither profit nor moral uplift
From any transactions I treat as a gift."

Both: "*To make inquiries microscopic*
The midnight oil you'll see us burn.
We track 'em down, We track 'em down, We track 'em down.
Time immemorial we spurn.
We track 'em down, We track 'em down, We track 'em down.
We often find there's no return.

"*When we assess the duty owed to us,*
We always see the debtor pays.
We add a penalty without a fuss,
We profit from our own delays.
So, if we sometimes do procrastinate,
We'll charge you interest just the same,
We charge it up, We charge it up, We charge it up,
Although you're really not to blame.
We charge it up, We charge it up, We charge it up.
You always fight a losing game.

"*Still we are senior servants civil.*
Did I say civil? Well, 'tis true.
Though you consign us to the devil,
We do a job of work for you.
So, when you next engage in argument
Upon some point, however neat,
Just be polite, Just be polite, Just be polite.
We like to have your case complete.
Just be polite, Just be polite, Just be polite.
We'd sooner have some light than heat."

JOHN DOE.

Mr. C. L. CALVERT (Dunedin) proposed the toast of "John Doe." He said that, when he was asked to propose that toast, he realized that he was expected to instruct rather than to entertain; and to instruct a gathering like that around him on a question so intimately connected with the law was rather frightening to him. He proceeded:

"John Doe was born on April 1, 1776. His parents, so far as I can find out, were neither very poor nor conspicuously honest. In fact, the family name was originally spelt 'Dough.' Young John was fortunately a man of wealth, and he certainly needed it. In 1791 or 1792 he married Jane Roe, and, with Richard Roe (his brother-in-law), he carried on a partnership that lasted for sixty years—till 1851—during which period he enriched both the Law Reports and the lawyers. He realized that the most important thing in a lawsuit was to have a plaintiff and a defendant. If you could not find a plaintiff, he would supply one, and, if a defendant was needed, he called in his brother-in-law, Richard Roe, and between them they did the job. You will be surprised to learn that in *Halsbury's Laws of England* the cases in which he was plaintiff occupy nine and a half pages in the index alone. This record is only once equalled, and that, I regret to say, is by the Commissioners of Inland Revenue. But I hope none of you will compare the single-minded altruism of John Doe with the calculated avarice of a professional blood-sucker.

"His activities covered many aspects of the law, but he specialized in actions for ejectment and in fines and recoveries, a branch of the law at that time very difficult—much too difficult for me to explain to you at this hour—though, through his untiring efforts, it became much simpler. Ejectment is what happens if you put your feet up on the seats of our new trolley-bus—and serve you right! Fines are what you get if you cross against our new pedestrian-crossing lights—and again, serve you right! To suffer a recovery is what you will do to-morrow morning.

"But, gentlemen, John Doe's chief concern was with the Law, and it is of the Law that I want to speak to you to-night—a very serious subject. What is the Law? Can you answer that question? I asked a lawyer. He told me it was what he got his bread and butter with, and, since the new scale of conveyancing charges, a little jam. I asked the Magistrates, both great and small—but they do not use it in their Courts. I thought of asking the Attorney-General. After all, he makes the laws. I looked up the vast number of recent Acts, and it was evident that Mr. Clifton Webb was asked to draft these laws, because they were 'Cheaper by the Dozen.' I was on the point of asking a Judge, 'What is the Law?' but he got in first and asked me. I told him, but my guess was wrong. But, gentlemen, I found the answer in the works of Charles Dickens. In the volume devoted to the life

and adventures of *Oliver Twist*, at p. 263, about three-quarters down the page, Mr. Bumble, who had got on the wrong side of the law, is reported to have said: 'The Law is a ass.' After a lot of reflection, I have come to the conclusion that he was right. If you look around you, you will see what I mean. Of course, Mr. Bumble meant to be rude, but many a true word is spoken in anger, and I regard Mr. Bumble as paying a compliment to me, and especially to you, when he compared the Law to an ass.

"The ass is a noble animal, and we are proud to be likened to him. Who else but an ass—or the Law—is so wise, so humble, so patient? Look at the first ass you meet. (There are plenty in Dunedin.) He looks wiser than anyone is entitled to look, unless he is a Judge, and paid to look wise. If Judges were paid more, they would look even wiser—a point that was overlooked by the mover of to-day's remit. Who else but the Law—or an ass—would bear so patiently the burdens of others, without the expectation of thanks or the hope of reward? I looked at an ass the other day to see if I was right, and, as I looked at him and he looked at me, I thought 'Here is someone I know. There are the same wise patient face, and the same air of humility, that are so characteristic of our profession.' And then I realized that I was looking at a composite photograph of the Council of the Otago Law Society. It was they who asked me to do this job, and I think I am even with them now. Then I looked at the ass from the other end, and was most painfully kicked. And the lesson I learned was always to keep on the right side of the Law.

"To come back to our toast: John Doe has earned the gratitude of all of us. He left the Law richer than he found it, and the lawyers even more so. His whole life was devoted to the Law, and his record proves more than any words that I can say that Mr. Bumble's definition is the true one, and that the Law is a ass.

"Will you please rise and drink to the health of John Doe, coupled with the names of Richard Doe and Mr. E. B. E. Taylor?"

The health of "John Doe" was enthusiastically honoured.

Mr. E. B. E. TAYLOR (Christchurch) said: "I want to thank you on behalf of John Doe and John Doe's family for the hearty way in which you have honoured this toast. Whether it was due to the lateness of the hour or alcoholic excitement I do not know and I do not care. But Mr. Calvert's eloquent references to the outstanding work of the Doe family—only part of which he touched on—I, on behalf of the Does, appreciate very much. Like Mr. Calvert, I did some research in this matter, because, like the President, when the matter was proposed to me, I could see no significance whatever in a toast to John Doe. I was in a quandary. I was trotting round, as it were, in a circle, when my very good friend Roy Deaker helped me out of my difficulties. He gave me the entrée to the Otago Law Society library. I went there yesterday morning, and, after a little research, I found under the heading of 'Agriculture' a little book entitled *A Tribute to a Great Doe*. Because of the lateness of the hour, I can give you only one or two extracts from it. One could almost call this volume a half-sister to the well-known text-book on pleadings, because, although it was probably printed later than the text-book, as there is no mention of Leake at all (he was probably dead), it bears the unmistakable imprint of the co-author, and that whimsical humour we associate so much with Bullen peeps from almost every page. It is an attractive little book bound in buckram and doeskin. The inscription reads: 'To a great family of litigants, jurists, and sportsmen.' Underneath the inscription is the Doe family coat of arms. It is a white scut over a cornucopia of fertility on a blue azure, and underneath is the smiling figure of Justice at a bar sinister. The motto is: 'Litter by Litter.'

"At random, I selected a few examples of the history of this prolific English family, and I begin with a reported case which occurs on page 96 of this book, and was heard before Mr. Justice McLachlan at a special session of the Low Court of Little-Piddleton-on-the-Marsh. The Roes, whom Mr. Calvert referred to as cousins, are mentioned, which makes the reported case even more interesting. The headnote reads: 'John Doe and his wife Mary Doe (locally known as "Hairy Mary") lived at 13 Little Lavender Lane. Richard Roe and his wife Fanny Roe lived at 13A Little Lavender Lane. Hairy Mary had thirteen children to John Doe in as many years, whereas Fanny had not in the same period even conceived. There were two loose palings in the common dividing fence, which was all actually in a poor state of repair. One night Fanny Roe climbed through the broken palings and put it up to John Doe, who could never say no (he was a bit of a rabbit). After a week, Mary Doe, tired of sleeping on the floor, went through the palings to Richard Roe. Richard Roe was a playboy but his carryings on never resulted in anything which appealed to Hairy Mary. After a period of a month John Doe sued Mary Doe in divorce on the grounds of adultery, quoting Richard Roe as co-respondent, and Fanny Roe sued Richard Roe in divorce on the ground of adultery, quoting Mary Doe as co-respondent (as it was in those days).' Both respondents cross-petitioned. The case lasted four days. Mr. Justice McLachlan gave a brief verbal judgment, as he said, without giving the matter any consideration. 'I find this case terribly interesting,' the judgment records. 'I have never before in a long judicial career enjoyed such an orgy of sexual intercourse. All four litigants are obviously guilty of collusion and connivance, and I feel each and every one of them has established this aspect of the case beyond any reasonable doubt. I feel that petitioners, respondents, and co-respondents got what they wanted. I wish to add that I feel deeply for Hairy Mary. (Loud laughter.) I find the bad repair of the paling fence had nothing to do with the case. In the circumstances, the laws of national justice require me to grant orders in terms of the petitions to both petitioners and cross-petitioners.' There is a footnote that the Court adjourned amidst applause. On page 120 there is another entry which concerns another member of the Doe family, Mr. Justice Doe. He was on circuit in a small county town in Shropshire. The second Crown witness had just been called, and his name was asked. He said: 'Tom Bury.' 'How do you spell that?' asked the Judge. 'T-o-m.' 'No, no. How do you spell your other name?' 'B-u-r-y.' 'That is not "Burey" but "Berry,"' His Honour pointed out. The Crown Prosecutor had just started to lead the witness when the Judge saw that he was chuckling very heartily to himself. The Judge said: 'What is wrong with you? What are you laughing at?' 'I was just looking at all those men over there, your Honour, who think they are sitting on the jury.'

" The only other case I want to quote is one dealing with the sporting activities of the Does. The learned author has done a good deal of research in this work, and he has found an extract from the Little-Piddleton-on-the-Marsh *Chronicle*. Judging by the facts and by the parties concerned, I think that the report dates from about the same time as the divorce proceedings. At that time, the game of croquet was very popular in England, as it is to-day in New Zealand. I think perhaps the same terms are still used. Little-Piddleton was apparently a great croquet centre, and the Piddleton croquet championships were on. This is the report: 'There was a good gallery for the semi-finals of the open championships. Mistress Roe had three points to make in her game against John Doe before he had scored. Doe went to rover and the stick, and, through his attempting to peg out his ball (which was not a rover), Mistress Roe won 26-23. The second game was short. Doe went to four-back and the peg in two turns. Mistress Roe failed at the sixth hoop, then Doe went out. In the last game Mistress Roe failed at hoop two. Doe got in and gave a brilliant display. He made nine, and then, starting at hoop six, completed a delayed triple peel. When attempting rover, he put one of his balls into the jaws of the hoop, did a jump shot over it, then peeled it by means of a cannon, and so out. His skill earned deserved applause.' "

This concluded the speeches. But there was something yet to come. When the formal gathering broke up, groups formed themselves around some of the older Dunedin practitioners and heard many an interesting story of practice in the early days. Mr. W. R. Brugh was a natural leader in these reminiscences, and the visitors thoroughly enjoyed this concluding stage of a memorable evening.

An interesting feature of the Dinner was the presence of the law clerks of Dunedin as waiters and wine-stewards. Working under expert supervision behind the scenes, the law clerks were most efficient and attentive. By thus taking part in this fine gathering, they were able to commence their training for the social side of the Law in very happy conditions.

THE DUNEDIN PRESS.

The Dunedin daily newspapers treated the Conference handsomely. On each day of the Conference, there were excellent summaries of the proceedings, and chatty paragraphs about people attending them.

The leading article in the *Otago Daily Times* on the Thursday morning was as follows:

LAW CONFERENCE.

For the first time since 1936 the Dominion Legal Conference is being held in Dunedin. Lawyers form a small community even in a city, and there are many towns in which there is only a solitary representative of the profession. One of the reasons for the holding of such conferences is, therefore, to provide opportunities for the practitioners of the law from one end of New Zealand to the other to become acquainted. Isolated though a lawyer may be from his kind, he cannot work apart and it is on such occasions as these that contacts are made which facilitate the formal approaches. Of course, this social aspect is not the most important one. There is much business before the Conference. Few would to-day seriously entertain the view of the Restoration dramatist who described the law as "a sort of hocus-pocus science." The law, and the interpretation of the law, has become in our perplexed age an increasingly vital force, not bounded, it is true, by scientific formulae, but necessarily free from hocus-pocus when it is practised, as it is in New Zealand, with responsibility to the common man and the protection of his rights. As Mr. Paul Kavanagh summed up in his broadcast address last evening: "The legal profession must strive always that justice may not anywhere be frustrated or diminished in its purpose of serving as the ligament which binds civilized beings together in all the manifold and altering phases of human relations." The upholders of such an ideal must be welcome in this city.

On this occasion a matter of public interest was touched upon even so early in the proceedings as the opening ceremonies, for the Mayor, in welcoming the visitors, referred to the fact that Dunedin has had no resident Judge since the retirement of Sir Robert Kennedy last July. It was as a matter affecting the general welfare that Mr. Wright informed the Attorney-General that the question of Sir Robert's successor was absorbing increasing attention. The interval has already been a long one, and it cannot be regarded as satisfactory that the many duties of a Judge in the Otago and Southland District should have to be discharged by visitors. The members of the judiciary are much too busy to be called upon to function in this manner. Dunedin had its first resident Judge—Mr. Justice Stephen—as early as 1850. Of him, it is true, history records that "his position was practically a sinecure as, the population being small and law-abiding, he had little or nothing to do." No comment is offered upon the size of the population now or its respect for the law, but no Judge in this city a century later would find his position a sinecure. The long-standing tradition of a resident Judge, which was established when Otago was in her lusty infancy, and has been maintained throughout the history of the Province by eminent and well-remembered jurists, is one that must be maintained. It was entirely proper that the Attorney-General should have been reminded of this by Dunedin's First Citizen.

On Thursday afternoon, the following leading article appeared in the *Evening Star*:

N.Z. LAW SOCIETY'S CONFERENCE.

Not every Dominion conference, however important it may be in the estimation of its delegates and of other people with related interests, is followed closely by the general public. In many instances the subjects discussed are professionally aloof from the workaday activities of the average man and, although the value of the gathering is almost automatically conceded, there is not always a full awareness of the underlying reasons why this should be so. Perhaps public faith in specialized talent is deep and abiding, or maybe it is simply a case of disinterest in matters that are not clearly understood.

The Conferences of the New Zealand Law Society, however, are invariably noteworthy for papers and debates in which the subject-matter, ranging from the romantic atmosphere of the past to the practical needs of modern times, attracts the attention of a comprehensive cross-section of the Dominion's people. The Conference of the Society now being held in Dunedin promises to be no exception. It was given an impressive start yesterday through an inaugural address by the Attorney-General, Mr. Webb, in which an appropriate analysis was given of the contribution made by English common law in moulding the British character. It is indeed true that the impact of English legal wisdom is indelibly interwoven into the character and conduct of people throughout the British Commonwealth.

Last night's broadcast address by Mr. Paul Kavanagh, editor of the "New Zealand Law Journal," constituted an absorbing reminder of the big part played by men of Otago in the legal life of the Dominion. Although professional practice throughout the whole country has experienced periods colourful as well as foundationally sound, it is probable that nowhere else has the spirit of romance associated with the interpretation and application of the law been so noticeable as in the southern Provinces. One has only to recall the names of lawyers who practised during the roaring goldfield days to arrive at an accurate assessment of what a legal influence meant to community development.

Among the judiciary, too, the names of Otago-born men stand out prominently on the scrolls of service. Not only on this account, however, but also because of practical issues bound up with the needs of these times, it is surprising that no tangible move has yet been made towards appointing a permanent resident Judge to take the place of Sir Robert Kennedy, who retired during the middle of last year. There should be wide public support for the representations for such an appointment made to the Attorney-General yesterday by the Mayor of Dunedin, Mr. Wright. The normal responsibilities of New Zealand's Judges are heavy enough without a burden of travel, which should be reduced to a minimum.

THE CONCLUDING FUNCTION.

Presentation to Conference Secretaries.

THE Conference ended with all the visitors and Dunedin practitioners, and their wives, as the guests of Lady Sidey at her beautiful old home, Corstorphine. After a delightful afternoon-tea served in the large reception rooms, the visitors spent a happy hour in the spacious gardens, which were adorned in their autumn tints, and in viewing the lovely old furniture and *objets d'art* for which this lovely home is well well known.

Finally, everyone gathered before the main loggia, from which the concluding speeches were delivered.

The President of the Law Society of the District of Otago, Mr. A. J. H. JEAVONS, said: "A few weeks ago, somebody told me a story, which I thought at the time was a little highly coloured, about a previous Secretary of the Conference, who at a late stage in the proceedings in his home town was found wandering the streets late at night, muttering to himself, and obviously in an advanced state of shock—I nearly said decomposition. At the time, I thought it was grossly exaggerated; but now I am not quite so sure. I have not been myself at all for the last two days, and I am sure you will forgive me if I seem a little strange. Two days ago, I was a nice, quiet type, with a home, a wife, and two children. To-day, I am not sure that I have any children, though I think I have a wife, whom I have been meeting at odd moments.

"There are a lot of thanks which we owe, and I hope I will not forget anybody.

"First and foremost, I would like to tender thanks on our behalf, and I know on yours, to Lady Sidey for her great kindness in asking us here to-day. Lady Sidey is well-known in Dunedin for this sort of thing. She is one of our most generous hostesses, and she has always been a very good friend of the Society. As you know, she is the widow of a former Attorney-General, and she has a keen interest in all our proceedings. On behalf of the District Law Society of Otago, and also, I know, on behalf of our visitors, I should like to thank her very much.

"The next persons I want to mention are our New Zealand President, Mr. Cunningham, and his charming wife. I did not know much about what was going to happen at this Conference—I still do not know much about what has happened—but I know that I would have gone off the rails twice as often as I have done if it had not been for the presence of Mr. and Mrs. Cunningham. They have been charming, co-operative, helpful, and anxious to do everything they could. In every way they have put themselves out and have endeared themselves both to my wife and to myself. I shall be very sorry to see them go, and I would like to say to them: 'Thank you very much for everything you have done.'

"The next matter is the committees who helped to organize this function. As you know, I did not do it singlehanded. In fact, I stayed well in the rear and made sure I got a lot of good organizers about me. I was particularly successful, we had marvellous committees, and, if our efforts have managed to please you at all, then the credit is due to them. That applies also to the wonderful Ladies' Committee who have been of great assistance not only to us, but also to my wife. To them, my personal and very sincere thanks.

"Then, those who attended the Dinner, and also the Ball, will be aware that we had some rather young wine-stewards about the place. They are budding members of the profession, very anxious to see how their elders behave when they get out. To those students who assisted us, and to Mr. Carl Larson, of Dunedin, who has no connection with the profession except writing a cheque for costs now and then, I would like to tender our grateful thanks.

"Then there are the sporting clubs whose grounds we have used to-day. We appreciate their help and co-operation in enabling us to enjoy the sports, and I would like to offer them the thanks of the Otago Society for their assistance. Also, I would like to offer the Society's thanks to those of our members who assisted with catering arrangements, the provision of golf and other sporting gear, and so on.

"Last, but not least, I want to say a special word in regard to the two Joint Secretaries who have beleaguered me and pushed me from pillar to post and kept me on my feet—once, I am afraid, quite literally—and who have done everything that it was possible for them to do to make my task easy. I would like to thank Denis Wood and Phil Cook very sincerely.

"If I catch up with my wife in the near future I would like to say 'Thank you' to her, too, for the provision of aspirins and other restoratives at the right moment, and for generally keeping me going.

"I hope I have not overlooked anybody, but I am not in first-class condition.

"I do hope that our efforts on your behalf have met with a measure of your approval. You have been all so kind that I have almost got to the point of daring to hope that they have. I thank you for that kindness. Whether it was courteous or genuine, I do not care. I hope that you have all enjoyed yourselves and will remember your Legal Conference in Dunedin, and that you have a pleasant trip home. I have greatly enjoyed meeting you all.

"We are going to present the trophies for the sporting events this morning, and I am going to ask Mrs. Cunningham if she will present them to the winners."

Mrs. W. H. Cunningham then presented the sports trophies to the winners.

THE CONFERENCE SECRETARIES.

Mr. HAMILTON MITCHELL (Wellington) then spoke. He said that he thought everyone would agree with him that Mr. Jeavons's condition was entirely due to the speed at which, and the precision of the manner in which, they had been entertained since 5.30 on Tuesday night. "I personally reached my crisis a little earlier."

Mr. Mitchell added: "I think you will also agree with me that that is due to one thing, and one thing only, and that is the very careful and painstaking

planning that has gone into this Conference. Mr. Jeavons has spoken of the committees that helped him. I wish to speak of the organizing geniuses who co-ordinated the work of those committees, and who have looked after us. I refer to our Joint Secretaries, Phil and Denis. They have been more than efficient; they have been courteous and charming, even in the most trying circumstances, and with the biggest gathering of blithering idiots over the last couple of days we have met anywhere. But their courtesy and charm is not limited to the last few days, because they have been preparing for this Conference since the middle of last year. I know, because I tried to avail myself of their services towards the end of last year, and I was well down the list.

"The visitors to Dunedin feel that they would like to recognize in some tangible way the wonderful service that these two have given us, and so I would like each of them to accept on behalf of the visitors these tokens of our appreciation and gratitude to them. We hope that at the next Conference we shall be able to do to them what they have done to us."

Mr. Mitchell then handed each of the Secretaries a token of the visitors' appreciation of their work.

The Secretaries Reply.

Mr. J. P. Cook said: "To be perfectly frank, for me this is the moment of greatest confusion in the whole Conference and in the whole of the planning for it. My mind is completely confused; in fact, I am extremely embarrassed. One does derive a certain amount of satisfaction in planning a function, and one gets greater satisfaction if that function appears to be moderately successful; but it is extremely embarrassing to be told about it. In one respect, I am rather sorry that it is over—without any serious mishaps as far as I am aware. There may have been some, but, if so, people were good enough not to tell us. Equally, I am sorry it is over because I have had so little chance of seeing you. To me, it has gone extraordinarily quickly. I am confused, too, because of the speed with which it has passed. It does not seem very long since we first got together and discussed the possibility of having a Conference in Dunedin at some dim, dark, distant time in the future. The time has slipped past very quickly, and here we are with the thing practically over.

"I would like to say a word about the committees. I think the Secretary can tell better than anyone else whether the committee has been working. I can assure you that we had to do very little chasing at all. Most of the work was done by the committees, and I know our thanks are due to them. I wish, too, to thank Mr. Wood. We have been able to work very well together.

"There is one other lot of people I want to thank, and that is the submerged seven-eighths of the profession who have seen fit not to come to the Conference. They have all paid their levies most gallantly for the last couple of years, and, if they had come, we could not possibly have run the Conference. So I just want to add a word of thanks to them, too.

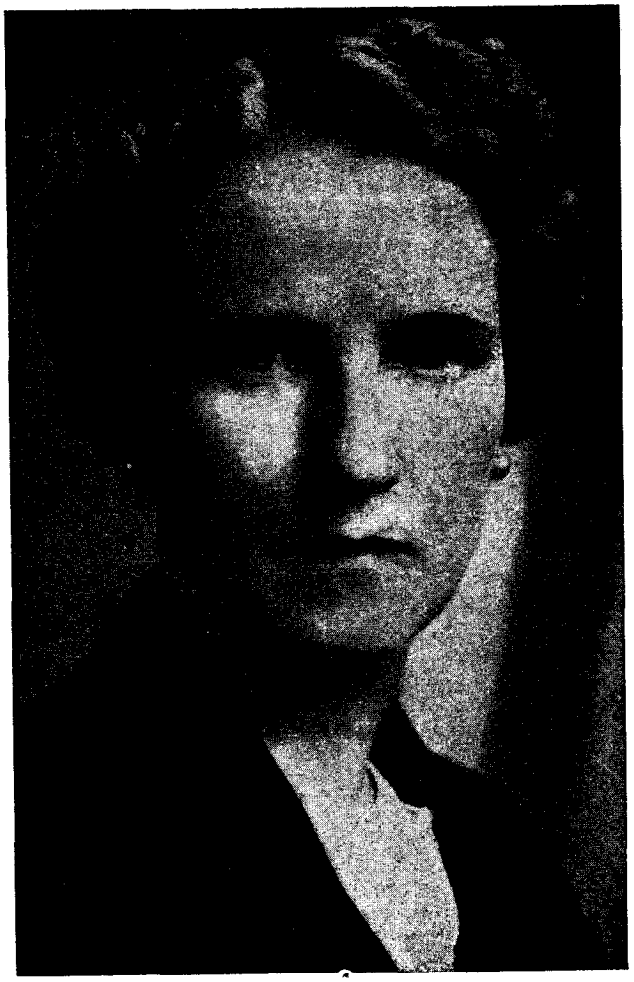
"Ladies and gentlemen, thank you all very much indeed."

Mr. D. Wood said: "I am technically known as the lower half of the Joint Secretaries, and the lower half never talks. So all I want to do is to thank Mr. Mitchell and thank you all for your kind words and your approval of our work, and to say that both Mr. Cook and I enjoyed what we had to do. Thank you."

Concluding Remarks.

Mr. Jeavons said: "I will ask the President of the New Zealand Law Society, Mr. Cunningham, if he will say a word or two to conclude the proceedings."

The President said: "I am not going to make a speech. The reason why I am speaking to-day is, I might as well confess, that I stepped out of the Conference on Thursday afternoon and left the engine running. That is as much the fault of the Deputy Chairman as it is mine.



Campbell Photo.

Mrs. A. J. H. Jeavons.
Hostess to the Conference.

"However, on behalf of all the visitors, I would like to add a genuine word of thanks to Mr. Jeavons, and to Mrs. Jeavons as the chairman of the Ladies' Committee, for the wonderful entertainment which we have had continuously throughout the Conference. Mr. Jeavons is very modest, and he has no doubt taken a very large portion of the work.

"I would also like to add to the thanks given to Lady Sidey for the opportunity of coming again—those of us who were here in 1936 will remember the wonderful party that she gave here then—to see her home.

"There is very little else that I can add, except that I feel that all of us visitors are overwhelmed with the hospitality which has been put on for us, not only by the Conference committee but also by the very many members of the Otago Law Society who have entertained us in their homes.

"I now formally declare the Eighth Dominion Legal Conference closed."

SOME PERSONALITIES AT THE CONFERENCE.

MR. A. J. H. JEAVONS, who was the host of the Eighth Dominion Legal Conference, and is the President of the Law Society of the District of Otago, was born at Auckland in 1909. He was educated at Mt. Albert Grammar School, the Otago Boys' High School, and the University of Otago. He graduated LL.B. in 1929. From 1940 to 1942, he served with Second N.Z.E.F. in the Middle East and was wounded. After that, he served in the Armed Forces in New Zealand till 1944, attaining the rank of Captain. He was President of the Dunedin R.S.A. in 1948 and 1949. He is a partner in the firm of Messrs. Ferens and Jeavons, Dunedin.

MR. J. P. COOK, one of the Joint Secretaries, Eighth Conference, was born at Wellington in 1917. He was educated at John McGlashan College and at the University of Otago. In 1939, he graduated LL.B. From 1940 to 1946, he saw service with Second N.Z.E.F. as A.A. and G.M.G. to the Second New Zealand Division, with the rank of Lieutenant-Colonel. He was awarded the O.B.E. and a Mention in Dispatches. He is a member of the firm of Messrs. Cook, Allan, and Cook, Dunedin.

MR. D. L. WOOD, one of the Joint Secretaries, Eighth Conference, was born at Dunedin in 1915. He was educated at John McGlashan College and at the University of Otago, graduating LL.B. in 1936 and LL.M. in 1937. From 1940 to 1945, he served with Second N.Z.E.F. in the Middle East as Brigade Major, 9th Brigade, with the rank of Major, being awarded the Military Cross and two Mentions in Dispatches. He was President of the Dunedin R.S.A. in 1949 and 1950, and is a partner in the firm of Messrs. Tonkinson and Wood.

MR. W. E. LEICESTER (*Some Reflections on the Development of the* Donoghue *v.* Stevenson *Principle*) was born at Wellington in 1899. He was educated at Wellington College and at Victoria University College, where he graduated LL.B. in 1921. He was President of the Wellington District Law Society in 1949. Mr. Leicester was a member of the Council of the New Zealand Law Society from 1948 to 1951, and has been a member of the Disciplinary Committee for the last two years. He has also been a member of the Wellington Lawn Tennis Association (1924-1926), as well as of the Council of Fellowship of New Zealand Authors (1929-1930). He is senior partner of the firm of Messrs. Leicester, Rainey, and McCarthy, Wellington.

DR. A. L. HASLAM (*Suggested Reforms in the Law of Evidence*) was born at Carterton in 1904. He was educated at Wellington College, Waitaki Boys' High School, and Canterbury University College, graduating LL.B. in 1924 and LL.M. (First Class Honours) in 1925. He represented Canterbury University College in athletics and debating. He was the 1927 Rhodes Scholar and proceeded to Oxford, where he graduated B.C.L. and D.Phil. He represented Oriel College in rowing and athletics. Dr. Haslam is the author of *The Law Relating to Trade Combinations*. He lectured at Canterbury University College on Torts, Evidence, and Criminal Law from 1936 to 1950, with the exception of the years 1943 to 1946, when he served with Second N.Z.E.F. in Egypt and Italy. He is the Vice-President of the Canterbury District Law Society. Since 1936, he has practised in Christchurch on his own account.

MR. D. J. RIDDIFORD (*A Suitable Second Chamber for New Zealand*) was born at Featherston in 1914. He was educated at Hurworth School, Downside School (Somerset), and New College, Oxford, where he graduated in the Honours School of Politics, Philosophy, and Economics (Modern Greats). After leaving Downside, he spent a year sheep-farming in the Wairarapa, and a further six months farming after he left Oxford. After that he returned to Oxford and graduated in the Honours School of Jurisprudence, M.A. For a year he was in the chambers of Sir Walter Monckton, K.C., of the Inner Temple, being a pupil of Mr. Colin Pearson (now K.C.). He is a member of Gray's Inn. Mr. Riddiford served with Second N.Z.E.F. in the 7th Anti-Tank Regiment and the 6th Field Regiment, attaining the rank of Captain. After serving in Greece and in the Libyan Campaign in 1941, he was captured at Sidi Rezegh. From 1941 to 1943, he was a prisoner in Italy. After Italy's capitulation, when he and other prisoners were on the way to Germany, he escaped in Austria, and made his way to our lines in Southern Italy, after having been for a time with Tito's partisans. He then rejoined the 6th Field Regiment, but was wounded in the fighting near Arezzo. The concluding part of the war he spent with Tito's partisans as Intelligence Officer to a unit of the S.A.S. operating in Istria. He was awarded the Military Cross. After the war, he returned to New Zealand, and in 1946 he was admitted to the practice of the law. From 1946 to 1950, he was a member of the staff of Messrs. Bell, Gully, and Co., but in July, 1950, he became a partner in the firm of Messrs. O. and R. Beere and Co. Mr. Riddiford is Vice-President of the New Zealand Founders Society. He is also Secretary of the New Zealand Association of Public Schools of Great Britain and the Secretary of the Oxford University Society (Wellington District).

MAJOR-GENERAL L. M. INGLIS, C.B., C.B.E., D.S.O., M.C. (*Occupation Courts in Germany*), was born at Mosgiel in 1894. He studied law at the University of Otago during 1913 and 1914, after which he served in First N.Z.E.F. from 1915 to 1919, with the ranks successively of Lieutenant to Major, being awarded the Military Cross. From 1921 to 1939, he practised at Timaru, and from 1933 to 1935 he was Chairman of the South Canterbury Adjustment Commission. He served in Second N.Z.E.F. throughout the war. He commanded the 27th Machine-Gun Battalion in 1940, and then became Brigadier of the New Zealand Brigade (afterwards 4th New Zealand Armoured Brigade). He commanded the 9th Brigade in 1941, and for periods in 1942 and in 1943 he commanded the New Zealand Division as Major-General. After the war, he was with the Control Commission for Germany in 1945, the Deputy Director of Military Government Courts in 1946, Chief Judge of the Control Commission Supreme Court, Germany, and President of its Court of Appeal during 1949 and 1950.

IN YOUR ARMCHAIR—AND MINE.

By Scriblex.

The Capricious Corpse.—The inauguration of the "Irish Parliament" at the Conference, short though its session was, had considerable merit, and produced several points of interest and value to the profession. The legal "Oscar" for one of the best thrusts of the discussions must be awarded to A. J. Mazengarb (Wellington) for his story of the deceased estate which was deluged by requisitions prepared by some over-earnest clerk in the Stamp Duties Office. One of these sought an explanation as to why the body had to be brought from Auckland to Wellington for burial. "I just wrote back," related 'A.J.,' "and said, 'Because he *is* dead, and because he wouldn't be *seen* dead in Auckland!'"

The Black Cap.—P. Thomson (Stratford), another speaker at the "Parliament," deplored the barbarous continuance of the use of the "black cap" in murder cases and its effect upon the Judges who (he asserted) did not feel too good about carrying it on to the Bench. The force of this argument, however judicially shock-absorbing, is not readily apparent. Once we accept the proposition that murderers are liable to be hanged, is it not better that we preserve the deterrent aspect of the punishment by retaining the trappings of the barbarism of a bygone age, including the more modern trimmings of published accounts of last meals, scaffold conduct, and belated confessions? "Do you suggest any alternative to hanging a murderer in semi-secrecy?" wrote a scribe to an English newspaper. "*I should hang him publicly*," replied the Catholic Bishop of Leeds. It is only fair to say, however, that, at murder trials at which he has presided in Eire, the President of the High Court, Mr. Justice Gavan Duffy (a cousin of the late Mr. Justice Callan), has consistently refused to wear the black cap. And was it not Robespierre, an old ruffian if ever there was one, who refused to accept a Judgeship because he was not prepared to sentence *anyone* to death!

Judges' Salaries.—Had the discussion following the Conference remit on Judges' salaries been more extended, some practitioner might well have mentioned Boswell's observation to Dr. Johnson: "Why then, sir, according to your account an English Judge may just live like a gentleman"—to which the learned Doctor replied: "Yes, sir—if he *can*." Holding strong views as to the decorous behaviour to be expected from a Judge, he nevertheless asserted that Judges might with propriety engage in trade. This was on the ground that no Judge was fully employed by the duties of his office, and, accordingly, there was no reason why his spare time should not be employed to his own advantage. He recognized that there must be some curb upon such extra-judicial activities: "A Judge may be a farmer; but he is not to geld his own pigs": *2 Boswell's Life of Johnson*, 344. Nor did he approve of a Judge's calling himself "*Farmer* Burnett"* and getting about in a little round hat. He said this, however, long before Judges were appointed to administer the Workers' Compensation Act.

Solicitors' Note.—The slight whirr of eyebrows, momentarily lifted, followed the incautious observation of one speaker at the Conference that he did not have much to do with solicitors. The distinction in this country between barristers and solicitors is, for all practical purposes, fine enough to go through the eye of a needle. A short time ago, Mr. Justice Gavan Duffy, of the Victorian Bench, told a gathering that his wife decided to alter her will and he offered to assist her. She thanked him nicely, but said: "This is a matter of some importance. I prefer to consult my solicitor."

Australian Convention of 1951.—In his concluding remarks at Dunedin, the President (Mr. W. H. Cunningham) referred to the invitation extended to New Zealand lawyers to attend (at their own expense) the 1951 Australian Seventh Law Convention, to commence in August, 1951. This will be a highlight of the Jubilee celebrations, especially as it is expected to bring to Sydney the Lord Chancellor (Lord Jowitt) and the Master of the Rolls (Sir Raymond Evershed), as well as the Chief Justices of Canada, India, and South Africa, and the Dean of the Harvard Law School. The New Zealand Judiciary will be represented by Mr. Justice Finlay. Presiding will be Harry Alderman, K.C., President of the Australian Law Convention.

* Burnett was Lord Monboddo's name.

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