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THE INTERNATIONAL ASSOCIATION OF DEMOCRATIC LAWYERS.

AROUND us, in the last few months, we have seen much evidence of the baneful influence of the Communist-dominated World Federation of Trade Unions on its associates. On the other hand, the moderating influence of industrial unions affiliated to the International Confederation of Free Trade Unions has been apparent.

The World Federation of Trade Unions has its counterpart, in the legal sphere, in the Communist inspired and dominated International Association of Democratic Lawyers, an organization of which, we think, our readers should know something. Like other Communist organizations, it demands, in its cold war for the minds of men—a conflict in which there is no neutrality—its members' renunciation of allegiance and obedience to the State of which individually they are citizens, wherever Communist aims are at variance with that State's ideals or policy. In particular, it seeks to weld members of the legal profession into an organization to promote the Stockholm "peace" drive, later confirmed and extended at the World Peace Congress held at Warsaw last November. The history of the Association is illuminating.

The International Association of Democratic Lawyers was founded at the International Congress of Jurists held in Paris during October, 1946, and arranged by the French National Judiciary movement, an organization under Communist influence. This latter body, however, kept in the background, so that the Congress should not appear to be dominated by it.

The Congress was presided over by M. Bidault and M. Teitgen in turn, and was attended by 250 delegates from twenty-four countries, including a number of distinguished lawyers from the West who were not connected with any pro-Soviet group.

The Association was set up under the chairmanship of Professor René Cassin (France) with Mr. Martin Popper (United States), a known "fellow-traveller," and M. Joseph Nordmann (France), a Communist, as Secretaries-General. Its general aims were defined as follows:

> to facilitate contact among lawyers of the world to develop a spirit of mutual understanding; to enhance juridical science and international law; to support the aims of the United Nations, especially through common action for the restoration, defence, and development of democratic liberties; to achieve the punishment of war criminals and the destruction of Fascism; and to co-operate with other groups to assure respect for law in international relations, and the establishment of a durable peace.

Congresses have since been held by the International Association of Democratic Lawyers at Brussels, Prague, Rome, Budapest, and Warsaw. On all these occasions, the Soviet delegates have included Zeidin (Vice-Minister of Justice), Professor Trainin (of the Soviet Academy of Science), and Denisov (Doctor of Juridical Science). Though the Communist element has been camouflaged, the resolutions at these Congresses have been uniformly in favour of the Soviet point of view on a wide range of subjects, such as control of atomic energy, the rights of man, extradition of war criminals, and promotion of peace propaganda.

Since 1946, the activities of the Association have included the study of conditions in Greece and Spain; the establishment of commissions on maritime law, the Press, and war crimes; and studies of the codification of laws of the Nuremberg trial and of genocide. In 1949, a committee representing the I.A.D.L. observed the trial of the leaders of the Communist Party of the United States, and later submitted a statement to Mr. Trygve Lie, the Secretary-General of the United Nations, suggesting that the matter be placed on the agenda of the General Assembly as a violation of the Declaration of Human Rights.

By the time the third annual Congress of the I.A.D.L. opened in Prague, there were signs of a rift between certain liberal elements and the pro-Soviet majority. The viewpoint of the former was expressed by Lord Chorley in a defence of the Western Press, which the Soviet delegate, Zeidin, had accused of warmongering.

A subsequent article on the Congress by Professor Trainin, published in *Izvestia* on September 19, 1948, made it clear that the I.A.D.L. was by that time accepted as an organization of the "democratic camp," and that its discussions were being successfully guided along the lines of current Soviet propaganda about the sharpening struggle between the forces of "warmongering" and "progress."

It was becoming increasingly clear to the liberal elements remaining in the Association that it was being manipulated by a group in the interests of Soviet policy, and this dissatisfaction led to a number of resignations just before the Paris World Peace Congress in April, 1949. Among them were Lord Chorley and Professor Cassin, who resigned from the chairmanship in protest

against a proposal to send an official delegation to the Peace Congress.

However, several members of liberal outlook remained in the Association, hoping to influence the policy of the controlling faction. Among them was Mr. Harvey Moore, K.C., who, in consequence, became the target of personal attacks by the Communist Press and radio.

The fourth annual Congress of the I.A.D.L. was held in Rome from October 28 to October 31, 1949. By this time, the I.A.D.L. was whole-heartedly in support of Cominform policy, and, in addition to the usual topics of atomic energy, human rights, and peace, the subjects discussed included the equality of national rights, and independence and democratic liberties for the colonial and dependent territories. Furthermore, in keeping with Cominform policy, Yugoslavia was expelled from the Association. It was noticeable that the Congress was less concerned with serious legal discussions than with support for the " peace " campaign.

The Communist *Daily Worker* (London) of November 7, 1949, reported as follows on the Congress :

> The fourth Congress of the I.A.D.L. has adopted an appeal to all democratic lawyers of the world to unite and strengthen their efforts for the defence of peace and security of the nations. The appeal states that law must be made to serve the great cause of progress and liberty and must serve as a weapon in the struggle for peace and democracy.
>
> Lawyers must do everything to ensure both the triumph of democratic principles in their own countries and respect for legality in international relations. The appeal notes that the forces interested in unleashing another war are again preparing war and conducting war propaganda, and concludes by calling on lawyers to struggle for the defence of human rights, for genuinely democratic legislation and the trade union movement.

A meeting of the Council of the I.A.D.L., attended by delegates from sixteen countries, was held in Budapest, from April 14 to April 17, 1950. At a Press conference before the meeting, the President of the Association, Mr. D. N. Pritt, K.C., said that a declaration would be drafted condemning " the attitude of imperialists, who condoned treaty violations and offences against international law." No report of the proceedings is available, although it is known that the decision to expel Yugoslavia was confirmed.

Telegrams were subsequently sent to the Speaker of the Turkish Assembly, protesting against the detention of Nazim Hikmet, the poet, and to the Allied Kommandatura in Berlin, on the arrest of young men and women " who advocated the aims of the World Peace Movement." A resolution was also passed on the Greek camp of Makronissos.

The main resolution adopted at the meeting expressed sympathy with all workers, railwaymen, seamen, and dockers who were " bravely struggling for the maintenance of peace." It declared that, as an aggressive war was the gravest of premeditated crimes in international law, it was everybody's right to refuse to become a participant in this crime. It emphasized " the priority of an individual's international obligation over the duty of obedience to the State of which the individual is a citizen."

Finally, the meeting approved the activity of the Partisans of Peace, who were " working effectively for the prevention of a new war," and endorsed the Stockholm Appeal, stating that those who violated international law by using the atomic bomb should be punished in accordance with the procedure followed by the Nuremberg International Military Tribunal.

At a " peace " meeting held in connection with the meeting of the Praesidium, the following statement is reported to have been made by Mr. D. N. Pritt, K.C. :

> Western lawyers must in their countries protect those who were persecuted by the existing régimes because of their progressive attitude. Progressive lawyers must exert united efforts to change such legal rules as rendered persecution possible. This was the lawyers' work for peace and against war.

The I.A.D.L. has had consultative status with the United Nations Economic and Social Council as a non-governmental organization since August, 1947. This privilege was, however, withdrawn in July, 1950, on the grounds that its activities had no real bearing on the work of the Council and that it was using its consultative status for propaganda purposes.

It is significant that the French Government issued an order on July 29, 1950, refusing permission to the I.A.D.L. to continue operating in France from its headquarters in Paris. Its centre of activity seems to have shifted partly to Belgium, where the Secretariat now operates, and partly to Poland, where some of the organizational work is carried out.

A meeting of the Council of the I.A.D.L. was to have been held at Sheffield at the same time as the Second World Peace Congress ; but it was transferred with the Peace Congress to Warsaw, and opened there on November 23 last. Representatives of more than twenty countries took part, and lawyer-delegates to the Peace Congress attended the session as observers.

The world rally of the " Partisans of Peace," it will be remembered, had been set down for Sheffield ; but its transfer to Warsaw seems to have been far from accidental. Indeed, the fact that a demonstration of this kind was so well organized officially within only two days indicates that elaborate preparations were made long before the announcement of the decision to hold the two meetings in Warsaw at the same time. The Communists were thus able to admit a large number of delegates in order to accentuate anti-British and anti-Western propaganda. As in the meeting of the World Peace Congress, so too in the contemporaneous meeting of the satellite I.A.D.L. The impression that it was intended to create in each gathering was that the Western Powers were the aggressors responsible for unrest and tension in the world to-day. One of the themes most likely to create the desired effect, particularly in countries east of Germany, was the allegation that this time the West, for selfish reasons, had embarked on rearming Western Germany against the " people's democracies " and against the cradle of peace itself, the Soviet Union, and that the revival of aggressive German militarism was an imminent threat.

Reporting on the activities of the I.A.D.L. at its Warsaw meeting, M. Joseph Nordmann, the Secretary-General, emphasized that the Association must widen its participation in the struggle for peace, draw into the ranks of peace-supporters all lawyers of good will, fight against the violations of international law in certain countries, and persecution of peace supporters, and popularize the principles of the United Nations Charter. The work of the session was continued by committees.

A resolution was drafted saying that the decisions of the Peace Congress were entirely in accordance with the principles of international law. In separate resolutions, the Association protested against United States " aggression and crimes " in Korea, and against the remilitarization of Germany. It declared itself in favour of the banning of atomic, bacteriological, chemi-

cal, and other weapons of mass destruction, and called for increased cultural and information exchanges between countries.

Mr. John Rogge, of the United States Bar, who attended as an observer, attempted to raise the question of the revision of the decision taken at Rome in 1949 to expel the Yugoslav section from the I.A.D.L. According to *Tass*, he was " properly rebuked."

The committees' resolutions were adopted by the plenary session on the last day. The meeting also protested against the arrest of an Egyptian lawyer for taking part in the " peace " movement, and the prosecution of Mme. Eugenie Cotton, President of the Women's International Democratic Federation, by a French Court. Finally a decision was taken to hold the seventh annual Congress of the Association in 1951. It was not specified where it would be held.

As regards personalities of the I.A.D.L., Mr. D. N. Pritt, K.C., of the English Bar, is this year's President. Vice-Presidents are Baron van den Branden de Reeth, Advocate-General of the Brussels Court of Appeal; Mr. Clifford Durr, President of the National Lawyers' Guild of the United States; Professor Ecer, Professor of Law at Brno University, Czechoslovakia; M. Lyon-Caen, President of the Chamber at the Court of Appeal, Paris; F. Targetti, Vice-President of the Italian Chamber of Deputies; Vladislav Tomorowicz, President of the Polish Bar; and I. L. Zeydin, Vice-President of the Supreme Court of the U.S.S.R.

Of more importance are the Secretaries-General, who are all known to be members of, or sympathizers with, the Communist Party. They include M. Joseph Nordmann, a member of the Court of Appeal in Paris; Mme. Marion Muszkat, Director of the Central Law School, Warsaw, who is Secretary-General of the European branch of the Association; and Mr. Martin Popper, Vice-President of the National Lawyers' Guild of the United States and a fellow-traveller, who is Secretary for the United States. M. Joseph Nordmann has been especially associated with the " peace " campaign, and has played a prominent part in trials in which the French Communist Party, of which he is a member, has been implicated.

It will be seen that the development of the I.A.D.L. has been along familiar lines. It was established with the support of non-Communists, whose genuine good will was exploited, and it was subsequently developed as a façade behind which the Communists directing its activities could operate. As in the case of other " front " organizations, it has been used in pursuit of the Soviet tactic of attempting to appeal to the people of Western Europe over the heads of their Governments.

The main role allotted to the I.A.D.L. has been in connection with the " peace " campaign. Its general purposes, when they were defined at its inaugural Congress in October, 1946, included " the establishment of a durable peace." Its particular task in the " peace " campaign was defined at its fourth Congress in October, 1949, which adopted an appeal to lawyers to unite for peace and ensure that law " serves as a weapon in the struggle for peace and democracy." Indeed, the I.A.D.L., as a body of specialists, appears to have been allotted an important specialized role in the " peace " movement.

The significance of the world " peace " movement is best gathered from Communist sources. Thus, in *L'Aube* (Paris), the French Communist leader, M. Waldeck Rochet, has told his followers:

> It is to permit development of the Soviet's strength as well as the strength of the popular democracies that we must actively continue our propaganda in favour of peace. It is this movement for peace that will undermine the imperialist armies and delay the outbreak of war. Do you not see that this is the best means to assure the destruction of our enemies The Soviet Union will choose the right moment, and the imperialists will have no say in the matter. You see, therefore, how important it is to develop our action in favour of peace.

It is worth recalling that we were told in the cable news of April 8 last that the French Government have banned the Communist-sponsored Committee of the National Congress of the " Partisans of Peace." But—" the Soviet Union will choose the right moment."

As pointed out earlier, the I.A.D.L. has asserted that war is a crime against international law, and has called for punishment of any violations of international law. In so doing, it prepared the way for the Peace Laws enacted by the satellite States on the initiative of the Second World Peace Congress staged at Warsaw in November, 1950.

It is significant that the council of the I.A.D.L., in session at Warsaw during the Peace Congress, passed a resolution to the effect that the decisions of the Congress were " entirely in accordance with the principles of international law." In this way, the Peace Laws passed in implementation of the decisions of the Congress are made to appear to have the endorsement of an international body of legal experts.

If the time should come when the Soviet Union decides to extend the application of the Peace Laws outside the countries in which they have been enacted, as has been done by means of the recent law imposed on the Eastern Zone of Germany, then the I.A.D.L. will be available to reinforce the argument with an interpretation of the obligations involved in the maintenance of " international law " along the lines of its resolution of its executive in April, 1950, emphasizing:

> the priority of an individual's international obligation over the duty of obedience to the State of which the indvidual is a citizen.

It will have been seen that no official representative body of lawyers in Western Europe or in the American continent has had any part or share in the so-called " International " Association. They, like the New Zealand Law Society, were conscious of the domination of the Cominform in all the activities of this Communist-inspired body. While this unrepresentative gathering of individuals was following the Party line, in British Columbia a Court of first instance, and then an appellate Court, after most careful investigation and impartial consideration of the evidence, held that a Law Society was right in refusing to admit to the Bar one who was an avowed Communist. The sound reasons for such refusal have already appeared in these columns (*Ante*, p. 17).

The issue that divides the world to-day is an intellectual one: that is the level at which that issue is implacably joined. For any lawyer to seek to play a neutral part, to attempt to contract out, is to fall neatly into the role envisaged by the Politburo and the Cominform, that of men caught up in a world-evolution against which resistance is useless. The Communists are forcing a choice upon the lawyers of the world—namely, a choice between whether we will blindly attach ourselves to the International Association of Democratic Lawyers, and, in obeying the orders of the Politburo in Moscow, become false to the oath of allegiance we took on admission, or whether we will take our full part intelligently in the world struggle against them.

SUMMARY OF RECENT LAW.

COMMON LAW.

Points in Practice. *101 Law Journal*, 283.

CONFLICT OF LAWS.

Classification in Private International Law. (W. R. Lederman.) *29 Canadian Bar Review*, 168.

Domicil of Choice—Nature of Intention to acquire Such Domicil—Tests Applicable—Evidence—Onus of Proof of Establishment of Another Domicil—Admissibility of Declarations of Party and of His Conduct in Relevant Circumstances—Principles generally Applicable. Every independent person can acquire a domicil of choice by the combination of residence (*factum*) and intention of permanent or indefinite residence (*animus manendi*), but not otherwise. That intention, which must amount to a purpose or choice, must be to reside permanently or for an indefinite period, and it must be an intention of abandoning—*i.e.*, ceasing to reside permanently in—the country of the former domicil. The concurrence of residence and intention is essential for the acquisition of a domicil. While residence is indispensable to the acquisition of domicil, it does not follow that an existing domicil cannot be retained without continuous residence. A domicil once possessed is not lost unless both residence and intention to reside are in fact given up. Abandonment equally with acquisition depends upon the *factum* and the *animus*. Intention without residence will be sufficient for the retention of an existing domicil. In order to establish that a person's residence in a new country amounts to domicil, it is necessary to prove that he has no present intention of removal, or, to put it affirmatively, that his present intention is to make that country his permanent home. The onus to establish another domicil lies on those who assert it. (*Fremlin* v. *Fremlin*, (1913) 16 C.L.R. 212, and *In re Lloyd Evans, National Provincial Bank* v. *Evans*, [1947] Ch. 695, followed.) Where a domicil of choice has been established, a subsequent change of domicil must be established with perfect clearness and satisfaction by the party alleging the same, the presumption being in favour of the continuance of the existing domicil. (*Winans* v. *Attorney-General*, [1904] A.C. 287, and *Union Trustee Co. of Australia, Ltd.* v. *Commissioner of Stamp Duties*, [1926] St. R. Qd. 304, followed.) Any circumstance may be evidence of domicil which is evidence either of a person's residence (*factum*), or of his intention to reside permanently (*animus*), within a particular country. Expressions of intention to reside permanently in a country are evidence of such an intention, and, therefore, evidence of domicil; but such expressions are looked upon as the least reliable forms of evidence. They must be examined by considering the persons to whom, the purpose for which, and the circumstances in which they are made, and they must be fortified and carried into effect by conduct and actions consistent with the declared intention. (*Bryce* v. *Bryce*, [1933] P. 83, and *Ross* v. *Ross*, [1930] A.C. 1, followed.) (*Gulbenkian* v. *Gulbenkian*, [1937] 4 All E.R. 620, and *Wahl* v. *Attorney-General*, (1932) 147 L.T. 382, referred to.) The presumption in favour of the continuance of an existing domicil may have a decisive effect, for, if the evidence is so conflicting that it is impossible to elicit with certainty what the resident's intention is, the Court, being unable to reach a satisfactory conclusion one way or the other, will decide in favour of the existing domicil. (*Winans* v. *Attorney-General*, [1904] A.C. 287, followed.) Intention to acquire another domicil is to be gained from all available testimony, and proof may be derived from the declaration of the party concerned and from the circumstances of the case, the chief matter to be considered being the party's conduct rather than his expressions of intention. (*Biggar* v. *Biggar*, [1930] 2 D.L.R. 940, followed.) The deceased, a bachelor, was born in Russia in 1877, and came to New Zealand in 1915 from the Cape of Good Hope, where he had resided from 1901, having been naturalized there in 1903. In New Zealand, he resided in Christchurch, where he carried on business and acquired property. He was naturalized in New Zealand in 1922. He made two wills in New Zealand appointing the Public Trustee executor, one in 1921 and the other in 1927. The latter will had not been revoked or superseded at his death. In 1930, he visited the United States of America, where he had relations, returning to New Zealand in the same year. On his return to New Zealand, he was in ill health. He left New Zealand for the United States of America in 1935, and remained there until his death in 1942. He had acquired real and personal property in New Zealand and Australia, and also assets in California. He gave notice of intention to apply for American citizenship, but died, four months after the expiry of the minimum time in which he could have petitioned for naturalization in America, without filing any such petition. On an originating summons to obtain the Court's direction as to the deceased's domicil at the time of his death, *Held*, after reviewing the evidence, That the onus of proving that the deceased changed his domicil of choice in New Zealand for a domicil of choice in California had not been discharged; and that, therefore, the deceased was, at the time of his death, domiciled in New Zealand. *In re Dix* (*deceased*), *Public Trustee* v. *Plotkin and Another*, (S.C. Wellington. April 24, 1951. O'Leary, C.J.)

CONTRACT.

Consideration—Undertaking by Divorced Husband to pay Allowance to Wife—No Request that Wife should abstain from applying for Maintenance Order—Divorce—Maintenance—Undertaking by Husband to pay Yearly Allowance—No Application by Wife to apply for Order for Maintenance—Enforcement of Undertaking. On February 1, 1943, a wife obtained a decree *nisi* for divorce against her husband. On February 9, her solicitors wrote to the husband's solicitors asking them to confirm that, with regard to permanent maintenance, the husband was prepared to make the wife an allowance of £100 a year free of income-tax. On February 19, the husband's solicitors replied that he had agreed to allow her that sum. On August 11, 1943, the decree absolute was made. The husband did not make any of the agreed payments, and the wife did not apply to the Court for an order for permanent maintenance. On July 28, 1950, the wife brought an action against the husband claiming the amount of the arrears, on the ground that she was entitled to them under the husband's promise. *Held*, (i) That, in the absence of proof of any request, express or implied, by the husband that the wife should forbear from applying to the Court for maintenance, there was no consideration for the husband's promise, and, therefore, it was not enforceable at the suit of the wife. (*Central London Property Trust, Ltd.* v. *High Trees House, Ltd.*, [1947] K.B. 130, explained and distinguished.) (ii) That, even if, in return for the husband's promise, the wife had promised to forbear from applying to the Court for maintenance, there would have been no consideration for the husband's promise, because the wife's promise would not be binding on her, and would not preclude her from applying to the Court. (*Hyman* v. *Hyman*, [1929] A.C. 601, and *Gaisberg* v. *Storr*, [1949] 2 All E.R. 411, applied.) Decision of *Byrne*, J., [1950] 2 All E.R. 1115, reversed. *Combe* v. *Combe*, [1951] 1 All E.R. 767 (C.A.).

As to a Wife's not applying for Maintenance, see *10 Halsbury's Laws of England*, 2nd Ed. 793, para. 1257; and for Cases, see *27 E. and E. Digest*, 326, No. *3044*, and Second Digest Supplement.

As to Valuable Consideration to a Contract, see *7 Halsbury's Laws of England*, 2nd Ed. 136-138, paras. 195-197.

CONVEYANCING.

Implied Covenants for Title. *101 Law Journal*, 284.

Ownership of the Soil under Roads. (F. D. Cumbrae-Stewart.) *24 Australian Law Journal*, 510.

"Seised in Fee Simple." *211 Law Times*, 167.

COSTS.

Appeals. *95 Solicitors Journal*, 229.

CRIMINAL LAW.

Company—Trial—Committal Order—Stamp of Court. Application for an order of *mandamus*. A limited company was charged on indictment at Wolverhampton Quarter Sessions with having carried out certain works of construction contrary to the Defence (General) Regulations, 1939, Reg. 56A. The chairman of the examining Magistrates had signed a written order of committal for trial, but no seal of the Court was affixed, and, in view of the decision in *R.* v. *H. Sherman, Ltd.*, [1949] 2 K.B. 674; [1949] 2 All E.R. 207, the Deputy Recorder held that the committal was irregular, and, therefore, Quarter Sessions had no power to try the indictment. The Director of Public Prosecutions was granted an order of *mandamus* directing the Deputy Recorder to try the indictment. *The King* v. *Deputy Recorder of Wolverhampton, Ex parte Director of Public Prosecutions*, [1951] 1 All E.R. 627 (K.B.D.).

As to Criminal Proceedings against a Corporation, see *9 Halsbury's Laws of England*, 2nd Ed. 114, para. 147; and for Cases, see *13 E. and E. Digest*, 408-411, Nos. *1286-1308*, and Digest Supp.

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LEGAL ANNOUNCEMENTS.

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Evidence—Admissibility—List of Banknotes found in Trunk belonging to Murdered Person in House in which He died—Admissible to prove Association between Banknotes and Deceased—Evidence of List's being in Deceased's Handwriting—Admissible to show that His Association with Notes was such that He Himself had made List—Evidence from which Jury entitled to draw Inference of Deceased's Possession or even Ownership of Banknotes—List not Admissible, on Ground of Hearsay, as Evidence of Truth of Any Statement of Fact on Deceased's Part. The appellant was charged with the murder on October 19, 1950, of one Atkinson, who was found murdered in a house in which he lived alone. After his death, in an unlocked trunk in his kitchen, there were found some share scrip, some papers of no value, and a list, on a piece of cardboard, of forty-two entries in ink comprising the numbers of banknotes, with some struck out and others added in pencil. The letters and figures it contained were the designating letters and figures of real banknotes which were or had been in circulation. A £50 note, bearing the number shown on the list, was found in the possession of the appellant on November 11, 1950; and three £10 notes, the numbers of which appeared in sequence on the list, were proved to have been in appellant's possession on about November 10. Apart from the list of banknotes, there was probably insufficient evidence of identity to support a conviction. The Crown tendered the list in evidence as being a list of numbers of certain banknotes made and preserved by the deceased; and it was the only evidence connecting the particular notes with the deceased. The vital issue at the trial was the alleged possession by the deceased of the banknotes in the list at the time of the murder, so as to found the inference that the appellant was the guilty person. The learned trial Judge admitted the list as evidence, and also allowed evidence to be given that the list was in the deceased's handwriting. The appellant was found guilty of the murder. The prisoner appealed from his conviction, on the grounds (*a*) that the writing purporting to be a list of banknotes and alleged to have been made by the murdered man, produced by the Crown at the trial, was wrongly admitted by the learned trial Judge as evidence that the deceased at some time possessed banknotes with numbers corresponding to those in the list, and that, in consequence of the admission of the list as such evidence, other evidence, the admissibility of which depended thereon, was wrongly admitted; and (*b*) that there was a miscarriage of justice, in that the summing-up by the learned trial Judge did not adequately put the defence to the jury. *Held*, by the Court of Appeal, 1. That the evidence of the list of banknotes was properly admissible to prove the main fact, which was the possession of the notes by the deceased at the time of the murder, as the existence of the list and its presence in his repository had, when viewed in the light of ordinary experience, a natural and logical tendency to prove that fact, and as the making and preserving of the list by the deceased afforded a reasonable presumption or inference that the deceased, at some time or other, had some sort of interest in the notes; and the list, when tendered in evidence for that purpose, was circumstantial evidence, from which a relevant inference might be drawn. (*Metropolitan Asylum District Managers* v. *Hill* (*Appeal No. 1*), (1882) 47 L.T. 29, applied.) (*R.* v. *Podmore*, (1930) 22 Cr. App. R. 36, referred to.) 2. That evidence as to the list's being in the deceased's handwriting was admissible in order to carry the proof to the point of showing, not merely that the deceased preserved the list, but also that his association with the notes was such that he with his own hand made the list, and that that was an act done by him in relation to the notes from which it might legitimately be inferred that he was in some way associated with the notes or that they were in fact his property; but the nature of that association was a matter for the jury. 3. That the list was not to be rejected as a hearsay statement, since there was no express statement of any kind in it, and its relevance lay, not in any implied statement that might be read into it, but in the fact that the person who made it could not have done so except by means of an association of some kind with the notes: The relevance of the list was limited in that way, and it was not to be regarded as a statement of fact made by the deceased and having a value dependent on his accuracy or veracity. 4. That, accordingly, the learned trial Judge was right in admitting the list and the evidence in regard to the list, including the evidence of handwriting; and there was no misdirection as to the use of that evidence as to the extent to which, or the purposes for which, it might be relied upon. 5. That the learned Judge's summing-up was eminently fair and completely satisfactory in dealing with the difficult array of circumstantial evidence. *Semble*, If the list of banknotes had not been in the writing of the deceased, it would still have been admissible, being sufficiently connected with him by reason of the fact that, even if he did not make it, or procure it to be made, he had put it in his repository and kept it there. The appeal was, accordingly, dismissed. *The King* v. *Vincent Anderson.* (Court of Appeal. Wellington. May 3, 1951. Fair, Gresson, Stanton, Hay, F. B. Adams, JJ.)

Offenders Probation—Three Disagreements by Jury—Discharge before Verdict—Offenders Probation Act, 1920, s. 18 (1) (b). The accused was charged on indictment with breaking, entering, and theft, theft of a motor-car, and receiving a stolen motor-car. On his first trial, the jury disagreed on all counts. On the second trial, the jury acquitted him on the theft charges, and disagreed on the count of receiving. On the third trial, the jury disagreed on the remaining count. The Crown Prosecutor said that the Crown would apply for a new trial. The learned Judge, being of the opinion that no good purpose would be served by another trial, as, having regard to the nature of the evidence, another disagreement might be expected, exercised the power conferred by s. 18 (1) (*b*) of the Offenders Probation Act, 1920, and discharged the accused. *The King* v. *Meehan.* (S.C. Palmerston North. May 8, 1951. Gresson, J.)

DEED.

Consideration—Nominal Consideration stated—Admissibility of Evidence to show True Consideration. Where the consideration is stated in a deed, parol evidence to prove a larger consideration does not contradict the deed, and is admissible. (*Clifford* v. *Turrell*, (1845) 14 L.J.Ch. 390, and *Frith* v. *Frith*, [1906] A.C. 254, applied.) *Turner* v. *Forwood and Another*, [1951] 1 All E.R. 746 (C.A.).

As to Admission of Parol Evidence to Prove Consideration, see *10 Halsbury's Laws of England*, 2nd Ed. 267, para. 333; and for Cases, see *17 E. and E. Digest*, 335-338, Nos. *1467-1495.*

DESTITUTE PERSONS.

Guardianship Order—Complaint alleging Failure to Maintain only—Jurisdiction to make Guardianship Order—Future Variation of Order—Destitute Persons Act, 1910, s. 18—Statutes Amendment Act, 1938, s. 8. A Magistrate has jurisdiction under s. 18 of the Destitute Persons Act, 1910, to make a guardianship order when the only allegation made in the complaint is an allegation of failure to maintain under s. 17 (1) (*a*) of the statute. (*Scherf* v. *Scherf*, [1951] N.Z.L.R. 15, followed.) (*Judd* v. *Judd*, [1933] N.Z.L.R. 1029, disagreed with.) *Semble*, The Magistrates' Court has power under s. 8 of the Statutes Amendment Act, 1938, at any time to revoke or vary a guardianship order; and, in a proper case, it may be desirable, in the interests of a child subject to a guardianship order, to exercise that power at some date during the currency of that order. *Crowe* v. *Crowe.* (S.C. New Plymouth. May 18, 1951. Cooke, J.)

DIVORCE AND MATRIMONIAL CAUSES.

Desertion; Effect of Attempts at Reconciliation. *211 Law Times*, 107.

Separation as Ground for Divorce—Wife applying for Maintenance and Separation Orders—Husband consenting to Making of Separation Order—Order refused for Want of Jurisdiction—Husband's Petition on ground of Verbal Agreement for Separation in Force for Not Less than Three Years—No "agreement for separation"—No Ground for Petition—Divorce and Matrimonial Causes Act, 1928, s. 10 (i). In October, 1944, a wife took proceedings for a separation order and a maintenance order; and, on October 23, the husband's solicitor said that he had been instructed to consent to the making of a separation order but to dispute liability for maintenance. The parties gave evidence. The Magistrate, however, being unable to make a finding that there had been wilful failure to maintain, dismissed the complaint for want of jurisdiction, under s. 18 (4) of the Destitute Persons Act, 1910. In a subsequent petition by the husband for dissolution of the marriage, an allegation of a verbal agreement to separate on October 23, 1946, was founded upon the wife's having sought a separation order and the husband's solicitor's having intimated that he would consent to it, as viewed in the light of the history of relations between the parties. A decree *nisi*, on the ground of separation by agreement for a period exceeding three years, was granted to the husband by *Stanton*, J. From this judgment, the wife appealed. *Held*, by the Court of Appeal, 1. That neither by conduct nor verbally was there on October 23, 1946, any "agreement for separation" within the meaning of s. 10 (*i*) of the Divorce and Matrimonial Causes Act, 1928; and, in fact, there was no agreement at all. (*Haynes* v. *Haynes*, (1861) 1 Drew. & Sm. 426; 62 E.R. 442, followed.) 2. That a husband cannot be permitted to treat his wife's application for separation and maintenance orders as an offer to live separate and apart

that, on acceptance by him, would constitute a valid "agreement for separation." (*Somerville* v. *Somerville*, [1920] N.Z.L.R. 735, *Somerville* v. *Somerville*, [1921] N.Z.L.R. 511, *Marshall* v. *Marshall*, [1922] N.Z.L.R. 248, *Fairchild* v. *Fairchild*, [1924] N.Z.L.R. 276, *McLean* v. *McLean*, [1925] N.Z.L.R. 687, *Hylton* v. *Hylton*, [1927] N.Z.L.R. 777, and *Paterson* v. *Paterson*, [1928] N.Z.L.R. 401, distinguished.) *Ducker* v. *Ducker*. (S.C. Auckland. September 22, 1950. Stanton, J. C.A. Wellington. April 9, 1951. Fair, Gresson, Adams, JJ.)

ELECTRIC-POWER BOARDS.

Notice of Intention to enter and erect Electric-power Transmission-lines—Such Notice a Nullity if issued before obtaining Order in Council—Electric-power Boards Act, 1925, ss. 66, 77, 78. In the term "necessary preliminary steps," as used in s. 77 of the Electric-power Boards Act, 1925, the word "preliminary" is used in the sense of "preparatory," and the section is intended to refer to the administration work which would be expected to take place in the preparation of a scheme for the future construction of electric works to lay before the Department for the purpose of obtaining an Order in Council authorizing the purchase or construction of electric works. A notice to the occupier of land, under s. 88 of the Electric-power Boards Act, 1925, of intention to enter upon the land for the purpose of erecting electric-power transmission-lines is not such a "preliminary step"; and such a notice is a nullity if, at the time when the notice was given, neither an Order in Council under s. 76 of the Electric-power Boards Act, 1925, authorizing the Board to construct a transmission line nor an Order in Council under s. 319 of the Public Works Act, 1928, authorizing the Board to lay, construct, put up, place, or use the transmission-line had been issued; because it is a condition precedent to the giving of a valid notice under s. 88 that the erection of the transmission-line had been authorized by an Order in Council. *Hawke's Bay Electric-power Board* v. *Heeney*. (S.C. Napier. May 14, 1951. Hay, J.)

EXECUTORS AND ADMINISTRATORS.

Order of Payment of Legacies. *101 Law Journal*, 297.

HUSBAND AND WIFE.

Maintenance—Husband's Reasonable Belief in Wife's Adultery—Dismissal of Petition for Divorce based on This Belief—No Continued Vaidity of This Defence to Claim for Maintenance. A husband withdrew from cohabitation with his wife, on the ground that he suspected her of having committed adultery. The wife took proceedings for restitution of conjugal rights, and the Judge, finding that the husband had reasonable grounds for his suspicions, dismissed her petition. The husband then petitioned for divorce on the ground of his wife's adultery, basing his claim on the same evidence as he had adduced in the earlier proceedings. The Judge on this occasion held that adultery had not been proved, and found in favour of the wife. On an application by the wife under s. 5 (1) of the Law Reform (Miscellaneous Provisions) Act, 1949, for the provision of reasonable maintenance, *Held*, That, once the alleged adultery of the wife had been the ground of a petition for divorce which had failed, the husband was no longer entitled to resist the wife's claim for maintenance on the ground that, *bona fide* and on reasonable grounds, he believed that she had committed adultery, and, therefore, the wife was entitled to maintenance. (*Glenister* v. *Glenister*, [1945] 1 All E.R. 513, distinguished.) *Allen* v. *Allen*, [1951] 1 All E.R. 724 (C.A.).

INDUSTRIAL CONCILIATION AND ARBITRATION.

Award—Breach—Action to recover Penalties—Costs—Principles on which Costs awarded Successful Defendant against Inspector of Awards—Action for Penalties in Magistrates' Court only where Admitted Breach or Dispute as to Facts—Industrial Conciliation and Arbitration Act, 1925, ss. 101, 130 (5), 131, 136—Magistrates' Courts Rules, 1948, r. 316. There is nothing in the Industrial Conciliation and Arbitration Act, 1925, to prevent a Magistrate from allowing costs to the successful defendant in an action brought against him by an Inspector of Awards to recover a statutory penalty for an alleged breach of an award, as such proceedings are civil proceedings, and are subject to the Magistrates' Courts Act, 1947, and the Rules thereunder. (*Mangahina Miners' Industrial Union of Workers* v. *Consolidated Gold Fields of New Zealand*, (1899) 1 G.L.R. 152, followed.) (*Inspector of Awards* v. *Adams and Sons*, (1937) 32 M.C.R. 120, and *Inspector of Awards* v. *Marton Borough Council*, (1944) 39 M.C.R. 149, distinguished.) The Magistrates' Court has a discretion in dealing with costs; but only in very exceptional circumstances should a successful defendant be deprived of his costs. (*Jackson* v. *Anglo-American Oil Co., Ltd.*, [1923] 2 K.B. 601, followed.) (*Ritter* v. *Godfrey*, [1920] 2 K.B. 47, referred to.) The penal provisions of the Industrial Conciliation and Arbitration Act, 1925, are to be invoked only as a last resort and in clear cases; and, when some difficulty in interpretation exists, the matter should be dealt with in the Court of Arbitration. The Magistrates' Court should be resorted to only where there is an admitted breach or a dispute as to the facts upon which the claim rests. (*Baillie and Co.* v. *Reese*, (1906) 26 N.Z.L.R. 451, and *Canterbury Bakers' Union* v. *Williams*, (1905) 8 G.L.R. 160, referred to.) In the present case, as the judgment of the Court involved a difficult question of law, and affected issues between the parties beyond those strictly involved in the proceedings, the learned Magistrate certified for a sum of £5 5s., in addition to the costs prescribed by the Rules, against the Inspector of Awards. *Inspector of Awards* v. *London Residential Flats, Ltd.* (Hamilton. April 6, 1951. Paterson, S.M.)

MAORIS AND MAORI LAND.

Maori Trustee—Statutory Administrator of Land—Nature and Extent of His Liability—Standard of Care, Competence, and Diligence required of Salaried Agent at Common Law—Measure of Damages when Conduct falls short of Such Standard—Maori Trustee Act, 1930, s. 25. The Maori Trustee is a statutory administrator, and his administration must be dominated by the consideration that it is, under s. 25 of the Maori Trustee Act, 1930, "for the benefit of the beneficial owners." His liability to account for moneys he has received, or ought to have received, is not to be measured upon the basis of trusteeship, as the authority given to him under s. 25 is of a general nature, and his functions are more those of an agent than those of a trustee; and it does not destroy his primary role as an agent that there is superadded a fiduciary relationship. He is, therefore, liable as an agent for neglecting to take precautions which an ordinary man of business would take in managing similar affairs of his own. (*In re Mitchell, Mitchell* v. *Mitchell*, (1884) 54 L.J. Ch. 342, applied.) Consequently, the Maori Trustee's liability, while he is in occupation and control of land of which he is statutory administrator, is to be determined according to the standard of care, diligence, and competence required at common law of a salaried agent. He is, therefore, liable to make good any loss occasioned by such acts or omissions, or by such conduct in the performance of his statutory duties as falls short of that standard. *Ropiha and Others* v. *Maori Trustee*. (S.C. Palmerston North. May 1, 1951. Gresson, J.)

MASTER AND SERVANT.

Profits obtained by Servant dishonestly by virtue of Employment—Right of Master to Profits—Soldier—Bribes by Civilian—Right of Crown thereto. The appellant, a sergeant in the Army stationed at Cairo, on several occasions, while in uniform, boarded a private lorry and escorted it through Cairo, thus enabling it to pass the civilian Police without being inspected. The lorry was loaded with cases, the contents of which were unknown. On each occasion, the sergeant received from a civilian a large sum of money, of which the military authorities later took possession. *Held*, That any position which enabled a servant to earn money by its use gave the master a right to receive the money so earned, even though it was earned by a criminal act; this right was derived from an implied promise by the servant, made at the time when the contract of employment was entered into, that he would account to his master for any moneys he might receive by reason of his employment, and it was not open to the servant to set up his own wrong as a defence to the master's claim; the appellant was using his position as a sergeant in His Majesty's Army, and the uniform to which his rank entitled him, to obtain the money which he received, and, therefore, the Crown, his master, was entitled to that money. Decision of the Court of Appeal, [1949] 2 All E.R. 68, affirmed. *Reading* v. *Attorney-General*, [1951] 1 All E.R. 617 (H.L.).

MENTAL DEFECTIVES.

Committee—Petition by Nephews of Mental Patient for Appointment in lieu of Their Respective Fathers, who had been Committee without Remuneration—Promise made to Respective Fathers—Petitioners preferred to Public Trustee—Order in Same Terms as That appointing Respective Fathers as Committee—Mental Defectives Act, 1911, s. 115. C., who was committed in 1919 to a mental hospital, had been amost continuously a patient therein since that time, and he was incurable. In 1920, his two brothers were appointed by an order of the Court to be a committee of his estate, without opposition by the Public Trustee. They performed their duties as a committee without charge, and regularly visited the patient and kept him supplied with parcels and comforts. One of the brothers had died, and the

other was upwards of eighty years of age and desired to be relieved from the order made in 1920. The brothers who had been the committee had each a son, each of whom had promised his father that he would assume the same office for his uncle, the patient. They had been visiting him, and intended to continue these visits, and, if permitted, by an order of the Court, they would assume also the functions of the committee of his estate. They expressly rejected any remuneration for the duties they desired to perform. On petition by those sons (the nephews of the mental patient) for appointment as such committee, *Held*, That there was " some sufficient reason " in terms of s. 115 of the Mental Defectives Act, 1911 (as appears from the facts above set forth), for preferring the petitioners to the Public Trustee for appointment as committee of their uncle's estate; and an order in the same terms as that which was made in 1920 would be made. (*In re A.B.*, (1913) 32 N.Z.L.R. 781, and *In re K.*, (1914) 33 N.Z.L.R. 771, referred to.) *In re C.* (*A Mental Defective*). (S.C. Timaru. May 2, 1951. Northcroft, J.)

PRACTICE.

Payments into Court. *211 Law Times*, 121.

Striking out Pleadings and Proceedings—Vexatious Proceedings—Two Previous Actions on Same Grounds struck out—Application for Order preventing Plaintiff from commencing Further Proceedings against Defendant without Leave of Court—No Jurisdiction to make Such Order. When the Court is making an order dismissing an action on the ground that it is frivolous or vexatious or otherwise an abuse of the Court's procedure, it is not within its inherent jurisdiction to include in such order a provision that the plaintiff should not be permitted to commence other proceedings against the defendant without leave of the Court. (*Grepe* v. *Loam*, (1887) 37 Ch.D. 168, and *Lord Kinnaird* v. *Field*, [1905] 2 Ch. 306, distinguished.) *Stewart* v. *Auckland Transport Board*. (S.C. Auckland. April 18, 1951. Fell, J.)

Third-party Notice—Application for Leave to issue Notice Out of Time—Extension of Time granted—Material Question in Action also Question between Defendant and Third Party—Leave granted—Magistrates' Courts Rules, 1948, r. 138 (1) (a) (c) (d) *(2).* The plaintiff sought to recover from the defendant damages for personal injuries sustained as a result of an accident, on the grounds that such accident was caused by the defendant's negligent driving of a motor-car. A summons was served on the defendant on March 22, 1951, before the commencement of the Easter vacation. Application for leave to issue a third-party notice against a cyclist was not filed until April 12, instead of within seven days after service of the summons, in accordance with r. 138 (2) of the Magistrates' Courts Rules, 1948. On application for leave to issue the third-party notice on the grounds set out in r. 138 (1) (*a*) (*c*) and (*d*) of the Magistrates' Courts Rules, 1948, *Held*, 1. That the application for an extension of time for applying to issue a third-party notice should be granted (*Collins* v. *Paddington Vestry*, (1880) 5 Q.B.D. 368, followed.) 2. That, as a material question in the action—*i.e.*, whether the plaintiff was injured as the result of the combined negligence of the defendant and the proposed third party—was also a question between the defendant and the third party, leave should be granted to enable a final judgment as between defendant and the proposed third party to be entered in one action. (*Swansea Shipping Co., Ltd.* v. *Duncan, Fox, and Co.*, (1876) 1 Q.B.D. 644, and *Baxter* v. *France*, [1895] 1 Q.B. 455, followed.) *Bogun* v. *Garlick*. (Rotorua. April 23, 1951. Luxford, S.M.)

SERVICEMEN'S SETTLEMENT AND LAND SALES.

Farm Land—Area planted in Pine Trees not " Farm land "—" Agricultural purposes "—Servicemen's Settlement and Land Sales Act, 1943, s. 2—Servicemen's Settlement and Land Sales Regulations, 1949 (Serial Nos. 1949/81, 1950/15), Reg. 3 (d). Having regard to the purposes, provisions, and language of the Servicemen's Settlement and Land Sales Act, 1943, the definition of " farm land " contained in s. 2 of that statute is not intended to include land used for the growing of timber, which is unsuitable for the settlement of servicemen and incapable of productive valuation. Thus, where property comprising some forty acres of undulating country was, at the time of its sale in June, 1950, planted in pine trees, which were about twenty-five years old, and, in the main, ready for milling when sold on June 8, 1950, it was held not to be " farm land " within the meaning of the definition of that term in s. 2 of the Servicemen's Settlement and Land Sales Act, 1943; and its sale was, consequently, exempted from Part III of that statute. *In re A Sale, Exton to Grenville.* (L.V. Ct. Auckland. May 21, 1951. Archer, J.)

TRANSPORT.

Motor-vehicles Insurance (Third-party Risks)—Passenger in Motor-car injured in Collision—Such Car being driven by Its Owner's Statutory Agent—Action by Passenger against Owner of Other Motor-car involved in Collision—Owner of Car in which Plaintiff Passenger joined as Third Party—Order made for All Issues between Plaintiff, Defendant, and Third Party to " be heard and determined in the one action and the one trial "—Judgment for Defendant—Motion by Plaintiff for Judgment against Third Party not Maintainable—Motor-vehicles Insurance (Third-party Risks) Act, 1928, ss. 3 (1), 6 (4) (c) *(Transport Act, 1949, ss. 67 (1), 70 (4)* (c))*—Judicature Amendment Act, 1930, s. 3 (1)—Code of Civil Procedure, RR. 99H* (b) (c). The plaintiff, Mrs. B., sued the defendant, L., for damages for injuries alleged to have been due to the negligent driving by L. of his motor-car, when it came into collision with a car owned by C. in which Mrs. B. was being driven by her husband. C., the owner of the car in which Mrs. B. was being driven, was, with the consent of Mrs. B. and of L., joined in the action. In his third-party notice, L. claimed indemnity or contribution from C., on the grounds that C. was the owner of the car in which Mrs. B. was being driven, that the car was being driven by C.'s agent (Mrs. B.'s husband), and that the accident was caused by Mr. B.'s negligence. The third party, C., filed a statement of defence to this notice admitting that the car being driven was registered at the time of the accident in his name for the purposes of the Motor-vehicles Insurance (Third-party Risks) Act, 1928, and was being driven by Mrs. B.'s husband as C.'s statutory agent. C. denied all other allegations and stated that the collision was due to L.'s negligence. By consent of all parties, it was ordered under R. 99H (*b*) (*c*) of the Code of Civil Procedure " that all questions or issues between the plaintiff, the defendant, and the third party, or any or either of them, be heard and determined in the one action and the one trial." No order was made under R. 99H (*d*), but the third party filed a statement of defence and appeared at the hearing by counsel, who was allowed to examine the witnesses for the other parties and to address the jury. The jury found that there was no negligence on L.'s part, but that the collision was due to Mrs. B.'s husband's negligence; and damages were assessed at £2,087. On this finding, judgment was entered for the defendant, L. On a motion by Mrs. B., the plaintiff, for judgment for the amount of damages against C., the third party, *Held*, That, as the liability imposed on the owner of a motor-vehicle by s. 3 of the Motor-vehicles Insurance (Third-party Risks) Act, 1928, by making the driver the statutory agent of the owner was unknown to the common law and was not intended to cover claims by passengers, such liability could not be imposed by the procedural provisions of the Code of Civil Procedure, which cannot confer on a plaintiff a substantive right not otherwise available to him. (*Stradling* v. *Morgan*, (1560) 1 Plowd. 201; 75 E.R. 308, applied.) *Semble*, Rule 99H, even when read literally, does not confer on a plaintiff any substantive right not otherwise conferred on him, as cls. (*a*), (*b*), and (*c*) of that Rule are limited to matters in issue between the defendant and the third party. *Busby* v. *Levesque* (*Busby, Third Party*). (S.C. New Plymouth. April 9, 1951. Fair, A.C.J.)

WILL.

Construction—Condition Subsequent—Beneficiary to forfeit Estate if She married " Pakeha " *Husband—Word* " pakeha " *Too Indefinite and Uncertain to defeat Vested Estate—Condition Subsequent void for Uncertainty.* A will in the Maori language contained a passage which, translated, was as follows: " This my will and all my personal estate wheresoever situate and whatsoever kind unto Nina McMillan for herself absolutely but if she should happen to marry a [*pakeha*] husband or whether at law or just living together or if she should die while she is still a minor without issue then all the aforesaid landed interests and the aforesaid personal estate unto Hone McMillan for himself absolutely." On originating summons for interpretation of the will, *Held*, 1. That the meaning of the word " *pakeha* " as used in the condition subsequent in the will was too indefinite and uncertain for it to be possible for the Court to say with reasonable certainty, on reading the will, upon what event the estate already bestowed was to determine. (*Clavering* v. *Ellison*, (1859) 7 H.L. Cas. 707; 11 E.R. 282, followed.) (*In re Sandbrook, Noel* v. *Sandbrook*, [1912] 2 Ch. 471, and *Sifton* v. *Sifton*, [1938] 3 All E.R. 435, applied.) 2. That the condition subsequent was, therefore, void for uncertainty. *McMillan* v. *Tutt*. (S.C. Wellington. December 19, 1950. Gresson, J.)

THE OCCUPATION COURTS IN GERMANY.

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

The Courts which are the subject of this talk must first of all be distinguished from the War Crimes Courts, which have been trying breaches of the laws and customs of war and offences against the international conventions regarding prisoners of war and sick and wounded. The War Crimes Courts were set up under Royal Warrant and administered by the Judge-Advocate-General's Branch of the Army. Their rules of procedure were contained in 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 a right to set up its own Courts to protect the security of its Forces and to maintain public order in the occupied territory. Before the invasion of Europe, therefore, a combined Anglo-American legal staff at Supreme Headquarters Allied Expeditionary Force Headquarters had prepared two Ordinances—Ordinance No. 1, setting out forty-three offences against the Allied Forces (nineteen of them capital offences), and Ordinance No. 2, establishing Military Government Courts. When the Allied Armies first occupied German territory on September 15, 1944, and as they progressively occupied more and more of that territory up to the final German surrender, these Ordinances were proclaimed in the name of the Supreme Commander and put into operation behind the advancing Armies.

After the final surrender, Germany was divided into four Zones of Occupation and the city of Berlin, an island in the Russian Zone. The British, French, and Americans, each in their respective Zones and in their sectors of Berlin, adopted and promulgated Ordinances Nos. 1 and 2 as their own, so that at the outset British, French, and Americans were all applying the same occupation criminal law, and were administering it in the same kinds of Courts and by similar procedure. The Russians played to other rules; we still do not know what they are.

MILITARY GOVERNMENT COURTS.

Military Government Courts had jurisdiction over all persons in occupied territory, except members of the Allied Forces who, not being civilians, were subject to military law and were serving under the command of one or other of the Allied Commanders-in-Chief. That meant that sailors, soldiers, and airmen regularly serving in Germany were not subject to the jurisdiction of the Occupation Courts, but that "camp followers" were so subject. The law administered by the Courts was occupation law and German law. A British Zonal Ordinance made the criminal law of England applicable to British subjects in Germany in much the same way as s. 41 of the Army Act makes that law applicable to any British soldier, wherever he may be. The Courts also had jurisdiction to try war crimes; but that jurisdiction was hardly ever used, such crimes being usually left to the War Crimes Courts to which I have already referred.

Roughly speaking, the business of Military Government Courts (and the criminal business of Control Commission Courts after them) was to try all offences by Allied nationals, all offences against occupation law, and all cases in which the Occupying Powers had any interest. Even cases where Allied property was affected by a crime, or where Allied soldiers or officials were necessary witnesses, came within the latter category. For example, if a German murdered another German with a brick, that was their own business entirely; but, if he shot him, that was our business, because it was a serious offence against occupation law 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 grades of Military Government Courts—namely, General Courts, International Courts, and Summary Courts—distinguished from one another by their composition and powers. General Courts had originally to be composed of not fewer than three Allied officers (later certain Control Commission Officials could sit as members), and, so far as sentence was concerned, the sky was the limit. Intermediate and Summary Courts consist of one or more Allied officers. Intermediate Courts could impose imprisonment up to ten years and fines up to £2,500 or the equivalent in other currency. Summary Courts could award imprisonment up to one year and fines up to £250. In practice, British General Courts were nearly always presided over by Colonels, Intermediate Courts by Lieutenant-Colonels or Majors, and Summary Courts by Majors or Captains.

The Rules of Procedure, drafted by the same legal staff as that which drafted the Ordinances, were not entirely satisfactory. Their designers had tried to mix accusatorial and inquisitorial procedure. A Court could interrogate the accused; but, if it did so, by the time it had finished the prosecutor did not know what was left for him to prove, and the defence did not know what it had to meet. We soon issued instructions that interrogation was not to be used except to clarify a plea.

In the early period of occupation, when the Army itself was directly responsible for military government, the Headquarters of the British Army and the Headquarters of each of its Corps had a Civil Affairs Branch of the Staff responsible for the administration of occupied territory. The American Army had a similar organization. As soon as possible after June 5, 1945 (the date on which the control machinery for Germany was agreed between the four Occupying Powers), the Control Commission went to Germany and took over from the Army the administration of military government in the British Zone of Occupation. In 1944, before the Allied Armies landed in North Western Europe, the Commission had already begun to assemble its key personnel and to prepare for its post-war task. It eventually became a large and complex organization, with branches to control every department of German government and administration, industry, economy, finance, manpower, labour, transport, dis-

*This is the full text of the address given at the Dominion Legal Conference at Dunedin on March 29, 1951.

armament, reparations, the restitution of Allied property, and the welfare of hundreds of thousands of Allied displaced persons left stranded in Germany.

The Legal Division of the Control Commission contained a Military Government Courts Branch, the first Director of which was Sir Charles Gerahty, a former Chief Justice of Trinidad and Tobago, and President of the West Indian Court of Appeal. Gerahty, who organized the Branch in England and steered it through its first few months in Germany, had had extensive administrative, legal, and judicial experience in several Colonies, and his appointment assured the adoption of sound principles in the administration of justice. His personal qualities endeared him to everyone who worked under him, and established a lasting tradition of zeal and loyalty in the Courts' service. I was his Deputy for the first few months, and then took over the Branch from him.

The Military Government Courts Branch brought with it to Germany six permanent Presidents of General Courts, who were barristers holding the rank of Colonel, an executive and reviewing staff, a prosecuting section, one or two other sections not necessary to detail, and a small establishment of clerks and typists. When we arrived on July 9, 1945, we decided not to take over control of the Courts until August 1, but to use the rest of July for reconnaissance.

The Control Council, which consisted of the four Allied Commanders-in-Chief, and which had already been set up, was intended to govern Germany by its unanimous decisions in matters concerning the occupied territory as a whole. Each of these Commanders was also the Commander of his own Zone of Occupation, where, so inter-Allied agreement provided, he had supreme authority, subject only to the instructions of his own Government. Berlin, an island in the middle of the Russian Zone, was divided into four sectors, each with its own Commandant, and was intended to be governed by a Kommandatura composed of the four Commandants. This separation of Berlin from the Zones meant that the Courts there and in the Zones derived their authority from different sources.

Before the Commission took over from the Army, the British Zone was divided, for the purpose of military government, into three Corps Districts. At each Corps Headquarters the Civil Affairs Branch of the Staff had a legal officer, with a few assistants, and on him fell an enormous amount of work. Not only did he have to set up German Courts, restore some sort of order to their administration, select and examine for professional capacity and political reliability new Judges and lawyers, and give snap decisions on all kinds of legal problems submitted to him, but he also had to convene all Military Government Courts in his District, procure members from the Army, requisition Court-rooms, arrange for prosecutions, be responsible for the case records, account for fines and bail moneys, safeguard exhibits, deal with confiscated goods, and—most onerous task of all—review the records of all the cases.

When the Commission took over, the five Regions corresponded in area (after the fusion of the Rhineland and Westphalia) to the four *Laender* or states of the British Zone to-day. Regional legal officers, with increased staffs, took over the duties which had formerly been carried out by Corps legal officers. Civil Affairs officers of the Army were generally absorbed in the Control Commission—usually to carry on with their old jobs under new management.

When we came to estimate the volume of work the Courts would have to undertake, it was obvious that the Military Government Courts Branch had insufficient personnel to attempt their direct administration, which would have to be a responsibility distributed among Regional legal staffs. We decided to have the records of all General and Intermediate Court cases reviewed by our own reviewing staff (or, in capital or other serious or complicated cases, by Gerahty or myself) and to delegate the review of Summary Court cases to the Regions. The necessity of this will be obvious when I say that, in the sixteen months during which the Military Government Courts Branch existed, nearly 14,000 cases were tried in the two higher grades of Courts, and more than nine times that number in the Summary Courts. Our control of the Courts had to be indirect, and was procured through the voluntary co-operation of the officers who actually administered them. In these circumstances, it was necessarily unsatisfactory.

The general conditions we found were such as to generate a great deal of crime. Indeed, it is a wonder that the chaos was not more complete. Millions of dwelling-units had been destroyed by bombing, and the accommodation problem for the civilian population was continually aggravated—and is still being aggravated—by German refugees coming west from Poland, Czechoslovakia, and the Russian Zone. In 1945 and 1946—indeed, until after the currency reform in 1948—the food situation was steadily worsening. In the first two years—especially in the winter—it became really desperate, and the ordinary German, who could not afford to buy on the black market, was gravely undernourished. Road, rail, and canal transport was disrupted by war damage; and industrial dislocation had reduced the output of coal, gas, and electricity to a dangerous y low level. In these conditions, the illegal slaughtering of meat, black markets of every kind, and smuggling on the grand scale were tempting activities. Young Germans were wandering about the country out of parental control, living in air-raid shelters near the main railway stations in the big cities, and getting into all sorts of mischief. Another source of crime, though not perhaps the most troublesome, was the number of displaced Allied nationals who had been uprooted from their own countries and brought to Germany as slave labour during the war, often as boys of fifteen or sixteen years of age. These people were collected as soon as possible into displaced persons' camps, where they were given makeshift accommodation and rations, but no work. There were some 200,000 Poles among them in the British Zone alone. These people hated the Germans, and armed groups of them used to go out at night to raid isolated German farm-houses. They usually shot the farmer as they broke in, raped the women, stole the money, jewellery, and food, and, before they left, often shot the whole family, including children, so that there would be no one to identify them. The German seems to have an indisputable attachment to his pistol, whether he needs it or not; and these Polish gangs encouraged the tendency of the Germans to retain their fire-arms—a serious breach of occupation law. The Public Safety Branch of the Control Commission and the German Police had a strenuous time running these

gangs to earth, and the Courts had to impose exemplary sentences to stamp out an incipient " Black and Tan " war between Polish displaced persons and German farmers.

That will show you some of the conditions which faced us. Perhaps the enormous amount of serious crime was not unduly excessive in the circumstances, particularly when it is remembered that the whole German administration had dissolved into chaos with the disappearance of Nazi control and local government organizations and the defection of their servants, and that all this administration had had to be replaced with *ad hoc* expedients by British Military Government officers acting on the spot in accordance with their common sense and the authority with which they became almost automatically invested as the only people to whom the population could look for the restoration of public order.

Control Commission Courts.

These Military Government Courts were reasonably satisfactory instruments for the administration of justice in the period immediately following the cessation of hostilities; but they were unsuitable for a prolonged occupation. Petitions against fining, or sentence, or both, could be lodged by a convicted person with the appropriate reviewing authority; but there was no proper appeal from any decision of a Military Government Court, and there was no machinery for the hearing of any petition. I have already referred to some of the unsatisfactory Rules of Procedure. The rules of evidence were very loose. Anything oral, written, or physical which the Court thought relevant to the issue before it was admissible in evidence, subject to the one qualification that, in general, the best evidence available should be adduced. In practice, availability was, of course, a very elastic quality. Even legally-qualified members of Courts, working under such rules, began to overlook sound principles of evidence and to come to dangerous conclusions.

Then there was the dispersed responsibility for Court administration—a factor which sometimes led to the loss of records or exhibits, delays in bringing persons to trial, the unsatisfactory composition of Courts, and various other defects, the responsibility for which could often not be fixed upon any individual in a somewhat haphazard chain, and which was, therefore, not easily cured without complete reformation. Perhaps the worst feature of the Military Government Courts was that they had no appearance of being independent of the Executive. First military officers, and later civilian officials, sat in uniform as members of the Courts. Even the permanent presidents of General Courts presided in uniform, with red hatbands and red patches. Control Council Proclamation No. 3, issued in October, 1945, had guaranteed the independence of the German judiciary as one of the " fundamental principles of the administration of justice " in occupied Germany; so it seemed that, if we were to set an example ourselves, we should introduce a system that would clearly appear to be divorced from the Executive side of Military Government.

This will indicate why, as soon as I took over the control of the Military Government Courts Branch, I started to work actively for the introduction of a completely new system of Occupation Courts in the British Zone. We had ourselves to plan the new system, to draft the necessary legislation, and to persuade the various authorities that the reforms were really necessary, so that some months' work was required before the new Ordinances were published and Control Commission Courts replaced Military Government Courts on January 1, 1947.

The Control Commission Courts consisted of a Supreme Court, comprising the High Court and the Court of Appeal, and Summary Courts. There were eight (later nine) Judges of the Supreme Court, three of whom held appointments as Judges of the Court of Appeal, but all of whom could be appointed to be Chief Judge to sit in the latter Court as required. Permanent Magistrates were appointed to the Summary Courts. Their positions had previously been held by any available officers, often the local Military Government Commanders themselves.

The Court of Appeal had wide powers, including powers to set aside verdicts and order new trials, to quash convictions or to substitute convictions for lesser offences, and to reduce or increase sentences when there were appeals against them. The work of the Court of Appeal was heavy—about 800 cases in its first year, 700 the next, and 580 in 1949. Selected judgments, reported in both English and German, helped to clarify our law and our procedure for German counsel, who had found these difficult to appreciate in the days of the earlier Court system.

A measure of civil jurisdiction was given to the Control Commission High Court in cases where Occupation law or the orders of Occupation authorities had cut across the ordinary rights and remedies of private individuals. The German Courts were not permitted to interpret Occupation law or to decide the existence or meaning of an order of an Occupation official. When, therefore, it appeared that any of these matters was a relevant issue in an action, the action had to be transferred from the German Court to one of ours, which usually contented itself by giving judgment as to the effect of the Occupation law or order and remitting the case to the German Court to complete its work in the light of our judgment.

There was, too, a provision, copied more than a year later by the Americans, enabling Judges of the Control Commission High Court to make orders in the nature of habeas corpus.

Military uniforms disappeared from the Courts. The Judges sat in wigs and black gowns, while the Magistrates sat in ordinary civilian suits.

Later, the French and Americans also reformed their Military Government Courts. The French set up a Court of Appeal not very long after we did, but they retained most of the old procedure, which they felt suited them. A year after we had done so, the Americans introduced a habeas corpus provision; and, a year and nine months after our general reform, they followed suit Our own battle for a more centralized Court administration lasted until early in 1948.

Our major difficulties were, I suppose, first, the language, and, secondly, the difference between our own and the German procedure. The official language of our Courts was English, but, except when the case concerned only British people, everything was done in both English and German, by means of two-way interpretation in Court. Outside the High Court,

in which considerable pains were taken to train them, most of the interpreters could deal with evidence, but they fell down when it came to legal argument. Some of them used misleading "glossaries" of legal terms, which seldom corresponded exactly in the two languages. I remember the interpreter's bringing me half a dozen German expressions he had coined for "malicious homicide," a term I had used in drafting a judgment, and asking which he would use. I had to reject them all, and tell him to use the English expression in the German version, with a German footnote explaining its meaning. These language difficulties demanded considerable care.

As German procedure, both criminal and civil, was completely different from our own, we had to administer German substantive law by means of a procedure for which it had not been devised. The difficulty of this proved less real in practice than it appeared in prospect. But in a short general talk I can hardly embark on any detailed discussion of the subject, which covers enough ground for separate treatment.

For more than a year after the establishment of Control Commission Courts, the Judges had no legal guarantee of their judicial independence; but, early in 1948, the British Government sent over the Maxwell Committee to examine the legal and judicial establishments in the British Zone, and that Committee recommended that the appointment and dismissal of Judges should be taken out of the hands of Military Government. As a result of the Committee's recommendations, the number, appointment, and dismissal of Judges passed into the hands of the Lord Chancellor. The judicial independence of the Magistrates was not, however, secured in an equally satisfactory way; and the Court officers and staffs of the Supreme and Summary Courts still formed part of the Legal Advisers' Office when I left Germany.

What did these Courts of ours achieve? I do not know, but I am inclined to believe that they will leave a few traces of their existence, mainly because they refrained from preaching to the Germans, whereas in certain other branches of the Control Commission there was a tendency to try to persuade the Germans of the excellence of our institutions and innovations by talking about them. I always believed that an ounce of example was worth a ton of precept, and carefully refrained from preaching. We never suggested to the Germans that we adopted our procedure because we considered it better than theirs; we said that we used it because it was the procedure in which our Judges and Magistrates had been trained, and was, therefore, the one by means of which they would most readily ascertain the truth. The Germans do not in theory adopt the rule *stare decisis*; but the decisions of their superior Courts do in fact exercise great persuasive weight. So far as we were concerned, the judgments of our Court of Appeal were binding upon all Courts, and we said that we would regard the decisions of the German Reichsgericht as authoritative on German law, with three express exceptions, one of which was, of course, where a judgment had been tainted by unsound Nazi innovations. In the result, the general body of German lawyers who had experience of practice in our Courts used quite genuinely to say that they would sooner practise in ours than in their own; and they quite often made representations to their Ministers of Justice for the introduction into German practice of certain practices of ours.

When Lord Jowitt, L.C., came over to Germany in the early days of Control Commission Courts, he told the Judges that their main task was to demonstrate to the Germans a rule of law guaranteed by the impartial administration of justice. To carry out that task was our object from the beginning. I believe the Germans recognized that we were actuated by that intention, and that they relied upon our integrity and impartiality.

FOOLS BUILD HOUSES.

By Advocatus Ruralis.

Recently a man called to discuss rents. He was by way of being a landlord himself, but he was more concerned because he was a trustee of a charitable trust which, under its trust, was expected to erect buildings for letting, and, as a trustee, it was his duty to endeavour to secure the best rents obtainable. Our village had recently suffered a revaluation—the first since 1921—although the Corporation had been charged for a pseudo-valuation in 1941. The trustees were extensive landlords, and my client submitted a series of cases which had him worried: (i) a group of houses each of which was now valued at £1,800 to £2,000; (ii) a reinforced concrete building built in 1937, not in the main street, valued at £15,000; (iii) a two-storied group of three wooden shops built in 1895 on the best site in town, valued at £8,670, of which the unimproved value was £6,840; and (iv) a two-storied group of three brick shops (earthquake racked) built in 1912 adjoining the wooden shops, but valued at £10,860, of which the unimproved value was £6,940.

The houses are let at £84 to £91 per annum, but apparently should be let at £160 plus rates, &c. The concrete building was let at £900, but should be let at £1,200 plus rates and insurances, but no one would pay £1,200.

The wooden shops were let at £604 plus rates. They should be let, according to valuation, at £488, and could easily be let at £900. At the present rental of these shops, the key of each door was worth £750 to £1,000.

The brick shops were let at £678 plus rates. According to valuation, they should be let at £650. They are not as popular as the wooden shops, as the tenants are afraid of earthquakes, but the leases would sell very freely, and could bring in £900 rental for the three. My client wished to know his position as a trustee whose duty it was to get the best possible rents.

I explained that, in the first place, the ratio of landlords to tenants was about one to five hundred, so that, in a national election, they could be ignored, and that the owners of commercial buildings were almost always either companies or deceased estates, so that they had no municipal votes, and became less than the dust beneath the something wheels.

I explained further that in 1931 or thereabouts all rents were reduced by 20 per cent., that this reduction in the smaller towns carried on to the outbreak of war, and that, on the outbreak of war, an Act was passed which fixed rents in towns but not in cities, apparently at the whim of the local Labour Inspector, plus (at times) the local Magistrate. I explained that, in times when rents were competitive, landlords had to keep up a standard or lose the tenants, and the rents were based roughly on the number of people who passed their doors.

I endeavoured to explain the theory that the landlord must take all risks of fire and earthquake, bad tenants, slumps, obsolescence, and such like, and that for this risk he is allowed 5 per cent. for interest on his money, plus 1½ per cent. depreciation, plus 1½ per cent. repairs. This needed some explanation, so I endeavoured to show how fixation of rents really worked. His wooden shops had been built fifty-five years ago for £900 (three shops, each of two stories). Later on (say 1910), there were additions to the value of £500. The premises have been kept in good order. I explained that, if Richard John Seddon had decided to fix rents in 1895 at 8 per cent., the trustees would have received a total rental of £4,500 for their £1,400 worth. If they had not used any of these rents for painting or improvements or repairs or payment of income-tax, but had each year put away the whole rental at 3 per cent. compound interest, they would to-day have a sum of £15,220 to meet the cost of replacing the buildings. According to to-day's building by-laws, a new two-story building on this site would cost £18,000, and the cycle could then begin again.

My client decided to resign his trusteeship.

RELEASE OF AN EASEMENT.

Under The Land Transfer Act, 1915.

By E. C. Adams, LL.M.

Explanatory Note.

There is no specific form provided in the Land Transfer Act, 1915, for the release or surrender of an easement. The practice is for the registered proprietor of the dominant tenement to transfer the easement to the registered proprietor of the servient tenement by the ordinary memorandum of transfer form. On the registration of the transfer, the easement becomes extinguished by unity of seisin. If the easement is an easement in gross, the registered proprietor of the easement transfers it to the registered proprietor of the servient tenement.

The registered proprietor of any other estate or interest in the dominant tenement should consent to the transfer, or, if it is an easement in gross and it has been mortgaged, the mortgagee should consent to the transfer.

In either case, the transfer should be accepted by the registered proprietor of the servient tenement.

If there is no consideration for the surrender (as in the following precedent), the Stamp Duties Department will stamp the transfer under s. 168 of the Stamp Duties Act, 1923, as a deed not otherwise chargeable. If there is consideration moving from the transferee to the transferor, the transfer will be stamped with *ad valorem* duty as a conveyance on sale.

A *partial* surrender of an easement may be effected in similar manner. There may be more than one dominant tenement, and the registered proprietor of only one of the dominant tenements may transfer the easement to the registered proprietor of the servient tenement. Conversely, there may be more than one servient tenement, and the registered proprietor of the dominant tenement may transfer the easement to the registered proprietor of only one of the servient tenements. It may be partial in still another sense. The registered proprietor of the dominant tenement may transfer the easement to the registered proprietor of the servient tenement only as to part of the land affected thereby. In such a case, the land to be cleared of the easement must be identified to the satisfaction of the District Land Registrar.

Similarly, the registered proprietor of an easement in gross may transfer the easement to the registered proprietor of the servient tenement only as to part of the land affected thereby.

Where there is a partial surrender of an easement effected by registration of a transfer, the easement will remain an effective registered easement as to the residue of the land affected thereby or as to the remaining dominant tenements, as the case may be. A search of the Register Book will disclose which lands are still affected by the easement, and the partial surrenders will also be memorialized on the instrument creating the easement.

The conveyancer will have no difficulty in adapting the following precedent to a partial surrender.

A surrender (complete or partial) of a *profit a prendre* may be effected in similar manner to the surrender of an easement. As there is usually no dominant tenement in the case of a *profit a prendre*, the form is akin to the surrender of an easement in gross. Again, the conveyancer will readily adapt the precedent to the complete or partial surrender of a *profit a prendre*.

PRECEDENT.

Release of an Easement under the Land Transfer Act, 1915.

Whereas A. B. of Wanganui Builder (hereinafter called "the dominant owner") is registered as the proprietor of an estate of freehold in fee simple subject, however, to such encumbrances, liens, and interests as are notified by memorandum underwritten or endorsed hereon in that piece of land situate in the City of Wanganui containing [*Set out area*] be the same a little more or less being [*Set out official description of dominant tenement*] and being also the whole of the land comprised in Certificate of Title Volume Folio Registry Together with the right-of-way created by Transfer Number over parts of the land comprised in Certificates of

Title Volume Folio and Volume Folio Registry [*Reference to servient tenement*] AND WHEREAS C. D. of Wanganui Accountant is registered as the proprietor of an estate of freehold in fee simple subject, however, to such encumbrances, liens, and interests as are notified by memorandum underwritten or endorsed hereon in that piece of land situate in the City of Wanganui containing [*Set out area*] be the same a little more or less being [*Set out official description of servient tenement*] and being also the whole of the land in Certificate of Title Volume Folio Registry SUBJECT to the right-of-way over part created by the said Transfer Number AND WHEREAS the said right-of-way is no longer used by the dominant owner and it is intended that the easement created by the said Transfer Number be released, surrendered, and extinguished NOW THEREFORE to give effect to the said intention the dominant owner DOTH HEREBY TRANSFER RELEASE AND SURRENDER to the registered proprietor of the land secondly above described all his right, title, estate, or interest in and over such lands created by the said Transfer Number to the intent that the easement created thereby be wholly extinguished and shall merge in the fee simple of the land secondly above described.

IN WITNESS WHEREOF these presents have been executed this day of 1951.

SIGNED by the above-named A. B. in the presence of:— } A. B.

E. F.,
Solicitor,
Wanganui.

SIGNED by the above-named C. D. (who hereby certifies that there are no outstanding equities to prevent merger as aforesaid) in the presence of:— } C. D.

G. H.,
Solicitor,
Wanganui.

Correct for the purposes of the Land Transfer Act.
G. H.,
Solicitor for the transferee.]

THE INNS OF COURT.

By N. E. LITTLE, B.A., LL.M.

To a visiting lawyer, the Inns of Court are the most interesting institutions of London. In England, no one may be admitted as a barrister except by one of the "societies" of the four Inns—Lincoln's Inn, the Inner Temple, the Middle Temple, and Gray's Inn. All the Inns have equal status. The society of each consists of Benchers, barristers, and students, the Benchers being the governing body. Though the four Inns are independent of each other, they act together through a Joint Committee where their common interests are affected; and they have delegated to a Council of Legal Education their functions of instructing and examining law students. But, apart from the scholastic test, the Benchers of every Inn decide the fitness of students to be called, and generally and exclusively exercise discipline over all members. Until the end of last century, there was no consultative body of the whole of the English Bar; but then the General Council of the Bar was formed, comprising official members (the Attorney-General and the Solicitor-General) and elected members, and having now very wide functions in representing the profession and regulating its practice, in acting as a law revision committee, in consulting with the Judges on the business and procedure of the Courts, and in consulting with the authorities on Court buildings. The Council is maintained financially by the four Inns of Court.

The offices of the General Council of the Bar are in Stone Buildings, in Lincoln's Inn. I met the Secretary, who took me to lunch in Lincoln's Inn Hall, and who showed me the Library at that Inn and told me much about all four Inns. He gave me a written authority for entry to all the Courts as a visiting barrister.

Every Inn has its Dining-hall, its Chapel, its Library, and many buildings, occupied (mostly by members) as chambers and living-quarters, as well as delightful gardens, some of which are public while others are for members only. The Temple Church was used jointly by the Inner and Middle Temples as their Chapel, the names both of that Church and of the societies themselves having been taken from the medieval Knights Templar to whom the Church and the old buildings of those Inns once belonged.

The precincts of the Inner Temple and the Middle Temple are side by side, to the south of the Strand and Fleet Street. The gardens run down to the Embankment. The buildings suffered sadly from bombing during the war. The famous Temple Church is a ruin. Both Halls were much damaged, but Middle Temple Hall has been restored. Before the war, the Middle Temple Library had some of the most precious old books and manuscripts in the world, not all being law books. When war came, many of the rarest were despatched for a safe place in the country; but the lorry carrying them, while traversing a lane in Oxfordshire with its precious load, collided with another vehicle, overturned, and was burnt. Later, many of the other books were destroyed by bombs, as well as the Library itself.

No one who visits the Inner and Middle Temples, with their fine old buildings, lovely secluded gardens, quaint alleyways, and courts bearing old historic names, can fail to feel that before his eyes the very history of English law is materialized.

The same feeling is evoked by Lincoln's Inn, which is situated between Chancery Lane, High Holborn, and Kingsway, and covers a more extensive area than any of the other Inns. Indeed, the wide lawns and old trees of Lincoln's Inn Fields, so serene and peaceful that the hubbub of the nearby streets seems remote, and the dignified and ancient buildings, so attractively grouped, have no equal that I know of. The very old Gothic hall (a gem of architecture) is not now used, its place being taken by a larger building, which is "modern" (somewhat less than two centuries old), but very spacious and nobly appointed. The Library is a fine old building, containing not only modern textbooks and legal journals and reports but also a great number of very old and valuable manuscripts and lawbooks. The Chapel is late Gothic, of fine and original design, with an open crypt below, and splendid stained-glass windows depicting saints and coats of arms. I went several times to services, which many Judges and many barristers of the Inn attended, particularly on those occasions when they could follow a course of inspiring sermons delivered under the terms of an ancient endowment.

Gray's Inn lies to the north of High Holborn. It, too, has fine gardens; but it suffered considerable war damage, which Lincoln's Inn fortunately escaped.

The Inns date back to a dim antiquity, at least to the thirteenth or fourteenth century, when they were associations of "apprentices" (as distinguished from Serjeants-at-law) living in hostels, like colleges, near the City of London. Then, the Serjeants-at-law had two Inns of their own, recruited from the apprentices, and there were a number of Inns of Chancery; but all these Serjeants' Inns and Inns of Chancery have been absorbed by the present four Inns, and only names of courts and lanes remain to record their names to a visitor. Until 1875, the degree of Serjeant was a necessary qualification for office as a Judge of the Courts of common law; but the order has now died out.

A function of the Inns has always been to instruct students and members in the common law. Even now, only students of the four Inns can be called to the English Bar. Women are now admitted, and aliens. Indeed, one can see students of every race and colour at the Inns. Some of the older members regret these innovations. The Benchers of an Inn decide a student's personal suitability for entry, and later for call; and a student cannot in general be called to the Bar unless he has kept twelve terms, passed the prescribed examination of the Council of Legal Education, and paid the requisite fees. Terms are kept by dining in the Hall of the student's own Inn, in term-time, and, before the student is called, his name and description are screened in the Hall, the Benchers' room, and the office of all the Inns. A course at a Law School of a University does not exempt a student from any of these requirements, except that, in certain cases, the number of his actual attendances at dinner in Hall may be reduced. Thus, a student's suitability for the Bar is judged largely by his conduct in the corporate life of his Inn.

After being called, the members of the Inn, both barristers and Benchers, always maintain close association, by lunching and dining in Hall together during term-time and by attending together the traditional ceremonies of the Inn. These customs lie at the root of the high reputation and standing of the English Bar.

In New Zealand, our students have not this contact with practising barristers in corporate life. Some in New Zealand who aim at the Bar have fathers who are in the profession, and most see a little of barristers who conduct their classes at the University, but the conditions of the Inns of Court do not exist. Moreover, after admission, our barristers, except to a limited extent in the larger centres, have little contact with their fellows suggestive of the life in London. Even in the cities, such contact is limited to occasional Bar dinners and functions, or conferences (still less frequent) for both barristers and solicitors. There is little incentive for the less socially-minded to attend, and many never go.

We lack almost entirely the conditions and the atmosphere which in England the Bar regards as most essential for the selection and training of candidates for the profession. Are we content that that lack should continue?

THE UNCOMMON ATTORNEY.

Readers of Reginald Hine's fascinating *Confessions of An Uncommon Attorney*, which has more than once been mentioned in this JOURNAL, may remember Hine's statement that his was "a little city. It has only two gates. Over one is written 'Law'; above the other stands 'Literature.'" It must be rare, however, for a busy solicitor to have the spare time required for antiquarian research and the recording of its results, and the writer's diverse reflections and reminiscences about people and letters in studied, almost Stevensonian, prose; and, although at the date of his death—he was killed in tragic circumstances by a train at the Hitchin platform in 1949—Hine was apparently much occupied with professional matters, one gathers that he could not help regarding the gate with "Law" over it as the less important of the two. Indeed, his habit of getting up at four o'clock in the morning to write his books must have left him without a great deal of enthusiasm to consider fresh problems by the time the office opened.

He mentions in his *Confessions* that:

> In our office we possess both a first- and a second-class waiting-room, and in placing our clients according to financial standing or moral behaviour our clerks have to discriminate as best they can.

The present writer does not know—fortunately, perhaps—which was the category that the clerk placed him in, but is able to state that the room in which he found himself contained a most attractive collection of books provided to beguile the waiting layman. Nor were Hine's own works by any means unrepresented among them. On the fly-leaf of the copy of the *Confessions* that is there, the author has written:

> For the casual reading of those uncommonly nice clients who sit, more or less patiently, in our waiting-room. From its perusal they may discover that even solicitors can be human, and, at the best, "uncommonly nice." At any rate, *we* shall try to be so.

The trouble with Hine as a lawyer seems to have been that he rather concentrated on being "uncommonly nice," a quality not always appreciated by clients if displayed in relations with the adversary. And certainly not every sort of client would be melted at receiving with his bill of costs:

> the covering, apologetic letter that I commonly employ: "I dislike sending in professional charges to friendly people, but we have a saying here that offices, like individuals, have to live."

Hine considered himself, indeed, the friend of all, and a total stranger was likely to find himself engaged in long and searching conversation in a Hitchin bookshop by a tall, intense man who appeared to assume that no visitor to the town could be ignorant of his identity. It is as a man of letters, rather than as a lawyer, that Hine must be thought of. What his place in literature will be it is, of course, too early to say. At present he is almost more honoured overseas, and particularly in the United States, than in his own country. A companion volume to his *Confessions* called *Relics of An Uncommon Attorney* is to be published posthumously.

—APTERYX.

IN YOUR ARMCHAIR—AND MINE.

By Scriblex.

On Visiting Terms.—We shall always have reason to feel grateful to the Hon. H. G. R. Mason, who, as Minister of Justice, promulgated a policy of new Court-houses, and pursued this policy until war and the priorities of building gave a crushing setback to his enthusiasms. With some timidity, which is largely overcome by his love for comfort, Scriblex refers the powers that be, including the Building Controller, to the fact that in England the accoustic and other exigencies of Court-houses are once more coming into their own. The Magistrates of Chatham, to cite an example, started 1951 on January 1 with "a new Court and a new courtliness." According to "Richard Roe" in the *Solicitors' Journal*, there were new light oak furnishings and rows of seats for onlookers, hitherto required to stand, if their civic conscience was strong enough, leaning on the railing round the public section. A pleasant innovation, he says. But better was to come. It seems that the first case was that of a lady who pleaded guilty to parking her car on the wrong side of the street. Upon the scene the new spirit of justice descended like a benediction when the Chairman offered her a gilt-edged invitation card and said with a smile: "As we are to-day celebrating the reopening of this Court with a luncheon, we would like you to come along and lunch with us. As yours is the first case to be heard in the new Court, the Magistrates will pay your fine of five shillings themselves." So, as representative of the convicted, Richard Roe continues, she was made one of about eighty guests epitomizing the whole of the Court's work—solicitors, cleaners, and four "established" regulars from the public section, the eldest an old gentleman of eighty-four, who for years had queued up three times a week to stand through the programme of local varieties. Viewed objectively, the whole idea is a happy one, and may yet lead to the promotion of Societies to encourage Better Relations between the Bench and the Public.

Alternative Accommodation.—It is said that, upon the passing of the Tenancy Amendment Act, 1950, amending s. 25 of the Tenancy Amendment Act, 1948, by providing that alternative accommodation should be deemed suitable unless the Court was satisfied that it was inadequate for the tenant's needs, of an unreasonably low standard, or for some special reason unsuitable for the tenant, landlords offered up special prayers of thanksgiving in many instances. However, it may well be that the amendment may not be as far-reaching as was at first thought. In *Cresswell* v. *Hodgson*, [1951] 1 All E.R. 710, a landlord seeking possession of a dwellinghouse offered the tenant another house as suitable alternative accommodation within s. 3 (1) (*b*) of the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933. This particular house had been built by the landlord under a building-licence, and was, therefore, subject to a price-limit if it were sold. There was no similar restriction on the property occupied by the tenant. In the view of the County Court Judge, the landlord's real motive in seeking possession was pecuniary gain, and he considered that it would be wrong to allow a landlord to turn his tenant out of his present house by offering him a new house and then to sell the old house at a greater price than he was permitted to charge for the new one. This decision was upheld by the Court of Appeal, upon the somewhat curious ground that the landlord had not exercised his rights of ownership "reasonably," having regard, not only to the interests of the parties concerned, but also to the interests of the public as well.

Knowing the Law.—Scriblex confesses to a measure of sympathy with counsel who explained the other day in the Wellington Supreme Court Library, to a group sufficiently large to obscure the "Silence" sign, how red his face was when he had to admit to the Court of Appeal that he had never heard of a proposition put up to him by a member of the Bench. He need not have worried unduly, and could have taken comfort in the observation of Abbott, C.J. (later Lord Tenterden), in *Montriou* v. *Jefferys*, (1825) 2 Car. & P. 113, 116; 172 E.R. 51, 53:

> No attorney is bound to know all the law; God forbid that it should be imagined that an attorney, or a counsel, or even a Judge is bound to know all the law.

Coming closer to our own times, Lord Atkin in *Evans* v. *Bartlam*, [1937] A.C. 473, 479; [1937] 2 All E.R. 646, 649, expressed himself as follows:

> For my part I am not prepared to accept the view that there is in law any presumption that any one, even a Judge, knows all the Rules and Orders of the Supreme Court. The fact is that there is not and never has been a presumption that everyone knows the law. There is the rule that ignorance of the law does not excuse, a maxim of very different scope and application.

We well remember, on the other hand, a Christchurch practitioner making a deep impression upon the Court of Appeal by quoting, in answer to a question upon an abstruse point, an appropriate authority even to the correct reference. He did not add that he had lectured on it extensively the night before.

Taxation and Damages.—The high incidence of taxation in England is shown in *Holgate* v. *Bagnall* (*The Times*, November 11, 1950), in which the deceased, while travelling on official business on a flight from England to India, crashed in the plane at Karachi as the result of negligence in its control. Described as of great business and athletic distinction, he was fifty-one at the time of his death, and had been earning £10,000 a year. It was agreed that, had he remained in good health, these earnings would have continued for many years. Nevertheless, the financial loss to the family was estimated at £1,300 a year only. Damages under the Fatal Accidents Acts were assessed by Barry, J., at £17,000, his estate being awarded a further £250 in respect of loss of expectation of life and £50 in respect of pain and suffering.

Here and There.—Lord MacDermott, M.C., a Lord of Appeal in Ordinary since 1947, who has been appointed Lord Chief Justice of Northern Ireland, will be the first member of the Judiciary of Northern Ireland to be appointed to the House of Lords.

NEW ZEALAND LAW SOCIETY.

Annual Meeting of Council.

The Annual Meeting of the Council of the New Zealand Law Society was held on March 9, 1951.

The following Societies were represented: Auckland, Sir Alexander Johnstone, K.C. (Proxy), Messrs. C. J. Garland, J. B. Johnston, and H. R. A. Vialoux; Canterbury, Messrs. A. C. Perry and G. C. Penlington; Gisborne, Mr. W. C. Kohn; Hamilton, Mr. G. G. Briggs; Hawke's Bay, Mr. L. W. Willis; Marlborough, Mr. A. C. Nathan; Nelson, Mr. C. M. Rout; Otago, Messrs. N. W. Allan and A. J. H. Jeavons; Southland, Mr. C. N. B. French; Taranaki, Mr. R. D. Jamieson; Wanganui, Mr. N. M. Izard; and Wellington, Messrs. W. H. Cunningham, F. J. Foot (Proxy), F. C. Spratt, and C. A. L. Treadwell.

Mr. A. T. Young (Treasurer) was also present.

The President (Mr. W. H. Cunningham) occupied the chair.

Apologies for absence were received from Mr. E. D. Blundell and the Westland delegate.

The Hon. Mr. Justice Callan.—The following resolution was passed, members standing in silence as a mark of respect:

That the Council of the New Zealand Law Society records with very great regret its sense of the loss which has been sustained by the Bench, the profession, and the public in the untimely death of Mr. Justice Callan, a Judge of the Supreme Court of New Zealand, and tenders to Mrs. Callan and her son its deepest sympathy in their bereavement, and that a copy of this resolution be conveyed to Mrs. Callan.

Sir Wilfrid Sim, K.C.—The following resolution was passed:

That this Council extends its hearty congratulations to Sir Wilfrid Sim, K.B.E., on the honour of knighthood bestowed upon him by the King in the New Year Honours List.

Delay in Publication of Statutes.—A letter was received from Auckland on the day of the meeting drawing attention to the serious delay in making available copies of new Acts, and citing instances where hardship had occurred.

It was resolved that the matter be left to the Standing Committee to approach the Attorney-General to see if an improvement can be effected.

Election of Officers.—President: Mr. W. H. Cunningham, the only nominee, was re-elected. *Vice-President*: Sir Alexander Johnstone, K.C., intimated that he did not desire re-election. Mr. J. B. Johnston, the only nominee, was elected as Vice-President. *Hon. Treasurer*: Mr. A. T. Young, the only nominee, was duly re-elected. *Management Committee of the Solicitors' Fidelity Guarantee Fund*: Mr. D. Perry, Sir Alexander Johnstone, K.C., and Messrs. D. R. Richmond and A. T. Young, the only nominees, were duly elected. *Joint Audit Committee*: Messrs. H. E. Anderson and J. R. E. Bennett, the only nominees, were duly elected. *Conveyancing Committee*: Messrs. A. B. Buxton, J. R. E. Bennett, S. J. Castle, and G. C. Phillips. *New Zealand Council of Law Reporting*: The appointment of Mr. G. T. Baylee expired on March 5, 1951, and he was appointed a member of the New Zealand Council of Law Reporting for a further term of four years. *Disciplinary Committee*: Messrs. J. B. Johnston, H. R. Biss, L. D. Cotterill, W. H. Cunningham, M. R. Grant, A. M. Haggitt, L. P. Leary, and W. E. Leicester, the only nominees, were reappointed the members of the Disciplinary Committee. *Library Committee—Judges' Library*: Messrs. T. P. Cleary and F. C. Spratt, the only nominees, were re-elected members of this Committee.

Workers' Compensation Act, 1922, s. 47.—The following letter was received from the Hon. the Minister of Labour:

Further to my letter of December 6, I have now to advise that the Mortgagees' Indemnity (Workers' Charges) Act, 1927, has now been repealed by the Finance Act, 1950.

Section 47 of the Workers' Compensation Act, 1922, has not been specifically repealed nor varied, but the repeal of the Mortgagees' Indemnity (Workers' Charges)Act, 1927, meets the problem raised in your letter of October 10, 1950.

Stamp Duty on Discharges of Mortgages Not Liable for Duty.—The following letter was received from the Hon. the Minister of Stamp Duties:

With reference to your letter of November 21, mortgages of policies of assurance are specifically exempted from the provisions of s. 168 (see subs. 2 (*g*)), but there is no similar exemption provided for discharges of such mortgages.

The same position arises under subs. 2 (*e*) which exempts instruments charging property other than lands, but correspondingly releases or discharges of such instruments are not exempted unless subs. 2 (*d*) applies.

Mr. W. E. Leicester.—The President referred to the fact that, under the "oldest inhabitant" rule in Wellington, Mr. Leicester retired from its Council and from the Standing Committee of the New Zealand Law Society. In recognition of his services, the following resolution was carried unanimously:

That the Council records its appreciation of the services rendered by Mr. W. E. Leicester during the period of three years he was a member of the Standing Committee of the Council.

Sir Alexander Johnstone, K.C.—The following resolution was carried unanimously:

That this Council records its appreciation of the great services given to the profession by Sir Alexander Johnstone, K.C., who for seventeen years has been a Vice-President of the New Zealand Law Society, and has in addition rendered other valuable service over many years, and expresses its regret at his decision to retire from active participation in the affairs of the Society, and wishes him well in his retirement.

Appropriate references to the retirement of Sir Alexander were made by the President, to which Sir Alexander replied, expressing his thanks and appreciation.

STAMP DUTIES OFFICE.

Transfer from Hokitika to Greymouth.

As a result of the amalgamation of the Stamp Duties Department with the Land and Income Tax Department, the Stamp Duties Office, which is at present located in Hokitika, will be transferred to Greymouth, and will open for business there on Monday, July 2, 1951.

The office in Hokitika will be closed at 4.35 p.m. on Friday, June 29, 1951, and thenceforward all matters relating to stamp duties, death and gift duties, Maori succession duties, and companies' annual licence duties will be handled at Greymouth.

The postal address of the new office will be Macfarlane's Building, 118 Mackay Street, Greymouth (P.O. Box 158; Telephone 1064).

The District Land Registrar, who is also Assistant Registrar of Companies, &c, will remain in Hokitika, and all land transfer, company, and allied registrations will still be effected in the Land Transfer Office there.

WAR CONCESSIONS FOR LAW PROFESSIONAL EXAMINATIONS.

The Senate of the University has now resolved that, in the case of long-term ex-servicemen, Latin, which has in the past been a compulsory unit for Law Professional, shall become an optional unit. Any long-term ex-serviceman working at the Professional examinations may, therefore, be excused Latin, and may use instead of it either some other suitable Arts unit or a war concession exemption which he has already been granted.

The University is immediately dealing with the files of ex-servicemen who may be approved for this special concession, and will be advising them in writing of their personal situation.

Any student who does not early in June hear from the University may be wise to address a letter of inquiry to the Registrar, University of New Zealand, Box 8035, Wellington.

The University wishes it to remain entirely clear that, for the purposes of the Law degree, a pass in Latin at an approved standard remains compulsory.