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"THE KING IS DEAD: LONG LIVE THE QUEEN."

ON the morning on which news of the death of His Majesty King George VI was received, His Honour the Chief Justice of New Zealand, in the Supreme Court at Wellington, addressed his brother Judges and the assembled members of the Bar. He joined Bench and Bar with the rest of the community in deploring the sudden death of His late Majesty, in expressing sympathy with the new Queen, and in wishing for her a long and prosperous reign. He concluded with the words: "The King is dead: Long Live the Queen!"

Those words, "The King is dead: Long Live the Queen," are a maxim of our constitution, and they stand rocklike in our common law, the permanence of which they epitomize. Their significance is brought home to us in these days of sadness—and of hope. For, at a time like this, it is well to remind ourselves of the position of the Monarchy among the peoples of the Commonwealth and Empire over which our new Queen has begun to reign.

The roots of the British Monarchy are sunk deep in ancient times. It is the oldest of all temporal sovereignties. Under the Saxons, the title to the Crown was elective. By slow constitutional development it became hereditary. The law as to the descent of the Crown, and as to the accession of a King or Queen, bears traces of legal and religious ideas from all periods in the history of the British race, from the time of King Alfred down to the end of the eighteenth century, and so to our own days.

These ideas tended to give the wearer of the English Crown a legal and moral position different from that of any other ruler. They added dignity and sanctity to the Royal office. These very ideas at the same time emphasized the obligations of the Monarch to his subjects—obligations to ensure justice to all men and to maintain the moral rules and truths acceptable to a Christian people.

To-day, as the result of the almost silent progress of constitutional development during the centuries of national history, our new Queen owes her succession to the will of her subjects; and, though her exalted office is at the apex of our constitution, she, like her people, is subject to that constitution. For the Crown of England, in a special sense, is dependent for its security on the supremacy of the rule of law.

This is the text of a talk by the Editor, which was broadcast over all National Stations of the New Zealand Broadcasting Service on the evening of Accession Day (February 11), and, by request, rebroadcast over a link of the Commercial Stations on February 17. It is reproduced by permission of the Minister in Charge of Broadcasting, the Hon. R. M. Algie, LL.M.

Although, in the middle period of our history, the succession to the Crown was to a great extent elective from the members of a particular Royal House, it is now hereditary, but subject to a condition.

By an Act of Parliament, passed in the year 1700, the Crown was resettled on a particular line of successors. Earlier, and more than once, Parliament had asserted itself and resettled the succession; but this was the last occasion on which it did so; and that resettlement, known as the Act of Settlement, endures to the present time.

The earlier Bill of Rights had given the succession to William and Mary and their issue, and, if they left no surviving child, then to the Queen's sister, the Princess Anne, and her issue. It became apparent that neither of the Royal sisters would leave any children to succeed, so the Act of Settlement was passed. It resettled the Crown on Princess Sophia of Brunswick, who was the granddaughter of James I, and on her issue in direct succession. But this Act went further than any previous Parliamentary enactments relating to the Royal succession. It provided that every successor to the Crown must profess the Protestant religion, and must not be married to anyone not professing it.

When Queen Anne died childless, Princess Sophia's son, as heir to the Throne, succeeded to the Crown as George I by virtue of the Act of Settlement. From his time to the present, the succession has never failed.

The present Queen, therefore, has succeeded by reason of a statute passed by the people of Great Britain in Parliament assembled. Before the Act of Settlement, the title to the Throne was purely hereditary, passing immediately to the heir of the former Monarch without any restriction. But, now, the inheritance is still there, but it is conditional, since it is limited to such successive heirs of the Princess Sophia of Brunswick as are in communion with the Church of England and are married to none but Protestants. If the heir of the last Monarch can fulfil those conditions, then, by hereditary right, he or she succeeds at the moment of the predecessor's death.

You have read in the last few days of the Accession Council, which met after the King's death. You will have noticed that its membership was not confined to Privy Councillors. It represented all public activities in Great Britain, and contained representatives of the Dominions, such as our own High Commissioner, who is not a Privy Councillor. There is no legal basis

for the calling together of this Council. But it preserves an old custom, which comes to us from the days when the Saxon Kings were elected by the Witan, that council of " the wise men of the nation " which is the germ of our Parliamentary system. The function of the Accession Council the other day was to settle and agree upon the terms in which the new Queen would be proclaimed to her peoples. But, really, it had no constitutional significance. There is no need for a formal act, such as the proclamation of an accession or a coronation, to confer on the new Monarch the constitutional right to succeed.

It is a principle of our constitution that the Crown is never vacant. The term " the Crown " is in itself " a name of continuance." And that principle is summarized in the words : " The King is dead : Long Live the Queen ! "

On the accession of a new Monarch, he or she must meet the Privy Council as soon as may be convenient. This, as you know, Her Majesty did on Friday, February 8. Mr. Holland and Mr. Nash were then present, because they are Privy Councillors. As required by law, the Queen then made the accession declaration that she is a true and faithful Protestant, and that she will, according to the true intent of the enactments which secure the Protestant succession to the Throne, uphold and maintain them.

The new Monarch must also take and subscribe the oath to preserve and secure the Presbyterian Church in Scotland. Two copies are signed, and one is lodged in the Court of Session in Edinburgh. This requirement rests upon the strong statutory basis of the Act of Union of 1706. The oath to preserve the Church of England is not taken until Her Majesty's coronation.

The fact of the succession of a new King or Queen is published to the various peoples of the realm by a Proclamation, which is read in solemn and formal circumstances, in London and other cities in Great Britain and Northern Ireland and in the capitals and cities of the other Dominions and Colonies. This is an established practice for which there appears to be no legal compulsion, other than ancient custom coming down to us from the days when the people of London were unable to read, and such a Proclamation had to be read to them in various parts of the old City. And so it is to-day.

Despite the maxim that the Crown never dies, in fact, in earlier days, the death of the Sovereign had some inconvenient consequences. In those days, since Parliament was summoned by the King, it was thought that it was dissolved when he died. Similarly, all holders of offices under the Crown and those who held the King's commission in the Army ceased to function until they were appointed by the new Monarch. This temporarily left the country without an Executive Government and an effective Army. The Judges, too, had to take new oaths of allegiance before they could act. But a series of Acts of Parliament, from 1707 to 1901, changed that curious position. The effect of those statutes is seen in a New Zealand one, the Demise of the Crown Act, 1908, which was originally enacted in 1888. It is similar, in effect to the present English statute. It provides that Parliament is not dissolved on the Sovereign's death, but, on the first usual meeting of the House of Representatives afterwards, the Members take fresh oaths of allegiance to the new Monarch. All appointments for the exercise of any office or employment under the Crown continue in full force, and all civil and criminal proceedings commenced in the name of the late King will be continued in the name of the new Queen. Similarly, all contracts entered into by or on behalf of His late Majesty continue in the new Queen's name, though she is not referred to in them.

Our Prime Minister and the members of his Cabinet are the constitutional advisers of Her Majesty in New Zealand. Theirs is an office of close personal relations with her. Therefore, as is customary, they take the oath of allegiance to the new Queen as soon as may be after her accession. For similar reasons, her representative in New Zealand, His Excellency the Governor-General, and the Chief Justice—who is deputy Governor-General in the absence of His Excellency from New Zealand—also take a new oath of allegiance to the person of the new Queen.

We have little of a written constitution, but something must be said at this time of the Statute of Westminster, which was passed by the British Parliament in 1931, and has since been adopted by the Parliaments of all the Dominions. In its Preamble it recites the modern position of the British monarchy, when it says :

> The Crown is the symbol of the free association of the members of the British Commonwealth of Nations, and they are united by a common allegiance to the Crown.

The effect of the Statute of Westminster is that we in this country owe allegiance, not to the Queen of England, as in the days of Queen Victoria, but to the Queen of England who is also the Queen of New Zealand itself. That is made clear in the Accession Proclamation which we were privileged to hear His Excellency the Governor-General read to us this morning. In that Proclamation, Her Majesty is declared to be " the Queen of this realm "—that is, New Zealand and her island territories—and she is also declared to be " Head of the Commonwealth "—that is, of all the British Dominions, which, in her person, are united by their common allegiance to her, and freely associated, through her, as members of the Commonwealth of Nations.

The wording of that Proclamation brings home to us the force of the words of a Poet Laureate :

> *Slowly in the ambience of this crown*
> *Have many crowns been gathered, till, to-day,*
> *How many people crown thee, who shall say ?*
> *Time and the ocean and some fostering star*
> *In high cabal have made us what we are,*
> *Who stretch one hand to Huron's bearded pines,*
> *And one on Kashmir's snowy shoulder lay,*
> *And round the streaming of whose raiment shines*
> *The iris of the Australasian spray.*

By an Act of Parliament of the reign of the first Queen Mary, a Queen Regnant has the same power and status as a King. Our new Queen is the sixth Queen Regnant in British history.

It has been aptly said : " If a somewhat paradoxical phrase may be used, the Sovereign is the first and highest of the officials of his Crown." By reason of her accession, Queen Elizabeth II is the chief officer of State. She is an essential part of the Legislature of Great Britain and of the Legislature of each of the Dominions. She is the fountain of honour. Justice is administered everywhere in her name. The Executive Government of each national group of her subjects

is administered in her name and on her behalf. But she rules always by the will of her peoples, and is subjected to the advice tendered her in each of her Dominions by those whom their respective peoples have elected by democratic means to express those peoples' will.

The very checks placed upon the power of the Monarch by our constitution have enhanced the Sovereign's prestige among his people. As Bagehot, that acute observer of the working of our constitution, pointed out long ago :

> the Sovereign has, under a constitutional monarchy such as ours, three rights—the right to be consulted, the right to encourage, and the right to warn.

As we all know, Queen Victoria insisted, and wisely insisted, on her duty to exercise those prerogatives. The King whose death we deplore similarly acted upon them, to the great advantage of the State. Occupying a lofty position, wholly apart from the noise and agitations of the political arena, the Monarch can tactfully yet effectively interpose his views when occasion requires. Coming from him, they naturally are entitled to, and in fact are given, great weight. In those ways, a constitutional Monarch shows in his person the greatness and the wisdom of the constitutional position in which we, the people, have placed him.

So, in the years of King George VI's reign, the Throne has steadily advanced in influence and prestige. It has linked the members of the British Commonwealth and Empire in a moral unity which is stronger than any legal or constitutional tie. For, to-day, the whole Commonwealth and Empire is united, not merely because of constitutional ties, or because of the observance of constitutional doctrine, but in a personal love and regard for the Crown and the Royal Family.

We have faith in our constitution to know that this confidence in, and affection for, our Sovereign, which is the common bond of the peoples of British allegiance, will endure. In her first act as Queen, our new Monarch made a declaration of faith in constitutional government. And her subjects hail her as the traditional symbol of national unity, " broadbased upon her people's will," as Tennyson put it, and ramparted around with their enduring affection.

The new reign may see further developments in our constitutional practice and in the inter-relationships of a world-wide empery. But, with the Crown always adapting itself to the changing characteristics of our peoples, as it has done in the years that have passed into history, the future of constitutional development gives no cause for fear. Because, as has been pointed out many times, the Crown is the point around which coheres the nation's sense of a continuing personality. In any deep stirring of heart, as John Buchan (Lord Tweedmuir) put it, the people turn from the mechanism of government (which is their own handiwork and their servant) to the person of the Sovereign—that ancient, abiding thing, behind popular government, which they feel to be the symbol of their past achievement and their future hope.

In this faith, we can join all others of Her Majesty's subjects in praying for her a long, happy, and peaceful reign. And to the Queen's Grace, as our constitutional Sovereign and Liege Lady, we say, in the poet's words, with respectful loyalty :

Proudly, as fits a nation that hath now
So many dawns and sunsets on her brow,
Our duteous hearts we bring.

SUMMARY OF RECENT LAW.

COMMON LAW.

Points in Practice. *102 Law Journal*, 74.

CONTEMPT OF COURT.

Committal—Execution of Writ of Possession—Resumption of Possession by Person evicted. On October 12, 1951, in execution of a writ of possession, a Sheriff's officer evicted the defendant from a flat and gave vacant possession to the plaintiffs. On October 25, 1951, it was found that the defendant had reoccupied the flat. The plaintiffs moved the Court to commit the defendant for contempt, but the learned Judge adjourned the application for one week on the defendant's stating that he had vacated the premises and promising not to return. On the resumed hearing, it appearing that the defendant had remained in occupation in the meantime, *Held*, That, although the ordinary remedy after the recovery of possession by a person evicted under a writ of possession was to apply *ex parte* to a Master for a writ of restitution, the Court had jurisdiction to commit for contempt in such circumstances, and it was proper to exercise that jurisdiction in the present case. (Dictum of *Pollock*, B., in *Lacon* v. *De Groat*, (1893) 10 T.L.R. 25, applied.) *Alliance Building Society* v. *Austen*, [1951] 2 All E.R. 1068 (Ch.D.).

CONVEYANCING.

Change of Investment: Tenant for Life's Power of Direction. *95 Solicitors' Journal*, 796.

The Rule in *Allhusen* v. *Whittell*. *95 Solicitors' Journal*, 812.

CRIMINAL LAW.

Evidence—Murder—Proof of Corpus delicti*—Body of Person Alleged Killed not found—No Confession by Accused—Fact of Death provable by Circumstantial Evidence—Requirements as to Such Evidence.* At the trial of a person charged with murder, the fact of death is provable by circumstantial evidence, notwithstanding that neither the body nor any trace of the body has been found and that the accused has made no confession of any participation in the crime. Before he can be convicted, the fact of death should be proved by such circumstances as render the commission of the crime morally certain and leave no ground for reasonable doubt: the circumstantial evidence should be so cogent and compelling as to convince a jury that upon no rational hypothesis other than murder can the facts be accounted for. (*Blundell* v. *Medical Council*, (1949) Court of Appeal, Wellington, not reported, followed.) (*Peacock* v. *The King*, (1911) 13 C.L.R. 619, and *R.* v. *Davidson*, (1934) 25 Cr. App. R. 21, applied.) (*Reg.* v. *Woodgate*, (1877) 2 N.Z. Jur. (N.S.) C.A. 5, *R.* v. *Brown*, (1911) 31 N.Z.L.R. 225, *R.* v. *Hindmarsh*, (1792) 2 Leach 569; 168 E.R. 387, *R.* v. *McNicholl*, [1917] 2 I.R. 557, and *Reg.* v. *Burton*, (1854) Dears. 282; 169 E.R. 728, referred to.) So held by the Court of Appeal, dismissing an appeal from a conviction for murder. At the trial of the appellant for the murder of his wife, whose body had not been found, the jury found him guilty of the crime. On appeal from that conviction, *Held*, 1. That the jury, viewing the evidence as a whole, was entitled to regard the concurrence of so many separate facts and circumstances—themselves established beyond all doubt, and all pointing to the fact of death on or about July 13, 1942—as excluding any reasonable hypothesis other than the death of the person alleged to have been

murdered, and as having, therefore, sufficient probative force to establish her death. 2. That, if the evidence were sufficient to establish the death of the deceased (as a jury could have regarded it to be), there was ample evidence pointing to the appellant's having murdered her. 3. That there was no misdirection of the jury by the learned trial Judge. *The King* v. *Horry*. (C.A. Wellington. December 10, 1951. Fair, A.C.J.; Gresson, J.; Stanton, J.; Hay, J.)

DIVORCE AND MATRIMONIAL CAUSES.

Desertion—Parties living under Same Roof—House owned by Both Spouses—No Allowance paid to Wife—Provision of Meals separately—Occupation of Separate Rooms—Other Parts of House shared. On an undefended petition for divorce brought by a husband against his wife on the ground of desertion, it was proved that for more than three years before the presentation of the petition the parties had lived in the same house, which belonged to them both, but each occupied a separate bedroom and sitting-room and cooked their own food separately. During that time the husband had not paid any allowance to the wife. They shared the kitchen and the passages and other parts of the house, and did not speak except for the business necessities of the day. *Held*, That, on these facts, it could not be said that the parties had ceased to be one household and had become two separate households, and, therefore, desertion had not been proved. (Observations of *Denning*, L.J., in *Hopes* v. *Hopes*, [1948] 2 All E.R. 925, applied.) *Baker* v. *Baker*, [1952] 1 All E.R. 297.

As to What Constitutes Desertion, see *10 Halsbury's Laws of England*, 2nd Ed. 835, para. 1338; and for Cases, see *27 E. and E. Digest*, pp. 307-310, Nos. *2840-2880*, and p. 322, Nos. *3000-3013*, and *Digest Supplements*.

Separation (as a Ground of Divorce)—Husband's Petition—Ground of Order Husband's Wilful Failure to Maintain—Duty of Court to ascertain if Separation imposed by Order due to "wrongful act or conduct of the petitioner"—Court, in going behind Order, to look further than Ground whereon Order made—Duty to take Realistic View of Circumstances and Relations of Parties to ascertain Cause or Causes to which Separation Due—"Wrongful act or conduct"—Divorce and Matrimonial Causes Act, 1928, ss. 10 (j), *18.* For the purposes of s. 18 of the Divorce and Matrimonial Causes Act, 1928, a separation which is imposed by a separation order cannot always be said to be due exclusively to the particular ground upon which the order was made, even though that ground be the only ground upon which, in the circumstances, there was jurisdiction to make the order. The Supreme Court, and the Court of Appeal on appeal, can decide on the evidence available to it, if material for the purposes of the suit, the nature and degree of whatever failure to maintain occurred, and the question whether such failure constituted a "wrongful act or conduct of the petitioner" within the meaning of s. 18 of the Divorce and Matrimonial Causes Act, 1928, notwithstanding a separation order, which must be treated as having been made on the ground of a failure to maintain that was wilful and without reasonable cause. (*Harriman* v. *Harriman*, [1909] P. 123, and *Keast* v. *Keast*, [1934] N.Z.L.R. 316, followed.) In performing the duty, cast upon it by the concluding part of s. 18, of determining whether it is satisfied on the evidence that the separation imposed by a separation order was due to the wrongful act or conduct of the petitioner, it is important that the Divorce Court, in going behind the order, should not confine itself to an investigation of matters directly relating to the very ground upon which the order was made, but should, whenever necessary, look further afield and take a realistic view of the circumstances and the relations between the parties for the purpose of ascertaining to what cause or causes the separation should, for the purposes of that section, really be regarded as due. *So held* by the Court of Appeal dismissing an appeal from the judgment of *Gresson*, J. The Court of Appeal expressed its views on the question whether whether *Ansley* v. *Ansley*, [1931] N.Z.L.R. 1010, had been wrongly decided and should be reconsidered by both Divisions: *Semble*, That, while the dictum of *Kennedy*, J., in *Keast* v. *Keast*, [1934] N.Z.L.R. 316, 346, 347, when read literally, was an express statement of the extent of the decision in *Ansley* v. *Ansley*, it was not an express statement that that decision was right; but, apart from that, the whole tenor of the pronouncement carried the inference that the Court intended to treat *Ansley* v. *Ansley* as correctly stating the law, and thereby to confer on it the status of a decision that would thereafter be immune from attack; and for those reasons the statement, though *obiter*, constituted an implied approval of *Ansley* v. *Ansley*. Further, even if the dictum in *Keast* v. *Keast* were regarded as no more than an explanation of the meaning of the decision in *Ansley* v. *Ansley*, the Court of Appeal would be disposed, if it were necessary, to hold that the decision in *Ansley* v. *Ansley*, as explained in *Keast* v. *Keast*, is one to which the principle *stare decisis* should, in the circumstances, be applied. The appellant husband's petition for divorce was based on a separation agreement dated October 11, 1935, and, alternatively, on a separation order made on May 21, 1945. It was admitted by the petitioner that he was on extremely intimate terms with a Miss J. by February, 1936; and letters showing this to be so were produced, and such relationship continued between them at all material times. It was also in evidence that, subsequently to the separation, the petitioner returned home and casual intercourse between the spouses took place in the years 1935 to 1940; but none occurred in the three years before the petition was filed. After those acts of intercourse, the petitioner lived in adulterous relationship with Miss J. The learned trial Judge held that the separation which took place at the time of the agreement of October 11, 1935, was occasioned by the wrongful conduct of the appellant (arising from his intimacy with Miss J.); and that, if, in law, there was a new separation arising under the order, that, too, was occasioned by the petitioner's wrongful conduct, based on the Magistrate's finding of wilful failure to maintain, and he dismissed the petition. He expressed no opinion on the question whether sexual intercourse subsequent to the separation agreement rendered it as a ground of divorce wholly void or left it good so that time ran again from the last act of intercourse, because he was satisfied that, even if the separation agreed upon were wholly void as a ground of divorce, the original separation under it, which he held to be due to the wrongful conduct of the petitioner, remained the separation which mattered for the purposes of s. 18 of the Divorce and Matrimonial Causes Act, 1928. On appeal from that determination, it was conceded on behalf of the appellant that the learned Judge was right in finding that the separation that took place at the time of the agreement of October 11, 1935, was due to the wrongful conduct of the appellant. It was, however, contended that it was the separation arising from the separation order of May 21, 1945, and not the original separation of October 11, 1935, that was material; alternatively, that, as a result of the intercourse between the parties after the separation agreement, not only was that agreement destroyed as a ground of divorce, but also the separation that took place under it ceased to be a "separation" within the meaning of that word in s. 18 of the Divorce and Matrimonial Causes Act, 1928, thus leaving the separation under the separation order the only "separation" within the meaning of that section. It was also contended for the appellant that, upon the evidence, the separation arising from the separation order, being, in the case of each of the alternative contentions, the only separation that was material, was not due to the wrongful conduct of the appellant. *Held*, by the Court of Appeal, dismissing the appeal, 1. That, whether or not there was a wilful failure by the appellant to maintain, and whether or not there was reasonable cause for any such failure, the fundamental cause of the separation order and the separation which took place under it was the appellant's relationship with the woman with whom he was living; and that the only proper conclusion on the evidence was that, for the purposes of s. 18 of the Divorce and Matrimonial Causes Act, 1928, that order and the separation arising under it must be regarded as "due to the wrongful act or conduct of the petitioner." 2. That it did not necessarily follow that the only separation which was material for the purposes of s. 18 was that arising from the separation order; indeed, it was an inevitable inference from the evidence that, if, by reason of the acts of intercourse in the years 1935 to 1940 which the learned Judge held to have been proved, the original separation had ceased to exist for the purposes of s. 18, there was at some time after the last of those acts, but long before the separation order, a new actual separation between the parties. 3. That, even if such new or second separation were consensual, the appellant would not be in any better position than he was under the separation arising under the order, because the respondent wife, at least by 1940, had the letters which had been written to the appellant by the woman with whom he was associating and knew all about his associations with that woman; and, having regard to that and other evidence in the case, the only reasonable conclusion on the evidence was that any actual separation by mutual consent in or after 1940 was a separation which was due to the appellant's wrongful conduct. *Semble*, That it was unnecessary to decide whether the marital intercourse, which the learned Judge held to be proved, had the effect of interrupting the original separation which took place under the agreement of October 11, 1935, in such a way as to render that actual separation immaterial for the purposes of s. 18; because, if the learned Judge were right in his view that it was the original separation that mattered, then the

petition must fail, whereas, if the true view were that the intercourse interrupted the original separation in such a way as to render it immaterial for the purposes of s. 18, then the petition must still fail, because both the actual separation which occurred after the intercourse but before the separation order and the separation which arose under that order were due to the appellant's wrongful conduct. (*Ansley* v. *Ansley*, [1931] N.Z.L.R. 1010, applied.) (*Bennett* v. *Bennett*, [1936] N.Z.L.R. 872, and *Buhck* v. *Buhck*, [1947] N.Z.L.R. 709, referred to.) *Bly* v. *Bly*. (C.A. Wellington. November 30, 1951. Northcroft, J.; Finlay, J.; Hutchison, J.; Cooke, J.)

FOOD AND DRUGS.

The Sampling of Food. *95 Justice of the Peace Journal*, 807.

INFANTS AND CHILDREN.

Criminal Capacity in Children. *95 Solicitors' Journal*, 795.

INNS AND INNKEEPERS.

Damage to Guest's Property—Extension of Hospitium—*Permission by Innkeeper to park Motor Coach at Petrol Station—Petrol Station owned by Inn, but separated by Public Road—Garages and Car Park at Inn.* A hotel comprised within its curtilage several lock-up garages for the use of guests and a car park open on one side to a public road, while across the road was a petrol station in the same ownership, on the runway of which the hotel manager permitted hotel guests to park their cars when the station was closed in the evening. The driver of an empty motor coach belonging to the plaintiffs, who had engaged a room at the hotel for the night, was unable to put the coach in the car park because it was full of cars belonging to the hotel's customers. The manager suggested he should leave the coach on the runway of the petrol station and bring it to the car park when the customers' cars were gone. The driver left the coach on the runway, and during the night it was removed and damaged by some unauthorized person. *Held*, (i) That, as the petrol station was separated from the inn by a public road, as there was accommodation for vehicles in the garages and car park at the hotel, and as the runway was not designed as a car park and could not be so used when the petrol station was open, the petrol station was not actually or constructively a part of the hotel or within its *hospitium*. (ii) That, having regard to the nature of the language he used, the hotel manager had merely given permission, and not an invitation, to the driver to leave the coach on the runway, and by giving such permission he did not extend the area of the *hospitium* so as to bring the runway within it. (iii) That the proprietors of the hotel, therefore, were not liable as innkeepers at common law for the plaintiffs' loss resulting from the damage to the coach. *Watson and Others* v. *People's Refreshment House Association, Ltd.*, [1952] 1 All E.R. 289 (K.B.D.).

As to Liability of Innkeeper in respect of Guest's Property, see *18 Halsbury's Laws of England*, 2nd Ed. 150-159, paras. 208-217; and for Cases, see *29 E. and E. Digest*, 10-17, Nos. *128-213*.

INTERNATIONAL LAW.

Codification of French Private International Law. (G. R. Delaume.) *29 Canadian Bar Review*, 721.

LANDLORD AND TENANT.

Rights of Statutory Tenant. *95 Solicitors' Journal*, 797.

LAW PRACTITIONERS.

Solicitor—Solicitors retaining Carbon Copies of Letters written on behalf of Client—Copies to be handed to Client on His Request for Same. Carbon copies of letters written by a solicitor on behalf of a client to other persons, properly made for the conduct of the client's business and preserved on his behalf as his agent, cannot be retained by the solicitor if the client requires them to be handed to him. A bill of costs, including the costs of such copies, might well be allowed, if the general fee for the letter was not held to cover it. (*In re Thomson*, (1855) 24 L.J. Ch. 599, distinguished.) A firm of solicitors had acted for many years for M. in the conduct of his affairs. He changed his solicitors, and requested his former solicitors to hand to his new solicitors the files relating to matters with which they were previously dealing. They agreed to do so, but they claimed to be entitled to retain the carbon copies of letters written on his behalf to other persons. They were willing for copies to be made at his expense, but asserted that the carbon copies already in existence were their own property and not his. On motion by M. for an order for the surrender of the carbon copies of the letters, *Held*, That M. was entitled to an order for surrender of the copies to him. (*Ex parte Horsfall*, (1827) 7 B. & C. 528; 108 E.R. 820, and *Gibbon* v. *Pease*, [1905] 1 K.B. 810, referred to.) *Marshall* v. *Macalister and Others*. (S.C. Wellington. December 19, 1951. Fair, J.)

What is a "Profession"? (Peter Wright.) *29 Canadian Bar Review*, 728.

LICENSING.

Wholesale Licence—Firm, not having Wholesale Licence, receiving Orders for Holders of Wholesale Licence—Such Firm without Authority to make Contract of Sale—Sale effected when Holders of Wholesale Licence received Order and appropriated on their Licensed Premises Goods as ordered—No Breach of Terms of Wholesale Licence—Licensing Act, 1908, s. 80. Section 80 of the Licensing Act, 1908, provides that "a wholesale licence shall authorize the licensee to sell and deliver liquors from one place only (such place to be specified in the licence), in quantities of not less than two gallons of liquors to be delivered to any one person at any one time, such liquor not to be consumed in or upon the licensee's house or premises." The appellant was the principal shareholder and the person in charge of the business of L.W., Ltd., which carried on business at 108 Victoria Avenue, Wanganui, under a wine-seller's licence. G. and B., Ltd., carried on business at 1 Victoria Avenue as wholesale wine and spirit merchants under a wholesale licence. On the material date, a constable in plain clothes visited appellant's wine-bar and ordered and paid for a glass of wine, which he drank at a table. He then went to the counter and asked if he could buy a dozen bottles of beer. He was told no beer was kept on the premises, but that an order could be dealt with by G. and B., Ltd. The constable was asked what kind of beer he wanted, and he named it. He paid £1 1s. 6d., and gave his name and address. He received a docket or order form, and was told the beer could not be supplied then but would be delivered to his address. The constable read the docket and was told the date of delivery was approximate, and, if the beer was not available, he could get his money back. Later, a carton of the kind of beer ordered was delivered by G. and B., Ltd.'s, carter at the constable's address, with an invoice from G. and B., Ltd. The appellant, when interviewed by the Police, said that he had arranged with G. and B., Ltd., to take orders as their agent. The arrangement was that his firm was to be responsible for the money and was to hand the orders to G. and B., Ltd., who then were to decide whether they would supply or not. If they decided to supply, a *pro forma* invoice was made out, two copies of which went to G. and B., Ltd.'s, store, where the goods were appropriated to the order and then dispatched with one copy of the invoice. Evidence was given that the decision by G. and B., Ltd., to accept an order was not merely formal. In considering whether stock was available, G. and B., Ltd., had the right to decide whether goods were to be available to a particular person or not. G. and B., Ltd., stated that L.W., Ltd., had been appointed agents, not to complete sales, but to complete orders for them. Evidence was given of the refusal of at least one order by G. and B., Ltd. The learned Magistrate held that there was a complete executory contract to purchase one dozen of ale made at the premises of L.W., Ltd., and that the substantial elements of the sale took place there when the order was placed and the cash was paid; and that the arrangement amounted to the establishment of a branch of G. and B., Ltd., at L.W., Ltd.'s, premises. The Magistrate convicted the appellant of assisting G. and B., Ltd., to sell liquor at a place where that company was not authorized to sell it. On an appeal under s. 303 of the Justices of the Peace Act, 1927, against the conviction, *Held*, allowing the appeal, 1. That, on the facts, no executory contract for sale was made on L.W., Ltd.'s, premises, and that firm had no authority to make such a contract on behalf of G. and B., Ltd. (*Petersen* v. *Paape*, [1929] N.Z.L.R. 780, referred to.) 2. That the order became a sale when G. and B., Ltd., received it, decided there was stock available for the particular order, and on their licensed premises appropriated the goods to it. 3. That, in so doing, G. and B., Ltd., did not commit a breach of the terms of their wholesale licence. *Simons* v. *Culloty*. (S.C. Wanganui. December 19, 1951. Fell, J.)

PROBATE AND ADMINISTRATION.

Points in Practice. *102 Law Journal*, 60.

Emergency Forces Payments Without Probate Regulations, 1952 (Serial No. 1952/7). These Regulations authorize the payment without probate of any amount not exceeding £200 payable out of public moneys to the estate of a deceased member of any New Zealand emergency force. These Regulations apply to members of any emergency force substantially the same provisions as are contained in the Payments Without Probate Emergency Regulations, 1942 (Serial No. 1942/313), which apply only to servicemen of the Second World War.

THE KING'S DEATH AND THE QUEEN'S ACCESSION.

Resolutions by New Zealand Bench and Bar.

On the morning of February 7, when the death of His late Majesty King George VI was announced, His Honour the Chief Justice, at the commencement of business in the Supreme Court at Wellington, addressed the assembled members of the Bar as follows :

" The business of the Court must be interrupted this morning because of the lamented death of our Gracious Sovereign King George the Sixth.

" Little need be said at this moment other than that we of the Bench join with the rest of the community in deploring the sudden death of our King, a model in every way—as King, as leader of his people, as husband and father—and a man beloved by all his people.

" To say we are shocked is mildly to express the state of our minds this morning, and, in expressing our deepest sorrow at his early death, our heartfelt sympathy goes out to his beloved Queen and to his daughters and to members of the Royal Family, but particularly to the young woman, Queen Elizabeth, who so early in life has placed on her the burden, as well, of course, as the honour, of succeeding as Queen of our great Commonwealth of Nations.

" To her in particular, whilst with humble duty we extend our sympathy and condolence, we are entitled at this stage to express our sincere wish to her for a long and prosperous reign and to say : ' The King is Dead : Long Live The Queen.' "

The Court then adjourned until the afternoon.

On February 12 there was a large attendance of members of the profession at the Supreme Court at Wellington to express the sympathy of the whole of the New Zealand Bar with Queen Elizabeth, the Queen Mother, and with the Royal Family on the loss that they and the Commonwealth had sustained in the death of His Majesty King George VI, and their loyalty and affection for the new Queen, Elizabeth II.

On the Bench with His Honour the Chief Justice were Mr. Justice Hutchison and Mr. Justice Hay. At the Chief Justice's invitation, the Rt. Hon. Lord Wright, P.C., also was present on the Bench. Among those in attendance were the Acting Attorney-General, Hon. J. R. Marshall ; Judge Tyndall, Judge Stilwell, and Deputy Judge Dalglish of the Court of Arbitration ; the Mayor of Wellington, Mr. R. L. Macalister ; the local Magistrates ; the Solicitor-General, Mr. H. E. Evans, Q.C. ; the President of the New Zealand Law Society, Mr. W. H. Cunningham ; and the President of the Wellington District Law Society, Mr. C. A. L. Treadwell.

THE CHIEF JUSTICE.

His Honour the Chief Justice said :

" When the news of the death of King George the Sixth was announced, we were in the early stages of the first Supreme Court Sessions for the year, and in Wellington we were engaged in criminal trials ; and, indeed, we had on the list a part-heard trial which was to continue on the day the news reached us.

" Reference to the event and the sorrow felt was called for immediately, and was duly made in this Court on Thursday last ; but little notice of what was to be done at the opening of the Court that day could be given to the profession, and, although we had a large gathering, it was obvious that many who would have wished to be present had been unable to do so ; and likewise there was no time for the leaders of the profession to take part and expressly to declare the profession's feelings of sorrow at the King's death and to proclaim its loyalty to the new Sovereign.

" I then intimated that, if the profession desired that another day be arranged for a fuller gathering, I would willingly arrange for it ; and, that request having been made, we are here to-day, the Bench and the Bar of New Zealand, publicly to proclaim our common loss, to pay united homage to the memory of a gracious and beloved King, and, equally important, to proclaim our loyalty to our new Sovereign Queen Elizabeth and our regard for her welfare and our affection for her.

" I have asked the Governor-General to convey to the Royal Family this message from the Judges of the Supreme Court of New Zealand :

> ' The Judges of the Supreme Court respectfully express their deep sorrow at the death of their beloved King and tender their profound sympathy with Her Majesty Queen Elizabeth and the members of the Royal Family. They will ever mourn this very grievous loss which has afflicted us all.'

And to Queen Elizabeth II :

> ' The Judges of the Supreme Court of New Zealand humbly and respectfully express their homage to the Throne and their affection for Her Majesty and pray that she may have a long, fruitful, and happy reign.'

" I understand similar messages have been framed on behalf of the practising profession, and no doubt will be referred to by your representative when he addresses the Court later.

" We have all, on entry into the profession, taken the oath of allegiance to the Sovereign. Some of us have already renewed that oath, but all of us are not required to do so. But this occasion can be taken to renew at least in spirit that oath of allegiance, taken by some of us many years ago but faithfully observed, I am sure, over the years by us all.

" I will not weaken by repetition what I said on the previous occasion, but I add this : Statesmen and Judges, lawyers and laymen, rich and poor, famed and obscure, young and old are all stricken in the passing of the King.

" That sorrow which we universally share may help us to realize the depth of the affliction which has befallen his family, to whom our greatest sympathy goes out. Our sorrow may be lightened by the remembrance of his unselfishness and of the unswerving devotion to duty which has characterized him.

" So with sorrow and affection we pay our tribute to his memory, and lament his loss.

" Our Queen will, I am sure, take her place among the great English Queens of history. Few of us will live to see the culmination of her work and rule, but, being her subjects at the commencement of her reign, we can and do confidently look forward to the fulfilment of the fervent wishes and hopes and prayers of

her united people that she have a long, calm, and fruitful reign."

THE PROFESSION IN NEW ZEALAND.

The President of the New Zealand Law Society, Mr. W. H. Cunningham, then addressed their Honours and Lord Wright as follows :

" The members of the legal profession practising in this Dominion are grateful to your Honours for affording them this opportunity of humbly expressing in this Court and on this occasion their sense of grief and sorrow at the death of their beloved Sovereign King George the Sixth, and of humbly expressing their sympathy with his widowed Queen and the other members of the Royal Family.

" The sudden death of King George the Sixth was a shock not only to his people in the British Commonwealth of Nations and Empire but to the peoples of many other friendly nations.

" Throughout his reign, by his integrity, his devotion to duty, his courage, and his simple Christian faith he was an example and an inspiration to his people.

" Throughout the war years, the Royal Family demonstrated that it was just another family within the nation sharing with the people all the hardships, privations, and dangers of those perilous times, but with high courage, endurance, and faith.

" The Royal Family lived a happy, Christian family life, and the King's Christmas broadcasts to his people seemed to bring us all within that happy circle.

" In the performance of his kingly duties, and in his solicitude for the welfare of all his subjects, the King did not spare himself, but, despite indifferent health, he set himself sternly to follow the course which duty required.

" His quiet courage in all circumstances and on all occasions, both in peace and in war, earned for him the undoubted love and regard of his subjects. He faced his last grave illness with fortitude and endurance beyond belief, and fought his way back to convalescence, but only to pass peacefully away in his sleep.

" To his sorrowing and widowed Queen, who in his lifetime so ably supported him and shared his responsibilities, and to all the Royal Family, our hearts go out in humble sympathy in their great loss.

" Finally, to the young Queen, Queen Elizabeth the Second, who has succeeded to her great office with all its responsibilities at such an early age, the members of the profession in this Dominion express with humble duty their abiding loyalty and high regard. Supported by a husband and blessed with two lovely children who have already won a place for themselves in the affection and regard of the peoples of the British Commonwealth and Empire, our young Queen stands on the threshold of a life of great opportunity. Our earnest wish is that God may bless her and her family and give her the strength and courage to follow the example set by her illustrious father.

" A Resolution has been framed and formally passed by the Standing Committee of the New Zealand Law Society on behalf of the Council recording what I have already expressed. It is the desire of the Society that this Resolution may accompany the Resolution recorded by their Honours the Judges and be transmitted to His Excellency the Governor-General, so that in due course it may be forwarded through the appropriate channels to Her Majesty the Queen. The Resolution reads as follows :

' That the New Zealand Law Society, on behalf of all the members of the legal profession practising in the Dominion, desires with humble duty to express their sense of grief and regret at the sudden death of their beloved Sovereign King George the Sixth, and to express sincere sympathy to his widowed Queen and to all the members of the Royal Family in their great sorrow, and especially with humble duty to express to their young Queen, Queen Elizabeth the Second, who has succeeded to her great office with all its responsibilities at such an early age, their abiding loyalty and high regard.' "

LORD WRIGHT.

The Chief Justice then said that they had on the Bench that morning a very distinguished Englishman and lawyer, for many years in various activities a very distinguished servant of His Majesty, Lord Wright, who served first in his judicial capacity as a Judge of the King's Bench, later as Master of the Rolls, and finally as a Lord of Appeal in Ordinary in the House of Lords. The Chief Justice said that he had invited Lord Wright to say a few words to the gathering that morning, and that he had kindly consented to speak.

Lord Wright said :

" I am deeply honoured by the invitation which the Chief Justice has extended to me, as he has just said, to address a few words of sympathy and fellowship with those here to-day. I am a stranger on this Bench, though I cannot regard myself as being a stranger when I am in this Dominion or in the other Dominions in which I have been, such as Australia and Canada. I feel at home there, and I can claim special kinship here with the Chief Justice. For one thing, he and I are both members of the Privy Council ; we are both Her Majesty's Privy Councillors ; and, in addition, we are both Benchers of the Inner Temple. There is, therefore, a special kinship between us ; and may I add that our late lamented King was also a Bencher of the Inner Temple.

" It is difficult at this moment to say very much about the sad occasion which has called us together to-day. Our late lamented Sovereign was not merely a great human being ; he was perhaps the most perfect possible exemplar of what a constitutional monarch should be, a constitutional monarch not only in relation to England and Great Britain, but also in relation to his position as the constitutional monarch of the Britsh Commonwealth of Nations. That great institution, the British Commonwealth of Nations, is in its kind and in its growth unique. Its future is not even now a closed book, but the position of the King of England, who is also the King of the Commonwealth, is very remarkable. Indeed, a constitutional monarch is debarred by the very nature of democratic government from taking any direct part in the government either of England or of the Dominions or colonies. His functions have never been finally decided, but what is quite clear is that he is a sort of keystone of that great institution, the British Commonwealth of Nations. His life has been a pattern to us all. We who have seen him at home have realized how devoted he was to his arduous, difficult, delicate duties. The great strain of that may have shortened his life, and in any case

limited his enjoyment of the country life and the country activities to which he was so attached. Well, he is gone. The old saying was : ' The King is Dead : Long Live The King.' We are met here, not without a feeling of compassion for the new Queen, but with confidence and hope that she will revive, continue, and repeat the glories which attended her illustrious namesake some centuries ago."

JUDICIAL AND FORENSIC MOURNING.

The Judges of the higher Courts are " the Queen's Judges," and thus are attached to the Royal Court so far as to obey the injunctions as to mourning issued on the occasion of the death of His late Majesty. As each Queen's Counsel, when about to be called to the Inner Bar, makes his declaration that he " will serve the Queen as her counsel learned in the law and truly counsel the Queen in her matters, when I shall be called, and duly minister to the Queen's matters and sue the Queen's process after the course of the law after my cunning," he, too, is subject to the same injunctions as to Court mourning.

Chief Baron Pollock is authority for the jesting statement that " the Bar went into mourning at the time of Queen Anne, and never came out again." The basis of the Chief Baron's remark was the fact that the full-bottomed wig, and black gown and Court dress, still the official costume of Queen's Counsel, date from the expression of the wish by William III that the mourning apparel worn by barristers at the funeral of Queen Mary II should be continued after the Queen's death as a mark of respect.

Nowadays, additional signs of mourning are adopted by the Judges and Queen's Counsel on the solemn occasions when Court mourning is ordered to be worn, and for the period during which such mourning continues. These take the form of " weepers," which are white lawn cuffs attached to the sleeves of the Court coat, and of mourning bands, which replace the bands usually worn and are of a pattern different from them.

The *indicia* of judicial and Queen's Counsel's mourning may be observed in our higher Courts at the present time.

The members of the outer Bar express their sense of respect by wearing the mourning bands only.

VISIT OF LORD WRIGHT.

The Rt. Hon. Lord Wright, whose judgments as a Judge of first instance and as Master of the Rolls and as a member of the House of Lords and of the Judicial Committee are known to every practitioner, is, with Lady Wright, at present paying a private visit to New Zealand.

His Lordship was met on arrival and welcomed by the Chief Justice and by the President of the New Zealand Law Society, Mr. W. H. Cunningham, as well as by the Acting Attorney-General, the Hon. J. R. Marshall.

After a tour of the South Island, Lord Wright was present on the Bench at the Supreme Court, Wellington, on the occasion of the gathering of the Judges and the profession to express sympathy with the Queen Mother, Queen Elizabeth, and their loyalty and affection for the new Queen.

Lord Wright addressed the Law Faculty of Victoria University College for an hour on recent developments in the law of negligence. A large number of practitioners attended.

The Mayor of Wellington, Mr. R. L. Macalister, and the Mayoress, were to have given a reception and five o'clock party in honour of Lord and Lady Wright in the Mayoral Chambers, and leading members of the profession were invited. Owing to the King's death, this could not take place.

NEW AUCKLAND QUEEN'S COUNSEL.

Call to the Inner Bar.

At a simple and dignified ceremony at the Auckland Supreme Court on February 8, 1952, three recently-appointed Queen's Counsel were called to the Bar. They were Mr. H. P. Richmond, Mr. L. P. Leary, and Mr. A. K. Turner.

The Court was filled with members of the profession and some members of the public. The wives of the new Queen's Counsel also attended. On the Bench were Mr. Justice Finlay, Mr. Justice Stanton, and Mr. Justice Adams.

Mr. Richmond, addressing the Court, said that Letters Patent under the hand of His Excellency the Governor-General had been issued to him appointing him one of Her Majesty's Counsel for New Zealand. After he had read the Letters Patent, he handed the document to the Registrar, Mr. C. O. Pratt, who in turn handed it to Mr. Justice Finlay.

Mr. Richmond then made the prescribed declaration. After he had read it, he was invited by Mr. Justice Finlay to " Come within the Bar." He then took his seat at the Inner Bar, next to Sir Alexander Johnstone, Auckland's senior Q.C. In turn, Mr. Leary and Mr. Turner made their declarations, and were also called within the Bar.

" The present occasion calls for congratulation upon the achievement that has been earned by industry, aptitude, wisdom, and effort," said Mr. Justice Finlay. " In that sense, it is a very real tribute to each of you individually. As Queen's Counsel, men are marked out as leaders of an honourable profession. They are marked out as men to whom the public may in difficulty or distress turn in complete confidence. It is in appreciation of the ability, dignity, and propriety with which each of you will bear these responsibilities that I, on behalf of the Bench, tender you congratulations and wishes for a long and successful professional career."

THE HISTORY OF THE COURT OF APPEAL.

By The Rt. Hon. Sir Raymond Evershed, M.R.*

You have delighted to do great honour to me and to my two distinguished companions, and this is indeed a proud moment in our lives. I appreciate, of course, that in honouring me you are primarily honouring the high and ancient judicial office which I am privileged to hold and the profession of the law, of which I am at least a devoted member and servant. I have said "judicial office," because I am informed—perhaps through my own fault and indiscretion—that the Master of the Rolls is thought in Melbourne to have no other function than the agreeable, if unexciting, occupation of looking after the Domesday Book.

If you have honoured my profession and my office, I am personally the beneficiary of your bounty. Being an Englishman, I am now and from henceforth in a sense also an Australian. I am proud that my illustrious predecessor as President of Clifton College, that great Christian soldier, Lord Birdwood of Anzac, was also an honorary LL.D. of this University. And I am proud also to number among my colleagues my fellow-bencher of Lincoln's Inn, Lord Bruce of Melbourne, the Registrar of Oxford, Douglas Veale, and Australia's Prime Minister and Chief Justice. It is also a great joy to me to find that my old friend (from whom I received so much kindness and help) Mr. Justice Uthwatt —afterwards Lord Uthwatt—was a graduate of Melbourne.

Like the Lord Chancellor, I am a graduate and honorary Fellow of a College of Oxford University. These great seats of learning, Oxford and Melbourne, which I know do not bestow their honours lightly, like other institutions of the same kind stretch out their hands above and beyond national and racial limits. They acknowledge no ideologies and bow to no despotisms of the mind. Here men seek the truth. Here men learn—and, in these terrifying and vexing days, when our way of life must be regulated according to circumstances which we can neither control nor avow, it is perhaps the last or only chance to do so—the true ethics of a civilized society. They learn how life should be lived.

I have been asked to say something of the history of the Court of Appeal in England over which it is my duty as Master of the Rolls to preside. To a citizen of those countries which have adopted the English system of law, to speak of the history of any of its institutions is no mere academic exercise. The historical method is (I can rest upon the authority of that great American Judge Cardozo) an essential ingredient of the judicial process. If the historical method alone and of itself would be apt to emphasize too much the limits of legal principle imposed by history, at least it gives to our system its coherence and stability, and at the same time by a kind of automatic process largely, if not wholly, robs the most striking legislative innovation, when brought to the consideration of our Courts, of its particular political significance.

The freshman in a University, from the moment that he first enters the University gates, or first puts on his academic gown, is instantly absorbed into and becomes part of a long-established institution, subject to and a beneficiary of its standards and traditions, by reference to which inevitably he will be judged and governed, however far removed be the arts and practices of his day from any that have gone before. So the most novel statutory enactment—like the income-tax once upon a time—becomes from the moment of its passing a part of our *corpus juris*, expressed by our draftsmen in the same style of speech, and judged and interpreted by the same established canons that have been employed (as one might say) from time immemorial.

The Court of Appeal may, unlike the mule, have some hope of descent, but it can claim no great pride of ancestry. It cannot pretend (as one of my colleagues has observed) to trace its origin, as the King's Bench Division is prone to do, by devious routes, to Plantagenet sources. It is younger than the city of Melbourne, and not much older than the Commonwealth of Australia. It has lived, in fact, for about three-quarters of a century. Yet it is not entirely without respectable parentage, for, in conception as in form, it followed the pattern of the Chancery Court of Appeal of 1851, and was the product of equity minds.

It is a strange thing when the long history of English law is considered that, until 1873 in Mr. Gladstone's first Ministry, there was no Court of Appeal in England—*i.e.*, no Court before which a case, having been tried at first instance, could be reheard and determined upon its merits—that hitherto a disappointed litigant had to proceed by way of Error in the Exchequer Chamber, a method which, as it operated, was (according to Sir William Holdsworth) at once both too narrow and too wide. But so it is (and this must be understood by a student of our laws by reason of our rule of precedent) that the judgments of the Exchequer Chamber are regarded as binding authority, equivalent to the judgments of the Court of Appeal.

And strange it is, too, that the Chancery Court of Appeal should have been the first of the line, because (as the Lord Chancellor observed at the first meeting of our memorable Convention at Sydney) the renowned Lord Eldon, the formidable Lord Chancellor of Great Britain at the beginning of the nineteenth century, was no kind of reformer. Eldon, as Greville pointed out in his *Memoirs*, "was consistent throughout and . . . offered a determined and uniform opposition to every measure of a liberal description."

Yet in 1851 the great change was made, the greatest—according to Mr. Hare in his preface to the Eleventh volume of his reports on cases before Page-Wood, V.-C.—since John de Waltham had invented the writ of subpoena in the days of King Richard II. And perhaps he was right. For, in the same Preface, Mr. Hare drew attention to the sad case of *Knight* v. *Lord Waterford*, in which the plaintiff, having started his proceedings in the Court of Exchequer, learned fourteen years later from the House of Lords that, whatever had been his merits (to which both the original Court and the Court of Exchequer Chamber had done their best to give effect), he had in truth selected the wrong (procedural) method of attack, and must (if he could or would), like the victim in a game of snakes and ladders, go back to the beginning and start his litigious journey all over again.

*The text of an address delivered to The University of Melbourne on the occasion of the conferring of the honorary degree of Doctor of Laws on Sir Raymond. (With acknowledgments to the *Law Institute Journal*.)

The life of the Chancery Court of Appeal was not long, but its achievement was not negligible. Great names adorned it. The first Lords Justices, Cranworth, Knight-Bruce, George Turner and James and Mellish, who carried the standard into the modern Court of Appeal.

The scheme of things for the Court of Appeal, according to Gladstone's Chancellor, Selborne, was therefore inspired and grandiose. It was to be the final Court of Appeal, the upper Division of a Court of judicature, which would be supreme in function as in name. For judicial purposes there was no more to be a House of Lords or a Privy Council. But the designers of the scheme forgot, or paid insufficient attention to (amongst others), Scotsmen and Irishmen. Scotsmen and Irishmen and others like them might not have accepted with uncritical enthusiasm the final arbitrament even of Chancery Court of Appeal of Englishmen. So in 1876 Disraeli and his Scottish Chancellor Cairns saved the House of Lords and Privy Council from judicial extinction, and left us with the difficult problem —with which my Committee on Supreme Court Practice and Procedure, appointed by the Lord Chancellor under my chairmanship, is now concerned—of "two-tier appeals." The matter is difficult and technical, and not the less so because of our rule of precedent. Had the original scheme persisted, the judgments of the House of Lords would have remained mystical and unimpeachable, like the ancient tablets. A situation for our Courts might have been created not dissimilar from that which you have here when the terms of the written Constitution are called in question.

I must not be taken to be deploring Mr. Disraeli's reprieve. It would certainly not be seemly for me—nor is it in my mind or heart—to denigrate the value of the opinions of the House of Lords, perhaps the greatest judicial tribunal the world has ever seen. But costs, or the fear of costs, are a serious matter. If the rule of law is really to be respected and maintained, the King's Courts must not, because of costs or otherwise, be too remote from the ordinary citizen.

To what must be but a slight historical sketch I add that since 1934, and so as partially to meet this same problem of "two-tier appeals," County Court appeals have to come direct to my Court, and from it there are no appeals to the House of Lords, save with the leave of the Court of Appeal or the House of Lords. The Court of Appeal is the final Court, in fact, for 95 per cent. of the civil cases. The result is not entirely satisfactory, for, to the layman, who may not always appreciate the nicest refinements of pure questions of law, it may seem capricious that leave should be given to A which is denied to B. And the work imposed upon the Court of Appeal is exceedingly heavy. In 1950 we determined over 630 cases, and in nine-tenths of that number our judgments were delivered immediately and extempore. This has sometimes excited much admiration, and, so far as the disptach of business is concerned, the result is undoubtedly good. But I do not think it is wholly good. Pressure of business makes it impossible for us to reserve as many judgments as I think we should, and the magisterial quality of our judgments must in some degree suffer. All the more reason, perhaps, to retain in appropriate cases the deliberative corrections of the House of Lords.

I cannot leave this part of my address without reference to one piece of history which is little mentioned. Under the original scheme of 1873, the High Court Judges were denominated "Justices" and the members of the Court of Appeal "Judges of Appeal." No more. By what Lord Asquith has called the supplemental and consolatory provisions of the Act of 1876, the Justices of the High Court became Judges merely, and the Judges of the emasculated Court of Appeal were elevated in name (though not in terms of remuneration) into "Lords Justices": and of these there are now eight who may be seen on State occasions with the Master of the Rolls, arrayed in garments of black and fine gold.

I would like, as being pertinent to my theme, to refer to two general matters. The first is this. Since the original design for the Court of Appeal was shorn of its boldest and most striking feature, it has limped somewhat through life. You might say that it has been neither fish, flesh, nor good red herring. Perhaps it is another example of what is euphemistically called the English genius for compromise. Would it be better to tear up the whole plan and cast it to the flames? Would it be better that intermediate appellate work should be done (as you do it in this State) by the Judges of first instance sitting in banc? The matter has been before my Committee, and I must tell you that the evidence has been very strongly against the change. No doubt that evidence is in some measure due to man's natural conservatism, even after but seventy-five years of experience. But in England (and I speak, of course, only of England), I think there are solid reasons for maintaining the *status quo*. In the first place, the Court may be said, by the distinction of its members in the past, to have worked its passage to approval. Consider names like Bramwell, Cotton, Fry, Bowen, Jessel, Lindley, Lopez, and, in more modern times, Scrutton, Atkin (of Australian birth), Younger, and Frank Russell. For obvious reasons, I stop short of the living. And there are further reasons. It is said that Judges sitting temporarily on appeal over their brethren may think over-much of what may happen later when their own cases come up for review. I do not myself attach too much importance to this. But the problem is very different, when there are but ten or a dozen Judges altogether, from when there are (as with us) three or four times that number. It must be remembered that, as I have said, our Court of Appeal is in fact the final Court for 95 per cent. of the civil cases, and it is therefore surely important that the Court should have the status, the experience, and also the uniformity of outlook appropriate to that fact. Moreover—and this I believe myself to be the most serious point—the judicial function is not quite the same in an appellate Court as it is in a Court of first instance. In a Court of first instance, the duty of the Judge is to sift the evidence and to reach a conclusion as best he can, and as quickly as he can—for there is no doubt whatever that costs vary directly with the length of the hearing. Despatch is, of course, important no less in the Court of Appeal, but it must be subject to due deliberation if an appellate Court is justifiable at all. In our Court, three Judges constitute the Court, and, so far as I know, all comparable Courts of Appeal consist of more than one Judge. If, therefore, the real purpose of an appellate Court is to be achieved, it is essential so to do by getting what I may call a combined judicial operation. Two heads, it is said, are better than one, but only if they work truly together. Otherwise, the individual opinion of each of three appellate Judges may have no obvious primacy over the view of the trial Judge. If, therefore, the members of the appellate Court are constantly having

to change (and I leave aside the mechanical difficulties which would clearly arise if constant change of personnel were necessary), then those Judges constituting the Court would not sit together often enough to acquire the faculty of working, not individually, but in co-operation with their brethren. And again—with us, where we have much specialization in our Courts, separate and distinct divisions of the High Court—each Judge would find a high percentage of the appellate work he was called upon to do work of which he had had little or no experience, which was almost entirely strange to him. This essential quality of a combined judicial operation is, indeed, not easy to attain. It requires a new effort of mind and a new kind of application. I remember the advice given me by Lord Uthwatt when I was the junior member of the Court of Appeal. "You must try," he said, "to attend to the case as if the result depended upon you alone. Otherwise, you will not be giving of your best, and you will derive no satisfaction from the work. But you must also realize that two other Judges are at the same time trying the same case, and you must try to understand how their minds are working, and gain inspiration from their approach." The point of a question put by the Bench is, therefore, in an appellate Court, somewhat different from the point of a question put at a trial. It is not put merely to demolish an argument, to vex counsel, or to indicate superiority of intellect. It is put as often as not to indicate to your colleagues that your own apprehension of the case may not be quite in accord with what you understand to be theirs. It is by such means that the combined judicial operation is achieved, and thereby we have, I think, surprisingly few dissenting opinions in our Court. May I add one word in that connection on what is called the system of the written brief? So far we have not adopted it, and again the evidence before my Committee has been against it. I can but touch upon the matter, but, if the argument is strictly limited, and if (as I understand commonly to be the case in the United States of America) the written briefs have not in fact been read before the hearing, it seems at least to me that the advantages of the combined judicial operation are far harder to achieve. Nor, on the question of costs, is it by any means clear that there would be any saving in the majority of cases. Someone has to be paid to prepare the written brief, and someone has to be paid again to conduct the argument. I remind you that one case in every three of those that come before us are relatively small cases from the County Courts.

My second point has reference to the rule of precedent to which I have already more than once alluded. And I make this reference, first, because it was only in 1944, in the celebrated case of *Young* v. *Bristol Aeroplane Co.*, that the Court of Appeal decided that it was still bound (save in certain limited cases) by decisions of its own, and, secondly, because to this matter, or to questions related thereto, valuable contributions have been made in legal literature by your Vice-Chancellor.

The point, I know, is controversial, though I think that much of the controversy may disappear upon precise formulation. On the one hand, there is the immense advantage of a system supplying (as your Prime Minister has recently observed) a body of known doctrine. And certainly, if Judges are tempted to "indulge in spasmodic sentiment and vague, unregulated benevolence," if they are tempted to stray into pronouncements upon what they conceive the law should be, they run the great danger of intruding into the legislative sphere and thereby, at a single blow, destroying the edifice upon which our whole civilization may justly be said in the last resort to depend. On the other hand, should the Judges be "slaves of the past and despots for the future"? Should it be said that "many an error by the same example will rush into the State"? There is the antinomy. For myself, where the law is clear, I have no doubt the judicial duty is clear also—namely, to administer the law as it is. But the trouble is that the law is not always clear. The conditions of to-day differ so greatly from those that obtained when many of our legal principles took form. Consider the fact that for eighteen centuries of our era a man's powers of movement were limited to the speed of the horse. In that regard, Napoleon could move no faster than Julius Caesar. And, since the powers and methods of communication must have an effect upon all human relations, may it not be that a principle enunciated in the eighteenth century will not be so easily applicable without qualification in the twentieth? Or, again, sometimes two principles of the law may come into conflict—*e.g.*, the principle of freedom of contract and the principle of public policy against restraint of trade. Thus it was in the *Nordenfeldt* case, and I quote the language of Lord Watson:

> It is not necessary to accept what was held to be the rule of policy one hundred or one hundred and fifty years ago, but to ascertain, with as near an approach to accuracy as circumstances permit, what is the rule of policy for the then present time.

It is not, then, a question of substituting, for the law as it is established to be, what the Judge may think it ought with advantage to become; but it is a question of giving to a principle established slowly and inductively sufficient life and energy to adapt itself by necessary qualifications to new standards—*i.e.*, to the social philosophy of the day and age. The difficulties in regard to precedent are, indeed, sometimes aggravated by the Judges themselves. For example, when more than one ground is urged for a particular conclusion, a Judge may, by slight variations in his language, either pronounce authoritatively upon both or base himself solely upon one, giving a more inconclusive opinion upon the other. It is upon this point that the Vice-Chancellor's recent contributions are in my mind. When a matter has been fully argued, it is not easy for a Judge, in fairness to the argument, to forbear to express conclusions upon every point. Yet, as I have said, slight differences in expression may distinguish that which can at most guide a later Court and that which must despotically compel.

I say no more upon this matter, but I do suggest that, at least in the two kinds of situation which I have mentioned, without invading the legislative province, there should be some relaxation in the strictness of the rule of precedent, at least in those Courts to whom belongs the final word. Any formulation must be difficult, and I am content to leave it to the students of the law in Melbourne. I conclude by one further acknowledgment to Lord Asquith. On a recent occasion, he asked some questions. One was: "What does the phrase 'per incuriam' include and exclude?" Another was: "Is a decision of the Court of Appeal that two of its previous decisions are reconcilable more binding than a decision that two of its earlier judgments are irreconcilable—and, of course, if not, why not?"

I thank you again, and most sincerely, for the high honour you have conferred upon me. Whatever may be said of the rule of precedent, I know that only by living up to the standards that have been set for me by my illustrious predecessors shall I prove myself worthy of that honour.

INSTRUMENTS REVIVING AND EXTENDING POWERS OF ATTORNEY.

By E. C. Adams, LL.M.

Explanatory Note.

The draftsman should be chary of introducing recitals in powers of attorney: they may be interpreted as limiting the effect of the operative portions. If, for example, the reason for the power of attorney is the intended absence of the principal from New Zealand, it is better to omit any recital of that fact.

It has, it is true, been held that a recital, "Whereas I am about to leave New Zealand and am desirous of appointing an attorney to act for me," will not limit the power to the period of the donor's absence from New Zealand: *Fell* v. *Puponga Coal and Gold-mining Co. of New Zealand, Ltd.*, (1904) 24 N.Z.L.R. 758. But a recital "Whereas I am desirous of appointing an attorney to act for me *during my absence from New Zealand*" makes the power exercisable only during the donor's absence, although the operative parts of the power of attorney may contain no words expressly limiting it to the period of the principal's absence from New Zealand: *Danby* v. *Coutts and Co.*, (1885) 29 Ch.D. 500. And probably a power so impliedly limited is exhausted on the donor's return to New Zealand, and also probably does not reoperate if the donor again leaves New Zealand: *Re Williams and Sons*, (1854) 23 L.T.O.S. 11.

The draftsman of the first precedent hereunder obviously was aware of this rule, for the relevant recital in the power of attorney reads as follows:

> Whereas I am about to depart from the Dominion of New Zealand for a time and am desirous of appointing an attorney and agent to act for me during my absence therefrom with all and singular the powers authorities and discretions by these presents conferred.

The second precedent hereunder deals with a different topic—namely, the conferring on the attorney of an express power of mortgage upon the principal's again going abroad after his return to New Zealand. The important point here is that the Courts will not readily infer a power to mortgage. For example, a power to sell will not include a power to mortgage. The recital in that power of attorney was as follows:

> Whereas I am about to leave New Zealand and am desirous of appointing C.D. of ——— to act for me in my affairs and of giving him full and sufficient powers and authorities to do execute and perform every act deed matter and thing which may be necessary to be done executed or performed with respect to the entire management of all my affairs and property.

It will be observed that both precedents provide for sealing as well as for signature. Sealing is not necessary for the execution of a deed in New Zealand, but it is still necessary in some jurisdictions. An attorney cannot execute a deed on behalf of his principal unless he is appointed by deed: *Garrow's Real Property in New Zealand*, 3rd Ed. 445. Consequently, if an attorney is to have power to execute a deed in jurisdictions where sealing is necessary, he must be appointed under seal.

The stamp duty on each instrument is 15s., as a deed not otherwise chargeable.

Precedent No. 1.

Instrument reviving a Power of Attorney by Endorsement.

To All to Whom These Presents Shall Come I the within-named A.B. of Palemerston North farmer Send Greeting:

Whereas since the granting of the within Power of Attorney I have returned to New Zealand for a time and am again about to depart therefrom and doubts may arise as to whether the same is or is not revoked Now Therefore Know Ye and These Presents Witness that I Do Hereby Revive the said Power of Attorney and renominate reconstitute and reappoint the within-named C.D. and E.F. both of Palmerston North solicitors to be my Attorneys and Agents during my absence from New Zealand and with all and singular the powers authorities and discretions conferred upon them by the within-written Power of Attorney of the day of one thousand nine hundred and forty-seven.

In Witness whereof I have set my hand and affixed my seal this day of December one thousand nine hundred and fifty-one.

Signed Sealed and Delivered by the said A.B. in the presence of:— } A.B.

G.H.,
Solicitor,
Palmerston North.

L.S.

Precedent No. 2.

Instrument Extending a Power of Attorney by Endorsement.

Whereas I A.B. of Wanganui in the Dominion of New Zealand merchant by the within-written Power of Attorney bearing date the day of 1948 did appoint C.D. of the City of Wanganui licensed land agent (hereinafter called "my Attorney") my true and lawful Attorney to act for me during my absence from the Dominion of New Zealand And Whereas I have recently returned to the said Dominion and am again about to depart therefrom and before so doing I desire to extend the powers of my Attorney under the said Power of Attorney Now Therefore These Presents Witness that I the said A.B. in addition to the powers given and granted to my Attorney by the within-written Power of Attorney do hereby nominate constitute and appoint my Attorney my true and lawful Attorney in my name and on my behalf to mortgage or otherwise encumber any or all of my lands or any lands in which I may be interested for such amount and upon and subject to such terms and conditions as my Attorney shall think fit and for that purpose to give and execute any mortgage charge or other document or documents to give effect to the power hereby granted And I hereby ratify and confirm all and singular the provisions of the said within-written power of attorney.

In Witness whereof I have hereunto set my hand and affixed my seal this day of December one thousand nine hundred and fifty-one.

Signed Sealed and Delivered by the said A.B. in the presence of:— } A.B.

E.F.,
Solicitor,
Wanganui.

L.S.

CONFESSIONS: A WARNING LIGHT.

A Correction.

The following communication has been received from the Acting Minister of Justice, Hon. J. R. Marshall:

"My attention has been drawn to the article entitled 'Confessions: A Warning Light' (*Police* v. *Weir*) written by Mr. J. C. Parcell and published in the NEW ZEALAND LAW JOURNAL of January 22, 1952. The rather extravagant language and the melodramatic references to Communist methods can be disregarded; but the accusation that an obscure country girl of tender years (20 years of age) was so badgered by the Police that she made a false confession cannot be ignored. The obtaining of a confession in that way would be contrary to Police Regulations and would offend against our conception of justice—it would be repugnant to the public and to the Police Force alike. It would not be permitted, tolerated, or condoned by the Government.

"The facts now in the possession of the Government do not support the charge that has been made; and it is clear that the hasty accusations made against the Police were based on evidence which could hardly be called reliable and which was certainly not complete. But the accusations have been made and they can only be proved to be true or false if a full, impartial, and independent inquiry is set up to examine them. This the Government proposes to do and an announcement will shortly be made giving effect to this decision."

The following letter has been received from the Commissioner of Police, Mr. J. Bruce Young:

"I have read with interest an article in the LAW JOURNAL, dated January 22, 1952, headed, 'Confessions: A Warning Light—By J. C. Parcell,' and have noted the assumptions, but there is one portion that is stated as fact which has serious omissions, and I should be grateful if you would, for the benefit of your readers, include the following: 'The girl was 20 years of age and her statement was made to the Police in the presence of her father.'"

AROUND THE LONDON LAW COURTS.

A New Zealander's Impressions.

By W. S. SHIRES.

Not the least interesting of the many pursuits a New Zealand practitioner may occupy himself with in London is to visit various of the Courts of Law to be found in the City, Westminster, and the Metropolitan Boroughs. These notes record a number of such visits and the impressions made by them. But a preliminary observation may be made concerning the degree of difficulty or otherwise with which ordinary people may exercise their right to visit these Courts and listen to their proceedings. Generally, it may be said that the visitor may secure admission if he can, which means that his right of entry is limited by the provision of accommodation for the public.

In the Law Courts in the Strand, the provision of public galleries is adequate, but this is not everywhere the case. When the Old Bailey was visited, there were four Courts sitting and two public galleries open, the galleries accommodating relatively few people compared with the number seeking admission. The inference drawn—although it is proper to say that this was not confirmed by exact information—was that there were two Courts where the proceedings could be heard from the body of the Court alone, and to which admission would be refused by the policeman at the door unless he was satisfied that the would-be entrant had some business to be there apart from an idle interest in the administration of criminal law.

Accommodation is equally limited in some of the Police Courts, where it is necessary to queue to obtain standing-room, if not elbow-room, at the back of the Court.

For Police Courts known to all by name, there are the Courts at Bow Street, on the edge of Covent Garden, and in the more fashionable area of Great Marlborough Street. These are presided over by Stipendiary Magistrates exercising the jurisdiction of two Justices of the Peace. But the Court at Tower Hill should not be overlooked by those who wish the rare sight of a Court presided over by a woman Stipendiary.

At Bow Street, we negotiated the porters' barrows, and the queue waiting admission, to elbow a way into the back of the main Court. Seen from among intermediate heads and shoulders, the Court appears perhaps smaller than in fact, but has the advantages of audibility and good lighting. Those summoned to appear foregather, not in the Court itself, but in an adjacent writing-room, and are solicitously ushered across the few steps from the door to the dock by an attendant policeman. The Bench shows equal courtesy in entering a conviction by the customary phrase of "Pay 10s., please," or whatever the sum may be. Organization is excellent, and the list is disposed of with the least possible fuss and bother, the occupants of both Bench and dock contributing to this state of affairs.

Certain points of practice show an interesting difference from the corresponding procedure in New Zealand. Depositions are taken down in long-hand by the Clerk. When bail is granted or extended, the sureties must enter the witness-box and give the necessary information on oath. Police officers objecting to bail or the terms on which it is asked may be cross-examined as to their reasons in open Court.

The visitor to the Judicial Committee of the Privy Council turns off Whitehall and finds his entrance in Downing Street. A list of appeals in the entrance hall indicates that the Committee is considering, or is about to consider, such questions as may be raised by decisions of Courts of Hong Kong, Alberta, Nigeria, and Aden, and the way to the Committee-room is shown by an attendant in full evening dress. Committee and Committee-room are accurate descriptions. Their Lordships sit at a semi-circular table—there is no longer an empty chair indicating the presidency of absent royalty—and are unrobed. Counsel address the Committee from a rostrum before the main table; other counsel and instructing solicitors occupy tables on either side, and a few chairs at the back of the room are sufficient to accommodate those whose interest in the proceedings is impersonal.

At the time of visit, their Lordships were being addressed by a Canadian junior barrister on the intricacies of personal-property tax in Alberta—a provision which he indicated that certain of the Canadian provincial Legislatures had imitated from the example of the United States. If the accent of the advocate and the units of currency he frequently referred to were unfamiliar, his methods in presenting his case left little doubt that the various common-law jurisdictions still retain a common approach and a common language.

Outside the Committee-room, a notice showed that the Commonwealth lawyers share something else in common. The attention of counsel and solicitors was drawn to the rule that a list of authorities to be referred to by counsel in argument should be deposited with the Registrar the day before the hearing of an appeal, and regret was expressed at the practice of producing a pencilled and sometimes illegible list only at the commencement of a hearing.

Of County Courts in London, the most easily available is the Westminster County Court, in St. Martin's Lane, a few minutes' walk from Trafalgar Square. But, for those who wish variety and believe that the proceedings of inferior Courts are most informative of the life and habits of the people frequenting them, a more profitable visit is to the Lambeth County Court in Kensington.

The first point of interest to be noted is not only that the Judge and counsel are robed, but also that solicitors, who appear frequently in judgment summons and in cases of debt, wear solicitors' robes. To the visitor unfamiliar with the County Courts, it is a strange sight to see wigged and gowned barristers and unwigged and gowned solicitors sitting side by side in the Court. A novel feature is also presented by the Registrar, who holds his own Court distinct from the Court of the Judge, and deals with cases of smaller debts and accounts.

In both the Registrar's and the Judge's Courts were two witness-boxes, designated for plaintiff and for defendant respectively, situated at each end in front of the Bench and facing each other, tradition apparently requiring that the rival litigants should be kept at the furthest available distance apart. In all proceedings, it was common for one or both parties to conduct their own cases. A case was called, and plaintiff and defendant entered their respective boxes, were sworn, and told their stories, one sometimes competing against the other to obtain the ear of the Bench. Judgment in debt cases seemed to be invariably for payment by instalments—the amounts, significantly enough, varying from 1s. per week to 20s. or 30s. per week. Judgment summons, which were heard by the Judge, were interesting, in that, commonly, a further order for payment was made without an order for committal, this last order, apparently, being made only when the judgment debtor had appeared in one or more previous summons and failed to obey the orders then made.

But the great volume of litigation in the Judge's Court comprised tenancy cases, and the majority of these were based on allegations of nuisance and annoyance. The evidence gave an interesting, if sometimes depressing, insight into the living conditions of South London. Rooms in condemned houses let at a few shillings' rent, the trials and tribulations of coloured people, and the difficulties in the way of a landlord who finds his property is being used for prostitution were but a few of the everyday topics of London County Court litigation.

IRRESPONSIBILITIES.

I do not know much about divorce practice myself, but I understand that in restitution matters the proceedings are begun by the solicitor, who over the petitioner's signature writes a letter to the other spouse asking that the errant one return to the connubial couch—a letter, it has been laid down, which should be so worded as not to antagonize the recipient. I heard a good story about this the other day. Some time ago, a country practitioner sent his town agent a restitution petition with all the usual trappings for filing and service. The town agent took a quick look through the papers, and noticed that the petitioning husband's letter (copied as Exhibit A) seeking his wife's return to him had invited her to "resume our martial relations." He sent the papers back to his principal and pointed out rather crushingly that, by an unfortunate transposition of letters, his typist had "introduced a regrettably militant note into a request otherwise commendably conciliatory."

The fetish for nationalizing everything leads sometimes to curious results. In *Re Frere, Kidd* v. *Farnham Group Hospital Management Committee,* [1950] 2 All E.R. 513, the deceased by his will gave £6,000 to a certain hospital, but directed that, if at the time he died hospitals generally were nationalized (as in fact happened), the legacy should be applied for such charitable purposes as the governors of the hospital should direct. The residue was given to the same hospital, but was not qualified by any condition. After a perplexing argument, Wynn Parry, J., now thoroughly puzzled, found himself driven to rule that the hospital, which by the condition loses the gift, takes residue, and, with residue, the gift that had failed and fallen into it! Adapting the words of the long-suffering patriarch of old, the legatee might well have exclaimed: "The Lord gave, the Lord hath taken away, *the Lord hath given back again*; *thrice* blessed be the name of the Lord" (*cf.* Job i, 21).

—R. J.

IN YOUR ARMCHAIR—AND MINE.

By Scriblex.

The Good Solicitor.—Scriblex was fortunate enough the other day to have a few words with Lord Wright, who has been passing through New Zealand. He mentioned to this distinguished visitor the pleasure the profession felt in having Evershed, M.R., here, and in listening to his broadcast. "A charming and a sound fellow," observed Lord Wright. "For an equity man!" he added, with a twinkle. At the Law Society's Annual Conference at Harrogate last September, Sir Raymond gave an address on "The Office of the Master of the Rolls," and in the course of it gave his opinion of the qualities which go to the making of a first-class solicitor. "A man," he said, "who above all must have judgment, a man who does not look up law books, nor even read the judgments of the Master of the Rolls, but who knows what is right and wise and what is wrong and foolish; a man who sustains his client when things have gone rather ill with him, who holds him back when he might be inclined to be reckless; above all, a man of whom the rest of the community say, 'There is a man I know can be absolutely trusted.'"

The Length of Commissions.—Those who are apt to criticize the Waterfront Commission on the score of prolixity might pause to consider the trial, at present proceeding in New York, of seventeen leading banking and investment institutions which are charged with conspiring to violate the Sherman Anti-trust Law. It is being presided over by Judge Harold Medina, who heard the case, some two years ago, of the eleven Communist leaders, and pleased a section of the public by committing most of the defence counsel to prison for contempt arising from their obstructionist tactics. In the anti-trust trial, the opening statements of counsel took four months to deliver, and, at the moment of writing, the Justice Department has spoken of putting in evidence no less than two hundred thousand documents, some of two hundred pages. "One thing I am strict about," said Judge Medina to an interviewer, "and that's a nap after lunch each day. Otherwise, by the middle of the afternoon I wouldn't know *what* the lawyers were talking about. It's a very complicated case, though I have a filing system for keeping track of things that is, if I do say so myself, a lallapalooza."

Tailors and Ushers.—In a case before Harman, J., recently, a testator was described as having been a barrister and a tailor. Asked how he had managed to combine the two callings, counsel replied: "It is suggested to me that during the week-end he made suits and during the week he appeared in them." For this story, Scriblex is indebted to "Richard Roe" of the *Solicitors' Journal*, who also tells of the usher recently sent to prison for stealing £8 10s. from the wallet of Mr. Justice Danckwerts. "He evidently failed to realize," he says, "that it was no part of his function to take notes in Court."

Gobbledygook.—A correspondent has written to the *British Medical Journal* that a regional hospital sent him a letter asking him to certify that a candidate for a job "is free from any physical defect or disease which now impairs her capacity satisfactorily to perform the duties of the post for which she is a candidate." The *Journal* comments that the writer of the letter apparently quoted this curious phrase from another document, presumably because he felt that he would be sailing across an uncharted sea if he asked for a certification that the candidate was fit for the job. Sir Ernest Gowers, in his *A.B.C. of Plain Words*, gives this as an example of that type of written pomposity, circumlocution, woolliness, and wordiness which he calls "Gobbledygook." Another example comes from the pen of an official who writes "There is a complete lack of ablution facilities" when he means "There is nowhere to wash." A few months ago, Lord Goddard, L.C.J., in dealing with a passage from the Motor-vehicles (Variation of Speed-limit) Regulations, 1950, said that it was perfectly deplorable to ask a Bench of Justices who were giving their time voluntarily in the interests of justice to sit down on a hot morning and wrestle with this particular passage, which could have been put in one-third of the length and in a way which anybody could have understood.

The Lawyer's Function.—"What is distinctive about the role of the lawyer in a democratic society? The law of such a society is a kind of self-rule, where the subjects are also the rulers, where, whether we speak of our Government as a republican or as a democratic one, the officials are responsible to the people. In such a society, the lawyer is a natural leader unless he abdicates in favour of less informed persons or otherwise defaults in the face of insistent obligation. Lawyers have been called ministers of justice and that underlines the fact that their service transcends their personal importance or advantage. It emphasizes the lawyer's function as an expert in law-making and law-administration. Not least does it cast the lawyer in the role of teacher to his fellow-men in the best Socratic sense of helping them to discover the "right answers," the better, sounder answers to difficult legal and political problems. These, at least, are the ways in which the great lawyers of the formative era in American history, the founding fathers, looked upon their profession. It also recalls the broader context of political science within which the ancient Greeks debated the nature and functions of law": Jerome Hall, "The Challenge of Jurisprudence," (1951) *37 American Bar Association Journal*, 23.

Olla Podrida.—According to the Federal Bureau of Investigation, forty-seven burglaries are committed hourly in the U.S.A., burglary being the most popular form of crime. For the benefit of the mathematically-minded, it might be added that in 1950 the average haul was one hundred and twenty-four dollars per burglary.

As from January 1, 1952, the minimum fee of a barrister in England, which has remained at one guinea for over sixty years, is to be two guineas except where statute otherwise provides.

The new Lord Mayor of London, Sir Leslie Boyce, was called to the Bar in 1922. He is a member of the Inner Temple, as is also Sir Denys Lowson, who, accompanied by an impressive retinue, visited us last year.

Mr. Ronnie White, a solicitor of Birkdale, who won the Brabazon Trophy in September for the second year in succession, is described as Britain's greatest amateur golfer.

PRACTICAL POINTS.

This service is available free to all paid annual subscribers, but the number of questions accepted for reply from subscribers during each subscription year must necessarily be limited, such limit being entirely within the Publishers' discretion. Questions should be as brief as the circumstances will allow; the reply will be in similar form. The questions should be typewritten, and sent in duplicate, the name and address of the subscriber being stated, and a stamped addressed envelope enclosed for reply. They should be addressed to: "THE NEW ZEALAND LAW JOURNAL" (Practical Points), P.O. Box 472, Wellington.

1. Landlord and Tenant. — *Lessor to purchase "plant and fittings"—Linoleums glued to Floor—Whether Fittings or Fixtures.*

QUESTION: A lease is being mutually determined between the parties thereto, and one of the terms is that the lessor is to purchase from the lessee "all the plant and fittings in the building." Certain linoleums are glued to the floor, having been put down in the modern way. The linoleums were valued, but the lessor claims that these linoleums so attached to the floor are fixtures and go with the building, and should not be paid for under the agreement for the lessor to purchase the stock, plant, and fittings.

In my opinion, these linoleums could be taken up by soaking with water, and they are not fixtures.

ANSWER: Your opinion appears to be correct: see the judgment of Edwards, J., in *Pukuweka Sawmills, Ltd.* v. *Winger*, [1917] N.Z.L.R. 81, and particularly at p. 106. See also *Adams's Death and Gift Duties in New Zealand*, 2nd Ed. 383, and authorities therein cited.

It is assumed that the lessor did not previously own the linoleum in question.

What is the true construction of the agreement to purchase entered into by the lessor and lessee? If the linoleums were provided by the lessee, it is reasonable to assume that, although they are gummed to the floor in the modern fashion, the Court would hold that they were included in the phrase "plant and fittings" as used in the agreement of sale. X.2.

2. Divorce and Matrimonial Causes.—*Restitution of Conjugal Rights—Husband now domiciled in New Zealand—Wife and Child in England—Jurisdiction to make Order for Wife to come to New Zealand—Divorce and Matrimonial Causes Act, 1928, ss. 8, 38 (2).*

QUESTION: A man marries in England, and, shortly after his marriage, comes to New Zealand, it being arranged with his wife that she will follow him to New Zealand after he has obtained a home. The husband carries out his part of the arrangement, but his wife refuses to come to New Zealand, and there is one child of the marriage living with the wife. The husband has been living in New Zealand over twelve months, and desires his wife to return to him.

Has the Supreme Court of New Zealand jurisdiction to deal with this man's petition for restitution for conjugal rights and to make a valid order on this petition for the wife to come to New Zealand with the child and live with her husband?

ANSWER: The Supreme Court of New Zealand will exercise the discretionary jurisdiction with which it is vested by s. 8 of the Divorce and Matrimonial Causes Act, 1928, (*a*) if the parties are domiciled in New Zealand, (*b*) if the parties are both resident in New Zealand, provided the residence is not of a transitory nature, and probably (*c*) if the parties had a matrimonial home in New Zealand at the time cohabitation ceased: see *Sim's Divorce Law in New Zealand*, 5th Ed. 17. As the domicil of a married woman is identified with that of her husband, the Supreme Court, if satisfied that the intending petitioner is domiciled in New Zealand, will entertain his petition, and will give leave to serve the same on the absent respondent: *Pritchard* v. *Pritchard*, [1924] G.L.R. 187, *Best* v. *Best*, [1935] N.Z.L.R. 593, *Colledge* v. *Colledge*, [1938] N.Z.L.R. 423, and *Halstead* v. *Halstead*, [1944] N.Z.L.R. 897. The Court's powers in restitution suits do not extend to the giving of directions for the return of a child, but the Court has certain ancillary jurisdiction in relation to the custody of children in such proceedings: see the Divorce and Matrimonial Causes Act, 1928, s. 38 (2), and the notes thereto in *Sim, op. cit.* p. 78. M.2.

3. Forestry.—*Planting of Timber Trees near Boundary—No Legislation to Prevent Same.*

QUESTION: Is there any law prohibiting the planting of timber trees in plantations within five chains of a neighbour's boundary or within five chains of a dwellinghouse situated on adjoining lands?

ANSWER: There is no legislation of the nature mentioned. It is the practice of some afforestation companies to plant up to the boundary-line, while others, as a protective measure, leave fire-breaks of varying distances from the boundary to the plantation area. X.2.

CORRESPONDENCE.

Elimination of Latin as A Degree Subject.

The Editor,
NEW ZEALAND LAW JOURNAL,
Wellington.

Sir,

May I, having read with interest the letters so far written to you on the place of Latin in our Law syllabus, make a suggestion which will, if nothing else, prolong the discussion.

Mr. Foot, in his letter (*Ante*, p. 14), refers to the place of Latin in a liberal education. I would be the last to deny this; but I doubt whether the student who has had two or more years in a Sixth Form gains anything from studying Latin at the University for one year. On the other hand, for the student who has not had the advantage of a post-University Entrance course at school, Latin I will be, perhaps, a hurdle to be jumped at the second or third attempt. But no student who stops at Latin I will have added much to his "cultural background." It has about the same value as leaving a house with the priming coat and omitting the other coats. What Latin I student has ever enjoyed, for instance, Juvenal's *Satires*, or the *De Rerum Natura* of Lucretius? Surely it is the full and wide reading of the "great works" which forms part of a liberal education, and not the studying of two set books, or parts of books, and some fairly simple exercises in composition and translation.

My suggestion is this. Provide for the student to whom Latin I would be a trial of endurance an alternative course, modelled on the present Greek History, Art, and Literature. (I would add that I found far more of lasting value in this course than in Greek I.) A course on these lines would give every student a knowledge of the Roman way of life, the literature and general culture of the Romans, and, above all, a knowledge of the development of the Roman Empire and its system of law. The keen student of Latin could, if he so desired, pursue his studies of the language and literature of Rome to the same extent as he does now.

It will no doubt be objected that no future student will be able to translate a Latin tag. My answer is that one can find all one needs in any of a number of books—the appendix to *Salmond* for instance, or E. A. Steele's intriguing *Juris Proverbia*. And it is now some years since the compulsory translation question was dropped from Roman Law.

Finally, sir, may I make it clear that I do not in any way oppose the teaching of Latin. I myself have taught Latin for several years, to juniors and seniors, and, for all I know, some of those students may still be waiting for the 50 per cent. which will enable them to leave Latin for ever and pass on to woods and pastures new.

Yours, &c.,
B. J. DRAKE.

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