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VENDOR AND PURCHASER: MISTAKE IN DESCIPTION OF LAND.

WHEN a purchaser intends to purchase a specific area of land, being part of an existing holding—or a vendor intends to sell such an area and retain the balance of his holding—the land should, as a general rule, be surveyed, or the boundaries checked by a surveyor, before the sale-and-purchase agreement is executed, so that the intention of the parties and the actual boundaries of the land intended to be dealt with can be ascertained with certainty. If it is not practicable to have a survey done before the agreement is executed, a survey should be stipulated for in the agreement, and carried out before the conveyance or transfer is executed.

This important precaution should be taken whether or not the land is Land Transfer land, except in very simple cases where there is no possibility of a mistake being made.

If the land sold is described as the land in the certificate of title, or as a Lot on a deposited plan, the result of a mistake in the occupation boundaries—or the boundaries of the particular Lot dealt with—may, in the absence of fraud or where the registered proprietor is not a transferee *bona fide* for value—be serious; because the title of the purchaser of such land will be conclusive, even though the land in the title overlaps the vendor's neighbouring land beyond the fenced boundary. In such circumstances, the purchaser's title to the whole of the area shown in the certificate of title is indefeasible; and, no matter how long the mistake remains unnoticed, the vendor can never re-acquire title by operation of the Limitation Act, 1950.

If the land is sold by description, e.g., "as fenced," and the fenced area is not coterminous with the surveyed description—the legal description—of the land actually agreed to be sold and purchased, then there may be mutual mistake in the agreement for sale and purchase, or in the transfer, arising from a *falsa demonstratio*. In such a case, if the vendor unintentionally retains ownership of any land not on his side of the fencing existing at the time of the sale, then the vendor or his personal representative holds such land in trust for the purchaser; and the original agreement for sale and purchase and the resultant transfer may, in a proper case, be rectified by the Court, provided, of course, no fresh interest has been acquired by any person contracting on the strength of the Land Transfer Register.

So too, in the converse case of a purchaser receiving more than he intended to buy owing to the parties accepting the occupation boundaries as the true legal confines of the land in question, rectification may be ordered in similar circumstances. Where, by a mutual mistake of the parties, a purchaser becomes the owner of more land than the parties to the contract intended, the Court may declare the purchaser to be a trustee for the vendor, and restore the position to what the parties intended at the time of the sale.

The principles outlined above are illustrated from the cases which follow.

An example of the false placing of a boundary line is *Zachariah* v. *Morrow and Wilson*, (1915) 34 N.Z.L.R. 885; 17 G.L.R. 655, in which Mr. Justice Cooper maintained the indefeasibility of a Land Transfer title, and nonsuited the plaintiff who claimed rectification of his title to include in it part of the land in his neighbour's certificate of title.

The facts are important. Mrs. Morrow, the registered proprietor under the Land Transfer Act, 1908, of two adjoining allotments included in a single certificate of title, built a house which was intended to be on Lot 98, but it slightly encroached on Lot 99. She also partially fenced what she supposed to be the boundary-line of the two allotments, but the fence when completed cut off from Lot 99 a strip of 10 perches along its northern boundary. She then sold and transferred Lot 99 to a Mr. Renner, who also supposed the fence to be on the true boundary, and both parties occupied accordingly. Mrs. Morrow subsequently agreed orally with one, Zachariah, to sell to him the land which she occupied. In supposed pursuance of this arrangement, a formal agreement for the sale and purchase of Lot 98 was executed, and Zachariah was given possession of all the land to the north of the fence. A transfer of Lot 98 to Zachariah was afterwards executed and registered. Shortly afterwards, Dr. Wilson purchased Lot 99 and took and registered a transfer of it, receiving possession of all the land to the south of the fence, which he also believed to be the true boundary. About five years later, as the result of a survey, Zachariah discovered the mistake, and he informed Dr. Wilson that his land included 10 perches of the land within Zachariah's side of the fence. Zachariah's house was partly on this area and, it is said, the boundary line on the certificate of title went across his bedroom. Zachariah subsequently brought an action against Mrs. Morrow and Dr. Wilson, claiming the rectification of his agreement and transfer by the inclusion of the strip containing the 10 perches.

The contention on behalf of the plaintiff, Zachariah, was substantially this: Mrs. Morrow intended to sell to the plaintiff, and the plaintiff intended to buy from her, Section 98 and the 10 perches. The written agreement was erroneously limited to Section 98, neither party

being aware that a portion of Section 99 was within the fence. The plaintiff went into possession of all the land which he intended to buy, and which Mrs. Morrow intended to sell. He contended that, if she had been the registered proprietor of Section 99, she could in proceedings have been compelled to transfer the 10 perches to the plaintiff, and the original written agreement could have been rectified; that Dr. Wilson had also intended to buy only the land to the south of the fence, and, therefore, he had no right to the 10 perches; that he was not a *bona fide* transferee of the 10 perches; that it was unconscionable for him to claim a right to the 10 perches; and, therefore, that, although there was no fraud in his obtaining the certificate of title, there was legal fraud in his claim to be the owner of the 10 perches, and that his certificate of title did not, *quoad* the 10 perches, protect him. It was further contended for the plaintiff that the written agreement between the plaintiff and Mrs. Morrow could still be rectified by the inclusion of the 10 perches, and that Dr. Wilson could be ordered to transfer the 10 perches to the plaintiff; and that, as there was a mortgage from Dr. Wilson over the whole of Section 99, Dr. Wilson could be ordered to indemnify the plaintiff against that mortgage so far as it affected the 10 perches.

Mrs. Morrow, on the other hand, contended that the plaintiff was the only one at fault, in that it was owing to his negligence in not ascertaining that the 10 perches were outside Section 98 that the whole trouble had arisen; that there was no evidence of which she was aware to the effect that the 10 perches were, in fact, part of Section 99; and that, as she, in good faith, transferred the whole of Section 99 to Renner in 1905, nearly ten years previously, the agreement could not be rectified, as she had not since then had any title to Section 99.

Dr. Wilson had refused to transfer the 10 perches to Zachariah. But that, he contended, was not in fact unconscionable, and was not in law fraud within the meaning of the Land Transfer Act, 1908; that, although he believed he was buying the land to the south of the fence, he believed he was in fact buying the whole of Section 99 and an area of approximately three-quarters of an acre; and that the certificate of title in fact gave him 2 perches less than that, and that his certificate of title was conclusive.

Mr. Justice Cooper based his judgment primarily on the indefeasibility of a Land Transfer title. For present day convenience, we shall translate the numbers of the sections of the Land Transfer Act, 1908, into the corresponding numbers of the unaltered sections of the Land Transfer Act, 1952.

> Section 62 [of the Land Transfer Act, 1952] enacts that the registered proprietor of land shall, except in case of fraud, hold the land absolutely free from all encumbrances, liens, estates, or interest whatsoever not notifed on the Register, except the estate or interest of a proprietor claiming the same under a prior certificate of title or a prior grant registered under the Act, and except as regards the omission of misdescription of any right-of-way or other easement created in or existing upon the land, and except so far as regards any portion of land that may be erroneously included in the grant, certificate of title, lease, or other instrument evidencing the title of such registered proprietor by wrong description of parcels or of boundaries. The misdescription referred to in this section does not, I think, apply to such a case as the present, and s. 183 of the Act, which must I think, be read as explanatory of s. 62, makes this, in my opinion clear.

The learned Judge went on to say that the plaintiff's written contract with Mrs. Morrow defined his purchase to be of Section 98, and limited it to the exact description of Section 98 contained in the certificate of title. He thought he was buying and intended to buy more land than was in fact contained in Section 98, but he believed that the whole of the land to the north of the fence was within the boundaries of Section 98, and he took his title accordingly. His possession of the 10 perches was not referable to any written contract, but to a verbal statement made by Mrs. Morrow that the southern boundary of the land she was selling was the fence. So also Dr. Wilson, when he bought from Renner, thought that he was buying Section 99, and that the area was practically three-quarters of an acre, but that that area and the whole of Section 99 were to the south of the fence. In each instance, each party believed that he was buying the specific section mentioned in the one case in the plaintiff's preliminary written agreement and in the other in the transfer from Renner to Dr. Wilson.

His Honour proceeded:

> There is no definite authority on the question in New Zealand, nor in any of the Australian States where the sections of cognate Acts are in similar terms to the ones in our statute. The case of *Russell* v. *Mueller*, (1905) 25 N.Z.L.R. 256; 7 G.L.R. 451, and the earlier case of *Moore* v. *Dentice*, (1901) 20 N.Z.L.R. 128, refer to certificates of title in which the land described in the original survey had been misdescribed or erroneously described in the certificates of title issued upon such survey. In my opinion, if such a case as the present were held to be within paragraph (c) of s. 62, there would be introduced into the Land Transfer Act a principle which would seriously lessen the value of the indefeasible title which it is the purpose of the Act to confer on a registered proprietor who without fraud obtains his title. And in the present case it is admitted that Dr. Wilson, in obtaining his certificate of title, was not guilty of any fraud.
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> Section 63 must be read with s. 62. Under that section no action for possession or other action for the recovery of land shall lie or be sustained against the registered proprietor except in the case of fraud, or in cases where the registered proprietor is not a transferee *bona fide* for value, or in cases of overlapping certificates, and then the first certificate prevails. Then, subject, of course, to the exceptions contained in s. 63 and 64, a certificate of title is made by s. 69 conclusive evidence that the person named in the certificate is seised and possessed of the land described in the certificate and for the estate or interest specified therein as from the date of the certificate.
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> Section 79 is as follows: Any certificate of title issued upon the first bringing of land under this Act, and every certificate of title issued in respect of the same land, or any part thereof, to any person claiming or deriving title under or through the applicant proprietor shall be void as against the title of any person adversely in occupation of and rightfully entitled to such land, or any part thereof, at the time when such land was so brought under this Act and continuing in such occupation at the time of any subsequent certificate of title being issued in respect of the said land; *but every such certificate shall be as valid and effectual against the title of any other person as if such adverse occupation did not exist.*

Mr. Justice Cooper went on to say that the "adverse occupation of a person rightfully entitled" does not mean what is ordinarily known as adverse possession. It means the occupation of a person who, but for the certificate of title, would be rightfully entitled to the land.

His Honour added that the words "adversely in actual occupation of and rightfully entitled to such land" were fully considered in *Franklin* v. *Ind*, (1883) 17 S.A.L.R. 133, and the Court (Way, C.J., Boucaut, J., and Andrews, J.) held that such adverse occupation was not ordinary adverse possession, but occupation or possession adverse to the certificate of title, the words "rightfully entitled" meaning occupation or possession under such circumstances as, but for the certificate of title, would have given a right to the ownership of or an interest in the land.

The possession which the plaintiff had of the 10 perches having commenced after the land had been

brought under the Act came within the latter part of s. 79; and it did not, therefore, avail against Dr. Wilson's certificate of title. Section 182 of the Act, which is intended for the further protection of *bona fide* purchasers, provides that, except in cases of fraud, no purchaser shall be affected by notice, direct or constructive, of any unregistered interest, and the knowledge that such unregistered interest is in existence shall not of itself be imputed as fraud; and by s. 183 nothing in the Act is to be so interpreted as to render subject to action for recovery of damages, or for possession, or to deprivation of the estate or interest in respect of which he is registered as proprietor, any purchaser on the ground that his vendor may have been registered as proprietor through fraud or error or under any void or voidable instrument. *This is so whether such fraud or error consists in wrong description of the boundaries or of the parcels of any land, or otherwise howsoever* (s. 183).

It was admitted—and, indeed, it was quite clear—that there was no fraud on the part of Dr. Wilson in acquiring the title to Section 99.

On this question, His Honour said:

> Now, a certificate of title is conclusive evidence of title except in cases of fraud, and by s. 182 of the Act, knowledge on the part of a *bona fide* purchaser for valuable consideration of the existence of an unregistered interest shall not of itself be imputed as fraud. It is clear that, though Dr. Wilson believed he was buying the land to the south of the fence, he also believed he was buying the whole of Section 99, and that the area he was acquiring was three-quarters of an acre. As I have already mentioned the area of the whole of Section 99 is 2 perches under three-quarters of an acre. If the 10 perches claimed by the plaintiff are excluded from the area, Dr. Wilson will get less by 12 perches than the area he believed he was buying. As he has the registered title to the whole of Section 99 I have come to the conclusion, not without some hesitation, that he is entitled to rely upon the conclusiveness of the certificate. He was, I think, in law and in fact, a *bona fide* purchaser of that section.

Mr. Justice Cooper held that there was no element of fraud in Dr. Wilson's relying upon his certificate of title; and, in that regard, he applied *Assets Company* v. *Mere Roihi*, (1905) N.Z.P.C.C. 275. Dr. Wilson, believing that he was buying Section 99, acquired the title which Renner had as registered proprietor, and the learned Judge said he was entitled to rely upon it.

His Honour, after referring to a case which, he thought, had a distinct bearing upon the question that it was not fraud to insist upon a legal right, *In re The Monolithic Building Company, Tacon* v. *The Company* [1915] 1 Ch. 643, said that the plaintiff's position was unfortunate. He was in possession of the 10 perches, and a portion of his house was erected on that strip. If Dr. Wilson should bring proceedings to eject the plaintiff from the strip, then the plaintiff might perhaps be able to obtain relief under s. 97 of the Judicature Act, 1908, as his case might be held to fall within the spirit if not within the strict letter of the section.

Mr. Justice Cooper said that he did not see how he could order a rectification of the original agreement. It was to a large extent the plaintiff's own unintentional neglect that has placed him in the position in which he found himself. He should have had the land measured before he signed the agreement, and the actual area of the land he intended to buy would then have been discovered while Mrs. Morrow still had the title, and the mistake would not have been made. Mrs. Morrow had many years since parted with all interest in the land, and Dr. Wilson had an indefeasible title to the whole of Section 99. His Honour nonsuited the plaintiff, without costs.

In *Shepheard* v. *Graham*, [1947] N.Z.L.R. 654; [1947] G.L.R. 316, the property agreed to be sold and purchased was described in the agreement for sale and purchase as "the house and section situated at No. 70 Idris Road (2 roods 31 perches)." The purchaser was Lady Clifford and the vendor was Mrs. Graham, who retained the balance of a block of land originally including "No. 70 Idris Road."

No. 70 Idris Road had been occupied as a separate unit for many years. It was enclosed as a unit by fences. When it was sold to Lady Clifford, Mrs. Graham's son (the first defendant in these proceedings) who had sold the property on his mother's behalf, had thought the unit to be coterminous with one of the surveyed lots in the block—which he later found to be Lot 5. He did not know the legal description when the agreement was signed, and Lady Clifford's solicitor apparently did not know what the legal description was. He was satisfied to purchase for his client "the house and section situated at No. 70 Idris Road," which he had previously inspected.

Lady Clifford sold this property in September, 1939, to the plaintiff. Before agreeing to purchase, the plaintiff inspected it on several occasions. In the written agreement made on September 15, 1939, the earlier mistake was repeated, and the land was described as Lot 5. The second defendant, who was Lady Clifford's solicitor, admitted that both he and Lady Clifford were under the belief that, both when they purchased from Mrs. Graham and when they sold to the plaintiff, they were dealing with the property known as No. 70 Idris Road as then, and since, fenced. The mistake was again repeated in the transfer to the plaintiff. The learned Judge said that this mistake both in the agreement and transfer was a mutual one as to the legal description of the land actually agreed to be sold and purchased.

Nearly eight years afterwards, it was discovered that No. 70 Idris Road contained not only Lot 5, but also a triangular portion of Lot 2, containing 10.8 perches. On this portion were situated the gate, which was the only entrance to the property and bore the municipal description of the property, "No. 70", also the metalled drive or entrance, a row of ornamental trees, part of the kitchen-garden, and part of a substantially built shed, all of which had been occupied as part of the unit, No. 70, for many years.

In 1941, the plaintiff, as the purchaser from Lady Clifford, wrote to Mrs. Graham asking her to contribute towards the cost of a new fence on the boundary between No. 70 and the land to the south of it. The first defendant, as agent for his mother, inspected the fence and paid the plaintiff part of the cost of erecting a new one. This, said the learned Judge, in itself would not amount to an estoppel—see *Moore* v. *Dentice*, (1901) 20 N.Z.L.R. 128—but it showed that even in 1941, some three years after the sale to Lady Clifford, he still thought he had sold to her the land as fenced. This fence was on the southern boundary of the triangular piece of land before mentioned. It is clear, therefore, that had the mistake been discovered in the lifetime of Lady Clifford and Mrs. Graham, the latter could have been required to complete the agreement by transferring to Lady Clifford the triangular piece of land.

The plaintiff's action was against both defendants for rectification of both agreements and both transfers, and for an order that the first defendant execute in favour of plaintiff a transfer of the triangular piece of land. Lady Clifford died on April 29, 1941. The second

defendant was her legal personal representative. Mrs. Graham, the original vendor, was also dead, and the first defendant was her legal personal representative, and also the sole beneficiary under her will. The first defendant denied that there was any mistake, and counter-claimed for possession of the triangular piece of land, which was still in plaintiff's possession. The second defendant, in his statement of defence, admitted that at all material time of purchasing, holding, and subsequently selling the propery described as No. 70 Idris Road, he and his testatrix (Lady Clifford) were under the belief that the property he or she was dealing with was the property known as No. 70 Idris Road as then, and since, fenced.

In the view of the learned Judge, Mr. Justice Fleming, the written agreement made between Mrs. Graham and Lady Clifford set out with sufficient clearness and correctness the real intentions of the parties. The property agreed to be sold and purchased was the house and section known as No. 70 Idris Road. The area of this property was incorrectly stated. It was later found to contain 3 roods 02.4 perches, instead of 2 roods 31 perches, as stated in the agreement. The land was in a residential area, and the questions of frontage and area were not discussed during the negotiations. The purchaser's solicitor was prepared to accept the property as it stood, and as he had found it on inspection. The learned Judge, first dealt with the area, and said the mistake must be rectified. He added :

> The error in the area is, in my opinion, a mere *falsa demonstatio.*
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> In *23 Halsbury's Laws of England,* 2nd Ed. 133, para. 186, the law is stated as follows :
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> > Where the subject-matter of a contract is identified with sufficient legal certainty, but there is some inaccuracy in the description or some addition to the description which is inaccurate, the inaccuracy may be rejected according to the maxim *falsa demonstratio non nocet.*
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> See also the judgment of Lindley, M.R., in *Cowen* v. *Truefitt, Ltd.,* [1899] 2 Ch. 309.

The learned Judge in conclusion said :

> This is not a case of a *bona fide* purchaser for value, and without notice. The first defendant takes by succession under his late mother's will. He could take no more than she could give. At the time of her death, she held the legal title to the piece of land in dispute, but, as she had sold it to Lady Clifford and received the consideration under the contract, she held this land merely as trustee for Lady Clifford or her assignee. The first defendant acquired the legal estate subject to the same trust. Besides, he had full notice of the facts, having acted as his mother's agent throughout.

His Honour, therefore, declared that the first defendant held the land described in trust for the plaintiff, and ordered him, upon request, to transfer it to the plaintiff.

The most recent case in which rectification was sought is *Dean* v. *Johnson,* [1953] N.Z.L.R. 656. This case differs from the other cases we have considered in that the land was not subject to the Land Transfer Act. It was held under a Residence Site Licence issued in terms of the Mining Act, 1926.

The section boundaries were delineated on an endorsed plan. As the learned Judge, Mr. Justice Stanton, observed, it seemed to be on all fours with *Shepheard* v. *Graham* (*supra*) where relief, on the ground of common mistake, in very similar circumstances, was granted.

The main facts in *Dean* v. *Johnson's* case were these : Mrs. Johnson was registered as the holder of a residence-site licence in respect of Section 238, Waihi. Formerly, she had been registered as the holder of a residence-site licence in respect of the adjoining section, Section 237, Waihi. She always believed that the boundary dividing Sections 237 and 238 approximated the actual occupation boundary on the land.

In May, 1949, she agreed to sell Section 237 to her son in the honest belief that the occupational boundaries of the land approximated the dividing line shown on the plans endorsed on the licences in respect of Sections 237 and 238. It was a term of that sale that Mrs. Johnson and her son would use in common the right-of-way giving acess to Sections 237 and 238. She duly transferred to her son the residence-site licence in respect of Section 237, which licence described the land included in it by means of a plan. A mistake was made in that plan by showing the back boundary to be a straight line of 129.6 links, whereas in reality there were two lines with a slight angle of a total length of 191.7 links. In the light of this plan, Mrs. Johnson and her son assumed that the western boundary of Section 237 was some 62 links further to the east than it actually was. The parties enjoyed the peaceful occupation of their respective pieces of land, and it was not considered necessary to have a check survey made.

In March, 1951, Mrs. Johnson's son verbally agreed to sell to one Dean his estate or interest in the piece of land and the buildings thereon, which he had purchased from his mother. It was a term of the sale that Dean would use, in common with the plaintiff, the right-of-way, giving access to Sections 237 and 238 ; and an agreement was signed by Mrs. Johnson and Dean defining the boundaries of Sections 237 and 238, and acknowledging that the right-of-way was to be used as a right-of-way by them. The son transferred the residence-site licence in respect of Section 237 to Dean. Following a dispute between the parties relating to the use of the right-of-way, it was agreed to rescind the agreement affecting the use of the right-of-way and have the legal boundaries ascertained. Upon survey, it was found that, in fact, the legal or title boundaries were not even approximate to the boundaries as occupied by the parties. Mrs. Johnson had built a house and a garage on what she thought was Section 238, but it appeared that the actual legal boundary line between Sections 237 and 238 ran through the middle of both her house and garage. At the time of the hearing, Dean was thus the registered holder of an area of land which cut through his neighbour's house and garage, but he had neither had, nor sought, occupation of the whole of that area.

Mrs. Johnson, in an action in the Warden's Court claimed that, by a mistake common to her and her son, and by mistake common to her son and to Dean, an area of land in excess of that which Dean had agreed to purchase, the excess being a portion of Section 237 was transferred to him.

The Warden, after hearing the parties, gave judgment for Mrs. Johnson. Dean appealed from that determination.

Mr. Justice Stanton, after reviewing the evidence, held that Dean had become the registered holder of the whole of Section 237 by a mistake common to all three participants in the transactions ; and that the true intent of those parties was that the property sold to Dean should be all the area he occupied to the east of the boundary-line above-mentioned ; and that being so, the error could be rectified by the Court, and proper directions given for making such rectification effective.

His Honour continued :

> That being so, the law seems now to be settled that, in the case of such a mutual mistake, the error will be rectified by the Court and proper directions given for making such rectification effective : see the decision of the Judicial Committee in *United States* v. *Motor Trucks Limited* ([1924] A.C. 196.) Mr. *Haggitt* contended that this was not a case of common mistake in respect of which relief could be granted, and cited cases such as *Marsh* v. *Mudford and Graham,* ([1932] N.Z.L.R.

1143; [1932] G.L.R. 213), where it was held that an excess or deficiency in the area of a specified parcel of land sold at per acre did not entitle either party to claim relief, except to the extent that compensation was provided for by the agreement for sale and purchase. That case seems to me to be entirely different from the present one which seems on all fours with *Shepheard* v. *Graham* ([1947] N.Z.L.R. 654; [1947] G.L.R. 316), where relief on the ground of common mistake in circumstances very similar to our own was granted. The latter case seems to me to be in accord with the English authorities, and I propose to follow it. In *Marsh's* case, *Ostler*, J., quotes with approval the statement in *Kerr on Fraud and Mistake*, 6th Ed. 626, as follows:

> Care must, however, be taken in distinguishing cases, where the parties are under a mutual mistake as to the subject-matter of the contract, from cases where there is no doubt as to the subject-matter; but the one has, in fact, sold more than he thought he was selling, and the other has got more than he expected. In such cases relief cannot be had in equity, if there has been no unfairness on either side.

The learned Judge then considered the question of the right-of-way, which was provided for by the agreement between the parties above referred to, that agreement being subsequently cancelled. It was not contested that an arrangement for the use of a common right-of-way was part of the agreement for sale and purchase of the property to the appellant, that such a right-of-way was used continuously by both parties from the time that the appellant went into possession, and the terms relating to the right-of-way were embodied in a signed agreement. His Honour concluded that as the agreement respecting the right-of way was entered into by reason of the common mistake as to the position of the boundary between Sections 237 and 238, and as the subsequent agreement to determine the parties' rights to use the right-of-way was entered into under the influence of the same mistake, the cancellation agreement should be set aside; and the parties were entitled to have the position restored to what they all intended at the time of the sale to the appellant.

In His Honour's view, the land as purchased by Dean should be surveyed in accordance with the true contract between the parties, the survey to make provision for a common right-of-way as agreed to by the parties; and that Dean should be declared a trustee for Mrs. Johnson of the excess land that was by mistake transferred to him, and that he should be ordered to convey and assign this to Mrs. Johnson and to execute a proper and legal easement of the right-of-way appurtenant to Section 238. But, before the Court could pronounce final judgment, consideration had to be given to the fact that there was a mortgage registered against Section 237, (the mortgagee not being a party to the proceedings) and to the present position of Section 237 as the licence for it had apparently expired.

We end as we began. It appears to be the duty of a solicitor acting in the purchase of an unsurveyed area of land to be careful, in the interest of whichever party he is acting for, to advise his client to make certain, by a check survey or by other proper measurements, that he knows the true boundaries of the land being dealt with. Fencing is often deceptive, as each of the foregoing cases shows. Consequently, where land is sold by title description or legal description, it is necessary to be sure that the area transferred is the area which the parties intended to have transferred. Care in this respect can save much future trouble between neighbouring owners, and expense in approaching the Court to rectify mutual mistakes. And then, too, there may be results like that in *Zachariah's* case, where there is no remedy for the error. We understand that in that case the mistake arose through there being two Land Transfer subdivisional survey-plans, duly approved as to survey, lying undeposited in the Land Transfer Office. The vendor had changed the boundaries of the Lots as shewn on the earlier survey, but inadvertently the earlier plan of survey was deposited and acted on by all parties, although the intention of the parties was to buy and sell in accordance with the later survey.

A mistake as to boundaries could, in practice, more often arise where part of a holding has been transferred without a plan or survey. To save survey costs, the land may have been dealt with on the strength of plans endorsed on transfers. The occupation may not have been in accordance with these diagrams, and a subsequent purchaser of such land would do well to have a check survey made by a surveyor before settling with his vendor.

SUMMARY OF RECENT LAW.

ACTS PASSED.

No. 15. Nassella Tussock Amendment Act, 1953.
No. 16. Local Elections and Polls Act, 1953.
No. 17. Hospitals Amendment Act, 1953.

AGENT.

Commission—Payments on Account of Commission—Repayment at Termination of Agency of Excess of Payments over Commission earned. The plaintiffs agreed to employ the defendant as a selling agent on the terms that he was to receive ten per cent. commission on all goods sold by him and delivered and paid for, after deduction of any discount allowed, and that a monthly sum be paid to him on account of the commission which would accrue to him. When the defendant terminated the agreement, he had been paid £1,005 in respect of the monthly sum, but the amount of the commission earned by him was less than that sum. On a claim by the plaintiffs for the difference between the two sums, *Held*, a term that the defendant should repay any overpayment on the termination of the agency was to be implied in the agreement, and alternatively, the money paid to him monthly by the plaintiffs was a loan, and, therefore, the defendant must repay the balance to the plaintiffs. *Rivoli Hats, Ltd.* v. *Gooch* [1953] 2 All E.R. 823 (Q.B.D.).

ANIMALS.

Agistment Agreement. *6 Australian Conveyancer and Solicitors' Journal*, 75.

CONVEYANCING.

Land and Proceeds of Sales of Lands Distinguished. *97 Solicitors' Journal*, 466.

DIVORCE AND MATRIMONIAL CAUSES.

Cruelty—Defence—Insanity—Husband unable to understand nature and quality of his acts.—Condonation—Condonation of Acts of insane person. For several periods during the married life the husband had been a voluntary patient in a mental hospital. During the intervals in which he had returned to the matrimonial home he had committed acts of cruelty towards his wife. On the hearing of the wife's petition for divorce on the ground of her husband's cruelty there was medical evidence which was accepted by the Court that at the material times the husband did not know the nature and quality of his acts. *Held*, in these circumstances the husband was not capable of being guilty of cruelty to the wife. *Quaere*, whether the husband could be found to be guilty of cruelty if, while knowing the nature and quality of his acts, by reason of disease of the mind he did not know they were wrong. Per *Hodson*, L.J. (with regard to condonation of cruelty committed by a person suffering from disease of the mind): I feel that the conception of forgiveness, which is always a necessary element in condonation, difficult, if not impossible, where the object of the forgiveness is not capable of receiving it by reason of the fact that he is out of his mind. (*M'Naghten's Case*, (1843) 10 Cl. & Fin. 200), applied.) (*Lissack* v. *Lissack* ([1950] 2 All E.R. 233), overruled.) *Kirkman*

v. *Kirkman*, (1807) (1 Hag. Con. 409), explained. *Swan* v. *Swan* [1953] 2 All E.R. 854 (C.A.).

Desertion (as a Ground for Divorce)—Wife deserting Husband but making Genuine Offers to return—Husband without Justification refusing Such Offers—Husband's Petition on Ground of Wife's Desertion refused—Decree granted to Wife on Ground of Husband's Desertion—Divorce and Matrimonial Causes Act, 1928, s. 10 (b). Where a deserting spouse makes genuine offers to return, and the deserted spouse without justification refuses to listen to those offers, the deserted spouse becomes a deserter. (*Thomas* v. *Thomas*, [1946] 1 All E.R. 170, followed.) The respondent left her husband in such circumstances as to amount to desertion on her part, and on several occasions she made sincere efforts to induce him to allow her to return; but he rejected all her approaches. He petitioned for divorce on the ground of desertion, and the respondent in her answer asked for a decree on the ground of the petitioner's desertion. *Held*, 1. That the petitioner's unjustifiable refusal to listen to his wife's requests disentitled him to a decree on the ground of desertion. (*Pratt* v. *Pratt*, [1939] A.C. 417, followed.) 2. That the petitioner had deserted the respondent without reasonable cause, and such desertion had continued for more than three years, and the respondent was entitled to a decree *nisi*. *Densem* v. *Densem* (S.C. Hamilton. August 27, 1953. Stanton, J.).

Foreign Decree—Decree granted to Wife in New South Wales on Ground of Husband's Desertion—Acquirement by Husband of Foreign Domicil after Commencement of Desertion—Recognition of Decree by English Court—New South Wales Matrimonial Causes Act, 1899, No. 14, s. 16 (a)—Matrimonial Causes Act, 1937, (c. 57), s. 13. By the New South Wales Matrimonial Causes Act, 1899, No. 14, s. 16: "Any wife who at the time of the institution of the suit has been domiciled in New South Wales for three years and upwards . . . may present a petition to the court praying that her marriage may be dissolved on one or more of the grounds following—(*a*) that her husband has without just cause or excuse wilfully deserted the petitioner and without any such cause or excuse left her continuously so deserted during three years and upwards and no wife sho was domiciled in New South Wales when the desertion commenced shall be deemed to have lost her domicil by reason only of her husband having thereafter acquired a foreign domicil." In 1937, the parties left England and went to New South Wales. In 1940, the husband left the wife at Sydney and went to Armidale in New South Wales. Subsequently, he joined the Australian armed forces and in 1943 or 1944 he obtained a transfer to the British forces. By a decree *nisi* pronounced on May 1, 1944, and made absolute on November 13, 1944, the Supreme Court of New South Wales, in proceedings under s. 16 (*a*) of the New South Wales statute of 1899, instituted by the wife in 1943, which the husband did not defend, granted the wife a decree of divorce on the ground that the husband had deserted her in 1940. On May 5, 1945, the wife married the co-respondent. In 1952, the husband petitioned for a decree of divorce from the wife on the ground of her adultery with the co-respondent. In her answer the wife pleaded that her marriage with the husband had been dissolved by the Court in New South Wales in 1944. The husband contended that that Court had never had jurisdiction to deal with the marriage since he, and, consequently, his wife, have never acquired a domicil in New South Wales. *Held*: (i) (*Jenkins*, L.J., dissentiente) on the evidence, in 1940, when the desertion commenced, the husband had acquired a domicil of choice in New South Wales, and, therefore, the Court in New South Wales had jurisdiction to entertain the wife's suit for dissolution of the marriage. (ii) the principle laid down in *Le Mesurier* v. *Le Mesurier* ([1895] A.C. 528), that the domicil of both spouses at the date of the institution of proceedings was the sole test of jurisdiction in divorce must be applied in the light of the provisions of s. 13 of the Matrimonial Causes Act, 1937, which corresponded substantially with s. 16 (*a*) of the New South Wales Matrimonial Causes Act, 1899, in that it gave the Courts of this country jurisdiction in divorce in cases where a wife had been deserted by her husband who was immediately before the desertion domiciled in England or Wales, notwithstanding that the husband had changed his domicil since the desertion; the provisions of s. 16 (*a*) of the New South Wales Act could not, therefore, be said to be peculiar to the forum of that country, and where a rule of municipal law was not peculiar to the forum of one country, but corresponded with the law of another country, that municipal law could not be said to trench on the interest of the other country; where, as in this case, there was in substance reciprocity it would be contrary to principle and inconsistent with comity if the Courts of this country were to refuse to recognize a jurisdiction which *mutatis mutandis* they themselves claimed; and, therefore, assuming that the husband had abandoned his domicil of choice in New South Wales on a date after the desertion and before the institution by the wife of the proceedings in 1943, the Court would recognize the decree granted to the wife by the Court of New South Wales. (Principle in *Le Mesurier* [1895] A.C. 528, considered.) *Travers* v. *Holley and Holley* [1953] 2 All E.R. 794 (C.A.).

ESTATE DUTY.

Estate Duty on Joint Property. *97 Solicitors' Journal*, 463.

EVIDENCE.

The value as Evidence of a Certificate of Birth, Death or Marriage. *6 Australian Conveyancer and Solicitors' Journal*, 69.

EXECUTORS AND ADMINISTRATORS.

Valuation for Hotch-pot. *103 Law Journal*, 455.

FACTORIES.

Dangerous Machinery—Cutter of Verticle Spindle Moulding Machine—"Most efficient guard"—Protection from Contact with Cutters or from Flying Broken Parts of Machine—Woodworking Machinery Regulations, 1922 (S.R. & O., 1922, No. 1196), Reg. 17—Factories Act, 1937 (c. 67), s. 14 (1)—(Machinery Act, 1950, (N.Z.) s. 17). A verticle spindle moulding machine in a factory was fitted with a Shaw guard, which was found by the trial judge to be the most effective to protect the operator from coming into contact with a cutter when the machine was being operated (that being much the greatest danger), but less effective than a cage guard to protect the operator from broken pieces of the machine flying out. The danger from flying fragments on such machines was recognized in two official pamphlets (Safety Pamphlet No. 8, published by the Home Office in 1928, and Form No. 279, 1935, reprinted in 1947, issued by the Ministry of Labour and National Service), and also in the trade and in evidence for the occupier of the factory, the employer of the plaintiff, and the pamphlets illustrated various guards, besides the Shaw guard and cage guards, which minimized the risk of injury from a piece of machinery ejected. While operating the machine the plaintiff was injured by a piece of a cutter which flew out, and he claimed damages against his employer. *Held*: (i) (*Denning*, L.J., dissentiente) the requirement in Reg. 17 of the Woodworking Machinery Regulations, 1922, that the cutter of every vertical spindle moulding machine should be "provided with the most efficient guard having regard to the nature of the work which is being performed" was intended to protect employees from the danger, not only of their coming in contact with the cutter, but also of a cutter, or part of a cutter or some part of the machine to which the cutter was attached, breaking away and injuring them, this being a danger which on the evidence had long been recognized; and as on the facts a guard affording this protection had not been, and could have been, provided, the employer was liable for breach of the regulation. (*Harrison* v. *Metropolitan Plywood Co.* ([*1946*] 1 All E.R. 243), approved.) (*Carroll* v. *Andrew Barslay & Sons, Ltd.* ([1948] 2 All E.R. 386), distinguished.) (ii) in any event, the employer was liable for a breach of the requirement in s. 14 (1) of the Factories Act, 1937, that "Every dangerous part of any machinery . . . shall be securely fenced", which covered the case of any dangerous part, including a part of the machine flying out, in so far as provision was not made in respect of it by Reg. 17. (*Benn* v. *Kamm and Co., Ltd.* [1952] 1 All E.R. 833, and dictum of LORD DE PARCQ in *Carroll* v. *Andrew Barclay & Sons, Ltd.* ([1948] 2 All E.R. 391), applied.) (Dictum of LORD PORTER (ibid., 390), not applied.) Decision of HAVERS, J. [1953] 1 All E.R. 236, reversed.) *Dickson* v. *Flack and Others* [1953] 2 All E.R. 840 (C.A.).

Safe means of Access—Maintenance—Temporary Obstruction—Factories Act, 1937 (c. 67), *s. 26 (1). (Factories Act, 1946 (N.Z.), s. 47).* Inside a shop in a factory occupied by the defendants a space fifteen feet, three inches, wide was marked out with white lines on either side as a way along which employees might pass to and from their work. Returning from the factory canteen to work in another shop, the plaintiff, an employee at the factory, found the way partly blocked by a lorry. Passing the lorry, he tripped over a piece of stee packing, used to place heavy machinery on when it was being loaded, which was about two inches high and projected three or four inches into the marked way, and he fell and was injured. *Held*: in view of the transient and exceptional character of the obstruction caused by the steel packing, the defendants had not failed to maintain the safe means of access to work which they had provided, and, therefore, they were not liable for breach of their statutory duty to maintain such access (as defined in s. 152 (1) of the Factories Act, 1937) under s. 26 (1) of that Act. (*Latimer* v. *A.E.C., Ltd.* [1953] 2 All E.R. 449, applied.) *Levesley* v. *Thomas Firth and John Brown, Ltd.* [1953] 2 All E.R. 866 (C.A.).

For the Factories Act, 1937, s. 26 (1), see *9 Halsbury's Laws of England*, 2nd Ed., p. 1018.

HUSBAND AND WIFE.

Married Women's Property: Discretion and Title to the Matrimonial Home. *215 Law Times*, 328.

INTERNATIONAL LAW.

The Naumann Case. *103 Law Journal*, 410.

JUDICIARY.

Improvements to the Judicial System (N. A. Jenkyn, Q.C., and K. L. Ward, Q.C.). *27 Australian Law Journal*, 145, 159.

LAW PRACTITIONERS.

Costs—Taxation—Barrister and Solicitor Same Person—Right to charge Fees as Barrister for Work done as Such in Addition to Fees for Work done as Solicitor—Extent of Court's Interference with Registrar's Decision on Questions of Taxation—Bill of Costs where Firm charging for Both Solicitor's and Counsel's Work—Duty to itemize Counsel's Fees—Law Practitioners Act, 1931, s. 37 (2A). A solicitor, practising also as a barrister, is entitled to charge fees as a barrister for work as such; and a firm in which the barrister is a partner may charge solicitor's fees in respect of work done by either him or by other members of that firm as solicitors, in addition to charging a fee in respect of services as barristers. In drawing bills of costs, firms are entitled to have regard to this difference and to fix their costs accordingly. (*Miles* v. *Tinline*, (1870) 4 N.Z. Jur. (N.S.) 82; *Bell* v. *Finn*, (1896) 14 N.Z.L.R. 447; *Watt and Cohen* v. *Willis*, (1909) 29 N.Z.L.R. 58, 63, referred to.) The Court will interfere with a Registrar's decision on questions of taxation where there has been an error in principle, and, in reviewing his decision on quantum, it may fix a lump sum on an application made under s. 37 (2) (A) of the Law Practitioners Act, 1931 (as added by s. 30 of the Law Practitioners Act, 1938) in such amount as it thinks fair and reasonable. (*In re A Solicitor*, [1945] N.Z.L.R. 114, and *In re Melbourne Parking Station, Ltd.*, [1929] V.L.R. 5, followed.) (*Ex parte De Lautour and Sievwright, In re Cooper*, (1893) 12 N.Z.L.R. 296, referred to.) In drawing a bill of costs where the firm concerned is doing both solicitor's and counsel's work, the bill should be so drawn as to make clear those fees which have been charged *qua* counsel as contrasted with those fees which have been charged *qua* solicitor. It is the duty of any firm making considerable charges for counsel's fees to itemize them, weigh each one, and be prepared to justify the amount fixed. Where this is not done, the Registrar should require amended bills to be furnished in which counsel's fees are itemized in lieu of striking out a lump sum altogether. (*Re Roemer*, [1928] 3 D.L.R. 860, referred to.) *Semble*, In cases where excessive or unwarranted counsel's charges have been paid, the Registrar should make an appropriate reduction; but, where there seems to have been a fair assessment for itemized services as counsel, such fees should not be unduly limited. *O'Donoghue* v. *Downer & Co., Ltd.* (S.C. Wellington. August 6, 1953. Fair, J. In Chambers).

MASTER AND SERVANT.

Liability of Master—Liability to Third Person for Act of Servant—Act within Scope of Authority and Course of Employment—Authorised Act done in Improper Manner—Servant employed as Garage Hand to move Customers' Cars in Garage—Car Driven on to Highway in Course of being moved from One Place to another in Garage—Servant having no Licence and Expressly Prohibited from Driving. The defendants, who were the owners of a garage, employed P. in a general capacity as a garage hand, part of his duty being to move cars in the garage so as to make way for other cars. He had no driving licence and he was forbidden to drive vehicles. In front of the garage were petrol pumps, and on February 7, 1950, the attendant asked P. to remove a motor-van, which was stationary in front of the pumps, so as to allow some motor-lorries to obtain petrol. Instead of pushing the van out of the way, P. drove it. Finding that there was not sufficient space to drive straight into the garage out of the way of the lorries, he drove on to the highway, intending to turn there so as to come back to the garage behind the lorries. On the highway a collision occurred between the van which P. was driving and a van belonging to the plaintiffs, which was damaged. In an action by the plaintiffs for damages against the defendants, *Held*: P.'s duty being to move cars in the garage, it was impossible to define the scope of his employment as that of pushing cars by hand in contradistinction to moving them by other means, including that of driving them, and, notwithstanding the fact that he was expressly forbidden to drive cars, his action in moving the van by means of its own engine, instead of by pushing it, was within the scope of his employment, being a wrongful and unauthorised way of performing an act which he was employed to perform; the excursion on to the highway was merely incidental to moving the van out of the way of other motor-vehicles on the defendants' premises, the work for which P. was employed, and, therefore, although it was illegal for P. to drive on the highway as he had no licence the fact that the accident occurred when he took the van off the garage premises on to the highway did not affect the result, and the defendants were liable in damages to the plaintiffs for P.'s negligence. (*Canadian Pacific Ry. Co.* v. *Lockhart*, [1942] 2 All E.R. 464; and *Goh Choon Seng* v. *Lee Kim Soo*, [1925] A.C. 550, applied.) *London County Council* v. *Cattermoles (Garages), Ltd.*, [1953] 2 All E.R. 582 (C.A.).

POST AND TELEGRAPH.

Damage to Telegraph Post—Procedure for Recovery of Damage—No Other Proceedings open—Prosecution for Causing Such Damage not Condition Precedent to Recovery of Damage—Post and Telegraph Act, 1928, ss. 215, 218. The object of s. 215 of the Post and Telegraph Act, 1928, is to impose absolute liability for damage to a telegraph post on the person causing it, and s. 218 of the statute lays down a special procedure for enforcing it. Consequently, the amount of the damage is recoverable in a summary way by way of complaint as provided in s. 10 of the Justices of the Peace Act, 1927, and not by way of civil proceedings. (*Ross* v. *Rugge-Price*, (1876) L.R. 1 Exch. D. 269. and *Great Western Railway Co.* v. *Sharman*, (1892) L.J.Q.B. 600, referred to.) The plaintiff claimed by ordinary civil proceedings to recover the damage to a telegraph post. On the question whether the plaintiff was entitled to proceed by way of civil action or whether it was bound to follow the procedure laid down in s. 218 of the Post and Telegraph Act, 1928. *Held*, 1. That a prosecution under s. 213 of the Post and Telegraph Act, 1928, is not a condition precedent to the recovery of damage to a telegraph post; and that the particular procedure for enforcing the special liability created by s. 215 enables the damage, when determined, to be recovered in the same way as a fine. 2. That, as the remedy prescribed is a complete one, and no remedy other than that prescribed (and particularly one more advantageous as to the time-limit for commencement) was open to the plaintiff. *The Queen* v. *Howarth* (Auckland. July 8, 1953. Sinclair, S.M.).

PRACTICE.

Court of Appeal—Ground of Appeal—Action for Negligence and Breach of Statutory Duty—Allegation of Negligence in Writ, but no Such Allegation in Statement of Claim or at Hearing—Judgment Based on Breach of Statutory Duty—Right to raise Issue of Negligence on Appeal. The widow of a dock labourer, who was fatally injured in an accident at the dock, brought an action for damages against his employers for negligence and against the dock board for breach of statutory duty. Although the writ contained an allegation of negligence against the board, in the statement of claim the allegation against the board was confined to breach of statutory duty. The employers by their pleadings made no allegation against the board, and at the hearing of the action the plaintiff made no allegation of negligence against the board. The plaintiff obtained judgment against both defendants. The judgment against the board dealt with breach of statutory duty only. On an appeal by the board to the Court of Appeal, the employers contended that the board were liable at common law as well as for breach of statutory duty. *Held*: the appeal must be confined to the question which as pleaded in the statement of claim and dealt with at the trial and which the Judge decided, *viz.*, the liability of the board for breach of statutory duty. *Woods* v. *W. H. Rhodes and Son, Ltd. and Others*, [1953] 2 All E.R. 658 (C.A.).

For the Docks Regulations, 1934, Reg. 1, see *8 Halsbury's Statutory Instruments*, p. 164.

Production of Documents—Accountant's Documents incidental to Audit of Client's Accounts—Correspondence with Inland Revenue regarding Client's Liability to Tax. The plaintiffs, a firm of chartered accountants, claimed damages from the defendant, who was employed by them as senior audit clerk, for breach of his contract of service. The defendant counterclaimed for damages for wrongful dismissal and alleged that in the course of preparing an audit of the accounts of a limited company, the clients of the plaintiffs, for the year ending August 31, 1951, he had discovered certain irregularities in the accounts for the year ending August 31, 1950, audited by the plaintiffs, and that he, having refused to proceed with the audit until the irregularities were adjusted, was summarily dismissed by the plaintiffs. On discovery, the plaintiffs objected to producing all working papers and schedules relating to the audit of the com-

pany's books for the years ending August 31, 1950, and August 31, 1951; the draft accounts of the company for those years and notes and calculations relating thereto made by a member of the plaintiff firm; the final accounts of the company for the year ending August 31, 1950; and correspondence between the plaintiffs and the Inland Revenue relating to the accounts for the year ending August 31, 1950, and the tax computations thereon. The ground for the plaintiffs' objections was that all such documents were the property of the company and were in the plaintiffs' possession solely as accountants to the company and not otherwise. *Held:* (i) in the preparation of the audits the relationship of the plaintiffs to the company was that of professional man and client and not agent and principal; there being no question of legal professional privilege, the fact that the documents embodied information which was the subject of professional confidence as between the plaintiffs and the company was insufficient ground for resisting production; and, therefore, the final accounts and the documents incidental to their preparation were the property of the plaintiffs and should be produced. (*Leicestershire County Council* v. *Michael Faraday and Partners, Ltd.* ([1941] 2 All E.R. 483), applied.) (*Ex parte Horsfall*, (1827) 7 B. & C. 528, explained.) (ii) the correspondence between the plaintiffs and the Inland Revenue, having been conducted by the plaintiffs as agents for the company, was the property of the company, and, therefore, the plaintiffs could not be ordered to produce it. (Dictum of *MacKinnon* L.J., in *Leicestershire County Council* v. *Michael Faraday and Partners, Ltd.*, [1941] 2 All E.R. 487, applied.) *Chantrey Martin and Co.* v. *Martin* [1953] 2 All E.R. 691 (C.A.)

PUBLIC REVENUE.

Income-tax—Relatives Employed in Business—Payment of Excessive Share of Profits as wages to Relatives—Commissioner's Powers to make National Allocation—Review by Court of Commissioner's Determination—Scope of Magisterial Inquiry—"Any other relevant matters"—"All the powers and functions of the Commissioner"—Land and Income Tax Amendment Act, 1951, s. 16. Section 16 of the Land and Income Tax Amendment Act, 1951, is designed to ensure that the taxpayer shall first bring into the fiscal field all the net profit earned by his business in the particular year, and pay the exigible impost thereon before the proceeds to divest himself of any part of it under the guise of remunerating relatives at a rate which is unreasonably high in proportion to the true value of their contributions by way of capital and service, towards the production of that sum. The expression "any other relevant matters" in s. 16 (1), imports only matters relevant to the performance of the contract during the particular period under examination, and does not extend to matters leading up to the formation of that contract. For this reason, past service is not relevant, except in a qualified fashion as ancillary to present service. Under s. 16 (4), the Court is entitled to substitute its opinion for that of the Commissioner. For the purposes of its review of the Commissioner's determination, the Court is to regard: (*a*) as a tribunal of first instance sitting on the spot, (*b*) as under a positive duty to hear the whole matter *de novo*, and (*c*) while ever remembering that under s. 23 of the Land and Income Tax Act, 1923, the onus is on the objector to establish his case (s. 23), as obliged to reach a decision on the merits for itself. (*Denver Chemical Manufacturing Co.* v. *Commissioner of Taxation* (*New South Wales*), (1949) 79 C.L.R. 296, applied.) (*In re Biggins*, (1901) 19 N.Z.L.R. 630; 3 G.L.R. 270, referred to.) *P.* v. *Commissioner of Taxes* (Dannevirke. May 18, 1953. Harlow, S.M.).

SHARE-MILKING AGREEMENTS.

Payments by Co-operative Dairy Company to Milk-powder Shareholders—Share-milker entitled to Percentage under Share-milking Agreement if Such Payment made for Milk or Cream but not if Shareholder's Bonus—Construction of Model Articles under Co-operative Dairy Companies Act, 1949—Payment "a bonus covered by shares" or "share bonus" within Share-milking Agreements Orders—Share-milker not entitled to Percentage of such Payment—Share-milking Agreements Act, 1937, s. 2, Schedule, cl. 3—Share-milking Agreements Orders, 1939–1946—Share-milking Agreements Order, 1951, Schedule, Part II, cl. 30—Co-operative Dairy Companies Act, 1949, s. 2 (2) (3) Schedule (Model Articles), Regs. 140 (1) (3), 148. The plaintiff, as share-milker, claimed from defendant, as farm owner, £83 12s. 2d. (being 39 per cent. of £214 7s. 8d.) and a penalty of 5 per cent. thereof, making £87 15s. 9d. in all. For many years, the defendant supplied milk to the Waitoa Milk Powder Factory, owned by the New Zealand Co-operative Dairy, Ltd. About March 25, 1952, he received from that company a statement of account bearing that date and headed "Second Supplementary Milk Powder Payment, Season 1950–51". It was, in part, as follows (the words "Last Season's Butterfat" having reference to the 1950–51 season. Milk Powder Shareholder's payment on 25,726 lbs. Butterfat supplied during 1950–51 Season at 2d. per lb. £214 7s. 8d. Total Value of his Season's supply (inclusive of this Payment which is in respect of Last Season's Butterfat.) £3,558 5s. 10d. The sum of £214 7s. 8d. was duly paid to the defendant. The plaintiff would be entitled to 39 per cent. thereof, if the payment was a cheque for milk or cream, but not if it was a shareholder's bonus. From June 1, 1944, the plaintiff was working as a share-milker on the defendant's farm at Waitoa under a verbal agreement with the defendant. He was a "share-milker" within the meaning of the Share-milking Agreements Act, 1937. The terms of his share-milking agreement were originally those set out in the Schedule to the Share-milking Agreements Order, 1939 (Serial No. 1939/86, as amended by Serial No. 1941/155); and those terms have since been successively those set out in the Schedule to the similarly-named Order of 1944 (Serial No. 1944/146), those set out in Part II of the Schedule to the similarly-named Order of 1946 (Serial No. 1946/156), and, finally, those set out in Part II of the Schedule to the similarly-named Order of 1951 (Serial No. 1951/221). Those Orders were in substitution for the conditions of employment originally enacted in the Schedule to the Share-milking Agreements Act, 1937, statute. Clause 3 of the Schedule to the 1939 Order was the clause by which the plaintiff's remuneration was in the first place determined. It gave him a percentage of "milk and cream cheques and deferred payments," and, there being no agreement to the contrary, it excluded "the share bonus". In the Orders of 1944 and 1946 the wording of cl. 3 remained substantially unchanged (this clause is hereinafter referred to as "clause 3."). The Share-milking Agreements Order, 1951, made a change in the wording of this provision. Clause 3 became cl. 30 of Part II of the Schedule; (hereinafter referred to as "clause 30") and, under it, the share-milker was to participate in "cheques for milk or cream" but not in "bonuses covered by shares" or in "dividends". There was no mutual agreement entitling plaintiff to share in such bonuses or dividends. *Held*, 1. That the payment was one made probably under Reg. 148 of the Model Articles under the Co-operative Dairy Companies Act, 1949, but analagous to a payment made under Reg. 140 (1) (*a*); and it was accordingly a "bonus covered by shares"; within the meaning of cl. 30, or a "share bonus" within the meaning of cl. 3; and that the payment was in no sense a payment representing the proceeds of milk supplied in the 1950–51 season, but was a payment to shareholders as such out of funds accumulated over a period of years. 2. That, whether the plaintiff's rights were governed by cl. 3 or cl. 30, he was not entitled to a share of that payment. *Neems* v. *Brown*. (S.C. Hamilton. April 20, 1953. F. B. Adams, J.)

TRUSTS AND TRUSTEES.

Resulting Trust—Deposit of Moneys with Company in Names of Infant Nephew and Niece—Death of Depositor—Presumption of Resulting Trust not rebutted by Evidence to Contrary—Company holding Amount in Trust for Deceased's Personal Representatives. The deceased had deposited with a company for investment a sum of £300, for which two accounts, each for £150, were opened in the company's books, one in the name of P. and the other in the name of O'S., respectively a niece and a nephew of the testatrix. At the time of the deposits at the end of 1943, P. was aged two years and O'S. six years. The deceased died in January, 1952. Her will made no reference to these deposits, although P. was given a bequest of £50. From the time of the deposits the interest thereon was collected by the deceased and was used for her own purposes. The parents of the two children knew nothing of these deposits. On originating summons to determine whether the deposits belonged to the children in whose names they were placed or whether they passed to the personal representatives of the deceased as part of her estate. *Held*, 1. That in the absence of evidence to the contrary and in view of the fact that both transferees were children living with their parents and the deceased was not *in loco parentis* to them, there was a resulting trust in favour of the deceased or her estate; and the children had to be regarded as trustees of the deposits and the accrued interest. Having regard to the ages of the children, an order was made that the company held the sum of £300 and interest accrued thereon for the personal representatives of the deceased. (*In re Howes, Howes* v. *Platt*, (1905) 21 T.L.R. 501, followed.) (*Standing* v. *Bowring* (1885) 31 Ch.D. 282; *Dyer* v. *Dyer*, (1788) 2 Cox. Eq. Cas. 92; 30 E.R. 42; and *In re Vinogradoff, Allen* v. *Jackson*, [1935] W.N. 68, applied.) *In re Muller* (*dec.*), *Cassin* v. *Mutual Cash Order Co., Ltd.* (S.C. Auckland. June 16, 1953. Northcroft, J.)

LEGAL EDUCATION.

Why Should a Lawyer Study Arts in a University?

By PROFESSOR ALLISON DUNHAM.*

While most of us proudly assert that ours is a " learned profession ", we seldom agree among ourselves about the training required for becoming a member of that learned profession. There is some agreement about the professional requirements in legal education, but there is little consensus about *why*, *how much*, and *what* non-professional training a law student should have to qualify him as " learned ". We can qualify a young man as a legal artisan by office training alone, by a combination of professional training in a university and in an office, or by professional training only in a University. But, what makes him learned ?

I have read the report of the Committee of the Law Society recommending a reduction of the number of arts units from five to three ; and, because the American legal profession has discussed this question as much as your profession is now discussing it, I am prompted to enter a discussion which is really none of my business. I hope you will pardon this lapse from courtesy.

Lack of unanimity concerning the status of arts units is as prevalent in the United States as it seems to be here ; and the discussion proceeds on the same intellectual level. We also tend to ask ourselves questions about the non-professional education in terms of time and units—how many years should a law student be required to spend on arts units ? Should economics or English be required ? (The battle concerning Latin was lost by the pro-Latin group many years ago). But we have tended to increase our Arts requirements rather than decrease them.

The requirement imposed by law in the United States is, in the main, a temporal requirement—the law student must have a minimum of two years non-professional education in a University. As a result of a resolution of the American Bar Association in 1950, this requirement will be increased to three years after 1955. Neither the two or three-year minimum gives a true picture of the actual situation. Although we have had the two-year requirement since 1920, 51 per cent. of our profession had a B.A. and an LL.B. degree in 1951. In New England, where our University tradition is the strongest, 73 per cent. of the lawyers have a B.A. degree as well as an LL.B. There is no appreciable difference in the percentage in cities under 200,000 from those over 200,000. All of the major university law schools (Harvard, Yale, Chicago, Michigan, California, etc.) require a B.A. degree before professional subjects are undertaken, or before the LL.B. is received. I suppose that most members of the profession, even though they themselves did not have full liberal arts education, would recommend that their sons have such education before practising law.

Why does our legal profession propose to increase the non-professional requirements at the same time that some members of your profession propose a decrease ? I must confess that some members of our profession favoured the increase in arts requirements as a means of discouraging admission to the Bar, which they thought over-crowded. While this may help the present practitioners, it hardly seems to be a proper basis upon which standards of education ought to be determined. I have also found this same argument here in New Zealand, although in reverse form. I have the impression that one reason some of you favour decreasing the number of arts units is because you think the present requirements discourage an abundance of unqualified clerks.

The main arguments advanced in the United States for arts units for lawyers are : (1) A liberal education is essential for a learned profession, whether or not such education is of " practical " value to the practitioner ; (2) Whatever its weakness or failures, a liberal education is the only safeguard to the public against a lawyer's breach of confidence, selfish advice or inadequate sense of moral values in his advice ; (3) A liberal education is necessary for the competence of the practitioner.

The first position is maintained by the survivors of the battle concerning Latin as a required unit and the new supporters of a " classical " education, such as the followers of the former Chancellor of my University, Robert M. Hutchins. The position of this group is best summed up by the statement of Dr. Andrew Stewart, President of the University of Alberta, that that which distinguishes a good professional man from a mediocre one is the same quality as that which distinguishes a civilized man from a Philistine. A Philistine, said Dr. Stewart, is an ignorant narrow-minded person. By contrast, a civilized man has knowledge, understanding, and wise judgment.

If the first reason can be labelled as a reason based on " professional pride ", the second reason advanced can be labelled as for the " protection of the public ". The American Association of Law Schools has pointed out that lawyers deal with confidences and trusts which go to the basis of our domestic, social and economic life ; and they must, in this position of trust, make decisions and give advice where differing value judgments will produce differing advice. The only safeguard to the public is that the lawyer have as broad an understanding of human values and culture as possible. I do not have the statistics available, but I think a case could be made at home showing that those with the least University training get into more moral and legal difficulty in the profession.

The third argument is one that can be described as one to protect the public and one exhibiting pride in the profession. This argument asserts that a lawyer is more competent if he has some general education beyond that of secondary school. As the New Zealand Council of Legal Education reported in 1934, everywhere in the English-speaking world a condition precedent to admission to practise is a preliminary general knowledge or cultural examination. Why is it considered practical for a lawyer to have an arts education ? The American Association of Law Schools gives these as the objectives of pre-professional university education :

(*a*) Education for comprehension and expression of words.

* Professor of Law, the Law School, University of Chicago, U.S.A. Visiting lecturer in Law, Victoria University College, on a Fulbright Grant, 1953.

(*b*) Education for critical understanding of Human Institutions and Values.

(*c*) Education for creative power in thinking.

Since language is the lawyer's working tool, objective (*a*) needs no comment other than to suggest that it may need something more than English, such as a course in logic or semantics. The third objective is also necessary in problem-solving and in sound judgment. Training in reasoning-power comes not only from such units as logic but from any unit in the University including the natural sciences in which the student is called upon to think out rational solutions by use of inductive and deductive reasoning.

But predicting the outcome of even routine litigation may involve considering whether a well-settled rule of law which is possibly applicable will be modified or reshaped to avoid unfairness and practical inconvenience. And, if the lawyer is advising on a transaction extending over a period of time in the future, what the client really wants is a prediction of what the law will be at the time a dispute is likely to come up for adjudication. How effectively and wisely the lawyer does either job of predicting depends on the insight which he has acquired about human institutions and values. The need for this insight is particularly true where the lawyer is called upon to advise on which of alternative courses of conduct, both legal, his client should undertake. Liberal arts education, although not the only means of acquiring this attribute, does seem to make man more conscious of the rights of others.

Furthermore, a good lawyer today is more than an adviser of clients on that which is narrowly legal; a good lawyer today serves as a legislator in his local or national government, as an administrator, as a member of a committee of the Law Society or some other organization seeking to obtain law reform. In this work also, the lawyer will be facing problems involving the relationship of law to economics, to sociology, to political science, and to ethics.

For a lawyer to do his job well in modern society it is not enough, as some of you have suggested, that the only non-professional work a lawyer needs is the study of the culture, history, and philosophy of law. This is, of course, needed; but it ought to be considered part of a lawyer's professional equipment. But, if a study of law's history shows anything, it shows how much law's development has been influenced by man's ethical, economic, and political beliefs of the times. A competent lawyer of the twentieth century must comprehend the twentieth century institutions.

Finally, I would like to suggest that a liberal arts education is desirable for a lawyer if for no other reason than that it permits the young would-be practitioner to speculate and think on the same problems that law deals with but from a different point of view. As Chief Justice *Vanderbilt*, of the New Jersey Supreme Court, a former President of the American Bar Association and a former Law-school Dean, has said:

> Law is nothing more than an official view of life, in contrast with the natural and social sciences which aim to mirror life's actualities, and with the humanities, philosophy and ethics which envision its ideals.

The law student cannot help but take a more mature approach to his law studies, if, before undertaking them, he has done intensive study for a substantial period on some human institution. The United States experience would confirm this. In examinations given by law societies, as well as in law examinations given by the University, the student with the B.A. degree has a better record than a student with two or less years of liberal arts work. I think the English experience must also bear this out.

But, regardless of the merit of the American arguments for increasing liberal arts education, I would doubt the wisdom of reducing the arts units to three, of which one must be English. I would fear that the result of this would be that the law student would get no intensive work in any subject, but would select three Stage I subjects in each of which he had probably done so well in high school that he was already on Stage I level. With five arts units, there is a chance at least that the student will elect to take some work through Stage II level; but this seems almost impossible with three arts units. Certainly first-year university students in the United States, especially if they were also starting work, would select in the university to continue those subjects which the student had done well in high school. It is only in the second year of university, or in Stage II, that a student begins to get intensive new training in a University.

I would have another reason, but this may only be a judgment based on appearances rather than actualities. From the University matriculation requirements, I have the impression that your high-school subjects are heavily weighted in favour of English, Science, and Foreign Language. The only high school subjects which could properly be called part of social science would be History and Geography. I have no suggestion that such preference is undesirable. But is it desirable that a member of a learned profession should be unacquainted with the literature and thought of political science, sociology, economics, philosophy and psychology? These are university subjects which appear nowhere in your high-school curriculum. Three arts units of which one must be English almost compels ignorance of the law student of these areas.

In short, I do not see how three Stage I units in any college of the University can produce a young man ready to become a mechanic in law; certain it is that it cannot produce a member of a learned profession.

A La Carte. They evidently do some things better in Ireland. A friend of mine, engaged in a fishing expedition in a remote village near the Western coast of that country, suddenly became in urgent need of legal advice on a local problem, and after due inquiry was directed to a gentleman engaged in the practice of the law. He found himself in rather an odd sort of office just before noon. When this hour struck, his conference was interrupted by the production from a drawer in the lawyer's desk of a fierce-looking knife. My friend, anticipating some anti-Cromwell gesture, was just about to beat a hurried retreat when he noticed a large side of bacon hanging in one corner of the room. This was duly attacked with the knife and some resulting large rashers were hurled into a frying pan resting on an oil stove in an alcove—then all legal problems were consigned to the background until an excellent picnic lunch was concluded. Now why should this procedure be limited to the other side of the Irish Sea? We know that we are not allowed to advertize, but would my practice tend to decrease if the word went round that a particularly luscious piece of Norwegian smoked salmon (with all the appropriate appurtenances) was usually "on cut" in my room on Tuesdays and Fridays? Then think of the interesting competition this would provide when my brethren sought to outbid me with caviare and other delicacies.—*Law Journal*, London.

THE RATING ASSURANCE.

Sale or Lease by Local Authority instead of by Registrar of Supreme Court.

By E. C. ADAMS, LL.M.

This topic of the Rating Assurance is dealt with in *Goodall's Conveyancing in New Zealand*, 2nd Ed. 102-106 and 192-194. Precedent No. 7, however, at pp. 192-194 (correcting a precedent given by the late Mr. S. I. Goodall in (1933) 9 NEW ZEALAND LAW JOURNAL 29) has had certain words of the operative clause misplaced. The operative clause commencing at the bottom of p. 193 should read as follows :

> NOW THEREFORE in consideration of the sum of £ paid to the Registrar by the Purchaser (the receipt thereof is hereby acknowledged) and in pursuance of such sale the Registrar on behalf of the Owner DOTH HEREBY TRANSFER unto the Purchaser ALL THAT the said land for an estate in fee simple free from encumbrance, etc.

I should be pleased if those readers of this JOURNAL, who have a second edition of *Goodall*, would kindly alter their copy accordingly.

In a footnote to p. 193 in *Goodall's Conveyancing*, I pointed out that s. 5 of the Rating Amendment Act, 1950, now provided an alternative procedure for the recovery by a local authority of the amount of a judgment for arrears of rates against the owner of an *abandoned* property, but it was not practicable in the second edition of *Goodall* to include a precedent for the purposes of that section.

Section 5 applies to any property in respect of which any judgment for rates has been given against the owner and in respect of which the owner :

(*a*) Is unknown ; or

(*b*) Cannot be found after due inquiry and has no known agent in New Zealand ; or

(*c*) Is deceased and has no personal representative ; or

(*d*) Gives notice in writing to the local authority in whose favour the judgment has been given that he desires to abandon the property.

When the provisions of subs s. (1) to (3) of s. 79 of the Rating Act, 1925, have been complied with ; and the *period of six months* referred to in subs. (2) of that section has expired (*i.e.*, as *Goodall* points out in (1933) 9 NEW ZEALAND LAW JOURNAL 13), judgment for rates must have been properly recovered and must have lain fallow for six calendar months ; and the Registrar on receipt of the necessary certificate from the local authority must have given the prescribed notice to all persons believed to have had an interest in the property (whereupon proceedings must have again lain fallow *for six calendar months*), the local authority may apply to the Registrar of the Supreme Court for a certificate to the effect that those provisions have been complied with, and it shall be the duty of the Registrar, on payment to him of a fee of £1, to issue such certificate accordingly instead of selling the land under s. 79 of the Rating Act, 1925.

On receipt of such certificate a Magistrate may make an order declaring the property to be *abandoned* property and authorizing the local authority to sell or let it pursuant to s. 5 of the Rating Amendment Act, 1950. Procedure to the Magistrates' Court is by way of originating summons. The powers of the local authority, after the Magistrate has made the necessary order, are set out in subs. (6), which reads as follows :

> (6) Every order so made shall be deemed to be made upon and subject to the following terms and conditions—namely :
>
> (*a*) The local authority may from time to time offer the property for sale or letting by public auction or public tender, until it is sold or let :
>
> (*b*) The local authority shall, in the case of every such offer for sale or letting as aforesaid, fix such reserve price or rent as it thinks fit :
>
> (*c*) Subject to the provisions of paragraph (*b*) of this subsection, every offer for sale or letting under this subsection shall be upon and subject to such terms and conditions as the local authority thinks fit :
>
> (*d*) The person submitting the highest bid or, as the case may require, the highest tender shall, if the amount of that bid or tender is not less than the reserve price or rent, and if he complies with the terms and conditions fixed, be the purchaser or lessee, as the case may require :
>
> (*e*) Any property offered for sale or letting as aforesaid and not sold or let may, at any time within twelve months thereafter, be sold or let by private contract at a price or rent not less than the reserve fixed when it was so offered and otherwise on such terms and conditions as the local authority thinks fit :
>
> Provided that no property which has been so offered for letting only shall be sold by private contract until it has first been offered for sale as aforesaid.

It shall not be lawful for the District Land Registrar to register any instrument executed by the local authority for the purpose of giving effect to any sale or lease under this section, unless there is lodged with the instrument a copy of the order of the Magistrates' Court, sealed with the seal of that Court. The provisions of paras. (*f*) to (*i*) of s. 80 and of s. 81, of the principal Act apply *mutatis mutandis*, in all respects, as if the reference to the signature and seal of office of the Registrar were a reference in para. (*h*) to the seal of the local authority in the case of a body corporate, or to the signature of the local authority in any other case.

If the land sold for non-payment of rates is "farm" land, the transaction will be subject to Part II of the Land Settlement Promotion Act, 1952 : *In re a Proposed Sale, Registrar of Supreme Court to Britton*, [1946] N.Z.L.R. 67 ; [1946] G.L.R. 15.

In practice, there will also arise the case (not covered by the following precedent) of the local body transferring or leasing by *private* sale following a period of twelve months after an unsuccessful attempt to sell or lease by public tender or by public auction. In such a case there should be an additional recital that no tenders or bid were received to the reserve price, and also a recital that pursuant to s. 5 (6) (*e*) a private sale or lease has been entered into at a date which must be at least twelve months from the date tenders closed or from the date of the auction, as the case may be. But note well the proviso to s. 5 (6) (*e*) that, if the property has previously been publicly offered for letting only, it shall not be sold by subsequent private contract until first it has been offered for public sale pursuant to s. 5 (6) (*a*).

CONVEYANCING PRECEDENT.

Memorandum of Transfer of Abandoned Land by Local Authority for Non-Payment of Rates.

WHEREAS A. B. of Auckland, Builder, (hereinafter called "the Owner") is registered as proprietor of an estate in fee simple in ALL that piece of land situate in the Land Registration District of containing [*set out here area*] situate in the being part Section [*set out here official description*] and being also Lot on Deposited Plan number and being ALL the land comprised and described in Certificate of Title Volume Folio Registry AND WHEREAS the said land is rateable property situate in the and within the rating District of the (hereinafter called "the Local Authority") AND WHEREAS the Local Authority having duly struck rates for the year ending upon all rateable property within its District and having duly made and served demand upon the Owner for the amount of rates due to the Local Authority in respect of the said land did recover judgment in the name of the Body Corporate called the Mayor Councillors and Citizens of in the Magistrates' Court at on the for the sum of [*words and figures*] against the Owner as such owner of the said land being arrears of such rates and costs due in respect of such land AND WHEREAS such judgment then remaining and still remaining at the day of the hereinafter recited sale by public tender unsatisfied the Local Authority did on the day of forward to the Registrar of the Supreme Court of New Zealand in in the Judicial District (hereinafter called "the Registrar") a certificate as in such case prescribed by "The Rating Act 1925" AND WHEREAS the Registrar on the day of caused notice to be duly advertised that the said land would be sold or leased after six (6) months from the day of the date of such notice unless the amount of such judgment and costs be paid in the meanwhile and on the day of caused a copy of such notice to be posted on a conspicuous part of the said land AND WHEREAS the Registrar on the day of upon application having been made by the Local Authority did issue pursuant to Section 5 sub-section 2 of the Rating Amendment Act, 1950, a certificate that sub-sections 1 to 3 of section 79 of "The Rating Act, 1925" had been complied with AND WHEREAS an order was made by the Magistrate's Court at on the day of declaring the said land to be abandoned property and authorising the Local Authority to sell or let the said land pursuant to Section 5 of the Rating Amendment Act, 1950 (being section 80A of the Rating Act, 1925) AND WHEREAS the Local Authority caused the said land to be offered for sale by public tender at tenders closing on the day of and at such sale by public tender C. D. of Auckland, Land Agent (hereinafter called "the Purchaser") was the highest tenderer at the sum of [*words and figures*] and was notified by the Local Authority of its acceptance of his/her tender by letter posted on the day of NOW THEREFORE IN CONSIDERATION of the sum of [*words and figures*] paid to the Local Authority by the Purchaser (the receipt whereof is hereby acknowledged) and in pursuance of such sale the Local Authority on behalf of the Owner DOTH HEREBY TRANSFER unto the Purchaser ALL that the said land for an estate in fee simple free from encumbrance PROVIDED ALWAYS that no covenant or warranty shall be implied herein on the part of the Local Authority save a covenant that it has not knowingly encumbered the said land.

IN WITNESS whereof these presents have been executed this day of 19 .

THE COMMON SEAL of THE CORPORATION OF THE MAYOR COUNCILLORS AND CITIZENS OF THE was hereto affixed by order of the City Council of the said City by and in the presence of: L. S. Under the Rating Act 1925

Mayor
Town Clerk

The Mayor Councillors and Citizens of the City of HEREBY CERTIFIES AND DECLARES that it has not in its possession the above mentioned Certificate of Title relating to the above described land and that it is unable to produce same.

[N.B.—*When this transfer is presented for registration it must be accompanied by a sealed copy of the order of the Magistrate, under s.* 80A (5) *of the Rating Act*, 1925 [*added by s.* 5 *of the Rating Amendment Act*, 1950] *declaring the land to be abandoned property and authorizing the sale* (*or lease, as the case may be*).

NEW LAW LIBRARY.

Victoria University College.

There was a large and representative gathering of Wellington practitioners at the recent ceremony in the new Law Library of Victoria University College. The Library was formally opened by the Attorney-General, Hon. T. Clifton Webb.

The first speaker was Mr. T. D. M. Stout, Chairman of the College Council, who said that the occasion marked an important stage in the development of the Law Faculty, which was of the greatest importance not only to the College but to the community at large. He hoped that it would not be long before it became a recognized special school of law. Mr. Stout welcomed the Attorney-General, and asked him to perform the function of opening the law library.

THE ATTORNEY-GENERAL.

The Attorney-General, the Hon. T. Clifton Webb, said:—

"I need hardly say that it is a great pleasure for me to come along and perform the opening ceremony of this law library. I would say that you are very privileged. I can assure you when I walked in and saw all the books, my mouth watered as I thought of the facilities that you have here in comparison with the facilities that were available in the days when men like Mr. F. C. Spratt here and myself were in our student days, not together, but roughly at the same time. In my youth, I had to do my swotting by correspondence in a small country town in North Auckland and most of it was done by lamplight or candlelight and with very limited access to law books. I am not suggesting for a moment that these are the conditions you people should have to endure. I do say that you are fortunate to have the facilities that you now have here, and no doubt, as the Chairman has said, there will be further developments.

"I recently had the privilege of visiting Harvard law school and there they do things in a big way. They have, for example, what I suppose they call a debating room. It seats five hundred students and in it they have all the atmosphere of a court, with a bench and bar, with seats for Counsel inside the bar; and for each student there is a desk with a movable sort of table on which he can make notes; and there they could listen to debates just as though they were in an actual court. You people won't have quite these facilities but you will have here, without doubt, facilities for carrying on moots and discussions and that sort of thing so advantageous to the law student.

"We are all privileged to be in the law, and I say it is a great privilege and a great responsibility. I think more devolves on us perhaps than we realize.

"There is a feeling amongst some people that there is no room or need for lawyers. I remember the remarks of one of my colleagues who came into Parliament the same time as I did: He said, 'When I first came into Parliament, I did not think there was any use for lawyers at all; since I have seen several of you at work, I realize what great value you are to the rest of us'. Not only in politics but in other fields there is great work for the lawyer, particularly in instilling into the minds of the community the extreme importance of upholding and maintaining the rule of law.

"I have said on a previous occasion, and I would like to repeat now, that I think one of the faults of which we lawyers are guilty is that in dealing with the community generally, with the laymen as we call them, we have perhaps a tendency to speak in legal terms quite unconsciously and I think it has given rise to a sort of suspicion in the minds of the laymen. If we talk, for example, about the *locus in quo* instead of saying plainly 'the scene of the accident', I think that it is inclined, as I say, to give the laymen a sort of suspicion of the law. What we should seek to do is to make the community realize that the law is there to assist them. The law as I understand it, is nothing more than applied common sense; and the best service, as I see it, that we can render is to remove what I believe is this sort of suspicion for which, I am afraid, we are to a consid-

erable extent responsible by talking in legal language when we are talking to laymen. This I fear tends to instil or create in the minds of the lay community an attitude of suspicion towards the law. I think that you will find that, when a layman picks up a document, his first thought is where is the pitfall.

"I hope that what I have said will register with you, because I am certain that it is not a fantastic notion of mine, and I hope that you will do what you can to prevent the law from coming under suspicion in this way. It does not deserve it at all.

"As I close, again my mind goes back to my own early days and as I say my mouth waters when I think of the opportunities we would have had if only we had the books and the facilities that you people have. I am sure that this law library which you have given me the privilege of opening today will be the means of assisting you to pursue your studies in a way that has not hitherto been possible to you and is not possible, I think, to students in other parts of New Zealand even at the present time. I hope it will encourage you in the love of the law, that you will take up the law not as a money-making profession, because it is by no means the best money-making profession. I hope that you will take it up because you love the law. *Ars gratia artis*, — 'Art for Art's sake', and I say *Lex gratia legis* 'Law for Law's sake'.

"I hope you will not enter the law with the idea of making money, for, as I have said, it is not a money-making profession but a profession in which you can, if you will, render a great service to the community. Service to the community is of more importance than the service to yourselves.

"As I have said, it gives me much pleasure in declaring the law library open, and I congratulate all those who are responsible for this beginning. I am sure that it will go on from strength to strength, and it will not be long before you find you have to burst your bounds and go forward until, perhaps, as Dr. Stout says, you will reach the stage when you have a real School of Law."

The Law Society.

The President of the Wellington Law Society, Mr. E. F. Rothwell, was the next speaker. He said:—

"It is my privilege this evening as representative of the Profession in the Wellington district to add a few words to what the Attorney-General has said in connection with the great privilege that you as undergraduates have received in the opening of this impressive library. Like the Attorney-General, I have memories going back over thirty years, of the condition under which I had to pursue my studies, almost as far south as the Attorney-General was north. That was in Dunedin, where the law faculty was very much the poor relation as far as the University of Otago was concerned. We had the Medical School, Dental School, Mining School, and a substantial Arts Faculty; and law just penetrated to the fringe of those big institutions. To a large extent the law faculty was separate from the University life and surroundings and was constituted in a very different way from the law faculty of this College.

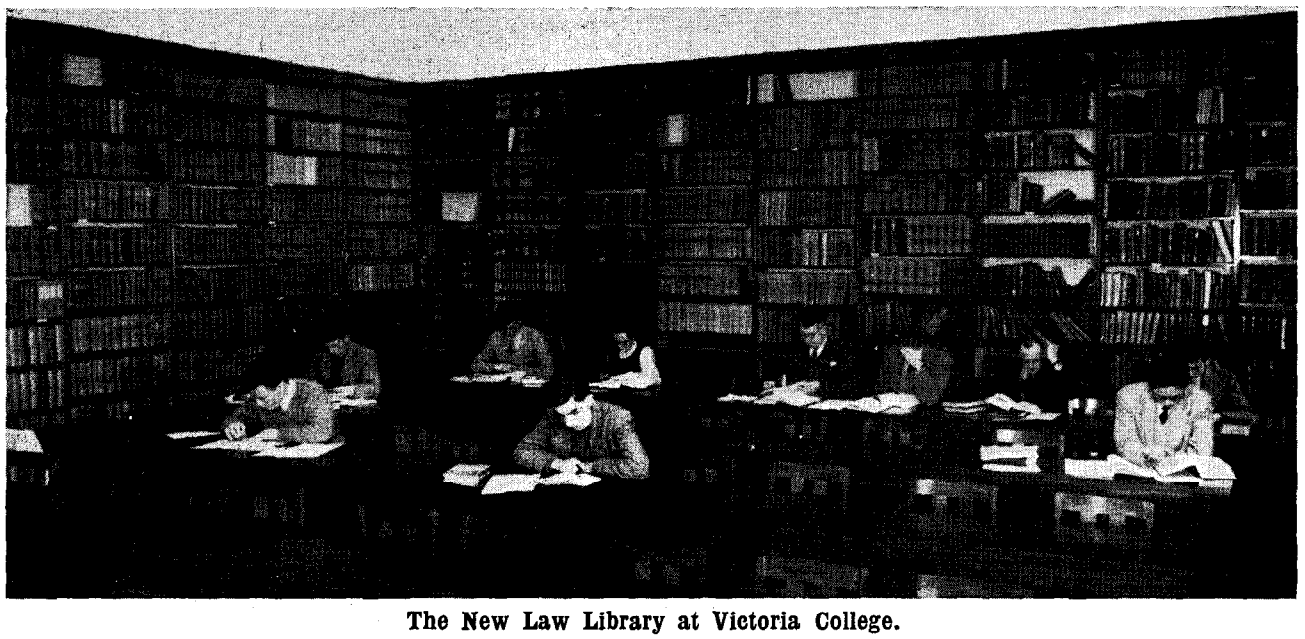
"The Dean of the faculty was Mr. J. B. Callan, who was afterwards a Judge of the Supreme Court, and who now is, unfortunately, no longer with us. The lectures were all conducted in the Supreme Court buildings and our library was the Supreme Court library. As far as the University was concerned, it offered no facilities to law students.

"In all branches of study, probably, we have two sides, the theoretical and the practical side. In other branches of study you will find you go to books to get the theory, but the practical work is done in another way; whereas in the study and the practice of law, your books are not only the source of your information and theory but also your tools of trade; and in that respect books and a library are much more important to a law student than to other people. Here you have a library for your theory, and also your workshop in which you put the theory into practice.

"I join with the Attorney-General in congratulating you in having this library as such a great facility for your work, and I hope that it will assist you greatly in your study of the law."

Students, Present and Past.

Mr. M. F. Dunphy, spoke, as he said, on behalf of those who, in the main, used the library, and he thanked the Law Faculty for providing a library of which it could justifiably be proud. He referred to the usefulness of the new library as a place in which moots might be held; and, on behalf of the students of law, he acknowledged the help which members of the Faculty freely gave to their students in all their activities. He was sure that the students, in the days to come, will justify the scheme.



The New Law Library at Victoria College.

Mr. J. B. O'Regan, who spoke for an older generation of students, said: "It was in 1936 that we were first tutored by Dr. Williams and we soon learned to regard him not merely as a Professor, but as a fellow-student as it were, because he took a sympathetic interest in our activities. We quickly learned to admire his judgment, and his scholarship, of which it would be trite to speak in this company, and also his selfless approach to his vocation. Dr. Williams assumed the Chair at a time when the economic conditions operating in this country made the people of this country a despondent and soul-sick people and the College and the faculty had not escaped from that despondency and that soul-sickness.

"The Dean of the Faculty was Professor Adamson, who is still held in affectionate regard and memory. He had given many years in the service of the law and of this College, but in those days he was stricken with an illness that made it almost impossible for him to continue to render the service that he had previously rendered. That was something of the atmosphere to which Dr. Williams came. He probably knew it when he came. If he did not, he soon sensed it and he set about to give a new spirit to the Faculty. He took a keen interest in our problems relating to our studies and in our problems remote from our studies, and we quickly learned to love him. New

Zealanders as a whole are inarticulate when it comes to expressing gratitude and I don't think we have personally given to Dr. Williams, as courtesy demanded we should, any expression of our thanks; but when we learned that he had vacated the Chair to assume the office of Principal, a move was made by my generation. My fellows and I could do something to mark our appreciation of his services to this faculty and our own friendship with him that we had gathered from our association with him. So it was that the few volumes that you see were purchased with the idea that they should be presented and form part of this library. They will supplement a set of New South Wales Reports that once belonged to Dr. Williams. We offer them not because of their intrinsic value but as a mark of our regard, to be recorded here where future students will gather, that we his students deeply appreciated his services to the profession, to the law and to us individually. My fellows would have me say how deeply we appreciate the work he has done for the College and for us, and that it has been good to have known him.

Mr. J. G. Sclater, speaking on behalf of the 1951 Graduating Class, said that when donation of a subscription to the *New South Wales State Reports* was a token of their regard for Professor Williams. The token was perhaps small, but their regard is very great. He continued: "When we learned that Professor Williams would be lost to the faculty in accepting the office of Principal of the College and would not be able to tutor or give so much time to the Law Faculty, we had a deep feeling of regret and as a mark of our regard we decided to make this annual subscription to the *New South Wales State Reports*, to be kept in this library as a mark of our regard, and we feel sure that Professor Williams will spend many happy hours relaxing in the comfort of these surroundings browsing through their Reports. To Professor Williams, with our subscription and in the succeeding years and future copies that come, go our very best wishes and the thanks of the class of 1951.

The Dean of the Law Faculty.

Professor R. O. McGechan, Dean of the Faculty of Law, then said:—

"As I have the privilege of talking in this room more or less when I want to, it behoves me to be brief, but there are some things I would like to say. Might I, on behalf of the teaching staff and the students, thank you, Mr. Attorney very much for opening this library for us; the profession for the interest they have shown in our students, in young lawyers, and in what we are doing, as is shown by their presence here this afternoon; the College for making available to lawyers, staff and students alike this very fine addition to our facilities; and Mr. Miller, the Librarian, who is responsible, in no small measure, for what has been done. He is, I think, principally responsible for the design of the room, and if there is one thing above all else I like about the room, it is its design. We told him what functions we wanted it to fulfil, our requirements as to desks, a bench for moots and so on. We wanted a room for moots, we wanted to house the law books which were to be found in a few cramped bays of the main library or were buried in stack rooms, and we wanted a room to lecture in. The result is this room.

Our library again owes much, of course, to the work of our predecessors. From the very beginning of its work in Law this College realized the importance of the library to lawyers. This room would not have been possible at all if there had not been a sound and liberal purchasing policy operating for over thirty to forty years. I can speak of the International Law part of it most surely, and in that field there is not just the foundation of a library but a well developed one, one which makes work in the field possible to staff and students.

"As to the germ of the idea which grew into this library, I am willing to admit authorship. I expressed my views to my colleagues and, as you might guess, they approved. I saw more difficulty in getting others to agree to it. The Librarian of course readily agreed. The real problem was to persuade other faculties that this was a good thing for them. We somehow managed that. Then, of course, we had to persuade the College. That, very largely, I think in this case was a matter of persuading Dr. Williams. In the result he weighed the evidence, judicially, and gave a very sound judgment, one so sound that none of the law teachers of the College, so sound even, Mr. Chairman, that none of our law students has ever suggested a flaw in it. Having got the judgment of the court, we were ready to proceed. We think the result, in design, workmanship and everything else very gratifying indeed.

"Our library is the focal point of our students' work. They have here the opportunity to go to the sources and to find the law, and the only way they can learn law — or anything else — is to find things out for themselves. It is now possible for us as a staff to emphasize this way of work and I think I am right in saying that students are availing themselves of the opportunity given them. They have shown great zest and zeal, and the energy which is going into the study of law is surprising. An indication of this new burst of vigour centres round moots, one of the uses to which the room has been shaped. Of late, interest in moots had fallen off. Students saw me wanting to see them put on a proper and workable basis. Would we make them compulsory? We agreed to do so with quite good results. This year we, have managed to stage only seven. Next year, we want to meet their request fully and to give every law student his appearance in a moot. There will be at least 160, probably 200 students to take part, forty to fifty moots to organize. I hope, in fact I know, the profession will help us out in this. As you will see, the library, which is our Court Room, has stimulated very noticeable and worthwhile student activity.

"When I was abroad recently, I found at British Columbia Law School one of the most interesting of lay-outs for a law school. The school was housed in a temporary building but it had, I think, hit upon the proper functional design for law schools. The whole school opened off the library; teachers' rooms, class rooms, common rooms, all were focussed on the library. I stored up this idea for future use. What we have here is the nearest we can come to it: a bringing together of the activities of our faculty in one room. Here is our class room, our library and our moot court-room. Here our students, lawyers of tomorrow, will develop that corporate entity which goes with the professional life of the lawyer. It is the realization of this which makes them so — I say it advisedly — proud of this library.

"Thank you Mr. Chairman, and you, Mr. Attorney, for opening the library."

Professor James Williams.

Dr. James Williams, President of Victoria University College, and formerly Dean of the Faculty of Law, said:—

"After all that has been said and so very well said by those who have already spoken, I feel that I must confine myself to a very few words.

"First, I wish to thank you for the kind and generous things which, on your behalf, Mr. O'Regan and other speakers have said of me, and for the tribute to me implied in the very generous gifts which many, whom I have had the privilege of teaching, have made towards the completion of the set of New South Wales law reports. Until two or three years ago, my life was law, the teaching of it and, to a smaller extent, the practice of it; and my abiding love has been, as it still is, the law school at this College. I can only say that your words in praise of me are much beyond my deserts.

"For the rest, I would like on this occasion to pay two tributes: first, to my friend and master in the law, Sir Alexander Johnstone, Q.C., and second, to the staff of the law school.

"Sir Alexander Johnstone was one of the early students at Victoria University College. He graduated B.A. in 1903 and LL.B. in 1905. I became a clerk in his office in 1927. He was at that time at the very height of his powers. He was a consummate master of every aspect of the work of counsel, and he combined with his professional qualities great personal and intellectual distinction. He was a great educator of young men, and he educated them not merely in law but in manners and the ways of their fellows. Perhaps I may mention those who were his clerks in my time. There was Hollis Cocker, Stanley Weir, Steve Goodall, Harry Butler. When I came to that office as a humble junior clerk my path was at that moment laid out for me, and I could do no other than follow in the footsteps of my fellow clerks.

"A. H. Johnstone was my great master in the law and in some other things of even greater value. His way was to treat his clerks as professional and intellectual equals. It was an exacting experience for the clerk; but a most rewarding one for him if he could sustain the part in which A. H. Johnstone cast him, while at the same time preserving in his own thoughts a proper recollection of his beginner's status. Our real reward for preparing a piece of work for A. H. Johnstone was the ensuing free discussion, which might be on points of law, strategy or tactics, the ways of Judges, or of other practitioners, or indeed of the whole world, or even on some problem of New Zealand botany. Whatever the talk, it was always a lesson in humanity.

"When I came to be Professor of English and New Zealand law at this College in 1935, I was in all conscience very ill prepared for my duties but I settled on one principle and that was so far as I could to treat my students as A. H. Johnstone had treated me.

(*Concluded on p. 272.*)

IN YOUR ARMCHAIR—AND MINE.

By Scriblex.

Decisions to Prosecute.—The refusal of the Police in a licensing case at Napier to comply with a request from the Magistrate (Mr. Harlow) to prosecute and to supply to him information from their file has prompted him to announce that "the inevitable result of this would be to reduce the function of the Court to something subservient to the Police. The whole thing calls out for further consideration." It seems that the case was one against a licensee's wife for selling after hours under circumstances that satisfied the Police that the husband who was in Wanganui at the time had given her "specific and limited authority" only and would, therefore, presumably not be vicariously liable. At all events that is the view taken by the Police authorities who, on matters of licensing, can be said to be well seized of the law as well as the practice of selling liquor on hotel premises. It is difficult to see why their judgment not to prosecute, in this or any other matter where they have the election, creates a state of subservience on the part of the Court. Even if at times they may be mistaken in deciding not to prosecute, such errors, honestly and deliberately made, are much to be preferred to circumstances in which before a case is heard the Court has access to the Police file dealing with the particular charge, and is liable consciously or unconsciously to be affected with the mass of memoranda, statements, and opinions that form part of such files. It is the function of a Court, particularly in a criminal case, to approach its task with an open mind, unaffected as far as possible by outside knowledge or viewpoint. Such judicial detachment would have to be altogether extraordinary to survive such a course as that proposed or suggested by the Bench at Napier.

The Evershed Report.—The Final Report of the Committee on Supreme Court Practice and Procedure (known as the Evershed Committee) has now been published. It is a volume of 380 pages and contains 230 specific recommendations. Six years were involved in the 440 meetings held by the Committee and its twenty-one sub-committees; oral evidence was received from twenty-nine different institutions and from 248 witnesses; and written evidence from 146 organizations and individuals. The Committee considered that there was no single ready answer to the problem of reducing the cost of litigation, and its report proceeds to say "if the claim to excellence of the English system of administering justice is well founded, the justification is to be found in our practice and procedure; or at least they are peculiarly suited to our character and genius."

Personal Injury Claims.—Some of the recommendations of the Evershed Committee have reference to aspects of personal-injury claims that are of interest in this country. It is suggested that each side should be compelled to disclose to the other at least ten days before the hearing the medical report of any doctor whom he may desire to call on penalty of the doctor's evidence not being receivable at the trial unless the Court otherwise orders. It is also suggested that the Court should have power, on a summons for directions, to order the exchange of medical reports with a view to possible settlement. Recommendations cover in addition the right of parties to obtain statements made by witnesses to the Police and briefs of Police evidence in running-down cases at an early stage of the proceedings. It would seem that, in New Zealand, Rule 142 of the 1950 Police Regulations are now interpreted as justifying a refusal of the right to peruse or to obtain a copy of the statement made by a practitioner's own client to the Police in cases of this kind.

The Income of Barristers.—Following the report of the Evershed Committee, the *Times Weekly Review* sent its special correspondent into seven or eight leading sets of Chambers in the Temple which had the reputation of housing the most industrious barristers. The investigation disclosed that, of the forty barristers who were prepared to give information, those who had practised for over twenty years averaged £2,700 a year, but of the rest only half earned more than £500 and a fifth more than £1,000. One earned over £5,000 a year, six between £3,000 and £3,500 and five between £2,000 and 3,000. Grouped according to the number of years from call to the Bar, those of three years standing averaged under £250, those of five to nineteen years standing under £800 and those of twenty years or more standing £2,700 a year — an all-over average (omitting those newly-called) being £1,400 a year. The investigation also disclosed that over 98 per cent. of the actions begun in the Queen's Bench Division were settled; that a considerable number of overworked "juniors" preferred to remain as they were rather than hazard a loss of the bulk of their practice resulting from the rule that a silk may not appear without a junior; and that, in one set of Chambers alone, the constant danger of losing one's ability to earn as the result of ill-health had caused several of the leading barristers to prefer work in the Universities, Foreign Office or Coal Board, and that one of the greatest advocates on the common-law side had recently elected to join an oil company.

A Late Delivery.—Students of the Sale of Goods Act might note under the heading of late deliveries this story of the pre-Coronation vintage. Don Marquis, a famous American humorist, was telephoning a friend when he found that through a faulty connection he was overhearing an official in Buckingham Palace give an order to the royal fishmonger. Marquis, by force of habit, could not resist jotting down the time of delivery, the various items, and the fishmonger's name. After the time appointed for delivery, he telephoned the fishmonger and said: "Buckingham Palace here. What about the fish, hey? It's not here; not a fin of it." He gave the list *seriatim*. "D'ye hear, Buckingham Palace speaking," he continued, "Damme, the King speaking. Am I or am I not going to get my fish?" Then, according to Marquis, he heard a dull sickening thud such as a royal fishmonger makes when he falls on his wet marble floor. "At that", he said, "I rang off".

NEW LAW LIBRARY: VICTORIA UNIVERSITY COLLEGE.

(*Concluded from p. 270.*)

Such little success as I may have had as a teacher I am certain was the result of my following this principle, and I am glad to have this opportunity to acknowledge, before those who have been my own students, my personal debt to one who taught me so much.

" Secondly, I would like to say a few words in praise of the teaching staff of the law school. I am in the somewhat singular position of knowing a good deal about law faculties in the great Australian Universities as well as of those in our own Colleges. All I wish to say of our own faculty is that, in my judgment, it is easily the strongest in Australasia and strong by any standards whatever. That is appropiate; for law has for many years been a special study at this College.

" Again, may I thank you for the kind things you have said of me, and may I wish all good fortune and prosperity to those who may read and study in this library."

MR. JUSTICE TURNER.

Honoured by the Auckland Law Society.

One of the largest gatherings of its kind ever held in Auckland, took place on the occasion of the Dinner recently tendered by the Law Society of the District of Auckland to His Honour Mr. Justice Turner, on his elevation to the Bench.

Among the official guests were Mr. Justice Gresson and Mr. Justice Stanton. The Magistrates' Court Bench was represented by Messrs. L. G. H. Sinclair, H. Jenner Wily, M. C. Astley, W. S. Spence, and J. W. Kealy. There were also present the Secretary for Justice, Mr. S. T. Barnett; the Dean of the Faculty of Law, Professor A. G. Davis; the Senior Lecturer in Law, Dr. J. F. Northey; the President of the Hamilton District Law Society, Mr. F. McCaw; the Senior Deputy-Registrar of the Supreme Court at Auckland, Mr. E. M. Mosley; and Mr. A. S. Nicholls, of Christchurch.

After the loyal toast had been honoured, the Chairman, Mr. G. H. Wallace, President of the Auckland Law Society, stated that apologies and good wishes had been received from the Attorney-General (Hon. T. Clifton-Webb), Sir John Reed and Mr. Justice Adams, and Mr. F. McCarthy, S.M.

His Honour's Qualities.

The President stated that this was the third occasion in five years on which members of the Auckland Society had met to congratulate one of their members on his appointment to the Supreme Court Bench. The present appointment had given the greatest satisfaction to the members of the profession and they wished to convey to His Honour their best wishes and to express their confidence in his ability to perform the duties of his office to the satisfaction of all. His elevation marked the culmination of years of work; and his wealth of learning and experience would be invaluable to him in the future.

In particular he would like to make reference to His Honour's quality of courage, which had been apparent, time and time again, during the course of his professional career. He referred also to the outstanding work that His Honour had done as Vice-President of the Council of the Auckland University College, and as one of the Governors of the Massey Agricultural College. In sport, His Honour had excelled at tennis. He congratulated His Honour on his well-merited elevation, and expressed the hope of all his fellow-practitioners for a long and happy period as one of Her Majesty's Judges.

The toast of the newly-appointed Judge was received and honoured with great enthusiasm.

Mr. Justice Turner's Reply.

Mr. Justice Turner thanked the President for all that he had so generously and eloquently said, and those present for the enthusiastic manner in which the remarks had been received.

It was a moment of his life, he said, by which he would always be warmed in retrospect; for there could be few joys that a man could have greater than the affection and regard of his fellows in his life work, be that work what it may.

His Honour said that he felt that on the present occasion he should make some reference and acknowledge his debt to his parents. His father (who was classics master at the old Grammar School, and from whom doubtless some present had learned their Latin) died in his early forties; and His Honour paid a special tribute to the courage displayed by his mother, who was left with four young sons of whom he was the eldest.

After he had concluded his school and college days, His Honour had turned to the Law and entered the office of Messrs. Reyburn, McArthur, and Boyes, in Auckland, the only office in which he ever worked for an employer. They had been a happy crowd in the office: Philip Connell, now at Whangarei; W. T. Dobson, now at Napier; Ralph Trimmer, now of Auckland, Ronald Sinclair, now a Judge of the High Court of Tanganyika, and himself. His own work and training was under Malcolm McArthur, whom he greatly loved and respected.

" This office ", said His Honour, " I left in December, 1926, to shiver on my own in a hard cold world, starting in a little side room in Horne's Building in Vulcan Lane. This is now part of the offices of Messrs. Baxter, Shrewsbury, Milliken, and Murdoch; and I think that they use what was my suite of offices as a cupboard in which to put away their files ".

Later His Honour entered into partnership first with Messrs. W. H. G. Kensington and L. B. Haynes, later admitting Messrs. Warwick White and D. H. M. Coates into the firm. He referred with affection to his former partners, with whom he had never exchanged a cross word, even in times of stress and difficulty. When he finally made the decision to apply for silk, the severance of their brotherly relationship was like a bereavement. Nevertheless, once the step had been taken, His Honour had been happy in his new status.

" May I say " said his Honour, " how very much I have enjoyed the only too brief period which I practised amongst you all as Queen's Counsel. This serves to remind me also ", he continued, " of the regrets I have that, in taking this last step, I have finally deprived myself of the opportunity of serving the Law Society on its Council. This will be a matter of perpetual regret so far as I am concerned. I have never been a member of the Council, and now I shall never have an opportunity of becoming a member ".

His Honour referred to his long period of service on the University College Council—work from which he parted with very much regret. In particular, he referred to O'Rorke House, which had been acquired as a Hostel for University students. After a great deal of effort, it had become established; and he sincerely hoped that, now that he was leaving it, other members of the profession would take an interest in the Hostel and see to its further progress.

" I thought I noticed in the President's speech ", His Honour concluded, " a reference to ' His Honour's former profession '— as if I were not to be considered any longer as a member of it. Having been for so many years a member of the legal profession, I do not want any mistake about this. I am not leaving it: it is *our* profession and I intend very much to remain a member of it ".

Mr. L. P. Leary, Q.C., proposed the health of the guests, and made special references to their particular attributes and quoted authorities in support of his view.

The reply to the toast was in the hands of Mr. Justice Stanton, who adequately replied to the remarks of the previous speaker.

This concluded the more formal part of the evening's proceedings and thereafter those present continued to enjoy themselves less formally to a late hour, each according to his own individual inclination and taste.