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THE NINTH DOMINION LEGAL CONFERENCE.

ALL who were privileged to take part in the Dominion Legal Conference of 1954, at Napier, are unanimous regarding the outstanding success which crowned the thoughtful preparatory work of their Napier and Hastings brethren. In point of numbers of visitors, it was a record Conference. In warmth of welcome and hospitality, it was a memorable one.

The gathering was, indeed, truly representative. The presence of His Honour the Chief Justice and two members of the Supreme Court Bench, the Judge of the Compensation Court, three representatives of the Magistracy, and hosts of practitioners from far and near, including a representative of the Law Council of Australia, made the Conference a real family gathering. Perhaps its most pleasing feature was the great attendance of the younger men. In the main, they were post-war principals in their firms of practices. They came from all parts of the Dominion, the majority from the smaller towns. It was pleasing to see so many of their age-group taking part in the corporate life of the profession. So long as their interest is sustained, the Conference series cannot fail for want of numbers or of interest.

The business side of the Conference began to a wonderful start with the witty, but thought-provoking, inaugural address of His Lordship the Bishop of Waiapu, the Rt. Rev. N. A. Lesser. His speech was the subject of conversation and renewed acclaim throughout the succeeding days wherever men gathered.

The address of the Acting-Attorney-General, the Hon. J. R. Marshall, who deputized, at short notice, for the Hon. Mr. Webb, was an inspiring success. His hearers quickly recognized the familiar touch of one who was very close to them in the profession, and he held their appreciative attention.

The papers, too, were of a uniformly high standard. The one of most general public importance was the reasoned argument of Mr. L. P. Leary, Q.C., ably supported by Mr. T. P. Cleary. Both convinced the Conference to a unanimous approval of their motion recommending the setting up of a separate Court of Appeal. And there was never any doubt of the whole-hearted and sympathetic support of their motion urging the granting of pensions to the widows of deceased Judges—a matter on which the whole profession feels very keenly indeed. The support given to the proposed separate Court of Appeal by the Hon. Sir David Smith, which Mr. Cleary read, was a valued contribution by an experienced Judge, who had first-hand knowledge of the difficulties confronting their Honours in having superimposed on their busy days in the Supreme Court the added burden of Court of Appeal sessions and the preparation of the consequential judgments. Sir David, as the Conference quickly realized, had, in contrast, also experienced the work of a Supreme Court Judge, during a temporary appointment, freed from the incubus of Court of Appeal work. The Conference appreciated his contribution to this important discussion.

The papers were all of a uniformly high standard and ranged over subjects of interest not only to the profession, but also to the public. The discussions on the several papers, too, were to the point and helpful.

The experiment, if such it may be called, of having a new venue for the Conference, outside the familiar cities of past Conferences, was a most successful and happy one. The Hawke's Bay practitioners, though comparatively few in numbers, obscured that fact by their enthusiasm and by their careful planning. There must have been a fine team-spirit animating them, to judge by the perfection of their arrangements and the enthusiastic appreciation of their guests. Their ladies, too, deserve a special word of gratitude. Changes in arrangements, due to an unexpected decline in the proverbial sunshine of Hawke's Bay, did not daunt them; they rose triumphant over such vicissitudes. Their private hospitality, continued in every spare moment of busy days, will always be remembered.

The social gatherings, in Napier and in Hastings, culminating in a Ball which was outstanding among similar Conference ones, were perfect in their arrangements and good fellowship. Sports Day, favoured with cloudless skies and warm sunshine, was a fitting conclusion to a memorable forgathering of the profession. The inclusion of a golf competition for the ladies was a successful and popular innovation.

Special congratulations are due to the chairman of the general Conference committee, and the official host, Mr. John Holderness, of Hastings, and Mrs. Holderness, who both contributed so much to everyone's enjoyment. Two years of careful staff-work, in close co-operation, earned for the untiring Joint Secretaries, Messrs. D. D. Twigg and G. E. Bisson, the meed of praise so wittily voiced on behalf of the visitors by Mr. W. E. Leicester at the closing function. Everyone who was present at the Conference is deeply grateful to them both, and very happy in the thought that their long and arduous labours were crowned with such notable success.

Hawke's Bay, we thank you.

THE ROLL CALL.

The Full Attendance.

THE SUPREME COURT BENCH.
The Rt. Hon. the Chief Justice, Sir Harold Barrowclough, K.C.M.G.
The Hon. Mr. Justice Hutchison.
The Hon. Mr. Justice Stanton.

THE COMPENSATION COURT.
Judge D. J. Dalglish.

THE MAGISTRACY.
Mr. L. G. H. Sinclair, S.M. (Auckland).
Mr. W. A. Harlow, S.M. (Napier).
Mr. S. S. Preston, S.M. (Wanganui).

THE NATIVE LAND COURT.
Judge I. Pritchard (Auckland).
Judge G. J. Jeune (Gisborne).

THE JUSTICE DEPARTMENT.
Mr. S. T. Barnett, Secretary for Justice.
Dr. J. L. Robson, Assistant-Secretary (Administration)

THE LAW COUNCIL OF AUSTRALIA.
Mr. N. V. Henderson (Brisbane).

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Childs, S. C. (Pukekohe)
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Cunningham, A. C. (Tauranga)
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Drower, D. N.
Drummond, J. R.
Ennor, S. C.
Finlay, Dr. A. M.
Gordon, D. B. (Tauranga)
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Hesketh, C. R.
Hillyer, P. G.
Hodgson, G. T. (Opotiki)
Hopkins, B. P.
Hopkins, R. H. P. (Tuakau)
Johnson, L. A.(Whangarei)
Johnstone, Sir Alexander, Q.C.
Kalman, J.
Leary, L. P., Q.C.
Moller, L. F.
Moody, W. R. P. (Pukekohe)
McCown, T. W.
Nicholls, G. A. (Kaitaia)
Pleasants, E. T.
Rennie, J. C.
Rennie, P. C.
Reynolds, J. S.
Robb, M.
Rudd, L. F.
Sexton, A. C. A.
Smytheman, H. E. H.
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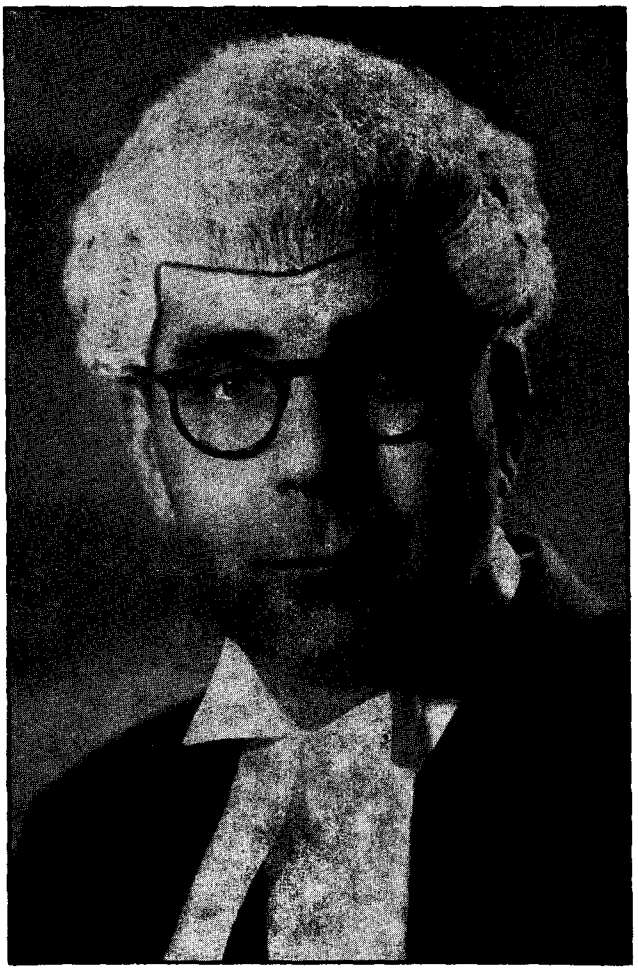

Stuart Johnson, photo.

Mr. J. H. Holderness.
President of the Hawke's Bay District Law Society and Conference Host.

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Burridge, R. R. (Masterton)
Burton, R. C.
Byrne, J.
Cahill, B.
Castle, S. J.
Clore, F. T.
Cleary, M. P. (Foxton)
Cleary, T. P.
Cornford, P. A.
Corry, A. P.
Cresswell, R. L. A.
Cullinane, D. C. (Feilding)
Cunningham, W. H.
Evans, H. E., Q.C.
Evans-Scott, C.
Gault, I. M.
Hardie Boys, R.
Haughey, E. J.
Hain, C. H.
Herd, L. H. (Paraparaumu)
Hogg, E. T.
Kavanagh, J. P.
Leicester, W. E.
Macarthur, I. H.
McCarthy, T. P.
McKay, I. L.
Marshall, J. R., Hon.
Martin, F. M.
Simpson, R. S. V.
Spratt, F. C.
Stuart, D. F.
Tinney, S. T. (Pahiatua)
Todd, J. (Levin)
Ward, D. A. S.
Ward, H. H. (Upper Hutt)
Webb, R. H.
White, J. C.
Whitehouse, N. F. (Levin)
Wild, H. R. C.
Wiren, S. A.
Wood, D. R.
Yaldwyn, J. B.
Yortt, A. W. (Palm. Nth.)
Mitchell, H.
Mazengarb, Dr. O. C., Q.C.
Neild, D. W. (Martinborough)
Olphert, W.
Page, E. F.
Papps, L. M.
Pope, R. E.
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Robieson, H. N.
Rothwell, E. F. (Lr. Hutt)
Rowe, G. (Palmerston North)
Scott, R. R.
Shorland, W. P.

THE FIRST DAY.

THE CIVIC WELCOME.

WHEN, for the first time, all those attending the Conference with their ladies came together in the Napier Municipal Theatre for the Mayoral reception on the Wednesday morning, it was obvious that, at least in point of attendance, the Conference was already a record one.

The stage of the Municipal Theatre was gracefully adorned with banks of begonias and other flowers, and with autumn foliage.

His Worship the Mayor of Napier, Mr. E. R. Spriggs, presided. On the platform with him were His Honour Mr. Justice Hutchison; the Acting-Attorney-General, the Hon. J. R. Marshall; the Bishop of Waiapu, the Rt. Rev. N. A. Lesser; the President of the New Zealand Law Society, Mr. W. H. Cunningham; and the President of the Hawke's Bay District Law Society, and Host of the Conference, Mr. J. H. Holderness.

The President of the Hawke's Bay District Law Society, Mr. J. H. HOLDERNESS, in his opening remarks, said:

"Our great day has arrived, but what weather, and what a forecast. But be of good cheer, it cannot get worse.

"Your Worship, we are very grateful to have you present with us to-day, and I should be glad if, as Mayor of Napier, you would say a few words to those assembled here."

THE MAYOR'S WELCOME.

HIS WORSHIP THE MAYOR OF NAPIER, MR. E. R. SPRIGGS, who was received with applause, said: "It gives me very great pleasure to extend a very warm welcome to Napier to so many distinguished and learned gentlemen, with their wives. I am told that this is the first occasion on which your Annual Conference has been held outside the four main centres. We are, indeed, honoured to have the privilege to be the first provincial town to extend a welcome to members of the Law Societies at their Annual Conference. We feel, of course, that you could not have made a better first choice. As you will know, Napier has always been popular as a tourist resort, but it is only over recent years that it has become popular as a centre for conferences. Its popularity is due not only to its climate (or, I should say, the climate it is reputed to have), but for the policy of its citizens over the years in progressively improving its tourist amenities.

"It will be realized, of course, that, whereas other centres in New Zealand have had at least a hundred years in which to develop their attractions, the people of Napier were compelled to make a new beginning only twenty-three years ago. This occasion was marked by tragedy—but it was not by any means all tragedy. Napier suffered a very severe earthquake, but from this has come a number of blessings for which the people of Napier can be thankful. It solved some long-outstanding difficulties and at least one long-outstanding argument.

"In the first place, we were able to design a model business area, and we were able, also, to dispense with overhead wires in this area. And, what is very important, especially to those of you who are not accustomed to earthquakes (and none of us are) our reconstructed premises were designed to resist earthquakes, and we now claim with some justification that Napier is the safest city in New Zealand.

"We are one of the newest and youngest cities, although we were declared a city under somewhat false pretences. The Government Statistician gave us our population as 20,050, and Mr. Marshall's colleague, the Hon. Mr. Bodkin (as he then was), declared us to be a city, but, when the census was taken a few months later, it was found that our population was only 19,712. I may state that one of your citizens in Hastings sent me a very uncomplimentary poem about this.

"At the time of the earthquake, Napier had almost reached the limit of its geographical expansion. It was completely surrounded by the inner harbour and tidal flats, but the earthquake lifted the ground some seven to eight feet, and we were granted many thousands of acres of extra land adjacent to the city. From this point of view, our geographical expansion was assured. We were able to establish new residential and industrial areas, and, what is most important, on land that was not very productive—land which had a fairly low value commercially. Our method of development may interest you, or the system which we work under. The land is owned by the Harbour Board. Out of every 3 acres, we get approximately eleven sections, and nine of these are freehold. The other two the Board retains as its interest in the land, and these are leased.

"Some of you may recall, too, that for many years successive Harbour Board members could not agree on the method of harbour development, whether it should be by way of an inner or outer harbour. Some wished to develop the breakwater, and others were opposed to this. This problem enlivened many Harbour Board meetings, the arguments were long and heated, and they kept the Press alive for many years. Incidentally, members of your profession were not entirely without profit from it. The problem had remained unsolved for over twenty years, and it resolved itself in a matter of twenty seconds. After the earthquake, there was no further question—the harbour would be developed by way of the breakwater. To give you some idea of the progress made in this direction; Napier now possesses the third largest export port in New Zealand. It is the clearing house for large quantities of wool, meat, fruit, and the fruit produce in Hawke's Bay. It is also the largest wool centre in New Zealand, and the largest cross-bred centre in the world. I have also been told that we now hold a record that Southland used to hold—we are the largest exporters of Canterbury lamb in New Zealand. (Laughter).

"I noticed a while ago that Mr. Algie made this comment when he had to open a school in Auckland. Before he left Wellington, he was told there were seventeen members on the teaching staff, and by the time he arrived in Auckland this had risen to nineteen. I had the privilege a few months ago of opening a new school in Onekawa, a suburb of Napier. The very day we opened it, the school was overcrowded, and they were talking already about adding two more classrooms. That is the way we are developing in Napier, and you

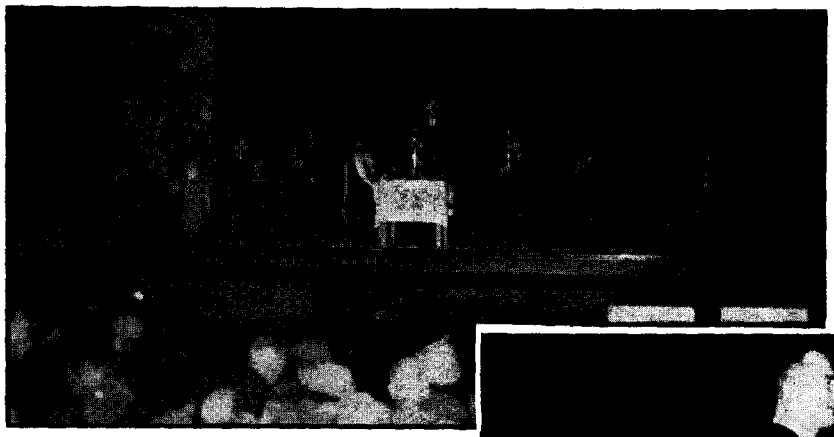
will see that Auckland has not got things all its own way.

" We are very conscious of the fact, however, that there is a great deal of work still to do before we can be really happy with the facilities we have to offer to tourists. I have told you something of the development over the past two decades, so that you may know we have not been idle, but there is still room for improvement. When you next hold your Conference in Napier, we hope to accommodate you in a Memorial Hall that will befit such an occasion.

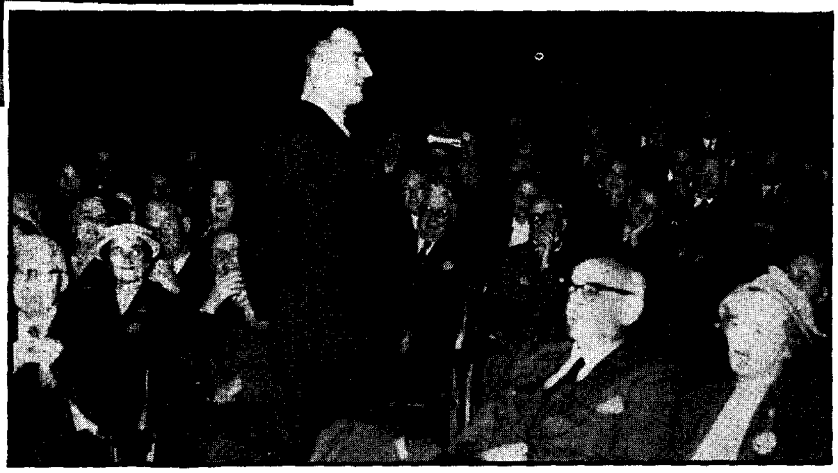
" Your short stay in Napier will be mainly devoted to Conference matters, but I am quite sure your hosts will have provided an opportunity to show you something of the beauties of Napier, and particularly the beautiful district round Hawke's Bay. In expressing the wish that your stay may be most enjoyable, I also hope the outcome of your Conference will be most profitable. I wish to express my thanks for giving me this opportunity to extend a welcome to you. May I truly say, on behalf of Napier: ' Welcome to Napier.' "

His Worship the Mayor was accorded a hearty vote of thanks.

At the Civic Welcome.



The President of the New Zealand Law Society, Mr. W. H. Cunningham, speaking at the Civic Welcome. Others on the stage are, from left, Mr. J. H. Holderness, President of the Hawke's Bay District Law Society; the Bishop of Waiapu, the Rt. Rev. N. A. Lesser, His Worship the Mayor of Napier, Mr. E. R. Spriggs, the Acting Attorney-General, Hon. J. R. Marshall, and the Hon. Mr. Justice Hutchison.



Mr. A. I. Cottrell, President of the Canterbury District Law Society, on behalf of the visitors, thanks His Worship the Mayor of Napier, Mr. E. R. Spriggs. Sir Alexander Johnstone, Q.C. (Auckland) is on the left, in the front row of seats, and Mr. F. L. G. West (Auckland) on the right.

THE HAWKE'S BAY PRESIDENT.

The President, MR. J. H. HOLDERNESS, in replying, said:

" Your Worship, we are most grateful that you have made time to extend this official welcome, and we thank you for it. With your kind permission, I would like to add, on behalf of the Hawke's Bay District Law Society, a very warm welcome indeed to the visitors. Ladies and Gentlemen, this is the Ninth Legal Conference, but it is the first to be held in provincial simplicity. At the first Conference after the last war, Mr. Bennett, then President of the Wellington Law Society, expressed the hope that it would be a milestone in the history of the legal profession. I cannot do more than express the same wish in respect of this Conference. It is, indeed, a great pleasure to welcome so many of you. If numbers make for the success of such a gathering, then this should be supremely successful.

" Here with me on the stage are His Lordship, the Right Rev. the Bishop of Waiapu, who will address you later; the Hon. Mr. Marshall who is deputizing at very short notice for the Attorney-General; Mr. Justice Hutchison, representing the Supreme Court Bench; and our President, Mr. W. H. Cunningham. The Chief Justice, Sir Harold Barrowclough, will be with us a little later in the week. The Attorney-General is leaving to-day for Geneva on urgent Government business; but the Minister of Health, the Hon. Mr. Marshall (who is one of us), has been kind enough to come in his place. With Mr. Marshall is Mr. S. L. Barnett, the Under-Secretary for Justice. The Compensation Court is here in the person of Judge Dalglish; the Magistrates' Court is represented by our own Mr. Harlow and Messrs. Sinclair (Auckland) and Preston (Wanganui), and the Maori Land Court by Judges Pritchard and Jeune.

" Our Australian friends have sent, as the representative of the Queensland Law Society and the official representative of the Australian Law Council, our Mr. E. V. Henderson from Brisbane (applause), to be returned in good order, fair wear and tear alone excepted.

" I see quite a number of practitioners with their wives here—not more than one each, I hope—and they come from as far as Kaikohe in the north, Gisborne in the east, Invercargill in the south, and New Plymouth in the west. I can assure you all we will do everything we can to make your stay memorable. I do not wish

to mention individuals. All I can say is, we are glad to see you.

" It was a departure for the New Zealand Law Society to suggest that this Conference should be held in Hawke's Bay, and, precedent being of the utmost importance, we would not dare to flout it further. Accordingly, this Conference will proceed along the lines of former ones, varied only by local conditions. Accommodation has been one of our great problems, and, of course, most of you, we know, would like 5-star plus. We would very much like to give it to you, but we have done our best and hope you will accept it. Being men of honesty and good humour, you will have realized our difficulties. We will try to make up with the warmth of our welcome.

" I would say one last thing which I thought of this morning. I suggest this to you who have cars here—you have read your morning newspapers, drive carefully*."

The Visitors' Reply.

Mr. A. I. Cottrell, President of the Canterbury District Law Society, replied from the body of the hall on behalf of the visitors. He said : " It is my extreme pleasure as a South Islander—and I promise to make no use of that well-worn phrase ' mainland ', or to comment on the fact that I think the weather is better down there, or to say how fortunate you are in bringing our Canterbury lamb out through your port—I repeat, it is my pleasure to thank you for the warmth of the welcome extended to us all, and our ladies. I would like to say how very nicely and kindly you have received us all in Napier, and thank you for the friendliness you have extended towards us all.

" This, I am ashamed to say, is only the second Legal Conference I have attended ; but the first was rather a unique one. It was held in Brunswick, in the middle of Germany during the last War in Prisoner-of-War Camp No. 79.

" We had a small, but very live Law Society there, and we had a number of students who received the greatest amount of help and encouragement from the English Law Society. One day, we decided that we would have a Legal Conference, and have it for two days. I know the amount of trouble you have gone to in preparing this Conference, but, believe me, we went to more trouble. We saved our biscuits and prunes, and any other little delicacies we could lay our hands on, and even bartered for others, so that we could have a real feast when the time came. It was a great occasion. We had the most marvellous food—under those conditions. It was a great success, a roaring success. The only thing we missed that you have here—we did not have the ladies. Papers were read and discussed, and Mr. Justice Cassells, whose son was a member of the Society, wrote a series of articles on matters of interest in English law, some enormously knowledgeable and some highly amusing. Altogether, it was quite an occasion.

" It is a long step from there to here, but I would like to say how we had the same feeling of unity and friendliness that we have here.

" I was last in Napier at the time of the earthquake, when I came through with others to see what we could do. Those were days of sadness and great destruction ; but here now we see a beautiful city which in itself is a true and very live memorial to those days. Mr. Mayor and Mr. President, I would thank you on behalf of the visitors for the warmth and friendliness of your welcome."

Mr. J. H. Holderness : " Thank you, Mr. Cottrell, for what you have to say. I would like now to ask the New Zealand President to take the Chair for this Conference."

The President Takes the Chair.

The President of the New Zealand Law Society, Mr. W. H. Cunningham, then took the Chair. He said : " I notice that nominations were not called for the office of Chairman, and I do hope it is your wish that I should take the Chair, which I am very willing to do. First of all, I would like to endorse the remarks that have been passed as regards the welcome extended by His Worship the Mayor and the President of the Hawke's Bay Law Society. I can assure His Worship that the members of the profession (and I hope their wives) are a very law-abiding community, and unlikely to cause any civic trouble during their stay here.

" It is fitting, perhaps, that I should refer now to a very well-known and esteemed lawyer of Hawke's Bay who served from 1925 to 1944 on the Council of the New Zealand Law Society, and was a member of the Committee from 1935 onwards. I refer to the late Hugh Butler Lusk. I am quite sure he still lives in the memory of members of the profession in Napier and Hawke's Bay, and all over New Zealand. I know it was one of his earnest wishes when the Conference Fund was inaugurated that some day Napier would see the Legal Conference held in the city. I am sure it is with a feeling of regret that we realize he never lived to see that wonderful day.

" I would like, also, to endorse what Mr. Holderness has said, and it is interesting to know that this Conference, from the number of visitors present from outside, is probably the largest attended that we have had in New Zealand. There are, I understand, over 240 visiting members of the profession, which is very much in advance of anything we have had previously. As President of the Society, I am delighted to see so many of the younger members present with their wives. I hope they will thoroughly enjoy themselves, and that soon we shall see the sun shining, and the Conference proceeding as we hope it will.

" Now, it is my first duty, as Chairman, to call on the Right Rev. the Bishop of Waiapu to give the Inaugural Address."

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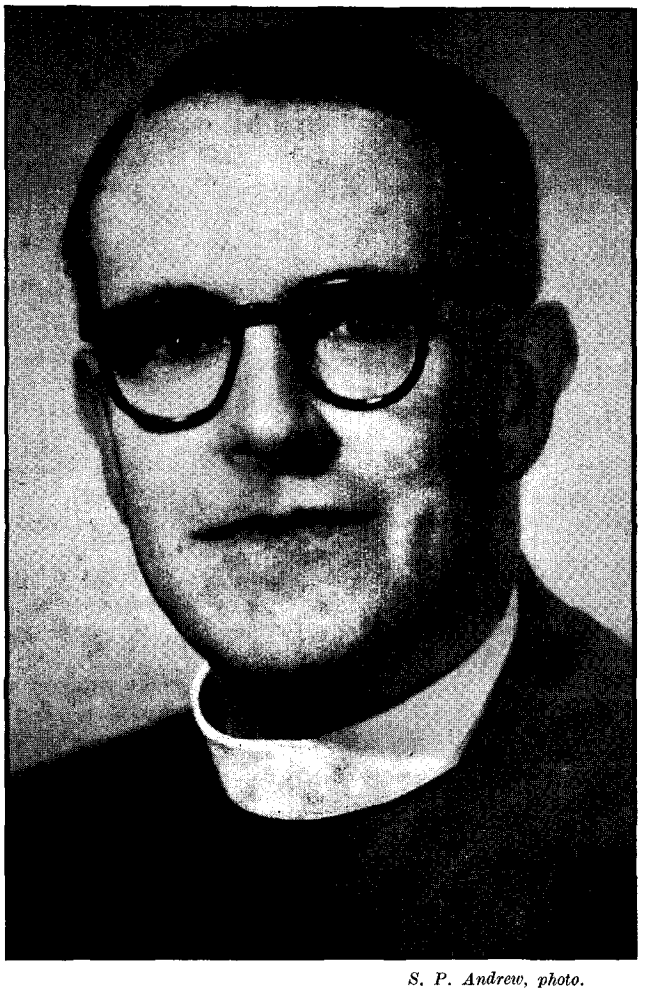
* Mr. Holderness was referring to the fact that a fatal accident had occurred the previous evening a few miles south of Hastings, and that it was still raining heavily in Hawke's Bay on the morning the Conference was opened, making conditions on the roads hazardous for those who were not familiar with them.

THE INAUGURAL ADDRESS.

By the Rt. Rev. N. A. Lesser, Bishop of Waiapu.

HIS Lordship the Bishop of Waiapu spoke as follows: "May I first of all express my gratitude for the privilege granted me in permitting me to make this Address. I made inquiries when the privilege was offered me, and was informed that the Conference is held once in three years for practising members of the profession in New Zealand to discuss points of interest which are exercising their minds. A careful perusal of the conference programme reveals that twenty items concern the minds of members and their wives relating to food and/or fun, and about eight items relate to work. It seems to me that that is a fair division of labour, and it has some merit for me in considering my own forthcoming Synod (laughter). I was also given to understand that this is the first time that the Dominion Legal Conference has been held outside what are known in the four main centres as the four main centres.



S. P. Andrew, photo.

The Rt. Rev. N. A. Lesser.

"I hope that what I say will not be taken down, and I also hope it won't be used in evidence against me. I understand, also, that when Kingsford-Smith made his famous flight, he gave a series of flips to people. One person on touching down thanked him for the two trips. Kingsford-Smith said: 'Did you have a ride before?' The passenger said: 'No, this is the first and the last.' (Laughter.) I hope the experiment which you are making in adjourning into the back-blocks (I shall hear more from the Mayor afterwards, no doubt, about this) will not result in the Conference suffering a similar fate.

"I must confess that those responsible for the programme did their utmost to observe the customary highly secret and confidential nature of their work by not disclosing the name of the speaker for this Address, and have named only those speakers about whom there could be no possible doubt existing.

"I would not like them, or you, to think I am unnecessarily churlish because I know the profession you represent so admirably contains nobody who is churlish. Lawyers, Magistrates, and Judges are the most considerate of men, possibly because they have some time on their hands. They are considered to be very considerate. I heard, although I have no doubt some of my legal friends will tell me it is an apocryphal story, that one person said, when he saw a rather pretty young thing in the witness box: 'Let her state her age, and then take the oath.' (Laughter.) That consideration, I hope, will be extended to me because the President at the beginning of these proceedings said that things couldn't get worse. (Laughter.) I only hope that you will still feel that when I finish.

"This calls to mind an occasion when somebody holding my office, but of a very different calibre, a learned man, was giving an address on the existence of God. He spoke for an hour, and during his sermon he introduced all the usual arguments—psychological, metaphysical, philosophical, theological—and when he had finished, the verger who passed the collection plate to the sidesman said in a hoarse whisper: 'I don't care what the Bishop says, I still believe in God.' I can only hope that my rambling ruminations will enhance your deepest convictions in the truths of an ancient and honourable and distinguished profession.

"The average layman is apprehensive or suspicious of what he commonly misunderstands as 'the law,' and obviously it was a layman who said the law of the Old Testament was as cold as the tablets on which it was written, that the law taught the meaning of sin but gave no hint as to how it might be overcome. Now, some of you will have heard of the rector who spent three weeks preparing examination papers. When taking a service and reciting the ten Commandments, he added unconsciously, 'Only four of these need be attempted.' (Laughter.)

"After the Old Testament came a new law envisaged by the noblest flights of brotherhood and righteousness—a law that had to accede no diminution—a new law and a power to attain and a corresponding abrogation of what was temporary and defective in the previous standards. Under the old law, the main blessings promised to those who hearkened to the voice of the Lord were those of a prosperous and successful life:

'Blessed shalt thou be in the city and blessed shalt thou be in the field;

'Blessed shall be the fruits of thy body and the

fruits of thy ground and the fruits of thy cattle ;
' Blessed shall be thy basket and thy kneading trough.'

" The new law also began with a promise of a blessing ; and, for those who were brought up in the temporal aspirations of the old law, or under the shadow of the material Graeco-Roman civilization, it must have been a startling contrast, for it said, ' Blessed are the poor, blessed are they that hunger and thirst, blessed are the persecuted . . . .' Here, then, was the sovereign law operative, sovereign in its apparent incongruity.

" It is natural that thinking man should endeavour to apply these principles to the conduct of his life, and not least in the relationship of individual with individual. The logical application of the concept of law as epitomized in the Golden Rule automatically involves us in the constant consideration of the vagaries of human nature, and the methods adopted by the human race to safeguard the bulwarks of its moral liberty by restricting the anti-social activities of the ill-disposed. One has only to read Dean Inge in one of his essays to realize the enormous advances in what might loosely be termed ' the humanizing influences of the law within the law,' and the unparalleled opportunities that still confront pioneers in jurisprudence. To quote Dean Inge :

' Objections to the retributive theory of punishment are very ' old, but they have not come mainly from Christians. Plato ' thinks that punishment is only justifiable as a corrective ' or deterrent. Seneca takes the same line. Hobbes says ' that " the aim of punishment is not revenge but terror." ' The majority of modern writers take the same view, and ' anyone who maintains that punishment is essentially vindic- ' tive, and that it is unjust to punish a man for any other ' reason than that he deserves to be hurt, must expect to be ' howled at. Very well. Let us take the view that punish- ' ment is only reformatory and deterrent, and see how this ' principle works out. A man is convicted of murdering his ' father and his mother ; the enlightened judge thus ad- ' dresses him : " Prisoner at the Bar, you have been found ' " guilty of a crime which in the days of our barbarous ancestry ' " would have been thought worthy of exceptionally severe ' " punishment. In ancient Rome, you would have been ' " tied up in a sack with a snake, a monkey, and a cock and ' " drowned in the Tiber. Still more cruel penalties might ' be quoted from other codes. We, however, have abandoned ' the vindictive theory of punishment. The crime which you ' have committed is proved by statistics to be the rarest of ' all offences. For one reason or another, there seems to be ' practically no temptation for children to murder their parents. ' It is, therefore, not worth while to make an example of you ' in order to deter others from conduct to which they show no ' propensity. There remains the other just object of punish- ' ment, as a deterrent. But as you are now an orphan it is ' impossible for you to repeat the offence for which you are ' now convicted. The judgment of the Court is that you are ' bound over to keep the peace for six months.'

The Heritage of the Common Law.

" Well, despite all the confusion of thought in the layman's mind, as Underhill said recently, the Common Law is regarded, and rightly so, as one of the proudest parts of an Englishman's heritage :

Freedom slowly broadens down
From precedent to precedent.

" ' The Common Law ', declared Coke, who was its champion and did so much to defend it against seventeenth century authoritarianism, ' is reason, and naught else.'

" This Common Law came from decisions by Judges given over hundreds of years, and recorded in such documents as the Plea Rolls which go as far back as the days of Henry II. Judges were not trained professional lawyers, as we have to-day, but men in Holy Orders who had frequently received some monastic training. Yet, even within their limitations, the medieval Judges moulded and made the law, deciding cases for which no precedent existed. It was inevitable that they should, in those circumstances, give the law in its infancy a Christian basis.

" As Professor Goodhart, in a recent series of lectures on English Law and Moral Law has said, the fact that the legal word for an infringement of a civil right is ' tort ' (the French word for ' wrong ') shows the close connection of this branch of the law with moral ideas.

" With the passage of time, the jurisdiction of the Common Law Courts became ossified, and men who could find no relief turned to the King for redress, and the King referred their petitions to the Chancellor (an ecclesiastic) who dealt with the matter not in a formal and legalistic way, but as justice and morality demanded. Thus were founded the Courts of Equity, presided over by the Chancellor, administering a system of law deliberately founded on conscience alone. It was natural that these Courts should demand the party seeking a remedy for wrong to be blameless, and, of course, it was one of the maxims of Equity that ' he who comes to Equity must come with clean hands.'

" But all legal systems, however flexible and nimble in youth, tend to grow stiff in old age like human beings, and this was true of Equity ; so that, in 1873, came the reform which gave us our present system. By the passing of the Judicature Act, Common Law and Equity were fused into one system, and, where any conflict of rules arose, those of Equity were to prevail. But both systems, each in its different ways, were built on a religious foundation and by men who professed and called themselves Christians.

" So, despite the inconsistencies and growing pains, there emerges a plain, unmistakable deposit of proved fundamental Christian principles enunciated in a body of law commending itself to all save those who frequently and contumaciously disregarded it. It is given to men not only to receive, but to make tradition, and this Conference will be addressed after this by distinguished speakers who are eminently qualified to point the way.

The Purpose of The Conference.

" The purpose of this Conference is in fellowship to advance study, not just to enjoy yourselves, otherwise another speaker would be discharging my duty and privilege. Thus you have been sentenced, and no Court of Appeal, and not even Equity, can come to your assistance in time. The purpose of Law, then, is that right and truth shall be vindicated. No doubt, there are many of you who heard, when you were very much younger, of the man who employed one of the leading legal luminaries in the Old Country to take up his case. Unfortunately, the day the judgment was to be delivered, the man himself had to be away from home, and so he asked his legal adviser to communicate the decision to him as speedily as may be. Judge of his mixed feelings when he received a telegram saying, ' Right has triumphed.' He immediately sent a telegram which read, ' Appeal at once.'

" Some years ago, when I was paying a visit to a dentist, I suppose my apprehension was extremely obvious, and he said, ' Don't worry, I will not be unduly unkind to you.' He went on to say, ' When I was a student, the Professor gave me a piece of advice which

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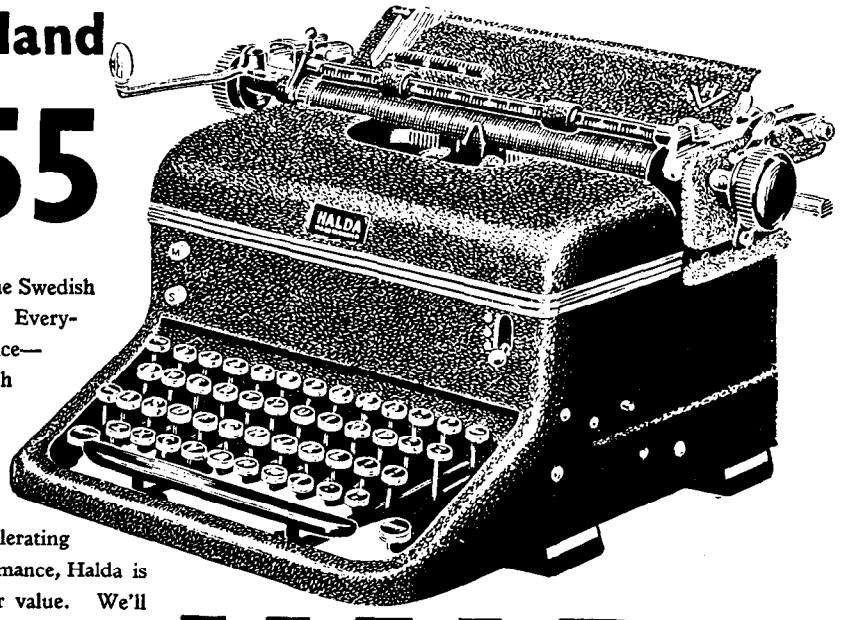

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I have always recollected. He said, " Remember that at the end of every tooth is a patient." ' I suppose the same applies in your profession, and in my own. In the long run, at the end of every legal process is a human being. No wonder, then, that an American Judge said to Lord Eustace Percy : ' Education in the obvious is more important than investigation into the obscure.' I repeat, education in the obvious is more important than investigation into the obscure, and I believe that that is the constant direction of enlightened law-givers: education in obvious Christian truths and their application to human problems.

QUO VADIS ?

" Now, I hesitated to give my title until the end of my talk, because it is *Quo Vadis ?*

" I understand that the New Zealand Law Society has dispensed with Latin. Therefore, I entertained some doubts as to its acceptability, but the older members will have had some Latin, and the younger members will have been to the pictures and seen it translated. (Laughter.)

" It is, nevertheless, a good question for any Conference to address to itself: ' Quo Vadis—whither goest thou ? ' And I would like to finish up by saying that there should be but one answer to ' Quo Vadis ': Forward with enlightened interpretation.

" I call to mind as I close something that happened during the first World War. Some of you may have remembered Studart Kennedy, ' Willie Woodbine ' as he was affectionately called. I will always remember an English Bishop in the front line in France. He had the same things on that I had : pinny, gaiters and a tin hat. He was a joyful sight. I thought that was a perfect picture of an advancing Church—feet firmly entrenched in the past, and a head moving with the times. I pass it on to you as a suggestion."

The Conference's Appreciation.

The President, MR. W. H. CUNNINGHAM, moved a vote of thanks to His Lordship. He said : " Your Lordship, on behalf of the members of the legal profession assembled for this triennial Conference, I should like to express to you our deepest thanks and appreciation for your Address this morning. Your presence reminds me that in the dim past the Church has had links with the law. In his speech at the opening of the Australain Legal Convention in the Sydney Town Hall on August 8, 1951, the Lord Chancellor, Lord Jowitt, when giving a little history of his predecessors, pointed out that Thomas à Becket, Chancellor, became Archbishop of Canterbury. Some centuries after his death, he was called upon by *quo warranto* proceedings to show cause why he should occupy the position of a saint. Counsel on his behalf did his best ; but judgment of *ouster* was pronounced and he was removed from the select list. Later, there was Cardinal Wolsey, who, while Chancellor, went to Rome to see the Pope about Henry VIII's divorce, and that was the last time a Lord Chancellor in office had gone to see the Pope until Lord Jowitt himself in 1950 went to Rome on an official mission for the Government.

" By giving the Inaugural Address, Your Lordship, you have conferred an unusual air of sanctity on this assembly of the Devil's Own, and for the first occasion on which it has been held outside the four centres. I am glad it is being held in the Cathedral town of your beautiful diocese at its autumn best—I should say at its spring best, for it is almost like spring. I do hope our timetable will allow us to see something of the countryside, and that we shall have an opportunity of visiting some of the beauty spots, in and around Napier.

" I omitted when I thanked His Worship the Mayor to remind him that we should all enjoy seeing the fountains playing on the front. I do not know what the municipal arrangements are, but we look forward (those of us from outside Napier) to seeing those beautiful fountains playing, even if it is wet."

The Conference then adjourned for morning tea in the Asher Hall at 10.45, and returned to the Municipal Theatre at 11.15 to hear an Address by the Hon. J. R. Marshall, acting Attorney-General, in the absence of the Hon. the Attorney-General, Mr. T. Clifton Webb.

THE CONFERENCE COMMITTEES.

GENERAL COMMITTEE :

Chairman : Mr. J. H. Holderness.

Members : Messrs. H. W. Dowling (Transport) ; M. R. Grant and W. E. Bate (Remits) ; A. G. Wane (Ball, and Hastings Cocktail Party) ; J. C. Fabian (Napier Cocktail Party and Conference Dinner) ; W. A. McLeod (Sports) ; W. T. Dobson (Wines) ; A. O. Woodhouse and G. B. Amyes (Accommodation) ; A. E. Lawry (Treasurer), and Mrs. John Holderness (representing the Ladies' Committee).

Joint Secretaries : Messrs. D. D. Twigg and G. E. Bisson.

Mr. C. E. H. Pledger was the Hastings Secretary.

LADIES' COMMITTEE :

Chairman : Mrs. J. H. Holderness.

Secretary : Mrs. J. Tattersall.

The Committee was fairly fluid and comprised the wives of Napier and Hastings practitioners who were attending the Conference.

These ladies took upon themselves the arrangements for the entertainment of the visiting ladies, the Ladies' Drive, the Buffet Dinner, etc., and also were responsible for providing the flowers for the visiting wives, and the decoration of all the halls.

THE LAWYER IN THE SERVICE OF THE COMMUNITY.

By The Hon. J. R. Marshall, B.A., LL.M., M.P.,
Acting Attorney-General.

MY first duty is to present the apology of my colleague, the Attorney-General, for his absence. I share your regret that he is not here, but I am sure that those of you who have followed the recent critical developments in the Far East, or, as we should say, the Near North, would appreciate the grave concern of the Government about the issues to be discussed at the Geneva Conference.

While it is clearly not in your own interests that he should to-day be leaving New Zealand, I hope that you will agree that it is in the cause of the wider public interest that you should have imposed upon you the Acting Attorney-General, designate, temporary and unpaid.

I must confess that I accepted the invitation to substitute for the Attorney-General with some trepidation. So many of the leaders of the profession, particularly in Wellington, know me as a junior, and the President knows me best as his former office boy and clerk. In addressing you, therefore, I am not unmindful of these things and I hope the older members of the profession will not find anything I have to say presumptuous or unbecoming.

I am bound to say that I was appalled by the Committee's request that this address should go on for an hour. I was reminded of the late Dean Inge's rather satirical comment on the Cabinet Minister who had "acquired the art of fulminating for an hour without saying anything at all". There are rare occasions, of course, where it is a mark of high statesmanship to be able to speak at some length without saying anything but I would not think this is one of them. Sir Winston Churchill himself is reputed to have said, 'If you want me to speak for five minutes I want a week's notice, if you want me to speak for fifteen minutes I want twenty-four hours' notice, if you want me to speak for an hour I'm ready to start right away'. Well, at least I have had a week's notice. On the strength of a week's notice, I want to speak about the place of the lawyer in the New Zealand scene.

The Lawyer in the Service of the Community.

The Editor of the Law Journal was kind enough to let me have his bound copies of the proceedings of previous conferences. In reading through them a constantly recurring theme is the emphasis that has been given at previous Conferences to the wider responsibilities of the profession in public affairs and in the life of the communtiy. I thought it might be interesting and profitable to examine the place of the profession in the community.

Let me say at once, to assure you that I have at least one foot on the ground, that the primary function of a lawyer is to be a lawyer and to be as good a lawyer as his ability and training and energy will permit. In this country, where all men are more nearly equal than in any other country in the world, it is the responsibility of the lawyer, like any other worker, to provide for himself and his family and also to contribute a substantial sum by way of taxation for redistribution to others less fortunately placed. There are, no doubt, some who will feel that this in itself is a full-time job and a sufficient discharge of the duties of citizenship.

I will concede, too, that the young lawyer, who is usually also a young father and an assistant maid of all work in these days of servantless equality, may be excused temporarily from further service.

The only other exemption order I would make would be for the partners of Cabinet Ministers who have quite enough to put up with as it is.

For the rest and residue of the profession, it seems that there is no escape from public or community service in some form suited to individual tastes and talents.

There are many authorities I could quote in support of this proposition. I will quote only two. A Lord Chancellor of England, Lord Buckmaster, speaking to the Canadian Bar Association at Winnipeg, in 1925, said :

> We are not, and we ought not ever to be, people who merely know the law and appear in Court and plead cases. We ought to be, and our historical role has always made us, far more than that. We are the people who not merely administer the law, but we ought to shape and help to make the law. No lawyer ought to exclude himself . . . from the great public life of which he forms a part. He, beyond all other men, is bound to use his energies for the public good.

The second quotation is from *1951 American Bar Association Journal*, where it says :

> What is distinctive about the role of the lawyer in a democratic society ? The law of such a society is a kind of self rule, where the subjects are also the rulers, where . . . the officials are responsible to the people. In such a society the lawyer is a natural leader unless he abdicates in favour of less informed persons or otherwise defaults in the face of insistent obligation.

Two Kinds of Leadership.

In the life of a nation there are two kinds of leadership which these two quotations emphasize. There is the leadership of thought and the leadership of action. The men who give that leadership in its highest form may do so in both fields, but it is more common for the man of thought to make his contribution in the form of ideas which go to the moulding of policies and for the man of action to grapple with the problems of applying them.

For the members of our profession, there is ample scope in both fields : for the men of action in the conduct of public affairs in this most democratic of the democracies ; for the men of thought in the problems of a changing pattern of society in which the law must keep pace with new social concepts and where those new concepts themselves need the careful scrutiny of thoughtful minds.

It is interesting to see the extent to which the members of the profession are now giving this leadership to the country and to the communities in which they live. I exclude from consideration the eleven members of Parliament and the six members of Cabinet because I am thinking more of the kind of voluntary public service which can be given by those engaged in the active practice of their profession.

ACTIVE SERVICE.

If we look first at local body affairs, we find that there are few borough councils upon which lawyers are not serving. In many cases, the Mayor is a lawyer. I started to make a list of them but it got too long and I must content myself by mentioning the Mayors of Auckland and Wellington, and the titular head of them all—the President of the Municipal Association.

There are also lawyers serving on Power Boards and again the titular head of them all, the President of the Electric Supply Authorities Association, is a member of the profession.

For obvious reasons, there are few lawyers on County Councils and Catchment Boards which draw their members in most cases from rural areas and on Hospital Boards, which for historical reasons which are fast losing their validity still draw more members from the country than the towns. But, in spite of all that, the President of the Catchment Board's Association and the President of the Hospital Board's Association are lawyers.

I do feel that there is a field of service in hospital administration to which members of the profession could make a valuable contribution. The time is ripe for reform. The leadership of men of thought and of action who can bring to bear on these problems the scrutiny of a keen mind and an impartial judgment is greatly needed particularly in those communities where parochial considerations are likely to be a barrier to progress.

The Hon. J. R. Marshall.
Acting Attorney-General.

One cannot think of the contribution of the profession to the country's service without mentioning the war service of so many of its members who were of an age to serve. The late Colonel C. H. Weston, K.C., used to say that lawyers made good soldiers because they knew how to charge. But, whatever may be the reason, the profession did produce four Major-Generals and numerous unit commanders and field and staff officers. Im fact, if we assembled them all in one place they would in one respect bear a striking resemblance to that legendary Portuguese Army.

It is good to know, too, that the service given in war to their country is now given by many in peace to their comrades who served their country. The President of the R.S.A. and the Chairman of the National Patriotic and Canteen Fund Board and the President of Heritage are members of the profession.

The profession is also well represented in the field of education, particularly in the University in the person of the Chancellor and a number of members of the Senate and the College Councils.

Lawyers can also, it seems, be diplomats since three of our four top diplomatic posts are held by members of the profession. I refer to our Ambassador to the United States and to our High Commissioners in Australia and Canada. The High Commissioner in Samoa, which is an administrative post, is also occupied by one of our number and others are in the British Colonial Service.

Lawyers also seem to find their way into the Chambers of Commerce, and, on two occasions in recent years, the business men of New Zealand have selected a lawyer as President of the Associated Chambers of Commerce.

In cultural and sporting life, and in many voluntary societies for the public good, members of the profession are taking an active and prominent part in administration and leadership.

I have mentioned only some of the public activities in which lawyers are to-day serving the community and mainly the cases where that service is on a national level. There must be many others whose service is local, less spectacular but no less worthwhile.

In addition, it would be proper to include the services rendered to the profession itself by the Council of the New Zealand Law Society, the District Law Societies, and the several Committees which watch the interests of the profession and also the interests of the public as they are affected by professional matters.

Mention should also be made of the Law Revision Committee, the Council of Legal Education and of the contribution which a number of members of the profession are making in the teaching of law in the universities and in the examining of candidates both in law and in the legal subjects of accountancy.

I would also like to mention the very valuable assistance which members of the profession give as chairmen of the Committees of Inquiry or Investigation which are from time to time set up by the Government. It is almost invariably the practice where a public inquiry has to be held for the Government to seek the

assistance of some member of the profession, either to conduct the inquiry or to act as chairman of a committee for that purpose. It is also the practice to pay a daily fee for this service, but, as those who have accepted these appointments will know, the daily fee is not, and is not intended to be a professional fee. There is in these appointments an element of public service which we have found members of the profession always ready to give.

It is interesting to see, too, that the papers which are to be read to this Conference all deal with matters which, to a greater or less degree, have a direct bearing on matters of public interest.

After this by no means complete review of the part lawyers are playing in the life of the community, I think it can be said that the members of the profession have not neglected their public duty. This is the more so when it is realized that the membership of the Law Society is about 2,000 and that that represents about .1 per cent. of the population. I think it can be said that by no other profession or group in the community is so much done for so many by so few. The profession deserves the respect and gratitude of the community, and while I believe that it has that in a large measure, the public's attitude towards the profession is something to which some thought could properly be given.

The Public Attitude to the Profession.

I think the public attitude differs according to whether lawyers are considered as individuals or as the Law Society in its official capacity or as the species " lawyer ". Lawyers as individuals, or course, get the respect they deserve, be the same a little more or less. The relationship of solicitor and client is a very personal one, and, while there are dissatisfied clients, the general experience is one of confidence in and respect for the men to whom they take their troubles. It is at times a touching and humbling experience to see the way in which people come to rely on their legal adviser.

Of the profession as represented by the Law Society, I do not think that the public knows enough. I think particularly of the work which the Law Society does in its relation to Parliament, in keeping a vigilant eye on legislation and in making representations fearlessly and impartially when it feels any legislation infringes on well-established constitutional or legal principles. This work is done quietly behind the scenes or before Parliamentary Committees which do not usually attract the notice of the press, and I think it would do no harm, and possibly much good, if the public knew more of these and other activities of the Law Society.

For the species lawyer, people, I think, generally do not hold as high an opinion as they might. I think that public opinion is certainly less harsh than it used to be. It is a far cry from the days when it was possible for Shakespeare, in " Henry VI " to put into the mouth of one of his characters, a follower of Jack Cade ' The first good thing we do, let's kill all lawyers ' or from Dr. Johnson's typical comment, " I would be loath to speak ill of any person whom I do not know deserves it, but I am afraid he is an attorney '. I think the species lawyer suffered, and still suffers, from the fictional characters of literature and the theatre, from the lawyers of ' Bleak House ' or Galsworthy's men of property, and, in these modern times, the sleuth type and the criminal type of the radio serial. There is also the popular impression that is enshrined in many a story which lawyers tell against themselves of the size of fees that are sometimes charged. The litigant having successfully recovered damages for an accident, having seen his share of the proceeds after the deduction of costs, asking who was it had the accident-type of story. The picture of two litigants fighting for possession of a cow while the lawyer milks it, and so on. Tho other side of the picture, of much work done without any reward at all is not mentioned, and, indeed, who would wish to mention it.

The law does give rise at times to delay and to feelings of frustration, to the feeling that the letter of the law and not the spirit is being followed. These are matters which can be mitigated but never entirely removed, but the public usually sees only the results and often does not understand the reasons.

There is also the type of person who comes to a lawyer expecting his assistance in some sharp practice and is disappointed at the reception he gets. These are all factors which contribute to the sum total of public opinion in relation to the law. It is a matter which, in the absorbing details of a busy practice, the average practitioner may overlook ; indeed, I suppose the average practitioner may be rather more than indifferent but I think it is relevant to the best administration of the law that the public should have confidence in those who administer the law, and I believe that such confidence is amply justified.

Problems of Law Reform.

And now having disposed for the time being of the men of action, I would like to say something which I hope will be a little more valuable about the kind of leadership which the men of thought can give. The men who help us to see ourselves as scholars see us.

Their contribution can, I think, take two forms. Those dealing with specific problems associated with the law and those dealing with general problems of the good order and government of the country.

In dealing with specific legal problems, much valuable work has been done by the Law Revision Committee. If the Attorney-General were here he would, I am sure, express to you the high opinion which I know he has of that Committee. The Committee deals in an expert and technical manner with difficult questions of law reform. It is a committee of lawyers sitting as lawyers to solve legal problems. But it does not, and is not intended to, deal with questions of a social, economic, or political character. When the question of granting divorce on the grounds of seven years' separation was referred to the Committee, they disposed of it by saying that it was a social and not a legal matter and so left it to another group of lawyers known as the Cabinet Steering Committee on Legislation, to advise the Government, with the result which you can see in s. 9 of the Divorce and Matrimonial Causes Amendment Act, 1953.

Because of this, and because there are matters which arise from time to time which are outside the scope of the Law Revision Committee but upon which the opinion of members of the profession with special qualifications would be valuable, I am specially interested in the proposals which Dr. Robson will put before you to-morrow. I do not know whether his proposals are practicable but they at least draw attention to a gap which could well

be filled, if not by an official committee at least by lawyers as individual citizens.

As one illustration of a specific problem which is occupying the attention of the Government and upon which the opinions of members of the profession would be valuable, I would like to mention briefly the problem of the punishment for crime and the treatment of offenders against the law. I do so at the request of the Attorney-General. In this field, we have not in recent years kept pace with the advances which have been made in Great Britain and the United States. On the eve of the last war—in 1939—Great Britain, under the influence of Sir Samuel Hoare, made a great step forward in the classification of persons and in corrective measures for those who were law-breakers but were not criminals. We may well take a lesson from Britain's experience as we have so often done before. I know that the Attorney-General hopes during the coming session to introduce a Criminal Justice Bill which will give legislative effect to some of the changing conceptions in penal policy. I think that the time is ripe for many changes in dealing with the offender against the laws of society. Opinions may differ as to the nature of those changes. Society must be protected against the constant and wilful offender against its laws. The keynote of the changes will be corrective training for the reformable—plain gaol for the incorrigible. Some changes in the probation system are visualized with a maximum of three years and a minimum of one year to achieve the purpose of probation.

New methods of treatment for young offenders with detention in a detention centre will provide a short sharp punishment for young offenders who need more than a mild lesson, but for whom other forms of detention are not suitable or advisable.

Borstal sentences, indeterminate up to three years with release decided by Prisons Board on the basis of progress in reformation and training will be provided.

Reformative detention will be replaced by corrective training—an extension of borstal training for slightly older offenders.

The present provisions as to habitual criminals and offenders will be replaced by a sentence of preventive detention with revised rules for its application.

The Prisons Board will remain.

Our proposals are based on the acceptance of two important principles. These are that imprisonment should be resorted to only where it is necessary for the protection of society or for the reformation of the individual, and that full use should be made of the probation method to achieve a satisfactory penal system. Secondly, short terms of imprisonment are, in general, useless, and may be harmful, and a sentence should be long enough to afford a reasonable opportunity for reformation of the offender or to give long-term security to the public in the case of the persistent offender.

I have given you this outline of our proposals in the belief that the views of the people who practise the law can be of considerable assistance in improving it and removing its imperfections. I know that some of you will take a keen interest in our plans and the Attorney-General would be pleased to know of any comments you may wish to offer.

Good Order and Government.

Now I want to say something about the good order and government of the country and of the kind of leadership which those members of the profession who think on these things can give.

Those who are concerned with the real welfare of our country and who are prepared to look more deeply than the surface tensions of our troubled world have been aware that for the past thirty years we have been going through a social revolution. It is not the kind of marxist revolution which certain starry-eyed intellectuals and unwashed agitators talk about, though in a way it is part of the western counter revolution which Communists fear even more than our armed stength.

The Social Revolution.

When the history of this century comes to be written, the really significant events will include not only the world wars and the growth of the national states, the resurgence of the East and the Communist bid for power, *but* the social revolution, and perhaps in the end this will be the most significant.

It began in the upheaval of the First World War and in the moral and social chaos of the decade which followed. Old values and standards were shaken and were by many discarded without new standards of value to take their place. The next decade was one of economic chaos but out of it the first signs of new standards began to emerge. The ideas of men like Beveridge and Keynes, to name only two, had caught the popular mind. It was the era of the New Deal in America and of social security in New Zealand. It was delayed for a further ten years in England by the Second World War but the pent-up forces of the revolution were enough to sweep Churchill from power at the moment of victory. It has come to be called throughout the western world, where its influence is felt, the welfare state.

We make a grievous error if we think of the Welfare State merely as a method of redistributing the national income by taxation on the one hand and pensions, family allowances and health and other benefits on the other. These are merely some of the outward signs of the revolution. The revolution is going on slowly and at times uncertainly but still inevitably in the minds and hearts of the people. It will go on until its momentum is spent and an acceptable condition of stability within the social order is achieved.

Just as the industrial revolution of the eighteenth century produced a shift of power to the middle classes, so this social revolution of the twentieth century is producing a change in the balance of power to the people. This has been well called the century of the common man. The Welfare State is for the benefit of the common man. There is sometimes a tendency to confuse the common man with what in a past age and a different world was referred to as the lower class. This is not so. The common man is man brought to equality.

Problems of Transition.

No disturbance of the established order takes place without raising issues of high policy. The times of transition (and these are times of transition) pose problems which call for the leadership of the wisest and best minds of our day. Here are some of the problems.

In this Welfare State as it is developing, there is a tendency for the common man to rely too much on the State and on the government of common men to regulate and to direct and to provide and there is a tendency for the State to do these things.

There is a tendency to ride rough-shod over individuals or minorities. There is a tendency to undermine the rights of property. There is a tendancy to demand rights and privileges without recognizing duties and responsibilities.

These are problems which must be solved, trends which must be guided into better ways before the revolution runs its course.

These are problems with which the man of law is well qualified by training and tradition to grapple.

The Rule of Law and Welfare Legislation.

It must be conceded, I think, that the Government of a Welfare State must have wide powers and carry on functions which until this revolution were quite outside its jurisdiction. But it therefore becomes the more important for the power of the State to be defined, the exercise of its powers to be constantly scrutinized and for adequate and enforceable safeguards against the abuse of power to be provided. It is imperative that the rule of law should prevail. This raises another unsolved problem—should the common man be presumed to know the law when in the Welfare State the law multiplies at so great a rate that even the lawyers and legislators cannot keep up with it all. It is a problem the solving of which is exercising the minds of thoughtful men to reconcile the complexity of welfare legislation with the rule of law which requires that the law should be certain, just, readily ascertainable and impartially enforced.

Equality without Uniformity.

The Welfare State postulates equality in much the same way as we postulate that all men are equal before the law. It is equality for a purpose, equality of opportunity, the equality of a floor below which no one may fall. But the plain fact is that, exept in this fictional sense, men are not equal. They have the awkward habit of being different, of being individuals. The preservation of this right to be different is essential in a free society. The Welfare State could very easily be misdirected towards that apparently benevolent form of dictatorship in which the State would provide for us all in much the same way as the State now provides for the permanent inhabitants of Her Majesty's prisons—security in exchange for liberty.

The legal profession has always been the guardian of the rights of the individual and of minorities and the need for vigilance was never greater if the new society is to remain a community of free men.

The Rights of Property versus the Rights of Man.

Because the welfare state involves the compulsory redistribution of wealth, it has an inherent danger that the incentives to produce and acquire wealth may become less keen. There has been a tendency over many years for the rights of property to give place to the rights of man. In many cases, this has been no more than a return to a more balanced and humane view of the rights of persons, but the pendulum could swing too far. Lawyers are, perhaps, better aware that most people of the need to maintain the just rights of property. They know the stabilizing effect of a property-owning democracy. They know that the protection which the law gives to the property which a man builds or creates or acquires is essential if the Welfare State is to produce and keep on producing enough wealth to maintain itself. There is always the danger that the Welfare State will kill the goose that lays the golden eggs and then die itself of slow starvation.

Rights versus Duties.

And, finally, I want to connect what I have been saying about the social revolution with the idea of service which I mentioned earlier. It is perhaps one of the least attractive aspects of the Welfare State that it tends to create rights and privileges without at the same time encouraging the acceptance of duties and responsibilities. We see to-day the break-down of service because people are too busy maintaining their rights and their equality to give anything away. The essence of service is giving, whether it is service to the community or in the home or in personal contacts with other people. The new society needs the spirit of service to make it a true community. In this, the profession is already taking a lead in action. In the leadership of thought, which in the end is of greater and more lasting significance, there is much to be done.

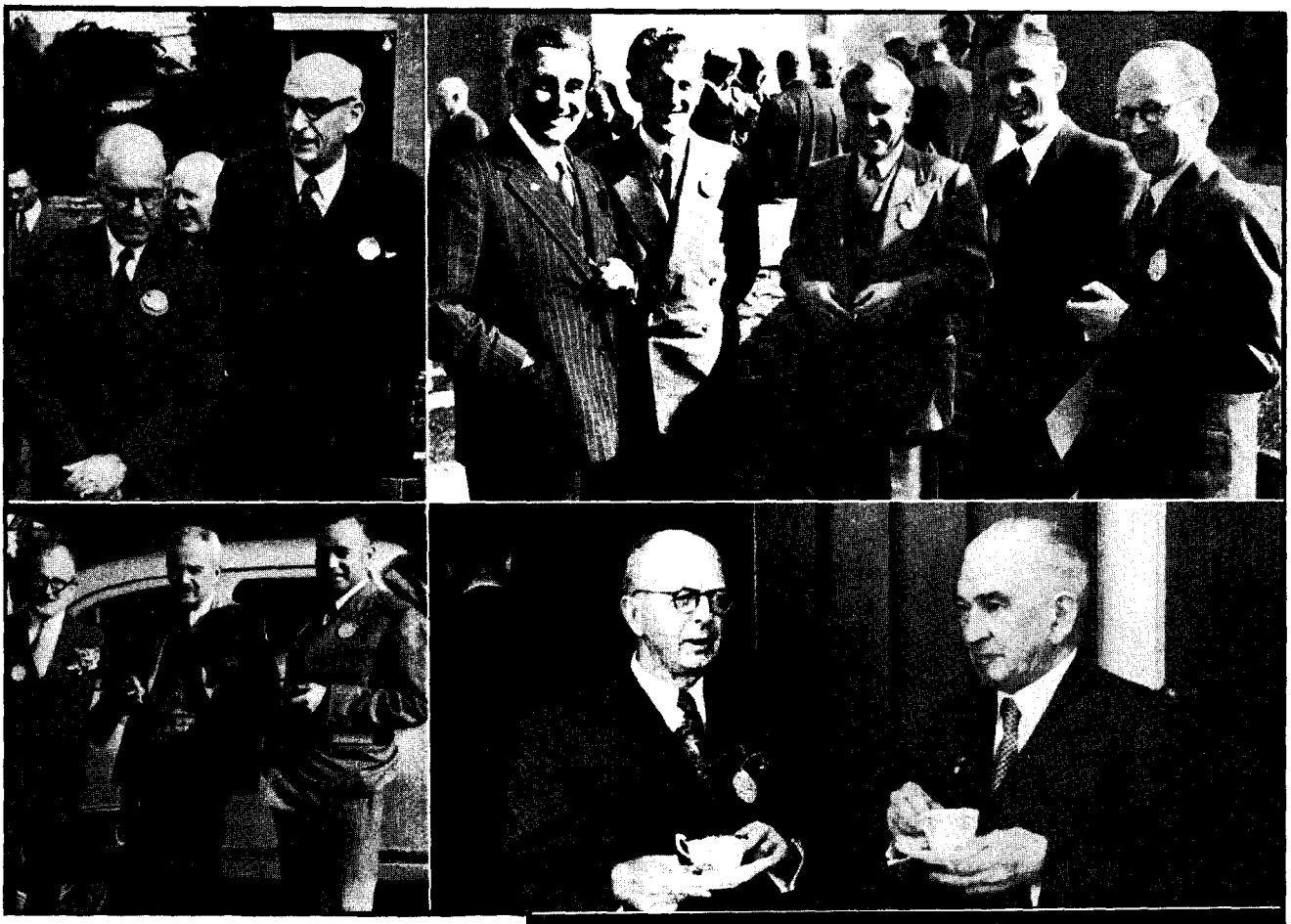
The Conference's Thanks.

Mr. F. J. Cox, President of the Auckland District Law Society, thanked Mr. Marshall for his address. He said: "It is my great pleasure and privilege to move a vote of thanks to the Hon. Mr. Marshall for his most interesting and illuminating address. When the President of the Hawke's Bay Society asked me to perform this task, I wondered why he had chosen me; and when I look round this large gathering and see so many distinguished practitioners more erudite and learned in the law than myself, I am still wondering. It may be (and this may be the only reason) because I hail from a little 'burg' situated nearer to the equator than Napier which is referred to, also, as the Queen City of the North and where, according to statistics, I think, one-third of the lawyers have their habitat. Whether or not that is a matter for civic pride, I am not prepared to say.

"I think, perhaps, I can rightly say I have been taken by surprise in this matter, for when Mr. Holderness handed the brief to me, one of the parties to these proceedings was the Hon. T. Clifton Webb, and I somehow feel I should perhaps have been served with a third-party notice or possibly a notice of change of parties. However, I am sure, gentlemen, we are all delighted that Mr. Marshall was able to come here to-day and fill the breach for the Hon. the Attorney-General when he is overseas. As has already been said this morning, the reason for that is that the Hon. Mr. Webb is one of the delegates to the Geneva Conference, and he left New Zealand to-day to attend that Conference.

"I am sure we have listened with great pleasure and interest to Mr. Marshall's speech, and the subject-matter will give us great food for thought. We are very grateful to Mr. Marshall for coming here to-day and setting aside his many arduous duties to do so. His address has been most illuminating, and I will ask members to carry this vote of thanks by acclamation."

This was done, and Mr. Marshall briefly thanked those assembled.



Top: (*left*), Messrs. W. E. Bate (Hastings) and F. L. G. West (Auckland); (*right*), Messrs. H. Mitchell (Wellington), R. T. Osmond (Cambridge), P. T. Gifford (Hastings), L. M. Smith (Hastings), and C. E. W. Wacher (Napier).

Second row: (*left*), Messrs. R. Hardie Boys (President of the Wellington District Law Society), L. F. Rudd (Auckland), and W. C. Deem (Inglewood); (*right*), Messrs. E. L. Commin (Hastings) and J. Houston (Hawera).

At Right: Messrs. W. G. P. Cunningham and Ian Pringle (Christchurch) and W. Willis (Napier).

Below: (*right*). Messrs. M. J. Morrissey, G. W. Stewart, and W. A. McLeod (Napier); (*left*), Mr. and Mrs. N. Whitehouse (Levin) and Mr. and Mrs. A. B. Lawson (Napier).

Around and About the Conference.

THE HAWKE'S BAY PRESS.

IT was very encouraging to notice the great amount of space devoted by the Hawke's Bay daily newspapers to lengthy summaries of the Conference papers, with apt comment on them in leading articles. The following leading articles, which appeared on the opening day of the Conference show that the local organs of public opinion appreciate the profession's place in the community.

THE LAW, THE LAWYERS, AND THE COMMUNITY.

"The first thing we do, let's kill all the lawyers." So runs Shakespeare's version of an age-old sentiment, a version which appears in Jack Cade's rebellion in "King Henry VI." The Jack Cade spirit has softened somewhat by to-day—for one thing, there is no sign of an imminent rebellion to encourage it—so that the lawyers of New Zealand, now meeting in Conference in Napier, can feel confident of a great deal more security and good will than were enjoyed by those of their profession in Britain a few hundred years ago. They should also be able to feel that their assemblage and their deliberations will helpfully bring their profession before the notice of the public. The law is in many respects a supreme institution, affecting every citizen. "Of law," said Richard Hooker, "there can be no less acknowledged than that her seat is in the bosom of God, her voice the harmony of the world; all things on heaven and earth do her homage, the very least as feeling her care, the greatest as not exempt from her power." This is an ideal—a noble ideal. The reality is rather less perfect. Yet above all men the law still stands, and its operation and application lie chiefly with those who make it their profession—the lawyers, whose corporate organisation, the New Zealand Law Society, is the authority now holding its members in conference.

For the average citizen, the law in the last decade or so has acquired a greater and a closer importance. It is now a commonplace that, in New Zealand at any rate, we are an over-governed people. There is hardly any aspect of our daily lives that the law does not touch. Unfortunately, the trend for many years was towards regulation, restriction and regimentation. Fortunately, in more recent times the effort has been to reverse that trend. Yet there remains a mass of authority, with the full force of law behind it, that still surrounds the everyday life and activity of the people. Much of that authority has its origin in the perpetuation of controls. (It was, for instance, once a matter of law whether a man should use a bag of cement or a sheet of corrugated iron; that is no longer entirely the case, but the intrusion of the law into even trivial activities still persists in many directions). Controls tend to do the law a disservice, in that they tend to bring the law into contempt. The Lord Chief Justice of England a short time ago observed that the diminution of crime in Britain was "undoubtedly due to a large extent to the lifting of controls."

It could be hoped that the lawyers, as a body, might make their voice heard more strongly and more clearly on the need for greater freedom from excessive government. Especially is this so in those instances where the expansion of government has actually denied the citizen his greatest safeguard against injustice—recourse to the Courts. It is both irritating and vexatious to be subject in so many respects to the discretion of officials or other authorities. It is wrong and harmful that, in some of these matters, a person affected should be unable even to challenge, in an impartial Court, the decisions imposed upon him. In much of the law that is made without specific reference to the Legislature—law that is made, or unmade, by Order-in-Council and by regulation—the provision exists that there shall be no right of appeal. In particular cases and in particular circumstances, it might be possible to justify such a provision. But as a trend it is wholly undesirable, and resistance to it could be greatly strengthened if reinforced more vigorously by the authority of such an institution as the Law Society.

As the functions of government have expanded, as the impact of the State upon private rights has become heavier, as bureaucrats have grown too numerous and too powerful, the essential character of the law has been affected. What is this essential character? It may be defined in many ways, but in the present context it can surely be said that law is the origin of all authority on which government is based. Under our democratic system, no Government can exist except by virtue of the law, and none can act except in its name. It was the reign of law to which the Greeks pointed as that quality which distinguished civilisation from barbarism. Under older tyrannies or modern totalitarianism the law, after truth, is the first casualty. In those societies where it is preserved in healthy and vigorous condition, it is thus precious. A full and clear recognition of its value should be an essential of enlightened citizenship. The lawyers of New Zealand, now in conference, will serve the community well if, in the course of their proceedings, they can promote such understanding and encourage among all citizens the respect for the law that is due to it.—*The Daily Telegraph* (Napier).

LAW AND COMMUNITY.

We walk into a lawyer's office with a slight feeling of trepidation—if not as lambs to the slaughter, at least resigned to some vague inevitable. But, whatever our unhappy thoughts and fears of the legal profession, the lawyer plays a vital part in our community. He is an officer of the Court, as much a part and parcel of our British administration of justice as the Supreme Court Judge.

For in many differing ways the lawyer protects the liberty of the subject. For instance, take away the independent defence counsel in a criminal trial, supplant him with an officer of a State department, and the way is clear for a law trial dominated by the State. However impartial the Judge, if the prosecuting counsel and the defence counsel were both servants of the one Government department (and so subject to instructions from the same superior in the department), the result could well be a complete abuse of the legal process as we know it.

The New Zealander charged with a crime, be it treason, assaulting a constable or any other offence, is assured that his defence counsel is unfettered by any State policy or directive. We are fortunate that we have never known it otherwise. Those who know the procedure of a Soviet State-dominated trial for treason, or can envisage a Court where the judge, prosecutor and defence counsel are employed at the direction of the State, are able to recognise the gross abuses that can arise under such conditions. . . .

Our constitution (although in the main unwritten) wisely keeps the judicial and the executive functions apart. The Courts are deliberately placed in as independent a position as the law can place them. The independent spirit of the legal profession is as important in maintaining the independence of the Courts as any checks and balances inherent in our constitution. It is no coincidence that in those countries where law trials have to-day become a mockery we find a nationalised legal profession. The nationalisation of this profession spells the prostitution of its ideals.

Again, it is through the Courts that many of our most precious liberties are safeguarded. By British tradition, special remedies are available to all to ensure a certain liberty to the subject. Any citizen can issue a writ of mandamus to compel a public officer to perform his duty; he can issue a writ of habeas corpus to free a person wrongfully detained, or a writ of certiorari to compel a Magistrate to perform his proper function. Each of these remedies (whether directed against a servant of the State or otherwise) will continue to protect fundamental rights of New Zealanders only if there is an independent legal profession to enforce them.

If the role of the barrister (that is, the Court lawyer) is at times the more spectacular, the solicitor too, performs an important function in the community. In a world becoming more complex day by day, it is to the solicitor (the office lawyer, as distinct from the Court lawyer) that we turn for help. We expect him, with equal facility, to draw our wills, transfer our land, arrange our loan, or to solve our matrimonial difficulties or our arguments with our neighbours.

Just as his work is varied, so it demands constant attention, specialised knowledge and, above all, sympathy and consideration for those he deals with. If at times we quibble at his fee, we should also bear in mind that some of his work is unremunerative and that he has a large staff dependent on the fruit of his labours.

These are but some of the duties and responsibilities of the legal profession, who will be meeting in conference in Napier and Hastings this week. With the barristers and solicitors will be the Chief Justice, Sir Harold Barrowclough, and other members of the Judiciary and Magistracy. All perform their parts in the administration of what we are proud to call British justice. In these informal gatherings, the public is entitled to feel that the freedom of our Courts and hence the liberties of our countrymen, are being preserved.—*Hawke's Bay Herald-Tribune* (Hastings).

A PERMANENT COURT OF APPEAL.

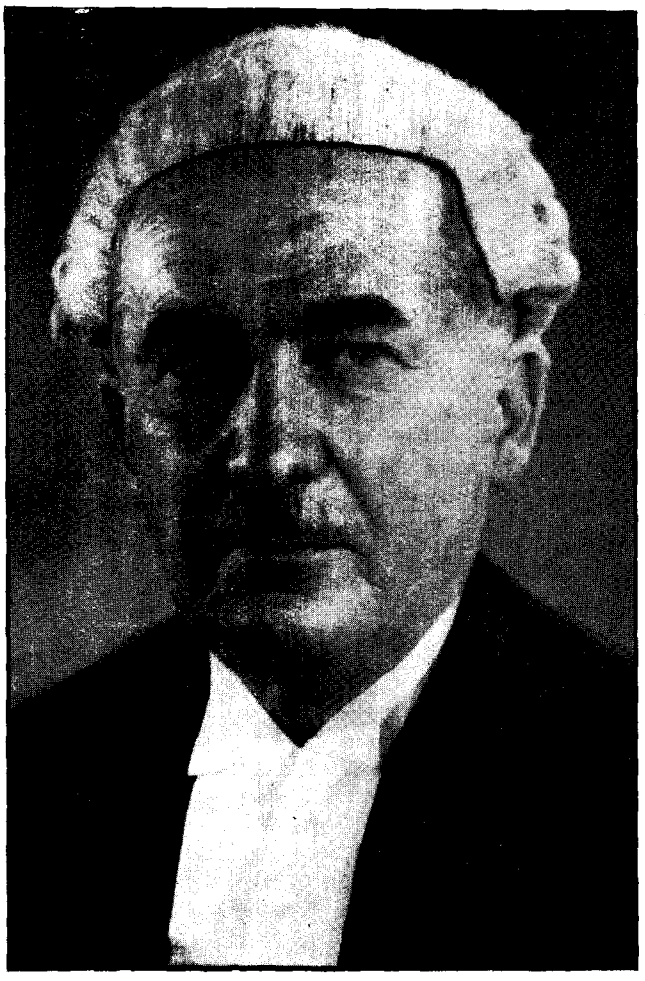
And Pensions for Judges' Widows.

By L. P. Leary, M.C., Q.C.

THE Court of Appeal in New Zealand is constituted on what is called the Full Court system, that is, an appeal lies against the decision of a Judge to his brethren on the same Bench. Such a method of appeal is, in my view, unsound and against the tendency of British judicial systems.

An examination of the Courts of Appeal throughout the Empire shows two types—the Full Court system that we have here, and the permanent Appellate Courts of England, Scotland, Canada, and Australia. Between these two extremes, the Empire offers many combinations of great interest and instructive force.

Generally speaking, the tendency is towards permanent Judges of Appeal. This, I think, is based partly on convenience and expedition of the work, and partly on the more satisfactory service that specialists can give. Some men are primarily trial Judges and some are primarily banco men; and, of course, there are men combining both qualities. Appeal work is mainly banco work. If all Judges are required to dispense all branches of the law and do appeal work as well, then the reading of every one of them must be encyclopaedic in its range. This is asking a great deal. If some, however, are permitted to specialize in appellate work, they become expert and expeditious.



Clifton Firth, photo.

Mr. L. P. Leary, Q.C.

British justice throughout the world is our national boast, adaptable to all races and creeds, blind and colour-blind. It is as trusted in darkest Africa as in Westminster. In all but the self-governing Dominions it is managed by the Colonial Service. This great Department of State orders the judicial arrangement over Colonies, Protectorates, and Trusteeships; from the Seychelles, a group of islands in the Indian Ocean with a total of 150 square miles and a population of 35,000, to Nigeria covering 370,000 square miles (half as large as Germany) and with a population twelve times greater than New Zealand's. In the Seychelles there is a Judge, a Magistrate, and two Crown Law officers. In Nigeria, there is a Chief Justice, seventeen puisne Judges, forty Magistrates, an Attorney-General, a Solicitor-General, three Legal Secretaries, four Senior Crown Counsel, and twenty Crown Counsel.

In the course of centuries, the Colonial Service has acquired immense experience of Judges and Courts and the best way to manage them. In the light of this experience, it can mould the Courts over-night by Order in Council, or, at any rate, by Imperial Statute unhindered by lengthy negotiation followed by local legislation that self-governing Dominions go through. What that Colonial Service finds best it can apply.

An examination of the great work of the Colonial Service shows that where the population is sparse and over wide territories and legal business is small, the Judges at first instance gather from outlying parts and deliberate in groups in the Court of Appeal on the Full Court system. But even where the countries are dispersed but the legal business is considerable, the tendency is for the Court of Appeal to become, as far as possible, a Court of permanent specialists. May I give a few examples.

Let us take the West Indian Court of Appeal. This is governed by the West Indian Court of Appeal Act, 1919, (9 & 10 Geo. 5, c. 47) passed at Westminster; and the Colonies of Trinidad and Tobago, British Guiana, Barbados, Leeward Islands, Grenada, St. Lucia, and St. Vincent are grouped for this purpose. The Chief Justices of these Colonies, with the Chief Justice of Trinidad presiding, meet and deliberate as a Court of Appeal from all these possessions. Except for the fact that there may be puisne Judges who do not have this privilege, it may be said to be a Court of Appeal on the Full Court principle.

It is to be noted, however, that even in this Act there is power to appoint as a Judge of the Court of Appeal a barrister who has not less than eight years' standing. The germ of permanency is evident in this Judge.

Then take the West African Court of Appeal covering Gambia, the Gold Coast, Nigeria, and Sierra Leone. It has for its Court of Appeal Judges from the respective Supreme Courts, but it is to be noted that, under the Imperial Order in Council No. 1330, of 1948, a full-time President and a full-time Justice of Appeal have been appointed, and there is power to add permanent Justices of Appeal. Here the element of permanency has been applied in part to this Court of Appeal.

The East African Court of Appeal is even further developed in respect of permanency. It covers Aden, Kenya, the Seychelles, Somaliland, Tanganyika, Uganda, and Zanzibar. The Court consists of the Judges of the Superior Courts of these territories and, in addition, there is a permanent President, a permanent Vice-President, and at present two permanent Justices of Appeal.

The Views of the Colonial Office.

Commenting on the structure of these two latter Courts, the Senior Legal Assistant of the Colonial Office wrote a short brochure last year upon the Colonial Legal Service. He is the Rt. Hon. Sir Sydney Abrahams, Kt., B.A., LL.B., Q.C. He is a member of the Judicial Committee of the Privy Council and a former Chief Justice of Ceylon. In this publication he makes special mention of the permanency of these Justices of Appeal.

The reason for this attitude of the Colonial Office is made clear in a work which was recommended to me by the Colonial Office when I wrote to it. It is entitled, *The Colonial Service*, by Sir Anton Bertram, formerly Attorney-General of the Bahamas; then puisne Judge, Cyprus; then Attorney-General of Ceylon, and latterly Chief Justice of Ceylon. At p. 131 of this work he comments on the unsatisfactory nature of the Full Court system. This is the language he uses:—

> When the Supreme Court consists of several Judges, no doubt an appeal could lie from a single Judge to the Full Court. But it is not satisfactory that an appeal should lie against the decision of a Judge whose brethren sit on the same bench with him and with whom he has worked in daily co-operation.

It may be well to pause and examine the implications of this observation. He assumes a Bench working in daily co-operation. Some of them meet as a Court of Appeal, and one judgment, or more, of each member may be under appeal. Although the member of the Court from whom the appeal is brought does not sit in the Court, it would be surprising if at times a judgment under appeal were not discussed by the Judges hearing the appeal with the Judge appealed from. The members of the Court may, therefore, hear arguments which were not expressed in open Court, and which are not answerable by counsel.

There is also another disadvantage which may arise from the human nature of even friendly colleagues. If, in their appellate jurisdiction, they find one of their brethren in error, then he, in his appellate jurisdiction, may not be wholly disappointed if he finds them fallible also. I think these are the things that the Colonial Office has in mind when it feels "that it is not satisfactory" that an appeal should lie to his brethren on the same Bench with whom a Judge is working in co-operation. This conclusion might be said to be one aspect of the maxim that justice should not only be done but should seem to be done.

Dominion Appellate Courts.

Turning now from the policy of the Colonial Office to the self-governing Dominions. When Australia by its Constitution Act at the beginning of the century settled its judicial arrangements, it provided for a High Court as its Court of Appeal composed of Judges permanently appointed. There are relics of the old Full Court arrangements still there, for example, in Victoria; but in New South Wales they are still considering the desirability of fusing law and equity. These, I think, are only indications that self-governing Dominions are not as susceptible of desirable legal reform as Colonies in which the Imperial voice can be heard at once.

Again, in Canada, the Court of Appeal is permanently appointed.

Lastly, turning to the great Imperial examples. In Scotland, the Inner House (which is the Court of Appeal) has two Divisions, one presided over by the Lord Justice-General and the other by the Lord Justice-Clerk. Judges of first instance can be invited to sit on appeal to make the Court up to five or even seven, but they are not members of the Court as of right.

It is almost superfluous to mention the English Court of Appeal, which everyone understands. It consists of six Judges, *ex officio*, and eight ordinary Lords Justices of Appeal. The Judges *ex officio* are the highest judicial officers of the realm, such as the Lord Chancellor, the Lord Chief Justice, and the Presidents of the Divisions. You can turn up the constitution any time you like in the White Book.

Opposing Views Considered.

Why, then, do we in New Zealand adhere to what I say (I hope without disrespect) the most primitive of all forms of the Court of Appeal?

It is a difficult question to answer because it is a complex one; but one reason has been the continued opposition of the Judges. One must sympathize with the view that they are appointed to judgeship in the Supreme Court which carries with it automatically a seat in the Court of Appeal; and, while the public knows a Judge almost wholly through his work in the Supreme Court, a seat on the Bench of the Court of Appeal is an office of dignity and honour. At the same time, some Judges have recognized the desirability of the change that I advocate; and I am not without hope that they will consent to the change if outside opinion is clearly in favour of a permanent Court of Appeal.

Any view as to the immutability of judicial office in this respect would involve the view that the principle on which the Colonial Office and the judicial systems of Great Britain, Scotland, Canada, and Australia have constituted their Courts of Appeal is unsound. I think it safe to say that the change must come some day.

Another objection of the Judges was that the proposed Court of Appeal would consist of three members, and it was suggested that a strong Judge might dominate such a Court. The force of this objection is largely met by the fact that a great number of decisions of the Court of Appeal are made by three Judges. In any event, we are entitled to assume that a man of sufficient calibre to be a Judge will not sink his opinion against his better judgment.

The next objection to the separation of the two Courts that has been made by the Judges is that the Court of Appeal will be out of touch with public sentiment, and that the Supreme Court will lose the advantage of its Judges meeting in conference on appeal, and that they be relegated to their own districts.

The first of these (the Court of Appeal getting out of

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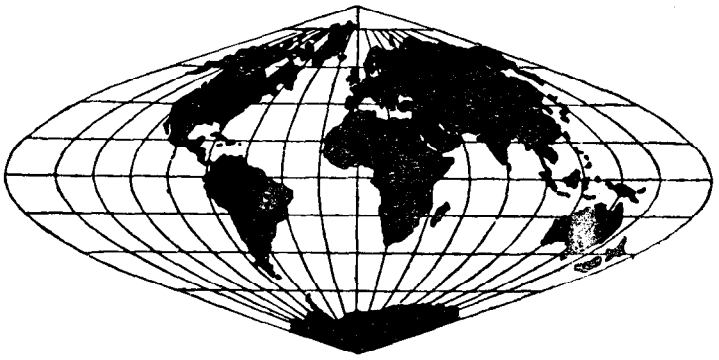

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AGENTS THROUGHOUT THE WORLD

touch) is supported by quoting the report of the Committee under Lord Hanworth, M.R., in 1943, suggesting the adoption in England of the Full Court system. I have not had access to this report; but may I comment that I do not think that this particular recommendation has appealed to anyone in any part of the world sufficiently to bring about a change. The Colonial Service has acted in the teeth of it. The quality of the work of the permanent Court of Appeal in England has nowhere, to my knowledge, been attacked. We were informed recently by distinguished legal visitors that this Court deals with 600 appeals a year, and a great number of decisions are given orally. This looks as if the Court of Appeal is very much in touch with the world.

The second (as to the Judges in outlying districts getting out of touch) is supported by a dictum of Sir John Salmond in 1913, when, as Solicitor-General, he advised the Attorney-General, then Mr. Herdman:

> The objections to this proposal seem to be so formidable . . . the Supreme Court Judges will be deprived of the stimulus of the periodical meetings of the Court of Appeal, and will be permanently relegated to the isolation of their subordinate position in their own districts. This will not conduce to their efficiency.

This observation should be put in perspective. The question of a separate Court of Appeal had been raised by Dr. Findlay (later Sir John) in 1908, when, as Attorney-General, he introduced into the Lower House a Bill for its establishment. It remained under consideration for two or three years, and the Bill was withdrawn partly because the Judges opposed it. Dr. Findlay, as he was then, lost his seat in 1911. The Bill turned up again in 1913; and, when Sir John Salmond was asked to advise on it, I understand he made the observation quoted above. None the less, Sir Francis Bell, who in his day was regarded as one of the most experienced and best informed lawyers in New Zealand, said in Committee on the Bill:

> I, myself, have always been in favour of a separate independent and peripatetic Court of Appeal.

After making this observation, he termed the Full-Court system of the 1913 Act, "the next best thing."

If we are to balance these two authorities against each other, I favour the view of Sir Francis Bell. In making this decision, I am influenced by the fact that the judicial business of New Zealand was very much smaller in 1913 than it is now. When Sir John Salmond accepted judicial office, having works of international repute to his credit, he found that time hung on his hands and it was then that he turned to his famous work on Contract as a means of occupying himself.

It is probable, therefore, that many Judges were equally short of work, and were denied the general education that a busy life on the Bench would provide.

Undoubtedly, a Judge must gather advantage from collaboration with his learned brethren; but, if one examines the position in Auckland and Wellington, there are usually three Judges in residence, and if they had the permanent Judges of the Court of Appeal sitting in these centres there would be opportunity for consultation among six Judges.

It is true that Judges from other centres would not always have this advantage unless the Court of Appeal visited those centres, but the system of temporary transfer would help considerably.

Moreover, there is an abundance of legal literature in our Law Reports and periodicals by which a Judge can keep abreast of legal thought. To postulate that the Judges, to keep themselves properly educated, must attend the Court of Appeal is to condemn the systems of England, Scotland, Canada, Australia, and the considered choice of the Colonial Office. A right to co-opt a puisne Judge temporarily to the Court of Appeal has been found satisfactory in other countries, and might help in this connection.

The Real Answer.

I feel in writing this that a helpful sidelight on Lord Hanworth and Sir John Salmond would be shed in learning how some permanent Court of Appeal recently appointed has, in fact, worked out. I, therefore, wrote to see what had happened in East Africa, where they abandoned the Full Court system in 1950 and have now, as I have said, a permanent Court of Appeal. I knew a practitioner in Kenya, and this is his reply:

> Prior to January, 1951, the Court of Appeal for Eastern Africa consisted of the three Chief Justices of the East African Territories who sat in Kenya, Uganda and Tanganyika to hear appeals and this Bench was augmented from time to time with puisne Judges on loan from each of the Territories. Due to the extreme pressure of work this system was found to be unsatisfactory and upon representations being made from both the Bench and the Law Society we were successful in achieving in January, 1951, the formation of our own Court of Appeal under a special Order in Council to that effect.
>
> The present Court of Appeal sits primarily in Nairobi throughout the year and consists of a President, Vice-President, and two Justices of Appeal appointed from the Colonial Bench. The members sit only in their appellate jurisdiction and as members of this Court. They visit Uganda and Tanganyika during the year for the hearing of a short list of Appeals, but the main bulk of their work is done in Nairobi. Their jurisdiction covers both civil and criminal work and Appeals are entertained only from the Supreme Court of one of the Territories under their jurisdiction; I may add that their jurisdiction has been extended to cover Zanzibar, Aden and British Somaliland, but I do not think this is particularly relevant in so far as you are concerned.
>
> The experiment has been entirely satisfactory, in that they are able to devote the whole of their time to the hearing of Appeals and there is no consequent encroachment upon the time of the Judge who normally would be sitting in an ordinary Supreme Court capacity as a Judge of his own Court.

This, in my view, is the real answer: it has been tried, and it works.

Having considered all the arguments of the Judges in favour of the retention of the present system—namely, the lowering of the status of the Judges, the isolation caused by the separation of the two Courts, and the fear of domination in a three-Judge Court, I now turn to the legal profession which has, in the main, supported the change since 1905.

The Present System at Fault.

The criticism by the profession has turned partly on the matters that I have suggested arose in the minds of the Colonial Office (although it is only right to say that the quality of the men that have been appointed to the Bench in New Zealand has done much to mitigate such criticism), partly by the delay in the work of the Court of Appeal, and partly that the system puts so much work on the Judges that their health suffers.

May I deal with the question of delay.

I examined the *New Zealand Law Reports* for 1952, and ran through the Court of Appeal cases there. I omitted 1953, because of the illness and absence of Judges. In round figures, the reported cases number between forty and fifty if one includes Full Court decisions. In very few cases, mainly criminal appeals, were the decisions prompt; but it is not an overstatement to

say that on the average the decisions came out three months after sitting, and in the last three—namely, at pp. 848, 898, and 962, two sittings of the Full Court in March delivered judgment in September, that is, six months later, and one of the Court of Appeal held in April experienced a similar delay. In one or two criminal appeals, the delay was as much as three months. I suggest all these delays are too long.

Again, a practitioner hearing that I was speaking on this topic telephoned me and mentioned an appeal in a matrimonial question. The judgment of the Supreme Court was given in July, 1952, the appeal was reached on March 20, 1953, and judgment was given on February 26, 1954—that is, eleven months later. The delay was caused by special circumstances in that the matter was of general importance, and, at one time, it was considered that both Divisions should sit upon it together. The illness and death of the Chief Justice, and the interval before another appointment, have been partly the cause of the delay.

I think it safe to say that every case of delay can be explained on grounds that do not reflect on the Judges concerned. The difficulty and importance of the question, illness, absence, infrequent sittings, and the like, all absolve the individual Judge. But all these exceptions indict the system itself. Why should any matter take three months to decide, much less eleven? If these appeals had been before a permanent Court of Appeal, they could have been determined within a short time after the hearing.

Under the present system, Judges proceed to the Court of Appeal. They hear a number of cases, and, before they are able to deliberate and decide upon some of them, they depart to their respective centres. Then ensues a laborious system of correspondence, each Judge circulating his judgment for comment by his brethren. This comment has to be made in a busy session in which the Judge has Chamber work, is hearing more cases, and may well have considered decisions to make. The arrears of work accumulate; and the most determined and hard-working Judge finds it difficult to keep that close touch with the case he heard last week, last month, or even last year. It is remarkable how they have succeeded in keeping touch, but at what cost! Look at the casualty list.

To sum up, I would invite you to look on this matter the other way.

A Permanent Court of Appeal at Work.

Let us assume that we have a Court of Appeal permanently appointed and specializing in the work. The work is up to date and Judges are not overworked. Would anybody having such a system seriously suggest we should revert to the present system? You can test the question easily. The Magistrates now have as their Court of appeal the Supreme Court—none of them sits on it. Would anybody advocate that the Court of appeal from our Magistracy should be changed, and that they should themselves constitute their appeal tribunal with a Full Court of three to five Magistrates?

If it is decided, therefore, that on grounds of specialization, smoothness of work, rapidity of judgments, and health of the Judiciary, the constitution of the Court of Appeal should be altered, there are some matters I should like to mention.

1. I think it is desirable that the Chief Justice should be a member of the Court of Appeal, *ex officio*. This, while not universal, is a very common practice and provides a link between the Courts.

2. The best man should be appointed to the Court of Appeal. If he is already a member of the Judiciary, that should be an additional reason for his appointment. Promotion of Judges is practised in England, and I glanced through a Canadian report recently and found that two of the Judges of Appeal were appointed from the High Court.

3. In England, there is no distinction in salary between a Lord Justice of Appeal and a puisne Judge. I suggest that that is sound in principle.

4. For the system to work properly, there must be an adequate number of Judges in both Courts, and a careful appraisal of the number required should be made in conjunction with the Judges themselves, and both Courts filled so that every member has leisure for recreation and general reading.

A Judge recently told me that the only exercise he had was walking to church on Sunday. He worked every night until eleven o'clock. He is dead—died in harness.

5. Another angle for consideration of the work that the Court of Appeal would undertake. Doubts have been expressed that there would not be ample work for it. I have mentioned that the reported appeals, including criminal appeals, approximate fifty in the *Reports*. The records of the Court of Appeal shew that, for the last ten years, the appeals have increased more than twice that number. If, as in England, all applications for new trials were directed to it, and facilities were made for direct reference to it of other matters of law such as cases stated by our Government Departments, including the Stamp Office, preliminary questions of law to be argued at trial which would dispose of the whole action, and, I think, direct appeals from the criminal judgments and sentences by Magistrates, the Court would find itself with its hands more than full. Even as matters are, it would be busy; but there could be desirable additions to its work that would lighten the burden of the Supreme Court.

These are all the parenthetical observations that my reading has suggested to me, and I emphasize that they are only suggestions. The main submission does not stand or fall on their soundness.

To resume the main question: I mentioned the early history of the movement for a permanent Court of Appeal, and now I come to its latest development.

After the war, the Hon. H. G. R. Mason, Q.C., when Attorney-General, brought down a Bill for a permanent Court of Appeal. It was closely examined by the Law Societies and by the Judges. It received warm approval from the New Zealand Law Society, and some criticism from the Judges. The Law Society unfortunately, I think, and I was a party to it, made certain provisoes with regard to the suggested personnel of the Court of Appeal which were not appreciated in some places, and the Bill was dropped.

The movement has, however, continued, and from time to time the Law Society has passed resolutions and made representations to the Government in respect thereof. It was well known that the late Chief Justice, Sir Humphrey O'Leary, was opposed to the proposal. Upon his death, many practitioners felt that, high judicial appointments being made or to be made, it was a suitable time to bring forward again the necessity of a permanent Court of Appeal, and this was coupled

with a feeling that the position of the widows of deceased Judges also required examination. Many practitioners in Auckland expressed their views in writing, and thus originated a move whereby three officers of the Council of the New Zealand Law Society were requested to wait on the Attorney-General and make representations on both matters. This deputation will take place shortly, and in the meantime an expression of views from this assembly would, it is thought, be helpful.

Pensions for Judges' Widows.

At first sight, the two topics may not seem to be closely related, but, in my view, they are. Let us examine the position of a man who is selected for judicial appointment. It goes without saying that he has been a student of the law. Many lawyers are businessmen and they accumulate wealth parallel with, and even arising from, their practice. The type of lawyer who is selected for a Judge is more a scholar than a businessman. I can remember no wealthy man ascending the Bench. By the time the lawyer has attained the age to be invited to the Bench, he may own his home and some small insurances and not a great deal else. He has acquired sedentary habits, his physique has at any rate not been strengthened by the energy that he put into his mental work, and he goes on to the Bench at a time when his physical properties are on the wane. He is pitchforked into a cauldron of unfamiliar work; and I heard one eminent Judge remark that he never worked so hard as when he was appointed to the Bench. The strain is very considerable. It is not a high percentage of Judges that see their span of office out to their seventy-second year. They fall by the wayside from various causes; but, in my view, in many cases, these physical failures are precipitated by the tremendous accretion of work that has been imposed upon them at a time when they should be letting up.

Sooner or later they get warnings that they are not as well as they should be. They are aware that they will get a pension, but if they die their wife will be left with slender resources. I have postulated that your Judge has not been a man of business and acquired wealth. The effect upon the Judge is a twofold anxiety. He not only fears that he will not be able to carry on the burden, but he has the gaunt spectre at his elbow that, if he dies, his wife will have little more than a pittance. The well-known words of Horace have a grim application, "*Post equitem sedit atra cura*" (Black care sits behind the knight).

We have thus bearing down on our married Judge an unfair burden of overwork, declining physique, and anxiety for the future. It is a terrible reflection that on his death, which in many cases he knows to be near, his wife will drop from an income of £2,600 a year to little more than a tenth of that amount.

Now, I ask you, is this a fair risk to require of a Judge to ask his wife to take? Sometimes an advocate is called upon to make an observation that does not carry his judgment: but, if ever I were sincere, it is at this moment. If some of our dead Judges could see the struggle their wives are making, they might well attend this meeting and say: "Gentlemen, we deserved better of you than this."

I am not overlooking that small grants are made sometimes by Cabinet. And they are small: and why should a wife have to ask for a gratuity?

As usual, I suppose there will be opposition.

I think that the Attorney-General could establish grounds for such pensions, particularly as the notion is not new. Our statutes provide for the widows of Magistrates, Judges of the Native Land Court, and members of the Public Service. (1)

The position of a Judge is a special one in that no one ascends the Bench in his youth. In many other branches of the service of the State, men enter early in life, with their emoluments and pensions for themselves and widows in black and white from the moment of entry into the service. They can govern their lives upon a plan.

On the other hand, a young man entering the law, who may be the material of which Judges are made, does not think of becoming a Judge until half his working life is run. He is then asked to make considerable sacrifices, and one of them is that from then on he can engage in nothing that will bring him private gain. I apprehend that he cannot take directorates or engage in business or professional activity for the duration of his appointment. When he might have started making enough and saving enough for his wife's future, he is asked to accept a salary that scales back to nothing more than a moderate living, and, indeed, if he has children still to educate or other responsibilities, he may well have to encroach on his savings.

If Judges' widows received a pension of £750 a year—I name the figure as a minimum—the burden on the taxpayer would be a feather's weight compared to the incalculable advantage of having a Judiciary confident of the future.

The Law Society's Views.

I shall shortly move a resolution that this meeting expresses its support of the proposals to be made by the delegates to the Attorney-General for a permanent Court of Appeal and for pensions for the widows of deceased Judges. I have very little doubt that everyone will be in favour of the second of these proposals; but I should like to feel that the first of these proposals carried the blessing of their Honours as well. As it is possible they may read, or even hear, this address, I take the liberty of putting forward two further considerations.

I think it must be conceded that the change to a permanent Court of Appeal will come some day. In 1883, we had five Judges; in 1915, we had eight Judges; now we have twelve Judges, and the establishment is too small. We can do with two if not three more. With the present rate of growth in New Zealand, in a few years we shall need seventeen to twenty Judges. How are we then to man the Court of Appeal on the Full-Court system? The recent amendment when Her Majesty was here permitted a Division of six in the Court of Appeal, so that one Division can be subdivided into two Benches of three each. When we have twenty Judges or so, and they all sit in appellate jurisdiction, are we to have as many Benches as three or even five goes in to twenty? I suggest such continuous and abrupt changing of the personnel of the Court of Appeal would lead to grievous results in that consistency of judicial thought and common understanding of appellate problems must suffer. The element of specialization in the Court of Appeal would be called for then as never before.

That brings me to my last point. The system has

(1) Superanuation Amendment Act., 1948, s. 20. Superanuation Amendment Act, 1950, s. 14.

led to the overworking of Judges and delay to litigants. This is inherent in the system. Things may improve temporarily but the trouble will remain. Might I, therefore, put the case to their Honours of their successors in office. Will not the Judges to come be grateful to the present Bench if, in making a personal concession now, they give their blessing to a scheme that will benefit those that follow on ?

I would like to say before I propose the motion, that, if any observations of mine cause pain to any persons in high places, then my apology is that I hold them in such esteem that I hoped they would not object to frank and sympathetic discussion.

I further feel that it would be both wise and courteous if an approach were made to their Honours for a conference with the representatives of the Law Society with a view to obtaining their approval to these proposals and discussing any modification of them that may be desirable. It would be a great help if Bench and Bar were in agreement.

At the conclusion of his Address, Mr. LEARY said : " I felt that, before this assembly met, a conference might be held with the Attorney-General. That was done, and the respective points of view were discussed and ironed out, with courtesy to the Judges ; and possibly it will be fruitful of results. I am not privileged to divulge to you the opinion of any particular Judge, but I have discussed this with some of them, and I am reasonably confident that there is a way out.

" Now, I will propose two motions, and I will put them separately, as one will probably pass without discussion, that of the provision of pensions for the widows of Judges, whereas the other might be the subject of discussion. I propose the two motions, then in this form. I move :

> THAT *the members of the Legal Profession at this Conference express their complete endorsement of the proposal to be laid before the Government by the New Zealand Law Society for the provision by law of adequate pensions for the widows of deceased Judges.*

" That is the first motion. The second has similar wording as to the commencement but there the proposal is for

> 2. *A similar endorsement of the proposals to be laid before the Government by the New Zealand Law Society for the establishment of a separate Court of Appeal consisting of Judges permanently appointed thereto.*

The President then called on Mr. T. P. CLEARY to support Mr. LEARY'S address and to second the two motions.

SUPPORTING ARGUMENTS.

BY T. P. CLEARY, LL.B.

AS Mr. Leary has said, the Law Society has on a number of occasions approved the setting up of a separate Court of Appeal. I have for many years shared this view, and, when Mr. Leary suggested that I might support his motion, I thought it not only a privilege but my duty to do so.

THE VIEWS OF THE HON. SIR DAVID SMITH.

After Mr. Leary had prepared the paper which he has read, he received from the Honourable Sir David Smith a memorandum on the subject which Sir David had been good enough to write. All will remember how Sir David's industry, insight, and kindliness were for many years a source of strength to the Bench and of inspiration to the Bar. This is what he has said :—

"1. My experience on the Bench led me to the conclusion a long time ago that a separate Court of Appeal was desirable. As nearly all my colleagues held a different opinion, I did not think it proper to express my view in public although I did express it in private conversation when the subject came up for discussion. Now that I have left the Bench, I see no reason why I should not state my view publicly.

"2. My chief objections to the present system of appeal are the inefficiency of its method and the undue strain it tends to impose upon some Judges.

"3. Upon the inefficiency of the method, I would make these comments. A New Zealand Judge must deal with the whole field of the law. He is, nevertheless, expected to give a decision in each case that will stand up to expert criticism. In the Supreme Court, he generally reserves judgment. In the Court of Appeal, the Court almost invariably reserves judgment. When judgment is reserved, a member of the Court is not usually ready to consult usefully with his brethren of the Court until he has investigated the authorities cited by counsel and until he has pursued any lines of inquiry that have suggested themselves to him. Frequently, before he can do these things, at least in the more difficult cases, he has returned to his circuit. He has then added a number of reserved Court of Appeal judgments to his reserved Supreme Court judgments and he is engaged daily in the work of the Supreme Court. He spends many of his evenings working on his reserved judgments. Sometimes, the library of a circuit town is inadequate for his purpose and his consideration of an important case is deferred until he returns to his headquarters. By the time he has investigated an appeal, the Judge has not infrequently written a draft judgment. His brethren of the Court, working as occasion permits, each on his own account, often develop differing views which need discussion. This discussion usually takes place by correspondence. Sometimes discussion is deferred until the Judges of the Court meet again at the Court of Appeal. On rare occasions, a special conference is called for the discussion of a particular case, though some Judges may find it difficult to leave their circuit work for the purpose. The not infrequent result of this process has been, in my view, consultation which has been less effective, judgments which have been more numerous, reasoning which has been more divergent, and delay which has been much greater than would have occurred if the case had been heard by a separate Court of Appeal. All in all, the present method of determining an appeal when compared with that of a separate Court of Appeal involves, I think, much inefficiency and much sheer waste of time.

"4. On the subject of the strain on the health of Judges, I would say that, in my observation, the present procedure has clearly placed an undue strain upon the health of a number of Judges.

"5. It is sometimes said that, if a permanent Court of Appeal were constituted, the prestige of the Supreme Court Judges would be lowered. I do not agree with this argument. In other jurisdictions, the prestige of the Supreme Court is not lowered by the existence of a separate Court of Appeal. Each type

of Court is regarded as having its own work to do. In my opinion, it is the Supreme Court work, particularly in the administration of the criminal law, which looms most largely in the public mind. It is in this field that the Chief Justice and the puisne Judges of the Supreme Court must pre-eminently uphold the dignity of the law and secure the respect of the public. The Judges of the Supreme Court may be assured, I think, that their standing in the eyes of the public will be largely regulated by their conduct of criminal cases—with dignity, with an adequate summing-up in each case without misdirection, and with the balanced tempering of justice with mercy in the imposition of sentences.

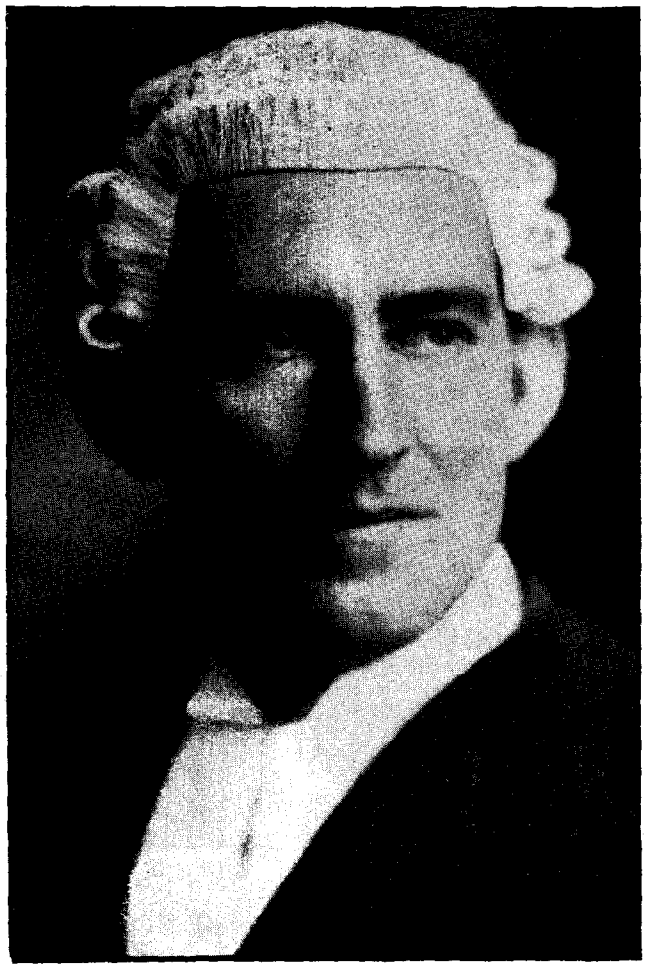
"6. If a permanent Court of Appeal were created, it would deal, I assume, with appeals in civil and in criminal proceedings. Each type of appeal would, however, be dealt with, almost without exception, upon a printed or typewritten case. In order that each Judge of Appeal may deal satisfactorily with both classes of appeal, he should be chosen with reference to his ability in appellate work, both in civil and in criminal matters.

"I have no final views on the actual constitution of a separate Court of Appeal, but I would make these comments. Assuming that the Court would deal with both criminal and civil appeals, I think that the Court would probably be best constituted if it consisted of the Chief Justice as a member of the Court, *ex officio*, and of three Judges who have had Supreme Court experience for not less than, say, three years. While it might be possible, as it is in England, to appoint a barrister direct from the Bar to the Court of Appeal, I think that such an appointment should be rarely made. I think that the Chief Justice should sit on criminal appeals whenever he thinks fit so to do. In that way, he could keep in close contact with the administration of the criminal law in all its phases. Following the English practice, he should not be expected to sit on civil appeals unless an emergency arose as, for example, when a Judge of the Court of Appeal became ill. In that event, the Chief Justice need not himself sit but might, if he wished, nominate another Supreme Court Judge for the purpose. Whenever the Chief Justice sits on any appeal, he should preside.

"I think that a Court of three for civil purposes is supported by the fact that three Judges constitute a quorum of our present Court of Appeal and that three Judges also constitute a Court of Appeal in England.

"7. If a permanent Court of Appeal were established, I think that the work of the Supreme Court could be dealt with by fewer Judges than at present. I think, also, that, notwithstanding the reduction in numbers, each of the Supreme Court Judges would become able to dispatch the business of the Supreme Court with greater celerity and with even more satisfaction to himself and to others than he can do at present.

"8. Emphasis is sometimes placed upon the advantage of bringing the Judges together at the Court of Appeal for discussion. There is some advantage in this meeting for general discussion, but it is, I think, much too dearly bought. Furthermore, discussion can be obtained in other ways. A new Judge is usually in Wellington for a few weeks when he is given hints and tries out his 'prentice hand. Thereafter, he seems to undertake the work of the Supreme Court with confidence. What he needs most, in my view, is practice in the conduct of criminal cases, in the preparation of an adequate summing-up in any case, civil or criminal, and in the proper assessment of sentences. Often the Judge does not get very much time for the preparation of a summing-up.



S. P. Andrew, photo.

Mr. T. P. Cleary.

"I think, also, sufficient recognition is not given to the fact that each Judge of the Supreme Court is a Judge whose jurisdiction extends throughout New Zealand and is not limited to any particular district. In my view, it would be to the advantage of the administration of justice if the Judges went on circuit from time to time in districts other than their own. The late Sir Charles Skerrett thought that the ideal system would be to concentrate all the Judges in Wellington and send them on circuit throughout New Zealand in a manner similar to that of the English system. I think, however, that the idea of the resident Judge is deeply engrained in New Zealand and also that a Judge probably likes to have his home in a particular city. These attitudes should not, however, prevent a greater coming and going of Judges on circuit in other districts and by the meetings which would then occur with other Judges. When a Judge came to work in Wellington or in Auckland he would not lack the opportunity for discussion.

"In any event, I think that the advantages of general discussion at the present type of Court of Appeal are, as I have said, much too dearly bought.

"9. There is an article in (1947) 23 NEW ZEALAND LAW JOURNAL, p. 29, which sets out various cogent arguments for a separate Court of Appeal with which I agree."

It is unnecessary for me to enlarge on the fact that Sir David's participation for twenty years in the work of the Court of Appeal gives the greatest weight to his views. But there is one point which should be remembered. You will recall that, after an absence of a year or so, Sir David returned to the Bench as a temporary Justice for nearly a further year. During this time, of course, he took no part in Court of Appeal work. I have reason to believe that his experience during this period, when he was confined to Supreme Court work only, strikingly confirmed the views he has expressed as to the relief which the Judges would gain by the separation of appellate work from Supreme Court work. There is no reason why our Judges should remain subjected to the same burden of which Best, C.J., complained in 1828 when, in advising the House of Lords on a question put to the Judges, he wrote: "Most of my learned Brothers were obliged to leave town for their respective circuits before I could write what I have now read to your Lordships. I should have spared your Lordships some trouble if I had had time to compress my thoughts; but I am now in the midst of a very heavy Nisi Prius sittings, and am obliged to take from the hours necessary for repose the time that I have employed in preparing this opinion."

THE NEED FOR CONTINUITY OF CO-OPERATION.

The greatest worth of a Court of Appeal arises from the fact that its judgments represent, or should represent, the united and joint consideration of its members. The greatest contribution which a Court of Appeal can make to the development of the law will come only when its members work together with reasonable continuity so that they may attain uniformity of approach to their problems. The greatest need a Court of Appeal has, if it is to achieve these objects, is the opportunity for deliberating on its judgments. Some two years ago, Sir Raymond Evershed gave an address to the University of Melbourne, in the course of which he said: "If, therefore, the real purpose of an appellate Court is to be achieved, it is essential to do so by getting what I may call a combined judicial operation. Two heads, it is said, are better than one, but only if they work truly together. Otherwise, the individual opinion of each of three appellate Judges may have no obvious primacy over the view of the trial Judge. If, therefore, the members of the appellate Court are constantly having to change (and I leave aside the mechanical difficulties which would clearly arise if constant change of personnel were necessary), then those Judges constituting the Court would not sit together often enough to acquire the faculty of working, not individually, but in co-operation with their brethren."

Our present system is a barrier to the combined judicial operation which Sir Raymond Evershed desscribes as essential for an appellate Court. Let us speculate on how far this may be achieved by the exchange of draft judgments and by correspondence between the Judges. Once the Judges have separated and gone to the length of preparing draft judgments, which may differ in their conclusions and will almost certainly differ in their reasoning, can the exchange of these drafts really result in the ironing out of their differences and in the achievement of a "combined judicial operation"? I suggest that all would agree that this method cannot be as satisfactory or as profitable as if the Judges remained together throughout their consideration of a case.

From such inquiries as I have been able to make, I gather that the Full Bench of an Australian State Court is not liable to be dispersed to circuit sittings in the way that obtains here upon the conclusion of a sitting of the Court of Appeal. It may be that the Amendment passed this year will give the Judges some greater opportunity for joint investigation of appeal cases than they previously enjoyed. But it can only be an alleviation, and not a removal, of this handicap. Even this alleviation is gained only at the expense of greater disturbance in the personnel of the Court. As the Law Society said at the time, such a partial alleviation of the present difficulties does not meet its wishes to see the establishment of a separate and permanent Court of Appeal.

I accordingly second the motions which Mr. Leary has moved.

Unanimous Approval.

At the conclusion of Mr. CLEARY'S address, THE PRESIDENT said: "The two motions are now before the Conference, one for the provision of adequate pensions for the widows of deceased Judges, and I venture to suggest that you will be prepared to carry that motion without discussion. As to the second one, there are probably many members present who would like to say something about a permanent Court of Appeal.

"With your concurrence, I would like first of all to put the first motion to the meeting, unless somebody wants to discuss it, *the provision of adequate pensions for the widows of deceased Judges*. The Council of the Law Society has already had this matter in hand; and, after this afternoon, assuming both these motions are carried, it will go to see the Prime Minister. We have already seen the Attorney-General."

The first motion, as moved by Mr. Leary, and seconded by Mr. Cleary, was then put to the Conference and carried unanimously.

The President continued: "The second motion is now open for discussion. I think we had better limit the time to two minutes per speaker.

MR. A. N. HAGGITT (Dunedin) "My only purpose in rising is to ask how, under that motion, the position of the Chief Justice is preserved. It doesn't seem to me to be covered at all. I would like to see the Chief Justice appointed as a member *ex officio*, but it is not covered by that motion."

Mr. Leary signified his consent that the motion should be amended to include the Chief Justice, *ex officio*. There being no further discussion, the motion, as amended, was put to the Conference:

> *That the members of the Legal Profession present at this Conference express their complete endorsement of the proposal to be laid before the Government by the New Zealand Law Society for the establishment of a Court of Appeal composed of separate Judges permanently appointed of which the Chief Justice will be a member* ex officio.

This was carried unanimously.

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LEGAL ANNOUNCEMENTS.

Continued from page i.

MR. ALAN WALTER BROWN who is carrying on practice (formerly with the late Sir Arthur Donnelly) as a Barrister and Solicitor at Christchurch under the firm name of Raymond Donnelly & Brown has pleasure in announcing that he has been joined in partnership by Mr. Jack McKenzie and Mr. Peter Thomas Mahon who have been associated with the firm for some time. The practice will be carried on as before, under the same name of RAYMOND DONNELLY & BROWN at the present address WEST END CHAMBERS, 80 HEREFORD STREET, CHRISTCHURCH.

Dated the 24th day of May 1954.

ALAN WALTER BROWN.
JACK McKENZIE.
PETER THOMAS MAHON.

MESSRS. GITTOS, UREN, WILSON, GREIG & BOURKE

Barristers and Solicitors, Auckland

Announce that on 31st May, 1954, MR. NIGEL WILSON will retire from the firm for the purpose of practising thereafter as a Barrister at his Chambers:

101-102 Chancery Chambers, O'Connell Street, Auckland. Telephone 45-123

MESSRS. ALAN MURDOCH MASSON GREIG, ARTHUR COLIN BOURKE AND ARNOLD REAY TURNER will, as from 1st June, 1954, continue to carry on the practice of Barristers and Solicitors at First Floor, Standard Insurance Buildings, 7 Victoria Street East, Auckland, as heretofore, under the firm name of:

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Continued on p. x.

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THE CONFERENCE BALL.

THE Conference Ball was held in the Cabaret Cabana, at Awatoto, near Napier, on the evening of the first day of the Conference.

The assembled practitioners and their ladies were fortunate indeed in the surroundings in which they found themselves. This beautiful and spacious cabaret is quite new, and is specially designed for gatherings such as were welcomed there on this occasion. It was beautifully decorated with palms and flowers; and its interesting murals—in a Mexican decor—enhanced the general scene.

The guests were received by the host and hostess of the Conference, Mr. and Mrs. J. H. Holderness, with whom were the acting Attorney-General, Hon. J. R. Marshall, and Mr. W. H. Cunningham, President of the New Zealand Law Society, and Mrs. Cunningham.

The floor was excellent, and everyone appreciated the fine orchestra, as was evidenced by the general carnival spirit which prevailed.

The supper was a remarkably fine one, and the general arrangements could not have been improved upon.

Before the Ball, the great concourse of visitors were entertained, in parties, by the Napier and Hastings practitioners and their wives in their own homes. Their hospitality was greatly enjoyed, and it formed a delightful prelude to the rest of the evening's felicities.

Receiving the Guests.

Mrs. J. H. Holderness, the Conference Hostess; Mr. W. H. Cunningham, President of the New Zealand Law Society, and Mrs. Cunningham; the Hon. J. R. Marshall, Acting Attorney-General, and Mr. J. H. Holderness, the Conference Host.

Taken in all, this Conference, in its ball, set a standard which the cities, in which previous Conferences have been held, have not yet attained.

THE SECOND DAY'S PROCEEDINGS.

THE proceedings of the second day opened in the Asher Hall at 9.30 a.m. with an address prepared by Dr. P. P. Lynch and read by Dr. D. A. Ballantyne, of Hastings, who first spoke to the Conference as follows: "It is a pleasant duty for me to be here to-day to read Dr. Philip Lynch's address, and while I regret he is unable to deliver this himself, yet such feeling is tempered by the knowledge that he is at present overseas receiving a distinguished degree from your own profession. He is an esteemed member of the medical profession, and has contributed much to its wise guidance in these past, shall I say, difficult years.

"An added pleasure is for me to meet members of the Law Society of New Zealand because, with the Church, Law and Medicine may be described as the humane professions in that each is concerned with the well-being of man in the highest sense. We in Medicine sometimes, perhaps, forget our indebtedness to the Church which first established the hospital as we know it in Christendom. Early English jurists, such as Henry of Bracton in the thirteenth century, and Fortescue some 200 years later, got many of their ideas from the philosophers of the Church, and, in the sixteenth century, Sir Edward Coke said that the Law of England was based on the Law of God.

"Speaking from a broader aspect, I think one may illustrate the kindred aims of Law and Medicine when we consider that man has two environments. Law guards and protects the individual from those malign influences affecting him in his external environment, whereas Medicine strives to achieve these ends in his internal environment, that association of cells, tissues and organs which we know as the human body.

"With these few thoughts of my own, I shall now pass on to deliver Dr. Lynch's address."

THE HOSPITAL, THE PUBLIC, AND THE LAW.

By P. P. LYNCH, B.Sc., M.D., LL.D.

I deem it a privilege and an honour to be asked by your executive to address this Conference. The Society meets in conference but once in three years and there must be many topics of importance to your members which have a claim on your consideration. All the more am I honoured when, having accepted an invitation to go overseas, and being unable to be present here, I was asked to prepare this address and to have it read on my behalf by my colleague, Dr. Ballantyne.

There are a limited number of subjects upon which your profession and mine can meet on common ground. On matters which are of public concern and importance we naturally both show an interest which is expected of members of learned professions. I have selected the title of this paper after some consideration, and after study of the problems of our hospitals during the time I was a member of the Consultative Committee on Hospital Reform.

It does not require much reflection to realize that profound changes have occurred in the constitution of hospitals and in their governing bodies and in the part which they play in the community. It was not on this general matter that I wished to address you, but on certain matters arising out of the responsibility of hospitals and their professional officers when claims for malpractice or for negligent or inadequate treatment are made against them.

S. P. Andrew, photo.

Dr. P. P. Lynch.

Doctors and those concerned in the administration of hospitals have for many years examined with interest the judgments of Courts of this country and of the United Kingdom where matters affecting professional negligence have been at issue. I am asking you therefore to take a brief glance, as it were, at the changing character of hospital practice; at the change in their constitution both in this country and in the United Kingdom, and to consider at the same time the profound changes which have occurred in the techniques of surgery and medicine. To consider also the part which has been played by the new and fantastically effective new therapeutic substances. With this as a background, I would ask you to consider the extent to which the doctor-patient relationship has remained affected or unaffected by these changes in its surroundings.

On no part of the community has the impact of the Welfare State been so striking as on the hospitals and on medical practice generally. On the hospitals more than on general practice because, from being voluntary organizations maintained in part by charitable contributions, in part by fees paid by patients, and in very great part by honorary service given by generations of surgeons and physicians, the hospitals are now quite changed. I have only to refer to the English legislation which turned voluntary hospitals—charitable institutions—into nationalized undertakings and to the sections in our New Zealand legislation relating to the control and management of hospitals.

In Great Britain, the hospitals are taken over by regional hospital authorities set up under the National Health Service Act. In New Zealand, they are maintained under a system of fixed local rating and on contributions from the Consolidated Fund, which gives assured finance and which many think encourages lavish and even extravagant expenditure. No longer are medical services given in public hospitals as a charitable act. Staffs, whether professional or otherwise, are paid; and the hospitals are, by right, free to all who seek treatment there.

This change in the constitution and management of hospitals has been marked by changes in the law not only in regard to the way in which the hospitals are maintained and governed and controlled, but in regard to the implications that may arise from allegations of negligence arising from treatment in such institutions.

I thought it might be of interest if I were to ask you for a moment to consider as historical landmarks, as it

were, what seems to me to be a changing view of professional negligence as revealed in four or five cases separated in time by many years. It may be thought that doctors are unduly preoccupied with, and that they take even a morbid interest in actions before the Courts arising from negligence. I do not think it is sufficiently appreciated—except perhaps by members of your profession, how very much doctors fear such actions. They are, in the first place, a reflection on personal professional reputation, a slight on skill, and, as many know to their cost, destructive of professional standing.

Historical Landmarks.

The first of these landmarks is *Hillyer's* case in 1909 (1). It relates to the responsibility of a doctor and nurse during an operation, and whilst the nurse was under direct orders of an operating surgeon. In the judgment of the Court of Appeal in *Hillyer's* case it was held that nurses stand on a somewhat different footing from medical staff. As to the medical staff, it was held that there was no practical control of them by the governing body, and that it could not be held responsible for negligence on the part of professional medical staffs in the course of their duties.

The managers of a hospital do not go to the public with a provision of themselves operating on or treating patients. They only hold themselves out as providing an institution where patients will be able to meet with skilled persons who will do these things.

It is to be remembered, and I think it is germane to my contention, that the staffing and the management and control of St. Bartholomew's Hospital in 1909 is quite a different thing altogether from the staffing and control in Great Britain of, say, the Croydon Hospital by its group management committee under the Ministry of Health. To proceed a step further (rather a large step, it is true) to 1934, let us consider for a moment the case of *Logan* v. *Waitaki Hospital Board.* (2) Logan was a workman on the Waitaki Hydro Scheme. He met with a severe accident at his work involving a fracture of the skull. He was taken in a critical condition to the Oamaru Hospital, a hospital then controlled by the Waitaki Hospital Board. A few days after his admission when he was in a critical condition from head injuries, he was operated on by a surgeon attached to the staff of the hospital. At the end of this operation his condition was extremely grave and for a few minutes it was thought that he was dead. On his return to the ward resuscitative measures by way of the application of warmth were ordered by the medical officers. These were given by the nursing staff in the form of electric-light bulbs under a cradle specially used for this purpose. The patient survived his injuries, but, when he came to get nursing attention in the morning, it was found that there was an extensive burn on his knee. This burn later became infected and later still there appeared complications involving the knee joint itself and ultimately, although Logan recovered from his grave head injuries, he required to have an amputation of the leg at the middle of the thigh. The case was heard before Mr. Justice Kennedy in the Supreme Court at Oamaru. The learned Judge followed the decision in *Hillyer's* case and found for the defendant Board, on the grounds that the negligence, which was held to be the negligence of one of the nurses, was not in the course of mere ministerial ward duty nor a matter of routine but was in discharge of a professional duty.

In the Court of Appeal, by a majority decision, this judgment was reversed. I have read with great interest the judgment of Sir Harold Johnston in that case. The Chief Justice (the late Sir Michael Myers) dealt with the difficulty of deciding, in these cases, where responsibility lies in the provision of medical and nursing care. The difficulty was great enough when the techniques of nursing and medical and surgical care were much simpler than they are to-day or than they were at the time of *Logan's* case. It is interesting to note that, in his judgment, he referred to a statement made as long ago as 1892 by Mr. Justice Williams about the extreme difficulty, but great public importance, of the issues at stake in such cases and the need for legislation to define the liability of hospitals. The humane and penetrating written judgment of Sir Harold Johnston in that case paved the way, as it were, for a better public understanding of the point at issue. The summary of his views, as I understand them, was that considering the purpose of the corporate bodies established in this country to care for the sick and injured, it is idle to say that they do not employ nurses to carry out the purpose for which they are constituted. The purpose of a hospital board, in his view, was the same whether it be a public institution or a private institution, and if the care of the sick is its purpose, this leads to an almost irresistible conclusion that the term of its implied contract with any patient is to nurse.

This is made plain by more recent decisions in which the hospital managers were regarded as being in control of the treatment as a whole. The effect of the recent decisions is to reverse the onus of proof; it is now for the hospital managers to show (if they can) how the damage could have happened in spite of proper medical attention, rather than for the plaintiff to prove who in particular has behaved culpably.

Two Recent Cases.

For this purpose, I quote the relevant medical circumstances of two recent cases: the case of *Jones* v. *Manchester Corporation*(3) and the case of *Cassidy* v. *Ministry of Health.*(4) Of these the one which made the strongest impression on my mind was *Cassidy's* case, where the facts were relatively simple. In this case, Cassidy, the plaintiff, was suffering from a contraction of the third and fourth fingers of his hand—a condition of great interest and called after a great French surgeon, Baron Dupuytren (1777-1835), Dupuytren's contracture. He was operated on by a whole-time assistant medical officer of the defendant hospital. The plaintiff's hand and forearm were bandaged to a splint and they remained so for some fourteen days. During this time the plaintiff complained of pain, but, apart from ordering the administration of sedatives, no action was taken by the surgeon or by the house surgeon. When the bandages were removed, it was found that all four fingers of the plaintiff's hand were stiff and that the hand was practically useless. In reading this case at its source, I was deeply impressed by the comments contained in the judgment of Lord Justice Denning and of his conclusions about the responsibility of a modern hospital in such a case. He

(1) *Hillyer* v. *Governors of St. Bartholomew's Hospital*, [1909] 2 K.B. 820.

(2) *Logan* v. *Waitaki Hospital Board* , [1935] N.Z.L.R. 385.

(3) *Jones* v. *Manchester Corporation*, [1952] 2 Q.B. 852; [1952] 2 All E.R. 125.

(4) *Cassidy* v. *Ministry of Health*, [1951] 2 K.B. 343; [1951] 1 All E.R. 574.

admitted that the actual evidence of negligence was meagre enough, but that the plaintiff knew that he was treated by people whom the hospital authorities appointed and *the hospital authorities must be answerable for the way in which he was treated.* The learned Lord Justice went on to say:

> If the plaintiff had to prove that some particular doctor or nurse was negligent he would not be able to do it, but he was not put to that impossible task. He says; "I went into the hospital to be cured of two stiff fingers. I have come out with four stiff fingers and my hand is useless. That should not have happened if due care had been used. Explain it if you can."

It is at this point at which it appears to me as though the onus of proof has been reversed. Furthermore, in this case the Court of Appeal held that the hospital was liable for the possible defaults of all the persons concerned, medical officer, house surgeon, as well as the nursing staff. In a modern hospital, the hospital managers or the board of management are a remote committee with which the patient never comes into personal contact.

Increase in Claims.

At this point, I think I may be allowed to interpolate that, although the number of claims against hospitals and their professional officers has been increasing, I do not believe that that connotes a growing lack of care by the medical officers who work in them.

I believe there are three separate reasons for this. As I have already said, I do not think that there has been any lessening of the sense of responsibility in relation to standards of care. I think that doctors are as careful to-day as ever they were. None of the reasons, therefore, has anything to do with any slackening of individual standards of medical care. One factor which operates to produce the effect that I have mentioned is that there is a greater awareness on the part of the public of the possibilities of financial gain which may accrue to them, if by chance some harm or even some unexpected or disappointing result should follow medical or surgical treatment.

I have more than once been impressed by the change which takes place in an apparently friendly and satisfied patient, when, or if, he learns, perhaps by chance, that he may profit from his mishap.

Another reason for the increase—and I think this may be the most important of all—is the extent to which operative procedures and therapeutic measures have become increasingly complex. With improvements in the technique of anaesthesia and in the use of resuscitative measures—such as blood transfusions—operations can now be attempted in regions of the body where formerly no attempt could be made. Not only do these aids to treatment increase the scope of the surgeon's work; they often result in procedures inherently dangerous in themselves and involving the use of methods which also have their own inherent dangers. Thus are multiplied many times the points at which error can creep into the work of the surgeon or the physician or the anaesthetist.

There is a third reason and some may regard this as being the most important. Most of the increase in the number of claims for negligence arise out of treatment in hospitals. In this field there have been profound changes. The work of a hospital is not the work of individual doctors but a large and mixed team. As a learned writer in *The Listener* (5) has said,

> A patient literally bails his body to an institution,—a State Institution at that,—which professes to apply to that body as to a thing, a process, a scientific method for which rather considerable claims have been made. If the body whilst under that control . . . suffers considerable deterioriation it is not unreasonable . . . that the institution should be put to its answer.

I have no doubt that, in the testing of the degree to which an institution such as a hospital has done its best for the patients committed to its care, higher standards will be demanded and required of that institution than would be required of a single individual. It may be said that the standard of negligence has not altered. This may well be so. Lawyers, I think, will agree with me that the degree of care required has risen as the result of scientific development and the elaboration of new processes, and the increasing danger attendant on their use.

It may be that a hospital is sometimes penalized for failing to attain a degree of care which it could attain only if everybody concerned acted with the very greatest of care and diligence. Looking back over the past, one can see in the learned judgment of Sir Harold Johnston in *Logan's* case that he had some understanding of the changes which were even then taking place.

The other case to which I have made reference, and of which I have studied the original reports, is that of *Jones* v. *Manchester Corporation*. This is a case which might very well cause more concern and misgivings to hospital officers because it relates to what the Court considered to be a defective choice of anaesthetic. The plaintiff was burnt on the face at his work. He was taken to the hospital and attended to by a house surgeon assisted by a woman doctor recently qualified. It was the latter who administered an anaesthetic giving nitrous oxidem but it was soon realized that the burns on the face could not have been attended to with a mask in position. On consultation, it was then decided to administer intravenous pentothal. While this injection was being given the patient died. All the Lords Justices were agreed that there had been negligence. Some strong observations were made on the danger of a newly-qualified doctor being entrusted with a responsibility of this sort. This was the view which the trial Judge, Mr. Justice Oliver, took. He said:

> I think to put a weapon like a barbituric within the reach of a girl who has been qualified for only five months and expect her to handle it accurately with sufficient knowledge and experience—to watch the way a patient has to be watched—is simply asking for trouble. I cannot help it if it is common practice.

Lord Justice Denning, who was a member of the Court of Appeal, said he found it difficult to place much blame on Dr. Wilkes, the woman doctor. She was not in charge of the operation; the house surgeon was. Moreover, he was in his own words responsible for the administration of anaesthetics. It was his decision to use nitrous oxide and that was the cause of all the trouble. It was the change over to pentothal—a procedure requiring skill and judgment—wherein lay the mistake, and with that decision I doubt whether any experienced medical man would quarrel. Nevertheless, the learned Lord Justice held that the responsibility of the hospital authorities is more than either of the doctors. Mistakes of this kind should not occur, and a hospital should be so run that they do not occur.

(5) C. J. Hampson "The Liability of Hospitals for Negligence." *The Listener*, Vol. 50, 1001.

A Closed System.

More and more one feels that, in regard to the position of the public and the hospital, the latter is to be treated as a closed system; and, just as in a factory the responsibility for negligence vests in the factory occupier, so the responsibility for anything that goes wrong lies on the institution and its managers. The plaintiff has no longer any thought as to whether it is the radiologist, the pharmacist, the nurse, surgeon, or a member of the lay staff. He knows that any defect is a corporate defect affecting the institution as a whole. I am satisfied that one of the less favourable developments in the modern hospital is the extent to which personal contact as between the doctor and the patient has changed for the worse. It has been a matter of concern to see that as a hospital increases in size, and indeed in efficiency, it becomes harder to maintain, on a level to which we have in this country become accustomed, the human and personal characteristics of relationship between doctor and patient. On the contrary, one frequently hears it said or complained of by patients, and by relatives, that they have no personal contact or discussions with the hospital medical man in charge of the case. Is not this a natural reaction which emphasizes the need for maintaining the human relation of doctor and patient, doctor and family, which have always been the most important ingredient of medical practice.

Frequently, actions against a doctor, and certainly actions against a hospital, have their genesis in some personal slight, some appearance of neglect, some fancied dereliction of duty—frequently based on nothing more than a discourtesy or a lack of consideration by members of the hospital staff. The smaller hospital in this respect is in a more favourable position. There the senior medical officer has a personal knowledge of all who are in his charge, and, frequently, also a personal knowledge of the family background of his patient.

In its public relations, I think that something could be done by the larger hospital. When there are good relations between hospital and the public—and these vary considerably from city to city—there is less likelihood of misunderstandings and less likelihood of the hospital being involved in actions for negligence.

I have submitted for your consideration this brief summary of what seems to me to be the changing scene in regard to the relation of the hospitals to the public and to the law. I have no doubt that in commenting on the facts as they relate to the cases that I have quoted, my interpretation of the legal aspects are wide of the mark. I hope I will be forgiven if I see in these judgments to which I have referred a record of the way in which the application and interpretation of the law by its guardians, the Judges, has kept in step with the changing social order.

May I in conclusion borrow a phrase from Lord Justice Denning in his recently published book([6]): "The hospitals afford the most striking illustration of how a nationalized undertaking has been brought under the rule of law."

I acknowledge friendly suggestions in the preparation of this paper by Mr. D. S. Wylie, F.R.C.S.

([6]) *The Changing Law* by the Rt. Hon. Sir Alfred Denning. Stevens & Son Ltd., 1953.

The Discussion.

The President: "The subject on which the Doctor has just spoken to us is one of general interest; and, if any member would like to make a short comment, or ask Dr. Ballantyne any question, I am quite sure, although it is not his own paper, he will do his best to answer."

Mr. W. E. Leicester (Wellington): "There is a point that emerges from the excellent paper to which we have just listened that I should like to refer to, in the hope that other members of the profession may care to express some opinion on it. It seems to me, also, that on these papers which are partly controversial, it is a pity to give the rubber stamp of approval to them without a minimum of discussion.

"At the outset, however, I pay tribute to the courage and courtesy displayed by Dr. Philip Lynch in presenting this paper. Dr. Lynch is a leading New Zealand pathologist who has done outstanding work in the medico-legal field, and his merits are recognized outside New Zealand. Consequently, anything he says deserves the greatest weight and consideration; and what I have to say I say with the greatest respect to him and the profession of medicine.

"It seems to me that, to the average doctor, negligence is a very delicate mental spot. It can be likened to a somewhat exotic plant—prod it and the bloom is gone. The attitude of a doctor towards negligence is rather like that of the strict Victorian lady to immorality; he shudders at it, and prefers not to discuss it. I would not have discussed it myself, except that in this paper Dr. Lynch refers to advanced therapeutic processes and involved surgical operations, with the possibility in the future of procedures which are inherently dangerous. Consequently, we may expect from the medical profession, as we expect from the legal profession, and in all other walkes of life, occasional and rare examples of lack of care amounting to negligence, where a mistake arises from one of these intricate medical operations and the patient suffers from such a position.

"In regard to the onus of proof, Dr. Lynch professes to deprecate, as, indeed, a common-law man would do, any suggestion that the onus of proof is reversed, and the onus placed on the defendant of explaining how the mistake occurred. Speaking as a common-law man, I accept the doctrine in regard to a mechanical or engineering process and the like, but deplore its utilization in the field of personal activity. Therefore, it seems to me it would be regrettable if we were faced with the position in the future of delicate operations where, because a mistake has occurred with a patient, the doctor is placed in the position, or the Hospital Board is faced with having to satisfy a tribunal that it could only have occurred in a manner consistent with good care.

"What is the remedy? It seems to me—and this is a criticism which is likely to be made of Dr. Lynch's paper—that doctors do not give us very much assistance on what amounts to proof of negligence in the case of a doctor. The remedy, it appears to me, is that there could be a more responsive attitude on the part of the

medical profession towards establishing proof of negligence. It seems to me that the medical profession has shown, at least in the past, a disinclination to assist the legal profession in those rare and unsatisfactory cases where the legal profession has got to advance a claim against a medical practitioner. I think if we had, perhaps, a greater degree of frankness on the part of the medical profession in those cases, that the interests of the legal profession, the medical profession and the public alike would be served.

"The medical profession might consider the setting up of a panel of doctors to which the legal practitioner could refer in a difficult case of negligence. No legal practitioner wants to make a claim against a medical practitioner. We are all members of a profession, but occasionally duty compels us to do so, and if we are unable to get information, if there is reluctance to give us information, a difficulty arises both in regard to the interests of the plaintiff and the defendant. If a tribunal thinks that information is being withheld, the natural reaction is to apply the doctrine of *res ipsa loquitur* to the case, and to say, 'Very well, if something is being kept back, let them prove that the accident occurred with the exercise of that due care they are pretending to observe.'

"I would not have made any observations at all were it not for this paper; but I think a panel of doctors would give assistance in those cases in helping to steer counsel both for the plaintiff and the defendant into the right channels."

DR. O. C. MAZENGARB, Q.C. (Wellington): "I agree with my learned friend that, if a paper is at all controversial, we should not accept it without discussion. What brings me to my feet is that I take a different view from Mr. Leicester and from Dr. Lynch as to the suggested change in the onus of proof and whether there should be a different rule in regard to precepts and doctrine where there has been some mishap in the body as against some mishap in mechanical matters.

"To illustrate with three recent cases, with which I have had to deal over the last two years: a man goes into a hospital with a broken arm and comes out with one of his legs amputated while in hospital; another goes into hospital to have treatment for his nose and comes out with a paralyzed arm; a woman goes into hospital for an operation and has two types of wrong blood transfused into her body, as a result of which she becomes very ill until the error is discovered, and then she is given the right type of blood which sets her on the road to recovery.

"Are we to say that these cases do not call for an explanation from the doctor and the Hospital Board concerned? It is against common-sense to say that there has not been neglect somewhere in the management of that hospital. Dr. Lynch says that there is a change of onus of proof. There is no change of onus of proof, but evidence is given of the facts; and that is evidence on which neglect may be inferred unless an explanation is given. I, therefore, take the view, that there has been no change in the law of evidence in these respects. The only change has been in the circumstances in which actions can now be brought.

"As Dr. Lynch has very fairly and properly pointed out in his paper, formerly the difficulty was to say whether the negligence, if any, was that of the doctor or the nurse, or whether the Hospital authorities in certain circumstances were liable. Now there has been a complete change in our social concept of these matters. We all know (or I think we do) that these hospitals are insured against liability (which is, I think, in the State Accident Department); and we have the spectacle of the insurers taking up the cudgels on behalf of the doctors. The general social concept is that, when a wrong has been done to a patient in a hospital, that wrong should be remedied, and we all know the source from which the money is coming."

THE PRESIDENT: "I think Dr. Ballantyne would like to reply to the remarks of Mr. Leicester and Dr. Mazengarb."

DR. BALLANTYNE (Hastings): "I am not an expert in forensic medicine—I am a physician. As regards Mr. Leicester's remarks about the doctors' Victorian attitude towards neglect, I think he is quite correct. I feel like that myself. Possibly it is partly because of the time and opportunities available. Probably no profession, no collection of people, is so liable to be in a position, or put themselves in a position where claims for negligence can occur. I doubt if there is any other collection of people or any other profession that is in such a position, where the members are so liable to claims for negligence; and this can come about despite the most intense care and attention. For instance, to give a simple example. In certain heart cases, one may, with accurate treatment and if looked after, live for years. One treatment is the giving at intervals once a week or once a month of certain injections which may be given into a vein. Some of these people have difficult veins to get into. After an injection, the material used may sometimes cause a blockage of tissues. In the old days before the use of the antibiotics such as penicillin, aureomycin and such like, the vein might easily become infected and a man might lose his arm. One of the most respected and eminent physicians in this country, a man with an international reputation, got into that trouble. There was no claim for negligence, but this occurred; and I offer my explanation as to why we are so fearful of neglect in addition to what Dr. Lynch, in his paper, said on these other matters.

"As regards giving information about negligence, I am sorry if the profession is like that. I quite agree that a panel of doctors would be the answer."

THE PRESIDENT: "We are past the time allowed for this paper, but I would like to say to Dr. Ballantyne there will be a mass vote of thanks to the speakers later this afternoon. I do not think, however, there is any reason when I have finished why we should not give him an instalment of our thanks for the task he has undertaken at considerable inconvenience. So far as Dr. Lynch's views on the onus of proof are concerned, I would probably be right in advising you that you had probably better accept the opinion of Dr. Mazengarb in preference to Dr. Lynch. (Laughter.)

"There is no question now, as the statute is framed. It is made clear that, when you go into a hospital, you enter into a contract to be looked after, and, if there is any failure in regard to that contract, the facts will no doubt all come out, although it may be difficult to get at the technical features as regards some abstruse medical problem which arises in your case."

A hearty vote of thanks was accorded Dr. Ballantyne.

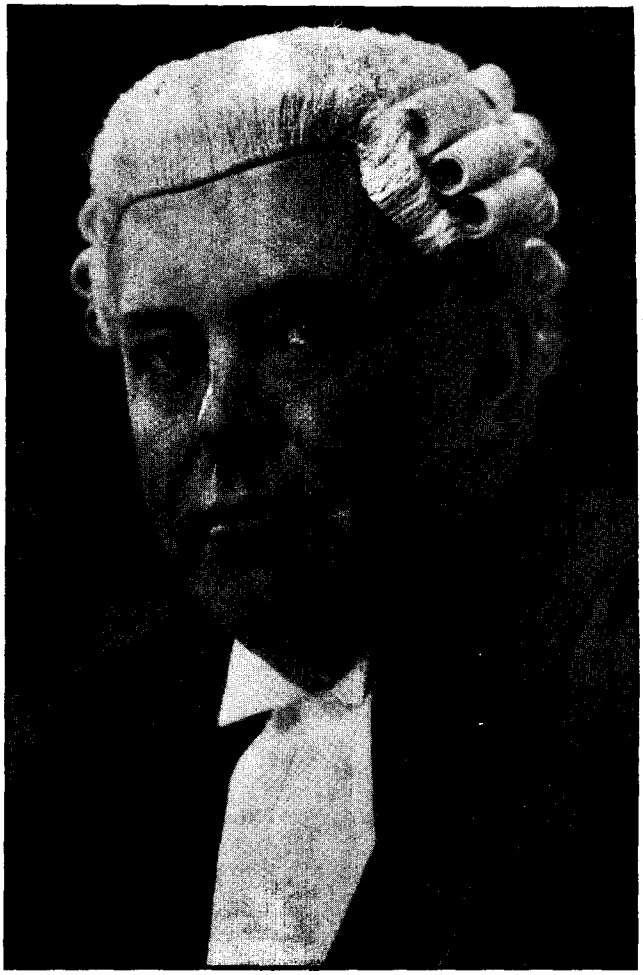
PRIVILEGE FOR CROWN DOCUMENTS.

By E. S. Bowie, LL.B., B.Com.

This is a matter of the greatest concern to us all. It involves on the one hand a question of high constitutional significance, in that it affects the security of the State. On the other hand, it is equally important to each subject of the Crown, in that it restricts the evidence which may be required for full justice to be done between subject and subject, or between a subject and the Crown.

Where a conflict arises between these two opposing interests, it is of paramount importance that the decision between the two shall rest in the hands of those most qualified to exercise it.

It has long been established that where documents are held by the Crown, and the disclosure of the information is contrary to public policy, or detrimental to the public interest, the documents should not be produced in evidence (1). There had been, however (until 1942) considerable divergence of opinion as to the practice to be observed on the taking of the objection. Some Judges had taken the view that where objection was taken by a responsible head of a State Department, the Judge should treat it as conclusive. On the other hand, some Judges of great learning and standing had held that they might properly probe the objection by examining the documents.



Claude King, photo

Mr. E. S. Bowie.

Before the Crown Proceedings Act, 1950, there was no right of discovery or production of documents in the possession of the Crown, where the Crown was a party to the litigation. That was a privilege of the Crown, although it was exercised with moderation. Under s. 27 of the Crown Proceedings Act, 1950, the Crown has been placed, in civil proceedings, in the same position as a private person. There is, however, a proviso to s. 27 (1) preserving the Rule of Law where disclosure is injurious to the public interest.

The rule is now the same in all civil cases, whether the Crown be a party to the litigation or not.

I wish now briefly to review the position in New Zealand as it stood in 1952.

In *Robinson* v. *State of South Australia (No. 2)* (2) decided in 1931, a strong Judicial Committee of the Privy Council held that the Judge must not take a Minister's objection as final; there is a reserve power, inherent in the Judicial Office, which it is the duty of the Judge to exercise in deciding on the validity of the claim for suppression.

Robinson's case was followed by our Court of Appeal in *Gisborne Fire Board* v. *Lunken* in 1936 (3), where it was unanimously held by four Judges, affirming the trial Judge, that in every civil case whether the Crown is a party or not, and whether, if the Crown is a party, it is party in a trading or in an administrative capacity, where privilege is claimed for a document on the ground that its disclosure would be contrary to the interests of the public, the Court has always in reserve the power of examining the document for which protection is sought, in order to ascertain whether the public interest would be prejudiced by its production, and to require some indication of the injury which would result from such production.

There the matter rested until *Duncan* v. *Cammell Laird and Co., Ltd.*, which came before the House of Lords in 1942 (4). This was the well-known case where the submarine *Thetis*, while undergoing submergence tests, failed to surface, and 99 men lost their lives. The documents, to the production of which objection was taken, included the contract for the hull and machinery of the submarine, letters written before the disaster relating to the vessel's trim, reports as to the condition of the submarine when raised, a large number of plans and specifications relating to various parts of the vessel, and a note-book of a foreman painter employed by the respondents.

It was, perhaps, unfortunate that the documents related to the details of a newly-built vehicle of warfare, and clearly were such that their publication might tend to injure the public security in its narrowest sense.

(1) *10 Halsbury's Laws of England*, 2nd Ed. 397.

(2) [1931] A.C. 704.
(3) [1936] N.Z.L.R. 894.
(4) [1942] 1 All E.R. 587.

DUNCAN *v.* CAMMELL LAIRD AND CO., LTD.

It was, perhaps, unfortunate that the hearing took place in what was the darkest hour of the last War. It could be a subject of speculation (although nothing more) to what extent the approach to the problem was unconsciously affected by the time and circumstance. It could be wondered whether the trend of this age is towards reposing more authority in the executive, and less in Her Majesty's Judges. But these are speculations, and do not affect the fact that a unanimous House of seven Law Lords held, in one judgment, that documents otherwise relevant and liable to production need not be produced if, owing to their actual contents, or the class of documents to which they belong, the public interest requires that they should be withheld. An objection to the production of documents duly taken by the Head of a Government Department should be treated by the Court as conclusive.

While examples of the classes of documents for which privilege might be claimed were given, the difference between documents affecting relations with other powers, or relative to defence, or the conduct of war, as opposed to what might be called domestic or administrative documents, was not reflected in the judgment. There was no distinction drawn (as had been done in some earlier cases) between the Crown in a trading capacity, or in an administrative capacity. A general rule was pronounced which applies to all cases where objection is made on the ground of public interest.

It is true that the Court set out the considerations which should be observed by officials in considering whether or not they should object to production of documents. But, referring to these admonitions, Sir Carleton Allen, that noted jurist, has said ([5]):—

> They are quite unavailing to undo the evil which that case perpetuated, in contempt of a previous elaborate decision of the Privy Council (*Robinson* v. *State of South Australia*, [1931] A.C. 704) and of several other weighty precedents, and also, as we believe, with little historical or constitutional justification.

Professor Hanbury, Vinerian Professor of English Law at Oxford, obviously shares to the full the apprehension of Sir Carleton Allen ([6]).

I mention these distinguished authorities (and others share their views) to show that we must not read *Duncan's* case as "The Law of the Medes and Persians, which changeth not." We must, and the Government must, consider whether it stands firm on a constitutional basis, bearing in mind not only the vital need of security of the State but also the right of each subject to justice in the Courts.

TWO NEW ZEALAND CASES.

Although *Duncan's* case was mentioned in two other New Zealand cases, where the subject of this paper was not directly in argument, I pass to *Carroll* v. *Osburn* ([7]) decided in 1952 by Northcroft, J.

The plaintiff, as a result of a motor collision, had suffered a broken spine. There was no independent evidence, as the plaintiff was incapable of finding witnesses, and advertisement produced none. It was thought to be important that the statement of the defendant to the Police be produced. Objection to production was taken by the Minister in Charge of Police. Counsel for plaintiff strove to move the Court to follow the Judicial Committee in *Robinson's* case, and not the later decision of the House of Lords in *Duncan's* case, although there was a powerful persuasive authority to the contrary, to which counsel was bound to draw attention. The learned Judge held that he was bound by *Duncan*'s case, and that the objection of the Minister was final.

It was also argued that the objection was to the production of Police statements as a class, and that the Court might intervene and see the document, where it appeared that the Minister had acted upon a wrong principle. (This view had been taken by Professor Hanbury, who had said, in commenting on a similar case of a Police statement ([8]).

> It may be that the cause of the individual litigant is not yet completely lost, for the Judge may have a power to order inspection in a case in which, in the estimation of a reasonable man, of a Judge acting (to borrow another phase from Dr. Allen) as a "man of the world," the objection cannot conceivably be based on the demands of public security, but can be prompted only by desire, either for official secrecy for its own sake, or for a concealment of Departmental errors.)

The Court did not accept this view, and the case was settled.

The learned Judge made observations on the possibility of injustice to litigants flowing from the Minister's objection to production in civil actions of statements made to the Police. He referred to the apparent inconsistency of a policeman being able to give evidence of what was said verbally, and the withholding of the document if the statement were reduced to writing. He said:

> That is a state of affairs which may be unjust to litigants, and possibly was unjust in the preceding case just referred to. If the presentation of these certificates from the Police Department in these two cases indicates a new policy now to be adopted by the Police, and if it is intended to resist the production in Civil cases of all statements made to Police Officers, then I suggest the matter be reviewed and the danger referred to be considered by the Minister.

This case was followed, last year, by North, J., in *Hinton* v. *Campbell*, ([9]) although he doubted whether *Robinson's* case is no longer law. This learned Judge also pointed to the harm which might result from the withholding of the statement, and said:

> In the present case, the withholding of the defendant's statement may result in little harm because there were witnesses present at the time of the accident, but I have had a good deal of experience in this type of litigation, and cases do, from time to time, occur where injured persons have been taken to hospital and for many months have had no opportunity of making inquiries, and sometimes, in the case of head injuries, they have no memory of the events immediately before the accident. A claim of privilege in such cases could work great hardship and, indeed, in some cases the only prospect the injured person has of recovering damages lies in his being able to obtain in Court information from the Police file.

His Honour drew attention to the provisions of the Transport Act, 1949, and stated that it should not be forgotten that the withholding of a statement does not work evenly, because, if there had been a prosecution, then the information would become available. He finished his judgment expressing the hope that the executive, in making the claim of privilege, had given consideration to the matters to which he had referred.

The points which arise from these two New Zealand cases are, first, if documents are, on their face, not

([5]) (1953) 69 L.Q.R. 449.

([6]) (1952) 68 L.Q.R. 173 "Equality and Privilege in English Law."

([7]) [1952] N.Z.L.R. 763.

([8]) (1952) 68 L.Q.R. 189.

([9]) [1953] N.Z.L.R. 573.

clearly bearing on the public interest, may the Court still inspect them ? Professor Hanbury thinks there may be this possible way of escape. It may be open, but I suggest that it would be far better to make the question clear by appropriate legislation. Secondly, are Police statements proper subjects for the exercise of the Minister's discretion ?

Results of Injustice.

Meanwhile, in England, the injustices which may flow from the rule in *Duncan's* case were brought into prominence, last year, in *Ellis* v. *Home Office.* [10] The plaintiff, a prisoner on remand, was put into hospital in a prison. Another prisoner, whose mental state was suspected to be deficient, was also in the hospital wing. Owing to shortage of staff, there was only one officer on duty instead of two. He left the wing for a period. In his absence, the prisoner suspected of mental deficiency entered the plaintiff's cell and assaulted him. The plaintiff claimed damages from the Home Office for alleged breach of duty of care for the plaintiff's safety. We are not concerned with the aspect of liability ; but we are concerned to consider the judgment of the Court of Appeal as to the production of documents for which privilege by the Crown had been claimed on the ground of public interest.

The documents of which production was sought included medical reports on the assaulting prisoner, Police reports made at the time, and a deposition made at the time of the assault.

As to the medical reports Singleton, L.J., was very critical, saying that the plaintiff was denied the elementary right of checking the evidence of Government witnesses against contemporary documents. [11]

As to the deposition, made by a prisoner at the time of the assault, which was 3½ years before the trial, an extraordinary thing happened. At the suggestion of the Court of Appeal the document was shown to counsel, and there was found to be nothing in it.

Singleton, L.J., said : [12]

> There was no reason why it should not have been produced, nothing which could affect the public interest in any degree. I suppose that, if the claim of privilege is made in these wide terms, it may be difficult for Counsel, but I think that the document should have been produced.

As to the medical reports, he said [13] :

> The major claim of privilege covered documents which were in the nature of reports on the prisoner Hammill. I have not seen those reports, and I ought not to express an opinion on them, but one thing that the courts in this country have sought to make clear, generation after generation, is that there ought to be fair play. I know that the responsible officials in the Home Office desire that, but the danger is that, if a claim of privilege is made in the wide terms in which it was made in this case, it prevents anything being done, and so one side has all the advantages and the other side is deprived of something which it might have without any danger whatsoever to the public weal.

One final quotation from the judgment of Singleton, L.J., may be permitted. I know that quotations from what others have said may detract from the force of an address ; but, where the words are important and authoritative, I must crave indulgence.

In the final paragraph of this judgment, Singleton, L.J., said [14] :

> I cannot help feeling that, if this question had been considered in all its implications, both in regard to Police documents and in regard to Hospital reports, it might well have been found that the disclosure of most of them could not have been fraught with any danger to the public interest, while it would have been desirable that they should be disclosed to the advisers of the injured Plaintiff for reasons of fairness and in the interests of justice.

Jenkins, L.J., emphasized the necessity for careful scrutiny before the claim for privilege is made. He stressed the importance of the duty of the Minister in that regard. With both of these judgments Morris, L.J., concurred, and said and emphasized that it is one feature and one facet of the public interest that justice should always be done and should be seen to be done.

We have, in *Ellis's* case, an outstanding example of the injustice which may result from the application of the rule in *Duncan's* case. It is a remarkable case because it records, in clear language, the disquiet which was felt by four Lords Justices of Appeal as to the method by which the privilege had been claimed. It was acknowledged that the Minister had the discretion, that the Court is bound by his decision ; but the Court said that two of the documents to the production of which objection was made, should have been produced, and in one case the document had nothing in it.

There was a suggestion by Jenkins, L.J., that there should be someone at the trial with discretion to waive the privilege. But, with the greatest respect, this seems hardly apt if we assume that the Minister has inspected the document, and made his claim with due deliberation. Moreover, if the claim is soundly based, it is the duty of the Court to intervene and prevent production.

Serving the Public Interest.

One must be fair to the Ministers in these cases. They are very busy men and occupied with many cares of office. The decision is, no doubt, made first by a civil servant in that Department of which the Minister is the responsible head. Is there not real perspicacity in the note, by Sir Carleton Allen, which reads [15] :

> It is a rare civil servant who desires, of malice prepense, to inflict hardship or injustice on his fellow citizens ; but it is an even rarer civil servant who does not, by natural instinct and force of habit, regard all intra-mural records and communications as things to be hidden from the gaze of the vulgar, especially when the vulgar have the temerity to attack official conduct, discretion or policy.

These cases of *Carroll*, *Hinton*, and *Ellis* make us ask " Is the public interest best served by reposing this discretion in the hands of a responsible head of a Department of State, who must turn for guidance to the civil servants, rather than in the hands of Her Majesty's Judges ? "

It has been said that " Those who are responsible for the national security must be the sole judges of what the national security requires." [16] But that depends on what is meant by national security. If it were restricted to relations with other powers, defence and the conduct of war, we might be disposed to agree. But can this term be defined as covering statements to the Police or to prison authorities ?

It is no academic question but a real one. It is not limited to Police statements but extends to all documents of State. For example there is, I understand, a recommendation that hospitals be entrusted to regional committees, under the supervision and control of the

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[10] [1953] 2 All E.R. 149.
[11] *Ibid.*, 155.
[12] *Ibid.*, 157.
[13] *Ibid.*, 158
[14] *Ibid.*, 159.

[15] (1953) 69 L.Q.R. 450.
[16] Per Lord Parker in *The Zamora* [1916] 2 A.C. 77, 107.

Minister. What is to happen if a claim be made for a smoke nuisance (a topical question in Christchurch), and it later becomes necessary in the interests of justice to test the evidence of experts against contemporary reports?

What is to happen if a patient alleges negligent treatment, and it becomes necessary to have X-ray photographs and case notes produced?

Will the responsible Minister object to production on the ground of public interest? We may be assured that he would not; but there seems to be little difference between the last example and the case of the prison-hospital records relating to a prisoner who has assaulted another prisoner.

There may be a need for matters of "security" in the limited sense defined by me, to be in the hands of those who have it in their charge. I would certainly not argue that those who say so have no case, for there are decisions to that effect, but I do not know of any case where a Judge has imperilled the security of the State by allowing production of a document for which privilege has been claimed. I am sure you will agree that their knowledge and experience fully qualifies our Judges to have that trust safely in their hands. It must be remembered that it was the Judges, not the executive, who first propounded and applied the common-law rule of privilege.

The Pillars of Freedom.

As to domestic or administrative documents we may say:

(1) In a trading capacity the Crown should have no privilege. It would be contrary to the spirit and intention of the Crown Proceedings Act, 1950.

(2) The Police and officials of other administrative Departments are the servants of the State. But also they are the servants of the people. Where any person demands production of a document in the interests of justice, it must be in exceptional cases only that that privilege should be claimed.

(3) Departmental heads should not be permitted to take too narrow a view. For example, as to Police statements, the Police surely have an interest in the administration of justice whether it be in the criminal or civil jurisdiction. When a statement is requested by the Police, the person to whom the request is addressed is, presumably, told that it may be used in evidence. There is no reason to stop at evidence in a Police prosecution, if the same statement can assist the Court in civil proceedings.

(4) The Judges are best qualified to define the interests of justice. I respectfully suggest, despite *dicta* to the contrary ([17]), that they are fully qualified to guard jealously the public welfare and security, as the three recent cases cited tend to show, and they would refuse production in all proper cases. It is a poor security which can be obtained only at the expense of justice.

(5) Justice must not be trammelled by the wishes of the Minister or a civil servant. As was said in the judgment in *Duncan's* case ([18]):

> It is not a sufficient ground that the documents are 'state documents' or 'official' or are marked 'confidential.' It would not be a good ground that, if they were produced, the consequences might involve the department or the Government in Parliamentary discussion or in public criticism, or might necessitate the attendance as witnesses or otherwise of officials who have pressing duties elsewhere. Neither would it be a good ground that production might tend to expose a want of efficiency in the administration or tend to lay the department open to claims for compensation. In a word, it is not enough that the Minister or the department does not want to have the documents produced.

(6) No one should be judge in his own cause. Where the Crown is a party in a civil proceeding there should be an independent ruling where privilege for documents is claimed. That can be given only by the Court. Where the Crown is not a party, it is still to some extent judge in its own cause, which is the limited question whether or not the privilege should be claimed in any particular circumstance.

(7) The Courts have always been the "pillars of freedom," and have stood between the subject and the Crown, not only when the liberty of the subject is involved, but when his right to justice is threatened.

I do not pretend that the question is an easy one. Few controversial questions are. On the one hand, we have the view that both principle and policy demand that the determination of privilege shall be for the Judge. ([19]) On the other, there is the view that the Judiciary should be relieved of the burden of deciding these matters, and that Parliament should control any abuse of the privilege. ([20])

I feel I have said enough to show that the present rule is very unsatisfactory, and appropriate legislation should be passed to prevent the kind of injustice to which attention has been drawn.

There may be many proposals offered, and if so, unanimity may be hard to reach.

The simple remedy is often the best, and less provocative of controversy and delay. That remedy is available by the restoration of the rule in *Robinson's* case, which I now recall to you:

> "Where privilege is claimed for a document on the ground that its disclosure would be contrary to the interests of the public, the Court has always in reserve the power of examining the document for which protection is sought, in order to ascertain whether the public interest would be prejudiced by its production, and to require some indication of the injury which would result from such production."

([17]) *Hughes* v. *Vargas*, (1893) 9 T.L.R. 551, per Bowen, L.J. *Admiralty Commissioners* v. *Aberdeen Steam Trawling Co.*, [1909] S.C. (Ct. of Sess.) 335 per Lords Dunedin and Kinnear.

([18]) *Duncan* v. *Cammell Laird and Co. Ltd.*, [1942] 1 All E.R. 587, 595, per Viscount Simon.

([19]) Professor Wigmore as quoted in (1942) 58 L.Q.R. 437, 438.

([20]) (1942) 58 L.Q.R. 33, 34.

POLICE STATEMENTS.

By R. A. Young, LL.B., In Support.

Mr. E. S. Bowie, in his paper on this subject, has given a full and detailed survey of the principles that are involved and of the major decisions of the past twenty years.

In briefly supporting his proposals for an amendment to the law in this country, I shall endeavour to deal with the matter in a practical way, *i.e.*, in the way that privilege concerns those practitioners who are engaged upon common-law work in this country.

Most of the civil litigation now arises out of accidents that occur on the road or in the course of employment.

Dealing with road accidents suits, *Carroll's* case (1) has established the right of the Minister in Charge of Police to object to the production of any written statement, made by a party involved, to a Police Officer investigating the circumstances of the accident. A similar attitude by the Minister in other cases may now be construed as a policy decision not to admit the production of those statements in civil cases arising as a result of motor accidents.

Summarized, the result of that policy may be :—

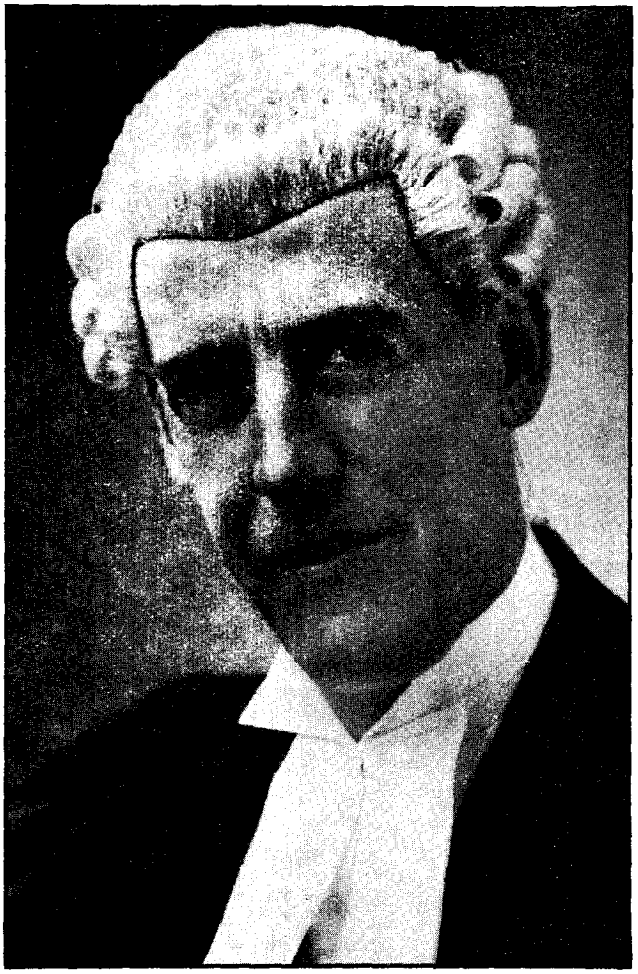
1. Considerable embarrassment and possibly a denial of justice to a person severely injured in an accident. Such person may perhaps be a pedestrian who has been rendered unconscious, and on whose behalf no immediate action has been taken. Upon his partial recovery, months later, he might well have no recollection of the accident, no witnesses, and the prospect of a permanent physical disability. If the motorist concerned in the accident had made a written statement to a Police Officer, that statement could not be produced whether it was of assistance either to the plaintiff or to the defendant.

2. If, on the other hand, the motorist had been prosecuted in the Police Court for a breach of the Traffic Regulations, and if he had there pleaded " not guilty ", the statement made by him would have been produced as part of the Police case against him. It would then have become part of the Court record, and could be perused by interested parties.

If, on the other hand, upon the hearing in the Magistrates' Court, the motorist had pleaded " guilty ", his statement would not have been produced.

It is in the sole discretion of the senior Police Officer in a district to decide whether or not the facts warrant a prosecution. If that Officer's decision favours a prosecution, and if the defendant in due course pleads " not guilty ", the statement becomes available to the other party involved. If, on the other hand, no prosecution is launched, or if the defendant pleads " guilty ", the statement then retains a cloak of secrecy.

3. If the accident had been attended by fatal results, the statement of the survivor of the accident becomes, in practice, the basis of his evidence at the inquest. In addition, the statement itself is usually produced by a Police Officer, its contents read, and the original statement handed in to the coroner as an exhibit. Inquest depositions, together with a copy of that statement, are readily obtainable from the Department of Justice at a later date. I have never heard of privilege being claimed for a statement in such circumstances.



Claude King, photo.

Mr. R. A. Young.

Those are some of the practical results that may follow the policy of claiming privilege for all such statements made in road accident cases.

As Mr. Bowie has stated, *Duncan's* case(2) arose out of a submarine disaster, and the case was heard when the Second World War was at its height. Clearly, the information then sought on behalf of the plaintiff would, if disclosed to the public, have been of considerable use to the enemy. It is by that decision that our Courts are bound. Even those concerned with the administration of justice would concede that national security interests in wartime impose special conditions that do not arise in times of peace.

In England, it would seem that it had been the regular practice in the Courts, there, for Police statements in accident cases to be produced by the officer who has taken the same, upon subpoena issued by a party to the litigation. The first reported road-accident case where privilege was claimed is *Spigelmann's* case (3) heard on

(1) *Carroll* v. *Osburn*, [1952] N.Z.L.R. 763.

(2) *Duncan* v. *Cammell, Laird and Co., Ltd.*, [1942] 1 All E.R. 587.

(3) *Spigelmann* v. *Hocker*, (1933) 50 T.L.R. 87.

November 22, 1933. Counsel for the Home Secretary claimed that it was contrary to the public interest that the statement made by the motorist three days after the accident should be produced. He argued that, if such a statement were not treated as confidential, the Police would have extreme difficulty in collecting any evidence at all. At a later stage in the proceedings, the Attorney-General made an appearance in the Court and submitted that if any public servant, including a Police Officer, had, in the course of his public duty, obtained a statement from another person, then, if the Secretary of State claimed that the production of it would be contrary to the public interest, it could not be produced.

Mr. Justice Macnaghten said that the document belonged to a class which had hitherto always been produced in Court without the slightest objection. He discussed the *Asiatic Petroleum Company's* case (4) and also *Ankin's* case (5). The former case had been heard during World War I and had been an action against the Anglo-Persian Oil Company in which the British Government had shares. Discovery as sought by the plaintiff in that case would have been of assistance to the enemy as it would have disclosed, *inter alia*, the amount of crude oil that was stored at Abadan. Swinfen Eady, L.J., had then stated the principle to be adopted as follows :—

> The foundation of the rule is that the information cannot be disclosed without injury to the public interests ; and not that the documents are confidential or official, which alone is no reason for their non-production (6).

It would seem that Macnaghten, J., felt some resentment at the claim for privilege in *Spigelmann's* case and adopted some measure of judicial subtlety to avoid the direct application of the *dicta* of Scrutton, L.J., in *Ankin's* case. He professed himself as being unable to determine whether the Home Secretary's objection was to the production of the statement itself or to the Police Officer's report made to his superiors. The latter was clearly inadmissible, and he preferred to accept the objection as being directed to that report. He then decided to determine for himself whether or not the Police statement could be injurious to the public interest. Having read it, he decided that there could be no such harm ; and he permitted its production in the action .

In *Duncan's* case, Viscount Simon, L.C., made reference to the practice adopted in the Metropolitan Police District in London. (7) From what the Lord Chancellor stated, it would appear that any person interested in a civil claim could then obtain from the Police an abstract of any report made by the Policeman on the spot to his superiors, including the names of witnesses as known to the Police.

English Recommendations.

In England, the Committee on Supreme Court Practice and Procedure, in July, 1953, brought down Command Paper 8878 setting out particulars of the availability of evidence in running-down cases. The Committee felt that, in such cases, witnesses' statements and Police proofs could, without embarrassment to the Police, be made available to the parties at an earlier stage of the proceedings. Agreement had been reached with senior Police Officers whereby the statements of independent witnesses were available (with the consent of those witnesses) with such modifications as the witness concerned wished to make to his original statement. As to Police evidence, a proof of it would be available to either party when it had been established that litigation had been commenced. The solicitor engaged for either party could also take a copy of the sketch of the scene made by the Police Officer. Such a sketch, however, was to be distinguished from a plan furnished by the Police, and it would be available only to the solicitor who copied it. The Police Officer's note-book would be shown to counsel in the precincts of the Court ; but any recorded expressions of the Police Officer's own opinion would be effectively covered whilst the note-book was being examined.

The foregoing is only a very brief summary of this Command Paper and one may well be left with the impression that in New Zealand the whole system could be cumbersome and provocative of a spate of letter-writing that would achieve, in the end, very little. It will be noted, however, that in this Command Paper, no reference is made to the system to which the Lord Chancellor had referred in *Duncan's* case, *i.e.*, the availability of an extract of a report made by a Policeman on the spot to his superior officers. Whatever may be the position about this, one could be pardoned for feeling that it would be difficult, from a perusal of such a report, to distinguish between what the officer had observed and his own expression of opinion. It is felt that any Police Officer's report upon an accident could not but be coloured, quite unconsciously, by the opinion that the officer had formed on arrival at the scene and by the way in which statements of bystanders had influenced his mind. He might well have reached a conclusion and reported on the very issue that later would be the duty of a jury to decide.

I think it can be said that most common-law practitioners in New Zealand found the old form of procedure simple and effective. This involved, on occasions, obtaining the names of witnesses from the Police, and then briefing their evidence independently of what was on the Departmental file. The statement of either party to the investigating Police officer could be made available, in the Court at the hearing, by subpoena to the officer who had taken it.

The Old Form of Procedure.

In *Duncan's* case, the Lord Chancellor accepted and confirmed the view :

> That a Court of Law ought to uphold an objection, taken by a public department when called on to produce documents in a suit between private citizens, that, on grounds of public policy, the documents should not be produced . . . The common law principle is well established (8).

The Lord Chancellor, however, gave what may be deemed a directive to Government Departments upon this topic. He said :—

> The Minister . . . ought not to take the responsibility of withholding production except in cases where the public interest would otherwise be damnified, *e.g.*, where disclosure would be injurious to national defence or to good diplomatic relations or where the practice of keeping a class of documents secret is necessary for the proper functioning of the public service (9).

It is submitted that, as between subject and subject, production of documents should not be refused by a Minister of the Crown unless the conditions laid down

(4) *Asiatic Petroleum Co., Ltd.* v. *Anglo-Persian Oil Co., Ltd.*, [1916] 1 K.B. 822.
(5) *Ankin* v. *London and North Eastern Railway Co.*, [1930] 1 K.B. 527.
(6) [1916] 1 K.B. 822, at p. 850.
(7) [1942] 1 All E.R. 587, 592.
(8) *Ibid*, p. 590.
(9) *Ibid*, 595.

by the Lord Chancellor completely justify that course of action.

Clearly, production of Police statements in accident cases cannot involve national defence or good diplomatic relations. The only question is whether their production would affect, in any way, the functioning of the Public Service.

From a perusal of reported cases, it would seem that, in running-down actions, Police statements were produced, without objection by Ministers of the Crown down to 1933 in England, and to 1952 in New Zealand. I can find no reference to the production of such documents having violated any of the matters which Viscount Simon, L.C., held to be vital in the interests of the security of the State.

Although *Duncan's* case was decided in April, 1942, ten years lapsed before a Minister in this country felt that its principles should be applied to running-down cases in New Zealand.

Objections Answered.

If it should be that the Minister was concerned (as was counsel for the Home Secretary in *Spigelmann's* case) that such production would involve the loss of safeguards that enabled the Police to act as detectors and preventers of crime, then I think it could be contended:

(*a*) That s. 47 of the Transport Act, 1949, makes it mandatory for a motorist to report an accident to the Police where personal injury has occurred.

(*b*) That a motorist or other person involved in an accident would, in the ordinary course of events, elect to make a statement that was favourable to his own cause.

(*c*) That there does not appear to be any evidence that the production of statements in Court before 1952, acted as a deterrent against persons making such statements to the Police.

It must be conceded, on the other hand, that non-production could result in grave injustice to a litigant. That being so, the exercise of Ministerial discretion to exclude documents from production in Court should be exercised only:

(*i*) In the interests of national defence or good diplomatic relations; or

(*ii*) For the proper functioning of the Public Service.

In New Zealand, provision has been made whereby the Minister of Transport may cause inquiries to be made into any accident involving a passenger-service vehicle. If such an inquiry is held, and a report is made to the Minister at the conclusion thereof, such report is accorded statutory privilege pursuant to s. 152 of the Act. Such an inquiry would no doubt be instituted only for the purpose of investigating an accident of considerable consequence. The fact is, however, that a statutory power does exist to investigate under a measure of privilege any accident where the safety of the public in a service-vehicle is involved.

The trading and commercial activities of the State have increased considerably in recent years. With the vehicles and machines that it operates in the course of this work, accidents are bound to happen. From these accidents and from the trading activities themselves, legal actions in tort and in contract may well arise; and it is important that in litigation the State should be on the same footing as individuals. If Ministerial claims to privilege are to be regarded as absolute and beyond the jurisdiction of Her Majesty's Judges, then it may well seem to the public that justice is not being administered in a fair and equitable way.

I join with Mr. E. S. Bowie in asking the Government to restore to the Judges of our Supreme Court the right to peruse any document for which absolute protection is sought; so that they, in the exercise of their judicial discretion, may decide whether or not there should be a full disclosure of all material evidence, or whether national security or other considerations justified the claim of privilege.

THE PRESIDENT: "I would like to ask the President of the Hawke's Bay Law Society, Mr. Holderness, to take over the Chair from me."

MR. HOLDERNESS accordingly took the chair.

MR. HOLDERNESS: "I think you will agree that these are two very excellent papers on a highly important subject. They are now open for discussion."

DR. O. C. MAZENGARB: (Wellington). "When they used to hang prisoners at Tyburn, there would be two prisoners in the morning and perhaps two in the afternoon carted together to the place of execution. It is on record somewhere that one of the prisoners on one occasion was bowing to the crowd and receiving applause to the exclusion of the other prisoner. The other was a little fellow, and he finally summoned up sufficient courage to say: 'Come out of the way, I have as much right in here as you have.' There are some people who are very interested in the subject which has been so carefully and with so much interest placed before us by Mr. Bowie and Mr. Young. I am one of those who have not yet formed a conclusive opinion as to where the path of justice may lead us in this instance.

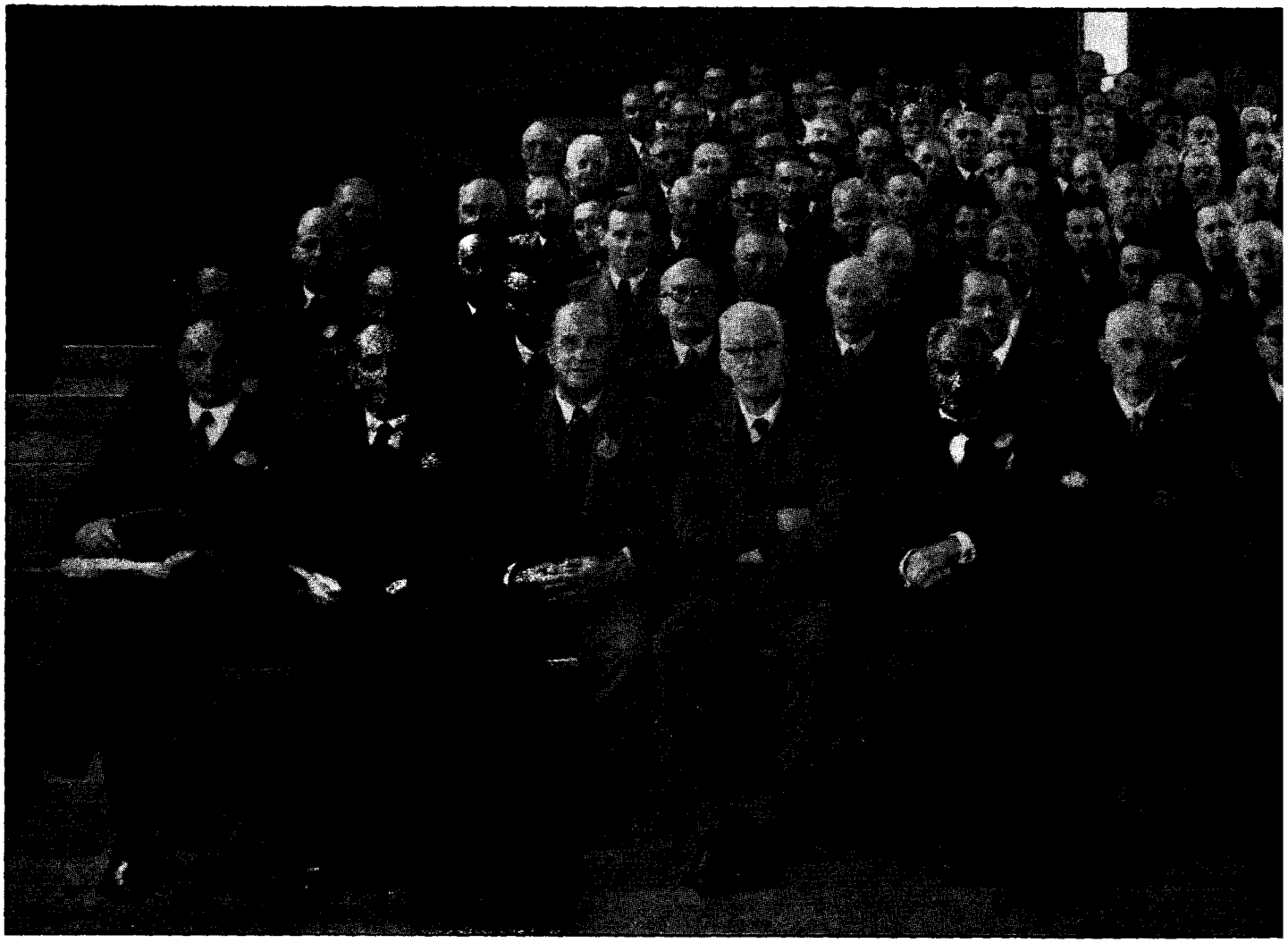
"The matter falls under two heads: First, the reference to the privilege which the Crown claims for documents in its possession. I want to say that I do not think any of us have any complaint, or should have any complaint, regarding the way in which the Solicitor-General and his predecessors have dealt with matters which come before them. I know of very many personal examples when the Solicitor-General has made available documents from one of the Departments of the Crown which could be, and have been, used successfully against the interests of another Department of the Crown. The Solicitor-General has been very fair in this matter, and I do not think any of us can have any complaint whatever concerning his administration of the law in this respect.

"But the matter of Police documents does cause a considerable amount of confusion and a considerable amount of difficulty. Listening to the paper by Mr. Young just now, I was surprised to find the view expressed that it was not until 1952 that objection was taken to the production of Police statements in running-down cases. I was surprised, myself, to find that in other parts of New Zealand these statements were fairly and frequently produced in Court without objection. That was not the case in Wellington, and I can carry my mind back over a good many years. Whenever they were asked to do so, the Police authorities have declined, and been supported by the Judge in their refusal, to produce statements made by one party or other in Police proceedings.

"The remarks made by Mr. Bowie and Mr. Young seem to me to relate to the production of statements

made by a defendant, and a plea is made on behalf of an injured complainant that he should have the benefit of the production of statements made by the defendant. There is the other side not touched on by my learned friends, that is, the use that is frequently sought to be made of statements made by the injured complainant when in hospital and used against him. Most of us have seen such things as this happening in Court. The defendant, cross-examining the plaintiff, happens to be in possession of a statement made by the complainant, and he produces the statement in cross-examination of the complainant. This statement is obtained from somewhere; somebody has given out a copy of that statement. Then we have heard the defendant asking the plaintiff, 'You made a statement to the Police. Are you prepared to go to the Police and get a copy of that statement and show it to us?' Well, gentlemen, it seems to me that that question would not be asked unless the person asking it has some information as to what was in that statement. It is very difficult for a plaintiff to say, 'I was in hospital. I had just come out of an anaesthetic. I answered the questions the Police put to me and I didn't make any further statement other than the replies made to them.' That, to my mind, is the crux of the problem—not the production or the privilege of withholding the statements, but the breach of what I would think is a 'seal of confidence' on the statements made by the plaintiff.

"The concern I have is not so much for the plaintiff who could not get production of a statement made by the defendant. The concern I have is for the use sometimes made of a statement given by an injured plaintiff in hospital when he is not in a fit condition to weigh up all the facts and make all the necessary deductions and inferences from what has happened without going back to the scene and seeing everything in its proper perspective.



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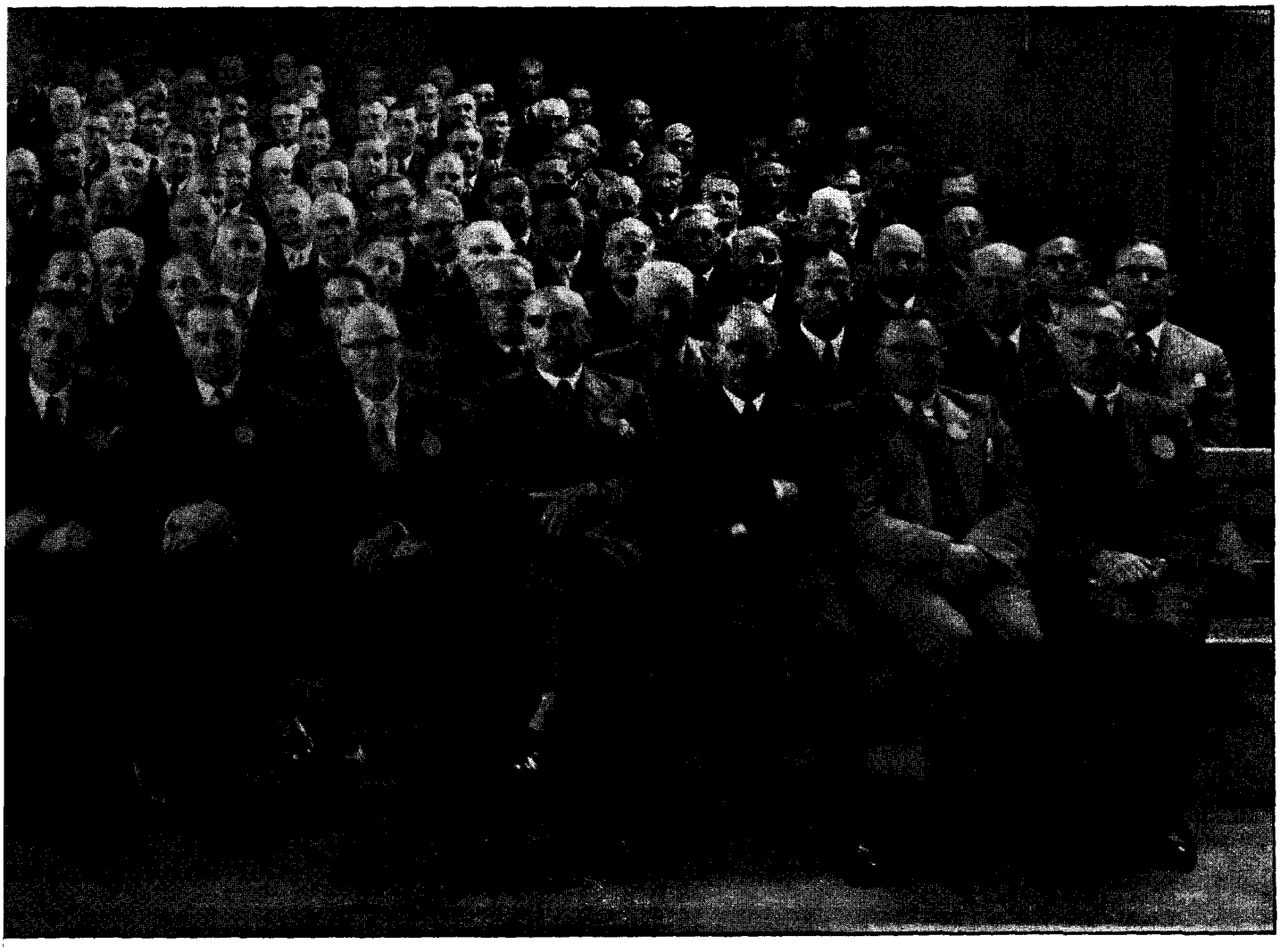
"I join with the President in expressing my personal appreciation of the way in which the subject has been tackled by the two practitioners who have read the papers to us. From my point of view, these are two of the most important papers to come before this Conference. I hope, then, although we are getting near lunch-time, that there will be an opportunity for full discussion. In a multitude of counsels, perhaps, much wisdom may lie."

DR. A. M. FINLAY (Auckland) "I would like to support Mr. Bowie's plea for legislative solution of this problem. I would like to mention very briefly an aspect of it which gives it some sense of urgency. It appears that, in the Petrov case, the Australian Government has recently come into possession of a number of

documents of more than passing interest. Eventually, some of these may come into the hands of our own Government and the disclosure even partially of the contents of some of these documents could pose in a very aggravated form some of the problems we find ourselves discussing to-day. Speculation on such subjects is apt to be accompanied by very warm sentiments and emotions which tend to cloud the issue. I think it is all the more important that the real principles should be kept in mind and we should decide on the course to be adopted at an early date and in the calm atmosphere of this discussion, rather than in the arena of political emotions. The principle ought to be settled, determined and applied by the Government so that, when occasions of the kind I am hinting at come before the public, the principles are there to be applied without being vitiated by the stress of public sentiments which may accompany their disclosure."



A. B. Hurst & Son, photo.

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MR. R. HARDIE BOYS (Wellington). "I think it would be a thousand pities if we could not test the feeling of the Conference as to its views upon the papers that have been put forward so ably by Mr. Bowie and Mr. Young. I propose to move two motions and invite you to put them to the meeting to test the feelings of practitioners. I am not a bit concerned over the issue raised by Dr. Mazengarb as to the plaintiff who makes a confidential statement before he is in a position to do so and without having his solicitor present. I think the issue is much more serious than that. We should concern ourselves, in the first place, with the restoration to Her Majesty's Judges of the right, to which Mr. Young has referred, of perusing documents in civil cases, and, in the second place, to get rid of the rubber stamp of objection to the production of statements in Court by the Police department.

"To give you an example of the latest injustice and absurdity of this: The other day, I had the spectacle of a Police officer claiming privilege and being upheld in his objection to producing the defendant's statement, but he had taken it himself and, therefore, was able, with some memory assistance from the statement itself, to give oral evidence. He was also the prosecuting officer at the inquest and had produced the same statement at the inquest. There the absurdity lies—a man can give oral evidence and yet he cannot produce the statement from which his evidence is taken.

"On behalf of the Christchurch Bar, and in order to put the matter as I suggest it ought to be put, and to invite you to test the feeling of the Conference, I desire to put these two motions (they deal with different topics):

That this Conference requests the New Zealand Law Society to make urgent representations to the Government to restore to the Courts, by appropriate legislation, the power to rule as to the admissibility of any document for which privilege has been claimed on behalf of the Crown.

And the other:

That this Conference supports the representations made to the Government by the New Zealand Law Society that there should be no privilege claimed by the Crown for Police statements in 'running-down' cases.

Dr. Mazengarb indicated that he would second the first motion.

Mr. C. Evans-Scott (Wellington) said that he would second the latter of the two motions if the word "negligence" were substituted for "running-down". Mr. Hardie Boys agreed to this.

MR. L. P. LEARY, Q.C. (Auckland). "I would be grateful for an opportunity of speaking to these motions on a matter that might be germane to them. We must be careful lest we get into deeper water than we think. I take it that a statement made to the Police which ultimately leads to a criminal investigation is a State document, and one sometimes sees the spectacle of a prosecuting sergeant staggered by the fact that a witness has departed from his brief. (Laughter.) Are we entitled to demand the policeman's brief to disprove the truth of the witness's statement? I think it quite possible that an argument could be levelled, and satisfactorily supported, that, upon occasions Police witnesses have made two or three inconsistent statements before they come to trial. There was one notable case in which a man was in prison for many years, and, on a later investigation, it was found that the principal witness had changed her statement a number of times, and the changes of statement appeared to concur with changes in view as to the medical evidence that would support a conviction. These changes of statement were not produced, but had they been produced that man, whom I think was wrongly convicted, would probably never have been convicted at all.

"If these statements are to be produced, then, of course, the safeguard will be the judicial discretion of the Court to permit them; but what a particular solicitor would have to say as to whether we should go that length is a matter of interest. It must be remembered, if we have that privilege (that is, those of us unlucky enough to be entrusted with the defence of a criminal) we may find it has a boomerang effect, because the production of our brief might be asked for in all fairness to prove that our witnesses have not stuck exactly to what they originally said. We are discussing it on a footing of fairness, and on this footing what would be sauce for the goose might also be sauce for the gander."

THE SOLICITOR-GENERAL, MR. H. E. EVANS, Q.C.: "I think I ought to say a few words to indicate to the Conference some matters, connected with this subject, which I think it should know. In the first place—and Dr. Mazengarb has anticipated me in this matter—there was no change in Police practice in 1952. The Police practice has existed for a very long time, as Dr. Mazengarb has recorded from his own experience; and I have in my hands a report given to me by the Police on the subject of the Police practice which indicates that over a period of years, in 1935, 1936, 1946, and again in 1947, this matter of claiming privilege for statements made to the Police was discussed before the Judges. Some of them have taken a strong view that these statements should have privilege and should not be produced. In another instance, Mr. Justice Blair, after having the matter explained to him, is reported in the newspaper to have said, 'There must be something in it.'

"The objection to the production of documents is not a new practice so far as the Police are concerned. It has been carried out without any intervention of the Crown Law Office, and the practice has been going on for a number of years. Mr. Justice Northcroft is reported as having spoken of a new practice in *Carroll* v. *Osburn* [1]. Two cases had been heard on successive days. In the first case, privilege was claimed for a document, while, in the second case, the Police gave oral evidence. The Judge commented on the difference in the attitude of the Police in the two cases.

"While I am speaking of oral evidence, I would like to draw attention to some remarks of Viscount Simon in the *Duncan* v. *Cammell Laird* case in which he expressed the opinion that the principle was applicable to the exclusion of oral evidence as wel as of documentary evidence.

"I will now pass to another topic. Viscount Simon has, as the Conference has already heard, enumerated some of the cases in which it is proper to claim privilege. The first two come under the heading of national safety and the preservation of diplomatic relations. These are obvious, and no doubt about them arises; but in the last type of cases mentioned by him the question is whether a document belongs to a class the withholding of which is necessary for the proper functioning of the public services. In *Ellis* v. *Home Office*, the burden of the matter was not so much the question whether a class of documents should be produced, but whether there should be discrimination within a class of documents—whether some should be produced and some not. I think that is the difficulty arising in the present controversy.

"With regard to the question of criminal and civil cases, admittedly an anomaly exists; whether documents should be pr duced in a civil case where the civil case has been preceded by a criminal case. It is a difficult question and there is evidently something which requires to be remedied there.

"With regard to the finality of the certificate of the Minister, it would seem that Mr. Justice North in the case of *Hinton* v. *Campbell* [2] thought that, in face of the Minister's certificate, the Court could still order the production of the document, because he emphasized that the decision is in the hands of the Court. Viscount Simon himself said in *Duncan's* case that it is for the Court to decide the validity of the objection; but he went on to say that, the objection having been taken in the proper manner by the Minister after consideration of the document, the proper ruling for the Court to give was, as already indicated, to support the certificate. So that it is really on the form of the certificate that the Court has the jurisdiction to decide."

[Mr. Evans here referred to some documents which it had been sought to obtain in a recent Police case.] He added: "The answer which I drafted for the Minister was, in effect, that the documents belonged to one of those classes for which privilege could be claimed. It concluded with the words: 'I direct that neither you nor any other member of the Police Force shall produce the said documents or disclose their

[1] [1952] N.Z.L.R. 763; [1952] G.L.R. 547.
[2] [1953] N.Z.L.R. 573.

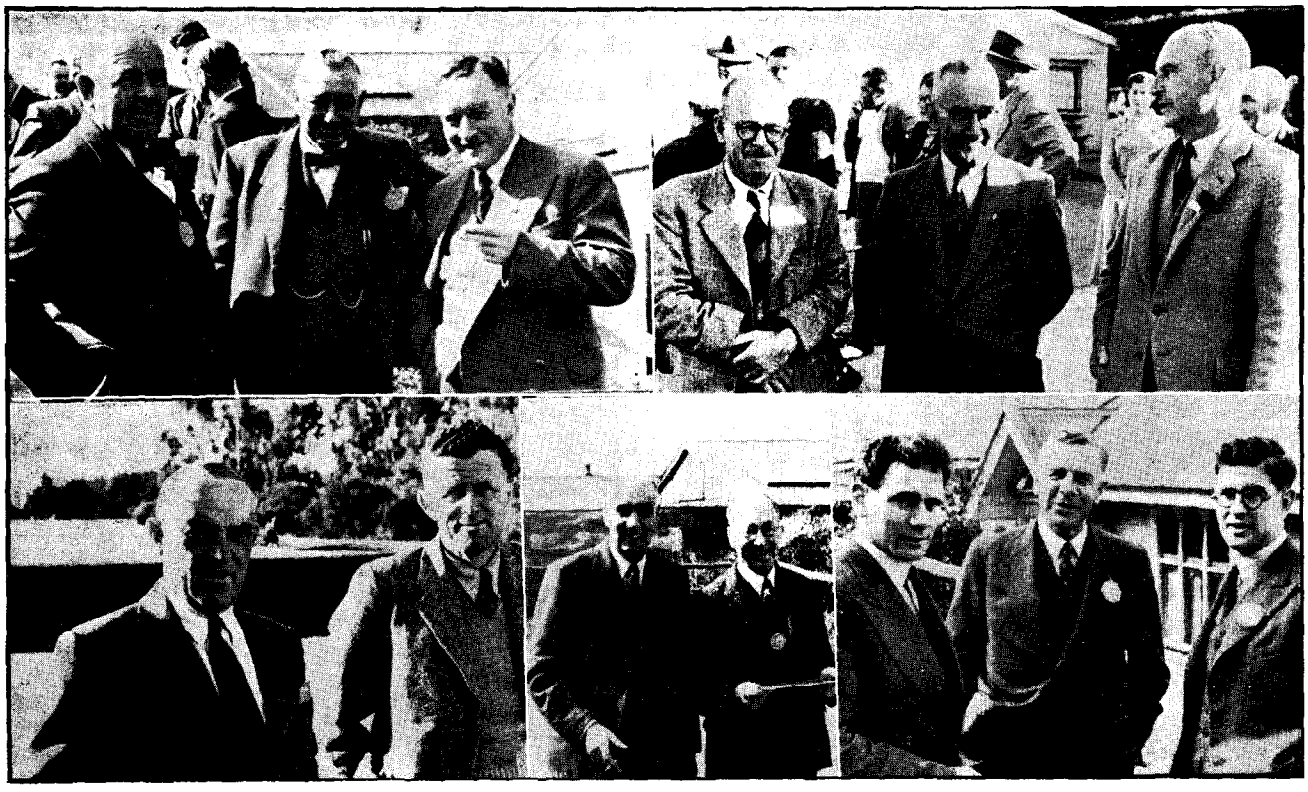
contents to any person unless the Court should hold that my objection to the production of the said documents has not been taken in accordance with law.' I intended to imply that the question is whether it had been taken on a ground consistent with the *Duncan* v. *Cammell Laird* case.

"With regard to the question whether the Privy Council decision or *Duncan* v. *Cammell Laird* should be followed in New Zealand, I want to remind the Conference that, when the latter decision came out, an approach was made by the Law Society to the then Attorney-General, the Hon. H. G. R. Mason, to ascertain whether the Government would in future cases follow the policy laid down in that case; and the Minister answered in the affirmative. It may, of course, be said that, when that question was asked and that answer was given, both the questioners and the Minister were thinking of the passages in the *Duncan v. Cammell Laird* case which said what were not good reasons for refusing production.

"I would also like to refer to another matter which has not yet been mentioned. There are two statutory provisions which cause some trouble. One is in the Factories Act, 1946, and a similar provision is in the Machinery Act, 1950. Each statute contains a modern provision which goes back a little way. These Acts provide that an Inspector who inspects a factory or machinery is not allowed to give any evidence of what he saw there. In a case in 1950 [3], that matter came under review by Mr. Justice Smith, who ruled that the statute would have to be obeyed, but that the Inspector could give evidence as an expert, presumably, after hearing someone else's evidence as to the facts. Possibly, the statute was designed to prevent an Inspector of Factories from going into one factory and then disclosing in another factory, to a competitor, the processes by which in the first factory a manufacture or industry is being carried on. There are no similar provisions in the English or Australian legislation. I have been unable to find, by searching *Hansard*, any reason given for the insertion of these provisions when they were first brought forward.

"With regard to the reasons why the Judge should not decide the question of production of documents for which privilege is claimed, I point out that Viscount Simon in his speech in *Duncan's* case referred to this, going back to the middle of the last century, and quoting Lord Kinnear in his judgment in *Admiralty Commissioners* v. *Aberdeen Steam Trawling and Fishing Co., Ltd.*[4] as giving the reason that the Court is less competent than the Minister in charge of a Department to know why the disclosure of information would be contrary to the public interest. Viscount Simon himself concluded with another statement. I think I have it here. He says:

> In many cases, there is a further reason why the Court should not ask to see the documents, for where the Crown



Conference Days.

Top: (*left*), Messrs. H. G. Carruth and L. A Johnson (Whangarei) and Mr. R. L. A. Cresswell (Wellington); (*right*), Messrs. J. G. Imlay (Invercargill), G. J. Walker (Timaru), and J. Tattersall (Hastings).

Lower: (*left*), Mr. H. S. Ross (Dunedin) and Dr. A. L. Haslam (Christchurch); (*centre*), Messrs. V. J. Langley (Napier) and S. T. Tinney (Pahiatua); (*right*), Messrs. G. C. Doole (Napier), I. H. Macarthur and G. P. Barton (Wellington).

[3] *Hiroa Martin* v. *Hutt Timber and Hardware Co., Ltd.*, [1950] N.Z.L.R. 458; [1952] G.L.R. 171.

[4] (1908) 9 S.C. (Ct. of Sess.) 335.

is a party to the litigation, this would amount to communicating with one party to the exclusion of the other, and it is a first principle of justice that the Judge should have no dealings on the matter in hand with one litigant save in the presence of and to the equal knowledge of the other.[5]

"I think I have mentioned all the points I wanted to bring to the notice of the Conference. I also want to say that this matter last came to the notice of the Attorney-General in December of last year. A communication was received from the New Zealand Law Society, being a resolution which came, I think, from Canterbury, and the Minister referred that to me, asking me whether I had any observations to add to a recent memorandum . . .

"I have not so far added any observations, and the holidays and my own engagements on a little gold-prospecting adventure in the South Island prevented me from doing anything about it; but it will come before the Law Revision Committee, and, no doubt, attention will be given to the valuable papers contributed by Mr. Bowie and Mr. Young and the members of the Conference who have spoken on this matter."

MR. E. S. BOWIE: "I now speak, if I may, in reply to the motions moved by Mr. Hardie Boys and to members in contributing to the discussion. Mr. Young and I are exceedingly pleased that our papers have promoted discussion, and we are very glad that you have taken such an active interest in what we had to put before you.

"Dr. Mazengarb and the Solicitor-General referred to the fact that it was earlier than 1952 that objection was taken to the production of Police statements. Mr. Young, I think, had made the point that it was not until 1952 that Ministerial objection had been before the Court, and, as far as we are aware, it was not until 1952 that there was, in fact, a reported case. We may be wrong there, but we can only speak of the practice as we have known it in Canterbury. For many years, our experience in Canterbury has always been this: a Police officer has frequently said, when asked to produce a statement, 'I have been ordered by my superior officers to claim privilege,' and our invariable experience in Canterbury has been that the Judge has said, 'Produce the document.' (Laughter.) We can only speak from our experience.

"As to production of the plaintiff's statement, I did make the observation that I did not think this a matter really covered by this discussion. We are discussing the question of public welfare and interest, and whether the plaintiff's statement should be produced is, I think, another matter. It could fairly be said, in any event, that it must work both ways. The plaintiff is entitled to the defendant's statement, particularly as it may be the only evidence of neglect where the plaintiff has been seriously injured and embarrassed in his claim. I would say that the plaintiff's statement could equally be admissible, and, after all, statements made orally or written are covered by ss. 11 and 12 of the Evidence Act, 1908; and, where cross-examination is directed as to whether a statement has been made, it can be produced. Surely, such a statement could be helpful in the interests of justice when a plaintiff, immediately after the accident, gives one story to the Police officer and twelve months afterwards, after having had time for consideration, he gives a different account of the accident in Court. That may be a useful check in some cases.

"Mr. Leary doubted the wisdom of the production of statements of witnesses, because witnesses could be attacked. Again, I submit that that is not a question of public interest. It may be a question of desirability, but it hardly comes within the scope of this particular topic.

"I agree with Dr. Mazengarb that the Solicitor-General has always allowed documents to go forward for the Court to examine in proper cases. I refer to the fact that Crown privilege has been exercised with moderation; and, as far as we in New Zealand are concerned, we have no criticism whatever to make of the Solicitor-General's office; but we do say that, in other cases where the objection has not been taken in the Solicitor-General's office, then injustice may flow from that objection.

"Regarding the case mentioned by the Solicitor-General as to the Labour Department: this was, I felt, a matter of statutory privilege; and, therefore, I did not mention it in my address. I would also respectfully say to the Solicitor-General that, despite Viscount Simon's judgment in the *Duncan* v. *Cammell Laird* case, there has since been considerable controversy among the jurists; and the matter is not decided finally. I consider we should not take it as being like the 'law of the Medes and Persians which changeth not.'

"May I respectfully suggest to the mover and seconders, that the motions should be withdrawn. It seems to me that a decision either way might be dangerous, even if practical. It is obvious, from what we have heard, that the matter is one of extreme difficulty, and it appears to me that as individuals we have not time to give the matter proper attention, and it should be left to the Council of the New Zealand Law Society to deliberate upon. Therefore, I make the suggestion that the motions should be withdrawn."

MR. R. HARDIE BOYS (Wellington) remarked that he had already indicated to the Chairman his desire to withdraw the motions. The Chairman said that at least they had stimulated discussion and that was a very good thing. He added:

"I suggest we give Mr. Bowie and Mr. Young some indication of the applause which is to be given later in the afternoon".

This was done.

The Conference adjourned at 12.30 for lunch, and on resuming at 2 p.m., Mr. W. H. CUNNINGHAM, the President, called on Mr. Robson to read his paper on "Widening the path of Law Reform."

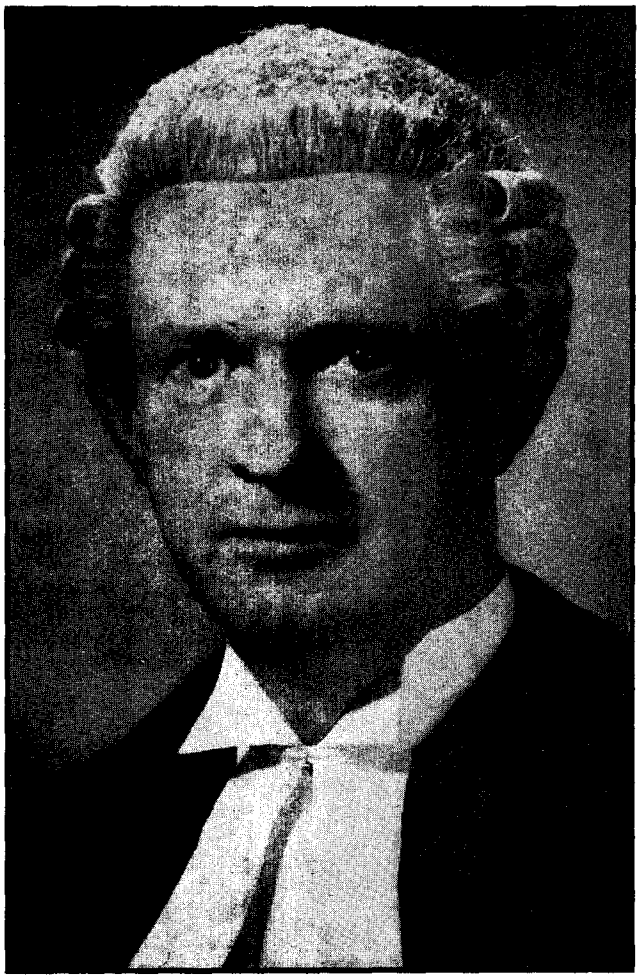
[5] [1942] 1 All E.R. 587, 594.

WIDENING THE PATH OF LAW REFORM.

By J. L. Robson, LL.M., Ph.D.

AT the outset, I want to make it plain that, although I am employed in the Department of Justice, I am simply expressing my personal views, and, if I commit any indiscretions, then the responsibility is entirely my own.

In dealing with this question of widening the path of law reform (1), I must skirt along the swamps of social and political controversy in order to discuss some of the problems of the day. I want to discuss the legislation that is significant in our lives. I want to show that much of it has gone far beyond the realm of private law, in elevation of the public interest, and that as things are to-day the practising lawyer makes no worthwhile contribution in the formative stages of that legislation. I want also to emphasize how crucial is that stage when measures are being considered before their introduction into the House. I propose to suggest machinery designed to bring the lawyer into the picture at that stage, but it may call for some modification in his traditional attitude.



Earl Andrew photo.

Dr. J. L. Robson.

Significant Legislation

As a starting point, let us look at New Zealand to-day to see the laws which touch us the most in our daily lives. We see, of course, that economic life is now regulated by a complex system of statutory relationships. Freedom of contract has been restricted. The title to property has gradually been subjected to a number of restrictions. Freedom to dispose of property by will has, in effect, been restricted by the Family Protection Act, 1908. The right to engage in business is hedged in by a number of restrictions such as import and price control. We also face a wide variety of licensing systems. The concept of status is dominant in much of this legislation and the trend was noted by Sir Robert Stout, C. J., as early as 1900 when he was contemplating the Industrial Conciliation and Arbitration Act. (2)

If we want to find what is significant to-day, it would be meaningless and misleading to catalogue the legislative changes made in, say, the last fifty years. As a polemical exercise, it would be possible to make such a depressing catalogue of regulatory legislation to show that we as individuals have become warts on the body politic with the razor about to descend upon us. The fallacy of this process is that it fails to take account of the changing social conditions and attitudes. In 1877, the notion of compulsory education was repugnant to many, whereas to-day it is accepted, and it has conferred greater freedom in the sense that people can enjoy a fuller and richer life. In 1900, the Testator's Family Maintenance Act was regarded by many as an unjustified interference with the right of a man to do as he wished with his own. To-day it is not regarded as such, and this result is achieved not because of apathy or indifference, but because of the emergence of a social standard that expects a man to behave reasonably when he is making his will.

In our family and domestic life we do not feel the impact of the law to any appreciable extent. It is true that the law is there to be invoked, if things go wrong, and it is also true that there may be a few irksome restrictions affecting our property. But in essence, family and domestic life proceeds on an informal plane, and the law is more of an aid than an impediment to this relationship. For instance there is no requirement in the public interest that we should proceed down our passages on the left-hand side, nor is the time we spend in the bathroom regulated: I make no reference to domestic tyranny. The law that governs our relationships within the home seems more nearly to express the concept of what a reasonable father or husband would do.

Now the picture begins to change pretty quickly from the time we open our front-gates to proceed to our particular sphere of economic activity. First of all, our behaviour in proceeding along the highway is regulated by a detailed transport code. Then, when we reach work, we face a wide variety of regulatory legislation. There are the labour laws. Controls run in many

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[1] I am indebted to Stevens & Sons Ltd. for permission to use some of my contribution to a book about to be published, *The British Commonwealth, The Development of its Laws and Constitutions*, Vol. 4, *New Zealand*, General Editor, George W. Keeton.

[2] *Taylor and Oakley* v. *Edwards*, (1900) 18 N.Z.L.R. 876, 885.

directions. We have import control, price control, export control; monetary and marketing control. It would be tedious to recount them all, but it is clear that this legislation dominates economic life to-day.

The Public Interest.

I mentioned earlier that the law which governs our relationships within the home seems more nearly to express the concept of what a reasonable father or husband would do, but it would be unreal to argue that this concept reigns to the same extent in the sphere of regulatory legislation. It has become subordinate to a somewhat wider, but more difficult and possibly nebulous concept, that of the public interest. It may be argued that the public interest expresses the views in the aggregate of a group of reasonable men, but this approach is far too simple to be convincing. Perhaps one way to reconcile the two concepts is to ascribe to the reasonable man a divine insight into everything of consequence in this universe, but, in reality, we must struggle further with this concept of the public interest.

Take the Land Sales legislation of recent years. If you look at it from the viewpoint of the property owner, it was simply one more restriction upon what he might do with his property and just one more addition, possibly illegitimate, to the law embracing property. Viewed from another angle, it was simply an economic control imposed as part of the State's policy of stabilization; and, as that was the primary reason for the enactment of the legislation, I prefer to regard it from that angle. It was a case of the public interest being placed above the interest which property owners had in the disposal of their property at such figures as they thought fit. The interest of citizens in preventing inflation prevailed over the interest of citizens in doing what they wished with their property. It is best put on that plane as the mention of the State in this context merely confuses the issue.

The question of the public interest was discussed by Lord Simon in *The Thetis* case, and although that case was not concerned with economic legislation, his direct and simple observations on the question are helpful:

> After all, the public interest is also the interest of every subject of the realm, and while, in these exceptional cases, the private citizen may seem to be denied what is to his immediate advantage, he, like the rest of us, would suffer if the needs of protecting the interests of the country as a whole were not ranked as a prior obligation. [3]

The plain cold fact is that this concept of the public interest reaches us as the legitimate expression of the will of the majority in a democracy.

Democracy.

We must acknowledge that our legislation is enacted in a country which accepts the democratic system of government with its various means of enabling citizens to express their views on current affairs, and in the last analysis it restrains the politician through the sanction of the ballot-box. Although we accept without question our own type of democracy, we can still ask whether the principle is applied as well as it might be. Democracy seems to have solved the problem of meeting the wishes of the majority, but has it solved the problem of the minority? It would be intolerable to allow a minority to overthrow a majority, but it is a completely different thing to ensure that the minority are not trampled upon by the elephants of the majority. Here I am thinking of the individual, but not the classical individual of laissez-faire philosophy, nor the individual of the classless socialist society. I think of the individual of to-day:—

(1) The one who feels helpless in the face of bigness, whether of the government department, or of the corporation.

(2) The one who is the victim of pressure groups, largely because he is inarticulate.

I do not argue that the existence of pressure groups is wrong; I merely argue that the individual needs a measure of protection which goes beyond the mere exercise of his vote.

Part of the reply to this problem lies in the way that legislative proposals are handled before they reach the House. It is of obvious importance that draft legislation of a far-reaching character should be subjected to a searching examination from all angles before it is introduced into the House. Without in any way belittling the functions of Parliament, I want to stress the significance of the early stage when legislative proposals are being formulated. That is the stage upon which I want to focus attention today, and the proposals I shall outline a little later are designed primarily for that stage. It is the stage when people are less committed and when changes can be made in a harmonious atmosphere and without raising the problem of face-saving. It also is the stage when the practising lawyer can make a substantial contribution.

Does the practising lawyer get the opportunity early enough to make his most effective contribution? The plain fact is that he does not; and there are vast areas of social and economic legislation upon which he has secured no worthwhile foothold. This arises, in part, because the machinery is not as comprehensive as it might be at the crucial stages of the formation of policy. However, before I proceed further, I must discuss the role that has been played by the Law Revision Committee up till now.

Law Revision Committee.

This Committee was set up in 1937 and has worked actively except for a break caused by war conditions. It is presided over by the Minister of Justice. The Law Society is represented and so are the Law Faculties of the University of New Zealand. Three high State officials sit on the committee—namely, the Solicitor-General, the Secretary for Justice, and the Law Draftsman. There is an informal link with Parliament in that the Chairman of the Statutes Revision Committee is a member, along with a lawyer drawn from the Parliamentary Opposition. The function of the Committee is purely advisory, and the recipient of the advice is the Minister of Justice. He, of course, is free to accept or reject that advice; but the facts of the situation are that advice given by a Committee so representative in character and so able in its membership would never be lightly tossed aside.

I do not propose to bore you with a recital of its achievements. All that I need say is that it has ranged with great effect over the fields of evidence, procedure, family law, contracts, property, and torts. It has moved some distance into the field of administrative law with its work on the measures leading to the Crown Proceedings Act, 1950, and the Limitation Act, 1950.

It is obvious that the committee has done excellent work, and its success stimulates one to ask why an

[3] *Duncan* v. *Cammell Laird and Co.*, [1942] 1 All E.R. 587, 595, 596.

analogous organization cannot be set up to deal with measures which go far beyond the traditional field of private law. Do we shrug our shoulders and pass these things by, even though they loom largely in our lives to-day ?

Machinery Suggested.

For the answer to this question, the analogy of the Law Revision Committee is helpful. There is need for a standing advisory committee but so composed as to bring in not only the lawyer, but the intelligent layman, the administrator, and other experts from other fields. This committee could set up sub-committees that were appropriate to the particular problem and it should, of course, have the power to co-opt. The problems of to-day cannot be tackled from one point of view; success comes from a pooling of the knowledge and experience of people drawn from a variety of fields, and the lawyer, if he is going to make his best contribution, must work in a more organized and continuous way with experts from other walks of life. It is not without significance that an English committee that recently sat on the question of practice and procedure included a number of laymen.

There are some legislative proposals which, because of their intrinsic importance or special difficulty, lend themselves to study by a committee working outside the framework of the departments which have initiated the proposals. A similar function is successfully performed for the French Government and Executive by the administrative sections of the Conseil D'Etat.

The Government in its discretion could refer to such a committee legislative proposals that raise exceptional difficulties. There are also some phases of social and economic legislation that could be examined by the committee, either on its own initiative or on invitation from Government. I do not contemplate that the committee should take the place of the occasional Royal Commission to deal with a contentious social question such as drinking or gambling, but it could be within the scope of the committee to recommend matters for such treatment. The committee could review the provisions and operation of subordinate legislation. Likewise it could examine the provisions governing administrative tribunals and their operation.

By the very nature of the questions that would be considered, a committee of this kind could not expect to work in the same placid atmosphere as does the Law Revision Committee in the field of private law. The questions would tend to be more contentious, and for this reason we should consider what would be the committee's place in the scheme of democratic government. I have already mentioned that the committee would be an advisory one. It could function effectively, and yet in harmony with the principle of ultimate Ministerial responsibility. Its reports could be made to the individual Ministers concerned, or to the Prime Minister. The extent to which a report on a given subject should be published, and at what stage, would be a matter for the Government of the day.

I will give, from our recent history, two illustrations of matters that could have been handled profitably by such a committee had it been in existence. Take the Import Control Regulations of 1938. As pointed out by Callan, J., in the *Jackson* case, [4] these regulations purported to surrender the whole field of importation to the uncontrolled discretion of the Minister of Customs, unguided by any settled principles. Was such a sweeping authority necessary ? Could not some machinery have been devised to give the importer an effective right of appeal within the framework of the policy ? A committee of the kind I have mentioned could have dealt with this, and could have whispered to the Government that the draft regulations were invalid anyway. The social-security legislation could have been improved by conferring on beneficiaries a more adequate right of appeal in respect of benefits.

[4] *F. E. Jackson and Co., Ltd.* v. *Collector of Customs*, [1939] N.Z.L.R. 682, 702, 703, 704.

The Individual Citizen.

Earlier, I spoke on the lot of the individual and I want now to elaborate a little in relation to his legal remedies because that is a problem worthy of study by the committee I have in mind. If it is a decision of an administrative tribunal that irks an individual, he will have to show that the tribunal has exceeded its jurisdiction or has acted contrary to the principles of " natural justice "—used in a restricted technical sense. Unless he has a statutory right, he cannot go to the Court on the substantial merits of the decision as such. If it is a regulation of Government that irks him, his range of remedy is pretty limited. As things are, the position of the individual is not as strong as it should be, but the problem is a most difficult one. It has been well said that

> the nub of the problem is how to confer the large discretionary powers which public authorities require in order to carry out their functions with efficiency and flexibility without thereby exposing the individual to arbitrary or irresponsible government actions. Political control is, of course, essential, but it is not sufficient. Legal redress must also be available. [5]

Take one facet of the question. There are innumerable administrative tribunals in this country. There could be more uniformity in their structure, powers, and procedures. What I am concerned to see is the provision of an effective right of appeal on the merits of a decision of an administrative tribunal. It may be that this can be achieved to a greater extent than now within the administrative tribunal system itself, but it would be more satisfying to the citizen if the appeal were to the ordinary Courts. I think of the citizens of little Charleston who wanted to retain their aged and decrepit pub.[6] There happened to be a right of appeal to the Supreme Court against a decision of the Licensing Control Commission, the right was exercised and the appeal successful.

The Common Law Attitude.

If progress is to be made on the status of the individual to administrative tribunals there may have to be some change in the attitude of the common law. I have in mind a dictum of the Privy Council in the *Crown Milling* case of 1927.[7] The case concerned the Commercial Trusts Act, 1910. The question was whether or not a particular monopoly was of such a nature as to be contrary to the public interest.

The Supreme Court and the Court of Appeal had wrestled with economic theory and policy in their approach to the question at issue, but the Privy Council threw cold water on their efforts with this dictum :

[5] W. A. Robson, *Law and the Welfare State*, in " Public Administration " (Eng.), Vol. XXXI, Spring, 1953, p. 21.

[6] *Alford* v. *Licensing Control Commission of New Zealand* (Greymouth. March 23. 1954. F. B. Adams, J.: to be reported).

[7] *Crown Milling Co., Ltd.* v. *The King*, (1927) N.Z.P.C.C. 37.

It is not for this tribunal, nor for any tribunal, to adjudicate as between conflicting theories of political economy. ([8])

If the common law in its evolution halts at that point, then, in effect, it means that many of the questions now dealt with by administrative tribunals should not be dealt with by the ordinary Courts by way of appeals on the substance of the decisions. Economic issues bulk large in the work of the Licensing Control Commission, and yet it is unlikely that the Supreme Court will find great difficulty in adjudicating upon these issues.

There are other facets to this question, but it is beyond the scope of my paper to go further. However, it is not without profit to look at the way Equity began and evolved. She began as a protest against the rigidity of the common law, later developed her own pattern of life, and then returned to live under the same roof with her sister, who in the meantime had become a bit more enlightened and talked less about her virginity. Is it beyond the realms of possibility that administrative tribunals will evolve in much the same way? I must leave this issue, but with the hope that its solution will not take quite the time that Common Law and Equity took to settle their differences. One is comforted by the thought that these days there is more ready acceptance of the concept of legitimation.

The Role of the Lawyer.

The broad question I now want to pose is this—does the lawyer need to change his habitual approach and outlook in order to make a greater contribution to the working of society? Certainly there is one approach which, while appropriate in the field of private law, has less relevance in the field beyond. Most of the work of the Law Revision Committee has not been creative in the sense of being original. The Committee has carefully considered English legislation, and then recommended it for adoption here with as little change as possible. Presumably the Committee has been guided by the sensible principle, enunciated from early days and by such figures as Sir Joshua Williams, that in the field of private law anyway, we should, as far as possible, follow English legislation, because it gives us the benefit of English decisions.

But the position is somewhat different in the areas beyond private law. There is less emphasis on making a strict copy of the laws of other countries, more evidence of laws and institutions that are native to the soil, and more scope for creative work.

The lawyer, of course, is often ranked as one who is opposed to change, and therefore as one who is not well fitted to take a creative role. Certainly there are illustrations from the history of our own country where the lawyer has strongly opposed a policy which today is accepted without question. Lawyers, as a class, can seldom be accused of being radicals in the sense of wanting to pull up social plants by their roots; but there is value in this attitude, even if the retrospective eye of history occasionally makes of the lawyer a somewhat pathetic figure.

The lawyer, however, is not unresponsive to change and there is an ebb and flow of ideas which quietly affects the decisions of Judges and Magistrates. Some words of Lord Wright are apt here, when he says that English law has reacted to the moral, social and political ideas of the time, which have profoundly and persistently affected not merely the Legislature but the Judges. ([9])

The role of the lawyer is best expressed when he does not oppose change because it is change, but insists that the proposals be closely studied for their efficacy to meet the end in mind. To contest the end in mind necessarily means an excursion into politics, which is to be deplored if only because it tends to give lawyers a political label in the eyes of citizens. But it is another thing to ask for clarity as to the end in view. Unless there be clarity, how else can the provisions that purport to achieve the end be measured for their efficacy? To seek clarity in the objective and then to test the efficacy of the provisions that lead to the achievement of the objective, is where the lawyer can make his greatest contribution. His training and experience gives him an analytical mind which enables him critically to dissect proposals and to test them against a variety of circumstances and against many combinations of fact.

The important question is how to ensure that the lawyer is given the fullest opportunity to make his best contribution over a much wider field. I believe that the committee machinery I have suggested would be a substantial step to that end. In the past, lawyers have lamented legislative trends, but the time for lament is over if only to avoid the occasion for further lament. Now is the time for a constructive approach, and I believe that the lawyer has a profound contribution to make in this age of transition.

[8] (1938,) *85 Law Journal* (Eng.), 416.
[9] *Ibid.*, 43.

The Discussion.

In opening the discussion on Dr. Robson's paper, the PRESIDENT said:

"I am sure you have listened with great interest to the thoughtful paper given us by Dr. Robson. If anybody would like to add any comments, we could spare a few minutes, although we have a full afternoon before us."

MR. M. JOEL (Dunedin): "I would like to say that we all appreciate the remarks of Dr. Robson, and the trouble he has taken in putting this paper forward. I merely wish to say that, in my small way, I do agree with him wholeheartedly that very definitely some system is needed in the proper consideration of proposed legislation, and the proper consideration of proposed and effective regulations of a subordinate kind. I also feel strongly that in this country, as elsewhere in the Commonwealth, administrative law is becoming more and more important to the people; and there is an urgent need for some proper system of providing appeals from the decisions of administrative and semi-judicial authorities. Administrative law, while becoming more and more important, is becoming more and more of a jumble as we go on. It is really important that something should be done to bring order out of the chaos that exists at the present time."

MR. R. A. HOUSTON (Huntly): "I, also, wish to support the paper. I understand (I may be wrong in this) that the Child Welfare Department is dissatisfied with the present system of adoptions, and wishes to regulate all adoptions through its own Department.

This would take away the duties of solicitors in this respect and regulate adoptions through one central agency in Wellington.

"I feel that if we, individually and collectively, can consider legislative proposals, whether through a Committee or through some other method, we can do something effectual to bring the weight of our experience and our knowledge to bear, and to make a worth-while contribution. I think the time for lament is not afterwards, but in the beginning, as the speaker has said; and, if we got in early and gave the benefit of our experience, we would be doing something. An individual practitioner, even if he is a conveyancer, can give that social service."

MR. A. C. PERRY (Christchurch): "I think Dr. Robson's address has drawn attention to the inaccuracy, to some extent, of the present system. Against that, I feel that insufficient attention has been directed by him to the part the New Zealand Law Society is already playing in the sifting of legislation. When you are a member of a District Committee, you experience that sifting process. Draft statutes, as you know, circulate through the New Zealand Law Society and down to District Societies; and criticism is made by the Districts and sent forward to the New Zealand Council. Representations are then made by our own Standing Committee, when the opportunity arises, before the Statutes Revision Committee. To some extent, then, the lawyer at the present time is playing the part that Dr. Robson seeks for him; but the real difficulty is the haste with which legislation is so often brought down and the inadequate time given for those draft statutes to go before solicitors. If lawyers, generally, have any criticism to make, it is the time-factor that makes our present system one that does not work effectively or to its full extent. The part, then, played to-day by the profession is a very proper one."

THE PRESIDENT: "This is a valuable paper, and the suggestions contained in it will be examined closely by the Council of the New Zealand Law Society, and, if opportunity occurs, may be given some practical effect. I think, probably, now our best course is to pass on to the next paper. I thank Dr. Robson very much for his paper, and he will be thanked in public later in the afternoon.

SOME PERSONALITIES AT THE CONFERENCE.

The President of the New Zealand Law Society, Mr. W. H. CUNNINGHAM, was born in Wellington in 1883. He was educated at the Wanganui Collegiate School. He was admitted in 1908 and practised in Wanganui, and was appointed Crown Solicitor there in 1926. In 1929, he went to Wellington to become a partner in the firm of Messrs. Luke, Cunningham, and Clere. He was President of the Wellington District Law Society in 1932 and he has been Crown Prosecutor at Wellington since 1936. He has served in the Military Forces since 1902. In World War I, he was Colonel commanding the 2nd Infantry Brigade N.Z.E.F., in Egypt, Gallipoli (where he was wounded), and France, and was four times mentioned in dispatches. He received the D.S.O. and the Order of St. Stanislaus, 3rd Cl. (Russia) in 1916, and the C.B.E. in 1935. In World War II, he commanded the 8th Brigade Group, and was O.C. the Fiji Defence Force with the rank of Brigadier, and in 1941-42, he was G.O.C. Fiji with the rank of Major-General. In 1942, he was invalided home, and returned to practice. He has been President of the New Zealand Law Society since 1950.

MR. J. H. HOLDERNESS, the President of the Hawke's Bay District Law Society, was born in Hastings in 3912. He was educated at Mahora School and Christ's College and subsequently graduated LL.B. from Victoria University College in 1937. He is now a partner in the firm of Messrs. Parkinson and Holderness practising in Hastings, having joined the firm in 1943. He is now in his second term as President of the District Society, having been President in 1949 and 1950; while President of the Society, he is the Society's representative on the Council of the New Zealand Law Society. He was a Hawke's Bay and Wellington athletic representative, and was for some years District Commissioner of Scouts in Hastings.

MR. G. E. BISSON, one of the Joint Secretaries, was born in 1918. He was educated at Napier Boys' High School and Victoria University College, where he graduated LL.B. in 1941. He served in the Navy for five years during the war, being mentioned in dispatches and promoted Lieutenant-Commander. He was Senior Radar Officer in H.M.S. *Warspite* and Squadron Radar Officer to Third Battle Squadron. He is now a partner in the firm of Messrs. Bisson, Moss, and Bisson, Napier.

MR. D. D. TWIGG, one of the Joint Secretaries, was educated at the Napier Boys' High School. Admitted in 1939, he joined the firm of Messrs. Cornford and Langley in 1939. He served with the New Zealand Expeditionary Force in Egypt from 1940 to 1943. He was transferred to England where he served under Major-General Kippenburger as A. A. and Q.M.G., with the rank of Lieutenant-Colonel. During his service in the Middle East, he was twice wounded, and was twice mentioned in dispatches. He is now a partner in the firm of Messrs. Langley, Twigg, and Doole.

MR. L. P. LEARY, Q.C. (*A Permanent Court of Appeal*) was born at Palmerston North in 1891, and was educated at the Palmerston North Boys' High School, Wellington College, and Victoria University College, where he obtained the LL.B. degree. From 1914 to 1918, he was on active service with the Samoan Advance Party, the R.F.A. in Egypt and France, where he was wounded and was awarded the M.C., and lastly at the Exeter Cadets Training School (R.F.A.). In 1930, he joined the firm of Messrs. Bamford and Brown, Auckland, and was admitted as a partner in 1922. In 1936, he formed the firm of Messrs. Leary and Giesen. From 1939 to 1944, he was active in the Defence League, joined the 1st Field Regiment, of which he was C.O. for two years, later acting C.R.A., 1st Div., Whangarei. He took silk in 1952. He is a member of the Disciplinary Committee and of the Council of Law Reporting. Mr. Leary is the author of *New Zealanders In Samoa*, and of several successful musical plays, including *Tutankhamen*. He now combines the practice of law with the raising of pedigree Friesians on his farm at Henderson.

REFORM OF THE JURY SYSTEM IN RUNNING-DOWN AND INDUSTRIAL ACCIDENT CASES.

By H. W. Dowling, LL.B.

THE basic thoughts outlined in this paper were formulated before Mr. Justice Stanton's recent remarks in his charge to a Grand Jury in Auckland, and the submissions I make are in no sense an attempted reply to whatever prompted His Honour's comments.

These comments did, however, give public expression to a doubt existent in the minds of many that certain aspects of the jury system could with profit be reviewed, and, perhaps, to some extent and in some fields at least, be modified.

The sole purpose of this address is to examine one particular field in which my colleague, Mr. White, and I feel that the existing system of trial by jury should be modified, if not, indeed, abolished, in the light of modern professional thought and experience. Together with many other practitioners, we have been impressed with the particular problem arising out of the trial by jury of running-down and industrial accident cases with which this discussion is alone concerned.

Following Mr. Justice Stanton's comments, two statements from widely different sources were published in the local daily newspapers—the one dealing obviously with trial by jury in criminal cases, the other in civil suits.

An experienced Queen's Counsel was reported as saying:

> There is no doubt that twelve reasonable men from ordinary walks of life are more able to express an able and just opinion than a bench of Justices and would do much better than a jury of six men. It is suggested that jurors to-day are more intelligent. I hope that is so, but against that the problems of life are far more complicated. It is to be hoped that no departure is made from it [the existing practice].

In contrast, a Napier practitioner commented:

> In England, most civil cases are heard with complete satisfaction to everybody concerned, before a Judge alone, without a jury. In some Australian States juries of only four hear similar cases. There are many reasons for believing that a jury of six would be completely adequate in such cases here.

For myself, I express the fervent hope that never in this country will we see a reduction from twelve to six in the numbers of the jury in criminal cases. In such matters the jury can be said to represent the public conscience, doing public justice. The offender is an offender against the public as a whole. The provisions of the criminal code for the most part coincide with public morality; and who more fitted to enforce the rules regulating public conduct than those in close daily contact with the public mind?

A. B. Hurst & Son, photo.

Mr. H. W. Dowling.

On the other hand, I am not one who holds any strong belief that it is either necessary or expedient that unqualified members of the public should take any active part, as members of the tribunal, in the administration of what, by contrast, I refer to as private justice—the trial of civil, as distinct from criminal, proceedings.

I venture to say without fear of contradiction that the aim and ideal is the delivery of a just and impartial verdict on the contest between the parties. If lay participation in that verdict ensures the highest standard of justice, let it be preserved. If it does not, then our duty, as lawyers, is to urge its modification or abolition.

I therefore start with the assumption that as a Law Society, while individually we are largely occupied with the purely individualistic incentive of personal gain, we are all, at the same time, conscious of a high calling and that the doing of justice between man and man is our predominant aim and our ultimate goal.

The solicitor who offers the brief, the counsel who conducts the case, the Judge who with dignity, understanding and intellectual integrity presides at the hearing, should be and for the most part, are, all concerned not with personal triumph but with the doing of maximum justice within the law.

This paper is concerned with an examination as to whether justice *is* better done under the present system or under some alternative. It is not a dogmatic expression of what ought to be, but a raising of a doubt for the purposes of practical examination and discussing in conference, by a body whose composite experience renders it more qualified than any other to express an

opinion of value.

It may well be that a number of our Judges are opposed to any change.

I am the very last to suggest that I have anything like the practical experience or knowledge that our Judges either have at elevation or acquire from their special position thereafter. But I believe, and the Judges are the first to agree, that the Bar both in Court and out of it, should be free to express honestly held views on matters of public interest of a legal nature without fear that, by so doing, the slightest disrespect is intended or will be thought to have been mplied.

My colleague and I find a great deal of comfort in the support for our proposals given by men of the highest qualification and professional standing, and certain quotations will be given to you both by me and by Mr. White. These cannot fail to impress you with the fact that any system, which calls down upon itself such unqualified condemnation from such high sources, is at least one which warrants careful scrutiny and mature consideration before a decision is arrived at to leave that system untouched.

I agree with the general principle, that, assessing the integrity of witnesses, a jury properly constituted of impartial and intelligent lay-men is fundamentally by its very numbers and composition, frequently more sure and certain of its judgment than would be some Judges sitting alone. No one, I trust, will take umbrage when we recognize that there are good Judges of law and good Judges of fact, and that there ar likewise some who are not so good as Judges of fact.

The argument in favour of juries can perhaps be best stated as was done in Australia recently by Mr. Norman A. Jenkyn, Q.C., of the New South Wales Bar, when he addressed their Eighth Annual Conference :

> Subject to one important and absolutely essential qualification, I prefer trial by jury. That qualification, as I have previously stated it, is that the key note to the right to occupy the important role of juror should be, as it is of that of Judge and counsel, competence. Once competence is established, there is much to be said for the opinion of intelligent lay men on a question of fact in preference to that of a single Judge. In expressing that view I am not unmindful of the advantages that a Judge has by training and experience and by a better appreciation of the laws of evidence to give due weight to the various aspects of the evidence adduced before him.
>
> As opposed to this is the fact that four competent and experienced *business* men would frequently represent a wider and more varied experience of human beings and affairs than would a Judge who has probably led a more sheltered existence. The collective wisdom of four provides a safe guide to the solution of most problems. Judges are only human and tend to develop prejudices which are reflected in their judgments. In a jury such prejudices are apt to cancel each other out.

Mr. Kevin Ward, Q.C., of South Australia, on the same occasion, expressed the other view when he said :

> Juries in civil causes were abolished over 25 years ago in South Australia. I think the opinion of the profession would be against introducing them again . . . I claim that, on the score of expedition and efficiency, there is a very strong argument in favour of eliminating juries in civil causes.
>
> A Judge, by training and experience, should be at least as competent to determine facts, particularly when they are complicated . . . One criticism of Judges, on this point, is that sometimes, they not only find the facts, but also give elaborate reasons for such findings. At times the reasons submerge the findings. With juries there is sudden death. On a general verdict, one may never know what were the findings much less the materials, or reasons, or mental processes, employed in ascertaining them. Judges sometimes deal with the facts in a way which the loser regards as unsatisfactory but their judgments are rarely so wide of the mark as are some jury verdicts. The extraordinary awards given to injured plaintiffs in road accident cases illustrate this point.
>
> Finally, if Judges go astray in their findings of fact, it is possible to get this set right on appeal. Appellate Judges have a traditional reluctance to interfere with jury verdicts even though they may suspect that the jury ignored the real issues in the case. My conclusion is that it is advantageous to dispense with juries in civil trials ; but I would like to pay tribute to the frank and strong arguments which Mr. Jenkyn has put forward to the contrary.

In my own submission, differing points of view must to some extent be held by those who might be classed as recognized " plaintiffs' men " or " defendants' " men " ; and that fact alone would warrant the inquiry as to whether the system which the one desires to preserve, and the other to change, is the best that can be devised.

A plaintiff and a defendant should both feel on an initial equality before the tribunal hearing th action. Neither should feel that the odds are for or against him by reason only of the constitution of the tribunal, and though some of our Judges, and some of you, may not feel that there is merit in that suggestion, it is, nevertheless, an undoubted fact, that, among thos who actively practise to any large extent in this field, there is a conviction that the plaintiff by reason only of being the plaintiff is in an immeasurably superior position to the defendant before the case has even been opened —indeed, even before the writ has been filed.

Theoretical principles of negligence remain fairly constant ; but their practical application has become so extended, that, in some views, it is sufficient to allege negligence for it to be almost a practical certainty that a jury will find a general verdict on that ground with which the Court finds the utmost difficulty in interfering.

Whatever the theory, and whatever the ideal, how many experienced practitioners, presented with a full brief of the facts, advise for the plaintiff that a claim should be made and action taken for th primary reason that whatever the real merit, a jury is almost certain to hold the defendant liable, so that judgment may be recovered for a greater or a less amount.

And if for the defendant, does not such a practitioner advise a settlement, at frequently a large amount, rather than face the great probability of a verdict for the plaintiff in an even greater amount ? In consequence, hundreds of settlements are effected each year, not on the basis of experienced asses ment of the merits of the claim or the defence, but on the fact that both plaintiff and defendant recognize that juries will, almost inevitably, in such types of cases, give a general verdict against the defendant. In the result, and frequently quite baldly, the plaintiff presses for settlement or the defendant offers it, not on the basis of the merits, but on the recognized risk the defendant will run on a jury trial.

I regret that this has been accepted to such an extent that it is only with the greatest difficulty that an insurance company will authorize a defence, fearing that costs will be incurred and judgment suffered so frequently and for such an amount, as to make it cheaper, almost invariably, to pay.

I have heard it commented, more than once, that almost invariably there is some negligence by the defendant in such cases. Even were this true, it

provides no excuse for or answer to the allegation that justice requires that the tribunal should be impartial, and that its partiality should not be the influencing factor in the consideration given to the majority of claims.

I am not wishing to reflect in any way on the integrity of the individual juryman and I am satisfied that, fundamentally, there is some basic cause for what Mr. Jenkyn and Mr. Ward both refer to—namely, the extraordinary awards given to injured plaintiffs in road accident and industrial cases and its explanation can, in my view, be found in what follows.

It is a well-known rule of practice, that, if matter prejudicial to either party is mentioned by counsel, if such matter is not in issue, the Judge may discharge the jury and order a new trial. If the breach is not a serious one, he may, on the other hand, warn the jury not to take any such matter into consideration. It is clearly recognized that, among matters that are deemed to be so prejudicial as to warrant the discharge of the jury, is mention of the fact that the defendant is or is not insured. It is not incumbent on the Court to order a new trial, but, the warning must be given.

In *Harman* v. *Crilly*(1), doubts were expressed by the Court of Appeal whether the rule should be observed where the jury already knows that the defendant is necessarily insured; and surely the time has arrived when a more realistic attitude should be adopted.

I do not intend, however, nor is it necessary in order to make my point, to enter into any discussion on the finer points of this somewhat thorny question as to whether or not the rule should be enforced or relaxed. Sufficient I believe it to be, to realize and appreciate that in their concern to see justice fairly done, our Courts have wisely, in the past, strongly discouraged any disclosure to the jury whether or not the defendant will be personally responsible for payment of the damages awarded or will be indemnified under a policy of insurance. Such disclosures are considered as prejudicial to the proper conduct of the action.

The only possible grounds for prejudice can be that the jury's verdict may be affected either as to liability or as to quantum of damage, by its sympathy for the plaintiff and by its knowledge that the verdict will rest lightly on the defendant and will be satisfied, not by the defendant with consequent loss to himself, but by his insurers, who have contracted to bear the risk.

If, then, the deliberate or involuntary disclosure of the fact that an insurance company is the real defendant is thought to be so prejudicial to the defendant as to warrant the discharge of the jury or a judicial warning to the jury entirely to disregard such matters, is it not impossible for a jury to-day to put out of its mind the knowledge which every juryman has, that every defendant in a personal injury claim of the class we are discussing, is compulsorily insured under the provisions of the relative statutes?

If it be deemed prejudicial for the jury to acquire that knowledge through the mouths of counsel or witnesses, surely logic demands that it be considered even more prejudicial to a proper verdict that the same jury should already possess the same knowledge before the case is opened to it, or indeed before its members are selected for the panel.

1. [1943] 1 K.B. 168; [1943] 1 All E.R. 140.

Furthermore, I find from my experience, and have no hesitation in saying with sincere conviction, that almost without exception, the usual common juror takes his seat with the firm conviction that every insurance company undertaking this class of business makes large profits from it and I have heard frequently asked the rhetorical question: "In any case, what is insurance for but to answer such claims?"

Thus, the natural sympathy for the injured person, combined with the knowledge that the defendant does not himself suffer, not only influences the quantum but is a preponderant factor in the consideration of liability.

It may well be answered by those so inclined, that the English experience is that trial before a Judge alone frequently results in higher awards than those given under the jury system. But my clear impression is that verdicts for the plaintiff are less frequent, resulting in greater caution in prosecuting to trial claims lacking in real and substantial merit.

As my colleague will emphasize, we are not in any degree opposed to a proper or even a generous award in the appropriate cases provided we have a tribunal before which we, as counsel, can present our cases in the confident knowledge that the issues will be determined in accordance with the evidence and on legal principles impartially applied by a judicial mind.

What, then, are the alternatives? The major proposals appear to be four in number.

First, to dispense with trial by our Courts of this type of claim and introduce the conception of universal compensation for personal injury resulting from road and industrial accidents.

In the view which I hold, the adoption of the principle of absolute liability and universal compensation is a matter which is not related in any way to the modification of methods of trial, but goes to the very root of the question whether such claims should be the subject of action at all.

Fundamentally, it affects our conception of the basis of liability and the right to recover. It is a radical remedy requiring a change in the substantive law; and one may well, with justification, have the gravest doubts whether, in a time when the accident rate is increasing, such a change would not promote accidents of all kinds rather than reduce their numbers or offer any palliative.

Secondly, to have all such cases heard before a Judge sitting with lay assessors. But here again, obvious difficulty arises in the application of the principles of law and of evidence and in the fact that assessors appointed by each side would feel under an obligation to support their respective parties. While I agree that this might be a satisfactory method for the assessment of damage once liability has been settled, it is, in my view, far from an appropriate tribunal to give judgment on the question of liability itself. The lay mind will still be brought to bear on that aspect of the case without the advantage of numbers impartially selected.

Thirdly, to modify the present system by increasing the qualifications of jurors to serve in these cases so that there will be an intellectual capacity to disregard sympathy, to be unaffected by the foreknowledge of insurance, and, particularly in industrial causes, to overcome what I feel is a very real bias of labour against management.

It has been suggested that jurors summoned for service for this type of action could be called from a special list. Generally speaking, those whose names appear on that list should be men either holding responsible positions in the business and professional world or of reasonably high educational attainments, which of itself should provide some guarantee of intelligence and competence. As it is, citizens now have the right to take their place as jurors whether they be almost illiterate or what ver their status or whether or not employed in occupations of such a nature that they could not reasonably be regarded as qualified for the task. Indeed, many jurors serving to-day would not themselves lay any claim to any such qualification.

If the standard of intelligence and competence were raised in some such way as is suggested, I would be myself satisfied that the number of the jury be reduced from twelve to six, feeling as I would that many of the difficulties outlined above would to a large extent be obviated by the change and yet we would still preserve that important function of the lay mind—namely, that of laying down the standard of conduct and care to be observed by road-users and employers generally.

Competence should be the key note of the right to occupy the important role of a juror, as it is in the case of Judge and counsel.

However desirable a special jury of six might be from the point of view of the profession, one can foresee the possibility of substantial difficulties for purely political considerations, in persuading any Government to place the fate of plaintiffs in the hands of a so-called privileged class.

But let me emphasize that, if competence is the qualification required for jury service, as for Judge and counsel, and if we, as a Law Society, believe in that standard and wish to maintain it, then surely ours is the duty to recommend accordingly, while the Government must accept the responsibility of adopting or rejecting the views so put forward.

The fourth and last proposal is to try all such causes before a Judge alone, as is the present practice in England and South Australia.

Personally, I was at first inclined, as is my colleague, to advocate the complete abolition of the jury system in personal injury cases but on mature reflection I feel that my third proposal, for the reasons given, would best meet the situation. If, however, no other satisfactory method can be adopted (and I fear it cannot) then in the interests of justice, trial by jury should be abolished and the fourth proposal adopted in the certain knowledge that in the case of trial before a Judge alone, we are in this country assured that the tribunal is impartial, is learned, and is, moreover, competent.

This is not an academic paper. It is not put forward as a skilled opinion supported by authority on some obscure principle of law. It raises a question of importance to the profession as a whole and to the public.

It is presented only as the views of a practising barrister, instructed as frequently for a plaintiff as for a defendant, in an attempt to give to conference a practical topic on which the opinions of those who never go into Court are as acceptable and as valuable as the views of those who do.

It is prepared with the sincere hope that it will stimulate discussion on a matter of public importance, so that the opinion of the profession can be ascertained and can be made known.

SOME FURTHER CONSIDERATIONS.

By J. C. White, LL.M., In Support.

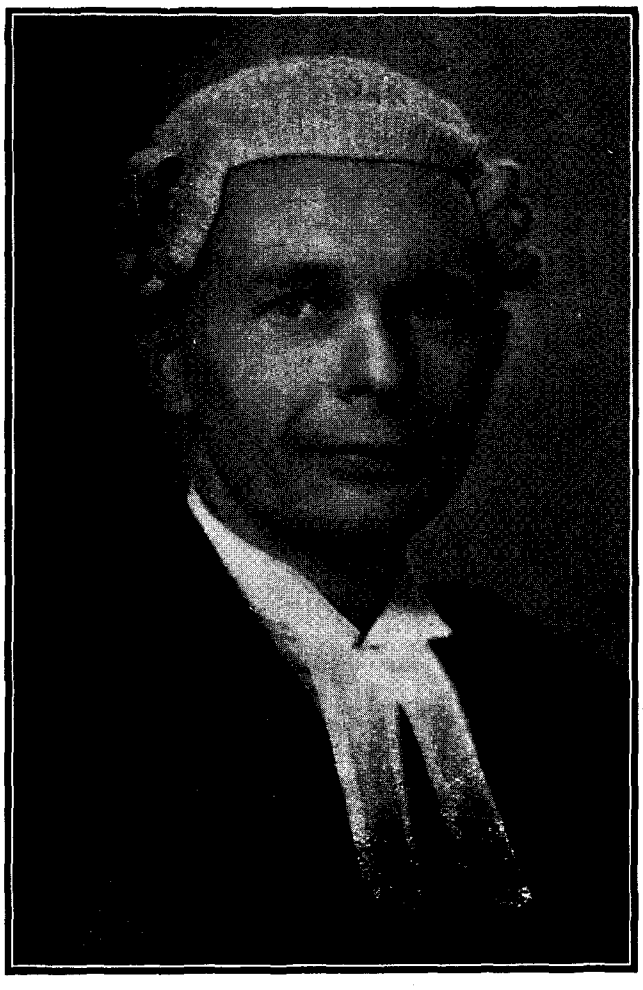
THIS will be a short paper in support of the case Mr. Dowling has placed before you. In submitting it, I acknowledge at the outset the support and assistance of a number of other Wellington practitioners engaged in defendant work who believe that the situation calls for change. I am aware that it may be thought somewhat presumptuous for one who has had only a short experience in the Courts to hold a downright view on this subject but, on the other hand, I hope you will feel it is right to express that view before one begins to accept as inevitable a highly unsatisfactory state of affairs.

First, I wish to give you an analysis of claims by watersiders at Wellington over a period of five years. These statistics were given in evidence before the Waterfront Royal Commission in 1951 and were obtained by searching the Supreme Court records. In that period, 331 watersiders issued writs claiming damages for personal injuries. Of this number 278 did not reach a hearing; a few, perhaps, were discontinued actions, but the great majority would be settled out of Court. Only 53 out of 331 went to trial. Then the figures show that the plaintiff was successful on 43 occasions and the defendant on but nine, there being one disagreement. On two of the nine occasions the plaintiff was nonsuited by the trial Judge. Thus, the statistics show that out of 331 writs issued and 53 heard, the jury found for the defendant on only six occasions.

These figures merit closer examination to bring the whole picture into bold relief.

The fact that 278 out of 331 cases were settled does not mean, of course, that the defendants concerned admitted negligence. It simply means that claims for damages were made and turned down, but later, after writs were issued and the pros and cons investigated, discretion was considered to be the better part of valour. It must be freely admitted that the issue of a writ often galvanises defendants into action; and closer investigation, after the allegations of negligence in the statement of claim have been studied, may show that there was evidence of negligence. In those cases, many fair and no doubt generous settlements are arrived at out of Court. There are also

cases where discretion enters the hearts of plaintiffs resulting in " nuisance value " compromises. There is, however, a proportion of those 278 settled cases—and, speaking from a short experience of ten years, including two as a Judge's Associate, I believe it to be a large one—where the settlement out of Court takes place not because it is considered that the right answer according to the evidence is that the defendant was negligent, but because the chances are that a jury will find for the plaintiff in spite of the evidence. This is the class of case where plaintiffs succeed with claims which would never be brought before a Judge, a fact that is emphasized and illustrated by the number of cases set down before a Judge and jury of four when they are within the jurisdiction of the Magistrates' Court. And, I might add, these settlements under duress are given an ugly name by defendant clients.



Spencer Digby, Photo.

Mr. J. C. White.

Another point the statistics I have quoted clearly illustrate is that defendants do not rush into the ring recklessly, but fight only when they feel they have a really strong case. Yet, despite the wariness of defendants before allowing themselves to be drawn into the ring, the figures show that out of 53 claims heard only eight were defended successfully. The margin should be reduced to some degree, because a number of cases are contested on the question of damages only; but that does not alter the fact the figures prove—that in a very large proportion of cases where the odds, in the opinion of the defendant's counsel out to win, *heavily* favoured the defence, the verdict of the jury was for the plaintiff. This is not " defendant's bias," because we know that in many of these cases the trial Judges have indicated, with the usual reservations no doubt, but with perfect clarity that they considered there was no evidence of negligence or that an affirmative defence should succeed. This has occurred too often for it to be explained on the ground that the Judge must have a " defendant's bias " also. Nor could it be said that in all these cases the judgment of the jury was right and that of the trained mind of the Judge wrong. The flimsy case and the absence of negligence, properly so called, are evident to the Judge, (and for that matter often to the jury); but, despite a careful direction on what must be proved to establish liability, juries, time after time, disregard the Judge and find for the plaintiff.

If reports from jurors after the event are to be believed —and reports of this nature are too frequent to be discounted—the question of negligence is often barely debated, the jury going straight to the question, " How much shall we give ? " The reason for this attitude is well known, and it has already been dealt with by Mr. Dowling. If there are some members of the jury trying to administer justice according to law there may be a disagreement; but a compromise on the damages is more likely, leading to some remarkable results, which every now and then please defendant's counsel but remain a discredit to the administration of justice.

In short, the jury dictates its own rules. In case after case, the gentlemen of the jury listen with apparent respect to His Honour's direction, that it is for the plaintiff to establish negligence by a preponderance of evidence; but, when they return with their verdict, it becomes quite clear that they must have set their own standard, assuming they have addressed their minds to the question of liability at all.

The hopelessness of this situation in New Zealand is completed by the apparent powerlessness of the trial Judge or Court of Appeal to interfere with a jury's verdict.

The true principle no doubt was stated by Mr. Justice Callan, in *Goldstine* v. *The King*, (1) as follows :—

> Before a Judge disregards the verdict of a jury, he should, I think, be on his guard lest preference for his own opinion should inadvertently mislead him. He is bound to make all proper allowance for the differences of opinion on questions of fact and human conduct that may arise between reasonable men. He should remember that our system of jurisprudence makes the jury, and not himself, the judge of these questions. All this I have endeavoured to remember and apply. But the Judge is also bound to remember that our system makes provision for that occasional phenomenon, an unreasonable verdict, and entrusts to him, subject to review by higher Courts, the tasks of detecting it and of dealing with it, lest injustice be done. When, after due consideration, a Judge is satisfied that he has before him a case which calls for the exercise of this power, he must exercise it. Otherwise he converts the duty to respect reasonable verdicts into an abdication of the power to disregard unreasonable verdicts.

Although the accuracy of this statement was not doubted, Mr. Justice Callan was overruled in *Goldstine's* case by the Court of Appeal; and the Reports show that what Mr. Justice Callan referred to euphemistically (but we can imagine with his whimsical smile) as " an occasional phenomenon," has been detected very rarely in the New Zealand Court of Appeal since *Benson* v.

(1) [1947] N.Z.L.R. 588, 599.

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TABLE OF CONTENTS.

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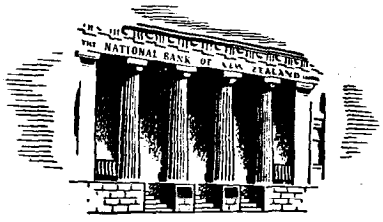

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MESSIEURS R. HERBERT WEBB, D. R. RICHMOND, P. K. BRYAN and R. D. RICHMOND, who have hitherto carried on practice as Barristers and Solicitors at 235 Lambton Quay, Wellington and at Hazelwood's Buildings, Upper Hutt under the firm name of Webb, Richmond and Bryan, wish to announce that as from 1st May, 1954, they have admitted into partnership Mr. K. A. BRYAN, B.A., LL.B. The practice will be carried on as before under the name of WEBB, RICHMOND & BRYAN at 235 LAMBTON QUAY, WELLINGTON, and at Hazelwood's Buildings, UPPER HUTT.

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NOTICE IS HEREBY GIVEN that the partnership between R. McKenzie, D. W. Foster and K. H. J. Headifen, carrying on business as Barristers and Solicitors and Notaries Public at Leecroft Chambers, Lincoln Road, Masterton, under the name of McKenzie, Foster & Headifen, has been dissolved as from the 30th day of April, 1954.

Mr. McKenzie will continue to practice at Leecroft Chambers under the name of R. McKenzie—Phone No. 1480, Box 18, Masterton.

Messrs. Headifen and Foster will continue to practice at Leecroft Chambers, under the name of Foster & Headifen until suitable premises elsewhere are obtainable—Phone No. 1835, Box No. 316, Masterton.

(*Signed*) R. MCKENZIE. D. FOSTER.
K. HEADIFEN.

Kwong Chong(2) was decided by the Privy Council more than twenty years ago. It is fair to say that, to all intents and purposes, a jury's verdict in a master-and-servant case stands if a non-suit argument cannot be maintained; and the Court of Appeal has found itself unable to put right manifest injustices perpetrated by juries. Let there be no doubt about it, the result is that we have in New Zealand a special form of liability—closely allied to absolute liability—for personal injury cases where insurance companies pay. What I have just said is not a recent discovery. It was apparently perfectly clear in motor-collision cases in 1938. In an address to the Fifth Conference at Christchurch in 1938, Mr. W. J. Sim, as he then was, spoke on the principle of absolute liability in motor-collision cases and in the course of his address said: "The point I wish to emphasize is that we have reached a stage where insurance companies have practically to accept the position that they must admit liability in all cases."

The Bias of Civil Juries.

May I now touch briefly on this problem as it has troubled others before us and still troubles other parts of the world. The bias of civil juries in personal-injury cases is no new thing. Two conflicting schools of thought which developed over the years are referred to in *Beven on Negligence*, (3) as follows:—

> Two distinct views grew up, according as Judges were impressed with the frequently unjust decisions of juries in favour of injured people against wealthy corporations, or with the necessity of protecting the individual, even perhaps at the cost of injustice against the negligent tendencies of powerful bodies whose wealth and influence often led them to acts of absolute oppression.

I am certain that no one with a sense of responsibility would suggest that powerful organizations of employers or insurance interests would or could in these more enlightened days perpetrate "acts of absolute oppression." For one thing, the powerful organizations of to-day include amongst them the labour unions; for another, the State, by Factories Acts and similar legislation, has set new standards for employers; and, thirdly, if personal injury claims were administered by Judges instead of juries, we know perfectly well that the law would be administered without regard to the influence of powerful bodies be they employer or employee.

It is interesting to note what has happened in New Zealand. In *A Brief History of the Acquisition of the Sovereignty of New Zealand and of the Supreme Court of New Zealand, written in 1923*, Sir Frederick Chapman refers to the Supreme Court Act, 1882, and points out that perhaps the greatest change was to limit trial by jury to "actions for debt or damages or for the recovery of chattels where the amount or value claimed is above a certain amount." And he adds: "The result has been to throw upon the Judges the duty of trying most of the actions set down for trial. The change was, compared with the old system, revolutionary, but in the opinion of most lawyers, highly beneficial to *bona fide* litigants."

There was some change in 1924 when new rules were introduced, but these did not extend the right to trial by jury in master and servant cases. It was in 1936 that trial by jury became the order of the day by virtue of s. 29 of the Judicature Amendment Act of that year, and the era of common-law claims before juries instead of claims in the Compensation Court was ushered in.

In England, on the other hand, where a hundred years ago every litigant had the right to trial by jury, to-day in personal injury cases the Judge has an untrammelled discretion to decide whether a case should be heard by a jury or not. This became the situation as a result of the passing of the Administration of Justice (Miscellaneous Provisions) Act, 1933, and the development over the years in England is to be found reviewed in *Hope* v. *Great Western Railway Co.*, [1937] 1 All E.R. 625. It is very interesting to find that at the 1938 Conference when Sir Alexander Johnstone, Q.C. (then Mr. A. J. Johnstone, K.C.) delivered a paper on the jury system and dealt with a number of proposals he said after reviewing the development of trial by civil jury in England and New Zealand: "It is therefore thought that the present English rule, based as it is upon the experience obtained in the working of the Courts, is preferable to ours, and should be adopted here." It is quite clear from the reports of English cases that in practice the discretion is rarely exercised in favour of trial by jury in personal claims, a fact which speaks for itself.

Openhandedness to Plaintiffs.

Reading the English Reports, however, it is apparent that plaintiffs continue to win cases; and it is noteworthy that some awards for damages in England are high by our standards. This is a factor which should be borne in mind, for it is a fact that a New Zealand jury, while prone to be open-handed whatever the facts of the case, and give a man "a few hundred" to see that he is not out of pocket, is apt to be more careful when it comes to thousands, because no doubt the average juror does not contemplate many lump sums in four figures. The result is that a very badly hurt man may not get as much from a jury as he would get from a Judge, and so, looking at the situation from the point of view of the plaintiff who should succeed, I suggest that trial by jury can and does lead to injustice. Putting it another way, I suggest that trial by Judge alone might not alter to any degree the amount paid out by insurance companies, but it would mean that proper compensation would go to the right plaintiffs.

Finally, let me quote the Hon. R. G. Menzies, K.C., (as he then was), when he addressed a Law Convention in Australia, in 1936, following a paper on the jury by Mr. Justice Evatt, (as he then was), in support of trial by jury. (4) Mr. Menzies, after dealing with criminal trials in which he was in full agreement that trial by jury should continue, said of the civil jury:—

> I want to say as one who practised a good deal before civil juries that the civil jury system ought to be abolished. I make no qualifications on that either. I regard the system as incompetent, unessential and corrupt. . . . How many lawyers here to-night could honestly say that having a choice they would put their civil cases before a jury unless the defendant be a rich man, an insurance company or a professional man, and, therefore, extraordinarily and illicitly rich. Your prospects of appealing successfully against a jury verdict are fantastically thin indeed. The answer of the higher Court is that the jury had all the facts before it: "The jury was properly directed by the learned Judge and we presume that the jury understood the direction. Your appeal must be dismissed with the usual result.

I respectfully submit that this forceful statement applies to New Zealand. We have come so close to the imposition of absolute liability that I claim the time is ripe for a decision to be taken. Either New Zealand should accept absolute liability and set up a suitable system of assessing damages, or the administration of the law of negligence in personal injury cases should no longer be entrusted to the common jury.

(2) *Benson* v. *Kwong Chong*, [1932] N.Z.P.C.C. 456.
(3) *Bevan on Negligence*, 4th Ed. 142.
(4) *10 Australian Law Journal*, Supplement, 49, at p. 74.

The Discussion.

THE PRESIDENT: "This is probably a topic on which you will want to comment, and I would be very pleased if anyone who wishes to speak on the subject would do so without delay."

DR. A. M. FINLAY (Auckland): "I cannot allow this case to rest solely on the voices of the defence. First, I would like to say I am horrified by Mr. Dowling's advocacy of a jury of all the talents. I could not think of any worse tribunal. If Mr. White is still in a mind for statistics, I would invite him to compare the cases heard by special juries in New Zealand and note if the result of their verdicts is not a complete reversal of the watersiders' case. I think he might carry his researches back a little further than five years. I can speak with some experience of Auckland. About five years ago, watersiders were hardly a popular group in the community; and, if a man were to go into the witness-box and proclaim that he was a watersider, his case was doomed. It was not unappreciated by those counsel who appeared for the shipping companies. The result, in terms of setttlements, showed that completely.

"However, I agree that there is undoubtedly a problem, and I think Mr. Dowling and Mr. White have made a science of the problem. I fear it is too large a one for us to embark on a discussion at this stage. All I can do is to outline the position. Essentially, the law of tort is derived initially from the same basis as criminal law; and the theory of the law is that, by awarding damages against a man, you are punishing him for a wrongful act. This moral basis was hinted at by the Bishop of Waiapu earlier in these proceedings. It is questionable whether this moral basis is entirely in accord with the facts of modern civilization; I refer particularly to the fact that, as so many people insure themselves against the consequences of their wrongful acts, they are no longer punished when a judgment is recorded against them. I say that, by dealing with this aspect of the problem, we are dealing with the externals and not going to the root of the problem. A radical problem requires a radical solution, and this is a matter which calls for the closest attention of lawyers: whether this essential moral basis of the law of tort is one that is still in accord with the demands of modern society."

Dr. O. C. MAZENGARB (Wellington): "There are so many looks being directed towards me that I feel I would be disappointing some of you if I did not rise to say something, especially as my own name seems to have been connected with these forces of evil that are seeking to obtain money from insurance companies. It would surprise you to know that I am in entire agreement with the main conclusions by Mr. Dowling and Mr. White. To show you that I am very sincere in that respect, I need only refer to the fact that about sixteen years ago, I wrote a paper which was dignified by the academic name of a 'thesis' in which I made the proposals made to-day by Mr. Dowling and Mr. White. It came under the notice of the Law Revision Committee and also of Parliament, and these two bodies decided in their wisdom that my proposals were no good, and preferred to pass the Contributory Negligence Act, and thereby provide further topics of litigation. I well remember that the insurance companies were not in favour of the proposal of an Administrative Board to distribute damages in the way I suggested, because, unfortunately, that would take all the business away from the insurance companies, and possibly would take a good deal of practice away from lawyers. So that I am being very sincere in the attitude I adopted some years ago and support to-day.

"There is one other aspect to which I wish to draw attention. That is the peculiar, and somewhat anomalous suggestion that a jury is a very good tribunal, in Mr. Dowling's submission, where life and liberty are at stake, and the principle or the matter in dispute cannot safely be left to the Judges, who must have the benefit of a jury; but, when it is a small matter of £. s. d., then this jury is not such a good tribunal. It seems to me that there is an inconsistency, or a fallacy in this.

"One feels very sorry for those shipping companies that are not insured against their losses, and that they have been able to obtain justice in less than 2 per cent. of cases. Out of the 331 cases examined by Mr. White, in only two was it found that the plaintiff had any case—less than 1 per cent. I suggest, therefore, that the figures Mr. White produces do not support his argument, because the companies themselves, and the Judges themselves, found that in only two out of the 331 cases was there no merit in the plaintiff's case. I suggest that possibly the figures might more fairly show that, in the public view, there is not the care exercised on the waterfront that ought to be exercised. I do not think it is a matter of insurance. I suggest it is a matter of public conscience in the matter of waterside accidents."

MR. R. HARDIE BOYS (Wellington), amid general laughter and applause, said: "I think it would be a very good thing if plaintiffs and defendants would hold a conference of their own to settle their differences. One point I wish to offer to the Conference is the denial of justice to other people that occurs at most Supreme Court sittings whilst the insurance companies argue the matter fully, resulting in the losses and the delays of which we have been speaking in earlier papers in connection with legal work, to say nothing of the strain put on the Judges. I think they should have a separate court of their own so that they could scrap out their claims, and other people could get on with their work."

MR. DOWLING rose to make a short reply to the comments raised by those taking part in the discussion. He said: "I would like to correct Mr. Finlay when he said the paper was presented by two defendants' men. I have taken a record of the number of my cases, and I have appeared far more frequently for a plaintiff than for a defendant. While the present system is in operation, I should prefer, from a mental and a financial point of view, to act for a plaintiff. I would be much more sure of sympathetic hearing and adequate remuneration.

"I would also like to say to Dr. Mazengarb that I am astonished that a man of his eminence and after the long association I have had with him, first as his office boy, then his junior common law clerk, and later as a clerk whom he sacked, does not know the difference between a civil and a criminal jury. Even I know the difference—namely, that in one, the jury seeks to protect the accused, and in the other it seeks to protect the plaintiff."

This concluded the adresses to be given, and the President asked Mr. R. Hardie Boys, President of the Wellington District Law Society, to move a vote of thanks to the authors of all the papers which had been prepared and read.

WRITERS OF CONFERENCE PAPERS THANKED.

MR. R. HARDIE BOYS (Wellington): It is my happy task, but great responsibility, to voice the thanks of those of you who did not write papers for the Conference to those who did. It is your words I want to express by way of thanks to the speakers who have put in such a lot of thought and time and study in preparing the most valuable papers to which we have listened, to-day and yesterday. I think it is a great thing that there are men in the profession willing to run the gauntlet of preparing and delivering papers for Legal Conferences. Nevertheless, most of us are too lazy or too fearful of 'sticking our necks out' to undertake the task of speaking to our own brethren on legal topics."

The speaker said that members were willing to express their views in the Courts of Justice, but not at the Legal Conference. He continued: "We are indebted to those who have been good enough to face the task and who fulfilled that task with such distinction to themselves and interest to us. There is only one suggestion I have in mind for future Conferences. It is no use commending it to you, Mr. Hawke's Bay President, for your office is now *functus officio*; but I would commend it to whoever is the President of the next Conference. There has grown up a tendency at these Conferences for a number of practitioners to leave their wives behind, and then get into a lot of mischief. They should be committed to the task of preparing and delivering the papers to keep them out of mischief. You see the peril that can be avoided if we more profitably and gainfully employ the unattached members of the profession.

"Now, I want to say, very briefly, how indebted we were to the speakers at the Civic Reception. Reference must be made to the remarks of the Hon. the Acting Attorney-General, Mr. Marshall, and the delightful address given by His Lordship the Bishop of Waiapu. Then the ones to whom we accord thanks, in the order of the delivery of their papers. First of all, to Mr. Leary and Mr. Cleary for their excellent approach to the question of a separate Court of Appeal and Judges' widows' pensions. I have tried to make something of it—some of you could fill in the gaps, but I feel there is something to be made of the fact that it was 'Leary' and 'Cleary'. The nearest I can get is that the 'C' in 'Cleary' enables 'Leary' to 'C' more 'Clearly'.

"Then, this morning, we were privileged to have from Dr. Ballantyne the paper that Dr. Lynch had prepared for us. Many of you who have had dealings with Dr. Lynch, or have had his help in the course of so much of the litigation in which he appears either as Government Pathologist, or representing some B.M.A. interest, will know his delightful personality. We would want to convey to him our thanks for the paper he prepared, but regret that he, in person, was unable to be with us. One thing I would like to have added, if he had been here in person (he is a defendants' man, by the way), is that if he asks to step down from the witness-box to examine some exhibit, try and stop him. He is all right in the witness-box, but when he gets down by the exhibits, you will find it difficult to stop him speaking at length. I have heard him being told by the Judge; 'You are not allowed two addresses to the jury—and would you please get back into the witness-box.' We are indebted to Dr. Lynch for his assistance to us.

"I thought it was a very delicate gesture on the part of the Organizing Committee that, immediately following Dr. Ballantyne's reading and the discussion we had on the liability of doctors for the terrible offences they committed in hospitals, the next occupant of the Chair by those who were to read papers should be Mr. Edgar Bowie, who has figured in a hospital case. If any of you do not know the story, Edgar will tell it to you. We were delighted to have him follow on and give us that delightful paper that he did, seconded by his fellow-practitioner, Mr. Young, and to have it provoke a discussion which was profitable to us all, although I have been challenged by Dr. Mazengarb as to my right to withdraw a motion that he had seconded, without his permission to do so.

"Then we must thank Dr. Robson for his thoughtful paper, which I think all of us should study still more, when it is published in the LAW JOURNAL. And, lastly, we had the brilliant Dowling-and-White combination of defendants' and plaintiffs' men, which we washed down with afternoon tea.

"On your behalf, I feel we can say very truly that the business of the Conference which gives the warrant for our meeting (in spite of the jocular remarks of the Bishop on the eight out of the twenty-eight items) has been worthily attended to, and we can all profit considerably from what has been told us. We are vastly indebted to those who led the discussions, and I move a very hearty vote of thanks." (Loud applause.)

THE PRESIDENT: "I think that can safely go down in the Conference notes as 'Carried unanimously by acclamation.'"

FORMER CONFERENCE OFFICE-BEARERS.

Twenty-six years have passed since the first Dominion Legal Conference took place at Christchurch.

An interesting feature of the Napier Conference was the presence there of so many who had held office at others of the preceding Dominion Legal Conferences.

The Napier Conference was attended by the host of the Conference of 1936, Mr. A. N. Haggitt (Dunedin); the host of the Christchurch Conference of 1938, the Hon. Mr. Justice (then Mr. J. D.) Hutchison; and the host of the Conference of 1947, Mr. J. R. E. Bennett (Wellington).

There was a good representation of former Conference Secretaries: Mr. W. E. Leicester (Second Conference, 1929); Messrs. H. R. C. Wild and J. C. White (Joint Secretaries, 1947); Mr. F. J. Cox (one of the Joint Secretaries, 1949), and Mr. J. P. Cook, one of the Joint Secretaries, 1951).

As the doyen of the former Conference Secretaries present, Mr. W. E. Leicester fittingly was chosen to make the presentation to the Napier Joint Secretaries, Messrs. G. E. Bisson and D. D. Twigg, at the closing function of the Conference.

THE PRESIDENT'S CLOSING ADDRESS.

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

" My obvious duty, as we are about to close the business side of the Conference, is to say something about the Conference arrangements and the work done by the Conference Committee under the able chairmanship of the Deputy Chairman of the Conference, Mr. John Holderness. You will probably agree with me that, notwithstanding that the Committee was forced to accommodate visitors in both Napier and Hastings, its organization was equal to coping with the extra work this entailed. All detailed arrangements were made to see that we visitors were equally well looked after whether living in Napier or Hastings. The Conference has gone smoothly and well, and the members attending are grateful for your work, Mr. Holderness, and that of your Committee. Your wife, who is Chairwoman of the Ladies' Committee, has done equally good work in looking after our wives and keeping them busy so that they have not been spending our money in the excellent shops which Napier and Hastings both appear to possess.

" The hospitality that the visitors have received at the hands of the Hawke's Bay Law Society and extended to us by social Clubs and other institutions and individual practitioners has been deeply appreciated.

" The various speakers who were called upon to give papers are to be congratulated on the interesting way in which they handled the topics on which they addressed us. A formal vote of thanks has already been accorded to them. We are grateful to the Bishop of Waiapu for setting the excellent note which he did in his Inaugural Address. I shall not forget when I go to service next Sunday that ' only four should be attempted.'

Is The Conference Worthwhile ?

" Now, the thought has occurred to most of us at some time or other—is this Conference worth while attending ? This is the Ninth Dominion Conference organized by the profession in New Zealand, and the first time it has been held outside the four centres, each of which has had two turns. You will agree that the Hawke's Bay Law Society has well maintained the standard set by the major Societies, having in its favour the fact that the Conference fund was in a particularly healthy state when they undertook to be the host Society. If we recognize that the chief benefit we receive from attending a Conference is the chance of meeting practitioners from other parts of New Zealand and making friendships we might otherwise have little opportunity of making, then the Conference is worth while from that angle alone. The opportunity we have to discuss topics of interest to us all in open conference is another benefit which only a Conference can confer. If I have had any misgivings about the benefit of Conferences, they were completely eliminated by having the privilege of attending that wonderful Commonwealth Jubilee Law Convention in Australia in 1951, which indirectly resulted in New Zealand's being included in the itinerary of the principal guests either on their way to the Conference or on their return journey. It did much to bring together the highest judicial officers in the British Commonwealth countries in friendly intercourse, and to cement lasting friendships which could be of inestimable value. In my opinion, the Australian Conference, with monetary assistance from the Nuffield Foundation and the Australian Government Jubilee Fund, achieved a pinnacle which it will be very difficult to achieve again. In that connection, it has been a great privilege to have Mr. Henderson of the Queensland Law Society here and to give him (as I know you have) a little New Zealand hospitality which I am sure he has thoroughly enjoyed. (Applause). Just after lunch, he put it to me (you know his interest in sheep) that he had an opportunity of going with a well-known sheep man out to see the country this afternoon. He said, ' But I must not miss your final address.' I said, ' You go and see the sheep,' and I think he has taken my advice.

Commonwealth Law Conference.

" Our brethren of The Law Society of England have arrangements well in hand for a British Commonwealth Law Conference in London about July, 1955. Any members of the New Zealand Law Society contemplating a visit to the United Kingdom next year would be made very welcome. We have appointed two members on the Executive of the Conference, Messrs. F. J. Cox and H. J. Butler, of Auckland, who are working with the English Committee, and who are both going to the United Kingdom next year ; and, if any members of our Law Society decide to attend the Conference, they will be well looked after.

" To summarize the position, the benefits conferred by the Conference are :

(*a*) The making of new friendships and the renewing of old ;

(*b*) A chance for the rank and file of the profession to participate in open discussion on topics of general interest to the profession.

The New Zealand Law Society's Work.

" General meetings of the profession are confined, as a rule, to the annual meetings of District Law Societies, and this triennial Conference open to us all is the only general meeting of the New Zealand Law Society that is held.

" The administrative work of the legal profession is shouldered by the Councils of the District Law Societies, and by the Council of the New Zealand Law Society which is composed of delegates from the District Law Societies. The organization works very well, but the rank and file member is well in the background, and it is very refreshing to have this opportunity of meeting him. It was very gratifying to me to meet so many younger practitioners, particularly those coming from country districts. They must benefit by rubbing shoulders with their city brethren ; and I can assure them that their city brethren are delighted to meet them.

" As you probably know, the New Zealand Law Society, functioning through its New Zealand Council, meets in Wellington and gets through much work in the course of the year. That work is summarized briefly in the Society's Annual Report which goes out to every member of the Society. I would like, just briefly, to touch on some of the principal items for 1953.

" First of all, the presentation of the Loyal Address on behalf of the members of the profession throughout

New Zealand to Her Majesty the Queen and His Royal Highness the Duke of Edinburgh. That was effected through Government House at Auckland immediately on Her Majesty's arrival. The Address was a very beautiful one, and pictures of it were sent out to the District Law Societies so that the members could get some idea of it. It was actually signed by every member of the Council of the New Zealand Law Society, and not one of them made a 'blob', either.

"An important matter that is still in hand is the consolidation of the Law Practitioners Act. It is hoped that that will soon be completed and a draft will go out very shortly to the District Law Societies, with particular reference to the revision of the taxation provisions, which were absolutely absurd.

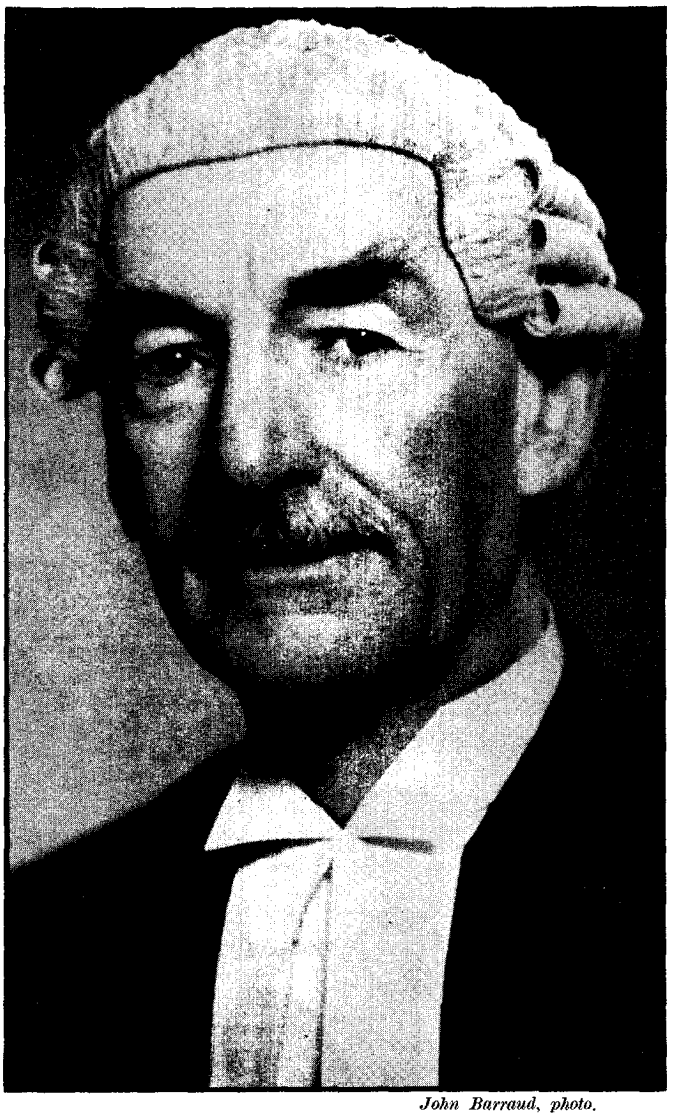
"Then we had the New Zealand Law Society providing for the defence of a solicitor for the purpose of establishing the right to claim privilege in regard to the production of his client's documents to the Commissioner of Taxes, he not having his client's authority. That got to the Court of Appeal, and a decision was given in favour of the practitioner, and established a very old but very useful privilege.

"The Council was also occupied with that ruling as regards a barrister and solicitor being a member of a Local Body and doing work for it. That was a very great effort; but the ruling apparently has met with universal acceptance, if not approval, and we have heard no more about it since it was passed last year.

"Then, a matter of a year ago, we were suddenly confronted with a rather alarming fact. It was reported that, in Hamilton, there was not a single male clerk, that most of the practitioners were of a goodly age, and that something ought to be done to try and overcome this difficulty and to encourage young fellows to take up the legal profession. A great amount of data was examined and a report prepared, and we thought, incidentally, that probably the length of the course for barristers and solicitors was one of the obstacles. That was carefully examined by our Committee, and that Report is now before the Council of Legal Education which has given it to the Deans of the Faculties of Law, and we hope to hear something more when the Council meets next Tuesday.

"You know, of course, that the practising and admission fees have been raised to try and overtake rising costs.

"Then there is our work in regard to new legislation. After hearing the paper that was read this morning, you will see that this is fairly constant. Last year, with the enormous amount of legislation that went through, the Council of the Law Society had a busy and anxious time, because we do not see a Bill until it is brought down. Then it appears on the Order Paper of the House when it is likely to go forward; and we learn when it is likely to go before the Statutes Revision Committee. We have received great help from everybody called upon, with particular knowledge, to run over a draft Bill and make any suggestions that could aptly be made, and those were kept before the Statutes Revision Committee by the effort of members of the Council and individual practitioners with special knowledge.



John Barraud, photo.

Mr. W. H. Cunningham, C.B.E. D.S.O.
President of the New Zealand Law Society.

"Finally, a very important amendment to our constitution was made by the Law Practitioners Amendment Act, 1953. That is that the President need not necessarily be a member of the Council. So that every practitioner carries the President's baton in his knapsack, as Napoleon would say, although it is difficult to say whether the old practice will be departed from of electing the President from the Council itself. However, it does permit of this position. As you know, delegates go tied with instructions from their own Law Society, and, on matters that come up for decision by the Council, the President now will not be tied as a delegate. He can use his position quite impartially and does not need to follow the dictates of the Law Society to which he belongs. I think that has been an excellent amendment to our constitution, and opens the door to any practitioner in New Zealand to become the President of the Law Society.

"Those are the only domestic matters to which I would like to refer.

"In declaring the business portion of the Conference finally closed, I wish to thank the Conference for its kindness and courtesy to me as Chairman, and for the excellent spirit which has prevailed throughout our business sessions. I should like to extend to every member best wishes for a successful day at sport tomorrow and a safe journey home. Thank you."

With these words of the President, the business of the Conference was formally closed.

THE CONFERENCE DINNER.

THE Conference dinner was held on the evening of Thursday, April 22, in the Napier Art Gallery. The President of the Hawke's Bay District Law Society, Mr. J. H. Holderness, presided. At his table were the Rt. Hon. the Chief Justice, Sir Harold Barrowclough; Mr. Justice Stanton; Mr. Justice Hutchison; the President of the New Zealand Law Society, Mr. W. H. Cunningham; the Judge of the Compensation Court, Judge Dalglish; the Solicitor-General, Mr. H. E. Evans, Q.C.; the Representative of the Law Council of Australia, Mr. E. V. Henderson (Brisbane); Dr. O. C. Mazengarb, Q.C.; Mr. L. G. Sinclair, S.M. (Auckland); the Vice-President of the New Zealand Law Society, Mr. T. P. Cleary; Judge Pritchard, of the Maori Land Court; and Mr. H. W. Dowling, Vice-President of the Hawke's Bay District Law Society.

The loyal toast was honoured, and the National Anthem was sung.

The Chairman's Opening Remarks.

Over two hundred and fifty practitioners were present, the number creating a record attendance for a Conference Dinner.

THE CHAIRMAN: "While some preliminary remarks may seem unnecessary at this stage of the proceedings, there is one which I feel sure you will agree does not come within that category, and that is to welcome His Honour the Chief Justice, the Rt. Hon. Sir Harold Barrowclough, who is with us to-night. I am indeed proud and honoured that His Honour consented to be present on this occasion.

"I think I should couple with the name of the Chief Justice the name of Mr. Justice Stanton, whose name I did not mention at the opening of the Conference on Wednesday morning, because, owing to his driver strictly observing the speed limit, he was unable to be present at the opening hour.

"It is now my pleasure to ask Mr. E. D. Blundell to propose the toast of "The Judiciary."

The Judiciary.

MR. E. D. BLUNDELL (Wellington): "Everyone present will agree that whenever we of the legal profession can find time to get away from our offices and from the fancied importance of our own little world, and meet and enjoy ourselves as we have been doing with a certain amount of success in the last two days and nights, we are always glad to have with us any representatives of any of our Benches who can be with us. (Applause.) Whenever we can hold a dinner and so become more social, there will always be one toast which invariably will be evergreen, popular, and warmly received. That is the toast of our Judiciary, which it is my privilege to propose to-night.

"We like to see their Honours and their Worships step out from the seclusion which inevitably their office requires, and rejoin the ranks from whence they sprang, and enjoy themselves as we do at a function such as this. Looking back on the last day or two, and, in particular, on last night's Ball, one cannot help thinking that some of them, including some of the most dignified representatives from our Bench, have dropped to our level. (Laughter.)

This toast, which I am attempting to propose, brings with it for me, a certain restraint. In the first place, I am in the position of one of those litigants that worried my friend, Mr. Leary, so much. I am waiting for a decision from the Court of Appeal, and it so happens that the very Division of the Court of Appeal comprises the three of their Honours who are with us to-night. I am in the position in which a lot of you may be in at times. Having picked up your cards, you buy to a flush, knowing that the other fellow is sitting with three kings pat. Also, I am in another difficulty because we lawyers are supposed to know what we are speaking about. I have not been a Judge and I have not been a Magistrate, and, therefore, I have not got that intimate knowledge of the subject-matter which a discourse such as this requires. Moreover, I cannot help being green with envy as I glance down the toast list and observe the last toast on the list. When you hear my learned friends from Wellington, you will know that they have what I have not: first of all, a great grasp of principle, and, secondly, a most profound practical knowledge.

"Those of you who have had to face the ordeal that now faces me of addressing as large and critical audience as this will realize that, when we are in this position for a brief few minutes, we have a slight sense of superiority. For once we are speaking to their Honours when they are sitting down; we are looking down on them; and courtesy demands that they listen and like it. There are many here to whom such a comment will be of no significance whatever; I am referring to those of you who are the breadwinners of our profession, the gentlemen that in ten minutes can fill in the gaps in those printed forms and in another minute send out a bill of costs, New Zealand Law Society scale, plus extras, thus earning in that short time something like ten times what any of the rest of us, excepting Mr. Leary, who spend most of our time in Court can earn. It gives one some relish to propose this toast. No doubt, those who have the privilege of doing so feel that no longer have we to crane our necks upwards and upwards, speaking ourselves hoarse, watching that pen or pencil taking down notes of our most earnest submissions, and hoping that the points have been appreciated and recorded; but realizing that possibly all that is happening is the sketching of flowers or the making of noughts and crosses.

"You know of our curious and indeed quaint phrase: 'elevated to the Bench'—elevated to something a little harder even that the seats we are occupying now. The phrase is the first of many shrewd devices that the Judges require to ensure that they receive the respect due to them from the gentlemen in the pit—I mean the Bar. I was thinking of this, and perhaps thinking aloud, when one of my friends who had been addressing the Court on a drowsy afternoon, submitting an argument typically inept, and observing that the Court was nodding, remarked to me with feeling 'Elevated to the Bench! Elevated to the sofa would be enough for him!'

"We welcome among us this afternoon a very representative gathering of the members of the Supreme Court Bench, of our other Benches, and of the Magistracy. A few weeks ago, it was anticipated that a larger number would be present, and we regret unavoidable absences because we enjoy meeting their Honours and their

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18 BRANCHES THROUGHOUT THE DOMINION

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ITS POLICY

(*a*) To provide the same opportunity to every crippled boy or girl as that offered to physically normal children; (*b*) To foster vocational training and placement whereby the handicapped may be made self-supporting instead of being a charge upon the community; (*c*) Prevention in advance of crippling conditions as a major objective; (*d*) To wage war on infantile paralysis, one of the principal causes of crippling; (*e*) To maintain the closest co-operation with State Departments, Hospital Boards, kindred Societies, and assist where possible.

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MR. C. MEACHEN, Secretary, Executive Council

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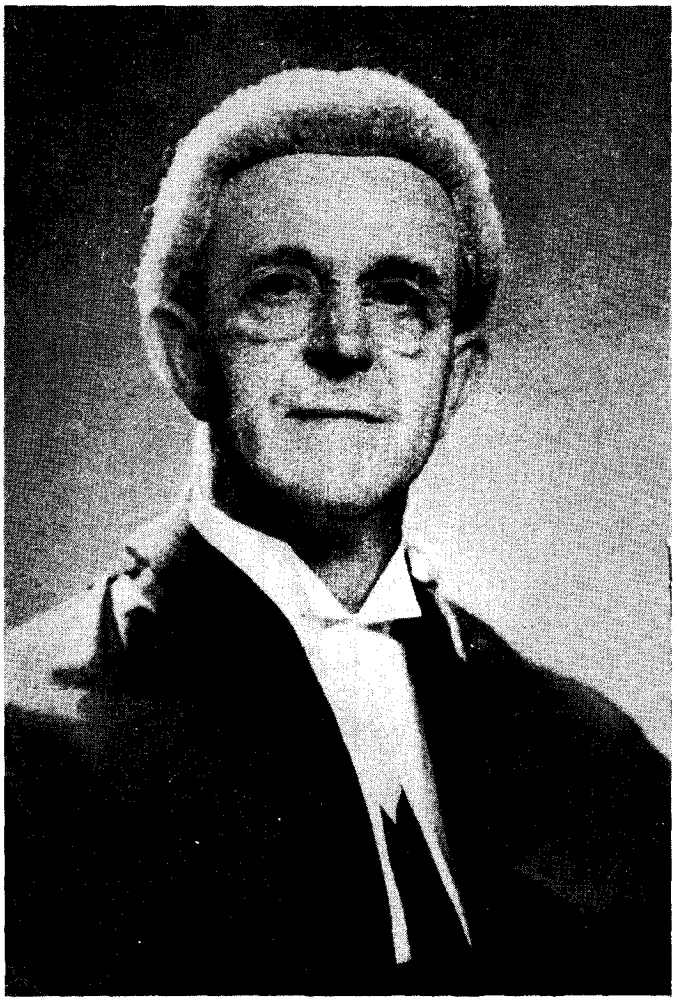
Worships on these equal and level terms. We feel that those who for very good reasons could not come have missed a Conference which I venture to suggest has been an outstanding success. (Applause.) I am not too sure that by the time we stagger away from here this will be any longer a conference of legal gentlemen, but will be known in history as the battle of Napier. (Laughter.)

" Reference was made by our President to His Honour the Chief Justice. I feel that I would be expressing your wish if I made particular reference to His Honour. He is a late starter. I know that the news of his appointment to his high office was received with universal acclaim by the profession. His Honour has held office for so comparatively short a time that it has not been possible for him to get round the country, but those of us who have had an opportunity of meeting him personally and of seeing him on the Bench know, as I am sure all of you will believe is the position, that he will in every way maintain that high tradition that goes with his office.



Spencer Digby, Photo.

The Rt. Hon. Sir Harold Barrowclough, K.C.M.G.
Chief Justice of New Zealand.

" Having said that, I want to make this perfectly clear : to a large extent I am responsible for His Honour's progress, for I gave him his initial training as a Judge. To give you the facts I have to go back to 1940, when His Honour arrived at Cairo as the Brigadier, Sixth Brigade, Third Echelon. In those days, there were one or two places like the Cabaret Bardia which were frequented by some of our people, possibly with a view to learning the art of warfare in their spare time. A member of a sister profession—he carried a pistol in any case—visited the Cabaret Bardia and partook of a vast quantity of liquor that was far from being true to label. Afterwards by means entirely unknown, he was found on the roof of an Arab house blazing away with his pistol, in imagination beating off an attack by the combined German and Italian Air Forces. In due course, he was charged with most of the offences possible for a member of the Forces to commit. It was the first General Court Martial in Egypt, and it was presided over by His Honour, then Brigadier Barrowclough. Looking back on it now, it seems clear to me that they wanted to get a conviction, because I was sent for and came from the desert to defend the fellow. The hearing lasted something like two days, thanks to the aid given by Greek and Arabic interpreters and the constant interruptions coming from the Court. I was only a ' one-pipper ' in those days, and I was shifting from foot to foot in an endeavour to show that I did not think that that was quite the correct conduct for the Court to adopt. The President, our present Chief Justice, observed what was taking place, and addressed me thus : ' You know, Mr. Blundell, I am doing all the things that, when I was practising at the Bar, I used to hate the Judges doing, and am I enjoying myself ! ' I thought, gentlemen, that at this early stage of His Honour's career a slight reminder of that incident might prove useful.

" We are very pleased indeed to have those of their Honours and their Worships who have found the time to be with us this evening. We would like the Bench to know that we have sincere admiration for the high standard they maintain in carrying out their various duties. It is a human trait that we can speak to the derogation of some one quite comfortably for half an hour ; but when we want to speak in praise of a person we seem to run out of terms of expression in a sentence or two. It is true that from time to time we are critical of decisions and of the statements made from the Bench, whether by the Supreme Court or the Magistrates' Court ; but, over all, those things matter little, and, in any event, criticism is no doubt helpful.

" But have you thought of what we ask of our Judges ? As you have heard from some of the addresses delivered at this Conference, our Judges are in the main tending towards middle age when they are appointed to their high office. Most of them for some years have been specializing in one or two branches of the law, and when they accept their appointments they are immediately thrown into the maelstrom of every type of legal problem which can arise. It certainly redounds to the credit of our Supreme Court that, as the Court of Appeal demonstrates, so few errors are made.

" I would make the same sort of observation about the Magistracy. As you know, the Magistrates have much increased responsibility and jurisdiction, and not only so, but they have duties which are absolutely inseparable from our way of life. In every sense, theirs is the People's Court. They have manifold occupations, even more, as was suggested, than the local postmaster. They discharge their functions with dignity and with very fine results.

" We have every reason to be proud of the high

standard that our Bench has maintained and continues to maintain. If I may become a little mundane for a moment, they are paid emoluments which every one of us knows are a disgrace to this country. In our Law Society we have been battling for an improvement, so far with limited success only. However, I end on this note: that it behoves every one of us who are members of the profession and who have that reverence for the law that is innate within us and who have that affection for the incumbents of the various Benches that meeting them on such an occasion as this creates, to do all that lies within our power to see that those whose duty it is to dispense justice themselves receive it. (Applause.)

"I give you the toast of 'The Judiciary.'"

THE CHIEF JUSTICE REPLIES.

When His Honour, the Chief Justice, the RT. HON. SIR HAROLD BARROWCLOUGH, rose to reply to the toast, he was received with long-continued acclamation. His Honour said: "I should like to set Mr. Blundell's mind at ease from the outset by informing him that I am not going to tell him the judgment of the Court of Appeal in the case that he has just referred to. I want to say how much I appreciate the kindly references that Mr. Blundell made and that you supported in reference to the Judiciary.

"For a moment, I should like to be personal, if I may, and express my thanks for the special remarks made about myself. I need hardly tell you how much they can be appreciated by any one in the position which I occupy, and especially by one who, like myself, is so newly installed in it. I was sorry I could not get to Napier earlier. There were various reasons that prevented me from being here; most of them were private, and I need not worry you with them. Perhaps you were better able to discuss the shortcomings of the Court of Appeal in the absence of the unfortunate members of that Court.

"This is not the first time I have visited Napier. I can remember my first visit here nearly fifty years ago, and it is appalling to think how long ago it was. I came here to play football on a piece of concrete which then did duty as the Napier High School football ground. Notwithstanding the hardness of the ground, we succeeded in taking away the Polson Banner in the two years in which I played against Napier for the Palmerston North High School; and I think we have taken it away once or twice since then. I hope that almost inexcusable remark to a Napier audience will be forgiven.

"My heart bleeds for Mr. Blundell. I was overcome with remorse when he told the story of that Court Martial in Cairo. I assure you I accept his warning; but I would like you to hear another side of that story. The young officer who had the misfortune to be tried by that Court Martial was the son of a friend of mine, and I was sorry to see him in the position in which he found himself. I ceased to worry on his account when Mr. Bundell was defending him. The truth of the matter is that he was probably as guilty as he could be. However, his counsel was so astute and so terrifying in his cross-examination that none of the witnesses would swear up to the briefs of their evidence; and, on cross-examination, they so watered down what they had said in examination-in-chief that the Court could convict only on a quite minor charge. We did so find him guilty, and sentenced him accordingly. It may not be known to Mr. Blundell, but I had a rather painful interview shortly afterwards with the Divisional Commander, who wanted to know why the accused had been acquitted on all the major counts, and who said he might as well have been acquitted altogether. I could only point to the evidence. The Divisional Commander was not a profound lawyer, but he had a good deal of common sense; and he was not disposed to let the absence or weakness of the evidence worry him unduly. He was probably right in his view. I grieved for Mr. Blundell as I heard him recall that story, but I assure you that none of us needs to have any regrets for his fortunate client.

"I told you a moment ago that I had visited Napier more than once. Every time I come here I see signs of development and progress in this city. I was impressed, when I arrived at my hotel this evening, to find when I went to hang up my clothes that all the coat-hangers were securely anchored to a rail in the wardrobe. I congratulate mine host on his appreciation of the type of visitors at present in Napier. (Laughter.)

"I have the task of responding to this toast not only on behalf of the Supreme Court Judges, but also on behalf of a whole host of others; and I really ought to endeavour to express myself in terms which will show that I am not unmindful of the fact that I am speaking not only on behalf of my brother Judges of the Surpeme Court but also on behalf of Judge Dalglish, Judge Pritchard, and Judge Jeune, and of the Magistrates. To the two last-mentioned Judges I would like particularly to express my profound respect. They exercise jurisdiction in matters of which I am profoundly ignorant. For over forty years, I have succeeded in avoiding consideration of any question relating to the Maori Land Court. I know nothing about it. I have never told anybody that before; and the fact that I do so now, rather unashamedly, must be due to the warmth of your hospitality and the measure and quality of your liquid refreshment. *In vino veritas!*

"The Magistrate in Napier is a gentleman with whom I have a nodding acquaintance, and, if he had any shortcomings in law, they would undoubtedly have been due to the fact that his early experiences in the law were obtained in a legal firm in which I was a partner. I am sure that he has overcome his invidious beginnings.

"I was a little at a loss to understand Mr. Blundell's statement that only on an occasion such as this was he in the position that the Judges, even if out of courtesy only, were compelled to hear him. I can assure him and you that, although I have had but a short acquaintance with the Bench, one of the first things I have learned is that one has to listen—and like it. (Laughter.) There is probably some context of which I am unaware, but I do not know why the learned proposer of the toast to which I am replying should have imagined that I might lighten the tedium of some ponderous argument by drawing flowers in my note-book. If I had any artistic merit at all, and I got tired of listening to Mr. Blundell, I am sure it would not be flowers which I would draw!

"Responding to a toast is always a somewhat unfortunate business, for one never knows what is going to be said by the proposer of it. The toast which you have just honoured was so ably and so happily proposed that any lengthy reply to it would only bore you and spoil the effect, if that were possible, of Mr. Blundell's oratory. I have taken my lead from him and will say

no more, except to thank you very sincerely for the kind remarks that have been made about us and about our work. It is always a help to us to know that we have the profession behind us in our problems and that you understand the difficulties we have to meet. One of the major advantages of this Conference is that it has given us a chance to meet together, and to meet as members of the profession. I refuse to think that simply because one of us is appointed—elevated, if you like—to the Bench, or sofa (as some one called it), he is no longer a member of the profession. Judges and Magistrates remain members of the profession to which you all belong, and it is fortunate that on occasions such as this we can meet together on exactly the same footing. I think it would be a good thing if we could have more frequent dinners in which we could join on that footing.

" On behalf of all the members of the various Benches for whom I am deputed to speak, I thank Mr. Blundell for his very kind remarks ; and I thank you, gentlemen, for the hearty way in which you have honoured the toast."

The Visitors.

Mr. H. R. Moss (Napier), in proposing the toast : " The Visitors," said : " This is the opportunity given to us of the Hawke's Bay Society to toast all those who are visitors to our District, and my first thought is to express to them something of our pleasure in the occasion. So let me say directly that we are delighted to have you all with us. We have been looking forward to your visit for a long time, and it is a pleasure indeed to be hosts for such a representative gathering. We hope you are all enjoying yourselves thoroughly, and, if we have left undone anything we might have done towards your greater enjoyment, please forgive us.

" In a town of this size—we are just a City and no more—we move in a circle of limited acquaintance, as far as the profession is concerned. Opportunity to meet many of our professional brethren does not come to us every day, so each Conference is an outstanding occasion for us. It means that names we have seen on letter-heads and in the *Law Reports* suddenly become people we know. Voices we have heard on a telephone become faces we recognize.

" When I was given the signal privilege of proposing this toast, it seemed certain that I would be addressing a critical audience. You do not look very critical now, but whether that is due to your post-prandial glow or mine, I cannot be sure. However, let me warn you that I am not a pop-up toaster. There was sufficient notice of this occasion for me to marshal a few of my own criticisms of one thing and another, and they will come a little later. For the moment there are more important matters, and, to begin with, I want to mention some of our visitors individually.

" You have already honoured a special toast to our Judges and Magistrates. It is fitting that we should offer our special good wishes to the Solicitor-General, Mr. Evans ; to Mr. Cunningham, the President of the New Zealand Law Society ; and to Mr. Cleary, one of its two Vice-Presidents. It is probably true to say that many practitioners, and particularly those who practise in country districts, know them only as names, without the enlivening touch of personal acquaintance. But they are honoured names, and by their works we all do know them. We welcome also Mr. Barnett, the Secretary for Justice, and Dr. Robson of the Justice Department. Theirs is the Department of State most closely allied to us and our work, and we greet them as friends with interests akin to our own. And you would wish me to mention by name our brother-in-law from overseas, Mr. N. V. Henderson, a practitioner from Brisbane. He is Secretary of the Law Society of Queensland, an office he has held for no less than twenty-seven years. Let me tell him that here he is among friends who are especially pleased to have a representative from Australia included in this toast.

" It is the representative nature of the Conference which gives it life, though some credit must undoubtedly go to Mr. Dobson and myself as sub-committee in charge of liquor.

" I am not going to attempt any fine classification of our visitors, but I do want to refer to certain differences. This Ninth Legal Conference is particularly notable as the first Conference to be held outside those places which refer to themselves as ' The Four Centres.' Those of us who live and work in less populated fields used to have a faint feeling of inferiority when we heard the term ' The Four Centres.' However, we got over that feeling when we remembered something which is axiomatic in mathematical drawing. You see, we realized that, where there is not only one centre but four, there you must have an eccentric circle. We felt that explained everything.

" Where you come from is quite often a matter of considerable importance. There was a certain young mother who made up her mind that when her small son asked the inevitable question she would answer with complete truth. The boy was only four years old when he came indoors one day and said, ' Mummy, where did I come from ? ' She had never expected the question so soon, but true to her decision she plucked up enough courage and told him the complete story. The boy looked boggle-eyed and said, ' Gee ! the new boy next door only came from Wellington ! ' So you will see that there are more important places even than Wellington—and I do not mean Auckland.

" The next ready-made classification of the visitors is that of barristers and solicitors. Of course, most of us are both, even if only in name, and the particular distinction I have in mind is best made by using the terms ' Common-law types ' and ' Conveyancers.' (I hope you will perceive the faintly derisive flavour of both those terms.) Not for a moment would I say anything to prejudice their disrespect for each other. Our legal world would not be half so entertaining if the common-law man and the conveyancer began to admire each other. Having made my point, I go back to the terms ' barrister ' and ' solicitor ' ; but I still have a serious complaint. Learned counsel will please treat this with respect. A few years ago, one of my partners was in Boston, Massachusetts, in company with another New Zealander, a dentist. They were walking along the street one day when the dentist stopped suddenly, and began to laugh. My partner asked why, and then he saw it too : a notice on an office door, reading, ' no dogs or solicitors.' Considering the development of international communications, I think it about time we dropped the name ' solicitor,' particularly as there is a much older profession with first claim to it.

" There are some problems though, which are common to us all, and staff is one of them. Always the best typists have an unfortunate tendency towards marriage, and that is not all. Only the other day, I heard a very sorry tale. One of the older school had a new typist,

and he had been giving her the usual briefing. After he had told the girl about confidential information and so forth, he said to her, ' One more thing ; I hate slang, and there are two words I never want to hear in this office. One is ' lousy ' and the other is ' swell.' The girl said, ' O.K. What are the words ? '

" To return to the Conference ; there is another interesting thing about this particular one. It has corrected a number of popular misconceptions about Napier. Many of you will now know that there are other hotels here besides the Masonic ; and those of you who thought the oldest wooden building in the world was somewhere else will have seen our Courthouse. Do not imagine it is a coincidence that the Courthouse adjoins the Hawke's Bay Museum. On the opposite corner, they have a try-pot from the old whaling station, so you will see that everything is in character.

" A Conference of this kind, of course, does involve a considerable amount of preparatory work ; but, as one who has done little or none of it, I can tell you it has been a labour of love. One of the Committee did claim that, every time it had a meeting, it was called to discuss how four more might be accommodated in a single bed at the Masonic ; but here we all are, and I hope that none of you loves us less in the watches of the night. We have hoped to arrange matters so that you care little whether you sleep at all, and much less where you lay your heads.

" In conclusion, let me give a word of warning to bachelors and those of you who have come to this Pacific Playground without your wives. Napier is a popular place for Conferences, but I would not want any of you to suffer the fate of one man who came alone to a Conference here. When he arrived at his hotel, there was a beautiful girl standing in the vestibule, and she gave him a sultry smile. He signed the register, and, with a flash of genius, he added the words ' and wife.' Then he went back to the girl, and everything went according to plan. It was quite the best Conference he had ever attended. Three days later, he went to pay his bill before leaving, and was handed an account for £83. He said, ' But this is utter nonsense ! Eighty-three pounds ! I have only been here three days ! ' The clerk replied, ' Yes, sir, true, but your wife has been here for four weeks ! '

" However, if you have any such problems, see the Information Bureau. We have a panel service which will take care of everything, on the usual agency basis. And now, visitors, we salute you and wish you well. We hope you will share with us a pleasant memory of your stay here.

Hawke's Bay members, I give you the toast, ' The Visitors '."

The Visitors' Reply.

Mr. L. F. Moller (Auckland) replied on behalf of the Visitors. He said :

" Like the Hon. Acting Attorney-General, I, too, wanting to be prepared for this task, read the reports of the earlier Conferences for the last six or seven years. I may say I paid particular attention in those reports to anything that might lead me into the proper way of replying to this toast, and replying to it as ably as had those who have gone before me. I can assure you that nothing so forcibly struck me in all that reading as the way in which my learned friend, Mr. Leary, in Wellington in 1947 opened his speech in reply, when he was able to stand, and make the bold statement, ' Well, I feel grand ! ' It is a matter of very great regret to me that this evening I am quite unable to make any such confident assertion about my own condition. We must remember, however, that Mr. Leary was speaking in the days when the dinner was held on the night before the ball, and not on the night immediately following. I can assure you that, within twenty minutes after I have finished addressing you, I intend to do my level best to improve that condition, without thought of the morrow. I can do that because I am not personally taking part in any of the organized festivities and games arranged for tomorrow.

" I recall an incident connected with the Conference held in Dunedin three years ago. After having struggled for some ten years to break 100 on several of the South Island golf courses, I was foolish enough to play in the St. Clair tournament with my one-time friend, Max Willis of Wanganui. I notice he has not come to this Conference ; and I can only infer that it is because of a deep-rooted fear that he might be again asked to play golf with me. I concede that his comments were tolerant and kind ; but at the finish he remarked to my wife, ' Well, you know, there is only one fault with his game ; it spoils an otherwise delightful walk ! '

THE CONFERENCE SECRETARIES.

A. B. Hurst & Son, photo.

Mr. D. D. Twigg.

" One should not really approach the responsibility of replying to this toast with any great trepidation, because after all it is certainly one of the easiest to deal with—easy because all that it is necessary to say on behalf of the visitors, and that can be said with a very warm heart, is 'Thank you, Hawke's Bay; thank you for a fine time and a grand Conference.' (Applause.)

" If I may return to the personal for a moment, one of the points that struck me on reading the reports of past Conferences was that replying to this toast used to be a double-barrelled responsibility, shared by a North Island practitioner and a South Island practitioner. I have imagined that the sole reason I am being asked to carry out this duty is that I have a considerable amount of the South Island in me; and I

A. B. Hurst & Son, photo.

Mr. C. E. Bisson.

have recently acquired a happy taste for the North. It is only some nine months ago that I wrapped up my series of the *English and Empire Digest* in my little red handerchief, threw it over my shoulder, and left New Zealand for Auckland. As kind friends in the South were bidding me farewell, I heard from several that I would have to be prepared to find North Islanders very different from the South Islanders; and that the North Islanders were unfriendly, unsympathetic, and unkind. Out of my own humble and as yet limited experience, may I say now that I have found the North Islanders just as kind, sympathetic, and helpful as anybody I have known in the South Island. I mention that only because for the last few days we have had so many examples of that same North Island kindliness and hospitality at this Conference.

" It has been an exceptionally good Conference. I feel that its whole tone was set by that delightful address given by the Bishop of Waiapu on the first day. We have enjoyed the hospitality of your homes; we have attended a ball which has left its mark on us, a mark which will remain for many days to come; and now we have been wined and dined to such an extent that I can only hope it will not mean being wined, dined, and fined! (Laughter.)

" In conclusion, let me say to our hosts, what grand fun it has been. We who have our roots in the main sub-centres knew the difficulties that must face you in undertaking to run a Conference of this size in Napier. I can assure you that our thoughts were with you at every stage. Tonight, every one of us can say truthfully and sincerely that we leave behind with you a little of our hearts. I thank you particularly for the way in which the toast was honoured. Even if the singing in the first stages was a little ' lousy ' the end was ' swell.' (Applause.) "

THE PRESIDENT: Our brother in law from Brisbane has kindly consented to add a few words to what Mr. Moller has said.

THE AUSTRALIAN VISITOR.

Mr. N. V. HENDERSON: " It gives me great pleasure to be able to say a few words of thanks to Mr. Moss for the kindly remarks he made about his brother-in-law from Australia; and also to utter a few words of thanks for the great warmth of the welcome you have extended towards this visitor to your shores, and the kindness and hospitality you have shown him. I have been overwhelmed by your hospitality. At the beginning of the Conference, I was told I would be returned to Australia in good condition, fair tear and wear alone excepted, but after the ball and these proceedings I imagine that the fair tear and wear are much greater than usually come under that description. In fact, the warmth of my welcome has been such that it could not have been greater had I been Mrs. Petrov herself.

" I congratulate those responsible for the organization of this Conference upon the efficient manner in which it has been run, and upon its success in general. It will put Australia on its merits, for we are having our biennial Conference at Brisbane from July 19 to 24 of next year, and we are hoping that many of our brothers-in-law from New Zealand will visit us on that occasion. I have a special message concerning Queensland's national drink that is manufactured at Bundaberg. I am sure the manufacturers would like to get as many New Zealanders as possible used to the consumption of the rum that is produced at Bundaberg. We hope to be honoured by the presence of your President, Mr. Cunningham, and as many others of you as possible.

" Visits between our two countries are good in every way. The bonds between Australia and New Zealand have been forged firmly not only by two World Wars, but also in other ways; and exchanges of visits are most desirable and helpful.

" I cannot express sufficiently the admiration I feel for the people of this beautiful city when I see how spendidly it has been rebuilt after being destroyed by earthquake. I was interested to learn at the beginning of the Conference that the Port of Napier now exports

more Canterbury lamb than any other port in New Zealand. If one can judge by the number of sheep apparently pastured to the acre, I should say that the volume of lamb exported from this district is likely to be increased very considerably. That brings me to another matter. New Zealand lawyers seem to be able to make a comfortable living from their practices, and yet this country seems able to carry twice as many lawyers to the square mile as we can carry in Queensland.

" Another thing has struck me. For many years, we have had in Queensland an important industry which has gained a certain amount of notoriety through New Zealand as well as elsewhere. I am interested to find its activities have been exceeded by a similar industry in New Zealand. Ours is called ' The Golden Casket.' In New Zealand, you have the T.A.B., which enables the people of this country to enjoy even greater amenities than are available in Queensland through The Golden Casket. Moreover, I understand that there is a proposal to extend this New Zealand industry, for press reports indicate that there is to be a link between New Zealand and Victoria in connection with Tatts. It has been interesting to me to learn all of those things.

" I thank you for the way in which you have honoured the toast to the visitors, and more particularly for the nice things you have said about me personally. I shall convey to the Law Council of Australia my appreciation of the welcome I have received and the courtesy and hospitality extended to me in New Zealand."

THE PRESIDENT: Before calling on Mr. McCarthy to propose the last toast, I should like to say a few words about the hall in which we are now assembled. You may not realize it, but it would seem that we may be classed as a lot of bulls unfit to be in a china shop. Let me explain: In the original preliminary arrangements connected with the Conference, this hall had been selected very wisely by the ladies for their deliberations to-night. It was found, however, that the hall we had selected for this function was totally inadequate to accommodate the large number wishing to attend. We had to approach the ladies on bended knees, saying ' Give us,' and they most graciously gave. The Museum Director, Mr. Bestall, who runs this building, had been quite prepared to allow the ladies onto the premises as they stood, well knowing that his precious works of art would be perfectly safe. It was a different story when he discovered that we were to occupy the place, and that explains the barrier of chairs which closes off the rest of the building from us. (Laughter.)

" We pay a sincere tribute to the Hawke's Bay Art Society for permitting us to come here to-night. At the same time, I would like to pay a tribute to the caterers who have wined and dined us so well.

DE FEMINIS NIHIL NISI BONUM.

Mr. T. P. MCCARTHY (Wellington), in proposing this toast, said: " When it was suggested that I should propose a toast this evening, the toastmaster placed me down at the bottom of the list. I was asked to choose my own subject, but was told it should be a subject pertaining to matters of law. I commented then, and I repeat now, that the law is a dull business, and it would be a poor compliment to the wines with which we have been soothed this evening if one was thus restricted in his remarks. I am reminded of the occasion of the Oxford Union centenary dinner at which were present Lord Birkenhead and Lord Simon, then at the very peak of their forensic careers. Lord Birkenhead was invited to propose the toast to the legal profession and Lord Simon was to reply. They discussed law in a few words. Lord Birkenhead said, ' Gentlemen, the law is an arid profession; it is also a very remunerative one. If you wish to have regard for its remunerative side, I would suggest you direct your attention to my friend, Lord Simon. If, on the other hand, you prefer to consider its aridity, I respectfully invite you to consider me.'

" To-night history repeats itself because it is the responder to this toast who demonstrates the lucrativeness of the law, while my partner and I demonstrate very clearly its aridity. The matter of the choice of subject being left to me, I felt it necessary to discuss the matter with my friend Ted, and with him there could be only one subject: feminis, in one shape or another. We had some difficulty over the choice of the title to be inserted in the Toast List. He was all for ' La femme sole,' which he understood to mean ' Ladies only,' and which would give him scope for those particular powers of entertainment for which he is justly famous in Wellington in certain circumstances. Try as I could, I was unable to convince him that he had the wrong interpretation, and that the phrase meant ' The only woman,' who, in his case, I hoped was his wife. Finally, in desperation and with the aid of a Latin dictionary we decided on the phrase, *De feminis nihil nisi bonum.* As to the meaning of that phrase we are still in disagreement, and we can only leave it to a Latinist like Mr. Justice Stanton, to decide it for us.

" When I came to contemplate what I was going to say to you to-night, I found I was really in difficulties because I realized that my knowledge of the subject was extremely bare. I decided that with due humility I should seek the advice of my seniors in the law. I turned to an old family friend, now a member of the Judiciary, and put my case to him. ' What can I say? ' I asked, ' And what is your opinion of marriage and women generally? ' ' Marriage has many pains,' he said, ' and, as for women, they are not to be trusted. They poke the fire from the top, and so they are not to be trusted. But there are exceptions, and my wife, of course is an angel.' ' In what way? ' I asked. ' She is usually up in the air, is always harping on something, and she has not got a damned thing to wear,' he explained. (Laughter.)

" On my way back from that Judge's Court, I happened to meet Leonard Leary of Auckland walking along the street, talking to everybody including himself, and enjoying himself immensely. I said to myself. ' Here is some one who knows all about women ' so I approached him on the subject. ' Women? ' he said. ' They are intolerable; that is their only fault.' You will see that I was not getting very far ahead.

" I turned once again to my friend and mentor in Dunedin, Charles Barrowclough. I rang him up and put my problem to him telling him that I did not know what I was to say to-night. He replied, ' I am sorry I have to disappoint you; I cannot assist you. For a man to pretend to know all about women is bad manners, and for a man really to know all about them is bad morals! Anyhow, if I said more than that I would be treading on my wife's corns, and Hell hath no fury like a woman's corns! ' (Laughter.)

" Finally, I felt forced to turn from the menfolk and

to direct my inquiries to the women. I thought I should do it at an official level, so, first of all, I got in touch with the wife of the President for the time being of Wellington District Law Society. I told her my troubles and asked her comments on lawyers as husbands and on marriage, and, as women do, she reverted from the general to the particular. She said, 'My husband would never look at another woman: He is too fine, he is too noble, he is too old!' After that I thought I would go even higher, so, finding that Mr. Cunningham was out of Wellington, I got hold of the wife of his deputy, who, by the way, was waiting for her husband to come home from the Library. I made my inquiries. 'Oh yes,' she said, 'Like all lawyers he is a blessing, but in disguise!'

"My researches went on, and I came to no other conclusion but that of the universality of the appeal of woman. It was not, I felt, a very original conclusion because it originated years ago from the Marx Brothers, Groucho, Harpo and Chico. They were imprisoned in a hut surrounded by the enemy when Groucho seized the microphone and broadcast an appeal to all nations: 'Three men and a woman prisoners in a hut in grave danger. Please send help immediately. If you cannot send help, send two more women!

"If I may be permitted to speak confidentially, I would say that every one of us has good reason to know that the life of the wife of a lawyer is not always an easy one. It is an old and trite saying that the law is a jealous mistress. Whether that is correct I do not know, but it is true that our profession makes claims upon the life and time of a man which no wife and few children would dare to exercise. It makes us irritable, it makes us tired, but it rewards us with some triumphs and some intellectual compensations. Yet such is the nature of those triumphs and those intellectual compensations that our wives can share but partly in them. It rewards us financially, but indifferently. While the wife of the master butcher down the road can afford a motor-car and a Karitane nurse, our wives too often have to be consoled with the explanation that services to the community and modest reward are the traditions of the professional classes.

"Once again, as you have heard from Mr. Holderness, our wives have placed our wants before their own. They were to be here; but, knowing that we needed this place, they went elsewhere. It is fitting that we should pause for a moment in our jollifications and frivolities to drink their health, which I ask you to do, and in doing so I would remind you of the old saying of Dr. Johnson that, if marriage has many pains, celibacy has few pleasures." (Applause.)

Mr. R. E. POPE (Wellington), in replying to the toast, said: "On or about Monday, January 8, 4004 B.C. a surgical operation was performed in the Garden of Eden. The patient, one by the name of Adam, was put into a deep sleep, which seems to discount medical opinion that anaesthesia was not applied until the nineteenth century. While he was under the anaesthetic, one of Adam's ribs was removed—hence Woman. The previous week had been a particularly busy one. During that week, there had been created night and day, the birds of the air, the fishes in the sea, the beasts of the field and all creeping things, to say nothing of Adam. Accordingly, Sunday, January 7, of the same year, was declared a day of rest, and it has been a public holiday ever since. But since Woman was created neither God nor man has rested. From those somewhat modest orthopaedic beginnings, women have progressed vigorously, although the basic curve still remains.

"Indeed, even at the present day perhaps curves and cosmetics are the two most formidable weapons wielded by women against us weaker vessels. Some efforts have been made by women to place those curves under control. During the early 'nineties, certain buttresses of steel and bone were employed, but normally the result was more like a war memorial than a screen actress. Woman has progressed, but underlying it all there has been what is sometimes called the battle of the sexes; and I shall refer to what we must realize is the ultimate triumph by woman.

"If we take marriage in the earliest times, the ardent male prowled the grassy wastes of a no man's land, manlike seeking his mate. But woman at that time was fleet of foot and was able to avoid an unwelcome capture. Where capture resulted, however, there seemed to be many instances of evidence that the female was not running her hardest.

"Marriage is not something you stumble into by accident and remain in by habit, as Dr. Johnson suggests. In many ways, it is more than that. When we come to consider the emotional period that precedes matrimony, we learn many things. During that period, the woman retains her grip on the situation. Consider the young man with the maid trembling in his arms. He fondly imagines that he has generated that feeling by the sheer horsepower of his wooing. It is not so. It is merely the excitement of her triumph. Throughout, the woman remains cool, calm, and collecting.

"Now I want you to treat in confidence what I am going to say. I understand that nothing I say will leak out of this room. Woman's progress over the centuries has been substantial. Just reflect on the consideration for woman by the law. In her marriage state, she was a chattel, but when she was a chattel she was both real and personal. Not only so, but when a man took unto himself a wife, he took also all her property, and gained both real and personal. Consider the position as it is to-day. When a man takes unto himself a wife, look at the income position. The wife has full control of his income. He has modest spending money, and the rest is at her disposal. If he feels that the position is intolerable, there is no escape. If he cuts down the housekeeping allowance, she can immediately proceed to Court under the Destitute Persons Act and obtain a maintenance order which can be enforced by a charging order, security can be given, and further than that he can be imprisoned if he does not pay. A separation order can be made, and he can be put in prison if he enters upon his own home. The picture, gentlemen, is a gloomy one.

"I have dealt with his income position; take the capital position. He might just as well give everything to his wife because if he does not, under the present system she can get it in any case under the Family Protection Act; and there will be a fine imposed in the form of death duties. That is the stage that woman has now reached, but we must keep it to ourselves. We cannot let that information leak into the other camp. It is indeed a gloomy prospect. It is possible a new era may be entered upon and a new day may dawn." (Applause.)

Mrs. R. L. A. Cresswell (Wellington), Mrs. S. C. Childs (Pukekohe) and Mrs. L. A. Johnson (Whangarei).

Mrs. C. F. Hart (Christchurch) and Mr. E. S. Bowie (Christchurch).

Mr. D. A. Oldham (Christchurch), Miss Valerie Wacher (Napier), Miss Corrie Bergh (Napier), and Mr. A. F. Shaw (Christchurch).

Mrs. E. T. E. Hogg (Wellington), Mr. and Mrs. H. M. Ward (Upper Hutt), and Mr. E. T. E. Hogg (Wellington).

Mr. T. V. Mahoney (Invercargill)and Mr. E. F. Rothwell (Lower Hutt). (*Right*): Dr. A. L. Haslam (Christchurch), Mr. J. B. Deaker (Dunedin), and Mr. R. A. Young (Christchurch).

At the Conference Ball.

THE LADIES' FUNCTIONS.

ALL the ladies visiting Napier for the Conference have the happiest memories of the continued kindness and overwhelming hospitality they experienced during Conference week.

From the moment when they were greeted with flowers in their hotel bedrooms, they were made to feel at home.

The ladies all attended the Cocktail Party, the Civic Welcome, the Ball, and the enjoyable closing function at the Bridge Pah Golf Course. They were, too, the guests of the Napier and Hastings practitioners' wives in their homes at pre-Ball parties and whenever there was an opportunity outside Conference gatherings.

Then, too, while the menfolk were otherwise engaged on serious business, the ladies' time was most pleasantly occupied.

The Scenic Drive.

The scenic drive arranged for the ladies on Thursday left Napier at 11 a.m., travelled along the Marine Parade through Clive, and branched off to Havelock North with a brief visit to Hereworth School, Woodford House, and Iona College, giving the visitors not only a beautiful panoramic view from the Havelock Hills but also an opportunity of seeing the lovely gardens and trees in the grounds of the Schools. The bright, autumn tints in the English trees, which are a characteristic feature of Hawke's Bay scenery, called forth the admiration of all who were privileged to take part in this drive.

After Hastings, the ladies passed through farmland and orchards, the trees being still laden with apples and other fruit; and so on to the Waiohiki Golf Links at Taradale. There, Mrs. Holderness, Mrs. Dowling, and the Ladies' Committee received the guests. A delectable buffet luncheon was served, and later the drive was resumed through Taradale and Greenmeadows, past the reclaimed inner Harbour, and then up to Bluff Hill for another magnificant view of Napier showing Westshore and the ranges beyond to Cape Kidnappers. The drive then continued around the Port Road back to Napier.

Stuart Johnson, photo

Mrs. J. H. Holderness
The Conference Hostess.

At the Pictures.

For the Garden Party, which had to be abandoned on the Wednesday, a film entertainment was substituted, and the ladies had the opportunity of seeing "The Malta Story".

The Ladies' Dinner.

On the Thursday evening, a very pleasant buffet dinner was served to a large gathering at the Red Cross Hall, Napier. The guests were again received by Mrs. Holderness, Mrs. Dowling, and members of the Ladies' Committee.

The entertainment was arranged in the form of a conversazione, the items given including a ballet dance, readings, and an amusing account of drama experiences in the United Kingdom.

Before the evening closed, the Secretary of the New Zealand Law Society, Mrs. D. I. Gledhill, introduced to the gathering Mrs. W. H. Cunningham, wife of the Society's President, who had been asked to speak on behalf of the visiting ladies.

Mrs. Cunningham said: "I have been asked by the visiting ladies to express on their behalf their warm thanks and genuine appreciation of all the planning and work which have gone into making this Conference and its entertainments the success it has been.

"We feel that to have achieved this result, with a local membership of less than a quarter of the numbers of the so-called 'main-centres', must have meant some very hard work covering a period of many months.

"To Mrs. Holderness, the wife of the President and the Chairwoman of the Ladies' Committee, we would like first to record our thanks. Not only has she had to convene and attend meetings of her own committee, but she has also had to attend as a member of the General Committee to ensure that all arrangements would be co-ordinated. Nevertheless, without Mrs. Dowling, the wife of the Vice-President in Napier, and Mrs. Tattersall, of Hastings, the stalwart Secretary, and the loyal support of a strong Committee of ladies, we doubt whether the results could have been so effective.

"The manner in which the Garden Party, at the last minute, was replaced by the excellent film programme, and similarly the re-arrangement of to-day's luncheon owing to weather conditions—both seemingly accomplished without hitch—is amply evidence of perfect organization.

"We understand that for the beautiful floral decorations at the halls, the arrangements for the ball supper, the distribution of flowers to welcome each lady visitor on her arrival, our thanks are due to the ladies of the Hawke's Bay Society.

"The Conference has given us all the opportunity of meeting friends from the far North to the far South, and we are unanimously of the opinion that our visit to Hawke's Bay will long remain in our memories as one of the happiest events we have experienced."

A hearty vote of thanks to the Ladies' Committee of the Hawke's Bay Law Society and their helpers was carried by acclamation.

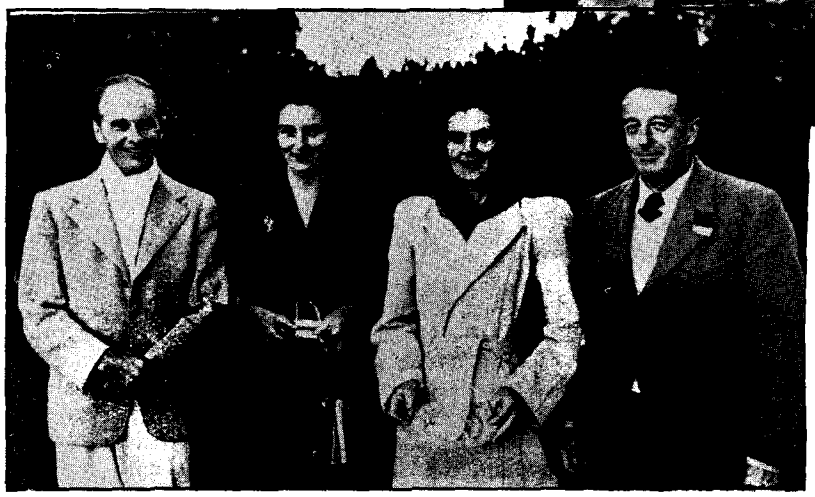
Bowls: Messrs. D. F. Stuart (Wellington), D. Finnigan (Napier), F. C. Henry (Hamilton) and M. Robb (Auckland).

Ladies Golf: Mrs. G. J. Walker (Timaru) and Mrs. E. C. Adams (Wellington).

The Winners and Runners-up of the Sports Events.

Men's Golf: Messrs. H. W. Dowling (Napier), R. R. Burridge (Masterton) (runners-up), and Messrs. P. Page (Te Awamutu) and M. Barltrop (Feilding), winners of the *Law Journal* Cup.

Tennis: Mr. J. C. White and Mrs. E. D. Blundell (runners-up), and Mrs. H. R. C. Wild and Mr. C. Evans-Scott (winners) (all of Wellington).



THE COCKTAIL PARTY.

An appreciated innovation at the last Dunedin Conference was the Cocktail Party on the afternoon of the day before the Opening Day of the Conference proper. This feature was renewed at Napier.

On the Tuesday afternoon, the spacious lounge of the Masonic Hotel was filled and a happy hour or so passed all too soon, as the Secretaries found to their dismay when it was time for the function to end. The Party was much enjoyed.

At Hastings, those who were domiciled out of Napier had their own cocktail party provided for them in the Municipal Hall. There were some seventy present, and it, too, was a very enjoyable gathering.

The CHURCH ARMY in New Zealand Society

CONVERSION CONSECRATION CHURCHMANSHIP N Z CHURCH ARMY

A Society Incorporated under the provisions of The Religious, Charitable, and Educational Trusts Acts, 1908.)

President:
THE MOST REV. R. H. OWEN, D.D.
Primate and Archbishop of
New Zealand.

Headquarters and Training College:
90 Richmond Road, Auckland, W.1.

ACTIVITIES.

Church Evangelists trained.
Welfare Work in Military and Ministry of Works Camps.
Special Youth Work and Children's Missions.
Religious Instruction given in Schools.
Church Literature printed and distributed.
Mission Sisters and Evangelists provided.
Parochial Missions conducted
Qualified Social Workers provided.
Work among the Maori.
Prison Work.
Orphanages staffed

LEGACIES for Special or General Purposes may be safely entrusted to—

THE CHURCH ARMY.

FORM OF BEQUEST.

"I give to The Church Army in New Zealand Society, of 90 Richmond Road, Auckland, W.1. [*here insert particulars*] and I declare that the receipt of the Honorary Treasurer for the time being, or other proper Officer of The Church Army in New Zealand Society, shall be sufficient discharge for the same."

The Young Women's Christian Association of the City of Wellington, (Incorporated).

Y.W.C.A.

★ **OUR ACTIVITIES:**

(1) Resident Hostels for Girls and a Transient Hostel for Women and Girls travelling.
(2) Physical Education Classes, Sport Clubs, and Special Interest Groups.
(3) Clubs where Girls obtain the fullest appreciation of the joys of friendship and service.

★ **OUR AIM** as an International Fellowship is to foster the Christian attitude to all aspects of life.

★ **OUR NEEDS:**

Our present building is so inadequate as to hamper the development of our work.

WE NEED £9,000 before the proposed New Building can be commenced.

General Secretary,
Y.W.C.A.,
5, Boulcott Street,
Wellington.

A worthy bequest for YOUTH WORK . . .

THE

Y.M.C.A.

THE Y.M.C.A.'s main object is to provide leadership training for the boys and young men of to-day . . . the future leaders of to-morrow. This is made available to youth by a properly organised scheme which offers all-round physical and mental training . . . which gives boys and young men every opportunity to develop their potentialities to the full.

The Y.M.C.A. has been in existence in New Zealand for nearly 100 years, and has given a worthwhile service to every one of the thirteen communities throughout New Zealand where it is now established. Plans are in hand to offer these facilities to new areas . . . but this can only be done as funds become available. A bequest to the Y.M.C.A. will help to provide service for the youth of the Dominion and should be made to :—

THE NATIONAL COUNCIL, Y.M.C.A.'s OF NEW ZEALAND,

114, THE TERRACE, WELLINGTON, or YOUR LOCAL YOUNG MEN'S CHRISTIAN ASSOCIATION

GIFTS may also be marked for endowment purposes or general use.

The Boys' Brigade

SURE B B STEDFAST

OBJECT:

"The Advancement of Christ's Kingdom among Boys and the Promotion of Habits of Obedience, Reverence, Discipline, Self Respect, and all that tends towards a true Christian Manliness."

Founded in 1883—the first Youth Movement founded.
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The NINE YEAR PLAN for Boys . . .
9–12 in the Juniors—The Life Boys.
12–18 in the Seniors—The Boys' Brigade.

A character building movement.

FORM OF BEQUEST:

"I GIVE AND BEQUEATH unto the Boys' Brigade, New Zealand Dominion Council Incorporated, National Chambers, 22 Customhouse Quay, Wellington, for the general purpose of the Brigade, (*here insert details of legacy or bequest*) and I direct that the receipt of the Secretary for the time being or the receipt of any other proper officer of the Brigade shall be a good and sufficient discharge for the same."

For information, write to:
THE SECRETARY,
P.O. Box 1403, WELLINGTON.

Active Help in the fight against TUBERCULOSIS

OBJECTS: The principal objects of the N.Z. Federation of Tuberculosis Associations (Inc.) are as follows:

1. To establish and maintain in New Zealand a Federation of Associations and persons interested in the furtherance of a campaign against Tuberculosis.

2. To provide supplementary assistance for the benefit, comfort and welfare of persons who are suffering or who have suffered from Tuberculosis and the dependants of such persons.

3. To provide and raise funds for the purposes of the Federation by subscriptions or by other means.

4. To make a survey and acquire accurate information and knowledge of all matters affecting or concerning the existence and treatment of Tuberculosis.

5. To secure co-ordination between the public and the medical profession in the investigation and treatment of Tuberculosis, and the after-care and welfare of persons who have suffered from the said disease.

A WORTHY WORK TO FURTHER BY BEQUEST

Members of the Law Society are invited to bring the work of the Federation before clients when drawing up wills and giving advice on bequests. Any further information will be gladly given on application to:—

HON. SECRETARY,

THE NEW ZEALAND FEDERATION OF TUBERCULOSIS ASSNS. (INC.)

218 D.I.C. BUILDING, BRANDON STREET, WELLINGTON C.1.
Telephone 40-959.

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Social Service Council of the Diocese of Christchurch.

INCORPORATED BY ACT OF PARLIAMENT, 1952

CHURCH HOUSE, 173 CASHEL STREET
CHRISTCHURCH

Warden: The Right Rev. A. K. WARREN
Bishop of Christchurch

The Council was constituted by a Private Act which amalgamated St. Saviour's Guild, The Anglican Society of the Friends of the Aged and St. Anne's Guild.

The Council's present work is:

1. Care of children in cottage homes.
2. Provision of homes for the aged.
3. Personal case work of various kinds by trained social workers.

Both the volume and range of activities will be expanded as funds permit.

Solicitors and trustees are advised that bequests may be made for any branch of the work and that residuary bequests subject to life interests are as welcome as immediate gifts.

The following sample form of bequest can be modified to meet the wishes of testators.

"I give and bequeath the sum of £ to the *Social Service Council of the Diocese of Christchurch* for the general purposes of the Council."

LEPERS' TRUST BOARD

(Incorporated in New Zealand)

115D Sherborne Street, Christchurch.

Patron: SIR RONALD GARVEY, K.C.M.G., Governor of Fiji.

The work of Mr. P. J. Twomey, M.B.E.—"the Leper Man" for Makogai and the other Leprosaria of the South Pacific, has been known and appreciated for 20 years.

This is New Zealand's own special charitable work on behalf of lepers. The Board assists all lepers and all institutions in the Islands contiguous to New Zealand entirely irrespective of colour, creed or nationality.

We respectfully request that you bring this deserving charity to the notice of your clients.

FORM OF BEQUEST

I give and bequeath to the Lepers' Trust Board (Inc.) whose registered office is at 115d Sherborne Street, Christchurch, N.Z., the Sum of

.....

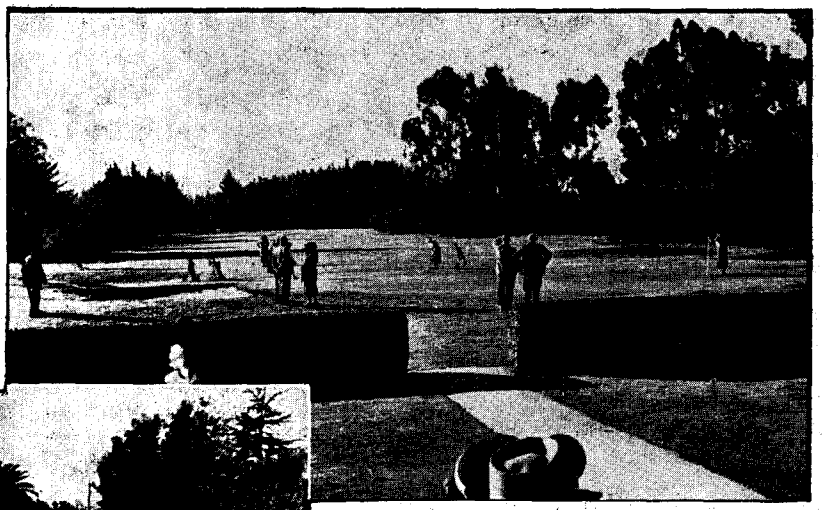
Upon Trust to apply for the general purposes of the Board and I Declare that the acknowledgement in writing by the Secretary for the time being of the said Lepers' Trust Board (Inc.) shall be sufficient discharge of the Legacy.

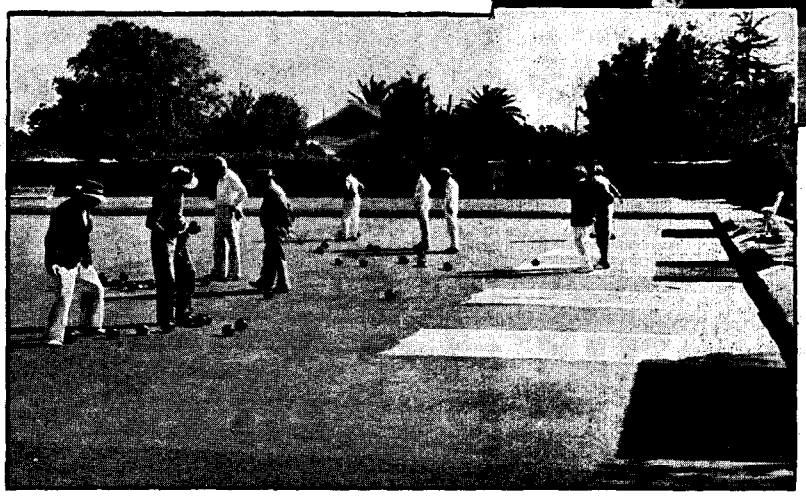
SPORTS DAY.

ON the final day of the Conference, Hawke's Bay provided a sample of the weather for which that lovely countryside is renowned. Sunny and cloudless, it was more like a summer day than an autumn one. It was ideal for the sports gatherings.

Golf was played, with record entries, at the beautiful Bridge Pah links at Hastings. The drive to the links from Napier, through Greenmeadows and Taradale, with their fruit-laden orchards and smiling pastoral setting, relieved with an autumn-tinted variety of trees, added greatly to the enjoyment of all the visitors, who gathered in the late afternoon at the Club-house for the closing events of the Conference.

Much interest was taken in the ladies' golf, played for the first time on a Conference Sports Day. It ended with the honours evenly divided between North and South Island ladies.





Beautiful Surroundings on Sports Day.

Above : The Bridge Pah Links, from the Clubhouse.

Left : Bowls at the Heretaunga Green.

Bowls and tennis were well patronised. They, too, took place at the picturesque Heretaunga Green and at the Hastings Lawn Tennis Club's courts.

The following is the list of winners of the various contests :

GOLF.

MEN :

THE WINNERS of Stableford Aggregate, and holders until the next Conference, of the LAW JOURNAL Cup, donated by Messrs. Butterworth and Co. (Australia) Ltd., were : P. PAGE (Te Awamutu) and M. BARLTROP (Feilding). The runners-up were : Messrs. R. R. BURRIDGE (Masterton) and H. W. DOWLING (Napier).

Personal trophies to winners and runners-up were also donated by Messrs. Butterworth and Co. (Australia) Ltd.

LADIES :

This year, for the first time, the ladies played golf, and the result of their competition was as follows : The winners were : Mrs. E. C. ADAMS (Wellington) and Mrs. G. J. WALKER (Timaru).

The runners-up were : Mrs. R. F. MACKIE (Waipukurau) and Mrs. W. A. MCLEOD (Napier).

BOWLS.

The winners were : Messrs. CLIVE HENRY (Hamilton) and MALCOLM ROBB (Auckland).

The runners-up were Messrs. D. F. STUART (Wellington) and D. FINNIGAN (Napier).

TENNIS.

The winners were : Mrs. H. R. C. WILD (Wellington) and Mr. C. EVANS-SCOTT (Wellington).

The runners-up were : Mrs. E. D. BLUNDELL (Wellington) and Mr. J. C. WHITE (Wellington).

The Bridge Pah links were in perfect order. All day the large and well-appointed Club-house was a scene of busy activity. Morning tea and lunch were provided for the players. In the afternoon, many non-playing visitors enjoyed the bright sunshine and the lovely precincts of the Club-house. When the final contestants came in, the whole of the large assemblage of Conference visitors had gathered for the closing ceremony, after which all shared in the afternoon tea provided for them.

Here, as at the Heretaunga Green and at the Hastings Lawn Tennis Club's courts, the arrangements were all that could be desired. The players were delighted with the facilities available to them. Mr. W. A. McLeod (Napier) who had charge of the Sports generally, and Mrs. J. Tattersall (Hastings), who made the arrangements for the ladies' golf, received many congratulations on their success.

THE CLOSING CEREMONY.

IN opening the proceedings, the President of the Hawke's Bay Law Society, MR. J. H. HOLDERNESS said: "I sincerely hope that you have all enjoyed yourselves during the time you have been with us. I know that I, myself, have enjoyed this Conference very much indeed. I know that my wife enjoyed the first forty-eight hours of it, but thereafter the strain became more apparent.

"It will also be quite apparent to all of you that the Conference has been entirely due to the very kind co-operation and assistance of a large number of practitioners throughout our district. Without their assistance, it would have been quite impossible for us to have done so much. I must, in particular, pay a special tribute to those Clubs and other bodies here in Hastings and in Napier that have been kind enough to help us in our difficulties. I would particularly pay tribute to the Hastings Golf Club for the use of their course to-day, and for the use of their magnificent Clubhouse for this particular function. We are greatly indebted to the Heretaunga Bowling Club for the use of the green to-day for the bowls, and to the Hastings Tennis Club for the use of their courts for the tennis.

"We should, too, pay tribute to the A. & P. Society who were good enough to make available the Waikoko grounds for the garden-party which you did not have. That, of course, was not their fault, and the grounds were available and we thank them for that. We would also like to thank Mr. and Mrs. Glazebrook for the proffered use of the Washpool for the Ladies' luncheon, and I am, indeed, sorry the ladies have missed that site for their lunch. Although they may have enjoyed what they did have at the Waiohiki Links, it would have been magnificent if they could have had the Washpool. It was very good of Mr. and Mrs. Glazebrook to make their grounds available to us. I am sorry we were not able to avail ourselves of that kindness.

"I realized when I took on the job of President for this Conference period that there would be a large amount of work involved, but I had wit enough to realize that most of it would not fall upon my shoulders. I will let you into a secret for the benefit of any District which hopes to have a Conference in future. I would advise any practitioner in that District to seek the office of President for himself, and not that of one of the Committee, and certainly not the job of a Joint Secretary. What I did not have wit enough to realize, however, was that the burden would fall on my wife's shoulders, and, if any of you seeks the office of President for a Conferrence peiod, I would advise you to consult your wife beforehand and advise her of the remarks I have made. I am deeply indebted to my wife for all she has done for us during the whole period of the Conference. I do not know how I can make it up to her. I am only grateful . . .

Mr. Holderness was interrupted by prolonged laughter, and when it had subsided, he continued.

"I was going to say I am only grateful that they don't sell mink coats in this district.

"I am also very much indebted to our New Zealand President, Mr. Cunningham, and Mrs. Cunningham, who have kept us both on the right and proper lines throughout our proceedings.

"The Conference Committee itself has undoubtedly done a magnificent job, and all our local practitioners have put their backs to the wheel and turned it to, I think, very good effect. But my chief tribute must undoubtedly go to our Joint Secretaries, Jock and Don (Applause). That is where the burden always falls, and, like real heroes, they went into it with their eyes open.

"Everyone has been very kind, and, from the sincerity of the remarks which have been passed on to myself and my wife during the course of the Conference, I feel sure you have enjoyed yourselves. That is what we set out to do and I hope that we have achieved it. May I say, 'Thank you' to you all and wish you a speedy and safe return to your homes.

Further laughter interrupted Mr. Holderness when the significance of the unconscious use of the word 'speedy' became apparent to his audience. He continued:

"It is interesting to note that this is apparently the largest Conference that has been held. There are some 240 visiting practitioners with their wives, not to mention some thirteen additional traffic officers who have been specially imported*."

"I have paid a tribute to my wife, and now, unfortunately, I have to thrust another burden upon her shoulders. I am going to ask her to present these trophies to those who were successful in the various sports fixtures to-day. Mr. McLeod will tell us who are to be the recipients."

SPORTS TROPHIES PRESENTED.

MRS. J. H. HOLDERNESS, the Conference Hostess, then presented to the winners and runners-up of the golf, bowls, and tennis, the trophies, which, in addition to the *Law Journal* cup and the individual trophies which went with it, were useful and well-chosen mementoes of a very interesting day's sport on a Dominion-wide basis of representation.

PRESENTATION TO CONFERENCE SECRETARIES.

At the conclusion of the presentation of trophies, Mr. Holderness asked Mr. W. E. Leicester (Wellington) to represent the visitors, all of whom wished to mark their appreciation of the work of the joint secretaries, Messrs. D. D. Twigg and G. E. Bisson.

MR. W. E. LEICESTER: "The pleasant task has been assigned to me of making a presentation to the energetic and genuine and most excellent Joint Secretaries of this Conference. I am also instructed to say a few words to them. This I shall now proceed to do in no uncertain manner.

"The difficulties which confronted this Conference (and, as you know, this is the first Conference held at a place outside the Capital city or one of the other cities of lesser legal learning) were mainly geographical, but the difficulty was solved at an early stage by the Joint Secretaries. With that spirit of compromise so characteristic of Napier practitioners—particularly away from their homes or their offices—they agreed at an

* Hawke's Bay had suffered an unduly large number of Easter road accidents, which accounted for the sudden influx of traffic officers referred to by Mr. Holderness.

Some Personalities at the Closing Ceremony.

Top: (*left*), Messrs. D. R. Richmond (Wellington), A. L. Tompkins (Hamilton), E. T. E. Hogg (Wellington), and R. L. Ronaldson (Christchurch); (*right*), Mr. and Mrs. J. H. Holderness (Hastings) and the Hon. Mr. Justice Hutchison (*Solicitor-General, photo.*).

Second row: (*left*), The Winners of the Men's Golf, Messrs. M. Barltrop (Feilding) and P. Page (Te Awamutu), receive the *Law Journal* Cup from Mrs. J. H. Holderness; (*right*), Messrs. M. J. Morrissey and W. T. Dobson (Napier).

Third row: (*left*), Mr. W. E. Leicester (Wellington) makes a presentation to Mr. D. D. Twigg (Napier), one of the Joint Secretaries; (*centre*), the winner of the Ladies' Golf, Mrs. G. J. Walker (Timaru) and Mrs. E. C. Adams (Wellington) receive their trophies from Mrs. J. H. Holderness; (*right*), the Joint Secretaries, Messrs. G. L. Bisson and D. D. Twigg (Napier) being thanked.

Bottom row (*left*), The Chief Justice; (*centre*), Messrs. A. O. Woodhouse (Secretary of the Hawke's Bay Law Society) discusses some weighty matter with his President, Mr. J. H. Holderness; (*right*) Mr. E. D. Blundell (Wellington).

early stage that for the purposes of the Conference, Hastings and Napier were to be regarded as suburbs of each other. To this bilateral agreement, I am glad to say, the ebullient Hastings representative, Max Pledger, vigorously refused to agree.

"A further difficulty was, of course, one of accommodation, and it is to be regretted that few of you have been able to enjoy the plush divans, flashing fountains and other splendours of most of your Hawke's Bay hotels. I am told that no less than 80 per cent. of the practitioners present here wrote to the Secretaries and said that, in the absence of better accommodation they would be disposed to occupy the Royal Suite, and one practitioner, I am told, wrote that 'Her Majesty the Queen, who was gratified by the accommodation proferred to her in Napier, insists that we sample the same on our visit to you.' As a matter of fact, for your information, the Royal Suite was occupied during the Conference, in the first instance by the Hon. the Minister for Health, and later by the Right Hon. the Chief Justice, Sir Harold Barrowclough. This situation is regarded by the Price Tribunal and other bureaucratic institutions as a signal triumph for their theory that in all things the Judiciary should follow the Executive.

"Now, the main difficulty, of course, was a lack of precedent. Lawyers always have difficulty in facing unusual situations, unlike politicians who solve them by removing the right of appeal. In the Conferences held in Christchurch in 1928, in Wellington in 1929, and in Auckland in 1930, the organizers provided one married Secretary. This was welcomed by the wife of the Secretary who found in Conference work an extension of that familiae and domestic fuss and bother with which the average husband is usually plagued, but it was not so easy for the husband-secretary, who, wearied of hard work during the day, would arrive home in the evening worn out by unnecessary remits and unreasonable complaints to find a note, 'Will be home late, am out on the Scenic Drive. You will find a plate of Wednesday's savouries in the ice-box.'

"In the middle years of the Conference, just after the War, the promoters decided to have two married Secretaries, but after some deliberation they thought it prudent to add the condition that they should be related, presumably on the assumption that what flesh and blood could not stand, kith and kin should and would.

"During the last three Conferences, the practice has been to have one married Secretary and one unmarried Secretary. This has had both advantages and disadvantages. The advantages have been that, in all matters of difficulty and doubt, where the husband-and-wife Secretaries might be at variance, the unmarried Secretary has been entitled to adopt the honorary and strictly honorable role of conciliator. The disadvantage has been—and this is a result quite uncontemplated by the promotors of the Conference, and a result for which the New Zealand Law Society has declined to take responsibility—immediately following the Auckland Conference of 1949 and the Dunedin Conference of 1951, the unmarried Secretaries were promptly married. On the doctrine of probabilities, this gives rise to a very parlous predicament for Mr. Jock Twigg, known as Napier's most perennial bachelor. I was somewhat apprehensive as to what I could say in the circumstances, and I consulted a friend of his—another denizen of the great outdoors—and he said, 'You needn't worry, Jock is a very downy old bird,' whatever that might mean. I can only express to him on behalf of you all the wish that after this Conference, his lot will be that which he richly deserves.

"The other Joint Secretary is Mr. Bisson, and Don is already a family man, and doesn't suffer from any such disabilities. He has an energetic and attractive wife, who is a pillar of the Repertory movement in Hawke's Bay and whose artistry you had an opportunity of experiencing at the Ball. Don is also a very gifted musician, and those of you who attended the Cocktail Party at the Masonic Hotel would have enjoyed his playing of the gong accompanied by such exclamations as 'Time, gentlemen, please,' and 'Why the hell don't all these people go home?'

"Speaking of the Joint Secretaries together, I should like to say that they have done their work quietly, without show, efficiently and pleasantly, and in their own way have made the Conference for all of us. I do not have to say how much work they have done. It is obvious what a great deal has been done. It is my pleasure, therefore, to present to Mr. Twigg this cigarette box inside which he will find a cheque which will enable him to buy that which he specially wishes. I also propose to present a cigarette box to Mr. Don Bisson, inside which he will find a cheque which will enable him to buy not that which he wants but which his wife wishes. In order to break down that situation just a little, I am going to ask him to accept on behalf of the visitors a small clock for Mrs. Bisson, and that will remind them both of the wise saying of Confucius, 'In conference, time and the tongues of man do not stand still.'"

Mr. Leicester then presented these tokens to Mr. Twigg and Mr. and Mrs. Bisson.

The Joint Secretaries Reply.

Mr D. D. Twigg, who was received with cheers, said:

"The Joint Secretaries are most gratified that one of the senior members of our Association, the Joint Secretaries' Association, should have been kind enough to say such very pleasant things about two raw recruits. As you know, our Association is probably one of the most exclusive in the country, and the period of initiation is long and rigorous. However, it has been rewarded by this very pleasant tribute that you have just paid us, if reward was sought, and it was not. For myself, I have thoroughly enjoyed the work. Don has been a real Joint Secretary. We have never argued, and for some reason or other, we have not had a cross word until we noticed on the agenda something about the Joint Secretaries replying to this address. I foolishly allowed myself to occupy the position, and then found, to my joy later on, that Don had to reply also.

"I do not wish to detain you. You have heard some very good speakers during this Conference, and I think the Joint Secretaries should close on the note that we have thoroughly enjoyed ourselves. We appreciated the way in which you assisted us in our work. Just to give you an example, 416 said they would come to our Ball, and 421 attended, and that, of course, makes it very easy for the Joint Secretaries. Thank you very much, Mr. Leicester."

Mr. G. E. Bisson, who was also received with cheers, said: "I, too, am overwhelmed by this tribute you have

paid us this afternoon. I do not think it is at all necessary, for, as Jock said, we have had a good time, and have thoroughly enjoyed ourselves. On the other hand, we think it has been a successful occasion and are glad it is over. I appreciate Mr. Leicester's remarks concerning my married state, and I think I am a lucky man to be able to still boast of it. As a matter of fact, I was very glad when the acceptances for the Conference were coming in, that a certain Mick Robinson from Auckland was not coming. I think as a divorce lawyer, he might have been saddled with a client in the form of my wife at one stage in the Conference. However, I was relieved on that score, but when I saw her dancing at the Ball with Mr. Leicester, who is recognized as an expert on divorce, having just returned from overseas, my fears returned. Now you have given her a present, I am sure we shall remain a very happily married couple. I wish to thank you on her behalf, as I am sure she would not want to make a speech herself."

The speaker, amid laughter, said he had not looked at the cheque yet, but he hoped it was made payable to the order of G. E. Bisson. He continued:

"This is an occasion where it has been arranged between Jock and myself that I should pay the thanks to those others who made the Conference such a success. We have had two and a half years to prepare for it and make sure it would be a success. We were fortunate, also, that we had a good fund to spend on it, and we hope we have spent your money wisely. I am pleased to say there will be a credit to be carried forward to the next Conference.

"Jock and I would like to mention, first of all, of course, the President of the Hawke's Bay Law Society and his wife, Mr. and Mrs. Holderness. They have both been simply grand throughout the whole show. Then we must offer thanks to the Vice-President, Mr. Dowling of Napier. He was, of course, closer to us, and also contributed very largely to the success of the Conference. Then we had a central Committee, and quite a large number were on that Committee but they did most of their work in sub-Committees. There was a Remits Sub-Committee which arranged the papers; a sub-Committee which organized the Ball, and that sort of thing.

"We were going to have a Garden Party at the Waikoko Gardens and I will let you into a secret. They have a very beautiful duckpond there, but to our horror we discovered that before the day on which we were to have the Garden Party, they had drawn all the water out of it, and the ducks had moved downstream. We were afraid you would have been disappointed if the party had been held, for you would not have seen the very pretty scene which the pond made. The A. & P. Society informed us that we could take the premises subject to their right to maintain their works programme, and they would do nothing about putting the water back. I felt there was one good thing to be said of the rain, it filled the pool again; the work has accordingly been set back; and they might just as well have put the water in, after all.

"The Sports Sub-Committee saw to everything for to-day, and then last, but by no means least, I must mention the Ladies' Committee.

"I should say that, in all these Committees, there was very close co-operation between Napier and Hastings. Napier realized that it could not run the Conference on its own, so it has been in a very real sense the Hawke's Bay Law Society's Conference, and everyone pulled together very well in both towns.

"I would like to pay tribute to Mr. Eric Lawry. I do not think he is here to-day. Unfortunately, his health broke down a little while ago, but he was on the Finance Committee, and was particularly helpful until he unfortunately suffered some illness and is not with us.

"Lastly, we must thank you all for making our job so easy and pleasant. We adopted the practice of sending out questionnaires to all those who accepted an invitation to the Conference. One of the questions was, 'Does your wife wish to play tennis or golf?' The actual question was framed—'My wife wishes to play (tennis) or (golf)' leaving one or other to be crossed out. Nearly all the questions came back with both 'tennis' and 'golf' crossed out but not saying what the wife wishes to play (laughter). However, we hope they got what they were looking for (More laughter).

"We don't mind late entries, so long as there is a good reason. I won't tell you the reasons that we were given except to mention a letter from Auckland, which accompanied a late questionnaire. The writer said, 'I have a very good reason but you would not be interested in it.' How right he was.

"To conclude, I endorse Jock's remarks. It has been a very happy joint operation—I might say a combined operation of the Army and the Navy. We thank you very much indeed."

The last speaker was the President of the New Zealand Law Society, MR. W. H. CUNNINGHAM, who said: "I have been in the habit, during the business session, of closing the proceedings down in order to go to tea; and all that remains in regard to this 1954 Conference is for me to pronounce, in a few formal words, that all is over. But, before I do that, I wish to thank the Hawke's Bay Law Society and the various Committees. Now that everything is over, we can look back on a very successful Conference indeed. The business side was well arranged, the topics for discussion were very interesting, and we were very fortunate indeed to choose as the Inaugural Speaker, His Lordship the Bishop of Waiapu. The Sports Day has turned out everything we could wish for in the way of weather; and you, no doubt, have all enjoyed yourselves in the games you have been able to play, and those wives who wanted games not on the schedule, I suppose they have enjoyed the beautiful day.

"Now, ladies and gentlemen, all I propose to do is to declare the whole proceedings of the 1954 Conference duly closed, and tea is on."

The Conference was thus formally closed at 5.30 p.m. on Friday, April 23, 1954.

Afternoon tea was then served, and, later, in the gathering dusk, the visitors reluctantly left for Napier and Hastings.

In the evening, many private parties took place at the homes of the Napier and Hastings practitioners, or at the places where the visitors were accommodated for the Conference.

IN YOUR ARMCHAIR—AND MINE.

By Scriblex.

Dominion Legal Conference.—The Ninth Dominion Legal Conference, held at Napier, must be adjudged to be one of the most successful yet held. The reputation of Napier as a charming and sunny holiday resort was one of the factors that attracted the largest crowd of visitors yet to gather at a Legal Conference. Another reason for the splendid attendance was the fact that lawyers are for the most part gregarious people, enjoying the company of each other and the renewal of friendships and associations that in many instances range over a lifetime. No effort was spared by the genial Hawke's Bay hosts to ensure a judicious mixture of informative material and good fellowship for the men and conversional opportunities with well-organized entertainment for the women. There was a touch of genius in the selection, as an inaugural speaker, of the Bishop of Waiapu, a witty and cultured speaker who paid his audience the compliment of having mastered his subject. In the short time at his disposal, the Hon. Mr. Marshall, who substituted for the Attorney-General, showed his ability with a belated brief and produced a number of thought-provoking observations upon our Welfare State. Dr. Ballantyne who read Dr. P. P. Lynch's interesting paper on what he could have termed, " Hazards of Professional Practice " somewhat disarmed critics of the medical profession by admitting that more assistance might advantageously be furnished by doctors where negligence or lack of skill of one of its members was in issue. Indeed, every one of the papers impressed hearers with the industry and reflection that had gone into its preparation ; and the work accomplished on the Wednesday afternoon and on the Thursday constituted an excellent balance of the practical and the more academic sides of the administration of justice. Entertainment reached a high level, topped off with a perfect warm autumn day for the various sports events. Tributes paid to the President, J. H. Holderness, his various committees, and to the joint secretaries, John Twigg and Don Bisson, were fully earned and the manner in which they controlled the Conference workings was greatly appreciated by the many practitioners fortunate enough to attend it.

The Conference Ball.—Amongst the celebrated maxims of Archy, the cockroach, is one that runs :

> dance mehitabel dance
> caper and shake a leg
> what little blood is left
> will fizz like wine in a keg.

The last two lines of this verse have a marked application to the Ball held at the Cabana Cabaret on the Napier seafront which, despite a wet and blustery evening, was the equal of any legal function of its kind and to a large number the most enjoyable of the Conference. Whether it was due to the Spanish atmosphere or to the " fizz like wine " never have so many middle-aged and elderly practitioners out-vied their younger colleagues on the dance-floor, vociferously demanding encores and boasting of the interval of time since they danced every dance on the programme and didn't want to go home. The lay-out of this beautifully decorated Cabaret, an excellent band and dance-floor, good food tastefully served and an unimpeded flow of liquid refreshment, served in spacious marquees, all assisted to the making of a function that set a standard which it would be difficult to emulate. Much of the happiness of the occasion is due to the generosity of the Hawke's Bay practitioners who held pre-Ball parties in their own homes from which the visitors, in a mellowed state, rolled, as it were, to the Ball on oiled wheels. Never has the well-known Hawke's Bay hospitality been seen to better advantage nor been more appreciated.

Suggestion Box.—While the memory of this happy Conference still lingers, Scriblex (who can claim to have attended eight of the nine Conferences) makes a few suggestions for hosts in the years to come, and invites criticism from other practitioners.

(1) Papers should not exceed 20 minutes and should be printed before the Conference.

(2) Copies should be available to visitors upon application to the secretaries.

(3) Thirty minutes should be allowed after each paper for discussion which should be stimulated by the availability to practitioners of printed copies on subjects in which they are interested.

(4) Half a day should be devoted for discussions (and, if need be, heated argument) on such matters of practical interest, to town or country practitioners, as might be mentioned to Conference secretaries beforehand. In the event of there being a number of such matters, a selection could be made and a time limit set for each. This would constitute an " Irishman's Parliament " but the profession does not lack Irishmen ; and Scriblex has still a vivid recollection of those earlier Conferences when H. F. O'Leary, P. J. O'Regan and J. J. Sullivan brought the breath of Dublin to what " those in the main centres call ' the main centres ' ".

Johnsonian Note.—An intriguing thesis for some future Conference might be the question as to whether a lawyer is the better for having " played around " in his younger days or for having burnt the midnight oil in constant application to the tasks on hand. Certain it is that a tribunal of lawyers would return but one answer to the question, although the public might well be more conservative in its reply. Lord Eldon at all times remained fond of studying the law, but in his younger days his thirst for legal knowledge was so great that he abandoned the pursuit of almost every other species of information, and never sacrificed one moment from his legal studies beyond what was absolutely necessary for his health. Law was "his food, his sleep, his study, and his pastime." His brother William (afterwards Lord Stowell) was fond of society, and used to join the literary parties at the Mitre, in Fleet Street, where Dr. Johnson, Goldsmith, and others of the highest ornaments of literature, used to assemble. Occasionally he would endeavour to induce his brother John to accompany him thither, saying, " Where do you sup to-night ? " To this question John invariably answered, " Brother, I sup with Coke to-night." William would demur with, " Come to the Mitre with me ; you'll meet Dr. Johnson " ; whereupon John would answer, " What's the use of *him ? He* can't draw a bill."

SOME IMPRESSIONS OF THE CONFERENCE.

By N. V. Henderson, Brisbane, Secretary of the Queensland Law Society and Representative of the Law Council of Australia.

BEFORE making any comments on the Conference, I would like to express my appreciation to Mr. W. H. Cunningham, the President of the New Zealand Law Society, and to Mr. J. H. Holderness, the President of the Hawke's Bay District Law Society, for the way in which I have been received as the representative of the Law Council of Australia, and the welcome which has been extended to me. I will take away from New Zealand many happy memories of my stay, and of the great kindness which has been shown to me by one and all. The New Zealanders and their country have laid me under their spell, and I hope that the time will not be far distant when I am able to return again to visit this country. I am full of admiration for the way in which communications have been developed, and the country closely settled, notwithstanding your hilly, and not to say mountainous terrain.

S. P. Andrew, photo.

Mr. N. V. Henderson.

I understand that the Conference is the first which has been held outside what are described as the four main centres, and my outstanding impression is its great success. I would like to congratulate the members of the Hawke's Bay District Law Society, who were the official hosts, for the way in which the Conference was organized. No detail, however small, seems to have been overlooked, even to the provision of flowers in the room of every lady visitor on her arrival. The Information Bureau proved a great convenience to the visitors to the Conference.

It is interesting to me to learn that the Conference is financed by means of a levy of 10s. a year paid by all practitioners in New Zealand. This is something which is well worthy of consideration in Australia, as it makes the financing of a Conference much easier. Those responsible for its organization know the amount of money available and are able to budget accordingly. I understand that at one Conference there was a toast to those members who had not attended the Conference, as they were the ones who really provided for it.

As with all other New Zealand institutions, your Law Society is decentralized. I have been very impressed with your system of District Law Societies, and the local pride taken by centres throughout the Dominion. I do not know whether the District Law Societies have been responsible, but there seems to be a very good feeling between practitioners practising in the same centre and their relations seem to be free from professional jealousies which are so often manifest in the smaller centres elsewhere. It was quite clear that practitioners practising in the same centre were friendly one with the other and that they met frequently apart from their professional contacts, and that their wives also were friendly.

I have not yet solved the problem as to why New Zealand is able to support nearly twice as many practitioners per head of population as we have in Queensland, with apparently much the same standard of prosperity.

A striking impression is the similarity of the problems facing the profession both in New Zealand and in Australia. No doubt, it springs largely from our common inheritance and from the many similarities between our respective ways of life.

The selection of the subjects for the papers which were delivered to the Conference showed sound judgment and a grasp of practical realities. At Conferences in Australia, there has been a tendency to include a number of papers of an academic nature by various teachers of law. I was struck by the way in which the papers here were related to matters of present interest, both to the profession and to the public. The selection of subjects was wide, and laymen as well as practitioners gave addresses. A very fine Inaugural Address was made by the Bishop of Waiapu, and also included amongst the papers was one on a medico-legal topic, written by Dr. P. P. Lynch. It was clear from the proceedings of the Conference that New Zealand practitioners are keenly interested in public affairs and in the way in which the public can be assisted by the profession. This attitude was epitomized by the very able address given by the Acting Attorney-General, the Hon. J. R. Marshall, on the Profession and the Public.

The choice of subjects had its effect on the reports and leading articles which appeared in the Press in relation to the Conference. These were on the whole very full and very favourable. It is clear from the attitude of the Press that the prestige of the profession is high, and is increasing.

The Law Council of Australia is holding its Biennial Conference in Brisbane from July 19 to July 24, 1955. On behalf of the Law Council, I would like to extend an invitation to New Zealand practitioners to be present. We would welcome our fellow-practitioners from across the Tasman, and will do our best to make their stay interesting and enjoyable. The weather in Brisbane is usually very good during July. Visits between our respective countries are a good thing, as they enable us to understand each other's problems, and also strengthen the close ties which already bind our two countries together.

SOME MORE CONFERENCE PERSONALITIES.

MR. T. P. CLEARY (*A Permanent Court of Appeal*) was born at Meeanee in 1900 and educated at St. Patrick's College, Wellington, and Victoria University College. After completing his course in 1920, he entered a law office in Wellington and became a member of the firm of O'Donnell and Cleary until 1937, when he became a member of his present firm of Barnett and Cleary. In 1943, he was President of the Wellington District Law Society and, in 1953, became a Vice-President of the New Zealand Law Society. He has served on various committees of the Law Society and is at present a member of the Rules Committee. He has also for some years past been the barrister member of the Pharmacy Board.

DR. P. P. LYNCH (*The Hospital, the Public, and the Law*) was born in Oamaru in 1894. He was educated at the Marist Brothers' School, Timaru, and at Victoria University College, where he obtained his B.Sc. degree in 1918. At the Otago Medical School he obtained the degrees of M.B., Ch.B. in 1922, and M.D. in 1924. He was clinical pathologist at the University of Otago in the years 1922 to 1924, was Government Analyst for Otago and Southland in 1924, and pathologist to the Wellington Hospital from 1924 to 1932, and consulting pathologist to the Health Department in 1925. He is a Fellow of the Royal Australian College of Physicians, and a Doctor of Laws of the National University of Ireland. He practises as a pathologist in Wellington.

MR. E. S. BOWIE (*Privilege for Crown Documents*) was born at Christchurch in 1907. He was educated at Christ's College and at Canterbury University College, where he graduated LL.B. in 1928 in which year he was admitted to the New Zealand Society of Accountants of which he is now a Fellow. In 1939, he was Chairman of the Canterbury Branch of that Society. In 1938 and 1939, he was Chairman of the North Canterbury No. 1 Farm Adjustment Commission. Mr. Bowie was President of the Canterbury District Law Society in 1949, and was a member of the Council of the New Zealand Law Society in 1949 and 1950. Since 1951, he has been Lecturer in the Law of Torts at Canterbury University College. Mr. Bowie and his brother practise as Bowie and Bowie at Christchurch.

MR. R. A. YOUNG (*Police Statements and Privilege*) was born at Dunedin in 1910. He was educated at Hamilton High School, Christchurch Boys' High School and Canterbury University College, where he graduated LL.B. in 1932. He was awarded a New Zealand University Blue in tennis, and also represented Canterbury College in athletics and debating. A graduate of the New Zealand Staff College, he served overseas with the Second N.Z.E.F. in the Pacific with the rank of Major. He has been a member of the Council of the Canterbury District Law Society for six years. Mr. Young is Deputy-Chairman of the Heathcote County Council. He has practised in Christchurch since 1932, and is the senior partner of the firm of Messrs. R. A. Young, Hunter, Cooke, and Brown.

DR. J. L. ROBSON (*Widening the Path of Law Reform*) was born at Halcombe in 1909. He attended the Wairoa District High School and later took his law course partly at Victoria University College and partly at Canterbury University College. He graduated LL.B. in 1930 and was awarded the Canterbury Law Society's Gold Medal for the best graduate of the year. He graduated LL.M. in the following year. In 1937, he began a post-graduate course at University College, London, and in 1939 was awarded the Ph.D. degree for a comparative study of the law affecting corporate trustees in U.S.A., New Zealand, and England. After some years in the Public Trust Office, Mr. Robson was appointed to the office of the Public Service Commission and later became Superintendent of Staff Training. In 1951, he was appointed to the Justice Department as Assistant Secretary (Administrative). He is Vice-President of the New Zealand Institute of Public Administration.

MR. H. W. DOWLING (*Reform of the Jury System in Running-down and Industrial Accident Cases*) was born in 1909 in Wellington. He was educated at Wellington College and Victoria University College, where he graduated LL.B. in 1932. After having some years in a legal office in Wellington and on the staff of the *Dominion*, Mr. Dowling went to Napier in 1933. He is a member of the firm of Messrs. Lawry, Dowling, and Wacher. He served for many years on various Napier and Hawke's Bay local bodies, and is Vice-President of the Hawke's Bay Law Society.

PHOTOGRAPHS.

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