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THE WIFE'S RIGHTS IN THE MATRIMONIAL HOME.

I.

THE feminists seem hardly to have noticed the victory they have won in relation to a wife's rights to occupy the matrimonial home after she has been deserted by her husband. The initial advance came when Lord Merriman, P., in *King* v. *King*, [1941] 2 All E. R. 103, refused to accept the proposition that in all circumstances the husband has the right to determine where the matrimonial home shall be; and the matter was further dealt with by Denning, L. J., in *Dunn* v. *Dunn*, [1948] 2 All E. R. 822, where he said that each spouse is entitled to an equal voice in the ordering of affairs which are their common concern; and, if the ordering of affairs, which are their common concern, should be frustrated by the unreasonableness of one or the other, and this leads to a separation between them, then the party who has produced the separation by reason of his or her unreasonable behaviour is guilty of desertion. But that was merely a beginning of the recognition of a wife's place in the home.

Then, a deserted wife began to be protected on her remaining in the matrimonial home, and the continuance of her occupation therein, in general, became assured. It is not our purpose to follow, in detail, the tortuous path taken in decisions relating to the right of a wife to remain in the matrimonial home after she has been deserted by her husband. These decisions deal with the wife's right as against the deserting husband, to remain in the matrimonial home; her right to remain there against her deserting husband's assignees, and her right to remain there against the landlord when the matrimonial home is occupied under a tenancy. (The latter class of case has been looked after in s. 41 (2) of the Tenancy Act, 1948, by the protection of a deserted wife as if she—and not her husband—were the holder of the tenancy.)

In *Thompson* v. *Earthy*, [1951] 2 K.B. 596; [1951] 2 All E.R. 235, Roxburgh, J., held that a deserted wife does not acquire any legal or equitable right to remain in occupation of the matrimonial home so as to affect a purchaser even with notice of the wife's desertion and her continued occupancy. The complacency of deserting husbands soon received some rude shocks at the hands of the Courts in England. This judgment was soon disagreed with, and a spate of decisions followed. A little later came *Bendall* v. *McWhirter*, [1952] 2 Q.B. 466; [1952] 1 All E.R. 1307, in which the Court of Appeal held that a wife has a legal right to remain in occupation of the matrimonial home after her desertion, as she is a contractual licensee who has an interest valid in equity against the successors in title to her husband, the licensor, and that the trustee in bankruptcy of the husband could not disregard the wife's interest: a decision which promptly attracted a considerable body of criticism and a resulting literature of its own. Then, Upjohn, J., in *Lloyds Bank, Ltd.* v. *Oliver's Trustee*, [1953] 2 All E.R. 1443, held that the earliest moment at which a wife's rights as against her husband's assignees of the matrimonial home arose was when her husband deserted her; and this date has a considerable effect on the rights of a mortgagee who has a legal charge; as it was held that a wife's right or privilege does not hold good against a person having a legal mortgage created before the date when the desertion occurred. In *Barclays Bank, Ltd.* v. *Bird*, [1954] 1 Ch. 274; [1954] 1 All E.R. 449, Harman, J., followed that decision, and extended it to an equitable mortgage. In *Bradley-Hole* v. *Cusen*, [1953] 1 Q.B. 300; [1953] 1 All E.R. 87, the Court of Appeal unanimously took the view that the wife's right was not an equitable one, but that the husband was under a purely personal obligation to his wife, depending on the relationship of husband and wife, to permit her to remain in the home. A more recent decision of the Court of Appeal, *Jess B. Woodcock and Sons, Ltd.* v. *Hobbs*, [1955] 1 All E.R. 445, held, by a majority, that a *bona fide* purchaser for value with notice that a deserted wife is in occupation of the matrimonial home takes title subject to the wife's right of occupancy.

The foregoing briefly indicates the extent of the problems which *Bendall* v. *McWhirter*, when it decided that the deserted wife had a right to remain in the matrimonial home, has raised; in particular, whether the wife's right gives rise to a merely personal right and a personal obligation of the husband, binding only on him and those who acquire all clogs or fetters or liabilities affecting the home in the husband's hands, or whether it is an equitable proprietary right in the matrimonial home itself. If it be the latter, then third parties, such as a purchaser or a mortgagee, would be bound by it unless they could show that they had acquired the property in occupation of the deserted wife without notice of the wife's claim.

Until recently, the Courts in New Zealand have happily been spared an excursus on the questions raised by the English judgments on the topic of the right of a deserted wife to remain in the matrimonial home as against her husband or his assignees. But in a recent judgment, *Shakespear* v. *Atkinson* (to be reported), an appeal from the decision of a Magistrate, Mr. Justice Finlay had the unenviable task of pioneering, in this country, what he termed

an aspect of the law which has been recognized and won expression only in very recent years.*

And His Honour added :

> In the course of its development it has invaded the law applicable to the sale and purchase of real estate, and its applicability, or the limit of its applicability, to that branch of the law has not yet been ascertained by ultimate authority.

In an extensive review of the authorities to date, His Honour cites the most recent of the cases, *Jess B. Woodcock and Sons, Ltd.* v. *Hobbs*, [1955] 1 All E.R. 445, in which a majority of the Court of Appeal held that a *bona fide* purchaser for value of the matrimonial home with notice that a deserted wife is in occupation, takes subject to the wife's right of occupancy—a question which arose *in limine* in the case which His Honour had to decide.

As this troublesome question has so far progressed in the Courts it would appear that the new doctrine, which has evolved from the judgments, has created far greater problems than it has solved. However that may be, we are indebted to Mr. Justice Finlay for the long and detailed scrutiny to which he has subjected the series of judgments which have so far appeared. He felt himself bound to follow the judgment of the majority in the *Woodcock* case, but he would have preferred that the case before him should have been removed into our Court of Appeal so that that judgment could have been reviewed by a Court of co-ordinate jurisdiction with the Court which decided it by a majority.

II.

Now, for the facts of *Shakespear* v. *Atkinson*, which was an appeal from a Magistrate's decision in favour of the wife, the respondent in the Supreme Court:

The appellant was the purchaser from the husband of the respondent of a house in which husband and wife and their family had lived for about ten years.

In February, 1952, the husband, while still to some extent living in the matrimonial home, stopped meeting the household expenses and expressly refused to pay such expenses in the future. He was living elsewhere for intermittent periods, but returned home frequently, living and sleeping there for periods of days and retaining there his personal clothing and effects.

In June, 1952, or, perhaps, later, the husband left the matrimonial home, taking his clothing. He then took up his permanent residence elsewhere exclusively. By November, 1952, the husband had finally quitted the family home, and he was not contributing to the maintenance of his wife and family. In that month, he entered into negotiations with the appellant for the sale to him of the house which had been the matrimonial home, and which was still the residence of the respondent. The appellant visited the house when the husband was there, but knew nothing of the disharmony between the respondent and him or of any disruption in their matrimonial relationship. After inspecting the house, the terms of its sale and purchase were verbally discussed and an agreement was reached.

In due course an agreement in writing, dated December 8, 1952, between the respondent's husband as vendor and the appellant as purchaser was drawn and executed. In preparation and completion of this agreement the solicitors for the respective parties were concerned in the usual way. The price agreed upon was £2,000, of which £100 was treated as paid as a deposit. (That was the sum which the respondent's husband owed the appellant's husband for some discs which he had bought from the latter.) The agreement provided for completion on June 30, 1953, upon which date possession was to be given and taken.

It is now necessary to return to the history of the relationship between the respondent and her husband.

On November 27, 1952, a complaint under the Destitute Persons Act, 1910, was made by the respondent and lodged in the Magistrates' Court. Proceedings were thus, upon the footing of that complaint, commenced for a separation order and maintenance. On December 22, 1952, a caveat was lodged by the respondent against the title to the property which the appellant had agreed to buy. The interest sought to be protected by the caveat was described as "an interest by virtue of an implied trust." The presence of the caveat was discovered when the appellant's solicitors made a search of the title on February 26, 1953. Until then, the appellant was unaware of any trouble or difficulty. Up to that point, the transaction was in every way normal and the appellant had no reason to suspect that the respondent and her husband were not living together in the home in the ordinary way.

Meantime, litigation between the respondent and her husband was proceeding. In February, 1953, what was called an interim maintenance order was made in the Magistrates' Court in favour of the respondent against her husband. In June, 1953, a divorce suit brought by the respondent's husband against her was dismissed by the Supreme Court, and, in the following month, a separation order on the ground of wilful failure to maintain was made by an Auckland Magistrate. In November, 1953, what was called a permanent maintenance order was made, requiring the respondent's husband to pay her maintenance at the rate of £2 a week. There—as between the respondent and her husband—matters still stand.

Now to return to the history of the house transaction : When the appellant's solicitors became aware of the caveat, they at once called upon the solicitor for the respondent's husband to have it removed. Apparently he was unable to do this, for he suggested that a transfer be tendered for registration as, upon its presentation for registration, he thought the caveat would be allowed to lapse, as it or a similar caveat had been allowed to lapse in respect of other parts of the property which had been sold by the respondent's husband and had been made the subject of transfers to purchasers.

At this point there was some unexplained delay, but ultimately the solicitor for the respondent's husband was asked by the appellant's solicitors to agree to a rescission of the agreement and to arrange for payment to the appellant of the sum treated as paid by way of deposit. This request could not be met because the respondent's husband was without sufficient funds. In consequence a new arrangement was made. It was agreed that the price should be reduced to £1,675 ; and it was arranged that the purchase money was to be paid to the appellant's solicitors to be held by them in trust until the transfer had been registered, when, of course, it was believed the appellant's title would be indefeasible. Registration necessarily involved the prior lapse of the caveat. The purchase money was to be paid to the vendor only when the transfer was registered.

* This is a different class of case from *Maxted* v. *Klee*, [1953] N.Z.L.R. 450, where the action was between a purchaser and a vendor of a house property occupied by separated wife in terms of a maintenance order giving her liberty to remain in the matrimonial home, with her three children, the husband paying the outgoings relative to the property.

Mr. Justice Finlay said that much significance attached to this rearrangement which was, in fact, carried into effect. The transfer was registered on November 20, 1953. On December 3, 1953, the purchase money, reduced as agreed, was paid to the vendor's solicitor. At the time the reduction in price was arranged, the appellant's knowledge did not extend beyond the fact that, as shown by the caveat, the respondent was claiming an interest in the property under an implied trust.

That was, in fact, the full extent of the appellant's knowledge of the nature of the respondent's claim up to November 18, 1953, when a letter was received by the appellant's solicitors from the respondent's solicitors advising them of the true nature of the respondent's claim. That was, of course, before the registration of the transfer, and so before the payment over of the purchase price.

As His Honour said, it was a material circumstance that when the purchase money was paid to the vendor the precise nature of the respondent's claim—the claim which she sought in the action to enforce—was, beyond peradventure, known to the appellant and her solicitors.

From the foregoing history, the learned Judge concluded that, when what was called "a deposit" was paid, the appellant had no knowledge of any claim by the wife, or yet of the existence of any condition that would give rise to a claim by her; but that, when the transfer was registered, and when, later, the purchase-money was paid over to the vendor, the appellant and her advisers had express notice—from the letter of November 18, 1953—of the precise nature of the respondent's claim, and knew that she claimed a right of occupation as a deserted wife. That is the right which the Magistrate, by his judgment, sustained.

That in December, 1953, the respondent was a deserted wife, and that she was then and had since remained in occupation of the matrimonial home, was beyond question. On the other hand, there was no evidence of any contractual arrangement relating to her occupancy between the respondent and her husband, and it was not claimed that the respondent had any express permission entitling her to occupy or retain possession of the property. In the result, the question in issue was whether, in the circumstances, the Magistrate should have made an order for possession in favour of the appellant as purchaser against the respondent as a deserted wife in occupation of the matrimonial home.

The learned Judge said:

> Any right of the respondent is the result of a legal conception which only found expression in comparatively recent years in circumstances far removed from the relation of vendor and purchaser but which has penetrated that law by a course of judicial decision. The effect of the conception and its limits appear to be now ascertained, but not with unanimity and not by ultimate authority. No good purpose would be served by my embarking upon a reference to or an analysis of the cases which are the origin of the conception. They relate to the Rent Limitation Acts restrictions and are fully discussed by Sholl, J., in *Brennan* v. *Thomas*, [1953] V.L.R. 111. With the history of the judicial process there given and Sholl, J.'s, analysis of the cases and comments on them, I am fully in agreement, if I may respectfully say so, noting only that *Ferris* v. *Weaven*, [1952] 2 All E.R. 233, which was decided in May, 1952, was not referred to before and was not mentioned in the judgment given by Sholl, J., in October, 1952. The influence of *Ferris* v. *Weaven*, in common with all relevant later decisions, invites some reference.

In 1951, in *Thompson* v. *Earthy*, [1951] 2 K.B. 596; [1951] 2 All E.R. 235, Roxburgh, J., in a judgment delivered on June 8 of that year, held, in the light of the authorities then in force, that a deserted wife who remains in occupation of the matrimonial home does not acquire any legal or equitable interest in the premises so as to bind them in the hands of a purchaser even with notice of the desertion and of the wife's occupancy. He held, in consequence, that when a husband, who is in desertion, sells the house constituting the matrimonial home the purchaser, on proof of his title, is entitled to an order for possession against the wife.

It was that case, His Honour continued, which Sholl, J., followed in *Brennan* v. *Thomas*, [1953] V.L.R. 111. The first suggestion of a different view had already emerged in *Errington* v. *Errington*, [1952] 1 K.B. 290; [1952] 1 All E.R. 149. There Denning, L.J., enunciated the doctrine that a deserted wife in occupation of the matrimonial home has an interest, cognizable in equity, in the house. He defined a deserted wife in such circumstances as being not a tenant of the husband or a bare licensee, but a licensee with a special right. He held that her position was such that her husband could not turn her out except by an order of the Court under s. 17 of the Married Women's Property Act, 1882 (Eng.) (s. 19 of our Married Women's Property Act, 1952). *Errington* v. *Errington* was not a case between a husband and wife; and, in any case, there was in it an enforceable contract upon which a right to occupancy could be founded. However, Denning, L. J., in the course of his judgment adverted to the rights of a deserted wife and referred to *Thompson* v. *Earthy*, [1951] 2 K.B. 596; [1951] 2 All E.R. 235, with some disapprobation as being in conflict with *Foster* v. *Robinson*, [1951] 1 K.B. 149; [1950] 2 All E.R. 342. What he said in that relation was clearly *obiter*. Hodson, L.J., expressly refrained from adopting this reasoning, and held that the persons concerned were licensees with a right under personal contract to remain. The learned Judge went on to say:

> As R. E. Megarry pointed out in the *68 Law Quarterly Review*, 379, 385, this adverse comment of Denning, L.J., on *Thompson* v. *Earthy* disregarded the judgment of the Court of Queen's Bench in *Doe* d. *Merigan* v. *Daly*, (1846) 8 Q.B. 934; 115 E.R. 1126, in which it was held that any rule which prevented a husband suing his wife for possession did not inhibit John Doe from suing the wife. Mr. Megarry's comment that the position of a real purchaser ought to be *a fortiori* that of a fictitious lessee is pertinent and forceful, if I may be allowed to say so.

Following *Errington* v. *Errington*, [1952] 1 K.B. 290; [1952] 1 All E.R. 149, to which reference is made in *Brennan* v. *Thomas*, [1953] V.L.R. 111, came *Bendall* v. *McWhirter*, [1952] 2 Q.B. 466; [1952] 1 All E.R. 1307, and *Lee* v. *Lee*, [1952] 2 Q.B. 489; [1952] 1 All E.R. 1299. When that case was decided there was, in *Thompson* v. *Earthy*, authority that a deserted wife had no enforceable legal or equitable right to possession—merely because she was a deserted wife and was in occupation of the matrimonial home—which she could enforce against a purchaser of that home for value, even if the purchaser had notice of the desertion and of the wife's occupancy. There was at the time uncertainty as to what the rights of a deserted wife were. Sholl, J.'s, comment as to that in *Brennan* v. *Thomas*, [1953] V.L.R. 111, 115, 116, is pertinent: "One looks in vain for any uniformity of view as to the nature of the wife's position."

Mr. Justice Finlay said that that comment must, of course, be related to the date of its utterance. In deciding as he did, therefore, Sholl, J., did not act contrary to any existing express authority. It is true that Denning, L.J., had suggested in *Errington* v. *Errington* that Roxburgh, J., in *Thompson* v. *Earthy* had based himself on an erroneous conception of what Denning, L.J., had himself said in *Old Gate Estates* v. *Alexander*, [1950] 1 K.B. 311; [1949] 2 All E.R. 822, 825, and had gone on

to say that, had the judgment of the Court of Appeal in *Foster* v. *Robinson*, [1951] 1 K.B. 149; [1950] 2 All E.R. 342, been drawn to the Judge's attention, *Thompson* v. *Earthy* would have been differently decided.

The judgment in *Ferris* v. *Weaven*, [1952] 2 All E.R. 233, was given in May, 1952. Jones, J., there held that a deserted wife was the licensee with a contractual right from her husband to remain in the matrimonial home, and that a purchaser with notice, who had bought for what appears was a nominal price and under an arrangement with the husband that the proceeds of a re-sale should be divided between them, was not entitled to recover possession. In that case, however, it was specifically mentioned in the judgment that the wife had a contractual right to remain in the house. The Judge seems also to have regarded the sale as pretentious and unreal, and lacking in good faith. That being so, he may well have taken the view (it is not expressed, for, as his judgment is phrased, he relied upon *Errington* v. *Errington* and *Bendall* v. *McWhirter*) that the sale alleged was designed to give to the husband a right he could get only by an application under the Married Women's Property Act. Mr. Justice Finlay observed that he apprehended that, had Sholl, J., known of it, his view would not have been altered by *Ferris* v. *Weaven*.

So far, the learned Judge had stated the law as it stood at the end of the year 1952. In our next issue, we shall continue his review of the development in this new branch of the law which has taken place down to the present time.

SUMMARY OF RECENT LAW.

CONTRACT.

Duration—Whether determinable by reasonable Notice—Commercial Contract, of unspecified Duration, involving Trust and Confidence—Licence to Canadian Company to Manufacture, and Sell in America, Products invented by Managing Director of English Company—Agency Contract containing Provision for Termination summarily in Certain Events—Length of Notice. Although where the character of perpetuity attaches to the legal personality of contracting parties (as, *e.g.*, in the case of statutory undertakers), a contract between them, indefinite in duration, may not be determinable by one party by giving notice of termination, yet that doctrine of permanence either has no application to mercantile or commercial contracts, or, if it applies, is subject to a wide class of exceptions, especially where mutual trust and confidence is involved. By an agreement, which was dated August 26, 1951, and was to be interpreted in accordance with English law, M.-B., an English company which manufactured aircraft ejection seats designed by its managing director, agreed to permit a Canadian company, which had been formed at the instance of the English company and of which one R.M., a former employee of the English company, was director, to manufacture, sell and exploit all M.-B. products on the American continent. The agreement contained no provision for its determination. By art. 1, M.-B. agreed, among other things, not to make a similar agreement with any other party on the American continent nor to permit anyone else to manufacture or sell any M.-B. products on that continent without first consulting the Canadian company, and the Canadian company agreed not to export the products made by them out of the American continent without prior consent of M.-B. By art. 2, M.-B. undertook to supply the Canadian company with the "know how" of the manufacture of all M.-B. products and to hand over to the Canadian company all the necessary documents concerning the products. Article 4 regulated the royalty rates payable by the Canadian company to M.-B., but there was no provision for any variation of those rates in the future. By art. 5, which provided for the exchange of information concerning improvements, any improvement which the Canadian company considered expedient was not to be incorporated without the prior permission of M.-B. By art. 6, the managing director of M.-B. was to have the right at all times to examine the processes of manufacture of the M.-B. products by the Canadian company; M.-B. were to give technical assistance to the Canadian company; and the Canadian company could send technical staff to England to examine the methods of production and to acquire the "know how" of the manufacture of the products. By an agreement dated March 9, 1954 (superseding an earlier agreement of July, 1951, which had been in substantially the same terms), between M. B. and R.M., M.-B. appointed R.M. their sole selling agent for all their products on the North American continent and by cl. 2 R.M. agreed, among other things, to use his best endeavours to promote and extend the sale of the products throughout the territory; to place any orders obtained for the products with M.-B., who would execute the orders reserving 17½ per cent. commission for R.M. who (by a modification of the 1951 agreement embodied in the 1954 agreement) was to pay it into the business of the Canadian company to expand the business. R.M. also agreed not to sell or be interested in any way in the territory in products which might be competitive with those manufactured by M.-B.; and to act as general consultant to M.-B. on all matters concerning the marketing of the products in the territory. By cl. 3, M.-B. agreed among other things, not to appoint any other agent and not to sell their products direct in the territory. By cl. 4, it was mutually agreed (i) that, in the event of M.-B. negotiating manufacturing licences for any of their products in any countries in their territory, R.M. would assist in such negotiations and the net proceeds from all such licences would be shared between the parties equally; and (ii) that commissions due from M.-B. to R.M. should be payable quarterly. Clause 4 (iv) provided: "Without prejudice to any other remedy which either party may have against the other for the breach or non-observance of the provisions of this agreement either party shall be entitled summarily to determine this agreement" (*a*) in the event of a breach of the provisions of the agreement by the other party, and (*b*) if the other party went into liquidation or made any arrangement with creditors generally. Differences having arisen between the parties, M.-B. claimed that the agreements of August 26, 1951, and March 9, 1954, were determinable by reasonable notice. *Held*, 1. The agreement of August 26, 1951, being an agreement for a licence for commercial purposes was, on its true construction, determinable by reasonable notice because, among other factors, (*a*) although the agreement barred M.-B. from entering into any agreement with another party to manufacture, sell or exploit M.-B. products in America, it did not impose any obligation on the Canadian company to manufacture, sell or exploit those products; (*b*) there was no provision for any change in the royalty rates to correspond with any change in the value of currency; and (*c*) the terms of the agreement involved the highest degree of mutual trust and confidence between the parties. (*Llanelly Railway and Dock Co.* v. *London and North Western Railway Co.*, (1875) L.R. 7 H.L. 550, considered and distinguished.) (*Dicta* of Lord MacDermott in *Winter Garden Theatre (London) Ltd.* v. *Millenium Productions, Ltd.*, [1947] 2 All E.R. 343, applied.) 2. The agreement of March 9, 1954, regarded as a whole, was more analogous to an agreement between master and servant than to an agreement merely of agency, as R.M. was to expend much time and money and was restricted from selling other persons' products; accordingly the agreement on its true construction was also determinable by reasonable notice, apart from the provision of cl. 4 (iv) which rendered it determinable summarily in certain specific events. (*Motion* v. *Michaud*, (1892) 8 T.L.R. 253, 447, considered.) 3. The question what was a reasonable notice depended on the facts existing at the time when the notice was to be given, and, in the circumstances, each of the agreements was determinable on twelve months' notice. *Martin-Baker Aircraft Co., Ltd. and Another* v. *Canadian Flight Equipment, Ltd.*: *Martin-Baker Aircraft Co., Ltd.* v. *Murison*. [1955] 2 All E.R. 722 [Q.B.D.]

DIVORCE AND MATRIMONIAL CAUSES—NULLITY.

Jurisdiction—Residence—Petition alleging Wilful Refusal and Incapacity on the Part of the Husband—Husband domiciled in Scotland—Husband and Wife resident in England—Matrimonial Causes Act, 1950 (14 Geo. 6 c. 25), s. 8 (1) (a). The husband, whose domicil of origin was Scottish, was educated in England. In 1931, he obtained employment which required him to live in various railway hotels in England. In 1942, he joined the Army and he had ever since remained in that service. In 1943, he was posted overseas. In 1945, he met the wife in Egypt, and the parties were married there in 1947. After a while they separated and in 1948, the husband was posted back to the United Kingdom; the wife remained in Egypt and later moved to Cyprus. During 1952, there was correspondence between

the parties which resulted in a reconciliation, although the husband was undecided in what country to make his home. In May, 1953, the wife returned to England and the husband bought a house in Surrey where the parties lived together until they again quarrelled and the wife left. The husband continued to live at the house, and the wife lived in London. On March 2, 1954, the wife presented a petition for a decree of nullity on the ground of the husband's wilful refusal, alternatively his incapacity, to consummate the marriage. The wife alleged in the petition that the parties were domiciled in England. The husband entered an appearance under protest, alleging that he was domiciled in Scotland and that the English Court had no jurisdiction. The wife contended that, even if the husband were domiciled in Scotland, the English Court had jurisdiction since at all material times both parties were resident in England. On this issue, *Held*, 1. An intention on the part of the husband to continue to reside in England for an unlimited time had not been established, and the purchase of the house in Surrey was insufficient to warrant the inference that the husband was acquiring a domicil of choice in England; accordingly, the husband retained his domicil of origin, *viz.*, domicil in Scotland (dictum of Lord Westbury in *Udny* v. *Udny*, (1869) L.R. 1 Sc. & Div. 458, applied.) 2. Notwithstanding the Scottish domicil of the husband, the Court had jurisdiction to hear the suit since both parties were resident in England (*Hutter* v. *Hutter* (*otherwise Perry*), [1944] 2 All E.R. 368, *Easterbrook* v. *Easterbrook* (*otherwise Jervis*), [1944] 1 All E.R. 90, followed; *Inverclyde* (*otherwise Tripp*) v. *Inverclyde*, [1931] P. 29, not followed). *Per Curiam*, jurisdiction to entertain proceedings for nullity on any other ground set out in s. 8 of the Matrimonial Causes Act, 1950, than wilful refusal can similarly be based on residence. *Ramsay-Fairfax* (*otherwise Scott-Gibson*) v. *Ramsay-Fairfax*. [1955] 2 All E.R. 709. [P.D.A.]

EVIDENCE.

Onus of Proof—Legal Burden—Provisional Burden by shifting Weight of Evidence. By s. 5 of the Private Street Works Act, 1892, a street means "a street as defined by the Public Health Acts, and not being a highway repairable by the inhabitants at large". In the eighteenth century Thingwall Lane led to a hamlet called Thingwall, which consisted of a large house, a farm and some cottages. It branched off from the road to Broad Green, and at the fork in 1776 someone erected a large guidestone, on one side of which was carved "Road to Broad Green" and on the other "Road to Thingwall. No thorough by". In a conveyance of the large house in 1846, reference was made to a document of 1812, in which there was no conveyance or reservation of the right to use the lane. There was no record of public money having been spent on the maintenance of the lane, and it was described as an occupation road in a tithe map of 1840. The local authority proposed to make up the lane and to charge the frontagers with the expense under the Private Street Works Act, 1892, on the footing that the lane was a street within that Act. On objection by a frontager, the justices found that the lane was a public highway repairable by the inhabitants at large and that the frontager was therefore not liable. A Divisional Court of the Queen's Bench Division allowed the local authority's appeal against that decision, holding that, once it was shown that no public money had been spent on the land, the onus of establishing that the lane was a highway repairable by the inhabitants at large was shifted to the frontager, and that he had not discharged that onus. On appeal, *Held*, 1. The justices having had before them evidence on which they could and did reach a determinate conclusion of fact, *viz.*, that the lane was a public highway repairable by the inhabitants at large, their decision could not be interfered with; and accordingly, although the legal burden of proof throughout lay on the local authority (*Rishton* v. *Haslingden Corpn.*, [1898] 1 Q.B. 294, and *Vyner* v. *Wirral Rural District Council*, (1909) 73 J.P. 242, approved and applied), yet the evidence was not so evenly balanced that the incidence of the burden of proof was the deciding factor (dictum of Viscount Dunedin in *Robins* v. *National Trust Co.*, [1927] A.C. 520, applied). 2. Although, in arriving at the conclusion on the issue of fact, evidence that no public money had been spent on the lane might, if the lane had been a cul-de-sac, have weighted the evidence in favour of the lane not being a highway, yet the Court would not have been bound to draw that inference if on the whole of the evidence it had seemed unjustifiable, but in fact the lane was not a cul-de-sac for this purpose as it was a way leading to a village. Observations on the legal burden of proof and the shifting weight of evidence. Appeal allowed. *Huyton-With-Roby Urban District Council* v. *Hunter*. [1955] 2 All E.R. 398 [C.A.]

LANDLORD AND TENANT.

Covenant—Breach—Waiver—Requirement of Personal Occupation—Application of Covenant to Trustees—Occupation by One only of Two Trustees and later by a Beneficiary. By a tenancy agreement dated October 13, 1893, a farm, including a dwelling-house and other buildings and cottages, was let to E.B. and F.B. (therein jointly, together with their executors, administrators and assigns, called "the tenant") "jointly and severally" for one year from March 25, 1893, and afterwards from year to year until determination by six months' notice given by either party. Clause 15 of the agreement provided: "The tenant will not during this tenancy assign, let, or part with the possession of the farm or any part thereof, but will at all times during his tenancy personally inhabit the farmhouse on the farm and cottages with his family and servants . . .". On August 2, 1923, F.B., who had survived E.B., died having appointed his wife, M.B., and H.B. executors and trustees of his will, which in due course they proved. In 1934, after the death of H.B., G.B.J. was appointed a trustee of the will of F.B. to act jointly with M.B. On May 8, 1950, M.B. died. The tenancy was at all times since 1923 vested in the executors or trustees of F.B., and the farm was occupied by M.B. until her death. After the death of M.B., the farm was occupied by N. and Mrs. N. (who was a daughter, and beneficiary under the will, of F.B.) although the tenancy remained vested in G.B.J. as the sole surviving trustee of the will of F.B. In an arbitration under the Agricultural Holdings Act, 1948, the question was referred by Case Stated for the opinion of the Court whether a breach had occurred of cl. 15 of the agreement. *Held*, 1. After the death of F.B. the trustees of his will became bound by cl. 15 of the agreement, when a reasonable time had elapsed after the death, to occupy personally the farm, notwithstanding their fiduciary capacity, and failure to do so was a breach of cl. 15. 2. Although only one of the two trustees (namely M.B.) had occupied the farm since 1923 up to 1950, and G.B.J. had at no time since his appointment as trustee in 1934 been in occupation of any part of the farm, cl. 15 had not been waived by the landlords' acquiescence, even on the footing that both joint tenants had been required to occupy the farm, because, having regard to the purpose of the clause, which was to ensure the personal occupation of the person responsible for the performance of the covenants in the agreement, the landlords' conduct was not wholly inconsistent with the continued existence of the agreement contained in cl. 15, nor was there anything to show that they intended to waive performance of it. (*Hepworth* v. *Pickles*, [1900] 1 Ch. 108 and *Gibbon* v. *Payne*, (1907) 22 T.L.R. 54, distinguished.) *Re Lower Onibury Farm, Onibury, Shropshire. Lloyds Bank, Ltd. and Others* v. *Jones*. [1955] 2 All E.R. 409. [C.A.]

SALE OF LAND.

Warranty—Sale by Builder of New House—House in course of Erection—Implied Warranty—Cracks in Walls due to Settlement caused by Roots of Poplar Trees. By a contract in writing dated February 22, 1950, the plaintiff's husband agreed to buy a bungalow then in course of erection from the defendant, who was building it without the assistance of an architect but according to plans originally prepared by an architect. After the plaintiff and her husband had moved into the bungalow, cracks appeared in the walls, which were caused by the withdrawal of moisture from the clay soil of the site by the roots of some poplar trees some thirty to forty feet from the back of the bungalow. The withdrawal of moisture by such roots was a well-recognized danger. In an action by the plaintiff for damages for breach of contract in which she alleged that the bungalow was unfit for habitation, *Held*, The warranty, which is implied in a contract for the sale of a house in course of construction, that the house when completed shall be fit for human habitation, extends to the foundations of the house below ground, and, as these had not been built in a place or manner which ensured that they did not settle in consequence of the extraction of moisture from the soil by roots of neighbouring poplars, the defendant was liable in damages for breach of the warranty. *Jennings* v. *Tavener*. [1955] 2 All E.R. 769. [Q.B.D.]

TRADE NAME.

Passing-off Action—Question of Fact whether Name adopted for Business of Same Kind in Same City calculated to deceive or confuse Customers—Delay of Nine Months in bringing Action for Infringement of Trade Name not Bar to Grant of Injunction. In a passing-off action, it is a question of fact whether the name adopted for a business of the same kind and in the same city even though innocently adopted is so like the name which the plaintiff has used as his trade name, as to deceive either by diverting customers from the plaintiff to the defendant, or by occasioning confusion between the two businesses, *e.g.*, by suggesting that the defendant's business is an extension, branch, or agency of, or is otherwise connected with, the plaintiff's business. (*Hendricks* v. *Montagu*, (1881) 17 Ch.D. 638, and *Ewing* v. *Buttercup Margarine Co., Ltd.*, [1917] 2 Ch.1, followed.) A delay of nine months in bringing an action in which an injunction was sought to enforce a legal right, is not a bar to the grant of the injunction. (*Fullwood* v. *Fullwood*, (1878) 9 Ch.D. 176, applied.) *N.Z. Farmers' Co-op. Assn. (Cant.) Ltd.* v. *Farmers' Car Sales, Ltd.* (S.C. Christchurch. March 14, 1955. Barrowclough, C.J.)

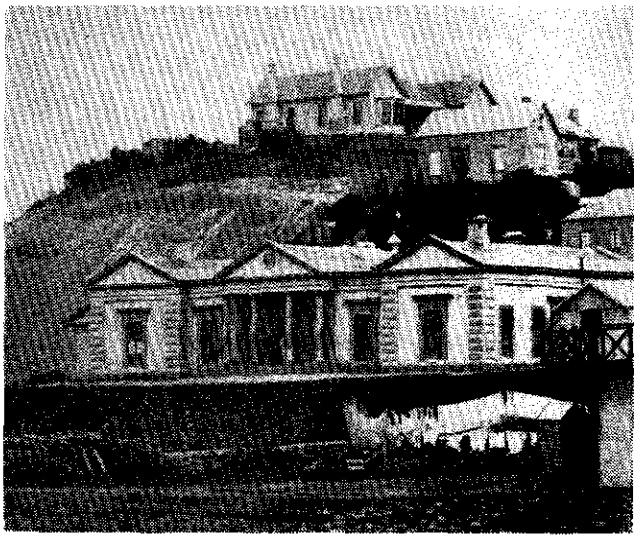
THE DUNEDIN LAW COURTS.

The Official Opening in 1902.

In view of the recent re-opening of the Law Courts in Dunedin, the following account of the original opening of the building on June 22, 1902, is not without interest. It has been compiled from the local newspapers of that time.

"The city of Dunedin has always been able to more than hold its own with other provincial capitals in respect to its public buildings, and citizens noted with satisfaction, as the new Law Courts approached completion, that their town was to be endowed with a Hall of Justice which was to be architecturally a thing of beauty, and one that could fittingly receive the Ruskinian description of 'a joy for ever.' It was only appropriate that its dedication to the administration of justice should come about with more than ordinary ceremony, and to this end, the Council of the Law Society and others concerned directed their energies with gratifying results.

"Nearly a quarter of a century has passed since the Supreme Court first sat in the building erected for the



By Courtesy Alexr. Turnbull Library.

The Old Supreme Court, Bell Hill.

meetings of the Provincial Council, and many respected members of the profession have been admitted to the Bar and grown grey in the practice of their vocation since that time. Central as it was, the old Supreme Court was inadequate in several ways, and, apart from a natural reluctance at quitting the scene of so many almost historic cases, the members of the profession hail with satisfaction their installation in the handsome pile of buildings which are now set apart for their accommodation.

A Procession from the Old Court.

"The Bar showed its affection for the old Supreme Court by assembling there yesterday morning, arrayed in wig and gown, to proceed in a body to their new quarters. So unique a procession naturally excited a good deal of interest, and large crowds of people, not entirely lacking in a sense of humour, congregated about Bond Street to see it start. The sheriff led the way down the old stone steps in Water Street, followed immediately by the president, vice-president, and Council of the Law Society. Two-deep the lawyers marched down Lower High Street to the Castle Street entrance of the new Law Courts. Entering, they waited in the vestibule the arrival of His Honour Mr. Justice Williams and His Honour Mr. Justice Cooper.

"Meanwhile, the general public had made their way in large numbers to the gallery and those portions of the Court reserved for them. A stalwart policeman, in accordance with the usual custom, was detailed to maintain order in the gallery, and it is safe to say that a long time will elapse before the strangers' gallery is again filled with so eminently respectable a section of the community. The portion railed off on the floor of the Court for 'witnesses and jurors' was filled with prominent citizens, and the jury box was reserved for the Magistracy, clergy, and others. Among those present were Colonel Hume (Inspector of Prisons), Messrs. E. H. Carew, C. C. Graham, and G. Cruickshank (Stipendiary Magistrates), Bishop Nevill, the Rev. James Gibb, Dean Fitchett, Messrs. R. Chisholm, G. L. Denniston, Inspector O'Brien, Mr. S. C. Phillips (gaoler), Mrs. Williams, Miss Williams and others.

The Official Ceremony.

"All present rose as His Honour Mr. Justice Williams was announced, and, the sheriff (Mr. King) preceding Mr. Justice Williams, and Mr. Justice Cooper, entered the court, followed by members of the legal profession, who were represented by Mr. A. C. Hanlon (president of the Law Society), Mr. S. Brent (vice-president), Mr. J. F. M. Fraser (Crown Prosecutor), Miss Benjamin, and Messrs. W. A. Sim, D'Arcy Haggitt, J. M. Gallaway, and D. D. Macdonald.

"Advancing to the centre of the floor, his Honour and the gentlemen of the legal profession awaited the arrival of Sir Joseph Ward, Acting-Premier, and other members of the Cabinet. The Ministerial party entered by the Stuart Street door, where they were met by Mr. A. Shaw, the contractor, who handed a silver key to the Hon. Mr. M'Gowan, Minister of Justice, with due ceremony . . . The Minister of Justice, in reply, accepted the key, and made a few remarks, in the course of which he said that if the interior was as well finished and as sightly as the exterior the City of Dunedin, already famed for its buildings, would have every reason to be pleased with the Law Courts.

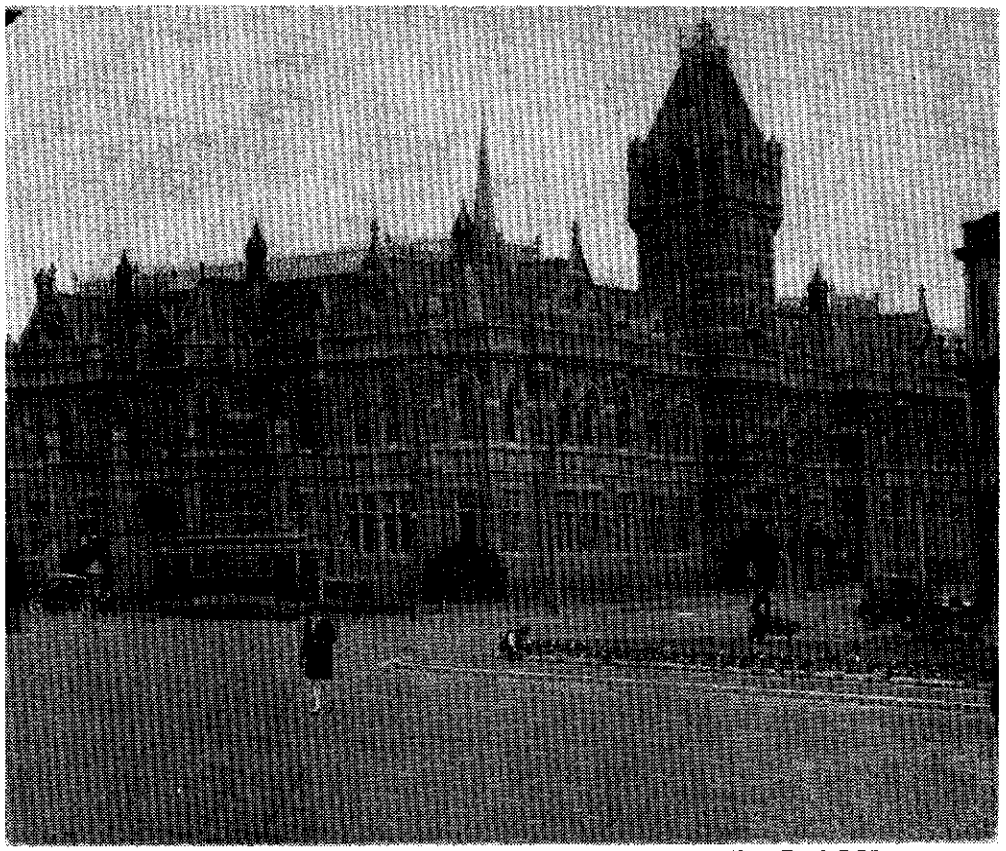
"Sir Joseph Ward, the Hon. Mr. M'Gowan, and the Hon. Mr. Duncan, the Minister of Lands, then entered the Supreme Court Chamber, and were received by Mr. Justice Williams. Without further delay, Sir Joseph Ward proceeded to declare the building publicly open."

Sir Joseph Ward, in his address, said that the Law Courts he was about to open, were, without exception, the finest in the Colony. He was very glad to be able to say that they were the cheapest of their kind ever erected in New Zealand.

Details of the New Building.

He continued: "The contract price was £19,311, and the furnishings and liabilities to date run into the sum of

£2,500.* The work has cost 7s. 1½d. per yard, and I am advised by those who were responsible for the erection of the building that it has been put up at the cheapest cost for a structure of the character that has ever been erected in New Zealand. It might be not out of place for me to say that the contractor, Mr. Shaw, and those who have worked with him, have given the Colony a building which we are very pleased with indeed. It is true that it has taken ten months over the contract time to complete the building, but circumstances which rendered it impossible for the building to be completed before have been recognized by the Department, and, in turn, they appreciate the faithful way in which the work has been performed. I can only hope that, although it has taken so long a time to complete the buildings, the contractor has made something out of it. The growth of work in this city has been so remarkable for a considerable period past that we are all very glad indeed to see the the Supreme Court and accessories removed from the building, where it has so long discharged its duties to the one in which we are now assembled. I am sure that Your Honour and the members of the legal profession, as well as the public, will hail with extreme satisfaction the transfer of the Court to this new building. The postal authorities of this city have been cramped for room for a considerable period, and, indeed, the growth in this respect here has been so marvelous that even when they use the whole of the old court building for that important branch they will still be short of what is required. And you can judge from that of the difficulties they have had in carrying out their work."



By Courtesy Alexr. Turnbull Library.

The Present Law Courts.

The speaker went on to say that, on the first floor of the new Courts, there was a room 38ft. by 34 ft. and 18ft. high, and also a room 34 ft. by 29 ft. This room was intended for the use of the Arbitration Court. There was also accommodation for the Official Assignee and his staff, and the custodians were also provided for on the first and second floors. The basement was to be used in connection with the prisoners and warders.

The building was commenced on June 24, 1900. Its frontage to Stuart Street is 190 ft., and to Castle Street, 133 ft. On the ground floor there were fourteen rooms, including the Supreme Court, which is 55 ft. by 30ft., and 26ft. high; the Police Court, and the library, both 40 ft. by 30 ft. and 20 ft. high. The library and Supreme Court were lighted by ceiling lights and seven windows. On this floor were also the common and grand jury rooms, each 19 ft. by 25 ft. Then on the first floor was the Stipendiary Magistrate's Court, 38 ft. by 34 ft. and 18 ft. high. This floor also contained a large spare room 34 ft. by 38 ft., which would be available for sittings of the Arbitration Court.

Sir Joseph Ward then declared the building publicly open, and presented His Honour Mr. Justice Williams with the silver key.

Mr. Justice Williams, in his reply, said :

" It gives us all great pleasure that the Acting-Premier of the Colony and two members of His Excellency's Government have been able to escape from their multifarious duties and afford us their presence today. On behalf of the Judges of the Supreme Court, of the Magistracy, and of the members of the legal profession, we tender our sincere thanks to the Legislature and to the Government for having caused to be erected the beautiful building in which we are now assembled.

" If justice be duly administered, it matters little where it is administered : whether it is administered under a tree in the open, or in a barn, or in some stately palace. The dignity of a Court depends not on its surroundings, but rests upon the learning, integrity, diligence, and patience of those who preside there. But, though the worth lies in the jewel, and not in the setting, it is well that the setting should be appropriate, and that the halls of justice should be convenient and seemly.

" It is further fitting that this present week † should have been chosen for the dedication of this build-

* It is stated that the cost of the recent renovations (including the installation of a new heating system) was about £20,000. The work took about two and a half years.

† The coronation of King Edward VII was to have taken place three days later. On the day following the opening of the Court, it was announced that the coronation was to be postponed owing to the King's sudden illness. It took place on August 9, following.

ing for the purpose of a Court of Justice. The extent of the Empire over which our King rules can hardly be better illustrated than by the fact that we here, separated as we are by the whole breadth of the habitable globe from the Royal Courts of Justice in London and the House of Lords at the ancient seat of learning, Westminster, administer the same system of law as these tribunals administer. Nay, more than that: we are united to these tribunals by the most intimate ties of respect and reverence—not a superstitious reverence, but a reverence founded on reason.

"We recognize that the Judges of these Courts possess not only the highest integrity, but the greatest intellectual power, and that they display in their judgments a breadth of view, a grasp of legal principles, and a lucidity in the exposition of those principles that elsewhere is unrivalled.

"And there is another reason why Coronation Week is an appropriate time for this ceremony. To secure due administration of justice is the noblest prerogative of the Sovereign. Three days hence, as part of the Coronation Oath, His Majesty will promise, to the utmost of his power, to 'cause Law and Justice in Mercy to be executed in all His Judgments'. May we, and all those who hereafter sit in these seats, assist by all that lies in our power to enable that promise to be fulfilled."

The First Courts.

Mr. Justice Williams and Mr. Justice Cooper then retired, and a few minutes later took their seats on the Bench. The usher (Mr. Martin) proclaimed that a sitting of the Court in Banco was about to be held. Seats at the registrar's desk were occupied by Mr. G. A. King (Registrar), Mr. A. Stubbs (Deputy-registrar) and Mr. J. R. L. Stanford (the Judge's Associate).

Mr. Justice Williams said:

"Gentlemen of the Bar,—I welcome you to our new home. We are indeed returning to a locality very near the site of the older home of the Supreme Court, which we left in the year 1878 for the Provincial Council Chamber. In that Chamber, the Court has sat for twenty-four years, from 1878 to the present time. Most of us, I suppose, have a sort of feline attachment for our old haunts, and I confess to a feeling of regret in leaving the spot where so much work has been done and which has witnessed so many forensic contests, some tragedies, and now and then a comedy. But a building erected for one purpose can rarely be made entirely suitable for another. That was the case with the building we have just left. It was wanting in several of the requisites of a Court. Amongst other things, its acoustic properties were defective. What would have been scarcely noticed as a defect when the building was used for its original purpose, became a serious defect when it was used for the purposes of a Court of Justice. Now we are housed in a building which architecturally is an ornament to the city, which has been designed for the special purpose for which it is to be used, and which may therefore be expected to combine with beauty, comfort and convenience.

Some Memories.

"When I look back to the year 1875, when I first sat in Dunedin in the old building, on the site close by, and when I look at the members of the Bar in front of me, what a change do I see. The leaders of the Bar in those days were Mr. James Smith, Mr. Macassey, Mr. George Eliot Barton, Sir Robert (then Mr.) Stout, our old and lamented friend, Mr. George Cook, Mr. B. C. Haggitt, Mr. (now Mr. Justice) Denniston, and the late Mr. Downie Stewart. All of those have left us, and the then Registrar, Mr. Ward, and our friend Mr. Gordon, who followed him, are gone also. So also has our venerable and faithful usher, the late Mr. Wadie.

"I do not think there are now more than six or eight members of the profession amongst us who were amongst us in those old days. I see before me a new generation. But I am no praiser of old times; it is no flattery to say that the new men are worthy successors of the old. I trust that in this new building the harmony that for so many years past has existed here between the Bench and the Bar may ever continue to be maintained.

"It is essential to the public interest that the Bar should be independent. It is also essential for the due administration of justice that the relations between the Bench and the Bar should be those of mutual trust and confidence. That the independence of the Bar is entirely consistent with the existence of these relations experience here has demonstrated. May those relations continue, and within these walls may both Bench and Bar apply to the utmost their learning, intelligence, and skill, so that the end of our existence, the administration of justice according to law, may be more surely attained."

The President of the Law Society of Otago, Mr. A. C. Hanlon, on behalf of the Bar, briefly thanked His Honour.

Mr. Justice Williams, on behalf of himself and Mr. Justice Cooper, acknowledged the remarks of the Bar. His work had been rendered light by the good sense and bearing and good nature of the members of the Bar. They had pulled together, and he did not think that the public interest had in any way suffered by their unity. He would bespeak for his successor—for his successor must come before long in the ordinary course of things—the same consideration from the Bar that had been accorded to himself. Had any member of the Bar any motion to make?

Mr. F. R. Chapman then said: "On behalf of the Bar I pray your Honours to direct that this day's proceedings be entered upon the records of the Supreme Court. In the case of the Royal Courts of justice, such a prayer was made to Her Majesty Queen Victoria, who was personally present, and Her Majesty's consent was signified by her Lord Chancellor. In this colony, the supreme judicial function of the Sovereign is vested in the Judges of this Court under the Constitution, and to your Honours I accordingly address this prayer."

The motion was granted, and a further motion by Mr. Chapman to adjourn consideration of a case mentioned was also granted; whereupon the Registrar (Mr. G. A. King) declared the Court adjourned *sine die*.

The proceedings concluded with the singing of "God save the King", started by Mr. D'Arcy Haggitt.

THE RE-OPENING OF THE LAW COURTS, DUNEDIN.

The re-opening of the Law Courts on July 29 was a red-letter day for the profession in Dunedin. It marked the end of a long period of inconvenience for the Judges and Magistrates, practitioners, and ligitants, while renovations and improvements of the fifty-three-year-old building had been in progress over the past two years. The occasion was marked by the presence of the Chief Justice, Right Hon. Sir Harold Barrowclough, Mr. Justice McGregor, and Mr. Justice Henry (who is the resident Judge at Dunedin), the Attorney-General, the Hon. J. R. Marshall, and a full attendance of Dunedin practitioners.

The Renovations.

The renovations and alterations to the Supreme Court buildings include the installation of a complete new heating system, and of fluorescent lighting throughout the building, with special emphasis on lighting in the Courts. New plaster ceilings have been supplied throughout the building, the interior of which has been completely repainted throughout in pastel colours. The interior walls of the three Courts have been sprayed with a new type of asbestos insulation to improve acoustics. The general colour scheme in the Courts is now pale grey walls with white, peach, or pale green tonings, and dark red patterned linoleum. The furniture in the Supreme Court has been re-covered in red leather, and the furniture in the other Courts is re-covered in brown leather. The corridors have been fitted with rubber linoleum.

The two offices—Supreme Court and Magistrates' Court—have been re-arranged, with improved facilities for the public, and a new staff-room with amenities has been provided. The Supreme Court library and the lecture-rooms have been completely renovated and re-decorated.

The Re-Opening Ceremony.

The Chief Justice, who was accompanied on the Bench by Mr. Justice McGregor and Mr. Justice Henry, presided at the first sitting in the Supreme Court since its renovation. Their Honours wore their ceremonial scarlet robes. Mr. C. Mason, Registrar of the Supreme Court, and Mr. A. G. Smith, Deputy Registrar, were present. In the jury box, in the foreman's seat, sat the Mayor of Dunedin, Mr. L. M. Wright, in his robes and gold chain of office. Seated beside him were Mr. J. D. Willis, S. M., and Mr. J. G. Warrington, S. M., Mr. G. Stratton, Registrar of the Otago Justices of the Peace Association; Mr. M. E. Lyon, Superintendent of Police in Dunedin; and Mr. A. C. Davis, Inspector of Police there. In the back row of the jury box were Lady Barrowclough, Mrs. G. I. McGregor, Mrs. T. E. Henry and her daughter (Mrs. Spackman), Mrs. C. Mason, wife of the Registrar of the Supreme Court, and Mrs. A. G. Smith, wife of the Deputy Registrar. The gallery was filled with the wives of members of the Otago Bar.

Led by the Attorney-General, the Hon. J. R. Marshall, and the President of the Law Society of Otago, Mr. J. R. M. Lemon, the whole of the accommodation in the centre of the Court was filled with members of the Bar and other practitioners who were present from all parts of Otago as well as from Southland.

The gathering was enhanced by its setting, the three-toned walls with Gothic arch-shaped panels of material resembling warm grey stone, panels of ivory and smaller inset panels coloured deep cream and peach, with pearl-shaded fluorescent lights on the ivory panels.

The Law Society's Welcome.

On behalf of the Council and Members of the Otago Law Society, Mr. J. R. M. Lemon, the President, extended a cordial welcome to their Honours on this important occasion in the history of the Society.

The President continued: "Our present Court buildings were erected as long ago as 1902; and, for some time past, improvements and modernisation were badly needed. With the passing years and changing conditions, many requirements have presented themselves, such as improved acoustic properties, lighting, and library facilities. It is fitting that the duties associated with the administration of Justice should be carried out in surroundings of dignity and quiet. Francis Bacon said: 'The place of Justice is a hallowed place'; and its surroundings should be appropriate thereto, as ours now are.

"In this building have been conducted many famous trials, justice has been dispensed as is known only to our democratic way of life, following on the grand and hallowed traditions of our English legal system. Here have presided many eminent Judges, and I would call to mind but a few—Williams, Sim, Chapman, and in our own times, Sir Robert Kennedy. These walls have resounded to the clear reasoning of Salmond, Saul Solomon, and the impassioned addresses of Stout and Hanlon. Many others, who have appeared here, have not only taken a prominent part in the everyday hurly-burly of legal practice, but also played a valuable part in the wider sphere of political and legislative office. We have had the late Sir Robert Stout, a former Prime Minister, the late Sir Thomas Sidey, a former Attorney-General, and the late John MacGregor and Harry Bedford, who all initiated and promoted valuable, enlightening, and progressive legislation.

"From this old building has come, therefore, much in the way of lasting value for the advancement of our Dominion.

"We can only express the hope that, in its remodelled form, there will be felt the same potent and beneficial influences.

"To the Department of Justice, the Ministry of Works and all others who were concerned in this work, I tender our most grateful thanks. To-day these Courts are comparable with the best in this Dominion."

The President was supported by Mr. G. T. Baylee, to whom had been entrusted the rehabilitation of the Law Library.

Mr. Baylee said: "Looking back now in retrospect for the period leading up to this day, this is, or was until recently, the third winter of our discontent. The renovations have been more or less in progress during that time, and justice has been administered under difficulties. Those days are now happily passed.

"I would like at this juncture to speak for a moment, if I may, on the Library of this Court. We in Otago know, and we hope others throughout the Dominion know, that our Library is in many respects unique. There are in that Library over 10,000 volumes, many

of great historical interest. It was with feelings of some dismay that, when we returned from the vacation in January, we received three days' notice from the Ministry of Works to remove the whole of those volumes. Happily, the law students rendered their aid, and many other practitioners helped, and we were able to do the work in two nights.

" It is only when you come to consider the relative weight of one volume that you come to realize the enormous amount of work that went into the removing of the books in the first place ; but this was coupled with the additional fact that a skeleton library had to be prepared, so that the work could continue. This was done.

" At a later stage, when the workmen had removed themselves from the Library, the greater burden of work came with the establishment of a new Library in the old site. I am happy to say that, with the co-operation of the various members of the profession and the students, that work has been done, and it will be for the future—for those who come afterwards—to say how well that work was done."

The Attorney-General.

The Attorney-General, the Hon. J. R. Marshall, addressed their Honours. He said :

" We are gathered here to-day to mark the completion of the renovations of the Law Courts. It is therefore an occasion which will give satisfaction to the members of the Bar, to the staff of the Courts, and to all those whose business brings them to this place. I think, too, it should be a matter of satisfaction to the general public, who, although they seldom frequent the Courts, have yet a very real concern to know that the place in this city where justice is administered befits the dignity of the law. It is a general principle of our law—a principle which has few exceptions—that the administration of justice should be done in public for all to see, so that the subject and his rights and liberties may be protected from the abuses that could arise—and which did arise in the days of the Court of Star Chamber—when justice was done in secret. Happily, those days are gone, and gone forever ; and we have to-day—and this is an occasion when I am happy to be able to say this—we have to-day a judicial system, in which, as far as human frailty can achieve it, justice is done.

" We have to-day a Judiciary which is independent and impartial ; the integrity of its members is unquestioned, and their knowledge of the law and of life fully qualifies them for their high office. We have a legal profession which is conscious of its responsibilities not only to its clients, but also to the maintenance and upholding of the high and honourable traditions of our profession in the administration of justice.

" We have to-day, and we are happy to be able to say it on this occasion, a staff of officers in the Courts, who, by their efficiency and their knowledge of the procedure and business of the Courts, are able to ensure that the business of the Courts runs smoothly.

" But I think we should not forget, and it is good that on occasions we should remind ourselves, that all this was not suddenly or easily attained, and that it will be maintained only by constant vigilance. We still find that mistakes are made, and, no doubt, mistakes will be made from time to time where Justice is circumvented ; but, if we are quick to recognize and ready to expose and correct such errors, that will be the test of our vigilance.

" And now we have here a place where the administration of justice may be carried out publicly and decently in accordance with the traditions and principles to which I have very briefly referred, a place where under proper conditions—conditions of moderate comfort and freedom from the distractions of the outside world—the work of the Courts can be carried on. For that reason, I think it is proper that the members of the Bar should assemble here before Your Honours with members of the public to mark this event.

" I am very happy to be associated with my brethren of the Otago Bar on this occasion, and I welcome the opportunity of saying these few words."

The Chief Justice.

The Rt. Hon. the Chief Justice, Sir Harold Barrowclough, then addressed the gathering. He said : " I am sure that I speak for both my brethren when I say that the Bench is in full accord with what has been said by Mr. Attorney and Mr. Lemon and Mr. Baylee. Dunedin is, I think, to be congratulated on having such a fine Court building as it now has. The business of the Courts, on the civil side in particular, is ever increasing. The work done here daily involves great concentration of thought, not only on the part of the occupant of the Bench, but also on the parts of the advocate and of the witnesses and of the litigant himself. That concentration cannot properly be given except in a reasonably suitable and comfortable building ; and it is proper for the administration of justice that it should be administered in a building which is reasonably comfortable, and reasonably designed for its acoustic properties—and those things, I think, you now have here.

" This is perhaps a somewhat unique occasion. I have not been able to consult the records. When it was my privilege to practise at this Bar, I do not recollect any case in which a Full Court was engaged. There may have been instances of a Full Court sitting here that will occur to some of you, but I venture to say that a sitting of a Full Court as you have here this morning is somewhat of a rarity.

" Litigation is, for the parties to it, a matter of the very gravest importance. Upon the judgment of the Court great issues may depend. In the balance, there is not only a man's wealth, but frequently his happiness and his reputation and his character ; and the balance must eventually come down on one side or the other. One must win, and another must inevitably lose. I think that one of the most distressing features of a Judge's work is the fact that every judgment which he delivers must cause disappointment or dismay, and perhaps even ruin, for one of the parties to the action which he tries. Such decisions ought not to be made, and such consequences should not ensue, unless they are arrived at in surroundings which lend themselves to arrival at the correct conclusions.

" If I may offer any suggestion about the design of our Courts it would be this, that it seems difficult to find adequate accommodation for the most important person in the case which is being litigated. I know the difficulties of a proper arrangement of a jury box, of a witness stand, the dock and all the accommodation for counsel. But I venture to suggest to the authori-

ties concerned that greater attention should be given to the provision of accommodation for the litigant himself. So often in the Courts up and down the length of this country I have found the litigant—the person most vitally interested—relegated to a hard seat in the back of the Court. It is not so difficult in cases that are tried before a Judge alone, because the jury box is then available for the litigant to be accommodated in, but so often one finds in Courts of New Zealand no reasonably comfortable accommodation where the litigant himself can hear what his counsel says, what counsel on the other side says, and still less what the witness says, and I think that those who are responsible for the design of Courts should always give the greatest possible attention to the need for providing proper accommodation for the person who is most vitally interested in the matter being heard by the Court.

"I think Dunedin is to be congratulated on the improvements that have been wrought here, and it is pleasing to see such a large attendance in the Court on the occasion of the official opening of the renewed Court."

C. J. Leeder, photo.

After the Re-opening Ceremony.

Front row (from left): The Attorney-General Hon. J. R. Marshall, Mr. C. Mason, Registrar of the Dunedin Supreme Court, Mr. Justice McGregor, the Chief Justice, Sir Harold Barrowclough, Mr. Justice Henry, Mr. A. G. Smith, Deputy Registrar of the Supreme Court, Mr. J. R. M. Lemon, President of the Otago District Law Society. In the *second row* (from left) are the Mayor, Mr. L. M. Wright, Mr. J. G. Warrington, S.M., and Mr. J. D. Willis, S.M.

THE BAR DINNER.

On the evening before the re-opening of the Law Courts, the well-known hospitality of Dunedinites took the form of a Bar Dinner to honour the Law Society's distinguished guests.

The dinner was held in the Tudor Room of the Savoy. It was a most happy gathering. The dinner itself was an exceptionally choice one, which drew many appreciative comments from the visitors.

The President of the Law Society of Otago, Mr. J. R. M. Lemon, presided. At his table were the Chief Justice, Mr. Justice McGregor, Mr. Justice Henry, the Attorney-General, the Hon. J. R. Marshall, Mr. J. D. Willis, S. M., and Mr. J. N. Warrington, S. M.

During the course of complying with the toast list, all present were delighted with the topical ditties rendered, in their inimitable style, by Messrs. P. S. Anderson and K. W. Stewart.

Apologies were received from Sir Robert Kennedy, Mr. S. T. Barnett, Mr. A. G. Neill, Q.C., Mr. J. P. Ward, and Mr. C. S. Turnbull.

"THE BENCH."

The toast, "The Bench," was proposed by Mr. J. M. Paterson, who began by thanking the distinguished visitors, who had come down to this special occasion in the life of the Law Society of Otago. All Dunedin practitioners were most indebted to them for sparing valuable time to join them. Mr. Paterson continued:

"I always think that our Supreme Court building is a lovely one in its exterior, but I am afraid that we have allowed the old building inside to deteriorate. Some one once said we never see our own homes growing shabby, because we are used to them. The same could apply to our Supreme Court.

"But the place now is really very fine inside. We now have good heating, excellent lighting, good acoustics, and, we may even hope now that the low-voiced lady—the divorce petitioner in the box—may be able at times to be heard by the bench.

"On occasions such as this, one's mind goes into reverse, in retrospect to the days when the Dunedin Court was built—although I hasten to say that I was not there then. In those days, the work of the Bar was different from to-day. Younger members of the profession can hardly realize the difference in the provision of a new style of reference books for their use. Heaven knows they need that provision, for things of that kind are a necessity in law to-day.

"Just before World War I, there were few law digests or annotations volumes such as are known to-day. When the first digest was issued, it seemed, on to-day's standards, a pathetic effort. To-day, of course, everything is tabulated and arranged and brought up to date with those familiar sticky slips, so that even a law-clerk can get on to the track of his subject.

"In the old days when one had to rely on memory, the preparation of an argument was to some extent fortuitous.

"The other day I was looking at the *All England Law Reports*. It seems just yesterday since these reports started, but to-day there are fifty volumes. I thought of the learning and industry that is contained in these volumes. A remarkable thing about them—and this refers also to our *New Zealand Law Reports*—is their beautiful English. I am sure that the best English heard to-day falls from the lips of English and New Zealand Judges. It is remarkable, too, to see how modern their English is. They do not allow their language, and that of the Law Courts, to become archaic.

"Fifty volumes of reports is a very large number. I was reading recently a judgment of the Court of Appeal in England. Three eminent Judges took thirty pages to give their judgments. When I read the judgment of the first, I was quite sure; when I came to the second, I was not; and, at the third, I was quite uncertain.

"Mr. Justice Oliver Wendell Holmes, that great American Judge, confessed that he wrote all his judgments standing up. When his legs began to tire, he thought his judgment was long enough. He was one of the most revered and popular Judges in the United States of America. I hear that a new permanent Court of Appeal may be set up in New Zealand. I wonder if four pieces of furniture similar to that used by Oliver Wendell Holmes—a high-legged desk—will be installed for the use of the appellate Judges?

"On an occasion such as this we do well to remember that we live in a freedom that we cannot prize too much. Is that achieved by the laws of the country? I suggest not. It is the administration of these laws that is the foundation of the democracy we enjoy. Laws can be good or bad. If they are bad, then they can be changed. But do you not think that the great thing is the way in which the laws are administered? The administration of them in the British Commonwealth is a shining example to the rest of the world.

"It makes one, at times, quite sick when one thinks of how laws are administered in other countries. Just because we know these things are happening, we should pause and think what we are privileged to enjoy. A fearless and incorruptible administration of the law is the foundation of our liberties.

"I would look upon it from the point of view of the common man—the man in the street. He may, and does, at times, criticize the law. That is a good thing. He may think the Judge or Magistrate wrong, but after all they are human. But never does he attribute corruption, lack of learning, or partiality to the Judge.

"The members of our Judiciary have given up much to become such. To further the democratic ways of our life, they have to spend laborious days and nights."

The toast "The Bench" was most enthusiastically honoured.

THE CHIEF JUSTICE.

The Rt. Hon. the Chief Justice, who was received with acclamation, replied. He said:

"My task of responding to your toast has been made much easier because it was proposed by my old friend, J. M. Paterson. Years have not robbed him in the least of his felicity of expression or charm of manner. I do wish to tell you on my own behalf and on behalf of my brethren on the Bench, how much we appreciate your invitation to be here to-night. When I see that you have invited here a Full Court, supported by two Magistrates, one of whom is very solid support [referring to Mr. J. G. Warrington, S.M.], I realize that our thanks should be the greater if for no other reason than that you have had to accept the financial responsibility of having so many 'deadheads' present. Your treasurer is no doubt glad that, to use a phrase not unfamilier to Chancery lawyers, the class of beneficiaries is closed. Upon further consideration, I am not so sure that it is closed. I imagine that the Hon. the Attorney-General may also be included in the list of 'deadheads.'

"It is a privilege to attend a Bar dinner here, and I much welcome it, for it emphasizes the oneness of the tasks we are all engaged in. The Bench and the Bar are two organs of the judicial system. The Bar, I feel, is the more important organ. Cases are not decided by what is said at the Bar so much as by what is done before counsel dons his robes.

"The administration of justice depends largely on the care and skill bestowed by solicitors and counsel on the preparation of cases and the sifting of evidence and argument, so that the real points in issue are properly presented. I think it can truly be said that the profession in Otago recognizes the importance of its work in this connection. Judges here have always been greatly helped and aided by a competent Bar. The high standards which have been established in the

past must never be allowed to fall. The Otago Bar has been a good Bar, and I am confident it will continue to be such.

"To-night I feel very much in the position of the prodigal son. I have returned to my father's house; the fatted calf has been killed; and it has been accompanied by excellent accessories. The resultant feeling of goodwill prompts me to indulge in personal reminiscences which I hope may be forgiven. If I am guilty of constant 'I remembers,' I trust you will realize that this function is for me in the nature of a reunion after twenty-five years of absence.

"My mind goes back to many friends I had in the legal profession here in Dunedin. First and foremost was Alf. Hanlon, K.C. When I was first admitted to the Bar, he attended and went to the trouble of robing just to see a young man admitted in open Court. After the ceremony, he took me round to the Law Courts Hotel for a drink to put the seal on my becoming one of the profession. It was a gesture which might well be followed by other senior counsel towards newly-admitted barristers.

"That very afternoon, I was required to attend an inquest at Port Chalmers on the death of a seaman. In the Courtroom, with James Bartholomew on the Bench, Alf. Hanlon, who was my opponent, did all he could to assist me in my unaccustomed task. I have never forgotten his kindness, and I hope I may have repaid that kindness in the only way in which he would have wished me to repay it, namely by showing a like consideration towards younger men when I meet them.

"There was also Douglas Ramsay, my former partner, whose recent death was a sad blow to me. He was a wise and kindly man and knew a great deal about the law. I would like to pay a feeling tribute to his memory. He was indeed my guide and mentor in the law.

"I remember the Hon. John MacGregor and his violent dislike of telephones. If he wanted to discuss any matter with me, he would send a retainer to ask me to be so good as to step around to his office. Such an invitation brooked no refusal. His venerable age and his status in the community made any request from him the equivalent of a Royal command.

"I regret that I do not see present at this gathering B. S. Irwin who has, I understand, completed more than half a century as a legal practitioner. I was once engaged in an action against Irwin, Irwin, and Irwin. It was an action brought against three incorporated societies or clubs. Irwin was the president of each, and his name appeared as the first of the representative officials of the three bodies joined in the action as defendants. It was a tribute to the public service he rendered to a number of sporting organizations in this city.

"I would pay a tribute to the memory of Saul Solomon, K.C. I remember an important case in which he led me, and in which he quite properly left me all the work to do. But he supplied the strategy for the case. And what a strategist he was! I must confess I learnt a lot of strategy from him. I much regret that Dave, his son, is no longer with us. I knew him as a territorial officer, as a lawyer who took life easily but with infecting charm, and later, in the War in the Pacific, as my Deputy Judge Advocate General. He did a surprising amount of good work in that office, and it is a matter of great regret that I am not able to-night to meet him again and talk over the old times we spent together in one capacity or the other.

"I once had the pleasure of being a member of the Balmacewen Golf Club, and shared with Jack Callan, of affectionate memory, the distinction of being the club's worst golfer. The time came, however, when I felt that his golf was even below my poor standard, and he agreed that I was justified in finding a new partner for my Saturday afternoon's game.

"I remember the late John Lang. He was my lecturer in Constitutional Law, and the only teacher I ever had who was a really inspiring teacher. He was also a profound lawyer, and I shall always think of him with affection and respect.

"And I should surely say something of the late Sir William Sim. He could be hard on the lawyer who had not prepared his case thoroughly; but he was an exceedingly capable Judge, and he kept up and built up the standards of the Bar who practised before him. Off the Bench, he was most kindly and charming. In one of my early cases, I had the temerity to take one of his decisions to the Court of Appeal. It was my first appearance in that Court, and my appeal was allowed. It was typical of Mr. Justice Sim that he should thereupon invite me to dinner at the Fernhill Club. When I arrived I found that Mr. Justice Stringer was another guest. My host introduced me to him as "the young man who has just put me right in the Court of Appeal." It was certainly a kindly way of setting at his ease a youthful barrister who was feeling not a little overcome by the august assemblage in which he found himself.

"I could go on almost indefinitely in pleasant recollections of my experiences in Dunedin, but they are utterly irrelevant to the duty I am on my feet to perform—the duty of replying to the toast you have so kindly honoured. For this I must crave your indulgence. I would do well to return to my allotted task and say on behalf of all members of the Bench, and especially of those who are here present, that we thank you cordially for a most enjoyable dinner and a most excellent feast of entertainment. I thank you, Mr. Paterson, for your speech in proposing this toast, and all of you for the manner in which you received it. I would do well also at this stage if I uttered those words which so commended themselves to Mr. Paterson, and said 'There is nothing that I can usefully add.'"

The Guests.

Mr. F. M. Hanan, in proposing the toast, "Our Guests," said: "We have naturally a special welcome for the Rt. Hon. the Chief Justice, a graduate of our University and a former colleague of ours, who is now adorning his high office with much distinction. His present success and achievements are a source of pride and indeed satisfaction to us all here this evening, and, particularly, to Mr. J. C. Robertson and myself who were his junior clerks in the 1930's. For, as has been authoritatively observed, 'Environment is a potent factor in moulding human character.' Consequently, we respectfully claim to share in Sir Harold's present achievements.

"We also would like to say how pleased and honoured we are to have with us our Attorney-General, who is

doing such fine work for law reform and administration in his responsible office.

"We know that he has many Parliamentary duties to perform at the present time. To have come here just now must have caused him considerable inconvenience. I would like, on behalf of our Society, to thank him very warmly indeed for his consideration.

"At least, while he is here, he could take the opportunity of seeing for himself what is now known throughout the Dominion as 'The Judges' hot seat.' For the time being this is occupied by the Hon. Mr. Justice Henry. We hope that he will remain here for some time yet, but are expecting to hear any day that he has been 'electrocuted' by the 'Power authorities' in Wellington.

"I would also like to extend to our old young friend—or, perhaps, I should say, young old friend—Mr. Justice McGregor, a very warm welcome. His stay with us was far too short, but in leaving us he left behind him not only the record of a wise, impartial, and erudite Judge, but also the memory of a kindly and lovable gentleman which endeared him to all.

"To our other guests this evening I would also like to express our pleasure in having them with us. We trust that they will have a very pleasant evening in our midst. No doubt some of them may well be thinking that now that the Otago Court building has been improved, remodelled, and revitalised, something may well be done in the same direction with the Otago Bar. My friend, Mr. Jeavons, has suggested that perhaps this time an application could be made to the Licensing Commission, rather than to the Ministry of Housing, for permission to instal a bar within the precincts of the Court, but I feel satisfied this evening that I can leave those remedial measures in your own good and efficient hands."

The Attorney-General, the Hon. J. R. Marshall, in replying to the toast, said he was sure that he could safely assume that the other guests shared his feelings of pleasure and privilege in the enjoyment of the Law Society's hospitality, and wanted him to say on their behalf how greatly they appreciate the Society's kindness and the warmth of its members' welcome. The Attorney-General continued:

"I have always had the idea, which I do not expect to be disputed here, that the profession in Dunedin produces very sound lawyers. Perhaps I got that idea because I had part of my education in this city. Perhaps because the Scottish character of this city produces canniness and hardheadedness. But I think it is more likely to arise from traditions built up over the years by the Judges and Magistrates who have administered justice here, and by the profession who have practised before them. When one thinks of the names of famous men, Williams, Stout, Sim, McGregor, Adams, Callan, and many others, and not forgetting the present Chief Justice, the list is imposing. It is because of that tradition, because of that record of distinguished members of the profession, that I count it an added privilege to be your guest to-night, and to share the hospitality of the Law Society of Otago.

"I appreciate, too, the occasion for this gathering. The Government has just spent £20,000 to make your Supreme Court more habitable. That is as good a reason as any for a Bar dinner. We are proposing to spend £200,000 in Auckland, and I hope that your precedent will not go unnoticed.

"On the other hand, I recently had the temerity to decide and announce that Christchurch, which has been the proud and hopeful owner of a foundation-stone since 1938, is not likely to get a new Court for many years. So I suppose dinner is off in Christchurch.

"The Chief Justice asks 'What about Wellington?' Well, the prospects of another dinner might have some influence.

"I am glad to know that the task of rejuvenating the Dunedin Courts is completed. The building itself is as sound and solid as Dunedin itself, but I suppose even the most conservative would agree that sooner or later the time must come when the carpet which Sir Joshua Williams used must be replaced and the chair upon which Sir Robert Stout sat at the Bar must become an occupational risk. When that time came, the Minister of Works and the Minister of Justice would do something about it. Well the time has come, and Dunedin is now starting on the cycle again. Indeed, better than before: the advances of science and technology have been called in to provide hot air in winter and cool air in summer, and less noise all round. All these measures would have met with the approval of those earlier occupants of the Courts. I am less certain of their approval of pale pink pastel paint and other shades of green and yellow and grey. Perhaps I am allergic to pink. It will be interesting to see if the colour scheme has any influence on the sentences imposed by the Bench, or has any effect on the forensic performances at the Bar. But, at least, it will do no harm, and, at best, it may temporarily brighten the outlook of the prisoners in the dock.

"I made a quick inspection of the Court this evening, and the general impression is pleasing. I hope it will grow on you. It is important for the proper administration of justice that the Law Courts should be places which reflect the dignity of the law. It will be, and has been, our objective to achieve that. We must not forget, however, that the quality of justice does not depend on the place in which it is administered. It depends on the spirit, the independence, the integrity, and the learning of the Judiciary, and the high standards and responsible conduct of the Bar."

The Attorney-General then told two stories to illustrate the point that the integrity of the administration of justice depends on the traditions we have inherited and the attitude of mind of those in charge of administering it. He concluded:

"We are fortunate in this country that the people have confidence in the administration of justice by our Courts. They feel they will get justice if they do have to go to Court. It is too much to expect that all plaintiffs and all defendants will think they have received justice when they leave. Some of my correspondents even go to the length of asking that the Government should intervene and see that they get justice. But justice is done. The man in the public gallery, the reporter at the Press desk, counsel waiting for the next case, will agree that justice is done.

"It is interesting to know, too, that a group of the greatest experts on the Courts, the criminal population, as a whole, considers that it gets justice. I have now a much closer contact with these gentlemen who are from time to time tenants of mine. Few complain about having to pay the rent.

"It is good that we are members of a profession which enjoys a responsible and honoured position in the community. And it is good for us, who are your guests, to enjoy your hospitality and good company. I thank you for the toast."

(*Concluded on p. 240.*)

IN YOUR ARMCHAIR—AND MINE.

By Scriblex.

Hats, Raised and Otherwise.—In his recent note in this column on the hatless woman witness, Scriblex voiced a possible difficulty in the selection of standard female headgear for emergency use. Circumstance has now provided at least a partial answer to the problem. It seems that, at the re-opening of the Law Courts at Dunedin, the back row of the jury box was occupied by the wives of three of the Judges, the daughter of one of them, and the wives of the Registrar and the Deputy-Registrar of the Supreme Court. According to the *Evening Star* of July 29, the "hat parade" consisted of "six chic models, the first two grey—one in pill-box shape, with upstanding osprey; and the other a manipulated felt model with folded brim and flyaway felt wings on the side. The next was two-tone, of navy and teal blue in pill-box shape worn forward. Then came a beret-shape black model, followed by a small head-hugging shape with a sideways line in black, and finally a brimmed hat of chartreuse". Indeed, the notes of this colourful assembly were quite striking. What with the scarlet judicial robes, the ornate trappings of the Mayor, and the three-toned walls "with Gothic arch-shaped panels of material resembling warm grey stone, wide white panels of ivory and smaller inset panels in various shapes coloured deep cream, with pearl-shaded vertical fluorescent lights on the ivory panels", even the Bench, with its old identity of rich wood, had "acquired an added sheen". This last allusion is that of the newspaper reporter who appears to have been affected by the surfeit of notabilities present, and to have given full rein to the exuberant luxuriance of his descriptive powers which include also a reference to the Police representatives there, in "their smartly-tailored blue uniforms with gleaming buttons and royal blue ties".

The Workman's Assaults.—The much-debated decision of the Court of Appeal in *Pettersson* v. *Royal Oak Hotel, Ltd.*, [1948] N.Z.L.R. 136, has again been the subject of judicial criticism. It will be remembered that in this case an angry and intoxicated customer, refused further drink by the barman, hurled the glass at him as he was in the process of making an undignified retreat. The barman, temporarily losing control of himself, picked up the remains of the glass (which had broken when it hit the bar) and hurled it back, unfortunately injuring the eye of another customer in the process. The Court held the employer liable upon the ground the personal resentment of the barman made no difference, his act being an unauthorized way of doing an authorized act, namely, keeping order in the bar. Under almost identical facts, the Appeal Court of Ontario in *Griggs* v. *Southside Hotel, Ltd., and German*, [1947] 4 D.L.R. 49, and the High Court of Australia in *Deatons Pty., Ltd.* v. *Flew*, (1949) 79 C.L.R. 370, have reached an opposite conclusion, as did Hilbery, J., in *Warren* v. *Henlys, Ltd.*, [1948] 2 All E.R. 935, where the employee of a garage attacked a customer who had complained to the Police about the language used to him during an altercation over petrol coupons. In the latest case, *Lane* v. *Associated Cement Manufacturers, Ltd.* (the full report of which is not yet available) two factory workers quarrelled, one in exasperation pushing the other and causing him to fall and sustain injuries from which he died. The Court (McNair, J.) considered that an assault by one workman upon another in a fleeting moment of irritation did not make the employer liable although the trespass was committed at the time of employment. (A similar view was taken by our Court of Appeal in *Rutherford* v. *Hawke's Bay Hospital Board*, [1949] N.Z.L.R. 400.) McNair, J., considered *Pettersson's* case was the high-water mark of the cases where an employer had been held vicariously responsible for an assault committed by a servant. He agreed that the decision did not depart from the well-established principle, but thought he would find difficulty in reaching the same appreciation of facts as our Court of Appeal had done. Indeed, it appears illogical to contend that a personal expression of revenge for an insult can be a way of keeping order, authorized or unauthorized. The barman who, out of spleen, throws a broken glass at a departing drunk appears, at least for the time being, to move outside the sphere of employment altogether.

Sir Walter Scott.—"A lawyer without history or literature is a mechanic, a mere working mason", wrote Sir Walter Scott. "If he possesses some knowledge of these he may venture to call himself an architect." This remarkable and courageous Scotsman, whose books teem with discussions on legal subjects and trial scenes, began his career as a young lawyer. His interest in the publishing firm of Ballantynes involved him, on the failure of Hurst and Robinson in London in 1825, in liabilities of £130,000 which Scott set to work to repay and in the end repaid to the last penny. A writer in the *Law Times* mentions that after he had paid £40,000 through his imperishable romances into a trust set up to administer his affairs, his creditors returned to him his library at Abbotsford in recognition of his supreme efforts. This was in 1830, the year he resigned as Clerk of Court on pension to undertake the Herculean task of discharging the balance of his huge debt. Two years later he was dead.

Slipped Bibs.—"*Cheerful Yesterdays* by the late Mr. Justice Alpers, written on his death-bed, is not only the best autobiography this country has produced, but, in its observation, humour, and style, it takes high rank in any country." These words of Alan Mulgan, the well-known New Zealand author and critic, written in 1943, have lost none of their original force. Scriblex was reminded of them by some amusing references by A. J. H. Jeavons in a speech at the Otago Bar Dinner on the re-opening of the Law Courts, to a passage he had had with Mr. Justice North at the Sessions. "At the end of a tiring argument, which obviously had no appeal for the Judge, I said something, quite unintentionally, which nevertheless had the undeniable appearance of impudence. The reaction was swift and ominous. The Judge leaned forward, his eyes became very hard, and he said: 'If you are not careful, Mr. Jeavons, in a moment you will not be seen, let alone heard.' This was followed by a ghastly silence while I pondered on what one did next. Then he relaxed and sat back, with his eyes twinkling, and said, 'Your bib's undone!' And so it was. In the excitement of battle, the tapes had come undone and gradually it had slipped around until instead of being around my neck it was draped across my stomach like a bookie's watch-chain." Alpers, J., would have enjoyed this incident, and found room for it in his chapter on slovenly Court attire which a number of barristers might with advantage peruse from time to time.

THE BAR DINNER, DUNEDIN.

(*Concluded from p. 238.*)

"FIAT JUSTITIA."

The final toast was "Fiat Justitia," and it was proposed by Mr. A. J. H. Jeavons, who, in the course of a witty speech, said that he would have gladly yielded to the temptation of denying himself the pleasure of this toast. In fact he doubted whether he should have come to the function at all, having only a month or so ago attended the Law Students' Ball and there found out the painful way that, along with their legal learning, the students had been absorbing some of the less admirable social achievements of the medieval Borgias. [The reference was to the food-poisoning which many of the guests suffered.] He continued:

"In any case I look on the toast with disfavour. First, because it is expressed in Latin. During my days on the Law Council, I was one who enthusiastically lent my support to the removal of Latin from the law course, thereby in part being instrumental in breaking up an enduring and lovely friendship between some law students and their Classics professors.

"As one of those, it is not very appropriate to ask me to propose the toast to the Latin exhortation '*Fiat Justitia.*' Furthermore, if justice is the law, which I doubt, then I seem to remember the book of jurisprudence drew a distinction which has also been commented on although in somewhat coarser terms by some of my unsuccessful criminal clients in considering what had just been handed out to them. And if justice is the law, then I am about the most ill-qualified person in the room to deal with the matter. Although I have rubbed shoulders with it for many years, very little has adhered.

"Not that that is attachable to my mentors of my student days. I was failed by the best lecturers, a number of whom are close by me now. The most distinguished is the Rt. Hon. the Chief Justice at the head table, who, in one of his earlier oral judgments, found that my co-delinquents and myself were menaces to the public, and sentence was passed accordingly. However, the fact that I am here to-night proves that he has a kind heart. He not only relented, but took me to dinner later as well.

"Another was the late Mr. Justice Callan, whom we would all like to see here to-night. We all remember his mixture of humorous whimsicality alternating with an appearance of profound solemnity that once caused the late Bill Ward in his dry way to remark that if he was half as clever as he looked, he would be burnt as a witch. His lectures were full of amusing irrelevancies.

"However, to get back to 'Justice' and the toast. There are certain omissions in the repairs carried out in the Court. First, I think they might well have removed the blindfold lady in the Grecian garments above the main door, and put up something more in keeping with the times and modern trends. I would suggest Saint Sam, the King with two thrones. Of course he would be represented as a robot indicating the progress towards automatic justice, holding a money-bag to indicate the increasing importance of the Justice Department as a flourishing branch of the Revenue Department, and, of course, surmounted by a policeman's helmet symbolizing the mystic union of two great Departments of State. At least it would be a proper tribute to Mr. Barnett and would serve to remind us of him, as it looks as if he may well spend the rest of his life overseas.

"The other improvement I suggest concerns the omission to supply a stickier and less repellent seat for the occupant of the Supreme Court bench, in the hope that we might persuade some occupant to remain a little longer than we have been successful in the past.

"As the toast stands it is a pretty abstract thing, although, as a slogan, of course, it is very accommodating and has something for all. I draw your attention to the secondary meaning of the word 'done,' which is the opposite of its primary meaning of being accomplished. So each of us, depending on the state of his brief, can go to Court shouting with fervour and hope, 'Let Justice be done—Fiat Justitia.'

"Nevertheless we might do better justice to it if we could approach it in a more abstract way. It occurs to me that all of us here in some way represent and serve justice. The grave and reverend seigneurs at the top table most certainly do. Mr. Attorney represents Justice and the State. And if you want something with a more literary flavour you have (glancing in the direction of Mr. J. G. Warrington, S.M.) the Shakespearean justice, justice 'in full round belly with good capon lined.'

"Even the rest of us at the lower tables, in a more humble way, are the servants of Justice, and for some of us it is a good thing that the lady is blindfolded. So I think that we might well make the toast 'To Justice and ourselves.'

"I judge from the fact that no name appears on the toast list opposite the word reply in reference to this toast that there is no appearance on behalf of the defendant, so we may do it by default".

THE COCKTAIL PARTY.

The re-opening of the Law Courts in Dunedin on July 29, was celebrated by a cocktail party which was held in the two Magistrates' Courts resplendent in their rehabilitation and refurnishing as part of the general renovation of the Law Courts buildings.

The guests were received by the President of the Law Society of Otago, Mr. J. R. M. Lemon and Mrs. Lemon, and by the Registrar of the Supreme Court, Mr. C. Mason, and Mrs. Mason.

The principal guests were the Rt. Hon. The Chief Justice and Lady Barrowclough, Mr. Justice McGregor and Mrs. McGregor, Mr. Justice Henry, Mrs. Henry and their son and daughter, as well as the Attorney-General, the Hon. J. R. Marshall.

The gathering was attended by the local practitioners and their wives and daughters, the Court officials, and the heads of the local branches of Government Departments.

The party was a most enjoyable one, and it was pervaded by that cordial spirit which is typical of all social gatherings of the Dunedin Bar, of which those who have enjoyed their friendliness and hospitality on the occasion of the Legal Conferences in Dunedin will have happy memories.