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LIMITATION OF ACTION: AMENDMENT OF STATEMENT OF CLAIM.

IN an article earlier this year, "Crown Proceedings," *ante* p. 181, we referred to the granting of amendments, during the hearing, to a plaintiff who sues the Crown.

Section 23 (1) of the Limitation Act 1950, provides as follows:

> (1) No action shall be brought against any person (including the Crown) for any act done in pursuance or execution or intended execution of any Act of Parliament, or of any public duty or authority, or in respect of any neglect or default in the execution of any such Act, duty, or authority, unless—
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> (*a*) Notice in writing giving reasonable information of the circumstances upon which the proposed action will be based and the name and address of the prospective plaintiff and of his solicitor or agent (if any) in the matter is given by the prospective plaintiff to the prospective defendant as soon as practicable after the accrual of the cause of action; and
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> (*b*) The action is commenced before the expiration of one year from the date on which the cause of action accrued:

In *Moynihan* v. *Attorney-General* (unreported), which primarily concerned claims for damages against the Crown, leave was given to the plaintiff for the amendment of the statement of claim during the hearing, by the introduction of two new alternative causes of action. We doubted whether the giving of such leave was allowable.

Neither of the conditions precedent set out in s. 23 (1) (*a*) and (*b*) had been observed in *Moynihan's* case in respect of the causes of action added, by leave of the Court, to the statement of claim.

We said:

> . . . it would seem that the Crown or a public authority can be faced with difficulties if the plaintiff applies for amendment of his statement of claim during the trial . . . to change or add to the ground stated in his notice of action and in his filed statement of claim founded on the circumstances set out therein. The phrase " after the accrual of the cause of action " at the end of s. 23 (1) must surely refer to the cause of action disclosed in the notice, and none other.

Now, in *Hall* v. *Meyrick* [1950] 2 All E.R. 722, an action between subjects, the question came up for decision by the Court of Appeal, which held that, under the general rule of practice as to amendments of statements of claim, a plaintiff may not be allowed to amend by setting up fresh claims in respect of causes of action which, having regard to the date of the issue of the writ, had been barred by the Limitation Act 1939 (U.K.). Consequently, an amendment of the statement of claim should not have been allowed in the Court of first instance, since the amendment alleged a new cause of action which was statute-barred at the time of the amendment by reason that it had accrued over six years before the action itself was brought: Limitation Act 1950, s. 4 (which reproduces s. 2 of the Limitation Act 1939 (U.K.)).

In *Moynihan's* case, the new causes of action introduced into the statement of claim during the course of the hearing were statute-barred by reason of non-compliance in their regard with the conditions precedent in s. 23 (1) (*a*) and (*b*), subject, however, to the provisions of s. 23 (2), but the question of seeking or obtaining leave of the Court thereunder was (so far as we are aware) not even argued.

In the course of his judgment in *Hall* v. *Meyrick*, Hodson L.J., at p. 723, said:

> This is an appeal from a judgment of Ashworth J., given on December 21, 1956. The action was brought by Mrs Hall, the widow of a man called Robert Constable Hall, against a solicitor, Mr Meyrick, for damages for loss incurred through the defendant's negligence in his capacity as solicitor. The learned Judge found that the case as advanced by the plaintiff was not established, but, at the conclusion of the addresses of counsel, he stated that the question of amendment might at that late stage be considered. It was considered on November 28, 1956, and he did in general terms give leave to the plaintiff to amend; but, as his judgment shows, he did not exclude the defendant from raising objections to the amendment when it had been formulated. On December 18, 1956, the amendment had been formulated—I shall have to deal with what it was in a moment. At that stage leading counsel for the defendant took a point which had not been taken before, but which was in the learned Judge's mind, as he stated, viz., that, if this amendment were allowed, it would have the effect of taking away from the defendant the benefit of the Limitation Act 1939. The learned Judge felt obliged, as he thought in fairness to the parties, not to resile from the position he had previously taken up, and, therefore, he did not reverse his original decision that there should be, an amendment.
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> The first point taken by the defendant in this Court is, or could be, that the learned Judge was wrong in allowing the amendment. He was in no sense barred by the fact that, the objection not having been taken at the earliest possible moment, he had come provisionally to the view that the amendment could be allowed; if a Judge has expressed himself by word of mouth, then until the order has been perfected he can make a different order, if he is so minded. This Court is asked to deal with the case on the basis that, in accordance with well-established authority, it is unjust to the defendant to deprive him of the benefit of the Limitation Act 1939, by a circuitous route. Secondly, it is said that the learned Judge, having decided the case correctly in favour of the defendant on the case as put, was wrong on the amended case, because in the circumstances here there was no duty on the defendant of which he was in breach. Finally, it is said that the damages of £1,200 assessed by the learned Judge did not in any event flow from the breach, if any.
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> Having regard to the decision which I have reached, I do not propose to say anything about the difficult question—

and, indeed, from the academic point of view, the interesting question—whether it can be said on the facts of this case, there being a breach, that any damages would flow from that breach, or whether the damages assessed by the learned Judge were largely excessive, having regard to the number of contingencies involved before any damage could be suffered by the plaintiff. I propose to rest my decision on the first point, viz., the question whether the amendment ought to be allowed.

Later on, after discussing the facts and the basis of the claim as originally pleaded, His Lordship, at p. 728, said :

As regards the amendment, the general rule is clear that the plaintiff will not be allowed to amend by setting up fresh claims in respect of causes of action which since the issue of the writ have been barred by the Limitation Act 1939. That principle was declared in no uncertain terms by Lord Esher M.R. in *Weldon* v. *Neal* (1887) 19 Q.B.D. 394. Lord Esher said, at p. 395 :

" We must act on the settled rule of practice, which is that amendments are not admissible when they prejudice the rights of the opposite party as existing at the date of such amendment. If an amendment were allowed setting up a cause of action, which, if the writ were issued in respect thereof at the date of the amendment, would be barred by the Statute of Limitations, it would be allowing the plaintiff to take advantage of her former writ to defeat the statute and taking away an existing right from the defendant, a proceeding which, as a general rule, would be, in my opinion, improper and unjust. Under very peculiar circumstances the Court might perhaps have power to allow such an amendment, but certainly as a general rule it will not do so. This case comes within that rule of practice, and there are no peculiar circumstances of any sort to constitute it an exception to such rule."

Lindley L.J., was of the same opinion. He said :

" I do not think it would be just to the defendant to allow these amendments, the effect of which would be to deprive him of his defence under the Statute of Limitations."

Lopes L.J., was of the same opinion. He said, at p. 396 :

" The effect of allowing those amendments would be to take away from the defendant the defence under that statute and therefore unjustly to prejudice the defendant."

Counsel for the plaintiff has not been able to indicate to us any peculiar circumstances which would, in the mind of Lord Esher M.R., or this Court, be likely to influence it in departing from that general rule of practice. For example, it is not suggested in any way that the plaintiff was tricked by the defendant or lulled into a sense of false security that the statute would not be pleaded against her. No question of that kind arises. Therefore, I see no possible ground on which this Court could depart from the ordinary rule. I think that the learned Judge was wrong in permitting the amendment as he did when the objection was taken that it would have the effect of depriving the defendant of the benefit of the Limitation Act 1939. For that reason, I would allow this appeal.

Parker L.J. came to the same conclusion, but, in regard to the amendment, at p. 729. He said this :

It often happens in the course of a trial that an application is made by a party for leave to amend, and the trial Judge may well then and there express the view that he will allow an amendment or will consider an amendment; but, unless and until the amendment has been put into writing and submitted to the other side, and the other side have had an opportunity of making submissions on it, anything that the trial Judge has said must be in the nature of a provisional view, and not a final ruling. Indeed, in this case, as I understand it, that was what the learned Judge himself intended, because in reciting the events in his judgment he says [1957] 1 All E.R. 208, 214) :

" . . . I granted it [leave to amend], reserving all questions of costs and reserving to counsel for the defendant the right to make further submissions when he had seen and considered the amendment."

It seems to me that was the proper attitude, the Judge treating anything he had previously said as purely provisional. When, therefore, the hearing was resumed on December 18, 1956, and counsel for the defendant drew attention to the fact that the proposed amendment was setting up a statute-barred claim, there could be no question of the Judge being bound by any previous ruling. His discretion was completely unfettered by what had gone before. That being so, once it appeared that the new claim was statute-barred, and the defendant objected to the amendment on that ground, I think that the Judge was bound to refuse the amendment in the proper exercise of his discretion.

Even if the learned Judge had intended to give a final ruling, it was always open to him to change his mind until the order was drawn up. Though no doubt a Judge would not take that course where the matter had been argued and submissions had been made, yet, in a case where there is an element of surprise and counsel has not had a full opportunity of making his submissions, it seems to me that it would be perfectly proper for the Judge to take a different view from that which he had already expressed.

Ormerod L.J. agreed that the case as originally pleaded could not stand. He concurred with the other members of the Court, and for the reasons given by them, that it was a wrongful exercise of his discretion for the trial Judge to allow the pleadings to be amended in such a way as to cause to be pleaded a cause of action which was statute-barred at the time of the amendment.

In earlier New Zealand cases, *Official Assignee* v. *The King* [1922] N.Z.L.R. 265 and *Quin* v. *The King* [1937] N.Z.L.R. 742, Herdman J. and Ostler J. respectively held that a petition under the now-repealed Crown Suits Act 1908 could not be amended at the trial to add a new claim, for the reason that no notice had been given of that claim.

As we all know, there is no dispensing section in the Limitation Act 1939 (U.K.)—there was none in the Crown Suits Act 1908— similar to s. 23 (2) of our Limitation Act 1950. The question arises as to the position as to leave to allow the amendment of a statement of claim, when the plaintiff seeks at the hearing to introduce a new cause of action which is statute-barred by reason of no written notice having been given as soon as practicable after the accrual of the cause of action, whether or not the action was commenced before the expiration of one year from the date on which the (new) cause of action accrued : s. 23 (1) (*a*) (*b*). Can the plaintiff during the trial apply to the Court for leave under s. 23 (2) to bring the action based on the cause or causes of action sought to be introduced into the statement of claim ?

This is a matter which the Courts have not so far had to consider. But there are two judgments which might be useful in this connection if the matter should arise.

In *McCullough* v. *Attorney-General* [1956] N.Z.L.R. 886, the plaintiff had not given written notice required by s. 23 (1) (*a*) until eight months after the accrual of the cause of action, and no leave to commence the action. Notwithstanding the lateness of the notice, the defendant did not raise the question of delay until he filed an amended statement of defence on the morning of the hearing, and in it he pleaded that notice of action had not been given in terms of s. 23 (1) (*a*) as soon as practicable after the happening of the accident. Stanton J. held that this late defence did not debar the defendant from relying on it, but it could, and did, affect the question of costs. Judgment was given the defendant, but without costs.

In the very recent judgment of the Court of Appeal in *Brewer* v. *Auckland Hospital Board* [1957] N.Z.L.R. 951, discussed in our last issue, F. B. Adams J., who concurred fully in the leading judgment, that of Shorland J., added some general observations on matters, which, as he said, had to some extent influenced his decision.

In the course of these observations, His Honour, at p. 955, l. 5, said :

> Still another difficulty in these cases is that the Court, when asked for leave under a provision such as we are concerned with here, is in effect called upon to decide in advance whether the defendant will or will not be prejudiced by the delay. The proper time for such an inquiry would seem rather to be after the event, and a defendant who has been unable to prove prejudice in advance might well be in a position, after the trial, to show that he had in fact been gravely prejudiced. Had we felt it our duty to grant the desired leave in the present case, I should have wished to consider whether some form of condition ought not to be imposed which would enable the Court to review the question of prejudice after the event.

It may well be, if and when the question comes before the Court for decision whether leave should be given to an amendment of the statement of claim to introduce a claim which is statute-barred under s. 23 (1), the observations of F. B. Adams J. may be taken into consideration as well as, by analogy, the judgment of Stanton J. in *McCullough's* case.

SUMMARY OF RECENT LAW.

DEATH DUTY.

Estate Duty—Policy of Insurance effected by Deceased on His Life—Such Policy transferred to Wife in Terms of Separation Agreement—Deceased paying Premiums during Remainder of His Lifetime—Policy disposed of for Adequate Consideration—Policy not "purchased or provided" by Deceased—Policy indefeasibly vested in Wife—No "beneficial interest accruing or arising by survivorship or otherwise"—Death Duties Act 1921, s. 5 (1) (f), (g).—Estate Duty—Debts—Covenant in Separation Agreement to pay Maintenance to Former Wife during Her Lifetime—Such Payments allowable as a "debt due by the deceased at his death"—Death Duties Act 1921, s. 9 (1). A person dealing with a policy of insurance on his life does not "purchase or provide" that policy, within the meaning of those words as used in s. 5 (1) (*g*) of the Death Duties Act 1921, if he disposes of it for adequate consideration in his lifetime, although he may, as part of the bargain, undertake to pay, and does pay, the whole of the premiums on the policy ; and it is not a policy "kept up by [the deceased] for the benefit of a beneficiary" within the meaning of s. 5 (1) (*f*) of the said Act. (*Lethbridge* v. *Attorney-General* [1907] A.C. 19, followed. *Commissioner of Stamp Duties* v. *Russell* [1948] N.Z.L.R. 520 ; [1948] G.L.R. 127 ; [1948] G.L.R. 127, *Craven* v. *Commissioner of Stamp Duties* [1948] N.Z.L.R. 550 ; [1948] N.Z.L.R. 365, referred to.) No "beneficial interest accrues or arises by survivorship or otherwise on the death of the deceased" in terms of s. 5 (1) (*g*) where a policy of insurance on the life of the deceased had in his lifetime indefeasibly vested in another person. (*D'Avigdor-Goldsmid* v. *Inland Revenue Commissioners* [1953] A.C. 347 ; [1953] 1 All E.R. 403, and *Re Barbour's Policies of Assurance* [1956] Ch. 453 ; [1956] 1 All E.R. 627, rev. *sub. nom Westminster Bank Ltd.* v. *Inland Revenue Commissioners* [1957] 3 W.L.R. 427 ; [1957] 2 All E.R. 745, followed.) Moneys which a husband has covenanted in a deed of separation to pay as maintenance to a former wife during her life in discharge of his obligations to her constitute, on the husband's death, a "debt owing by the deceased at his death" in terms of s. 9 (1) of the Death Duties Act 1921. The basis on which the debt should be calculated is the annual amount covenanted for, estimated at the death of the husband on an actuarial basis, disregarding both the possibility and the actuality of subsequent variation by agreement or by way of compromise. (*Commissioner of Stamp Duties* v. *New Zealand Insurance Co. Ltd.* [1956] N.Z.L.R. 335, followed. *Commissioner of Stamp Duties* v. *Pearce* [1924] G.L.R. 338, applied. *Commissioner of Stamp Duties* v. *Permanent Trustee Co.* (1933) 49 C.L.R. 293, distinguished.) On June 12, 1931, the deceased entered into a separation agreement with his wife, which contained, inter alia, a covenant to pay his wife £50 a month during their joint lives, and a provision that he should maintain an insurance policy on his life for £5,000, which was then transferred to his wife. On August 15, 1935, a decree nisi was granted to the deceased. On February 17, 1936, the provisions of the separation agreement were varied by deed, in which it was agreed that the maintenance payments agreed upon should continue for the life of the wife, but, if she remarried, the monthly amount should be reduced to £25 ; and, further, it was agreed that the wife should transfer the insurance policy to trustees to be held in trust for her and the child of the marriage, and for the deceased if he should survive his wife and the child died under the age of twenty-one (which he would attain in 1940). On May 15, 1955, the decree nisi was made absolute. The deceased died on March 30, 1951. The wife had remarried. She and the child of the marriage survived the deceased. The proceeds of the policy of insurance, payable on the deceased's death, amounted to £7,440 4s. The Commissioner of Inland Revenue included in the value of the deceased's estate for death duty purposes the proceeds of the life insurance policy. He also refused to treat the liability of the deceased to pay maintenance to his former wife as a debt owing by the deceased. On Case Stated by the Commissioner, *Held*, 1. That the Commissioner wrongly included the sum of £7,440 4s., representing the proceeds of the insurance policy ; and that no portion of that amount should be included. 2. That an allowance should be made in respect of the liability of the deceased at his death to pay £25 per month to his former wife during her life, such allowance to be calculated on an actuarial basis. *New Zealand Insurance Co. Ltd.* v. *Commissioner of Inland Revenue.* (S.C. Dunedin. September 30, 1957. Stanton J.)

INDUSTRIAL UNION.

Registration and Availability for Inspection of Union Rules containing Constitution and Powers of Officers—Constructive Notice of Contents to any Person dealing with Union—Industrial Conciliation and Arbitration Act 1954, ss. 54, 55 (2), 56, 71. Principal and Agent—Ostensible Authority—President of Industrial Union purporting to enter into Contract on Union's Behalf—Statutory Requirements as to Registration and Availability of Union Rules resulting in Constructive Notice of Contents—Rules not giving President Power to contract on Union's Behalf—No Binding Contract made. The requirements of the Industrial Conciliation and Arbitration Act 1954 that the rules of a registered and incorporated union which contain its constitution and the powers given to its officers must be recorded and must be made available to any person, result in constructive notice of the contents of the rules to any person dealing with a union. (*Royal British Bank* v. *Turquand* (1856) 6 El. & Bl. 327 ; 119 E.R. 886, and *Mercantile Bank of India* v. *Chartered Bank of India* [1937] 1 All E.R. 231, applied. *Ernest* v. *Nicholls* (1857) 6 H.L. Cas. 401 ; 10 E.R. 1351, referred to.) Consequently, where T. purported, on behalf of the company of which he was managing director, to enter into a contract with a Union based on an offer by him to the President of the Union, T. was fixed with knowledge of the Rules of the Union and with notice of the fact that those Rules did not give the President power to make the contract on behalf of the Union. Furthermore, T. was put on inquiry as to the authority of the President to accept the offer, as T. had been told that power to deal with him had been delegated to the President and the Secretary and he knew the Secretary was available for discussion ; and the inquiry, if pursued, would have revealed that no authority had been given to the President, either alone or in conjunction with any other persons save the Secretary. *Progress Advertising (N.Z.) Ltd.* v. *Auckland Licensed Victuallers Industrial Union of Employers.* (S.C. Auckland. October 7, 1957. Shorland J.)

LANDLORD AND TENANT.

Landlord's Covenant "to keep and maintain in good and weatherproof wear and condition" Roof and Outer Walls of Shop Premises—Proviso that Owner not liable for Damage caused "by any failure to so keep and maintain in good and tenantable repair" unless One Month's Notice given to Owner of Any Such Want of Repair—Rain Entering Tenant's Premises damaging Tenant's Stock—No Prior Notice of Want of Repair given—Covenant and Proviso co-extensive—No Liability attaching to Owner under Operative Part of Covenant as No Notice given under Proviso by Tenant. On December 10, 1954, while the respondent was the occupier of a lock-up shop on the ground floor of a property owned by the appellant, a rain storm damaged the respondent's stock owing to the rose at the top of a downpipe being partially or substantially blocked by pigeon debris, the water thus backing up on the roof and finding an escape over the flashing of the roof guttering. The water then flowed down inside walls to the respondent's premises. Clause 2 (3) of the lease referred to destruction or damage to the premises by fire. The covenant

in the respondent's lease in regard to repair was as follows: 3. The owner hereby undertakes with the tenant as follows: (a) Subject to provisions of cl. 2 subcl. 3 that the owner will keep and maintain in good and tenantable weatherproof wear and condition the roof and outer walls of the said shop premises on the said premises not caused by the act or default of the tenant provided that the owner shall not be liable for any damage caused by any failure to so keep and maintain in good and tenantable repair until after the expiry of one month from the date or respective dates on which the tenant shall have given notice ot the owner of any such want of repair to the owner." The roof of the building, the guttering downpipe, and exterior walls were in the possession and control of the appellant. It was found by the learned trial Judge that the flood was caused by three factors, all of which had to be present to bring it about; (a) the presence of the rose on top of the downpipe; (b) the accumulation thereon of pigeon droppings; and (c) the presence of the metal cover on the rainhead. He also found that the appellant had not been negligent so as to give rise to any action and rejected the claim founded in nuisance.

THE CRIMES BILL: AN EXAMINATION.

The Crimes Bill was introduced in Parliament by the Attorney-General, the Hon. J. R. Marshall, on October 24, 1957. The Minister stated that the Government did not propose that the Bill should be passed this Session. It has been introduced now to enable it to be widely circulated and examined before next Session, when a similar Bill—amended as may be found desirable—will be introduced. The aim of the Government, if returned to office, is to consider representations from all quarters regarding the contents of the Bill, and eventually to pass a measure which will come into operation at the beginning of 1959.

The Bill is a comprehensive revision of the Crimes Act 1908, and embodies with little alteration the Criminal Appeal Act 1945. It incorporates a great number of proposed amendments, several new crimes (such as sabotage, kidnapping, and drug-peddling), and some new defences (such as the defence of diminished responsibility, akin to insanity). In some branches of the law, notably burglary and housebreaking, it effects a great simplification of the existing law. It revises many of the maximum sentences, increasing considerably the severity of the penalties for sexual offences.

Changes in the criminal law are of the utmost concern to the profession. Consequently, we feel that readers will welcome a series of articles stating in detail what changes are being proposed, and, where necessary, the reason for the change. Explanatory comments on the clauses of the Bill will assist in the thorough examination of the measure to which it should be subjected before it is re-introduced.

Professor I. D. Campbell, of Victoria University of Wellington, who was a member of the Departmental Committee on whose recommendations the Bill is based, has agreed to write these articles for the JOURNAL. *They will appear in these pages in the New Year.*

—THE EDITOR.

He held that the appellant was liable under the covenant and was not protected under the proviso: [1956] N.Z.L.R. 896. On appeal from that judgment, *Held*, per totam curiam, 1. That, in the intention of the parties to the agreement, as appearing from cl. 3 (a) thereof, the proviso covered the same ground as the operative part of the clause and was co-extensive with it; and that no liability attached to the appellant under the operative part of the clause as no notice was given by the respondent in pursuance of the proviso. 2. That no claim lay in nuisance, and there was no failure on the part of the appellant to exercise reasonable care; and, further, the respondent took the premises as they were and could not complain if the building was not constructed differently. (*Espagne* v. *Hart* [1930] N.Z.L.R. 289 and *Kiddle* v. *City Business Properties Ltd.* [1942] 1 K.B. 269, followed.) Appeal from the judgment of McGregor J. [1956] N.Z.L.R. 896, allowed.) *Masterton Licensing Trust* v. *Finco.* (C.A. March 25, 1957. Hutchison J., Turner J., Henry J.)

TOWN AND COUNTRY PLANNING.

Compensation—Subdivision—Claim for Loss arising out of Refusal of Consent to Proposed Subdivision in Area zoned "rural"—Subdivision resulting in "ribbon development"—Decision on That Issue by Town and Country Planning Appeal Board Final and Conclusive—Compensation Court's Decision on Claim for Compensation following Such Refusal—Onus on Claimant to show that Proposed Change in Use of Land from "rural" to "residential" would not be contrary to Economic Interests of Particular Locality—Town and Country Planning Act 1953, ss. 38 (2), 42 (3), 44 (6) (b), *(ii), (iii).* The effect of the words "notwithstanding anything in subsection five of this section", in s. 44 (6) of the Town and Country Planning Act 1953, saves certain claims which would have been barred by subs. (5), but does not restrict the application of subs. (6) to those claims. Under s. 44 (6) (*b*) (ii), the Court is required to consider only the effects of the particular proposed subdivision. The claimant is required only to show that the proposed change of use of the land concerned in his application for consent would not cause demand for an uneconomic extension of public services. Under s. 44 (6) (*b*) (ii) wider considerations are involved, as it is a recognition of the undesirability of permitting what is known as "ribbon development" along highways in, or extending into, rural areas, and where such development is held to be contrary to the economic interests of the locality. The owner of a property in Piako County proposed to subdivide it into five building sections, reserving a strip to give access to the rear lands for later subdivision. The area was zoned as "rural" in the County's undisclosed district scheme. Under s. 38 (2) of the Town and Country Planning Act 1953, the County refused consent to the subdivision and an appeal from that refusal was dismissed by the Town and Country Planning Appeal Board. The owner of the property then claimed £1,000 from the County as compensation for "all loss" arising out of the refusal of consent to the proposed subdivision. A Land Valuation Committee awarded him £750. From that decision, the County appealed, but it did not dispute that a claim for compensation may lie for loss resulting from the refusal of consent to a subdivision of land. *Held*, 1. That the issues arising out of s. 44 (6) (*b*) (iii) of the Town and Country Planning Act 1953, whether the proposed subdivision would amount to "ribbon development" area and whether it should be prohibited on that account had been conclusively determined against the claimant by the Town and Country Planning Appeal Board; but, while that decision by the Board, within its proper authority, is, under s. 42 (3) final and conclusive, the responsibility of deciding whether or not a claim for compensation can succeed is that of the Land Valuation Court. 2. That the claimant had not discharged the onus of showing, under s. 44 (6) (*b*) (iii) that the proposed change in the use of part of his land from "rural" to "residential" would not cause a condition of ribbon development, which would be contrary to the economic interests of the particular locality. 3. That the decision of the Land Valuation Committee was wrong in law, and the appeal should be allowed and the Committee's order discharged. *Allison* v. *Piako County.* (L.V.Ct. Hamilton. October 8, 1957. Archer J.)

TRUSTS AND TRUSTEES.

"Purposes" Trusts. *101 Solicitors' Journal*, 673.

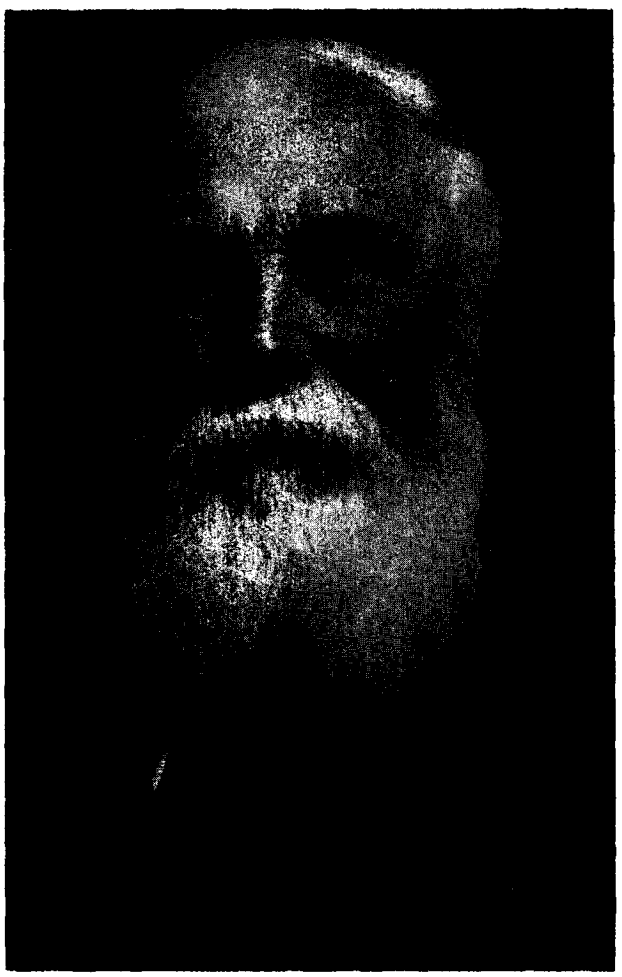
WORKERS' COMPENSATION.

"In the Course of Employment." *107 Law Journal*, 533.

LEGAL PORTRAITS.

VI. Sir Robert Stout, 1844-1930.

No doubt many stories could be written of men who have come to New Zealand without money or influence and by their own exertions have attained eminence. But I can think of none so striking as that of Sir Robert Stout—Attorney-General, Premier, Chief Justice for more than a quarter of a century, Chancellor of the University—unless it be that of Richard John Seddon, with whom he fought a five-year duel for the Premiership. Two biographies of Seddon have been written by New Zealanders*, but none of Sir Robert Stout has yet appeared. Perhaps the extent of his activities over the eighty-six years of his life is such as to appal the strongest heart.



Sir Robert Stout.

He arrived in Dunedin from the Shetland Islands in 1863. He was nineteen years of age, over six feet in height, and pleasant and cheerful in his manner. There was no fear that he would have difficulty in earning a living in the Colony; he had served for five years as a pupil teacher and passed the necessary examinations, was a qualified surveyor, was very well informed and could write a good leading article for a newspaper. His preference at that time, however, was for surveying work; but he found none available. There was, however, a vacancy for a mathematics master at Shaw's Grammar School in Upper Stuart Street, Dunedin. He secured this appointment and remained there until 1865, when he became first assistant at the North Dunedin Grammar School, usually called the Old Stone School, the headmaster of which was an Edinburgh graduate named Stuart. Amongst Stout's pupils were (Sir) Thomas McKenzie, Saul Solomon (afterwards a King's Counsel), and A. S. Adams (later Mr Justice Adams).

He was a good teacher and popular with his pupils. By this time schools were well established in Otago, but the teachers had no organization. With that energy which he was to display so often, and in such different circumstances in later life, Stout founded the Otago Schoolmasters' Association—the beginning of what is now the nationwide Educational Institute. All his life he loved to teach, and he would probably have devoted his life to educational work, but a ridiculous situation arose which turned his thoughts in another direction. He applied for the position of headmaster of the school at Oamaru but was rejected because he could not teach singing! He looked around and could see little hope of preferment. Moreover his political bent was already well developed; and he no doubt realized that the law is a better spring-board to political life than teaching. It happened that William Downie Stewart, a Dunedin lawyer with a good practice, required an articled clerk. Stout went to him, terms were arranged, and he took his first steps towards qualifying in that profession in which he was to be so remarkably successful. He was twenty-three.

The Law was at that time a highly technical profession and a mystery to the layman. The Supreme Court had jurisdiction both in Common Law and Equity; but the old system of pleading was in operation and the articled clerk had to make himself proficient in the use of the complicated procedure prescribed by the *Regulae Generales* of 1856 and amendments. Stout flung himself into his new work; his days were occupied with work in the office and his evenings with study; he often worked twelve or fourteen hours a day. He completed his articles in three years, as he was entitled to do; and, at the close of 1870, he presented himself before Mr Justice Henry Samuel Chapman for the examinations in general knowledge and law which would qualify him for admission as a barrister and solicitor. He passed them triumphantly, and on July 4, 1871, he was duly admitted.

The Bar, of which Stout was now a junior member, was extremely able. From a commercial point of view, Dunedin was the leading city of the Colony and there was ample work to occupy two Judges—Richmond and Chapman. Commercial disputes, the opening up of great tracts of pastoral country, and the many legal questions arising from gold-mining resulted

* *Richard John Seddon*, by James Drummond.
King Dick, by R. M. Burdon.

in a great accession of work to the legal profession, and a number of the most eminent lawyers were practising there.

It is a remarkable fact that for many years the Dunedin Bar had almost a monopoly in the appointment of Judges of the Supreme Court, and that this continued even after Wellington, with its advantages as the capital, and the meeting-place of Parliament and the Court of Appeal. had become the legal centre of the Colony. During Stout's early years, the members of the Dunedin Bar included James Prendergast, afterwards Attorney-General and later Chief Justice, C. Macassey, B. C. Haggitt, F. R. Chapman, Downie Stewart, G. Cook, and G. E. Barton.

A young lawyer learns from his seniors and the Judges of the day, and Stout could have had no finer training than he received in the Dunedin Courts. He already had some slight experience, as in those days articled clerks were allowed to appear in the Magistrates' and Wardens' Courts. Before he left Downie Stewart's office, he had the satisfaction of arranging that his successor there should be John Edward Denniston, a young bank clerk who had served as such in the primitive conditions of a gold-mining district on the West Coast, and who showed a keen desire to qualify for the legal profession. Stout entered into a partnership with Basil Sievwright, a young lawyer a few years his senior; and the firm of Sievwright and Stout joined the ranks of Dunedin practitioners.

Meanwhile the Otago settlers, with true Scottish enthusiasm for higher education, were proceeding with their plans to found a university. Four professors were installed, and the opening took place on July 4, 1871, eighty students being enrolled; and the first name on the list was that of Robert Stout. During the first two sessions he attended classes in Mental and Moral Philosophy and in Political Economy, and gained prizes in both. The professor who taught these subjects was Dr Duncan MacGregor who had graduated M.A. at Aberdeen and M.B. and Ch.B. at Edinburgh He was barely two years older than Stout. They became close friends, and MacGregor gave Stout a philosophic basis to his thought which remained a permanent influence. In 1873, law classes were established at the University and Stout was appointed the first lecturer. He gave two lectures a week in Common Law and the Law of Contracts and held this post till 1876, when he found it necessary to resign on his becoming a member of the House of Representatives.

It was, however, in 1871, three months after his admission, that Stout first appeared in the Supreme Court in a case of importance—as junior to Barton for the defence in the case of *The Queen* v. *Reichelt*. The accused was charged with arson by burning down his shop with intent to defraud an insurance company. The facts were complicated, there were a number of witnesses for the prosecution, and the hearing occupied several days. Barton did not call witnesses, but his closing speech occupied four hours; he several times acknowledged the great assistance he had received from Stout. The jury disagreed, and were discharged at 11.35 p.m. On a new trial, Stout was given an opportunity to address the jury, and was congratulated by Mr Justice H. S. Chapman, the presiding Judge, and the prosecuting counsel, James Smith. The jury's verdict this time was "Not Guilty".

In the same Session, Stout appeared for the first time alone when he defended Bridget Gee, maid-servant, aged twenty-five, on a charge of infanticide. After evidence for the prosecution had been heard, he submitted that it did not substantiate a charge of murder and offered to plead "Guilty" to concealment of birth. The Crown Counsel accepted this and the Judge (Chapman) agreed that this was a proper course. The accused was sentenced to two years' imprisonment with hard labour.

In April, 1872, Stout appeared for the defence in the case of *Wenkheim* v. *Arndt*, in which the plaintiff claimed substantial damages from a woman for breach of promise of marriage. Wenkheim was a German Jew, and the defendant had been a Miss Beaver. In reply to his proposal of marriage, she wrote a letter of acceptance; but, immediately after, she received a proposal from Arndt, a wealthier candidate. She thereupon telegraphed Wenkheim not to open her letter. However, he did open it and announced their engagement. She married Arndt, and Wenkheim brought his action.

On the law, Stout had a poor case. The authorities were clear that once a letter was posted accepting an offer the contract was complete. It was therefore a question of getting the damages reduced. He read Wenkheim's letters, which were over-sentimental and amusing, and ridiculed the whole idea of a man suing a woman for breach of promise. The plaintiff was laughed out of Court, the verdict being for one farthing damages.

Cases such as these and many others in which Stout appeared during his early years in practice aroused great interest in the community and the firm of Sievwright and Stout prospered in spite of the fact that Stout's political views, freely expressed, had aroused the opposition of powerful interests—the "squatters" and the liquor trade. He also opposed religious instruction in the schools and aroused much hostility from the Churches. He paid no attention whatever to any question of injuring his practice by the expression of political or religious views; and so capable was he in his profession that, in a year or two after his admission, he was well established as an advocate. Otago had its miniature Parliament, with a Speaker, a Mace, and a mace-bearer; and its procedure was modelled on the House of Commons at Westminster. Stout stood for the district of Caversham, was elected, and in 1874 became Provincial Solicitor.

An anonymous writer thus referred to him in an article, "*Of Old Dunedin and Dunedinites*" †:

> It was in 1871 that Sir Robert Stout won his first case. In 1877 he was Her Majesty's Attorney-General and as such leader of the New Zealand Bar! Splendid! I suppose some were jealous of him, but I never met a man who could disarm envy or jealousy as Sir Robert could. He was, and still is, always so simple and so straight, with absolutely no humbug, Of course he has strong opinions. He is an immensely strong man mentally, and was so physically. As an advocate he was easily first in New Zealand. I question if we ever had a man at the Bar in this country within cooee of him with a jury .... Sir Robert Stout was a winner with a jury nearly every time. His superb management pulled off a verdict when the odds were against him. Long before he began his address to the jury, Mr. Stout had sorted out the men he had to deal with. He knew which two or three would mould the verdict or the answers to the issues, and to those two or three, or may be even one of them he addressed his remarks. If the jury were sensible, they understood Sir Robert's tactics. If they were not sensible, they liked to

* *Otago Daily Times*: November 23, 1918.

be called sensible by such a great man and adopted the views of the counsel who had so adroitly weighed them up."

But Stout was not only successful with juries; he was a good Court of Appeal man. He first appeared in that Court in 1872, with Macassey, in the case of *Receiver of Land Revenue of District of Southland* v. *The Queen (Ex parte Bell)* (1874) 2 N.Z.C.A. 508, and from then on appeared there frequently; indeed, it was said that no sitting was complete without him: see the *New Zealand Court of Appeal Reports* (1872 onwards) and *Ollivier, Bell, and Fitzgerald's Reports* (1870-1880) *passim*.

In 1875, Stout was elected member for Caversham in the House of Representatives, his first speech there being a defence of the Provincial system. In March, 1878, he became Attorney-General in the first Liberal Ministry—that of Sir George Grey—his friend John Ballance being also a Minister. Stout and Ballance found Grey a difficult man to work with. Ballance resigned, and shortly after Stout did also. His partner was seriously ill; he returned to Dunedin to look after the practice and was out of politics for five years. Throughout his professional life he found from time to time that it is difficult to drive law and politics in double harness.

In 1884, Stout was in Parliament again, and became Premier, with Vogel as Treasurer. He and Ballance put through some useful legislation, including the Married Women's Property Act, the Police Offences Act, the Workmen's Wages Act, and some gold-mining legislation. When the General Election of 1887 took place, the country was labouring in a depression, and Stout was defeated for Dunedin North by James Allen. He remained out of politics for six years. After the death of Ballance, he was a representative in Parliament for Wellington City. Seddon became Premier, and Stout, although still accounted Liberal, was really in opposition. He was appointed Chief Justice on June 22, 1899, and retired on January 31, 1926, when in his eighty-second year, and was called to the Legislative Council. He died on July 19, 1930.

It has often been said that Stout's appointment as Chief Justice was a political one. In the sense that Seddon was glad to put his rival for the leadership of the Liberal Party and the Premiership in a position where he could take no part in politics, it may fairly be accounted such. But if the term means that, for political reasons, better men were passed over, it could not be so called; Stout was without doubt the leading lawyer in the country. His experience as Attorney-General, as a Minister of the Crown, and as Premier, merely added to his suitability for the office of Chief Justice. It was true that he had not confined his studies to legal matters but had spread them widely (and he remained a student all his life), and in knowledge of pure law there may have been others who surpassed him, but his legal capacity was always adequate. It is to be noted that he did not consider that the holding of judicial office should debar a Judge from doing his full duty as a citizen.

He took an active part in the administration of higher education. He was a member of the Otago University Council from 1891 to 1898; one of the founders of Victoria University College, a member of its Council and Chairman in 1900, 1901, and 1905; a member of the Senate of the University of New Zealand from 1884 onwards, and Chancellor from 1903 to 1923. During a visit to England in 1909 he was honoured with the Doctorates of the Universities of Oxford, Edinburgh, and Manchester.

A man of simple habits, without ostentation or undue pride in his remarkable capabilities, genial and kindly, helpful especially to the young, Sir Robert Stout deserved and won the respect of all ranks and of all opinions. He was, in many ways, unique. We may not expect to see his like again.

Women in Law.—While statistics show that women in the United States control the majority of the nation's wealth, the fact remains that it is still a man's world, and the legal profession, to date, has been no exception, although it shows hopeful signs of weakening. Government service has offered most opportunity for the woman lawyer as sex barriers there started crumbling sooner than elsewhere. A legal background in the family frequently helped launch a woman lawyer in private practice. But beyond these, few doors except their own, in private practice, have been opened to date to the female legal practitioner. As to the established law firm, only a few women were able to gain entrance there, sometimes through the back door, as legal secretaries who were at the right spot at the right time when a legal vacancy occurred. A law firm, when it weighs the ability and personality of a man against that of a woman, finds them equal. However, it will also consider the potentials of the applicant. The law firm has three problems; one is to bring in the business, the second is to handle it, and the third is to keep it. A woman can not only handle it but handle it well, and by handling it well she keeps it, but can she bring it in? Of that I am not only convinced but am equally convinced that her potential in that respect will so steadily increase that the progressive thinking law firm, no matter how much evidence of extreme conservatism it exhibited in the past, will recognize this fact and will not only accept but seek out capable women lawyers as a necessary adjunct of the firm for getting business. The economic status of women has changed radically. Demands are made upon them for ever greater financial contribution to the maintenance of the home, be they single or married. Their quest for realization of wherewithal for such contributory share led them to a prominent place in the business world. They now not only inherit and control the spending of money but they are fast learning to manage and invest it. A peek at the roster of any service or business and professional organization gives an idea how diversified the interests of women now are and, how high on the list of executives are their positions in the business firms. In law, like in anything else, the aptitudes, abilities, and potentials of men and women are not always identical. While in some tasks a man may be relied upon to do a better job, in others a woman will excel and will enjoy and ably perform tasks which men find irksome and irritating. The perfect combination, therefore, in a well-established law firm, with a diversified type of practice, should be a blending of the two talents. There is a place in law for work of women attorneys to complement that of the men. It is not men v. women, women lawyers hope, but men plus women.—Mary N. Kolis in the *Detroit Lawyer*.

THE WORKERS' COMPENSATION ACT 1956.

Allowances and Expenses.

(*Continued from p. 314.*)

Dependants' Allowances.

(a) *In case of death of worker* (s. 20 (1)-(3), (7)): Where the death of the worker results from the injury and he or she leaves any total dependants under the age of 16 years and ordinarily resident in New Zealand an allowance of £50 is payable in respect of each of those dependants in addition to the compensation otherwise payable.

Where the worker leaves partial dependants under the age of 16 years and ordinarily resident in New Zealand an allowance that is reasonable and proportionate to the injury suffered by each such dependant (but not exceeding £50 in respect of each such dependant) shall be paid in addition to the compensation otherwise payable.

The foregoing provisions apply where the death of the worker occurs after the commencement of the Act as the result of an accident happening on or after September 17, 1953.

For the purposes of the foregoing provisions a person over 16 years and under 18 years shall be deemed to be under 16 years of age if he is engaged full-time in a course of education or training without pay.

(b) *In cases of total incapacity* (s. 20 (4)-(7)): Where a worker's total incapacity results from the injury the following allowances (subject to the limit referred to hereunder) shall be paid while he is receiving weekly payments of compensation for total incapacity—namely,

(i) If he is a married man and his wife is ordinarily resident in New Zealand, an allowance at the rate of £1 per week.

(ii) If, not having a wife, the worker has dependants under the age of 16 years ordinarily resident in New Zealand and also a dependent woman who is in the position of parent to the infant dependants, an allowance at the rate of £1 per week.

(iii) So long as the worker has any dependants under the age of 16 years and ordinarily resident in New Zealand, an allowance at the rate of 10s. per week in respect of each of those dependants.

A person over 16 years and under 18 years shall be deemed to be under 16 years of age if he is engaged full-time in a course of education or training without pay.

The limit placed on dependants' allowances in cases of total incapacity is that the total amount of the allowances payable to any worker together with the amount of his weekly payments of compensation shall not exceed 90 per cent. of his weekly earnings.

The foregoing provisions as to dependants' allowances in cases of total incapacity came into force with the commencement of the Act and apply with respect to cases of accidents occurring before as well as after the commencement of the Act.

Personal Attendance Allowance.

Where a worker's incapacity is such that he must have the constant personal attendance of another person he is entitled to a weekly allowance of £2 a week during the period that the attendance is necessary, and so long as his weekly compensation is running, but not including any period when he is maintained free of charge in a hospital or other institution (s. 21).

Medical and Funeral Expenses.

If the death of the worker results from the injury there shall be payable a sum equal to the reasonable expenses of his medical and surgical attendance, including first aid, and on his funeral, but not exceeding a total sum of £100 (s. 22). This was formerly £50.

In any other case there shall be payable a sum equal to the reasonable expenses incurred for medical or surgical attendance on the worker, including first aid and physiotherapy, but not exceeding in all £50 and not exceeding in respect of any occasion the individual amounts prescribed by cl. 8 (2) of the Workers' Compensation Order (S.R. 1957/56) (s. 22). This provision has been extended to include physiotherapy and the maximum amount has been increased from £1 to £50.

Provision of Artificial Limbs or Aids.

Where as the result of the injury the provision of an artificial limb or aid (e.g. denture, eye, spectacles) for the worker becomes necessary or desirable for the worker, the employer shall be liable to pay the cost thereof and also the reasonable cost (not exceeding £25) of keeping it in repair for up to three years (s. 23). This provision extends the maximum amount of liability and also covers all artificial aids when previously it only covered an artificial limb, hand, foot, or eye.

Damage to Teeth, Artificial Aids, or Clothing.

Where, as the result of an accident arising out of and in the course of his employment, a worker :

(a) Suffers damage to his teeth ; or

(b) Suffers damage to any artificial limb or aid (not being spectacles) ; or

(c) Suffers an injury for which compensation is payable and damage to clothing or spectacles—

the worker is entitled (in addition to compensation, if any) to the reasonable cost of repair or replacement of the damaged teeth or other articles, not exceeding £50.

If the injury or damage is not such as to cause the worker to cease work, notice of the damage shall be given to the employer forthwith after the accident (s. 24).

The 1949 provision, which s. 24 replaced, referred only to damage to teeth and provided a maximum liability of £10.

how quite recently, in his late seventies or early eighties during the Christmas vacation, when none of the barristers in the firm was available, Mr Tripp attended at the Magistrates' Court prepared, if necessary, to appear for an old client of the firm who had got himself into serious trouble.

" To another of his partners," said Mr Cresswell, " I am indebted for the opinion that Mr Tripp's outstanding characteristic was his generosity—a generosity that was not confined merely to monetary matters, but also to a liberality of outlook. He looked for and expected the best of those with whom he came in contact, and, as so often happens, he found the best.

" On such occasions as these," Mr Cresswell continued, " we usually meet to pay tribute to one who has held high judicial office or has attained eminence as an advocate. Mr Tripp would have made no such claim to fame. Yet the memory of none of those whom we have so honoured in the past will be held in greater respect and regard by his fellow practitioners. The profession has lost one of its members who was an outstanding citizen and a great gentleman. To his relatives, and to those who had the privilege of being his partners, we extend our sympathy."

THE BENCH.

" I was very pleased to hear the observations which Mr. Cresswell has just made on the life and work of the late Mr L. O. H. Tripp," said the Chief Justice, " and I know I speak for all those who are sitting with me this morning when I say that we join with the Bar in paying tribute to one who for many years had been an ornament to his profession and a staunch upholder of its greatest traditions.

" Mr Tripp began his legal career in Wellington in 1888—that is all but seventy years ago," said His Honour. " For the greater part of the intervening years he was actively engaged in the practice of the law, and even in the closing years of his long life he never ceased to be interested in it. But, as has already been said, his interests were not confined to the law alone. As befitted a lawyer, he used his talents in other directions, and always for the benefit of the community in which he lived.

" No lawyer can be said to be truly great if his learning and experience are confined to the problems of his daily practice. However exacting his practice may be, he owes it to the community that he should take that part in community life for which he is equipped by reason of his training and his knowledge of human affairs.

" Mr Tripp recognized that obligation and throughout his life he did his utmost to discharge it. As events have shown, his utmost was very great indeed and we, as lawyers, have reason to be proud of it.

" It is proper that we should acknowledge our pride in his achievement, and that we should pay tribute to it in this Court, which is a very appropriate forum for the public expression of the views of legal practitioners in this judicial district. It is for that reason that the Bench very willingly joins with the Bar in expressing a profound regret at the passing of a very distinguished lawyer and citizen of Wellington, and in expressing also a deep sense of pride in the impeccable manner in which, throughout his long life, he upheld those high traditions which are the common heritage of us all."

GEORGE THORNGATE WESTON, 1876—1957.

A Tribute.

By W. R. L.

I knew him well and was privileged to observe the latter half of his long and good life. His early years had been conditioned by a parental background which was at once judicial and practical. He was reared in an atmosphere where discipline, though mollified by courtesy, was yet dominant.

In his boyhood days, he sang as a Cathedral chorister and loved music ever after. Exhibiting an early commercial instinct, he would rear a heifer and make a pound or two for pocket money, or embark on other minor trading ventures which laid the foundations of the business balance for which he was known. These tendencies could be said to adumbrate those wise admonitions he so frequently expressed later: " Never sign a guarantee nor back a bill: it is better simply to give."

In early manhood he would walk miles to practise or play games and would study hard. With Jeremy Taylor, he felt that idleness was the greatest prodigality in the world.

He liked work. How otherwise could he, during the same period, have practised law, lectured at the University upon all law subjects from Crimes to Honours Jurisprudence, and yet have found time to practise and play as a provincial wicket-keeper and participate, as he always did, in civic and national activities

He partook somewhat of the paternal pattern. The father, in bell-topper and frockcoat, inclining slightly forward, and walking in old-world fashion upon professional missions was a Christchurch recollection. *Autre temps, Autre moeurs!* A generation later, the son, in black bowler hat, immaculate grey suit and shining black shoes, would move with the same " pressing-forward " shoulders along the same pavements bent upon similar purposes. Both were equally well respected.

How different in appearance was he then from the " old " intelligence officer re-entering the sally-port after patrolling with a few of his loyal snipers that muddy no-man's land up Ypres way!

In the office he was virtually a model practitioner, receiving his client with unfailing courtesy and conscientiously advising him with the wisdom which came from much learning and wide experience. Highly skilled in conveyancing and draftsmanship, well versed in the principles and cases of equity and experienced in company law, he adapted a breadth of knowledge to give guidance in a special need. He respected all per-

sons. One remembers a little charwoman listening with straining mind to his painstaking explanation, in simplest terms, of the formidable mortgage document that was to secure her hard-earned savings. To the passing comment that she had been rather time-consuming, he explained that it had taken much scrubbing by those toil-worn hands to accumulate £400, and it was especially important that, in her ignorance of documents, she should have confidence of mind as well as security of asset.

He would instruct a new clerk with equal care, impressing upon him the importance of keeping legal confidences and of attending to detail. He would with emphasis illustrate his point by remarking that should the young man most unfortunately be struck by a taxi, he would be grievously sorry, but the file brought back from the scene would, he hoped, always carry a due notation such as: "Attended and settled with Mr Brown, who undertook to pay the rates!"

He would, while preserving an out-worn loyalty to an old pipe or a veteran golfing jacket, quietly bestow gifts to help a deserving friend to balance his budget or to assist some charitable or educational purpose. A few months before his death he had unobtrusively made one of his larger gifts—£2,000 to help College House—always an object of his interest and affection.

As his practice grew and the complexity of the law piled Ossa on Pelion, pressing problems and fraying moments would bring their periods of vexation. At these times, and in moments of disturbing clerical or telephonic intrusions, he would explosively resort to the soldier's vernacular, or even appeal to Highest Heaven!

Like many others, he had his little affectations—particularly that intertwining super-imposed piece of complexity from a G. nib, which was really his signature, but, failing to survive judicial challenge upon an application for Probate, was thenceforth obediently accompanied by the plain baldness of a rubber stamp.

He left us in the sixtieth year of his practice of the law. He was then still an acknowledged doyen of the profession he had served so faithfully and well. He drew a will and arranged a settlement on the morning of his death. Then he left the office saying he was not very well and was going home. He died that day—the same day as his esteemed and lifelong friend and brother-practitioner, Mr John Glasgow, of Nelson. They went on the last long journey together.

No Bossuet will sound his praise, but many a client and friend will remember him with appreciation and affection. His dedication to Justice had no overlay of personal ambition. To pay him homage is to praise Integrity. Indeed, he was one of those lawyers and citizens to whom, with aptitude and truth, could be applied the words of Horace: "*Integer vitae, scelerisque purus.*"

Our Noble Profession.—I for one, am proud of my own profession, and I am weary of having it compared—by lawyers—with the medical profession, and always invidiously. There is a great hue and cry among the legal profession to follow the lead of the physicians. The battle hymn of this group is "Let's All Do Like the Doctors Do" (to the tune of "Let's All Sing Like the Birdies Sing"). It is impossible to tell whether there is really a large number of such malcontents or whether (as is probable) they are merely more vociferous than the rest. The present furore stems from the controversy over specialization, and the main argument advanced by the proponents is that the doctors do it that way. The real question is whether they want to specialize as lawyers or, as they appear to indicate, merely want to do anything the medical profession does. I venture to guess that if all the doctors in the nation were to start standing on their heads while treating patients, a certain percentage of lawyers would begin interviewing clients in this undignified position. It must indeed gratify the ego of the doctors to be pointed out as the paragons of professional practice. Mr Justice Holmes once said that "a page of history is worth a volume of logic." Blackstone, Coke, Littleton and More were formulating great principles of law while surgeons and physicians were still barbers and bloodletters. Medicine as a science is in its infancy and may try to repudiate many methods before settling down. This is no reflection on the men who practice medicine today. The blame cannot be laid at their doorsteps for the stagnation of the sciences in a long void from Hippocrates to Pasteur, and the failure of medicine to advance apace with the humanities and the law. However, it cannot be gainsaid that medicine has a history of fitful starts and dead ends, of advances and retreats, and the practice of medicine today is not the medical practice of even one hundred years ago. The profession lacks the exactitude and certainty which the community is entitled to expect from the precise sciences which form its background and furnish the authority which it is so anxious to emphasize. The law on the other hand, has a history of an unbroken line of growth and development back into the dawn of British culture, and to the extent that the Norman Conquest engrafted on to it the civil law, back to Justinian and Solon. Orderly development, unmarked by radical revolution, is the heritage of the legal profession. Doctors are now trying to find their way out of the confused labyrinth of new discoveries, novel methods and untried theories coming at them in bewildering array. Most lawyers know where we came from and, in general, where we are going. The machinery is available to do all that we need to do within our own profession. It is an ancient, honourable, and respected profession; perhaps not perfect, but what human endeavour is? But let us iron out our imperfections in our own way, rather than bemoaning the low estate to which lawyers have fallen . . . and pointing the finger of scorn at our brethren because they don't imitate some alien group. And let's stop comparing the legal profession with the medical profession. It sounds like a story attributed to Sir Norman Birkett, when a Judge of England's Court of Appeal: "I well remember a young legal friend of mine who went to a great gathering of the medical profession trying to curry favour with them, which is a fault of some members of the legal profession, and said: 'I know not why I was invited here unless it be there is some affinity between your great profession and mine, because I know that whenever I finish a case I say to myself, "Now, have I left anything out?" whereas the medical profession at the end of a case says, "Have I left anything in?"'" I submit that this pretty well sums up the "affinity."—J. Reese Daniel, *American Bar Association Journal*, February, 1957.

DIFFICULTIES AND COMPLEXITIES AS TO TITLE TO LAND IN NEW ZEALAND.

I. The Operation of the Statutes of Limitation with regard to Maori Land.

By E. C. ADAMS, I.S.O., LL.M.

It has often been said that the Land Transfer Act has made title to land in New Zealand very simple indeed. It is true that a major purpose of the Land Transfer Act is to lessen the cost of, and to make more certain, dealings with the legal title to land in New Zealand. As the late Professor Garrow said in his *Real Property in New Zealand* :

> It probably never occurs to a New Zealander to have any doubts about his title to the land he holds under a Land Transfer certificate of title. He knows no reason why any one should oust him, nor can he conceive the possibility of anyone coming along and saying that he has no title to his land.

Several cases which have been decided in New Zealand in recent years, however, show that, in practice, difficulties and complexities may often arise with regard to title to land in New Zealand—difficulties and complexities with respect to which it is often rash for counsel to give any confident opinion, until the Supreme Court has decided the question of title. Perhaps this is chiefly due to the fact that there are many parcels of land in New Zealand for which no certificate of title has been issued, although owing to the operation of the various Maori Land Acts since the Native Land Court Act 1894, and owing also to the Land Transfer Act itself, many of these parcels are, in fact, subject to the Land Transfer Act. The legal concept that a parcel of land may be subject to the Land Transfer Act, although no certificate of title, under the Land Transfer Act, has ever been issued therefor, or no title thereto has ever been placed on the Land Transfer Provisional Register, certainly offends one's sense of logic ; but the Legislature is not bound by the dictates of logic.

The recent case, *Hira Tamati* v. *District Land Registrar* [1957] N.Z.L.R. 231, deals with the acquisition of title to Maori land by adverse possession against the legal owner. The particular parcel concerned was a Maori burial ground, or urupa; and had been Crown granted after the Land Transfer Act 1885 ; but the Crown grant purported to be ante-vested to a date before the constitution of the Land Registration District. The case fairly bristled with technicalities, and involved a consideration of the various Native and Maori Land Acts and the Torrens Statutes which have from time to time been in force in New Zealand. North J. at p. 233 said :

> Owing to circumstances to which it is unnecessary to refer, it was arranged that the submissions of all counsel should be put in writing. After these were received, I called counsel together and invited them to submit further argument on the questions which appeared to me to be relevant.

This case must have involved a considerable amount of research by the Court as well as by counsel. It will be extremely interesting to the student of real property in New Zealand, as showing the development of title to Maori land in New Zealand, and, in particular, the meaning of certain terms and phrases used by the Legislature in the relevant statutes. The definitions have been by no means uniform ; on the contrary there have been considerable and often misleading fluctuations in terminology. Fortunately, since 1910, there has been no substantial departure from the lucid and apt definitions in the Native Land Act 1909, which was drafted by the late Sir John Salmond.

The case will also be useful in emphasizing again that, once land has become subject to the Land Transfer Act, title cannot as a general rule be acquired by operation of statutes of limitation as against the registered proprietor of any estate or interest therein : Land Transfer Act 1952, s. 64.

His Honour carefully examined the nature and history of the Native title to land in New Zealand. The Privy Council has also from time to time been obliged to pronounce on the nature of the Maori title to land not only in New Zealand, but also with respect to other parts of the British Commonwealth : (e.g., the recent case, *Oyekan* v. *Adele* [1957] 2 All E.R. 785, title to the Royal Palace at Lagos). The late Lord Haldane's pronouncements on this topic will, for example, prove of great interest to the student, and of much use to counsel who have to advise on these matters.

In New Zealand, the Maoris, by the Treaty of Waitangi, were promised retention of their lands and rights thereto : this solemn obligation has in due course been substantially, though not completely, performed by the various Native and Maori Land Acts which have from time to time been enacted. The Treaty itself, of course, did not confer on the Maoris any title to land in New Zealand : it had to be implemented by the necessary legislation : *Te Heu Heu Tukino* v. *Aotea District Maori Land Board*, [1941] N.Z.L.R. 590 ; [1941] G.L.R. 254 ; *Oyskan* v. *Adele*, [1957] 2 All E.R. 785.

In *The Queen* v. *Symonds* (1847) N.Z.P.C.C. 387*n*, H. S. Chapman J. at p. 388, said :

> It is a fundamental principle of our laws, springing no doubt from the feudal origin abd nature of our tenures, that the King was the original proprietor of all the lands in the Kingdom, and consequently the only legal source of private title : *2 Bl. Comm.* 51 ; *Co. Litt.* 604 . . . This principle has been imported, with the mass of the common law, into all the colonies [including New Zealand] settled by Great Britain.

Even before the native customary title has been investigated by the Maori Land Court it is protected by the Courts.

The natives, by virtue of the Treaty of Waitangi were assured of certain rights in respect of their lands and this obligation was in due course recognized by the early Native Land Acts. It seems reasonably clear that the natives at least had rights of occupancy, and that these rights could not be extinguished otherwise than " by the free consent of the natives or by the provisions of some statute " : see *Nireaha Yamaki* v. *Baker* (1901 N.Z.P.C.C. 371, 384.

Even when the Native title had been investigated by the Maori Land Court, the Native title did not ipso facto become extinguished. The theory of the whole matter was that until the Sovereign had granted an estate in fee simple to the Maori owners in some way, either by Crown grant, Governor's Warrant in lieu of grant,

or by some statutory vesting, the Native title was not extinguished.

The issue of a Crown grant, therefore, was no empty ceremony. Thus, the issue by the Maori Land Court of a " certificate of title " (which must not be confused with a certificate of title under the Land Transfer Act) under s. 17 of the Native Land Act 1867, or a memorial of ownership under the Native Land Act 1873, or " a certificate of title " (also not to be confused with a certificate of title under the Land Transfer Act) under the Native Land Act 1880 was not equivalent to a grant of the legal estate in fee simple : the Native title still remained.

Eventually, North J., at p. 240, formulated the question to be decided thus :

> The question is whether the issue of a Crown Grant in favour of Natives on the commutation of their ownership—if such it can be called—of land under Native custom for an English title in fee simple can be regarded as an alienation from the Crown in fee.

The dispute in *Tamati* v. *District Land Registrar*, concerned Pukekura A, an area of 5 acres, which lies within the boundaries of a farm owned and occupied by the second defendant, Suckling, situated near Cambridge. The land in question originally formed part of a block of Native land known as " Pukekura " containing 8,395 acres, in respect of which, on November 9, 1868, a " certificate of title " in favour of or for the benefit of certain named Maoris was issued by the Native Land Court pursuant to the provisions of s. 17 of the Native Lands Act 1867. Pukekura A was severed from the main block by partition order made by the Native Land Court on December 13, 1887. On May 20, 1892, a Crown Grant for Pukekura A was made and issued in favour of the Maoris named in the said partition order. This Crown Grant *was antevested to November 9, 1868*, which it is to be noted, was the date of the issue of the " certificate of title " for the main or parent block, by the Native Land Court. The Crown Grant was registered under the Deeds Registration Act 1868 in the Deeds Registry Office at Auckland on November 16, 1892. On August 23, 1923, a succession order was made in favour of T. and others, as successors of the original owners, in which it was declared that their interests should vest as from November 14, 1912. There was no evidence that the Maori owners had ever exercised any rights of ownership until June, 1954.

For more than fifty years, Pukekura A was farmed as part of the same property which had been owned and occupied by a European, from whom Suckling and another European, Gear, purchased the farm in 1931 ; later, Suckling acquired Gear's interest.

In November, 1954, Suckling applied to the District Land Registrar at Auckland for a Land Transfer title for Pukekura A, " by virtue of long occupation." Hira Tamati, one of the documentary owners of the land, brought an action to restrain the District Land Registrar from issuing a certificate of title under the Land Transfer Act in favour of Suckling. The Court granted the injunction, holding that the land was subject to the Land Transfer Act, because it came within the words of s. 10 of the Land Transfer Act 1885 as being " all land hereafter alienated . . . from the Crown in fee ".

It will be observed that the ante-vesting date in the Crown Grant was before the coming into operation of the first Land Transfer Act. His Honour, at p. 243, l. 34, dealt with this difficult point as follows :

> Apart from the point I earlier mentioned—namely, that proof that the land had been alienated from the Crown in fee was the condition sine qua non of an application to bring land under the Act, it is to be noted that there is in this section [s. 17 of the Land Transfer Act 1885] a clear recognition that an alienation might occur without a Crown grant having issued. Section 22 [of the Land Transfer Act 1885] also makes special provision for the case of an applicant who is " the original grantee " under a Crown grant. I conclude then that the change in language was not intended to exclude, and did not exclude, from the benefits of the Act land which was the subject of a Crown grant consequent upon the commutation of the Native title. If I am right then it follows that, once the Crown grant was issued for Pukekura A, the land became subject to the provisions of the Land Transfer Act, 1885. I do not think that it makes any difference that the Crown grant contained an " ante-vesting " clause. Section 35 of the Native Land Court Act 1886 made provision for the ante-vesting of Crown grants " for the purposes of completing the title " of persons who had acquired rights under Deeds earlier executed by Natives. It may be doubtful, indeed, whether in this case the insertion of an ante-vesting clause was lawful, for the Maori owners had not parted with the land, but whether this is so or not I do not pause to consider, for I am satisfied that for the present purposes the date the grant was issued determines the matter.

It is obvious that the plaintiff, one of the documentary owners, got his injunction, because of s. 64 of the Land Transfer Act 1952, which reads as follows :

> After land has become subject to this Act, no title thereto, or to any right, privilege, or easement in, upon, or over the same, shall be acquired by possession or user adversely to or in derogation of the title of the registered proprietor.

" Registered proprietor " is not defined in the Land Transfer Act, but " proprietor " is, the definition being as follows :

> " Proprietor " means any person seised or possessed of any estate or interest in land, at law or in equity, in possession or expectancy.

Part III of the Land Transfer Act 1952 is under the heading, " Registration." Section 33 provides that each Registrar shall keep a book to be called the " register ", and shall bind up therein a duplicate of every grant of land and of every certificate of title to land within the district. Section 34 provides that every grant and certificate of title shall be deemed and taken to be registered under the provisions and for the purposes of the Land Transfer Act as soon as the same have been marked by the Registrar with the folium and volume number as embodied in the register. Section 35 provides that the person named in *any grant*, certificate of title, or other instrument *so registered* as seised of or taking any estate or interest shall be deemed to be the *registered proprietor* thereof.

Now this vital section (s. 64) is nowhere mentioned in the judgment. Therefore, we can only conclude that counsel were all in agreement that, if the land were subject to the Land Transfer Act, the Maori documentary owner (who was the plaintiff) was entitled to his injunction ; and that the District Land Registrar had no right to issue a certificate of title to the applicant whose claim was adverse to the title of the documentary owners. As the judgment does not specifically deal with this point, its value, in my opinion, as an authority for future guidance is very much weakened. In fact, this point may be taken as still res integra. For it may be (and it has been strongly argued) that s. 64 of the Land Transfer Act 1952 has no operation where there is no actual *registered* proprietor i.e. where there has been no Crown Grant registered under the Land Transfer Act, or no certificate of title under that Act has issued, during the relevant period of adverse possession.

In the instant case, the Crown grant was registered not under the Land Transfer Act, but under the Deeds Registration Act, without doubt because it was ante-vested to a date before the constitution of the Auckland Land Registration District on January 31, 1871. The Limitation Act 1950 is subject to the Land Transfer Act, etc., *so far as it is inconsistent with anything* in those Acts: Limitation Act 1950, s. 6. That is not the same as saying that the Limitation Act 1950 shall have no application to land subject to the Land Transfer Act.

Apparently, during the relevant period of alleged adverse possession against the documentary owners, no certificate of title under the Land Transfer Act was in existence. In the course of his judgment, North J. refers to s. 73 of the Native Land Court Act 1894, which provided that land owned by Natives, the owners whereof had already been ascertained by the Native (now the Maori) Land Court, should thenceforth be and become subject to the provisions of the Land Transfer Act. (This section (s. 73) has been kept alive by the Native Land Act 1909, the Maori Land Act 1931 and the Maori Affairs Act 1953). Had the title been affected by s. 73, this difficulty in construing s. 64 of the Land Transfer Act 1952 would not have arisen in the instant case; for that section provides that every Native owner of such land shall, subject to all equities affecting the estate or interest therein, and to all existing restrictions on alienation thereof, *be deemed to be the proprietor thereof* under the Act for an estate of inheritance in fee simple in possession. But, as His Honour pointed out in the course of his judgment, s. 73 did not apply, because Pukekura A was freehold land held under Crown Grant as from 1892.

Whatever may be the true construction of s. 64 of the Land Transfer Act 1952 in this connection, I am of opinion that, if in fact it does not apply where there is no registered proprietor or no person deemed by statute to be the registered proprietor, then the relevant period of adverse possession, where the land has not been alienated by the Crown for an estate in fee simple, is sixty years under the Nullum Tempus Act or s. 7 of the Limitation Act 1950, and not twenty years under the Real Property Limitation Act 1833 or twelve years under the Limitation Act 1950.

This view appears to be consistent with the reasoning in this case by which it is established that the native title to Pukekura A was not extinguished until the issue of the Crown Grant in 1892, and it appears to be consistent also with the ratio decidendi in *Riddiford* v. *The King* (1905) N.Z.P.C.C. 109: see also *Johns* v. *Rivers* (1873) 2 N.Z.C.A. 344.

It may be well to point out here that the Limitation Act 1950 has no application to Maori *customary* land, i.e., Maori land, the title whereof has not been investigated by the Maori Land Court: Limitation Act 1950, s. 6 (1).

So far as the writer is aware, *Hira Tamati* v. *District Land Registrar* is the first example of a grant of land ante-vested to a date before the date of the constitution of the Land Registration District, being held to be subject to the Land Transfer Act because the date of the grant is subsequent to the date of the constitution of the Land Registration District. Apparently it always has been the practice of the Department to regard such land as not being subject to the Land Transfer Act, because of the ante-vesting date. Where questions of title to land are in dispute, the Courts will take cognizance of long-established custom: *In re Goldstone's Mortgage, Registrar-General of Land* v. *Dixon Investment Co. Ltd.* [1916] N.Z.L.R. 489, 494. On the other hand, of course, bad practice does not make good law: *In re Robb's Contract* [1941] Ch. 463, [1941] 3 All E.R. 186.

Section 21 (c) of the Crown Grants Act 1908 (a consolidation of the Crown Grants Act 1883) provides that dates whereon grantees shall be deemed respectively to have become entitled to receive Crown grants of their lands shall be in the case of grantees of lands the title to which has been determined by the Native Land Court, or other authority lawfully empowered to direct the issue of a Crown grant of Native land, then the date of the certificate or order issued by that Court or authority in respect of that land. The effect of the ante-vesting of a Crown grant is stated in s. 20 of the Crown Grants Act 1908:

> All deeds executed by grantees of lands comprised in grants from the Crown their heirs executors administrators and assigns after the date at which they became entitled respectively to Crown grants of the said lands, but before the dates of the Crown grants by which the same were granted, *shall for the purpose of completing the titles of parties to such deeds but for no other purpose*, be deemed to have the same force and effect as though the said grants had been respectively executed immediately upon the grantees named therein becoming entitled to receive the same respectively.

It is probable, in the writer's opinion, that the grant for Pukekura A should not have been ante-vested to a date anterior to the date of the partition order, which was made on December 13, 1887. Had that been the ante-vesting date, then title would have been conferred by the issue of a Governor's Warrant, on the authority of which the District Land Registrar would have issued a certificate of title in lieu of Crown grant. There would then have been no doubt but that the block was under the Land Transfer Act, and that s. 64 of the Land Transfer Act 1952 prevented the acquisition of title by possession adverse to that of the registered proprietors.

It will be necessary to distinguish this case from the decision of the Court of Appeal in *In re Bradley Brothers' Application* [1920] N.Z.L.R. 339. By virtue of the New Zealand Settlements and Continuance Act 1865, three Crown grants were issued in 1881 and 1882 in favour of certain Maoris; all grants were ante-vested to a date before the constitution of the Land Registration District. Eminent counsel appeared: Skerrett K.C. (as he then was) for the applicants; Sir John Salmond K.C. (as Solicitor-General) for the Registrar-General of Land. The main question argued was whether restrictions against alienation by the Maori owners prevented a trespasser from obtaining a Parliamentary title by operation of the Real Property Limitation Act 1833; it was held that they did not and the decision of the Court was unanimous, although Sir Robert Stout C.J. reluctantly came to that conclusion, because, as he said, at p. 351:

> I recognize that this is a question of public policy, and that it would be in the interests of the Natives and of the Dominions to hold that adverse possession should not apply to Maori lands of this class.

The difference between the two cases is this: in Pukekura A the grant was under the Native Land Acts and there had been no sale from the grantees: in *Bradleys'* case the grants were under the New Zealand Settlements and Continuance Act 1865, and probably the lands had been contracted to be alienated by the Crown before the date of the constitution of the Land Registration District.

IN YOUR ARMCHAIR—AND MINE.

By Scriblex.

Chicks and Fogs.—Two recent applications in England for patent rights contain some unusual features. In the first a patent was sought for a method of treating an egg to affect the sex of a chick. The applicant relied on *Szuec's Application* (1956) 73 R.P.C. 25, which concerned the growing of mushrooms and where the process required the mixing of a culture mushroom tissue with nutrient material plus much agitation and aeration. This case was distinguished by the Patent Office Examiner, who considered that just as fruit and other growing crops do not result from a process which is a manner of new manufacture so the fertilisation of the ovum, the production of the egg, its incubation and the hatching of the chick are steps in a process of nature. The applicant's invention claimed to control the sex of the chick to be hatched, but the chick would hatch whether controlled by the applicant's process or not; hence, such a process was not a manner of new manufacture as required by the Act. In the second application, the patent sought was for a method of dispersing of fog by means of smoke or spray of such a nature as to cause coalescence of the droplets resulting in rain. This application was also rejected; but an appeal was allowed by Lloyd-Jacob J., who held that the test whether a vendible product resulted from the method was one to be applied with some latitude, and, upon the basis that fog-free land would enter into the estimation of commercial value of the land, he should permit the patent to be granted.

Authors and Taxation.—No one has ever seen a litigant agog with excitement when he listens to his counsel arguing a point of law, but it is not irrelevant to wonder at times how it all sounds to the cost-paying client An answer, or at least a partial answer, is provided by Sir Compton Mackenzie, who, in September, cast aside temporarily his role as a humorist to write in *Time and Tide* upon the "Philistine and the Tax Gatherer." It seems that just before the Finance Act 1943, he sold twenty copyrights of books published between 1911 and 1926 for £10,000 and was advised by his accountant that this was a capital transaction. The Inland Revenue Department took a different view. "In the event," he says, "after a long struggle winding up in the Court of Appeal, it was declared income in the current year, which, when added to what I had made in the ordinary way that year, meant a formidable sum for taxation. The precedents produced by the Solicitor-General to dispose of my contention were a Malay rubber-grove in 1910, two public-houses in Camberwell during the 1870's, and a coal-mine; finally, in a rhetorical outburst, he asked their Lordships what there was to prevent my selling another twenty copyrights next year and every year (!) and claiming exemption as a capital transaction." A partial answer, indeed: but who would not be partial under such trying circumstances

Adoption Note.—Scriblex notices in the May number of the *Canadian Bar Review* an article on adoption written by B. D. Inglis, appointed Senior Lecturer in English and New Zealand Law at Victoria University College and at present British Commonwealth Fellow and Bigelow Teaching Fellow at the University of Chicago Law School. The article deals with the right of a child adopted abroad to succeed under an English will. In the course of it he refers to s. 17 of our Adoption Act 1955, as pioneering legislation in its assimilation of the position of a child adopted overseas with that of a child adopted in New Zealand. In quoting the opinion of the Judicial Committee of the Privy Council in *C. S. Nataraja Pillai* v. *C. S. Subbaraya Chettiar* (1949) L.R. 77 I.A. 33 (a case that deals with the validity of an adoption in French India and the right of the adopted child to succeed to immoveable property in British India as his adoptive mother's heir), Mr Inglis makes an interesting claim to be the first person (according to the Law School Library recording system) to consult this particular volume of the reports since it became available seven years ago, and the first person to consult the volume containing the report of the case in the Civil Appellate Division of the High Court at Madras (I.L.R. (1939) Madras 507) since it became available seventeen years ago. The New Zealand lawyer abroad may be inquisitive, but at least he never ceases to be energetic.

At the L.T.O.—The influence of fashion manifested itself recently at the Land Transfer Office, Wellington, when a female law-clerk of pleasant mien arrived there carrying her bundle of documents and arrayed in sack dress. The comment of one of the registration officials was approved by the male section of the waiting queue. "It will have to be limited as to parcels," he said. "The boundaries are not clearly defined."

Professor J. L. Haggen.—The death of a distinguished New Zealander took place a few months ago in the person of Professor Geoffrey Loosemore Haggen who was for thirty-one years successively lecturer, reader, and finally Dean of the Faculty of Law at the University of Leeds. As a young man, he studied at Toronto University in Canada where he gained a Rhodes Scholarship that took him to Oxford. While studying law at the Inner Temple, he received the coveted Cobden Prize, and he was called to the Bar in 1923. During his career as a University lecturer, he enjoyed the right of private practice. He was chairman for many years of the National Insurance Local Appeal Tribunal and the Court of Referees at Leeds. His grandfather, James Haggen, was one of Otago's early settlers.

The Mysteries of Contract.—From a contributor who makes a weekly effort to indoctrinate students at a night class held at the local Technical College into the mysteries of the law of contract for the purposes of accountancy examinations comes this written answer of one student asked to discuss the statement that, in order that a valid contract should ensue, the intention to create legal relationships must be a prime object of the parties.

> "Intention to create legal relationships is one of the prime objects of a contract. A contract is a legal document binding two or more parties to some agreement. Thus, to be of any use at all, a contract must be able to be brought into a Law Court and thoroughly discussed, pulled to pieces, twisted, and finally upheld to be true. In writing out a contract we have to consider what will happen if some matter is omitted, therefore having effect on us and may be to our suffering. One is placed under legal obligations in writing a contract."

The suffering here appears to have been rather that of the examiner than of any of the parties to the contract.

NEW ZEALAND LAW SOCIETY.

Meeting of Council.

A meeting of the Council of the New Zealand Law Society was held at the Supreme Court Library, Wellington, on August 13, 1957.

The following Societies were represented: Auckland, Messrs D. L. Bone, B. C. Haggitt, A. A. Coates, S. W. W. Tong; Canterbury, Messrs E. B. E. Taylor (proxy) and G. C. Weston; Gisborne, Mr J. D. Kinder (proxy); Hamilton, Mr G. J. A. Foy; Hawkes Bay, Mr J. Tattersall; Nelson, Mr H. G. Brodie; Otago, Mr J. E. K. Mirams; Southland, Mr R. P. H. Hewat; Taranaki, Mr J. H. Sheat; Wanganui, Mr C. N. Armstrong; Westland, Mr A. M. Jamieson; and Wellington, Messrs A. B. Buxton, W. R. Birks, R. L. A. Cresswell and I. H. Macarthur.

The president (Mr T. P. Cleary) occupied the chair, and the treasurer (Mr D. Perry) was also present.

Apologies for absence were received from Messrs R. A. Young, K. A. Woodward, F. Noble-Adams and W. G. Aitken.

The Hon. Mr Justice Haslam: The following resolution was recorded:

"The Council of the New Zealand Law Society desires to record its congratulations to Mr Justice Haslam on his appointment to the Supreme Court Bench and wishes him success and happiness in his high sphere of office."

The late Mr H. R. Biss: The following resolution was recorded:

"The Council of the New Zealand Law Society desires to record its deep regret at the death of the late Mr H. R. Biss. Mr Biss, during his nine years of service on the Disciplinary Committee proved himself a most conscientious and valuable member and will be sadly missed by his colleagues. He also served as a member of the council of the New Zealand Law Society and of its standing committee and as such gave valued service to the society. The council extends its deepest sympathy to the widow and son."

Disciplinary Committee: The Council appointed Mr A. B. Buxton a member of the Committee in lieu of Mr H. R. Biss.

International Bar Association: A letter was received from the International Bar Association dated May 15, stating inter alia,, that an advisory committee on professional ethics had been appointed and member associations were invited to submit questions or comments as to the code adopted at the Oslo Conference in 1956.

Member organisations making additional appointments to the above committee were asked to advise the Secretary-General in New York.

The International Bar Association suggested that, if desired, information could be given to members of the profession, for example, upon—

(a) the lawyers in any country who specialize in particular branches of the law to be employed as agents;
(b) legal aid, professional conduct; continuing or post-admission legal education, etc.;
(c) the law or legal procedure;
(d) the certification of documents;
(e) evidence;
(f) procedure for the enforcement of judgments;

and to circulate legal information of interest to practitioners, e.g., the titles of standard text books on particular legal subjects, and short references to judgments involving matters of principle.

The attention of member organizations was called to the fact that the next Conference was to be held in 1958 (July 21-26) at Cologne, Germany.

The subjects selected for discussion were set out in detail with an invitation to organisations to appoint an author or authors to write papers on one or more of the topics selected.

The correspondence was received.

Council of Legal Education: It was resolved that Mr Nigel Wilson be nominated as a member of the Council of Legal Education in lieu of Mr Justice Haslam who had resigned.

Memorandum of Priority: The following report submitted by the Conveyancing Committee was adopted and it was resolved that it should be included in the Decisions, Rulings, and Interpretations of the Society.

"The Conveyancing Committee has considered the matters referred to in your letter—namely, whether the solicitor holding the Mortgage over which priority is granted by a Memorandum of Priority is entitled to a production fee and, if so, which party should pay such a fee. The Committee is of the opinion that:

(a) The solicitor holding the mortgage over which priority is granted is entitled to a production fee.
(b) The production fee is payable by the mortgagor."

Agency Charges on Settlements of Conveyancing Transactions: The following report by the Conveyancing Committee was adopted and it was resolved to refer the matter to the Costs Committee asking that it bear in mind the existing Rulings Numbers 180 and 181 in the consolidated Conveyancing Decisions and Rulings of the Society.

"We have carefully considered the questions raised in the Hawkes Bay Society's letter of the 1st March, 1957.

Despite the fact that 'Scale charges under Sections A and C are both minimum and maximum' it is submitted that it is common practice to make an extra charge (over and above the Scale) to cover the actual settlement in respect of transactions settled at a distance—this is a practice generally recognized.

Enquiries have shown in some cases, where the amounts involved are substantial and the costs are consequentially higher than the average transaction, no extra fee for "settling" has been charged (costs as per Scale being regarded as adequate to cover the whole transaction), and we consider that, in the special circumstances, this action is a proper one. Nevertheless, in relation to the normal average transaction which is settled at a distance, a fee for the work involved should, in our opinion, be provided for—payable, of course, by the purchaser or mortgagor—thereby clarifying the position and removing the uncertainty which undoubtedly exists at the present time as to the propriety of such charges.

We suggest that an appropriate reference in the General Rules under Section A of the Scale in order to cover *all* such transactions (regardless of the amount involved), and we recommend that the matter be referred to the Costs Committee for consideration accordingly."

LEGAL LITERATURE.

Road Traffic Laws of New Zealand. Third edition. By R. T. Dixon, Solicitor to the Transport Department. Pp. xxix + 586. Wellington: Butterworth & Co. (Australia) Ltd. Price: 105s., post free.

In the new edition of this useful publication, the author has brought the law up to July 1 of this year, and has accordingly provided his readers with a full annotation of the Traffic Regulations 1956. Here, each regulation is succeeded by a footnote showing whether it is new law or giving the reference to the regulation which it replaces; and, further, there is a useful summary of the principal changes effected. In addition, a considerable amount of case law has been added to the comprehensive annotation of the Transport Act 1949, which has all amendments incorporated in the text of the statute. All the other relevant statutory provisions relating to transport and to claims for damages are to be found with appropriate explanation and cross-reference. Among these are ss. 63 and 69 of the Government Railways Act 1949 (railway crossings); s. 9 of the Law Reform Act 1936 (charges on insurance moneys); as well as the Third-party Insurance Agreement ("hit-and-run" claims). There is also a review of the law of negligence as applied to negligent driving, and a speed table. A well compiled index rounds off a valuable and easily assimilated work of reference on all matters affecting transport law.