New Zealand
Law Journal
Incorporating "Butterworth's Fortnightly Notes"

VOL. XXXV TUESDAY, JUNE 2, 1959 No. 10

EMPLOYERS' LIABILITY: THE LISTER CASE CONSIDERED AS TO APPROPRIATE LEGISLATION.

IN our last issue we summarized the Report of an Inter-Departmental Committee appointed by the Minister of Labour and National Service in the United Kingdom to study the implications of the judgments in *Lister* v. *Romford Ice and Cold Storage Co. Ltd.* [1953] A.C. 555; [1951] 1 All E.R. 125, as they might affect relations between employers and workers.

We now continue that summary in relation to the Committee's findings on suggested legislative means to protect employees from the effects of the majority judgments in the House of Lords in *Lister's* case.

PROPOSED LEGISLATION.

It was suggested that:

> Legislation could be passed which would relieve an employee of any liability for his negligence in the course of his employment, including both liability to third persons and to his employer. Such legislation could cover either all or only specific forms of employment, and provision could be made to exclude all cases in which there was evidence of criminal wrongdoing.

The Committee said that, although such legislation would certainly remove the liability of the employee, there were serious objections to it. First, it seemed plainly wrong that in order to protect an employee from having to make good to his employer (or to his employer's insurers) the damages which his employer had had to pay because of the employee's negligence, the person injured by that negligence should be deprived of his right to sue the employee if he wished to do so (e.g., if the employer were insolvent). If it were thought desirable to protect the employee from the employer (and the employer's insurers) it would not seem right to do so in a manner which would deprive the injured person of any of his existing remedies. Secondly, it seemed important in the public interest and the maintenance of industrial safety that employees should not be relieved from the consequences of failure to exercise that duty to take care in relation to third parties which rests upon all members of the community.

The next proposal considered was this:

> Legislation could be passed which would compel the employer to take out insurance, or provide some similar guarantee, to protect the employee from the consequences of his negligence in the course of his employment.

The Committee's comments were:

> Again there are serious practical difficulties in the way of such a proposal. First, it would be impossible to enforce. Secondly, it would create difficulties for insurers, the most obvious being that some form of cover would have to be provided for employees who were considered to be "bad risks" and for employers who were not acceptable to insurers and who would thus stand to be put out of business. It is of interest to note that the possibility of compulsory insurance in a narrower field was examined in connection with the Mines and Quarries Act 1954, and the Agriculture (Safety, Health and Welfare Provisions) Act 1956, and in both cases was rejected as impracticable.

Then the following proposal was considered:

> Legislation could be passed to provide that where the employer had in fact insured himself against a third-party risk the policy should inure for the benefit of the employee to the extent to which the employee was, under the law as it stood, under any liability in respect of any act or omission which might make his employer liable to a claim covered by the policy.

The Committee considered that this solution would have the merit of not only protecting the employer from a claim being made against him at the instance of the insurer, but also of providing him with cover in the event of the third party claiming directly against him. The principal objection to this proposal was that it would not protect the employee of the uninsured employer. The proposal might also give rise to practical difficulties if the injured third party were to make his claim directly against the employee. The insurer would in such a case be obliged to consider whether the claim was one for which the employer would be liable before he, the insurer, could decide whether he should deal with the claim on behalf of the employee and this might involve the determination of a preliminary issue between the insurer and the employee.

Finally, it was the Committee's task to consider the following proposals:

> Legislation could be passed to vary, to such extent as might be thought suitable, the legal relationship between an employer and employee so as (i) to prevent the employer from claiming an indemnity from the employee for the consequences of negligence by the latter in the course of his employment and possibly also (ii) to require the employer to indemnify the employee against any liability the latter might incur to third parties for such negligence.

Of the possible remedies which involve legislation this was the one which, in the Committee's view, was open to the least objection. Legislation on these lines was suggested by the Trades Union Congress. How far such legislation would have to go in varying the legal relationship between employer and employee would depend upon the extent to which it was thought desirable to protect the employee from the possibility of having to meet claims by his employer or, in his name, by the employer's insurer arising out of the negligence of the employee in the course of his employment.

The Report continued :

It might appear at first sight that such legislation should be confined to precluding the employer from bringing a claim against the employee where he, the employer, had become liable to a third party as a result of the employee's negligence, because this would not only protect the employee from a claim by the employer but also, of course, from a claim made in his employer's name by his employer's insurers. On the other hand, an employee is not likely to see much difference between having to pay his employer in a case where the injured third party has claimed against the employer, and having to pay (without any right of recovery from his employer) the injured third party in a case where the latter has made his claim directly against the employee. (For an example of such a claim see *Adler* v. *Dickson* [1955] 1 Q.B. 158.) It would seem, therefore, probable that the legislation would have to extend to requiring the employer to indemnify the employee against liability for the latter's negligence in the course of his employment so as to cover the possibility of a third party making his claim directly against the employee. The legislation might even have to be extended to protect the employee from claims by the employer for damages for negligence which had resulted in injury to the employer or damage to the employer's property, on the view that if an employee requires to be protected from the consequences of his negligence in the course of his employment, where this has resulted in a third-party claim, he ought to be similarly protected if his negligence has exposed him to a substantial claim by his employer for damage he has caused to his employer's property. The recommendation by the Trades Union Congress for legislation on these lines appeared to us to be directed to covering all the possibilities referred to above.

The Committee considered, however that there were a number of objections to legislation on these lines :

First, to the extent to which the employee would be relieved from having to pay for harm caused by his negligence, the legislation could be regarded as a form of statutory exemption from liability and, therefore, open to some of the objections mentioned above. It is clear that many people would consider it objectionable that an employer should be expected positively to indemnify his servant against the consequences of a breach by the latter of his contractual duty to exercise care in performing his duties.

Secondly, the framing of such legislation would give rise to a number of problems. Should it apply to all employments or only to specified classes of employment, and, in the latter case, to what classes of employment ? Would it be right to protect an employee from claims by his employer in cases where the employee is a person employed in a professional or executive capacity who is well able to afford the premiums necessary to take out a policy to cover him against liability for his negligence ? It would also be necessary to decide whether the protection to be afforded should be subject to any exception covering cases where the employee had been guilty of gross negligence or wilful or criminal misconduct and how such an exception should be defined. Consequential problems would arise from cases where a servant is lent by one person to another, cases where a servant is liable but his employer is not because the employer has contracted out of liability (as in *Adler* v. *Dickson* (*supra*)), and cases where a servant is already entitled to indemnity under a policy covering him. Finally, there would be the question whether the protection should be absolute or subject to any agreement to the contrary which might be entered into between the employer and the employee. No doubt provision could be made to meet these difficulties but the result might well be to create new problems of interpretation and new fields of litigation.

Action Not Requiring Legislation.

The Committee favoured an extension of the British Insurance Association's "gentleman's agreement". It said :

Mention has already been made of the British Insurance Association's "gentleman's agreement". An agreement such as this is no doubt likely to limit the cases in which, as a result of action taken by insurers, employees have to pay or contribute towards the damages which their employers have had to pay because of the employee's negligence. Considered from this point of view, however, the value of the existing agreement is reduced by the fact that it applies to employers' liability policies only and that even in this field it is not subscribed to by the whole of the mardet. Clearly, the effectiveness of an agreement of this kind would be increased if it were accepted by all insurers, and extended to cover all cases in which there was an insurance covering a third-party claim against the employer. Its effectiveness would be even greater if the undertaking by insurers were made independent of the employer refusing his consent, and if it were written into the policies issued to employers. How far it would be possible to extend the agreement in this way is a matter which could be considered with insurers if this were thought desirable. The discussions between the Committee and representatives of the British Insurance Association and of Lloyds have suggested that, while it might well be possible to secure a virtually universal acceptance of the existing agreement in the employers' liability field, its extension so as to apply to all insurances in so far as they cover third-party claims might present difficulties. Presumably any proposal to dispense with the requirement that the employer should give his consent or to reflect the undertaking by suitable provisions in the policies issued would also encounter difficulties.

The Committee was of the opinion that encouragement might be given to trade unions to secure where necessary, by process of collective bargaining, assurances from employers that neither they themselves nor their insurers would attempt to recover from employees damages paid out as a result of their negligence, with a suitable exception for cases of intentional wrongdoing or recklessness.

A course of action of this kind has already been proposed as a method of securing protection in a narrower field by the I.L.O. Committee of Experts who examined the protection of employed drivers against civil-law claims arising out of their employment. The great advantage of this proposal is its flexibility. Not only would protection be restricted to industries which had shown a need for it, but the form of protection could be modified to suit the industry concerned. The most serious objection to this proposal, however, is that it does not provide protection for unorganized employees.

Conclusions.

The decision in the *Lister* case shows, in the Committee's considered view, that employers and their insurers have rights against employees which, if exploited unreasonably, would endanger good industrial relations. They think that employers and insurers, if only in their own interests, will not so exploit their rights and the evidence received as to the action taken by the British Employers' Confederation and the Insurance Industry seems to the Committee to support this view. They did not therefore think that the decision in the *Lister* case had exposed a practical problem or that there was any need for legislation at present.

If, in future, it should appear that employers or insurers were exploiting their rights unreasonably, the problem would, the Committee thought, have to be

reviewed; in that event further consideration might be given to the possible legislative measures which they have mentioned in their Report and the various objections to them. Their conclusion, they said, does not, however, rule out any further effort to deal with the matter by voluntary methods, such as an extension of the "gentleman's agreement" within the insurance field, or by collective bargaining in any individual industry.

In our next issue, we shall discuss in the light of the Committee's Report the proposed New Zealand legislation on this subject.

SUMMARY OF RECENT LAW.

CIVIL AVIATION.

Liquid dropped from Aeroplane damaging Vegetable Crop—Damage or Loss "caused by an aircraft in flight"—Owner of Aircraft absolutely liable—"Article"—Civil Aviation Act 1948, s. 5 (3). On December 21, 1957, an aeroplane owned and operated by the defendant flew over the plaintiff's property, and, while it was in flight, liquid was seen to be coming from the machine. Later in the same day or on the following day, the plaintiff's crop of vegetables showed signs of poisoning, and, ultimately, the crop failed. The defendant company admitted that it was operating an aircraft in the district at that time, spraying willows in a nearby river bed with a hormone spray and one of its aircraft in the course of a flight lost the major part of its load of Weedone spray in the course of a journey to its target. This occurred as a result of a break in a rubber hosing attached to a pump fitted to discharge the load of liquid. In an action claiming damage brought under the Civil Aviation Act 1948, the jury found that the aircraft owned by the defendant company flew over the property occupied by the plaintiff, and, while so doing, let fall a liquid or spray from the aircraft. It awarded the plaintiff £420 damages, including £85 general damages. The plaintiff moved for a nonsuit. *Held,* That, as the fall of the liquid was "caused by an aircraft in flight" as that phrase is used in s. 5 (3) of the Civil Aviation Act 1948, the damage suffered by the plaintiff came within that phrase; and that the aircraft owner was liable without proof of fault for the damage to the property of the plaintiff, who was entitled to judgment for the amount found by the jury. *Semble,* The word "article" in s. 5 (3) of the Civil Aviation Act 1948 embraces a liquid, particularly when the liquid is broken into drops as a result of turbulence from aircraft. *Cox* v. *S. Cutler & Sons Ltd.* (1949) 118 L.J. Newsp. 294, referred to.) *Walker* v. *Weedair (N.Z.) Limited.* (S.C. Auckland. 1959. March 26. McCarthy J.)

MEDICAL ADVERTISEMENTS.

Offences—Publishing Medical Advertisements containing False Statement—Statement Claiming Success of Certain Treatment for Cancer—Honest Belief of Maker of Statement in Its Truth—Mens rea Ingredient of Offences—Medical Advertisements Act 1942, s. 15—Medical Advertisements Regulations 1943 (S.R. 1943/63), Reg. 13 (a). There is nothing in the Medical Advertisements Act 1942 or in Reg. 13 (a) of the Medical Advertisements Regulations 1943 made thereunder which expressly, or by implication, excludes the principle of mens rea. Consequently, Reg. 13 (a) does not impose criminal responsibility upon a person found to have acted honestly. *Hill* v. *Douglas.* (S.C. Christchurch. 1958. October 10. Haslam J.)

PRACTICE.

Bail Bond—Estreat—Solicitor as Surety—Bond by Solicitor Prohibited by Rules in Court's Civil Jurisdiction—No Effect in Criminal Jurisdiction—Summary Proceedings Act 1957, ss. 50 (1), 58—Summary Proceedings Regulations 1958 (S.R. 1958/38), Reg. 3—Magistrates' Courts Act 1947, s. 20—Magistrates' Courts Rules 1948, rr. 4 (1), 342 (1) (a). Rule 342 (1) (a) of the Magistrates' Courts Rules 1948, which provides that no solicitor shall become surety on a bond in relation to proceedings in a Magistrates' Court, has no application to a bail bond given by a solicitor as surety under s. 50 (1) of the Summary Proceedings Act 1958 or to its estreat arising out of the Court's criminal jurisdiction under that Act. *Re Dyer.* (1959. February 4. Coates S.M., Auckland.)

Injunction—Hall let for Three Days and Letting later rescinded—Injunction sought to enable Access to Hall on Those Days—Period too insubstantial to justify Injunction—Limitation of Action—Actions against Public or Local Authorities—No Notice Of Action claiming Injunction given—Application for Leave during Hearing of Proceedings for Injunction—Leave to operate retrospectively not obtainable—Claim invalid—Limitation Act 1950, s. 23 (1) (a), (2). A representative of the plaintiff society booked a War Memorial Hall controlled by the defendant corporation for three days. Later, the Council passed a resolution rescinding the letting of the hall to the society, which was notified accordingly. The society sought an injunction restraining the defendant corporation's servants and agents from preventing access to the use of the hall on the days in question. *Held,* refusing an injunction, 1. That no notice of action in pursuance of s. 23 (1) (a) of the Limitation Act 1950 had been given by the plaintiff society before the action was brought, and that leave to bring the action could not operate retrospectively so as to give validity to the proceedings, and the action failed through lack of the requisite notice. 2. That, alternatively, an injunction designed to enforce a letting for three days should be refused, as the period represented too insubstantial a loss to justify the Court interfering by way of injunction. (*Glasse* v. *Woolgar and Roberts (No. 2)* (1897) 41 Sol. Jo. 573, applied.) 3. That the plaintiff society's remedy was a claim for damages. *Watch Tower Bible & Tract Society* v. *Huntly Borough.* (S.C. Auckland. 1959. April 29. Shorland J.)

RABBITS.

Rabbit-destruction—Notice by Rabbit Board of Intention to destroy Rabbits on All Land constituting Board's Area—Insufficient Description—Cost of Rabbit-destruction, following Such Notice—Statutory Debt not recoverable from Occupier of Land in Board's District—Rabbits Act 1955, s. 48 (2) (b), 49 (1). A notice by a Rabbit Board under s. 48 (2) (b) of the Rabbits Act 1955 of proposed entry on land to destroy rabbits is not a valid notice if it refers to the whole of the Board's area. Consequently, the cost of any rabbit destruction on such land, following such a notice, is not recoverable by the Board from the occupier, as an entry and performance of work without proper notice, or established and effective waiver is not an an entry and work done pursuant to s. 49. (*Simmons* v. *Woodward* [1892] A.C. 100, and *In re Stogdon, Ex parte Leigh* [1895] 2 Q.B. 534, followed. *Karori Borough* v. *Buxton* [1918] N.Z.L.R. 730, applied.) *Agnew* v. *Clifton Rabbit Board.* (S.C. Dunedin. 1959. May 4. Henry J.)

WILDLIFE.

Absolutely Protected Bird—White Ibis—Offence of having "in his possession any absolutely protected wildlife"—Meaning of "possession"—Wildlife Act 1953, s. 63 (b). The white ibis (a sacred ibis of ancient Egypt) is a protected bird within the meaning of the Wildlife Act 1953. On July 21, two Rangers of the North Canterbury Acclimatization Society interviewed the appellant H. in regard to the bird which had been shot. H. denied the shooting, but admitted picking up the dead bird which he knew was a rare one, and having had it for about a week. He said he intended taking it to the museum, but had given it to B., who wanted to show it to his friends. At the request of one of the Rangers, he then obtained the bird from a car belonging to B. and handed it to the authorities. B. also admitted to a Ranger that he had obtained the bird from H. and had had it for about a week. Both H. and B. were convicted of an offence under s. 63 (b) of the Wildlife Act 1953, and were fined. Each appealed against his conviction and fine. On the appeal, *Held,* dismissing the appeal, that, on the facts, each of the appellants took the protected bird into his possession and had it in his possession; and the physical custody, coupled with their actions in respect of the bird, constituted the offence on the part of each appellant of having "in his possession [an] absolutely protected wildlife" within the meaning of s. 63 (b) of the Wildlife Act 1953. (*McAttee* v. *Hogg* 1903 5 F. (Ct. Sess.) 67 J. applied. *Dong Wai* v. *Audley* [1937] N.Z.L.R. 290, distinguished.) *Hamilton* v. *Henderson*: *Blowers* v. *Henderson.* (S.C. Christchurch. 1959. April 22. McGregor J.)

THE JUDICIARY AND THE LEGAL PROFESSION UNDER THE RULE OF LAW.

Conclusions of Committee of Congress of International Commission of Jurists, New Delhi.*

1. An independent Judiciary is an indispensable requisite of a free society under the Rule of Law. Such independence implies freedom from interference by the Executive or Legislature with the exercise of the Judicial function, but does not mean that the Judge is entitled to act in an arbitrary manner. His duty is to interpret the law and the fundamental principles and assumptions that underlie it. It is implicit in the concept of independence set out in the present paragraph that provision should be made for the adequate remuneration of the Judiciary and that a Judge's right to the remuneration settled for his office should not during his term of office be altered to his disadvantage.

2. There are in different countries varying ways in which the Judiciary are appointed, reappointed (where reappointment arises) and promoted, involving the Legislature, Executive, the Judiciary itself, in some countries the representatives of the practising legal profession, or a combination of two or more of these bodies. The selection of Judges by election and particularly by re-election, as in some countries, presents special risks to the independence of the Judiciary which are more likely to be avoided only where tradition has circumscribed by prior agreement the list of candidates and has limited political controversy. There are also potential dangers in exclusive appointment by the Legislature, Executive, or Judiciary, and where there is on the whole general satisfaction with the calibre and independence of Judges it will be found that either in law or in practice there is some degree of cooperation (or at least consultation) between the Judiciary and the authority actually making the appointment.

3. The principle of irremoveability of the Judiciary, and their security of tenure until death or until a retiring age fixed by statute is reached, is an important safeguard of the Rule of Law. Although it is not impossible for a Judge appointed for a fixed term to assert his independence, particularly if he is seeking reappointment, he is subject to greater difficulties and pressure than a Judge who enjoys security of tenure for his working life.

4. The reconciliation of the principle of irremoveability of the Judiciary with the possibility of removal in exceptional circumstances necessitates that the grounds for removal should be before a body of judicial character assuring at least the same safeguards to the Judge as would be accorded to an accused person in a criminal trial.

5. The considerations set out in the preceding paragraph should apply to: (1) the ordinary civil and criminal Courts; (2) administrative Courts or constitutional Courts, not being subordinate to the ordinary Courts. The members of administrative tribunals, whether professional lawyers or laymen, as well as laymen exercising other judicial functions (juries, assessors, Justices of the Peace, etc.) should only be appointed and removable in accordance with the spirit of these considerations, in so far as they are applicable to their particular positions. All such persons have in any event the same duty of independence in the performance of their judicial function.

6. It must be recognized that the Legislature has responsibility for fixing the general framework and laying down the principles of organization of Judicial business and that, subject to the limitations on delegations of legislative power which have been dealt with elsewhere, it may delegate part of this responsibility to the Executive. However, the exercise of such responsibility by the Legislature including any delegation to the Executive should not be employed as an indirect method of violating the independence of the Judiciary in the exercise of its Judicial functions.

7. It is essential to the maintenance of the Rule of Law that there should be an organized legal profession free to manage its own affairs. But it is recognized that there may be general supervision by the Courts and that there may be regulations governing the admission to and pursuit of the legal profession.

8. Subject to his professional obligation to accept assignments in appropriate circumstances, the lawyer should be free to accept any case which is offered to him.

9. While there is some difference of emphasis between various countries as to the extent which a lawyer may be under a duty to accept a case it is conceived that:

(i) Wherever a man's life, liberty or reputation are at stake he should be free to obtain legal advice and representation; if this principle is to become effective, it follows that lawyers must be prepared frequently to defend persons associated with unpopular causes and minority views with which they themselves may be entirely out of sympathy;

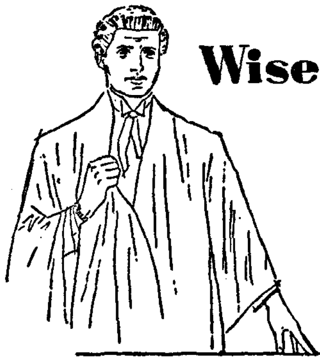
(ii) once a lawyer has accepted a brief he should not relinquish it to the detriment of his client without good and sufficient cause;

(iii) it is the duty of a lawyer which he should be able to discharge without fear of consequences to press upon the Court any argument of law or of fact which he may think proper for the due presentation of the case by him.

10. Equal access to law for the rich and poor alike is essential to the maintenance of the Rule of Law. It is, therefore, essential to provide adequate legal advice and representation to all those, threatened as to their life, liberty, property, or reputation who are not able to pay for it. This may be carried out in different ways and is on the whole at present more comprehensively observed in regard to criminal as opposed to civil

(Concluded on p. 150.)

*This was the Report of the conclusions reached by the Fourth Committee of the Congress of the International Commission of Jurists, held at New Delhi, in January last. It is one of the reports mentioned in the first paragraph in the declaration of Delhi and formed part of the complete declaration, the conclusions of which are contained in the formal declaration, *ante*, p. 116.



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MR JUSTICE HAGGITT.

The Hon. Mr Justice Haggitt was sworn in as a temporary Judge of the Supreme Court on April 22, 1959, by His Honour, the Chief Justice, Sir Harold Barrowclough, in the presence of their Honours, Mr Justice Turner, Mr Justice Shorland and Mr Justice T. A. Gresson and a large number of practitioners. Although the appointment was obliged by law (there being at present the full number of Judges permitted by the Judicature Act) to be temporary in form, it is generally assumed that it will be made permanent as soon as circumstances permit.

Even in a country where the practice of law has shown so strong a tendency to become hereditary, His Honour must be unique in being the fourth generation of legal succession. Both his great-grandfather, Mr D'Arcy Haggitt, and his grandfather, Mr B. C. Haggitt, practised in Dunedin, the latter being Provincial Solicitor, and subsequently Crown Prosecutor, for a number of years, and His Honour's father, Mr A. B. Haggitt, practised in Lawrence and Invercargill.

Earle Andrew, photo.

Mr Justice Haggitt.

Born in Lawrence in 1904, His Honour received his formal education at Southland and Waitaki Boys' High Schools and Otago University and his early professional training with Messrs Ramsay, Barrowclough and Haggitt, of Dunedin. In this firm, he was common-law clerk to the present Chief Justice. He was later associate to Mr Justice Sim and, after his death in 1928, to Mr Justice MacGregor. This was a valuable experience to any young man on the threshold of a career at the Bar, and it was early apparent that His Honour had taken full advantage of it.

He was admitted as a barrister and solicitor of the Supreme Court in 1928. In 1930, he commenced practice in Wanganui where he became a partner in the firm of Treadwell, Gordon, Treadwell and Haggitt. He continued as a partner in this firm until 1949 when he left it to enter the firm of Earl, Kent, Massey, Palmer and Haggitt, of which he remained a member until his appointment to the Supreme Court Bench.

During his thirty years of practice, His Honour covered a very wide field of experience. Although primarily and essentially a barrister, he was also well known as a commercial lawyer. At the Bar, his practice extended into almost every known subject of litigation and he was equally at home at nisi prius and on banco work. An indication of this wide experience is to be found in the fact that one of his earliest appearances in the Court of Appeal was on the famous "heir-at-law" case (*In re Macleay* [1935] N.Z.L.R. 463) and one of his latest was on appeal from a verdict in a murder trial.

His Honour's service to the profession is equally outstanding. At the time of his appointment, he was a vice-president of the New Zealand Law Society. He had just completed a two-year term as President of Law Society of the District of Auckland, after serving for a further two years as its treasurer and several more years as a member of the Council of that society. Auckland, however, was not the first district society of which he was President, for in 1948-49 he was president of the Wanganui District Law Society, having previously served for a number of terms as a member of the council. He thus belongs to that exclusive band of those who, like the late Sir Alexander Johnstone and the late Sir William Cunningham, have been presidents of two district societies.

Mr Justice Haggitt commenced his duties as a Judge in Christchurch on May 4. His exceptional experience of all branches of law and of all sorts and conditions of men, his quick apprehension and broad outlook and, above all, his warm humanity will make easy and pleasant the task of counsel appearing before him. A pitiless taskmaster to himself, he expects a high standard in others, but in his Court the young practitioner, in particular, can be assured of a courteous and helpful audience.

The Swearing-in Ceremony.

Mr Justice Haggitt was sworn in on April 22 in the Auckland Supreme Court before a representative gathering of the Bar.

The Rt. Hon. the Chief Justice Sir Harold Barrowclough, presided, and had associated with him on the Bench Mr Justice Turner, Mr Justice Shorland, Mr Justice T. A. Gresson and Sir Joseph Stanton.

Addressing the assemblage, the Chief Justice said:

"I have before me a Commission under the hand of

His Excellency the Governor-General, acting in the name and on behalf of Her Majesty the Queen, appointing Bryan Cecil Haggitt to be a Judge of the Supreme Court of New Zealand. Before he can take up his new duties it is necessary that he should take the oaths prescribed by law. I now therefore invite him to take before me, first, the Oath of Allegiance and next the Judicial Oath.

The oaths having been administered, the Chief Justice said that he had very great pleasure in handing to the new Judge his Commission as a Judge. Having done so, he said he wished to take that opportunity of extending to Mr Justice Haggitt a very warm welcome to the Bench. In this he spoke not only for the Judges present, but also for Mr Justice Hardie Boys whose illness alone prevented him from sitting on the Bench with the rest of them that day. His Honour said he had a letter from him in which he desired to be associated in the welcome which he, as Chief Justice cordially extended to Mr Justice Haggitt on behalf of all the Judges of the Court.

" We congratulate you most warmly on your appointment to such a high and responsible office ", the Chief Justice continued, " and we note with satisfaction that you have come to the Bench at an age which ensures that we can count on your help and assistance for many years to come. You have in front of you seventeen years of judicial life before you reach that age at which Judges in this Dominion are, quite properly, required to retire, and we hope and believe that they will be for you very happy and very rewarding years. Again let me say that we welcome you to our brotherhood and congratulate you most warmly on your elevation to this Bench ".

THE LAW SOCIETY'S CONGRATULATIONS.

Mr D. L. Bone, President of the Auckland District Law Society said he had been requested to express on behalf of the President of the New Zealand Law Society (Mr A. B. Buxton) his very great regret at his inability to attend the ceremony that day. The members of the Auckland District Law Society, he said, welcomed the opportunity the ceremony afforded of respectfully tendering to the newly-appointed Judge their congratulations and good wishes.

Addressing Mr Justice Haggitt, Mr Bone said :

" The President of the New Zealand Law Society has requested me to convey the very great pleasure that your appointment has afforded to the members of the New Zealand Law Society upon whose Council you served both as a delegate from the Wanganui District Law Society and from the Auckland District Law Society, and also as a Vice-President of the Society. The members of the New Zealand Law Society tender to you their congratulations on your appointment as a Judge of the Supreme Court and their best wishes and hopes that your tenure of office will be happy and satisfying.

" Your Honour, it is with the greatest of pleasure that I tender to you on behalf of your former brethren and colleagues their respectful and sincere congratulations upon your appointment to your high office ", Mr Bone continued. " That you have been one of our colleagues and one of our most distinguished brethren makes your appointment a matter of particular pride and satisfaction to us. Not only have you in your long association with us gained our highest regard and respect, but you have for many years served our Society well on its Council, and have with wisdom and ability guided its affairs as President. We acknowledge our debt of gratitude to you in this regard.

" Knowing well the qualities you bring to your high office, we have no doubt that you will fill that office with distinction and with honour to yourself, and we express the hope that you will have many years of satisfaction and happiness in your appointment.

" The members of the Wanganui District Law Society have expressed their desire to join with the members of the Auckland Society in conveying congratulations to you, and in so doing extend both to Your Honour and to Mrs Haggitt their best wishes, and express the hope that it will not be long before you are able to preside over the Wanganui Court in which you practised for some twenty years."

THE NEW JUDGE.

Mr Justice Haggitt, in reply, said he was most grateful to the Chief Justice for the kind remarks he had made and for the welcome he and his other fellow Judges had extended to him on his joining their ranks.

" I am also most grateful ", said His Honour, " to the President of the Auckland District Law Society for what he has said on behalf of the members of the Society to which I have belonged for the past several years, and with which I have had such happy associations, and also for the kind messages from the New Zealand Law Society and from the Wanganui District Law Society, of which I once was a member.

" Likewise I am very appreciative of the fact that so many of my friends and colleagues in the profession, as well as Sir Joseph Stanton, Judge Archer, Judge Dalglish and the Magistrates, no doubt at personal inconvenience, have seen their way to be present today. I can assure you all that seeing you here at this ceremony is a real comfort and encouragement to me in what is, you will appreciate, quite a considerable ordeal. This is a very solemn occasion for me for I am deeply conscious of the grave responsibilities attaching to the high office to which I have the honour of being appointed. It is my earnest hope that I shall discharge my duties adequately and all the kind messages I have received since my appointment will encourage me in that hope. My very sincere thanks go to you all."

THE JUDICIARY AND THE LEGAL PROFESSION UNDER THE RULE OF LAW.

(Concluded from p. 148.)

cases. It is necessary, however, to assert the full implications of the principle, in particular in so far as " adequate " means legal advice or representation by lawyers of the requisite standing and experience. This is a question which cannot be altogether dissociated from the question of adequate remuneration for the services rendered. The primary obligation rests on the legal profession to sponsor and use its best effort to ensure that adequate legal advice and representation are provided. An obligation also rests upon the State and the community to assist the legal profession in carrying out this responsibility.

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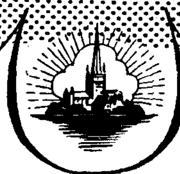

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COMPARISON OF PRACTICE IN THE UNITED STATES AND IN NEW ZEALAND.

Dean Erwin Griswold Interviewed.

Dean Erwin N. Griswold needs no introduction to the New Zealand legal profession. Head of Harvard Law School in the United States, Dean Griswold first visited New Zealand in 1951. On his return visit this year, he travelled widely throughout New Zealand meeting members of the profession, and while in Wellington, he agreed to answer questions put to him by members of the Victoria University of Wellington Law Faculty on matters of current interest in the profession.

Students over twenty-one years of age have found it very difficult to secure employment in law offices in Wellington. Have you any comments to offer on this situation ?

I think it would be a wonderful thing if a number of leading offices in Wellington and elsewhere in New Zealand would adopt the policy that they would not hire anyone under twenty-one. Of course, with us all legal education is now full-time. Students spend three years in Law School, during which they do not do any work in offices at all, except during the summer vacations if they want to ; even then it is not required. We recognize that when they leave the Law School there are many things they still must learn. Indeed, a lawyer's education is never done.

Nearly all of our students when leaving the Law School enter a law office. They are paid surprisingly well and a very considerable proportion of them might be said—virtually all of those who are really any good—to learn the practical aspects of the lawyer's work, the matters of office practice, in a relatively short time. I would not minimize at all the importance of the practical training ; but I feel that, with a good basic full-time legal education it could be obtained in New Zealand, through office experience, in a rather less time than is now thought necessary.

In other words, you would not consider the difficulty which is raised here by the profession, that they have to pay a full salary at the age of twenty-one, was a real embarrassment ?

I know, of course, nothing about the economics of New Zealand law practice. The salary issue has not proved to be an embarrassment in my country and I find myself with the feeling that, if the offices decided that this is a thing they ought to do, they could do it ; and they would be rather surprised at the superior service they got from the older students. They might find it well worth their while because they would have better junior assistants and be able to develop more rapidly people who were in line for eventual partnerships in their offices.

Another aspect of the matter is that the better offices in the United States are very keen to get the best students ; and, when I say that our students go into offices at surprisingly high salaries, that is true of those in the top third of the class. Those in the bottom third of the class may have considerable difficulty in finding an opening. They usually do, but our offices have come to the conclusion that it is well worth their while to provide attractive opportunities for the abler students.

Would considerable emphasis be laid by the profession on academic record ?

Yes, very heavy. We have to discourage that, as offices come to us who say that they would not consider anyone who is not in the top ten per cent. of the class. We know that there are plenty below the top ten per cent. who will make very good lawyers, and our general policy is to let them see the students and make their selection. Most of the students in the top ten per cent. of the class receive other opportunities immediately in one form or another of Government service, as law clerks (i.e., associates) to Judges, or sometimes in further graduate study leading eventually to law teaching. This means that most of the top ten per cent. are not immediately available for places in practice.

Can you give us any idea of how long it would take a newly-graduated student to acquire enough practical experience to make himself really useful in an office ?

My observation is that three quarters of our people are immediately useful. This, I may say, is in part the consequence of our system of what we call briefs : with us the brief is the formal written argument presented to a Court. The young man out of law school is often put immediately to work on what is basically a library job of research, first, in digging out materials that can be used in a brief ; secondly, as he shows his capacity, in writing passages of the brief itself ; and, finally (and many of them do this in a matter of a few months) in preparing the entire brief. The latter is usually done in consultation with the senior lawyer who gives his advice and then finally reviews and approves the brief.

I have a cousin—I mention this just by way of identification as he is not any better than a good many other students—who left our school and went into a big New York office. That office had an anti-trust case in which the Government was alleging that the company had sought to monopolize various aspects of foreign trade. When my cousin had been in the office only eighteen months he was sent alone to Australia and New Zealand to interview witnesses, gather statements, deal with solicitors and make a report to his principals in New York. I know he had a fine time on the trip ; and I know, too, that he did a very competent job. I think it gets back to my contention that, if a student has a sound academic training that is not too theoretical, and if he has a certain amount of maturity, which a seventeen-year-old does not have, he can acquire the basic practical experience needed in a relatively short time. By that I do not mean that he knows all he needs to know, but he can, I think, in a period of six to nine months learn all that he needs to know to the point that he will know when to consult one of his seniors as to how to do something that he does not know.

Your students are older than ours?

That is so. Our students are all required to have a four-year Arts course before they enter Law School. They do not enter Law School before about the age of twenty-two, and finish the study of law at the age of twenty-five. They have then had a lengthy arts and legal education, all of it full-time, and are twenty-five years old and have a measure of maturity. I would not necessarily recommend this practice for others. It may even be rather extravagant for us, although it is now the clear pattern and seems to work very well.

One of the advantages of the full-time system is that you can give your students training in the practical elements of the law in action. Can you give us some idea of the things you do?

We have extensive moot-court work. Every student participates in this work, most of which is on the appellate level and consists of taking what we call the record of a case, and preparing and handling the case in a Court of Appeal. Usually the students work in pairs, two working for the appellant and two others for the appellee. Each pair prepares, over a period of three weeks, the written brief for their side, and then go before the judges to present the oral argument in the case. They are judged by the quality of their performance, with equal weight usually being allowed to the written brief and to the oral argument.

Would you be able to give us your impressions of some of the disadvantages of part-time study?

My impression, which may well be inadequately based, is that, where legal education is conducted on a part-time basis, with the time shared between University and office, neither aspect of the work is very well done. The situation is such that the student is likely to gain the impression that the academic work is not very important. Besides, he is kept quite busy and he often does not have much time to prepare the academic work adequately. On the other hand, so far as the office work is concerned, he does not in the early years have much background. He cannot be useful to the office in much more than an office-boy capacity, and I find it difficult to see why people who have the equipment to become good lawyers ought to be spending this formative time of their career in what is essentially office-boy work.

Another question which interests us is that of the separation of the two branches of the profession. In New Zealand there is a nominal separation, and I gather the position is not like that in the United States.

In the United States the separation of the branches of the profession has no significance at all. Most American lawyers would not know what you meant when you talked about it. They are not ordinarily familiar with the distinction between solicitors and barristers in the English practice. Most of them would have difficulty in understanding if you sought to explain it to them. We have never had it, at least for 150 years, and with us a lawyer who is qualified as a lawyer has the right, not merely legally but also professionally, to carry on any kind of practice he has the opportunity to do or wants to do. Now this does not mean, of course, that there are not lawyers who confine themselves to office work. There are lawyers who do nothing but conveyancing or estate work. On the other hand, there are lawyers who confine themselves to court work. This would be particularly true in the automobile running-down area, where both on the plaintiffs' and the defendants' side there are lawyers who do no legal work except in connection with the trial of cases in court. Even there the lawyer who is going to try the case will also be the lawyer who will carry out negotiations for settlement and, in the greater proportion of cases, settle the case rather than try it. He will be in charge of the preparation of the case for trial.

I would say, therefore, that with us most lawyers do both kinds of work to some extent, without any awareness that they are doing anything other than what lawyers do. In a typical situation a lawyer will handle a matter from beginning to end. It may start off with office planning and follow with the drafting of instruments such as a will or a trust. If, sooner or later, some litigation arises, the same lawyer will conduct negotiations; and, if the matter gets into court, he will try the case in court. He is doing lawyer's work all the time.

Is it very common for a lawyer who does suddenly come up against litigation like this to discuss it with a specialist in that type of litigation?

Occasionally, but rather rarely. The thing that happens more often is for a lawyer who for some reason or other does not have much confidence in trying the case to call in a trial lawyer. This is, of course, not dissimilar to briefing a barrister, except that one never thinks of it that way. Most of the law business in America is done through firms of lawyers, most of them not as big as the New York ones. The typical law firm will have from four to six or eight to ten lawyers altogether. One will be a tax lawyer, one an estate lawyer, and one a trial lawyer. Even then they do not spend their time exclusively in that field. That will be a field where they feel most at home—where they try and keep up with the latest developments—and one of the reasons for entering into partnerships is that one can have someone to turn to for advice.

Would it be right to say, then, that there is specialization, but that it is specialization in fields of law rather than a particular type of work?

Very much so. There is a considerable amount of specialization, though the only specialties which are recognized as such are Admiralty and Patents. As a practical matter much of the tax work—which is extensive—is done by people who specialize in tax work; but they have strongly resisted any effort to recognize a specialty in taxation because they say: "We are lawyers first. It is true we specialize in tax matters but to handle a tax matter adequately we must understand Property, Company Law, Trusts, Wills, etc. We do not want to be labelled as tax men".

Taxation law is, incidentally, a field which does not seem to have developed in either New Zealand or Australia, and, speaking as one lawyer to another, this seems to me a likely field of usefulness to the community that is untapped at the moment.

The United States system of electing judges is a matter of great interest to the profession in New Zealand. Can you give us some idea of how it works?

In the first place, by no means all of our judges in America are elected. All of the federal court judges

without exception are appointed. The United States Constitution requires that they be appointed by the President, and their appointment confirmed by the Senate, and that they hold office for life. This is also true of all State courts in the extreme North-Eastern part of the country. For example, in Massachussets, where I live, there are no elected judges at all. This would cover perhaps ten per cent. of the population.

However, from New York, west and south, the State Court judges are nearly all elected. This goes back more than a hundred years to the time when there was a tremendous democratic sentiment, and it was felt, that every officer who had any authority over anyone else should receive that authority only from the people. Another illustration of the same tendency is the fact that in many States many very minor officers, such as the dog wardens and sealers of weights and measures, are elected. Now I do not think that this is good. I would not favour it if I was setting up a governmental system. I would not have elected judges.

On the other hand, the system is not nearly as bad as it might seem. With appointed judges, I suppose you do well to have eighty-five per cent. of the judges of a reasonably high standard. I would say that under the elected system perhaps seventy-five per cent. of the judges are pretty good. It is not as good that way as with an appointed system, but it is not utterly bad. For example, one of our greatest judges, Cardozo, was for many years a judge of the New York Court of Appeals, an office which he reached by election and to which he was re-elected several times.

As a practical matter, elected judges do not ordinarily campaign, make speeches on street corners, or have torchlight processions the way politicians do, and in many States they do not do this at all. In New York, for example, where Cardozo came from, it is not infrequent for the leaders of both political parties to nominate the same man. In such cases, the judge has been selected by the political leaders rather than by the Governor of the State, and might thus be regarded as another form of an appointed judge. If the political leaders are conscientious we sometimes get some very good judges.

It is also important to remember that, when a judge dies or resigns, the State Constitution usually gives the Governor power to fill the vacancy until the next election. A considerable proportion of those so appointed are eventually elected, and the consequence is that the judges are in fact first selected by the executive power rather than by the electorate.

Any effort to eliminate the election of judges in the United States would be almost certain to fail at the polls in the States where they have elected judges. There is, however, one device which is now used in a number of States—called " the Missouri plan "—under which the Governor makes a selection when a vacancy occurs. The judge serves for a year or two, then his name appears on a ballot without any other name, with the question " Shall So-and-So remain in office ? ". If the vote is " no ", he is out. If the vote is " yes ", he stays on for a full term, maybe ten, twelve or fourteen years. This is an effort to maintain the appearance of popular election and the substance of appointment. The plan is used in Missouri and to some extent in California, and some other States have used it. Under the system of elected judges we do have some poor judges, some head-line seekers and publicity hounds. We also have a very large number of thoroughly, conscientious and able people who have a somewhat harder time than they might have, because I suppose it is not quite possible for them ever to put out of their minds the fact that their continued tenure in office depends on an election some time in the future.

Would you care to make some observations on newspaper comment on the issues involved in a pending criminal charge, that is, on pre-trial newspaper comment ?

I think there are two sides to this question, and I think it is hard to be sure just where the right place is to draw the line. We have such extensive comment on pending matters because of our constitutional guarantees of freedom of the Press. Congress has no power to restrict the freedom of the Press under our Constitution, and so the Press is free to do and say what it pleases, subject to the libel laws, but not to much else. We happen to believe very strongly in freedom of the Press, partly because of our early history and certain things in our more recent history ; and our newspaper people would regard your present rules as to contempt as an intolerable restriction on the freedom of the press. With us, the Supreme Court has held that a contempt of court cannot be punished summarily unless it happens in the court-room in the presence of the judge, so that a newspaper article can never be punished as contempt.

There is the other ideal which we entertain to some extent—not as much as you do, not as much as we should—of fair trial. The accused is entitled to a fair hearing with as much freedom from emotional bias as it is possible to maintain. Our view and experience is that in most cases what appears in the newspapers has no effect whatever on what happens in the court-room and in particular on the conclusions of juries. Trial lawyers are of the opinion that juries more or less instinctively react to what is presented to them in the court-room and do not pay much attention to what is given them outside. I suppose it is partly because our very great freedom of the Press makes us sceptical of what we read in the newspapers.

Occasionally, we get an extraordinarily spectacular case such as the Bruno Hauptmann case in the 1930's involving the Lindbergh baby kidnapping murder, or the Alger Hiss case, where there has been extensive publicity in the papers, and it is very hard for me to be sure that this does not have some impact. Sometimes this freedom is used by rather unscrupulous lawyers to do things which are thoroughly wrong and reprehensible, such as letting a newspaper man know the nature of certain evidence which is clearly inadmissible in the hope that maybe some juryman will see it and take some account of it. In the Hiss case, I believe, on some occasions, evidence was excluded in the court and then appeared in the papers. I thought, and many people thought, that this was scandalous. There is not, under our system, any good way to deal with this problem.

This is one of those cases that is neither black nor white. My own view is that we go considerably too far, and if we could get our newspapers to exercise a greater self-restraint it would be a good thing—and

the more responsible papers do. But in all countries there is a fringe of sensational journalism which has no responsibility at all. However, I have great difficulty in avoiding the thought that yours and the English view is too strict. This, I think, was emphasized by my experience in South Africa last July and August where I went as observer at the treason trial. They follow the same rule rigidly forbidding any comment on pending cases. There were certain aspects of that case—not the conduct of the court, because I think the court did its duty all right—but the complete lack of preparation of the case by the Crown, which seemed to me to be subject to legitimate public and professional criticism. The newspapers were anxious to comment on this, but dared not say anything about it. In that particular situation, it seemed to me that the British rule was a contribution to oppression. The newspapers were all completely frightened about saying anything about the situation as they knew that the judicial response to any kind of comment about the case while it was pending would be automatic and severe. In your country, where you do not do outrageous things, your rule doubtless does more good than harm. In our country, we have a repeated history in one place or another of some sort of outrageous thing being attempted; and we feel that free Press comment is a good thing, and we are reluctant to see it impaired. How to make a proper balance between these objectives is a real problem. The best answer, it seems to me, lies between your view and ours—a little closer to your view but not quite as restrictive as your view is.

One last question—we understand that after the first Hiss trial the Press "got at" members of the jury?

Yes, I think we ought to be more strict on that than we have recently come to be. We have virtually no restriction on access to the jury after trial—during the trial is another matter. But of course we have a very active group of newspaper reporters, each one trying to get ahead of someone else, and, in that kind of a case, I am afraid it is inevitable at the present time that people are going to talk to the jurors. My own thought would be that it would be highly salutary if this was dealt with very firmly.

EASEMENTS: SOME UNUSUAL TYPES.

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

Explanatory Note.

Modern cases tend to show that an easement may include a much wider range of rights over land than many of us imagimed. From a study of the English Court of Appeal case, *Re Ellenborough Park* [1956] Ch. 131; [1955] 3 All E.R. 667, and from our knowledge that in New Zealand there can be an easement in gross,* the four essentials of an easement in New Zealand are: (i) an easement must "accommodate" the dominant tenement or in the case of an easement in gross, the grantee; (ii) there must be a servient tenement; (iii) dominant and servient owners (or in the case of an easement in gross, the servient owner and the grantee) must be different persons; and (iv) a right over land cannot amount to an easement unless it is capable of forming the subject matter of a grant.

As to the first requisite; a right over land does not possess the status of an easement, if appurtenant to land, unless it accommodates and serves the dominant tenement. Thus, a right granted to the purchaser of a house to use the Zoological Gardens free of charge or to attend Lord's Cricket Ground without payment would not constitute an easement: although it might increase the value of the land conveyed, it could not run with it in law as an easement, because there is no sufficient nexus between the enjoyment of the right and the use of the house. In the case of an easement in gross, I suppose, there would have to be some nexus between the enjoyment of the easement and the grantee: but, as easements in gross are in practice almost always in favour of important corporations (e.g., a grant of water rights to a municipality), perhaps the question, which is a difficult one, may never arise in practice. Perhaps a rough and ready method of deciding the point would be to hold that it is sufficient to constitute an easement in gross, if it is of such a nature that if the grantee were an owner of the land, and the easement were appurtenant to it, it would under the common law constitute a good easement.

* Section 122 of the Property Law Act 1952.

As to the fourth requisite, the Court of Appeal in the case cited approached the question as follows:

> As we have earlier stated, satisfaction of the condition in the present case depends on a consideration of the questions whether the right conferred is too wide and vague, whether it is inconsistent with the proprietorship or possession of the alleged servient owners, and whether it is a mere right of recreation without utliity or benefit.

Both in Roman and English law (for there is much Roman dicta in the English law of easements) a mere "jus spatiandi," is not a legal easement.† The Court of Appeal in the *Ellenborough Park* case, defines a "jus spatiandi" as a privilege of wandering at will over all and every part of another's field or park, and which, though easily intelligible as the subject-matter of a personal licence, is something substantially different from the subject-matter of the grant in question—namely, the provision for a limited number of houses in a uniform crescent of one single large but private garden.

Consequently, the Court held: (*a*) that the rights conferred over Ellenborough Park on adjoining owners was not a right of joint occupation with the freehold owners of the park and that there was nothing repugnant to a man's proprietorship or possession of a piece of land that he should decide to make it and retain it as an ornamental garden and to grant rights to a limited number of other persons to come into it for the enjoyment of its amenities; (*b*) that a right appurtenant to houses to use a garden for normal domestic purposes was beneficial to the houses to which the right was annexed and did not fail as being a right merely of recreation and amusement; and (*c*) that

† In Roman law, "ut spatiari, et ut coenare in aliena possimus, servitus imponi non potest."

The New Zealand CRIPPLED CHILDREN SOCIETY (Inc.)

ITS PURPOSES

The New Zealand Crippled Children Society was formed in 1935 to take up the cause of the crippled child—to act as the guardian of the cripple, and fight the handicaps under which the crippled child labours; to endeavour to obviate or minimize his disability, and generally to bring within the reach of every cripple or potential cripple prompt and efficient treatment.

ITS POLICY

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

It is considered that there are approximately 6,000 crippled children in New Zealand, and each year adds a number of new cases to the thousands already being helped by the Society.

Members of the Law Society are invited to bring the work of the N.Z. Crippled Children Society before clients when drawing up wills and advising regarding bequests. Any further information will gladly be given on application.

MR. C. MEACHEN, Secretary, Executive Council

EXECUTIVE COUNCIL

SIR CHARLES NORWOOD (President), MR. G. K. HANSARD (Chairman), SIR JOHN ILOTT (Deputy Chairman), MR. H. E YOUNG, J.P., MR. ALEXANDER GILLIES, MR. L. SINCLAIR THOMPSON, MR. FRANK R. JONES, MR. ERIC M. HODDER, MR. WYVERN B. HUNT, SIR ALEXANDER ROBERTS, MR. WALTER N. NORWOOD, MR. J. L. SUTTON, MR. G. J. PARK, DR. G. A. Q. LENNANE, MR. L. G. K. STEVEN, MR. B. PINDER, MR. F. CAMPBELL-SPRATT.

Box 5006, Lambton Quay, Wellington

19 BRANCHES THROUGHOUT THE DOMINION

ADDRESSES OF BRANCH SECRETARIES:

(Each Branch administers its own Fnnds)

Branch	Address
AUCKLAND	P.O. Box 2100, Auckland
CANTERBURY AND WEST COAST	P.O. Box 2035, Christchurch
SOUTH CANTERBURY	P.O. Box 125, Timaru
DUNEDIN	P.O. Box 483, Dunedin
GISBORNE	P.O. Box 15, Gisborne
HAWKE'S BAY	P.O. Box 377, Napier
NELSON	P.O. Box 188, Nelson
NEW PLYMOUTH	P.O. Box 324, New Plymouth
NORTH OTAGO	P.O. Box 304, Oamaru
MANAWATU	P.O. Box 299, Palmerston North
MARLBOROUGH	P.O. Box 124, Blenheim
SOUTH TARANAKI	P.O. Box 148, Hawera
SOUTHLAND	P.O. Box 169. Invercargill
STRATFORD	P.O. Box 83, Stratford
WANGANUI	P.O. Box 20, Wanganui
WAIRARAPA	P.O. Box 125, Masterton
WELLINGTON	P.O. Box 7821, Wellington, E.4
TAURANGA	P.O. Box 340, Tauranga
COOK ISLANDS	C/o MRS. ELSIE HALL, ISLAND MERCHANTS LTD., Rarotonga

Active Help in the fight against TUBERCULOSIS

OBJECTS: The principal objects of the N.Z. Federation of Tuberculosis Associations (Inc.) are as follows:

1. To establish and maintain in New Zealand a Federation of Associations and persons interested in the furtherance of a campaign against Tuberculosis

2. To provide supplementary assistance for the benefit, comfort and welfare of persons who are suffering or who have suffered from Tuberculosis and the dependants of such persons.

3. To provide and raise funds for the purposes of the Federation by subscriptions or by other means.

4. To make a survey and acquire accurate information and knowledge of all matters affecting or concerning the existence and treatment of Tuberculosis.

5. To secure co-ordination between the public and the medical profession in the investigation and treatment of Tuberculosis, and the after-care and welfare of persons who have suffered from the said disease

A WORTHY WORK TO FURTHER BY BEQUEST

Members of the Law Society are invited to bring the work of the Federation before clients when drawing up wills and giving advice on bequests. Any further information will be gladly given on application to :—

HON. SECRETARY,

THE NEW ZEALAND FEDERATION OF TUBERCULOSIS ASSNS. (INC.)

218 D.I.C. BUILDING, BRANDON STREET, WELLINGTON C.1.

Telephone 40-959.

OFFICERS AND EXECUTIVE COUNCIL:

President : Dr. Gordon Rich, Christchurch.

Executive : C. Meachen (Chairman), Wellington.

Dr. J. Connor, Ashburton Town and County.
H. J. Gillmor , Auckland.
Dr. Gordon Rich, Canterbury and West Coast.
M. J. Keeling, Gisborne and East Coast.
L. Beer, Hawke's Bay.
Dr. J. Hiddlestone, Nelson.
A. D. Lewis, Northland.
W. R. Sellar, Otago.
L. V. Farthing, South Canterbury.
C. M. Hercus, Southland.
L. Cave, Taranaki.
A. T. Carroll, Wairoa.
A. J. Ratliff, Wanganui.

Hon. Treasurer : H. H. Miller, Wellington.
Hon. Secretary : Miss F. Morton Low, Wellington.
Hon. Solicitor : H. E. Anderson, Wellington.

A worthy bequest for
YOUTH WORK . . .

THE

Y.M.C.A.

THE Y.M.C.A.'s main object is to provide leadership training for the boys and young men of to-day . . . the future leaders of to-morrow. This is made available to youth by a properly organised scheme which offers all-round physical and mental training . . . which gives boys and young men every opportunity to develop their potentialities to the full.

The Y.M.C.A. has been in existence in New Zealand for nearly 100 years, and has given a worthwhile service to every one of the thirteen communities throughout New Zealand where it is now established. Plans are in hand to offer these facilities to new areas . . . but this can only be done as funds become available. A bequest to the Y.M.C.A. will help to provide service for the youth of the Dominion and should be made to :—

THE NATIONAL COUNCIL,
Y.M.C.A.'s OF NEW ZEALAND,

114, THE TERRACE, WELLINGTON, or
YOUR LOCAL YOUNG MEN'S CHRISTIAN ASSOCIATION

GIFTS may also be marked for endowment purposes or general use.

The Young Women's Christian Association of the City of Wellington, (Incorporated).

★ **OUR ACTIVITIES:**

(1) Resident Hostels for Girls and a Transient Hostel for Women and Girls travelling.

(2) Physical Education Classes, Sport Clubs, and Special Interest Groups.

(3) Clubs where Girls obtain the fullest appreciation of the joys of friendship and service.

★ **OUR AIM** as an Undenominational International Fellowship is to foster the Christian attitude to all aspects of life.

★ **OUR NEEDS:**

Our present building is so inadequate as to hamper the development of our work.
WE NEED £50,000 before the proposed New Building can be commenced.

General Secretary,
Y.W.C.A.,
5, Boulcott Street,
Wellington.

President:
Her Royal Highness,
The Princess Margaret.

Patron:
Her Majesty Queen Elizabeth,
the Queen Mother

N.Z. President Barnardo Helpers' League:
Her Excellency Viscountess Cobham

A Loving Haven for a Neglected Orphan.

DR. BARNARDO'S HOMES

Charter: "No Destitute Child Ever Refused Admission."

Neither Nationalised nor Subsidised. Still dependent on Voluntary Gifts and Legacies.

A Family of over 7,000 Children of all ages.

Every child, including physically-handicapped and spastic, given a chance of attaining decent citizenship, many winning distinction in various walks of life.

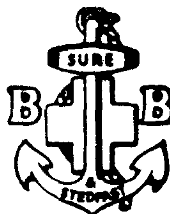
LEGACIES AND BEQUESTS, NO LONGER SUBJECT TO SUCCESSION DUTIES, GRATEFULLY RECEIVED.

London Headquarters : 18-26 STEPNEY CAUSEWAY, E.1
N.Z. Headquarters : 62 THE TERRACE, WELLINGTON.

For further information write

THE SECRETARY, P.O. Box 899, WELLINGTON.

The Boys' Brigade



OBJECT

"The Advancement of Christ's Kingdom among Boys and the Promotion of Habits of Obedience, Reverence, Discipline, Self Respect, and all that tends towards a true Christian Manliness."

Founded in 1883—the first Youth Movement founded.
Is International and Interdenominational.

The NINE YEAR PLAN for Boys . . .
9–12 in the Juniors—The Life Boys.
12–18 in the Seniors—The Boys' Brigade.

A character building movement.

FORM OF BEQUEST:

"I GIVE AND BEQUEATH unto the Boys' Brigade, New Zealand Dominion Council Incorporated, National Chambers, 22 Customhouse Quay, Wellington, for the general purpose of the Brigade, (*here insert details of legacy or bequest*) and I direct that the receipt of the Secretary for the time being or the receipt of any other proper officer of the Brigade shall be a good and sufficient discharge for the same."

For information, write to—
THE SECRETARY,
P.O. Box 1403 WELLINGTON.

the right to use a private pleasure ground was an easement known to the law.

It would appear, however, that the grant to play a game (e.g., golf) on land, or to conduct a race-meeting thereon, would not constitute a legal easement, for such is a right of mere recreation or enjoyment. The difficulty can be got over in practice by granting a lease for the parts of the year on which it is desired to play the game or conduct the race-meeting, reserving wide rights to the lessor.

In *Attorney-General of Southern Nigeria* v. *John Holt and Co.* [1915] A.C. 599, where one of the easements in question was to store casks, etc., on the neighbouring land, the Privy Council said on the subject of easements:

> The law must adapt itself to the conditions of modern society and trade, and there is nothing in the purposes for which the easement is claimed inconsistent in principle with a right of easement as such. This principle is of general application and was so treated in the House of Lords in *Dyce* v. *Hay* (1 Macq. 305) by Lord St. Leonards, L.C., who observed, "the category of servitudes and easements must alter and expand with the changes that take place in the circumstances of mankind."

This theme is well brought out by the Master of the Rolls (Lord Evershed) in delivering the judgment of the Court of Appeal in *In re Ellenborough Park* (*supra*):

> It has, therefore, been necessary for us to consider carefully the qualities and characteristics of easements, and, for such purposes, to look back into the history of that category of incorporeal rights in the development of English real property law.

Both the term "easement" and the thing itself were known to the mediaeval common law, but in the latter part of the sixteenth century and even later when Blackstone wrote—in the mid-eighteenth century—the law as to easements was still rudimentary. Right down to the beginning of the nineteenth century, there was still but little authority on many parts of this subject. The industrial revolution, which caused the growth of large towns and manufacturing industries, naturally brought into prominence such easements as ways, watercourses, light, and support; and so *Gale's* book became the starting point of the modern law, which rests largely upon comparatively recent decisions. Thus does the late Sir William Holdsworth proceed:

> But though the law of easements is comparatively modern, some of its rules have ancient roots. There is a basis of Roman rules introduced into English law by Bracton, and acclimatized by Coke . . . The law, as thus developed, sufficed for the needs of the country in the eighteenth century. But, as it was no longer sufficient for the new economic needs of the nineteenth century, an expansion and an elaboration of this branch of the law became necessary. It was expanded and elaborated partly on the basis of the old rules, which had been evolved by the working of the assize of nuisance, and its successor the action on the case; partly by the help of Bracton's Roman rules; and partly, as Gale's book shows, by the help of the Roman rules taken from the Digest, which he frequently and continuously uses to illustrate and to supplement the existing rules of law.

Coming down to the first quarter of the present twentieth century, the highest Court in Australia, in *Commonwealth* v. *Registrar of Titles* (1918) 24 C.L.R. 352, held that a grant of a *general* easement of light was supported, as a valid grant at common law, although it was admitted that such a general grant could not arise by the Prescription Act or presumed grant. Sir Samuel Griffith C.J., at p. 354, said:

> In the course of argument, I referred to several possible easements novel in kind. For instance, an easement or servitude for the passage of aeroplanes through the superjacent air of the servient tenement to a landing place,* for the passage of an electric current through suspended wires passing through the air, for the free passage of the flash from a heliograph station. Why not also of the sun's rays? All these would be servitudes of a right of passage over the servient tenement, not indeed on the surface of the soil, but through that, which, *usque ad coelum*, is in the eye of the law, a part of the land. In the light of modern knowledge, however, there is no difference in principle between the right to the free passage of moving air to my windmill and the free passage of running water to my watermill.

In the light of modern knowledge, that was the true keynote. Judged by the tests posed in the *Ellenborough* case, (*supra*), and in *Commonwealth* v. *Registrar of Titles* (*supra*), I think that all the following precedents will pass muster as constituting permissible easements both in English and New Zealand law.

PRECEDENTS.

1.—GRANT OF RADIO AND ELECTRICITY RIGHTS.

MEMORANDUM OF TRANSFER GRANT OF EASEMENTS.

WHEREAS A. B. of Hamilton, Farmer (hereinafter with his heirs, executors, administrators and assigns, called "the grantor", is seized of an estate in fee simple subject however to such encumbrances liens and interests as are notified by memorandum underwritten or endorsed hereon in all that parcel of land situate in [*set out here official description of servient tenement*] and being the land comprised in Certificate of Title Vol.......... Folio.......... TOGETHER WITH a right of way over [*set out official description*], AND SUBJECT to (i) Memorandum of Mortgage No. to the Bank of.................... and (ii) Memorandum of Mortgage No..........to C. D. of.................... (hereinafter referred to as "the said land") AND WHEREAS the....................ELECTRIC POWER BOARD a body corporate incorporated by virtue of the Electric Power Boards Act 1925 (hereinafter with its successors in title called "the Grantee") has concluded negotiations with the Grantor for the installation and maintenance of a permanent radio telephone station on part of the land, AND WHEREAS the Grantor has agreed with the Grantee to grant to the Grantee the rights as hereinafter set out, and subject to the conditions and payment of the annual sums hereinafter set out NOW THEREFORE THIS MEMORANDUM OF TRANSFER WITNESSETH that in pursuance of the premises and for the consideration aforesaid the Grantor DO HEREBY irrevocably TRANSFER AND GRANT unto the Grantee for all time full and free right liberty and licence (1) to construct, instal, renew and maintain on that part of the said land as shown on the diagram hereon and therein coloured red, a permanent radio station (including an aerial mast), of the dimensions and in accordance with the specifications shown on the diagram annexed hereto, together with such guy wires and protective posts (as shown on the diagram annexed hereto), which as may be necessary to anchor securely the said aerial mast, (2) to construct, renew and maintain on the said land along the route as shown on the plan annexed hereto and thereon coloured green, an electric land service line, (together with such poles and supports as may be necessary), for the transmission of electrical energy, together with the right to transmit along the said electric lines electrical energy and telephonic messages, (3) for the Grantee, its servants, agents or workmen of ingress, egress and regress through over and UPON SUCH PART OR PARTS OF THE SAID LANDS AS MAY BE NECESSARY TO SECURE ACCESS to the said radio telephone station and electric service line, from the nearest public highway and from the said radio station and electric service line to the nearest public highway, and upon such part or parts of the said land as may be necessary for the purpose of erecting, constructing and installing, renewing, re-erecting, repairing or maintaining, the said radio telephone station, aerial mast, guy wires, protective posts, electric service line, poles and supports, and together with the right to deposit thereon any material, tools and/or implements necessary for the purposes aforesaid, together with full power and authority for the Grantee, its surveyors, engineers, workmen, agents and servants, with or without horse, carts and other vehicles and machinery from time to time, and at all times to enter and remain on the said part or parts of the said land as may be necessary.

* For precedents for a landing strip for aeroplanes engaged in aerial top-dressing, see (1954) 30 N.Z.L.J. 276.

or proper for or in relation to any of the purposes aforesaid AND FOR THE CONSIDERATION AFORESAID the Grantee doth hereby covenant and agree with the Grantor as follows:

1. THAT in exercise of the rights, liberties, licences and easements created by this memorandum of transfer, it shall do as little damage as possible to the said land of the Grantor and to the fences erected thereon.

2. THAT it will instal and thereafter maintain in good working order, to the satisfaction of the Grantor, two gates not greater than 10′6″ wide each to have a proper and efficient latch where the fences of the Grantor intersect the said land line.

3. THAT as consideration for the Grant of the Rights, liberties licences and easements hereby granted it will pay in each and every year on the first day of February to the Grantor, or the registered proprietor for the time being of the land affected by this instrument, the annual sum of TWELVE POUNDS (£12) per annum, and it is hereby declared by the parties hereto that in the event of the said land being subdivided the said annual sum of TWELVE POUNDS (£12) shall be apportioned between the respective registered proprietor of each part of the land constituting a servient tenement under these presents, and it is also declared that it is the intention of the parties hereto that the said annual sum shall so far as possible, have the incidents of rent as if it was rent reserved under a lease of land.

4. THAT the Grantor shall not be liable for any damage which may be caused to the said radio telephone station, aerial mast, guy wires, protective posts, electric service line, poles and supports by stock or otherwise than through his own wilful act or default.

5. THAT if the exercise of any of the rights hereinbefore granted any damage whatever shall be done to the land of the Grantor or to anything on or upon the said land, then such damage shall forthwith be repaired and made good by the Grantee and that the Grantee will at all times indemnify and save harmless the Grantor from all actions, suits, proceedings, claims and demands whatsoever which may be made or brought against the Grantor as a result of the exercise by the Grantee of any of the rights, liberties and licences, hereinbefore conferred upon the Grantee AND FOR THE CONSIDERATION AFORESAID the Grantor doth hereby covenant with the Grantee that he will not at any time hereafter do permit or suffer any act whereby the rights, powers, licences, and liberties hereby granted to the Grantee may be interfered with or affected AND IT IS HEREBY AGREED AND DECLARED To by the parties hereto as follows: All disputes and differences arising between the parties touching the operation of this Grant or the construction thereof shall in every case be referred to two arbitrators and their umpire in accordance with the provisions of the Arbitration Act 1908 and any amendment thereto or any enactment in substitution therefore for the time being in force.

In Witness this Memorandum has been executed this day of 1959.

SIGNED on the day above-named by the said A. B. in the presence of: } ....

....

....

....

The COMMON SEAL of the .... ELECTRIC POWER BOARD hereto affixed in the presence of: }

....

....

....

CONSENT OF THE MORTGAGEES.‡

....

....

I, C. D. the mortgagee under mortgage no.......... do hereby consent to the easements created by this memorandum of transfer.

Dated the day of 1959.

Signed by the said C. D. in the presence of: }

Witness (who must add his occupation and address).

2.—EASEMENT TO *MAINTAIN* A LETTER *AND* MILK BOX CREATED BY WAY OF RESERVATION IN A TRANSFER BY WAY OF SUBDIVISION.

[*After the operative part of the transfer of the fee simple of the land first described add*:]

RESERVING FURTHER unto the transferors their heirs executors, administrators and assigns the registered proprietor or proprietors for the time being of the land secondly abovedescribed as and in the nature of an easement appurtenant thereto the right of all times hereafter to erect and maintain repair and renew a suitable letter and milk box on the servient land where it fronts.....................Road and the right as all times hereafter to have deposited therein letters transmitted through the post and milk receptacles intended for the owner or owners or occupier or occupiers of the land secondly abovedescribed AND the transferors do hereby covenant that they will at all times keep the said box or any box substituted therefor in a neat and tidy condition and will from time to time paint the same with proper oil colours in a workmanlike manner so as not to detract from the general appearance of the neighbourhood and that they will at all times maintain the said box or any box substituted therefor in a good and efficient state of repair and will not permit or suffer the same to be or become in any way a nuisance to any person having any estate interest or right in or over the servient land.

3.—SIGN-BOARD EASEMENT AS ANCILLARY TO A RIGHT OF WAY.

[*After the operative part of the transfer of the fee simple of the land first described add*:]

Together also with the right to the said......................his heirs, executors, administrators and assigns at all times hereafter as in the nature of an easement appurtenant to the land secondly described to erect and maintain a suitable signboard or notice board upon or across the said piece of land coloured green on the plan in such place or places as shall be decided upon by him or them respectfully such signboard or notice board to be so erected as to leave a free passage to the height of at least twelve feet from the surface of the ground along the right of way.

4.—ELECTRIC POWER EASEMENT: EASEMENT IN GROSS.**

[*To be preceded by similar recitals and operative words as in Precedent No. 1 Ante.*].

To lay construct and repair renew and maintain an electric line over and above the piece of land above described at a height of not less than 20′ above the ground in the position shown by a red colour on the plan endorsed hereon for the transmission of electrical energy and for that purpose from time to time to enter by its servants agents or workmen on the said piece of land for the purpose of constructing, repairing, renewing and maintaining the said electric line together with the right to transmit along the said electric line electrical energy at all times PROVIDED ALWAYS that the corporation (the grantee) shall not be entitled to erect any pole or other structure on the said piece of land and Provided Further that in consideration of the rights hereinbefore granted the corporation doth hereby covenant with the vendor that if in exercise of the rights hereinbefore granted any damage whatever shall be done to the said piece of land or anything in or upon the said piece of land then such damage shall

‡ Consent of the mortgagees is advisable, for no easement in respect of any mortgaged land is binding on the mortgagee except so far as he has consented thereto; s. 90 (1) Land Transfer Act 1952. There is no form of consent prescribed: any simple form will suffice, e.g.

** This precedent may be compared with Precedent No. 1 *Ante.*

WELLINGTON DIOCESAN SOCIAL SERVICE BOARD

Chairman : Rev. H. A. CHILDS,
Vicar of St. Marys, Karori.

The Board solicits the support of all Men and Women of Goodwill towards the work of the Board and the Societies affiliated to the Board, namely :—

All Saints Children's Home, Palmerston North.

Anglican Boys Homes Society, Diocese of Wellington, Trust Board : administering a Home for Boys at "Sedgley," Masterton.

Church of England Men's Society : Hospital Visitation.

"Flying Angel" Mission to Seamen, Wellington.

Girls Friendly Society Hostel, Wellington.

St. Barnabas Babies Home, Seatoun.

St. Marys Guild, administering Homes for Toddlers and Aged Women at Karori.

Wellington City Mission.

ALL DONATIONS and BEQUESTS MOST GRATEFULLY RECEIVED.

Donations and Bequests may be earmarked for any Society affiliated to the Board, and residuary bequests subject to life interests, are as welcome as immediate gifts.

Full information will be furnished gladly on application to :

Mrs W. G. BEAR,
Hon. Secretary,
P.O. Box 82. Lower Hutt.

SOCIAL SERVICE COUNCIL OF THE DIOCESE OF CHRISTCHURCH.

Incorporated by Act of Parliament, 1952

CHURCH HOUSE, 173 CASHEL STREET CHRISTCHURCH

Warden : The Right Rev. A. K. Warren, M.C., M.A.
Bishop of Christchurch

The Council was constituted by a Private Act and amalgamates the work previously conducted by the following bodies :—

St. Saviour's Guild.
The Anglican Society of Friends of the Aged.
St. Anne's Guild.
Christchurch City Mission.

The Council's present work is :—

1. Care of children in family cottage homes.
2. Provision of homes for the aged.
3. Personal care of the poor and needy and rehabilitation of ex-prisoners.
4. Personal case work of various kinds by trained social workers.

Both the volume and range of activities will be expanded as funds permit.

Solicitors and trustees are advised that bequests may be made for any branch of the work and that residuary bequests subject to life interests are as welcome as immediate gifts.

The following sample form of bequest can be modified to meet the wishes of testators.

"I give and bequeath the sum of £ to the *Social Service Council of the Diocese of Christchurch* for the general purposes of the Council."

THE AUCKLAND SAILORS' HOME

Established—1885

Supplies 15,000 beds yearly for merchant and naval seamen, whose duties carry them around the seven seas in the service of commerce, passenger travel, and defence.

Philanthropic people are invited to support by large or small contributions the work of the Council, comprised of prominent Auckland citizens.

● **General Fund**

● **Samaritan Fund**

● **Rebuilding Fund**

Enquiries much welcomed:

Management : Mrs. H. L. Dyer,
'Phone - 41-289,
Cnr. Albert & Sturdee Streets,
AUCKLAND.

Secretary: Alan Thomson, J.P., B.Com.,
P.O. BOX 700,
AUCKLAND.
Phone - 41-934

DIOCESE OF AUCKLAND

Those desiring to make gifts or bequests to Church of England Institutions and Special Funds in the Diocese of Auckland have for their charitable consideration :—

The Central Fund for Church Extension and Home Mission Work.

The Orphan Home, Papatoetoe, for boys and girls.

The Henry Brett Memorial Home, Takapuna, for girls.

The Queen Victoria School for Maori Girls, Parnell.

St. Mary's Homes, Otahuhu, for young women.

The Diocesan Youth Council for Sunday Schools and Youth Work.

The Girls' Friendly Society, Wellesley Street, Auckland.

The Cathedral Building and Endowment Fund for the new Cathedral.

The Ordination Candidates Fund for assisting candidates for Holy Orders.

The Maori Mission Fund.

Auckland City Mission (Inc.), Grey's Avenue, Auckland, and also Selwyn Village, Pt. Chevalier

St. Stephen's Schoo for Boys, Bombay.

The Missions to Seamen—The Flying Angel Mission, Port of Auckland.

The Clergy Dependents' Benevolent Fund.

FORM OF BEQUEST.

I GIVE AND BEQUEATH to (e.g. The Central Fund of the Diocese of Auckland of the Church of England) the sum of £..........................to be used for the general purposes of such fund OR to be added to the capital of the said fund AND I DECLARE that the official receipt of the Secretary or Treasurer for the time being (of the said Fund) shall be a sufficient discharge to my trustees for payment of this legacy.

Charities and Charitable Institutions

HOSPITALS - HOMES - ETC.

The attention of Solicitors, as Executors and Advisers, is directed to the claims of the institutions in this issue:

BOY SCOUTS

There are 22,000 Boy Scouts in New Zealand. The training inculcates truthfulness, habits of observation, obedience, self-reliance, resourcefulness, loyalty to Queen and Country, thoughtfulness for others.

It teaches them services useful to the public, handicrafts useful to themselves, and promotes their physical, mental and spiritual development, and builds up strong, good character.

Solicitors are invited to COMMEND THIS UNDENOMINATIONAL ASSOCIATION to clients. A recent decision confirms the Association as a Legal Charity.

Official Designation:

The Boy Scouts Association of New Zealand,
161 Vivian Street,
P.O. Box 6355,
Wellington, C.2.

PRESBYTERIAN SOCIAL SERVICE

Costs over £200,000 a year to maintain
18 Homes and Hospitals for the Aged.
16 Homes for Dependent and Orphan Children.
General Social Service including :—

- Unmarried Mothers.
- Prisoners and their Families.
- Widows and their Children.
- Chaplains in Hospitals and Mental Institutions.

Official Designations of Provincial Associations:—

"**The Auckland Presbyterian Orphanages and Social Service Association (Inc.).**" P.O. Box 2035, AUCKLAND.

"**The Presbyterian Social Service Association of Hawke's Bay and Poverty Bay (Inc.).**" P.O. Box 119, HAVELOCK NORTH.

"**Presbyterian Orphanage and Social Service Trust Board.**" P.O. Box 1314, WELLINGTON.

"**The Christchurch Presbyterian Social Service Association (Inc.)**" P.O. Box 1327, CHRISTCHURCH.

"**South Canterbury Presbyterian Social Service Association (Inc.).**" P.O. Box 278, TIMARU.

"**Presbyterian Social Service Association.**" P.O. Box 374, DUNEDIN.

"**The Presbyterian Social Service Association of Southland (Inc.).**" P.O. Box 314, INVERCARGILL.

CHILDREN'S HEALTH CAMPS

A Recognized Social Service

A chain of Health Camps maintained by voluntary subscriptions has been established throughout the Dominion to open the doorway of health and happiness to delicate and understandard children. Many thousands of young New Zealanders have already benefited by a stay in these Camps which are under medical and nursing supervision. The need is always present for continued support for this service. We solicit the goodwill of the legal profession in advising clients to assist by means of Legacies and Donations this Dominion-wide movement for the betterment of the Nation.

KING GEORGE THE FIFTH MEMORIAL CHILDREN'S HEALTH CAMPS FEDERATION,
P.O. Box 5013, WELLINGTON.

THE NEW ZEALAND Red Cross Society (Inc.)

Dominion Headquarters
61 DIXON STREET, WELLINGTON,
New Zealand.

"I GIVE AND BEQUEATH to the **NEW ZEALAND RED CROSS SOCIETY (Incorporated)** for :—

The General Purposes of the Society,

the sum of £......................(or description of property given) for which the receipt of the Secretary-General, Dominion Treasurer or other Dominion Officer shall be a good discharge therefor to my trustee."

In Peace, War or National Emergency the Red Cross serves humanity irrespective of class, colour or creed.

MAKING A WILL

CLIENT: "Then, I wish to include in my Will a legacy for The British and Foreign Bible Society."
SOLICITOR: "That's an excellent idea. The Bible Society has at least four characteristics of an ideal bequest."
CLIENT: "Well, what are they?"
SOLICITOR: "It's purpose is definite and unchanging—to circulate the Scriptures without either note of comment. Its record is amazing—since its inception in 1804 it has distributed over 600 million volumes. Its scope is far reaching—it broadcasts the Word of God in 844 languages. Its activities can never be superfluous—man will always need the Bible."
CLIENT: "You express my views exactly The Society deserves a substantial legacy, in addition to one's regular contribution."

BRITISH AND FOREIGN BIBLE SOCIETY, N.Z.
P.O. Box 930, Wellington, C.1.

forthwith be repaired and made good by the corporation and that the corporation will at all times indemnify and save harmless the transferor from all actions suits, proceedings, claims and demands whatsoever which may be made or brought against the vendor as a result of the exercise by the corporation of any of the rights liberties and licences herebefore conferred upon the corporation.

5.—Grant of Private Telephone Wire.*

[*To be preceded by similar recitals and operative words as in Precedent No. 2 ante.*].

Do hereby transfer and grant to the grantee as and in the nature of an easement appurtenant to the said land secondly described the right to erect and maintain and keep a telephone wire through the said lands of the grantors as shown on the plan hereon with such poles and supports as may be necessary to support such wire and the right to transmit and receive telephone messages over such wire with full power authority and licence to the grantee his servants agents or workmen of ingress, egress and regress through over and upon such land wherever necessary for the purpose of renewing re-erecting, repairing or maintaining such wire or the poles or supports maintaining the same or in any way appertaining thereto *Provided Always* that the grantee will in the exercise of such rights do as little damage as possible to the said lands and fences thereon and will forthwith repair any damage occasioned to the said lands and fences in connection therewith as provided *also* that the grantee will maintain and keep the said telephone wire at its present height of 15′ from the surface of such land and provided further that the grantors shall not be liable for any damage which may be caused to the said wire or the poles or supports thereto by slack or otherwise than through their own wilful act or default.

* This easement may be compared with Precedent No. 1 *ante*

MR W. T. CHURCHWARD.

Crown Appointments Relinquished.

The resignation of his appointment as Crown Prosecutor and Crown Solicitor for the Marlborough district of Mr W. T. Churchward was marked on April 28 by tributes from Bench and Bar in the Blenheim Magistrates' Court. Mr H. J. Thompson S.M. presided and members of the Marlborough District Law Society attended.

Mr Churchward was appointed in March, 1934, and at twenty-five years had held the posts longer than any of his predecessors, said the president of the Marlborough Society, Mr F. W. Horton. In that long period he had earned the respect of Bench and Bar, and in particular the respect of members of the Society.

Mr Churchward, said Mr Horton, had carried out his duties with all the tradition of the office, and his outstanding quality had been his sense of fairness—his "tempering of justice with mercy".

"It could be said of him that he always pressed his cases when necessary, but at the same time showed great fairness", said Mr Horton.

"We of the Bar have been very fortunate in having a man of Mr Churchward's stature in our midst", he added. "I am pleased to be able to say that Mr Churchward is not retiring. He has had only 56 years in active practice."

During his long service, continued Mr Horton, Mr Churchward had filled with dignity many offices. He had, for instance, been six years as president of the Law Society and for five years on the Council of the N.Z. Law Society and two years on the Disciplinary Committee. Mr Horton, on behalf of the Bar, extended a welcome to Mr Churchward's successor, Mr P. L. Molineaux, a partner in the same firm.

Colleagues' Tribute.

"I speak with mixed feelings", said Mr A. E. L. Scantlebury. "I have been honoured with Mr Churchward's friendship for close on forty years, and for considerably more than half that period we have from time to time been on opposite sides.

The office of Crown Prosecutor was a difficult one, said Mr Scantlebury, and the conduct of the office no less so. But never had Mr Churchward conducted himself in anything other than the high tradition of the office. He was, one might say, intent only on truth and justice. Mr Churchward had set a fine example to his successor, said Mr Scantlebury.

Mr A. C. Nathan, another long-term member of the Marlborough legal profession, said Mr Churchward's unfailing courtesy had been a hallmark of his practice and he had gone out of his way to help the younger generation.

High Standard.

Mr Thompson, said the offices of Crown Solicitor and Crown Prosecutor were important ones in any community.

"I have known Mr Churchward for a long time, and he has always set a high standard for the younger practitioners, and in the conduct of his cases he has been singularly lacking in bombast.

"We are all sorry to see him go, but are pleased that he is to stay with us in normal day-to-day work."

It was a fine tribute which had been paid to him by his colleagues and the Bench, said Mr Churchward in reply.

"Knowing how sincere these expressions are, I feel they are a fine reward for what I have attempted to do."

He had been fortunate in his career in that he had had good teachers in his student days and while a young practitioner, said Mr Churchward, all through his career he had had good partners—men of high integrity.

"I have always tried to carry out the high traditions of the profession", he said, "and to be fair in my work. This fairness I have tried to exercise more than anything else. I feel that after 25 years I should retire while I am still young and active", he said.

He referred to the fine relationship which existed between Bench and Bar in Blenheim. This was an essential in seeing that justice was done, he said.

Mr Churchward outlined the qualifications in order that he considered essential for a good practitioner—

integrity, knowledge, industry and ability. While the last was important, it was of little use without the other three, he said.

Mr Churchward extended thanks to all who had helped him in his career—his colleagues, the Police, Court officials, and the Bench. He expressed also appreciation of the good wishes extended to him and his wife.

Mr Churchward's successor, Mr P. L. Molineaux, M.A. (Hons. in Philosophy), LL.B., served with the New Zealand Military Forces in the Pacific in 1942 and 1943 and was then invalided out of the Army. He completed his B.A. in 1944 and M.A. in 1946, when he joined the office of Wynn-Williams, Brown and Gresson for two years. He then served in the Colonial Administrative Service in North Rhodesia for three-and-a-half years. He returned to New Zealand after gaining his LL.B. degree, and resumed practice in the office of Burden, Churchward and Horton in 1952. In 1954 he became a partner in the firm, now known as Churchward, Horton and Molineaux. He was appointed Crown Solicitor for the district on April 16 last.

VIA RURALIS.

By Advocatus Ruralis.

The life of a country solicitor consists largely in living so that he does not have to commit his legal opinion to writing. This has the disadvantage that, if he does more than grunt, he is deemed to have given an oral opinion on the client's side and will be so quoted. From a client's point of view this means that the client —while quoting his solicitor as an authority—pays no costs.

Advocatus has recently been consulted on the question of roads. The first question was bound to come up sooner or later, but Advocatus felt that the matter (being an honorary one) could easily have gone elsewhere.

A boys' camp had recently been established on a lonely coastline. This was followed by one of those settlements which spring up and sell sections along the sea-front.

The farmer with about three miles of coastline immediately to the North was a little peeved because his beach was overrun by people old and young. He stated that his title ran down to low-water mark, and he quoted as his authority the head of a Government Department, who, on being asked, had said that it might be so.

Advocatus remembered from his student days that there was something about a chain width along the waterfront, but he rather thought that this had to do with the horse-bus service, which, one hundred years ago, went along the beach from Wellington to Wanganui. Research found that unless specially granted a title ran to high-water mark. The land lying between high and low-water mark (according to Brewer, possibly the origin of Tom Tiddler's land) belongs to the Crown. This meant a search had to be made of the Crown Grant. The search showed that the farmer's title reached only high-water mark. The search also showed that the Crown Grant reserved a right of a road, one chain wide, through the said land and we are hoping that no one asks whether this means a chain road along the foreshore. We wondered what happened to this right of road when the land was brought under the Land Transfer Act without the right being brought down on the title. We referred the point to the junior partner who informed us crushingly that the point was covered by the small print on the Certificate of Title which we cannot remember having previously read. The points that now worry us are : (1) can we advise the kids that they have a right of road above high water as well as below high water ; and (2) do we have to explain to every farmer that the Crown has a right to drive a road up his front drive and through the newly-built tennis lawn apparently without paying compensation, if as was usual a chain-road right was reserved ?

The next question also dealt with a road. For three years a farmer and his sons have been discussing breaking up the farm among the different members of the family. The frontage is to a side road leading off a district road. We explained that, according to a Court decision, it was nearly a crime to enter into an agreement for the sale or transfer of land until a plan had been deposited in the Land Transfer Office. As the question of gift might arise, we urged that the plan be gone on with. After a comparatively short discussion (two-and-a-half years), the farmer and his sons decided on the boundaries of the subdivision and we somewhat thankfully called in a surveyor. The surveyor has now called and stated that the side road is less than 66 ft. wide and must be legalized and exempted ; but, worse than that, for four miles the main district road in use for seventy years and properly tarred has never been surveyed or dedicated. Advocatus and the farmer went to the same War, so that time may be deemed to be running against both of them. It is a legal impossibility to give or transfer any of this land until at least another twelve months has been added to the years that the locust hath eaten—and the farmer wants to know what attitude the Stamp Office will take if he presents a transfer for stamping now. We said they would undoubtedly take the money.

We have explained further that it might be possible for the D.L.R. to issue a provisional acceptance of the plan for deposit, but our agents say he won't. We have explained that until his plan is deposited he will be an object of suspicion to the Income Tax potentates, and when he dies he will be an object of joy to the Stamp Office—all because nobody will sit down and draw a short amendment which would give the right to enter into an agreement pending deposit of a plan. Today, as a member of a Board of Trustees, Advocatus has discussed with a Government Department the erection of a £50,000 building to be leased to the Government Department. As it was on only part of the land in the title we pointed out to the property officer that one or other of us was committing an offence. His reply was . . . ! ! !

IN YOUR ARMCHAIR—AND MINE.

BY SCRIBLEX.

Alternative Accommodation.—How many practitioners can place their hands upon their heart and declare that they know what a "proleptic notion" is ? According to the *Little Oxford Dictionary*, it is an assumption that something is done or true before it is so ; and in this sense the term is used with classic aptness by Cleary J. in *Fear's Radios and Cycle Co. Ltd.* v. *Dominion Life Assurance Office of New Zealand Ltd.* in which he gave the dissenting judgment on May 18 :

> "The question therefore seems to me to be whether the offered premises, situate partly in a street which is not and will not for some time be a retail-shopping street and partly in an incomplete arcade which will not for nine months provide access from a main shopping street, can be deemed suitable alternative accommodation available for the appellant when the order takes effect. I do not think so ; such a proleptic notion of suitability does not satisfy the Act. What is available at the relevant time is a shop which by reason of its location is unsuitable ; what may be a suitable shop after nine months or more is not available at the relevant time."

In the Supreme Court, McCarthy J. had ordered the respondent to give the appellant a five-years' lease under which rent was remitted for the first year (in order to allow for the completion of the arcade) and for the next two years rent was halved. The President, Gresson P., did not think that this concession could fairly be treated as compensation for the unsuitability of the accommodation offered, but it was rather an adjustment to meet the period during which the tenant would suffer inconvenience and be denied access to Willis Street. The decision of the trial Judge, he considered, was made with a proper regard to the construction of the statute, and he was not disposed to disagree with it. North J., who agreed with him that the appeal should be dismissed, said :

> "Whatever the position may have been before 1950, I cannot think that with the guidance of the more liberal provisions of the present Act, the Court should declare that a 'protected' tenant is to be immune from temporary inconveniences which are an inevitable consequence whenever an old building is pulled down and replaced by a new building, particularly when, as here, the landlord is prepared to go to great lengths to cushion the effect of the temporary disadvantages of the new premises. See the observations of Jenkins L.J. in *Scrace* v. *Windust* [1952] 2 All E.R. 104, 109. Having studied the evidence in the present case, I am satisfied that when the arcade is built the appellant will enjoy modern premises in very pleasing surroundings and with all the added advantages which will come from the presence of the new shops with which the arcade is to be flanked."

On the other hand, Cleary J. summarized his views on the subject of alternative accommodation by citing a passage from the judgment of the Privy Council in *Singh* v. *Malayan Theatres Ltd.* [1953] A.C. 632. This reads :

> "It is true that all the circumstances must be taken into account, but after they have all been duly weighed it is still incumbent on the Court to find as an independent and essential requisite that suitable alternative accommodation exists or will exist when any order or judgment for possession takes effect. Unless this requirement is complied with, no Court is entitled to make an order, however much it is persuaded that it is reasonable to do so."

New Judicial Appointments.—On the retirement from the House of Lords in April of Lord Morton of Henryton (whom we had the pleasure of entertaining in 1957), Jenkins L.J. was appointed a Lord of Appeal in Ordinary to replace him. His lucid and incisive judgments for the past ten years have been a feature of the work of the Court of Appeal into which there now moves Mr Justice Jarman, a Judge of the Chancery Division since 1947. Mr Justice Davies has been transferred from the Probate, Divorce, and Admiralty Division to the Queen's Bench. Three new Judges have also been appointed. These are Mr C. R. N. Winn who has been assigned to the Queen's Bench Division and Mr A. P. Marshall Q.C. and Mr H. J. Phillimore Q.C. who both go to the Probate, Divorce, and Admiralty Division. The last-named follows two members of his family into the office of Judge—the first Lord Phillimore, who was his father's cousin and a Lord Justice of Appeal, and Sir Robert Phillimore, who was the last Judge of the old High Court of Admiralty. The new Judge acted as junior counsel at the Nuremburg trials in 1945.

Mr Justice Rand.—"Mr Justice Rand is, of course, the philosopher of Canadian constitutional law, the Judge who thinks through the mass of disparate detail in the case law to the great universal, organizing principles in terms of which alone the scattered details have significance : and Rand J. is also the judicial innovator, the Judge who is not afraid to break new ground and put forward new, experimental hypotheses for testing in action. The analogy to Lord Denning among contemporary English Judges is both proximate and fair, even though Lord Denning is essentially a private lawyer and Mr Justice Rand pre-eminent in the public law above all—undoubtedly the most outstanding public law Judge now sitting in the Commonwealth countries. When one first attempts to study Rand J.'s opinions in detailed, systematic fashion, there is a temptation to assimilate him to Mr Justice William O. Douglas, of the current United States Supreme Court Bench ; but Douglas J.'s opinions have had at times a touch of absolutism in them—perhaps the product of the frustrations of having to dissent too often—and consequently on occasion a certain element of acidity that mark them off, as examples of libertarian activism, from Rand J.'s special concurrences : liberalism perhaps requires a certain element of kindliness to reach its full development as a working judicial philosophy."—*The Supreme Court and the Bill of Rights, Canadian Bar Review, March,* 1959.

From My Notebook.

"I deprecate", says Viscount Simonds in *Smith* v. *Austin Lifts Ltd.* [1959] 1 All E.R. p. 81, "any tendency to treat the relation of employer and skilled workman as equivalent to that of nurse and imbecile child . . .".

"At football matches, loud and pointed doubts are often expressed about the referee's ancestry, but this is not slander in the legal sense ."—Mr Justice Donovan.

"No country ever takes notice of the revenue laws of another."—Lord Mansfield in *Holman* v. *Johnston* (1775) 1 Cowp. 341.

TOWN AND COUNTRY PLANNING APPEALS.

Manutute and Others *v.* Taupo County Commissioner.

Town and Country Planning Appeal Board. Taupo. 1958. December 12.

Zoning—Lakeside Area zoned as "Proposed Reserve"—Balance of Owner's Land zoned "Residential"—County not to require Further Land to be set aside as "Reserve"—Zoning confirmed subject to Such Condition—Land Subdivision in Counties Act 1946, s. 12—Town and Country Planning Act 1953, s. 42 (3).

Appeal by the owners of a property at Mission Point, Lake Taupo, containing 4ac. 2 ro. 08.7 pp. being Tauranga-Taupo No. 2B No. 2M, No. 3B, No. 2.

Under the Taupo County's proposed district scheme (Eastern Lakeshore Section) as publicly notified, part of this land comprising 1 ac. and 15 pp. was zoned as "proposed reserve". This was the part of the appellants' property fronting on to Lake Taupo at Mission Point.

The appellants lodged an objection under s. 23 of the Town and Country Planning Act 1953, claiming that this land should be zoned as "residential". The objection was disallowed and this appeal followed.

The judgment of the Board was delivered by

Reid, S.M (Chairman). At the hearing, the Board was informed that the parties were agreed that "proposed reserve" was the appropriate zoning but that as the owners had prepared a scheme for the subdivision for residential purposes of the balance of their land already zoned as "residential" they wished to be safeguarded against being required to set aside further land out of the subdivided land for reserves under s. 12 of the Land Subdivision in Counties Act 1946.

It was submitted by counsel for the appellants that this Board should impose a condition specifically binding the respondent not to require any further land to be set aside as "Reserve". Counsel for the respondent submitted that it was not competent for the Board to impose such a condition.

Under s. 42 (3) of the Town and Country Planning Act 1953, the Board "may vary, cancel, or reverse the scheme decision or determination to which the appeal relates, or may confirm it either absolutely or subject to such conditions and modifications as the Board deems just".

Acting under that subsection, the Board confirms the decision of the respondent zoning the land under consideration as "proposed reserve" subject to the special condition that as between the appellants and the respondent the setting aside of this land as a reserve shall be deemed a sufficient compliance with the Reserve requirements of s. 12 of the Land Subdivision in Counties Act 1946.

Order accordingly.

In re Downs and Poole Ltd.

Town and Country Planning Appeal Board. Wellington. 1958. December 12.

District Scheme—Re-zoning—Property zoned "Residential" Balance of Block zoned "Light Industrial"—Application to change zoning of Applicant's Property to "Light Industrial"—Property constituting Residential Pocket in Existing Industrial Block—Application granted—Town and Country Planning Act 1953, s. 35.

Application relating to a property being Lot 34 on Deposited Plan 9412 known as 19 Merton Street, Trentham, in the Borough of Upper Hutt. This property is zoned as "residential", but it is in a block the rest of which is zoned as "light industrial". Apparently it was first zoned as "residential" because there was a residence on it when the relative plans were prepared. The applicant has carried on a light industrial manufacturing business on the adjoining land since 1946. It purchased Lot 34 in April, 1958, and wishes to use it for industrial purposes. It accordingly applies for a specific departure from the provisions of the Upper Hutt Borough Council's operative district scheme by changing the zoning from "residential" to "light industrial".

The Upper Hutt Borough Council supported the application.

When the application was publicly advertised pursuant to Reg. 35 of the Town and Country Planning Regulations 1954, various residents in the locality filed objections and the Board directed a public hearing of the application in order to give the objectors the opportunity of being heard.

The judgment of the Board was delivered by

Reid S.M. (Chairman). 1. The real grounds of objection are the existence of any light industrial area in this locality, but that is not a matter upon which the Board is required to adjudicate.

2. A considerable number of the objectors have acquired their properties and built their houses in the locality after the factory had commenced operations.

3. The property under consideration constitutes a residential pocket in an existing industrial block and it is appropriate for it to be zoned in conformity with the land adjoining it.

The application is granted.

The Board consents to a specific departure from the provisions of the Upper Hutt Borough Council's operative district scheme by altering the zoning of the property known as 19 Merton Street, Trentham, containing 30.3 pp. more or less being Lot 34 on Deposited Plan 9412 from "residential" to "light industrial".

Application granted.

Dilworth Old Boys Association (Incorporated) *v.* One Tree Hill Borough.

Town and Country Planning Appeal Bord. Auckland. 1958. September 1.

Zoning—Areas zoned "Residential"—Conversion of Residence for Use as Club-room—Application for Property to be zoned as "Commercial B"—Area predominately Residential—Re-zoning to create "Spot" Commercial Zone Undesirable—Town and Country Planning Act 1953, s. 23.

Appeal by the occupier of a property comprising (*a*) all that parcel of land containing 33.4 pp. more or less situate in the Borough of One Tree Hill, being part Allotment 13 of Section 11 Suburbs of Auckland and (*b*) all that parcel of land containing 11.3 pp. being Allotment 19A on Deposited Plan No. 11464, being part of the said allotment 13 and known as Number 75 Great South Road, Auckland. The property was owned by the Dilworth Trust Board which owned a substantial area of land in this vicinity dominated by the Dilworth School and the grounds appurtenant thereto.

The property under consideration was a residence to which the appellant wished to make certain structural alterations so as to use it as a clubroom for its members.

It first applied to the Council for a building permit to make the requisite alterations. This was refused.

The property was in an area zoned as "residential B" under the Council's undisclosed district scheme. When this scheme was publicly notified, the appellant lodged an objection under s. 23 of the Act against the zoning of this property as "residential B" and requested that it be rezoned as "commercial B" so as to permit of the appellant establishing clubrooms as of right.

The objection was heard by the Council and disallowed. This appeal followed.

The judgment of the Board was delivered by

Reid S.M. (Chairman). 1. The property in question is in an area that has been zoned as "residential" since 1941. This area is predominantly residential in character and the zoning is appropriate.

2. To allow the appeal would lead to the creation of a "spot" commercial zone in a predominantly residential area and would be contrary to town-and-country-planning principles.

3. The use of this property as clubrooms would be a "conditional use" under the Code of Ordinances proposed for the Council's undisclosed district scheme, that is to say, a use that is permitted subject to the consent of the Council and to such conditions as the Council may see fit to impose.

This appeal is directed only to the disallowance of an objection to the zoning, and, as such, it is disallowed.

Had the appellant appealed against the refusal of a building permit to alter the building and use it as clubrooms the Board would have been disposed to allow the appeal, subject to the right of the Council to impose reasonable conditions.

Appeal dismissed.