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THE COMING VISIT OF THE LORD CHANCELLOR.

EVERY New Zealand lawyer is dutifully grateful to Her Majesty the Queen for graciously permitting Her Lord High Chancellor, Viscount Kilmuir of Creich, to leave Great Britain to attend the Eleventh Dominion Legal Conference in Wellington at Easter time.

His coming is an event of great interest to us all. His presence at the Conference will make it an event unique in our local legal history.

Lawyers, in particular, will welcome the Lord Chancellor for personal reasons: as Sir David Maxwell-Fyfe, he was one of the foremost lawyers of the Commonwealth before he attained his present high office in October, 1954, and one of the great legal personalities of his time.

The profession in this country are deeply conscious of the singularly high honour of the Lord Chancellor's attendance at the coming Conference. They are deeply appreciative of Lord Kilmuir's kindness in so generously and willingly accepting the invitation of the New Zealand Law Society and the Conference Committee which must involve no small inconvenience and difficulty to the holder of his high office.

Everyone will also welcome the Lord Chancellor as the holder of the most historic office under the Crown. His office is at the centre of the Constitution of Great Britain, and has been so for many centuries. He is the Queen's first subject, after the members of the Royal Family and the Archbishop of Canterqury. And the origin of his office is almost obscured in the mists of legend that surround the days of the almost fabulous King Arthur, who is said to have first appointed a Chancellor.

The Antiquity of the Office.

The origin of the name "Chancellor" is disputed. Sir William Holdsworth disagrees with Lord Campbell, and, in his *History of English Law*, says that it is derived from the *cancelli*, or screen, behind which the secretarial work of the Royal Household was carried on. According to Selden, in his *Office of Chancellor*, Ethelbert, the first Christian King among the Saxons, had Augmendus for his Chancellor. So, from the time of the conversion of the Anglo-Saxons by St. Augustine, in 596, the King always had near him a priest, who was his personal chaplain and his confessor: hence the historic title of the Lord Chancellor, "the Keeper of the King's (or Queen's) Conscience".

The person selected for the office was chosen from the most learned and most able of the clergy. He was better fitted for his duties than the unlettered laymen of the Court. In the ordinary course of events, he became in practice the private secretary of the Sovereign, and he was qualified by his knowledge of Civil and Canon Law to advise the Sovereign in the delicate legal issues which lay outside the purview of the Courts administering the Common Law of England. (The first layman to become Chancellor (in 1340) was Sir Robert Bourchier, a distinguished soldier; but many other clerics held the office in the centuries that followed.)

Edward the Confessor, the first King to have a Seal, was also the first King to have a Chancellor to keep it.

The Sovereign has always been the fount of justice; but, not being learned in the law, he could not himself decide all controversies. The Judges in his Courts were appointed to remedy all wrongs. Still, applications came to the monarch in person from people seeking redress in cases where the Courts could give no remedy. The monarch, therefore, needed assistance to deal with these petitions, someone to act in his name. This task fell to the King's secretary, on whom, by degrees, the duty of remedying wrongs not cognizable by the Courts entirely devolved. And so the secretary came to be known as the King's Chancellor in a special sense, and the place where he could easily be approached—the Chancery—evolved into a form of Court.

The Chancellor's duties at first, as we have seen, were chiefly secretarial. He was "the secretary of state for all departments"; and, as part of this duty he drew and sealed the Royal writs (*1 Stubbs's Constitutional History*, 398, 399. He became a prominent member of the Exchequer department of the Curia Regis; and he assisted in the judicial business both of the Exchequer and of the Curia Regis, and acted as itinerant Justice when he accompanied the Sovereign on any Royal progress.

The Chancery.

The increase of the business of the Curia Regis increased the dignity of the Chancellor, and necessitated the employment of a staff of clerks. The Chancellor thus became the head of a department—the Chancery. In 1199, the departments of the Exchequer and the Chancery were separated, and a separate set of rolls—the Chancery Rolls—began. (It is probable that to

this separation and the establishment of a new set of rolls, on the model of the rolls of the Exchequer and the Curia Regis, was due the development of the office of Master of the Rolls.) Then, as now, the Chancellor had miscellaneous functions; but for some time to come the Chancellor was not the head of a Court. Even when he attained that position, he did not cease to be an important member of the executive Government.

Naturally, the connection of the Chancellor and the Chancery with the Curia Regis—the governing body of the kingdom—was close. The Chancellor, as Professor Tout has said in his *Place of Edward II in English History*, was " the King's natural prime minister ".

The result was that the Chancellor, though still a Court official following the King wherever he journeyed, had a staff of his own entirely separate from the chaplains and clerks of the Household. Professor Tout said, at pp. 59, 60:

> The clerks of the Chancery, living with their chief a self-contained and semi-independent collegiate life, . . . soon developed a departmental tradition and *esprit de corps* that began to rival the strong corporate feeling of the Exchequer officials.

But the Chancellor was destined to become something very much more than a mere departmental chief. Though a " salaried officer of limited powers and tenure of office " had been substituted for " the old type of irresponsible magnate ", yet this officer was bound to become an important official in the State, because he kept the Great Seal. It is, in fact—as Professor Holdsworth has reminded us—the Chancellor's position as Keeper of the Great Seal which puts him at the head of the English legal system and makes him the legal centre of the constitution.

As the Chancellor and the Chancery were, from the earliest times, in direct connection with all parts of the constitution, this accounts for the extraordinary range and variety of the Chancellor's duties. Of that range and variety, Bentham's critical summary will give us the best idea. He is:

> (1) A single Judge controlling in civil matters the several jurisdictions of the twelve great Judges.
>
> (2) A necessary member of the Cabinet, the chief and most constant adviser of the King in all matters of law.
>
> (3) The perpetual president of the higher of the two Houses of Legislature.
>
> (4) The absolute proprietor of a prodigious mass of ecclesiastical patronage.
>
> (5) The competitor of the Ministers for almost the whole patronage of the law.
>
> (6) The Keeper of the Great Seal; a transcendent, multifarious, and indefinable office.
>
> (7) The possessor of a multitude of heterogeneous scraps of power, too various to be enumerated [cited in *Parkes on the Chancery*, 437].

We have seen that the English legal system was a system of Royal justice. This Royal justice had to be called into action by original writs (as opposed to judicial writs), and these had to be sealed by the Chancellor. So, as Lambard, in his *Archeion*, says, the Chancery was " the forge or shop of all originals ".

Thus, down to our own day, in conjunction with the common-law Judges, the Lord Chancellor is a guardian of personal liberty; and anyone unlawfully imprisoned may apply to him for a writ of *habeas corpus*, either in term or in vacation. He may at any time issue a writ of prohibition to restrain inferior Courts from exceeding their jurisdiction, though he listens with reluctance to such motions, since they may be made to the King's Bench, whose habits are better adapted to the sort of business, as Lord Redesdale L.C., said in *Montgomery* v. *Blair* (1804) 2 Sch. & Lef. 136. Also, the Lord Chancellor has an exclusive authority to restrain a party from leaving the kingdom where it appears that he is withdrawing himself from the jurisdiction of the Courts. This is effected by the writ *ne exeat regno*, which is a high prerogative remedy issued under the Great Seal, but always (as Lord Campbell L.C., reminded us) with great circumspection.

The Lord High Chancellor of Great Britain.

To Be Guest of New Zealand Law Society.

Viscount Kilmuir of Creich, Lord High Chancellor of Great Britain, is to visit New Zealand in April to attend the eleventh Dominion Legal Conference at Wellington. This has been announced by Mr D. Perry, President of the New Zealand Law Society. Viscount Kilmuir will be accompanied by Lady Kilmuir, D.B.E., and will be the guest of the New Zealand Law Society. They will arrive in the Dominion on Easter Sunday.

Mr Perry expressed the Society's deep appreciation of the assistance which the New Zealand Government had given towards making the visit possible.

The Chancellor's Appointment.

It is now usual for the Sovereign to appoint, as Lord Chancellor, the person recommended for that office by the Prime Minister, whose choice must be made from the Judiciary or from those who have held the office of Solicitor-General or Attorney-General. On his appointment, the Great Seal of Great Britain is placed in his hands by the Sovereign, because, since 1707, the Lord Chancellor has been the Keeper of the Great Seal of Great Britain. He cannot leave the British Isles without the Sovereign's personal consent; and, while he is away, the Seal is held by Lords Commissioners. He returns the Seal to the Sovereign on retirement or resignation.

The Lord Chancellor receives a salary of £12,000 a year, and, on his retirement, a pension of £5,000.

Unkind critics have bitterly attacked the latter payment; but it must be borne in mind that most Lord Chancellors, health permitting, continue to sit on appeals to the House of Lords and to the Judicial Committee of the Privy Council, and that tradition forbids them to return to their practice at the Bar. On his retirement from the Woolsack, Lord Birkenhead was attacked in some quarters for taking the pension attached to the office of Lord Chancellor. To this he made reply that, when he accepted the office, he abandoned an income of £20,000 a year at a pre-war value. "Ask any of the leaders of the Bar", he said, "whether, if I returned to practice at the Bar, I could not now make £40,000 a year". While all ex-Lord Chancellors could not, perhaps, make £40,000 a year at the Bar, every one of them could earn in fees considerably more than £5,000;and this should effectually silence most of the critics.

Duties of the Office.

The Lord Chancellor has a great many duties, political, administrative, and judicial. He is a member of the Ministry and of Cabinet, and he accepts office or retires with the party to which he belongs. He is the Speaker of the House of Lords; and he is, in general, the formal medium of communication between the Sovereign and Parliament.

The political nature of the office of the Lord High Chancellor has frequently been denounced as contrary to the best interests of justice, in that it is destructive of independence. But England has been fortunate in its Lord Chancellors, and their personal conduct of the office has gone far to meet the objection. It has been said, in support of the existing system that, while the other Judges should be permanent, the highest legal functionary should stand or fall with the Ministry as the best means of securing his effective responsibility to Parliament for the proper exercise of his extensive powers.

The executive functions of the Lord Chancellor are not now so heavy as they were in the past. While extensive duties still remain, their burden is now in practice considerably lightened by the efficient management of the Lord Chancellor's Department under his Secretary. Lord Thurlow was once asked how he got through his business as Lord Chancellor. "Oh", he replied, "just as a pickpocket gets through a horsepond—he must get through". But to many another Lord Chancellor the burden of the office has been heavy. To Lord Herschell, an exceptionally conscientious Chancellor, there were not, to use his own words, three days in the year in which he was not hard at work, and on many days he was working ten, eleven, twelve, and thirteen hours. And we know that Lord Langdale, offered the Great Seal in 1850, drew up a list of the pros and cons, the latter ultimately prevailing, on which side appeared the words:

> Persuasion that no one can perform all the duties that are annexed to the office of Chancellor. Certainly that I cannot. Unwilling to seem to undertake duties, some of which must (as I think) be necessarily neglected.

Happily, the burdens of the office have since been lightened.

Speaker of the House of Lords.

Unlike the Speaker of the House of Commons, the Lord Chancellor takes part in debates. Practically the only function which he discharges as Speaker is putting the question. If two members of their Lordships' House rise together, he has no power to call upon one, nor can he rule upon points of order. Not he, but the whole House, as "My Lords", is addressed by any member rising to speak.

It may perhaps be mentioned that there is no binding obligation on a Lord Chancellor to become a Peer. Though a commoner, he may still sit on the Woolsack and put the question and commit resolutions; but one thing he cannot do, and that is address their Lordships' House.

There are advantages for a Lord Chancellor in remaining a commoner. For instance, if his party were ousted from power, he could return to the House of Commons and have within his reach both the office of Leader of the Opposition and the glittering prize of the Prime Minister-ship, should his party later be successful at the polls. But to accept a peerage is an irrevocable act, and there is many an ex-Lord Chancellor who, after his party's defeat, has sunk, so far as a public life is concerned, into comparative obscurity, spending the rest of his days in hearing and determining appeals to the House of Lords—valuable and essential work, but not a task that attracts the public eye. Exceptions, of course, are to be found, and among them stands conspicuous the case of Lord Birkenhead, who remained quite as well known under that title, and quite as important a personage, as he ever was as F. E. Smith—which is saying a great deal. Nevertheless, most Lord Chancellors continue, and probably always will continue, to take the irretrievable plunge into the peerage. Two of the most famous commoner Chancellors have been Sir Thomas More, whom historians have called "the greatest of Englishmen", and Sir Francis Bacon (though the latter elected to become Baron Verulam some six months after his appointment, and, a few years later, Viscount St. Albans).

The names of three Lord Chancellors adorn the calendar of saints: St. Swithun, St. Thomas a Becket,, and St. Thomas More. But, as Earl Jowitt L.C., told us in 1951, modesty alone prevented him from pointing out that the list is not necessarily closed.

Judicial Duties.

As the King's highest judicial officer, the Lord Chancellor is *ex officio* the President of His Majesty's High Court of Justice, and, in particular, the President of the Chancery Division thereof; and he is also the President of the Court of Appeal. When the Lords of Appeal in Ordinary sit as the final appellate Court for Great Britain and Northern Ireland and the Lord Chancellor is present as a member, he presides on the Woolsack, and he also declares the formal conclusion of the debate. He is also a member of the Judicial Committee of the Privy Council, as a Privy Councillor "holding high judicial office".

From a very early date, the practice has prevailed of conferring upon the Chancellor special jurisdiction under special statutes. We find instances of this at all periods in the history of his office. In the Middle Ages he was given a special jurisdiction, *inter alia*, to punish the misdemeanours of sheriffs and other officers; to issue process for the arrest of felons who had fled into unknown places; to try cases of robbery committed by subjects upon alien friends, on the sea,

or in any port within the realm. At a later period, various and heterogeneous powers still continued to be conferred upon him. We may take as instances an Act for settling tithes to be paid in the City of London after the Great Fire, the Habeas Corpus Amendment Act, and statutes dealing with arbitrations, Jews, and friendly societies; and Canal, Navigation, Enclosure, and Tramways Acts often added further special powers.

The Lord Chancellor possesses an extensive judicial patronage, but it is wrong to suppose that he is the only medium for recommending to the Sovereign preferment in the profession of the law. Justices of the High Court and the County Court Judges are selected by the Lord Chancellor, as are also Official Referees, Masters in Lunacy, and a certain proportion of the Masters and other high officials of the Supreme Court. But, technically at any rate, the Lord Chief Justice, the Master of the Rolls, and the Lords Justices are appointed on the recommendation of the Prime Minister. The Lord Chancellor also has the appointment of Justices of the Peace, but the number of these dignitaries renders it well-nigh impossible for any Chancellor to satisfy himself of the personal merits of each individual applicant or appointee. Lord Herschell, however, insisted on personally examining the case of each candidate to satisfy himself that he was a fit person to administer justice, saying that he would rather renounce his office than prostitute his power of appointment to political-party purposes, and by this conscientiousness aroused, incidentally, considerable disfavour among his fellow-Liberals.

The Woolsack.

The Woolsack is traditionally, and in the daily speech of lawyers, inseparable from the office of Lord High Chancellor of England. It is a large sack, like a bale, filled with wool, without back or arms. It is the "throne" or chair of the Lord Chancellor when he presides as Speaker of the House of Lords. The origin of the Woolsack, and its significance is interestingly told in the fine recently-published "life" of Lord Chancellor Wolsey, *Naked to Mine Enemies*, by Charles Ferguson (Longmans, Green, and Co.). The author, writing of Wolsey's appointment on Christmas Eve in the year 1515, says:

> There was something meet and fitting about Thomas Wolsey of Ipswich seated on a sack stuffed with wool. The woolsack was the throne, so to say, of the Lord Chancellor of England, and now the Chancellor was the son of a man of sheep in a land of sheep which owed its wealth and daily living to sheep, with sheep outnumbering humans three to one. Dealing in cloth occupied men's thoughts daily. Many figures of speech came directly from it. One spun a yarn, carried a thread of discourse, unravelled a mystery. A thing was fine-drawn or homespun. Unmarried women were spinsters. The government concerned itself gravely with every detail of the trade in cloth: the import of foreign-made hats and caps was forbidden; the prices of articles produced at home were fixed; the export of more expensive kinds of cloth was not to be allowed unless the cloth was fully finished.
>
> The woolsack was a healthy and solid reminder of an ancient fact. It survived ceremonially out of a time when woolsacks had been occupied in Parliament by high dignitaries of the Crown. Now the highest councillor of the Crown still occupied it. With all his glory, and though a Cardinal, the Chancellor of the realm accepted as his symbol a sack stuffed with wool and covered with rich and appropriately red cloth. It gave him, this emblematic sack, some kinship with the common people and some basis for concern with their daily problems. The connection might be tenuous, as it is in any ritual, but it was there just the same. The King existed above and beyond the commonalty; the Lord Chancellor was of it: an audience for the complaints and aspirations and pleas of the lowborn and the bedraggled. The Chancellor stood between the Throne and the people, and the woolsack signified that he was of the people.

The Woolsack is of, but is technically not in, the House of Lords. The Lord Chancellor can sit on the Woolsack and put the question without being a member of the House. If he is a Peer and wants to make a speech as a member of the House, he takes one step to the left, and thus brings himself within the House. He votes, however, from the Woolsack and does not go into the division lobby.

The Great Seal.

It is no wonder that lawyers and statesmen regard the Great Seal—the *clavis regni*—with an almost superstitious reverence. It is treason to counterfeit it; and they come to think that, if it is used—it may be contrary to the will, or during the madness, of the Sovereign—the act is as authentic as if the Sovereign had really sanctioned it.

All important Government acts—treaties with foreign States, the assembly of Parliament, Royal grants—must pass the Seal, and must, therefore, come under the Chancellor's review. The history of the office of Lord Chancellor is thus inseparable from every feature in the history and development of the constitution.

When the Lord Chancellor appears in his official capacity in the presence of the Sovereign, or receives the messages of the House of Commons at the Bar of the House of Lords, he bears in his hand the purse—a red velvet bag embroidered with the Royal Arms that contains (or is supposed to contain) the Great Seal. On other occasions, it is carried before him by his purse-bearer.

The Great Seal is kept in the purse under the Chancellor's private seal. There is a rule that he may not take it out of the realm.

At the beginning of a new reign, or on a change in the Royal Arms or style, the Great Seal is "demasked", or struck with a hammer by the Sovereign at his or her first Council, in order slightly to deface it. The old Seal is then presented to the Lord Chancellor as a perquisite. On the accession of William IV, there was a dispute between Lord Lyndhurst, who was Chancellor on the King's accession, and Lord Brougham, who succeeded him as Lord Chancellor before the new Seal was finished, as to the rightful possession of the old Seal, a question which the King himself decided by giving half of the Seal to each, and by arranging that the particular half that each of these great Chancellors should receive was to be determined by lot. His Majesty's judgment was greatly approved. Seals that have become worn out are also presented to the Lord Chancellor for the time being. The late Lord Halsbury is reputed to have acquired two such relics in this way. But the practice now is for a wafer Seal to be affixed to most documents of State, and the Great Seal itself, being used for only a few purposes, has thus a much longer period of efficiency than formerly.

Without the express permission of the Sovereign' the Lord Chancellor, as Keeper of the Great Seal, may not leave the United Kingdom. Sir Alan Herbert, in writing of the duties of Lord Chancellor, refers to a

disconsolate holder of the office looking across the Channel and seeing the French coast on which he may not set foot :

> Oft upon the rocky shore
> Men see the sad-eyed Chancellor,
> At Folkstone or at Dover,
> Astride of some convenient groyne,
> He looks with longing at Boulogne
> As cattle do at clover.

To our great happiness, Lord Kilmuir has Her Majesty's permission to come as far as the shores of New Zealand. In his absence, the Woolsack is occupied by one of the commissioners appointed under the Great Seal to represent him. It is usual to appoint the Lord Chief Justice and the Master of the Rolls as two of the commissioners.

Conclusion.

To conclude, we take the words of a writer well qualified to assess the interest and the importance of the Lord Chancellor's office. In his preface to the first edition of his great work, Lord Campbell says :

> There is no office in the history of any nation that has been filled with such a long succession of distinguished and interesting men as the office of Lord Chancellor or Lord Keeper of the Great Seal of England. It has existed from the foundation of the monarchy; and, although mediocrity has sometimes been the recommendation for it, generally speaking, the most eminent men of the age, if not the most virtuous, have been selected to adorn it. To an English statesman as well as an English lawyer the narrative ought to be particularly instructive, for the history of the holders of the Great Seal is the history of our Constitution as well as of our jurisprudence.

For these reasons, and particularly for his own qualities and the friendliness of his personality, New Zealand lawyers will welcome to New Zealand the present distinguished holder of the Great Seal.

SUMMARY OF RECENT LAW.

ADMINISTRATIVE LAW.

Earthquake and War Damage Commission—Order made contravening Principles of Natural Justice—Order of Certiorari made by Supreme Court in Its Original and Supervisory Jurisdiction over Inferior Tribunal—Whether Prohibition would be to prevent Commission's Rehearing of Claim—See EARTHQUAKE AND WAR DAMAGE (*Ante*, 39).

DEFAMATION.

Libel—Privilege—Newspaper publishing Defamatory Statement of Fact about Individual—Such Statement in Article on Matter of Public Interest—Statement not privileged—General Verdict by Jury—Statutory Provision declaratory of Common Law—Defamation Act 1954, s. 22. A newspaper cannot claim privilege if it publishes a defamatory statement of fact about an individual merely because the general topic developed in the article is a matter of public interest. (*Davis* v. *Shepstone* (1886) 11 App. Cas. 187, and statement of Sir John Latham C.J. in *Loveday* v. *Sun Newspapers Ltd.* (1938) 59 C.L.R. 503, 513, followed. *M. G. Perera* v. *Peiris* [1949] A.C. 1, distinguished. *Allbutt* v. *General Council of Medical Education and Registration* (1889) 23 Q.B.D. 400, and *Chapman* v. *Ellesmere* [1932] 2 K.B. 431, referred to.) In the present case, the fact that the newspaper was demanding an inquiry into the circumstances referred to in its article did not provide it with a lawful excuse for making a defamatory statement; but the fact that it was seeking an inquiry might be relevant to the question of damages. Section 22 of the Defamation Act 1954 is merely declaratory of the common law. (*Parmiter* v. *Coupland* (1840) 6 M. & W. 105; 151 E.R. 340, referred to.) A summing-up is not to be rigorously criticized; and it would not be right to set aside the verdict of the jury, because in the course of a long and elaborate summing-up the Judge may have used inaccurate language. The whole of the summing-up must be considered in order to determine whether it afforded a fair guide to the jury, and too much weight must not be allowed to isolated and detached expressions. (Statement of Bramwell L.J. in *Clark* v. *Molyneux* (1877) 3 Q.B.D. 237, 243, adopted.) Appeal from the judgment of Hutchison A.C.J. [1959] N.Z.L.R. 1121, dismissed. *Truth (N.Z.) Ltd.* v. *Holloway*. (C.A. Wellington. 1959. November 16. North J. Cleary J. McGregor J.)

GAMING.

Offences—Premises Kept for Betting Purposes—"Picks" Competition—Such Competition conducted by Publican and Barman in Hotel—Horse-race "contingency" whereon they Undertook to pay Competitors—Whole Pool paid out to Successful Competitors—Publican Merely Stakeholder—No Offence committed—Gaming Act 1908, s. 36 (1) (b). B. was at all material times the occupier of licensed premises. At the same time W. was barman on the premises, and employed by B. On October 10, 1958, and on various dates between then and January 31, 1959, what have been known as a racing "Picks" competitions took place at the hotel. The method of the competition was that entrants filled in forms in relation to a specified race meeting, and in such form each entrant named the winner of each of the eight races on the card for the race meeting being held. Completed forms were delivered to a barman employed at the hotel either on the Friday immediately preceding the race meeting, or on the Saturday morning before 11 a.m. With each entry form the sum of 2s. 6d. was handed by the entrant to the barman. The forms and money so delivered to W. or to other barmen were placed by B. in a cashbox and were kept apart from the moneys of the hotel. On the first week-day following the race-meeting, the winner of the competition was ascertained in the bar of the hotel by reference to the delivered forms. The points were calculated by awarding three points for a winning selection of the horse for each race, two points for a second, and one point for a third. W. checked the forms and marked them; and he assessed the winner in accordance with the highest number of points recorded on the forms. In the event of there being more than one competitor with the same number of points, the pool was divided between those competitors. W. handed over the moneys in the pool to the sole winner or to the winners so ascertained. The pool distributed consisted of the total amount of the individual sums of 2s. 6d. paid as entrance fees in respect of each form. No deduction of any kind was made from the pool. The forms used by the patrons were supplied by W. and had been printed by a firm of printers at the order and cost of B. Neither defendant took part in any such competition as a competitor. For the competition being run on January 31, 1959, there were fifty-two completed forms, and the pool moneys amounted to £6 10s. B. was the person using the premises at all material times for the conduct of the competition, and W. did at all material times assist B. therein. B. and W. were charged with offences under s. 36 (1) (b) of the Gaming Act 1908. On Case Stated by a Magistrate and removed into the Court of Appeal pursuant to s. 78 of the Summary Proceedings Act 1957, *Held*, 1. That the horse-race was the "contingency" (as that term is used in s. 36 (1) (b) of the Gaming Act 1908) on which the undertaking to pay depended, and not the knowledge and skill of the competitors. (*R.* v. *Stoddart* [1901] 1 Q.B. 177, followed. *McComish* v. *Alty* [1955] N.Z.L.R. 172, in part overruled.) 2. That s. 36 (1) (b) of the Gaming Act 1908 applies to a competition such as the one in question in this case, provided always that the evidence shows that the defendants who received the money received it "as or for the consideration . . . for [the] undertaking [or] promise to pay" whatever sum of money the terms of the competition required. (*Skill Ball Pty. Ltd.* v. *Thorburn* (1936) 55 C.L.R. 292, applied.) 3. That, as B. did not receive anything out of the pool, he must be regarded as a stakeholder. An occupier of premises who is merely a stakeholder does not come within s. 36 (1) (b) of the Gaming Act 1908, for he has not received money "as or for the consideration for any . . . promise to pay" money to the winner. (*R.* v. *Hoffs* [1898] 2 Q.B. 647, followed. *McComish* v. *Alty* [1955] N.Z.L.R. 172, in part approved. *Shuttleworth* v. *Leeds Greyhound Association Ltd.* [1933] 1 K.B. 400, distinguished.) *Pine* v. *Bailey and Williamson*. (C.A. Wellington. 1959. November 16. Gresson P. North J. Cleary J.)

LITTLETON ON TENURES.

The First English Legal Text-Book Printed.

Lawyers everywhere have learnt that Littleton's work on English Tenures was the first text-book relating to English law to be printed. New Zealand practitioners may, however, not be aware that a copy of the original edition is in New Zealand today, in such perfect condition that it looks as if it had just come from the printers, and gloriously bound. It is in the possession of His Excellency the Governor-General, Viscount Cobham. In fact, it is one of his proud ancestral possessions.

Whether it is better to thumb jealously the pages of one of the first ten books printed in London at the dawn of printing nearly 500 years ago or pore wonderingly over the earliest treatise on English law to appear in print, is probably too nice a distinction for His Excellency, as collector and graduate in law, to determine. But it is probable that his pride of possession founds itself most firmly on the theme of sentiment since the folio in question is a product of the mind and industry of an ancestor, Sir Thomas Littleton, whose name Lord Cobham still carries on.

This treasure of art and antiquity is the original edition of Sir Thomas Littleton's *Land Tenures*, printed in London in 1481.

Nearly one hundred and fifty years later, Sir Edward Coke said of *Littleton on Tenures*, that it was "the most perfect and absolute work that ever was written in any human science", an observation which, for a Lyttelton of the twentieth century must reduce to relative unimportance Sotheby's insistence on the market value of early printing and binding or the fact that, last year, the auctioneer's hammer fell on a final bid of over £8,000 for *Littleton's Tenores Nouelli* and *Abbreviamentum Statutorum* published at the same time.

The modern binding of His Excellency's copy is by Sangorski and Sutcliffe, but the printing is by Lettou and William de Machinilia.

Binding by Lettou is extremely rare, more so than printing by him and his partner. Contemporaries of William Caxton, who had been operating in London only since 1477, they had an output that was quite slight; and it is probable that so useful and used a book as *Littleton on Tenures* is one of the rarest of their productions.

Thus, when His Excellency, in his study, passed his handsomely-bound folio volume to the writer, one could scarcely have been more awed had he been handed one of the Sibylline books; for indeed it was the 1481 original edition of *Littleton on Tenures*. "My ancestor's magnum opus", Lord Cobham explained. It is a possession in which one interested in the common law may well rejoice, especially when he is also the modern bearer of so distinguished a name. There are only a dozen or so copies known, mostly in Britain. Three have found their way to America, and there is a copy in Vienna.

The type is an uninspiring black-letter, the printing not ill-done, and His Excellency's copy has margins ample enough to satisfy the most exacting connoisseur. There are surviving two manuscripts of the work done in the author's lifetime, but apparently not in his own hand. It is a commentary upon the general usage of the old law-French that no English translation appeared till 1525.

Actually there are two very similar variants of this edition, the one with sixty-eight pages, forty lines to the page, the other of seventy pages and thirty-eight lines per page. The former carries the name of Machinilia alone, the latter both Lettou and Machinilia. Neither is dated, but 1481 is accepted for both.

The writer on Littleton in the *Dictionary of National Biography* says in a matter-of-fact way: "Probably no legal treatise ever combined so much of the substance with so little of the show of learning, or so happily avoided pedantic formalism without forfeiting precision of statement".

The best testimony to the use and demand for this little work is the flood of editions that kept coming from the press in the next century and a half. The Turnbull Library can produce on microfilm fifty-four texts of Littleton, from 1481 to 1639, which means a new edition every three years or so.

But, great as was the achievement of Littleton, it was transcended and illumined by the commentary and translation of Sir Edward Coke, the great Judge and law-writer of Tudor and Stuart times. The original work had appeared in the old law-French of the fifteenth century; and, although we know it was in part based on a work still older, Littleton's was almost wholly a new and independent work.

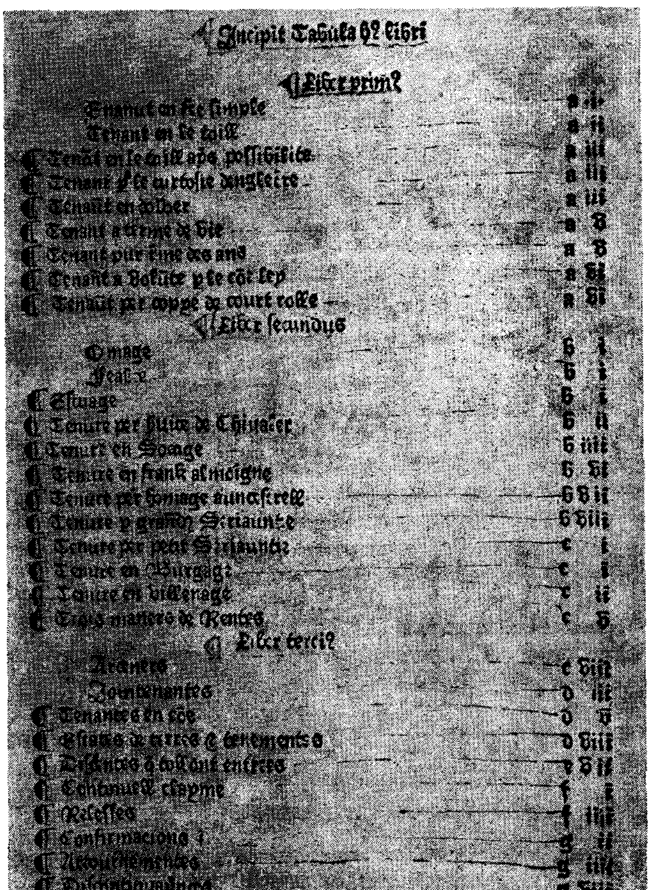
Coke's *Institutes of the Laws of England*, or a *Commentary upon Littleton* appeared first in 1628. It was a substantial folio in four parts, the first being the original text of Littleton with Coke's annotations. Fresh editions followed fast upon one another in 1629, 1633, 1639, 1656, 1664, and so on. And following upon these come the revisions of Hargrave and Butler, Day and Small, Sir Matthew Hale, J. H. Thomas, and others. Today, of course, Coke and Littleton are not often quoted in the Courts.

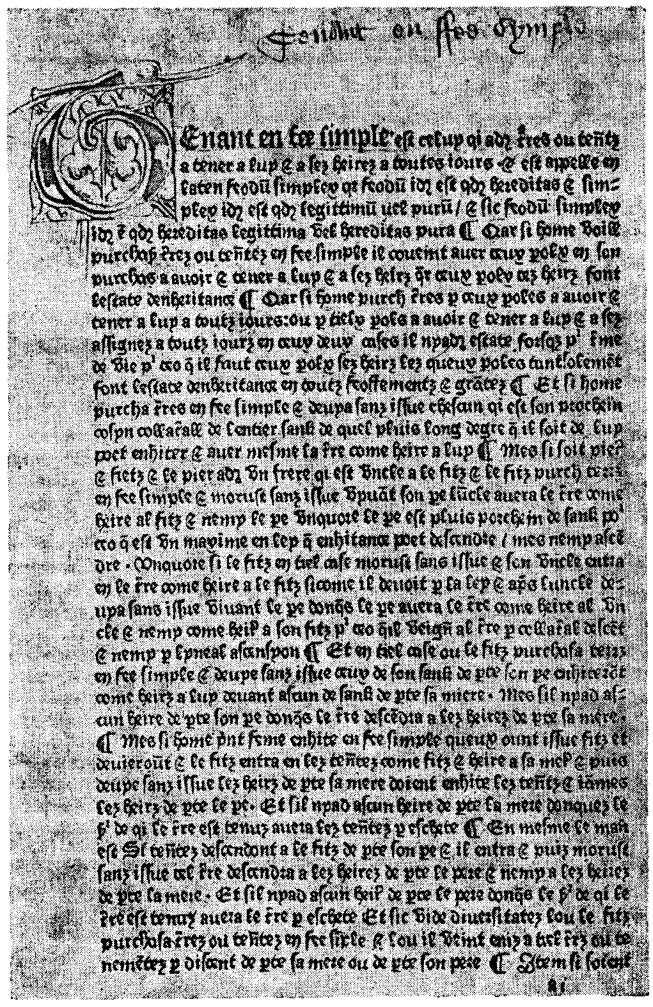
Coke's opinion of Littleton was, for a justiciar, almost lyrical and unrestrained.

His advice to the user of his pages is both sound and kindly. If the law is changed, he says, the student must inquire the reason:

> "knowing for certaine that the law is unknown to him who knoweth not the reason thereof, and that the knowne certaintie of the law is the safety of all".

And he takes leave of the young devotee, who is presumed to have achieved with him the pilgrimage through the flowerless land of real property law, in this way:





"and for a farewell to our jurisprudent, I wish unto him the gladsome light of jurisprudence, the loveliness of temperance, the stabilitie of fortitude, and the soliditie of justice".

Sir Thomas Littleton was born near Birmingham. The date is uncertain, but it is known that he was a member of the Inner Temple from 1440 to 1450, and was, in fact, the earliest recorded Reader in the Temple About this time he was appointed escheator and later under-sheriff of Worcester, and finally Recorder of Coventry. His next step upwards was King's Serjeant at Law (the equivalent of today's Queen's Counsel) and Judge of Assize. After riding the northern circuit for some years he became a Judge of the Court of Common Pleas and sat as such until his death. It is recorded of him that he made his will on August 22, 1481, and died the following day. His remains lie in Worcester Cathedral.

The Wellington District Law Society has reason to be proud of owning, in quite an array of important early law-texts, copies of Coke's work in the second (1629) and third (1633) editions, from one of which the portrait published with this article has been reproduced.

The generous assistance of Mr C. R. H. Taylor, Chief Librarian, Alexander Turnbull Library, in the preparation of this article, is gratefully acknowledged.

THE EDITOR.

Above: The Beginning of the Chapter on Fee Simple.
Left: The Table of Contents.

DISTINGUISHED CONFERENCE VISITORS.

Heading the company of distinguished overseas visitors to the Eleventh Dominion Legal Conference in Wellington at Easter will be Viscount Kilmuir of Creich, the Lord High Chancellor of Great Britain, who will be accompanied by Lady Kilmuir, D.B.E.

In addition an invitation has been accepted by a noted American. He is Mr Herman Phleger, who as legal adviser to the State Department, was a member of the United States delegations at all the important international conferences during the period 1953-57. He represented the United States at the Thirteenth General Assembly of United Nations. Mrs Phleger will accompany her husband.

The Lord Chancellor

The Lord High Chancellor of Great Britain, Viscount Kilmuir, is now in his sixtieth year. He was educated at George Watson's School, Edinburgh, and Ballioe College, Oxford, where he graduated B.A.

Between University and his call to the Bar of Gray's Inn in 1922, he served with the Scots Guards (1918-19). In 1925, he married Miss Sylvia Harrison, the daughter of Mr W. R. Harrison, of Liverpool, and they have two daughters. Lady Kilmuir is a Dame of the British Empire in her own right.

As Sir David Maxwell Fyfe Q.C., Viscount Kilmuir had a distinguished career at the Bar. He practised on the Northern Circuit (Liverpool) from 1922 to 1934, and in 1936 he became a Bencher of Gray's Inn and Treasurer in 1949. He took silk in 1934.

Viscount Kilmuir's active interest in politics began in 1924 when he unsuccessfully contested the Wigan seat in the Conservative interest. It was not until 1935 that he took his seat in the House of Commons as Conservative member for the West Derby Division of Liverpool, and he retained that representation until his appointment to the Lord Chancellorship in 1954. He became Solicitor-General in 1942 and held that post until he was appointed Attorney-General in 1945. He was Home Secretary and Minister for Welsh Affairs from 1951 to 1954.

In 1945-46, with Sir Hartley Shawcross, he was deputy-chief prosecutor at the trial of Nazi war criminals at Nuremberg.

He became a member of the General Council of the Bar in 1936, and was Recorder of Oldham from 1936 to 1942. In 1940, with the rank of Major, he was Deputy Judge Advocate of the Judge Advocate General's Office.

The Lord Chancellor became a Visitor of St. Antony's College, Oxford, in 1953, and has had conferred upon him the Honorary LL.D. degree of the following Universities: Liverpool, 1947; Manitoba, 1954; Edinburgh, 1955; Wales, 1955, St. Andrews, 1956; Hon. D.C.L. Oxford, 1953. He is an hon. member of the Canadian Bar Association (1954), the American Bar Association (1954), and the New York Bar Association (1954). He was appointed Rector of St. Andrew's University in 1955.

Mr Herman Phleger.

Mr Herman Phleger, United States Representative to the Thirteenth General Assembly, was born in Sacramento, California, on September 5, 1890. He received a B.S. degree from the University of California in 1912 and attended Harvard Law School in 1913-14. He received hon. LL.D. degrees from Mills College in 1935 and from the University of California in 1957.

A partner in Brobeck, Phleger, and Harrison, of San Francisco, Mr Phleger is also a director of the American Trust Company, Fibreboard Products (Inc.), Moore Dry Dock Co., Matson Navigation Co., and several other companies.

Mr Phleger served in the United States Navy in 1917-18 as a Lieutenant. He was Associate Director of the Legal Division of the Office of Military Government in Germany in 1945, and served the United States Government as legal adviser to the Department of State, 1953-57. He was on the United States delegations to the Inter-American Conference at Caracas in 1954, the Indo-China and China Conferences in 1954; the South-East Asia Treaty Conference in Manila in 1954, the Summit Conference and Foreign Ministers Conference in Geneva in 1955, the Suez Conferences in London in 1956, and the Bermuda Conference in 1957. He is a United States member of the Permanent Court of Arbitration under The Hague treaties, and was also chairman of the United States delegation at the Antarctic Conference in Washington in October-November last.

He is a trustee of Stanford University, the Children's Hospital, and the William G. Irwin Charity Foundation, a fellow of the American Bar Association, and a vice-president of the American Society of International Law.

Mr Phleger makes his home in San Francisco. He is married to the former Mary Elena Macondray, and he and Mrs Phleger have two daughters and a son, Mr Atherton Macondray Phleger.

N.S.W. Solicitor-General.

Another visitor of note will be Mr Harold Snelling Q.C., Solicitor-General for New South Wales.

Mr Snelling has been Solicitor-General in New South Wales since 1953. The son of Mr A. J. Snelling, of Haberfield, Sydney, he was born in 1904, and after completing his course at Sydney University, he graduated LL.B. and was admitted as a solicitor in 1927 and as a barrister in 1933. He took silk in 1952.

Mr Snelling served for three years (1942-45) with the Australian Imperial Forces and in 1944, with the rank of Lieut.-Colonel became Assistant Director of Ordnance Services. Mr and Mrs Snelling live at Vaucluse, New South Wales and they have three daughters.

Other Visitors

Seven Australian practitioners will be at the Conference. They are of every State except Queensland.

Among them may be mentioned Dr B. A. Helmore (of the firm of Sparke, Helmore, and Withycombe, Newcastle). He is president of the Law Institute of New South Wales. From Melbourne will come the Secretary of the Law Institute of Victoria, Mr A. Heymanson. A Western Australian barrister, Miss S. R. Offer, will be another visitor.

Mr G. R. Powles C.M.G., High Commissioner of Samoa since 1949, and formerly in practice in Wellington, will also be attending.

MORTGAGE OF LEASE CONTAINING RIGHT OF PURCHASE.

Acquisition of Fee Simple by Lessee.

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

EXPLANATORY NOTE.

Section 118 of the Land Transfer Act 1952 provides that a right for, or covenant by, the lessee to purchase the land may be stipulated in a memorandum of lease; and, in case the lessee pays the purchase money and otherwise observes his covenants expressed and implied in the instrument, the lessor shall be bound to execute a memorandum of transfer, and to perform all other necessary acts for the purpose of transferring to the lessee the said lands and the fee simple thereof.

I think that we are all acquainted with the leading case of *Fels* v. *Knowles* (1906) 26 N.Z.L.R. 604, where it was held that, if a lease containing such a clause is registered under the Land Transfer Act, the right to purchase (like any other registered estate or interest is indefeasible, although it may have been granted by a trustee registered proprietor in breach of trust. Such a lease of course may be mortgaged, and the mortgage when registered shall also be state-guaranteed: the right to purchase may have been an inducement to the mortgagee to lend the money.

Many practitioners, therefore, will perhaps be surprised to learn that, with the exception of Crown leases issued under any of the Land Acts, there is no statutory machinery provided whereby the District Land Registrar on the acquisition of the fee simple by the lessee can note the fee simple as being subject to the mortgage: even the State Advances Corporation at that stage, in order to protect itself, must get another mortgage executed by the purchaser affecting the fee simple.

Another factor to be noticed is that at that stage the mortgage of the lease does not merge in the fee simple. Section 30 of the Property Act 1952 provides that there shall not be any merger by operation of law only of any estate the beneficial interest in which would not be deemed to be merged or extinguished in equity. The equitable doctrine of merger applies to estates or interests registered under the Land Transfer Act, but it will not be applied to the prejudice of a registered or unregistered estate or interest vested in some third person, e.g. the mortgagee or chargee of an estate of leasehold: *Smith* v. *Davy* (1884) N.Z.L.R. 2 S.C. 398: *Bevan* v. *Dobson* (1906) 26 N.Z.L.R. 69.*

It is understood, however, that the District Land Registrar in practice will effect merger of a lease, if the mortgagee of the lease consents thereto. And in practice of course the mortgagee will not consent to merger until he gets a mortgage of the fee simple registered in his favour. The application for merger must be in the form of a statutory declaration by the lessee, and must establish to the satisfaction of the District Land Registrar that there are no other equities outstanding to prevent merger. A declaration in the form of the following precedent has been accepted by a District Land Registrar.

* This case also decides that a lessee under the Land Transfer Act, who has mortgaged his lease, is not prohibited thereby from exercising without the consent of the mortgagee an option of purchase contained in the lease.

In conclusion, one may suggest an amendment of the law to bring in this respect all registered Land Transfer leases into line with those issuing under the Land Acts. Section 114 (1) of the Land Act 1948 reads as follows:

> (1) Where a lessee or licensee acquires an estate in fee simple in land previously held by him under lease or licence which was subject to any encumbrance, lien, or other registered interest, the District Land Registrar, before issuing the certificate of title in respect thereof, shall make all entries necessary in order to record on that certificate every then existing encumbrance, lien and interest, in the order of their registered priority; and the estate in fee simple shall be subject thereto in like manner as if they had been created in respect of that estate.

This provision works excellently in practice, and I have never known a case where it has caused any hardship to the mortgagor. On the contrary it saves him the legal expense of getting a new mortgage of the fee simple.

PRECEDENT.

IN THE MATTER of the Land Transfer Act 1952

AND

IN THE MATTER of Memorandum of Transfer dated.....day of..... 1960 from the .....Society Ltd., to A. B. of Wellington Married woman of the land in Certificate of Title Volume.....Folio..... (Wellington Registry)

I, A. B. of Wellington married Woman, do hereby solemnly and sincerely declare as follows:

1. I am the transferee named and described in the said Memorandum of Transfer.

2. I am the lessee under Memorandum of Lease registered number.....affecting the land in the said Certificate of Title.

3. I have not charged or encumbered my interest as lessee under the said Memorandum of Lease whether by way of sub-lease mortgage lien pledge or in any other name whatsoever except by Memorandum of Mortgage number.....in favour of the State Advances Corporation and no other person (except the said State Advances Corporation) has any right title or interest affecting my interest as lessee thereunder and there are no other equitable estates or interests outstanding to prevent merger of the said lease in the fee simple of the land comprised in the said Certificate of Title.

4. That the State Advances Corporation (witnessed by its consent hereunder) has consented to the merger of the said lease in the fee simple of the said land, and no other person shall be affected by the merger as aforesaid.

5. That I do hereby apply for the registration of the said transfer and the consequent merger of my said estate as lessee in the fee simple estate in the land comprised in the said Certificate of Title.

AND I MAKE this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths and Declarations Act 1957.

DECLARED AT WELLINGTON by the said A. B. this.....day of..... 1960 Before me:)

[*A Solicitor of the Supreme Court of New Zealand.*]

CONSENT

THE STATE ADVANCES CORPORATION OF NEW ZEALAND (The mortgagee under mortgage registered number.....DOTH HEREBY CONSENT to the merger of Lease No.....in the fee simple of the land comprised in Certificate of Title, Volume.....Folio.....

N.B. For form of attestation by the State Advances Corporation, see *Goodall's Conveyancing in New Zealand*, 2nd ed. 589.

DOMINION LEGAL CONFERENCES: A RETROSPECT.

IV. Bar Dinner Memories.

Among the interesting chapters of the extensive records of the Dominion Legal Conference are those dealing with the Conference Bar Dinners, which have always had a proud place in the social programmes of these gatherings.

For reasons that do not seem to have been recorded, the Conference in the early days of its existence preferred to blush unheard behind closed doors when it relaxed at dinner. The chronicle of the First Conference in Christchurch in 1928 contains only the baldest reference to a dinner having been held, but it recorded a decision that there should be no reporting of the function.

"A Devastatingly Witty Speech."

This is to be regretted since there are those who still recall with lively pleasure the speech of Mr J. B. Callan, (later Mr Justice Callan), who was then still at the Bar in Dunedin. Twenty-nine years later, at Christchurch again, Mr M. J. Burns (Hawera) referred to it at the Bar Dinner as "a devastatingly witty speech".

Mr Burns said that the late Judge had good material to work on, because he was replying to a toast proposed "by the late, great Arthur Donnelly, who had not then more or less deserted the Bar for a flirtation (if nothing worse) with the sirens of commerce."

"The fame of J. B. Callan's speech rang in legal circles from the North Cape to the Bluff", said Mr Burns, "and such were the consequences of this rash conduct that, in a few short years, J. B. Callan was forced, in self-protection, into the extreme step of accepting a seat on the Supreme Court Bench".

The organizers of the Bar Dinners at Wellington in 1929 and Auckland in 1930 at least released details of toast lists for publication, but little more found its way into print. In Wellington, Mr W. A. Izard proposed the toast of "The Judiciary" and the reply was in the hands of Mr Justice Macgregor and Sir Frederick Chapman. Mr Alexander (later, Sir Alexander) Gray K.C. proposed the toast of "Parliament" and the Prime Minister, Sir Joseph Ward, replied. In Auckland the toast of "His Majesty's Judges" was proposed by Sir Francis Bell, and Mr Justice Reed and Sir Walter Stringer replied. What was said, or how it was said, are today no more than matters of personal recollection.

Mr Downie Stewart on Judges.

A more liberal approach to the perpetuation of prandial wisdom was achieved at the post-depression Conference in Dunedin in 1936. There were, in fact, two Bar Dinners in different premises, because of accommodation difficulties, with the division of attendance largely a question of age. In the august and somewhat musty precincts of the Fernhill Club, "the grave and reverend seigniors" foregathered.

The toast of "The Judiciary" was proposed by Mr W. Downie Stewart in the quiet, whimsical fashion which was his habit. Having by this time exchanged the dignity of the Bar for the hurly-burly of the Cabinet room, and finally turned his back on both, he was able to find some ingenious explanations for his selection as proposer of the toast.

One of these was that he would almost certainly be unaware of any "defects, shortcomings, or deficiencies" the Judiciary may have developed since he gave up practice "and left the Judges to their own resources". Also he suggested that as he no longer had any influence with Cabinet he could seemingly be regarded as no longer one to be reckoned with.

Mr Stewart recalled that all the counsel with whom he had served as a junior had gone on to the Bench, but he declined to say whether he viewed that as a case of cause or effect. Emphasizing that he thought Judges and Magistrates were inadequately paid, he consoled the holders of such offices with the suggestion that "a light of hope gleams on the horizon, as under the new dispensation [the first Labour Government was only a few months old] it appears that one has only to strike the rock, like Moses, and 'plenty' of money will gush forth".

The speaker quoted a certain Lord Chancellor who said of his appointments of Judges that he always selected a gentleman, and if he knew a little law, so much the better. But he concluded on a more sober note with a characteristically-phrased recognition of the need for the preservation of the principle of law, justice, and liberty "which is the sacred trust of our Courts of Law".

New Members of the Family.

Mr Justice Kennedy (now Sir Robert Kennedy, of Waikanae), replying on behalf of the Bench, referred to 1934 and 1935 as vintage years of the Judiciary. Two new Judges had been added to the judicial family in each year—Mr Justice Johnston and Mr Justice Fair in 1934 and Mr Justice Callan and Mr Justice Northcroft in 1935. And from that point the speaker went on to anticipate what he called "the crowning glory of four new Judges in a single year".

Today, twenty-four years after, that judicial millenium has still to be achieved. The years 1953 and 1957 produced the next best thing with three new appointments in each year—the Chief Justice, Sir Harold Barrowclough, Mr Justice Turner, and Mr Justice McGregor in 1953, and Mr Justice McCarthy, Mr Justice Haslam, and Mr Justice Cleary in 1957. Two new Judges have appeared since in a single year in 1948, 1950, and 1959.

Mr Justice Callan excused his very brief endorsement of his colleague's response by saying that the advocate who went on to the Bench, no matter how eminent his faculty for self-expression may be, found himself "in a place where his greatest virtue was to be able to hold his tongue".

The star turn at the dinner in "another place" was undoubtedly the entertainment provided by Mr A. C. Hanlon K.C. Although then already in sight of his fiftieth year at the Bar, Mr Hanlon had chosen to identify himself with the younger, if not actually lesser, fry. It was an informal occasion from start to finish, with the doyen of Dunedin advocates displaying all those gifts of drama, drollery, and dry wit which in his younger days had led the celebrated Shakespearean actor and producer, H. B. Irving, to plead with him to close up his law books and join him on the stage.

For most of those who have visited Dunedin, the laconic reference in the official report to a visit the following afternoon to "the Brewery" in Rattray Street will require neither explanation nor elaboration.

"I Dreamt that I Dwelt . . ."

The 1938 Conference in Christchurch, on the extra-mural side, was outstanding less for the Bar Dinner than for the fanfare and farrago associated with the laying of the foundation stone of the new Law Courts which, twenty-two years later, have still to take shape.

Three excerpts from the proceedings of that great day (April 20) should suffice to show the extent of Canterbury's "hope deferred".

> "The new Courthouse will give greater convenience and better facilities to those whose duties or needs take them to the Courts as litigants, Judges, counsel, witnesses, or officers of the Court"—Mr J. D. Hutchison (now Mr Justice Hutchison), then president of the Canterbury District Law Society,
>
> "The new Courthouse will be in modern design, but harmonizing with both Classic and Gothic buildings in the vicinity. The whole will be faced with white marble, which in its green setting of lawn and trees can scarcely fail to produce an effect of great beauty."—The Attorney-General, the Hon. H. G. R. Mason.
>
> "Their extent and magnificence have not yet ceased to astonish a public used to disappointment . . . The Government is entitled to the thanks of the city for its complete answer to an appeal, often renewed, but never exaggerated"—*Christchurch Press*. April 21.

A Text-Book for Judges.

At the Bar Dinner that year Mr H. F. O'Leary K.C. proposed the toast of "The Judges", and jealously recalled "the brilliant and witty" remarks of Mr W. Downie Stewart at Dunedin. But he struck a happy note with a lengthy outline of the aims and contents of a text-book for Judges which he felt constrained to write for the benefit of his fellow-practitioners.

In his reply, the Chief Justice, Sir Michael Myers, whom Mr O'Leary was to succeed in his high office eight years later, adopted a more serious vein in an instructive review and estimate of the work of the Bench.

Mr J. B. Thomson (Dunedin), now Stipendiary Magistrate in Wellington, in a compound of irony and good humour, proposed the health of "The Litigants". His racy classification of the genus showed him to be in his best form, and it may be suspected that there was more than one echoing sentiment in the hearts of his hearers when he expressed the hope "that all our clients may be litigants; that they will all be born out of wedlock and thus provide us with work from their earliest days; that their lives may be full of trouble, and that they may, when their earthly careers are drawing to a close, all make their own wills".

Mr P. B. Cooke K.C. employed no less humour and had his audience equally with him in a deft and masterly reply on behalf of "The Litigants".

Mr W. J. Sim (then of Christchurch) called upon unexpectedly to reply to the uncharted toast of "The Hosts" paid a gracious tribute to the visitors whose "presence and enthusiasm" had animated the Conference and made it the living thing it turned out to be. His concluding brief for Christchurch and its beauties, and the juxtaposition of the Cathedral and the drowsy Avon must have encouraged even the local section of his audience to perceive fresh virtues in the City of the Plains.

A New Chief Justice.

The Dinner in Wellington in 1947 had to cope with one of the electric power "black-outs" which were epidemic in the North Island around that time, but the spirit of the occasion was not noticeably dimmed.

Mr W. T. Churchward (Blenheim) proposed the health of "The Judges" with less flippancy and fewer words than usual, and the reply was undertaken by the new Chief Justice, Sir Humphrey O'Leary, who only the year before had succeeded Sir Michael Myers. Nine years before, when the world was much younger and a global war had still to be fought, he had proposed the toast of "The Judiciary", and it could be regarded as typical of the man that he could, with an admirable blend of grave and gay equate his 1947 response with his 1938 proposal. It was noticed, however, that he tended to be evasive on the topic of his projected text-book for Judges, which he more than half promised in 1938.

Mr W. E. Leicester gave the impression of thoroughly enjoying himself proposing the toast of "Kindred Professions", though a wider audience could have been excused for considering his recognition of those "without the law" more than a little discriminatory. Coupled with the toast were the names of representatives of the arts of medicine and accountancy, and the speaker was no more than half-hearted in his apologies to the Press, the Church, the bookmaking and the acting professions (in that order), all of whom he immediately set out to ignore. Actually he devoted more time to "the profession euphemistically described as the oldest in the world, which, like acting, according to its adherents, is being ruined by amateurs". But such mundane things as prescriptions and balance sheets provided him with a wealth of citation in the course of which he bombarded his hearers in quick succession with such a widely assorted conglomeration of names as Bacon, Aesculapius, William Harvey, *Forever Amber's* Claire Winsor, Paul Muni, Pasteur, Lister, Noah, L. P. Leary, and Adam and Eve.

Three Phases of the Judiciary.

The 1949 Conference Dinner in Auckland was exceptional for the variety and quality of the speeches. Mr W. J. Sim K.C. may be said to have set the mean when he proposed the toast of "The Judiciary". It was a case of the historical and documented method being applied by a lively and personal mind. Mr Sim's thoughts could well have been back at the Otago Boy's High School when he conceived his "Omnis Gallia in tres partes divisa est" classification of the three phases of the Judiciary.

He began with 1899 as a first phase, with the Chief Justice, Sir Robert Stout, dominating the scene. There, he said, they had a Bench "schooled at the feet of preceding masters—Prendergast, Richmond, and Williams—learned, serene, rock-like".

Then came the period of Sir Charles Skerrett and Sir Michael Myers, with five puisne Judges from the

Wellington Bar, "fortified by the strength of Callan from Dunedin and Northcroft from Auckland". In this phase, Wellington College used to boast that at one time it had six old boys sitting as Supreme Court Judges. The calibre and worth of the Bench at this period could be measured, said Mr Sim, by the way they coped with "post-war unrest, social dis-ease and the disturbance of time-honoured legal conceptions".

Finally, Mr Sim turned to the Sir Humphrey O'Leary phase, with its better geographical spread in six recent appointments—Auckland, two; Wellington, two; Christchurch, two—and the mellowing influence of several Judges "whose time of retirement may not be out of sight". Nothing was getting easier, in Mr Sim's view, and "it is conceivable that the Bench of 1949 faces the toughest judicial task of the century".

Ten years have passed and those who will may look back and judge how well Mr Sim anticipated the future.

From a Different Angle.

The Chief Justice, Sir Humphrey O'Leary, replying once again to a toast which he had proposed in 1938 and acknowledged in 1947, exhibited an undoubted consciousness of the responsibilities and urgencies of office which, for him, had been scarcely more than anticipation two years before when his appointment was only months old. In 1947, he was taking risks and exploring his palette. In 1949, with an increase of experience and observation, the texture of his utterances had strengthened (and if his reporter can be relied upon) he had rejected excess and thrown off the superfluous word. Humour and irony guided his choice of words less, and, as befitted His Majesty's Chief Justice, he tended to put aside the consciously picturesque note.

On one point he became almost tutorial, administering a gentle rebuke to the Bar in the matter of complaints about delays in the Courts. On the principle that the path of criticism is a public way, in which everyone is entitled to wander, he accepted some of the strictures on his Courts, but made it very clear that a great deal of the responsibility for the failure of the Courts to clear up accumulating business rested on the shoulders of counsel.

The Lighter Side.

Two other notable interludes on this occasion were provided by Mr W. E. Leicester on the subject of "The Visitors" and Mr Bryce Hart (Auckland) who used "De Minimis" as an excuse for some artless but, at times, far from guileless, ad-libbing.

Mr Leicester's response on behalf of the visitors was both witty and polished, but, as always, relieved by an admirable compound of soft airs and flavours. The more he strayed from the straight and narrow path of simple acknowledgment, the more to the point became his thrusts at that northern self-sufficiency which more than ever today seems to be the despair of those whose lines are cast south of the Waikato River. His suggestion that a learned Auckland friend, now a well-known Q.C., had brought the art of the non sequitur to its finest flowering was, on the day at least, a classic example of Satan reproving sin.

Then came Mr Bryce Hart, who disdained the Leicester rapier as a weapon and unashamedly flirted with the ribald. For several minutes the leviathan of low comedy floundered round the tables of the Trans-Tasman banqueting room to the huge delight of his hearers, and even when he forsook the law and directed his full-blooded bludgeonings at undertakers and their macabre accoutrements and grisly properties, he left an impression of still being somewhere in the vicinity of his subject. It was a light and inconsequential finale to a felicitous occasion. The Auckland wit had once again demonstrated the extraordinary range of his style and the degree of dramatic truth that can be distilled from the comic and the absurd.

Two Great Judges.

When Mr A. G. Neill K.C. rose to propose the toast of "The Bench" at Dunedin in 1951, he began and ended on conventional lines, and contrived a well-phrased eulogy that served out a full measure of the recognition that the Judiciary of New Zealand has studied earnestly to deserve. In his not over-long speech, Mr Neill reverted to a theme touched upon two years before by the Chief Justice, Sir Humphrey O'Leary and Mr W. J. Sim K.C.—Sir Joshua Williams and Mr Justice Callan, whose death had occurred only a few weeks before. He presented them as shining examples of their office, opposites in some respects, but common possessors of that singular faculty of combining the realism of extreme simplicity with a complete freedom from professionalism. There has probably been more specialized judgeship than either of them possessed, but both gave to law and justice something of their inherent democratic appeal. The fact that one was Irish, and both were specially revered in Dunedin, may be accepted as merely accessory to Mr Neill's encomiums, because the truth remains that their names have become inseparable from the things the law strives most after.

Mr Justice Stanton in reply fell back on Pope to say on behalf of the Judges: "We hope that our sons will be wiser than ourselves". Of Mr Justice Callan he said with obvious sincerity: "As a colleague, he was perfection".

Napier Bar Dinner.

At Napier in 1954, Mr E. D. Blundell (Wellington) proposed the toast of "The Judiciary" and made special reference to the presence of the Chief Justice, Sir Harold Barrowclough, whom he described as "a late starter", since his appointment dated back no further than a few months to the previous November. One of the things that might have made the speech memorable was the light it shed on General Court-Martial proceedings in Cairo, over which the then Major-General H. E. Barrowclough, of the Second New Zealand Division, presided; but the learned Chief Justice had no difficulty in convincing his audience, when he came to reply to the toast, that there were very definitely two sides to the story.

The reply of Mr L. F. Moller (so recently of Invercargill) to the toast of "The Visitors" introduced a faintly wistful note when the speaker, in tones half-ashamed, half-defiant, confessed that it was only a mere nine months since "I wrapped up my series of the *English and Empire Digest* in my little red handkerchief, threw it over my shoulder and left New Zealand for Auckland".

Mr T. P. McCarthy (Wellington), now Mr Justice McCarthy, found himself saddled with the toast "De feminis nihil nisi bonum". Admittedly the subject was a delicate one, and if he said nothing new about a topic on which most males have decided views

one way or the other, the air of naked innocence he achieved in describing his attempts to discover something about women from the wives of fellow-practitioners quickly established an intimacy between himself and his audience that must have richly rewarded him for his efforts.

THE SEPARATE COURT OF APPEAL.

At the last Conference, Christchurch, 1957, the toast of "The Judiciary" was entrusted to Dr A. L. Haslam (Christchurch), himself a bare five months removed from translation to the Supreme Court Bench. Dr Haslam was well served in his task by an earlier reference by the Canterbury President (Mr R. A. Young) to the centenary of the appointment of Canterbury's first Judge, Mr Justice H. B. Gresson, grandfather of the President of the Court of Appeal, Mr Justice K. M. Gresson, and great-grandfather of Mr Justice T. A. Gresson. He made full use of his opportunity. Like Goethe, he agreed that all that passes is a symbol, but he left his hearers in no doubt that, even though the law, in one sense, appears to be the most swiftly changing and tangible of mortal things, it is, in another, the essence of the imperishable.

The Chief Justice, Sir Harold Barrowclough, replied to the toast and at the outset urged the merit in the correct and careful choice of one's words. Bearing in mind this exhortation, His Honour's hearers, when he referred to the new Court of Appeal, were entitled to reflect that in the Judiciary there had indeed arisen a generation that knew not Joseph. Speaking of the announcement by the Attorney-General, the Hon. J. R. Marshall,earlier in the Conference, of imminent legislation for the establishment of a separate Court of Appeal, the Chief Justice said on behalf of himself and the rest of the Judges: "We are at one with you all that the time has come for a separate and permanent Court of Appeal".

The thoughts of many present could hardly have failed to hark back to a time when some of the sternest opposition to such a Court sat entrenched on the Bench of the Supreme Court, and particularly in the office of the Chief Justice.

Still, at the same time, there would be others, like the Chief Justice himself, constrained to spare a tear for the old institution, "aged, with one foot in the grave", which served its day and generation admirably. It is very easy to forget what has gone before when something new succeeds, but with the Chief Justice's "jubilation and shouting" stilled this two years and more, it is permissible for the profession to reflect that if the present Court of Appeal was born out of delay and the accumulation of arrears of work, then there is something to be said for the flow and flood of litigation that produces such congestion.

* * * *

It is possible that the point has no significance (although it may have a bearing on events at the coming Easter), but the files of the LAW JOURNAL show that in the past ten years the time consumed by the Bar Dinner has tended to increase. This, of course, may be no more than a circumstance of editorial indulgence, but, at least, visitors to the coming Conference cannot be heard to say that they were not warned.

R.J.

FENCING COVENANTS.

The most irritating feature of searching land-transfer titles is the fencing covenant. This normally gives no trouble when only a small suburban section is involved. One simply reads the covenant itself to find out who is protected, and for what class of persons it is expressed to enure; then examines the titles to all the adjoining sections and finds, as a rule, that the covenant is "now inoperative". This often takes longer than the actual search.

It can take much longer. Today, for example, I had to examine twenty titles to prove what could almost have been guessed—that the covenant was spent. Yet this is nothing compared with the time I have wasted over covenants dating back to the eighteen-eighties, protecting say the Scottish & New Zealand Investment Co. or Mervyn Aloysius Bloggs of Mukau Livery Stable Proprietor, and affecting farm land which has since been re-subdivided five or six times. Can one assume that this ancient company is defunct (for no one seems to know), or that Bloggs is gathered to his fathers? Or must one check up on every adjoining property?

Consider also the covenant expressed to enure for the benefit of certain persons, the owners or occupiers of adjoining land. We can be certain who is the owner, but how do we know who the occupier is? I understand that covenants are frequently brought down on new titles for this reason alone.

I understand also that the Registry Offices in the main centres have no time to check on fencing covenants at all; they are brought down automatically unlessis they are obviously extinct, with the result that some titles are cluttered up with more fencing covenants than the land comprised in them has frontages.

I am forced to conclude that the fencing covenant is both an obnoxious waster of manhours and a blot on the Torrens system, which is admirably lucid in other ways. This leads me to wonder how long such covenants generally remain in force. In the form which appears in *Goodall*, 2nd ed., p. 165, they cannot extend beyond the vendor's life; in the form at p. 241 they could survive him.

But I suspect that their most frequent use is to protect an owner who subdivides his land, with the intention of selling his sections piecemeal, and who naturally does not wish to contribute to the cost of erecting each successive fence. No doubt it is the rule rather than the exception for the vendor to sell every section in the block, leaving an army of dead, but unburied, fencing covenants on the new titles. It would be highly expedient to get rid of them.

To remove each spent covenant by application, as the land came to be dealt with, is too clumsy. And while it would make some inroads on their numbers, it would never exterminate them.

And the Land Registry Offices simply have not the time to examine every covenant and expunge the spent ones.

The obvious remedy is to extinguish them by legislation. I suggest that fencing covenants be made to expire twenty years after registration, unless a renewal registered.—SCRUTATOR.

TOWN AND COUNTRY PLANNING APPEALS.

Northern Investment Co. Ltd. *v.* Mangonui County.

Town and Country Planning Appeal Board. Kaitaia. 1959. October 2.

Subdivisional Plan—Residential Lots with Road Dedication—Consent to Proposed Subdivision refused on Ground of Detrimental Work—Urban Pocket in "Rural" Zone—Observations as to Solution—Land Subdivision in Counties Act 1946, s. 3 (4)—Town and Country Planning Act 1953, s. 38.

Appeal by the owner of a property containing 12 ac. 2 ro. being part of Section 6 Block XI Houhora East Survey District. It submitted a scheme plan No. 7278 to the Surveyor General pursuant to Section 3 of "The Land Subdivision in Counties Act 1946" for the subdivision of this land so as to provide a block of 10 ac. 20 pp. and ten residential lots with a road dedication strip of 1 ro. and 2 pp. fronting on to the Main North Road. It was the intention of the appellant if the plan was approved to gift the back block of 10 ac. 20 pp. to the Auckland Education Board for use as a future high school site. The Board had intimated that it was prepared to accept the proposed gift.

Pursuant to s. 3 (4) of the Land Subdivision in Counties Act the plan was submitted to the Council for its comments. The Council sought the advice of its town-planning consultants and on October 29, 1958, it passed the following resolutions:

Houhora Pukenui Area—Zoning:

"That the Ministry of Works be approached regarding the possibility of a bypass of the Main North Road behind the Pukenui Waterfront."

"That the Council adopts for the time being as part of its Undisclosed District Scheme under the Town and Country Planning Act, 1953, the zoning of all land shown or described on Plan T.P. 3;1 entitled "Mangonui County Council District Planning Scheme, Houhora, which shows all land zoned for rural use except that zoned for residential use or for reserves and public land."

"That the Council is prepared to consider extending the area zoned for residential purposes on Plan T.P. 3;1 to include some land in the vicinity of the Ariawa Creek Estuary and the Houhora Harbour entrance, provided any such additional areas do not include residential allotments fronting the Main North Road the most promising rural land falling under the above description being Lots 1 and 2 directly north of the Ariawa Creek Estuary, Lot 1 directly to the south of Estuary, and Lots 2 and 6 adjacent to the Harbour entrance."

S.P. 7278—Northern Investment Co. Ltd.:

"That the Northern Investment Co. Ltd. be informed that although the land covered by Scheme Plan 7278 has been zoned as rural on the Mangonui County Council interim zoning plan for the Houhora-Pukenui-Ariawa Creek area on the grounds that such a subdivision would involve ribbon development along the Main North Road. The question of a bypass road is being investigated and the present zoning will be reconsidered when such investigations are completed."

Following on this inquiries were made as to the possibility of the future re-alignment of the main North Road or the provision of a bypass road, but when it became apparent that there was no prospect of either proposal being considered by the responsible authority (the Ministry of Works) the Council on February 18, 1959, passed the following resolution:

"That whereas the subdivision of part section 6, Block XI, Houhora East Survey District by the Northern Investment Co. Ltd. into residential lots as per Scheme Plan 7278 is not in accordance with the zoning of land in the Council's Undisclosed Scheme for the Houhora-Pukenui Area, the Mangonui County Council hereby declares the said Scheme Plan 7278 to be a Detrimental Work under Section 38 of the Town and Country Planning Act 1953."

This decision was conveyed to the appellant company and this appeal followed.

The judgment of the Board was delivered by

REID S.M. (Chairman). After hearing the evidence adduced and the submissions of counsel and having inspected the property under consideration and the surrounding locality, the Board finds:

1. The Main North Road is classified as a Government road—it is neither a State not a Main Highway. It is controlled and maintained by the Ministry of Works out of Government funds plus contributions from the respondent Council and the National Roads Board. Intrinsically, it is at present no more than a fourth or fifth class country access road giving the only road access to the Far North.
2. Although in what may be described as the interim decision given on October 29, 1958, and in its reply to the appeal the Council gave as its grounds for refusal of consent that the proposed subdivision would involve ribbon development along the Main North Road the final decision of February 18, 1959—the decision appelaed against—makes it clear that consent was refused on the grounds that the proposed subdivision would constitute a "detrimental work" within the meaning of s. 38 of the Town and Country Planning Act 1953.
3. The Board is of the opinion that the areas zoned as "residential" under the Council's undisclosed district scheme in so far as it relates to the Houhora-Pukenui area together with the areas in the vicinity of Ariawa Creek designated as potential residential areas make more than adequate provision for the foreseeable future residential development of this locality for many years.

It follows that to approve the subdivision under consideration would be to approve the creation of a small urban pocket in a rural zone and be contrary to town-and-country-planning principles.

The appeal is disallowed.

Addendum:

At the hearing, evidence was given that, after the decision appealed against had been given, the appellant applied to the Council for approval of the subdivision of the property into two allotments—Lot 1 to comprise approximately 10 ac. to be gifted to the Education Board and Lot 2 fronting on to the Main North Road to comprise approximately 2 ac.

The Council replied that it would not approve such subdivision because the residual lot would be less than 5 ac. in a rural zone.

The Council's undisclosed district scheme prohibits subdivisions in rural areas into less than 5 ac. lots.

This is in accordance with recognized town-and-country-planning principles, 5 ac. being generally recognized as the minimum standard of subdivisions in rural areas as providing the minimum area suitable for primary production.

Counsel were agreed that an expression of the Board's views on the application of this principle to the facts of this case would be of assistance to the parties.

The Board is of the opinion that as a general rule a five-acre minimum is appropriate and that the Council acted consistently and properly in refusing its consent to the proposed subdivision, but it also considers that there are cases when regard should be given to the nature and situation of the land under consideration, its productive potential in a 5-ac. lot, and the purpose to which it could be put as a 2-ac. lot. In this case, it considers that the land under consideration would have little if any productive value as a 5-ac. lot but that having regard to its situation it could in the future be well utilised as a 2-ac. residential lot.

The Board desires to make it clear that the foregoing observations do not constitute a decision.

Appeal dismissed.

Price Construction Co. Ltd. *v.* East Coast Bays Borough.

Town and Country Planning Appeal Board. Auckland. 1959. November 26.

Zoning—Appeal against Re-zoning—Land bought in Good Faith relying in Council's Assurance Area zoned "Industrial"—Zoning subsequently changed to "Residential A"—Area residential in Character and Occupancy—Appeal dismissed—Town and Country Planning Act 1953, s. 26.

Appeal under s. 26 of the Town and Country Planning Act 1953 by the owner of a property situate at 5 Watea Road, Torbay, being all that piece of land containing 2 ro. 9.4 pp.,

(Concluded on p. 64).

IN YOUR ARMCHAIR—AND MINE.

By SCRIBLEX.

"Wig Note."—At the Wanganui Sessions recently, in a spell of hot and humid weather, the jury requested that they might remove their coats. "Certainly", said the presiding Judge (Hutchison J.), "and I propose to remove my own wig. Counsel, if they wish, may do likewise". This complaisant assent recalls the different attitude of an earlier day. Sir William Stamer, a portly, consequential alderman of the venerated Corporation of Dublin, a Magistrate and terror of all evildoers, when sitting as a foreman of a jury, interrupted Chief Baron O'Grady of the Irish Court of Exchequer at a critical moment by vehemently protesting he could no longer endure the intensity of the cold, begging the permission of the Court to wear his hat. His Lordship, casting an affectedly sympathizing glance at the half-frozen baronet, drily replied: "Sir William, it is not usual for gentlemen to wear their hats in courts of justice; but if a wig would answer, I am sure that the members of the Bar would kindly accommodate you with a good fit". Incidentally, O'Grady C.B. acquired an unenviable reputation for heartless and acrid humour as the following incident shows. When he was acting as Judge of Assize, a schoolmaster, who had been in prison some months awaiting trial, pleaded guilty to a bad assault on a young girl. The prisoner's counsel urged, in mitigation of punishment, that the prisoner's conduct had been exemplary. The Chief Baron deferred judgment until he had read the depositions. When the prisoner was brought up for sentence the Chief Baron thus addressed him: "Your conduct in gaol has been as good as your conduct out of it has been bad. I am doing the best thing I can do for you, and that is to keep you in gaol as long as the law permits me. I therefore pass on you the heaviest sentence which the law enables me to pass for the crime to which you plead guilty".

The Law's Delay.—A correspondent from Pukekohe who has just had occasion to consider the judgment of Luxmoore J. in *Bleachers Association Ltd.* v. *Chapel En-Le-Frith Rural District Council* [1933] Ch. 356; [1932] All E.R. Rep. 605, writes that this was an action claiming an injunction to restrain interference by the defendant council with underground water which was alleged to flow in a defined channel into a stream on which the plaintiff association was a lower riparian owner. The writ was issued on July 14, 1931. At p. 106 of the latter report, Luxmoore J. says: "On July 24, 1931, I gave directions for a speedy trial, and on October 13, 1931, the action came on for hearing". An unusual reference to the phrase "the law's delay" was once made by Sir Algernon West in his reminiscences in the *Cornhill Magazine*. He was at the time Mr Gladstone's private secretary. It seems that on January 10, 1872, a letter purporting to be signed by him and dated from 10 Downing Street was addressed to Bovill C.J., who was presiding at the famous Tichborne trial. The letter gave expression to Mr Gladstone's serious concern at "the law's delay," as exemplified in the proceedings over which the Chief Justice was presiding, and that, while he did not consider that Sir William Bovill was in any sense responsible for a state of things "which is a blot upon our civil jurisprudence", he thought that an early and public expression from the Bench on the subject would tend to remedy matters. Naturally the Chief Justice was both aghast and indignant by the receipt of this communication. Calling together the various Judges who were within reach, he placed the letter before them. One of his colleagues, somewhat sceptical as to the authenticity of the letter, suggested that Sir Algernon be sent for. This was done, and Sir Algernon at once saw that the whole thing was a concoction and his signature a forgery. Who the forger was, or how he contrived to get hold of the official notepaper, was never discovered—another example, no doubt of a sense of humour that was greatly unappreciated.

The Junior's Argument.—In a recent occasion in the Court of Appeal, counsel for the appellant appearing with an experienced junior stated that with the consent of that Court the junior would argue the case. The President remarked: "We think it proper to comment on what is an unusual application—that counsel should in fact say he appears and delegates the whole conduct of the case to his junior, which, viewed from many angles, is not a proper proceeding. We should be sorry if we let it continue to be regarded in any way as a precedent. The proper course is that if senior counsel is appearing, senior counsel is conducting the case. He may delegate portions to his junior, but to delegate in this wholesale fashion virtually reduces him to the role of instructing solicitor. However, the Court having made these comments, you can proceed". The Court was informed that senior counsel had appeared in the Court below and for that reason considered that he should appear again, and that what was being done was intended to be the right thing in the circumstances, even if he took no part in the case. The argument proceeded accordingly but it is clear that the course followed did not meet with favour in the Court of Appeal.

Le Mot Juste:

At the making of fixtures before Turner J., in Hamilton last month, counsel applied for a fixture in a contested divorce founded upon adultery. The Court replied that it would have to be "squeezed" in with two other matters on an allotted day. "This appears to be both appropriate and propitious", observed counsel, "as a degree of 'squeezing' by the co-respondent is an allegation in the petition".

L.C.C. Note:

When licensing a new hotel,
To eat, to drink, and lie in,
Please organize some extra baths,
For drip-dries to drip dry in.

—*N Z. Licensee—January*, 1960.

Tailpiece:

Beneath this slab
John Brown is stowed
He watched the ads,
But not the road.

—*Ogden Nash.*

TOWN AND COUNTRY PLANNING APPEALS.

(*Concluded from p. 62.*)

being Lot 17, Block I on Deposited Plan No. 9855 and being part Allotment 189, Parish of Takapuna, where it carries on the business of builders.

The appellant company's dealings with the Council indicated that it had been most unfortunate in that the Council appeared from time to time to have made decisions favourable to the company and then subsequently reversed them.

The appellant company wished to erect a workshop for the purpose of its business and in May of 1957 it made application to the Council for a building permit to erect a workshop on a section in Auld Road, Torbay. The permit was declined oh the grounds that the land was in an area zoned as "residential" under the respondent's undisclosed district scheme. The appellant then inquired of the respondent as to what sections of land in Torbay were zoned as "industrial" and on receipt of advice that the land was in an area zoned as "industrial", it purchased a section known as 21 Watea Road, Torbay. This was in October, 1957. It then applied for a building permit, but on December 12, 1957, it was informed that the section had been re-zoned as "residential" and the application for a permit to build a workshop thereon was declined. After some negotiation the respondent made an ex gratia payment to the appellant in settlement for a claim for damages in respect of the expense to which the appellant had been put in purchasing this section. The appellant then made further inquiry of the respondent as to what industrial sections would be available in Torbay, and was informed that certain sections, including the above described land, No. 5 Watea Road, were zoned "industrial". As a result of this advice the appellant purchased the property, applied for and was on April 9, 1958, granted a permit to erect its workshop on this property.

When the Council's proposed district scheme was publicly advertised, objections were lodged against the zoning of the appellant company's property as "industrial" and the appellant gave notice, pursuant to s. 23 (3), of its opposition to these objections. The objections, and the appellant's opposing objection, were heard by the Council which upheld the objections and re-zoned the appellant's land as "residential A". It is against this decision that the appellant appealed.

The judgment of the Board was delivered by

REID S.M. (Chairman). (1) The unfortunate changes of attitude by the Council in respect of the appellant company's property must, of necessity, be a matter of embarrassment and annoyance to the company. It bought the land in good faith, relying on the Council's assurance that it was zoned as industrial but, by reason of the change of zoning to "residential A", it can only carry on its business as a non-conforming use and it cannot expand.

(2) However, much as the Board may sympathize with the appellant company in the unfortunate position in which it has been placed, it must determine the question at issue in accordance with town-and-country-planning principles, and must judge the situation as it is.

(3) When the Council's scheme was publicly advertised, over 200 objections were received to the zoning of any land in the Torbay area for industrial use and the respondent Council gave way to these objections and decided that in the main industrial areas within the Borough should be sited in Browns Bay, and that the residential character of Torbay should, so far as possible, be maintained as such.

(4) The evidence clearly establishes that the area in which the appellant company's property is situated is predominantly residential in character and occupancy.

(5) To allow this appeal would be to create a "spot" industrial zone in the middle of a residential area. This would be contrary to town-and-country-planning principles. Although the appellant company's operations, as they are carried out at present, may not detract greatly from the amenities of the neighbourhood, nevertheless if the land were re-zoned "industrial C", then it could at any time in the future be used for any purpose permitted in such an area and many of these would, of necessity, detract from the amenities of the neighbourhood.

The appeal is disallowed.

During the hearing, evidence was given that the plan for the proposed district scheme, as publicly notified, made provision for a fairly substantial area of industrial land in Browns Bay, but this area was later substantially reduced. The only "industrial C" area in Brown's Bay is an area of 1 ac. 1 ro. 21.9 pp. and although this area is available—using that word in its town-planning sense—for industrial use, there was the suggestion that it is not in fact available in that it is not on the market and could probably not be acquired by any company or individual seeking industrial land. The Board considers that the Council should, if its proposal is that industrial areas should in the main be confined to the Brown's Bay area, give careful consideration to zoning more land for industrial purposes.

Appeal Dismissed

Wiseman *v.* East Coast Bays Borough.

Town and Country Planning Appeal Board. Auckland. 1959. November 26.

District Scheme—Roadway—Ordinance designating Strip along One Side of Road—Appeal against Such Provision —Anticipated Development necessitating Eighty-feet Roadway —No Hardship to Appellant—Town and Country Planning Act 1953, s. 26.

Appeal under s. 26 of the Town and Country Planning Act 1953 by the owner of a property situate on the western side of Clyde Road, Brown's Bay, containing 1 ro. 3.8 pp. more or less, being Lot 2 on deposited plan 42470, portion of allotment 189, Parish of Takapuna. This property had a 120 ft. frontage and 103 ft. of that frontage had been built on, the buildings comprising a single-story building used as shops and a double-story building used as shops and offices. There was an area of vacant land upon which the appellant could build, having a 17 ft. frontage. The Council's proposed district scheme, as publicly notified, provided for a street widening ordinance designating a strip 14 ft. wide along the western side of Clyde Road as a proposed future road. The appellant considered that this proposal adversely affected his property and he lodged an objection to the scheme. This objection was disallowed and this appeal followed. The appellant prayed that this provision for the widening of the western side of Clyde Road should be deleted from the plan.

The judgment of the Board was delivered by

REID S.M. (Chairman):

(1) Clyde Road at present has a width of 66 ft. The plan envisages the widening of this street to 80 ft.

(2) This locality is developing as a commercial area and it is a reasonable assumption that it will in time become the main commercial centre of the Brown's Bay area. It is a through route for bus traffic between Torbay and Takapuna and Auckland City and it already carries a substantial volume of traffic.

(3) The Board considers that it is prudent planning and in accordance with town-and-country-planning principles to make provision now for the widening of Clyde Road in the future. If the anticipated development takes place in this area, then an 80 ft. roadway will be a necessity.

(4) The only ways in which the appellant could be adversely affected by this provision are:

(a) If the existing building were to be destroyed by fire, any buildings erected in lieu thereof would have to be set back a further 14 ft.

(b) If he wishes at some time in the future to build on his vacant land, any building so erected would require to be set back 14 ft. from the present street line.

This would not entail any hardship on the appellant because he has ample room at the back of the present premises for future development.

The appeal is disallowed.

Appeal dismissed.