New Zealand
Law Journal
Incorporating Butterworth's Fortnightly Notes
VOL. XXXVI TUESDAY, NOVEMBER 1, 1960 No. 20

TRADE PRACTICES: RECENT DECISIONS.

ARRANGEMENTS have recently been made for the reporting in the *New Zealand Law Reports* of decisions of the Trade Practices Appeal Authority and the first to appear will be that relating to the Wellington Fencing Materials Association which was the subject of two articles in the *Journal* (1959) 35 N.Z.L.J. 337 and 353. Two further decisions have been released concerning hairdressing charges and master grocers' price lists, and although it is intended to report these in due course it is thought that in the meantime an article dealing with their salient points will be of interest and assistance to our subscribers.

The Hairdressers' Decision

The case as to hairdressers' charges concerned the activities of a body known as the New Zealand Council of Registered Hairdressers (Inc.) which we shall refer to as "the Council". Originally it represented all the hairdressers throughout the country, but as a result of a break-away which occurred about June, 1959, another organization was formed and the Council's sphere of undisputed activity was restricted to the middle and lower half of the South Island, the rest of the country being covered by a new organisation known as "The Registered Hairdressers' Guild and Tobacconists' Association Incorporated." The activities of this guild were not before the Appeal Authority.

Hairdressing charges were released from price control in March 1957, and the price for men's haircuts was immediately increased from 2/6 to 3/-. The increase was explained as putting the trade on a better economic footing and enabling a higher standard of hygiene and service than was possible on the prices fixed under the Control of Prices Act 1947. In May, 1959, a further increase was decided upon which became effective in most of the South Island from June 2, 1959. Printed cards notifying the increased charges were dispatched to members of the Council who, with a few exceptions, displayed them in their place of business.

The Council registered its constitution and a copy of the card under Part II of the Trade Practices Act. The card showed the specified charges as "recommended" and provided for styling, special cuts and other individual cases to be at such charge "as may be arranged."

After an investigation pursuant to s. 18 of the Act, the Commissioner of Trade Practices reported to the Trade Practices and Prices Commission that the trade practice of the hairdressers was contrary to the public interest and sought various orders. After inquiry the Commission ordered as follows:

(a) That there was a trade practice as defined in s. 2 of the Act.

(b) That such trade practice was an agreement or arrangement within the meaning of s. 19 (2) of the Act.

(c) That it had the effect of unreasonably reducing or limiting competition within the meaning of s. 20 (d) of the Act.

(d) That it reduced or limited competition to such a degree as to be contrary to the public interest.

The appeal was brought from this order.

Application of Principles of Natural Justice

The appeal was brought on various grounds, the first of which is stated in the decision as being:

> "The attitude of the Commission at the inquiry was contrary to the principles of natural justice, and on that ground alone its decision should be reversed and the matter placed on a proper footing."

In support of this, Dr. Mazengarb, leading counsel for the Council, complained of the failure of the Commissioner or the Commission to supply particulars of the ground on which it was alleged that there was a trade practice, and the attitude of the Commission generally, in that it accepted the Commissioner's report and put the onus of proof on to the Council. He said that the Council had been told of the inquiry, but had not been told what was alleged to be contrary to public interest. On this point the Appeal Authority, Judge Dalglish, said:

> "In my view, it is a proper request to be made by any parties to a trade practice which is to be the subject of an inquiry by the Commission that they should be supplied with sufficient particulars so that they know in advance what, in connection with the trade practice, is claimed to be contrary to public interest.
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> "In the present case, in accordance with the practice which has been adopted by the Commission, a copy of the Commissioner's report was supplied to the Council some time before the holding of the inquiry. This report set out the facts in some detail. The Commissioner stated in the report that he had formed the opinion that the trade practices evidenced by the agreements embodied in one of the rules in the constitution of the Council and in its resolution as to hairdressing charges were contrary to the public interest and that he therefore recommended that the Commission, pursuant to ss. 19 and 21 of the Act, make certain orders the terms of which the Commissioner set out in some detail. No reasons were given by the Commissioner for the opinion which he

formed. He did not specify under which provision of s. 19 (2) he thought the trade practice in question fell, nor under which paragraph of s. 20 he considered the trade practice to be contrary to public interest.

"It is, in my view, desirable that the Commissioner in his report to the Commission should specify under which paragraph or paragraphs of s. 19 (2) he considers a trade practice to fall. It is also desirable that in his report he should state, by reference to some specified paragraph or paragraphs of s. 20, the grounds for his opinion that the trade practice is contrary to the public interest. Parties to a trade practice then have some idea of the grounds on which the trade practice is claimed to be contrary to the public interest.

"It may well be that on a closer examination of the facts preparatory to a public inquiry before the Commission there appear to be other or additional grounds on which it may be alleged that a particular trade practice is contrary to public interest or it may be considered that a trade practice falls under some other provision of s. 19 (2) than that to which the Commissioner has referred in his report. In such a case, the parties concerned should be advised before the hearing if additional grounds for claiming that the trade practice is contrary to public interest are to be urged before the Commission or if it is proposed to claim that the trade practice falls under some different provision of s. 19 (2)."

As to the question of fact involved in this sumission the Appeal Authority held that the Council had not been prejudiced since counsel assisting the Commission had advised Dr. Mazengarb before the hearing of the lines which his submissions would follow and the sections of the Act relied upon.

In dealing with the submission that the Commission had placed the onus of proof on the Council His Honour said:

"As I have pointed out in the decision which I issued on the appeal by the Wellington Fencing Materials Association, the wording of s. 18 of the Act is somewhat unusual and almost makes it appear that the Commission must practically make up its mind that a trade practice is contrary to the public interest before it commences an inquiry. It cannot however be the intention of the Legislature that the Commission should, as it were, disqualify itself from conducting the inquiry which it is required to hold, and it is obvious that the Commission must give full weight to all the evidence and arguments put before it on all sides. It thus follows that, however difficult it may appear to be, the Commission must approach any inquiry with an open mind and must consider the whole of the evidence and arguments put before it."

He then went on to consider the record of the proceedings before the Commission and the authorities as to the distinction between the legal burden of proof properly so called which is imposed by the law itself, and a provisional burden which is raised by the state of the evidence.

In this connection he dealt with *Brown* v. *Rolls Royce Ltd.* [1960] 1 All E.R. 577, *Huyton-with-Roby Urban District Council* v. *Hunter* [1955] 2 All E.R. 398 and *Robins* v. *National Trust Co.* [1927] A.C. 515; [1927] All E.R. Rep. 73.

Onus of Proof

He then went on to say:

"Before an order is made under s. 19 of our Act the Commission must be satisfied that there is a trade practice which comes within s. 19 (2), that it is contrary to the public interest within the meaning of s. 20, and that an order should be made. Evidence must be placed before the Commission which satisfies the Commission affirmatively as to these things. The legal burden of disproving these things does not rest on the party supporting the trade practice, but at any time during an inquiry the evidence may weight against that party and the provisional burden, referred to by Lord Denning in the cases quoted above, may shift to that party."

He found as a fact that the Commission had not placed the onus of proof on the Council except to the extent that the evidence adduced had raised a prima facie case. The Commission found itself able to come to a conclusion on the evidence presented to it and did not therefore need to consider the question who had the legal burden of proof.

The decision on this point follows that in the *Fencing Materials* case, but the reasons are further elaborated and the decision should do much to clarify the position as to the burden of proof in these cases.

"Agreement or Arrangement"

The second main ground of appeal was that the recommendation of the Council as to prices was not an "agreement or arrangement" for the purposes of s. 19 and that was supported by submissions which can be paraphrased very briefly as follows:

(a) It did not fall within the dictionary meaning of "agreement" or "arrangement".

(b) There were no disciplinary powers involved.

(c) There was no power to impose a sanction for non-observance.

(d) Even if the statutory fiction contained in s. 11 (4) made the recommendation as to prices an agreement that was only for the purposes of Part II of the Act relating to registration and not in respect of contract under Part IV.

The Judge accepted Dr. Mazengarb's submission lettered (d) above, the relevant portion of his decision reading as follows:

"Where a trade association makes recommendations to its members or to any class of its members as to action to be taken or not to be taken by them in relation to any matter affecting the trading conditions of those members, then the agreement for the constitution of the association must be registered as if it contained a term by which each member agreed with the association to comply with the association's recommendations. The Commission however cannot make any order under s. 19 except in respect of a trade practice which is substantially within one or more of the categories referred to in the various paragraphs of s. 19 (2). Where it is alleged that the trade practice in question is an agreement or arrangement substantially within one of those categories the fictional agreement under s. 11 (4) cannot be relied on; an agreement or arrangement must be established as existing in fact."

Dealing with submission (a) above His Honour agreed that in the normal dictionary sense a recom-

mendation cannot be said to be an "agreement" or an "arrangement" but pointed out that the whole of the transaction had to be considered. In his opinion, the following factors were material:

(i) The fact that the recommendation was made by the executive of a body whose members, on its incorporation, stated one of its objects to be to fix prices.

(ii) The fact that the recommendation was made by the executive of that body to those members following a meeting of hairdressers at which a resolution was passed recommending the same prices for haircutting.

(iii) The fact that that body, or related bodies, issued price cards.

(iv) The fact that price-cutting was frowned on by the executive and by the meeting of hairdressers referred to above.

(v) The fact that the recommendation as to hairdressing charges has been accepted and acted on.

He then went on to refer to the *Fencing Materials* case, where there was no specific agreement, but the whole course of conduct showed that the members of the Association concerned left it to the executive to take certain steps and the whole transaction amounted to an understanding between the traders who were members of the association that they would follow a common course of action.

The Judge then held that the existence of an agreement or arrangement could be inferred from the circumstances and from a course of conduct. He reviewed the facts and placed some reliance on a clause in the objects of the Council relating to price fixation. On the facts, he held that there was an agreement or arrangement to conform to the recommended charges between the Council and those members who conformed to the recommendation and also between those members *inter se*. Such agreement or arrangement was substantially within the category described in s. 19 (2) (c) as extended by s. 39.

Reduction or Limitation of Competition

Next for consideration was the question whether the agreement or arrangement so found to exist had the effect of unreasonably reducting or limiting competition to such an extent as to be contrary to the public interest. This is a question of fact and its determination called for a lengthy consideration of the facts which it is not necessary to recapitulate here. The following passages from the decision are however informative:

> "The Commission in forming an opinion on the question of the reasonableness or otherwise of a reduction or limitation of competition in the field of price is entitled to have regard to the present effect of the agreement or arrangement and to its likely effect in the future. In the present case the Commission is entitled to take into account the extent to which members of the public are able to obtain hairdressing services at prices or on conditions other than those recommended by the Council. The commission is also entitled to give consideration to the extent to which the agreement or arrangement as to prices operates to prevent members of the public from obtaining hairdressing services at reduced prices where the nature or standard of the services performed does not warrant the charging of the same price as in the majority of cases. I do not agree that it is necessary for it to be established that prices, speaking generally, are unreasonably high before it can be said that an agreement or arrangement to charge those prices is an unreasonable limitation of competition.
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> "It is clear that in the South Island, and in Christchurch and Dunedin in particular, where 90 per cent of the hairdressers are members of the Council there are few hairdressing establishments where the recommended prices do not operate. As to the North Island there is evidence that 90 per cent of the hairdressing establishments in the main cities are members either of the Council or of another organisation and that the lead of the Council as to hairdressing charges has been followed by the other organization. The agreement or arrangement in the present case is that men's hairdressing shall be charged at 3/6d. but that in special cases other charges may be arranged. The only special cases referred to in the evidence, in respect of whom a smaller charge might be made, were bald customers or favoured customers. There are also cases of suburban shops where the rent is low, and in some of those cases, the Commission was informed, lower charges might operate. It will thus be seen that the majority of customers not falling within the special classes, whatever hairdressing saloon they visit, are required to pay the amount of 3/6d. This amount is charged even although the amenities may be poor, the efficiency of the hairdresser may not be of the best and the standards of cleanliness and hygiene may be low."

His Honour held that the agreement or arrangement was contrary to the public interest in terms of s. 20 (d) of the Act.

Having so found, it was necessary to consider whether the Commission in the exercise of its discretion should have made an order under s. 19 (1), and on this point the Judge said:

> "Having regard to the purposes of the Act, I consider that, unless appropriate action is taken under s. 19 (6) to ensure that a trade practice ceases to be contrary to the public interest, very cogent reasons against making an order would need to be established to persuade the Commission to refrain from making an order in respect of a trade practice which it finds to be contrary to the public interest."

On a consideration of the facts, and in particular of the fact that there was no evidence of any countervailing circumstances to outweigh the public interest in having free and open competition, His Honour held that this was a case for the making of an order.

Form of Order

The form of the order made by the Commission then came under fire on the grounds that it was obscure and could not be complied with. As to the first ground it was held that the order did not sufficiently define the agreement or arrangement which was its subject. His Honour suggested a recital which would remove this cause of complaint. As to the effect of the order he said:

> "Section 19 (1) authorizes the Commission to make an order directing the discontinuance or non-repetition of a practice, and the order in the present case is clearly based on the wording of that section. To the extent that the trade practice in

the present case is an agreement or arrangement to charge certain prices for particular services the cancellation of the agreement or arrangement cannot from a practical point of view involve any more than the cessation of the effect of the recommendation fixing those prices and the ending of the expectation of members of the Council that those prices will continue to be observed by members generally. There is no power to order that prices shall be varied in any particular way or ways unless, of course, hairdressing services are again made subject to price control under the Control of Prices Act 1947, and it is not suggested that that should be done in the present case. Discontinuance of the agreement or arrangement does not mean that members of the Council must depart from the prices recommended by the Council. Many, if not most, of the members of the Council will no doubt continue to charge those prices for a time at least. I think it probable that more members would tend to make up their own minds as to the prices they should charge if it is made abundantly clear to them that the recommendation of the Council no longer has any validity. The Commission's order would in my view be more effective if the Council's recommendation is revoked, and notice of that revocation sent to all members of the Council, and if the cards setting out the charges are recalled by the bodies which issued them. The Commission has power under s. 21 (1) to order those things to be done. Section 21 (1) provides that in any order under the Act the Commission may make such provisions, not inconsistent with the Act, as it thinks necessary or desirable to ensure compliance with the terms of the order. The order should therefore contain a further provision to the following effect:

> 'The Commission further orders that the Council—(1) shall within such period as the Commission fixes rescind the resolution of May 30, 1959, concerning the recommendation of male hairdressing charges; and (2) shall within the same period advise each member of the Council in writing that he is no longer bound to observe the charges recommended pursuant to that resolution but is free to make such charges for male hairdressing as he thinks fit; and (3) shall within the like period take such steps as are necessary to ensure that the cards distributed by or with the authority or approval of the Council, and setting out the recommended charges, are withdrawn from exhibition in hairdressing saloons or other places where they may be seen by the public.' "

Procedure When Case Remitted Back

In the circumstances, the appeal was allowed and the case remitted to the Commission for reconsideration of the form of the order. One final dictum of importance reads as follows:

> "From the wording of s. 33 (2) (which may be compared with s. 149 (2) of the Transport Act 1949 and s. 37 (2) of the Motor Spirits Distribution Act 1953) it does not appear that the Commission is required either to reopen the inquiry or to hear the parties before reconsidering the matter. Nevertheless, I think that in this case counsel for the Council and counsel assisting the Commission should be given an opportunity of making representations as to the precise form of order to be issued by the Commission after it has reconsidered the matter."

The decision is a further step in the elucidation of what is undoubtedly a difficult and novel piece of legislation. Just what will be the practical effect of the order made in the case cannot be determined at the present time. At the moment each hairdresser is entitled to fix his own prices, but whether competition will tend to keep those charges down is a moot question. If there is any failure in this direction this cannot be attributed to the thoughtful and careful decision of the Appeal Authority, but will be due to defects in the legislation. For the time being the charges recommended by the Council remain in force with some exceptions, but at any time individual hairdressers may announce increases and may be followed by the rest of the trade. In the absence of concerted action a trend of increasing prices could be stopped only by the re-imposition of price control.

The appeal of the New Zealand Master Grocers' Federation and of certain Master Grocers' Associations is still to be dealt with, but will be covered in an early issue.

SUMMARY OF RECENT LAW.

DAMAGES.

Assessment of damages for loss of earnings. (*1960*) *104 S.J.*, 631.

DESTITUTE PERSONS.

Maintenance—Registered agreement—Date of Fictional Order is date of registration—Application for variation—Must be based on change of circumstances after date of registration—Destitute Persons Act 1910, ss. 39 and 47B. Where a maintenance agreement has been registered under s. 47B of the Destitute Persons Act 1910 the date of the registration is the date upon which the fictional order represented by the provisions for maintenance contained in the agreement is to be deemed to have been made. A change of circumstances subsequent to the making of an agreement but prior to the date of its registration cannot be a change of circumstance "since the making of the order" within the meaning of those words as used in s. 39. *Hume* v. *Hume*. (S.C. Auckland. 1960. August 15; September 5. Shorland J.)

EXECUTORS AND ADMINISTRATORS.

Liability and authority of the executor *de son tort*. (*1960*) *13 Australian Lawyer*, 144.

DIVORCE AND MATRIMONIAL CAUSES.

Nullity—Concurrent petitions for nullity and restitution of conjugal rights—Not necessary that they be heard together—Nullity suit to be heard first—Divorce and Matrimonial Causes Act 1928, s. 14. Marriage not consummated—Wilful refusal over short period—Decree may be made. When there are concurrent petitions, one by one spouse for a decree of nullity of marriage and one by the other spouse for restitution of conjugal rights, s. 14 of the Divorce and Matrimonial Causes Act 1928 does not require the two petitions to be consolidated or heard together. It is proper for the nullity suit to be heard first and if the decree sought is granted that necessarily disposes of the restitution suit. (*F.* v. *F.* (*otherwise D.*) [1952] N.Z.L.R. 613; [1952] G.L.R. 438, explained and distinguished.) If it is established that there has been wilful and unequivocal refusal to consummate a marriage proceeding from a settled and definite decision, even though the period over which this has been manifested is short, a decree of nullity may properly be made. (*Morgan* v. *Morgan* [1949] W.N. 250 and *Way* v. *Way* [1950] P. 71; [1949] 2 All E.R. 959, followed.) *M.* v. *M.* (C.A. Wellington. 1960. August 4, 10. Gresson P. Cleary J. Turner J.)

LEGAL ANNOUNCEMENTS

Continued from page i.

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LANDLORD AND TENANT.

Lessor's liability for structural repairs. *(1960) 13 Australian Lawyer*, 150.

LOCAL AUTHORITIES.

General—Liability of local authority for damage arising from performance of duty by Inspector of Dangerous Goods appointed by it—Dangerous Goods Act 1957, s. 8—Dangerous Goods Regulations 1958, (S.R. 1958/76) Reg. 52—Statutory Duty—Civic liability for breach—Principles applicable. An Inspector of Dangerous Goods appointed by a local authority under s. 8 of the Dangerous Goods Act 1957 exercises his powers by virtue of his office and is answerable only to the Chief Inspector. In the exercise of those powers he does not act as agent for the local authority which appointed him. A local authority appointed as a licensing authority under s. 2 of the Dangerous Goods Act 1957 has no power of inspection and now power to require defects to be remedied or dangerous practices to be discontinued. It is not civilly liable for damages caused by breaches of regulations merely because it has failed to enforce penalties for such breaches. Observations on the availability of civil remedies for breaches of statutory duty. *M.A. Patterson Ltd.* v. *Robertson and Another* (S.C. Invercargill. 1960. July 21, 22; August 3. Henry J.)

PUBLIC WORKS.

Compensation for land—Effect of zoning under the Town and Country Planning Act 1953—Principles to be applied in valuing zoned land—Land zoned as recreational but shown on scheme plan as "Council Yard"—Not an admission by local authority that suitable for industrial use. Where land is part of a block shown in an undisclosed District Scheme under the Town and Country Planning Act 1953 as zoned for recreational purposes but is shown on the scheme plan as "Council Yard", this endorsement is not an admission by the local authority that the land is suitable for industrial uses. It is not in accordance with sound practice for a valuer to accept instructions from his employer as to assumptions upon which his valuation should be based. The valuer should be entirely independent, and should himself decide what assumptions as to future development may properly be taken into account. His duty always is to value the land as it was at the relevant date for valuation, making due allowance for any potential value. *Hutt River Board* v. *Lower Hutt City Council.* (L.V. Ct. Wellington. 1960. January 27, 28; June 6; July 12. Archer J.)

Compensation for land—Assessment—Land covered by cut-over bush—Methods of valuation to be applied. For the purpose of assessing the compensation payable in respect of land taken under the Public Works Act 1928, it is not necessary to establish the unimproved valued of the land, though it may sometimes be convenient to do so. Where the land in question is covered by standing bush, a skilled and experienced land valuer should be able to assess the added value given to the land by such bush although it may be reasonable for him to seek the assistance of a timber appraiser. It is not a reliable method of valuation for the land and the timber to be valued separately and the total valuation to be ascertained by adding the two resultant figures together. The more generally recognized method of assessing the market value of land is by reference to comparable sales of similar land. *McCallum and Others* v. *Mount Maunganui Borough.* (L.V. Ct. Tauranga. 1960. 17, 18, 19, 20; June 27. Archer J.)

SPECIFIC PERFORMANCE.

Agreement for sale of shares—Restrictions on sale in Articles of Association not complied with until after action for specific performance commenced—Compliance not too late. P. agreed at the request of G. to take up 1,500 shares in a company to be formed on the faith of promises made by G. that P. would be employed by the company when formed, and that in certain events G. would purchase P.'s shares for £1,500. The company was formed and its Articles of Association contained provisions restricting the sale or transfer of shares and requiring a shareholder who desired to sell his shares to notify the directors and to appoint them as his agents for the purpose of selling. The conditions upon which P. was to become entitled to require G. to buy his shares arose, and P. called on G. to carry out his contract. G. refused, and P. sued for specific performance before complying with the terms of the company's articles. On the day on which the action was to be heard P. gave to the directors the required notice, and the directors resolved to approve the sale of his shares to G. *Held*, by the Court of Appeal, affirming the judgment of Hardie Boys J. that P.'s compliance with the provisions of the articles of association was not too late to be effective and P. was entitled to a decree of specific performance. *(Lyle and Scott Ltd.* v. *Scott's Trustees* [1959] A.C. 763; [1959] 2 All E.R. 661, distinguished.) *Held*, also (per Gresson P.) that there was mutuality between the parties since both contracted with a knowledge of the articles of association and what was required under them, and compliance with the articles was not a condition precedent to an enforceable contract. *(Blackburn Union* v. *Brooks* (1877) 26 W.R. 57 and *Wylson* v. *Dunn* (1887) 34 Ch.D. 569, followed.) (Per Cleary and Hutchison JJ.) that the promise to purchase the shares was separate from and collateral with the promise as to P.'s employment by the company, and the two together were not integral parts of an entire contract. Consequently the fact that the contract regarding P.'s employment by the company could not be the subject of a decree of specific performance did not prevent the grant of such a decree in respect of the contract for the purchase of shares. *Gold* v. *Penney.* (S.C. Auckland. 1958. December 8, 9. 1959. July 16; September 18. Hardie Boys J.) (C.A. Wellington. 1960. March 15, 16; July 25. Gresson P. Cleary J. Hutchison J.)

TRADE PRACTICES.

Report by Commission to Commissioner—Admissible as evidence—Weight—Trade Practices Act 1958, s. 17. Onus of proof—Rests in first instance on Commissioner—Trade Practices Act 1958, s. 20. "Arrangement"—Meaning—Trade Practices Act 1958, s. 19 (2). Practice contrary to public interest—Principles to be applied—Matters relevant—Trade Practices Act 1958, s. 20. In so far as it contains statements of fact, the report of the Commissioner of Trade Practices and Prices submitted to the Trade Practices and Prices Commission under s. 17 of the Trade Practices Act 1958 may be accepted by the Commission as evidence of the facts of which it speaks even although it is not the best evidence and is not strictly legal evidence. The weight to be given to that evidence is a matter for the Commission, and where evidence is tendered which contradicts any statement of fact in the Commissioner's report the Commission would no doubt give greater weight to the direct evidence given by witnesses who appear in person and are subjected to cross-examination than to statements which are at best only hearsay and which may not have been subjected to any test by cross-examination. In arriving at its findings of fact the Commission is entitled to weigh up probabilities and to decide what inferences are to be drawn from established facts according to the probabilities. It is only when at the conclusion of an inquiry it finds that it is unable to decide which of two disputed versions of fact is the correct one, or what is the proper inference to draw, that the Commission need concern itself with the question of burden of proof. Section 20 does not require the party supporting a trade practice to establish that it has none of the effects referred to in paras. (a) to (e) of that section. On the contrary the Commission must have evidence before it which establishes affirmatively on the balance of probabilities that the trade practice has one or more of those effects. If the evidence is such that the probability is equal each way the benefit of the doubt must go in favour of the trade practice. In the context in which the word "arrangement" appears in paras. (b) and (c) of s. 19 (2) it includes something more than an understanding arrived at between two or more persons, binding those persons as between themselves to a common course of action. It would include also an understanding arrived at between individual traders and a third party, for example a trade association, under which traders are bound to follow a common course of action although no rights by one trader against another may arise from the arrangement and although the obligation to follow the common course of action may not be legally enforceable. The word "arrangement" also contemplates something which is arranged by an organization and which the members of the organization are bound to observe. An agreement or arrangement need not be in writing. When the Commission has to consider whether or not any particular trade practice is contrary to the public interest under s. 20 it may apply each of the tests in the section separately. A trade practice may therefore be deemed to be contrary to the public interest if only one of those tests is satisfied. Observations as to the matters relevant to a consideration of the question whether any particular agreement is contrary to public policy. *Re the Wellington Fencing Materials Association.* (Trade Practices Appeal Authority. Wellington. 1959. October 30; November 20. Dalglish J.)

VENDOR AND PURCHASER.

Specific performance—Restrictions on sale of shares in Articles of Association not complied with until after action for specific performance commenced—Compliance not too late—See SPECIFIC PERFORMANCE *(supra).*

AGREEMENTS BETWEEN MORTGAGOR AND MORTGAGEE SUBSEQUENT TO MORTGAGE.

Conveyancing Precedent

EXPLANATORY NOTE

Courts of Equity have always regarded mortgagors as necessitous persons requiring protection against rapacious or crafty mortgagees. This is shown particularly in the development of the principle of the mortgagor's equity of redemption. The Courts of Equity considered that it was necessary to guard against the restriction or limitation of that right by any arrangement made between the parties *at the date of the mortgage*. The attitude taken by the Courts of Equity was thus stated by Lord Macnaghten in *Noakes & Co.* v. *Rice* [1902] A.C. 24, at p. 30: "Redemption is of the very nature and essence of a mortgage, as mortgages are regarded in equity. It is inherent in the thing itself. And it is, I think, as firmly settled now as ever it was in former times that equity will not permit any device or contrivance designed or calculated to prevent or impede redemption. It follows as a necessary consequence that, when the money secured by a mortgage of land is paid off, the land itself and the owner of the land in the use and enjoyment of it must be as free and unfettered to all intents and purposes as if the land had never been made the subject of the security."

As Lord Davey said in *Bradley* v. *Carrit* [1903] A.C. 266: "Once a mortgage, always a mortgage, *and nothing but a mortgage*." Thus an agreement, at the date of the mortgage, to sell to the mortgagee at a fixed price if the mortgage money is not paid, is invalid,* as is also an option to purchase taken by the mortgagee in the mortgage instrument: *Samuel* v. *Jarrah* [1904] A.C. 323. But, as observed in *White and Tudor's Leading Cases in Equity*, 9th ed. at p. 7 the principle thus expressed does not affect the validity of an agreement or arrangement made between the mortgagor and the mortgagee *subsequently to, and independently of*, the mortgage, though that agreement may modify, limit, or extinguish the right of redemption. The precedent hereunder is an example of a valid agreement made between the mortgagor and the mortgagee subsequent to the mortgage itself. The legal rights of the parties thereafter, and the liability of the instrument to stamp duty, will depend on whether the right of redemption is extinguished or merely modified or limited. If the right of redemption is extinguished, then the mortgagee becomes the beneficial owner of the property and any subsequent increase in the value of the property belongs to him, and the instrument is liable to *ad valorem* stamp duty, as a conveyance on sale. It is further pointed out in *White and Tudor (ibid)* that there is no rule of equity which prevents a mortgagee from purchasing or accepting a release of the equity of redemption from the mortgagor, though such an agreement may be voidable if oppressive or unfair. The case of *Montefiore* v. *Minister of Stamp Duties* [1922] N.Z.L.R. 1017; [1922] G.L.R. 253, although in the form of a compromise between the mortgagee and the Official Assignee in Bankruptcy of the estate of the bankrupt mortgagor, was held by Stringer J. to be in substance and reality a release by the Official Assignee to the mortgagee of the equity of redemption. Accordingly His Honour held that it was liable to *ad valorem* conveyance duty as a conveyance on sale. That was a clear case of the extinction by agreement of the mortgagor's equity of redemption, but in practice cases sometimes arise where it is difficult to place into which category the instrument comes. In the precedent given below there was a contest between the Department and the taxpayer. There was an appeal to Head Office against the assessment of *ad valorem* conveyance duty by the District Office but on the Commissioner of Stamp Duties dismissing the appeal the matter was not taken any further by the taxpayer. In my opinion there can be no doubt but that the bank became the beneficial owner of the property concerned.

In instruments of this nature three questions may be conveniently put:

(1) Could the mortgagee succeed in an action for specific performance of an agreement to sell the property to him?

(2) Would the mortgagor on payment of all moneys due under the mortgage in question be released from his obligations under the agreement?

(3) Would the mortgagor be entitled to any surplus realized on sale? (This is perhaps the most vital question of the three.)

If the answer to the first question is in the affirmative and the answer to the other two in the negative, then the agreement is a sale of the equity of redemption from the mortgagor to the mortgagee.

In the instant case of this precedent, it is submitted that the answer to the first question would be in the affirmative and the answer to the other two in the negative. The power of attorney is irrevocable, clause 3 (g) authorizes the bank to retain as its own separate property without being liable to account for the same to the mortgagor or the guarantor (called the "obligant" in the deed) all moneys arising from the sale of the mortgaged lands and the shares. And there is no doubt that the chattels described in the Third Schedule and the Life Insurance Policies set out in the Fourth Schedule are being transferred to the Bank, "absolutely freed and discharged from all right or equity or redemption"; for clauses 1 and 2 of the deed so expressly provide.

The reader will find this interesting topic discussed at further length in my book *The Law of Stamp Duties in New Zealand*, 2nd ed. at pps. 111 to 115.

The difference between a mortgage and a sale may be illustrated by the modern New Zealand case, *Rees* v. *Guardian Trust and Executors Co. of N.Z. Ltd.* [1956] N.Z.L.R. 340. A document transferring shares to a creditor of their owner with an agreement by the creditor to hold the same in trust as security for an advance and interest on the amount from time to time owing and to re-transfer the shares at par at any time when called upon is a mortgage of shares, as

* e.g. *Vernon* v. *Bethell* (1762) 2 Eden 110, 28 E.R. 838.

the borrower possesses an equity of redemption, which continues notwithstanding that the borrower fails to pay the principal sum on the due date.

PRECEDENT

DEED BETWEEN MORTGAGOR MORTGAGEE AND GUARANTOR

Subsequent to Mortgage. Surrender of Assets to Mortgagee

THIS DEED is made this 20th day of September 1960, BETWEEN A.B. Hamilton, Butcher (who and whose executors administrators and assigns are hereinafter referred to as "the Customer") of the first part C. D. of Hamilton, wife of the said A. B. (who and whose executors administrators and assigns are hereinafter referred to as "the Obligant") of the second part AND THE BANK OF ..... (which with its successors and assigns is hereinafter referred to as "the Bank") of the third part WHEREAS the Customer is a customer of the Bank and as such is not indebted to the Bank in the sum of £10,696 16s. (Ten thousand six hundred and ninety six pounds sixteen shillings) including interest computed to the date hereof AND WHEREAS the Customer is registered as the proprietor of an estate in fee simple in the lands described in Part I of the First Schedule hereto and is the holder of the shares enumerated in Part II thereof AND WHEREAS the Customer and the Obligant are registered as the proprietors of an estate in fee simple in the land described in the Second Schedule hereto and are the owners of the chattels enumerated in the Third Schedule hereto AND WHEREAS the Bank holds as security for the said sum of £10,696 16s. (Ten thousand six hundred and ninety six pounds sixteen shillings)

Memoranda of Mortgage over the lands described in Part I of the said First Schedule and Deeds of Lien dated respectively the 18th day of September, 1956 and the 10th day of November, 1956, over the shares mentioned in Part II of the said Schedule, all given by the Customer, and also a Memorandum of Mortgage over the land described in the Second Schedule hereto and an Instrument by Way of Security bearing date the 8th day of April, 1954 over the chattels enumerated in the Third Schedule hereto, both given by the Customer and the Obligant AND WHEREAS the Customer is the beneficial owner of the several policies of assurance on his own life short particulars whereof are contained in the Fourth Schedule hereto AND WHEREAS the said policies became and are now vested in the Bank by virtue of the transfers thereof executed by the Customer in favour of the Bank but notwithstanding that such transfers were absolute in form the said policies were intended to be and were in fact transferred to the Bank by way of mortgage to secure the Customer's indebtedness as aforesaid AND WHEREAS the the Obligant is personally liable to the Bank for the payment of the said sum of £10,696 16s. (Ten thousand six hundred and ninety six pounds sixteen shillings) AND WHEREAS the Customer and the Obligant are unable to fulfil their obligations to the Bank and being satisfied that the value of the real and personal property secured to the Bank as aforesaid is considerably less than the sum owing to the Bank they have requested the Bank to release them from all personal liability in respect of the aforesaid sum which the Bank has agreed to do upon the Customer and the Obligant agreeing to assign the said chattels to the Bank absolutely and to confer upon it the irrevocable powers hereinafter contained and upon the Customer agreeing to assign the said policies of assurance to the Bank absolutely freed from his equity of redemption therein AND WHEREAS for the purpose of more fully evidencing the nature terms and scope of the said agreement and of carrying the same into effect the parties hereto have agreed to enter into these presents NOW THIS DEED WITNESSETH as follows:

1.—In consideration of the release and indemnity hereinafter contained the Customer and the Obligant as beneficial owners do hereby assign transfer and set over to the Bank all and singular the chattels mentioned and described in the Third Schedule hereto To HOLD the same unto the Bank absolutely freed and discharged from all their right or equity of redemption therein under and by virtue of the above-mentioned Instrument by Way of Security.

2.—For the like consideration the Customer as beneficial owner doth hereby transfer and assign to the Bank the several policies of assurance mentioned and described in the Fouth Schedule hereto and all moneys assured by or to beeome payable under or by virtue thereof and all benefits and advantages thereof To HOLD the same unto the Bank absolutely freed and discharged from all right or equity or redemption of the Customer therein.

3.—For the consideration aforesaid the Customer and the Obligant do hereby jointly and severally covenant with the Bank that they will not nor will either of them without the previous written consent of the Bank deal with any of the lands and shares mentioned in the Firstfnd Second Schedules hereto in any manner whatsoever and that they will forthwith deliver possession of the said lands to the Bank AND they do and each of them doth hereby irrevocably nominate constitute and appoint the Bank and its General Manager for the time being and also its Manager for the time being at Hamilton and each of them to be the true and lawful Attorney and Attorneys of the Customer and the Obligant and each of them for and in the name or otherwise on behalf of the Customer and the Obligant and each of them to do execute and perform all or any of the acts deeds matters and things following, that is to say:

(a) To sell (either by public auction or privately) or exchange the whole or any part of the lands and shares mentioned in the First and Second Schedules hereto for such consideration and generally upon and subject to such covenants and conditions as the Attorneys (which expression as here and hereinafter used shall where the context so admits mean the Attorneys or any one of them) may think fit and to receive and give receipts for all or any part of the purchase moneys or other consideration which receipts shall exonerate the persons paying such moneys from seeing to the application thereof or being responsible for the loss or misapplication thereof.

(b) To contract with any person for leasing the whole or any part of the said lands for such period at such rent and with or without a purchasing clause and generally upon and subject to such terms and conditions as the Attorneys shall think fit and any person to let into possession thereof and to accept surrenders of leases and also to sign and give lawful notice to quit to any tenant of the said lands and to distrain for rent and levy execution in such form and by such process of law as the Attorneys shall think proper.

(c) To enter into and upon the said lands or upon any part or parts thereof and to take actual possession of the same and to expel therefrom all tenants and other occupiers (including the Customer and/or the Obligant) thereof and to occupy and use the said lands for such purposes as the Attorneys shall think fit.

(d) To expend moneys on structural alterations and additions to the buildings on the said lands and generally for the maintenance and improvement thereof and to pay all rates and taxes in respect of the said lands.

(e) To demand receive and recover the rents profits and all other moneys arising from the said lands.

(f) To exercise for the Customer and in his name all rights and privileges and perform all duties which now or hereafter may appertain to him as the holder of the said shares and to demand receive and recover all dividends and other moneys now or hereafter payable to him as the holder of such shares.

(g) To retain as the Bank's own separate property without being liable to account for the same to the Customer or the Obligant all moneys and other consideration arising from the sale exchange letting or use of the said lands and shares and all dividends and other moneys now or hereafter payable to the Customer as the holder of the said shares.

(h) To transfer or assign to the Bank or its nominee all or any of the said lands and shares without payment of consideration to the Customer or the Obligant.

(i) To commence and prosecute or appear in and defend all suits actions and proceedings arising out of or concerning the said lands and shares and to consent or submit to or appeal against any judgment or order in any such suit action or proceeding.

(j) To execute sign and seal and deliver all deeds contracts instruments and other documents necessary and proper for effectively doing or causing to be done any or all of the acts and things which the Attorneys are by these presents empowered to do AND the Customer and the Obligant hereby declare that all and every the receipts deeds matters and things which shall be by the Attorneys given made executed or done for all or any of the aforesaid purposes shall be as good valid and effectual to all intents and purposes whatsoever as if the same had been signed sealed delivered given made executed or done by the Customer and/or the Obligant in their his or her proper person And they do and each of them doth hereby under-

take at all times to ratify and confirm all and whatsoever the Attorneys shall lawfully do or cause to be done in or concerning the premises by virtue of these presents.

4.—In consideration of the assignments hereinbefore contained and of the irrevocable powers hereinbefore conferred upon it the Bank doth hereby release and discharge the Customer and the Obligant and each of them from the said sum of £10,696 16s. (Ten thousand six hundred and ninety six pounds sixteen shillings) and from all actions suits accounts claims and demands whatsoever for upon account or in respect of the same But without releasing or discharging all or any of the lands and shares described in the First and Second Schedules hereto from any securities affecting the same now held by the Bank or from the said sum of £10,696. 16s. (Ten thousand six hundred and ninety six pounds sixteen shillings) or from any other moneys now or hereafter to be charged thereon by virtue of any of the said securities And the Bank each of them that it will at all times hereafter save defend and keep harmless the Customer and the Obligant and each of them from and against all actions proceedings accounts claims and demands on the part of any person or persons under the said several securities now held by the Bank and of from and against all rates and taxes which may hereafter become owing in respect of the said lands.

IN WITNESS whereof these presents have been executed the day and year first above written.

THE FIRST SCHEDULE ABOVE REFERRED TO

PART I

[Set out here official description of all the mortgagor's lands mortgaged to the mortgagee.]

PART II

Firstly 200 fully paid shares of five shillings each (numbered ..... to ..... inclusive) in the ..... Company Limited.

Secondly 1501 fully paid shares of one pound (£1) each (numbered ..... to ..... inclusive) in the ..... Company Limited.

THE SECOND SCHEDULE ABOVE REFERRED TO

[Set out here official description of land].

THE THIRD SCHEDULE ABOVE REFERRED TO

All and singular the under-mentioned chattels which are now on the land described in the Second Schedule hereto (being the premises situate in ..... Street, Hamilton, known as the ..... Butchery), that is to say : [Set out here the chattels]

THE FOURTH SCHEDULE ABOVE REFERRED TO

[Set out here the particulars of the policies mortgaged].

SIGNED by the abovenamed A. B.
in the presence of :
in the presence of :
E. F.
Solicitor
Hamilton

A. B.
A. B.

SIGNED by the abovenamed C. D.
in the presence of :
E. F.
Solicitor
Hamilton

C. D.

EXECUTED on behalf of the BANK OF ..... by its Attorneys G.H. and Director thereof and S. J. the General Manager thereof in the presence of :
K. L.
Bank Officer
Wellington

THE BANK OF .....
by its Attorneys G. H. and G. J.

E. C. ADAMS

NEW ZEALAND LAW REVISION COMMITTEE.

May Meeting

The New Zealand Law Revision Committee's forty-first meeting took place on May 13. The Attorney-General, the Hon. H. G. R. Mason Q.C., presided.

Jury Trial in Civil Cases.—A draft amendment bill was approved, subject to the alterations agreed to.

Land Transfer Act 1952 (Rights of Way).—The committee considered suggestions by the Auckland District Law Society for the alteration of the law governing the registration of easements. Mr. Hannan (representing the Registrar-General of Land) was present to assist the committee. He explained a modified proposal recommended by the Registrar-General in his report.

The proposal was in substance that a certificate by a registered proprietor may be lodged on the deposit of a plan but before the transfer of any lot on the plan, such certificate to set out such easements delineated on the plan which shall arise on the transfer of another lot affected by the certificate without further allocation of these easements.

The committee approved the proposal.

Enforcement of Custody Orders.—The committee approved a proposal by the Hawkes Bay District Law Society for legislation enabling custody orders made in the Supreme Court to be registered and enforced in the Magistrates' Court.

Maori Land (Compensation for Acquisition).—The committee affirmed its support of the proposal that compensation claims for the acquisition of all land (including Maori land) should be determined by the Land Valuation Court.

Shipping and Seamen Act 1952.—The committee considered suggestions for the alteration of s. 460 imposing a limitation on liability for damages. It was pointed out that the problem concerned claims by passengers as well as employees. That the suggestions were : (1) that the present limitation be removed altogether or replaced by one on the lines of that under the compulsory third-party provisions of the Transport Act, and (2) that insurance against claims of this nature be made compulsory.

The committee decided to invite the comments of the shipping companies and the insurance associations, and to ask the secretary to prepare for the next meeting a comparative note on the position in respect of air and road transport and the position in the United Kingdom and other countries.

Life Insurance Act 1908.—The committee discussed a proposal by the Canterbury District Law Society that mortgages and assignments of insurance policies issued by companies not having a place of business in New Zealand should not be required to comply with the registration provisions. The proposal was approved in principle, and the law draughtsman was asked to prepare a draft for the next meeting.

Married Women's Property Act 1952.—The committee considered another suggestion by the Canterbury District Law Society for the amendment of s. 19 to apply it to cases where the husband had died. It has

been held to apply to cases where the wife had died. There was agreement that the present anomaly should be removed, either by extending the jurisdiction under s. 19 or limiting it. After discussion, it was decided to approve the suggestion.

Those present at the meeting were Sir Wilfrid Sim Q.C., Professor I. D. Campbell (Victoria University of Wellington) the Hon. J. R. Marshall M.P., Mr. H. E. Evans Q.C., and Messrs. A. C. Stephens (Dunedin), J. P. Kavanagh (Wellington), H. J. Butler and B. J. Cameron (representing the Justice Department), D. R. Wood (representing the Solicitor-General, Mr. H. R. C. Wild Q.C.), and Mr. D. A. S. Ward (law draughtsman).

JULY MEETING

The Attorney-General, the Hon. H. G. R. Mason Q.C., presided at the Committee's forty-second meeting on July 7 and 8.

Trustee Act 1956— Amendments.—Lengthy consideration was given to the draft Amendment Bill giving effect to the Committee's recomendations and making other changes in the existing law.

Proposed amendments were modified and additions to the draft Bill were approved.

A letter was received from the New Zealand Law Society in connection with the Trustees' Commission Rules. It was agreed that provision ought to be made in the Bill for commission to be paid to a trustee who has retired or to the representatives of a deceased trustee.

Administration Amendment Bill.—The draft Bill was approved subject to certain modifications. It was agreed that the law draughtsman and Professor Campbell should be asked to give further consideration to the terms of a clause to be inserted in the Bill concerning the entering into of contracts to make or not to make a will.

Law Reform (Testamentary Promises) Act 1949. An Amendment Bill was discussed at some length. The main discussion took place on the question of the ranking of claimants under this Act as creditors and not as beneficiaries. The law draughtsman and Professor Campbell were asked to prepare a draft clause to embody a suggestion that the Court should have a discretion to declare the promise to be either a debt or a legacy. The chairman pointed out that agreement that this draft should be prepared in no way involved all members of the committee in approval of the suggestion.

It was suggested that the procedure for bringing an action under this Act should be by way of originating summons, as under the Family Protection Act 1955. It was agreed that this suggestion should be referred to the Judges, inviting them, if they so desired, to express their views on the desirability of the proposal.

Married Women's Property Act 1952.—The suggestion by the Canterbury District Law Society for alteration to s. 19 was approved. The law draughtsman was requested to prepare a draft to provide that reference in that section to husband and wife should include the legal representatives of the husband or wife.

Shipping and Seamen Act.—This matter was deferred till the next meeting to allow time for all the shipping and insurance companies to whom the suggestion had been circulated to give the committee their views.

Charitable Trusts Act 1957.—The report of the subcommittee on the adoption of the Recreational Charities Act 1958 (U.K.) was adopted, and the matter was referred to the law draughtsman to prepare a draft Bill.

Fencing Act 1908 (Trees).—The attention of the committee had been drawn to the Magistrate's Court decision in *West* v. *Michael* (to be reported), where it was held that loss of a view might justify an order for the removal of trees under s. 26A of the Fencing Act 1908. It was agreed that legislation should be introduced providing that no order should be made under that section on the grounds of interference with view only.

Present at the meeting were the Solicitor-General (Mr. H. R. C. Wild Q.C.), Mr. H. J. Butler, Professor I. D. Campbell, Messrs. H. E. Evans Q.C., and J. P. Kavanagh, Hon. J. R. Marshall M.P., the Secretary for Justice (Dr. J. L. Robson), Sir Wilfrid Sim Q.C., Messrs. A. C. Stephens and D. A. S. Ward (law draughtsman).

CORRESPONDENCE.

The Legal Conference

Sir,

I attended all the business sessions of the Legal Conference save the last and also the Government House party and the dinner. In due course I received the Conference number of the LAW JOURNAL and promptly lost it. I have lately acquired another copy and have had time to consider its contents. May I make a comment or two ?

First, without the Conference number, much that was said would have passed on without possibility of recall. Papers on legal subjects, to be worthwhile, require time for digestion.

Secondly, some papers, notably the one read by our our guest from U.S.A. flowed on quietly from point to point. These could be followed. But there were some that were read so quickly and which contained so many subleties and flying allusions that I, at least, found it hard to follow the speaker. We were in a sense, judges, and the speakers were trying to convince us. Yet every advocate before a curia knows that, if he is to convince, he must be heard and understood by the judges whom he is addressing.

Thirdly, discussions on some of the papers would have fallen flat had not the papers been handed out to experts on the subjects beforehand. This was a good thing, save that it tended to restrain the discussion to the special pleaders.

However, the Conference was a feast of good things—especially, socially and mentally. I hope that I am a poor prophet, but I have a feeling that, one day, the judges will say, in effect to us: "We thank you for putting a toast to us on the dinner programme, but don't bother"

Yours etc.

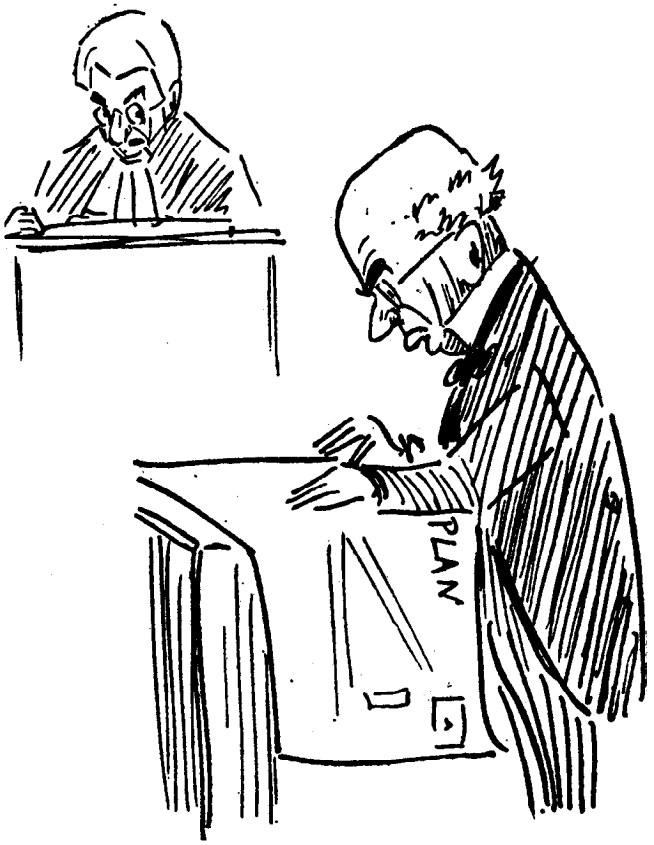
L. A. TAYLOR, Hawera.

FORENSIC FABLE.

By "O"

The Profound Lawyer who Received a Subpoena Ad Testificandum.

A PROFOUND Lawyer, Whose Fame as an Orator and a Cross-Examiner was of the World-Wide Order, once Chanced to Observe a Collision between a Taxi-Cab and a Bus. When a Stout and Peremptory Policeman Demanded his Name and Address the Profound Lawyer Gladly Gave the Desired Particulars. He was Well Pleased to Have an Opportunity of Entering the Witness-Box and Showing Everybody how Evidence Ought to be Given. A Month Later the Profound Lawyer was Visited by a Managing Clerk of Unprepossessing Appearance and Considerable Intelligence. Invited by his Visitor to Give a Proof, the Profound Lawyer Proceeded to Dictate an Accurate Account of the Disaster, Prudently Retaining a Copy of the Resultant Document so that he might from Time to Time Refresh his Memory before the Hearing of the Cause. In Due Course the Profound Lawyer Received



a Subpoena Requiring him to Testify on behalf of the Plaintiff in the King's Bench Division of the High Court of Justice.

Was the Evidence of the Profound Lawyer a Success ? Far from it.

When the Profound Lawyer was Asked to Mention the Date of the Accident he was Quite Unable to Remember it. So Confidential were the Tones in which he Began his Story that the Judge Sharply Ordered Him to Speak Up. When the Plan was Handed to the Profound Lawyer he Held it Upside Down. Twice he Endeavoured to Tell the Court what he had Said to his Wife when he Got Home in the Evening. His Reservations and Qualifications were so Abundant that it Appeared Doubtful Whether he had seen Anything at All. A Short Cross-Examination Elicited the Fact that he had Learnt his Proof by Heart. In his Summing-Up the Judge Told the Jury to Dismiss from their Minds the Evidence of the Profound Lawyer, as it was Entirely Worthless.

Moral—*Look the other way.*

OBITUARY.

Mr. Cheviot Bell

Son of Sir Francis Dillon Bell and a former member of the Legislative Council, Mr Cheviot Wellington Dillon Bell died at his home "Lake Mallard," Rangitumau, near Masterton, on September 26.

Mr Bell, who was 68 years of age, as a young man, was closely associated with his father in legal practice and assisted him during the time that Sir Francis was Attorney-General and, for a brief period, Prime Minister.

Mr Bell was born at Wellington and educated at Christ's College, Christchurch, and Trinity College, Cambridge.

During World War I he served with the 10th Royal Hussars and with the R.F.C., in which he gained the rank of captain. He was mentioned in dispatches for his flying prowess over enemy lines.

In World War II, Mr Bell became friend and adviser to thousands of airmen pilots and R.N.A.F. ground staff, who passed through the Officers' School of Instruction, R.N.Z.A.F. Station, Levin. With the rank of Squadron Leader, Mr Bell was officer commanding the unit and he worked tirelessly in the interests of the men under him, imbuing them with his own deep patriotism. A polished after-dinner speaker, Mr Bell was at his best at functions to mark the passing-out of courses from Levin and his fund of humour on those occasions will long be remembered by all those privileged to gain their commissions under his tutelage.

In 1920, Mr Bell married Miss Dorothy M. Newton, and he is survived by his wife, son and daughter.

When the New Zealand Founders' Society was formed in 1938 he was its first president and he was a member of the Waitangi Trust Board. He was appointed to the Legislative Council on July 28, 1950, and was a member of it till the council was abolished.

Alcohol.—"The use of alcohol in its many forms has perplexed society and its government from time immemorial and still does. It confronts them with an inescapable problem and apparently with an unsolvable one. Some are cursed by it and some are comforted. Unhappy results have followed intemperate indulgence—certainly from the time of Noah—while discreet indulgence has added zest and wit to social gatherings long before the marriage feast at Cana."—Holt J., in *Commonwealth* v. *Anheuser-Busch, Inc.*, 181 Va 678, 26 SE2d 94.

IN PARLIAMENT.

The highlights of proceedings in Parliament in the latter part of September were first the announcement by the Minister of Justice of a proposal to set up short-term Detention Centres for the punishment of youthful offenders, and secondly the further announcement by the Minister of Police of the Government's intention to promote legislation stiffening penalties for disorderly behaviour. Both decisions are no doubt due largely to the happenings at Hastings during the Blossom Festival, but the need for both steps to curb hooliganism has long been apparent.

As to increased penalties, there is no indication as yet of the detailed proposals but no doubt the Bill will proceed on conventional lines increasing fines and imposing terms of detention. The time is, however, opportune for consideration of the re-introduction of corporal punishment in some cases at least. The Government must realize that the present outbreak of vandalism, hooliganism and similar offences is due to the activities of what must be a comparatively small group of individuals who appear to have declared war on society. They must be shown that this attitude does not pay and practically any means are justified in bringing this home to them.

The present-day trend is towards the reformation of offenders and this is all to the good. Unfortunately the trend has gone too far and has been allowed to obscure the deterrent and retributive requirements of the treatment of offenders. For the protection of law-abiding citizens there must now be a swing towards penalties which will have a strong deterrent effect and, in view of the mentality of those concerned, corporal punishment even if only for a second or third offence seems to be the answer.

Bills Before the House

The House has gone on with the consideration of Departmental Estimates, and progress has also been made with the legislative programme. Additions to the Bills before Parliament are as follows :

Administration Amendment Bill.
Agriculture (Emergency Regulations Confirmation) Bill.
Companies Amendment Bill.
Cook Islands Amendment Bill.
Emergency Regulations Amendment Bill.
Health Amendment Bill.
Disabled Persons Employment Promotion Bill.
Primary Products Marketing Regulations Confirmation Bill.
Public Works Amendment Bill.
Trustee Companies Bill.
Trustee Amendment Bill.
Workers' Compensation Amendment Bill.

The Administration Amendment Bill incorporates the provisions now contained in s. 10 of the Family Protection Act 1955 relating to the protection of an administrator who distributes before the normal limitation period for Family Protection claims has expired, and extends those provisions to claims under the Law Reform (Testamentary Promises) Act 1949. It also incorporates the remaining provisions of s. 10 of the Family Protections Act as to following assets into the hands of persons to whom they have been distributed.

The Trustee Amendment Bill extends to all trustees certain rights which have long been exclusive to the Public Trustee. One is the right of a trustee to sue and be sued by himself in another capacity and the other is the right to protect himself against claims by advertisement. There are numerous other amendments to the principal Act too lengthy to deal with in this column.

The Workers' Compensation Amendment Bill contains provisions to cover a worker while he is travelling by the most practicable route between his place of employment and premises (other than residential premises) to which he has right of access by virtue of his employment, and also while he is on such premises. Section 18 of the principal Act relating to hernia claims is also amended giving the Court a wide discretion to determine whether an incapacity from hernia arises out of and in the course of the workers' employment.

Public Acts passed are as follows :

Amusement Tax Act.
Cheques Act.
Imprest Supply Act (No. 4).
Inland Revenue Department Amendment Act.
Social Security Amendment Act.
Stamp Duties Amendment Act.
State Supply of Electrical Energy Amendment Act.
War Pensions Amendment Act.

Corporal Punishment.—"It is surprising to learn that in answer to the question, "Do you consider corporal punishment should be reintroduced as a judicial punishment?" 71 per cent of approved school welfare officers and staff questioned on the matter inserted "Yes" and only 26 per cent. "No". Fifty-nine per cent. favoured the reintroduction of birching for juvenile offenders, and as many as 45 per cent. voted for the reintroduction of the "cat" for adult male offenders. Eighty-three per cent. considered that corporal punishment should be used against persons found guilty of violence against prison officers, and six per cent. considered that corporal punishment was an effective deterrent against a repetition of an offence by a particular defendent.

These are remarkable figures and show that the wheel is beginning to go full circle: It would appear that the deterrent aspect of sentence is once again beginning to receive its due measure of attention after a long period of recession during which the reformative aspect has been almost exclusively emphasized". (*1960*) 124 *J.P.* 466.

A Good Answer.—An adverse witness preceded each answer with "I think . . ."

The distraught lawyer demanded for the third time that the witness tell the Court and jury "what you know, and not what you think."

The witness quietly replied, "I'm not a lawyer; I can't talk without thinking."—*American Union News.*

Have Times Changed ?—In *The Idler* of January 20, 1758, Dr. Johnson wrote: "Advertisements are now, so numerous that they are very negligently perused and it is therefore become necessary to gain attention by magnificance of promises, and by eloquence sometimes sublime and sometimes pathetick. *Promise, large promise, is the soul of an advertisement.*"

LIGHT RELIEF FOR THE EXAMINER.

The marking of examination papers is a tedious chore and it is a welcome change to run across an answer with a gleam of humour in it. The publication of such "howlers" is rather unkind, yet many of them are too good for the examiner to keep to himself.

In a recent law examination (not, one should add, conducted by any of the Universities) the candidates were invited to give the definitions of homicide, culpable homicide, and murder as contained in the Crimes Act. There were some rather surprising results. When informed that homicide was the killing of a "humane" being by another the examiner took this as a slip of the pen in the stress of the examination room, but found on proceeding with the rest of the answer that the candidate always used that spelling for the word "human". One wonders whether the other would have to be humane also.

The following definitions of culpable homicide were much more astonishing :

> "Homicide is culpable when death is brought about by accident or operation, there being no intent whatsoever to cause death. If death is brought about by unlawful act it is manslaughter.
>
> "Homicide is culpable when it is blameworthy—this amounts to murder. Homicide is not culpable when it is not blameworthy—this amounts to manslaughter."
>
> "Culpable homicide is when a person is killed justifiably e.g. hanging when this was carried out."
>
> "Homicide is non-culpable where, although reasonable care was used, the person still died. Examples of this are :
>
> 1. . . .
>
> 2. A hangman in the execution of his duty.

We always thought that the hangman's duty of care lay in the opposite direction, but perhaps we were wrong.

The definition of murder also contained some unexpected and novel conceptions such as the following :

> "Culpable homicide amounts to murder when a person kills another without cause or reason.
>
> Culpable homicide is murder, when a person has due to some act by another, ceased to breathe and departed from this world.
>
> Culpable homicide is murder when a person omits an act thereby causing that person's death e.g. pushing a person off a wharf knowing there to be a large rock jutting out.

The omission supposed to be involved in the last example escapes us as does the significance of the large rock.

Then there was the candidate answering a question on the rules as to the admissibility of evidence of complaints by a prosecutrix on a charge of rape and kindred offences. After quite a good answer he rather spoilt it by adding "These are called the McNaghten rules". What does the examiner do ? This one disregarded the addition completely.

There were the usual candidates who, knowing nothing about a question, wrote a great deal of more or less correct though irrelevant matter or else took a long shot and failed to hit the target. These cases are pathetic rather than humorous, but one candidate was refreshingly frank. Faced with a question on automatism as a defence to a charge of a crime, he wrote :

> "This is dealt with in *R.* v. *Cottle*. This is a case I have noted for reading, but I have not yet got around to it, so I know nothing about the subject. I will therefore not waste either your time or mine by writing anything further."

The examiner felt well disposed to the candidate, but could not fairly allocate more than one mark out of ten for the mention of the name of the case. He was, however, pleased to see that the candidate more than made up the lee-way by excellent answers to other questions.

Perhaps a mark or two for initiative should have been awarded to a candidate who answered a question on the Doctrine of Recent Possession in the following terms :

> "I do not know anything about this subject but you will find it all in *Luxford* and *Garrow*. This the examiner already knew, having been through those works in his search for questions and preparation of model answers. The same answer could also have been given to about eight of the twelve questions in the paper, so the examiner made another attempt to draw a perfect circle freehand.

There is still a mountain of papers for marking in the examiner's study and before the job is finished there may be found further examples of original thought. If so they will be shared with readers of the Journal.

The Danger of the Drunken Pedestrian on the Road.—We agree wholeheartedly with the president of the Pedestrians' Association, who said, as reported in *The Guardian* of June 28, that the slow reaction of a pedestrian going at two m.p.h. cannot be compared with the slow reaction of a driver going at 60. He was commenting, at the Association's annual meeting, on the emphasis which he said had been placed, in speaking of the Christmas road deaths, on the fact that pedestrians had been drinking as well as drivers. We are not, however, wholly in agreement with the president when he suggests that the drunken pedestrian endangers only himself. A car driver has many hazards to contend with on the roads of today, and the unexpected and unpredictable movements of a drunken pedestrian can create a situation in which a car driver is placed in some peril in trying to avoid him, and this peril may involve other road users. We think therefore, that although the drunken driver is by far the greater menace a drunken pedestrian is a potential danger to others as well as to himself—32 *J.P. and L.G. Review* (1960) 509.

Sound Advice.—"Presumably, the public generally feel that, although lawyers are of use in getting them out of trouble, the legal profession, unlike the medical profession, bears some of the responsibility for getting them into it, as well ; in other words, that lawyers largely make the law. Perhaps that attitude ought to stimulate lawyers to take more interest in law reform, for they are going to get blamed for the law's shortcomings anyway." (*1960*) *104 S.J.*, 552.

Charities and Charitable Institutions

HOSPITALS - HOMES - ETC.

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

BOY SCOUTS

There are 42,000 Scouts in New Zealand undergoing training in, and practising, good citizenship. They are taught to be truthful, observant, self-reliant, useful to and thoughtful of others. Their physical, mental and spiritual qualities are improved and a strong, good character developed.

Solicitors are invited to commend this undenominational Association to Clients. The Association is a Legal Charity for the purpose of gifts or bequests.

Official Designation :

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

PRESBYTERIAN SOCIAL SERVICE

Costs over £250,000 a year to maintain.
Maintains 21 Homes and Hospitals for the Aged.
Maintains 16 Homes for dependent and orphan children.
Undertakes General Social Service including :
Care of Unmarried Mothers.
Prisoners and their families.
Widows and their children.
Chaplains in Hospitals and Mental Institutions.

Official Designations of Provincial Associations :

" **The Auckland Presbyterian Orphanages and Social Service Association (Inc.).**" P.O. Box 2035, AUCKLAND.
" **The Presbyterian Social Service Association of Hawke's Bay and Poverty Bay (Inc.).**" P.O. Box 119, HAVELOCK NORTH.
" **The Wellington Presbyterian Social Service Association (Inc.).**" P.O. Box 1314, WELLINGTON.
" **The Christchurch Presbyterian Social Service Association (Inc.).**" P.O. Box 2264, CHRISTCHURCH.
" **South Canterbury Presbyterian Social Service Association (Inc.).**" P.O. Box 278, TIMARU.
" **Presbyterian Social Service Association (Inc.).**" P.O. Box 374, DUNEDIN.
" **The Presbyterian Social Service Association of Southland (Inc.).**" P.O. Box 314, INVERCARGILL.

CHILDREN'S HEALTH CAMPS

A Recognized Social Service

There is no better service to our country than helping ailing and delicate children regain good health and happiness. Health Camps which have been established at Whangarei, Auckland, Gisborne, Otaki, Nelson, Christchurch and Roxburgh do this for 2,500 children — irrespective of race, religion or the financial position of parents — each year.

There is always present the need for continued support for the Camps which are maintained by voluntary subscriptions. We will be grateful if Solicitors advise clients to assist, by ways of Gifts, and Donations, this Dominion wide movement.

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

THE NEW ZEALAND Red Cross Society (Inc.)

Dominion Headquarters
61 DIXON STREET, WELLINGTON,
New Zealand.

I Give and Bequeath to the
NEW ZEALAND RED CROSS SOCIETY (INCORPORATED)
(or).....Centre (or).....
Sub-Centre for the general purposes of the Society/
Centre/Sub-Centre.....(here state amount of bequest or description of property given), for which the receipt of the Secretary-General, Dominion Treasurer or other Dominion Officer shall be a good discharge therefor to my Trustee.

If it is desired to leave funds for the benefit of the Society generally all reference to Centre or Sub-Centres should be struck out and conversely the word "Society" should be struck out if it is the intention to benefit a particular Centre or Sub-Centre.

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

The BRITISH AND FOREIGN BIBLE SOCIETY: N.Z.

P.O. BOX 930,
WELLINGTON, C.1.

A GIFT OR A LEGACY TO THE BIBLE SOCIETY ensures that THE GIFT OF GOD'S WORD is passed on to succeeding generations.

A GIFT TO THE BIBLE SOCIETY is exempt from Gift Duty.

A bequest can be drawn up in the following form:

I bequeath to the British and Foreign Bible Society: New Zealand, the sum of £ : : , for the general purposes of the Society, and I declare that the receipt of the Secretary or Treasurer of the said Society shall be sufficient discharge to my Trustees for such bequest.

LEGAL LITERATURE.

Bureaucracy in New Zealand. 134 pp. Table of Contents and Index. Oxford University Press, 1957, 15/-.

This book contains the text of six lectures which were delivered to the 1957 Convention of the New Zealand Institute of Public Administration. The speakers were the then Attorney-General, the Honourable J. R. Marshall, two Permanent Heads, Mr. F. Baker and Mr. P. B. Marshall, two lawyers, Mr. R. B. Cooke and Mr. D. J. Riddiford, and Professor Milne who is also the editor. The theme of the lectures is stated in the first word of the title of the book, but as the editor and other speakers were at pains to point out, the popular meaning of the word "bureaucracy"—the meaning used by Sir Carleton Allen and the late Lord Hewart in their books—is not the technical meaning assigned to the word. In its technical sense, bureaucracy describes the administration, whether in central or local government or in private business. In this sense, it is clear that bureaucrats are necessary. In his lecture on the inevitability of administrative discretion, Professor Milne demonstrates that legislation must confer discretions upon Ministers and officials who together will work out the details of policy. The former Attorney-General described how government policy was framed and how far a Minister becomes involved in departmental administration. This was an extremely interesting contribution because the extent to which Ministers determine policy is not generally known. Mr Baker outlined the manner in which the policy-making involved in rehabilitation was shared between the Department and the Minister. It was recognized, however, that the work of that Department was perhaps not typical of the work of the Civil Service and that the account would not accurately state the relations of Ministers to other Permenant Heads. Mr Marshall described the "internal" controls on administration and the high standards of behaviour set by the Public Service. These controls reduce the breadth of the discretion conferred on officials. Mr Riddiford's lecture was entitled "A Citizen's Point of View"; it contained much of the usual criticism of the Public Service, but it was much more moderate and better informed. Mr Riddiford recognized that some of the criticisms normally made of public servants are unjustified. Mr Cooke's lecture is the most important from a lawyer's point of view because it discussed recent decisions, such as the *Okitu* and *Licensed Victuallers'* cases, determining the relations between the Courts and the administration. He was not then prepared to accept the need to establish a supreme administrative tribunal which would hear appeals from inferior administrative tribunals and supersede the Courts in the control that has previously been exercised by them over administrative tribunals.

This book will be found to be extremely useful by political scientists, those interested in public administration and administrative lawyers. By publishing the book, the Institute has made available to a wider audience the benefit of the experience and judgment of those who gave the lectures.

J.F.N.

ELECTRONIC 'LAW LIBRARY' DISPLAYED IN WASHINGTON.

An electronic "law library" which locates legal information in record time has been introduced in the United States.

In a demonstration to members of the American Bar Association at their convention in Washington in August, an International Business Machines 650 data processing system provided in minutes facts that would have taken many hours to find by conventional methods.

The most spectacular achievement of the electronic system was to search for, find and print out—upon request—the full text of laws from various States on health and hospitals.

Pennsylvania statutes on public health and laws from the *Hospital Law Manual* were "stored" in the magnetic tape memory of the 650 computor. When specific statutes on the taxation of property owned by charitable hospitals were sought, the system was fed words (taxation, exemption, charitable, hospital) which were expected to be in the desired statutes. Searching through the vocabulary list it had created while recording the laws, the computer produced in a few minutes each of the nineteen statutes which contained all the descriptive words.

Also stored in the system's memory, and available upon request, were certain citations of cases dealing with oil and gas law, product liability, labour law and negligence.

The demonstration was conducted under the auspices of the University of Pittsburgh's Health Law Centre and the American Bar Association. Chiefly responsible for developing the 650 system's programme are Mr. F. Horty, director of the Health Law Centre, and Mr. William B. Kehl, director of the university's Computation and Data Processing Centre.

The retrieval of another kind of legal information was displayed in a second demonstration at I.B.M. headquarters, which features an I.B.M. R.A.M.A.C. 305. Under the guidance of Mr. Donald D. Andrews, director of research and development for the U.S. Patent Office, the R.A.M.A.C. searched for and printed out laws in the field of patent design.

According to the president of the American Bar Association, Mr. John D. Randall, the potential of retrieving information electronically is enormous.

"The system will help to free lawyers and judges from tedious, time-consuming research," he said. "Data processing machines are capable of providing ready access to any part of the tremendous mass of written law that has accumulated through the years and continues to pile up at a fantastic rate."

Mr. Horty, who conducted the 650 demonstration, foresees the establishment of regional electronic law libraries to serve the Judiciary, the Bar and those concerned with legal research and legislative drafting.

TOWN AND COUNTRY PLANNING APPEALS.

Mason and Porter Ltd. *v.* Auckland City Council

Town and Country Planning Appeal Board. Auckland. 1960. June 24, 30.

Zoning—Property zoned as Industrial B—Part of substantial block with same zoning—Topography and fact that it adjoins residential area to be taken into account—Land zoned as residential to be used as car park.

Appeal under s. 26 of the Town and Country Planning Act 1953.

The appellant company was the owner of two properties: (a) 2 ro. 38 pp. fronting on to Cleveland Road, Parnell, being Lots 1, 1A, 2 and parts of Lot 3 Deposited Plan No. 153, Part Allotment 85, Section 1 Suburbs of Auckland. (b) 38 pp. fronting on to Stanwell Street, Parnell, being Lot 93 Deposited Plan No. 314, Part of Allotment 85, Section 1 Suburbs of Auckland.

Under the Council's proposed district scheme, as publicly notified, these properties were zoned as follows: (a) industrial B; (b) residential B. The company lodged objections to those zonings claiming that both properties should be zoned industrial C.

An owner of a property situated at the corner of Cleveland Road and Gladstone Road filed an objection to the appellant's objection.

The Council disallowed the objection and allowed the cross-objection on the grounds that the land adjoins residential land and to zone it industrial C would detrimentally affect the amenities.

The appellant company appealed against that decision.
Dyson, for the appellant.
Butler and *Hollis*, for the respondent.
The judgment of the Board was delivered by

REID S.M. (Chairman) The cross-objector intimated that he did not wish to appear on the appeal After having inspected the properties, the Board finds:

1. The land first described is on two levels—the upper level adjoining the residential zone is flat and vacant. The lower level has buildings formerly used as a foundry and general engineering works erected on it. These buildings are obsolescent and have a neglected appearance. The land secondly described is vacant land connected by a right of way to the land firstly described.
2. The property zoned as industrial B is bounded to the North by Cleveland Road, to the east by land zoned residential B and occupied as residential, to the south by a substantial block zoned as industrial C and to the west by land zoned as industrial B. The property zoned as residential B is bounded on the west by the industrial C zone, lying at a much lower level, and on the north, east, and south partly by residential properties and partly by Stanwell Street.
3. The company has not apparently made any yse of either properties for some time. Its foundry and engineering works are established at Mt Wellington.
4. Since the hearing of the objection the Council has amended its Code of Ordinances so as to permit of general engineering engineering work being carried on in an industrial B zone as a conditional use.
5. Having regard to the fact that the property zoned as industrial B forms part of a substantial block zoned as industrial B and also having regard to the topography of the locality and to the fact that the company's property adjoins a residential area, the Board agrees with the council's submission that to zone it as industrial B is appropriate. An industrial C zoning would detract from the amenities of the neighbourhood. The appeal in respect of this property is disallowed.
6. With regard to the property in Stanwell Street zoned as residential B, the zoning is appropriate but the Board considers it reasonable to allow the company to use it as a car park. The appeal is disallowed but the Board directs that the company be permitted to use it as a private car park for the parking of cars of employees and customers.

Appeals dismissed.

Northern Automobiles Limited and Another *v.* Auckland City Council

Town and Country Planning Appeal Board. Auckland. 1960. June 29; July 1.

Proposed District Scheme—Land leased from Council zoned as part of proposed Civic Centre—Council bound to make provision for such Civic Centre—Issue that zoning would interfere with appellants conractual rights to quiet enjoyment not before Board—Board expressing opinion as to appellant's rights to alter or improve buildings.

Appeals under s. 26 of the Town and Country Planning Act 1953. As they both related to the same provision of the Council's proposed district scheme they were, by consent of the parties, taken together.

Under the Council's proposed district scheme as publicly notified, the appellants' properties both lay in an area zoned as a proposed civic centre. The appellants lodged objections to this zoning. These objections were disallowed and these appeals followed.

Warnock, for the appellants.
Butler, for the respondent.
Macklow, for the Minister of Works.
The judgment of the Board was delivered by

REID S.M. (Chairman). The first-named appellant is the occupier, under lease from the Council, or property comprising: (a) 15.7 pp. being Lot 24 D.P. 21520, portion of section 31 City of Auckland. (b) 28.6 pp. being Lots 15 and 23 D.P. 21520 part section 31 City of Auckland. (c) 14.9 pp. being allotments 26 and 27, section 31 City of Auckland.

The second-named appellant is the occupier, under lease from the Council, of property situated in Bledisloe Street, Auckland containing 86 pp. more or less being lot 14 D.P. No. 21520, part section 31 City of Auckland.

The first-named appellant and its predecessors have carried on business in their present premises for over forty years, and the second-named appellant has occupied its present premises for twnety-two years. Both appellants ask that the lands which they occupy should be taken out of the Civic Centre zone and re-zoned in a manner appropriate to the use to which their premises are put. After hearing the evidence adduced and the submissions of counsel the Board finds:

1. In April of 1950 an agreement was entered into between the Minister of Works and the Auckland City Council pursuant to s. 31 of the Finance Act (No. 3) 1944, whereby, as a matter of national and local importance it was agreed that there should be created in the City of Auckland a combined administration centre to be known as the Civic Centre, for government, local and other authorities conducting public business in Auckland. This agreement defined the boundaries known as the Civic Centre as approximately the area between Queen Street and Federal Street to the east and west respectively and Wellesley Street and Grey's Avenue to the North and south respectively.
2. The Council was bound, in preparing its district scheme to make provision for the creation of this Civic Centre and to define it on the relative map. If it had not done so of its own volition it could have been required to do so by the Minister of Works pursuant to the provisions of s. 21 of the Town and Country Planning Act 1953.
3. The appellant's properties lie, broadly speaking, in the centre of this proposed Civic Centre. The Board considers that the provision of this Civic Centre is in accord with town-and-country-planning principles and is an essential concomitant of the district scheme for the City of Auckland.
4. It was submitted by counsel for the appellants that the zoning of their lands as part of a proposed Civic Centre would interfere with their contractual right of quiet enjoyment in that it might be precluded from carrying out internal alterations or improvements to their builds and so be precluded from using them to the best advantage. That issue is not before the Board in these proceedings but the Board does express the opinion that the appellants should not be precluded from carrying out any work not involving a substantial reconstruction or alteration or their buildings.

The appeals are disallowed.

Appeals dismissed.

(*Continued on p. 384*)

IN YOUR ARMCHAIR—AND MINE.

By SCRIBLEX.

The Ombudsman.—The summer 1960 issue of *Public Law* (Stevens) contains an article by Mr L. J. Blom-Cooper stating that there has been an underlying current of hostility in Britain to any form of juridical control over administrative action, and suggesting that Scandinavian countries offered the real solution in the institution of the Ombudsman. This individual is elected by Parliament, and has working with him some five lawyers and four secretaries. He sits in the eighteenth century wing of the Danish Parliament in Copenhagen—a Parliamentary Commissioner for Grievances, with the paid and official duty to investigate any complaint made by any citizen against the Government or any of its departments. While a considerable amount of his time is taken up with "screwballs" and cranks as well as people suffering from persecution mania, it is felt in Denmark that this is not waste of time, and the fact that a citizen may pour out his troubles to him is in the nature of a "safety valve." The idea is entirely Scandinavian, being first introduced in Sweden as early as 1809, and taken over by the Finns after World War I, the Danes following suit in 1955. It is thought that Norway will introduce the system next year, and at the present time a committee of lawyers is considering whether the functions of an Ombudsman could be conducted in England. It would seem that they could more readily be adopted in New Zealand, which, like Denmark and Finland, is a small country composed of homogeneous communities. Certainly dissatisfaction in this country as to administrative action has found its expression over the last few years both in Court cases and Conference papers.

The Right to Privacy: Although the House of Lords has not yet recognized as a new remedy of the common law "offensive invasion of privacy" as a cause of action, the recent decision of the English Court of Appeal in *Williams* v. *Settle* veers in that direction. The plaintiff had sued a professional photographer for £1,000 damages for breach of copyright. The case arose from the publication in the *Daily Express* and the *Daily Mail* of photographs of the plaintiff's wedding following the murder of the plaintiff's father-in-law. The defendant had sold the photographs to the newspapers without the consent of the plaintiff who had commissioned them, and in such circumstances had committed a breach of copyright. Even though neither the plaintiff nor his family suffered financially by the publication of the photographs, the award of £1,000 damages was upheld and it is felt that the Court in fact punished the defendant for his invasion of the plaintiff's privacy. A different incident of this kind is referred to by "Richard Roe" in the *Solicitor's Journal*. At the opening of the Exeter Assizes, a policeman who heard the whirr of a cinecamera when the Judges and the High Sheriff, all resplendent in their formal regalia, were passing in solemn procession, quickly and "with a swift and quiet precision traditional of his calling in England" strode over to the lady with the camera and said, taking possession of it, "This is forbidden, madam; you are liable to arrest." He was discreetly informed by a bystander that the lady in question was the High Sheriff's wife to whom the camera was, with equal quietness, promptitude and discretion, restored by the constable in time for her to complete the record of her husband's honour by filming the departure of the Judges.

Traffic Note.—At Pretorius Kop, one of the game reserves of Kruger Park (area 7,340 square miles), roughly the same as Wales), notices issue to tourists a warning in Afrikaans: *Bly in die pad, Bly in u kar,* Spoldbeperking 25 m.p.i. (Keep to the road. Stay in your car. Speed limit 25 m.p.h.) And even more explicitly: *Oliphante is gevaalik. Pasop t* (Elephants are dangerous. Keep your distance *t*) But according to the Park authorities, these beasts are more effective than traffic cops.

A Source of Delinquency.—At the Second United Nations Conference on the Prevention of Crime and the Treatment of Offenders, held at Westminster in August, M. Lutz of the French Ministry of Justice dealt with the problem of "floating youth" of large cities. In his view, the highest incidence of juvenile delinquency was to be found in urban areas with furnished rooms. In such shabby areas, where the greater part of the population was composed of unskilled workers, often engaged in marginal season activities, and where the age distribution was often abnormal in that the population of young adults was high compared with the more elderly, the young tended to isolate themselves in a "closed world" of their own. Other speakers equated the growth of juvenile delinquency with the compelling tendency to imitate those somewhat older in years or experience. The deputy chairman of the Supreme Court of Soviet Russia (Mr L. N. Smirnov), referring to the showing of Tarzan films in the Union, said: "Afterwards we had a number of juvenile Tarzans who wore long hair, and jumped from tree to tree".

From My Notebook:

Do not forget that in 1846 the jurisdiction of the County Court was limited to £20, and the party could insist on a jury if the claim was over £5. Of course, £5 was £5 in those days, but a jury—well, talk about the steam-roller and the nut!—J. K. H. in *Solicitors' Journal* (12/8/60).

It is proposed in England that a Royal Proclamation be issued under s. 11 of the Coinage Act 1870 by which farthings will no longer be legal tender as from January 1, 1961. It would seem, therefore, that with the rise in the cost of living, juries in libel cases will have to be directed that one halfpence is the appropriate minimum.

As a mark of appreciation of his long and brilliant service of thirty years to the literature of the law, Richard Roe (whose wit and learning have been referred to at times in this column) was presented by the Editor with a half-calf bound volume of the *Solicitors' Journal* bearing his name and the legend, *Refreshers*: 1930 to 1960. This opens with a heavy metal clasp and discloses an ingeniously disguised case containing cut-glass tumblers and suitable "refreshers" for use in them. In fifteen years, SCRIBLEX will look forward to a half-calf bound volume of this JOURNAL.

TOWN AND COUNTRY PLANNING APPEALS.

(*Concluded from p. 382.*)

Moriarty *v.* Auckland City Council

Town and Country Planning Appeal Board. Auckland. 1960. June 23, 30.

Zoning—Scheme making provision for adequate commercial zone—Property zoned as residential but adjoining both commercial zone and substantial bank building—Desirability of closing gap and rezoning property as commercial.

Appeal under s. 26 of the Town and Country Planning Act 1953. The appellant, as administratix of the Estate of John Francis Samuel Moriarty, deceased, was the owner of a property situate at No. 1848 Great North Road, being Lot 6 on Deeds Plan 425, and being portion of Allotment 63 of the Parish of Titirangi, containing 3 ro. 13.9 pp. Under the Council's proposed district scheme, as publicly notified, this property was zoned as residential. The appellant objected to part of this property, having an area of 9 pp. approximately, having a 50-foot frontage to the Great North Road by a depth of 49 feet 6 inches, being zoned as residential, and requested that it be zoned commercial B. This objection was disallowed and this appeal followed.

Southwick, for the appellant.

Butler and *Hollis*, for the respondent.

The judgment of the Board was delivered by

REID S.M. (Chairman). The Board finds as follows:—

1. The southern boundary of the appellant's property adjoins the northern boundary of a commercial C zone lying to the south of it, having frontages to Great North Road and Rosebank Road. The northern boundary of the appellant's property adjoins a property owned by the Bank of New Zealand, on which is erected a substantial brick building used as a bank.
2. The Council submits that their scheme makes adequate provision for a commercial zone in this locality. This is substantially correct. Besides the commercial zone adjacent to the appellant's property, there is another commercial zone lying to the south but separated by the site ofthe Avondale Primary School
3. On the evidence, the Board is satisfied that the northern commercial zone adjoining the appellant's property is the commercial hub of the locality. The fact that the appellant's property adjoins this commercial zone would not in itself be sufficient ground for allowing the appeal, but the existence of a substantial bank building adjoining the northern boundary of the appellant's property does alter the situation. The Board considers that to allow the appeal would have the effect of closing a gap and would link up the bank premises with the commercial premises to the south, allowing a continuity of commercial zoning. This would not detract from the amenities of the neighbourhood nor detrimentally effect other properties. The appeal is allowed.

Appeal allowed.

St. John's College Trust Board and Another *v.* Auckland City Council

Town and Country Planning Appeal Board. Auckland. 1960. June 23, 29.

Proposed District Scheme—Provisions for motorway—Essential part of Master Transport Plan for Auckland Metropolitan Area—In accord with town and country planning principles.

Appeals under s. 26 of the Town and Country Planning Act 1953. As they both related to the same provision of the Council's proposed district scheme they were by consent of parties heard together.

The first-named appellant was the owner of three blocks of land as follows: (1) An area of 105 ac. 1 ro. approximately situated between St. John's College corner on the right side and St Heliers Bay Road and an area of 65 ac. 23 pp. approximately bounded by College Road and Pt. England Road being part Section 2 of Allotment 55 District of Tamaki. (2) The area from St. Chad's Church, Meadowbank on the left side of the road past and including St. John's College and continuing down Kohimarama Road and along Kepa Road to approximately the Kepa Road boundary between Mission Bay Estate and Orakei subdivision being Lots 15 and 16 of Allotments 38 and 38A and also Part Allotments 39A, 34, 35, 36, 2, 20 and 21 District of Tamaki (Temple Street subdivision).

The second-named appellant was the owner of 13½ ac. approximately being part Section 6 District of Tamaki and being land adjacent to the Railway Tunnel. The Council's proposed district scheme as publicly notified contained a provision for the construction of a proposed motorway as shown on District Scheme Map No. 2. This proposed motorway when constructed would traverse the appellants' properties. The appellants lodged objections to this proposal, insofar as it would affect their properties and when their objections were disallowed they appealed.

Aubin, for the appellant.

Butler and *Hollis*, for the respondent.

The judgment of the Board was delivered by

REID S.M. (Chairman). The Board finds:

The proposed motorway forms an essential part of the master transport plan for the Auckland Metropolitan area and in making provision for it the Council acted in accord with town-planning principles.

Both the appeals are disallowed.

Appeals dismissed.

Voykovich *v.* Mount Wellington Borough

Town and Country Planning Appeal Board. Auckland. 1960. June 21, 29.

Zoning—Fact that land adjacent to Commercial zone not argument in favour of zoning as Commercial—Need for line of demarcation.

Appeal under s. 26 of the Town and Country Planning Act 1953.

The appellant was the owner of a property at Panmure, situated on the corner of Tripoli and Kings Roads, containing 37.6 pp. more or less, being Part 3 and 4, Section 3, Village of Panmure being all the land on deposited Plan No. 7555. Under the Council's proposed district scheme, as publicly notified, this property was in an area zoned as residential. The appellant lodged an objection to this zoning, claiming that the land should be zoned as commercial. His objection was disallowed and this appeal followed.

Dickson, for the appellant.

Pleasants, for the respondent.

The judgment of the Board was delivered by

REID S.M. (Chairman). The Board finds as follows:

1. This property is one corner of a six-road intersection. The area to the north and east of it is predominantly residential in character and is so zoned.

2. For the appellant it was contended that there is insufficient land zoned for commercial use in this locality. Mr Grierson, on behalf of the appellant, put forward a proposal that the commercial zone in Panmure should be extended by the creation of a circus in the vicinity of the intersection of Tripoli Road, King's Road and Queen's Road. This proposal is something that has already been considered by the Council, but it considers that having regard to the expense involved it is a proposal which should not be entertained at the present time, although it is something which may eventuate in the future. In cross-examination, Mr Grierson conceded that the re-zoning of the appellant's land as Commercial was dependent to a great extent on the creation of the suggested circus in this locality. The only question before the Board in this appeal is the zoning of appellant's land as a single unit. The mere fact that it is adjacent to the already existing commercial zone is not an argument in favour of zoning it as commercial. There must always be a line of demarcation between zones.

3. Although the Board considers that at some future date the appellant's land might be zoned as commercial as part of a larger plan for an extension of the commercial zone, it is not prepared to re-zone the appellant's land for commercial purposes as an isolated unit.

It forms part of a substantial residential area lying to the north and east of the present commercial zone and a residential zoning is appropriate.

The appeal is disallowed.

Appeal dismissed.