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A WRITTEN CONSTITUTION AND A SECOND CHAMBER.

AT a time when the Constitutional Society is circulating a petition asking for the creation of a written Constitution and the reversion to a bicameral system of Parliamentary Government, it is topical to examine these projects, their feasibility and the relative advantages and disadvantages of each. According to newspaper reports the petition is being well-received by the public and large numbers of signatures are being obtained. It is, however, a reasonable assumption that by far the greater number of the people signing have no real idea what they are asking for, particularly in regard to the question of the written Constitution. We suggest that the inference to be drawn from the response to requests for signatures to the petition is that a great many people are dissatisfied with the manner in which the present system is operated and are prepared to accept any change as being for the better.

Contriving a Constitution

It is first pertinent to inquire how a written Constitution for any country comes into being. The first and perhaps the most common method is by imposition by a higher legislative authority. An example of this type of Constitution is that of South Africa, imposed on the people of the country by the South Africa Act 1909, an Act of the British Parliament. As will be remembered, this Constitution was subjected to attacks by the Government of South Africa from 1951 onwards but survived the attacks. A little later in this article the constitutional position in South Africa will be discussed. Further examples are the Constitutions provided by the British Parliament for Colonies being granted self-government and, coming nearer home, the Constitution which our own Parliament will set up for Samoa.

The second method of creating a Constitution is by convention amongst sovereign States, and this method is applicable only to federal States. The Constitution of the United States of America is the outstanding example.

The second of these methods is obviously not available to New Zealand. We are not a federal State and do not desire to become one even were that possible. The first might conceivably be used but, since the adoption of the Statute of Westminster in 1947, the Parliament of the United Kingdom cannot legislate for New Zealand, except with the consent and at the request of New Zealand (Statute of Westminster, s. 4). Under s. 3 of the Statute of Westminster Adoption Act 1947 the necessary request and consent can be made and given by the Parliament of New Zealand and not otherwise.

Here then is a method of having a written Constitution for New Zealand imposed by the Parliament of Great Britain. First, we in New Zealand draft the Constitution required. Then a request for the enactment of the Constitution in a statute of the Parliament of Great Britain goes to that Parliament, presumably in the form of a New Zealand statute, although possibly a resolution of the New Zealand Parliament would suffice. On the enactment of the proposed statute by the Parliament of Great Britain the new Constitution would have the force of law in New Zealand.

Two of the requisites of a written Constitution are that it should be binding and that it should be capable of repeal or amendment only in accordance with its own terms. A Constitution which could be amended merely by a statute enacted in the ordinary way would be no safeguard or advantage to anyone. In the case of a country such as New Zealand, the provision for amendment would require to provide either for a referendum or perhaps for a certain majority of votes in favour of the amendment in Parliament.

Having acquired a Constitution, imposed by the British Parliament and containing the necessary provisions restricting the power of amendment or, perhaps it is more proper to say, laying down a certain procedure for amendment, such Constitution would become binding as part of the law of New Zealand.

Amendment Procedure

Now comes what we might term the 64,000 dollar question. The Constitution can obviously be amended only by following the special procedure for amendment which it itself must contain; but can it be repealed by an Act of the General Assembly of New Zealand passed in the normal way and without following such special procedure? In considering this question it is relevant to look at s. 2 (2) of the Statute of Westminster (1947 *New Zealand Statutes* 349) which reads as follows:

> "No law and no provision of any law made after the commencement of this Act by the Parliament of a Dominion shall be void or inoperative on the ground

that it is repugnant to the law of England, or to the provisions of any existing or future Act of Parliament of the United Kingdom, or to any order, rule or regulation made under any such Act, and the powers of the Parliament of a Dominion shall include the power to repeal or amend any such Act, order, rule or regulation in so far as the same is part of the law of the Dominion."

In particular attention is called to the use of the words "repugnant . . . to the provisions of any existing *or future* Act of Parliament of the United Kingdom". Prima facie, we would say that this provision would enable the New Zealand Parliament to put through a statute repealing any Constitution which may have been enacted in the manner above outlined, but the position is rather obscured by certain dicta which fell from the Judges in cases which arose during the South African constitutional crisis of the fifties. As these dicta also relate to a Constitution acquired by one further method to which we are about to refer, it is more convenient to leave over their consideration until dealing with it.

A Third Method

The third and final method by which a written Constitution could be acquired by New Zealand would be by Act of the General Assembly of New Zealand itself. Once again, to serve any real purpose, such a Constitution would require to lay down special rules for amendment but the same question arises—namely, whether future Parliaments would be bound to follow those rules, particularly if desirous of simply repealing the Constitution rather than amending it.

This is a problem which has divided writers on Constitutional Law and which has not yet been solved. On the one hand, there is the group which holds that Parliament is sovereign in its law-making powers and can disregard conditions imposed by its predecessors; on the other is the group which says that Parliament in making laws is bound to follow the *procedural rules* laid down by its predecessors although it cannot *prohibit* the repeal or amendment of a statute.

Sir Owen Dixon C.J. discussed this question in *Attorney-General for New South Wales* v. *Trethowan* (1931) 44 C.L.R. 304. Its decision was not necessary in the particular circumstances which confronted him, but he posed the question of an Act of the British Parliament which possibly contained a provision that it could be repealed only after a vote in favour of repeal had been given by the electors. He said that if a repealing Bill received the Royal Assent without prior reference to the electors "the Courts might be called upon to consider whether the supreme legislative power in respect of the matter had in truth been exercised in the manner required for its authentic expression, and by the elements in which it had come to reside". (*ibid.* 426) Sir Owen did not attempt to answer the question, and contented himself with saying that the answer might be "evident" or might be "obscure". With respect, we suggest that the answer would be obscure.

South African Crisis

We do not wish to go too deeply into this question, fascinating though it be. The purpose of this article is merely to discuss the difficulties which are implicit in the proposal that New Zealand should adopt a written Constitution and the possible advantages which might flow from so doing. The article would, however, not be complete without some discussion of the South African crisis and the attempts which were made to disregard the entrenched provisions of the South Africa Act of 1909, the text of which will be found in 6 *Halsbury's Statutes of England*, 2nd. ed. 458.

Section 35 of the South Africa Act contained provisions restricting the power of the South African Parliament to disqualify certain persons from voting except by a Bill passed by both Houses of Parliament sitting together, and at the third reading agreed to by not fewer than two-thirds of the total number of members of both Houses. A Bill so passed was to be taken to be duly passed by both Houses of Parliament.

The Statute of Westminster was adopted by South Africa by the Status of the Union Act 1934. In 1951, the South African Parliament passed the Separate Representation of Voters Act in the normal manner, sitting bicamerally and not unicamerally. The validity of the Act was challenged and it was held invalid since it affected s. 35 of the South Africa Act and had not been passed in the manner prescribed by that section. It was contended for the Government that, since the Statute of Westminster had conferred sovereignty on South Africa, it had impliedly repealed the entrenching provisions of the South Africa Act, and normal Parliamentary procedure could be followed in enacting any amendment or repeal of any of the provisions of the South Africa Act. The Court would not accept this argument and held that the entrenching provisions did not detract from the sovereignty of the South African Parliament, but merely laid down rules for the exercise of its powers in specific cases.

Situations Compared

Now this decision seems to imply that if a Constitution were enacted for New Zealand, either by the British Parliament, at the request and with the consent of the New Zealand Parliament, or by the New Zealand Parliament itself, any entrenched provisions contained in it would be binding. We doubt whether this follows. The point of distinction between the South African case and the position in New Zealand is that the South Africa Act was passed by the British Parliament at a time when it had the power to legislate for the Dominions, whereas, in the case of New Zealand, the New Zealand Parliament is now sovereign within New Zealand. It has the same power to amend or repeal any British legislation enacted under s. 4 of the Statute of Westminster as it has in respect of its own legislation.

The South African decisions would not be binding on the New Zealand Courts. It may be that the New Zealand Courts, and ultimately the Judicial Committee, would take the view that, although one Parliament could not bind its successors not to repeal or amend a statute, it could lay down a procedure to be followed in effecting such an amendment or repeal which would be binding. The South African Courts considered that such a provision did not detract from the sovereignty of Parliament but, with respect, the validity of this decision is doubtful.

A Gamble

Whatever may be the answer to this problem, it is fairly obvious that it can be settled only by expensive litigation ending before the Judicial Committee. To adopt a written Constitution at this stage of our development is obviously a gamble which could have serious results for the country with the cost of litigation and, perhaps more important, a period of grave doubt and uncertainty as to the powers of Parliament while such litigation was in progress which could have disastrous effects on the economy of the country.

Assuming that a written Constitution can be adopted and made binding, its advantages are doubtful. It is regarded as a check on the powers of Parliament and of the Executive, which it might well be. Moreover, if properly drawn, it could operate as a means of preventing the delegation of legislative powers by Parliament, and could bring any such delegated legislation under the control of the Courts. This would be all to the good, but it is asking a lot of any political party to clip its own wings to such an extent. The drafting of the Constitution, if decided upon, would be a matter for the Government of the day, aided of course by such experts as it decided to call in, and one can be sure that any such Government would see that it left itself with ample powers to carry out its policy.

A decided disadvantage of a written Constitution is the amount of litigation which it engenders. Perusal of any volume of the *Commonwealth Law Reports* will show the vast amount of time and money which is spent in the interpretation of the Australian Constitution. Such a position could easily arise in New Zealand and, while it may be a good thing for the legal profession it could become a serious matter for the country as a whole.

Disadvantages Predominate

We suggest that the disadvantages of the adoption of a written Constitution heavily outweigh the rather doubtful advantages which might flow from it. The triennial election is in itself a valuable check on the activities of the Government. In theory, Parliament could extend its life indefinitely and thus nullify this check, but, except in times of stress, and with the tacit approval of the electorate, no Parliament has as yet sought to do so, nor is one likely to do so for fear of public opinion.

A final thought on the efficacy and desirability of a written Constitution arises from the question of enforcement. Assume the adoption of such a Constitution, held binding by the Courts. Assume also the enactment of legislation held by the Courts to be unconstitutional. Who is to enforce the judgment of the Courts ? In Little Rock the Federal Government sent in the Army. In New Zealand, the Army and the Police are under the control of our own Government. In the last resort, with a Government of the very type against which the Constitution would be directed, and which could be expected to defy the Courts, we are thrown back on the weight of public opinion to deter the Government from so acting, so that, in the long run, we should have no more effective sanction than we have at present.

Bicameral Government

Allied with the move for a written Constitution, though not inseparable from it, is the demand for the re-institution of a second Chamber, again as a check on the activities of the Government of the day. In principle we must agree that a bicameral Legislature has manifest advantages provided always that the second Chamber is so constituted that it can not become the mere tool of the Executive.

In laying down proposals for a second Chamber it is necessary to steer a careful course between Scylla and Charybdis. On the one hand, the Upper House must be effective to revise legislation brought before it and to delay legislation of doubtful worth, forcing an appeal to the electors where the matter is of sufficient importance. On the other, it must be a body of reasonable men who do not obstruct for the sake of obstruction. Its powers placed in the wrong hands could stultify the efforts of the Government to govern and bring us into a situation comparable with that of France where it was impossible to obtain a stable Government. If that situation did arise, the government of the country would fall still further into the hands of the public servants, which would be the opposite effect to that desired by the exponents of a second Chamber.

With all that has been said and written in favour of the second Chamber no one, to our knowledge, has brought forward one method of appointment or election that is acceptable. The old process of nomination by the Executive is completely undesirable. Nominations by each of the political parties in proportion to their respective strengths in the House of Representatives is less objectionable but seems to add little to the strength of the Opposition under the present system. Any form of election by proportional representation or otherwise is untried and could produce unlooked-for results, including a membership so opposed to the policy of the Government as to bring about a deadlock. We do not say that the problem is insoluble, but no one has yet produced the solution nor can we attempt to do so. Until it is found, it is better to carry on under the present system with all its defects rather than to try the untried merely for the sake of change.

One criticism, and a very valid one, which can be levelled at our present unicameral system of government under a flexible Constitution is that a strong man at the head of a weak Government could make himself virtually dictator of New Zealand. Theoretically he could, but surely it would be an extraordinary thing if out of his forty odd supporters in Parliament there were not a few sufficiently strong to make their presence felt. Party discipline is strict once a measure is brought before the House, but if recent rumour concerning the Licensing Bill is correct, the rank and file members of a political party exert much greater influence in caucus than is generally appreciated. Again the triennial election plays its part as a brake on the too ambitious leader.

The subjects discussed in this article are of the greatest importance to the country and call for deep and clear thinking. Our purpose has been to provoke that type of thinking and we would welcome contributions dealing with these subjects.

A VICIOUS CIRCLE.

It is reported that the Federation of Labour has asked for increases in remuneration for workers in line with those recently granted to public servants, and, if this request were in fact made, we have the perfect example of an attempt to create a vicious circle.

The public servants' increases were granted because it was thought that their remuneration had fallen below that of other workers. A survey of ruling rates in industry was made and the Public Service increases were fixed in relation to such ruling rates. If this present request were granted the old anomalies would arise again and would create further pressure for a new "ruling rates" survey with consequent further increases for public servants and so it would again go on.

Surely the Federation must be aware of all this and realize that it is in their own interests to call a halt to these continual demands for increased remuneration.

UNION LEADERS AND DEFAMATION ACTIONS.

While too much reliance should not be placed on rumour, a recent one to the effect that certain of the leaders of the trade union movement are seeking a special privilege in respect of defamation is so disturbing that it deserves special mention.

There has certainly been a succession of libel actions against union officials this year. It is desirable that such officials should be free to indulge in straight talking when that is called for, but the same applies in many other walks of life, and we see no reason why trade union leaders should be given any special privilege over other citizens.

Union officials reporting to their executive committees or unions would in general be entitled to qualified privilege, which gives ample latitude for the making of proper reports. If they overstep the bounds and lose that privilege they have no one but themselves to blame. What is wanted in trade union circles is not a special privilege but more care in the selection of words and in the elimination of malice from reports and debates.

Fortunately the political branch of the Labour movement has a greater sense of its responsibility than many of the leaders of the industrial branch display and the likelihood of the mooted legislation ever being introduced is remote.

SUMMARY OF RECENT LAW.

BILL OF EXCHANGE AND PROMISSORY NOTE.

Promissory notes collateral with illegal hire purchase agreement—Discounted by finance company without notice of illegality—Not a holder in due course—Such promissory notes void even in hands of holder in due course—Bill of Exchange Act 1908, s. 29 (2). Section 29 (2) of the Bills of Exchange Act 1908 is merely an enumeration of certain matters which amount to defects in title without being exhaustive. If promissory notes are taken from the purchaser under such an illegal hire purchase agreement as is mentioned above and are discounted with a finance company which knows that the notes are collateral with the hire purchase agreement but has no notice of the illegality of the agreement the finance company does not become a holder in due course of the notes and accordingly holds them subject to the same taint of illegality as affected them in the hands of the original payee. In any case promissory notes so given are made in direct contravention of the regulations and are at all times null and void and incapable of any legal effect and remain so even in the hands of a holder in due course. *Stenning* v. *Radio and Domestic Finance Ltd.* (S.C. Christchurch. 1960. June 27; August 17. Richmond J.)

CONTRACT.

Breach—Warranty—Statement made some time before contract of sale may be warranty—Supporting consideration is later entry into contract of sale—Damages for breach of warranty—Revenue-producing asset needing repair—Damages for loss of revenue while being repaired—Irrelevance of extension of period of repair because of purchaser's impecuniosity. The question whether any particular statement made by a vendor to a purchaser does or does not amount to a warranty depends on the intention of the parties to be deduced from the totality of the evidence, and when the vendor states a fact which is or should be within his own knowledge and of which the buyer is ignorant intending that the buyer should act on it, and he does so act on it, it is easy to infer a warranty. (*Heilbut, Symons and Co.* v. *Buckleton* [1913] A.C. 30, *Turner* v. *Anquetil* [1953] N.Z.L.R. 952 and *Oscar Chess Ltd.* v. *Williams* [1957] 1 All E.R. 325, followed.) A statement by a vendor may be regarded as a warranty even though made at some interval of time before the actual contract of sale. There is no reason in legal principle why the warranty should not be given in anticipation of the making of the principal contract, and in circumstances which show that the consideration which makes the warranty binding on the vendor is the entry by the purchaser into the principal contract of sale. (*Miller* v. *Canon Hill Estates Ltd.* [1931] 2 K.B. 113; [1931] All E.R. Rep. 93, followed. *Hopkins* v. *Tanqueray* (1854) 15 C.B. 130; 139 E.R. 369, distinguished). Where the warranty relates to the condition of a revenue-producing asset, the plaintiff is entitled to recover for damages for its breach the cost of the repair of such asset and a sum equivalent to the net loss of revenue during the period which would reasonably be required for the repairs. If that period is extended because of the plaintiff's lack of money to pay for the repairs, the delay cannot be taken into account in assessing the damages. (*Liesbosch Dredger* v. *Edison S.S.* (*Owners*) [1933] A.C. 449, followed). *Coffey* v. *Dickson* (S.C. Christchurch. 1960. June 24; August 9. Richmond J.)

DAMAGES.

Measure of damages—Breach of warranty as to condition of revenue-producing assets—Allowance for loss of revenue during period reasonably taken up by repairs—Not to be increased if preairs delayed by plaintiff's impecuniosity.—See CONTRACT (*supra*).

DEFAMATION.

Libel—Newspaper calling for general inquiry—Not an answer to question whether passage complained of is defamatory—Possibly relevant to assessment of damages—No defence that passage by way of report only. The fact that, in a passage which is the subject of an action for libel, a newspaper is calling for a general inquiry into some matter of public interest is not an answer to the question whether that passage is defamatory but may be relevant to the assessment of damages. It is not a defence to such an action that the passage complained of is put forward by way of report only. Appeal from the judgment of the Court of Appeal reported [1960] N.Z.L.R. 60, affirming the judgment of Hutchison A.C.J. reported [1959] N.Z.L.R. 1121, dismissed. *Truth (N.Z.) Ltd,* v. *Holloway* (J.C. 1960. July 4, 5, 26. Viscount Simonds. Lord Reid. Lord Tucker. Lord Denning. Lord Morris of Borth-y-Gest.)

GASWORKS.

Obligation to continue to supply consumers continues until removed by legislation or by agreement—No injunction for breach of obligation but action for damages will lie—Gas Supply Act

LEGAL ANNOUNCEMENTS

Continued from page i.

COURT WORK. Qualified Solicitor, preferably with some experience, for well established Auckland firm with considerable practice. Liberal remuneration to suitable applicant.

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WELLINGTON.

MR F. B. ANYON practising as a barrister and solicitor at Australia and New Zealand Bank Chambers, 196 Featherston Street, Wellington, announces that as from 1st November, 1960, he has admitted into partnership GREGORY JAMES KNIGHT. The practice will be carried on under the firm name of ANYON AND KNIGHT at the same address.

F. B. ANYON
G. J. KNIGHT

1908, ss. 3, 5. Sections 3 and 5 of the Gas Supply Act 1908 places an obligation on a supplier to continue to supply gas to its consumers until such time as it is relieved of that obligation by legislation or by some settlement arrived at with its consumers. An injunction to enforce performance of this obligation would be perpetual in operation and would require the supplier to continue its general gas undertaking with the employment of personel and the carrying on of a business. Such an injunction will not be issued except in special circumstances. (*Attorney-General* v. *Colchester Corporation* [1955] 2 Q.B. 207; [1955] 2 All E.R. 124, followed). It is an added reason against the grant of an injunction in such a case if the injury to the plaintiff's legal rights is small and is capable of being estimated in money and adequately compensated by a money payment. An action for damages will lie for a breach of the duty to supply gas imposed by ss. 3 and 5 of the Gas Supply Act 1908. (*Clegg, Parkinson and Co.* v. *Earby Gas Co.* [1896] 1 Q.B. 592 and *Stevens* v. *Aldershot Gas, Water and District Lighting Co.* (1932) 102 L.J. K.B. 12, distinguished. *Commercial Gas Co.* v. *Scott* (1875) L.R. 10 Q.B. 400 and *Johnston and the Toronto Type Foundry Co. Ltd.* v. *Consumers Gas Co. of Toronto* [1898] A.C. 447, followed. Dictum of Goddard L.C.J. in *Attorney-General* v. *Colchester Corporation* (*supra.*), applied.). *Morton* v. *Eltham Borough* (S.C. New Plymouth. 1960. July 21, 22; August 8. McCarthy J.)

HIRE PURCHASE AGREEMENT.

Agreement in contravention of statutory provisions—Void inter partes and in hands of assignee without notice—Illegality not curable by estoppel—Collateral promissory notes also even in the hands of a holder in due course—Economic Stabilization Act 1948, s. 18—Hire Purchase and Credit Sales Stabilization Regulations 1957, (S.R. 1957/170) Regs. 3, 8, 10. Where a hire purchase agreement is entered into in breach of the provisions of the Hire Purchase and Credit Sales Stabilization Regulations 1957, (S.R. 1957/170) it is void and of no effect inter partes and is no more valid in the hands of an assignee than it was in the hands of the assignor even when the assignee has no notice of the illegality. The illegality cannot be cured by raising an estoppel. (*Luhrs* v. *Baird Investments Ltd.* [1958] N.Z.L.R. 663, followed). *Stenning* v. *Radio and Domestic Finance Ltd.* (S.C. Christchurch. 1960. June 27. August 17. Richmond J.)

PRACTICE.

Striking out pleadings and proceedings—Claim for damages in respect of death of worker following settlement of claim under Workers' Compensation Act—Need for consideration before settlement of compensation claim bars damages claim—Payment of amount due under Workers' Compensation Act not necessarily consideration—Question as to existence of consideration one for tribunal of fact at trial—Workers' Compensation Act 1956, s. 102 —*See* WORKERS' COMPENSATION—DEATH OF A WORKER (*infra*).

Injunction—Injunction will not be granted which would require defendant to continue to carry on a business and employ staff—*See* GASWORKS (*supra*).

PUBLIC REVENUE.

Income Tax—Assessment—Sons employed by taxpayer under profit-sharing agreement—Agreement not bona fide if stated statutory conditions not complied with—Land and Income Tax Act 1954, s. 106 (6). Section 106 (6) of the Land and Income Tax Act 1954 enumerates conditions which must be fulfilled before a contract which is already *bona fide* in the ordinary sense will qualify for the exemption from the operation of s. 106 which is provided by subs. (6). If those conditions are not fulfilled the contract cannot so qualify. (*Moore* v. *Commissioner of Inland Revenue* [1959] N.Z.L.R. 1046, affirmed). *Commissioner* v. *Lilburn.* (C.A. Wellington. 1960. June 23; August 10. Gresson P. Cleary J. McGregor J.)

ULTRA VIRES.

Payment made by resolution of industrial union—Recoverable by member if union if union itself does not take action—Recoverable from person for whom benefit payment made even if he did not handle money. Where an industrial union of workers by resolution authorises a payment which is *ultra vires* the union and the union itself does not take steps to recover the money so paid individual members of the union may take action to recover the payment from the person to whom it was paid. (*Russell* v. *Wakefield Waterworks Co.* (1875) L.R. 20 Eq. Cas. 474, followed.) Such moneys can be recovered from any person for whose benefit and in whose favour the payment was made if such person knowingly acquiesced in and adopted such payment in such a way as to make him a party to the illegal transaction. (*Salomons* v. *Laing* (1850) 12 Beav. 377; 50 E.R. 1105 and *Russell* v. *Wakefield Waterworks Co.* (1875) L.R. 20 Eq. Cas. 474, followed.) *Wall* v. *Wellington Amalgamated Watersiders' Industrial Union of Workers and Others.* (S.C. Wellington. 1960. August 29; September 14. Barrowclough C.J.)

VENDOR AND PURCHASER.

Land Settlement Promotion—Neither vendor nor unsuccessful bidder at auction has right or appeal against decision of Committee approving sale—Land Valuation Court Act 1948, s. 23 (2).—*See* LAND SETTLEMENT PROMOTION (*supra*).

WORKERS' COMPENSATION.

Liability for compensation—Serious and wilful misconduct—Worker travelling as passenger in truck drinking with driver—Passenger injured as result of accident to truck—Guilty of serious and wilful misconduct, but such misconduct not cause of accident—Workers' Compensation Act 1956, s. 34. The plaintiff a Ministry of Works employee was sent as a passenger in a truck driven by a fellow worker to carry out duties as part of his employment. Both on the way to and returning from the place of work all men on the truck visited an hotel and consumed sufficient liquor to affect them. After leaving the hotel the truck ran off the road and the plaintiff was injured. *Held 1.* That the plaintiff's act of drinking in the hotel was serious and wilful misconduct and the accident was due to the insobriety of the driver of the truck. It had not however been proved that the plaintiff's misconduct so contributed to the driver's insobriety as to be the cause of the accident, and his claim to compensation was therefore not barred by s. 34 of the Workers' Compensation Act 1956. 2. That the party's drinking activities interrupted the course of the plaintiff's employment but when he resumed the journey he also resumed the course of his employment. (*M'Crae Ltd.* v. *Renfrew* 1914 S.C. 539; 7 B.W.C.C. 898, discussed and explained.) *Manukau* v. *Attorney-General.* (Comp. Ct. Auckland. 1960. April 8; Hamilton. 1960. May 31; August 9. Dalglish J.).

Arising out of and in course of employment—Worker travelling as passenger in truck interrupting course of employment by drinking in hotel with driver—Course of employment resumed when journey resumed—Insobriety of driver not an "added risk" such as to prevent accident arising "out of" employment. Held. That the "added risk" or "added peril" test is only one of the tests which may be useful if it is a matter of doubt whether a particular act is or is not within a worker's employment and the accident arose out of the plaintiff's employment notwithstanding the driver's insobriety as he was employed to ride in the truck and the accident was one of the normal risks of the employment—*See* MANUKAU *v.* ATTORNEY GENERAL. (*supra.*)

Death of worker—Claim for compensation settled—Subsequent action by dependants for damages—Need for consideration before agreement for settlement of compensation claim bars damages claim—Payment of amount due under Workers' Compensation Act not necessarily consideration—Workers' Compensation Act 1956, s. 102. A worker was killed in an accident to an aircraft admittedly arising out of and in the course of the worker's employment. The employer paid full compensation including funeral expenses. Subsequently the workers' widow brought an action under the Deaths by Accidents Compensation Act 1952. The defendant moved to strike the action out as vexations on the grounds that it was barred by s. 122 of the Workers' Compensation Act 1956. *Held.* That whether it be claimed that there was an agreement at common law which acts in discharge of a worker's rights or whether it be said that a claim for compensation has been settled by agreement within the terms of s. 122 there must be consideration before the agreement is an effective one, and the mere payment of an amount due under the Workers' Compensation Act by an employer does not of itself necessarily establish consideration moving from the employer. There must be proof of consideration which is real. Whether there is such a real consideration turns, at least substantially, on the facts of each particular case and it is a question to be left to the tribunal of fact at the trial of the action. (*Bowley* v. *W. Booth and Co. Ltd.* [1918] N.Z.L.R. 77; *Logie* v. *Union Steam Ship Company of New Zealand Ltd.* [1945] N.Z.L.R. 388; [1945] G.L.R. 169, followed.) *Hamilton* v. *Straits Air Freight Express Ltd.* (S.C. Wellington. 1960. June 17; August 9. McCarthy J.)

THE LICENSING AMENDMENT BILL.

The long-awaited Licensing Amendment Bill was introduced into the House on October 19 and, as expected, its provisions are not far-reaching but they do go somewhat further than recent rumour would have led one to believe.

The provision for the licensing of restaurants recommended by the Select Committee has been included in the Bill but in a very emasculated form. For the whole of New Zealand only ten of such licences are to be issued and we can only assume that this severe restriction in number has been imposed in order to give an innovation a trial. If this is the case, it appears to be ill-advised. If the experiment is considered not to be a success presumably the number of such licences will not be increased but what of licences already granted ? Are the fortunate holders to be allowed to retain their monopoly indefinitely or will the licences be cancelled by legislation ? The latter seems unlikely in view of the sacrosanct character which has been acquired by liquor licences in New Zealand over the years.

In sorting out the restaurants to be favoured with the new licences the Licensing Control Commission will be faced with an unenviable task. It can reasonably be assumed that the applications will number many more than the magic number, ten. Territorial considerations will have to be taken into account, but assuming three licences were allocated to Auckland, on what basis are they to be granted ?

The intention, we understand, is to grant licences to " better class " restaurants which presumably means those restaurants which can claim to provide food of high quality at high prices. If this is the case, it seems to us that the Bill goes perilously close to providing one law for the rich and another for the poor, which one would have thought to have been anathema to a Labour Government. Another point is that some of these so-called " better class " restaurants are the very ones which have in the past flouted the law either by themselves selling liquor without a licence or, if not going to those lengths, allowing patrons to consume their own liquor during prohibited hours. Are they now to reap the reward for their illegal activities by being granted licences ? Possibly a conviction for one or both of these offences will count against an applicant for a licence but those who have been fortunate enough to escape detection will then score at the expense of their less fortunate competitors.

By the time this article appears in print the fate of the Bill will be known. It is to be hoped that these particular provisions will either be substantially amended or dropped altogether for the time being.

It is rather curious that in the Bill which places such a severe restriction on the number of restaurant licences the long-standing limit on the number of tourist house licences should be removed. The Minister may explain this apparent incongruity but we cannot.

The other provisions of the Bill are not of great importance. The extension of hours during which liquor may be sold in hotel dining-rooms is badly wanted, although 11.30 p.m. seems a late hour at which to partake of a " substantial meal ". The legalization of the consumption of liquor at dances is also a long-needed reform though here again the provisions seem unduly restricted.

The change in the definition of " liquor " to include any beverage containing more than two parts per cent. of proof spirit is, we understand, likely to cause headaches to the manufacturers of certain classes of soft drinks.

On the procedural side, the transfer from the Supreme Court to the Land Valuation Court of jurisdiction to hear appeals from the Licensing Control Commission's determination of compensation for the cancellation or surrender of licences is to be commended. Such cases are peculiarly within the experience of the Land Valuation Court.

An amendment in relation to club charters which the Licensing Control Commission has recommended for some years is provided in the Bill. In the past if a club were convicted of a licensing offence the Commission could only revoke its charter with the consequence that the premises could never again be licensed either as an hotel or as a club. Such a penalty was too drastic for the Commission to impose, except in the worst of cases. It will now be given the option of suspending a charter as an alternative to revocation.

Like most legislation this Bill is good in part. It is regrettable that the good parts are far outweighed by those that are not so good or even bad.

PERSONAL.

Mr A. C. Holden, B.A., LL.B., B.Com., has been appointed full-time senior lecturer in law at the University of Otago. Mr Holden has been a part-time lecturer in Constitutional Law at Otago since 1953 and is at present on the staff at John McGlashan College.

Mr R. E. Pope of Wellington has returned to New Zealand after attending the Commonwealth Legal Conference at Ottawa.

Mr Richard Ashley Cresswell, of the firm of O'Donnell Cresswell and Cudby, Wellington, has died after a lengthy illness. Mr Cresswell, who was admitted in 1928, was President of Wellington District Law Society in 1957-1958.

Judge E. F. Rothwell, of the High Court of Western Samoa, has tendered his resignation to the Department of Island Territories. He will leave Western Samoa on December 7.

Tailpiece.

In opinions several and in opinions joint very learned counsel wholly missed the point and despite the erudition they respectively displayed, the case was won entirely on the point the client made. J.P.C. in *J.P. and Local Government Review* (23/7/60).

CHATTELS TRANSFER ACT: SEIZURE OF CHATTELS BY GRANTEE.

It labours the obvious to say that s. 18 of the Chattels Transfer Act operates to avoid an unregistered instrument against the gentlemen referred to in that section *only so far as* regards chattels that are in the possession or apparent possession of the grantor.

If, therefore, the grantee has been able to take the chattels out of the grantor's possession and bring them effectively into *his own* possession before the earliest date at which the said gentlemen are entitled to make their claims the grantee may retain what he has seized. Where bankruptcy is in point, the grantee's seizure must have been made before the date to which the bankruptcy relates back.

We have clear authority for each of these simple propositions, in such a case as *Official Assignee* of *Casey* v. *Bartosh* [1955] N.Z.L.R. 287, where the solicitor for a grantee whose instrument had not been registered purported to take possession of the chattels charged but was held on the facts to have done so ineffectively with the result that the Official Assignee succeeded in having the goods restored to general creditors. The solicitor had entered the business premises of the debtor and obtained the key; business ceased, the chattels were not actually moved away but were left where they were, bankruptcy intervening before the grantee had shifted them.

The position is the same in the United Kindgom under the legislation from which our Act was taken. So in *3 Halsbury's Laws of England*, 3rd ed., 309.

> "If before the occurrance of any of the events mentioned the grantee takes and holds actual possession, registration is unnecessary . . .
>
> To terminate the grantor's apparent possession there must be more than formal possession on the part of another. Something must be done which in the eyes of everyone who sees the goods, or who is concerned in the matter, plainly takes them out of the possession or apparent possession of the grantor."

It is submitted that this principle, so clearly established, and authorised by the words of the statute, can result in grave injustice and should be reviewed.

The chief purpose of the Act is surely to protect the s. 18 group against the unregistered instrument, and, to go one step further back, to prevent the debtor from raising credit on the strength of his possession of goods which he does not own, or which are subject to secret charges. It is suggested that if the grantee under an unregistered instrument can effectively seize the chattels at the first breath of trouble this basic purpose of the Act is endangered. The test should not be the possession of the debtor at the time the rights of the s. 18 group arise (the damage is likely to have been done at this stage) but at the time when the credit is obtained in the first place. Let us assume a person owns trade plant worth £1,000. On January 1 he obtained a loan on the security of it by instrument which is not registered. By August 1 he has incurred debts of £1,500 from merchants who have granted the credit on the basis that he is in a reasonable position, and is using £1,000 worth of plant. He gets involved financially and finally files his petition in bankruptcy on say November 1 and his bankruptcy relates back, say, to August 1. Meanwhile, however, the grantee has seen the deteriorating position and has seized the plant on, say, July 15. The seizure is good under s. 18 and he may sell the goods and pay himself out, as possible. The unsecured creditors who could reasonably be assumed to have granted credit on the apparent stability of the debtor can only share in any surplus after the grantee is satisfied.

It is odd how in various matters the law goes to considerable lengths to reach out and recall past transactions so that a fair distribution of assets can be made amongst all claimants, e.g., the fraudulent alienation under the Property Law Act, the doctrines of relation back and various avoiding provisions in the Bankruptcy Act, but yet will protect an unregistered grantee under the Chattels Transfer Act in the above circumstances. Odder still does it become when we realize how stringent are the requirements of the Act for instruments if they are to survive. An instrument can founder on any one of many technicalities. Registration and the tests for it are jealously guarded; an unregistered instrument is indeed cast into the outer darkness. But let only the unregistered grantee seize the chattels before the rights of the s. 18 group arise and the Act hastens to spread over him a surprising mantle of protection. The time to protect the creditors whom the s. 18 persons represent should surely be the time when they gave credit, not some later date when the milk is spilt. What is the remedy? None of the s. 18 group have to show now that the creditors they represent were actually induced to grant credit because of the apparent possession of the chattels by the grantor; the statute virtually establishes in their favour an irrebuttable presumption that they were so influenced. It follows that if some other test were devised, e.g., the date the credit was granted that they should still be entitled to the benefit of a similar presumption. Prima facie the date credit was granted is a simple test; the rule could be that an unregistered grantee to be entitled to hold his seizure, must have seized before the complaining creditor granted credit. In other words the latter could not have been influenced by goods no longer in the possession of the debtor. However, difficulties with this would arise if bankruptcy were in point; some creditors may have become such before seizure and some after it. Also the date of grant of credit may be obscured by a running account spanning all material times.

Perhaps the simplest way would be to avoid against the persons in s. 18 seizures by an unregistered grantee made within a certain period before the claim arises; this period to be arbitrary but so fixed as to give reasonable cover to the unsecured creditors. For instance the seizure, to stand, must have occurred not later than one year before commencement of bankruptcy or other invalidating incident dealt with in s. 18. This would appear to do justice and prevent the unregistered grantee from standing by while credit was being obtained, and then at a late stage seizing the goods when the grantor's position had deteriorated. Perhaps some reader may have a better suggestion.

G. CAIN.

A DILEMMA RESOLVED.

In an earlier note, [1] the judgments of T. A. Gresson, J., in *Low* v. *Earthquake & War Damage Commission* [2] were examined. The Government and the Commission must have shared the learned Judge's "serious misgivings as to [the Commission's] ability to conduct a rehearing with the necessary degree of impartiality and detachment" [3] because Sir Joseph Stanton [4] was appointed to hear the claim. In his report, Sir Joseph stated:

> "It was subsequently agreed between the claimants and the Crown that the claims should be referred to me as an independent referee, the parties appearing and conducting their cases as if it were a Court hearing, and that I should then report to the Crown who would pay whatever sums (if any) I thought should be paid." [5]

There was no precedent for what was done and it is inaccurate to describe the status of Sir Joseph in relation to the claim as that of an arbitrator or umpire. He did not possess the powers of an arbitrator nor was he appointed as a commission within the meaning of the Commissioners of Inquiry Act 1908. This would have been a serious disadvantage in normal circumstances because there was no power to summon witnesses and to compel their attendance or to administer an oath. However, no difficulties were met and the Crown can be expected to make the payment recommended in Sir Joseph's report. His report states that the hearing of the claim [6] took a full week and that each of the parties was represented by counsel who treated the claim as though it were an ordinary action.

The issue to be determined was whether the damage to Low's house was caused by landslip or was "disaster damage", i.e., "damage occurring as the direct result of storm, flood, or volcanic eruption (excluding damage caused by landslip, subsidence of earth or rock, or erosion by the sea)."[7] The question for the "referee" involved an interpretation of the regulation, but the real issue was one of fact—was the house damaged by landslip or flood? The expert witnesses produced by the parties supported both possibilities; in these circumstances the referee applied the

> "well-settled principle that where there is an insurance against any particular cause with an exception in certain cases, the burden of proof that the exception applies is on the insurers. In *22 Halsbury's Laws of England*, 3rd. ed., 221 it is said:
>
> 'As a general rule the general operative words will be held as prevailing in the absence of concrete proof by the insurers that the provision described as an exception is applicable.'
>
> See also *Bond Air Services* v. *Hill* [1955] 2 Q.B. 457 where Lord Goddard L.C.J. said that the exception restricts the scope of the policy and the insurer who relies on the exception must prove that the loss was due to the excepted cause. In *Preston and Colinvaux on Insurance*, 1950, ed., the rule is stated in similar terms."[8]

Because the Commission had failed to produce *concrete proof* that the damage was caused by landslip and fell within the exception, the referee held that it was covered by insurance.

The Commission having waived its option to reinstate or repair, the sole question remaining was settling the cash payment to be made to Low. An amount determined by cost of replacement was unacceptable because the house could not be made habitable (or saleable) by reinstatement; it was therefore decided that the applicant should be paid the actual value of the house less its salvage value so long as this figure was less than the amount of the insurance. As to interest on the amount awarded (£3,900) Sir Joseph stated:

> "There seems to be no provision in the Act or Regulations which requires the Commission to pay interest where there is a delay in payment." [9]

The question of costs was left to be settled by the parties but failing their agreement Sir Joseph indicated that he would settle them. His power to do so may be conceded, but enforcement of his order would present difficulties.

The problem has been disposed of to the satisfaction of those concerned. It could be argued that Low has received special treatment in that this is the first occasion on which an applicant has been able to have his claim determined by a body other than the one established by statute to hear the applications and make the determination. He has, on this basis, been given more than he was entitled to under the statute. It is doubtful, however, if many would object to what was done except for the reason that it creates a rather awkward precedent. Others who have been disappointed by the determination of an administrative tribunal may be tempted to seek the appointment of a referee to rehear the application. If these claims were not resisted the foundation on which the structures of administrative tribunals has been built would be endangered. The justification for administrative tribunals has been made elsewhere. [10] Most of the advantages of administrative tribunals would be lost if tribunals were superseded by a referee. Few administrative tribunals could devote five days to the hearing of three claims; the multiplicity of claims would prevent them giving three weeks [11] to each. The advantage of speed and relative cheapness would be lost. Moreover, the specialised knowledge of members of the tribunal would not necessarily be possessed by the referee.

What the *Low* case does seem to demonstrate is the need for establishing more appellate bodies than exist at present. Many statutes have created appellate administrative authorities but others make the decisions of the tribunal of first instance final. [12] Had there been an appeal from the decision of the Earthquake and War Damage Commission to an independent (and impartial) tribunal, Low would presumably have been content with the exercise of his right of appeal.

J. F. NORTHEY.

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[1] *Ante*, p. 230.
[2] [1959] N.Z.L.R. 1198; [1960] N.Z.L.R. 189.
[3] [1960] N.Z.L.R. 189, 190.
[4] Sir Joseph had resigned as a Judge of the Supreme Court on October 31, 1957.
[5] For the Crown and not the Commission to make the payment suggests that the payment was intended to be ex gratia. This arrangement preserves the independence of the Commission and involves no usurpation of its powers.
[6] There were two other claims arising from the same circumstances which were heard at the same time.
[7] Earthquake and War Damage Regulations, 1956, Reg. 2.
[8] This statement appears in the report of Sir Joseph Stanton.
[9] The damage occurred in February, 1958; Sir Joseph's report was made in September, 1960.
[10] e.g., W. A. Robson, *Justice & Administrative Law*, 3rd. ed., 557
[11] The hearing began on August 15 and the report was made on September 6.
[12] e.g., Transport Act 1949, Air Services Licensing Act 1951, Public Service Amendment Act 1927.

IN PARLIAMENT.

Since the beginning of October the House of Representatives, has made steady if not spectacular progress with the legislative programme, but with only two weeks' sitting time left the rate of work will have to be speeded up or a good number of the Bills now before the House will have to be dropped. In particular, the prospect of the passing of the Crimes Bill this year seems to be remote.

The Licensing Amendment Bill has not yet been introduced but will be available before the column appears in print. According to rumour, apparently well-informed, this will be an innocuous measure due to strong opposition in the Labour Party's caucus to certain of the recommendations of the Select Committee.

Although the probable licensing legislation is a fruitful source of controversy in political circles, it seems to be due to a defect in our system of parliamentary government that the House has been deprived of the opportunity of debating the Committee's recommendations in the form of a Bill. Everyone is agreed that the existing licensing legislation is archaic and requires rewriting but, for fear of a defeat, no Government is prepared to face up to the problem.

Having gone to the trouble and expense of setting up a Select Committee, representative of both sides of the House, it would surely have been open to the Government to have a Bill prepared strictly on the lines of those recommendations and then to have invited the House to pass, amend or reject the Bill as it thought fit. The Bill would not have been a policy measure, and its amendment or defeat would not need to be regarded as the defeat of the Government. Some procedure on these lines will require to be framed before there can be any hope of modernizing an Act which is now a blot on our Statute Book.

Bills recently introduced have been :

Cinematograph Films Amendment Bill.
Estate and Gift Duties Amendment Bill.
Statutes Amendment Bill.

The introduction of the last-mentioned Bill is a return to a practice of the former Labour Government which was never viewed favourably by the profession, however convenient it may be from the legislative point of view. When the Bill is enacted, amendments contained in it are easily lost sight of, and the policy of the National Party in introducing separate amendment Bills is preferable.

Clause 3 is of importance as it amends the Acts Interpretation Act by enacting in general form the savings clause usually enacted in consolidating or repealing Acts.

Clause 7 contains an amendment to the Bankruptcy Act to overcome the decision in *R.* v. *Mantell* [1960] N.Z.L.R. 624.

Clause 46 contains a useful amendment to the Land Transfer Act. Where a lessee acquires the fee simple of the land comprised in his lease under a right or obligation to purchase contained in the lease, encumbrances etc., on the lease may be brought down and registered against the fee simple estate, thus saving a new set of securities.

Clause 82 contains the provisions already publicized for the increase in penalties for disorderly behaviour. the new penalties are three months' imprisonment or a fine of £100.

Of the total of one hundred and eleven clauses in the Bill, the others are not of general interest to lawyers.

The Estate and Gift Duties Amendment Bill is of interest and importance since it gives effect, with some variations, to the proposals for pre-payment of estate duty announced in the Budget. This Bill will be the subject of a separate article in the near future.

The enactments passed are not of any great professional interest or importance. They are :

Nurses and Midwives Amendment Act.
King George the Fifth Memorial Children's Health Camp Amendment Act.
Manapouri—Te Anau Development Act.
Thames Boys' and Girls' High School Amendment Act.
Rangiora High School Amendment Act.
Napier High School Amendment Act.
Servants' Registry Offices Amendment Act.
Coal Mines Amendment Act.
University Grants Committee Act.

Statutory Regulations. This is the second issue in which there has been no list of Statutory Regulations. This is not an oversight on our part but is due to a lack of Regulations of any general interest to our subscribers. The feature will reappear whenever there is anything worthy of recording.

British Practitioners.—Britain is badly short of solicitors. Some 20,000 are in practice but this is not enough (says a message from London). For every man or woman who qualifies as a solicitor there are 10 or more jobs for them to pick from, starting salaries ranging from £750 to more than £1,000 a year. A Law Society spokesman told the *Daily Mirror* : " The demand for solicitors has rocketed. In London alone we have over 100 vacancies, most of them six to nine months old. Dozens of local authorities, solicitors' offices and business organizations just cannot get the men. There are several reasons for this—chiefly more work. It has been created by Government legislation with the Town and Country Planning Acts, welfare schemes and the Rent Act. More work also has been made by increasing hire purchase agreements over the last few years. Many of Britain's brightest young brains, too, have been attracted away from legal careers into commerce."

The World we Live in.

Now that they have just replied
By saying the rumours are denied,
It's clear the wisest thing to do.
Is treat the rumours as being true.

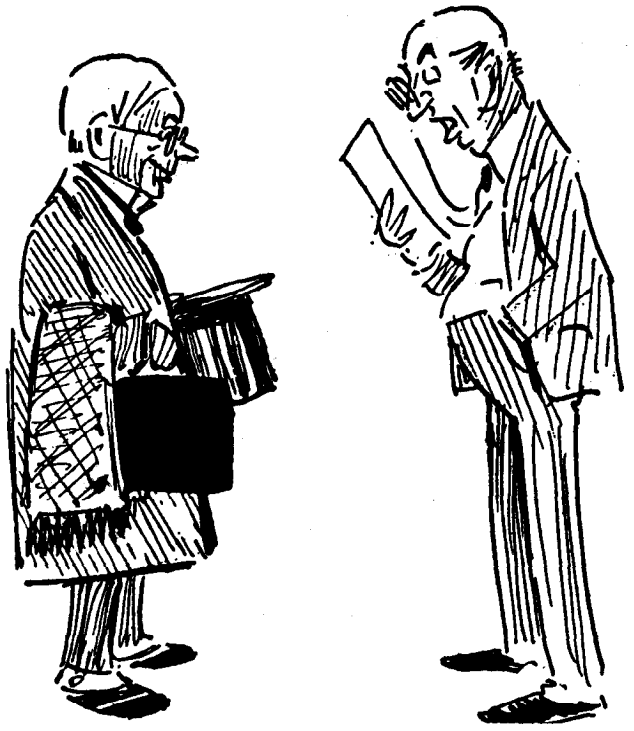
J. C. P. in *124 J.P.* 539.

FORENSIC FABLE.

By "O"

The White-Haired Trustee and The Highly-Placed Official

There was Once a Dear Old Trustee. He had White Hair and Gold Spectacles. His Reputation for Stability and Integrity Equalled that of the Bank of England. For Many Years he had Enjoyed the Confidence and Esteem of the Various Widows and Orphans whose Affairs and Securities were in his Capable Hands. But the White-haired Trustee, having Rashly Availed himself of Certain Inside Information as to Rubber, got into a Nasty Financial Mess and Came to the Conclusion that he had Better Do a Bolt. He Felt, at the Same Time, (1) that it would be a Pity to Leave Behind Anything Belonging



to his *Cestuis Que Trustent* which could be Turned into Ready Money, and (2) that Penal Servitude Should If possible, be Avoided. The White-haired Trustee accordingly Placed a Nice Little Lot of Bearer Bonds and Coupons in his Bag, Procured a Ticket for the Continent, and Repaired to Scotland Yard. Here his Admirable Appearance Secured for him an Interview with a Highly-Placed Official. Stating that he had been Robbed, the White-haired Trustee Handed to the Highly-Placed Official a List of the Choses in Action which his Bag Contained, and Begged to be Told where the Thieves were Likely to Endeavour to Encash them. The Highly-Placed Official Expressed his Keen Sympathy and Courteously Supplied the Desired Information. The White-haired Trustee Thanked him Warmly, and Disposed of the Nice Little Lot in the Cities Named by the Highly-Placed Official at Very Satisfactory Prices. The White-haired Trustee has not been Heard of Since. The Highly-Placed Official has Retired on a Pension.

Moral.—*Melius Est Petere Fontes.*

LEGAL LITERATURE.

Underhill's Law of Trusts and Trustees, 11th. ed. by C. MONTGOMERY WHITE and M. M. WELLS. Pp. clvii and 684. London: Butterworth and Co. (Publishers) Ltd. Price £5. 17s. 6d.

In this edition of *Underhill* Mr. Montgomery White and Miss Wells have once again exhibited the qualities which are required for editing a well-established textbook. Here are to be found accuracy in the statement of principle and rule; thoroughness and an orderly, logical arrangement; and a balanced judgment in the assessment and treatment of developments since the 10th edition almost a decade previously. The result is, generally speaking, a revision of clarity and exactness.

The most significant English development in the law of trusts was the decision of the House of Lords in *Chapman* v. *Chapman* [1954] A.C. 419 which must have come as a surprise to many counsel in Lincoln's Inn. The enactment of the Variation of Trusts Act 1958, passed as a result of that decision, has allowed the Court to sanction the very kind of arrangement which was rejected by the House of Lords: *Re Chapman's Settlement Trusts* (*No.* 2) [1959] 1 W.L.R. 372. Those developments and many others are skilfully woven into the text of the book. But they raise a fundamental problem for the New Zealand practitioner. Here too there have been significant changes, the most important of which have been the Trustee Act 1956 and the Charitable Trusts Act 1957. As neither of those statutes provides a slavish imitation of comparable English legislation, it is clear that *Underhill's* usefulness to the New Zealand equity lawyer is limited. But it will still furnish him with an accurate and succinct statement of the basic principles of trustee law in the best tradition of the English legal textbook.

There is one topic which seems, perhaps because it is discussed on p. 3, to have been given inadequate treatment. In their discussion of Sir Arthur Underhill's definition of a trust the editors refer to criticisms that have been made of it on the ground that it did not include trusts for the maintenance of memorials and the support of particular animals. That topic the editors discuss in the strange environment of Legality of Expressed Object of the Trust (at pp. 100-3), notwithstanding the persuasive criticism of that location by Mr. R. E. Megarry in his review of the 10th edition. Technically, the editors' treatment of this anomalous type of trust is good: there is even a slight but welcome relaxation (on p. 101 (e)) of the apparent policy of non-recognition of academic contributions to the study of trustee law. But the editors show a reluctance to grapple with the problem caused by the existence of this admittedly anomalous category of trusts. Perhaps the Privy Council decision in *Leahy* v. *Attorney-General of New South Wales* [1959] A.C. 457 and the English Court of Appeal decision in *In re Endacott* [1960] Ch. 232, will stimulate them to consider the issue, which is a basic one, in the next edition.

The book is very well printed and handsomely produced.

G. P. B.

PREVENTION OF CRIME AND TREATMENT OF OFFENDERS.

United Nations Congress in London

The second United Nations Congress on the Prevention of Crime and the Treatment of Offenders was held at Church House, Westminster, from August 8 to August 19, 1960. A report on the proceedings is contained in a special supplement to No. 35 of Volume 124 of the *Justice of the Peace and Local Government Review* of August 27.

As might have been expected, juvenile delinquency, its causes and treatment played a large part in the reports presented to the Congress and in the discussions. In view of the interest in this subject in New Zealand, we are reprinting extracts from the summary of the reports as they appeared in the supplement to the *Justice of the Peace and Local Government Review* above-mentioned.

Background Information on Juvenile Delinquency

" A wealth of statistical data, background information and opinion on the question juvenile delinquency was presented to the Congress in the form of reports and memoranda." said the summary. " The official reports consisted of three on 'new forms,' one by the Secretariat and the others by Judge Wolf Middendorff of the Federal Republic of Germany and by Dr. T. C. N. Gibbens for the World Health Organization; a report submitted by the Secretariat of Unesco on school, and social maladjustment of youth, and a report submitted by Interpol on special police departments for the prevention of juvenile delinquency. Unofficial reports from many countries included a paper on the preventive and social function of the police, presented by the International Federation of Senior Police Officers.

Report of the Secretariat: Substantial Increase

Commenting on the substantial increase of juvenile delinquency in the majority of countries—significant exceptions are France, Italy, Spain and Argentina—the report of the Secretariat makes the point that in referring to new forms it does not refer to new types of crime committed by juveniles, or to acts which have not previously been known as legal types of crimes, but to new manifestations of delinquency. It is demonstrated that in some countries forms of delinquency are appearing which are new to those countries, and that other countries have recorded forms of delinquency that are new in the sense that there is an increase in their extent, gravity, violence and apparent lack of motive. Again, new groups of society, such as juveniles from the middle and upper social and economic groups, not previously strongly implicated in juvenile delinquency, have in some countries become increasingly involved. The extent of the problem of juvenile delinquency as a social problem, the report states, cannot be considered as affecting only a small part of the juvenile population. The numerical extent of the problem is greater than often realized and greater than would appear from just looking at one year's figures. It is suggested, however, that some estimates of the gravity of the problem are inflated by the broad meaning given to the word " delinquency " in certain countries, and by the excessive publicity given to juvenile delinquency as a news item.

New Trends

Amongst the trends noted in the report are an increase in violence, both against persons and property, as a feature of juvenile delinquency; the gradual lowering of the age at which acts of delinquency are committed and the increasing number of delinquents from the higher income brackets. It is also pointed out that in quite a number of countries " association " forms of delinquency are becoming more frequent—although not all these forms can be identified with the word " gang "—and that associations between adults and children, often the former using the latter for their criminal purposes, are becoming more common. These new forms, however, are not considered as showing the same characteristics everywhere, especially as regards motivation and other specific factors, but as presenting distinctive characteristics in each region.

Corporal Punishment " Excluded "

The report concludes that juvenile delinquency—like crime in general—is caused by a variety of factors, amongst which family disintegration or transformation, accompanied by a more or less general lowering of moral standards, seems to play a significant role. Moreover, the report adds, in some highly developed countries juvenile delinquency is becoming more and more a problem of attitudes, whereas in the less developed countries it can still be linked with factors such as poverty, poor health, lack of education and urbanization. The report does not agree with the idea that until the cause is known little can be done towards prevention, and suggests that enough is now known to reduce the problem considerably. Towards this end the report puts forward the suggestion that local preventive measures should include all juveniles, not only those who show delinquent tendencies, and should include recreation and leisure time programmes, welfare programmes, foster homes, slum clearance projects and visiting teachers. A more direct approach, focusing attention on juveniles who show a clear tendency towards delinquent behaviour, should also be undertaken, which would include youth gang projects, child guidance clinics, community conferences, special police and schools, and observation centres. Treatment, the report believes, should endeavour to develop in the juvenile a sense of moral and social responsibility through his participation in a world where adults and children live together, and where he is expected to act in accordance with the generally accepted system of fundamental values, and the importance of non-institutional agencies and open or semi-open institutions is stressed. Disciplinary methods and punishment should include fines, restitution, compulsory attendance at institutions, detention and deprivation of freedom.

Corporal punishment, the report states, should be excluded in any form *since it has practically no effect as a deterrent*"

[The italics in the above passage are ours. With the statement italicized we cannot agree, reluctant though we are to disagree with those who should be expert in the subject under discussion we suggest that the statement is based on inadequate information, and that the only way of estimating the worth of corporal punishment as a deterrent is to give it a trial under proper conditions and with careful statistics taken which would show its deterrent effect.]

The summary continues :

General Report—Influence of the Family

Gang activities, theft of motor cars, traffic violations, vandalism, sex delinquency, alcoholism and drug addiction are amongst the new forms of juvenile delinquency mentioned in the report presented by Judge Middendorff, which is based on material supplied by government officials, organizations and experts in various countries. Judge Middendorff also believes that there is no one cause or single explanation of juvenile delinquency and a combination of traits and factors—both old and new—is always found when investigations are undertaken. But criminologists agree, it is stated, that the influence of the family is of the utmost importance to the juvenile—an importance especially evident in the highly developed Western countries with the highest standard of living and the greatest number of broken homes. Factors in this growing process of dissolution of family life are the crises in authority, so-called progressive aducation, the conflict of parental authority and the results of some recent trends in psychology. With regard to the influence of psychology the report suggests it as unfortunate that under the influence of some schools of thought the child's world has been regarded as the primary one around which the other should revolve, and suggests that while it is true that the first five years of a child's life are important, the policy of separating child and adult worlds has been, and still is, one of the most powerful contributing factors to juvenile as well as adult delinquency.

" Increasing Gravity "

The report shows the increasing gravity of the juvenile delinquency problem as a whole. In the United States, the Federal Bureau of Investigation has stated that, according to the latest available figures, 47 per cent. of the more serious crimes are committed by juveniles. A report to the United States Senate by a subcommittee investigating juvenile delinquency noted the annual increase in court appearances and stated that, according to the figures then available, some 20 per cent. of male adolescents in the 10 through 17 age group in the United States had a delinquency record. In numbers, they exceeded 1,700,000, and the subcommittee estimated that soon they would exceed two million. In the Philippines, too, the problem of juvenile delinquency has increasingly become acute so that public opinion is alarmed at this growing menace to the social order. A rapid rise in juvenile delinquency was also reported from England and Wales, the Union of South Africa, Australia and New Zealand, the Federal Republic of Germany, Austria, Greece, Yugoslavia, France, Sweden, Finland and the German Democratic Republic. However some decline was reported from Switzerland, Italy, Belgium and Canada.

Interpol—Special Police Departments

The Interpol report, which points out that most police forces agree on the principle that special departments should be formed to deal with juvenile delinquency, gives the details of the various ways in which the forces of different countries have interpreted this principle. These vary from the special department of Israel which operates separately from the police proper, the general use of policewomen to deal with juveniles, and those forces that have individual officers specially trained to deal with young offenders. In the United States, for example, half the local police forces have either special departments or specially trained officers for dealing with juveniles, a task that is undertaken in Federal Germany by the women's criminal investigation department, and it would seem true to say that the majority of the thirty-seven countries mentioned in this report have some special arrangement within the police service for dealing with this type of work. The report emphasizes the special qualifications and training needed for the officers of special departments, and points to the new function of the police in its preventive role. Such training should be a minimum of three month's duration and should include, it is considered, pedagogics, general and child psychology, sociology and physiology, as well as the more normal police training.

World Health Organization—" Good Servants "

Dr. Gibbens, in his report for the World Health Organization, stresses the fact that figures are good servants but bad masters and that properly collected they mean what they say—not something else. The available statistics of juvenile delinquency, he suggests, while they no doubt give a painfully accurate picture of the problems that many administrations have to face, when used for discussion about trends in delinquent behaviour need to be supplemented by special investigations. He reviews the so-called new forms of delinquency such as car stealing, sexual offences and offences involving violence, and concludes that some of the noted increase may be due to the fact that the opportunity has increased (i.e., car stealing and shoplifting) ; to the increased incidence of case reporting (i.e., sexual offences), and, in cases of violence, to the move of populations out of slum areas, where violence is tolerated and kept, as it were in the family, into the new housing estates where the *mores* are less inclined to condone such behaviour.

Generations in Conflict

Dr. Gibbens queries as to whether the most significant change may not perhaps be, not the behaviour of youths, but the fact that adults view the situation with more alarm than they used to, and suggests it as possible that the older generation, for economic and other reasons, are less able to maintain pressure on the younger. There are some who believe, he states, that with the rapid advance of technology, adults are increasingly threatened with the more complete training of youth. In his assessment of youth rioting, a phenomenon that has been observed increasingly on an international scale (*c.f.* the " rock and roll " riots of a few years ago and the more recent " jazz " riots in the United States, England and elsewhere), Dr. Gibbens notes that at times these groups appear as a

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P.O. Box 6355,
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"**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.
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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.

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

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herd-like defence against the common enemy with the police identified as a common—if usually quite symbolic—representative of authority and the adult generation. Members of these groups, he emphasizes, do not usually have a delinquent record, and there is no indication they come in the main from broken homes or possess other characteristics of delinquents.

Unesco—The School's Potential

The report submitted by Unesco, while emphasizing the importance of the social and educational role to be played by the school in preventing juvenile delinquency suggests that its potentialities can only be realized through close contact and co-operation with the parental and other socio-educational workers. The fact that in the course of the present process of social change the family has forfeited some of its educative influence, confronts the school with the additional task of taking the initiative and working with parents in bringing up their children. But in the future it would not be enough to entrust teachers and social workers with the task of carrying on family education and therapy without first putting into their hands a serviceable methodology. It could then contrive the elimination of some of the structural danger points, such as the uneasiness and stress put on the children by too early and hard competition and examination, or the coincidence of important changes of school and crises in the life of the child. In particular, the report notes, great possibilities would be open when it became universally possible to lengthen the period of compulsory school attendance by some years. During these final years, it is considered, the main point of teaching should be the turning of the interest of young people towards finding an orientation to their lives, not only through vocational training and guidance in the conventional sense, but by giving young people the opportunity of developing an independent spiritual orientation, and in the years of this transition at school, young people should be mainly engaged in carrying out independent projects, thus finding their various ways to an understanding of the real world.

Senior Police Officers—Penetration of Environment

In their report on the preventive and social functions of the police, the International Federation of Senior Police Officers concludes that nothing in the social order is nowadays outside the scope of activity of the police chief and expresses its belief that whilst keeping its classic qualifications, the police service which evolves in a new social perspective is in process of bringing a contribution to the solution of the problem of the social inadaption of children not only by its official judicial work, but also in co-operation with all those services which have moral and material charge of juveniles. The report points out that the preventive role of the police in the realm of juvenile delinquency is an established fact, recognized in the majority of contemporary States, and suggests that it is at this level that its most efficacious and delicate mission is to be found. The most suitable method by which this role can be implemented, it is considered, is by the penetration of the environment of the child, but since it is known that children considered by their teachers and parents to be well behaved, are often anti-social when brought into contact with the general public, the police officer is bound to take into account a number of particularly complex and variable facts according to the individual and environment under consideration. The laws of the majority of countries leave to the police officer a margin of initiative necessary when entering the realm of prevention of juvenile delinquency, and since it is usual for the police officer to be the only representative of social order in public places, it is he who must exercise the role of guide and protector.

Relationship with Parents

The relationship between parents and the police is also discussed in the report, and it is pointed out that the approach of the police officer to the family is often considered to be an intrusion into private life. It is therefore necessary, the report considers, for the police officer by his behaviour and his firm, just and unbiased authority, to try and do away with these regrettable prejudices. It is also stressed that the police officer has many occasions in the exercise of his functions to interview parents, either at his own initiative or at their request, and that co-operation with other services concerned with children can provide him with the means of entry into the family circle. The report sums up the fundamental duties of the police as seeing that the child understands the essential function of the police; securing his interest in the practical work of the police; giving the child the impression that the confidence of a police officer is worth while and that he can even arouse his admiration, and, finally, giving him the impression that the police are interested in him and will protect him.

[Included in the Supplement are summaries of the reports dealing with pre-release treatment and after-care of prisoners, integration of prison labour with the national economy including the remuneration of prisoners, criminality resulting from social change, short-term imprisonment and new forms of juvenile delinquency. Individuals will disagree with much of what is written in these reports yet it is always of value to get the other person's point of view and the Supplement is commended to all our readers for careful study.]

Fined for Burglary.—It is seldom that we read of a fine being imposed for the offence of burglary, because it is among the graver types of crime and as such imprisonment for life may be the penalty. Like other crimes, however, it differs widely in its seriousness, and occasionally a conviction may be followed by a probation order. *The Western Daily Press* reports a case in which the learned Recorder of Bridgwater imposed a fine of £50 on a man convicted of burglary. The reason was that the prisoner had not been guilty of violence or terrorized the householder and his wife: had this not been so, said the Recorder, he would certainly have been sent to prison. That is understandable, for one reason why burglary is regarded as a grave crime is that often it means that people are alarmed in the night by an intruder who may well be a dangerous and violent criminal. The general power to fine on conviction of felony on indictment was conferred by s. 13 of the Criminal Justice Act 1948. (*1960*) *124 J.P.* 523.

TOWN AND COUNTRY PLANNING APPEALS.

B.G.M. Construction Company Ltd. and Others *v.* Mount Wellington Borough

Town and Country Planning Appeal Board. Auckland. 1960. June 17, 24.

Zoning—District scheme making adequate provision for Industrial zones—To be taken into account in considering appeal against zoning—Land at rear of shops—Suitability as car park—Commercial zoning upheld.

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

When the Council's proposed district scheme was publicly advertised, the appellant companies lodged objections to the zoning of their properties. These objections were disallowed and these appeals followed. The appellant companies' interests were all identical and they were all under the same management so that the appeals were, by consent of the parties, heard together.

Whyte, for the appellants.
Pleasants, for the respondent.
Finlay, for the owners of property affected.

The judgment of the Board was delivered by

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

1. The land under consideration lies between Queen's Road and the main highway, which formerly formed part of Domain Road. Some of this land is zoned as commercial B and some of it is zoned as residential. The appellant companies seek to have this land re-zoned as Light Industrial. It will be convenient to deal with the two areas under consideration under separate as follows:
   (a) *Commercial.*
   The appellant companies own between them properties Lots 1 to 25, both inclusive, on Deposited Plan No. 39076. These properties all front on to Queens Road and they will have commercial buildings erected on them. None of these commercial buildings extend the full depth of the sections and the proposal is that the southern portions of these shop sites at present unoccupied should be re-zoned as light industrial and merged in with other lands owned by R. F. Batson & Co. Ltd., at present zoned as residential, so as to form one small light industrial area.
   (b) *Residential.*
   The land under consideration here is Part Lot 3, Lot 4 and Lot 5 on Deposited Plan No. 38838. The proposal here is that these lands should be merged with the commercially zoned land referred to above into a light industrial zone, but designating Parts Lot 4 and 5 fronting on to Domain Road as a proposed car park. This residential land adjoins residential property zoned as residential and occupied as such by various owners, who were represented at the hearing and who had filed counter-objections to the appellant companies' proposal.
2. The evidence shows that land lying to the south-east of this area is predominantly residential in character and it is proposed to develop the land on the opposite side of Domain Road as a public recreational reserve.

   The Council's proposed district scheme appears to make adequate provision for industrial zones in other parts of the Borough, and there is no evidence of any pressing need for further industrial zoning. The land actually fronting on to Domain Road is suitable for residential development and the Board considers that that zoning is appropriate. As to the land zoned as commercial, which the appellants seek to have re-zoned light industrial, it is true that this land is at present unoccupied, but it forms an integral part of the commercial zone and as such could be used for commercial expansion. Under the commercial B zones, one car park lot is required for every 400 square feet of shop building. The shops now erected in this commercial zone and fronting on to Queen's Road were erected before there was any scheme in operation and so at the time that they were erected they could not be required to provide off-street parking. Most of the shops have basements, which are used for various purposes, some of them probably coming into the category of industrial uses, and the Board accepts the Borough Engineer's estimate that approximatey 75 car park lots would be required to comply with the requirements of the Scheme in relation to off-street parking. The vacant land at the rear of the shops under consideration could well be adapted for the purpose of providing off-street parking facilities for the occupiers and employees of the shops fronting on to Queens Road. The Board considers that the Council acted properly and in accord with town-and-country-planning principles when it declined the appellant companies objections. All appeals are disallowed.

Appeals dismissed.

Bartell *v.* Mount Wellington Borough

Town and Country Planning Appeal Board. Auckland. 1960. June 16, 24.

Zoning—Small special zones generally to be avoided—Special circumstances—Land otherwise to be allowed to remain idle—Residential zoning not appropriate for land fronting Main Highway carrying substantial volume of traffic.

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

The appeal related to the zoning of four sections of land fronting on to Domain Road owned as follows:

Lot 20 owned by R. M. F. Neill; Lot 21 owned by the Australia and New Zealand Bank; Lot 22 owned by L. W. and M. F. Roberts; Lot 23 owned by R. F. Batson & Co. Ltd. Under the Council's proposed district scheme as publicly notified these properties were zoned as residential and requested industrial zoning. Their objections were opposed by the appellant and other owners of residential properties in the vicinity. The Council allowed the objections and re-zoned the land as a special zone industrial A1. This appeal followed.

Finlay, for the appellant.
Pleasants, for the respondent.
Whyte, for R. F. Batson & Co. Ltd.
Chignell, for the Australia and New Zealand Bank Ltd.
L. W. and M. F. Roberts.
The judgment of the Board was delivered by

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

1. Domain Road, formerly a quiet residential street carrying only local traffic has, in the locality under consideration been converted into and now forms part of the Main Highway leading to the Tamaki Bridge and the large areas lying beyond the Bridge.
2. The area to the south and south east is predominantly residential in character.
   The properties are bounded to the north by the southern boundary of a commercial zone fronting on to Queen's Road. The Queen's Road frontage of this commercial zone is fully built on.
3. The Board would have considered a residential zoning appropriate but for two factors, viz.
   (a) The properties front on to a main highway carrying a substantial volume of traffic which can be expected to increase materially in density in future.
   (b) They are, to a great extent, overshadowed by commercial buildings erected on Queen's Road which is on a much higher level.
4. For the reason given in para. 3 (a) (*supra*) they are not suitable for commercial zoning.
5. The Board as a general principle does not approve of the erection of small "special" zones. They are to be avoided as far as possible but cases do arise when the only alternative to allowing land to lie idle is to create some form of special zone restricting its use in such a way as to minimise as far as possible any detraction from the amenities of the locality. That is this case.

   Under the Code of Ordinances relating to industrial A1 zones predominant uses are restricted to a very limited industrial field and the conditional uses are so framed as to ensure that the Council will be able at all times to keep control and protect the amenities of the neighbourhood. The Board considers that the Council in zoning the land as industrial A1 followed the only reasonable course open to it in special and difficult circumstances.

The appeal is disallowed.

Appeal dismissed.

(*Continued on p. 384*)

IN YOUR ARMCHAIR—AND MINE.

By SCRIBLEX.

A Note on Penguins.—*Lady Chatterley's Lover*, the erotic novel of D. H. Lawrence which provided the first case of its kind in England since the Obscene Publications Act 1959, may by its ramifications establish strong grounds for its repeal. Despite the verdict of the jury in favour of Penguin Books Ltd., subsequent criticism would indicate that there is much public support for the contention of the prosecution that the book "sets on a pedestal adulterous intercourse and commends and sets out to commend sensuality almost as a virtue, and encourages and advocates vulgarity of thought and language". Filled as it is with four-letter Anglo-Saxon words descriptive of anatomical functions and carnal activities—there are some seventy of them used, one being repeated thirty times, others as many as thirteen and fourteen times—and with descriptions of some twelve vividly-described incidents of sexual intercourse, it is not surprising that even enlightened followers of modern literature find it difficult to understand the enthusiasm, since the trial, of education authorities to provide the novel as a source of study for their pubescent pupils. On the other hand, the verdict of a mixed jury of nine men and three women provides support for the view that, judged by the standards of the community, the book is not obscene. This was certainly not the view of the critics when *Lady Chatterley's Lover* was first published in 1929. They banned it unmercifully, and saw little or no merit in it save as fuel, but World War II with its spate of uninhibited war books that sought to express the thoughts of servicemen under varying war conditions opened up a new era of literary frankness that marks the majority of works of fiction sold today. None of these exceeds Lawrence's novel in sexual bawdiness despite the artistry which has placed him in the forefront of modern writers: indeed, it might well be said that no franker book of its kind can be found in any language. The issue before the jury in England was not, as it is in New Zealand, whether *Lady Chatterley's Lover* unduly emphasizes sex. If it had been, the task of Sir Gerald Gardiner Q.C., even with his battery of churchmen, school-mistresses and literary experts might have been much harder.

Contingent Fees.—The justification by American practitioners of the contingent fee in litigation on the ground that the lawyer is only paid if he wins (and a good settlement is reckoned a good win) has always appeared somewhat specious and of dubious ethical value. Recently the President of the American Bar Association observed: "The contingent fee developed as a necessary means for assuring the economically less fortunate that they would have their day in Court, even against corporate giants". In the United States there appears to be no control judicially over contingent fee contracts save in parts of New York. The scale regarded as reasonable as between lawyer and client is either a flat 33⅓ per cent. maximum of the sum recovered or the following scale—50 per cent of the first 1,000 dollars of the sum recovered, 40 per cent. of the next 2,000 dollars, 35 per cent. of the next 22,000 dollars and 25 per cent. of any amount over 25,000 dollars. "If we are to apply this scale to common-law claims in England", says one writer, "even making due allowance for failures we could make our litigation departments much more economic". This seems to SCRIBLEX one of the classic understatements of the year.

Made Your Will Yet —"When one considers that a considerable portion of the work of lawyers deals with the interpretation of statutes it is somewhat ironical that the statute relating to the legal profession should fail to provide a definition of the term 'conveyancer' more particularly when the term is used in a penal section": *Anderson* v. *McCulloch* per Keane S.M. (2/11/60).

Professional Earnings in England.—The recent report of the Royal Commission on Doctors' and Dentists' Remuneration shows that in the course of its investigations resort was made to the comparative earnings in the United Kingdom of barristers and solicitors. A survey of those of 393 barristers and 2,643 solicitors is the basis for it. Average earnings of the barristers were £2,075, and over the top ten per cent. £5,200. Similarly analysed those of the solicitors were £2,205 and £4,228; but, as tabulated in an age group under 35, the barrister averaged over £857 as against the solicitor's £1,244 and it took him seven years of practice to achieve the earnings of a solicitor admitted at the same time.

That Tired Feeling.—"To quote a surfeit of authorities for trite legal propositions is the hallmark of the novice lawyer. But this, tiresome and time-consuming as it often may be, is after all, an innocuous failing. The same cannot be said of the omission to refer in argument on disputed points of law to relevant cases and authorities. If we believe the contributors to the latest *Annual Survey of South African Law*, there were in 1959 no fewer than ten important cases in which difficult legal issues were argued without, apparently, reference having been made to previous decisions directly in point."—Aemilius in *The South African Law Journal*, August, 1960.

Tailpiece:

Albertine: "I've always meant to give you the lake house, Lily, and tomorrow we'll go round and have Warkins do the papers. . . ."

Lily: "How old is Mrs Warkins"

Albertine: "I know little about her, Lily. It's bad enough to know Warkins. I remember her as a tall woman with a sad face. Possibly from being married to a lawyer."—Lillian Hellman in *Toys in the Attic*. (Random House, 1960.)

Retainers.

Counsel and jockeys are not unalike,
For with both it's winners that count,
And though much may be done by the riding,
A great deal depends on the mount.

J. C. P. in *124 J.P.* 539.

If only you could "take it with you,"
You think you'd be then in the clear z
But the State would simply make certain
To take all of it while you were here.

J. C. P. in *124 J.P.* 545.

TOWN AND COUNTRY PLANNING APPEALS.

(*Concluded from p. 398.*)

Glen Innes Residents and Ratepayers Association (Inc.) *v.* Auckland City Council.

Town and Country Planning Appeal Board. Auckland. 1960. July 25, 29.

District Scheme—Land zoned as industrial B—Light industrial zones desirable in suburban areas to meet need for garages, dry-cleaning factories, wood and coal depots and other service amenities—Principles to be applied.

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

Under the Council's proposed district scheme, as publicly notified, an area described as Lots 419 and 420 on Deposl ed Plan 43832, containing 21 ac. 1 ro. 29 pp. was zoned as industrial B. The appellant lodged an objection to this zoning ,claiming that the land should not be committed to industrial use. This objection was allowed in part in that an area of approximately three acres at the northern end of the block was re-zoned proposed reserve and embodied in a larger area already zoned as a proposed reserve. The appellant appealed against the decision.

Southwick, for the appellant.
Hanna, for the respondent.
Macklow, for the Minister of Works.

The judgment of the Board was delivered by

REID S.M. (Chairman). After hearing the evidence adduced and the submissions of counsel, the Board finds as follows:

1. The area under consideration is bounded generally to the west by Apirana Avenue, to the south by Taniwha Street, to the east by Line Road, and to the north by an area designated as a proposed reserve.
2. When the appeal came to hearing counsel for the appellant intimated that it was not proposed to pursue the appeal on some of the grounds put forward on the hearing of the objection and the appeal was related broadly to the proposition that this land should be zoned for recreational purposes. The proposed district plan makes provision for a commercial shopping centre to the south of the area under consideration, bounded generally by Taniwha Street, the main trunk railway line and Line Street. To the east of this commercial zone is a block of land containing approximately two acres and designated as reserve for community purposes.
3. The land under consideration is owned by the Crown, held by it for the purposes of the Housing Act 1955, and it constitutes part of what is generally described as the Tamaki Housing District. The appellant's case is that the area under consideration, having regard to the fact that it is close to a proposed civic centre, should be designated for recreational use, as being an appropriate use of land adjoining a civic centre.
4. It was suggested that there was not sufficient provision made in the plan for recreational reserves in the Glen Innes area. This proposition was not borne out by the evidence. The Tamaki Housing Block comprises 1,680 ac. of which a total area of 170 ac. has been provided or will be provided as recreation reserves. The Board considers that this is adequate. A large recreation area has been set aside at Point England which will make adequate provision for all forms of organized sport, football, cricket and so on. The area to the north of the land under consideration, which had been designated as proposed reserve, will provide three to four acres as an informal recreation area and adjoining the area set aside as a community centre there is a large reserve area containing approximately 13 ac. of which at least five to six acres can be developed for recreational use. The schools provided for in the Glen Innes area all have adequate recreational grounds of their own.
5. It is in accordance with sound town-planning principles to make provision for some light industrial zones in suburban areas to meet the local needs for service industries, such as garages, petrol stations, drycleaning factories, wood and coal depots and other service amenities and also to provide local employment for some of the inhabitants of such an area.
6. Having regard to the fact that the area under consideration does not impinge upon any residential zone, with the exception of a few State houses on the eastern side of Line Road, and that the proposed reserve lying to the north will provide an adequate buffer zone between the industrial zone and the residential zone to the north, the Board considers that the zoning as industrial is appropriate and that it will not in any way detract from the amenities of the neighbourhood. The appeal is disallowed.

Appeal dismissed.

Hay *v.* Auckland City Council

Town and Country Planning Appeal Board. Auckland. 1960. July 26; August 3.

Zoning—Appeal from disallowance of objection—Appeal to be related to objection and cannot be extended to embrace other land not covered by objection—Commercial development to be sited away from busy intersections—Present business to be carried on as existing use.

Appeal under Section 26 of the Town and Country Planning Acts 1953.

The appellant was the owner of a property known as No. 1771 Great North Road, Avondale, containing 1 ro. 14.6 pp. more or less being part of Allotment 14 of the Parish of Titirangi which under the Council's proposed district scheme as publicly notified in an area zoned as residential. The appellant objected to this zoning claiming that part of his land should be zoned as commercial. Although he related his appeal to all of the above-described land the record of the hearing of objections indicated that he related his objected only to a portion of his land viz. 22 pp. having erected thereon a combined shop and dwelling. The shop was a small combined dairy-grocery business and a well recognized type of suburban business.

Thom, for the appellant.
Hanna, for the respondent.

The judgment of the Board was delivered by

REID S.M. (Chairman) As the appeal is an appeal against the disallowance of an objection it must be related to the objection and cannot be extended to embrace the balance of the appellant's land.

The Board finds as follows:

1. The property under consideration is situated on the intersection of Victor Street with the Great North Road and almost opposite to the intersection of Henry Street with the Great North Road. This is an important and busy intersection and one which can be expected to be required to cope with very substantial volumes of cross traffic in future.
2. It is a well recognized town-planning principle that wherever practicably possible commercial development should be sited away from busy intersections.
3. The Council's plan makes provision for a commercial zone situated on both sides of the Great North Road some three chains to the south of the appellant's property. This commercial zone is not fully developed. In its decision on a recent appeal (No. 81/60 Ivan John Milicich and Auckland City Council) which related to the zoning of land on the south-eastern corner of the intersection of Henry Street with Great North Road, the Board held that there was already sufficient land zoned for commercial use in this locality to meet the future foreseeable commercial needs.
   It is still of the same opinion.
4. In a great many schemes provision is made in the Code of Ordinances for the sale of groceries and dairy products to be permitted as a conditional use in Residential zones. (See the Fourth Schedule to the Regulations under the heading "Residential A Zones") but the respondent Council's Scheme does not contain such a provision. The appellant can continue to carry on this type of business on his present premises as an existing use and as the evidence is that the shop at least is a substantial structure he should be able to do so for many years. To change the zoning of the land to commercial would mean that any type of business permitted in a commercial zone could be carried on as of right and many of such businesses would undoubtedly detract from the amenities of an area zoned as residential and predominantly residential in character. The appeal is disallowed.

Appeal dismissed.