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NEW LEGISLATION OF INTEREST TO PRACTITIONERS.

IN our Parliamentary column we have endeavoured to keep practitioners more or less up to date with Bills which are of interest to the profession, but now that the Session has closed, it is desirable to survey the whole of the legislation of the year and give detailed explanations of those Acts which contain matter affecting the activities of practitioners. The Land Transfer Amendment Act 1960, the Stamp Duties Amendment Act 1960, and the Death Duties Amendment Act 1960 will be dealt with by our contributor, Mr. E. C. Adams.

Details of the various new statutes are as follows :

Acts Interpretation Amendment.

A new section, 20A, is added to the principal Act, containing a general saving clause to operate on the repeal or revocation of any statute or subordinate legislation. It follows the provision usually used in consolidating Acts and will require to be kept in mind when such an Act calls for interpretation, or the validity of something done under the repealed Act requires consideration.

Administration Amendment.

New sections, 30A and 30B, are inserted in the principal Act. Section 30A grants protection to an administrator under certain circumstances in respect of claims under the Family Protection Act or the Law Reform (Testamentary Promises) Act, or arising out of any contract to make a will containing certain specified provisions, or not to revoke such a will or not to make a will at all. Section 30B contains provision for following assets which have been distributed into the hands of the beneficiaries. Section 4 prohibits the grant of administration to companies other than trust companies.

Bankruptcy Amendment.

Section 2 of the Act is obviously designed to overcome the decision in *R.* v. *Mantell* [1960] N.Z.L.R. 624. It provides that the Chairman at any meeting shall be the Assignee or some person appointed by him. If neither the Assignee nor a person so appointed is present at a meeting then, a provision following the original s. 95 of the Bankruptcy Act takes effect. There are consequential amendments to ss. 60 and 95 (6).

Cheques.

This Act is designed to relieve from liability a banker who, in good faith, pays an order cheque which is unindorsed or irregularly indorsed.

Child Welfare Amendment.

The main purpose of this Act is to provide a right of appeal from either conviction or sentence or both by the Children's Court.

Criminal Justice Amendment.

The committal to detention centres of persons between the ages of 16 and 21 is authorised by this Act and also the release on probation of persons committed to detention centres. The relevant sections are to come into operation on a date appointed by the Governor-General in Council.

Inland Revenue Department Amendment.

When introduced as a Bill this Act was dealt with in our Parliamentary column (*ante*, 346). We then commented on its provisions as to costs, which, we suggested, might require re-consideration. The provision that no costs shall be awarded to or against the objector on the Commission still stands.

Joint Family Homes Amendment.

Section 16 of the principal Act (s. 4 of the Joint Family Homes Amendment Act 1952) is amended. That section (as amended in 1955) exempted from estate duty a joint family home up to a value of £3,000 where one of the joint tenants died during the lifetime of the other joint tenant. The new amendment adds a proviso that if on the death of the joint tenant there existed grounds for cancellation of the registration of the property or part of it as a Joint Family Home under paras. (c), (e) or (f) of s. 8 (1) of the principal act, s. 16 should not apply to such property or such part of it. The grounds referred to in the above paragraphs are :

(c) Where the husband and wife cease to be joint owners of the land.

(e) Where the husband and wife have ceased to reside on the land or it has ceased to be used as a home by husband and wife or either of them.

(f) Where the certificate should not have been issued.

Judicature Amendment.

New sections, 58A and 58B are added to the principal Act providing for the cases of a witness who fails to attend in response to a subpoena, and a witness who attends and refuses to give evidence. A further new section, 58 (c) contains a partial definition of contempt in face of the Court, and provides a penalty of three months' imprisonment or a fine of £100 for each offence.

The Court's jurisdiction in respect of other types of contempt is not affected. Section 4 gives the Court a discretion to order trial before a Judge alone notwithstanding the serving of a jury notice, if the trial involves mainly the consideration of difficult questions of law or the prolonged examination of documents or accounts or some particular type of investigation not suitable for a jury to undertake.

Land and Income Tax Amendment.

Part I provides for objections to assessments to be referred to a Board of Review instead of to the Magistrates' Court. Part II contains provision for relief from double taxation while Part III contains various amendments too numerous for setting out in this article.

Licensing Amendment Act.

The principal provisions are :

(a) The vesting of power in the Licensing Control Commission to suspend a Club Charter instead of revoking it.

(b) The transfer to the Land Valuation Court of Appeals from the Commission's determination as to compensation.

(c) The creation of power to cancel a licence for failure to comply with directions.

(d) The amendment of the definition of the term "intoxicating liquor" to include beverages containing two per cent or more of alcohol.

(e) The taking away from holders of wholesale licences of the right to sell liquor otherwise than in bottles.

(f) Provision for the fixing of a fair price to be paid on the removal of a licence.

(g) Authorisation of the supply of liquor to persons registered as lodgers but sleeping away from the licensed premises.—see *Bennett* v. *Mitchell* [1959] N.Z.L.R. 342.

(h) Provision for the locking of bars when licensed premises are required to be closed.

(i) The extension of hours within which liquor may be served with meals in hotels or chartered clubs.

(j) Authority for consumption of liquor at social gatherings under strict conditions.

(k) Provision for the grant of ten restaurant licences.

Maori Purposes Amendment.

Section 3 adds two paragraphs to s. 2 (2) of the principal act defining the status of land. Section 6 adds a new subsection, (2a) to s. 115 of the principal Act declaring that where a Maori devises Maori freehold land on trust for sale, the interest of every beneficiary under the trust shall remain an interest in Maori Freehold Land until the land is actually sold.

Police Offences Amendment and Police Offences Amendment (No. 2).

The first of these Acts creates a number of new offences and repeals the Police Offences Amendment Act 1951. The second, which is aimed principally at public disturbances, creates the offences of riotous behaviour in a public place, with a much increased penalty than that formerly applicable to a charge of disorderly conduct, and drinking on a public conveyance or, in the case of minors, in a public place. Section 4 authorises the cancellation of any driving licence held by a person convicted of certain offences.

Trustee Amendment.

Section 3 empowers a trustee to sue himself or to be sued by himself in some other capacity. Section 4 empowers a trustee to protect himself against outstanding claims by advertisement. Section 5 gives protection to a trustee who delivers a chattel to an infant, or to the guardian of an infant, when that infant is absolutely entitled to the chattel. Section 7 validates the imposition by a trustee of conditions on maintenance payments which he is entitled to make, and s. 8 empowers the Court to authorize dealings with trust property under certain circumstances. Section 9 empowers the Court to authorize variations of a trust under certain circumstances and s. 10 repeals s. 72 of the principal Act dealing with trustees commission and replaces it by another section. Sections 11 and 12 deal with the barring of claims against an estate and the distribution of shares of missing beneficiaries.

Wills Amendment.

This Act makes only a minor amendment to s. 16 of the Wills Amendment Act 1955 (s. 3 of the Wills Amendment Act 1958) which does not seem to affect the operation of that section.

Workers' Compensation Amendment.

This Act provides cover for a worker while he is travelling by the most practicable route between his place of employment and premises (other than residential premises) to which he has right of access by virtue of his employment, and also while he is on such premises. Section 18 of the principal Act relating to hernia claims is also amended to give the Court a wide discretion to determine whether an incapacity caused by hernia has arisen out of and in the course of the worker's employment.

SUMMARY OF RECENT LAW.

PRACTICE.

Trial by jury—Jury notice not given—Motion for leave to set down for trial by jury—All parties consenting—Consents cannot cure lack of jurisdiction—Principles applicable—Judicature Amendment Act (No. 2) 1955, ss. 2 (2), 3. The jury notice required under s. 2 (2) of the Judicature Amendment Act (No. 2) 1955 must be given before each session at which the action, if set down, will come to trial. If such notice is not so given, the consent of parties cannot cure what is, in fact, a lack of jurisdiction. The proviso to s. 3 of the Act gives the Court power to direct trial with a jury if it is made to appear that the action or any issue therein can be more conveniently so tried. This power is not to be exercised merely because it is convenient to the parties to invoke it in order to avoid the consequences of office mistakes, but is to be used when there are questions arising for determination better fitted, as a matter of the convenience of the Court, to be left to the verdict of a jury. For the defendant and third party (if any) to join with the plaintiff in saying that trial by jury is more convenient does not make it so. *Kemble* v. *Bedogni and Another : McLean* v. *Bedogni and Another : S. K. Stephens* v. *Bedogni and Another* ; *J. D. Stephens* v. *Bedogni and Another : Foster* v. *Attorney-General and Another.* (S.C. (In Chambers.) Auckland. 1960. July 29. Hardie Boys J.)

SALE OF GOODS.

Motor car—Damages for breach of warranties—Implied warranty of merchantable quality—Sale of "car" a sale by description—Particular purpose of goods—Buyer asking for goods by description is sufficient to make known purpose—Buyer buying car with a view to resale—Reselling a purpose to which warranty applies—Goods Act 1958 (Vict. No. 6265), s. 19. Where an article has but one use, the mere fact that the buyer asks for the article by that description may in the circumstances amount to a making known of the purpose for which it is required so as to show reliance on the seller's skill and judgment within the meaning of s. 19 of the Goods Act 1958. When therefore a person asks a motor dealer for a motor car which he then buys, the particular purpose for which he requires the car is to drive it as a conveyance and there is an implied condition in such a sale that the car is fit for that purpose regardless of whether the buyer desires to use the car himself or to resell it at a profit. *Frank* v. *Grosvenor Motor Auctions Pty. Ltd.* (Supreme Court of Victoria. 1960. February 24, 25, 26; March 15. Pape J.) [1960] V.R. 607.

TRANSPORT.

Licensing—Available route—Effect of amending legislation—Transport Act 1949, s. 96 (6) (a) (Transport Amendment Act 1959, s. 8)—Transport Amendment Act (No. 2) 1958, s. 8. The word "available" as used in s. 96 (1) of the Transport Act 1949 means "capable of being used" or "susceptible of use" and there is nothing in s. 8 of the Transport Amendment Act (No. 2) 1958 which alters this meaning. Section 96 (6) (a) of the Transport Act 1949 as enacted in s. 7 of the Transport Amendment Act 1959 applies only where a diversion from the customary route would be required in order to connect with the railway. If in fact no diversion or deviation from the customary route is necessary neither the main part of para. (a) nor the provision thereto can have any application. *Transport Department* v. *Balle* (1960. July 13; August 5. Coates S.M. Auckland).

TRUSTS AND TRUSTEES.

Purchase of trust property by trustee. *(1960) 110 L.J.*, 569.

VALUATION.

Value for death-duty purposes—Undivided share in freehold land—To be valued as such and independently of the value of the land as a whole—Valuation of Land Act 1951, ss. 2, 45. Section 45 of the Valuation of Land Act 1951 is not applicable to the valuation for death-duty purposes of an undivided share in a freehold estate. In valuing such a share the Valuer-General should have regard to the definition of capital value contained in s. 2 of the Act, and should value the undivided share as such, and independently of the value of the land as a whole. *In re an Appeal by the Executors of Thornton Jackson (Deceased).* (L.V.Ct. Auckland. 1960. July 29; September 6. Archer J.)

WILL.

Condition subsequent—Forfeiture of interest if will contested—Testator's family maintenance—Application by legatee—Whether a proceeding "to contest" will—Whether condition valid—Public policy—Administration and Probate Act 1958 (Vict. No. 6191), Part IV. By his will, a testator bequeathed certain stock to his daughter and gave the residue of his estate to his son. He declared that if either of his beneficiaries "be dissatisfied with any of the provisions of this my will and institute or cause to be instituted at law or in equity any action suit or other proceedings to contest any of the provisions of this my will such beneficiaries shall upon the institution of such action suit or proceedings forfeit all his her or their share and interest in my estate". The daughter wished to make application under Part IV of the Administration and Probate Act 1958 (Vict.) for further provisions for herself. *Held,* On originating summons, 1. Such an application would be a proceeding "to contest" the provisions of the will. 2. The declaration contained a condition subsequent attached in the case of the daughter's legacy to a gift of personalty which provided for a bare forfeiture on the happening of the condition with no gift over on forfeiture, and having regard to the nature of the condition, it was merely imposed in terrorem, was repugnant to the gift and void. 3. The condition was also void as being against public policy because its object and effect was to deter the beneficiary from having recourse to the Courts in a matter in which it was in the public interest that she should be free to have recourse. *In the Will of Gaynor (Deceased).* (Supreme Court of Victoria. 1960. May 20, 31. O'Bryan J.) [1960] V.R. 640.

WORKERS' COMPENSATION.

Accident arising out of and in course of employment—Hernia—Disabling character need not arise from pain—Extent of duty to report immediately—Circumstances in which delay in reporting may be excused—Workers' Compensation Act 1956, s. 18. When compensation is claimed for incapacity resulting from a hernia it need not necessarily be the pain of the hernia that leads to the stoppage of work that is the test of the disabling character of the hernia required by s. 18 (1) (a) (i) of the Workers' Compensation Act 1956. If the stoppage is caused by another symptom such as faintness resulting from the onset of the hernia, that is sufficient. The report required by s. 18 (1) (c) must be made with reasonable promptitude having regard to the circumstances in which the worker finds himself. If the first opportunity to make the report is not taken there is a failure to report immediately, and if an opportunity to make a report does not present itself within a very short time the worker must seek out his employer and report his condition. Observations on the circumstances in which a failure to report may be excused. *Jensen* v. *William Cable Ltd.* (Comp. Ct. Wellington. 1960. August 4, 24. Dalglish J.)

Christmas Message to the Profession

From the ATTORNEY-GENERAL.

I gladly accept the opportunity afforded me by the Editor of the LAW JOURNAL *to send a message to practitioners.*

The year was made notable for us by the visit of the Lord Chancellor and the success of the Eleventh Dominion Legal Conference. The presence of the Lord Chancellor and his inspiring address deepened our respect for the ancient traditions of the law; while the informed discussion at the Conference of a variety of new questions showed the readiness of lawyers to meet the problems of changing times.

As I shall be leaving the office of Attorney-General in a few days, I would express my gratitude for the help and goodwill I have had from the profession; not only from the New Zealand Law Society and the Law Revision Committee, but also from practitioners. I have always found the profession ready to ensure that the fruits of its wisdom and experiences are made available for the public well-being. The satisfaction of service in it and the goodwill amongst its members will remain one of my enduring memories of office.

I send all practitioners my good wishes for the Christmas Season and the future.

H. G. R. MASON.

Attorney-General's Office,
Wellington.
28 November, 1960.

MR JUSTICE F. B. ADAMS.

Complimentary Dinner.

On Thursday October 27, the Canterbury District Law Society tendered a complimentary dinner to Mr Justice F. B. Adams on the occasion of his retirement from the Bench. The invited guests were Mr Justice T. A. Gresson, Mr Justice Macarthur, Mr Justice Richmond, Judge Archer, Mr Reid S.M., Mr Ferner S.M., Mr Lee S.M., Mr Blair S.M., and Mr J. Gerken, Registrar of the Supreme Court at Christchurch.

After the Loyal Toast, the toast of the guest of honour was proposed by Mr P. H. T. Alpers who said that this was a passing-out parade, although it had to be remembered that a retiring Judge was still fated to be considered, followed, overruled and distinguished for many years; Judges in fact, he said, died a slow death. The truth was that his Honour was faced with an irrebuttable presumption that at 72 he was slipping into senility, although his Honour looked a very spry 72 and, in any case, a man of 72 years now was much younger than a man of 72 had been in 1903.

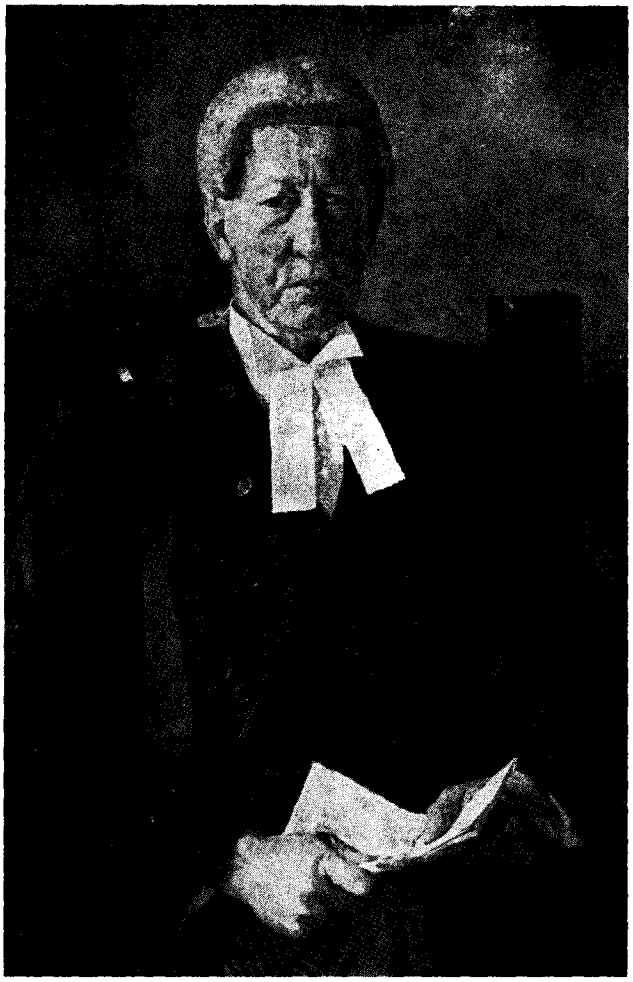
He thought the Society did well to honour Mr Justice Adams as the epitome of modern New Zealand requirements of a judge because:

Firstly, he was a man of the world who had been a soldier, a Crown Solicitor of many years standing, and the father of a family.

Secondly, he was a lawyer who came up to Bacon's requirements of being "more learned than witty, more reverend than plausible, more advised than confident", and the extraordinary thing was that he was the third Dunedin Judge of the same calibre who had been sole Judge in Christchurch where Sir John Denniston and the two Adamses had sat for fifty out of the past seventy years.

Thirdly, he was hard-working.

Fourthly, he exhibited all that tact and extreme circumspection which was one of the most striking traditions of the New Zealand judiciary, a tradition somewhat different from that in the United Kingdom and something of which the Dominion should be very proud and,



Portrait of Mr Justice F. B. Adams by W. A. Sutton, commissioned by the Canterbury District Law Society and to be hung in the Supreme Court at Christchurch.

Fifthly, he had that integrity which, as Bacon said, was the "portion and proper virtue" of Judges.

Mr Alpers then referred to certain New Zealand Judges of the past and also to the rather different attitude to prisoners and counsel of English Judges of earlier times. He then discussed the different situation which confronts New Zealand Judges today compared with English Judges, saying that a distinguishing feature of New Zealand was that here Jack is, and always has been, as good as his master. If there ever had been a day in New Zealand for the browbeating of witnesses and parties it had gone, and this brought him to what he thought, with respect, was Adams J.'s greatest accomplishment—namely the pleasant, unrestrained atmosphere of his Court He had once seen his Honour put his pen firmly down on his notebook and lean forward as he spoke to counsel. He thought that was the most extreme sign of irritation his Honour had ever shown in Court. Some situations his Honour had dealt with by glancing up at the skylight in a well-known attitude; others had been dealt with by a deliberate lowering of voice where one might expect the reverse. He had been seen to look at his watch or the clock, but for no other purpose than to tell the time.

This great restraint had its effect on counsel in his Honour's Court, who inevitably were similarly restrained in their addresses and in their handling of witnesses. It was very important, he suggested, that the Court should not be feared by the public—neither by counsel, nor by parties, nor by witnesses—respected, certainly, but not feared.

Above all, he said, parties wanted to be heard, and heard out. It was a great satisfaction to them that their counsel, whoever he was, was listened to. Adams J., he thought, habitually paid young counsel the only worthwhile judicial compliment—that of simply listening to them and dealing with their arguments quite regardless of age or experience. And all these things, he said, were done in a natural and apparently unselfconscious manner which showed an ingrained recognition of the necessity that the public should not

fear the Court and should have confidence in it.

Mr Alpers went on to say that in particular, he admired the Judge's patience in grappling with the law in the abstract. He would apply to Adams J., what E. M. Forster had written of Roger Fry, that he "had never tired of applying logic to the illogical, for him no labour of Ixion"; that his integrity and independence were more to him than seemliness; that his belief had been that man was, or could be, rational and that the mind could and should guide the passions towards civilization.

His thoroughness, of course, had been proverbial. Those who had appeared before him would have experienced the anxiety of getting a careful order minuted on the file. Just as counsel would think that everything was sewn up, his Honour's pen would stop and, in a characteristic way, his head would turn sharply to the left. This meant, alas, that something had been forgotten—probably the unborn children of a seventy-year old spinster.

But this thoroughness and this patience were not inhuman and usually ended in a rational and common-sense result. For instance in his first reported case, *Johnston* v. *Johnston* [1950] N.Z.L.R. 1016, the papers in an undefended divorce case contained a number of irregularities. Adams J. had been careful first to exonerate counsel—one G. I. McGregor—from personal responsibility for these irregularities and had then proceeded to find sound logical reasons why each of the irregularities could be overlooked.

Finally, he hoped that his Honour's resignation was not a sad event for him. There was great scope, he thought, for the voluntary exercise of the Judge's skill and knowledge, his physical and mental activity being beyond question, in work which could be just as important for the community as that which he had been doing on the Bench for the last ten years.

In reply, his Honour began by referring to the fact that this was the first occasion on which he had had the opportunity of addressing the members of the Christchurch Bar informally, and otherwise than from the Bench.

He expressed a big sense of personal gratitude to them all for the honour they had done him in commissioning the portrait which was then on display, and in attending in such numbers at the dinner. He deemed it a unique honour that his portrait should be hung in the Court and near the portrait of his late father, referring to the affection with which he knew his father had been regarded by the members of the Christchurch Bar in his day.

His Honour said that it was a sound and necessary principle that condemned a Judge still in office to a considerable measure of judicial isolation, but so far as he himself was concerned, the isolation was now ended, and henceforth he would no longer desire isolation, but would gratefully be accepted without reserve as a member of the legal fraternity.

Mr Justice Adams made reference to the changes that had occurred during the fifty-three years since he first began to be associated with the Law, and referred in particular to the complexity of the Law, and of the Judges' vocation in the moulding of the Law, expressing the view that there was still much room, where matters were not precisely covered by authority, for the exercise by Judges of a wise discretion in selecting as rules that should be followed, those they deemed to be more consonant with justice and good sense.

His Honour then indulged in some reminiscences of some early and trifling cases in which he had been concerned as a beginner in the practice of the Law, and ended by referring to the dinner then in progress as a happy culmination to his career.

The other toast honoured was that of the visitors, proposed by Mr J. G. Leggat, and replied to by Mr Justice T. A. Gresson.

LIABILITY FOR DAMAGE TO PUBLIC PROPERTY.

In *McMahon* v. *Post and Telegraph Department* [1958] N.Z.L.R. 717, T. A. Gresson J. had to consider the question of the liability of the motorist who, without negligence, carelessness or other misconduct on his part, collided with and damaged a telegraph pole. Proceedings were instituted against him by way of a complaint under s. 215 of the Post and Telegraph Act 1928 (now s. 156 (1) Post Office Act 1959) which provides as follows:

> *Every person who causes damage* to any electric line or any works connected therewith, whether or not he has been guilty of any offence against this Division of this Act, *shall be liable* to make good the damage done by him, the amount of which damage shall be determined by the Magistrate or the Justices adjudicating; and such amount when determined may be levied by distress of the goods and chattels of such person in the manner provided by law for the levying of a fine.

On the hearing of the complaint in the Magistrates' Court the motorist was ordered to pay the cost of repairs to the pole and it was against that order that he appealed to the Supreme Court. The facts of the case were that the motorist while driving at night around a corner in the road near Waihou had to swerve to avoid a cow which ran across the road in front of his car. Unfortunately, in his swerve he ran off the road and collided with the pole.

For the motorist it was conceded that liability under the section was independent of proof of negligence but it was argued that he could not be said to have *caused* the damage. It was argued that the cause was the wandering cow. His Honour held that it was not necessary to embark on any refined consideration of the doctrine of cause but adopting a practical approach held that the motorist's action in pulling his car too far to the side of the road in his swerve to avoid the cow was a contributing cause of the damage to the pole and he therefore dismissed the appeal. In arriving at his decision His Honour followed a line of English authorities under Harbours, Docks and Piers Clauses Act 1847 (U.K.), *23 Halsbury's Statutes of England* 2nd ed. 1117 which enacted that:

> *The owner* of every vessel, or float of timber, *shall be answerable* to the undertakers *for any damage done* by such vessel or float of timber, or by any person employed about the same, to the harbour, dock, or pier, or the quays or works connected therewith; and the master or person having the charge of such vessel or float of timber, through whose wilful act or negligence any such damage is done, shall also be liable to make good the same, and the undertakers may detain any such vessel, or float of timber, until sufficient security has been given for the amount of damages done by the same: provided always, that nothing herein contained shall extend to impose any liability for any such damage upon

the owner of any vessel where such vessel shall, at the time when such damage is caused, be in charge of a duly licensed pilot whom such owner or master is bound by law to employ and put his vessel in charge of.

One case in which this provision was invoked was *The River Wear Commissioners* v. *Adamson* (1877) 2 App. Cas. 743, decided by the House of Lords. The respondents were owners of a steam vessel which went ashore in a violent storm, the persons on board being saved by use of a rocket apparatus. The crew had not been able to take down the sails before they escaped from the wreck and these were left fully unfurled. After the ship had been abandoned the storm continued for several days and when the tide rose the sails acted on the vessel, battering it against the pier. The Commissioners of the Docks sought to recover the cost of repairs to the pier but, for reasons which are difficult to follow, the House of Lords held that they were not entitled to recover damages from the respondents as owners. This decision was ultimately explained in *Great Western Railway Company* v. *The Mostyn (Owners)* [1928] A.C. 57; [1927] All E.R. Rep. 113 in which the same section was considered. In speaking of the *River Wear* v. *Adamson* case Viscount Haldane said:

> It is important to know what was really laid down in this judgment which was affirmed by the House of Lords. *I think only that there having been no human agency as the cause, and the real cause having been the act of God, the case was not covered by the section. The learned Judges were at least agreed on this, that when the cause was not human agency but a vis major beyond human control, it did not come within the words.* (*ibid.* 65, 117).

Lord Shaw said:

> It may be asked—if the general doctrine of non-liability except in cases of negligence, was not decided in *Wear* v. *Adamson*, what was decided? To that I reply that *Wear* v. *Adamson was a conspicuous instance of a derelict ship from which all human agency had been withdrawn, and it was on that footing, and upon that speciality, and to that extent alone, that the judgment in Wear* v. *Adamson can be applied.* I do not say whether or not that can be characterised as a ratio decidendi, and I desire to utter no disrespectful word on that subject, but I must in duty declare that this statute seems to me still to abide in its full and comprehensive application of liability to owners, but that, in deference to *Adamson, the sole exception*, plus the statutory exception of pilotage, *is the derelict or abandoned ship case.* (*ibid.* 86, 128).

Lord Blanesburgh said:

> *The result*, in my view, *is that the owner of a vessel has*, under this section, *been made answerable to the undertakers for the damage* referred to in this section, *with no obligation on the part of the undertakers to prove more against him than that the damage was done by his vessel and that he was her owner at the time. To such a claim* when so far proved *only two defences are open to the owner*: (a) The pilotage exception; (b) *That the damage was in fact attributable to the agency of what, in the language of a simpler age, is known to the law as an act of God.*
>
> The object of the section being to provide exceptional protection for the undertakers, I do not myself feel that the enactment on this view of it imposes on owners of vessels a burden that can fairly be regarded as oppressive. (*ibid.* 106, 136).

Reverting to the statute under consideration in *McMahon's* case, the question may be asked as to what is the liability of a person whose car is forced into collision with a telegraph pole by the happening of an earthquake, tempest, or violent wind, or through collision with another car, or the sudden collapse of a motorist.

In *McMahon's* case T. A. Gresson J. (*ibid.* 719) envisaged circumstances in which a motorist might be forced into collision with a telegraph pole and in which it might be possible to conclude that the cause of the damage lay elsewhere than with the driver of the car which was eventually the instrument of harm. One example the learned Judge gave was that of a motorist being forced off the road by another vehicle in such a way that he must inevitably strike a telegraph pole; another was that of a car thrown against a pole in an earthquake or tempest. He then expressed the view that if satisfied that the real cause of the damage was "not human agency but a vis major beyond human control" he would be disposed to exclude the application of the section. Reservations of a similar kind were expressed in *Postmaster-General* v. *Beck and Politzer* [1924] 2 K.B. 308, in which the English Court of Appeal had to consider the case of a motor lorry which, while being driven along a public highway, came into collision with a fire alarm post belonging to the Postmaster-General. There was no negligence on the part of the driver and the case was really decided on the question of the meaning to be attributed to the word "person" as it appeared in the appropriate section of the Telegraph Act 1878 (U.K.) *24 Halsbury's Statutes of England* 2nd ed. 1013. The facts of the case came before the Court of Appeal in form of admissions agreed to by counsel but some comment was made by the members of the Court that these agreed on facts were not sufficiently explicit in that all they stated was that the motor lorry had been driven by the defendant's servant who had "brought it into contact" with a fire alarm post. Scrutton L.J. (*ibid.* 312) expressly left undecided the question of liability if the damage to the post had not been directly caused by an act of the servant, as for instance if the servant's lorry had been forced against the post by another vehicle, or if the machinery of the lorry or horse drawing it had got out of control and he expressly limited his decision on the defendant's liability to a case in which the owner of the property doing the damage was by himself or his servant in control of the property at the time of the damage, so that he or his servant might be said to have damaged the telegraph line (*ibid.* 314) Atkin L.J. expressed similar reservations.

It may be of some interest to note in the light of these decisions that, in an article in *76 L.Q.R.* 211 entitled "*Liability Without Fault*", G. H. Gordon refers to two cases in the United Kingdom in which similar legislation to our Post and Telegraph Act and the Telegraph Act 1878 has been interpreted. The first in time of these was *Hogg* v. *MacPherson* 1928 S.C. (J) 15 in which a vanman had been charged on a complaint that he had broken a gas lamp in an Edinburgh street and damaged it to the extent of £3. 19s. 6d. While travelling close to the left hand side of the road the van had been caught in a sudden gust of wind which had capsized it and caused it to fall over on to its left side against the lamp post, levelling the pillar to the ground and smashing the lantern. At the time of the occurrence a gale of very exceptional severity was blowing from a south-westerly direction across the road practically broadside on to the van at the bend of the road. The gust of wind was held to be the sole cause of the occurrence and the appellant was held to be guilty of no negligence. The section under which the appellant was charged was s. 128 of the General Police and Improvement (Scotland) Act 1862 which enacted:

> *If any person shall*, through negligence or accident, *break any lamp* set up in any street, public or private, . . . and shall not, upon demand, make satisfaction for such damage, it

shall be lawful for any of the Magistrates, upon complaint thereof being established in the Police Court, under the summary procedure authorized by this Act, to award such sum of money as the damage proved shall amount to.

Lord Justice-General Clyde in referring to this section said :

> In short, the person who breaks a lamp pays for the damage he has done, whether the act by which he breaks it is a negligent act or a purely accidental act. In the present case the appellant was driving a horse-drawn furniture van along the street on one of those very windy days which occurred not long ago in this city, and one of the more furious of the blasts overturned the lorry. It happened to be near a lamp post at the time and the lamp suffered. The ground of the complaint is that the breaking of the lamp in that way was the act of the driver of the lorry—not (it is admitted) negligent, but (as is alleged) accidental. All I can say is that it seems to me as plain as can be from the circumstances of the case that the breaking of the lamp was not the appellant's act at all, either negligent or accidental, and that, accordingly, upon the facts found proved, there was no justification for the award made. (*ibid.* 17).

The second and more recent of the cases was that of *Kensington Borough Council* v. *Walters* [1959] 3 All E.R. 652 [1959] 3 W.L.R. 945, in which a Divisional Court had to consider the effect of s. 181 (3) of the London Government Act 1939 (Eng.) *15 Halsbury's Statutes of England* 2nd. ed. 1157, which provided :

> *If any person* accidentally or carelessly *damages any property* vested in a local authority, the authority may recover from him summarily as a civil debt the expenses incurred by it in making good the damage.

The respondent, while driving his car along a road, was involved in a collision as a result of which the respondent's car came into contact with and damaged a street refuge vested in the local authority. The driver of the other car was responsible for the collision and the respondent was not. It seems clear from the report that had not the other car come into collision with the respondent's car the respondent's car, in turn, would never have struck the street refuge. Moreover, the respondent's car seems to have been pushed into the refuge by the other car. The local authority demanded the cost of repairs from the respondent but the Justices dismissed the complaint. It was held by the Divisional Court that the local authority was entitled to recover the cost of repairs to the street refuge on the ground that it was the respondent's hand or vehicle which had come actually into contact with the refuge. At p. 948 Lord Parker C.J. said :

> The real point is, as I see it, whether subsection (3) is aimed at the person who is responsible for the damage and who as a matter of causation has caused it, or whether it is aimed at the person whose hand or vehicle has come in contact with the property and has caused damage to that property thereby. In my judgment, the latter is the correct view. I think that this subsection is providing a speedy remedy for the local authority to recover expenses incurred in repairing damage without having to consider who is blameworthy in that respect. (*ibid.* 948, 654).

Cassels J. who agreed with the Lord Chief Justice said that he was impressed by the example given by the respondent that if counsel's argument were correct then a pedestrian who was pushed through a window belonging to a local authority could be liable to the local authority even though he had damaged it solely because of the push he had received from some other person.

In his note in *76 L.Q.R.*, G. H. Gordon does not comment on these two apparently irreconcilable decisions except to say that each involved the interpretation of similar statutory provisions. However, in *23 M.L.R.* 190 C. Grunfield considers the *Kensington* case as being the invocation of a mediaeval idea of civil liability.

A case similar to *Hogg* v. *MacPherson* was *Hutt Valley Electric Power Board* v. *Certified Concrete Limited* (1945) 4 M.C.D. 195 in which an action for damages was brought by the Power Board against the defendant company for damage caused to electric power lines which had been struck by the cover of a cement bin owned by the defendant. This cover had been blown by a high velocity wind on to the lines causing damage to them and a breakdown in the supply of power. The plaintiff based his case on a number of causes of action, of which one was s. 123, of the Electric Power Boards Act 1925. This section provides :

> 123. Every person who damages electric works, appliances, or conveniences erected, constructed or used under this Act shall be liable for the amount of such damage, to be recovered by any person authorized in that behalf by the Board in any Court of competent jurisdiction and, if such damage is done wilfully, shall be liable in addition to a fine not exceeding five hundred pounds.

Of it Goulding S.M. said :

> While this section casts a greater liability on persons who damage electric works, etc., than would lie upon them were it not for the section, I agree with Mr. Blundell's view that the section connotes some human action by a person before liability can attach. If the action is a wilful action, then there is a penalty in addition to a statutory liability for damage. The presence of that word 'wilfully' supports the contention that the section contemplates some personal action. It appears to me that in the case before me, since the cause of the accident was beyond human control, no liability attaches to the company under the section.

This decision was not followed by Paterson S.M. in *Central Waikato Electric Power Board* v. *MacDonald* (1945) 4 M.C.D. 269 which concerned the liability of the owner of a horse which was left unattended on a farm with the reins tied back to the shafts of a wagon. While thus secured the horse bolted and finally collided with and damaged a power pole. The plaintiff Board, sued to recover the cost of damage to the pole, basing its claim on negligence, or, alternatively, that the defendant was under a statutory obligation imposed by s. 123 of the Electric Power Boards Act 1925 to pay the amount of damage caused by the horse. Paterson S.M. (*ibid.* 273) expressed the view that similar considerations applied to s. 123 of the Act as did in *Adamson* v. *River Wear Commissioners* and differing from Goulding S.M. did not feel disposed to adhere to the latter's restrictive view that liability under the section implied active human agency. On the ground that liability under the section was independant of active human agency he gave judgment in favour of the Board, notwithstanding that there was no driver of the horse and wagon present.

The section of the Post and Telegraph Act which was involved in *McMahon's* case is, it is submitted, similar in its material wording to the relevant statutory provisions considered and applied in *Hogg* v. *MacPherson* and *Kensington Borough Council* v. *Walters* as well as to a number of similar statutory provisions the operative words of which are set out as follows :

> (1) The Harbours, Docks and Piers Act 74 : " *The owner shall be answerable* to the undertaker . . . *for any damage done* by such vessel . . . "

Of this section it was said in the House of Lords in the *Mostyn* case that liability was absolute under the section unless the cause of the damage was an " act of God ", a " vis major beyond human control ", a force from which " all human agency had been withdrawn."

(2) The Post and Telegraph Act 1878 (U.K.), s. 8: "*Where any undertakers*, body or person . . . *destroy or injure* any telegraphic line of the Postmaster-General, *such* . . . *shall be liable.*"

In *Postmaster-General* v. *Beck and Politzer* (*supra*) Scutton L.J. and Atkin L.J. expressly reserved their view as to whether the section covered the case of a person who was forced into a telegraph pole by the intervention of some outside agency.

(3) Post and Telegraph Act 1928 (N.Z.), s. 215: "*Every person who causes damage* to any electric line . . . "

In *McMahon's* case T. A. Gresson J. inclined to the view that this section was not wide enough to make liable the person whose car was thrown against the pole in an earthquake or tempest involving forces or nature which, rather than the driver, had caused the damage.

(4) Post Office Act 1959, s. 156 (1): "Every person who damages any line or works . . . "

(5) General Police and Improvement (Scotland) Act, 1862, s. 128: "*If any person shall* . . . *break any lamp* . . . "

It was this section which was considered in *Hogg* v. *MacPherson*. There the Justiciary Court held that the breaking of the lamp by contact with the appellant's van did not make it the appellant's act at all. In short, the Court looked for the cause of the breaking of the lamp and found it to be a blast of wind.

(6) London Government Act 1939 (Eng.), s. 181 (3): "*If any person* accidentally or carelessly damages any property "

This section was held in the *Kensington* case to create liability on the part of the person whose hand or vehicle had come in contact with the property irrespective of any question of causation.

(7) Electric Power Boards Act 1925, s. 123: "Every person who damages electric works . . . "

Differing views on the effect of this section were expressed in *Hutt Valley Electric Power Board* v. *Certified Concrete Ltd.* and *Central Waikato Electric Power Board* v. *MacDonald.*

A comparison of these provisions and decisions leads one to the view that there is no real difference between the operative words of the London Government Act 1939 (Eng.) s. 181 (3) of which was given such a rigid construction in the *Kensington* case and the statutes in pari materia given a more liberal construction in *The Mostyn*, *McMahon's* case and *Hogg* v. *MacPherson.*

It is, perhaps, worthy of note that in the *Kensington* case none of the cases decided under the Harbours, Docks and Piers Act was cited to the Court in argument and the respondent, presumably a layman, argued his own case in person, albeit as Edmund Davies J. said, "with eminent clarity and ability". There appears to have been no reference to previous authorities in the judgment in *Hogg* v. *MacPherson*. A bolder spirit might have submitted that *Hogg* v. *MacPherson* and *Kensington Borough Council* v. *Walters* are irreconcilable, but the writer contents himself with the following submissions:

(1) That common to all the statutes cited above is the principle that liability attaches without proof of negligence and that legislation of that kind is designed to provide a means whereby a government department or local authority may recover the damage to public property without having to embark on proof of negligence on the part of the person who makes contact with the property so damaged;

(ii) That all the statutes use language which involves by necessary implication proof of some causal relationship between the vehicle involved and the property damaged. Does it matter if the statute refers to the liability of a person who "causes damage"; who "breaks any lamp"; who "shall be answerable . . . for any damage done"; or who "damages any property?" Do not such words all import an element of cause and effect though not excusing a non-negligent cause or a partial cause?

(iii) That acts of God such as earthquakes, tempests and winds of catastrophic force would excuse the owner or driver if he is not in the vehicle at the time that the damage is done.

What, then, is the liability of a person *who is actually driving the vehicle* when it is overcome by one of the disasters referred to in (iii) above? While all human agency has not been withdrawn (*The Mostyn*), it is submitted that such a disaster being an act of God would excuse the driver. Vide obiter dicta of T. A. Gresson J. in *McMahon's* case and *Hogg* v. *MacPherson.*

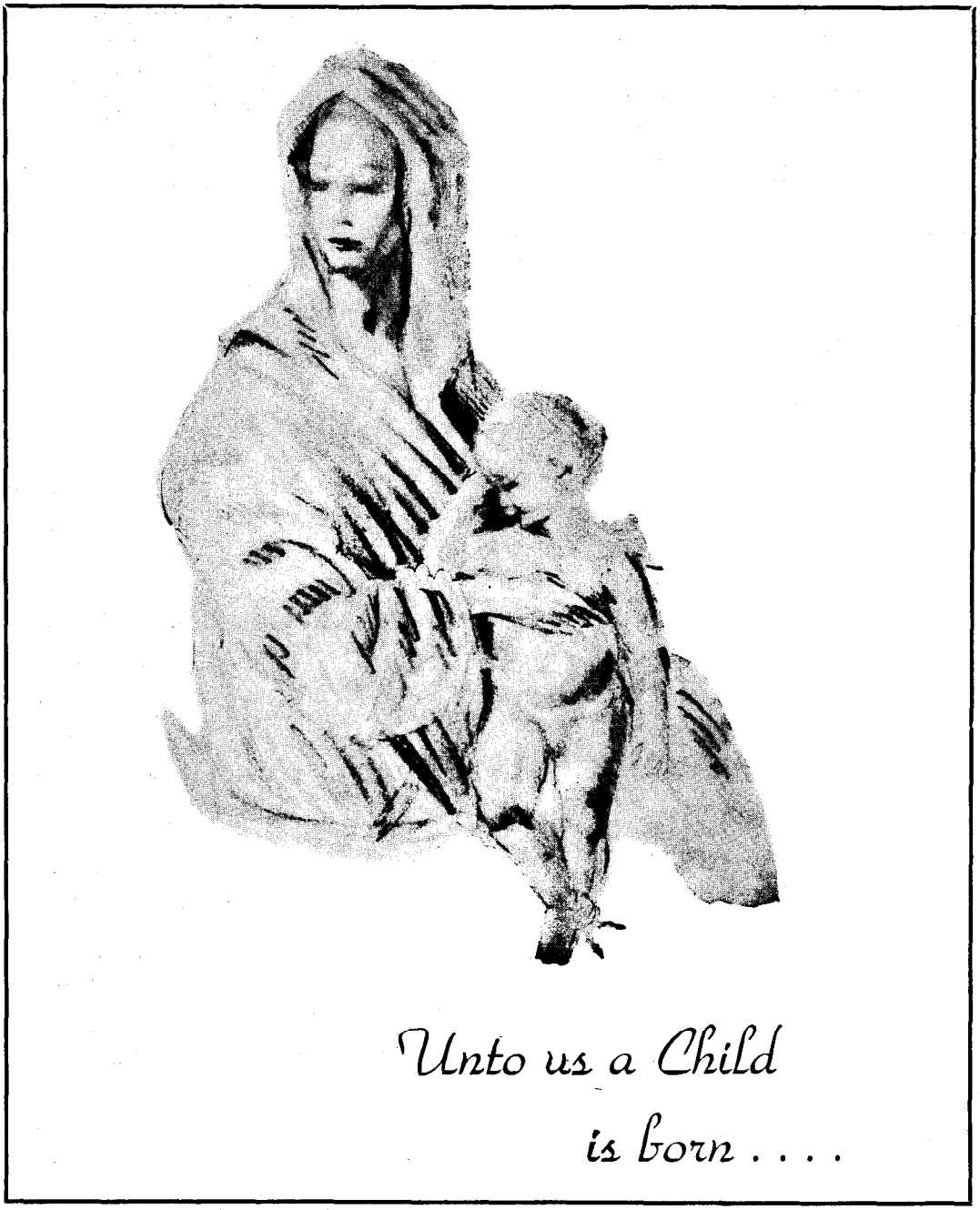
What, too, is the liability of a driver whose vehicle is forced into a public installation by contact with another vehicle, or which runs there through some mechanical breakdown such as a steering fault? According to *Kensington's* case he would be liable, though there are dicta to the contrary. Perhaps the answer is to be found in the distinction between acts of God resulting directly from natural causes without human intervention and inevitable accidents attributable to human agency. T. A. Gresson J. expressed this view in *McMahon's* case. In the one there is a way of escape for the driver; in the other there is no escape.

Cases under this type of legislation must arise in the future and it is quite within the realms of possibility that cases of the kind postulated above will come before the Courts in this country or the Commonwealth jursidictions for decision.

D. W. McMULLIN.

[The italics in the quotations from legislation and from judgments in the above article are the author's.]

A Case on Trafficators.—"In the *Eastern Daily Press* of August 19, is a report of a case in which a driver was fined £15, and had his licence endorsed, for driving without due care and attention. He began a right turn with his left trafficator indicating that his intention was to turn left. In consequence he was in collision with another vehicle. His advocate explained that he had previously used the left trafficator when he pulled in to his near side to set down a passenger, and he had failed to observe, when he drove off again, that the cancelling mechanism had not worked. This was a very clear example of the danger which can result from a driver's failure to keep an eye on his trafficators. In this matter the near-side passenger in a car can sometimes help the driver by calling his attention to a failure to cancel his near-side trafficator." (*1960*) *124 J.P.* 572.



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With Good Wishes for Christmas and the New Year

The Editor and Publishers
of the
New Zealand Law Journal

FORENSIC FABLE.

By "O"

The Defeated Litigant and the Rash Attendant

A Defeated Litigant was Leaving the Royal Courts of Justice in a State of Mind which can be Better Imagined than Described. The Case had Lasted for Thirteen Days. He had been Offensively Cross-Examined. His Expensive Leader had Left the Junior to Make the Final Speech. The Judge had Said Some Very Disagreeable Things about him in his Summing-Up. The Jury had Found Against him on Every Point. The Damages were Five Thousand Pounds. As he passed down the Central Hall the Defeated Litigant calculated that the whole Beastly

Thing had Cost him Well into Five Figures. He Felt it was the Last Straw when his Solicitor (with a Watery Smile) Observed that at any rate his Case had been Patiently Heard. But it was not. As he Neared the Exit to the Strand a Rash Attendant Approached him and Respectfully Enquired whether he would Care to Take a Ticket for the Annual Concert in Aid of the Superannuation Benefit Fund of the Staff of the Royal Courts of Justice. The Defeated Litigant Gave a Scream like that of a Wounded Elephant and Let Loose a Flood of Horrid Oaths which so Startled the Rash Attendant that he Came Over Quite Queer and has Never been the Same Man Since.

Moral.—*Don't rub it in.*

PERSONAL.

Mr Justice F. B. Adams, whose retirement took effect on November 23, was, on November 22, married to his former associate, Miss Joy Terry. Mr and Mrs Adams left on November 23 for Fiji where Mr Justice Adams will sit as a member of the Court of Appeal for some three weeks. At the end of that period, Mr and Mrs Adams will spend some further time in the Islands before returning to Christchurch.

Sir Joseph Stanton was recently admitted to the Mater Hospital, Auckland, for treatment following a heart attack.

WELLINGTON DISTRICT LAW SOCIETY.

Tribute to Mr R. L. A. Cresswell.

At a recent meeting of the council of the Wellington District Law Society, reference was made to the death of Mr. R. L. A. Cresswell.

The president, Mr H. R. C. Wild Q.C., said that Mr Cresswell had spent all his professional life in Wellington and had won a high place in the regard of those who were the best judges of the character of any lawyer, his fellow-practitioners.

"He was a very sincere and friendly man" said Mr Wild, "and there was nothing ostentatious about him. He worked quietly and solidly and was known as one who could be relied on absolutely. As a member of the Council for ten years and ultimately president, he had done much for his profession and for the law. Mr Cresswell's death in early middle age is a very sad loss."

The council placed on record its keen appreciation of Mr Cresswell's services to the profession and to the law, particularly as a member of the Council and as president of the society, and expressed its deep sympathy with Mrs Cresswell and her family.

Stolen Cheques.—The *Surrey Comet* has called attention to the prevalence of offences involving the obtaining of goods by means of worthless cheques in the Epsom and Ewell district. The police point out that in most of these cases the cheques have been stolen, and that these thefts could generally be prevented if people were careful not to leave cheque books lying about at home or in unattended cars. Moreover, tradesmen who take cheques from unknown customers and part with goods before the cheques have been cleared or inquiry has been made, are bringing losses upon themselves by want of simple precautions. Perhaps traders can afford to take risks in these prosperous times, and regard such losses as all in the way of business. That may or may not be so, but at all events there is more than that to be said. If offences can be prevented every possible step should be taken. The police have plenty to do without having their time occupied unnecessarily by inquiring into this kind of thing. If thieves found they could not so easily make profitable use of stolen cheques they would be far less likely to steal them.—*31 J.P. and L.G. Review* (*1960*) 494.

THE SECOND COMMONWEALTH AND EMPIRE LAW CONFERENCE.

The Second Commonwealth and Empire Law Conference opened at Ottawa, the Federal Capital of Canada on Wednesday, September 14, 1960. As in Wellington at our Easter Conference, perfect weather, distinguished guests and local hospitality set the seal of success on this important gathering.

The opening ceremony was held in the foyer of the Supreme Court of Canada Building. As the delegates gathered on the steps in the sun, they were entertained by the band of the Royal Canadian Mounted Police, who, dressed in their famous scarlet jackets, provided a colourful spectacle of which the many amateur photographers present took full advantage. The Minister of Justice of Canada said the Government would take the credit for the weather provided there was no criticism if it turned bad.

The opening ceremony began with the Invocation by the Most Reverend M. J. Lemieux O.P., DD.. Archbishop of Ottawa and by the Right Reverend E. S. Reed L.Th., M.A., B.D., D.D., D.C.L., Lord Bishop of Ottawa. The former was dressed in white robes and pronounced the Lord's Prayer in French, while the latter, robed in light purple, prayed in English. The Conference Chairman, Mr. D. Park Jamieson M.B.E., Q.C., LL.D., then opened the Conference and addresses of welcome followed by the Hon. E. Davie Fulton Q.C., M.P., Minister of Justice of Canada and by the Hon. Patrick Kerwin, Q.C., Chief Justice of Canada. Responses were made on behalf of the delegates by the Rt. Hon. Viscount Kilmuir G.C.V.O., Lord High Chancellor of Great Britain and by representatives of Australia, Ceylon, Nigeria, South Africa, the United Kingdom and the Colonies Mr. R. E. Pope, of Wellington, impressively responded on behalf of New Zealand. Many speakers, Canadians and visitors alike, spoke partly in English and partly in French, as Canada is truly bilingual. One member of the English Bar after speaking in French thanked his listeners for the kind look of understanding on their faces.

At both the American Bar Association meeting in Washington D.C. and at this Commonwealth Conference, proceedings began with an Invocation by the Church, an example which might well be followed at future Dominion Law Conferences in New Zealand.

Mr. Denys T. Hicks O.B.E., T.D., D.L., president of The Law Society of England, speaking on behalf of the 800 odd United Kingdom lawyers who had first attended the American Bar Association meeting and then moved north into Canada, expressed the sentiments of many when he referred to the feeling of being a looker-on at the Washington Conference, a sort of third dimension, although no one could have been more kind than the Americans, whereas here in Ottawa they were meeting with their brothers and sisters, where the name of a Solicitor meant a lawyer and not a travelling salesman.

In his response to the Canadian welcome, Mr. Oscar J. Negus Q.C., president of the Law Council of Australia, extended a welcome to the next Commonwealth Law Conference to be held five years hence in Australia—a venue which should attract a substantial body of New Zealand lawyers.

Conference Papers.

The convention hotel was the Chateau Laurier, a magnificent building in the striking architecture of a French Chateau. Here, delegates were supplied on arrival with a mass of Conference literature including a printed copy of every paper submitted on the subjects chosen by the executive committee. These subjects were: Human rights and civil liberties; reciprocal enforcement of judgments; trends of legal education within the Commonwealth; estate planning having regard to the incidence of taxation; problems of Federalism in the Commonwealth; necessity of proof of wrongful intent in criminal cases; matrimonial property laws within the Commonwealth; transfer of lawyers within the Commonwealth; administrative tribunals and their function in a legal system; the legal profession of the future; restrictive trade practices; (monopolies, mergers, cartels); the role of the lawyer in community affairs; consideration of liability for taxation in assessing damages; compensation for industrial injuries.

There were about four or five papers on each subject, which, having been printed and circulated in advance, were then taken as read. Each general session opened with the Chairman introducing the rapporteur who had made a close study of the papers and who skilfully summarised them all in no more than 15 minutes, leaving about two hours for the ready discussion which usually followed. This system overcomes the justifiable critism of the New Zealand Conference practice as voiced in this Journal's issue of November 1 by Mr. L. A. Taylor. It is a great improvement to have the papers printed and circulated in advance as it enables more than one paper to be considered on each topic, it gives more time for discussion and it gives the audience something in black and white in their hands to refer to when taking part in the discussion. Several microphones were stationed about the floor so that speakers had no difficulty in moving to a convenient microphone and in being heard.

Touch of Drama.

A touch of drama was felt during the discussion of the papers on Human Rights and Civil Liberties when a speaker from South Africa took the floor. After drawing attention to the possibility of this being the last Commonwealth Conference attended by South Africa, and referring to the Government's break with tradition in 1951 by appointing a non-practising lawyer to the Bench and to the six months boycott of the Courts which was unavailing, he said he was not going to say too much for the sake of his own safety and in any case the place to fight the Government was at home. Then he pointed out how some members of the Bar were fighting for the liberty of the subject by taking unpopular briefs and others in a new political party. "When you go home", he said, "those of you in your Governments, please remember us and try and keep us in the Commonwealth as I'm afraid South Africa will become a Republic soon at the polls."

Estate Planning.

The discussion on the papers on Estate Planning did not take the course of one lawyer after another

displaying his ingenious schemes for the saving of tax and duties for his clients. It was felt that the less said about these the better as the Legislature has the habit of catching up with and defeating these well laid plans. A divergence of view was expressed on the extent to which lawyers should go in assisting clients to defeat the Revenue Authorities. Sir David Cairns Q.C., considered that lawyers should advise against schemes which go as far as possible without actually breaking the law, because the common man sees no material difference between such tax avoidance and plain tax evasion. Many speakers expressed strong disagreement with this view, one describing tax avoidance as winning without actually cheating. It was generally felt that one should not sail too close to the wind as the wind has a habit of changing.

Wrongful Intent.

The papers on "Proof of Wrongful Intent in Criminal Cases" brought forth some very strong criticism by Canadians of the House of Lords decision in *Director of Public Prosecutions* v. *Smith* [1960] 3 All E.R. 161. Professor J. D. Morton M.A., L.L.B. of Osgoode Hall Law School withdrew his paper to give a new paper dealing solely with this "regrettable decision" which holds mens rea to be judged in an objective not a subjective sense and which, he warned, "will have an unfortunate effect in England and we must not follow it in Canada." This was the case involving the death of a policeman who was thrown off a car to which he was clinging by the actions of the driver whose "intent" was to escape. As, however, a reasonable man would contemplate grievious bodily harm as likely to result in such circumstances the objective test that the trial judge had applied was upheld, the decision of the Court of Criminal Appeal reversed and the conviction of wilful murder restored.

The Hon. Wilfred Judson, a puisne Judge of the Supreme Court of Canada, said from the floor, that he was in London at the time *Smith's* case was before the House of Lords and, if not disrespectful to such an august body, he would like to say he was startled at the result. He stated that the objective doctrine had been rejected in Canada. The chairman tactfully assured the meeting he would not overthrow or affirm the decision of the House of Lords, especially while the Lord Chancellor was present in Ottawa.

Many more examples could be given of the vital nature of the discussions that took place, discussions which were highlighted by contributions from many eminent legal personalities and in which it was a pleasure and inspiration to see many Judges from all over the Commonwealth taking vigorous part.

A Conference Problem.

At such a conference with so many distinguished speakers and learned papers, one wondered how the available material could reach the right quarters at home for consideration and possibly for legislative or other action. For instance, the papers on Matrimonial Property Law included reference to an Australian Federal statute, s. 86 of the Commonwealth Matrimonial Causes Act 1959, by which the Court may by order require the parties to the marriage, or either of them to make such a settlement of property or to vary existing settlements of property as the Court considers just and equitable for the benefit of all or any of the parties to, and the children of, the marriage. Another example of legislation within the Commonwealth without parallel provisions in New Zealand is an English enactment, s. 3 of the Matrimonial Causes (Property and Maintenance) Act 1958, by which a divorced wife who has not remarried has the right to apply to the Court for provision out of the deceased estate of her former husband under the Family Protection legislation.

This problem of dissemination of all available legal information throughout the Commonwealth gave rise to a suggestion by the Prime Minister of Canada, the Rt. Hon. John G. Diefenbaker Q.C., in his address at the dinner given by him and Mrs. Diefenbaker. The Prime Minister proposed the establishment of a Commonwealth Law Institute which would also fill a growing need for legal knowledge that would be of particular value to new member nations. This proposal met with ready support and so this Second Commonwealth and Empire Law Conference will be notable for the conception of a Commonwealth Law Institute which it is hoped will come into being long before the next such conference.

Social Programme.

The social side of the Conference was outstandingly successful. On the opening day there were two receptions—one at 4.30 p.m. in Parliament Buildings, which gave delegates an opportunity for a tour of inspection of its very impressive appointments and the other at 9.30 p.m. in the ball room of the Chateau Laurier Hotel. On the next night was held the Conference Ball in H.M.C.S. Carleton, the headquarters of the Royal Canadian Naval Volunteer Reserve. This was very well staged and included a most sumptuous buffet meal. Mr. Geoffrey Lawrence Q.C., President of the Council of the Bar of England and Wales, jokingly referred to the Ball as "an exercise in compression side by side with a thousand succulent lobsters."

The dinner was held in the Chateau Laurier Hotel and attended by over 1,300, including the ladies, and by the High Commissioners in Canada of several Commonwealth countries. The following night a reception was held at the National Art Gallery in the Lorne Building and on Wednesday, September 21, the final day of the Conference, a dinner dance was held in the ball room of the Chateau Laurier Hotel.

In addition to these special functions there was a coffee hour each morning and a tea hour each afternoon in the drawing room of the convention hotel and various conducted tours every day and at the weekend.

A very impressive occasion was the special Convocation at the University of Ottawa for the conferring of an Honorary Degree of Doctor of Laws on the Right Honourable Viscount Kilmuir.

A Summing-up.

Chief Justice L. N. Mbanefo, of the High Court of Eastern Nigeria, summed up the benefits of this great conference at the closing session and his speech was of special interest because Nigeria's independence was only 10 days away. He expressed the general feeling of fellowship so noticeably present on all occasions and the common interest arising out of the general acceptance of the rule of law. Then he referred to the educative value of the conference from the many learned papers and discussions. And, for the future, the prospect of a Commonwealth Law Institute which

could be of so much assistance to Nigeria where legal training had only just begun.

For those attending a Commonwealth Conference for the first time, it undoubtedly gave a new sense of pride in this great brotherhood of nations and one could feel the need for the older members to be alive and attentive to the problems of the younger members. One came away with a greater realization of values and concepts—the knowledge that there must be "a thread stronger than tradition, and a link closer than posterity to bind the growing Commonwealth into an indissoluble unity"—that perhaps the greatest bond is the rule of law which means liberty under the law and equal rights of all people without regard to race or colour. It is a challenging thought that this rule of law must be buttressed by a strong and independent legal profession, "indignant with injustice, resolute with faith and honour, courageous in failure and humble in success."

G. E. BISSON.

LEGAL LITERATURE.

General Principles of Criminal Law by JEROME HALL, Distinguished Service Professor of Law, Indiana University. Second Edition 1960. The Bobbs-Merrill Company Inc., New York. 682 pp. + Index.

This is the second edition of a work first published in 1947, when the author stated that his work was devoted to an analysis of the principles of criminal law which comprised the foundations upon which the entire discipline rested, and of the major doctrines of that law. In his second edition he attempts to realize more fully his original intention.

His treatment of mens rea is extensive, and the four chapters deal with the objective meaning of the principle; intention, recklessness and negligence; the theory of non-moral liability; and criminal conduct. To the advanced student and to the teacher of criminal law, these chapters will have some appeal.

Later, Mr Hall deals fully with such topics as ignorance and mistake, and, as elsewhere in his book, does not confine his references to American cases only. There is frequent reference to English cases, and occasionally to New Zealand reports, as, for example, *R.* v. *Carswell* [1926] N.Z.L.R. 312, which is mentioned in the context of a discussion on "the contrast between hard law and soft administration."

After a useful and lengthy chapter on mental disease, and a short discussion on intoxication, Mr Hall concludes with his own attempt to find a solution to the problem of attempts, a problem which, in his words, "is as intriguing as it is intricate." Along with Professor Glanville L. Williams, he finds difficulty in accepting the development in New Zealand, and is critical of *R.* v. *Barker* [1924] N.Z.L.R. 865. It would be interesting to read his comments on the subsection proposed to be added to s. 93 of our Crimes Bill!

All in all, this is not a book for the busy practitioner, but time spent, particularly on the chapters mentioned, would not be wasted. If nothing else, it serves to demonstrate again the dependence of American law on our own principles, and the unity of development over the past two centuries.

B.J.D.

Books received or published in New Zealand by Butterworth & Co. (New Zealand) Ltd. October to December 1960.

Bingham's Motor Claims Cases, Fourth Edition, by Leonard Bingham, Solicitor of the Supreme Court. 80s.

Garrow & Willis's Law of Wills and Administration, Third Edition, by J. D. WILLIS, S.M. Butterworths Standard New Zealand Textbooks No. 1. £6. 6s.

Harrison & Hillman's Book-keeping and Accountancy for Solicitors, by P. HARRISON, Solicitor of the Supreme Court, and A. G. HILLMAN, F.A.C.C.A., Senior Lecturer in Book-keeping and Trust Accounts at the Law Society's School of Law. 60s.

Munkman's Damages for Personal Injuries and Death, Second Edition, by JOHN MUNKMAN, LL.B., of the Middle Temple and North Eastern Circuit, Barrister-at-Law. 40s.

McCleary's County Court Precedents, Second Edition, in 2 volumes. Consulting Editor: His Honour Sir EDGAR DALE, formerly Judge of the Westminster County Court and a member of the Standing Committee for framing Rules; Editor, J. W. PRYKE of the Butterworths Editorial Staff. 112s. 6d.

Tristram & Coote's Probate Practice, Twentyfirst edition. Consulting editor; C. T. A. WILKINSON, C.B.E., formerly Registrar of the Probate and Divorce Division; Editors, W. J. PICKERING of the Principal Probate Registry, and W. J. ATKINSON, LL.B., of the Estate Duty Office. £6. 10s.

Webb & Brown's Casebook on the Conflict of Laws, by P. R. H. Webb, M.A., LL.B., (Cantab.), Solicitor of the Supreme Court, Lecturer in Law in the University of Nottingham, and D. J. L. BROWN, M.A., LL.B., (Cantab.), of the Temple, Barrister-at-Law, Lecturer in Law in the University of Leeds. 67s. 6d.

Tailpiece (Hats off to Mr Jones).—"We have discussed whether or not we ought to take away your driving licence. But this is a very special day—and we have decided not to do so. I think you can thank Princess Margaret", said the Chairman when convicting a defendant at the Saffron Walden Magistrates' Court today.—*Cambridge Daily News.*

Correct Ruling.—A Criminal Court Judge in Indianapolis, Ind., rejected a request by an attorney to have jury members in a robbery case examined by a psychiatrist. The Court's ruling: "There is no statutory requirement that a juror be sane"—*The Hartford Courant.*

TOWN AND COUNTRY PLANNING APPEALS.

Coates Bros. (N.Z.) Ltd. *v.* Mt. Albert Borough.

Town and Country Planning Appeal Board. Auckland. 1958. April 14. 1959. November 3.

Undisclosed District Scheme—Land zoned residential—Appeal on grounds that should be light industrial—Matters to be taken into account in addition to detraction from amenities of neighbourhood—Promotion of economic and general welfare of inhabitants of district to be taken into account—Town and Country Planning Act 1953, s. 18.

The appellant company was the owner of a property situated in Asquith Avenue and Linwood Avenue in the Borough of Mount Albert containing 8 ac. 39.1 pp., being part Lot 233 on D. P. 20722 and Lot 2 on D. P. 33558, being part Allotment 172 of Section 10 of the Suburbs of Auckland.

It carried on the business of printing-ink manufacturers. This business fell within the category of light industrial and at the time when the appellant purchased this property, the property was, in fact, zoned as industrial B1.

The company applied for a permit to erect a factory and ancillary plant on its property. This permit was declined on the grounds that in the respondent Council's undisclosed district scheme the property in question is in an area zoned as "residential". It was admitted by the respondent that the land was originally zoned for industrial B1 purposes and also that it rezoned this land as residential because it became aware of objections from neighbouring owners to its development or use for industrial purposes.

Smytheman, for the appellant.
Southwick, for the respondent.
Doole, for the objectors.

The judgment of the Board was delivered by

REID S.M. (Chairman). Various adjoining owners had petitioned the Council on this question, objecting to the industrial zoning, 52 of these objectors were represented at the hearing and some of them gave evidence. A considerable volume of evidence was tendered, but the Board does not propose to traverse that evidence in detail.

After hearing the evidence, and having made a complete and thorough inspection of the property itself and the surrounding residential area, the Board finds:

(1) That there is a very substantial volume of expert evidence to establish and support the submission that this land is not suitable, by reason of its topography and the nature of its soil, for residential purposes. It could be made suitable for residential development, but that is a physical possibility only, not an economic one. The cost of so developing it would be prohibitive and clearly uneconomical.

(2) That for the same reason it is not suitable for development as a public reserve, again on economical grounds. In addition, the Borough is reasonably provided with public reserves in close proximity to this particular property.

(3) That only some form of industry could develop such a site and put it to economical use, and its development as an individual industrial unit is an economical proposition.

The Board has given very careful consideration to the views of the objectors that the establishment of an industry on this site would detract from the amenities of the neighbourhood, but the amenities of the neighbourhood are not the only question which the Board is required to give consideration. Section 18 of the Act sets out the general purposes of district schemes and one of them is to promote the economical and general welfare of its inhabitants. In this particular case, the Board is faced with this position: either this area of waste untended land is to remain as it is for an indefinite period, or be put to some appropriate commercial or industrial use.

The Board is satisfied that the nature of the appellant's business, that is to say, the process of manufacturing ink, is a clean and quiet process and that no smoke, fumes or noxious gases are liable to be discharged during the process, nor is there likely to be any noise nuisance.

The Board considers the objectors' opposition to this proposal arises from aesthetic or psychological factors. They do not want any type of factory in close proximity to their properties. This is an understandable point of view and the Board has not dismissed it lightly, but it considers that, if the site is properly treated and developed, there may be some detraction from the amenities of the neighbourhood while a factory is being erected and the site is being developed, but it considers that when that purpose has been accomplished, the economic gain to the Borough as a whole would outweigh any slight detraction from the amenities that will arise from there being a factory in this area.

The Board allows the appeal, subject to certain conditions.

Those conditions have been agreed upon by counsel for the company, the Council and the objectors and they are embodied in a deed of covenant and memorandum of encumbrance, a copy of which is annexed hereto and forms part of this decision.

The Board makes no order as to costs on the appeal.

Appeal allowed.

Long *v.* Minister of Works.

Town and Country Planning Appeal Board. Wellington. 1960. July 1, 23.

Subdivision of land—Minister's requirement as to minimum frontage and area of sections—Principles applicable to determination of appeal—Town and Country Planning Act 1953, s. 38 (14).

Appeal under s. 38 of the Town and Country Planning Act 1953.

The appellant was the owner of a property containing 14 ac. 1 ro. 33 pp. more or less, being a subdivision of part Lot 10, Deposited Plan 568, part Lots 1, 2, 3 and 4, 2982 and part Lot 20, 19058 being part Horowhenua 3B1, Block 1, Waiopehu Survey District, being the land comprised and described in Scheme Plan No. 2536.

In October 1952, the Minister of Lands approved a plan of subdivision pursuant to the Land Subdivision in Counties Act 1946 of an area of land comprising, inter alia, the land the subject of the appeal. At that time the owner contemplated that this subdivision would be carried out in three stages. The first stage was embodied in 19058 deposited on 28 November 1956. The second stage of subdivision was approved by the Minister and embodied in 20623 deposited on 27 January 1959. The land under consideration here represents the third and final stage of the original subdivision. On 15 June 1959, Scheme Plan D. 2536 was submitted to the Minister of Lands for approval, this scheme plan being the third and final stage of the original subdivision with an additional area of 1 ac. 1 ro. 39 pp. which had not been previously owned by the present appellant.

On 3 August 1959, the respondent, acting under s. 38 (14) of the Act, issued a requirement requiring the Horowhenua County Council to prohibit, except with his consent, the subdivision of any land within the area bounded by MacArthur Street-Fairfield Road-Roslyn Road and the extension of Cambridge Street that would produce any allotment having an area of less than five acres and a frontage of less than 264 feet to any road. The land under consideration here is part of the ar3a covered by this requirement. It is against this requirement that this appeal was lodged.

Tripe, and *Park*, for the appellant.
McGill, for the respondent.

The judgment of the Board was delivered by

REID S.M. (Chairman). After hearing the evidence, the Board finds as follows:—

1. The land under consideration is in an area zoned as residential under the Horowhenua County Council's undisclosed district scheme. In preparing the plan for the Levin section of its scheme, the Council has endeavoured to provide for the expansion of the Levin Urban District. In so doing it has sought to avoid creating what might become isolated pockets or urban development. It was suggested by an expert witness called by the respondent that the Council has zoned too much land as urban, but

(*Continued on p. 432.*)

IN YOUR ARMCHAIR—AND MINE.

By SCRIBLEX.

F. A. de la Mare, deceased.—" In his own distinctive way he possessed some of the attributes of greatness." Sir David Smith, Chancellor of the University of New Zealand, thus refers to the late F. A. de la Mare B.A., LL.B., a Hamilton practitioner, who died last May in his 83rd year. He represented, said Sir David (in his address to the Senate), the graduates of the University on this Senate from 1919 to 1947, a period of 28 years. Throughout this period, his approach to every problem was idealistic. He was a member of the Hamilton Borough Council in 1923 and a member of the High School Board of Governors. He held important positions in the New Zealand Alliance for the Abolition of the Liquor Traffic, the Howard League for Penal Reform, the Rationalist Association, the League of Nations Union, the " Save the Children " Fund, and he was a member of administrative bodies in rugby and lawn tennis. He spent much time visiting prisoners in prison and in helping them when released. His publications include *Our Educational System*, *Academic Freedom in New Zealand*, *This Gambling Business*, and *People in Prison*. ' We can respectfully say ", the Chancellor added, " that he was one of the few people who never compromised with his beliefs, that when he fought with his knightly lance. he remained courteous withal and that he evoked from many who disagreed with his views a warm affection and a profound admiration for his consistent courage and selfless actions."

A Lawyer's Book.—To practitioners who have derived pleasure in dipping into the legal reminiscence and miscellany of such writers are Hine, Haynes and Megarry, the publication for the first time, as a whole, of Lord Eldon's *Anecdote Book* (Stevens and Sons Limited, 1960) will provide many hours of enjoyable reading. Some of the anecdotes have been printed before in Twiss's *Life of Lord Eldon* and in Campbell's *Lives of the Chancellors* but a number appear now for the first time. In the foreword, the present Earl of Eldon tells us that his distinguished ancestor began to keep his *Anecdote Book*, at the request of his grandson, on December 18, 1824, when he was still Lord Chancellor in Lord Liverpool's administration. He completed it some time in 1827, shortly after the change of government that year in which he finally resigned the Great Seal—having held the office of Lord Chancellor since 1801, with one short break between February 1806 and April 1807. " Apart from the first few pages which contain brief autobiographical notes, the book follows no plan, and was evidently set down as occasion offered. Each anecdote is numbered and written in a small, flowing, and finely legible hand in a stout manuscript book bound in purple and gold." Edited by Anthony Lincoln, a barrister-at-law of Lincoln's Inn and Robert McEwen, a barrister-at-law of Inner Temple, the 246 pieces in the book throw a great deal of light upon the social, political and legal facets of society a century and a half ago. The following Anecdote (No. 130) is illustrative : " Mr Justice Willes, the son of Chief Justice Willes, had many good qualities, but he was much too volatile and inattentive to reasonably grave behaviour upon the Bench. He was, however, very anxious to do right. He condemned a Boy, I think, at Lancaster, and with the hope of reforming him, by frightening him, he ordered him for Execution next Morning. The Judge awoke in the middle of the night, and was so affected by the Notion that he might himself die in the Course of the Night, and the boy be hanged, though he did not mean that he should suffer, that he got out of his bed and went to the Lodgings of the High Sheriff, and left a Reprieve for the Boy, and then, returning to his bed, spent the rest of the night comfortably."

The Personal Touch.—In *R.* v. *Mehari* (the " Love Potion " case), F. H. Shaw, Professor of Pharmacology at the University of Melbourne gave evidence of the considerable risk that he had run in experimenting with cantharidin in 40 tests conducted on himself and bringing blisters to various parts of his body. There is a parallel in the action of the ex-New Zealander, Sir Sydney Smith, who, in 1928, followed Harvey Littlejohn into the Chair of Forensic Medicine at the University of Edinburgh. On one occasion, in an Egyptian courtroom, he brought a whip down on his own bare arm to show the marks that it left on the skin. For many years the medico-legal expert in the Egyptian Ministry of Justice in Cairo, Smith became a world expert in the use of poisons, particularly arsenic, (" the poison most commonly used for murder . . . as it has been in every country from remote periods.") and in the science of ballistics. In the early 1920's, when asked for advice by the police as to whether certain bones were human, he reported : " They are the bones of a young woman. She was short and slim. Aged between 23 and 25 when she died, which was at least three months ago. She had probably had at least one pregnancy . . . She walked with a pronounced limp. She was killed by a shotgun loaded with homemade slugs, fired in an upward direction from a range of about 3 yards . . . She was not killed outright, but died seven to ten days later, probably of septic peritonitis . . . " The report was accurate in all respects and led to the arrest of the girl's father. His study of the 1924 murder of the Sirdar (Commander in Chief) of the Egyptian Army, Sir Lee Stack Pasha, led to the conviction of the assassins and did a great deal to establish the science of forensic ballistics. In 1902, requested to reconstruct a murder in Ceylon, and engaged to go from Scotland for the trial, he did so with such accuracy that he pinpointed the existence in the victim's kitchen of an iron hook on which she had bruised her back while struggling with her assailant.

Tailpiece :

Mr Griffiths-Jones.—The only relationship is a sexual one between Mellors and Lady Chatterley. I suggest that virtually there is no other relationship that is discussed between them ? "

Witness.—I would agree that most of their talk together is about the sexual side of their relationship, but when I read the book I got the strong impression that they were getting to know each other better. . .

Cecil Day-Lewis, author, poet and publisher, giving evidence in the " *Lady Chatterley's Lover* " case.

TOWN AND COUNTRY PLANNING APPEALS.

(*Concluded from p. 398.*)

the issue before the Board on this appeal is not the broad issue of whether or not the Council has in fact zoned too much land adjacent to the Borough of Levin for urban development, but whether the subdivisional plan under consideration in this appeal is contrary to town-and-country-planning principles.

2. The respondent submitted, and this submission forms the basis of his case, that the land in question is land of high actual or potential value for the production of food and that to permit of its being subdivided for residential use would be contrary to accepted town-and-country-planning principles. Reference was made to the Board's decisions in the following cases:

Minister of Works v. *Kaitaia Borough Council* (*ante* 18), *Blakely* v. *Manukau County Council* (*ante* 29), *Church Property Trustees* v. *Minister of Works* (*ante* 81).
where the Board held as a general principle that the encroachment or urban development on land of high actual or potential value for the production of food should not be allowed. The Board is still of that opinion, but there are material differences in the facts surrounding the cases referred to and the present case. These differences may be summarised as follows:

(i) In each of the cases cited, the land under consideration was zoned as rural and it was sought to have that zoning changed to residential and the land subdivided for residential use. In each case the land was held to have a high actual or potential value for the production of food, but a perusal of the cases will show that that factor was not in itself the only factor to be taken into consideration.

(ii) In two cases there were no sewerage facilities available and in each case the Board held that there was in the neighbourhood already available land zonçd as urban sufficient to meet the foreseeable population growth of the areas under consideration.

(iii) In this particular case the property under consideration is in an area zoned as residential and on three sides it is bounded by fully developed high-class residential areas.

The population of Levin and its immediate environs is estimated to reach 15,000 by the year 1978, of whom 10,000 will be living within the Borough and 5,000 will be living within the Levin section of the County, although the mahority of them would be expected to be working in the Borough itself. It is considered that the Borough of Levin itself cannot possibly be expected to accommodate 15,000 people. 10,000 is considered to be the limit of population that can be accommodated within the Borough when fully developed. It follows, therefore, that some provision for urban development in the County where it adjoins the Borough boundaries is necessary and in accord with town-and-country-planning principles.

(iv) It was suggested by the respondent that urban development in the County should take place to the south and southwest of Queen Street and not towards the north into the area covered by the Minister's requirements.

The sewerage system within the Borough is a gravity flow system. The expert evidence is that areas outside the Borough lying west of the line of Oxford Street, are not favourably situated for satisfactory reticulation because the further west from the land in Oxford Street the area to be reticulated is situated, the less becomes the difference in the respective heights above sea level of the subdivided area and the treatment works. On the other hand, for the land under consideration in this appeal adequate fall would be available and the land could easily be connected to the sewerage system.

(v) The final and important difference between the land, the subject of this appeal, and the land under consideration in the cases cited, is that on the evidence the appellant's land is second-class land of medium fertility. There was evidence called on behalf of the appellant that 4 acres of it had been cultivated as a market garden growing a wide range of vegetables, but this enterprise was abandoned because of poor returns. It might be possible to improve the soil content of this land so as to bring it up to the point where market gardening might be practicable, but it was conceded that this would be a very expensive operation and it is questionable whether the returns that could be expected to be obtained would justify the outlay demanded. That is the important distinction between this case and the cases cited. On the evidence, the Board holds that this land cannot be reasonably described as land having a high actual or potential value for production of food.

3. It was suggested that if the appellant is allowed to subdivide her land, in some unexplained way this would create a precedent for further subdivision in this locality. This is a generalisation and the Board is not prepared to attach any weight to it. If this subdivision is approved the effect will be that it will be consonant with the other residential areas adjoining it, it will provide an appropriate line of demarcation between an existing residential area and the adjoining rural land and it will remove from the appellant's farm an awkwardly shaped enclave, but will leave her with 70 acres of rural land constituting an economic farming unit without any material loss of production.

The appeal is allowed.

The Board desires to emphasise that this decision relates only to the appellant's land and is not to be construed as touching upon the wider question of where urban development in the Horowhenua County on the periphery of the Borough of Levin should best be directed.

Appeal allowed.

Milicich *v.* Auckland City Council

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

Zoning—Land zoned as Residential B—Claim to Commercial C zoning—Adequate provision made for commercial land in locality—Surrounding land zoned as residential and used as such—No evidence of need for further commercial land.

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

The appellant was the owner of a property No. 1784 Great North Road, Avondale, containing 1 ro. 35.4 pp. more or less being Lots 1 and 2 on Deeds Plan No. 1291 and being portion of Allotment 53 of the Parish of Titirangi.

Under the Council's proposed district scheme, as publicly notified, this property was in an area zoned as residential B. The appellant lodged an objection to this zoning claiming that this land should be zoned commercial C. This objection was disallowed and this appeal followed.

Smytheman, for the appellant.
Butler, for the respondent.
The judgment of the Board was delivered by
REID S.M. (Chairman). The Board finds as follows:

1. The property in question is situated on the southern corner of the Great North Road and Henry Street. It has a residence, occupied by the appellant, erected on it. Its southern boundary adjoins a small commercial C zone lying on both sides of the Great North Road.
2. It was conceded on behalf of the appellant that the Council's proposed district scheme makes adequate provision for the commercial needs of the locality in land already zoned as Commercial.
3. The small commercial zone adjoining the appellant's property was so zoned because there had been for many years a pocket of industrial use large enough in area to justify an appropriate zoning but no evidence was adduced to justify any extension of this zone or any unsatisfied demand for commercial development in this locality.
4. All the surrounding land is zoned as residential and is residential in character and occupancy. Any extension of the existing commercial zone would tend to detract from the amenities of the neighbourhood.

The appeal is disallowed.

Appeal dismissed.