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PARLIAMENTARY REFORM

IN the Parliamentary column which we instituted a year ago we made frequent reference to the amount of time wasted by Members of Parliament in the formal debates held during the Session, notably the Address-in-Reply and the Budget debates. It is heartening to see that a Select Committee has been set up to review the Standing Orders and evolve some system whereby these debates could be shortened, thus leaving Parliament more time for productive work and, in particular, for the careful consideration of legislation placed before it.

In dealing with this matter the Committee will require to steer a very careful course. One of the most valuable privileges of a Democracy is the right of freedom of speech, and in particular freedom of debate in Parliament. Nothing should be done which would have the effect of curtailing this right.

In particular, it would be unwise to amend the Standing Orders merely to deal with the situation as it stands today, with only two parties in the House. It must be recognised that at any time a third party may obtain a foothold, perhaps with only two or three members, or we may revert to the day when there are one or more independent members. The rights of any such minority must be amply safeguarded.

As to the likelihood of a third party arising, this may at present seem remote, but we need only look back to the history of the Labour Party itself to see how this can come about. That Party grew from a mere handful of members to a position where it became the official Opposition and finally the Government. History could repeat itself, however unlikely the prospect may appear to be at the moment.

What then is the solution ? Is it the reduction of the speaking time allowed to each member, subject to the right of the House to extend the time ? We do not think so. If any member has the material for, and the ability to deliver, a speech of value lasting for an hour or more he should not be dependent on the will of the House for the opportunity of delivering it. He should have the right to say all that he has to say.

The real solution lies in the commonsense of the members themselves who should be prepared to realise when they have said everything of value which they can contribute to the debate in question and sit down when that has been said. Unfortunately, that brand of commonsense is not exercised by most members of either party who, with certain notable exceptions, seem to feel bound, once they have the floor, to use up the full time allotted even if this entails tedious repetition of arguments already put forward by themselves or by their colleagues. Contrary to their own beliefs, the adoption of this practice does nothing to increase their standing with their own electorates or with the country generally.

It may be that the improvement of the standard of debate, largely through the curtailment of the length and number of speeches, could be brought about by some educat on of members by the leaders of the respective parties. In the meantime, however, we would suggest that the leaders should, without necessarily touching the Standing Orders, agree on a programme for these debates, limiting the number of speeches from each side of the House and, except in the cases of one or two on each side, limiting the time allowed to each member. It is obvious that there is at present some degree of co-operation between the parties to ensure that certain members will have the advantage of speaking during the most prized broadcasting hours and there is no reason why such co-operation should not be extended on the lines indicated above. If so Parliament would become a much more business-like place and would gain much in stature in the opinion of the electorate.

The proposed discussions could be extended to include questions. The Session has commenced with the usual heavy batch of questions for Ministers, many of the " parish pump " type and others of a facetious nature. The answering of even the most puerile of these takes time and costs money, and something should be done to limit questions to matters of national importance or other subjects on which the Department or the Minister concerned has perhaps adopted an evasive attitude. This is a reform which cannot be satisfactorily dealt with by an amendment to the Standing Orders. The right of a member to question a Minister is too valuable to be restricted. At the same time, it is too valuable to be abused as it often is at present. The solution we suggest is that each party should voluntarily agree to put only those questions approved by its leader or by some person or persons appointed by its leader.

Another possible reform is the extension of the life of Parliament. Quite properly the Prime Minister has made the suggestion, we believe at present only tentatively, that this question should be put to the electorate by way of referendum at the next General Election. This is certainly the way in which to

handle the matter, and it absolves any Parliament from a charge that it extended its own life for improper purposes.

For many years we held the view that a three-year Parliament was too short. It seemed to us that the first Session, particularly after a change of Government, was merely a "settling down" Session, the second was the real working Session and the third was devoted very largely to electioneering. This view is held by many people, although it is not supported by reference to the annual Statute Books which provide the best criterion by which to measure the work of Parliament year by year. At the same time these disclose only the statutes enacted, and give no clue to the amount of consideration given by the House to the legislation.

Our views were rather changed by the events of the Parliament of 1958 to 1960 throughout which the Labour Party held power by an effective majority of only one. Up to this time it was always thought that a Government could not survive without a good working majority, and in fact on a previous occasion when the Labour Party held office by virtue only of the four Maori votes, it was freely forecast that this slender majority would not enable it to see out its full term. In 1958, however, it was shown that a majority of one was sufficient to enable a Government to carry on, even when it was compelled to reject some of its election promises and thus brought itself into disfavour. Such a happening brings home the need for fairly frequent elections so that the will of the electorate may be expressed to the Government having regard to changes in conditions since the previous election.

We thought at the time, and still think, that when Mr Nash found that circumstances of which he was not aware caused him to be unable to carry out firm election promises, his proper course was to have gone back to the country with a full and frank disclosure of the circumstances and an amended platform. He and his party would have gained much mana in the minds of the public from following such a course and the chances are that he would have been returned to office with an increased majority and may even still have held office.

However, that is away from the point. The incident shows that a Government, elected by the smallest possible majority, can retain office after it has lost the confidence and even aroused the resentment of the electorate and that raises acutely the question whether it is wise to extend the term of Parliament by one or perhaps even by two years.

In writing on the adoption of a written Constitution we stressed the safeguard provided by our system of triennial elections. Any extension of the term of Parliament would *pro tanto* weaken that safeguard. We agree that the extension of the term has some considerable merits. No one would question that. But we consider that the disadvantage, or we could perhaps even call it the danger, referred to above outweighs the advantages and, running the risk of being called too conservative, we suggest that we leave well alone.

SUMMARY OF RECENT LAW

CRIMINAL LAW.

Appeal against conviction—Inconsistency between two pieces of evidence given by same witness in different trials—Course to be followed—Court of Appeal's power to amend indictment—Crimes Act 1908, s. 392—Criminal Appeal Act 1945, s. 5 (2)—Attempt—Charge of obtaining money for third person by false pretences—Delivery of cheque to third person actually obtained—Not an attempt to obtain money—Crimes Act 1908, s. 252 (a)—False pretences—Delivery of cheque to third person obtained by false pretences—Not an attempt to obtain money for such third person—Value of cheque—Crimes Act 1908, s. 252 (a). Where on an appeal against conviction it is shown to the Court of Appeal that there has been an inconsistency between two pieces of evidence given by the same witness in two trials the proper course may be for the Court of Appeal to order a new trial rather than to hear the evidence of the witness itself. (*R.* v. *Hullett* (1922) 17 Cr. App. R. 8, distinguished.) If the appellant, intending to obtain for himself a sum of money by false pretences actually obtains only a credit for the amount he may be guilty of an attempt to obtain the money. (*R.* v. *Parkes* [1948] 1 D.L.R. 752 and *R.* v. *Eagleton* (1855) Dears. 515; 169 E.R. 826, followed.) But if the appellant's object is to procure the delivering of a cheque and he succeeds in that object, it is not permissible to say that he attempted to procure the delivery of something else, *viz.* a sum of money. A conviction for an attempt is appropriate where the objective sought to be achieved is frustrated but not where it is fully achieved and does not itself constitute a criminal offence. (*R.* v. *Percy Dalton (London) Ltd.* (1949) 33 Cr. App. R. 102, followed.) The Court of Appeal possesses the right to amend an indictment conferred by s. 392 of the Crimes Act 1908 as well as the power of amendment conferred by s. 5 of the Criminal Appeal Act 1945. A conviction for obtaining a cheque by false pretences may be sustained where the representation resulted in a cheque for a greater amount being obtained than would otherwise have been paid, whether the cheque is obtained by the accused himself or is procured to be delivered to a third person. The word "value" as used in s. 252 (1) (a) of the Crimes Act 1908 when applied to a cheque does not necessarily mean the amount shown in the body of the cheque; but where the cheque in question is a Treasury cheque to be met by the Government and is for an amount far in excess of £2 it is impossible to attach to it a value of £2 or less. Without necessarily attributing to it its face value, it may properly be held that it had a value exceeding £2 in the hands of the payee. *R.* v. *Lanham and Gilmore: R.* v. *Gilmore.* (C.A. Wellington. 1961. 23 February; 14 April; 15 May. Gresson P. North J. Cleary J.)

Mens rea—*Supplying liquor to person apparently under 21—Proof of* mens rea *not necessary—Licensing Act 1908, s. 202 (1) (Licensing Amendment Act 1952, s. 6 (1)).* The offence created by s. 202 (1) of the Licensing Act 1908 (s. 6 (1) of the Licensing Amendment Act 1952) of supplying liquor to a person apparently under the age of 21 years is an act which the Legislature intended to prohibit absolutely and the question of the existence of *mens rea* is relevant only to the question of determining the quantum of punishment after conviction. (*Eccles* v. *Richardson* [1916] N.Z.L.R. 1090; [1916] G.L.R. 704, followed. *Dunn* v. *Monson* (1911) 30 N.Z.L.R. 399; 13 G.L.R. 562 and *Innes* v. *McKinlay* [1954] N.Z.L.R. 1054, not followed.) The apparent age of the person supplied must be judged at the time of supply but it is for the Court to say whether, upon all the evidence, including that of the person supplying the liquor if he gives evidence on the point, the person supplied was apparently under the age of 21 years. (*Innes* v. *McKinlay* (*supra*), dissented from.) *Holland* v. *Peterken.* (S.C. Wanganui. 1961. 20 February; 27 April. Hutchison J.)

DECLARATORY JUDGMENT.

No jurisdiction to make declaration as to decision to be reached by Magistrate in a matter entirely within his jurisdiction without right of appeal. When a Magistrate is considering an application for a wine-maker's licence under s. 24 of the Licensing Amendment Act (No. 2) 1953, once he is satisfied that the statutory criteria have been fulfilled, he has no right to go beyond them and find reason for refusal. The fitness of the applicant which is in question in such an application is his fitness to receive the particular licence applied for in respect of the specified quantity of wine in the specified premises, and the fact that he was deemed fit to hold a licence elsewhere does not *ipso facto* qualify him for another. (*R.* v. *City of London Licensing Justices, Ex parte Stewart* [1954] 3 All E.R. 270; [1954] 1 W.L.R. 1325, followed.) The words "unless the Magistrate is satisfied" used in s. 24 connote the existence of a judicial discretion in deciding whether or not the Magistrate is in fact satisfied. In considering the fitness of an applicant for such a licence, it is not irrelevant for the Magistrate to go into the question whether a licence for the amount of wine specified can be economically operated, the reasons why the applicant requires a further licence when he already holds one for other premises and the possibility that the issue of a second licence could offer temptations to infringe the law and render difficult the policing of the licence. These elements must, however, be reviewed solely within the realm of the applicant's fitness and not as added and extraneous considerations. Where a Magistrate has already heard and determined a matter in regard to which there is no right of appeal and his determination is not in accordance with law, such hearing is regarded as no hearing at all and *mandamus* will lie to compel him to hear it again in accordance with law. In such a case the issue of a writ of *certiorari* to quash the earlier decision is not necessary. Since the grant of a wine-reseller's licence is within the jurisdiction of the Magistrate and there is no appeal from his decision, the Court cannot give a declaratory judgment or make an order under the Declaratory Judgments Act requiring the issue to the applicant of the licence applied for. (*Pyx Granite Co. Ltd.* v. *Ministry of Housing and Local Government* [1958] 1 All E.R. 625; [1958] 1 Q.B. 554, distinguished.) *Yukich* v. *Sinclair.* (S.C. Auckland. 1961. 14 March; 28 April. Hardie Boys J.)

DESTITUTE PERSONS.

Maintenance (Wife's)—Wife in desertion—Unable to earn—Husband unwilling to have her back—Court's jurisdiction to make maintenance order—Destitute Persons Act 1910, s. 17 (3). A husband whose wife is in desertion may be guilty of no failure to provide her with adequate maintenance when her state of health and her family responsibilities permit her to earn and she is able to earn sufficient for her own needs; but when it is shown in evidence that the wife has no income at all and that her health precludes her working to earn money, a husband fails to provide that wife with adequate maintanance if he, unwilling to return and maintain her in the family home, leaves her completely unprovided for. That is a failure to provide "maintenance reasonably sufficient for the necessities of the wife", and under those circumstances a Magistrate has jurisdiction under s. 17 (3) of the Destitute Persons Act 1910 to make a maintenance order against the husband. (*Bulman* v. *Bulman* [1958] N.Z.L.R. 1097, distinguished. *King* v. *Wilson* [1960] N.Z.L.R. 272, followed.) *Hodder* v. *Hodder.* (S.C. Auckland. 1961. 28 March; 14 April. Hardie Boys J.)

INFANTS AND CHILDREN.

Custody—Appeal from exercise of discretion as to custody—Principles applicable—Infants Act 1908, s. 6—Appeal to Supreme Court—Discretionary order—Principles on which such order to be reversed on appeal. A boy aged two-and-a-half years born of the marriage of the appellant and the respondent had been in the custody of his father since shortly after birth, although the main burden of the care of the boy had been carried by his maternal grandmother. There was a probability that as the child grew older he would turn more and more to the father for guidance and need less of his mother's care. *Held,* By the Court of Appeal (North and Cleary JJ., Gresson P., dissenting), That the welfare of the child was best served by leaving him in the custody of his father. Appeal from the judgment of McCarthy J., allowed. *Further held,* Per Gresson P. and Cleary J., An appellate Court when sitting on appeal from an inferior Court on a matter involving the exercise of a discretion is required to examine the relevant facts and circumstances in order to exercise its own discretion by way of review. The appellate Court should not reverse the order appealed from merely because it would have exercised the original discretion in a different way, but if it reaches the clear conclusion that there has been a wrongful exercise of discretion in that no weight or no sufficient weight has been given to relevant considerations, then the reversal of the order subject to appeal may be justified. (*Osenton* v. *Johnston* [1942] A.C. 130; [1941] 2 All E.R. 245, followed.) It may be that the restraint to which the appellate Court should subject itself is less stringent when the exercise of discretion appealed against is no mere matter of practice or procedure but is of such prime importance as the welfare of an infant whose right to have decided for him or her what is best is the first and paramount consideration. Per North J. Where questions as to the custody of the child of a broken marriage arise the welfare of the child is the paramount consideration. Such welfare requires to be considered broadly and with due regard to the future as well as the present. (*Reid* v. *Reid* [1941] N.Z.L.R. 952; [1941] G.L.R. 404 and *Fleming* v. *Fleming* [1948] G.L.R. 202, followed.) Per North and Cleary JJ. It can seldom be in the best interests of a child that it should suffer several changes in custody. While regard must be had to the principle that a child of tender years should be in the mother's care, a boy needs each year more and more guidance from his father. If this need may later require the child to be returned to the father's custody, the desirability of avoiding a change in custody may outweigh the mother's claim based on the child's present needs. Per Cleary J. 1. The conduct of parents is relevant to questions of custody of children insofar as it assists the Court to determine what is best for the welfare of the infant. 2. The principle that a young child is best in its mother's care is not to be regarded as a principle of inflexible application and much less as a rule of law. It should yield to other considerations affecting the welfare of the infant. *Palmer* v. *Palmer.* (C.A. Wellington. 1961. 15, 16, 17 February; 21 April. Gresson P. North J. Cleary J.)

LICENSING.

Licences—Wine-maker's licence—Magistrate's right to go beyond statutory requirements—Effect of applicant already holding such a licence—Discretion of Magistrate—Matters to be taken into consideration—Licensing Amendment Act (No. 2) 1953, s. 24 —*See* DECLARATORY JUDGMENT (*supra*).

Offences—Supplying liquor to person apparently under 21—Proof of mens rea *not necessary—Meaning of "apparently"—Licensing Act 1908, s. 202 (1) (Licensing Amendment Act 1952, s. 6 (1)*—*See* CRIMINAL LAW—MENS REA (*supra*).

MAGISTRATES' COURTS.

Practice—Order for possession of tenement on ground of non-payment of rent—Arrears and costs paid—Proceedings at an end—Magistrates' Courts Act 1947, s. 32 (3)—Tenancy Act 1955, s. 37 (3). Proceedings for possession of a tenement for non-payment of rent are brought to an end by s. 32 (3) of the Magistrates' Courts Act 1947 upon payment of the full amount claimed and costs. Once such payment has been made it is too late to apply under s. 37 (3) of the Tenancy Act 1955 for an order that s. 32 (3) shall not apply to such proceedings. *Hunter* v. *Norman.* (1961. 9, 10 March. Rothwell S.M. Auckland.)

MANDAMUS.

Matter already heard and determined but not according to law—Issue of writ of mandamus—*Whether writ of* certiorari *also necessary*—*See* DECLARATORY JUDGMENT (*supra*).

MASTER AND SERVANT.

Servant's liability for personal negligence not limited by statutory limitation in favour of employer—Carriers Act 1948, s. 6—Government Railways Act 1949, s. 23 (b)—*See* CARRIER (*onte,* 194)

PUBLIC REVENUE.

Income tax—Lease of farming land expiring and livestock thereon sold—Sale "in the ordinary course" of business—Income Tax Assessment Act 1957, s. 75 (1) (b). The appellant, a sheepfarmer, made a custom of buying sheep, fattening them and then selling them, and his properties consisted of a small area of freehold land and large areas held under short-term leases. At the beginning of the year ended 31 March 1958 the appellant's lease of an area of 430 acres ran out and was not renewed, with the result that he was forced to sell the stock which had been running on it. *Held,* That having regard to the appellant's ordinary methods of carrying on business the sale of the livestock above-mentioned was "in the ordinary course of that business" for the purposes of s. 75 (1) (b) of the Income Tax Assessment Act 1957. *A.* v. *Commissioner of Inland Revenue.* (1961. 19 April. Harlow S.M. Napier.)

CASE AND COMMENT

Contributed by Faculty of Law of the University of Auckland

Right To A Licence

The recent decision of Hardie Boys J. in *Yukich* v. *Sinclair* (28 April 1961) is of interest not only to lawyers but also to New Zealand wine makers in that the Court has held that in refusing to issue a second wine-maker's licence to Yukich in respect of premises located in a no-licence area the learned Magistrate had failed to hear and determine the application according to law. Yukich had applied for a licence authorising him to sell up to 500 gallons of grape wine at premises in Avondale. Under the Licensing Amendment Act (No. 2) 1953, s. 24, no licence was to be granted unless the Magistrate was satisfied that three conditions had been complied with—namely, the fitness of the applicant, the suitability of the premises and the availability of grapes for manufacture into wine.

It was argued for the plaintiff that if an applicant could demonstrate that these three requirements had been met he was entitled to a licence. The learned Magistrate had declined to accept this proposition and had refused to issue the licence on grounds which, in part at least, could not be justified by the terms of s. 24. Hardie Boys J. took the view that a Magistrate could not go beyond s. 24 in considering applications for licences. He referred to the decision of the Divisional Court in *R.* v. *The City of London Licensing Justices, Ex parte Stewart* [1954] 3 All E.R. 270; [1954] 1 W.L.R. 1325, and to an extract from the judgment of Lynskey J. who had stated:

> " If those conditions [set out in the statute] have, in fact, been complied with, the Licensing Justices have no power or discretion to refuse the grant. . . ." (*ibid*, 272; 1329)

In that case the United Kingdom Licensing Act had provided that the Justices " shall grant . . . if they are satisfied " as to three requirements whereas in *Yukich's* case the provision was different in that it provided that no licence " shall be granted unless the Magistrate is satisfied " as to three similar requirements. Hardie Boys J. recognised that the wording was different but in his view the difference was not material. The same principle, he said, applies to both cases, " that if the Magistrate is, in fact, satisfied with the statutory criteria he has no right to go beyond them and find reason for refusal ".

With respect, it is difficult to see that a negative proposition and an affirmative proposition have the same result. For example, if an Electoral Act provided that " A shall be entitled to vote if he is a British subject over the age of 21 and has resided in the district for three months " there can be no doubt that A has a right to vote if he can satisfy the three requirements named. If, however, the Act had said " A shall not be entitled to vote unless he is a British subject over the age of 21 and has resided in the district for three months " it is submitted that A cannot, even if he shows that the three requirements have been satisfied, claim the right to vote. All he can say is that he is not disqualified. He must prove his qualification by another provision. But in the absence of such a provision it is probable that an electoral qualification would be implied from the negative provision. In the case of the grant of a wine-maker's licence, there is no other provision upon which an applicant could base his entitlement to a licence. Is it reasonable, therefore, to argue that as no specific provision is made it can be implied from the terms of s. 24. ?

However, having found that the conditions stated in s. 24 were exhaustive, Hardie Boys J. decided that the taking into account of any other, and therefore extraneous, consideration invalidated the decision. But he could not grant the plaintiff the relief sought. The learned Judge rightly, it is respectfully suggested, refused to issue a *mandamus* commanding the Magistrate to grant the licence because that would have been a usurpation of the Magistrate's discretion. Nor could he issue a declaration under the Declaratory Judgments Act requiring the issue of a wine-maker's licence because this, too, would have been an improper interference with the Magistrate's jurisdiction from the exercise of which no appeal lies. A declaration is not a substitute for a right of appeal: see *Healey* v. *Ministry of Health* [1954] 3 All E.R. 449, 454; [1955] 1 Q.B. 221, 232, per Parker L.J. What the Court could do was by *mandamus* to order the Magistrate to hear and determine the application according to law. This Hardie Boys J. did, but he considered that it was unnecessary to quash the Magistrate's decision prior to issuing the *mandamus*. In his view no valid determination had been made. Although this judicial short cut is probably sound, it would have been more consistent with the generality of earlier cases if the invalid order had been quashed as a preliminary to the issue of a *mandamus* to hear and determine. The existence of a duty to act judicially was found by the Magistrate to exist. The second condition to the issue of *certiorari*—power to determine a question affecting rights—may have been more difficult to establish but the learned Judge did not inquire into this aspect of the question. He expressed himself as satisfied that an order of *certiorari* was unnecessary

> " for the effect . . . of the *mandamus* is to treat the original hearing as not a proper determination so that the hearing will proceed *de novo* ".

In this way the difficult question of " rights " did not arise for settlement. There is authority for the view adopted by the learned Judge, including *R.* v. *The City of London Licensing Justices* (*supra*), that *mandamus* alone is effective to secure reconsideration—or more accurately a proper determination—of the application.

Although the Court refused to issue a declaration in this case, the decision should not be taken as establishing that a declaration is not available in circumstances such as these. The plaintiff had made the same sort of error that was made in *Healey's* case (*supra*) when he asked for the wrong sort of declaration. The plaintiff in the *Yukich* case was, it is submitted, clearly entitled to a declaration that the Magistrate's decision was invalid; he could not, however, expect the Court, for the reasons already stated, to declare that he was entitled to have a licence issued to him.

The extract from the judgment of Lord Goddard L.C.J. in *R.* v. *Furnished Houses Rent Tribunal for*

Paddington and St. Marylebone, Ex parte Kendals Hotel Ltd. [1947] 1 All E.R. 448, 449, cited by Hardie Boys J. in relation to the limitations on the powers of the Supreme Court where the proceedings of a tribunal are regular upon their face but there has been a misconception on a point of law is no longer accepted as quite as authoritative as his judgment suggests. The decision in *R.* v. *Northumberland Compensation Appeal Tribunal, Ex parte Shaw* [1952] 1 K.B. 338, and later cases have provided a convenient means of escaping from the limitations imposed by Lord Goddard on the powers of a Court in relation to inferior tribunals. On this point reference should also be made to the cases cited by *de Smith's Judicial Review of Administrative Action*, 209-210, where it is stated

> " . . . the doctrine that it [the *Paddington* case] propounds has been impliedly rejected in a number of subsequent cases decided in England and in Commonwealth jurisdictions; and it must now be accepted that if a statutory tribunal exercises a discretion on the basis of irrelevant considerations or without regard to relevant considerations, *certiorari* may properly issue to quash its order."

J.F.N.

CORRESPONDENCE

Mental Health Conference

Sir,

In Canterbury, a Mental Health Council has been formed with the aim and object of raising the level of knowledge among all sections of the community about the facts of mental health and disease; encouraging research into mental health and disease; and assisting in every way, individuals and agencies, voluntary and Governmental, already working in these fields. The constitution of the Canterbury Mental Health Council is probably unique. Below are some of the organisations to which members of the council belong: The professions of medicine, nursing, the ministry, law, accountancy and teaching; Canterbury University, Junior and Senior Chambers of Commerce and the Canterbury Manufacturers' Association; the National Council of Women; the Plunket Society; the Rotary and the Lions Clubs; the Public Service Commission; the Trade Unions; the Health Department; the Mental Health Association; the City Council; the New Zealand Broadcasting Service, and the Returned Services Association. The Council was organised early in 1960 and, shortly thereafter, was incorporated under the Charitable Trusts Act. After Council members had considered the ways in which they could begin work for mental health in Christchurch, they decided the first project should be in the form of a community-wide educational programme.

The programme will last two weeks in August-September 1961. The first week will be devoted to professional groups, the second to the lay public. It is felt that non-medical professional groups, such as clergy, lawyers, nurses and school teachers, as well as medical practitioners, psychologists, and social workers should participate in the first week's learning experience since all have vast social responsibilities in their daily work. There will also be meetings restricted to medical practitioners. If we are to work towards the prevention of emotional disorder, it is necessary that each of the various groups should understand the roles and attitudes of the others and learn to work harmoniously with mutual respect and in close co-operation.

Interested members of the legal profession are invited to register promptly for the professional week's meetings through Mr D. W. Bain, Secretary, Canterbury Mental Health Council, P.O. Box 318, Christchurch (Registration Fee £1).

Detailed programmes will be supplied to those who register, but in the meantime you are advised that the first week's sessions, and most of those in the second week, will be held at the University of Canterbury. The Students Association, which initially financed this campaign by a public collection, has made rooms available in its Student Union Building, and the University Council is allowing the use of the University Hall and a lecture room.

Yours, etc.,
H. D. LIVINGSTONE, Chairman,
Professional Education Committee,
Canterbury Mental Health Council.

"The Perfect Litigant"

Sir,

In anticipation of your offer next month of a prize for the correspondent who can detect and correct the greatest number of technical errors in the anecdote, "The Perfect Litigant" (*ante*, 175), I offer the following:

1. First sentence. This should read: "A young litigant called on a well-known solicitor and asked him to bring an action for him in the Queen's Bench."

2. Alter "barrister" to "solicitor" throughout the remainder of the story.

3. Substitute "House of Lords" for "Privy Council" in eighth and tenth sentences.

4. Substitute "office" for "chambers" in fifteenth sentence.

I claim that this is the neatest solution. To retain the barrister motive it would be necessary to introduce an awkward third character in the person of the solicitor (or his managing clerk) at suitable stages, which would make a very clumsy narrative. Of course, there is an easier solution—namely, to give the story a New Zealand setting by the simple process of substituting "Supreme Court" for "Queen's Bench" and "Queen's Bench Division". It would be necessary then only to change "chambers" to "office".

If a bonus is offered for punctuation mistakes, I will put in for another comma in each of the two last lines, after "throat" and "breed" respectively.

Yours, etc.,
NIGEL WILSON.

[The above letter was referred to our contributor, Scorpio, who replies:

> "Scorpio bows his head in shame and pleads that the rights of *In re Homer* be invoked and that Scorpio, the suppliant, be allowed a 'nod'." We join in his plea—EDITOR.]

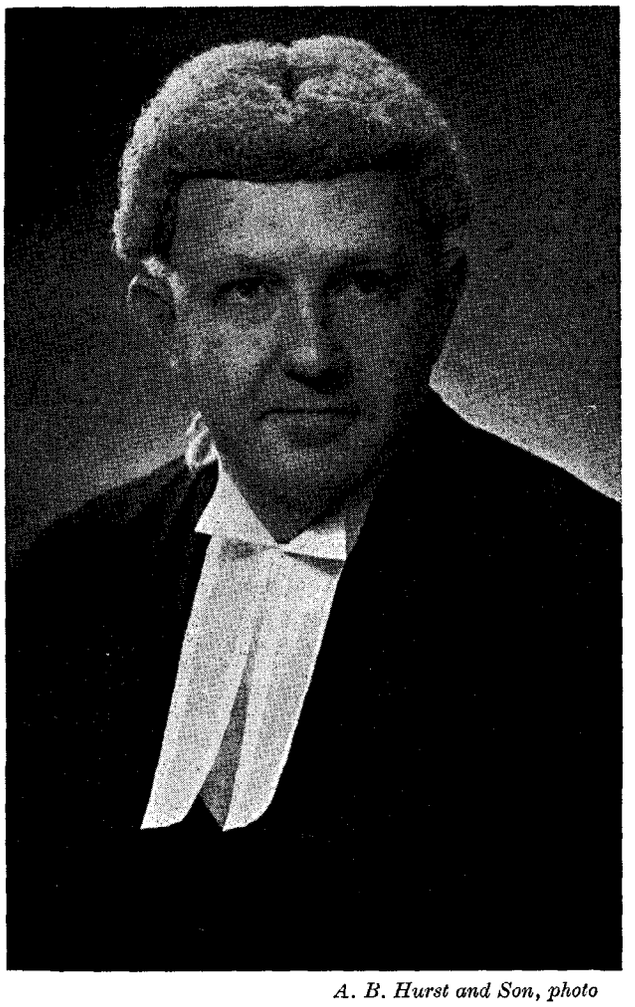
MR JUSTICE WOODHOUSE

Hawke's Bay Provides New Judge

THE legal profession in New Zealand and the public have, over the years, been fortunate in the care and wisdom with which the Judiciary has been chosen and the appointment of Mr Justice Woodhouse is not likely to prove an exception. His many friends in Hawke's Bay and others outside the provincial boundaries have known for some time that he possessed the essential qualities of a Judge and the regret occasioned by his departure for higher office will be outweighed by the feeling of satisfaction that he goes to a task for which he is well fitted.

The new Judge was born in Napier in 1916 and received his education at the Napier Boys' High School and Auckland University College. At the latter he took an active part in student life and was editor of the College publications.

During the last war, he had a short period of service in the Army in New Zealand, but later joined the R.N.Z.N.V.R. He was commissioned in the United Kingdom and rose to the rank of Lieutenant-Commander. He operated in motor-torpedo boats and was awarded the D.S.C. for service in the Mediterranean. For some months in 1943 he was a liaison officer with the Yugoslav Armed Forces on the Dalmatian coast and at the conclusion of hostilities in Europe he was appointed assistant to the Naval Attache at the British Embassy in Belgrade.



A. B. Hurst and Son, photo

Mr Justice Woodhouse

On his return to New Zealand in 1946 he joined the firm which became known as Lusk, Willis, Sproule, and Woodhouse. On the retirement of Mr L. W. Willis in 1954 he was appointed Crown Solicitor at Napier and held that office until his appointment to the Bench.

As an advocate the new Judge has been restrained, analytical and purposeful rather than aggressive, and in his capacity as Crown Prosecutor he erred, if so it could be called, on the side of leniency in his intense desire to ensure that the accused received *full justice*.

Apart from his work as Crown Prosecutor, he has had a wide experience in common-law, local body litigation and taxation cases.

Mr Justice Woodhouse has been continuously associated with the council of the Hawke's Bay District Law Society for the past 13 years, first as secretary and later as a member of the council. At the date of his appointment he was vice-president of the society. It is a matter for regret in Hawke's Bay that he will be unable to fill the office of President which was so ably carried out by his predecessors as Crown Solicitors, the late Mr H. B. Lusk and the late Mr L. W. Willis, who were members of the firm from which the new Judge now retires.

It has been characteristic of Mr Justice Woodhouse that when he has encountered a problem requiring technical, scientific or other unusual knowledge he has been satisfied with nothing less than complete expert qualification in the subject. The ills of the flesh which support a claim for damages, the inner workings of machinery and other things have had his close attention during his career at the Bar, and probably his most exhaustive treatment of a subject was his work as counsel assisting the Commission of Inquiry on the controversial question of fluoridation of water supply. It is a compliment to his industry that inquiries for the printed record of that Commission have come from many overseas countries where it is regarded as the last word on the subject.

Apart from his industrious approach to the particular problem of the moment, Mr Justice Woodhouse has been a wide reader, not only of the law but of current affairs and practical subjects. With the knowledge he has gained, and with a warm and understanding approach to his fellow-men, he will grace the Bench to which he has been appointed.

His Honour has taken up residence in Auckland and with Mrs Woodhouse and their six children left Hawke's Bay with the warmest congratulations and best wishes of the profession.

Complimentary Dinner

On Saturday, 30 June, a complimentary dinner was tendered to his Honour at the Hawke's Bay Club. It was largely attended by practitioners in the district,

LEGAL ANNOUNCEMENTS.

Concluded from p. i.

Position available for Solicitor in progressive Auckland City practice. Commencing salary £1,250. Good prospect of partnership for suitable applicant. Apply to:
No. 158,
c/o C.P.O. Box 472,
WELLINGTON.

Solicitor required for Magistrates' Court, conveyancing and estate work in Bay of Plenty practice. Partnership prospects for suitable man. Apply to:—
No. 157,
c/o C.P.O. Box 472,
WELLINGTON.

Messrs Gawith, Neild & Co. and Mr J. Macfarlane Laing, *Barristers and Solicitors, Masterton, give notice* that they have amalgamated their legal practices as from 1 July 1961 and that the combined practices are now being carried on as one at the offices of the past firm of Messrs Gawith, Neild & Co., at 32 Perry Street, Masterton, under the new firm name of Messrs Gawith, Neild & Laing.

Young qualified solicitor required by old-established Hamilton firm for conveyancing, estate and some common-law work. Good prospects for suitable applicant. Reply with details of qualifications and experience to:—
No. 155,
c/o C.P.O. Box 472,
WELLINGTON.

and the toast to the guest of honour was proposed by Mr K. U. McKay, of Waipawa.

In reply his Honour made reference to the recent death of Mr William Wood, of Napier, after 60 years of practice and expressed regret that Mr Wood had not known of this appointment which he would have regarded as a compliment to the profession in Hawke's Bay as a whole.

After some brief reminiscences of his period in practice, his Honour expressed thanks to various colleagues and others with whom he had been associated. "First", he said, "you will permit me, I know, to acknowledge before you all my great debt to Messrs Lawrie Willis and Henry Sproule, and to thank my two younger partners for their loyalty and feeling for me. In regard to the work of the Crown I have tried to be fair; to the extent that I have succeeded I was provided in advance with examples in Messrs Lusk and Willis, which are unlikely to be forgotten in this district. From the Magistrates who have been here and, over the last 10 years, from Mr Harlow, who I am glad to see here tonight, I have had the greatest consideration; and I might add from the Registrar and all his staff as well.

"I must mention, too, my close association with the council of the Law Society over the last 13 years", he said. "This is a matter of great pride to me and I am grateful for your confidence in me over all that period. In the Courts, I look back on a good many keenly fought encounters with my old friend Mr Hallam Dowling and the other members of the Bar here. It is one's colleagues who provide the education and I am a local product. May I say, too, that those of you who are now coming along behind my vintage are a credit to us all. And then just one word to our immediate past president, Mr W. A. McLeod, my old friend, who has been a good and faithful 'debunker' through the years and who often has straightened up a faltering approach by the Gaelic cry of 'Hold Fast'."

In conclusion his Honour said: "I approach the responsibilities which lie ahead of me with feelings of humility and of hope and a deep wish to do my best. I believe I go with your goodwill and encouragement. For this and for all your kindness I am a grateful man."

ESTREAT OF BAIL

In the course of an article on the above topic we quoted (*ante*, 163) two paragraphs from the judgment of Hardie Boys J. in *Ware* v. *Attorney-General*. In the second of these paragraphs his Honour referred to "such of Her Majesty's loving subjects as are remanded on bail".

In case his Honour may be thought to have been flippant in using the word "loving" in this passage, we wish to point out that the phraseology used is a direct reference to that part of his judgment, not mentioned in our article, which, in quoting *In re Hooper* (1824) M'Cle. and Yo. 578; 148 E.R. 241, sets out the form of the Writ of Privy Seal published at the beginning of the reign of George IV (as was then the custom) in which there is held out to "our loving subjects" the prospect of mitigation of penalties and forfeitures.

PERSONAL

The Hon. Mr Justice Macarthur has been appointed a member of the Rules Committee under the Judicature Amendment Act 1930 to replace the late Mr Justice Shorland. Mr Justice Macarthur will hold office until 31 December 1963.

Mr J. K. Patterson, of Reefton, has been appointed a Stipendiary Magistrate. Mr Patterson took up his appointment today at Invercargill where he replaces Mr E. S. J. Crutchley, S.M., who has transferred to Christchurch.

Mr K. Gillanders Scott, of Gisborne, has been appointed a Judge of the Maori Land Court. He will preside in the Tokerau (North Auckland) district, filling the vacancy caused by the death of Judge Porter.

Recent visitors to Australia for the Twelfth Legal Convention were the Solicitor-General, Mr H. R. C. Wild Q.C., the vice-president of the New Zealand Law Society, Mr S. W. Tong, of Auckland, and Messrs D. McGrath, J. B. O'Regan and L. M. Papps, all of Wellington.

We Must Punish Crime Hard—"*The Guardian* of 25 March reports remarks made by the Home Secretary on various matters when he was speaking recently at a Conservative Central Council meeting. He said that three things should be done to combat the crime wave, 'we must strengthen the police force, we must punish crime hard and we must not mix up the young and the old, otherwise our prisons will become universities of crime and the young will learn from the old'. This recognition of the need for real punishment of crime (and obviously this does not here include minor traffic or other offences but refers to what the ordinary person means by 'crime') is welcome. There is perhaps a tendency to overlook, in the attempt always to be fair to the offender, that he is in the dock for two reasons, the first is that he has in fact committed an offence, and the second is that the person against whom he has offended is not allowed to deal with him personally for his offence but must rely upon the law to see that adequate steps are taken in order to punish him for what he has done, to discourage him and others from committing offences, and to consider, in appropriate cases, any recompense for the victim of his offence. By all means let Courts have all the relevant information about the offender which may help to show why he has committed the offence and the likelihood of his behaving himself in the future, but do not let us forget that punishment is still often necessary and that in the Home Secretary's words 'we must punish crime hard' if we hope successfully to fight the present crime wave."—(1961) 125 J.P., 252.

SOME ASPECTS OF THE LAW RELATING TO MATERNITY PRACTICE *

What Should the Patient be Told ?

There is little authority on this question, but I consider that the authority does show that the patient must be told all the facts relative to her condition, if she should so require. In matters of opinion, a doctor would necessarily be guarded, and it is probably not for any nurse to venture opinions relative to medical states. In one case in England in 1946[1] a doctor refused to disclose to his patient confidential information as to venereal disease. He agreed to disclose the information in Court should he be required to do so. The Judge held that it was not for the doctor to keep his patient in the dark and produce the evidence only when called upon in Court. The considerations relating to venereal disease did not justify him in refusing to divulge confidential information to the patient, or to any named persons or persons, when asked by the patient so to do. In this section I am dealing with what has happened, not what doctors should tell patients as to danger of treatment,[2] nor damage due to faulty diagnosis communicated to a patient.[3]

Professional Secrecy

Although the doctor or the nurse must tell the patient all the facts when so required, there must necessarily be secrecy in regard to professional matters, when other persons wish to find out these things. Our starting point may be s. 62 of the Hospitals Act 1957, which prevents any person employed by a Board giving information concerning a patient without the prior consent of the patient or his representative, whether the person is still in the institution or not. There are many exceptions to this rule. The most important for your purposes being possibly the disclosure of information to certain officers of Departments and notably to any constable. It should be noted that the representative of a patient includes his executor or administrator, a dependant within the Workers' Compensation Act provisions, a parent or guardian of an infant, and, where the patient is unable to give his consent, means a person appearing to be lawfully acting on behalf of the patient or in his interests.

This section applies only to public hospitals but it would be reasonable to suggest that all hospitals could obey this same rule.

Difficulties can be encountered if persons in a professional capacity give information concerning their patients to other people, and two cases will illustrate this. The first is a recent case in New Zealand.[4] A doctor who was attending a woman gave a certificate to her husband's advisers in regard to her mental health. Later the patient was confronted with the certificate in Court proceedings. She suffered physical injury by way of shock. A jury found in her favour, assessing damages at £250. The Chief Justice (Sir Harold Barrowclough) held that a doctor's duty of care included a duty not to give a third party a certificate as to his patient's condition, if he could reasonably foresee that the certificate might come to the patient's knowledge, and that that would be likely to cause the patient physical harm. The verdict of the jury was upheld. In a much earlier English case,[5] a doctor was sued for damages when he had discussed with relatives an abortion in the case of his sister-in-law whom he was attending. Her husband was abroad, and the doctor, regarding the pregnancy as illegitimate, sought to have her allowance stopped. Damages were assessed at £12,000. Bearing in mind that this was in 1896 one can realise how much the damages might have been today. The law clearly holds that secrecy is an essential condition of the contract between a medical man and the patient, and there can be no doubt that it would also be considered an implied condition of the contract between a nurse and a patient. Any doctor or nurse who voluntarily gives information to third parties may find that it could result in harm, not only to the patient, but perhaps, to the person giving the information.

Privilege

This topic is of course related to the others, as to what the patient may be told, and as to what others may be told. The English law is that the relationship between a medical practitioner and his patient does not excuse the practitioner, whatever medical etiquette may require, from the obligation, if called upon, to give evidence in a Court of law. He is in the same position as any other person who is not specially privileged in this respect by the law. He may be summoned to give evidence in civil or criminal cases and is liable to be punished for contempt of Court if he neglects to attend. He may be asked to disclose on oath information which came to him through professional relationship with a patient; and if the question is not inadmissible on other grounds, he may be committed for contempt of Court if he refuses to answer.[6] In New Zealand this rule has been substantially modified. Section 8 of the Evidence Act 1908 states that a physician or surgeon shall not, without the consent of his patient divulge in any *civil* proceeding (unless the sanity of the patient is the matter in dispute) any communication made to him in his professional character by such patient, *and necessary to enable him to prescribe or act for such patient.*

Nothing in the section protects any communication made for any criminal purpose, or prejudices the right to give in evidence any statement or representation at any time made in or about effecting life insurance. Two important questions arise from the wording of

*Concluding text of an address given by Mr E. S. Bowie, of Christchurch, to the medical and nursing staff of St. Helen's Hospital, Christchurch.

[1] *C.* v. *C.* (1946] 1 All E.R. 562.

[2] As to this see *Eddy on Professional Negligence*, 109-110.

[3] See discussion in *Glaister's Medical Jurisprudence and Toxicology*, 10th ed., 9--10.

[4] *Furniss* v. *Fitchett* [1958] N.Z.L.R. 396.

[5] *Kitson* v. *Playfair* (1896) *Times*, 28th March; as to facts see *Simpson on Forensic Medicine*, 3rd. ed., 230.

[6] *20 Halsbury's Laws of England*, 3rd. ed., 11.

this section. It should first be noted that the communication is privileged in a civil proceeding. It is quite clear that privilege in criminal proceedings will not attach to any such communication. The second point is that it must be a communication which is necessary to enable the doctor to prescribe or act for the patient. If the communication is not such a communication but is irrevelant to the question of prescribing or acting for the patient, it carries no privilege under this section. It has been held[7] that the privilege does not extend to matters discovered by a physician or surgeon on examination of the patient's body or during operation or to communications of any kind made by the physician or surgeon to the patient. The privilege extends to communications made by patients to their medical men in their professional capacity and subsequently communicated by such medical advisers in the course of their duty to other persons, and the communications cannot be divulged without the consent of the patient. If therefore a communication is made to a doctor, who communicates it to a matron, or nurse, and it is recorded on the hospital records, the communication does not become available merely because it is in the hospital records. What the doctor has told the matron or the nurse is hearsay evidence and cannot be admitted as such. This was decided in a case involving your own hospital.[8] Subject to the last qualification of communication by the doctor to the matron or nurses and recording on case notes and the like, I point out that communications to nurses are subject to no privilege whatever. It is therefore of the utmost importance that a nurse should not tell anyone of such communications, and should give the information of such communications only by the direction of the patient herself.

Duty to Disclose Crime

There appears to be a conflict between the legal view and the ethical view of the profession. The legal view is that if a medical practitioner (or presumably a nurse) is informed by a patient that a crime has been committed, it is his duty to communicate with the authorities.[9] This rule was propounded by Mr Justice Avory in a charge to a Grand Jury in a criminal abortion charge. It provoked a resolution by the Royal College of Physicians, the full text of which is set out in *Glaister on Medical Jurisprudence and Toxicology*, 10th ed., 362, 363.

Summarised these resolutions are that the doctor must not disclose without consent of the patient; in cases of criminal abortion he should urge the patient to make a statement which may be taken as evidence; in the event of refusal by the patient the doctor is under no legal obligation to take further action; the doctor should obtain the best legal and medical advice available to ensure that the patient's statement may have value as legal evidence and to safeguard his own interests; if the patient should die the doctor should refuse to give a certificate of the cause of death and should communicate with the Coroner. The question of professional secrecy in relation to medical witnesses was commented upon by the Judge in the £12,000. damages claim to which I have referred. The Judge took the view that the medical profession had no right to legislate on this matter. They might make their own rules for their guidance as professional men, but they cannot impose upon the public their self-made laws. The Judge would exercise discretion whether he would order the witness to answer or not. As to the duty to report crime, he did not agree with a rule that in all cases medical practitioners must report to the Public Prosecutor, but there might be cases where it was their obvious duty.[10]

The view of the profession as set out in the resolutions does not seem to be universal. *Simpson on Forensic Medicine*, 3rd. ed., 230, 231, deals with the question more on the basis of the legal view. He takes the view that the medical man must use his own judgment, even to the extent of giving the Police information which may involve his patient. He considers that information which might lead to the conviction of a dangerous habitual abortionist involves the doctor in a duty as a citizen to provide the Police with information. The doctor may hesitate whilst hurt to a patient still alive may follow from publicity, but if death has eliminated that possibility, he should no longer hesitate.

Simpson points out that a dying declaration, which can only become valid after death, may help the doctor to record vital evidence without risking his reputation for tact and consideration among his patients. Further, Simpson points out that it is fair to add a word of caution on the remarks on ethics. If the doctor remains silent when in possession of knowledge of crime he may appear to be condoning the offence, or even be suspected of assisting in it. He says that good faith and common sense will guide most doctors well enough, but he recommends that in the event of a dilemma the advice of an experienced secretary of a defence society is better than a chat over a drink with a colleague at the club. To nurses, I would say take first the advice of your matron who, in turn, may well think it wise to obtain advice from a senior consultant.

Identification

Identification of the mother is required to enable the nurse to keep the chart referred to in Reg. 48 of the Nurses and Midwives Regulations. The name in full and the address of the mother must be given. If the nurse has cause to believe that the information is false, she should take all reasonable steps to check. This could be important later if there were a need for proving that the woman who presented herself to the hospital was a certain person who had given birth to a child. That evidence might be required in a paternity suit or in proceedings involving inheritance, or in divorce proceedings.

Identification of the father does not present much problem. There appear to be no duties except under Reg. 48 (2) which provides that a midwife or maternity nurse in domicilary practice must advise the parents of their obligations to register the birth. It may be that the person appearing to be the father, may not be the husband of the patient. Care therefore should be taken to see that no statements are made which could lead to any difficulty as between the husband and his wife.

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[7] *Lucena* v. *National Mutual Life Association of Australasia Ltd.*, (1911) 31 N.Z.L.R. 481: 14 G.L.R. 231.

[8] *In re St. Helen's Hospital* (1913) 32 N.Z.L.R. 682; 15 G.L.R. 418.

[9] *R.* v. *X.* (1914) 49 L.Jo. 713.

[10] *Kitson* v. *Playfair* (*supra*) as to views of Hawkins J. see *26 Halsbury's Laws of England*, 3rd. ed., 11 (i) and *Glaister on Medical Jurisprudence*, 10th ed. 52.

It should be noted that care should be taken in regard to name and address of the father. Section 10 of the Births and Deaths Registration Act 1951 compels the occupier of premises in which the child is born, to give notice to the Registrar, according to the best knowledge and belief of the occupier, of the facts of the birth, the date, the name and address of the mother or father, and such other particulars as the Registrar-General may require. The occupier of a hospital is the person for the time being in charge. The notice must be given within 48 hours after the birth if in a borough, or seven days in any other cases. If the father's name is given in that notice, it is necessary to make some careful inquiry before giving the notice. This notice has to be in writing signed by the occupier and endorsed by some other person, if any, in attendance at the confinement. Where a child is born immediately before admission to the premises, the occupier must still give the notice.

If the father and the mother are unable to give further information as required, the occupier of the premises and each person present at the birth of the child, is responsible (under s. 11) for informing the Registrar of the particulars required to be registered concerning the birth of the child. If, for example, the mother is dead, and the father is absent or unable to give the information, the duty falls on the occupier and every person present at the birth. Of course, the information can only be given to the best of the knowledge and belief of the informant and this is all that is required.

I mention these sections to show that where information is given, care must be taken to see that it is accurate. The information must be given according to the best of the knowledge and belief of the informant.

Identification of twins may present a problem. It is possible that the first born of twins may be entitled to inherit property. This could happen if the child were entitled to inherit an entailed estate, or if a legacy were given to the first-born of a particular mother. There is a Bible story of the birth of twins where one twin put forth his arm, and was tagged by the midwife. The arm was then retracted, and the other twin was born first. That story is not the expression of the legal view as to which was born first. The common law provides that a child is not deemed to have been born alive unless it has an independent circulation.[11] Section 174 of the Crimes Act 1908 provides that the child becomes a human being within the meaning of the Act when it has completely proceeded in a living state from the body of its mother, whether it has breathed or not, whether it has independent circulation or not, and whether the navel string is severed or not. It should be noticed that it is only for the purposes of the Act, and the section deals with the killing of a child. In regard to questions of inheritance, in my view, the common law would prevail and the child required to have established an independent circulation. Careful notes should be taken, just in case such matters may be important later.

Abortion

I have dealt already with questions of privilege and and duty in relation to abortion. It is not necessary for me to say that abortion is a crime and that no doctor or nurse should be a party to it. Without dealing with that question of crime any further, it is interesting to remember the case of Mr Bourne who in 1938 was charged with this crime.[12] A young girl not quite 15 years of age was pregnant as a result of rape. Mr Bourne who was a surgeon of the highest skill, openly in one of the London hospitals and without fee performed the operation of abortion. The Judge directed the jury that it was for the prosecution to prove beyond reasonable doubt that the operation was not performed in good faith for the purpose only of preserving the life of the girl. The surgeon had not got to wait until the patient was in peril of immediate death, but it was his duty to perform the operation if, on reasonable grounds and with adequate knowledge, he was of opinion that the probable consequence of the continuance of the pregnancy would to be to make the patient a physical and mental wreck. It will therefore be seen that a reasonable (if not a liberal view) was taken by the Judge as to the meaning of the words " preserving the life of the girl ". The test is, was the operation performed to get rid of the child or was the operation performed to preserve the life of the patient ?

Coroners' Inquests

It is of course your duty to report the death of the mother or of the child : see Reg. 48. In such a case the Coroner will examine the facts to see if an inquest is necessary. If a doctor can certify that the death was due to natural causes and there is nothing to suggest any untoward happening or negligence then no inquest is necessary. If however, the Coroner directs an inquest, it may be necessary for you to attend to give evidence. This brings home one of my earlier points stressing the need to comply with the regulations in all respects, and in particular the regulation relating to the keeping of records. Those records in such an event are of immense value, not only to the Coroner, but to any nurse or doctor who is concerned with the matter.

I feel I have said enough to cover what I think are the most important matters which may arise in regard to the law applying to maternity practice. I am grateful for the opportunity given to me to deliver this address.

[11] *R.* v. *Poulton* (1832) 5 C & P. 329 ; 172 E.R. 887 ; *R.* v. *Enoch* (1833) 5 C. & P. 539 ; 172 E.R. 1089, and *R.* v. *Wright* (1841) 9 C. & P. 754 ; 173 E.R. 1639.

[12] *R.* v. *Bourne* [1938] 3 All E.R. 615 ; [1939] 1 K.B. 687.

The Short Sharp Shock——" It appears that official policy has receded somewhat from the line of the ' short, sharp, shock ' which was given so much publicity when the first detention centre was opened at Kidlington. We gather that it is now considered that this line of treatment with its emphasis upon discipline, prompt obedience, and general speedy efficiency is to be modified in favour of a ' reformative ' approach which it is considered will make a return to society easier after sentence has been served. Three months is a very short time for any reformative treatment to be at all effective. We believe that generally such methods are best reserved for the cases considered suitable either for probation on the one hand, or a considerable sentence of imprisonment or corrective training on the other. Our own observation, which we have verified from a wide variety of interested people, is that the ' short, sharp, shock ' methods were often most successful in restoring some semblance of discipline and personal pride to the young men whose neglect of these qualities were frequently at the root of their delinquent behaviour."—(1961) 125 J.P. 186.

FORENSIC FABLE

By "O"

The Languid Leader and the Ducal Action

There was Once a Languid Leader. He Despised Old-Fashioned Methods and did not Think Much of his Contemporaries. Though the Languid Leader was both Learned and Industrious he Preferred to Pose as a Dillettante. Sometimes he Remarked that he Only Practised at the Bar because it Provided him with a Certain Amount of Pocket-Money. Often he would Say that it was an Old Woman's Job. Shortly after the Languid Leader had Taken Silk a Painful Dispute Arose between the Bogglesdale Rural District Council and the Duke of Agincourt. The Rural District Council Asserted, and the Duke Denied, that there was a Right of Way over his Grace's Best Grouse-Moor. As the Passage of Citizens along the Sky-Line would Absolutely Ruin the Third and Fourth Drives the Duke Consulted his Family Solicitor and a Chancery Action was Duly Launched. The Duke Retained Mr Topnot, K.C., the Great Real Property Lawyer, to Present his Claim for Damages, a Declaration and an Injunction. The Rural District Council Delivered a Defence and

Counterclaim which Bristled with Law and Fact. Two Days before the Case Came On, Mr Topnot, K.C., was Attacked by Influenza and Returned his Large and Well-Marked Brief. Consternation Reigned in the Ducal Camp. The Family Solicitor, not without Misgivings, Approached the Clerk of the Languid Leader. That Experienced Official Undertook that if the Fee were Substantially Increased (as Time was so Short) his Employer would Give the Matter his Close Attention. On the Eve of the Day Appointed for the Trial the Duke of Agincourt, the Family Solicitor, the Managing Clerk, and the Junior Counsel Attended at the Chambers of the Languid Leader for the Final Consultation. The Languid Leader had Studied the Brief with Care and Knew the Case Inside Out. But he was not Going to Give the Show Away. He Received the Party with Vague Cordiality and Thought it Well to Mistake the Duke of Agincourt for the Managing Clerk. He then Observed that he had Only been Able to Glance at the Pleadings, and Opined that the Case was about a Cargo of Chinese Pickled Eggs. When this Misapprehension was Rectified the Languid Leader Exhibited no Emotion. After the Junior Counsel had Explained the Outstanding Points, the Languid Leader Yawned and Said he was Afraid he must be Going to the House. The Duke of Agincourt Left the Consultation Speechless with Rage and Indignation. On the Morrow the Languid Leader Delivered a Dashing Speech and Cross-Examined the Defendants' Witnesses into Cocked Hats. When All was Happily Over the Languid Leader Received the Congratulations of the Duke of Agincourt with Easy Nonchalance. He Explained that One Case was Much Like Another and that it was Quite Easy to Pick a Thing Up as You Went Along.

Moral—*Keep It Up.*

BILLS BEFORE PARLIAMENT

During the current Session of Parliament we propose to publish in each issue a list of the Bills before the House which have not yet been finally dealt with. Owing to the unavoidable delay occurring between the date of going to press and the date of publication the list will from time to time not be completely up to date, but we shall endeavour to see that it is kept as nearly so as is possible. The Bills now before the House are as follows:

Agricultural and Pastoral Societies Amendment
Apprentices Amendment
Births and Deaths Registration Amendment
Coal Mines Amendment
Cook Islands Amendment
Criminal Justice Amendment
Education Amendment
Engineering Associates
Gas Industry Amendment
Government Railways Amendment
Land Settlement Promotion Amendment
Land Transfer Amendment
Law Reform (Testamentary Promises) Amendment
Local Elections and Polls Amendment
Maori Education Foundation
Maori Social and Economic Advancement Amendment
Mental Health Amendment
Mining Amendment
Monetary and Economic Council
Motor Spirits Duty
New Zealand Army Amendment
Penal Institutions Amendment
Quarries Amendment
Republic of Cyprus
Staff Superannuation (Private Member's Bill)
Workers' Compensation Amendment.

Statutory Regulations.

PUBLIC TRUST OFFICE REGULATIONS 1958, AMENDMENT NO. 1 (S.R. 1961/64).—Increasing from 4 per cent to 4¼ per cent the rate of interest payable after 1 June 1956 on trust money in the Common Fund of the Public Trust Office which is not at call.

COURTS MARTIAL APPEALS (LEGAL AID AND EXPENSES) REGULATIONS 1961 (S.R. 1961/65).—Prescribing the fees and expenses payable to solicitors and counsel assigned to appellants under the Courts Martial Appeals Act 1953 and also witnesses expenses.

PATENTS DESIGNS AND TRADEMARKS CONVENTION ORDER 1940, AMENDMENT NO. 6 (S.R. 1961/69).—Including Vatican City in the list of Convention Countries for the purposes of the Patents Act, the Designs Act and the Trademarks Act.

THE DETERIORATION OF THE ALCOHOLIC

The address on alcoholism by Albert B. Logan, published in a recent issue of the LAW JOURNAL (*ante*, 173) prompts me to describe for the benefit of interested practitioners the deterioration that takes place in those afflicted with alcoholism. The alcoholic deludes himself on matters of fact, but is most convincing to his hearers because he really believes the matters of which he speaks to be the truth. He is a past-master at putting everyone else in the wrong. For instance, if his wife talks to him, she is nagging, but if she remains silent she is sulking. What is the poor woman to do? Many psychiatrists who have been consulted by a wife have, after hearing the alcoholic husband, come to the conclusion that it is the wife herself who needs treatment. This may be so, but the trouble stems from the alcoholism of her husband. The purpose, therefore, of this article is to acquaint practitioners of the symptoms of alcoholism which might explain certain inconsistencies in the behaviour and beliefs of one or two of their clients.

Alcoholism is now accepted by medicine as a progressive incurable fatal disease unless the sufferer stops drinking alcohol. For the purpose of this article, Dr Thomas T. Jones of America supplies a very suitable description of alcoholism. He says:

> "Alcoholism is a disease of three facets. There is physical disease, mental or emotional aberration (some prefer to designate it as personality defect or disorder), and, most important of all, there is spiritual conflict or need. All three elements of major distress must be recognised, appreciated and understood."

During the course of this disease, certain physical disorders develop, because of progressive vitamin and nutritional deficiencies. These physical disorders are within the province of a medical practitioner who should be consulted.

If we liken the processes of the body to that of an ordinary motor car engine, the vitamins may be likened unto the spark, and the sugar and starches to the fuel. If there is a poor spark or no spark at all, there is little or no combustion, and therefore no energy. That is why alcoholics are such procrastinators and put off most things until tomorrow. They have no energy for continuous effort.

Lack of vitamins also affects the working of the mind. That is why alcoholics develop that merry-go-round of stinking thinking and drinking so common to them all. They are usually idealists, perfectionists, and unduly sensitive, but they are unable to cope with frustration. When frustrated, they respond by resentment against persons or things. Although this causes a certain amount of local disturbance, the most serious wound is to themselves. They believe themselves not understood, retreat into themselves, and suffer extreme self-pity and loneliness. By drinking they either find company or live in a dream world and get back their self-conceit, which is usually expressed in an unhealthy grandiose form—life of the party, taxi-itis, telephone-itis, big-shotism, or squandering their money. Through sneaking drinks in the early stages of alcoholism, they have learned to drink alone, and sometimes prefer it. They then go on from self-conceit to day-dreaming; "If only I . . ., if only I won a sweep-stake, everything would be all right". These day-dreams are in turn frustrated; hence the alcoholics' mental cycle of frustration, resentment, self-pity, drinking, self-conceit, day-dreaming—frustration, and so on around again.

At this stage it should be remembered that there are two things common to all alcoholics. First, they are unable to live a normal life and drink alcohol as well; something goes seriously wrong with their health or their economic, domestic or social affairs. Secondly, having had one drink, they are unable to guarantee their behaviour; they are unable to guarantee the duration of their drinking, the number of their drinks, or their emotional condition—whether truculent, jealous, suspicious, selfish, resentful or depressed. They are very seldom jubilant. Those days are gone for the alcoholic, although he or she is for ever seeking those periods of elation of yesterday. For the alcoholic, a drink of alcohol is like putting coal-slack upon a fire which is nearly out. Dirty, greasy smoke arises. It does not burn with a clear flame, nor does the alcohol consumed by an alcoholic metabolise in a complete manner; for the alcoholic it amounts to adding toxin to toxin.

Further, alcoholics have two urges to drink, one mental, the other physical. In the physical realm, they usually drink normally at first, and then, for some unknown reason, their capacity increases without apparent ill-effects, and they can drink more than their associates; they sneak drinks, but then a little later the hang-overs start. These come closer and closer together and get deeper and deeper. The alcoholics then learn to drink in the mornings as alcohol has the curious property of making a person ill, but if its consumption is persisted in it makes that person feel tolerably well again. But, once having had that morning drink and being alcoholics, they cannot guarantee their behaviour after having started drinking. Although they do not want to, they invariably drink themselves into a state of intoxication and a subsequent hang-over. So, the cycle becomes hang-over, morning drink, intoxication, hang-over, etc., day after day, until their bodies absolutely rebel, and they become too frightened to drink, and too frightened to remain sober. The result is they "suffer it out", and swear "never again". They go on the water-wagon.

We are now in the mental realm. The alcoholic goes through a period of "dry drunks", that is, he or she is dry but, not working the Alcoholic Anonymous programme, they do nothing to clean up their cycle of "stinking thinking". They are still caught up in the old mental cycle, but, when they come to "drinking", they want to drink, but are too frightened to because of the memory of the last hang-over. At this stage, there is no more miserable person in the world, knowing a drink will ease his mental condition, but being too frightened to take that drink. However, as the memory of the last hang-over fades, so the desire to drink once again takes charge, and they are then back again in the physical realm. This vicious circle repeats itself as they suffer a succession of crises, each getting worse than the previous one, until they reach a stage beyond which they are not prepared to go. Some are not prepared to suffer hang-overs; some to

lose their job; some their home; some are not prepared to go from the good boardinghouse to the slums or sleep in the open; others are not prepared to face the Police or to commit suicide; and so their predicament goes from bad to worse. It is up to each alcoholic to choose how far he or she is prepared to deteriorate, for a despairing end is inevitable. A spiritual deterioration also takes place. Alcoholics set too high a goal for themselves. They make the pedestal upon which to rest their attainments too high and they become discouraged when they realise they cannot possibly attain the position set for themselves or live in accordance with their own ideals.

Their ego cannot stand this disappointment or apparent inadequacy. Even though they may give satisfaction to their employers and others, if they merely think themselves inadequate, their ego has three harmful ways of dealing with the situation. First, it projects its trouble into the body, and they suffer from those numerous emotionally induced disorders—ulcers of the stomach, asthma, shingles, neuritis, rheumatic pains and the like. Secondly, the ego projects its own personality defects into other people, and sees them as persons unduly selfish, jealous, suspicious, arrogant, or what have you. They often have illusions of infidelity by the other partner to the marriage which is very distressing to the innocent party. The third subterfuge is to refuse to face facts; the ego lies to itself concerning reality. This in turns means being dishonest with the super-ego which is part of the divinity in each of us. This seems to be a condition no human being can stand for long—something gives way. The alcoholics experience nebulous fears. They develop "the shakes" which are physical manifestations of those fears. From being dishonest with themselves, they become dishonest with others. They lie, not only about their drinking, but about most other things that will boost their ego or excuse their conduct. They live in a world of make-believe. At first, life is a bowl of cherries which eventually turn to sour grapes. Being dishonest with others brings a great many of them up against the law and in conflict with others. It is then that the practitioner's discernment and proper diagnosis can best help his client.

Having some understanding of the extent of the physical, mental and spiritual deterioration of the alcoholic, gives us something definite upon which to work. It should be borne in mind, however, that there is a misconception about alcohol itself to which attention should be given. It is not a stimulant. It is a depressant. It is an anaesthetic, and in the guise of chloroform is recognised as such. In the early stages, alcohol deadens the sensitivity of the potential alcoholic, and he or she can do things that their sensitivity, unaffected by alcohol, would preclude them from doing, or would make distasteful to them. At this stage, it actually helps the potential alcoholic to overcome some of his or her difficulties. However, sooner or later, they pass over an invisible line and the devastating effects of their drinking become the problem, and not their sensitivity, that is, the apparent solution has become the problem itself. The problem drinker, being anaesthetised by what he is drinking, is as incapable of "seeing himself as others see him" as any other person under an anaesthetic. For this reason, the last person to recognise his or her condition is the problem drinker.

One of the early symptoms of alcoholism is the "black-out" or state of impaired consciousness in which the alcoholic is mobile and apparently in control of his actions. This is not in fact the case. During periods of "black-out" he will terrify his wife, children or parents, and yet be blissfully unaware next morning of what he has done. Because he does not remember it, he denies it. These periods are dangerous. The person concerned, not having full control, may be provoked into doing something quite foreign to his or her nature and later have no recollection of events.

When a practitioner is consulted in such circumstances, he should probe the story of his client to ascertain exactly how much his client actually recollects and how much he or she has "accepted" because "it must have been so". The alcoholic is loath to admit failure to recollect, and therefore is very ready to adopt the version of someone else as his or her own. It can be seen that a practitioner may be led far astray if such a statement is accepted and not corroborated by other surrounding circumstances. It is only by careful cross-examination that the alcoholic's own recollection of events can be separated from his reconstruction of events based upon statements he has accepted from third parties.

Owing to the activities of the National Society on Alcoholism it is gratifying to learn that alcoholics are now coming forward for treatment at a much earlier age than in the past. The disease usually takes from 12 to 15 years to develop to serious proportions and strikes when men or women are in their prime between 35 and 50 years of age.

Such a person should be advised to seek help. This advice may not be acted upon immediately, but the seed is sown, and sooner or later will bear fruit.

W. W. KING

Treatment of Offenders—"Many people feel that the modern tendency always to show so much concern for the offender and what is best for him results sometimes in too little consideration being given to the victims of crime. There are times when the most important thing is to try, by the way offenders are dealt with, to deter others from committing offences. It is by no means certain that in practice, if not in theory, this way of dealing with offenders is not also the best way, on occasions, from their point of view as well."—(1961) 125 J.P. 186.

Confessions as Evidence—"We should have thought that it is unlikely that there is any considerable percentage of offenders who make and sign confessions admitting offences which they have not committed, and it is to be hoped that if it is considered necessary to do anything in the matter at least the police will not be unduly hampered in their often very difficult task by provisions which discourage people who are guilty and who know that they are guilty from saying so. If confessions are made by such people why should they not be used in evidence to secure the conviction of the guilty persons?"—(1961) 125 J.P. 158.

LEGAL LITERATURE.

Wily's Magistrates' Courts Practice. Fifth Edition. (Butterworth's Standard New Zealand Textbook No. 2) By H. JENNER WILY, S.M. Pp. xl+598. Wellington: Butterworth & Co. (New Zealand) Ltd. Price: £6.

The "practice" books are undoubtedly the most frequently used in any legal library and when (as has sometimes been the case) long periods have elapsed without revisions of them to keep them up to date with procedural and other changes, the busy practitioner soon finds the binding of his book overstrained in containing loose regulations and amendments, while he is unable to keep up with the task of annotation.

The need for a new edition of Mr Wily's well-known and valuable work has been thus evident for some time, six years having elapsed since the fourth edition, to which a supplement became necessary some three years ago. The recent publication of the fifth edition again brings the work right up to date, the law being stated as at 30 June 1960, while it has been possible to include as an appendix the text of the Magistrates' Courts Amendment Act 1960, passed soon afterwards, the provisions of which, though important, are quite straightforward.

As is well known there are a large number of statutes under which the Magistrates' Courts have jurisdiction, or which affect their procedure, and important amendments have been made to several of these, while others have been consolidated since the last edition. These include a number of particularly important changes in the Rules, scales of fees, witnesses' expenses and the like, some of which were dealt with in the intervening supplement.

As with previous editions, the work is well indexed and cross-referenced, and includes many useful references not only to the corresponding Rules of the Code of Civil Procedure but also to corresponding or comparable County Court Rules and other English practice, thus facilitating reference to the English practice books and authorities. In addition, more than 160 additional decisions of the Courts have been noticed in the text.

Although the new edition, like its predecessors, conveniently provides the various forms prescribed by the Act and Rules and a collection of typical statements of claim, it would be of advantage to have a more comprehensive set of forms and precedents for the variety of miscellaneous applications that may be made to these Courts or to Magistrates. Reasons of space no doubt preclude this but we may perhaps hope that the learned author will one day provide a companion volume of this type.

It remains to say that the new edition has been more attractively printed and bound than its predecessors. It remains an essential to the practitioner engaged in these Courts, to their officials, the Magistrates themselves, and all connected with their work.

F. D. O'F.

Books Published or Received by Butterworth & Co. (New Zealand) Ltd. 1 April 1961 to 30 June 1961

Butterworths Cases Annotations to the 1908-1957 Reprint of New Zealand Statutes. Volume 2, by H. JENNER WILY, S.M. £6.

Butterworths Annotations Supplement 1960. 52s. 6d.

Clarke Hall and Morrison's Law Relating to Children and Young Persons, Sixth Edition, by A. C. L. MORRISON, C.B.E., formerly Senior Chief Clerk of the Metropolitan Magistrates' Courts; and L. G. BANWELL, O.B.E., formerly Chief Clerk, Metropolitan Juvenile Courts. £6.

Haydon's Law and Justice in Buganda, by E. S. HAYDON, B.A., of Gray's Inn, Barrister-at-Law, formerly Judicial Adviser, Buganda. 60s.

Kerr's The Native Law of Succession in South Africa, with Special Reference to the Nguni Tribes of the Ciskeian and Transkeian Territories and Natal, by A. J. KERR, B.A., LL.M., Advocate of the Supreme Court of South Africa; Senior Lecturer in Law in Rhodes University. 47s. 6d.

Luxford's Liquor Laws of New Zealand Supplement No. 2, by J. H. LUXFORD, C.M.G., formerly Senior Stipendiary Magistrate at Auckland. 30s.

Magnus and Estrin's Companies Acts Supplement 1961. 15s.

Mahaffy and Dodson on Road Traffic, Third Edition, in two volumes, under the general editorship of F. GERALD KIDNER, of the Middle Temple, Barrister-at-Law. £6 17s. 6d.

Rayden's Practice and Law in the Divorce Division, Eighth Edition, Editors, JOSEPH JACKSON, M.A., LL.B. (Cantab.) LL.M. (Lond.) of the Middle Temple, Barrister-at-Law and of the South-eastern Circuit, and D. H. COLGATE, LL.B. (Lond.) of the Probate and Divorce Registry. £8. 15s.

Reforming Criminals and Protecting the Public—"*The Guardian* of 20 April has a short leading article headed 'Reform or Protection.' It discusses the call at the Conservative Women's Conference for a return to judicial corporal punishment and refers to the fact that expression was also given at the conference to the feeling of many citizens that, in dealing with the criminal, society is entitled to be protected first and that the reform of the criminal has second priority. The writer of the article puts the point of view that he most elementary and effective way to protect society is to reform the criminal and therefore that the protection of society and the reform of the criminal are inextricably bound up with each other, there being no question of priorities. The force of this argument is apparent. We would add, however, that it can still be argued that it remains to be established what is the most satisfactory way of reforming criminals, and that it may well be true that their reform can be assisted by their being punished in a way which they find makes crime not worthwhile so that being reformed becomes more worthy of serious consideration."—(1961) 125 J.P., 260.

IN YOUR ARMCHAIR—AND MINE

By SCORPIO

Parking Fee—Another example of the great care which English Courts apply to principles no matter how minor the monetary value involved is illustrated by the case of *Strong* v. *Dawtry* which was heard in the Divisional Court and referred to briefly in *The Times* of 3 March. Mr Strong had parked his car in a street in the West End of London outside a parking meter. On pocket research he discovered that he had no shillings or sixpences. He noticed a policeman ten yards away whom he asked for change but he was unable to supply it. He then accosted a taxi-driver, obtained the necessary change, returned to the parking meter, but the parking-meter attendant had arrived. Mr Strong told him his story, called the constable in confirmation, and then paid the coin into the meter. Nevertheless, Mr Strong was duly charged for " leaving the vehicle in the parking place " without the payment of the fee. He was convicted by the learned Magistrate. Mr Strong being a man of strong principles duly appealed. On the appeal, the matter appeared to turn on the legal construction of the word " left ". The Lord Chief Justice remarked that if counsel for Mr Strong was right in that Mr Strong had not " left " his car then we should have a new profession of car-sitters. The learned Chief Justice expressed his sympathy with the motorist but dismissed the appeal. Hard cases, it is said, make bad law, but the appeal was really dismissed on the construction of the word " leave " which means, according to *Chambers' Twentieth Century Dictionary*, " To allow to remain, to abandon, resign, to quit or to part from ". The issue is a grave one and might well be posed in the words of Sir Thomas Wyatt,

> " And wilt thou leave me thus
> Say nay, say nay, for shame."

Cautionary Tale—London newspapers recently contained a sad little story from the Clerkenwell Magistrates' Court, which should have been cast rather in the form of a cautionary tale than of a news item. There could be extracted from it all sorts of morals, mainly relating to the perfidy and mendacity of women and the credulity and vanity of men. Very early in the morning on Easter Monday a labourer from Wallingford in Berkshire was walking through the deserted streets of Kentish Town. He was 36 years old and therefore in the prime of life, beyond the callow inexperience of youth and not yet ensnared in the foolish forties and fifties or the senescent sixties and seventies. A girl, appearing out of the night, stopped him and, indicating a house, said that she lived there with her husband but he was out and she had no key. Would the kind and evidently athletic stranger oblige her by getting through a window and letting her in ? Flattered by her confidence in him and believing every word she said, he deposited his shoes on the window sill, vanished inside, found his way to the front door and opened it softly, saying, " You can come in now ". There was no girl there. He might as well have invoked a fitful phantom of the night. But behind him, all too solid and substantial, was the owner of the house, disturbed by his entry, who proceeded to detain him until the Police arrived. Not unnaturally he was charged with breaking and entering the house with intent to commit a felony. To one who had been so willing and ready to believe the young lady's story, the incredulity with which his own wholly veracious narrative was greeted by the Police and the Magistrate must have been particularly painful. He was remanded in custody for a week, but, just before it was up, the lady in the case, having heard of her benefactor's predicament, called at the police station. Yes, she had asked him to go in. She had spent the previous night in the flat of a couple in the house and, being still without a bed, she thought they might put her up again. She had invented the story of a non-existent husband as being more likely than the truth to persuade a stranger to climb into a dark house in the middle of the night. So the charge was dismissed and the accused went his way, having acquired a useful slice of worldly wisdom at the cost of a week's lost wages.

What's In A Fleet Street Name ?—Back for one moment to the tale from the Clerkenwell Court. The journalists could not resist the temptation to christen the accused " Sir Galahad " because, somehow or other, in the cliche-befogged vocabulary of Fleet Street, poor Sir Galahad can be hitched up to anything that can be labelled " chivalry," and scrambling through a window in Kentish Town because a girl has asked you to is " chivalry ". So much for the most mystical and other-worldly of King Arthur's knights. In the age of labour saving (including the labour of thought and reading) that sort of allusion can be called " culture without tears " and " literature without letters ". Any young man in any sort of circumstances professing to be " very much in love " with any sort of girl is " Romeo ". Any girl barrister is inevitably " Portia ", although anyone having even a slight acquaintance with Shakespeare's play should know that Portia was precisely the opposite of everything a girl barrister is supposed to be. Portia was a sham, brilliantly improvising for highly personal reasons to save her lover's friend. The girl barrister is a professional forensic gladiator who is obliged to make a plausible case for anyone who briefs her, be he Shylock or Antonio, but it is against the standing orders of Fleet Street to call her anything but " Portia ". Fleet Street is also strong on cliche misquotations. How often does it " gild the lily " and how readily many people who ought to know better have caught the habit ! When did an editor or a sub-editor last read " King John " ? May one small voice be raised to get this right in newspapers, and for the matter of that, speeches in Court ? Just look at Act IV, Scene 2 :

> " To gild refined gold, to paint the lily,
> To throw a perfume on the violet,
> To smooth the ice, or add another hue
> Unto the rainbow, or with a taper-light
> To seek the beauteous eyes of heaven to garnish,
> Is wasteful and ridiculous expense."

Forgive a touch of irritability. " Sir Galahad " in that Kentish Town context just touched it off.

TOWN AND COUNTRY PLANNING APPEALS

Clifford and Others *v.* Christchurch City Council.

Town and Country Planning Appeal Board. Christchurch. 1961. 23 February.

Proposed District Scheme—Zoning—Land zoned as "other public and private buildings and uses"—Probably required as extension of property of High School—Rezoned as residential but designated as "proposed school"—Town and Country Planning Act 1953, ss. 21 (6), 26.

Appeals under s. 26 of the Town and Country Planning Act 1953. As they related to the same proposal in the respondent Council's proposed district scheme, they were by consent heard together. The first-named appellant was the owner of part Town Section 346 and Town Section 351, Lot 1, Deposited Plan 5153, being Nos. 33 Gloucester Street and 28 Armagh Street. The second-named appellant was the owner of Town Section 350, being No. 25 Gloucester Street. The third-named appellant was the owner of part of Town Sections 346 and 348, being No. 31 Gloucester Street. Under the Council's proposed district scheme, as publicly notified, all these properties were zoned as "other public and private buildings and uses." The appellants objected to this zoning and when their objections were disallowed, they appealed.

Alpers, for the appellants.
W. R. Lascelles, for the respondents.
Clark, for the Christchurch Post-Primary Schools Council.

The judgment of the Board was delivered by

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

1. The properties in question were zoned by the Council in the manner indicated as the result of a requirement by the Christchurch Post Primary Schools Council made under s. 21 (6) of the Act. The Council is a local authority having jurisdiction within the district and was entitled to make this requirement.
2. Counsel for the appellants did not call any evidence, but submitted legal argument as to the correct method of zoning the appellants' land. In the main, this argument is the same as was submitted by counsel for the appellants in the appeals of the Canterbury Club Inc., and Mrs A. M. E. J. Clifford, (*ante* 208). These submissions were fully discussed by the Board in its decision on those appeals, and it is not necessary to reiterate them in this decision. The Board has already indicated that in circumstances such as these, the proper course is for the respondent Council to zone the land as if no requirement had been made and then to designate it, by notation on the map, for the proposed use to which it may be put in the future.
3. The first-named appellant's properties both adjoin the site of the Christchurch Girls' High School on its western boundary, the second-named appellant's property abuts on to the first-named appellant's property, 28 Armagh Street, and the third appellant's property abuts on to the first-named appellant's Gloucester Street property. The evidence satisfies the Board that the Christchurch Girls' High School will more or less in the immediate future require further room for the school's activities. It is already unduly cramped. The logical direction for it to expand is to the west. This will ultimately involve taking of the properties under consideration in these appeals. Were it not for this requirement, the appellants' lands would be appropriately zoned as Residential C.

The Board directs that the Council's scheme be amended by zoning these three properties as Residential C and by designating them on the map "proposed school".

Appeals allowed.

Clarks Potteries Ltd. *v.* Auckland City Council.

Town and Country Planning Appeal Board. Auckland. 1960. 8 December.

Zoning—Land zoned as "residential"—Used for manufacture of burnt-clay products—Business established for 30 years, long before any substantial residential development took place—Land re-zoned—Amendment of Code of Ordinances—Town and Country Planning Act, 1953, s. 26.

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

The appellant company was the owner of an area of land situated at the corner of Taylor Road and Matata Street, Avondale containing an area of 12 acres 3 roods 15 perches. It carries on business as manufacturers of burnt clay products. Under the Council's proposed district scheme as publicly notified under s. 22 of the Act most of the appellant's land was zoned as "residential". The appellant lodged an objection to this zoning and also to the zoning of an adjoining section (Lot 111, Parish of Titirangi) owned by one Coombs. The Council allowed the objection in part by zoning part of the appellant's land as "Burnt Clay Products Zone" but disallowed it in relation to Lots 111, 112 and 113, Parish of Titirangi.

The appellant appealed against that decision.

Kennedy, for the appellant.
Butler, and *Hillis*, for the respondent.
Clark, for Coombs (cross-objector).
Richardson, for the Blockhouse Bay Ratepayers' Association (cross-objector).

The judgment of the Board was delivered by

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

1. It was conceded by counsel for the respondent that the manufacture of burnt clay products cannot be carried on economically except in close proximity to deposits of suitable clay.
2. Counsel for the appellant intimated that he did not propose to press for a rezoning of the Coombs Section (Lot 111, Parish of Titirangi).
3. Counsel for the Blockhouse Bay Ratepayers' Association made a formal submission that the use of the appellant's land for industrial purposes would detract from the amenities of the neighbourhood. The appellant's business has been established on the existing site for over 30 years so that it was in existence long before any substantial residential development took place in the neighbourhood.

In these circumstances the Board is not prepared to uphold the Ratepayers' Association objection.

The appeal is allowed in part.

The Board directs:

1. THAT Allotments 112 and 113 Parish of Titirangi are to be rezoned and included in the Burnt Clay Products B Zone.
2. THAT the Code of Ordinances be amended by adding to Ordinance 9 the following provisions:

BURNT CLAY PRODUCTS B ZONE
Predominant Uses

The following shall be predominant uses in Burnt Clay Products "B" Zones.

(a) The winning of clay.

Conditional Uses

The following shall be conditional uses in Burnt Clay Products "B" Zones.

(a) Buildings ancillary to the winning of clay.
(b) Buildings ancillary to the manufacture of Burnt Clay Products:

Provided that nothing herein shall authorise the manufacture of Burnt Clay Products in Burnt Clay Products "B" Zones.

(c) Works of public utility not deemed to be predominant uses by virtue of s. 21 (9) of the Act.

(3) THAT the other grounds of the appeal are disallowed.

Appeal allowed in part.