

THE NEW ZEALAND

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Introduction

It was in June 1914 that Butterworths first opened their doors in Ballance Street, Wellington. The firm has been in business in the capital city continuously since that date, providing widening and more varied services to the legal profession and eventually to other professions. It is a happy conjunction of events that the 70th Anniversary of Butterworths beginning business in New Zealand should coincide with the holding of the 19th triennial Conference of the New Zealand Law Society.

Books are the indispensable tools of the practising lawyer and the essential texts of the law student. Butterworths has progressed in New Zealand from being a local office facilitating the supply of English publications, to the publishing of New Zealand Texts, Services and Reports. Butterworths has always sought to meet the needs of the profession as these have arisen, and indeed has not hesitated sometimes to provide a service even before the need was yet widely recognised. Local legal and tax publishing now contributes over 70 percent of Butterworths annual sales.

Publishing means "taking risks" and there is always an element of risk in launching new legal publications. While not all our ventures have been entirely successful, it is the acceptance by the legal profession of our offerings that has engendered a close relationship between the members of the profession and Butterworths.

Butterworths is very conscious of its indebtedness to and reliance on the profession for its business success. The Company joins with the profession in acknowledging the enormous and significant contribution that has been made by the authors whom it has commissioned over the years. The quality of the works published is obviously dependent on the legal knowledge and the literary skill of the authors of the individual publications. Butterworths is particularly proud of its "stable" of writers drawn both from academia and from the legal office. In this way the Company has endeavoured to contribute towards and encourage the necessary relationship of inter-dependence that must exist between the working profession and the academic world.

As we now look forward to our Centenary, it is clear that there will be no diminution in the future in the profession's demand for legal information; indeed the information explosion will increase the lawyer's need for

properly and logically synthesised legal information to enable him to keep abreast of change in the law.

A question often asked is "How will the development of computer retrieval affect the role of the publisher?" A short answer is the work of the publisher will remain very much the same, for what we are talking about in essence is a change in the manner of presenting the information. The VDU (Visual Display Unit) may replace the printed page, but the processes of publishing will still have to be carried out. In legal publishing it is necessary to undertake a great deal of editorial work inside the house and to recruit a great deal of effort outside it so as to amass and organise legal information. The product of this effort then goes to a typesetter for conversion to a readable image. The readable image is then multiplied by a printing machine so that numerous copies of the information are made available — usually in the form of printed books. Finally the books are (hopefully) sold.

The advent of the computer makes no difference to these processes. The collection and organising of information will still have to take place. The information will still have to be converted into a readable image, thereafter instead of being printed it will have to be loaded and stored in a computer which must be carefully maintained in working order. The information will then be distributed by telephone networks to visual display terminals. If it is desired to have a copy printed out a printer must be used.

Butterworths of New Zealand, in co-operation with the international Butterworth Group of Companies, will continue to develop and expand its role as a provider of professional legal information.

In this special Conference issue of the New Zealand Law Journal will be found a number of articles that touch on aspects of the history of the services that Butterworths has sought to provide. Space is also given to past Law Conferences.

In closing, I wish to thank and acknowledge all those Butterworths people, both authors and employees, past and present, who have made our Anniversary possible.

DEREK DAY

Managing Director

Butterworths of New Zealand Limited

Conference Message

From the Chief Justice

The Triennial Conference of the New Zealand Law Society provides an opportunity for Judges and practitioners to meet together and to discuss matters of common interest in various fields of law. But, in addition, it enables both Judges and practitioners to meet socially in an informal manner and to exchange points of view with overseas guests who are attending the Conference.

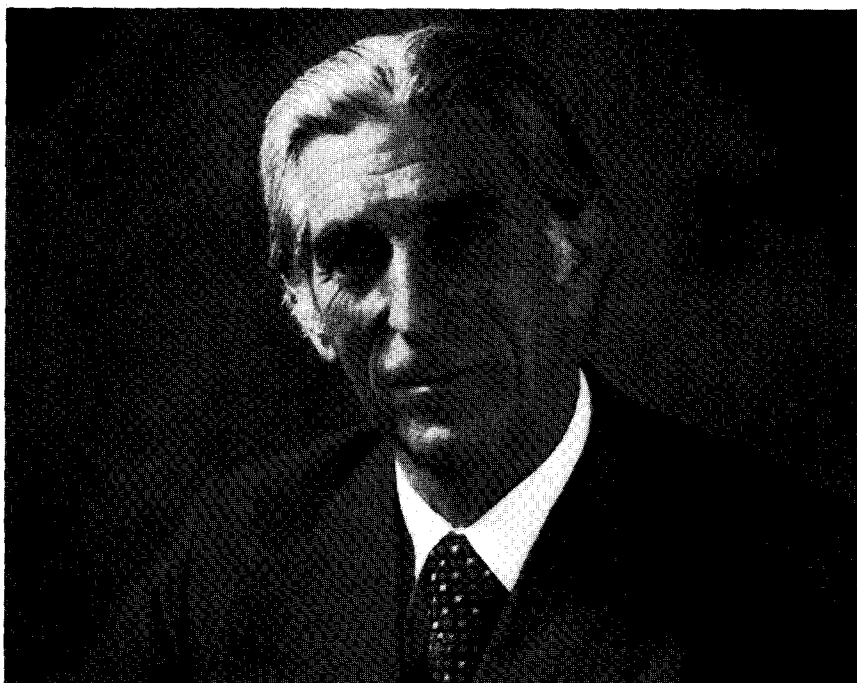
There are some who would deny the benefits of Conference attendance. But in a world of rapidly emerging social forces and changing technology it is important that an opportunity be taken periodically to discuss social trends and the relationship of the law to those trends and at the same time to benefit from such experience as is available from visitors from overseas.

There are also more practical benefits to be gained by New Zealand lawyers from social contacts one with the other and with overseas colleagues.

The role of the lawyer in a changing society is well expressed in words from the book "Lord President Suffian", a man who was a frequent attendee of past New Zealand Conferences and a man well known to very many who will be attending the Conference in Rotorua:

Probably more than anybody else, the lawyers of the country, by the very nature of their profession, their education and their training and experience, are expected to discharge the delicate but challenging role of guardians of the rights and freedoms of the citizens. Times call for vigilance and there is an urgent need for a deeper awareness of the social dimensions of legal practice. Members of the legal profession would do well to look further than tomorrow.

Six years ago when I spoke at the 1978 New Zealand Law Society Conference held at Auckland I referred to the need for lawyers to look outward to the interests of the wider social community. Subsequent years have demonstrated that the profession in this country has indeed done so and that a new era in public relations has



Rt Hon Sir Ronald Davison
Chief Justice of New Zealand

emerged. At the same time within the profession there have been great changes in office management techniques and in the use of modern data processing and other electronic equipment as aids to greater efficiency.

Brief reference to the topics of papers and of discussions scheduled for this Conference indicates the concerns of the profession with both the social issues of society and improvement of management efficiency and techniques within office practice.

There are listed such matters as: "The Law and the Practitioner — Can they fulfil society's expectations of them?"

"The Lawyer of the Eighties (and Beyond): A new model required."

"Can the Courts system cope with society's demands?"

"The Future of the Conveyancer"

"The Business Community: Is it being served?"

"Bioethics: Experimental Medicine: Legal implications"

"Making the computer serve the lawyer"

"The Law, the State and the Citizen: Have the Courts a role?"

"Environmental protection: the only valid function of planning"

"The Marketing of the Profession".

Discussions at this Conference and the interchange of ideas at business and social sessions can provide the spark to lawyers to extend their participation in the social problems of this country and to search for greater efficiencies in the course of day-to-day practice.

It is not only in New Zealand that traditional areas and aspects of legal practice have come under severe scrutiny. In this country the "scale" system of charging for conveyancing and other legal work is shortly to be abolished. Questions of removal of the exclusive right of lawyers to do conveyancing — to engage in company formation are being raised. As to whether this is a good or a bad thing I express no opinion. I simply observe that in these changing conditions it is important that there be earnest dialogue between lawyers to ensure that those who are engaged in the practice of law fulfil the social expectations of the public and that the practice of law is carried on as efficiently as the abilities of lawyers and modern technology will permit.

What better place to consider such matters than at the 1984 Conference to be held in Rotorua? I wish all attending the Conference fruitful discussion and an enjoyable Conference. □

Conference Message

From the President, New Zealand Law Society



For some years now law conferences have included sessions which look ahead and try to discern trends in the law, the Courts or in practice.

For several conferences we have been warned about impending change. At first this was centred round the social developments, protest and the questioning of authority and the law itself. The theme through those years was the challenge to the law, the lawyers and the Courts, to cope with change.

Those developments which have occurred were not as difficult to cope with as might have been expected although there have been traumas that New Zealand has never faced before such as the Springbok tour.

Now the changes are different. New technologies have made the computer a reality in the offices in which most lawyers work. The beginnings of the electronic law library have been developed in several countries and are accessible from New Zealand.

The last five years have seen the biggest changes in recent history in the organisation and structure of the Courts.

Our approach to the important field of family law has changed from basing our legal approach on the need to help destitute persons to a modification of the adversary system, the use of mediation and the resolution of legal problems within the family by methods intended to bring a solution as quickly, as cheaply

and with as little damage to the parties as possible.

We are much more inclined now to examine dispassionately what we are doing and we tend less to defend unthinkingly what has always been done as the right way to do it. Reform has been rapid in many fields of law, some of them too fast for the profession, others not nearly fast enough.



Mr Bruce Slane
President
New Zealand Law Society

The profession has grown. There are now 50 percent more practising lawyers than there were ten years ago. Large numbers of lawyers are qualifying, and being admitted to the profession, but some are not practising within it. An increasing

proportion of those entering the law are women and their awareness of discrimination has made us all more aware of discrimination in other fields in respect of other groups of people.

Butterworths have serviced the publishing needs of the profession for 70 years. It's a sobering thought for me to realise that I started work as a 17-year-old in a small law office in Auckland half way through that period.

How publishing has changed. While some legal publications look much the same as they always did, others, like this journal, have no resemblance to the plain white document which I used to read with its tiny index on the front page. Inside there was Scriblex and Advocates Ruralis to lighten the otherwise sober pages of learned reading, interspersed with E C Adams precedents.

Who would have thought then that a law journal would come out with coloured pictures on the front page — even with a Law Society President who is wearing neither tie nor jacket? Some lawyers no doubt consider this simply proof of the decadence of the 80s — and possibly an illustration of the danger of dealing with lawyers from Auckland.

But perhaps it represents the subtle change in the approach which we must have to the law too. For no longer can the *Law Journal* be regarded as simply an earnest document arriving at regular intervals for the purpose of improving the

mind. It must now entertain, relate to the realities of practice, stimulate and reflect.

The television age has required us to entertain and be entertained. It has probably led to recognition by those who appear before juries that people are not prepared to sit endlessly for hours and hours and hours listening to the one person deliver a long and detailed address. Today the law, or anything else, needs to be put in a form that can be readily assimilated, readily understood, clearly written, and in a form acceptable to the consumer of the law. For the consumer will not just accept what the lawyer tells him. He wants to know today the whys and wherefores.

That demonstrates the basic change the professionals are facing whether they are in private practice or in public or commercial organisations — that they are much more accountable to the people they serve than was ever the case before. The accountability extends to our satisfying them that we are efficient, that we are knowledgeable, that we are effective, that we are not carrying on some unnecessary priesthood with rites that are continued for the sake of impressing rather than because they improve the quality of the law and its administration.

The public and even governments query, question, and criticise the decisions of the Courts. Lawyers are no longer regarded as people whose word should be taken without

question or whose practices or systems should be accepted without investigation.

Government agencies want to know much more about how fees are calculated, how complaints are handled, how lawyers' offices work, whether their activities in mortgage and allied fields are an economic activity that should be subject to regulatory control.

We are required to adapt on occasion to the standards that are being set within the community, whether those standards are particularly appropriate to our role or not. We have fortunately moved our own disciplinary and regulatory position to be in the vanguard of the profession around the world with a modern effective and flexible Law Practitioners Act for which we have to thank a forward looking Minister of Justice and a forward looking Law Society Council which embarked on the task some years ago.

But drastic change is here and now. The scale fee which used to be regarded almost as sacrosanct as the rule of law is to go. Advertising by lawyers — albeit with dignity and restraint — is being considered, and is a fact of life in jurisdictions like ours not very far away.

Lawyers, as their firms have grown, are more and more conscious of the business side of practice. It worries them and yet, as a Heylen poll discloses, they do not all want to get much involved in it.

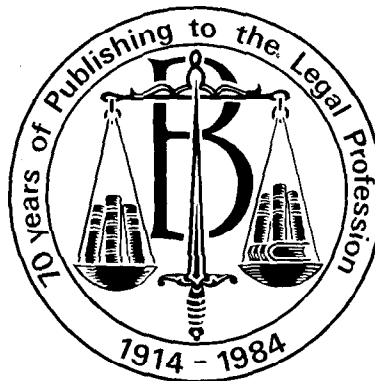
A proud, independent and even idiosyncratic set of professionals now find themselves for practical and sensible reasons recording their time, adhering to systems and doing things other than off the top of their head or as their mood takes them.

This conference enables us to look back and forward but the future lies right in front of us in 1984. We are staring at it dead ahead.

The conference gives an opportunity to consider all aspects of the law. We should enter it with confidence, with friendship, and with the lawyer's unique ability — the ability to argue, to differ but not to fall out.

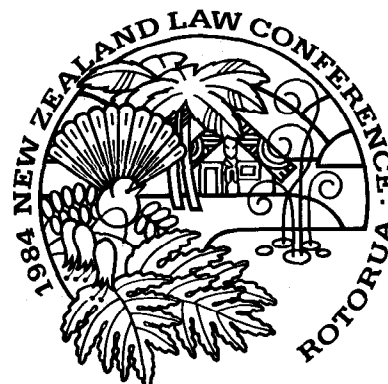
I thank Butterworths for their 70 years service and for this opportunity to write in this journal. I am grateful for the privilege I have had in the past two years of serving the profession during a period of momentous change with unprecedented political, economic and social impact.

The enthusiasm of lawyers who are prepared to devote years in preparation and organisation of a conference never ceases to surprise me. In the Hamilton District Law Society a small group have worked to produce potentially the greatest conference we have ever had. I both salute and thank them for giving us this opportunity at a vital time in the history of the profession to stand back for a few days to look at ourselves, to look at others, to seek solutions and to enjoy each other. □



Conference Message

From the Organising Committee Chairman



Only twice before has the New Zealand Law Conference been held outside the four main centres. In 1954, the Hawke's Bay Society hosted the 9th Conference and in 1969 the Hamilton District Law Society hosted the 14th Conference which, like the 1984 Conference, was held in Rotorua.

Many of those who attended the 1969 Conference still speak enthusiastically about it. It is the hope of this year's Organising Committee that the 1984 Conference will be an equally enjoyable occasion, and will merit the appellation of "the Friendly Conference".

Occasionally, it has seemed a little bizarre that the preparations for a Conference lasting five days, should extend over three years. However, we have been mindful of the high standards set by the Organising Committees of previous New Zealand Conferences and have been keen to live up to them. I must admit that during the last few months, we have sometimes looked wistfully back to those far-off days when we met only once a month.

It was Bruce Slane and his cohorts from the Auckland Society's Organising Committee of 1978 who taught us a valuable lesson early on. If we were going to perform this task, above all we should ensure that we enjoyed it! I think I can speak for all of the Organising Committee, when I say that it has been a lot of fun. The pressure and the fun have tended to

work in inverse ratio during the last month or two, but we have still managed to enjoy going to meetings, even at the expense of having to work



Mr Gerald Bailey
Chairman
Conference Organising Committee

nights and weekends in our offices to make up for increasing time lost.

Another lesson we learned from previous Organising Committees, was that it does not do to settle upon one's business programme too early in the piece. Today's "hot issue" can very quickly become "ho-hum" in a short time. It is a little difficult to decide, even just a few months before a Conference, what are going to be the topical issues for consideration at the time. We believe that we left our programme as long as we comfortably

could. We can merely express the hope that delegates find the papers topical and relevant.

One difficulty that we have had to face, not shared by our metropolitan brethren, is organising a Conference an hour and a half's drive away from where most of the Organising Committee live. Any regrets the Hamilton City Committee members might feel, however, at not being able to hold a Conference in their home town, because of the limited numbers of beds available, are well and truly outweighed by our belief that Rotorua affords an ideal venue for a Conference such as ours. The venues are within comparatively short distances of each other, and traffic "snarls" will be at a minimum.

We hope that all delegates to the Conference find the occasion stimulating, challenging, but above all enjoyable. I would like publicly to pay tribute to the members of the Organising Committee. I have never known a group of people so dedicated to making a success of the project entrusted to them. They have spared no effort, and indeed made considerable sacrifices to endeavour to ensure that the 19th New Zealand Law Conference will be a worthy successor to those that have gone before. If those attending the Conference return to their homes with memories as happy as those who attended the 1969 Conference, the Organising Committee will feel well and sufficiently rewarded. □

Past Conferences

I THE FIRST CONFERENCE



In this and the succeeding two articles, a brief look is taken at past legal conferences as these are reflected in the New Zealand Law Journal. Apart from this article on the first conference the approach is necessarily impressionistic. No attempt has been made to do more than indicate some aspects of past conferences, and these not necessarily the most important. For many years the Conferences were reported in full in the Law Journal, but for various reasons this has changed recently. A slightly different retrospective approach is to be found in a series of articles published in the New Zealand Law Journal in 1960, beginning at (1960) 36 NZLJ 11. Individuals are referred to in accordance with the status or title they had at the time of the particular Conference.

Beginnings

In *Butterworth's Fortnightly Notes* for 8 November 1927 there is a brief editorial comment concerning a suggestion that had been made that "the Legal Profession of New Zealand" should meet in annual conference. At that date the issue was being considered by the District Law Societies. The writer was of the view that much good could come of such an activity. Attention was drawn to overseas experience and to the wider possibilities of such a conference.

The Societies of England meet in annual conference and find that by so doing much useful work can be accomplished. This work is not necessarily confined to those subjects of interest and profit to the profession, but extends to far wider fields. Who shall say where the limits of good shall extend to, as a result of the American Bar's visit to London as the guests of the English and Canadian Bars. The American Bar association also finds it convenient to function for the promotion of International goodwill. The invitations extended and accepted by the leading lawyers of both countries to address the Law Conferences must add much to the appreciation of American and English viewpoints. The same happy results have attended the Annual Legal Conferences held by the three Scandinavian countries, Norway,

Sweden and Denmark. Within the Scandinavian Union many concrete achievements have been realised. The Congress of Northern Jurists have met regularly ever since 1872. Uniformity of law between the three countries has been aimed at to assist intercommunication.

The author went on to speak of the more immediate local benefits that might be expected. In view of the recent development of CER and what might be the legal implications of that it is interesting to note that the trans-Tasman connection was not overlooked.

That the time is opportune for the initial step to be taken namely the initiation of annual conferences cannot be gainsaid. The interest of the members of the profession in respect to purely professional concerns would be quickened. Their attention would be drawn to the tendencies in present-day developments both legal and legislative and the expression of opinion of the profession in conference would doubtless find echo in the Legislature. The further, and increasingly desirable, effort to seek and maintain uniformity of the law of New Zealand with that of the Australian States is also a field of opportunity which if entered into would increase the profession's

utility to the community and entitle it to an advance in public esteem.

In the same issue there was a letter from W J Hunter of Christchurch who had raised the question originally at the New Zealand Law Society Council meeting earlier in the year when it had been decided to canvass the views of the District Societies. What is of particular interest about the letter is the pre-eminence given in Mr Hunter's view to the "government of the profession" with its 1,700 members. The reading of papers and the public impression made, which we would now call professional education and public relations, were seen merely as valuable side effects. Nowadays of course, the priorities would probably be reversed.

The proposal of 1927 was not the first time the question had been raised. In 1922 W C McGregor KC, the Solicitor-General had suggested there should be an annual conference of all members of the profession. This idea was apparently considered by the New Zealand Council but did not gain acceptance. When Mr Hunter, on behalf of Canterbury raised the matter again in 1927 however, it was strongly supported by Taranaki and Gisborne, and not opposed if not strongly supported by other Districts. It was said (1928) 2 NZLJ 44 that:

The proposal received the tepid approval of that meeting chiefly

because it did not arouse any dissent or opposition, and after the District Law Societies had been consulted it was decided that, as Christchurch had made the suggestion, Christchurch should carry the proposal through. Mr Hunter, with great energy and ability and with the assistance of the Council of the Canterbury Law Society, began to make the arrangements. Many practitioners in Christchurch did not regard the proposal with any great enthusiasm.

Whatever may have been the reasons for the general lack of enthusiasm initially, the success of the first conference ensured that there would be others. They have subsequently been held with what might be called irregular regularity. The original proposal was for annual conferences, and this pattern was adopted for the two succeeding years with conferences in 1929 at Wellington and in 1930 at Auckland.

By this time however the Great Depression had made itself felt and future conferences were put off until recovery should occur. In 1936 a conference was again held, this time in Dunedin and then in 1938 the conference returned to Christchurch. There was a report in (1937) 13 NZLJ 48 to the effect that a cordial agreement had been reached that the 1938 Dominion Legal Conference would be held in Christchurch, which, it was said:

will leave the way clear for the Wellington practitioners to entertain their brethren of other parts of the Dominion in the Capital City during the Dominion Centennial year, 1940.

In fact however there was no conference in 1940 because of World War II. Some, who are not from the deep south, will learn without surprise that early in 1940 the Otago District Law Society suggested that there should be no 5/- conference levy that year "as it is felt that members will strongly object". This was not the view of the majority however, and the collection was made that year but then discontinued for the rest of the war. The Council minutes for 1946 record the decision to revive the collection of the 5/- conference levy and that Wellington should host a

conference in 1947. That was what was duly done. The following two conferences, 1949 at Auckland and 1951 at Dunedin, were held at two-year intervals, but thereafter the present triennial pattern was adopted.

Legislative trends

When the members attending the first conference met on Wednesday, 11 April 1928 at 10 am in the old Canterbury Provincial Council Chamber the chair was taken by Sir Alexander Gray KC the President of the New Zealand Law Society. With him on the dais were the Attorney-General Rt Hon F J Rolleston and the Solicitor-General Mr A Fair KC. The report at (1928) 4 NZLJ 44 notes that the Presidents of the District Societies were accommodated at the table immediately below the dais, "and conspicuous in the body of the Hall were two Wellington lady practitioners, Mrs Down and Miss Hopkins". There were two members present from Auckland and 24 from Wellington including the Attorney-General and the Solicitor-General. The total attendance was 174, of whom 69 were from Christchurch and immediate environs. This total attendance was almost exactly 10 percent of the total membership of the New Zealand Law Society at that time. No Judges attended.

There were four papers given. These were Mr A F Wright (Christchurch) on *The Present Trend of Legislation Viewed from a Constitutional Viewpoint*; Mr Harold Johnston (Wellington) on *The Present Position of the Supreme Court Code Dealing with Juries*; Mr M Myers (Wellington) on *The Outlook of the Profession*; and Mr W R Lascelles on *Inroads on the Work of the Profession*.

Since these were the first four papers given it is worthwhile pausing to look at the major issues raised 56 years ago. Mr Wright's points of concern about the constitution were first the removal of matters from the Courts and putting them in the hands of State servants; second, the enacting of provisions that on a particular issue the determination by Minister or Government Department shall be final and binding and not be questioned in a Court; and third, the granting of wholesale powers to issue regulations having the force of law. (Some people might be tempted to think today of the Immigration Bill

with the removal from the Courts of questions involving deportation by the subterfuge of "decriminalisation" but with the "non-offender" being subject nevertheless to temporary detention, and of course the price and wages freeze.)

One other comment by Mr Wright is worth quoting as a reminder that today's constitutional issues are also yesterday's issues

The promulgation of legislation by Government Departments, particularly that brought down in the dying hours of the session, when it can receive no proper publicity and no effective Parliamentary criticism, should be discontinued.

There was a lengthy discussion of Mr Wright's paper. This led eventually to the adoption of a resolution in support of the criticisms made by Mr Wright. This was said to be agreed to unanimously although Mr A Fair KC (the then Solicitor-General) spoke against it.

The paper by Mr Harold Johnston on the Rules relating to Juries concerned the reservation of civil jury trials to actions arising out of pure tort only. He summed up the effect of the changes as being that "the Judge has in effect displaced the jury as the criterion of truth in English law". There followed a discussion on a motion in which there were strongly expressed views on either side. According to Mr A T Donnelly (Christchurch) the change had been made on the basis of the views of some of the Judges. This led Mr M J Gresson to say that he thought that:

the Judges were not the best judges as to whether they were the best judges of fact — legal practitioners of experience were the best judges of that.

The end result of the discussion was the adoption of a resolution that it was desirable to revert to the previous system. Eventually Parliament did this some years later, and then this in its turn was the subject of criticism and debate at later conferences.

The Profession

Mr M Myers KC and Mr W R Lascelles were each concerned, in their different ways with the welfare of the profession. Mr Myers said that

"anyone who would could read the writing on the wall, and see that the profession was overcrowded". In 1926 there were 1,636 practitioners for a total population of 1,304,384. Mr Lascelles was also concerned and expressed himself in a rather more expansive style.

Primary and secondary education are followed by years of university study with little or no accompanying return. In such circumstances one might expect to reap some reasonably lucrative reward. So serious, however, have been the inroads on the work of the profession that the young practitioner, in particular, often finds himself at a marriageable age earning the same wage as a butcher's shopman. Under New Zealand conditions, the academic or opinion side of law, save in exceptional circumstances, can only be pursued with reasonable financial return if the conveyancing side is fairly remunerative; the conveyancing side for itself must rely not upon high charges for intricate work affecting small transactions, but upon a steady flow of ordinary property transactions, the charge for which is sufficiently high to permit more technical services being given when required at a reasonable fee.

After reading this and thinking on certain present day developments it is difficult to avoid the flippant current comment — "so, what's new". There was little discussion on the two papers by Mr Myers and Mr Lascelles apparently because no one wished to or could argue against them.

Remits

There were some other noteworthy aspects of this first conference. In the first place there were a number of remits debated as well as resolutions arising from the papers presented. Some of the remits were withdrawn; in respect of one of them the report notes delicately "it has been considered advisable to omit this part of the proceedings from our report"; it was also decided not to report on the Bar dinner for reasons that future generations can only surmise. Some of the remits, including one to prohibit the publication of some evidence in murder and divorce trials were lost.

The remit regarding which no report was made, apparently dealt with what is now known as the Solicitors Fidelity Guarantee Fund. This is to be deduced from a comment in a later article at (1928) 4 NZLJ 286 by W J Hunter, the Secretary of the Conference Committee. He was writing about the follow-up work resulting from the conference. After referring to some other resolutions he went on to say:

The most important from the point of view of the future welfare of the profession was, in my judgment, that expressing approval of some scheme of Solicitor's Guarantee, and although this has not yet received legislative enactment, I have not the slightest doubt that the work done by individual members, by District Law Societies, and by the Council of the New Zealand Law Society in connection with this matter has not been wasted and will in due course receive its reward.

Interestingly there was a remit seeking revision of the inadequate salaries of Judges. This was unanimously agreed to, although in opening the Conference the Attorney-General referred specifically to this remit which he said he regretted to see, adding "there was not much chance of increases being made". And of course they were not made, but the dissatisfaction with judicial remuneration that already existed by 1928 is a matter to be borne in mind when considering the refusal of the Judges to accept a reduction in their salaries during the Depression.

No Judges attended the first conference. In moving the remit to increase judicial remuneration Mr H H Cornish (Wellington) remarked that the remit "was put forward in an obviously disinterested manner as the majority there would never be elevated to the Bench (laughter)". This might have been true enough as far as it went, but 14 of those present subsequently sat as permanent or temporary Judges of the Supreme Court. The list is an interesting and impressive one. In order of their appointment they were, R Kennedy, M Myers, H Johnston, A Fair, J B Callan, H H Cornish, K M Gresson, J D Hutchison, F B Adams, A K North, G I McGregor, and W E Leicester with K G Archer and F C

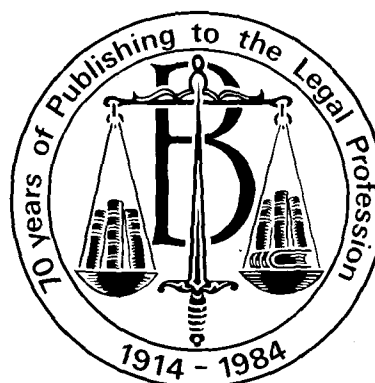
Spratt having only temporary appointments.

Other topics covered by remits originally proposed included the need before admission for practical experience in a law office; admission of New Zealand solicitors in England; vacancies on the Bench; compulsory motor vehicle (third party) insurance. These illustrate the concerns of the profession in those days with serious practical issues.

Butterworths

On the final day there was a discussion on two topics that concerned the firm of Butterworths. The first was a proposal regarding the method for the issue of the New Zealand statutes. Mr H Page of Butterworths was given leave to address the Conference and his proposal was accepted. An arrangement was also come to with Butterworths concerning the availability of space in the *Law Journal* for matter to be supplied by the Law Society about its activities.

At the end, lunchtime on the Friday, the usual congratulatory resolutions and appreciations were expressed in a formal manner. In addition the original Conference Committee was reconstituted as a Committee to carry into effect the resolutions of Conference. As Mr Hunter reported later in the *Law Journal* the Committee met on a number of occasions, passed to the New Zealand Law Society for its action certain appropriate matters and met with the Attorney-General to convey to him the matters that were the responsibility of the government. Those involved must have felt that this was an auspicious beginning. □



Past Conferences

II THE PRE-WAR YEARS



On 4 June 1928 the *Evening Post* (Wellington) carried an editorial about the first Law Conference which it described as "the Lawyers' Parliament". It raised the question about a permanent executive committee separate from the Law Society Council, and responsible to an Annual Conference open to all lawyers. This possibility was discussed by the first Conference Secretary Mr W J Hunter in an article in the *Law Journal* in November at (1928) NZLJ 286. He suggested that the Rules of the New Zealand Law Society should be amended to provide, among things, for an Annual Conference with defined duties and objects. He also proposed that at the conclusion of each Annual Conference the Council, either alone or in conjunction with a local committee, should meet to consider and deal with the decisions of the Conference.

This was not how things have worked out. Annual Conferences were held in 1929 and 1930; but because of the economic situation there was then a gap until 1936 with another conference two years later in 1938, before the coming of World War II caused another hiatus. These four conferences were held respectively in Wellington, Auckland, Dunedin and Christchurch. Attendance varied being 239, 307, 181, and 206 respectively. The most interesting comparative figures might be thought by some to be that Otago sent four members to Auckland in the depression year of 1930, but Auckland sent only two members to Dunedin in the recovery year of 1936. The attraction of the north was obviously real even then.

The Attorney-General, Mr T K Sidey gave the inaugural address at the 1929 Conference in Wellington. He also attended the 1930 Conference in Auckland and spoke on matters relating to his work as Attorney-General; but the inaugural address

was given by the Chief Justice Sir Michael Myers. Mr Sidey spoke on legal education in 1929. Sir Michael Myers however in 1930 chose to speak as he said "in the form of more or less desultory remarks on questions which I think are of importance to the legal profession generally and to the public".

In the course of his speech the Chief Justice made two comments that are worth recalling. In the first instance he spoke about the effects of earlier conferences and admitted that he himself had been a pessimist about them but that he had been wrong. He went on to say:

One of the main things that pleases me is to see that members of the profession do not, at these Conferences, bring up matters that affect only their own interests. It is a new side to the profession, as far as the public is concerned, to see that, although they may not be altogether altruists, lawyers have an eye to matters that affect the public interest.

The Chief Justice went on to say that in his view the idea of an Annual Conference was a good one and that it should not be abandoned in favour of a biennial conference, which was then being proposed, without very careful consideration. In the event because of the economic situation no conference was held for six years.

Privy Council Appeals

The other matter referred to by the Chief Justice that is moot today concerned the question of appeals to a particular appellate Tribunal. The Chief Justice said:

There is, at the present time, not in New Zealand, but in certain other parts of the British Dominion, an obvious desire — one might almost say a

determination — to get rid of the Privy Council as the ultimate appellate tribunal. I do not believe this is a live question in New Zealand. I do not believe anybody in New Zealand wants to get rid of the Privy Council. I hope it will ever remain, and remain as it is. It is, I consider, the finest tribunal in the world, the greatest of all tribunals. You receive from it not only the judgment of the finest minds in the Empire but you receive the greatest courtesy, and you know there is a freedom from that unconscious local bias which, sometimes, try how he will, the man in a small country cannot avoid.

These comments by Sir Michael Myers were really by way of introduction and commendation for a paper that was read later at the Conference by Mr J B Callan of Dunedin dealing specifically with the question of appeals to the Privy Council. Sir Michael Myers had a few years earlier been very successful in a number of appeals he had conducted before the Privy Council. Mr Callan's paper will be found at (1930) 6 NZLJ 94. The crux of Mr Callan's defence of the right of appeal to the Privy Council can be gathered from the following quotation at p 98.

I am prepared to concede that the completely independent efforts of New Zealand Judges might accomplish as near in approximation to abstract justice as the efforts of English Judges. But all human efforts to attain ideal justice are mere approximation. And there is a practical, attainable aim of far more importance than the pursuit of abstract justice. It is of great importance to the community that the citizen should be able to find out, without recourse to the

Courts, what he may or may not do, and what is his redress, if any, in such-and-such events. To be able to do this in a large number of cases is attainable, so long as we preserve a common jurisprudence with huge and busy populations. At present, the disputes of English litigants, the researches of the English Bar, the decisions of English Judges and the dissertations of English text-writers settle many of our daily problems for us. . . . Under present conditions, our daily work brings us into close and continuous touch with the best efforts of the best intellects in England that are or have been dedicated to law. . . . As a profession, we must suffer if severed from our fellowship with English workers in the law, and such a severance would be the ultimate result of severance from any Court of Appeal manned by English Judges.

It was interesting also that Mr Callan referred specifically to the possibility he foresaw of it being possible at some time in the future for New Zealand counsel to be able to fly to the hearing of appeals of the Privy Council. Mr Callan's paper was described at that time as attaining "the highest level reached at any of these conferences".

Legislation

At the 1929 Conference Mr R L Ziman (Auckland) read a paper on *The Crown in Business*. His opening paragraph shows that the complaints that are still currently made about the extent of legislation were not unknown to legal practitioners in 1929.

In this happy country, we are able to enjoy the best of food and that in abundance. Possibly it was this fact which caused our legislators to conceive the idea that our legislative diet should be on the same liberal scale. Whatever the reason, the legislature endows us each year with a Statute Book besides whose gross proportions the Statute Book of the Imperial Parliament appears but a tiny sylph. Now, amid its "mass production" methods, our Legislature appears not to have had the time — and not to have the facilities — for adequate consideration of the constitutional

effect of the law it enacts. This circumstance has not infrequently been deplored. . . .

The Wellington Conference in 1929 was the first to be addressed by a Governor-General who at that time was Sir Charles Ferguson. Among the more interesting papers presented was one by Mr P J O'Regan who later became a Judge of the Arbitration Court and a temporary Supreme Court Judge, on the subject of "An Elective Judiciary". The proposal was not that there should be an election of Judges in the way that is done in the United States but rather that Judges should be elected by the legal profession. He suggested an Electoral College of 40 members chosen by the profession which would then in its turn make appointments, whether or not from among its own members, to judicial offices. The Attorney-General and the Solicitor-General would be members *ex officio*. It is possible to see in this proposal something akin to the later suggestions for a Judicial Commission with the great advantage that it would be a substantial body that would reflect the considered views and assessments of the legal profession rather than an appointed body that would be largely composed of politicians and civil servants.

Absolute Liability

At all of the conferences before the war a great deal of time was devoted to the consideration of remits. A large proportion of these were duly passed and referred to the Council of the New Zealand Law Society for further consideration. Perhaps the most significant in view of what has eventually come to pass was the discussion at the 1938 Conference in Christchurch on the principle of absolute liability in motor collision cases. A paper was read by Mr W J Sim in support of such a proposal. The matter was debated and discussed at great length and with some heat. Eventually however a motion was carried in the following form:

That this Conference approves the principle of absolute liability for personal injuries in motor collision cases, such liability to be covered by compulsory insurance, and that compensation be assessed in some suitable manner.

The Attorney-General Hon H G R Mason was present and took an active

part in the discussion which had a direct relationship to a Bill that he had proposed on this subject. Somewhat to Mr Mason's apparent surprise and delight he was supported by a former Attorney-General in the Reform Government Mr F J Rolleston who was present at the conference as a member of the profession.

The 1938 Conference was also particularly noteworthy in the laying of a foundation stone for the proposed new Courts of Justice in Christchurch. It was to be many years before Christchurch actually obtained new Courts of Justice. The foundation stone was laid by the Governor-General Viscount Galway.

Judges

In 1930 the inaugural address was given by the recently appointed Chief Justice Sir Michael Myers who had taken an active part in the two previous conferences. Apart from that occasion however the Judges either individually or as a body seem to have been little involved in the law conferences before the war except in attending the Bar dinner to accept and acknowledge the toast to the judiciary. At the 1936 Conference dinner the newly appointed Mr Justice Callan remarked on the fact that under the British system the recruitment was from the Bar to the Bench. His Honour went on to say:

But advocacy in judging require and develop very different faculties. It was, . . . a curious thing that when a man had shown some facility in self-expression, he was taken and put into a place where his greatest virtue was to be able to hold his tongue.

It is noteworthy that the reports on the conferences for 1936 and 1938 both contained full accounts of the Bar dinner, even in the case of Dunedin the fact that it had been necessary to have two Bar dinners in different places in order to accommodate the number of members present as the dining facilities in Dunedin had not been designed for large crowds.

The pre-war conferences were notable for the discussion of remits and the expectation of those attending the conference that these would be actioned in some appropriate manner by the Conference Committee itself. □

Past Conferences

III TOWARDS THE CENTENNIAL YEAR



In the 20 years 1949-1969 there were eight law conferences held. The present pattern of triennial conferences became firmly established. While there was some degree of variation as organising committees sought for better and more interesting ways of doing things, the purpose and the function of the conferences that have become accepted imposed a basic structure.

At the meeting of the Council of the New Zealand Law Society in March 1946 it was decided to ask the Wellington Society to sponsor a conference the following year, and it was also decided to review the collection of the 5/- fee when the next practising fees were being paid. The first three conferences those of 1947, 1949 and 1951 were held at two-year intervals, but thereafter the triennial pattern has been followed. The joint conference secretaries for the 1947 Conference were Mr H R C Wild later to be Solicitor-General and Chief Justice, and Mr J C White later to be Solicitor-General and subsequently a Judge of the Supreme Court and after his retirement still sitting in a temporary capacity as a member of the High Court Bench.

The 1947 Conference

At the first post-war conference in 1947 there was a marked increase in the number of papers given. Several of them traversed a number of issues that had received consideration on earlier occasions. Mr A C Stephens of Dunedin read a paper on *The Abuse of Delegated Legislation* which was a replay in a different key because of subsequent political developments of the very first paper given at a law conference being that by Mr A F Wright at Christchurch in 1928. Mr J D Hutchison of Christchurch spoke on *The Etiquette of the Profession* which was again a subject that had been discussed earlier by Sir John

Findlay KC at the 1929 Conference in Wellington. Legal education was discussed by Professor R O McGechan. This was a topic that had been discussed at the 1929 Conference by the then Attorney-General the Hon T K Sidey.

The impression given of the 1947 Conference was that it was devoted to re-establishing the professional links and professional standards that might have been frayed a little during the war years, and in particular to assist the returned servicemen to recollect and appreciate the standards and concerns of the profession as a body.

The first reference to attendance by Judges at a conference other than as guests at the Bar dinner, is in the report of the 1951 Conference when Mr Justice Adams, Mr Justice Stanton and Mr Justice Hutchison were all present. They did not however take any active part in the proceedings of the Conference as far as the reported discussions are concerned. It may be that a certain degree of judicial discretion was considered to be appropriate in view of the fact that there was a remit before the Conference seeking a substantial increase in the salaries of the Judges of the Supreme Court. There was a discussion on the matter which clearly favoured this being done but then in order to avoid any possible question of embarrassment it was agreed that the whole matter be referred to the New Zealand Law Society.

Another interesting development at the time of the 1951 Conference was that the editor of the *New Zealand Law Journal* gave a broadcast from Station 4YA in which he introduced the Conference to the public and spoke of the work that the profession did when regarded from the point of view of the public interest. He emphasised the traditions and integrity of the profession and explained that lawyers were deeply

conscious of their duty to the community. As far as the Conference was concerned he said that it would also serve

as a valuable reminder to the profession itself of its duties to its clients, to the community it serves, and to mankind generally. The profession's duty in that regard can be summed up (briefly, though inadequately) by saying that it must observe and foster due observation of the rule of law; it must respect and administer the common law which recognises the dignity of the human personality and safeguard the inalienable rights of man; and it must always resist the intrusion of the state into matters not within its province.

Napier

The 1954 Conference was notable for a number of things. The first was that it was held for the first time away from what was described by the Bishop of Waiapu in his inaugural address as "what are known in the four main centres as the four main centres". The Conference went to Napier. The recently appointed Chief Justice the Rt Honourable Sir Harold Barrowclough was in attendance with Their Honours Mr Justice Hutchison and Mr Justice Stanton.

The Acting Attorney-General The Hon J R Marshall spoke on the lawyer in the service of the community. Mr Marshall spoke of what he called "the social revolution" which was expressed in the Welfare State. He went on to say:

We make a grievous error if we think of the Welfare State merely as a method of redistributing the national income by taxation on the one hand and pensions, family allowances and health and other benefits on the other. These are

merely some of the outward signs of the revolution. The revolution is going on slowly and at times uncertainly but still inevitably in the minds and hearts of the people. It will go on until its momentum is spent and an acceptable condition of stability within the social order is achieved.

Mr Marshall pointed out some risks inherent in this revolution both in terms of its economic viability and in terms of civil liberty. His emphasis however was on the responsibility of lawyers in particular to take an active part in matters relating to public service. He said that he had read through the reports in the *New Zealand Law Journal* concerning previous conferences and had been struck by the recurring theme of "the wider responsibilities of the profession in public affairs and in the life of the community". He said that the profession had a responsibility in the two forms of leadership in respect of thought and of action.

For the members of our profession, there is ample scope in both fields: for the men of action in the conduct of public affairs in this most democratic of democracies; for the men of thought in the problems of a changing pattern of society in

which the law must keep pace with new social concepts and where those new concepts themselves need the careful scrutiny of thoughtful minds.

Permanent Court of Appeal

The major address at the Conference was by Mr L P Leary QC who spoke with that vigour which still marks his utterances, on the subject of *A Permanent Court of Appeal*. He was strongly of the view that the Conference should express its endorsement of the proposal being put forward by the New Zealand Law Society for the establishment of a separate Court of Appeal consisting of Judges permanently appointed thereto. Supporting arguments were then advanced in another paper by Mr T P Cleary who of course was to become one of the first three members of that Court of Appeal when it was established in 1957.

Before being appointed to the Court of Appeal however Mr T P Cleary presided as President of the New Zealand Law Society at the 1957 Conference held in Christchurch. It was at the 1957 Conference that the Attorney-General the Hon J R Marshall announced that the Government proposed to proceed to establish a permanent Court of Appeal.

Distinguished Guests

The 11th Conference held at Wellington in 1960 began a new development with the attendance of the Rt Honourable the Viscount Kilmauir, Lord Chancellor of Great Britain. In subsequent years two other Lord Chancellors have attended conferences. These were Lord Gardiner at the Centennial Conference in 1969 and Lord Elwyn-Jones who attended the Wellington Conference in 1975.

The 1960 Conference was also notable for the attendance of Mr Herman Phleger who attended as a representative of the American Bar Association. At the Conference in Auckland in 1963 there were two official representatives of the American Bar Association Mr G B Powers and Mr J Balch, both from Kansas. At that conference the Lord Chief Justice of England the Rt Honourable Baron Parker of Waddington was the principal guest. The Chief Justice of New South Wales and a Judge of the Supreme Court of Victoria were also special guests. Sir Thomas Lund, the Secretary of the Law Society from London and Mr J B Piggott, the President of the Law Council of Australia, Hon R R Downing Attorney-General of New South Wales, and Maitre R Penger an Advocate of the Court of Appeal in Paris, were also present as guests. That conference also marked an attendance for the first time of a number of Australian practitioners. This all indicated the growing appreciation on the part of the profession that the world of the law was not to be thought of solely in terms of the territorial boundaries of New Zealand.

The 1966 Conference extended the international context by having as one of the special guests the past President of the Canadian Bar Association Mr H Hansard. The principal special guest on that occasion was Rt Honourable Lord Denning Master of the Rolls. At both the 1963 Conference and that of 1966 the Judiciary attended in substantial numbers and added considerably to the colour and formality more particularly of the opening ceremony. Another first for the Dunedin Conference of 1966 was the attendance of the Prime Minister the Rt Hon K J Holyoake.

The papers at the Dunedin Conference in 1966 covered such

Where and When

The 19th New Zealand Law Conference is being held in Rotorua, as the most suitable venue for the host Society the Hamilton District Law Society. As a matter of record, and some interest, the following chronology lists the year, place, and reference to the Law Journal report, of each of the previous Conferences.

1st	1928	Christchurch	[1928]	NZLJ	44
2nd	1929	Wellington	[1929]	NZLJ	46
3rd	1930	Auckland	[1930]	NZLJ	81
4th	1936	Dunedin	[1936]	NZLJ	73
5th	1938	Christchurch	[1938]	NZLJ	95
6th	1947	Wellington	[1947]	NZLJ	73
7th	1949	Auckland	[1949]	NZLJ	99
8th	1951	Dunedin	[1951]	NZLJ	79
9th	1954	Napier	[1954]	NZLJ	93
10th	1957	Christchurch	[1957]	NZLJ	93
11th	1960	Wellington	[1960]	NZLJ	96
12th	1963	Auckland	[1963]	NZLJ	155
13th	1966	Dunedin	[1966]	NZLJ	155
14th	1969	Rotorua	(1969)	NZLJ	155
15th	1972	Christchurch	[1972]	NZLJ	459
16th	1975	Wellington	[1975]	NZLJ	299
17th	1978	Auckland	No Record		
18th	1981	Dunedin	[1981]	NZLJ	139

matters as *The Reform of Procedure* by G P Barton, *The Law of Damages* by D W McMullin, *The Public Image of the Law* by P T Mahon.

Centennial Conference

In 1969 the Centennial Law Conference of the New Zealand Law Society was held in Rotorua. On that occasion the special guests were the Rt Honourable Lord Gardiner, the Lord High Chancellor of Great Britain; the Rt Honourable Sir Garfield Barwick, Chief Justice of Australia; Justice Roma Mitchell, Judge of the Supreme Court of South Australia; and Hon William S Richardson, Chief Justice of Hawaii. The Conference was presided over as usual by the President of the New Zealand Law Society who was at that time Mr D McGrath of Wellington. The Chief Justice the Rt Honourable Sir Richard Wild, and the Governor-General Sir Arthur Porritt were also present.

Sir Arthur Porritt in his brief opening remarks referred to a sense of awe that he had in being in the presence of so many lawyers when he was merely an ex-practitioner of the sister profession of medicine. He then went on to say:

Nevertheless, for one who was but a simple surgeon, to address such a galaxy of legal luminaries as this is a daunting task. I boost my morale a little by remembering that medicine has a slight chronological precedence over law in that the first chapter of Genesis records the first organ transplantation before this led to the first murder trial!

The task of looking back over the previous one hundred years and commenting on the relationship of the law and the community was given to Mr J G Leggatt of Christchurch. In his address Mr Leggatt said:

We joined this profession in a desire to serve the community and we do ourselves and the community a disservice if we forget that. Our performance may not measure up to what might reasonably be expected of us and we are lowered in the esteem of the public accordingly, but I think we would do well to acknowledge and remember that there are more opportunities to serve the community and frequently without hope or expectation of reward in this profession than in almost any other, the medical profession not excepted. If we lose sight of that, something has gone out of our professional *raison d'être*

There were two papers on *Reforms in the Law of Evidence* given respectively by the Rt Hon Sir Alexander Turner and by Mr R C Savage. These papers and the discussion that followed were particularly concerned with proposals to reform the hearsay rule. There were papers on the *Compulsory Acquisition of Land* by Mr R I Barker, on a *Company's Commission* by Mr R H Duncan and J P Molloy, on *Tax Reform* by Mr L M Papps, and on *Family Law* by Mr D B Inglis. The papers were discussed, but unlike

the earlier days of the law conferences there were no resolutions passed or remits considered as these had gone out of use.

The Conference also had a judicial and official flavour to it that was in marked contrast to the first conference in 1928. Addresses were given by the Rt Hon Lord Gardiner, Lord High Chancellor of Great Britain, by Justice Roma Mitchell, by the Rt Hon Sir Alexander Turner of the Court of Appeal, and by the Rt Hon Sir Garfield Barwick who spoke on a *Regional Court of Appeal*. Mr Arulanadam, Vice-President of LAWASIA spoke about the organisation and, the Hon J J Hannan, the Attorney-General who spoke on *Law Reform*.

It is fitting to conclude this retrospective glance at some aspects of previous law conferences with the Centennial Conference. It was the first conference held in Rotorua and in 1984 the Conference is again being held in that city. The most recent conferences are relatively fresh in peoples memories.

Law conferences are now an established fixture among the activities of the New Zealand Law Society. Although they have changed in many ways they still serve to inform the profession in regard to technical legal matters, to broaden the outlook in respect of community service, to emphasise the link that exists within the common law tradition, to retain and renew personal relationships and to provide that sense of belonging to a professional community that shares common ideals and obligations. □

New Zealand Law Society Elections

Auckland lawyer Mr Bruce Slane has been re-elected for his third year as President of the New Zealand Law Society at the NZLS Council's first meeting for 1984, held on 23 March.

The four vice-presidents, elected to represent the various parts of the country, are: Mr Paul Temm QC, representing the Auckland area; Mr Tony Ellis QC, representing Wellington; Mr John Laurenson of New Plymouth, representing the rest of the North Island; and Mr Neil Williamson of Christchurch, representing the South Island.

All but Mr Laurenson, who is serving his second term as a vice-president, are new to this office.

Wellington lawyer Mr Malcolm Dunphy, has been re-elected Treasurer.

Other members of the new Council are: Messrs Don Dugdale, Colin Pidgeon, Simon Lockhart QC, Bob Eades (Auckland); Andrew Tipping, Ian Cameron, Nigel Hampton (Canterbury); Neil Weatherhead (Gisborne); Steve Brooker, John Bryant (Hamilton); Tim Twist (Hawkes Bay); Paul Cullinane

(Manawatu); John Wain (Marlborough); Tony Doogue (Nelson); Peter Gibson, Mike Radford (Otago); Peter Galt (Southland); Don Christian (Taranaki); Rhys Barker (Wanganui); Dick Heron, Paul Neazor QC, David Hurley (Wellington); and Alan Stobie, representing Westland.

Messrs Dugdale, Tipping, Brooker, Gibson, Heron and Barker, together with the President and four vice-presidents, have also been elected as members of the Society's new Executive Committee.

The Butterworths and the Bonds

Butterworths, as a legal publishing house, dates back to February 1818 as the official history of Butterworths on which this article is based makes clear. It was then that Henry Butterworth just about to turn 32, opened a bank account for his new business. He was not lacking in experience. He had worked for 17 years as an apprentice and employee for a law publishing firm in which an uncle and a cousin were the partners.

Henry Butterworth started business in premises at No 7 Fleet Street. Naturally it took him a few months to get organised and to build up a stock of books. In May 1818 he sent out his first prospectus to customers. As all readers of this *Journal* will know, Butterworths has sent out many since.

The circular is interesting because, if the somewhat stilted formal style is allowed for, it describes in brief the nature of the business and the qualities that Henry Butterworth hoped would attract customers. After respectfully announcing "to his friends and the public in general" that he has commenced business as a Law Bookseller, he expresses the hope of their support on the basis of "being determined to deal on moderate and liberal terms". He assured his potential customers that they could "rely on his utmost diligence in executing their orders with punctuality and dispatch".

Henry Butterworth said he would maintain an extensive collection of the best legal publications, both new and second hand. He also declared his intention to have "approved Works of Miscellaneous Literature". All the books would be in "various appropriate bindings". Periodicals would be sold; and collections of law books would be purchased, valued and arranged — this latter presumably referring to some system of cataloguing.

Development of the business

The business flourished. Not that all customers paid promptly. For instance there still survives a courteously phrased request for payment in 1824 in respect of an account overdue by three months for what then must have been a very



Henry Butterworth

substantial sum of money. The letter read in part:

I request therefore to be informed, if it is convenient to you now to pay the account delivered to Mr Ward up to Christmas amounting to the sum of 235. The favour of an immediate remittance will much oblige Sir Your obdient servt H Butterworth.

Henry Butterworth also had some difficulties with his authors. In 1826 an injunction was granted against one author in respect of what was alleged to be a piratical work. Henry Butterworth was particularly incensed that no defence had been offered while his name was reported as the publisher.

The most ironic contretemps would appear to be that involving Mr Chitty of *Chitty on Contracts* fame. The problem concerned a substantial

theft of some two tons of paper, much of it apparently printed sheets, from the Butterworth store. Most of it was duly recovered but there was a legal issue of Mr Butterworth's liability as a warehouseman for the printed sheets that belonged to Mr Chitty. In his letter denying liability Mr Butterworth relied on and quoted some passages in the legal textbook by Mr Chitty on *Commercial Law*.

Henry Butterworth had married in 1813. His wife, Elizabeth Whitehead had a book of verse published in 1848 — but not by her husband's firm. They had three sons and four daughters. Henry Butterworth took an active part in community affairs being a vestryman, a Common Councillor and a Commissioner of Taxes for the City of London. He was active in the Royal London Militia and rose to the rank of Colonel.

His association with the business lasted up to the time of his death in 1860 when he was in his seventy-fourth year. On his death the business passed to his second son Joshua who had in effect been managing the business for some years. He remained as sole proprietor until his death 34 years later in 1895. His death marked the end of any direct connection of the Butterworth family with the firm that still bears the name. He was a man greatly interested in typography and did considerable research into the history of printing. He was a Fellow of the Society of Antiquaries and was active in the affairs of the Stationers Company of which he became Master in 1894. The business was not greatly developed during Joshua Butterworth's lifetime. The firm had a staff of only 5 in 1895.

The Bond era

In his will Joshua Butterworth instructed that the business be sold. It was bought for 5,500 by two brothers Charles Bond and Richard Shaw Bond who owned a printing and publishing business. Neither of these two men figure prominently in the history of Butterworths. It was Charles Bond's son Stanley Shaw Bond, who was a sickly young man of 18 when Butterworths was purchased, who made it into the major world-wide legal publishing company from which the present more diversified group has developed.

Stanley Shaw Bond was a very determined young man who grew into a business autocrat. In his early days he was known within his own family as "paddle your own canoe Stanley". His father, in a fit of exasperation presumably is reputed to have said to him "Look here, Stanley, you take Butterworths, which you can run yourself and so stop upsetting everything here". And that was what he did.

Encyclopaedia of Forms

Stanley Bond was not a lawyer, but he was responsible for the three major publishing ventures that have been in varying degrees of lasting value to generations of lawyers here in New Zealand, as well as in England and other countries where the legal system is based on the Common Law of England. The first was the *Encyclopaedia of Forms and Precedents*. The first volume of this 20-volume work appeared in 1902. Bond had selected the Editor-in-Chief

Arthur Underhill, but had had some difficulty in persuading him to undertake the task. Underhill finally agreed provided that there were enough pre-publication subscribers to ensure it would not make a loss. The break-even figure apparently was 800. Within one month Bond had contracts for 1500 sets of 20 volumes.

The entire work took seven years to publish. A second edition was required in the 1920's because of the introduction of what was in effect a new property code, commonly known as the Birkenhead Property Legislation, which was embodied in six separate statutes passed in 1925. This legislation was so innovative that it was necessary to rewrite all those portions of the *Encyclopaedia* dealing with the branches of the law covered by the new statutes. All the other forms had to be revised and where necessary brought up to date. The Acts were passed on 9 April 1925 and came into effect on 1 January 1926. All 20 volumes of the new edition of the *Encyclopaedia* were published within the calendar years 1925 and 1926.

It was eventually necessary to produce a separate *New Zealand Encyclopaedia of Forms and Precedents*. This came out in 15 volumes during the 1960's. It was edited by E C Adams and was modelled on the English encyclopaedia.

The second major venture that was also the idea of Stanley Bond himself was *Halsbury's Laws of England*. This is dealt with at greater length in a separate article. Unlike the *Encyclopaedia of Forms and Precedents* this was not a financial success from its inception. But Bond persisted over a period of years and eventually his vision and determination were richly rewarded.

English and Empire Digest

The third great enterprise was the *English and Empire Digest*. This was the largest but the least successful. Publication of the 45 volumes extended over a ten-year period from 1920 to 1930 although the preparatory work had begun in 1913. The publication of the *Digest* involved an enormous amount of work. The original idea had simply been to reproduce headnotes verbatim. In many cases however this was not possible either because of copyright problems or because the style was

unsuitable, or because the case might deal with more than one title and thus required a different emphasis to be given in the different entries.

Stanley Bond took a direct interest in the *Digest* and from 1920 he took over the administrative responsibility for the work himself. All of the work was done in London from original sources. This involved the clerical assembly of the material and its assessment by legal staff. There was a card index called the Great File which contained references to other series of reports and annotations from later decisions. The *Digest* did not include all cases from the law reports in the Dominions or Colonies, but included all that were considered relevant to or parallel with English decisions.

The *Digest* did not achieve the success of the other great works. For this there would seem to be three reasons. In the first place there was its size. It was originally projected and advertised in 1913 to comprise "about twenty-four volumes", but it finished up by 1930 in 45 volumes. It was too large for the ordinary office and in a sense it contained too much. The second reason that has been given is that it did not do much, for the English lawyer, that was not already done by *Halsbury*. If the practising lawyer wanted fuller details of the case law than *Halsbury* gave him, his preference would be to go to the full reports.

The third reason is probably to be found in the title itself with the use of the word Empire. In 1913 when the project was conceived the Empire was taken for granted by many as a permanent formal entity, and the law was seen as an essential element of a developing unity. By 1930 the whole situation had changed. The shift of emphasis that had been going on was ironically summed up in 1931, the year after the last volume was published, by the passing of the Statute of Westminster signalling the acceptance of the change from Empire to Commonwealth.

It was not just the idea of Dominion status and of independence that was a problem. Inherent in the idea of Empire was the legal practice in all the colonies whereby the Courts would follow their own precedents and those of the Court of England. A Judge sitting in Dunedin could be expected to accept an authority cited to him of one of his brother Judges in Auckland or a



Stanley Bond receives from Queen Mary a painting by Winston Churchill bought at a charity auction

Judge on circuit in Nottingham, but was unlikely to be impressed by a headnote of a decision of a local Judge in say Durban or Madras — and vice versa. As for the attitude of the Judge in Nottingham it was probably only too adequately expressed in the imperially arrogant attitude of the Privy Council in 1903 towards the New Zealand Court of Appeal in the case of *Wallis v Solicitor-General* [1903] AC 173.

Strangely enough there is probably a greater judicial openness now to other Common Law jurisdictions than there was in the 1920's or 1930's (see the article by Cooke J [1983] NZLJ 297 and the note on *Mandla's* case in the House of Lords [1983] NZLJ 167). Perhaps now the *Digest* will become more useful as the search for precedents that express a relevant

principle rather than a "binding authority" becomes more intense.

Other Major Works

Stanley Bond was also responsible for the publication of two other encyclopaedic works which were of only peripheral interest if any, to New Zealand lawyers. The first was *Halsbury's Statutes of England* which does have some usefulness as a supplement to *Halsbury's Laws*; and the second was a non-legal work the *British Encyclopaedia of Medical Practice*. This latter marked the move of Butterworths into wider fields than law publishing.

Of more significance for lawyers in New Zealand was the publication of the *All England Law Reports*. The unique aspect of these at the time was the recognition by Stanley Bond that

the profession had a need for quick access to judgments from a wide variety of judicial sources. There was some resistance in the early days after the *All ER* was launched in 1936, but there is now a world-wide circulation of over 14,500.

Bond's Success

Bond's success has been summed up by H Kay Jones who worked for him and wrote the official history of the firm, as being

that of an autocrat. As a bold innovator and the sole proprietor of the company, he neither wanted nor needed to devolve the decision-making process down the line. In this respect his successors tried to imitate Bond's methods without the strength of his personality and his unique position.

Another assessment of him was that of a publisher who worked for Butterworths for some years in a senior position after Bond's death. From his experience of the company as it was then, he saw that the management technique of Bond had been, divide and rule. Ron Watson went on to say,

He failed in building and organising a structure which could survive him and continue to expand and flourish after he had gone. He left a perfect take-over situation. . . .

The post-Bond years

Stanley Bond died in February 1943. He had been the sole owner of Butterworths and it was apparently his hope and expectation that his two sons would inherit his business. The incidence of death duties however decided otherwise. After a number of

inter-company arrangements and some management conflicts and changes Butterworths is now an independently operating unit of Reed International under Managing Director Gordon Graham with a Group Board of executives from the United Kingdom company and the subsidiaries in Australia, New Zealand, Canada, South Africa, and the United States.

The international expansion had occurred under Stanley Bond. Since his death the company has developed as a multi-national company and has expanded more dramatically into medical and scientific publishing. The major new emphasis at present in legal publishing is the use of computer technology through the Lexis system. In addition to the case law now in the Lexis database it was announced in November last year that all English statutes are now included.

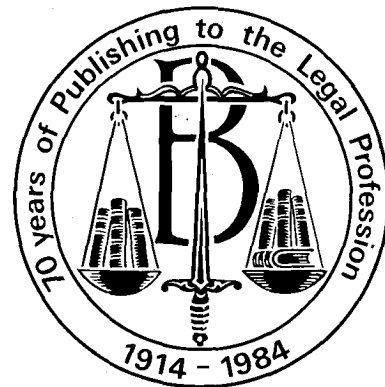
This means some 2,700 statutes and over 7,500 statutory instruments are now in the Lexis database, which runs from the Statute of Marlborough 1267 to the Value Added Tax Act of 1983. It is being kept constantly updated.

Butterworths has grown a great deal since Henry Butterworth sent out that first circular to customers in May 1818. As a firm it has had its slack periods and its times of difficulties. Its foundations were laid by Henry Butterworth himself and it was developed by the vision and ability of Stanley Shaw Bond. In its various international branches, including the separately operating company here in New Zealand, it continues to seek to merit the support of the legal profession, by providing as publishers, in Henry Butterworth's words "an extensive collection of the best Legal Publications". □



Lord Scarman (right) with (right to left) Tom Harper (former editor of the *New Law Journal*) Roger Burke (present editor) and Ian Dickson (former Managing Director of Butterworths)

Butterworths in New Zealand



Beginnings

Paradoxically, but in historical terms not surprisingly, the story of Butterworths in New Zealand begins in Australia. Early in 1911 Stanley Shaw Bond who was then the sole proprietor of Butterworths visited Australia and New Zealand. During that visit he arranged for the opening of an office in Sydney with a local man as manager. In 1913 Herbert Page was sent out from England to become manager for Australia and New Zealand. Apart from a five-year break in the 1920's Herbert Page continued to hold that office until his death in 1932 by which time he had been appointed a director of the Australian company.

One of the first things that Herbert Page did was to purchase the *Federal Law List*. He redesigned this and published it under the title *The Law List of Australia and New Zealand*. This clearly indicated the way in which the two countries were seen as one market for legal publications at that time.

Wellington office

The year after Page arrived in Sydney he arranged for the opening of a separate Wellington office. This occurred in June 1914. To mark the occasion the company sent out a circular. The letter referred to a desire "to get into that closer and more intimate touch with our supporters which is possible when we are actually working in their midst". For this reason the circular said the company took great pleasure in announcing the opening of its office in the "Dominion capital". Butterworths has had a permanent office in New Zealand therefore for a period of 70 years. An article celebrating the 50th anniversary of Butterworths operations in New Zealand appears in [1964] NZLJ 241.

The first manager Mr Alan Allen was really a salesman and he did not reside in New Zealand. In fact he referred to himself as a "travelling manager". The office was actually run by a Miss Butt who had come out from London. She used the title of "Office Manager" and the office in Wellington was under the control of Sydney. In 1919 George MacArthur was appointed local manager and he continued in office until 1925. In that year he was replaced by Hugh Jenkins who remained as manager until 1928. Both of these appointments were made by the Sydney office which clearly continued to consider New Zealand one of its branches.

Bill Nichols

In 1928 there occurred the appointment of W H (Bill) Nichols who was thereafter to have a very important influence on the development of the business in New Zealand. Bill Nichols joined the Sydney office in 1916 as an office boy and by 1928 he had become senior sales clerk. When Herbert Page returned from England in 1928 to resume the managership of the Australian branch Bill Nichols was someone he knew well. Nichols was sympathetic to the instructions that Page had received to extend local publishing in both Australia and New Zealand. The appointment of Bill Nichols was intended by Page to ensure that New Zealand would be a legal publishing base in its own right.

Nichols stayed in Wellington until 1945. He then returned to Sydney and for another 20 years until 1965 he was still responsible for the New Zealand operation as Resident Director for Australia and New Zealand.

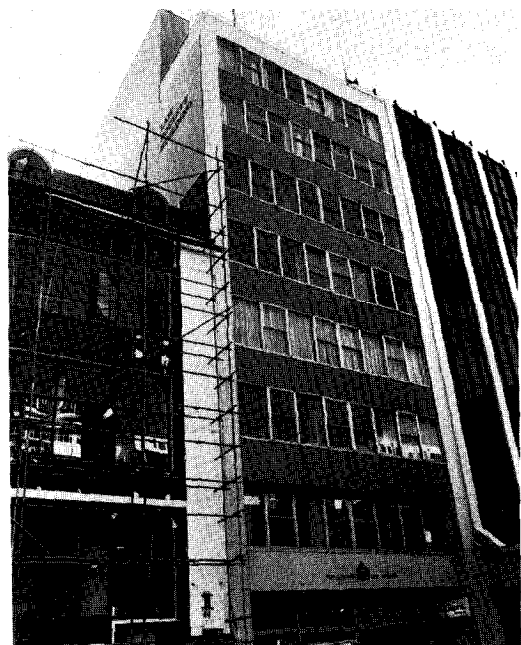
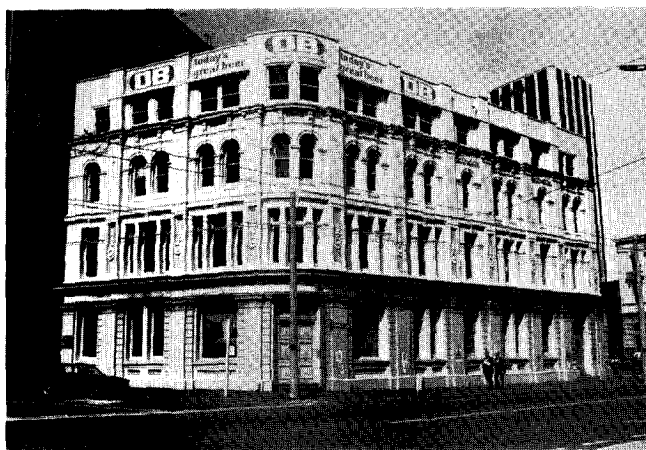
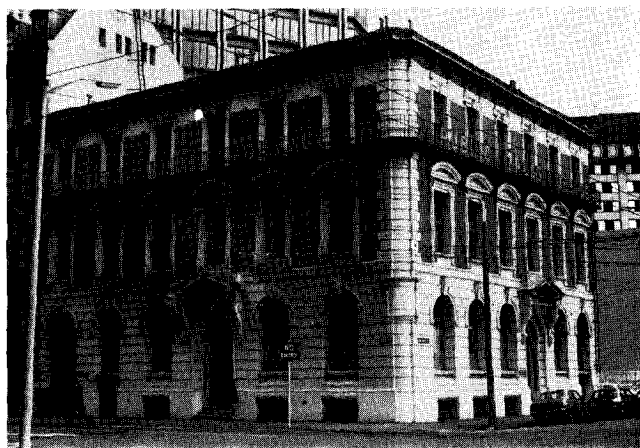
The official history of Butterworths written by H Kay Jones devotes considerable space to the activities of Butterworths in New

Zealand. Much of the early material about both Australia and New Zealand that appears in the book is derived from correspondence with Bill Nichols and it accordingly presents a picture that reflects the forthright personality that Bill Nichols had.

He is described as a tough character who got results. His way of doing things did not always endear him to his superiors in London and some of the correspondence that has survived is apparently quite sharp in tone. Kay Jones remarks that it is surprising that Bill Nichols lasted with the firm until his retirement. He was apparently known in London as a "rough diamond" and it may be that in his own down-to-earth manner he represented what some people in London would have thought of as a wild colonial boy.

The situation was such that on one occasion, at least, Bill Nichols resigned as a protest over an internal management matter but he subsequently withdrew the resignation. Butterworths head office in London was currently sufficiently concerned about the matter that they arranged for the manager of Canada to come out to Wellington to have a look at the situation but by the time he got here Bill Nichols had withdrawn his resignation and the matter blew over. Apparently however this was only one of many clashes that occurred between London and Bill Nichols. On other occasions there were threats of resignation and from the other end consideration was given at times to his dismissal. Nevertheless in 1939 Nichols was made Resident Director in New Zealand and then in 1945 he went to Sydney as Director for Australia and New Zealand.

Both the official history and the historical article mentioned earlier refer to 1916 as being the year when



Butterworths offices in Wellington
 Top left: Ballance Street (1914-1971)
 Bottom left: Waring Taylor Street (1971-1977)
 Top right: Customhouse Quay (1977-1981)
 Bottom right: Cumberland Place (1981-)

Butterworths became the publishers of the *New Zealand Law Reports*. In fact, however, Butterworths published the 1915 *New Zealand Law Reports* but it may have been appropriate to refer to 1916 as the year in which they would have been distributed to the profession. They were published on behalf of the Council of Law Reporting. This is an arrangement that has continued from that time, and in fact only last year this has been renegotiated for a further period.

First books

There is a certain interest in the titles of the first two books that were published by Butterworths in New Zealand. The first book published was in 1928. The book was *Maunsell's Licensing in New Zealand*. In 1983 Butterworths has published a new edition of the now standard work on

the same subject namely *The Liquor Laws of New Zealand* by L H Southwick QC, Alan Dormer and G R Halford. It is not that Butterworths has not advanced very far but rather that with the very substantial changes in New Zealand's liquor laws that have taken place there is a need for a new book to keep the profession well informed in this area of the law which would appear to have a continuing obsessive interest for the New Zealand politician — and of course for the New Zealand citizen.

It was in the same year that Butterworths took over and published *Ferguson's Scale of Conveyancing Charges*. It will be seen from the titles of these two original Butterworths publications that the firm was concerned above all to provide works of local utility! First was the primary concern of the ordinary citizen,

followed immediately by the primary concern of the profession.

Law Reports

Butterworths took its responsibilities as publisher of the *New Zealand Law Reports* very seriously. In 1925 the *Reports* from 1883 to 1924 were totally reprinted by Butterworths in London after much of the stock of the earlier volumes had been destroyed by fire. In order to keep copies of decisions available to the profession Butterworths undertook in 1970-72 a reprint in 93 volumes of the whole of the *New Zealand Law Reports* and of earlier series, so as to cover the period from 1861-1961.

When it first started Butterworths in New Zealand could be best described as a selling outlet for books of an English publisher. This of course was also true in Australia.

There had been a number of legal textbooks already published in New Zealand. The first book published would have appeared to have been *Supreme Court Practice* which appeared in 1873 from the Government Printing Office and was written by the Honourable Mr Justice Alexander J Johnston a Judge of the Supreme Court. The first legal textbook which has survived to the present day was the original publication in 1892 in *Stout and Sim's Practice and Procedure*. Neither author at that time was a Judge but in 1899 Sir Robert Stout became Chief Justice and William Alexander Sim was appointed as a Judge of the Supreme Court in 1909.

Professor Garrow

One author to whom so much is owed by the New Zealand legal profession was of course Professor James Mitchell Ellis Garrow. His first book was *Real Property in New Zealand* which appeared in 1913 and was for so many years the standard text until it was superseded by Hinde McMorland & Sim on *Land Law* in 1978. Thereafter Professor Garrow produced a whole series of books which provided the basic information required by both students and practitioners. These have covered the topics of *Personal Property*, *Crimes*, *Trusts*, *Wills*, and *Evidence*. An article on early publishing in New Zealand can be found at [1962] NZLJ 73.

It was the association with Professor Garrow that established Butterworths as a legal book publisher on a firm base. Bill Nichols has described what happened in the following way:

During 1929, having heard that Professor Garrow had a new book in preparation, I approached him about B & Co publishing it and suggested terms, and later in the year, when Herbert Page [at that time Resident Manager for Australia and New Zealand] visited New Zealand, he confirmed to Garrow that we would publish at our expense and pay him a royalty, and a contract was signed. Later I suggested to Page that we should buy Garrow's stock of his publications: *Real Property* (2nd Edn), *Personal Property* (2nd Edn), *Law of Trusts*, *Crimes Act* (2nd Edn), and *Notes on Evidence*. The sum of £900 was offered to Garrow, and as he had never made

money out of his books, he gladly accepted. This purchase laid the foundation of real local publishing in New Zealand, and most of Garrow's books are still current, having run to a number of editions.

From that time on Butterworths have published a consistently wide range of legal textbooks written by and intended for members of the profession in New Zealand. In part because of the drive and determination of Bill Nichols the policy of issuing local publications in New Zealand was carried on to a greater extent by Butterworths here than was the case in other countries.



Bill Nichols

As the firm developed it took over some other companies or accepted the responsibility for producing legal works which they may have started. As will have been noticed in the above description by Bill Nichols about the relationship with Professor Garrow the position had been that books were published at the expense of the authors on a commission basis. Butterworths however accepted the responsibility for publication and marketing and normally commissioned the books and acquired the copyright. This policy has continued to the present.

In 1929 Butterworths opened a branch in Auckland. This bookshop was there for many years but eventually it was closed. More recently a new bookshop has been opened in Auckland and it is expected that this will now be permanent.

Encyclopaedic works

At the beginning of the 1930's Butterworths undertook the publication of a complete annotated reprint of the New Zealand Statutes,

1908-1931. This was in part because a campaign to sell *Halsbury's Statutes* had not been very successful until Bill Nichols produced a set of tables that compared sections of some of the English statutes with the New Zealand ones. It was clear however that this was an unsatisfactory compromise and a complete annotated reprint of New Zealand Statutes was therefore undertaken with one of the editors of *Halsbury's Statutes* H A Palmer being sent out to New Zealand to work on the publication.

Another specifically New Zealand undertaking was the publishing of two supplementary volumes of appropriate forms which were related to the 2nd edition of the *Encyclopaedia of Forms and Precedents*. Subsequently in 1963 an entirely new *Encyclopaedia of New Zealand Forms and Precedents* began to appear. This eventually ran to 14 volumes. It was edited by E C Adams and was published between 1963 and 1968.

With the publication of the 2nd edition of *Halsbury* a Pilot was produced. The same was done with the 3rd edition and for the 4th edition a *New Zealand Commentary* as is being produced in individual chapter form. The history of *Halsbury* and its relationship to New Zealand legal publishing is dealt with in a separate article in this issue.

The *New Zealand Law Journal* itself technically began in 1928. In fact however it started in 1925 under the title of *Butterworths Fortnightly Notes*, and this was changed in 1928 to the present name of the *New Zealand Law Journal*. The first editor was Mr C A L Treadwell. It consisted originally almost entirely of brief local case notes. The *Journal* has had a number of editors since of whom perhaps the best known and the one who had the longest period of office was Mr J P Kavanagh. He was editor from 1931 to 1960. A brief historical note about the *Law Journal* can be found at [1962] NZLJ 1.

Post-war years

It was clear in 1945 when Bill Nichols was transferred from Wellington to Sydney as "Resident Director in Australia and New Zealand" that the New Zealand business was well established. It was indeed the dominant force in legal publishing in New Zealand by that time. Nichols was replaced as branch manager by

Fire Down Below

Under this heading an article appeared in the English staff magazine Butterworth Gazette of October 1977. The article dealt with the unfortunate fire of 8 July 1977 in Hannah's Building on Lambton Quay, Wellington where the editorial department of Butterworths was then situated. The article is reproduced herewith. The article was illustrated with several photographs but not the one used here.

At 3.30 pm on Friday, 8 July 1977, fire broke out in the building containing the New Zealand editorial department. By 5.30 pm the department was completely gutted.

The careless dropping of a match was the cause. The match was dropped into a wastepaper basket on the first floor of a four-storey building, and within minutes the flames were leaping up a light well, up the lift shaft and stairway, to engulf the top two floors. On the third floor was the editorial department, with, fortunately, only six of the twelve staffers working at the time. The others were out of the office for various reasons. These six were lucky, because the escape ways were blocked by smoke within seconds of the alarm going off. They were rescued by a fire brigade snorkel, lifting first Jack Croft and Linda Pilalis to safety (Linda was five months pregnant), followed by Peter Smailes, Audrey Scott, Barbara Ah Mu and Sheena MacCormick. Peter showed cool leadership in taking the people from the office before it became smoke filled, and leading them onto a verandah outside one of the windows. We lost absolutely everything: IBM typesetting equipment, proofs, magnetic tapes, manuscripts and furniture.

Phoenix Rises Again

Wiped out on Friday, 8 July, fully operational on Monday, 18 July! With magnificent co-operation all round, we were able to start churning out material within ten



Roger Hayman

Butterworths editorial staff being rescued by the Fire Service "cherry-picker."

days. The sequence of events was: interview with IBM on the Saturday morning, ordering of replacement typesetting equipment on Monday, girls training on new equipment on Wednesday, installed on the following Monday in new premises. Fortunately for us, there were

only two manuscripts destroyed, but we were able to capture two-thirds of them in a slightly charred condition. The proofs were pulled up again on Monday, read for literals and sent to authors for any necessary corrections within two working days. □

C A (Ted) Allen who remained manager until his death in 1955. D R (Bob) Christie was sent out from London in 1946 as a young man to act as Ted Allen's general assistant. In 1955 he succeeded Ted Allen as manager. Bill Nichols as the resident director in Sydney continued however to take a very active interest in the affairs of the New Zealand branch. The firm continued to be a publishing company on the basis that had been established in the 1930's. In 1963 it brought out a major work in a new digest of cases under the title *New Zealand Abridgement*. In 1960 a separate New Zealand company was formed with Bill Nichols being an original director. Bob Christie was made a director in 1962.



Bob Christie

Under Christie's management as New Zealand director the company continued to expand its operations in this country slowly but steadily. Christie's period at the head of Butterworths was one whose most noteworthy feature was perhaps the improvement in the relations existing between the firm and the legal profession. His natural geniality and reasonableness paved the way to better relations, and in this he received substantial help from J P Kavanagh, who in his long reign as editor of the *New Zealand Law Journal* seemed always to be on good terms with everybody.

Under Christie in the fifties and sixties authors like Sir Wilfrid Sim, Messrs Jenner Wily, Stephen Goodall, and J W Willis, and Professors Hinde, Brookfield and Caldwell came to the fore, and established works like *Morison on Companies*, *Garrow on Property*, and *on Crimes*, made their appearance in new editions from the pens of eminent members of the profession, who began to accept the idea of

serving their colleagues by publishing the results of their scholarship.

Christie's enlistment of Sir Alexander Turner, first as a general editor in New Zealand of the *Halsbury Commentary*, and later as a director of the firm, marked the ultimate development of this policy. But the New Zealand company still remained in effect a subsidiary of the Australian firm, and during this period important decisions still had to be referred to Sydney.

In 1978 the management structure was altered. In May 1979 Derek Day was transferred from the position of Financial Director in Durban to Wellington as Managing Director which position he still holds.

In 1977 Butterworths' editorial department suffered a rather disastrous fire. A brief account of this appears on a separate page. What was remarkable was the ability of the staff to have production resume in the amazingly short space of 10 days.

Recent developments

Butterworths has developed greatly in recent years. In 1981 Butterworths gave consideration to expanding its publication activities into the agricultural sector. After a year's extensive research, the first textbook was commissioned. This was *Plant Pests and Their Control* by Peter Fennemore of Massey University. It was published in early 1982. This text has been remarkably successful to the extent of being adopted as a student text at the University of California, Los Angeles. In addition, the company publishes the *NZ Agricultural Science Journal* on behalf of the NZ Institute of Agricultural Science.

In February 1984 a second agricultural text was published with the title *Plant Breeding in New Zealand*. This was a joint venture with the DSIR. Three further texts are scheduled for publication in 1984, namely *Milk Production from Pasture*, *Commercial Flower Growing* and *Temperate and Subtropical Fruit Production*.

Legal book publishing continues of course, as does the sale of relevant law books and law reports from overseas. There have been some considerable changes however. One of these has been the publication of books in a new format where substantial rapid changes in the law seem possible. Thus there has been developed the looseleaf book, which

could probably be more correctly described as a binder. Examples of this are the current edition of *Morison on Company Law*, of *Sim and Cain on Practice and Procedure*, of *Dixon and McVeagh's Road Traffic Laws* and *Mazengarb's Industrial Law*. This method means that the books can be updated in a prompt and inexpensive manner so that the work does not become too soon out-of-date.

Recognising the growing degree of specialisation in the law Butterworths has provided a variety of Services, Bulletins and specialist reports. There is for instance the *Family Law Service* with its related *New Zealand Family Law Reports*. There is an *Industrial Law Bulletin* which serves as a supplement to the main text of Mazengarb. There are the specialist reports on *Town Planning Appeals*, on *Administrative Law* and on *Tax*. There is a *Conveyancing Bulletin* and there was published last year Volume 1 (1978-1982) of a set of *Conveyancing and Property Reports*. There is the *District Court Reports* which have continued on what used to be the *Magistrates Court Reports*.

For the immediate use of the profession there is *Current Law* noting all the relevant cases as the judgments come out, and all statutory and regulatory amendments or provisions as these are promulgated. There is also the very practical set of *Annotations* to the NZ Statutes which enable the libraries of legal firms to be kept fully up-to-date.

Sir Alexander Turner

The company has been particularly fortunate in obtaining the editorial services of Sir Alexander Turner on his retirement as President of the



Derek Day
Managing Director Butterworths (NZ)

Court of Appeal in 1973. As an eminent jurist with a wide acquaintance among members of the profession and legal academics Sir Alexander has exercised a great editorial influence in selecting the authors and determining the works to be published over the past ten years. His major responsibility has been the *New Zealand Commentary on Halsbury*. He is the General Editor and as such has been involved directly in commissioning the authors for the commentaries and in the detailed editing of their manuscripts. There are expected to be more than 120 separate New Zealand commentaries on chapters in *Halsbury* and they are being published at a rate of more than one a month.

In addition Sir Alexander has been the director of the company most responsible for legal book publications. The extent of this work has been very considerable and very exacting.

Last year, 1983, was a record year for legal book publishing by Butterworths, with over 16 books published. The publication schedule into 1984 is continuing to be a very busy one. Books published in 1983-84 have included Southwick, Dormer and Halford on *Liquor Laws of New Zealand*, Geare on *Industrial Relations*, Darvell & Clarke on *Securities Law*, Leys and Northey on *Commercial Law* (7 edn), Prebble on *Taxation of Companies*, Inglis' *Family Court Code*, *Conveyancing and Property Reports Vol I*, Blair on *Accident Compensation*, Webbs' *Law of Partnership*, *Butterworths Family Law Guide*, Smellie on *Conditions of Contract* and Northey's 6 edn of *Cheshire & Fifoot on Contract*.

Works currently in the course of production include a book on matrimonial property, the 7th edition of *Garrow on Evidence*, a new work on the *Family Protection Act*, a book on summary proceedings, and the 5th edition of *Garrow on Wills*.

In the publication of Reports, Bulletins, Journals, Services, and books on a regular and continuous basis, Butterworths has sought to serve the working legal profession, to help it become more efficient and to recognise and cater for needs as these arise. Over the 70-year period that Butterworths has been in active business in New Zealand the emphasis of its use to the legal profession has developed from book selling, to book publishing, to the

Butterworths Anniversary Cup

The second New Zealand Law Conference was held in Wellington in the first week of April 1929. The New Zealand Law Journal for 30 April that year had a brief note of the social functions associated with the Conference.

Among these activities there was mention of a four ball golf competition for the Law Journal Cup which it was intended should be competed for at future Conferences. The best card returned was that of S A Wren and A M Cousins who were 9 up. No suggestion is made that either of those two gentlemen failed to return the Cup because there are subsequent records of other winners. But, sad to say, the Cup has disappeared. An amnesty is now declared and no inquiries will be made if the Cup simply turns up in the mail.

Since, after all this time, such a return is most unlikely, Butterworths has decided to donate a new cup. This will be known as the Butterworths Anniversary Cup. The Cup will be awarded to the best net score out of the 2 days set aside for golf. The winner will have the cup presented to him or her together with a symbolic miniature and a prize.

A photograph of the new cup, Butterworths Anniversary Cup, is shown herein. The cup proper measures 35 cm and the base 7 cm making a total of 42 cm, or for those educated in the good old days before metrication, about 17 inches. The capacity of the cup is unknown; but it is known that several people have disputed whether or not it will hold a magnum of champagne, and they



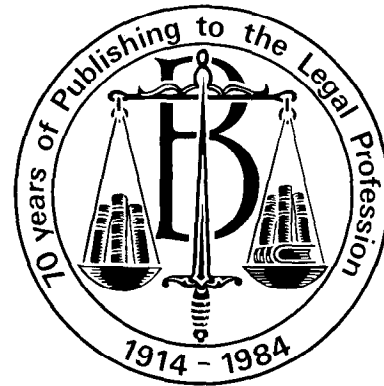
look forward to the occasion when the winner of the trophy will put this issue to the proof. □

provision of a range of specialist services, while retaining the other functions as well.

Butterworths in New Zealand now has a total staff of 45 in editorial, marketing, production and management functions. It is a big change in 70 years from the office run by Miss Butts with Alan Allen dropping in from time to time as travelling manager. Henry

Butterworth started business on his own in 1818 to supply books to the legal profession. He could not have foreseen that 166 years later in the South Pacific there would be a subsidiary company larger than the one he was to bequeath to his son, for New Zealand at that time would have been a country probably unknown except to a small band of geographers. □

Halsbury and New Zealand



Introduction

Halsbury's Laws of England is now such an indispensable part of any worthwhile law library that we can only wonder how the profession in the 19th century got on without it. Not perhaps that one needs to go as far as the quotation in the salesman's prospectus of 1912 to the effect that

Lord Halsbury's *Laws of England* may fairly be characterised as the most important contribution to legal literature since AD 531. The 'Digest' of the late Emperor Justinian, however. . .

The author of this piece of "puffery" had apparently not heard of the Decretals of Gratian or the Napoleonic Code. There is no argument however that *Halsbury*, as everyone now calls it, in all its editions is a major legal work of great value. It is important in its scope, its comprehensive detail, and its judicious summary of the statute and case law of England.

The work owes its existence to the vision and determination of a man, Stanley Shaw Bond, who was not a lawyer, but a book publisher. His family had acquired Butterworths in 1895 and shortly thereafter Stanley Shaw Bond became the sole proprietor of the firm. In the official history of Butterworths H Kay Jones writes that:

Stanley Bond's unique contribution to legal literature lies in the great encyclopaedias which became, and remain today, authoritative and indispensable works of reference wherever English law is practised: the *Encyclopaedia of Forms and Precedents*, *Halsbury's Laws of England*, the *English and Empire Digest*, and *Halsbury's Statutes*.

Historical background

These encyclopaedic legal works, and *Halsbury* in particular need to be seen in their historical context. The last

part of the 19th century and the early years of the new century saw the conception and the beginning of publication of those eminent works of English scholarship, the monumental 63 volume *Dictionary of National Biography* (1885-1900), founded by George Smith, the great *New English Dictionary* (1884-1928), later called the *Oxford English Dictionary*, edited by J A H Murray, the universal *Cambridge Modern History* (1902-1910) planned by Lord Acton, and the famous 11 editions of the *Encyclopaedia Britannica* (1910-1911) almost entirely written by dons of Cambridge University. It can thus be seen that the *Encyclopaedia of Forms and Precedents* (1902-1909) and *Halsbury's Laws of England* (1907-1917) fit into a publishing context, as the expression in legal writing, of a more general movement for the unification and consolidation of extensive areas of knowledge.

Stanley Bond actually got the idea of publishing *Halsbury* from a report by a government committee which had considered the general question of a codification of English law and decided it would be an impossible task. Having the idea of an encyclopaedic approach was one thing, but in order to bring it to fruition Stanley Bond had to organise it. It was first necessary to prepare an outline scheme and to set up an Editorial Board. He also had to get an Editor-in-Chief whose name would give the work status, and to have the titles written by a group of lawyers who would make the compilation authoritative.

In making *Halsbury* what it was two men were of pre-eminent importance. The first of these was of course Lord Halsbury himself as Editor-in-Chief. The second was T Willes Chitty, of the Inner Temple, Barrister-at-Law, and a Master of the Supreme Court who agreed to become Managing Editor. Persuading

Lord Halsbury to be involved in the active way that he was, was of great significance, and Stanley Bond's own account of the circumstances of his engagement is worth recalling.

I decided I must have the support of the top men if the idea was to succeed. I determined to invite the Lord Chancellor to be Editor in Chief and I obtained an interview with him. He was obviously interested but said he must have time to think it over. I waited for a while and then hearing nothing, I made enquiries to find, to my consternation, that Lord Halsbury had gone on holiday to Nice. As I needed to start as soon as possible, I took myself to Nice and finally ran Lord Halsbury to earth in an hotel.

I accosted him in the foyer and in surprised tones he said, "Hello Bond, what are you doing here?" I replied, "I've come for my answer, my Lord." "But I'm on holiday," Halsbury replied. "I'm sorry, my Lord," I said, "but I must have a reply one way or the other." "Well, Bond," he said, "I admire you for your cheek . . . and, yes, I'll do it. Only, Bond, the labourer is worthy of his hire . . . eh?" "Name your fee, my Lord," I replied. He named it and it was a stiff one. I pulled out my cheque book and wrote him a cheque for the lot. "Done, my Lord," I said.

Lord Halsbury was not merely a nominal editor. He was both influential and diligent. A member of Butterworths' staff Owen Elliott, who worked on *Halsbury* at the beginning wrote about Lord Halsbury's activities as follows:

. . . he was outstanding in every way; his length of life, his reputation as a lawyer and a judge, his length of tenure of the Chancellorship, his ability to fight for what he wanted. On occasion, he would put in an appearance at

Bell Yard, without warning, with a batch of page proofs in his hand, having walked from the House of Lords, or even his house at Kensington, to Bell Yard. He had "a point" and before that point was cleared up, Mr Bond's room was full of texts and reports, with Master Chitty and two or three other interested authors or editors called in. By the time Lord Halsbury stalked out with his point won, the rest of the group were in a state of near collapse.

On a daily continuous basis however it was probably T Willes Chitty whose overall contribution was the decisive one. Owen Elliott had this to say about him:

... Master (later Sir) T Willes Chitty was the Managing Editor, with whom we were in direct touch daily. His office, or chambers, in the Law Courts, was just across Bell Yard and I could reach him in less than five minutes, which I did several times a day. Master Chitty was in every possible way a perfect gentleman, with emphasis on the word "gentle"; he was never cross or put out no matter how hard was the going. He worked tremendous hours, and if any one individual was outstanding as both the architect and builder of the first and basic edition of *Halsbury*, it was T Willes Chitty. . . .

Professional acceptance

Halsbury was not immediately successful in the way that the *Encyclopaedia of Forms and Precedents* had been even before publication. The volumes appeared regularly but it took 10 years to complete. To begin with the work was running at a heavy loss. Consideration was given to stopping and Bond received a lot of advice to do this. But Bond persisted and his determination was richly rewarded both in terms of acclaim for the work and the financial returns.

It was only when the work was nearing completion that it won wide acceptance in the profession, and its great utility and high standards were recognised. In considerable part this was due of course to the legal standing of the contributors. In the salesman's brochure of 1912 it was already possible to write that

... in its final stage no less than twenty-five Judges of the House of Lords and High Court, ten County Court Judges, six Masters of the



The Earl of Halsbury

Supreme Court, and forty-two King's Counsel, together with some two hundred practising barristers, everyone a specialist in his own department, will have taken part in its production.

In 1907 when the first volume of the first edition of *Halsbury* was published, the law of England was to all intents and purposes the law of New Zealand. Early English statutes were still the basis of our law and even when new laws were enacted here they were largely modelled on, and often followed precisely, English statutes. The Crimes Act purported to be a codification of the criminal law of England and expressly preserved, as it still does, the defences of the common law, except so far as they are altered by New Zealand statutes.

Thus the first edition of *Halsbury* (1907-1917) was, as it stood, a most serviceable publication for the New Zealand practitioner. Not all of the law for New Zealanders may have been included, but most of it was in detail, and certainly the general principles of all branches of the law (excepting perhaps the Land Transfer system) were to be found there. So the first edition could be sold here in its own right.

As New Zealand law has developed however this has become less practicable. New Zealand law has probably stayed closer to English law than many of the other Dominions, as indicated by our slowness, almost our reluctance to adopt the Statute of Westminster. Nevertheless by the time the first volume of the 2nd edition

came out in 1931 it was apparent that some recognition of the separate development of New Zealand law had to be made.

New Zealand Pilots

Consequently a separate *New Zealand Pilot* was produced and this was sold as an integral part of the whole work. This Pilot however merely provided New Zealand statutory references to replace the references to English Acts appearing in the footnotes to *Halsbury*. The New Zealand case law was not included as it was obviously deemed unnecessary as far as adding any weight authority or variation to the wisdom enshrined in the decisions of the English Judges. But even that was to change.

The first volume of the 3rd edition of *Halsbury* appeared in October 1952. Shortly thereafter a New Zealand Pilot began to appear. The Pilots were produced from 1953 to 1956 in 11 regular supplements and were then bound into 3 volumes to match the green binding of the 3rd edition. This Pilot still contained no text, but in addition to references to New Zealand statutes it now included the case references for the relevant New Zealand case law. The Pilots really constituted additions to the footnotes in the main volumes. In the introduction to the Pilots the purpose was explained.

... the reader will have before him the statement of the law with dual supporting footnotes; the English statutes and cases, and, in the Pilot, the New Zealand statutes and cases. ... Referred to in the same manner as footnotes, the New Zealand complement footnotes in the Pilot cannot be anything but helpful in finding the law, which, after all, is the objective of *Halsbury* itself.

New Zealand Commentary

The 4th edition marked for New Zealand a most substantial change. The system of Pilots has been replaced by an extensive set of commentaries. The original proposal was that the *Commentary* would be a joint one for Australia and New Zealand with separate contributions from Australian and New Zealand authors. The Editor-in-Chief was to be the Chief Justice of Australia, the Rt Hon Sir Garfield Barwick with separate General Editors in the persons of the Hon Sir Gordon

Wallace for Australia and the Rt Hon Sir Alexander Turner for New Zealand.

What might have looked like a good idea in London turned out not to be so practicable 10 or 12 thousand miles away. Experience quickly showed that it was much better for the two sets of commentaries to be produced separately, and as is now well enough known this is what is being done. Sir Alexander Turner became the sole editor for New Zealand.

The full 4th edition of *Halsbury* is expected to contain 167 chapters plus an additional two volumes now projected on EEC law. Not all of these chapters have their counterparts in New Zealand law. One for instance deals with London Government and some deal with systems of landholding such as copyholds that are not relevant to New Zealand. Then there are those topics such as the criminal law, income tax or Court procedure, that have been codified in New Zealand in the form of separate statutes or rules. There is simply no way that these can be properly covered by a commentary on the text of *Halsbury*, and some are already very well dealt with in the standard New Zealand textbooks. Accordingly in these two classes of topics no commentary has been attempted. Careful consideration was given to the question of cost and a decision made in respect of each chapter as to whether the New Zealand practitioner could benefit from the existence of a commentary.

Then there was a third class of topics that raised a different problem. These were the chapters where the law in England is arranged so differently from the law in New Zealand that a paragraph by paragraph commentary would be impracticable, but the topics were of such importance in New Zealand law that they could not be ignored in any general survey of our law. These topics included such matters as the Courts, Electricity, and Atomic Power and Radioactive Substances. In these cases a New Zealand expert was found and was commissioned to write a New Zealand monograph on the particular subject. This has then been included in the appropriate place as an integral part of the *Commentary*.

In the end result over three-quarters of the chapters in *Halsbury* will be covered by the *New Zealand Commentary* in due course. The *New*

Zealand Commentary has become completely separate from the Australian one and this of course represents a substantial cost benefit for New Zealand subscribers. However because of the development of CER, and the growing interrelationship of our legal systems there is a great deal of value to be had from the Australian commentaries. They provide information about case law that is useful by the way of precedent in the preparation of an opinion or argument for use in Court. There are also of course copious references to the peculiarities of Australian statute law which can differ so much, not only from our own statutes but also between the various Australian States. Many of the larger legal libraries, particularly for firms with business clients involved in the Australian market, are finding the *Australian Commentary* of considerable help.

As mentioned above some among the chapters without commentaries, refer to forms of land holding not known here, another one deals with Peerages and Dignities, and one with Capital Gains Tax. It is to be hoped that the latter never needs to be written; but perhaps, since we have a Herald of Arms in Mr O'Shea we could have a brief piece someday on the conventions and status and protocol and precedence in respect of the various initials that a select group of people can put after their names, and the honorifics that an even more select group can put before their names.

In the preliminary brochure announcing the publication of the *Commentary*, Sir Garfield Barwick explained its purpose:

The immediate object is to provide guidance to the lawyer who, having found *Halsbury* a statement of the English law relating to a matter in hand, must consider the applicability of that statement to his own jurisdiction. His need to know the local modifications and substitutions for that law is intended to be satisfied by the *Commentary*. The ultimate object, however, is to lay the foundation for the publication in due time of "The Laws of Australia and New Zealand" as a self-contained encyclopaedic text and counterpart of *Halsbury's Laws of England*.

The *New Zealand Commentary* is proceeding well with the regular publication of the individual



Rt Hon Sir Alexander Turner
General Editor of the *New Zealand Commentary on Halsbury's Laws of England*

chapters. For various reasons publication has not followed the precise order of the original, but since the chapters are being issued separately and kept in binders this in itself is not a major problem. As a publishing venture the *New Zealand Commentary* has been a great success, due in no small measure to the editorial ability of an outstanding jurist in the person of Sir Alexander Turner.

The Halsbury cycle

Halsbury now has an established cycle of about 20 years. It takes approximately 10 years to publish an edition and there is a ten-year gap between editions. Editions tend to get bigger. The first edition ran to 28 volumes of text and 3 volumes for Tables of Cases and Index. This 4th edition will run to 56 volumes.

It may be that the project referred to by Sir Garfield Barwick quoted above will be some way off yet, and

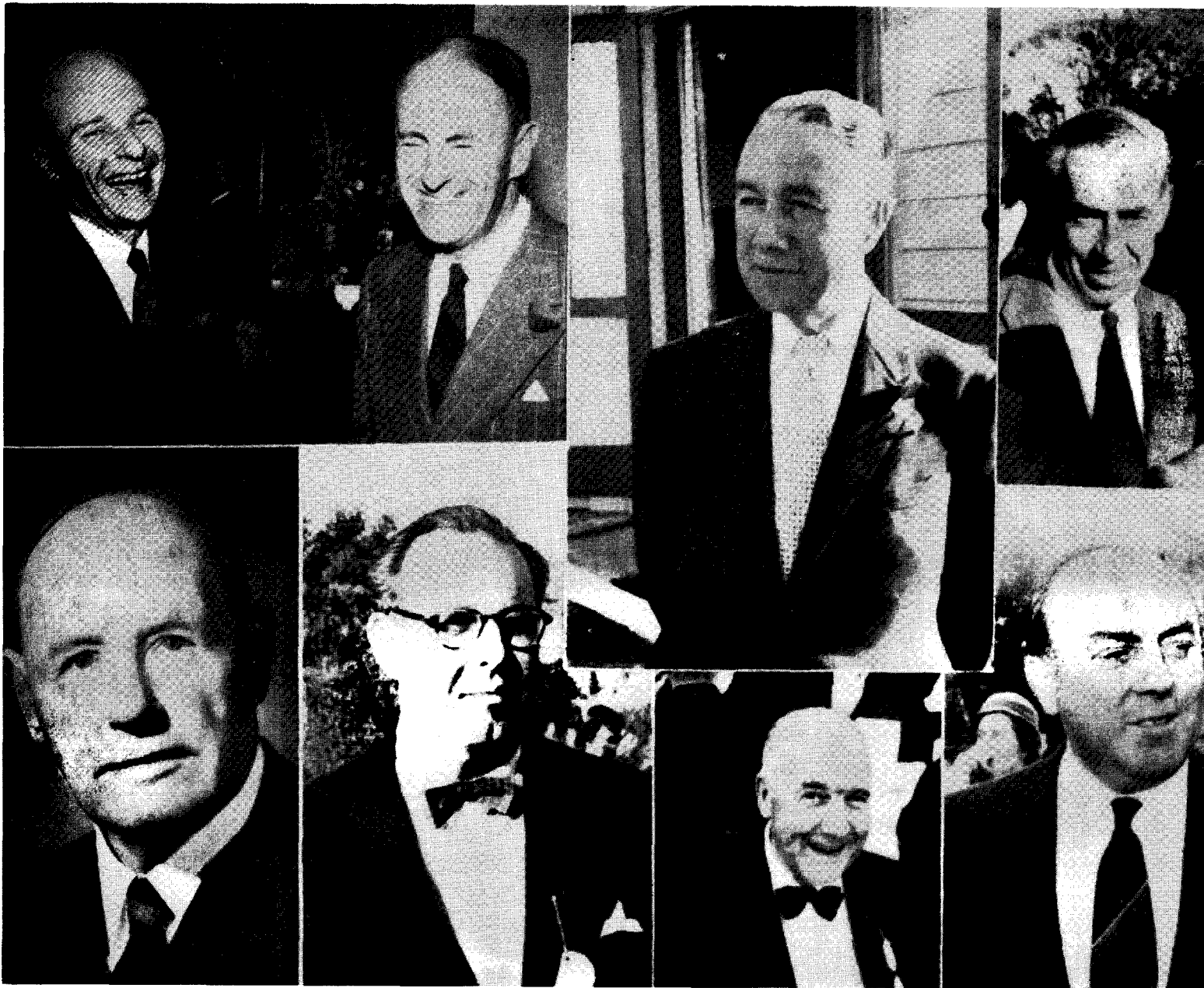
when it comes there will probably be a separate New Zealand edition with the present set of commentaries providing the base. But perhaps the base will become a data base with the growth of computer technology and its common use.

The history of *Halsbury* from a New Zealand perspective says a good deal about the legal development of this country from a colony, to a Dominion, and now to a fully independent state within the Commonwealth. When the first volume of the 4th edition of *Halsbury* was published in 1973 the law of England was about to be affected by the law of the EEC, for it was in that same year that Great Britain joined the Common Market having ratified the Treaty of Rome. The subsequent volumes have shown the growing influence of EEC law.

New Zealand law too is in a process of change and development with the Court of Appeal consciously

adopting solutions to legal problems from a variety of sources. This was said by the Right Honourable Sir Robin Cooke at the Australian law conference last year [1983] NZLJ 297. The New Zealand Court of Appeal, he explained, has been faced recently with a series of policy cases which are: bringing home how many fundamental issues remain unsettled or reassessable in these restless years, creating a constantly strengthening awareness that our responsibility must be to aim at solutions best fitting the particular national way of life and ethos.

In this situation the *New Zealand Commentary on Halsbury* serves a necessary purpose. At one and the same time it reflects the changing times, and by virtue of its very existence it contributes to a greater awareness and understanding of the present legal situation in New Zealand. In that sense it can fairly be described as a necessary good. □



(Clockwise from top left) Mr J C White, Mr H R C Wild, Wellington 1947: Mr W E Leicester, Wellington 1920: Mr J P Cook (with Mr D L Wood) Dunedin 1951: Mr V G Spiller, Christchurch 1938: Mr F J Cox (with Mr J T Sheffield) Auckland 1949: Mr G E Bisson (with Mr D Twigg) Napier 1954: Mr A M Goulding (with Mr R M Algie) Auckland 1930.

Conference Secretaries of Other Days (photographs taken at the 1960 Law Conference)