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THE CONTRACTS ENFORCEMENT ACT 1956.

WITH the passing of the Contracts Enforcement Act on October 19, 1956, there were swept into unlamented oblivion in this country some legislative provisions which have called forth the almost unopposed condemnation of generations of lawyers. It is not a completely "clean sweep", for there will remain two reminders of the oddly-assorted kinds of contracts which came within the scope of s. 4 of the Statute of Frauds 1677. The new Act itself is short and to the point: in its substantive sections it repeals the whole of s. 6 of the Sale of Goods Act 1908 and of the whole of s. 4 of the Statute of Frauds 1677. It re-enacts only that part of the latter relating to contracts for the sale or deposition of land or an interest in land (which are more specifically indicated later in this article); and to contracts to answer for the debt, default, or liability of a third person. The Act is not retrospective in effect: the repealing and re-enacting provisions do not apply to any contract which was made before October 19, 1956, the date of the coming into force of the Act.

I.

To understand the full significance of the repeal it is necessary to consider the matter historically, and the actual background against which the Statute of Frauds was passed. For fifty years previously the country had been torn with political dissension. The civil war had been followed by a period of Cromwellian dictatorship, and this in turn by the Restoration. Parliament had at one time been reduced to a shadow of itself, and no proper legislative programme affecting ordinary litigation had existed. The ordinary Courts of law had functioned—if at all—under the gravest difficulties; and subornation and perjury were doubtless rife.

It is noteworthy that the Statute is described as "an Act for prevention of frauds and perjuries", and the Preamble goes on to state: "For prevention of many fraudulent practices, which are commonly endeavoured to be upheld by perjury and subornation of perjury". It is clear that the difficulties of arriving at the truth in a common-law action were considerable, bearing particularly in mind that it was not until the mid-nineteenth century that litigants were competent witnesses in their own causes, owing to the rule that no one could testify in proceedings in which he was interested. It is not perhaps surprising, therefore, that it was felt that something in writing was a most necessary precaution to ensure satisfactory proof, although the reasons which impelled Parliament to select

only certain classes of contract are now obscure. It has even been suggested that two French *Ordonnances* of 1566 and 1667 provided the models upon which the Statute of Frauds was based (see *Rabel, The Statute of Frauds and Comparative Legal History*, 63 L.Q.R. 174). But it should be remembered that s. 4 and s. 17 formed only a small part of the Statute, most of which was concerned with the protection of other interests in property generally.

Accordingly, s. 4 of the Statute of Frauds provided that the following contracts would not be enforceable without the evidence of a note or memorandum in writing signed by the proposed defendant or his authorized agent: (i) a special promise by an executor or administrator to answer damages out of his own estate; (ii) a special promise to answer for the debt, default, or miscarriage of another; (iii) any agreement made in consideration of marriage; (iv) any contract for the sale or other disposition of land or any interest in land; and (v) any agreement not to be performed within the space of one year from the making thereof.

In addition, s. 17 of the Statute provided that contracts for the sale of goods to the value of £10 or upwards should not be enforceable unless the buyers should accept part of the goods and actually receive them, or should give something in earnest or part payment or unless some note or memorandum in writing of the transaction should be made and signed by the party to be charged. This section was subsequently incorporated almost word for word into the Sale of Goods Act 1893 (Gt. Brit.), which, in turn, became s. 6 of the current Sale of Goods Act 1908 (N.Z.).

It was not long before Judges began to comment unfavourably upon the working of the Statute, for it deprived them almost entirely of any discretion in matters of fraud—an obvious essential if justice as well as law is to prevail. In *Simon v. Metivier or Motivas*, (1766) 1 Wm. Bl. 599; 96 E.R. 347, Lord Mansfield declared that "no advantage shall be taken of this Statute to protect the fraud of another", and from this it is clear that any taking advantage of technicalities arising under the Statute would generally be frowned upon. However, not all judicial opinion was unfavourable. Sir William Grant M.R. in *Woollam v. Hearn*, (1802) 7 Ves. 211, 219; 32 E.R. 86, 89, went so far as to say: "Thinking, as I do, that the Statute has been already too much broken in upon by supposed equitable exceptions, I shall not go farther in receiving and giving effect to parol evidence than I am forced by precedent." Earlier, Blackstone had described the

Statute as "a great and necessary security to private property" (4 *Commentaries*, 432).

When the Evidence Act 1851 permitted litigants to give evidence upon oath, the chief *raison d'être* for the existence of the Statute came to an end, and as from that moment it became a complete anachronism. Probably no clearer example of the pressure of legal opinion necessary over a prolonged period to achieve reform could be found. Perhaps the strongest condemnation, once it had become obvious that the Statute had outlived its usefulness, came from Sir James FitzJames Stephen J. writing in 1885 (1 L.Q.R. 1), with reference in particular to s. 17, when he said: "I know of hardly any part of the whole law of England which throws so much light upon the nature and extent of its defects, or upon the difficulty of understanding and applying a remedy to them (though in this case the remedy appears to me to be simple enough) as this particular bit of it." And, again, he said: "It is in the nature of things impossible that it ever should have any operation, except that of enabling a man to escape from the discussion of the question whether he has or has not been guilty of a deliberate fraud in breaking his word. . . . The cases in which a man of honour would condescend to avail himself of it, must, I think, be very rare indeed." He also went on to describe it as a "relic", and added: "I can only recommend that it should be thrown out of the window, and the cases on it consigned to oblivion." Lord Wright, in his *Legal Essays and Addresses* (1939) called the Statute an "excrescence of the common law".

It may be of interest to recall briefly from the welter of case law to which the Statute gave rise some of the more obvious difficulties which confronted the Courts in attempting its interpretation. The provision relating to the "debt, default, or miscarriage of another" created immediate problems, for were these words synonymous or were they referable also to another branch of the law—that of tort? It was held in *Kirkham v. Marter*, (1819) 2 B. & Ald. 613; 106 E.R. 490, that the Statute was not confined to cases of contract since the word "miscarriage" was different in meaning and capable of including that species of civil liability. The definition of contracts "not to be performed within the space of one year" also caused a good deal of trouble, and has given rise in its time to even more subtle distinctions than other parts of the section. So long ago as the end of the seventeenth century, Holt C.J., in *Smith v. Westall*, (1698) 1 Ld. Raym. 316; 91 E.R. 1106, considered that the intention of the Legislature was "not to trust to the memory of witnesses for a longer time than one year", but from the earliest times the Courts had made strenuous efforts to limit the effect of this provision, and highly artificial interpretations resulted from such cases as, for instance, *Donellan v. Read*, (1832) 3 B. & Ad. 899; 110 E.R. 330, and *Hanau v. Ehrlich*, [1912] A.C. 39.

In applying s. 17, or its local successor, s. 6 of the Sale of Goods Act 1908, one obvious difficulty lay in distinguishing between a contract for the sale of goods or one for the supply of labour and materials. This resulted in many contrasting cases of which the best-known examples were, perhaps, *Lee v. Griffin*, (1861) 1 B. & S. 272; 121 E.R. 716 (the false teeth case) and, more recently, *Robinson v. Graves*, [1935] 1 K.B. 579 (the portrait case). In the latter, the Court of Appeal decided that the proper test of whether a sale was within the Act was the intention of the parties whether

the client was paying substantially for materials or for skill. It is somewhat ironic that a satisfactory interpretation of the old s. 17 of the Statute of Frauds was only evolved after more than 240 years and shortly before the repeal in the United Kingdom of the re-enacted provision.

It is true that in modern times the Courts invariably did their best to restrict the application of the provisions of the Statute, and that, by various Rules of Court made from time to time, if a defendant wished to avail himself of a defence based on non-compliance with those provisions he had to plead the fact expressly, but even that could not prevent many obvious injustices: cf. R. 142 of the Code of Civil Procedure. Perhaps the last of this type of case—which makes it even harder for the unfortunate plaintiff—was the case of *J. Marcel (Furriers), Ltd. v. Tapper*, [1953] 1 All E.R. 15. The facts were that the defendant and his wife visited the plaintiff's showrooms in Bond Street to order a mutation mink jacket, and after taking away various shades of sample skins returned and ordered a particular style of jacket to be made up from "royal pastel" shade skins. The coat was duly made up and invoiced to the defendant for £950, but there was no written note or memorandum of contract signed by the defendant, who rejected the coat and invoked the protection of s. 4 (1) of the Sale of Goods Act 1893 (s. 6 (1) of our Sale of Goods Act 1908). Hilbery J. took the view that the contract was one, not for work and labour to be done and materials to be supplied, but for the sale of goods to a special order, and held, following *Lee v. Griffin* (*supra*), that, in the absence of a memorandum in writing signed by the defendant, the contract was unenforceable by virtue of s. 4 (1) of the Sale of Goods Act 1893.

Most of the principles to be deduced from the judgments mentioned have been applied in numerous cases appearing in the New Zealand and Australian reports; it is unnecessary to particularize them here.

In the course of the great law reform advance achieved by Lord Birkenhead L.C., opportunity was taken to repeal (so far as England and Wales was concerned) that portion of s. 4 of the Statute of Frauds which required contracts for the sale or disposition of land or any interest in land to be in writing. It was replaced by a simpler provision, s. 40 of the Law of Property Act 1925, which still requires such contracts to be in writing. The section preserved the equitable doctrine of part performance, and excluded sales of land by the Court.

The first comprehensive frontal attack on s. 4 of the Statute of Frauds by a text-book writer was made in 1932 by a distinguished New Zealand scholar, Dr James Williams. While he was at the University of Cambridge, after he had obtained his Master of Laws degree of the University of New Zealand, he produced his *Statute of Frauds, Section Four, in The Light of Its Judicial Interpretation* (Cambridge University Press). This work soon received the most favourable attention of reviewers and legal commentators. In the words of the late Professor H. D. Hazeltine, it is "an illuminating treatise, and it is, indeed, the only book in our legal literature which deals exclusively with this part of our Statute Law". In concluding his foreword to Dr Williams's book, Professor Hazeltine wrote:

As a result of his extensive survey of the judicial interpretation of the Statute of Frauds, section 4, the learned author

has shewn us clearly that there has been to a large extent a nullification of the section by the courts; and, moreover, he has demonstrated, with remarkable lucidity and in abundant detail, that "the processes by which the courts have achieved this result have of necessity brought in their train many complexities and over-refined distinctions". In view of this undesirable feature of our existing law, Dr Williams raises the question as to whether the section should not be repealed by the legislature, or, if not repealed, at least extensively modified. He himself favours repeal; and indeed at the present day, both in legal and in commercial circles, this view is generally held. Dr Williams' arguments for repeal, based as they are on an elaborate and scholarly study of all the problems involved, are worthy of the most careful consideration by law reformers.

To quote the final passage in Dr Williams's book:

Contract is the creature of the mutual agreement of the parties; and it is conceived that in general the parties may be trusted to secure that their contracts are evidenced in a satisfactory and adequate manner. The penalty of having their contract declared void for uncertainty should be a sufficient incentive to induce the parties to attend to this aspect of the matter. It is no sufficient argument for the retention of the Statute to say that the provision of written evidence simplifies the task of the court. In cases such as actions on contracts, where in general the parties and others concerned are available to give their personal testimony, it should be the duty of the courts, as being the instruments by which the Crown gives effect to the Royal declaration, *nulli negabimus justitiam*, to hear the evidence adduced, whether oral or written, and to pronounce upon it. The case for the repeal of the Statute seems, indeed, to be unanswerable.*

When the Enforcement of Contracts Bill was introduced into our Parliament recently by the Attorney-General, the Hon. J. R. Marshall, he paid an eloquent and deserved tribute to Dr Williams's erudite and practical work as the inspiration of the almost complete removal by the Parliament at Westminster of s. 4 of the Statute of Frauds, and of the Bill then before the House. The Hon. H. G. R. Mason, Q.C., and the Hon. R. M. Algie, himself a former Professor of Law, joined in the Attorney-General's tribute to Dr Williams.

It is not without significance that, within two years of the publication of Dr Williams's strenuous plea for the abolition of s. 4 (and its offspring, s. 4 of the Sale of Goods Act 1893), a Law Revision Committee was appointed by the Lord Chancellor in 1934 to consider, inter alia, the possibility of amendment or repeal of the sections under notice. The Report (Cmd. 5449), published in 1937, summarizes (para. 9, pp. 6-8) the chief criticisms of s. 4 of the Statute of Frauds, most of which also applied to s. 4 (our s. 6) of the Sale of Goods Act, were as follows:

(1) First and foremost, it is urged that the Act is a product of conditions which have long passed away. At the time when it was passed, essential kinds of evidence were excluded (e.g., the parties themselves could not give evidence), and objectionable types of evidence were admitted (e.g., juries were still in theory entitled to act on their own knowledge of the facts in dispute). It was an improvement on this state of affairs to admit the evidence of the parties, even though only to the extent that such evidence was in signed writing. Today, when the parties can freely testify, the provisions of s. 4 are an anachronism. A condition of things which was advanced in relation to 1677 is backward in relation to 1937.

(2) "The Act," in the words of Lord Campbell, "promotes more frauds than it prevents." True, it shuts out perjury; but it also and more frequently shuts out the truth. It strikes impartially at the perjurer and at the honest man who has omitted a precaution, sealing the lips of both. Mr. Justice FitzJames Stephen (writing of s. 17, but his observation applies equally to s. 4) went so far as to assert that "in

the vast majority of cases its operation is simply to enable a man to break a promise with impunity, because he did not write it down with sufficient formality." (*Law Quarterly Review*, 1885, Vol. 1, p. 1.)

(3) The classes of contract to which s. 4 applies seem to be arbitrarily selected and to exhibit no relevant common quality. There is no apparent reason why the requirement of signed writing should apply to these contracts, and to all of them, and to no others.

(4) The section is out of accord with the way in which business is normally done. Where actual practice and legal requirement diverge, there is always an opening for knaves to exploit the divergence.

(5) The operation of the section is often lopsided and partial. A. and B. contract: A. has signed a sufficient note or memorandum, but B. has not. In these circumstances B. can enforce the contract against A., but A. cannot enforce it against B.

(6) The section does not reduce contracts which do not comply with it to mere nullities, but merely makes them unenforceable by action. For other purposes they preserve their efficacy (for what other purposes precisely, is doubtful; see *Law Quarterly Review*, 1936, Vol. 51, p. 49). Anomalous results flow from this: e.g., in *Morris v. Baron & Co.*, [1918] A.C. 1, a contract which complied with the section was superseded by a second contract which did not so comply. It was held that neither contract could be enforced: the first, because it was validly rescinded by the second; the second, because owing to its purely oral character, no action could be brought on it. This was a result which the parties could not possibly have intended.

(7) Apart from its policy, the Statute is in point of language obscure and ill-drafted. "It is universally admitted," observed the original editor of *Smith's Leading Cases*, "that no enactment of the Legislature has become the subject of so much litigation." This could hardly have been so if its terms had been reasonably lucid.

When the Committee further came to consider the provisions of the sections from the point of view of importance of the subject-matter and the time intervening between contracting and complete performance of the contract, it came to the conclusion that the retention of these provisions was illogical. The illogical character was also shown by the exclusion of the equitable doctrine of part performance (i.e., the doctrine that acts done in part performance of the contract will excuse the absence of signed writing) from contracts not to be performed within one year from the making, even if such contracts were also contracts for the sale of goods of a value of £10 or upwards: *Prested Miners Co., Ltd. v. Garner, Ltd.*, [1910] 2 K.B. 776.

In the light of these criticisms, the Committee recommended the repeal of both sections. A minority, however, recommended the retention of writing for contracts of guarantee.

The Law Reform Committee set up in 1952 to consider whether these recommendations should be carried into effect issued, in 1953, a Report (Cmd. 8809) in agreement with the earlier Committee, except that it adopted the minority report on contracts of guarantee. (This follows the pattern of most modern codes which, although proclaiming the principle of formless obligation, have recognized that suretyship must be created by written declaration.)

In June, 1954, the Parliament at Westminster enacted the Law Reform (Enforcement of Contracts) Act 1954 (2 & 3 Eliz. 2, c. 34), which gave effect, in two brief sections, to the recommendations made in 1953 in the Report of the Law Reform Committee, mentioned above. The Act was made retrospective: see, thereon, *Crazfords (Ramsgate), Ltd. v. Williams and Steer Manufacturing Co., Ltd.*, [1954] 3 All E.R. 17.

* Reference is also made to the summary of his views in relation to the corresponding New Zealand legislation by Professor James Williams (as he then was) in (1948) 24 NEW ZEALAND LAW JOURNAL, 30.

The effect of the statute, which applies to the whole of the United Kingdom, except Northern Ireland, is that s. 4 of the Statute of Frauds now applies only to contracts of guarantee, and, in particular, that absence of a memorandum in writing no longer renders unenforceable a contract which is not to be performed within one year. The other section repeals s. 4 of the Sale of Goods Act 1893, relating to contracts for the sale of goods of the value of £10 and upwards, the

counterpart of part of s. 4 of the Statute of Frauds, which is largely repealed by the other section in the new statute.

It was against this background that the New Zealand Law Revision Committee recommended the enactment of corresponding legislation here. The Enforcement of Contracts Act 1956 is the ultimate result of that recommendation. It will be considered in detail in our next issue.

SUMMARY OF RECENT LAW.

ACTS PASSED, 1956.

Agricultural Emergency Regulations Confirmation.
Amusement Tax Amendment.
Apiaries Amendment.
Appropriation.
Armed Forces Canteens Amendment.
Auckland Harbour Bridge Amendment.
Bankruptcy Amendment.
Building Emergency Regulations Amendment.
Canterbury University College Amendment.
Christchurch-Lyttelton Road Tunnel.
Cinematograph Films Amendment.
Contracts Enforcement.
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Cook Islands Amendment.
Co-operative Companies.
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Counties Amendment.
Dairy Products Marketing Commission Amendment.
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Municipal Corporations Amendment.

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National Parks Amendment.
National Provident Fund Amendment.
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Police Force Amendment.
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Post and Telegraph Amendment.
Primary Products Marketing Regulations Confirmation.
Public Revenues Amendment.
Public Trust Office Amendment.
Public Works Amendment.
Rabbits Amendment.
Rangitiki Land Drainage.
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Reserves and Domains Amendment.
Reserves and Other Lands Disposal.
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Rural Housing Amendment.
Samoa Amendment.
Samoa Amendment (No. 2).
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Social Security (Reciprocity with the United Kingdom).
Social Security Amendment.
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LOCAL ACTS.

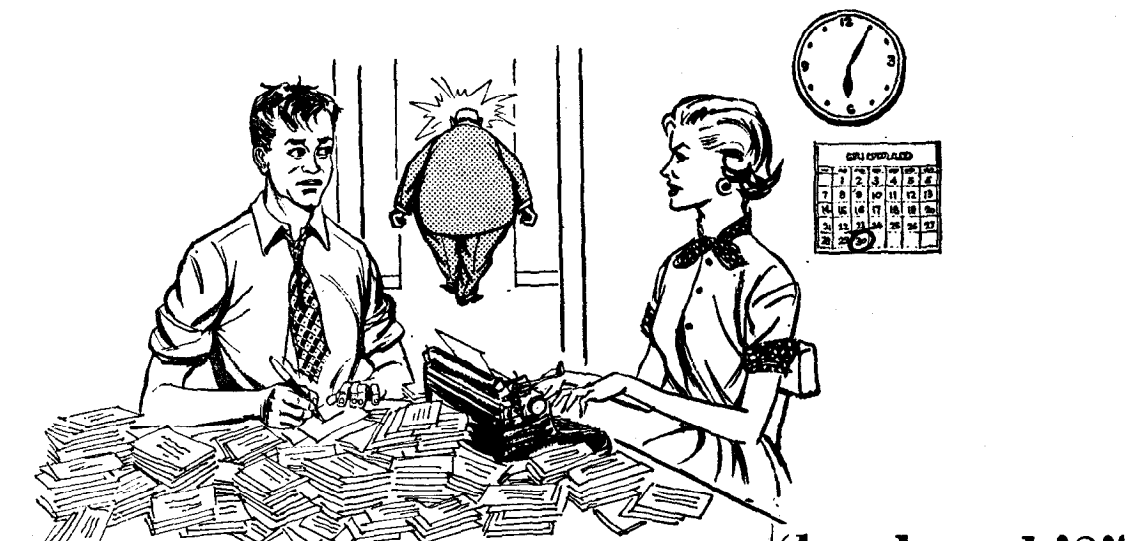
Awanui Harbour Board Empowering.
Bay of Islands Harbour Board Empowering.
Gisborne Harbour Board Empowering.
Greytown Trust Lands.
Lyttelton Harbour Board Loan.
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Taranaki Harbour Board Empowering Amendment.
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Charitable Trust for "Public Benefit". 9 *Australian Conveyancer and Solicitors' Journal*, 125.

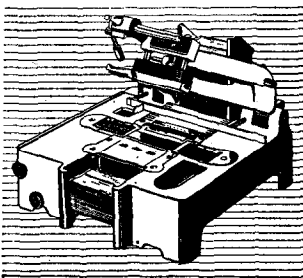


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Continued from page i.

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COMPANY LAW—WINDING-UP.

Provisional Liquidator—Appointment made only on Special Grounds when Assets in Serious Jeopardy—Companies Act 1933, s. 186—Companies (Winding-up) Rules 1934 (1934 New Zealand Gazette, 3636) R. 19. Section 186 of the Companies Act 1933 and R. 19 of the Companies (Winding-up) Rules 1934 contemplate that the appointment of a provisional liquidator will be made only when there are special grounds for the appointment, and it must at least be shown that the assets are in some way in serious jeopardy, which might be a ground in itself. *In re Hill & Plummer (Merchants), Ltd.* (S.C. Auckland. October 12, 1956. North J.)

CONTRACT.

Breach—Damages—Company undertaking not to proceed against Storekeeper on Summons for Debt owing on His Giving Series of Post-dated Cheques—Judgment subsequently entered against Him—Storekeeper's Name appearing in "Mercantile Gazette" in List of Persons against whom Judgment had been given—Consideration for Company's Undertaking—Loss resulting from Injury to Credit and Business Reputation—Measure of Damages recoverable. For some years the plaintiff carried on business as a storekeeper in Wellington, and had been a customer of the defendant company. In November, 1955, he was indebted to the company for goods supplied in the sum of £198 6s. 9d. On November 11, 1955, the company issued a summons in the Magistrates' Court at Wellington claiming to recover that amount. Before he received the summons, he had paid £50 on account, and, upon its receipt, he immediately saw the manager of the company with a view to making arrangements concerning the payment of the balance owing. Under an agreement then made between the parties, the plaintiff gave the company eight post-dated cheques payable at fortnightly intervals, and the company undertook not to proceed upon the summons which had been issued against the plaintiff. The company's manager neglected to advise his solicitors of the arrangement he had made with the plaintiff. In consequence, on November 28, 1955, judgment was entered against the plaintiff for £153, being the balance then owing, and costs. On January 18, 1956, the plaintiff's name appeared in the *Mercantile Gazette* in a list of persons against whom judgment had been given in the Magistrates' Court at Wellington. The *Mercantile Gazette* was a periodical circulating throughout New Zealand, one of its purposes being to give information concerning those against whom judgments have been given in the Courts. The *Gazette* had a wide circulation in commercial circles, and was frequently consulted for information of the type referred to. The company's manager acknowledged that the company had been at fault in the matter. He forwarded a letter of regret and apology to the plaintiff and arranged for the publication in the issue of the *Mercantile Gazette* dated February 29, 1956, of a correction and apology. This published statement acknowledged that the defendant's action in entering judgment against the plaintiff was contrary to the express terms of an agreement whereunder the company undertook to withdraw the proceedings in question. In an action by the plaintiff claiming damages against the company, for injury in his credit and business reputation, *Held*, 1. That the cheques given by the plaintiff to the company were accepted as consideration, and were given in such circumstances as to constitute good consideration for an undertaking by the company to withdraw its summons. 2. That the damage complained of was loss resulting from injury to credit and reputation; and that, subject to proof, it would be the direct and natural result of a default judgment in the Magistrates' Court, and a result which ought to have been within the contemplation of the company. 3. That, notwithstanding the warning given in the *Mercantile Gazette* (to the effect that some cases in the published lists of judgments given in the Magistrates' Court might have been wrongly entered or the moneys paid, and that in no case did the publication of a name imply inability to pay or anything more than the fact that a judgment appeared in the books of the Court), the plaintiff was not debarred from alleging that the publication of his name therein had in fact caused him loss or damage. (*Strubbs, Ltd. v. Russell*, [1913] A.C. 386, distinguished.) 4. That the plaintiff could recover damages only in respect of pecuniary loss suffered as a result of the company's breach of its undertaking in a sum sufficient to reimburse him for that loss; and he was not entitled to punitive damages or to damages for loss of reputation. (*Addis v. Gramophone Company, Limited*, [1909] A.C. 488, and *Aerial Advertising Co. v. Batchelors Peas Ltd.* (Manchester), [1938] 2 All E.R. 788, followed.) *Last-Harris v. Thompson Bros. Ltd.* (S.C. Wellington. September 20, 1956. Archer J.)

Construction—Grant of Twelve Months' Option to purchase Leased Land—Two Dates in Option—Date at Top of Document—

Different Date before Signature—Latter Date that of Signature—Option operative from Former Date—Option expired before Acceptance—Evidence—Admissibility—Extrinsic Evidence—Document Unambiguous—Extrinsic Evidence not admissible to ascertain Parties' Intention or to contradict, vary, or add to Terms of Contract—When Extrinsic Evidence admissible in Aid of Interpretation. W., deceased, was the registered proprietor of a lease in perpetuity comprising 373 acres. On November 2, 1952, he signed the following document (herein referred to as "the option"); it was headed "20th October, 1952". Before the signature, there appeared "Dated 3-11-52". Wallace refused to sign an acknowledgment of receipt of the letter. In an action by Bell against the executor of Wallace (who had died in June, 1954) claiming specific performance of the contract alleged to have arisen from the foregoing documents, *Held*, 1. That, on the true construction of the option, the date "November 3, 1952" must be regarded as the date of signature, and the date "October 20, 1952" the operative one from which the period of twelve months was to run. (*Dictum of Somervell L.J. in S.A. Maritime et Commerciale of Geneva v. Anglo-Iranian Oil Co., Ltd.*, [1954] 1 All E.R. 529, 531, applied.) 2. That, on the evidence, the option was intended as the sole and exclusive record of the arrangement made; and extrinsic evidence was not admissible either to ascertain the intentions of the parties, or to contradict, vary, or add to the terms of the document. 3. That, assuming, contrary to the foregoing construction, that the option was in fact ambiguous, the whole of the antecedent and contemporaneous extrinsic evidence, if admissible, supported the foregoing construction of the option. (*Bruner v. Moore*, [1904] 1 Ch. 305, referred to.) 4. That the option had expired before the purported acceptance, and the action must fail. *Bell v. Hobbs.* (S.C. Christchurch. October 2, 1956. F.B. Adams J.)

CRIMINAL LAW.

Breaking and Entering—Breaking and Entering a "Counting-house"—Building or Part of Building devoted to Purposes of Commercial Business—Garage wherein Business of Garage Proprietor carried on, a "countinghouse"—Crimes Act 1908, s. 278. In the ordinary sense of the word, "countinghouse" is a building or part of a building devoted to the purposes of commercial business. (*Piercy v. Maclean*, (1870) L.R. 5 C.P. 252, and *R. v. William Potter*, (1851) 2 Den. 235; 169 E.R. 488, followed.) Where, in the absence of anything to the contrary, the jury was able to infer that the business of a garage proprietor was carried on in garage premises where the business records were kept and wages paid, accounts made out, and moneys received from customers, as would be usual in such a business, the premises were properly treated as a "countinghouse" within the meaning of that term as used in s. 278 of the Crimes Act 1908. *The Queen v. Wilson.* (C.A. Wellington. October 10, 1956. Gresson J., Stanton J., Shorland J.)

Police Offences—Found Drunk in a Public Place—Meaning of "found"—Police Offences Act 1927, s. 41 (a). Section 41 (a) of the Police Offences Act 1927 does not make it an offence for a person to be "drunk in any public place": he must be "found" there, which implies more than proof of mere presence at some time, as the word "found" imports some perception by means of the senses such as ocular observation by a person unconnected with and not accompanying the person, that the person was present, i.e., he must be "discovered" or "seen" in a public place. (*Thomas v. Powell*, (1893) 57 J.P. 329; *Moran v. Jones*, (1911) 75 J.P. 411 (approved in *R. v. Goodwin*, [1944] K.B. 518; [1944] 1 All E.R. 506); and *R. v. Lumsden*, [1951] 2 K.B. 513; [1951] 1 All E.R. 1101, applied. *Braxton v. Sugrue*, [1927] G.L.R. 31, and *R. v. Boyd*, [1936] N.Z.L.R. 861; [1936] G.L.R. 620, referred to.) Thus, where a constable sought the appellant out, and met him at his front door, and, at the constable's invitation, they both walked side by side down the private pathway on to the public footpath, with the intention of proceeding together to the Police Station, at the request of, and for the purpose of a constable who was inquiring into some complaint of an unrelated matter, and the constable then arrested him on the footpath for being found drunk in a public place, it was held that the facts did not amount to the constable having "found" the appellant in any public place, either when he reached the constable's motor-car on the highway or at any other period during the short journey across the public footpath. It was also held that there was no evidence upon which it could be held without reasonable doubt that the appellant, at the material time, was drunk. *McKenzie v. Police.* (S.C. Timaru. August 13, 1956. Henry J.)

DIVORCE AND MATRIMONIAL CAUSES.

Indirect Cruelty. 106 Law Journal, 536.

THE RESURGENCE OF MENS REA.

By I. D. CAMPBELL.

I

A man who accidentally killed another was at one time barely distinguished from a murderer. It was an eventful step forward on the path of civilization when this elementary but fundamental distinction came to be made. By the time of Coke, this insight had been extended to the whole field of criminal law in England. Coke is reported to have said that "Acts of Parliament are to be so construed as no man that is innocent, or free from injury or wrong, be by a literal construction punished or endamaged." It came to be established doctrine that a person could not be guilty of a crime without a wrongful intent. To hold otherwise, it was said, would be contrary to the whole established law of England. The outstanding implications of this doctrine were that there had to be a blameworthy state of mind, and personal fault on the part of the accused. One could not become guilty of a crime by accident or mistake, or solely by reason of the wrongdoing of others.

But the doctrine was often thought to suffer from two major defects. First, it had no proper place for negligence. The essence of mens rea was an awareness of wrongdoing, and its scope was accordingly limited to the state of mind in which the accused either intentionally did the forbidden act or was reckless whether he did it or not. Consequently a man who was under a duty to act but failed to do so through forgetfulness could not be given a salutary reminder of his duty because mens rea did not embrace inadvertent negligence. Secondly, it was said that the doctrine created insuperable difficulties in securing the conviction of many guilty persons. The doing of some acts (e.g. stabbing a man) might in itself carry presumptive evidence of criminal intent, but what of the retailer who sold defective food? He might have done so in all innocence, but if not, how was his guilty knowledge to be proved?

To repress many activities that endangered public health and safety the Legislature began to create offences of strict liability, in which mens rea was not an ingredient, and the courts vastly extended the ambit of such offences by statutory interpretation. If a statutory prohibition did not require mens rea in express terms, the courts over and over again construed the provision as dispensing with the requirement of mens rea. Although it was stated that mens rea should in general be presumed to be an ingredient of statutory offences judges discovered innumerable reasons for holding that in the particular case before them the legislation disclosed an intention to exclude the presumption. This process reached its zenith in the judgment of Kennedy L.J. in *Hobbs v. Winchester Corporation*, [1910] 2 K.B. 471, 483, when he said that in construing a modern statute the presumption as to mens rea did not exist. With this and similar utterances in mind, Dr Stallybrass in 1936 wrote of "The Eclipse of Mens Rea" and maintained that "in the case of modern statutory offences the maxim has no general application and the statutes are to be regarded as themselves prescribing the mental element which is prerequisite to a conviction" (52 L.Q.R. 60, 66). The eclipse which he thought he had observed was apparently approved by some courts as recently as 1941. For example, in *Proudman v. Dayman* (1941), 67 C.L.R. 536, 542, McTiernan J. said: "In recent

times the presumption of mens rea in statutory offences has suffered such an eclipse that a learned writer has warned legislators to be very circumspect to see that the necessary words are inserted in statutes creating offences if they wish to limit the number of potential lawbreakers." He held that the maxim *actus non facit reum nisi mens sit rea* "is not of general application to modern statutes". He paid no regard to Dr Stallybrass's further observation that unless some statutes were amended this mode of interpretation would lead to "unnecessary injustices".

II

If Dr Stallybrass were living today he could record not merely that the eclipse was never total, but that it is now almost over. In the last twenty years there has been a tremendous change, and the presumption that mens rea is required has gained ground in every possible direction. Revulsion against strict liability has rapidly grown in intensity. Predictions based on the views of Kennedy L.J. or McTiernan J. would now be worthless.

Before looking at a number of manifestations of this change it may be well to specify its cause, which is clear beyond doubt. To construe an offence as not requiring mens rea does, of course, facilitate the conviction of wrongdoers, but it also makes for the conviction of persons who are in no way at fault. Acts morally innocent become criminally punishable. It is repugnant to our feelings of what is right and just to convict as a criminal a person who did not know and had no reasonable means of knowing that any offence was being committed. The tide of judicial attitude has hitherto ebbed and flowed, but the current has now set firmly in one direction—against strict liability. By clear and appropriate words the Legislature can, if it wishes, impose liability for negligence and "put pressure upon the thoughtless and inefficient". It is not necessary (as Roscoe Pound seems to have thought it was) to adopt strict liability to attain this end. Moreover, the difficulties of proof of a guilty mind can be mitigated by a variety of methods, including rebuttable statutory presumptions of knowledge or intent. The elimination of the doctrine of mens rea is an extremely crude and inefficient technique to achieve that purpose. As it slowly comes to be realized that these supposed justifications of strict liability are insupportable, and that criminal guilt without fault is a relic of barbarism, the presumption that mens rea is essential to criminal liability is steadily regaining lost ground.

Strict liability seems to have grown out of the distinction between crimes which involve breach of moral rules and crimes which do not. In the former case the object of the statute is said to be to punish immorality, whereas in the latter case the object is (for example) to protect the revenue, or to regulate trade, or to protect public health. In the latter group of offences, sometimes termed *mala prohibita*, proof of evil intent is, of course, unnecessary: but it does not follow that proof of *intent to do the act* should be held to be unnecessary. This fallacious conclusion seems to have become firmly embedded in the law, but is clearly a non sequitur. If the object of a statute is not to punish immorality it follows that it need

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not be shown that the defendant intended to act immorally; but it does not follow that his mental attitude is immaterial, or that the statute makes a defendant criminally punishable for accidents or for the consequences of honest mistake. The presumption that *mens rea* is an ingredient of an offence has constantly been excluded on the ground that the statute related to the regulation of trade or traffic; but if the significance of the subject-matter is that the statute is not concerned with personal morals, all that is necessary is to ensure that the prosecutor need only prove that the defendant knowingly did the prohibited act. To hold that *mens rea* is not an ingredient of the offence is entirely unnecessary for this purpose, and has the effect of imposing criminal liability where this is utterly devoid of purpose or justification.

Baty in England and Hall in the United States were probably the most forceful critics of the tendency to restrict the scope of the presumption that *mens rea* is required. The result of Baty's examination of vicarious liability was to show (to use his own words) that it was a principle "dubious in origin, and unjust in operation—one, moreover, which eminent judges have stated is certainly not to be extended, and for which little or no theoretical justification is ever to be found advanced". Dealing with vicarious criminal liability he said that "the law is in a state which it is not too much to call discreditable to English jurisprudence" (*Vicarious Liability* (1916), 3, 218). Hall, speaking of the confused decisions on strict liability, said that this branch of the law effected such gross injustice as to require major reform. "Such penalization of persons who are both innocent and careful smacks of an indiscriminate terrorism that is foreign to the common law" (*Principles of Criminal Law* (1947), 343).

These criticisms have borne fruit. Thus Glanville Williams, in 1953, writes: "Atkin L. J. once said that he viewed the tendency to dispense with *mens rea* with some trepidation. There are signs that this view is slowly gaining ground . . . To make a practice of branding people as criminals who are without moral fault tends to weaken respect for the law and the social condemnation of those who break it" (*Criminal Law*, 264, 269). Edwards, in 1955, says: "Gradually in the past fifty years there has been re-established the principle that in statutory crimes . . . there is still a presumption in favour of the requirement of a guilty mind, and that to overcome such presumption there must be strong indications of the legislature's intention to exclude its operation. . . . Whereas at one time the position had been reached when a judge was prepared to state that in construing a modern statute the presumption as to *mens rea* did not exist, the present attitude is happily the exact reverse, and, it is to be hoped, will long continue" (*Mens Rea in Statutory Offences*, 246, 253).

III

This re-orientation may first be illustrated in connection with the direct issue: does a specific offence require proof of *mens rea*?

Glanville Williams (*op. cit.*, 270) looking back on the history of strict responsibility in English criminal law said:

Judges have failed to adhere to any one principle of interpretation, and it is hard to resist the impression that many decisions depend simply upon idiosyncrasy. The various

precedents cannot be reconciled by comparing the words of the statutes on which they were decided, because sometimes they go different ways on similar statutory wording by reason of an assumed difference of social policy underlying the statutes. Some authorities assume that words of prohibition without reference to the mental element create strict responsibility, some do not. Some regard the heinousness of the crime as a determining factor, some do not. Some, not content with construing the words of the statute and guessing its social purpose, trace its history into previous legislation now repealed. Some cases regard an express reference to *mens rea* for one offence in the statute as impliedly dispensing with it for another, some do not. Then there are the technical rules of construction, such as that the word "permits" in a section colours the alternative word "uses" and the doubt when these rules will be applied. Finally, an offence may be held to be of absolute prohibition in one respect but not in another, although there are no words in the statute to indicate the difference.

An Australian judge, he adds, summed up the melancholy situation in this way:

A fertile field of litigation has been created; multitudes of reported cases have come into existence, many of them irreconcilable, in which the common-law rule has been treated as excluded or not excluded upon judge-made *indicia* derived from cases in which there has often been a difference of opinion as to so-called necessary implications; and no one can now be reasonably sure of the effect of a penal statute until it has been tested by prosecutions (*Turnbull* (1943), 44 S.R. (N.S.W.) 108, per Jordan C.J.).

We have not yet completely emerged from this era of hopeless uncertainty, but we have made considerable progress. Where there are conflicting decisions or dicta on the question whether a particular offence requires *mens rea* it is noticeable that in those of more recent date it is generally held that *mens rea* is required. Typical illustrations are *Innes v. McKinley*, [1954] N.Z.L.R. 1054, contrasted with *Eccles v. Richardson*, [1916] N.Z.L.R. 1090; [1916] G.L.R. 704; and *Jones v. McDonald*, [1939] N.Z.L.R. 928; [1939] G.L.R. 548; and *Police v. Hawthorne* (1951), 7 M.C.D. 168, compared with *Police v. Chisholm* (1944), 4 M.C.D. 24.

More important than specific instances, however, has been the emphatic re-assertion of the common-law doctrine by Lord Goddard L.C. J. in several recent cases. In *Brend v. Wood* (1946), 175 L.T. 306, 307; 62 T.L.R. 462, 463, he said:

It is of the utmost importance for the protection of the liberty of the subject that a court should always bear in mind that, unless a statute, either clearly or by necessary implication, rules out *mens rea* as a constituent part of a crime, the court should not find a man guilty of an offence against the criminal law unless he has a guilty mind.

This principle he re-affirmed in *Harding v. Price*, [1948] 1 K.B. 695, 700; [1948] 1 All E.R. 283, 284, adding:

In these days when offences are multiplied by various regulations and orders to an extent which makes it difficult for the most law-abiding subjects in some way or at some time to avoid offending against the law, it is more important than ever to adhere to this principle.

This changed point of view is strikingly exemplified in the cases relating to unlawful possession. In *Woodrow* (1846), 15 M. & W. 404; 153 E.R. 907, the accused was convicted of possessing adulterated tobacco although he did not know and had no cause to suspect that it was adulterated; but the principle of the case has since been restricted to traders handling the goods in which they deal. Thus in *Maher v. Musson* (1934), 52 C.L.R. 100, the High Court of Australia held that a person who did not deal in spirit could not be convicted of being in possession of illicit spirit if he did not believe

and had no reason to believe that it was illicit. In *Sambiravum v. Public Prosecutor*, [1950] A.C. 458, 469, it was conceded on behalf of the Crown—"and rightly, in their Lordships' opinion"—that a regulation making it an offence to carry a fire-arm was to be read as meaning "carries to his knowledge", and that the carrying of a fire-arm by a person who did not know what he carried would not constitute an offence.

Recent decisions on the offences of "causing", "permitting", "allowing" or "suffering", though not marking a new line of authority, have done much to emphasize the continuing importance of the doctrine, and show that the requirement of mens rea is normally to be written into the definition of offences even in modern statutes.

In *Reynolds v. G. H. Austin & Sons Ltd.*, [1951] 2 K.B. 135, 148; [1951] 1 All E.R. 607, 611, Devlin J. expressly rejected the contrary view of Kennedy L.J. already referred to. He held that mens rea was necessary for the offence not only of "permitting the use" but also of "using" under a section of an Act of 1934. In *Lovelace v. D.P.P.*, [1954] 3 All E.R. 481, it was held that mens rea is a necessary ingredient in "causing" or "permitting" an act to be done because one cannot "cause" or "permit" the act to be done unless one has knowledge of the facts. That case was under a statute of 1843, but a similar construction was recently placed on those expressions in the Motor Vehicles Regulations of 1951: *James & Son Ltd. v. Smees*, [1955] 1 Q.B. 78; [1954] 3 All E.R. 273.

(To be concluded.)

THE NEW COMPANIES ACT 1955.

The Names of Companies.

By E. C. ADAMS, I.S.O., LL.M.

APPROVAL OF A PROPOSED NAME.

Having decided on the form of the Memorandum of Association and obtained the consent of the Capital Issue Committee, if the capital of the proposed new Company is to exceed £10,000, one must choose a name and submit it to the Registrar of Companies for his approval. Unless the approval of the name is urgent, one should make application for the approval to the District Registrar of Companies, in whose district the company is to be registered. If, as is often the case in practice, approval of the name is urgent, a prepaid reply telegram should be transmitted to the Registrar of Companies at Wellington, who will immediately deal with the application and send his reply by telegram, at the same time sending by post a copy of his reply to the appropriate District Registrar.

REGISTRAR'S UNFETTERED DISCRETION AS TO NEW NAMES.

"What's in a name? That which we call a rose,
By any other name would smell as sweet."

But then Shakespeare was never a Registrar of Companies. Approval of a name for a new company is often vehemently pressed by the promoters thereof and just as vehemently opposed by the directors of some existing company, and so the Registrar, in the approval and rejection of names, must have vested in him the widest discretion, and this the Companies Act 1955 does. Under the Companies Act 1933, no company except with the consent of the Court (i.e. the Supreme Court) shall be registered by a name which, in the opinion of the Registrar, is contrary to public policy. Subsection (4) of s. 31 of the Companies Act 1955, however, provides that, except with the consent of the Supreme Court, no company shall be registered by a name which, in the opinion of the Registrar, is *undesirable*. Thus the word "undesirable" has been substituted for the words "contrary to public policy" and the powers of the Registrar of Companies in this respect have been increased. In the United Kingdom these powers as to approval of names have been vested in the Board of Trade. As stated in *6 Halsbury's Laws of England*, 3rd Ed., 133, under the Companies Act 1948 (U.K.) no company is to be registered by a name

which in the opinion of the Board of Trade is undesirable, and in a footnote, (k), it is observed that this provision gives an *unfettered discretion* to the Board of Trade. The Companies Act 1955, therefore, will vest a similar unfettered discretion in the Registrar of Companies. The present law and practice as to names of companies registered under the United Kingdom Act is set out in *6 Halsbury's Laws of England*, 3rd Ed., p. 133, para. 279 and in footnote (k) thereto; a perusal of this will satisfy one that the law and practice in New Zealand on or after the first day of January, 1957, will be substantially the same: the only practical difference appears to be that in New Zealand we have slightly more prohibited names.

Classification of Names. Names which are suspect may be divided into three classes:

- (a) Names which the Registrar considers are undesirable.
- (b) Names which are absolutely prohibited by statute.
- (c) Names which, although not absolutely prohibited, nevertheless require the precedent consent of the Governor-General in Council.

NAMES WHICH ARE UNDESIRABLE.

The principal objection hereunder will be, as heretofore, that the proposed name so resembles that of a company or society carrying on business in New Zealand or registered in New Zealand that it is calculated to deceive the public. It is stated in the same paragraph in *Halsbury* that in the United Kingdom a name will not be allowed if it is *misleading* (for example, if it is suggested that a company with small resources is trading on a great scale or over a wide field). Probably a name would be similarly objected to in New Zealand.

The Companies Office in New Zealand has no objection to the use of a *coined* word, for a coined word usually has the merit of distinctiveness and is therefore not likely to mislead. But the placing together of two or more English words into one word is not regarded as a coined word.

The Companies Office does object to the use of any name containing the word "Proprietary", which in-

dicates to the informed public a special class of company incorporated in Australia, and is therefore regarded as misleading in the name of a New Zealand company.

Sometimes when application is made for the approval of a name for a proposed company, the Registrar will insist on the year being inserted before the last word "Limited", in order to prevent confusion with the name of another company already on the Register, e.g. *Repton Foundry (1943) Limited*. This appears to be in accordance with the practice in the United Kingdom: see, for example, *In re Repton Foundry, Ltd.*, (1942) 86 Sol. Jo. 331; 194 L.T. Newsp. 153. It is the fact, however, that as a general rule company promoters prefer short names; and additions suggested by the Registrar are often not acceptable to them.

NAMES WHICH ARE ABSOLUTELY PROHIBITED BY STATUTE.

Unfortunately s. 31 of the Companies Act 1955 will not form a complete code.

Section 31 (1) reads as follows :

- (1) No company shall be registered by a name which—
- (a) Is identical with that of a company carrying on business in New Zealand (whether registered in New Zealand or not), of of any other body corporate registered in New Zealand under any Act, or so nearly resembles that name as to be calculated to deceive, except where that company or other body corporate, as the case may be, signifies its consent in such manner as the Registrar requires, and the Registrar is satisfied that registration of the company by the proposed name will not be contrary to the public interest; or
- (b) Contains the words "Chamber of Commerce", unless the company is a company which is to be registered under a licence granted in pursuance of section thirty-three of this Act without the addition of the word "Limited" to its name; or
- (c) Contains the words "Building Society"; or
- (d) Contains the word "Anzac" or the words "United Nations".

The names "Anzac" and "United Nations" are new to the Companies Act, but it has long been the practice to decline to register companies containing these words. The use of the words "Post Office", "Telegraph" and "Telephone" are also restricted by statute: see s. 132 of the Post and Telegraph Act 1928.

Section 10 of the State Advances Corporation Act 1934 provides that no company or other corporation shall be formed in New Zealand or registered under any Act with a name identical with the name of the Corporation established under the Act, or with a name that so resembles that name as to be calculated to deceive; that is to say, the names barred under these provisions are "the Mortgage Corporation" and "the State Advances Corporation".

NAMES NOT ABSOLUTELY PROHIBITED BUT REQUIRING CONSENT.

If approval of a name coming within this category is desired, application for approval by the Executive Council should be made through the Registrar of Companies: the reasons why the particular name is sought should be briefly stated. After considering the application the Registrar of Companies makes a report to the Ministry of Justice, and, if the name meets with the approval of the Minister of Justice, the application is eventually considered by the Executive Council: as all this takes some time it is usually prudent to make

application to the Registrar as soon as possible.

Section 31 (2) of the Companies Act 1955 reads as follows :

- (2) Except with the consent of the Governor-General in Council or as expressly provided in any Act other than this Act, no company shall be registered by a name which—
- (a) Contains the word "Royal", or "Imperial", or "Parliament", or "National", or "State", or any word which in the opinion of the Registrar suggests, or is calculated to suggest, the patronage of Her Majesty or of any member of the Royal Family or of the Governor-General, or connection with Parliament or with Her Majesty's Government or any Department thereof; or
- (b) Contains the word "Municipal" or "Chartered", or in the opinion of the Registrar suggests, or is calculated to suggest, connection with any municipality or other local authority, or with any society or body incorporated by Royal Charter; or
- (c) Contains the word "Bank", "Bankers", "Banking", "Co-operative", "Trust", or "Trustee", or the words "Stock Exchange"; or
- (d) Contains the word "Standard".

This section to some extent overlaps ss. 56 and 57 of the Statutes Amendment Act 1939 (amending the Police Offences Act 1927, which has been reprinted in Vol. II of the 1955 Statutes, pp. 1744 *et seq.*, to which reference should be made). In addition, the Police Offences Amendment Act 1956 prohibits the use of the names "Returned Services Association" or the initials "R.S.A.", without the prior consent of the Governor-General in Council.

Reference should also be made to s. 15 of the Standards Act 1941, which, except with the consent of the Governor-General, prohibits the use of the words "Standard" or "New Zealand Standard", or any abbreviation of those words.

"CO-OPERATIVE."

A short note on the approval of the word "co-operative" may be of assistance to practitioners. It is not now easy to secure approval of this much-desired word. The Co-operative Dairy Companies Act 1949 and the Co-operative Companies Act 1956 contain their own provisions as to registration. Thus in the latter Act a "co-operative company" is defined as follows :

"Co-operative company" means a co-operative egg marketing company, or a co-operative fertiliser manufacturing company, or a co-operative fish marketing company, or a co-operative milk marketing company, or a co-operative pig marketing company; and includes such other classes of companies as are from time to time declared by the Governor-General by Order in Council to be co-operative companies for the purposes of this Act :

Then follow definitions of a "co-operative egg marketing company", a "co-operative fertiliser manufacturing company", a "co-operative fish marketing company", a "co-operative milk marketing company", and a "co-operative pig marketing company".

If the word "co-operative" is desired in respect of a proposed company which does not come under special statutory provisions, consent will not be granted unless it is manifest that the company is truly co-operative in the best sense of that word: it must appear not only that the company has been formed on a co-operative basis but also that it will always remain so: for example, the fact that employees are to share in the profits will not *per se* make the company a co-operative one.

NAME OF A COMPANY MUST NOT CONFLICT WITH REGISTERED TRADE-MARK.

Section 31 (3) of the Companies Act 1955 is new. It provides that the Registrar may refuse to register a company by a name which contains a trade mark registered under the Trade Marks Act 1953, or any word or words which in the opinion of the Registrar so nearly resemble any such trade mark as to be calculated to deceive or to cause confusion.

REGISTRATION WITH DECEPTIVE NAME.

Despite the fact that a company has been registered under the Companies Act, it is not entitled to carry on its business in such a way, or under such a name, as to represent that its business is the business of any other company or firm or person; and the absence of fraud is immaterial. In such cases the old company or firm may apply to the Supreme Court for an injunction, and the principles then apply which apply to individuals trading under identical or similar names. This remedy is equally available to companies registered under the Companies Act: *6 Halsbury's Laws of England*, 3rd Ed., 134. Thus a change of name was ordered in *British Legion v. British Legion Club (Street) Ltd.*, (1931) 47 T.L.R. 571, but an objection by a company to a proposed change of name by another company was overruled by the Court in *In re Cuff and Thomson, Ltd.*, [1933] N.Z.L.R. s. 50; [1933] G.L.R. 313. In the first-named case the defendant had become incorporated under the Companies Act before the plaintiff was a legal entity, but that made no difference because a voluntary unincorporated society using a name *prima facie* has the right to retain it.

WHEN REGISTRAR MAY REQUIRE COMPANY TO CHANGE NAME.

These provisions contain some alterations. Subsection (2) (b) of s. 32 of the Companies Act 1955 reads as follows:

(2) If, through inadvertence or otherwise, a company on its first registration, or on its registration by a new name, is registered by a name which— . . .

(b) Contains a trade mark previously registered under the Trade Marks Act 1953, or any word or words which in the opinion of the Registrar so nearly resemble any such trade mark as to be calculated to deceive or to cause confusion,—

Notice and Equities.—"The rights between the immediate parties do not depend on notice, just as in the case of an equitable assignment of a debt notice is not necessary to complete the equitable right as between assignor and assignee. Thus in *William Brandt's Sons & Co. v. Dunlop Rubber Co., Ltd.*, [1905] A.C. 454, 462, it is clear that there was a good equitable assignment as between the merchants as assignors and the financiers as assignees, though the assignment was not completed in the sense that the debtors to the merchants were bound by it or bound to pay the assignees, without receiving notice of it. Thus Lord Macnaghten says: "As between Kramrisch & Co., [the merchants] and Brandts [the bankers] the assignment was . . . perfect without them" (sc. the documents giving notice to the debtors). In the same way in the present case, though it is true that no third party holding the goods or dealing with them without notice of the respondents' lien, would be affected by that lien, this is

the company shall, within a period of six weeks from the date of its being required by the Registrar to do so, or such longer period as the Registrar may think fit to allow, change its name by resolution to a name approved by the Registrar in writing, having regard to the provisions of section thirty-one of this Act.

This provision, be it noted, does not require the resolution to be an extraordinary or special one: an ordinary resolution will suffice. Under the 1933 Act it has to be by extraordinary resolution. Subsection (4) is new and is designed to prevent hardship: it provides that every document required for any compulsory change of name shall be exempt from stamp duty, and no fee shall be payable to the Registrar in respect of any such change of name or in respect of any document required for the purposes or or by reason of any such change of name. Subsection (7) is also new. Where the Registrar requires, or refuses to require, a company to change its name under the section, the company or the proprietor of the trade-mark concerned may appeal to the Supreme Court against the decision of the Registrar at any time within twenty-one days after the date of the requirement or refusal. The decision of the Court on any such appeal shall be final.

VOLUNTARY CHANGE OF NAME BY A COMPANY.

These provisions remain unchanged. Section 32 (1) provides that a company may, by *special* resolution and with the approval of the Registrar signified in writing, change its name. Before passing the special resolution the company should make sure that the proposed new name is available and agreeable to the Registrar. But the fact that the name is agreeable to the Registrar does not constitute his written approval of the name for the purpose of s. 32 (1). The Registrar, after the special resolution has been passed and a declaration in support of the change stating the reasons therefor has been filed and considered by him, must then, if he approves, signify his approval in writing. The Registrar must then enter the new name in the register in place of the former name, and shall issue a certificate of incorporation altered to meet the case. Until these acts are done the change of name is not legally effective. The Registrar must then at the expense of the company publish in the *Gazette* a notice of the change of name, and that notice shall be conclusive evidence of the change to which it relates.

a consideration which is irrelevant to the equitable rights constituted as between the respondents and the insolvents. In this case nobody's rights are concerned except the rights as between these immediate parties: the appellant merely stands in the insolvents' shoes": Lord Wright, delivering the opinion of the Judicial Committee in *Official Assignee of Madras v. Mercantile Bank of India, Ltd.*, [1935] A.C. 53, 65.

Support of Surface.—"But it is now thoroughly well settled, and it is unnecessary to refer to specific authorities in support of the proposition, that the right of the surface owner to support of that surface by subjacent soil is not an easement, but is a natural incident to the land itself. If therefore the payments in question are to be regarded as arising from the right of support, they arise from the ownership of the land itself": Lord Warrington of Clyffe in *Elliott v. Burn*, [1935] A.C. 84, 94.

WELLINGTON DIOCESAN SOCIAL SERVICE BOARD

Chairman: REV. H. A. CHILDS,
VICAR OF ST. MARYS, KARORI.

THE BOARD solicits the support of all Men and Women of Goodwill towards the work of the Board and the Societies affiliated to the Board, namely:—

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Anglican Boys Homes Society, Diocese of Wellington,
Trust Board: administering Boys Homes at Lower Hutt,
and "Sedgley," Masterton.

Church of England Men's Society: Hospital Visitation.

"Flying Angel" Mission to Seamen, Wellington.

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Full information will be furnished gladly on application to:

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Social Service Council of the Diocese of Christchurch.

INCORPORATED BY ACT OF PARLIAMENT, 1952

CHURCH HOUSE, 173 CASHEL STREET
CHRISTCHURCH

Warden: The Right Rev. A. K. WARREN
Bishop of Christchurch

The Council was constituted by a Private Act which
amalgamated St. Saviour's Guild, The Anglican Society
of the Friends of the Aged and St. Anne's Guild.

The Council's present work is:

1. Care of children in cottage homes.
2. Provision of homes for the aged.
3. Personal case work of various kinds by trained
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Solicitors and trustees are advised that bequests may
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The following sample form of bequest can be modified
to meet the wishes of testators.

"I give and bequeath the sum of £ to
the Social Service Council of the Diocese of Christchurch
for the general purposes of the Council."

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assistance is needed to do this
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Be a partner in this great work, for all creeds
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M.B.E., 'Leper Man', Secretary, Lepers Trust
Board Journal, Christchurch.

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THE Y.M.C.A.'s main object is to provide leadership training for the boys and young men of to-day . . . the future leaders of to-morrow. This is made available to youth by a properly organised scheme which offers all-round physical and mental training . . . which gives boys and young men every opportunity to develop their potentialities to the full.

The Y.M.C.A. has been in existence in New Zealand for nearly 100 years, and has given a worthwhile service to every one of the thirteen communities throughout New Zealand where it is now established. Plans are in hand to offer these facilities to new areas . . . but this can only be done as funds become available. A bequest to the Y.M.C.A. will help to provide service for the youth of the Dominion and should be made to:—

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The Young Women's Christian Association of the City of Wellington, (Incorporated).

★ OUR ACTIVITIES:

- (1) Resident Hostels for Girls and a Transient Hostel for Women and Girls travelling.
- (2) Physical Education Classes, Sport Clubs, and Special Interest Groups.
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★ OUR AIM as an Undenominational International Fellowship is to foster the Christian attitude to all aspects of life.

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Our present building is so inadequate as to hamper the development of our work.
WE NEED £50,000 before the proposed New Building can be commenced.

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OBJECT:

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A character building movement.

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"I GIVE AND BEQUEATH unto the Boys' Brigade, New Zealand Dominion Council Incorporated, National Chambers, 22 Customhouse Quay, Wellington, for the general purpose of the Brigade, (here insert details of legacy or bequest) and I direct that the receipt of the Secretary for the time being or the receipt of any other proper officer of the Brigade shall be a good and sufficient discharge for the same."

For information, write to

THE SECRETARY,
P.O. Box 1403, WELLINGTON.

TOWN AND COUNTRY PLANNING APPEALS.

Somerton Investments, Ltd. v. Dunedin City Corporation.

Town and Country Planning Appeal Board. Christchurch. 1956. May 2, 18.

Subdivision—Area zoned as "rural"—Land usable for Grazing Purposes only—Provision of High-pressure Water or Sewerage Services not economically feasible—Recognized Principle that Areas for Residential Purposes should be Capable of being adequately serviced with Adequate Supplies of Water for Fire-protection Purposes and Domestic Needs—Town and Country Planning Act 1953, s. 38 (1) (c).

Appeal under s. 38 of the Town and Country Planning Act 1953 against the decision of the Dunedin City Council refusing to approve a plan of subdivision of land situated in Campbells Road, Dunedin. The proposed subdivision comprised twenty sections, between 250 ft. and 340 ft. depth, all fronting on the existing road.

The grounds for appeal were that the land was suitable for subdivision in spite of the reason to the contrary advanced by the City Council.

The Council replied that consent had been refused to the proposed subdivision because the said subdivision was a "detrimental work" within the meaning of the Town and Country Planning Act 1953, in that it was not in conformity with the town-and-country-planning principles likely to be embodied in the undisclosed district scheme for the area to be zoned as "rural".

The judgment of the Appeal Board was delivered by

REID S.M. (Chairman). On February 6, 1956, the Council refused its consent on the grounds that the land in question is in an area zoned as "rural" under the Council's undisclosed district scheme. In its reply to the appeal, the Council states as grounds for the refusal of consent that the proposed subdivision is a "detrimental work" within the meaning of the Town and Country Planning Act 1953 in that it is not in conformity with the town-and-country-planning principles likely to be embodied in the undisclosed district scheme for the area under consideration.

The appeal therefore falls for consideration under s. 38 (1) (c) of the Town and Country Planning Act 1953.

The zoning of this area as "rural" would appear at present to be appropriate. It is not suggested that this particular block of land has any high actual or potential value for the production of food or primary produce. With the exception of the portion sought to be subdivided, it is a very steep slope, having a certain value for grazing purposes but no agricultural value.

The land in question has been zoned as "rural" mainly because it is not a feasible economic proposition to provide it with the high-pressure water or sewerage services appropriate to residential areas, with particular reference to fire-fighting services.

In determining the boundary-line between residential and rural zones in this locality, the Council's planning officers were guided largely by this question of water supply. The datum line in this locality beyond which it is not at present a practicable proposition to supply water has been fixed at the 800 ft. contour level. All the land in the proposed subdivision is above that level, the lowest portion being at the 850 ft. level rising to 944 ft. at the highest point.

It is a recognized principle of town-and-country-planning practice that areas proposed to be utilized for residential purposes should be able to be economically serviced with adequate supplies of water both for fire-protection purposes and domestic needs, and in zoning the area under consideration here the respondent Council has acted in accordance with those principles.

It follows, therefore, that the proposed subdivision would not be in conformity with the town-and-country-planning principles likely to be embodied in the Council's undisclosed district scheme for the area and the appeal is disallowed. No order as to costs.

Appeal dismissed.

Franklin Transport, Ltd. v. Pukekohe Borough.

Town and Country Planning Appeal Board. Auckland. 1956. January 23; February 7.

Alteration to Business Premises—Carriers' Business—Area zoned as "residential"—Operation of Such Business in Residential Area not in Conformity with Planning Principles—Alterations tending to perpetuate Present Position and Increase in Volume of Carriers' Business—Detraction from Amenities of Neighbourhood—"Detrimental work"—Town and Country Planning Act 1953, s. 38.

Appeal under s. 38 of the Town and Country Planning Act 1953 against the decision of the Pukekohe Borough Council refusing to grant a permit to the appellant to make alterations and extensions to its building used as a carriers' depot in the Borough of Pukekohe in an area zoned as "residential".

The grounds for the appeal were that the property had been used as a carriers' yard and depot for many years; that the alterations and extensions sought were reasonably required by the appellant for the purpose of its business as carriers; and that the proposed alterations would improve the appearance of the buildings on the land and would not be a detrimental work or detract from the amenities of the neighbourhood.

The Council replied that the proposed extensions would be a detrimental work and would detract from the amenities of the neighbourhood in that they were designed to facilitate the increased use of the property, and this would involve a substantial volume of traffic by heavy trucks not only through the day but at night and at week-ends, which would seriously disturb the peace and quiet of the surrounding residential area.

The judgment of the Board was delivered by

REID S.M. (Chairman). The zoning of this particular area as "residential" is appropriate.

The appellant company's operations of necessity involve the use of the property for the loading and unloading of produce and goods seven days in the week, frequently at night and in the early hours of the morning.

The operation of a business such as that of the appellant company in a residential area is not in conformity with town-and-country-planning principles and the respondent Council acted properly in refusing its consent to alterations and additions that might tend to perpetuate the present position. The nature of the appellant company's business and the methods under which of necessity its operations must be carried on must detract from the amenities of a residential area, particularly one such as is under consideration here and already substantially built upon.

If the alterations and additions sought were allowed, it must inevitably follow that there would be an increase in the volume of business being carried on on this property and a consequential further detraction from the amenities of the neighbourhood.

The appeal is disallowed. No order as to costs.

Appeal dismissed.

Wilson v. Mt. Wellington Borough.

Town and Country Planning Appeal Board. Auckland. 1956. January 27; February 7.

Subdivision—Two Tenants desiring to purchase Respective Business Premises—One Lot less and One Lot greater than Minimum Standard Requirement—Special Circumstances—Appeal allowed with Some Hesitation—Town and Country Planning Act 1953, s. 38 (8).

Appeal under s. 38 (8) of the Town and Country Planning Act 1953 against the decision of the Mount Wellington Borough Council refusing him permission to subdivide his property near Panmure into two rear lots.

The grounds for appeal were that there were already on the land two separate buildings occupied by two different firms; that each tenant desired to purchase the respective land and buildings occupied by his firm, and that the appellant was

willing to sell to them if the subdivision were granted. That the area of one of the lots exceeded the minimum area required by the Council by 4 pp. and that the other was 4 pp. less than the minimum; that the width of the proposed mutual right of way was 12 ft. whereas the Council specified that the total width should be 15 ft.; that the land was almost entirely surrounded by properties on which the differences between the areas and widths shown on the scheme plan and the minimum requirements of the Council were so small as to make the refusal of consent unreasonable.

The Council replied that the proposed subdivision did not comply with the Code of Ordinances for the Borough's undisclosed district scheme and that the proposed subdivision was not in conformity with the town-and-country-planning principles likely to be embodied in its undisclosed district scheme.

The judgment of the Appeal Board was delivered by

REID S.M. (Chairman). The respondent Council acted consistently and properly in refusing its consent to the proposed subdivision. The minimum standards provided under its "undisclosed district scheme" are consistent with town-and-country-planning practice and principles.

Had the land in question been vacant land the Board would have had no hesitation in disallowing the appeal.

On the land in question there are already established two separate industrial businesses and the evidence shows that the existing 12-ft. right-of-way has provided adequate access from the road to these business premises. The Board is of the opinion that some consideration must be given to the rights and interests of the owners of these businesses.

The Board takes the view that there are in this particular case certain special circumstances which it should take into consideration, and with some hesitation it allows the appeal.

The Board desires to emphasize that this decision has been arrived at in the light of the circumstances of this particular case and is in no way to be regarded as creating a precedent. No order as to costs.

Appeal allowed.

Minister of Works v. Kaitaia Borough.

Town and Country Planning Appeal Board. Kaitaia. 1956. March 14; April 26.

Proposed District Scheme—Objections—Zoning of Parts of Borough as "urban" excessive—Over-estimate of Probable Population Increase—Sufficiency of Vacant Residential Sites—Reticulated Water-supply and Sewerage Unlikely to be Available for Certain Included Areas—Not in Public Interest to zone Them otherwise than as "rural"—Proposed District Scheme to be amended accordingly—Town and Country Planning Act 1953, ss. 23 (3), 24.

Appeal by the Minister of Works made under s. 26 of the Town and Country Planning Act 1953 against the decision of the Kaitaia Borough Council dismissing his opposition to the objections to the scheme, made by certain landowners in the district.

The grounds for the appeal were that the river flats north of the Grigg St. area (Area "A") and those south of the Te Maire Avenue area (Area "B"), which the Town Planning Board had decided on November 25, 1952, should be zoned as a rural district, comprised fertile soils very suitable for farming and should in the public interest be preserved for this purpose; that the river flats would not be served by the sewerage reticulation proposed for the Borough of Kaitaia, so that sporadic development in these flats as extensions to the residential zones, would create a problem in the disposal of sewerage originating there and would delay the consolidation of development within the main residential area of the town for which reticulation had been approved. The first ground of this appeal was supported by the Agriculture Department, and the second by the Health Department.

Evidence was given that the Minister's appeal was in support of the earlier decision of the Town Planning Board that the zoning of the whole Borough as "urban" was excessive as it would have provided for a population of 10,000 as against the population in 1952 of 1,850. Even with the zoning of the areas in question for rural purposes, there would still be sufficient residential land to accommodate a population of 6,000.

The Council, in reply, stated that it was replying in the interests of its ratepayers as a whole and not on behalf of the individual objectors.

The Council stated that the area which the appellant claimed should be zoned as rural district, while comprising fertile soil,

represented the major portion of the area available within the Borough for housing sites; to deprive the Council of its right to determine under its powers both as a local authority and as Town Planning Authority the future development of this area by orderly subdivision would be to deprive the town of residential areas which had been carefully related in size to other land uses in the Borough; the effect would be the destruction of the whole balance of the town-planning scheme, and would involve (if this were possible) the replacement of the area lost by an equivalent area outside the borough boundaries, which would in turn destroy the compact geographical nature of the borough and raise difficult transport and service problems, the solution of which would be expensive and uneconomic. The Council was well aware of the question of public interest raised and would bear this in mind in the development of the area in question.

The judgment of the Appeal Board was delivered by

REID S.M. (Chairman). The respondent Borough Council's estimate of the probable increase in population in the Borough to 10,000 within twenty years is somewhat optimistic. The estimated population of the Borough as at April, 1955, was 2,100. Between the years 1926 and 1955 the growth of the Borough's population progressed at about 4 per cent per annum. This is an average annual increase of population considerably in excess of the average annual increase in population for New Zealand as a whole, and, in the opinion of the Board, forms a more reliable guide than the estimates made by the witnesses called on behalf of the Borough Council. At that rate, the population cannot be expected to increase to more than 5,000—6,000 persons within the remaining 20 years for which the planning scheme has been prepared. There is no evidence of the probability of any industries likely to attract large labour forces being established in this district and it would be hard to visualize such an event occurring. The Board's view is that the probability is that Kaitaia as a market and service town for a pastoral and agricultural community will expand at a moderate rate in conformity with the general increase in population that can be anticipated in the country as a whole.

Under the scheme as it stands at present, apart from areas "A" and "B" there are substantial areas of vacant land within the borough boundaries zoned as residential, and these areas should provide accommodation for a substantially increased population. The availability of this land for residential purposes, from the point of view of the willingness of the owners thereof to sell or subdivide, is not a matter to which the Board can pay much consideration. The land is there, it is vacant, and it is zoned as residential. If the owners thereof or private enterprise are not prepared to develop it as such, the Council has its own remedy; it can acquire it and develop it itself.

The two areas under consideration comprise in the main land of high actual value for the production of food and primary produce, and, as far as practicable, should not be encroached upon by urban development unless there is no other alternative. With the exception of five quarter-acre sections owned by Mr Dyer, there is no evidence that the owners of the land in these areas are ready and anxious to subdivide for housing purposes.

A further ground of objection by the Minister is based on the question of availability of reticulated water supply. The Borough is at present installing a sewerage system which is designed at present to serve the central portion only of the Borough, but the scheme is so designed as to allow of extensions to cover, eventually, the whole Borough. This modified scheme is estimated to cost £90,700. The Health Department will not approve the establishment of septic tanks or any other method of disposal other than an extension of the present approved system and its view is that the system serving the whole Borough should be advanced by stages as the development of the Borough warrants.

The Board is of the opinion that it is not in the public interest that areas "A" and "B" should be zoned as residential. The Board holds: they are lands in the main of highly fertile nature and should, in the public interest, be retained as long as possible for production of food stuffs and primary produce; and further that the total area zoned for urban development should be related to the sewerage scheme network. This is subject to one exception—having regard to their situation immediately adjoining the Borough boundary, the Board considers it reasonable to allow the five sections on Mr Dyer's property to remain as residential. The appeal is allowed in respect of the whole of the areas "A" and "B" with the exception of these five sections, and the Borough's proposed district scheme must be amended accordingly. No order as to costs.

Appeal allowed.

The New Zealand CRIPPLED CHILDREN SOCIETY (Inc.)

ITS PURPOSES

The New Zealand Crippled Children Society was formed in 1935 to take up the cause of the crippled child—to act as the guardian of the cripple, and fight the handicaps under which the crippled child labours; to endeavour to obviate or minimize his disability, and generally to bring within the reach of every cripple or potential cripple prompt and efficient treatment.

ITS POLICY

(a) To provide the same opportunity to every crippled boy or girl as that offered to physically normal children; (b) To foster vocational training and placement whereby the handicapped may be made self-supporting instead of being a charge upon the community; (c) Prevention in advance of crippling conditions as a major objective; (d) To wage war on infantile paralysis, one of the principal causes of crippling; (e) To maintain the closest co-operation with State Departments, Hospital Boards, kindred Societies, and assist where possible.

It is considered that there are approximately 6,000 crippled children in New Zealand, and each year adds a number of new cases to the thousands already being helped by the Society.

Members of the Law Society are invited to bring the work of the N.Z. Crippled Children Society before clients when drawing up wills and advising regarding bequests. Any further information will gladly be given on application.

MR. C. MEACHEN, Secretary, Executive Council

EXECUTIVE COUNCIL

MR. H. E. YOUNG, J.P., SIR FRED T. BOWERBANK, MR. ALEXANDER GILLIES, SIR JOHN LLOTT, MR. L. SINCLAIR THOMPSON, MR. FRANK JONES, SIR CHARLES NORWOOD, MR. G. K. HANSARD, MR. ERIC HODDER, MR. WYVERN HUNT, SIR ALEXANDER ROBERTS, MR. WALTER N. NORWOOD, MR. H. T. SPEIGHT, MR. G. J. PARK, MR. D. G. BALL, DR. G. A. Q. LENNANE.

Box 6025, Te Aro, Wellington

**19 BRANCHES
THROUGHOUT THE DOMINION**

ADDRESSES OF BRANCH SECRETARIES:

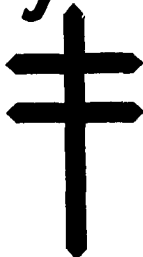
(Each Branch administers its own Funds)

AUCKLAND	P.O. Box 5097, Auckland
CANTERBURY AND WESTLAND	P.O. Box 2035, Christchurch
SOUTH CANTERBURY	P.O. Box 125, Timaru
DUNEDIN	P.O. Box 483, Dunedin
GISBORNE	P.O. Box 20, Gisborne
HAWKE'S BAY	P.O. Box 30, Napier
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NEW PLYMOUTH	P.O. Box 324, New Plymouth
NORTH OTAGO	P.O. Box 304, Oamaru
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SOUTH TARANAKI	P.O. Box 148, Hawera
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STRATFORD	P.O. Box 83, Stratford
WANGANUI	P.O. Box 20, Wanganui
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WELLINGTON	P.O. Box 7821, Wellington E.4
TAURANGA	42 Seventh Avenue, Tauranga
COOK ISLANDS	C/o Mr. H. Bateson, A. B. Donald Ltd., Rarotonga

Active Help in the fight against TUBERCULOSIS

OBJECTS: The principal objects of the N.Z. Federation of Tuberculosis Associations (Inc.) are as follows:

1. To establish and maintain in New Zealand a Federation of Associations and persons interested in the furtherance of a campaign against Tuberculosis.
2. To provide supplementary assistance for the benefit, comfort and welfare of persons who are suffering or who have suffered from Tuberculosis and the dependants of such persons.



3. To provide and raise funds for the purposes of the Federation by subscriptions or by other means.

4. To make a survey and acquire accurate information and knowledge of all matters affecting or concerning the existence and treatment of Tuberculosis.

5. To secure co-ordination between the public and the medical profession in the investigation and treatment of Tuberculosis, and the after-care and welfare of persons who have suffered from the said disease.

A WORTHY WORK TO FURTHER BY BEQUEST

Members of the Law Society are invited to bring the work of the Federation before clients when drawing up wills and giving advice on bequests. Any further information will be gladly given on application to:—

HON. SECRETARY,

THE NEW ZEALAND FEDERATION OF TUBERCULOSIS ASSNS. (INC.)

218 D.I.C. BUILDING, BRANDON STREET, WELLINGTON C.1.

Telephone 40-959.

OFFICERS AND EXECUTIVE COUNCIL

President: Dr. Gordon Rich, Christchurch.
Executive: C. Meachen (Chairman), Wellington.
Council: Captain H. J. Gillmore, Auckland
W. H. Masters } Dunedin
Dr. R. F. Wilson }
L. E. Farthing, Timaru
Brian Anderson } Christchurch
Dr. I. C. MacIntyre }

Dr. G. Walker, New Plymouth
A. T. Carroll, Wairoa
H. F. Low } Wanganui
Dr. W. A. Priest }
Dr. F. H. Morrell, Wellington.

Hon. Treasurer: H. H. Miller, Wellington.
Hon. Secretary: Miss F. Morton Low, Wellington.
Hon. Solicitor: H. E. Anderson, Wellington.

Charities and Charitable Institutions

HOSPITALS - HOMES - ETC.

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

BOY SCOUTS

There are 22,000 Boy Scouts in New Zealand. The training inculcates truthfulness, habits of observation, obedience, self-reliance, resourcefulness, loyalty to Queen and Country, thoughtfulness for others.

It teaches them services useful to the public, handicrafts useful to themselves, and promotes their physical, mental and spiritual development, and builds up strong, good character.

Solicitors are invited to COMMEND THIS UNDENOMINATIONAL ASSOCIATION to clients. A recent decision confirms the Association as a Legal Charity.

Official Designation:

The Boy Scouts Association (New Zealand Branch) Incorporated,
P.O. Box 1642.
Wellington, C1.

500 CHILDREN ARE CATERED FOR
IN THE HOMES OF THE

PRESBYTERIAN SOCIAL SERVICE ASSOCIATIONS

There is no better way for people to perpetuate their memory than by helping Orphaned Children.

£500 endows a Cot
in perpetuity.

Official Designation:

THE PRESBYTERIAN SOCIAL SERVICE TRUST BOARD

AUCKLAND, WELLINGTON, CHRISTCHURCH,
TIMARU, DUNEDIN, INVERCARGILL.

Each Association administers its own Funds.

CHILDREN'S HEALTH CAMPS

A Recognized Social Service

A chain of Health Camps maintained by voluntary subscriptions has been established throughout the Dominion to open the doorway of health and happiness to delicate and understandard children. Many thousands of young New Zealanders have already benefited by a stay in these Camps which are under medical and nursing supervision. The need is always present for continued support for this service. We solicit the goodwill of the legal profession in advising clients to assist by means of Legacies and Donations this Dominion-wide movement for the betterment of the Nation.

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

THE NEW ZEALAND Red Cross Society (Inc.)

Dominion Headquarters
61 DIXON STREET, WELLINGTON,
New Zealand.

"I GIVE AND BEQUEATH to the NEW ZEALAND RED CROSS SOCIETY (Incorporated) for:—

The General Purposes of the Society, the sum of £..... (or description of property given) for which the receipt of the Secretary-General, Dominion Treasurer or other Dominion Officer shall be a good discharge therefor to my trustee."

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

MAKING A WILL

CLIENT: "Then, I wish to include in my Will a legacy for The British and Foreign Bible Society."
SOLICITOR: "That's an excellent idea. The Bible Society has at least four characteristics of an ideal bequest."
CLIENT: "Well, what are they?"
SOLICITOR: "It's purpose is definite and unchanging—to circulate the Scriptures without either note or comment. Its record is amazing—since its inception in 1804 it has distributed over 600 million volumes. Its scope is far-reaching—it broadcasts the Word of God in 820 languages. Its activities can never be superfluous—man will always need the Bible."
CLIENT: "You express my views exactly. The Society deserves a substantial legacy, in addition to one's regular contribution."

BRITISH AND FOREIGN BIBLE SOCIETY, N.Z.

P.O. Box 930, Wellington, C1.

DOMINION LEGAL CONFERENCE, 1957.

An active Committee in Christchurch has plans well under way for the Dominion Legal Conference to be held next Easter.

The following programme has already been planned :
Monday, April 22 : 5.30 p.m. Cocktail Party.

Tuesday, April 23 : Official opening ceremony, followed by Morning Tea.

Papers and Remits in afternoon.

Conference Dinner.

Wednesday, April 24 : Papers and Remits.
Conference Ball.

Thursday, April 25 : (Anzac Day) Free.

Friday, April 26 : Golf, tennis and bowls, followed by a concluding function.

A special programme for the entertainment of ladies is under consideration, and details will be given later.

Over 200 practitioners from outside Christchurch have already indicated that they will be attending the Conference, which will be honoured by the presence of the Chief Justice, the Attorney-General, Mr Justice Stanton, Mr Justice Hutchison, Mr Justice McGregor, and Mr Justice Henry. It is likely that some others of the Judges may be able to attend, and that a number of barristers and solicitors from Australia will be present.

The Conference Secretaries advise that they still have accommodation available at Hotels of a reasonable standard which they are prepared to recommend. They are unable, however, to keep this accommodation after December 15, 1956. Any practitioners wishing to attend the Conference who have not already given notice, should communicate with the Secretaries of their District Societies who should have a supply of the necessary forms.

PRESENTATION TO MR WALTER PARKER.

On his Retirement.

The occasion of the retirement of Mr Walter Parker, the Registrar of the Court of Appeal and of the Supreme Court, Wellington, was marked by a large gathering of the profession to do him honour and present him with a silver tea and coffee service and a cheque as tokens of their esteem for him.

Mr I. H. Macarthur, President of the Wellington District Law Society, said that he had had some difficulty in getting Mr Parker to keep the fixture; he was quite appalled at the prospect of appearing in front of them. He continued :

"A good long time ago when I was a Solicitor-Clerk, the Senior Magistrate where I was working was a kindly compassionate



Mr Walter Parker.

old man with silver hair, quietly spoken, with not one extra word. On the other hand the Clerk of the Court, though efficient, was inclined to be talkative, and he ran the Court from start to finish as though he was an R.S.M. A story told within our firm was that a client of ours who had never been inside the Magistrates' Court wished us to arrange for him to listen to a case, which was done. Coming out afterwards he said : 'Thank you very much indeed. As you know, I have never been inside a Court before and I was most interested; but one thing that puzzled me immensely was this : Who was that old gentleman sitting up there behind the Magistrate ?'

I have told that little anecdote, because if there is one thing that none of us can charge Walter Parker with, it is being over-talkative. On the contrary, I think I speak for you all when I say that during the six years and a bit that he has been with us as Sheriff and Registrar he has carried out his duties quietly and efficiently, and has, moreover, given us the co-operation and help which we have found almost universally on the part of the Supreme Court staff.

"Now that his time of retirement has come we could not let him go without asking him to come into these familiar surroundings so that we could say, 'Thank you for the help and the assistance you have given to us : we wish you well in your retirement'. We hope that you will have many happy years in your retirement, and that you and Mrs Parker will remember

your friends in the profession in Wellington by this token from us which we want you to accept, and I do not want you to overlook the additional envelope there because it has something of interest within it.

Mr Parker, in his reply, said :

"Last night I spent a lot of time making a few notes of what I ought to say to-day, and I might as well have gone out and gazed at the stars, as I have no more idea now of what they were, of what they are or of what they should be; but I would like to say right from the outset, 'Thank you very much for all that you have done for me since I have been here'.

"This presentation really takes my breath away. I think Mrs Parker will have a bit more to say about it than what I will; but I would say that I do appreciate your words every bit as much as I am sure Mrs Parker will appreciate this silver.

"Believe me, this is no easy day for me to stand up here at the end of the road and say my association with you is done. I am going to feel it very, very much indeed. Perhaps I have had a good spin in the Department; I have been very fortunate in every position I have had to deal with. I met Mr Archie Treadwell this morning, and he was the first lawyer whom I ever met. He was Judge's Associate in Dunedin when I entered that office as a very, very green cadet. There, too, I had the fortune of meeting one of your number, and I refer to the late Mr Alf. Hanlon, K.C., who was a really good friend, even to the cadets, in those days.

"Later on, I moved to Christchurch and became friendly with the late Sir Arthur Donnelly. He was a gentleman, and a good lawyer and a sportsman. And so it went on; and I then found myself in Auckland, and there again I met a man who I think did more for me than anyone else, and I refer to the late Sir John Hosking. It so happened I had to take over the work of another clerk during the first World War, when I was still in my cadetship, and he sent for me and said : 'You and I will be having a lot to do with each other. I sign everything on the desk without reading it, and unless you are certain of a thing don't put it on my desk.' That gave me a great ego, and I have been eternally grateful to Sir John Hosking ever since. I suppose it was because he was one of the earliest memories that he sticks in my memory the most. There are many others I probably should mention if they were not still alive, but I would like to thank you here personally in this room for all that you have done for me in the last six years. It has really been a labour of love in many ways, and everybody has been co-operative. I have been kept busy most times, but I do appreciate the way you have all helped me. I really think I should say now that I am not solely responsible for your kind words; I think most of the credit belongs to my staff. Thank you very much indeed for all that you have done."

In the Court of Appeal.

In the Court of Appeal just before its adjournment on the last day of which Mr Parker was to attend as Registrar, he was addressed by Mr Justice Gresson who was presiding: "Mr Parker, as this is the last day we shall have you with us in this Court, I should like to say a few words of farewell."

"For many years you have occupied the dual role of Registrar of the Supreme Court and Registrar of the Court of Appeal. I do not know which has proved the more exacting; but there

is general agreement that in both capacities the Judges have always had from you careful and courteous attention to their many requests, and diligent and efficient performance of the duties in both positions.

"On behalf of the Chief Justice and the other Judges of the Court of Appeal, we take leave of you and hope that you may enjoy a happy and carefree retirement."

Mr Parker: "Thank you, Your Honour."

MR E. J. W. HALLETT.

Fifty Years in Practice: Complimentary Dinner.

A warm atmosphere of good fellowship surrounded the members of the Hawke's Bay Law Society when they gathered at the Hawke's Bay Club during the August Sessions, to pay their respects to Mr E. J. W. Hallett, the senior partner of the firm of Messrs Hallett, O'Dowd, Lusk, Willis, and Co., of Hastings, who had recently celebrated the fiftieth anniversary of his call.

The dinner was presided over by the President, Mr H. W. Dowling, and was attended by Mr Justice Turner who presided at the Sessions, and by Mr W. A. Harlow S.M., and forty-three members.

THE BENCH.

Following an excellent dinner and the loyal toast, Mr K. U. McKay rose to propose the toast to "The Bench". Mr McKay said he had been classified as a conveyancing counsel, but nothing could be further from the truth: the most he would admit to was that he was one of the working and non-talking lawyers. He said that one of the mainstays of the administration of justice was the quality of our Judges and that the unifying force of English jurisprudence was dependent upon the Judges. Our Judges' decisions were respected throughout the English-speaking world, and he was proud of the Bench, of its courtesy and integrity.

The President then called on His Honour to reply.

Mr Justice Turner began by expressing his deep sense of appreciation at the invitation to attend the dinner and for the way in which the toast had been honoured. He extended his congratulations to Mr Hallett on this historical occasion. His Honour delighted those present with a number of legal anecdotes, and, in the course of them, he mentioned the case of the counsel appearing for a plaintiff in a damages action who, while addressing the jury, advised them that they might be interested to learn that the defendant had, just before the accident, insured himself with a well-known insurance company against liability for this precise kind of damage, and counsel then turned to the Judge, who had reached a state of near-apoplexy, and remarked that he was happy to advise him that he had looked into the law and that the information just given to the jury was not a ground for a new trial; it was merely gross professional misconduct.

His Honour concluded by expressing his appreciation at the very kind reception he had received at the hands of the Hawke's Bay Bar. He stated that it was one time the tradition that a Judge should withdraw from the society of his former colleagues, but this was not the case so much to-day; and for what His Honour himself had done in this direction he was proud. He remarked that he was not the only one among his brother Judges to express the view that Judges need the friendship of their former colleagues and need to make new friends to replace those who have gone before by reason of the passing of years, and he was grateful for what the Hawke's Bay Bar had done in this direction.

His Honour resumed his seat, amid prolonged applause.

THE GUEST OF HONOUR.

The toast to the Guest of Honour was proposed by Mr W. G. Wood, himself a member who had attained and passed his fifty years at the Bar. In proposing the toast to Mr Hallett, Mr Wood said that he had known him since boyhood. He went on to say:

"I have found him, always, as you have, what everyone who practises our profession ought to be, a gentleman. If you can say that of a man, there is not much else that you can say of him. It is all-embracing. You will remember the answer that Baden-Powell got from the Boy Scout when he asked him if he knew what a gentleman was. 'He keeps his toenails cut, and does not tell lies.' I have always thought that definition

goes a long way. I have not seen Mr Hallett's toenails, and don't want to; but we may be sure they are not boring holes in his socks; and that, if he has told any lies, they have been very pale ones. We who practise in this District are fortunate, associated as we are with men of honour whom we can trust implicitly and who are our friends. Mr Hallett is one of them and none is held in greater respect."

Mr Wood then went on to give an account of how Mr Hallett had spent the seventy-four years of his life, including his five years at Canterbury College, and how he qualified in 1905 and was admitted on June 14, 1906, and how he first went to Taranaki and practised there for six months. Mr Wood then went on:

"But thinking, I have little doubt, that the prospects were rosier if he diverted his intentions from milking cows in Taranaki to fleecing sheep in Hastings, he returned to Hawke's Bay and commenced practice in February, 1907."

Mr Wood then referred to Mr Hallett's civic duties, and how he had been a member and often chairman, of various bodies and institutions, including the Hawke's Bay District Law Society. Mr Wood then said:

"We are met to thank him for his services to us and to the community and to congratulate him upon the way he has for fifty years stood up to the rough and tumble of a busy life."

He then referred to various good qualities possessed by Mr Hallett, and to the pleasure it gave the gathering in its endeavour to show him how much he was appreciated and respected. Mr Wood concluded by wishing Mr Hallett many more years of useful and happy practice.

The President then remarked on the esteem in which Mr Hallett is held. Those who best know what it means for justice to be done between man and man, know that it has always been Mr Hallett's aim not only to act between man and man to his own advantage, but to achieve justice whether to his advantage or not.

The President then presented to Mr Hallett as a token of the very high esteem in which all held him, a silver tray bearing an inscription in Latin: "Throughout fifty years, learning, justice, and service."

Mr Hallett in reply, stated that this was the proudest moment of his life. He went on to say:

"You will understand that I am somewhat overwhelmed by what has been said. This is a great occasion, but, when I say I am honoured, I take no credit for surviving fifty years. I am happy to have survived the span of years. The habit grows on one as does the friendship of those who have passed such tributes to-night. To those who have flattered me I say this: In what you have said there is a basis of fact, but something of supposition; and Mr Dowling in particular, has not been cross-examined. I express my appreciation and raise no defence."

Mr Hallett remarked that in the course of his practice he had appeared before thirty Judges, not including Judges of the Compensation Court, the Maori Land Court, and Magistrates, and had appeared in almost every Supreme Court in the North Island. He then recounted some of his interesting experiences in practice, and said that in his opinion the young barrister of to-day is a better educated and more efficient man than his counterpart of fifty years ago and showed a truer appreciation of his fellow-practitioner than those of former years.

In conclusion, Mr Hallett produced a Title of 1876 in the name of his grandfather, which he handed to the President for the perpetuation of the Hallett name.

This was accepted by the President amidst acclamation, and the dinner concluded.

IN YOUR ARMCHAIR—AND MINE.

BY SCRIBLEX.

Caustic Comment.—Dr W. Friedmann, Professor of Public Law of the Melbourne University, in a review in the *Modern Law Review* (July, 1956) of Dr J. L. Robson's *New Zealand: The Development of its Laws and Constitution*, has some pointed observations to make of the Privy Council. "In the Commercial Trusts Act 1910, New Zealand had an interesting piece of anti-monopoly legislation, somewhat modelled upon the American Sherman Act. The effectiveness of this Act was probably destroyed for good in the celebrated case of *The King v. Crown Milling Co., Ltd.*, which went to the Privy Council in 1927. The question at issue was whether a company formed for the purpose of acting as sole selling agent, on a commission basis, for mill owners, with a partial monopoly of the supply of flour and control over prices of flour in part of New Zealand, offended against the Act. The New Zealand courts were deeply divided on the issue of the 'public interest'. The Privy Council sided with those who held this part monopoly not to be against the public interest. The decision is famous above all for a much debated exercise in judicial self-deception: 'It is not for this tribunal, nor for any tribunal, to adjudicate as between conflicting theories of political economy' (per Lord Finlay). Having delivered itself of this opinion, the Privy Council proceeded to take sides in a conflict of political and economic theory, by holding that it was for the prosecution to establish in each particular case whether a monopoly was contrary to the public interest, and that the Crown had not discharged the burden of proof in this case". There are other features about it worthy of note. Of the counsel in the Court of Appeal ([1925] N.Z.L.R. 753), two became Chief Justices and two Puisne Judges of our Supreme Court Bench. For the appellant, the Attorney-General (Sir Francis Bell) was supported by the Solicitor-General (Arthur Fair K.C.) and F. B. Adams, then Crown Prosecutor at Dunedin: for the respondent, Skerrett K.C. and Myers K.C. appeared and shared the same junior—a situation that, as far as Scriblex knows, has no parallel in our legal records.

Baron Westbury.—In his toast to the Judiciary at the annual dinner of the Wellington District Law Society, the President (I. A. Macarthur) quoted one of the sardonic sayings of Lord Chancellor Westbury who was renowned for the bitterness of his speech. On one occasion while being driven in his carriage the horses bolted. "I can't hold then, my Lord," said the coachman, "what shall I do?" The instincts of a lawyer did not desert Westbury in this perilous situation "Drive into something cheap," he replied.

The Safe Answer.—One of the worries of the counsel's life is the incautious admission made by his client at the material time but of which he is unaware until it first arises at the trial. Even then it is sometimes capable of explanation. An Irish carrier instituted proceedings against a veterinary surgeon who had driven his motor-car into the carrier's cart and inflicted personal injury and loss upon him. In cross-examination of the plaintiff carrier, counsel for the defence asked:

"Did you, or did you not, at the time of the accident say that you weren't hurt?" "Well, now, it was loike this," replied the carrier. "Oi'm goin' along the road, with me ol' ass and cart, and along comes this motorist fella and knocks us all into tha ditch. Ah ya niver saw secha mess in yer loife. There was me flat on me back in the ditch, wit me legs in the air. There was me ole moke in the ditch with her legs in the air, and there was the ole cart in the ditch with her wheels in the air. Then this motorist fella comes up and he sees that the moke has her leg broke. So he goes back to his motor-car and comes back with a revolver, an he shoots her. Then he comes up ta me and he says, 'Now what about you? Are you hort?'"

Haldane L.C.—Richard Burdon Haldane was born in 1856 and, on the centenary of his birth, a daughter of Lord Asquith has written a tribute in the *Times* in which she recalls that he and her father, a future Prime Minister, formed a lasting friendship when, as young and briefless barristers, they chanced to sit beside each other at a dinner in Lincoln's Inn. When Haldane received his first brief concerning a basement infested with black beetles, it seems that he and Asquith sat up together all night "pooling their whole intellectual resources to cope with the problems it presented". Like many another Scot who went, unknown and uninvited to the English Bar, Haldane was tenacious and confident, prepared to devil for others and to work, study, and memorize day and night. During his first year when he earned £31 10s., he translated Schopenhauer and edited Dart's *Vendors and Purchasers* while he waited for briefs. In his fourth year, his fee-book showed over £1,100, and he began to acquire a reputation before the Privy Council for mastery of complicated facts in varying systems of law and jurisprudence that has never been exceeded. In his *Autobiography*, he mentions one fortnight within which, beginning with a case of Buddhist law from Burma, he went on to argue successively "appeals concerned with the Maori law of New Zealand, the old French law of Quebec, the Roman-Dutch system of South Africa, the Mohammedan law, and then the Hindu law from India, the custom of Normandy in a Jersey appeal and Scottish law in a case from the North". He had no doubt about his own powers. "I was not very easy to catch out or drive into a corner," he says. "I was full of knowledge and industry, and I fought hard in Court. A leading Chancery Queen's Counsel of these days told me that he suffered greater strain for encountering me in argument than from encountering anyone else at the Bar." Always an outstanding philosopher, he became an excellent Lord Chancellor, but the greatest tribute paid to him is to be found in the remarkable inscription signed by Field-Marshal Douglas Haig in his War Despatches. "To Viscount Haldane of Cloan, the greatest Secretary of State for War England has ever had. In grateful remembrance of his successful efforts in organizing the military forces for a war on the Continent, notwithstanding much opposition from the War Council and the half-hearted support of his Parliamentary friends."

LEGAL LITERATURE.

Introduction to Company Law in New Zealand. Third Edition. By J. F. Northey, B.A., LL.M. (N.Z.), Dr. Jur. (Toronto), Professor of Public Law, Auckland University College; Barrister and Solicitor of the Supreme Court of New Zealand. Pp. 276 with appendices, Index, T. of C., etc. Wellington: Butterworth & Co. (Australia) Ltd. Price: 37s. 6d.

In this, the third edition since January, 1954, now called for by the new statutory provisions, Professor Northey has again given an orderly and annotated narration of the contents of the Companies Act, with explanations, where considered necessary, of the trading or financial reasons responsible for the clauses or principles he explains. The recent New Zealand case of *McNeil v. McNeil's Sheepfarming Co., Ltd.*, [1955] N.Z.L.R. 15, is noted in illustration of the attitude of the Court in interpreting articles of association, and other discussions of important principles (ultra vires contracts, estoppel by share certificate, payment of dividends, etc.) are retained or modified in terms of the changed legislation. It is of course too early for case-law to have arisen in New Zealand in respect of the 1955 Act, which does not come into force here until January 1, 1957, but the comparative table in Appendix E enables the reader to trace germane decisions in England under the Companies Act 1948 (U.K.).

The Law of Contract. Fourth Edition. By G. C. Cheshire, D.C.L., F.B.A., of Lincoln's Inn, Barrister-at-Law, Reader in the Law of Real Property to the Council of Legal Education, and C. H. S. Fifoot, M.A., F.B.A., of the Middle Temple, Barrister-at-Law, Fellow of Hertford College, Oxford, All Souls Reader in English Law, Reader in Common Law to the Council of Legal Education. Pp. 556 with Index. London: Butterworth & Co. (Publishers) Ltd. Price: 61s.

Four editions in ten years suffice to show the authority of this work, as well as to recall the extent to which the subject-matter is changing. The learned authors, in this new edition, have kept abreast of current developments not only of new law but also of juristic and commercial trends. Thus, the significance of *Bonsor v. Musicians Union*, [1954] Ch. 479; [1954] 1 All E.R. 822, is set out in relation to the concepts of contracts of adhesion (p. 23), of contracts with monopolies (p. 114), and of the ultra vires contracts of a trade union (p. 346). The developments in the "*High Trees*" principle up to *Toot Metal Manufacturing Co., Ltd. v. Tungsten Electric Co., Ltd.*, [1955] 2 All E.R. 657, are briefly analysed. In view of the comparison with common-law estoppel (p. 78), a note on the relationship of the "*High Trees*" principle to that of equitable estoppel might have been introduced by way of practical *elegentia* to round off the topic. On p. 533, an unexpected reference to *Ministry of Health v. Simpson*, [1951] A.C. 251; [1950] 2 All E.R. 1137, in the discussion of money paid under mistake of fact, shows the wide scope of this book, which has by now a firm position as a standing work of reference. This is one of those really satisfying books, for guidance in practical matters, and yet to be read with academic enjoyment.

The Rule Against Perpetuities. By J. H. C. Morris, D.C.L., of Gray's Inn, Barrister-at-Law, Fellow of Magdalen College, Oxford, and W. Barton Leach, LL.B., of the Massachusetts Bar, Story Professor of Law at Harvard Law School. Pp. 316, appendices of statutes (11 pp.), and Index (9 pp.). London: Stevens & Sons, Ltd. Pub. price: 55s.

Dr. Morris and Professor Leach present the Rule against Perpetuities in today's clothing with the aim of showing where it needs some adjustment to fit modern needs. The Rule itself, and its various limbs, are clearly and interestingly set out as now standing in the whole common law area, British and American. It is of local interest to see *Re McEwen, McEwen v. Day*, [1955] N.Z.L.R. 575, mentioned twice in the discussion of powers and the Rule.

The book is not a competitor with Gray's as an exhaustive work, but is a valuable introduction to its study. For example, the manner in which the principle of *Christ's Hospital v. Grainger*, (1849) 1 Mac. & G. 460, has been used in *Re Tyler*, [1891] 3 Ch. 252 (C.A.), to secure perpetual maintenance of a grave is told simply and plainly, so that its significance may be practically appreciated.

There is a series of critiques in which particular assessments of fact by the Courts in the application of the Rule are analysed, and the need to adjust the law in the light of these situations is discussed, both theoretically and practically. The learned authors consider that the "remorseless" application of the Rule should be modified when its privative effect becomes punitive. By the precocious toddler, the unborn widow, and the fertile octogenarian (who, they recall, can still adopt), they reinforce their point that the Rule "should not be a constantly present threat to reasonable dispositions which slightly overstep a technical law" (p. 35). This approach seems to set the Rule in the field of marginal hardship already occupied by the debt or action now statute-barred by one day, the contract that should be in writing but is not, the will where the witnesses are not at any stage present together, the application to Court that is out of time, and the testators who execute each other's wills. For it is in the nature of law that lines be drawn, and a policy of progressively deleting these lines may unexpectedly defeat the valid ends for which they were established. But, whether or not one agrees that this, or any other particular Rule, should be modified by Court or statute for the purpose of condoning its breach or neglect by draftsmen, there is every advantage in the warning to conveyancers given by the work of Dr Morris and Professor Leach in exploring and recording the hardships that follow the breaking of the perpetuities rule.

Chapter 8, setting out the application of the Rule to various interests, e.g. contracts, options, and easements, is a useful perspective for the conveyancer, who can easily overlook the application of the Rule in these matters. Altogether, the book is an acquisition to the shelves of student and practitioner alike.

Taxation Laws of New Zealand. By H. A. Cunningham, LL.D., A.I.A.N.Z., Barrister and Solicitor of the Supreme Court of New Zealand. Third edition, by M. I. Thompson, LL.B., A.R.A.N.Z., Barrister and Solicitor of the Supreme Court of New Zealand and of the Legal Section of the Inland Revenue Department, and (Practice Section only) by I. M. Roberts of the Inland Revenue Department. Consulting Editor: T. A. Cunningham, Barrister and Solicitor of the Supreme Court of New Zealand. Pp. 859 + Appendices, Index, etc. Wellington, 1956: Butterworth & Co. (Australia) Ltd. Price: £5 15s., + Supplement Service £2 2s. p.a.

This work is largely a revision of its predecessor, to bring it up-to-date in terms of recent case law, and of the 1954 consolidating legislation. The considerable portions of the previous edition (1942) standing without need of change show how justifiably "Cunningham and Dowland" has stood as an authority in its field.

The pages are now set in a longer measure, but greater readability than previously is provided by the use of a wide-based type. The editors have further improved the format by transferring the names and references of illustrative cases to the footnotes, where they appear in light italics instead of in the bold roman face that, in the second edition, distracted attention in the body of the page.

By the continual addition of new cases, the book is more and more taking on the character of a digest. In such a subject, abundant illustration is desirable, but there is a risk of exceeding manageable limits for the busy reader. For example, para. 347 is now expanded by some ten illustrative cases. It may be that a slightly fuller treatment of the leading case, *New York Life Insurance Co. v. Stiles*, (1889) 14 App. Cas. 381; 2 Tax. Cas. 460, to show that the "veil of incorporation" will sometimes be beneficially lifted in relief of taxation, and then a mere list, with references, of the juristic persons—mutual insurance association and social clubs (even when incorporated as companies) distributing surpluses, co-operative societies paying bonuses to members, local authorities applying surpluses in reduction of rates, unregistered trade-unions running successful holiday camps—so far brought within its scope, would have been adequate to show the lines along which the principle can be applied to practical cases encountered.

A monthly brochure, "New Zealand Current Taxation", sets out material of current interest, with a cumulative noter-up to be merged into the familiar six-monthly loose-leaf Service supplement to keep the main work right up-to-date.

M. B.