TWO JUDGES: FATHER AND SON.

THE LATE HENRY SAMUEL CHAPTON.
Appointed originally, Judge of the Supreme Court of New Zealand, 20th December, 1863; resigned March, 1869; re-appointed 10th March, 1883; resigned 1st March, 1875.

FREDERICK REVANS CHAPTON.
Appointed Judge of the Supreme Court of New Zealand, 15th September, 1902; also to take office as President of the Arbitration Court of the Colony.
"TWO JUDGES - FATHER AND SON":

AN ANALYSIS OF THE CAREERS OF HENRY SAMUEL CHAPMAN AND FREDERICK REVANS CHAPMAN

BY

PETER SPILLER.

SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE OF DOCTOR OF PHILOSOPHY IN THE FACULTY OF LAW, UNIVERSITY OF CANTERBURY.

PREFACE

I should like to thank those who have helped me in the production of this thesis. I am indebted to John Farrar for having alerted me to the existence of the Rosenberg papers, for his introduction to the Rosenbergs, and for his subsequent encouragement in this project. I am extremely grateful to Ann and Wolf Rosenberg for their unfailing hospitality, generosity and support, during months of research on the papers held by them. I thank the staff of the University of Canterbury Library, the National Library and the Hocken Library, for help in providing access to material. I thank my supervisor, John Burrows, for his encouragement, his expeditious reading of my draft and for his constructive advice. Finally, I express my loving gratitude to my wife, Dorothy, for her patience, understanding and support.

Except for quotations indicated in the text, and such help as I have acknowledged above, this thesis is wholly my own work.

Peter Spiller.

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ABSTRACT

The main focus of this thesis is on the legal and judicial careers of Henry Samuel Chapman (1803-1881) and his son Frederick Revans Chapman (1849-1936). Henry Chapman served as judge in Wellington (1844-1852) and Dunedin (1864-1875) and was also a barrister, law lecturer and acting judge in Victoria (1854-1864). Frederick Chapman was a member of the Dunedin bar (1872-1903), President of the New Zealand Court of Arbitration (1903-1907), and judge of the New Zealand Supreme Court and Court of Appeal (1903-1924). Besides examining their legal careers, I outline their personal and educational backgrounds and their wide range of extra-legal activities. I study each man's career in chronological order, with convenient subdivisions relating mainly to their shifting geographical locations. In an appendix I sketch the career of Martin Chapman, whose life was intertwined with those of his father Henry and brother Frederick and therefore forms a useful reference-point for the thesis. The structure of my study is determined by my conviction that, as far as possible, one must allow historical material to suggest its own significance and not try to shape it according to conscious predetermined convictions.

This thesis is of human interest in itself. The combination of a rare collection of family papers, official records and published accounts produces a detailed and intimate account of the lives of Henry and Frederick Chapman and of their periods. The thesis also sheds light on the characteristics and values of the educated, aspirant middle class to which the Chapmans belonged. These included a strong commitment to the work ethic, an emphasis on self-improvement in a wide range of areas, a benevolent tolerance, and a devotion to family life. Finally, the thesis illuminates important aspects of colonial legal development in the late nineteenth and early twentieth centuries, and in particular the continued strength of inherited English legal traditions counterbalanced by the steady growth of a unique New Zealand jurisprudence.
PART ONE:

HENRY SAMUEL CHAPMAN

(1803-1881)

[Henry Samuel Chapman] certainly held an unique position in the colonial history of the Empire. I do not know of any other man who had been associated in the development of the colonies of Canada, New Zealand, Tasmania, and Victoria. In all of these colonies [he] took up a public and distinguished position.

CHAPTER I

EARLY LIFE AND CAREER (1803-1843)

I. Early years in England: 1803-1823

Henry Samuel Chapman was born on 21 July 1803, in Kennington, Surrey, England. His father was Henry Chapman (1770-1863), the son of a merchant who had amassed and then lost a fortune in commerce with the American colonies. Henry Chapman, after suffering hardship in his youth, entered the Government Barrack Department, which had the duty of constructing barracks and defensive works throughout Britain. There he derived a small but improving income, and by the time of his retirement in 1830 he had become one of four barrack masters in the Department. Through persistent efforts he also educated himself, and became a fairly accomplished linguist (in retirement, he became fluent in French), a good

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1 Unless otherwise indicated, this survey is drawn from FRC, Outline of the life of Henry Samuel Chapman (1929) and FRC, Memoranda of conversations with Henry Samuel Chapman.

2 Henry Chapman was the only child of Henry Chapman (1744-1798) and his first wife Rebecca Winter, who died in 1771. In 1772, Henry Chapman senior married Christina Neate and they had three surviving children, William Neate, Christiana Fanny (1775-1871) and Emma. (Henry Samuel Chapman maintained an especially close link with Fanny Chapman). Henry Chapman senior was impoverished in the wholesale ruin brought about by the War of Independence (1775-1783). In 1784, he migrated to the United States, as an agent to collect his own estate for his creditors and to collect similar ruined estates, and he died fourteen years later in New York.

3 Henry Chapman was rescued from destitution and given an education by his maternal uncle Winter, a shipbuilder. He began work as an apprentice to his uncle, but while Chapman was still a young man Winter's shipyard was destroyed by fire, Winter died and Chapman's occupation came to an end. Chapman was thus grateful to accept the secretariaship offered to him by General Oliver D'Lancney in 1793. This led to a position in the Barrack Department.

4 His duties led him into every part of Britain, to select sites for barracks and defensive works.
musician and a painter. Henry Chapman, a man of decision, energy and industry, was to exercise an enduring influence on the life of his son Henry Samuel. He was to be mentor, confidant and indefatigable correspondent through the first sixty years of the life of his son, and died only at the age of ninety-three. On 8 July 1800 Henry Chapman married Ann Hart Davies (c 1774-1832), eldest daughter of the Reverend Thomas Hart Davies. She was remembered as an attractive and vivacious woman who, despite frail health, gave devoted service to her husband and her two sons.

Henry Samuel Chapman was born into a country at war with France under Napoleon Bonaparte. His early youth was subject to certain adverse influences, notably the limited financial means of his parents and the great weakness of his eyes which developed at a very early stage. Also, the death of his only brother in 1811 caused him "great sorrow" and Chapman continued to speak of him throughout his life. But it appeared that these experiences did not affect "the ardour of the strong, vigorous and high-spirited boy who throughout his life understood thoroughly how to derive the greatest amount of enjoyment from every occupation in which he embarked".

Although his family had limited financial income, his father (in view of his own childhood experiences) was determined to give him as good an education as

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5 He was described as being "very small, very particular in dress" (I M Dunscombe to FRC, 9 February 1882).
6 HSC to HC, 13 June 1844.
7 Henry Samuel Chapman described her as "pretty with the most beautiful eyes, a brilliant complexion and great vivacity of manner like a French woman" (HSC to FRC, 30 April 1871). Her marriage took place within the lunch hour assigned to Henry Chapman, after the ceremony her husband returned to his afternoon duties, and when he returned home at the end of the day she was found at her household duties. The couple had only two children: Henry Samuel, and James Winton, born 18 January 1806. Ann Chapman's health was never good, and she died of a painful illness on 2 February 1832 (FRC, Memoranda).
8 FRC, Memoranda 2.
possible. Thus, in 1811, he was sent to a good boarding school in Bromley, Kent,\(^9\) and here he remained until 1817. The memories of this school, during his formative years of late childhood and early adolescence, remained with him throughout his life. He remembered "a more primitive [and rural], rougher and in some respects healthier existence than of later times".\(^{10}\) It was here that he commenced his lifelong interest in foreign languages: at age eight he commenced Latin, and at eleven he started French.\(^{11}\) At the same time, Chapman developed a love of music, and later recalled the "vivid emotion of delight with which we listened to the music of the *Zauberflote*, the favourite opera of the 1811-1812 season."\(^{12}\) He also recalled that he learnt to skate on the Thames river when it was frozen over in the hard winter of 1812 while Napoleon was retreating from Moscow.\(^{13}\) During his school holidays, Chapman regularly visited the home of the Duke of Brunswick (this followed a chance meeting with the Duke in the street, at which Chapman had made a favourable impression). He played with the Duke's sons, and here he met and was kindly received by the Duke's sister, Caroline Princess of Wales. It was said that, as a result of this experience, Chapman became a "warm hater of Caroline's husband, [and] republican in sentiment".\(^{14}\)

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9 The school was at Mason Hill, and was run by a German couple, Mr and Mrs Pieters. In 1811, Chapman's father wrote that he was at "a most excellent boarding school in the neighbourhood of Bromley, rather expensive, but his education is paramount to every other consideration" (FRC, *Memoranda* 1; Henry Samuel's first letter was written on 6 December 1811).


11 HSC to HC, 15 June 1847.

12 HSC, Review "Italian music", May 1839, in HSC, *Essays and Articles* II.

13 Chapman's favourite sports were skating, rowing and swimming, but his short-sightedness prevented any expertise at cricket (HSC to FRC, 18 June 1864). Events on the Continent were never far from his consciousness: in later years he recalled the occasion when the biggest boy in his school was enlisted and the receipt of news later that he had been killed at the battle of Waterloo.

Chapman was a hard-working and apt pupil, who (in his own words) "endeavoured to the utmost of [his] abilities to merit the continuation of [his] parents' love and affection". However, he continued to suffer from an unfortunate affliction of his eyes, and his school career was seriously interrupted by repeated painful operations. It was probably because of this that he was, in 1817, removed to a school in Newington, London, where his eyes could be given better attention. During his time at Newington, his father placed in his hands an abridgement of Blackstone's *Commentaries on the Laws of England*, which he later recalled was "very perfunctory but of some use". His schooling at Newington lasted only two years, at the end of which his father was unable to fund his education further. Chapman later reflected that his formal schooling did not adequately prepare him for his future career, and that the limited means of his parents "retarded his progress for many years for had he not had to struggle to maintain himself his literary and legal career would have commenced much earlier". The image of himself as a self-educated and self-made man was to remain with Chapman throughout his life.

At the age of sixteen, Chapman began work as a junior clerk in Esdailes Bank, London. Here he was placed in a position of some trust, as he lived on the premises and had charge of the house. However, after only a year, his eyes failed, and he was withdrawn from the bank, ordered not to read for twelve months, and frequently subjected to severe operations. When his health was somewhat restored, he entered the office of a bill broker named Solomonson, who operated in the City of

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15 HSC to HC, 13 June 1814. His father wrote in 1816 that "in education, [Henry] was realising his most sanguine wishes" (FRC, Memoranda 1).
16 Lecture at Melbourne University, 7 March 1864.
17 HSC to HC, 7 June 1817.
18 FRC, Memoranda 2.
19 Chapman remained short-sighted throughout his life, but until shortly before his death he managed to cope with this disability with the help of spectacles.
London. Solomonson not only guided Chapman in the elements of mercantile business, but also employed a tutor to teach him German and allowed him considerable time for the study of French and for reading. Chapman later recalled his habit of incessant reading at this time, even though he "had not means to get a library ... I always had to sell my book before I could buy another". Chapman also developed an interest in politics, born out of the events of the time. He later recalled that the death of George III and the trial of Queen Caroline in 1820 "made me a politician for the domestic excitement was great, the talk of revolution constant and open, and then I began to find out who everyone was and enquire into everything". In the winter of 1821-1822, Chapman was engaged in a business assignment in Amsterdam, on behalf of Solomonson. Chapman was to remember this as one of the most pleasant episodes in his life, and spent much time in improving his knowledge of German, acquiring Dutch, and engaging in amusements such as skating. When Chapman returned to England, Solomonson incorporated a partner with large capital into his firm, and increased the scale of the business. He then decided that Chapman should travel to Quebec as his merchant. Chapman was amenable to this arrangement: he saw no chance of making headway in England without capital of his own, and his grandfather's former connection with America "made him familiar with colonial lore". Chapman sailed for Canada in the early part of 1823. This marked an important point in Chapman's career: at less than twenty years of age, he had commenced a colonial career which was to last just short of fifty-nine years.

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20 This move was designed so that Chapman might acquire "business habits".
21 FRC, Outline.
22 FRC, Memoranda 20.
23 Chapman later recalled that he lived at Docke in 1822 (HSC to FRC, 25 September 1869).
24 FRC, Memoranda 28.
Chapman's connection with Quebec lasted for ten years. The arrangement with Solomonson soon came to an end, and Chapman set himself up as a merchant on his own account. He began mercantile life without capital of his own, and most of the business he did was as a commission merchant on behalf of concerns in England, to which he made annual trips until 1833. He later recalled that "his liberally whiskered face" concealed his want of age, and that, through hard work and ability with figures, he made a modest living. The "mercantile habit of method" which he established by this time remained with him throughout his life, and "through to the last he always kept his accounts with all the accuracy of a merchant". At the same time, being a man of powerful physique and spirit, Chapman took great delight in the sports of shooting, skating and sleighing. During this period, Chapman expanded his circle of friends and acquaintances to include the French radical Louis Papineau and the English reformer Arthur John Roebuck. He developed an interest in local liberal politics, and wrote articles in the Quebec liberal newspapers. Chapman also travelled to and developed ties in the United States of America: he later wrote of himself as one "who has passed many years of his life on the American

25 Surviving advertisements in the Quebec Gazette of 4 August 1823, 18 September 1823, 30 October 1823 and 5 April 1824, show that he sold choice wine, fine cloth and dry goods.

26 FRC, Memoranda 28. His mercantile experience was of use to him in his later judicial career. In 1851, in a trial in Wellington, the point arose as to whether goods sold for less at an auction than otherwise. Chapman J gave an answer that no political economist could except to - 'sometimes more sometimes less'. No doubt when goods were scarce and the competition of the buyers active there will be a tendency to a high auction price. As a general rule, the auction price is the fair wholesale market price" (Cases in the Supreme Court of New Zealand 1844-1852 (Cases), newspaper cuttings, CP 104 (Hocken Library) 94).

27 It was said of Chapman that he "had in an exceptional degree the faculty of making agreeable acquaintances" (FRC, Memoranda 1).
continent, who has seen much of society in America, and who is still proud of the friendship of many of her sons.  

By 1832, Chapman's interests had begun to move away from the mundane demands of mercantile life, which he found were limiting and "not to his taste". His trading activities led him towards a theoretical interest in economics, and he began to write articles for publication. He also devoted much of his time and attention to the question of the emigration of British settlers to Canada, and in October 1832 (with the sanction of the Governor of Lower Canada) communicated his views on the subject to the Colonial Secretary in London. Besides this, Chapman had further developed his interest in political matters. During his annual visits to England, he had established links with the group known as the philosophic radicals, of whom John Stuart Mill (whom he had met around 1826) and Arthur John Roebuck were leading members. This group advocated the creation of a democratic constitution, a rationalisation of all matters of government and law, the establishment of legal and educational systems to which all members of the community could have equal access, and economic growth brought about by capital accumulation, a laissez-faire approach and free trade. The projected result of these developments would be "the creation of a society of economically independent producers, educated to a high level of reason and enlightened self interest, [e]ach

29 FRC, Memoranda 28. He later wrote that "[i]n the absence of an end for which to desire wealth ... the pleasure of playing the game has as much attraction as the rattle of dice to a member of Crockfords" and that to him "commerce is disgusting, unless with large capital, so as to make it a matter of science" (HSC to HC, 16 December 1846).
30 In May 1832 he published "A statistical sketch of the corn trade of Canada" (in the British Farmers' Magazine), and in September he published "Thoughts on the money and exchanges of Lower Canada" (in the Montreal Gazette) (HSC, Essays and Articles, I).
31 Letter, Aylmer to Goderich, 27 October 1832.
32 Chapman recalled that in 1824-5 he went on a sketching tour of the Lake District (FRC, Notes on Henry Samuel Chapman 19 August 1878).
[counting] for one and no more than one in a representative and responsible system of government, and protected from invasion of his rights by a free and rational body of law.  In Lower Canada, Chapman had immediate experience of a movement striving for representative government in the form of the popular French movement under Papineau. By the early 1830's, this movement had come to dominate the elected lower house (the Assembly), but it had found little favour with the governor, his nominated executive and the nominated upper house (the Legislative Council). Chapman's political sympathies drew him to the side of the radical cause, and he attended and started to speak at meetings held by the popular movement. In England, on his annual visits, Chapman attended meetings of the Union Debating Society supported by the philosophic radicals, and actively assisted Roebuck in his successful campaign for the seat of Bath in the first general election after the Reform Bill of 1832.

Chapman was undoubtedly inspired by the success of Roebuck, and by the end of 1832 he decided to abandon his mercantile business in Quebec and devote all his energies to promoting the radical cause in Canada. He acquired a printing press (in New York), and, on 14 May 1833, he started the Montreal Daily Advertiser, the first daily newspaper published in British North America. The newspaper was a radical one, and, over the ensuing eighteen months, Chapman used it to expose and criticise abuses of economic and political power and to promote the politico-economic principles of philosophic radicalism. For Chapman, the crucial issue was the need for representative and responsible government, and, as in England, a

33 Neale, op cit 37.
34 Ibid, 25 and 59; FRC, Memoranda 28; and HSC to FC, 18 October 1865.
35 HSC to HC, 7 October 1847.
36 In this enterprise Chapman was aided by Samuel Revans, his boyhood friend from London, whom Chapman brought out as his printer and who later became his partner.
37 Neale, op cit 54-62. On one occasion Chapman with some difficulty avoided the destruction of his establishment by a conservative mob (FRC, Memoranda 29).
fundamental step towards this was the removal of the principle of aristocracy. He declared that the struggle in which the people of Canada were engaged was "similar in its principle to that which is agitating every country in Europe", and was that of the people against an oligarchy supported by the aristocratic government of Britain.\textsuperscript{38} When not attending to his editorial tasks and political concerns, Chapman read for the Canadian Bar. Chapman's interest in law may have been fostered by his regular attendance at John Austin's lectures while on annual visits to England from Quebec. He became a \textit{clerk avocat}, acquiring knowledge of Justinian's \textit{Institutes} and \textit{Pandects}, with a view to being called to the bar.\textsuperscript{39}

In December 1834, an election for a new Assembly was held, and Chapman assisted the radical cause by publishing Papineau's election address (warning against "a government which chooses to have an authority over the people, not an authority derived from them"), and letters and speeches supportive of this cause.\textsuperscript{40} Not surprisingly, in view of Chapman's support of the radical cause, the \textit{Daily Advertiser} was only moderately profitable.\textsuperscript{41} On 4 December 1834, Chapman issued the last edition, noting that "all our articles had a Radical tendency" and that this had alienated "those who hold the advertising support in their hands".\textsuperscript{42} However, Chapman's political friends soon found alternative work for him to do. On 24 December the Liberal majority of the Assembly resolved to send Chapman to London to act as an intermediary between the Assembly and its friends in the House.

\textsuperscript{38} HSC, "Canada", September 1835, in HSC, \textit{Essays and Articles}, I.
\textsuperscript{39} FRC, \textit{Memoranda} 12 and 30; and FRC, \textit{Notes} 30 July 1878.
\textsuperscript{40} As soon as the results were known, Chapman wrote an analysis, which was published on 8 December 1834. Chapman concluded that the radical victory was a convincing demonstration of multi-racial support for the principle of democracy as against the principle of aristocracy.
\textsuperscript{41} His son later wrote that it had ranged against it the "deadweight of capitalistic and conservative influence" (FRC, \textit{Outline}).
\textsuperscript{42} FRC, \textit{Notes}.
of Commons. Chapman immediately accepted the position at a salary of £200 a year, settled his business arrangements, and left Canada for England.

III. Career in England: 1835-1843

Chapman reached London on 24 January 1835, and was to spend the following eight-and-a-half years in England pursuing a variety of interests. During the first two years after his return, he highlighted the grievances of the Canadian people in published articles in England. During 1835, he regularly reported, in the Vindicator (a Montreal newspaper), his views on political developments in Britain and what tactics should be followed by the Canadian radicals. Chapman believed that "liberalism" in Britain was "safe", and so encouraged Papineau and his followers to believe that future British governments would be open to granting peaceful concessions. Chapman exhorted the Canadians to be firm and uncompromising in their demands for an elective council and a civil governor. He even advised "each honest man in Canada [to] keep his rifle in order, and his powder dry", because "if the government rejects the authority of the only power which controls it, and makes it responsible, the people must assume the authority which numbers and force give them". These views appeared to contribute to the hardening of attitudes in Canada, especially in the face of the British Government's negative response.

43 He was instructed to advise Messrs Hume, O'Connell and Roebuck (politicians sympathetic to the Liberal cause) "for the advantage of this Province and to furnish them with all such information upon the state of this Country with a view to the Reformation of the ... several abuses complained of" (Resolution of a meeting a select committee, Lower Canada House of Assembly).

44 He published the articles "Canada" and "Recent occurrences in Canada" in the Monthly Repository (in September 1835 and February 1836, respectively); and "Progress of events in Canada" in the London and Westminster Review (in January 1837) (HSC, Essays and Articles, I).

45 Letter dated 7 February 1835 and Vindicator 3 April 1835 (referred to in Neale, op cit 76).

46 Vindicator, letter dated 5 June 1835 (in Neale, idem).

47 Neale, Class and Ideology in the Nineteenth Century (1972) 82. Neale quoted Canadian newspapers which held that Chapman's "correspondence from London ... contributed more than
1837, the British Government expressly refused the Canadians their political demands, and this provoked a rebellion in November of that year. The effect of this was to sever Chapman's political connection with the Assembly, but he continued to campaign on behalf of the Canadian liberal cause. Chapman later recalled that, for years after the Canadian rebellion, "most men from the North American Colonies of the liberal party sought introduction to me, as I had an extensive connexion with the press, and was well disposed to do them service". Although the rebellion was put down, the Canadian question remained a leading issue in British politics, thanks to men like Chapman, and the struggle for responsible government was finally won in 1848. An editorial in a Canadian newspaper, The Gazette, on the occasion of Chapman's death, declared that Chapman's writings on the political situation "tended eventually to dispose English statesmen to a colonial policy more in harmony with modern views", and that "Chapman has a place in Canadian history among those worthies who laboured faithfully for their country's good".

From 1835, Chapman subedited editions of the London Review (a radical magazine under the concealed editorship of John Stuart Mill) and its successor, the

anything else to deceive and corrupt the minds of the people in the District of Montreal, and bring on the rebellion".

48 In 1838, Chapman wrote in the radical British magazine, Monthly Repository, that the Canadians had fought "with determined bravery" and would "not be put down" (Neale, supra note 32, 94). However, the rebellion was swiftly and easily put down. In 1838, Lord Durham sailed for Canada as High Commissioner of British North America, and there (on 28 June) he issued an ordinance declaring Papineau and others whom he considered to be the leaders of the rebellion guilty of high treason. Chapman and others such as Roebuck agitated strongly against what they saw to be a flagrant example of arbitrary and personal rule, and maintained an "active and friendly zeal" on behalf of those against whom Durham had acted (ibid, 101-9). Here at least Chapman and his colleagues were successful, as ultimately the British Government disallowed Durham's ordinance, and Durham resigned.

49 HSC, Reminiscences.

50 The Gazette, 19 May 1882.
London and Westminster Review. Of greater significance was Chapman's association with Roebuck's Pamphlets for the People, which appeared each week between June 1835 and February 1836. The Pamphlets presented news in the form of comment written for a readership drawn from those who (like Chapman) were poor but respectable and motivated to achievement, and at an early stage they reached a circulation of 10000. Chapman was on the committee for the "Society for the diffusion of moral and political knowledge", which promoted the Pamphlets, and wrote numerous articles exposing abuses and advocating reforms in a wide range of areas. His first article was entitled "The American Ballot-Box", in which he wrote of the "great federal democracy" which "has proved that a people which has once governed themselves can never afterwards be ruled", and where "[i]mprovement - real improvement, is most rapid in its progress". He held that the ballot-box in America was "the sole protector of the people against the influence of the rich class, who are just as grasping - just as greedy of undue influence, as the rich of other countries". In several other articles, Chapman campaigned for the repeal of the newspaper stamp, arguing that the "[n]ewspaper should be the book of the poor man," and that "[u]ntaxed it is one of the prime necessaries of his life; taxed it is converted at once into a luxury for the rich". He argued against the finding of the so-called "Drunken Committee" that drunkenness amongst the lower classes was caused by the existence of "gin palaces", and pointed out that the "great cause of drunkenness is a hopeless state of misery and poverty, combined with excessive

51 Neale, op cit 120-1; and FRC, Memoranda 13.
52 Chapman had regular social contact with men such as Mill and Roebuck, and on Sundays they would sometimes go on thirty-mile walks in the London environs (HSC to FRC, 15 January 1865).
53 Neale, op cit 121.
54 Ibid, 126 and 152.
55 HSC, "Transatlantic travelling" in HSC, Essays and Articles, II, 400 and 416.
57 HSC, Pamphlet 11, "Mr Rice and the tax on knowledge", Pamphlets, I, 10.
ignorance". In replying to an attack by a member of the landowner class on railroads, Chapman recognised that "incidental to all improvement" was the "pushing aside" of things that were less good, thus producing "some individual suffering", but he argued that this was no reason why there should not be improvement. He concluded in the optimistic, forward-looking tone which was characteristic of Chapman's outlook: "[t]he time must come when we shall be able to go to Brighton in a couple of hours, for four or five shillings, in spite of the long speeches of the Sussex landowners". In an article on "Injustice to prisoners", Chapman exposed the injustice inflicted on persons detained on suspicion of crimes, even after insufficient evidence had been found against them by the grand jury. Chapman described detention as "an evil which is absolutely necessary for the preservation of society", having the objects of safe custody, punishment and reformation. But he held that "it should be as light, - as little aggravated as possible", especially in its duration. He called for more frequent sittings of the courts, even arguing that "the hall of justice should never be closed" as once it was it became "a negative instrument of injustice".

Underlying much of what Chapman wrote was his continued aversion to the aristocracy, which he saw as a barrier to the legitimate aspirations of "the people". In November 1835, Chapman wrote his most wide-ranging pamphlet, "Preliminary Reforms - Being a summary of the principles advocated in these pamphlets". He wrote that "the object of Reform is to obtain good government, ... that which secures to the great body of the People the greatest aggregate of happiness". He argued that Parliament was the governmental institution which most affected the happiness of

58 HSC, Pamphlet 19: "Sobriety of the working class - the gin palace fallacy", Pamphlets, I.
60 HSC, Pamphlet 27, Pamphlets, II, 13-14.
61 Neale, op cit 134-5.
62 HSC, Pamphlet 22, Pamphlets, I.
the community, and for Parliament to be representative of the community there had to be "an extension of the suffrage to the great body of the People".63 Central to this scheme was secrecy of suffrage by means of the ballot: Chapman declared that "the Ultra-Liberal deems the Ballot of the greatest moment".64 Through writings such as these, Chapman kept alive the principles of philosophic radicalism, and helped to prepare the ground for the momentous chartist movement which commenced in 1837.65

After his work on the Roebuck Pamphlets, Chapman continued to rely upon journalistic work to earn a living, and much of his attention at this time was devoted to political economy. Some of the articles he wrote arose out of his involvement in North American affairs, and were written with a view to extending knowledge of the American economy which was "a rich but almost unexplored mine of information".66 In 1838, Chapman was able to relate his economic views to first-hand experience when he was appointed as an assistant commissioner on hand-loom weaving. His work was part of a royal commission of inquiry into the plight of the

63 Ibid, 11.
64 Ibid, 14. Other elements in Chapman's proposals were an extension of the suffrage to all occupants, the abolition of the property qualification and the existing complicated system of registration, the reduction of the expense of elections, a more equal distribution of members according to population and territory, the shortening of the duration of parliaments, the abolition of the tax on knowledge, the reform or abolition of the existing hereditary upper house, and curbs on the use by the Crown of its prerogative powers (ibid, 14-15).
65 Neale, op cit 136. Chartism was a working-class movement for parliamentary reform (including universal male suffrage, the abolition of property qualifications, and vote by ballot) which produced the People's Charter of 1838.
400,000 hand-loom weavers who were affected by the technological and economic changes connected with the Industrial Revolution. Chapman realised that the problem of the hand-loom weavers was that of an abundant supply of cheap labour in a context where new technology was reducing the demand for labour. His overall view, which was in line with his philosophic radical principles, was that the government had only a limited role to play in the labour context:

Over the children employed in factories the legislature may exercise an increased control, but it cannot step in, and prevent the weaver teaching his own child, or the child of another, to weave in his own cottage. The chief authors of this kind of improvement must ... be the working classes themselves. The Legislature may make a vast amount of improvements in removing restrictions from trade, in lightening the pressure of taxation, and so promote the accumulation of capital, and improve the demand; but as regards the supply of labour, it is the labourers alone who have any control over it.

Furthermore, Chapman, while acutely aware of the plight of the hand-loom weavers and their families, rejected short-term palliatives such as a minimum wage and a restriction on working hours as being counter-productive in the long-term (in reducing the demand for labour). Instead, he called for a national system of education, in which the "disposition in favour of education" already generated amongst the working classes would be "fostered and directed". He declared that education "begets industry, prevents wastefulness of expenditure, and tends continually to elevate the notions of the population as to what constitutes a decent subsistence". The report of the Royal Commission, to which Chapman contributed, prompted neither the short-term palliatives demanded by the weavers themselves nor the broader reforms advocated by Chapman. Nevertheless, the work

67 Neale, op cit 157. Chapman was directed to conduct inquiries in the hand-loom weaving districts of the West Riding of Yorkshire, and there he travelled extensively over a period of 106 days (Report, E P Thompson, The Making of the English Working Class (1963) 301).

68 Neale, op cit 157.
on the commission had been an enriching experience for Chapman, and, using the knowledge he gained here, he (in 1841) contributed articles on "Weaving" and "Wool and its manufactures" for the *Encyclopedia Brittanica*.\textsuperscript{69}

By February 1840, Chapman's able and enthusiastic support for free trade had earned him appointment as founder secretary to the Metropolitan Anti-Corn Law Association. In May of that year lack of funds brought this employment to an end, but Chapman continued his work for the anti-corn law movement as a pamphleteer, producing five successful pamphlets.\textsuperscript{70} An especially noteworthy pamphlet (published in 1841) was "Will cheap bread produce low wages?", which sold over a quarter of a million copies. Here he explained, in lucid and concrete terms, the relationship between low corn prices and general economic prosperity:\textsuperscript{71}

When food is cheap and plentiful, people very properly feed their families better; they indulge in more and better bread; they eat a little meat, and enjoy a cheerful glass of beer. ... the wives and children of the labourers get better clothes, and the tattered blankets of [their] bedding are replaced by new. The house itself, too, is put in order; the old hat, or the wisp of straw, is snatched from the broken window, and a new pane of glass gives light and cheerfulness to the cottage. Now, what does all this mean? It means that the labourer becomes a better customer to the village shop-keeper; that the shop-keeper, in his turn, increases his purchases from the merchant; the merchant gives a larger order to the manufacturer, and the manufacturer at once employs more hands to meet the new demand for his goods. This increased employment ... gives a start to wages, and in this way it is that every man is made a good customer to every other man in the kingdom.

\textsuperscript{69} FRC, *Outline*. These included engravings of machinery from drawings made by Chapman, who was an able draughtsman (FRC, *Memoranda* 30).

\textsuperscript{70} N McCord, *The Anti Corn Law League* (1958) 75-6 and Neale, op cit 200 and 236. Central to the arguments which Chapman continued to propound was the need to achieve permanently high real wages through a combination of state education and free trade.

\textsuperscript{71} HSC, *Essays and Articles*, II, 7.
In 1835, Chapman decided to complement his journalistic work with a return to the study of the law. Chapman saw the bar as a profession suited to his "habit of writing and study".72 On 17 March 1837, he formally enrolled at the Middle Temple, and studied under an eminent special pleader of the common law, Samuel Dodgson.73 Here again Chapman revealed his prodigious capacity for work, and Dodgson later recalled that a fellow-student of Chapman appropriately applied the maxim "Chapman studet diligenter" to him.74 In 1837, he gave evidence of his legal industry in a fifty-four page pamphlet, in which he outlined the "safety-principle of joint-stock banks and other companies" in the law of partnership. He included in this an exposition of the French law of partnership and reflected his knowledge of American law.75

72 HSC to HC, 10 February 1844. D Duman notes that between 1835 and 1885 the representation of the middle classes at the bar rose from 61 per cent to 73 per cent (although sons of civil servants rose from 3 percent to only 5 per cent). Duman claims that "for these groups unlike their social betters the bar was a desirable profession despite the evident risks", and that "simply having been called to the bar was a mark of social standing and provided an entry card into a wide variety of occupations" (The English and Colonial Bars in the Nineteenth Century (1983) 18-19).

73 Middle Temple records. Chapman recalled that he was a member of the Middle Temple for two years before keeping terms (HSC to FRC, 14 April 1868). At the time, the Middle Temple was the second most popular Inn of Court (after Lincoln's Inn, home of the equity bar) (Duman, op cit 25-6). Duman notes that, in this period, "the aspiring barrister received little beyond a social introduction to the profession inside the inns. Legal knowledge was acquired from reading legal classics and from a period of apprenticeship, in the chambers of a barrister, special pleader or equity draftsman and conveyancer" (ibid, 26).

74 FRC, Outline and Memoranda 30. Amongst Chapman's student friends were David Dundas, later Solicitor-General, future QC's Price, Pickering and Forsyth, and Baron Martin. Chapman later recalled that he used to argue doubtful points of law in the hall of Lyon's Inn, with Pickering, Warren and Bliss. When he was secretary, and had to set a question, he used to read the last numbers of Bingham, Addison and Ellison, noted the judges' doubts and expressions "if the case had here so-and-so", then framed a question on the doubts, and assigned two counsel in the affirmative and two in the negative (HSC to FRC, 11 June 1870).

75 HSC, Essays and Articles, II, 9-16.
On 12 June 1840, Chapman was called to the bar. He was soon retained by the New Zealand Company to conduct arbitration and other cases on its behalf, and by the end of 1840 he remarked that he had "done wonders" for a barrister of such short standing at the bar. He attracted some practice in London, "more indeed than actually falls to the lot of a barrister of few years standing". In 1841 he became a member of the Northern Circuit and West Riding Sessions, and later recalled his years on the Northern Circuit as follows:

When I joined the Northern Circuit I felt some nervous anxiety about briefs. [This feeling] arose from an impression that a brief or two might be cast upon me, and that I should not, in my then inexperience, acquit myself satisfactorily to the Attorneys or even to myself: I was however spared any such trial. Briefs I had none: I had however some business at Sessions, and my early career was considered tolerably successful. On my second Circuit, though I had some briefs at Liverpool, I had none at York. I had then however plenty of occupation in another way, for at the past Circuit, I had been chosen Junior [President or Chairman of the Grand Court of the Northern Circuit].

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76 Cocks notes that the bar at this time was marked by the absence of any powerful central authority and by vagueness as to much of the bar's etiquette. It was seen as the domain of individual endeavour, and was united by the ideal of the "Great Man", such as Eldon, Erskine and Brougham (R Cocks, Foundations of the modern bar (1983) 26-8).

77 HSC to FC, 31 August 1840 and 8 December 1840.

78 Cocks notes that "in the spring and the summer many of the barristers in London would leave the capital and travel around a country Circuit", of which one of the largest was the Northern Circuit (op cit 2).

79 HSC, Memoir. Chapman later recalled that his best sessions practice was in Leeds (HSC to HC, 5 September 1846).
At the same time, Chapman's personal life was undergoing a major change. It appears that Chapman would have liked to have married and started a family at a much earlier stage in his life, but that the "terribly hard struggle" he had in his early career and the lack of a regular income precluded this. He later recalled that he "had to make a living somehow and anyhow ...[and] used to try and look out for the future hoping someday to be able to settle down and provide for a family." In June 1839, at just under the age of thirty-six, he became engaged to Catherine Brewer, two of whose brothers were fellow students and friends of Chapman at the bar. Catherine was the daughter of Thomas Gibson Brewer of the Chancery bar and Ann Hughes (herself the daughter of a barrister). She was born on 15 February 1810, in Boswell Court, London, the fifth of seven daughters and one of thirteen children. Her father was a man of considerable means who lived a great deal abroad in Belgium and Germany. Catherine was educated in a convent at Bruges, Belgium, where she learnt to speak French as fluently as English. Chapman pronounced that she had "intelligence improved by a most careful education", and "sweetness of temper and disposition", and that she was small in person, pretty in appearance, with the manner of a gentlewoman. They were married on 6 June 1840, at Mary-le-bone New Church, and, after a one-week honeymoon at Gravesend, they set up house with Chapman's widowed father at Tillotson Place, Waterloo Road, London. From the outset, Chapman's married

80 FRC, Memoranda 8. He later commented of his son Charles that "a lad who marries at 23 a girl of 20 runs the risk of having a large family" (HSC to FRC, 28 June 1870).

81 Thomas Brewer (c1775-1851) became a member of Lincoln's Inn in 1797, practised as a certified conveyancer under the bar for nine years, was a student for five years, and was then called to the bar. He married Ann Hughes (c 1785-1866) on 6 January 1802 (HSC to HC, 5 July 1851).

82 FRC, Memoranda 30. Chapman later wrote that, from her tenth to her twentieth year, Catherine was more familiar with French than with English (HSC to Annts, 18 August 1865). Catherine left Bruges in 1827, but her brother Richard settled in Ostende (CC to HSC, 22 April 1865).

83 HSC to FC, 5 June 1839.

84 FRC, Memoranda 10, and HSC to FC, 8 December 1840.
life appears to have been extremely happy, and he characterised it as one of great mutual affection and devotion.\(^{85}\) Chapman drew much support from his wife's calm, generous and cheerful disposition, and it was said that "his home was his elysium".\(^{86}\) For Chapman's part, it was said that "his affection for all who were dear to him or had shown him kindness at any period of his life was extremely strong".\(^{87}\) On 10 April 1841, a son, Henry Brewer Chapman, was born.\(^{88}\)

From 1838, yet another major element in Chapman's life was his involvement in plans for the colonisation of New Zealand. This grew out of his close association with Edward Gibbon Wakefield in colonisation projects. As early as 1837, Wakefield had asked Chapman to review the book *The British Colonization of New Zealand* (an account of the principles and objectives of the New Zealand Association), and, to furnish himself with the necessary background, Chapman went to see the "Panorama of New Zealand" then showing in London. From this sequence of events Chapman traced his interest in the colonisation of New Zealand,\(^{89}\) and by the following year he had become associated with the leading theorists and proponents of colonisation. Chapman continued to advocate, for Britain and for the colonies, a society of economically-independent producers, free of the dominance of the aristocratic classes. He thus welcomed the views of Wakefield, who opposed the system of credit sales for unlimited amounts of colonial land (which system ultimately favoured the landowner aristocratic class). Chapman noted that the effect of the restriction of land sales to limited amounts of land (at "sufficient" prices) would be to force labourers to work for existing landowners until such time as the labourers accumulated sufficient capital for land purchase. But, he argued, once labourers had bought their land for cash, they would be free to use it

\(^{85}\) HSC to FC, 5 May 1841, and 22 September 1842.
\(^{86}\) FRC, *Memoranda* 30.
\(^{87}\) FRC, *Memoranda* 28.
\(^{88}\) List of family details (RC).
\(^{89}\) HSC to HC, 10 February 1844.
as security for credit for working capital, and they would in turn employ new immigrant labour. In this way, "a bold and really independent yeomanry" would be raised as a bulwark against the aristocracy.90

By 1839, the plans of the New Zealand Company were coming to fruition, and Chapman enthusiastically promoted its cause.91 On 8 February 1840, Chapman launched the New Zealand Journal, and he continued to issue this until 1843. This published a variety of literary matter concerning New Zealand, including letters from immigrants to New Zealand. During the course of his editorship of the Journal, Chapman made "a constant and minute study of the affairs of [New Zealand], gleaning his information from many sources", and, in particular, his correspondents in Nelson and Port Nicholson (notably Samuel Revans).92 In the Journal and in other publications, Chapman expounded the advantages of colonisation for the British people. Chapman suggested that colonisation would alleviate the misery of the labouring classes, "by altering the [over] supply of labour and the [under] demand for it, by diminishing the one and increasing the other". For those of the middle class, colonisation provided a way out of their "difficulty of providing for a family" and their "constant and painful effort to preserve their station in society, from which numbers are continually being thrust by the superior energies of their fellows".93 Chapman probably had his own situation in mind when he asked the question:94

Who, for instance, does not feel the pressure of numbers in some shape or other? In the professions - in commerce - in all

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91 An important personal factor motivating his involvement was the presence of his friend, Samuel Revans, in New Zealand (HSC to HC, 10 February 1844).

92 Miller, op cit 36.


94 New Zealand Journal, 30 October 1841.
the higher kinds of service or employment, civil as well as military - all are full to overflowing. ... Every head of a family feels painfully the perpetual danger to which he and his are exposed, of falling into a lower grade of society than that to which he belongs.

Chapman also believed that colonisation would produce economic benefits for the British people as a whole: 95

Colonization is also an enlargement of the field of production, and is equivalent to an addition to the land of Great Britain, minus the cost of removing capital and labour to the new field. ... A double enlargement of the field of production, by means of the immediate adoption of the principles of free trade, accompanied by a full and complete measure of colonization, would give such a stimulus to industry, that we can conceive no limit to the prosperity which would ensue.

Chapman went on to give his support to those who campaigned for a government-sponsored scheme of emigration. In April 1843, he helped to prepare Charles Bulter, a leading parliamentarian who supported systematic colonisation, in the speech which he delivered on the question, to the House of Commons. Chapman later recalled that he attended the pre-speech briefing as the person "who was supposed to be master of the facts and their application". 96

Chapman also expounded the specific virtues of New Zealand as a home for British colonists. He wrote of "this fine country", with land sufficient for a hundred times its existing population. Of the indigenous population, he wrote: 97

[they] have given proof of the possession of an energetic character, such as to make it worth our while to civilize, rather than to destroy. ... To talk of ourselves as "a nation, which neither insults nor oppresses", is a piece of the coarsest self-

95 New Zealand Journal, 8 January 1842.
96 HSC to HC, 19 August 1847.
adulation. Wherever we have colonized, there have we both insulted and oppressed. The negro we have forcibly used; the American Indian we could not so use; him, therefore, we have destroyed. The "influence of a benevolent religion", has never been exerted to improve the worldly welfare of the natives, and the most speaking result of European intercourse is, that the coloured races have thereby been taught to paint their devil white. The New Zealand native has, by the energy of his character, taught us, that he is neither to be used nor destroyed, so we must make a virtue of necessity, and civilize him.

During 1842, Chapman campaigned for certain measures which, he believed, would promote the well-being of the colony of New Zealand. In particular, he wrote on the advantages of a representative assembly for New Zealand, "the only means of making a contented people", and said that the local colonists (being of "industry, morality, and general good conduct") were well capable of governing themselves. This would serve to counteract the ex officio governing class which tended to emerge in colonies, and would release the Colonial Office of pressing difficulties. In 1843, Chapman published these and other writings in the New Zealand Portfolio, so as to draw them to the attention of the government, the New Zealand Company and others.

Thus, Chapman passed the years 1835-43 pursuing an amazingly wide range of activities, campaigning hard for those causes in which he believed, and pushing his resources to the limit. He commented at the time that his "friends give me credit for firmness and my enemies say I am obstinate". Besides the above-named activities

98 HSC, "Observations on the advantages of a representative assembly for New Zealand", 1842, 121-136, in New Zealand Portfolio. He also corresponded with John Smith, MP (a director of the New Zealand Company), on the advantages of establishing a loan company for New Zealand (to alleviate the shortage of capital amongst the colonists); and delivered an address to the New Zealand land-proprietors resident in Britain on the need to unite into one body so as to increase their influence on the course of events.

99 HSC to FC, 8 September 1842.
were his association with Joseph Parkes in promoting municipal reform, his assistance given to Dr John Bowring in his 1843 edition of the published works of Jeremy Bentham, and his account of New Zealand in the *Encyclopedia Brittanica* published in 1842. Frederick Chapman, in his assessment of the life of his father, aptly described this period as "one of the most active portions of his life".  

By the summer of 1842, Chapman and his wife had come to the decision to leave England for New Zealand, and, in a letter to his Aunt Fanny, Chapman explained the reasons for this decision:

> You know I have nothing but the proceeds of the labour of my head and hands, and at 39 years of age I find the Bar very uphill work. I have certainly met with success for the short time I have been in practice, and if I were ten years younger or had a few hundred a year, as most men who go to the Bar have, I should feel certain of success but my expenses of Circuits, chambers, clerk and books amount to upwards of £200 a year before I can earn one shilling, so that the deficiencies of my professional income I am compelled to make up by the pen. Now to do this I am obliged to condemn myself to incessant labour. I am never at rest. I can hardly walk with my wife or play with my child, without a sacrifice of the time which should be devoted to earning an income. Nobody has any idea of the severity of that labour which knows no remission, and whilst my mind has been worn out and my body in a painful state of fatigue by excessive toil, I have over and over again been regarded by those about me as one who knew no other pleasure than toil at the book or the pen. My illness of last winter was the result of this close application and of nothing

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100 FRC, *Outline, and Memoranda* 30.

101 HSC to FC, summer 1842. Chapman's position must be seen against the background of the state of the English bar at this time. By the early 1840s, there had occurred an unusually large increase in the number of practitioners: one authority believed that between 1835 and 1845 the number of barristers increased from 1300 to 2317. Cocks notes that the 1840s "were notable for loud complaints about the fact that the limited work available was having to be divided between more and more willing hands" (op cit 57).
else. In a more pecuniary point of view a second illness of this kind would throw me into difficulties that I might never recover.

In the midst of all this present difficulty and doubtful prospect New Zealand presents a less occupied field where I have peculiar advantages. In the first place the New Zealand Company offer me the office of their advocate general, to be paid by fees, and as their law business must be considerable it gives me an immediate certainty. In the next I am known to every body in New Zealand - to most of the leading settlers personally and to all by name as I have been their staunch advocate for the whole period of the existence of the Colony. Many [notably his friend, Samuel Revans] have written to me urging me to come out and estimating the income which I am likely to earn at £1000 to 1500 a year. ... I have been a hard student and have seen a good deal of useful practice and I am certain I shall soon start ahead of all the men in practice there.

I am at least ten years too late at the bar, I cannot live without a painful amount of labour and if I remain here I may have a family too large to educate. Now I have suffered too much from an imperfect education myself to run such a risk for my children. I think 12 years will answer my purpose.

During the following year, Chapman and his family lived in expectation of imminent departure for New Zealand. However, difficult negotiations between the New Zealand Company and the Colonial Office, for which the Company required Chapman's services, caused repeated postponements of departure.102 During this period, Chapman's resolve to leave England was strengthened by the lingering illness of his wife, which he believed was exacerbated by the want of "pure air" in London.103

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102 CC to FC, 12 October 1842, and HSC to FC, 15 November 1842, 5 December 1842, 11 February 1843, and 13 February 1843.

103 HSC to FC, 13 February 1843. In 1842, Catherine Chapman suffered a miscarriage (HSC to HC, 18 May 1844).
Meanwhile, on 30 July 1842, Chapman had written a letter to the Secretary of State for the Colonies, Lord Stanley, on the administration of justice in New Zealand.\textsuperscript{104} In this letter he pointed out the inadequacy of the existing system which provided for courts of quarter sessions and of requests in various centres but which had only one Supreme Court judge in Auckland, a centre "remote from the great bulk of the population, and is not easily accessible".\textsuperscript{105} He argued that this system effectively deprived the "eight thousand subjects of the Queen residing at the several settlements on Cook's Straits" of judicial remedy in serious criminal cases and a wide range of civil cases.\textsuperscript{106} Chapman thus suggested the erection of a Supreme Court at Nelson and, in particular, one at Wellington, "the metropolis of a producing and commercial population".\textsuperscript{107} The New Zealand Company supported Chapman's proposal, and the British Government ultimately responded by creating a puisne judgeship centred at Wellington. In May 1843, Chapman applied for the position. Lord Stanley queried Chapman's suitability in view of the fact that he was "too much connected with the New Zealand press and the New Zealand Company", and questions were to be raised about Chapman's limited legal experience and the controversial views he had held as a journalist.\textsuperscript{108} However, overall, Stanley was not "unfavourably inclined" to Chapman's appointment, and Chapman was quick to give the assurance that "[w]hatever connexion I had with the press has never been

\textsuperscript{104} On 22 December 1841, an ordinance was passed creating a Supreme Court of New Zealand, and in February 1842 the first sessions of the Court were commenced at Auckland (then the centre of officialdom in New Zealand) under Chief Justice William Martin. As the only judge of the Supreme Court, Martin C J was also required to hold circuit courts in Wellington (which commenced in September 1842) and other centres (G Leonard, \textit{Sir William Martin} (1961) 8 and 53).

\textsuperscript{105} HSC, "Letter to the Secretary of State for the Colonies" 13.

\textsuperscript{106} Ibid, 12-16.

\textsuperscript{107} Ibid, 20.

\textsuperscript{108} J Wortley to HSC, 27 May 1843, and \textit{The Sydney Morning Herald}, 4 May 1844.
such as to be inconsistent with the nicest professional etiquette". Furthermore, weighing in Chapman's favour were the fact that he had recently met and favourably impressed Captain Robert Fitzroy, the newly-appointed Governor of New Zealand; the legal reputation he had established for himself (especially in the fields of the law merchant and the law of real property) as evidenced by the strong testimonials he had from the leaders of the Northern Circuit and the West Riding Session; his interest in and knowledge of New Zealand; and the fact that the salary attached to the judgeship was not such as to attract other barristers of higher standing to the position.

On 5 June 1843, Chapman was called to the Colonial Office and offered the judgeship. Chapman readily accepted the offer. He was attracted to the judgeship because of the salary (£800, with prospect of improvement), the pension and the "rank or station we shall occupy", and he looked forward to passing "a useful and a peaceful, tranquil and happy life" in New Zealand.

109 J Wortley to HSC, 27 May 1843, and HSC to J Wortley, 29 May 1843.
111 HSC to FC, 7 June 1843.
IV. Conclusion

This survey of the first forty years of Chapman's life reveals the classic story of a man of self-education, determination and industry, struggling with varying success against the limitations which his lowly social and financial status imposed on him. It is not surprising that Chapman devoted many of his energies to the rational reform of the existing political, social, economic and legal institutions, with a view to promoting individual opportunity regardless of birth, status and money. These ideals, and an optimistic belief in his own progress and that of "humanity" generally, were key elements in Chapman's philosophy.

Chapman's early involvement in commercial and mercantile affairs afforded him useful practical knowledge and skills; his extensive contact with North American politics, law and commerce gave him a broader perspective on English legal and other issues; and his continued extensive reading, publishing work and contact with the philosophic radical movement developed his writing and reflective capabilities. These factors equipped him well in his new role as judge of the Supreme Court of New Zealand.

On 14 June 1843, at the presentation of plate made to him by his friends in the New Zealand Company, Chapman expressed his positive outlook on the fresh challenges that his new career would bring:

In my new capacity, I feel that a greater field will be afforded me for doing good. My duties, as well as my inclination, will keep me scrupulously free from party predilections, and from all party bias of every kind. A course of conduct which might be praiseworthy in a private individual, would be a crime in my position; but I am convinced that I shall best fulfil the

112 It was said that Chapman chose the memorial of a "true Utilitarian - something useful in the wide sense of the word - useful for every day's necessities, and useful not less to the eye and to the taste" (New Zealand Journal, 24 June 1843).

113 Idem.
intentions of the Government by using my opportunities, both public and private, to promote peace and good will among all classes of my fellow Colonists.
CHAPTER II

FIRST NEW ZEALAND JUDGESHIP (1843-1852)

I. Life and career in Wellington

On 23 December 1843, after a voyage lasting nearly six months, Chapman and his family reached Auckland. There they met Chief Justice William Martin, who, from 1842, had officiated as Chief Justice (and sole judge) in New Zealand. This marked the beginning of a fruitful and happy association between the two judges of New Zealand, and Chapman always retained a deep respect for the "high character" and integrity of his Chief Justice. On 26 December 1843, Chapman was sworn in as judge of the Supreme Court of New Zealand, in the presence of colonists and an assemblage of Maori chiefs. He spent the next four weeks in consultation with Martin CJ, settling the geographical boundaries of their jurisdiction, and

1 The Chapmans left England on 27 June 1843. Their departure was clearly accompanied by much regret and distress; and Chapman thought of the great "difficulty and discouragement" he had faced, the "terrible expense" of his outfit and passage, and his alarmingly deficient law library (HSC to HC, 30 June, 3 July and 29 September 1843). His recurrent thoughts were of the prospect of saving sufficient money to send his son to England to be educated there, and of himself returning to England in time to see his son settled in his profession "in his own country" (HSC to HC, 30 June, 29 September, and 6 October 1843). However, as the voyage proceeded, Chapman's natural optimism increasingly reasserted itself: he looked forward to the time when he would have his court "properly organised" so that he would have "more leisure for following inclinations in the way of study than I have ever enjoyed" (HSC to HC, 29 September 1843).

2 Supra.

3 HSC to HC, 20 January 1844, and HSC to MC and FRC, 26 February 1871. Chapman's third son was named after and became the godson of Martin CJ.

4 Chapman reportedly "addressed the natives explaining the object of his appointment, an act which made a profound impression on his simple hearers" (FRC, Outline).

5 It was agreed that Chapman would have jurisdiction over the area south of a line running through Tongariro and Mount Egmont, including the whole of the South Island (in 1845, Chapman J heard a robbery case which had allegedly taken place at Port Cooper) (FRC, Notes).
formulating rules to govern the legal machinery of the new Colony.\(^6\) The Chapmans then left Auckland, and, on 1 February 1844, arrived in Wellington, where they were to live for the ensuing eight years.\(^7\)

Chapman saw himself in the role of a detached and impartial judge, who would dispense rational justice without trace of personal bias or prejudice.\(^8\) To this end he lived, throughout his judgeship in Wellington, away from the town (in the Karori area), so as to live "the life of a hermit, apart from the angry passions and gossip" of the colonial community.\(^9\) He was determined to exercise his office to the best of his ability and in that way "promote peace and goodwill among all classes of my fellow Colonists".\(^10\) Already, on the voyage from England, he had devoted three hours every day to the study of the law, and two hours each day to the study of the Maori language.\(^11\) Now, when he was not at court or on official business,\(^12\) he studied and

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6 For example, they agreed that there would not be appeal or writ of error from one judge to the other, "for that would be inconsistent with the spirit of English law" (HSC to HC, 26 January 1844).

7 HSC to HC, 3 February 1844 and 25 April 1852.

8 In an early judgment, he noted that counsel had appealed to his "private knowledge", but that counsel "must be well aware that if I had any private knowledge, I could not use it here" (Cases, 4-5).

9 HSC to HC, 20 January 1844 and 26 January 1844, and to Aunts, 13 February 1844. The Chapmans initially lived in a rented house three miles from town, on the Karori road (HSC to HC, 10 February 1844, and to Aunts, 13 February 1844). On 24 April 1847, they moved to their own home (which they named "Homewood"), also in Karori (HSC to HC, 11 May 1847). This home, "surrounded by green lawns and beautiful woods and pleasing prospects", was to remain in the memory of the Chapman family long after they had departed from it (HSC to HC, 14 April 1848, and HSC to FRC, 26 August 1866).

10 New Zealand Journal, 24 June 1843.

11 HSC to HC, 12 August 1843 and 29 September 1843. He saw the study of Maori to be "necessary to the performance of my official duties and to obtain that influence among the native population which I trust I shall exercise to their advantage" (HSC to HC, 12 August and 29 September 1843).

12 Chapman J’s court duties were: attendance at court on the tenth, twentieth and twenty-eighth of each month for eight months, a fortnight sitting in March, a circuit to Nelson in April, a week-long
worked at home for about six hours a day.\textsuperscript{13} In a review of his first three months at work, Chapman claimed that, as far as he could learn, he gave "satisfaction to the public and the profession". He said that he kept his court "in good order", had the great advantage of knowing procedural law and pleading so that he was ready "with every point" that was brought before him, and was strong in mercantile contracts with which most of his civil litigation was concerned.\textsuperscript{14} In his review over three years later, Chapman declared that "no one can have taken more pains to fill his office faithfully than I have done", that he endeavoured to do his work as well as his faculties and legal experience permitted, and that he guarded himself "publicly and privately from any act or demeanour unbecoming" his station.\textsuperscript{15}

Chapman genuinely delighted in analysing and expounding the law from his colonial bench. He declared that "[i]t is decidedly the pleasantest as well as the most important of my functions to settle the application of the law of England [in the colonial context] and whenever I have any case of the kind I generally go over the field of Continental and American law so as to make my judgment as instructive as I am capable of doing".\textsuperscript{16} Crucial here was the development of his library of law

\textsuperscript{13} HSC to HC, 13 June 1844.
\textsuperscript{14} HSC to HC, 26 April 1844.
\textsuperscript{15} HSC to HC, 21 August 1847. Thus, for example, when counsel cited an English case that was new to him and "was cited only from the abstract in Harrison", Chapman J "thought it my duty to go over the whole case again" and carefully consider the significance of the case cited (Cases, 96-7). Chapman evidently took his status as judge very seriously. In 1853, Henry Sewell (then acting for the Canterbury Association) was told that Henry Chapman had insisted on people observing etiquette by calling and paying their respects to him (W D McIntyre (ed), The Journal of Henry Sewell 1853-7 (1980) I 204).
\textsuperscript{16} HSC to HC, 17 March 1849.
books: he declared that "[t]hese are our tools - they are expensive but they do not wear out like some expensive machines and do not eat like horses and men servants". Chapman dedicated himself to a systematic plan of gradually building up an "excellent working library", with the addition of reports and treatises of English, foreign and international law. Beneath his carefully controlled judicial exterior, Chapman remained committed to his philosophic radical ideas. He said that he would always dispassionately but firmly adhere "to what I believe to be my duty and repel the least attempt at Executive interference with my perfect independence". He continued to profess himself to be of the "New School", one who rejoiced in the 1848 revolts as a "wonderful change working in Europe", and one who hoped that the French revolution settled itself "into a well-working republic". At the local level, he did what he could to encourage the "only institution here for the promotion of the people", by becoming president of the Wellington Mechanics' Institute.

Chapman J considered it important that there be agreeable relations between himself and the local legal profession. In court, he took heed of counsel's arguments and authorities, and complimented them on creditable performances. In Durie v Butler, he granted plaintiff's counsel (Ross) leave to move because the
English case quoted by him was "entitled to sufficient consideration", even though it was against his own view of the law.\textsuperscript{23} But Chapman was also determined to guide the local, inexperienced bar to better efforts. In \textit{Pharazyn v Smith}, Chapman J spent a significant time advising counsel on appropriate practice and procedure, a course he would not have taken if "this Court had been longer established [and] if its practice were well established".\textsuperscript{24} In \textit{Re Lloyd}, he commented that counsel had argued points not in his affidavit, and that this practice was "extremely irregular, and cannot be encouraged, as it is calculated to take the other party by surprise - a course which may sometimes be productive of inconvenience and even hardship".\textsuperscript{25}

Beyond the court setting, Chapman J was sometimes called upon to give Governor Grey advice, "aid and support".\textsuperscript{26} In April 1846, he had a three-hour interview with the Governor on his legal position regarding martial law and a new organisation of the police force, and, in September 1848, Chapman J reported that

\begin{itemize}
\item \textsuperscript{23} After argument on the motion, Chapman J distinguished the case quoted, and indeed used part of the judgment to support his own decision (\textit{Cases}, 14).
\item \textsuperscript{24} In this case, counsel for the defendant (Wakefield and Hart) had blamed Chapman J for not having suggested that they adopt equity procedure in the trial. Chapman J noted that "an attempt was made to cast a responsibility on the Court which does not belong to it, and which it disclaims, the scope of its rules was misunderstood, and its equitable and legal jurisdiction were confounded". He added that it was "no part of the Judge's duty to suggest an alternative course, where there is nothing on the face of the proceedings to show that the course adopted is wrong", and that a suggestion on his part "instead of being proper would perhaps have been thought to savour of presumption". He also pointed to the "vulgar error that a Court of Equity has a sort of roving discretion to revise and control legal proceedings", and stressed that equity was "as much under the dominion of strict rules as what we call law" (\textit{Cases}, 10-11).
\item \textsuperscript{25} \textit{Cases}, 4-5. See also \textit{Cases}, 28-9 ("a departure from the ordinary course of practice is calculated to introduce laxity and uncertainty where the rule is clear and well defined") and \textit{Cases}, 43 (the difference between \textit{quo warranto} and \textit{mandamus}).
\item \textsuperscript{26} HSC to HC, 13 August 1847.
\end{itemize}
he had successfully mediated in the disputes between the government authorities, the New Zealand Company and the local settlers regarding land disputes.27

From the outset, Chapman J pledged himself to devote a "good part" of his non-judicial working time to "the improvement of the Law in this Colony".28 Of major long-term significance was Chapman J's work in formulating Rules of Court to regulate the procedure of the Supreme Court. In January 1844, he and Martin C J engaged in "revising the Supreme Court Act and making new rules of court, suited to the new circumstances of the colony".29 En route to New Zealand, Chapman had had the opportunity of sitting on the bench in Sydney, and he noted that the proceedings there were "nearly as technical" as the English procedure. Both Chapman J and Martin CJ discouraged such technicality in New Zealand, and this was reflected in the rules of court which were given statutory force in September 1844.30 Chapman J took great interest in framing these rules, which aimed at clarifying and simplifying legal practice and assimilating English common law and equity procedure with each other, with a view to making local practice and procedure "more convenient, less expensive".31 He remarked in June 1844 that he intended "to make a reputation as a Colonial Judge and indirectly as a Legislator and Law Simplifier",32 and that Bentham's "spirit animates the procedure of the tribunals of a country unknown to him" as he had already done one or two things that would have delighted Bentham had he been alive.33

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27 HSC to HC, 10 April 1846 and 17 September 1848 (Grey acknowledged Chapman's essential service in clearing up all points of difficulty).

28 HSC to HC, 10 February 1844.

29 HSC to HC, 20 January 1844.

30 The rules were approved on 12 January 1844, and were given statutory power on 26 September 1844 (Ordinance, Session 4, number 1).

31 Cases, 49.

32 In April 1844, he noted that he was beginning to frame a complete code of practice for use as a model for the procedure of colonial courts (HSC to HC, 26 April 1844).

33 HSC to HC, 4 June 1844. See also HSC to HC, 13 June 1844.
Chapman J and Martin CJ met again and drafted further rules to provide for the growing needs of the Colony. 34

Chapman J’s work on legal procedure achieved its most comprehensive form as a result of the commission issued by Governor Grey to Martin C J and Chapman J on 19 November 1849. This commission was issued at the suggestion of Martin C J and Chapman J while the latter was on a visit to Auckland to confer with Martin C J. 35 The commission noted that the rules of practice and pleading in the several English courts (which had been adopted by the New Zealand Supreme Court) were "very various and conflicting, and in some respects wholly inapplicable to the circumstances of the colony, and especially unsuited to a single tribunal of general [common law and equity] jurisdiction". The commission directed Martin C J and Chapman J to inquire into the process, practice and pleading in civil remedies in use in the English courts and the Supreme Court, and to recommend what parts of these were applicable to the Supreme Court and what changes should be introduced, "having in view the union of the several English jurisdictions in New Zealand and the comfort and benefit of suitors". 36 The two judges had been at work on this "for some time", and they now continued their efforts, Martin C J on equity forms, and Chapman J on common law pleadings, with a view to their reform and fusion. 37 By January 1852, they completed their first report on a system of procedure suited to New Zealand. The report, and particularly the sections on pleadings at common law prepared by Chapman J, indicate the work of a philosophic radical, seeking to replace archaisms with a rational and just legal system. It condemned the "artificial,

34 These were approved by the Governor in Council on 12 May 1845, and included, for example, a scale of fees payable to sheriffs (Ordinance, Session 3, number 1).
35 HSC to HC, 28 November 1849.
36 First Report, 4 and 9.
37 Chapman hoped to arrive at "a general system of procedure suited to all these Colonies, ... and I even think we shall work out some principles not wholly inapplicable to the system of pleading in England" (HSC to HC, 28 November 1849).
prolix, and expensive" proceedings in England, and pledged itself to promote simpler and less technical pleadings and to facilitate the court's "scrupulous and reverential regard for truth". The report carefully reviewed the operation of the English rules of procedure with extensive reference to English decisions; it referred to procedure adopted in the courts of New South Wales, Bengal, Scotland, and New York; and it canvassed the views of text writers such as Story, Chitty and Stephen. It also noted that it was not desirable that the New Zealand judges "should continue to exercise so direct a control over the proceedings, and especially over the pleadings of the parties, as was necessary in the first working of the Court; and as it will now become necessary to leave more to the practitioner and less to the Judge, the rules of the Court will require to be filled up in detail, so as to become more complete and directory". At the same time, it was added, "the great advantages which have been observed to arise from the personal conference of the parties, or their agents, in the presence of a judge before the issues are finally settled, ought, we think, under any system, to be carefully retained".

Arising out of the survey, a number of rules were proposed. These included the abolition of the distinction between actions at law and suits in equity, in relation to the practice of the court and pleadings; the prohibition of the use of all fictions in any action or pleading to any action; the statement of facts in all pleadings in "ordinary and perspicuous" language, without any repetition; the specific statement in the declaration of all such matters of fact as were material and necessary to constitute the plaintiff's right of action; and the trial by jury of issues of fact in all actions (including equity proceedings), unless the parties agreed to some other mode of trial according to the practice of the Supreme Court. The report stated

38 First Report, 4 and 9.
39 Ibid, 54-112.
40 Ibid, 12.
41 Ibid, 125-126.
that, in order to complete the review of procedure, "we have still to consider the classification and forms of actions, together with some existing rules applicable to particular actions, which seem to us to need reform". It noted that the materials on these matters had been collected, and that they would be contained in a second and final report. On 1 March 1852, Chapman J wrote to his father that he was at work on the manuscript of the second report and that it would be revised by Martin C J before publication. This report was released on 31 December 1852; like its predecessor it revealed admirable diligence in research, and it too proposed the adoption of a number of new rules of procedure.

The 573 rules advanced in the two reports were brought into force by the Supreme Court Procedure Act 1856. Chapman J's son, Frederick, who began his legal practice under the 1856 rules, acknowledged that they had grave defects. In particular, he noted that the practice of trying equity suits by jury broke down, as in "some complicated cases an immense number of questions had to be put to the jury and contradictory verdicts not really understood by the jurors themselves not infrequently resulted". He also noted that in many respects the rules were still too cumbersome. However, he pointed out that the rules were an advance on the then-existing English and Australian systems. He also noted that the rules produced "almost unaided a unified judicature system twenty years before such a system came into force in England"; and that the system it enforced (with pre-trial settlement of issues and greater dependence on forms of pleading than in modern systems) called for greater accuracy on the part of judges but also lightened their work, and meant that the Supreme Court of that time was "a great training school for lawyers". The rules remained in operation until 1882, outliving Chapman J himself.

42 Ibid, 124.
43 FRC, "The acquisition of the Sovereignty of New Zealand to the Queen, and a short history of the Supreme Court", in The Budget, 25 August 1923.
44 Ibid.
In both his court work and his other legal functions, Chapman remained thoroughly dedicated to duty despite the evident deficiencies in his environment. He complained that "[t]he human mind lies fallow in a Colony and yet is not invigorated".\textsuperscript{45} Especially in his early years in Wellington, he missed "the friends parted with at home, and the pursuits of men of my class".\textsuperscript{46} He wrote to his father that he led such a quiet, retired and regular life that he was sometimes at a loss for subjects, "and our world does not furnish so many as your great wood-paved, gas-lit, new-streeted, be-parked, be-gardened and be-shop-palaced world".\textsuperscript{47} Personal encounters with Martin CJ were sporadic, and, on the occasion of their meeting at New Plymouth, achieved only through enormous physical effort.\textsuperscript{48} Contact was maintained through a "voluminous correspondence",\textsuperscript{49} but here too the

\textsuperscript{45} HSC to HC, 20 May 1848.
\textsuperscript{46} HSC to HC, 24 August 1844.
\textsuperscript{47} HSC to HC, 25 October 1845. Chapman wrote to his father that his only intimates were his wife and boys, his books and his correspondents, "so be a good one" (HSC to HC, 1 July 1846). Chapman also corresponded with friends such as Buller, Egerton, Mill and Graham (HSC to HC, 5 June 1845).
\textsuperscript{48} Chapman J described his epic trip to and from New Plymouth as follows: "I have just returned from my long trip up the coast. To save time and my legs I embarked in a brig for Taranaki to meet Martin, but the wind drove us to the northward and the ship being ill-found and dirty I landed at a Native settlement at Albatross Point. ... it was on Friday night, 13th December, that I landed, and then I started for Taranaki, which I reached on the 20th - a march of 90 miles over the most difficult part of the country, in some places at the side of precipices; at others over difficult rocks, and in two places up and down a rope of flax 36 or 40 feet. After a week spent with Martin I started with three Maori attendants to walk to Wellington (252 miles), but I had to pass through a country disturbed by Native warfare. I was abandoned by my Natives, who were afraid of being killed and eaten, and as I did not feel sure I could protect them I agreed to the prudence of the course they adopted. By the help of a Wesleyan missionary I succeeded in getting on" (HSC to HC, 17 January 1845). See also FRC, \textit{A walk through Taranaki}, pamphlet of a lecture delivered at New Plymouth, 11 December 1922.
\textsuperscript{49} HSC to HC, 1 July 1846.
cumbersome postal services caused frustrations and delays in litigation. 50 He reflected on his library, which, though it was "the best in the Colony", had imperfections which constituted "a great difficulty with me". 51 He remarked that he had to be content "with the streamlets of the law" (abridgements or short notes of the older cases), but that he "should be most happy once more to seek the fountains of the law in the cool recesses of the Temple library". 52 Chapman was also unhappy about the decline in court work that set in after his first year in office. 53 This trend continued, rendering his office "almost a sinecure which I do not like". 54 Chapman

50 In a motion for a new trial in a case involving a partnership issue, Chapman J remarked that he had anticipated that "this was a case likely to call for the further consideration of the Court, under any conceivable verdict that a jury might give", and that he had therefore written to Martin CJ on the matter. However, no opportunity of communicating with Martin CJ then occurred for two months, thus causing "a degree of delay, unusual in this Court", which Chapman J publicly regretted (Cases, 28-9).

51 HSC to HC, 15 June 1847 and 17 April 1847. His efforts to improve his holdings were upset by the wreck of the ship bringing the thirty-volume abridgement of the law by Viner, as a result of which these works were "only just readable and just susceptible of being referred to" (HSC to HC, 15 June and 18 July 1847).

52 HSC to HC, 15 June 1847.

53 He calculated that in 1844 he tried thirty-nine civil cases, in 1845 thirty-four, and in 1846 only eighteen or nineteen, and that the criminal business had fallen off in the same ratio (HSC to HC, 7 March 1847).

54 HSC to HC, 4 March 1847, 7 March 1847 and 21 August 1847. As early as 1846 he claimed he would have been happy with "three times as much" work as he had (HSC to HC, 10 April 1846). In 1850 he declared that his court business was "very inconsiderable" and that "with steam communications one judge could more than do all the work of the whole colony north and south" (HSC to Parkes, 11 June 1850) Chapman was therefore surprised that a judge (Sydney Stephen) was appointed for the South Island, to sit in Otago, and he commented that the colony "was now decidedly over-judged" (HSC to HC, 6 May 1850 and 20 September 1850). When Governor Grey asked Chapman in March 1851 if he would be prepared to have the emergent settlement at Canterbury brought within his jurisdiction, he readily accepted, saying that he was "not sorry to have more work" (HSC to HC, 29 March 1851). Subsequently, in September 1851, Chapman J heard several criminal and civil matters which had been sent to Wellington for trial (Court Note Books (CNB) 1844-1851, MS 1 (Hocken Library), 411 P). On 10 October 1851, Chapman
privately viewed most members of his profession with disdain: after describing the incumbent Crown Solicitor (later Attorney-General) Daniel Wakefield, as being "in every respect a bad fellow, so destitute of principle, so mendacious and slanderous", he added that he was "as competent as the other practitioners for the office he held".\(^{55}\) He described the local executive authorities as being "incapable, weak and suspicious", and Lieutenant-Governor Edward Eyre as a "perfect ninkumpoop".\(^{56}\) He complained of the local Maori people as "a rope of sand, too lazy and filthy to

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reported to Governor Grey on the feasibility of having only one judge for Wellington and the South Island, and he reiterated his view that this was "quite practicable at present". He suggested that the judge be based at Wellington, and that he go on circuit to Nelson and Lyttelton (but not Otago, which he suggested would not have any business for years to come). Of Nelson, Chapman reported that the average number of prisoners for trial was not above three a year, that no civil case had gone to trial for four years, and that business regarding wills and administration of estates had been managed by correspondence with the registrar or by motion. However, of Canterbury, Chapman foresaw that it would need a resident judge in the near future, as its rapid increase in size would generate more civil business, and because its external and inter-colonial trade would tend "to bring loose characters to its port" (\textit{CNB}, 411 N).

\(^{55}\) HSC to HC, 18 January 1848. In later murder trials, Chapman noted that the "chain of evidence was very complete and might have been made more so if the Attorney-General had not conducted the case with his more than usual apathy" (HSC, \textit{Various notes on many subjects}); and that he would place the evidence before the jury "not in the same order as it was brought forward by the Attorney-General, but in that order which it would be most convenient to consider it" (\textit{Cases}, 85). Chapman noted that Holroyd "does his work badly" and that while he had "a good deal of tact of the tricky kind", he lacked knowledge of the law (HSC to HC, 26 April 1844); and on one occasion Chapman J was required to intervene to prevent Holroyd's "want of courtesy" in attempting to conduct a prosecution in place of the Crown Prosecutor (\textit{Cases}, 16). Chapman conceded that Hanson was able and efficient, but noted that he was "low in tastes and habits, illtrained, and vindictive in disposition" (HSC to HC, 26 April 1844 and 10 July 1848).

\(^{56}\) HSC to HC, 10 September 1847. Eyre, for his part, reportedly criticised a direction of Chapman J's as "highly improper" (HSC to HC, 17 June 1849). In 1844, there were delays in the receipt of his salary, prompting him to complain that the "local government does not possess a single efficient person" (HSC to HC, 21 June and 23 September 1844). These delays continued into 1845 (HSC to HC, 25 October 1845). Chapman described Governor Fitzroy as "utterly incapable, vain, vindictive pharisaical" (HSC to HC, 25 October 1845).
compete with energetic Englishmen", and in need of being rescued from their barbarity.\(^57\) Prior to the completion of the new court-house (in operation by November 1849), the local court facilities were shabby: Chapman noted that the lawyers were in "very dismal circumstances, and that grass was discovered pushing its way through the floor of the court-house".\(^58\) Other difficulties which had to be endured were a stormy return trip from a circuit in Nelson (in which Chapman nearly lost his life), a severe earthquake in 1848, and physical complaints such as rheumatism and lumbago.\(^59\)

Yet, to Chapman, the really "grand disadvantage" of New Zealand was the problem it posed about the education of his sons, whose number had grown to five by 1849.\(^60\) He was haunted by the prospect that his sons would, like himself, suffer

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57 HSC to HC, 17 January 1845. He noted that his Maori servant, "like all of his race, got tired of workee-workee so I sent him off" (HSC to HC, 14 August 1844). He also bemoaned the arrival of the mischief-making "saint class" who had drawn his servants to prayer-meetings as a result of which they were much less conscientious (HSC to HC, 24 July 1846). However, he conceded that there was "amidst much ferocity and treachery in the native character, a great deal that is good ... they are great imitators and therefore profit by good example" (HSC to Aunts, 12 September 1844). In April 1850, the Westminster Review published Chapman's article on "The Polynesians and New Zealand". In this he hoped for the improvement and preservation of the native race through the "gradual substitution of our social institutions and arts of life in place of their rude, barbarous, and often cruel customs" (HSC, Essays and Articles, 447).

58 HSC to HC, 4 March 1847, and Wellington Independent, 10 November 1849. The early court building was described by Chapman as a "miserable building" which also housed the local church (HSC to Aunts, 13 February 1844). However, the new court building was evidently an improvement. Henry Sewell described it in 1853 as "a small but not incommodious wooden building, adjoining the Government Offices and fronting the Harbour. It reminded me of those temporary sheds appropriated to the Vice-Chancellors in Westminster Hall - not quite so big - but really almost as respectable" (McIntyre, op cit 198).

59 HSC to HC, 19 August 1846, 1 January 1847, 26 October 1848, 4 May 1849 and 25 July 1849. Chapman published an authoritative account of the earthquake in the Westminster Review of 1849.

60 HSC to HC, 17 December 1845. Charles William was born on 13 May 1844, Martin on 26 March 1846, Ernest Arthur on 17 August 1847, and Frederick Revans on 3 March 1849 (HSC to HC, 13 May 1844, 26 March 1846, 19 August 1847 and 4 March 1849). Chapman lamented that "[t]he
the disadvantage of an incomplete education. He feared that, when his sons had outgrown parental instruction at home, there were "no means of educating them properly here", and he was not prepared to allow them to be reared as "coarse, rude and unenlightened" stockmen. Therefore, he foresaw that he would have to send his sons to England to be educated, so that each might become "an educated gentleman - a better instrument of happiness to himself and others". This required an increase in his local salary ("£800 is not enough to educate a parcel of boys according to my degree"), a move to another colonial judgeship with a higher salary and more hopeful prospects (notably, in Van Dieman's Land or Victoria), or "some law office" in England with a salary of not less than £1000. To this end, Chapman wrote repeatedly to his friends in England, asking them to advance his cause in the Colonial Office. While the hope of being moved may have had an unsettling effect on Chapman's frame of mine, it had the salutary consequence of spurring him on to greater effort in his role as judge at Wellington. In his attempts to produce well-researched judgements and reformed rules of court, Chapman had

birth of boy after boy necessarily defeats all plans suited to a moderate income - especially in a country where education is scarcely possible at all" (HSC to HC, 22 February 1848).

61 Chapman commented that the advantages of Oxford or Cambridge "are perhaps best understood by those who feel the want of them" (HSC to HC, 29 September 1843). He also pointedly remarked to his father that he "abhorred the practice of simply getting rid of sons in some office or situation before they ought to leave school" (HSC to HC, 22 February 1848).

62 HSC to HC, 25 October 1845.

63 HSC to HC, 17 December 1845.

64 HSC to HC, 16 December 1846 and 11 June 1850.

65 HSC to HC, 3 February 1847, 17 April 1847, 22 February 1848 and 14 February 1849. During 1849-50, Chapman believed that he was in line for the "great step" of appointment to the Van Dieman's Land bench (HSC to HC, 4 April 1850 and 10 June 1850). After learning that this position had been given to another, Chapman then wrote asking for a judgeship in Victoria (HSC to Parkes, 11 June 1850).
in mind the thought that his work would advance his reputation as a "Colonial Judge and lawyer", and so facilitate his promotion.66

However, in large measure compensating for the frustrations Chapman had in his work, and the fears he had for his sons' education, was the increasing personal happiness of Chapman and his family in their lives in Wellington. Chapman said that his position in New Zealand was "an enormous gain when considered in reference to the life of labour I led in England".67 He now had a secure income, and a position which he saw afforded him "a greater field for doing good" than he had in England.68 He had the opportunity to pursue his scholarly interests, such as the reading of the classics and works such as Bentham's *Memoirs*, and to commence the writing of a book.69 He had sufficient leisure time to be with his family, which was a major priority for him,70 and he and his wife spent many hours teaching and guiding their children.71 He savoured his garden and the countryside, and reported

67 HSC to HC, 24 August 1844 and 16 December 1846.
68 *New Zealand Journal*, 24 June, 1843, and HSC to HC, 10 April 1846 and 13 May 1846.
69 HSC to HC, 29 September 1843, 13 June 1844, and 14 August 1844. Chapman's concern as a judge to be more than a "mere lawyer" was in tune with prevailing attitudes of English lawyers of the time. Cocks writes that "some of the eighteenth century judges such as Mansfield, Sir William Jones, and Blackstone had left to the Victorian legal world a very well-known legacy of concern for mixing law with literature and philosophy". He quotes Lord Lyndhurst as having said: "a judge should not occupy his mind totally with the administration of justice. ... A judge ought to look abroad, and to cultivate literature and science, for the lights they so acquire reflect back upon the bench, and afford a vigour and force to the judgment they pronounce" (Cocks, op cit 36).
70 Chapman declared that "there is no holiday making to me equal to my home" (HSC to HC, 10 April 1846).
71 HSC to HC, 29 September 1843. Chapman later recalled that Colonel Wakefield gave him a toy printing press (the second printing press introduced into New Zealand), and that he had "introduced his eldest son to the rudiments of practical printing" (*ODT*, 2 November 1874). One advantage of Chapman's unsophisticated "new world" was that he was able to take his sons Harry and Martin with him on circuit. At a circuit session at Nelson, Harry sat with his father on the
on the "mild and equable climate", "our beautiful domain" in Karori, and the "flourishing condition of the colony".72 He, his wife and his family generally enjoyed good health,73 and on one occasion his wife wrote of her "happy and contented" life in a country of "great perfection".74 Chapman and his family established a good rapport with many of the colonists: he noted that when his only daughter was born in 1850, "everybody of all classes seemed to rejoice as if they themselves had had a stroke of good fortune", and that this was "not the first time we have had proof of the sympathy and good will of the settlers".75 Chapman came to have an increasingly high regard for the colony and its "resources and capabilities", especially after the arrival of the "clever, clear headed, firm and generous Governor George Grey".76 By 1850/1, such was the "comfort and quiet happiness" of Chapman and his family, that he had come round to the view that if his local salary

72 HSC to HC, 12 July 1845, 17 December 1845, 14 March 1846, 25 March 1846, 14 April 1848, 5 July 1851, and 12 November 1851, and to Aunts, 9 April 1846 and 24 November 1846. He wrote that he and his family "were going on as comfortably and as happily as if we had a gold mine within our reach (HSC to HC, 17 January 1845).

73 In January 1851, Chapman wrote that he had increased only ten pounds in weight since he was twenty-two years old, but that he was growing grey, and that his wife grew "fat, fair and forty" (HSC to Aunts, 30 January 1851).

74 CC to HC, 30 November 1844. Catherine Chapman provided her family with considerable emotional and physical support, and could be relied on for her usual calmness and self possession (HSC to HC, 26 October 1848). Chapman also spent many hours in sketching (HSC to HC, 17 January and 25 October 1845 and 4 February 1846).

75 HSC to HC, 18 October 1850 (Catherine Ann de Laney Chapman was born on 18 October 1850). This indicated that, while Chapman was not popular amongst colonists such as Charlotte Godley (who found him conceited), he was liked by others, perhaps especially the "industrious classes" (J Godley (ed), Charlotte Godley, Letters from New Zealand (1951) 238-9; and HSC to HC, 18 October 1850).

76 HSC to HC, 28 December 1845 and 1 January 1847.
was raised to £1000 he would "really scarcely wish to leave this Colony for another".\textsuperscript{77} Ironically, however, his earlier persistent efforts to gain promotion out of the colony were then about to come to fruition.

\textbf{II. Civil jurisdiction}

On 15 February 1844, "a numerous attendance of the profession" witnessed the formal opening of the Wellington Supreme Court. After preliminary formalities, the court addressed itself to the first motion, that of \textit{Re Brandon}. This was an application for the admission of Alfred Brandon as a solicitor, under section 16 of the Supreme Court Ordinance, which provided for the enrolment of such persons as "shall have established themselves in the exercise of their profession on or before 22 December 1841". It appeared that Brandon had appeared in court as an attorney and held himself out generally as a legal practitioner, but five members of the local profession opposed the application on the basis that Brandon had not legally established himself in the profession. Chapman J immediately revealed himself in the role of a dispassionate, rational judge, when he declared that he had to apply the law as it clearly stood, regardless of its hardship or "impolicy". He stated that "[o]ur sole business is with the fair meaning of the Ordinance as apparent on its face, of which the Court is the expositor, and not the censor or critic". On the basis of the interpretation that the ordinance simply required an "establishing" in fact, Chapman J declared that Brandon should be admitted to the profession.\textsuperscript{78}

On 2 April 1844, Chapman J addressed a civil jury for the first time. He drew attention to the "peculiarity" of the jurors' position as part of "a very limited community", which made it difficult to fulfil their duties without bias or private

\textsuperscript{77} HSC to HC, 6 May 1850, 29 March 1851, and 12 November 1851.

\textsuperscript{78} \textit{Cases}, 1-3; and \textit{CNB} 411 A. In later cases, Chapman J repeatedly referred, not only to the literal words of statutes, but also to the "whole tenor and obvious intention" of the legislature (\textit{Cases}, 88 and 99).
feeling. In a moralistic fashion, he suggested to them an expedient which he used to guard himself from "improper biases": that when they were told of possible lawsuits, they should determine that (in themselves) "such reports shall meet with an impassable barrier", and that they should "caution the report bearer that he also should not spread rumours the truth of which he cannot ascertain". In the ensuing trial, Chapman J advised the jury that they must "harden their hearts" to the considerable hardship that would arise from a decision either way, and simply be guided by the facts in evidence and by his own direction.79

Three weeks later, Chapman J heard an application for rules nisi for judgment to be arrested and new trials granted in three cases involving the same defendant. Chapman J decided to grant a rule in one of the cases, the strongest in favour of the defendant, so as "to save the parties the expense of three sets of affidavits and office copies, three rules, and three arguments, when one would do".80 This attempt by Chapman J to reduce the expense and length of litigation proved to be a characteristic feature of his conduct in civil cases.81 Chapman J’s judgment on this application for new trials also illustrated his characteristic reluctance to interfere with the jury's assessment of factual issues and quantum of damages.82 In subsequent cases, Chapman J would at times err on the side of not giving express directions to jurors on points at issue, for fear of usurping their function.83 But, in a judgment delivered on 28 July 1845, he indicated that there were limits to his policy of non-intervention in the jury's assessment of fact. In deciding that there should be

79 Cases, 5-6.
80 Cases, 9.
81 Cases, 22 and 29-31.
82 Cases, 10-13.
83 Cases, 19 ("until a question of usage has been reduced to a rule of law, it remains a question for the Jury"). In a libel action, where Chapman J was assisted by a special jury, he declared that "you Gentlemen are well acquainted with mercantile customs, and it will be for you to say whether the mode of selling accounts was or was not such as partners usually adopt" (CNB, 411 E).
a re-trial, Chapman J stated that, while "the verdict of a jury should not be disturbed except on very cogent grounds, we must be satisfied that the verdict fulfils the substantial justice of the case". He said that to allow parties to be bound by hasty decisions of a jury "suddenly formed from perhaps complicated and not very clear testimony" would render trial by jury "an intolerable nuisance". 84

Many of Chapman J's judgments indicated elaborate preparation, in which he canvassed a wide range of sources ranging from his experiences at the English bar to the principles of Roman, French and American law. 85 Chapman appeared to accept that the proclamation of British sovereignty over New Zealand (in 1840) meant that the colony was subject to the laws of England, so far as they were applicable to the circumstances of the colony. 86 In many cases, he gave judgment on the basis of English authority which "remains unshaken by any subsequent decision". 87 At the same time, he was alive to possible divergences between local and English statutory law, which could render English cases inapplicable. 88 Further, he believed that "incalculable advantage" could be derived from the

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84 Cases, 28-29.
85 In Samuel and Joseph v Carkeek, an objection raised was that the plaintiff's counsel had given his place of abode as his place of business and not his dwelling-place. Chapman J rejected this because "an attorney in good practice probably abides during a much larger portion of the day at his office than at his house". He then also rejected the notion that the endorsement "King, Wellington" was inadequate "until we have more than one of the name on the rolls", and here he referred to a decision of his own in a case where similar objections were unsuccessfully raised. He recalled that when he was on circuit, the endorsement "John Smith, Liverpool" was held to be insufficient, because the Liverpool directory showed a list of John Smiths (Cases, 94). See also Cases, 29-31. Chapman J was not averse to saying that a doctrine of the English courts of equity was "not so highly remedial as the rule of the civil law and those systems of jurisprudence [Scots, French and Canadian law] which are based thereon" (ibid 50-1).
86 See B J Cameron, "Law Reform in New Zealand" (1956) 32 NZLJ 88.
87 Cases, 20. Amongst the English authorities upon which he drew extensively was the "most elaborate and comprehensive work", Chitty's General Practice of the Law (Cases, 10-13).
88 Cases, 96-7.
jurisprudence of America, in his attempt to apply English law to "the circumstance of what is commonly called a new country". He said that, in applying the principles of English law to the circumstances of New Zealand, he was "never quite satisfied unless [he had] succeeded in tracing those principles to their application in the United States, and certainly there is no author so well calculated to afford us assistance as the great and estimable judge [Story]". Chapman J was rarely content with simply reproducing the law in the case and texts, and he commonly discussed the principles behind legal rules. In a case of libel, Chapman J was at pains to explain the apparently anomalous rule of libel that the essential element was the tendency of the words to injure and not proof of actual damage to reputation. In a succinct and vivid account, he pointed out that if proof of actual damage to reputation were required, persons of unassailable character could be libelled with impunity and only those "whose good character gave good force and effect to their words" could be guilty of libel.

Perhaps the most challenging and significant set of civil disputes which faced Chapman J was that relating to land ownership in New Zealand. By the time of Chapman J's arrival in the colony, the question of land ownership had become an

89 Cases, 52. He added that "if it be a source of honest pride to us that we have given our laws to that growing nation [America], may she not reasonably entertain a similar feeling on reflecting, that she is enabled to repay the debt, by the assistance she affords the colonial courts in the construction of their jurisprudence" (ibid). He had previously noted the view of Story, in Equity Jurisprudence, that the bona fide purchaser should have a claim to compensation for improvements made to property held under a "title apparently perfect and complete", and claimed that this was an "admirable view, breathing as it does in every line, the largest and purest equity". On another occasion, he commented that Story's work on partnership, "like all the productions of that learned Judge's pen, cannot be mentioned without admiration and respect for the author" (Cases, 28-9).

90 Cocks notes that the more "thoughtful" members of the legal profession of this time "were determined to break away and find a style of relating the actual details of the law to broader, more philosophical ideals" (op cit 37).

91 Cases, 23 and 43.
extremely complex and vexed issue. By late 1839, Europeans had bought substantial areas of land from the Maori, and many of the transfers were for trivial amounts and were backed by questionable documentary titles. In January 1840, Governor George Gipps of New South Wales (having extended New South Wales jurisdiction to cover New Zealand) proclaimed that title to New Zealand land would be valid only if derived from or confirmed by the Crown, that commissioners would be appointed to investigate lands purchased, and that any further purchases would be null and void. In February 1840, the Treaty of Waitangi was signed by the new Lieutenant-Governor of New Zealand, Captain William Hobson, and local Maori chiefs. The English text guaranteed the Maori ownership of their lands, subject to a pre-emption clause to the effect that the Crown had the sole right of buying Maori land. In August 1840, the New South Wales Council passed the New Zealand Land Claims Ordinance, to facilitate investigation of all land purchases made before 1840, and it provided, in principle, that only equitable claims up to 2560 acres would be allowed. Late in 1840, New Zealand was separated from the temporary jurisdiction of New South Wales and became a fully-fledged colony, but the substance of the New South Wales proclamation and ordinance concerning land claims was re-enacted in ordinances (of 1841 and 1842) of the New Zealand Legislative Council. In December 1843, Captain Robert Fitzroy became Governor of New Zealand. By this stage considerable opposition had been voiced, amongst the Maori and European settlers, to the pre-emption clause in the Treaty of Waitangi (in particular, would-be Maori sellers of land found that they were unable to sell their land to the government, or asked to sell at an unfairly low price). In response to this opposition, Fitzroy issued two proclamations waiving the Crown’s pre-emptive rights over Maori land. The second of these, issued in October 1844, permitted certain lands to be bought direct from the Maori, on payment of a fee of a penny per acre to the Crown. Fitzroy also re-opened many of the claims which had been settled by the land commissioners under Hobson and, in many cases, increased the grants already
made. The result of these actions was that, by the time of Fitzroy’s recall in 1845, there was much uncertainty as to title to land in the Colony, and many of those who had acted according to Fitzroy’s instructions were seen to have claims of strong moral but questionable legal validity.92

In 1847 the case of *R (at the suit of McIntosh) v Symonds* was brought to court.93 This case was prompted by the action of Governor George Grey (Fitzroy’s successor), who wished to test the legal validity of land purchases made under his predecessor’s “penny proclamation”.94 The case concerned the claim of Charles Mcintosh, who, in 1844, had obtained Fitzroy’s waiver of the Crown’s right of pre-emption over an island in the firth of the Thames, and in 1845 had bought the island from the Maori owners. On 22 April 1847, Grey made a deed of grant of this island from the Crown to his secretary J J Symonds. McIntosh then obtained leave from the Government to use the Queen’s name to sue out a writ of *scire facias*, to repeal or avoid the grant, thus placing the validity of the title squarely before the court. The case was argued on 4 May 1847, before Martin C J in Auckland. At the conclusion of the argument, Martin C J reserved judgment in order to consider the issues and to obtain the judgment of Chapman J. By the end of the month the Chief Justice had received from Chapman J his judgment and "a great number of notes and some books" for his guidance on the matter, and on 9 June Martin C J read out Chapman J’s and his own concurring judgments.95

The main thrust of Chapman J’s judgment was an assertion of the notion of the Queen as the exclusive source of private title, and on the basis of this he upheld Symonds’s claim (founded on a fully valid grant from the Governor) over that of


93 (1847) NZPCC 391.

94 According to Chapman, Grey selected the strongest claim he could find among the "penny an acre" claimants (HSC to HC, 15 June 1847).

95 *Cases*, 33-35; and HSC to HC, 15 June 1847.
McIntosh (whose claim was founded on an instrument not under the seal of the colony). A subsidiary theme of the judgment was a sympathetic and benevolent treatment of the property rights of the Maori. This treatment was heavily dosed with notions of respect for rights, justice and "the humane spirit of modern times", and here Chapman J indicated that his early philosophic radical spirit was still at work: 96

Whatever may be the opinion of jurists as to the strength or weakness of the native title, whatsoever may have been the past vague notions of the natives of this country, whatever may be their present clearer and still growing conception of their own dominion over land, it cannot be too solemnly asserted that it is entitled to be respected; that it cannot be extinguished (at least in times of peace) otherwise than by the free consent of the native occupiers. But for their protection, and for the sake of humanity, the government is bound to maintain, and the courts to assert, the Queen's exclusive right to extinguish it.

Chapman J had been careful to outline the principles on which his judgment was based "with more care and particularity" than usual, as the issue involved "principles of universal application to the respective territorial rights of the Crown, the aboriginal natives, and the European subjects of the Queen", and as the decision "may affect larger interests than even this Court is up to this moment aware". 97 In the event, Chapman J was justifiably satisfied that his "very full opinion" [had] exhausted the whole subject [and] would be a lesson as well to the public as Governors. It certainly revealed him to be a scholar of wide learning and historical

96 Cases, 36-7. On the latter point, Chapman J noted that "the great mass of the Natives, if sales were declared open to them, would become the victims of an apparently equitable rule; so true it is, that "it is possible to oppress and destroy under a show of justice" (ibid). Note, the commitment to respecting the rights of the Maori was reflected in an article in the New Zealand Journal, dated 4 April 1840: this stated that the instructions to Hobson were "clearly meant to convey a solemn assurance - a national guarantee to the New Zealanders that our transactions with them will be conducted with strict justice and good faith".

97 Ibid.
sense, with fluent expression and the ability to draw upon a wide range of sources from England, Canada and America. Governor Grey considered the judgment "an able and important judgment which will long continue a record of law upon the subject"; Sir Alfred Stephen, Chief Justice of New South Wales, ensured that Chapman J's judgment was published in the *Sydney Morning Herald* as "well deserving the compliment", and the introduction in this newspaper said that "it contained much research and learning not always met with in colonial courts".

In the longer term, Chapman J's judgment came to be regarded as a classic statement on New Zealand land tenure and Maori property rights. By 1938, such was the importance of the *Symonds* judgment and so great was the need to render it accessible, that the publishers of the *New Zealand Privy Council Cases* decided to include it in their work. It is significant to note the differing usages made of Chapman J's pronouncements in cases where, unlike the *Symonds* case, the rights of the Crown and the Maori were in opposition to each other. While more conservative New Zealand judges of the 1870s through to the 1960s quoted Chapman J's assertion of the sovereignty of the Crown in land tenure, judges more sympathetic to the assertion of Maori rights (in the Privy Council and very

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99 HSC to HC, 14 April 1848.

100 HSC to HC, 21 August 1847.

101 NZPCC Introduction x.

102 See *Wi Parata v The Bishop of Wellington and the Attorney-General* (1877) 3 NZ Jurist (NS) 72 at 78-81; *Re The Ninety-Mile Beach* [1963] NZLR 461 at 468; and *Keepa v Inspector of Fisheries* [1965] NZLR 322 at 326.

103 *Nireaha Tamaki v Baker* (1901) NZPCC 371 at 384.
recently in New Zealand courts\textsuperscript{104}) stressed Chapman J's benevolent attitude to Maori rights.

In the context of Chapman J's own time, the effect of the \textit{Symonds} judgment was to deny validity to Fitzroy's "penny proclamation" and transfers made under it, on the basis that private title could be acquired only by grant from the Queen's representative in terms of letters patent under the colonial seal. During 1848 and 1849, Chapman J, acting on the same basis, felt obliged to \textit{uphold} a number of grants of land made by Fitzroy, despite his private view that these grants were "improvident" and "anomalous".\textsuperscript{105} In particular, the case of \textit{R v Clarke} (heard in 1848 before Martin C J in Auckland) concerned an action of \textit{scire facias} to try the validity of a deed of grant of 4000 acres made (in May 1844) by Fitzroy to Clarke, under the public seal of the Colony. This grant had been made notwithstanding the recommendation of the land claims commissioners, appointed in terms of the Land Claims Ordinance, that only 2500 acres be granted, and despite the provision in the Ordinance that grants should not, in principle, exceed 2560 acres. Martin C J once again referred the matter to Chapman J, who decided that the Governor's prerogative to make grants of waste land was not restrained by the Land Claims Ordinance, and that, even if the Governor had departed from the spirit of the Ordinance, this did not affect the legality of grants so made.\textsuperscript{106} Governor Grey was, according to Chapman J, astonished at the outcome of the \textit{Clarke} case,\textsuperscript{107} but


\textsuperscript{100} HSC to HC, 17 June 1849, and Cases, 47.

\textsuperscript{106} Judgment, RC, 20. See also Scott v Grace (Cases 48-52), R v McDonald (Cases 60-62); and R v Taylor (judgment, RC).

\textsuperscript{107} Chapman J believed that Grey's surprise was as a result of an assurance by the Attorney-General that the grant would be set aside, Grey's knowledge of Chapman's private view that "Fitzroy, in strict accordance with the spirit of his instructions, ought not to have made many of the grants
this did not deter Chapman J from upholding grants made by Fitzroy in two further cases in 1848-9. In July 1849, the Attorney-General obtained leave to appeal to the Privy Council from the decision in Clarke, but Governor Grey knew that the appeal would take a considerable time. Therefore, when, in July 1849 (in the case R v Taylor), Chapman J gave a judgment on very similar lines to that in Clarke, Grey decided to take more immediate and 'vigorous action'. He ensured the passage of the 'Quieting Titles' Ordinance, which declared the grants of land by Fitzroy valid subject to certain conditions. Chapman J had not lightly taken a view contrary to that of Governor Grey, but at the same time he was ready to take an independent stand on principle, especially one which might improve his long-term career prospects:

which he did make", and Grey's reliance "a little on that subserviency to which as Governor he is accustomed in his executive officials" (HSC to HC, 24 August 1849). Chapman had earlier written of "Fitzroy's legacy of spite", which would create "a disturbance of property amounting to £5000 or £6000" (HSC to HC, 20 May 1848).

108 In Scott v Grace, Chapman J (in May 1848) confirmed the decision of a jury in favour of a plaintiff to whom Fitzroy had granted land. He declared that "the Crown can convey nothing to the subject, except under the public seal of the colony", and that such a grant had been made to the plaintiff (Cases, 46 and 48). In R v M'Donald, Chapman J (in a judgment of January 1849) affirmed that grants of land could be made only under the public seal of the Colony, and that a letter to the New Zealand Company conveyed nothing to the Company and was "absolutely inoperative to impeach a grant" (Cases, 62).

109 Judgment, 5-8 (RC).

110 HSC to HC, 24 August 1849. The disputed claims were settled only after 1856, when the New Zealand General Assembly appointed a commissioner to adjudicate upon the grants (Marais, op cit 283).

111 Judgment in R v Taylor, 8, and HSC to HC, 24 August 1849 (he claimed that there was "no point in all these cases that I have not examined over and over again").

112 HSC to HC, 17 June and 24 August 1849. Chapman J's judgment in Clarke was in fact reversed by the Privy Council. In its judgment of May 1851, it found that the grant in question "was only intended as a confirmation of a report founded upon an Ordinance, [and] as it was contrary to the terms of the Ordinance, the grant must be declared void and annulled" ((1851) NZPCC 516). In the meantime, Grey's "Quieting Titles Ordinance" did not prove as successful as he hoped it would
We, the Judges, have got great credit for firmness, independence and integrity in giving judgment conscientiously against the Crown in a case so difficult and doubtful that no one could have accused us of a corrupt motive had we given it the other way. ... I think we shall gain some real and I think well merited credit for the minute care with which we have examined these cases. That is, that each case will add a small increment of reputation to the character of the Supreme Court and the public respect it enjoys and I think that is conspicuous enough to add generally to the character of the Colonial Bench. What I am at is to secure the perfect confidence of the public and of the Government and to maintain my perfect independence of all extrinsic influences. ... if my interpretation of the Prerogative as exercised by the Governor be decided to be untenable ... it will at all events be seen that I have taken high ground both for the Queen's honour and the subjects' advantage. If these Judgements are affirmed - I believe I may ask for and obtain any thing in the way of a Judicial office.

III. Criminal jurisdiction

On 12 April 1844, Chapman J opened the first criminal sittings of his court at Wellington.¹¹³ For the first time in Wellington, a grand jury was sworn in, and Chapman J addressed the grand jurors on their powers and duties.¹¹⁴ He declared

¹¹³ In the previous month, Chapman J had offered to try any prisoners who might be committed at the County Court: this was in accordance with his views on the need to guard against committed prisoners being needlessly kept in gaol (Cases, 5).

¹¹⁴ He also explained the reason for the delay in the introduction of the grand jury to Wellington. He noted that "in an infant community, the persons qualified to serve on Juries are few in number", and, had the common jury lists been sifted to provide for grand jurors, the character and "integrity" of the common jury would have been "materially impaired". Therefore, an indictment
that the main function of the grand jury was to ensure that "a case had been clearly made out for the prosecution", and therefore afford security to accused persons against the publicity of an unwarranted trial. Chapman J then outlined, in high moral tones, other functions of the grand jurors, including the duty (by virtue of their station in society) "to repress and discountenance, not merely actual crime, but even all habits and practices calculated to exert a hurtful influence on the community". After this, Chapman J reviewed the cases on the calendar, and the grand jury then "retired to a room provided for them at Cooper's Inn, the miserable barn which is courteously called 'a Court-house' affording no accommodation for them".¹¹⁵

In later addresses to the grand jury, Chapman J revealed a practical grasp of the realities of the criminal justice process, and an ability to convey this in clear language. In September 1844, he reviewed a charge of rape, which he described as "an accusation easily to be made, hard to be proved, and harder to be defended by the accused". He claimed that the new penalty of transportation for life was "more efficacious" than the death penalty, because juries had become unwilling to convict in the face of the tide of opinion against the death penalty, and so "excess of punishment grew into impunity".¹¹⁶

Chapman J's handling of criminal cases was characteristically scrupulous and fair. In a motion to arrest judgment following a conviction for uttering, Chapman J noted that (unlike in England) "here the appeal is merely from the necessarily hasty decision of the Judge who tries, to his more deliberate Judgment", and that "this

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¹¹⁵ Ibid.

¹¹⁶ Cases, 16-17.
circumstance at all times impresses me with a very vivid sense of the responsibility which is cast upon me, and I feel this the more intensely where the liberty of a subject, criminal though he be, is at stake. 117 His addresses to the petty jury were generally thorough, balanced and dispassionate on factual issues, 118 although, particularly when a case had been poorly prosecuted, he would occasionally give his decided views on the strength of the evidence against the accused. 119 Chapman J's attitude to the different kinds of crime presented to him was reflected in the wide range of sentences he imposed. He consistently awarded light prison sentences without hard labour for such offences as assault, breaking out of prison and keeping a disorderly house. 120 By contrast, Chapman J (with much anguish) imposed the death sentence on two occasions for murder and once for wounding with intent to murder. 121 Further, for rape and property-related offences such as robbery, wounding or killing of animals, and uttering, Chapman J regularly handed down sentences of transportation for seven years or more. 122 He was heard to describe the wounding of cattle as a "gross outrage", and before imposing the sentence of ten years' transportation for uttering he noted the "ruinous consequences which may arise from the unrestrained prevalence of forgery". 123

In criminal cases, more than in civil cases, Chapman J was confronted starkly with the undeveloped nature of his colonial environment. At Chapman J's first circuit court in Nelson, the grand jury stated that the lightness of the criminal calendar (which had been seen by Chapman J as reflecting a sound state of

117 Cases, 31.

118 Cases, 68-9.

119 Cases, 85-86.

120 See, for example, CNB 411 J-L. When sentencing the rare woman prisoner, Chapman would, for example, impose imprisonment with hard labour 'suitable for a woman' (CNB, MI 411 N).

121 CNB, 411 L-N; and Cases, 68-69 and 86.

122 CNB, 411 L-P.

123 Cases, 14-15 and 31-32.
society) was because of "the miserable state of the gaol". This, the grand jury said, "had induced the magistrates in a very great many instances to take bail for the appearance of parties charged with the most serious felonies, rather than subject them to confinement in a place crowded to a degree sufficient to produce pestilence and death", and such parties had "availed themselves of the facilities afforded for their escape" and quitted the colony. In Wellington, a grand jury on one occasion endorsed the charge of larceny against a Maori, but the accused did not appear in court because he "was rescued from the constables by an armed body of natives".

As this case indicates, it was in criminal cases that Chapman J had dealings with the indigenous population. Chapman J, acting from his desire to "civilise" the Maori, appeared determined to maintain strict English legal standards, but at the same time he tried to make the proceedings as fair and meaningful as possible to Maori who appeared before him. In the first criminal proceedings in Wellington, Chapman J refused to sanction the practice that had existed in the county court to take the evidence of non-Christian Maori without oath and then let the jury "give what credit to it they pleased". He said that "there was no authority for such a practice, and that, however desirable some relaxation of the rule might be, he could not break in upon the law as it at present stands". In the case of *R v Wirimu and Kumete*, Chapman J tried to ensure that "everything was done to give solemnity to the trial". At the same time, he was at pains to ensure that counsel were assigned to the prisoners, and that a jury was chosen of people entirely unconnected with the place where the robberies in question had occurred. In sentencing the prisoner Kumete to ten years' transportation, Chapman J "told him that the crime of which

124 The only criminal charges were for the shooting of a pig and the killing of a buck (*CNB*, 411 I).
125 *Cases*, 18.
126 *Cases*, 16-17.
127 *Cases*, 15.
he had been convicted was not merely an offence against the law of England but was equally so against the customs of his own people." 128

V. Conclusion

In November 1851, the New Zealand newspapers carried a paragraph copied from the London Observer to the effect that Chapman had been appointed Colonial Secretary of Van Dieman's Land. This was the first news that Chapman had of his appointment, which had been organised on his behalf (and without his sanction) by his father in London. Chapman observed that he certainly had no wish to quit the Bench, and, by this stage, "none to leave the Colony provided I could get some increase of salary". 129 However, the appointment had already been gazetted and so Chapman felt himself bound to accept, and Governor Grey advised "acceptance under any circumstances - saying he felt sure [Chapman] would make it a step to something better". 130 Furthermore, the position offered a significant improvement on his existing salary (a rise to £1200 a year), he was encouraged by the "frank and kind letter" from the Governor of Van Dieman's Land, and he came to see areas where he could make a positive contribution (and perhaps in due course become a governor of a colony). Therefore, he resolved to "go zealously to work, investigating everything in the colony and drawing up reports on every point". 131 At the same time, he was determined to "keep in view the possibility of returning to the bench,

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128 HSC to HC, 10 April 1846 and CNB 411 K. Chapman J's Maori name was "Hapimana", but he was generally addressed as "E'Hapi" (ibid). Note, the Native Exemption Ordinance (session 3, number 18) allowed for payment by Maori prisoners of four times the value of the property stolen in lieu of a sentence (see New Zealand Spectator and Cook's Straits Guardian, 13 December 1845).
129 HSC to HC, 6 December 1851.
130 Ibid.
131 Ibid and HSC to HC, 1 March 1852.
and shall certainly keep my law library, and not permit my legal knowledge to evaporate".132

On 13 March 1852, Chapman and his family left Wellington for Hobart, having received tributes testifying to Chapman's "great ability", "valuable services", and "kindly interest" in the welfare of those around him.133 His replacement in Wellington was Sidney Stephen, whom Chapman described as a "foolish and intemperate" figure, who was justly reputed to be "addicted to women".134 However, the solid judicial structure that Chapman J had established easily survived the inadequacies of Stephen J, and were to be built upon by more competent successors such as Johnston J (1858-1875) and Prendergast C J (1875-1899).

The people of Wellington had been fortunate to have had Henry Chapman as their pioneer judge for eight years. His conscientious nature, moulded through years of self-discipline and self-education, ensured that Wellington litigants received a thorough and careful adjudication of their rights. His rich and varied background, particularly in North America, made him personally adaptable, and alive to the need to develop a flexible legal system in tune with the colonial environment. His idealistic, liberal outlook, fostered during years of active support for the philosophic radicals, spurred him on to "civilise" and rationalise his untamed new world. The open-ended nature of the colonial environment afforded him the space to formulate law and legal practice in new ways, freed from the archaisms of the mother country. Chapman J's early legacy to New Zealand lived on - through his example, his judgments, and his rules of court - long after he had departed from the Supreme Court in Wellington.

132 Ibid.
133 HSC to HC, 25 April 1852; and New Zealand Spectator 18 February 1852 and 17 March 1852.
134 HSC to HC, 1 March 1852.
THE HON H S CHAPMAN
Judge of the Supreme Court, New Zealand
(from a picture in the possession of his family, by Mr T Lawrence)
WELLINGTON COURT-HOUSE

"HOMEWOOD", KARORI, WELLINGTON
CHAPTER III

AUSTRALIAN CAREER (1852-1864)

I. Colonial Secretaryship of Van Dieman's Land and sojourn in England (1852-1854)

On 4 April 1852, Chapman, his wife and six children arrived in Hobart Town. During the first five months of their stay in Van Dieman's Land, the Chapman family appeared to be well satisfied with their new home. Chapman's interest in political affairs was freshly stimulated, and he appeared to relish the exercise of state power. Relations with the Lieutenant-Governor, William Denison, were cordial: Chapman noted in April 1852 that he liked Denison "very much", and it appears that Denison hoped for a great deal from Chapman, particularly in dealing with the local elected opposition. Chapman and his wife savoured the "beautiful and healthy climate" of Van Dieman's Land, and came to form bonds with "many kind friends". Their seventh (and last) child was born in Hobart, the local education offered to the older children appeared satisfactory, and Chapman was confident that the change had been for the best and that it offered the hope of even better prospects.

As Colonial Secretary, Chapman was (in terms of the constitution introduced in 1851) the Lieutenant-Governor's right-hand man. Denison informed Chapman that the two of them "constitute[d] "the Government"", and indeed the day-to-day

1 Tasmanian Colonist, 8 April 1852.
3 HSC to CC, 6 April 1853.
4 Walter Chapman was born on 12 July 1852.
5 HSC to HC, 11 July 1852 and 4 September 1852.
administration of the government was carried on by them. However, the constitution also provided for a Legislative Council comprising sixteen elected members, four ex officio members, and four Crown nominees. The Colonial Secretary was one of the ex officio members and the recognised leader of the eight "government members". Unfortunately for Chapman, before his arrival, the elected members had organised themselves as a group in opposition to the Governor. The focal point of their opposition was their denunciation of transportation of convicts to the Colony, a policy of the Imperial Government which the local authorities were obliged to uphold. Thus, Chapman, the fervent disciple of representative and responsible government, found himself in the awkward position of being part of a political elite which was unrepresentative of and unpopular with the majority of the Colony's settlers on the central issue of the day.

During the first two months after his arrival, Chapman was engaged in routine administration and in preparation for the Legislative Council session which opened on 15 June. In fulfilling these functions, Chapman displayed his usual

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6 HSC to HC, 25 April 1852 and 11 July 1852. Matters of considerable importance were taken to the Executive Council, which consisted of the Lieutenant-Governor, the Colonial Secretary, and three other officials (HSC, "Responsible Ministries for the Australian Colonies", in HSC, Essays and Articles IV, 19). But this was largely a rubber-stamp body, matters were settled by Denison and Chapman beforehand, and "very little discussion ever [took] place in the Executive Council" (HSC to HC, 25 April 1852).

7 HSC to HC, 11 July 1852.

8 Neale, op cit 283. During the years immediately preceding Chapman's arrival, the number of convicts in Van Dieman's Land had declined, but at 30 June 1852 there were still 18,907 convicts in the Colony (HSC, "Suggestions for the immediate reduction of convict expenditure in Van Dieman's Land" in HSC, Essays and Articles IV, 9, appendix I). On 14 January 1852, the elected representatives had secured the passage of certain resolutions protesting against the continuance of transportation, and Denison was requested to forward these to the Queen. Denison's reply to this, read at the close of the first session of the Council on 19 March, expressed "deep sorrow" at the language of the resolutions, and this enraged the representatives who interpreted Denison's reply as imputing "a want of loyalty and fidelity" to the Queen (Tasmanian Colonist, 24 June 1852).
conscientiousness, "zeal and probity", and Denison was satisfied that Chapman added considerable strength to the Government. Soon after the commencement of the Council session, Chapman gave notice of his political sagacity and managerial skills in the face of considerable opposition to the government from elected members. In just over a week, Chapman transformed the Legislative Council from one in which the elected majority was "at open war" with the Governor to one which was prepared to work constructively in the legislative process. Chapman wrote to

9 Neale, op. cit 287-8, and Colonial Times and Tasmanian Gazette, 27 September 1854.

10 Directly after the Governor's speech opening the session, an elected representative (Nutt) gave notice that on 17 June he would introduce a resolution "in reference to certain unfounded charges" made by Denison at the close of the previous session, and another representative (Cox) then proposed an immediate adjournment. Chapman rose to move an amendment that the Council appoint a select committee to prepare the customary address in reply to the Lieutenant-Governor's address. This was voted down, and the original proposal was "carried by a large majority". It was evident to Chapman and commentators that "the Legislative Council [were] now at open war with Sir Wm. Denison" (Tasmanian Colonist, 17 June 1852). However, thanks to Chapman's astute judgment, the situation was defused. Chapman helped to organise a counter-proposal, to the effect that the Lieutenant-Governor be asked for an explanation of the remarks made in his speech. On 17 June, after Nutt had argued for his address, the counter-proposal was put as an amendment. Chapman helped to ensure that "the official members of council preserved a dignified silence", thus forcing the elected members to dispute between themselves and so increasing the divisions within their ranks. The amendment was carried by 12 votes to 9, and thus was the hostile address "got rid of by a masterly stroke of generalship on the part of the government officials in the council" (ibid, 21 and 24 June 1852). On the following day, the amended address was formally approved and presented to the Lieutenant-Governor, and he in reply disclaimed any imputation of doubt upon the representatives' loyalty and fidelity (Ibid, 24 June 1852). On 22 June, after a number of routine matters had been dispensed with, Chapman suggested that "the Council was now in a condition and frame of mind favourable to his proposition for a Committee to prepare an address in reply" to the Lieutenant-Governor's speech. This motion was carried (ibid, 24 June 1852). On the following day, Chapman presented the address, which thanked the Lieutenant-Governor for his speech, pledged the Council to give its earnest attention to the Bills he had presented before it, and promised to "foster all those measures which may promote the progress of the Colony". The address was adopted unanimously (ibid, 28 June 1852).
his father that one of the leading Council members had come round to declaring "thank heaven we have got a leader at last", and that Denison had indicated his satisfaction.\textsuperscript{11}

Over the ensuing four months of the Council session, Chapman pressed ahead with "good popular measures" on a wide range of areas.\textsuperscript{12} In particular, he earned praise "for the exertions he has put forth to carry out the ... proposed arrangements to amend, and re-model our postal arrangements".\textsuperscript{13} A local editorial commented that Chapman's conduct in the Legislative Council gave "the utmost satisfaction to all parties", and that his object seemed to be "to smoothe the asperity of political opponents, and, with a due regard for the interests of the Crown, to lend his powerful aid for the advancement of the legitimate rights of the people".\textsuperscript{14}

But the strongly-held anti-transportation views of the elected majority continued to be problematic. Chapman later recalled that the "temper and feeling" of the Council were his "especial study" during this session, and that "[n]o aspiration of the

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\item \textsuperscript{11} HSC to HC, 11 July 1852.
\item \textsuperscript{12} Ibid, and 4 September 1852.
\item \textsuperscript{13} Tasmanian Colonist, 19 July 1852. These arrangements were designed to assimilate the local postal system with that of England, reduce the postage on letters, abolish the privilege of franking, and make pre-payment compulsory. The far-sighted rationalisation of the postal system clearly appealed to the philosophic radical strain in Chapman. He declared in the Council that "[h]is own feeling was that a system of stamps should be established, and that no payment for letters should be allowed, with the ultimate intention of abolishing money payments for letters altogether"; and in calling for the abolition of franking of letters, he suggested that "all official letters should be paid for by the departments, to meet which sufficient sums should be placed on the estimates" (ibid, 12 July 1852). Chapman also moved for and served on several select committees to consider matters ranging from the development of a parliamentary library to the salaries of clerks in the government service. He also conscientiously laid returns before the Council on financial and other issues; and readily answered questions put to him by members of the Council (ibid, 24 June, 1, 12 and 22 July, and 6 September 1852).
\item \textsuperscript{14} Ibid, 5 July 1852. See for example Chapman's comments on the introduction of the Slaughtering Bill (ibid, 6 September 1852). Chapman himself claimed that he "gained credits for management and courtesy" (HSC to HC, 11 July 1852).
\end{itemize}
legislative body was more conspicuous, than a desire to obliterate, as speedily as possible, the convict element of the population.\textsuperscript{15} Chapman, who had frequently imposed the sentence of transportation while judge in Wellington, had come to Van Dieman's Land with an open mind on the question of transportation to this colony. But, certainly by the beginning of September 1852, he was "quite certain that representative institutions and transportation cannot go together", and he was firm in his conviction that the government could not "go on against the determined wish of the people".\textsuperscript{16}

On 8 September, an elected member, Gleadow, gave notice that he would bring in an address to the Queen asking her to revoke the Order in Council (of 1848) which made Van Dieman's Land a penal colony. Chapman saw this simply as a respectfully-worded request to the British Government to change its policy on transportation, and so he hoped that the Lieutenant-Governor would allow a free vote on it. However, Denison held that a motion urging the abolition of transportation should be treated as a government question, and, therefore, that all government members should vote in support of the government in the Legislative Council.\textsuperscript{17} In the week following Gleadow's notice, Chapman repeatedly appealed to Denison to allow a free vote, but in vain. He then offered to resign, but Denison also refused to accept this. On 14 September, the motion for the address to the Queen was moved. Chapman immediately moved an amendment (approved by

\begin{footnotesize}
\begin{enumerate}
\item Chapman almost lost his much-improved and consolidating Ports Regulation Bill because of a clause regulating the search for absconding convicts, but managed to ensure its passage by a device whereby the clauses were kept but the Council was not itself required to enact them (Neale, op cit 284).
\item HSC to HC, 4 September 1852.
\item Denison saw the motion as being "directly against the policy of the Government both at home and in the colony", and claimed that support for it by government members "would be taken as an indication of a change of policy on the part of the Government" (MSS Papers 53 4M, Turnbull Library).
\end{enumerate}
\end{footnotesize}
Denison) to the effect that, since the Council had already addressed the Queen on the subject in the previous session, it would be improper to do so again until the former address had been received. In presenting this amendment, Chapman did not express an opinion "one way or the other, on the merits of the general question of transportation".\(^{18}\) However, this amendment was lost by a large majority. Chapman then walked out of the Council chamber, claiming that he had been called away, and, during his absence, Gleadow's motion was passed with a large majority.\(^{19}\) Chapman later recalled that he had refused to support the government of Denison having "calculated all risks", having consulted his wife who "sustained and encouraged me to keep the right path", and with "the strongest conviction that it would come out right".\(^{20}\)

Chapman remained in office until the end of the legislative session as Denison did not wish to lose Chapman's services in the Council or provoke the Council further by suspending Chapman during its sitting. It is significant that Chapman, on two occasions, staunchly defended Denison's position in the face of the opposition of the elected members. In particular, on 28 September, Chapman strongly (but unsuccessfully) opposed a motion of no confidence in the Lieutenant-Governor, based on Denison's continued and open opposition to the views of the Council on transportation. Chapman argued that "every person was entitled to form an opinion on such an important subject, and more especially the Governor of a colony", and that the Lieutenant-Governor should not be censured for adopting the "open, manly, straightforward course of fairly stating his opinion, a course which he was bound to adopt by his allegiance to his sovereign".\(^{21}\) Besides defending the government

\(^{18}\) *Tasmanian Colonist*, 16 September 1852.

\(^{19}\) Ibid, and MSS Papers 53 4M.

\(^{20}\) HSC to CC, 26 May 1853.

\(^{21}\) *Tasmanian Colonist*, 30 September 1852. On 8 October, Chapman opposed a motion that the Lieutenant-Governor lay before the Council correspondence relating to the alleged forced retirement of Turnbull, Clerk of the Executive Council (who had voted in favour of Gleadow's
position, Chapman attended conscientiously to the passage of government bills and to other duties in the Council.22

However, Denison had not forgiven Chapman for his failure to vote against the motion on transportation.23 On 28 October, Denison suspended Chapman from office and gave him leave of absence on half pay. Denison wrote to the Colonial Office advising of the suspension and accusing Chapman of a lack of moral courage in accepting and continuing his office without explaining to Denison his view on transportation. He also accused Chapman of organising a political movement amongst the anti-transportationists which was aimed at weakening the power of the Lieutenant-Governor.24 Chapman resolved to make a personal appeal to the Secretary of State for the Colonies, and to this end he prepared to leave for London. Chapman, accompanied by his eldest son, left home on 4 December 1852, spent three weeks in Melbourne, and finally reached London on 4 April 1853.25

Chapman now began one of the most difficult periods of his life. During the ensuing period of thirteen months, he suffered feelings of bitterness, hurt and anguish, separation from most of his family, financial harm and loss of career

motion). Chapman argued that the matter of Turnbull was a confidential matter before the Executive Council, which, he argued, was analogous to the Privy Council in England. Again, however, the elected representatives defeated the government bench (including Chapman), on this occasion by 8 votes to 3 (ibid, 11 October 1852).

22 Ibid, 20 and 23 September, and 11, 14, 18 and 25 October 1852. After the adjournment of the Council on 19 October, Chapman continued to act for the Lieutenant-Governor, for example, in publishing instructions to immigration agents in the local press (ibid, 28 October 1852).

23 By 12 October, rumours of possible action against Chapman were such as to prompt a question to Chapman in the Council as to whether Denison intended to deprive him of office (ibid, 14 October 1852).

24 Denison to Pakington, 3 November 1852, MSS Papers 53.

25 Chapman initially intended to take his whole family, but he realised that this was too expensive an undertaking and that his family would retard his movements. Chapman and his wife therefore agreed that he would be accompanied only by Harry, who would commence his English education in London. See Journal and Observations of HSC on a voyage from Melbourne to England in 1853.
prospects. In this time of trial, Chapman was supported by the conviction that he had fulfilled his "duty to bear witness to the truth even at considerable risk to self", and by the steadfast support of his wife, father and friends.

Chapman was initially encouraged to stay in London following his meeting in April with the Colonial Secretary, the Duke of Newcastle, and by Newcastle's statement that he was "well aware of [Chapman's] zeal and ability" and that he was "eligible for a suitable vacancy". However, Newcastle, a man who "adopt[ed] nearly all the Colonial Office traditions", could not be relied upon to promote a man who had appeared to flout "the Authority of the Governor". In October 1853, following Newcastle's receipt of Denison's report that the local Executive Council had formally recommended Chapman's suspension, Chapman was relieved of his post and half salary (with effect from 12 November 1853). Chapman later recalled that he was offered a small West Indian Governorship, but that he refused

26 Chapman declared that he felt the absence of the family most: on a "cold wet foggy November night" he imagined "the music of the children's voices out of doors" and wrote of his longing "to see you all" (HSC to CC, 29 November 1853). He also succumbed at times to feelings of bitterness, as he reflected on how much his life of campaigning for causes had cost him: "My whole life has been a series of sacrifices to principle. In Canada, it was hinted to me that if I should be disposed to act with the dominant party, I might have almost any thing I asked for. In England I was always on the losing side I mean as far as personal interest was concerned. If now the Council [in Van Dieman's Land] is to be mesmerised by Denison ..., nothing will exceed my disgust" (ibid).

27 HSC to HC, 9 October 1852. On 5 November, Chapman was heartened by the address of 15 members of the Legislative Council, which paid tribute to his "conciliatory and candid, ... firm and courteous, ... wise and prudent conduct" during his time as Colonial Secretary (Address, RC).

28 HSC to CC, 6 and 19 April 1853. See also HSC to CC, 2 October 1853. Newcastle indicated in a despatch to Denison that he was not prepared to provide a government appointment for Chapman elsewhere as a method of removing him from the Colonial Secretaryship (Newcastle to Denison, 22 February 1853 in MSS Papers 53).

29 HSC to CC, 16 June 1853, and Memoranda 32.

30 HSC to CC, 13 October 1853.
this on account of the small salary. Apart from this, Newcastle inquired into the possibility of appointing Chapman to a judgeship in Victoria, but, in late March 1854, he advised Chapman that "from several circumstances and information derived from others he doubted [Chapman's] popularity in the colony". The most that Newcastle was prepared to do was to write to the Governor of Victoria that "in case of difficulty he may look to [Chapman] and that what he chooses to do shall be confirmed".

Chapman himself initially harboured ambitions for the Governorship of Van Dieman's Land, and, even when this no longer appeared feasible, he hoped for a position from which he could earn enough to retire to Van Dieman's Land. This was because of the evident affection Chapman and his wife had developed for the country and people of this colony. However, for the short-term future at least, Chapman increasingly focussed his thoughts on a legal career in Victoria. On his trip to England, Chapman had spent three weeks in Melbourne, assessing the prospects of living there. He found Melbourne to be "one of the wonders of Colonial history", and he considered that it "want[ed] legal men". Chapman had discussions with A'Beckett CJ, who (Chapman claimed) offered him the prospect of the Acting Chief Justiceship of Victoria during his own absence in England for two years. Chapman believed that he would be successful in his appeal in London, and so he refused the offer. However, within a short while after his arrival in

31 *Memoranda* 8, 11 June 1878.
32 HSC to CC, 31 March 1854.
33 Idem.
34 HSC to CC, 8 June 1853 and 9 August 1853.
35 Chapman wrote that "taking the country, climate, people and prospects, Van Dieman's Land is best for the English gentleman" (HSC to CC, 8 June 1853).
36 Further, he remarked at this stage that he "as the oldest puisne judge in the Australian Colonies should not have listened to a proposal for a junior puisne judgesthip - under Mr Williams, a man of lamentable and known incompetency, and Mr Justice Barry whose knowledge and acquirements are lost in his inordinate Irish vanity" (HSC to CC, *Journal and Observations*).
England, Chapman asked for the Acting Chief Justiceship, and, by January 1854, he declared that he would be content with the "first vacant judgeship in Victoria". Chapman recalled the happy life that he and his family had enjoyed during his judgeship in New Zealand, and so he "naturally look[ed] to the bench as the most desirable position in the colonies". He asserted defiantly: "the bench is what I am and the bench I will attain to".

An alternative career in Victoria, that was suggested to him by his friends as early as June 1853, was practice at the bar. Chapman was initially averse to the idea, as he considered himself "too old to run risks except where principle is concerned", and preferred the prospect of a judgeship "with a good [secure] paymaster ... and without any degradation". But, as the months wore on and the prospect of a judgeship dimmed, Chapman became reconciled to the idea of practice at the Victoria bar. He saw that he had the chance of making even more money there than on the bench, and that his career at the bar could be a stepping-stone to the bench. He also saw that, without the restrictions of government office, he would be free to pursue political reform: he noted that "a year or two out of office [would] enable me to promote the establishment of responsible ministry in the colonies".

Chapman's months of inaction in England did have one positive result: they afforded him time to reflect and to write upon aspects of colonial law and administration. By 17 December 1853, he had written the article "Suggestions for the immediate reduction of convict expenditure in Van Dieman's Land". This was a

37 HSC to CC, 8 June 1853 and 8 January 1854.
38 HSC to CC, 30 January 1854.
39 HSC to CC, 3 January 1854.
40 HSC to CC, 4 and 8 June 1853.
41 HSC to CC, 30 January and 2 April 1854, and to Aunts 12 May 1854.
42 HSC to CC, 30 January 1854.
43 HSC to CC, 19 April 1853, 14 and 26 August 1853, 3 January 1854, and 27 March 1854.
proposal designed to bring about a great saving in convict expenditure in Van Dieman's Land, while at the same time satisfying the settlers. Chapman, in a careful and thorough analysis, showed that the expenses of maintaining the convicts had "much increased of late", and that the colonists strongly desired to rid themselves of the convict element of the population. He therefore proposed that the convicts classed as "ticket-of-leave holders" and "pass-holders maintaining themselves" be pardoned at once, and that about 2000 of the other convicts be released after probation. He also proposed that the management and control of the remaining convicts be handed over to the local government, in consideration for the payment of a sum of money by the Imperial Government to the colony. In 1854, he published in the Law Magazine two articles on "Points of colonial law" and one on "Colonial legal policy". The first article on colonial law concerned the meaning of the clause, found in colonial charters and statutes, forbidding colonial legislatures from making laws "repugnant to the law of England". Chapman argued that such a clause meant that "any law made by the colonial legislature which shall conflict with any Act of the British Parliament, expressly binding on the particular colony, shall be deemed 'repugnant', and therefore absolutely null and void". In the second article on colonial law, Chapman noted the conflict between an English rule and a colonial rule on the law relating to powers of attorney. The English rule declared absolutely that the death of a principal operated as a revocation of the power of attorney of his agent. A contradictory rule, "recognized and acted upon in the colonies", affirmed the validity of many acts performed by the delegated authority after the principal had died, but before notice of death had reached the colony. Chapman noted that the colonies took English law "not absolutely and unconditionally", but only "so far as may be consistent with their circumstances and condition", and in many cases the law of the colonies had diverged from that of England. He also noted that "[t]he most conspicuous feature in the colonial

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44 HSC to CC, 24 December 1853, and "Suggestions ", in HSC, Essays and Articles, IV, 1-8).
condition is distance from England, the distance of the agent from the principal", and, arising out of this, the English rule would produce "inconvenience, confusion, absurdity, and even positive injustice". He therefore recommended that the colonial rule should be preferred by colonial courts.\textsuperscript{45} The article on colonial legal policy covered two areas. First, Chapman proposed certain measures which he hoped would promote the independence of the judiciary and remove suspicions of bias on the part of judges.\textsuperscript{46} In the course of the article, Chapman commented on the approach which he thought judges should follow in formulating their judgements. He argued that while it was the judge's first duty to be "right", it was also important that he should "convince the public that he is so; and this he can only do by exposing, in the clearest manner, the process of reasoning by which he arrived at his ultimate opinion". He asked: "What, indeed, is the object of judgements, but to instruct and satisfy the public, i.e. the professional mind?\textsuperscript{47}

In the second part of his article on colonial legal policy, Chapman called for the introduction into the Australian colonies of the English institution of Queen's Counsel and patents of precedence. This, he said, was "not so much to give rank or consequence to the individual barrister, as to place the successful man in a position, for the convenience of himself and others, which he would not enjoy according to the date of his call to the Bar".\textsuperscript{48}

\textsuperscript{45} HSC, "On the doctrine of repugnancy", and 'Revocation of powers of attorney by the death of the principal', in HSC, \textit{Essays and Articles}, IV, 3 and 185.

\textsuperscript{46} Chapman argued that the salaries of the colonial judges should be secured to them by positive enactment (and not simply be included in the annual vote of the legislature), and that the colonial judges should hold office "during good behaviour" (and not simply "during her Majesty's pleasure"). In the course of his argument he remarked that "[p]ermanency of tenure and security of remuneration have been adopted into the constitution of the United States, as the only means of securing the independence, purity, and integrity of the Bench".

\textsuperscript{47} "Independence of the judges", in HSC, \textit{Essays and Articles}, IV, 205.

\textsuperscript{48} Chapman suggested that the governor of each colony should be empowered to appoint only on the formal recommendation of the judges, and that the judges should recommend on the express
The final major work which Chapman completed during his time in England was a thirty-nine page treatise on "Parliamentary Government; or Responsible Ministries for the Australian Colonies". Here Chapman argued for the introduction, into the Australian colonies, of "a ministry responsible to the lower branch of the legislature", which had been extended to the British North American colonies "with the most marked success". He also argued that the Imperial Government should limit its involvement in colonial affairs to "questions which concern the empire at large", and should "never intermeddle with the purely local and internal affairs of the colonies". He foresaw that, should this be allowed to happen, the colonial connexion would, in a very few years, be reduced to "a common citizenship and a common allegiance", and this would ensure its permanence.

On 14 May 1854, Chapman left England to resume his Australian career. He stopped over in Melbourne, where he received "great encouragement" from his friends concerning practice at the Victorian bar. In August, he was reunited with his family in Hobart, and here, freed from the trammels of public office, he published his treatise on responsible government. On 25 September, at a dinner held in his honour, tribute was paid to Chapman's "comprehensive mind, peculiar application of the barrister who desired the distinction ("Queen's Counsel", in HSC, Essays and Articles, IV, 206-209).

49 HSC, Essays and Articles, IV, 3. Chapman claimed that the introduction of responsible government into Canada had "been the principal means of converting an oppressed and discontented people, disposed to loyalty, but yet often on the verge of, and once in actual rebellion, into a contented, happy, and most loyal and well-governed people". He contrasted this with the existing representative governments in the Australian colonies, and (reinforced by his recent experience in Van Dieman's Land) claimed that "the attempt to unite the antagonistic principles of despotism and representation is, and ever must be, a failure".

50 At 10, 29 and 34-5.

51 HSC to Hotham, 16 September 1854, and HSC to FC, 29 January 1854. In September, he received from Hotham the offer of the acting Colonial Treasurship of Victoria, but declined this on account of the salary offered ("insufficient for the support and education of the family"), and because of the encouraging prospects of the Victorian bar (HSC to Hotham, 16 September 1854).
fondness and aptitude to assist in framing a constitution, high mind and good conscience. Chapman, in his reply, noted that, "next to the satisfaction of one's own conscience, he knew of nothing so encouraging as the approval of the honourable, the upright, and the wise".52 Two days later, Chapman left Van Dieman's Land for Victoria.

II. Career in Victoria (1854-1864)

During Chapman's nine-and-a-half years in Victoria, he pursued a wide range of activities. He was at various times a barrister (for eight-and-a-half years), a legislator (for a total of three-and-a-half years), the Attorney-General (for twenty-one months), a law lecturer (for a total of three years), and an acting judge (for a year). On occasions (in early 1858, late 1861 and early 1862), he acted concurrently as a barrister, a member of the Legislative Assembly and a university lecturer. Chapman's father remarked that Chapman was "always the most at ease when [he was] in perpetual motion", and his son Harry acknowledged that his father could "stand much more work than most men".53

Throughout Chapman's taxing career in Victoria, he was sustained by the knowledge that his wife and family were well and happy. Already, by the end of 1854, Catherine Chapman indicated to her father-in-law that "every thing was going on so favourably at Melbourne", and that the climate was agreeable, the children were well, and the family had adjusted to the changes.54 Her main problem areas were her fear that her husband was over-exerting himself, and the fact that she

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52 Record, RC.
53 HC to HSC, 1 June 1855, and Henry Brewer Chapman to HSC, 11 December 1859. However, on repeated occasions, Chapman succumbed to physical ailments such as gout, fever, dysentery and eye failure (HC to HSC, 20 November 1855, 12 April 1856, 12 January 1857, 15 January 1858 and 7 April 1860). Note, it is unfortunate that Chapman's letters to his father, during the Victorian period, were lost in the family disaster of 1866.
54 HC to CC, 31 March 1855.
sorely missed her eldest child, Harry, who continued his English education. It was against this supportive background that Chapman launched into his many ventures in Melbourne.

1. Practice at the Bar

At the beginning of October 1854, Chapman began work at the Victorian bar. According to his later recollections, he "had not a day, scarcely an hour to wait for practice, a steady stream of briefs came in, his opinion was sought on all hands; this increased until his time was fully occupied". This trend continued into 1855, which proved to be an extremely lucrative year for Chapman's legal practice.

55 HC to CC, 4 April 1856 and 4 July 1856. However, she was consoled with a visit to Victoria by Harry in the latter part of 1860, on what proved to be the last occasion on which the entire Chapman family of nine were reunited (HC to HSC, 14 May 1860, and HC to FC, 9 February 1861). Harry Chapman was educated at Westminster School, and in 1860 he was elected to one of the school's scholarships at Trinity College Cambridge where he went on to obtain the LLB Honours degree (Re).

56 Chapman remarked that all his sons were "high principled, steady and gentlemanly lads" (HSC to Aunts, 26 January 1864). See below for Chapman's pleasure in the successes of son Martin (Appendix). The principal friends of the Chapmans were the Ireland family and Catherine's brother Charles Brewer and his family. Catherine Chapman also enjoyed her musical interests and her garden (HC to HSC, 17 October 1856, and to CC, 14 July 1860). Frederick Chapman noted that the "house at St Kilda was constantly the resort of the literary section of Melbourne society and was frequently visited by travellers from abroad (FRC, Outline).

57 HSC, Memoranda 32. His letter to his father of 24 October indicated that he had "got fairly into the current of the tide in the affairs of men", and that of 31 December vindicated his father's prophecy that his "prospects at the bar in Melbourne were superior to any ... office (HC to HSC, 26 January 1855 and 31 March 1855). In the months October-December alone, Chapman's fees amounted to £1124.9 (Fee Book, RC).

58 He made £2596.14.6, of which £835.14.6 was earned in the first quarter alone (ibid).
of Chapman's success in 1855 may be attributed to his creditable performance as counsel for the defence in *R v Joseph*, which commenced its main hearing on 22 February.\(^5^9\) The prosecution of Joseph was the first of a series of treason trials related to the momentous "Eureka affair". This arose out of the clash, in late 1854, between the mining community, who pressed for the vote, land reform, and (above all) the abolition of a system of licence fees, and the inflexible administration of Governor Charles Hotham, who refused to compromise on these issues. Arising out of this, the colonial government charged thirteen of the alleged participants with high treason, and Chapman joined leading members of the Victorian bar in agreeing to appear gratuitously in defence of the prisoners.\(^6^0\) Chapman's address to the jury at the conclusion of his case was eloquent, forceful, persuasive and emotive, albeit at times rambling and repetitive. Elements of his philosophic radical beliefs came vividly to the fore. He claimed that the uprising had been at least partly provoked by the unwise and arrogant actions of the authorities, and argued that, had the authorities read the Riot Act instead of attacking, "the reverence for authority ... of almost every British subject would have induced them to pause before they proceeded further; there is, in fact, what Carlyle terms a reverence for the constable's staff".\(^6^1\) Again, in rejecting the significance of the flag displayed by the accused (which contained the same motif as that on the anti-transportationist flag), Chapman asserted that "[i]f the fact of hoisting that flag be at all relied upon as evidence of an intention to depose Her Majesty, then I can only say that [the Attorney-General] and myself ought to be included in this indictment".\(^6^2\)

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59 *The Age*, 17 January (preliminary hearing) and 23 February 1855.

60 G Serle, *The Golden Age* (1963) 174. See also *State Trials 1855, Queen v Hayes, Queen v Joseph* (verbatim account from the notes of Mr Webb, Library of the Supreme Court of Victoria), A Dean, *A Multitude of Counsellors* (1968) 35-6, and *The Age*, 23-4 February 1855.

61 *State Trials*, 44.

62 Ibid, 43. As can be seen from this, Chapman adopted a high moral tone. He cast suspicion on the evidence of certain witnesses who had acted as spies: he said that "the extreme meanness of being
Chapman's address (concluded "amidst some applause") was followed by that of the flamboyant B C Aspinall, whose address had a more anti-government tone than had Chapman's speech. However, it appears that Chapman's contribution was by no means eclipsed by that of Aspinall, and that Chapman's address was "a masterly examination of the evidence" by a "very able advocate." The jury duly acquitted Joseph, and this set the scene for the subsequent acquittals of the other prisoners. Chapman had advanced his reputation as a barrister, and increased his standing in anti-government political circles.

The Joseph case was the most sensational case in which Chapman appeared as a barrister in Victoria. Furthermore, apart from the periods during which he was Attorney-General, Chapman appeared very rarely in criminal cases. Most of Chapman's private practice at the bar concerned routine civil matters. These ranged over a wide area, and the causes of action reflected Melbourne's character

"spies" indicated "a low moral condition which an honest mind naturally revolts from; and I have always found that where there is a low moral condition it extends itself to almost every act of a man's life" (ibid 44). In a different way, he undermined the evidence of soldiers who testified that the accused played a part in the shooting of Captain Wise: he remarked that it was "highly creditable" that the soldiers should have felt so much for their officer, but that this feeling had caused them to "look as it were through a coloured medium" (ibid 45).

63 The Age, 26 February 1855.

64 The fiercely anti-government newspaper, The Age, held that "the dull mediocrity of the senior counsel was more than counter-balanced by the bold and dashing speech of his junior, who carried the war into the Government camp" (10 March 1855).

65 Dean, op cit 37-8.

66 The Age, 24 February 1855, and Serle, op cit 175.

67 For a rare criminal appearance, see The Age, 18 July 1861. In R v Ellison, one of the issues contested was whether or not the oath had properly been administered on a Chinese witness. Chapman successfully argued that it had, as "the witness affected to believe that if he did not speak the truth, annihilation, so far as his soul was concerned, would be his lot" (The Age, 7 September 1860).
as a shipping and commercial centre, serving mining and farming interests. Chapman acquired a good business in civil cases taken before juries. Here he established himself as "a sure and accurate man, but slow". The rambling and pedantic nature of many of Chapman's addresses to the jury was compensated by his command of language and "the common touch". In *Amsinck v Story*, Chapman gave what was described as a "lengthy and very able address" in defence of a man accused of slander. Chapman portrayed himself as a balanced, compassionate advocate, when he began his address to the jury by acknowledging the feelings of sympathy he and the jury felt for the plaintiff, but stressing that the jury had to decide according to their conscience and due sense of justice. He then called the jury's attention to the place in which the slander was alleged to have taken place ("a small town ... a very likely place for little petty scandals to be most rife") and the type of person who was alleged to have heard the slander (the publican, a newsmonger, anxious to promote "scandal and tittle tattle in order to increase his profits").

As is the norm in legal practice, Chapman met with both failure and success. There were numerous occasions when Chapman's arguments on behalf of his clients were to no avail: on one occasion, the Chief Justice noted the "fallacy of Chapman's argument", in his plea of justification for criminal libel. However, there were occasions when Chapman's arguments were adopted by presiding judges as part of their judgments, and duly enshrined in Victorian case-law. Chapman established

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68 *The Age*, 17-18 November 1854, 14 March 1855, 3 May 1855 and 23 May 1855. Note, Chapman was not averse to pleading narrow points of law and procedure ((1855) VT 57-8, (1856) VT 46, and *The Age*, 14 November 1860).

69 J L Forde, *The Story of the Bar of Victoria* 204.

70 *The Age*, 12 March 1855.

71 Case 6 December 1856, newspaper cutting.

72 In *Bank of Australasia v The Colonial Bank of Australasia*, the reported headnote of the case reflects Chapman's argument that, where an issue has been found for the defendants, and no step had been taken by the plaintiffs to disturb that finding, the defendants were entitled to the costs of the issue ((1856) VT 401-2).
a reputation for expertise in certain areas, including maritime law and divorce law, and obtained the first decree for a divorce under new legislation which allowed for divorce on the grounds of the husband's desertion and adultery.

In this way, Chapman continued to derive a good income at the bar. His prominence in political affairs brought both disadvantages and advantages. His political involvement occupied a considerable amount of his time and placed a considerable strain on his physical resources. On the other hand, he benefited from the attendant publicity, and it is significant that, within a short while after relinquishing the Attorney-Generalship in 1859, he was "getting on as well out of office as in". Furthermore, Chapman acquired many contacts with influential business and government figures, he was the standing counsel for the Provident Institute of Victoria, and he was called upon to represent concerns such as the Colonial Bank of Australasia and the Board of Land and Works of Australia.

During his first period as Attorney-General (March-April 1857), when he was not a member of the Legislative Assembly, Chapman appeared regularly as chief prosecutor in criminal hearings, and before the full bench on points reserved in criminal trials. However, during his second period as Attorney-General (March 1858 to October 1859), Chapman had the additional burden of attending to political and legislative matters in the Legislative Assembly, and so he appeared less frequently in court. On the occasions when he did lead the prosecution, Chapman

73 Case 24 December 1861.
74 FRC, Various manuscripts.
75 He earned fees totalling £1520.16 in 1856, £1744.10 in 1857, and £1719.9 in 1860 (Fee Book).
76 HC to CC, 4 April 1856.
77 HC to HSC, 10 February 1860, Fee Book, and HSC to FRC, 5 August 1866.
78 The Age, 29 October 1858, 1856 VT 401, and case 3 July 1860.
79 During this time, he normally delegated the function of prosecuting offences to the Solicitor-General or (more frequently) to a practising barrister (The Age, 11 April 1858: this was denounced as a source of patronage).
was characteristically thorough, and, as in the Joseph case, at pains to reveal himself as a balanced and rational pleader. In R v Smith and others, where the accused were on trial for the murder of the Inspector-General, he advised the jury in his opening address that he would keep a "strict guard" on himself to refrain from using any expression unsupported by the evidence, as the prisoners were undefended. Further, he noted, the prisoners would, "so far as the humanity of the law provided it", remain innocent men until the jury had decided beyond doubt that the prisoners were guilty. However, he said that the Crown was bound to bring evidence against the prisoners, and he believed that there was no doubt of their guilt. The prisoners were duly convicted and sentenced to death. 80 In his addresses to criminal juries, Chapman at times sounded like a lecturer in criminal law. In R v Brannigan and others, which related to the same murder, he noted that "the popular idea of murder was a correct one - that murder consists in the unlawful killing of another, with what the law calls malice aforethought, that is, with some degree of deliberation". He added that "there was another principle to which he would draw their attention, that was, that if a common purpose were shown in a number of persons, all who were united in that common purpose were equally guilty of the murder committed with the person who might actually strike the blow". Here he "cited the usual cases to prove and illustrate these views". 81

Out of court, Chapman (as Attorney-General) was called upon to advise prosecutors on points of criminal law and procedure. In this regard, Chapman recorded a breakthrough when he argued a demurrer by the newly-introduced electric telegraph. At a criminal trial in Ballarat, counsel for the prisoners objected

80 *The Argus*, 14-15 March 1857. This trial was followed by that of R v Williams and others, for aiding and abetting in the same murder, and here he suggested to the judge that "it would be a wise, just, and humane course if the Legislature made provision for prisoners otherwise undefended" (ibid, 16 April 1857).

81 Ibid, 21 April 1857. Chapman also occasionally represented the Crown when points were reserved or appeals lodged from criminal trials (*The Age*, 26 March and 26 November 1858).
to the legality of the entire panel of jurors, on the basis of an alleged defect in the
summoning of jurors under the new Jury Act. The local Crown Prosecutor, unsure
of what to do, telegraphed Chapman for help, and Chapman immediately
telegraphed the advice: "Demur to the challenge - ask the judge to postpone [the
case until] late tomorrow, and I will instruct you before 10 am". The Crown
Prosecutor duly did this, Chapman sent him heads of argument with references to
books that Chapman knew were available in Ballarat, and at the subsequent hearing
the judge decided in favour of the Crown.82

Chapman's private and public practice in court brought him financial rewards
and a fair measure of fulfilment. It was also his most enduring activity during his
time in Victoria, stretching as it did from October 1854 to shortly before his
departure in April 1864 (with a year's break on the bench). However, by reason of
his late entry into the profession, his time-consuming political interests, and his solid
rather than brilliant advocacy skills, he was not regarded as one of Victoria's
outstanding barristers.83 Further, there was no indication that Chapman ever saw
his career at the bar as an end in itself. Instead, throughout his career in Victoria,
Chapman entertained the hope that his career, in private practice and as Attorney-
General, would foreshadow his promotion to the bench.84

2. Career in politics and government

On his arrival in Melbourne, Chapman resolved to steer clear of direct
involvement in a political structure which he condemned as "an attempt to unite a
partially representative legislature with a despotic and irresponsible Executive". Hs treatment at the hands of an autocratic Lieutenant-Governor was still fresh in his mind, and so he declined the office of Colonial Secretary (made by the Lieutenant-Governor on 6 December 1854), and initially he was even opposed to becoming a member of the Legislative Council until the arrival of responsible government. However, by the end of January 1855, Chapman declared that he had got "a little party" round him and that it was "not improbable" that he would attain the office of Attorney-General, which would not require him to abandon his profession again. At this point, the Member of the Legislative Council for South Bourke, Evelyn and Mornington resigned, and a large group of "respectable" electors asked Chapman to stand for election. Chapman saw this as an opportunity for him to promote the liberal cause in the Council, pending the British Government's approval of the responsible government constitution. The principles which Chapman advocated in his election pamphlet remained true to his philosophic radical past. He supported the establishment in Victoria of substantial self-government, an executive responsible to the local legislature, the universal spread of secular, popular education, and the "encouragement of a class of yeomen proprietors". Chapman's claim to "represent the people", at this crucial juncture in the transition from the old order to responsible government, was backed by two factors, which Chapman and his backers were not averse to exploiting. One was his pending gratuitous defence of Joseph, in the "Eureka" trial. The other factor was his

85 Pamphlet, "To the electors of South Bourke".
86 HSC to FC, 29 January 1855. A further reason for Chapman's rejection of the Colonial Secretaryship was the low salary (£2500) which accompanied it (The Age, 13 February 1855 and HSC, Memoranda 32).
87 HSC to FC, 29 January 1855.
88 The constitution had been despatched to England by the Victorian Government in March 1854. See The Age, 13 February 1855, and Serle, op cit 146.
89 Pamphlet (supra note 83).
established reputation as a champion of the popular cause, particularly in Van Dieman's Land.\textsuperscript{90} At the poll taken on 13 February 1855, Chapman won a convincing victory.\textsuperscript{91}

In the Legislative Council, Chapman won respect for his political independence and his legal skills (although the \textit{Melbourne Punch} lampooned him as a prosy, pedantic and tedious old lawyer).\textsuperscript{92} His most important contribution in the Council was in the area of electoral reform. The new constitution introducing responsible government finally arrived in October 1855. Two months later, when the government of William Haines presented its electoral bills, it was met with the notice of William Nicholson that the electoral Act should be based on the principle of voting by secret ballot.\textsuperscript{93} Chapman spoke persuasively in support of Nicholson's motion, and argued that the ballot would help men to serve their consciences and the community without fear of coercion or intimidation.\textsuperscript{94} The motion was carried against the opposition of the government. Haines duly resigned, but, following Nicholson's unsuccessful attempt to form a government, Haines was restored to office.\textsuperscript{95} Not surprisingly, Haines made it clear that neither he nor the law officers

\textsuperscript{90} The chairman of an election meeting noted that Chapman had "early identified himself with the liberal cause in Great Britain and in Canada", and that on his recent suspension as Colonial Secretary of Van Dieman's Land, "[a] burst of indignation occurred in Victoria at such a piece of tyrannical power" (\textit{The Age}, 6 February 1855). A local newspaper report declared that Chapman's fame was "not simply Victorian, or Tasmanian, but Australian" (newspaper cuttings, MSS Papers 53, Chapman 13).

\textsuperscript{91} \textit{The Age}, 13 and 17 February 1855: he defeated Richard Ireland by 521 votes to 347.

\textsuperscript{92} \textit{Melbourne Punch}, I, 26 & 57; and II, 18. He played a highly constructive role in introducing and chairing the select committee on legislation to amend previous Acts relating to the Bank of New South Wales (Neale, op cit 313-5).

\textsuperscript{93} Serle, op cit 201.

\textsuperscript{94} \textit{The Argus}, 20 December 1855.

\textsuperscript{95} On 21 December, Nicholson was given the task of forming a ministry, and Chapman was suggested as "the only possible successor" as Attorney-General (Serle, op cit 208-9, and \textit{The Age}, 8 February 1856). However, by the end of December, Nicholson had abandoned his attempt to
in the government would do anything about drafting and incorporating the ballot clauses into the Electoral Act. Nicholson himself had "but the crudest conception as to how to give effect to what he desired" and appeared incapable of doing so. At this juncture, Chapman later recalled, Nicholson came to him and asked him to draw up the ballot clauses. Chapman drew on his extensive legal and political knowledge, and set to work with his customary diligence and practical grasp of reality. He recalled that he "examined every system of ballot to which I could obtain reference", to establish the best method of voting. Ultimately, he "discarded them all in favour of reliance on what I deemed to be a natural human propensity": that of striking out the names of the opponents of the favoured candidate (instead of writing in or placing a cross next to his name). Other notable provisions included in the electoral bill enabled the elector to mark his voting paper in a place where he could not be overlooked (and thus gave him protection in the exercise of his voting right); and provided for the marking of the ballot paper on the back, by the Returning Officer, with a number assigned to the voter (thus guarding against multiple voting and impersonation). The electoral bill passed the Council in March 1856. Its provisions were brought into operation at the ensuing election, where they "worked perfectly, [and] produced precisely those results of quietness, orderliness, and freedom from the grosser kinds of conduct which had characterized elections under the old system". The method of voting in the Victorian ballot was subsequently adopted by New South Wales, and has been retained in several states

form a government: The Age reported that the abandonment of the enterprise was caused by Chapman's stipulation of a judgeship and Nicholson's difficulty in arranging this.

96 E Scott, "The History of the Victorian Ballot" (1921) 8 The Victorian Historical Magazine 57.
97 FRC, MSS on the Ballot; and report of V Pyke in OW, 5 January 1893.
98 Neale, op cit 326. In methodical style, Chapman included in the ballot clauses "directions for use" of the ballot paper, and here he gave, by way of example, the names of several candidates, one of whom was a guest in the Chapman household at the time and another was a neighbour (FRC, MSS on the ballot).
99 Scott, op cit 58; and The Argus, 20 August 1856.
to the present; and the improvements guaranteeing secrecy of voting and guarding against fraud have been adopted and retained in Britain, the Commonwealth and the United States. Chapman is today acknowledged as the "real author of the Australian ballot ... the man who took the crude idea and worked out a scheme in the form of practicable clauses". 100

In March 1856, the Legislative Council was prorogued, and the colony prepared for elections to the new Legislative Council and the Legislative Assembly. Chapman, together with John O'Shanassy (the leader of the Irish-Catholic community) and other opponents of the outgoing government, subscribed to a "moderately progressive, high-sounding policy". 101 Chapman decided to stand for election "in the important district" in which he resided, and, in his election pamphlet to the electors of St Kilda and Prahran, he announced his policies. He saw the new constitution "as the successful foundation of a representative Legislature and a responsible Executive", which could be bettered through the introduction of an universal adult male franchise (with some condition as to residence), a reduction in the duration of the Legislative Assembly (from five to three years), and "the reconstruction of the electoral districts, with a view to a fair and equal representation of the people". He opposed state aid to religion, on the grounds that this checked and limited private and voluntary efforts, and was unjust to religious bodies such as the Hebrews and non-Christian sects who were excluded. He proposed "economy in every department of the public service", and the creation of "extensive internal communications" so as to develop the enormous resources of the colony. He was in favour of "extensive law reforms, with a view to render the administration of justice efficient, expeditious, and less expensive to the suitor", and condemned the imperfections in the systems of conveyance and registration. He considered that the labours of "law-reformers in England have materially smoothed

100 Scott, op cit 53 and 62.
101 Serle, op cit 252.
the path of amendment to the colonial law reformer”, and believed that “the codification of our law to be quite as practicable as the mere consolidation of our statute law”. Finally, he thought that “the possession of small freehold farms by working proprietors should be encouraged throughout the country, and that they should have facilities afforded them for purchasing at a moderate price”. 102

At the nomination meeting for St Kilda and Prahran, on 14 September, Chapman was proposed as an "old and tried friend", who "had been connected with great reform movements in England", and who had "always been at his post when he was wanted in the old House - when the interests of the working class wanted to be upheld or extravagance was to be opposed". 103 At the subsequent poll on 23 September, Chapman achieved only a creditable third place. 104 The Argus attributed Chapman's defeat to two factors. First, many people blamed Chapman for Nicholson's failure to form a ministry and did "not hesitate to charge him with having played fast and loose with Mr Nicholson on that occasion". Secondly, although Chapman denied that he was part of a coalition seeking office, "he did not succeed in persuading the constituency that he had not a certain longing for office, under the protecting wing of the great O'Shanassy". 105

In November 1856, the new Legislative Assembly and Council met for the first time, with Haines at the head of a ministry which maintained a tenuous hold on power. On 3 March 1857, the Haines ministry was defeated by a coalition of democrats and "moderate, respectable reformers", led by O'Shanassy. 106 Eight days later, a new ministry formed by O'Shanassy, with Chapman as Attorney-General, took office. However, the government laboured under anti-Catholic prejudice, and was rightly condemned as "a motley batch of politicians without a principle in

102 Pamphlet, "To the electors of St Kilda", 11 July 1856.
103 The Argus, 15 September 1856.
104 The votes were: Sargood 713, Fellows 687 and Chapman 553 (The Argus, 26 September 1856).
105 Ibid, 25-26 September 1856.
106 Serle, op cit 261.
common, or a sympathy or antecedent to bind them together". Chapman himself was seen (at least by some) as one of the least objectionable appointees, in view of his "individual claims to respect" and his standing as a constitutional lawyer. But he was regarded neither as a brilliant orator nor as a "popular member", and therefore he did not add political weight to the new ministry. Not surprisingly, in polls held shortly after the government took office, Chapman and two other ministers were decisively beaten. On 23 April, the O'Shanassy government was defeated (and was to be succeeded by a second Haines government), and Chapman relinquished the Attorney-Generalship six days later.

By the end of 1857, the standing of the Haines government, and parliamentary politics as a whole, were at a low level. Parliamentary resignations abounded, and, with the expectation of a general election early in 1858, there were few candidates willing to offer themselves. On 23 December, at the nomination for the vacant seat of St Kilda, Chapman was proposed (in his absence) as "a man of well-known ability

107 The Argus, 19 March 1857.
108 The Argus, 10 March 1857, and Serle, op cit 262.
109 The current political practice was for those who had accepted ministerial posts to refer to their own constituency for re-election. Chapman was not a representative of any constituency, but T H Fellows, the member for St Kilda, had recently resigned his seat on being made Attorney-General in the previous government (and the dissolution of the previous government had taken place before his re-election). Chapman decided to contest the St Kilda constituency, in which he resided. The contest between the former and present Attorneys-General was seen as a key test of public reaction to the new government (The Argus, 14 April 1857). Nomination day was 13 March, and it was accepted by both candidates that the result of the poll on that day would be conclusive. Fellows was returned with an increased majority (Fellows 665, Chapman 498. The Argus, 18 March 1857). The Argus attributed Chapman's defeat to public lack of confidence in O'Shanassy's new ministry; Chapman himself suggested that his defeat was "probably due to the strong religious prejudices excited at the election by the absurd statement that he was a Roman Catholic" (The Argus, 19 & 20 March and 14 April 1857). Chapman's departure from office was postponed only by the delay in the recall of parliament and the passing of a motion of no confidence in the new ministry.
110 Serle, op cit 263.
and experience in political matters, and one also well known to the constituency". Politically, Chapman was viewed as a man not identified with any particular party, but "solely as a man of liberal opinions". Chapman was declared to be unanimously elected, amidst great cheering.\(^\text{111}\)

On 5 January 1858, Chapman was introduced to the Legislative Assembly and took his seat on the opposition bench. In the Assembly of sixty members, the government of Haines was supported by around twenty conservative (including squatter) members. Arrayed against them were the democratic/Catholic grouping led by O'Shanassy, of slightly less strength than the conservatives. These two groups were divided on issues of constitutional, land and goldfields reform. In the centre were some sixteen liberals, including Chapman.\(^\text{112}\) For Chapman, the two most important questions were the provision of a national system of education and electoral reform. On the former issue, he was at variance with the Catholic faction of O'Shanassy (which favoured denominational schools), and supported the Public Education Bill introduced by the Haines Government which promoted secular national education. However, on the question of electoral reform, he gave solid support to the democratic attack on the Elections Regulation Bill introduced by the Haines administration. The effect of this Bill was to give the goldfields fewer seats than their share of the population warranted, and to favour the "representation of minorities" (and particularly the conservative minority) in the Assembly. The scheme was supported by the Catholic faction, as Catholic members were well below their proportionate share of the Assembly, and so they anticipated an increase under the "representation of minorities" scheme. Chapman, however, referred to the history of America for illustrations of the "tyranny of minorities", declared that "he had no fear of democracy in the country as he considered that the press was an effectual and salutary check", and condemned Haines's proposal as

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\(^{112}\) Serle, op cit 259.
interfering with the "equality of the registration". He feared that the public "would be influenced by purely sectional considerations, and not by any regard as to which was the party of progress [of which he was a part], and which the conservative or stationary party". Chapman was joined in his opposition to the Bill by an odd assortment of fellow-liberals, democrats, squatters (who wished to defeat the Bill and so delay any reform process), and anti-Catholics. On 24 February, Chapman's fellow-liberal, Clarke, moved an amendment on the minorities clause on which the government was defeated, and the Haines ministry resigned.

The Governor, Sir Henry Barkly, was required to find a ministry, a bewildering task in view of the strange alliance of forces on the vote which had brought down the Haines ministry. After failing to persuade Haines and then Clarke to form a ministry, on 2 March he sent word to Chapman, who at this stage was out of town on legal business. It is clear that Chapman was now held in high regard as a political figure. He was hailed by local newspapers as "the substantial leader of the movement that led to the overthrow of the Government" and as "a man full of knowledge and experience - well read, and thoroughly acquainted with political science - perfectly familiar with the history and wants of the colony - a tried and proved reformer". Chapman considered O'Shanassy to be the most suitable and "efficient" person for the post of Chief Secretary, and chose for himself the Attorney-Generalship as "that would be a more convenient arrangement for [him] in the formation of the Ministry". The new government (which formally took office on 10 March) represented a Catholic/liberal coalition, from which the democratic left was notably absent. Chapman claimed that "not only had they formed the best ministry under the circumstances but they had formed the very best ministry that

113 The Age, 3 and 19 February 1858.
114 Serle, op cit 278, and The Age, 16 March 1858.
115 The Age, 9 April 1858.
116 The Age, 2 and 5 March 1858.
117 Ibid, 9 April 1858.
could be formed from the present House.\textsuperscript{118} Certainly the new government appeared to enjoy a large measure of support, and there was no serious opposition at the ministerial elections. On 18 March, at the nomination meeting for his constituency, Chapman was hailed as "a thorough democrat", and received the unanimous support of the meeting.\textsuperscript{119}

Chapman pledged that the first measure to be brought forward by the new government would be "a Reform bill based upon population and without a minority clause".\textsuperscript{120} The Elections Regulation Bill, the second reading of which Chapman moved on 14 April, was a thoroughly democratic measure, with only slight weighting against Melbourne and the goldfields and in favour of certain outlying areas. After a few minor amendments in favour of rural areas, the bill was passed by the end of the month. However, the bill then had to pass to the conservative-dominated Legislative Council, and here it was narrowly defeated. In response to this, the government decided to adjourn parliament until after the elections in August/September for one-third of the Council, and then re-introduce the bill in the hope that the balance of opinion in the Council would by then have been altered.\textsuperscript{121}

During the four-month recess, Chapman kept a low political profile, and \textit{The Age} suggested that "he was overwhelmed with official cares, borne down by the twenty bills he has prepared for the opening of parliament".\textsuperscript{122} By the time parliament opened on 6 October, there were suggestions that the government was losing the popular support it had enjoyed. Chapman believed that this was because the government had delayed in calling parliament and "pushing [the reform bill]
When Chapman introduced the second reading of the Electoral Districts Alteration Bill on 19 October, he appeared resolute that the same bill that had previously been rejected by the Council should become law. However, the strength of opinion in the Assembly was shifting to the right: whereas the conservative-squatter group returned to the Assembly in fighting mood, the democratic group of goldfields members (who suffered from the non-payment of members) had become less effective. Thus, from the time of the re-introduction of the electoral bill, it was under conservative pressure from those who opposed "the potential tyranny of men of no property". The government grew fearful that it would lose its majority in the Assembly, and that the Council would once again reject the bill as re-introduced. Rather than risk a dissolution of parliament and an appeal to the electorate (which might well have proved successful), it decided that a watered-down bill, with general parliamentary support, was the best solution in the circumstances. Thus, on 28 October, the government accepted a series of amendments which reduced the number of seats apportioned to the urban and mining areas. Chapman himself was heard to say that "if by a reduction in large constituencies largely represented, a better schedule could be produced, he had no objection, provided that no attempt were made to destroy the principle of representation itself". The amended bill duly passed through the Assembly and the Council almost without protest.

The passage of the amended reform bill guaranteed the O'Shanassy government another year in office, and it did remove some electoral anomalies and make some advance towards equality of representation. However, "[t]he price [of the concessions made] was the contempt of supporters and opponents in the country

123 Ibid, 6 and 27 October 1858.
125 The Age, 29 October 1858.
and the House, and certain ultimate annihilation". The standing of the government was further reduced in the months ahead by allegations of corruption and self-interest in two areas. First, the government was required to finance construction of the country railways, and certain of the banks that were awarded the contract to raise money for the construction were connected with members of the ministry. For example, one of the successful banks was the Colonial Bank, which Chapman had helped to found and of which O'Shanassy was the chairman. Further, money was advanced at a high rate of interest to the railway contractors by the Victorian Life and General Insurance Company, which was founded in April 1859 by Chapman and two other ministers. Factors such as these prompted *The Age* to condemn the government as "an administration of money-lenders and stock-jobbers". A second contentious area was that of official appointments, and here the government was continually accused of blatant patronage of Catholics and other supporters. In this regard, Chapman, who was officially entrusted with the appointment of magistrates and other legal officials, was seen as no more than a "convenient cipher in the Ministry". *The Age* declared that there was "no doubt that the Ministry, politically speaking, consists of O'Shanassy and Ireland", and so the blame for the appointments was directed mainly at these two figures.

Amid the political controversy and sagging fortunes of the government, Chapman applied himself in his usual thorough and conscientious manner to the various functions of his office. During 1858, he scrutinised and drafted amendments to the Audit Act, to improve and clarify accounting procedures and to make government expenditure more readily accountable. It is said that the Victorian

126 Serle, op cit 281.

127 *The Age*, 14 April 1859. Serle suggested that "in these days of *laissez-faire* and comparatively loose and undefined rules of conduct for public men, some of the O'Shanassy ministry managed to persuade themselves that in advancing their own interest so energetically and identifying the public interest with them, they were thereby adding to the welfare of the community" (op cit 283).

128 *The Age*, 9 November and 3 December 1858.
Audit Act, as "revised and re-introduced by Chapman in 1858, is basically the Audit Act of the Australian states, New Zealand and the Commonwealth today".129 In the Assembly, he revealed a sound grasp of the duties of Attorney-General and was ready with informed replies to questions raised, and he also applied himself diligently to constituency work in St Kilda.130

However, Chapman appeared to labour under certain political disabilities which attracted criticism. He was parodied for his serious, reserved and dull public performances, and he was seen by some as a "worn-out old man", with a "used-up" air.131 His laissez-faire, tolerant approach to human behaviour was at times out of step with current notions of public morality: for example, he refused to conduct an inquiry into the private affairs of an official in his office known for his seduction and adultery, and in fact promoted the official.132 There was also the (justifiable) perception that he was "lying in wait for a judgeship", and using his office as a "pre-judicial official career".133 Thus, Chapman's presence in the ministry certainly did little to improve the government's declining fortunes. The government hung on "only because no alternative ministry could possibly have found a majority". On 24 February 1859, parliament closed in a state of "utter demoralisation", "with a government bankrupt of policy, powerless, and suspect of continually advancing their private business interests, and a conservative Opposition with no better policy than to fan the flames of religious hatred".134

129 Neale, op cit 341.
130 The Age, 22-29 October, 5-24 November, and 15 December 1858, and 12-28 January, 5-23 February, and 8 March 1859.
131 Ibid, 24 November 1858, and 20 April 1859.
132 Ibid, 12 & 16 August 1859.
133 Ibid, 22 December 1858, and The Argus, 18 August 1859. This perception was justified, as, in his letters to his father during 1858, Chapman repeatedly surmised that his government position might foreshadow a move to the bench (HC to HSC, 10 September 1858 and 6 January 1859).
Chapman faced the elections in August 1859 with his customary optimism, declaring the fullest confidence in the ministry and the expectation of being re-elected. On 17 August, he addressed a crowded meeting of electors in his constituency, and here he defended his own record and that of the government. He claimed that he had "watched carefully, not only over the interests of his constituency, but also over the interests of the whole country"; and that he had "attended sedulously to his official duties", "never allowed his private business to interfere with the performance of them", and "always endeavoured to execute [departmental business] without delay". He claimed that electoral reform had caused members of parliament to be "distributed fairly throughout the country", and that the amendments to the bill originally proposed had deducted members "chiefly from large constituencies which could best afford to lose them". He claimed that the government had accepted the best railway contract it could get; and he defended his interest in the insurance company with which the railway contractors had dealings by asking if "he was to be prevented from investing his small savings in the way most beneficial to his family, and in any way he pleased, so long as it was honourable". He defended the government list of magisterial appointments as "quite as respectable as any former one". However, his arguments were to no avail. At the poll on 26 August, in his home constituency, he finished last, behind a liberal and a democrat. Elsewhere, the government fared badly, and it was left with few supporters in the new parliament. On 27 October Chapman and the rest of the ministry left office.

Chapman appeared content to remain out of active politics until July 1861. He found it a great comfort to spend time with his family, and declared that he "would not be tempted to take office again were it not that the Attorney-Generalship is the

135 The Argus, 18 August 1859.
136 The Age, 27 August 1859 (the result was Michie 1399, followed by three other candidates, and then Chapman with 494). Chapman also tried unsuccessfully for the seat of Dalhousie.
137 Serle, op cit 291-3.
step to the bench”. However, the general elections of July 1861 proved too great a temptation, and Chapman decided to contest the Mornington constituency. From late 1860, the government had been controlled by Heales and his democratic faction. They contested the 1861 election on the issues of reform of the Legislative Council, land settlement by occupation licences, payment of members, national education, and protection of industrial pursuits. Chapman, in his election address, showed that he sided with the Heales government on certain issues, such as electoral reform and national education. However, in other areas, such as protection, free trade and assisted immigration, his liberal stance placed him at odds with the government, and it was because of these issues that he was numbered amongst the opposition. The Heales government was returned to office, while Chapman was elected to the Assembly by a very narrow margin. In the months ahead, Chapman confessed to being confused by the political turn of events in Victoria, where "[t]he adherence to certain opinions which not many years since marked a man as an Ultra Radical is here deemed the sign of Conservatism". Further, he foresaw situations where there might be clashes between the ideals for which he had long striven: for example, he thought that, if the popular government of Victoria attacked the freedom of movement of private capital, this might prompt the intervention of the British Government and the suspension of Victoria's responsible government constitution. In such a situation, he declared that he "should grieve sorely at the necessity of [British intervention], but I should bow to its

138 HSC to Aunts, 18 April 1860.

139 The Age surmised that "an easy tool and plastic Attorney-General is again wanted for a possible Ministry, with O'Shanassy once more as captain and helmsman" (The Age, 26 August 1861).

140 The Age, 27 July 1861.

141 Ibid, 21 August 1861 (Chapman 356, Balcombe 335). The election was marred by personation by certain of his supporters, who were subsequently convicted and imprisoned for this offence. Chapman rejected calls for him to resign, as he claimed that he had no knowledge of or connection with the men who had acted on his behalf (The Age, 13 December 1861).
Clearly, Chapman, the philosophic radical, had been overtaken by political events: "the political apparatus he had helped to create [had] passed into the control of a class he scarcely recognized, which used it to solve problems he did not understand".

A change of government occurred in November 1861, when O'Shanassy became Chief Secretary again, but Chapman (contrary to his earlier hopes) was not included in the new ministry. Chapman continued to appear in the Assembly, proposing motions and raising questions. However, he now found it irksome, after a day's work which ended at 4.30, "to sit in the heated assembly lighted with gas for eight or ten hours and sometimes until three or four in the morning", without the comfort of evenings at home. Therefore, when he was offered a temporary judgeship, to commence 6 February 1862, he "was not sorry to quit the Assembly". He hoped that the temporary position would give him a claim to a permanent judgeship, but if this did not eventuate and he took to politics again, he hoped for a seat in the Legislative Council. In the event, neither hope was realised.

142 The Times of London, 17 October 1861, letter dated 26 August 1861.
143 Neale, op cit 349-350.
144 Serle, op cit 308, and HSC to FC, 26 September 1861.
145 The Age, 23 October 1861 and 17 January 1862.
146 HSC to FC, 24 February 1862. Chapman continued to take an interest in the political and economic development of Victoria. In a paper entitled "The Industrial Progress of Victoria as connected with its Gold Mining", which was read before the Statistical Society of London on 17 November 1863, he claimed that "the abundance of land, in proportion to capital and labour, imparts to colonies a remarkable vitality; and where, as in the case of Victoria, they have one or more especial sources of wealth, periods of depression are always temporary" (HSC, Essays and Articles, IV, 438).
Chapman's initial appointment as Law Reader was the result of a communication between Chapman and Redmond Barry, Chancellor of the University and also puisne judge of the Supreme Court. Chapman's life-long commitment to learning and education made him predisposed to accept the offer. Furthermore, at the time of his appointment, he was out of political office, and the lectureship brought him added revenue. Chapman held the office of Law Reader from the time of his appointment in June 1857 until he resigned to become Attorney-General in March 1858. During this time he was responsible for the Practising Certificate, the sole law qualification then offered by the University of Melbourne. This qualification was introduced in 1857, and in that year Chapman taught the bulk of the course and (with Professor William Hearn) prepared the first law examinations at the University. After his resignation Chapman retained links with the University through his membership of the University Council.

On 12 March 1860, on the retirement of one of the lecturers, Chapman agreed to resume the law lectureship. His appointment again followed his loss of the Attorney-Generalship, and Chapman viewed the lectureship as a convenient and pleasurable occupation with financial advantages. In the first term of 1861, Chapman was entrusted with the Certificate course, and it is from this period that the earliest of Chapman's lecture notes have survived. From these notes it appears that Chapman's approach to lecturing was to write out his lectures in full, and


148 He had for many years been active in the education of his children, and in this context he remarked that "my own self cultivation for [many] years has made me far from a bad teacher and guide" (HSC to HC, 13 June 1844).

149 HSC to FC, 18 April 1860.

150 Letter from University of Melbourne Archives, 7 February 1989.

151 For 84 lectures delivered during 7 months of the year to 29 Practising Certificate students, he received £648.32 (HSC to FC, 18 April 1860).
sometimes he would insert the main point of each paragraph in the margin. In delivering lectures, he would normally not read his notes, but would use them as reference points. Chapman displayed a sensitivity to the attitudes of his practice-oriented student audience, when, in beginning the constitutional law section of the course, he acknowledged that this would appear to be remote from their day-to-day concerns. However, he suggested that the course would "elevate their views above the mere practice of the law as a trade", and that knowledge of the constitution under which they lived was "absolutely necessary to all [who] aspire to the character of accomplished lawyers and educated gentlemen". He then called upon his extensive knowledge of American and English constitutional law, in presenting the features of the Victorian constitution. 152

There is also a surviving "lecture to the students [at] Melbourne University" entitled "Status of Native races considered in relation to the Sovereignty". In this lecture, Chapman reaffirmed the sovereignty of the Crown in New Zealand. He specifically rejected the notion that the Waitangi Treaty was the foundation of the British Crown's sovereignty over New Zealand. He stated repeatedly that the British Crown had overall sovereignty in New Zealand "by right of discovery and occupation". This sovereignty gave the Crown rights in relation to "its own subjects and other European powers", which could not be impeded by the indigenous inhabitants. Further, the Crown had the right to regard as "void ab initio ... such of the native laws and customs as are repugnant of the Christian morality". In particular, he upheld the right of the Crown ("a right founded in humanity and sanctioned by the comity of nations") to suppress murder and cannibalism. Chapman argued that the sovereignty which the Crown had by right of discovery and possession was backed by another principle which prevented the "Native chiefs" from disputing the exercise of the Queen's authority. This principle was that "the sovereign de facto is to be obeyed even to the exclusion of the rightful sovereign

152 Lecture, 12 April 1861.
while out of possession of the throne. It has been found necessary to maintain this doctrine in every country in Europe. Otherwise, in a struggle for the throne, as each party obtained the ascendancy, the extermination of a portion of the population might have been judicially effected under colour of attainder for treason. On the restoration of Charles II for instance, to have held that obedience to the sovereign de facto was treasonable would have made the whole population criminal, and the late Duke of FitzJames or the late Cardinal York would have had a better title to our allegiance than the 5th or 6th sovereign of the House of Hanover. Upon this principle, the mere declaration of the Queen's sovereignty over these islands is binding and conclusive on all persons who owe her allegiance and supposing there had been any previous sovereignty in the islands it would not be entitled to obedience while out of possession". Chapman accepted that the local inhabitants retained a limited sovereignty "inter se until they have parted with it by treaty". This enabled them to retain their "national character in relation to each other and to the discovering nation except in so far as such sovereignty impairs the sovereignty of the discovering and occupying nation in relation to its own subjects and other European powers [and the right to suppress murder and cannibalism]". Chapman believed that it was "this modified sovereignty which the Natives of New Zealand part with by the Treaty of Waitangi". 153

Chapman followed his lectures to the Practising Certificate class with the inaugural lectures on Part I of the LLB degree, which was introduced in 1861. Chapman stressed that his lectures were designed to convey and illustrate "the leading principles" of the law, and not detailed information. He "often warned [the students] not to be content with the amount of information conveyed by the lectures", and "all along endeavoured to point the way to more complete sources of information [particularly leading cases]". On the occasion of a revision lecture, he declared provocatively that "unless you come now to listen to me with a rigid

153 Undated lecture, University of Melbourne, RC.
determination not to rest satisfied with what I can now offer, this lecture will be more mischievous than useful".\textsuperscript{154} Chapman also showed a good grasp of both the value and the limitations of teaching techniques. In a discourse on classification, in which he revealed the breadth of his learning and literary knowledge, he described this as "a logical contrivance which has no other object than to aid conception". He argued that classification was "not the less useful because there are some anomalous cases", and added:\textsuperscript{155}

Bentham has well illustrated this: What so different he says as light and darkness yet who shall tell where daylight ends and darkness begins? When we come to the practical use of law we throw aside classification to a great extent or at all events unconsciously lose sight of it; but, to the student, it is of the greatest service in directing his attention to the leading feature or broad principles of the cases under discussion.

Chapman's lectures on the substance of the law were clear and thorough, and were enlivened by historical background and literary allusions. For example, in a lecture on copyright, he sketched the background to the statute of 1709 (granting to authors the sole right of printing their books) by referring to the complaints of Daniel De Foe about works being "piratically printed, garbled and falsified immediately after the author's own copy came out".\textsuperscript{156} Chapman made good use of his extensive mercantile and legal knowledge, and presented legal issues in vivid and immediate terms, as seen in a lecture on the modes of acquiring rights to chattels:\textsuperscript{157}

by far the most extensive in their operation are by contracts and by testamentary disposition or administration. On the average the whole of the personal property in the empire

\begin{itemize}
\item \textsuperscript{154} Lecture, 6 September 1861.
\item \textsuperscript{155} Lecture, written 20 May 1861.
\item \textsuperscript{156} Lecture, 22 July 1861.
\item \textsuperscript{157} Lecture, 8 July 1861.
\end{itemize}
passes by will or administration from one person to another about three times in a century, but by contract it is impossible to compute the number of times a chattel changes hands. In the case of manufactures, for instance, before an article is fit for the consumer the number of times it has been the subject of a contract baffles all calculation. Take the case of the coat I have on my back. The wool was probably grown in Australia where there may have been contracts about the station and live stock, mortgages and sales, loans, preferential liens, repayments and reconveyances. The wool itself may have been bought and sold, pledged and redeemed more than once before it was shipped. The transitus also gives rise to several contracts involving important questions as to bailments, affreightment, insurance and other matters connected with shipping. After arrival, the wool passes through many hands before it reaches the manufacturer and so also after it leaves his hands before it ultimately finds its way to my back. The same feature discloses itself in relation to every article which habit has rendered necessary to civilized man, and where death intervenes the whole current of these contracts is interrupted by a transmutation of ownership through the instrumentality of a will or of letters of administration.

On 3 February 1862, Chapman resigned his lecturing position because of his pending appointment as acting puisne judge. This appointment expired in February 1863. On 5 October 1863, following the forced resignation of a lecturer, Chapman returned as Law Reader for LLB students. He began the lectures to the Part I students with an address which indicated the high value he placed on legal education:

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158 R Campbell, A History of the Law School 1857 to 1873 (1977) 8, and letter from University of Melbourne Archives, 7 February 1989. In 1863, he completed the course for students studying Part IV of the LLB degree, and in March 1864 he commenced lectures in Parts I and IV of the degree.

159 Lecture, 7 March 1864.
Apart altogether from the value of these studies to the lawyer, the statesman, the legislator, the magistrate, apart also from the consideration that education cannot be deemed liberal and complete without some knowledge of the law and constitution under which we live, the mere pursuits of the study afford a healthy stimulus to the understanding. In subtlety of reasoning the law nearly approaches to mathematics. Legal investigation has to deal with complicated masses of facts combined in almost endless variety which must be analysed and classified and referred to the principle of law by which they are governed. This I need hardly say often requires the utmost discrimination and the closest reasoning - to which the highest natural powers of the human mind are quite inadequate without careful training; but to which happily even average intellectual powers become quite equal with the aid of such training.

Chapman then turned to discuss the concept of law, and he remarked that "taken as a single word there is scarcely one in the English language which has more varied shades of meaning than the word law". Hence, he said, it was difficult to arrive at a definition "in few words, where the very words we employ are words in ordinary use in our language, and yet have a technical meaning in contemplation of law". He finally chose the definition of John Austin as being "the most accurate and the least vague and ambiguous": this defined law as "a command prescribed by a political Superior to political Inferiours".160 Chapman saw great scope for what he referred to as "judge-made law", particularly in "a new and rapidly improving country" like Victoria. He noted that the adaptation of new facts and circumstances to the established principles of the law "must continue to be necessary as the relations of civilized society become more artificial and especially as new industries are developed".161 At the same time, he suggested that codification of the law

160 Ibid.
161 Insert, 9 March 1864 to lecture, 20 May 1861. He added that, while consolidation of the statute law was useful in itself and a very valuable step towards codification, interpretation and construction by the courts would always be necessary. In an earlier lecture, Chapman had paid
might diminish the necessity for judge-made law, and he applauded the "consolidation of the statute law, such as the present Attorney-General [Higinbotham] is promoting, [which] besides being useful in itself, is a very valuable step towards codification".162

Chapman also spent time in advising the students on the best methods of note-taking and study. He suggested that their notes in class should "embrace a very short but clear abstract of the principles or propositions enunciated by the lecturer", with any illustrative facts and case citations. This method would commit the student "to listen to and thoroughly understand the propositions of the lecturer, with an express view that his own abstract shall faithfully preserve the concentrated spirit of the more diffuse original". The students might then "compare their respective abstracts, and where they differ the mere discussion of the differences, so as to get the abstract finally and correctly settled, will prove a most useful aid to the correct understanding of the subject of the lecture".163 Chapman also advised that, when students read legal materials, they engage in "judicious note making". This was tribute to the development of mercantile law by Lord Mansfield, "the great and master intellect". He stated: "He is said to have created the mercantile law of Great Britain - applying settled principles to new states of fact with a facility that sometimes excites astonishment, and with an accuracy that leaves the mind without doubt" (Lecture, written 20 May 1861).

162 Insert, 9 March 1864 to lecture, 20 May 1861. A Castles notes that the beginning of consolidation in Victoria in 1863 "was a practical example of the application of nineteenth-century philosophical ideas which had often been propounded by Bentham and his disciples". He adds that "[i]n 1863 and 1864, Higinbotham ... worked closely with a small group of draftsmen, including Professor Hearn of the University of Melbourne, to produce the consolidating Bills" (An Australian Legal History (1982) 480-1).

163 Lectures, 9 and 11 March 1864. Chapman declared that "in listening even there is an art which is capable of improvement. I have often noticed that the countenances of uneducated auditors exhibit the painful effort which listening imposes on them - while the man whose profession or functions compel him frequently to attend to the discourse of others sits at his ease. You will recognise the accuracy of my statement if you will take the trouble to note the expression of different classes of people in any large assemblage of people where speaking is going on - a church for example".
because "the exercise of one sense aids impressions conveyed by another (writing employs the sense of touch and concurs with the eye to perpetuate memory)", and because note making "imparts to the student a ready habit of analysis and abstracting - of analysing the leading or operative facts and abstracting the principles".164

During March 1864, Chapman delivered introductory lectures on equity, "the principal subject of Part IV". Chapman was ideally placed to lecture on this subject, as he had spent most of his recent time on the bench adjudicating upon equity matters. However, Chapman did not lecture the 1864 LLB courses beyond their early stages, as on 30 March he resigned his Law Readership to prepare for his departure from Victoria.165

It is evident from the lectures which have survived that Chapman was in many ways ideally equipped for the role of lecturer, and it is not surprising that Chapman was regarded by his law students as a "star".166 In March 1864, fifty-one past and present law students of Melbourne University (including John Madden, future Chief Justice of Victoria) presented a scroll to Chapman. This fittingly testified to his "patience and labour" and to his "high integrity of purpose, kindness of disposition and warm desire to benefit others by [his] own learning and abilities".167

4. Acting judgeship

Chapman came to Victoria determined to attain a position on the bench. Behind his activities at the bar, in politics and in government, there was the hope that these would lead to a judicial appointment. He hoped for the Chief Justiceship of New Zealand, in succession to William Martin, but his father explained that there

164 Ibid.
165 Letter from University of Melbourne Archives, 7 February 1989.
166 Campbell, op cit 6.
167 Scroll presented to Henry Chapman.
was very little chance of this, as it was "too good a thing not to be seized upon by high interest". 168 He twice accepted acting judgeships of minor courts: in December 1859 he was acting judge of the Court of Mines and County Court of Ballarat, and in February 1860 he was acting judge of the County Court of Dunolly. 169 Finally, his chance came in early 1862, when Redmond Barry, with whom Chapman had dealings at the University and at the bar, went on a year's leave. On 6 February 1862, he was appointed acting judge of the Supreme Court of Victoria, for the duration of Barry J's absence. 170

Chapman's acting judgeship began inauspiciously, as local newspapers proclaimed his appointment a political one, at the hands of Chapman's former political colleagues. Questions were raised as to why Chapman, a comparatively junior barrister without special prominence at the bar, had been preferred over more senior barristers and judges of the inferior courts. Nevertheless, Chapman began his acting judgeship with pleasure in his appointment and high hopes for the future. He noted that the salary was £2500, which, with what he possessed, was "about double" his expenditure; the Supreme Court library had an "excellent library of 5000 volumes", Barry J had left him the use of his library in his chambers, and he could remove his own "very good library of 800 volumes" to his own home; and the acting appointment gave him "a claim to a permanent judgeship". 171

Chapman's time as judge was occupied almost entirely with civil matters, and, in particular, "equity" cases. 172 These required decisions on matters relating to

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168 HC to HSC, 12 December 1856 and 10 September 1857.
169 Record of appointments, and HSC to FC, 18 April 1860.
170 The Age, 7 February 1862.
171 The Age, 8 February 1862, and HSC to FC, 24 February 1862. By the time of Chapman's departure from Victoria in 1864, Chapman's library comprised some 4000 volumes, including one of the most complete collections on the legal profession (The Age, 31 March 1864).
172 It appears that New South Wales and Victoria (unlike New Zealand) "approximat[ed] some of the existing divisions between English courts", notably the separation of common law and equity. In
insolvent and deceased estates, and remedies such as injunctions and specific performance in contract. Chapman J also exercised jurisdiction in matrimonial matters; and occasionally he sat with two other members of the bench and heard common law matters and cases brought on appeal. 173

In his judicial duties, Chapman J revealed himself to be as conscientious and thorough as he had been in Wellington. He would declare that he "desired time to look into the arguments and put his judgment into a shape satisfactory to all parties", or that he had given the subject "very anxious study" and now stated his opinion "to the best of [his] ability". 174 Chapman J revealed extensive knowledge of legal sources, especially of the English common law which formed the basis of Victoria's legal system, 175 and these sources were regularly updated by references in such publications as the Law Journal. 176 This knowledge enabled him to go beyond the legal insights of the counsel appearing before him: on one occasion he concluded from an examination of "three several reports" of a case that an "erroneous view ha[d] been taken from the marginal note" of the case as presented in court. 177 Chapman J's comprehensive knowledge of past and current case-law enabled him to discern trends in legal development: in sustaining an injunction, he

1856, a fourth judge was appointed to the Victorian Supreme Court to take charge of equity proceedings (Castles, op cit 347).
173 The Age, 26 September and 17 December 1862.
174 The Argus, 24 May 1862, and (1862) 1 W & W 166 (insolvency).
175 Section 24 of the Australian Courts Act 1928 provided that all laws and statutes in force in England on 25 July of that year should be applied in the administration of justice in the courts of New South Wales (of which Victoria was a part until 1851).
176 (1862) 1 W & W 326 (equity) and (1863) 1 W & W 388-9 (equity). For the general trend amongst Victorian judges towards English law, see W Harrison Moore, "A Century of Victorian Law", (1934) 16 Journal of Comparative and International Law 182-3.
177 (1862) 1 W & W 238 (equity).
referred to "high authority that in modern times injunctions were more liberally granted than formerly". 178

In examining legal authority, Chapman J was anxious to establish the principles which they exemplified. 179 His stress on the principles or "substantial meaning" of the prevailing law prompted him to use a wide range of sources, including text-writings and cases from American jurisdictions, which were in conformity with established principles. 180 His approach also enabled him to make creative use of legal precedents. In Molesworth v Molesworth, Chapman J had to decide on the times for payment of alimony, and turned to English law for guidance. He noted that the practice of English courts was to direct alimony to be paid quarterly, but that the principle on which the practice was based was the payment of English salaries, rents and dividends each quarter. He therefore decided that he would "best preserve the principle laid down in England by departing from practice, and by directing that the alimony should be paid monthly". 181

Chapman J was repeatedly called upon to interpret the wording of local statutes and contracts. Chapman’s approach was to look at the language and context of the section in question, and the intention of the legislature in framing the statute. 182 In Re Coates, he had to interpret the phrase "the person the cause of whose debt had

178 Case, 31 July 1862.
179 Case, 28 August 1862.
180 Case, 3 July 1862. This was in line with the earlier-expressed view of the Victoria Law Times that its readers could profitably look beyond English legal models to French and United States legal developments ((1856) vol 1, 32).
181 (1862) 1 W & W 57 at 62 (matrimonial); and case, 3 July 1862.
182 (1862) 1 W & W 176 (insolvency). During his time in Victoria, Chapman wrote notes on the authority of English precedents, in which he stated: "[they] are entitled to the greatest respect as guiding lights to the Colonial Courts - but are not absolutely binding. The Colonial Courts are bound to decide according to their own conscientious view of the law. In examining any decision of one of the Superior Courts they will act with becoming diffidence, but still they must enunciate their own view of the law - even although they should depart from a decision of one of the Courts of Westminster - even at the risk of being charged with presumption and arrogance".
arisen". Chapman J remarked that "[t]hese are certainly not very artistic words to be employed in the framing of a statute; nevertheless we are bound, if possible, to give them a meaning which shall be consistent with the context". Chapman J was sometimes called upon to make use of his grammatical skills. He had to decide whether the Insolvency Act, in the section stating "in contemplation of insolvency or knowing himself to be insolvent", referred only to one set of circumstances. He noted that if the word "or" meant "otherwise" the second phrase was explanatory of the first, but suggested that here "or" was "put in the disjunctive, separating two distinct states of circumstances". Chapman J also referred to the decisions of other courts on analogous statutes, and strove to give as benign an interpretation as possible. In Goodman v Hughes, he noted the trend of the courts "of England and America, to construe the statute more favourably towards creditors"; and, in relation to certificates of rehabilitation, said that he thought "considerable allowance should be made for the sanguine hopes which traders often entertain of a favourable turn in their affairs, even after they have fallen into considerable difficulties". However, he was alive to the limits of the judicial function. He said that "[a] statute passed by the Supreme Legislature of the Colony, with all the deliberation which our Constitution demands, ought not to be held invalid by the Supreme Court, except on the clearest and most cogent grounds". In interpreting the words "in substitution" in the Trustee Act, he said that to imply from these the power of displacing a trustee "would be carrying judicial interpretation beyond its proper function".

Chapman J displayed a practical, realistic grasp of the matters brought before him. In McIntosh v McIntosh, where a wife had petitioned for judicial separation, he

183 *The Age*, 4 October 1862, and (1862) 1 W & W 122 at 125-6 (insolvency). He sometimes experienced difficulty because of the careless wording of statutes and contracts.

184 *The Age*, 4 April 1862.

185 (1862) 1 W & W 202 at 214 (equity), and *The Age*, 4 April 1862.

186 *The Argus*, 24 May 1862.

187 (1862) 1 W & W 175 (equity).
accepted that "where the wife possessed considerable property of her own, the Court ought to exercise great caution in investigating the facts, to discover that the cruelty was not generated by the wife, in order to get rid of a husband who proved an encumbrance to her". He said that he would "look to all the cluster of acts, so to speak, and not merely those occurring at the time of the principal act complained of". In framing his judgments and deciding on the remedies to award, Chapman J favoured decisions that reduced the prospect of further litigation, promoted "economy", and were most convenient for the parties concerned. On the question of the validity of the appointment of trustees, Chapman J said that he was bound by an English decision, but decided to elaborate on his judgment "as otherwise the Defendant might be vexed by a suit by other parties". But sometimes Chapman J's dislike of prolonged litigation had to give way to a practical assessment of what he saw to be the fairest solution. In Mouatt v Kaye, he sustained an injunction because "litigation between the parties was well advanced, and the possible mischief of a sale at this stage might be much more grievous to the plaintiff than a trifling further delay will be to the defendants".

Chapman J presented his judgments in a fluent and appealing manner. At certain times his expression was succinct and direct. In Dancker v Porter, he noted: "Mutual consent is the foundation of the contract of partnership. Without consent there may in many cases be community of interest, but there can be no partnership". At other times he expressed himself in more florid terms. In Lee v

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188 *The Age*, 28 May 1862. See also (1862) 1 W & W 190 (equity). In notes which he wrote on the authority of a colonial court to examine the validity of statutes passed by the local legislature, Chapman stated that such examination was necessary where statutes were inconsistent with each other or conflicted with an imperial statute, or where only limited powers of legislation had been conferred on the legislature.

189 (1862) 1 W & W 141 (insolvency), and case 18 August 1862.

190 (1862) 1 W & W 185 (equity).

191 Case, 31 July 1862.

192 (1862) 1 W & W 313 at 329 (equity).
Robertson, where he refused to dissolve an injunction obtained by the shareholders of one mining company to restrain the company from carrying out an agreement made with another mining company, Chapman J prefaced his refusal with comments on the "energy and indomitable perseverance" of the great mining enterprises. Chapman J was anxious to explain his judgments as carefully as possible, and to clarify the technicalities of the law. In Henty v Hodgson, he stated the rule *qui prior est tempore potior est jure*, and then immediately explained what it meant and gave an example of its application, before considering its relevance in the case in hand. Chapman J treated with respect the barristers appearing before him: where appropriate he would compliment them, and (even where he was sure of his own views) he would take further time to consider his judgments in deference to the authorities quoted by them. At times Chapman J was disarmingly frank in his judgments: he noted that his decisions on the rehabilitation of an insolvent had not been "with perfect satisfaction to [him]self", and that, while he had discovered no applicable cases on a certain issue, "there may of course be such, but at all events I at present know of none".

There were occasions when Chapman J's decisions were overruled on appeal by the other judges. It appears that Chapman J's tendency to assess matters in terms of overall merits and justice, and in as benign a light as possible, sometimes caused him to overlook more precise legal requirements. In *Re Stephenson*, Chapman J made an order for sequestration absolute, despite the objection that the proceedings were irregular, as he considered the mistakes were "immaterial and unimportant". The

193 (1862) 1 W & W 374 at 391 (equity).
194 (1862) 1 W & W 250 at 258 (equity).
195 (1862) 1 W & W 287 (equity), and case, 9 October 1862. Thomas a Beckett recalled that Chapman was the first judge before whom he practised, that he retained "most pleasant recollections of [Chapman] on and off the bench", and that Chapman was "most considerate in his bearing towards the junior bar" (T a Beckett to FRC, 7 October 1903).
196 (1862) 1 W & W 189 (insolvency), and case, 4 October 1862.
appeal court set aside the order, on the basis that the statutory requirements, whether material or not, had to be met. 197 In Re Perry, Chapman J granted an insolvent auctioneer a rehabilitation certificate, and in so doing took a lenient view of the responsibilities of an auctioneer in relation to his customers. He held that the auctioneer was not an agent of his customers, and that he was expected to carry on his business according to the custom and trade of his country and not a higher standard of morality. Chapman J later admitted that he had viewed the case against the background of "the extraordinary and penal character" of the applicable section of the statute. Molesworth J, in overruling Chapman J's judgment, said that "the error which seems to pervade the Judgment [is] that, because auctioneers in some cases are not responsible as agents only, therefore, in all cases auctioneers are not so responsible". 198 Chapman J's attitude to the reversals of his judgments revealed a flexible independence. In the Perry case, he said that he maintained his position; but on another occasion he remarked that "after a very careful consideration, and consultation with [the other judges]", he had come to concur in their opinion. 199

However, most of Chapman J's judgments were neither challenged nor reversed. During his brief time on the Victorian bench, he contributed to the development of Australian case-law, particularly in the areas of practice and procedure and family law. A number of his judgments remain as precedents of modern Australian law. 200

During the week 15 to 19 September, Chapman J presided over the Melbourne criminal sessions. Here he revealed his characteristic frankness and directness of approach. In the case of a female who was acquitted of stealing clothing, Chapman J said that "from his knowledge of her character, she had been fortunate in being

197 (1862) 1 W & W 114 at 116-120 (insolvency).
198 The Age, 30 August 1862, and (1862) 1 W & W 150 at 160 (insolvency).
199 (1862) 1 W & W 341 (equity).
200 See Australian Digest (2 ed, 1976), volumes 19 (732), 27 (857), 29 (88), 30 (292-3) and 31 (672).
acquitted", and he advised her to be "more circumspect in future". Chapman J also revealed his preference for curtailment of litigation through flexibility of procedure. In the case of a charge of bigamy, counsel for the defence submitted that there was no case to answer, as the first marriage had not been clearly proved. Chapman J reserved the point, and the jury later found the accused guilty with a strong recommendation to mercy. Chapman J said that he was "inclined to pass so lenient a sentence that it would not be necessary to raise the law point", and later that day he sentenced the prisoner to three months' imprisonment. On another occasion Chapman J indicated that he aimed at consistency of sentencing. In the case of a person who had pleaded guilty to a charge of embezzling money, Chapman J was aware that the prisoner's employer wished the court to be as lenient as possible. However, Chapman J said that "in justice to those prisoners who had been placed in a similar position", he could not pass a nominal sentence in deference to the wishes of the employer.

For most of his time on the bench, Chapman J was required to work long hours. In November 1862, Chapman J wrote that "until about a month ago I have been very hard worked: sitting in equity suits every day and all day". However, he added that "we are coming to the end of the legal year and business is getting slack", as it was "getting too hot for people to quarrel with their trustees or for partners to seek for a dissolution". In December, he commenced a six-week vacation, after which he returned to the bench where he remained until 19 February 1863.

Unfortunately for Chapman, his acting judgeship did not lead to a permanent appointment on the bench in Victoria, as Barry J returned to fill the only existing vacancy. However, Chapman continued to harbour the ambition of returning to the

201 The Age, 20 September 1862.
202 Ibid, 17 September 1862.
203 Ibid, 20 September 1862.
204 HSC to FC, 26 November 1862.
205 The Age, 6 and 20 February 1863.
bench. By the beginning of 1864, the New Zealand authorities had decided to appoint an additional judge, and Chapman was approached with a view to his appointment to the New Zealand bench. On 23 March 1864, a notice in the New Zealand Gazette announced his appointment, and, on 9 April 1864, Chapman departed for Dunedin.

III. Conclusion

During his time in Australia, Chapman displayed a remarkable consistency of approach in his varied career as government official, barrister, politician, lecturer and judge. He was thorough, hard-working, and conscientious, and was driven by an earnest desire to communicate his knowledge and beliefs to others. His extensive reading and research, his experience and knowledge of law and government, and his sound, practical grasp of reality allowed him to formulate overall ideals and at the same time retain a pragmatic appreciation of their limitations in practice. The clash between commitment to principle and pragmatic considerations was most acute in Van Dieman's Land, and the bitter personal cost of his opting for the former possibly reinforced for him the importance of the latter in his political career in Victoria. Chapman was far from being a flamboyant extrovert, and consciously adopted a restrained and balanced approach in the positions of authority that he held. Underlying his actions and beliefs was an optimistic belief in the improvement of humanity through individual endeavour.

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206 HSC to Aunts, 26 March 1864.

207 The offer was conveyed on behalf of the New Zealand Government by Charles Ligar, Surveyor-General of Victoria, formerly Solicitor-General of New Zealand (FRC, Outline of the life of HSC). Catherine Chapman urged her husband to accept, "for ease and leisure and to enjoy a happy future with the children around" (HSC to Aunts, 18 April 1866). Chapman's positive response was received by February 1864 (F Whitaker to HSC, 25 February 1864).

208 ODT, 16 April 1864.
In government, both in Van Dieman's Land and Victoria, his conscientious application of his legal skills and experience facilitated significant reforms in areas ranging from postal services to the auditing of public accounts and electoral reform. Chapman's talents appeared to be least effective in the political sphere, and in Victoria he failed to capture the public imagination as a "popular figure". At the Melbourne bar, Chapman's restrained public persona and comparatively limited experience hampered his rise beyond the middle-order range of barristers, but he did play a key role in the "Eureka" case and he contributed to the development of the law in certain areas.

A factor which limited Chapman's success in politics and at the bar in Victoria was that he saw these activities as means to achieving an end (a judgeship), and not as long-term careers. (Not surprisingly, Chapman's departure from Victoria for the New Zealand bench signalled the end of his career at the bar and in politics). This factor was not at work in the two other areas which engaged his attention in Victoria: lecturing and judging. These were activities best suited to Chapman's talents, they were enjoyed by Chapman for their own sake, and they brought him success. His pioneering efforts in law studies at the University of Melbourne earned him the adulation of his students; and his sound performance on the bench helped to ensure his permanent appointment as a judge in New Zealand.
Lecture 3
TBA by request

Monday, July 3.

Of the several modes of acquiring and of confining with a right to personal property, we have already treated, and on the same terms the courts determine their operation in the common law by Contract, and by the usual principle of disposition, or an annuity, in the case where the holder of personal property in his own place, by order of an administrator, has a person to another about three terms in a century, he by contract and is incapable of conferring the amount of terms a child, charged, doesn't. If the case is manufactured in nature, before an act...
CHAPTER IV
SECOND NEW ZEALAND JUDGESHIP AND RETIREMENT (1864-1881)

I. Life and career in Dunedin

The early 1860s marked the substantial beginnings of Otago's judicial history. Prior to that time, Dunedin had briefly had a resident judge, Sidney Stephen, who, in his two years of residence (1850-1852), heard no cases; and from 1858 Henry Gresson, who had jurisdiction over the South Island, made periodic visits from Christchurch. From 1861, the discovery of gold at Tuapeka, and the resultant growth of Dunedin in terms of population and legal business, made these makeshift judicial arrangements wholly inadequate. In October 1862, Christopher Richmond was appointed to the bench, and he became resident judge in 1863. Further gold discoveries in other parts of Otago, and the ensuing influx of population and commerce into Dunedin and neighbouring areas, caused the government to appoint a judge to assist Richmond J, in Otago and Southland.¹ Chapman J arrived in Dunedin on 15 April 1864, was judge until his retirement on 31 March 1875, and remained in Dunedin until his death in December 1881.²

Chapman's elevation to the New Zealand Supreme Court satisfied his long-held ambition of receiving a permanent appointment to the bench, a position he had last held twelve years before in Wellington. For Chapman, his appointment brought "relief from his arduous struggle with fortune", with work that was "less anxious and with regular remuneration".³ In November 1864, he reported that he had made

¹ Cooke, op cit 330-1.
² ODT, 16 April 1864, and New Zealand Gazette, 25 March 1864.
³ FRC, Memoranda 34 (but the salary of £1500 was far less than his earnings in Victoria had been).
himself "very comfortable here", with "plenty of work to keep my mind fairly and healthily employed but not too much for the comfortable enjoyment of my family circle". Chapman's pleasure in returning to judicial office was matched by the response he received from the local inhabitants: at his first court appearances, lawyers and jurors paid tribute to his character, learning, experience, and "sympathy with the cause of popular education and advancement". Richmond J was pleased to obtain Chapman's assistance, especially with the work emanating from the gold fields and Southland. Over the ensuing years, Chapman retained his liking for his judicial role: in 1867, he remarked that "the work is easy to me and very much to my taste", and in 1871 declared that his "working powers fortunately continue unimpaired".

Chapman appeared to be happy to return to New Zealand: he had always retained fond memories of his eight years in Wellington (where five of his seven children had been born), and he had maintained an interest in the development of the country and its law. Chapman also appeared to be satisfied with living in Dunedin. The cool, moist climate was a relief from the "great heat in Australia" which he had come to find oppressive, and he much admired the "splendid glaciers",

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4 HSC to FRC, 18 November 1864.
5 ODT, 3 May 1864, and Daily News, 6 & 14 July 1864.
6 ODT, 27 April 1864. The Richmonds housed Chapman during his first months in Dunedin, and Mrs Maria Richmond, while finding Chapman "very egotistical" in relation to himself and his family, admitted that he was "not at all a troublesome guest" and "a man of extensive information, has seen, read and written a great deal and abounds in amusing anecdotes and stories" (G H Scolefield (ed) The Richmond Atkinson Papers II, 118).
7 HSC to FRC, 19 September 1867 and 30 April 1871. Chapman resolved to "hold on to full salary" until Frederick required no subsidy to his professional income and until his sister-in-law (Elizabeth Brewer, who had been left destitute with nine children on the death of her husband in January 1868) no longer required his financial support (HSC to FRC, 30 April 1871).
8 HSC to Aunts, 26 August 1862, HSC to AG, 19 April 1859 (J1 National Archives, Wellington), and Daily News, 14 July 1864.
"very fine scenery", and "magnificent views" around Dunedin. In later years he commented that "though this climate is changeable, I believe it is really healthier and more favourable to work and mental activity than that of Melbourne". He did, however, "often feel very dull", and wrote that "this is a place that does not furnish [him] with many topics likely to interest [outsiders]". Not surprisingly, by August 1866, he had acquired an "intense desire to visit England to see all my old friends". To this end he obtained leave at half pay for the period October 1868 to April 1870. In England and Europe, Chapman (for the last time) personally renewed his ties with his family, former legal colleagues and philosophic radical friends, and savoured the richness of the cultural and intellectual environment. After his return, in April 1870, he cautioned his son Frederick that, if he came to Dunedin, he would soon know everybody and "everybody's business". At that stage he expressed a preference to see his sons successful in London where he would join them on retirement. However, he foresaw that this was an unlikely prospect,
and remarked that, if his sons all settled in Australasia (and this in fact occurred), he "would not leave this side of the world on any consideration".17

Chapman J settled into his round of judicial duties, sitting in jury trials, in the debtors' and creditors' court and on circuit, and (with Richmond J until 1867) in hearings in banco. By 1867, the level of legal business had declined to the extent that it was perceived that one judge could handle it alone, and Richmond J was happy (for health reasons) to be transferred to Nelson.18 As sole judge of Otago and Southland, Chapman J was sometimes confronted with a build-up of cases, in banco or before juries, but overall he appeared to cope well.19 The cases heard by Chapman J were mainly civil. In 1873, Chapman J reported the criminal business to be "very light": he estimated that it did not exceed that in Wellington where the population was "not much more than one third of Otago proper". By contrast, he observed that the civil business was "very heavy", and the 1871 parliamentary papers showed that Dunedin's civil business was far in excess of that of Canterbury and Auckland.20

Chapman J was required to go on quarter-yearly circuits to Invercargill, to attend to the needs of the Southland population. On the occasion of Chapman J's first circuit court hearing, the local inhabitants expressed their disappointment that he was not permanently stationed in Invercargill, as there had been "large arrears of business" and "lengthy imprisonment" of debtors and those committed for trial on criminal charges.21 However, as Chapman J pointed out at the time, the amount of judicial business generated by Invercargill did not warrant Chapman J's removal.

17 HSC to FRC, 30 April 1871.
18 ODT, 10 May 1867.
19 HSC to FRC, 12 August 1867, 4 September 1867, and 20 August 1868.
20 The 1871 parliamentary papers showed that Dunedin's civil business yielded fees of £1880, compared with Canterbury's £870 and Auckland's £1077 (HSC to CS, 8 February 1873).
21 Daily News, 6 July 1864.
from Dunedin, and this point was emphasised in subsequent years. In July 1870, Chapman J remarked that he "mitigated the dullness of a dull day in the dullest of all towns", by writing a letter to his son Martin. However, by the early 1870s, other centres in the region were growing in size, and so, in 1871, the government (in accordance with suggestions made by Chapman J) added half-yearly sittings of the Supreme Court in Lawrence and Oamaru.

Chapman J also sat periodically with the other four New Zealand judges on the Court of Appeal: in 1864, this sat at Dunedin, but from October 1865 the Court sat at regular intervals in Wellington. Here Chapman J and his brother judges attended to judicial business and conferred on such matters as the preparation of rules, reports and statutes for publication. The correspondence which passed between Chapman J and his brother judges indicates that, during Chapman J's tenure of office, there were cordial relationships amongst the members of the bench. Chapman J certainly appeared to enjoy the respect of his fellow judges.

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22 In the eight circuits in the two years ending in July 1868, he tried twelve prisoners and heard four civil cases, and the circuits often lasted only a couple of days (HSC to FRC, 26 July 1867).

23 HSC to FRC, 31 July 1870. However, Chapman often spoke of the "unvarying kindness" of the Invercargill people, and of the "extensive hospitality" of the Southland people (Southland Times, 10 March 1904).

24 23 HSC to CS, 16 January 1871 and 15 April 1871. However, little business was transacted at Lawrence (ODT, 30 December 1872).

25 HSC to FRC, 18 November 1864, 17 December 1865, 1 November 1866 and 3 November 1867, and AG to HSC, 21 August 1865. From 1872, sessions were held in Wellington in May and November (ODT, 9 October 1871). Chapman's hectic schedule from September to December 1865 involved a series of common and special jury cases and sittings in banco in Dunedin, the Court of Appeal sittings in Wellington from 20 October to 9 November, a circuit court at Invercargill from 19 November to 3 December, and further sittings in Dunedin (HSC to FRC, 17 December 1865).

26 Richmond to HSC, 5 April 1873, HSC to CS, 6 January 1874, and Arney to HSC, 16 April 1874.

27 Arney to HSC, 10 March 1873, 26 January 1875, 21 February 1875 and 21 March 1875, and Johnston to HSC, 27 March 1873.
On one of the rare occasions when he and Richmond J differed when together in Dunedin, Richmond J began his judgment by observing that "I need scarcely say that my confidence in the correctness of my judgment would have been much increased by the concurrence of my Brother Chapman". 28 A number of his judgments were upheld by the Court of Appeal, and here Chapman J was complimented for his "very able and elaborate judgment [displaying] ability and care" (per Johnston ACJ) and for a judgment in which "the whole matter was exhausted" (per Arney CJ). 29

In relation to other participants in the legal process - notably the bar and juries - Chapman J exercised a restrained and non-authoritarian role. The local press observed that the manner in which order was observed in the Supreme Court "occasionally deserves censure". 30 Chapman J set great store by a positive and mutually-beneficial relationship with the members of the bar, allowed a fair amount of latitude to them in the presentation of their arguments, and devolved much responsibility on them for the presentation of relevant authorities. 31 He was generous in his praise of counsel for the presentation of helpful, elaborate or

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28 Mac 336. It was observed by Macassey that Richmond and Chapman "represented entirely distinct classes of mind", but that they complemented each other well and showed "the most marked and cordial deference to each other's views" (RC).

29 (1867) 1 CA 6, (1870) 1 CA 380, (1874) 2 CA 551, and NZ Jur I 33 & II 51.

30 ODT, 10 July 1874. In March 1875, the Otago Daily Times doubted the wisdom of appointing someone with limited experience such as Williams J, in view of "the numerous body of legal practitioners, the fact that great license prevailed which often turned the Court into a bear garden". C C Bowen, Minister of Justice, in his telegram to Williams J offering the judgeship, noted that there was "a good deal of work and management of [the] bar will require judgment" (Downie Stewart, op cit 29-32). See also ODT, 2 April 1875.

31 ODT, 3 May 1864, and Otago Guardian, 3 April 1875. The latter held that Chapman was courteous and painstaking in relation to the bar, and relied upon them "as administrators of justice like himself". It added that "if he appeared to entrust too much to [the bar], the public were not really losers, for woe to the rash barrister who abused the trust". On his retirement in 1875, Chapman claimed that generally his relations with the bar had been of a "satisfactory, and even friendly, nature" (NZ Jur, II vi).
ingenious arguments: on one occasion he began his judgment by stating that "[t]he very careful and complete arguments of the learned counsel for the plaintiff and defendant have exhausted the subject under notice, and have received, as they indeed well merit, the most careful attention from me". He was patient with their presentation of technical objections, as he accepted that "a Counsel, not instructed to make admissions, was bound by his duty to his client, to take every objection that might be open to him". At times he would even engage in banter with the members of the bar, and interjected with humorous observations and reminiscences of his experiences in Canada and Victoria. He was anxious to assist aspirant lawyers, and it was later recalled that young law students "all bear testimony to the cheerful aid, sympathy, and countenance which they have at all seasons received from the 'old man eloquent". At the same time, he firmly rejected irrelevant authorities, pointed out gaps in argument, corrected misinterpretations in the law, guided arguments along appropriate lines, and at times suggested more suitable procedures. Chapman J enjoyed the respect of the bar, not least because of the

32 Mac 573, 600 & 1008, NZ Jur I 23, and ODT, 28 October 1870.
33 ODT, 19 March 1868.
34 ODT, 7-8 October and 21 December 1864.
35 ODT, 15 February 1875. In 1871, he presided over a meeting of the Otago Law Clerks' Association (ODT, 5-7 December 1871).
36 Mac 1097, NZ Jur I 51, 58-59 & 147, and NZ Jur II 10 & 37. Chapman's view of the local bar (backed by the opinion of James Macassey) was that it contained a small group of capable men, who could not get through the work satisfactorily for want of competent assistance. By 1871, Chapman had come to like and respect Macassey, and pronounced him "much improved since Mart knew him" (prior to 1868) (HSC to MC and FRC, 26 December 1871); and he regarded Cooke as "the best conveyancer-solicitor here" (HSC to MC and FRC, 1 September 1870). However, he had less respect for the other leading members of the bar: he regarded Cecil Haggett as inferior to Macassey, saw Holmes as "a perfect muff" because of his incapacity and want of address, held that "no great confidence is reposed" in Barton, and noted that James Smith had "not so much business" (accounted for by Macassey because of Smith's "insolence and want of attention") (HSC to FRC, 10, 17 and 26 December 1871).
practical experience he had gained at the English and Victorian bars. Two of New Zealand's subsequent Chief Justices practised before him, and later paid tribute to his abilities. James Prendergast said that Chapman J had discharged his duties "with great ability, great perseverance, great patience, and great painstaking", while Robert Stout recalled that Chapman J had been an "able judge, ... exceedingly kindly to the younger practitioners and of great assistance to them ... a very learned and cultured man".

Within a few months of coming to New Zealand, Chapman J actively returned to his favourite theme of law reform. He wrote to the Attorney-General suggesting the consolidation of the law, sent a sample of a Victorian proposal to consolidate the law of landlord and tenant, and offered to do work in one branch of the law. During 1865, Chapman J conducted a review of the insolvency laws, and forwarded to the government proposals for reform; and in 1866 he undertook to prepare a bill for consolidating and amending the jury law. Following his report on the controversial "Green and Spencer Land Claims Act" of 1868, to the effect that the period for appeal against the Land Commissioner's decision (on claims to Maori land purchased) had expired, a new statute was passed extending the period for appeal. The government also derived assistance from Chapman J's opinions on bills which were to be presented to parliament; Chapman J gave balanced views on petitions presented to the government for the remission or commutation of sentences of prisoners; he highlighted areas in need of reform which surfaced in

37 NZ Jur I 149, and ODT, 3 May 1864 and 5 October 1868.
38 ODT, 13 April 1875, and New Zealand Times, 13 October 1903. Chapman J admitted Stout as a barrister and solicitor on 4 July 1871 and gave him a special parchment certificate in evidence of the best record achieved by a candidate in his own experience of legal examinations (Dunn and Richardson, op cit 25).
39 AG to HSC, 3 October 1864.
40 AG to HSC, 26 July 1865 and 5 September 1865, CS to HSC, 25 June 1866, and HSC to CS, 12 July 1866.
41 HSC to Domett, 3 August 1870, and Domett to HSC, 23 August 1870.
cases heard before him on the bench; and he supported and assisted the publication of the *New Zealand Jurist Reports* in 1874.42

Chapman J addressed himself to the facilities of the local court, and wrote to the relevant authorities pointing out the want of necessary accommodation at the Supreme Court, motivating the appointment of a clerk to assist him, and requesting *New Zealand* statutes and ordinances.43 However, his efforts to improve the courthouse facilities had limited effect. In 1871 it was described in the local press as "probably the worst in the colony ... pervaded by draughts to such an extent that it seems impossible to escape from them; in summer the occupants are half-baked with the heat; in winter the temperature of their bodies is reduced to the lowest degree compatible with the preservation of life".44 Further, the lack of staff in the registrar's office caused him to agree to his associate clerk relieving the registrar of attendance in court during criminal and civil trials and in chambers. Because of the demands placed on the associate, Chapman J was at times "wholly deprived" of his services, and was often compelled to send official communications "in rough", which was an inconvenience that was "not imposed on any other judge".45 However, a positive feature of the Supreme Court facilities in Dunedin was the court library, which developed with Chapman J's encouragement and which he described in 1872 as "excellent".46

42 Letters 72/2401 and 74/1655 (National Archives), CS to HSC, 10 May 1871 and 8 May 1872, HSC to CS, 15 April 1871, 21 July 1872, 23 July 1872 and 25 November 1872, Mac 876, (1872) 2 CA 71, and NZ Jur I, foreword.

43 Arney to HSC, 22 November 1864, Provincial Secretary to HSC, 6 July 1865, and HSC to Aunts, 18 August 1865.

44 *ODT*, 23 June 1871 and 8 May 1871 ("one day, a learned counsel will be found frozen to death over his brief").

45 HSC to CS, 8 February 1873.

46 HSC to FRC, 15 May 1870 and 6 August 1872.
Chapman derived great personal satisfaction from research, particularly on law and language.\(^{47}\) Here he had the advantage of a large private library. In January 1866 he assessed that this comprised 3000 volumes, of which 900 were legal, 130 on history, 160 on metaphysics, moral philosophy and political economy, 120 on poetry, and "the rest something of everything and a little besides".\(^ {48}\) This collection was continually supplemented through Chapman's requests to his sons in London for further books, so that, by 1872, he rated his library as "the best private collection in the colony".\(^ {49}\) Chapman was very willing to share his knowledge with the public, through lectures and speeches, and the public appeared responsive to him. A local commentator wrote that Chapman's "extensive range of literary acquirements, his knowledge of history, language, the drama, poetry, painting and music, made him one of those 'full' men who have always something well worth hearing to say", and that his "long experience of the world, of men, life and politics enabled him to say appropriately and well, what others could only half heartedly attempt".\(^ {50}\) As early as July 1864, on his first visit to Invercargill, he gave a public lecture on popular errors in the corruption of place names and regarding legal matters.\(^ {51}\) In 1868, on the passage to England, he amused himself by making a collection of what his son Martin called "fossilized Saxon words in the English language".\(^ {52}\) He worked this study into a lecture, which he gave in October 1870, in aid of the building fund of a local church.\(^ {53}\) He also gave lectures on the political economy of railways, the

\(^ {47}\) HSC to FRC, 10 May 1865.
\(^ {48}\) HSC to FRC, 29 January 1866.
\(^ {49}\) HSC to FRC, 5 August 1866, 28 April 1870, and 6 August 1872.
\(^ {50}\) ODT, 28 December 1881.
\(^ {51}\) Daily News, 14 July 1864. See also ODT, 28 February 1868.
\(^ {52}\) HSC to FRC, 31 July 1870.
\(^ {53}\) HSC to FRC, 30 October 1870.
triumphs of science in the domains of science and art, as seen in astronomy, telegraphy and photography, and legal myths and popular errors about law.  

Chapman's interest in education at a higher level led to his being asked (in September 1869) to become a member of the Council of the University of Otago. Chapman was prominent at the formal opening of the University of Otago in July 1871. Here he defended the teaching of Latin, Greek and maths, for the training of the intellect, for the appreciation of English that Latin afforded, and "to teach the boy to concentrate his thoughts on one subject". He asserted that "you cannot train the intellect without paving the way to the training of morals", and quoted J S Mill that the "peculiar function of a university is to keep alive philosophy". In August 1872, Chapman presided at a conversazione in aid of a fund to establish a Walter Scott Scholarship in connection with the University of Otago.

In October 1872, Chapman became president of the Dunedin Mutual Improvement Society, and he duly delivered the inaugural address. Here he declared that "for years I have been thinking over subjects connected with the improvement of the people". He claimed that the great principle upon which the Society depended was the mutual benefit which came from mixing together and exchanging ideas. Chapman commented that "I scarcely ever met a man, howsoever apparently moderate and humble his requirements might be, that I could not pick up something from him". Chapman was also active in works of charity, was

54 ODT, 21 February and 10-12 September 1872. In certain of his lectures, Chapman revealed a self-effacing sense of humour: on one occasion, he confessed that he had not written his address because he was short-sighted, and "though it was not painful to him to read, it might well be painful to those who saw him reading for an hour or more" (ODT, 28 February 1868).

55 Superintendent of Otago to HSC, 13 September 1869, and CS to HSC, 16 March 1872. Council records show that he attended meetings during 1871, at which he provided advice which was "highly appreciated" by the university authorities (RC).

56 ODT, 6 July 1871.

57 Report, 15 August 1872 (RC). See also ODT, 5 March 1872.

58 ODT, 30 October 1872.
elected President of the Otago branch and later a governor of the New Zealand Institute, gave the prize-giving speech at the local high school, participated in the movement for a half-holiday for workers, and proposed the toasts of the occasion at the opening of the Port Chalmers Railway and a meeting of the Press Club.59

Besides his legal and public commitments, the central focus of Chapman's life was his family: in January 1864, Chapman wrote that the conduct of his children, coupled with his health, "constitute a source of happiness far above all others."60 In April 1864, his wife Catherine, sons Frederick (aged fifteen) and Walter (twelve), and daughter Kitty (thirteen) left Victoria to join the eldest son Harry (twenty-three) in England. Harry had just taken the LLB degree at Cambridge, and was due to attend the bar until his call in June 1865. The plan was that Catherine would remain in England until after Harry's call, during which time the youngest children

59 HSC to FRC, 31 August and 30 September 1870, Colonial Museum to HSC, 19 January 1871, and ODT, 31 December 1872 and 2 November 1874. At the prize-giving ceremony, Chapman supported the "vision of prizes floating before [the pupils'] eyes" to encourage in them the habit of attention, of abstracting their minds from external objects, and concentrating their attention upon the work before them (ODT, 18 December 1871). In 1872, the Otago Daily Times remarked that "Chapman is certainly one of the most remarkable men in the country", who "no sooner escapes for the long vacation from his very arduous duties" than he is heard to deliver "lectures for charitable objects in the upcountry townships". It added that Chapman seemed "not to be able to take a holiday without labouring for the benefit of others" (ODT, 27 February 1872). Frederick Chapman claimed that his father's social reputation was earned by his learning, intellect, cheerfulness, joviality, keen wit, piquant style of anecdote, and interest in the well-being of the community (FRC, Notes). Chapman remained actively interested in European political affairs: he hoped the French forces of Napoleon III would be beaten (HSC to FRC, 25 September 1870), foresaw that, with the demise of the Bonapartes, France would permanently become a republic or at least "a republican monarchy like that of England", suggested that, "when England grows tired of kings, we can slip quietly into a so-called republic by means of a parliamentary reform" (HSC to FRC, 10 November 1870), condemned Queen Victoria's self-indulgence and queried if she was insane (HSC to FRC, 10 November 1870). In terms of local politics, Chapman saw himself on the side of the squatting interest (HSC to FRC, 26 February 1871).

60 HSC to FRC, 15 January 1864. Likewise, in 1871, he wrote to Frederick that "nothing that you do or think about can fail to be highly interesting to me" (HSC to FRC, 28 April 1870).
would continue their schooling in England. 61 Chapman was, however, comforted by the presence of his son Martin (eighteen), who, from his arrival in Dunedin in May 1864, was his father's constant companion for nearly four years; and by the ready accessibility of his other sons Charles (twenty) and Ernest (seventeen), who came to Otago from Victoria in late 1864. 62 It was with a view to providing Charles and Ernest with a livelihood, and as an investment for the future, that Chapman engaged in the most important financial venture of his later life. In June 1865, he reported that he had bought a sheep station of 35000 acres with 5000 breeding ewes, at Eden Creek in central Otago, to be run by Charles (a trained stockmaster) and Ernest. 63 Over the ensuing years, Chapman invested a considerable amount of money in the station, and in 1868 acquired a second station through a loan of £6000 from the Otago Investment Society. 64 After a promising start, the profitability of the station suffered from the increasing world production of wool and the resurgence of cotton. 65 However, from the early 1870s, the station benefited from a small advance in wool prices and the new confidence generated by the meat-preserving companies, and, by December 1871, Chapman estimated the wool return to be £3500. 66 Besides the financial investment and the livelihood it provided his sons,

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61 HSC to Aunts, 26 March 1864.
62 HSC to FRC, 18 November 1864. The separation was eased somewhat by Chapman's regular correspondence with his family and his knowledge that his wife maintained her usual energetic devotion to the welfare of her family (HSC to FRC, 15 June 1865, and FRC to HSC, 26 December 1865). Catherine Chapman wrote in July 1865 that, "as you say, we have had very little to complain of since the law made us one ... never was there a more fortunate woman than I have been since I have been a wife, and never a more happy mother" (CC to HSC, 26 July 1865).
63 HSC to FRC, 15 June 1865.
64 HSC to FRC, 5 December 1866 and 20 August 1868.
65 HSC to FRC, 5 December 1866 and 19 December 1867.
66 HSC to FRC, 28 April 1870 and 13 December 1871.
the station gave Chapman an interesting outlet and a retreat during holiday breaks. 67

In January 1866, Catherine Chapman left England with her children Harry, Kitty and Walter, to join Henry in Dunedin. It had been decided to leave son Frederick in England, to continue his education with a view to being called to the English bar, and to take the place with the English family that Harry had occupied since 1853. 68 Chapman confessed that, as he awaited the arrival of his wife and three children in March 1866, he was "on the tiptoe of expectation". 69 However, unbeknown to him, the family he awaited had already perished. On 11 January 1866, the SS London, on which the family was sailing, foundered in the Bay of Biscay, with the loss of almost all the passengers. 70 Chapman received the news of his family only on 22 March, at which point he felt "paralysed - deprived of all sense but that of my own misery". 71 Chapman reflected on his loss in the following terms: 72

Surely no heavier affliction ever fell on man; and it fell all the more heavily upon my naturally sanguine, hopeful and buoyant nature. I never could anticipate evil, [but] anticipated the

67 HSC to FRC, 17 December 1865 and 17 March 1866.
68 HSC to FRC, 29 January 1866. Catherine Chapman wrote of the sorrow she felt at parting with Frederick, and that it "may be a long time before we see him again" (CC to HSC, 4 January 1866).
69 HSC to FRC, 17 March 1866.
70 J Munro, A Brief Narrative of the loss of Steam-ship "London" (1866) 5-6. It was reported by the survivors that Catherine Chapman, true to the life that she had led, was active in helping and encouraging those who attempted to save the ship, and that, after hope was gone, she sat calmly with her family. Her last reported action was to throw blankets and a rug to the departing survivors (HSC to FRC, 1 and 4 June 1866).
71 HSC to FRC, 14 April 1866 (he recalled that he was roused from his reverie by the chink on the floor of one of the 'pebbles' which fell from his spectacles).
72 HSC to Aunts, 18 April 1866. In similar terms, Chapman commented in October 1866 that he was "so accustomed to succeed in plans which I determine upon and work out with a will (except alas when defeated by such a disaster as we have suffered)" (HSC to FRC, 15 October 1866).
return of the best of wives, the most promising of sons, the
most cheerful, affectionate and idolized of daughters, and my
poor little Watty. ... In the little discouragements, annoyances
and disappointments inseparable from a very active
professional and political life, I never heard even an uncheerful
word pass my dear Kate's lips. Her perfect temper, her
wonderful equanimity and her calm resolution sustained and
comforted me always. All our little troubles (and they were
very few) were outside of our happy home: within all was
peace.

The loss of his wife, eldest and youngest sons and only daughter was a key event
in the life of Chapman and was felt keenly by him to the end of his days. Although, by June 1866, he had recovered his health and some composure, he was said to look "a good deal older" than he did before the news. In subsequent months he remained prone to depression and loneliness when without his immediate family, and declared himself "too old to make new friends" (and

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73 Frederick Chapman recalled that throughout his parents' married life "by absolutely relieving him of all domestic cares [his mother] had contributed to an incalculable degree to lighten [his father's] political and professional labours" (FRC, Outline of the life of HSC). Henry Chapman admitted that his late wife "spoiled me for a solitary existence", as he had led a married life of "unabated happiness" with one who was most "gentle and affectionate ... cheerful and eminently good and faultless" (HSC to SC, 13 February 1868).

74 Chapman drew comfort from the personal support of his devoted sons, local friends such as James Smith and his old friend Samuel Revans, and from letters of sympathy from other family, friends and colleagues such as Johnston, Gresson and Richmond JJ (FRC to HSC, 24 January 1866, 25 February 1866 and 23 March 1866, A Johnston to HSC, 28 March 1866, H Gresson to HSC, 12 April 1866, and C Richmond to HSC, 21 April 1866). J S Mill wrote that the news came as a shock to him such as he never experienced from any similar event, and suggested that "throwing the mind by a strenuous effort into useful work" was the only chance of not being crushed by the blow" (J S Mill to HSC, 25 February 1866).

75 HSC to FRC, 21 June 1866, and E Chapman to FRC, 18 July 1866.
therefore surrounded himself with photographs of family and old friends). By late 1867, Chapman's emotional vulnerability was compounded by his decision that son Martin should join Frederick in studying for admission to the English bar. On Martin's departure in February 1868, Chapman admitted that he was left "comparatively solitary".

Into the void created by Martin's departure came Selina Frances Carr (c 1823-1902). She was born in Ireland, the daughter of a clergyman, and, in 1852, left Britain with her twin sister Sophie and settled in Victoria. Sophie married Richard Ireland, with whom the Chapmans developed an enduring friendship from 1855. Selina was part of this circle of friends, and both Chapman and his wife held her in high esteem. During a holiday in Victoria in March/April 1867, Chapman again met Selina. To Chapman the meeting seemed like the renewal of an old friendship, and he thought that in her manner to him there was "a gentle kindness" which he attributed to her "generous sympathy" with him for the great tragedy he had suffered. Chapman reported that, when he returned to his "solitary and desolated home", the thought of her "came continually uppermost in [his] mind", and soon a feeling of "sincere and tender affection" took "complete possession" of him. There followed a regular correspondence between Chapman and Selina,

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76 HSC to FRC, 15 October 1866, 5 June 1867 and 4 July 1868. In September 1867, he said that it was a "miserable thing to lose them when we did ... I never think of it without a fresh stab" (HSC to C Ponsonby, 9 July 1866, and HSC to FRC, 15 July 1866).
77 See below at 318-9 for insight into the close relationship between Chapman and his son Martin.
78 HSC to FRC, 5 March 1868.
79 HSC to FRC, 4 June 1868, and to FC, 5 May 1868.
80 S Ireland to HSC, 18 May 1866.
81 HSC to FRC, 4 July 1867, and to SC, 13 February 1868.
82 HSC to FRC, 28 April 1867, and to SC, 13 February 1868.
and on 13 February 1868 he sent her a letter proposing marriage. After receiving a ready acceptance, Chapman wrote to his son Frederick:

You know very well how very potent an influence the domestic ties and relations have with me. To me home is every thing. I feel my solitude, and still more keenly the inevitable prospect of solitude. All of you must in a few years be established for yourselves. That is the end for which I have been working for years. You may all in time present me with good and affectionate daughters-in-law. But they would not make my dwelling a "home". I can see no other means of doing that but the one which I have chosen. ... You know very well what a gentle and affectionate and in every way excellent woman she is, and I do not doubt that she will make me a tender, affectionate and cheerful companion.

Chapman was not disappointed in Selina: by early May 1868, he reported that she had changed his "solitary house into a cheerful home". Frederick Chapman, reflecting on his father's marriage many years later, wrote that both his father and brothers "have always had every reason to rejoice at this step".

83 HSC to FRC, 4 July 1867 and 9 October 1867, and to SC, 13 February 1868. Chapman wrote that "feeling most keenly every day and every hour the utter loneliness of my life, and having always before me your gentle and womanly character, can you wonder that I turned to you as alone calculated to fill the blank in my existence - can you wonder that a long and sincere friendship, strengthened by admiration and esteem, should have grown into the deepest and most tender affection". He also pointed out that he was "too old to unite himself with a stranger", nor could he "safely" have introduced a stranger to his sons "to whose advancement in life I am I may say passionately devoted" (HSC to SC, 13 February 1868).

84 HSC to FRC, 15 March 1868. Chapman also described her as a woman of "great gentleness of disposition, sweetness of temper and winning kindness of manner, very ladylike in manner and carriage, well educated and has a pretty Irish accent which gives precision and crispness to her speech" (HSC to FC, 5 May 1868).

85 HSC to FRC, 5 May 1868.

86 FRC, Memoranda 34.
Chapman's devotion to the interests of his sons continued after his marriage: he declared in his proposal of marriage to Selina that he was "a father who has through life placed [his children's] welfare and happiness before his own, or rather has made them his own". In 1870, Charles bought his own station, and in September he vacated the station in favour of Ernest. Martin and Frederick continued their preparation for the bar, subject to Chapman's intense interest and guidance, expressed through a continuing correspondence. Chapman, however, while providing his sons with as much help as he could, was careful to allow them a large measure of independence and free choice. In 1871, Chapman advised Frederick to commence practice in Dunedin, and not in Melbourne as he had originally planned, because of the more hopeful prospects of success in Dunedin. He was pleased that local barrister Macassey had indicated to Chapman that he would welcome Frederick or Martin into a partnership (as another barrister Barton had, in 1866, indicated to Harry). Chapman, the self-made man who had succeeded without family status or finance, commented with pride: "there is something in family reputation, respectability and character, and it is quite as natural for Macassey to look to you as it was for Barton to look to Harry". As to the question of his sons practising before their father, he said that he was "strong enough to bear that very slight and very common inconvenience" (pointing to the Pollock, Denman, Willmot and Stephens legal families), said that "judge's sons ought not to be excluded from following the profession of their sires", and claimed that he had "a character for

87 HSC to SC, 13 February 1868. On 28 May 1868, Chapman delighted in the birth of his first grandchild (Charles's son): he was given the name Henry, which was the name of the first-born Chapman son for five generations (HSC to FRC, 4 June 1868). Chapman also maintained contact with, and gave financial support to, family members in Victoria and England (HSC to FRC, 20 January 1867 and 22 February 1868).

88 HSC to FRC, 1 June 1870.

89 HSC to FRC, 28 April and 11 June 1870, and 30 April 1871. See below at 320.

90 HSC to FRC, 30 April 1871.
impartiality and an absence of bias beyond that of any other judge".91 Frederick duly arrived in Dunedin in August 1872, and, after passing the entrance examination for barristers, commenced practice in partnership with Macassey.92

Unfortunately, Frederick's connection with Macassey was to have painful repercussions for Chapman, as a serious allegation of bias was made against Chapman by Charles Ward, who had deputised for Chapman during his absence overseas, and then become District Judge for Westland, Southland and Otago.93 Macassey, besides being a barrister, conducted a political career. During an election campaign in Queenstown, a local newspaper published a strong attack on him, but Macassey's resultant action for libel was dismissed by the local resident magistrate, Richmond Beetham. Macassey was subsequently elected to the Otago Provincial Council, and in 1872 he presented a petition of the Chinese community calling for the removal of Beetham from office. On 21 June 1873, the Dunedin newspaper, the *Evening Star*, owned by barrister George Bell, published an article and two documents, claiming that Macassey had directly prompted the petition by going to the Chinese community (who disliked Beetham) with an offer to try to remove Beetham from office for a fee of £200. The newspaper asserted that "the affair was as discreditable a matter as ever came before the Council".94 Macassey then commenced an action for libel against Bell. Macassey had good reason to

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91 HSC to FRC, 10 December 1871. In exhorting Frederick to take up Macassey's offer, Chapman used the words of his late father: "this the tide in the affairs of men which should be taken at the lowest ebb" (HSC to FRC and MC, 26 December 1871).

92 HSC to FRC, 6 August 1872.

93 Ward to CS, 19 July 1870, and HSC to FRC, 26 February 1871. Ward had been appointed by the government with some reluctance and only after it had unsuccessfully approached other officials: J C Richmond had advised that "Mr Ward is untried in his new capacity and has lived a very long time out of the way of legal practice" (Correspondence, J1, National Archives). Chapman had little respect for Ward: he described Ward as "a man of infamous private character and has not the decency to conceal it" (HSC to MC and FRC, 26 February 1871).

94 NZ Jur I 60-62.
suspect that the actual author of the article in the *Star* was Charles Ward. In March 1874 Macassey obtained an *ex parte* order from Chapman J authorising the pre-trial production and inspection (by Macassey) of all telegrams to or from Bell's solicitor and Ward in connection with Macassey. Chapman J had made such orders in other cases, and the propriety of doing this had not been disputed. However, the practice of the Supreme Court in other parts of New Zealand had been to make such orders only after hearing both sides, and, when the local telegraph officer refused to comply with the order, the Attorney-General held that Chapman J had no authority for making the order and agreed that it should not be obeyed. On 21 April, Ward sent a "most urgent" telegram to the Premier, Julius Vogel. This pointed out that Chapman J had ordered the production of the telegrams to the plaintiff, "partner of the son of the judge", without "the knowledge of the defendant, and without giving him a chance of objecting". In the light of this, Ward asserted that "it is felt that Mr Bell has no chance of a fair trial before Judge Chapman", and suggested, in the interests of justice, that "you send down Judge Johnstone to try the case on the ground of gross partiality of Judge Chapman, now exposed, and suspend Chapman until the Assembly meets to take action". Ward followed this with a telegram of 22 April, in which he pointed out that Macassey was "on most intimate terms with the Judge, who is god-father to one of his children". The government sent the substance of the telegrams to Chapman J, and it devoted two to three days on the matter. It decided that the charges against Chapman J were too vague, and, on 25 April, Vogel replied that "Ministers, though disproving of the order, see no reason, supposing their view of its objectionable nature is correct, to consider that

95 *ODT*, 27 July 1874.
96 *ODT*, 12 August 1874.
97 *ODT*, 27 July 1874.
98 *ODT*, 18 July 1874.
its issue was other than an error of judgment". Further, they saw "no ground for connecting it with the domestic circumstances" to which Ward referred.99

The trial of Macassey v Bell took place from 4 to 9 May 1874, and Chapman J found himself in the invidious position of presiding over an extraordinarily bitter contest, in which he was the subject of continual suspicion on the part of the defence counsel. James Smith clearly indicated the attitude of the defence side when he protested that "His Honour appeared to shut the defendant out from showing anything" (to which Chapman J replied that he "thought this rather an unfair remark"), and that "His Honour allowed Mr Barton a license in the Court that he allowed no other counsel" (to which Chapman J replied that "this was not the case").

An examination of the report of the case indicates that Chapman J was even-handed in his approach: he repeatedly ruled against points raised or evidence led by the plaintiff's counsel, and, in particular, he prevented Barton from questioning the defendant's solicitor with a view to showing that Ward was the real defendant and that Bell was "a shadow". Further, in his address to the jury, Chapman J was at pains to point out that "[t]he liberty of the Press was one of the elements in our constitutional liberty which he thought all men treasured", and that "every man in a public position was undoubtedly liable and justly liable to more severe comment than a private person". Despite the clearly defamatory nature of Bell's publication, the jury acquitted him of maliciously publishing the material, and found that the statements of fact were true in substance and the comment thereon fair and bona fide comment.100

On 22 May, the Otago Daily Times published the substance of the telegrams sent by Ward to Vogel. A parliamentary committee of inquiry subsequently found that the newspaper had received its information from Macassey, but that how he had

99 New Zealand Parliamentary Debates (1874) volume 16, 104.
100 ODT, 6-11 May 1874. See also NZ Jur II 55 at 70, and ODT, 27 June 1875.
come to have had the telegrams had not been satisfactorily proved.\footnote{Supra note 99, 852.} In Dunedin, the publication of the telegrams "gave rise to a very considerable feeling of dissatisfaction, uncertainty and distrust as to the manner in which the judicial branch of the Government was carried out".\footnote{Ibid, 28.} On 15 July (by which time the matter had become "a great judicial scandal"), Parliament decided to appoint a committee of inquiry into the charges laid against Chapman J and how the \textit{Otago Daily Times} had come to publish the substance of the telegrams.\footnote{Ibid, 113.} On 11 August, the "Ward-Chapman Enquiry Joint Committee" issued the following conclusions:\footnote{DDT, 12 August 1874. \textit{The case of Macassey v Bell} continued for several months longer: in March 1875, Chapman ordered a new trial, on the grounds, \textit{inter alia}, that the verdict of the jury was wrong in that "imputing a nefarious and dishonourable bargain" was clearly defamatory (NZ Jurist II, 70) (This judgment was cited later by Sim J, in \textit{King v A Hall Ltd} [1920] NZLR 94 at 109, as one of the few examples of where a libel verdict in favour of the defendant was set aside). The matter was finally settled in June 1875, when Bell admitted to be untrue and unfounded, and withdrew, all the imputations contained in the article, and both parties agreed to stay all further proceedings in the case (\textit{ODT}, 27 June 1875).} 1st. That the charges made by Mr Ward against Mr Justice Chapman have not been substantiated, and were made without due consideration of their importance as affecting the character of a high judicial officer; 2nd That, while the propriety of the practice of issuing such orders \textit{ex parte} may be open to grave question, yet the Committee are not of opinion that Judge Chapman acted partially in the matter, or that there are any grounds whatever for impeaching the conduct, or questioning the integrity and impartiality of Mr Justice Chapman in the general discharge of his judicial duties. 3rd. While it may not be strictly within the order of reference, yet the Committee cannot refrain from suggesting to the Government the desirability of making arrangements for the
periodical shifting of Supreme Court and District Judges to
different circuits.

By October 1874, the government had decided to take up the suggestion to
move the judges to different districts, and to accompany this with the pending
removal of the Chief Justice to Wellington in early 1875. Chapman J was asked to
take the Auckland district, with an expected commencement date of February
1875.105 Chapman J was initially prepared to "go to Auckland for a few months,
even until the end of 1875", although he had planned to retire in 1875 at the same
time as George Arney CJ.106 However, in November 1874, a long and demanding
sitting of the Court of Appeal "pressed severely on his health" (which had recently
decreased through the continuous pressure of work),107 and he was left "so weak as
to cause his family much uneasiness".108 By 22 February 1875, Chapman had
decided to revert to his original plan of retiring with Arney CJ on the same date
(fixed at 31 March 1875), and he forwarded his letter of resignation to the

105 S Hallen to HSC, 3 October 1874. Johnston J protested at "the assumption of power by the
Government to knock us about at their will", and claimed that "the whole business has been
conducted insidiously, uncourteously and unconstitutionally" (A Johnston to HSC, 16 October
1874).

106 HSC to FRC, 17 November 1874.

107 Frederick Chapman recorded: "The judicial routine continued for some years longer but it was
evidently telling upon him. Suitors who had causes during the last few years of his career and
jurors who tried them will remember that whatever might be the hour at which the jury retired
there was always an intimation from the judge that he would be back again at eight in the evening
and that he would remain so as to give them time to deliberate; and this he did in all weather,
always giving them until midnight if they required it. These night journeys were very trying as his
eyesight at night was very bad and night travelling especially in the 'Jingles' which served for cabs
in those days not too comfortable" (FRC, Memoranda 34, 10-11).

108 FRC, Memoranda 34. In February 1875, the Otago Daily Times reported that "it is not to be
wondered at that, with advancing years, Judge Chapman should have no great caring at his time of
life to be sent to some far distant portion of the Colony, to found once more a new home and
build afresh [his] social relations" (ODT, 15 February 1875).
government. 109 It was decided that Joshua Williams would take up office as the new resident judge in Otago and Southland. 110

II. Civil jurisdiction

Chapman J continued to display many of the admirable qualities that he had shown in his earlier judicial career. He remained a conscientious and dedicated judge. 111 Cases received his "most anxious consideration", as the facts were carefully examined, the points raised methodically followed, and the law referred to as fully as possible. 112 He would reserve his judgment for further consideration where a point was new or where the legal issue warranted a thorough-going outline for the benefit of the local legal community. In making absolute a rule for prohibition against the jurisdiction of the resident magistrate of Dunedin, Chapman J said at the conclusion of argument that he would "look carefully into the case, with a view to giving such a decision as may be useful to the magistrates". 113 In later years, the combination of Chapman J's determination to examine important issues thoroughly, the pressures of work, and his declining powers, sometimes caused delays (uncharacteristic of his earlier judicial career). The case of Bank of Otago v Gregg, concerning a question of appeal to the Supreme Court, was argued in

109 HSC to CS, 22 February 1875. In reply, the government paid tribute to Chapman's "ability and zeal", and remarked that the country would suffer from the loss of his services (CS to HSC, 6 March 1875). Arney CJ, in reply to Chapman's letter informing him of the decision to resign, hoped that "Mrs Chapman does not disapprove (a word which I fear is neither a Saxon, English nor even Latin transitive) your resolve to give the rest of your days to repose and to her society" (G Arney to HSC, 21 February 1875).

110 J S Williams to HSC, 18 March 1875.

111 The Otago Daily Times claimed that Chapman was "singularly painstaking and patient to a degree" (ODT, 28 December 1881).

112 Mac 347 and 573, and NZ Jur I 4.

113 NZ Jur I 134 and 182, and ODT, 27 September 1864.
October 1872, "immediately before the commencement of the Criminal and *Nisi Prius* sittings of the Court". Chapman J noted, in his judgment six weeks after the hearing, that he "was not able to give it the consideration, which the question now raised for the first time merits, until very lately".114

Chapman J, with the benefit of the excellent library sources available to him, conducted wide and thorough surveys of legal authorities. Like other judges of his time, he relied heavily upon English law.115 He had a profound grasp of English case-law, its history and its subsequent development down to the immediate past.116 His knowledge was revealed in his interjections of counsels' arguments with precise knowledge and citations of English cases, his careful surveys of the reasoning of English judges, his inclusion in his judgments of English precedents not referred to by counsel, and his references to recent trends in the law.117 Chapman J regarded himself as being bound by English decisions on statutes which had been reproduced in New Zealand (for example, the Crown Costs Act and the Bankruptcy Act).118 Further, in matters ranging from pleading in slander actions to interpretation of statutes, Chapman J held himself to be bound by established principles in "the Courts at Westminster".119 He observed that even *obiter dicta* of English judges might acquire the force of authoritative precedent: on the question of the grant of mandamus, he noted that "when we find these dicta repeated by Judge after Judge, they acquire the authority of a judicial decision".120 Chapman J's respect for the

114 Mac 1101 at 1107.
115 In 1858, the English Laws Act had expressly provided that the laws of England, so far as they were applicable to the circumstances of the colony, should be deemed to have been in force in the colony since 14 January 1840 (Session 2, number 2).
116 Mac 606-610, 865-868 and 941-943, and *ODT*, 26 May 1865.
117 Mac 194 & 413, NZ Jur I 12 and 131, and *ODT*, 23 February 1871.
118 NZ Jur I 26, 33 and 182.
119 Mac 384 and 941, and NZ Jur I 191.
120 Mac 773.
legal acumen and learning of the leading English judges frequently caused him to use their judgments as guidelines. On one occasion he adopted "to the full the very clear language of Mr Justice Blackburn", and on another he stated the views of Lord Wensleydale, "one of the most learned common-law Judges who ever graced the bench". 121 Chapman J also made extensive use of common law texts and compilations, which facilitated access to relevant case-law and statutes and provided informed comment. 122 In a case involving a question relating to a bill of exchange, he noted the cases cited by Story in *Equity Jurisprudence*, and said that he had laid down the relevant rule "with his habitual clearness". 123 At the same time, Chapman J did not slavishly follow English case-law and the views of English writers, and was alive to the emerging differences between English and local law in statute and practice. 124 He affirmed that rule 147 of the Supreme Court Rules overrode the English case-law on pleading, noted that "[t]here is nothing in England strictly analogous to a pastoral tenant in New Zealand", and conceded that "[i]t may be very questionable whether the English law as to highways is applicable to the colony". 125

Chapman J also repeatedly referred to the law as applied in Victoria, particularly in procedural matters and questions relating to the Goldfields Act 1866 (which was modelled on the Victorian Mining Acts down to 1865). 126 He declared that he "always adhere[d] to the practice in England and Victoria" on the question of the judge's direction to the jury on costs; referred to an unreported Victorian decision on the issue of a demurrer; and used reported judgments (of himself and

121 Mac 487, 825 and 900. See also NZ Jur II 49 and (1874) 2 CA 542.
122 Mac 795.
123 NZ Jur II 49.
124 Mac 1057 and 1100, (1874) 2 CA 570, NZ Jur I 101 and 188, and ODT, 11 May 1867.
125 NZ Jur II 79 and 102.
126 NZ Jur II 115-116, and (1872) 2 CA 229. Castles notes that "the most notable piece of mining legislation in Australia in this period was the Victorian *Mining Statute 1865*, and that this made a major contribution to the law of Australasia (op cit 467-8).
other Victorian judges) and McFarlane’s Digest of the Law of Mining in Victoria in questions relating to magisterial jurisdiction and the pollution of rivers by miners.127

Chapman J had occasion to refer to the growing body of New Zealand case-law, particularly in matters of practice and procedure. In one instance, which concerned the evidence led by the New Zealand Law Society in its opposition to the admission of a solicitor, Chapman J referred to his experience in Wellington, in 1845, where he "acted on a mere newspaper report, leaving it to the applicant to answer it if he could".128 In the main, Chapman J relied upon recent decisions of himself and Richmond J in Dunedin, on issues ranging from the application of rules of court to the grant of new trials.129 The Macassey Reports were of great assistance to Chapman J and the other New Zealand judges, in providing a sizeable and professionally-compiled body of local case-law. For example, in Macassey v Bell, which concerned the grant of a rule nisi in a matter of contempt of court, Chapman J concluded that "[t]he cases cited, and especially that of Cameron v The Otago Daily Times 1 Mac. N. Z. Rep., 645, in which the authorities then and now cited are fully considered, afford ample authority for allowing the rule nisi to go".130

In analysing the nature of the disputes before him, Chapman J tried to isolate the general principles which ought to be followed. These he applied in the absence of "a special principle to the contrary applicable to the particular case, or express authority".131 This approach enabled him to see through the detailed facts and rules involved in cases, and arrive at a clear appreciation of the essence of the disputes; it facilitated consistency of decision-making and rational justifications for his judgments; and it enabled him to make creative use of precedents established in

127 Mac 385 and 1108, (1870) 1 CA 1095, (1872) 2 CA 208, and NZ Jur I 135 and II 115-116.
128 Mac 848.
129 Mac 919, and NZ Jur I 74.
130 NZ Jur II 57, and (1872) 2 CA 230.
131 NZ Jur I 158 and 191.
other jurisdictions. Especially in matters relating to the practice and procedure of the court (such as questions of costs, where judges had considerable discretion), Chapman J declared that he took time to consider "the principles upon which the practice of this court is based". He repeatedly used English cases which were analogous "in principle" to those before him: for example, he invalidated a Crown grant of land over which there was an easement to which others had a right, as it came within the principle of an English judgment which had invalidated a Crown grant of land subject to an unexpired lease held and enjoyed by others. At times, Chapman J conceded that it was difficult to establish the principle at work in local law and practice. In *Cargill v Green*, which related to the Green Land Claims Settlement Act 1870 (on which Chapman J had reported to the government), he stated:

Undoubtedly, the mode of dealing with lands and claims to land in this colony, with possession, and even without possession, has been anomalous. Before a single Crown grant had been sealed in New Zealand, claims under land orders of the New Zealand Company were dealt with as legal estates in fee. Instances have occurred in which it has been difficult to extract from the English authorities, principles applicable to such cases. But difficulties are not impossibilities, and the Court must exercise its best judgment in dealing with such anomalous cases as they occur. One safe and equitable guide is to treat as equitable rights and interests such instruments as are couched in language applicable to legal estates and interests. This has been found necessary in the United States, where land has been dealt with under ... mere vouchers, which give the purchaser no legal estate, but which have been dealt with in equity as analogous to estates in fee, and as clothed

132 Mac 789.
133 Mac 886 and NZ Jur I 8 and 148.
134 *ODT*, 5 January 1871, Mac 803, and NZ Jur I 28.
135 Mac 991 at 1004.
with all the incidents of such estates; and this too upon principles drawn from the fountain of English equity jurisprudence.

On occasions, Chapman J openly drew upon his own liberal principles, in interpreting material before him. In deciding on the effect of a deed-poll whereby certain creditors had agreed to accept a settlement of their claim, he admitted that he "had a leaning in favor of deeds of this description - of giving effect to arrangements between debtors and creditors, as he was under the impression that the parties would manage their business better than courts of justice would manage it for them". 136

Chapman J's approach to the interpretation of statutes was broad, and involved a consideration of what they expressed literally, their "spirit" or overall intention, and (where applicable) what equitable extensions might legitimately be made. 137 He insisted on the strict, literal interpretation of statutes where, to hold otherwise, individual rights would be infringed. He rejected the argument of counsel that the Goldfields Act had affected the common law right to lateral support, as the "common law rights of the subject cannot be destroyed by implication". 138 He also affirmed that, while provisions of statutes "may be sometimes extended beyond their apparent letter, by equitable construction", the policy of the Act had to be derived from "what an Act expresses", and that extension to the primary meaning of sections "is never done in violation of a meaning which is free from ambiguity, and where two rights are in conflict, in order to turn the scale in favour of one of those rights". 139 Thus, there were occasions when Chapman J felt obliged to apply the clear literal meaning of statutes, notwithstanding his moral qualms or feelings of

136 ODT, 11 August 1864.
137 NZ Jur II 26.
138 Mac 902 and (1867) 1 CA 71.
139 Mac 961 and 1013, and NZ Jur I 32.
personal sympathy for the litigants. In *Robinson v Reynolds*, Chapman J rejected the argument of counsel that the court should treat the clear wording of the Privileges Act 1856 as void on the basis that it transgressed a fundamental maxim of natural justice that "no man shall be judge in his own cause". He declared:

I deny the power of any Court of Justice to treat a statute as void upon some fancied conflict with natural justice or natural equity, which probably differs according to the conceptions of different moralists, and certainly varies very much from century to century - improving and advancing, I hope, from age to age. I do not affirm that the argument of want of conformity with natural justice has no force in construing Acts of Parliament; in the same way that I should be sorry to affirm that the argument from inconvenience has no force. In a doubtful construction, both the one and the other may have weight. They may turn the scale of a nicely balanced argument. But that is a very different thing from the doctrine now urged.

Not surprisingly, where Chapman J did perceive scope for judicial construction of statutes, he was ready to apply an equitable interpretation. In *R v Bagley*, Chapman J held that the provision in the Otago Municipal Corporations Ordinance 1865 requiring a cross to be made on the voting paper was directory merely, and that as long as the intention of the voter was clearly apparent, a departure from the form prescribed was immaterial. He stated:

a perfectly strict and literal compliance with a statute cannot be deemed essential, where it is complied with, with reasonable certainty ... in the case of a Jewish candidate, is his election to be questioned because his pre-name is not a christian name? Would not common sense reject such objections? If then we must depart from strict language in one case, why not in another, when the sole object of the

140 Mac 334 and 849, and ODT, 14 January 1868.
141 Mac 562 at 576.
142 Mac 836 at 844.
Legislature is to secure to every citizen his right of election? I therefore think that there is no charm in the form of the cross, and that the words are not imperative. I decide thus in favor of the franchise, because I think the Legislature intended to give the fullest effect to the franchise.

Chapman J's readiness to admit an equitable extension of statute where he saw this to be appropriate led to one of the few occasions on which he and Richmond J openly disagreed. In *Eccles v Taylor*, judgment had been obtained by the plaintiff against the defendant as Superintendent of the Province of Southland, in an action brought under the Provincial Law Suits Act 1858. Richmond J held that no right of execution was given by the statute in respect of judgments obtained under it, and that such judgments could be satisfied only out of monies appropriated for the purpose by the Provincial Council. Chapman J held that the right of the plaintiff to sue out a writ of execution was a necessary consequence of the judgment recovered in the action, although the right to execution was not expressly given by the statute. He cited "the well-known rule that where a statute or other instrument conceded a right or a thing, all other things are given which are necessary to give effect to the enjoyment of the thing specifically conceded, and without which it cannot be enjoyed". 143

Chapman J's extensive learning and principled, equitable approach were complemented by an evident knowledge of practical realities. This generally enabled him to guard against expensive, on-going litigation and to facilitate the economical dispatch of business. 144 It also enabled him to arrive at securely-grounded decisions and directions to the jury. In *Williams v Green*, in considering whether a building erected by a tenant in Princes Street, Dunedin, had become annexed to the freehold, it was found necessary to consider the nature and object of the structure and the uses to which it had been applied. Chapman J, in holding that

143 Mac 334 at 344. See also Mac 1019.
144 NZ Jur I 15, and ODT, 29 June 1865.
building on the land leased was contemplated by the parties (even though the lease did not expressly provide for this), remarked:\textsuperscript{145}

The very nature of the land, namely, town land in the business part of the town, seems to imply that the land could not have been let or leased for any other purpose. We have heard of a town in New Zealand in the early days of the Colony described as "very well adapted to agriculture," and possibly parts of Dunedin may still be eminently-deserving of a like commendation; but Princes-street has long passed from that stage - if, indeed, it ever occupied it. It is emphatically town. Land let there, ... cannot be brought reasonably within the same rules as are made to apply to land on which barns, granaries, windmills, and numerous other buildings of a secondary nature, are erected.

Chapman J's grasp of practicalities enabled him to reinforce his judgments with "simple and intelligible illustrations" for litigants and jurors.\textsuperscript{146} In showing that the purpose of the traffic of goods was immaterial in relation to the payment of freight, he drew on his own experience of getting out "a few cases of books for our library".\textsuperscript{147}

Chapman J's judgments were marked by clarity and precision of expression. The \textit{Otago Daily Times} claimed that Chapman's written judgments were "as a rule finished pieces of composition, displaying a thorough mastery of the English language, and the faculty of keen discrimination in the use of terms and phraseology".\textsuperscript{148} In giving judgment on whether a claim was an action for money had and received or an action of account, Chapman J appeared to relive his earlier role of law lecturer, in giving a "logical and exhaustive" division of actions.\textsuperscript{149}

\textsuperscript{145} Mac 658 at 662, and \textit{ODT}, 4 and 7 October 1864.
\textsuperscript{146} NZ Jur I 102.
\textsuperscript{147} NZ Jur II 11, and Mac 450.
\textsuperscript{148} \textit{ODT}, 28 December 1881.
\textsuperscript{149} NZ Jur II 42.
Likewise, his legal outlines to juries were said to have been as clear and methodical as those of the best of teachers.\textsuperscript{150} The precision of his thought and language was indicated in a judgment on the question of damages. He noted that, in cases of personal torts, the law allowed "what is commonly called vindictive damages". This name, he said, "is not very well chosen, as in modern acceptation it means revengeful, and some Judges have preferred exemplary or punitory damages".\textsuperscript{151} His judgments were enlivened at times by neat turns of phrase and vivid images. He was heard to comment, in an election dispute, that "[t]ardy electors often only just save the time; more tardy electors just miss it"; and, in a mining case, that the loosening of ground was "a common misfortune which a prudent arrangement might perhaps have converted into a common benefit".\textsuperscript{152} In ordering a new trial where one juror had been absent during part of the hearing of the evidence, Chapman J remarked that the "secrets of the jury-room are sometimes whispered abroad, and we have heard of such a thing as one sensible and firm juryman turning all his fellows to his own way of thinking".\textsuperscript{153} Chapman J's lively and colourful language was particularly useful in presenting issues to the jury. In a special jury case against the Bank of New Zealand for alleged dishonouring of bills, he affirmed that "the question of damages was entirely within their province", but he noted that "[a] merchant's credit had been likened to a woman's chastity", as it was "what he depended upon", and the "instant a breath was breathed on his reputation he was damnified".\textsuperscript{154}

Chapman J's view was that questions of fact, as well as mixed questions of law and fact, should generally be left to the jury, and, despite the urgings of counsel and

\textsuperscript{150} ODT, 7 October 1864.
\textsuperscript{151} NZ Jur I 54.
\textsuperscript{152} NZ Jur I 15 and 82.
\textsuperscript{153} Mac 540 and 795.
\textsuperscript{154} ODT, 30 September 1864.
jurors, he generally adopted a restrained approach.155 In *Macfarlane v Macneil*, Chapman J admitted that, while reviewing the evidence after the trial, it occurred to him that he "might have been disposed to have taken the matter more into my own hands, and have directed the jury more emphatically than I did".156 Chapman J was even opposed (except in very long trials) to the reading of evidence to the jury, as "a cold reading by the Judge has only a tendency to impair the effect that the evidence has as it comes from the mouths of the witnesses".157 This attitude was evident in his handling of motions for new trials which were brought on the basis that the verdict was against the weight of evidence. He declared that "the Court will not usurp the function of the jury by a very nice balancing of evidence", and that to justify a new trial on this ground "the weight of evidence must greatly preponderate on the side of the party seeking to disturb the verdict".158 In a case where he admitted that he thought the damages awarded by the jury were too high, he did not know why his judgment should be preferred to that of the jury, "nay, I will go one step further, I do not know that my judgment ought not to be preferred to that of the jury".159 But there were limits to Chapman J's forbearance towards juries. He was aware that they needed reminding that they had to be as objective as they possibly could, bearing in mind that Dunedin was a small community in which "we live a great deal among each other", and that they should "weigh evidence and not merely count witnesses".160 Where juries returned inconsistent verdicts, he sent them back to reconsider.161 Further, where he considered the case clearly warranted it, he gave clear directions on issues of fact, although even here he sometimes cautioned

155 NZ Jur I 52 and 101, and ODT, 27 September 1864 and 28 June 1867.
156 ODT, 1 September 1864.
157 ODT, 7 October 1864.
158 Mac 880-881.
159 NZ Jur I 55.
160 ODT, 7 October 1864 and 28 October 1870.
161 NZ Jur I 44 and II 78.
that the jury was not bound by his comments. In *Potter v Cargill*, he successfully conveyed to the jury his view that there should be an acquittal on the charge of slander, and in so doing he revealed his own social and moral views: he noted that the defendant was a "respectable" woman and therefore believed that there was a "strong moral improbability" that she had used language "not common in her circle of life". He also pointed out that the quarrel had been about the conduct of the women's children, "the most tender point upon which a woman could be touched".162

Chapman J was disarmingly frank in his statements from the bench. He sometimes admitted that he had experienced difficulty with points at issue or that he felt hesitant or without "anything like absolute certainty" upon a matter.163 He was heard to confess that he had lost a reference to a case made by counsel, and that he had wrongly referred to a matter which had not been accepted as evidence.164 When applications were made for new trials on account of Chapman J's alleged misdirection of the jury, he was "much more disposed to let in an opportunity for such objection than I should be when disposing of the ruling of another judge".165 He allowed applications for new trials on the basis that further reflection had caused him to change his mind on the law applicable, or to realise that his direction to the jury had been inadequate.166

Several of Chapman J's judgments were reversed by the Court of Appeal, and (as in Victoria) certain of these reversals were on account of the broad and equitable approach that he adopted in the interpretation of statutes. In *Macandrew and others v MacLean and others*, he decided that it was not competent for the Superintendent of Otago (on behalf of the Governor) to cancel a pastoral lease over

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162 ODT, 6 May 1864.
163 Mac 600, NZ Jur I 7, and ODT, 17 February 1866.
164 Mac 895, and (1872) 2 CA 96.
165 Mac 918.
166 Mac 418, 535, 833 and 918, and NZ Jur I 8 and II 71.
land in which gold had been discovered, in terms of the Gold Fields Act 1866. An important aspect of his judgment was his assertion that all authority should be "strictly pursued", especially where any departure from the statute invaded private rights. Arney CJ adopted the "more rational and convenient" construction of the Act, in favour of the Superintendent's right, and argued that "it cannot be supposed that the supreme Executive power ... would abuse the authorities committed to it".167 In Receiver of Land Revenue, Southland v The Queen, Chapman J allowed a mandamus against the Receiver directing him to receive the purchase money of rural land at a lower rate. His judgment was given in terms of the "whole spirit" and "equity" of the Southland Waste Lands Act, the policy of the Act to "close the door against favouritism", and the need to guard against retroactive legislation. Richmond J, for the Court of Appeal, overruled Chapman J's judgment: while Richmond J recognised that there were difficulties in interpretation, "arising out of the several sections of the Statute", he said that the Court of Appeal had to give judgment in favour of the Receiver as this was "the only intelligible solution warranted by the Statute".168

However, the great proportion of Chapman J's judgments in civil cases remained unchallenged, and played an important role in contributing to New Zealand's early store of judicial precedent. Despite the limited nature of case-reporting during Chapman J's judgeship, certain of his judgments were relied upon and quoted by later New Zealand judges. These judgments illustrate the positive features of Chapman as judge. One such feature was his extensive learning, especially in the area of English and colonial legal interaction. In Borton v Howe, he engaged in a learned and wide-ranging outline of "the applicability of certain portions of the law of England to the circumstances and condition of the colonies".

167 (1872) 2 CA 198 at 209 and 214.
168 (1874) 2 CA 508 at 517 and 525.
His judgment was "fully concur[red] in by Johnston J of the Court of Appeal." Thirty years later, in The King v Joyce, Frederick Chapman J referred to the Borton case in which "Mr Justice Chapman states at some length what laws a colony takes from the Mother-country". Another feature which appealed to later judges was Chapman's broad, equitable approach, based upon general principles. This found favour with judges such as Stout CJ, who called up illustrations (heard at first hand at the Dunedin bar) "given long ago by an eminent Judge, the late Mr Justice Chapman". The value of Chapman J's approach was also recognised by Richmond P in Wybrow v Chief Electoral Officer. Here, Richmond P outlined Chapman J's judgment in R v Bagley, which had interpreted the Otago Municipal Ordinance in the light of each voter's intention and the need to uphold the free exercise of the franchise. Richmond P commented on the judgment as follows:

That judgment was given notwithstanding that the Ordinance contained no ... express enactment of a clear indication test. Indeed it may itself be one of the origins of the clear indication test later expressly enacted in New Zealand. It is a long-standing decision of one of our pioneer Judges. Subject to one point, ... concerned with shades of emphasis in language, we do not think that its approach can be improved on in applying the statutory test.

A further feature which enriched Chapman J's judgments and made them useful for later judges was his concrete grasp of reality, based upon his wide and varied

169 (1875) 3 CA 5 at 13-17.
170 (1905) 25 NZLR 78 at 111.
171 In re Award of Wellington Cooks and Stewards' Union (1906) 26 NZLR 394 at 413.
173 See above, 155.
174 At 156. The Bagley judgment was also relied upon by Stout CJ in Lee v McPherson (No 2) [1923] NZLR 1307 at 1313-4.
experience. Particular use was later made of his judgment in Williams v Green, which involved a practical assessment of whether or not the chimneyed house in question was a fixture to the land.\textsuperscript{175} In Pearce v Hare Rakena Te Awe Awe, Edwards J quoted Chapman J's observations and held that they "apply exactly to the present case, [and] are, in my opinion, both sound law and common sense".\textsuperscript{176}

**III. Criminal jurisdiction**

In Dunedin, Chapman J conducted quarterly criminal sessions, normally lasting several days, and on circuit he heard the small number of criminal cases alongside the civil cases. The criminal sessions began with the judge's address to the grand jury. Here Chapman J normally commented on the size and nature of the criminal calendar, and so the local public were given an idea of trends in serious reported offending in Otago and Southland. In the years immediately preceding Chapman J's arrival (and following the "first rush after the discovery of gold"), the number of indictments presented at the quarterly sittings in Dunedin had reached the high thirties, and so Chapman J, at his first criminal session in September 1864, was pleased to congratulate the jury on the lightness of the calendar which presented only twenty persons for trial.\textsuperscript{177} The trend towards fewer criminal cases in the Supreme Court continued for the first ten years after Chapman J's arrival in Dunedin, and during the period 1870-74 the number averaged at only seven to eight. Chapman J suggested that "in all parts of the Colony crime has very sensibly diminished", and another factor at work was the establishment of District Courts (for example at Oamaru) which relieved the Supreme Court of certain criminal

\textsuperscript{175} See above, 156.

\textsuperscript{176} (1912) 32 NZLR 440 at 447. See also R v Johnson, where Denniston J held that Chapman J's observations "seem to be very much in point here" ((1908) 27 NZLR 485 at 488). For other references to Chapman J see [1932] NZLR 963, [1964] NZLR 765, and [1978] 1 NZLR 192.

\textsuperscript{177} ODT, 2 September 1864 and 2 March 1865.
cases. However, from April 1874, the average number of cases presented to the grand jury rose to over twelve, and this Chapman J ascribed to "the great number of new arrivals, the large increase of population here - not only from abroad, but also, I fancy, attracted here from other parts of the Colony".

Chapman J's comments on these trends indicated that he maintained a practical and enlightened grasp of the causes of crime in British and colonial society. His view was that, in New Zealand and the other British colonies, "the temptation to crime as well as the excuses for crime, are much less than in England". He ascribed this to two "causes of crime pervading society in England which I hope do not exist here". First, he claimed that "among the dangerous classes of society at home, there are criminals whose trade is crime, [who are] educated in it from their earliest infancy and systematically trained to be thieves". Secondly, he stated that in England "there is a large number of the working classes very frequently in a state of frightful distress, which is no doubt a great temptation to crime, and although the law makes distress no excuse for crime, in a moral view we cannot help making considerable allowance when offenders, from that cause, are brought before Courts of Justice". Six years after Chapman J made this observation, he had occasion to sentence a prisoner born in New Zealand. He remarked that "it was very creditable to the youths of the country that they were very seldom brought before its tribunals", and again ascribed this to life being "easier here than at home" and to the fact that "persons coming out to the colony might bring with them habits of crime". However, Chapman J suggested that one cause of crime which did exist "to a considerable extent in these colonies" was the "habits of intoxication". He claimed that many violent crimes were committed under the influence of drink, and that the

178 ODT, 3 March 1868 and 4 April 1872.
179 ODT, 5 January 1875.
180 ODT, 2 September 1864.
181 ODT, 7 September 1870.
effect of excessive liquor in tending to incapacitate people for labour made them desire to "obtain the means of living without labour". Further, he feared that in New Zealand and the neighbouring colonies there were children at large on the streets, some without the control of parents and "others suffering from the vicious example of parents", who required "the Government to take them in hand" to prevent them "becoming trained to become members of the criminal class".182

In his opening addresses to grand juries, Chapman J commonly explained to the jurors their functions, which, he pointed out, differed "very materially from those of a petty jury".183 He said that their function was to inquire, not to conduct a trial, and the object was "simply that no prisoner shall be called upon to answer a case which is so slight as only to amount to a bare suspicion".184 The grand jury had to weigh the evidence brought forward by the Crown, and decide "whether there is sufficient evidence to call upon the prisoner in the first instance to answer to the charge".185 In the event, the grand jury tended to return "true bills" in respect of most, if not all, the cases brought to them.186

Chapman J, in presiding over criminal trials, displayed the care, thoroughness, and conscientiousness that he showed in civil cases. But because criminal cases involved the liberty and (in the case of murder trials) the life of the accused, and because they stimulated far greater popular interest than most civil cases, Chapman J adopted a role which was different from that adopted in civil cases. His attitude

182 ODT, 2 September 1864. In 1867 he noted "with very great satisfaction that the Legislature of the Province had taken steps for establishing some description of Reformatory" to train and educate orphaned and abandoned children who were to be found roaming about the streets (ODT, 4 June 1867).

183 ODT, 2 September 1864.

184 ODT, 2 March 1865.

185 ODT, 2 September 1864.

186 ODT, 4 June 1867, 6 July 1871, 3 January 1872 and 8 April 1873.
was revealed in his comments on certain prosecutions which had taken place on the
West Coast: 187

the law had been completely vindicated there - vindicated in so
lenient a manner, that he had no doubt the effect would be
very beneficial in restoring and preserving the good order of
society. The prosecutions were carefully, but not vindictively,
conducted; the trials were under the superintendence of a very
able, and, at the same time, a very humane Judge; and the very
leniency of the sentences would ... have a most beneficial
effect, not merely upon the particular community in which the
trials occurred, but throughout the whole of New Zealand.

Chapman J's stress on the careful and humane conduct of trials, in the interest
of restoring or preserving the good order of society, was seen in the firm control he
kept over the course of proceedings and his determination that the accused should
receive fair treatment. Thus, he promised that accused persons in custody would "be
kept no longer in gaol than is absolutely necessary for the administration of
justice". 188 When juries delayed giving verdicts until late at night, he gave the
assurance that "so soon as you knock at your door, and intimate that you have
agreed, the sheriff shall send for me; and I hope that within half-an-hour of your
agreement, I shall be able to be here to take your verdict". 189 He strongly
discountenanced applause or other disturbances from those who attended court.
When a group clapped and stamped with approval after the verdict of the jury,
Chapman J "assumed his severest aspect", said that the jurors were bound to do their
duty and that "if applauded on the one hand, they might be hissed on the other", and
committed two of the culprits to gaol for twenty-four hours. 190 Prisoners on trial
were dealt with fairly and firmly, and, even where the lack of evidence resulted in an

187 ODT, 4 June 1868.
188 ODT, 2 March 1865.
189 ODT, 23 March 1865.
190 ODT, 20 March 1865 and 10 April 1874.
acquittal, Chapman J would give stern admonitions on the need to improve moral conduct.  

On very rare occasions, where the facts and law were entirely clear, Chapman J simply left the question of guilt to the jury, without a summing-up. But, almost always, he addressed the jury at length, explaining relevant legal principles (for example, the law of criminal libel and privilege) and the admissibility of evidence (for example, the evidence of husband and wife against each other). Here again he displayed his ability to communicate in clear and vivid terms. In indicating that even confessions were not conclusive evidence, he recalled that, in the past, persons had confessed that they were guilty of witchcraft. He declared that "[w]e know, in these more enlightened times, that that is an impossibility; and yet these poor persons - possibly with their minds broken down by long detention in Gaol - may have believed that they were endowed with supernatural powers".

Chapman J also appeared to be far more inclined to give his views on the facts of criminal cases than he was in civil disputes. At times, he clearly indicated that the accused was guilty. On most occasions, however, he pointedly directed the evidence in favour of the accused. His overriding theme, expressed repeatedly, was that "the humane policy of our law entitled the prisoner to the benefit of [the] doubt". Thus, he was heard to say that he thought the accused's story "very plausible" and that he had a good character, that the jury might "very fairly take into account" that the prisoner was a foreigner, and that the case was not one for "severe punishment, or even for strong animadversion".

191 ODT, 2 September 1864.
192 ODT, 6 March 1865 and 4 March 1868.
193 ODT, 6 September 1864.
194 ODT, 2 March 1865.
195 ODT, 3 July 1865, 3 December 1867 and 10 October 1872.
196 ODT, 24 June 1867.
197 ODT, 6 September 1864, 2-4 March 1865, 5 June 1867, and 6 December 1870.
Chapman J’s benevolent attitude towards accused persons was most marked in murder trials. Statute imposed a mandatory death sentence for murder, and Chapman J’s approach (as he openly admitted on one occasion) was to "put to the Jury every trifling circumstance that [he] thought could possibly operate on their mind to reduce murder to manslaughter". This tendency was particularly evident in *R v Jalvey*, the first murder trial over which Chapman J presided in Dunedin. Although his handling of the leading of evidence by the prosecution (conducted by Prendergast) was fair, his eight-hour address was clearly weighted against the return of a guilty verdict. Chapman J declared that "[w]here a prisoner's life is placed in jeopardy, I need hardly remind the jury, that if anything, an extra degree of vigilance is necessary". An obvious example of his approach was his attempt to discredit the evidence of a leading expert witness against the accused, on the basis that he had "such an animus in the matter as would make him color his testimony in a way injurious to the prisoner". Chapman J spoke of the witness's folly of reporting to others his version of the events, and then "some equally chattering and tattling person whips up these little bits of prejudice, and carries them off to [another]". This prompted a protest from the witness, at which point Chapman J declared:

No, I will take no explanation whatever. I ought not to have been interrupted at all. If this were not a Criminal court, I should have a great regard for the feelings of any person - I should not be disposed to say a word that would affect the feelings of any man; but sitting here as I do, I am bound to give expression to my opinion on the matter... Whenever a witness, be he who or what he may be, betrays, while in the box, anything that can possibly be construed into an animus, that circumstance ought to be plainly put to the jury, and they ought to be told to weigh it carefully, so as to decide how far it affects the integrity of the evidence.

198 *ODT*, 2 May 1874, and FRC to HSC 16 April 1965 (Frederick doubted whether his father could "reduce [him]self to a machine and give [his] mind no trouble").

199 *ODT*, 23 March 1865.
Chapman J was criticised in the local press for his address on this occasion, and it was said that he allowed "the instincts of the pleader [to be] too strong for him", and "constituted himself into a Counsel for the prisoner".200

Chapman J's approach to sentencing generally followed well-established English patterns,201 and so they provide an insight into sentencing practices of his time. In sentencing convicted prisoners, Chapman J constantly had in mind the suppression of further offending, but he realised that the means of achieving this varied according to the nature of the offender and the offence. In relation to particularly brutal offences and/or "hardened" offenders, Chapman J appeared to apply notions of retribution and deterrence. This was particularly evident in his comments on sexual assaults on children. He declared to a man found guilty of assaulting a seven-year-old girl with intent to commit a rape that "there is no offence of which a man can be guilty which is so brutalising, so cruel, so inhuman, as that of which you have been convicted". Chapman J believed that, for such an offender, imprisonment had very little effect, as "the disgrace of being in gaol is not felt as a disgrace" by him. Rather, he advocated the infliction of a moderate amount of lashes, as "the best possible punishment for a man of such debased and degraded feelings", and to deter him "from committing these and similar crimes in the future".202 However, in the case of a petty thief, who "had been convicted of various larcenies, embezzlements, and other offences not less than twelve times", Chapman J appeared to believe that lengthy imprisonment would dissuade the offender from further crime. He declared that "[t]here was very little hope of effecting a cure except by a long incarceration".203

200 ODT, 28 March 1865.
202 ODT, 2 March 1865, 3 January 1872 and 7 January 1873.
203 ODT, 9 April 1874.
On certain occasions, Chapman J spoke in terms of general deterrence. In the case of a prisoner convicted of maliciously and unlawfully wounding, Chapman J said that "whatever might be the case in America, of which the prisoner is a native, the use of a knife in the British dominions could not be tolerated, and whenever a case of that sort was brought before him he should visit it severely". He said that "[h]e did not say that for the sake of the prisoner, but of the colony, for he was determined to discourage the use of such deadly weapons as far as possible".204 Again, in the case of a man guilty of assault by biting the victim's ear and cheek, Chapman J said that the assault was "a most ferocious and brutal one", and that it was "quite impossible to pass it over without a sentence that should be calculated to deter others from committing these offences".205

At the other end of the scale, in cases involving young, first offenders and/or minor offending, Chapman J looked to measures that would reform the offender. Chapman J was alive to the detrimental effect that prison could have on young offenders. In deliberating on the sentence he should impose on an offender of sixteen, he noted that "the gaoler had no means of keeping a prisoner of this boy's previous character apart from other boys who, perhaps, were as bad as men, and the prisoner was almost sure to be turned out worse than he went in, and perhaps a contaminated character".206 Chapman J's call on this occasion for a reformatory was met less than three years later with the introduction of the Act to provide for the care and custody of Neglected and Criminal Children.207 This empowered the Superintendent of the Province to establish reformatory schools, and the judge to direct that, after the expiration of the sentence imposed on a child under fifteen, the child be taken to a reformatory. Chapman J praised this "preventive and highly

204 ODT, 3 September 1864.
205 ODT, 13 October 1874.
206 ODT, 5 September 1864.
207 31 Victoria no 14.
remedial" Act. He envisaged that sentences on such children might be nominal, and that by "training them to habits of industry, and attending to their moral reformation, there is no doubt very great hope of permanent reformation".208 Where prisoners had committed such offences as attempting to commit suicide, Chapman J would "reasonably reprimand" them, and in one case he insisted on a person offering security that the prisoner would come up for judgment when called upon, so as "to give somebody an interest in watching the accused".209

The sentencing discretion of Chapman J and the other New Zealand judges was circumscribed by criminal statutes, which outlined the range of sentences (usually maximum limits) that the judges could impose.210 Chapman J had regard to the statutory sentences as indicating the seriousness with which the local society, through its legislators, viewed the range of crimes for which it legislated. In a case of receiving stolen property, he told the prisoner that his offence was "a very serious one, and the Legislature has marked its sense of its dangerous nature, by assigning to it a much higher punishment than to common larceny". He compared the maximum sentence of penal servitude for larceny (three years) with that for receiving (fourteen years), and said that it was "therefore impossible to pass over an offence of this kind without awarding a severe punishment".211 The statutes allowed, as an alternative to the lengthy terms of penal servitude, imprisonment (normally restricted to a maximum of two years) with or without hard labour, and Chapman J almost always opted for imprisonment (and usually with hard labour).

Of the factors which Chapman J took into account as tending to aggravate the offending in question, some related to the nature of the offence. These included breach of trust, the prevalence and danger of the offence within the community, the

208 ODT, 3 December 1867.
209 ODT, 4 June 1867 and 15 September 1871.
210 31 Victoria nos 2, 3, 5 and 6.
211 ODT, 9 June 1868.
use of a weapon, and the damage inflicted. In the case of a prisoner convicted of forgery, he imposed a sentence of imprisonment with hard labour because "this offence was committed with a design to cover a very gross breach of trust", and the offence "seems to be particularly rife in this Province at the present moment". Other aggravating factors related to the offender, such as a previous criminal record. In the case of a prisoner who had pleaded guilty to four charges of forgery, Chapman J noted that he had been previously convicted of similar offences, and that "forgery and uttering seemed to have become his trade". He therefore imposed cumulative sentences of five and three years' imprisonment with hard labour.

However, less importance was attached to previous convictions of a long time before (indicating an attempt at "repentance"), and to previous convictions (especially for minor offences) unconnected with the present offence.

Of the factors which Chapman J took into account as tending to mitigate the offence, almost all related to the offender. These included the youth of the offender (relating to offenders aged, for example, eighteen or nineteen), evidence of good character, the absence of previous convictions and the indication that the offence was an isolated act, and signs of repentance. In a case of embezzlement, Chapman J sentenced the prisoner to four months' imprisonment with hard labour, "stating that he took into consideration that it was his first offence, and that the prisoner had given the best evidence he could of his repentance in having given himself up".

On occasions, aggravating and mitigating factors competed for attention, and here Chapman J tended to place more weight on the latter. In the

212 ODT, 3 September 1864, 6 March 1865, 4 March 1868, 10 September 1870, 15 September 1871, 9 January 1872, 9 April 1874, and 7 January 1875.
213 ODT, 7 December 1865.
214 ODT, 9 June 1874.
215 ODT, 9 January and 4 April 1872.
216 ODT, 5 September 1864, 9 June 1868, 15 September 1871 and 10 April 1874.
217 ODT, 4 June 1867.
case of a person who had pleaded guilty to horse-stealing, Chapman J noted that the case was "of a kind with which it was always very difficult to deal". He said that "in a country like this, where horses and cattle were much exposed, it was necessary that the law should, in most instances, deal with some severity with those who stole such property". On the other hand, he said, the prisoner, as soon as he had been arrested, had "expressed contrition for his act; and he had carried out that feeling of immediate penitence, by pleading guilty", and there was evidence that the prisoner had borne an excellent character. Chapman J therefore held that he would "deal very leniently with the prisoner", and sentenced him to eighteen months' imprisonment with hard labour.218

IV. Retirement (1875-1881) and Conclusion

On 31 March 1875, at Chapman J's last appearance on the bench, a very large gathering of the bar took place. George Cook, on behalf of the members of the bar, paid tribute to Chapman J's "industry, considerable powers of endurance", "courtesy to the bar on all occasions", "great patience with which [he had] always listened to [their] arguments", and his "efforts always to endeavour to grasp the true points of every case brought before [him] for adjudication". He considered that Chapman J's retirement deprived the community of an "experienced and able judge". In reply, Chapman J remarked that he strongly felt leaving "the exercise of a profession I have always been proud of, of which I was always fond, and which led me into studies congenial to my own feelings - studies not merely connected with the technical subjects of our profession, but studies all of which are of use both in the exercise of the functions of counsel, and in the exercise of the functions of Judge".

218 *ODT*, 4 March 1868.
He reflected that this was "by no means the last time I shall have the pleasure of seeing you - not as Judge Chapman, but as Mr Chapman".219

Chapman's sadness at leaving office was counterbalanced by the sense that "all his anxieties were now at an end", and he later recalled that within a year after his retirement he had increased ten pounds in weight.220 The six-and-a-half years of Chapman's retirement were marked by unabated mental vigour, checked only by physical constraints. He twice held judicial commissions to conduct circuit proceedings (in June 1875 in Invercargill and in September 1875 in Lawrence), but later refused government requests to take further judicial work.221 He spent much time in reading the books in his extensive library: in July 1878, his son Frederick mentioned that, after an illness, he was again "reading enormously and with immense gusto, especially upon metaphysical subjects".222 He elaborated on his earlier work on the history of the English language, and in August 1876 he published this as a pamphlet entitled *Specimens of Fossilised Words*.223

Chapman became heavily involved in university affairs during his service as Chancellor of the University of Otago in 1876-9.224 Frederick Chapman later recalled that his father took the keenest interest in the university and "to its well

219 NZ Jur II vi-vii.
220 FRC, Memoranda 34.
221 Ibid.
222 FRC, Notes 30 July 1878.
223 Copy in RC. This, he said, was produced with a view to stimulating "students of their own language to push their enquiries a little further back than usual, into the sources of their own everyday language". In the pamphlet, he showed that, while English had become a "very mixed or composite speech", the foundation remained Anglo-Saxon. He stated: "the language in which you pray, quarrel, and make love, is still, to a great extent, founded on the common speech of England in the time of England in the time of King Alfred". Chapman also published a philological article in the *New Zealand Magazine*.
224 FRC, Outline of the life of HSC, ODT, 22 December 1876, and G E Thompson, *A History of the University of Otago (1869-1919)* (c 1922) 44.
being he gave a large amount of his time and energy, devoting his attention to the subject in the closest and most methodical way.\textsuperscript{225} He served on the committee of the Indian Famine Relief, worked for the endowment of the local museum and high schools, led a deputation to the Harbour Board on the siting of the docks, and published a letter to the Chamber of Commerce on the reduction of railway fares.\textsuperscript{226} Frederick Chapman also recalled that his father "was a large subscriber to public charitable objects and in private acts of charity his gifts were larger and more numerous than any but his own family can form an idea of; even amongst his own family many of these benevolent acts were only found out by accident". Further, "his subscriptions to the Church were always liberal though personally he was never a church goer".\textsuperscript{227}

Chapman retired on a pension of £750 a year, but by then the station was profitable and so he had a sufficient income to keep him in a comfortable position.\textsuperscript{228} In 1875, Chapman commissioned the building of a handsome home called "Woodside", where he lived in style.\textsuperscript{229} Chapman also purchased shares in

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\textsuperscript{225} In December 1876, he presided over a University Council meeting which discussed the contentious resignation of Professor M Coughtrey, Professor of Anatomy, and he showed firmness and candour (\textit{ODT}, 22 December 1876).

\textsuperscript{226} \textit{ODT}, 4 May 1877 and \textit{FRC}, \textit{Notes} 24 July 1878.

\textsuperscript{227} \textit{FRC}, \textit{Memoranda} 34.

\textsuperscript{228} Ibid.

\textsuperscript{229} \textit{ODT}, 24 November 1875, and \textit{HSC} to \textit{FRC}, 10 January 1877. In November 1875, the \textit{Otago Daily Times} noted that the building had a Tudor-Renaissance style of architecture, and "all the appearance of a fine old baronial mansion in the home country". The report claimed that, of the seven rooms on the ground floor, the best was the library, which housed "the finest collection of books in the Australian colonies, in private hands", and where Chapman "spends the greater portion of his time". Other notable features included the only concrete mantelpiece yet made in New Zealand, and the provision of hot and cold water throughout the house (\textit{ODT}, 24 November 1875). Chapman estimated his cost of living there during the first year at £1080 (\textit{HSC} to \textit{FRC}, 10 January 1877).
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and was a director of the Colonial Bank, and he was a founder member and director of the Victoria Insurance Company.230

In early 1875, George Arney CJ wrote to Chapman that he had "long observed that it is the greatest comfort of your life to have [the members of your family] near you and around your hearth, as they are intertwined with and around your heart's affections".231 Besides Selina, Frederick was now his main source of support, as Martin practised in Wellington, after spending only a few months in Dunedin in 1875. Chapman rejoiced over the success of Frederick and Martin at the bar.232 Ernest administered the sheep station, and the eldest son Charles moved to Australia, where he experienced mixed fortunes.233

On 2 May 1878, Chapman had a bad attack of rheumatism, vomiting and hiccoughs, which confined him to bed, and such was the certainty of his death that Macassey wrote an obituary on him in preparation for publication in the local press.234 By late July Chapman had recovered remarkably,235 but during the

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230 FRC, Notes 22 December 1881, and FRC, Memoranda 34.
231 G Arney to HSC, 26 January 1875.
232 HSC to FRC, 15 January 1879, and I Dunscombe to HSC, 22 January 1881.
233 C Chapman to HSC, 5 February 1881, and E Chapman to HSC, 2 August 1881.
234 In the event, Macassey died in 1880, and Chapman went to his funeral.
235 During these months, Frederick, anxious to preserve the story of his father’s life, engaged in many conversations with his father, and noted the comments that he made. One notable conversation which Frederick noted was between Chapman and his wife Selina, on the eve of his seventy-fifth birthday. To the question "how should you like to be back at 25", he replied: "Not a bit, that would only be going over it again there would be no interest in that; but I should like to come back 100 years hence and see how New Zealand had advanced. I should like to meet a little fellow in the street and say "Who are you" "Oh my name's Chapman; my great-grandfather was a judge" "Who is your father" "Oh! he's the President of the Republic" (FRC, Memoranda, 18 20 July 1878). By late July he had recovered remarkably, was back to reading and discussing avidly, and "despite his crippled condition, invented an ingenious method of getting in and out of his bath" (FRC, Notes 24-30 July 1878) By August he was giving his comments on Frederick's propositions on the unconstitutional character of the proposed legislation against the Chinese, and suggested that Frederick's statement that the poll tax was illegal should be amended to "ultra vires as a casus
ensuing three-and-a-half years until his death, physical set-backs continued to beset him. In April 1879, Frederick reported that "some months since a kind of paralysis gradually began to attack my father's hand", and that "my father moves about though he finds it difficult and painful to hold a stick". At the beginning of April, his carriage "came to grief", and Chapman was "thrown out violently on his hands, spraining both wrists and suffering dreadful pain". Frederick noted that "during the bolt, he was perfectly cool, holding Selina's hands to keep her in her place"; and Frederick commented generally that his father's intellect was "untouched", his pluck was "unlimited", and his energy was "only circumscribed by his bodily failings". In January 1881, Chapman wrote to his friend Dunscombe in Quebec, reporting a "painful illness". Dunscombe replied, saying that Chapman's "description of the gold needle and the drops of morphine was all really so like you, working into everything, no amount of pain or suffering would prevent your philosophical inquiries into any occult process". In August 1881, he wrote to Alexander Johnston about the approaching operation to his eye, and Johnston was sure that his "unabated vigour and spirits" would make the operation a complete success. On 11 December 1881, the symptoms of his illness in 1878 reappeared and his stomach failed to retain food, and by the middle of the month he had taken to bed "with terrible spasms of pain at times". Frederick commented on how "patient and philosophical" he was through his suffering, until his death on 27 December.

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236 FRC, Notes 3 April 1879.
237 I Dunscombe to HSC, 22 January 1881.
238 A Johnston to HSC, 27 August 1881.
239 Chapman called Frederick and sought reassurance that Selina retained authority to pay cheques: to Frederick's statement that the authority would continue until withdrawn, Chapman replied that that was "good law". Frederick was frank in telling his father that he had to recognise his age, and
This study of Chapman's life and career in Dunedin has shown that he was characteristically thorough, hard-working, and conscientious, and was still driven by an earnest desire to assist others and to communicate his knowledge and beliefs to them. Local commentators referred to his "extraordinary vigor of mind and body", and noted that "in any movement having for its object the physical, intellectual, or moral improvement of his fellow-men, he has always been ready ... as a zealous worker".240 His life-time of self-education and varied experience meant that he combined an extensive knowledge of law, government and literature with a practical grasp of reality. The Otago Guardian remarked that Chapman united "a ripe culture to a practical knowledge of life - which saved his learning, however extensive, from becoming pedantic".241 Chapman strove to live and work according to broad, guiding principles, drawn from his considerable knowledge, his liberal beliefs and his optimistic belief in the improvement of humanity through individual human endeavour. He set great store by individual human relationships, and this was reflected in his personal life through his devotion to his family and his kindness and generosity to friends, colleagues and members of the public. Chapman did not reveal a towering intellect or a flamboyant, dominating personality. Indeed, he consciously adopted a laisser-faire approach in his judicial role, except where he perceived a threat to the humane and equitable administration of the law. Where

Chapman replied that he was not depressed or low spirited and "must take his chance" (FRC, Notes 22 December 1881). On 26 December, Chapman's loss of sight and the similarity of the family voices meant that he was unable to distinguish each member until announced. To Frederick's query as to whether he felt pain, Chapman replied "I feel dying that's the plain English of it". At midday on 27 December, he took the fatal turn, but long after that he answered questions, knowing Frederick's voice. Even when apparently near his last breath, when Frederick put water on his lips, he commented that "that refreshes me". He died at 5.45 pm that evening (ibid, 27 December 1881). Chapman left an estate valued at £18739.9.7. His widow survived him and died on 27 December 1902 (RC).

240 ODT, 28 December 1881 and Otago Guardian, 3 April 1875.
241 Otago Guardian, 3 April 1875.
Chapman was challenged or criticised, it was on the grounds that he adopted too restrained a role as judge, and tended to overlook the more precise demands of the law.

On hearing of Chapman's death, Alexander Johnston described his late friend and former judicial colleague in succinct and apt terms. He declared that here was a man of "wonderful tenacity to life [and] constitutional cheerfulness", who had "done vigorously and thoroughly the work which was found for him to do, in public as well as in private".242

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242 A Johnston to FRC, 29 December 1881. Chapman's friend Dunscombe described Chapman as "the truest heart I ever met with" (I Dunscombe to FRC, 9 February 1882).
PART B:

FREDERICK REVANS CHAPMAN
(1849-1936)

His learning was real as his temper was judicial. It was not restricted to the law, but ranged over many fields, such as history, literature, and science. His was probably the most comprehensive scholarship in the Dominion.

CHAPTER V

EARLY LIFE AND CAREER (1849-1872)

I. Childhood in Wellington, Hobart and Melbourne (1849-1864)

Frederick Revans Chapman was born at 8.10 pm on Saturday 3 March 1849, at the family home in Karori, Wellington. His father reported his birth as follows:¹

Catherine gave birth to - a fifth wheel to the Coach - another Son! He is a large fine child and Catherine as usual is remarkably well. ... The Child had a narrow escape for his life, and without surgical skill he must have been still born, for the umbilical chord was round his neck and it took a quarter of an hour before he could be made to breathe and cry (the sign of life) by means of hot water, friction and inflation. When at length he did cry he gave ample evidence of his strength and vitality - for I heard him while walking outside the house. ... The Doctor got out at about 2, Catherine got to bed about half past 5 and soon after 8 she was comfortable and quiet, but she had more suffering than on any former occasion. There is rather less than 19 months between Ernest and the fifth wheel ... and only 3 years less 24 days between the infant and Martin with one between whereas between Harry and Charley with none between there are 3 years and 33 days. What we are to do with all these boys is a problem which we may discuss hereafter.

Five weeks later, his father described Frederick as a "baby of the large breed like Charley ... fat, cheerful and contented, he is giving no one any trouble, and although the 'baby' is always master of the house, he is also the decided favourite with every one".² On 13 May, he was baptised by the Reverend W Cole at the

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¹ HSC to HC, 4 March 1849.
² HSC to Aunts, 9 April 1849.
Episcopal Church, Wellington: his second name was that of his father's life-long friend Samuel Revans.\(^3\) A month later, Henry Chapman declared that "in point of size, strength and forwardness I think he is the finest child we have had".\(^4\) Over the ensuing months, he grew into "an enormous child as full of fun as of energy".\(^5\) At a year old he was "almost on his feet" and making "very successful efforts at talking", and he and brother Charley were said to be the "John Bulls" of the family.\(^6\) In October 1851, his father declared proudly that Freddy was "distinguished "as the tallest, stoutest, and finest boy in the Colony, and many who admire brawn think him the handsomest".\(^7\)

Frederick Chapman remembered many "trifles" about his life at Wellington, including the activities of his nurse and other servants, his father returning from his travels down the coast with "a Maori named Whiti with whom we all became very friendly", and Rata Valley as a blaze of crimson at the end of 1851.\(^8\) He recalled the departure of the family from Wellington in March 1852, in terms which captured a child's perceptions of the rustic, unsophisticated world of New Zealand at the time.\(^9\)

In April 1852, the three-year-old Frederick and his family arrived in Hobart. Although Lieutenant-Governor Denison offered the family accommodation, Henry Chapman chose to stay with his brother-in-law Charles Brewer, because of the

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\(^3\) HSC to FRC, 15 January 1865.
\(^4\) HSC to HC, 17 June 1849.
\(^5\) HSC to HC, 28 November 1849 and 23 January 1850.
\(^6\) HSC to HC, 12 March 1850. On his second birthday he was said to be "quite glorious with his festival", and was reported to be two feet nine-and-a-quarter inches tall and proportionately stout (HSC to HC, 3 March 1851).
\(^7\) HSC to HC, 23 October 1851.
\(^8\) He also remembered his brothers Harry and Charley making mixtures of berries and water and calling it wine" (and naming one of the berries Waiwaka or Waiwalker) (FRC, Recollections).
\(^9\) Idem.
"dreaded effect of introducing a mob of noisy boys".10 The family duly moved to their own home, a rented one-storey brick house with a large garden full of fine fruit trees.11 Amongst Frederick's memories of this time were those of the servants in the home. He recalled that there was "at least one free servant a half caste who went with us from New Zealand". The rest were convict servants, though Frederick had "no recollection of any servant of ours ever being referred to by us as a convict: evidently our parents carefully kept that word and status from our knowledge".12 Frederick remained at home with his sister and (from July 1852) his baby brother,13 while his older brothers went to a local school.14

In December 1852, Frederick's father and eldest brother Harry left Hobart for England.15 When Henry Chapman returned at the beginning of August 1854, he found the family "well, though they had had scarlet fever and measles in the

10 HSC to HC, 25 April 1852. Frederick remembered that his uncle "was living in style", and "had built a theatre and ball-room" (FRC, Recollections).

11 When the gold rush in Victoria caused a great demand for fruit his mother was able to pay the rent of the house by selling off her crop to a dealer (idem). Contact with the Brewers continued, and Frederick remembered later visits to the cousins and "open-air lunch in the bush" (idem). Note, in October 1852, Frederick fell ill for a short period, when "the cleansing of the yard disengaged foul gas, and the children played too much in its vicinity" (HSC to CC, 3 October 1853).

12 One servant who wished to convey that she was not a convict (whose hair had been cut in prison) used to tumble her hair before she answered the door to let it be shown that she had a head of long hair. At the foot of the garden lived a gardener and his wife, who were "no doubt both convicts", and "the old lady regularly smoked her clay pipe like a Maori lady" (FRC, Recollections). Frederick also recalled that the family was often troubled by visits of burglars (idem).

13 Frederick well remembered "being taken into the bedroom when my mother lifted the bed-clothes and showed my astonished eyes - a baby!" (idem).

14 Frederick remembered walking out to the front gate on Davy Street with his brothers and watching other boys go past, including Cecil Haggett (future practitioner in Dunedin) (idem).

15 Except for a short period in 1860, Harry was to be apart from Frederick until 1864 (idem).
During the following weeks the family prepared for the move to Melbourne. Henry Chapman left alone at the end of September, to acquire and prepare accommodation for his family.

Catherine Chapman and her "clutch of flaxen-haired children" arrived in Victoria on 11 November 1854. Henry Chapman had rented "a very moderate-sized house" in Toorak, which Frederick described as "a beautiful unspoiled suburb with wide stretches of open country dotted with trees, in parts of which were the remains of forests of giant eucalyptus trees". Frederick recalled that "to us children the whole scene was different from what we had become accustomed to in Van Dieman's Land. The heat seemed greater and the variety of bird and insect life interested us". He remembered that "as boys we often stood under the water tanks to get a refreshing drink of the water flowing from the Jarra from leaks". Overall, he found Victoria "a pleasant country to live in and there were pleasant people about there". His father plunged into legal and political activities, and Frederick recalled that "towards Xmas 1854 my mother bought a lot of ribbons and she and the servant girl made them up into rosettes for the election then going on".

Early in 1855, a governess (a Mrs Neil) was engaged to teach Frederick and Ernest, and she taught them "to tell the year AD". Soon after, she started a school for boys and girls in a street off Toorak Road, Prahran.

In November 1855, the family moved to St Kilda, where Henry Chapman had rented a newly-built house (in four-and-a-half acres of ground), which was then the "last house in that part of the suburbs of Melbourne". Frederick recalled that, at

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16 HSC to Aunts, 29 January 1855.
17 FRC, Recollections.
18 Idem.
19 Idem.
20 Henry Chapman later bought the house (which stood in Alma Road) for £1500 (idem). Three rooms and a cellar were added, and under the superintendence of Catherine Chapman the rough land was brought under control.
the time, St Kilda was "a widespread straggling suburb with shops in the centre". He recorded that the countryside near the St Kilda home was sparsely inhabited and had none of the beauty of Toorak but that "to us boys the wide stretches of heathland had attractions".

To the Chapman home came prominent local figures and overseas visitors. Frederick observed that "when my father was in office a certain amount of entertaining went on", and that "when we were growing up we took a great interest in our father's election contests without knowing much about the questions involved".

Initially, Frederick (and Ernest) went to a Mr Northcotts' school near St Kilda beach. In March 1858, the Church of England Grammar School opened, and later that year Frederick and Ernest followed their brothers Charles and Martin in enrolling at the school. This school was established by the Reverend J E Bromby,
DD, former Fellow of St John's College, Cambridge.26 It had a strong religious emphasis, as it opened each day with prayer, religious instruction was "conveyed chiefly through the text of Scripture", and it was hoped that "the faithful discharge of daily duty" might become "no mean element of religious discipline and advancement". Corporal punishment was "very sparingly resorted to, and only in cases of gross moral delinquency". The primary classification of the school was according to proficiency in the classics, with classes ranging from the first (for those at the highest level, boys of sixteen or seventeen years) to the sixth (later the eighth, for those at the lowest level, boys of about ten years). This primary classification did not prevent boys being classified differently for other subjects, so that "the same boy, being an indifferent classic and yet an excellent French scholar, or Geometrician, shall be in the First class in these latter subjects though in a lower one in the primary classification". In the lower classes, attention was given to writing, arithmetic, elementary history, outline geography, and the rudiments of French and Latin, "and care shall be taken that whatever is done, shall be done neatly and with accuracy". In the higher classes, various subjects were offered, according to the pupils' interests and "future occupation in life", and these included algebra, geometry, English composition, German, bookkeeping, plan-drawing and ornamental drawing.27 The school attracted a range of boys, from the sons of leading Melbourne figures to boys from the countryside.28 Frederick later recalled his school-days at the Grammar School as follows:29

26 Frederick came to revere Bromby, and on the occasion of the latter's retirement after sixteen years' service he commented: "Well he may rest on his laurels, not gotten by a stroke of sword or pen, but by a patient and vigorous application of his rich and disciplined mind" (Note, RC).

27 Plan of education by Dr J Bromby (Melbourne Church of England Grammar School records).

28 Frederick recorded that the sons of Heales and A'Beckett attended the school. He also noted that "as there were no railways we did not get very far into the country but boys from all parts came to the Grammar School from 'up the bush' as the country was always called. They feasted us with tales of country life and the doings of blackfellows. Tales of blackfellows and of birds,
[We] had no uniform, there was no attempt to organise the boys, the old-fashioned parents allowed their children's hair to grow sometimes in enormous masses of curls and sometimes in long festoons, ... and when [one] considered that in those days even Melbourne had no water supply [one] could just imagine the consequences. We only knew the masters as enemies ... at school I was a very slow boy, so much so that I used to wonder at one time whether I would ever reach anywhere.

Although Frederick had doubts about his ability, he was a boy of considerable determination. This helped him to win prizes in French (in 1858, 1859 and 1861) and in natural science and Greek (in 1863), and earned him an "honorable mention" in Latin and English (in 1863). By his last year at the school, Frederick had reached the fourth class.

For a time, Frederick learned music, at which he made good progress. From 1860, he attended lectures at the Mechanics' Institute in St Kilda, and in February 1864 he and Ernest joined the Volunteer Artillery for regular drill exercises. At an early age, Frederick developed an interest in law, and (of significance for the

snakes and other animals in the far track country entranced us town dwellers in what was still the imaginative age" (FRC, Recollections).

29 Taranaki Herald, 15 December 1922. Frederick also remembered seeing a monkey on the way to school, and that his father refused to have it on the ground that it was a "miserable imitation of man (from the lips of a man who keenly followed recent scientific speculation and certainly was abreast of everything)" (idem).

30 In his response to a photograph of the family sent in August 1858, Frederick's grandfather said that the first impression he had of Frederick was "determination" (HC to CC, 1 November 1858).

31 Melbourne Church of England Grammar School records. His brother Martin also excelled at French and natural science (see below at 312-3).

32 Henry Chapman wrote of his children that "they all learn music, master comes at 6.45 am twice a week .. they all make good progress except Kit" (HSC to FC, 26 November 1863). However, after Frederick broke his arm, he never took up the piano again (CC to HSC, 18 November 1864). (Cf Martin Chapman: Appendix).

33 Henry Chapman claimed: "Thank God there could not be better boys - from Harry downwards" (HSC to FC 25 February 1864).
future) his earliest legal recollection was of criminal trials.\textsuperscript{34} At a "sly grog prosecution" in the Police Magistrate's Court at Anderson's Creek, he "sat most of the day listening with delight" to the contest between the barristers, "noting for the first time the frequent use of the expression 'my learned friend'.\textsuperscript{35} In November 1863, his father reported that "at present Fred's thoughts turn entirely to the bar for which he shows great aptitude".\textsuperscript{36}

Frederick was intrigued by the customs of the aboriginals, and thus began his life-long interest in indigenous cultures. He recalled a gathering (around 1858) where the aboriginals were:\textsuperscript{37}

- painted with white lines to make them look like skeletons, and
danced in a circle round a fire, women had opossum skins tight across their knees on which they drummed; was a sort of chant which we imitated and sang for years. Watching the aboriginals throwing boomerangs and climbing trees was the delight of the Grammar School boys.

Frederick was a robust boy,\textsuperscript{38} and he savoured the rugged, outdoor life which Victoria offered. In preference to indoor activities such as parties,\textsuperscript{39} he spent many

\begin{footnotes}
\textsuperscript{34} He wrote: "The great event of our young days was the murder of Mr Price in March 1857 [the Inspector-General of Convict Establishment]. My father often said speaking of one of the convicts that he would have advised that his life be spared had he not himself been so short sighted that he failed to notice how young he looked. Among schoolboys nothing else was talked about for many a day" (Recollections).

\textsuperscript{35} He had been invited to spend his school holidays at Anderson's Creek by Warburton Carr, warden of what was claimed to be the first Victorian gold diggings. Carr's sister was Selina, later Frederick's step-mother. At the prosecution in question, the accused's wife and baby were looked after by Selina Carr. Frederick later rode out with Warburton Carr to a new gold rush at Eltham, to attend the hearing of a mining dispute (idem).

\textsuperscript{36} HSC to FC, 26 November 1863.

\textsuperscript{37} FRC, "South Suburban Melbourne", op cit 172.

\textsuperscript{38} His father noted that he "always has a solid look" (HSC to Aunts, 26 May 1861).

\textsuperscript{39} It was said that Frederick "never cared to go to parties" (E Chapman to FRC, 24 June 1864).
\end{footnotes}
happy hours at sport, swimming, shooting game and camping, as his reminiscences reveal.\(^{40}\)

At the beach at St Kilda we all learned to swim and thither our father a keen and powerful swimmer often accompanied us. When we grew older we often spent the whole day there and out of the water, indeed that was long our greatest pleasure in life. As boys we thought it a great piece of luck in hot weather coming home from bathing to meet the ice cart, the driver of which freely gave us chips to suck.

As we grew still older and obtained guns, expeditions to Oakleigh afforded us the form of sport which suited us, while ducks in the various swamps passed on the way sometimes fell victims to our cunning. ... we knocked native cats out of wattle trees with long sticks and hunted them with dogs. Snakes were in those days plentiful and we made snake hunting a fine art ... [and] demolished wattle trees with a tomahawk.

When we grew bigger our wanderings took us as far out as Dandenong, Berwick and Cranbourne. To reach the farm of our friends the brothers Rossiter we had to stop the night on the way. As our pocket money was usually invested in powder and shot we saved a hotel bill by sleeping out. One of the coldest nights I remember to have felt was camping in the open with my brother Martin just across the Dandenong Creek under an immense tree. A tent was a luxury we never thought of. [We] listened to a sergeant's wonderful tales of pursuit of and arrest of bushrangers and other malefactors. In those days the air was full of such romances so dear to youthful ears.

In March 1864, after Frederick had celebrated his fifteenth birthday, his father received official conformation of his appointment to the New Zealand bench. Catherine Chapman had promised her mother that she would visit England as soon

\(^{40}\) FRC, "South Suburban Melbourne", op cit 174-183. In later years Frederick was to contrast the cold of Europe with the heat during his expedition to the Fern Tree Gully in the summer of 1863-4 (FRC to HSC, 24 January 1867). Many of his outdoor activities were undertaken with his brother Martin (see Appendix).
as Henry received a permanent judgeship. It was decided that she would be accompanied by the three youngest children, including Frederick. In January 1864, Henry Chapman had written to his son Harry about placing Frederick with a solicitor with a view to being admitted to legal practice in England. In response, Harry suggested that, in preparation for this, Frederick should have eighteen months' schooling at Westminster, and Henry agreed to this. Henry was confident that with Frederick's "skill at cricket and football and in swimming and schooling" he would soon become a popular boy in the school. Henry regarded Frederick as a "very fine intelligent lad of his age and very good looking", "a fine manly boy [who] has always been steady and well conducted", and "well informed and above all high principled".

II. General education in London and Europe (1864-1867)

Frederick, with his mother, sister and younger brother, left Melbourne on 20 April 1864. The events of their lives over the ensuing years were recorded in the intensive correspondence which passed between members of the family: in June 1864, Henry Chapman invited Frederick to write "good long letters by every mail", in which he told him "what and whom you see and how you like them, and what you think of all around you". In July, while on board ship, his mother wrote that "Fred looks well and much more of a young man than when he left, everybody thought him 17, he quite looks it now, he has spent all his time with young men instead of with

41 HSC to Aunts, 26 March 1864.
42 HSC to FRC, 18 June 1864.
43 HSC to FRC, 18 November 1864, HSC to Aunts, 18 August 1865, and HSC to FC, 17 December 1864. Henry regarded Martin in a similar light (see Appendix).
44 HSC to Aunts, 26 March 1864.
45 HSC to FRC, 18 June 1864. For Frederick's correspondence with Martin, see Appendix.
boys". He and the family arrived in England on 27 July 1864, where they met Harry and his mother's family.

By mid-August, Harry had found a "well-educated clergyman" (Davis) to prepare Frederick for entry to school. In early September the tutor told Catherine Chapman that "Fred would do very well, that he paid great attention, and as far as he went he had been well grounded". Frederick reported that he had the tutor four days a week, that he was going to commence Ovid soon and do Virgil with Harry, and that he had started writing classes with a man living nearby. In October his mother noted that Frederick was "anxious to get on", and that he was "working very hard, at times almost too much so". In November, Frederick advised his father that he "could not take a place at Westminster with boys of my own age", and "shall probably go to school where they don't go in so much for Latin and Greek and more for mathematics and history". On 23 December, he had his last day with his tutor, and in late January 1865 he commenced studies at King's College. In February Frederick commented that he liked King's College "very well" and attended maths every day and French and German twice a week, and in

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46 CC to HSC, 14 May 1864. Frederick reported that he had grown an inch on board ship, and proved to be not much shorter than his twenty-three-year-old brother Harry.

47 FRC to HSC, 23 August 1864.

48 HSC to FC, 18 November 1864.

49 CC to HSC, 4 September 1864. Frederick for his part said of the tutor that he "seems to be well enough except that he is a parson and has too much jaw in him" (FRC to HSC, 23 August 1864).

50 FRC to HSC, 18 September 1864.

51 CC to HSC, 14 October 1864. At this stage Frederick said that he was "getting on very well with his tutor", and was studying Ovid, Greek, arithmetic, algebra, Euclid" (FRC to HSC, 25 October 1864).

52 FRC to HSC, 23 November 1864.

53 FRC to HSC, 23 December 1864, and CC to HSC, 28 January 1865.
odd hours worked in the reading room at Somerset House. By March, his liking for German had caused him to express the wish "to go to Germany and perfect himself in German". Frederick appeared to be less enamoured with the students at King's College: he said that he could "not say very much" for them, "they seem to be too 'English'". Frederick continued at King's College until the end of the term in late March.

Frederick had mixed feelings about his first months in London: in September he reported that "he liked the place pretty well though not nearly so well as he liked St Kilda". He complained of physical ailments, and he clearly found his first winter in England very difficult. By early 1865 he had become noticeably thinner and caught rheumatism which caused a shakiness in his hand, thus hampering his writing. Frederick also found certain aspects of London life to be disturbing. He later recalled that "on first perambulating the streets in 1864, [he] had been shocked at the dirty appearance and the dirty shabby clothing of the masses", especially the

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54 He claimed that he was doing very well in mathematics and French and had made a good beginning with German (FRC to HSC, 16 February 1865).
55 CC to HSC, 16 March 1865.
56 FRC to HSC, 18 March 1865.
57 Ibid. He appeared to get much encouragement to study from his family: on his sixteenth birthday, his presents largely comprised such items as a desk and learning equipment (FRC to HSC, 18 September 1864).
58 His brother Martin also regretted the move from Melbourne (see Appendix).
59 In mid-September he reported that, since he had come to England, he had had toothache and two very bad headaches (FRC to HSC, 18 September 1864).
60 In October he noted that he had had "the pleasure of a walk in London through mud and rain for about 7 miles", during which time he had seen Westminster Abbey and the Polytechnic (FRC to HSC, 25 October 1864); in early January 1865 his mother noted that "the cold does not agree with Fred, he mopes about in it and looks miserable" (CC to HSC, 3 January 1865); and in February he remarked that the frightful weather meant that he was nearly always shivering with cold and had to wear a greatcoat in the house (FRC to HSC, 16 February 1865, and CC to FC, 6 March 1865).
61 FRC to HSC, 29 December 1866.
children "vast crowds of whom lived in filth and rags". However, overall, he found London to be a "tremendous place", and within a month had been to the Zoological Gardens three times and also to the British Museum. Frederick took great interest in the geography and general development of London and in the local political debates and criminal trials, and on these he reported at length (and with precise details) to his father. He also savoured the sense of being closely attuned to world events, and reported on current issues such as transportation, the Victorian land bill, Canadian and South American troubles, and New Zealand matters. His comments indicated a maturity and self-confidence well beyond his years, and it was his seriousness of disposition that earned Frederick the description "old Fred" from his family.

In April 1865, Frederick visited his aunts in Bath, and then joined his family on a five-month visit to Europe. A primary aim of the visit was for the children to

62 He also recalled that "even prosperous shop-keepers and well-placed shop-hands spoke the true ancient Cockney dialect" (FRC, Reminiscences).
63 Here he saw stuffed animals, curiosities and fossils (FRC to HSC, 23 August 1864).
64 FRC to HSC, 23 November 1864.
65 FRC to HSC, 16 February and 18 March 1865.
66 In February 1865, he thought that the two islands of New Zealand would separate, as "there are two minds in the colony and two classes of men, the Victorian miners and squatters in the south and the old class who quarrel with the Maoris in the north". He also thought, in relation to transportation, that "most people in England never think of the outrages of the bushrangers but just think of the most convenient way of getting rid of their surplus ruffians" (FRC to HSC, 16 February 1865). Henry Chapman later wrote of his "good and thoughtful Fred", who had the "good fortune to be gifted by judgment far beyond his years". He added that Frederick did not betray the confidence placed in him to manage his finances in his own discretion (HSC to FC, 20 January, 5 August and 5 December 1867).
67 CC to HSC, 16 March 1865, and HSC to Aunts, 18 October 1865.
68 FRC to HSC, 16 April 1865. Frederick later recalled that "it was my delight in my boyhood and early manhood to visit my Aunts Fanny and Emma at Bath". He said that "there I could listen for hours to the tales of times long past; of their association with notabilities of other days; and of the connexion of their friends with the French Revolution". Frederick also recalled that, when he first
improve their command of the French language. After a short stay in Belgium, the family arrived in Paris where they remained for nearly four months. There Frederick enrolled at a private school, learnt French "by talking to decent Frenchmen most of the time", and had drawing lessons three times a week. Correspondence at this time reveals Frederick to have been methodical, thorough and hard-working (he learned about 100 prose idioms a day), thoughtful about those close to him, but also robust and at times highly critical of others. Towards the end of his stay in Paris, Frederick assessed that he was "not sufficiently ready with what I know but when I go to talk deliberately to a person I can get on very well", and that he could "read French almost as fast as English". At the end of August, while the rest of his family returned to England, Frederick went on a four-week holiday which included Switzerland and Belgium. At the end of his European tour, Frederick looked and felt much improved in health and better prepared for the

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69 HSC to FC, 18 November 1864.
70 On 20 April, the family arrived at the Ostend home of Catherine Chapman's brother, Richard Brewer, and stayed there a week (CC to HSC, 22 April 1865). Frederick liked Ostend "for its quiet" and "picked up a little French" (FRC to HSC, 25 April and 14 May 1865).
71 FRC to HSC, 14 May 1865.
72 Henry Chapman later declared that Frederick "never forgets anything likely to please or be useful to those around him" and that "everybody likes him" (HSC to FC, 20 January, 5 August and 5 December 1867).
73 He labelled the French boys as very quarrelsome and confessed that he "leathered them on the quiet" whenever he had the chance (CC to HSC, 5 August 1865, and FRC to HSC, 14 May, 24 June and 15 July 1865).
74 FRC to HSC, 24 August 1865. One area where he did not appear to make progress was his handwriting: his father repeatedly scolded him for his very poor handwriting which "lapsed into the old careless scratch" (HSC to FRC, 15 September and 15 October 1865).
75 FRC, Diary 1870, and FRC to HSC, 24 August 1865.
English winter. 76 Frederick's physical recovery was to be of momentous importance for him, as it dispelled his mother's earlier "great doubt" about whether Frederick should be left to survive another English winter, and resulted in his remaining in England after the departure of the family in January 1866. 77

On 5 October 1865, King's College reopened, and Frederick resumed his studies there. He reported that he had maths every morning, and regular lessons in French and German (in both of which he was placed in the senior division, the latter after only one term). 78 Frederick remained at King's College (apart from the Christmas break) until the end of the first term of 1866. 79

As 1865 drew to a close, Frederick prepared for the departure of his family for Dunedin, for what he thought would be for a few years. He wrote to his father that "I suppose I shall feel very lonely when they are all gone, but it is my turn now as I have been with [my mother] all my life and you have been separated for two long intervals". He remarked on "how much my mother has done for us at the cost of a good deal of peace of mind to herself", and that "I am sure none of us will ever get into mischief from any fault of the father or mother". 80 Frederick accompanied his family to Plymouth, and on 4 January 1866 he parted with them and proceeded to

76 FRC to HSC, 25 September 1865. His mother noted that he had become "much stronger and stouter, he looks remarkably well, his tour in Switzerland did him a great deal of good and seems to have made a man of him, he is now rather taller than Harry, and has improved in good looks in the same proportion as in bodily strength, I do not feel anxious about him any more" (CC to HSC, 14 November 1865. Frederick noted in November 1865 that he was 5' 7": FRC to HSC, 25 November 1865). However, his teeth were very bad for his age, a feature which the dentist said was "common with Australians" (FRC to HSC, 25 October 1865).

77 HSC to FRC, 16 November and 17 December 1865.

78 FRC to HSC, 25 October 1865. Martin, too, was instructed in these languages, and was taught by his father (see Appendix).

79 FRC to HSC, 23 March 1866.

80 FRC to HSC, 26 December 1865.
his great-aunts' home in Bath. 81 After a short stay, he returned to London, to the home of his maternal grandmother, with whom Frederick had expected to live. However, he found his grandmother dangerously ill with bronchitis, and on the evening of 16 January she died. 82 The following morning, while reading the morning newspaper, Frederick came upon the news of the drowning of his family in the SS London. 83 He was "stupefied" by the news for the rest of the day: he had lost his mother, of whom "I can never say sufficient", his brother Harry who "was like a father to me all the time we were together", and his younger brother and only sister. 84 He was now desperately concerned about how his father would react to the "dreadful blow", and spent several months "in the most wretched state of suspense", hardly expecting to see his father again. 85 Over the ensuing six months, Frederick "had a regular series of relapses, sometimes I would feel quite strong and then after some extra exertion I would become almost incapable of moving and finding it an immense trouble to have to answer a question or speak at all". 86

However, Frederick appeared to take comfort from his Christian faith: he declared in his letter to his father that "God's will be done", and hoped that his

81 CC to HSC, 4 January 1866.
82 FRC to HSC, 25 February 1866.
83 FRC to MC, 22 February 1866.
84 FRC to HSC, 24 January 1866. Adding to his unhappiness was the fact that his late grandmother's home was to be broken up and his Aunt Ellen was due to join her relations in Caen. Cf Martin's response (Appendix).
85 FRC to HSC, 24 March 1867. With the aim of giving his father comfort he wrote to Dr Bromby of Melbourne asking him to write to his father (J Bromby to HSC, 20 March 1866) In the meantime, Frederick had to endure the agony of receiving letters from his father which were written before the receipt of the news of the tragedy and which were full of expectation over the arrival of the family (FRC to HSC, 26 April and 26 May 1866).
86 FRC to HSC, 23 July 1866. An indication of Frederick's unsettled disposition was the handwriting in his letters: his father declared it was the "worst I ever saw", and "purely the result of carelessness and hurry" (HSC to FRC, 20 August and 23 September 1866).
father would "get over this with God's help". He was comforted by his maternal aunt Ellen, received "endless letters of sympathy" from relations and friends, and in due course developed a friendship with a solicitor Charles Shea (who replaced Harry as an elder brother figure). He found relief in writing letters to his father and others, and was determined to reassure his father that "though you have lost so many dear ones and they all seem to have been the best you have still some left and we will always endeavour to make you as happy as possible". He took comfort from the "great benefit" he had had in knowing his departed family for so long: "my poor mother's unchanging good temper and cheerfulness and goodness in every way, poor Harry's kindness and liberality, Kitty's merriness and liveliness and poor little Watty's ingenuity in imitating everything must have all been good examples for me to copy".

After a short visit in April to his cousins in Ireland, which made him feel "very much better in health and spirits", Frederick prepared (at the end of June) to return to Europe. In late August he reported that, after visiting his cousins in Belgium, he had come with his Aunt Elizabeth to a small fishing village near to Caen for a month's holiday. He declared himself "recovered in great measure from depression of spirits and in excellent health", and wanted to remain in France for some months as he had "a great deal of French to learn". At the end of September, he came to Caen, where he spent over two months at the home of his Aunt Ellen. Here he had French lessons three times a week and German classes twice a week. Besides his

87 FRC to HSC, 24 January 1866. On 24 March 1866 he was confirmed by the Bishop of London (FRC to HSC, 24 March 1866).
88 FRC to HSC, 24 January, 22 June and 25 November 1866.
89 FRC to HSC, 26 April 1866, and FRC to MC, 22 June 1866.
90 FRC to HSC, 25 August and 25 September 1866.
work, Frederick spent time with friends, walking, party-going, dancing and writing letters.  

In late October, Frederick bemoaned his lack of progress at German, and his French master suggested the name of a German pastor with whom Frederick might stay in order to master the language. Frederick thought this a good idea as "German colleges swarm with English and one speaks too much English here", and the pastor had a good reputation for helping other pupils to speak German "fluently and correctly". Frederick duly wrote to the pastor, Herr Schmahlstieg, who lived in Burgdorf bei Schladen, Hanover, Prussia, and learnt that he was willing to receive a pupil. Frederick later recalled that "at an age betwixt boyhood and man's estate, I made up my mind to learn German by plunging into some uninvited district of that country".

Frederick arrived in Burgdorf on 10 December 1866, and the ensuing nine months that he spent there were a happy period in his life. The German pastor and his wife were "exceedingly kind people", and Burgdorf (a village of 800 inhabitants) was "prettily situated among fertile hills" near a fine wood and the Hartz mountains. Frederick adjusted well to German living, liked everything he tasted

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91 FRC, Diary 1866. He discussed the state of European affairs with friends, and gave his views on New Zealand colonial affairs to his father. He agreed with his mother's statement that "you can't govern New Zealand from Downing Street, they don't know what niggers or diggers are there", and suggested that Britain should "give the colony a constitution and set it afloat" (HSC to FRC, 25 November 1866).

92 He complained: "my great difficulty is in learning words they won't stick in my head" (FRC to HSC, 25 & 29 October 1866).

93 Ibid.

94 ODT, 10 August 1893.

95 Frederick left Caen on 7 December (after suffering his usual headache before travelling), and travelled via Paris and Cologne to his destination which he reached on 10 December (FRC, Diary 1866).

96 FRC to HSC, 23 December 1866 and 24 July 1867.
(including the beer and sauerkraut), and proclaimed that Germany was under three of the best men in the world (Bismarck for diplomacy, Roon for the war department and Moltka for the current campaign). He declared that he was "much more at home here than among English people when I have known them the same length of time". He wrote of the "great advantage one gets by living this way" which was "meeting and living in friendship with people of a superior class and of all ages".

Frederick, who much preferred modern languages to the classics, had a particular liking for German, and even wrote to his father that he could "easily forego the pleasure of making [a voyage to New Zealand with his father] in exchange for learning German perfectly". By January 1867, he could "understand almost everything not only in ordinary conversation but in arguments on all subjects", and by May he could "speak German fluently". To further his mastery of German, Frederick came to read Schiller and Goethe on alternate days and wrote short accounts of the lives of German writers and poets. Besides his study of German, Frederick began daily readings of Latin and studied English and History, in which subjects he would be examined before "eating dinners" at an Inn of Court.

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97 FRC to HSC, 23 December 1866.
98 He had been heard by a friend to call England "this old worn out country" (FRC to HSC, 24 January 1867, and C Shea to HSC, 1 March 1867).
99 FRC to HSC, 24 May 1867.
100 FRC to HSC, 24 January 1867.
101 FRC to HSC, 24 January, 20 February and 24 May 1867.
102 FRC to HSC, 24 July 1867. In his work on German, Frederick had the support of his father: Henry Chapman described German as "the key to the northern Teutonic languages, and without much labour you will easily learn to read the language of England from the days of Alfred to those of Shakespeare" (HSC to FRC, 5 May 1867).
103 FRC to HSC, 24 March 1867. Martin Chapman received instruction in Latin and Greek from his father (see Appendix). Note, Frederick continued to show particular kindness and fond regard towards his aged great-aunts in Bath, and during March/April he paid them a visit (FRC to HSC, 24 March and 24 April 1867).
On 23 September 1867, Frederick left Burgdorf, for Bremen en route to London. He declared that he now had "the spirit of the language within myself and I think, speak and write in German as naturally as English". He also retained fond and long-enduring memories of the pastor, his family, the village and the "kind and courteous" people of Germany. However, he was physically unwell (his rheumatic condition had recurred in Germany and he had lost weight), and his friend Dr Shea said that Frederick had "overfatigued" himself in Europe and was to relax his study schedule (of which advice Frederick did "not at all approve"). Frederick took lodgings with a friend, Francis Parker, started singing lessons, maintained his interest in modern European languages, and (in the words of his father) began "to drudge at the law".

III. Legal education in London (1868-1872)

Frederick was pleased to enter upon the study of law, in which he had long shown interest. Following the death by drowning of Harry Chapman, there had been the added impetus that (as one relative suggested) Henry Chapman might "make Fred what Harry was". Indeed, Henry Chapman admitted that in the years following Harry's death, he confided in Frederick "as I did in poor dear Harry". Further, Henry Chapman recommended that Frederick should (as his deceased brother had done) train at the English bar, as in this way he would "get a more complete training and a good deal of knowledge of the world", and would be

104 FRC to HSC, 20-3 September 1867, translated by W Rosenberg. His father reported that he returned to London "crammed full of German to his very throat" (HSC to FC, 5 December 1867).

105 ODT, 17-24 August 1893.

106 C Shea to HSC, 31 October 1867, and A Shea to HSC, 1 November 1867. Frederick had admitted to his father that he had "doubtful patience" (FRC to HSC, 26 February 1867).

107 FRC to HSC, 25 November 1867, and HSC to FC 5 December 1867.

108 W Hughes to HSC, 25 July 1866.
"free of all the colonial bars".  

Henry Chapman also hoped that Frederick would "go in for the London University degree", as he thought it "would be of advantage" to Frederick. While Frederick wrote that he "should like very much to be an English barrister", he did not think he was "up enough in classics" to take the degree. During 1867, Henry Chapman decided that Frederick's brother Martin should also qualify at the English bar. The fact that Martin was older than Frederick caused the latter to suggest that his expected entry to an Inn before Martin might be "dis disadvantageous and unpleasant to [Martin]", and that he (Frederick) should instead become a solicitor. Henry Chapman, however, rejected this suggestion: he said that Frederick would "reap great advantage as an English barrister all over these colonies, and I doubt whether Mart will take to the law at all", and said that even if he did Frederick needed only to abstain from being called to the bar for several months to give Martin seniority.

Frederick entered the Inner Temple on 25 January 1868, and Martin followed four months later. Henry Chapman could not afford special pleaders' fees that year, and so he advised his sons to spend 1868 in preparatory reading, "with such advice and direction as your legal friends may afford you". Chapman himself gave guidance to his sons on, for example, the nature of and distinction between substantive and procedural law. He also recommended suitable texts, and insisted that his sons should buy the latest editions of these works. He suggested a study of

109 HSC to FRC, 29 January 1866, 15 October 1866, 5 May 1867 and 4 & 5 August 1867.
110 HSC to FRC, 5 May 1867. Henry Chapman remarked that a degree "creates a sort of prestige" in one's favour.
111 FRC to HSC, 29 December 1866, and HSC to FRC, 5 May 1867.
112 HSC to FRC, 3 March and 20 June 1867, and HSC to FC 22 February 1868. See Appendix.
113 FRC to HSC, 24 May 1867.
114 HSC to FRC, 18 July 1867.
115 J Foster, *Men at the Bar* (1885) 82.
116 HSC to FRC, 4 May & 4 June 1868.
Stephen's Commentaries twice over, as, by reading this work "very very carefully and attentively, you will acquire a general conception of the whole field of law". Also, "to give a general conception of the course of an action you had better get J W Smith's Elementary view of the proceedings in an action at law". But he cautioned that, to acquire a complete knowledge of the law, "the great school is the pleaders' chambers".

Frederick and Martin took up lodgings in Cambridge Street, Hyde Park. Frederick clearly had intentions of making his mark in the world, and he set to work with gusto. He recalled that he and his brother became "persistent readers of law in the Inner Temple library". Frederick's exhaustive reading of legal texts remained an important feature of his life in London over the ensuing years. He noted in July 1870 that, after working all day and evening, he felt "very tired of a morning now, I work too much in the evening but I have got this fit and always have at this time of the year, am now engaged in boiling down Chitty's chapter on the essentials of a contract especially Consideration". He often alternated between the Temple Library and the British Museum. Frederick's diary entry for 18 March 1870 was: "went to British Museum and took out a ticket for reading room, 117 Other works he recommended included those of Bullen and Leake, Day and Roscoe, and he noted that further works would have to be consulted later (HSC to FRC, 1 December 1867, and to MC, 23 August 1868).

118 Henry Chapman quoted "a great judge" to the effect that "there are only two ways to acquire a complete knowledge of the law, pleading and a miracle, and I prefer the former" (ibid).

119 Diary, 5 October 1870: "when I am king of somewhere and this my diary is published".

120 He remembered that he joined the Inn at the same time as did a young assistant, Pickering, who later became the long-serving librarian of the Inn (FRC, Recollections). Frederick's diary contained homely touches about the library. For example, he recorded a notice in the library: "Gentlemen are requested not to bite the penholders" (Diary, 24 October 1870).

121 Diary, 18 March 1870.

122 Diary, 8 July 1870; see also 4 July 1870.

123 On one occasion he had to escape to the British Museum because of varnishing in the Temple Library (Diary, 5 October 1870).
read till 2, then went to chambers for lunch - bread and butter in my pocket, read in Temple library.¹²⁴

Frederick commenced eating dinners at the Inner Temple.¹²⁵ He labelled the style of dining as "somewhat barbarous", as a large joint was placed in the middle of the students and each man cut out what he wanted. Generally, he found the food "good, but by no means delicately cooked", there was "unlimited beer brewed by the Inn and a very large bottle of fiery sherry to each men of four", and "on Grand Night once a term a bottle of port or claret was added and the viands were more select". In attendance were waiters - addressed as "panniers" - who were "curious old men, some of whom had been an immense time in the service of the Inn".¹²⁶ He noted that some of the students were careless about giving in their names when coming to dine, and that they often suffered for their neglect as no excuses were accepted in calculating the terms kept.¹²⁷ Frederick recorded changes in the composition of the student body. In April 1870, he noted that there were "always lots of [dark-

¹²⁴ Diary, 18, 22 and 28 March 1870. Frederick also recorded a visit to the Middle Temple Library, where he was "not impressed, they have not got room for their books" (Diary, 10 May 1870).

¹²⁵ At the Old Hall there were two long tables for students and one for barristers. He remembered that "a student who was a few minutes late had to step on and over the table to get into his place" (FRC, Memoirs). In May 1870, the new Hall was opened, and this provided better seating arrangements for smaller groups of men. On the occasion of the opening of the new Hall on 14 May, Princess Louise performed the honours and the Lord Chancellor and Robert Lowe were in attendance, but Frederick was more impressed with the bottle of Steinberger Cabinet and "ever so many more" that were on offer (Diary, 14 March 1870).

¹²⁶ FRC, Memoirs. The senior pannier, Hurlstone, told Chapman in 1870 that he had served in the Inn for fifty-seven years (Diary, 8 November 1870).

¹²⁷ Frederick saw that many attempts were made to dodge the dinner by slipping away after the name was recorded, but that the vigilance of the panniers meant that "such evasions were seldom successful" (FRC, Memoirs).
skinned men] about now, rather a new thing since I first became a member", and in June 1870 he "counted 7 dark skins, some of them regular Indians".128

During 1869-1871, Frederick was successively a pupil of Henry Greening, Charles Russell, and Russell Roberts. He recalled that "from each of these I learned a great deal - far more in fact than I realised at the time".129 Frederick wrote proudly of Greening as "one of the most eminent Special Pleaders", and as the editor of Chitty on Pleading. He recorded that, in the days before the Judicature Acts, written pleadings had to be framed with great accuracy, and that Greening was one of "about a dozen" special pleaders who earned their living by drawing pleadings, giving opinions on cases, and taking in pupils. Frederick remarked that the pupil of a special pleader "lived in an atmosphere of pure law", and later claimed that, notwithstanding the passing of the old system, "without a knowledge of special pleading, its history and its true meaning, a barrister's education is unfinished".130 Frederick remembered Greening as being "very attentive to his pupils".131 Greening also arranged that Frederick should spend part of his time in the Chamber of his son, "who was rising in practice also as a Special Pleader, and who was able to give me more special attention than his father could give me".132

128 Diary, 23 April and 14 June 1870. Duman notes that the influx of Indians in the second half of the nineteenth century was because, to the Indians, an "English qualification was more prestigious, less demanding educationally and more demanding than an Indian one", and because the British believed that "an English-educated Indian legal intelligentsia would be pro-British" (Duman, op cit 131-132). Frederick did not record much interchange with the other students of his Inn. Amongst other observations he made of life at the Inn were the case of Lamb, a member of the Inn, who was convicted of stealing books from Lincoln's Inn (Diary, 18 November 1870 and 11 January 1871), and his first luncheon in the Templars' Luncheon Room, which he described as "a comfortable little place, nice and clean, somewhat dear" (Diary, 19 January 1871).

129 FRC, Memoirs.

130 Ibid.

131 Diary, 22 October 1870.

132 Diary, 7 May 1870.
Frederick described Russell as "one of the greatest advocates", who was "probably more in demand than any man of his age at the bar". He recalled that "life in Mr Russell’s Chambers was more exciting than in those of a special pleader", as Russell had his hands full of great cases.133 Frederick claimed that, to his pupils, Russell "was the most charming and courteous of men", and "his genial jocular manner made firm friends of his pupils".134 In his diary of 1870, Frederick recorded seeing Russell in court, at chambers and on his way to Lincoln’s Inn, attending a dance at the Russells’ home, and the occasional informal contact.135

The third of Frederick’s mentors, Roberts, was "a well-known equity man".136 Frederick was Roberts' only pupil and Roberts took a great deal of trouble to instruct him in the art of equity pleading and in "the profound mysteries of English conveyancing". At Roberts’ chambers, Frederick completed draft conveyances,

133 He said that he was a very different type of man from Greening, as he was "a robust, boisterous, hard-hitting advocate". He noted that "when wanted he was not always to be found, and his love of race meetings and other sporting recreations gave solicitors much trouble at times" (FRC, Memoirs, and Diary, 1 June 1870).

134 FRC, Memoirs.

135 Frederick remembered meeting Russell on Primrose Hill, where he was sitting on a bench "with three of his children nos. 1, 4 and 5 I believe" (Diary, 10 June, 3 July, 7 October, and 4 November 1870). He also recorded Russell's application in December 1870 for silk, which met with a non-committal response from the Lord Chancellor (Diary, 10 December 1870). Russell was a devout Roman Catholic and often gave advice to priests about property. Frederick at times helped to research questions of law for the priests, and in this way came to know several of them. Many years later, Frederick described Russell as "a bold advocate, a master of cross-examination, and the most eloquent barrister in an age when eloquence is not at a high pitch ... an Irishman of the purest type, full of fun and ready humour" (Otago Witness, 21 April 1894).

136 Frederick described him as "a young man in good practice", who was "a persistent fighter in a court - that of Vice Chancellor Malins - where it was often more a question of fighting the judge than the opposing counsel". In June 1871, Frederick recorded the "desperate fight" that Roberts had with Malins. Malins "threw all the papers in a shower over the court and said Roberts might talk to all eternity but he would not listen". However, Roberts held his ground and "talked at Malins till at last in sheer despair Malins picked up the bill again and went on with it" (Diary, 1 June 1871).
worked at interrogatories, and drew wills, partnership deeds, plaints for specific performance, and model settlements for his own instruction. 137 Frederick said that he must have proved "a difficult and unprofitable pupil as I did not take kindly to the system of equity, my inclination being all towards the common law". 138 Nevertheless, he and Roberts became personal friends, and he was often at the latter's house and together they visited every skating place in or near London. 139

Frederick regularly attended the courts and observed the judges and the conduct of trials. In April 1870, he went to the Central Criminal Court and heard the Recorder make "a neat summary", and the following day he returned and heard a sentence of "cat" by the Recorder. 140 At Westminster, he heard the Solicitor-General (Sir John Coleridge) make "a splendid speech in his usual style"; and saw the Lord Chancellor Hatherley "received coldly, he is not popular at the Bar because he wanted to make obnoxious reforms". 141 He attended the Privy Council "and heard an appeal of Russell's from the Cape"; and saw Lord Justices of Appeal

137 Diary, 9 January, 7, 9 and 23 February, and 2 March 1871.
138 Frederick confessed to exercising with his rifle in chambers by using the ink bottle of Pitcairn, who had his chambers opposite to Roberts', as his mark (Diary, 26 January 1871).
139 Diary, 19 June 1870 and 26 December 1870. Frederick once had dinner with Roberts and Sir Valentine Fleming, who had been a neighbour of the Chapmans in Hobart. He described Fleming as "an extremely small man [who] doesn't like to talk of his smallness". He noted that Fleming once broke off an engagement with a young lady because she said "what a nice little couple we shall make". Frederick wrote that Fleming was "very long-winded and explains everything in very small detail", but "nevertheless seems to be a nice good hearted man and a thorough gentleman of a very high polish" (Diary, 16 February 1871). Frederick also recorded the time when he was walking "down from the Rolls" with Roberts, who was dressed in his gown. Frederick "never saw anything equal to the astonishment of a distinguished foreigner who happened to see him crossing Fleet Street". He wrote that "the old boy stopped and stared in the uttermost amazement as if turned to stone" (Diary, 28 April 1871).
140 Diary, 4-5 April 1870; see also 25-8 October 1870.
141 He also witnessed Lord Justice of Appeal Mellish being "received with occasional bursts of cheering; he was always a well liked man and of course being a Common Law Lord Justice was received with cheers at Westminster" (Diary, 15 June and 2 November 1870).
Sir William James and Sir George Mellish, "mind and matter", sitting together.¹⁴² Frederick also added to his legal knowledge by attending various courses of lectures, given by such luminaries as Herbert Broom, William Birkbeck and Frederick Prideaux.¹⁴³ Birkbeck, for example, lectured on "the order in which different classes of creditors come in on administration, with legal assets".¹⁴⁴

Frederick found time to develop his knowledge and ability in a range of non-legal activities. He became a member of the West End Debating Society, and participated in debates on current issues.¹⁴⁵ He read widely: by March 1871, he was "deep into" Darwin's book on the origin of mankind, and the following month, when he visited the Zoological Gardens, he noticed that he "felt much more sympathy with my lower fellow-creatures".¹⁴⁶ In 1870, he commenced lessons in Italian; and for a period he and a friend conducted a twice-weekly night school for poor children in Moore Street.¹⁴⁷ In November 1870, Frederick became a member of the Inns of Court Volunteers, and thereafter regularly went on shooting

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¹⁴² He also heard Sir George Bramwell of the Exchequer bawl out to a barrister 'in his bluff way', "Don't tell me your opinion of the case Mr Oswald, because you know I might decide it on your authority and that would be wrong"; and witnessed the farewell to Vice-Chancellor Sir John Stuart, who was "much liked as a Judge", and "still more as a man" (Diary, 30 June and 14 December 1870, and 16 and 25 March 1871).

¹⁴³ Diary, 17, 26 and 31 January, and 2 and 9 February 1871. After one of these lectures, Frederick had an encounter with "old Wingfield" (Diary, 31 January 1871). Lectures had been instituted in 1852 (Cocks op cit 98-99).

¹⁴⁴ Diary, 2 February 1871. During 1852-1873, Birkbeck was reader in equity for the Council of Legal Education.

¹⁴⁵ Diary, 14 March 1870, and 12 January 1871.

¹⁴⁶ Diary, 21 March and 1 April 1871.

¹⁴⁷ Diary, 23 and 30 April 1870. On one occasion, while at the school, Frederick said that he witnessed "the bounty of the poor", as a local woman threw to a singing tramp enough money for a meal, while he threw a copper because he was seen by a little girl who cried out "schoolmaster" to him (Diary, 3 June 1870).
practices and drilled with his "very awkward corps". Frederick sometimes attended dances, concerts and recreational activities: in March 1871, he noted that he "went in the afternoon to hear Mme Schumann at the Saturday pop concert. Joachim played too. Both these were in their best form". Frederick periodically went on holiday trips in England and to the Continent. He was fascinated by European political and military developments, and these he recorded with minute detail. The night after the start of the Franco-Prussian War in July 1870, he confessed that he "could not sleep for hours from excitement".

In April 1871, Frederick prepared for his call to the bar. He was not required to sit examinations (they were made compulsory the following year), and simply had to attend to routine formalities. He obtained certificates of attendance from his

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148 Diary, 21, 24 and 25 November, and 7 and 9 December 1871.
149 Diary, 18 March 1871.
150 He travelled to Wales, parts of England, and European centres such as Caen, Burgdorf and Amsterdam. In particular, he visited his Aunt Fanny until her death in April 1871. He commented, shortly before her death, that "the good old generation of the last century were better than our generation". He wrote that Fanny's "fine intellect, her noble nature, her sweet manner and affectionate disposition have left an impression in me that I shall carry to my grave". He added that "it was always a treat to me to go an see her and hear her gentle voice and refined conversation" (Diary, 13 February 1871).
151 Diary, 28 November 1870. His writings indicated German sympathies: in January 1871 he wrote that "soon our proud cousins will march into the mightiest city ever yet besieged [Paris]". However, he did question whether Bismarck was "perhaps flying too high", and wondered if Germany was plotting against the English (Diary, 17 November 1870 and 24 January 1871). He also wondered what America would do with the "ugly Alabama question still open". He reflected that "someday I hope we shall be safe from all trouble when we are all re-united but I suppose that will not be till this country has become republican". He foresaw that "with the territories we have got and those we shall still conquer in Africa we shall have lots of room for a thousand million Englishmen" (Diary, 18 November 1870).
152 Diary, 16 July 1870.
153 Cocks, op cit 154.
principals and executed a bond. He also had to find a sponsor, and here he was assisted by a letter of introduction from his father to Sir David Dundas (former Solicitor-General).

Frederick's call to the bar took place in the Parliament Chamber of the Inner Temple. He remembered that the ceremony was "slight and simple". In an antechamber the aspirants (numbering around twenty) assembled, robed and "amused ourselves with chaff while waiting". They were then led into another room and there the senior pannier placed them in a row according to the order in which their names were entered as students in the books of the Inn (which order regulated their seniority at the Bar). Having ushered the aspirants into the Parliament Chamber, the senior pannier asked each student the question: "Will you be called in Port or Madeira?", and proceeded to hand each a glass of wine according to his liking (Frederick chose Madeira). Seated before them were John Locke (the Inn's Treasurer/Senior Bencher, who acted as chairman), Robert Collier (the Attorney-General), Russell Gurney (the Recorder of London) and Arthur John Roebuck. The Treasurer made a short speech wishing them success, the students drank to the Treasurer, and the senior man (John Moore) made a speech in reply. The

154 Diary, 13, 15, and 27 April 1871.

155 When Frederick came to call on 18 April 1871, Dundas received him very kindly and wished him success, and Frederick carried with him the memory of a "tall, well made, benevolent-looking man" (Diary, 18 April 1871).

156 Diary, 1 May 1871.

157 Frederick recorded that he made a fair speech and proposed "the 'eternal' health of the Inn, to which a bencher near me suggested 'infernal'". The senior man later told Frederick that he had used the word "eternal" as a shot at a bencher "who openly professed his belief in such things" (Diary, 1 May 1871). For Martin's description of the event and his reaction, see Appendix.
following morning Frederick and the others went to Westminster to sign the Roll in the Court of the Exchequer.158

Henry Chapman had suggested that Frederick spend a year in England after his call to become familiar with court procedure.159 The first thing Frederick did was to order a wig and gown (at Ravenscroft).160 There was some delay in getting these as the Tichborne trial commenced on 10 May 1871, and the new barristers required robes as a means of getting into the crowded court.161 On 2 June, Frederick (with his own gown and a borrowed wig) went with Roberts to the Sessions House at Westminster, and eventually managed to get a good place from which he observed the claimant Tichborne.162 Throughout the long duration of the case, Frederick attended frequently to watch "the greatest [forensic struggle] the world had seen".163

158 On the way they passed Blackburn, Hannen, Bramwell and Mellor JJ, walking together. In the Court of Exchequer, the first man signed a paper, paying two shillings and sixpence each for the privilege, and then wrote their names on a long parchment roll (Diary, 2 May 1871).

159 HSC to FRC, 28 April 1870.

160 Diary, 3 May 1871.

161 Diary, 11 May 1871.

162 He recorded as follows: "The claimant is one of the largest men I ever saw, he is positively enormous. I never saw a better nor calmer witness, under the severest pressure he was perfectly immovable. Coleridge attacked him in vain; he was never really cornered, always had a reasonable answer or excuse, and always took his own time about it. Every movement and every gesture seemed in keeping with his story. He looks not in the least romantic, he is very like a respectable butcher, tho' not like a Wapping one, his hands are small well formed tho' fat and smoother than mine. On the whole he created a strong impression in his favour in my mind. The judge seemed against him and the public with him. He appears to affect stupidity, tho', in fact, one can't see much affectation about him, but a little attention shows him to be a man of singular shrewdness, as a witness he is fully a match for Coleridge. He may be described as looking respectable but caddish, but he has much dignity which covers his vulgarity. There is no foreign accent" (Diary, 2 June 1871).

163 Diary, 30 June 1871. Frederick returned to the trial on 5 June, and on 6 June he recorded that "[i]t is said today on the authority of the Master that the Jury are disgusted with the Judge's
Frederick recalled that, when he was called to the bar, he wondered whether he would get any briefs. He said that he was unknown, had no means of making himself known, and "could not regard the prospect as promising". Frederick received his first brief on 26 July, sent to him by his solicitor-friend Charles Shea. This concerned an action in which Alfred Wallace (a noted naturalist) sued one Hampden for libel. This had arisen out of a bet between Wallace and Hampden (who belonged to a flat-earth society) on the outcome of a test as to whether the world was round or flat. The experiment went against Hampden, the money he had bet was paid to Wallace, and then followed threats of violence and the libel which was the subject of the lawsuit. Frederick described the action as "unimportant in itself but nevertheless in a way marking an epoch in intellectual history". After receiving the brief, Chapman read it all day and until 11.30 pm. The following morning he went over the brief again, and then went down to Guildhall. Frederick "opened the pleadings" but spared the court the reading of them, as, when he had earlier timed himself, the reading had taken forty-five minutes, and his leader considered it unnecessary to do anything other than mention what the case was about. The leader was Edward Clarke (later Sir Edward, Attorney-General), who "made an excellent address of half an hour to the jury and called Wallace to prove the fairness of the experiment". The jury retired for a few minutes and

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partiality [against the claimant]. He also noted that "[m]uch professional zeal prevails, Sergt Parry would give up all his briefs to sit and hear the case, Cockburn would give £1000 to cross examine the claimant" (Diary, 6 June 1871). On 8 June, Chapman "felt much inclination to hear the Tichborne case but refrained as other cases are more instructive as regards my immediate object" (Diary, 8 June 1871). On that day, he found his robes at Westminster and paid £1.7.6. On 30 June, he observed that, as Tichborne entered his fly and drove off, the mob cheered lustily, though there were "a few shouts of a more familiar and less respectful character" (Diary, 30 June 1871). For Martin's account of the trial, see Appendix.

164 FRC, Memoirs.
165 Diary, 26 July 1871.
166 FRC, Memoirs, and Diary, 27 July 1871.
brought in a verdict for £600 "which was more than expected". Frederick earned six guineas for his efforts. 167

On the question of which circuit to join, Henry Chapman advised Frederick to call upon his (Henry's) old circuit friend Edwin Plumer Price QC (a member of the Inner Temple), get accurate information about the Home Circuit, and "decide for yourself". 168 Frederick chose the Home Circuit, though when he was proposed (by Sergeant Parry) it was before a drunken audience and only his two first names were read out. 169 In early August Frederick attended his first circuit at Croydon. 170

Apart from the occasional brief and attendance on circuit, Frederick's life after his call to the bar followed a similar pattern to that which he had followed before. He continued to read at length in the Inner Temple Library and the British Museum. 171 Roberts offered him a seat in his chambers whenever he wanted it and in November 1871 he recorded that he had begun work on a mortgage. 172 He sat in on court sessions, often in the Central Criminal Court and also in Chancery, where he observed that Vice-Chancellor Malins had "become very strict about talking in court". 173 He continued with his debating activities, general reading, drill

167 Diary, 27 July 1871. Frederick displayed his characteristic conscientiousness approach in his preparation for his second brief, in December 1871. Here he appeared with James QC and Bridge before Mellor J, and obtained a verdict for £755 on the money counts and one shilling on the count for damages (Diary, 15-16 December 1871).

168 HSC to FC, 30 April 1871.

169 Diary, 24 July 1871 and 1 August 1871.

170 Diary, 1-5 August 1871.

171 Of the Library, he wrote in December 1871 that the entrance was now by a beautiful new tower, and that the Library was much improved by the changes and the new rooms were "uncommonly comfortable" (Diary, 21 December 1871). He read, for example, Coke on Littleton, and commented that there "is much that is fanciful in it, but the notes are excellent" (Diary, 15 May 1871).

172 Diary, 28 October and 2 November 1871.

173 Diary, 3 and 6 May, 15 July and 21 November 1871.
with the Volunteer Corps, and (until August 1871) Italian lessons. In August
1871, he left England for a European holiday. He travelled through Germany,
where he attended the Passion Play at Ober Ammergau, Bavaria, and then enjoyed
a two-month stay in Italy, where he had further Italian lessons and did extensive
sight-seeing.

Henry Chapman's initial plan for Frederick and Martin was that, barring the
unexpected event that they were successful enough to remain in practise in London,
they would settle in Melbourne and practise there. Frederick, for his part, did
not express any wish to remain in England (he had reservations about the English
temperament and he repeatedly complained of physical ailments while in
England), and inclined towards practice in Melbourne.

However, by late 1871, Henry Chapman had come to the view that Frederick
should settle in Dunedin, and advised Frederick accordingly. This change of view

174 Diary, 5 August and 28 November 1871. He wrote of Dante's Inferno that its marvellous force
rendered it "one of the most extraordinary things I ever read" (Diary, 26 May 1871).

175 Diary, 20 August to 28 October 1871. He marvelled at the treasures and scenes in Italy, and said
that the intensely hot weather "agreed with [him] wonderfully" (Diary, 8 September 1871).
Frederick had an ambivalent attitude to the Roman Catholic Church: he rejected the "dead
institutions which still held ground" in it, but professed overall respect for Catholics (Diary, 11
June and 15 October 1871).

176 HSC to FRC, 28 April 1870 and 30 April 1871.

177 Frederick said of Germany that "there is none of that excessive stiffness which keeps people at a
distance in England" (Diary, August 1871). Frederick was well built at fourteen stone, and his
diaries show that he rarely missed work or other commitments through ill-health. But he
repeatedly recorded headaches, feelings of giddiness and indigestion, and also toothache, colds,
pains in his chest and failing eyesight. (He realised that his regular smoking habits undermined
his health - in October 1870 he noted that half a packet of tobacco lasted him eight days). In
December 1871, Frederick was medically diagnosed as having inflammation of the pleura and a
"slight over-action of the heart which [the doctor] thought might be connected with weakness of
stomach" and which would last him "a lifetime tho' it is not dangerous" (Diary, 1 and 19 December
1871).

178 HSC to FRC, 10 December 1871.
followed discussions Henry Chapman had with Sir William Stawell of Victoria and James Macassey of the Dunedin bar.179 According to Macassey, "the bar in Melbourne is tremendously overstocked ... [while in Dunedin] there is a first rate opening - not merely for two but for a greater number". He said that "Martin and his brother would supply [the want of competent assistance] without any competent competitor", and "they would be sure of success and they could not come out at a better time". Macassey backed this up by proposing that Frederick take the place of the existing partner in Macassey's legal practice as soon as possible, with a guaranteed income of £500 a year. Henry Chapman thus believed that, while success in Melbourne would "take years to accomplish", success in Dunedin "would be certain".180

In 1872, Frederick returned to New Zealand via the United States. When he arrived in New York, it was discovered that he had tuberculosis, and this caused him to stay there for a month.181 From New York he travelled to Chicago, San Francisco and Hawaii, and then on to New Zealand.182 In June, at Wellington, he reported a smallpox epidemic on board his ship, and this further delayed his return.183 Frederick finally arrived in Dunedin in mid-August 1872.

179 Macassey was born in Ireland, was educated largely in Australia, and came to Dunedin as a law clerk for Richmond and Gillies (M Cullen, Lawfully Occupied (1979) 25).
180 Henry Chapman agreed with Macassey that Frederick's efficiency would, in a year or two, greatly add to Macassey's business. Henry Chapman suggested that Frederick come out alone, as when he was established he would have far better opportunities of making some preparatory arrangement for Martin than he (Henry) could have, and also to allow Martin time to complete his German studies (HSC to FRC, 17 December 1871).
181 FRC to Sedgwick, January 1934.
182 Diary, 1871.
183 HSC to FRC, 31 July and 6 August 1871.
IV. Conclusion

When Frederick returned to New Zealand at the age of twenty-three, he brought with him a wide range of experiences. His early years in Wellington and Australia, with his large, closely-knit family headed by devoted parents, gave him the emotional support upon which he drew in subsequent years, and a life-long commitment to the importance of the family unit. The rustic, unsophisticated environment of Australasia also engendered a permanent love of outdoor activities and a fascination with indigenous cultures and with nature. From his tutors and (notably) the Melbourne Grammar School, he gained a sound, well-structured education, and here he already showed flair in subjects such as French and science which he was to pursue throughout his life. His school career in Melbourne marked him out as a boy whose lack of intellectual verve or brilliance was well compensated for by a mature and serious disposition, steady determination and self-discipline.

Frederick's eight-year period in England, interspersed with visits to Europe, stimulated his intellectual development in a wide range of areas, notably his facility with modern languages. His four-and-a-half years of legal life in London were of particular significance in themselves and as preparation for his legal career in New Zealand. During this period he witnessed at first hand the continuing idiosyncrasies and eccentricities of the bar, as seen in the rituals of dinners and the curious ceremony of his call to the bar. He was made aware of the changing face of the English legal profession, the tensions created by the current moves for reform, and frictions between prominent individuals. His knowledge of English procedure, case-law and texts, which he conscientiously promoted in London and which he was to maintain in subsequent years, proved to be an invaluable aid in New Zealand at the bar and on the bench. Writing in retirement, Frederick recorded that it had been in London that he had begun his life-long "special study of criminal law", and he
acknowledged that his observance of the "many notables of the day prosecuting and defending" had been "lessons of the highest value to me".184

At the same time, Frederick did not appear to adjust to the pattern of English weather or social customs, which he found to be cold and cramping. Further, his stay overseas was overshadowed at an early stage by the tragic loss of his mother and other close family members. This had a major effect on his life: writing nearly seventy years later, he admitted that the loss of his family had haunted him daily.185 The tragedy reinforced his early maturity, seriousness of mind, resourcefulness and thoughtful regard for others. It also spurred him on to even greater efforts in his studies, to give meaning to his life and to give satisfaction to his bereaved father whom he revered.

184 Ibid.
185 FRC to VE, 11 January 1935.
CHAPTER VI

CAREER AT THE DUNEDIN BAR (1872-1903)

I. Life and career in Dunedin

Frederick Chapman arrived in Dunedin on 13 August 1872. The world to which he came was quite different from the highly-sophisticated society that he had left behind in England. The climate he found to be "extremely variable, and is, on the whole, an unattractive one". However, he acknowledged that Dunedin offered "comfortable houses, public libraries, employment for every man who will work, and every material comfort which can be desired by reasonable men unaccustomed to excessive luxury, and unhampered by fastidious tastes and desires". He also recalled that "an immense amount of mining was still going on" in the outlying centres, and that "the little townships were full of life and this added to the life of the road and the activity of the universal 'pub'".

Chapman sat the elementary entrance examination prescribed for members of the English bar, and was duly admitted to the local profession on 15 October 1872.

1 ODT, 14 August 1872.

2 He recalled that "the only railways were from Invercargill to the Bluff and the one from Lyttelton to Christchurch", that there were "no steamers conducting foreign trade excepting those running to Australia", and that overseas trade was conducted by small sailing vessels, the interior trade by freight waggons drawn by horses or bullocks, and the passenger traffic by horse coaches ("always painted red and known as Cobb's coaches" from the name of the enterprising American who initiated the system in Port Phillip) (FRC, Reminiscences).

3 FRC, History of New Zealand (1870s). He wrote that the people of Canterbury "show a superiority of polish and refinement to the inhabitants of the other settlements", as they retained "the impress of the origin of their settlement".

4 FRC, Reminiscences.

5 The examination was conducted by G Cook (ODT, 16 October 1872). His father told Chapman not to bother about the examination, as that prescribed for English barristers was "really a
Besides conducting a thriving legal practice, Chapman played an active part in the affairs of his profession. In 1873, he corrected the proofs for Macassey's *Reports of Cases 1861-1872*. During the period January 1874 to November 1875, he was editor of the *New Zealand Jurist*. This publication included judgments, articles, notices of books and useful extracts from the *Gazette*. Chapman initially found it difficult to obtain judgments in districts other than Otago and Southland, as the judges were scattered in isolated areas throughout New Zealand, but in time he secured "a number of really valuable judgments" from the newspaper press. During 1883-1885 and 1891-1900, he was on the Council of Law Reporting, and during 1883-5 he was the reporter for Dunedin.

In May 1876, Chapman succeeded Robert Stout as sole law lecturer at the University of Otago, with a class of ten law students. Chapman discussed the question of legal education with the local judge Williams J, and learned from him that he wanted control of the barristers' preliminary examination in arts subjects (hitherto conducted by the judges) to be handed over to the university. In November 1876, Chapman wrote to the Chancellor, setting out Williams J's proposal, and ideas of his own. Chapman proposed a full university-based law course, with at least two lecturers to start with, controlled by a mixed board drawn from the University.

It covered the general principles of colonial law (reflecting the relationship between English and the local law) and certain statutes and ordinances (such as the conveyancing and registration ordinances). On the statute law of New Zealand, the candidate had to give correct answers to at least half of fourteen or fifteen questions (HSC to FRC, 6 August 1872).

6 Introductory pages to the *Macassey Reports*.
7 Introductory comments in volumes I and II of the *Jurist*.
8 Introductory pages to the law reports for these years.
9 *Advertiser*, 13 May 1876 and Registrar, University of Otago to FRC, 3 May 1876 (noting that classes would meet the following day). In June 1876, Chapman was made a member of the professorial board (Registrar, University of Otago to FRC, 9 June 1876). In 1873, the University had instituted a course of introductory law lectures, and Robert Stout had been appointed as "Reader in Common Law" to give two lectures a week at a salary of £50 per session plus three guineas from each student (Cullen, op cit 117).
from the university and the judiciary. He also wanted a better-defined syllabus with which to work. Consideration of Chapman's proposal was deferred, but in March 1877 the University passed the first set of regulations for a three-year Bachelor of Laws degree. During the two years that he lectured, Chapman presented his material in a clear and, at times, critical fashion. He ventured to question "in a proper spirit of humility" the English decision in Thorogood v Bryan, to which, he claimed, force of habit had secured adherence for forty years. Chapman noted that this case "established the tribal doctrine so compatible with our schoolboy instincts, so exactly in accord with what we may derive from our Maori fellow countrymen, yet so little consonant with reason, that a man cannot recover for injuries caused by negligence occurring in a collision with a carriage or a vessel where the conduct of the driver or manager of his own carriage or vessel conduced to the accident".

Chapman was active in the creation of the Otago District Law Society, which was established in 1879. He was on the first committee of the Society, which aimed to preserve and maintain the rights of the profession, to "suppress any illegal and dishonourable practice", and to "give its aid and countenance to law reform". In 1892, Chapman served as President of the Society.

Chapman periodically presented papers of a practical legal nature at meetings of the Dunedin Law Debating Society. In 1892, he read a paper "On Authority", in

10 FRC to Chancellor, 13 November 1876, University of Otago in-letters files, Hocken Library.
11 The courses prescribed were: (first year) Jurisprudence, and one of English, History of the British Empire and Political Economy; (second year) Roman Law, Constitutional Law, Property, and Obligations; and (third year) International Law, Wrongs, and Procedure. See Cullen, op cit 117-8.
12 8 CB 115, later overruled by the House of Lords in Mills v Armstrong 13 App. Cases 1.
13 Paper, "On Authority", 1892. See also ODT, 3 May 1877. In 1903, Chapman was appointed an examiner in Criminal Law and Torts (Registrar, University of Otago to FRC, 20 March 1903).
14 Cullen, op cit 42 and 185. In 1891, Chapman and F H D Bell were instructed by a conference of representatives of district law societies in New Zealand to draft a bill "to re-establish the New Zealand Law Society on a representative basis". It was only in 1896 that legislation was passed which brought the New Zealand Law Society into existence (Cullen, op cit 60-61).
which he found it "more convenient rather to deal with a few concrete illustrations than to attempt to lay down and elucidate the general principles which govern the subject of authority in connection with the evolution and stability of law". He remarked that "we are constantly guided by authority, and in innumerable cases courts and lawyers literally find logic blocked by authority". He observed that the decisions of the Privy Council and the New Zealand Court of Appeal "fixed the law for New Zealand". However, he noted that "as these tribunals had not yet dealt with the whole range of the law we had to make the best use we could of decisions more or less authoritative given by tribunals ranging from the House of Lords downwards to our own single judges and English single judges, with side lights from America, from Australia, and occasionally from Canada and other parts of the empire". He said that the tribunals of New Zealand in particular had "made a practice of readily opening their ears to almost any kind of authority". He supported the approach which the New Zealand courts usually adopted in relation to non-binding decisions, which was "to obey where obedience is due, and to reject the decision of such tribunals as are usually regarded as capable of setting the law only upon good and manifest grounds". He added that "used in this way, authority tends to maintain the certainty of the law without rendering it illogical".

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15 He affirmed that "our courts and our people owe not merely obedience but deference to the Privy Council for the guidance it affords to the colonies in its broad expositions of the law".

16 He noted that, until recent years, Victorian cases had been freely used and relied on. This, he wrote, was because his father and several members of the local bar had practised in Victoria, the Victorian reports were the only ones then printed in the colonies, and the New Zealand Parliament was in the habit of using Victorian Acts as precedents.

17 Record of paper in RC. In 1898, Chapman addressed a lecture on "The Law of Domicile: its bearing on practical questions of law" to the Law Debating Society in Dunedin. This lecture arose out of a resolution of the Otago District Law Society Council, in which it claimed that "a want of knowledge of such a subject as conflicts of laws is a grave disqualification for anything like an important practice at the bar". The Council argued that this was indicated by the "reckless and ignorant action of the courts in parts of the United States in granting divorces against absent spouses" (ODT, 28 May and 2 June 1898). In his talk, Chapman noted that he had prepared
Besides Chapman's legal affairs, a wide range of non-legal activities occupied his time and attention. Chapman had an insatiable desire for knowledge of all kinds, and he declared openly that he was "very fond of novelties in any form". At times he felt confined by the facilities that were on offer. In a review for the *Otago Daily Times* in 1902, he noted that "it is a defect in colonial life that though a colony like this possesses good reading rooms and reading libraries, it cannot have extensive reference libraries", and so "if anyone wishes to pursue a topic to the end he has a great difficulty in doing so". He wrote extensively for local publications, particularly "Passing Notes" for the *Otago Daily Times* (during the 1870s) and editorials for the *Otago Witness* (during the 1890s). These included short comments on current points of interest as well as lengthier, more reflective accounts. They revealed Chapman to be a fluent and knowledgeable writer, and attracted favourable comment. In 1878, George Grey, who regarded Chapman as "both clever and painstaking", wrote that his articles showed that "he will turn out a really good historian, if he has leisure to write and a good library of reference at his disposal".

"some observations on the law of domicile in its relation to subjects which should be constantly in the mind of the practitioner". He did not claim that his treatment of the topic was systematic or exhaustive, but hoped that he would bring home "the practical importance of the subject and its momentous bearing upon the fortunes and destinies of some of your possible clients". He discussed domicile in relation to marriage, divorce, legitimacy, succession to personal property and testamentary power (record of paper in RC).

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18 "Passing Notes", RC.


20 Grey also wrote that he took "much interest" in Chapman and it always gave him "great pleasure to have him as a companion" (G Grey to HSC, 11 December 1877). Of Grey, Chapman wrote that "he was fitted to govern paternally a spirited and turbulent people as a father, not always succeeding in keeping the peace, but keeping strife to a minimum" (History, 1870s). An example of Chapman's writing was his account in 1894 of "The Mistress of the Seas: How England gained her proud position, and how she has kept it". He wrote that "the love of the sea is in the blood of all branches of the great English stock", and that New Zealand "contains the germ of an essentially
Many of his newspaper articles revealed rational, reformist views reminiscent of those of his father, and these were often expressed in forthright fashion. While he declared that he had "the greatest reverence for law and its definitions and distinctions", he was also alive to the deficiencies which emerged in practice. In 1874, he claimed that "there is scarcely an important Act passed which does not give rise to lawsuits", the result of "passing raw bills from the hands of inexperienced persons". He argued that "the great desideratum in Parliamentary drafting is accuracy of language", that "the wording of a clause may be in almost the ordinary language of everyday life", and that "wherever a word is used, it should have a definite meaning assigned to it capable of being ascertained at a glance; and, moreover, it should bear the same meaning throughout the Act in which it is used". In June 1875, he condemned the accumulation of legal business which had occurred over the previous months, as having caused "as complete a denial of justice as ever disgraced a colonial administration and brought scandal upon a pure and over-wrought tribunal". In 1896, he wrote of a recent appointment to the bench that "it was not approved of by those most competent to judge", that "it is seldom that a judicial appointment made solely on political grounds can prove acceptable", and that "learning, dignity, integrity, and temperament are the points which have to be studied in selecting a judge". In reviewing criminal statistics, he remarked that "the real seat of evil is in the stomach", and that "hungry men steal because they are hungry, and well-fed men steal far less", and he declared that the "Patients and

sea-faring and sea-loving nation" (OW, 1 January 1894). Chapman also published the letter of W N Chapman describing "Governor King's Visit to New Zealand, 1793".

21 "Passing Notes", 1870s.
22 ODT, 17 April 1874.
23 ODT, 18 June 1875. See also his condemnation of the practice of locking up criminal juries (OW, 18 July 1874).
24 ODT, 23 May 1896. It appears that Chapman was referring to the appointment of Patrick Buckley in December 1895.
25 Ibid.
Prisoners' Aid Society is one of those institutions which deserve the sympathy and support of the community.26 His optimistic belief in human endeavour was indicated in his claim that "man's great victories over rugged nature are the true source of man's superiority", that Dunedin could claim to be "the most enterprising city in New Zealand" and that "there is no better place than Otago for a working man".27 He pointed to the contribution of German historians, philologists, men of science and philosophers, and claimed that "to no nation, with the exception of our own - the pioneer of freedom, and the mother of the future world - does civilisation owe so much as to Germany".28 While retaining his belief in the need to treat women with "gentleness",29 he supported their right to advancement, and had been an adherent to the cause of women's suffrage since the publication of J S Mill's book in 1869.30 He said that he had "long come to the conclusion that men oppose the admission of women to many lucrative occupations solely because they are afraid of their competition".31 He retained an attachment to the Church of England, "in which I was baptized and confirmed, and to which I am bound by the strongest ties of family and education", but this did not prevent him from criticising perceived narrow-mindedness on the part of her clerics and from commenting in sceptical fashion on the superior part played by fashion and upbringing (as opposed to reason) in religious belief.32

26 OW, 1893.
27 ODT, 29 April 1874, and "Passing Notes".
28 ODT, 2 May 1874.
29 "Passing Notes", 1870s.
30 FRC to H Taylor, 28 January 1913.
31 He said that this was particularly true in the printing industry, as "the natural handiness and minuteness of the softer sex fits them for this work". He declared that he knew "nothing meaner than the action of those who oppose the introduction of female compositors" (FRC, "Passing Notes", 1870s).
32 Ibid, OW, 30 May 1874, and RC letter. See also his denunciation of the "want of regard for the feelings of poor foreigners shown by my countrymen" (OW, 20 June 1874).
However, his later writings (certainly those of the 1890s) indicated a marked conservatism in certain areas. He protested against "the growing disregard for disciplinary measures [including the whipping of schoolboys] which is one of the evils inseparable from the democratic movement of this century".\(^3\) He cautioned against punishments that were too limited, and said that "there is nothing, perhaps, that strikes the minds of half-civilised men, as the certainty of retributive justice as administered by our law courts in all parts of the world".\(^4\) In cautioning against the introduction of immigrants other than white Christians into Australia, he wrote that "Black men and yellow men are well enough in their way, but Australia, unlike the rest of the tropical world, has fallen to white men, and a long struggle should be made before it is allowed to cease to be the white man's heritage".\(^5\) He opposed the government of Seddon, whom he described as a man "untrustworthy in matters where strict veracity is expected, so dexterous in unscrupulous manoeuvre, and so distinctly reckless in his method of filling the services of the State".\(^6\) He opposed interventionist policies of the government, the "tendency to abolish everything as a remedy for imaginary ills", "administration by Government officials", and measures such as prohibition which "as Mill viewed it - [is] a dangerous infringement of liberty".\(^7\)

From his return to New Zealand in 1872 until his death in 1936, Chapman spent much time collecting and writing about Maori historical and cultural material. This involvement stemmed from the fascination and admiration he had always had for the "attractive manners" of indigenous people, as evidenced by his recorded boyhood memories of the aboriginals in Victoria.\(^8\) It was said of Chapman that, in

\(^3\) "Passing Notes", 1870s.
\(^4\) "Passing Notes", and \(OW\), 2 September 1893.
\(^5\) \(OW\), 7 March 1892.
\(^6\) \(OW\), 2 December 1893.
\(^7\) \(OW\), 5 and 26 May 1892.
\(^8\) \(OW\), 20 June 1874, and record in RC.
New Zealand, he "never lost an opportunity of conversation on [Maori lore, mythology and history] with representative Maoris, especially with the older chiefs who were still typical Maoris of the ancient guild". From 1874, he was engaged in writing a history of New Zealand from the time of the earliest English discovery and settlement, including an account of the traditions, customs and arts of the Maori, and this was published in 1877 in the Dunedin Saturday Advertiser. During the 1880s, Chapman recorded "antiquarian notes" (on Maori tracks, dwelling places, names and the like) following his visits to Murdering Beach and other sites of former Maori settlement. Chapman strongly believed that if "upon such subjects as the history, traditions and customs of the Maori race, colonists with good opportunities would record all the facts they observe upon their travels while these facts are fresh, much valuable matter now daily growing scarce would be preserved". In particular, during a visit in 1884 to the Mackenzie Country, Chapman thought it "worth while to jot down in this way observed facts relating to our gigantic extinct birds [the Moas], especially in connection with their relation to the inhabitants of these islands". These notes were presented in a paper read before the Otago Institute in June 1884. Chapman applauded the founding of the Polynesian Society, which, from 1892, began publishing a journal of the cultural and historical records of the Maori and other Polynesian races. He contributed various items of interest to this journal.

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39 Notes (RC).
40 RC. Chapman continued his interest in the early history of settlement in New Zealand. On 23 April 1884, he attended a meeting called to consider the formation of a society to collect and publish the early history of the settlement (ODT, 25 June 1936).
41 FRC, "Notes on Moa Remains in the Mackenzie Country and other Localities". In January 1891, Chapman conducted an extensive examination of the beds of Moa bones at Shag Point.
42 For example, "Koruru, the Maori game of 'Knuckle-Bone'", (1898) 7 Journal of the Polynesian Society 114.
On his visits to areas of earlier Maori settlement, Chapman also collected Maori artefacts: it was said that among his qualities was "the rare one of the instinctive 'finder', of detecting the presence of articles of interest on the sites of old camping grounds". In particular, Chapman developed a major interest in the working of greenstone by the Maori, and on visits to such sites as Taiaroa Head, the Purakanui district and Warrington, he gathered many greenstone implements, tools and fragments. By 1881, Chapman had acquired such a reputation for his knowledge of the Maori use of greenstone that, when a German professor wrote to Professor Ulrich (the Professor of Mineralogy at Otago University) inquiring about "the Maori lore concerning this mineral and its uses", Ulrich passed on the request to Chapman. Chapman then wrote to Maori scholars, asking for their views on this subject, and having collated this material he presented a paper to the Otago Institute in October 1891. This paper was regarded as a classic, and was "in a class of its own in the field of Maori material culture" for many years.

Chapman's attitudes towards the Maori people, as revealed in his writings, underwent a remarkable change during the course of his life in New Zealand, as his involvement with them and their history and culture deepened and developed. Writing in the 1870s, fresh from his education in Europe and at the English bar, he wrote with a marked sense of the superiority of white civilisation and with little appreciation of Maori values and attitudes. He claimed that many people viewed in a "ludicrous light" the Waitangi negotiations "with simple people who could not..."
possibly have any ideas equivalent to those contained in the Treaty". He said that "while the English Treaty professes to convey the sovereignty to the Queen, the Maori version is said only to give her the shadow, for the term sovereignty has scarcely even a rudimentary representative in Maori language or polity". He also claimed that the policy of leaving all the lands in the hands of the tribal authorities was a "great mistake" which had hampered the development of the Maori and New Zealand as a whole:46

a system of extensive forfeiture, supplemented by a liberal and prompt return of lands sufficient for all individuals who could show a fair claim, would have been the best policy to have adopted in reparation of the fatal policy of the Treaty of Waitangi, with its pernicious conservation of the ancient tribal tenure ... Holding, in virtue of grants from the Crown, definite areas surveyed and ascertained, with a tenure - as to part at least - similar to that enjoyed under the Homestead laws of America, there is little doubt that the worst features of Maori life would have lost their hold, and the individuals of that race, dropping tribal distinctions, would soon have become one with the white race, as it is a well known fact that mere colour has never been a great social barrier in New Zealand, and that feeling of repulsion towards the dark race which is so marked in the Northern States of America is scarcely known. ... The tribal tenure - an impotent communism among a non-industrial people - still bears its fruits, wherever it has not been by various changes eradicated. Its result everywhere, where it continues to exist, is that it is impossible for Maoris to advance beyond a certain point; that the lands must remain locked up and unused in the hands of the tribe until, by persuasion, and often by fraud, a purchase can be effected either by Government or some individual. The error of the Treaty of Waitangi, no doubt, was that it assumed that the Queen conferred a benefit upon the Maoris in adopting them as her subjects, and professing to extend to them the blessings of her

46 FRC, "New Zealand", in Saturday Advertiser (1877), RC. See also OW, 14 November 1874.
sovereignty and consequent civilisation, while it altogether failed to reserve to her the material resources from which to draw these benefits. No colony can prosper without public lands. It is by the conversion of the public estate into public communications, in the shape of roads, bridges, navigable rivers, with schools and other indispensable media of civilisation, that colonies have become the homes of prosperous peoples, and it was a false sentiment which induced the promoters of the Treaty of Waitangi, by a few ill-judged words, to leave absolutely in the hands of jealous savage tribes, the entire control of those lands which, had individual claims alone been recognised, even to the utmost extent, would probably have made those tribes rich, and the whole people prosperous.

By contrast, Chapman, in his later, developed reflections, revealed great sympathy for the Maori, his "brother race". In his paper on the Maori working of greenstone, written in Dunedin, he referred to his "native island, Aotearoa" and to "Wai Pounamu, where my home now is". In his writings on Maori history, he appeared anxious to convey to his English readers the positive aspects of Maori life. He also tried to make Maori history more meaningful to himself and other English settlers in New Zealand by relating the events of the Maori past to well-known incidents in British history. He wrote of the coming of the Maori to New Zealand as follows:

The report of the discovery of a great country, with no formidable inhabitants, arriving in an over-populated island, the inhabitants of which were constantly at war with each

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47 Newspaper records, RC.
48 FRC, "Greenstone", 57.
49 Ibid, 10. In the same vein, Chapman reflected on the inter-Maori wars in the early nineteenth century "as a precursor of white settlement, which has proceeded in the South Island almost unobstructed by the native difficulties which have arisen in the North Island, repeating here the history of the Roman Britons, whose petty contentions gave to the northern invaders the power to sweep them back to the western ranges" (ibid, 18).
other, is just the kind of circumstance that would stimulate a great migration, such as that which the traditions describe with such minute detail. The chief difficulty in this story ... lies in the degree of accuracy required to navigate a small vessel back to a very small island ... It is, however, more than probable that the Maori navigators of ancient times possessed far superior knowledge and methods to those of Cook's time. Possession of a great territory had made them cease to be navigators of the ocean. The same thing had happened to our own race for two centuries at least before Alfred's time, and it is not difficult to point out that four or five times in history the possession of more than sufficient land-extension has caused the English or the Saxons to turn their faces from the sea.

In 1891, Chapman was introduced to Rudyard Kipling, who was at the time visiting Wellington, and their meeting was recorded as follows: 50

[Chapman] was able to afford him a good deal of data respecting Maori manners and customs. Mr Kipling imbibed it with his usual eager receptivity, and seemed to find the dose highly stimulating; ... This student of savages appeared immensely amused at my friend [Chapman]'s assertion that the majority of the Maoris, when first the Britisher forced his unwelcome contact on them, "hardly knew how to thieve or lie".

Chapman's positive attitude to Maori culture and historical records is also evident in an unpublished manuscript entitled "The Literature of the Unlearned", which he commenced in 1898. 51 Here he stated that in the Pacific Ocean were people "possessed of an extensive literature which has been preserved for centuries without the scratch of a pen or anything serving the same purpose to record it". He claimed that "the Polynesians are essentially a literary people in that they are fond of their myths, songs, poems, tales and personal and national history which they

50 Note by Phillip Mennel, 1891, RC.
51 Manuscript in RC (he continued to work on this until 1934).
have thrown into attractive shape and have treasured with great care and preserved up to the point of coming into contact with European races".52

Chapman noted that "the laborious preservation of ancient traditions and genealogies is [not] without its practical value", as "they are in fact the title deeds of the Maori race". He confirmed that "a British court seriously entertains as valid evidence of the title to land of great value the traditions which the Maori tribes have preserved orally for generations nay for centuries".53 He said that this was done because "the judges have found that in the main it is accurate and trustworthy both as to the facts concerning discovery and occupation and details of ancestry and descent". Chapman asserted that "though the quality of memory displayed is remarkable it cannot be called miraculous". He claimed that "this sort of thing is possible in a people subject to no distracting influences from the outer world with few and unvarying daily duties and little pressure in the struggle for life".54 Chapman predicted that "advancing education and the systematic introduction of

52 He continued: "Many beautiful tales such as in Europe were formerly carried from generation to generation in ballads have been carefully preserved by a people whose power of expression is ample and whose quasi-literary taste is cultivated to a degree far above that of some of the literary races. Narratives of voyages which must have taken place more than four centuries since have been not merely carefully preserved but have been in our times authenticated in a remarkable way. Tales of the lives of heroes have been handed down with genealogies in such a way as to leave little doubt as to their substantial authenticity while all investigation tends to confirm the accuracy of these narratives. Songs which are naturally more easily remembered than chapters of history are to this day repeated by people who cannot translate them or render them into the language of the day so archaic has the language in which they were composed become" (idem).

53 He recalled that he had "heard a Maori witness reel off a long pedigree and account for the death with or without issue of numerous members of the family going back 3 or 4 generations and have heard the adjudication of a land title based on this recital without challenge" (idem).

54 The passing on of information took place in the wharekura, which reminded Chapman of the schools of the Druids, who considered it unlawful to commit their knowledge to writing. There the grandfather, who had done his share of fighting and who had heard the tikanga (tribal customs), genealogies and history recited so often that he could not make a mistake in them, took possession of his grandchildren and taught them with accuracy and persistence (idem).
English into Maori schools" would soon sweep away such of the traditions as required isolated and leisured conditions for their preservation.55

For Chapman, the practical value of Maori historical traditions in legal disputes was only one of the many advantages which the collection and exposition of such material offered. In particular, Chapman believed that the preservation and knowledge of Maori historical material in New Zealand could lead to "the more thorough understanding of the ways of thought, of the aspirations and interests of the Maori people". He argued that, had the English colonists in Ireland acquired such a knowledge of the native Irish, "a better understanding would have existed, and the two races would not have remained foreigners to each other".56

Chapman continued to take great interest in his natural surroundings, and experienced these at first hand.57 He believed that "everything which takes our town-bred youths into the country helps to keep the race robust".58 He took a keen interest in (and, during 1887 and 1898-9, served as president of) the local scientific society called the Otago Institute, which was affiliated to the New Zealand Institute; and he published articles in the Institute's Journal as well as in other scientific journals.59 Chapman became secretary60 and later vice-president of the

55 Idem.
56 OW, 20 January 1894.
57 He recalled that, in January 1873, he and Charles Ireland (his father's associate) rode out from Lawrence to the Beaumont Ferry and then swam across the Molyneaux and back. This feat had not been repeated when Chapman wrote his reminiscences in the 1920s. In the same year he spent a holiday with friends at Waimea Plains, and a party (including John Cook) took the opportunity to shoot ducks (RC). Later, he recorded his visit to the remote sub-Arctic islands of the south (FRC, "Diary kept on an excursion to the Sounds of Otago in SS Hinemoa, 1878"). Chapman also recorded an expedition in 1883, and he planned, but did not effect, an expedition to Smith Sound.
58 OW, 16 February 1894.
59 FRC, Memoirs. In 1899, he delivered his retiring address as President of the Otago Institute on "Australasian Federation". He suggested that the formation of an Australian Commonwealth was a matter of great importance and interest for New Zealand. He noted the counter-arguments
Australasian Association for the Advancement of Science, and in 1891 he read a paper before the geographical section of the Association in Christchurch on "The Exploration of Western Otago".\(^{61}\) As vice-president of the Association, he initiated the proposal for the naming of the sea between New Zealand and Australia as the Tasman Sea.\(^{62}\)

In the countryside, he also developed an interest in botany. Chapman claimed that "to the student of botany the flora of New Zealand is of supreme interest", as New Zealand occupied one of the world's "botanical provinces, ... so different is her flora from that of other regions".\(^{63}\) In 1885, near Dunedin, he made a "spectacular discovery in the botanical world", that of the red manuka, and this came to bear his Latinised name.\(^{64}\) Again, in 1890, in a paper to the Otago Institute, he reported that his brother Martin had discovered a new species of celmsia when they were out together in an excursion in Campbell Island.\(^{65}\) Chapman's interest in the natural

regarding New Zealand's membership of the Commonwealth: that exclusion "becomes a source of injurious isolation to this colony", and that inclusion meant "we consequently become a dependency of a powerful neighbour" (\(\text{ODT, 20 November 1899}\)) . In 1890, he published "The outlying islands south of New Zealand" in the \textit{Transactions of the New Zealand Institute}; and in 1893 he published "On the extinction of the fur-seals in the Southern Seas" in the \textit{Canadian Record of Science}.\(^{60}\)

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\(^{60}\) F W Hutton to FRC, 1 April 1890.

\(^{61}\) \textit{OW}, 23 April 1891.

\(^{62}\) He recorded that Sir James Hector, Government Geologist, called his attention to the fact that the sea had no separate name. At the 1890 meeting of the Association, Chapman's motion for the naming of the sea as the Tasman Sea was carried, and it was later adopted by the authorities. He said that "both Australia and New Zealand owe much to the Dutch, that great-hearted nation". He added that the name of Tasman Sea was a "fitting monument to one of the greatest seamen of our ancient ally" (\(\text{RC}\)).

\(^{63}\) Ibid. In 1880, he was appointed as a member of the Dunedin Botanical Domain Board (\textit{Order in Council, 5 May 1880}).

\(^{64}\) \textit{EP}, 24 June 1936.

\(^{65}\) FRC, "On a New Species of Celmsia" (1890) \textit{Transactions of the New Zealand Institute}. See D Petrie to FRC, 19 May 1889.
world also extended to animals, birds and fish. In 1892, he edited a "Hand-book of Laws relating to Acclimatization, Fish, Fisheries, and the Protection of Animals and Birds",66 and in 1893 he published in the *Canadian Record of Science* his "Notes on the Depletion of the Fur-Seal in the Southern Seas".67 Further, Chapman's involvement with things Maori, and the contacts he had with Maori people, led him to acquire knowledge about indigenous birds such as the takahe.68

On 2 August 1875, Chapman was elected as a town councillor for Dunedin. In his address to the rate-payers of High Ward, he declared (at the age of twenty-six) that "for a great many years he had taken a deep interest in colonial matters". He spoke of the current "important epoch" in Dunedin's history, in view of the magnitude of works (such as the widening of Princes Street and a general drainage system) shortly to be undertaken. He gave his views on these matters, backed by his first-hand knowledge of similar projects in London and Paris.69 Chapman easily won election, but clearly he did not take to public office as, after only a year on the Council, he retired.70 However, such was Chapman's many-sided involvement in the affairs of Dunedin that he remained an important public figure. This was indicated in 1901 when he was appointed as reception commissioner for the visit of the Duke and Duchess of York and Cornwall. Chapman, in typically methodical

66 Already, in "Passing Notes" (in the 1870s), Chapman was obliged to acknowledge that while "there is a great deal to be said in favour of hunting, of course, there is the cruelty against it", and that deliberate cruelty was unacceptable.

67 At 446-459. This article arose out of inquiries made by a prominent Canadian naturalist to Professor T J Parker of the University of Otago, regarding the fur-seal and methods of sealing in the Australasian region. Parker referred to Chapman "as likely to be well informed on the subject" (446).

68 RC.

69 *ODT*, 30 July 1875.

70 *ODT*, 3 August 1875, and 5 and 25 July 1876.
During the first nine years of his life in Dunedin, a central focus of Chapman's domestic life was his father. This was particularly evident during his father's near-fatal illness in 1878, when Chapman gave his father devoted support and recorded his reminiscences. By this stage, Chapman had met and (by early 1875) become engaged to Clara Jane Cook, the daughter of George Cook, a local barrister. They were married on 9 January 1879, at All Saints Church, Dunedin, and Clara "having so consented [to marry], devoted herself to becoming the perfect wife and mother".

1881 proved to be a traumatic year in Chapman's personal life. Clara fell victim to a toxic goitre, and this may have accounted for the deformity of her first child, Henry Alwyn, born in July 1881. Chapman himself became dangerously ill with appendicitis, which caused him "indescribable pain" and for which there was at the time no surgical cure. However, by September "all cause for anxiety" about him

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71 GH Perth to FRC, 24 July 1901; and CS to FRC, 10 December 1901.
72 Records, RC.
73 ODT, 14 January 1879. George Cook was "an English solicitor with some pretensions to gentle status (his sons went to schools like Uppingham) who had arrived in Dunedin in 1859". He founded the firm which is today known as Cook, Allan and Co. (Cullen, op cit 45 and 190-1). Clara Cook was born on 5 December 1854 in the St Pancras area of London (C Chapman to J Cook, 15 December 1936 and letter SG Chapman, 6 October 1988), and she came to New Zealand in 1869 (C Chapman to J Cook, 3 April 1938). Her daughter Gytha remembered her as having been a "particularly sweet and gentle person", though Gytha recalled that "she kept my poor father dangling for five years before consenting to marry him" (letter, SG Chapman).
74 M A Martin to HSC, 16 February 1875, and letter SG Chapman, 7 September 1988.
75 E Chapman to HSC, 2 August 1881. Henry was a dwarf who never exceeded five feet in height, but mentally he was perfectly normal (letter SG Chapman, 25 October 1988).
76 FRC, Reminiscences 26. Chapman recorded that he was "pulled through" by the skill and attention of his friend Dr Hocken.
and his wife was over.\footnote{E Chapman to HSC, 16 August 1881 and MC to HSC, 19 August and 29 September 1881.} In December, Chapman returned from a visit to Victoria to find that his father had been unwell since he had left. Over the ensuing three weeks, Chapman was continually at his father's side, nursing and comforting him until his death on 27 December.\footnote{Diary of HSC's last weeks (RC).}

In the ensuing years, Chapman missed his father sorely. He confessed in 1888 that his life "has never been so agreeable since my father's death". He suggested that "business cares, of which I have many, have made me feel as if the whole affair were flat, stale and unprofitable". At the same time, he acknowledged that this ought not to be, "as I am in my domestic ties the most fortunate of all men". He described his wife as "my ideal of womanhood", and said that his son, "in every little trick of manner and in every turn of his little mind", was "a working model of my father". It was at this time that Chapman began work on the plan, urged upon him by others, to collect and publish a selection of his father's correspondence with a sketch of his life and career. With a view to gathering material for this purpose, he wrote to persons overseas, in countries such as Canada and England.\footnote{Drafts of letters, 1885-1888. This work was never fully completed or published.}

After a break of nearly four years,\footnote{During this time Clara and her mother returned to England for a stay (J D Wood to FRC, 13 July 1883 and MC to FRC, 19 July 1884).} the Chapmans' second child, Clara Vera, was born.\footnote{She was born in June 1885 (genealogical table drawn up by FRC). The Dunedin Almanac of 1885 first lists Chapman's private address as 203 Leith Street.} Then followed George Martin, Hilda Margaret, and Sylvia Gytha de Lancey.\footnote{They were born on 26 March 1887, 17 November 1888 and 27 November 1896 (respectively).} Chapman was a devoted father and family man, in the way his father had been.\footnote{See, for example, the letter of his daughter Vera (VC to FRC, 2 May 1894.) From 1886 he recorded, at intermittent intervals, details of his children and their development, in a manner similar to that of the letters of his father to his
grandfather during the family's years in Wellington. These included accounts of his children's progress in English and in European languages, music and physical development, which was subject to his guidance and encouragement.84

Besides his family ties, Chapman maintained friendships with a wide range of people, and he was as scrupulous as ever in maintaining correspondence with them. The thoughtfulness which had been evident in the period after the death of his mother, sister and brothers was shown again in his letters after his father's death to old family friends.85 It was also evident in the care he took, for example, to congratulate W B Edwards on his elevation to the bench.86 Not surprisingly, Chapman's appointment as judge in 1903 was seen to be a popular one in Dunedin society.87

Chapman's health was generally good during his later years in Dunedin. He succumbed to typhoid fever, but noted that "during the last four years of my career

84 On 13 April 1886, he recorded that Harry "went off [to school] in good form with me", and "took in the bag Alice in Wonderland which my father gave him when a baby". On 11 June 1887, he noted that "little Vera not quite two years old can say whole sentences now", and that "Harry can say his alphabet by himself and counts over 20 ... we have carefully avoided any pushing". On 17 November 1888, on the birth of Hilda, he observed that he "was not at home having gone up to Selina's house since my return from Melbourne to make more room". In February 1897, he noted that the birth of the baby in the previous November had "caused great excitement among the children"; that Harry's failing health had caused him to get a tutor for Harry; that Vera "now speaks French very fairly"; that George had from earliest childhood shown a great interest in the stars, had been for some years at George Street school and had just started Latin, and was "the wit of the family" and was for this reason greatly admired by Harry; that Hilda had "always spoken with wonderful exactness" and "precision and primness were her strong points"; and that in the previous December he had taught the children to row a dinghy (FRC, Family Notebook). In November 1898, he advised his son George that Vera had "begun to read Alice in Wonderland in German" to him (FRC to G Chapman, 14 November 1898).

85 A Johnston to FRC, 29 December 1881.

86 W B Edwards to FRC, 16 July 1896.

87 Record of dinner given by members of the Dunedin profession to Chapman on his elevation to the bench (RC).
at the Bar I did not miss a day through illness or indisposition".88 One of the advantages which Chapman was seen to have on his elevation to the bench was "the possession of a strong frame and a stout physique, upon which, as he is still in the prime of life, the weight of years has not yet been felt".89

II. Legal practice

In October 1872, Chapman entered the promised partnership with Macassey, and the first case in which he appeared (on 16 October) was with his partner in an action for damages for malicious prosecution.90 Macassey died in 1880, and Chapman then entered a partnership with Edward Chetham Strode,91 which lasted until the latter's death in January 1886.92 By 1888, Chapman had formed a partnership with James Smith, John Robert and Alexander Sinclair, and John White.93 This partnership continued94 until Chapman's elevation to the bench. It became the firm of solicitors for the Dunedin Council,95 and Chapman came to represent many important bodies and individuals.96

88 FRC, Reminiscences 27.
89 Review, RC.
90 ODT, 17 October 1872.
91 See, for example, the case argued in June 1880, where the solicitors are listed as Chapman and Strode (O B & F, 91).
92 Dunedin Almanacs, 1884-5, list Chapman and Strode of 78 Princes Street (Hocken Library).
93 Cullen, op cit 189. This firm was the forerunner of the modern-day firm of Brent, Haggitt and Co. The Dunedin Almanac, 1888, lists Smith, Chapman, Sinclair and White at Liverpool Street. The Almanac of 1897 changes the listing to Smith, Chapman and Sinclair.
94 With the exception of White, who retired by 1897.
95 See, for example, (1884) 3 NZLR 89 (SC), (1888) 6 NZLR 490, and (1895) 13 NZLR 648 & 677. In 1903, the Dunedin Town Clerk thanked Chapman for his "very valuable services rendered to Dunedin during his connection with Smith, Chapman and Sinclair" (Town Clerk to FRC, 17 September 1903). See also Town Clerk to Smith, Chapman, Sinclair and White, 26 August 1887, thanking them for their "zeal and skill"; and W Brown (Chairman, Dunedin Drainage and
Chapman conducted a wide-ranging civil and criminal legal practice, which took him before the magistrate's court, the District Court, the local Supreme Court and circuit courts, and (from a month after his admission to the local bar) the Court of Appeal. Besides representing clients from the Dunedin area, he was regularly instructed by solicitors in Invercargill, Christchurch and other centres.

Sewerage Board) to Smith, Chapman and Sinclair, 30 October 1901, appointing them solicitors to the Board. Chapman also served as deputy inspector of lunatic asylums for Seafcliff and Ashburn Hall Asylums (W Hall-Jones to FRC, 15 September 1903). In 1889, Chapman, in this capacity, conducted a lengthy inquiry into charges made by a patient at Seafcliff against Dr (later Sir) Truby King (ODT, 25 June 1936).

96 Chapman appeared for the Taieri County Council ((1883) 1 NZLR 360 (SC)), the Commissioner of Stamps ((1883) 2 NZLR 29 (SC)), St Bathans Channel Company Ltd ((1886) 5 NZLR 184), the National Fire and Marine Insurance Company of New Zealand ((1888) 7 NZLR 28), the Federated Stewards' and Cooks' Union of Australasia ((1890) 9 NZLR 212), the Nenthorn Consolidated Gold-Mining Company ((1890) 9 NZLR 234), and the Tuapeka County Council ((1900) 2 GLR 252). In 1897, Chapman looked after the interests of Joseph Ward in the liquidation of the Ward Farmers' Association, and then appeared for Ward when he was granted his discharge from bankruptcy in Invercargill (ODT, 25 June 1936). In 1898, Chapman represented the Union Company in proceedings under Admiralty jurisdiction arising out of the sinking of the barque Laira by the steamer Wakatipu. In 1900, Chapman appeared for the administrator of J W M Larnach's estate in several matters ((1900) 2 GLR 180).

97 Chapman recalled his return trip on horseback from Lawrence in 1873.

98 In November 1872, he appeared with Travers in two matters in the Court of Appeal ((1872) 2 CA 208 and 215). Chapman in fact appeared in the Court of Appeal before he had argued a case in the Magistrate's Court (ODT, 25 June 1936).

99 George and JA Cook of Dunedin ((1903) 22 NZLR 902), Hall (later with Stout and Lillycrap), F W Wade, R Manisty, J Harvey and R McNab, all of Invercargill ((1886) 4 NZLR 441, (1890) 9 NZLR 162 and 220, (1891) 10 NZLR 470, (1892) 11 NZLR 602, and (1903) 22 NZLR 758), S E McCarthy of Naschby ((1886) 5 NZLR 188 (SC)), S Turton of Cromwell ((1891) 9 NZLR 313), R D Thomas and Duncan and Cotterill of Christchurch ((1892) 10 NZLR 391 and (1895) 13 NZLR 450), Sainsbury and Logan ((1893) 11 NZLR 533), Perry, Perry and Kinney of Timaru ((1894) 12 NZLR 681), R Gilkison of Clyde ((1895) 13 NZLR 342), and M Macdonald of Alexandra ((1903) 22 NZLR 821).
Chapman recorded his impressions of the local magistrates and District Court judges. He recalled that one of the magistrates before whom he appeared was E H Carew, who was a "sour-looking punctiliously accurate man who seldom made or heard a joke [and who] wearied the profession with his exacting technicalities".100 Chapman also recalled that "some of our lay magistrates occasionally gave way to the weakness of using learned phrases".101 District Court judges were, according to Chapman, appointed by favour, and were generally inferior to the mining wardens from whose decisions parties could appeal to the District Court. Chapman noted that he "had much experience of the inconvenience and injustice of trying mining appeals before District Judges", and that ultimately upcountry practitioners resolved to carry mining appeals to the Supreme Court. Of District Court Judge Ward, in particular, Chapman remembered that he "was never known to trouble himself about questions of law", and that he generally despatched business before him speedily so that he "never missed the train which left at 3 in the afternoon".102 Not surprisingly, Chapman held that "the balance of public convenience was in favour of abolishing these courts".103

Chapman had better memories of the Supreme Court judges. During the first two-and-a-half years of his career at the bar in Dunedin, he practised before his

100 Chapman remembered that Carew "preferred to have his court absolutely without ventilation", and that "many a headache have I earned through sitting in the crowded court in a stifling atmosphere all day" (FRC, Reminiscences).

101 He remembered the occasion when Isaac Watt, acting as Resident Magistrate, gave judgment in favour of Chapman's client in the Police Court as he found "the evidence of the vesting of the fee insufficient". This phrase had been overheard by Watt in a complicated testamentary case in the Supreme Court (where he had functioned as sheriff), and was repeated by him without any apparent understanding and in an inappropriate context (ibid).

102 Chapman also recalled the occasion when Ward pronounced judgment "with a greasy smirk" (ibid).

103 In 1909, the districts relating to the District Courts Act were abolished, and so the District Courts effectively ceased to operate after that (J Hight and H D Bamford, The Constitutional History and Law of New Zealand (1914) 358). The District Courts were formally dis-established in 1925.
father, whom he revered. In 1875, he paid tribute to Johnston J for efficiently deputising for Williams J, who had been prevented by illness from taking up his duties in Otago in succession to Chapman J. But he initially questioned whether the judges who had been appointed in 1875 (Prendergast CJ, Williams J and Gillies J) were of the same standard as their predecessors. This, he suggested, was because the bench offered insufficient financial incentive for the "young and vigorous man of the requisite mental power and learning [who] can earn twice as much and retain his independence". However, when Williams J made his first appearance on the bench in Dunedin, Chapman noted that the "tall man with [the] soft voice" had "already given fair proofs of his learning". He later remembered Prendergast CJ and Richmond J as "equally good lawyers", although he claimed that the latter initially had a tendency to be over-logical before becoming "one of our finest judges".

Of the conduct of the local bar, Chapman remarked in retirement that "litigation may not be as amusing or as exciting as it was in [earlier] days but it is

104 NZ Jurist I, 12, 31, 73, 75, 134, 142, 143, 155, II, 12; and ODT, 7 August 1873.
105 He "cheerfully acknowledged that the thanks of the community are due to him for the promptitude he has shown in endeavouring zealously and conscientiously to cope with the difficulties of his position" (ODT, 23 July 1875).
106 "Passing Notes", 1875, RC.
107 "Passing Notes", 1875, RC. Downie Stewart, a colleague of Chapman at the Dunedin bar, noted that Williams J "seemed to take a special delight in helping young members of the Bar", and that this inspired in junior lawyers "such a love and veneration for the Judge". He wrote that "his methods were justified by the fact that Dunedin came to be known as 'the cradle of judges' and during his benign reign at least seven or eight Supreme Court judges were appointed from the Dunedin bar - a much higher percentage than any other city can show over the same period" (Downie Stewart, op cit 45).
108 FRC, Reminiscences 11-12. Chapman, in recalling his appearances before Arney CJ, Johnston, Richmond and Gresson JJ, noted that their "names would remain honoured by the Bar of this Dominion as long as there remained a scrap of the literature recording their doings". He singled out Johnston J "as the Judge who was the most careful in indoctrinating the Bar with their ideal of their relationship to the Bench" (EP, 2 March 1921).
more like what it should be", and that there was a modern tendency to "avoid unnecessary strife". Chapman remembered that Macassey\textsuperscript{109} and James Smith came to be on very bad terms, "not even on speaking terms"; and that both Macassey and George Barton ("a fiery little Irishman") taunted Smith on account of the latter being a "Mulatto". Chapman noted that Smith "frequently became mixed up in speculations and this led to unseemly quarrels, though at his best he was a gentlemanly, well-bred man". Chapman called Donald Stewart a "man of some ability" and "the joker of the Magistrate's Court", but "in life a failure". Chapman did, however, give credit to the more capable of his colleagues.\textsuperscript{110} He said of Robert Stout that "no advocate has, in the history of this colony, attained so high a command at the bar". He also noted that, because of the development of railway and steam communication, Stout was known, to a greater extent than any other advocate, "from end to end of the colony".\textsuperscript{111} On the question of whether New Zealand should retain its fused profession, Chapman believed that "the true course lies between the divided and undivided systems". He suggested that "we shall have to resort to a scheme by which those who are privileged to practise in the Supreme Court shall only be those who have shown themselves qualified by education, general and legal, to undertake the business of those courts".\textsuperscript{112}

Much of Chapman's court work involved juries. Apart from criminal cases, all civil cases prior to the Judicature Act of 1882 had to be tried by jury. Chapman

\textsuperscript{109} Chapman later described Macassey as "an extremely acute lawyer, and a most painstaking reporter", who "must go down in our legal history as 'the Father of Law Reporting in New Zealand'" ((1933) 9 NZLJ 53).

\textsuperscript{110} J G Denniston, the son of John Edward Denniston J (who practised as a barrister in Dunedin 1877-1889) claimed that "Dunedin at this time was the most active centre in the colony, owing partly to the vigorous character of its Scotch settlers, partly to its immunity from the Maori troubles, but mainly to the discovery of gold in the district; so it drew to it the strongest Bar in New Zealand. Chapman, Stout, Hosking, and Sim were all destined for the Bench" (op cit 70).

\textsuperscript{111} \textit{OW}, 2 February 1893.

\textsuperscript{112} "Passing Notes", 1870s, RC.
found the ways of juries to be mysterious, and the difficulties were compounded within the small, closely-knit colonial community. He remembered that Robert Stout ("a most formidable opponent") had many friends and, "though his opponents always tried to challenge his countrymen we could not always identify the Shetlanders". Especially in so-called actions for specific relief, involving exact written pleadings and complex framing of issues, the jury system was seen by Chapman to be most unsuitable. He recalled that it was common "to have a dozen or two dozen questions framed for the jury", and for juries to deliberate in confusion without understanding the real issues. Frequently, juries which had been locked up all night were found in the morning to have disagreed. However, Chapman opposed the idea mooted in 1892 to abolish grand juries and special juries. He claimed that these were "ancient democratic institutions, whose value in educating men to judicial [norms] alone is something". He saw the grand jury as "really one of the guardians of our liberty and one of the best guarantees for purity of administration". He argued that the special jury was "an excellent institution for difficult and complicated cases", and said that "their abolition will infallibly increase

113 He also recalled that, after an apparently hopeless criminal defence, his leader Macassey remarked that "Why, J- J- is on that jury, nothing will ever induce him to find a verdict against me", and this turned out to be true (FRC, *Reminiscences*).

114 He remembered that "many a night at Dunedin have I sat for hours waiting for the verdict", relieved by the efforts of the sheriff, Isaac Newton Watt, who brewed coffee and genially told yarns of past times. Chapman and the other lawyers "used to stay at the court-house until about midnight and then feeling sure that the Judge had gone home and to bed and would not come back we would do the like" (ibid).

115 Chapman remembered an especially curious experience he had in a jury trial before the District Court, in which he represented a father who sued his son for £87. The jury reported after five hours of deliberation that there was no possibility of their agreeing. Chapman then suggested to the judge that he advise the jury that it could award less than the full sum claimed. After the judge had done this, the jury promptly found a verdict for the plaintiff for £83 (ibid).
the existing tendency to drive the trial of causes into the hands of judges and still further decrease the use of juries.\textsuperscript{116}

In both civil and criminal matters, Chapman repeatedly represented Chinese litigants. His Chinese connection began when he was asked to defend a Chinese man whose explanation was translated in court by the interpreter "in such a weird accent" that no-one in court could understand it. Chapman then successfully appealed to the jury by saying that "surely it would be hard on him to convict him when for all you know he has explained his conduct". Chapman suggested that his defence of the Chinese man "must have excited the admiration of his clan as for years after that [he] defended almost every case in which a Chinaman was implicated and several important merchants brought [him] their business". He also thought that the Chinese took to him because he "showed some interest in their affairs". In characteristic style, Chapman learnt as much as he could of the Chinese people and their culture.\textsuperscript{117} Chapman recalled that Chinese business was "always different from that of European clients", and he realised that for the Chinese "the ways of the White court must at times have been difficult to follow". He recorded that every merchant house or store had a "store name", and so "nobody ever died because the accounts were all in the store name and all debts and obligations were faithfully paid and fulfilled".\textsuperscript{118} Chapman found the Chinese to be very honest

\textsuperscript{116} OW, 10 May 1892.

\textsuperscript{117} For example, that a man could not marry a person bearing his own surname, and that there was a separate race (the Ha Ka) who lived amongst the Chinese and were called "Chinese Jews". The local Chinese were Cantonese, and comprised well-educated shopkeepers and miners and market-gardeners of the Coolie class. Most of the cases that came into court arose out of their own tribal quarrels, with Chapman generally retained by the Sam Yap as opposed to the Su Yap tribe (FRC, Reminiscences).

\textsuperscript{118} Chapman remembered that difficulties over leases were sometimes even more acute: "I prepared say a lease of a market garden from a landowner to a company of Chinese. In a few years I found that not one of the lessees named in the deed remained. As each retired with his little pile and returned to China he transferred his share by means of a Chinese document to a new shareholder. They had simply introduced Chinese tenure into New Zealand in total disregard of our law as to
people (though he noted that those who acted as interpreters and agents were "sometimes scoundrels"), and they showed him "complimentary attention in various ways giving [him] small objects of art which they thought would please [him]".119

Chapman found proceedings in the Supreme Court to be more ponderous than those in the lower courts (which he claimed were "less sombre and at times more amusing"). Nevertheless, he regarded himself as having been fortunate in that "beginning with junior briefs it so happened that excepting in two or three cases I was in every really heavy case heard in the Supreme Court [in Dunedin] in my time".120 Here, and in the Court of Appeal, Chapman revealed himself to be an extremely hard-working and conscientious barrister, who prepared his cases with great care and attention to detail. These qualities were evident in the notable case of Aitcheson v Kaitangata Railway and Coal Company. This concerned a claim for royalties for coal mined, and crucial here was the plaintiff's claim that the company's returns of coal mined were false. Williams J, in his judgment, noted the "mass of evidence" brought forward by the plaintiff (represented by Chapman) which proved that the lists of men alleged to be employed were "wholly incorrect".121

Chapman's surveys of legal authority were wide-ranging and thorough. He showed a comprehensive grasp of New Zealand statute law and procedures, and of

assignment of leases. I have no doubt that death duties were constantly evaded without any intention of defrauding the Crown" (idem).

119 These included "a small hand-painted fire screen to be held in the hand", and fireworks for his sons at Christmas (idem).

120 Chapman recalled that divorce cases were, until the change in the law which facilitated divorce, very rare (he noted that "scandals in high life were in my part of the world practically unknown"), and that, even after the law was changed, there were fewer divorce cases in Dunedin than in other centres. He suggested that "the separation by consent trick which really means divorce by consent is better understood elsewhere than in the south". Chapman's own view was that Parliament should instruct the courts "to jealously refuse to grant divorces on mere consent of the parties or otherwise than for specified cases" (FRC, Memoirs).

121 (1901) 3 GLR 280 at 281.
the emergent New Zealand case-law reflected in the law reports and (occasionally) in unreported decisions in the local court. In *The Jutland Flat (Waipori) Gold-Mining Company (Limited) v McIndoe*, Chapman argued successfully for the respondent in the Court of Appeal on the basis that "[t]his Court ought to follow its own decisions". Chapman also regularly referred to English case-law and texts, in matters involving practice and procedure, companies and partnerships, domicile and negligence. In *Russell v Sims*, Chapman successfully argued for the respondent (against his brother Martin for the appellant) in the Court of Appeal, on the basis that a medical practitioner could not recover fees for medical attendance unless he was registered under the relevant Act at the time the services were rendered. Chapman relied upon more recent English interpretations of the same provision in the English Act, which favoured his argument, as opposed to earlier decisions which did not. He argued that the intention of the statute was "quite plain, and is in accordance with the later English decisions", that "[a]s a rule, later authorities will prevail" and "[j]udges virtually overrule where they consider and disapprove of earlier authorities", and that "Pollock on Contracts favours later decisions". Occasionally, Chapman called in aid American decisions and texts (on matters such as watercourses and evidence) and also Australian case-law.

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122 O B & F, 89, 163 and 176; (1883) 1 NZLR 361-2 (SC), (1889) 7 NZLR 379, (1890) 9 NZLR 198, and (1890) 10 NZLR 378-9.

123 (1880) 1 NZLR 28 (CA) and (1887) 5 NZLR 463.

124 (1895) 14 NZLR 99 at 104-5.

125 O B & F, 89, 172 and 176, (1880) 1 NZLR 26-9 (CA), (1883) 1 NZLR 361-2 (SC), (1890) 9 NZLR 293, (1890) 10 NZLR 378-9, (1891) 10 NZLR 495, (1891) 11 NZLR 32, (1893) 12 NZLR 104, and (1900) 19 NZLR 402.

126 (1900) 18 NZLR 773 at 776. At times, Chapman used his knowledge of English law to distinguish cases relied upon by opposing counsel ((1903) 22 NZLR 809). Cf Martin Chapman (appendix).

127 (1886) 5 NZLR 35 (CA), (1887) 5 NZLR 93 (CA), and (1895) 14 NZLR 104-5.
emanating from Victoria and New South Wales (on, for example, procedural matters and the interpretation of similar statutes). 128

Chapman's mastery of legal material enabled him to formulate new and unique arguments. Some of Chapman's "novel experiments" and "interesting enigmas" were rejected by judges. 129 In *Heenan and another v Heenan and others*, Chapman unsuccessfully argued that two bequests of sheep were valid, in circumstances where the sheep involved had roamed indiscriminately over the land of the claimants and other land. In the course of his argument, in which he referred to English and New Zealand authorities, he put to the Court the case of a bequest of all the sovereigns in one jar to A, and of all the sovereigns in another jar to B, and where a housemaid, after the death of the testator, emptied one jar into the other before the sovereigns were counted. Richmond J referred to this "very ingenious argument", and agreed that in this example the bequests would be good. However, he pointed out that "the present case is distinguishable on the ground that the sheep were unascertainable at the time either of the devise or of the testator's death". 130 However, on other occasions, Chapman's imaginative arguments proved effective. In *R v Bratby: Re McLeod Bros*, Chapman was successful in obtaining a rule for *habeas corpus* for the release of debtors. Williams J noted the grounds "which have been urged by Mr Chapman, and which have not, so far as I am aware, been urged in objection to any previous cause of commitment, and yet (on considering the cases which Mr Chapman has cited in support of these grounds), which seem to me sufficient to invalidate the order". 131 His in-depth knowledge also meant that he could

128 (1880) 1 NZLR 26-9 (CA), (1882) 1 NZLR 160 (CA), (1884) 3 NZLR 80 (SC), (1900) 19 NZLR 7, and (1900) 2 GLR 201.
129 (1884) 3 NZLR 323 (SC), (1885) 3 NZLR 462 (SC), and (1900) 2 GLR 350.
130 (1893) 12 NZLR 111 at 124.
131 (1889) 7 NZLR 375 at 380.
anticipate opposing counsel's arguments on the authorities, and so enhance the effectiveness of his own argument. 132

Chapman presented his materials and arguments in logical sequence, taking care that the Court followed his line of reasoning. In *R v Robinson*, he argued in support of a summons for prohibition against the award by a magistrate of the costs of witnesses who had not been summoned. He argued in three stages, securing Williams J's agreement after each stage. He declared on the basis of New Zealand case-law and subsequent practice that procedure by summons was the accepted practice; that, according to English practice, prohibition lay to restrain the enforcement of the judgment of an inferior court which was in excess of jurisdiction; and that the resident magistrate's court was a statutory court, its right to give costs rested only on statute, and it had no power to allow the costs in question. 133

Chapman repeatedly insisted on the minute observation of legal procedures and formalities. This made him appear, at times, as a legalistic and pedantic lawyer, and, on occasions, judges were averse to deciding cases on the narrow, technical grounds which he presented. In *R v Bratby: Re McLeod Bros*, Chapman insisted that "the Court and the Judge and the machinery are the creation of the Statute, which must be absolutely followed", and Williams J's response was that he had "very great reluctance in proceeding upon what must be considered as technical grounds". 134 Chapman's pedantic manner was indicated also in *Oliver v Taylor*, where he raised the question as to whether appellant or respondent should begin. He did not dispute that the respondent, being the prosecutor, ought to begin, as such was the universal practice, but he wished to have a ruling on the question. 135 However, Chapman's meticulous attention to finer legal points was, at times, of benefit to the

132 See (1883) 1 NZLR 361-2 (SC).
133 O B & F 88 at 89-91 (SC).
134 See above at 378-9. See also Pennefather J's comment at (1898) 16 NZLR 682.
135 (1896) 15 NZLR 449 at 450.
court. In *Armstrong v Armstrong*, Chapman argued that a declaration be inserted in
the divorce decree that the respondent was domiciled in New Zealand. Williams J's
immediate reply was that the Court had jurisdiction without proof of domicile.
Chapman's response to this was that unless the parties were domiciled in New
Zealand the divorce would be valid only in New Zealand. Williams J conceded this
point by noting "Yes; it might be desirable to insert the declaration".136 Further,
there is no doubt that Chapman's careful argument on legal minutiae was of benefit
to his clients. In *The Queen v Scott*, Chapman successfully argued that a writ of
*capias ad respondendum*, the service thereof and all proceedings thereunder should
be set aside. This was on the basis that the copy served on the defendant had
omitted the word "or", that the variance had altered the sense, and that the defect
could not subsequently be cured.137

In his arguments in court, Chapman was confident, forthright and, at times,
blunt. In *Heffran v The Land Board of the Otago District*, he declared in the course
of his argument that "the Board has adopted a wrong view of the policy of the
Act".138 At times he resoundingly asserted the need to safeguard individual rights
and constitutional privileges. In *Paxton and others v Butler*, where Chapman
appeared for the defendant in an action for ejectment, he declared that "the rights
here cut into are rights existing for centuries, based on long-established rules of
law".139 Many of his arguments stressed a common-sense approach,140 and he
often enlivened his presentation with a vivid picture of the practical realities
involved. In *Maitland, Commissioner of Crown Lands for the District of Otago v
Mervyn*, Chapman successfully argued that a licensee who breached a condition of a
license to occupy under the Land Act 1877 absolutely forfeited his license to occupy

136 (1892) 11 NZLR 201 at 203.
137 (1891) 11 NZLR 29 at 31-2. See also O B & F 163-5 (SC).
138 (1883) 2 NZLR 82 (SC). See also ODT, 29 October 1888 and (1898) 16 NZLR 679.
139 (1883) 1 NZLR 344 at 346 (SC). See also (1884) 3 NZLR 79 (CA).
140 (1896) 15 NZLR 7 and (1903) 22 NZLR 900.
the land, but could not be sued for the instalments of his purchase money. Richmond J referred to the argument adduced by Chapman which appeared "of considerable weight". This was that "if it were held that a licensee could not throw up his purchase, settlers might be driven to waste years of time and labor on a badly chosen lot; not being able to afford to lose both the section and their whole purchase money, and, as Mr Chapman put it, a new species of adscripti glebae would be created".141 Again, in Riddell v Dodds and others (the trustees and executive officers of the Federated Stewards' and Cooks' Union of Australasia), Chapman successfully opposed a motion for an injunction to restrain the defendants from paying strike monies out of the funds of the trade union. Chapman claimed that "an injunction will prevent the administration of the fund in the way it was intended to be administered, and some of the men dependent on it might be brought to starvation and come upon the State".142

It is not surprising that Chapman proved to be a persuasive and effective lawyer. On one occasion (where Chapman appeared for the respondent), Williams J admitted that, when he had first read the case he had taken a view favourable to the appellant, but that "after having heard the arguments, however, I have come to the conclusion that the respondent is entitled to succeed".143 Many of Chapman's arguments and references were used by judges, and incorporated into the headnotes of reported judgments. This occurred in the lengthy case of Isaac and others v Mills and others, in which Chapman opposed an action for the recall of probate of a will. The Court of Appeal adopted Chapman's argument that, although a mistake was made in the drawing of a will causing a variance from the instructions, if the testator adopted the mistake, it was irremediable (and the Court could not substitute

141 (1882) 1 NZLR 156 at 166-7 (CA).
142 (1890) 9 NZLR 210 at 212. See also (1890) 9 NZLR 234.
143 (1884) 2 NZLR 280-1 (SC). See also (1886) 5 NZLR 37 (CA).
another devise to carry out the testator's intention). Chapman made a particularly valuable contribution in the areas of practice and procedure, the interpretation of local statutes, and family law. Judgments based on his arguments were relied upon by later New Zealand judges, and so Chapman as barrister contributed to the long-term development of New Zealand case-law.

Chapman recalled that, when he was a young man, he had his share of criminal cases. Here he showed himself to be resourceful and tenacious in his defences. An example was his performance in the case of *R v Fleming*. Although the accused in this case was clearly guilty of larceny, Chapman argued that "from the prosperous position of the prisoner, and her careless actions, she must have been suffering from kleptomania when appropriating the goods". After the jury returned a verdict of guilty with a strong recommendation to mercy, Chapman inquired whether the judge "would take medical evidence as to how the prisoner might bear punishment or imprisonment". However, Chapman recalled that, after he became a leader, the criminal business gradually passed into the hands of younger men and he seldom defended indictable cases. Nevertheless, he remained familiar with criminal law and practice. First, he kept up the special study of criminal law which he had begun

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144 (1887) 5 NZLR 122 at 139 (CA).

145 *White v White and McLellan O B & F* 163 and 165 (SC), *R v Roberts* (1882) 1 NZLR 176 (SC), and *R v Scott* (1891) 11 NZLR 29.

146 *Maitland, Crown Commissioner of Land for District of Otago v Mervyn* (1882) 1 NZLR 156 (CA), *Mayor of Dunedin v Histop* (1887) 5 NZLR 492 (SC), *R v Bratby* (1889) 7 NZLR 375, *The Jutland Flat (Waipori) Gold-Mining Company (Limited) v McIndoe* (1895) 14 NZLR 99, and *Dalgety v Simmonds* (1903) 22 NZLR 807.

147 *Atkinson v Atkinson (No 3)* (1892) 10 NZLR 385 and *Armstrong v Armstrong* (1892) 11 NZLR 201.

148 For example, the *Maitland* judgment was followed in *Bank of New Zealand and Ewing v Scandinavian Water-Race Company (2)* (1906) 1351 at 1366; and the *Jutland Flat* judgment was followed in *Kelly v Hayes* (1902) 22 NZLR 429 at 434.

149 See, for example, the trial in October 1874 of Lee Chung Woh for attempting to commit an unnatural offence: Chapman defended and the accused was acquitted (*ODT*, 6 October 1874).

150 *ODT*, 21 April 1875.
in England, and continued to read "everything [he] could lay his hands on". Secondly, he was "perpetually engaged" in prosecuting in summary cases, and of this he wrote:\footnote{151}

I had a keen pack against me and had to satisfy keen critics in the City Council which employed me. Incessant vigilance [and] care in preparing information and completing evidence is even more essential in conducting such prosecutions than in Crown cases. That is especially so when the prosecution is before Justices who may be misled by the ardent youths unless the prosecuting counsel carefully instructs them in the law applicable to the case. Crotchety stipendiary magistrates not very strong in their law may also have to be similarly instructed. In the Supreme Court it is not much good trying to rely on fallacies. The Judge usually promptly sits on the fallacy or its proponent.

According to Chapman, the greatest criminal case in which he was engaged was \( R \) \textit{v} \textit{Hall}, in which the accused was tried for the murder of his wife's stepfather. Hall had earlier been convicted of the attempted murder of his wife, and been given a life sentence. At the trial in Dunedin in January 1887, Chapman was retained as leading counsel, with John Denniston as his junior. They relied on the failure of the Crown to prove that death had been caused or accelerated by poison, and the fact that there was no proof that the accused had ever administered poison to the deceased or had at the relevant date possessed poison. Chapman recalled that the evidence "was really very slight and scarcely any evidence of motive could be adduced". In the course of the trial, the judge admitted as evidence the facts of the attempted murder by poisoning of the wife six months later. The jury returned a verdict of guilty: Chapman noted that "they had before them a man whose

\footnote{151 \textit{FRC, Memoirs}. In 1898, Chapman was engaged (in the absence of a Crown Prosecutor) to conduct the case for the Crown against one Charles Clements, who was found guilty and duly executed. This was the last execution conducted in Dunedin by the time of Chapman's death in 1936 (\textit{ODT}, 25 June 1936).}
subsequent conduct showed him to be a poisoner by inclination". Williams J sentenced Hall to death, but reserved for the Court of Appeal the question whether, in the light of the admission of evidence concerning the alleged poisoning of the accused’s wife, and the judge’s direction that the jury might draw any inference from this evidence that it thought reasonable, the conviction should stand. In March 1887, a special sitting of the Court of Appeal was held at Christchurch, with a full bench comprising Prendergast CJ and Johnston, Richmond, Williams and Ward JJ. Chapman was joined by H D Bell (later Attorney-General) and Denniston. Chapman argued that the evidence in question "would only be admissible where the act itself was admitted, or where it was necessary to prove guilty knowledge on the part of the actor". He and his colleagues distinguished the English authorities on which Williams J had relied, and he argued that "even if the Court came to the conclusion that the authorities were not broadly distinguishable, they could consider whether they were in accordance with the principles of English law, and this Court could overrule the authorities cited if they were wrong". The Court of Appeal decided that the evidence had been improperly admitted, and that the conviction should be quashed. Chapman noted that "there was a good deal of adverse comment on the judgment". However, The Press adopted a more balanced approach: while acknowledging that the public were "far from satisfied", it said that the point of law in question had been "so exhaustively argued by an exceptionally

152 Newspaper report, March 1887, RC
153 The Timaru Herald remarked that "the mildest of the adverse comments is that the trial was a farce; that the Crown lawyers bungled the prosecution; and that a murderer of the very vilest stamp has escaped punishment through a technicality" (see Evening Star, 12 March 1887). Chapman remembered that "even political leanings were hinted at, but among the judges there was only one actual politician and he certainly had no political leanings towards the friends of the accused". He added that "moreover from first to last the Bench of this country has been entirely free of political leanings" (FRC, Memoirs).
strong bar”, and that if justice had failed it was because of "the inherent difficulty of proving one of the most secret and insidious kinds of crime".154

When Chapman left the bar in 1903, it was said that there were "few lawyers practising in New Zealand who have consistently and uninterruptedly maintained a place in the front rank at the Bar over a period of a number of years as Mr Chapman has done".155 It was admitted that his "powers of expression are adequate without being showy", and that "there are more alert lawyers in New Zealand".156 At the same time, Chapman earned high praise for his exceptionally wide range of knowledge, for being "one of the most deeply read members of the profession, for being an "exceedingly sagacious and safe lawyer", with an "uncommonly sound judgment", and for having unquestioned integrity.157 These qualities caused him to be offered a judgeship after the death of Alexander Johnston (in 1888), though he declined this "for business reasons".158 They were also crucial in securing his position on the bench in 1903.

154 The Press, 15 March 1887. The judgment in R v Hall was adversely commented on by judges in New South Wales ((1893) 14 NSWLR 1), and their decision was affirmed by the Privy Council (1894) AC 57. Section 16 of the Evidence Amendment Act 1895 made evidence of the class rejected in Hall admissible for all purposes in cases of poisoning.

155 Newspaper Review, RC

156 Evening Star, 10 September 1903 and newspaper report, RC. The Bulletin (16 October 1903) suggested that "he was a trifle too slow and heavy to be a very successful advocate", that he had "a slouching gait and for years has been about the worst dressed barrister" in New Zealand, and that he 'had an unfortunate habit in court of hitching up his trousers as though he did not wear suspenders and was in fear of his garments dropping off'. At the same time, the newspaper regarded his appointment as "one of the best that Seddon has made".

157 Newspaper reviews, RC.

158 Review, RC. The Evening Star, 10 September 1903 also suggested that Chapman was offered a judgeship when James Martin was raised to the bench (in 1900).
III. Chairmanship of the Otago Conciliation Board (1899-1902)

During the 1890s, New Zealand's system of industrial relations was born. The Industrial Conciliation and Arbitration Act of 1894 introduced a network of Conciliation Boards, an Arbitration Court and the process of compulsory arbitration. In 1896, the Conciliation Boards and the Arbitration Court began their first hearings of industrial disputes. Over the ensuing ten years, there were no significant strikes in New Zealand, the Colony prospered, and so successful did the new system of industrial relations appear to be that it became "an object of colonial pride, an example of New Zealand leading the world". 159

A central figure in the emergent process of conciliation and arbitration was Chapman. In terms of the Industrial Conciliation and Arbitration Act 14 of 1894, 160 the Colony was divided into districts, each with a Board of Conciliation. Each Board consisted of an equal number of persons elected by employers and by unions of workers, and the elected members together elected "some impartial person, not being one of their number, and willing to act, to be Chairman of the Board". 161 Any industrial dispute might be referred for settlement to a Board, and until the dispute had been finally disposed of by the Board no strikes or lockouts were allowed to the parties to the dispute. The Board was required to inquire "carefully and expeditiously" into the disputes referred to it, and take steps to induce the parties to come to a "fair and amicable settlement" of the dispute. Failing such agreement, the Board was to make a recommendation for the settlement of the dispute according to the merits and substantial justice of the case. In terms of the Act of 1900, if no application of referral of the dispute to the Arbitration Court was

159 J Holt, Compulsory Arbitration in New Zealand (1986) 49.
160 This was replaced by Act 51 of 1900.
161 Section 32 (4), Act 14 of 1894.
lodged within one month of the Board's recommendation, the recommendation became enforceable as an industrial agreement.162

Chapman was generally opposed to the measures of the Liberal Government of the 1890s, which he saw as being "socialistic", facilitating state intervention, and producing legislation "in favour of employed at the cost of employers" which had the effect of "crush[ing] out industry in our fast-declining towns".163 At the same time, he was alive to the damage of "industrial war", and suggested that "sensible people ought to find means to deal with strikes and lockouts".164 He therefore supported the introduction of Conciliation Boards, and suggested that if there were elected to the Boards "men of high character, sound judgment, unlimited patience, and above all, sound temper, great things may be accomplished".165

It was, then, with a positive frame of mind and with the ideal of the Board as a conciliatory body displaying judicial qualities, that Chapman, in May 1899, entered upon his duties as Chairman of the Conciliation Board for the Industrial District of Otago. During his three years in office, he and his board negotiated and recommended numerous industrial agreements between employers and workers' unions (ranging from the Dunedin Bakers' and Pastry Cooks' Union to the Otago Coalminers' Union). These agreements covered such matters as rates of wages, hours of employment, overtime, holidays and apprenticeships. One of the most contentious issues was that of preference of employment for union members. Preference was commonly allowed in recommended agreements, subject to the rules of the union allowing "persons of good character and sober habits" membership of the union at a reasonable fee; provided that there were members of the union equally qualified with non-members to perform the particular work required and

162 Section 58 (1).
163 OW, 21 July, 28 September and 13 October 1894.
164 OW, 9 December 1893.
165 OW, 15 February 1896.
who were ready and willing to undertake it; and subject to existing engagements being respected. Further, it was often stipulated that, where both union and non-union members were employed together, there would be no distinction between them, they would receive equal pay for equal work, and would "work together in harmony".166

Certain of the matters before the Board proved to be extremely time-consuming and difficult, and involved unsatisfactory evidence and strongly competing interests. At times the Board recommended agreements that were limited in time or in scope. In a dispute involving the Otago Tramways' Union, the Board made no recommendation on the claim "to allow smoking at out-stations", as this was a matter which came exclusively within the authority of the local body, and because there was evidence that, if this was allowed, the men might not "keep time-table". Further, the Board thought that the tramway proprietors should not be bound to give preference to unionists, as "the proprietors are all carriers of passengers largely in the public interest".167 At other times the Board felt obliged to report that it could make no recommendation of agreement. This occurred in the matter of the Dunedin Tailoresses' Union, where the employers were willing to pay the rate of remuneration asked by the employees, provided that the same rate was fixed for other parts of the Colony, notably Auckland. Following the first reference of the dispute in 1899, the Board adjourned the matter to establish whether a uniform rate of wages could be brought about in the Colony. However, finding that the government did not propose promoting legislation on the matter, the Board recommended that the parties carry on under their existing system until the Auckland agreement expired. The Board made it clear that it was "of opinion that wages and conditions of labour should be uniform throughout New Zealand, unless

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166 Book of Awards (Awards) (1900) 260-1.
167 Awards (1901) 636-7.
it can be shown that local circumstances give rise to necessary differences. Nevertheless, the Auckland agreement was renewed, and in 1900 a fresh reference was filed with the Board by the Dunedin Tailoresses. At this stage the Board did not consider that it was "constituted to settle questions of competition between localities", and so reported that it had "failed to bring about a settlement of the dispute satisfactory to the parties."  

Chapman, as Chairman of the Otago Board, was also asked to settle detailed disputes in the working of awards. Here he generally adopted a cautious approach, and preferred interpretations of awards which were "in accordance with the grammatical structure of [sentences] consistent with the rule as a whole". He also exhorted the parties involved to make greater efforts to agree on minor points. In the matter of the Allendale Coalminers' Union, where Chapman was asked to define a "wet place", he said that "to attempt a definition would create rather than get rid of difficulties", and that "the common understanding of miners and managers ought to be able to settle this in individual cases".

Chapman won respect from both employers and workers for the "impartiality and practical sense" with which he carried out his duties as Chairman of the Otago Board. He later recalled that visitors from Europe and the United States showed a deep interest in the proceedings of the Board, were "struck with the good feeling which prevailed during the forensic contests", and at times showed some admiration for the method pursued (though the advances in wages agreed to were far in excess of those which European industries felt able to afford). In May 1902, after Chapman had left office, the Minister of Labour thanked him for the

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168 Awards (1899) 426.
169 Awards (1900) 459; see also Awards (1901) 667.
170 Awards (1901) 602.
171 Awards (1900) 254.
172 Evening Star, 10 September 1903 and OW, 16 September 1903.
173 FRC, Observations.
"very efficient manner" in which he had carried out his duties, and said that his "firm
guidance and wise conduct" had made the Dunedin Board the model for other
Boards.174 Unfortunately, however, by this stage Conciliation Boards throughout
New Zealand were in a state of permanent decline. It had become generally
observed that very little direct negotiation went on between the parties before the
Boards, and that "each side battl[ed] only to convert the chairman". Employers and
workers thus came to hold that the Boards were "merely inferior Courts with less
powers, less knowledge and experience", and with functions insufficiently different
from those of the Court of Arbitration to justify a two-tier system.175 The result
was the passing of the provision in the Arbitration Amendment Act 37 of 1901,
which allowed parties to by-pass the Boards and go directly to the Arbitration
Court.176 This was opposed by Chapman as a "retrograde step", which greatly
increased the work of the Arbitration Court and did away with the preliminary
hearing before the Board "which was a great help in clearing the way to ascertain
the really substantial points in difference".177 But, as Chapman himself observed,
parties (especially employers) largely availed themselves of this amendment, and as
a result the Conciliation Boards languished. After Chapman's departure, the Otago
Board itself sat for only "five or six days in the [ensuing] five years",178 and in 1908
the Boards were replaced by Conciliation Councils. Thus, Chapman's able
Chairmanship of the Otago Conciliation Board was unable to secure the long-term
future of the Board. Nevertheless, it helped to establish his own reputation in the
handling of industrial affairs, as seen in his subsequent appointment as President of
the Court of Arbitration.

174 W Hall-Jones to FRC, 9 May 1902.
175 Holt, op cit 50.
176 Section 21.
177 FRC, Observations.
178 ODT, 12 October 1907.
IV. Conclusion

This survey of Chapman's thirty-one year career in Dunedin has revealed a man who strove to the utmost of his ability to develop and to give of his talents and abilities in a wide range of areas. This was seen in his remarkable acquisition of legal and other knowledge, which he used in his professional and private life; his openness and sensitivity to other cultures; and his unfailing commitment to his many duties, in both his professional and his domestic life.

There were divergent strands in Chapman's personality. He was capable of imaginative and forward-looking thinking, and was aware of flaws in law and society that needed to be remedied. But he was most essentially a man of precise, concrete thought-patterns, who valued existing institutions, and who favoured a balanced, cautious approach. His life exemplified the enormous potential of individual human endeavour (given appropriate opportunities), and not surprisingly he was out of tune with the growing calls for radical state intervention in social and economic affairs. While his catholic tastes and interests marked him as a "well-rounded man", he saw his central focus and career prospects as being in law. He declared that he "never allowed the allurement of a literary or quasi-scientific career to lead me off the track", as he was "a lawyer by training and occupation, [and] had family responsibilities and the ordinary ambition of a barrister to reach the Bench someday".179

After a thirty-one career at the Dunedin bar, Chapman's ambition was finally realised. On 9 September 1903, Edward Conolly resigned as judge of the Supreme Court, and the following day Chapman was appointed to take his place.180 The appointment was described as an "admirable one" which gave "great satisfaction to

179 Undated letter, RC.
180 Letter FRC to Prime Minister, 11 September 1903.
the profession and the general public.\textsuperscript{181} Chapman was hailed as a "sound and well-equipped lawyer, with the mature experience that can only be acquired by a large and varied practice, a public-spirited citizen ever keenly alive to that which is best for the welfare of the community, a man of blameless life and character".\textsuperscript{182} He was also seen to possess "to a very marked degree a judicial temperament: he does not arrive at a conclusion hastily or without deliberate, dispassionate, and mature consideration of the issues involved, and he has never permitted his sense of duty to a client to overshadow his sense of fairness and justice".\textsuperscript{183} Besides these qualities, the experience gained and ability shown in his chairmanship of the Otago Conciliation Board were seen to be particularly appropriate for his new office as President of the Court of Arbitration.\textsuperscript{184}

\textsuperscript{181} EP, 11 September 1903 and New Zealand Illustrated Magazine, November 1903.

\textsuperscript{182} Ibid.

\textsuperscript{183} Review, RC.

\textsuperscript{184} Ibid and OW, 16 September 1903.
FREDERICK CHAPMAN'S CHILDREN

HARRY AND GEORGE

HILDA, (SYLVIA) GYTHA AND (CLARA) VERA
CHAPTER VII

CAREER AS JUDGE AND RETIREMENT (1903-1936)

I. Life and career as judge

Chapman J was the first native-born New Zealander and the first son of a former Supreme Court judge to reach the New Zealand Supreme Court bench.1 His permanent position on the bench lasted from 11 September 1903 to 2 March 1921, when he was obliged by statute to retire on reaching the age of seventy-two.2 Between October 1921 and June 1924, Chapman J was commissioned four times to act temporarily on the bench,3 to cover the absences of permanent members on leave or through illness.4 In this way, Chapman J rendered two-and-a-half year’s extra service as a judge.5 Chapman J resigned finally on 5 June 1924.6

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1 (1936) 12 NZLJ 173.
2 Judicature Act 1908, s 13. He was said to have been the “first victim of the Act which compels every Supreme Court Judge appointed after the 4th September, 1903, to retire at the age of seventy-two” (EP, 3 March 1921).
3 In October 1921, he was appointed acting judge during the absence of John Salmond (AG to FRC, 13 October 1921); on 26 June 1922 he was appointed during the absence of William Sim (Minister of Justice to FRC, 29 June 1922); and on 10 May 1923 this appointment was extended (Minister of Justice to FRC, 8 and 22 May 1923 and 1 May 1924). Chapman J evidently enjoyed judicial work, but he also had financial motives for accepting further appointments: he applied for his services as a temporary judge to be included in the computation of his retiring allowance (AG to FRC, 24 July 1923).
4 In November 1923, it was represented to Chapman that “the Supreme Court was in a bad way”, as the Chief Justice had been absent on Prison’s Board business and had “lately so frequently broken down that the other Judges were arranging their programme without him”, and because Hosking J was ill in bed and not likely to return to work that year (FRC to Minister of Defence, 9 November 1923).
5 ODT, 25 June 1936.
During the years 1903-1906, most of Chapman J's time was taken up by his Court of Arbitration duties, and in 1907 he was stationed in Christchurch. Thereafter, Chapman J officiated mainly in the Wellington District of the Supreme Court. This comprised Wellington itself "with its large city business", and circuit towns which included Masterton, Palmerston North, Wanganui and Napier "all of which are liable to have heavy circuits". Chapman J was called upon to take circuits in such North Island centres as New Plymouth, Gisborne and Auckland, and South Island towns such as Nelson and Blenheim, and he returned occasionally to Christchurch. Chapman J also regularly sat in the Court of Appeal, and he noted in 1908 that this Court met three times a year and occupied up to fourteen weeks of the time of the six judges.

Chapman J appeared to cope well with the demands of his office, notwithstanding the "immense" and "incessant" demands placed upon the judges.

6 FRC to AG, 5 June 1924. Chapman J's last reported judgment was of 10 May 1924 ([1924] GLR 460-2).
7 He noted in 1908 that "in Canterbury the work after being light for many years has increased very largely owing mainly to extensive dealings in land" (FRC to AG, 7 December 1908).
8 Ibid.
9 He noted in 1908 that the work in Auckland was "very heavy" and that crime formed a large item of the business (ibid).
10 Chapman J's locations are recorded in the New Zealand Law Reports and the Gazette Law Reports for the years 1903-1924.
11 FRC to AG, 7 December 1908.
12 During 1908, there appeared to be great pressure placed upon the Wellington judges in particular, as a result of the Chief Justice being pre-occupied with work on the Native Land Court. Stout CJ also pointed to the delays in Supreme Court cases caused by the service of the judges on the Court of Appeal, and called for the establishment of an Appeal Court comprising judges not doing Supreme Court work (EP, 12-15 January 1909). See also Ward to FRC, 2 September 1911, and FRC to VE, 13 April 1916 and 1 June 1917. He claimed that the judges in Australia had easier jobs than in New Zealand (FRC to VE, 9 February 1925).
He managed to work for long hours and for lengthy periods without breaks. Through to his seventies, he applied himself with his characteristic zeal. In February 1922, he wrote from Wanganui that he had been "sitting until 6 pm every day and 9 pm on Saturday", and that he then had "to go to New Plymouth where there were forty cases of various sorts and sizes". Chapman J clearly took the role and status of judge very seriously. On one occasion he wrote to the Attorney-General suggesting the implementation of rules requiring constables to assist circuit judges to assist with luggage and other arrangements, and to use the proper style of address in relation to judges, magistrates and other functionaries. He remarked: "I am not anxious to be saluted but I suppose you have read Darwin's Expressions of the Emotions and realise the close connexion between expression and that which it represents".

Chapman J's term of office fell within the Chief Justiceship of Robert Stout (1899-1926). Stout CJ appeared to offer only limited legal leadership to his bench. On numerous occasions he was overruled by or dissented alone from the

13 In 1908, he estimated that, from 1 February to 30 November, there were at the most twelve days on which he did not work, that at the Wanganui circuit he had sat for a fortnight "working every day including Saturdays in Court and in Chambers from 9.30 am to about 6 pm", and that at Palmerston North "in addition to the same length of sitting time I sat on several evenings till 10 or 11 o'clock" (FRC to AG, 7 December 1908). There was also the pressure placed on judges by the absence of some of their members on leave or on account of illness: in the period 1903-8, Chapman recorded that "two judges have had leave of absence for a year each and one for a few months, the last on account of illness" and that "four judges have been at times indisposed for short periods" (ibid). Skerrett KC, in paying tribute to Chapman J on his retirement, claimed that he had "never spared himself" and that the administration of justice had been run by Chapman J on "oiled bearings" (EP, 2 March 1921).

14 FRC to VE, 13 February 1922. See also FRC to VE, 26 March 1922.

15 FRC to AG 12 March 1909. Chapman J also saw it as the duty of a judge to keep clear of political discussion, and noted in 1913 that the militant suffragette movement was "forbidden ground" for a judge (FRC to H Taylor, 28 January 1913).

16 I Richardson commented that Stout's "desire for reform led to some of his decisions running ahead of precedent", that "he lacked the penetrating mind of a Salmond or a Williams", and that
judgments of his brother judges, who privately questioned the legal acumen of some of his decisions. Another judge who appeared "out of step" with the majority of the bench was Edwards J (judge 1896-1921), whose public and private pronouncements indicated a difficult temperament. However, adding weight to the bench was the presence of Williams J (judge 1874-1914), whose judgments were regarded with great respect and were frequently relied upon by Chapman J. Chapman J appeared to enjoy cordial relations with his fellow judges, with whom he regularly consulted and corresponded. On his retirement, he remarked that "his judgments are less valuable and reliable precedents than those of many of his judicial brethren" (Cooke, op cit 46).

17 See, for example, (1908) 27 NZLR 101, 1106 & 1134; (1911) 30 NZLR 99, 221, 316, 707, 838, 896 & 1025; and [1919] NZLR 305, 419, 562 & 607. Edwards J, for example, criticised Stout CJ for placing the burden of proof on the wrong party in one case and for giving an unimpressive judgment in another (Edwards to FRC, 10 June and 19 August 1920).

18 For examples of Edwards J’s regular dissents, see (1906) 25 NZLR 79, 385 & 746, (1910) 29 NZLR 350, 602, 627, 657, 846 & 1123, and (1913) 32 NZLR 241, 821 & 866. Edwards J, in his correspondence with Chapman J, made caustic comments on Cooper J (noting his vacillation, his almost being reduced to tears after some plain speaking, and his judgment which had "nothing in the world to do with the matter") (Edwards to FRC, 24 May and 10 June 1920). Edwards and Hosking JJ also appeared to resent Salmond J’s display of high-handedness and obstinacy on one occasion (Edwards to FRC, 15 November 1920 and J Hosking to FRC, 16 November 1920). Edwards J looked forward to the time when he would be "free of the trammels which go with the holding of judicial office" (Edwards to FRC, 24 May 1920). See Cooke, op cit 55-56, and R J Fauchelle, "The Life and Times of Sir Worley Bassett Edwards" (unpublished LLB dissertation, University of Auckland, 1991).

19 See Cooke, op cit 53-4. Other judges who served with Chapman J were J E Denniston (1889-1918), T Cooper (1901-1921), W A Sim (1909-1928), J H Hosking (1914-1925), T W Stringer (1914-1927), A L Herdman (1918-1935), J W Salmond (1920-1924), J R Reed (1921-1936) and A S Adams (1921-1933).

20 J E Denniston recorded in July 1913: "Williams, I, Chapman and Cooper met to consult on our judgment in the Sugar case which occupied so much of our time last sittings. ... Being all, as Chapman said, reasonable men we got through the greater part of the work early and comfortably, with some little differences at first which we were in each case able to reconcile. Made great progress" (Denniston, op cit 127). Chapman did, however, have harsh words to say
had been uniformly treated with the greatest courtesy and consideration", and "made
special reference to Mr Justice Edwards, who had been of as much help to him as
any Judge on the Bench, and always endeavoured with patient care to assist him to
the full".21 For his part, Stout CJ remarked that the judges "had had as a colleague
one ever courteous, ever kindly, ever brotherly".22 After Chapman's death, Sir John
Reed, ACJ, remarked that "no one could have had a more kindly or valuable mentor
[in Chapman]" than he had had. He said that "it was never too much trouble to
[Chapman] to help in any way he could", and that "he was always prepared to place
[his] knowledge at one's disposal to assist in unravelling some intricate point, and
would cheerfully put all that vigour and energy that characterised everything he did
into clarifying and elucidating the position".23

Patience, kindness, courtesy and consideration also pervaded Chapman J's
dealings with members of the bar, litigants and others involved in the judicial
process. Skerrett KC declared on Chapman J's retirement that "what appealed to
[the bar] with attractive force was his humanity and kindliness". He added that
Chapman J's humanity "was the arresting quality which gave him the confidence of
suitors and of the Bar, and which gave a force to his judicial acts which no mere

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about James Martin (temporary judge of the Supreme Court and President of the Court of
Arbitration in 1900): he remembered him as "a bright genial man quite unfit for the higher office
[of judge] as he was a poor lawyer" (FRC, Notes, RC). Of the local profession, he wrote in 1922
that "the bar are bores", but that this was better than being "lazy as on the other coast" (FRC to
VE, 27 February 1922).

21 On one occasion, Edwards J remarked that Chapman J's judgment was superior to his, founded as
it was "on independent reasonings", but that "there are many people who will be convinced by
cases [which he had supplied] when they cannot be convinced by reasoning" (Edwards to FRC, 16
August 1920).

22 EP, 2 March 1921.

23 (1936) 12 NZLJ 173.
learning could have done.\textsuperscript{24} In particular, Chapman J was supportive of junior members of the bar, and he noted on his retirement:\textsuperscript{25}

he had always tried to do his best for the younger members of the Bar in the interests of the profession generally, and ultimately in the interests of suitors, because, after all, whatever the interests of the Bar might be, those of the suitors were paramount. He had always been anxious that every young man of ability, ambition, and energy should have due encouragement.

Chapman J, like his father, was active behind the scenes in giving advice to the government on law reform. This concerned measures such as the Habitual Criminals Bill, the Judiciary Bill, the Justices of the Peace Amendment Bill, the Police Force Bill, the Expeditionary Forces Bill, and the Inalienable Life Annuities Bill.\textsuperscript{26} Chapman J made suggestions for the amendment of police regulations and the criminal law, and the appointment of \textit{pro deo} counsel to defend prisoners.\textsuperscript{27} Chapman J also gave the government his views on matters ranging from "the great

\textsuperscript{24} EP, 2 March 1921.

\textsuperscript{25} Idem. S A Wiren recalled that Chapman J "insisted always that I was his associate, not his clerk or secretary. His kindliness and consideration never failed, even when forbearance was hardly merited" ((1936) 12 NZLJ 173).

\textsuperscript{26} Chapman J suggested amendments to the Habitual Criminals Bill, to allow, for example, the proving of previous convictions (which, he said, prisoners did not always admit) (FRC to Minister of Justice, 26 August 1907). Concerning the Inalienable Life Annuities Bill, Chapman J claimed that "the state has a direct interest in encouraging and enforcing a provident spirit and the greater the number of persons provided for against old age the fewer the claims against relatives and the greater the ability of all members of the community to assist in deserving cases" (FRC to AG, 13 August 1910). See also FRC to AG, 7 December 1908 and 3 November 1913, Minister of Justice to FRC, 9 October 1912, AG to FRC, 6 August 1913 (Chapman J drew attention to the faulty drafting of one of the clauses of the Police Force Bill, and made suggestions for amendment), and AG to FRC, 10 July 1915.

\textsuperscript{27} National Archives, J1, 10/June 927, and AG to FRC, 3 September 1913.
pressure of work under which the judges of the Supreme Court are at present labouring", to the ventilation and facilities of Supreme Court buildings.28

In 1919, Chapman wrote a paper on "The Law of Status in New Zealand", in which he sketched important developments in such areas as divorce, legitimation and adoption.29 He noted that "the Legislature of the Dominion of New Zealand has probably plunged further into the experimental region in ... the Law of Status than that of any other British Dominion". He claimed that this was in keeping with its general "disposition to break with tradition", as indicated in such fields as labour law, insurance, and the franchise. He pointed, for example, to the Family Protection Act of 1908, which "has proved a slight but really necessary invasion of the plenary power to dispose of property by will".30

28 Ward to FRC, 2 September 1911, Under Secretary Public Works Department to FRC, 12 September 1912, and AG to FRC, 5 August 1913. Chapman J once referred to "that summation of inconvenience the Supreme Court house at Wanganui" (FRC to AG, 12 March 1909). See also his appointment to a commission to inquire whether the audit system of public money was efficient (Prime Minister to FRC, 14 October 1905). There are references also in the National Archives, J1, 1005, July 1904, (accommodation, Arbitration Court, Auckland), 1505, November 1909 (ventilation of the Supreme Court building, Napier), 1533, August 1912 (additions to the Supreme Court, Wellington), and 1686, November 1913 (repairs and acoustics of the Masterton Court-house). Chapman J occasionally gave advice to the government in his judgments: for example, he observed that "where a restrictive enactment represents the policy of the State, there should be some person - presumably the Attorney-General - called in in such a proceeding as this to represent the public interest" ((1905) 24 NZLR 850).

29 S A Wiren, Chapman J's associate, wrote: "One branch of the law which peculiarly interested him was the law of status, that personal law which is always changing, always undeveloped, and not much expounded by the writers of text-books. Very many of the reported decisions on divorce law and the conflict of laws will be found to have been written by Chapman J" ((1936) 12 NZLJ 172).

30 FRC, "The Law of Status in New Zealand".
Chapman maintained and developed his wide range of extra-legal interests, including Maori, historical, geographical, botanical and scientific matters. His associate recalled:

His reading was voracious and extended in all directions. In everything he read, he probed to the smallest detail; he refused to leave any question unsatisfied so long as a source of inquiry remained; and, in whatever he studied, his memory was retentive and exact. ... He read and conversed in French, German, and Italian; he read also, but not so fluently, in Spanish and Portuguese; yet I remember him spending an evening with a manual on English grammar. As a Commission in the later days of the War to inquire into the treatment of persons interned at Somes Island his knowledge of German enabled him to follow evidence given through an interpreter in all manner of German dialects, and not infrequently to correct the interpreter on inadequate translations. ... The work he read when I first accompanied him on circuit ... related to Egyptian hieroglyphics. ... In short, no line of study was without interest to him and his quest for knowledge endured throughout his life.

Chapman's rational, scientific bent and the fact that he was a "convinced Darwinian and evolutionist" probably explained why he was not an active church member. However, he retained links with the Anglican Church. In 1911, Bishop Cleary of Auckland even had a "great notion" of suggesting Chapman's suitability for an episcopate to his Anglican colleagues. Chapman also maintained an interest in Dunedin and in the University of Otago in particular, and in 1912 he presented to

31 See, for example, the "Story of Te Puoho", written by Chapman in the visitor's book at an hotel at Lake Wanaka in 1908. He served on the Geographic Board of New Zealand (Surveyor-General to FRC, 10 December 1912).

32 Wiren, (1936) NZ LJ 172.

33 ODT, 25 June 1936.

34 Bishop Cleary to FRC, 9 February 1911. In his will, Chapman left two small legacies to the Anglican Church ("Estate of Sir Frederick Chapman").
the University the trowel and mallet with which the foundation stone of the University Building was laid.35

Chapman remained keenly interested in world events,36 and produced tracts and articles containing his reflections. During the period September to November 1914, while in London, he wrote letters to the Westminster Gazette condemning the tyrannical and aggressive regime of "William the Pacemaker".37 He also worked on the major part of an extended article entitled "The Terms of Peace Historically Considered". Chapman continued to work on this during the following three years, and concluded his reflections in October 1917, after the Russian Revolution. His article revealed a sound grasp of the historical and contemporary features of the nations of Europe involved in the current war. Chapman believed that the war "had an economic basis and a vicious one". He claimed that "it suited militarism to join hands with commercialism in a new Germany which aimed at using the sword to win triumphs for its dominant class and wealth for the masses". He believed that, for the allies, "this is and must be a war of liberation", and declared that "it is now demonstrated that war cannot be made to pay". In 1918, Chapman wrote an article entitled "Peace Terms: the Crucial Problem", and this was published in the June 1919 National Review.38 He argued that the conditions of peace had to be such as to "leave Germany powerless for purely aggressive action against any of her neighbours", "secure and vindicate the public law of Europe", and "secure the safety

35 Minister of Defence to FRC, 24 July 1912. Chapman commented of his time in Dunedin that "the spending of almost half of one's life and manhood in one place naturally endeared one to that particular locality" (Southland Times, 10 March 1904).

36 Chapman noted in 1934 that, until recently, he had been "a steady reader of the Times Literary Supplement" (FRC to J MacCrimmon, March 1934).


38 RC. The editor published the article "as interesting evidence of the appreciation of European problems by the thinkers in the distant Dominion of the King, whose co-operation is urgently needed in order to keep British policy in the right path".
of the surrounding States great and small and thus to ensure the peace of the world by removing incentive to war".39

Chapman, like his father before him, placed much importance on the well-being of his family (from whom he derived considerable emotional support).40 This was evident in June 1904, in his reply to the government suggestion that, while Dunedin might be his headquarters for the Arbitration Court, he conduct his Supreme Court work in Wellington. He declared that this arrangement was "not suitable and not fair", that the Arbitration Court absorbed nearly all his time at present, and that to change residence while his children were at school or University would be "worse than inconvenient".41 The government bowed to Chapman's wishes, and allowed him to retain Dunedin as his headquarters until a judicial district had been permanently assigned.42 His family thus remained in Dunedin for several years after his elevation to the bench, and, except for son George, then joined him in Wellington.43 Despite the punishing demands placed upon him by his work and

39 He argued that the Drang nach Osten aim of German policy "cannot be frustrated save by means of a stable Polish State". He declared that "neglected and half-forgotten Poland is really the necessary and only barrier between Central Europe and the East, and that the reinstatement of the Polish nation as a Power with definite boundaries, adequate defences, and proper access to the sea are essential and must be treated as an objective in which the world is interested". He believed that due consideration should be given to "the legitimate desires of the populations involved in any proposed alteration of boundaries", but claimed that that "deference to local feeling and aspirations" had to be "subject to the absolutely paramount interest of the safety and peace of Europe" (at 497 and 506). Chapman also wrote articles on "The Quake-line of Europe", "Poland - the peace terms" (The Press, 7 December 1918) and "The passing of the kings" (The Press, 12 April 1919).

40 EP, 2 March 1921.
41 FRC to Minister of Justice, 27 June 1904.
42 Minister of Justice to FRC, 6 July 1904.
43 See, eg, Harry Chapman to FRC, 14 February 1905, addressed to 203 Leith Street, Dunedin. Wise's New Zealand Post Office Directories list Chapman's address in Dunedin until 1908, and from 1909 list it as 27 Golder's Hill, Wellington. George, after a year at the Medical School of the University of Otago, went to England in 1905, and subsequently attended Caius College,
other activities, Chapman maintained a close interest in the activities of his family, was concerned that his children should have as full and as liberal an education as possible, and regularly corresponded with his family when apart.

Chapman remained in good physical health, apart from the occasional ailments and prostate and hernia problems in 1913. He recorded that, during his time on the bench, he "never lost a day through ill-health", although for five weeks illness forced him to work half-days. By contrast, all the judges senior to him and at least one junior to him at times (owing to over-work) broke down in health for periods from one to six months, and Chapman "relieved them all at times, sometimes for

Cambridge and London Hospital, and passed the BA (Hons) and MB examinations (records in RC, and W Sim to FRC, 18 May 1915).

44 In 1913, George referred to the "rate of overwork" which he had "carried on consistently for years" (G Chapman to FRC, 15 May 1913).

45 See, eg, FRC to C Chapman, 9 April 1910. Clara Chapman wrote in 1907 that she and her husband would walk together in Manners Street, where he would turn to go to his room, and that she would return for him about 4.30 and walk together until 6.00 (C Chapman to VC, 23 July 1907). Chapman's daughter Gytha later recalled that "as a father, he was anxious that we should all have the benefit of a liberal education, hence the prolonged visit to Paris of my two sisters, both artists of some merit". Hilda and Vera also spent some time in England and this had an unsettling effect on them. Their brother George wrote that "if they came again, I think you would have to give up the idea of ever having them all together at home again" (G Chapman to FRC, 20 August 1913). Gytha noted that "I myself, aged 13, was sent to a school kept by secularised Dominican nuns, and there absorbed rather more of the Roman Catholic faith than my poor mother (at that time the dupe of Christian Scientists) could find it in her to approve" (letter, Dr S G Chapman, 22 August 1988). Chapman also helped to educate the sons of his wife's brother, Jack Cook (C Chapman to J Cook, 12 July 1936).

46 In 1911, his son George noted that his father "may have gout but probably arthritis" (G Chapman to FRC, 26 January 1911). See also G Chapman to FRC, 10 January 1913.
prolonged periods".\textsuperscript{47} He was of a large frame (he weighed around 186 pounds)\textsuperscript{48} and enjoyed being in outdoor, natural settings.\textsuperscript{49}

In 1913, after ten years on the bench, Chapman applied for, and was readily granted, a year's leave of absence.\textsuperscript{50} This was at least partly due to the prompting of his son, George, who was by now on the staff of the London Hospital. George cautioned his father that he needed a holiday as "if you drive yourself like this when you are tired, you will be absolutely done in a year or so".\textsuperscript{51} On 13 December 1913, Chapman and wife Clara left New Zealand on an overseas holiday.\textsuperscript{52} They spent several days in Australia. In Sydney, Chapman commented that he was "interested in being once more in a city full of life and concentrated business". He stayed with his brothers in Melbourne, which he described as "a magnificent city, immensely improved in the 25 years since I was last there".\textsuperscript{53} After a long sea voyage,\textsuperscript{54} they travelled through Egypt (where Chapman had "a magnificent holiday" and described

\begin{itemize}
  \item \textsuperscript{47} FRC, \textit{Reminiscences}.
  \item \textsuperscript{48} Ibid.
  \item \textsuperscript{49} G Chapman to FRC, 15 May 1913, and C Chapman to VE, 25-31 December 1916. His daughter Gytha, in comparing her father and uncle Martin, noted the following: "Fred was much the more heavily built of the two and Mart decidedly the more active physically" (letter, Dr S G Chapman, 25 October 1988).
  \item \textsuperscript{50} FRC, \textit{Diary} 1913-14.
  \item \textsuperscript{51} G Chapman to FRC, 20 August 1913.
  \item \textsuperscript{52} C Chapman to VC, 2 January 1914.
  \item \textsuperscript{53} FRC, \textit{Diary} 1913-14.
  \item \textsuperscript{54} Clara Chapman reported on 2 January that "the dear old Daddy seems a bit dull, he has not yet found anyone to talk with" (C Chapman to VC, 2 January 1914). However, later that month she wrote that her husband was "very well and cheery" and had "his usual following of admiring females" (C Chapman to VC, 11 and 19 January 1914). On board, amongst other activities, Chapman took delight in speaking to a young Viennese law student, who, "like all others" wondered when and where he had learnt to speak German so accurately (ibid).
\end{itemize}
the "inconceivably splendid monuments"), Italy (where Clara reported that her husband "quite over-tired himself") and France, and reached London by the beginning of May 1914. Chapman and his wife remained in England until late November, and there he conducted family research, enjoyed "looking into old bookshops and antiquity shops", reflected on European developments, and gave the occasional guest lecture. Their holiday was, however, marred by the outbreak of war, by the enlistment of George in the Royal Army Medical Corps, and by a minor operation which Chapman was required to have.

1915 proved to be a traumatic year for Chapman and his family. In February he wrote of Clara's nervous condition (compounded by the presence of son George in

55 FRC to VC, 5 February 1914. Clara Chapman wrote that "this Egyptian trip is the thing for the dear old Daddy, he is tremendously interested and amused by all we see" (C Chapman to VC, 30 January 1914).

56 C Chapman to VC, 16 April 1914. Clara Chapman wrote that she found the shops in Naples attractive, but "can't flatten my nose against them satisfactorily as it would bore your Daddy so much" (C Chapman to VC, 5 March 1914). She also reported that he missed "nice men who could talk intelligently", and became "sick of pictures, more particularly Madonnas" (C Chapman to VC, 16 March and 16 April 1914).

57 FRC to Gytha Chapman, 14 May 1914.

58 C Chapman to VC, 6 May and 9 October 1914. Chapman recorded that "the first thing that struck me on revisiting London after 42 years' absence was the great improvement in the appearance of the people". He noticed that the crowds of children who emerged from Board schools "were relatively speaking completely and cleanly dressed and looked better fed and better kept in every way". He also recorded the change in the style of speech from the ancient Cockney dialect to "ordinary well-pronounced English", which made him "feel ashamed of the slovenly speech of the same class in my own country" (FRC, Reminiscences).

59 In August, he wrote that "this most awful war is now upon us", the result of the German Government "watching its opportunity to create a world-power such that no state in Europe could move without the permission of Germany" ("The War", 5 August 1914).

60 FRC to VC, 15 September and 8 October 1914, and C Chapman to VC, 16 July, 19 August, 31 August, and 9 October 1914. Chapman also met Mary Taylor, J S Mill's grand-daughter (FRC to J MacCrimmon, March 1934).
the Army Medical Corps) and her affliction by Graves' disease. Then, on 16 May 1915, the Chapmans heard that George had been killed by shell-fire two days before, in trenches east of Ypres, while attending to the wounded. Among the many letters of sympathy that Chapman received from judicial colleagues, legal and governmental figures, family and friends, was one from John Denniston, who noted that "having been so much with you the last few years I have naturally come to know so much of what your boy was to you, how much he was in your mind and how much you have done for him".

The misery which George's loss caused to the Chapmans was compounded at the end of the following year when their only surviving son, Harry, hanged himself.

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61 FRC to VC, 21 February 1915. Later that month, news was received that son George had received a medal "for courage and devotion" from the French Government, for carrying help to shipwrecked men in danger (in which incident his right hand was paralysed) (Daily Mail, 27 February 1915).

62 Major G W Ing to FRC, 16 May 1915. Major Ing noted that George Chapman had been "most popular with the officers and men". Colonel Browne of the First Cavalry Division described him as "one of the best officers" that had ever served under him (Colonel E P Browne to FRC, 25 May 1915).

63 J E Denniston to FRC, 19 May 1915. Chapman's brother Ernest remarked that Lord Kitchener had sent a message of sympathy, and "like you had looked forward to a brilliant professional career for George" (E Chapman to FRC, 3 June 1915). The loss of his son may have coloured Chapman's views on the issue of German names of mountains and other natural features in New Zealand. On 28 April 1916, he wrote to the Minister in charge of the Tourist Department, endorsing the view that, with certain exceptions, these names should be changed. He wrote that "this country is surely our own: we strive to maintain it pure and national, and in the coming years in pursuing a common policy with the rest of the Empire we shall endeavour in all respects to make it stainlessly so". He stressed that he objected to the German and Austrian names "because they leave affixed to us a brand of dependence on a barbarous and soulless people which creates a feeling of horror in me and many others whenever [they are] mentioned" (RC).

64 FRC to VC, 19 August 1915.

65 Harry, although physically deformed, was mentally capable, and in December 1906 was appointed a judicial secretary (National Archives, J1, 1444, December 1906). He was his father's associate during the Rua trial (see J Binney, G Chaplin and C Wallace, Mihaia (1979) 130).
when on a voyage to England. Although they drew comfort from each other, Chapman and his wife never regained their normal mental poise after the death of their two sons. Clara Chapman wrote to her daughter in December 1916: "If we only knew why these dreadful sorrows are sent us; what is it that they must teach us, but they are so stunning and bewildering that one seems just to grope blindly for comfort and for knowledge". In August 1917, Chapman wrote to his daughter from a judicial circuit in Wanganui that he felt "pretty miserable here", but that he was kept working until late at night "and that keeps my mind off other subjects". In later years, his correspondence indicated how much these events prayed on him, adding to the loss of his family in 1866.

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66 From the outbreak of the War, Harry had grown increasingly mentally depressed by his inability to enlist. Doctors advised his parents to send him to England with the object of finding work in a munitions factory, as a compensation for his unfitness for active service. However, this did not alleviate his depression, and when crossing the Bay of Biscay he took his own life (letter, Dr S G Chapman, 7 September 1988).

67 C Chapman to VE, 3 January 1917: "I still have the love of my dear, good husband".

68 Ibid.

69 C Chapman to VE, 31 December 1916. In January 1917, she wrote that "when we heard of his death we thought we had sounded the uttermost depth of sorrow but this [the news of the suicide] has plunged us into a still profounder deep". She added that she would resolve to "remember what a happy, bright affectionate fellow [Harry] was" (C Chapman to VE, 12 January 1917). Later that month, she reported that "the Daddy" was "in need of loving attention just now", and that she would be glad to get him back home again "and amongst his beloved books" (C Chapman to VE, 17 and 21 January 1917).

70 FRC to VE, 31 August 1917.

71 Bell to FRC, 17 May 1929, FRC to Secretary of State, War Office, London, 5 December 1934, and FRC to VE, 11 January 1935.
II. Presidency of the Court of Arbitration (1903-1907)

The Industrial Conciliation and Arbitration Act 51 of 1900\(^{72}\) established one Court of Arbitration for the whole of New Zealand. The Court comprised a judge of the Supreme Court, as President, one member appointed on the recommendation of the industrial unions of employers and one on the recommendation of the industrial unions of workers. The members held office for three years. The Court had jurisdiction for the settlement and determination of any industrial dispute referred to it by registered industrial unions and employers, and it exercised this jurisdiction "as in equity and good conscience it [thought] fit".\(^{73}\)

Chapman was appointed President of the Court of Arbitration on 25 September 1903, following the resignation of Theophilus Cooper J.\(^{74}\) In entering upon his duties as President, Chapman had ambivalent views as to the merits and effects of the arbitration system. Writing in 1903, he commented that "it is by no means obvious to fair minded residents in New Zealand on which side the best of the argument lies as to its usefulness". On the one hand, Chapman acknowledged the beneficial effect that the arbitration system had had in "rooting out sweating" (the exploitation of labour) and doing away with strikes. He also applauded what he considered to be the best feature of the conciliation and compulsory arbitration system, which was that "it compels every disputant to open his heart and bring the whole of his grievance into daylight and tends to do away with those lurking half concealed suspicions which cause so many misunderstandings between employers and employees". Further, Chapman indicated that he was sympathetic to at least some of the views of workers. He observed that clauses giving preference of

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72 This was replaced by Act 32 of 1905.
73 Section 76 of Act 51 of 1900.
74 Document, RC. Chapman was initially appointed for the balance of Cooper J’s term, and, on 20 February 1904, he was appointed to a three-year term (Minister of Labour to FRC, 22 February 1904).
employment to unionists had "not proved objectionable and [were] not open to the criticism that [they were] tyrannical", and he recognised that "it is undoubtedly the case that some employers have a standing objection to union officials and ... are reluctant to take them on". On the other hand, Chapman had grave reservations about the cumulative effect which the creation of unions, counteracting employers' combines, rises in wages and increases in costs of production had on the cost of living. In his view, colonial workmen (unlike Englishmen) were accustomed to high, ever-increasing wages, and they attached "far less importance to measures which tend to reduce the cost of living". He pointed out the effects of this attitude on those who built houses and on "every housewife in the towns of New Zealand" who bought bread and meat. Further, he suggested that if the rise in wages and costs resulted "only in satisfying the present generation while rendering it more difficult to get the next into employment, the working classes themselves will be the greatest sufferers".

Chapman J's exercise of jurisdiction was dictated by his belief that the Court of Arbitration was "a Court of Justice which, while invested with extensive powers and furnished with elastic procedure, administers justice upon the same principles as are applicable to all Courts of justice under our Constitution". This approach was evident in the nature of the remedies granted by the Court and in Chapman J's insistence that proper legal procedures should be adopted. In the Auckland Butchers' case, Chapman J declined to hear a dispute referred by the union, as the members of the union had not approved the reference in the manner prescribed by the Act, and stated:

75 FRC, Observations.
76 Awards (1904) 187.
77 Awards (1905) 110. The Auckland Herald reported the heated argument that took place in the hearing of the dispute. R F Way, secretary of the Scoria Pit Employee's Union, argued that "a mere legal quibble" stood in the way of the intentions of the Act. Chapman J replied that "this is not a quibble, and you must not call it such, although I care little for the words you use". Way
We have been urged to overlook this defect on the ground that it is an error in form only, and that this Court does not stand on form. I can only regard it as a failure to do something which the Legislature has clearly prescribed as essential. ... There is in this country happily no difference between Courts of law and Courts of equity, and, however this Court may be classed, not a word can be found in its constitution to suggest that in a manner affecting its jurisdiction it can, under the name of dispensing with mere formalities, set aside the expressed will of Parliament.

A major part of the jurisdiction exercised by the Arbitration Court under Chapman J was the settlement of industrial awards. The increase in disputes referred for settlement during Chapman J's tenure was due to the growth in the number of trade unions (particularly those representing less-skilled workers) taking advantage of the arbitration system, the return of unions for subsequent awards, the gradual extension of the arbitration system to provincial centres, and the by-passing of the Conciliation Boards after the amendment of 1901.78 The difficulties of the Court in settling disputes were at times exacerbated by the widely-divergent stances of the opposing parties and the poor presentation of cases (Chapman J on one occasion lamented the "mass of undigested matter" presented to the Court).79

In the framing of awards, Chapman J's Court expressly tried to achieve settlements that were, as far as possible, acceptable to both parties, workable, and free from anomalies and sources of disagreement.80 In the Otago Federated

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78 Holt, op cit 57-67. In the Southland Timber Yards' and Sawmills' award, Chapman J remarked that the Court had sat at Invercargill and Orepuki, had "visited the mills at several points and saw the operations both in the bush and at the mills", had examined thirty-eight witnesses, and had gone into the case "with great minuteness" (Awards (1905) 420).

79 Awards (1906) 241, 467 and 562.

80 Awards (1904) 94 and 353, (1905) 71, and (1906) 241.
Seamen's Union case, he declared that the Court did "not settle the wages on a profit-sharing basis, as that might in many industries involve the necessity of fixing a differential rate as between employers, and would certainly lead to confusion".\(^{81}\)

Chapman J generally adopted a restrained and cautious attitude in relation to the Court's jurisdiction and the nature of the awards it ordered. In the Wellington Tailors' award, the union and the master tailors joined in asking the Court to protect the tailoring trade against the competition it had to meet from the makers of ready-made garments. Chapman J declared that the tailors had asked for "a protective measure which the Legislature can grant if it thinks fit, but which cannot be dealt with by the Court as arising out of an industrial dispute between employers and employees in this case". He stressed that "we are forced to recognise the limits of our jurisdiction".\(^{82}\) In the Rimu Gold Miners' award, which presented one of the rare occasions when the Court was asked to review a recommendation of the Conciliation Board, Chapman J remarked that the Board had "all the advantages derived from local knowledge", and that "we do not think that we ought to alter a Board decision on a question unless some good reason is shown us for so doing".\(^{83}\) In the Auckland Electric Tramways' award, Chapman J said that the Court had "thought it best to make the award for one year only, as this is the first occasion on which an award has been made in connection with an extensive system of electric tramways". It was considered desirable to do this "in case any of the provisions operate detrimentally to either party, as it will give the Court an opportunity of reconsidering such provisions".\(^{84}\) Again, in the Southland Timber Yards' and Sawmills' award, where "the union sought to establish the complaint which the Court now hears in every part of the colony, of enhanced cost of living", and where the

\(^{81}\) \textit{Awards} (1906) 60.

\(^{82}\) \textit{Awards} (1906) 40.

\(^{83}\) \textit{Awards} (1904) 96.

\(^{84}\) \textit{Awards} (1904) 106.
employers called evidence to show increasing competition, Chapman J said that the Court had decided that the wages had to remain "as at present for a term subject to minor adjustments". In the West Coast Coal and Gold Miners' dispute, Chapman J reported that the Court, after considering the interests of all parties concerned, including "the workmen not directly concerned, but involuntarily affected" and "the public of the colony", was unable to grant an award reducing the hours of men working in the mines. Such an award, Chapman J claimed, would materially increase the cost of production and diminish the output of mines, which in turn "would stimulate competition from abroad, diminish employment in New Zealand, and operate detrimentally to the interests of the colony" and ultimately the workers themselves.

On occasions, however, the Court was innovative and formulated new clauses which were designed to make awards more satisfactory and effective in their operation. A notable example of this was in the Nelson Carpenters' award, where Chapman J announced that a new "more workable" clause would be inserted in relation to "under-rate men" (workers who, because of some handicap, were allowed to be employed at a lower wage). This allowed those seeking a permit to be classed as "under-rate" workers to go directly to the Chairman of a Conciliation Board, bypassing union officials. Further, Chapman J specifically explained that the permit would cover, not only those who were old or infirm, but also partially qualified workers, whom the craft unions were concerned to debar from tradesmen's work. Chapman J claimed that there was insufficient work for "first class tradesmen", and that a special rate was needed for the many partially qualified carpenters in the district.

85 Awards (1905) 420. See also (1906) 9 GLR 270.
86 Awards (1905) 39.
87 Awards (1905) 71.
88 Awards (1904) 368-9.
Chapman J's Court also spent much time considering applications for the enforcement or interpretation of existing awards or agreements. Initially, where a union believed that an employer was not complying with an award, the union itself took the case to the Arbitration Court for enforcement of the award. But, in 1903, an Amendment Act charged factory inspectors with the duty of "seeing that the provisions of any industrial agreement, or award, or order of the Court, are duly observed". Chapman J considered it "preferable that prosecutions should be conducted by the inspectors instead of by the unions, because in the end there was less likelihood of friction arising out of prosecutions conducted by inspectors". In 1904, he noted that, in every place where the court had sat since the system of inspection had come into operation (and particularly in Auckland, Christchurch and Dunedin), the Court had found that the inspectors "were doing their duty efficiently and in a perfectly reasonable way". However, the new system resulted in a considerable increase in prosecutions before the Court, as in many cases the inspectors instigated proceedings even in small cases "really in the nature of a caution, so as to induce people to study their awards and obey them". Chapman J acknowledged that "these small prosecutions were at a certain stage necessary, but the Court hoped that in time they would disappear".

In reviewing existing awards, Chapman J was emphatic that "it was the duty of all parties to awards to use due care in ascertaining the conditions and to comply with them strictly". He repeatedly condemned employers for "dealing with [employees] in an unauthorised way without taking the trouble to read the instrument under which they are working and to which they have made themselves parties". He pointed out that the observance of awards and industrial agreements,

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89 Section 7.
90 Awards (1904) 222; also (1905) 384.
91 Awards (1903) 333.
92 Awards (1904) 141.
notably in preventing the payment of lower wages than those agreed upon, was "not merely in the interests of employees, but in the interests of the employers in the same trade". 93 In *Baillie and Co v Reese* (in the Court of Appeal), Chapman J upheld the right of an employee who was party to an award fixing a minimum wage to sue for the wage so fixed. He stated: 94

The purpose of the Industrial Conciliation and Arbitration Act is to prevent workmen from unduly lowering the wages and other conditions of labour by excessive competition. It has been found necessary to extend its purpose to that of binding all employers who are parties to it, to observe the same conditions. To this end the Court of Arbitration is empowered to fix a minimum wage to be paid by all employers bound by its award. ... [the award] confers a status defined by law upon [the employee] and his employer, and I am satisfied that it amounts to a statutory direction to the employer to pay [the employee] that sum, and imposes a legal obligation to pay it. When a statute imposes such an obligation in favour of another, irrespective of any contract between them, it gives to that other a right of action to recover the sum given.

At the same time, Chapman J acknowledged that it was "not every apparent infringement of the letter of a law that constitutes a breach of it according to its object and intention", and that employers had to "be allowed considerable latitude in dealing with emergencies". 95 In the Wellington Seamen (Australasian) case, he dismissed the charge that the Union Steamship Company had failed to pay overtime, as he held that the steamer was still on her voyage during the waiting hours. He claimed that "were we to decide otherwise we should be doing something which would tend to hamper masters by interfering with their authority and

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93 *Awards* (1904) 142.

94 (1906) 8 GLR 795 at 800.

95 *Awards* (1904) 304.
responsibility with reference to navigation and the safety of their ships. Again, in the Otago Coal Miners' case, Chapman J rejected the charge of dismissing a miner for the purpose of injuring the union, and remarked that it was "of first importance that the responsible manager should retain undisputed authority in matters of management and discipline, ... in the employer's interests, [and] that of the men working in the mine." Chapman J also affirmed the well-established principle that only those made parties to awards, or at least cited to attend the Conciliation Board or the Arbitration Court in connection with the making of awards, were bound by the provisions of awards. Thus, in Auckland Builders' and Contractors' Labourers' Industrial Union v Clark, an employer who, at the time when an award was made, regularly engaged in the industry to which it applied, but was not a party to the award or cited to appear, was held not to be bound by the award.

Many of the applications for enforcement or interpretation involved detailed analysis of the meaning of the Arbitration Act and of binding awards and agreements. Chapman J considered that the Court was bound by the "true grammatical meaning of a clause when that is unambiguous", and that it was "usually the safest course to give an enactment ... its literal meaning". However, he recognised that there were cases in which this would defeat the intention of the enacting body, and that to avoid this the Courts "have at times been forced to give a restricted meaning to words". Indeed, Chapman J held that "a literal construction of an Act of Parliament is the worst possible construction if it can be used to effect something that Parliament manifestly never intended, especially if that something be a palpable injustice". In deciding on the meaning to be given

96 Awards (1904) 326.
97 Awards (1905) 236.
98 (1904) 6 GLR 538 at 540-1.
99 Awards (1903) 363, and (1904) 62.
100 Awards (1905) 404.
101 Awards (1904) 191, and (1903) 364.
to awards and agreements, Chapman J made use of the intention of the "whole instrument", evidence of the custom of trades, previous Court decisions, and discussions he had with judges of the Supreme Court.102

Where the Arbitration Court found that an award or agreement had been breached, it was empowered to impose a penalty on the offending party. Chapman J described the penalty given for breach of awards as being "mainly punitory", though he noted that the Court had "ample power, by declaring to whom it is to be paid, to make the allocation of such penalty operate as compensation".103 He confessed that "we have not in the decisions of this Court been quite so astute to discover reasons for refusing to award penalties as the Courts which have decided some of [the building contracts cases]".104 Heavier penalties were imposed where the breach was seen to have been flagrant: in the Wellington Tailoresses' case, the Court found that the failure to pay agreed wages was committed with full knowledge and so was a "deliberate breach", requiring a fine on each count of £10 to be paid to the union.105 Generally, however, the Court "found it more conducive to harmony to inflict moderate penalties than to inflict severe ones", particularly where the breach did not involve unfairness or hardship or arose out of a new agreement.106 In a subsequent Wellington Tailoresses' case, Chapman J reported that "the question was largely one of interpretation, the breach had been admitted", and the Court ordered a penalty of £2 with costs.107

Chapman J was also called upon to adjudicate claims for compensation under the Workers' Compensation for Accidents Act 1900 (as amended by Acts of 1902 and 1904). The Act provided that liability for compensation would be settled "as an

102 Awards (1904) 194, 265, 300, and 382.
103 (1904) 6 GLR 527.
104 Awards (1904) 148.
105 Awards (1903) 340.
106 Awards (1903) 336 and 393, and (1904) 57.
107 Awards (1904) 328.
industrial dispute by the Arbitration Court.108 The powers of the Court in hearing such disputes were extensive, and the Court was allowed to admit "such evidence as in equity and good conscience it thinks fit, whether strictly legal evidence or not".109

After the Amendment Act of 1904, certain procedural formalities were relaxed, and the claim for compensation could then be made in the most informal way, provided its terms were clear and unequivocal.110 Chapman J took these provisions as a cue to admit testimony that was not strictly legal evidence, and to allow informal procedures, where he considered it safe and equitable to do so.111 In Olsen v Carlson, Chapman J held that the statutory time prescribed for making a claim for compensation was waived by the regular payment of compensation by the employer. He remarked that "it is more than probable that a majority of all accident cases are settled by periodic payments without more, and it would be imputing to the Legislature something that it never intended when passing the Act of 1904, were we to decide that these were barred".112

In deciding on the substantive validity of claims for compensation, Chapman J strove to adopt a balanced approach. He held that an accident "arising out of, and in the course of employment" did not occur where a cleaner burnt his foot while at recreation during his lunch hour, and where a waggoner relinquished control of a vehicle to an inexperienced driver who then caused a fatal accident.113 On the other hand, he held that the Act included situations where an employee did something that he thought necessary in his employer's interests, though not actually at work, and where a dredger drowned in working hours when he was going ashore to obtain water to make tea "in accordance with the usual and recognised

108 Section 8, Workers' Compensation for Accidents Act, 1900.
109 Section 77 (10).
110 Section 12, Workers' Compensation for Accidents Act 1904. See (1906) 9 GLR 142.
111 (1904) 7 GLR 199-201 and (1906) 9 GLR 141-2.
112 (1906) 9 GLR 269 at 269-270.
113 (1904) 7 GLR 99 and (1906) 8 GLR 657.
In deciding whether the claimant fell within the class of workers specified in the Act, he decided that a licensed carrier and a vendor of chattels were not covered by the Act, but that a person employed in general and garden work who was injured when topping a hedge was a "worker in agriculture" within the meaning of the Act. In assessing the employer's defence of "serious and wilful misconduct", which disentitled a worker to compensation, Chapman J insisted that there had to be an explicit order, understood by the employee to be followed in all events, which the latter disobeyed. However, he stated that "the mere possibility that the act of disobedience might prove inconvenient to the employer, without proof that it was urgent or necessary" was not sufficient to justify it, and so would disentitle the claimant. In deciding who were dependants of the worker, entitled to claim, Chapman J extended this class to all who were in fact found to be dependant, irrespective of the worker's national allegiance or domicile and irrespective of the family's allegiance, domicile or residence.

114 (1904) 7 GLR 83 and (1904) 6 GLR 316. In the latter case, Chapman J remarked that the employer was interested in the men doing their work properly, that it was "reasonable and in a sufficiently accurate sense necessary that the men should take a slight meal in the middle of the shift", and that "in this colony workmen invariably drink warm tea with such a meal if they can get it" (at 318). See also (1904) 7 GLR 195 and 199.

115 (1905) 8 GLR 320-1 and 326, and (1906) 9 GLR 287. In the latter case, Chapman J observed that "we have frequently had occasion to observe that in the Colony there is no such line drawn between the duties of a gardener and those of a labourer as in the Old Country, but it must be common experience that at residences where a gardener or handy-man who acts as gardener is regularly or, as in this case, casually employed, this sort of work is part of his duty" (at 287).

116 (1905) 8 GLR 321 and 328, and (1906) 8 GLR 655.

117 (1905) 8 GLR 328.

118 (1905) 8 GLR 196 and 354, (1906) 8 GLR 655, and (1906) 9 GLR 114. In upholding a claim by dependants domiciled out of New Zealand, Chapman J declared (at (1905) 8 GLR 356): "The general population still contains a very high proportion of British-born immigrants, many of whom may not have done all that is necessary to determine their domicile of origin, and many of whom have left dependants in their former homes. In many industries in the colony, more especially in the mines, large numbers of employees are Australians. As to men of this class, it is often very
Difficulties were sometimes found in computing the amounts to be awarded as compensation. This was particularly the case where the Court had to decide on the expression "average weekly earnings" in the Act of 1900. Here Chapman J admitted that "despite the efforts of the Courts to give a reasonable common sense interpretation to the language used, its operation was found to be such as might not inaptly be termed capricious", the result of "applying a simple and comprehensive phrase to extremely multifarious conditions".  

In deciding on issues of workers' compensation, Chapman J meticulously canvassed a wide range of sources, apart from the Act itself. These included previous decisions of the Arbitration Court, overseas (mainly English) decisions, and textual writings. He also held discussions with fellow-judges, and took into account social factors and practical realities.

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difficult to determine their domicile, as men shift about freely from colony to colony, so that several sons of the same parents often have several birthplaces, their parents having lived and moved about under such conditions that it is extremely difficult to determine the domicile of origin of their sons after a lapse of many years. Then again, men from New Zealand marry in Australia, sometimes marrying into a family whose domicile is equally doubtful as between New Zealand and Australia, and in circumstances which render it difficult to say whether the man intended to settle in Australia or not. This is complicated by the circumstance that the Australian Commonwealth itself consists of six separate states, which until recent years were unconnected with each other, and are still separate for the purposes now under consideration. Again, we have the case of foreigners who have become entirely incorporated with the colonial community, who may or may not be naturalised in New Zealand, whose children may belong partly to their parents' nationality and partly to our own".

119 (1905) 8 GLR 60.

120 (1903) 6 GLR 234, (1904) 7 GLR 62, 85, 102, 111, 197, 202-4, 328-9, 368 and 425, (1905) 7 GLR 595, (1905) 8 GLR 96, 161, 320-1, 328 and 354, (1906) 8 GLR 607-8, and (1906) 9 GLR 287. On the question of "average weekly earnings", for example, Chapman J noted the conflict between the earlier decisions and said that this necessitated the Court choosing the course which appeared the most reasonable, and went on to use a House of Lords judgment and the "admirable work" of Bevan, in arriving at his decision ((1903) 6 GLR 234).
Chapman J's "lawyer-like" approach and his conscious efforts to balance out the interests of workers, employers and the general public won him mixed reviews. The *Wairarapa Daily Times* commented after Chapman J's first visit to Masterton that "the impression made by him upon those attending the Court was distinctly favourable", even though he was "not an easy-going official who makes things nice all round".121 Following his retirement from the Arbitration Court in early January 1907,122 the Christchurch *Press* paid tribute to his "inflexible care and impartiality, fine legal training and strong common sense", and commented on how "easy it is to see how strongly the determination to do justice to all ruled his decisions".123 In the longer term, Chapman J's reputation as an expert in industrial matters ensured that his views were quoted in subsequent cases. In *Salvation Army v Canterbury Hotel Union*, Richardson J, in interpreting a section of the Industrial Relations Act 1973, thought it "important to bear in mind a feature to which Chapman J, a former President of the Court of Arbitration, gave some emphasis".124

However, Chapman J's approach did not endear him to many unionists and those sympathetic to the workers' cause. His decision on the Nelson Carpenters' award in 1904 produced such union outrage that the government introduced a legislative amendment requiring union consultation in "under-rate" permit applications.125 In 1906, at the Annual Conference of the Trades' and Labour Council, which described the Court's clause as "utterly unfair, unreasonable, and one-sided", and as "the culminating point in a long series of unsatisfactory decisions and awards of the present court". It went on to claim that "Mr Justice Chapman's whole attitude has been in the direction of

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121 The newspaper went on to comment that Chapman J had threatened severe penalties for future breaches of awards, and said that he "will make the law respected wherever he goes; and this is as it should be" (*Wairarapa Daily Times*, 25 November 1903).

122 *EP*, 10 January 1907.

123 *The Press*, 12 January 1907, and *Awards* (1906) 503. See also *ODT*, 25 June 1936.


125 Act 56 of 1905, section 13. See, for example, the statement of the Otago Trades' and Labour Council, which described the Court's clause as "utterly unfair, unreasonable, and one-sided", and as "the culminating point in a long series of unsatisfactory decisions and awards of the present court". It went on to claim that "Mr Justice Chapman's whole attitude has been in the direction of
Councils, delegates questioned Chapman J's fitness for office, denounced his awards as unsatisfactory, and even suggested that if he was allowed to remain as President "the end of arbitration was not far off". Later in the year, in the Legislative Council, John Rigg, MLC, condemned the recent administration of the Court as being characterised by one-sided awards and "legal subtleties and legal absurdities". He regretted that a "wider conception of the functions of the Court has not been exhibited in recent years", as "the intention of the Act was really to provide a fair standard of competition and trade, and ... secure some proper distribution of the products of industry as between the employer and the worker". In Chapman J's defence, it is evident that he had to work in very difficult circumstances. The judges of the Arbitration Court of the 1890s were seen to have treated workers generously, but this was chiefly because they had granted first awards and increased workers' wages from previously unacceptable levels. Analysis of Chapman J's treatment of first awards indicates that it was no less generous. However, Chapman J and other Presidents of the early 1900s increasingly faced second and third awards, with unions (at times) resting their claims for even better wages and conditions on less than reliable data, and arguing in the face of more effective opposition from employers. In these circumstances, it would have taken "an angel from heaven to fill the [Presidency] in such a manner as to please everybody". Nevertheless, it is clear that union perception of Chapman J as a judge unsympathetic to workers was a direct cause of the limited series of strikes in 1906-7, and helped to prepare

converting the Arbitration Court into a purely Law Court; and, more than that, the decisions have been in almost every case in favour of a particular side" (ODT, 18 March 1905). However, see the defence of Chapman J as "an honourable and fair-minded judge", in the newspaper editorial (ODT, 20 March 1905).

126 Hansard (1906) 567-8.
127 Hansard (1906) 568.
129 J B Callan to FRC, 27 July 1907.
the way for the important reform of the Conciliation and Arbitration system in 1908.130

Whatever doubts there may have been about Chapman J's attitudes and sympathies, his performance as an administrator, in efficiently and tirelessly expediting the business of the Court, was generally acknowledged. He inherited a Court encumbered with a huge backlog of work, and for most of his Presidency the increasing volume of business (and the competing demands of his Supreme Court work) forced him to work with arrears of accumulated cases. In May 1904, at the close of the Auckland sittings, he announced that "the Court had dealt with all cases filed before December 31, and would adopt a similar line of action in connection with matters to be dealt with at the other three principal centres, ... [thus] endeavouring to deal equally with all the four large districts of the colony".131 During 1904, the Court visited twenty-seven centres throughout New Zealand, including Wellington and Dunedin (three times each) and Auckland, Napier, Palmerston North, Wanganui, Nelson, and Christchurch (twice each).132 In May 1905, he remarked that there was "always plenty of work for us to do in preparing awards and other matters and we are always busy", and that he was "working all day

130 Holt, op cit 65-67.
131 New Zealand Herald, 31 May 1904.
and often till late at night".\textsuperscript{133} John Rigg himself paid tribute to the industry of Chapman J's Court, which had "at all times done as much as it was possible for any one to do to overtake the arrears of work".\textsuperscript{134} By the time he retired, Chapman J had overtaken the arrears and "disposed of all cases that were ripe for hearing up to the time of the sittings in each district".\textsuperscript{135} Furthermore, Chapman J worked effectively behind the scenes, suggesting to the government ways of improving the arbitration system and the administrative running of the Court.\textsuperscript{136} These suggestions found expression in such legislation as the Amendment Acts 56 of 1905 and 40 of 1906 (the latter providing for a full-time President of the Court and the appointment of a Registrar).\textsuperscript{137} In the light of this contribution, it was rightly said that the condition of the Arbitration Court on Chapman J's retirement was "a monument to his industry and energy".\textsuperscript{138}

III. \textit{Civil jurisdiction}

Chapman J was a highly active member of the Supreme Court and Court of Appeal. This was seen in his conduct during the hearing of counsels' arguments before the bench: here he often interjected with pertinent questions, suggestions or observations, and relevant statutes, cases and legal texts.\textsuperscript{139} Within two months of taking office, he delivered the judgment of the Court of Appeal in the case \textit{The King}

\textsuperscript{133} \textit{Auckland Herald}, 12 May 1905.
\textsuperscript{134} \textit{Hansard} (1906) 570.
\textsuperscript{135} \textit{EP}, 13 December 1906.
\textsuperscript{136} R J Seddon to FRC, 23 July 1905.
\textsuperscript{137} \textit{Hansard} (1905) 732, and FRC to R J Seddon, October 1905.
\textsuperscript{138} \textit{The Press}, 14 January 1907. Later, John Reed, ACJ, said that Chapman J, as President of the Arbitration Court, "performed the duties of that office with the thoroughness that ever distinguished him" ((1936) 12 \textit{NZLR} 173).
\textsuperscript{139} (1903) 23 NZLR 300, (1904) 23 NZLR 1045, (1907) 26 NZLR 742, (1910) 12 GLR 530, (1911) 30 NZLR 1045, [1918] NZLR 775 and [1919] GLR 5.
v Shand, concerning the right of action against the Crown for damage caused by a public work under the Public Works Act 1894. Over the ensuing years, he repeatedly gave the judgment of the Court of Appeal (sometimes overruling the Chief Justice or giving the majority judgment against him) or of the full sitting of the Supreme Court in Wellington. These judgments covered a range of issues, notably interests in land, construction of wills, procedural matters and questions of criminal law. When other members of the Court gave the main judgment/s, Chapman would usually outline his own judgment; and on the rare occasions when he simply concurred, it was clear that he had carefully reviewed the facts and the authorities but considered that the ground had been satisfactorily covered in the other judgments.

140 (1903) 23 NZLR 297 at 301.
141 See Ewing v Scandinavian Water-Race Company (1904) 24 NZLR 271, Westport Coal Company Ltd v Champion (1906) 8 GLR 581, Madill v Madill (1907) 26 NZLR 737, R v Bagnall (1907) 26 NZLR 756, Commissioner of Taxes v Smith (1907) 26 NZLR 961, Hicks v Hirst (1907) 26 NZLR 1376, R v Beeson (1908) 27 NZLR 481, Reynolds v Attorney-General (1909) 29 NZLR 24, Te Peehi v Smith (1909) 29 NZLR 171, Fraser v Campion (1910) 29 NZLR 1009, Pike v Mayor of Wellington (1910) 30 NZLR 179, Budge v Bayly and Attorney-General (1911) 31 NZLR 97, Wellington Hospital and Charitable Aid Board v Mayor of Wellington (1912) 14 GLR 758, Merchants Association of New Zealand v The King (1912) 32 NZLR 537, Round Hill Mining Company v Ourawera Gold-Mining Company (1913) 32 NZLR 810, R v Ford (1913) 32 NZLR 1219, Johnston v Ocean Accident and Guarantee Corporation (1915) 34 NZLR 356, In re Grant (1915) 34 NZLR 641, Commissioner of Taxes v Gorman (1915) 34 NZLR 1029, Pennan v Bennie (1915) 17 GLR 553, Palmerston North-Kairanga Road Board v Palmerston North Borough (1916) NZLR 1127, Napier Borough v Australian Mutual Provident Society (1917) NZLR 292, Tarbutt v Nicholson and Long (1918) NZLR 447, Hardy v Te Aka Pairama (1918) NZLR 492, In re Edmonston (1918) NZLR 608, Irwin v Muirhead (1918) NZLR 673, Merson v Raetihi Town Board (1918) NZLR 1023, Bush v Bates (1918) GLR 621, McIlroy v Nyberg (1919) NZLR 403, R v Jackson (1919) NZLR 607, Balfour v Ritchie (1920) NZLR 405, Dansey v McDonald (1920) NZLR 825, Smith v Collins (1921) NZLR 150, and Bodell v William Cable and Company (1921) NZLR 211.
142 (1904) 23 NZLR 1077.
143 (1903) 23 NZLR 294, and (1904) 23 NZLR 775.
Chapman was a painstaking and thorough judge. He devoted a great deal of time and anxious attention to the consideration of the cases before him, and regularly consulted his fellow-judges particularly on questions of practice and procedure.\(^{144}\) In *Marshall v Matthews*, which concerned an appeal against a conviction by a magistrate under the Licensing Act, he noted that, "as there is no appeal from this decision, I have consulted with the four judges now in New Zealand".\(^{145}\) In *Cooper v Karori Borough Council*, Chapman J, sitting as President of a Compensation Court, was asked to pronounce on a question of law. He declared that, as it was "important that there should be unanimity in such cases", he had asked the Chief Justice and Cooper J to sit with him and deliver their collective opinion.\(^{146}\) Whenever he considered the matter sufficiently important (for example, when "applications of this sort are becoming increasingly common"),\(^{147}\) he would write out the reasons for his decision. These would be explained at length where, for example, an applicant had argued his case in person and was "naturally not conversant with matters of this kind".\(^{148}\) An indication of Chapman J's scrupulous determination to effect justice was in *Williams and Kettle Ltd v Morice Bros*, where he decided to grant a new trial in an action because he considered that his own address to the jury, though in terms correct, had probably misled the jury on the admissibility of certain evidence.\(^{149}\)

\(^{144}\) (1907) NZLR 221, (1909) 28 NZLR 760, (1910) 29 NZLR 576 & 1038, (1911) 30 NZLR 1056, (1915) 17 GLR 556, [1918] NZLR 883, and [1920] NZLR 412 & 710. Stout CJ noted that Chapman J's "fellows on the Bench knew what the members of the Bar perhaps did not, the trouble he took to arrive at a just conclusion". But Skerrett KC knew of the "meticulous care" with which Chapman J conducted the administration of justice" (*EP*, 2 March 1921).

\(^{145}\) (1906) 26 NZLR 484 at 489.

\(^{146}\) (1910) 30 NZLR 273 at 274.

\(^{147}\) (1909) 28 NZLR 726.

\(^{148}\) (1906) 8 GLR 735.

\(^{149}\) (1909) 11 GLR 540 at 542-3.
Chapman J acquired a reputation in legal circles for "scrupulous fairness and impartiality". His associate recalled that, in civil cases, his "demeanour on the bench was that of arbiter, ... both sides were heard without preconceived ideas of fact or to all appearances of law, and only when the argument was concluded was there any indication of what the Judge was thinking". In his approach to the views of his fellow-judges and the arguments of the bar, Chapman J was firm and measured but also gracious and sensitive to others. When he disagreed with other views, he usually couched this with qualifications of respect, and, when he agreed, he was at times fulsome in his praise. For example, he commented in Jones v Flower that "the matter has been exhaustively dealt with by His Honour the Chief Justice, and His Honour Mr Justice Cooper, and I think that Mr Treadwell has really said everything that can be said in support of the application". He considered the arguments of counsel, even where he decided cases on other grounds, acknowledged where his views had been changed by the "unanswerable" arguments of counsel (such as Adams), and in turn assisted the course of justice with helpful suggestions on the course of action to be adopted.

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150 *EP*, 2 March 1921,
151 Wiren, op cit 172.
152 For example, Chapman J commented that "the question was not raised and placed before [Cooper J] in the light in which it has been presented to this Court" ((1904) 24 NZLR 389), "the value of corroboration in this case has been somewhat under-rated by [Denniston J]" ((1912) 14 GLR 773), and "a great deal of argument becomes - I wish to use the term with all respect - irrelevant" ((1920) NZLR 617). Stout CJ noted that "when there were disagreements they found that Mr Justice Chapman was always considerate and anxious to see that his view was correct and willing to test it" (*EP*, 2 March 1921).
153 (1904) 6 GLR 516 at 520. See also (1908) 27 NZLR 643, and (1909) 28 NZLR 608 (noted that Myers "put every view of the matter properly before the Court"), (1910) 30 NZLR 326, and [1917] NZLR 423.
154 (1907) 9 GLR 644, (1909) 29 NZLR 299, (1912) 14 GLR 781, and (1911) 31 NZLR 458
Chapman J's surveys of legal authority were wide and deep: he is remembered as "one of the most scholarly of the Supreme Court Judges". Like his fellow-judges, he generally based his judgments on the "well-marked principles laid down in cases decided in England and New Zealand". His knowledge of English law stemmed from his days as a student in London, and he had occasion to refer to the work of one of his instructors, Henry Greening. Chapman J showed considerable insight into the development of English law from its early origins through to the present. In *Bowron Bros v Bishop*, which concerned the procedure for the commencement of proceedings under the Justice of the Peace Act 1908, Chapman J recounted the process of development of the law of justices of the peace, "amidst an unlettered population", in order to help "account for the phraseology which has been handed down to us and perpetuated in our statute". Turning to more recent developments, in *Quill v Hall* he noted that the "sale of a business as a going concern" had received "much consideration in England in recent

155 Cooke, op cit 48. See his grasp of grammatical niceties in [1916] NZLR 125. It was said of Chapman that he combined exceptional legal learning and legal acumen with "a general erudition which is not so common an attribute of Judges, especially on this side of the world" (EP, 3 March 1921); that "his was probably the most comprehensive scholarship in the Dominion" (per Attorney-General H G R Mason, (1936) 12 NZUL 174); that he adorned many walks of learning and that "none stood higher in the Australasian group" as a jurist (EP, 24 June 1936); and that he was "one of the most learned members of the profession", with "an exceptionally well-stored legal mind" (*ODT*, 25 June 1936).

156 [1920] NZLR 765. The *Evening Post* declared: "Above all he was a great lawyer, with an extraordinary memory for case law always arranged in his mind in its true perspective, and he added to that a profound knowledge of human nature and kindly understanding of the frailties and vagaries of the parties and their witnesses, and of juries" (25 June 1936). Sir John Reed, ACJ recalled that Chapman "was a master in the principles of the Common Law whilst his memory for case law was remarkable, and his knowledge of practice profound" ((1936) 12 NZUL 173).

157 (1908) 11 GLR 30 (reference to Greening's Chitty on Pleading (7 ed)).

158 (1910) 29 NZLR 759 at 776.
years, where there has been an increasing tendency to convert family businesses into joint-stock companies".159

Chapman J's knowledge of English law was derived from the established law reports,160 supplemented by such publications as the Law Times reports.161 Chapman J also obtained considerable assistance from the texts of English legal writers: these included the "closely packed pages of Sebastian on the Law of Trade Marks", "Leake on Contracts and other text-books of repute", Theodore Sedgwick's "great work on damages", Landlord and Tenant by the "learned text-writer Redman", Tristram and Coote's Probate Practice which "should in future be followed", and Underhill's Laws of Trusts and Trustees where the "subject was very fully considered and the cases collected".162

Chapman J, as a member of the New Zealand Supreme Court, was bound by the decisions of the Privy Council, and, according to the accepted practice of the day, these included judgments on appeals from jurisdictions outside New Zealand. In R v Rogan, Chapman J stated firmly that an opinion of Lord Herschell in an appeal from New South Wales was "professedly laid down as the rule applicable to such cases, and it is not open to us to limit its effect upon any conjecture as to its intended scope".163 Along with the rest of the New Zealand bench, Chapman J also considered himself bound by decisions of the House of Lords. In Bodell v William Cable & Co, which concerned the right to claim under the Workers' Compensation Act 1908, Chapman J remarked that the case was "concluded by authority [of a House of Lords decision on the English Workers' Compensation Act] unless some difference appears in our legislation as compared with that in force in

159 (1908) 27 NZLR 545 at 563.
160 See (1903) 23 NZLR 304.
161 See (1908) 27 NZLR 1034.
England, such as to give rise to a real distinction". He decided that it was "not necessary to discuss the reasons of their Lordships: it is enough to say that this judgment is a final and unanswerable authority for the proposition that the right created by the Act is an unqualified substantive right." 164

Chapman J attached great weight to the decisions of the Court of Appeal. He stated that "if there are instances where the Supreme Court of this Dominion has questioned the decision of the Court of Appeal they must be extremely rare." 165

Thus, in Richardson v Harley, he held that the matter fell "within the broad principles" of a Court of Appeal judgment (on the privilege of advocates in defamation) given twenty-eight years before, and which had "been recognized as part of our law ever since." 166 In Reynolds v Nelson Harbour Board, which concerned the interpretation of the Harbours Act 1878, he held that the plaintiff could not succeed unless he could "free himself from the effect of the decision and reasoning" in a Court of Appeal judgment on "a section somewhat differently worded" but which did not produce a different result. 167

Chapman J also relied upon judgments of the English courts of Chancery, the Exchequer and the Queen's Bench. He often quoted important statements by eminent or "experienced" English judges which clarified the law or which affirmed what he considered to be fundamental principles of the Common law. In The King v Price, he reproduced at length the judgment of Blackburn CJ (in the Queen's Bench) on the presumption of legal knowledge, because of the "importance of the subject and the general misapprehension which prevails". 168 In The King v Shand, he quoted Jessel MR (in Chancery) to the effect that the onus was on the Crown to

164 [1921] NZLR 211 at 218. See also (1910) 29 NZLR 1196.
165 (1911) 31 NZLR 467.
166 (1911) 31 NZLR 464 at 467.
167 (1904) 23 NZLR 965 at 1000. See also (1910) 29 NZLR 458 and [1923] GLR 441.
168 (1904) 24 NZLR 291 at 306. See also (1906) 8 GLR 818.
show clearly that a common-law right of action had been taken away by statute. Chapman J also followed judgments of English courts where these decisions were of long standing and/or they had been given on statutes analogous to New Zealand Acts. In *Madill v Madill*, where a testator had made an absolute gift by will to his wife, with a portion to be deducted in the case of remarriage of the widow, Chapman J (delivering the judgment of the Court of Appeal) held that the widow was entitled to have the whole of the legacy paid to her by the trustees of the will, with an obligation to refund in the case of remarriage. This decision, which is still a standing authority in New Zealand, was decided on the basis of two Chancery cases decided in 1790 and 1811. Chapman J noted that "these authorities are recognised as embodying the law on the subject in the latest text-books", and "that there are no more recent authorities seems to prove that in this special class of case there has been long acquiescence in this expression of the law". In *Walden v Collins*, Chapman J, sitting in the Wellington Supreme Court, said of an Exchequer decision that it had "frequently been adopted in Courts of this Dominion since the statute law was placed on the same footing as that of England", and that it "would require a solemn decision of a Court of higher authority than the Supreme Court to justify us in holding it was no longer applicable in New Zealand".

However, there were occasions on which Chapman J departed from English precedents. The clearest instance of this was where New Zealand statutes had introduced changes in the local law, and here Chapman J was bound to observe the local law even if this conflicted with rules laid down by the Privy Council. In *Wellington Hospital and Charitable Aid Board v The Mayor of Wellington*, where Chapman J had to interpret the word "hospital" in terms of the Rating Act 1908, he

169 (1903) 23 NZLR 297 at 304. See also (1907) 26 NZLR 740, (1908) 11 GLR 173, and (1912) 32 NZLR 427.

170 (1907) 26 NZLR 737 at 740. This was followed in *In re Watkins* [1947] NZLR 79 and is referred to in A Alston (ed) *Garrow and Alston Law of Wills and Administration* (5 ed, 1984) 460 and 462.

171 (1910) 30 NZLR 282 at 285-6. See also (1909) 28 NZLR 342.
noted that "the Court ought to be content to accept the meaning attributed to the word by the Privy Council, unless we can see that the statute under consideration affords grounds for attributing to it a more restricted meaning".172 And, in cases involving such statutes as the Post Office Act 1900, the Divorce and Matrimonial Causes Act 1908, and the Public Works Act 1908, Chapman J expressly turned aside from English law and "construed [the New Zealand statutes] according to [their] peculiar terms and requirements".173 Chapman J was also obliged to depart from English decisions where these had been overruled by the New Zealand Court of Appeal. In *Re Jones*, which concerned a question of jurisdiction, he noted that "rightly or wrongly we have arrived at a different conclusion" from that of an English court, and that "we could not in any case depart from our own decision".174 In relation to precedents which emanated, for example, from the English Court of Chancery and the King's Bench Division, Chapman J was prepared at times to depart from judgments with which he disagreed on the basis that they were "not in accordance with the authorities" or were not "express decisions" "actually binding upon this Court".175

Occasionally, Chapman J relied upon precedents from outside jurisdictions apart from England. Particularly in the latter part of his judgeship, he drew upon Australian precedents, notably those of the Supreme Court of Victoria and the High

172 (1912) 14 GLR 758 at 760.
173 (1907) 26 NZLR 746, and (1912) 31 NZLR 505-7 and 711. In a case concerning bankruptcy, Chapman J noted that the cases collected in Halsbury were "all decided in circumstances which do not exist in this country" and at a different time ([1917] GLR 584); and in a case concerning succession, Chapman J said that the English decisions did not afford much assistance, in the light of the "great change in the law of primogeniture, now in force in New Zealand for many years" ([1923] GLR 59).
174 (1908) 11 GLR 30 at 36.
175 (1910) 29 NZLR 775, (1911) 30 NZLR 727, and (1912) 32 NZLR 311. In one case, Chapman J preferred the view expressed by a Scottish court to that adopted by the King's Bench Division ([1916] NZLR 1080-1).
In R v Jackson, Chapman J delivered the judgment of the Court of Appeal on the question whether the invalid portion of a section of the Crimes Act 1908 might be separated from the valid part, and stated:

English authorities on the subject of severing the void from the valid portion of an Act of Parliament are not to be found, as the British Parliament has no prescribed limits set to its authority, and the Courts have no power to find a limit. Both in the United States and in the Commonwealth of Australia it has been found necessary to consider questions of the kind, as in each of those cases the authority of the Federal legislative body is a limited authority, and the authority of the State Legislature is necessarily limited. ... we prefer to take, as expressing the law on the subject, the test put by Griffith, C.J., in R v Commonwealth Court of Conciliation and Arbitration [11 C.L.R.] - namely, "whether the statute with the invalid portions omitted would be substantially a different law as to the subject-matter dealt with by what remains from what it would be with the omitted portions forming part of it."

As this judgment indicates, Chapman J also referred to American legal authorities: he referred to American cases, texts and journal articles on issues ranging from constitutional law to the law of rivers and the position of the mortgagor as surety.

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178 (1906) 8 GLR 819, (1905) 25 NZLR 113, (1910) 29 NZLR 713, and [1917] NZLR 35 and 546-7. Chapman J showed a knowledge of Roman law ((1905) 25 NZLR 115 and [1917] NZLR 546-7) and of the French legal process regarding testamentary instruments ((1915) 17 GLR 717). Chapman J also had occasion to follow the decision of the Irish King's Bench Division. In deciding on the interpretation of the Property Law Act 1908, which was based on an Imperial statute of 1870, he noted that "the great care with which the learned [Irish] Judges dealt with the authorities and expressed their own reasoning compels me to regard this case as one of very high authority" ((1913) 32 NZLR 1218).
Besides English case-law, the main source of judicial precedent relied upon by Chapman J and others on his bench was New Zealand case-law, particularly in cases involving the interpretation of local statutes and questions of practice and procedure. Chapman J revealed a thorough grasp of New Zealand case-law, and at times developed ideas from cases not quoted by counsel but which he knew from his days as a barrister.\footnote{179} In due course, he was also assisted by texts such as \textit{The Law of Torts} by Salmond.\footnote{180} Chapman J was bound by decisions of the New Zealand Court of Appeal. In \textit{Williams v Abbott}, which concerned the enforcement of a contract, he regretted that the case had to be decided "upon what seems to be a narrow ground, but I cannot ignore the line of decisions, ending with that of the Court of Appeal ..., which seems to me to cover this case".\footnote{181} Chapman J also considered himself bound by long-standing judgments of lower New Zealand courts: in \textit{Leslie v Stevens}, he noted that, if he had had any doubt about the judgment of Williams J, "I ought still to follow the decision, which has not been questioned, and has presumably been relied upon by conveyancers for twenty years".\footnote{182} Chapman J attached great weight to the judgments of earlier judges whom he admired.\footnote{183} On one occasion he declared that he would follow the example of Prendergast CJ "who really gave effect to the spirit and intention of the rules",\footnote{184} and on another he referred to the "admirable judgment" of Richmond J and said that his reasoning "is as applicable to-day as it was then".\footnote{185} Chapman J appeared to have a particularly high regard for the judgments of Williams J, and frequently relied upon his

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179 (1906) 8 GLR 800.
180 (1908) 27 NZLR 1131 and (1912) 14 GLR 810.
181 (1907) 26 NZLR 1389 at 1395. See also (1907) 27 NZLR 125.
182 (1908) 27 NZLR 973 at 974.
184 (1910) 12 GLR 570.
185 [1918] NZLR 732.}}
"carefully considered" decisions or quoted his "accurate" statements of the law. Chapman J also occasionally referred to judgments of his father.

However, Chapman J did not slavishly follow previous New Zealand decisions. In cases which involved the exercise of judicial discretion (for example, where statutes or rules allowed judges to decide what remedies to grant), Chapman J repeatedly held that the decisions of other judges in different circumstances could be valuable illustrations of the exercise of discretion, but were not binding authorities. Further, Chapman J at times held that the grounds of previous decisions were erroneous, or dissented from the findings themselves. In *Hughes v Miller*, which concerned the service of notice of appeal in the magistrate's court, Chapman J dissented from the strict line taken by Cooper J in an earlier case. Chapman J remarked that "with all respect I cannot subscribe to [Cooper's] dictum, which was not necessary for the decision of [the] case", that the provisions of a relevant statute had apparently not been brought to the attention of Cooper J, that it was "unsafe in interpreting an Act relating to the practice of a popular Court to rely on such authorities as the *dicta* of Judges in cases in a superior Court such as [the English Chancery Division]*, and that "the circumstances of a country like this" made it more imperative for a large and liberal view to be taken of such practice than in "older lands".

Besides case-law, New Zealand statute law formed a major source of law, and here Chapman J had to grapple with issues of great difficulty and complexity. 

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187 See (1905) 25 NZLR 78 at 111, (1908) 27 NZLR 1131 and [1922] NZLR 772. Chapman J also had occasion to refer to his own judgments ((1909) 29 NZLR 137 and (1912) 32 NZLR 309); and in one case he commented on his "sufficiently long" judicial experience ((1912) 31 NZLR 951).


189 (1909) 29 NZLR 350, and (1910) 29 NZLR 464.

190 [1924] GLR 256 at 256-7.
times, poor drafting of statutes rendered interpretation a near-impossible task. In interpreting a section of the Hospitals and Charitable Institutions Act 1885, he complained that this section "in itself contains contradictions, placed in an Act in which contradictions abound", and that "the task is a difficult and necessarily unsatisfactory one from any point of view, as no construction can be found which is not apparently inconsistent with something in the statute". In reviewing Maori land legislation up to 1908, he said that "many of these statutory provisions are marred by vague and short-sighted drafting to such an extent as to be almost unintelligible in parts", with the result that he was "compelled to deliver a judgment in the correctness of which I cannot say I have any real confidence".

Chapman J generally adopted a cautious approach to legislative interpretation. He declared that "where language is plain, I find it simplest and surest to adopt a literal interpretation". In relation to penal statutes, Chapman J insisted that there was "a duty always cast on the Court of seeing a man is not made an offender by inference or by means of considerations as to the policy of the statute, but only by finding plain words covering his case". But where the language of statutes was clear, he insisted that "the Court must not usurp the function of the Legislature", and that cases of hardship or grave inconvenience had to be dealt with by

191 (1909) 28 NZLR 501. He noted of the Native Land Claims Amendment Act 1901 that it "had not been drawn by a skilled hand" ((1909) 28 NZLR 779).

192 (1910) 29 NZLR 717. Chapman J also noted on one occasion that "I am afraid that it must be admitted that the draftsman often sees somewhat further than the Legislature" ((1911) 30 NZLR 575).


194 [1923] NZLR 713. Likewise, of a taxing Act, Chapman J remarked that "we have to see that the subject is not taxed unless the Legislature has with sufficient plainness made him liable, and at the same time we are to scrutinize a claim for exemption in very much the same way" ([1918] NZLR 473). But Chapman J did remark, in relation to the Gaming Act 1908, that the courts should "not allow an Act intended to remedy a known evil to fail of its object through an over-refined construction if it is sufficiently expressed to carry out that object" ((1911) 13 GLR 201).
Parliament. A striking example of this was where Chapman J found himself "reluctantly compelled" by the Divorce and Matrimonial Causes Act 1908 to grant a decree for restitution where the grounds of misconduct by the plaintiff were not sufficient to warrant a separation. He noted that, though this might be called "barbarous", it was the law of New Zealand and had to be applied.

However, most statutory provisions which were the subject of litigation did present doubt or ambiguity. Here, Chapman J's starting-point was the "natural" and "ordinary" meaning of words: he declared that "the Act should be read as ordinary people would read it". In interpreting the Maori Land Settlement Act 1905, he chose the "simple" reading of the enactment, and noted that the fact that "anomalies result from these conclusions merely supplies an argument, but not a final argument, in favour of some other conclusion". In holding that a section of the Crimes Act had to be read "as any ordinary educated man would read it", he declared that "a Court must always be on its guard against the temptation to overlook the exact language used, and try to shape an enactment into the expression of a logical system".


196 He also said that, by this Act, "the matrimonial law of the eighteenth century and of earlier centuries, abrogated in England despite its Established Church and other mediaeval institutions, is reintroduced in modern New Zealand" ((1912) 31 NZLR 508). Of his interpretation of the Licensing Act 1908, he said that "it may be that the result is somewhat capricious, but if we held that we were entitled to undertake to correct the caprice of the Legislature we should be asserting legislative authority" ((1915) 34 NZLR 471).

197 (1907) 26 NZLR 1308. See also (1905) 24 NZLR 850, (1906) 25 NZLR 831, (1907) 26 NZLR 551, and (1909) 28 NZLR 501.

198 (1907) 27 NZLR 35.

199 (1912) 32 NZLR 437.
Chapman J's central concern in the interpretation of doubtful legislation was to arrive at and implement the intention of the legislature in the Act in question. He declared, in Mayor of Wanganui v Whanganui College Board of Trustees, that "all general rules of construction must give way when the real intention is to the contrary", and that "the worst use that can be made of a general rule of construction is to ride it too hard, and so allow it to defeat the actual intention of the Legislature". This mode of interpretation was enshrined in section 6 (i) of the Acts Interpretation Act 1908. Chapman J summed up his approach to this section as follows:

Section 6 ... may not, as was observed by the Privy Council in Smith v. McArthur and Others (1904, A.C. 389), make any material alteration in the law, but it at least acts as a caution to Courts not to allow an Act intended to remedy a known evil to fail of its object through an over-refined construction if it is sufficiently expressed to carry out that object.

200 (1905) 24 NZLR 850. Chapman J did state that "the intention of the Legislature is generally best arrived at by attributing to words their most ordinary meaning" ((1910) 29 NZLR 449).

201 (1907) 26 NZLR 1167 at 1173. See also (1905) 25 NZLR 506, and (1908) 27 NZLR 576.

202 "Every Act ... shall be deemed remedial, whether its immediate purport is to direct the doing of anything Parliament deems to be for the public good, or to prevent or punish the doing of anything it deems contrary to the public good, and shall accordingly receive such fair, large, and liberal construction and interpretation as will best insure the attainment of the object of the Act ..., according to its true intent, meaning, and spirit".

203 Hutton v Hutton (1910) 13 GLR 201. For subsequent judgments of Chapman J which followed this approach to the interpretation section, see Westland Brick Company Limited v Hewlett (1910) 29 NZLR 701 at 704, Edgerton Manufacturing Company v Macky Logan and Company (1913) 32 NZLR 662 at 665, and Wagstaff v O'Donnell (1915) 34 NZLR 449 at 471. J Burrows notes that "apart from two 'high tides' - one between the years 1910 and 1920 [in which Chapman J was a central figure] and the other in the 1960s - the section has been referred to infrequently" ("The Cardinal Rule of Statutory Interpretation", (1969) 3 New Zealand Universities Law Review 256).
Chapman J repeatedly made clear that statutes had to be construed as they were understood by the legislature at the time of their passage into law. In *Tucker v Hazelhurst*, Chapman J decided that the shooting of tame pigeons was not proscribed by the Police Offences Act 1884. He stated:

I am aware that Queen Alexandra has discountenanced this form of sport, and that the famous Hurlingham pigeon-shooting matches have been discontinued, and that public opinion exhibits a growing sense that it is unmanly to derive amusement from acts which cause suffering to animals. In a more advanced state of society these arguments may perhaps some day come to be applied ... I have not, however, to deal either with the subjective aspect of the question or to assume the role of a legislator, but simply to consider what the Legislature intended to condemn when it passed the law of 1884. I say in 1884 because no process of legal evolution allows a Court to attribute to Parliament ethical considerations which were not present to it when the legislation under review was passed, unless the language used is so peculiar as to justify the Court in so doing.

In assessing the intention of the legislature in ambiguous statutes, Chapman J considered himself entitled to look, not only at the terms of the Acts in question, but also at the "history [and] the working of the legislation". In *Loyal Marlborough Lodge v Rogers*, he decided that certain provisions of the Property Law Act 1908 were intended to be retrospective. This was in the light of the fact that "those who had to do with mortgages, and especially solicitors in practice, had experience for a quarter of a century of a system which had really broken down", and that the Act had introduced "a whole and complete system eminently fair to both parties".

204 (1906) 9 GLR 210.
205 (1906) 26 NZLR 263 at 268.
206 (1909) 29 NZLR 141 at 148. Chapman J claimed that it was legitimate to inquire into the history of Acts, to ascertain the meaning of the Legislature, "especially in consolidation Acts, ... as a section in a consolidation Act is generally ... supposed to have the same meaning in such an Act as
Further, Chapman J took into account the provisions of "kindred" statutes. In *Keddie v South Canterbury Dairy Company*, in arriving at the meaning of "factory" in the Shops and Offices Act 1904, Chapman J referred to the definition in the Factories Act 1901. He remarked: "If a definition is given by statute to an expression it is not unreasonable to assume that in related Acts at least the Legislature has its own definition in mind in using that expression."207 Chapman J also took into account the consequences of legislation,208 and was reluctant to attribute to the legislature the intention to introduce measures which disrupted long-established usages. This was particularly evident in his interpretation of legislation affecting Maori, and he declared on one occasion that when legislation is ambiguous "the Courts constantly endeavour to appreciate the consequences, at least to the extent of seeing whether a revolutionary measure was probably in its contemplation".209 Further, following English precedent, he declared that "we ought to prefer that which does not lead to the enacting body professing to enact something illegal, just as in construing a statute we ought not to adopt a construction which is extravagantly oppressive when there is one open to us which is free from that objection".210 In *Rose v Macdonald*, Chapman J, in deciding against the

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207 (1907) 26 NZLR 522 at 524. Chapman J also considered that "matters which are common knowledge ought, I think, to be treated as the common knowledge of legislators and of the Legislature" ((1908) 27 NZLR 1001).

208 (1911) 13 GLR 684.

209 (1910) 29 NZLR 1150. See also (1907) 26 NZLR 644.

210 (1905) 25 NZLR 506. Another aid which Chapman J used was the Acts Interpretation Act: of this he said that "the standing weakness of an Interpretation Act is that, like all anticipatory legislation, it must give way to any later expression of the will of the Legislature; but until that will is expressed to the contrary, a general rule of the kind ought to be respected by this Court" ((1907) 26 NZLR 792).
remedy of imprisonment for debt in terms of the Imprisonment for Debt Limitation Act 1908 and the Judicature Amendment Act 1910, said that "we must look at the most recent legislation as indicating what has been termed the spirit of the times".211 In Gardiner v Boag, Chapman J was faced with the difficult question of whether a wife or other person primarily entitled to the benefit of the Family Protection Act could deprive her/himself of that benefit by means of a contract with the person who afterwards became a testator. He held that, because of the state policy underlying the Act, the statutory right could not be taken away by contract, and noted:212

By Judges and text-writers we are constantly cautioned against relying on the policy of the law unless we can find either words in a statute setting it up or a purpose so clearly indicative of the policy of the State that we cannot allow parties to defeat it by their contracts. There are undoubtedly instances in our legislation in which the will of the Legislature is so clearly expressed on a question which it deems a matter of public interest as to compel us to read its ruling as an expression of State policy incapable of being altered at the will of the parties.

On rare occasions, Chapman J stretched the wording of statutes, with a view to following the benign intention of the Legislature.213 He declared that, while the courts were "very chary of omitting a word, more so substituting another", this was sometimes done "where the reference in the text is really meaningless", "obvious nonsense", or "inconsistent with the outstanding scheme attributed to the Legislature".214 And he added that "if there is any kind of legislation that a Court is justified in stretching to the full extent to which the wording admits, it is that which

211 (1911) 30 NZLR 741 at 778.
212 [1923] NZLR 739 at 742-3.
213 He declared in Public Trustee v Sheath [1918] NZLR 129 at 145: "When that dominant intention of the legislature [is] apparent, an imperfect expression of that intention may be supplemented by construction".
confers on it beneficial powers of amendment which can invade no actual right and do nobody any real harm".215

Adding weight to Chapman J’s judgments was his clear, direct and down-to-earth approach to legal issues. He repeatedly commented, after elaborate arguments had been heard, that the question at issue was a "comparatively simple" one, and he then proceeded to outline his analysis in concise and lucid terms.216 A notable example of this was in Johnston v Ocean Accident and Guarantee Corporation Ltd, where Chapman J distinguished between a life insurance policy and an accident insurance policy. His statement is quoted in modern New Zealand texts as a classic statement on the law in question:217

The former is a valuable piece of property which continues to increase in value from year to year; the latter cannot be said to have any present value beyond that of the unexhausted premium. One relates to an event which certainly must happen and which is always present to the minds of the parties; the other relates to an event which as to any particular year is not likely to happen, and which in everyday life parties do not regard as impending. In one case the duration of the risk usually coincides with the life of the assured; in the other it expires with the current year.

Like his father before him, he tried to promote speedy and simple procedures: on one occasion he commented that "it is very undesirable that a process intended to

215 (1909) 29 NZLR 151. See also (1907) 26 NZLR 771 and 816.

216 He stated on one occasion: "What has to be considered is, What has the testator really provided by his will, and how has the Legislature dealt with the transaction?" ([1921] NZLR 163). See also (1910) 29 NZLR 449 and 937, (1911) 30 NZLR 575, and [1920] GLR 536.

217 (1915) 34 NZLR 356 at 368-9. The statement was later quoted by Myers CJ (see [1933] NZLR 451-2) and by A Tarr, Insurance Law in New Zealand (1985) 18. Chapman J’s judgment was also used in a later case which concerned a question of the parties to an insurance contract (see Buxton v Commissioner of Stamp Duties [1953] NZLR 92 at 100 and K Sutton, Insurance Law in Australia and New Zealand (1980) 64).
simplify procedure should by any chance be allowed to complicate it. 218 In analysing issues, he was heard to say that the best test was "by reference to what must take place, and what has taken place, in a concrete case". 219 For example, in *Lever Bros v Newton and Sons*, in considering whether a trade-mark was calculated to deceive, he said that he had to consider: 220

the nature of the goods, the circumstances attending the sale of them, and the character of the customers. If it were a question of a traction-engine or a reaping-machine there would be practically no risk of deception; if it were the case of a bicycle there would be a little more; if it were the case of a sewing-machine a good deal more; and so on. This is not necessarily a question of how far housewives of experience, who may be termed the ordinary buyers and may be ranked with the average purchaser, would be deceived, but one has to look a little further and consider whether there is not a substantial risk of messengers, such as young servants or still younger children, being led to mistake one article for another. This is not a fanciful test, as such persons are not infrequently sent to purchase groceries at country stores and suburban shops.

In considering the practical implications of issues, Chapman J called upon his wide knowledge of New Zealand society and conditions: of loose speech patterns, the small scale of New Zealand boroughs, the financial difficulties of urban tramways, the nature of Wellington weather, the characteristics of noxious weeds, the different values of native wood, the nature of mountainous regions, the habits of the kiwi bird, and the free passage by the public over country tracks and land. 221

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218 (1907) 10 GLR 77, and (1908) 10 GLR 479.
219 (1906) 8 GLR 759. See, for example, Chapman J's treatment of statutory liability in *R v Ewart* (1906) 25 NZLR 744.
220 (1907) 26 NZLR 856 at 874.
Certain of Chapman J's practical assessments were unavoidably limited by the state of development of his society: these included his statement that "an overcoat is part of a motor-driver's equipment" and therefore recovering it was reasonably incidental to his employment, and that "the use of the kiwi mark does not appear to me to import a representation of anything special in the quality or origin of the article offered; nor is there any sentiment connected with it, such as is found to be connected with the shamrock symbol".222 Although Chapman J was generally a sober and serious judge, he occasionally laced his observations of reality with touches of humour, as where he commented in *Kenealy v Karaka* that pea-rifles "are commonly used by boys, for whom they possess an extraordinary attraction".223

As is evident from Chapman J's approach to legal sources, he was essentially a "safe" and cautious judge.224 A typical statement was that in which he declared that he "would be inclined to go as far in the direction of upholding liability as I could find it safe to go having regard to the principles deducible from the authorities".225 Likewise, in relation to statutory authority, he declared emphatically that the judges

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222 [1917] NZLR 437 and [1925] NZLR 47. See too his statement that a by-law prohibiting the driving of a motor-car at a greater speed than twelve miles per hour was not necessarily unreasonable ([1918] NZLR 277).

223 (1906) 8 GLR 820. In a later case he remarked on the English "priceless privilege of preventing a stranger from catching moths" ((1909) 29 NZLR 363). However, his daughter Gytha claimed that he had no sense of humour, and she recorded: 'He would pick up a volume of *Punch*, show one a picture and say, 'Now, tell me what is funny in that'. By the time one had explained the joke it was, of course, no longer funny; and Fred would fling the book across the room with an expression of disgust' (letter, Dr S G Chapman, 25 October 1988).

224 The *Evening Post*, in extolling Chapman's humanity, remarked that "his kindness was under judicial control, and was not allowed to illustrate the maxim that hard cases make bad law" (3 March 1921).

225 (1908) 10 GLR 392. See also (1906) 9 GLR 279, and (1907) 27 NZLR 309-312 and 353.
were limited by the powers conferred by Parliament, and that it was "perfectly useless to ask us to assume any other authority". He carefully scrutinised authorities presented to him and precisely distinguished those which he considered to be authoritative from those which were not. In repeating once again the harsh rule that a wife could not at will create a new domicile for herself whatever the husband might do, he said that "observations which I venture to refer to as of a somewhat speculative character, suggesting a possible exception, made by the Court of Appeal in England ... have no bearing on a case like this". He also indicated the precise limits of legal rules: he noted, with reference to a provision allowing for the calling of a special jury, that it was "not whether I think this is a case which would be more satisfactorily tried by a jury of commercial men, but whether I find this is a case requiring expert knowledge". In construing documents such as wills and agreements, he cautioned against the unwarranted use of general rules of construction, and suggested that the safest method was the careful scrutiny of the documents themselves. In several cases, Chapman J made it clear that he preferred not to lay down general rules unless these were called for nor give concluded opinions unless he had had an opportunity for full consideration of the matter. In appeals against jury verdicts, he consistently adhered to the well-established principle that "the jury's verdict must be respected unless the plaintiff's evidence wholly fails to make out the case, or the verdict is shown by outstanding facts to be demonstrably wrong". One of the most memorable instances of this approach was in the renowned defamation case of Massey v New Zealand Times Company, where Chapman J held the jury's verdict to be conclusive, on the basis of

226 (1906) 8 GLR 735.
227 (1912) 32 NZLR 180. See also (1907) 9 GLR 602 and (1909) 28 NZLR 919.
228 (1908) 27 NZLR 749.
229 (1907) 27 NZLR 358 and (1912) 31 NZLR 689 and 794.
230 (1907) 27 NZLR 480, (1909) 28 NZLR 725, and (1911) 30 NZLR 1055.
231 [1921] GLR 33. See also (1909) 28 NZLR 579.
this principle.\textsuperscript{232} And particularly in cases involving the security of the state, Chapman J was heard to adopt a very conservative, pro-authority line. In \textit{Dempsey v Furness}, he held that the respondent had clearly committed an offence in terms of the Act by neglecting and refusing to attend a military camp for training, and declared:\textsuperscript{233}

as a community the people of this Dominion when a Crown colony accepted this principle of universal liability to military service, more than twenty years before the Prussian victory Koniggratz or Sadowa made it clear to the world that sooner or later it would have to be adopted by every self-respecting State.

However, at least some of Chapman J's apparently narrow and legalistic judgments were founded on what he considered to be necessary in the interests of justice. In \textit{Davies v Deputy Official Assignee of Davies}, he held that the appellants should not be bound by a judgment pronounced in their absence. He noted:\textsuperscript{234}

This is more than a question of procedure; it is a question of necessary parties, going to the root of the judgment ... complete representation of all parties is considered essential in Courts of equity as in Courts of law.

Further, Chapman J would at times try to soften the impact of harsh rules by which he was bound. In \textit{Mapplebeck v Mapplebeck}, he said that "there can be no doubt of the jurisdiction of this Court to dissolve a marriage when the husband has proved that he is domiciled here". However, he considered it "incumbent on this Court to see that a woman does not lose her status through being unable to be represented at the hearing". Therefore, he had "adopted a practice which will, I think, be followed by the other Judges here, by which a husband who seeks a divorce

\textsuperscript{232} (1911) 30 NZLR 929 at 941.
\textsuperscript{233} (1912) 31 NZLR 874 at 885. See also [1917] NZLR 32 and 290.
\textsuperscript{234} (1904) 24 NZLR 161 at 190. See also his rejection of evidence which tended to prove "not anything directly in issue in this case but a propensity to commit this class of crime" ((1913) 16 GLR 38).
in such circumstances must send his wife the means of obtaining adequate advice".235

Chapman J adopted a characteristically cautious stance towards the Treaty of Waitangi:236

It has been argued that the Treaty of Waitangi was an international treaty entered into with chiefs having the sovereignty. ... The terms employed and the mode of execution of the treaty leave it at least an open question whether it was so regarded at the time. It professes to be made with certain federated chiefs and certain chiefs who are not federated, but it does not state over what territories they exercised authority, though the text of the treaty seems to suggest that it was contemplated that it should be made with several chiefs who might possibly be regarded and were provisionally and hypothetically treated as sovereigns of their respective territories. ... The whole current of authorities shows, however, that the question of the origin of the sovereignty is immaterial in connection with the rights of private persons professing to claim under the provisions of the treaty of cession. Such treaty only becomes enforceable as part of the municipal law if and when it is made so by legislative authority. That has not been done.

Chapman J was also emphatic that "there is no such thing as a marriage [by Maori custom] that can be recognised",237 and that his cautionary practice to refuse to appoint a sole trustee of property left by a will was "especially [necessary] in cases

235 (1913) 33 NZLR 297 at 298. See also (1908) 27 NZLR 969 and (1908) 28 NZLR 5. For a less successful attempt to mitigate the harshness of a legal rule, see Kiwi Polish Co v Kempthorne, Prosser & Co [1923] NZLR 49.

236 (1912) 32 NZLR 354-5.

237 (1909) 29 NZLR 372 (here he also remarked of Australia that "there it is true the Natives are savages"). See also his comment that "there is a strong presumption in favour of the validity of a regularly conducted marriage, even when celebrated in a country like Turkey, where, however, Christian communities have always maintained their existence and their institutions" ([1920] GLR 156).
where Maoris are interested and the trustee might be a Maori with an insufficient sense of responsibility". On the other hand, Chapman J affirmed that "Maoris are in the fullest sense British subjects, and on the same footing as the colonists save where the Legislature has introduced some disability," and that "the due recognition of [Maori land] right or title by some means was imposed on the colony as a solemn duty." He expressed respect for the Maori Land and Appellate Courts, and said of the latter that "it certainly has an advantage which the Judges of this Court do not possess of greater experience in looking at matters from the natives’ standpoint."

At times Chapman J's cautious approach led him into difficulties. In McLoughlin v White, at the close of the plaintiff's case, the defendant's counsel moved for a nonsuit on the ground that the plaintiff had failed to give any evidence of want of reasonable and probable cause for laying the information in question. Chapman J later recalled that he "was inclined to grant this, but thought it safer to take the course taken by Richmond J" in an earlier case, which was to reserve the defendant's right later to move for a nonsuit. When the matter was later heard, Chapman J admitted that he "ought to have nonsuited the plaintiff at the conclusion of his case, and that the course which [he] took was not strictly correct."

238 [1921] NZLR 436.
239 Therefore he did "not see why a Maori should not have adopted a European child under the Adoption of Children Act" ([1918] NZLR 637).
240 (1912) 32 NZLR 356.
241 [1922] GLR 52. He said of the Maori Land Court that "a body of custom has been recognized and created in that Court which represents the sense of justice of its Judges in dealing with a people in the course of transition from a state of tribal communism to a state in which property may be owned in severalty" ((1910) 29 NZLR 1149). He also commented of the Ikaroa District Land Board that it "must be looked upon as a guardian of the interests of the Natives, and that "I prefer the opinion of a Board erected for the very purpose - with a knowledge of the land, the parties, and their circumstances - to any opinion I might be inclined to form upon these affidavits" ((1911) 31 NZLR 438).
242 (1908) 11 GLR 169 at 173.
Likewise, his fellow judges and members of the Privy Council occasionally overruled decisions of Chapman J which had been given on narrow or overly-cautious grounds.243

Generally, however, Chapman J's approach ensured judgments which were securely-grounded in legal authority and which were usually upheld on appeal.244 In Auckland Harbour Board v Rex, where Chapman J and the majority of the Court of Appeal had upheld the claim of the Crown for moneys paid by mistake, the Privy Council declared itself "at one ... especially with the opinions expressed towards the end of their respective judgments by Chapman J and Hosking J".245 In Greville v Parker, Chapman J's judgment was reversed by the Court of Appeal but later restored by the Privy Council. Here Chapman J had refused the plaintiff's claim for renewal of a lease, where he had substantially failed to perform the conditions precedent to this right. In characteristic fashion, Chapman J noted that he had "endeavoured to pay attention to the way in which the duties thereby created were intended by the parties to be performed", and said that the parties had specifically intended to express these "with precision and with some stringency" and therefore he was obliged to find against the plaintiff.246 The Privy Council approvingly referred to Chapman J's outline of the current law in England and New Zealand that "a right to claim a renewal is a matter of bargain, and the terms of that bargain must be sought in the instrument expressing it", and that "it is usually provided in granting an

243 The Court of Appeal overruled his interpretation of the Family Protection Act 1908, in which he had admitted that his judgment went against his "natural inclination to try and rectify what I consider to be an injustice that has been done to [the claimants]" ([1908] 29 NZLR 965-6). See also (1908) 28 NZLR 164, (1909) 28 NZLR 895, and NZPCC 159 and 597-8.
244 See, for example, NZPCC 131, 262-5, 470-3, 503, and 691.
245 NZPCC 68 at 75-6: in his judgment, Chapman J had insisted that the Government was "in the right in standing on the words of the agreement" in question ([1919] NZLR 434).
246 (1908) 28 NZLR 164 at 170.
option ... that it shall only be exercised if the covenants of the lease containing it have been strictly observed".247

In like fashion, many of Chapman J's judgments were approved of and followed by later New Zealand judges. There were several reasons why Chapman J's successors found his judgments to be useful. First, they had the assurance that his judgments were based upon extensive and thorough legal research. In Re Jones,248 which concerned the construction of a will, Macarthur J quoted and followed Chapman J's judgment in Church Property Trustees v Public Trustee and Another.249 This judgment had carefully shown that "the general course of authorities [in England and New Zealand] shows that if all the words of a description are true, and correctly describe a thing certain, the Court will not presume that there is any error in order to avoid inconvenience".250 Many of Chapman J's judgments which were subsequently used were based upon his thorough research of English law. In Gisborne City v Openshaw Ltd,251 Beattie J held that the reasonableness of a bylaw was not to be tested by taking possible but extreme examples. He quoted Chapman J's statement in Bremner v Ruddenklau to the effect that "in recent times there has been a marked tendency [reflected in English reports] to treat the by-laws of local bodies with more respect than formerly when dealing with the subject of reasonableness".252 Again, in Olympic Corporation Limited v Orcatory Road,253

247 NZPCC 262 at 262-5.
248 [1971] NZLR 796 at 801.
249 (1908) 27 NZLR 354.
250 At 359.
251 [1971] NZLR 538 at 541.
252 [1919] NZLR 444 at 461.
253 Unreported, Court of Appeal, 20 October 1989, CA 111/89.
Bisson J quoted Chapman J's analysis of English authorities in *Gilbert v Beattie*[^254] for the "correct position" on the effect of a sub-lease on a lessor's rights.[^255]

A second reason why succeeding New Zealand judges found Chapman J's judgments to be useful was because of his meticulous handling of the legislation of his time, much of which passed into later statutes. Chapman J's interpretation of the Mining Act 1898 in *Ewing v Scandinavian Water-race Company*[^256] became the key authority on the question of the forfeiture of claims through long neglect. In *Inspector of Mines v Onakaka Iron and Steel Company Limited*, Callan J referred to Chapman J's "useful historical summary of the variations of language in which the Legislature has from time to time since 1858 expressed its will in this matter", the origins of New Zealand mining legislation in Victorian law, and the ways in which the courts had interpreted these provisions. He then proceeded to accept and apply Chapman J's *dicta* expressed in the judgment.[^257]

Of major importance for New Zealand judges was Chapman J's carefully-considered interpretation of the massive body of legislation passed in 1908, which entirely recast New Zealand's legislative framework. One recurrent feature of the judgments relied upon by later judges was Chapman J's insistence on the observance


[^255]: See also *Scott and another v Commissioner of Stamp Duties* [1939] NZLR 293 at 301 and 313-4 (per Myers CJ and Smith J), and *Polaroid Corporation v Hannaford and Burton Ltd* [1974] 1 NZLR 368 at 373 (per Beattie J).

[^256]: (1904) 24 NZLR 271.

[^257]: [1943] NZLR 734 at 762. See also *Manorbarm Sluicing Company (Limited) v Rivers* (1909) 28 NZLR 1082 at 1085 (per Williams J), *Wilson v Tinkers Gold-mining Co* (1913) 32 NZLR 360 at 361 (per Williams J), *Lake Hochstetter Goldfields Ltd v Donnellan and others* [1917] NZLR 1044 at 1046 (per Sim J), and *Bell v Goodger and another* [1933] NZLR 743 at 750 (per Kennedy J). Another useful mining judgment of Chapman J was *Westport Coal Company v Champion* (1906) 8 GLR 581: see *McHenry and others v Conlon and Meldrum* [1930] NZLR 804 at 807 (per Adams J).
of the terms and procedures "expressly laid down". In *Canterbury Central Cooperative Dairy Co Ltd v McKenzie*, Chapman J stressed that "the very words of the section" [in the Sale of Food and Drugs Act 1908] must be pursued. He noted that there was therefore an onus on the defendant to prove that all reasonable steps had been taken to avoid the offence against the Act and that "within practicable limits no other steps could have been taken". This *dictum* was referred to with approval by later judges interpreting the same statute. It was also recently used by Eichelbaum J in *Department of Health v Multichem Laboratories Ltd* in the interpretation of a similar provision in the Medicines Act 1981.

Another recurrent theme in the judgments relied upon by later judges was Chapman J's emphasis, in construing doubtful legislation, on the intention of the legislature. In *Pike v Mayor of Wellington*, Chapman J, in interpreting the Public Works Act 1908, declared that "the dominant provision of the statute is that which gives full compensation for every loss that may be suffered by the claimant by the exercise of powers conferred by the Act, and the Court must find means of moulding the procedure so as to effect this". This judgment "stood unchallenged for over 70 years" before it was affirmed and applied by the Court of Appeal to the Public

258 *Cooper v Karori Borough Council* (1911) 30 NZLR 274 at 275, applied in *Deans and others v District Land Registrar and another* [1928] NZLR 311 at 316 (per Adams J, regarding the Public Works Act 1908).

259 [1923] NZLR 426 at 428.

260 *Wellington Dairy Farmers' Co-operative Association Ltd v Pomare* [1944] GLR 478 (per Johnston J), and *Dairy Farmers' Co-operative Milk Supply Co Ltd v Fischer* [1951] NZLR 993 at 997 (per Fell J).


262 (1910) 30 NZLR 179 at 195.
Works Act 1928 in *Cockburn v Minister of Works and Development*.

Likewise, Chapman J's stress on the "policy of the State" in the Family Protection Act 1908, expressed in *Gardiner v Boag*, was consistently upheld by later judges.

A third reason why subsequent New Zealand judges found valuable guidance in Chapman J's judgments was because of the precise, thorough and clear-headed way in which he approached matters of practice and procedure. Later judges followed his strict observance of legal rules of practice, echoed his call for the best available proof of documents, and the exercise of judicial discretion in matters of practice according to appropriate and rational "definite principle[s]". Chapman J's logical decision in *Reynolds v Attorney-General*, to the effect that a judicial body which had completed its function could not be reached by the writ of prohibition, was adopted and applied on repeated occasions.

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263 [1984] 2 NZLR 466 at 470, 472 and 475 (per Richardson and McMullin JJ).
264 See above note 212.
265 See *Parish v Parish* [1924] NZLR 307 at 313-4 (per Sim J), *Public Trustee v Dillon* [1940] NZLR 874 at 881 (per Smith J), and *Re Churchill* [1978] 1 NZLR 744 at 751 (per Chilwell J). See also the use made of Chapman J's judgment in *Miramar Borough v McLeod* (1911) 31 NZLR 54 (where he stressed the intention of the Municipal Corporations Act 1908) in *Attorney-General v Lower Hutt City Council* [1976] 1 NZLR 721 at 725-6 (per White J) and *Lower Hutt v Attorney-General* [1977] 1 NZLR 184 at 189-190 (per Richmond P and Woodhouse J).
266 See the adoption of Chapman J's decision in *Re Seymour* (1915) 34 NZLR 990 (the certification of motions for grant of probate) in *Re Dykes* [1974] 1 NZLR 482 at 483 (per Wilson J) and *Re Johnston* [1977] 1 NZLR 446 (per Quilliam J). See also *Re Penney* [1975] 2 NZLR 337 at 339 (per Wilson J).
267 See the reference to Chapman J's judgment in *Re Morshead* J (1910) 29 NZLR 1023 in *Re Tinkler* [1990] 1 NZLR 621 at 625 (per Ellis J).
269 (1909) 29 NZLR 24.
270 *Boyes v Carlyon* [1939] NZLR 504 at 511 (per Myers CJ) and *Manawatu Catchment Board v Taylor and others* [1949] NZLR 910 at 911 (per Gresson J). For further use made of Chapman J's
IV. Criminal jurisdiction

Sir John Reed ACJ said that, as a criminal judge, Chapman J had no rival. Chapman J’s associate suggested that he was the pre-eminent criminal judge of his time because of his "long experience combined with a thorough study of the literature of criminology and criminal trials, and the widest knowledge of and sympathy with all classes of men", which "had produced a mind peculiarly alert to the deficiencies in proof on the one side or in attempted exculpation on the other".

As was customary at the time, Chapman J opened criminal sessions by addressing the grand jurors empanelled to consider which bills brought against alleged offenders should be referred for trial. In his addresses, Chapman J usually "explained the nature of the alleged offences and the principles by which the jury should be guided in considering the bills". Chapman J’s advice was that, if a case was *prima facie* or substantially made out, the matter should be referred for trial. At times, Chapman J clearly indicated which approach the grand jury should take, as, for example, in the case of a charge of manslaughter against a motor-car driver, where he remarked that "under any circumstances the person in charge of the car

271 (1936) 12 NZLJ 173.
272 Wiren, op cit 172. Likewise, the *Evening Post* declared: "It was truly said of him that he was a great criminal judge - I think the greatest of our criminal Judges - and his calm, albeit drily humorous charges to juries in criminal cases were always a model of perfect impartiality, with extraordinary skill in marshalling the facts and placing them before the jury in an easily assimilable form. ... even in the most wearisome [case] never have we detected any sign of impatience. So far as New Zealand is concerned he held the record for trying the longest criminal case in the history of the Dominion. This was the Rua case, which lasted approximately sixty days" (25 June 1936).
273 Address, 18 March 1907, Napier (RC).
274 Address, 7 February 1905, Timaru (RC), and *Lyttelton Times*, 12 February 1907.
had very serious responsibilities laid upon him". On occasions, Chapman J also commented on the state and possible causes of crime in the particular district. In a charge to a Napier grand jury, he commented:

He found that there was a large number of cases against natives. He could not say that this denoted an undue amount of criminality among the natives here; perhaps it only indicated a looseness in the conditions of living and a liability to yield to temptation. These cases had, however, to be dealt with by the Grand Jury in the same way as those against European prisoners, no matter what simplicity the natives had shown.

In his conduct of criminal trials, Chapman J showed firm leadership. He insisted that "the Judge has authority over the whole trial ... he is the functionary in whom is vested the power to allow or to refuse, to allow or to prohibit this or that course of conduct in connection with a criminal trial". In the case of a jury who returned after eighty minutes without a verdict and who (through the foreman) began to explain the reasons for the impasse, Chapman J declared: "I do not want to know the details. I must ask you to retire until you are agreed". Chapman J insisted that proper decorum be maintained in court and, for example, in cases of sexual assault, he sometimes forbade the publication of "disgusting" evidence and ordered the police to remove those who were present out of "morbid curiosity".

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275 Lyttelton Times, 12 February 1907.

276 On another occasion he observed to the grand jury that "the better class Maoris themselves aspire to be put upon the same footing as Europeans in the eyes of the law, and if that is so it is idle to talk about one law of marriage for the Maori and another for the European" (EP, 16 August 1909). See also Timaru Herald, 6 February 1907 (he suggested that an increase of crime usually followed a rapid increase in population and a "considerable distribution of expenditure").

277 (1910) 29 NZLR 862-3.

278 EP, 7 May 1912.

279 Lyttelton Times, 12 February 1907, and hearing 5 March 1907 (RC). In 1909, he wrote to the Attorney-General suggesting that constables be required to attend to, inter alia, "male spectators remaining with their hats on", "allowing doors to swing to and fro", "ostentatious gazing at prisoners or witnesses and crowding or jostling to positions in so doing", "signs of approval or
At the same time, Chapman J displayed considerable patience towards participants in the criminal justice process, such as jurors and witnesses. In particular, Chapman J showed sensitivity towards young children, whom he questioned with gentleness and understanding. Chapman J was also ready to praise counsel, jurors, police and the public when they assisted the criminal justice process. At the conclusion of the notorious murder case *R v Thorn*, Chapman J thanked those who had contributed to the resolution of the case, including the jury for the "most careful attention they had given to the case".

Chapman J was particularly supportive of the efforts of the police, whose work was "sometimes to ordinary minds as unpleasant as well it could be". Therefore he accepted that, especially in dealing with recurrent crime which was difficult to detect, the police were "justified in obtaining proof of what is going on". Chapman J's attitude was particularly evident in the long-running sedition case *R v disapproval of anything in the proceedings*, and "sleeping in Court" (FRC to AG, 12 March 1909). In 1916, he urged the Minister of Justice to "prevent in future the disgrace of men wearing the King's uniform appearing in the dock" (FRC to Minister of Justice, 20 May 1916).

280 See *EP*, 17 May 1909 (a jury not wanting to elect a foreman) and [1917] GLR 424-5 (a witness who refused to answer relevant questions).

281 Chapman's daughter Gytha recalled: "as a judge he was noted for his patience and kindness, especially towards children, who were never afraid of him. Never would he allow a child to be put in the witness box, but had him (or more often her) brought up to him on the bench, where he would explain the questions of counsel with unending patience. Children loved his white hair and kindly pink face" (letter, Dr S G Chapman, 22 August 1988). Chapman J himself noted that "my experience of very young children is that the real limit of their capacity to give evidence does not lie in their inability to narrate something that has occurred, so much as in their inability to understand the meaning of the promise the child is under our law asked to give" ([1920] GLR 486).


283 Newspaper cuttings. In the *Thorn* case, he observed that "the country stood greatly indebted to the police" for the "amount of work and industry that had been applied" (*New Zealand Herald*, 4 December 1920).
Rua, in which complaints were raised against the actions of the police in dealing with the Maori followers of the accused. He noted that the complaints of Maori witnesses gave the impression that the police had acted like the German soldiers in Belgium, and because such a notion was unthinkable to him he concluded that no evidence was sustainable against the police.\textsuperscript{284}

In almost every contested case, Chapman J followed the argument of counsel with an outline of the relevant law and a thorough summing-up of the salient facts for the jury.\textsuperscript{285} Sir John Reed ACJ claimed that the summing-up of no judge had greater weight than that of Chapman J. This, he said, was because "the guilty criminal was certain of an impartial trial before him, but, whilst scrupulously fair, the weakness of a defence would be made apparent in the clear logical examination of the evidence and of counsel's perhaps specious arguments, delivered in a measured and quiet tone of voice".\textsuperscript{286} In explaining the law, Chapman J relied upon legal principles as developed in England and New Zealand, and these he presented in clear and simple language. In \textit{R v Nosworthy}, where the charge was the unlawful supply of a noxious thing or instrument, knowing that it was intended to procure a miscarriage, Chapman J noted that "the Court of Appeal in England, the decisions of which are observed at any rate by single judges addressing juries, has, according to my view, decided that the question for the jury is the intent of the accused person, not the intent of the person to whom he supplies an article".\textsuperscript{287}

\begin{itemize}
\item \textsuperscript{284} \textit{New Zealand Herald}, 3 August 1916.
\item \textsuperscript{285} An exception was the case of an undefended elderly man, addicted to drink, with forty-two previous convictions for minor offences (\textit{EP}, 19 August 1909).
\item \textsuperscript{286} (1936) 12 \textit{NZLJ} 173. P Webster claims that, in the \textit{Rua} case, Chapman J's summing up was biased against the accused and protective of the police (\textit{Rua and the Maori Millenium} (1979) 266). But Chapman J was careful to point out difficulties inherent in the police case (see J Binney, G Chaplin and C Wallace, op cit 125).
\item \textsuperscript{287} Hearing, newspaper cutting 13 March 1907. On one occasion, Chapman J noted that he had "searched the records of the Central Criminal Court for a year after the passing of [the Prevention of Crime Act 1871]", and had also looked at "reports of various winter assizes for 1871 in the
R v Livingstone, which involved the first trial of an alleged bookmaker under the new Gaming Act 1920, Chapman J stressed that "as to the morality of the legislation or the transaction - this was nothing to do with the jury. They need not enter into any fanciful researching about that. They were simply invited to administer Acts of Parliament".288 At times, however, Chapman J was faced with new issues, not provided for in the established law. One such issue was the value of finger-print evidence, and Chapman J's judgment in R v Krausch remains a landmark decision in its recognition of this class of evidence, besides being a classic example of Chapman J's ability to present issues in vivid, practical terms:289

Under the law of this country a Judge may in scientific matters refer to such books as he may consider to be of authority on the subjects to which they relate. I have referred so often to these matters that I now know what the books have to say on the subject ... The leading facts respecting finger-markings such as have been proved in this case may be regarded as established facts. The first of these facts is that finger-markings remain absolutely unaltered from birth to death, however long a human being may live, unless, of course, destroyed by scars. The second is that there is no rule whatever of race or heredity which determines on what part of the finger-print certain marks will be found ... these are strewn absolutely at random about the picture which reproduces the pattern on the finger. ... In comparing prints of two individuals you may chance to find a close agreement as to a particular point, but the whole weight of scientific testimony shows that

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*Times* [and] reports of proceedings at the Clerkenwell sessions in that year" ((1909) 28 NZLR 148).


289 (1913) 32 NZLR 1229 at 1230-2. See *Keenan v Attorney-General* (1986) 2 CRNZ 204 at 210, where McMullin J refers to Chapman J's judgment. See also *R v Masters* [1920] GLR 351, where Chapman J, to illustrate the point that force in assault need not be directly applied to the person, used the example of "a person sitting on something, say a pile of boxes, which an accused person knocked away and brought him to the ground".
even this is rare. If the chances are five to one against this—and they are said to be much more than five—then when you come to half a dozen such points what may in popular language be termed the odds against two being alike have gone up with great rapidity, and beyond this go up with enormous strides. I need not take you into arithmetic: I prefer to ask you to deal with the matter as you would deal with any other question of probability that arises in daily life. ... I take from my pocket this bunch of keys. You see that they are of various sorts and sizes, made to fit a considerable variety of locks. Suppose you were now to arrest every man in New Zealand who possessed a bunch of keys, can you suppose for a moment that you would find another man whose keys correspond in type and detail with mine to the extent of, say, one-quarter of their number? ... The proposed illustration may at first sight appear to go too far, but if the accepted scientific facts respecting finger-marks are true facts, that illustration presents a fairly close analogy.

Seven years later, in the murder trial of R v Gunn, Chapman J again expounded on the technique and value of finger-print identification, and the guilty verdict was seen as a vindication of the "finger-print system". 290

In relation to the facts of cases, Chapman J professed belief in the intelligence of juries to weigh up evidence with discrimination. 291 But he was well aware that juries were capable of giving illogical, inconsistent and unwarranted verdicts, and therefore he believed that they needed considerable guidance on the facts led in evidence. 292 He was at pains to stress that "in a case where criminal responsibility was alleged, it was the duty of the jury to scan everything narrowly, and not to

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290 Auckland Star, 29 May 1920. This issue clearly appealed to Chapman J's scientific interests, and during the course of the Gunn trial he noted that "scientists have even noted finger-prints on a deer-horn found among the remains of prehistoric man, and on the handle of a pick used for digging flints" (Auckland Star, 26 May 1920).

291 Hearing 6 March 1907, newspaper cuttings.

292 (1909) 28 NZLR 579, and FRC to AG, 2 December 1912 ("the man defended himself and was acquitted, mainly I assume, because he was a foreigner and his voluble defence was quite unintelligible").
impose upon a man a liability as a criminal, unless a case was fairly and properly made out", and that jurors "must refer the matter to their reason, remembering their oath, and not to their sympathies".293 And, in a number of cases, Chapman J clearly indicated his views on the guilt or innocence of the accused, on the basis of his assessment of the evidence. In the case of R v Thorn, Chapman J declared that "a Judge might be too logical, but fortunately there were always 12 men who were not bound by the arguments of counsel or the summing up of the Judge, but by their own consciences, and a true and just interpretation of the evidence". Yet, moments beforehand, he had built up the evidence which "all bore in the same direction" (against the accused), and noted that "where the jury had a number of circumstances and these circumstances were consistent and pointed to the accused they might treat them as cumulative and the more cumulative the 'arrows' of evidence were the stronger the evidence was".294 On the other hand, in R v Wimsett, involving a charge of burglary, Chapman J forcefully indicated that the jury should bring in a verdict of not guilty, by demolishing the credibility of the prosecution's key witness, whom he described as a shameless self-convicted criminal with "absolutely no morality whatever on the subject of stealing".295

It was never safe to convict a man on the evidence of a self-convicted criminal unless they felt absolutely certain it was true. Such a man was in possession of the inside running, and could govern events to his own advantage. Such a man had peculiar opportunities to weave in a charge that looked probable as being supported by minor facts. For these reasons corroboration was needed. What was corroboration? It was

293 Hearing August 1907, Christchurch, newspaper cuttings, and EP, 14 February 1921.
294 New Zealand Herald, 3-4 December 1920.
295 EP, 2 September 1909. See also his summing-up in a charge of indecent assault: "it was not an unusual thing for young women, when surprised in a position of which they were ashamed, though generally truthful, to make statements at variance with the truth, in order to shield themselves from blame" (hearing 15 February 1907, newspaper cutting).
some independent act or fact that could be proved quite apart from the evidence of such a witness.

Where the prisoner pleaded or was found guilty, Chapman J would carefully analyse the issues to arrive at the most appropriate sentence. He summed up his approach to sentencing as follows: 296

What for convenience is called punishment of crimes is awarded on several grounds. It may be deterrent in the sense of being exemplary. That is the ordinary ground on which the State justifies imposing punishment. It may also be protective. A man who is dangerous to the citizens of a State, either with respect to their persons or their property, may be justifiably detained by the State. It may also be avowedly reformative.

Chapman J was frequently heard to impose deterrent sentences which would cause others to "shun temptation" and prevent the tendency to commit crime in the community. 297 He observed, of a sentence designed to "set an example to the community", that "you do not punish your own child if you are sure he will not offend again but you do punish a school boy in the same case", and that "if you fail in that you fail in your duty towards the others". 298 In R v Alexander, he imposed a sentence of two years' imprisonment with hard labour for assault and causing bodily harm, as the case "was one which, to his mind, called for such punishment as would act as a deterrent in the district, and prevent people from resorting to acts of violence without adequate reason". 299 Chapman J was also conscious of imposing sentences that would act as deterrents for the individual offenders themselves: in R v Seeds, although the jury returned a verdict of only common assault under strong

296 (1908) 28 NZLR 147.
298 FRC to Mrs Saunders, 29 November 1911.
299 Southland Times, 11 March 1904.
provocation, Chapman J still considered it imperative to send the offender to prison so as to teach him to restrain himself.\textsuperscript{300}

It was Chapman J's use of the deterrence model in \textit{R v Rua} that gave rise to his most serious lapse in the administration of criminal justice. In this case, the jury acquitted the accused on the charge of using seditious language, and found him guilty only of using moral resistance to police arrest. Chapman J (to the horror of most of the jury) then pronounced at length on Rua's "long history of defiance of the law", and sentenced him, as a member of a race whom he considered to be "still in tutelage", to one year's hard labour followed by eighteen months' imprisonment. Chapman J, against the backdrop of a world war in which his son had recently died in support of the British imperial forces, reaffirmed the authority of the law against those who appeared to undermine it:\textsuperscript{301}

You have learned that the law has a long arm, and that it can reach you, however far back into the recesses of the forest you may travel, and that in every corner of the great Empire to which we belong the King's law can reach anyone who offends against him. That is the lesson that your people should learn from this trial.

In relation to offenders with a long history of crime or whose offending was of a particularly violent or dangerous nature, Chapman J stressed the need to detain them so that they would not "prey on the public".\textsuperscript{302} In \textit{R v White}, Chapman J imposed a sentence of eight years' imprisonment with hard labour for robbery, shooting with intent and burglary, where the prisoner had five previous convictions. He noted that "the accused was a very dangerous character, and one from whom society must be protected", and that "when such a man was convicted of entering

\textsuperscript{300} \textit{EP}, 18 May 1909.


\textsuperscript{302} FRC to Minister of Justice, 26 April 1911, and \textit{EP}, 5 November 1919.
dwellings by night the case called for some penalty adequate to protect the members of a peaceful community.\textsuperscript{303} On the other hand, where Chapman J was faced with young, first offenders, he welcomed the power he had to admit them to probation and so give them "a chance to reform". He remarked that "a wise and beneficent Legislature, desiring to keep young people from contamination by contact with hardened criminals, had made special provision to relieve them as far as possible from the stigma of a conviction".\textsuperscript{304}

In deciding on appropriate sentences, Chapman J took into account the range of factors familiar to sentencing judges of the time. On the one hand were factors which appeared to aggravate the wrongdoing in question. Certain of these related to the offence itself. Sexual offences attracted particularly harsh punishment: Chapman J described New Zealand as a "country of mild measures and mild judicial sentences for all crimes but sexual crimes".\textsuperscript{305} Chapman J had occasion to "interpose a physical barrier" between "degenerates with diseased faculties" and the public, especially the "young generation".\textsuperscript{306} In the case of \textit{R v Dyer}, where the prisoner pleaded guilty to incest with his granddaughter, Chapman J described the case as "the most painful and at the same time the most shameful with which it had ever been his lot to deal", and imposed the maximum sentence of imprisonment with

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\textsuperscript{303} Hearing 13 February 1907, Christchurch, newspaper cuttings.

\textsuperscript{304} Hearing 18 February 1907 Christchurch, newspaper cutting. Chapman J referred to the Probation Act as "a piece of legislative clemency, made in the interests of society and the State" (hearing 15 February 1907, Christchurch, newspaper cuttings).

\textsuperscript{305} FRC to H Taylor, 28 January 1913.

\textsuperscript{306} FRC to AG, 25 June 1909 (where he commented that "it is a very extraordinary fact but a fact it is that there is a close connexion between musical taste and sexual perversion"), FRC to AG, 16 February 1911 (where he suggested that "a single act committed by a man of this sort might have the effect of ruining for life a young girl. Children are protected by their natural modesty and by prudent training"), and FRC to Minister of Justice, 15 September 1911 (where he supported the lengthy prison sentence for a man who had debauched his granddaughter of thirteen, as otherwise "before [the child's fellow schoolchildren] are old enough to forget his personality he reappears among them").
hard labour for ten years. Crimes of violence were also dealt with severely. In *R v Easton*, where the prisoner was convicted of highway robbery, Chapman J remarked that "it was not to be tolerated that, in a country such as New Zealand, people should be terrorised by men armed with loaded firearms", and (despite the recommendation to mercy on account of the prisoner's youth) imposed the "substantial" sentence of three years' imprisonment with hard labour. Crimes of violence were the only offences which attracted corporal punishment (a sentence which Chapman J "greatly disliked"), as in the case of a prisoner who received two floggings of twenty lashes each "owing to the excessive brutality of the act by which a young schoolgirl was not only violated but injured".

Particular note was also taken of circumstances accompanying the commission of crimes. In *R v Bater*, Chapman J imposed four years' imprisonment with hard labour for theft, in view of "the character of the defalcations, the heavy amount, the reckless way without need in which you carried on the stealing". Chapman J took account of breaches of trust, of employees, teachers and family members. In *R v Wicks*, Chapman J imposed a sentence of four years' imprisonment with hard labour on a music teacher for the indecent assault of a girl of fourteen, and said that the prisoner had been guilty of a "very gross breach of trust in the treatment of the child confided to you", and of a "very gross wrong to your own profession" by committing an act which would shake public confidence in it. Chapman J also insisted that "where a crime was designed and planned beforehand, imprisonment ought to follow", as if it did not "the public are likely to get the idea that a man can

307 Hearing 13 August 1907 Christchurch, newspaper cuttings.
308 Hearing 18 March 1907 Napier, newspaper cuttings.
309 FRC to Minister of Justice, 20 June 1910. Arson was another crime which was seen to be "a most serious one, for no one could foresee what would be the result of a fire by night, when other buildings might be involved and lives might be lost" (newspaper cutting).
311 *EP*, 8 May 1912.
pay his way through this sort of thing". The prevalence of an offence was another factor taken into account. In *R v Lang*, Chapman J sentenced the prisoner to seven years' imprisonment with hard labour for procuring an abortion, and he noted that he "had regard for the actual condition and requirements of the district and the necessity for supporting the police in their efforts to deal with a sordid criminal trade".

Certain aggravating factors related to the offender him/herself. The most important of these was evidence that the prisoner was a "dangerous character", usually indicated by previous convictions. In *R v King*, Chapman J imposed a sentence of three years' imprisonment with hard labour for theft upon a prisoner who had a very long list of convictions dating back twelve years. Chapman J observed that the prisoner was "a man not only inclined, but quite willing and ready, to commit a crime when you see a chance of success", and that he had to "discharge a duty in order that others may see what is in store for those who deliberately enter on a career of crime". After the passing of the Habitual Criminals and Offenders Act 1906, Chapman J was entitled to declare hardened offenders "habitual criminals". Chapman J also indicated that status and race might be aggravating factors. In *R v Francis*, where a solicitor pleaded guilty to theft, Chapman J remarked that he had to "deal more severely with one of the accused's profession than it would be in the case of some poor clerk who had drifted into crime". In *R v Zimmerman*, Chapman J considered it his duty to make known

313 FRC to Minister of Justice, 18 August 1913. The nature of the victim (for example, an elderly man) and the locality (for example, unprotected places such as railway stations) could also be aggravating factors (*EP*, 12 May 1909 and 6 November 1919).
315 (1908) 28 NZLR 147.
316 Lyttelton Times, 12 February 1907.
the law forbidding unlawful relations with a girl under sixteen, and said that "it was much more necessary in the case of Europeans" than for Maori.317

On the other hand, Chapman J took account of a range of factors which mitigated sentence. These he noted for himself, or were brought to his attention by defence counsel, the probation officer or the jury (whose recommendation to mercy Chapman J said he never disregarded unless the jury had been totally misled).318 Certain of these related to the offence: that it was not violent, or that it had been committed without motive or design.319 Chapman J observed that he "always [gave] some consideration to circumstances of drunkenness, where a man has been exposing notes or money, tempting persons to rob him".320 In the case of *R v Mitchell*, the prisoner had, in accordance with an old Maori custom, burnt the home in which he and his recently-deceased wife had lived. Chapman J "did not wish it to be supposed that Maoris would be dealt with differently from Europeans in such cases, but he thought there were circumstances in this case which would justify him in not sending the man to prison", and so liberated the prisoner on his own recognisance. On the following day, where Chapman J was faced with a case of attempted arson, he noted that he had been able to pass over the offence "on the previous day in the case of an ignorant and superstitious Maori, but an intelligent and educated European could not be let off so lightly".321 Most mitigating factors related to the offender him/herself. These included evidence that the prisoner had previously borne a good character, without previous convictions. In *R v Clarke*, where the prisoner had pleaded guilty to embezzlement, Chapman J (against the advice of the probation officer) admitted the prisoner to probation. He remarked that he believed "it was to the common interest that one, who did not belong to the

317 Hearing 13 February 1907 Christchurch, newspaper cuttings.
318 FRC to Minister of Justice, 9 January 1911, and newspaper cuttings.
319 *Lyttelton Times*, 12 February 1907.
321 Hearing 18 March 1907 Napier, newspaper cutting.
criminal class, but had been, until recently, a respectable member of society, should be given an opportunity to retrieve his position".322 The good reputation of the prisoner's family could be a mitigating factor: in the case of R v Reid, Chapman J said that "the prisoner really deserved a pretty severe sentence for the robbing of a guest in a hotel", but that "as her husband was a respectable man, he would make the sentence as short as he reasonably could".323 Chapman J also took account of the offender's unfortunate circumstances which had prompted the offending: he declared that "if a man came before him who had committed a crime such as [theft], and he could see that he had been, in a sense, starved into it, that circumstance required some consideration".324 The tender or advanced age of the prisoner could also be a mitigating factor. In the case of R v Portelli, where a youth pleaded guilty to unlawful carnal knowledge of a girl under the age of sixteen years, Chapman J noted that "the accused was only eighteen years of age, and it would be, perhaps, not the best thing in the interests of the girl he had wronged nor of the community that he should be made to join the criminal class", and so he was placed on probation for two years.325 Other factors which Chapman J took into account were war service given by the prisoner and accompanying loss caused by the offending. In R v Lloyd, Chapman J said that he had imposed a light sentence because the prisoner had been wounded in the Transvaal and his pension from the Victorian Government was in peril.326

In pronouncing sentence, Chapman J usually outlined the main considerations which had weighed with him, admonished the prisoner for his/her behaviour, and cautioned him/her against future offending. At times, Chapman J also used the occasion to give his views on issues relating to criminal justice. In R v Bater,

322 Hearing 15 February 1907 Christchurch, newspaper cutting.
323 Hearing 15 August 1907 Christchurch, newspaper cutting. See also EP, 10 May 1909.
325 Lyttelton Times, 12 February 1907.
326 FRC to Minister of Justice, 26 August 1910. See also EP, 11 February 1921.
Chapman J had to impose sentence on a man who had stolen money from his employer, following the loss of money through heavy betting transactions with bookmakers. Chapman J observed that he felt it his duty to say that the recent legislation which had legalised bookmaking was "one of the gravest mistakes legislators of this Dominion have ever made", as it had legalised "the operations of a section of the community who come very close to the criminal class", and had "produced a very degrading effect on a certain section of the population of this country".327

Chapman J, along with the other judges of the Court of Appeal, was at times asked to consider issues emanating from criminal trials. These included appeals against the findings of juries, and here Chapman J's approach was to support verdicts which juries were entitled to find, even where these were somewhat illogical or inconsistent. In R v Godbaz, he declared that "it is not always necessary that the verdict should be an absolutely logical conclusion from the evidence, provided that it is not to the prejudice of the accused and in excess, so to speak, of the offence charged".328 On occasions, points of law emerged in motions for new trials or were reserved for the Court of Appeal's consideration by the judge who presided over the criminal hearing. Chapman J was repeatedly called upon to deliver the judgment of the Court, and here he put his considerable knowledge of the criminal law to good use.329 Certain of his judgments reflected his characteristic caution and demand

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327 Auckland Star, 25 June 1910. In the case of a prisoner "who admitted committing an indecent act, [and] was stated to be less than half-witted", Chapman J commented that "what is required for such a case seems to be something between a gaol and a mental hospital" (EP, 2 April 1912).

328 (1909) 28 NZLR 577 at 579.

329 An indication of his overall grasp of the criminal law was seen in R v Tustin, where the Court of Appeal considered whether mens rea was an ingredient of the offences created by the Bankruptcy Act 1892. Chapman J observed: "No doubt it is the general doctrine of the criminal law that an evil intent of some kind must be made out, but one has only to look at the summary of the subject in Archbold's Criminal Practice [23rd ed] to see not only how large a number of cases is made out without proof of mens rea, but how under modern conditions the number of cases in which mens
for the observance of strict rules of evidence. Others, however, indicated a more activist stance. In *R v McNamara*, he noted that the law on the admission of complaints had undergone changes, and that it was "fully open to us to consider whether there is or can be any logical ground for drawing a distinction between sexual assaults on males and sexual assaults on females". He declared that "though our law is not a logical system, and often rests upon what may be termed segregated decisions, I do not see why we should not follow a logical course of reasoning in connecting two cases which are really of one class, and in the absence of binding authority showing this to be wrong I think we should do so".

Chapman J was repeatedly asked to respond to petitions for new trials, reduction of sentence or discharge of prisoners whom he had sentenced. These he handled with firmness and fairness. In the case of *R v Rosarte*, which involved an application for a new trial, he noted that it was "unusual to allow men convicted of crimes to rely on matters which they have had time to invent", and he advised the government to grant a new trial only if there was fresh evidence throwing new light on the issue. He opposed probation or discharge of prisoners guilty of aggravated or violent offending. But he advised discharge or reduction of sentence where, for example, he was "favourably impressed" by the prisoner's appearance, or the prisoner made a "frank statement of the circumstances to the police to assist them to arrest an escapee". Of particular difficulty were

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330 See, for example, *R v Beeson* (1908) 27 NZLR 481 and *R v Ford* (1913) 32 NZLR 1219.


332 FRC to Minister of Justice, 10 April 1910.

333 FRC to Minister of Justice, 7 November 1911 and 9 October 1912.

334 FRC to Minister of Justice, 13 May and 26 August 1910. See also FRC to Minister of Justice, 18 February 1921.
prisoners who had received indeterminate sentences as a result of being declared habitual criminals. Chapman J's approach here was as follows: 335

If men are ever to be released who have received indeterminate sentences some experimenting must be undertaken and some risk run ... Even in the case of McNeill where such an experiment failed I see no reason to regret that it was tried under the advice of Mr Justice Cooper. The successes or failures of the system of indeterminate sentences must be taken into account in estimating its value.

Thus, in the case of *R v Bagnall*, Chapman J decided that, while it was impossible to affirm that the prisoner had "sufficiently reformed", "the history of his imprisonment, his excellent conduct, his improved bearing, and the absence of actual inclination in the shape of fondness for crime" were taken to be sufficient reasons for liberating him conditionally. 336 Chapman J also forwarded information, unsolicited by the Government, which was in the interests of deserving prisoners: for example, in relation to "white collar" offenders whom he had sentences to prison, he requested that "instructions be given to put them to suitable light work according to their abilities and that they be kept separated as far as is reasonable from contact with men of degraded character". 337

335 FRC to Minister of Justice, 13 May 1909.
336 FRC to Minister of Justice, 5 August 1909. See also FRC to Minister of Justice, 13 May 1909, 23 July 1910 and 8 August 1910.
337 FRC to Minister of Justice, 20 February 1909. See also FRC to Minister of Justice, 9 August 1912. Chapman J also drew the Government's attention to the case of a prisoner who was "a member of a respectable Jewish family", and noted that "the way in which members of that community look after their weaker brethren affords some assistance that he will be looked after when he comes out of prison" (FRC to Minister of Justice, 20 August 1909). Chapman J also redeemed a promise to a Maori prisoner to write to the Minister of Native Affairs, to express his concern that "the women and children of his distant kainga might be in want before long and that he was practically ruined by the cost of the trial" (FRC to Minister of Native Affairs, 7 August 1916).
Chapman J's expertise in criminal matters was of primary significance in the context of the actual trials over which he presided. Most judicial pronouncements in criminal cases were not reported as they were mainly concerned with issues of fact. However, of those that were, the statements of Chapman J proved useful to later judges, particularly in the subsequent shaping of New Zealand's criminal procedure and evidence. One example was the case of *R v Borland*. Here, Chapman J held that, in a count charging burglary, it was not necessary to specify the particular crime which the Crown alleged was intended by the accused when he broke and entered the premises.\(^{338}\) This was referred to with approval by Myers CJ in *R v O'Meara*,\(^ {339}\) and later by Richmond P in *R v Tracy* (where the principle was extended to the case of possession of cannabis).\(^ {340}\)

**V. Retirement and Conclusion**

In May 1923, Lord Jellicoe wrote to Chapman advising him that he was to be recommended for the conferment of a Knight Bachelorhood, in recognition of his "distinguished services".\(^ {341}\) This was duly granted, and on 14 June 1923, the award was announced in the *New Zealand Gazette*.\(^ {342}\)

\(^{338}\) (1907) 10 GLR 241.

\(^{339}\) [1943] NZLR 328 at 331.


\(^{341}\) Jellicoe to FRC, 26 May 1923. Chapman clearly expected to be granted this honour. Writing in February 1923, in which he noted his long years of dedicated service, he remarked "A grateful
In the meantime, Chapman's public service had continued almost unabated. This was not surprising, as it was generally recognised that Chapman had retired "in the plenitude of his powers". In 1920, legislation was passed appointing an officer called the "Compiler of Statutes". On 3 March 1921 (the day after Chapman's resignation from the bench took effect), he was appointed to this office, which he held until 5 June 1924. The Compiler of Statutes was required to supervise the compilation of statutes and to make suggestions on the "amendment or extension or limitation of the effect of statutes", and he was also a principal officer of the Law Drafting Office. In this way, Chapman assisted in the consolidation of Acts of Parliament, and he helped to produce such legislation as the long-standing Workers' Compensation Act 1922. For periods between 1922 and 1927, Chapman was Chairman of the Takapuna and Auckland Arbitration (Transport) Appeal Boards, and of the War Pensions' Appeal Board. In late 1928, country has rewarded me. All the senior judges whom I have relieved have been knighted. I have been left title free" (FRC, Reminiscences).

342 New Zealand Gazette 52, 14 June 1923.
343 EP, 2 and 3 March 1921.
344 Sections 5-6, Act 46, 1920.
345 Bell to FRC, 28 February 1921. See, for example, the draft bill to amend the Judicature Act of 1908 (National Archives, J1, 1922/October 1294).
346 Chapman was appointed Chairman of the War Pensions' Appeal Board in September 1923; he resigned in March 1924 because of the unexpected death of Martin Chapman, of whose estate he was executor; and he was reappointed in July 1926, because of the disablement of Sir John Hosking (Minister of Defence to FRC, 29 October 1923, 21 March 1924 and 15 July 1926, and F Rolleston to FRC, 3 November 1926). F Rolleston (Minister of Defence), in acknowledging Chapman's resignation as Chairman of the War Pensions' Appeal Board, thanked him for his services to the soldiers and the country, and noted that he had taken up the work 'at short notice and at some inconvenience' (to FRC, 1 March 1927). For his activities as Chairman of the Transport Boards, see T W Stringer to FRC, 23 December 1926, and Minister of Public Works to FRC, 18 February 1927.
Alexander Adams J (judge 1921-1936) wrote to Chapman that the government "cannot afford to part with you".347

Chapman continued to write on legal topics. In 1923, he wrote the "History of the Supreme Court of New Zealand", which was applauded by the historian James Hight for its "thoroughness and accuracy". This paper was later to be of "extraordinary practical importance" in the work of the committee of legal experts (set up in 1926) that worked on the declaration of autonomy and equality of status of the Dominions.348 Chapman delivered the paper to a meeting in Wellington organised by the Law Society, and he stressed the importance of the subject in the following terms:349

The greatness of the British Empire does not lie in its armies or their victories but in the impartial administration of justice throughout its vast collection of States and dependencies. In a more complete sense than in the case of any other Empire, that to which we belong is a voluntary aggregation of commonwealths. ... Even those who express discontent with Imperial rule are ready at all times to revert for relief to the courts of the British system. The very essence then of British rule lies in the possession of strong and just courts

347 A Adams to FRC, 6 November 1928. As late as 1932, Chapman was appointed deputy to the Chairman of the War Pensions’ Appeal Board for Dunedin (Commissioner of Pensions to FRC, 2 June 1932).

348 J Hight to FRC, 30 September 1922, and S G Raymond to FRC, 3 November 1929.

349 The Budget, 25 August 1923. In his paper, Chapman sketched the history of the Court from the acquisition of sovereignty through to the changes introduced by the Supreme Court Act 1882 and the Judicature Act 1908. He pointed, for example, to the change which limited trial by jury to such matters as actions for debt or damages or for the recovery of chattels where the amount or value claimed was above a certain amount. This, he said, threw upon judges the duty of trying most of the actions set down for trial. He welcomed this development as bringing the system "nearer to the ideal of the early Judges than their own methods attained". He stated that "if we have more law suits that only means that there are fewer cases in which owing to the complexity of the laws aggrieved parties with genuine claims had to give up hope of redress through the fear that they might be involved in unascertainable cost".
administering a just system in which neither birth nor wealth has any advantage.

In July 1927, Chapman gave an address to the Honorary Justices' Association of Wellington, on the "Evolution of Law and Equity in New Zealand". Here he outlined the distinction between the concepts and remedies of law and and those of equity in England, and remarked happily that in New Zealand "we never had such a history" as the courts were given common law and equitable jurisdiction.350

With the commencement of the New Zealand Law Journal in 1925, Chapman found a new outlet for his legal knowledge and energies. The editor in 1936 recalled that Chapman was always ready to give "kindly help and advice", and showed a "benevolent interest" in the Journal almost up to the time of his death.351

In 1934, after "seven years of close investigation and correspondence" in New Zealand and overseas,353 he and Dr Guy Scholefield (Dominion Archivist and Parliamentary Librarian) published a list of all the judges who had held office in New Zealand, and tribute was paid to the "extensive research" and "great future benefit" of the document.354

Chapman's judicial experience had confirmed the practical value of Maori historical traditions (notably genealogies) in legal disputes. But for him, this was only one of the many advantages which the collection and exposition of such material offered. He held that history as a whole was not merely "a chronicle of a period", but the "reflection of the life and being of a people", drawn from even the smallest incidental details of origin and mode of life. The preservation and teaching

350 Address, 2 July 1927, RC.
351 (1936) 12 NZLJ 169.
352 (1933) 9 NZLJ 53 and 66.
353 (1936) 12 NZLJ 169.
354 (1935) 11 NZLJ 84. See also (1934) 10 NZLJ 8, (1935) 11 NZLJ 318, and (1936) 12 NZLJ 182.
of history enabled succeeding generations "readily to ascertain who and what they are, by considering who and what those parents were who introduced them to this world". Chapman also held that "without adequate attention to history we are liable to go wrong - aye, woefully wrong, in any great enterprise", and that history "adds to our gift of vision". The wider perspective which knowledge of Maori traditions and values gave to Chapman himself was indicated in a lecture given in 1923 to the Taranaki District Law Society. Here Chapman revealed that the views he had earlier held on the Treaty of Waitangi had developed considerably:

The treaty has sometimes been spoken of with ridicule and sometimes treated with contempt. It is, however, the basis of British sovereignty in New Zealand, and as an act of justice to a native race is unsurpassed in the history of colonisation. The respect which by us at least is due to it is best expressed in the language of the Privy Council in the case of Nireaha v. Baker, 1901 Appeal Cases [which quoted the statement of Chapman's father in an early New Zealand case that "it cannot be too solemnly asserted that (Native title) is entitled to be respected)].

Chapman also maintained his interest in Maori artefacts, and he came to be regarded as a "central figure in New Zealand ethnology". It was said that, until his death, his "unerring judgment on all matters connected with Maori implements in stone and bone resulted in his being consulted again and again by all who could visit

355 PRC, "The Interest and Value of New Zealand History", 21 June 1928. His last visit to Dunedin, in the early 1930s, was to deliver a lecture to the Otago Historical Society (Dunedin Evening Star, 24 June 1936).

356 PRC, "A Brief History of the Acquisition of the Sovereignty of New Zealand", 17 August 1923. However, regarding Chapman's claim that the Treaty was an unsurpassed act of justice to a native race, Dr D Williams has indicated that there are "many examples in British imperial history of treaties with indigenous peoples which were not dissimilar to the 'Treaty of Waitangi'" (D V Williams, 'Te Tiriti o Waitangi - Unique Relationship Between Crown and Tangata Whenua?', in Kawharu, op cit 64).
him.\textsuperscript{357} He gave his ethnographic collection (including a Maori wooden bone-box and a painted feather-box) to the Otago Museum, and his important collection of New Zealand pamphlets to the Hocken Library.\textsuperscript{358} The Otago Museum recognised his benefaction by naming the gallery which housed the Maori collections the Chapman Gallery, and in October 1929 he was invited to open the Fels Wing of the Otago Museum (containing a Maori house).\textsuperscript{359}

In retirement, Chapman increased his involvement in matters of a scientific, geographical and astronomical nature.\textsuperscript{360} His friends suggested that "he possessed a brain divided into watertight compartments, each mentally labelled, and severally guaranteed to deliver up any portion of their classified contents immediately upon being unlocked for casual discussion". In the sphere of botany, "the first thing he would enlarge to a visitor about a plant or a flower was not its beauty, but its place in the scheme of things, and how and why its propagation and modification came about".\textsuperscript{361} At the opening of the Wellington City Council's telescope (in the acquisition of which Chapman, as President of the New Zealand Astronomical Society, played a key role), Chapman remarked that "astronomy was one of the greatest, profoundest and most interesting studies, and tended more perhaps than

\begin{itemize}
\item\textsuperscript{357} Obituary, RC.
\item\textsuperscript{358} W Benham to FRC, 19 May 1928.
\item\textsuperscript{359} See newspaper cutting, RC. Chapman described Dunedin as 'a city of dignity', as seen in the affection of its people for the University and other branches of academic development such as ethnology. See also H Benham to FRC, 26 April 1931. He donated other material and collections to the Dominion Museum and the Turnbull Library (RC). Chapman also served on the council of the Association of Friends of the University Museum.
\item\textsuperscript{360} He served on the Library and Archives Committee of the Board of Science and Art (Secretary, Board to FRC, 3 February 1925), as Vice-President of the Wellington Reserves Protection and Improvement Society (E Jack to FRC, 22 February 1927) and as President and later Vice-President of the New Zealand Astronomical Society (C Adams to FRC, 20 March 1930).
\item\textsuperscript{361} \textit{ODT}, 25 June 1936.
\end{itemize}
any other to enlarge the human mind". Chapman also wrote reflections on such issues as "how the wonderful life that surrounds [us] came into existence". He noted that the present generation "does not know the origin of life but it is prepared to start at the point of its origination and to accept some mode or modes of evolution to account for what has followed". In 1924, he read a paper before the New Zealand Institute at Otago on "Considerations relative to the Age of the Earth's Crust", and this was later published by the Institute. It was said that Chapman loved birds, and "published records carefully kept by him showing that the so-called depredations to crops by the humble sparrow had resulted in diminution of blights".

Chapman was regularly called upon to give speeches to schools, clubs and other organisations, as it was said that there were "not many who could talk more interestingly". In October 1922, he gave a lecture to senior cadets at the Community Club, and this attempted to give "some idea of the kind of man Captain Cook was, and of the services he rendered to our nation and to the community". Chapman claimed that "we, a young nation firmly tied up, and on even terms with the homeland, owe the whole fact of our existence to the circumstance that Cook discovered these islands". He noted "the outstanding fact that he plunged into vast

362 *EP*, 27 August 1924 and newspaper cutting, RC.

363 FRC, *Reminiscences*. Chapman wrote that he wondered what his father thought of the origin of living beings.

364 RC.

365 For many years in his home in Eccleston Hill, a host of sparrows, blackbirds, thrushes and native birds waited for his whistle which he would blow promptly at 10 o'clock for the breakfast. He also advocated the planting of honey-bearing trees to supplement the rapidly-diminishing food supplies of New Zealand's native honey-eaters (*EP*, 25 June 1936). He also sent seeds of the manuka flower to Gallipoli for planting in the graveyards of New Zealand's soldiers.

366 L Barnett to FRC, 23 June 1927. See, for example, C Pierce (Headmaster, Wanganui Collegiate) to FRC, 12 October 1923; and A Roberts to FRC, 29 November 1926. For all his ability, Chapman was said to have a "charming modesty".
problems the solution of which was unknown, that he voyaged in a small ship which might have been lost and nothing more heard of it.\footnote{367}

During the 1920s, Chapman was active in recording memoirs of his life prior to his elevation to the bench. He wrote in \textit{Reminiscences} (recorded in 1923-4):\footnote{368}

\begin{quote}
I have sometimes been asked to write my own reminiscences or some jottings on subjects I remember ... My reason for not having done this is that until 1903 I never was a public man and scarcely took part in those scenes and incidents which interest people. That is wrong. The people of the future like to have the things of the past which contrast with those of their own time first-hand. They do not want so much to hear of the bigger events which are recorded in books and current newspapers as of minor events which constitute the early lives of their predecessors.
\end{quote}

Chapman produced papers based on family records. In December 1922, he delivered a lecture at New Plymouth (organised by the Victoria League) on his father's walk through Taranaki in 1844.\footnote{369} This was hailed by Lord Jellicoe as providing "a wonderful idea of the spirit of the early settlers in New Zealand".\footnote{370} Following his return from overseas in 1925, Chapman completed an extended article entitled "Governor Phillip in retirement". This was based on the large quantity of family correspondence and diaries retrieved from the home of his great aunt, Fanny Chapman, who had known Governor Phillip well. His object in writing the article was "to add a few facts to what is known of Admiral Phillip, and in so doing to endeavour to some extent to place those facts in a suitable setting, and thus to

\footnote{367} "The Life, Voyages, and Discoveries of Captain James Cook", delivered 25 October 1922. In December 1922, he addressed the prize-giving assembly of the New Plymouth Boys' High School. In a clear and straight-forward speech, he indicated the kinds of values that he espoused \textit{(Taranaki Herald, 15 December 1922)}.\footnote{368} \footnote{369} \footnote{370} Jellicoe to FRC, 2 December 1923.
endeavour to reconstruct in a perfectly legitimate way, and from authentic material, a sketch of the circle in which he lived at the time of his appointment, and ultimately in retirement".371

In Chapman's later years, he was approached many times to write a connected narrative of his life. This was in view of what contemporaries said was the "wonderful story" he could have told of his varied life, because his life "spanned the whole period of [New Zealand's] constitutional government", and in view of his knowledge of almost all the judges who had sat on the New Zealand bench. However, although Chapman "was always glad to tell incidents from the wealth of his experiences", he "felt that if he consented [to write his autobiography] he would be undertaking a task he could not finish".372

In December 1924, after Chapman's final retirement from the bench, he, his wife and youngest daughter Gytha went on a second trip overseas. During January to April 1925, they travelled through France (where he "was glad to be among foreign sights and scenes and smells again", and found his French "reviving rapidly")

371 Copy of Article in RC. Chapman forwarded the article to the H Wright of the Mitchell Library, with a view to publication in the Journal of the Royal Australian History Society. Wright returned the article, noting that he was "charmed with the manner" in which he had handled the subject and arranged the points of interest. However, he said that there was too little about Phillip for the article in its existing form to be published in the Journal, as the title was really "The Chapman family in England, with occasional references to Admiral Phillip", and suggested that it be reduced to one-quarter of its length (H Wright to FRC, 11 November 1927). Chapman did not take up the suggestion, but towards the end of his life there was renewed interest in Australia in the material he possessed. In 1935, Ms I Leeson, librarian at the Mitchell Library, visited Chapman (who had donated certain family letters to the Library) and obtained the assurance that he would pass the Chapman diaries onto the Library (I Leeson to FRC, 12 June 1936). However, Chapman changed his mind and the diaries remained with the family (I Leeson to S Eichelbaum, 17 July 1936). In 1936, G Mackaness of Sydney, who was writing a life of Phillip, asked for, and obtained from Chapman, material referring to Phillip (G Mackaness to Blair, 16 May 1936). Chapman also edited a bulletin of the Alexander Turnbull Library entitled "Journal kept in New Zealand in 1820 by Ensign Alexander McCrae" (Chapman had known a sister of McCrae in Dunedin).

372 (1936) 12 NZLJ 169.
and Italy (where he noted that he had "forgotten most but not all" of his Italian).  

They then stayed in England, where Chapman "rambled over the scenes of his youth", and continued to pursue his family research, writing and other interests (including the learning of Spanish). In November, he dined at Lincoln's Inn as the guest of Warrington LJ, and spent the evening in conversation with men such as Laurence J and Hughes KC. He recalled that "the obvious part to me was that I was spending the evening in a blaze of intellect which is perhaps more conspicuous in Equity than in common law men". Although Chapman clearly enjoyed occasions such as these, his advanced years were beginning to take their toll. On the Continent he complained repeatedly of being "too old" for sight-seeing, and there and in London he confessed that he tired very easily. It also appeared that Clara Chapman was prone to breakdown as well. By October, he wished himself "back in our dull little city". The Chapmans left London at the end of December, and returned to New Zealand via Australia.

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373 FRC to VE, 29 January and 26 February 1925, and Journal of a trip to England and France. The Chapmans returned to France in September. Chapman also visited Ypres to see the grave of his son George (FRC to VE, 12 August 1925).

374 FRC to VE, 10 July, 23 August, and 29 November 1925, O Alpers to FRC, 12 July 1925, and C Chapman to VE, 11 and 27 August 1925.

375 Ibid. Chapman also attended a gathering at Warrington's house, where he met Lord Merivale who told him that he considered that the case of Massey v The New Zealand Times (which Chapman had heard) "had been conducted and tried in absolutely the best manner possible as well as it could possibly be done here".

376 FRC to VE, 26 February, 18 March, 22 April and 16 June 1925.

377 He remarked that Gytha had kept her mother in bed, to prevent her from over-exerting herself, which had "been the cause of each breakdown she has had" (FRC to VE, 29 November 1925). Family correspondence revealed that Clara Chapman remained the kind, caring woman that she had always been (FRC to VE, 10 July and 14 December 1925).

378 FRC to VE, 19 October 1925.

379 FRC to VE, 29 December 1925 and 8 February 1926.
In the ensuing years, Chapman appeared to rely heavily upon his wife (described as "the traditional wife and mother figure, and a much beloved one at that") and daughters. The youngest daughter, Gytha, remained unmarried, lived with her parents and came to conduct her medical practice from their home. She assessed her father as "student, scholar, exceedingly able lawyer, [and] in old age, extremely opinionated, indeed, at times, unjustly so". The eldest daughter, Vera, appeared to play a special role: in 1932, Chapman recorded that "Vera comes to see us constantly, needless to say that is always a bright hour for me". Vera was the only one of his children who both married and produced children, Chapman valued the friendship and assistance of Vera's husband, Siegfried Eichelbaum, and he came to delight in "sharpening" the minds of his grandchildren.

380 Letter, Dr S G Chapman, 7 September 1988.

381 This she regarded as "a reaction to the tragedy that affected him as a young man, ie the tragic loss of his mother, two brothers and a sister in a terrible sea disaster. ... had he had the influence of a wise mother in early manhood, he might have been a very different person" (letter, Dr S G Chapman, 22 August 1988).

382 FRC to S Eichelbaum, 21 July 1932.

383 The middle daughter, Hilda, married Langer Owen of Sydney. Like Chapman, Owen lost his mother and elder brother in 1866 when the SS London foundered. Owen was a judge of the Supreme Court of New South Wales (1922-1932), and married Hilda in 1925 (G Serle (ed), *Australian Dictionary of Biography* (1988) volume 11, 114-5). Clara Chapman described him as "more of an Englishman than an Australian", and as a gentleman with a "very attractive and quiet manner", and she was pleased that her daughter would take her place in the foremost rank of Sydney society (C Chapman to VE, 8 February 1925).

384 Eichelbaum and A W Blair became Chapman's advisory executors and trustees (FRC to VE, 29 May 1933). See also FRC to S Eichelbaum, 6 August 1933. It was Chapman's continued interest in German that led to Vera meeting Eichelbaum: Chapman enjoyed German conversations with Eichelbaum's father. Eichelbaum qualified in law and briefly worked for Chapman and Tripp before going into family business. His cousin, Sir Johann Thomas Eichelbaum, is the present Chief Justice.

385 Ibid and FRC to VE, 19 October 1925: "I am sure that Ann would easily learn the sort of things I used to teach Gytha".
also involved in the writing up of her father's historical and European accounts. Chapman was heard to say that Vera was the one member of his family who was really interested in historical matters. Chapman also maintained an extensive network of friends, many of whom were drawn from the legal fraternity, and with whom Chapman corresponded.

With his pension and the income received from his temporary appointments, Chapman, until his last years, easily managed to maintain his large house in Eccleston Hill, in which he, Clara and daughter Gytha lived with their servants, and to create a "fair reserve" in the savings bank. However, from 1932, his financial position deteriorated: in July he complained that his "own estate in the light of present values is woefully shrunken", and in October Clara fell ill, thus requiring Chapman to cash an investment to pay for a nurse. Thereafter, the running of his expensive house which he could not sell at a realistic price required him to draw on his reserves, and caused him acute anguish and sleepless nights. By December 1933, his troubles appeared to have eased somewhat and Clara was in better health, although he continued to record his anxieties which "keep me employed until the final call".

386 I Leeson to S Eichelbaum, 17 July 1936.
387 Charles Skerrett (appointed Chief Justice in 1926), in his reply to Chapman's letter of congratulation, noted Chapman's "high character" and "great success as a judge" and their "long association" (C Skerrett to FRC, 25 January 1926). David Smith (appointed judge in 1928) wrote in reply that "your own career on the Bench is, at the least, a model for me, but I shall not attain to your weight and learning" (D Smith to FRC, 7 April 1928).
388 In July 1932, he noted that he had "had eleven commissions and appointments since I was declared dud by Act of Parliament (FRC to S Eichelbaum, 25 July 1932).
389 FRC to VE, 29 May 1933.
390 FRC to S Eichelbaum, 21 July 1932, and FRC to VE, 29 May 1933.
391 Ibid.
392 FRC to J Cook, 17 December 1933.
In December 1934, Chapman declared that he had "nothing to complain of but old age which makes me slow in all actions physical and mental and very unwilling to undertake any enterprise". However, he continued to write his reflections, pursue his interest in his family's history, and maintain an extensive correspondence with his family and the many friends for whom he cared. In May 1936, it was reported that Chapman was "nearing the end of his term", and that from several weeks before he was "not likely to be about again". He was by this stage "very depressed about his failing sight which daily seemed to increase and his deafness". However, on the afternoon before he died, he enjoyed seeing Sir Truby King's daughter and gave her information for the book she was writing of her father's life. Chapman died on the morning of 24 June 1936, after an "attack of breathlessness", and "at the last passed quite peacefully".

Clara Chapman wrote after her husband's death that she "did not know how much my dear man was respected and loved until now", as she received "hundreds of telegrams and letters from all parts of New Zealand testifying to the affection and

393 FRC to Professor MacCrimmon, 19 December 1934.
394 FRC to VE, 11 January 1935, and to War Office, London, 12 February 1935. In 1933, Chapman was engaged in a dispute with J Andersen, of the Alexander Turnbull Library, over the whereabouts of certain of his father's letters. He confessed in a letter to Andersen that "my wife persuaded me not to have a quarrel" (FRC to J Andersen, 28 August 1933). See also note of 13 January 1936, that he was "engaged in putting into order my father's papers and my own" (RC). Sir John Reed, ACJ, after Chapman's death, mentioned "as an instance of his thoughtfulness and kindness that from his sick bed on the last day of his life he caused to be conveyed to me his congratulations on my recent preferment ... It was a characteristically thoughtful act" ((1936) 12 NZLJ 174).
395 G Mackaness to Blair, 16 May 1936 (Blair appeared to be administering Chapman's affairs at this stage).
396 C Chapman to J Cook, 27 June 1936.
397 Ibid. That morning, the full bench of the Supreme Court adjourned for half an hour "to mark at once its sense of regret" (EP, 24 June 1936).
respect in which he was held. Chapman was buried on 26 June 1936, after a funeral service at St Paul's Pro Cathedral. Canon P James paid tribute to Chapman's great force of character, strength of intellect, breadth of culture, and love for human kind and nature, and said that he was a man of true humility. On the same day, "one of the largest gatherings of the legal profession that has been seen in the Supreme Court at Wellington", assembled to pay him tribute. Sir John Reed, ACJ, extolled Chapman's versatility, vigour, energy and humanity.

The accolades accorded to Chapman were well merited. His two decades on the bench and his fruitful years in retirement continued to reveal a man who developed and gave of his remarkable abilities to the full. He expressed his approach to life in the following words of advice:

398 C Chapman to J Cook, 27 June 1936. She noted that she had heard from the Governor-General, bishops, judges, the Prime Minister, the Jewish rabbi "down to old servants and our humblest friends". George Cook wrote that "Fred had indeed a wonderful memory and extensive knowledge,... had done much useful work and [left] a most worthy record, [and] was a good husband and father and a good kind fellow" (G Cook to J Cook, 21 July 1936). The Otago Daily Times claimed that "if New Zealand ever makes a claim to the nurture of great men, the name of Frederick Revans Chapman will not be far from the head of the list" (ODT, 18 July 1936). Clara Chapman outlived her husband by nearly four years, and, thanks to her husband's careful efforts, had enough income to keep her comfortable (C Chapman to J Cook, 12 July 1936. See Manager, The Guardian Trust, 27 July 1936). She complained that she missed her "dear man every minute that I live", and by the end of 1939 she had "made up her mind she will not live very much longer" (C Chapman to J Cook, 12 July 1936 and H Owen to J Cook, 30 December 1939). She died in the evening of 15 April 1940, remembered as one whose "courage and cheerfulness had made her the centre of everything in this home" (G Chapman to J Cook, 15 April 1940). The Chapman home in Eccleston Hill was sold to the Wellington Anglican Diocesan Board of Trustees, and became the residence of the Bishop of Wellington (letter, G J Duncan, 8 February 1989: the transfer took place on 13 August 1940, and Mr Duncan suggests that the Bishop took up residence around November 1940.

399 EP, 26 June 1936.

400 Taranaki Herald, 15 December 1922.
If you have anything to do, think it out and do it thoroughly. ...
Keep your eyes open, study what is going on, and try and keep abreast of the times. ... Never say die, stick to your job.

In pursuing this path, Chapman believed in "attend[ing] accurately to the smallest details", and observed that "the elements of greatness in a great man are not always to be found in great deeds, but in the minor acts by which he ensures that no mistake is made."401 This approach at times made Chapman appear to be rule-bound, overly-cautious and lacking in vision. At the same time, Chapman’s rational, objective, thorough and painstaking approach meant that others could almost invariably be assured of the highest standards in professional and personal life. It also meant that he continually grew in knowledge and insight in a range of areas, not least in the legal and cultural spheres. Chapman also retained a deep-rooted respect and care for individual humanity, as evidenced in his attempts to soften the impact of legal rules, and in his courteous and kindly behaviour towards the public and his legal colleagues, friends and family. His double loss during the First World War appeared to have a similar effect to that of his boyhood tragedy: it drove him on to further working efforts, and it drew him closer to his surviving family.

In July 1936, the New Zealand Law Journal published "An Appreciation" by S A Wiren, Chapman’s former judicial associate. Wiren remarked of Chapman:402

His was a philosophy of life more ample, more tolerant, more self-controlled than are found in our generation; and his passing has taken from us one of the giants of our profession and of the times to which he belonged.

402 (1936) 12 NZLJ 173.
MR. JUSTICE CHAPMAN,
JUDGE ON THE ARBITRATION COURT.

THE PATH TO PEACE.

[Image of a cartoon depicting a judge with a book of awards, and a scene with various figures symbolizing nations and peace]
FREDERICK CHAPMAN

Supreme Court Judge

with Maori accessories

with plant collection
[Sir Frederick Chapman] was a remarkable man, the son of a remarkable father, who between them have left in New Zealand judicial circles two records, the one that of father and son, both occupying a seat on the Judicial Bench, the other that of the father, in occupying a seat in two distinct parts of the Empire, namely, in Victoria and in New Zealand. Sir Frederick may be looked upon as the last of that judicial dynasty that came upon the Bench during the last years of the old century and the early years of the new, and who had left in the Law Reports an imperishable record of their knowledge and learning. They were the worthy successors of the great men who had gone before them - splendid examples for those who followed them.


Historical accounts normally have two interrelated dimensions. First, they seek to record and reveal material which has hitherto been unknown. Secondly, in the process of recording, the historian attempts to assess the material and to chart its import and significance. The structure of my study has been determined by my belief that, as far as possible, one must allow historical material to suggest its own significance and not try to shape it according to conscious predetermined ideas. The aim of my conclusion is to synthesise the traits and patterns which have been emerging in the course of this study and in so doing to address the objectives posed at the outset.
I suggested in my introduction that my study of the lives of Henry and Frederick Chapman might be of human interest and value in itself. Samuel Johnson remarked that "the incidents which give excellence to biography are of a volatile and evanescent kind, such as soon escape the memory and are rarely transmitted by tradition".\(^1\) Thanks to the wealth of family material in the Rosenberg Collection, many of such incidents have been preserved and here revealed. At the same time, because the Chapmans became important public figures, their story has also been told in official and published records, including government papers, law reports and newspapers. These have balanced the personal accounts, and so helped to ensure that (in the words of Johnson) "respect be paid to knowledge, to virtue, and to truth".\(^2\) The result has been the construction of a detailed and personalised account of Henry Chapman's versatile career. This included his early struggle in England to acquire education and financial experience, his mercantile and political involvement in Canada at a crucial stage in its history, his adoption of philosophic radicalism and his pursuit of a journalistic and legal career in England, his pioneering efforts as judge in Wellington, his career set-back in Van Dieman's Land and the subsequent anguish he suffered, his multi-faceted and high-profile legal and political career in Victoria, his more sedate but certainly constructive career as judge in Dunedin, his tragic domestic loss in 1866, and his active retirement through to his death. The records have also provided a closely-focused and intimate insight into the life of Frederick Chapman: his childhood in rustic and newly-developing New Zealand and Australia, his experience of the cultural and educational riches of England and Europe, his family tragedy, his doggedly-determined training at the anachronistic English bar, his versatile and lengthy career in Dunedin, where he achieved high respect in the spheres of law, labour relations and cultural affairs, his highly scholarly and efficient service as arbitrator and judge, the endurance of further

\(^1\) Op cit 135.
\(^2\) Idem.
family tragedy, and his productive retirement. Henry and Frederick Chapman were not men of great intellectual brilliance or eloquence, but thanks to their steady determination and application their lives and careers are of enduring significance. Theirs are human stories which readily "seize the attention" and inspire interest in the history of the period to which they belonged.

I also suggested in my introduction that my thesis might shed light on significant aspects of society during the nineteenth and early twentieth centuries, and, in particular, the characteristics and values of the educated, aspirant middle class to which the Chapmans belonged. As a member of the English middle class, Henry Chapman was part of that social group which determined the Victorian "frame of mind". He shared with others of the Victorian middle class certain distinct features. First, this class subjected itself to enormous demands of work. W R Greg, in his article of 1875 entitled "Life at High Pressure", claimed that the eminent lawyer and other professionals were subjected "to an amount and continued severity of exertion of which our grandfathers knew little". There were various factors which drove men like Henry Chapman on to such great heights of efficiency and effort. One was the desire to overcome the educational and financial disadvantages of their upbringing: through the pursuit of higher office, they hoped to secure a sound financial and social status for themselves and their family and provide for

3 Ibid 132.
5 Ibid 6. The value placed upon work is indicated in John Ruskin's comment on Millais' painting "Mariana in the Moated Grange": "If the painter had painted Mariana at work in an unmoated grange, instead of idle in a moated one, it had been more to the purpose - whether of art or life" (Houghton, op cit 243).
6 Houghton notes: "In the middle classes the passion for wealth was closely connected with another, for respectability. Indeed, their economic struggle was focussed less on the comforts and luxuries which had hitherto lain beyond their reach than on the respect which money could now command. ... [Yet] the summum bonum for everyone not born into the aristocracy was success. To win the
the education and advancement of their children. Another factor was the belief in the need to act in the public good, above all, by guiding and educating the populace. Carlyle believed that his age was advancing because "knowledge, education are opening the eyes of the humblest; are increasing the number of thinking minds without limit". A further important element was the current desire to develop one's natural talents and so advance towards human perfection. Henry Chapman's exertions were directed to a wide range of areas, including philosophy, language, politics, law and government, and so his career illuminated major features of nineteenth century England and English colonial society.

Secondly, Henry Chapman and many of his contemporaries were searching, as Matthew Arnold said, "for some clear light and some sure stay", and so to arrive at rational general principles of conduct. This was especially important to an age which saw itself as being in transition: John Stuart Mill wrote that "mankind have outgrown old institutions and old doctrines, and have not yet acquired new ones". The principles which were to be developed would not be in the nature of abstract laws: instead, they would be rooted in practice and devised with a "ready appeal to common sense". The search for practical general principles was reflected in Chapman's political and legal writings, his political and legal reforms, and in his judgments. In an ad hoc, case-centred legal system, which English law of this time represented, this was a courageous and radical approach.

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7 "Signs of the Times" (1829), Critical and Miscellaneous Essays (Chapman and Hall edition, 1899) II, 80.
8 Houghton, op cit 249.
10 Houghton, op cit 1.
11 Houghton, op cit 110.
A third general characteristic of Henry Chapman and others of his class was an irrepressible optimism and enthusiasm, accompanied by a benevolent tolerance in human affairs. This approach was premised on the belief in the goodness of human nature and its capacity for improvement, and this in turn sustained the drive for reform. At the same time, there was an overall commitment to many of the basic institutions of English society, and this ensured that men like Henry Chapman were content to work within the existing legal structures and there adapt them to the "improved conditions" of the age.12

A fourth general feature of Henry Chapman and his class was their reverence for family life: the home was seen to be a unique source of virtues and emotions, and as the place of peace.13 Mill wrote that "the progress of civilization, and the turn of opinion against the rough amusements and convivial excesses which formerly occupied most men in their hours of relaxation - together with (it must be said) the improved tone of modern feeling as to the reciprocity of duty which binds the husband towards the wife - have thrown the man very much more upon home and its inmates, for his personal and social pleasures".14 For men like Henry Chapman, their family was their emotional centre, and sustained them through career fluctuations and domestic tragedies.

Frederick Chapman was also greatly influenced by the middle-class Victorian frame of mind: he clearly modelled himself upon his father, lived more than half of his life in the Victorian era, and spent a formative part of his youth in England. He too believed in the value and importance of rigorous work-patterns and of the

12 See P Spiller, Cox and Crime: An Examination of Edward William Cox (1809-1879) (1985) 82. This commitment also set limits on Chapman's reformist notions, as indicated by his distaste for radical worker movements in his later political career in Victoria.

13 Houghton, op cit 343.

14 Essays on Equality, Law and Education (J M Robson edition 1984), "The Subjection of Women" (1869) 335. Houghton also notes the increase in the size of families and the middle class preoccupation with raising families on the social ladder (op cit 342).
counter-balancing family unit. His working efforts were, like those of his father, in the interests of advancing the educational, social and career prospects of himself and his family, they aimed for self-development in a wide range of areas, and they were conscientiously, courteously and humanely performed so as to "do the duty which lies nearest".\textsuperscript{15} Perhaps to an even greater extent than his father, Frederick heeded Carlyle's call:\textsuperscript{16}

\begin{quote}
Whatsoever of morality and of intelligence; what of patience, perseverance, faithfulness, of method, insight, ingenuity, energy; in a word, whatsoever of Strength the man had in him will lie written in the Work he does. To work: why, it is to try himself against Nature, and her everlasting unerring Laws; these will tell a true verdict as to the man.
\end{quote}

However, the nature of Frederick Chapman's abilities and temperament and the circumstances of his upbringing were in certain respects quite different from those of his father, and these resulted in key contrasts between father and son. Frederick lacked the breadth of vision of his father and the intellectual verve of his brother Martin, but these were compensated for by steady application to the tasks in hand and by his sense that much was required of him by his father, particularly after the death of his elder brother Harry. Frederick appeared by nature to be of a serious and cautious disposition, and these qualities were reinforced by the tragic loss of his mother, sister and two brothers and (later) of his two sons. He grew up with many social and educational advantages which his father had lacked, and his career was spent in a society which was relatively egalitarian. He commenced his legal career early in life, and did not have the broad mercantile, journalistic and political experiences that his father had had. As a result of these factors, Frederick was much more in the mould of the traditional lawyer than his father had been. Frederick tended not to look for the broader picture - the grand sweep of general

\textsuperscript{15} Houghton, op cit 257.

\textsuperscript{16} Past and Present (1843) (R D Altick edition, 1965) 158.
principles - but to focus on the concrete details of the matter in hand; he certainly lacked his father's irrepressible optimism and his drive for politico-economic reform, and instead adopted a measured air and a more narrowly legal focus; and his judicial role was less in the nature of an enlightened educator and more that of the thoroughly conscientious and eminently sensible arbiter.

In my introduction I further suggested that my thesis might illuminate important aspects of colonial legal development in the late nineteenth and early twentieth centuries, and in particular the operation of essentially English institutions and laws in the colonial environment. Henry Chapman's legal career in New Zealand and Victoria revealed his basic commitment to the English legal system in which he had been trained. In Wellington, he pioneered a court which observed many of the traditional English norms and principles, and these he tried (albeit in as benign a fashion as possible) to impress upon the colonial and indigenous population. In his versatile career in Victoria and again as judge in Dunedin, it was to English case-law, statutes and texts (located in his well-stocked library) to which he had primary recourse. At the same time, Henry Chapman's colonial legal career clearly indicated the modifications and qualifications which were imposed on English legal institutions in the colonial environment. In Wellington, these were reflected in the primitive nature of the conditions in which Henry Chapman worked (involving sparse legal resources, intermittent judicial consultation, an inferior fused bar, and harsh physical constraints), the limited concessions made to the indigenous population in criminal practice and in Chapman's recognition of the Treaty of Waitangi, and the introduction of laws and rules which were consciously designed for the New Zealand context. Henry Chapman's judgments in the Symonds and

17 In early 1853, Henry Sewell remarked that the proceedings of the Wellington Supreme Court "were altogether decorous and a very fair copy of our English Courts" (McIntyre, op cit 198).

18 William Swainson, New Zealand's Attorney-General 1841-56, wrote: "And not being hampered by any complicated pre-existing system, nor impeded by the opposing influence of a powerful profession, the lawgivers of the Colony were also enabled to effect amendments in the law, which
other important cases and his formulation of the early Supreme Court rules stand as major contributions to the development of a distinctively New Zealand jurisprudence. In his judicial career in New Zealand and Victoria, Chapman supplemented his legal material with references to Australasian and American developments, particularly in the interpretation of local legislation and in procedural matters. He also contributed to the strengthening of local legal institutions and jurisprudence, notably through his support of the legal profession and his work in legal education.

Like his father, Frederick Chapman was trained in the English legal tradition, and he retained a deep-rooted respect for and extensive knowledge of its laws and institutions. His lengthy period at the Dunedin bar in the late nineteenth century and his judgeship during the first quarter of the twentieth century coincided with an era of extensive English legal influence in New Zealand, and the innately cautious and at times rule-bound Frederick Chapman generally followed the overall trend.

The British Legislature had hardly yet succeeded in accomplishing. A simple system of oral pleading, suited to the primitive condition of the community, was established, for eliciting the issue in civil actions; and the form and language of indictments in criminal proceedings were materially amended. Of enactments of a more permanent character, that [the Land Registration Ordinance and Conveyancing Ordinance of 1842] relating to real property is perhaps the most conspicuous for the boldness of its alterations. Many useless forms and subtleties in this abstruse branch of the law were abolished; not a few of its rules were amended" (New Zealand and its Colonization (1859) 94-5).

19 The reference to American decisions and textual writings was common in English and colonial courts of the nineteenth century (J L Robson (ed), New Zealand: The Development of its Laws and Constitution (2 ed, 1967) 29-30).

20 B J Cameron, in explaining this attitude, pointed to the British origin of almost the entire population, the growth of a conscious Imperialist sentiment at a formative period of New Zealand history, the extraordinary economic dependence on the United Kingdom, the ease and abundance of communications with England, the inferiority of the professional colonial classes, the reverence for the common law, the ready accessibility of English legal sources, the role of the Privy Council, and the nature and quality of New Zealand legal education ("Law Reform in New Zealand", (1956) 32 NZIJ 72-3).
At the same time, Frederick Chapman saw himself as a native-born New Zealander, was concerned with "things New Zealand", and worked for the rational administration of justice in the manner most appropriate to the New Zealand environment. This was particularly important in view of the dramatic spate of legislative reform which marked the last quarter of the nineteenth century in New Zealand, when "outside the field of property law most of the present important divergences between English and New Zealand law" emerged.\(^{21}\) This period of reform was followed in 1908 with an extensive consolidation of New Zealand's statute law. Frederick Chapman, at the bar and on the bench, contributed to the "fleshing out" of this legislation in the modern New Zealand environment. Further, in the conciliation tribunal and the Arbitration Court, he was at the forefront of New Zealand's pioneering approach to industrial relations. In his persuasive arguments at the bar and in his judgments from the bench, Frederick Chapman's wide and deep surveys of legal authority included the growing body of New Zealand, Australian and American legal sources. His learned and meticulous judgments have been quoted on numerous occasions by New Zealand judges, down to the present. He made a special contribution in the sphere of criminal law and justice, and judgments such as that in \(R v Krausch\) broke new ground in the ongoing development of New Zealand law. While at the bar in Dunedin, Frederick Chapman was an active participant in the publication of New Zealand law reports and in the organisation and education of the local profession. While there, and later as judge and in retirement, he contributed to New Zealand legal writing, which was then in its embryonic stage. On the bench and in his early retirement, he also

\(^{21}\) Cameron, op cit 89. This legislation included the Real Estate Descent Act 1874 (which anticipated English law by nearly fifty years), the Adoption Act 1881 (which was the first of its kind in a common law British country), the First Offenders Probation Act 1884 and the Criminal Code Act 1893 (both pioneer measures), and the Testators Family Maintenance Act 1900 (seen to be the most original and famous legislation of this time) (idem).
assisted the government in law reform measures. All of this was crucial to the development of a credible New Zealand legal identity.

This study of Henry and Frederick Chapman is, then, of significance in terms of human interest and for the insights it gives into the social and legal developments of the periods in which they lived. The kind of inquiry here undertaken is the more important because it causes us to reflect upon our own lives and age. Samuel Johnson remarked that "there has rarely passed a life of which a judicious and faithful narrative would not be useful", for "every man has ... great numbers in the same condition as himself, to whom his mistakes and miscarriages, escapes and expedients, would be of immediate and apparent use".22 Further, to look into the frame of mind which characterised men like the Chapmans "is to see some primary sources of the modern mind".23 While much of the Victorian excitement and wonder has retreated in the face of scepticism and disillusionment, yet certain basic attitudes have persisted: the underlying optimistic striving for a better future, the commitment to the work ethic, the stress on individual human improvement, and the value placed on domestic family life. Likewise, to examine the legal careers of the Chapmans causes us to reflect upon modern legal developments, particularly in New Zealand: notably, the continued strength of inherited English legal traditions, counterbalanced by the steady development of a unique New Zealand jurisprudence.

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22 Op cit 133.
23 Houghton, op cit xiv.
I. Early years in Wellington, Hobart and Melbourne (1846-64)

Martin Chapman was born at 10.50 pm on Thursday 26 March 1846 at the family home in Karori. He was the third son of Henry and Catherine Chapman. His father declared openly that "we should have preferred a daughter", although he added after reflection that "we are too thankful for the great blessing we enjoy in the possession of fine healthy and intelligent children to repine at the mode in which it pleaseth Providence to bestow those blessings". After toying with the name "earnest" (which his father said marked his character), his parents named him Martin, after Chief Justice William Martin, who had consented to be his godfather.

Martin was smaller and more delicate of constitution than the two brothers who had preceded him (as well as Frederick who followed him three years later). During the first three-and-a-half years of his life, he was subject to colds, coughs and other disorders. In November 1849, his father wrote that Martin had been very ill and that for several days his recovery had been very doubtful. He noted that "though to all appearance the very picture of health, he is liable to sudden and severe derangement - arising from some affection of the mesenteric gland". However, the illness of 1849 represented a turning-point, as after that Martin improved in health and strength.

1 HSC to HC, 26 March 1846, and HSC to Aunts, 9 April 1846.
2 HSC to HC, 1 and 7 July 1846.
3 HSC to HC, 19 August 1846, 5 September 1846, 6 March 1848, and 17 July 1848.
4 HSC to HC, 28 November 1849.
5 HSC to Aunts, 30 January 1851.
Despite his physical ailments, Martin was a lively, cheerful, and attractive child who gave his parents much joy. In October 1847, his father recorded that, "when Martin came to see me [after returning from the Nelson assizes], he was the prettiest little fellow I had ever seen, [with] bright clear brown eyes like my mother's with long dark eyelashes, light curly hair ... [and] a bright clear ruddy complexion". Henry Chapman noted that the birth of a fourth son (Ernest, in August 1847) made Martin "bold and independent". Martin also proved himself to be "certainly quicker and more clever than the others of his age". At five months he imitated a cock crowing, at eight months he was "making great efforts at talking", and at twenty-one months he could "put long sentences together". In August 1848, his father commented that "Martin is so careful and neat in his manipulations that he can be trusted with the most valuable book to look at the pictures ... every morning he comes to me to ask for a book to look at the pictures ... he has picked up the letters himself, how we hardly know ... we rather try to keep him back than to push him forward on account of an excess of his nervous system". Around his fourth birthday, Martin commenced reading, and less than five months later his father wrote that Martin progressed with "surprising rapidity" and that "nothing satisfies him but complete explanation".

6 HSC to HC, 17 October 1847. Henry Chapman repeatedly commented that Martin closely resembled his paternal grandmother Ann, especially in the eyes, brows, and having "an outer back rim of the left ear indented as if three or four pieces had been cut out" (HSC to HC, 19 August 1846, 21 and 30 August 1847, and 17 July 1848, and to Aunts 9 April 1849).

7 HSC to HC, 10 September 1847.

8 HSC to HC, 17 July 1848.

9 HSC to HC, 19 August and 24 November 1846 and 19 December 1847. In June 1849, Henry Chapman wrote of Martin that "the correctness of his language and the clearness and perfect propriety of his utterance are quite ridiculous" (HSC to HC, 17 June 1849).

10 HSC to HC, 2 August 1848.

11 Henry Chapman wrote: "yesterday he read a page containing some words with two syllables and a few even of three such as another. ... the other day coming to too he said there are three sorts of
It is clear that Martin's rapid development was promoted, not only by his innate ability, but by the active interest and careful nurturing of his parents. In May 1851, Henry Chapman gave Martin the privilege afforded earlier to his eldest brother (Harry) of accompanying his father on circuit to Nelson.

Shortly before his sixth birthday, Martin and his family sailed from Wellington for Van Dieman's Land. But the childhood memories that Martin had of Wellington remained with him in later life, as evidenced by later visits to his first home. In Hobart, Martin, together with his brothers Harry, Charles and Ernest, attended the local school, called the Hutchins School, which Martin apparently enjoyed.

Martin and his family moved to Melbourne in November 1854, when he was eight-and-half years of age. In January 1855, his father resolved to send Martin and elder brother Charles to Christ's College in Van Dieman's Land as there was no public school in Melbourne. But when, in March 1858, the Melbourne Grammar School opened, Martin and Charles were amongst the first to be enrolled.

In his comments on a family photograph taken in 1858, Henry Chapman (Martin's grandfather) noted that his first impression of Martin was one of "mildness". But beneath this exterior was a boy who was talented and hard-working in his studies. In 1860, he won prizes in natural history and French, and in too, Mama ... he asks the difference between hear and here, ear and year - both as to sound and meaning" (HSC to HC, 28 July 1850). See also HSC to HC, 23 October 1850.

12 See, for example, Henry Chapman's letter to his father, in which he recorded the following conversation: "Kate: Marty, shut the door after you. Martin: How will you get air? Kate: Oh! we shall get plenty of air from the chimney. Martin: Then shan't you die if I shut it? Kate: No! (Exit Martin shutting the door after him)" (HSC to HC, 28 August 1850).

13 HSC to HC, 20 June 1851.
14 HSC to FRC, 17 October 1866.
15 FRC, Reminiscences, and HSC to CC, 2 October 1853.
16 Idem.
17 HC to CC, November 1858.
1862 in pencil drawing studies.\[18\] By 1862, Martin had reached the first class of the
school, and at one stage it was planned that he would begin university in November
of that year.\[19\] However, the headmaster advised that Martin (at sixteen-and-a-half)
was "over young" and that this plan should be deferred until the following
year.\[20\] As compensation, Martin was allowed to visit New Zealand, where he spent time
with his godfather William Martin (who had extended the invitation for Martin to
visit) and George Grey.\[21\] In November 1863, Henry Chapman wrote that he still
managed to keep Martin and Ernest at school, but that "they press me hard to let
them go forth into the world".\[22\] Martin completed his final year at the school in
fine form, gaining a prize in mathematics and "honorable mention" in classics,
French and natural science.\[23\]

Outside of his schoolwork, Martin's interests were wide and varied. By 1858, he
showed considerable "musical propensity" in his piano playing.\[24\] He revelled in the
untamed world of Victoria of that time: in May 1862, his father recorded that
"Martin had been out in the bush during the Easter holidays on a kangaroo hunting

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18 Melbourne Church of England School records. See also HC to HSC, 20 May 1861 (noted that
Martin had taken a liking for civil engineering, and commented "I take Mart to be a smart little
fellow").

19 HSC to Aunts, 26 August 1862.

20 Idem.

21 His father wrote that "Mart when a little boy used to be a great favourite of Sir George Grey"
(HSC to Aunts, 26 August and 11 November 1862).

22 HSC to FC, 26 November 1863.

23 Melbourne Church of England Grammar School records. For most of their time at this school,
the Chapman boys were the only New Zealanders enrolled. When war broke out in New Zealand
in 1860, "they were at much trouble to teach their school-fellows how to pronounce the word
Maori" (The Melburnian, obituary).

24 HC to HSC, 3 April 1858. In November 1863 and January 1864, Henry Chapman wrote that
Martin played the piano with "very good execution" (HSC to Aunts, 26 November 1863 and 26
January 1864).
expedition and had ridden forty miles the day before". In later life, Martin fondly recalled the rugged life he had enjoyed, especially with his brother Frederick: in a letter to the latter in England, he asked if the "savages of Great Britain ... could ride a buck jumper or crack a stock whip or go after a kangaroo in timber or live a summer on native beer and possum or on nothing and a drink of water as we did at Dandenong". In time, Martin also had occasion to admire the local females: he later wrote that "I don't admire that milky colour dabbed over with scarlet [of English girls] but like a rich brownish red like you get in Australia and Tasmania the result of healthy exercise under our splendid sky (ahem)". Martin's father also reported proudly that "Martin rides well, ... is also a splendid swimmer, a good shot and a skilful cricketer, but above all a very good boy". Through these activities, Martin developed his health and strength, though he (and brother Walter) remained the "short ones" of the family, and he was still prone to illnesses.

In December 1863, Martin passed the examination for the civil service of Victoria, in the subjects English, Arithmetic, Latin, French, Euclid, Algebra and History. On 26 January 1864, his father reported on his progress as follows:

Martin entered the Survey Department, but not as yet in the permanent establishment. He has passed two civil service examinations with great credit being the first of 146, and he has

25 HSC to Aunts, 26 May 1862.
26 MC to FRC, 17 September 1864. In another letter to Frederick, he referred to the occasion when a snake was found in the University of Melbourne, and the time when he walked through the scrub with a gun on his shoulder looking for quails, ripe pigeons and other game (MC to FRC, 17 August 1865).
27 MC to FRC, 17 March 1865.
28 HSC to Aunts, 11 November 1862.
29 CC to HSC, 14 May 1864, and HSC to FRC, 17 November 1864.
30 Certificate, RC. Martin was the only candidate to pass in all these subjects (HSC to FC, 25 February 1864).
31 HSC to FC, 26 January 1864.
still to pass a special examination for the Department and then wait for a vacancy. When that occurs he will have £175 a year. Martin is now practising drawing and mapping from field books; he will be placed hereafter in the photolithographic department with some opportunities of studying geology under very able officers, and will acquire an accurate knowledge of the country. Ultimately however he looks to settling on the land and will probably either join Charley in a station or take to wine growing which he is now starting on one sixth of an acre of my land here.

Martin in due course started work as a supernumerary (without salary) in the Survey Department, which his father regarded as "a good scientific school". However, his father's appointment as judge in New Zealand brought this to a speedy end, as it was decided that Martin would follow his father to Dunedin. On 20 April 1864, Martin bade farewell to his mother, brothers Frederick and Walter and sister, all of whom (except for Frederick) he was never to see again. In May he left his brothers Charles and Ernest in Australia, and departed for Dunedin.

II. Sojourn in Dunedin (1864-68)

Martin lived in Dunedin for less than three years, and it is apparent that this was a difficult period in his life. For him, the adjustment from Melbourne to Dunedin was a painful one. He found Dunedin to be a dull town, with an unappealing, cold and wet climate. He described it as "a town (!) stuck on the side of a hill and on the flat at the bottom of the hill [with] one great beauty that

32 HSC to FC, 25 February 1864. During his time there, Chapman (and another cadet) drew the first map showing a railway line from Sydney to Melbourne (The Melburnian, obituary).
33 HSC to Aunts, 26 March 1864.
34 Idem.
35 HSC to FC, 18 November 1864.
36 E Chapman to FRC, 25 July 1864.
everybody can see down everybody's chimney". He described Otago as "the land of mud and rain", and, in a letter written in mid-October 1865, he noted the hail, rain and snow, "the streets very muddy, regular gale all day ... this is fine summer weather is it not ... nothing is stirring now in Dunedin". He longed for the "brown grass such as we get after a nice 140 degree F hot wind in Victoria", and added that "I should like to import a few hot winds to Otago".

A major problem for one as active and mentally developed as Martin was that, for the first eighteen months after his arrival, he was not occupied in any employment or formalised study. He remarked that "I am eaten up with ennui here having nothing to do", and his mother, expressing regret that Martin had no settled employment, wrote that she was sure "that he feels not having regular occupation".

During this period, Martin occupied his time with a range of leisurely activities. He furthered his musical interests and talents. His father wrote that he "plays the piano better than many who call themselves professors ... the execution is brilliant and his expression good"; and he became a good tenor singer at the local Philharmonic Society's concerts and in the local church choir. He joined the local cricket club, represented it in a match at Christchurch and became its treasurer, and went boating, shooting and swimming. He also attended the occasional party, flirted with the local girls, and conducted an affectionate and playful

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37 MC to FRC, 16 April 1865.
38 MC to FRC, 16 September and 14 October 1865.
39 MC to FRC, 17 September 1864.
40 MC to FRC, 17 July 1865, and CC to HSC, 8 September 1865.
41 HSC to FRC, 17 November 1864 and 15 June 1965, and to Aunts, 18 August 1865. Henry Chapman wrote that Martin's voice was "a tenor like my father's and mine - only smaller and weaker". In 1864, Martin was offered the post of organist in the new church built in Dunedin (Henry Brewer Chapman to HSC, 18 July 1864).
42 HSC to FRC, 17 November 1864 and 16 February 1865, and MC to FRC, 14 October 1865.
43 HSC to FC, 18 November 1864, and MC to FRC 16 December 1864.
correspondence with his brother Frederick. In November 1864, Martin was host to the Chief Justice, George Arney, who had come to Dunedin with the rest of the Court of Appeal, and who stayed with the Chapmans. Henry Chapman believed that Martin was "remarkably well informed so as to be quite equal to conversation with educated men", and Arney corroborated this by later repeatedly telling Chapman that he had "never met with any young man of Martin's age so well informed and so extensively read". Arney also testified to Martin's "quiet, steady, persevering consistency in his attention to [his] smallest wants", and suggested that "any department of public service must be benefited which is accredited with young men, such as he is, bred up as gentlemen and scholars".

On 16 November 1865, Martin commenced duties as judge's secretary. He wrote that "I have got my billet at last, the screw is only £200 but the fees [for copying judge's notes and as allowance on circuit] may amount to £50 or more, and then the time I serve is to count as articles which is a great advantage". Three days after his appointment he accompanied his father to Invercargill, where he had to sit in court (with "the bother of donning the robe and sitting to arraign the prisoners") as the local registrar had been suspended because of a charge of murder against him. During the period of over two years that Martin officiated as judge's

44 He wrote: "Sweete is the kiss of a sister but if you have not a sister handy kiss somebody else's, I find that just as pleasant", and "In future you may expect something very brilliant from me as I have just been cutting my wisdom teeth at least one of them" (MC to FRC, 17 August 1864, and 18 June and 14 October 1865). See also HSC to FRC, 17 November 1864, and 12 March and 13 August 1865, and E Chapman to FRC, 16 January 1865.
45 HSC to FC, 18 November 1864.
46 G Arney to HSC, 22 November 1864. Martin thought Arney to be a "very pleasant sort of coon" (MC to FRC, 17 November 1864). When Martin visited Christchurch in February 1865, he also impressed the judge there. H B Gresson J wrote to Henry Chapman commenting that "the extent and accuracy of his information, his taste and proficiency in music - is certainly a favourable example of a colonially educated youth" (Henry Brewer Chapman to HSC, 18 July 1865).
47 MC to FRC, 18 November 1865; see also HSC to FRC, 16 November 1865.
48 MC to FRC, 18 November 1865, and letter from CS 29 November 1865.
secretary, he obtained useful insights into court practice and procedure. But much of his work involved lengthy court sittings (sometimes from 6.00 am to 9.00 pm), and these Martin found to be dull and tedious.\textsuperscript{49} Also, Martin was required to return regularly to Invercargill, "that dullest of dull places", for circuit court hearings.\textsuperscript{50} More interesting official excursions were to Wellington in October 1866 and 1867, where his father attended sittings of the Court of Appeal. Martin commented that "Wellington is not so pretty generally as Dunedin but it has a prettier bay and many very pretty gardens which Dunedin has not", and that "the climate is quite different; Dunedin rain and wind, Wellington warm, balmy, clear sky, no wind". Martin enjoyed a return visit to the house where he had been born and "remembered many of the conspicuous features, especially the garden",\textsuperscript{51} and was invited to dine with Sir George Grey and the Attorney-General.\textsuperscript{52}

In March 1866, Martin received news of the drowning of his mother, sister and two brothers. Martin wrote to Frederick of how he was "shocked and horrified by the frightful intelligence which the last mail brought in".\textsuperscript{53} Lady Mary Ann Martin commented that "the blow must fall very heavily on him ... he was so thoroughly domestic in his habits and so fond of his mother and his home".\textsuperscript{54} An indication of the effect which the news had on his already depressed frame of mind came in a letter written three months after he heard the news: he declared that "everything seems so changed to me now ... I sometimes think how happy in comparison I was even when I had thought myself least so".\textsuperscript{55} He succumbed to influenza "rather badly", but by August he had improved and once again developed his reading and

\textsuperscript{49} MC to FRC, 18 January 1866, 5 September 1866, and 19 December 1866.
\textsuperscript{50} MC to FRC, 4 November 1867.
\textsuperscript{51} HSC to FRC, 17 October 1866.
\textsuperscript{52} HSC to FRC, 17 October 1867, and MC to FRC, 4 November 1867.
\textsuperscript{53} MC to FRC, 15 April 1866.
\textsuperscript{54} M A Martin to HSC, 12 July 1866.
\textsuperscript{55} MC to FRC, 18 June 1866.
other interests.\textsuperscript{56} The sad loss also had the effect of making his father even more dependent than before on Martin's emotional support. Over the ensuing two years, Henry Chapman wrote repeatedly of his dear Martin "who never leaves me", and towards the end of this period his father suggested that "I sometimes think that he must find it very dull".\textsuperscript{57}

During this time, Martin continued to develop his interests. In July 1867, his father wrote that "he is already a good Latin and Greek scholar and mathematician and plays beautifully on the piano ... he is good deal like what Harry was at about his age".\textsuperscript{58} Shortly after this, Henry Chapman began to instruct Martin in French and German, and by February 1868 his father reported that "Martin will soon speak French with ease".\textsuperscript{59} Martin began a collection of the music of major composers (such as Chopin, Beethoven and Mozart), and decided to fulfil a long-held ambition of learning to play the organ.\textsuperscript{60} Martin never refused to play the piano at home or at small parties, and occasionally was prevailed upon to play in public (for example at an amateur concert in aid of the building fund of All Saints' Church).\textsuperscript{61} But he confessed that he hated playing before a crowd and "steadily refused to play for a dance", as "I always fancy that I am asked not for the sake of the music but for the vulgar wish to hear how I can play".\textsuperscript{62} Martin continued to represent the Dunedin Cricket Club (for example, in matches at Oamaru and Christchurch),\textsuperscript{63} went on an

\textsuperscript{56} E Chapman to FRC, 18 July 1866, and Charles Chapman to FRC, 18 August 1866.

\textsuperscript{57} HSC to FC, 20 November 1866, 20 January 1867, and 5 December 1867, and HSC to FRC 29 November 1866 and 8 October 1867.

\textsuperscript{58} HSC to FC, 5 July 1867.

\textsuperscript{59} HSC to FRC, 4 August 1867 and 2 February 1868.

\textsuperscript{60} MC to FRC, 19 September 1866, and HSC to FRC, 16 December 1866.

\textsuperscript{61} HSC to FRC, 16 December 1866.

\textsuperscript{62} MC to FRC, 19 September 1867.

\textsuperscript{63} MC to FRC, 18 January 1866, 16 December 1866 and 20 January 1867.
excursion with his brother Ernest to the local ranges, and periodically visited the family sheep station in Otago. In May 1867, Martin left for a month’s holiday in Melbourne, where friends commented on "how much improved" they considered him, and others were "quite surprised at his conversation and general knowledge for so young a man".

During 1867, Henry Chapman (despite some doubt as to "whether Mart will take to the law at all") formulated the idea that he might "make Mart an English barrister". Martin, for his part, continued to find Dunedin to be a "dull eventless place", and his father noted that "there are few people here for whom he cares". He therefore expressed a liking for his father’s plan, and, on 22 February 1868, he set sail for Melbourne, en route for England. His father wrote, sadly, that Martin "has been my constant companion for nearly four years", and that he felt his departure keenly.

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64 HSC to FRC, 4 January 1868.
65 HSC to FRC, 1 December 1867. Martin also compiled some fifty photographs of Maoris "in all stages of civilisation", and collected local ferns (HSC to FRC, 17 October 1867).
66 HSC to FRC, 4 July 1867. Martin continued to savour the company of the opposite sex; he declared openly "what is the good of knowing a pretty girl if you cannot flirt with her?" (MC to FRC, 2 February and 19 April 1867). The attraction appeared to be mutual: one Australian lady fell "quite in love with Martin’s face [in a photograph], saying 'it is so intellectual'" (HSC to FRC, 19 September 1867).
67 HSC to FRC, 18 July 1867.
68 HSC to FRC, 3 March 1867.
69 MC to FRC, 19 September 1866.
70 HSC to FRC, 4 January 1868.
71 HSC to FRC, 20 June 1867.
72 HSC to FC, 22 February 1868.
73 HSC to FRC, 5 March 1868.
III. Legal career in London (1868-75)

Martin arrived in London in May 1868, and took up lodgings with his brother Frederick. He passed the entrance examination for students wishing to enter an Inn of Court, and entered the Inner Temple on 6 June 1868 (in time for Trinity term). His father could not afford special pleaders' fees that year, and so Martin (like Frederick) occupied his time with preparatory reading. Henry Chapman was careful to outline his views on the best method of acquiring "a good stock of law", to add to Martin's experience in Dunedin which "must have given [him] an insight into pleading and practice".

Henry Chapman also sent letters of introduction for Martin to present to Henry's former friends in London, asking them to allow Martin access to lectures at the Royal Institution and to the Kensington cricket ground. For his part, Martin initially gave the impression that "he has come prepared not to like England, as he seems to regard us rather in the light of outer barbarians, sadly deficient in colonial

74 HSC to MC, 20 August 1868 and J Foster, Men at the Bar (1885) 82.
75 HSC to FRC, 15 May 1868.
76 Henry Chapman wrote: "I think that in order to [acquire] a general notion of the whole field of law you should read with care the four volumes of Stephen's Commentaries. ... As to pleading, buy and read Sergeant Stephen's principles of pleading, and buy also Bullen and Leake's precedents - in order to be able to compare the forms with the rules laid down. Buy also J W Smith's little book describing progress with the course of an action at law. For practice, begin with Smith's Action at Law and Day's Common Law Procedure Acts with notes; ... and for the general principles of evidence the first part of Roscoe's Nisi Prius. When you have worked through these, you will be fully primed for a pleader's chamber. ... For Real Property - after having read the volumes of Stephen's Commentaries thereon, read Burton's Compendium or Noyes's Conveyancing or both. The books which I have mentioned amount to 13 volumes of which 11 are to be read and studied and 2 only referred to (Bullen and Leake and Day)" (HSC to MC, 23 August 1868).
77 HSC to J Wolfe, 15 May 1868, and to Ward, 13 June 1868.
However, Martin set to work with gusto and he and his brother became "persistent readers of law in the Inner Temple library". He was pleased to receive piano lessons with a good local instructor, and he was reported to be "delighted with the opera and the Handel festival".

In 1869, Martin commenced an eighteen-month pupillage with Stephen Cracknall, an established equity draftsman, conveyancer and barrister of the Middle Temple. In due course, Martin entered the chambers of John Tatham, long-standing barrister and (from 1866) bencher of Lincoln's Inn. On 6 March 1871, Martin recorded that he had been "at Chambers working hard all day", and that he had "a very heavy and complicated deed in hand which will occupy me for some time". Martin also attended the requisite number of dinners, which he completed on 21 April 1871.

Martin spent a fair amount of his time as a student in non-legal activities. He continued with music lessons, attended concerts and dances, played chess, and so on.

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78 HSC to MC, 23 August 1868. Henry Chapman ascribed this attitude to "colonial sensitiveness", and the belief that colonists had that "colonies and colonists are undervalued or not appreciated in England".

79 FRC, Reminiscences.

80 HSC to MC, 20 and 23 August 1868.

81 MC, Diary 15 April 1871. Martin maintained social contact with Cracknall after his time in Chambers (MC, Diary 21 January 1871). (Cracknall was called to the bar in 1848, and continued his career until 1884/5 (Middle Temple records)).

82 Foster, op cit 458; and MC, Diary 31 January 1871 ("Tatham promises a series of discussions on the Fines and Recoveries Abolition Act").

83 MC, Diary. On 11 February 1871, he "assisted [a friend] to draw up the specification for taking out a patent for a cryptograph".

84 Here he met, for example, "a naval Port Captain who expects to be a rear Admiral in about 3 years" (MC, Diary 23 January 1871).

85 MC, Diary 9 March 1871 ("I have now commenced a new line of harmony with Silas viz imitation it is dry work but not difficult. Fugue will come next").
and went skating in the winter. 89 He periodically went on holiday trips within Britain and to the Continent. 90 During June to September 1869, he visited various centres in France, Switzerland and Germany, where he spent much of his time with Frederick and his father. 91

In April 1871, Martin prepared for his call to the bar. He obtained signatures from Cracknall (certifying that Martin had read with him) and from Sir David Dundas (endorsing a proposal form). 92 On 1 May, Martin and his brother (with around eighteen others) were called to the bar in the Parliament Chamber of the Inner Temple. Martin noted in diary: "I suppose this is an important day in our life". 93 The following morning he and Frederick went to Westminster to sign the roll in the Court of Exchequer, "which is the finishing stroke for making me a Barrister". 94

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86 MC, *Diary* 18 February 1871 ("Went to chambers in the morning, to a Saturday Popular Concert in the afternoon heard a magnificent string quartet by Mozart also a very fine trio by Schubert but this was very long. Halle played in his usual cold style"). Martin also met the eminent violinists Signot Savoir and Henry Holmes: of the latter he said that he admired "his playing and also his composition much" (MC, *Diary*, 1 February and 22 March 1871).

87 MC, *Diary* 6 February 1871 ("We went tonight to a Soiree ... at Silas's request danced a waltz with a lump of lead").

88 MC, *Diary* 1 February 1871.

89 MC, *Diary* 1-18 January 1871.

90 HSC to MC, 19 November 1870, and MC, *Diary* 1 January 1871. In Britain he travelled to Wales, the western part and the midlands of England, and Canterbury.

91 HSC to MC, 11 June 1869, and HSC to FRC 12 and 29 August 1869. Martin was intrigued with the Franco-Prussian War, and recorded its progress in his diary (MC, *Diary* 27 January 1871).

92 MC, *Diary* 15 and 19 April 1871 (Martin recorded that Dundas "spoke most kindly" to him and that he "seems to be a fine old gentleman").

93 MC, *Diary* 1 May 1871.

94 MC, *Diary* 2 May 1871.
After his call to the bar, Martin visited his mentor Tatham, who "kindly said that he might as well stay on with him for a time".95 Martin spent much time in the ensuing weeks attending the Tichborne trial, where he observed that the judge seemed partial to the defendants and that the claimant seemed "pretty much a match" for the opposing counsel, Coleridge.96 On 22 June, he received his first brief (a consent brief in *Re Tayleur*)97 from the family friend Charles Shea. This was set down for 24 June, but the Master of the Rolls "did not sit as he was one of the Pall Bearers at [the eminent historian] Grote's funeral".98 On 30 June, Martin received a second brief "to oppose an application to appoint new trustees on another petition in the same matter". The following day, Martin went into the Rolls Court with the two briefs. He recorded that "I tried to make myself heard once to correct a mis-statement but as it was corrected elsewhere I sat down". At the conclusion of the hearing, "a most satisfactory order was made".99

It was unfortunate for Martin that it was probably in the Rolls Court that he contracted smallpox.100 On the day following his appearance in court (Sunday 2 July), he recorded that he "Staid at home very seedy", and thereafter his condition steadily worsened. On 5 July, the family doctor "impacted to me the agreeable information that I had the smallpox".101 Three days later he was taken to the smallpox hospital at Highgate, where he remained until 25 July.102 The close bond between Martin and Frederick was particularly evident at a time like this, and

95 Idem.
96 *MC, Diary* 5 June 1871.
97 This case concerned a wealthy lunatic who had made two wills before he was found to be a lunatic. An earlier hearing was reported in (1871) 6 Chancery Appeals 416.
98 *MC, Diary* 24 June 1871.
99 *MC, Diary* 30 June and 1 July 1971. He earned £5.5 for his efforts.
100 *MC, Diary* 4 August 1871.
101 *MC, Diary* 5 July 1871.
102 *MC, Diary* 25 July 1871.
Frederick proved himself to be at his thoughtful best.103 Martin then spent ten days at Brighton, where he bathed, walked and gradually recovered his strength.104 He returned briefly to London (where he attended the Exhibition),105 and then went to Germany where he remained for four months. Here he studied German in earnest (and proclaimed towards the end of his stay that he could speak the language better than he could read it),106 and travelled to places such as Ober Ammergau (where he saw the Passion Play).107

Martin returned to London on 14 December. Here he renewed his contacts with his friends Cracknall and Shea, arranged to have his name put up at the Old Buildings, Lincoln's Inn, and resumed his reading in the Temple Library.108 Martin continued to practice from his chambers in the Old Buildings (also known as "Old Square") during 1872 and 1873, but in 1874 he moved to Chancery Lane.109 In July 1872, he was despatched by a London solicitor to Iceland, in connection with the title to certain sulphur mines.110 Here he met R F Burton, whose publication Ultima Thule recorded his summer tour of Iceland. Burton recorded that Martin's "good gifts as a traveller, his energy and his imperturbable good temper and sang
froid, made him an excellent companion". Later, Martin was similarly commissioned to go to Canada in the interests of an oil company, and there he remained for ten months.

Henry Chapman hoped that Martin and Frederick would establish complementary legal practices in the same centre. His plan was that Frederick would have a common law practice and that "Martin's must be a general practice in equity: conveyancing, equity pleading and court business and divorce". By late 1871, Henry Chapman had received the assurance from James Macassey that "Martin and his brother would supply [the want of capable assistance at the Dunedin bar] without any competent competitor", and that "they would be sure of success and they could not come out at a better time". Henry Chapman suggested that Frederick come out alone, as when Frederick was established he would have far better opportunities of making preparatory arrangements for Martin than he (Henry, as judge) could have, and also allow Martin time to complete his German studies.

Frederick duly established himself in Dunedin in 1872, but Martin had decided reservations about returning to live in Dunedin. An indication of this was when his father wrote to Frederick (in 1871) that Martin "may have dwelt on the superiority of the Melbourne climate [over that of Dunedin] and the advantage of a large city". It is not surprising, then, that when Martin left England in 1875 he chose to settle in a city other than Dunedin. Wellington appeared as an attractive

111 *Ultima Thule* (1875) 67-8. Together, between 8 and 29 July, they travelled to Hekla ("the Vesuvius of the north") and the mountains near Reykjavik, before Burton "parted regretfully with Mr Chapman, who had no longer anything to detain him in Iceland" (ibid, 230).

112 *The Melbournian*.

113 HSC to FRC, 28 April 1870.

114 HSC to FRC, 10 December 1871.

115 HSC to FRC, 17 December 1871.

116 HSC to FRC, 10 December 1871.
alternative: apart from being Martin's birthplace, it offered good prospects to a young lawyer starting out on his own. Martin returned briefly to Dunedin, where he passed the local bar examination, and was admitted as a barrister and solicitor on 22 July 1875. A few weeks' later, on 2 September 1875, he boarded a ship for Wellington.

IV. Career at the Wellington bar (1875-1912)

After arriving in Wellington, Chapman established his legal practice in Hunter Street. Within a short while he was briefed by the prominent Wellington barrister, William Travers, to do the preliminary work and appear with him as junior counsel in a Court of Appeal case. This case, *Williamson v Pearce*, was an appeal on the ground of alleged misdirection of the jury, and, following Chapman's first Court of Appeal appearance on 22 and 23 November 1875, judgment was given in favour of the party he represented.

Chapman continued to practice on his own until 1882, when he entered into partnership with William Fitzgerald. By 1879, Chapman had moved his office to premises next to those of Fitzgerald in Lambton Quay, and the accumulation of

117 R Gore, *Chapman Tripp & Co. - the First 100 Years* (1975) 2. Gore noted Wellington's "central position, rich back country, fine harbour and increased status since becoming the Capital" in 1865. The *New Zealand Jurist (New Series)* 1876 showed that Wellington also had fewer lawyers than any of the three other main centres.

118 Certificate, Chapman Tripp Sheffield Young archives.

119 Gore, op cit 1-3.

120 Ibid, 15; and A F Wiren, "Some experiences of an old legal accountant", (1942) 18 NZLJ 10.

121 (1875) 3 CA 142 at 156.

122 Fitzgerald (1856-1888) was the son of a former Superintendent of Canterbury. He acted as secretary to Arney CJ and later Gillies J, before his admission as a barrister and solicitor in 1877 (Gore, op cit 10-14).

123 Wiren, op cit 10.
Chapman's workload probably prompted him to form a partnership with his neighbour. The partnership that Chapman and Fitzgerald formed moved into a wooden building on reclaimed Council leasehold in Brandon Street. However, Fitzgerald suffered repeatedly from ill health, and on 2 June 1888 he died. Chapman resumed solo practice, which he maintained for nearly eighteen months, though he retained Fitzgerald's name in the title of the firm.

In November 1889, Chapman admitted Leonard Tripp into partnership, and the firm was styled Chapman, Fitzgerald and Tripp and later simply Chapman and Tripp. Tripp recalled the circumstances leading to his partnership with Chapman:

A solicitor I got to know in Wellington suggested my going into partnership and I went and consulted H D Bell. And Bell said: "The man you ought to be with is Martin Chapman, because he has got a fairly well established business, and is a great friend of mine, but I can see he wants a partner who can look after the business side." And I said: "How do I get there", and he said: "Leave it to me", and about a fortnight later Martin Chapman sent for me and offered me what I thought very

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124 Gore, op cit 22.
125 See, for example, MC to HSC, 4 June 1881.
126 Gore, op cit 31.
127 L O H Tripp (1862-1957) obtained a BA at Cambridge University and was admitted to the bar at the Inner Temple. In 1888 he arrived in Wellington and started practice on his own account (Gore, op cit 33).
128 L O H Tripp, Leonard Owen Howard Tripp (1956) 3 (Chapman Tripp Sheffield Young archives). In terms of the partnership agreement, Tripp paid Chapman £750 for a third share of the practice, with Chapman taking two-thirds of the net profits. Chapman was to draw a salary of £40 a month and Tripp £20 a month. The Brandon Street premises, owned by Chapman, were rented to the firm, and Chapman paid rates, taxes and maintenance (Gore, op cit 62). Tripp brought to the partnership, as his "office boy", Albert Jorgenson, who later became a partner (ibid, 82). Also in 1889, an auditor was appointed, and "it is thought that Chapman & Tripp was the first law firm in Wellington (possibly in New Zealand) to adopt the practice of having a regular audit of their trust account" (op cit 80).
reasonable terms, and as I had not got the money I was able to get the guarantee of an overdraft, and so I joined Mr Chapman and naturally all my life I was very grateful for what H D Bell did for me.

The following year the firm expanded by buying the small business of W B Edwards and taking over the lease of the building he occupied (which adjoined that of Chapman and Tripp). This followed the appointment of Edwards as judge in March 1890. Tripp recalled that, after Edwards approached Chapman with the suggestion that he take over the business, Chapman said to Tripp: "I won't argue about any price with Edwards, and will either take it at his price or not".\textsuperscript{129} Edwards' appointment proved to be short-lived, as it was held invalid by the Privy Council in May 1892. Edwards then resumed practice with Chapman and Tripp (although Edwards rejected the suggestion of Chapman and Tripp that he should pay something for the right to practise with them), and remained in the partnership until his return to the bench in 1896.\textsuperscript{130}

During the 1890s and 1900s, Chapman, and his firm, continued to develop in stature and expertise.\textsuperscript{131} It was not surprising that, in 1903, Chapman was offered a judgeship. What was surprising, though, was his reaction to this offer, as recalled by Tripp:\textsuperscript{132}

Martin Chapman came into my room at the office one day and said: "I want to tell you something in very strict confidence. I have been offered a Judgeship and as I am a single man, and my brother Frederick is married and has children and has an excellent practice in Dunedin, I am going to ask the Attorney-General whether the Government would consider offering the

\textsuperscript{129} Tripp, op cit 5.

\textsuperscript{130} Ibid, 6. Tripp wrote that Edwards was a "peculiar man", who later (as judge) annoyed H D Bell and Chapman to the extent that for a time neither would appear before him.

\textsuperscript{131} In 1890, Chapman was admitted as a notary (certificate, archives, Chapman Tripp Sheffield Young); and in 1893, the firm used typewriters for the first time (Gore, op cit 53).

\textsuperscript{132} L Tripp, Martin Chapman and "Chapman & Tripp" 1 (Chapman Tripp Sheffield Young archives).
Judgeship to him and not to me, because having children I realise it would be an advantage to him to accept the Judgeship, if it was offered him. The Government agreed to Martin's suggestion.

However, four years later, Chapman, along with nine other barristers, received recognition for their pre-eminence, seniority and long service at the bar, by being chosen as the first King's Counsel in New Zealand. In administering the oath to Chapman, Attorney-General J Findlay and H D Bell, Cooper J remarked that "the conferring of the rank of King's Counsel on the leaders of the Bar in this country was a recognition of the ability, learning, and degree of business to which they had attained". Cooper J also noted the restrictions which accompanied the award: "the holders could not plead in the lower court except under a considerable fee, and in the upper court they must have a junior with them". At the time of the appointment of the ten King's Counsel, T I Joynt of Christchurch was the most senior counsel; but, on the latter's death in June 1907, Chapman held "the first patent of presidency" and thus became the leader of the bar in New Zealand. He retained this formal position until his death seventeen years later.

By 1909, Chapman had decided that, at the age of sixty-three, he was ready for retirement. It was agreed that the firm should amalgamate with the firm Skerrett and Wylie, in which Charles Skerrett KC (later Chief Justice) was the leading figure. On the amalgamation, the combined firm of Chapman Skerrett Wylie and Tripp had the rare distinction of having two King's Counsel in its ranks. The firm decided that the two wooden buildings which the firm had hitherto occupied in Brandon Street should be demolished and that the new enlarged firm should have a new reinforced concrete building occupying the two sections. Over the ensuing three years,

133 Certificate, dated 7 June 1907 (Chapman Tripp Sheffield Young archives).
134 EP, 10 June 1907.
135 Newspaper cutting, March 1924, RC (per Sir Francis Bell).
136 Gore, op cit 82.
Tripp, Chapman and Skerrett consecutively took leave of six months each,¹³⁷ and Chapman retired on 31 December 1912.¹³⁸

During his thirty-seven years at the New Zealand bar, Chapman practised almost exclusively in Wellington,¹³⁹ where he regularly appeared before Supreme Court judges in chambers or *in banco*¹⁴⁰ and before the Court of Appeal. His practice tended to focus on cases involving interests in land, the construction of wills, business affairs and questions of procedure. He regularly represented District Land Registrars and the Registrar-General of Land,¹⁴¹ other governmental and corporate bodies,¹⁴² and large local and overseas (particularly Australian) commercial companies.¹⁴³ But Chapman also had occasion to represent the

¹³⁷ It appears likely that Chapman took leave during the second half of 1910, as he resigned from the Council of Law Reporting in June of that year, and there are no recorded appearances in cases reported in the law reports for the remainder of that year. Chapman also holidayed in Australia in January 1909 (*EP*, 20 January 1909).

¹³⁸ Tripp, *Martin Chapman* 3-4, and Partnership Notice, 31 December 1912 (Chapman Tripp Sheffield Young archives). On Chapman’s retirement, the firm became known as Chapman Skerrett Tripp & Blair, a title it retained until the end of 1927.

¹³⁹ Occasionally, he appeared in centres such as Wanganui ((1881) 3 NZLR 257 (SC)) and Gisborne ((1887) 6 NZLR 108).

¹⁴⁰ Chapman also appeared with Ollivier for the unsuccessful plaintiff in the Maori will case *Nahe v Tomoana*, before the Chief Justice and a special jury (*EP*, 28 July 1882).

¹⁴¹ The Registrars of Canterbury, Wellington, Napier and Auckland ((1888) 6 NZLR 342 and 760, (1902) 21 NZLR 275, and (1907) 26 NZLR 126). For instances of his representation of the Registrar-General of Land, see (1889) 8 NZLR 129 and (1905) 24 NZLR 385.

¹⁴² These included the Solicitor-General ((1889) 8 NZLR 109), the Commissioners of Land and Income Tax and of Stamps ((1896) 15 NZLR 133 and (1897) 15 NZLR 570), the Kaipoi Municipality ((1888) 7 NZLR 231), the Borough of Devonport ((1911) 29 NZLR 556), the Wesleyan Church ((1905) 23 NZLR 769) and the Jewish Hospital and Orphan Asylum ((1907) 25 NZLR 504).

¹⁴³ These included the National Mortgage and Agency Company ((1885) 3 NZLR 257 (SC)), the National Bank ((1907) 26 NZLR 212), the Australian Mutual Provident Society ((1886) 4 NZLR 147 (CA) and (1902) 22 NZLR 445), the Australian Mercantile Union Insurance Company ((1887) 6 NZLR 108), the Bank of New South Wales ((1892) 12 NZLR 712), the Eastern
ordinary litigant, who included a Wellingtonian tobacconist and hairdresser, an apprentice to a dental surgeon in Masterton, and Maori claimants to land title. 144 In many of the cases in which Chapman appeared, he was instructed by solicitors from other firms in Wellington and neighbouring towns, whose matters were pending in the Wellington Supreme Court; and he was also instructed by a large number of firms throughout New Zealand who wished Chapman to appear on their clients' behalf in the Court of Appeal. 145 In more significant cases, Chapman appeared together with other prominent members of the members of the bar (such as Travers, Joynt, Bell, Stout, and Frederick Chapman), 146 and in other cases he appeared alone or with a representative of the firm which instructed him. 147

In preparing his arguments, Chapman made considerable use of the growing body of New Zealand case-law, including the reported decisions which he had an active hand in publishing, and unreported judgments within his knowledge. 148 On at least one occasion, Chapman made use of a judgment of his father, concerning

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Extension Australasia and China Telegraph Company ((1904) 23 NZLR 308), Huddart, Parker and Company ((1905) 7 GLR 467), and Hindley and Company, London ((1894) 13 NZLR 13).

144 ((1894) 12 NZLR 483 and (1895/6) 14 NZLR 609, (1903) 5 GLR 305, and (1906) 25 NZLR 330.

145 These included Skerrett, Wylie & Weston and Martin & Atkinson of Wellington ((1904) 24 NZLR 340 and (1908) 27 NZLR 564); B N Sandilands of Carterton ((1884) 2 NZLR 299 (CA)); Gawith & Logan of Masterton ((1905) 23 NZLR 959); Baldwin & Baldwin of Palmerston North ((1904) 23 NZLR 389); Watt & Cohen of Wanganui ((1905) 23 NZLR 832); Carlile & McLean, Wilson & Cotterill, and Sainsbury & Logan of Napier ((1883) 2 NZLR 142 (SC) (1883) 2 NZLR 159 (CA) and (1887) 5 NZLR 415 (SC)); H J Finn and Rogan & Nolan of Gisborne ((1882) 1 NZLR 153 (SC) and (1883) 2 NZLR 164 (SC)); Hesketh & Richmond and Bamford & Brown of Auckland (1895) 14 NZLR 390 and (1907) 26 NZLR 141); Weston, Harper & Company, Stringer & Creswell, Maude & Harman and A Rhodes of Christchurch ((1888) 6 NZLR 347, (1892) 10 NZLR 765, (1901) 20 NZLR 198, (1905) 24 NZLR 417, and (1906) 25 NZLR 200); and White & Jameson of Timaru ((1882) 1 NZLR 72 (CA)).

146 (1887) 6 NZLR 273, (1893) 12 NZLR 1 and 13, and (1895) 14 NZLR 4.

147 Wilson ((O B & F 100), Harper ((1883) 2 NZLR 131), and Carlile ((1890) 9 NZLR 521).

148 (1889) 8 NZLR 8, and (1890) 8 NZLR 754-5.
the adoption by New Zealand of the English law relating to river beds.\textsuperscript{149} His knowledge of the local case-law was useful also in arguing against New Zealand precedents which apparently strengthened the argument of his opponents. In \textit{Re Chavennes}, which concerned the question of commission allowed to executors of a deceased estate, Chapman noted that an opposing decision of Conolly J had been given because the judge had thought himself bound by a New South Wales case, founded on an Indian decision. The Court (Prendergast CJ) agreed with Chapman that such cases did not bind the New Zealand court.\textsuperscript{150}

Many of the cases in which Chapman appeared concerned the interpretation of New Zealand statutes, some of which, like the Land Transfer Act, presented difficulties on account of being "obscure and ungrammatical".\textsuperscript{151} Here Chapman's knowledge of the English language was put to good use. In \textit{Fitchett v Mayor of Wellington}, he argued that the word "watershed" as used in a section of the Municipal Corporations Act had to be given its proper meaning by the Court. He pointed out that "the affix 'shed' has not the same meaning as the word 'shed', and does not denote a sloping roof, but it means 'part' or 'divide', and that "a watershed is the line along the crest of a hill which parts the water".\textsuperscript{152}

Chapman used the standard approaches to interpretation, which varied according to which side he represented. Chapman was heard at times to call for the literal interpretation of statutes. In \textit{Russell v Sims}, he argued that the "plain grammatical meaning" of the Medical Practitioners' Registration Act had to be taken, provided it did not lead to absurdity or repugnance, and that it was "not absurd that a medical practitioner should be entitled to sue [for fees] without registration". He cautioned that "a Court should not modify the language of a

\begin{footnotesize}
\begin{enumerate}
\item[(149)] (1904) 25 NZLR 85.
\item[(150)] (1898) 16 NZLR 640.
\item[(151)] (1888) 7 NZLR 233.
\item[(152)] (1907) 27 NZLR 193 at 195.
\end{enumerate}
\end{footnotesize}
statute to accord with its own views".\footnote{153} On the other hand, in \textit{Mayor of Wanganui v Whanganui College Board of Trustees}, he successfully argued that the intention of the Rating Act was plainly to exempt the defendant from rates, and claimed that "if the intention is clear the Court will give effect to it, even if to do so it violates the grammatical construction".\footnote{154} In \textit{Nash v Preece}, he argued that the New Zealand cases (including a Court of Appeal decision) showed that the words of a section of the Supreme Court Act 1882 "cannot be read in their strict technical meaning, but in a larger and popular meaning", and that the words "right to purchase" in the statute meant "option to purchase".\footnote{155}

Chapman often used English legal principles drawn from recent decisions and texts such as \textit{Jarman on Wills}, \textit{Leake on Contracts} and \textit{Chitty's Archbold's Practice}.\footnote{156} As he noted in \textit{The King v Joyce}, "the whole body of the common law has been imported into New Zealand, unless where it has been altered by statute", and so in this case argued that "by the English law the bed \textit{ad medium filum} passed to the Crown grantee: \textit{Dart's Vendors and Purchasers}".\footnote{157} His extensive knowledge of English law enabled him to take cognisance of changes in the case-law, and argue on the basis of the latest standing decisions. In \textit{Williams and Kettle v Official Assignee of Harding}, he noted the "judicial mistake" in a Chancery Division case (on a bill of sale), which had been overruled by a higher authority, and observed that a later

\footnote{153}{(1900) 18 NZLR 773 at 775. See also (1909) 28 NZLR 230 ("The Court will endeavour to give a meaning to every word in a statute").}

\footnote{154}{(1906) 26 NZLR 1167 at 1168-9.}

\footnote{155}{(1901) 3 GLR 439 at 441. See also (1906) 26 NZLR 401 ("if a statute can be so construed as to confine it within the powers of the Legislature enacting it, it will be so construed"), (1907) 27 NZLR 195 ("A statute will be so construed as not to take away vested rights by implication").}

\footnote{156}{(1882) 1 NZLR 107-8 (CA), (1885) 4 NZLR 56 (SC), (1889) 8 NZLR 110, (1905) 23 NZLR 1091, (1905) 25 NZLR 582, (1906) 26 NZLR 1, and (1908) 26 NZLR 1110.}

\footnote{157}{(1904) 25 NZLR 78 at 84.}
Queen's Bench case was "still good law" and "governs this case". It also enabled him to respond readily and fully to interjections by judges, as in Cock v Attorney-General, where he showed a wide knowledge of the history of English commissions of inquiry.

Chapman also displayed a knowledge of legal authorities of other jurisdictions outside of New Zealand, notably those of Australia and America. He referred to Victorian and New South Wales decisions, and on one occasion countered Victorian precedents which had been quoted by opposing counsel as "they appear to ignore the Acts rather than to be decisions upon them". In Holland v Ollivier, which concerned a question of priority of title over an estate, he noted an opposing English case, but claimed that this had been "frequently lamented", and observed that the Irish Registration Act and most American State Regulation Acts had a different provision.

Chapman was not simply a lawyer who "knew his law well". In analysing the issues which cases presented, he brought to bear a fine analytical mind, which enabled him to pursue his arguments with relentless logic and pin-point precise distinctions. In St Hill v St Hill, Chapman argued successfully against the admission of extrinsic evidence to show the intention of a testator. He noted that it had been admitted that the presumption of satisfaction did not arise in this case, and stated:

158 (1908) 27 NZLR 871 at 884. On another occasion he noted: 'The maxim Verba chartarum fortius accipiuntur contra proferentes is too well established to be disturbed by the mere dictum even of Jessel MR' ((1900) 19 NZLR 606). See also (1907) 27 NZLR 195.
159 (1909) 28 NZLR 405 at 413. Chapman also relied upon English statutes which still applied in New Zealand (Johnson v McKay (1884) 2 NZLR 156 at 158 (SC)).
160 (1890) 9 NZLR 540. See also (1893) 12 NZLR 9, (1901) 21 NZLR 196, and (1907) 26 NZLR 1020.
161 (1881) 1 NZLR 197 at 201. See also (1904) 25 NZLR 86, where he relied upon Angell on Watercourses. In this case, he referred to the Digest, as quoted in Houck on Rivers.
162 (1906) 26 NZLR 1105 at 1110.
Evidence to support a presumption will not be admitted unless rebutting evidence has first been admitted. As no presumption arises here, no evidence can be admitted to rebut it, and therefore no supporting evidence can be admitted.

In similar fashion, Chapman presented the logical consequences of his opponents' arguments, and concluded that these led to a reductio ad absurdum. \[\text{(1902) 22 NZLR 447 and (1904) 24 NZLR 320. For his precision of thought, see (1908) 27 NZLR 885.} \]

At times judges included in their judgments Chapman's precise and logical summaries of the issues. In *Bennett v Hutchison*, where Chapman argued that it was no ground of *appeal* that a judge of the District Court had granted a new trial after an appeal in the same action, Richmond J echoed Chapman's summation that "either the District Judge has exceeded his jurisdiction, in which case the remedy is prohibition; or he has exercised a discretion from which an appeal does not lie". \[\text{(1904) 24 NZLR 645 at 646. See also (1885) 4 NZLR 56 (SC).} \]

Chapman pursued his arguments in methodical and systematic fashion, as he canvassed all the possible issues which bore upon his client's case. \[\text{(1902) 4 GLR 350-1, and (1904) 24 NZLR 296.} \]

In *Re Joseph*, he successfully argued on behalf of the widow of the deceased that sums paid by the latter during his lifetime were not recoverable from the widow by the deceased's executors. He argued that the same principle was applicable here "as in the case of any gift by one person to another", and continued:

There must be an intention to give, and everything done necessary to complete the gift at the time. Here everything was done that could be done to complete a gift. He pays the
debts of his wife and never asks to be repaid. His declarations are as eloquent as his acts. No Court of equity would say that there was not here a complete gift of the money.

Chapman often spoke in concrete terms, and reinforced his statements with practical considerations. In *Samson v Aitchison*, he successfully argued for the respondent in a negligence action against the owner of a motor car which had caused damage while being driven by another:168

For whatever purpose an owner asks a guest to drive a car, he has not abandoned the control of the car. He reserves the right to say, "If you don't drive as I wish you will have to hand me the car". The fact that the owner is on the car is conclusive that he is in control. ... Supposing the arrangement was that [the guest] was to try the car on the hill, and that he was to be in control on the hill, the reason for that control was gone when they left the hill and [the owner] was again in control.

Again, in *Bank of New Zealand v District Land Registrar, Auckland*, Chapman successfully argued on behalf of the respondent that certain roads had not been dedicated to the public. He declared that, if the roads had been dedicated, "the local authority will have to maintain twenty-five miles of badly made or unmade roads running through a private estate, and that would throw a very heavy burden upon the ratepayers".169

Chapman argued with confidence and conviction. This was reflected in his forthright expressions in argument,170 replies to interjections by judges,171 and criticisms of judgments which he took on appeal. In *Alexander v Alexander*, Chapman appealed from a decision of his brother Frederick. He condemned the

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168 (1911) 30 NZLR 838 at 840-1.
169 (1907) 27 NZLR 126 at 131.
170 (1902) 21 NZLR 280 ("The consent of the Maori Council is waste paper unless the provisions of the Act have been complied with"), and (1911) 31 NZLR 1134 ("Any course that can be proposed would be extremely inconvenient. The statute is a spent statute").
171 (1902) 22 NZLR 447 and (1904) 24 NZLR 296-7.
procedure in the case as "wrong", said that "the learned Judge in the Court below has allowed matters outside the will [such as "irrelevant" presumptions] to influence him in coming to the conclusion he did", and that he had "erred" by making intention the test when the simple words of gift had to be taken by themselves.172 Chapman spoke with ease, which came from his mastery of the English language, his intellect and his grasp of reality. In *Samson v Aitchison*, in addressing the point that the driver [Collins] was a servant of Mrs Collins and not of the car's owner [Samson], Chapman remarked that "a servant can have two masters, and the question is who has control of him for the time being".173 Again, in *Ruddick v Weathered*, he argued successfully for a conviction for gambling on the basis that the Imperial Statute outlawing gambling was in force in New Zealand. He declared that "at the time of the proclamation of the Queen's Sovereignty in New Zealand, human nature was exactly what it was before and since. The propensity to gamble existed, and that was the mischief which induced the statute against gambling".174

Chapman had his share of reverses at the bar, in the face of established legal authority or superior arguments cited against him. Judges at times questioned his use of authorities, noting that cases quoted were distinguishable or were even authority against him.175 On other occasions, they rejected his arguments as being "too ingenious" or "untenable".176

Nevertheless it is evident that Chapman played a significant role in the shaping of New Zealand case-law during the late nineteenth and early twentieth centuries. Judges paid tribute to his "unanswerable" arguments (per Prendergast CJ), his "very able and ingenious" arguments (per Stout CJ), and the "forcible illustrations" of the

172 (1909) 28 NZLR 895 at 896-8.
173 (1911) 30 NZLR 838 at 841.
174 (1889) 7 NZLR 491 at 492.
175 (1882) 1 NZLR 153 (SC).
176 (1895) 13 NZLR 580 (Richmond J), and (1899) 17 NZLR 587-9 and (1902) 5 GLR 164 (Edwards J).
consequences of judgments (per Cooper J). His arguments were reflected in judgments of the Court of Appeal and of judges from Prendergast CJ and Richmond, Gillies, Johnston and Williams JJ through to Stout CJ and Conolly, Edwards and Martin JJ. These covered a range of areas, especially rights to land, interpretation of wills and matters of practice and procedure, and also including the law of promissory notes, trade marks and insurance. One notable example of Chapman's role occurred in *The King v Joyce*. This concerned the rights of a registered proprietor of land, bounded by a non-tidal, non-navigable river, to the river bed. The case, Chapman argued, "was one of great importance, affecting the title to all the river beds in the colony". Here, Chapman's argument that New Zealand had adopted the English rule that the registered proprietor of land bounded by such a river is presumed to be the owner of the river bed to the middle line, was adopted by the Court of Appeal. The judgment in *The King v Joyce* remains a leading authority in modern New Zealand land law.

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177 (1898) 17 NZLR 86, (1900) 19 NZLR 606 and (1909) 28 NZLR 927.


179 (1905) 7 GLR 661 at 662.

180 (1904) 25 NZLR 78 (Chapman's argument is at 84-5).

which followed Chapman's arguments were adopted by later judges and so became entrenched in New Zealand law.\textsuperscript{182}

Besides his busy legal practice, Chapman was heavily involved in the affairs of his profession. One of his most important and enduring contributions was in the sphere of law reporting. In 1876, he assumed responsibility for reporting Wellington Supreme Court and Court of Appeal cases for the \textit{Jurist (New Series)} reports. In 1882, Chapman and Fitzgerald began their pioneering work on the \textit{New Zealand Law Reports}.\textsuperscript{183} The \textit{Reports} commenced publication under the direction of the Council of Law Reporting, which appointed Fitzgerald as the first editor, and Fitzgerald and Chapman as co-reporters in Wellington.\textsuperscript{184} On Fitzgerald's death in June 1888, Chapman took over the editorship of the \textit{Reports}, and shared the reporting of Wellington cases with Maurice Richmond.\textsuperscript{185} He continued to exercise these functions for eighteen years, until his resignation in July 1906. The Council of Law Reporting then recorded "its sense of the value of the services which Mr Chapman has rendered, and its sincere regret that he cannot see his way to accede to its wish that he should retain the office he has held so worthily and so long". The Council also commented that it "had every reason to be satisfied with the accuracy and character of the Reports", and that "Mr Chapman had earned the respect and goodwill of the members of the profession in his long and active

\textsuperscript{182} For example, the \textit{Booth} judgment was followed by Denniston J in \textit{Clark v Hopkins} (1898) 18 NZLR 201 at 211; the \textit{National Bank} judgment was followed by Edwards J in \textit{Mere Roahi v Assets Company} (1902) 21 NZLR 673 at 731; the \textit{Sanitas} judgment was adopted by Sim J in \textit{Schweppes Limited v Thomson, Lewis and Company} (1913) 32 NZLR 1123 at 1124 and by Adams J in \textit{Edmonds Limited v Self-Help Limited} [1932] NZLR 87 at 90; and the \textit{Wellington and Manawatu Hospital} judgment was relied upon by Edwards J in \textit{Boswell v Reid} [1917] NZLR 225 at 229.

\textsuperscript{183} In 1878, Fitzgerald, together with F M Ollivier and F H D Bell, had started the O B & F reports, the forerunner of the \textit{New Zealand Law Reports}.

\textsuperscript{184} Gore, op cit 28.

\textsuperscript{185} Ibid, 31 and 63.
career. In 1906, Chapman was elected to the Council of Law Reporting as a representative of the Wellington District Law Society, and remained in this position until his resignation in June 1910.

In 1878, Chapman was at the meeting of the Wellington legal profession which decided to form a Law Society for the Wellington District. He, along with seven other lawyers and the Solicitor-General, were chosen to form a committee to research the matter and to draw up relevant rules and regulations. The ultimate outcome of their efforts was the passing of the District Law Societies' Act 1878. Chapman remained a member of the Wellington District Law Society until 1913, and was active as a member of its Council from 1897 to 1900.

By the early 1880s, Chapman had become an examiner in law subjects for the twice-yearly law examinations sat by aspirant lawyers. In 1880, a commission was appointed to inquire into the constitution, practice and procedure of the Supreme Court and other courts in New Zealand. Chapman became secretary of the commission, signifying the confidence he had already secured amongst members of the government, bench and bar. Over the ensuing two years, the commission laboured hard on its assigned tasks. It was no wonder, therefore, that Martin complained in March 1881 that he had been "much worried with business for some time, in consequence of having too many things to do at once". In June of that year he noted that on his return to Wellington he "found himself in the thick of

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186 (1906) 24 NZLR.
187 (1906) 24 NZLR to (1910) 28 NZLR (in 1909, Chapman served as acting treasurer for the Council).
189 Wellington District Law Society records. The Annual Reports of 1897-8 and 1901-2 show that Chapman and two others were appointed to form a committee to draft a more comprehensive and satisfactory New Zealand Law Society Bill.
190 Wiren, op cit 10.
191 Tribute by Sir Francis Bell, March 1924 (RC).
192 MC to HSC, 18 March 1881.
work, what with the commission and arrears of office work my nose has been pretty well down to the grindstone", and that he had "been obliged to do a good deal of night work which is my aversion". The commission had its final meeting in November 1881, and its draft code of procedure formed the basis of the highly significant Supreme Court Act of 1882.

Remarkably, Chapman found time to stand for election in the Thorndon ward in the October 1888 municipal elections. Despite an election address which was dubbed "very colourless" and non-committal, Chapman won election easily and was described as "a decided acquisition to the Council". Chapman remained as councillor for only two years, but throughout his term he "took a warm interest in Municipal matters, and exercised a beneficial influence in maintaining the dignity of the City".

Like his father and brother Frederick, Chapman was tireless in his search for knowledge. It was said that he was "probably the most omnivorous reader in New Zealand, a man who not only read but who stored up an immense amount of knowledge upon a remarkably wide range of subjects, on quite a number of which he was an authority". He was elected a member of the Wellington Philosophical

193 He noted that he was obliged to hand over a brief to Bell, so that he could attend to commission work, and that it was "ridiculous" that Bell should lose, as counsel on the other side were Alfred Brandon (who had "not a case to quote and not a new point to raise") and Fletcher Johnston (who "has at last scraped through [and] did not open his lips") (MC to HSC, 4 June 1881).
195 EP, 2 October 1888: Chapman called for the closure of the cemetery, economies in street construction, and noted his opposition to further borrowing and increased rates; at the same time he argued that the council should take over and remedy the streets on reclaimed land, and called for a recreation ground for Thorndon.
196 EP, 6 October 1888: Chapman came second in a five-man contest for three seats, and defeated a sitting councillor in the process.
197 The Cyclopedia of New Zealand I 302.
198 EP, 17 March 1924.
Society, and also attended the Union Debating Society meetings.\textsuperscript{199} He displayed a remarkable aptitude for languages: he retained his fluency in German and French,\textsuperscript{200} and became proficient in Spanish, Portuguese, Italian and Dutch.\textsuperscript{201} Chapman apparently "never skimmed over these languages, but mastered each methodically and thoroughly".\textsuperscript{202} Chapman also worked consistently at "the higher Mathematics and the kindred subjects of physics and astronomy". He was said to have "calculated the climate of Mars long before the modern publication on this subject saw light".\textsuperscript{203} He became a member and President of the New Zealand Institute, and took an interest in other scientific bodies.\textsuperscript{204} He keenly pursued the study of botany: he became an expert in the cultivation of rare plants in his own garden, and planted the still-standing pohutukawa tree on Wellington Terrace in the grounds of the Wellington Club.\textsuperscript{205}

\textsuperscript{199} In 1881, he heard Richmond give "a capital lecture on materialism [in which he] attacked the fortuitous concourse of atoms theory [but] did not touch on the at least equal difficulties of his own hypothesis" (MC to HSC, 19 August 1881).

\textsuperscript{200} Tripp remembered "when I was yarning with him one night at his house something cropped up about the French Revolution and Chapman said: 'Would you mind handing me down Volume so and so', of one of the many volumes he had in French about the French Revolution; and he turned up and read out [and translated] to me what he wanted to tell me within a very short time" (Tripp, \textit{Martin Chapman 2}).

\textsuperscript{201} Tripp recalled that Frederick Chapman was once sent a Dutch paper which he could not read, so he handed it to Martin Chapman who set to work on it with a dictionary and eventually translated the whole paper. He also recalled that the New Zealand Government, on receiving a copy of the Dutch Arbitration Act, was advised to pass it to Chapman, who eventually gave the government a translation of it (idem).

\textsuperscript{202} \textit{The Melburnian}, obituary.

\textsuperscript{203} His mathematics had a practical slant, for he "worked out the sail-areas for yachts and saw his results adopted by yachtsmen and riggers" (idem).

\textsuperscript{204} Outline, RC.

\textsuperscript{205} Idem and Gore, op cit 88. T Hocken extracted a promise from Chapman to send him a set of young trees (T Hocken to FRC, 1908).
From the early years of his career in Wellington, Chapman also found time for social and sporting activities. In January 1876, he joined the lawyers' cricket team ("the Devil's Own"), and he became keenly interested in yachting and in time acquired several boats. In 1895, the Wellington Golf Club was founded, and Chapman became a member and (in 1898) the club captain. Chapman was also a member of the Wellington Club and was its president in 1911-2.

In 1882, Chapman built himself a fine house in Golder's Hill (later named Eccleston Hill), which remained his home until his death (and then became the home of Frederick and his family). Chapman never married, but maintained close domestic ties especially with Frederick and his family. His niece, Gytha Chapman, recalled that "Uncle Mart was, in fact, a confidant in whom we felt we could have unlimited confidence, and many were the coins of the realm that found their way into nepotal pockets from an always sympathetic friend and listener".

Robert Stout recalled that Chapman was "of the reserved, the English type, not...

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206 Gore, op cit 18.
207 MC to HSC, 4 June 1881, and Dominion, 18 March 1824.
208 Gore, op cit 62.
209 Ibid, 18. He was also a member of the Wellington Chamber of Commerce from 1879 (EP, 26 March 1924).
210 Gore, op cit 30. Chapman's "Classification of assets" after his death show that he also invested money in shares in such companies as the Otago Daily Times, the Union Bank, the P & O Steam Company (London), Huddart Parker (Melbourne) and gold mining companies (RC).
211 In his correspondence, he would often make pointed comments on women, though there was no indication that he contemplated marriage. He noted, for example, that "David Mills came back with a wife, a nice, lively body, the sort of woman to make a good wife" (MC to HSC, 18 March 1881); and "you might as well make [Miss Forbury's] acquaintance as she both sings and plays with taste and she has a fine voice ... I am told she is spoons on some one down there who is not spoons on her which is a pity" (MC to HSC, 29 September 1881). His niece, Gytha Chapman, wrote that she did not know why "Uncle Mart" did not marry. She noted that "he loved all women, and all women adored him. But it never came to anything more than a very happy friendship" (letter, 7 September 1988).
pushing himself forward, not demonstrative, but anxious to give assistance wherever it was asked.213 Another contemporary wrote that "in private life he was the calmest and most amiable of men, universally beloved by all classes, but there was no weakness in this, he was as firm as he was amiable."214

V. Retirement (1913-1924) and Conclusion

In his retirement, Chapman had time to pursue his wide range of interests. As senior King's Counsel, he was still held in high esteem by his profession. This was indicated in 1918 when Sir Francis Bell, the Attorney-General, enlisted Chapman's aid in the censorship controversy involving publications issued by Roman Catholic and extreme Protestant factions.215 Chapman was entrusted with the task of reading the allegedly offensive sectarian propaganda, and making recommendations as to whether these infringed the current War Regulations. The decisions which Bell reached on the basis of these recommendations were recognised as being impartial even by the disputants, and it was said that "Bells' fair and firm control had a sobering and beneficial effect on factions" involved.216

213 Outline, March 1924, RC. He was remembered as "a generous giver to public and private objects" (The Melburnian). H I Graves, a member of Chapman's firm, recalled that Chapman freely gave him a loan of £600, to be repaid when it suited Graves (Gore, op cit 89).

214 The Melburnian, obituary. Tripp gave an instance of Chapman's "firmness": he recalled that one day he saw Chapman "(a small man) with a big chap by the coat and pants, shoving him out of the office", and that the reason he gave for this was that the man had "wanted to do something which I thought was crooked, so I went up and went for him" (Tripp, Martin Chapman 3).

215 In the last year of the First World War, extreme Protestant organizations were engaged in an active and provocative anti-Roman Catholic campaign, while certain Roman Catholic articles appeared to support the outbreak of violence, sedition and rebellion in Ireland. War Regulations were passed to check the importation and circulation of offensive sectarian propaganda, and Bell was required to establish if these publications gave grounds for prosecution (W D Stewart, Sir Francis H D Bell; His Life and Times (1937) 174-5).

216 Ibid 176.
Chapman also acted as honorary interviewer to the Wellington War Relief Society during the First World War, became a member of the newly-formed Astronomical Society, went on climbing expeditions with brother Frederick, and several times visited England and Australia. In his old age, he retired "in his quiet unostentatious way, in the secluded life of his home", where "he was able to follow his best loved arts of music and horticulture and indulge in [his] scientific pursuits". A member of Chapman's firm recalled that on Thursday mornings he would deliver Chapman's weekly pipe tobacco to Chapman's home, and there help him to feed the sparrows which he called to his lawn.

In early March 1924, Chapman fell ill and on the evening of 16 March he retired to bed for the last time. A service was held at St Paul's pro-Cathedral, and his ashes were laid to rest in the churchyard overlooking his old home in Karori. On 20 March, in the Wellington Supreme Court, the Chief Justice (Sir Robert Stout), the Attorney-General (Sir Francis Bell) and other representatives of the bench and bar gathered in large numbers to pay tribute to Chapman. Sir Robert

217 EP, 17 March 1924 and The Melburnian. In her letters in December 1916 and January 1917, Clara Chapman wrote of Frederick and Martin walking to Kea Point (near Mount Cook) and to Stocking Glacier (where "dear old Uncle Mart completely cracked up"), and noted that "the Daddy and Uncle Mart joined a short expeditionary party so they dear things will be quite happy, I am despised as a poor-spirited shirker") (C Chapman to VE, 25 December 1916 and 3 January 1917).

218 Outline, RC. It was noted that "almost his last reading consisted of all the articles on physics and kindred subjects in the new supplement to the Encyclopaedia Brittanica" (The Melburnian). During his last years, Chapman shared his home with another retired bachelor, Charles Knapp (Gore, op cit 89).

219 Russell wrote: "We would walk out on to the large front lawn, surrounded by trees, and he would blow his whistle and go red in the face. The birds were waiting in the trees and on hearing the whistle they would come in their thousands and the lawn would be black with them. They would soon demolish the bread and their chirping would be deafening but glorious" (Gore, op cit 89).

220 However, as early as February 1922, Frederick Chapman wrote that he was "not easy about Uncle Mart" (FRC to VE, 13 February 1922).

221 EP, 17 March 1924, and The Melburnian.
Stout declared that "a prince of Israel has fallen to-day": he claimed that Chapman was "one of our most distinguished men and a lawyer of great knowledge", a man who "did everything well". Sir Francis Bell spoke of the honour, deep respect and warm appreciation which the legal profession and the people of New Zealand had felt for Chapman. He concluded: "his brethren of the law have tried to pay a tribute to him who rose to the first place amongst us without making an enemy, and who dies without any but friends amongst those he has left". 222

Martin Chapman clearly displayed many of the qualities which his father and his brother Frederick had shown. Like them, he was energetic, hard-working and thorough in his pursuits. His legal career was characterised by the same scholarly attention to New Zealand sources as well as considerable English and overseas material, and this was combined with a solid grasp of practical realities. He too was a "well-rounded man", who developed his knowledge in a wide range of areas, notably foreign languages. He displayed the characteristic Chapman devotion and loyalty to his family.

Like his brother Frederick, Martin Chapman had advantages in his upbringing which his father had lacked. This helped to instil self-confidence and ease with a range of accomplishments. This background, and the nature of New Zealand's socio-political development, helps to explain why (like Frederick) he displayed little of his father's zeal for reform, and why he had only a limited interest in public office. Instead, like Frederick, Martin devoted much time to furthering the interests of the legal profession, in the law reporting and organisational areas, and (to a limited extent) the education of law students.

Yet Martin also displayed qualities which were quite different from those of Frederick. Martin's niece Gytha, in comparing her uncle Martin with her father Frederick, observed: "Martin was more intellectually gifted and had more vitality.

222 EP, 20 March 1924.
Mart had a sense of humour, Fred none whatever.\textsuperscript{223} Martin's sense of humour and unpretentious attitude to life indicated that he did not have the strongly-focussed need of his father and brother to prove their worth in the pursuit of higher office. Martin was a man secure in his considerable talents and abilities.

\textsuperscript{223} Letters, 22 August and 25 October 1988.
MARTIN CHAPMAN
AND
ANN EICHELBAUM
(1924)
HENRY BREWER (1841-1866) = (1) REBECCA WINTER (1744-1798) = (d. 1771) = (2) CHRISTINA NEATE (1774-1840) (1775-1871) (1778-1868)

HENRY = ANN HART DAVIES (1770-1863)

WILLIAM CHRISTIANA FANNY EMMA

HENRY SAMUEL = (1) CATHERINE BREWER (1803-1881) = (1) CATHARINE BREVRE = (2) SELINA CARR JAMES WINTER (1810-1866) (1823-1902) (1806-1811)

HENRY BREWER CHARLES WILLIAM MARTIN ERNEST ARTHUR FREDERICK REVANS = CLARA COOK CATHARINE WALTER (1844-1929) (1846-1924) (1847-1933) (1849-1936) = FLORENCE BARRAUD (1854-1940)

HENRY CLARA VERA GEORGE HILDA SYLVIA

ALWYN MARTIN MARGARET GYTHA

= SIEGFRIED EICHENBAUM* (1885-1953) (1887-1979)

ANN MARY MAX MARGARET CATHARINE

(1921- ) (1924-1975) LINA VERA (1924- ) (1926- )

= WOLFGANG ROSENBERG

* Siegfried Eichelbaum was the first cousin of Walter Eichelbaum, father of the present Chief Justice of New Zealand, Sir Thomas Eichelbaum.

** Langer Owen was a judge of the Supreme Court of New South Wales (1922-1932).
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