

Finn, Jeremy --- "New Zealand Lawyers and "Overseas" Precedent 1874-1973 - Lessons from the Otago District Law SocietyLibrary" [2007] OtaLawRw 8; (2007) 11 Otago Law Review 469

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New Zealand Lawyers and "Overseas" Precedent 1874-1973 – Lessons From The Otago District Law Society Library

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1 Introduction

This article sets out to explore aspects of the history of the library maintained by the Otago District Law Society (ODLS), in particular the changing patterns of library materials from a range of jurisdictions. It then goes on to consider patterns of citations of overseas authority as an indicator of the influence those jurisdictions had on the development of legal thought in New Zealand, and to suggest a direct correlation between the nature of legal digests and similar secondary materials available to lawyers and the pattern of citations of overseas authority.

The ODLS has been in continuous existence since the 1870s^[1] and since 1879 has controlled and funded the principal law library for legal practitioners in the province of Otago. In 1874 in circumstances which are still somewhat of a mystery the New Zealand government agreed to fund the establishment of a library in Dunedin for the use of the judges of the Supreme Court (now the High Court) and for the use of local lawyers as well. In 1879 this library was taken over by the ODLS and they have continued to operate and fund it ever since. There is a traditional account, of questionable authority, of its origins:

Tradition informs us that this Library was founded many years ago at a time when Dunedin was the commercial capital of New Zealand and its Bar the strongest in New Zealand, that one of the members of the Bar was sending his son to England to complete his education in Law. Accordingly the members gave the son a cheque with instructions to purchase the nucleus of a Library and that the only way he could do that, at that time, was by purchasing a number of small private libraries. This is the reason why the Library contains a number of rare and interesting books the like of which cannot be found in any other Library in New Zealand.^[2]

Dunedin was for much of the 19th century the largest metropolitan centre in New Zealand, deriving its status and wealth from its entrepot position commanding the bulk of trade with the largest and most long-lived of the New Zealand goldfields. In addition the Otago region was a fertile farming area and included many of the farms which pioneered the export of frozen meat to Britain. With this commercial eminence came, for many years, a disproportionate share of the litigation in the New Zealand courts.

Fortunately the records of the ODLS are very much more complete than those of other district law societies, and it is possible to understand much of the development and administration of the ODLS Library. We can thus reconstruct a substantial part of the library's history and may gain some understanding of the changing patterns of library holdings. There is also archival material relating to the

administration of the library and the purchase of textbooks which gives us an opportunity to see – at least to some extent – the priorities that were observed by ODLS members in their purchase of legal materials.

The second part of the paper considers some aspects of the judicial citation of case law from five jurisdictions – Australia, Canada, the United States, Scotland and Ireland^[3] (hereafter collectively referred to as the “overseas” jurisdictions) in the century since the inception of a lawyers’ library in Dunedin. As will be seen, the first of these is by far the most significant of the five sources of “overseas” precedent. (The shortest examinations of library records and of the New Zealand Law Reports will indicate in each sphere the dominant positions of English and New Zealand materials. The dynamics of the process whereby lawyers and judges used such English and New Zealand material in their professional roles must await further study.) The paper goes on to show that there is a significant correlation between the availability of certain forms of legal material – in particular digests of case law – and the frequency and nature of the citations of case law from particular “overseas” jurisdictions. This in turn allows us to draw some inferences about the transmission of legal authorities and principles to New Zealand and how this impacted – or did not impact – on New Zealand lawyers.

2 The Library

2.1 Creation and scope

It is important to note that in the first 30 to 40 years of the library there was a considerable divergence between two of the principal legal materials acquired, the reports of legal cases and the legal textbooks. The vast majority of the reports held in the ODLS library were very much the standard English lawyer’s materials. From the earliest days there was a virtually complete set of the Nominate Reports and the library had subscriptions to all the English law reports then being published. The other British jurisdictions were also well represented, with report series for the Irish and Scots courts.

There is a considerable imbalance in purely numerical terms when one considers the law reports held by the library in the 1870s. We can identify 316 different series of reports from England and Ireland, many of which ran for only one or two volumes. Against this there are three reports from Australia and three from New Zealand.^[4] There was also a set of the United States Supreme Court Reports and the digests for that set of reports.

The initial collection of textbooks shows a very strong English influence – as one would expect. By my calculations there were 227 English titles,^[5] to which should be added four on Scottish law, two from Australia and a lone New Zealand publication.^[6] In addition there were 29 books published in the United States. The bulk of these came from Boston and New York. Apart from the general works such as *Kent’s Commentaries on American Law* (4 vols, 11th ed 1867), *Wheaton’s International Law* (8th ed, 1868) and *Story’s Equity Jurisprudence* the bulk of the works dealt with commercial subjects. There were, for example, four works on insurance and the same number on banking and negotiable instruments etc, three each on contract and company law. The eminent place of Joseph Story in nineteenth century American legal writing is reflected in the fact that 11 works bore his name, mostly in various editions by successor editors.

We may compare this with the holdings some 60 years later. By 1934 the ODLS catalogue listed 1020 works, of which 959 were English and 59 American (the latter being almost entirely 19th century titles). The Australasian works had nearly gained parity in numbers with the American – there being 28 New Zealand titles, eighteen from Australia and a further nine works which considered the law in both the jurisdictions. There were but four Canadian texts and these were all on specialized public law areas.^[7] There was also a handful of Scots law texts, but none specifically on Irish law. It is interesting to compare these data with those of other District Law Society libraries. The Auckland District Law Society (ADLS) Library appears to have been slower to acquire the few New Zealand texts of the period.^[8] The 1909 ADLS Catalogue lists 341 titles, of which 297 are English, and 30 American.

Once again there are but two Australian texts and one from New Zealand.^[9] Both ODLS and ADLS held the American State Reports covering much of the early part of our period (in ODLS’s case volumes 1-140 for 1887 – 1911) with appropriate digests. Auckland also held the American Reports series, though the start date is not known. The Wellington DLS Library does not appear to have possessed the State Reports series though by 1914 it did hold both Annual Digests of American Law and the second (1907) edition of the *American and English Encyclopedia of Law*.

In its early decades the Otago library may well have provided local lawyers with a significantly better set of materials than was available elsewhere. Certainly the judges may have enjoyed the facilities given that there was no separate judges’ library in Wellington until 1903. That library was substantially underwritten by the government but in 1913 the government subsidy was lost and the various Law Societies were levied to keep the library going.^[10] Later Wellington lawyers had the advantage, for some years from 1942, of access to significant quantities of American legal materials (including the US Reports) which the US Government provided to the General Assembly library for public use.^[11]

2.2 Operation and administration

Throughout the period under study the ODLS library was maintained by a Librarian – apparently usually a practitioner who combined this role with private practice – whose activities were overseen by a library committee of three or four members of the society. That committee appears to have met usually eleven times a year and reported to the Council of the Society which on a small number of occasions overrode its decisions. As may be expected, the Librarian and the Library Committee had to attempt to maintain an awkward balance between the pressures of ODLS members for a cheap but effective library and the commercial realities of the legal publishing world.

We have little of the clearly very substantial correspondence between the ODLS Librarian and legal publishers, but some flavour of it can be gained from the surviving material for 1936-37. It is clear that the publishers regularly supplied both circulars advertising existing or

forthcoming publication, and on occasion copies of texts were sent for the Library Committee to consider.^[12] One feature of the record is the diversity of suppliers with whom the ODLS dealt – apparently for fear of exploitation by any one supplier. In 1910 it appears that Butterworths offered to supply the Society with all its requirements at a substantial discount, apparently in return for a sole agency. The offer was declined.^[13]

While the early records of the Society do not record financial information reliably, we are able to be reasonably precise about the costs of the Library's spending on legal materials – statutes, reports, textbooks and ancillary material. In 1936 such spending was £223-13-4 – one of the lower years recorded. For most of the 1930s and early 1940s the figure fluctuated between £250 and £300, rising to over £320 in 1949 and to more than £400 in 1952. Although there was a slight decline in 1956-57, the overall trend was up. In 1959 they reached £564 and touched a new high of £993 in 1962. This figure was not exceeded until 1968 (\$2257). Increases in holdings – and inflation generated by New Zealand's devaluation of its currency in 1967 and subsequent years – almost doubled that figure by 1974 (\$3938) and again by 1976 (\$7295).^[14] It must be remembered that not all this spending was on new materials alone. In addition to paying publishers for reports, texts and periodicals, there was the cost of maintenance and repairs and the Library also had to pay substantial sums to have many of the reports suitably bound.^[15]

It is difficult to estimate the proportions of spending on resources from different jurisdictions because material from England and Australia (and sometimes further afield) was often invoiced, and paid, as a global sum which cannot now be broken down further.^[16] It is reasonably possible to assess the North American component. In 1915 the Society spent just over £200 on all its legal materials. Of this amount, £6-4-0 was spent on the American reports, around 3% of the total spend. By contrast the Society spent £9-9-0 on its set of the *New Zealand Law Reports* and £37-10-0 on the English reports published by the Council of Law Reporting. The total spending that year was, as with other war years, below the peace time average, so these report figures are somewhat higher proportions of the total than usual. In 1952 it seems spending on US reports was £6-6-9 out of a total of about £400, but the (undiscoverable) costs of the Canadian materials must be added to that. The proportion of costs going to North American materials may therefore have been reasonably close to that in 1915. The costs of Australian material were probably a much higher proportion of total expenditure, not least because a number of Australian texts were bought to supplement the reports, but expenditure on Irish and Scots material cannot be ascertained.

It is difficult, if not impossible, to determine how well the Library Committee met practitioner demand. Some insight can be gained from the matters dealt with in the Library Committee minutes and, less reliably, from the contents of a rather underused "Recommendations" book kept in the ODLS Library. That book shows very few suggestions for materials from jurisdictions other than England and New Zealand. The only suggestion recorded for American works was in 1934 when some practitioner (unfortunately with an illegible signature) suggested the purchase of text books on American mining law, a suggestion annotated "declined". Better luck attended the suggestion in 1939 that the library purchase some digest of Australian law because the case reports were impossible to use without such assistance. That recommendation is annotated with the response that the *Australian Digest* had been ordered.^[17]

2.3 Developments before 1914 – the hey-day of US material

In 1886 the major development was the acquisition, through influence with the Government, of Hansard and the Journals of Parliament.^[18] At some point, probably in the late 1880s or early 1890s, the ODLS was purchasing the *American State Reports* for the library.^[19] It also subscribed briefly (1894-1897) to the Albany Law Journal.^[20] The selection of this journal may have been influenced by memories of the publishing of extracts of it on a fairly frequent basis by the *New Zealand Jurist* in the 1870s. A fair number of American volumes were purchased throughout the 1890s, as in 1896 with the purchase of *American Negligence Cases 1895-1896*.^[21] However in that same year came a foretaste of the future, when the Society ordered an English edition of *Story's Equity Jurisprudence* rather than an American version.^[22]

The Minutes record receipt of a letter in January 1888 from the Registrar of the Supreme Court Ottawa, Canada about the "Canadian Reports".^[23] It may be assumed the response encouraged action, because at the 1890 Annual General Meeting it was said that a set of the "Reports of the Supreme Court of Canada" had been procured – as had the Queensland Reports.^[24] In 1892 the report to the ODLS annual general meeting stated in a somewhat self-congratulatory tone that:

.. a number of new books have been added to the library during the year and it is believed that the society now has in the library all the latest editions of text books.^[25]

Two years later the tone was a little more modest:

A number of new books have also been added to the Library and it is believed that the library is fairly complete in this respect.^[26]

At some unknown point after 1874 the ODLS Library acquired three different Digests of Irish law, perhaps most importantly an 1893 Digest of the Irish Reports. A significant extra report series was acquired in 1896 when the Society first purchased the *Argus Law Reports* "on the suggestion of Mr Stewart" who appears to have been a member of the ODLS Council, though not a member of the Library Committee.^[27]

In 1905 the Society inquired about the price of the *American and English Encyclopedia of Law* and later that year resolved to purchase it for the substantial sum of £240.00.^[28] As we will see, this work had already been in substantial use in other centres. Relatively little attention seems to have been directed to expanding the Australian resources, although in 1910 there was discussion of the acquisition on a regular basis of several Australian publications but the decision was left over for the future. At a subsequent meeting it was decided to order the *Commonwealth Law Reports*.^[29]

2.4 The First World War and after – leaning back to England and expansion of Canadian holdings

It is noticeable in the years of the First World War that significantly fewer books were bought over a ^[30] and what was bought was almost invariably bought from England. As far as can be judged from the 1934 catalogue of the ODLS library and other records, of over 230 textbooks purchased between 1900 and 1904 around 90% were English. The exceptions included 11 on New Zealand law, five Australasian texts on banking, commercial law and company law, four Australian works, two on Scots law and only two American texts. Not all New Zealand books published at this time were purchased – in 1915, for example, the Library Committee decided against the purchase of what became the standard (indeed for many years the only!) New Zealand work on Criminal Law, James Garrow's *Crimes Act 1908*.^[31]

In 1916 the library committee decided to begin cutting its former subscriptions to American material with the decision to cancel the subscription to the *American Annotated Cases*. Other American works were maintained. Yet at the same meeting it was decided to purchase the *New South Wales Reports*.^[32] It is interesting that in the following annual general meeting there was specific mention of the discontinuance of an English publication but nothing was said about the cancelled American subscription.^[33]

In the post-war years the premium addition to the library was the *English and Empire Digest*. It is clear that the society was eager to acquire the work, as the ODLS agreed to subscribe to that work prior to the first volume being published.^[34]

However there is evidence of some modification of the Anglo-centric focus. In 1923 the Society made inquiries of a Scots publisher of available modern Scottish law publications,^[35] but the following year sought advice from a local practitioner as to the best books on Scots law for them to purchase.^[36] More importantly more attention was paid to Australian resources. At the annual general meeting in 1926 members of the Society appeared to have directed the executive to determine the cost of completing the holding of Australian law reports.^[37] The Society purchased the back-runs of the Queensland Reports (unbound) for £25 and the South Australian Reports for £47.^[38] Those were large sums for a Society whose normal Library purchases appear, at this stage to be around £250-300 per year.

In 1927 the Library Committee sought to economise by suggesting the cancellation of the *United States Advance Opinions*, the *New Zealand and Australian Digest* and the *Argus Law Reports* (this latter on the basis that “the majority of the cases are reported in the Victorian Reports and the Commonwealth Reports”). British materials escaped more lightly – the suggestion being that the English and Scottish Law Lists be ordered every three years instead of annually and “... the continuance of the Justice of the Peace Journal be referred to the Council for its opinion”.^[39]

This move to cut certain subscriptions may have been intended to balance new expenditure, as in that year the Society began to consider seriously, for reasons which are not yet clear, the expansion or improvement of the Canadian holdings. Thus we find a decision that the Society's Secretary write to the Law Librarian of the Wellington DLS to ask which Canadian reports would be best purchased.^[40] Later that year it was decided to write directly to the Registrar of the Canadian Supreme Court in search of more information.^[41] In the following year the Society purchased 36 back volumes of the *Canada Law Reports* and took out a subscription for the future.^[42] A new American Digest was also purchased in 1928,^[43] and in 1930 the Society took out a subscription to the *Northern Ireland Reports*.^[44]

2.5 The depression and cuts-back

In the 1930s the financial pressures of the Depression clearly hit the Society hard, and there was reluctance to purchase substantial works of any kind. This is exemplified by one meeting in 1934, where the Committee first declined to purchase two American texts recommended by a member, and then decided not to order a volume of American cases or the *Canadian Digest*.^[45] Financial pressures may also have influenced the 1936 decision to defer a decision on the *All England Law Reports*.^[46] The most severe cuts of all were in 1937, where at a single meeting the Committee declined to order consolidations of the statutes of, respectively, the Commonwealth of Australia, New South Wales and South Australia, the *Australian Law Journal* and all five texts suggested by the Librarian.^[47]

At that same meeting the Library Committee considered the purchase of the *Australian Digest* – a 20 volume work which must have been costly – with the Secretary being directed to find out from the publishers, the Law Institute of New South Wales, whether the *English and Empire Digest* could not fulfil the same function, a suggestion strongly denied by the Institute.^[48] Some weeks later the matter was discussed again. Uniquely the Minutes of the Library Committee set out the rival contentions as to the degree of utility of the work and its cost, and then deferred the decision for six months.^[49] Clearly the decision was over-ridden by the Society's Council because the *Digest* was ordered the following month.^[50]

Throughout the 1930s – perhaps influenced by the strictures of the Depression – the Society tended to be unreceptive to suggestions from members or from the Librarian that United States materials be purchased, although the *Harvard Law Review* was ordered in 1931, on the suggestion of a society member, after the cost had been ascertained.^[51] However in 1938 the Society began to explore the purchase of the *Dominion Law Reports*^[52] which were ultimately purchased – together with a second-hand set of 134 back volumes at a price of £95 in 1939.^[53] These purchases pushed Library spending to over £400 for the first time.^[54] The biggest single issue for the Library in this period was, however, the substantial discontent expressed with Butterworths for commencing the publication of a new edition of Halsbury's *Laws of England* shortly after the previous edition had been completed. Otago appears to have led a chorus of protest from the different New Zealand societies,^[55] but eventually to have accepted the position after a company representative addressed the ODLS Council.^[56]

This was not the last problem encountered by the Society with this publication. In 1940 the ODLS was asked to pay for four extra volumes of the publication. When the Society objected, Butterworths (the publishers) acknowledged that the extra volumes were outside the contracted quantity and that there was no legal obligation on the society to pay for the volumes. However a representative of the company

addressed the ODLs in January, 1941 and persuaded the Society that they should meet the moral obligation to pay the extra charge because the product was of a higher quality than had been promised.^[57]

2.6 World War II and after – Australia dominant

Other decisions in the 1940s and 1950s emphasise the move away from American law. Thus in 1949 it was decided not to order copies of new Digests for the United States Reports.^[58] In other cases the problem was that wartime conditions had held up production of desired works or that restrictions on foreign exchange transactions prevented purchases on the desired scale.^[59] Money was not the only obstacle to expanding the library's holdings; in some cases the purchases – as with the Dominion Law Reports Digests purchased in 1948 – were substantial enough to require the Society to obtain an import licence.^[60]

Australian holdings were also amplified – notably by the acquisition in 1954 of the *Australian Pilot to Halsbury's Laws of England*^[61] but difficulties were sometimes encountered in doing so. Thus in 1961 the Society began a subscription to the *Western Australian Reports*, after having considered subscribing to the predecessor series in 1957 but being unable to secure a back-run of the reports from the publisher.^[62] There was little comparable expansion of North American material, though in 1963 the Society purchased, amongst other things, the *Canadian Abridgment*.^[63] It is more difficult to establish the origins of books and similar materials purchased late in our period, but an analysis of books dating from the last 10 years of our study indicates about one-third were from Australasia, and none from America, Canada, Ireland or Scotland.^[64]

Secondly there were far more acute issues as to the relationship between the University Library and that of the Society.^[65] This is clearly a reflection of the increasing numbers of students who studied for the LLB degree as their mode of entry to the legal profession. The 1960s and 1970s saw significant growth in all University Law Libraries, and it may be expected that practitioners were able to draw on University resources to supplement ODLs holdings. The University however was also benefited by its dealings with the Society.^[66]

3 Citations data and the transmission of “overseas” law

The purpose of this study is to show the range of “overseas” materials to which the New Zealand judiciary had access, either because of a citation by counsel or from the judges' own researches. While inevitably some qualitative assessment must be made, this is very much intended to be secondary to establishing the data relating to accessible “overseas” case law.^[67] The selection of the five “overseas” jurisdictions reflects the fact that when New Zealand judges referred to judicial decisions, other than those from England or New Zealand itself, the cases cited came almost exclusively from these five jurisdictions. The remainder of the common law world was almost ignored – completely so until a South African case, *Van Wyk v Lewis*,^[68] was applied in a medical negligence case, *Ingram v Fitzgerald*.^[69] There were occasional later judicial references to South African decisions – nine of twelve being in tax cases.^[70] To this may be added two judicial references to cases decided by the subordinate Indian courts^[71] and an old Hong Kong case mentioned in *Naniseni v R*.^[72] in a context which makes it clear it had been previously cited in a Privy Council appeal from Hong Kong.

The statistics shown in the tables below are taken on the basis of counting those occasions on which a judge in a case reported in the New Zealand Law Reports (NZLRs) mentioned a case from one of the five “overseas” jurisdictions in our sample. The restriction to reference by a judge in the judgment is designed to ensure comparability over the period under study. Simply counting references in the NZLRs would produce significant distortion of the statistics as in the earlier years of the NZLRs the argument of counsel was given in almost every case; while in the last few years of the sample very few cases indeed – in some years none – give any indication of the argument. No attempt has been made to evaluate the context in which the reference was made (whether the case was applied, distinguished etc) – both because of the quantum of research needed and the frequent difficulty of determining exactly how the reference might be classified. There is of course no necessary correlation between the frequency with which counsel cited overseas cases in argument and judicial reference to those cases. One perhaps extreme example from the earlier years of our study is *Donaghy v Brennar*.^[73] where counsel's argument, as reported, contained references to 10 American cases, but only one was mentioned in the judgment. In many others judges simply did not mention “overseas” cases cited.^[74]

It is also important to note that Privy Council decisions have been treated as English decisions, not as “overseas” references – on the basis of the normal composition of the Judicial Committee and, more directly, the status of Privy Council decisions as (allegedly) binding precedents.

We must begin by acknowledging the fact that the citation of Australian, Canadian American, Scots or Irish cases was quantitatively much less significant than was reference to English law. For example even in a 1947 case where reference was made to four Australian cases as well as one Scots and one Northern Irish, 13 English cases were also cited.^[75] Although it was increasingly common to see “overseas” references, it was rare to find cases from more than one or two jurisdictions being cited. Such cases did become rather more common in the last years of our study, with decisions such as *Attorney-General v Wilson & Horton Ltd*.^[76] where in addition to New Zealand and English decisions the Court of Appeal referred to cases from Australia, Canada, Scotland and Ireland. Similarly in *Re Empire Building Ltd*.^[77] the Court of Appeal referred to three Australian, two Canadian and one Scots decision, but also to six English cases. It is hoped that in the future researchers will attempt a more nuanced study of the use of law from particular jurisdictions and, equally importantly, to study the interplay of the use of New Zealand decisions, English cases and overseas decisions.

Table 1 “Overseas” cases by number of judicial mentions^[78]

Year	Irish	Scots	US	Canadian	Australian
1874-1878	5	3	6	-	16
1879-1883	-	2	11	-	2
1884-1888	7	2	15	-	23
1889-1893	9	5	28	1	40
1894-1898	3	2	7	-	25
1899-1903	23	4	22	3	72
1904-1908	31	15	17		64
1909-1913	36	11	25		61
1914-1918	23	20	36		57
1919-1923	25	12	13	1	40
1924-1928	26	15	4	1	53
1929-1933	47	19	20	18	108
1934-1938	26	24	2	26	160
1939-1943	18	17	-	16	121
1944-1948	28	23	7	20	142
1949-1953	9	15	3	23	153
1954-1958	12	16	-	14	130
1959-1963	22	34	4	35	263
1964-1968	16	38	26	44	335
1969-1973	17	24	19	59	317
	383	301	265	261	2182

Table 1 records the number of citations of “overseas” cases in New Zealand judgments. Some temporal variations in the patterns of citations call for comment. Firstly it should be noted that the apparent paucity of citations from any “overseas” jurisdiction 1878-1883 is simply an artefact of the limited reporting of cases. The reporting of cases was also affected to some extent by variations in the size of the relevant volumes of the NZLRs. In particular the reports in the wartime years were substantially slimmer than in peace time, with the

number of cases reported in the late 1930s and again from 1959-1973 being significantly greater than that in other periods.

Other features of this table are striking on first glance. It is evident that the pattern of citation of Irish and Scots cases is comparatively consistent over time and certainly varies much less than is the case with North American or Australian law. The North American cases show a remarkable reversal over the period from an almost total absence of Canadian material with substantial numbers of American citations to a position where Canadian cases are common but American ones are a rarity. The sheer volume of Australian citations clearly shows that Australian law has had a different position in the use of precedent in the New Zealand courts. Indeed the statistics indicate that the number of Australian cases cited in the last two decades under study exceeds the aggregate for any other two "overseas" jurisdictions over the whole century. That remarkable fact indicates that Australian case law has had an enormous effect on the development of New Zealand law.

A more discriminating analysis of the influence of "overseas" law can be made in the light of the data in Table 2.

Table 2 NZ cases in which decisions from an overseas jurisdiction were judicially mentioned

Year	NZ citing Irish	NZ citing Scots	NZ citing US	NZ citing Canadian	NZ citing Australian
1874-1878	5	2	5	-	12
1879-1883	-	2	5(2)	-	1
1884-1888	7	2	10(1)	-	16(2)
1889-1893	9	5	10(5)	1	28(2)
1894-1898	3	2	6	-	23
1899-1903	22	4	17(1)	3	45(4)
1904-1908	28	13	12(1)	-	43(5)
1909-1913	30	11	15(2)	-	36(8)
1914-1918	20(1)	18(1)	26(2)	-	47
1919-1923	20	11	6(2)	1	26(3)
1924-1928	20(1)	15	4	1	28(5)
1929-1933	40(1)	18	13(1)	12(1)	66(9)
1934-1938	25	21	2	20(1)	90(18)
1939-1943	16	15	-	15	77(10)
1944-1948	23	19	4(1)	18	80(13)
1949-1953	9	13	2	15(1)	100(10)

1954-1958	11	16	-	13	88(7)
1959-1963	20	29	3	22(1)	151(26)
1964-1968	16	32	9(4)	27(4)	184(35)
1969-1973	16	17	14(1)	41(5)	183(30)
	340(3)	265(1)	163(23)	189(13)	1314(197)

Table 2 records the New Zealand cases in which the judge made some reference to a case from one of our five “overseas” jurisdictions. Importantly, the table includes in brackets the number of New Zealand cases in which three or more decisions from the relevant “overseas” jurisdiction were cited. In general, though not universally, such multiple references involved at least a degree of discussion as to the law in that “overseas” jurisdiction. They may therefore be taken as providing a crude indicator of judicial consideration of the applicability of such “overseas” precedent to New Zealand conditions. On that basis we may again note the dominant position of Australian law, but it is also significant to look at that element over time and note the substantial increase in the frequency of such multiple citations over the last 30 years of the study. It is also important to note that the percentage of cases involving multiple citations is almost the same for American and Australian cases, each being well ahead of the percentage for Canadian cases and of several orders of magnitude greater than that for Scots and Irish law. Some possible explanations for these differences are explored below.

4 Comments on jurisdictions

4.1 Of Scots and Irish law

While it may seem a little surprising that the number of Irish citations exceeds that of Scots law, it must be remembered that prior to 1921 the Irish courts largely administered the same equitable and legal rules as did the English courts and there is therefore a significant body of historic case law which is not infrequently drawn on in New Zealand. Space precludes a detailed study of post-1921 Irish authority.

A striking feature of the statistics relating to citation of Scots and Irish case law throughout the century under study is that the number of cases cited is only slightly greater than the number of cases in which such decisions were cited. This reflects the fact that in very few cases did judges refer to more than one Scots, or more than one Irish, decision. It is remarkably rare to find significant evaluative comment. In general we may say that such Scots or Irish decisions are normally drawn on as authority on quite limited issues, which in turn may suggest they were frequently derived from a law dictionary or textbook which had referred to the decision on a point of statutory interpretation (commonly so with Scots decisions) or as determining a quite narrow point.

It is notable that in the period before the Second World War it was fairly common to see Scottish, and to a lesser extent Irish, cases cited in litigation over workers’ compensation for injuries. Some at least of the cases so cited would have come to the attention of New Zealand practitioners because of their inclusion in Butterworth’s Compensation Cases.^[79] A similar process may also have occurred with citation of Scots cases reported in the Tax Cases report series.^[80] There may also have been a very few “overseas” cases reported in Lloyds Reports.^[81]

4.2 North American cases

The citation of North American material is interesting. We may start with the striking fact that more US decisions were cited in the 1880s and 1890s than at any time up until the late 1970s. Canadian citations show the reverse – few citations before the 1920s, and a pattern of generally steady growth with some acceleration in the 1960s and 1970s.

The comparatively small number of citations, and their frequent clustering, allow us to establish certain patterns of citation. In the first half of our period, references to American law are most common in the commercial law area – particularly insurance cases of which there are 8 cases between 1879 and 1890,^[82] debt and credit transactions^[83] and three intellectual property cases.^[84] The other very substantial incidence of American references comes with litigation about negligence and personal injury – with six cases before 1900.^[85] The other references are diverse, but include, surprisingly, only two in criminal matters^[86] and an interesting group of cases where American law was used in litigation affecting Maori interest, most notoriously in *Wi Parata v Bishop of Wellington*.^[87]

In the second half of the period, the litigation is more diverse. It is certainly less common to find North American law being cited in commercial litigation, although there were still a number of insurance cases.^[88] Tort and personal injury cases were once again important.⁸⁹ It is notable that such American references quite commonly came where the Court was faced with issues arising from technology only recently imported to New Zealand, as with issues of negligent driving of motor vehicles or involving aeroplanes.^[90] A similar recourse to American law in the absence of English guidance is to be found in litigation following a major earthquake in 1931^[91] and in a case involving title to land where rivers had altered course.^[92]

More important is an apparent shift in professional practice. By the early 1950s it appears that recourse to the Canadian judgments had

become a fairly standard procedure for counsel who wished to demonstrate that a substantial and careful argument was being mounted, as in tort and personal injury litigation where Canadian cases on contributory negligence statutes were canvassed in some detail in the New Zealand courts because the legislation in the Canadian provinces was in very much the same terms as the New Zealand statute.^[93]

It certainly becomes increasingly common to find citations where judges have treated Canadian law as part of the mainstream of the body of precedent which they have to consider, rather than as something unusual and probably to be distrusted.^[94] Curiously this habit appears to have developed earlier in civil cases than in criminal ones. Given that there was very substantial similarity between the New Zealand Crimes Act 1908 and the Canadian Criminal Code, we might expect to find the reverse. Yet until the 1950s, Canadian cases were rarely cited, and if cited were given little weight in the judgments.^[95] A decade later the Courts were more regularly citing and applying Canadian decisions in the criminal law area.^[96]

From the mid-1930s to the mid-1950s, Canadian citations were overwhelmingly from the *Dominion Law Reports* – 59 to 9 from other reports. The great advantage of the *Dominion Law Reports* series was that it was apparent that other Law Societies had, sooner or later, followed Otago's lead so that judges in all parts of the country regularly had access to the full text of the Canadian decisions.^[97] The qualification is necessary because as late as 1944 Fair J could set out at length a Canadian judgment from a case reported in the *Dominion Law Reports* on the basis that "...the Canadian law reports are not available in all our law libraries."^[98]

There is one other striking feature of the North American citations which has no parallel in the other jurisdictions – the remarkable influence of three identifiable judges. The first of these is Sir Joshua Strange Williams, resident Judge in Dunedin 1879-1914. In the 1890s under the influence of Williams, the citation of American cases in cases from the Dunedin area almost equals those from all other areas of New Zealand combined. While Otago counsel were clearly very ready to cite American law, Williams's judgments show such citations found receptive ears. It is difficult to ascertain exactly the extent of the Otago influence in the citation of American cases because it is clear that on some occasions Dunedin counsel appeared in other centres.^[99]

Even more pronounced is the influence of Sir Robert Stout. Stout learned his law in Dunedin and was in practice there for many years, often appearing before Williams J, until politics took him to Wellington.^[100] He marked his accession to the Chief Justiceship with a number of references to American law.^[101] There was an evident technique – perhaps an attempt to educate the New Zealand profession as to American law – whereby Stout would refer to American law, frequently including cases not cited by counsel^[102] – only after canvassing the other relevant authorities and coming to his conclusion, which he would then say accorded well with the American law.^[103]

A later Chief Justice, Sir Michael Myers has a similar though rather less marked role in the citation of Canadian cases in the 1940s, with a similar tactic of citing a Canadian case not mentioned by counsel only at the end of his judgment to confirm a view which had been formed on the basis of case law from New Zealand or England or Australia.^[104]

4.3 Australia

A thorough analysis of the Australian citations must await further research, but certain features are clear. In the early decades, it is clear that Australian decisions referred to in the New Zealand courts were overwhelmingly from Victoria, in particular, and New South Wales. Such cases were most commonly cited in mining cases, where it was regularly noted that the New Zealand legislation mimicked the Victorian law.^[105] Throughout the period land law was a constant with Australian cases regularly being cited on Torrens title questions,^[106] but Australian case law was widely cited over a very wide range of issues. Indeed by 1963 it was not uncommon to see two or more Australian decisions cited on relatively simple matters such as traffic offences.^[107]

As we have noted there is remarkable quantitative increase in Australian citations in the last two decades of our study. In part, but only in part, this reflects the extraordinary frequency of citation of "overseas" taxation cases. Tax litigation is common over the century, but it reached surprising levels in the last years of our study. One measure of this is the growth in repeated citations of certain "overseas" cases. Thus between 1964 and 1973 two Australian cases were judicially cited in six different New Zealand cases, and a further three cases were cited by judges in five New Zealand cases. Each of these five Australian cases was concerned with taxation.^[108] (The mass of tax litigation generated other "overseas" references – three references to Scots tax decisions in 1964 alone^[109] while nine of 12 references to South African decisions were to tax cases).

5 Access through secondary sources

One important aspect of the pattern of "overseas" citations over time is that there is a very substantial shift from a preponderance of references to reported decisions where the court acknowledged it had not seen the full report to a norm of actual reference to the printed text. Although examples can be found for all the "overseas" jurisdictions, this is at its most marked with North American citations. It is not until well after 1900 that we can be certain that a judge actually had a copy of an American law report in front of him.^[110] Instead counsel frequently simply relied on statements in American textbooks.^[111] Unlike the Scots and Irish cases, few North American references related to the definition of a particular word or phrase on the basis of citation in a judicial dictionary or similar work.^[112] Rather less often judges relied (as counsel apparently had) on printed collections of leading American cases. In the late nineteenth century this is exemplified by a number of insurance cases where counsel cited either *Hare and Wallace's Leading Cases*^[113] or *Bennett's Fire Insurance Cases*.^[114]

By the end of our period textbooks might be cited, but it was rare for judges to rely on a writer's statement of a case as a sufficient authority. A rare exception is *Gunn's Commonwealth Income Tax Law* which was relied on as late as 1963 for its statement of relevant Australian case law.^[115] However law dictionaries and similar works continued to be used as a source of relevant overseas precedent.^[116]

Periodical literature may have occasionally revealed “overseas” case law of relevance, but its effect must have been limited. There are certainly a fair number of references to Australian articles, none have been found for Ireland or Scotland. American journals were rarely cited.^[117] There is one identified instance where a North American case citation seems to have come from an article in a New Zealand legal periodical.^[118]

However the most important resource throughout the first half of our period was secondary materials such as digests or encyclopedias. Thus many American references were to *Danforth's United States Supreme Court Digest*^[119] Later, and much more common, was reference to American (or more rarely Scots, Irish or Australian) cases in the *American and English Encyclopedia of Law*.^[120] In the period to 1920 or so it was common for the judges to note that the full report was not available, and that the judgment was given on the basis of the report in a digest, textbook or encyclopedia.^[121] In only one case, at this time, was there expressed judicial reluctance to apply the briefly reported authority for fear of inaccuracy of the secondary source.^[122] It was also common for reference to a textbook or digest or the *Encyclopedia* to prompt the judges to look for further relevant American cases not cited by counsel.^[123]

These different resources were not mutually exclusive, as can be seen in *Brown v Ocean Accident and Guarantee Corporation*^[124] – where counsel cited material from *Bennett's Fire Insurance Cases* but the judge relied less on these cases than on a Canadian decision which had been endorsed by an Australian court. In that case Cooper J particularly noted that the Canadian case was not available in New Zealand^[125] but he was prepared to base his judgment on the citations in the Australian judgment.

In the period after 1920, the dominant digest is the *English and Empire Digest* which was cited extensively and often. As with the use of the *American and English Encyclopedia of Law*, most judges were prepared to rely on the law as stated in the *Digest*,^[126] but there were instances of judicial caution.^[127] This pattern persisted, with decreasingly fewer digest references right to the end of our period; the last such reference found being in *Police v Drummond*^[128] where McCarthy J referred to “*R v Ballentine* (1914) 3 All-Canada Digest 5407 cited to us”. More commonly the references were to the *English and Empire Digest*.^[129]

Whatever the willingness to rely on Commonwealth secondary sources in the 1960s, it was not evident in relation to American cases where no report was accessible. Thus in the case which saw the greatest number of American citations by a judge – *Attorney-General ex rel Lewis v Lower Hutt City*^[130] concerning the legality of fluoridating a local body's water supply – McGregor J said he had been referred to a number of American cases, listed the ten cases to which he had been referred, but went on:

As no recognized reports are available to me I have not considered these authorities. I apprehend that the empowering legislation in each case may be fundamentally different from the legislation with which I am concerned, and I merely mention them by way of reference for the future, if need be.

6 Evaluation and conclusion: the place of secondary materials

I suggest that the data is best explained if we hypothesise that possession of or access to the full text of judgments of the courts in one of the “overseas” jurisdictions is neither required for, nor of itself sufficient to ensure, that the law of that jurisdiction would have any significant influence on New Zealand law. For any such influence to be felt, lawyers and judges had to have convenient and effective access to the information held in the volumes of the law reports. Such access could be provided by secondary literature such as digests, abridgements or textbooks. Without them few lawyers – and probably fewer judges – would have the time or the inclination or the financial resources to wade through the volumes of overseas materials to find relevant law. The Scots and Irish citations charted are consistent with this hypothesis – given the frequency with which legal dictionaries or digests seem to have been used. The use of the *English and Empire Digest* might well also have perpetuated their use.

Stronger backing for the hypothesis comes from the Australian and North American data. In the period up to the First World War there are only a tiny number of Canadian cases referred to by the judges – and even counsel seem rarely to have cited Canadian material. Yet Canadian materials were available. The ODLs Library had a complete set of the Canadian *Supreme Court Reports* from 1889, which seem never to have been referred to. Citations of Canadian cases increase rapidly in and after the 1920s, and soon outpaced American citations throughout the remainder of our period.^[131] Why? After 1920 the New Zealand profession had access to secondary material – first the *English and Empire Digest* and later the *Canadian Abridgment* – which made it possible to discover relevant Canadian law relatively easily. By comparison it was very common in the first decades of our study to see American cases cited from the *United States Digest* or from the *American and English Encyclopedia of Law* though very rare to see reference being made to the full text of a decision of the courts.^[132] In the period immediately after the First World War there is a substantial volume of American material cited but it tails off very rapidly after 1932. Why? As we have seen, the *English and Empire Digest* had largely replaced American Digests – which had not been kept up to date.

The sheer number of the Australian citations makes analysis more difficult, but it seems consistent with our hypothesis. In the early years the bulk of the Australian cases cited were from Victoria, and digests of Victorian materials were available by that date. Yet the real growth in the use of Australian citations is from and after the late 1920s, despite the ODLs Library, and others, having earlier had substantial holdings of Australian reports. Once the new *Australian Digest* became available at about this date^[133] there is a striking increase in both of the total number of Australian cases cited and in the frequency of multiple citation.

There is a clear parallel between the citation pattern and the development of the ODLs library – to the point where we may speculate on probable mutual reinforcement of the trends. The Library holds significant American material in its early years, and American cases are regularly cited. The American secondary materials decline and so do citations – but Australian and, to a lesser extent Canadian, references burgeon with the newly available digests. Indeed it could almost be said that a large part of the story of New Zealand legal

culture in regard to “overseas” law is the supplanting of the *American and English Encyclopedia of Law* by the *English and Empire Digest* and that work, in its turn, being overtaken in importance by the Australian materials.

It is also, I suggest, likely that what is clear to us with the advantage of hindsight was not fully evident to the ODLS and its members. While it is clear that on occasion – as with the purchase of the *Australian Digest* and the discussions on the *English and Empire Digest* – Otago lawyers were keen to ensure their library contained adequate reference aids to allow some sets of reports to be used readily, they also maintained large collections of certain reports (as with Canadian material before the 1930s and American material from after the First World War) without any adequate secondary indices or digests to aid their use. Whether this was from oversight, inertia or an unvoiced belief that a report series, once cancelled, would never be able to be reinstated but digests could be later acquired we cannot now tell. It may be that defects in the library holdings only became apparent when lawyers tried unsuccessfully to grapple with the reports in question. In some cases pressure for better secondary material grew because access was perceived as important; in others busy lawyers may simply have focused on reports from other jurisdictions. Thus decisions to seek, or not to seek, replacement of digests may have mirrored to some extent the shifting scale of values placed on different “overseas” precedents. The advent of electronic data sys

[1] Associate Professor of Law, University of Canterbury. The author would like to gratefully acknowledge the financial assistance of the Otago District Law Society and New Zealand Law Foundation which made possible the research on which this article is based. Thanks are also due – indeed overdue – to Charlotte Wilson, my principal research assistant and Kathy Basire for their work; to Susan Schweigman, Claire McDonald and the Council of the ODLS; to Robin Anderson, Wellington DLS Librarian and Janice Woolford of Auckland DLS and to the staff of the Hocken Library, University of Otago, Dunedin.

[1] For the history of the ODLS generally see M J Cullen, *Lawfully Occupied, the Centennial History of the Otago Law Society* (Dunedin, Otago District Law Society, [1979]).

[2] Undated memo, probably 1959, in ODLS Library Correspondence, Hocken Library, Item 01-20-9 Box 20.

[3] For the purposes of this article “Ireland” comprehends both the undivided island before 1921 and the successor regimes after partition; Newfoundland has been included within Canada and Australia comprehends the six separate colonies prior to Federation.

[4] The Australian reports, all from Victoria, were *Wyatt and Webb’s Reports*; *Wyatt, Webb, and A’Beckett’s Reports* and *Webb, A’Beckett, and Williams’s Reports*. The New Zealand series were the *New Zealand Jurist*; *Macassey’s Reports* and *Johnstone’s Court of Appeal Cases*. Curiously the libraries seems to have been very slow to acquire the last of the early New Zealand reports, *Ollivier, Bell & Fitzgerald’s Reports*, (published 1878-1880) which apparently were acquired only after 1963.

[5] The count is based on apparent place of publication thus Judah Benjamin *The Law of Sale of Personal Property, with references to the American Decisions and to the French Code and Civil Law* (2nd ed 1873) is counted as English, as is an edition of Montesquieu *Spirit of Law*. The American works appear all to have been written by American authors, except for Leonard Field and Edward C Dunn’s full American editions of *Daniell’s Chancery Forms* (1868) and *Daniell’s Practice of the Court of Chancery* (1871). While pirated American editions of English texts were not uncommon, there are none traceable in the ODLS collection.

[6] The Australian volumes were Gurner *Criminal Law of Victoria* (1871) and McFarland *Law of Mining* 1869; the New Zealand text was *Johnstone’s Justice of the Peace (NZ)* (2nd ed, 1870).

[7] 1934 ODLS catalogue, ODLS records.

[8] There is a brief overview of parts of the history of the Auckland DLS library in *Re Mason (deceased)* [1971] NZLR 714, 717.

[9] ADLS catalogue 1909. I would like to thank Janice Woolford for arranging access to the relevant material.

[10] Minutes of AGMs 14 February 1913 and 6 February 1914, ODLS Minute Book, ODLS Library.

[11] Undated (but 1942) circular ODLS collection, Hocken Library, item 94-159-136 “Books and Applications 1942”.

[12] ODLS collection, Hocken Library, item 94-159-101 “Publishers and book companies”.

[13] Minutes of Council Meetings 13 May and 27 May 1910, ODLS Minute Book, ODLS Library.

[14] Figures from ODLS Annual Reports 1937-1977, compiled by Charlotte Wilson. In each case there was also a cost of binding materials, which ranged from as little as £30-19-0 in 1945 to a more normal £50-60 per year (or, after 1967 the dollar equivalent).

[15] Figures drawn from ODLS annual accounts from 1936 indicate that binding costs could be anywhere between 10% and 40% of that on books, reports and periodicals, with 15-20% being more usual. It is not possible from the documents to determine what costs related to new material and what to repair of old volumes. It is probable the extreme figures reflect deferment of, or undertaking of, repairs.

[16] The following data as to major report series may assist readers to understand some of the later discussion. In 1874 the Library began with the *American Decisions* 1765-1869 and Digests; several volumes of reports of Scots appeals, 37 series of nominate Irish reports together with six longer series, and Victorian reports from 1863 with a Digest. There were then no Canadian materials. Over the period to 1934, the American holdings grew substantially until 1991, with the acquisition of, inter alia, the *American State Reports* (vols 1-140 1887–

1911); the American *Criminal Law Reports*. However from 1912 only the *United States Reports* were purchased, a subscription maintained till the end of our period. Scots holdings were increased by the *Sessions Cases*, again throughout the period. Australian holdings were soon increased by the *Argus Law Reports* and the *Victorian Law Reports*, and later by the *Commonwealth Reports* (in 1910); the *New South Wales State Reports* (in 1916); the *Queensland Law Reports* and the *South Australian Law Reports* (with back runs) in 1928, see nn 37-38 below. The *Western Australian Reports* were added in 1960, it appears, but the Tasmanian reports were never purchased. Irish subscriptions included the *Irish Reports*, from their initiation in 1894 and the *Northern Irish* reports from 1930. Canadian material began with the *Canadian Supreme Court Reports* from a date unknown but these were replaced in 1938 with the *Dominion Law Reports*.

[17] The timing seems fortuitous, as discussion of the purchase had been in progress for some time. See nn 48-50 below.

[18] Minutes of AGM 31 January 1887, ODLS Minute Book, ODLS Library.

[19] It is not clear when the purchases start – the acquisition is not noted in any Annual Report but we have clear archival evidence of payment from 1896. See minutes Meeting of Library Committee March 6 1896, in ODLS memoranda book, ODLS library. By 1894 the ODLS appears to have two different subscriptions to reports put out by the publishers, and it is possible one of these was for the *American State Reports* (see Minutes ODLS Council 8 June 1894, ODLS Minute Book 1878-1898, ODLS Library). This may indicate a subscription date before 1896.

[20] The earliest payment noted in the minutes is in 1894: Minutes ODLS Council 8 June 1894, ODLS Minute Book 1878-1898, ODLS Library. The termination of the subscription is noted Minutes Library Committee 8 October 1897, ODLS Minute Book.

[21] Memorandum 10 July 1896, ODLS Memoranda Book, ODLS Library.

[22] Memorandum 23 October 1896, ODLS Memoranda Book, ODLS Library.

[23] Minutes of Council Meeting 6 January 1888, ODLS Minute Book, ODLS Library.

[24] Minutes of AGM 17 February 1890, ODLS Minute Book, ODLS Library. Curiously no other mention of what might have been expected to be a substantial transaction appears in the minutes for that year.

[25] Minutes of AGM 4 February 1892, ODLS Minute Book, ODLS Library.

[26] Minutes of AGM 29 January 1894, ODLS Minute Book, ODLS Library.

[27] Minutes of Council Meeting 27 April 1896, ODLS Minute Book, ODLS Library.

[28] Minutes of Council Meetings 10 November 1905, 2 February and 19 October 1906, ODLS Minute Book, ODLS Library.

[29] Minutes of Library Committee 28 January and 1 April 1910, ODLS Minute Book, ODLS Library.

[30] This being in large part because: “Very few textbooks or new editions of text books have been published during the year hence there have been very few additions to the Library: Minutes ODLS AGM 4 February 1919, ODLS Minute Book, ODLS Library.

[31] Minutes ODLS Library Committee 18 May 1915, ODLS Minute Book, ODLS Library.

[32] Minutes ODLS Council 3 July 1916, ODLS Minute Book ODLS Library.

[33] Minutes ODLS AGM 9 February 1917, ODLS Minute Book, ODLS Library.

[34] Minutes ODLS Council 29 August 1919, ODLS Minute Book, ODLS Library.

[35] Minutes of Council Meeting 23 November 1923 ODLS Minute Book, ODLS Library.

[36] Minutes of Council Meeting 21 April 1911, ODLS Minute Book, ODLS Library. “Mr Paterson” recommended “*McLaren’s Law of Wills and Succession* – 2 vols £2, *Menzies Laws of Scotland affecting Trustees* £2, and *Walter Laws of Husband and Wife in Scotland*.”

[37] Minutes of AGM 19 February 1926, ODLS Minute Book.

[38] Minutes of Council 28 May 1926 and 30 July 1926 ODLS Minute Book.

[39] Minutes of Library Committee 6 June 1935, ODLS Minute Book.

[40] Minutes of Council 26 August 1927 ODLS Minute Book.

[41] Minutes of Council 4 October 1927 ODLS Minute Book.

[42] Minutes of Council 22 June 1928 ODLS Minute Book. At a later meeting, the Council was resolute that “Council accepts no liability for any, if any, increase of cost by reason of the volumes being bound in half calf instead of buckram”: Minutes of Council 28 September 1928, ODLS Minute Book.

- [43] Minutes of AGM 22 February 1929, ODLS Minute Book.
- [44] Minutes of Library Committee 1 and 29 May 1930, ODLS Minute Book.
- [45] Minutes of Library Committee 29 November 1934, ODLS Minute Book. The only texts ordered on that occasion were a new dictionary and *Taylor's Medical Jurisprudence*.
- [46] Minutes of Library Committee 14 May 1936, ODLS Minute Book.
- [47] Minutes of Library Committee 25 November 1937, ODLS Minute Book.
- [48] Minutes of Library Committee 25 November 1937, ODLS Minute Book; Incorporated Law Institute of New South Wales to ODLS 14 December 1937 in ODLS collection, Hocken Library, item 94-159 101. "Publishers and book companies".
- [49] Minutes of Library Committee 15 February 1938, ODLS Minute Book.
- [50] Minutes of Council 28 March 1938, ODLS Minute Book.
- [51] Minutes of Council 28 March 1938, ODLS Minute Book.
- [52] Minutes of Council 28 March 1938; Minutes Library Sub-Committee 27 June 1939, ODLS Minute Book.
- [53] Minutes of Library Committee 27 June 1939, Council 23 April and 30 July 1931 ODLS Minute Book. The ODLS sought, apparently unsuccessfully, to find a buyer for some of its existing Canadian material to offset that cost.
- [54] Minutes of AGM 23 February 1940 ODLS Minute Book.
- [55] The ODLS had apparently written to the NZ Law Society indicating a belief that practitioners would be forced into purchasing the new edition because the judges and government departments had ordered them: "The general feeling of the profession here is that publication after publication is being brought out especially by Messrs Butterworth as a regular business: approval is obtained from the Judiciary (who do not pay for them at all) and from the Government Departments (who pay for them out of public money). The profession is then forced to make reference to them and consequently to buy them. We trust we are not insensible to the value of many of the publications but there is a limit to everything and in default of the limit being defined in this case the profession will shortly be working for the Government and Messrs Butterworth": copy letter, undated but January 1932, ODLS collection, Hocken Library item 94-159-77 "Books etc". The ODLS received, but apparently did not forward, a complaint in similar terms from a country practitioner about a proposed new series in the 1950s, see Brodrick & Parcell to ODLS, 10 April 1952, ODLS collection, Hocken Library item 94-159-198 "Books etc".
- [56] See Minutes of Council 26 November 1931, 18 December 1931 and 27 January 1932; Minutes of AGM 26 February 1932.
- [57] Minutes of Council 15 and 28 January 1941, ODLS Minute Book.
- [58] Minutes of Council 16 February 1949 ODLS Minute Book.
- [59] Minutes of AGMs 25 February 1946 and 12 February 1942 ODLS Minute Book.
- [60] Minutes of AGM 21 February 1949, ODLS Minute Book. The most extreme reaction to the war situation was the decision, after Pearl Harbour "...that the contents of the Library and the Wigs and Gowns in the Robing Room be insured against War Risk immediately." Minutes of Council 22 December 1941, ODLS Minute Book.
- [61] Minutes of Council 11 February 1954, ODLS Minute Book.
- [62] Minutes of Council 14 February 1961, ODLS Minute Book. The Society had sought to arrange a private purchase of the back-run without, it seems, any success. Minutes of Council 17 July 1957, ODLS Minute Book.
- [63] Minutes of Council 26 August 1963, ODLS Minute Book.
- [64] Analysis from 1993 ODLS catalogue, as analysed by Charlotte Wilson. This analysis assumes books were generally acquired close to publication date.
- [65] See for example Minutes of Council 17 June 1954. ODLS Minute Book.
- [66] In 1993 ODLS transferred a very substantial fraction of its older materials to the University.

[67] It is, unfortunately, not possible to correlate ODLS library data with the citation of "overseas" cases. While the library records ostensibly record the borrowing by practitioners of books from the library for use in court and, separately, the borrowings by the judge of the Supreme Court, it is clear that these registers are so incomplete as to be of only minor value. On the one hand there was frequent complaint that lawyers, or the judge, had removed books from the library without this being recorded. On the other, the borrowing records contain no entries which correlate with significant cases reported in the New Zealand Law Reports in which a number of overseas authorities were cited.

[68] [1924] App D (S Af) 438.

[69] [1936] NZGazLawRp 126; [1936] NZLR 905.

[70] See, inter alia, *NZ Dairy Farmers Mortgage Co Ltd v Commissioner of Taxes* [1940] NZGazLawRp 130; [1941] NZLR 83, 92; *Grant v Commissioner of Taxes* [1948] NZGazLawRp 38; [1948] NZLR 871, *CIR v Walker* [1963] NZLR 339, 346; *CIR v Levin* [1962] NZPoliceLawRp 22; [1963] NZLR 801, 835 and *CIR v Murray's Equipment Ltd* [1966] NZLR 360, 364.

[71] *W V Middleditch & Sons Ltd v Hinds* [1963] NZLR 570 referring to *Narayanan Chettyar v Official Assignee, Rangoon* (1941) 39 Allahabad LJ 683 and *Mamsa (EA) v M E Majid* (1931) IRL 9 Ran 333 followed in *Re Martin (A Bankrupt) Ex parte James* [1952] NZGazLawRp 3; [1952] NZLR 142. These cases may have been drawn from the report of a Privy Council decision. Privy Council decisions on appeal from India have not been included in the count.

[72] [1971] NZLR 269, 271.

[73] (1900) 19 NZLR 289.

[74] See for example *In re Macleay (deceased) Treadwell v Macleay* [1935] NZGazLawRp 76; [1935] NZLR 463 and *Best v Newton King Ltd* [1941] NZGazLawRp 114; [1942] NZLR 360 (CA).

[75] *Stannus v Commissioner of Stamp Duties* [1946] NZGazLawRp 112; [1947] NZLR 1.

[76] [1972] NZLR 364. In the following year the judgments in *Stephenson v Waite Tileman Ltd* [1973] 1 NZLR 152 (CA) referred to New Zealand, English, Canadian, Irish and Scots authority. It is interesting that in each case no reference was made to American law.

[77] [1973] 1 NZLR 214 (CA).

[78] Cases cited on more than one occasion are counted on each occasion.

[79] See for example in 1939 alone *Thomas v Flemington Coal Co Ltd* [1911] SC(Ct of Sess) 823, 4 BWCC 406 cited in *Wortley v Wellington CC* [1939] NZGazLawRp 5; [1939] NZLR 151; *McDougal v Singer Manufacturing Co Ltd* [1931] SC 47, 23 BWCC 616 cited in *Bell v John Mill & Co* [1939] NZGazLawRp 69; [1939] NZLR 582 and *Hetherington v Dublin and Blessington Steam Tramway Co* [1927] IR 75; 20 BWCC 852, cited in both *Brown v NZ Workers IUW* [1939] NZGazLawRp 1; [1939] NZLR 165, 169 and *Leonard v Union SS Co of NZ Ltd* [1939] NZGazLawRp 14; [1939] NZLR 210, 213. For later examples see *Bidois v Robinson and Knapp* [1945] NZGazLawRp 43; [1945] NZLR 454; *Mason v William Cook & Sons* [1946] NZGazLawRp 9; [1946] NZLR 214; *March v Bowlin* [1946] NZGazLawRp 5; [1947] NZLR 218 and *Auckland Harbour Board v Cooke* [1960] NZLR 94.

[80] See for example *Gordon v Commissioner of Stamp Duties* [1946] NZGazLawRp 75; [1946] NZLR 625 where counsel cited *IRC v Falkirk Temperance Café Trust* [1927] SC 2651, 11 Tax Cases 353 and *Burmah Steamship Co Ltd v CIR* 1931 SC 156; (1930) 126 TC 67 cited in *Omihi Lime Co Ltd v CIR* [1964] NZLR 731, 733.

[81] The only ones so far identified are two American decisions cited in *AM Satterthwaite and Co Ltd v NZ Shipping Co Ltd* [1973] 1 NZLR 174, 186.

[82] *White v South British Insurance Company* (1879) OB & F (SC) 23; *Mollison v Victoria Insurance Company* (1883) 2 NZLR SC 182; *Bank of New South Wales v Royal Insurance Company* (1884) 2 NZLR SC 345; *National Insurance Company v Australian Mercantile Union Insurance Company* (1887) 6 NZLR 153; *Holmes v National Fire Insurance Company* (1887) 5 NZLR SC 360; *Scott v Accident Association Of New Zealand* (1888) 6 NZLR 271; *Bowes v National Fire and Marine Insurance Company* (1888) 7 NZLR

[32] ; *Dorset v New Zealand Insurance Company* (1890) 8 NZLR 308, 313.

[83] *Otago and Southland Investment Company v Burns* (1874) 2 NZ CA 551, 586; *Brown v Bennett* (1891) 9 NZLR 514.

[84] *Beecham v Hanlon* (1894) 12 NZLR 554; *Thomson v Phillips* (1895) 14 NZLR 29, 49; *Shacklock v Brinsley* (1896) 16 NZLR 364, 370.

[85] *McBride v Brogden* (1876) 3 NZ CA 271; 2 NZ Jur. N.S. CA 28; *Nystrom v Cameron* (1891) 9 NZLR 433; *District of Auckland Hospital and Charitable Aid Board v Lovett* (1892) 10 NZLR 597; *Heenan v Iredale*, (1901) 19 NZLR 387 at 391; *Linklater v Minister for Railways* (1900) 18 NZLR 540; *Donaghy v Brennan* (1900) 19 NZLR 289, 294.

[86] *R v Hall* (1887) 5 NZLR CA 106; *R v Ross* (1887) 6 NZLR 87, 89.

[87] (1877) 3 NZ Jur. NS SC 72, 81. See also *Te Raihi v Grice* (1886) 4 NZLR CA 219.

[88] *Colonial Mutual Life Assurance Society Ltd v Long* [1930] NZGazLawRp 184; [1931] NZLR 528 at 539; *Mercantile Finance Corporation Ltd v New Zealand Insurance Co Ltd* [1932] NZGazLawRp 72; [1932] NZLR 1107; *Lundberg v Royal Exchange Assurance Corporation* [1933] NZGazLawRp 73; [1933] NZLR 605 and *Murdoch v British Israel World Federation (New Zealand) Inc and Another* [1942] NZLR 600.

[89] Indeed one of the few cases in the 1930s where the judges considered North American cases at length is *Logan v Waitaki Hospital*

Board [1935] NZLR 385, a case on a hospital's liability for negligence by a nurse. Counsel cited Canadian and US cases, as well as an article in "the *Fortnightly Law Journal Canada* volume 4 p 152". See also *Munt v The King* [1932] NZGazLawRp 134; [1932] NZLR 1691, 1699; *Wellington City Corporation v Laming* [1933] NZLR 1435. Cases in other fields which involved substantial

discussion of Canadian material include *Colonial Mutual Life Assurance Society Ltd v Long* [1930] NZGazLawRp 184; [1931] NZLR 528, 539; *Murdoch v British Israel World Federation (New Zealand) Inc and Another* [1942] NZLR 600 and *Public Trustee v Commissioner of Stamp Duties* [1942] NZGazLawRp 23; [1942] NZLR 170.

[90] See, respectively, *Aitchison v Samson* (1911) 30 NZLR 166 and *Dominion Air Lines Ltd (in liquidation) v Strand* [1933] NZLR 1.

[91] *Borthwick (Thomas) & Sons (Australasia) Ltd v Ryan* [1932] NZLR 225, 240-241. Myers CJ was the only member of the Court of Appeal to cite the US cases.

[92] See *Humphrey v Burrell* [1951] NZLR 262, 280-81.

[93] In *Petersen v The King* [1950] NZGazLawRp 5; [1950] NZLR 691 the law in at least five Canadian provinces was canvassed by counsel although O'Leary CJ did not traverse all the Canadian cases. See also *Griffin v F T Wimble and Co (NZ) Ltd* [1950] NZGazLawRp 3; [1950] NZLR 774. For discussions of Canadian case law prior to statutory reform see *Bourke v Jessop (No 2)* [1934] NZLR s 81; *Bourke v Jessop (No 3)* [1935] NZGazLawRp 39; [1935] NZLR 246 CA and *Horning v Sycamore and Flexman* [1935] NZGazLawRp 95; [1935] NZLR 581 (all discussing *Delaney v City of Toronto* (1921) 49 OLR 245; 64 DLR 122) and *Godfrey v Gilbert* [1936] NZLR 699, 722. For a similar example of careful consideration of a Canadian case dealing with a similarly worded statute see *In re an Arbitration Broughton and Renown Collieries Ltd* [1940] NZGazLawRp 150; [1941] NZLR 227.

[94] See for example *Re Burney (A Bankrupt) ex parte Official Assignee* [1955] NZLR 1071 at 1073; *In re Hunter (deceased), New Zealand Insurance Co Ltd v Hunter* [1958] NZLR 654 and *Beals v Hayward* [1960] NZLR 131.

[95] There is for example the strange position that in a substantial argument in 1931 on the law of negligent manslaughter we find two Canadian cases cited, but these do not deal with the substantial issue of criminal liability but rather relate to the quite separate question whether the New Zealand Court of Appeal was or should be bound by its own decisions: *R v Storey* [1931] NZLR 417, 472 citing *Desormeaux v Village of Ste Therese de Blainville* (1910) 43 Can SCR 82 and *Duval v Maxwell* (1901) 31 Can SCR 459. See also *R v Mareo (No 3)* [1946] NZLR 660, *R v Kahu* [1947] NZLR 368; *R v Brown* [1948] NZPoliceLawRp 8; [1948] NZLR 928 *R v Roach* [1948] NZLR 677 and *Purdie v Maxwell* [1960] NZPoliceLawRp 3; [1960] NZLR 599.

[96] See *R v Noel* [1959] NZPoliceLawRp 21; [1960] NZLR 212; *R v Lanham and Gilmore* [1961] NZPoliceLawRp 8; [1961] NZLR 735; *R v Reisterer*

[1962] NZLR 1040.

[97] See for example *In re Mills (deceased), Mills v J R Mills and Son Ltd* [1949] NZGazLawRp 4; [1949] NZLR 221.

[98] See *In re Paterson (deceased)* [1943] NZGazLawRp 115; [1944] NZLR 104, 141, citing *In re Kemp* [1939] 1 DLR 117 (SCC). The case originated in Dunedin, where the ODLS library did hold the Dominion Law Reports.

[99] One identifiable example of that is *R v Hall* (1887) 5 NZLR CA 106.

[100] One indication of Stout's interest in American law is that among the hundreds of pamphlets on various subjects that he collected over his life there is a collection of eight articles reprinted from the 1877 Southern Law Review (published in St Louis) on various aspects of American law. Stout Collection, VUW, vol 43/1-43/8.

[101] See *The "Queen Eleanor"* (1899) 18 NZLR 82; *Common, Shelton, & Co v Timaru Milling Company* (1899) 18 NZLR 321; *Harris v Aldous* [1899] NZGazLawRp 133; (1899) 18 NZLR 449, 461; *Glenny v Rathbone* (1900) 20 NZLR 1; *Jones v New Zealand Trust and Loan Company* [1900] NZGazLawRp 138; (1900) 19 NZLR 449, 455. (CA 1900.)

[102] See for example *Assets Co v R* [1902] NZGazLawRp 142; (1902) 22 NZLR 459, 469 citing *Leather Manufacturers' Bank v Merchants Bank* 128 US Rep 26; *Jellicoe v Haselden* [1902] NZGazLawRp 168; (1902) 22 NZLR 343, 352 citing *Yates v Lansing* 5 Joh 282, 9 Joh 395; 6 Amer Dec 290; *Beauchamp v Johnston* (1903) 22 NZLR 926 citing *Akers v Akers* 57 Amer Rep 207. For a similar approach by another judge see *Crisp v Snowsill* [1917] NZLR 257.

[103] Eg *New Zealand Shipping Co v Wellington Harbour Board* (1914) 33 NZLR 1403, 1406; *In re Broadbent* [1916] NZGazLawRp 121; [1916] NZLR 821, 824; *In re Knowles, Brown v Knowles* [1916] NZLR

[83] , 114; *Pukuwaka Sawmills Ltd v Winger* [1917] NZLR 81, 92; *R v McNamara* [1917] NZLR 394 (CA); *Todd v Commissioner of Stamp Duties* [1923] NZLR 536. There were occasions where other judges appear to have considered that the Chief Justice overstated the similarity of English and American law; compare the different views of Stout CJ and Denniston J in *Miller v Union Steamship Co Ltd* [1918] NZGazLawRp 17; [1918] NZLR 247.

[104] See for example in 1945 alone *Jackson v De Havilland Aircraft Co of New Zealand Ltd* [1944] NZGazLawRp 136; [1945] NZLR 250, 260, citing *Everett v Schaake* (1912) 4 DLR 147 and *Re Northern Navigation Company* (1912) 6 DLR 69; *Reid Weston and Guardian Trust and Executors Co of New Zealand Ltd v Commissioner of Stamp Duties* [1944] NZGazLawRp 144; [1945] NZLR 192, 198 citing *Re*

Gwynne (1912) 5 DLR 713 and *In Re Isdale, Isdale v Medical Council* [1945] NZLR 136 citing *Re Washington* (1893) 23 OR 299. For a similar tactic with US material see *In re Hourigan* [1945] NZGazLawRp 135; [1946] NZLR 1 and see also *Leyland Motors Ltd v Napier Harbour Board* [1929] NZGazLawRp 131; [1930] NZLR 113, 125.

[105] See for example *Kay v Ironstone Hill Lead Gold-mining Company Ltd* [1876] VicLawRp 87; 2 VLR (L) 148 cited in *Hoskings v Caledonian Gold-mining Company* (1889) 7 NZLR 756, 758.

[106] The first such may well have been *Gunn v Harvey* [1875] VicLawRp 18; 1 VLR (Eq) 111 and *Campbell v Jakbett* 7 VLR (Eq) 144 cited in *Panione v Matthews* (1888) 6 NZLR 744, 752.

[107] See for example *Martinovich v Transport Department* [1963] NZLR 625, citing *Rowe v Butcher* [1936] VicLawRp 17; [1936] VLR 103 and *Ames v Nicholson* [1921] SASRp 24; [1921] SASR 224 and *Jenkinson v McDonald* [1962] NZPoliceLawRp 26; [1963] NZLR 131, citing *Rosey v Gordon* [1960] SASR 149 and *Samuels v Noonan* [1956] SASR 32.

[108] The two cases cited six times were *Cecil Bros Pty v Federal Commissioner of Taxation* (1964) 111 CLR 430; 37 ALJR 445 and *Federal Commissioner of Taxation v Newton* (1957) 96 CLR 578. Those cited five times were *Jaques v Federal Commissioner of Taxation* [1923] HCA 70; (1924) 34 CLR 328; *Deputy Federal Commissioner of Taxation v Purcell* [1921] HCA 59; (1921) 29 CLR 464 and *Clarke v Federal Commissioner of Taxation* [1932] HCA 46; (1932) 48 CLR 56. The small number of cases cited four times in that period includes several tax cases.

[109] *United Collieries Ltd v Commissioners of Inland Revenue* 1930 SC 215 cited in *Meadowcroft v CIR* [1964] NZLR 108, 111; *Inland Revenue Commissioners v Fleming & Co (Machinery) Ltd* 1952 SC 120 cited in *A G Healing & Co Ltd v CIR* [1964] NZLR 227 and *Burmah Steamship Co Ltd v CIR* 1931 SC 156; (1930) 126 TC 67 cited in *Omihī Lime Co Ltd v CIR* [1964] NZLR 731, 733.

[110] The first appears to be *Morland v Hales & Somerville* (1910) 30 NZLR 201, 219, 220 referring to *Richardson v Hardwick* 106 US R 252.

[111] See for example *Bowes v National Fire and Marine Insurance Company*, (1888) 7 NZLR 32 (citing *May on Insurance*); *R v Ross* (1887) 6 NZLR 87, 89 (citing *Parsons on Bills*); *Hansen v Cole* (1890) 9 NZLR 279 (citing *Kent's Commentaries*). Perhaps the most charming, if atypical, textbook reference is *Robins v Kennedy & Columb* [1931] NZGazLawRp 137; [1931] NZLR 1134, 1142 where two Canadian cases on the negligent keeping of honeybees are cited and the judge makes it clear that these came from *The Law of the Honeybee* by P R Campbell "General Counsel to the American Honey-Producers League".

[112] The first Canadian case judicially cited – in 1892 – is one of this kind, see *Sharland & Co. v Commissioner of Trade and Customs* (1892) 11 NZLR 557. See also *Lilley v Commissioner of Customs* (1890) 9 NZLR 1, 3; *R v Crago* [1917] NZLR 86, 89; *Saracen Shoe Co Ltd v Minister of Customs* [1932] NZLR 765, 769 and *In re Wallace, Wallace v Wallace* [1933] NZGazLawRp 23; [1932] NZLR 479, 481.

[113] *White v South British Insurance Company* (1879) OB & F (SC) 23; *Mollison v Victoria Insurance Company* (1883) 2 NZLR SC 182. Those *Leading Cases* are cited in other litigation, see eg *Johnson v Mckay* (1884) 2 NZLR SC 157, 160. (SC 1883.)

[114] For example *Bank of New South Wales v Royal Insurance Company* (1884) 2 NZLR SC 345; *National Insurance Company v Australian Mercantile Union Insurance Company* (1887) 6 NZLR 153; *Holmes v National Fire Insurance Company* (1887) 5 NZLR SC 360. Another measure of the importance of American law in insurance litigation at this time is the presence in the ODLS library of Fairman's *Insurance Statutes of New York* (1885), and the purchase in 1897 of a 4 volume American work on insurance by Joyce.

[115] See *Irvine v CIR* [1963] NZLR 65, 69 in relation to decisions of the Commonwealth Taxation Board of Review. The same work, in a different edition, was also cited as a reference point for some South African cases. The ODLS library had sought unsuccessfully throughout 1946 to acquire a copy of the first edition (1943) of this work. See correspondence in ODLS collection, Hocken Library, item 94-159-162 "Books 1946". For another example of reliance on an English case see *Stratford Borough v J H Ashman (NP) Ltd* [1960] NZLR 503, 517 where the Court of Appeal rely on *Bateman v Thompson* reported in *2 Hudson on Building Contracts* 4th ed 36.

[116] See for example *Police v Christie* [1962] NZLR 1109 where Henry J draws upon *Blacks Law Dictionary* and draws upon it for references to relevant American cases, *Garvin v City of Waynesboro* 15 Ga App 633, 84 SE 90 and *City of Seattle v Franklin* 191 Wash 297; 70 P 2d 1049.

[117] The Harvard Law Review was referred to in *Fitzgerald v Macdonald* [1918] NZGazLawRp 175; [1918] NZLR 769, 788 by Stout J, by Adams J in *Day v Collins* [1924] NZGazLawRp 133; [1925] NZLR 280, 285 and by counsel in *Coastal Shipping Co Ltd v Wanganui Herald Newspaper Co Ltd* [1929] NZLR 305, 314. There does not appear to have been another reference until 1987!

[118] *Sandford v Graham* [1944] NZLR 16 where Myers CJ seems to have derived his references to *R v Henry* [1934] 2 DLR 51 and *R v Higgins* [1929] 1 DLR 269 from an anonymous article at (1942) 18 NZLJ 187.

[119] See for example *Harris v Aldous* [1899] NZGazLawRp 133; (1899) 18 NZLR 449, 461; *Glenny v Rathbone* (1900) 20 NZLR 1.

[120] See for example *State of Alabama v State of Georgia* 54 US Rep 515 cited in *R v Joyce* (1905) 25 NZLR 78; *Fleming v Ramsay* [1905] NZGazLawRp 129; (1905) 25 NZLR 596 citing *Compania de Navigacion La Flecha v Brauer* 168 US Rep 104; *Lucena v National Mutual Association of Australasia* [1911] NZGazLawRp 178; (1911) 31 NZLR 481, 489; *Partridge & Co v Nathan Co* [1912] NZGazLawRp 217; (1912) 31 NZLR 1229, 1236.

[121] See eg *Minister of Customs v Ross & Glendining* (1911) 31 NZLR 220, 223; *Dalgety & Co v Solicitor-General* [1912] NZGazLawRp 103; (1912) 31 NZLR 632, 646.

[122] *Reid v Barnett* [1903] NZGazLawRp 196; (1903) 22 NZLR 964, 966. Oddly, this was a decision of Stout CJ.

[123] Thus in *Kenealy v Karaka* [1906] NZGazLawRp 117; (1906) 26 NZLR 1118, an interesting negligence case, counsel cited three US cases, all apparently derived from the *American and English Encyclopedia of Law* and Stout CJ cited not only those three but a fourth. Compare *Latter v Parsons* [1906] NZGazLawRp 54; (1906) 26 NZLR 645, 653. See also *Wolters v Public Trustee* (1914) 33 NZLR 1395, 1397 where Stout CJ cites five American cases – an unusually large number – when determining the proper construction of a will, attributing them to the discussion of the point in *Kent's Commentaries* and the *American and English Encyclopedia of Law*.

[124] [1916] NZLR 380, 380-382.

[125] A view which may have been wrong because it would appear that the ODLS library probably did hold the relevant volumes.

[126] *Winsley Bros v Woodfield Importing Co* [1929] NZGazLawRp 47; [1929] NZLR 480, 487; *Candy v Maxwell* [1934] NZGazLawRp 61; [1934] NZLR 766; *James v Smith* [1954] NZLR 707.

[127] See *Robins v Kennedy & Columb* [1931] NZGazLawRp 137; [1931] NZLR 1134, 1142; *Invercargill Savings-Bank v Genge* [1929] NZLR 375, 379.

[128] [1973] 2 NZLR 263, 266. For another reference to the same digest see *McDowell v A-G* [1963] NZLR 878, 886.

[129] See *Mathewson v Police* [1968] NZPoliceLawRp 15; [1969] NZLR 218, 219-20; *Shorter's Parking Station Ltd v Johnson* [1963] NZLR 135; *R v Naidanovici* [1961] NZPoliceLawRp 24; [1962] NZLR 334 and *R v Tennent* [1961] NZPoliceLawRp 31; [1962] NZLR 428, 430.

[130] [1964] NZLR 438, 445. An interesting feature of the later decision of the Court of Appeal was that it followed the minority, rather than the majority view of the Supreme Court of Canada in *Forest Hill Village v Municipality of Metropolitan Toronto* (1957) 9 DLR (2d) 113. For a similar exercise in distinguishing Canadian cases see *Stanley v Auckland Co-operative Terminating Building Society* [1973] 2 NZLR 673, 677.

[131] Although it is outside the period of this present paper I would note that since 1973 Canadian law has been even more dominant.

[132] One measure of the use of the *American and English Encyclopedia of Law* and the American digests at the beginning of the 20th century is that in vol 19 of the New Zealand Law Reports several American cases are both referred to in the report of argument and indexed by the *Encyclopedia* or *Digest* reference rather than by any report series. See *State v Pierce* "65 Iowa 88; Am & Eng Enc of Law, vi, 385" (cited by counsel in *Brown v Bowden* (1901) 19 NZLR 98, 100; *Ullrich v New York Press Co* "Amer Dig [1898] 3272"; *Tucker v Hyatt* "Amer Dig [1899] 2276" and *Mutual Fire Insurance Co v Showalter* "Amer Dig [1897] 2741" all cited by counsel in *Donaghy v Brennan* (1900) 19 NZLR 289, 298. None were referred to by the judges.

[133] See text at nn 48-50 above.

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Civil Law, in contrast, is codified. Countries with civil law systems have comprehensive, continuously updated legal codes that specify all matters capable of being brought before a court, the applicable procedure, and the appropriate punishment for each offense. Such codes distinguish between different categories of law: substantive law establishes which acts are subject to criminal or civil prosecution, procedural law establishes how to determine whether a particular action constitutes a criminal act, and penal law establishes the appropriate penalty. Otago (/ˈoʊtɑːɡoʊ/ (listen), /oʊˈtɑːɡoʊ/, ˈoʊˈtɑːɡoʊ- ˈɪˈ-/) is a region of New Zealand in the south of the South Island administered by the Otago Regional Council. It has an area of approximately 32,000 square kilometres (12,000 sq mi), making it the country's third largest local government region. Its population was 229,200 in June 2018. The name "Otago" is an old Māori southern dialect word (the North Island dialect equivalent is "Otakou"), introduced to the south by Europeans in the 1840s. The exact meaning of the term

Sources of law means the origin from which rules of human conduct come into existence and derive legal force or binding characters. It also refers to the sovereign or the state from which the law derives its force or validity. Several factors of law have contributed to the development of law. These factors are regarded as the sources of law. [edit]Precedent Precedent is one of the sources of law. The judgements passed by some of the learned jurists became another significant source of law. when there is no legislature on particular point which arises in changing conditions, The judges depend on The history of law reform is the history of strong differences of opinion between those who wanted a change and those who did not, and on the whole progress has been made by these means. (Sir John Simon, then Home Secretary, to the Chief Magistrate, Sir Rollo Graham Campbell, 13 July 1936.) The importance of studying the law in its social and historical context has been part of the conventional wisdom for many years; but surprisingly little detailed work by lawyers on the background to legislation has been published. For the past five years the matchless