

**F. W. GUEST MEMORIAL LECTURE:
RIVER POLLUTION AND THE LAW**

G. H. Newsom Q.C.*

The F. W. Guest Memorial Trust was established to honour the memory of Francis William Guest, M.A., LL.M., who was the first Professor of Law and the first full-time Dean of the Faculty of Law at the University of Otago, serving from 1959 until his death in November 1967.

It was felt that the most fitting memorial to Professor Guest was a public address upon some aspect of law or some related topic which would be of interest to the practitioners and the students of law alike.

The University has done me the honour to invite me to enter the distinguished, and limited, company of those who have given the Guest Memorial Lecture, and has suggested that I should address you about River Pollution and the law. River pollution is a great evil. It has not yet become of acute public menace in New Zealand, but the makings of serious trouble already exist here. I shall try to give you some account of the melancholy history of the matter in England, especially over the last 20 years, during which I have been much concerned with it. I hope that I can say something which may serve as a guide here in the years ahead. It is still, in my judgment, possible here by resolute legislative and administrative action, and by resolute enforcement in the Courts of the provisions of an amended criminal law, to forestall the troubles in which England has become embroiled.

In comparatively modern times it has become a criminal offence in England to discharge polluting matter into a watercourse. There is similar, but less stringent, legislation here. But behind the modern statutory criminal law there lies in both countries the immemorial common law of England, conferring rights and imposing liabilities civilly enforceable, originally by the award of damages, but also in equity by injunction.

On any river a riparian proprietor is entitled at common law to certain natural rights of property. These rights were stated definitively by Lord Macnaghten in *Young v. Bankier Distillery Co.*¹ thus:

A riparian proprietor is entitled to have the water of the stream, on the banks of which his property lies, flow down as it has been accustomed to flow down to his property, subject to the ordinary use of the flowing water by the upper proprietors and to such further use, if any, on their part in connection with their property as may be reasonable under the circumstances. Every riparian proprietor is thus entitled to the water of his stream in its natural flow, without sensible diminution or increase and without sensible alteration in its character

* A Benchler of Lincoln's Inn. The above text is a copy of the address delivered by Mr Newsom at the University of Otago on Monday, 28 June 1971.

1 [1893] A.C. 693 at 698.

or quality. Any invasion of this right causing actual damage, or calculated to found a claim which may ripen into an adverse right, entitles the party injured to the intervention of the court.

This passage is expressed in terms appropriate to a fresh-water stream flowing down hill, that being the sort of case with which the House of Lords was concerned in *Young v. Bankier Distillery Co.* The principles equally apply where the water flows upwards, whether by the action of the tide or through being penned back by a lower proprietor. Equally, in my opinion, they apply where the person who sues is riparian proprietor upon a lake and the defendant is fouling the lake adjacent to his riparian tenement.

The right is thus defined by the highest authority in very stringent terms and it is clear that the cause of action for its infringement is nuisance.

Most natural water contains fish and side by side with the rights thus defined there are the common law rights in respect of the fishery. If the riparian proprietor has only one bank he *prima facie* owns the bed of the river *ad medium filum aquae*. If both banks, then *prima facie* he owns the whole bed. Of course by suitable conveyances the boundary may be placed anywhere in the bed. Again *prima facie*, the owner of the bed is owner of the fishery in the supernatant water. But here, too, by conveyance, lease or prescription, the fishery may be severed from the soil and may exist as a separate incorporeal right. Where the fishery and the riparian ownership are in the same hands, there is no need for a separate cause of action to protect the fishery. Where they are severed, the fishery, as a *profit à prendre*, is protected by a separate action for its disturbance. The authorities usually cited for this proposition are *Fitzgerald v. Firbank*² and *Nicholls v. Ely Beet Sugar Factory Ltd.*,³ both in the Court of Appeal.

In England, these two causes of action at common law put powerful weapons into the hands of a riparian proprietor whose neighbour pollutes the water of the stream or disturbs the fishery or both. Not only can the damages awarded be very large, since freshwater fisheries in England are immensely valuable, but the process of water pollution is continuous, unless it is caused by an accident as occasionally occurs, and the resultant tort is therefore a continuing tort. The normal remedy for a continuing tort is an injunction, and the polluter therefore faces the prospect of imprisonment for contempt of court if he does not cease committing the tort. Usually the Court will allow him a reasonable period to put his house in order and will in the meanwhile suspend the operation of the injunction; but of course that will be only on stringent terms, including payment of damages down to the date of judgment and giving to the Court itself an undertaking to indemnify the plaintiff against damage accruing after judgment and during the period of suspension. Further, since the defendant is a proved tortfeasor, any incidental onus which lies upon him is a heavy one. He is, as they say, "in mercy". That means that he walks in the shadow of the jail.

This remedy, the injunction, is and remains in England by far the most effective method of combating river pollution. Over and over again I have seen cases in which the defendant, either a municipal sanitary authority or an industrialist, has asserted that the pollution

2 [1897] 2 Ch. 96.

3 [1936] Ch. 343.

is not curable, or not economically curable, right down to the moment when the injunction has been granted. Once that has occurred, the difficulties have vanished like the snow in springtime. The consulting analyst who has been concerned with most of the cases of the last 20 years in which I have been myself, and many in which I have not, tells me that he has *never* known a case of industrial pollution where the evil was not cured in consequence of the injunction. The only two cases of which he and I know where the problems have in the end proved insoluble concerned the sewage effluents of two adjacent large industrial towns each built on a watershed so that there was no clean water to dilute the effluent. In these two cases the plaintiff's riparian rights were eventually bought out, for £80,000 and £60,000 respectively in round figures.

These, then, are the main weapons at common law. They are supplemented by two others which are of less importance. An action for trespass lies if, in its passage over the plaintiff's land, an effluent deposits a coating of alien solid matter on the bed or banks of a river; so it was held by the first Lord Parker in *Jones v. Llanwrst U.D.C.*⁴ This tort generally overlaps with nuisance under *Young v. Bankier Distillery Co.*, but the fact that there is a trespass is useful in enabling the plaintiff to have his damages assessed on the so-called wayleave principle instead of being restricted to damage actually suffered.⁵ This is a serious consideration: the amount one would reasonably charge for a licence to enable a stream of sewage to pass through one's garden would be considerable.

There are also some pollutions which amount to public nuisances, which can be restrained by injunction at the suit of the Attorney-General, who acts *ex officio* or can be set in motion by a relator. I have never myself seen this remedy used in respect of pollution, though I have seen it employed to restrain a nuisance by smell. There are, however, some old pollution cases of this sort and this procedure may well be useful in New Zealand. The usefulness of this remedy in England is limited by the fact that the bed and banks of most rivers are private property. Here in New Zealand on the other hand rivers are thought of, no doubt somewhat loosely, as public domain and proceedings for public nuisance are therefore more readily adaptable. I should perhaps mention in passing that public nuisance is a criminal offence for which an indictment lies at common law.

You will observe that, except for public nuisance, which is an indictable offence at common law, I have so far discussed only civil rules and remedies. Pollution of a river, not amounting to a public nuisance, is not a criminal offence at common law.

By the Rivers Pollution Prevention Act 1876 most river pollution was prohibited by statute; but the Act made a very curious penal arrangement. The only sanction was a prohibitory order in the County Court (the equivalent of the New Zealand Magistrate's Court). This legislation was almost entirely ineffective, save that it had the incidental consequence that it was no longer possible to acquire by prescription a right to pollute, since all prescription must have a lawful origin and that could no longer occur.⁶

⁴ [1911] 1 Ch. 393.

⁵ *Whitwham v. Westminster Brymbo Coal and Coke Co.* [1896] 2 Ch. 538.

⁶ *Hulley v. Silversprings Bleaching and Dyeing Co.* [1922] 2 Ch. 268.

This development was not noticed in the textbooks, which continued to recognise this sort of prescription. For practical purposes, therefore, the pollution of rivers was not considered to be a matter of any real public interest so long as it infringed only the Act of 1876. This state of affairs continued until the passing of the Rivers (Prevention of Pollution) Act 1951⁷ to which I shall refer later. The law of tort was, on the other hand, strongly against this sort of wrong. The limiting factor was, however, the great expense of proceeding for an injunction, especially when there was multiple pollution and a plurality of defendants. For example, as long ago as 1952 the costs of the plaintiffs, recoverable on taxation, in the *Pride of Derby* case⁸ amounted to £10,000 and the whole action with its appeal must in all have cost £50,000. The technical evidence is never particularly easy and some actions that were brought did not succeed. *Nicholls v. Ely Beet Sugar Factory Ltd.* (*supra*) is an example. In such a case the unsuccessful plaintiff must have had to pay a very large sum indeed for his own and the defendant's costs. None of this was very encouraging to potential plaintiffs, and there were relatively few of these actions—relatively, I mean, to the total number of pollutions that existed. Nevertheless, fisheries and riparian rights are very valuable in England, and a good many cases were successfully brought in the years between the wars when the menace of pollution was spreading. During the second war this evil made great advances; it would not have been reasonably possible to expect industrialists or local authorities to spend money—and the sums required are always very large—on purifying their effluents when we were fighting for our lives. The necessary resources in materials and skill and labour were better employed on guns and ammunition. Such refinements as cleaner rivers of course had to wait. In the course of the war there arose one, afterwards notorious, case of a sewage pollution, at Luton. In May 1941 the sanitary authority completed and inaugurated a new sewage works, the building of which had started before the war; its effluent immediately killed every fish for miles and in particular those in the lake and river at Brocket Hall, the seat of Lord Brocket, who sued the corporation after the war though not till then. Things were thus in a pretty bad state when hostilities ceased and at that point Mr John Eastwood K.C., a London stipendiary magistrate, and an angler of note, formed an organisation called the Anglers' Cooperative Association to protect fisheries by aiding or sponsoring pollution actions. The Association was and is an alliance of the riparian and fishery owners, who are interested mainly in salmon and trout, with the coarse fishermen, who operate under tenancies and licences and catch such fish as chub, dace, roach, and pike.

In 1950 they numbered about two million, enough to sway a general election. The Association collected a fighting fund and gave to sponsored members who started approved actions in the courts an indemnity for the costs of both sides, thus removing one great difficulty in the way of enforcing the common law. The Association assembled a team of counsel, solicitors and expert witnesses who became accustomed to working together and who were employed also in a good many cases by

⁷ There was also a relatively ineffective penal section in respect of fisheries: Salmon and Freshwater Fisheries Act 1923 s.8. It was seldom enforced and the penalties were trivial.

⁸ [1953] Ch. 149.

plaintiffs who were rich enough to pay for their own law suits. Mr Charles Harman was the original leader, later Mr Upjohn, after him Mr Russell and finally myself. I had had a retainer in early days as the junior. Thus began a series of actions and injunctions. The Association became extremely unpopular with the authorities and of course with industry. Numerous attempts were made to unhorse it. One was by the Labour Government in 1950 when the bill for the Rivers (Prevention of Pollution) Act 1951 was before the House of Commons. It was found to contain a clause abolishing, without compensation, the remedy in tort for the infringement of the right of a riparian owner to a clean flow of water. Since English law is a law of remedies, this would have amounted to the confiscation, without compensation, of all relevant riparian and fishing rights. This was opposed in the Standing Committee of the House of Commons and an opposition amendment was carried. I understand that some Labour members of the Committee absented themselves because they sympathised with the coarse fishermen. The importance of the matter to the coarse fishermen and their numbers had been pointed out to the Government. The Act accordingly contains a provision, s.11(6), which expressly says that nothing contained in the Act is to affect the law of nuisance. There was later an attempt by one sanitary authority to obtain exemption for itself by a private statute. The riparian owners concerned appeared by counsel before the Standing Committee in the House of Commons and persuaded the Committee to write into the Bill a clause corresponding with s.11(6) in the public Act. In 1953-54 industry, in the person of the Consett Iron Company, tried to get the Association's guarantee declared to be an illegal maintenance. This attempt to activate the mediaeval tort of maintenance failed.⁹ After that, the Association apparently came to be accepted by industry and the sewage authorities as part of the landscape—as being at least an inescapable evil—and it did a lot of good work in cases of less importance. None of them is reported, being on questions of fact. The success of the civil action has been the subject of a good deal of wry comment from public servants. Thus the Ministry of Housing and Local Government's recent publication about pollution, entitled *Taken for Granted*, draws attention at one point to the dramatic improvement of the River Derwent below Derby in consequence of the measures taken by the local corporation and certain industrialists, without mentioning that these changes were forced upon them by injunction in one of the Association's actions, the *Pride of Derby* case.¹⁰ The trial had been hotly fought and had lasted three weeks. The appeal lasted a week. During the trial it emerged that the local River Board, which was supposed to repress pollution, was sympathetic with the defendants rather than the plaintiffs. In short, the improvement was effected solely through the enforcement of the private rights, without any help, but rather the reverse, from the public authorities. Again the recent Committee in its paragraph 165 made a scarcely veiled suggestion that riparian rights should now be abolished, thus reverting to the idea which was tried and failed in 1950-1951. The official objection to this sort of property is, of course, that if one finds two rivers equally polluted, the river on which there is a riparian owner with the funds and courage to bring an action for an injunction is cleaned up first. This is not in accordance

⁹ *Martell v. Consett Iron Company* [1955] Ch. 363.

¹⁰ [1953] Ch. 149.

with Whitehall's idea that it always knows best and that it is the place where priorities should be determined rather than by the Courts. I am confident that there will be other assaults upon riparian rights. I am equally confident that they will fail. To compensate for their abolition would be too costly. To confiscate without compensation has never been the considered policy of any responsible British parliamentary party.

In the meantime the legislature took a hand, and by the 1951 Act made almost all sorts of pollution into criminal offences and imposed really severe penalties, including imprisonment for a second or subsequent offence. The Act enabled directors and officers to be prosecuted, and in an appropriate case imprisoned, if the polluter is a body corporate. This Act also retains from the Act of 1876 the idea that the county court should be empowered, at the suit of the body responsible for enforcing the Act, to make a prohibitory order. Once there is a severe criminal section this power is a useful adjunct, though it was ineffective alone. Since 1951 it has been too little used, but it has real possibilities. The prohibitory order has no immediate penal effect, but serves as a warning that prison will follow if the crime does not stop. It would thus be as potent as a riparian owner's injunction, hitherto far the best remedy. And this new weapon is in the hands of the River Authority and so cannot be impeded by lack of funds for costs. Unfortunately the legislation of 1951 came too soon after the war and no one was prepared to enforce it. Indeed the legislature ensured non-enforcement by two provisions; one, that the Act should be enforceable only by the Attorney-General or by a River Board; the other, that a River Board needed the Minister's consent before starting. The legislature need not have worried. The duty of enforcing the Act was vested in the River Boards created by the River Boards Act 1948. These were bodies with strong representation of the local authorities in the large centres of population, the County Boroughs. Many such authorities were themselves among the most notorious offenders. I know of no serious attempts by River Boards to enforce the Act in respect of serious pollutions. Thus, through the nineteen fifties the burden still rested mainly on riparian and fishery proprietors. In the nature of things their efforts were necessarily sporadic. My impression is that many, indeed all, the individual actions succeeded, but that in the country at large much ground was lost in that period. There is a lot of factual information in the Report published in the 1960s of a Committee presided over by the present Viscount Bledisloe, a Queen's Counsel with a very considerable knowledge of this problem. It is not encouraging reading.

However, events were moving and a further Act of 1961 dispensed with need for the Minister's leave for proceedings to enforce the Act of 1951 and stopped up some holes in that Act. Besides the main criminal provisions it is now an offence, similarly punishable, to make any discharge into a river without the consent of the River Authority or to violate the conditions of such a consent. We shall see in a moment what I mean by "River Authority".

By 1963, things had got so bad that the legislature was concerned about the future of water supplies. This led to the abolition of the old River Boards and the creation of new River Authorities on which the waterworks undertakers are represented as well as fishing interests and the membership is in general so constituted as to be more willing, and likely, to enforce the Acts of 1951 and 1961. These new bodies are just getting into their stride. They have an enormous task, due largely to the

failure of the former River Boards. I have personally been concerned, mostly as counsel but once as a magistrate, with a number of their cases and I know of several others as well. Prosecutions are steadily increasing. I am very hopeful that the tide has now turned. Much is, of course, due to the complete change in a climate of public opinion which has occurred in the last three years or so. In former days defendants, through their counsel, were apt to tell the court that the plaintiff's action was a ridiculous fuss about "a few fish". The judges, to their credit, never listened to this sort of thing: but now it would be quite impossible to take such a line in any court. The new will to enforce the criminal law represents a great advance. But the battle is very far from won. Moreover, it is very far from certain that the Minister (now styled the Minister of Environment) is as determined as the best of the River Authorities. Since I began to draft this lecture I have heard with much concern of his refusal to uphold the Trent River Authority in its endeavour, through its power to impose conditions on discharges, to enforce better standards upon one of the greatest polluters of all, the sewage board for the Birmingham area. This is a depressing event and shows how much remains to be done to coerce the Ministry, even in the present state of public opinion.

The riparian owner's action is still the most effective means of stopping any given pollution; moreover it is the only means that ensures that the polluter is made to compensate his victims. And it is the most expeditious form of remedy, since the riparian owner can protect himself without the prolonged deliberation that public bodies require. Nevertheless the public is interested, vitally interested, in this matter of the "pollution of the environment", and it would be quite wrong to continue to leave the matter primarily to private enterprise. The statutory weapons are now sharp. If properly used, they can be as sharp as the private action. Moreover, except where the A.C.A. is acting, a riparian owner is in logistical difficulties. He needs to organise an enforcement staff to collect evidence for the trial and, when he has won, to police his injunction. Much expensive organisation is needed. This the River Authority can provide. The Trent River Authority, which operates in a basin comparable in area, though not in density of population or industry, to those of the Waikato or the Clutha, has, I think, an enforcement staff of ninety, who are none too many. Therefore, I welcome the increased intervention of the River Authorities and hope that it will increase further, and steadily, in the years ahead.

Let me repeat, then, the sum of the English experience. The law, both civil and criminal, is now adequate. The problem is as to its enforcement. The resolution to enforce the criminal law was lacking for many years, but the new River Authorities are beginning to tackle pollution as they should. The Minister is not as helpful as he could be, despite his change of title. Cost was a factor against more than a few civil actions, but the River Authorities do not lack funds. The keys to successful enforcement are (i) resolution; (ii) organisation, with adequate staff; (iii) a law which makes a threat of imprisonment, gravely intended and perseveringly insisted upon, to any polluter who, after warning, does not desist. It is for the want of these things, or some of them, that there has been the dismal failure of the English criminal law until just lately. During this century matters have got far worse. The Victorians killed the Thames as a salmon river and my generation has seen the destruction of the Tyne and Tees as salmon rivers due to

the foul state of their estuaries. There are scores of other places up and down the country where pollution has got worse since the war. The major offenders are industrialists and sanitary authorities. Many farmers are also much too careless about such things as silage effluent. Two recently pleaded guilty to this offence before me at Devizes and were fined, it being a first offence. All these people are making money, or in the case of sanitary authorities saving the ratepayers' money, by polluting the rivers rather than instal adequate purification plant. Small fines are utterly useless though they have to be imposed for first offences. The defendants take them in their stride. The threat of imprisonment is quite another matter. It underlies the civil injunction and the statutory prohibitory order, since breach of either sort of order is contempt, which is punishable by imprisonment. For this reason alone the civil injunction has been universally effective when used, save for the two sewage effluents on a watershed. I repeat, all that is needed by the enforcement authorities is resolution, money, expertise and organisation.

Now what about New Zealand? Here pollution is in its infancy. I think that most of you would be appalled if I took you for a tour of some English rivers, even in the relatively clean south and west. You would be even more appalled by those of the industrial midlands or north. You simply must not allow conditions comparable with present English conditions to develop here. There is a great deal of generalised goodwill on this subject and public opinion here, in my experience of the past five months, is clearly behind any attempt to stamp out river and lake pollution. Nevertheless, I do not think that the good side is winning so far. I am told that through pollution Rotorua is virtually dead, and that grave harm is being done to other lakes by fertilisers being allowed to enter them in excessive quantities. I went to a meeting the other day at which an evidently informed person spoke of half a dozen cases of quite derisory fines inflicted on industrialists for the offence of river pollution. The New Zealand criminal statute, the Waters Pollution Act 1953, has serious holes. As I read it, no local authority discharging sewage from a sewer or effluent for a sewage disposal works can be guilty of an offence. Such bodies are altogether exempted by s.15(3)(a) in respect of such discharge. But in my experience in England, sewage and sewage effluent are among the worst sorts of pollutant and they are discharged by the most obstinate sorts of offender. Again in New Zealand there is no effective provision for the making and enforcement of prohibitory orders by the Magistrate's Court. There is a provision under which a Magistrate can order *specific* work to be done and there is a daily default fine of \$20 for not doing it: see s.18. Such a provision has insufficient teeth. The order should be simply to stop the offence. How can the Magistrate specify work that can take months to perform and must involve complex engineering considerations? This is just the kind of mandatory order that the High Court in England has always been loath to make, and there is recent House of Lords authority against the usefulness of such orders. Further the penalties for the main offence are inadequate (s.17). However serious the offence and however often it is repeated the maximum fine is \$1000 and \$100 a day. This is chickenfood to a big industrialist who is making large profits, even if the maximum was imposed. Imprisonment can never be imposed. Far worse, legislation has since 1902 prohibited the sale or leasing of fishing rights. The present provision is s.89 of the Fisheries Act 1908 which says:

It shall not be lawful for any person to sell or let the right to fish in any waters.

Quite what this means I do not know. "Sell" and "let" are not defined in the Act, and I should have thought that it was still open to a riparian or fishery owner to grant fishing licences for value, using "licence" in the sense in which we use it in the law of tort. Whatever the section might be held by the Privy Council to mean, it is generally treated as if its effect was to make private fishing rights of no commercial value. Thus there is in practice no one who has the sort of personal interest which underlies the English action for the disturbance of a fishery. Even if an action under *Fitzgerald v. Firbank* still lies here, no one can be expected to bring such an action. Finally, the Water and Soil Conservation Act 1967 has done two things. It has set up a most complex administrative structure stated to be directed to preventing the waste or pollution of natural water. But the only offence committed under this Act by a polluter is that of discharging "waste" into "natural water" otherwise than as authorised by that Act. Under s.34(2) the maximum penalty is \$200 and \$10 a day for a continuing offence.¹¹ Moreover, it is at least strongly arguable that the result of s.21 of this Act is to abolish the riparian owner's action under *Young v. Bankier Distillery Co.* and to leave him with such protection only as the administrative authorities operating under the Act see fit to give him. This proposition was argued cogently by Mr B. H. Davis in the N.Z.L.J. for 1968, at p. 105, and at p. 441 Mr J. M. Brookfield contributed an article describing the contribution of Mr Davis as "helpful and comprehensive" and making "additional" observations on some quite separate points. Thus Mr Brookfield, who I understand has made a special study of water cases, does not dissent. Faced with these important expressions of opinion it would be a bold riparian owner who, in New Zealand, started an action founded on *Young v. Bankier*. Thus in New Zealand both the riparian owner and the fishery owner (if he still exists) who is injured by pollution are probably disarmed and certainly neither of them has any incentive to act. All, therefore, must be left to public authorities. What their resolution and their organisation and their funds may be I do not know. But it is obvious that however resolute and well provided they may be their weapons are inadequate. For they cannot prosecute a large class of potentially serious offenders, the sewage works authorities, under the Act of 1953 and the penalties both under that Act and the Act of 1967 are woefully inadequate to deter. I believe that the sewage works authorities *can* be prosecuted under the Fisheries Act, which has recently been amended in a sense calculated to make it more effective. But the penalties under it are still much too small. I said, as is the fact, that I have no knowledge of the organisation and funds of these enforcement bodies. But I wonder very much whether anyone in a country which is not yet seriously affected by pollution can realise the great amount of work and cost that is involved in stringent enforcement. Staff is absolutely necessary; otherwise polluters, even continuing ones, will remain undetected, and without adequate staff serious mishaps can occur in presenting and proving the case for the prosecution of even a detected polluter. For these reasons, I respectfully

11 These penalties have since been increased tenfold, but imprisonment can still not be imposed even for a repeated offence—see Water and Soil Conservation Amendment Act 1971 (No. 2)—Ed.

suggest to you that this subject deserves serious attention and inquiry. In England where things are far worse, my generation will all be dead before our rivers are restored to the condition in which most of yours still happily are, even assuming the utmost resolution, vigour and despatch on the part of our River Authorities. Here you can forestall our degree of evil; but to do so needs adequate equipment. The private interests being disarmed, all must depend on the enforcement authorities. I venture to suggest that you in this country should give serious attention to the penalties under the Acts of 1953 and 1967 and the Fisheries Act and should include the penalty of imprisonment for persistent offenders. Further you would, I think, be wise to consider arming the Magistrate's Court (or if you prefer the Supreme Court) with power to make prohibitory orders corresponding with those which our County Courts can make. I am indebted to Mr Mark Clarkson and another student at Auckland for drawing my attention to paragraphs 1408 (i) and (j) of the Auckland City Consolidated Bylaw 1964 which forbid anyone "to deposit in, or discharge into, any stream or watercourse any . . . matter which may pollute such stream or watercourse or cause such stream or watercourse to become a nuisance" and also to "throw, cast or deposit any nightsoil, carrion or offensive matter . . . into any stream, water course pond or open drain." The sanctions are provided by Bylaw 113, which prescribes the usual minor penalties, but this one is reinforced by Bylaw 114 which enables the City Council "after a conviction for the continuing breach of any by-law" to obtain an injunction against such continuance. Here, then, is a strong weapon in the hand of a local authority able and willing to use it. The provision about an injunction follows s.66(2) of the Health Act 1956, which is the enabling statute, and it appears to be *intra vires*.

The Auckland City Consolidated Bylaw looks as if it is in common form and I have no doubt that other local authorities either have it or could readily obtain it. Here then is something of a challenge to local authorities, Borough Councils, Town Councils and County Councils (see the definition in s.2(1) of the Health Act) to give a lead in enforcement. Again, may I suggest that a panel of lawyers should be set up to make an intensive study of the questions (i) whether the common law action under *Young v. Bankier* has survived the Act of 1967 and if so how far it can usefully be employed, and (ii) whether indictments for public nuisance, or relator actions of this sort, can be more useful here than they have recently been in England, and (iii) what amendments should be proposed to the existing statutes, and especially to the enforcement sections.

Further, it might be as well to take a careful look at the administrative structure, to ensure that enough skilled staff is available to make the task of enforcement practicable and that the authorities themselves are as tightly organised as is needed. Finally, since the greatest possible help to the enforcement authorities is an informed and active public opinion, you might consider whether the organs for mobilising public opinion are as active, as comprehensive and as well supplied with money as is needed. I do not know, and it would be presumption in a visitor, a bird of passage, to press solutions upon you. But I hope that I have given you, both in my account of the English experience and in my critique of the New Zealand legislation, serious food for thought.