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SUMMARY OF RECENT LAW.

CRIMINAL LAW.

Conspiracy—Conspiracy to commit Crime Abroad—Whether indictable in England. The respondents were convicted of conspiracy. They had conspired in England to make false representations in Germany and thereby to obtain from a department of the Federal Republic of Germany licences to export strategic metals from the Republic of Germany, which licences, but for the falsity of the representations, would not have been granted. On appeal by the Crown from a decision of the Court of Criminal Appeal quashing the convictions, *Held*, That a conspiracy to commit a crime abroad is not indictable in England unless the contemplated crime is one for which an indictment would lie in England; the conspiracy in the present case was to obtain by unlawful means something that could lawfully be obtained and, since the unlawful means and the object to be attained were both outside the jurisdiction, the conspiracy was not indictable in England. *Quaere*, Whether a conspiracy in this country which is wholly to be carried out abroad may not be indictable here on proof that its performance would produce a public mischief in this country or injure a person here by causing him damage abroad. (*R.* v. *Kohn* ((1864) 4 F. & F. 68), explained. Decision of the Court of Criminal Appeal (sub. nom. *R.* v. *Owen*) [1956] 3 All E.R. 432, affirmed.) *Board of Trade* v. *Owen and Another.* [1957] 1 All E.R. 411 (H.L.).

DESTITUTE PERSONS.

Rehearing—Affiliation Proceedings—Supreme Court Practice as to Application for New Trial, in a Civil Case, applicable—Discovery of New Evidence, as Ground for Rehearing—Destitute Persons Act 1910, s. 38—Code of Civil Procedure, R. 276. In considering an application for the rehearing of a complaint in affiliation proceedings under the Destitute Persons Act 1910, a Magistrate is bound by the rules and practice which govern the Supreme Court of New Zealand in considering an application for a new trial in civil cases. (*Jones* v. *Foreman* [1917] N.Z.L.R. 798; [1917] G.L.R. 513, referred to.) Where the evidence given at the trial shows that a witness other than the complainant was guilty of misconduct (such as perjury upon a material matter) affecting the trial, that is a ground under R. 276 (*g*) of the Code of Civil Procedure, a rehearing should be granted. The discovery of new evidence is not a sufficient ground for granting a rehearing unless it is "material" within the meaning of that word in R. 276 (*e*). In the present case, before a rehearing could be granted, it had to be established that the new evidence was of the kind required before a rehearing could be granted; and it had also to be such evidence as would establish that the witness was guilty of such misconduct (here, perjury) as to affect the result of the trial. There must be proof of the facts relied on before the Court is justified in going on to the stage of considering whether those facts may give rise to a miscarriage of justice. (*Munro* v. *Middleditch* (1912) N.Z.L.R. 140; 15 G.L.R. 215, distinguished.) *McDowell* v. *Lusty.* (S.C. Invercargill. March 6, 1957. Barrowclough C.J.)

DIVORCE AND MATRIMONIAL CASES.

Estoppel—Paternity of Child—Order for Maintenance of Child—Application to vary Order on Ground that Child was not Child of Marriage—Matrimonial Causes Act 1950 (14 Geo. 6, c. 25), s. 26 (1). The parties were married in 1950 and a child, M. V., was born on October 15, 1950. In May, 1952, the wife obtained a separation order against the husband; she was granted the custody of the child and the husband was ordered to pay maintenance for herself and for the child. In 1954, the wife filed a petition for divorce; she recited the order of May, 1952, but did not include a prayer for the custody of or maintenance for the child. Within two months of the decree absolute, the wife gave notice of application for an order (under s. 26 (1) of the Matrimonial Causes Act 1950 that the husband pay maintenance for herself and for M. V. "the child of the marriage". The husband in his affidavit of means offered to continue payments "in respect of my daughter M. V.". In May, 1955, the registrar ordered the husband to pay M. V. "the child of the marriage" maintenance at the rate of 27s. 6d. per week. Subsequently, the husband applied to vary the order of May, 1955, and disputed paternity of the child, whereupon an issue was ordered to be tried as to the paternity of the child. *Held*, That an order for the maintenance of the child having been made under s. 26 (1) of the Act of 1950, the husband was estopped from alleging now that the child was not the child of the marriage. (Observations of Lord Romer in *New Brunswick Ry. Co.* v. *British & French Trust Corpn., Ltd.* [1938] 4 All E.R. at p. 770, applied; *Lindsay* v. *Lindsay* [1934] P. 162, followed, and *W.* v. *W.* [1953] 2 All E.R. 1013, distinguished). *Nokes* v. *Nokes.* [1957] 1 All E.R. 490 P.D.A.).

HUSBAND AND WIFE.

Title to Property—Matrimonial Home—Both Parties contributing to Purchase—Intention of Parties—Married Women's Property Act 1882 (45 & 46 Vict. c. 75), s. 17. A husband and wife married in 1933. There were two children of the marriage. During the war of 1939-1945, the husband joined the Royal Air Force and made a compulsory allotment to his wife out of his pay. In 1941, the question arose of his making an additional allotment, but the husband and wife arranged that the wife should take paid employment to assist in the maintenance of the family and their home, and that the husband should save the amount of the proposed additional allotment for the future welfare of the family. The wife took employment and continued to be employed at all times thereafter, using all her earnings for family purposes. On the husband's demobilization in 1946, he had accumulated, together with his gratuity, £260. The joint earnings of the spouses were thereafter used for family purposes and they bought furniture together, which it was agreed belonged to them in equal shares. In 1950, the husband's savings were reduced to £130. In that year an opportunity arose to buy the lease of the dwelling-house in part of which the family was living and a deposit of £150 was required. The husband provided £130 and the wife £20, and £800 wse raised by means of a mortgage. The assignment was made to the husband, and a policy of insurance was taken out to cover the amount of the mortgage Parts of the house were let to other tenants and the rents paid by them covered most of the outgoings, the difference, which was no more than the amount of the rent formerly payable for the accommodation which the family occupied, was paid by the husband. The lease was therefore being acquired at no extra cost to the husband or wife than the amount of the deposit. In 1955, the wife obtained a decree nisi of divorce. Before the decree was made absolute, the wife applied under the Married Women's Property Act 1882, s. 17, to determine the title to the house. *Held*, That the house, though acquired in the husband's name and initially chiefly out of his savings, was acquired for the future benefit of both the husband and the wife and, the evidence not justifying any more precise calculation of their interests, the house belonged beneficially to the husband and wife in equal shares. (*Rimmer* v. *Rimmer* [1952] 2 All E.R. 863,a pplied.) Appeal dismissed. *Fribance* v. *Fribance* [1957] 1 All E.R. 357 (C.A.).

IMPOUNDING.

Stock found wandering at Night on Road—Dead Horse—Constable arranging for Owner's Employee to drag It to Side of Road—Section contemplating Seizure of Live Animal and holding It in Pound or under Restraint—Impounding Act 1955, s. 33 (1). A constable, on arriving at the scene of an accident caused by a motor-car striking a horse on a main highway, found a dead horse on the bitumen and arranged for an employee of the horse's owner to drag it to the side of the road, and told him he could do what he liked with it. The owner of the horse was charged under s. 33 (1) of the Impounding Act 1955 with being the owner of certain stock, to wit, one horse, found at night straying or wandering on the main highway. *Held,* dismissing the information That the seizure of the stock contemplated by s. 33 (1) of the Impounding Act 1955 is taking possession of a live animal, and holding it in a pound or under restraint to prevent it from straying. *Semble,* Under s. 33 (1), it is not necessary to establish mens rea, but the requirements of the section must be strictly complied with before it can be successfully invoked against the owner of wandering stock. *Police* v. *Wilson.* (Patea. October 29, 1956. Yortt S.M.).

LOCAL ELECTIONS AND POLLS.

Declaration Votes—Improper Questions by Returning Officer to Persons seeking to vote by Declaration—Irregularity fatal to Election—Exhibit of Result of Poll on Notice Board in Vestibule of Town Hall—Not "public notice"—Local Elections and Polls Act 1953, ss. 2, 28 (1), 41 (6), 42 (6), 66 (1), 68, 73 (1). On November 19, 1956, the Returning Officer completed his official count of a mayoral election, and made the required declaration of the result of the election, and displayed it in the vestibule of the Town Hall, and subsequently inserted it in the local newspaper. On December 4, 1956, a petition seeking to have a mayoral election declared void by reason of irregularities was filed in the Courthouse at Otorohanga, which was not open on the previous day. On November 21, 1956, an application was made for a Magisterial recount, pursuant to s. 42 (1) of the Local Elections and Polls Act 1953, and this was completed on November 30, the Returning Officer being ordered to give an amended public declaration of the result of the poll. This was done by publication in the local newspaper in its next following issue. The evidence showed that the Returning Officer addressed to persons attending the polling place to vote by declaration questions he was not properly empowered to ask under s. 28 (1), including questions being relative to what the person might or might not subsequently insert in the declaration form. To those concerned, he conveyed, either expressly or impliedly, that either the vote could not, or should not, be recorded, or, if it were so recorded, it would not subsequently be counted. It was contended that the petition was out of time as the time for filing it expired on December 3, being fourteen days after the declaration of the result of the poll in terms of s. 66 (1) of the Local Elections and Polls Act 1953. *Held,* 1. That the exhibition of the Returning Officer's declaration upon the notice-board in the vestibule of the Town Hall was not a compliance with the requirement as to public notice required by s. 41 (6) of the Local Elections and Polls Act 1953; and such notice was not given until it appeared in the then next weekly issue of the *Otorohanga Times.* 2. That the declaration required by s. 66 (1) was the declaration following the recount, as that declaration determined the result of the election; and, consequently, the time for filing the petition had not commenced to run until, at the earliest, December 3, 1956, or at such later date as the declaration of the recount was published in the *Otorohanga Times* as required in terms of the definition of "public notice" in s. 2. 3. That, on the facts, more than one person (possibly ten or twelve persons) claiming to be entitled to vote by declaration were refused the necessary papers to enable such a vote to be recorded, because the Returning Officer himself considered they were not entitled to vote. 4. That the Returning Officer's action in questioning prospective voters by declaration in the manner he did was an irregularity, and was fatal to the election, which must be declared void. *Otorohanga Mayoralty Election Petition.* (Otorohanga. February 8, 1957. Hardy S.M.)

Election of City Councillors—Recount—Application for Recount—Last Day for Lodging Same a Sunday—Filed in Time when lodged on Next Day—Duties of Magistrate on Recount of Votes—Errors in Declaration and Postal Votes—Local Elections and Polls Act 1953, ss. 34, 35, 42 (1). As the last day on which an application for a Magisterial recount of the votes for the election of City Councillors should have been lodged, in terms of s. 42 (1) of the Local Elections and Polls Act 1953, fell on a day on which the Court office was closed, it was filed in time under R. 336 of the Magistrates' Courts Rules 1948 when filed on the next day on which the Court was open. Section 42 of the Local Elections and Polls Act 1953 does not authorize the Magistrate in his recount of votes to make a further scrutiny of the rolls: his duty is to examine every vote cast, determine its formality or legality, and then to proceed with the recount. If the public declaration made by the Returning Officer as to the result of the poll is found to be incorrect, then the Magistrate's duty is to order him to give an amended public declaration of the result so found and declare the successful candidates. Observations as to errors in the actual count, and the allowance and disallowance of the postal and declaration votes. *In re Auckland City Council Election.* (Auckland. December 19, 1956. Wily S.M.)

MACHINERY.

Transmission Machinery—Failure to fence securely—Possibility of Accident remote—Such Machinery "not as safe . . . as it would be if securely fenced"—Machinery Act 1950, s. 16 (1). Section 16 (1) of the Machinery Act 1950 is as follows: "Every part of any transmission machinery shall be securely fenced unless it is in such a position or of such construction as to be as safe to every person employed or working on the premises as it would be if securely fenced." If it is concluded from the evidence that a worker at unfenced transmission machinery could conceivably, by accident or great carelessness, reach a hand on to the belt, with injurious consequences, although the possibility of such an accident is remote, the requirement of the section requiring secure fencing "unless it is such as to be safe to every person employed or working on the premises as it would be if securely fenced" is not complied with. *Corliss* v. *J. Robertson, Ltd.* (Dargaville. October 18, 1956. Herd S.M.)

SOIL CONSERVATION AND RIVERS CONTROL.

Rating—Classification of Lands in Catchment Board's District liable for Rating—Magistrate's Duty to confirm or amend List—Classification to be rejected only if Board has ignored Its Duty—Circumstances wherein Classification a Nullity—Soil Conservation and Rivers Control Act 1941, ss. 102 (1), (2), (2A), 103 (6). A classification list made pursuant to the statutory powers of a Catchment Board conferred by s. 102 (2) of the Soil Conservation and Rivers Control Act 1941 (as amended by s. 2 (1) of the Soil Conservation and Rivers Control Amendment Act 1954) is an essential foundation of the jurisdiction of a Magistrate to hear and determine appeals under s. 103 (6) (as enacted by s. 3 (2) of the Soil Conservation and Rivers Control Amendment Act 1954). (*Federated Engine Drivers' and Firemen's Association* v. *Broken Hill Pty. Co., Ltd.* (1911) 12 C.L.R. 415, followed.) The decision of the Magistrate, as to whether or not there is a list with which he has jurisdiction to deal is open to consideration by the Supreme Court which must determine whether or not the acceptance or refusal of jurisdiction was in the circumstances right or wrong. Such a decision is open, if it be affirmative and wrong, to prohibition. It is open, if it be negative and wrong, to prohibition. (Dictum of Fullagar J. in *The King* v. *Blakeley* (1950) 54, 91; 82 C.L.R. 54, applied.) It is the duty of the Magistrate to amend the list, and not to refuse to consider it, if it is established by an objector or a number of objectors that land is not fairly classified, or is improperly (i.e., unfairly) included in or excluded from the list, or the proportions in which rates are imposed do not fairly represent the varying degrees of benefit to the land in the several classes. He may not refuse to consider any such objection. The Magistrate must either confirm the list or amend it in such manner as he thinks reasonable, that is, to make it equitable between the various owners of land affected. To justify total rejection of the list, it must be shown that the Board has ignored its duty as distinct from having fallen into errors in endeavouring to perform it, e.g., either that the Board has not attempted to make it equitable, or that the Board has produced a list which, in its basis of rating, is manifestly and palpably inequitable. (*Nelson Catchment Board* v. *Waimea County* [1955] N.Z.L.R. 1126, approved.) *So held* by the Court of Appeal in dismissing an appeal from the judgment of Barrowclough C.J., sub nom. *Manawatu Catchment Board* v. *Grant* [1956] N.Z.L.R. 634. *Lancaster* v. *Manawatu Catchment Board and Another.* (Ct. of App. February 7, 1957. Gresson J. Stanton J. Shorland J.)

VENDOR AND PURCHASER.

Misdescription of Area. *101 Law Times,* 121.

Repudiating a Contract for Defect in Title. *101 Solicitors' Journal,* 77.

WILL.

Advancement. *108 Law Journal,* 51.

IN YOUR ARMCHAIR—AND MINE.

By Scriblex.

Women Wrestlers.—One of our rarer lawyers, a reader of the *U.S. Federal Reporter*, has given us a reference to *State* v. *Hunter* (2nd Series, 22/10/56, p. 1) in which Tooze J. has something to say on the question of women wrestlers. "One area of human endeavour has been exclusively reserved for men, at least in Oregon. That State has a law prohibiting women from engaging in wrestling exhibitions or competition and this law has been upheld by the Supreme Court as a valid exercise of the police power. In searching out the legislative intent, the Court noted that at the time of the enactment of this law the membership of the Legislature was predominantly masculine." The Court characterized the purpose of the law as a bald attempt, although somewhat selfish, to reserve for man one island on the sea of life that would be impregnable to the assault of woman and to halt the "ever-increasing feminine encroachment upon what for ages had been considered strictly as manly arts and privileges". In this country, the more svelte female exhibitionist does not need, in order to display her charms, to become a matswoman (if that be the correct term): she has all the opportunity she needs in the shape of beauty competitions.

No Theatre for the Witness.—In *Abbey National Building Society* v. *Abrahams*, a witness summons action heard by Roxburgh J. in December last, attention was drawn to the disinclination of counsel in the Queen's Bench Division to apply to the Judge to exclude witnesses, and in the Chancery Division so rarely as almost to make such an application insulting to the witnesses concerned. "I cannot understand why counsel do not more often ask me to put witnesses out of Court. I do not think I have ever refused it in ten years or more. These applications are seldom made, more often I do it on my own initiative. I think it is a practice which in certain types of cases is very desirable. I have heard it suggested that it makes it very dull for the witnesses; so it does. But this Court is not intended as a theatre but for the administration of justice." Counsel in New Zealand are less hesitant about, or more suspicious of, the frailities of human nature. "All witnesses, save the parties, representatives of the parties, medical and expert witnesses, are to leave the Court and remain beyond hearing until called upon to give their evidence." Who would wish to deprive the Court orderly of this declaration, often delivered, with all the dramatic vehemence of an Ollivier? But Scriblex has his doubts about the "experts". "I have listened to the evidence of the plaintiff and his cross-examination", said one of them the other day. "I do not think the accident happened in the way, the defendant's counsel has suggested. For my part, I believe the plaintiff."

Native Tribute.—And speaking of witnesses, Scriblex hears that, in a divorce case recently heard in Wanganui before Stanton J., a Maori who was being cross-examined claimed to be unable to understand the questions put to him by counsel, so on each occasion the Judge reframed them in his own precise way. After this had been going on for some time, the witness turned to him and said: "Py Korry, I like you!" and, pointing to counsel, added: "Him, he only a professional bloke!".

The Military Mind.—An assertion that any story "ranks first of the good stories of 1956" lacks nothing in boldness, but when the assertion is made by no less a personage than the Lord Chancellor (the Rt. Hon. Viscount Kilmuir G.C.V.O.) we would be wanting, both in respect and gratitude, if we did not bow to authority in the matter. The occasion was the reception given to the Editor and Proprietors of the *Solicitors' Journal*, which recently celebrated its centenary, and the Lord Chancellor's toast of "The Solicitors' Profession and the *Solicitors' Journal*." The story, as reported, is that of the two most foolish batmen in the Army, and their masters. The officers for whom they worked had a fierce argument as to which of their batmen was the more stupid, so eventually they decided that the only way in which it could be solved was by calling in the batmen after mess, to decide it by actual fact. So the first officer called in his batman, who appeared. He said: "Smith, here's half-a-crown; go and buy a television set." The batman replied: "Yes, sir," and left the room. The other officer said: "That's nothing; I will call my man, Tompkins." He did so, and said to him: "Tompkins, just go to the orderly room and see if I am there" Tompkins said: "Yes, sir," and left the room. Then the two batmen met, to decide which of their masters was the most stupid officer in the Army. Smith said: "You know, my fellow sent for me. He said, 'Here's half-a-crown, go and buy a television set.' He ought to have known it was early closing day!" The other one said: "That's nothing to my guv'nor. He said to me, 'Go into the orderly room and see if I am there.' He had a telephone beside him, he could have rung up and found out!"

Magistrate's Note.—During the same toast, the Lord Chancellor, in expressing the hope that he had made a point clearly, related the "sad example" of Lord Brougham, one of his predecessors who was, after the Reform Bill, proposing a health at a great dinner. After he had finished this mighty oration, and when Lord Grey was girding his loins to reply, he saw that a homespun-clad figure rose up as though he were going to anticipate the noble earl. Then he heard someone say to this figure: "Sit down, man! The Lord Chancellor was proposing 'The majesty of the people'—not 'The magistrates of Peebles'!"

Social Prejudice.—The topic of a healthy aversion to over-legislation was dealt with by Mr. I. D. Yeaman, Vice-President of the English Law Society, in his reply to Viscount Kilmuir's toast. It seems that when in 1925, when revolutionary inroads were made legislatively in England into the law of property, law publishers were duly exhilarated and sent their travellers out all over the country. In the County of Pembroke, one of these travellers called upon the senior partner of one of the leading firms in those parts. He started to do his sales talk, and the elderly gentleman listened to him for a long time and then said: "Young man, you are wasting your time." "Oh!" said the traveller, "why is that?" "Well," was the reply, "all the solicitors had a meeting in Haverfordwest only last week, and decided unanimously that the new law of property would not apply in the County of Pembroke!"

TOWN AND COUNTRY PLANNING APPEALS.

E. G. Kinvig *v.* Waitemata County.

Town and Country Planning Appeal Board. Auckland. 1956. September 18; October 8.

Subdivision of One Residential Section—Area in County zoned as "rural"—Conditional Approval of Such Subdivision for Purpose of Erection of Home for Relative assisting the Appellant on Assurance by Appellant's not seeking Approval for Further Subdivision of His Property—Town and Country Planning Act 1953, s. 38 (2), (8), (10).

Appeal under s. 38 (8) or (10), of the Town and Country Planning Act 1953 against the Council's refusal to allow the subdivision of one residential section of about one-third of an acre of the appellant's 43-acre block, situated in the Waitemata County about one and a half miles west of the Borough of Henderson. A new house was recently built on the lot in question.

The Council's refusal to approve of the subdivision was made under s. 38 (2) of the Act on the grounds that the land was situate in a rural zone and that approval of the subdivision would not be in conformity with the town-and-country-planning principles likely to be embodied in the Waitemata County's undisclosed district scheme.

At the hearing the Council intimated that it would consent to the appeal being allowed subject to certain conditions. These conditions are set out in the Appeal Board's decision, *infra*.

The judgment of the Board was delivered by

REID S.M. (Chairman). The appeal is allowed subject to the following conditions:

1. The subdivision is to be approved only for the purpose of erecting a home for a relative of the appellant who is to assist the appellant in working his orchard.
2. The appellant has given an assurance that he does not intend to seek approval of any further subdivision of his property.
3. The approval of the subdivision is without prejudice to the respondent Council's zoning proposals for the area in question.
4. Each party is to pay its own costs.

Appeal allowed.

Gardiner and Others *v.* Taupo Borough.

Town and Country Planning Appeal Board. Taupo. 1955. May 9; June 9.

Subdivision into Residential Sites—Area in Borough zoned as "rural"—Policing of Consolidating Future Development in Stages into Areas already subdivided to Residential Density—Policy economically Sound and in Accordance with Town-and-country-planning Principles—Application subject to Later Reconsideration of Zoning—Town and Country Planning Act 1953, ss. 22, 35.

The appellants, as trustees under a declaration of trust, were the owners of approximately 60 acres, lying within the boundaries of the Borough of Taupo.

Under the respondent Council's proposed district scheme this area is zoned as "rural". The appellants wished to subdivide 13 acres of this land into residential sites and sell them as such, and accordingly they filed an objection under s. 23 of the Act to the zoning of their land as "rural". This objection was duly heard by the respondent Council and disallowed. It was against that decision this appeal is brought.

The judgment of the Board was delivered by

REID S.M. (Chairman). The Board finds: 1. That over recent years Taupo has expanded considerably, but in relation to the area of the Borough its residential occupancy is widely dispersed and the provision of the usual services appropriate to residential areas presents a considerable economic problem.

2. That the respondent Council's policy of consolidating future development as far as possible in stages into areas already subdivided to residential density but not yet built upon is economically sound and in accordance with town-and-country-planning principles. There are 1802 unoccupied sections within the Borough at present.

3. That the present zoning of the area under consideration as "rural" is sound and in accordance with town-and-country-planning principles though future development may justify a reconsideration of that zoning.

The appeal is disallowed. No order as to costs.

Appeal dismissed.

Louis Wood & Son, Ltd. *v.* Hawke's Bay County.

Town and Country Planning Appeal Board. Napier. 1955. July 14, 18.

Zoning—Wool-scouring Business—Area zoned as "reserve"—Land of No Productive Value and Unsuitable for Other than Industrial Purposes—Long-established Essential Industry—Applicants' Property re-zoned as "industrial"—Town and Country Planning Act 1953, ss. 22, 35.

The appellant company is the owner of a freehold property comprising approximately 4 acres situate on the seaward side of the Napier-Hastings Main Highway.

The company carried on the business of wool scouring—a business that had been in existence for forty-six years and has occupied its present site since 1918. In regard to locality, access to road and railway, adequate water supply, and suitable drainage area, it was admirably sited for its particular purposes.

Under its proposed district scheme, the respondent Council has zoned as "reserve" the strip of land on the eastern or seaward side of the main highway extending from a point opposite the Maraenui Golf Course to the Tutaekuri River thus extending the already existing reserve along the sea frontage. The company's property lay in this area and, pursuant to s. 22 of the Act, it objected to the inclusion of its property in this reserve.

The Council heard the objection on November 22, 1954, and disallowed it. Against this disallowance the appellant company appealed. In disallowing the objection the Council gave as its reasons that it wished to preserve the right of the public to have unhindered access to the beach and sea front, and for that reason it supported the establishment of reserves along the coast-line. The effect of this decision was that the company cannot be prevented from carrying on its activities with its present buildings and equipment, but it was not, by reason of the provisions of s. 35, able to expand or extend its buildings.

The judgment of the Board was delivered by

REID S.M. (Chairman). The Board finds: 1. That the company's land is most suitable for the purpose for which it is being used.

It is a shingle bed of no productive value and unsuitable for buildings except for industrial purposes.

2. That, on the western side of the Highway opposite to the reserve under consideration here, the Council's proposed district scheme makes provision for a strip of land of considerable length to be zoned for noxious industries and there are already noxious industries coming within that category in operation, amongst them being a fertilizer plant and a soap-factory.

It is reasonable to assume that further industries of a like nature will be established here in the future.

3. That, assuming, even though it may be highly improbable so to do, that the public in the future would desire to make use of the foreshore in this particular locality, the Board is of the opinion that the appellant company's buildings would in no way deny the public access to the beach or foreshore, nor, having regard to the existence of the noxious industry zone, in any way detract from the amenities of the neighbourhood.

4. That it must be borne in mind, in considering this appeal that the Board is called upon to deal only with the appellant's property not with the whole of the area zoned as "reserve". The Board is appreciative of the principle upon which the Council acted in seeking to create this reserve, but it is of the opinion that the realities must also be looked at, and that the creation of a noxious industry zone in immediate proximity to that part of the reserve under consideration here virtually stultifies the Council's desire to preserve this part of the foreshore for the benefit of the public.

Here the Board has been called on to give consideration to the needs of a long-established efficiently operated essential industry—had the appellant company's property been vacant land other considerations might well have applied.

The appeal is allowed in so far as it relates to the appellant company's freehold property. This property is to be re-zoned as "industrial". No order as to costs.

Appeal allowed.