SESS. II.—1891.
NEW ZEALAND.

REPORT OF ROYAL COMMISSION ON STRIKES.

(APPOINTED BY GOVERNMENT OF NEW SOUTH WALES, ON 25TH NOVEMBER, 1890.)

Laid on the Table by the Hon. W. P. Reeves, with the leave of the House.

To His Excellency the Right Honourable VICTOR ALBERT GEORGE, EARL OF JERSEY, a Member of Her Majesty's Most Honourable Privy Council, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, Governor and Commander-in-Chief of the Colony of New South Wales and its Dependencies.

MAY IT PLEASE YOUR EXCELLENCY,—

I. We, the Commissioners appointed by your predecessor, Sir Alfred Stephen, on the 25th November, 1890, "to investigate and report upon the causes of conflicts between capital and labour known as strikes, and the best means of preventing or mitigating the disastrous consequences of such occurrences; and to consider, from an economic point of examination, the measures that have been devised in other countries by the constitution of Boards of Conciliation or other similar bodies to obviate extreme steps in trade disputes; and to consider and report upon the whole subject," have the honour to submit the following report:—

II. *Witnesses.*—We have sat fifty-one times, and examined fifty-five witnesses, some being industrial employers, others workmen earning wages, and others not distinctively belonging to either class. One of these witnesses was from Victoria, one from South Australia, and one from Queensland. Several of the local witnesses were actively engaged in the late strike, and their evidence will be of historical value, as disclosing facts connected with that important movement, and the views of those facts taken at the time. As each witness was examined from the standpoint both of employers and employed, the facts and opinions form a valuable mass of contemporary information as to the light in which the labour question is viewed, and as to the causes of that one strike in particular. The time at our disposal has not been long enough to admit of our taking all the evidence proffered to us, or to summon all the witnesses whom we could have examined to advantage; but the evidence we have taken has been sufficient to enable us to arrive at a practical conclusion. A précis of the evidence of each witness has been made, which gives the substance of this information in a narrative form, classified under a number of main and subordinate heads, and arranged in such a manner that, by glancing at the marginal notes, the substance of the evidence can be seen without wading through the evidence itself. The witnesses may be roughly classified as follows: Employers, 15—namely, squatters, 4; stevedores, 4; steamship-proprietors 2, and steamship company manager 1; colliery-owners 2, and colliery manager 1; master-builder, 1. Employed, 25—namely, miners, 3; marine officers, 2; seamen, 2; engineers, 2; building and carpentering, 2; tailoring, 2; typographical, 2; stewards, 2; shearing, 1; boiler-maker, 1; iron-moulder, 1; stonemason, 1; shoemaker, 1; coal-lumper, 1; wharf labourer, 1; builder's labourer, 1. Seventeen out of these 25 are, or have been, trades union officials. Independent, 14—namely, politicians and lawyers combined, 3; journalists, 3; judge, 1; clergyman, 1; station manager, 1; wharfinger, 1; registrar of friendly societies, 1; solicitor, 1; accountant, 1; manager A.M.P., 1; bank manager, 1. Grand total, 55. A summary of the views on conciliation and arbitration held by the various witnesses will be found in the Conciliation Appendix.

III. *Importance of the Subject.*—As to the importance of the question submitted to the Commission to study there can be no two opinions. It is undeniably the great social problem of the age. Even those who are least disposed to interfere between the contending forces, and who would prefer to leave the strife to settle itself, admit that the industries of the colony, and therefore its prosperity, are seriously hampered by the disagreements between employers and employed.

Many investors are timid about embarking their savings in any industrial pursuit, which can at any time be brought to a stop by a strike or lock-out; and if this uncertainty could be removed, there would, in all probability, be a great development of industry. The resources of the colony, it is admitted, are at present but very imperfectly developed, and the openings for industry are many and promising. But the spirit of enterprise is considerably damped by the unwillingness of many to set up at their individual risk establishments employing a considerable number of workmen, and who consequently prefer to be idle shareholders in joint-stock companies, or to accept a small interest on fixed deposits at the banks rather than run the risk of losing their capital in a venture that may be ruined by strikes. The timidity that exists may be in excess of what the facts of the case justify, but savings are principally made by cautious and prudent people, and they, as a class, seem to be much affected by the danger to them of quarrels, which they can neither prevent nor control, and which sometimes they cannot even understand.

IV. *The Exact Conflict.*—The social conflict, as it exists, is generally spoken of as a conflict between labour and capital. To some extent, however, the capitalist stands outside the arena, though intensely interested in the issue. The exact antagonism is between the direct employer and the employed. Some employers work entirely on their own capital, and some joint-stock companies do the same, and in those cases the employer and the capitalist are one. Some employers, especially those who are struggling upwards, have very little capital of their own, but work largely on credit; and we may mention incidentally that quarrels over little points arise most frequently with small employers, to whom small gains are of proportionately greater importance than they are with large employers. The majority of employers in this colony lie between the two extremes. They have some capital of their own, and they borrow the rest from banks, finance companies, or individual capitalists. The lender, who is not personally involved in the business, does not directly come into contact with the workman, or into any conflict with trades unions, but he is indirectly concerned in the maintenance of social peace, because it is to his interest that those to whom he lends should carry on their industry profitably, and should be able to pay him for the use of the money advanced, as well as to refund the principal.

V. *Causes of Strikes.*—One part of our instructions was to inquire into the cause and cure of strikes. So far as this colony is concerned, there does not appear to exist any systematic record of the number of strikes in recent years, nor of their causes, their duration, and the way in which they were settled. From the evidence, it appears that, until recent times, the most frequent causes have been an effort to raise wages or to resist the reduction of wages, an effort to secure shorter working hours, or to resist any covert or open increase of the hours of work, or claims for the intermission of labour for rest, or a demand to employ more hands for a given work, or to resist the discharge of men supposed to be punished for their position in a trades union, or their prominent labours in connection with it. All these are matters which affect the personal comfort of the workman, and his status as respects his material interests. The last, however, is specially in defence of the principles and practice of unionism. And this leads to the remark that, at the present time, more important than all the causes mentioned is that which is rapidly becoming the chief ground of contention between employers and employed—namely, the employment of non-unionists. The late strike turned almost wholly upon this extremely important point. The incident of the discharge of the stoker Magan from the Tasmanian Company's steamship "Corinna," though it turned on the dismissal of a man who was a delegate, and who was thought to have been dismissed for that reason, was comparatively unimportant, and arrangements had been made for settling it by negotiation. But the refusal of the ship-owners to allow their officers to affiliate their union to the Trades and Labour Council was resisted as an opposition to the development of unionism itself, it being contended that the right of affiliation was only an extension of the right to form a union. The ship-owners took the ground that their officers had the right to form a union of their own, but that the necessity for maintaining discipline at sea made it inexpedient in the owners' interest, and in that of the travelling public, that officers who represented employers should affiliate with other labour bodies, because when at sea they could hold no direct communication with such employers, and therefore occupied a position that distinguished them from ordinary servants. It is obvious that this distinction raised the question whether the right to form trades unions has any limitation, and whether the position of ships' officers constitutes one of those limitations. The question was, therefore, distinctly raised as to the rights of unionism, but it was raised in a form as to whether those rights were subject to the limitation referred to. It was not the question of unionism in the abstract that was raised, but the restraint on affiliation as being a restraint on unionism. The difficulty with the shearers also raised the question of unionism, and it did so in this form: whether the Shearers' Union was entitled to demand the non-employment of non-union men. This question was raised in a practical way by the declared refusal of the wharf labourers to handle non-union wool. It is clear from this statement that a very broad and important distinction is to be drawn between all those demands of the wage-getting class which directly affect their comfort, and those which are put forth in defence of their labour organisations, and in assertion of their right to extend the operations of those unions and their confederation. This difference will be further emphasised when we come to consider the cure of strikes.

VI. *Federation of Employers and Employed.*—The federation of labour and the counter federation of employers is the characteristic feature of the labour question in the present epoch. A few years ago each union was an independent organisation, though the sympathy between different trades was strong, and showed itself repeatedly in the form of subscriptions to assist other trades when their members were on strike or were locked out. But now the union of men in a trade has developed into a union of different trades together, and practical sympathy has taken the form of aiding a strike by striking also. This, of course, has the effect of increasing the area of contest, and of dragging into it persons not originally involved. It is obvious that there is no limit to this extension of any strike, except the limit of the labour organisations themselves, and what the colony

has already experienced in the way of suspension of industry is only a fraction of what it might possibly experience if a more general strike took place. The difficulty in any one trade may become a cause of quarrel in many trades, and employers and workmen in no degree connected with the point at issue, and otherwise working harmoniously, may be forced into hostility. The effect of this organization of labour has already been to draw employers together; and, though their organizations have not at present the mature experience or the proved loyalty of the labour organizations, and although, from the nature of the case, it is more difficult for employers to come together and to hold together than it is for workmen to do so, still the sense of danger is now so keenly felt that jealousies and rivalries are being overpowered by fear of loss. The industrial community is thus being organized into two vast camps, jealous and suspicious of each other, and preparing for a possible conflict, which, in a few months, may destroy the savings of many years. The extent to which this organization of employers and employed has now attained gives the whole question its present public and even its national importance.

VII. *The Cure of Strikes.*—What has been said above as to the great distinction to be observed as to the cause of strikes necessarily leads to the remark that the same distinction must be observed when treating of their cure. All those disputes which arise from a demand on the part of employés that they should have something more, or an effort on the part of employers to give them something less, have their origin in a conviction on one side or the other that the consideration given for labour is not satisfactory. This conviction is either well-founded or ill-founded, or it may have some justification, but not so much as is supposed. Obviously, the thing to be done under such circumstances, is to get at the truth; and, in doing this, it is necessary to get rid of everything that disguises the truth. It is frankly admitted that a great many disputes originate in ignorance, in mutual misunderstanding, in unfounded suspicions, in exaggerated alarms, and that very much is gained if all these disturbing accessories can be got rid of, and the controversy can be narrowed to its simple issue. No better method of dispersing the mists that surround a controversy of the sort under our consideration can be found than a friendly conference.

VIII. *Conciliation.*—A very large experience has shown that the difficulty is often cleared up in this way, and reduced to such dimensions as admit of a fairly satisfactory settlement. It is this experience which leads to the conclusion that the very first thing to be done, in order to promote the settlement of a labour dispute, is to try the effect of conciliation. And, in using this term conciliation for the first time in this report, it is convenient to remark here that the terms conciliation and arbitration are often employed somewhat vaguely as if they were interchangeable, and yet they really represent two distinct things. The function of any conciliation agency is to get the parties to a dispute to come to a common agreement voluntarily, without any opinion being pronounced on the merits, or any instructions given. The function of arbitration is distinctly to determine the merits and to give a positive decision to be abided by. If the declaration of such a decision can be avoided it is well that it should be, because decisions are generally more or less adverse to both parties, for even splitting the difference is an equal censure upon both. But conciliation, if it is a success, allows of a friendly settlement on a mutual agreement, and leaves no opening for discrediting the understanding or the impartiality of the arbitrators. That being so, the practical question that arises is, How should this primary remedy of conciliation be applied? It may naturally be said that no fresh law, no new appointments are necessary for the purpose. It is always possible for people who quarrel to meet together, with or without the intervention of third parties. It has been done frequently on a small scale, and also on a large scale, and with satisfactory results. In different localities, too, and as respects different trades, as is the case in England, Boards of Conciliation have been voluntarily established, have lasted for several years, have done good work, and often very difficult work. But, while this is admitted, it seems to us that the work of conciliation would be greatly assisted if there were in this colony an established organization instituted by the State, and always ready to be called into action by either of the parties to a dispute. The evidence on this point is not unanimous, some witnesses on each side being of opinion that no good would come of any State Board. But the great weight of the testimony is distinctly to the effect that the existence of a State Board of Conciliation would have a wholesome and moderating effect. Such an institution, clothed with the authority of the State, would stand before the public as a mediatory influence always and immediately available, and public opinion would be adverse to those who, except for very good cause shown, refused to avail themselves of its good offices.

IX. *Arbitration.*—But though, in the majority of cases, disputes will be settled by the preliminary process of having them thoroughly sifted before a Board of Conciliation, there will remain some cases in which, despite all explanation and mediation, there will survive an irreducible residuum. Under such circumstances, the question arises whether everything that can be done has been done, and whether the task of settling the dispute must be abandoned. All the experience hitherto gained goes to show that this need not be. Either under the term conciliation or under the term arbitration, Boards have to a very large extent been empowered to give decisions —that is to say, have practically exercised a judicial function. When conciliation has failed, then is the time for arbitration to begin. It is admitted that in some cases decisions have been given in error, and have been practically neutralised even by the consent of the parties. But in the immense majority of cases—both in France and England—the decisions given have been reasonably equitable, and have served to settle the dispute, till circumstances altered, and raised the same or a similar question again. It is impossible to resist the moral effect of the vast body of evidence which exists on this point. It is a demonstrated fact that decisions can be given as to industrial disputes which practically solve the immediate difficulty. Adjudication, therefore, is applicable between employers and employed, and, consequently, when conciliation falls short of doing what is wanted, the resources of arbitration can be effectively brought to bear.

X. *One Board or Two?*—When this point is taken as settled, the next question that arises is whether the Board of Conciliation that is already seized of the matter shall be the adjudicating body, and in many trades this custom has been advantageously followed. The Board tries first to

settle the dispute without a decision, and, if required, finally exercises its authority to give a decision, and this plan has met with a large degree of success. The principal objection made to it is that the persons most suitable to act as conciliators are not necessarily the most suitable to act as arbitrators, and that the two separate functions will be better exercised by two separate agencies. Two reasons are adduced in support of this view. The first is that conciliators should be selected in virtue of their knowledge of the details of the trade in question—a knowledge not so necessary for arbitrators who have to deal only with the residuary difficulty after all minor matters have been disposed of. Arbitrators, whose special work is judicial, should be chosen mainly for their judicial temperament and ability. Secondly, in a Board of Conciliation all the members but the Chairman will be chosen respectively from the two bodies of employers and employed. They will inevitably have the bias of their class, and will feel some responsibility towards their associates for upholding their class interests, and therefore at the Board will act in the mixed capacity of advocates and judges. On the other hand, it must be borne in mind that, in the absence of compulsion to enforce the award, it is all-important that it should be voluntarily acquiesced in, and that therefore both sides should be contented with the constitution of the tribunal. It is clear from the evidence that in this colony the trades unions will not accept readily the decisions of any Court in which unionism is not represented. This implies, of course, that the employer must have a corresponding representation. It follows that the Arbitration Court cannot consist exclusively of independent judges, but must consist predominantly of persons chosen to represent class interest, the purely judicial functions being performed only by the umpire, who would decide when the votes were equal. It is true that the members of the Court would be chosen on account of their high character, and would be expected to be fair and impartial; still their special function is to see that their class is not wronged. Under these circumstances, seeing that an absolutely judicial Court is not possible, and that it must, to a large extent, be composed of the same material as a Board of Conciliation, the argument for having two separate bodies is weakened.

XI. *Objections to a Second Hearing.*—It is obvious that the reference of the dispute to a second Court requires that all the details should be gone over again and explained to a second set of persons—an expenditure of time and trouble that could only be justified by results of corresponding value. The expense of adjudication would thereby be considerably increased, and there might be some difficulty, unless that course were made compulsory, of passing the question on from the Board of Conciliation to the Court of Arbitration.

XII. *Recommending one Board.*—Taking all these things into consideration we recommend that, in the first instance at least, and until circumstances justify some further differentiation in the constitution of the labour tribunal, there should be only one Board, but that this one Board should be empowered in some form to discharge, as occasion may require, the double duty of conciliation and arbitration. That is to say, that its first effort should be towards bringing about a voluntary agreement between the parties, and, failing that, that the Board, or the permanent part of it, should discharge the duty of adjudication and pronounce a decision.

XIII. *Constitution of the proposed Board.*—Assuming that arrangement to be adopted, it then remains to be considered how this Board should be constituted. For the purposes of conciliation it is, as we have already shown, absolutely necessary that the Board should be representative, so that it may be able sympathetically, as well as intellectually, to consider the question equally from the point of view of the employer and that of the employed. The parties themselves and corroborating witnesses will have to make their statements and give their evidence, but that evidence will have to be searchingly tested from opposite points of view. The Board must have the whole case before it and study it fairly from both sides before it can suggest any settlement that will be a reasonable solution of the difficulty, or before it can pronounce any decision that will carry with it the conviction that it is just. Secondly, a Board of Conciliation must consist to some extent of persons who are intimate with the trade or occupation in which the dispute occurs. Not that outsiders cannot be made to understand the technicalities of a trade or occupation when they are sufficiently instructed, for, as is well known, this is done continually in our Courts of Justice, where Judges, counsel, and jury are compelled to form an opinion on matters that were previously new to them. But the process is slow, and not always satisfactory. Where the object is conciliation it is obvious that those who understand all the intricacies of a trade can appreciate the difficulties, feel the force of objections, and see the merit of suggestions, much more quickly than those whose minds have not been exercised over the same details. But, if part of the Board is to consist of men practically experts in the business principally concerned, they must be chosen anew as each fresh dispute arises. How they should be chosen is a matter of detail, the essential point being that they must be satisfactory to the interests they represent. The parties to the dispute might nominate as members the persons they prefer; or it might be left to the particular trades union, or to the Trades and Labour Council, to name the members who should represent labour, and to the Employers' Union or the Chamber of Commerce to name those who should represent the interests of employers. The choice might be left absolutely open on either side until the occasion arises; or, as some have suggested, there might be framed annually a list out of which conciliators should be chosen. For many reasons, the less bondage and the more freedom in constituting the Board, the better it is likely to be for its purposes.

XIV. *The Standing Part of the Board.*—But though a part of the Board should, in order to adapt it to its special work, be renewable for each new occasion, it would be well that a part should be more permanent. And this for two reasons: In the first place the continuing portion of the Board will come to possess a qualification quite as important as that of detailed knowledge. For, by practice, they will become experts in their work, with a quick eye to the knot of the difficulty, and with the tact and skill to untie that knot, if it is not too obstinate. Secondly, this permanent portion of the Board will be well fitted to act as a Court of Arbitration, should the general body of Conciliation fail to bring about an agreement. It would not be desirable to make this whole body perform judicial functions. The temporary portion would necessarily be subject to a strong class

feeling, which would not unfit them for arguing in defence of their order, but which would be no qualification for an impartial decision. When decision, therefore, is called for, it had better be left to the more practised and more responsible portion of the Board.

XV. *Constitution of the proposed Arbitration Court.*—The question then arises—how should this section of the Board be constituted? We think it should consist of not less than three. The Chairman should be appointed by the Government; and it is not necessary to say that he should be a fair-minded man, whose reputation should be a guarantee for industry, honesty, and impartiality. His colleagues, or coadjutors, should be selected to represent the conflicting interests of employers and employed, and should be elected by these two parties respectively. These members of the Board should be appointed for a term. They would always be in office ready to act. In case of a dispute the full Board of Conciliation would be constituted by the election of not less than six other persons, an equal number from each side. If the Board failed in its task of conciliation, then the members who form the standing portion of the Board would constitute a Court of Arbitration, and would give a decision. If they could not agree unanimously, or even by a majority, then the decision of the President would be the decision of the Court.

XVI. *Trade.*—We have taken a considerable amount of evidence on the subject of written agreements between employers and employed in the several trades and occupations. Some witnesses have objected to them on the ground that they are apt to be one-sided, and others on the ground that in the case of a large strike, if they are faithfully adhered to, they prevent unionists from coming to the support of their comrades. But the evidence is, on the whole, clear that suitable and equitable agreements, dealing with all the practical details of the several callings, promote a good understanding. We suggest, therefore, that the Conciliation Board should be empowered, whenever requested to do so, to assist in the discussion and settlement of the terms of industrial agreements. Its services would unquestionably be very valuable in this respect; its intervention would be a guarantee for fairness and thoroughness, and, in case of a dispute, the standing Board would be in possession of all the knowledge necessary to interpret and apply the agreement fairly.

XVII. *Experience in England.*—On the debatable question as to whether the functions of conciliation and arbitration should be exercised by the same or by different persons, there has been a considerable and varied experience. In France the duties are separated, and the judicial award is an official one, and is enforceable by law. In England, where the active Boards are all voluntary, the practice has differed considerably. The Union of Glasgow tailors, as far back as thirty years ago, provided for conciliatory work being done by a Committee, and failing a satisfactory result the matter was to be referred to an equal number of employers and employed, whose decision as arbitrators should be final, the disputants binding themselves to abide by the same. The Glasgow potters, in 1860, made disputes referable to an Arbitration Board of six persons, three being manufacturers and three working-men. The scheme is reported to have succeeded in ninety out of 100 cases. Mr. Mundella's scheme of 1860 provided that when the Board of Conciliation failed there should be a reference to some arbitrator appointed for the occasion. The Wolverhampton scheme provided for a single umpire to be chosen in the case of a tie on the question before the Conciliation Board. Judge Rupert Kettle was the first umpire chosen, and he worked out a scheme which provided for a permanent standing arbitrator. In the Staffordshire Potteries, the President is in the chair when the Board is doing conciliation work, but, when it is arbitrating, a standing referee presides, and his decision is final. He is not called in unless arbitration has become necessary. The Leicester Hosiery Board has a standing referee, whose decision is given in case of an equal vote. In the iron trade of the North of England a standing Committee first investigates the details of the dispute. Failing to come to a settlement, it hands the matter to the larger Board. If that fails to agree it appoints an independent referee. A subsequent modification, thought to be an improvement, makes the Arbitration Board consist of three members: one chosen by the employers, one by the men, with an umpire, whose decision is final. In the Nottingham Lace Board, established in 1874, there is a standing referee, who is appealed to in the case of an equal vote, and whose decision is final. In the South Staffordshire iron trade a President, not connected with the trade, listens, without speaking, except to ask for explanations, and in the case of an equal vote he gives his decision then and there. In the Chemical Trade Board for Northumberland and Durham the rules provide for a referee for the occasion. In the Leicester boot trade a permanent referee is appointed. According to Mr. Howell, the London dockers' strike of 1889 was really settled by arbitration after efforts to effect conciliation had failed, though those efforts paved the way for the settlement. The most recent English model is the conciliation scheme of the London Chamber of Commerce, which was drawn up by some very able men, and in the light of all the English experience: and this provides that the Conciliation Board shall not constitute itself a body of arbitrators, except at the express desire of both parties, but shall in preference offer to assist the disputants in the selection of arbitrators. Perhaps, however, the most important lesson to be derived from the English experience is that conciliation has been found to do much more work, and more satisfactory work, than arbitration, and that it is by far the more effective agency of the two.

XVIII. *In other Countries.*—With respect to the attempts made in other countries to establish trade tribunals, we have not had at our disposal witnesses who could give us much personal experience; but we have collected from books such information as was available, and are thus enabled to furnish a résumé sufficiently full to admit of a fair understanding of the methods adopted elsewhere, and of their adaptability to our circumstances.*

XIX. *France and Belgium.*—It is to France that the world is indebted for the first type of a Court of Conciliation, and for many years—nay, even for centuries—France had a monopoly of this wise institution. It originated as far back as 1296, in the reign of Philippe-le-Bel. Its first incep-

* Details of the systems of conciliation and arbitration in vogue in France, England, Germany, Belgium, Italy, Denmark, and Norway, and the United States, and of the different schemes proposed in these Colonies, will be found in the Conciliation Appendix.

tion was in no respect due to private or voluntary action. It was official from the start, and it has never lost its official character. In the early days it was practically a council of twenty-four industrious experts to assist the Mayor and aldermen of Paris in taking cognizance of industrial establishments and trade contracts. From that time to this it has exercised functions to some extent corresponding with those which, in England, are exercised by factory inspectors. It was in the city of Lyons, the great seat of the silk manufacture, that the Conseil de Prud'hommes principally developed into an institution for settling disputes between employers and employed. In that capacity it has received a great development, the law having been amended from time to time to meet the needs of an ever-widening experience. The principal of these amendments, as well as an historical sketch of the institution itself, will be found in the Conciliation Appendix, digested from recent French publications, for which we are indebted to the courtesy of M. Verleye, the French Consul in Sydney. The Conseils de Prud'hommes have proved most effective, having settled thousands of disputes, and to their intervention France has been indebted for its escape from a host of labour troubles. At the same time it is proper to notice that the French Courts of Conciliation have never had to deal with so perplexing a problem as the refusal of unionists to work with non-unionists. The difficulties that they have dealt with have been almost exclusively questions relating to wages and hours, and conditions of employment. The practice in Belgium is the same as in France.

XX. *Germany.*—In Germany, according to the industrial code, disputes may be settled by authorities specially constituted for that purpose in different districts, or by the communal authorities, with an appeal to the Courts of Justice. By local regulations also representative Arbitration Courts may be established. A new law (for a copy of which we are indebted to the courtesy of A. L. R. Pelldram, Esq., Consul-General in Sydney for the German Empire) was passed in July, 1890, which gives a further development to the formation of Industrial Courts. These Courts are empowered to exercise the functions both of conciliation and arbitration. They are constituted of employers and employed. From the decision of these Courts there is to be no appeal. They are composed of the President and at least one Vice-President, who are not to belong to the class of employers or of employed. These are assisted by at least four coadjutors, who are to be elected, and who are to represent the two classes. The existence of this Court does not interfere with private Conciliation Courts that may be established in the different trades.

XXI. *Italy.*—In Italy there is a law which provides for conciliation and arbitration in respect of all minor commercial disputes, and this law is available for many of the ordinary labour disputes. It is contained in the Code of Civil Procedure, a copy of which has been kindly furnished to us by Dr. Marano, Consular-Agent in Sydney for the Kingdom of Italy. Under this law there is in each commune an official conciliator, who possesses very much the status of a Stipendiary Magistrate. On being set in motion he summons the parties, who may be represented by attorneys. If either party fails to appear, nothing more is done except on the request of both parties. Any settlement arrived at is put in writing and signed by both parties, and, where any payment is agreed to, it can be enforced by ordinary process if under thirty francs. The Arbitration Court may consist of one or more persons, provided the number is not even. The decision of the Court is enforceable, subject in some cases to appeal.

XXII. *Denmark, Norway, and Sweden.*—A somewhat similar system prevails in Denmark, although, instead of a single conciliator in each township, there is a regular Conciliation Court, the constitution of which varies in different parts of the kingdom. In the capital the Court is composed of a Judge, a magistrate, and a citizen; in the larger towns the Court consists of two citizens elected by the people; in the provinces the sheriffs act as arbitrators, and in extensive outlying districts the sheriffs appoint deputies to act on their behalf. These tribunals take cognizance, as as does the conciliator in Italy, of all sorts of cases, and being inexpensive they are much resorted to by the Danes. Similar tribunals exist in Norway, which belonged to Denmark when these tribunals were first established. We are informed by Mr. E. G. Stenberg, attached to the Swedish Consulate in Sydney, that, while no special legislation exists in Sweden to deal with industrial conflicts, a custom exists by which the parties to an ordinary dispute can refer their differences to a private Board of Conciliation, constituted of equal representatives from either side, who elect others from outside the dispute to assist in arriving at a settlement. Neither party can compel the other to go before the Board, which is purely voluntary. The parties agree beforehand that they will abide by the decision of the Board. Mr. Stenberg has never heard of this Board being resorted to in labour disputes, but only for commercial differences; but he thinks that this may be owing to the fact that labour troubles are of quite recent occurrence in Sweden. He adds that a Royal Commission to inquire into the whole subject of labour disputes has been sitting in Sweden for two years, and last year presented a very voluminous and exhaustive report.

XXIII. *United States.*—In the United States there is no Federal law on the subject. The first systematic application of the principle of conciliation in America was in the cigar manufactory of Straiton and Storm, of New York city. Since 1879 all disputes in this establishment, which employs over 2,000 workmen, have been settled by a Board of Arbitration composed of persons connected with the establishment. Several attempts have been made in the mining and iron-manufacturing districts of the State of Pennsylvania to bring the principle of arbitration into operation there; but they have failed, because the disposition for a peaceful settlement was not strong enough. The "Wallace Act," however, passed in 1883 for the State of Pennsylvania, provides for carrying out the principle of voluntary arbitration, and it is the first American law of the kind. The Court is called into existence by the request of both parties on application to a Judge. Its constitution is representative, but it avails itself of the services of an umpire if required. The submission of all disputes is voluntary, and the awards have no legal or compulsory force. Two years afterwards, that is, in 1885, the Legislature of Ohio unanimously passed a Bill construed somewhat on the lines

of the Pennsylvania Act, but in Ohio the parties pledged themselves to abide by the award.* In another appendix will be found a list of strikes in the United States for the past one hundred and fifty years—a formidable amount, which shows how far the need for conciliation and arbitration has outrun the provisions for it.

XXIV. *England.*—The working of the different Courts of Conciliation in England has already been indicated. They are all voluntary. The Acts passed to establish tribunals have been dead letters, partly because the unions did not like the compulsory enforcement of the awards, and partly, perhaps, because it needs the consent of both parties to bring a dispute before the Court.

XXV. *The Colonies.*—In the neighbouring colony of Victoria a scheme for the settlement of disputes has been in existence for a short time, and has been brought into successful operation. The scheme at present is somewhat in abeyance, principally, it is said, owing to a want of organization, rendering it impossible to enforce a reference to the tribunal provided. The same scheme was submitted for approval to the Employers' Union and Trades and Labour Council of this colony, but was ultimately rejected on the ground that it did not adequately provide for the recognition of unionism. In the building trades of this colony, however, there has existed for more than two years a representative Board of Conciliation without any provision for arbitration, and which has done good work. No scheme is in existence in the colony of South Australia, but we direct attention to the Bill prepared by the Hon. C. C. Kingston, the features of which he kindly explained to us.† In devising the scheme we have the honour to recommend, we have endeavoured to take advantage of all the suggestions available to us from other parts of the world, and at the same time to adopt a plan which should be suitable to the circumstances of this colony, which would be intelligible to all concerned, which would be simple in its machinery and easy of application, and which would commend itself to the approval alike of employers and employed.

XXVI. *Economy and Simplicity.*—In proposing the scheme as submitted, we have kept in view the expediency of having the new tribunal as economical as possible. More complicated schemes, it will have been seen, are in existence elsewhere, especially where large and varied industries are collected in great manufacturing districts. But the circumstances of our colony do not at present call for any complicated arrangement. The largest localised industry we have in this colony is that of coal-mining in the Hunter River district, and there the miners and the colliery proprietors have substantially worked out for themselves a system of agreement and arbitration.‡ There is no need to disturb what has thus been the product of experience. But the system of settling disputes in force in that district would be fortified by the existence of a State tribunal such as we suggest, for it should be borne in mind that a State Board of Conciliation in no way whatever prevents the existence of private agreements in particular trades; on the contrary, the evidence is clear that the existence of such agreements leads to a better understanding of the mutual relations of employers and employed, and also facilitates the work of a Board in giving a decision. Private conferences—private efforts at conciliation—may fittingly take place in any or every trade, but the advantage of a State Board is that it is there, always in existence, to deal with any case that has proved too obstinate for private settlement. All disputes should, if possible, be settled within the trade itself, and there would be the greater probability of this being done if it were known that, failing a settlement, either party could force the case before the State Board of Conciliation. We have said that we have not neglected the question of economy, but, at the same time, we do not think that a rigid economy should be a ruling consideration in dealing with the constitution of a trades tribunal, for the loss to the community at large from a great and prolonged strike is immeasurably greater than the cost of any conciliation tribunal. What the loss to the colony from the late strike was, it is difficult to estimate. To the Government alone in its various departments it was very great; while in the loss of trade, in the depreciation of investments, and in the discouragement of industry, it was very much greater still. Any reasonable expense should be cheerfully encountered if by so doing these disastrous social conflicts could be prevented.

XXVII. *Compulsion to appear.*—We have given careful attention to the question as to whether the tribunal we propose should have any compulsory powers. This question has to be considered on two sides; first, whether there should be compulsion in initiating the action of the Board, and, second, whether there should be compulsion in enforcing the decrees of the Court. As to the first point, we do not reject the doctrine that the State may legitimately interfere to prevent such colossal disputes as have already distracted our society, and are threatening to distract it still more. Looking at the laws as they exist now for the prevention of disturbances, and for forbidding incitement to disorder, it can hardly be contended that disputes which almost assume the character of civil war ought to lie outside the cognisance of the guardians of the public peace. But we do not propose at present any such extension of principles already recognised as to give to the State Board of Conciliation a right to insist on both parties to a trade dispute bringing their case before it. It may, under conceivable circumstances, become expedient hereafter to give such powers, but the expediency should first be clearly proved. In establishing a tribunal for settling disputes that are not in themselves criminal, we think it best that the State agency should be called into action rather than act of itself. But, admitting this, the question still arises whether, if one party to the dispute calls for the action of the Board, it should proceed to take such action even if the other party stands aloof. And here we are of opinion that it should not be necessary for both parties to call upon the Board to interfere, as to adopt this course would be very greatly to limit the usefulness of the Board.

* The constitution and rules of the Straiton and Storm Arbitration Board, an account of the attempts at conciliation in Pennsylvania, particulars of the working of the "Wallace Act," together with the full text of the Ohio law, will be found in the Conciliation Appendix.

† The schemes of conciliation proposed in the various colonies comprise the Conciliation Bill introduced in the New South Wales Legislature by the Hon. J. H. (then Mr.) Carruthers; the conciliation scheme drawn up by the late Chief Secretary of Victoria (Hon. C. J. Langridge); the Industrial Bill, by the Hon. C. C. Kingston, ex-Attorney-General of South Australia; and the Victorian Board of Conciliation referred to above. The full text of all these schemes and Bills will be found in the Conciliation Appendix.

‡ The full text of the Newcastle agreement will be found in Appendix A, attached to the evidence.

It is true that to allow one party to set the Board in motion would be, to a certain extent, to put compulsion on the other party, because it must either appear, or run the risk of having an award given in its absence. But this degree of compulsion is in the public interest clearly expedient. No quarrel should be allowed to fester if either party were willing to accept a settlement by the State tribunal. Industrial quarrels cannot continue without the risk of their growing to dangerous dimensions, and the State has a right in the public interest to call upon all who are protected by the laws to conform to any provision the law may establish for settling quarrels dangerous to the public peace. We may mention in support of this view that we have already some pertinent and valuable experience. The Newcastle agreement, which represents the matured experience of the colliery proprietors and of a compact body of about five thousand coalminers, provides that differences that cannot be settled out of Court may be submitted to a referee, and that either party may set the Court in action. Five cases have hitherto been so submitted, the miners having in each case taken the initiative, the masters coming into Court to defend their position.

XXVIII. *Compulsion as to the Award.*—The second point is, how far compulsion should be applied at the close of the arbitration process. Should there be any power to enforce awards, or to inflict fines and penalties for non-compliance? Most of the legal witnesses are in favour of such compulsion, on the ground that a Court that cannot enforce its award is not worthy of existence. But it should be remembered that a Court of Arbitration is not like an ordinary Court of law. There is no fixed code of law which it interprets, and its decision is only a declaratory statement as to what it thinks just and expedient. Neither party to the suit has been breaking the law; and the decision asked for is not, as in a Court of law, what is the law of the case, but what is the justice, or the wisdom, or the expediency of the case. In England it was for many years the law that Justices of the Peace should assess wages, and under such a state of things it was appropriate that there should be fines and penalties for disobedience to the constituted authorities. It has been said that if an Arbitration Court cannot compel obedience to its decisions it will be useless. The answer to this is that experience is, though not wholly, almost wholly the other way. In England all the trade arbitrations have been outside the law, because the three laws passed for the purpose have been inoperative. And yet, though arbitrations have been very numerous, the cases are very few in which the decisions have not been loyally accepted. The reason of this is that the decisions have been reasonably fair, and both parties to the suit have felt that it was better to acquiesce in a decision with which they were not wholly contented than to prolong the strife. Public opinion, too, which counts for a great deal in matters of this kind, is always in favour of acquiescing in a decision given after a fair hearing. There is every reason to expect that in the very great majority of cases the decisions of arbitrators will settle the dispute, and it is not worth while, therefore, for the sake of making compliance universal, to introduce the repugnant element of compulsion. Moreover, as has been pointed out by witnesses on both sides, although a Court of Arbitration might inflict fines and penalties, it could not compel men to work for less wages than they were contented with, because they could all give their legal notice, and quit their occupation; nor could an employer be compelled to keep on his business for a lower rate of profit than would, in his judgment, compensate him for his risk and trouble. The law cannot prevent him from refusing to take any new business and closing his establishment. It may be added that the absence of external compulsion does not prevent the parties from putting compulsion on themselves. All who want compulsion can have it. They can agree to a bond before going to arbitration that would give the right to sue a defaulter.

XXIX. *Unionism.*—We have already pointed out the great distinction to be observed between disputes which concern the remuneration and comfort of the workmen and those which concern the rights of labour organizations. And in concluding our report we wish to bring this distinction again into prominence. Of late years the latter cause of quarrel has come more and more to the front, and it is becoming a fundamental question between employers and employed. The contention on the side of labour is the "recognition of unionism." The contention on the side of the employers is "freedom of contract." This question of the organization and federation of unions is a fundamental point. It has not been possible for us to discover a solution, but we have had to consider whether Courts of Arbitration would be competent to pronounce a decision on the question when it comes before them as the principal element in a threatened strike. We cannot pretend to say that a Court, as we propose it, would be fully competent to deal with so large a question. It may, indeed, be an issue only ultimately to be settled by law. It seems to be the task of the present generation to work at this problem incessantly till the right conclusion is reached. The evidence before us has, however, impressed us with the conviction that the continuous operation of conciliation and arbitration will tend to assuage the bitterness of the dispute, to remove much misconception and suspicion, to bring the merits of the controversy more clearly into view, to diminish the force of the contending influences, to bring the disputants nearer together, to educate public opinion, and, if new laws should be necessary, to prepare the way for such legislation. While, therefore, we do not pretend that a State organisation for conciliation and arbitration would, under the existing circumstances, be a perfect cure for all industrial conflicts, we are of opinion that it would render inestimable service in the right direction, and that its establishment should not be delayed.

XXX. *The late Strike.*—In the course of our inquiry we have naturally elicited a great deal of evidence relative to the late strike. It is no part of our Commission to pronounce upon the merits of that dispute; but it is important that, in support of the proposal we submit, we should direct attention to the fact that several witnesses fully competent to speak on the subject are of opinion that, had there been for several years past a State Board of Conciliation in existence in this colony, the strike would, in all probability, never have occurred, because many outstanding complaints would have been adjusted, and the irritation that existed on both sides would not have been allowed to grow up. In that opinion the Commission concur.

XXXI. *Social Changes.*—Some of the witnesses examined before us have recommended

extensive changes in the laws, customs, and ideas which regulate the relations between employers and employed, on the ground that nothing but such extensive changes can ever deal effectively with the evils as they exist. We are not prepared, however, to recommend any scheme for the reconstruction of society, being of opinion that, whatever changes in the laws may be considered necessary, much may be done to mitigate the industrial conflicts that now exist by a comparatively simple addition to our established institutions. We have, therefore, addressed ourselves to things as they are; and, without entering on the highly debatable region of social reconstruction, we have considered what reasonable means are within our reach to mitigate, if not wholly to neutralise, the disastrous effects of industrial conflicts. If this can be done quickly and easily, then whatever may stand over as the problem of the future is simplified. We believe that the plan we recommend would very quickly abate existing evils, as the remedy of conciliation and arbitration has already been very largely practised and has been almost uniformly successful.

XXXII. *The late Mr. Fletcher.*—We have had the great misfortune during the course of our inquiry to lose by death the services of James Fletcher, Esq., M.P. He was particularly fitted, by his large experience as a workman and an employer, to aid our deliberations, and to interpret the views and interests of each class, and we desire to place on record our sense of the great loss the Commission sustained by his removal.

XXXIII. *Unanimity.*—We have only to add finally, as indicating the degree of unanimity with which this Commission, representing, as it does, antagonistic interests, has reached its conclusions, that each clause of this report, after discussion and consideration of amendments, has been voted on separately, and that each has been adopted unanimously.

We have, &c.,

ANDREW GARRAN, President.

L. Beaton.	T. J. Houghton.
Jno. Bennett.	Henry Hudson.
Frank Cotton.	Jno. See.
James Curley.	C. F. Stokes.
T. M. Davis.	J. H. Storey.
H. E. Dickenson.	J. R. Talbot.
James Finch.	F. H. Trouton.
Bernard Goode.	

Friday, 22nd May, 1891.

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