924. CHRISTCHURH GARDENERS.—DECISION *RE* APPLICATION TO EXTEND AWARD TO PARTIES.

(Case dismissed on technical grounds, that the proceeding filed is for a breach of award, instead of an application to join the parties referred to to the award.)

In the Court of Arbitration, Canterbury District (Christchurch).—The Christchurch Gardeners' Union *v.* A. E. Allen and others.

Report of Case.

Proceedings in the case took the form of an application to extend the provisions of the award made between the Christchurch Gardeners' Union and certain employers, dated the 21st May, 1903 (Book of Awards, Vol. iv., p. 227), so as to bind certain parties whose names were set out in the citation. The parties cited were very numerous, and were mostly private persons residing in or in the vicinity of Christchurch. The application before the Court, which was filed on the 12th July, 1904, was in form an application to refer an alleged dispute to the Board of Conciliation for settlement. The particulars of the dispute were set out as follows: "They (the parties cited) having failed to comply with the union's request that they should become parties to the award No. 268, dated the 21st May, 1903." It appeared that there had been an earlier application against the same persons filed on the 30th January of the same year, also in form an application to refer an alleged existing dispute to the Board of Conciliation for settlement, but in this case the particulars were different. They were set out as follows: "They having failed to comply with the conditions of labour and wages as set forth in the union's award No. 268, dated the 21st May, 1903." On the same day on which this application was filed the union filed an application, under section 21 of the amending Act of 1901, to have the dispute referred direct to the Court of Arbitration for settlement. A declaration, signed by the chairman who presided at the special meeting summoned to ap-

prove of the institution of these proceedings, was attached to the second or amended application now before the Court, which stated that on Tuesday, the 29th September, 1903, the following resolution was passed at such meeting: "That Arthur E. Allen and others be cited before the Court of Arbitration, they having failed to comply with the conditions of labour and wages as set forth in the union's award No. 268 of the said Court, dated the 21st May, 1903." The declaration also stated that the meeting was convened and the subsequent ballot taken in accordance with the provisions of the Act. After deliberation, the following decision of the Court was delivered:—

THE PRESIDENT: The Court has investigated the proceedings with the greatest care in order that it might arrive at a proper conclusion as to whether the hearing of this matter can proceed, and it has been forced to the conclusion that it is not before the Court in a way in which the Court can deal with it. The first step shown by the papers before the Court is a circular to members of the union to the effect that a list of employers mentioned should be cited before the Court of Arbitration, they having failed to comply with the conditions of labour and wages set forth in the award. The members of the union had been asked to attend a special meeting convened to adopt a resolution, and the meeting had apparently been duly called, and the resolution had been adopted. A ballot-paper had then been circulated to all members of the union, and this, though somewhat defective, might be assumed to be sufficient. Subsequently an answer had been obtained which, according to the minute-book, confirmed the resolution. The Court has now before it an application which was based on that resolution or was based on nothing, so far as the union was concerned, which asked virtually that the Court should join the persons mentioned as parties to an award, still on the grounds of having failed to comply with the conditions of the award. Objection has been raised, and it must be taken as one that cannot be waived. The objection is that what had been authorised by the union is not the step which has been taken, but is a proceeding against Arthur E. Allen and others for a breach of the award. It may be taken as certain that the authorities of the union did not intend to affirm that a breach of the award had been committed, or that the parties mentioned should be summoned for a breach, but such a reading must be given to the application. The expression "having failed to comply" can only suggest that the persons cited have failed in some duty which they owe under the award, and consequently the only interpretation which can be placed on the words is that these persons are to be charged with the breach of an award. Whatever it may mean, it can hardly be suggested that the proceeding proposed is an original proceeding for a new award. That would have to be referred first to the Board of Conciliation, and by subsequent proceedings would come before the Arbitration Court. At one stage of the proceed-

ings the parties had assumed that some such course was necessary, because, on the 30th January, 1904, they had applied, under section 21 of the Amendment Act of 1901, to have cases referred to the Court of Arbitration, but that assumed that an original application for an award had been made. It seems to me that the union's action has been based on a misconception. There was filed on the 12th July an application which might virtually be treated as one to join the persons cited as parties to an award, but the Court has endeavoured in vain to see that authorisation has been granted to the union to take that step. It is quite plain that the Court cannot now deal with the application. It seems to me that the best course for the union to take is to consider the whole position as to what proceedings it should take, and, further, to consider what powers the Court has to carry out the views which the union has in mind. I make these remarks to prevent friction in future. The application will be dismissed.

15th June, 1905.

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925. CHRISTCHURCH CARPENTERS.—DECISION *RE* APPLICATION TO JOIN PARTIES TO AGREEMENT.

(Dismissed on grounds that parties cannot be compulsorily joined to an agreement, and that the application should be for an award.)

In the Court of Arbitration, Canterbury District (Christchurch).—Between the Christchurch Carpenters and Joiners' Union and Idiens and others.

DECISION OF THE COURT, DELIVERED BY CHAPMAN, J. (PRESIDENT), WITH REPORT.

THE application was similar to that in the Christchurch Gardeners *v.* Allen, in form an application complaining of a breach of duty. Treated as an application to join parties, it asked the Court to order them to be joined as parties to an industrial agreement dated the 24th November, 1904 (Book of Awards, Vol. vi., p. 7). The parties cited were very numerous; some had given written consents; the greater number did not attend. One attended and objected to the proceedings.

CHAPMAN, J., PRESIDENT: We have no authority whatever to make an order in this proceeding, which seems entirely misconceived. There is an industrial agreement, and nobody can be ordered to become a party to it against his will. If what it was intended to effect was to compel all these parties to come in and be bound by the terms of this agreement, there should have been an application for an award. That would have been addressed to the Board of Conciliation, though it might have been afterwards, and before hearing, brought here under section 21 of the amending Act of 1901. There is no semblance of such a proceeding here,