929. SOUTHLAND BUTCHERS.—APPLICATION FOR AWARD.

(Decision of Court *re* ballot—no jurisdiction.)

In the Court of Arbitration, Otago and Southland District (Invercargill).—Southland Operative Butchers' Union *v.* Employers.

REPORT OF CASE.

MR. WILLIAM SCOTT, for the employers, raised the question that the application was not in order, and asked that it be investigated. Mr. Paape, for the union, stated that he was unaware of the Court's decisions on the question, and produced the minute-book, which was inspected by the Court, which then delivered the following decision:—

CHAPMAN, J. (PRESIDENT): We have now investigated the history of this reference, which, shortly, may be stated thus: A circular was issued forwarding a ballot-paper, and at the same time giving the date of the meeting as the 20th March, and a notice of the resolution proposed to be carried thereat. There are minor irregularities with which we need not deal; but dealing only with substantial matters we find that the meeting was in fact held on the 20th March, and a resolution was then passed. I will refer to the terms of the resolution later. The resolution was passed, and at the same meeting the meeting appointed scrutineers, who purported to take the ballot, bringing out the result—for the

motion, 10; against, 2. The whole of the minute relating to meeting and ballot is in one, as it were—that is to say, the minute purports to be the minute of the meeting, and is signed by the chairman of the meeting, and that one minute covers the proceedings of the meeting and the ballot. It is quite evident that that does not comply with the Act. We have had on several occasions to consider this, and a written decision of this Court on the subject was given at Auckland on the 12th May of this year. That written decision, which was in two cases—the Auckland butchers and the quarrymen's cases—covered this question, and was given as a written decision after the same point had been verbally decided by the Court a few days before in Auckland. That decision is published in the current volume, the incomplete volume, of the Book of Awards, Vol. vi., page 108, and it has also been published throughout the colony in the *Journal of the Labour Department*. It ought by this time to be well known to all representatives of unions and associations, and, as a matter of fact, we know that it was the subject of Press telegrams and discussion throughout the colony. That decision gave effect to the plain wording of the Act—that the resolution must be passed by a special meeting, and that the resolution must be confirmed by subsequent ballot, not of the persons who happen to be in the room at the meeting, but of the union. In other words, the resolution which has been passed must be circulated, or the effect of it stated to the members of the union wherever they may happen to be, and they must be given an opportunity of confirming it by ballot. What has been done here has been to take a ballot of the members who happened to remain in the room after the resolution was passed, and of those only, and to take that resolution under a circular ballot-paper obviously issued before the resolution was passed. That does not comply with the Act, and we must accordingly hold that we have no jurisdiction to proceed with this reference. It is only due to the parties that we should, with a view to avoiding another difficulty that might arise, point out another error to which our attention has not been called, but which stands out on the face of the papers. We refer to this in order that the union in proceeding afresh may correct its procedure, and not have raised here at a subsequent hearing another question which might prove fatal to its proceedings. We are not bound to give this advice, but we think it only right to do so. This resolution is in these terms: "The agreement between the Southland Operative Butchers' Union and the master butchers of Southland having expired, and as all attempts to enter into a new agreement amicably have failed, the dispute be referred direct to the Court of Arbitration for settlement." It does not appear on the face of that circular which forwards that proposed resolution what the dispute is. It is not perhaps necessary that it should appear, but if the matter were challenged it might be necessary to prove that the actual claim of the union was communicated to all its members. This expression simply refers

to the dispute. It may be that the members have been sufficiently informed what the dispute is, so as to leave no doubt that the resolution refers to a claim already circulated; the proper way really to inform them is to take their opinion upon the claim of the union by the executive circulating that claim among the members. There is, however, a much more serious defect in this resolution, and that is that the wording of it is "that the dispute be referred direct to the Court of Aribtration for settlement." Now, it is not competent for any union or body, whether employers or employees, to refer a dispute direct to the Court for settlement in that way. The dispute must be referred to the Board, and can only be referred to the Board. The Act, section 98, requires that an industrial dispute "shall not be referred for settlement to a Board by any industrial union or association . . . . unless and until the proposed reference or application has been approved of by members in the manner following." That section goes on to provide for a resolution passed at a special meeting, but it must be a resolution to refer the dispute to the Board; and unless it is a resolution to refer the dispute to the Board there is every danger of the Court holding that it has no jurisdiction. What has led to the confusion is an endeavour to take a short cut to the Court by means of the original resolution, because the amending Act of the next year, section 21, provides that every party to an industrial dispute which has been referred to a Board of Conciliation may, previous to the hearing, file with the Court an application in writing requiring the dispute to be referred to the Court of Arbitration. That is what is commonly referred to as going direct to the Court; but the principal Act can only be deemed to be altered in so far as that section has altered it. The resolution must be to refer to the Board, and the reference is made to the Board. This section 21 of the amending Act of 1901 gives power to anticipate the hearing of the Board by another resolution to take the case, before it is heard by the Board, direct to the Court. It is as well that the parties, if they wish to renew this application, should carefully consider the wording of the Act, and, reading the decisions of the Act to which I have referred, should see that these conditions are properly circulated among their members, and that their resolution is regular in form. Both these questions were dealt with by the Court in the Hikurangi Coal-miners' case (Book of Awards, Vol. iv., p. 117), on the 25th February, 1903. If reasonable attention is given to these details, it will be found that the Act is not difficult to follow, and a good deal of trouble and heartburning will be avoided in future. All we can do now is to uphold the objection which has been raised, and to hold that the ballot has not been taken in the manner prescribed by the Act, that conesquently the Court has no authority whatever to hear the dispute, and to strike the case out of the list.

4th September, 1905.