NORTHERN, WELLINGTON, CANTERBURY, AND OTAGO AND SOUTHLAND **BOOT OPERATIVES**.—APPLICATION FOR AWARD

In the Court of Arbitration of New Zealand, Canterbury Industrial District.—In the matter of the Industrial Conciliation and Arbitration Act, 1925, and its amendments; and in the matter of a combined district Footwear Industries' industrial dispute.

Christchurch, Thursday, 9th September, 1943

Industrial Dispute—Constitution of Conciliation Council—Presence of Conciliation Commissioner essential—Industrial Conciliation and Arbitration Act, 1925, Section 46 (7)

When the dispute came before the Court of Arbitration it was shown in evidence that, on the date upon which a settlement of the dispute was reached, the Conciliation Commissioner nominated to hear the dispute was not present at the hearing. *Held*, That on the date in question there was no properly-constituted meeting of the Conciliation Council within the meaning of section 46 of the Act, and therefore no settlement of the dispute could have been reached on that date, and there was consequently no dispute validly before the Court.

THE COURT, PER TYNDALL, J., ORALLY

MR. McDonnell and Mr. Duckworth, the Court has taken some time to consider the position which has arisen. We find that the documents are signed by the assessors. They appear to be in order, and must be taken as *prima facie* evidence of what they contain. Mr. McDonnell, however, has stated certain facts to the Court, and has challenged the documents. Mr. Duckworth has made a statement differing in some respects from Mr. McDonnell's statement; but in one important respect the statements agree—namely, that Mr. Hunter, the Conciliation Commissioner nominated by the Minister of Labour to hear the dispute pursuant to section 5 (4), was not present on Friday, 6th August. This statement, we find, is confirmed by the contents of a letter written by Mr. Hunter to the Clerk of Awards.

I now want to read subsections (6) and (7) of section 46 of the Industrial Conciliation and Arbitration Act. Subsection (6) reads:—

Meetings of the Council shall be held from time to time at such times and at such places within the industrial district in which the dispute has arisen as the Commissioner appoints.

Subsection (7) reads:—

No such meeting shall be duly constituted unless the Commissioner is present thereat, but the absence of any of the assessors shall not prevent the exercise by a Council of any of its powers or functions.

The Court has before it signed documents which it is entitled to accept as correct unless they are challenged. Mr. McDonnell, however, has challenged them, and it is necessary that there should be sworn evidence to support the challenge. We therefore propose to put Mr. McDonnell into the witness-box to give formal evidence of the non-presence of the Commissioner.

[Mr. McDonnell gave evidence of the sitting of the Council of Conciliation on the 6th August, 1943, being the day on which the settlement of the dispute was reached, without the presence of the Conciliation Commissioner nominated to hear the dispute. Mr. Duckworth stated that Mr. McDonnell's evidence was correct in every particular.]

In view of that evidence, gentlemen, and the confirmation given by Mr. Duckworth, we are forced to hold that there was no properly-constituted meeting of the Conciliation Council on 6th August within the meaning of section 46 of the Industrial Conciliation and Arbitration Act, and therefore no settlement of the dispute could possibly have been reached by the Conciliation Council on that date. In other words, the present legal position is, in the opinion of the members of the Court, that the Conciliation Council in its consideration of the dispute is merely at the stage it reached on the afternoon of 5th August—as I understand it has never sat since.

Mr. McDonnell has applied for leave to withdraw the dispute, but so far as the Court is concerned there is really no dispute validly before it. I do suggest, however, that Mr. McDonnell withdraw his present request (after I have completed my statement). The position is, however, that the Conciliation Council has not finished its task, and if Mr. McDonnell wishes to withdraw the dispute from the Council, it is open to him at any time to do so.

At the same time, to avoid needless expense in money, time, and man-power, there does not appear to be any good reason why the Council should not resume where it left off. And consequently Mr. McDonnell may now decide that there is no adequate reason why he should make any further request in the Conciliation Council to withdraw the dispute. The Court, in the circumstances which have arisen, has decided that the dispute is not validly before it, and therefore directs that the Council resumes consideration of the dispute at the point where it left off at 5th August.

We note that in the alleged settlement certain alterations to rates of wages and conditions were proposed. We feel that we should impress upon the representatives of the parties that the onus is upon them to satisfy the Court under the Stabilization Regulations that any alterations that may

be agreed upon are for the purpose of adjusting anomalies within the meaning of the Stabilization Regulations. An anomaly has been defined by this Court as a departure from a general rule. The parties, in asking for adjustments, must therefore satisfy the Court that the provisions of the present award which they desire to have altered are departures from some general rule applying in this particular industry, or in industry generally.

Finally, I would say—for the benefit of everybody present who is interested in industrial matters—that to-day's proceedings constitute an excellent illustration of the necessity for complying strictly with the requirements of the law in industrial proceedings; and, further, that persons in appending their signatures to documents should satisfy themselves that they know exactly what they are signing, and that the statements made in the documents to which they are certifying are correct.