

## MINUTES OF EVIDENCE.

TUESDAY, 8TH OCTOBER, 1912.

The Hon. F. H. D. BELL, Minister of Internal Affairs, examined. (No. 1.)

1. *The Chairman.*] Would you kindly make a statement, on behalf of the Government, regarding the question before the Committee?—Yes, I should like to make a short statement about the whole Bill.

2. *Hon. Mr. Buddo.*] I would suggest that Mr. Bell should tell us briefly the reason why the Bill is introduced, and, secondly, why we should depart from common-law right?—Well, the difficulty which has occurred in respect of the flax-mills is only one instance of difficulties which are anticipated and are threatened in respect of the butter-factories and the cheese-factories and the sawmills. With regard to the last, it is not suggested that the sawmill people should be at liberty to throw sawdust into the river. That is already prevented, as Mr. Buddo knows, by the Fisheries Act. These intimations of complaint of the fouling of streams by the butter-factories and the cheese-factories must have reached the last Government as they have reached the present Government. The position is as was defined in the actions which were recently brought by Mr. Pearce in respect of the flax-mills. Damages—very heavy damages—were claimed in that action. It was shown that the water as it left the flax-mills was very little less usable than as it arrived there, but it was laid down that any diminution in the quality of the water is a trespass under common law—a wrong to the riparian proprietor below. For all the many months in respect of which Mr. Pearce claimed damages—and he claimed substantial damages—and tried to prove them, the Court awarded him only £5, and the judgment shows that the Court found that he had received no substantial injury at all. But this is the law—not the common law, but the equity which follows the law—that where you have established a common-law right, the Court of equity grants an injunction to prevent the continuance of the wrong which has been proved at common law. The reason is this: in the old days, before equity intervened, a man establishing his injury and receiving his damages for the past injury had no right to prevent future injury, and so his remedy was to wait till the future injury had been suffered, and then recover further damages; and so on by a series of actions. The equity rule introduced was, by granting an injunction after and not before the common-law right had been ascertained, to prevent the continuance. However insignificant was the injury, until quite recent times the Court of equity had no right at all to consider that: they granted the injunction as a matter of course when the common-law right was established. The result is that as the law now stands, whether the injury be serious or really minatory to the beneficial use of the land, or whether it be merely trivial, any person below on the stream has the right to an injunction when he has established any diminution in the purity of the water, though he is not really injured, but only because his common-law right has been interfered with, and therefore he can stop the process by which that which is causing him no injury is occasioned. Very well. This question of the flax-mills is of far less importance than the question of the factories; indeed, if the flax-mills were cut out of this Bill the Government would not be broken-hearted. I am not inviting the Committee not to protect the flax-mills, but what I want to make quite clear is that we are not moved by anything more than principle in regard to the flax-mills, and not by the injury that might happen to them, though I am not sure that that is not a serious matter, for this reason: the flax-mills are on low land; it is almost impossible to prevent the ooze from the refuse of the flax-mill getting into the water. And so I think the flax-mills, because they are on the low land, do deserve the protection of this Bill. The Bill does not abolish injunctions. It provides, first of all, that a man shall not have the right to an injunction which he has now as of course. If the injury is such as to render the water unfit for use—not less fit, but unfit—then under the Bill he will get an injunction. If it is rendered less fit but still usable, or if the man has another supply which is just as good for him, then the Court, instead of giving him the injunction, is to continue giving him damages. It may give him so-much per month, or damages from time to time. The action remains open, and he has not to bring another action. We remove the difficulty which caused equity to intervene in the first instance; and then in the last clause of the Bill we provide that if the injury is caused by circumstances which could be prevented according to the usual working of such mills in New Zealand, then the injunction shall issue until the person ceases those methods. I do not think we could have protected the industry with less interference with the common-law right than we have attempted here. We do not propose by the Bill to interfere with the common-law right in any respect; we do propose to interfere with the equitable right of an injunction enforcing the common-law right. If the Committee and Parliament leave the matter as it stands, I have tried to explain what would be the result—that any mischievous person, who is not really injured but alleges he is injured, can stop the operations of some great factory until that factory has adopted some method which will prevent any effluent from getting into the stream; and in many cases that would be impossible, because the factories have been so built as to be on the margin of the stream. If Parliament leaves it so, well, it will not be the fault of the Government. We have tried several methods—that is to say, we have consulted our Law Officers, and no method suggested does not interfere with the injunction. Mr. Salmond's method was to grant the injunction but tie it up so long as the man did so-and-so. That does not seem so right as this, which prevents the injunction unless so-and-so is done. There is no difference in principle, as you see, between the two. No method which does not inter-