

E. L. BROAD examined. (No. 2.)

1. *The Chairman.*] What are you?—I am a flax-miller at Palmerston. I am vice-president of the New Zealand Flax-millers' Association.

2. Will you make a statement?—Yes. The Bill that has come before the Committee is, I understand, the outcome of a recent case connected with the flax-milling industry in Palmerston North, with reference to the pollution of the Oroua River by certain flax-millers. The Chief Justice, in his lengthy judgment in the case, has mentioned several facts which proved conclusively to his mind that the plaintiff, although he was entitled to his injunction, suffered practically no damage whatever. I will quote, if I may, one or two passages from the judgment to prove what I say. He says, "If the case depended on the putting of fibre in the river it appears to me that even if some slight or nominal damages were recoverable for past action, that what is done now would not entitle the plaintiff to an injunction under this head." And further on he says—this is in reference to the pollution of the river by other means, "It appears that many miles above the part of the river where the first mill sends its refuse into the river there is an outflow from a septic tank belonging to the Feilding Borough. If there were disease-germs in that tank (such as germs of typhoid fever) it would not be safe to use the water in the Oroua River for any purpose, whether for washing dairy utensils or for drinking, unless, at all events, the water had been boiled." He also says, "In my opinion this last quotation correctly summarizes the law. In *Young and Co. v. The Bankier Distillery Company* (1893, A.C. 691) the House of Lords held that if pure water is turned into a stream by an upper riparian proprietor that is of a different character from that which usually flows in the stream, that is an actionable wrong, and an interdict or injunction would issue." I take that to mean that if a laundry was working on a river-bank, receiving pure, clean, soft water, and an owner above that laundry came along and sunk an artesian well and got absolutely pure, clean, but hard water, and ran that into the stream, the laundry could get an injunction against the proprietor above to prevent him putting his pure, clean water into the river, because it was of a different character from that which was already in the stream. I will quote now the last part of the Chief Justice's decision: "In my opinion, therefore, the plaintiff is entitled to maintain his actions. The defendants cannot put the effluent from their mills into the river and so pollute it. It may be that a considerable industry may be crippled or destroyed if they cannot continue what they have done, and it may be that the plaintiff's loss or damage will be small, and very small compared with the loss the defendants will suffer by an alteration of their present methods of disposing of their effluents, but I cannot consider such results." That proves conclusively to my mind that the plaintiff suffered no material damage whatever. This matter of river-pollution has already been dealt with in connection with the mining industry. Sections 117, 118, and 119 of the Mining Act, 1908, allow the refuse from alluvial mining to be put into rivers. I have here a short statement of points in favour of the Bill. It is as follows: 1. The Bill is absolutely necessary in New Zealand, because (i) the dairying industry requires it; (ii) the flax business requires it; (iii) local bodies who drain into rivers or take water from rivers, or who discharge by septic tanks, require it. These industries and local bodies represent a huge proportion of the population, and the minority must concede something for the necessities of the majority. 2. The flax business cannot exist if prohibited from using the rivers reasonably, and that industry and the milk industry are too important in New Zealand to be ignored. 3. The principle of the Bill has been dealt with before—that is, under the Mining Act power is given to deposit waste into rivers. Are the flax and milk industries less important than mining? They will exist when mining has gone. It will be pointed out that the law without the Bill is the same as in England, and no River-pollution Bill exists in England. In reference to this—(a.) The dairying and flax industries are not, and never will be, known in England. (b.) Various Acts have from time to time been passed in England to assist manufactories by modifying the common law. (c.) By an Act in England (39 and 40 Vict., c. 75) it is declared that "polluting" shall not include innocuous discolouration, and there are many Acts encroaching on the common-law rights in regard to water. (d.) Many establishments in England have obtained the right to turn waste products into rivers by "long user" without interruption. In New Zealand, owing to nearly all the land being under the Land Transfer Act, no such right is possible, no matter how long the undisturbed user. There may be, therefore, not the same necessity or so urgent a reason in England as here for legislation. (e.) In America certain pollution is permitted under statute law, it being realized that the necessity to some extent exists. 4. The present law is such that any farmer having land on the banks of the stream may prevent another person taking water or turning something into it, although he suffers no injury. He may even prevent a person turning into the river *pure* water of a different kind to that in the river (see the case referred to by Stout, C.J., in flax-millers' case). A "dog in the manger," or a man who makes a hobby of law, may try this on at any time. 5. The proposed Bill sufficiently protects all persons requiring or using the water (see subclause (a) of section 4, and clause 8). I have also a letter from Mr. Hugh Akers, a farmer on the Manawatu River and a flaxowner. He had some water analysed from a creek which passes the Longburn Freezing-works. That analysis proved that the water both above and below the Longburn Freezing-works was quite unfit for either animal or human consumption. The whole of that water goes into the Manawatu River. I will put his letter in. [Document put in.]

3. What is the point of that: was the injury to the water caused by a flax-mill?—No, there was no flax-mill at all on the creek.

4. From what cause was the water deteriorated?—Through rotten vegetable and animal matter.

5. Whence derived?—Above the freezing-works, from rotten vegetable and animal matter—dead carcases which had been left in the creeks, and rotten leaves, and so forth. Below there