The principal defects in the Act seem to be the following :—

(*a*) It lays down no principle of guidance in the light of which the Court is to act. Section 80 provides :—

> " The Court shall in all matters before it have full and exclusive jurisdiction to determine the same in such manner in all respects as in equity and good conscience it thinks fit."

This want of a guiding principle gave little trouble in the years of steadily rising prices and growing prosperity, but it has on occasions since proved somewhat embarrassing, and at one time or another the Court has been guided, as it appears, by the following principles, singly, or in various combinations :—

(1) The standard of living.
(2) Wages of similar groups doing work of similar character in other industries.
(3) What the industry can bear.
(4) The general economic situation.

It is obvious that these principles are not necessarily consistent, and that the application of one may exclude one or more of the others. In these circumstances a compromise has to be effected, but on the whole the Court tends to adopt the standard-of-living basis, because that is most easy to apply, and seems most in accordance with social justice.

> " From the earliest times the major part of the Court's attention has been given to wages, and, failing to find any other definite basis, the Court has gradually concentrated more and more on the cost of living as the standard by which to determine wage rates. The drift towards this standard, strengthened by many judicial precedents, was given legal sanction when, from 1918 to 1923, the Court was authorized to grant bonuses on the basic wage calculated upon changes in the officially recorded cost-of-living index number. It is not surprising, therefore, to find that indexes of wages (mainly award rates) and of retail prices move closely together, and that the estimated purchasing-power of average wages has changed but little."—(Canterbury Chamber of Commerce, Bulletin No. 28).

A difficulty arises when the wage fixed on the standard-of-living basis proves greater than the value of the services rendered by the worker in exchange for the wages either because the management or the work is inefficient, or more usually because prices have fallen, and the industry will not stand the wage. This difficulty the Court endeavours to meet as far as possible, and it certainly does as far as practicable allow for other factors, but not even the Court can apply two inconsistent principles of wage regulation at the same time, and in common with wage tribunals on all conceivable bases, it finds itself unable to solve the insoluble or reconcile the irreconcilable. It is needless to say that the Court is in no way responsible for this state of affairs. It arises from the inherent difficulty of wage fixation. In ordinary times an approximation is near enough, but on the crucial test of a falling price-level the problem of maintaining a fixed standard of living becomes extraordinary difficult, and, if the price-fall goes far enough, would become impossible.

(*b*) Being a Court of justice administering a complex system of *ad hoc* jurisprudence, the Court is not sufficiently flexible to accommodate itself conveniently to the changing requirements of industry. It is, in fact, on the horns of a dilemma. If it does nor develop and maintain both legal and economic precedents, it lands in chaos, since it could hardly be operated with consistency and sanity unless parties could assume that what it had decided before it would decide again the same way in the like circumstances. No tribunal can operate without this basis of rational calculability in its actions, and it cannot help being bound in practice by precedents of its own creation. Moreover, being a compulsory tribunal, it has to provide an elaborate system of inspection and enforcement, and this means inquisitorial interference with the details of private business. Since the Court prohibits direct action between the parties subject to its jurisdiction, and industrial stoppage is made a technical crime, the Court must necessarily interfere to adjust all industrial relations, however minute. There is no half-way house. Again this is not the fault of the Court, but of the system. It is, however, a serious handicap, especially as its psychological effect on the outlook of both employer and worker is to diminish their feeling of responsibility for the conduct of industrial negotiations.

The awards are legislative in their nature, and have to be imposed over the whole area of the dispute without close consideration of modifying individual or local circumstances. This imports an element of rigidity into an area where flexibility is essentially desirable, and prejudices industrial efficiency. Industry should be multiform, and submits uneasily to the strait jacket of a procrustean legal system.

> " In settlement of these disputes, the Court makes rigid regulations regarding the minutest details of industrial relationship, each applying to all wage-earners under the particular award, and many of them disregarding local and individual differences and covering the whole Dominion. One authority says that he compiled a list of seventy different subjects of regulation under the awards in force, and added that before the War the Court's awards gave New Zealand the most complete system of State regulation of industry the modern world had ever known. Burdened with the dead weight of this amazing complex of regulation, harassed by Inspectors, whose duty it is to see it observed in every detail, faced on the other hand with the ever present necessity for the maximum elasticity in making internal adjustments to meet the constant flux and change of market conditions, it is little wonder that industry has failed to make progress and to increase productivity under the arbitration system."—(Canterbury Chamber of Commerce, Bulletin No. 28.)

It must be noted here, too, that this is the result of the nature of the system, and not of defective administration. The awards of the Court are subsidiary statutes, and must run in general terms imposed on all. Here again there is no half-way house. State regulation of industry necessarily involves this drawback.

(*c*) This leads to the next trouble, that under the system industrial efficiency has not progressed. It does not follow that the Court is responsible, for it might be that the factors making for inefficiency are something over which the Court has no control ; and it might even be maintained, though not, I think, with success, that inefficiency would have been greater had there been no arbitration system. The system, however, seems to me to promote inefficiency in two ways :—

(1) The rigidity and absence of flexibility above mentioned.

(2) The tendency of the men to look for increased reward to contention rather than production. This is not the fault of the Court, and the Judges have frequently issued warnings against it, but it is inherent in the system. The fixation of wages as the result of a contentious process focusses the minds of the men on the Court as the source " from which all blessings flow," and they tend to overlook the close correlation between production and real, if not nominal, reward. A rising wage, unaccompanied by corresponding efficiency, cancels itself out in the long-run either in less employment or a higher cost of living. Employers will not permanently employ men at a loss. Either they pass on the increased cost, or they do not. If they do, it raises the price level ; if they do not, it throws men out of work. Statistics make it clear that *per capita* production is virtually stationary in New Zealand, and has been so for a quarter of a century.

(*d*) It brings the parties together only in an atmosphere of contention, and continuously emphasises the points where they are at variance. The Court gets no jurisdiction until there is a dispute, so that the parties cannot meet before it except when they are at loggerheads. It may be rejoined that it is quite open for them to meet privately to discuss common interests if they so desire, but in fact they do not, because the whole atmosphere of compulsory arbitration on a judicial basis fosters a contentious and litigious spirit. I do not say personal bitterness or enmity. The fact is, however, that the representatives of the unions on both sides are a race of quasi-barristers who enjoy the game for the zest of the chase, and who are often anxious to commend themselves to their unions by pointing to the scalps they have won on the field of arbitration battle. This means that the parties are in effect, if not in theory, prevented from exploring other avenues to industrial peace and productivity. The secretaries are more interested in putting technical points across their adversaries than in improving the productivity of industry. Theoretically, unions need not use the Court if they do not want to, but once in the system it is not easy or safe to get out, as another union in the industry may be registered and an award made, binding non-members.