AUCKLAND. — Constable J. Maher, No. 857, has been awarded £2 for services in connection with the conviction of Cameron Bell for keeping liquor for sale and sending liquor into a no-license district without being labelled. (09/798.)

WANGANUI.—Constables C. Rowland, No. 1195, and M. Flanagan, No. 1297, have been awarded £4 each for arresting William Moore, deserter from H.M.S. "Cambrian." (09/65.)

WANGANUI.—The following rewards have been granted by the Customs Department for services in connection with the conviction of Messrs. W. C. Maidens and W. A. Lack for a breach of the Distillation Act at Waihi: Inspector N. Kisly, £11 10s.; Sergeant W. H. McKinnon, No. 388, £11 10s.; Constables E. Driscoll, No. 1002, T. J. Cummings, No. 1095, and T. B. Miles, No. 1119, £3 each. (09/65.)

LAW REPORT.

("Times Law Reports," Vol. xxv, pages 239-41.)

[K.B. DIV. (LORD ALVERSTONE, C.J., BIGHAM AND WALTON, JJ.)—20TH JANUARY, 1909.]

BUXTON AND ANOTHER *v.* SCOTT.

Gaming—Betting—House used for betting—Permission of Person assisting in Management of House—Betting Act, 1853 (16 and 17 Vic., c. 119), ss. 1, 3.

A used a publichouse for the purpose of betting with persons resorting thereto. He did this with the knowledge and connivance of B, the licensee's son, who assisted the licensee in conducting the business of the publichouse. The licensee was present in and managing the publichouse, but the justices were not satisfied upon the evidence that she knew that betting was going on. The justices convicted A of using the publichouse for the purpose of betting with persons resorting thereto, and convicted B of aiding and abetting A to commit the offence.

Held, That, as B was in fact assisting in conducting the business of the publichouse, he was a person clothed with the licensee's authority who could give permission to A to use the premises for the purpose of betting with persons resorting thereto, and that the conviction of A and B was therefore right.

THIS was a case stated by two justices for the City of Sheffield. On the 6th June, 1908, an information was preferred by Charles Thomas Scott, Chief Constable of Sheffield (hereinafter called "the respondent"), against Thomas Henry Buxton and Harry Harvey (hereinafter called "the appellants"), under the Betting Act, 1853 (16 and 17 Vict., c. 119), alleging that the appellant Buxton, on the 20th April, 1908, and on divers other days between that date and the 14th May, 1908, at the City of Sheffield, being a person using a house called the Old Blue Ball there situate, unlawfully used the same for the purpose of betting with persons resorting thereto on certain events and contingencies of and relating to horse-racing; and further that the appellant Harry Harvey did at the same time and place aid and abet the appellant Buxton to commit the said offence. The said information was heard on the 14th July, 1908, and the justices convicted each of the appellants for having on the 28th April, 1908, committed the offences charged against each of them. On the said 6th June, 1908, an information was preferred by the respondent against Hannah Maria Harvey, of the said Old Blue Ball Inn, Sheffield, innkeeper (hereinafter called "the licensee"), alleging that she did on the same days as aforesaid knowingly and wilfully permit the appellant Buxton so to use the said premises as aforesaid contrary to the Betting Act, 1853, which information, together with the information preferred on the 6th June, 1908, against the appellants, was heard and determined on the said 14th July, 1908, and upon such hearing the justices dismissed that information.

Upon the hearing of the information against the appellants the following facts were admitted or proved: (*a*) That the licensee was the tenant and occupier of the Old Blue Ball publichouse; (*b*) that the appellant Harry Harvey was the son of the licensee, and resided with her and assisted her in the management of the said publichouse; (*c*) that the appellant Buxton was a person frequenting and using the said publichouse; (*d*) that the appellant Buxton used the said premises for the purpose of betting with persons resorting thereto upon certain events and contingencies of and relating to horse-racing on nine days between the 20th April and 14th May, 1908—namely, the 20th, 21st, and 28th April, and the 2nd, 5th, 6th, 9th, 12th and 13th May; (*e*) that the licensee was present in and managing the said publichouse when the appellant Buxton used the same for the purposes of betting on six days between the 20th April and the 14th May, 1908—namely, the 21st, 25th, and 28th April, and the 5th, 9th, and 12th May; (*f*) that the appellant Harry Harvey was present when the appellant Buxton used the said premises for the purpose of betting on eight days between the 20th April and the 14th May, 1908—namely, the 20th, 25th, and 28th April, and the 2nd, 5th, 9th, 12th, and 14th May—and that he saw and knew that the appellant Buxton was betting thereon as aforesaid and permitted him to do so. Further, that he, the appellant Harry Harvey, received bets on horse-races with persons resorting to the said premises for and on behalf of the appellant Buxton, and also messages relating to the betting of the appellant Buxton, and otherwise aided and abetted him to use the said premises for the purpose of betting as charged in respondent's information; but that on the 28th April, 1908, he, although he was present on the said premises and saw and knew that the appellant Buxton was betting thereon, took no active part in receiving bets or in assisting the appellant Buxton to do so. It was contended on behalf of the appellant Buxton that, inasmuch as the justices had not convicted the licensee of permitting the appellant Buxton to use the said premises for the purpose of betting, they could not in law convict him (Buxton) of the offence charged against him, and on behalf of the appellant Harry Harvey that inasmuch as the justices could not lawfully convict the appellant Buxton they could not convict him (Harry Harvey) of aiding and abetting the appellant Buxton. Although the justices did not consider that there was evidence to justify them in convicting the licensee of the offences charged against her which they held to be a personal offence, they considered that she had, through her servant the appellant Harry Harvey, so permitted the appellant Buxton to use the house for the purpose of betting as to justify them in coming to the conclusion that Buxton had an authorised consent on behalf of the occupier to so use the said premises. It was contended on behalf of the appellant Harry Harvey that there was no evidence upon which they could lawfully find that on the 28th April, he aided and abetted the appellant Buxton in the commission of any offence; but this was a mere technicality of date, and other dates besides that were charged and proved. The justices were of opinion that the appellant Buxton was guilty of an offence under the said Act in that he did on the 28th April, 1908, use the said premises for the purpose of betting with persons resorting thereto, and that the appellant Harry Harvey was guilty of an offence under the said Act in that he did on the 28th April, 1908, aid and abet the appellant Buxton to commit the said offence. The question for the opinion of the Court was whether, upon the above statement of facts, the justices came to a correct determination in point of law. If they did, the conviction was to stand; if they did not, the conviction was to be annulled.

Mr. H. T. WADDY, for the appellants, submitted that the conviction was wrong. In order to convict a person under section 3 of the Betting Act, 1853, of using premises for betting, where the user was of the premises generally and not of any particular part of them, there must be evidence of permission from the landlord or some one clothed with the landlord's authority. In this case, on the material date, the 28th April, 1908, as the licensee was present in and was managing the house, there could be no devolution of authority to a servant. Buxton, as he had got no permission from the licensee, got no permission which could legally be given. Counsel referred to "Rex *v.* Deaville" (19 The Times L.R., 223; [1903] 1 K.B., 468); "Commissioner of Police *v.* Cartman" (12 The Times L.R., 334; [1896] 1 Q.B., 655); "Somerset *v.* Hart" (12 Q.B.D., 360); "Bond *v.* Evans" (21 Q.B.D., 249).

Mr. ELDON BANKES, K.C. (Mr. S. Fleming with him), for the respondent, was not called upon.

The LORD CHIEF JUSTICE, in giving judgment, said that it was found as a fact that on several days, and in particular on the 28th April, 1908, Buxton resorted to the premises in question for the purpose of betting upon horse-racing, and carried on his business there, and that the appellant Harry Harvey received the bets on behalf of Buxton, and otherwise aided and abetted him to use the premises for the purpose of betting. There was abundant evidence that Buxton used the premises for betting, and with the knowledge of Harry Harvey. It was said by Mr. Waddy, however, that in consequence of the justices' finding as to there not being evidence that the licensee was guilty of the offence charged against her, and their finding that there was no evidence of Harry Harvey having authority from the landlady to permit Buxton to use the house, neither Buxton nor Harry Harvey could be convicted. The real point in Mr. Waddy's argument rested upon what the justices meant when they said that they found that the licensee was the person managing the publichouse when Buxton used it for the purpose of betting. It had been strenuously contended by Mr. Waddy that that