Now, in Bailey *v.* Pratt (20 N.Z. L.R. 758) Mr. Justice Denniston, after exhaustively examining the English cases from 1875 to 1899, held that, in order to justify the conviction of a licensed hotelkeeper for "allowing" matters to take place in his licensed premises which were prohibited during the hours within which the licensed premises were directed to be closed, knowledge or connivance must be proved, and that mere negligence or carelessness will not support the charge, unless such negligence or carelessness is of such a character as to be in itself evidence. Section 190 of the Licensing Act, 1908, under which the present appellant has been convicted, is, so far as regards this charge against him, in the same terms as section 155 of the Act of 1881, which was under consideration in Bailey *v.* Pratt (20 N.Z. L.R. 758). I have carefully examined the cases on which His Honour has based his judgment, and I quite agree with the principle he has deduced from them, and I shall follow his judgment. Is there, then, any evidence upon which the conviction in the present case can be supported upon the ground that the appellant had been guilty of such negligence or carelessness as amounts to evidence of connivance? I do not think there is. The appellant was obliged to leave the room; the Magistrate has found as a fact that he was justifiably absent up to the time when the police visited the hotel, and that he had no intention of allowing a breach of the law to be committed; and the proved facts show that he did not know that a breach of the law was likely to be committed. The only circumstance from which negligence or carelessness might be inferred is that he did not insist on the liquor being removed from the dining-room. He forbade, some time before 10 o'clock, its consumption after 10 o'clock; and the Magistrate has found that the appellant intended to prevent such consumption by his own personal attendance throughout the concert, but that he was prevented from remaining in the room by circumstances beyond his control. These facts so found by the Magistrate negative any inference that the appellant left the room and abstained from returning for the purpose of allowing a breach of the law to be committed. Therefore, in my opinion, the mere fact that the appellant did not remove the liquor is not evidence from which any inference can be drawn that he remained out of the room for the purpose of conniving at a breach of the law.

I do not think it necessary to refer to the later English cases cited by Mr. Bell, beyond stating that they do not at all narrow the principle which, in my opinion, Mr. Justice Denniston has correctly stated to be the result of the decisions of the English Courts up to the year 1899. Mr. Ostler has urged that if this appeal is allowed it will be difficult to enforce the law. I do not agree with this. A simple remedy is that the police shall insist on all entertainments, if held in a licensed house, ceasing at the hour at which the house is directed to be closed.

The appeal is allowed, and the conviction quashed.

Solicitors for the appellant: Bell, Gully, Bell, and Myers (Wellington).

Solicitors for the respondent: The Crown Law Office (Wellington).

EXTRACTS FROM NEW ZEALAND GAZETTE.

(From *Gazette*, 1911, pages 2055 and 2063.)

Inspector of Sea-fishing appointed.

Marine Department,
Wellington, 25th June, 1911.

HIS Excellency the Governor has, in pursuance of the power and authority vested in him by subsection (1) of section 4 of the Fisheries Act, 1908, appointed

THOMAS MARTIN CONDON,

of Whangarei, Police Constable, to be an Inspector of Sea-fishing under the above-mentioned Act.

J. A. MILLAR.

Certificate and Declaration of Execution of Criminal.

Department of Justice,
Wellington, 24th June, 1911.

THE following certificate and declaration are published in conformity with the provisions of the Crimes Act, 1908.

GEO. FOWLDS,
Acting Minister of Justice.

CERTIFICATE OF EXECUTION OF SENTENCE OF DEATH.

I, DONALD NORMAN WATSON MURRAY, the Medical Officer in attendance at the execution of Tahi Kaka at His Majesty's Prison at Mount Eden, do hereby certify and declare that I have this day witnessed the execution of the said Tahi Kaka at the said prison; and I do further certify and declare that the said Tahi Kaka was, in pursuance of the sentence of the Supreme Court, hanged by the neck until his body was dead.

Given under my hand, this 21st day of June, 1911, at His Majesty's Prison at Mount Eden.

D. N. W. MURRAY, M.D.

DECLARATION OF EXECUTION OF SENTENCE OF DEATH.

WE do hereby testify and declare that we have this day been present when the extreme penalty of the law was carried into execution on the body of Tahi Kaka, convicted at the criminal sittings of the Supreme Court held at Auckland on the 22nd day of May last, and sentenced to death; and that the said Tahi Kaka was, in pursuance of the said sentence, hanged by the neck until his body was dead.

Dated this 21st day of June, 1911, at His Majesty's Prison at Mount Eden.

R. G. THOMAS, Sheriff.
T. R. POINTON, Gaoler.
H. McMURRAY, Chief Warder.
FRED. W. DOIDGE.
A. J. FARQUHAR.
J. W. HARDCASTLE.
DUNCAN MACPHERSON, Presbyterian Chaplain.