In our opinion, therefore, section 202, does not release a solicitor from his duty not to divulge information given to him by his client for the purpose of obtaining advice, or the advice given on such information. The question is therefore disallowed.

Solicitor for the petitioners: W. Sinclair (Blenheim).
Solicitor for the respondent: C. H. Mills (Blenheim).

("New Zealand Law Reports," Vol. xxxi, page 964.)

[S.C. IN BANCO. INVERCARGILL—(WILLIAMS, J.)—31ST MAY, 1912.]

ADAMSON v. AITKEN.

Impounding—Cattle depasturing on Roads—"Unfenced"—The Impounding Act, 1908, Section 17, Subsection 4 (c).

The word "unfenced" is used in section 17, subsection 4, paragraph (c), of the Impounding Act, 1908, in a different sense from that in which the words "fence" and "fenced" are used in other parts of the Act and in the Fencing Act, 1908.

If there is an actual fence which separates a road from the adjoining land, and which is intended to prevent the free passage of cattle from the land to the road, then the road is not unfenced within the meaning of section 17, subsection 4 (c), although the fence may not come to the standard required by law to enable an occupier of land to recover for cattle-trespass.

APPEAL from the decision of G. Cruickshank, Esq., S.M., at Invercargill. The facts are sufficiently stated in the judgment.

W. Macalister for the appellant.
Rattray for the respondent.

Cur. adv. vult.

Williams, J.:—

Section 17 of the Impounding Act, 1908, enables persons duly authorized to impound any cattle found wandering at large, or straying in or lying about or tethered in any road. Subsection 4 of section 17, however, enacts that the section is not to apply in the cases there specified. By paragraph (c) of subsection 4 the section is not to apply "to cattle owned by any person in the lawful occupation of land if they are depasturing on roads which are unfenced on either or both sides and are bounded on both sides by the land of such occupier." If this paragraph be read by itself without reference to any statutory definition of the word "unfenced" the meaning is perfectly clear. If there is no erection which in fact separates the road from the land occupied, so that cattle can pass without hindrance from the land to the road, the road is unfenced. If, on the other hand, there is an actual fence which separates the road from the land, and which was intended to prevent the free passage of cattle from the land to the road, the road is not unfenced, although the fence may not come up to the standard required by law to enable an occupier of land to recover for cattle-trespass. Does, then, the interpretation of the words "fence" and "fenced land" in section 2 of the Act apply to the word "unfenced" in paragraph (c), and compel the Court to place a different construction on that paragraph?

By section 2, "'Fence' and 'fenced land' respectively mean a sufficient fence, and land enclosed within such a fence, acording to the meaning of any Act for the time being in force relating to fencing." The main object of the Fencing Act was to enable an occupier to compel the adjoining occupier to join with him in the erection and maintenance of a fence. By the interpretation clause of the Fencing Act, 1908, "fence" means "a sufficient fence of any of the kinds mentioned in the schedule separating the land of different occupiers." The object of the Impounding Act, so far as relates to the sufficiency of fences, was to give the occupier of land fenced with a sufficient fence as defined by the Fencing Act a higher right in the event of cattle trespassing than he would have had if it were not so fenced. The question of a sufficient fence under the Fencing Act is a matter between adjoining occupiers, and under the Impounding Act between an occupier of land and trespassers. "Fenced land" means land enclosed within a fence, and the road does not come within that definition, because a road is not enclosed. The word "unfenced" in the paragraph is used in quite a different connection from that in which the words "fence" and "fenced" are used in the other parts of the Impounding Act and in the Fencing Act. It bears no relation to the rights of the occupier of land as against his neighbour or as against trespassers. There is no reason, therefore, why the word "unfenced" in the paragraph should receive the same construction as it would receive in the cases above mentioned. In my opinion, the natural meaning of the paragraph, apart from any statutory definition, is as I have stated above. If that be so, the definition is in fact inconsistent with the context, and by section 2 of the Act the definitions there given apply only where they are not inconsistent with the context. The case of Olsen v. Bailey (6 N.Z. L.R. 713), referred to in the judgment of the Magistrate, is clearly distinguishable from the present case. I think, therefore, that the appeal must be allowed, and the case remitted to the Magistrate with a direction to convict. Costs, £4 4s.

Solicitors for the appellant: Macalister Bros. (Invercargill).
Solicitors for the respondent: Rattray & McDonald (Invercargill).

("New Zealand Law Reports," Vol. xxxi, page 1003.)

[S.C. IN BANCO. PALMERSTON NORTH—(CHAPMAN, J.)—7TH AND 14TH JUNE, 1912.]

DUDDY v. CONNOLLEY.

Gaming—Offences—Bookmaker—Betting on Racecourse—The Gaming Act, 1910, Section 2, Subsection 2.

The Magistrate found with respect to the respondent, upon an information laid under section 2, subsection 2, of the Gaming Act, 1910, charging him with betting on a racecourse, he being a bookmaker, that certain entries in a race-book found in his possession when arrested were entries of bets made by the defendant with persons who had backed particular horses with him against the field. On this evidence he found that the respondent was a bookmaker, but he held that the evidence which proved the status of the respondent could not be looked at to prove the fact of betting upon which the prosecution relied.

Held, on appeal to the Supreme Court, That the Magistrate was right in finding that the respondent was a bookmaker, but wrong in law in holding that the evidence could not be relied upon as proof of betting, and that the case must therefore be remitted to the Magistrate with a direction to convict.

APPEAL by way of case stated from a decision of A. D. Thomson, Esq., S.M., at Palmerston North. The facts and the substance of the Magistrate's decision appear from the judgment of Chapman, J.

Loughnan for the appellant.

Cooper for the respondent.

Cur. adv. vult.

Chapman, J.:—

Appeal by way of case stated from the dismissal by A. D. Thomson, Esq., S.M., of an information laid under section 2, subsection 2, of the Gaming Act, 1910, for that the respondent on the 20th of January, 1912, being a bookmaker, did bet on a racecourse—to wit, the Foxton Racecourse. The Magistrate found it proved that the respondent was a bookmaker, but dismissed the information on the ground that it was not proved that as a bookmaker he had committed the offence of making a bet.

By section 2 of the Gaming Act, 1908, "bookmaker" means "any person who acts or carries on business as a bookmaker or turf commission agent, or who gains or endeavours to gain his livelihood wholly or partly by betting or making wagers, and includes a bookmaker's clerk or agent." This was laid down in an Act in which to some extent the calling of a bookmaker was recognized as a lawful calling, as one of the provisions of the Act obliged such persons to take out licenses to enable them to follow their calling upon a racecourse. The Act of 1910 is an amending Act which sweeps away this provision and creates the offence described in the conviction. It is therefore necessary to find two things proved—namely, first that the accused is a bookmaker, and secondly that being a bookmaker he made a bet on a racecourse.

In the first place, it is necessary to observe that the interpretation I have set out does not really attempt to define what a bookmaker is. It extends the meaning of the term to persons who are not bookmakers, and it sets out certain *indicia* by means of which an offender may be proved to be a bookmaker, but it assumes that what ordinarily constitutes a man a bookmaker is a matter of common knowledge. A man who acts as a bookmaker is a bookmaker. A bookmaker, I am assured, is a person who "lays the odds" or "takes the field," leaving it to his customer to select the horse he wishes to back at an agreed rate.

The Magistrate found that the respondent, being on the racecourse, was seen to give money to one person and receive money from three others. He was arrested, and in his possession was found a race-book or programme. In it were found eight separate entries and a calculation of the totalizator dividend on one race, showing that the respondent had made eight separate bets with seven separate persons