on July 28, 1910, were to be apportioned as between capital and income. It was stated that the decision on this point would govern a great number of other cases.

By his will dated May 21, 1904, Richard Pennington gave all his residuary personal estate upon trust as to moieties thereof for his two sons for their respective lives with remainder to their respective children or remoter issue as therein mentioned. Power was given to the trustees to retain any securities or investments upon which any part of the personal estate might be laid out, and by Clause 21 of the will the testator declared that the net income arising therefrom, whether the retained securities or investments were of an authorized character or whether of a permanent or wasting nature, should for the purpose of his will be applied "as if the same were income arising from the proceeds of conversion, no part thereof being liable to be retained as capital." At his death the testator was possessed of debentures guaranteed as to the capital and interest by the Law Guarantee, Trust and Accident Society (Limited), which now belonged to the testator's residuary estate. All the companies had made default in the payment of principal, and with one exception they had all made default in payment of interest. Since December 14, 1909, the Law Guarantee, Trust and Accident Society had been in voluntary liquidation, and the liquidation had been ordered to proceed under the supervision of the Court. On July 28, 1910, a scheme of arrangement in the winding up of the society was sanctioned by Neville, J. Under the scheme it was provided that the time for payment of claims of creditors in respect of principal moneys should be postponed until December 31, 1918. Provisions to be applicable to holders of debentures guaranteed by the society were set out in Clause 12 of the scheme, and sub-clause (*b*) provided that "in all cases of default in payment in full of interest on the debentures of any company down to the 31st December, 1918," the liquidators of the society "shall pay or make up such interest to £3 per cent. per annum on the principal moneys secured by the debentures." but it was provided that if the security of the debenture-holders of the company had been valued and such value admitted, the debenture-holders concerned should only be entitled to 3 per cent. on the balance of their total claim.

This appeal raised (*inter alia*) the question how moneys received and to be received by the trustees by way of interest at 3 per cent. per annum under Clause 12 (*b*) of the scheme ought to be applied as between the tenants for life and remaindermen.

Mr. Justice Joyce held that these payments ought to be apportioned between the persons interested in the income and the persons interested in the capital of the testator's residuary estate in the proportions which at the time of the payment of any such sum the amount of interest then in arrear under the debentures should bear to the amount of principal then due thereunder, this apportionment to be without prejudice to any ultimate adjustment of the rights of the parties upon complete realization of the securities in question, including payment of a final dividend by the society under the scheme.

One of the tenants for life appealed.

Mr. Maugham, K.C., and Mr. A. Adams appeared for the appellant; Mr. T. T. Methold for the remaindermen; Mr. W. Hunt for the executors.

At the conclusion of the arguments, their Lordships reserved judgment, and they to-day delivered judgment, allowing the appeal.

The MASTER of the ROLLS, in his judgment, said that this question turned upon the language of a scheme of arrangement under section 120 of the Companies (Consolidation) Act, 1908. It was binding upon all the creditors of the Law Guarantee Society, including Pennington's executors. It did not follow the rules and principles of the bankruptcy law, and his Lordship thought they were not justified in straining the language to bring it into accordance with the bankruptcy law.

His Lordship then continued:—Substantially the effect of the scheme is (1) to postpone payment of principal moneys until December 31, 1918; (2) to postpone payment of the full contractual interest until the same date, and even then to place it behind the payment of principal; and (3) to pay 3 per cent. interest meanwhile, credit being given for such 3 per cent. in 1918, when full contractual interest is payable. The question is whether, as between tenant for life and remainderman, under Mr. Pennington's will, the former is entitled to receive the 3 per cent., having regard to Clause 21 of the will. His Lordship then read the clause and continued:—In my opinion the tenant for life is entitled. The 3 per cent. is not a general payment an account of the total debt, principal, and interest. I am aware that the successive payments of 3 per cent. may diminish, or even exhaust, the money which would be available for payment of capital in 1918. That is often the operation of such a clause. There is no equitable rule which prevents full effect from being given to the express language of Clause 21.

The appeal must be allowed.

The LORDS JUSTICES delivered judgment to the same effect.

[Solicitors—Messrs. Pennington and Sons.]

K.B. Div. } 1913.
(Darling, Rowlatt, and Atkin, JJ.) } Nov. 19.

WATERS v. BRAITHWAITE.*

Cruelty to Animals — Cow — Overstocking—Custom before sale — Protection of Animals Act, 1911 (1 and 2 Geo. V., c. 27), s. 1 (1).

Where unnecessary suffering is caused to an animal by the owner an offence is committed against s. 1 (1) of the Protection of Animals Act, 1911, even if the act is done in pursuance of a custom and for commercial reasons.

The respondent held liable for allowing a cow to be overstocked with milk before offering her for sale.

This was a case stated by Banbury justices.

Mr. Stuart Bevan appeared for the appellant; the respondent was not represented.

An information was preferred against the respondent under section 1 of the Protection of Animals Act, 1911, charging that he unlawfully did "cause to be cruelly ill-treated" a certain cow by allowing her to be overstocked. The respondent, Thomas Braithwaite, was a farmer and breeder, and on June 12, 1913, he caused the cow and her calf, which was muzzled, to be walked from his farm to Banbury market, a distance of five and a half miles. The cow was a heavy milker, and was in full milk. On her arrival at the market at 11 a.m. her udder was found to be very much distended. The teats were also distended, and they were hard and hot and felt like the skin of a drum. When her legs came into contact with the distended udder milk was forced out, and there were inflamed patches on the udder. Her back was

*Reported by W. L. L. BELL, Esq., Barrister-at-Law.

arched, she had great difficulty in walking, and had to be constantly struck to keep her moving. She was overstocked with milk. The appellant, an inspector of the Royal Society for the Prevention of Cruelty to Animals, remonstrated, and the calf was then unmuzzled and allowed to suck her. The cow had not been milked for 19 hours, and the expert evidence was that cows in full milk should be milked every 12 hours, and that overstocking caused pain and was harmful. For the respondent it was contended before the justices that it was a well-known custom of farmers throughout the country to keep cows unmilked for a like period before offering them for sale, and that it caused no substantial pain, and that interference with the custom would be detrimental to farmers.

The justices found that the udder was overstocked and that the cow suffered pain, but as it was an old-established custom in the district to expose cows for sale in this condition, they dismissed the summons.

By section 1 (1) of the Protection of Animals Act, 1911:—"If any person (*a*) shall cruelly . . . ill-treat . . . any animal . . . or, being the owner, shall by . . . unreasonably doing or omitting to do any act . . . cause any unnecessary suffering," he shall be guilty of an offence.

Mr. BEVAN said that the defence set up had only to be stated to be refuted. In Ford v. Wiley (5 *The Times* L.R., 483; 23 Q.B.D., 203), a case of dishorning cattle, where a similar defence was set up, and in addition the magistrates found that there was an honest belief that the operation was for the benefit of the animals, the respondent was convicted.

MR. JUSTICE DARLING.—Has the case of the docking of horses arisen?

Mr. BEVAN said that it had not come before the High Court, but that magistrates showed a tendency to convict in such cases.

MR. JUSTICE DARLING said that in former times war horses were docked, whilst at the present time in nine cases out of ten the tails were left long.

Mr. BEVAN said that a horse was unable to twitch the skin and so dislodge insects on those parts of the body swept by an undocked tail.

MR. JUSTICE DARLING said he could understand the docking of terriers, for if they fought, as "it was their nature to," they might catch hold of a longer tail.

Mr. BEVAN drew attention to Lewis v. Fermor (3 *The Times* L.R., 449; 18 Q.B.D., 532), in which it was held that the operation of spaying a sow, being customary, and performed for the purpose of benefiting the owner, was not cruelly ill-treating, abusing, or torturing it within the Cruelty to Animals Act, 1849. In the present case the only result of this treatment might be to put a few pounds into the owner's pocket.

MR. JUSTICE DARLING said that it was found that this treatment of cows was customary, the object being that the udder should be very much distended, so that possible purchasers might see that the cows were heavy milkers. It was not denied that this caused great pain; no one alleged that it produced any benefit to the cow, but, on the contrary, it was stated to do her harm. The only benefit there was might be that of the owner. It was said that the respondent caused the animal unnecessary pain. The case proved that the pain was unnecessary as far as the cow was concerned, and the respondent did cause unnecessary suffering by omitting to have her milked, or preventing her from being milked by muzzling the calf. If the custom of doing this did exist, it was time that it ceased, and people must find some other means of judging whether a cow was a good milker or not. That class of case had been considered in Lewis v. Fermor (*supra*). The headnote was: "A person who, with reasonable care and skill performs on an animal a painful operation, which is customary, and is performed *bona fide* for the purpose of benefiting the owner by increasing the value of the animal, is not guilty of the offence of cruelly ill-treating, abusing, or torturing the animal within the meaning of 12 and 13 Vict., c. 92, section 2. even though the operation is in fact unnecessary and useless." Some parts of Mr. Justice Wills's judgment did not seem to go that length; he said at page 536:—"In my opinion the proper view is that if the person who performs the operation entertains an honest belief that what is done will benefit the animal, he is not liable to be convicted. The belief may sometimes be erroneous, but we must be careful that we do not try to teach new, though perhaps improved, views on matters within the area of fair scientific discussion by means of the criminal law." But even if the case decided what the headnote said it did, it had been considered in the later case of Ford v. Wiley (*supra*). Mr. Justice Hawkins said at page 225:—

"If the law were that any man or any body of men could in his or their own interests, or for his or their pecuniary benefit, cause torture and suffering to animals without legitimate reason, and could, when charged with cruelty, excuse himself or themselves upon the ground that he or they honestly believed the law justified them, though in fact it did not, it is difficult to see the limits to which such a principle might not be pushed, and the creatures it is man's duty to protect from abuse would oftentimes be suffering victims of gross ignorance and cupidity."

Lord Coleridge at page 216 said:—"Upon the decision in Lewis v. Fermor (*supra*) we are not called upon to observe. It is upon a different operation, and is open to different considerations. But if my brother Hawkins is right in the view which he has taken of the reasoning on that case I desire to say that I concur in the observations he has made upon it, and I respectfully dissent from it." They were not bound, therefore, to follow Lewis v. Fermor (*supra*) if it went as far as the headnote stated. There was ample authority in Ford v. Wiley (*supra*) and in the statute itself to enable them to say that where unnecessary suffering was caused by some act of an owner it could not be justified on the ground of old custom and of benefit to commercial persons. The case must be remitted to the justices with a direction to convict.

MR. JUSTICE ROWLATT gave judgment to the same effect, and MR. JUSTICE ATKIN concurred.

[Solicitor—Mr. Sydney G. Polhill.]

K.B. Div. } 1913.
(Darling, Rowlatt, and Atkin, JJ.) } Nov. 20.

RADFORD v. WILLIAMS.*

Licensing — Permitting drunkenness — Two drinks ordered — Inquiry by barman — Reasonable step — Licensing (Consolidation) Act, 1910 (10 Edw. VII. and 1 Geo. V., c. 24), s. 75.

Where a sober person orders on licensed premises two drinks at the same time, it is a reasonable step for preventing drunkenness on the premises within the meaning of s. 75 of the

*Reported by W. L. L. BELL, Esq., Barrister-at-Law.