

A witness said he went with the complainant to defendant's office. Complainant asked for the watch. Defendant said he held a receipt for it. When they first came in the office defendant said he had paid no money. When they were going out defendant said he had paid complainant money for the watch.

The Inspector of Factories gave evidence as to inspecting defendant's books.

The defendant said that he had paid complainant 6s. 6d. for the watch, and had received it as a fee. He had been an agent for thirty years. It was no good him swearing against the other witnesses.

Mr. Dyer, S.M., said defendant had no right whatever to buy the watch or take it as security for payment of fees. No license-holder, such as defendant, had any right, under the Act, directly or indirectly, to accept any goods or chattels in payment or as security for the payment of his fees. He said that he believed defendant took the watch as security. He did not believe that defendant paid 6s. 6d. for the watch.

Mr. Mays then withdrew the first charge. He said defendant had once before been convicted for a breach of the Act.

Mr. Dyer said it was a very contemptible and miserable trick to play. He was certain defendant took the watch as security, which the Act said was illegal. He would fine him £5, and costs £2 2s., and order his license to be indorsed.

SHOPS AND OFFICES ACT.

Decision of Dr. McArthur, Stipendiary Magistrate, Wellington, as to whether Unnaturalised Chinese come under the Obligations (as to closing Shops) under Section 21.

Inspector of Factories v. Four Chinese Grocers (10th and 13th August, 1906).

A case having an important bearing upon the question of Chinese competition with Europeans in the grocery line was heard by Dr. A. McArthur, S.M., in the Magistrate's Court, Wellington. Four Chinamen, carrying on business at Petone as fruiterers and grocers, were charged on informations laid by the Inspector of Factories with failing to close their shops on the 28th July at the hour (9 p.m.) required under a requisition gazetted on the 12th July. Dr. Findlay appeared for the prosecution, and Messrs. Skerrett and Blair for defendants.

In opening the case Dr. Findlay said that he apprehended that the defence would rest on two questions, one essentially a question of law, the other a question of fact. The first question raised would be, can an unnaturalised Chinaman, who is a shopkeeper, be fined under section 21 of the Shops and Offices Act for keeping his shop open later than the hour fixed by requisition? The second question would be, what constitutes a grocer within the meaning of the Shops and Offices Act? The Proclamation fixing the hour of 9 p.m. as that at which shops in the Borough of Petone should be closed was gazetted on the 12th July last. The prosecution alleged, continued Dr. Findlay, that defendants were grocers, though they also sold fruit. The latter, however, was, it was submitted, entirely a side line, and defendants were mainly and substantially grocers. He submitted that in the absence of any clear definition, His Worship was bound to look at facts and ask what, in fact, was the business defendants were carrying on. He was instructed that every grocer sold some fruit, and it was part of the business of an ordinary grocer to do so. In the present case, Dr. Findlay said, he hoped to satisfy the Court that whereas a few pounds of fruit was all defendants had on sale, they had between 100 and 200 pounds' worth of groceries. The more difficult question His Worship had to answer was the one of law. He was called upon to deal with one of the most clumsy pieces of draftsmanship that ever disfigured the statute-book. Section 21 provided that "on the requisition in writing of a majority of the occupiers of all shops in the district of any local authority desiring that all the shops therein shall be closed on the evening of every working-day at an hour specified in the requisition, the Minister shall, by notice in the *Gazette*, direct that all shops in the district shall be closed in accordance with the requisition." Clause 5 of section 21, continued Dr. Findlay, said "for the purpose of this section the interpretation of 'occupier' in section 2 is so far modified as to include only British subjects, whether by naturalisation or otherwise." "Occupiers" in section 2 would plainly include Chinese, whether naturalised or not. But the only provision in the Shops and Offices Act for the closing of shops was section 21. Then came clause 5. Counsel recognised the difficulty before him in view of this clause. A case had been before the Magistrate at Blenheim, who had decided that the section did not exclude Chinese. The position was, either His Worship must read clause 5, section 21, as excluding Chinese as occupiers of shops altogether for the purpose of the closing of shops, or section 21 must be read in a liberal way, as required by the Interpretation Act, and let the interpretation help the purpose of the Act and avoid the mischief aimed at. If Mr. Skerrett's literal reading of the section was correct, every European grocer in Wellington must close his shop at the hour fixed by the requisition, but not one Chinaman, unless he were naturalised, need close at all—he could keep his shop open all night. This would apply to the whole colony. He submitted that such a construction of the section was so unfair that it would not be accepted. It was fraught with the greatest injury to the rest of the shopkeepers. The escape from the mischief seemed to counsel to be a simple one. Subsection (5), section 21, was known to be one of those discriminating sections by which it was sought to exclude Chinese from the right of participating in the signing of requisitions. The object was that where there were large numbers of Chinese shopkeepers they should not be permitted to overrule the European shopkeepers and control the hours of closing. Dr. Findlay submitted that clause 5, section 21, should be read to mean that for the purpose of calling into existence the *Gazette* notice an unnaturalised Chinaman was not to count as an "occupier." The startling and unfair results of the other interpretation of the clause raised the question whether the real purpose was so inconsistent with the express purpose that His Worship could not give the real purpose