

Saturday at 10 p.m. would allow assistants to be employed while so open. (Case heard 19th March, 1906.) On an appeal, Mr. Justice Denniston gives a similar decision, full report of which is given. (See page 76.)

Collingwood.—(Factories Act): A firm of sawmillers were fined £5, with 9s. costs, for failing to register their sawmill as a factory.

Christchurch.—(Shops and Offices Act): An auctioneer was fined £1, with 7s. costs, for employing a clerk in conducting a sale on the statutory half-holiday. A similar case against another auctioneer was dismissed on the grounds that the sale did not take place in the auction-room, and that the clerk was not a shop-assistant, but an office-assistant. (For full report see page 75.)

SHOPS AND OFFICES ACT.

Decision of the Supreme Court (Mr. Justice Denniston), that Assistants may be employed during the Hours fixed for the Closing of Shops by Requisition under Section 21.

On the 4th September, 1906, Mr. Scott-Smith, S.M., announced at Blenheim the following judgment forwarded by Mr. Justice Denniston in the following case (Picton):—

The occupiers of all shops in certain trades in the Borough of Picton, of whom the respondent was one, signed a requisition in terms of section 21 of "The Shops and Offices Act, 1904," desiring that all such shops should be closed at 6 o'clock p.m. on Mondays, Tuesdays, Wednesdays, and Fridays, at 10 p.m. on Saturdays, and 1 o'clock p.m. on Thursdays (the weekly half-holiday). This requisition was duly certified by the local authority, and a direction was made by the Minister of Labour that from and after the 20th November, 1905, all such shops be closed in accordance with such requisition. The information in respect of which this appeal is brought alleges that the respondent, on the 17th February, 1906 (being a Saturday), did employ an assistant between the hours of 9.30 p.m. and 10 p.m., when such assistant should be away as prescribed by section 3, subsection (5), of "The Shops and Offices Act Amendment Act, 1905." The Magistrate dismissed the information, and the informant brought this appeal.

Section 3, subsection (1), clause (c), provides that a shop-assistant should not be employed "in or about any other shop if situate within a borough not included in paragraph (b) hereof after one o'clock in the afternoon of the statutory closing day, or nine o'clock in the evening of one working-day in each week, or seven o'clock in the evening on any other working-day."

The question raised on this appeal is, Does this provision prevent the employment of any shop-assistant after 9 p.m. in a shop properly open after that hour under section 21 of the Act of 1904? It is obvious that it was contemplated by that section not only that shops should be open, but that shop-assistants would be employed while so open. It would be absurd to suggest that a majority of the occupiers of shops in a district would request that their shops should be open unless their assistants were present. What has to be decided here seems to be whether the provisions of clause (c) before mentioned are to be read as inapplicable to cases under section 21, or whether its effect is practically to limit the discretion of the Minister as to extension to an hour not later than 9 p.m.

Section 3, subsection (1), clause (d), provides that a shop-assistant shall not be employed "in or about any shop not included in any of the foregoing paragraphs after one o'clock in the afternoon of the statutory closing-day, or such hours on other working-days as may be fixed by the occupiers for the closing of such shops."

The only case in which, under either Act, the hour of closing any shop may be fixed by the occupiers is under section 21 of the Act of 1904. That section is not only repealed by the Act of 1905, but is referred to and amended by it. If it had been intended practically to limit or curtail the right given to occupiers, subject to the discretion of the Minister, by section 21, one would have expected it to be given plainly and not by implication. The provisions of section 3 of the Act of 1905 are declared to be subject to the provisions of the principal Act—that of 1904.

Appeal dismissed, with £7 7s. costs.

OCTOBER, 1906.

Auckland.—(Factories Act): A baker was fined £1, with 11s. costs, on each of two charges of having failed (1) to keep wages record, and (2) to keep overtime-book. Defendant had been previously warned by Inspector.

Gisborne.—(Factories Act): The Borough Council was fined 10s., with £1 8s. costs, for failing to register the municipal stone-crushing plant as a factory. It was shown by the prosecution that there were three persons employed working and feeding the crusher, but counsel for defence argued (1) that the work performed at the stone-crusher was not a handicraft; (2) that to make the Council liable informant must show that the work came within subsection (3) of section 2 of the Factories Act; and (3) that even if it were held that the work was a handicraft, there must be two or more persons employed. The Magistrate ruled that the place was a factory within the Act, but, as it was a test case, ordered a fine as above.

New Plymouth.—(Factories Act): A boot-factory employer was fined £2, with £1 8s. costs, for (1) employing a boy under fourteen years of age in factory; (2) employing same without a permit from Inspector. For the defence it was stated that the manager (who was acting in defendant's absence, and who had recently arrived in the colony) had been misled by the boy's statement. The boy was at first employed at running errands, but latterly was put to factory-work, where an accident happened, and the above proceedings ensued.

Blenheim.—(Factories Act): A firm of tailors was fined 10s., with £3 3s. costs, for having failed to pay wages as prescribed by section 31 of the Act (£13 was due to two employees at £1 10s.