

The facts of the present case are that the defendant is a grocer and keeps a grocer's shop in the Borough of Invercargill wherein goods are kept for sale. The front door of the shop is close to the street. On the evening of the 3rd instant—a Wednesday—about half past 8 p.m., the defendant's son was working in the office, which is part of the shop. There was a light burning in the office, but the shop was not fully lighted as is the case when business is being carried on. The shop-door facing the street was locked, and the light in the office could be seen from the street, and attracted a young man, who knocked at the before-mentioned door, and his knock was answered by the son, who unlocked the door and admitted him. At the time the latter knocked for admittance the son was ruling a ledger connected with the business of the shop. Although the defendant did not know that the son was working in the office that particular evening, he yet knew that he was occasionally in the habit of going back to work on Wednesday evenings. The son lives on the premises with and is employed by the defendant in connection with the shop. Although he is a member of defendant's family, and therefore not a shop-assistant within the meaning of the Act, yet the provisions of the Act relating to the weekly half-holiday and the hours of employment apply to all such members (see the definition of "shop-assistant" in section 2 of the Act of 1904, and subsection (3) of section 3 of the Act of 1905); and it is clear from the provisions of paragraphs (a) and (b) of section 5 of the last-named Act that on the evening of this 3rd October, the son was employed in the shop, and that defendant must be deemed pursuant to paragraph (d) of section 4 of the Act of 1904 to have committed a breach of the Act with reference to the employment of a member of his family after the hour of closing. After the young man had been admitted he asked the son to sell him a couple of boxes of matches, and tendered payment. The son replied that he would get into trouble if he took the money, and he did not in fact take the money, but told the young man he might pay him another time. Whilst the young man was being served the front door remained unlocked. This evidence is not seriously disputed by the son, and I must find that the transaction detailed as to the matches was a sale by the defendant to the young man, though payment therefor was by mutual consent between the son and the young man temporarily deferred.

We have this, then: that on the evening of this Wednesday there was a light in the office which could be seen from the street and attracted passers-by; that the son was doing defendant's work in that office, and whilst so engaged he admitted a customer to whom he effected a sale. The door, indeed, at the time of the young man's admittance was locked, and, although it is possible for a shopkeeper's assistants to be employed in the shop after hours and yet for the shop to be closed, yet if a locked door is unlocked and remains unlocked whilst a customer is admitted and a sale effected, it cannot be said that the shop is closed "at the hour of one o'clock in the afternoon for the remainder of the day" as is required by subsection (1) of section (9) of the Act of 1904. The mere fact that defendant was not aware that his son was in the office on this Wednesday evening will not relieve him from liability. The ruling-up of the defendant's ledger and the selling of his goods were acts within the general scope of the son's authority, and even although the son in so doing was committing acts prohibited not only by statute but by defendant, the latter is nevertheless liable, because if a master could shelter himself behind secret instructions given to his servants, it would be impossible to enforce the penal provisions of the Act: See *Commissioner of Police v. Cartman* (L.R. 1896 1 Q.B. 655) and per Lord Alverstone, C.J., and Lawrence, J., in *Boyle v. Smith* (L.R. 1906 1 K.B. 436). Moreover, in the present case defendant says that he knew his son occasionally went back to work at the shop on Wednesday evenings. The reasonable inference therefore is from all the circumstances that in so doing the son acted with the full knowledge and consent of defendant.

For these reasons I think the offence charged has been proved. Defendant will therefore be convicted and fined £5, and ordered to pay costs—17s.

(Second Case against Same Defendant.)

*Decision by Stipendiary Magistrate, Mr. S. E. McCarthy, 2nd November, 1906.*

Information charging defendant for that he, on the 3rd October, 1906, being the occupier of a shop within the meaning of "The Shops and Offices Act, 1904," and its amendments, did employ a shop-assistant—to wit, his son—at work in connection with the business of his shop later than half an hour after the prescribed time of closing.

Inspector Browett appeared in person; Mr. James Harvey appeared for the defendant, who pleaded "Not guilty."

The information was heard on the 29th October instant, when judgment was reserved, which is now given as follows:—

The facts in this case are precisely the same as those of which proof was given on the hearing of the information charging defendant with failing to close his shop, and on those facts I am asked to convict defendant of employing a shop-assistant—to wit, his son—later than half an hour after the prescribed time of closing—namely, 1 o'clock in the afternoon. The information will have to be altered by deleting the words "shop-assistant" and substituting therefor the words, "member of his family." Since the passing of the Act of 1905 members of a shopkeeper's family are no longer deemed to be shop-assistants, though the provisions of the principal Act relating to the weekly half-holiday and to the hours of employment apply to such members (see subsection (3) of section 3). By the principal Act it is enacted that "shop-assistants shall not be employed in or about the shop or its business at any time after 1 o'clock of the afternoon of one working-day in each week, which day shall (subject to the provision of section fifteen) be the day on which the shop is required to close." The day fixed for closing for the Combined District of Invercargill is Wednesday, and on that day it is directed "that all shops shall be closed on one working-day of each week at the hour of 1 o'clock in the afternoon for the remainder of the day" (see section 9); and it is provided that "if any shop-assistant is employed at any work in connection with the