business of any shop later than half an hour after the prescribed time of closing, the employer commits an offence in respect of each shop-assistant so employed, and shall be liable to a penalty of ten pounds for each breach" (see sections 34 and 36). Section 35 prescribes that "in any proceedings against the occupier of a shop for employing any assistant therein in breach of the Act, the fact of the assistant being found in the shop or office shall be evidence that he was then being employed therein, unless the defendant satisfies the Court that the assistant was not being employed, but was there against the orders or without the knowledge, consent, or connivance of the occupier."

In the present case it is quite clear the defendant's son was working in the shop with the knowledge, consent, and connivance of the defendant. Defendant said, in cross-examination, "it is not usual for my son to tell me he was going into the office. I did not instruct him not to go. I did not instruct him to go. In a case like this he (the son) would suit his convenience. The son knew he had to look after the books. If he did not do them in the daytime he had to do them at night. I told the son not to work on Wednesdays. He could always do the work in the daytime if he liked." Now, seeing the defendant lives over the shop, and that the son was residing with him, of what avail is it for the defendant to go through the empty form of telling his son not to work on Wednesday evening if, knowing that he was in the habit of working on the evenings of that day, he did not see his injunction carried out. But further, defendant swore on the hearing of the information relating to closing that "the son occasionally goes back on Wednesday evening, but not often. I did not know son was in shop. I have been warned by registered letter for back-door trading, and I have had verbal warnings from the Inspector." On the hearing of this information defendant did not allege he had told his son not to go back to work, and as both informations relate to the one set of facts and were heard on the same day I am entitled to look at any discrepancies in the evidence for the purpose of testing the credibility of the various witnesses.

However, the matter does not end here. Section 35 only governs those cases where the assistant is merely *found* in the shop; when, however, he is *found working*, different considerations apply. In such cases it is provided by section 5 that "in order to prevent any evasion or avoidance of the limitation imposed on the employment of shop-assistants by section 4, the following provision shall apply in the case of every shop-assistant: (*b.*) The shop-assistant shall be deemed to be employed in the shop if he, in fact, does any work in or about the shop, whether the occupier has assented thereto or not." Here the son was about his father's business in the shop, and even assuming the former was there without the father's knowledge, still the latter is liable for the act of the son to the same extent as if he had expressly authorised it, and it will be observed that the master is liable under section 5 even although the work done is not within the general scope of the servant's authority. Wherever that is the case the master will be liable apart from the provisions of section 5.

I am of the opinion, therefore, that the offence alleged has been proved; but, inasmuch as the defendant has already been convicted once on the same set of facts as are the subject of the present information, no conviction will be recorded, and the information will be struck out.

Factories Act, 1901.

re consumptive patient working in a factory.

(Supreme Court, Wellington.)

"Factories Act, 1901," Section 48—Right to discharge Consumptive Patient from Factory—Readiness to teach—Unreadiness to be taught.

"The Factories Act, 1901," section 48, contains no prohibition against allowing a consumptive patient to work in a factory.

Where an apprentice owing to ill health was not ready to be taught during the time the master contracted to teach him, but it was alleged that the master told him if he came back "fit" the master would teach him again, and the apprentice returned after the expiration of the time contracted for, not free from the original disease, and the master refused to teach him, there is no breach of the new contract.

M. Chapman for the appellant, Hollings for the respondent.

Judgment of Stout, C.J.

I am of opinion that this appeal must be dismissed. The Magistrate has founded his decision on the ground that, as the appellant was suffering from consumption, his master was not bound to employ him, and, if he did, would be contravening the provisions of section 48 of "The Factories Act, 1901," if he allowed the appellant to work at his rooms and carried on there the business of a dental surgeon. It does not seem to me that his decision can be supported on this ground, for I agree with counsel for the appellant that section 48 of "The Factories Act, 1901," contains no prohibition against allowing a consumptive patient to work in a factory. There seems to be much need for an alteration of the law in this respect.

I think, however, that the judgment of the Magistrate can be supported on the ground that there was no breach of the contract during the time of the existence of the contract. This was a contract to teach the appellant for three years from January, 1901, and during that time there was no breach of the contract.

The respondent was ready to teach the appellant during that period, but, unfortunately, the appellant was not ready to be taught. He went away in October, 1902, to try to be cured, and he did not come back and ask that his teaching should be continued until January, 1905. When he came back the respondent refused to teach him further. That being so, he must either show that