

An office, on land in which stood a factory, stables, and the dwellinghouse of the manager, all in the same enclosure, which was used for factory purposes only, men being employed outside the factory building, is excluded by the terms of section 2 of "The Shops and Offices Act, 1904," from the operation of section 23 of the Act.

White, for appellant: Section 2 of "The Factories Act, 1901," defines a factory as being a building, office, or place. "Place" is associated with the preceding words, and workers in the open are not included (Maxwell on Statutes, 491). The statute is clear, and must be read literally, and it indicates that only an office within a factory—i.e., a building—shall be exempted: *Harcastle Stat.*, 75; *McKenzie v. Hogg* (13 N.Z. L.R., 158, at p. 162). An exemption is claimed, and the onus rests on the claimant. On the principles affecting the construction of statutes he cited *Garnett v. Bradley* (3 A.C. 944, at p. 966); *Att.-Gen. v. Sillem* (33 L.J., Ex. 92, at p. 130).

Raymond, for respondent: The sole question is, Is this an office "within a factory"? *Vide* "Shops and Offices Act, 1904," section 2. The factory and shop and office legislation affect similar subject-matter, and should be read together. The definition given to a factory under "The Factories Act, 1901," is therefore properly referred to. If a factory includes only buildings, persons employed at wool-scouring, brickmaking, and other out-of-door employments are not entitled to the benefit of the Act. Section 61 of "The Factories Act, 1901," gives an extended meaning to the term, and is indicative of the Legislature's intention to capture all employments of a handicraft or industrial nature wherever carried on. If the popular meaning of "factory" is accepted, as it may be—*Shanaghan v. Tanner* (7 Gaz. L.R. 505, 24 N.Z. L.R. 970)—respondent remains within the exemption.

Judgment of Chapman, J.

This is an appeal from the decision of Mr. C. A. Wray, S.M., dismissing an information against respondent company for failing to close its office at 1 p.m., and to keep it closed for the remainder of the day, in terms of section 23 of "The Shops and Offices Act, 1904."

The situation of the office in question is as follows: The factory and office are on the freehold land of the company, comprising an acre and a quarter of land, and on this there stood a factory, the stables, the offices, and the dwellinghouse of the manager, all in the same enclosure. Men were employed outside the factory building, and the whole of the area mentioned was used for factory purposes only. It would be impossible to carry on the business of the factory lucratively if the office staff was not present when the factory was working. The company has an export trade, and telegrams arriving on Thursday and Saturday afternoons require immediate attention.

Section 23 of the Act of 1904 provides in terms that every office shall be and continue so closed. A proviso exempts certain offices. In section 2 an interpretation of "office" excludes "any building or room in which the clerical work of a factory or shop is carried on if situate within the factory or shop." "Shop" is defined so far as to mark the difference between a shop and a wholesale warehouse. Factory is not defined. The Magistrate considered that he was entitled to look at "The Factories Act, 1901," for the definition of a factory, and I think he was right. That statute, like the one under consideration, is passed to ameliorate and regulate the conditions of labour, and they may at least be described as kindred statutes. If a definition is given by statute to an expression, it is not unreasonable to assume that, in related Acts at least, the Legislature has its own definition in mind in using that expression: *Clark v. Powell* (4 B. and Ad. 846); *Smith v. Lindo* (4 C.B. (N.S.) 395).

The definition of "factory" in "The Factories Act, 1901," is: "'Factory' means any building, office, or place in which two or more persons are employed directly or indirectly in any handicraft, or in preparing or manufacturing goods for trade or sale." In relation to the preparation or manufacture of goods for trade or sale, this does not materially depart from such a definition as a Court would have to make for itself, save in the test arising from the number of persons employed. It is, moreover, probable that a Court would in the same way have adopted a definition as wide as that given by section 61 of the Act, which enacts that all the buildings, enclosures, and places treated as one factory in carrying on its operations shall be deemed one and the same factory, notwithstanding the intervention of a road, stream, or intermediate building not forming part of it.

In this view it is, I think, immaterial whether the definition in the Factories Act is looked at or not. Mr. White, however, argued that if it is to be read into the Act of 1904 it is to be read as a restrictive definition, and its terms, including the word "place," must be read as referring only to buildings or places of that nature in which productive labour is employed. This gives a very restricted value to the expression "place."

To give effect to this argument would be to exclude from the protection of the Act many persons whose work is immediately connected with the productive work of the factory who happen to work in open spaces, though in co-operation with others who are under cover. Even the older cases, which, so to speak, took out of the factory persons working in wide open spaces such as slate-quarries, did not go so far as this, and in those cases there were no factory buildings, but only shelter-sheds connected with the work: *Kent v. Astley* (L.R. 5 Q.B. 19; 39 L.J., M.C. 3; 10 B. and S. 802); *Redgrave v. Lee* (L.R. 9, Q.B. 363; 43 L.J., M.C. 105). The definitions used in such legislation as this have to be expanded from time to time, and this has been effected in England by a comprehensive definition of the expression "factory" in section 149, subsection (5), of "The Factory and Workshop Act, 1901."

We are, however, dealing with the definition in our own Act. It seems to me that that definition was intended to cover the very situation disclosed in this case, and to bring within the factory all the premises within the curtilage or precincts, including buildings and open spaces, so long as they are not excluded from being used in connection with the work of the factory. In this case the premises used for office-work were within the factory in this sense and in the sense intended in both statutes. I think, therefore, that the Magistrate was right. The appeal is dismissed, with £5 5s. costs.