

establishment and partly in the other, such last person shall, for the purposes of the weekly half-holiday and the wages therefor, be deemed to be employed exclusively in that part of the establishment in which he is chiefly employed, as certified by the Inspector."

This section perhaps might have been, with advantage, carried further, and made expressly applicable to cases like the present, where there is a combination of a shop and a factory. Be this as it may, however, it is a clear indication of the mind of the Legislature, and it shows that where a factory and a shop are combined the intention of the Legislature is that the employee ought to be deemed to be employed exclusively in that part of the establishment in which he is chiefly employed.

Now, it is clear from the evidence that the assistant was "chiefly employed" in delivering the bread. Indeed, the employer admits this in so many words, for he swore "the great bulk of his work is the delivering of bread." And the interpretation clause of the Act of 1904 shows that, being so employed, the assistant must be deemed to be "a shop-assistant," and not a factory-worker. The employer must be convicted upon this information. At the same time, I am satisfied that the defendant had no intention of breaking the law, and, as this is a test case, a nominal fine of 1s. only will be imposed, together with the costs of the prosecution. In any future conviction under similar circumstances a substantial fine will be inflicted.

#### OCTOBER, 1907.

*Wellington.*—(Scaffolding Act): A case against a firm of builders, for failing to give notice of intention to erect scaffolding, was dismissed. The scaffolding was erected by a sub-contractor, and the Magistrate held that defendants were not liable.

#### NOVEMBER, 1907.

##### *Auckland.*—

#### SHOPS AND OFFICES ACT.—WHEN IS A BUSINESS PLACE CLOSED?

The Inspector of Factories at Auckland proceeded against a shopkeeper for failure to close his shop at 1 o'clock on the statutory closing-day. Mr. W. Fallon conducted for the prosecution, and Dr. Bamford appeared for the defendant.

The case was one in which the question was involved as to whether two businesses could be carried on in one shop by separate persons, when the Act demanded that a statutory closing-day should be observed in regard to one of the businesses, the other business being exempt. The shop occupied by defendant is carried on in his name as a fruit-shop, but a portion of it is used by his wife as a florist, her name being over one window, and her business being, according to the defendant's statement, conducted by her as entirely distinct from his. This, however, did not come up to the requirements of the Inspector, who said that to comply with the Act it was necessary that the florist part of the shop, the business which has to observe the half-day closing-hours, must have a permanent and distinct entrance, and be so divided from the other shop that no communication can take place between the two. Defendant's wife had offered to put a shutter along the counter, shutting off the florist section entirely, but this, the Inspector held, was not sufficient. If both shops closed, of course no objection would be made to the business arrangement.

Dr. Bamford said that defendant's wife had carried on the florist business for ten years, running it quite separate from her husband's, and he contended that it really came under a similar category as a bookstall, the stock-in-trade of which might be closed up, although the stall was an open one. In any case, he contended that the prosecution should have been against defendant's wife, and not the husband, who was at perfect liberty under the Act to carry on his business.

His Worship remarked that there seemed to be no provision in the Act for penalising a person that allowed another to carry on a business in his premises. He decided to visit the shop in question, and meantime reserved his judgment.

His Worship in giving judgment said that the complaint was made by the Inspector that in breach of section 9 of "The Shops and Offices Act, 1904," defendant being the occupier of a shop, failed to close his shop at 1 o'clock on the statutory half-holiday, Wednesday, the 2nd October. Defendant was the lessee and occupier of premises in Lower Queen Street, in which he carried on exclusively the business of a fruiterer and refreshment-room keeper. The sole entrance was from Queen Street, in the middle of the building, and on each side was a show-window, one bearing the name of defendant and the other the name of his wife. For some ten years defendant's wife had, with his consent, had the exclusive use of a portion of the premises, and there carried on, entirely on her own account, the business of a florist. He saw no reason to doubt defendant's testimony that he had no interest whatever in the business carried on by his wife, and that she had no interest in his. On the statutory half-holiday defendant's wife discontinued her business at 1 p.m., and that portion of the premises used by her was effectively shut off by a wooden screen or partition, securely fixed so that the stock of flowers, &c., belonging to her could not be reached or procured by the defendant or those serving in the other portion of the premises. No flowers were sold or exposed for sale on Wednesday afternoons in any part of the shop. The defendant admitted that he carried on his business as a fruiterer and refreshment-room keeper, but contended that he was entitled to do so as the premises occupied and used by him was "a shop wherein was exclusively carried on the business of a fruiterer and refreshment-room keeper." A shop was defined as "any building or place in which goods are kept or exposed for sale, or in which any part of the business of a shop is conducted," and, having regard to the facts established by the evidence, he was of opinion that the defendant's contention must be upheld. The information was dismissed without costs.