

Palmerston North.—

MASTER AND APPRENTICE.

At the Stipendiary Magistrate's Court, on the 29th October, 1907, the Stipendiary Magistrate delivered judgment in the case in which an employer made application under section 14 of "The Master and Apprentice Act, 1865," for the cancellation of the indentures of an apprentice, on the ground that the apprentice's condition of health rendered it impossible to teach him.

The evidence given, said His Worship, was to the effect that the boy was subject to fits, and that it was dangerous to employ him near machinery such as it was necessary to use in a cabinet-maker's shop. Evidence was given for the defence that the doctor had stated that the boy would probably grow out of the fits, and also that it was not absolutely necessary for the boy to work with machinery in order to learn the trade of a cabinetmaker, as it was shown that there were two rooms in the establishment, one in which there was machinery, and another in which there was none. In this case the employer would be justified in giving instructions to the boy that on no account, either of his own accord or by the instructions of any one else, should he go into the room where the machinery was kept, and if he did so, and injury resulted, he would, in his (His Worship's) opinion, be guilty of serious wilful misconduct within the meaning of the Workers' Compensation Act. Under those circumstances the application was refused.

Wellington.—

SHOPS AND OFFICES ACT.—RESTAURANT OR REFRESHMENT-ROOM HELD TO BE A SHOP.—ANY AGREEMENT AFFECTING SHOP-ASSISTANTS IS SUBJECT TO THE SHOPS AND OFFICES ACT.

(1907, November 1 and 2.—Supreme Court, Wellington.—Cooper, J.)

A restaurant or refreshment-room is a "shop" within the provisions of section 4 of "The Shops and Offices Act, 1904." A recommendation of the Board of Conciliation, which has become effective through none of the parties referring the dispute within the statutory time to the Court for settlement, operates only as an industrial agreement, and, as such an agreement is not equivalent to an award of the Court, the recommendation does not override the provisions of section 4 of "The Shops and Offices Act, 1904," regulating and limiting the hours of labour.

Judgment of the Court.

COOPER, J.—The respondents are restaurant-keepers carrying on business in Wellington. Separate informations were laid against them by the appellant, who is the Inspector of Factories, Wellington. For convenience both informations were heard together by the Stipendiary Magistrate, Wellington, and he dismissed each charge. The present appeal is from his decision.

Each appellant was charged for that he, being the occupier of a shop within "The Shops and Offices Act, 1904," and its amendments, did, during the week ending the 6th April, 1907, employ his male shop-assistants for more than fifty-two hours, excluding meal-times, contrary to subsection (a) of section 4 of the Act.

At the hearing before the Magistrate the following facts were admitted: (1) That each of the appellants was a restaurant-keeper; (2) that in each case the employees mentioned in the information were waiters; (3) that in each case each of such employees worked more than fifty-two hours in each week.

The following facts were proved:—

(1.) That in a dispute between the Wellington Amalgamated Society of Cooks and Waiters (an industrial union of workers) and the Licensed Victuallers' Association (Wellington Branch), the Conciliation Board for the Industrial District of Wellington, on the 26th October, 1906, recommended, *inter alia*, as follows:—

Hours of Work in Restaurants.—The hours of work in restaurants shall not exceed sixty-five in any one week, and in the case of females they shall not exceed the number of hours prescribed by "The Shops and Offices Act, 1904." The working-hours shall be between 5.30 a.m. and 8 p.m.

(2.) That the recommendations were to take effect as from the 29th November, 1906, and to remain in force until the 30th November, 1908.

(3.) The Board's recommendations were duly filed in the office of the Clerk of the Industrial District of Wellington.

(4.) Within the period of one month from the filing of the recommendations no application was duly filed in the office of the Clerk to refer such dispute to the Arbitration Court for settlement.

(5.) The employees referred to in the informations have been working under the Board's recommendations, and have been paid on a basis of sixty-five hours a week in pursuance of the recommendation.

(6.) Several restaurant-keepers (including one of the respondents) have been proceeded against by the Labour Department in the Arbitration Court for a breach of the recommendations, in working their employees for more than sixty-five hours in a week, and have been fined in respect of such breaches.

The Magistrate held "that the facts and circumstances admitted and proved were insufficient to support the informations," and consequently dismissed each information.

The question for the opinion of the Court is whether his determination was erroneous in point of law.