

the definition of "employ" in the interpretation clause (section 2) of the Act did not apply to such work as was proved to have been done in this case, but was confined to factory work—work upon the substance or texture of a manufactured article. The words of the interpretation clause taken by themselves did not seem apt to meet the work and incidents of a retail shop, to which it is here sought to apply them. They were taken, as was pointed out by Mr. Stringer, from the definition of "manufacturing process" in "The Factories Act Extension Act, 1867," 30 and 31 Vict. c. 103, an Act which is confined to factories of certain specific kinds. Even in factories, however, work of the kind mentioned in the case—work outside the actual manufacturing, such as putting up, wrapping, marking, and such like—would certainly be "adapting" an article "by way of trade or for sale," and within the Act. Unless, therefore, retail shops are not within the New Zealand Act, I think persons doing the acts mentioned in the case would be "employed" in the sense used in that Act. The definition of factory in the New Zealand Act—"Any manufactory, workshop, workroom, or other establishment or place of business where any female child or young person shall be employed"—is very much wider than the similar definition in the English Act, and indicates, I think, that a wider scope is to be given to the New Zealand Act. But apart from the interpretation section of the Act we have section 10. That section, by subsection (1), while declaring that "nothing in this Act shall be deemed or taken to prevent the employment of saleswomen in retail places of business, where goods are exposed for sale, so long as such retail places are open to the public," adds, "but saleswomen or others employed or retained for work after the closing of such places of business to the public shall continue to be under the operation of this Act." This section seems to show clearly that the Legislature assumed that, but for the saving clause, the saleswomen or others employed in retail places of business, where goods are exposed for sale, would be subject to the Act, and that when employed or retained for work after the closing of such business they become, or as the Act puts it "continue," under the Act. Now, the only sense in which these persons can be held to be or continue under the operation of the Act is by treating their work as "employment" under section 5 of the Act. If the construction the appellant claims to put upon the Act is correct the saving clause in subsection (1) of section 10 would be unnecessary, and the provision following it inoperative. The use of the words "retained for work," after employed, in subsection (1) of section 10, might be taken to intend as to retail shops a more extensive prohibition of work than that given by the interpretation section and section 5. I think, therefore, that the language of the Act carries out, however artificially, the obvious intention of its framers—that saleswomen or others employed or retained for work in retail places of business after closing of such places of business to the public are "employed" within the meaning of section 5 of the Act. A point was raised, but not strongly pressed, by the appellant that the defendant did not "employ" the saleswomen. The case states him to be "the manager" of the company which carries on the business. It was, however, admitted that he was in charge of the establishment, and that the work complained of was done under his directions. I think this is sufficient to make him "a person employing" the saleswomen within the Act. A further point was suggested during the argument—that the information did not allege any offence, but only brings the persons within the Act, and that the specific offence alleged should be "employing" in contravention of the Act. Even if this is so, I think that as the facts show the commission of an offence the conviction is good. *Cooper v. Hamilton* (6, N.Z. L.R., S.C., page 598) shows that a Magistrate may convict without amendment, even where there is a defect in form, or a variance between the information and the evidence. I think that applies equally where no offence is specifically or formally shown in the information as where a different offence is shown from that proved. No amendment was asked for, and no objection taken, and, undoubtedly, if the Magistrate were now called upon to draw up a conviction, he could frame it on the offence proved. Appeal dismissed, with £7 7s. costs.

Mr. Stringer for the appellant; Mr. Martin for the respondent.

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