

effect. He submitted that Chinese, whether naturalised or not, were "occupiers" in a general sense under sections 2 and 32 of the Act, but not "occupiers" for the purpose of signing a requisition.

James B. Lindsay, Inspector of Factories, stated that the requisition was signed by the Petone grocers, none of whom were Chinese. The four defendants were the only Chinese grocers there, several others selling fruit only. Most of the stock displayed in defendants' windows was fruit, but the groceries kept were of higher value.

Mr. Skerrett, for the defence, said that two of the defendants were not naturalised. He submitted, therefore, that section 21 did not apply to them. He was not concerned in the least to admit or deny that his construction of the section produced unfairness. He based his argument on the express language of the section, and submitted that His Worship could not limit or qualify it. Section 21 created a duty to close shops, section 32 pointed out that the "occupier" was the person who was to perform this duty, and subsection (5), section 21, excluded unnaturalised British subjects. He submitted that for all the purposes of section 21 two of the defendants were not occupiers, and therefore not liable. Dr. Findlay had suggested that subsection (5) must be restricted as defining an "occupier" only for the purpose of the requisition. There was, he contended, no justification for that. No Court had a right to read in restricted words to a penal Act. The principle of subsection (5), section 21, was—no representation, no obligation. If Chinese were not to sign the requisition, they were not to close in accordance with it. The short point was that section 21 imposed an obligation on any who were liable, and then said that for the purposes of the section it was not to include unnaturalised persons. Before a duty could be imposed upon defendants under section 21, they must be "occupiers" under that section. The second ground of defence was that these businesses were substantially and really fruiterers. Added to that, they sold a few lines, such as tinned materials, condiments, tobacco, and so on. It was quite incorrect to say, however, that grocery was the dominant business, and that fruit was merely a side line.

Evidence for the defence was given by the four defendants and another witness, all in the direction of seeking to prove that the shops of defendants were mainly fruit-shops.

Reserved judgment was given on the 13th August.

Two questions arose in the cases. One was, can a non-naturalised Chinaman, who is a shop-keeper, be convicted under section 21 of the Act of 1904? The second was, what constitutes a grocer?

Taking the first question, His Worship said that two of the defendants were not naturalised, whilst the other two were. Section 2 of the Act of 1904 provided that "in this Act, unless inconsistent with the context, 'occupier' means the person occupying any building, enclosure, or place used or intended to be used as a shop or office." It was clear that the four defendants came within the scope of this definition. Section 32 provided that, "In every case where, by this Act, (a) any rule is required to be observed in a shop or office, or (b) any requisition of any Inspector is served on the occupier of shop or office, or (c) any requirement, obligation, or provision is imposed or enacted with respect to a shop or office, the conduct of its business, the treatment of the persons employed therein, or otherwise, it shall be the duty of the occupier to cause such rule, requisition, requirement, obligation, or provision to be faithfully observed or complied with." Here again, His Worship said, he considered that the term "occupier" was used in the sense given to it in section 2, and that the four defendants came under the provisions of this section.

Section 21 of the Act was next quoted by His Worship, together with subsection (5), providing that "for the purpose of this section the interpretation of 'occupier' in section 2 is so far modified as to include only British subjects, whether by naturalisation or otherwise." The whole issue in the first question to be decided in these cases lay, he said, in the meaning to be given to the words, "for the purpose of this section," in subsection (5). Were occupiers who were not British subjects to be excluded from the operation of section 21 altogether, or were they to be excluded only in the preparation of the requisition, but otherwise to come under the provisions of the section? It was the duty of the Court to give a fair interpretation of the words of a section, while not losing sight of the true purpose of the Act. The Court ought not, in his opinion, to strain the meaning of the words simply because some unlooked-for result might follow from a candid interpretation. If such were the case, it was the duty of the Legislature, and not of the Court, to remedy matters. The intention of the Legislature must be gathered from its language, and when that language was clear and unequivocal the Court must be bound by it. If the language were equivocal or ambiguous the Court must assign that meaning which, when taken with the context, would best advance the purpose of the Act.

Section 32 did not assist him, inasmuch as he considered the word "occupier" was there used in the meaning given to it in section 2. Subsection (5) of section 21 clearly limited the meaning of "occupier" as defined in section 2 to "occupiers being British subjects." He thought the true intention of the Legislature would be got at without any straining of language by reading into the section the words in parenthesis, as follows: "(1.) On the requisition in writing of a majority of the occupiers (being British subjects) of all the shops in the district of any local authority desiring that all the shops therein shall be closed in the evening of every working-day at an hour specified in the requisition, the Minister shall, by notice in the *Gazette*, direct that, from and after a day therein mentioned, all shops in the district shall be closed in accordance with the requisition. . . . Provided that no requisition shall be acted upon by the Minister unless the local authority has certified that the signatures to the requisition represent a majority of the occupiers (being British subjects) of all the shops within the district."

In his opinion, therefore, continued the Magistrate, non-naturalised persons could take no part in the requisition, but, notwithstanding this, they were bound by the provisions of the section. This might be "taxation without representation," but the remedy was in the hands of the non-naturalised persons themselves. They might become naturalised. His Worship's answer to the