

in a similar case in which a chemist carrying on his business also sold photographic cameras, and the question was whether he exclusively carried on the business of a chemist. In the amending Act of 1905 the word "chemist" was inserted in the excepting clause of the Act, and was in exactly the same position as the business of a florist was under the present Act. Meanings were assigned to the different terms in the Act, but there was no meaning attached to the word "florist." He must therefore look upon it as ordinarily accepted by the public and the trade. In the case of the chemist the late Chief Justice held that, as chemists ordinarily stocked and sold photographic cameras, they came within the exemption of the Act. In the circumstances he must dismiss the present case.

Costs were not allowed defendant. The Inspector was allowed fourteen days in which to appeal. He intimated that the case had been mainly brought for a definite interpretation.

CLOSING UNDER A REQUISITION.

Judgment of Court of Appeal.

On the 24th June, 1909, at Nelson, Mr. Justice Cooper gave his judgment in the appeal case, in which S. Tyson was the appellant and a Nelson ironmonger the respondent. This was an appeal from the decision of the Stipendiary Magistrate, Mr. H. Eyre-Kenny. The following are extracts made from it:—

The appellant is the "Inspector" in Nelson under the provisions of the Shops and Offices Act, 1908. The respondent is an ironmonger carrying on business in Nelson, in a shop within the meaning of that Act. He was charged with a breach of section 25 of the Act, by failing to close his shop at an hour directed by the Minister and notice in the *Gazette*, in accordance with a requisition certified by the local authority under the provisions of subsection (7) of that section. The Magistrate held that the direction of the Minister was not conclusive evidence that the provision of the Act had been complied with, and that he could go behind it and examine the certificate and the requisition; and, having done so, he held that the requisition was not signed by a majority of the occupiers of all shops carrying on the particular trade carried on by the respondent. He therefore held the requisition, the certificate, and the notice invalid, and dismissed the information.

There are two grounds of appeal: (1) That the notice in the *Gazette*, and the direction given by the Minister, and the certificate of the local body are conclusive evidence that the requirements of section 25 have been complied with, and that the requisition has been signed by a majority of occupiers of all the shops of the particular trade within the borough, and that the Magistrate was wrong in making an inquiry into the validity of the requisition; (2) that, if the requisition can be inquired into, then the Magistrate was wrong in holding that it was not signed by the requisite majority.

The first ground of appeal cannot, in my opinion, be sustained. There is no provision in section 25 of the Act making the notice in the *Gazette* conclusive evidence of the matters stated therein, and there is no general provision in the Act to that effect, although there are certain particular matters in which the Act states that the *Gazette* notice shall be conclusive evidence. Under section 10, subsection (6), the *Gazette* notice specifying the combined districts is made conclusive evidence of the matters stated therein; so also by section 16, subsection (3), the *Gazette* notice is made conclusive evidence of the statutory closing-day appointed by the Minister; and subsection (10) of section 17 makes the *Gazette* notice conclusive evidence of the result of a poll, and of the appointed day determined by such poll. The general provisions applying to *Gazette* notices are contained in sections 32 and 46 of the Evidence Act, 1908, and under those sections the *New Zealand Gazette* is made *prima facie* evidence of any order, regulation, or other instrument issued under the authority of a Minister of the Crown in New Zealand. Section 46 enacts that, where by any Act a Minister of the Crown is authorised to perform any act, power, function, or duty, the *Gazette* containing a notice of the doing, exercise, or performance of any such act, power, or duty shall be *prima facie* evidence that the same was lawfully done, exercised, or performed.

Unless a statute makes a notice or certificate conclusive evidence of the matters contained therein, it is *prima facie* evidence only, and the rules stated in sections 32 and 46 of the Evidence Act apply. There is not only no provision making the *Gazette* notice conclusive evidence; there is also no provision making either the Minister's direction or the local body's certificate conclusive.

The position of matters was, therefore, that, in the absence of any such provision, the production of the *Gazette* notice was *prima facie* proof of the validity of the direction, the requisition, and the certificate, and, coupled with proof of the fact that the respondent upon the date stated in the information kept his shop open beyond the hour fixed in the notice, established a *prima facie* case only, capable of rebuttal by evidence that the requisition, or the certificate, or the notice was not authorised by the statute.

It is only upon a valid requisition certified by a valid certificate that the Minister's jurisdiction to give the direction which, under section 25 of the Shop-hours Act he is authorised to give, arises. If the requisition or the certificate is invalid, the notice and direction are ineffective. The requisition must be signed by a majority of the occupiers of all the shops in the particular trade in the district of the local authority, and the Minister can only act upon it when it is accompanied by a valid certificate.

The facts found by the Magistrate are that the requisition was signed by two firms only. Each of these firms carried on the business of ironmongery and hardware dealers in their respective shops. Practically this business was their exclusive business. The defendant carried on a business the main part of which was ironmongery and hardware; but he sold some other classes of goods. There were a number of other shopkeepers in the district carrying on general businesses of which the sale of ironmongery and hardware formed a substantial, but not the main, part of their businesses. The Magistrate held that these shopkeepers were all ironmongers, and were carrying on the particular trade of