

plus the risk from defective machinery. There must be an assent to undertake the risk, with the full appreciation of its extent."

In *Williams v. The Birmingham Battery and Metal Company* (1899, 2 Q.B., 338) *Smith v. Baker* is discussed and approved. Lord Romer (page 345) said, "In order to escape liability the employer must establish that the servant has taken upon himself the risk without the precautions. Whether the servant has taken that upon himself is a question of fact to be decided on the circumstances of each case."

As to what constitutes a defect, in *Reedy v. The King* (3 G.L.R., 286) it was held that the absence of so ordinary an appliance as a pawl on a winch, which would have the effect of arresting the motion of a winch-barrel on the machine getting beyond the control of a workman, was absence of reasonable appliances and evidence of actionable negligence.

Also in *Stanton v. Scrutton* (62 L.J. Q.B., 405) it was held that the absence in the conditions of the machinery, taken as a whole, of any sufficient safeguard taken against danger arising from an ordinary and probable occurrence as a slip in the management of a winch is a defect.

For the defence Dawbarn's "Employers' Liability," 3rd ed., pp. 18-19) has been quoted: "A master is not responsible for latent defects, but it is his duty to test for those which may arise in the course of wear. This is not a personal duty cast upon him, and, if he delegate it to a competent person, that will exonerate him, even if such person or servant neglect to do so. So also, as a matter of defence, a master can say the servant knew of what was wrong as well and completely as himself." With all due deference to the learned author, I am of opinion that these two statements require considerable qualification before they can pass as good law at the present time. It must be remembered that many old cases are no longer of authority.

I consider the defendants were liable in supplying a defective winch; further, I consider that the plaintiff did not voluntarily agree to accept the risk of the work with the additional risk of a stiff handle. I do not consider that the plaintiff was guilty of contributory negligence in having his pawl up, first, because the evidence does not disclose that he was instructed to keep it down, and, secondly, if instructions were given generally, they did not apply to his winch, which was not put into position till after the pile was taken from the smaller punt. I do not consider, however, that plaintiff is entitled to the full amount claimed.

Judgment will be for the plaintiff for £30 and costs, less the amount of compensation already received.

CLAIM FOR WAGES DISALLOWED.

In the Magistrate's Court at Wellington, before Dr. McArthur, S.M., on the 14th December, 1909, a journeyman tailor sued his employer to recover £20 16s. 3d., amount of wages alleged to be due to plaintiff for services rendered as a tailor. Defendant employed claimant on full time; but with the advent of the winter season work slackened, and some of the employees had to be put off on broken time. Plaintiff said that he was engaged at the rate of £3 5s. per week, and he claimed the full time under the award. After hearing the evidence, Dr. McArthur, S.M., remarked that it was very clear to him that, when the slack time came along last winter, defendant called his employees together and pointed out to them the state of his business, and advised them to obtain other employment if they could, adding that he would be glad to give them work again whenever it was available. This arrangement was carried out for some time, but now plaintiff claimed full time wages for this period. Judgment was for defendant, with costs £3 9s.

SHOPS AND OFFICES ACT.—CHEMIST FAILING TO CLOSE AT TIME FIXED BY ACT.

In the Magistrate's Court at Hastings, 14th January, 1910. Before Mr. S. E. McCarthy, S.M.—Inspector of Factories *v.* a local chemist.—Information alleging that defendant, being the occupier of a chemist's shop situate within the Borough of Hastings, did, on the 20th November, 1909, at the time when such shop was directed by law to be closed—namely, at 9.45 on the evening of the said day—unlawfully keep such [shop open.—Inspector Murray appeared in person; Mr. Dolan appeared for the defendant, who pleaded "Not guilty."

The case was heard on the 10th December, 1909, on which day judgment was reserved, which is now given as follows:—

This is an information laid pursuant to sections 25 and 39 of the Shops and Offices Act, 1908. The former section creates the offence; the latter fixes the penalty. Subsection (1) of section 25 provides for the closing of all shops in the district of any local authority on the evening of every working-day other than the day fixed for the weekly half-holiday, on requisition in writing made by the majority of the occupiers of such shops to the person and in the manner prescribed. Subsection (2) provides that the requisition and direction to close may be limited to any particular trade. The chemists within the Borough of Hastings have requisitioned the Minister to direct the closing of all chemists' shops in that borough on all working-days other than the weekly half-holiday at the hour of half past 9 p.m. The defendant had passed all the necessary examinations for admission as a chemist, but, not having yet attained his majority, cannot be registered as a pharmaceutical chemist under the Pharmacy Act. He, however, carries on business as a herbalist, and in his shop he keeps herbal and patent medicines and all the drugs recognised in the British Pharmacopoeia, which latter he makes up into mixtures. The whole of these he exposes for sale and does sell. The shop kept by defendant is to all intents and purposes a chemist's shop. All the products usually kept and sold by chemists are in defendant's shop kept and sold, save that defendant does not make up prescriptions to the order of any medical man. It is contended that because defendant is not a chemist registered under the Pharmacy Act he cannot be convicted of keeping open a chemist's shop. I cannot adopt this contention. The offence created by section 25 is not the keeping-open during prohibited hours of a chemist's shop by a registered chemist, but the keeping-open of a chemist's shop during those hours. The provisions of the