

by the notice to quit but the substantive question is the right given the tenant to remain in possession unless the landlord can show that possession should not be retained by the tenant because of the special circumstances and considerations enumerated. And so long as the tenant is in possession this question continues to be the question before the Court on an application by the landlord for possession apart from the right to give notice to quit and commencement of proceedings prior to the Amendment coming into force. It may be that in a sense such a conclusion rests on giving to the Regulations a retrospective construction and conflicts with the presumption against such a construction and the rule that where the law is altered during the pendency of an action, the rights of the parties are decided according to the law as it existed when the action was begun, as is the case here. But these rules are subject to the intention of the legislation to be construed. *Quilter v. Mapleson* (9 Q.B.D. 672); *Landrigan v. Simons* (1924, 1 K.B.D. 509).

In my opinion, the purpose of the Regulations would be avoided and rendered nugatory if at the hearing of an application, although notice to quit had been given and the action started before the coming into operation of the amendment the Court made an order for possession on grounds other than those specified in the Regulations. That the intention of the Amendment is to make the conditions on which an order for possession can be made, apply in all cases where there is in fact possession, is, in my opinion, clear, and the language in which this intention is expressed is negative in form and may therefore be inferred to be mandatory.

For these reasons Plaintiff's action, in my opinion, fails. Judgment must be entered for defendant. Costs and disbursements to defendant.

Solicitors: for plaintiff: *Fell, Putnam & Macandrew*, Wellington; for defendant: *Bell & O'Regan*, Wellington.

WRIGHT V. N.Z. WOOLPACK AND TEXTILES LTD.

1946, October 23, 24, 30, December 4. Supreme Court, Wellington. Fair J.

Industrial Arbitration—Award—Validity—Factory working hours—Extension of ordinary working hours—Making of order—Hearing contemplated to determine whether forty-hour week impracticable—Whether provision requiring indication of grounds in award mandatory—Effect of omission—Right to overtime in excess of forty hours—Period during which order in force—Limitation of claim to 12 months prior to action—Industrial Conciliation and Arbitration Act 1925, s. 146—Amendment Act 1936, ss. 20 (1) (2), 27 (1).

Although the hearing contemplated by s. 20 (1) of the Industrial Conciliation and Arbitration Amendment Act 1936 as to whether it was impracticable to carry on efficiently the industry if the working hours were limited to forty was an independent enquiry by the Court of Arbitration where there was a difference between the workers and the employers on the

question, there was no sufficient reason for interpreting the subsection so as to make this a condition precedent to a valid order in the Award in every case, and an agreement arrived at pursuant to s. 3 of the Industrial Conciliation and Arbitration Amendment Act (No. 2) 1939 by the assessors for the workers and the employer before the Conciliation on the settlement of the terms of their employment, which included an extension of hours at ordinary rates from 40 to 43 and which was sent to the Clerk of Awards with a request in writing to forward it direct to the Court of Arbitration which thereupon pronounced an award, is *prima facie* evidence that a forty-hour week was impracticable, and, in the absence of any ground for doubting that their conclusion was *bona fide* and reasonable, is the equivalent of an oral statement made by both parties before the Court that they considered it impracticable to operate under a forty-hour week and is a sufficient justification for the Court's own opinion in the matter and a compliance with s. 20 (1) of the said Amendment Act so far as the requirement of a hearing of the parties is concerned; and, having regard to the great weight the Court may well have attached to the evidence of the parties most vitally interested as well as to its knowledge of the earlier history of the industry and to its comprehensive knowledge of its conditions generally, it could not be said that the Court did not form its own opinion on the question. *Allcroft v. Bishop of London* (1891, A.C. 666) applied.

Compliance with s. 20 (2) of the Industrial Conciliation and Arbitration Amendment Act 1936 which provided that the Court should indicate in the award the grounds which in its opinion made impracticable the fixing of a forty hour week, was not mandatory or a condition precedent to the making of a valid order for extension of hours in the award, and to hold the clause and/or the award null and void because of its omission would defeat the main object of the Legislature, which was to ensure a lawful and prescribed method of settling industrial disputes, and would work serious inconvenience and injustice to those who had arrived at an agreement intended to be binding on the industry; and the unlikely case of workers agreeing to such an extension of hours contrary to the general tenor of the Legislation and where it was not impracticable to conduct the industry efficiently within the forty-hour week, was not a consideration of sufficient weight to outweigh those considerations. The clause, moreover is severable, the effect of striking it out being merely to make overtime payable at an earlier date. *Montreal Street Railway Co. v. Normandin* (1917, A.C. 170-175) applied; *New Zealand Harbour Boards' Union v. Tyndall* (1943, G.L.R. 458 and 1944, G.L.R. 241; 1944, N.Z.L.R. 43, 48, 594) referred to.

Plaintiff, a textile worker, employed upon piece work in defendant company's factory, claimed additional payment at the rate prescribed for overtime for all hours worked by her in excess of forty hours in each week between December 31, 1940, and July 13, 1945, during a certain part of which period there were clauses made under s. 3 of the Factories Amendment Act 1936 in the award in force extending the hours of employment at ordinary rates. In support plaintiff sought to establish that the last valid order authorising an extension of hours lapsed on December 31, 1940, and that the award made on September 11, 1942, for a term ending on August 14, 1943, was invalid as being *ultra vires* the Arbitration Court's powers and inoperative during its term to authorise such an extension of hours.

HELD—That the Award of 1942 was valid, and, although pursuant to s. 81(1) (d) of the Industrial Conciliation and Arbitration Act 1925 it remained in force as an award until a new award was made on April 1, 1945, that the clause authorising an extension of hours lapsed on August 14, 1943. *United Repairing Co. Ltd. v. Glover* (1944, G.L.R. 482; 1945, N.Z.L.R. 160) applied.

That pursuant to s. 146 of the Industrial Conciliation and Arbitration Act 1925 as amended by s. 27 (1) of the Amendment Act 1936 the claim was limited to the amount due within 12 months prior to the institution of the action.

That although the relative rate of overtime was fixed by statute s. 146 of the Industrial Conciliation and Arbitration Act 1925 applied to wages legally payable under the contract of service and not to the minimum rate fixed by the award and, the wage having been fixed by the award, but supplemented by agreement between the parties, that the claims under this head were made under the award and not under the statute and that they could not be supported for a longer period than for the

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portion of the final 12 months prior to the institution of the claim. *Hill v. United Repairing Co. Ltd.* (1946, G.L.R. 270; 1946, N.Z.L.R. 585) applied; *Young v. Adams* (1898, A.C. 469, 476) and *Jensen v. Wellington Woollen Manufacturing Co.* (1942, G.L.R. 291; 1942, N.Z.L.R. 410) referred to.

Harding for plaintiff.

Sim K.C. and *Stephenson* for defendant.

FAIR J.—The plaintiff, in this action, is a textile worker employed upon piece work in the defendant company's factory at Foxton. The first ground of action is a claim for extra payment calculated at the rate of payment prescribed for overtime, for all hours worked by her in excess of forty in each week, between December 31, 1940, and July 13, 1945.

The action is what is described in the statement of facts as a "test" action, brought to determine whether a large number of other workers, in a position similar to that of the plaintiff, are also entitled to recover these additional payments for the four and a half years in question. During a certain part of that period, there were clauses, made under section 3 of the Factories Amendment Act 1936, in the award in force, extending the hours of employment, at ordinary rates, from forty to forty-four. But the plaintiff claims that the last valid order lapsed on December 31, 1940, and that the award made on September 11, 1942, was invalid, as being *ultra vires* the Arbitration Court's powers—and so was inoperative, during its term, to authorise such an extension of hours. That award was for a term ending on August 14, 1943, and although by virtue of section 89 (1) (d) of the Industrial Conciliation and Arbitration Act, 1925, it remained in force as an award until a new award was made on April 1, 1945, the clause authorising an extension of the weekly working hours to 44 lapsed on August 14, 1943. *United Repairing Co. Ltd. v. Glover* (1944, G.L.R. 482; 1945, N.Z.L.R. 160). It would appear, therefore, by reason of provisions of section 3 of the Factories Amendment Act 1936, that after that date, all work in excess of forty hours should have been regarded as overtime, and paid for at overtime rates. Neither of the parties to the award realised this, however, until after the decision last cited had been given. Both considered the extension order operative during the currency of the award.

It was also decided by the Court of Appeal in *Hill v. United Repairing Co.* (1946, G.L.R. 270; 1946, N.Z.L.R. 585) that by reason of section 146 of the Industrial Conciliation and Arbitration Act 1925, as amended by section 27 (1) of the Amendment Act of 1936, a claim for unpaid overtime under the Factories Acts, where an award governs the industry, lies only in respect of the amount due within twelve months prior to the institution of the action. In the present case the action was instituted on October 9, 1945; consequently, the amount recoverable, if the award is valid, would be only for the period from October 9, 1944, to July 13, 1945. That this amount is due and payable by the defendant is now admitted.

Mr. Harding, however, submitted that the limitation contained in section 146 does not apply to the plaintiff's claim as the award of September 14, 1942, was made without jurisdiction, and is, therefore, void, and to be treated as non-existent. He argued that

consequently the plaintiff's claim is not made under, or in pursuance of, any award, but under the statute, and the contract made between the defendant and the plaintiff, irrespective of the award, and the limitation of twelve months does not apply.

He claimed that the award was made without jurisdiction, as the Arbitration Court, in making it, failed to comply with the conditions imposed by section 20 (1) and (2) of the Industrial Conciliation and Arbitration Amendment Act 1936. He argued that, as the conditions precedent to enable the Court of Arbitration to grant an extension of the weekly hours beyond forty were not observed by it, the whole award was *ultra vires*. He argued that consequently a claim for an overtime rate of payment for the additional four hours was not a claim for the difference between the wages legally payable under an award, but a claim under the Factories Act, and the contract made between the parties in the absence of an award.

Section 20 (1) of the Industrial Conciliation and Arbitration Amendment Act 1936, so far as it is relevant, is as follows:

"In every award made after the passing of this Act the Court shall fix at not more than forty the maximum number of hours (exclusive of overtime) to be worked in any week by any worker bound by the award unless, in the opinion of the Court, after hearing representatives of employers and of workers, it would be impracticable to carry on efficiently any industry to which the award relates if the working hours were so limited."

Section 20 (2) reads:

"Where in any award made after the passing of this Act the maximum number of hours (exclusive of overtime) to be worked by any worker in any week is fixed in excess of forty, the Court shall indicate in the award the grounds which, in the opinion of the Court, made impracticable the fixing of forty hours as the maximum number of hours to be worked in any week."

It was argued that there were three conditions precedent to be fulfilled by the Court before any order or clause in an award extending the working hours in a factory beyond forty per week could be valid.

1. It was bound to hear representatives of the employer or employers and of the worker.
2. The Court must be of opinion, after hearing them, that it would be impracticable to carry on efficiently, the industry concerned, if the working hours were limited to forty per week.
3. The Court must indicate in the award, the grounds which, in the opinion of the Court, make a forty-hour week impracticable.

With regard to the first two conditions I am inclined to think that they are mandatory upon the Court, and non-compliance with them might possibly render an extension invalid. It is unnecessary, however, for me to determine this question as, in my opinion, it has not been shown that either of them was not complied with by the Court.

The award in question was made an award under the provisions of section 3 of the Industrial Conciliation and Arbitration Amendment Act (No. 2) 1939. This provides that if a settlement for an industrial dispute is arrived at by the parties before a Council of Conciliation, the terms of the settlement may be reduced to writing and on the written request of the assessors, forwarded by the Clerk of Awards directly

to the Court of Arbitration. The Court may forthwith incorporate the terms of the settlement in an award without any hearing of the dispute.

In the present case the assessors for the workers in the defendant factory, and the employer, agreed before the Conciliation Council on the settlement of the terms of their employment, and requested the Clerk of Awards in writing to forward it directly to the Court of Arbitration. This was done and the Court pronounced an award which is reported in *Book of Awards*, Vol. 42, p. 1002. Mr. Harding very properly conceded that there could be a hearing without the physical appearance before the Court of the parties to it, or their representatives, or oral representations. But he submitted that the hearing contemplated by section 20 (1) was an independent enquiry by the Court of Arbitration as to whether it was impracticable to carry on efficiently the industry if the working hours were limited to forty; and that it had not done this. No doubt that course is both contemplated and desirable in all cases where there is a difference between the workers and the employers on this question. But there seems no sufficient reason for interpreting the subsection so as to make this a condition precedent to a valid order in the award in every case. As Mr. Harding agreed, in answer to a question put to him at the hearing, an agreement before the Conciliation Council upon this point is at least *prima facie* evidence that a forty-hour week is impracticable. There may be rare cases where, as he said, workers may agree to accept the lower rate for the additional four hours, because, otherwise, no pay might be earned by the workers for either ordinary time or overtime worked for those four hours. But such a position is exceptional, and, in the light of the strong feeling in favour of a forty-hour week in New Zealand, the *prima facie* presumption would seem amply sufficient to justify the Court in concluding that the parties primarily concerned thought it was impracticable; and the Court might well think, in the absence of any ground for doubting that their conclusion was *bona fide* and reasonable, that that was sufficient evidence to justify its own opinion on this matter. So, in that case, the hearing would be a consideration of the inferences to be drawn from the agreement by the parties concerned, forwarded, at their request, to the Court.

Clearly, this is the equivalent of an oral statement by both parties before the Court, that they considered it impracticable to operate under a forty-hour week, for the insertion of the clause itself, as well as the previous history of such an application, implies that the parties have given consideration to this question. It therefore appears to me that there was a compliance with the clause so far as the requirement of a hearing of the parties was concerned.

Then it was suggested that the Court had not carried out its duty of itself forming an opinion on the question, but had simply adopted the opinion of the parties concerned. The evidence and facts before the Court does not, in my view, support such a conclusion. The Court of Arbitration may well have attached great weight to this evidence from the parties most vitally interested in the question. But there is no doubt that it would have some knowledge, at least, of

the earlier history of the industry. It would also have a comprehensive knowledge of the conditions of industry, generally, in New Zealand including, probably, that of industries competing with this one, and of the general economic position and requirements of this industry. In the light of these considerations, how can this Court say that the Court of Arbitration did not form its own opinion, taking into account many of these factors, in addition to the agreement of the parties? As was said in the House of Lords in *Allcroft v. Bishop of London* (1891, A.C. 666) by Lord Bramwell at p. 678 with reference to a discretion vested in the respondent in that case:

"Then it was said that there was something he had considered which he ought not to have considered, and something he had not considered which he ought to have, and so he had not considered the whole circumstances and them only. It seems to me that this is equivalent to saying that his opinion can be reviewed. I am clearly of opinion it cannot be. If a man is to form an opinion, and his opinion is to govern, he must form it himself on such reasons and grounds as seem good to him."

Lord Herschell said at pp. 680-681:

"My Lords, when the statute prescribes that the bishop's opinion is to be formed after considering the whole of the circumstances of the case, I think it must mean that the bishop is to consider all the circumstances which appear to him, honestly exercising his judgment, to bear upon the particular case, and upon the question whether he ought in that case to prevent proceedings being taken. I dissent entirely from the view that it is for the Courts or your Lordships to determine what are the considerations which ought to govern the bishop's opinion."

At p. 682 he says:

"It is impossible to read the bishop's statement without seeing that he has honestly considered *what appeared to him* to be all the circumstances bearing on the question whether proceedings should be allowed to go on. This being so, it is not for Your Lordships, on this application for a mandamus, to consider whether the bishop's reasons are good or bad; whether they ought or ought not to have led him to form the opinion he did."

So far as the condition contained in section 20 subsection (2) is concerned, it appears to me that that condition is plainly directory. A similar provision was contained in the Public Worship Regulations Act 1874 which was considered in *Allcroft's case (supra)*. With reference to it, Lord Bramwell said at p. 678:

"Then it is said why, if his decisions cannot be reviewed, is he to state his reasons? Lindley L.J. has given an excellent answer to this. It is that he may be under the necessity of forming a careful opinion, and one that will bear public examination."

Lord Herschell said at p. 681 with reference to the requirement that he should state his reasons:

"I think this obligation was imposed upon him in order to secure, as I think it was calculated to do, a careful consideration of the circumstances of the case, and a conclusion for which, in the bishop's opinion, he was able to disclose adequate reasons. The knowledge that his reasons would be made public and be the subject of criticism would manifestly tend to prevent capricious and ill-considered action."

Possibly much the same reasons led to the enactment of this subsection. Obviously, such a safeguard is more important where the matter is contested. Where it is not contested it may be desirable, in the public interest, that the reasons should be stated, but the use of the word "indicate" in the subsection suggests that a full statement of the reasons is not required, and detracts

from the weight of the argument that the subsection was considered essential to protect the public welfare or public interest, regard for which may be assumed to be the reason for the limitation of the hours of working to forty. No doubt the word "shall" is intended to ensure that the reasons are indicated in every case. The form of the provision is very similar to that considered by the House of Lords in the *Sussex Peerage case* (1844, 11 Cl. & F. 85, 148) which was considered directory.

Even if, on the application of a party to the proceedings, or the Attorney-General, a mandamus would lie on the Court to require it to indicate its reasons where it has omitted to do so, in accordance with the ordinary rule in mandamus an application would first have to be made to the Court by an interested party for it to observe the duty imposed on it by this subsection. Moreover, the remedy by mandamus, if available, would be discretionary and would only be granted in a proper case and on a reasonably prompt application. It seems clear that in such circumstances as the present, it would not be granted, as more than four years have elapsed since the making of the award, and it has been superseded by a fresh award.

I should say, although I have considered these matters, that it appears to me that such a review of the factors that led to the Court making the settlement agreed on an award is prohibited by the provisions of section 97 of the Industrial Conciliation and Arbitration Act 1925, which is as follows:

"Proceedings in the Court shall not be impeached or held bad for want of form, nor shall the same be removable to any Court by certiorari or otherwise, and no award, order, or proceeding of the Court shall be liable to be challenged, appealed against, reviewed, quashed, or called in question by any Court of Judicature on any account whatsoever."

That provision would, it appears, apply in such circumstances as the present, where there are some grounds before it upon which the Court of Arbitration's award could be based. Clearly it had jurisdiction to make such an award. Clearly, too, it is required to comply with the conditions laid down in section 20 (1) of the 1936 Amendment. But it is only where there has been no real compliance, or attempt to comply, with those conditions that there is a failure of jurisdiction. That position does not exist here. The matter was clearly within the jurisdiction of the Arbitration Court and it would appear that the correct procedure in case of non-compliance with the conditions is to apply to it to review its decision. *New Zealand Waterside Workers Federation v. Frazer* (1924, G.L.R. 139 at p. 147; 1924, N.Z.L.R. 689 at p. 702). Cf. *Butt v. Frazer* (1929, G.L.R. 384; 1929, N.Z.L.R. 637). See also section 118 (2) and the decision of the Court of Arbitration *In re the Auckland Bakers' Award* (7 G.L.R. 594) approved in *re New Zealand Waterside Workers' Award* (1938, G.L.R. 86).

I doubt whether non-compliance with the two requirements of section 20 (1) of the 1936 Amendment is purely a matter of want of form where the parties are at issue on the question of the extension of the hours beyond forty. It may be, too, that the public interest and welfare prevent it being merely formal

matter in other cases. It may possibly be, too, that the other provisions of section 97 of the Industrial Conciliation and Arbitration Act 1925 may not extend to prohibit such proceedings by way of mandamus. But that section does show clearly that awards are, where possible, to be protected from formal objections on any matters not going to the substance of the award, and, to invalidate an award as being *ultra vires* i.e. made without jurisdiction, the Court must clearly have wholly failed to comply with a condition compliance with which is mandatory before its power exists.

These considerations, and the possibility of proceeding by way of mandamus, confirm the conclusion that compliance with subsection (2) of section 20 was not mandatory, or a condition precedent to the making of a valid order for extension of the hours in the award. The general principles which govern the question as to whether requirements of the kind are mandatory or directory have been dealt with in *Montreal Street Railway Company v. Normandin* (1917, A.C. 170-175). They are also set out in *Maxwell on the Interpretation of Statutes* 7th Edn. pp. 321, 323, 324, 331; *Halsbury 2nd Edn.* Vol. 31 pp. 530, 531 para. 692. In the case cited the principle is stated as follows:

"Where the provisions of a statute relate to the performance of a public duty, and the case is such that to hold null and void, acts done in neglect of that duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the Legislature, such provisions should be construed as being directory only and not imperative."

This subsection seems to fall completely within that statement. To hold the clause and/or the award null and void because of its omission would defeat the main object of the Legislature, which is to ensure a lawful and prescribed method of settling industrial disputes, and ensure the settled and orderly conduct of industrial relationships between employers and workers. It would, obviously, work serious inconvenience and injustice to persons who had, after perhaps much discussion and difficulty, arrived at an agreement which was intended to be binding on the industry for twelve months, and contemplated as likely to bind them for two, three or four years.

To hold the provision to be directory seems, I think, to ensure compliance with it in every case in which strict compliance is desirable, and not to result in any kind of serious inconvenience. The unlikely case of workers agreeing to such an extension contrary to the general tenor of the industrial legislation, and where it is not impracticable to conduct the industry efficiently within the forty hour week is not a consideration of sufficient weight to outweigh these considerations. The provision resembles those considered in *New Zealand Harbour Boards' Union v. Tyndall* (1943, G.L.R. 548, and 1944, G.L.R. (C.A.) 241; 1944, N.Z.L.R. 43, 48, and (C.A.) 594).

Moreover, it appears to me that the clause is clearly severable—as all it does is to fix the weekly working hours. To strike it out only makes overtime payable at an earlier point in the working week. The plaintiff (and her fellow-workers) might well, I think, be precluded by their conduct from repudiating the binding

force of the clause and award in other respects. But it is unnecessary for me to consider this aspect closely.

Nor do I think that it is necessary for me to consider the other reasons adduced by Mr. Sim as confirming these conclusions. I should add, too, that as the parties desired a decision, the Court has decided the question of law as requested by them, but this judgment is not to be taken as establishing the right of the parties to challenge the validity of a superior Court of Justice—such as the Arbitration Court—in the course of an ordinary action between the parties. There are obvious objections to such a procedure: but in view of the facts that this aspect was not argued, and the decision the Court has come to, it has not thought it necessary to rule on this question.

In my opinion, therefore, the Award of 1942 was, and continued, valid till the date of the new award made on July 13, 1945.

The minimum wages and rates of pay applicable to the plaintiff were fixed under clauses 4 (a) and 9 of the award. The overtime payment which is fixed by section 21 (3) of the Factories Act 1921-22 as amended by section 6 (1) (a) of the Factories Amendment Act 1936, provides that such overtime rates shall be one half as much again as the ordinary rate. What is the "ordinary rate" is not explicitly defined by the Factories Act, and may mean, I think, either the minimum rate fixed by the award, or the actual wages being received, which are often considerably in excess of the minimum rate. But it seems to me clear, that section 146 must apply to the wages legally payable under the contract of service, and this is considered as the amount which is fixed by the award, although the relative rates of overtime is fixed by statute. *Hill v. United Repairing Co. Ltd.* (*supra*). So far as Finlay J.'s judgment at p. 280 in that case may be read as indicating a contrary view, the opinion of the majority of the Court must be preferred. In the present case the rates fixed for other than overtime were considerably in excess of the minimum wage. It appears that that excess varied from 8 per cent. to a maximum of approximately 30 per cent. of the minimum. Consequently, the wage was actually fixed by the award but supplemented by agreement between the parties.

It follows that the plaintiff's claims under this head are made under the award and cannot be supported for a longer period than for the portion of the final twelve months—from October 9, 1944, to July 13, 1945.

With reference to the plaintiff's claim for increased remuneration on the ground that the full amount required to be added as the first additional cost of living bonus was not included in the last adjustment of wages; the increase allowed was upon the rates provided for in the awards. The rates provided for in the awards are the minimum rates and, in my view, the Labour Department was right in holding that this was the plain meaning of the provision. In accordance with what has been described as the "golden rule" of interpretation, the meaning of the award must be ascertained from the ordinary meaning of the language used: and cannot be modified by conjecture or speculation as to whether it intended to state a different basis. The final sentence of para. 3 of the Memorandum to clause 8 of the 1945 Award appears

to have been included to extend the ordinary meaning of the words under consideration in relation to that Award. But the Court's definition cannot operate retrospectively to alter the ordinary meaning of the language used in its application to past awards. It can only apply to alter such meaning under the award in respect of which the special and artificial meaning is given; for future relationships and payments are the only matters with which it is intended to deal.

The rule which the Privy Council, in *Young v. Adams* (1898 A.C. 469, 476), held applicable to statutes is, I think, applicable to this award. It was there said:

"They think that, in a case like the present, the learned Chief Justice was right in saying that a retrospective operation ought not to be given to the statute, 'unless the intention of the Legislature that it should be so construed is expressed in plain and unambiguous language, because it manifestly shocks one's sense of justice that an act legal at the time of doing it should be made unlawful by some new enactment'."

See also *Jensen v. Wellington Woollen Manufacturing Coy.* (C.A.) (1942, G.L.R. 291, at 297, 304, 307; 1942, N.Z.L.R. 394 at 410, 421, 426).

The plaintiff's claim on this ground, therefore, also fails, and judgment must be given for the defendant.

The questions of the amount for which judgment is to be entered, and of costs, are reserved.

Solicitors: for plaintiff: *C. J. O'Regan*, Wellington; for defendant: *Stephenson & Anyon*, Wellington.

COLEY V. N.Z. WOOLPACK AND TEXTILES LTD.

1946, October 23, 24, December 4. Supreme Court, Wellington.
Fair J.

Factories—"Factory"—Whether area for drying flax $1\frac{1}{2}$ miles from mill a "place" within the meaning of—*Factories Act, 1921/22, s. 2—Factories Amendment Act 1936, s. 3.*

The word "place" in the definition of "factory" in s. 2 of the Factories Act 1921/22 must be considered as *ejusdem generis* with the preceding words "building" and "office" and accordingly a "paddock" employed by a company engaged in the manufacture of woolpacks and cloth woven out of flax fibre whose work was exclusively confined to an area of some 90 acres used for drying and bleaching the fibre which was situated approximately one and a half miles from the stripping mill was held not to be employed in or about a factory within the meaning of s. 3 of the Factories Amendment Act 1936. *Otley v. Armstrong* (1938, G.L.R. 222; 1938, N.Z.L.R. 328) applied; *Powell v. Kempton Park Race-course Co.* (1899, A.C. 143) referred to.

Harding for plaintiff.

Sim K.C. and *Stephenson* for defendant.

FAIR J.—In this action the plaintiff was employed by the defendant as a "paddock". According to the agreed statement of facts, the conditions under which he was employed were as follows:

"The Company is engaged in the manufacture of woolpacks and cloth woven out of flax fibre, with the addition, in some cases, of jute. For the purposes of its undertaking the Company owns a flaxmill in which raw flax is treated as