

REX v. BLOCK.

1910. May 2. WARD, J.

*Criminal law.—Appeal.—Secs. 4 and 8 of Ordinance 5 of 1906.—
Half-holiday law.—Closing.*

Where the side door of B's shop was open after closing hours and a loaf of bread sold to A, *Held*, on appeal, that a conviction of B under the half-holiday law must be upheld.

Semble, the term "closing" connotes the complete cessation of business.

This was an appeal from a decision of the Resident Magistrate of Harrismith. The appellant had been convicted, under secs. 4 and 8 of Ordinance 5 of 1906, of failing to close his shop at 1:30 P.M. and to keep it closed for the remainder of the day on the 6th April, being Wednesday, the day selected under sec. 3 of that Ordinance by the majority of shopkeepers within the municipality as the weekly half-holiday. He had been sentenced to a fine of £10 or in default to fourteen days' imprisonment. It appeared that the appellant was manager of the shop in question for one Van Rooyen. At 6:30 P.M. a constable had seen a native carrying a parcel come out of a side door of the shop managed by the appellant. The constable on examination of the parcel found that it contained a loaf of bread. The constable's evidence was supported by that of two eye-witnesses. The magistrate in his reasons stated that this evidence satisfied him that the loaf of bread had been sold after closing hours.

Rorich, for the appellant: It was not proved that the loaf had been sold by the appellant. The fact that the side door of a shop is found open after hours does not constitute a contravention of sec. 4.

Lloyd, for the Crown, was not called upon.

WARD, J.: The appellant was charged under secs. 4 and 8 of Ordinance 5 of 1906 with failing to close his shop at the closing

hour and to keep it closed for the remainder of the day. Sec. 4 makes it an offence to keep a shop open after 1:30 P.M. on the day selected by the majority of shopkeepers in the municipality as a half-holiday. I do not think that the provisions of this section would be satisfied even if the shop doors were all closed, provided that a person could knock and gain admittance and obtain goods from the shop. The meaning of the word "closing" is that business shall cease, and if business is carried on in any way after 1:30 P.M. the Ordinance is contravened. It is well known that attempts were made to obtain half-holidays for employes voluntarily; but it was found that though promises were made by shopkeepers to give these holidays, the promises were not fulfilled, and those who were philanthropically inclined were thus prevented, by others keeping open their places of business, from carrying out their good intentions. The legislature came to the conclusion that the only way to secure the half-holiday was to compel the closing of shops and to enact that business was to cease at 1:30 P.M. In this case it has been admitted that a side door of the shop was open. A native was seen by a policeman coming out of that door. The policeman stopped him and took a parcel from him, whereupon the native ran away. The appellant was in his shop. It was found that the parcel contained a loaf of bread. The magistrate found as a fact that this loaf had been obtained in the store by the native. He had sufficient evidence to justify him in coming to this conclusion. The appeal must therefore be dismissed with costs.

Appellant's Attorneys: *Marais & De Villiers.*
