

meaning of the said Act, two shop-assistants after 1 o'clock in the afternoon of every working-day of such week as aforesaid.

Counsel for the defence admitted that the shop-assistants did not receive a half-holiday during the week ending the 30th day of June.

For the defence it was contended that the defendant was not bound to give his employees a weekly half-holiday, and that the Act of 1904 and the amending Act of 1905 must be considered together. Counsel for the defence took three points, as follows:—

1. That the amending Act of 1905, section 3, with the schedule of the Act, makes it quite clear that a restaurant-keeper is not bound to give any half-holiday to his assistants.

2. That section 4 of the Act of 1904 and section 3 of the Act of 1905 are expressly made subject to any award of the Court of Arbitration, and that the provisions of the award in this case are inconsistent with the allowance of a weekly half-holiday to the employees.

3. That a place where merely meals are supplied is not a shop within the meaning of the Act.

In answer to these points, I may state at once that, in my opinion, (a) the amending Act of 1905, section 3, with the schedule to the Act, does not free a restaurant-keeper from giving a weekly half-holiday to his assistants; (b) the Act cannot be made subject to any award of the Arbitration Court, but the award, on the contrary, must be subject to the Act; and, further, the provisions of the award are not inconsistent with the allowance of a weekly half-holiday to the employees: and (c) a place where meals are supplied and sold is a shop within the meaning of the Act.

As to the first point of counsel for the defence, that the amending Act of 1905, section 3, with the schedule to the Act, makes it quite clear that a restaurant-keeper is not bound to give his assistants a weekly half-holiday: Counsel relies in the first place on section 4, (4), of the Act of 1904, which provides that this section shall operate subject to the provisions of this Act and to any award of the Arbitration Court. The award in force upon the passing of the Act of 1904 was dated the 24th day of March, 1902, and must be taken as if the Act of 1894 were in force, which it was when the award was made. Now, section 8 of the Act of 1894 provides that every shop-assistant in excepted shops, of which an eating-house or restaurant was one, shall have a half-holiday from the hour of 1 o'clock in the afternoon of some working-day in each week. It further provides that if any person shall offend against the provisions of this section by allowing any shop-assistant or other assistant as aforesaid to continue at work during such half-holiday he shall for every such offence be liable to a penalty not exceeding £5.

The Act of 1894 was therefore clear enough as to the right of assistants in excepted shops to a weekly half-holiday. The Act of 1904, section 15, (a), (i), is absolutely clear on the matter of a weekly half-holiday to shop-assistants in excepted shops which are not required to close on any working-day. It says, "Provided that the provisions of this subsection shall not affect the right of any shop-assistant employed in any such excepted shop to a half-holiday for the remainder of the day from 1 o'clock in the afternoon of such working-day in each week as the occupier, in the case of each individual shop-assistant, thinks fit." Can anything be stated in clearer terms? Counsel further contends that section 3 of the Act of 1905 stood in the place of section 4 of the Act of 1904 so far as the matters which it deals with, which are the hours in which employees are to be employed in every case. He refers to the schedule of the Act of 1905 and its headings. Now, these two sections are not on the same subject-matter. Section 4 of the Act of 1904 states what are to be the number of hours a shop-assistant shall be employed during one week, whereas section 3 of the Act of 1905 states the limit of employment of shop-assistants.

Section 3, (1), of the Act of 1905 says, "Subject to the provisions of the principal Act and to any award of the Arbitration Court, a shop-assistant shall not be employed (a) in or about any shop in which any one or more of the trades or businesses mentioned in the schedule hereto are exclusively carried on, after the hour set opposite to such trade or business in the said schedule." This limits the hours during which a shop-assistant can be employed. In the schedule the time fixed for the latest employment of an assistant in a refreshment-room is 11.45 p.m. on any working-day. He may be employed up to that hour on any working-day of the week, but this does not deprive him of his weekly half-holiday under the proviso contained in section 15, (1), of the Act of 1904. The terms of the award do not preclude the weekly half-holiday, and must be read subject to the provisions of the Act of 1904.

Counsel's second point was that section 4 of the Act of 1904 and section 3 of the Act of 1905 are expressly made subject to any award of the Court of Arbitration, and that the provisions of the award in this case are inconsistent with the allowance of a half-holiday to the employees. Counsel refers to the award, at page 291, where under the heading "Hours for Restaurant Waiters" it provides, "If more waiters are employed, the hours for such employees shall not exceed eleven hours' work per day, and shall be worked between the hours of 6 a.m. and midnight." How can this be said to preclude an assistant's right to a weekly half-holiday? It states a limit of hours each day within which the assistant must be employed. It is not inconsistent with his right to a weekly half-holiday. I cannot see that section 9 of the award, on page 292, takes away the right to the half-holiday. It provides that two days' holidays or two days' pay shall be allowed to each employee once every three months if he shall have been so long in the employer's service. I cannot read this as something in substitution of a weekly half-holiday.

Counsel's third point was that a place where meals are supplied is not a shop within the meaning of the Act. I do not know whether counsel was in earnest on this point. He certainly looked it, and I will therefore answer his contention. He says that the definition of the word "shop" in section 2 of the Act of 1904 does not include a restaurant. The definition says that "shop" means any building or place in which foods are kept, or exposed, or offered for sale, or in which any part of the business of the shop is conducted. Surely a restaurant is a building or place in which meals are kept or offered for sale. Surely meals are goods. Surely a restaurant is a place in which the business of selling meals is conducted. But the matter is concluded by different sections of the two Acts. I shall refer to two only—viz., section 15, (a), (i), of the Act of 1904,