are purchased for consumption off the premises would be a *reductio ad absurdum*. The ordinary meaning of the words "to sell meals" includes clearly the sale of the meal for consumption in the rooms as well as the sale of food to be taken away by the purchaser and eaten elsewhere. In each instance the meal is sold. The first question must therefore be decided against the respondents.

The second question depends upon the meaning and effect of subsection (4) of section 4 of the Act of 1904. That subsection is as follows: "This section shall operate subject to the provisions of this Act and to any award of the Arbitration Court." The recommendations of the Board operate, through the failure of the employers to refer the matter within the statutory time to the Court of Arbitration, and are enforceable, in the same manner in all respects, as an industrial agreement duly executed and filed by the parties (section 59 of "The Industrial Conciliation and Arbitration Act, 1905"). This section is a re-enactment of a corresponding section in the Act of 1900. In the Auckland Tailoresses' case (Vol. iii, Book of Awards, p. 104) the Court of Arbitration at a time when I was President had to consider the effect of an industrial agreement. In a judgment of the Court, delivered by me in that case, the Court said, "An industrial agreement differs in many respects from an award of the Court. An award is a judgment of a Court of exclusive jurisdiction, and an industrial agreement is a contract made *inter partes* under certain statutory provisions. An award cannot be set aside, varied, or cancelled; the only powers the Court possesses in reference to an award are to amend it by remedying any defect in it, or by inserting additional terms to give fuller effect to it, or to enforce it; an industrial agreement may be varied, renewed, or cancelled by the parties to it. An award binds persons although not named, unless they are exempted from its provisions; an industrial agreement only binds the actual parties to it. The force of an award extends to persons who commence business in the district affected by the award during its currency; before such parties can be bound by the terms of an industrial agreement they must file in the office of the Clerk of Awards a notice signifying their concurrence with it." I see no reason to modify the statement of the law I then made, and, in my opinion, it is impossible to hold that an industrial agreement is equivalent to an award of the Court. The provision in section 30 of the Industrial Conciliation and Arbitration Act that an industrial agreement is enforceable in manner provided by section 101 of the Act and not otherwise is a procedure section only. It does not convert the agreement into an award of the Court; it merely provides the machinery for the enforcement of its provisions, and gives to a special Court exclusive jurisdiction to enforce its observance. If an industrial agreement purporting to have been made and filed under the provisions of the Act contains terms which are in contravention of a statute, then, unless express power is given by statute enabling parties to contract themselves out of the statute, the statute must prevail and the agreement must give way. There is nothing in the Act of 1905 which enables the parties to an industrial agreement to override statutory provisions regulating and limiting the hours of labour in a particular trade or business. In certain statutes, of which the Shops and Offices Acts 1904 and 1905 are instances, the provisions of the particular statute are subordinated to the award of the Court of Arbitration in an industry affected by the statute; but this special power to override the provisions of a statute has been intrusted only to the Court of Arbitration, and has not been placed in the hands of parties who are competent to make an industrial agreement. The Legislature has carefully avoided giving to the recommendations of a Board of Conciliation, when such recommendations have become effective, any greater force than it has given to an industrial agreement. Such recommendations only bind the parties actually named, and the union and the particular employers can mutually and without invoking the jurisdiction of any Court vary, amend, or cancel the recommendations just as they can vary, amend, or cancel an agreement actually made and executed by the named parties. The recommendations bind no parties but those cited before the Board and named in the recommendations; in short, the recommendations have no higher effect than an industrial agreement made and executed by the same parties. There is a substantial reason why an industrial agreement cannot override express statutory regulations in a particular industry. The present case is an instance. The recommendations only apply to a limited number of the particular classes of employers affected. Other employers in the same industry are not bound. But an award binds every one, and there is by the award uniformity throughout the industry. I am therefore of opinion that the respondents are within section 4 of "The Shops and Offices Act, 1904," and that the special matter pleaded as an answer to the section is not within the terms of subsection (4), and cannot in law justify the employment of the shop-assistants in the present case beyond the statutory limit of fifty-two hours per week.

Respondents' solicitor has contended that this result will produce great hardship. The wages stated in the recommendations are based upon a consideration of sixty-five hours' work per week. If the employers can be compelled to pay these wages for fifty-two hours' work, then, no doubt, hardship arises; but as, in my opinion, the effect of the recommendations is that the extension of the hours of work from fifty-two per week to sixty-five per week is inoperative, a substantial part of the consideration for the amount of the weekly wage fails, and it is open to the respondents to have the question of their liability to comply with the recommendations tested in a competent Court.

In the present case I can only administer the law, and I hold that the respondents have committed a breach of section 4 of "The Shops and Offices Act, 1904," and that the recommendations of the Board of Conciliation are no answer to the informations.

The appeal must be allowed, and the case remitted to the Stipendiary Magistrate, with the opinion of the Court that upon the facts and circumstances stated in the case the respondents have committed a breach of the Act and that he ought to convict them.

There will be no costs.