

or avoidance of the limitations imposed on the employment of shop-assistants, the following provisions shall apply in the case of every shop-assistant. . . . (c.) All work done for the occupier of the shop by the shop-assistant elsewhere than in the shop (whether work is or is not in connection with the business of the shop) shall be deemed to be done whilst the shop-assistant is employed in the shop." Section 15 provides for excepted shops and notifications of closing-hours, but the shop-assistants, even in the shops mentioned in this section, are to have their half-holiday once a week. Section 23 deals with the closing of offices. Every office is to close not later than 1 o'clock on Saturdays; but there is a proviso that this section does not apply to offices of auctioneers, and several other offices. Section 24 provides that "in the event of any other day than Saturday being appointed as closing-day for shops, the occupier of an office shall be entitled to close on that day in lieu of Saturday, but must give notice to the Inspector during the month of January. (2.) Where a shop and office are conjoined in one and the same building and under the one occupier, it shall be sufficient if the two divisions are closed on the day appointed for the closing of shops in the district." There are two classes of employed—viz., shop-assistants and office-assistants. A shop-assistant as described by the Act is any person who is employed by the occupier of the shop in or about the business of the shop, and includes all persons in the occupier's employment who are engaged in selling his goods. "Shop" means any building or place in which goods are kept, or exposed, or offered for sale, or in which any part of the business of the shop is conducted, but does not include a warehouse doing exclusively a wholesale business. There can be no doubt that these premises is a shop; goods are kept there and exposed and offered for sale. The employee, although he is the accountant in the office of the auctioneer business, also attends to customers visiting the shop and sells goods to them. It is true that the defendants are auctioneers; but they are also shopkeepers—in fact, the principal part of their business is selling goods by retail. The shop is open every day of the week from about 9 a.m. to 6 p.m., except Thursdays; but auctions are held on most Saturdays, and occasionally, as in this case, on Thursdays—the statutory half-holiday—at private residences. Take the case of the W.F.C.A. I believe that firm holds an auctioneer's license, and they are large retail dealers. Could it be said that if they were holding an auction sale of wool, skins, and hides on the statutory half-holiday that they could call in their shop-assistants as office-assistants at the auction without committing an offence? I think not. If defendant was an auctioneer simply, and the said employee was only employed in the office, then no offence would have been committed; but as I hold he is a shop-assistant, and was employed by the occupier of the shop on Thursday afternoon, the statutory half-holiday, the offence charged in the information has been committed. There does not appear to be any legislation against auctioneers holding a sale on any day they choose, except, of course, Sunday; but they cannot employ their shop-assistants on the statutory half-holiday to assist them at the auction. I am aware that another Magistrate has recently decided in favour of the defendant in an almost similar prosecution; but then there was no evidence that defendant sold goods retail at his mart, although the Inspector stated in his opening that he did so. I presume that it is not the intention of the Labour Department to press for a heavy penalty, but to treat it more in the nature of a test case. That being so, I shall only impose a nominal penalty. Defendant is convicted and fined £1, with costs 11s.; counsel's fee, £1 1s.

The Stipendiary Magistrate then intimated that the other four cases had better be withdrawn, as they were of a similar character, and the position was fully established by the conviction in the above case. Mr. B. J. Dolan, representing the Labour Department, agreed, and the cases were accordingly withdrawn.

WALTER NEWTON, INSPECTOR OF FACTORIES, *v.* AN AUCTIONEER, ETC.

(Before W. P. James, S.M., at Masterton, 11th January, 1907.)

In this case defendant is charged under "The Shops and Offices Act, 1904," with failing to give an employee the usual statutory half-holiday, the same employee being a shop-assistant.

It is admitted by defendant that the man was employed, but he contends he is not liable because he is a partner, and in support of his defence produces an agreement of partnership (the date of this offence was the 20th December, 1906, and the agreement is dated the 14th November, 1906).

I believe this show of partnership is a pretence and nothing else, and think that he is neither more nor less than a shop-assistant as defined by section 2 of "The Shops and Offices Act, 1904." He is employed, I should say, even under the agreement itself, because by the terms of that agreement the control of the business rests entirely with defendant, and the employee is to assist in same—that is, the business, not the controlling of the business—and is to receive a weekly sum *as wages* and a very small percentage of the profits. Admittedly the execution of the agreement was a device to evade the provisions of the Act. That admission is sufficient to cast a doubt upon the *bona fides* of the alleged relationship; and when you come to examine the document and find that there are no provisions as to the share which the employee should have in the partnership assets in the event of dissolution (or death), and that no deed defining the rights and liabilities of the so-called partners has been executed, though two months have elapsed since the agreement was signed, it appears to me that the doubt may very well be strengthened into a conviction that the thing is bogus. Note that the agreement does not say that the parties are to be and become partners *from the date of the agreement, or henceforth, or from any other date*, and it appears to me that if this man had tried to insist upon his partnership rights the defendant could have turned round and said, "Oh, there is no partnership yet; we are *to be* partners: the agreement does not say *we are* partners; we have not even defined our respective rights and liabilities, and we won't be partners until a deed containing provisions to which we may agree is prepared and executed." Note, too, the man is to be paid *wages*, showing that the relation of master and servant is to continue—a thing quite inconsistent with a partnership in which the ordinary rights and powers of partners have not been