[HIGH COURT OF AUSTRALIA.]

ALBERT EDWARD GRACE . . . . APPELLANT;
DEFENDANT,

AND

WALTER I. TAYLOR . . . . . RESPONDENT.
INFORMANT,

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

H. C. OF A. 1910.

SYDNEY, *Nov.* 23, 24.

Griffith C.J., Barton, O'Connor and Isaacs JJ.

Minimum Wage Act 1908 (*N.S.W.*) (*No.* 29), *sec.* 8—*Tea-money—Overtime—Overtime on any day.*

Tea-money is payable to a workman under sec. 8 of 1908 (No. 29) only in cases where the workman works after six o'clock in the evening of a working day.

Decision of *Sly* J.: *Taylor* v. *Grace*, 27 W.N. (N.S.W.), 115, reversed.

APPEAL by the defendant by special leave from the decision of *Sly* J. upon the hearing of a special case.

The information alleged that between 18th and 23rd April both inclusive the appellant, being the employer of a workman within the meaning of the *Minimum Wage Act*, to wit Nellie Brady, a female, did unlawfully fail to carry out the provisions of the said Act in that on the said date the said workman was required to work overtime, to wit, more than 48 hours in the week above mentioned, and such employer did not on such last mentioned day pay such workman a sum of not less than sixpence as tea-money.

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It was admitted that Nellie Brady had during the week ending on 23rd April worked 48 hours up to 9 a.m. on the last-mentioned day, and that she worked till 1 p.m. on that day, making four hours overtime for the week.

The magistrate held that tea-money is only payable for work done after 6 p.m. on any day. *Sly* J. reversed this decision: *Taylor* v. *Grace* (1).

The defendant obtained special leave to appeal.

Blacket, for the appellant. Sec. 3 of the *Minimum Wage Act* draws a distinction between overtime in any week, that is more than 48 hours work, and overtime on any working day, which means working after 6 p.m. on such day. Sec. 6 applies to overtime generally. Sec. 8 draws the distinction which is provided for by sec. 3, and refers to overtime on any day. "Tea-money" has its ordinary meaning of money required for tea, and is only payable when an employé is required to work after six o'clock in the evening on any working day.

Whitfeld and *Pickburn*, for the respondent. The sixpence payable for tea-money under sec. 8 is merely a bonus payable to a particular class of employé for working overtime, in addition to the minimum overtime pay payable under sec. 6. It does not necessarily mean money for the purchase of a meal. There is an analogous provision in the Queensland *Factories and Shops Act (Amendment) Act* (8 Edw. VII. No. 4). The section applies to overtime worked at any time during the week, whether before or after the ordinary working hours. If tea-money means meal money it should be equally payable to an employé required to work after lunch on Saturday, if he has then worked more than 48 hours in the week, because he has then worked overtime on that day.

GRIFFITH C.J. The question for determination in this case is so short and simple that it is difficult to give any reasons for our decision, beyond saying that we do not agree with the learned Judge. The question is as to the proper construction of a section

(1) 27 W.N. (N.S.W.), 115.

of the *Minimum Wage Act* 1908, which seems to me to be expressed in very plain English. The Act is entitled: "An Act to provide a minimum wage for certain persons; to make better provision in certain cases for the payment of overtime and tea-money"; and for other purposes. Sec. 3 provides that a "workman works overtime within the meaning of this Act when he works more than forty-eight hours in any week or after six o'clock in the evening on any working day." This section contemplates two kinds of overtime, overtime "in any week," and overtime "on any working day."

Sec. 8 says:—"Where any workman . . . . being a male under sixteen years of age or a female, is required by his employer to work overtime on any day, the employer shall on such day pay such workman . . . . a sum of not less than sixpence as tea-money." The expression "overtime on any day" appears to me obviously to refer to the kind of overtime described in sec. 3 as working "after six o'clock in the evening on any working day," and not to the kind of overtime which is only overtime by reason of the employé having already worked for 48 hours in the same week. If there could be any doubt about the meaning, the purpose for which the money is required to be paid is stated to be "for tea money," obviously to enable the employé to get a meal. To make its meaning still more clear, the section provides that the tea-money is to be paid "on such day," that is, so as to provide the employé with cash to pay for the meal. This meaning seems to me to be so clear that it is unnecessary to pursue the matter further. Other sections of the Act referred to by Mr. *Whitfeld*, so far as they have any bearing on the matter, tend to confirm this conclusion. I think, therefore, that the learned Judge came to a wrong conclusion, and that the appeal should be allowed.

BARTON J. and O'CONNOR J. concurred.

ISAACS J. I agree. The learned Judge, in his judgment, said that "at 9 a.m. on 23rd April the workman had worked 48 hours, and she worked until 1 p.m. that day, working four hours overtime for the week. She was not paid tea-money for such

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overtime." There is no doubt this was overtime within sec. 6 of the Act for which she was entitled to be paid not less than 3d. per hour or at her option under sec. 37 of the *Factories and Shops Act* 1896. But she would not be entitled to 6d. for tea money merely because she had worked over 48 hours in the week. She could only be entitled to this under sec. 8 if she had worked after six o'clock in the evening on any working day. With the greatest respect to the learned Judge, he has omitted to preserve the distinction between these two sections.

Appeal allowed.

Solicitor, for appellant, *J. V. Tillett*, Crown Solicitor.
Solicitor, for respondent, *G. H. Leibins.*

C. E. W.

[HIGH COURT OF AUSTRALIA.]

DUNCANSON . . . . . APPELLANT; PLAINTIFF,

AND

HAYWOOD, ... RESPONDENT. DEFENDANT.

ON APPEAL FROM THE SUPREME COURT OF TASMANIA.

H. C. OF A. 1911.

HOBART, *Feb.* 13, 14, 15.

Griffith C.J., Barton and Isaacs JJ.

Contract—Sale of land—Action for deceit—Damages—Evidence—Special leave to appeal—Rescission of—No substantial injustice.

In an action by a purchaser of land against the vendor for deceit the jury found that there had been fraud, but gave no finding upon the question whether the plaintiff had suffered any damage. The Supreme Court of