

cup of tea and coffee, but is liable to the penalty should he supply to another customer a dish of ice cream and a glass of water or a biscuit and a glass of milk? If it is lawful for an inn-keeper or an eating-house keeper to supply meals on a Sunday, is he bound to catechise his customers and satisfy himself before serving them that they are hungry and need food to refresh them, or must he refuse them any trifling nourishment short of a full-course dinner?"

The case of *Rex v. Sabine*, decided by Judge Winchester, and relied on by the respondent, is easily distinguishable. The appellant Sabine was fined for selling ice cream soda on Sunday, but contended that in so doing he was within the exemption, being a restaurant-keeper. He had, it is true, a restaurant license, but the learned Judge held, on the evidence, that he was a candy shop-keeper and not a bona fide restaurant-keeper, having obtained the license only as a blind to enable him to sell ice cream and ice cream soda on Sundays, and therefore properly dismissed his appeal. The learned Judge said in his judgment: "In the present case I am satisfied that the defendant was not strictly and exclusively carrying on the business of a victualler, but, on the other hand, he was carrying on the business of a candy and ice cream store; that he obtained the victualling house license in order to enable him to sell ice cream soda and ice cream on Sundays during the summer weather." He has not decided that a bona fide restaurant-keeper cannot sell ice cream soda on Sundays.

It was also contended by the respondent that because the candies and oranges were not eaten on the appellant's premises, this made the premises a shop, and therefore the selling of them was an offence, a candy-shop not being, as I have already said, exempt under the Act. I cannot give effect to this contention. To hold that a restaurant is only a place where, according to the common idea, meals alone are served from a bill of fare to be eaten on the premises at tables or counters, would, in my opinion, be too narrow a definition of the word "restaurant" or "eating house." I prefer to hold, in the light of modern progress and requirements, that it is a place where, in addition to such foods as are ordinarily sold, there is also sold ice cream, ice cream soda, candies, oranges, and other things of a like nature, to be eaten either on or off the premises. What difference does it make if they are eaten off the premises? To contend, as the respondent does, that it is no offence if eaten on the premises, but if