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GREVILLE v. WILLIAMS.

Appeal allowed with costs. Order appealed from discharged with costs. Rule absolute to enter judgment for the plaintiff with costs for £829 14s. 6d., subject to an agreement signed by counsel and filed in Court.

Solicitors, for the appellant, *Aitken & Aitken.*

Solicitor, for the respondent, *The Crown Solicitor of New South Wales.*

C. A. W.

Foll *R v Longshaw, D.J.* (1990) 50 ACrimR 401

Refd to *Stamps, Commissioner of v Telegraph Investment Co* (1995) 133 ALR 130

Refd to *Stamps, Comr of v Telegraph Investment Co* (1995) 184 CLR 453

Cons *Hooper v Territory Insurance Office* (2002) 11 NTLR 182

Cons *Le Blanc v Qld TAB Ltd* [2003] 2 QdR 65

[HIGH COURT OF AUSTRALIA.]

SWEENEY . . . . . APPELLANT;

AND

FITZHARDINGE AND OTHERS . . . RESPONDENTS.

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

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SYDNEY, *Nov.* 21, 22, 23, 27.

Griffith C.J., Barton and Isaacs JJ.

Liquor Act (*N.S.W.*), (*No.* 18 *of* 1898), *sec.* 108—*Liquor* (*Amendment*) *Act* (*N.S.W.*), (*No.* 40 *of* 1905), *secs.* 46-52—*Registration of club—Appeal to Quarter Sessions from an order of Licensing Court—Re-hearing.*

The *Liquor* (*Amendment*) *Act* 1905, which was passed for the purposes, amongst others, of making fresh provision for the control of the sale of liquor in houses licensed under the Principal Act, and also for placing clubs in which liquor was sold on a footing analogous to that of licensed houses, gives the Licensing Courts jurisdiction to deal with the registration of such clubs, and to make orders in respect thereof. Sec. 1 provides that the Act shall be "construed with the *Liquor Act* 1898" thereinafter referred to as the Principal Act.

Sec. 108 of the *Liquor Act* 1898 provided that "Any person aggrieved by any adjudication of a Licensing Court . . . made under this Act," subject to certain exceptions, may appeal to the Court of Quarter Sessions, which "shall have power to hear and determine the matter of the appeal in a

summary way, and shall and may exercise all the powers conferred by sec. 3 of the Act 5 Wm. IV. No. 22," and the *Interpretation Act* 1897, sec. 12, provided that every Act amending an Act should be construed with the amended Act and as part thereof, unless the contrary intention should appear in the amending Act.

Held, that the *Liquor (Amendment) Act* 1905 should be construed as part of the *Liquor Act* 1898, and therefore, by sec. 108 of the latter Act, an appeal lies to Quarter Sessions from an order made by a Licensing Court under the former Act, granting registration to a club.

The omission of the words "and as part thereof" from sec. 1 of the amending Act is not sufficient to show a "contrary intention" within the meaning of sec. 12 of the *Interpretation Act*.

Held, further, that such an appeal should be by way of rehearing, and, therefore, the reception of fresh evidence by the Court of Quarter Sessions is not objectionable provided that it is restricted to the issues raised before the Licensing Court.

The legislature having given the Court of Quarter Sessions a new appellate jurisdiction must be taken to have intended that that jurisdiction should be exercised according to the established mode of procedure in appeals before that Court.

Decision of the Supreme Court: *Ex parte Sweeney*, (1906) 6 S.R. (N.S.W.), 146, affirmed.

APPEAL from a decision of the Supreme Court of New South Wales.

The appellant, who was secretary of a Workmen's Club, applied for a certificate of registration of the club under Part V. of the *Liquor (Amendment) Act* 1905, sec. 46. Certain objections were lodged, and the application came before the Licensing Court in accordance with sec. 49. The Court, after inquiry, granted the application and a certificate was issued. Two of the objectors appealed from this order to the Court of Quarter Sessions for the district, and the appeal came on for hearing before *Fitzhardinge*, District Court Judge and Chairman of Quarter Sessions, who held that an appeal lay under sec. 108 of the *Liquor Act* 1898, dealt with the appeal as a rehearing of the whole matter, in accordance with the usual practice in appeals to Quarter Sessions, and allowed the appeal.

The appellant then applied to the Supreme Court for a writ of certiorari to remove the order of the Chairman of Quarter

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Sessions into the Supreme Court to be quashed, or in the alternative, for a prohibition, on the grounds, *inter alia*, that the Court of Quarter Sessions had no jurisdiction to entertain an appeal from the granting of an application for registration of a club; that there was no jurisdiction to hear the appeal as a rehearing; and that on the hearing of the appeal evidence was received of matters arising subsequently to the hearing by the Licensing Court.

The Supreme Court, after argument, refused the application, discharging with costs the rule *nisi* that had previously been granted: *Ex parte Sweeney* (1).

It was from this decision that the present appeal was brought, by special leave, the respondents being the learned Chairman of Quarter Sessions and the two objectors who had appealed from the Licensing Court in the first instance.

A motion by *L. Armstrong* to rescind the special leave was allowed to stand over to be argued on the appeal.

Piddington (*Curlewis* and *E. M. Mitchell* with him), for the appellant. Where a Statute establishes a new Court or confers a new jurisdiction upon a previously existing Court, there is no right of appeal unless it is expressly conferred: *Hardcastle on Statutory Law*, 3rd ed., p. 139; *Attorney-General* v. *Sillem* (2); *The Queen* v. *Stock* (3). Sec. 108 of the *Liquor Act* 1898 refers only to adjudications under that Act, not to decisions of the Licensing Court under Part V. of the Act of 1905. That Part is more than a mere amendment of the original Act. By it clubs are dealt with and regulated for the first time, and no mention is made of appeals. The only limitation upon the life of a certificate of registration is that it may be suspended or cancelled. [He referred to secs. 9, 13, 23, 41, 53 of the *Liquor Act* 1898, and secs. 1, 5, 42, 43, 48, 49, 55, 57 and 59 of the *Liquor (Amendment) Act* 1905.]

The decision of the Licensing Court in granting an application for a certificate is not an adjudication. The Court is not acting

(1) (1906) 6 S.R. (N.S.W.), 146. (2) 10 H.L.C., 704.
(3) 8 A. & E., 405.

as a Court of summary jurisdiction, but in an administrative capacity: *Reg.* v. *Sharman* (1).

[GRIFFITH C.J.—That case has been dissented from once or twice since.]

[*Flannery*, for the respondents, referred to *The Queen* v. *Justices of Manchester* (2), and *The Queen* v. *Bowman* (3).]

The fact that the Court is constituted a Court of Record does not prevent it from acting ministerially in certain kinds of proceedings. In these cases it can act upon inquiry, not only upon evidence.

[BARTON J.—Is there not a distinction between the nature of the Licensing Bench in England and the Licensing Courts under these Acts? The former could take evidence not on oath. That does not appear to be within the power of the Licensing Courts here.]

It appears from sec. 57 that the Court can act on evidence not on oath. Sec. 58 makes special provision for evidence on oath, where it is intended that it should be so taken in an application for cancellation of registration. If registration is wrongly granted it is subject to cancellation after proper inquiry; and under sec. 58 new matter would be brought forward by the inspector. [He referred also to secs. 28 and 64, and to the *Clubs Act* (Eng.) 2 Edw. VII., c. 28.] There is no machinery for the entertaining of an appeal; the materials that were before the Licensing Court cannot be brought before the Quarter Sessions, and, if the latter Court did entertain an appeal, they could not give effect to the judgment. In England the Appeal Court is empowered to make the order that the Licensing Bench could have made.

[GRIFFITH C.J.—But if it appears that a right of appeal is given, then everything necessary to make the appeal effectual will be taken to have been also given.]

If an appeal had been contemplated the legislature would have expressed its intention to grant it. The fact that the decisions of the Licensing Court in its ordinary jurisdiction were subject to appeal is not sufficient reason for holding that, when a totally new sphere of action is opened to it, its decisions in the new sphere are also to be subject to appeal.

(1) (1898) 1 Q.B., 578. (2) (1899) 1 Q.B., 571. (3) (1898) 1 Q.B., 663.

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[GRIFFITH C.J. referred to *Great Fingall Consolidated Ltd.* v. *Sheehan* (1).]

The Act of 1905 cannot be read as part of the Act of 1898 in such a way as to bring adjudications under it within sec. 108 of the Principal Act. Sec. 12 of the *Interpretation Act* 1897 does not apply, first, because the Act of 1905 is not a mere amending Act, and, secondly, because the words of sec. 1 exclude the operation of the *Interpretation Act*, and limit the extent to which the amending Act is to be read in connection with the Principal Act; the words "as part thereof" are excluded.

Even if there is an appeal to Quarter Sessions, it is not by way of rehearing, but an appeal in the strict sense, and no new material can be considered. There is no analogy between the decisions of a Licensing Court under this Part and those of justices sitting in the ordinary way. The Licensing Court is specially constituted for a special purpose. [He referred to *Ponnamma* v. *Arumogam* (2); *Re W. S. Hill* (3); *Bragg* v. *McCulloch* (4); *Ex parte Jefferis* (5); *Clancy* v. *Butchers' Shop Employés Union and others* (6); *Mining Act* (37 Vict. No. 13, sec. 106.] The words "in a summary way" in sec. 108 do not mean by way of rehearing, but merely without a jury, without the formality of an indictment by the Attorney-General, &c. [He referred to 5 Geo. II. c. 19; 4 Geo. IV. c. 96; 6 Geo. IV. No. 9; 2 Geo. IV. No. 13; 5 Geo. IV. No. 3; 8 Geo. IV. No. 5, sec. 10; *The Queen* v. *Pilgrim* (7).]

[GRIFFITH C.J.—But supposing that an appeal is given, and there is no provision as to the procedure on the hearing of the appeal, who is to settle the procedure but the appellate Court itself? There is no appeal from it.]

It cannot take evidence again if the power to do so is not conferred upon it. The admission of fresh evidence was really an exercise of original jurisdiction. [He referred to *In re Farrar* (8).]

Rolin, Armstrong and *Flannery*, for the respondents. This is

(1) 3 C.L.R., 176.
(2) (1905) A C., 383.
(3) 22 N.S.W. W.N., 117.
(4) 15 N.S.W. W.N., 31.
(5) 3 N.S.W. W.N., 109.
(6) 1 C.L.R., 181.
(7) L.R. 6 Q.B., 89.
(8) 16 N.S.W. L.R. (B. & P.), 3.

not a case in which special leave should have been granted. It has no general importance, as it merely involves the question whether this particular club should be registered. It does not affect other clubs, and therefore the special leave should be rescinded: *Bagnall* v. *White* (1).

[GRIFFITH C.J.—That case involved merely a question of procedure, this case involves other points, including a very important question of construction. Moreover, the amount involved is uncertain. It may be more than £300.]

Assuming that there is a right of appeal, it is by way of rehearing. The appellate Court may regulate its own practice with regard to the hearing of an appeal, and it will not be interfered with unless it is manifestly unjust. Courts of Quarter Sessions had long established the practice of dealing with appeals by way of rehearing. 5 Wm. IV. No. 22, sec. 3, which was adopted in sec. 108 of the *Liquor Act* 1898, does not in any way limit the power of Courts of Quarter Sessions, and consequently sec. 108 incorporates in the most general way the appeal from justices to Quarter Sessions. It is to be presumed that the appellate Court will have the same powers in entertaining the new class of appeals as it had in its former jurisdiction, without any express provision to that effect: *Dales' Case*; *Enraght's Case* (2); *Great Fingall Consolidated Ltd.* v. *Sheehan* (3). [They referred also to *Paley on Summary Convictions*, 8th ed., pp. 307, 398; *The King* v. *Southampton Licensing Justices*; *Ex parte Cardy* (4); *Walsall Overseers* v. *London and North Western Railway Co.* (5); *Breedon* v. *Gill* (6); *The Queen* v. *Pilgrim* (7); 5 Geo. II. c. 19; 22 & 23 Car. II. c. 25; 2 Vict. No. 18, sec. 76; 13 Vict. No. 29, sec. 77; 25 Vict. No. 14, sec. 60.]

An appeal is clearly given by sec. 108 of the *Liquor Act* 1898. Sec. 1 of the amending Act provides that it is to be read with the Principal Act, and therefore an adjudication under the Act of 1905 is an adjudication under the Principal Act within the meaning of sec. 108 of the latter Act. If there were any doubt it is removed by sec. 12 of the *Interpretation Act*. The Act of 1905

(1) 4 C.L.R., 89.
(2) 6 Q.B.D., 376, at p. 450.
(3) 3 C.L.R., 176.
(4) (1906) 1 K.B., 446.
(5) 4 App. Cas., 30, at p. 40.
(6) 1 Ld. Raym. 219.
(7) L.R. 6 Q.B., 89.

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is an amending Act within the meaning of that section. It cannot be said that the contrary intention appears in sec. 1 of the amending Act merely because of the omission of the words "and as part thereof." The object of sec. 1 is to make it clear that the Act is an amending Act, and to indicate the Act which is to be regarded as the Principal Act. It incorporates the common law principle of construction that Acts *in pari materia* are to be read together as far as possible: *Hardcastle, Statutory Law*, 3rd ed., pp. 147, 148: *Waterlow* v. *Dobson* (1). Sec. 12 of the *Interpretation Act* requires that the two Acts shall be read as if they had been *printed together* unless the contrary intention appears. If the Acts are not read together there is no means of knowing the nature of the Appellate Court, its powers and practice. If it is admitted that the other parts of the amending Act are to be read with the Principal Act, there is no valid reason for excluding Part V. The mere arrangement of the Act cannot show a contrary intention. [They referred to *Norris* v. *Barnes* (2).]

The granting of a certificate of registration is an adjudication. All the requisites are present, parties, power to make an order, and power to award costs. *Reg.* v. *Sharman* (3) has not been approved; moreover, the Licensing Committee in England is a different body from our Licensing Court. Sec. 108 speaks of the refusal of a certificate to an hotel as an adjudication, implying that the grant of such a certificate is also an adjudication. Why, then, should the grant of a certificate to a club not be an adjudication? There is nothing to suggest that evidence may be taken otherwise than on oath in open Court. [They referred to secs. 57 and 64.] The Court is a Court of Record: sec. 9, sub-sec. 5. The power to direct an inquiry is not out of keeping with its judicial character. The result of the inquiry could be brought before the Court on oath.

As to the wrongful reception of evidence, certiorari does not lie for such a mistake on the part of the Court, it will only go for excess of jurisdiction: *Colonial Bank* v. *Willan* (4). There is nothing before this Court to show that evidence was wrongly

(1) 8 El. & Bl., 585; 27 L.J.Q.B., 55.
(2) L.R. 7 Q.B., 537.
(3) (1898) 1 Q.B., 578.
(4) L.R. 5 P.C., 417.

admitted or that any improper issue was dealt with by the Appeal Court; the only question raised and decided was whether this was a *bonâ fide* club or not. On that point evidence was admissible, whether it dealt with matters arising subsequent to the original hearing or not.

[BARTON J. referred to *The King* v. *Excise Commissioners* (1).]

Piddington, in reply, referred to *In re England* (2); *The King* v. *Inhabitants of Newbury* (3); and on the question of costs to *Reg.* v. *Thornton* (4).

[GRIFFITH C.J. referred to *Mather* v. *Brown* (5).

ISAACS J. referred to Act No. 22 of 1905.]

Cur. adv. vult.

November 27th.

GRIFFITH C.J. This case raises for decision two questions of considerable importance. The first is whether an appeal lies to Quarter Sessions from the granting of registration of a club by a Licensing Court, and the second, whether, if an appeal lies, the case is to be dealt with by way of rehearing or upon the evidence that was before the Court below. The questions arise in regard to the *Liquor Act* 1898 and the amending Act of 1905. The principal Act provides, amongst other things, for the establishment of a Court called the Licensing Court. Sec. 5 provides that the Licensing Courts for the purposes of the Act shall be composed of appointed and official members, and shall be constituted in a certain manner. The Courts are to consist of seven members in Sydney and three in the country districts. Each of the members becomes by virtue of his office a justice of the peace, if he was not one before, and holds office for three years. Sec. 6 provides that the Licensing Court shall be a Court of record, with power to make rules for the conduct of its business and the enforcement of its orders, adjudications, and convictions. The Court is to have a seal, and the Chairman may administer oaths &c., and take depositions in any proceeding before the Court. Then follow various provisions as to the procedure before the Court, and other parts of the Act confer various powers upon it. Sec. 108 provides: [His Honor read the section and con-

(1) 3 M. & S., 133.
(2) 13 N.S.W. L.R., 121.
(3) 4 T.R., 475.
(4) 67 L.J.Q.B., 249.
(5) 1 C.P.D., 596.

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tinued.] Sec. 45 provides that any person who sells liquor without holding a licence authorizing him to do so shall, subject to certain exceptions, be liable to penalties. Sec. 13, sub-sec. 5, provides that that provision shall not extend to any person selling liquor in a club house to members of the club or their guests, in premises of which the members "are the *bonâ fide* owners or lessees." That Act, therefore, has no application to clubs; they are entirely free from restriction, and there is no prohibition of the sale of liquor in them.

Then in 1905 the legislature determined to amend the Act of 1898, and by an Act No. 40 of 1905, which is entitled "An Act to amend the law relating to the supply of intoxicating liquor, to regulate the supply of liquor by clubs; to make better provision for the exercise of local option with regard to the supply of intoxicating liquor; to amend the *Liquor Act* 1898; and for other purposes consequent thereon and incidental thereto," it was in the first place enacted that sec. 13 sub-sec. (5) of the principal Act should be repealed, and then various provisions were made for the regulation of clubs. In effect the legislature undertook to deal with clubs in which liquor is sold, and to bring them under the same general laws as hotels or licensed premises. The provisions, of course, are not the same in words, but the legislature undertook to regulate the whole subject of clubs, and the scheme was, in short, that every club should be registered. Various conditions were laid down as to the kinds of clubs that might be registered. If a club desired to be registered, the secretary was to give notice to the clerk of the Licensing Court of the District. A copy of the application was to be submitted to the inspector for inquiry and report, and objections might be lodged. If no objection was lodged, the clerk granted the club a certificate of registration. But if an objection was lodged, it was provided by sec. 49 that the matter of the application should be dealt with by the Licensing Court. By sec. 50 it was provided that at the hearing of the application, objections might be taken by certain persons mentioned upon any one or more of certain specified grounds. There are, in all, thirteen different grounds of objection. By sec. 52 it is provided that when an application for registration of a club is granted, a certificate of registration under the hand of the Clerk

of the Court shall be issued to the club, for which a prescribed fee is payable, according to the number of members in the club. Sec. 53 provides that when an application for a certificate or renewal is refused the Chairman of the Court shall pronounce the decision in open Court, stating the grounds of the refusal, and shall cause the grounds to be entered on the records of the Court.

In the present case the appellant, the secretary of a club, applied to the clerk for registration, and objections were lodged. After hearing evidence the Licensing Court granted the application for registration. From that decision the objectors appealed to the learned Chairman of Quarter Sessions, who, after rehearing the case on fresh evidence, allowed the appeal and refused registration. The appellants applied to the Supreme Court for a certiorari, which was refused, and from that decision the present appeal is brought to this Court.

The first question is whether an appeal will lie from a Licensing Court to the Quarter Sessions. There is no doubt that, as a general rule, an appeal will not lie from a Court unless an appeal is given by Statute, and usually, when a new Court is created and no appeal is given, *primâ facie* no appeal will lie. The question is whether an appeal lies from the decision of a Licensing Court given under the Act of 1905. In order to support the contention that an appeal does lie, it is necessary to show that the provisions of sec. 108 of the Act of 1898 apply to it. That section says:— "Any person aggrieved by any adjudication of a Licensing Court or Court of Petty Sessions made under this Act," subject to certain exceptions, may appeal to the Quarter Sessions. It is said for the appellant that the decision of a Licensing Court with respect to registration of a club is not an application made under the principal Act within the meaning of that section. In one sense that is true, and, if it were a matter to be determined on the words of the two Acts alone, that contention would be hard to answer. But there is another Act in force in New South Wales, called the *Interpretation Act* 1897, which by sec. 12 provides that "Every Act amending an Act shall be construed with the amended Act and as part thereof, unless the contrary intention appears in the amending Act." There is no doubt that

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the Act of 1905 is an Act amending the Act of 1898. It is so described in the title, and the contents show clearly that it is. If, therefore, any effect is to be given to sec. 12 of the *Interpretation Act* 1897, the Act of 1905 is to be read as part of the Act of 1898 unless the contrary intention appears in it. If it is read as part of the Act of 1898 then the words "under this Act" in sec. 108 must mean "under this or any amending Act which forms part of it." If it is so read, of course, an appeal will lie. It is contended, however, that the contrary intention does appear in the amending Act. That is sought to be made out in various ways. The first point made is that in sec. 1 of the Act of 1905 are the words:—"This Act shall be construed with the *Liquor Act* 1898, hereinafter referred to as the Principal Act."

It is said that this is a partial repetition of sec. 12 of the *Interpretation Act*, and that, as the repetition is only partial, it must be taken that the part not repeated is to be excluded. I do not think that argument can be supported. No doubt, effect should be given to every provision in an Act, and to every word, if possible, in the provision. When there is a new enactment establishing a new body of law it is desirable to give effect, if possible, to every provision and every word, so that no word shall be wasted. But it very often happens that in passing fresh legislation the legislature makes a statement declaratory of the law. When it does so it does not add to the law, nor does it alter the duty of the Court. When there is fresh legislation dealing with matters that have already been the subject of legislation, then, *ex necessitate rei*, all the acts must be construed together for the purpose of answering any question arising under them. But these words really add nothing to the law, and impose no new additional duty on the Court, and they cannot be said to import the contention that the provisions of the *Interpretation Act* are to be excluded. Then it was said that the whole general scheme of the provisions about clubs was such as to show that it was not intended that there should be an appeal in such matters. As I have pointed out, the general scheme of the Act was to put clubs on a footing very analogous to that of licensed premises. There is nothing improbable, therefore, in supposing that when the legislature imposed these duties on a Court, which it declared to be a

Court of record, and which it required to consist, in part, of judicial members, it was intended that its decisions should be subject to appeal in the same way as the decisions of an analogous Court on analogous matters under the principal Act. It is said that many of its duties are more of an administrative than a judicial kind. Perhaps that is so. But they are imposed by law upon it as a Court, and its decisions are to be entered of record. If the matters that come before it are matters which can properly be determined by a Court of first instance, there is no reason why they should not be adjudicated upon by a Court of Appeal. Then it was said that from its nature a decision granting or refusing a certificate of registration was not the kind of thing likely to be made subject to appeal, and, further that in the principal Act the legislature plainly applied their minds to the various kinds of decisions that the Court had to give, and classified them, specifying which were to be final and conclusive and which were not. But I am unable to see anything in the language of the Act to indicate that the legislature did apply their minds to any such matter. It may be that, if the legislature had applied their minds to the various grounds on which decisions might be given, they might have classified the provisions and said that an appeal would lie in some cases and not in others. But that is, after all, mere conjecture, and I do not think it is sufficient to establish the contrary intention, which, by the *Interpretation Act*, the Court is bound to find before holding that the provisions of the amending Act are not to be taken as part of the principal Act.

Being, therefore, unable to find any indication of contrary intention such as the Court could rest its decision upon, I have come to the conclusion that the *Liquor (Amendment) Act* 1905 must be construed as part of the principal Act, and as if its provisions were provisions of that Act. When so construed, the appeal given by sec. 108 from all decisions "under this Act" applies to all decisions given under the amending Act of 1905. It is quite clear that in many provisions of the *Liquor (Amendment) Act* it is intended that there should be an appeal to Quarter Sessions. One instance is that of a new offence created by sec. 59, for the sale of liquor on club premises to persons who are not

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members of the club. For the reasons given I am of opinion, therefore, that the first objection fails.

The other point was that the appeal, if there is one, should not be by way of rehearing. The origin of appeals to Quarter Sessions was fully discussed at the bar. Their history is stated in the introduction to *Paley on Summary Convictions*, 7th ed., p. 12. The earliest instance of an appeal from a conviction by justices of peace was in Statute 22 Car. 2 c. 1, called the *Conventicle Act*, and the author says:— "That act, after authorizing a summary examination and recovery of penalties before any two justices, gave to the party convicted the privilege of an appeal in writing, to the judgment of the justices of the peace in their next quarter-sessions, upon which 'he may plead and make his defence, and have his trial by a jury thereupon.'" It is obvious that if the appeal was to Quarter Sessions with a jury the case must be heard *de novo*, and it would have to be heard in the ordinary way, by the taking of evidence and the jury giving a verdict. That is the only instance, according to *Paley*, of an appeal to Quarter Sessions with a jury. The next Act was passed in the following session, 22 & 23 Car. 2 c. 25, an Act for the protection of Game. That gave an appeal by sec. 9 in these words:—"It shall and may be lawful" for any person aggrieved by any judgment given by any justice of the peace by virtue of that Act "to appeal unto the Justices of Peace in their General Quarter Sessions which shall happen to be held next after such judgment given," who were authorized to give such relief and make such order on the appeal as should be agreeable to the tenor of the Act; and their judgment, order or determination was, except in certain cases, to be "final to all intents and purposes whatsoever." Now, from that time down to the present it appears that it has been the uniform practice at Quarter Sessions in England to hear appeals from justices by way of rehearing, and without a jury. Indeed by the Act 5 Geo. II. c. 19, it was expressly declared that justices could take that course. It was declared that the particular object of the Act was not to introduce any new form of procedure, but to do away with technical objections to the form of the original proceedings, and the justices were directed to rectify all defects in form and to proceed to determine the truth and merits of the

matter of the appeal by the examination of witnesses on oath, in terms that clearly indicate, if there were any doubt—which there is not—that that was already the practice of that Court. The practice of the Court is further stated by *Lush* J. in a passage quoted by the learned Judges of the Supreme Court from *The Queen* v. *Pilgrim* (1):—"Generally speaking," he said, "on appeal to the Quarter Sessions the justices are not limited to the evidence before the petty sessions, but they have to hear the whole matter *de novo*, and the issue is the same, and the justices are put in the same position as the justices in the Court below. It is only in cases in which the particular Statute giving the appeal limits the inquiry to the same evidence, that the Quarter Sessions are precluded from going into fresh evidence, ... but where there is no such limitation, either expressly or by implication, the matter is at large, and the Quarter Sessions are to rehear the whole matter, and give their judgment upon all the evidence that is brought before them." That is a statement of the general practice of Courts of Quarter Sessions on appeals from justices in England, and no doubt that practice has always been carried out in those Courts.

Courts of Quarter Sessions were introduced into New South Wales very early. The first Statute or local ordinance on the subject is 5 Geo. IV. No. 3, which was passed in order to give effect to the Imperial Act 4 Geo. IV. c. 96, authorizing the Governor to establish Courts of Quarter Sessions by proclamation. That was followed up by later Acts, with the result that, the Act 5 William IV. c. 22 in effect gives Courts of Quarter Sessions in New South Wales the same powers and duties as the Courts of Quarter Sessions in England. That being the nature of the Court, and that having been its ordinary practice during all these years, and the legislature having in 1898 established a new Court called a Licensing Court, and given an appeal from it to Quarter Sessions, what is to be inferred? It is suggested that on such appeals the Court ought to be treated as a Court with some new procedure. There is no doubt as to the rule in England, stated by *Lush* J. in *The Queen* v. *Pilgrim* (1), that "it is only in cases in which the particular Statute giving the appeal limits

(1) L.R., 6 Q.B., 89, at p. 95.

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the inquiry to the same evidence, that the Quarter Sessions are precluded from going into fresh evidence." It is said that a contrary rule is to be established here, and that it is to be taken that, unless there is something in the Statute giving the appeal authorizing fresh evidence to be taken, the inquiry is to be limited to the same evidence as was before the justices in the first instance. There is a passage in the judgment of *James* L.J. in *Dale's Case* (1) which appears to me to be exactly in point. He said:—"It was strongly urged that this was a new jurisdiction and a new procedure. According to my view of the case, that is not material, because if a new jurisdiction is given to an existing Court—that is to say, a jurisdiction to deal with some new matters in a different mode and with a different procedure—if that jurisdiction be so given to a well-known Court, with well-known modes of procedure, with well-known modes of enforcing its orders, it must, unless the contrary be expressed or plainly implied, be given to that Court to be exercised according to its general inherent powers of dealing with the matters that are within its cognizance." I think that when the legislature in these Acts gave the Courts of Quarter Sessions a new jurisdiction in these cases they intended that it should be exercised according to the general mode of procedure in that Court, and therefore that this appeal was properly heard by Quarter Sessions as a rehearing. In my opinion, therefore, both objections fail.

It is not necessary to consider whether, if either of them were valid, the remedy would be by certiorari or prohibition.

A third point was suggested, as to new evidence having been received. But the reception of new evidence is not objectionable, for the reasons I have already given. If a new objection is allowed to be made before the Quarter Sessions, possibly objection may be taken because, by entertaining a new objection, the Court would be trying a new issue and practically assuming original jurisdiction, but no such case is made in the affidavits.

For these reasons I think that the appeal should be dismissed.

BARTON J. His Honor has stated the matter fully. The third question one may at once put out of the way. The fact

(1) 6 Q B.D., 376, at p. 450.

that the Judge receives evidence, in itself inadmissible, is not a question of jurisdiction. I think, for the reasons given and to be given, that this appeal was by way of rehearing, and it was therefore competent for the Court to hear fresh evidence if necessary. If the evidence, though wrongly received, is within the Court's jurisdiction, that surely can not be a question to be raised by certiorari or prohibition. That is simply an instance of the licence that every Court has to go wrong.

As to the first question, whether an appeal lies at all, I refer, first of all, to the *Interpretation Act* 1897, sec. 12, which provides as follows [His Honor read the section and continued]. Does sec. 1 of the *Liquor (Amendment) Act* 1905 show a contrary intention? Instead of repeating in full words which have already been enacted in the *Interpretation Act*, it deals with things a little more shortly, and at the same time leaves out part of that section. It says:—"This Act may be cited as the *Liquor (Amendment) Act* and shall be construed with the *Liquor Act* 1898 hereinafter called the Principal Act." It is argued that because the words "shall be construed with the *Liquor Act* 1898" are there and the words "and as part thereof" are not there "the contrary intention" is shown. I am unable to accede to that argument. The section is not for the mere purpose covered by sec. 12 of the *Interpretation Act*. It deals with other considerations and points out which is the Act to be referred to as the principal Act. The mere omission of the words "and as part thereof" does not show a contrary intention to sec. 12. It may show an inadvertent omission. But it does not necessarily show even that. In my opinion, sec. 1 of the Act of 1905 may be read as merely pointing out the Act with which that Act is to be construed. That is, I think, the prime purpose of the section. It is a provision well framed by the draughtsmen in view of the frequency with which fresh statutory provisions have the effect of amending more than one prior Act. Under those circumstances it may have been thought that the proper method was to insert a section when the new Act amends prior legislation in order to point out the Act which will be referred to in it as the principal Act, and with which it should be construed. For the purpose of such a section it may well be that this reference would

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be considered sufficient, and I am inclined to think that it is. If it is contended that it is not so, then I think that the principle stated in the case of *Salmon* v. *Duncombe* (1) would apply. In that case a section in an Act of Natal dealing with the law of inheritance was framed so as to lead to a totally different consequence from that which the legislature had in the preamble clearly expressed to be their intention.

In the Privy Council it was held that where it was obvious that, by the mere carelessness or omission of the draughtsman, language had been used which, if taken as correct, would have the effect of defeating the manifest purpose of the Act, the words which brought about that result should be construed, if possible, in a sense which would not lead to the consequence of defeating the manifest intention of the legislature. That principle exactly applies in this case to render futile the objections founded on the mere omission of the words "and as part thereof." I think that the reasoning on which the argument as to contrary intention is founded is in every part of it without any real force or validity.

Passing now to the other reasons urged in support of the appeal. Prior legislation and practice, before the passing of this Act, conferred the right of appeal to Courts of Quarter Sessions by way of rehearing in a summary way without a jury. This was the state of things when the *Liquor Act*, consolidating prior legislation on the subject, was passed. An appeal was there given to General or General Quarter Sessions, and the Court was to have power to hear and determine the matter of the appeal in a summary way and at once, "and shall have and may exercise all powers conferred by the third section of the Act fifth William the Fourth number twenty-two; and the decision of the Court shall be final and conclusive": sec. 108.

It is unnecessary to make more than a short reference to the Act 5 Wm. IV. No. 22. The third section of that Act prescribed the conditions under which liberty was given to every person aggrieved to appeal from a summary conviction to the next Court of General or Quarter Sessions under certain conditions, and went on to say:—"And the justices at such sessions so assembled shall hear and thereupon finally determine the matter

(1) 11 App. Cas., 627.

of every such appeal in a summary way and their judgment thereon shall be final and conclusive to all intents and purposes," and so on. Now, what is the meaning of the words "in a summary way"? I do not think anybody has ever attempted to say that where an appeal is by way of rehearing, a *gratissimi juris* form of appeal, if the Court considers evidence that is not in the depositions and deals with the matter upon the new evidence as well as that originally taken, it could be considered as exercising original jurisdiction. To hear and determine the matter of the appeal in a summary way seems to me to imply more than one thing. Certainly it implies the absence of a jury. There can be no question about that. But the words also imply, in my judgment, a hearing upon evidence taken orally before the Court, and not merely upon a consideration, as a Court of Appeal, of the depositions already taken. Even if this might not have been the case otherwise, yet legislation and practice having both approved that Court in its treatment of appeals by way of rehearing, and that being the law and the practice when the *Liquor (Amendment) Act* 1905 was passed, the Court of Quarter Sessions being a Court in which, the legislature knew, appeals were dealt with by way of rehearing, and the legislature not knowing of any kind of appeal to Quarter Sessions except appeals by way of rehearing, the question arises whether by the use of the particular words the legislature did not intend them to have that well known and defined meaning which they have always had when used in relation to appeals to Quarter Sessions. In my opinion that is the sense in which the words should be read. There is no necessity to strain them for that purpose. And, therefore, I am of opinion that the word was used to define that summary way of rehearing which was original and customary in Courts of Quarter Sessions. The appeal to Quarter Sessions was originally an appeal from one set of justices to another, from the petty to the General Sessions; that is, from a smaller to a larger meeting of magistrates. Was it a Court of appeal from the ordinary Court of petty sessions in the sense that it could take into account only the depositions taken in the Court of first instance in a case where depositions were taken, and upon reading those

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alone come to a determination? To have prescribed that would have merely been to give to a larger set of magistrates the right to pronounce upon depositions taken before another set of magistrates. An appeal under those circumstances would, to my mind, have been of no conceivable advantage. The only argument by which it could be claimed that one Court was superior to the other would be that the members of one were more numerous than those of the other. It is scarcely conceivable that that should be considered a reason for granting an appeal to Quarter Sessions, meaning, as was long ago settled, to Quarter Sessions as ordinarily constituted, or, as the result of subsequent legislation, to a Chairman of Quarter Sessions exercising the functions of Quarter Sessions. I cannot see in this an indication of any intention to alter the method of hearing appeals, but I am led to the opinion that the intention was to grant an appeal in the way known to practice, and that is by way of rehearing.

I agree with the Chief Justice that the appeal should be dismissed.

ISAACS J. I am also of opinion that this appeal should be dismissed, and, in view of the general importance of the questions involved, I shall state my reasons. The appellant contended that the Court of Quarter Sessions had no jurisdiction to entertain the appeal from the Licensing Court, and he rested his case on three grounds.

The first ground was:—That no appeal whatever to Quarter Sessions has been provided by law, in the case of the grant of an application for a certificate of registration of a club under the *Liquor (Amendment) Act* 1905. This contention was supported by two arguments. It was said that, without the aid of sec. 12 of the *Interpretation Act* (No. 4 of 1897), it was impossible to connect the appeal section of the principal Act with the amending Act, and that the incorporating provisions of sec. 12 of the *Interpretation Act* do not apply because the contrary intention appears in the amending Act, both by reason of the wording of its first section and by reason of the general purview of the whole Act. In my opinion this argument is unsound. It is unnecessary to say what the result would be apart from sec. 12 of the

Interpretation Act. That section is a legislative declaration of general application, that when any Act is amended by a later Act the two shall be regarded as one connected and combined statement of the will of Parliament, unless the contrary intention appears in the amending Act. *Primâ facie*, this general rule applies in the case of every amending Act, and the onus of displacing it rests upon those who assert the contrary intention; they have the burden of satisfying the Court that, by express words or necessary implication, the legislature has indicated in the amending Act its intention to depart from the ordinary rule expressed in the section referred to. So far as express words declaring a contrary intention are concerned they do not exist in this case, but the Court has been invited to infer it from the fact that, whereas the *Interpretation Act* provides that the amending Act shall be construed with the amended Act and as part thereof unless the contrary intention appears, sec. 1 of the amending Act, on the other hand, merely says that the amending Act shall be construed with the principal Act, and does not go on to use the words "and as part thereof." But no negative words are used and no provision is inserted that can be regarded in any way as inconsistent or incompatible with the general rule. It is merely overlapping at the most, and that is not, in my opinion, sufficient to over-ride, or in other words, to repeal, for this purpose by implication the distinct provision in sec. 12. So far, therefore, as sec. 1 of the amending Act is alone concerned, I can see no reason for refusing to apply to the amending Act the ordinary provisions for appeal. Then it is sought to aid the construction argued for by a general consideration of Part V. of the Act of 1905. It is said that it is new legislation on a new subject and represents a code quite complete within itself, and that, as no reference can be found in that Part of the Act conferring any right of appeal, no such right exists. The Act, however, in dealing with clubs is not taking up absolutely new matter. Clubs were the subject of special consideration in the principal Act, and enjoyed a certain measure of exemption under the 5th sub-section of sec. 13, and in the amending Act the legislature simply repealed that sub-section and placed clubs on another footing. It required henceforth

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registration and all the necessary and incidental investigation and safeguards precedent to registration as a condition of continued exemption of clubs from the general provisions of the licensing law. Consequently, the notion of an entirely new subject of legislation is not accurate. Clubs to be exempt in future must be registered, and the duty of deciding whether a club is registrable or not is placed on the Licensing Court as one of its ordinary judicial functions.

The principal Act must certainly be consulted to discover what is meant by the expression "the Licensing Court." So much is conceded, though it is said that is sufficiently accounted for by the presence in sec. 1 of the direction to construe the Act with the principal Act. But in addition to that there are penalties provided, as in sec. 59, with respect to which there would be no appeal if the appellant's contention is given effect to; and, if there be an appeal to some other Court with regard to the penalties under sec. 59, I do not see how the argument of a complete code entirely excluding appeal can be maintained. Again, what is to be the procedure of the Licensing Court on an application to register a club? Secs. 49 and 57 of the Act 1905 lay down the duties of the Court in most general terms and prescribe no specific procedure. Plainly it was thought that the ordinary procedure provisions would apply, and this consideration militates against the view of the appellant that the club provisions in the later Act form a separate and complete code, and that the two Acts are to be regarded as quite independent enactments.

It was further urged on behalf of the appellant that the only appeals given were in respect to adjudications under the principal Act, because the appeal sec. 108 uses the expression "made under this Act" with respect to adjudications which may be appealed against.

If, however, the rule of incorporation contained in sec. 12 of the *Interpretation Act* applies, so that the amending Act is construed as part of the principal Act, no difficulty exists. The argument, if successful, would equally exclude the operation of all the other sections of Part IX. of the principal Act with respect to proceedings under the amending Act, a result improbable in the last degree.

Finally, on this branch of the case it was urged that the grant of registration of a club was not an adjudication within the meaning of sec. 108 of the principal Act, and *Reg.* v. *Sharman* (1) was cited in support of this contention. That was a case in which a Divisional Court held that under the English Licensing Acts certiorari would not lie to bring up the order of a Licensing Committee to be quashed. That case is very hard to follow, and English Judges have found it difficult to appreciate: see *Rex* v. *Johnson* (2). But in any event it cannot affect the question here. The Licensing Court is by the principal Act expressly declared to be a Court of record with power to administer oaths in any licensing or other matter, complaint or other proceeding to be heard or determined or dealt with by such Court, and elaborate provisions are made for punishment for contempt, and these and similiar provisions make it perfectly evident that the tribunal is a Court in the strictest sense of the term, and that it acts judicially. Its determinations are in fact termed by the Statute adjudications, even when it grants or refuses a licence or a permit. Consequently there is nothing unusual in allowing an appeal from its decisions to another judicial tribunal, and therefore this contention fails also; the result being in my opinion that an appeal is given in a case of this nature.

The second ground of objection was that, if an appeal is given at all, it must be determined by the Court of Quarter Sessions on the evidence adduced before the Licensing Court and upon no other. Shortly put, the contention is that the Court of Quarter Sessions cannot take evidence on appeal. This is so opposed to the recognized and constant practice at Quarter Sessions, and so inconsistent with the due performance of the functions of that Court, that it would require the clearest legislative language to support it, and no such provision can be found. On the contrary, so far as affirmative words can be pointed to, they are quite against the argument. Sec. 108 of the principal Act provides that the matter of the appeal shall be determined in a summary way, and that the Court shall have and may exercise all powers conferred by the 3rd section of 5 William IV. No. 22. The last named Act also declares that the Court shall determine the

(1) (1898) 1 Q.B., 578.

(2) (1905) 2 K.B., 59, at pp. 65 and 66.

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matter of appeals from justices in a summary way. When the history of the Court of Quarter Sessions is looked to it is found that the words "in a summary way" were necessary in order to displace the previous practice of trying appeals with the aid of a jury. The Court of Quarter Sessions, however, must still determine the facts as well as the law, and, as facts cannot be determined without taking evidence, it seems impossible to escape the conclusion that the Court of Quarter Sessions must hear the evidence for itself. It is said that "appeal" means reconsideration of the evidence already given; in some Courts and on some occasions that is so, but the word "appeal" has no invariable meaning. In a late case, *Darlow* v. *Shuttleworth* (1), the word "appeal" was held to include "error." In the present case the phrase "in a summary way" seems to place its meaning beyond doubt.

The third and last ground of appeal was based on the wrongful admission of evidence by the Court of Quarter Sessions. Even if that were established, the wrongful reception of evidence on a proper issue would not amount to a usurpation of jurisdiction. It would be merely an erroneous ruling in a matter which the Court had jurisdiction to determine.

For these reasons I am of opinion that the judgment of the Supreme Court appealed against was correct, and that this appeal should be dismissed.

Appeal dismissed. Appellant to pay one set of cost to respondents Wynn and Burrows.

Solicitor, for appellant, *Percy Owen* by *P. J. Pratt.*

Solicitor, for respondents, *The Crown Solicitor of New South Wales, A. A. Lysaght* by *B. A. McBride.*

C. A. W.

(1) (1902) 1 K.B., 721.