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appellants desire to proceed with the inquiries pending the appeal, and as proceedings under the judgment of this Court have been stayed until further order they apply for the suspension of the stay. I think that in such cases the analogy of appeals to the High Court should be followed rather than that of appeals to the House of Lords.

At first I was disposed to think that the removal of the stay would not prevent an independent application to the Supreme Court to stay proceedings. But on consideration I think that it would have that effect so far as the pending appeal to the King in Council was relied on as a ground for a stay, although it would not prevent a postponement of proceedings on special grounds.

At present I do not see any sufficient ground for removing the stay. The summons will be adjourned generally with leave to bring it on again if the parties are so advised.

Application refused.

Solicitor, for plaintiffs, *F. S. Stephen*, Melbourne.
Solicitors, for defendants, *Blake & Riggall*, Melbourne.

B. L.

[HIGH COURT OF AUSTRALIA.]

McGEE INFORMANT ;

AND

WOLFENDEN DEFENDANTS.

EX PARTE McGEE,

SPECIAL LEAVE TO APPEAL.

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MELBOURNE,
March 12.
Griffith C.J.,
Barton,
O'Connor, and
Higgins JJ.

Licensing Act 1906 (Vict.) (No. 2068), sec. 91—Sunday—Hours during which sale of liquor to public is prohibited—Person found on licensed premises—Special leave to appeal refused.

Two persons having been found at 4 p.m. on a certain Sunday on certain licensed premises, the licensee was prosecuted and convicted under sec. 91 (3) of the *Licensing Act* 1906 for that he being such licensee, certain persons were found on his premises on that Sunday. On order to review, Hood J. quashed the conviction, holding that sec. 91 was inapplicable, inasmuch as a distinction is drawn in that Act and the *Licensing Act* 1890 between Sunday and "the hours during which the sale of liquor to the public is prohibited," and that that phrase is limited to the days other than Sundays, and to the hours of those days other than the hours specified in licences as those during which liquor may be sold. (*McGee v. Wolfenden*, (1907) V.L.R., 195; 28 A.L.T., 163.)

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Held (by a majority of the Court), that the case was not one in which special leave to appeal should be granted.

MOTION for special leave to appeal from a decision of the Supreme Court of Victoria.

At the Court of Petty Sessions at Footscray, Albert T. Wolfenden was prosecuted on a charge, under sec. 91 (3) of the *Licensing Act* 1906, that he being the licensee of certain licensed premises, to wit, the Ship Inn at Footscray, certain persons were found on the said premises on Sunday the 13th January 1907.

The evidence showed that two men were found by the police on the premises in question about 4 p.m. on the day mentioned.

The defendant, having been convicted and fined £2, obtained an order *nisi* to review the conviction which was made absolute by Hood J., who held that sec. 91 of the *Licensing Act* 1906 was inapplicable to the case, inasmuch as a distinction is drawn in that Act and the *Licensing Act* 1890 between Sunday and "the hours during which the sale of liquor to the public is prohibited," and that that phrase is limited to the days other than Sundays, and to the hours of those days other than the hours specified in licences as those during which liquor may be sold: *McGee v. Wolfenden* (1).

The informant now moved for special leave to appeal to the High Court from that decision.

Duffy K.C. (with him Meagher), for the applicant. The matter is one of great importance for, if the decision of Hood J. is right, the *Licensing Act* 1906 must be amended. The decision is not

(1) (1907) V.L.R., 195; 28 A.L.T., 163.

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clearly right, but is probably wrong. The distinction which existed in the *Licensing Act* 1890 between Sunday and "the hours during which the sale of liquor to the public is prohibited" is done away with by sec. 75 of the Act of 1906. The learned Judge has misread the Act of 1906 in two instances:—The expression "during the hours when liquor may not be sold or disposed of to the public" in sec. 22 must apply to Sunday, for the exception therein of persons being served with their meals between the hours of twelve and two and six and eight can only apply to Sunday; he omitted to notice that by virtue of sec. 135 of the Act of 1890, as amended by sec. 79 of the Act of 1906, the provisions as to Sunday trading apply to the persons excepted from sec. 76 of the Act of 1906, just as do the provisions of sec. 128 of the Act of 1890 as to trading between the hours of 11.30 p.m. and 6 a.m.

[GRIFFITH C.J.—The meaning given by *Hood J.* to the words in sec. 91 is their *prima facie* meaning. A new offence is created and the language should not be strained. The two distinct expressions "Sunday" and "the hours during which the sale of liquor to the public is prohibited" are used in secs. 80 and 81 of the Act of 1906, showing that the distinction is kept up in that Act.]

On the other hand in sec. 22 the latter expression is used in such a way that it can only apply to certain hours of Sunday.

[HIGGINS J.—Counsel has indicated two points in which, admittedly, the learned judge has misread the Act; and I think the decision is not so clearly right that we should refuse special leave to appeal.]

GRIFFITH C.J. A majority of the Court is of opinion that this is not a case in which special leave to appeal should be granted.

Special leave to appeal refused.

Solicitor, for applicant, *Guinness*, State Crown Solicitor.

B. L.