spoken on the motion for the suspension; he waited till it was passed, and then he spoke in objection to it, and said he would take the matter into Court. To a certain extent he took the chance of a favourable issue at the Assembly. He did not submit so far as to agree to any resolution they might arrive at—and therefore he escapes the position of voluntary submission to the Assembly's jurisdiction to suspend him, but he cannot in my opinion justly charge the Assembly with condemning him unheard.

I agree with what the learned Chief Justice has said on the question of costs.

Order appealed from varied by omitting the word "mandamus," in other respects affirmed. Appellants to pay the costs of the appeal.

Solicitors, for appellants, *Atthow & McGregor.*
Solicitor, for respondent, *Arthur H. Pace.*

H. V. J.

[HIGH COURT OF AUSTRALIA.]

DEEGAN . . . . . APPELLANT;
APPLICANT,

AND

THE LICENSING BENCH FOR THE LICENSING DISTRICT OF HOBART } RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF TASMANIA.

Licensing—Application for certificate for licence—Procedure before Licensing Bench—Evidence—Counsel—Appeal—Case stated—Jurisdiction of the Supreme Court—Review of findings of fact—Licensing Act 1902 (*Tas.*) (2 *Edw. VII. No.* 32), *secs.* 32-72-85.

On an application to a Licensing Bench for a certificate for a licence under sec. 31 of the *Licensing Act* 1902 (Tas.), the Bench may take evidence and

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allow counsel to examine witnesses for the purpose of informing themselves as to the locality of the house in respect of which a licence is sought and the necessity for such a licensed house in the locality, notwithstanding that there has been an attempted opposition under sec. 72 which has failed.

Semble, on the hearing of a case stated by a Licensing Bench under sec. 85 of the Act the Supreme Court has no jurisdiction to review the findings of fact by the Licensing Bench.

APPLICATION for special leave to appeal from a decision of the Supreme Court of Tasmania.

At a sitting of the Licensing Bench for the Licensing District of Hobart an application was made by John Patrick Deegan under sec. 31 of the *Licensing Act* 1902 for a certificate for a public house licence in respect of a house called "The Queen's Arms" in Harrington Street, Hobart. The application was refused, and on the application of Deegan a case was stated by the Bench under sec. 85 of the Act for the opinion of the Supreme Court. The case, so far as is material, was as follows:—

"A petition was presented to the Bench by a number of ratepayers resident in the said District objecting to the granting of any certificate to the applicant in respect of the said public licensed house of the nature applied for in the locality in which the said public house is situate, and a notice was given to the said Bench by one John Duncan Brown opposing the granting of any certificate to the applicant in respect of the said public house on the same ground. Counsel for the applicant on the application being called on for hearing objected to the said petition being received or considered by the Bench on the grounds that the same (1) was not in accordance with the form prescribed by the *Licensing Act* 1902 because it was not verified by a statutory declaration made by virtue of the *Statutory Declarations Act* 1837, and (2) did not state as a ground of objection any of the matters mentioned in sec. 73 (1) of the said Act. Counsel for the applicant also objected to the said notice given by the said J. D. Brown being received or considered on the grounds that the same (1) did not allege that the said J. D. Brown was a resident ratepayer in the said District, and (2) did not state as a ground of objection any of the matters mentioned in sec. 73 (1) of the said Act.

"We the members of the said Bench heard argument on the

several objections raised by counsel for the applicant, and after consideration decided not to receive the said petition or the said notice. We also announced at the said meeting that we would hear and consider the evidence of any member of the public who desired to give evidence in respect of the applicant's application, and we requested the learned counsel, who had appeared to support the said notices, to assist us by conducting the examination of such witnesses.

"Counsel for the applicant objected to counsel being heard on behalf of the public. We overruled the objection and counsel then addressed us, and evidence was received in opposition to the granting of the said certificate.

"Counsel for the applicant then called evidence in support of the said application, and addressed us on the whole case.

"We considered the evidence and arguments adduced before us, and the majority of us being of opinion that there was no necessity for a licensed house of the nature applied for in the locality, refused the said application in exercise of the power conferred on us by sec. 32 of the said Act.

"The questions of law arising on the above statement for the opinion of the Court therefore are :—

"(1) Whether the said Bench were right in allowing counsel to address them and call evidence in opposition to the granting of the said certificate on behalf of the public.

"(2) Whether the Licensing Bench has the power to refuse to grant the application when such Bench is of opinion by a majority that there is no necessity for a licensed house in that locality.

"(3) Whether in the event of the Court being of opinion that the said Bench were wrong as to both or either of the two before mentioned questions, the determination of the said Bench was proper and valid, and whether in such event the said determination ought to be reversed, or the matter remitted to the said Bench to be reheard."

The case was heard before *Nicholls* J., and in the course of his judgment, he said :—"The first question raised was whether the Bench was right in allowing counsel to address it and to call evidence on behalf of the public in opposition to granting a certi-

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ficate for a licence. I am of opinion that there is no objection to the Bench obtaining the assistance of any member of the bar in order to assist it in arriving at the true facts and law of the case. Chief Justices of England have not disdained to accept the help of an *amicus curiae*. As to the evidence, a Licensing Bench has the same powers as to summoning and examining witnesses as a Court of General Sessions, and a Court of General Sessions has the same powers as a Court of Quarter Sessions in England. By sec. 32 of the *Licensing Act* 1902 the Bench is directed in every case to inquire (*inter alia*) into the necessity of a licensed house of the nature applied for in the locality. To make this inquiry the Bench must either rely upon its own knowledge or receive the testimony of others. I am of opinion that it is proper that the Bench should act upon sworn testimony whenever it is possible, according to the ordinary practice of Courts, and that it has the power, inherent in Courts generally, of calling witnesses for the purpose of ascertaining the truth as to the matter in dispute, even though the parties to the case do not call them. . . .

"Question (2) was argued by consent (on the application of the appellant) as if it were: Whether in the circumstances the Bench had power to refuse the application? and (also on the application of the appellant) the notes of evidence of the Chairman of the Bench were taken as added to the case for the purpose of enabling me to review the Bench's decision with a knowledge of the testimony as it was given.

"Counsel for the appellant established, in my opinion, that it was not sufficient for the Bench to find that this particular house was unnecessary, but that the Bench should consider all the houses in the locality, and only refuse certificates to those which on a consideration of its needs, were found to be least necessary, and contended that this had not been done. A plan was put in by consent, which was a print from the same block as a plan used by the Bench in considering this application. After looking at that plan and the evidence, I think that the justices have clearly considered the needs of the locality. . . .

"The word 'locality' is not defined in the Act. In its ordinary sense it may include anything from its astronomical distances too great for the mind to conceive down to a subdivision of the

smallest area the eye is capable of seeing. It has no fixed signification as to dimensions, and is purely comparative. As used in the *Licensing Act* 1902 I take it to refer to an area frequented by a certain number of people, who either dwell in, or are in the habit of frequenting that particular part of the country or town. Locality for this purpose in the lake district might include hundreds of square miles; in a crowded city one block might fairly and accurately be so termed. The justices seem to me to have taken the neighbourhood of Harrington and Melville Streets as a locality, and to have decided that no public house of the nature of these was required. If they so thought then it was peremptorily demanded of them by the legislature that they should refuse the certificates, and they did so. I am of opinion that the decision of the justices was correct, and was come to upon evidence properly called. I dismiss the appeal, and make no order as to costs, as there is no successful party. I have not sent the case back for formal amendment by adding the evidence and altering question (2), as both these amendments were asked for by the appellant, and the case was taken as if they had been made. Giving the appellant the benefit of them I still think he fails."

The applicant now applied for special leave to appeal from that judgment to the High Court.

Bryant, in support of the application.

GRIFFITH C.J. delivered the judgment of the Court as follows:— The questions reserved for the opinion of the Supreme Court were, (1) whether the Bench were right in allowing counsel to address them and call evidence in opposition to the granting of the certificate on behalf of the public; (2) whether in the circumstances the Bench had power to refuse the application; and (3) whether in the event of one or both of those questions being answered in the negative the determination of the Bench was proper and valid. By sec. 32 of the *Licensing Act* 1902 it is provided that the Licensing Bench, in considering any application for certificates for licences, are to have regard, amongst other things, to "the character of the applicant, the suitableness of the premises, the locality of the house in respect of which such licence

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is required, and the necessity for a licensed house of the nature applied for in such locality." Under sec. 72 certain persons may oppose the granting of a certificate for a licence, and by the same section a person opposing a certificate is limited to the grounds of opposition of which he has given notice, "but nevertheless such Bench in considering any such application shall be guided by the provisions of this Act, whether or not any notice of opposition to the granting of a certificate has been given as hereinbefore provided."

In this case there was some attempted opposition, but the opponents failed at the outset. The case then before the Bench was an ordinary application for a certificate for a licence, and the Bench were then bound to inquire whether the application was a proper one to be granted, and in doing so to consider, amongst other things, the locality of the house in respect of which the licence was required, and the necessity for a licensed house of the nature applied for in that locality. They allowed a barrister to assist them in examining witnesses on these questions, and, having heard the evidence, they came to the conclusion that there was no necessity for a licensed house of the character applied for in the locality, and refused the application.

The first question asked by the case can only be answered in one way. The Bench are to decide whether the house is required in the locality, and they may inquire into that matter for themselves in any way they think fit. As to the second question, the Act expressly says that the Bench are bound to refuse the application if the house is not required in the locality. We think that the Judge was clearly right, and that being so, of course there is no ground for granting special leave to appeal.

The learned Judge, however, appears to have thought that he had jurisdiction to review the decision of the Licensing Bench on questions of fact. If he thought that, we take leave to doubt whether he had power to do so.

Special leave refused.

Solicitors, for applicant, *Nunn, Smith & Jefferson*, for *Finlay & Watchorn*, Hobart.

B. L.