[HIGH COURT OF AUSTRALIA.]

BROSNAN . . . . . APPELLANT;

AND

THE KING . . . . . RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF QUEENSLAND.

H. C. OF A. 1912.

SYDNEY, *Aug.* 1.

Barton and Isaacs JJ.

Licensing — Licensed Victualler's Licence — Renewal — Local option — Resolution existing that no new licences should be granted — Additions to premises — Licensing Act 1885 (*Qd.*) (49 *Vict. No.* 18), *secs.* 29, 32, 115, 124.

Sec. 124 of the *Licensing Act* 1885 (Qd.) provides that "if the third resolution" (that no new licences shall be granted) "is adopted, it shall not be lawful for the Licensing Authority . . . to grant a certificate for a licensed victualler's licence . . . to any person for the sale of liquor in any house or premises within the area unless at the time of the adoption of such resolution a licence was current and in force for the sale of liquor in such house or premises."

Held, that a renewal of a licence can only be granted in respect of substantially the same premises as those in existence when the third resolution was adopted.

Special leave to appeal from the Supreme Court of Queensland: *R.* v. *Licensing Authority of South Brisbane and Brosnan*; *Ex parte Moore*, (1912) S.R. Qd., 220, refused.

APPLICATION for special leave to appeal.

On 3rd April 1912 one John Brosnan was, and since before July 1891 had been, the holder of a licensed victualler's licence for a hotel in Stanley Street, South Brisbane, known as the Victoria Hotel. Up to the time of the renewal of the licence in 1911 the hotel and premises comprised a block of land which had no

frontage to any street except Stanley Street, and was held by Brosnan under a lease from William Beit.

Prior to 9th January 1912 certain buildings were erected upon an adjoining block of land. These buildings had a frontage to Stanley Street and Melbourne Street, and they communicated with the Victoria Hotel by doors cut in the side wall. The new premises were considerably larger than the Victoria Hotel. On 9th January 1912, Beit obtained a lease of the land on which the new premises were erected, and on 11th January 1912 he executed a new lease in favour of Brosnan of the Victoria Hotel and premises and a sub-lease of the new premises and the block of land on which they were erected.

On 27th March 1912 Brosnan applied to the Licensing Authority for a renewal of his licence, and that the licence should include the new premises as well as the Victoria Hotel. This application was granted by a majority of the Licensing Authority.

On 18th July 1891 the third resolution mentioned in sec. 115 of the *Licensing Act* 1885, viz., "that no new licences shall be granted," was adopted, and from that time onward remained in operation in the area in which the Victoria Hotel and the new premises were situated.

Certain ratepayers who had objected to Brosnan's application before the Licensing Authority obtained a rule *nisi* for a *certiorari* to quash the certificate of licence granted to Brosnan, and on 7th June 1912 the rule *nisi* was made absolute by the Full Court: *R.* v. *Licensing Authority of South Brisbane and Brosnan*; *Ex parte Moore* (1), the majority of the Judges holding that sec. 124 of the *Licensing Act* 1885 prohibited the renewal of a licence extending to any premises other than the premises licensed at the time the third resolution was adopted.

Brosnan now applied for special leave to appeal to the High Court from that decision.

Thomson, for the appellant. Where the third resolution is in force sec. 124 of the *Licensing Act* 1885 prohibits only the granting of a new licence, and a renewal of a licence under sec.

(1) (1912) S.R. Qd., 220.

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29 including additional premises is not granting a new licence: *R.* v. *Morris* (1). Under sec. 32 the licensee could, by a renewal of his licence, get substantially what he asked for here. It is a question of fact for the Licensing Authority whether the premises in respect of which the licence was sought were the same premises as those in respect of which a licence already existed: *R.* v. *Alley*; *Ex parte Slack* (2); *R.* v. *Yaldwyn* (3).

BARTON J. delivered the judgment of the Court. Before the licensing magistrates could have jurisdiction to decide the matter that came before them, it was necessary for them to decide that the premises in respect of which a renewal was applied for were the same premises as those originally licensed. We need not decide that any addition to the premises would deprive them of that character, but it seems to be at least necessary that the premises in respect of which a renewal is applied for should be substantially identical with those in respect of which the original licence was granted. In this case a plan and a description of the premises are before us upon affidavit, from which it appears that the premises sought to be added to those covered by the existing licence are larger than the original premises. A finding by the magistrates that the premises were substantially identical must have been involved in their determination to grant a renewal. To come to such a conclusion upon the evidence before us seems to be beyond all reason, and so the majority of the Supreme Court thought. The question whether the premises are the same premises which were originally licensed lies at the root of the matter. We do not think that in the exercise of the discretion committed to us we ought to grant special leave to appeal in this case, although there are certain questions of law which are interesting and important. These, however, may be raised in some other case.

Special leave to appeal refused.

Solicitors, *Morris, Fletcher & Jensen*, Brisbane.

(1) 6 Qd. L.J., 9.
(2) 9 V.L.R. (L.), 302; 5 A.L.T., 93.
(3) 9 Qd. L.J., 242.