[HIGH COURT OF AUSTRALIA.]

THE LICENSING COURT FOR THE DISTRICT OF NORTHAM AND ANOTHER . . . . . } APPELLANTS;

AND

WORNER . . . . . RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF WESTERN AUSTRALIA.

H. C. OF A. 1915.

MELBOURNE, *March* 26.

Griffith C.J., Gavan Duffy and Powers JJ.

Licensing Law—Wayside house licence—Removal of licence to other premises—Jurisdiction of Licensing Court—Licensing Act 1911 (*W.A.*) (*No.* 32 *of* 1911), *secs.* 30, 57.

Sec. 30 of the *Licensing Act* 1911 (W.A.) provides (*inter alia*) that "no licence for a wayside house shall be granted or renewed for any house or premises situated within a distance of ten miles from any municipal district or townsite in which the population exceeds one hundred persons." Sec. 57 provides that "(1) No removal of a licence from one district to another shall be lawful, but if any licensee desires to remove his licence from his licensed premises to any other premises in the same district he shall give and publish notice . . . of his intended application . . . (4) The Licensing Court shall not make an order of removal unless satisfied that no valid objection to such removal is made by the owner of the premises to which a licence is attached, but subject thereto may, in its discretion, grant or refuse the application."

Held, by *Griffith* C.J. and *Powers* J. (*Gavan Duffy* J. doubting), that the effect of removal is that the licence applies to the new premises, and, having regard to the provisions of the Act as to the character of a licence, operates as a grant of a licence in respect of those premises, and consequently that a Licensing Court has no jurisdiction to make an order for the removal of a

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wayside licence to other premises in the same district which are within ten miles of a municipal district or townsite in which the population exceeds one hundred persons.

Decision of the Supreme Court of Western Australia reversed.

APPEAL from the Supreme Court of Western Australia.

On 7th September 1914 before the Licensing Court for the District of Northam an "application was heard whereby George Gordon Worner, the holder of a wayside house licence in respect of premises situated at the townsite of Hines' Hill in the Northern District, applied for the removal of that licence to premises proposed to be erected at the townsite of Merredin in the Northern District. The Court held that they had no jurisdiction under the *Licensing Act* 1911 and its amendments to make an order for such removal because the population within a distance of ten miles of the townsite of Merredin exceeded one hundred persons, and they refused the application.

The applicant thereupon obtained from the Supreme Court an order *nisi* for a mandamus directing the Licensing Court to hear and determine the application according to law.

Upon the return of the order *nisi* the Full Court made the order absolute.

From that decision the Licensing Court and James Connor, sergeant of police, obtained special leave to appeal to the High Court upon their undertaking to abide by any order the Court might make for payment of compensation for any loss the respondent might sustain by reason of special leave to appeal having been granted, to pay the respondent's costs of the appeal, and to expedite the appeal, and to transfer the appeal to the principal registry if the respondent so desired.

The appeal now came on for hearing.

Starke, for the appellants.

Mitchell K.C. (with him *Lewers*), for the respondent.

During argument reference was made to *Ex parte Whitwell* (1); *Licensing Act* 1911, secs. 30, 45, 57, 61 (3), Ninth Schedule; *Licensing Act Amendment Act* 1911, sec. 5.

(1) 13 W.A.L.R., 81.

GRIFFITH C.J. The point to be determined in this case is a short and interesting one. The Western Australian *Licensing Act* 1911 authorizes the granting of, amongst other licences, "wayside house licences." Sec. 30 provides that "no licence for a wayside house shall be granted or renewed for any house or premises situated within a distance of ten miles from any municipal district or townsite in which the population exceeds one hundred persons." Among the privileges of a wayside house licence is that the licensee may sell on the premises any liquor in any quantity, which is the same privilege as is conferred by a general licence, but in the former case the licensee pays a smaller licence fee.

The respondent in this case was the holder of a wayside house licence, and desired to "remove" his licence, as such a transfer is called, to premises situated within ten miles from a municipal district or townsite in which the population exceeded 100 persons, being premises in respect of which it was not lawful to grant a wayside house licence. He contends that he is entitled under sec. 57 of the Act to have his license "removed," and that there is nothing in the Act to restrict this right of removal.

Sec. 57 provides that if a licensee desires to remove his licence to any other premises in the same district he must publish a notice corresponding almost in all respects with the notice required in the case of an application for an original licence. If his application is granted an indorsement is to be made on the licence in the form in the Ninth Schedule, which records that the Licensing Court "ordered that the within licence shall henceforth cease to apply to the house and premises described in the within licence, and that the same shall hereafter apply to" the premises to which the licence is removed. If that order were made in the present case it would be an order that from its date the respondent's wayside house licence should apply to premises in an area in which it is not lawful to grant a wayside house licence. It is a fundamental part of the licensing law that a licence has a double operation, operating both as a licence to an individual and as a licence in respect of premises. The term "licensed premises" is frequently used in the Act, and is defined as meaning

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"premises in respect of which a licence has been granted and is in force." If the "removal" sought for were made, it could not be controverted that the new premises in the prohibited district would become "licensed premises." That consequence would ensue because, and only because, a licence had come into force in respect of them. From these considerations I draw two conclusions: first, that a "removal of a licence" within the meaning of the Act is in effect the grant of a licence in respect of the premises to which the existing licence is sought to be removed, and, secondly, that when sec. 57 speaks of a licensee desiring to remove his licence from his licensed premises "to any other premises in the same district" it means other premises in respect of which the law will allow a licence to be granted. In the case, for instance, of minimum accommodation, which is required for certain licensed premises, it cannot be doubted that such a licence could not be "removed" so as to operate in respect of premises not having the prescribed minimum accommodation.

For these reasons I think that the objection taken to the granting of the respondent's application was valid, and that the magistrates had no jurisdiction to entertain it. The mandamus should, therefore, not have been granted, and the appeal must be allowed. The appellants, in pursuance of their undertaking on the grant of special leave, must pay the respondent's costs.

GAVAN DUFFY J. Mr. *Starke* puts his argument in two ways: first, he says that the word "grant" in sec. 30 (1) includes the word "removal"; alternatively, he says that in sec. 57 (1) the words "but if any licensee desires to remove his licence from his licensed premises to any other premises in the same district" should have attached to them the words "in respect of which such a licence might be granted." I am not convinced by either of those contentions, but as the other members of the Court have no difficulty in coming to the conclusion that the argument is correct I say no more.

POWERS J. I agree in the judgment of the learned Chief Justice, and for the reasons stated by him.

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Appeal allowed. Order appealed from discharged. Appellants to pay costs of appeal.

Solicitors, for the appellants, *Lawson & Jardine*, for *F. L. Stow*, Crown Solicitor for Western Australia.

Solicitors, for the respondent, *Darvall & Horsfall*, for *Downing & Downing*, Perth.

B. L.

[HIGH COURT OF AUSTRALIA.]

McKINLEY . . . . . APPELLANT;
DEFENDANT,

AND

DELANEY . . . . . RESPONDENT.
COMPLAINANT,

ON APPEAL FROM THE SUPREME COURT OF VICTORIA.

H. C. OF A. 1915.

MELBOURNE, *March* 25.

Griffith C.J., Isaacs, Gavan Duffy, and Rich JJ.

Maintenance of Children—Evidence of paternity—Corroboration of evidence of mother—Pre-maternity order—Marriage Act 1890 (*Vict.*) (*No.* 1166), *secs.* 42, 43, 48—*Marriage Act* 1900 (*Vict.*) (*No.* 1684), *secs.* 4, 5, 8.

Sec. 42 of the *Marriage Act* 1890 (Vict.) provides (*inter alia*) that when any father deserts his children whether illegitimate or born in wedlock, or leaves them without adequate means of support, if complaint thereof be made on oath to any justice by the mother of the children, such justice may issue his summons calling upon such father to show cause why he should not support his children. Sec. 43 provides that on the hearing the justices may make an order for maintenance against the father. Sec. 48 provides that in any proceedings under Part IV. of the Act, which includes secs. 42 and 43, "no man shall be taken to be the father of an illegitimate child upon the oath of the mother only."

Sec. 4 of the *Marriage Act* 1900 (Vict.) provides that "if any woman, being enceinte, complains on oath to any justice that any person is the father of a child which she believes she will bear, and upon proof that such woman is