[HIGH COURT OF AUSTRALIA.]

ROLFE . . . . . APPELLANT;
DEFENDANT,

AND

WILLIS . . . . . RESPONDENT.
COMPLAINANT,

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

H. C. OF A. 1916.

SYDNEY, *March* 28, 29; *April* 11.

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

Licensing— Permitting drunkenness on licensed premises— Presence of drunken person on premises—"Reasonable steps to prevent drunkenness"—Drunken person entering premises—Liquor Act 1912 (*N.S.W.*) (*No.* 42 *of* 1912), *sec.* 46.

Sec. 46 of the *Liquor Act* 1912 (N.S.W.) provides that "If any licensee permits drunkenness . . . . to take place on his licensed premises, he shall be liable for the first offence to a penalty not exceeding five pounds and for the second or any subsequent offence to a penalty not exceeding twenty pounds. Where any licensee is charged with permitting drunkenness on his licensed premises, and it is proved that any person was drunk on his premises, it shall lie on the licensee to prove that he and the persons employed by him took all reasonable steps to prevent drunkenness on the premises."

Held, that the phrase "reasonable steps to prevent drunkenness" means such steps as ought reasonably to be taken by way of precaution against the occurrence of drunkenness on the premises under any circumstances that may reasonably be anticipated, and to prevent its continuance when its existence is discovered.

Held, further, that failure to prevent a drunken person from entering licensed premises, or, if reasonable steps have been taken to prevent him from entering, failure to eject him within a reasonable time, is failure to take reasonable steps to prevent drunkenness, unless the failure to prevent his entry or the failure to eject him was under the circumstances justified by the obligations of humanity or by some other obligation which the law can recognize.

Special leave to appeal from the decision of the Supreme Court of New South Wales: *Ex parte Rolfe*, 15 S.R. (N.S.W.), 427, rescinded.

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APPEAL from the Supreme Court of New South Wales.

At the Court of Petty Sessions at Cooma an information was heard whereby John Willis, inspector of police, charged that on 12th September 1915 George Rolfe, being the licensee of certain licensed premises, did permit drunkenness on his licensed premises. The defendant having been convicted, an order *nisi* was obtained by him for a prohibition, which was discharged by the Full Court: *Ex parte Rolfe* (1).

From that decision the defendant now, by special leave, appealed to the High Court.

The material facts are stated in the judgment hereunder.

Blacket K.C. and *Alec Thomson*, for the appellant. Upon the evidence the Magistrate was bound to find that the appellant and his employees had taken "all reasonable steps to prevent drunkenness" on the licensed premises within the meaning of sec. 46 of the *Liquor Act* 1912. If he came to the conclusion that the evidence for the defence should not be believed, that conclusion was unreasonable. Reasonable steps to prevent drunkenness do not involve the immediate ejection from the premises of a person who, in spite of all reasonable steps to prevent the entry of drunken persons, comes upon the premises in a drunken state, where it is necessary for the protection of that person that he should be allowed to remain: *Canty* v. *Buttrose* (2). There was no justification for the Magistrate finding either that the steps which were taken to prevent that which happened in this case were unreasonable, or that other steps ought to have been taken to prevent it happening. [Counsel also referred to *Mitchell* v. *Gascoigne* (3).]

Lamb K.C. (with him *Watt*), for the respondent. The Magistrate was not bound to accept the evidence for the defence either as to how the appellant came upon the premises or as to what

(1) 15 S.R. (N.S.W.), 427. (2) (1912) V.L.R., 363; 34 A.L.T., 91.
(3) 6 S.R. (N.S.W.), 717.

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happened afterwards. The permitting a drunken person to enter the premises and the allowing him to remain there is evidence of failure to take reasonable steps to prevent drunkenness: *Thompson* v. *McKenzie* (1). In this case the only question is one of fact, and special leave to appeal should not have been granted: *Green* v. *Worley* (2). [Counsel also referred to *Hope* v. *Warburton* (3); *Somerset* v. *Wade* (4); *Radford* v. *Williams* (5).]

[RICH J. referred to *Edmunds* v. *James* (6); *Young* v. *Gentle* (7).]

Blacket K.C., in reply. The offence aimed at by the first part of the section is permitting persons to become drunk on the premises. The use of the words "permitting drunkenness" shows that the drunkenness must be such that the licensee could have prevented it, and, therefore, that the drunkenness must have been brought about on the premises. In the second part of the section the reasonable steps referred to are steps to prevent the particular person getting drunk, and in this case no reasonable steps would have prevented it. If that is not so, and the reasonable steps required to be taken are steps to prevent drunkenness generally, then the Magistrate could not, on the evidence, find that such steps had not been taken.

Cur. adv. vult.

April 11.

The judgment of the COURT was read by

GRIFFITH C.J. This is an appeal from a judgment of the Supreme Court of New South Wales, dismissing, by majority, an appeal from a summary conviction of the appellant, a licensed publican, for permitting drunkenness to take place on his licensed premises. The charge was preferred under sec. 46 of the *Liquor Act* No. 42 of 1912, which is as follows:—

"If any licensee permits drunkenness or any indecent, violent quarrelsome, or riotous conduct to take place on his licensed premises, he shall be liable for the first offence to a penalty not exceeding five pounds and for the second or any subsequent offence to a penalty not exceeding twenty pounds.

(1) (1908) 1 K.B., 905.
(2) 20 C.L.R., 418.
(3) (1892) 2 Q.B., 134.
(4) (1894) 1 Q.B., 574.
(5) 78 J.P., 90; 110 L.T., 195; 30 T.L.R., 108.
(6) (1892) 1 Q.B., 18.
(7) (1915) 2 K.B., 661.

"Where any licensee is charged with permitting drunkenness on his licensed premises, and it is proved that any person was drunk on his premises, it shall lie on the licensee to prove that he and the persons employed by him took all reasonable steps to prevent drunkenness on the premises."

The case made against the appellant was that about 8 o'clock on Sunday evening, 20th September 1915, a married woman who lived in the neighbourhood of the appellant's licensed premises was found by the police in a state of helpless drunkenness in a stable, part of the premises. She was removed by them to a bedroom, with the consent of the appellant's daughter, and kept there until she had sufficiently recovered to be removed to her home. These facts were sufficient to bring the case within the second paragraph of sec. 46, and to cast upon the appellant the burden of showing that he and his employees had taken all "reasonable steps to prevent drunkenness on his licensed premises."

It was proved, and indeed not disputed, that neither the appellant nor any person employed by him had failed to take any reasonable step to prevent drunkenness from taking place on the premises, in whatever sense that phrase is used, unless failure to prevent the woman's original entry under the circumstances which we will state, or failure to have her forthwith removed, was in law a failure to take such steps.

If the matter were free from authority, we should have been disposed to think that the phrase "permitting drunkenness to take place" connoted that either the inception of, or some progress in, the drunken condition took place on the licensed premises. But this view is excluded by authority, by which, in view of the course of legislation, we are bound. (See *Hope* v. *Warburton* (1); *Worth* v. *Brown* (2)).

In our opinion the phrase "reasonable steps to prevent drunkenness" means such steps as ought reasonably to be taken by way of precaution against the occurrence of drunkenness on the premises under any circumstances that may reasonably be anticipated, and to prevent its continuance when its existence is discovered.

(1) 61 L.J.M.C., 147; 56 J.P., 328. (2) 40 Sol. J., 515; 63 J.P., 658.

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It would seem to follow, as was indeed indicated in the case of *Hope* v. *Warburton*, that merely permitting a drunken person to remain upon the premises may be sufficient proof of permitting drunkenness to take place upon them. In such a case, therefore, failure to cause the ejection of the drunken person within a reasonable time would be a failure to take reasonable steps to prevent drunkenness, unless such failure to eject was under the circumstances justified by the obligations of humanity or some other obligation which the law could recognize. Similar considerations apply to the original admission of a drunken person.

The question of what is a reasonable time for ejecting must depend upon the circumstances.

This appears to have been the view taken by *Williams* J. in the case of *McRobie* v. *Bowden* (1) and by *Cooper* J. in *Agnew* v. *Matthew* (2).

The appellant called witnesses to show how the woman came to be in the stable. His groom deposed that she had twice opened a latched gate in the outer fence of the appellant's premises, separating them from a lane, and staggered into the yard, where he, after once turning her out, had on her second entry laid her on a heap of hay in the stable to rest until she could be removed. It appears on this statement that the groom, for whose actions the appellant is responsible, finding the woman in the yard, did not at once eject her, and in that sense failed to prevent her continued presence upon the licensed premises.

It is suggested that the Magistrate did not accept the story of the groom. He was, of course, at liberty to accept any part of it which he believed, and to reject any part which he did not believe.

The real question, therefore, for decision is whether the appellant succeeded in showing that the groom took all reasonable steps to prevent the woman's coming upon the premises in a state of drunkenness, or, if he did, whether he failed to take all reasonable steps to prevent her remaining there in that state. This is a question of fact, and not of law. It is not the practice of the Court to grant special leave to appeal where the decision of a Magistrate upon a question of fact is impeached by statutory prohibition.

(1) 24 N.Z.L.R., 10. (2) 33 N.Z.L.R., 225.

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The special leave will therefore be rescinded.

Special leave to appeal rescinded.

Solicitor for the appellant, *F. F. Mitchell*, Cooma, by *P. B. Colquhoun & King.*

Solicitor for the respondent, *J. V. Tillett*, Crown Solicitor for New South Wales.

B. L.

[HIGH COURT OF AUSTRALIA.]

THE COMMISSIONER OF TAXES FOR VICTORIA . . . . . Appellant;
Defendant,

AND

CURRIE AND OTHERS . . . . Respondents.
Plaintiffs and Defendant,

ON APPEAL FROM THE SUPREME COURT OF VICTORIA.

H. C. OF A. 1916.

MELBOURNE, *Feb.* 22, 23, 24.

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

Settlement—Duty—Trusts to take effect on death of settlor—"Property comprised in such settlement"—Alteration of property settled—Locality of property—Administration and Probate Act 1890 (*Vict.*) (*No.* 1060), *sec.* 112—*Administration and Probate Act* 1903 (*Vict.*) (*No.* 1815), *secs.* 9, 15, *Sched.* 2.

Sec. 112 of the *Administration and Probate Act* 1890 (Vict.), as amended by the *Administration and Probate Act* 1903 (Vict.), provides that "Every settlement of any property made on or after the 16th day of December 1870 by any person containing trusts or dispositions to take effect after his death, shall upon the death of the settlor be registered within the prescribed time . . . and no such trusts or dispositions shall be valid unless such settlement be so registered. No settlement shall be registered unless the trustees or some other person interested under the settlement have filed a statement setting forth