

[HIGH COURT OF AUSTRALIA.]

THE LICENSING COURT (SOUTH AUS- } APPELLANT;
TRALIA)

AND

CUMMINS RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF
SOUTH AUSTRALIA.

H. C. OF A. *Licensing—Forfeiture of licence—Jurisdiction of Licensing Court—Management of
1919. premises not satisfactory—Acts amounting to offences—Licensing Act 1917
(S.A.) (No. 1322), secs. 80, 81.*

ADELAIDE,
Sept. 26;
Oct. 1.

Barton,
Gavan Duffy
and Rich J.J.

Sec. 80 of the *Licensing Act 1917* (S.A.) provides that “(1) If any person holding a licence under this Act is within a period of two years convicted two several times of offences for which his licence is liable to be forfeited as in this Act provided . . . the Special Magistrate or justices by whom such person is convicted for the second offence, or the” Licensing “Court for the district in which the licensed premises in respect of which such person holds a licence are situate, may, or if any person holding a licence under this Act is within a period of three years convicted three several times of such offences as in this section before mentioned, the Special Magistrate or justices by whom such person is convicted for the third offence, or the” Licensing “Court as in this section before mentioned shall, upon information by any person and on proof of the convictions, . . . declare such licence to be forfeited, and such licence shall thereupon cease to be of any force or effect, and the person whose licence is so forfeited shall thereupon be disqualified for a term of two years from holding any licence under this Act. (2) No such declaration of forfeiture shall be made by the” Licensing “Court except upon information lodged with the Clerk within four months after such second or third conviction (as the case may be) as aforesaid, and upon seven days’ notice of the hearing of such information, and of the time and

place of the meeting of the " Licensing " Court being given by the Clerk to the holder of such licence." Sec. 81 provides that "(1) An inspector may apply to the " Licensing " Court to forfeit any licence on the ground that the management of the licensed premises has not been satisfactory. . . . (3) If the " Licensing " Court is satisfied that the management of the premises has not been satisfactory, and is of opinion that the licence should be forfeited, the Court shall . . . declare such licence to be forfeited, and such licence shall thereupon cease to be of any force or effect."

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Held, that the unsatisfactory nature of the management of licensed premises may, for the purpose of authorizing a forfeiture under sec. 81, be established by proof of a series of acts which are offences upon conviction for two or more of which the licence is liable to forfeiture under sec. 80 and in respect of none of which has there been a conviction.

Decision of the Supreme Court of South Australia reversed.

APPEAL from the Supreme Court of South Australia.

At the sittings of the Licensing Court for the Southern Licensing District of South Australia on 16th August 1918, applications were made by an inspector of licensed premises for the forfeiture of the storekeeper's Australian wine licence and the storekeeper's licence of Richard William Cummins in respect of certain premises at Mount Gambier. The ground of the applications was that the management of the premises had not been satisfactory, in that Cummins, on 30th and 31st March 1918 and 1st, 2nd, 3rd and 4th April 1918, and on divers other occasions, on the licensed premises had supplied liquor by the glass to be drunk on the premises contrary to the provisions of the *Licensing Act* 1917. After hearing evidence the Licensing Court made orders forfeiting the licences on the grounds mentioned. Cummins obtained, in the Supreme Court of South Australia, a rule *nisi* for a prohibition in respect of both orders of the Licensing Court, which was made absolute by the Full Court.

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

Cleland K.C. (with him *Hannan*), for the appellant. The Supreme Court has excluded from the consideration of the Licensing Court, in determining whether under sec. 81 of the *Licensing Act* 1917 the management of the licensed premises has been unsatisfactory, any

H. C. OF A. acts which are offences against the Act. There is no ground for so
 1919. limiting the language of sec. 81. The management of licensed
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 LICENSING premises includes the whole conduct of the licensee with regard to  
 COURT (S.A.) those premises. If he does not manage in accordance with the tenor  
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 CUMMINS. of his licence the business there carried on, the Court may hold  
 ——— that his management is not satisfactory. The fact that under sec.  
 80 the licence is liable to forfeiture on proof of two or more convictions for offences against the Act is not a ground for limiting the classes of acts which will constitute unsatisfactory management under sec. 81. [Reference was also made to secs. 16, 18, 53, 57, 157, 269.]

There was no appearance for the respondent.

*Cur. adv. vult.*

Oct. 1.

The judgment of the COURT, which was read by BARTON J., was as follows :—

Under secs. 14, 16, 17 and 18 of the *Licensing Act* of 1917 (No. 1322) the respondent held a “storekeeper’s licence” and a “storekeeper’s Australian wine licence.” The first of the licences authorized him to sell “in the house or on the premises therein specified” liquor of the quantity mentioned in sec. 16, “not to be drunk in or about the premises.” The second licence authorized the sale on the premises specified of mead, wine, cider or perry produced or manufactured in the Commonwealth of the quantity mentioned in sec. 18, “not to be drunk on the premises.”

An inspector of licensed premises applied to the Licensing Court for the forfeiture of each of the respondent’s licences under sec. 81 of the Act on the ground that the management of the licensed premises had not been satisfactory. In each case the particulars specified six consecutive occasions, and alleged “divers other occasions,” on which the licensee had supplied liquor by the glass to be drunk on the licensed premises. The supply of liquor by the glass or to be drunk there and then was not authorized by either licence, and for the purpose of this appeal on the question of jurisdiction it must be taken that the acts alleged were committed.



On the hearing of the applications by the Licensing Court the respondent contested the jurisdiction of the Court, but the Court made the orders of forfeiture applied for, and he obtained a rule *nisi* for a prohibition and an order absolute. From that order the Licensing Court now appeals to this Court.

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The question rests upon the construction of secs. 80 and 81. It is unnecessary to state these sections at length. They are quoted in the judgment appealed from.

The contention on which the respondent succeeded was that as the supply of liquor by the glass to be consumed on the premises is a finable offence under sec. 157, and under sec. 269 is an offence for which a licence may be forfeited as provided in sec. 80, the last mentioned section was the only provision on which to rest the application for forfeiture, the necessary condition precedent to which must be such convictions as are specified in sec. 80, which convictions have not been alleged or proved. In other words, it was argued that there was no jurisdiction in the Licensing Court to forfeit the licences under sec. 81. Sub-sec. 2 of sec. 80 forbids the Court to make any "such" declaration of forfeiture, except on information lodged with the Clerk within four months after the second or third conviction (as the case may be), &c.

The learned Chief Justice, in delivering the judgment of the Supreme Court, did not find it necessary to determine whether the acts specified in the written notice delivered to the Clerk of the Licensing Court would constitute unsatisfactory management in the ordinary meaning of those words. His Honor met the case of the applicant by a dilemma. If they would not, the application must fail; if they would, some other meaning must be assigned to them in sec. 81 so as to avoid a repugnancy or inconsistency between that section and sec. 80. He says:—"Now, by sub-sec. 2 of sec. 80, it is expressly declared that 'no such declaration of forfeiture,' that is, a declaration of forfeiture for, amongst other things, supplying liquor by the glass contrary to the tenor of a licence, 'shall be made by the Court,' that is, by the Licensing Court, which is the only Court that has jurisdiction under sec. 81, 'except upon information lodged with the Clerk within four months after such second or third conviction (as the case may be) as aforesaid,' that is, after a second



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conviction within two years, or a third conviction within three years. It is perfectly plain, therefore, that a construction of sec. 81 which would allow of a licence being forfeited for such conduct without any conviction at all would be repugnant to, or inconsistent with, sec. 80. Hence sec. 81 must be construed in such a way as to avoid that repugnancy or inconsistency, and the only manner in which it can be done is to limit its application to breaches of good management other than those which are covered by sec. 80."

In our opinion, there is no such dilemma. Sec. 80 (1) enables the Licensing Court to declare a licence to be forfeited on proof of two, or three, convictions for specific offences before a Special Magistrate or justice. Sec. 80 (2) does not enact that no declaration of forfeiture for any specific misconduct shall be made except upon the conditions contained in that sub-section; it merely enacts that a declaration of forfeiture based on two or more existing convictions and authorized by the provisions of sec. 80 (1) shall not be made except on those conditions. Then comes sec. 81, which enables the Licensing Court not merely to act on convictions obtained elsewhere, but to determine for itself whether the management of the licensed premises has been satisfactory, and to declare the licence to be forfeited if it is satisfied that the management has not been satisfactory, and is of opinion that the licence should be forfeited.

It remains only to consider whether the acts alleged in the written notice delivered to the Clerk of the Licensing Court would justify a finding that the management of such premises had not been satisfactory within the meaning of sec. 81. We think they would justify such a finding. In our opinion, the words of the section should be given their ordinary and natural meaning, and we see no reason why evidence which would justify a number of convictions for the offence of supplying liquor by the glass to be drunk on the licensed premises might not also justify a finding that the management of such premises had not been satisfactory.

We therefore think that the Licensing Court had jurisdiction to proceed on the applications, and to declare the licences to be forfeited. The appeal must be allowed. The order *nisi* for a writ



of prohibition must be discharged. The declaration of forfeiture therefore stands.

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*Appeal allowed. Order nisi for prohibition discharged. Declaration of forfeiture to stand.*

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Solicitor for the appellant, *F. W. Richards*, Crown Solicitor for South Australia.

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[HIGH COURT OF AUSTRALIA.]

CAMPBELL AND ANOTHER . . . APPELLANTS ;  
DEFENDANTS,

AND

GLASGOW AND OTHERS . . . RESPONDENTS.  
PLAINTIFFS AND DEFENDANTS,

ON APPEAL FROM THE SUPREME COURT OF  
VICTORIA.

*Will—Construction—Gift to A for life and after his death to his issue—Words of distribution—No words of limitation—Life estate or estate in tail—Rule in Shelley’s Case—Effect of Wills Act—Wills Act 1890 (Vict.) (No. 1159), secs. 26, 27 (Wills Act 1915 (Vict.) (No. 2749), secs. 26, 27)—Real Property Act 1915 (Vict.) (No. 2719), sec. 62.*

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MELBOURNE,  
Oct 21-24 ;  
Nov. 5.

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

Sec. 26 of the *Wills Act* 1890 (Vict.) (sec. 26 of the *Wills Act* 1915) provides that “Where any real estate shall be devised to any person without any words of limitation, such devise shall be construed to pass the fee simple or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a contrary intention shall appear by the will.”