

[HIGH COURT OF AUSTRALIA.]

SYMES APPELLANT ;
DEFENDANT,

AND

STEWART RESPONDENT.
INFORMANT,

ON APPEAL FROM THE SUPREME COURT OF
NEW SOUTH WALES.

H. C. OF A. *Licensing—Supply of liquor to person in state of intoxication—Handing liquor to*
1920. *owner thereof—Previous sale and delivery—Liquor handed back to licensee for*
safe-keeping—Liquor Act 1912 (N.S.W.) (No. 42 of 1912), sec. 53.

SYDNEY,
Nov. 16, 17.

Knox C.J.,
Isaacs and
Rich JJ.

Sec. 53 of the *Liquor Act* 1912 (N.S.W.) provides that “if the holder of any licence for the sale of liquor supplies liquor to any person who is at the time in a state of intoxication,” he shall be liable to a certain penalty.

Held, that the word “supplies” in that section includes a handing over to the owner where, whilst he was sober, there had been a previous sale to him completed by delivery and a handing back to the licensee for safe-keeping.

Hall-Dalwood v. Emerson, 87 L.J. K.B., 296, followed.

Decision of the Supreme Court of New South Wales (*Harvey J.*) affirmed.

APPEAL from the Supreme Court of New South Wales.

At Ardlethan, in New South Wales, before a Police Magistrate, an information was heard whereby Peter Stewart charged that on 25th March 1920 George Richard Symes, being the holder of a publican’s licence for premises known as the Barellan Hotel at Barellan, did supply on such premises liquor to one John Samuel Lilburn, who was at the time in a state of intoxication. The Magistrate, having dismissed the information, on the application of the informant stated a case for the determination of the Supreme Court. The case, after setting out the evidence, continued :—“It was proved upon the hearing that the defendant at 7.30 a.m. on 25th March

1920 sold and delivered a bottle of whisky to Lilburn, who was then sober; that Lilburn gave the whisky back to the defendant for safe custody; that the defendant handed the whisky again to Lilburn at 12.45 p.m., when Lilburn was in a state of intoxication. It was contended on the part of the defendant that the handing back of the whisky to Lilburn by the defendant was not supplying liquor within the meaning of sec. 53 of the *Liquor Act* 1912. I upheld the contention, and I determined that the matter hereinbefore stated was insufficient to support the said information. The question for the Court is whether my said determination was erroneous or not."

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The case was heard by *Harvey J.*, who answered the question in the affirmative and remitted the case to the Magistrate.

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

Leverrier K.C. (with him *H. E. Manning*), for the appellant. The word "supplies" in sec. 53 of the *Liquor Act* 1912 connotes that the person to whom the liquor is supplied is not the owner of it.

[ISAACS J. referred to *Hall-Dalwood v. Emerson* (1).]

In that case the sale was of unascertained goods, and there had never been actual delivery of the goods to the defendant so as to pass the property to him until the delivery which was charged as the offence of "supplying." Here there had been actual delivery of the liquor to Lilburn when he bought it, so that the property had already passed to him when the liquor was alleged to have been supplied to him. The primary meaning of "supplies" is to provide some one with something which is not already his property, and there is nothing in the context here which alters that meaning.

Evatt, for the respondent, was not called upon.

KNOX C.J. This is an appeal by special leave from a decision of *Harvey J.* ordering that the case be remitted to the Magistrate. The material facts were these:—A man named Lilburn went to the public-house kept by the appellant early one morning and bought a

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bottle of whisky, for which Lilburn paid. The bottle was handed to Lilburn, who gave it back to the appellant to be kept for him until later in the day. It was then apparently wrapped up and put on a shelf and kept for Lilburn. At that time Lilburn was sober. He came back about 12.45 p.m. in a state of intoxication, and the son of the appellant handed him the bottle of whisky. The appellant was then charged with supplying liquor to a person who was at the time in a state of intoxication, within the meaning of sec. 53 of the *Liquor Act* 1912, and the Magistrate held that the liquor was not "supplied" within the meaning of the section, and dismissed the charge. There was then an appeal to *Harvey J.*, who upheld the appeal and remitted the case to the Magistrate on the ground that his decision was erroneous in law. An appeal was brought to this Court by special leave.

I have no doubt that the decision of *Harvey J.* was right. Sec. 53 is one of a group of sections from sec. 49 to sec. 56 which is headed "The supplying of liquor." Sec. 49 provides for a certain penalty on a licensee who gives, sells or supplies, or allows to be given, sold or supplied, any liquor to a person of any one of three classes, and also provides for a penalty on any person other than the licensee who supplies liquor to a person of any one of six classes, one of those classes being "(d) any person then in a state of intoxication." Sec. 53 provides that "if the holder of any licence for the sale of liquor supplies liquor to any person who is at the time in a state of intoxication," he shall be liable to a certain penalty. For some reason which is not apparent, the prohibited act on the part of a licensee in the case of the person belonging to classes (a), (b) and (c) in sec. 49 (1) is the giving, selling or supplying of liquor or the allowing liquor to be given, sold or supplied, and the prohibited act on his part in the case of a person belonging to class (d) in sub-sec. 2 is the "supplying." The prohibited act on the part of a servant of a licensee is the supplying liquor to a person belonging to any one of the six classes. Why the difference is made, unless it be because the Act is a consolidating Act, is difficult to understand. At any rate it is quite clear that the matter is not one in which any nice distinction can be drawn from the fact that the word "supplies" is used apart from the words "gives" and "sells." The ordinary

meaning of the word "supply" is to furnish or provide, and I think that ordinarily in common parlance there is underlying the word the idea that the thing supplied is something belonging to the supplier and not to the person supplied. How far that idea ordinarily goes can hardly be defined. But it is to be remembered that the sections in this group are mainly for the purpose of protecting certain classes of persons against themselves and against licensees who are not sufficiently scrupulous. The object being to protect these persons against themselves, it is necessary that the word "supply" should be construed liberally. That being so, I see no reason why we should not adopt the meaning which was given to the word by the Divisional Court in *Hall-Dalwood v. Emerson* (1). That case, so far as I can see, is practically on all fours with the present case. It is quite true that the offence there was "to supply otherwise than by way of sale," but the Court had to find two things in order to sustain the conviction, first, that the transaction was one otherwise than by way of sale and, secondly, that the transaction properly came within the word "supply." The Court found both of those things, and I see no reason why we should not follow the decision on the second point, and hold, consequently, that the decision of *Harvey J.* was correct, and that the appeal should be dismissed.

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ISAACS J. I agree, and would only add that I think that the word "supply" is a word of such elastic meaning that its significance must depend entirely upon its context and the subject matter dealt with.

RICH J. I agree.

Appeal dismissed with costs.

Solicitors for the appellant, *Matthews & Dangar*, Narrandera, by *Kershaw, Matthews, Lane & Glasgow*.

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

B. L.

(1) 87 L.J. K.B., 296.