[HIGH COURT OF AUSTRALIA.]

LUCAS . . . . . APPELLANT;
DEFENDANT,

AND

GRAHAM . . . . . RESPONDENT.
INFORMANT,

ON APPEAL FROM THE SUPREME COURT OF VICTORIA.

H. C. OF A. 1907.

MELBOURNE, *Sept.* 25.

Griffith C.J., Barton, O'Connor, Isaacs and Higgins JJ.

Licensing Act 1906 (*Vict.*) (*No.* 2068), *secs.* 31, 32—*Licensing Act* 1890 (*Vict.*) (*No.* 1111), *secs.* 5, 12—"*Australian*" *wine licence*—"*Colonial*" *wine licence*—*Rights and obligations of licensee*—*Permitting liquor other than wine &c. to be brought on premises*—*Liquor purchased for customer.*

Sec. 32 (1) of the *Licensing Act* 1906 (Vict.) is not limited to liquor (other than wines, &c.), brought on the licensed premises for the purpose of sale by the licensee, or which is the property of the licensee.

The effect of sec. 31 (1) of the *Licensing Act* 1906 is to change the name of a colonial wine licence to an Australian wine licence. Sec. 32 imposes the same restrictions upon the holders of all such licences, whether they were originally granted as colonial wine licences or as Australian wine licences.

Held, therefore, that a person who, before the *Licensing Act* 1906 came into force, obtained pursuant to the *Licensing Act* 1890 a renewal of his colonial wine licence, and who in 1907 permitted stout bought on behalf of a customer to be brought on his licensed premises, was properly convicted of an offence under sec. 32 (1) of the *Licensing Act* 1906, which forbids the bringing of liquor other than Australian wine on premises for which an Australian wine licence is in force.

Judgment of Supreme Court (*Graham* v. *Lucas*, (1907) V.L.R., 478; 29 A.L.T., 10), affirmed.

APPEAL from the Supreme Court of Victoria.

On 28th March 1907, at the Court of Petty Sessions at Melbourne, an information was heard, whereby Thomas Graham,

inspector of the Latrobe Licensing District, charged Anthony Lucas that he, on 19th January 1907, then being the holder of an Australian wine licence within the meaning of the Licensing Acts, and then holding a licence for the licensed premises situate at 240 and 242 Collins Street, Melbourne, did permit certain liquor, to wit, stout, to be brought on the said licensed premises contrary to the said Acts.

It appeared from the evidence that, on 3rd December 1906, the defendant, who was the proprietor of a café, carrying on business in the above-mentioned premises, was granted a certificate of renewal of his colonial wine licence for the ensuing year by the Licensing Court sitting at Melbourne; and that, on 19th January 1907, one of his waiters went out from those premises and purchased at a neighbouring hotel on behalf of a customer, who had provided the money for the purpose, some stout to be consumed, as it was consumed, by the customer at the café with a meal supplied by Lucas. It was contended for the defence that sec. 32 (1) of the *Licensing Act* 1906 did not apply as Lucas was the holder of a colonial wine licence. The Court of Petty Sessions having dismissed the information, an order *nisi* to review their decision was obtained on the grounds that the holder of a colonial wine licence for the year 1907 was within the provisions of sec. 32 of the *Licensing Act* 1906, and that on the evidence the justices ought to have convicted the defendant.

On the return of the order *nisi*, the Full Court made the order absolute: *Graham* v. *Lucas* (1).

The defendant by special leave now appealed to the High Court.

On the appeal to the High Court the question was raised whether, where an information for an offence is dismissed by a Court of Petty Sessions, the informant is a "person who feels aggrieved" within the meaning of sec. 141 of the *Justices Act* 1890 so as to be entitled to appeal to the Supreme Court, but, as this question was not dealt with by the High Court, the arguments upon it are not reported.

Starke, for the appellant. In sec. 32 (1) of the *Licensing Act*

(1) (1907) V.L.R., 478; 29 A.L.T., 10.

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1906 the prohibition against keeping, bringing or permitting to be brought liquor on the premises specified should be construed as limited to liquor kept or brought on the premises for the purpose of sale by the licensee. That is shown by sec. 32 (2), which provides that the finding of liquor other than wine &c. is to be *primâ facie* evidence of an unlawful sale of liquor. There was no evidence of a sale by the licensee: *Graves* v. *Panam* (1). See however *Graham* v. *Matoorekos* (2). The provisions of sec. 32 (1) do not apply to the holder of a colonial wine licence for the year 1907, but only apply to Australian wine licences, properly so called, and granted after the passing of the Act. See also secs. 34, 78 (2). The renewal of the appellant's licence was granted on 3rd December 1906, and the *Licensing Act* 1906 was not assented to until 28th December 1906. That Act did not affect any change in licences granted before it came into operation, nor did sec. 31 alter the name of those licences. The repeal of the section under which the licence was granted to the appellant, and its re-enactment with the words "Australian wine licence" substituted for "colonial wine licence," would not affect the appellant's rights which he had gained under the repealed section: *Acts Interpretation Act* 1890, sec. 27. Although no right which was conferred upon the holder of a colonial wine licence by his licence may be taken away by sec. 32 (1) of the *Licensing Act* 1906, yet a disability is imposed upon the holder of an Australian wine licence, and the section should not be interpreted to impose that disability on a person who is not in truth the holder of an Australian wine licence.

Duffy K.C. (with him *Meagher*), for the respondent, was not called upon.

GRIFFITH C.J. This case was taken out of its turn in order to decide a point which was said to be one of urgency. The question is raised upon the construction of secs. 31 and 32 of the *Licensing Act* 1906, which was assented to on 28th December 1906. Sec. 31 provides that:—"In the Licensing Acts for the words 'a colonial'

(1) (1905) V.L.R., 297; 26 A.L.T., 232.
(2) (1907) V.L.R., 270; 28 A.L.T., 173.

or the word 'colonial' wherever occurring before the words 'wine licence' or 'wine licences' there shall be substituted the words 'an Australian' or the word 'Australian' as the context may require." A wine licence was a well known form of licence under the old Licensing Acts in which they were called "colonial wine licences." That section provides that for the future they are to be called "Australian wine licences." Sec. 32 (1) provides that:—"The holder of an Australian wine licence shall not keep nor bring or permit to be brought any liquor other than wine cider or perry the produce of fruit grown in any Australian State on the premises specified in such licence."

The first point taken is that sec. 32 (1) only applies to liquor brought on to the premises for the purpose of sale by the licensee, or to liquor the property of the licensee. The words are perfectly general, and that point therefore fails.

The next point made is that the appellant had obtained last year, and before this Act was assented to, a colonial wine licence which was still in force, and that when he obtained that licence there was no law prohibiting the holder of a colonial wine licence from bringing liquor upon his premises. Consequently, it is argued, when the new Act came into force, it could not deprive him of the right which he had to bring liquor on his premises. But that was not a right which he acquired by virtue of the *Licensing Act* 1890; it was a right enjoyed by everybody else in the community. The Supreme Court thought there was nothing in the objection. *à Beckett* J. put the case thus (1):—"It is clear, therefore, that where the old Act spoke of 'a colonial wine licence,' it is now to be read as speaking of 'an Australian wine licence.' The new Act contains no provision keeping alive the rights conferred by the colonial wine licence. They are at an end unless the licensee can exercise them by reason of his licence being treated as equivalent to an Australian wine licence. The document which he holds confers no rights by itself independently of the Act under which it issued. When the existing law ceases to give any rights to the holder of a colonial wine licence, the licence is a nullity unless it can operate as an Australian wine licence, to the holder

(1) (1907) V.L.R., 478, at p. 479; 29 A.L.R., 10, at p. 11.

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of which the existing law gives the rights which the holder of a colonial wine licence previously possessed, qualified by the conditions added by the amending Act. It cannot have been the intention of the amending Act to destroy these rights. I think that by force of sec. 31, they are preserved by converting that which was theretofore called a colonial wine licence into a licence to be called an Australian wine licence. The holder cannot claim the rights without incurring the obligations which this change involved, or be considered an Australian wine licensee within the meaning of some section of the existing law, and not of others." I entirely adopt, if I may venture to say so, that reasoning of the learned Judge. It appears to me that all that section does is to change the name of the licence, leaving the substance exactly the same as before, and then sec. 32 goes on to impose certain restrictions upon the holder of such a licence. On the merits, therefore, I am of opinion that the judgment appealed from was right. The consideration of the other point, which is not urgent, will stand over.

BARTON J. I concur with the opinion of the Full Court on the questions raised as to secs. 31 and 32 of the *Licensing Act* 1906, and think it is the only conclusion they could reasonably have come to. The question as to the meaning of sec. 141 of the *Justices Act* 1890 is of the highest importance, and deserves further argument.

O'CONNOR J. I am of the same opinion, and have nothing to add.

ISAACS J. I concur. I would like to say that on the first point, as to whether it is necessary that the liquor should be brought on to the premises for the purpose of sale, the matter has been thoroughly and perfectly dealt with by *Madden* C.J. in *Graham* v. *Matookeros* (1). I think there is nothing to be added to His Honor's reasoning on that subject.

With regard to the other point, I agree that the reasons of *à Beckett* J. should govern the matter, and I should like to add

(1) (1907) V.L.R., 274; 28 A.L.T., 173.

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that what *Hood* J. said was correct, viz., that the right to bring liquor on to his premises was not a right conferred on the licensee by the licence, but was a right which he possessed in common with all other persons, and therefore no statutory right was taken away from the licensee by upholding the conviction.

HIGGINS J. I concur.

Solicitor, for appellant, *Raynes W. S. Dickson*, Melbourne.

Solicitor, for respondent, *Guinness*, Crown Solicitor for Victoria.

B. L.

[HIGH COURT OF AUSTRALIA.]

IN RE DALEY.

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

H. C. OF A. 1907.

SYDNEY, *Aug.* 13.

Barton, Isaacs and Higgins JJ.

Appeals to High Court—Suspension of solicitor by Supreme Court for professional misconduct—Discretion of Supreme Court as to punishment of its officers—Special leave.

A solicitor of the Supreme Court of New South Wales was suspended from practice by that Court for having by a false representation induced a barrister to accept a brief which otherwise he might not have accepted.

The High Court, being of opinion that the Supreme Court clearly had jurisdiction to deal with one of its officers who had been guilty of such misconduct as was alleged, and seeing no reason to differ from them in the conclusion to which they had come on the facts, refused to grant special leave to appeal from their decision.

The nature of the punishment in cases of professional misconduct on the part of an attorney is entirely within the discretion of the Supreme Court.

In re Coleman, 2 C.L.R., 834, followed.

Special leave to appeal from the decision of the Supreme Court: *In re Daley*, (1907) 7 S.R. (N.S.W.), 561, refused.