

power I order before I finally decide the Appeal, that the girl Mary and her mother, appear before this Court and be examined on oath touching the matter in question.

After hearing, on the 14th October, 1925, the additional evidence referred to the court held: That although the additional evidence was open to criticism it must have raised a reasonable doubt in the District Commissioner's mind if he had had the opportunity of hearing it—no doubt the case was a suspicious one, but suspicion was not sufficient to convict upon and the defendant was entitled to the benefit of any doubt which existed. The evidence adduced by the prosecution to my mind is unsatisfactory and does not warrant a conviction.

The conviction is therefore quashed and appeal upheld.

As regards the point raised by Mr. Crompton I am not prepared without further consideration to give any definite ruling, but will express the opinion, by way of *obiter dicta*, that in similar circumstances I should hesitate to convict, and if owing to the state of the law I felt compelled to do so, should only pass a nominal sentence. I take this view on the ground that a husband described as "too old" cohabiting with a mere child, is repugnant to our ideas of what is morally right.

In the circumstances of the case I make no order as to costs, leaving each party to pay his own. I arrive at this conclusion on the ground that the appellant was at fault in neglecting to call the additional evidence in the court below.

PARSOTAM *ats.* POLICE.

[Appellate Jurisdiction (Young, C.J.) May 6, 1926.]

Liquor Ordinance 1911—s. 43¹—sale of "Hop Beer" containing 5.7 per cent proof spirit—vendor licensed to sell "Hop Beer"—whether an offence to sell a liquid within the definition of "liquor"—evidence of sale.

Defendant held a licence to keep a "Hop Beer" Saloon under the Liquor Ordinance. Samples of his wares were analysed and found to contain 5.7 per cent proof spirit.

HELD.—A person who is licensed to keep a Hop Beer Saloon is not thereby licensed to sell a liquor within the meaning of the Liquor Ordinance, 1911.

APPEAL against conviction. The facts appear from the judgment. *R. Crompton, K.C.*, for the appellant.

The Attorney-General, *K. J. M. Mackenzie*, for the respondent.

YOUNG, C.J.—This is an appeal against the conviction of the appellant by the Chief Police Magistrate sitting at Suva on the 19th March, 1926, for selling liquor without a licence, contrary to the provisions of s. 43 of the Liquor Ordinance No. 6 of 1911, the liquor in question being described as "Hop Beer".

¹ *Rep. Now Liquor Ordinance, 1946, s. 46.*

The first ground of appeal taken on behalf of the appellant is that there was no evidence of the sale of the "Hop Beer" subjected to analysis. S. 43¹ reads :—

"Every person who shall sell any liquor without holding a licence authorizing the sale thereof shall for the first offence be liable to a penalty of not less than thirty nor more than fifty pounds . . ."

The section then goes on to make further provisions which do not arise in this case.

The scientific evidence before the learned Magistrate established the fact that the sample of Hop Beer submitted to the Government Analyst contained five point seven per cent (5.7 per cent) of proof spirit, and was therefore a "liquor" within the meaning of s. 2 of the Liquor Ordinance—the definition of liquor in the Ordinance being : "'liquor' means and includes any spirituous or fermented liquor, and any liquid used for drinking, which contains more than two per cent of proof spirit"—(see decision of Sir Charles Davson, C.J., in *Judd v. Muni-samy*¹ [1918] on this point).

The learned Magistrate found as a fact that there had been a sale of Hop Beer from which the sample was taken.

Now what was the evidence upon which he arrived at this conclusion. Head Constable Holland swore : "On Friday 26th February last I went into his saloon (meaning appellant's licensed Hop Beer Saloon at 24 Toorak Road, Suva), and asked him for samples of Hop Beer from the same cask from which he was supplying natives. There were no customers at the time. I took two samples which I sealed in his presence, and gave him one."

On this evidence the Magistrate apparently arrived at the conclusion that there was a case to meet ; he had heard the witness give his evidence, and was satisfied that, at any rate, an answer was required.

The appellant then made the following statement—"First offence. Poor man. Don't do much business. Beer not strong"—and the Magistrate thereupon found him guilty.

The Magistrate evidently viewed the appellant's statement in the light of an admission that the sample of Hop Beer taken by the Head Constable came from the same cask of Hop Beer as that from which he was selling to natives, and on this evidence I am of opinion that he could reasonably come to the conclusion he did, namely, that there had been a sale of "Hop Beer" which came within the meaning of the word "liquor" as defined in the Ordinance.

The second ground of appeal is that the appellant was duly licensed to sell Hop Beer and that therefore he could not be convicted of selling a product which he was licensed to sell.

The appellant holds a licence issued under Schedule B of Ordinance No. 3 of 1924 as amended by s. 6 of Ordinance No. 9 of 1925 by virtue of which he is licensed to keep a Hop Beer saloon. The words in the Schedule are : "Keeping Hop Beer Saloon". I may here mention that the law appears to have been amended solely for the purpose of levying a different rate of licence for keeping a Kava Saloon, a Hop Beer Saloon, or a Restaurant, inasmuch as under both the 1917 law

¹ Unreported.

and the 1924 law there was one uniform fee of £5 for keeping such places. What constitutes "Hop Beer" is unknown in law—from the Government Analyst's certificate it may be gathered that it is a liquid and that the sample he analysed contained 5.7 per cent of proof spirits, and was therefore a "liquor" within the meaning of s. 2 of the Liquor Ordinance. Now when the Legislature imposed a licence of £15 on a person "Keeping Hop Beer Saloon", placing it in the same category as a Kava Saloon, and a Restaurant, did it intend that a liquid which is a "liquor" under the Liquor Ordinance should be sold in the Saloon, and that a person licensed to keep a Hop Beer Saloon should be authorized to sell a potable liquid which is a "liquor" within the meaning of that liquor Ordinance, the sale of which without a licence is contrary to the provisions of the Ordinance?

I can find nothing in the Licensing Ordinance, as amended by Ordinance No. 9 of 1925, to indicate any such intention. Whatever may be the ingredients contained in Hop Beer I am not prepared to hold that a person who is licensed to keep a Hop Beer Saloon is thereby authorized to sell a liquor within the meaning of the Liquor Ordinance.

Appeal is therefore dismissed and the conviction upheld with costs.

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- (a) re THE ESTATE OF H. MAUGHAN DECEASED.
 (b) re THE ESTATE OF W. A. SCOTT DECEASED.

[Civil Jurisdiction (Maxwell Anderson, C.J.) September 28, 1929.]

Real Property Ordinance 1876—instrument creating trust preserved in Registry—transfer subsequently presented for registration—whether it is the duty of the Registrar of Titles to see that the Trustee is acting within the terms of his trust.

In both cases the registered proprietors were trustees and in both cases the instruments creating the trusts were preserved in the Registry in pursuance of s. 20 of the Real Property Ordinance 1876.¹ Upon transfers of the two properties being presented for registration the Registrar of Titles referred to the Supreme Court, under s. 97 of the Real Property Ordinance, 1876, the question whether he should refuse registration on the grounds that he had express notice of the trusts, and that in each case the transferrer's power of sale as trustee was subject to the consent of the cestui que trust.

HELD.—If a transfer is presented to the Registrar in proper form and duly attested the Registrar must register the instrument and the new title thereby created.

[EDITORIAL NOTE.]—S. 20 of the Real Property Ordinance, 1876 (Rep.) was in the same words as s. 108 of the Land (Transfer and Registration) Ordinance (Cap. 120) (Revised Edition, Vol. II, p.

¹ Repealed. Vide Land (Transfer and Registration) Ordinance (Cap. 120, s. 108) (Revised Edition, p. 1245.)