Licensing Court for the District of Northam v Worner [1915] HCA 21; (1915) 19 CLR 521 (26 March 1915)

HIGH COURT OF AUSTRALIA

The Licensing Court for the District of Northam and Another Appellants; and Worner Respondent.

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On appeal from the Supreme Court of Western Australia.

26 March 1915

Griffith C.J., Gavan Duffy and Powers JJ.

Starke, for the appellants.

Mitchell K.C. (with him Lewers), for the respondent.

Griffith C.J.

The point to be determined in this case is a short and interesting one. The *Western Australian Licensing Act 1911* authorizes the granting of, amongst other licences, "wayside house licences." Sec. 30 provides that "no licence for a wayside house shall be granted or renewed for any house or premises situated within a distance of ten miles from any municipal district or townsite in which the population exceeds one hundred persons." Among the privileges of a wayside house licence is that the licensee may sell on the premises any liquor in any quantity, which is the same privilege as is conferred by a general licence, but in the former case the licensee pays a smaller licence fee.

The respondent in this case was the holder of a wayside house licence, and desired to "remove" his licence, as such a transfer is called, to premises situated within ten miles from a municipal district or townsite in which the population exceeded 100 persons, being premises in respect of which it was not lawful to grant a wayside house licence. He contends that he is entitled under sec. 57 of the Act to have his license "removed," and that there is nothing in the Act to restrict this right of removal.

Sec. 57 provides that if a licensee desires to remove his licence to any other premises in the same district he must publish a notice corresponding almost in all respects with the notice required in the case of an application for an original licence. If his application is granted an indorsement is to be made on the licence in the form in the Ninth Schedule, which records that the Licensing Court "ordered that the within licence shall henceforth cease to apply to the house and premises described in the within licence, and that the same shall hereafter apply to" the premises to which the licence is removed. If that order were made in the present case it would be an order that from its date the respondent's wayside house licence should apply to premises in an area in which it is not lawful to grant a wayside house licence. It is a fundamental part of the licensing law that a licence has a double operation, operating both as

a licence to an individual and as a licence in respect of premises. The term "licensed premises" is frequently used in the Act, and is defined as meaning "premises in respect of which a licence has been granted and is in force." If the "removal" sought for were made, it could not be controverted that the new premises in the prohibited district would become "licensed premises." That consequence would ensue because, and only because, a licence had come into force in respect of them. From these considerations I draw two conclusions: first, that a "removal of a licence" within the meaning of the Act is in effect the grant of a licence in respect of the premises to which the existing licence is sought to be removed, and, secondly, that when sec. 57 speaks of a licensee desiring to remove his licence from his licensed premises "to any other premises in the same district" it means other premises in respect of which the law will allow a licence to be granted. In the case, for instance, of minimum accommodation, which is required for certain licensed premises, it cannot be doubted that such a licence could not be "removed" so as to operate in respect of premises not having the prescribed minimum accommodation.

For these reasons I think that the objection taken to the granting of the respondent's application was valid, and that the magistrates had no jurisdiction to entertain it. The mandamus should, therefore, not have been granted, and the appeal must be allowed. The appellants, in pursuance of their undertaking on the grant of special leave, must pay the respondent's costs.

Gavan Duffy J.

Mr. *Starke* puts his argument in two ways: first, he says that the word "grant" in sec. 30 (1) includes the word "removal"; alternatively, he says that in sec. 57 (1) the words "but if any licensee desires to remove his licence from his licensed premises to any other premises in the same district" should have attached to them the words "in respect of which such a licence might be granted." I am not convinced by either of those contentions, but as the other members of the Court have no difficulty in coming to the conclusion that the argument is correct I say no more.

Powers J.

I agree in the judgment of the learned Chief Justice, and for the reasons stated by him.

Appeal allowed. Order appealed from discharged. Appellants to pay costs of appeal.

Solicitors, for the appellants, Lawson & Jardine, for F. L. Stow, Crown Solicitor for Western Australia.

Solicitors, for the respondent, Darvall & Horsfall, for Downing & Downing, Perth.
