

Legal Notes

GIN CONTAINING ADDED WATER

(Report of an Appeal in the High Court, Queen's Bench Division, before the Lord Chief Justice (Lord Parker), and Marshall and Widgery, JJ.)

On 18th February, 1965, the High Court upheld an Appeal by James Goodfellow (Chief Public Health Inspector for Leeds) against the dismissal by the Leeds Stipendiary Magistrate of a summons against Stanley Johnson (manager and licensee of the Yorkshire Hussar Hotel, Leeds) for an offence against Section 2 of the Food and Drugs Act, 1955, in selling, to the prejudice of the purchaser, gin, which was not of the quality demanded by the purchaser in that it contained 18 per cent. of added water.

A Leeds sampling officer purchased a formal sample of gin at the hotel and was served by a bar-maid (Mrs. Wright), the manager being in another part of the building at the time. The Public Analyst's certificate showed the sample to consist of 82 parts gin (70 per cent. proof) and 18 parts excess water. Legal proceedings were instituted against the manager of the hotel.

The Stipendiary Magistrate dismissed the summons and in Case Stated said,

"I was of the opinion that there was an unlawful sale of the gin to the prejudice of the purchaser by the said Mrs. Wright. I was further of the opinion that although the Respondent was allowed by the said brewery company to choose servants, those servants were the servants of the said brewery company to whom they looked for payment of wages. I came to the conclusion that the actual seller was a servant of the said brewery company and not a servant of the manager and I accordingly dismissed the information against the Respondent."

(i.e., the Stipendiary Magistrate was of the opinion that the summons should have been taken out against the brewery company not against the manager).

THE LORD CHIEF JUSTICE in giving judgment stated, *inter alia*:

"As is well known, Section 2 of the Food and Drugs Act constitutes an absolute offence. If a person sells to the prejudice of the purchaser any food, and that includes drink, which is not of the nature or not of the substance or not of the quality demanded by the purchaser he shall be guilty of an offence.

"The forbidden act is the selling to the prejudice of the purchaser, and it has long been held that a person who has done the forbidden thing through somebody else like a servant or agent, is himself liable.

"It is in those circumstances that Mr. McLean, for the Appellant, argues that in this case Mrs. Wright's act of handling and handing over was not the act of the company her master, but of the licensee, the Respondent.

He points out that under the licensing laws the Respondent alone was entitled on these premises to sell liquor. From that he contends that since the company could not on those premises sell liquor in the sense of handling and handing over liquor, they could not be liable for the offence, and he maintains that the person who was responsible for the act of handling and handing over and who alone could do so on those premises was the man who had the Justice's licence, namely, this Respondent. I confess that it is a new point to me, and one of some difficulty. But if, as I hope, the fundamental principles to which I first referred are right, it seems to me logically to follow that in this case Mrs. Wright's act or acts were not the acts of the company which they could not perform on those premises, but were alone the acts of the Respondent.

I think that the learned Stipendiary came to a wrong conclusion in law, and that the case should go back to him with a direction to convict."

MR. JUSTICE MARSHALL: "I agree."

MR. JUSTICE WIDGERY: "I also agree. By section 120 of the Licensing Act 1953, it is provided that: 'If any person (a) sells or exposes for sale by retail any intoxicating liquor without holding a justices' licence authorising him to hold an excise licence for the sale of that liquor, or (b) holding a justices' licence sells or exposes for sale by retail any intoxicating liquor except at the place for which the justices' licence authorises him to hold an excise licence for the sale of that liquor, he shall be guilty of an offence.' Applying that Section to the facts of the case before us, it becomes obvious, I think, that unless Mrs. Wright was selling on behalf of the Respondent, the licensee, she herself would have been committing an offence under that Section. It is not in my judgment a fiction that in licensed houses the bartenders are selling on behalf of the licensee; in my judgment it is a fact that licensed houses are, by the necessity of the licensing legislation, organised on that footing, and here the act of selling complained of was an act, as my Lord has said, which could only have been done in that house by the Respondent licensee.

"In those circumstances it seems to me inevitable to conclude that Mrs. Wright's act of selling was in law the act of the licensee and he should be responsible for it."