

POLICE *ats.* PICKERING.

[Appellate Jurisdiction (Thacker, Acting C.J.) October 3, 1935.]

Liquor Ordinance, 1932—s. 47¹—exposing liquor for sale—liquor exposed for sale in private house—whether an offence—interpretation—ejusdem generis—Appeals Ordinance 1934—s. 3²—jurisdiction in appeal by case stated.

Pickering sold two glasses of liquor to a native constable. The sale took place in a private room on premises occupied by Pickering as a dwelling house. A magistrate dismissed a charge of "exposing liquor for sale" contrary to s. 47 of the Liquor Ordinance, 1932 and stated a case to the effect that in his opinion the evidence was insufficient and that exposing liquor for sale in a private room was not an offence under the section.

HELD.—(1) The Court will not go into the question of sufficiency of evidence on an appeal by way of case stated.

(2) A private house is not within the meaning of the words "in any other place whatsoever" in s. 47 of the Liquor Ordinance, 1932.

[**EDITORIAL NOTE.**—S. 47 of the Liquor Ordinance, 1932 (Rep.) was as follows :—

" Any District Commissioner may seize and any member of the
 " Fiji Constabulary may seize and take away and may convey to
 " the nearest District Commissioner all liquor which he may rea-
 " sonably suspect to be carried about for or exposed for sale in any
 " street road footpath booth tent store shed boat or vessel or in any
 " other place whatsoever by any person not holding a licence to sell
 " the same therein respectively and also every vessel containing or
 " used for drinking or measuring the same and every cart dray or
 " motor or other vehicle and every horse or animal carrying or
 " drawing the same and every boat or vessel conveying the same.
 " And any District Commissioner may either on view or on confes-
 " sion of the offender or on complaint made by any person without
 " formal information and upon proof on oath convict any such
 " offender of carrying about or exposing for sale such liquor with-
 " out a licence. Every person so convicted shall be liable to a fine
 " not exceeding fifty pounds or in default of payment to imprison-
 " ment for any period not exceeding three months. And the Dis-
 " trict Commissioner may adjudge any such liquor vessel cart dray
 " or motor or other vehicle horse or other animal boat or vessel to
 " be forfeited and may order the same to be sold and the proceeds
 " thereof shall be paid to the Colonial Treasurer for the use of the
 " Colony. Provided that whenever any such liquors shall be car-
 " ried from one place to another the burden of proving that the
 " same were not so carried for sale shall rest upon the person so
 " carrying them."

Vide Liquor Ordinance, 1946 s. 49.

As to appeal against dismissal of a charge *vide* now Criminal Procedure Code Cap. 4 s. 339 and as to appeals by way of case stated *ibid* s. 367 *et seq.*]

¹ Repealed. *Vide* Liquor Ordinance, 1946, s. 49.

² Repealed. *Vide* Criminal Procedure Code Cap. 4.

Cases referred to :—

- (1) *Skinner & Co. v. Shew & Co.* [1893] 62 L.J.Ch. 196 ; 1 Ch. 413 ; 9 T.L.R. 84 ; 36 Dig. 848.
- (2) *Cannon v. Abingdon, (Earl)* [1900] 69 L.J.Q.B. 517 ; 2 Q.B. 66 ; 82 L.T. 382 ; 64 J.P. 504 ; 16 T.L.R. 318 ; 24 Dig. 348.
- (3) *R. v. Doubleday* [1861] 3 E. & E. 501 ; 121 E.R. 530 ; 30 L.J.M.C. 99 ; 25 J.P. 421 ; 42 Dig. 637.
- (4) *R. v. Edmundson* [1859] 28 L.J.M.C. 213 ; 23 J.P. 710 ; 8 Cox, C.C. 212 ; 121 E.R. 30 ; 42 Dig. 673.

APPEAL by case stated against dismissal of a charge. The argument appears from the judgment.

D. R. McDonald, for the appellant.

Said Hasan, for the Respondent.

THACKER, Acting C.J.—This is an appeal by way of case stated from a decision of the Chief Police Magistrate on the 18th day of June, 1935, whereby the magistrate dismissed a charge of exposing liquor for sale contrary to s. 47 of the Liquor Ordinance No. 25 of 1932, and the appellant asks for a new trial. Now, appeal by way of case stated is the only method whereby a case which has been dismissed may be reviewed (see the second proviso to s. 3 of the Appeals Ordinance 1934).¹ That, however, does not imply that this Court is empowered in such cases to go into the question of sufficiency of evidence ; in other words, this Court may not review or alter the facts as found by the Magistrate. It may only review a question of law and this is so partly because this court of appeal does not see the witnesses or their demeanour in the witness box, an advantage which is desirable when coming to a conclusion of facts, and partly because it is undesirable that there should be appeals from unsuccessful prosecutions except on questions of law. The Magistrate says in his opinion as follows :—

“ I formed the opinion that the evidence before the Court was not sufficient to sustain the conviction of the respondent on the charge as laid, and accordingly dismissed the charge. It appeared to me that the words occurring in the section should be construed *ejusdem generis* with the preceding words and that in such case they would not cover the facts of this case where a private room, entrance to which was so clearly secured in every possible way, was involved. There appeared to me not to be sufficient evidence of ‘exposing liquor’ within the meaning of the section under these conditions. I was impressed by the fact that no one was found on the premises when the police entered and considered that the voices heard by the Inspector might be accounted for by the other occupants in the house.
“ I further formed the opinion that in the circumstances of this charge there was not sufficient corroboration of the evidence of the witnesses as to the supply of liquor in these rooms on the former occasions, which were too remote to receive corroboration from the evidence adduced in respect of the 1st June.”

I take this to mean that, apart altogether from the question of law which exists in this case, there was not sufficient evidence to satisfy the Magistrate as to exposing liquor for sale. I come to this conclusion because the Magistrate says as follows, “ I was impressed by the fact that no one was found on the premises when the police entered and considered that the voices heard by the Inspector might be accounted for by the other occupants in the house ” ; and further because the Magistrate held that there was not sufficient corroboration of the evidence of the witnesses as to the supply of liquor in these rooms on a former occasion. The question of law, therefore, in this case can have no interest other than an academic one. If I were to decide in favour of the appellant, on the question of law, the appeal must still fail on the ground that the Magistrate was not satisfied with the evidence. How-

¹ *Rep. c.f. Criminal Procedure Code Cap. 4 s. 339.*

ever, as the question of law has been raised I now proceed to deal with it. The appellant submitted in his argument that the words occurring in s. 47 of the Liquor Ordinance "or in any other place whatsoever" cannot be considered as *ejusdem generis* with the preceding words "street, road, booth, footpath, tent, store, shed, boat or vessel."

This raises a somewhat difficult point and one which is not easy to decide with any degree of certainty and quite a number of authorities have been cited in this case. There are authorities both for and against this contention. It is a rule of interpretation of statutes that when a general word follows particular and specific words of the same nature as itself it takes its meaning from them and is presumed to be restricted to the same genus as those words; or in other words, as comprehending only things of the same kind as those designated by them. That is one of the cardinal rules as to interpretation of statutes but of course the restricted meaning which primarily attaches to the general word in such circumstances is rejected when there are adequate grounds to show that it was not used in the limited order of ideas to which its predecessors belong. If it can be seen from a wider inspection of the scope of the legislation that the general words, notwithstanding that they follow particular words, are nevertheless to be construed generally, effect must be given to the intention of the legislature as gathered from the larger survey. The cases of *Skinner and Company v. Shew and Company* [1892] L.J. Ch. 196 and *Cannon v. Abingdon* [1900] 69 L.J.Q.B. 517 are both important cases in this respect, and there are other cases such as *R. v. Doubleday* 3 E. and E. 501 and *R. v. Edmundson* [1859] 28 L.J.M.C. 213 which are much to the point. In the latter case, the Act 17 George III c. 56 s. 10,¹ after reciting that stolen materials used in certain manufactures were often concealed in the possession of persons who had received them with guilty knowledge and that the discovery and conviction of the offenders was in consequence difficult, proceeded to authorise justices to issue search warrants for purloined materials suspected to be concealed "in any dwelling house, out house, yard, garden or other place," was held to include under the last word, a warehouse which was a mile and a half from the dwelling house. Though such a warehouse would probably not be usually considered as *ejusdem generis* with a "dwelling house" coupled with its enumerated dependencies, it was held to be reasonable, having regard to the preamble and the general body of the statute, to think that the warehouse was within the contemplation of the legislature, as it was a very likely place for the concealment against which the enactment was directed and a narrower construction would have restricted the effect instead of promoting the object of the Act. Again, to quote from *Maxwell on the Interpretation of Statutes*, page 598 of the 6th Edition, "the rule as to the effect of specific words on the more general one, which closes the enumeration of them is subordinate to the more general principle of gathering the intention from a review of the whole enactment, and giving effect to its paramount object." Therefore this court ought to endeavour to ascertain from s. 47 of the Liquor Ordinance as well as from the whole Ordinance itself whether the legislature intended that a private house in which liquor is being exposed for sale comes within the section. There is no preamble to the Ordinance which will assist

¹ *Frauds by Workmen Act, 1777.*

and I must endeavour to ascertain the intention from other parts of the Ordinance and from s. 47. I cannot find from s. 47 that the legislature intended a private house to come under the section. The section appears to infer (as the marginal note shows) that those liquors are referred to which are carried about or openly sold to the public. The rest of the Ordinance does not assist nor indeed can it have so much weight or significance as the particular s. 47. I regret therefore that I must come to the conclusion that there is no sound justification for this court finding that the legislature intended a private house to come within the section and that is the view taken also by the learned Magistrate in the court below. The whole of s. 47 appears to contemplate the carrying about or the exposure of liquor for sale in a public place or in a place to which the public has access such as street, a booth, a tent, things which have the common characteristic of open accessibility. The inclusion of boats or vessels at first sight would appear to show that this common characteristic of accessibility was not intended, but to some extent a boat or a vessel is also accessible to the public, although admittedly there may be parts of it which are not, and this is true, of course, also of a store, which, while primarily and normally open to the public may have private offices or rooms which are not so open to the public. Moreover, I think the words "boat or vessel" were contemplated as being one of the usual methods of carrying liquors, in the same way as are carts or drays, which are also mentioned in the section. I cannot but think that had the legislature intended a private house to be intended as coming within the words "in any other place whatsoever" it would have said so distinctly. Here it may be mentioned that in the relevant English Act the words whereby it is made an offence to expose liquor for sale without a licence are couched in much wider terms than in the local Ordinance. The appellant's counsel further contended that the *ejusdem generis* rule does not apply if two sets of genus are mentioned in the particular words but I read the particular words as really including not so much two sets of genus, but rather as one genus having a common characteristic of accessibility, nor do I read into the word "whatsoever" such a meaning as does appellant's counsel. I therefore come to the conclusion that the appellant's contention fails on the question of law and that the *ejusdem generis* rule applies. The appellant also contends that the Magistrate in coming to his conclusion wrongly considered that the supply or selling of the liquor is an essential ingredient of the offence of exposing for sale. I cannot find, however, any justification for this contention in the words of the stated case. The appellant also contends that the facts as found in the stated case constitute the full offence and that the Magistrate on the facts as proved might have brought in a conviction, but as I have stated at considerable length in this and in the other cross appeal I have no power to go into the question of the weight or sufficiency of evidence. The learned Magistrate found as a fact that, apart altogether from the question of law, the case was not proved and I have no power nor wish to review his finding as to the facts.

This appeal therefore for the reasons I have stated fails and is dismissed and the Magistrate's decision affirmed.