

JAMES FRANCIS McKENNY *v.* THE POLICE

[Appellate Jurisdiction (Vaughan, C.J.) February 18th, 1951]

S. 70 of the Liquor Ordinance—supplying liquor to Indian—whether licensee liable for acts of his servant.

The accused, the licensee of the Raki Raki Hotel, was convicted by the 1st Class Magistrate at Raki Raki of the offence of unlawfully supplying liquor to an Indian contrary to section 70 of the Liquor Ordinance, 1946.

The liquor was supplied by the accused's servant, the barman of the above hotel, the accused not knowing that the liquor had been supplied.

HELD.—A person who supplies liquor unlawfully in the circumstances referred to in section 70 of the Liquor Ordinance is criminally liable even if he supplied the liquor through a servant and although the act of supplying was done without the knowledge or consent of the licensee.

[**EDITOR'S NOTE.**—Section 70 of the Liquor Ordinance, 1946, reads as follows:—

“70. Any person whether licensed to sell liquor or not who gives, sells, supplies or in any way procures for any native or Indian or prohibited person, or shall aid or abet in any way in the giving, selling, supplying or procuring any liquor to or for any native or Indian or prohibited person shall be guilty of an offence.”]

Cases referred to:—

Allen v. Whitehead [1930] 1 K.B. 211.

H. P. Ragg for the appellant.

W. G. Bryce, Acting Solicitor-General, for the respondent.

VAUGHAN, C.J.—The licensee was the only person entitled by law to supply liquor, and it would be straining the language, in the light of the admitted facts, to say that he was not in fact supplying liquor on this occasion. Insofar as the supply of liquor was concerned, he had undoubtedly delegated to his barman his powers of selling liquor during his absence. I am fortified in this view by the authorities quoted to me by the learned Solicitor-General, particularly the case of *Allen v. Whitehead* [1930] 1 K.B. p. 211. I am satisfied, therefore, that section 70 prohibits the licensee from supplying liquor to an Indian, whether he does so with his own hands or by means of his barman.

There remains, therefore, the question whether, in the absence of any knowledge by the licensee that his barman was unlawfully supplying liquor, he can be held to be criminally liable. I have been invited by Counsel on both sides to compare the wording of this section with the wording of other sections of the Liquor Ordinance, in order to assist me in arriving at a correct interpretation of this aspect of section 70. The most significant point is the absence of any word in section

70 signifying that knowledge on the part of the licensee is an essential ingredient. It is true, as Mr. Ragg points out, that in at least one section, namely section 51, the licensee is made specifically liable for the act of his servant, but under section 51 it would appear that the licensee might be liable for the act of his servant even were the servant acting outside the scope of his authority. I do not decide this point because it is not before me ; I merely mention it as indicating the difference between the two sections.

Accepting the invitation of Mr. Ragg to interpret section 70 as it stands, it seems to me that I am driven to the conclusion that a person who supplies liquor unlawfully in the circumstances referred to in the section is criminally liable, even if he supplied the liquor through a servant acting within the general scope of his authority, although the act of supplying was done without his knowledge or consent.

Appeal dismissed.