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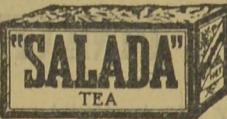
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JUDGMENT OF MAGISTRATE IN CASE AGAINST VENDOR

Case Dismissed With Costs—Held That Prohibition Act Does Not Deprive Policeman of Getting a Prescription Filled While on Duty—Not Proven That Vendor Knew Policeman was on Duty—Reported That an Appeal May be Taken.

The judgment of Police Magistrate Limerick in the case of R. T. Mack, licensed vendor under the Intoxicating Liquor Act, 1916, charged with violation of that Act by selling liquor under prescription to a policeman on duty, by which the case was dismissed with costs, was as follows.

It is reported that an appeal will be taken from this judgment.

It is admitted for the purposes of this prosecution:

That the defendant, Mack, is a drug-

gist and a licensed vendor under The Intoxicating Liquor Act, 1916.

That Mack, as a licensed druggist, supplied to one Kelly, a policeman, a quantity of liquor upon a duly qualified doctor's prescription.

That the prescription in itself was good.

That Mack observed the necessary requirements of the law in the actual filling and registering of the prescription.

Claim of Prosecution.

It is claimed by the prosecution that Kelly, being a police officer and being on duty, Mack violated section 23 of the Act in supplying liquor to the said Kelly while on duty, and the prosecution claimed that a police officer cannot have liquor prescribed for or administered to him while on duty.

The prosecution offered evidence to show that the police officer, Kelly, was on duty at the time of the purchase of the liquor from Mack, but the defence claimed that the evidence was not sufficient to establish the fact that the police officer was on duty.

In my mind there is no doubt that the police officer Kelly was on duty at the time he presented the prescription to and obtained the liquor from Mack.

What Section Says.

Section 23 of the Act says: No person authorized to sell liquor shall knowingly harbor or entertain, or knowingly suffer to remain on his licensed premises where such liquor is sold or kept for sale, any constable, policeman or peace officer during any part of the time for such constable, policeman or peace officer to be on duty, unless for the purpose of keeping or restoring order, or in the execution of his duty, or supply any liquor or refreshment whatever, by way of gift or sale, to any constable policeman or officer on duty.

The First Point.

There are just two points to be considered. One is, May a police officer while on duty be supplied with liquor on prescription? This was the point to which both sides directed their arguments.

Section 41 of the Act says: "Nothing herein contained shall prevent a sick person from having in his possession the liquor prescribed for him by a physician under section 46 of this Act."

Section 46 of the Act says: "Any physician who is lawfully and regularly engaged in the practice of his profession, and who shall deem any liquors necessary for the health of his patient or patients, may give such

patient or patients a written or printed prescription or prescriptions therefor in Form No. 12 in Appendix to this Act, or he may administer the liquor himself, for which purpose he may, when visiting in the discharge of his professional duties, have liquor in his possession."

Under section 2, sub-section (c) and section 32, a licensed druggist is authorized and empowered to sell liquor for medicinal purposes and then only on a bona-fide prescription.

Section 41 of the Act says: "That nothing in the Act shall prevent a sick person from having liquor—"

Section 2, sub-section (k), says that "person" shall mean "any person or persons, male or female, corporation, club or society."

Cannot be Deprived.

In view of the above, it cannot be intended that simply because a man happens to be a police officer, charged with the duty of enforcing the law, that he is to be deprived of the benefit of a doctor's prescription, should he, the officer, be so unfortunate as to become ill while on duty. Surely no legislation would be so framed as to intentionally deprive a sworn officer of the law of the benefit of a doctor's prescription.

The prosecution claimed that section 23 was intended for this very purpose. I do not think so. I think that section 23 is intended to prevent police officers and constables from loitering in licensed beer shops and other places and from buying beer or liquor therein during their hours of duty, and to prevent officers receiving gifts of liquor from persons authorized to sell and who might be desirous of obtaining the good will of the officers.

The Second Point.

If I am wrong in my view that a police officer on duty is entitled to the benefit of the prescription, there is a second point in the case which was apparently lost sight of by both sides, neglect to establish which is fatal to a prosecution under a section worded as section 23.

Generally under a prohibitory law it is not necessary to establish mens rea. It is necessary in a prosecution under section 23 of the Intoxicating Liquor Act, 1916.

Section 23 says: "That no person authorized to sell shall knowingly supply liquor to an officer on duty."

The prosecution through the entire case has put forward the view that a sale to a police officer on duty is an offence. This is not the case. The sale to a police officer in itself is not an offence under the Act, providing the sale is properly made by the licensee. The licensee has the right and it is his duty to fill any bona fide prescription from any duly qualified physician. The offence is selling knowingly while on duty.

Burden on Prosecution.

The burden is on the prosecution to show that the sale was made knowingly while the officer was on duty. In the case of the King vs. Farrell, Vol. 16, Canadian Criminal Cases, page 419, a licensee was charged with "knowingly selling to one under age, or apparently under age." It was held that "in case of a sale to a minor, it is not sufficient for the prosecution to show merely that the purchaser is in fact under twenty-one years, it is essential that the magistrate find that he was apparently under twenty-one or that the vendor knew he was under age." In the case of Sherras vs. De Rutzen, 54 J. P., page 440, a police officer on duty removed the armlet which signified that he was on duty, entered a public house and was served with liquor. The officer was served without being asked or without giving any information as to whether he was or was not on duty. The vendor was convicted for selling knowingly to an officer while on duty.

The court, on appeal, held that the licensee was not liable for selling to a police officer while on duty, unless guilty knowledge on the part of the licensee was proved by the prosecution. The conviction was quashed.

Circumstances of Case.

In the case against the defendant, Mack, the evidence of the prosecution is that Kelly, a police officer, in uniform, went to the drug store of the defendant, a licensed druggist. Kelly presented to the druggist a prescription for liquor. The druggist, after the prescription was handed to him, said to Kelly, "I do not know if I should fill this." Kelly replied, "Yes, it is alright." The druggist supplied to Kelly the liquor called for in the prescription.

Do these facts constitute a sale made by a licensee to an officer with the guilty knowledge or belief that such officer was then on duty? The officer presenting the prescription is an officer upon whom is imposed the duty of enforcing the Act (see section 156). He presented the prescription to a duly licensed druggist. The officer is one who has the right or whose duty it is to examine the books to see whether or not Mack is properly conducting his business as a licensee. This officer, empowered as he is, presents the prescription, and the licensee says: "I do not know if I should fill

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it," and the officer tells him, "Yes, it is alright." What more can be expected of the licensee?

No Guilty Knowledge.

I think that the prosecution has failed to discharge its burden, which is to show that the defendant, Mack, acted with a guilty knowledge or belief. Mens rea must be established in order to convict a person charged with knowingly doing those things which the Act says he must not knowingly do.

I therefore dismiss the complaint with costs.

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| 1 Vase | \$10.00 | 6.98 | 1 Lamp | \$8.50 | \$4.75 |
| 1 Vase | 7.00 | 5.40 | 1 Lamp | 9.25 | 8.35 |
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| 1 Candle Stick | 4.00 | 2.90 | 1 Lamp | 5.00 | 4.50 |
| 6 Tumblers | 4.50 | 3.00 | 1 Lamp | 2.75 | 2.50 |
| 1 Bon Bon Dish | 2.00 | 1.40 | | | |
| ONE BAND LIMOGES CHINA | | | PICTURES | | |
| | Regular | Sale | | Regular | Sale |
| 2 Dinner Plates | 2.40 | 1.90 | 1 Framed Picture | \$6.00 | \$4.90 |
| 2 Tea Plates | 1.80 | 1.40 | 1 Framed Picture | 8.50 | 6.75 |
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| 2 Bread and Butter | 1.40 | 1.10 | 1 Brass Vase | \$5.00 | \$3.78 |
| Also reduction in Three-Band Limoges China and Rose Pattern. | | | 1 Brass Vase | 4.75 | 3.19 |
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| 1 Wedgewood Teapot | \$2.25 | \$1.90 | 1 Brass Heater | 7.50 | 5.13 |
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| 1 Ladies' Travelling Case 13.50 | 11.50 | | 1 Brass Picture Frame | 1.00 | .55 |
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