

1873, of an intention to impose a different limit of time to that imposed by s. 11 of Jervis's Act. The main object of s. 62 was, no doubt, to authorize proceedings before justices. It is a repetition of the first part of s. 35 of the Salmon Fishery Act, 1861 (24 & 25 Vict. c. 109), which provided the tribunal before whom penalties should be recovered. Sect. 35 was repealed, and s. 62 of the Act of 1873 was substituted for it. The first words of s. 62 are identical with those of s. 35 of the earlier Act, the main object of s. 62 being also, there is no doubt, to provide the tribunal. I am of opinion that s. 62 means that the penalty may be recovered before two justices in the manner which is provided by Jervis's Act—that is to say, within six months after the commission of the offence, and that consequently the complaint may be made within that period.

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 MORRIS  
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 DUNCAN.  
 ———  
 Channell J.

*Judgment for the appellant. Case remitted.*

Solicitor for appellant: *C. O. Humphreys.*

W. A.

WILLIAMSON, APPELLANT v. NORRIS, RESPONDENT.

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 Nov. 1, 2, 3.

*Licensing Acts—Offences—Sale without Licence—House of Commons—Sale by Servant of the House—Charge against Servant—Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 3.*

The provisions of s. 3 of the Licensing Act, 1872, imposing penalties for unlawful sale of liquor without a licence, do not apply to a servant selling liquor, the property of his master, by his master's order.

The respondent, a servant of the House of Commons, sold liquor, the property of the House, at a bar within the precincts of the House. The purchaser of the liquor was not a member of either House of Parliament, and the place where it was sold was not licensed for the sale of liquor.

On a case stated on an information charging the respondent with unlawfully selling liquor which he was not licensed to sell, contrary to s. 3 of the Licensing Act, 1872:—

*Held*, that the respondent was not guilty of an offence against the Act, and could not be convicted.

CASE stated by a metropolitan police magistrate.

An information preferred by the appellant against the

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respondent, charging that the respondent, on May 2, 1898, at St. Stephen's Hall in the Palace of Westminster, did unlawfully sell by retail certain intoxicating liquor, which he was not then licensed to sell by retail, contrary to s. 3 of the Licensing Act, 1872 (35 & 36 Vict. c. 94), was heard and determined by the magistrate, and was dismissed.

On May 2, 1898, about 8 P.M., the appellant, entering Westminster Palace in the usual way, and passing through St. Stephen's Hall, proceeded to the bar at the foot of the Committee Room staircase, and called for a glass of brandy and soda. This was supplied to him by the respondent, who accepted half-a-crown in payment therefor, returning eighteenpence to the appellant as change. At the same time two other persons were supplied with two glasses of whisky and Apollinaris water by the respondent, who accepted money from them in payment therefor.

The respondent, while he was so acting, was acting as the servant of the House of Commons, and in obedience to orders which he had received on their behalf through the Kitchen Committee of the House, by whom he was paid; the liquor which he delivered was the property of the House of Commons, and paid for by the Kitchen Committee, there being an annual vote of the House for the refreshment department; the money which he received he received for and on behalf of the House of Commons, and paid over to the Kitchen Committee. The bar at which the liquor was delivered was under the general control of the Kitchen Committee, above the bar being a tariff shewing the prices of various intoxicating liquors.

The appellant was not, when the liquor was delivered to him, a member of either House of Parliament. The Palace of Westminster is not a place licensed for the sale of intoxicating liquor.

It was contended for the respondent that the sale of liquor in this case was a sale by the House of Commons, and not by the respondent, and also that the provisions of the Licensing Act, 1872, did not apply to sales of intoxicating liquor in the Palace of Westminster.

The magistrate held that the fact that the respondent was a

servant would be no defence to the charge of selling liquor made against him, if the sale were illegal under the Act, but that s. 3 of 35 & 36 Vict. c. 94, and the other provisions of the Act, did not apply within the Palace of Westminster to sales of liquor by the House of Commons.

The questions for the opinion of the Court were :—

1. Whether there was a sale of intoxicating liquor by the respondent, within the meaning of 35 & 36 Vict. c. 94, s. 3.

2. Whether s. 3, and the other provisions of the statute, applied within the Palace of Westminster.

3. Whether, under the circumstances, the respondent was guilty of the offence.

Nov. 1, 2. *Asquith, Q.C. (H. L. Stephen with him)*, for the appellant. The magistrate was wrong in refusing to convict the respondent. The case *prima facie* comes within the express prohibition contained in s. 3 of the Licensing Act, 1872. (1) There is an exemption clause in s. 72, enumerating a series of matters and places to which the Act is not to apply, but that section does not refer to the Houses of Parliament. The doctrine that the Crown is not bound by an Act of Parliament if not named does not apply to the House of Commons. Even if the House can be described as a Royal Palace, the respondent was not a servant of the Queen, but, as found in the case, of the House of Commons. As to a sale by a servant being an offence, that point has been found against the respondent by the magistrate.

*The Attorney-General (Sir Richard Webster, Q.C.), (H. Sutton and Ivory with him)*, for the respondent. In the first place, the Licensing Acts do not apply in any way to the House of Commons. By 1 & 2 Vict. c. 7, s. 5, and 30 & 31 Vict. c. 40,

(1) 35 & 36 Vict. c. 94. By s. 3, "No person shall sell or expose for sale by retail any intoxicating liquor without being duly licensed to sell the same, or at any place where he is not authorized by his licence to sell the same. Any person selling or exposing for sale by retail any intoxicating liquor which he is not licensed

to sell by retail, or selling or exposing for sale any intoxicating liquor at any place where he is not authorized by his licence to sell the same, shall be subject to the following penalties"; and the section goes on to provide penalties for the first, second, third, and subsequent offences.

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s. 2, the House of Commons is vested in the Queen. The Houses of Parliament do not come within the Rating Acts: *Leith Harbour and Docks Commissioners v. Inspector of the Poor* (1), per Lord Cranworth C. (2) It does not follow that, because the House of Commons is not expressly mentioned in the list of exemptions contained in s. 72, the Act applies: s. 72 is not exhaustive. The whole of the Act must be looked at to see whether it can apply, and not merely the special words of exemption: *London Joint Stock Bank v. Mayor of London* (3), per Curiam (4); *Reg. v. Kent Justices*. (5) A club has been held not to come within this Act, though not excepted by s. 72: *Graff v. Evans*. (6) The House of Commons has power to regulate its own internal procedure: *Bradlaugh v. Gossett* (7); and to hold that it was subject to the Licensing Acts would be to take away this right. It is clear that many of the provisions of the Licensing Acts could not possibly be made applicable to the House of Commons; for instance, in the Act of 1872 (35 & 36 Vict. c. 94), the provision, in s. 3 as to forfeiture of liquor; s. 4, making all the occupiers liable; s. 11, as to painting or fixing up the name of the licensed person; s. 18, as to excluding drunken persons; s. 23, empowering justices to close the premises in case of riot; s. 25, imposing penalties on persons found on premises during closing hours; s. 26, as to exemption from closing in certain cases; s. 45, as to qualification of premises; ss. 46, 47, as to annual value; and in the Act of 1874 (37 & 38 Vict. c. 49), s. 3, as to closing hours; s. 16, as to entry by police constable; s. 17, as to search for liquor.

[WILLS J. referred to s. 64 of the Act of 1872, as to production of licence by the holder.]

The following statutes were also referred to on this point: 11 Geo. 4 and 1 Will. 4, c. 64; 4 & 5 Will. 4, c. 85; 3 & 4 Vict. c. 61; 23 & 24 Vict. c. 27; 32 & 33 Vict. c. 27; 33 & 34 Vict. c. 29.

(1) (1866) L. R. 1 H. L., Sc. 17.

(2) L. R. 1 H. L., Sc. at p. 20.

(3) (1875) 1 C. P. D. 1; affirmed  
 (1880) 5 C. P. D. 494, and (1881)  
 6 App. Cas. 393.

(4) 1 C. P. D. at p. 17.

(5) (1889) 24 Q. B. D. 181.

(6) (1882) 8 Q. B. D. 373.

(7) (1884) 12 Q. B. D. 271.

Secondly, assuming that the Licensing Acts do apply, and that an offence has been committed against s. 3 of the Act of 1872, the case states that the respondent was acting as the servant of the House of Commons, and in obedience to orders, and there is no evidence or suggestion of any guilty knowledge on his part. This being so, he cannot be held to be criminally liable. The provision in s. 3, that "no person shall sell or expose for sale by retail any intoxicating liquor without being duly licensed to sell the same," cannot apply to the act of a mere servant in supplying the liquor and receiving the money in obedience to orders, but applies to the person having control of the sale, and who ought to be licensed in order to justify the sale. A barman never is licensed, and is not a "licensed person," within the meaning of s. 74 of the Act of 1872. If guilty knowledge on the part of the servant were proved, the case might come within the enactment contained in the Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 5, "That every person who shall aid, abet, counsel, or procure the commission of any offence . . . punishable on summary conviction, shall be liable to be proceeded against and convicted for the same." The provisions of s. 62 of the Act of 1872, relating to the evidence necessary to prove sale or consumption of intoxicating liquor, shew further that the penal provisions of s. 3 cannot have been intended to apply to a servant.

*Asquith, Q.C.*, in reply. The fact that certain provisions of the Licensing Acts would be inapplicable cannot prevent the application of s. 3 of the Act of 1872, the express words of which amount to an absolute prohibition. *Reg. v. Kent Justices* (1) has no bearing on the present case, for there the weights and scales were the property of the Crown, and the Crown was not mentioned in the Act.

The case of a servant falls within s. 3 of the Act of 1872, for the words "no person shall sell," &c., are wide enough to include it. The words in the same section, "without being duly licensed," &c., are equivalent to "without being protected by a licence."

*Cur. adv. vult.*

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Nov. 3. LORD RUSSELL of KILLOWEN C.J. The question which we have to decide comes before us on a case stated by a metropolitan police magistrate, before whom the respondent was charged with an offence against s. 3 of the Licensing Act, 1872, in selling by retail intoxicating liquor which he was not licensed to sell. Two questions are involved in the case: first, whether an offence against the Act was committed at all, and, secondly, if an offence against the Act was committed, whether the respondent was the party who committed the offence, within the meaning of the Act. On the facts which are set out in the case being proved, the contention on behalf of the respondent was, that the sale of the liquor was a sale by the House of Commons, and not by the respondent, and that the Licensing Act, 1872, did not apply to the sale of liquor in the Palace of Westminster. The magistrate came to the conclusion that the fact that the respondent was a servant would be no defence to the charge against him, if the sale were illegal under the Act, but that the provisions of the Act did not apply, within the Palace of Westminster, to sales of liquor by the House of Commons, and he dismissed the information. We have now to say whether the decision of the police magistrate was right.

Of the two questions involved, I will first consider the question, whether any offence at all against the Act has been committed. It was argued for the respondent that no offence had been committed, on the ground that the Houses of Parliament, in the regulation of their internal arrangements as to the sale of liquor, were entirely outside the control of the law as to licensing. Having regard to the view which we take of the other question to which I have referred, it is not necessary for us to decide this question; but I think it right to say that I am far—very far from being satisfied that no offence has been committed. I am not at all impressed by the argument that because many of the provisions of the Licensing Acts cannot be worked with reference to the House of Commons, therefore the Acts do not apply. It does not follow that intoxicating liquor can lawfully be sold without a licence, because some of the provisions of the Licensing Acts are inapplicable. Sect. 3 of the

Licensing Act, 1872, begins with a very sweeping prohibition against the sale of intoxicating liquor by unlicensed persons: "No person shall sell or expose for sale by retail any intoxicating liquor without being duly licensed to sell the same, or at any place where he is not authorized by his licence to sell the same." Then follow various provisions for the purpose of carrying out the objects of the Act, and there is a long series of exceptions in s. 72, which does not include the present case. I am far from saying that no offence has been committed by those under whose authority the sale took place. I wish to add that, in the face of the doubt, the very grave doubt, which exists, it is obvious that an appeal should be made to the Legislature to legalise and regulate what is going on, if Parliament thinks it expedient that the sale of liquor should take place within the precincts of the Houses of Parliament.

The next question is, Did the respondent in the present case commit the offence against the Act if an offence were committed? In order to arrive at a conclusion as to this point, it becomes necessary to examine the provisions of s. 3, and on reading that section I think it is impossible not to see that, in order to bring the innocent act of a waiter or a barman within the penal clause, it is necessary to put a strong gloss on the words of the section. I am of opinion that the true meaning of the section is, that the sale which is prohibited must be a sale by the person who ought to be licensed. Every one knows that a barman or a waiter is not a person licensed. The sale struck at is a sale by the master or the principal. It is contended for the appellant that s. 3 ought to be read as if the words "without being duly licensed" were "without being protected by a licence"; but that would be putting a violent gloss upon the words, and to do so is not necessary for the purpose of giving effect to the Act. It may be that the act of sale is *prima facie* evidence of an offence, so that, if a sale is proved, the burden of proof lies on the party charged; but it is unnecessary to inquire as to this, for when once it appears that the person who gives the liquor and receives the money is a mere servant, and is not knowingly accessory to an illegal sale, it is clear that he has committed no offence; if he acted knowingly he could be

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convicted of aiding and abetting under the Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 5. It is true that there are cases where the Legislature in its wisdom has declared that, in the particular class of cases dealt with, a man is to be treated as guilty of the offence in question, although he has not acted with negligence, and had no guilty mind. There are several such cases, but they form an exception to the general rule of law. The general rule of English law is, that no crime can be committed unless there is *mens rea*. In the present case the respondent was a mere servant, appointed by the Kitchen Committee of the House of Commons. Can it be suggested that this man, who was appointed by, and acted under authority of, the House of Commons, and so was under the ægis of a responsible body, had such a guilty mind as to be liable to a criminal conviction? Would it be fair or equitable, would it be just, to hold, under such circumstances as those of the present case, that the respondent has committed a crime? I am of opinion that, if there was any offence at all, it was an offence committed by those who authorized the sale, and therefore the respondent is not liable to be convicted.

The result is that, on different grounds from those taken by the learned magistrate, I arrive at the same conclusion as he arrived at, which is, that no offence was committed by the respondent, and therefore the magistrate's decision dismissing the information must be affirmed.

WILLS J. I am of the same opinion, and I entirely concur in all the observations which have been made by the Lord Chief Justice. The construction contended for by the appellant requires that "authorized by his licence" should be read as equivalent to "acting under the authority of some one else having a licence." It is a great straining of the language. "Licence" and "licensed" are used everywhere else in the Act in their natural sense, and the second member of the phrase so read would be a very odd alternative to the first, whereas "sell without being licensed or in a place to which the licence does not apply" is a perfectly natural and intelligible pair of alternatives.



Further, a great part of the argument on behalf of the respondent as to the application of the Licensing Acts rests on the common fallacy that the result produced cannot have been contemplated, and therefore it necessarily follows that the case does not come within the words of the statute. Such an argument as this ought to have effect only within very narrow limits. Generally one has to consider what is said in the Act, and this is the only way of arriving at a right conclusion, and if that is clear, it is nothing to the purpose that possibly results may follow which were not foreseen. I share to the full the doubts expressed by the Lord Chief Justice, as to whether there has not been a breach of the Act of Parliament, but I agree that no offence has been committed by the respondent.

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 Wills J.

*Judgment for the respondent.*

Solicitors for appellant: *Todd, Dennes & Lamb.*

Solicitor for respondent: *The Treasury Solicitor.*

P. B. H.

[IN THE COURT OF APPEAL.]

WOODHAM v. ATLANTIC TRANSPORT COMPANY,  
 LIMITED.

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*Employer and Workman—Compensation—Personal Injury by Accident—  
 Employment on or about Machinery or Plant—Ship unloading in Dock—  
 Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 1; s. 7,  
 sub-ss. 1, 2.*

Where a ship was unloading in a dock by means of a crane on the quay hired by her owners, and a workman employed by them in unloading her was killed by the explosion of a case of percussion-caps which he was placing in a basket attached to the chain of the crane for the purpose of its being hoisted out of the ship on to the quay:—

*Held*, that the accident arose out of and in the course of the workman's employment on or about machinery used in the process of unloading to a quay within the meaning of the Workmen's Compensation Act, 1897, and therefore the Act applied to it.

APPEAL from the decision of the judge of the Bow County Court upon a question of law submitted to him by an arbitrator