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 LLANDUDNO  
 URBAN  
 COUNCIL  
 v.  
 HUGHES.

breach of his licence, but was only doing that which could be done without any licence. I think that the respondent was clearly within the exception, and that the justices were right.

BUCKNILL J. concurred.

*Appeal dismissed.*

Solicitors for appellants: *Belfrage & Co., for Chamberlain & Johnson, Llandudno.*

Solicitors for respondent: *Kennedy, Hughes & Co., for Corbett, Llandudno.*

W. A.

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 Jan. 16.

# CHARNOCK, APPELLANT; MERCHANT, RESPONDENT.

*Criminal Law—Evidence—Examination of Defendant—Previous Conviction—Prevention of Cruelty to Children Act, 1894 (57 & 58 Vict. c. 41)—Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), ss. 1, 6.*

The appellant was charged before a court of summary jurisdiction with an offence under the Prevention of Cruelty to Children Act, 1894, and gave evidence on his own behalf as that Act permits. He was asked in cross-examination whether he had not been previously convicted of a similar offence, and answered that he had. The Criminal Evidence Act, 1898, s. 1, enables "every person charged with an offence" to give evidence on his own behalf; but (f) "a person charged and called as a witness in pursuance of this Act" shall not be asked or required to answer any question tending to shew that he has been convicted of any other offence than that with which he is charged. By s. 6, "this Act shall apply to all criminal proceedings, notwithstanding any enactment in force at the commencement of this Act."

The court of summary jurisdiction convicted the appellant:—

*Held*, that s. 1 of the Criminal Evidence Act, 1898, applied; that the evidence of the appellant's previous conviction was wrongly admitted, and, therefore, that the conviction was bad.

CASE stated, under the Summary Jurisdiction Acts, by four justices of the county of Hereford.

At a court of summary jurisdiction held at Wigmore in the same county the appellant was charged, on the information of the respondent, an inspector of the National Society for the Prevention of Cruelty to Children, for that he, the appellant, having the charge or care of a child named Arthur Price,

under sixteen years of age, unlawfully and wilfully assaulted that child in a manner likely to cause him unnecessary suffering or injury to his health, contrary to the provisions of s. 1 of the Prevention of Cruelty to Children Act, 1894 (57 & 58 Vict. c. 41).

At the hearing before the justices it was proved to their satisfaction that the appellant, who was the master of a public elementary school, did commit the offence charged by assaulting Arthur Price, one of the school-children, contrary to the provisions of the statute.

During the hearing of the case the appellant was called as a witness in his own behalf by his counsel, and upon cross-examination by the solicitor for the respondent the defendant was asked whether he had been previously convicted for a similar offence. The appellant's counsel objected that the question was inadmissible.

The justices overruled the objection and allowed the question to be put. The appellant then admitted that he had been previously convicted of an assault upon a boy under his charge.

The justices convicted the appellant and imposed a fine upon him.

They stated in the case that the appellant's answer as to his previous conviction in no way affected their minds, as the fact of the previous conviction was well known to all of them, three out of their number having adjudicated on the occasion when he was so convicted.

The questions for the opinion of the Court were :—

1. Whether under the circumstances stated in the case the question as to the previous conviction was admissible :

2. Whether, if the question was wrongly admitted, the conviction was thereby invalidated, as the justices found the appellant guilty of the offence charged on the facts proved before them.

*H. Lynn (J. A. Organ with him)*, for the appellant. The Prevention of Cruelty to Children Act, 1894, s. 12, enables a person charged with an offence under that Act to give evidence on his

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own behalf, and there is no restriction on the questions which may be put to him in cross-examination. The justices appear to have thought that, as the appellant was proceeded against under that Act, he might be asked about his previous conviction. They were clearly wrong. By reason of the Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), s. 1 (*f*), the appellant could not be asked as to his previous conviction, and by s. 6, "this Act shall apply to all criminal proceedings, notwithstanding any enactment in force at the commencement of this Act."

[He was stopped.]

*Cecil Walsh*, for the respondent. Sect. 6 of the Criminal Evidence Act, 1898, does not alter the provisions of prior Acts which are not inconsistent with it. The words in s. 6, "notwithstanding any enactment in force at the commencement of this Act," mean "notwithstanding any enactment to the contrary in force, &c." There is no enactment inconsistent or to the contrary in the Prevention of Cruelty to Children Act, 1894, under which Act the proceedings against the appellant were taken. He tendered himself as a witness in pursuance of the Prevention of Cruelty to Children Act, not "in pursuance of this Act," which are the words used in s. 1 (*f*) of the Criminal Evidence Act. Sect. 1 of the Criminal Evidence Act was intended to apply only to proceedings by indictment, not to proceedings before courts of summary jurisdiction. Even if the evidence of the appellant's previous conviction was not legally admissible, the conviction ought not to be quashed, because the justices state that his answer did not influence their minds, and as a court of summary jurisdiction they were entitled to use their own knowledge.

GRANTHAM J. Unfortunately in this case the magistrates have taken a course which was illegal. They allowed a question to be put to the appellant which was not legally admissible. It may be that the fact of the previous conviction did not affect their judgment, though they do not say that; they only say that his answer did not affect their minds. As to the point taken that the provisions of s. 1 of the Criminal Evidence Act,

1898, do not apply to alter the provisions of prior Acts which are not inconsistent, I can say from my own knowledge that since the passing of the Act of 1898 it has always been applied by the judges in cases under the Criminal Law Amendment Act, 1885. I am of opinion that the conviction was wrong, and that it should be quashed.

CHANNELL J. I am of the same opinion. It is of great importance to hold that the Criminal Evidence Act, 1898, has established one rule to be observed in all criminal courts and cases. The 6th section amply establishes that. If the contention made for the respondent were well founded, in cases under the Criminal Law Amendment Act, 1885, the defendant could still be cross-examined as to previous convictions, and prosecuting counsel, if the defendant did not give evidence on his own behalf, would still have the right to comment on that fact in his reply. The practice, since the Act of 1898 was passed, has always been to the contrary, and s. 6 makes it quite clear that the right course has been pursued.

*Conviction quashed.*

Solicitors for appellant: *Baker & Nairne.*

Solicitors for respondent: *Chester, Broome & Griffiths, for Corner & Co., Hereford.*

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