

any liquor was actually consumed, . . . and proof of consumption . . . shall be evidence that such liquor was sold to the person consuming," &c.

The Supreme Court (per Richmond, J.) had occasion to consider the effect of this section in a sale after hours, being an offence under section 155, which says, "Any person who . . . sells . . . any liquor shall," &c. It was held in that case—*White v. Nestor*—that the section (170) only meant that consumption was *prima facie* evidence which the accused could displace. The case of *Pine v. Barnes* was followed, and *Scatchard v. Johnson* was distinguished. I am of opinion that this section does not mean that the proof of consumption is conclusive evidence. It is *prima facie* evidence which will have to be displaced, and in the absence of other evidence would be conclusive. Here the evidence was, and the Magistrate has found, that liquor was ordered and paid for by Mr. Scally, and not by the drunken man. It was argued that permitting drunkenness or selling to a drunken man is an offence against public order, and different considerations should apply to this class of offence from those which apply to sale at improper hours to men not in a state of intoxication. The section under which the information is laid is one of a group (142 to 153, both inclusive) under the cross-heading of "Offences against Public Order." The sections dealing with illicit sales are 144 to 175, both inclusive. I do not think it is permissible to strain the words of the Act to carry out what was no doubt the intention of the statute. This is a statute dealing with crimes, and if an act does not come within the words of the section defining a crime, the Court cannot enlarge the words to suit the act and to make it an offence. Before I could reverse the decision of the Magistrate I should have to read into the statute some additional word, such as "gives" or "supplies," after the word "sells." It may be that interpreting the word "sells" strictly will lead to many offences that were meant to be reached going unpunished. That, if so, is for the Legislature to deal with. I have only to interpret the law as I find it. Where the Legislature has meant to make supplying, as distinct from selling, intoxicating liquor an offence, it has used proper words. For example, in section 24 of "The Alcoholic Liquors Sale Control Act Amendment Act, 1895," the section reads, "If any person . . . sells or in any way gives or supplies, or allows to be sold, given, or supplied, any liquor," &c. Some words, similar in import, will have to be added to section 146 to meet cases of this nature. To meet the state of things pointed out by *White v. Nestor* the Legislature enacted subsection 5 of section 22 of the statute last mentioned. If in this case Mr. Jones and Mr. Scally had come in together to the bar of the hotel, or been seen drinking together before their meeting in the bar of the hotel, or if there were any evidence pointing to any collusion between them, or any evidence of agency, or if it could be supposed Mr. Jones was to repay Mr. Scally for the drink supplied, the case would have been within the decision of *Scatchard v. Johnson*. The facts, however, are different. I need not add that hotel-keepers and their employés run a great risk by allowing men in a state of intoxication to be on their premises.

The appeal must be dismissed. It is not usual to give costs against the police unless it is clear the proceedings should not have been taken. I think, looking at the decision in *Scatchard v. Johnson*, this was a proper case to bring before the Court, and, under these circumstances, no costs will be allowed.

Appeal dismissed.

Extract from New Zealand Gazette.

(From *Gazette*, 1901, page 1442.)

Amended Regulations for the Sale of Arsenic and Strychnine.

RANFURLY, Governor.

ORDER IN COUNCIL.

At the Government House, at Wellington, this sixth day of July, 1901.

Present:

HIS EXCELLENCY THE GOVERNOR IN COUNCIL.

IN pursuance and exercise of the powers and authorities vested in him by "The Sale of Poisons Act, 1871" (hereinafter termed "the said Act"), His Excellency Uchter John Mark, Earl of Ranfurly, the Governor of the Colony of New Zealand, acting by and with the advice and consent of the Executive Council of the said colony, doth hereby revoke the regulations made under the said Act on the thirty-first day of March, one thousand eight hundred and ninety-two, published in the *New Zealand Gazette* of the seventh day of April, one thousand eight hundred and ninety-two, and in lieu thereof doth hereby make the regulations following with respect to the sale of certain poisons, and doth declare that these regulations shall come into force and take effect on and after the fifteenth day of July, one thousand nine hundred and one

REGULATIONS.

1. "The Sale of Poisons Act, 1871," is hereinafter referred to as "the said Act."

2. It shall not be lawful for any person to sell or dispose of strychnine or arsenic in any quantities unless such person shall, previous to making the entry required by the provisions of the twelfth section of the said Act, obtain from the intending purchaser of such strychnine or arsenic a written statement from such purchaser setting forth the particulars hereinafter mentioned; and such statement shall be signed in the presence of the seller, and witnessed by him, and also by any person introducing the purchaser to such seller.

3. Immediately upon completion of the purchase the seller of such poison shall forward such written statement to the Registrar of the district appointed under the said Act: Provided that this and the preceding regulation shall not apply to the sale of arsenic wholesale for use in the cure of diseases in sheep.

4. Every such written statement shall set forth precisely (1) the Christian name and surname of the intending purchaser at full length, together with his or her occupation and address; (2) the exact quantity and name of the poison required; and (3) the express purpose or purposes for which such poison is alone intended to be used, and the places or localities where the same is to be used or deposited respectively.

ALEX. WILLIS,
Clerk of the Executive Council.