Where liquor was sold to a person under the age of twenty-one years by the wife of a licensee, and contrary to his general instructions in the circumstances before mentioned,

Held, That the licensee was rightly convicted under the said section 202.

APPEAL from a decision of S. E. McCarthy, Esq., S.M., at Dannevirke.

T. H. G. Lloyd for the appellant.

P. S. K. Macassey for the respondent.

Cur. adv. vult.

Chapman J. :—

Appeal from a decision of S. E. McCarthy, Esq., S.M., convicting appellant on an information charging him that on the 3rd of July, 1912, at Dannevirke, he did allow Charles Russell, a youth apparently under the age of twenty-one years, to be supplied with three glasses of whisky in his licensed premises for consumption on the premises. The facts showed that Russell and two companions, all under the age of twenty-one, were in a sitting-room in the licensed house of the appellant. Russell went thence to a slide opening into the bar from the passage, and was there served by the appellants wife. At the time appellant was in the house and was in and out of the bar during the whole evening, but his wife and a son twenty-six years of age were serving in the bar with his knowledge and consent. Though they were authorized to sell, the respondent had forbidden them to sell liquor for consumption on the premises to any person under the age of twenty-one years, and notifications prohibiting such sales were posted up in prominent positions in the bar. The Magistrate was satisfied that the liquor was intended to be consumed on the premises. He finds as a fact that Russell not only was but appeared to be under the age of twenty-one. It is due to the appellant to say that the Magistrate also finds that the sale was made entirely without his knowledge, and that the moment he discovered the three youths drinking in his house he turned them out.

The information was laid under section 202 of the Licensing Act, 1908, which, as amended by the Act of 1910, makes it an offence to supply or allow to be supplied in his licensed premises, by purchase or otherwise, to be consumed on the premises, any spirits, &c., to a person apparently under the age of twenty-one. The first ground of appeal was that the sale was effected through a slide, and a person could not see clearly to whom the liquor was being sold. Mrs. Baker swore that she did not see that she was supplying liquor to a boy. I am satisfied, however, that these facts are beside the question. Mr. Lloyd admitted that if a licensee chose to employ or allow a person with defective sight to sell in his bar he could not set up his agent's personal defects as a defence. The same reasoning must apply to the structure of his house. If a licensee instituted a system of selling liquor and delivering it through a small aperture in the wall he would have to take the consequences of a sale to a person to whom it was unlawful to sell it. Selling at a slide which may be opened and closed, but which in any case has a limited aperture, may be the same thing according to its size and the circumstances. If the appellant's wife had put her head through the aperture she would have seen Russell. This no doubt would have been inconvenient, but it leaves open the argument that all precautions were not taken to avoid what is said to have occurred here—namely, that Russell stood in such a position that his face was not clearly seen. It is clearly the duty of any person selling liquor to take ordinary measures to ascertain to whom it is sold or supplied, in order to ensure that the person who gets it is not a prohibited person, and the same considerations must apply to sales to youths.

Then it is argued that the sale was not with the authority of the appellant, and that to sell and to allow to be sold are both expressions which imply that *mens rea* must be made out—that is to say, that allowing a thing to be done implies knowingly allowing it. For this reliance was placed on Emary *v.* Nolloth (1903 2 K.B. 264). In that case a barman had, contrary to the instructions of the licensee, sold liquor to a child. The English statute uses the word "knowingly," and the Court there held that the licensee had not delegated his authority to the barman, but was himself in charge of his house. If this had been a charge of selling the liquor in question contrary to law the plenary agency of the wife to conduct the business of the bar during the temporary absence of the appellant could hardly have been disputed. Indeed, Mr. Macassey asked me to amend the conviction in exercise of the powers conferred by section 10 of the Inferior Courts Procedure Act, 1909, if necessary, and if I had thought it necessary I should have been disposed to do so. It does not, however, appear to me that the facts are the same as in Emary *v.* Nolloth (1903 2 K.B. 264). The Magistrate has found that the wife was acting with the full authority of the appellant, and this I think is amply borne out by the surrounding facts, and not answered by the fact that the appellant was in the house. According to her own account she was actlng *bona fide* in discharge of the duty she had undertaken towards her husband when, owing to a condition arising from the structure of the house, aided perhaps by some deception, she supplied this youth with liquor. It is manifestly the duty of a licensee, and of any one he puts into the position of his agent, to take care that he shall see to whom he is selling, in order that he may avoid selling to prohibited persons and youths. There may be cases exhibiting circumstances in which he is excused from the consequence of the unauthorized acts of his delegate. This is not one of them. Giving a general instruction such as is found here may not always be sufficient. It must be made clear that the instructions were sufficient: Greig *v.* Macleod (1908 10 Ct. Sess. (J.) 14.) The instructions should be equally effective with an instruction to do in every case what he himself would do were he selling—namely, to take ordinary precautions in seeing for himself whether it was probable that the person to whom he was selling was under age.

Conviction affirmed. Costs, £10 10s.

Solicitor for the appellant: T. H. G. Lloyd (Dannevirke).

Solicitors for the respondent: Crown Law Office (Wellington).

EXTRACT FROM NEW ZEALAND GAZETTE.

(From *Gazette*, 1913, page 2371.)

Opossums absolutely protected in certain Districts.

LIVERPOOL, Governor.

IN pursuance of the powers vested in me by the Animals Protection Act, 1908, I, Arthur William de Brito Savile, Earl of Liverpool, the Governor of the Dominion of New Zealand, do hereby notify and declare that, from and after the date hereof, opossums of every variety shall be deemed to be absolutely protected within those parts of the districts under the said Animals Protection Act, 1908, comprised in the counties of:—

North Island.

East Taupo.	Waimarino.
Kaitieke.	Waitomo.
Ohura.	West Taupo.
Opotiki.	Whakatane.
Rotorua.	Whangamomona.

South Island.

Amuri.	Murchison.
Awatere.	Oxford.
Bruce.	Peninsula.
Buller.	Selwyn.
Chatham Islands.	Sounds.
Clutha.	Southland.
Collingwood.	Stewart Island.
Fiord.	Taieri.
Grey.	Tawera.
Halswell.	Tuapeka.
Heathcote.	Vincent.
Inangahua.	Waihemo.
Lake.	Waikouaiti.
Mackenzie.	Waimairi.
Malvern.	Waitaki.
Maniatoto.	Wallace.
Mount Herbert.	Westland.

Given under the hand of his Excellency the Governor, this fourth day of August, one thousand nine hundred and thirteen.

H. D. BELL,
Minister of Internal Affairs.