

Department of Internal Affairs,
Wellington, 12th March, 1915.

Memorandum for the Commissioner of Police.

Motor Regulation Act, 1908.

I have to advise you that the letters "WD" and the numerals "1 to 500" have been assigned to the Westland County Council as suitable distinguishing marks under the Motor Regulation Act, 1908.

J. HISLOP,
Under-Secretary.

LAW REPORT.

("New Zealand Law Reports," Vol. xxxiv, page 45.)

[S.C. IN BANCO. DUNEDIN—(SIM, J.)—22ND DECEMBER, 1914.]

In re KERRIGAN.

Licensing Acts—Indorsement of Conviction on License—Procedure—Failure by Magistrate to inspect Register before delivering Judgment—Register produced after Judgment, but no further Order made—Indorsement bad—Amendment of Conviction—The Licensing Act, 1908, Section 247—The Inferior Courts Procedure Act, 1909, Section 7.

A licensee was charged with an offence under the Licensing Act, 1908. After hearing the evidence the presiding Magistrate reserved his judgment. He subsequently read his judgment, which concluded as follows: "The defendant must be convicted. Fined £5, and license indorsed." He had not inspected the Register of Licenses at the time of delivering this judgment. His attention having been directed to the fact that the Register had not been produced he allowed the Clerk of the Court to be called to produce the Register, but the matter was not reopened, and no further pronouncement was made after the production of the Register. All that the Magistrate did was to enter in the record-book a record of the judgment he had previously pronounced.

Held, That a strict compliance with the provisions of section 247 of the Licensing Act, 1908, was necessary before a license could be indorsed, and that, as those provisions had not been complied with in the present case, the conviction was bad as regards the indorsement of the license.

Held, further, That under section 7 of the Inferior Courts Procedure Act, 1909, the conviction could be amended by striking out that part relating to the indorsement of the license.

MOTION to quash a conviction, or, in the alternative, for a writ of prohibition prohibiting the enforcement of the conviction.

An information was laid against John Kerrigan, publican, of Campbelltown, charging him with selling liquor to a person already in a state of intoxication. The Magistrate, after hearing the evidence, reserved his judgment. He read a lengthy judgment some weeks later, in which the evidence was reviewed, and which concluded as follows: "It results that the charge has been proved, and that the defendant must be convicted. Fined £5, and license indorsed." After the Magistrate had delivered this judgment the Inspector of Police, who was conducting the prosecution, asked permission to call the Clerk of the Court to produce the Register of Licenses in which Kerrigan's license was recorded. The Magistrate was under the impression that, in view of the fact that the license had been produced, it was unnecessary to have the Register also produced. The Inspector was, however, allowed to call the Clerk, who read therefrom the portions relating to Kerrigan's license. The Register was then handed up to the Bench, where it was open for the Magistrate's inspection. The affidavits filed on behalf of Kerrigan were to the effect that the Magistrate did not take any notice of the Register, as his view was that the proceeding was unnecessary. On the other hand the affidavits filed on behalf of the police stated that the book was placed in such a position that the Magistrate could not have failed to read the entries. The Magistrate himself stated that he could not recollect whether he read them or not. After the Register was produced counsel for Kerrigan asked that the fine be increased to above £5 in order that an appeal might lie. The Magistrate refused this application, but made no further pronouncement regarding the case. Kerrigan now applied for an order quashing the conviction and the order for the indorsement of the license, or, in the alternative, for an order for a writ of prohibition prohibiting the enforcement of the conviction and indorsement.

W. A. Stout and F. G. O'Beirne, in support:—

Under section 247 of the Licensing Act, 1908, the production of the Register for inspection is a condition precedent to an order for indorsement: *Bullivant v. Wilson* (12 N.Z. L.R. 420). This condition was not observed here. The sentence was passed when the judgment was read and the order for indorsement made. The fact that the Register was subsequently produced does not affect the question, as the Magistrate did not make any further pronouncement. The fact that the entries were read out by the Clerk does not amount to an inspection by the Magistrate. He must personally inspect them: *Bullivant v. Wilson* (12 N.Z. L.R. 420.) The maxim "Omnia praesumuntur rite esse acta" does not apply to establish jurisdiction in inferior Courts: *Broom's Legal Maxims* (8th ed. 744-745); *Stanton v. Styles* (5 Ex. 578, 583). If the Court is of opinion that the indorsement is bad there is a power under section 7 of the Inferior Courts Procedure Act, 1909, to quash the conviction as to that part. They also referred to *Halsbury's Laws of England* (Vol. ix, p. 376), *Russell on Crimes* (7th ed. 205), and *In re O'Dowd* (23 N.Z. L.R. 331).

Macalister, to oppose the motion:—

The question is practically one of fact as to whether, 1, the Magistrate inspected the Register, and, 2, the inspection took place before passing sentence. The Clerk read the entries in the Register, and then the book was placed where the Magistrate could not fail to see it. This was an inspection within the section. After the production of the Register the application for the fine to be raised was disposed of; it was only then that, all matters being completed, the sentence could be said to have been passed.

Stout in reply.

Sim, J.:—

Section 247 of the Licensing Act, 1908, is the same as section 202 of the Licensing Act, 1881. It was held by Denniston, J., in *Bullivant v. Wilson* (12 N.Z. L.R. 420), that a strict compliance with the conditions prescribed by section 202 was a condition precedent to the assumption of the right to make an indorsement of the license as part of the sentence. The question is whether the conditions precedent prescribed by section 247 have been complied with in the present case. It seems to me they have not. What really happened was that the sentence that the defendant should be fined £5 and that the license should be indorsed was made before section 247 was complied with. It is true that afterwards the Register of Licenses was produced, and what then happened might amount to inspection by the Magistrate; but it is clear that the Magistrate did not reopen the matter and consider whether the license should be indorsed or not. There was no further pronouncement after the production of the Register of Licenses. All that the Magistrate did was to enter in the record-book a record of the sentence he had pronounced before the Register was produced. I think the conviction, so far as it affects the indorsement of the license, is bad. Under section 7 of the Inferior Courts Procedure Act, 1909, that part of the conviction may be struck out. According to the decision in *Bullivant v. Wilson* (12 N.Z. L.R. 420) an order may be made amending the conviction by striking out all parts of the conviction regarding the indorsement of the license.

Solicitor for Kerrigan: F. G. O'Beirne (Invercargill).

Solicitor for the police: Crown Solicitor (Invercargill).

EXTRACTS FROM NEW ZEALAND GAZETTE.

(From *Gazette*, 1915, pages 815, 840, 844, and 847.)

Amending Regulations under the War Regulations Act, 1914.

LIVERPOOL, Governor.

ORDER IN COUNCIL.

At the Government Buildings at Wellington, this eighth day of March, 1915.

Present:

THE HONOURABLE J. ALLEN PRESIDING IN COUNCIL.

WHEREAS by Order in Council made and gazetted on the twenty-sixth day of January, one thousand nine hundred and fifteen, regulations were made providing that no goods imported into New Zealand from Norway, Sweden, Denmark, Holland, Switzerland, or Italy should be delivered from the control of the Customs without complying with the said regulations: And whereas it is now deemed expedient to amend the said regulations: