trate (Mr. Cruickshank) has not found that the appellant knew that the horse was being driven on the day in question. What he held was that, though the appellant might not have known that the horse was being used, he should have known it, and should have given instructions for the horse not to be used. But that was not sufficient, in my opinion, to justify the conviction. The charge was laid under subsections 1 (*a*) of s. 7 of the Police Offences Act, 1908, and it has been held that in order to justify a conviction under that subsection there must be proof of guilty knowledge on the part of the accused: Bowden *v.* Alder (15 G.L.R. 595). The same construction has been put on the corresponding section of the English Act, and some of the cases on the subject are mentioned by Mr. Justice Cooper in his judgment in Bowden *v.* Alder (15 G.L.R. 595). The judgment of A. L. Smith, J., in Elliott *v.* Osborne (65 L.T. 378) appears to be an authority for saying that a conviction might be justified without proof of actual knowledge, if it were proved that the accused had wilfully abstained from acquiring knowledge on the subject. It may be that on the evidence before him the Magistrate would have been justified in finding that the appellant did know that the horse was being used; but he had not found that, and without such a finding the conviction cannot be supported.

The appeal is allowed and the conviction set aside, with costs to the appellant, £5 5s., and disbursements.

Appeal allowed.

Solicitor for the appellant: G. P. Keddell (Invercargill).

Solicitors for the respondent: Watson & Haggitt (Invercargill).

("New Zealand Law Reports," 1916, page 223.)

[S.C. IN BANCO. INVERCARGILL — (SIM, J.) — 2ND, 8TH MARCH, 1916.]

THOMSON *v.* BURROWS.

Licensing — Offences — Selling Liquor within a No-license District — Holders of Wholesale License in Licensed District also Holders of Bonded Warehouse License in No-license District — Order for Liquor received in Licensed District — Delivery from Bonded Warehouse to Railway in No-license District and Consignment to Purchaser — When sale complete — Tests to be adopted — Licensing Act, 1908, ss. 80, 146.

T. & Co. are the holders of a wholesale license under the Licensing Act, 1908, in respect of premises at the Bluff, within the Awarua Licensing District, and are also the holders of a license under the Customs Act, 1913, for a bonded warehouse at Invercargill, which is a no-license district. T. & Co.'s traveller received an order for liquor from M. at a place within the Awarua District, which was forwarded to their Bluff office, and from there to their Invercargill office. The Invercargill office took the liquor from their bonded warehouse and delivered it at the Invercargill Railway-station, addressed and consigned to M., freight being prepaid by T. & Co.

Held, That M.'s order was an offer to T. & Co., with an implied authority to them, if they accepted the offer, to appropriate goods to the contract, and that on their despatching the liquor by rail to M. they accepted his offer, and the property in the liquor then passed to M. The contract of sale was thus made within a no-license district, and an offence had been committed within s. 146 of the Licensing Act, 1908.

Held, further, That the authority conferred on T. & Co. as the holders of a wholesale license under s. 80 did not entitle them to do any of the things prohibited by s. 146.

Forms appended in a schedule to a statute may be referred to for the purpose of throwing light on the construction of the statute. Thomas *v.* Kelly (13 A.C. 506, 511) followed.

Semble, That for the purpose of determining whether there has been a sale within the meaning of s. 146 the two tests following may properly be adopted:—

1. Was the contract of sale made within a no-license district?

2. Did the property in the liquor pass to the purchaser within such a district?

APPEAL from the decision of G. Cruickshank, Esq., S.M. at Invercargill, convicting the appellant of the sale of liquor in a no-license district.

The facts are sufficiently stated in the judgment.

H. A. Macdonald for the appellant.

W. Macalister for the respondent.

Cur. adv. vult.

8th March.—Sim, J.:—

The appellant is the manager at Invercargill for Thomson & Co., who are merchants carrying on business at the Bluff, in the Licensing District of Awarua, and elsewhere in New Zealand. They are the holders of a wholesale license under the Licensing Act, 1908, in respect of their premises at the Bluff. They have also a bonded warehouse at Invercargill, and have a license for it under the Customs Act, 1913. Invercargill is a no-license district. On the 16th September, 1915, Thomson & Co.'s traveller received an order at Brown's, in the District of Awarua, from one Finlay McIvor, a hotelkeeper there, for certain goods, including one case of Dewar's Imperial whisky. This order was sent to Thomson & Co.'s Bluff office, and from there to their Invercargill office. On the 30th September the Invercargill office, at the request of the Bluff office, and in execution of the order, took a case of Dewar's Imperial whisky from the bonded warehouse in Invercargill, addressed it to "Finlay McIvor, Hotelkeeper, Brown's," delivered it so addressed at the Invercargill Railway-station, and consigned it to McIvor at Brown's. That is a flag station, and all charges for goods consigned to it by rail have to be prepaid. Thomson & Co. accordingly paid the freight at Invercargill and charged it to McIvor. The Magistrate (Mr. Cruickshank) held that this amounted to a sale in a no-license district of liquor, and was therefore an offence under s. 146 of the Licensing Act, 1908.

Section 146 forbids any person to sell any liquor within a no-license district. This means, as Mr. Justice Denniston held in Mackenzie *v.* Wittingham (23 N.Z. L.R. 857; 6 G.L.R. 530), that it is unlawful to make a sale in a no-license district of any liquor, whether that liquor is in the district or not. It is not unlawful, however, to make a sale outside such a district of liquor which at the time is within such a district. The section does not prohibit the keeping of liquor in such a district for sale, but only the keeping of it for sale in a no-license district.

The first question that arises, then, on this appeal is whether in the circumstances there was a sale by Thomson & Co. in a no-license district of liquor. The order given to Thomson & Co.'s traveller was not accepted by him, nor apparently was it accepted by any letter of acceptance sent to McIvor from the Bluff office. That order remained, therefore, an offer only until Thomson & Co. accepted it by the steps taken by them in Invercargill to execute the order. The position with regard to such an order is clearly stated by Lord Herschell in the following passage from his judgment in Grainger *v.* Gough ([1896] A.C. 325, 333): "An order given to a merchant for the supply of goods does not of itself create any obligation. Until something is done by the person receiving the order which amounts to an acceptance there is no contract." The order given by McIvor must be treated, in the circumstances, as giving implied authority to Thomson & Co., if they accepted the offer, to appropriate goods to the contract, and to transmit such goods by rail to the purchaser. Such an authority is an implied assent by the purchaser to the subsequent appropriation by the vendor, if the goods appropriated are in accordance with the order: Halsbury's Laws of England (Vol. xxv, p. 169, s. 302); Aldridge *v.* Johnson (7 E. & B. 885); Jenner *v.* Smith (L.R. 4 C.P. 270). When, therefore, Thomson & Co. despatched by rail to McIvor a case of whisky in accordance with the order, that amounted to an acceptance of McIvor's offer, and at the same time the property in the whisky passed to McIvor by virtue of s. 20 of the Sale of Goods Act, 1908, Rule 5. The contract of sale was thus made within the no-license district, and the property in the liquor passed under it to the purchaser within such district.

Two tests have been suggested for determining whether there has been a sale within the meaning of s. 146, viz.: 1. Was a contract of sale made within a no-license district? 2. Did the property in the liquor pass to the purchaser within such a district? As to the first of these tests, it appears to be the intention of the no-license legislation to forbid within a no-license district everything in the nature of trade in liquor. In pursuance of this intention s. 146 makes it unlawful to receive in a no-license district any order for liquor. It follows necessarily, I think, from this that it is unlawful also to make in such a district an executory contract for the sale of liquor. That is how the prohibition in the English Excise Act of 1860 against selling beer by retail was construed in the case of Stephenson *v.* Rogers (80 L.T. 193), and several Judges have expressed the opinion that such an executory contract is a sale for the purposes of s. 3 of the English Licensing Act of 1872. That opinion was expressed by Wright, J., in Pletts *v.* Campbell ([1895] 2 Q.B. 229, 232), and by Alverstone, C.J., and Wills, J., in Strickland *v.* Whittaker (20 T.L.R. 224).

With regard to the second test, the subject was discussed by Mr. Justice Denniston in the case of Mackenzie *v.* Whittingham (23 N.Z. L.R. 857; 6 G.L.R. 530), but the point was not definitely decided. The case of Pletts *v.* Campbell [1895] 2 Q.B. 229, 232) appears to be an authority for saying that it may be used as a test under the English Licensing Act. Looking at the scope and purpose of the no-license legislation, it seems to me that it may