

ANDREW FINSETH (PLAINTIFF) APPELLANT;

1911

*Feb. 28.

*March 21.

AND

THE RYLEY HOTEL COMPANY
 (DEFENDANTS) } RESPONDENTS.

ON APPEAL FROM THE SUPREME COURT OF ALBERTA.

Liquor laws—"Liquor License Ordinance," ss. 37 and 57—*Cancellation of license—Jurisdiction of judge*—7 Edw. VII. c. 9, s. 14 (Alta.).

The provisions of section 57 of "The Liquor License Ordinance" (Con. Ord., 1898, ch. 89), confer upon a judge of the Supreme Court of Alberta power to direct the cancellation of liquor licenses which have been obtained in violation of sub-section 3, of section 37, of that ordinance as amended by section 14 of "The Liquor License Amendment Act, 1907," 7 Edw. VII. ch. 9, of the Province of Alberta.

APPEAL from the judgment of the Supreme Court of Alberta setting aside an order by Harvey J., by which a license issued to the respondents for the sale of malt and spirituous liquors was directed to be cancelled.

Special leave for an appeal to the Supreme Court of Canada was granted on application(1); the questions raised on the appeal are stated in the judgments now reported.

C. A. Grant for the appellant.

H. H. Parlee for the respondents.

*PRESENT:—Girouard, Davies, Idington, Duff and Anglin JJ.

(1) 43 Can. S.C.R. 646.

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GIROUARD J.—I agree in the opinion stated by my brother Davies.

DAVIES J.—The sole question involved in this appeal is whether or not, under section 57 of the “Liquor License Ordinance” for Alberta, the judge of the Supreme Court of the province had jurisdiction to hear a complaint that the license had been obtained in violation of section 37 of the ordinance.

The contention on the part of the licensee, sustained by a majority of the court of appeal, was that the “violation of any of the provisions respecting licenses” referred to in section 57, should be read and construed as referable only to those sections of the ordinance which fall under the sub-title “licenses,” and that the whole of section 37, under the third subsection of which the trial judge proceeded, related to procedure only.

I am unable to take the view of the statute which prevailed with the majority of the court of appeal, and concur in that taken by Stuart J. and by the judge who heard the complaint, now Chief Justice Harvey.

Section 57 gives jurisdiction to the Supreme Court over complaints that a

license or transfer *has been obtained* by fraud or in violation of any of the provisions respecting licenses.

It would seem, therefore, that the jurisdiction given to the court is limited to violations of any of the provisions of the ordinance with respect to *obtaining* licenses, and does not apply to violations subsequent to the granting of the licenses.

Section 37 provides that a license shall not be granted to any person who has not obtained a recommendation in writing from at least twenty of the forty

householders nearest in a direct line to the proposed licensed premises, and also provides for the time when it must be signed, and for verification of the signatures.

Sub-section 3 reads as follows:

(3) No application for a new license shall be entertained in respect of any hotel or wholesale premises not situated in a city or town; or in respect of any hotel license in a village containing less than forty dwelling houses or in any place containing less than forty dwelling houses within an area not greater than 960 acres.

This section 37 is found in that part of the Act containing a sub-title "Applications for Licenses," and it is contended, and has been held, that section 57 giving jurisdiction over complaints that the license attacked had been obtained "in violation of any of the provisions respecting licenses," does not extend to this section 37, but must be confined to the sections 12 to 23 under the sub-title "Licenses." It is, in my judgment, a narrow and improper construction so to limit what appears to me to be the fair and obvious meaning of section 57. That section, in my judgment, relates to fraud and violation of the provisions of the act antecedent to the granting of the license. It covers all cases where it is shewn that a license has been obtained either by fraud or in violation of any of the provisions of the ordinance, including section 37.

The latter section comes as well within the words "any of the provisions respecting licenses" as do the sections 12 to 23.

Our attention was also called to section 48, giving the Board of License Commissioners power at any time to cancel licenses in certain specified cases. I do not see any necessary conflict between the powers of the Board under this section and that of the court under section 57.

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The jurisdiction of the latter is limited to the cancelling of licenses obtained either by fraud or in violation of pre-requisite provisions, compliance with which was necessary to obtain the license.

That of the Board seems confined to the violation, after the granting of the license, of conditions which the ordinance makes the continuous existence of, or continuous compliance with, necessary.

I would allow the appeal with costs here and in the court appealed from, and affirm the jurisdiction of Harvey J. to make the order in question.

IDINGTON J.—It seems to me that the plain terms of section 57 of the “Liquor License Act” conferred upon the learned judge who acted, power to cancel as he did the license in question, issued in violation of the provisions of the Act respecting licenses.

I am unable to follow the reasoning given for interfering with his exercise of this power.

Even if the court below had, as I much doubt, any power to interfere with his decision, it seems to me upon the facts that the decision is not well founded.

The appeal should be allowed with costs.

DUFF J.—The “Liquor License Ordinance” of the North-West Territories (still in force in the Province of Alberta) enacts by section 37:

A license shall not be granted to any person to sell intoxicating liquors outside of incorporated cities or towns who has not first obtained the recommendation in writing in form B.

(2) Such recommendation must be signed within the period of sixty days immediately prior to the day it is so received by the territorial treasurer and the justice, notary or commissioner before whom the same is signed shall certify the date upon which each person signs such recommendation.

(3) No application for a new license shall be entertained in

respect of any hotel or wholesale premises not situated in a city or town; or in respect of any hotel license in a village containing less than forty dwelling houses or in any place containing less than forty dwelling houses within an area of not greater than 960 acres.

And by section 57:

If within sixty days from the granting of a license or a transfer of a license any person deposits with the clerk of the Supreme Court for the judicial district wherein the licensed premises are situated \$10 as security for costs, together with a complaint (verified by affidavit) that the said license or transfer has been obtained by fraud or in violation of any of the provisions respecting licenses, on application the judge may by means of an originating summons investigate and summarily hear and dispose of the complaint and may direct the cancellation of the license or dismiss the complaint and award costs in the same way as costs are awarded in proceedings in the Supreme Court.

Upon an application to Mr. Justice Harvey under the last mentioned provision for the cancellation of a license alleged to have been obtained by the respondents "in violation" of section 37, sub-section 3, the learned judge directed the cancellation of the license. On appeal it was held by the full court that the authority conferred by section 57 would not support the annulment of a license for non-compliance with the requirements of section 37(3). This view is based upon two grounds. First — that the provisions of the last mentioned section are directory merely; and secondly, — that the phrase "provisions respecting licenses" denotes those provisions only (sections 12-23(a)) to be found under the title "Licenses."

As to the second of these grounds the phrase "provisions respecting licenses" in its *primâ facie* meaning certainly includes all such provisions and the context indicates an intentional reference to all provisions which it is ordained that an applicant shall observe as a prerequisite to procuring the grant of a license. There is nothing, moreover, in

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the character of the provisions found under the title mentioned as compared with those to be found, for example, under the title "applications for licenses" which suggests a reason for supposing that the jurisdiction given by section 57 was intended to be limited to cases of non-observance of the first mentioned provisions, and I think there is no satisfactory ground for so limiting it.

As to the first of the grounds upon which the court below proceeded the language appears to me to be very clear. "No application * * * shall be entertained" unless a certain state of facts exists — appears to be a sufficiently plain way of expressing the intention that the existence of that state of facts is to be an essential condition of the right of the applicant to have his application considered. It is not very relevant to say that the legislature has in other cases enacted that the grant of a license contrary to a particular provision shall be void. It may be that in the absence of some such provision as section 57 persons attempting to impeach the grant of a license on the ground that the conditions laid down in section 37(3) were non-existent would encounter obstacles almost if not quite insurmountable; it was probably (in part, at least,) to avoid such difficulties that section 57 was enacted.

Counsel for the respondents relies upon section 48, suggesting that such cases as this would fall within the cognizance of the commissioners under that section. It is sufficient to say that the authority of the commissioners to act under section 48 is, by the express terms of the section, exercisable with reference to the state of affairs existing at the time of its exercise; the section confers no authority to cancel a

license by reason of the fact alone that a "violation" of the Act has been committed in obtaining it.

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ANGLIN J. agreed with Duff J.

Appeal allowed with costs.

Solicitors for the appellant: *Bishop, Grant & Dela-
vault.*

Solicitors for the respondents: *Boyle, Parlee & Co.*
