

Present: Ennis J.

WARD v. GALLE FACE HOTEL COMPANY,  
LIMITED.

376—P. C. Colombo, 17,972.

*Excise Ordinance—Sale of liquor within prohibited hours—Servant of hotel—Liability of Company—Mens rea—Ordinance No. 8 of 1912, ss. 45 (c) and 50.*

Where a servant of the Galle Face Hotel Company sold liquor within prohibited hours,—

*Held*, that the Company was liable as the holder of the licence for the act of the servant unless the Company was able to establish that all due and reasonable precautions were exercised to prevent the commission of the offence. A corporation cannot be convicted of the commission of an offence under section 45 (c) of the Excise Ordinance.

**A** PPEAL from a conviction by the Police Magistrate of Colombo.

*Drieberg*, for appellant.

*Garvin, S.-G.* (with *Fernando, C.C.*, and *Dias, C.C.*), for respondent.

November 8, 1918. ENNIS J.—

In this case the Galle Face Hotel Company, Limited, was charged and convicted of selling liquor between the hours of 10 and 11 P.M. to persons other than residents in the hotel or to *bona fide* travellers in contravention of a condition of this licence, an offence punishable under section 45 (c) of the Excise Ordinance, No. 8 of 1912.

The section referred to makes this an offence only when the act is done “wilfully,” and it was argued that the Hotel Company being a corporation could not be convicted of an offence under this section.

This argument is correct. The point arose in the case of *Pearkes, Gunston, and Tee, Ltd., v. Ward*,<sup>1</sup> and *Channel J.* in a judgment subsequently cited with approval in *Mousell Bros. v. The L. N. W. Ry.*<sup>2</sup> held that a corporation could be convicted only where the legislature had prohibited an act absolutely, and where no question of *mens rea* arose.

In the present case, to constitute the offence under the section it must be shown that the act was “wilful,” which raises a question of knowledge. Apart from this, there is no difficulty about the conviction of a corporation, as the Penal Code expressly provides that the word “person” shall include a corporation. A prohibition against “whoever sells” absolutely prohibits sale, but one against “whoever wilfully sells” prohibits sale only in certain circumstances.

<sup>1</sup> (1902) 2 K. B. 1.

<sup>2</sup> (1917) 2 K. B. 336.

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pany, Ltd.*

The charge and conviction are, however, not strictly correct. The charge should have been framed under section 50 of the Excise Ordinance, which provides that the "holder of a licence" shall be punished (but with fine only) as well as the actual offender for any offence under section 45 committed by any person in his employ as if he had himself committed the same, unless he shall establish that all due and reasonable precautions were exercised by him to prevent the commission of such offence.

The licence has been filed in the case, and there is no doubt that the Galle Face Hotel Company is the holder of the licence. The learned Police Magistrate has found as a fact that a servant of the Company sold liquor to persons other than hotel residents or *bona fide* travellers between 10 and 11 p.m. The finding is supported by evidence, and I see no reason to interfere with it. That the liquor was hotel liquor is proved by the chits produced and filed in the case, showing that it was served as if from the saloon bar of the hotel. The Hotel Company was, therefore, liable to punishment under section 50 as "if it were the actual offender under section 45 (c)" unless it proved that "all due and reasonable precautions" were exercised to prevent the commission of the offence. On this point it appears that orders were given that the saloon bar was to be closed at 10 o'clock; that two men go round after 10 p.m. to see that no drinks are served; and that the dining room bar is open from 10 to 11 p.m. for residents only, and that the residents must write the chits or go in person to the bar to be supplied. This evidence so far as it goes is satisfactory. There is however a gap in the precautions which might have been taken, viz., the neglect in respect of the use of the saloon bar chits after 10 p.m. There is no evidence of any precaution to prevent these being used after the prohibited hours. In fact the main defence before the Police Magistrate was that the drinks were served before 10 p.m. If it had been proved to have been practically impossible for the saloon bar chits to have been used after that hour, the chits themselves would have been strong proof in rebuttal of the sworn testimony of the witnesses who testify to a sale after that hour, but this was not proved, and the Magistrate has believed the evidence of these witnesses.

The conviction should have been that the Galle Face Hotel Company being the holder of a bar licence did neglect to take all due and reasonable precautions to prevent a breach of the conditions of the said licence by one of its servants who committed an offence, in that he did, &c.

The accused does not appear to have been prejudiced by the mistake in the charge. I accordingly alter the conviction as indicated and dismiss the appeal.

*Appeal dismissed.*