IN THE SUPREME COURT OF NEW ZEALAND
(ADMINISTRATIVE DIVISION)
WELLINGTON DISTRICT
WELLINGTON REGISTRY

M.277/69.

IN THE MATTER of the Sale of Liquor Act 1962, Section 226

A N D

IN THE MATTER of Part IV of the Summary Proceedings Act 1957

BETWEEN: J. T. COLTMAN LIMITED
a duly incorporated company having its registered office at Wellington

Appellant

AND: THE CHIEF SUPERINTENDENT OF POLICE, Wellington

Respondent

Hearing: 9 December 1969

Counsel: Cooke Q.C. and Powles for appellant
Solicitor-General White Q.C. and Cornford for respondent

Judgment: 23 December 1969

JUDGMENT OF WILD C.J.

This is a case stated by the Licensing Control Commission on a question of law only. It arises on s.249 of the Sale of Liquor Act 1962 which, speaking generally, prohibits the sale or consumption of liquor on licensed premises outside the authorised hours, but allows certain exemptions. One of the exemptions is in ss.(7) which is:

> "(7) Nothing in this section shall apply to the supply of liquor without charge and by way of hospitality to, or the consumption of liquor so supplied by -
>
> (a) Any bona fide guest of any lodger, while he is in the company of the lodger; or
>
> (b) Any bona fide guest of the licensee or manager, or of the wife or husband or any member of the family of the licensee or manager, elsewhere than in a bar. "

Then follows ss.(8) on which the present case arises. The relevant part of that subsection is:

> "(8) Notwithstanding anything in paragraph (b) of subsection (7) of this section, the Licensing Committee may from time to time, in writing, authorise the use, for the purposes of that paragraph, of any specified bar of any particular licensed premises, if it is satisfied that no suitable room that is not used by lodgers is available on the premises for those purposes; and may at any time, in writing, revoke any such authorisation."

On 14 August 1963 the Wellington Licensing Committee, acting under ss.(8), authorised the use of the cocktail bar in the Grand Hotel, Wellington, for the purposes of ss.(7)(b). At the annual meeting in 1968 the Committee revoked this authorisation not, I was told, because of any criticism of the conduct of the hotel but apparently in accord with the manner of treating similar authorisations in other hotels. An appeal against that revocation was heard by the Commission on 26 November 1968 but decision was reserved pending the outcome of a case stated by the Commission on the construction of s.249(8) which was about to be heard by this Court at Christchurch. Macarthur J. delivered his judgment in that case (McGregor v. Police 1969 N.Z.L.J. 648) on 30 July 1969 and, on 8 August, the Commission gave its written decision on this case. It said:

> "3. The argument put forward by Mr. Cooke in this case was that it was necessary for the smooth and satisfactory management of the "Grand" Hotel, which is a substantial residential hotel, that the licensee or manager be in more or less constant attendance at the centre of activities, namely, the first floor, which contains the dining room, lounge, function rooms, and cocktail bar.
>
> 4. According to the evidence there is available a room on the third floor. Mr. Coltman said it was furnished and would accommodate six to eight people comfortably. His main objection to the use of this room was that he wanted elasticity - he said it would be far more convenient to entertain his guests in the Cocktail Bar rather than the sitting room on the third floor. Mr. Coltman agreed the room was available, but said it was not suitable because it was on the third floor and that it makes it impossible to entertain his guests and supervise the hotel at the same time.

> "5. We think the essence of the argument in this case was that the room is not suitable because if Mr. Coltman entertains in this room he cannot combine this form of entertainment with his supervision of the hotel. In short we think his real argument is that it is not convenient to him in the circumstances to use this room for the entertainment of his guests. "

It then referred to McGregor's case, quoted a passage from the judgment, and dismissed the appeal.

In this Court two main submissions were made for the appellant. The first was that, though the two cases are distinguishable on the facts, the reasoning in McGregor's case should have led the Commission to accept the appellant's case rather than to reject it. The second and alternative submission was that Macarthur J. placed too narrow a construction on the word "suitable" in s.249(8) and that his judgment should not be followed. I deal with that alternative submission first and simply say that I think Macarthur J's judgment should be followed.

As the basis for his first and principal submission Mr. Cooke relied on a passage in the judgment in McGregor's case in which Macarthur J. said :

> "If a room on the premises is of adequate size, is capable of being adequately furnished, is sufficiently independent of the sleeping accommodation and bathroom and ancillary facilities, and is appropriately sited, then it will be 'suitable' within the meaning of subsection (8). "

Counsel placed emphasis on the words "appropriately sited" to which he said the Commission had failed to give due weight. The appellant's case, he said, was that the room on the third floor (described by the Commission in para. 4 above) was not "appropriately sited", being two floors away from the centre of activities on the first floor of the Grand Hotel - a leading accommodation hotel at which many social events continue till after 10 p.m., requiring personal supervision by the licensee or manager. Reading Macarthur J's judgment as a whole, however, I think it is clear that the phrase "appropriately sited" refers to the room as such and cannot be coloured by considera-

tions of the convenience or preference of the licensee.

Mr. Cooke sought also to distinguish this case from McGregor's on the ground that the latter turned on the undesirability from the point of view of the licensee's family of the type of guest he had to entertain, while in this case the issue is as to what effect the use of the third floor room would have on the licensee's general supervision of the hotel. But in my opinion both those factors go to the licensee's convenience or preference. In this connection it is to be remembered that the question the Court was asked to answer in McGregor's case was -

> "Whether in determining the questions of suitability and/or availability under section 249 (3) of the Sale of Liquor Act 1962 a Licensing Committee or the Commission is entitled to take into account matters of convenience affecting the licensee and his family personally, or is limited to a consideration of the physical attributes of the room considered to be 'suitable' and 'available'. "

and the answer given was -

> "the Licensing Committee or Commission is not entitled to take into account matters of convenience affecting the licensee and his family personally but is limited to consideration of the physical attributes considered to be 'suitable' and 'available'. "

The appeal is dismissed with $50.00 costs to the respondent.

Solicitors:

Macalister, Mazengarb, Parkin & Rose, Wellington, for appellant.

Crown Law Office, Wellington, for respondent.