

BETWEEN

CHISHOLM,
) BAKER and
NICHOLLS

Appellants

A N D THE POLICE

Respondent

Hearing: 31 July 1984
Counsel: C.J. Murdoch for Chisholm
M.H. Coughlan for Baker
C. Robertson for Nicholls
G.S. Noble for Respondent
Judgment: 3 AUG 1984

JUDGMENT OF ROPER J.

The three appellants have appealed against the sentences imposed on them on a charge of selling liquor otherwise than pursuant to a licence, a charge which, I was informed by Mr Noble, is rare indeed in Invercargill.

Chisholm and Nicholls were each fined \$750 and sentenced to six months' periodic detention. Baker was fined \$300 with three months' periodic detention. In addition an order was made that all liquor, plant, equipment and cash found on the premises were to be forfeit to the Crown. It is Chisholm who bears the brunt of that order.

The facts were that at 11.10 p.m. on the 20th October last the Police executed search warrants on premises in Esk Street where an organisation known as the Tin Shed Club operated. There was a full operational bar on the premises and behind the bar were 89 dozen bottles of beer and assorted wines and spirits. Scattered about the room were 15 tables and 59 chairs where Club members were seated. It was a fully fledged operation, and indeed was on such a scale that any long term concealment of the Club's activities was impossible. I shall now deal with the part played by

each of the Appellants in this operation.

Chisholm

He is 33 and has no previous convictions. He purchased the Club from one Pettigrew, a transaction he will forever regret. The price was \$10,000. Chisholm paid \$7,000 in cash and was given credit for the balance for work he did in renovating the premises. He is a self-employed builder. Pettigrew has absconded leaving debts due by the Club totalling \$10,000 for which Chisholm is now liable. The Police accept that Chisholm was "used" by the more worldly Pettigrew, and confirm that Chisholm was most co-operative during their enquiries. The sentencing Judge expressed amazement that Chisholm should have involved himself in this venture without proper legal advice. However, I have been informed by Counsel that Chisholm purchased the Club after he had been shown a legal opinion by an Invercargill solicitor to the effect that the Club's activities were lawful. It seems that this opinion was obtained by Pettigrew who had earlier experience with a similar club in Christchurch - the Ace of Clubs.

Chisholm's offending appears to have been more the result of stupidity than blatant disregard for the licensing laws. He has been left with a conviction, considerable indebtedness running into thousands of dollars and the forfeiture of his property.

Nicholls

He was an active worker in the Club and was associated with Pettigrew on whose behalf he found suitable Club premises. It was intended that he be a paid employee but in the result received nothing. He knew of the legal opinion. His tasks were to collect liquor from wholesalers in Dunedin and work behind the bar at times. He has a fair list of previous convictions for dishonesty.

Baker

He also acted as a barman and collected liquor from Dunedin but was really hardly anything more than a normal Club member. It seems that other members carried out the

same kind of duties. He has a fair list of previous convictions, mostly for alcohol inspired offending.

The Trial Judge took a serious view of the Appellants' offending as the sentences imposed indicate. However, I am satisfied that the sentence imposed on Chisholm was manifestly excessive in all the circumstances. Apart from anything else he seems to have received no credit for his previous good record; and his actions have been seen as more sinister than the facts justify. I propose to quash the sentence of periodic detention in his case and as it was his Club, with the prime responsibility for its running on him, it would be inappropriate to allow the sentences of periodic detention imposed on the other Appellants to remain. They would otherwise have a justifiable sense of grievance.

The appeals are allowed to the extent that the sentences of periodic detention are quashed. The fines and order for forfeiture are confirmed.



Solicitors:

Tait, Ward, Adams & Murdoch, Invercargill, for Chisholm
 Coughlan & Troon, Invercargill, for Baker
 Broughton, Henry & Galt, Invercargill, for Nicholls
 Crown Solicitor, Invercargill, for Respondent