IN THE HIGH COURT OF NEW ZEALAND
TIMARU REGISTRY

GR.104/83

BETWEEN ROBERT JAMES DRUMMOND

Appellant

A N D POLICE

Respondent

Hearing: 20 November 1984

Counsel: E. Bedo for Appellant
N.J. Scott for Respondent

Judgment: 19 December 1984

JUDGMENT OF HARDIE BOYS J

This appeal is against conviction on a charge brought under s 262(1) of the Sale of Liquor Act 1962 that on 17 March 1983 the appellant kept liquor for sale on premises at 37 and 39 Theodosia Street, Timaru, the headquarters of the Road Knights motor cycle club. The charge was brought in reliance on the presumption created by s 272 that where the Police pursuant to a warrant enter premises and find liquor there, the occupier and the manager (if any) shall each, until the contrary is proved, be deemed to have committed an offence against s 262. It was not the Police case that the appellant was a manager, but rather that he was an occupier.

Number 37 and 39 Theodosia Street comprise separate titles and there is a separate building on each. There is no

dividing fence between them, and they have a common boundary fence around them. Number 37 is owned by one McRae, and this was described as the club's meeting house. It contained one bedroom used as a bunkhouse and a recreation room, at one end of which was a well set-up bar. Mr Bedo very properly conceded that when the Police raided the premises there was ample evidence that liquor was being kept for sale in this building. Number 39 is owned by the appellant. Comprising five bedrooms, it is used principally for accommodation. In a cupboard in this building were found eight bottles of spirits, which the appellant told the police had been acquired for a house-warming.

The question is whether the appellant was proved to have been an occupier, of no.37 as well as of no.39, on the day of the raid. For no attempt was made to displace the presumption; and no evidence was called for the defence.

When the Police arrived, 14 people were in the room where the bar was. One of them was a man Wilson, whom the sergeant in charge knew to be the president of the club. He had nothing to say. The appellant was also there, standing by the bar. Apart from his explanation about the spirits, he had nothing to say either. The sergeant in his evidence proceeded to say this about the appellant:

> " The defendant Robert Drummond is known to me to be vice president of the Road Knights. He resides on the premises at 39 Theodosia Street. I have found him to be spokesman in the absence of Tony Wilson, the president, I find him to be the person having care and management of those premises."

This evidence was subjected to close scrutiny by Mr Bedo arguing the appeal. He emphasised the use of the present tense of the word "resides", correctly pointing out that it was the day of the raid, not of the hearing, four months later, that was relevant. He said that the reference to the office the appellant held in the club was plainly hearsay. And he argued that the evidence showed no more than that the appellant was present in the premises, in no different capacity from that of any of the others who were there.

Unfortunately, there was more than one instance of hearsay, and some apparent lack of precision, in the sergeant's evidence. Nonetheless, the transcript may give an erroneous impression. Residence is a continuous thing, and the sergeant may well have been intending to speak of a continuous period including the date of the alleged offence and leading up to the date of hearing. I note that at another stage in his evidence he referred to a photograph album that had come from the appellant's bedroom and although the fact that it had was also hearsay, the way in which the sergeant spoke confirms my view of what he intended, as does his answer in cross-examination that it was the appellant and not Wilson who was charged, because Wilson did not live there. But I do not regard this as a crucial matter. For the sergeant was certainly entitled to speak of his past dealings with the appellant and his experience of him as the person having the care and management of the premises in the absence of Wilson. However, whilst that helps to explain why it was the appellant and not anyone else present who was charged, it was not critical to the prosecution case either.

Although s 272 speaks of "the occupier", clearly there can be more than one occupier. And for a statement of what is meant by "occupier", I respectfully adopt what was said by Speight J in dealing with the comparable s 23 of the Arms Act 1958 in Bright v Police [1971] NZLR 1016, 1018:

> " The law therefore says that it is fair that persons who are placed in such close proximity to the premises that a reasonable presumption can be made that he is likely to be associated with the article and should be deemed to be in possession unless he proves to the contrary(sic). What is the proximity which is intended by this expression 'occupier'? Obviously not a visitor present on sufferance, nor an absentee owner who has let out his right to be present to another. But in my view, such person or persons who, either alone or in combination with others, has the right to use the premises for such purposes as he wishes, principally in the case of a dwellinghouse for the purpose of habitation."

Number 37 was the headquarters of an association of people who it is clear had the right to use the premises for social and other purposes. In my view all members were occupiers, and certainly the appellant, because of the role he played in the club's affairs, and because of his ownership of the adjoining property, which was operated in conjunction with no.37.

Whilst it is arguable that the two properties ought to be regarded as separate premises, the point is of no consequence, as the presumption applies to them both.

For these reasons the appeal is dismissed.

Solicitors:

D.C. Fitzgibbon, CHRISTCHURCH, for Appellant
Crown Solicitor, TIMARU, for Respondent.