

Magistrates' Courts (Northern Ireland) Order 1981
(Article 146: Rule 160)

Case Stated by Magistrates' Court
In Her Majesty's Court of Appeal in Northern Ireland

On Appeal by way of Case Stated under the
Magistrates' Courts (Northern Ireland) Order 1981

Between:

Superintendent S Martin

Complainant/Appellant

AND

Hugh Anslem Davey

Defendant/Respondent

Case Stated by Maurice D McHugh, Resident Magistrate in respect of his adjudication at
Downpatrick Magistrates' Court on 25 day of November 1996

M. J. P. Rankin
Deputy Clerk of Petty Sessions

Despatched to the Director of Public Prosecutions on 13 March 1997

CASE

- 1 On the 26 day of February 1996 the Defendant/Respondent appeared before Downpatrick Magistrates Court to answer a complaint that he, on the 19 day of November 1995 at Brook Cottage Hotel, Bryansford Road, Newcastle in the County Court Division of Ards being the holder of a licence by yourself or by your servant or agent permitted persons to be on licensed premises outside permitted hours or any period as is mentioned in Article 53 of the Licensing (Northern Ireland) Order 1990 contrary to Article 55(1)(b) of that Order.
- 2 The Complainant/Appellant was represented by Mr R Connell, Barrister-at-Law, instructed by the Director of Public Prosecutions and Mr McCollum, Barrister-at-Law instructed by E McEvoy & Co appeared for the Defendant/Respondent.
- 3 I heard the said complaint on the 25 day of November 1996 and found the following facts:-
 - [a] The defendant/respondent was the licensee of the hotel on the 19 day of November 1995 and did not have an extension licence to cover the premises on that day.
 - [b] On Sunday the 19 day of November 1995, Inspector Dowey of the RUC Newcastle whilst on duty and in uniform entered the hotel at 12.45am and found a number of persons sitting in the lounge bar. The shutters were down on the bar but the bar lights were still lit and several persons were collecting and generally cleaning up.
 - [c] 22 persons were sitting in the lounge bar. I was not satisfied from the evidence that Inspector Dowey's conclusion that these people were drinking spirits, wine and beers was properly drawn.
 - [d] There was evidence that the persons present on the premises were either members of staff, residents or guests of residents.
 - [e] It was contended on behalf of the Complainant/Appellant that by virtue of Article 33 of the Licensing (NI) Order 1990 the Defendant/Respondent must prove that the persons found on the premises outside permitted hours were there for a lawful purpose.
 - [f] I was not referred to any case law.
 - [g] I was of the opinion that the Appellant/Complainant had not achieved the necessary standard of proof to prove the complaint. Accordingly I dismissed the complaint.

QUESTION

The question for the opinion of the Court of Appeal is:-

Was I correct in law to hold that the Defendant/Respondent had not contravened Article 55(1)(b) of the Licensing (Northern Ireland) Order 1990, the Complainant having proved that the Defendant/Respondent by himself or by his servant or agent permitted persons to be on licensed premises outside permitted hours and the Defendant/Respondent having failed to prove that each and every one of those persons was there for a lawful purpose.


Resident Magistrate