ROYAL COURT

12th September, 1988

Before: The Deputy Bailiff and
Jurats Myles and Bonn

Police Court Appeal: Elizabeth Anne Theresa de Ste Croix

Appeal against charges of refusing to leave licensed premises, contrary to Article 17(3) of the Licensing (Jersey) Law, 1974, and an assault on a Police Officer.

Advocate J.A. Clyde-Smith for the Crown
Advocate C.J. Scholefield for the appellant.

JUDGMENT

DEPUTY BAILIFF: This is an appeal against conviction and has been argued before us on points of law only. It is not disputed that the appellant was quarrelsome and that she refused to leave the licensed premises, nor is it disputed that the appellant punched one of the police officers. However, the ingenious argument of Mr. Scholefield, and he put it very ably, is that Article 17(1) of the law, which gives the right to exclude persons from licensed premises, applies only to the conduct of persons who resort to licensed premises for the purpose of consuming alcohol and cannot apply to employees of the licensee; that the words "quarrelsome or disorderly" are ejusdem generis with the words "drunken, violent"; and that because Article

17(1) had no application in this case, the actions of the police under Article 17(2), which enables any police officer to help to expel from the licensed premises any person liable to be expelled under the Article, similarly had no application, with the result that the 'taking hold' of the appellant was unlawful and the assault which followed constituted self-defence.

It is appropriate to take those arguments in reverse order. We agree that the police officers in this case acted in accordance with the provisions of Article 17 and not under any common law power. Therefore, if Article 17 had no application to the circumstances of the present case, the police officers were not acting in the execution of their duty and the charge of assault brought against the appellant would fail. As Mr. Scholefield put it, and we agree, the two convictions "stand or fall together".

In respect of the ejusdem generis argument, Mr. Scholefield cited Francis Bennion's Statute Law at page 83, and here I quote:-

> "Ejusdem generis: Where a string of terms falling within one genus is followed by sweeping-up words not expressly limited to that genus they are taken to be so limited by implication. Thus in the phrase 'any orange, lime, banana or other article' the word article would be taken to be limited to an article of the same genus, namely fruit. There must be at least two preceding terms ...."

Mr. Scholefield argues that "quarrelsome or disorderly" are sweeping-up words directly associated with "drunken, violent". We cannot agree. In our judgment, the draftsman was referring to four separate states of behaviour. Each one of the four - drunkenness, violence, being quarrelsome and being disorderly - is sufficient to justify exclusion from the premises. What is sought here by the legislature is the peaceful conduct of licensed premises - if two people are quarrelsome in such a way as to encroach on the peaceful enjoyment of the licensed premises by other customers, then they are subject to exclusion. Similarly, if one person is disorderly without being either drunk or violent or quarrelsome and similarly if one person is quarrelsome with the licensee or manager, as it is admitted the appellant was.

We come now to the principal argument - Mr. Scholefield accepts that the 'golden rule' in statute interpretation applies in Jersey. We can conveniently take it from the Jersey case that he cited to us, that of The New Guarantee Trust Finance Ltd. -v- Birbeck 1980 J.J. 117 at page 121, and I quote:-

> "The so-called "golden rule" in the construction of statutes is stated in Maxwell at page 43 in these terms:-
>
> "It is a very useful rule, in the construction of a statute, to adhere to the ordinary meaning of the words used, and to the grammatical construction, unless that is at variance with the intention of the legislature, to be collected from the statute itself, or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified, so as to avoid such inconvenience, but no further"."

But, says Mr. Scholefield, we should not apply the 'golden rule' here and he relies on the following extracts of the Birbeck case starting at page 121. I say that because the application of the 'golden rule' would be decisive against the appellant, as Article 17 enables the holder of a licence or his servant or his agent - which the manager is - without giving any reason - to expel any person who is quarrelsome. And so we come to the requested exemption from the 'golden rule' and I start at page 121. The then Bailiff said:-

> "If I were to take the "golden rule" literally and confine myself to asking the single question "are the words 'nuls et comme non avenus' clear and explicit in their ordinary meaning?" I could not fail to answer it in the affirmative if I looked at the words alone. But alongside the Jersey cases I am entitled to look at a number of English cases which together with the Jersey cases, enable me to take into account the rest of the Law".

And then further down the page:-

"An important English case is that of A.G. -v- Prince Ernest Augustus of Hanover [1957] A.C. 436. I cite two passages. First at page 461 Viscount Simonds says this:

" ...words, and particularly general words, cannot be read in isolation, their colour and content are derived from their context. So it is that I conceive it to be my right and duty to examine every word of a statute in its context, and I use 'context' in its widest sense, which I have already indicated as including not only other enacting provisions of the same statute but its preamble, the existing state of the law, other statutes in pari materia, and the mischief which I can, by those other legitimate means, discern the statute was intended to remedy".

Secondly, Lord Somervell said (at page 473):

"It is unreal to proceed as if the court looked first at the provision in dispute without knowing whether it was contained in a Finance Act or a Public Health Act. The title and general scope of the Act constitute the background of the context. When a court comes to the Act itself, bearing in mind any relevant extraneous matters, there is, in my opinion, one compelling rule. The whole or any part of the Act may be referred to and relied on. It is, I hope, not disrespectful to regret that the subject was not left where Sir John Nicoll left it in 1826.

'The key to the opening of every law is the reason and spirit of the law - it is the 'animus imponentis' the intention of the lawmaker, expressed in the law itself, taken as a whole. Hence to arrive at the true meaning of any particular phrase in a statute, that particular phrase is not to be viewed, detached from its context in the statute: it is to be viewed in connection with its whole context - meaning by this as well the title and preamble as the purview or enacting part of the statute' "."

And at page 124:-

> "Although gaps in the Law cannot be filled in, yet as Lord Denning said in Eddis -v- Chichester-Constable [1969] 2 Ch. 235, at page 358: "A Judge must not alter the material of which it is woven, but he can and should iron out the creases"...."

Mr. Scholefield argues that the whole of the mischief aimed at here is the misconduct of drunken or violent customers who have resorted to the licensed premises to consume alcohol and he asks us to iron out what he regards as a crease or wrinkle in the law.

We cannot agree that Article 17 should be so restricted. The words used in Article 17 are "any person". The Statute itself differentiates in several places between employees and others where it uses the term "member of the public" but in this case it does not say "member of the public", it says "any person".

It is easy to think of many examples where to distinguish employees from customers and customers resorting to consume alcohol from other customers, would lead to absurdity. It is as much an essential of statute interpretation as the 'golden rule' that the Courts must avoid absurdity.

For example, is a manager to be required to rely only on his common law rights to exclude a drunken employee? Is a manager to exclude two quarrelsome customers, the one who is consuming alcohol under Article 17 and the other who is a teetotaller under the common law?

We are convinced that Article 17 is intended to be absolute - for that reason the holder of the licence, his servant or agent, does not have to give a reason for his action - and the purpose of the legislature is to ensure the orderly conduct of licensed premises so that they may be peacefully enjoyed by all persons resorting there.

Accordingly, the appeal is dismissed and Mr Scholefield, to whom we are obliged, will have his legal aid costs.

Authorities referred to in the judgment

Francis Bennion's Statute Law - p.83 "Maxims".

The New Guarantee Trust Finance Limited -v- T.V. Birbeck J.J. 1980 117 at p.121.

n.b: No other authorities referred to.