FITZPATRICK

THE HIGH COURT

1982 No. 8505P

BETWEEN:-

THOMAS FITZPATRICK AND STELLA FITZPATRICK

Plaintiffs

and

JAMES McCORMACK

Defendant

ALSO:- THE HIGH COURT

1982 No. 488 S.S.

THE STATE AT THE PROSECUTION OF THE DIRECTOR OF PUBLIC PROSECUTIONS AND OTHERS

.v.

DISTRICT JUSTICE BENEDICT J. DALY

Judgment delivered by Mr. Justice Keane on 30th May 1984

Mr. Justice Keane stated that the facts were not seriously in dispute and had been outlined in the Plenary Proceedings. He went on to outline the said facts very briefly.

He then went on to say that the determination of the case depended on the answers to the following two questions:-

(1) Whether Thomas was the "holder" of the licence under Section 28 of the Intoxicating Liquor Act 1927 at the time of conviction. If the answer to this question is yes then the licence is forfeited. However if the answer is no then the second question came into play.

(2) Was the ad-interim transfer bona fide or was it an attempt to pervert the course of justice?

It is quite clear from the authorities already quoted that an ad-interim transfer by the District Court is no more than an authority to carry on until the next licensing session. However, this does not necessarily mean that the transferee does not become "the holder". It is clear that he is responsible for his own conduct and this can result in the forfeiture of the licence.

The simplest way to examine this problem is to decide what happe to the licence itself. On one side Mr. Cassidy claims that the lice... comes to an end. It would follow therefore that there is no licence left to endorse if you accept this argument. On the other side Mr. Keane claims that it remains vested in the original licensee

i.e. the transferor. I believe the licence cannot simply disappear. If this was the case it would defeat the principal idea behind Section 28 of the Intoxicating Liquor Act 1927. The licence has been granted at the annual licensing session by a competent authority and it must remain with that same person until a competent authority transfers it or dispenses with it.

Mr. McCormack, the District Court Registrar, properly held that Thomas Fitzpatrick, the transferor was the holder of the licence at the time of conviction. In the case of Dumigan .v. Walsh (1904) 2 IR 29 it is clearly stated a publican's licence does not have the character of a personal licence and is therefore incapable of assignment or transfer. Mr. Fitzpatrick is not therefore divested of the licence. The ad-interim transfer by the District Court only gives Mrs. Stella Fitzpatrick an authority to trade. A licence is a personal privilege granted by a statutory authority. I am therefore satisfied that Mr. Fitzpatrick was the holder of the licence at the time of conviction and therefore the Defendant in these proceedings was correct in endorsing the said licence.

As this case may be appealed I shall deal with the Certiorari Proceedings. The Certiorari Proceedings only appear to deal with my

second point i.e. the Mala Fides question. There was no attempt whatsoever to conceal any of the facts. The case was a straight-forward application for an ad-interim transfer. It was either going to have to result as advised or it was not. All facts were fully disclosed and therefore I hold that there is no Mala Fides involved.

I therefore must dismiss the Plenary Summons herein with the cost of same to be paid by the Plaintiff while discharging the Conditional Order of Certiorari, allowing cause shown with the cost of the Certiorari Proceedings to be paid by the applicant to the respondent.

Mr. Cassidy applied for a stay on the forfeiture and on costs until the determination of the appeal.

Mr. Justice Keane agreed that the status quo should be maintained and therefore extracted an undertaking from the Defendant that he would not endorse the licence and forward it for forfeiture while he extracted a further undertaking from Mr. Cassidy that the Plaintiffs would prosecute the appeal expeditiously, both undertakings to last until the determination of the appeal or at the end of the time limit in which to lodge an appeal if said Notice of Appeal had not been lodged.

Appeal

R.L. 6/12/1984