

ROYAL COURT

24th June, 1991

84

Before: The Deputy Bailiff, and  
Jurats Bonn and Gruchy

---

Police Court Appeal: Lords Limited  
and Mr. John Young

---

Appeal by way of case stated against  
conviction for a breach of Article 45  
of the Licensing (Jersey) Law, 1974.

---

Miss S.C. Nicolle, Crown Advocate.  
D.E. Le Cornu for the appellants.

---

**JUDGMENT**

DEPUTY BAILIFF: This is an appeal by case stated by Lords Limited, holder of licences of the 3rd (restaurant) and 7th (entertainment) categories under the provisions of the Licensing (Jersey) Law, 1974, (the Law) and by Mr. John Young, the registered manager for the conduct of the business, against convictions recorded against them by the Police Court on the

13th February, 1991, in respect of the premises known as Lords Discotheque, 22-22A, Beresford Street, St. Helier.

Both appellants were charged with having, and were convicted of having, on the 8th August, 1990, at about 01.58 hours, contravened Article 45 of the Law by permitting members of the public to enter and be on the licensed premises.

Article 45 of the Law is in Part VI of the Law and relates exclusively to the restaurant licence. It provides that "No member of the public shall be permitted to enter or to be on the licensed premises before 06.00 hours or after 01.30 hours the following day".

Article 45, albeit headed "Entry of persons on premises", creates two entirely separate offences i.e. entry on the premises outside the prescribed hours, and being i.e. remaining on the premises after 1.30 a.m. The charge in the instant case was of permitting members of the public "to enter and to be on the licensed premises at about 01.58 hours", i.e. after 01.30 hours.

Thus it is clear that the charge was bad for duplicity in that it charged two offences.

On the agreed facts on which the submission of no case proceeded no member of the public, whether members of the staff of Lords Limited or not and if so whether on duty or off duty had entered the licensed premises after 1.30 a.m. on the night in question. Therefore the first of those offences could never have been established.

But the Police Court does have a power to amend and if this matter stood alone this Court might well remit the matter back

to the Magistrate for further consideration. Because it does not stand alone we propose to dispose of the case altogether today. But we do wish to say that the police should take greater care when drafting charges for the Police Court and avoid duplicity of this kind.

We note moreover that the Relief Magistrate in his case stated believed that he had convicted under Article 74 which relates to the Entertainment Licence and not Article 45. This was a mistake on his part but we think the charge would have been better brought under Article 74 since those concerned were never restaurant customers on the night in question.

The ground which Crown Advocate Miss Nicolle has properly conceded is not included in the case stated. The Court has power to remit the case stated for amendment but we do not think it necessary to do so. The fatal flaw is the failure to hear evidence.

Article 19 of the Police Court (Miscellaneous Provisions) (Jersey) Law, 1949, contains the procedure to be followed on an appeal by case stated. The Court is required to hear and determine the question or questions of law arising on the case and may reverse, affirm or amend the determination in respect of which the case has been stated, or remit the matter to the Police Court, with its opinion thereon, or may make such other order in relation to the matter as may seem fit.

It appears to us that in the circumstances of this case, we should use our power to make such order in relation to the matter as may seem fit. In our judgment the proceedings in the Police Court were flawed, and fatally so. The defendants were charged with permitting entry to the premises and were found guilty of that charge, which patently they were not. The charge

would have been better brought under Article 74 and not under Article 45 of the Law. The Relief Magistrate having found against the legal submission of the defence should have heard evidence - because he convicted the defendants without evidence when a plea of not guilty had not been changed. Indeed evidence should have been heard at the outset of the proceedings because the defence submission was not a plea in bar but a legal submission arising out of the facts. Accordingly the convictions are quashed.

This means that the question of Law regarding the status of members of the staff and definition of members of the public has not been decided. But anything we might say on that subject would be 'obiter' and therefore we refrain from doing so.

no authorities.