THE INTERPRETATION OF SECTION 60 (c) OF THE SALE OF LIQUOR ACT 1962

The case under discussion, *Pickens* v. *Franssen*[1], attracts the attention both as an example of the uncertainty as to judicial approach to interpretation of the "ordinary meaning" of a word and as the first decision of the Court of Appeal on the scope of s. 60(c) of the Sale of Liquor Act 1962, a section which, providing as it does extended facilities for the consumption of liquor with meals, is of particular practical importance to the hotel trade and to the public generally.

The case originated in the Magistrate's Court at Wellington as an information laid by a Police Officer alleging offences under s. 249(1) and (2) of the Sale of Liquor Act 1962, by the sale of liquor during unauthorized hours at the Bistro Bar of the Royal Oak Hotel in Wellington. It was argued in all three Courts by the defendant, who was the respondent in the Supreme Court and Court of Appeal, that the alleged offences were authorized by s. 60(c) of the Act, which provides:

> 60. A hotelkeeper's licence shall authorize the licensee to sell and dispose of liquor, on the hotel premises described in the licence, –
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> . . .
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> (c) To any person actually partaking of a substantial meal in any room or place (other than a bar) used for dining, whether generally or on that occasion, for consumption by that person as part of the meal, at any time between the hours of nine o'clock in the morning and eleven-thirty o'clock at night on any day.

The information was dismissed by the Magistrate. An appeal, by way of case stated, to the Supreme Court was also dismissed and a further appeal with leave of the Supreme Court brought the case before the Court of Appeal.

The Magistrate in his judgment found as facts that during the hours authorized by s. 60(c) liquor was sold to and consumed by persons actually partaking of a substantial meal as part of that meal in the Bistro Bar, a room or place used both generally and on that occasion for dining. The learned Magistrate then turned his attention to the question whether the Bistro was a room "other than a bar". Section 2 of the Act

1. [1964] N.Z.L.R. 606 (S.C.); 609 (C.A.).

is in part to this effect:

> 2. In this Act, unless the context otherwise requires, –
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> "Bar", in relation to any licensed premises includes any part of those premises that is used principally or exclusively for the sale, supply, or consumption of liquor: [2.]

Applying this definition the Magistrate found "as a fact that the room or place was used for sale, supply and consumption of both food and liquor but not principally for the sale, supply and consumption of one rather than the other". That finding as to fact could not be, of course, and was not challenged in the higher courts. But the Magistrate went on to hold that his finding as to the use of the Bistro negatived the proposition that the Bistro was a bar – i.e. in effect treating the definition in s. 2 as concluding the matter.

It was argued for the appellant both in the Supreme Court and in the Court of Appeal that the Magistrate misdirected himself in treating the definition in s. 2 as an exclusive definition of the word. The Crown contended that upon the proper construction of the interpretation section, the word "bar" should be given (a) its ordinary meaning and (b) that meaning which is "included" by virtue of s. 2.

In the Supreme Court, Barrowclough C. J. declined to accept that submission, stating that, in his view, the ordinary or popular meaning of the word "bar" should not be applied to s. 60(c) if its effect would be to attribute to the Legislature a meaning which would defeat the obvious purpose and intention of that subsection. Such a result would follow if the appellant's submission were accepted. [3.] The Chief Justice went on to say:

> As I read s. 60(c) and that part of the interpretation section which deals with what is included in the meaning of the word "bar" the interpretation section does not enlarge the popular meaning . . . but rather restricts it. At all events it qualifies it. Even if in the popular meaning of the word regular sales of liquor therein would make a room a bar, that meaning is not now to be attributed to the word in subs. (c)

2. "Bar" was not defined in the Sale of Liquor Act's precursor, the Licensing Act 1908, and the definition in the Sale of Liquor Act 1962 appears to have been adopted from the comparable English legislation, the Licensing Act 1953 (U.K.), s. 165(1) of which provides that "bar" includes any place exclusively or mainly used for the sale and consumption of intoxicating liquor. It should be noted that the New Zealand Legislature has inserted the word "or" where the English Statutes use the word "and". The reason for this widening of the definition is not altogether clear, particularly in a statute which otherwise appears to be intended to liberalize the licensing laws of this country.

3. [1964] N.Z.L.R. 606 at 608.

> of s. 60. It seems to me that . . . the only meaning that can be attributed to the word without making the section completely inoperative is the meaning which is assigned inclusively, if not exclusively, by the interpretation section. [4]

The Court of Appeal, which comprised North P., and Turner and Hutchison JJ., did not accept the interpretation of Barrowclough C. J. and unanimously reversed his decision, holding that the definition in s. 2 was intended to extend the ordinary meaning of the word "bar", and that the word should bear its ordinary meaning plus the statutory addition. As North P. pointed out, [5] s. 60(c) appears to have been intended to liberalize to a limited degree the previous position with the reservation that under no circumstances could a bar be used after 6p.m. as a place for dining, whether generally or on a particular occasion, if liquor was served. The Sale of Liquor Restriction Act 1917, s. 10, permitted the sale of liquor between the hours of 6p.m. and 8p.m. to persons actually partaking of an evening meal in a specified room. Section 21 of the Licensing Amendment Act 1960 extended the period to 11.30p.m. and granted permission on certain days as well.

The members of the Court each delivered separate judgments, emphasizing the importance with which the Court viewed this case, even though the point was, as Hutchison J. described it, a very narrow one. [6] At the request of North P., Hutchison J. delivered the first judgment, and after considering the decision reached by the learned Magistrate and Chief Justice, he turned his attention to the remarks of Lord Watson in *Dilworth* v. *Commissioner of Stamps*. [7] His Lordship in that case pointed out that while the word "include" is very generally used in interpretation clauses in which the Court of Appeal applied it here, it may also be equivalent to "mean and include" and in that case afford an exhaustive explanation of the word for the purposes of the statute in which it appears. Hutchison J. could see no context in the Sale of Liquor Act to show that the word "includes" would bear the meaning of "mean and includes". Indeed, of the twenty-seven terms in s. 2 itself, only four definitions use the word "includes", while in the other twenty-three "means" is used. To His Honour, this clearly indicated that the Legislature intended a difference between the two different usages.

North P. and Turner J. agreed with the conclusion reached by Hutchison J. and largely with the reasons by which he supported it. Turner J. for his own part

4. Ibid., at 608 - 9.
5. Ibid., at 615.
6. Ibid., at 611.
7. [1899] A.C. 99 at 105 (J.C.).

thought that there would be few cases where a bar (in its ordinary meaning) would not be "used principally or exclusively for the sale, supply or consumption of liquor", but he instanced a room constructed as a bar the user of which had been temporarily discontinued. [8.]

North P. agreed with Hutchison J.'s dicta on the general characteristics of a bar, such as the general appearance of the room and its availability to the public, [9.] and referred to the fact that, unlike its counterpart of 20 years ago, a bar may now offer sit-down drinking and a hotel may serve meals in some of its bars. [10.]

Both Hutchison and Turner JJ. conceded that, on the extended statutory meaning, it was arguable that a room might at one time be a bar within that extension and at another time not a bar, depending on the use to which it was for the time being put. But both judges agreed that on the ordinary meaning there was no possibility of so treating the room. [11.]

As the appeal was by way of case stated, it was not open to the Court of Appeal to make any findings of fact. [12.] The only question of fact in dispute having been found to have been dealt with on a basis wrong in law, the case was remitted to the Magistrate for further consideration.

The learned Magistrate, applying the law as stated by the Court of Appeal, found that an offence had been committed and convicted the defendant. [13.] However, one point did emerge which was not referred to the Magistrate by Counsel, namely that s. 255 of the Act places on the defendant the onus of showing that the Bistro was "other than a bar" if he was to escape conviction. The Magistrate did, however, say that in his opinion s. 255 applied only to charges against the person who purchased liquor or had it supplied to him but not to charges against sellers or suppliers, by virtue of the wording of s. 249. [14.]

Both North P. in the Court of Appeal and Barrowclough C.J. in the Supreme Court considered the dictum of Stringer J. in *Iles* v. *Waterson* [15.] as to the ordinary

8. [1964] N.Z.L.R. 606 at 614.
9. Ibid.
10. Ibid., at 615.
11. Ibid., at 614.
12. Ibid., at 615.
13. (1964) 11 M.C.D. 154.
14. Ibid., at 156.
15. [1927] G.L.R. 33 at 34.

meaning of the word "bar". Barrowclough C.J. accepted Stringer J.'s definition and that of Lord Ardwall in *Donaghue* v. *McIntyre*[16] as "generally workable descriptions of what is in popular language meant by a 'bar'," [17] although he noted that neither was, nor purported to be, a correct or exhaustive definition. The learned Chief Justice went on to state that to apply this definition to s. 60(c) of the Sale of Liquor Act would defeat the purpose for which it was enacted. It is clear that His Honour was applying the proposed description in a literal sense to reach his conclusion that a hotel dining room would come within the classification of a "bar". But, as the Court of Appeal held, it is apparent that one must exercise caution when dealing with definitions expounded four and five decades ago, particularly in view of the changing character and appearance of hotel bars in the last ten or so years.

It is submitted that the approach of North P. is correct and that on the basis of that approach, one can perhaps formulate a proposition that in looking to the ordinary meaning of a word the Court should give that word such fair, large and liberal interpretation as will best ensure that its true meaning is attributed to that word, provided that due attention should be paid to the influence of social development. The object of such a rule, if the word is not too strong, would be similar to that for which s. 5(j) of the Acts Interpretation Act 1924 was enacted: to attempt to rid the Courts of the burden of deciding which common law rule of construction to apply.

It may be said that such a rule is self-evident. It is true that perhaps it should be self-evident, but it would appear from *Pickens* v. *Franssen* [18] that if it is self-evident, it is not always applied.

16. [1911] S.C. (J) 61.

17. [1964] N.Z.L.R. 606 at 608.

18. *Supra.*