Judgment of Mr. Justice Kent

IN THE CASE OF SOPER vs. BYRNE.

ALBERT SOPER APPELLANT vs. JOHN BYRNE RESPONDENT.

The appellant was convicted by His Honour Judge Morris, K.C. acting as Stipendiary Magistrate, of a breach of section 4 of the Intoxicating Liquors Prohibition Act 1916 and this appeal is brought by him against that conviction. The appellant is a wholesale grocer who carries on business on New Gower Street in St. John's. On February 4th last he sold to Michael Byrne, a retail grocer and provision dealer, certain goods including two dozen 8 ounce bottles of Shirffs Imperial Quintessence of Vanilla. This article is one of the usual flavouring essences used in cooking, in the manufacture of ice creams and other such preparations. It is and has always been sold in the grocery business, as part of the ordinary stock in trade. It is made up in bottles of various sizes but, until lately, generally in sizes varying from 1-2 to 4 ounces. The most usual was the 2 ounce bottle, but lately the 8 ounce bottle is in common use. Before the Prohibition Act came into operation, these essences were used, almost exclusively, for flavouring purposes. But after the sale of the usual alcoholic liquors was prohibited, Shiriffs essence, like several other such preparations, has been largely used instead of them as a beverage. They are undoubtedly alcoholic. A good essence takes about 50 per cent. of alcohol in its preparation but with the other ingredients its strength is reduced to about 40 per cent. alcohol. The analysis by Mr. Davies, the Government analyst, of a bottle of Shiriffs Vanilla, taken from those sold by the appellant to Byrne on the 4th of February, gave 39.4 per cent. of alcohol by volume. The learned Magistrate held, on this analysis, that this liquor and, therefore, one of those liquors absolutely prohibited by the Prohibition Acts. He says, "In my opinion, the words 'spirituous liquor' in the section, implies spirits of any description, and all liquors, mixtures, essences and compounds made with spirits. The compound labelled 'Shirriff's Imperial Quintessence of Vanilla' contains 39.4 p.c. by volume; its sale, therefore, by the defendent, is a violation of the Prohibition Act." Upon this finding he convicted the appellant of an offence against section 4 of the Act. That section reads as follows:—"If any one not licensed in accordance with the provisions of the said Prohibition Plebiscite Act, sells, after the 1st of January 1917, any intoxicating liquors, he shall be liable to a penalty of not less than one hundred dollars nor more than five hundred dollars or, in default of payment, imprisonment not exceeding three months. The appellant was not licensed under the Prohibition Plebiscite Act. The question then to be decided on this appeal is, was the sale by the appellant to Michael Byrne of two dozen bottles of Shiriffs Imperial Quintessence of Vanilla on the 4th of February a sale of intoxicating liquor within the meaning of section 4 of the Act. The Court is bound to interpret the words of a Statute in the sense in which the Legislature directs. The Prohibition Acts define the term "intoxicating liquors" and wherever that term occurs in the Acts it must be interpreted in accordance with that definition. The Prohibition legislation consists of three Acts,—the Prohibition Plebiscite Act 1915. The Intoxicating Liquors Prohibition Act, 1916, and the Amending Act of 1917. The definition of the term intoxicating liquor differs in each of these Acts. The latest, and that now binding, is set out in section 1 of the Amending Act of 1917. It says "the term 'intoxicating Liquors' shall be construed to signify all ales, wines, malt, brewed or spirituous liquors, containing 2 per cent. or upward of alcohol by volume, and such medicinal, toilet and other preparations containing two per cent, or upward of alcohol by volume, as may from time to time be directed by the Governor in Council, by proclamation, but not wines for Sacramental purposes." Section 1 of the Act of 1917 repealed the definition of the term that had been given by 35 of the Prohibition Plebiscite Act 1915, and by Section 7 of Prohibition Act, 1916. That in the Act of 1915 was "The term 'Intoxicating Liquors' shall be construed to signify all ales, wines, malt, brewed or spirituous liquors containing two per cent. or upward of alcohol in volume, except wines for Sacramental purposes." That in the Act of 1916 was: "The term 'Intoxicating Liquors' shall be construed to signify all ales, wines, malt, brewed or spirituous liquors containing two per cent. or upward of alcohol in volume, except such drugs and medicines as may be excepted by the Governor in Council and wines for Sacramental purposes." It will be noticed that the difference between these definitions of the term 'Intoxicating Liquor' consists in the words that are added, in both the 1916 and 1917 Act to those in which the term is defined in the 1915 Act. These additions are not the same in the two Acts. In the Act of 1916 after the words of the 1915 Act, it proceeds to say: "except such drugs, etc., as may be excepted by the Governor in Council, etc." That of 1917, after the words of the 1915 Act says: "and such medicinal, toilet and other preparations, etc., as may be directed by the Governor in Council, etc." This difference in wording represents a substantial difference in the meaning of the phrase. In the 1916 Act the articles over which the Governor in Council is given control are included in the prohibited articles unless and until they are excepted from them by him. In the Act of 1917, those preparations over the prohibition of which he is given control are not included in the prohibitied articles until he so directs. This change which is effected by excluding from the prohibition act what had previously been included within it, was deliberately made by the Legislature and must be given effect to by the Courts. The Act of 1917 is law to-day and the Court must interpret the words 'Intoxicating Liquors' in all three Acts as it 's defined by that Act. "Intoxicating Liquors," the sale of which is now penalized by section 4 of the Act of 1916, with a breech of which the appellant is charged in this case, must be taken to be "all ales, wines, malt, brewed or spirituous liquors, etc., and such medicinal toilet and other preparations, etc., as may from time to time be directed by the Governor in Council by proclamation, etc." This definition consists of two members, the first covers what is forbidden, the second what is not but may be. The first comprises articles usually comprehended by the words "ales, wines, malt, and brewed or spirituous liquors, containing two per cent. or upward of alcohol by volume," and the second "such medicinal, toilet and other preparations containing two per cent. or upward by volume," as the Governor in Council may direct. The first named articles are absolutely prohibited; the others are not prohibited but the Governor in Council is given authority to prohibit them. A logical interpretation requires that these two clauses should be mutually exclusive—in the sense that the same article, as such, cannot be in both at the same time. Does "Shirifts Imperial Quintessence of Vanilla," which the appellant sold to Byrne, belong to the first or second class of this division of alcoholic liquors or is it outside of both of them? The prosecution contended that it is a "spirituous liquor" which is one of the articles that are named in the definition as absolutely prohibited. None of the Prohibition Acts define the words "Spirituous Liquor," but leaves it to the Court to interpret that term according to the context in which it is found. The general rule of interpretation, in such cases, is to give the words their popular meaning, unless the context requires a different interpretation. It seems to me that, by placing the words "ales, wines, malt, brewed and spirituous liquors" in contradistinction to "medicinal, toilet and other preparations" containing two per cent. or upward of alcohol, the Legislature intended to use the first set of words in their popular as distinct from their scientific meaning. Any other interpretation would involve the difficulty that, scientifically, the term 'spirituous liquor' includes not only those liquids ordinarily and popularly comprehended by the phrase, but other liquids containing two per cent. of alcohol by volume, including those in the second class of the definition, but if a medicinal or toilet preparation is prohibited because it is a spirituous liquor, the power to prohibit them given to the Governor in Council is meaningless. The intention of the Act is clearly to prohibit the usual intoxicating beverages and to enable the Governor in Council to prohibit other alcoholic liquids should he at any time deem it desirable to do so. In the case of the Attorney General vs. Bailey 17 L.J. Exch. 9, which was an information under the excise laws, the defendant, a wholesale druggist, purchased from a man, who was not licensed as required by the Act, a quantity of spirits without a permit. Spirits of Nitre was made by mixing nitric acid with spirits of wine. The spirits used in making the spirits of nitre was illegally distilled by the seller, which the defendant well knew. The spirits of nitre were ordinary merchantile spirits of nitre such as were usually sold by chemists and druggists. The defendant was convicted. He appealed, and the question upon which the appeal was decided was whether the spirits of nitre were "spirits" within the true intent of the Excise Acts. In delivering the judgment of the Court, Pollock C.B. said, "The section is not an interpretation clause, explaining the meaning of the word 'spirits,' but an enactment as to what are to be deemed to constitute the different classes or denominations of 'spirits.' It assumes that 'spirits' is a word of known import and then proceeds to define the different classes of spirits; so that it does not enable us to determine the material point in this case, namely, what is the meaning of the word 'spirits.' In the absence, therefore, of any Statutable definition, we must assume that the word is used in the Excise Acts in the sense in which it is ordinarily understood; and we do not think that in common parlance the word 'spirits' would be considered as comprehending a liquid like sweet spirits of nitre, which is itself a known article of commerce not ordinarily passing under the name of spirits. It is very true the case finds that 'spirits' enter very largely into the composition of sweet spirits of nitre, but so they do with the article called Sal Volatile and into most if not into all, kinds of varnish, and so as to other fluids, which certainly no one in common parlance would speak of as 'spirits.' And we think that nothing can be taken to be 'spirits' within the meaning of 6 Geo. 4 C. 80 which does not come under the definition of an inflammable liquid produced by distillation either pure or mixed only with the ingredients which do not convert it into some article of commerce not known in common parlance under the appelation of spirits. Inasmuch, therefore, as sweet spirits of nitre is itself a well-known article of commerce, not commonly known under the name of "spirits," and not adapted for ordinary use as an intoxicating beverage, we think it is not 'spirits' within the meaning of that word as used in the information." Acting on this view, the Court allowed the appeal and set aside the conviction. The reasoning applied by Chief Baron Pollock in Bailey's case to spirits of nitre under the Excise Acts has equal force when applied, under the Prohibition Act, to the vanilla sold by the appellant to Byrne. 'Spirituous liquor' is not defined in any of the Prohibition Acts. It must, therefore, as in that case, be read in the sense in which it is ordinarily understood in common parlance; it is itself a known

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