

Campbell v Strangeways (1877) (3CPD105)

Day - fraction of - keeping dog without licence - licence subsequently obtained on the same day - 30 vict, C, 5 SS 5, 8.

On the 21st October, the respondent kept a dog without having a licence granted under 30 Vict. c.5. He thereby became liable to a penalty under s.8. His fault was discovered by the excise and he took out a licence at a later hour on the same day.

Sect.5 enacts that every licence shall commence on the day on which the same shall be granted.

An information against him laid before a magistrate, charged his offence to have been committed on the 21st of October. At the hearing, he produced the licence granted on the 21st of October and the charge was dismissed:-

Held that the dismissal was wrong, because an offence had been committed on the 21st of October and the subsequent licence operated only from the time when it was granted. And did not relate back to the earliest moment of that day so as to justify the violation of the Act before the licence existed

Case stated by a police magistrate, under 20 and 21 Vict. C43. On the 21st of October, the appellant, an excise officer, called at the house of the respondent, at about 12.40pmm and there saw a dog, above the age of six month, kept by him. No licence for the dog was then in force. On the day at 1.10pm the respondent took out a licence authorising him "to keep one dog From the date hereof, until December the 31st 1877".

The appellant laid an information against him, which charged that "on the 21st of October 1877", the respondent kept a dog without a licence (1).

At the hearing of the information the respondent produced the licence. The magistrate being of the opinion that the licence was an answer to the information, dismissed the charge.

The question was whether his decision was right.

Lockwood (C Bowen with him)
for the appellant

The magistrate was wrong. In deciding the case the precise times at which the penalty was incurred and the licence granted ought to have been regarded: Chitty's Archibold's Practice, 12th ed. P 164. Lord Mansfield said in *Combe V Pitt*(2) that "though the law does not in general allow for the fraction of a day, yet it admits in cases where it is necessary to distinguish. And I do not see why the very hour may not do so too, where it is necessary and can be done: for it is not like a mathematical point which cannot be divided". So likewise, *Patteson J, in Chick V Smith* (3) said: "The good sense of the

matter is, that where it is necessary to show which was the first of two acts, the court is at liberty to consider fractions of a day. The rule of law would otherwise be absurd". The licence may commence on the day, and yet only operate from the moment it was actually granted. When that time is ascertained to have been after the offence, then both a conviction and the licence would be consistent.

Lindley, J.

The licence authorises the respondent to keep one dog "from the date thereof". The form is wrong. It is not in accordance with the words of s.5.

Grove, J.

The provision that the licence shall terminate "on" the 31st of December, shall no doubt mean at the end of that day. But in strict grammatical construction, "on the 31st of December" would mean "when the 31st of December has arrived". And the word used should have been "with".

The respondent seeks to avail himself of a general rule of law, but his case is within the exception to it, and if the court might not have regard to the part of the day at which the licence came into existence, the Act would be often violated with impunity.

Grove, J.

We are now satisfied that the decision of the magistrate was wrong, although much could be said in favour of it. Effect can only be given to the Act and to the language of sect.8, by holding that the offence was actually committed on the date alleged, and could not be purged by the defendant taking out a licence at a later hour on the same day. *Chick V Smith* (1) and the other cases cited explain where the law will distinguish the fractions of a day, viz, where it is necessary - not merely as was once said, for the "purposes of justice," which is a vague expression, but for the purposes of the decision to show which of the two events first happened. Undoubtedly, the defendant did "keep a dog without having in force a licence granted under the Act authorizing him so to do" contrary to the terms of sect.8. But can the operation of that section be modified or changed by the words used in s.5, declaring that "every licence shall commence on the day on which the same shall be granted, and shall terminate on the 31st of December following"? The object of s.5 is that if a person does not take out a licence on the first day of the year, a licence afterwards taken out shall not cover the preceding part of that year; for example, if granted on the 1st of June it shall not run from the 1st of January; and the provision that the licence shall commence "on" the day does not necessarily mean that it shall begin at the first moment of the day, but it shall not go further back than that day. Our judgement will in no wise contradict this provision, because we decide that the licence did commence on the day on which the same was granted. Suppose after this offence a valid conviction had been signed and sealed on the same day, that would have been a true and proper conviction at the time, and could not have been overruled or altered by the defendant, on the same day but subsequently taking out a licence, which could be rightly said to run back through the doctrine of relation to the beginning of the day, and so make the conviction wrong. If our construction of s.5 be correct, then we may regard the fractions of the day, for otherwise the events of it would

be subsequently varied by the parties on the day. We hold that the sections can be read in a manner not inconsistent with each other, that the respondent did “keep a dog without a licence”, that the licence afterwards granted “on” the same day, commenced “at and from” the time when actually issued, and was no protection to him for the past offence, and that he was therefore liable.

Lindley, J.

I have arrived at the same conclusion. At first I was rather inclined to take the view of the magistrate, partly because I thought a man might buy a dog at, say 8 o'clock am and not take out a licence until 4pm on the same day, and yet be convicted, although he may not have had the time or opportunity to have obtained a licence sooner after the purchase. But the answer perhaps would be that the words of s.8 are not “have” but “keep” a dog, and that during the short interval of possession between the purchase and the time of taking out a licence he could not be said to “keep” the dog so as to bring himself within the terms of the enactment. The case however turns on the true construction of ss.5 and 8. By s.5 the form of the licence is left to the officers of Inland Revenue, and although they are not bound to adopt any particular form, yet it must not be inconsistent with the Act. But this licence is not inconsistent with it. Section 5 declaring that the licence shall commence on the day on which the same is granted, the licence *prima facie*, would cover the whole day, because there would be no necessity for distinguishing one part of the day from the other. But when s.5 has to be construed with s.8, we may be compelled to split the day into parts, and I think that in this case we are compelled. The authorities cited show that we may do so, and when, looking to the order of events, we find first, the offence committed, and then that the respondent got a licence after the offence, I think we should go too far were we to say that because the word “on” is used in s.5, an offence committed on a day can be purged by obtaining a licence later in the day. I agree with my brother Grove, in thinking that we can properly construe “on” as “at and from”, and therefore there shall be no inconsistency. The legislature probably meant to prevent a man taking out a licence to cover previous defaults. I think the offence here was complete, and that the mere fact of taking out a subsequent licence did not affect it.

Decision reversed.

Solicitor for appellant

The solicitor to the Inland Revenue.

(1) 30 Vict. C.5, imposes an excise duty in respect of dogs, and provides for the granting of licences to keep them. By s.5, the licences to be taken out under this act shall be granted by such officers of Inland Revenue as the Commissioners of Inland revenue shall direct; and every licence shall commence on the day on which the same shall be granted, and shall terminate on the thirty-first day of December following. By s.8: If any person shall keep a dog without having in force a licence granted under the Act authorising him to do so... he shall for every such offence forfeit the sum of five pounds.

(2) 3 Burr. 1434

(3) 8 Dowl. 337 at P.340