

02/82

SUPREME COURT OF VICTORIA

MORE v LAMB

Gobbo J

8th April 1981 — [1981] VicRp 54; [1981] VR 559

LIQUOR CONTROL – SALE OF LIQUOR WITHOUT A LICENCE – PERSON ORGANISING PARTY AT PRIVATE RESIDENCE – MONEY ACCEPTED BY PERSON FROM THOSE ATTENDING THE PARTY WHO WISHED TO CONSUME LIQUOR – 'NO CASE' SUBMISSION – ACCEPTED BY MAGISTRATE – FINDING THAT NO SALE OF LIQUOR OCCURRED AS THERE WAS NO ACTUAL OR ANTICIPATED PROFIT – CHARGE DISMISSED – WHETHER MAGISTRATE IN ERROR: LIQUOR CONTROL ACT 1968, S114,

L. was one of the persons organising a party at a private residence. Money had been accepted from patrons attending the party in return for the supply of a quantity of liquor. L. was later charged with selling liquor without a licence authorising such sale. At the subsequent hearing, the magistrate accepted a 'no case' submission and dismissed the charge on the ground that a transaction by which property in liquor was transferred on payment of money did not constitute a sale of liquor if there was not an actual or anticipated profit by the transferor. Upon appeal—

HELD: Appeal upheld. Remitted for further consideration.

The absence of profit is not decisive of there not being a sale. Whilst the intervention of money raises the possibility of a sale, it is not decisive of a sale. In the present case, it was a misdirection on the part of the Magistrate to regard the existence of profit as essential to the existence of a sale.

GOBBO J: ... It was common ground that a sale is constituted by an agreement wherein there is exchange of goods for money or other consideration. One begins with the proposition that the charging of money in exchange for liquor is *prima facie* inconsistent with a private party. Certain situations, however, do not normally point to a sale, even if money passes in exchange for liquor.

Obviously, a private party at home where a person entertains his guests, ordinarily involves no sale. It is the intervention of money or like consideration that raises the possibility of a sale. But the mere intervention of money is not decisive of a sale although it tends to erode somewhat the ordinary inference to be drawn from a private party...