

THE WINE BAR

14th June, 1982

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DEPUTY BAILIFF: This appeal is in respect of certain matters that took place quite a long time ago in the licensed premises at the Wine Bar, St. Aubin's, and the company and the licensee or manager were convicted of two offences. One was of permitting excessive noise to emanate from the premises and the other was of permitting a cabaret on the premises contrary to Article 12(d) of the Licensing (Jersey) Law, 1974. As regards the question of excessive noise we are not concerned as to whether there had to be continual noise between the hours stated, that is not the law, but whether there were at least one occasion on which excessive noise did emanate from the premises. We are abundantly satisfied that the Magistrate had a considerable amount of evidence in front of him from which he could draw the conclusion that excessive noise had emanated from the premises between the hours stated although not I repeat continuously of course between those hours. To do so would of course make it impossible to prove. It is sufficient if there is adequate evidence for the Magistrate to find that on occasions between those hours a certain amount of excessive noise came out. Of course we agree with what Mr. Barker has said that what is or what isn't excessive noise is a matter of fact. The Magistrate heard the evidence, he was entitled to come to the conclusion that it was excessive and he found it was excessive. We do not think that he was wrong to do so. Now as regards the question of cabaret, that is a most interesting point. The facts of the cabaret are these, and I call it a cabaret for the moment. There was a group of three or four young persons who were permitted to play their instruments, we are not told exactly what they were, but using amplification. From time to time throughout the evening they were joined by a singer. It is irrelevant whether she came with them to the premises to sing with them or whether she was a person who happened to be on the premises and joined them. The fact is like the players she was permitted to sing. It is irrelevant in our opinion whether those who played or sang were professional or amateur musicians, that is not the test of a cabaret. Now it is interesting to note that Article 12(d) is silent about music except mentioning the words "dancing or cabaret" and we should add that it would be possible to have cabaret which consists of musical or non-musical items. It might be argued of course that dancing requires music and that therefore cabaret, if it is non-musical because of the wording "no dancing or cabaret", ^{the} *eiusdem generis* rule might imply the use of music. We think that would be too restrictive and therefore it would be possible in our view to have a cabaret consisting of a non-musical

item or items. But it follows from the wording of Article 12(d) that is not illegal to have music in licensed premises provided that music is not a cabaret. We define cabaret, there is no previous definition except in the Oxford English Dictionary which is a form of entertainment provided in restaurants, and this wasn't a restaurant, and it sometimes is described according also to the Oxford Dictionary as the entertainment itself, we define it however as entertainment provided for customers of an establishment and the test is was entertainment provided and if entertainment was provided it becomes a cabaret. The Magistrate took the view that what was provided or permitted was a cabaret and we would not interfere with his decision in this respect. That does not mean to say that on other occasions a single musician may perform without being a cabaret and it does not mean to say that on some occasions there may be more than one musician performing and yet the two of them or even more do not make a cabaret. It entirely depends on the circumstances of each case and we would not wish to lay down a principle as regards judging whether a particular event on a particular occasion was or was not a cabaret. It is, as Mr. Bailhache said, a matter of fact. The Magistrate found that it was a cabaret on that occasion and there was evidence on which he could find and we will not disturb his finding. That does not mean to say, Mr. Barker, that you were not right to raise this part of the appeal. It was an interesting point which you rightly brought to our attention and because of that we are only going to award the Crown half the costs because we have found as regards the noise that it was excessive, or the Magistrate was satisfied, and this being a legal point and the first time we have had it we do not think it would be right to award anymore than half the costs of this action and therefore we so award it.