

## LEGAL HISTORY

### **The dodgy billet: “The past is a foreign country; they do things differently there.”**

*Re Billeting of Soldiers, Devizes and Wiltshire Gazette*, 28 November 1847

Devizes District Petty Sessions, before Admiral Bouverie and Mr Nisbet

John Sawyer\* and Dr Steve Foster\*\*

#### **Introduction**

In a previous issue of the Journal, the authors considered a case that involved relatives of John Sawyer in a dispute about payment of agricultural workers.<sup>1</sup> In that article, the authors related the case of a worker who objected to being paid for his work in beer, with Steve Foster imagining the legal outcome in today’s legal system. In the present issue, we examine a case that again involved one of John’s relatives, but which had a more serious impact on individual rights and liberty and the general notion of the rule of law.

John has transcribed the case in which Thomas Sawyer is, by John’s admission, made to look a little foolish, and which raises questions about the degree to which petty officialdom should be allowed to exercise its responsibilities without following the rules and the rule of law. Once the case has been explained, the authors will attempt to place the salient legal issues in a modern context, also noting the present government’s predilection for ignoring the basic principles of procedural justice, and its reluctance to follow the law and the rule of law.

#### **The facts and claims**

The case concerned a recruiting corporal who was seeking accommodation for himself and a recruit. He was entitled under the provisions of the Mutiny Act to do this, provided he obtained a "billet" (French for note) from the parish constable, and served this on the accommodation provider. The army and navy recruiters then often offered food and drink to recruits as an inducement to sign up for long terms of service. The dispute related to the fact that the recruiting officer provided a billet with an incorrect signature and the landlord refused to offer accommodation.

John Hazell, the landlord of the *Wheatsheaf Inn*, West Lavington, was summoned by a Sergeant belonging to the Coldstream Guards under section 67 of the Mutiny Act, for having refused to receive a billet brought to him on the evening of November 8 by the Corporal of a recruiting company for that regiment. The Corporal, whose name was George Grant, briefly stated that he applied for a billet at the Constable's House, which he duly obtained. At approximately 8:50 in the evening he took it to the Wheatsheaf Inn, where it was refused by the landlord and landlady, both of whom said. That “they would have no soldiers in their house that night”. As a consequence, the corporal was obliged to obtain and pay for a bed elsewhere for the recruit he had with him.

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<sup>1</sup> John Sawyer and Steve Foster, ‘Ale not be accepting that as payment, thank you. Payment in beer and the decision in *Shore v Sawyer*’ (2020) (25) 2 Coventry Law Journal 89.

The two magistrates who heard the case against the landlord found that he should have provided accommodation, irrespective of the incorrect signature on the billet, and duly fined him 40/-.

In the recorded court proceedings, Mr Whittey [who appeared for the defendant] said he was instructed that no billet had been made on this occasion, and if there had been he should like to see it. The corporal then produced the piece of paper he had received, stating that when he took it to the public house, neither the landlord nor landlady would look at it. Mr Whittey then submitted that before a victualler is compelled to receive a soldier into his house, the billet brought to him must be legally drawn by the constable of the parish. But, in this case the billet was neither drawn in the proper form nor had it the signature of the Constable attached to it. The constable's name was Sawyer, and the name appended to the paper was "Thomas Junior".<sup>2</sup>

The sergeant replied that it was not to be expected that a soldier should know the name of the constable of every parish into which he marched, and that had the landlord looked at the billet, as he ought to, and pointed out that the signature was a wrong one, then it might have been changed; but, he positively refused to have any soldiers to his house that night.

It was argued, therefore, that the signature on the billet was accounted for by the corporal. On his arrival in West Lavington about 7 o'clock in the evening, he applied at the Constable's (Sawyer's) House for billets for himself and the recruit he had brought with him, but found the constable from home. Sometime afterwards he made a second application and a person who represented himself to be the Constable's father said, if his son did not come home shortly, he would make out the billets himself, which he subsequently did at the *Churchill Arms*, signing them "Thomas Junior". The son (who had returned in the interval) was present just as he was handing them to the corporal, and upon being told by his father that he had billeted two men, inquired where he had put them? "One to the *Wheatsheaf* and one to the *Churchill Arms*", replied the old man. "I don't believe" rejoined the son "I have any business to billet at the *Wheatsheaf* as that is in Littleton" (actually, the constable was mistaken in this, as although Littleton has a separate constable, as a matter of convenience, it forms part of the West Lavington Parish).

Mr Whittey then argued that surely private individuals have no right to grant billets in this way:

I would submit that it is the duty of a soldier applying for a billet to ascertain the name of the constable of the Parish into which he marches: and that the victualler upon whom the onerous duty of receiving soldiers falls has a right to expect to be satisfied of the legality of the claim that he made upon him.

Mr Nisbet, one of the Magistrates, stated that in this instance the objection of the landlord does not seem to have been grounded upon the supposed illegality of the billet which he refused to look at. His reply to the application appears to have been that he would have no soldiers in his house that night. Every facility ought to be afforded to Her Majesty's service, and had Mr Hazel done what he ought he would have taken the billet, and if he thought the

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<sup>2</sup> "Thomas Junior", the parish constable, lived next door to the *Churchill Arms* on one side, and next-door to his father (also Thomas Sawyer), on the other. Note that the parish constable was an unpaid role appointed by the local parish vestry. Wiltshire was the earliest developer of a County Constabulary, under the provisions of the County Police Act 1839, but it appears that there must have been a considerable period over which the parish constable roles in relation to local administration continued.

signature was an improper one, would have directed the corporal how to get it rectified. The constable, however, here appears to have virtually acknowledged the billet as his own by allowing his father, with his sanction, to act as his deputy. Were such quibbles and excuses to be allowed an immense deal of disturbance would be created throughout the country.

In response, Mr Whittey pointed out that Mr. Hazell has never, on any occasion, refused the billet of a soldier when brought to him at reasonable hour; but in this instance the house was quite full, in consequence of its being feast time, and his previous arrangements put it out of his power to afford the required accommodation. The Sergeant replied that no time was specified for the reception of billets for soldiers on recruiting service. After some further discussion upon the matter, Admiral Bouverie, the other magistrate said:

We think the paper the corporal received appeared to him to the right and proper thing, and that it should not have been objected to by Mr. Hazell. We consider therefore the charge proved, and fine him 40s.—that being the lowest sum we think it a sufficient penalty, but it is the smallest we can impose.

### **Following procedures and procedural justice**

The Magistrate's decision provides a fascinating insight into judicial (or quasi-judicial) reasoning at that time, the Magistrates rejecting the defence lawyer's arguments that the serving of the billet was illegal and of no effect because of the procedural flaw accepted by all parties. Rather, the landlord and landlady are portrayed as the villains of the peace, obstructing the performance of a public servant's duties by, perhaps as a second thought, unreasonably relying on the technical illegality of the billet. In the court's view, the essential thing was that the law was executed and obeyed, and any technical procedural breach needed to be overlooked, particular as the defendants had the opportunity to notify the authorities of the irregularity and get it rectified. In other words, defendants should not be able to avoid their legal responsibilities by relying on technical irregularities.

In modern administrative law, whether the breach of a statutory procedure voids a legal power is primarily determined by asking whether the procedure was mandatory or directory: a mandatory (compulsory and essential) procedure will mean the power is declared unlawful if the procedure is not followed; whereas a directory (a minor, technical and less important) procedure will not affect the legality of the action. This classification is also used in contract law to distinguish between important breaches (conditions) and less important ones (warranties) in deciding whether a breach entitles the innocent party to terminate the contract for that breach.<sup>3</sup>

But, as with any strict classification, the courts are wary to apply such distinctions without flexibility and the context of the case.<sup>4</sup> Thus whether the procedure is mandatory, thus making any action automatically unlawful, will depend on factors such as the wording of the statute – did it say the procedure must be followed, or simply that it *may* or *should*? More importantly, the court will inquire into the purpose of the procedure and what the consequences might be to persons affected by that power if the procedure was not followed.<sup>5</sup>

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<sup>3</sup> See Mark Ryan and Steve Foster, *Unlocking Constitutional and Administrative Law*, 4<sup>th</sup> edition, Routledge 2018, 609-610. A new edition of the text is published in January 2023.

<sup>4</sup> See Lord Hailsham in *London and Clydeside Estates Ltd v Aberdeen DC* [1980] 1WLR 182.

<sup>5</sup> Thus, in cases where the Act requires consultation, the courts are likely to regard the statutory duty to consult as mandatory. *Agricultural, Horticultural and Forestry Industry Training Board v Ayelsbury Mushrooms Ltd* [1972].

Thus, in cases where the power affects the liberty or rights of the individual a procedure is likely to be regarded as mandatory, the power falling for breach of that procedure.<sup>6</sup>

In our case, the requirement to provide a billet from the local constable, not his father, should have been regarded as mandatory and the resultant power unlawful and of no effect. Although many might see it as a technical departure from the legal power – the son would surely have authorised the billet had he been there – it is fundamental to any legal system and the control of public power that legal officers follow procedures, and that only those provided with legal powers are allowed to exercise them.

## **Conclusion**

Again, we thank John for sharing his research of his family history with us, and providing another example of legal enforcement and reasoning from another era. The Magistrate's attitude and decision in this case should serve as a warning to those who fail to follow the rules and seek to justify their actions by receiving public and political approval in order to escape the consequences of their illegal actions. Fortunately, there now exists a more robust system of judicial review to counter such abuses, thus upholding the rule of law, accountability of public officers, and the benefits of procedural justice.<sup>7</sup>

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<sup>6</sup> *E 1/(OS Russia) v Home Secretary* [2012] EWCA Civ 357.

<sup>7</sup> See Steve Foster, 'The rule of law in modern times: not a pretty sight' (2021) 27 (1) *Coventry Law Journal* 1.