thereof, and he suggested that it was clear that the question of resealing applied only to personalty. I reject this submission and I do so for this reason. These Rules were enacted in 1915 when stamp duty on probate was payable only in respect of personalty. Indeed it was not until 1931, by the Stamp Duty (No. 2) Order in Council of that year, that it became payable in respect of realty as well. As s.4 of the Probates (British and Colonial) Recognition Ordinance provides that before sealing a probate the court must be satisfied that "Probate duty has been paid in respect of so much (if any) of the estate as is liable to Probate duty in the Colony and Protectorate," and as realty was not liable at the time to any duty, it is clear why the sole mention in the Rules is of personalty.

The application for probate in this case in my view was rightly refused, and I uphold the Registrar's decision. The Registrar must have his taxed costs.

Application dismissed.

WRAY *v.* COMMISSIONER OF POLICE

SUPREME COURT (Beoku-Betts, Ag.C.J.): October 9th, 1950
(Cr. App. No. 29/50)

[1] **Liquor—offences—keeping open licensed premises during prohibited hours—elements of offence—intoxicating liquor must be available to outsiders during prohibited hours:** In order to constitute the offence of keeping open licensed premises for the sale of intoxicating liquor during prohibited hours there must be a keeping open of the premises to enable people to come in from outside to procure intoxicating liquor, or to get it supplied to them when outside (page 63, lines 19–30).

The appellant was charged in a police magistrate's court with keeping licensed premises open after closing hours contrary to s.26(2) of the Liquor Licence Ordinance (*cap.* 121).

Several persons were found in the appellant's licensed premises during the hours of closing. No evidence was led to show whether the drinks being consumed by such persons were intoxicating or not. The appellant was convicted, and appealed to the Supreme Court on the ground that the offence charged could not be constituted unless it was established that intoxicating liquor was available during prohibited hours.

Case referred to:

(1) *Commissioner of Police* v. *Roberts*, [1904] 1 K.B. 369; (1903), 20 T.L.R. 105.

Dobbs for the appellant;
Benka-Coker, Ag. Sol.-Gen., for the respondent.

BEOKU-BETTS, Ag.C.J.:

This is an appeal against the decision of the Acting Police Magistrate in Court No. 3 on three grounds. Only one ground need be considered. It is that the decision is against the weight of the evidence. The charge was that of keeping liquor-licensed premises open after closing hours. The learned trial magistrate found that two Europeans and others were found in a part of the defendant's bar after closing hours, and in the glasses of some of those persons were found what the magistrate described as "drinks," and that some of the occupants of the bar were sipping drinks. There is no evidence to show the nature of the "drinks," *i.e.*, whether they were intoxicating or not.

In a charge such as the one with which the appellant was charged it is not sufficient to show that there were some "drinks" available. It is necessary that the prosecution should prove that intoxicating liquor was available within prohibited hours. In the case of *Commissioner of Police* v. *Roberts* (1), it was decided that in order to constitute the offence of keeping open licensed premises for the sale of intoxicating liquor during prohibited hours there must be a keeping open of the premises in the sense that people can come in from the outside to procure intoxicating liquor, or can get it supplied to them when outside. The learned magistrate neglected to consider the important requirement that there should be proof of intoxicating liquor supplied.

In the circumstances, I have no alternative but to set aside the conviction and sentence and to order that the fine, if paid, be refunded to the appellant.

Appeal allowed.