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HOUSE OF LORDS.

Monday, July 7, 1913.

(Before the Lord Chancellor (Haldane), Earl Loreburn, and Lords Atkinson, Shaw, Moulton, and Parker.)

INLAND REVENUE *v.* TRUMAN, HANBURY, BUXTON, & COMPANY.

(On Appeal from the Court of Appeal in England.)

Revenue — Finance (1909-10) *Act* 1910 (10 *Edw. VII, c.* 8), *sec.* 44, *sub-sec.* 2—*Valuation of Licensed Premises — Calculation of Annual Licence Value — Deduction of Profits on Non-intoxicants.*

The Finance (1909-10) Act 1910, sec. 44 (2), directs that the Commissioners of Inland Revenue shall prepare and keep corrected a register showing the annual licence value of all fully licensed premises, and that "in estimating for that purpose the value as licensed premises of hotels or other premises used for purposes other than the sale of intoxicating liquor" no increased value arising from profits not derived from the sale of intoxicating liquor shall be taken into consideration."

Held (1) the words "other premises" include a public-house used substantially for other purposes than the sale of intoxicants; (2) the words "increased value" mean such value as arises from the additional profits made on the sale of non-intoxicants due to their sale on licensed premises, not the value of the whole profits on the sale of non-intoxicants.

Appeal *sustained* on the first point; *dismissed* on the second.

Appeal from a judgment of the Court of Appeal (Cozens-Hardy, M.R. and Farwell, L.J., Kennedy, L.J., *dissenting*) reversing in part a judgment of Hamilton, J., on a petition presented to the High Court under sec. 44, sub-sec. 2, of the Finance (1909-10) Act 1910, which enacts as follows:—"It shall be the duty of the Commissioners to prepare and to keep corrected a register showing the annual licence value of all fully licensed premises and all beer-houses. For the purpose of this provision the annual licence value shall be taken to be the amount by which the annual value of the premises as licensed premises exceeds the annual value which the premises would bear if they were not licensed premises, those values being calculated on the same basis as that on which the amount to be paid as compensation under section 2 of the Licensing Act 1904 is calculated in default of agreement and approval in cases where compensation is payable under that Act, but there shall not be included in the value of the premises as licensed premises any amount on account of depreciation of trade fixtures. The annual licence value shall be fixed and certified for the purposes of this Act by the Commissioners of Inland Revenue, and those Commissioners shall send by post a copy of the certificate (and in case any correction is subsequently made in the amount certified, a copy of the corrected certificate) to the licence-holder stating the two annual values by reference to which the annual licence value has been arrived at, and, on the application of any other person who appears to them to be interested in the premises, furnish a copy of the certificate or corrected certificate to him, and any such certificate shall be subject to the like appeal as that to which the determination of the Commissioners of Inland Revenue of the amount to be paid for compensation under sub-section 2 of section 2 of the Licensing Act 1904 is for the time being subject, with the substitution, as respects Scotland, of the Judges of the Court of Session named for the purpose of hearing appeals under the Valuation of Land (Scotland) Acts, and as respects Ireland, of the High Court of Justice of Ireland, for the High Court, and the costs on any such appeal shall be in the discretion of that Court. In estimating for that purpose the value as licensed premises of hotels or other premises used for purposes other than the sale of intoxicating liquor, no increased value arising from profits not derived from the sale of intoxicating liquor shall be taken into consideration."

The respondents, Truman, Hanbury, Buxton, & Company, Limited, and Edwin Warden, were the owners and licensee respectively of a fully licensed public-house. Business in the nature of an eating-house was carried on there in addition to the trade in intoxicating liquors. Luncheons were served, and in addition to chops and steaks from the grill, other commodities were sold, such as tobacco and cigars, and mineral waters, and sandwiches and cakes were supplied at the counter. During the year from the 3rd June 1909 to the 2nd June 1910 the takings from the sale of such commodities amounted to £1024, 5s. 2d., and the gross profits on such sale to £359, 16s. 2d. In the period from the 3rd June 1910 to the 31st May 1911 the takings amounted to £1104, 10s. 7d., and the gross profits to £360, 13s. 7d.

The sole question raised in this appeal was the true construction of the last paragraph of section 44, sub-section 2, of the Finance (1909-10) Act 1910.

After the passing of the Finance (1909-10) Act 1910 the appellants proceeded, pursuant to section 44 (2), to fix and certify the annual value of the respondents' public-house as licensed premises at the sum of £1495, the annual value thereof if not licensed, at the sum of £250, and the annual licence value thereof (being the difference

between the said two sums) at the sum of £1245.

The respondents appealed against the certificate.

The appellants amended their certificate and certified the annual value as licensed premises of the respondents' public-house at the sum of £1503, the annual value which the same would bear if not licensed at the sum of £300, and the annual licence value thereof (being the difference between the said two sums) at the sum of £1203.

The respondents appealed to the High Court alleging in their petition that the appellants should have fixed and certified the annual value as licensed premises of the public-house at the sum of £900, the annual value thereof if not licensed at the sum of £350, and the annual licence value thereof (being the difference between the said two sums) at the sum of £550. Subsequently by letter dated the 4th September 1911 the appellants gave notice to the respondents' solicitors that they had determined to maintain their decision as set forth in the amended certificate.

After the filing of the petition certain figures in relation to the trade done at the public-house were agreed between the parties. It was also agreed by correspondence that for the purposes of the case in estimating the annual value of the premises the trade done should be taken upon an average of two years' trading. The respondents also supplied by a letter dated the 12th April 1912 information as to the methods adopted by them in arriving at the figure of £97 claimed as a deduction by the respondents under the last paragraph of 44 (2) of the Finance (1909-10) Act 1910.

The petition was heard before Hamilton, J. In the course of the hearing it was agreed between counsel on both sides that the said sum of £97 represented the total average net profits not derived from the sale of intoxicating liquor earned at the respondents' public-house, and that if the respondents were correct in their contention they were entitled to have the sum of £97 deducted in estimating the annual value as licensed premises. It was also agreed that the sum of £300 represented the annual value the premises would bear if they were not licensed.

On the 22nd April 1912 Hamilton, J., gave judgment upon the petition. The learned Judge found upon the evidence that the annual value of the respondents' public-house as licensed premises was, subject to any deduction to be made under the last paragraph of 44 (2) of the Finance (1909-10) Act 1910, the sum of £1545, and the sum of £300 having been agreed as the annual unlicensed value, that subject to any such deduction the annual licenced value of the premises was the sum of £1245. With reference to the last paragraph of 44 (2) of the Finance (1909-10) Act 1910, he held that the same applied to the respondents' case, but further held that the paragraph did not authorise the deduction of the whole of the net profits not derived from the sale of intoxicating liquors, and that the appellants' contention as to the meaning of the paragraph was correct. He also held that any deduction on account of the increased value was a deduction from the sum of £1545, and thereupon it was admitted by counsel for the respondents that upon the construction placed by the Judge upon that paragraph the amount to be deducted would not reduce the annual value of the premises as licensed premises below the sum of £1503 and the annual licence value thereof below the sum of £1203, being the values fixed and certified by the appellants as aforesaid.

From this decision the respondents appealed.

On the 20th July 1912 the judgment of the Court of Appeal was delivered, and the Court held that the last paragraph of 44 (2) of the Finance (1909-10) Act 1910 applied to public-houses as distinguished from hotels, and applied to the respondents' public-house, and the majority of the Court (Kennedy, L.J., dissenting) held that the respondents' contention as to the effect of the paragraph was correct, that under the paragraph in estimating the annual value of the respondents' public-house as licensed premises no part of the profits not derived from the sale of intoxicating liquor was to be taken into consideration, and that the sum of £97 was accordingly a proper deduction from the annual value of the premises as licensed premises, and that the annual licence value must be reduced accordingly. Upon this point Kennedy, L.J., dissented and held that the appellants' contention and the judgment of Hamilton, J., was right.

From this decision the Commissioners of Inland Revenue appealed.

Their Lordships' considered judgment was delivered as follows:—

LORD CHANCELLOR—This appeal arises in proceedings on a petition of the respondents presented to the High Court of Justice under section 44, sub-section 2, of the Finance (1909-10) Act 1910. Several questions of fact and law were decided in the course of these proceedings. But the only question which remains and is now before your Lordships' House is one of law relating to the construction of the section.

The Act imposes on the Commissioners of Inland Revenue the duty of preparing and keeping corrected a register showing the annual licence value of licensed premises. This annual licence value is to be the amount by which the annual value of the premises as licensed exceeds the annual value which the premises would bear if not licensed. These values are to be calculated on the same basis as that on which the amount to be paid as compensation under section 2 of the Licensing Act 1904 is calculated, but there is not to be included in the value of the premises as licensed any amount on account of depreciation of trade fixtures. A sub-section which is introduced later on in section 44, which directs the valuation, provides that in estimating for that purpose (*i.e.*, the ascertainment of the annual licence value) the value as licensed premises of hotels and other premises used for purposes other than the sale of intoxicating liquor, no increased value arising from profits not

derived from the sale of intoxicating liquor is to be taken into consideration.

The appellants fixed the annual licence value of a public-house belonging to the respondents, and known as the Eagle, at an amount which it is not now material to specify. There was an appeal which came before Hamilton, J., and that learned Judge decided that the annual value of the premises was £1545, and that the annual value as unlicensed was £300. He further decided two questions which were raised before this House, both of which turned on the construction of the sub-section which I have already quoted, of section 44. The first of these questions was whether the case of the Eagle public-house came within the words "hotels or other premises used for purposes other than the sale of intoxicating liquor" in this sub-section. Hamilton, J., held that it did fall within the words, and the Court of Appeal has agreed with him in the view that the rule of *ejusdem generis* does not apply so as to cut down the wide significance of the words "or other premises," and consequently that the Eagle public-house was within the scope of the sub-section. The present appeal has been twice argued, and the point that the rule applied so as to exclude a public-house was taken on the first argument but not on the second. As it is not now pressed for the appellants I do not refer to it further than to say that I agree with the view taken by both Courts below that the Crown could not succeed on it.

The second point is quite a different one. The respondents contend that the sub-section which I will refer to as the "proviso," an expression used in the course of the arguments, means that before making the deduction directed by section 44 from the annual value of the premises as licensed of the value which the premises would bear if not licensed, a preliminary deduction is to be made of all value arising from profits not derived from the sale of intoxicating liquor. This was the interpretation placed on the proviso by the Master of the Rolls and Farwell, L.J., who formed the majority in the Court of Appeal. The appellants argued for a different construction, which was that placed on the words by Hamilton, J., and Kennedy, L.J. Upon this construction all that the proviso directs is that in estimating the value as licensed premises there should be excluded from consideration the element of value which arises from the increase in price or quantity of non-intoxicants due to the advantage which the possession of a licence has conferred. The sale of spirits in a public-house may, it is said, increase the price and volume of its trade in mineral waters, and the possession of a licence may enable an hotel to make higher charges for accommodation. It was proved in the Courts below that this was so in point of fact, and in this appeal we have been informed that there is no serious controversy as to the figures which will result according as one construction or the other is adopted.

The question before the House is thus one solely of the interpretation of the words of this proviso. In order to come to a conclusion about it I think it necessary to refer to certain provisions of the Licensing Acts. The Licensing Act of 1904 is now repealed, but its provisions are substantially re-enacted in the Licensing (Consolidation) Act 1910 (10 Edw. VII and 1 Geo. V, cap. 24). Section 20 of the latter Act, which corresponds to section 2 of the earlier one, provides for the compensation of the holder of an old on-licence, if his licence is taken away, on the basis of payment to him of a sum equal to the difference between the value of the licensed premises, including any depreciation of trade fixtures occasioned by the refusal to renew, and the value which the premises would bear if without a licence. It is obvious that this provision refers to existing rights which have been put an end to, and not to any prospective valuation such as that under consideration in the case before us. Section 14 of the later Act substantially re-enacts section 4 of the older Act, and more nearly resembles, both in what it deals with and in its language, the provision under consideration. It aims at securing, on the grant of a new on-licence, payment in the interest of the public for what it terms the monopoly value. This it defines as the difference between the value which the premises will bear, in the opinion of the justices, when licensed, and the value of the same premises if they were not licensed. But, unlike section 20, it contains a proviso closely resembling in its language the one which we have to construe. For in estimating the value of licensed premises where the profits are not wholly derived from the sale of intoxicating liquor, it directs that no increased value arising from profits not so derived is to be taken into consideration.

Section 14 deals, not with the annual value of the licence, but with its capital value. But it is obvious that there is a close analogy between the two. The annual licence value directed to be estimated by section 44 of the Finance Act of 1910 is made use of both in section 45, which makes it the foundation of an alternative mode of paying a reduced duty in the case of hotels and restaurants, and in the provisions in the schedule applicable to retailers' on-licence. Section 45 and the schedule allow in certain cases an alternative mode of paying duty, based, not on the annual value of the licensed premises, but on the annual license value. But in the cases so dealt with, both under section 45 and under the provisions in the schedule to which I have referred, a lower limit is provided in the shape of a minimum duty. This is not done in the case of monopoly value under section 14 of the Licensing (Consolidation) Act, and the result is that on the construction of the proviso to that section contended for by the respondents in reference to the similar language of the proviso to section 44 of the Finance Act of 1910, the public might in many cases lose the monopoly value altogether. For if the words "no increased value arising from profits not so derived" mean that the whole of the value arising from profit made by the sale of non-intoxi-

cants is to be deducted, as distinguished from the mere increase in these profits brought about by the fact that the sales take place on licensed premises, it is obvious that the equivalent of what is directed to be eliminated in estimating the capital value of the licensed premises may in another form be deducted when the value of the premises as if they were not licensed is subtracted as the section directs. When dealing with the value of hotels or restaurants, where a large part of the profits may arise from the provision of accommodation and the sale of food, this might often be so.

It is, in my opinion, impossible to say with truth that the one deduction is based on a calculation of actual profit and the other on an estimate of annual value. In both instances the only way in which actual profits come in is as evidence of the value of premises. That value is, however, to be estimated prospectively, and not by looking at this or that item separately. It represents what a bidder in the market would think it worth while to give for the premises, taking into account every means by which he could make a profit by trading on them. The value as licensed must therefore *prima facie* include profits which he can make by selling on them non-intoxicants as well as intoxicants, and if in estimating the value as licensed you are under the proviso to deduct all prospective value anticipated from the profit in the sale of non-intoxicants, and then separately all value estimated on the basis of selling non-intoxicants to the extent that seems probable if the premises were unlicensed, it is, to my mind, plain that in many cases the deductions will overlap and become a double deduction of what is substantially the same thing.

As under section 14 the dominant intention of the language is obviously to secure for the public the monopoly value in all cases I am unable to read the words of the proviso to this section in any other sense than that the deduction is to be only of the increase of value which is due to the licence, although that increase of value arises from the sale of non-intoxicants.

But if this be the true reading of section 14 it has an important bearing on the construction of the words which we have to construe. For the language of section 14 only reproduces the earlier words of section 4 of the Licensing Act of 1904, and these words must have been present to the mind of the draftsman of the Finance Act of 1910 when he repeated them in selecting the words of the proviso to section 44. It is not conceivable that in a case so closely resembling that of monopoly value as does the definition of annual licence value he should have used the same words without intending the same result. And not only does the scheme of section 44 point to this conclusion, but the ordinary principles on which statutes are interpreted appear to me to require it. One of these principles is that where it is possible a meaning should be given to every word used. A meaning must therefore be given to the word "increased" in the proviso, and I have no diffi culty, on the construction I have suggested, in finding a meaning for this expression. The value of the premises as licensed is the entire value, taking all sources of profit into account, and these sources are threefold. There is value derived from the right to sell intoxicants, value derived from the supply of everything that can be supplied apart from the licence, and value arising from the fact that the advantage of possessing a licence enables the licence-holder to improve his trade, in point both of price and of quantity, as regards these other things. The excess of the value of the premises as licensed over their value as not licensed includes the total increase of value arising from the first and third of these advantages, and it is that part of the total increase which is attributable to the third of them that appears to me to be indicated when the proviso directs that in estimating for the purpose of ascertaining annual licence value of hotels or other premises used for objects other than the sale of intoxicants, no increased value arising from profits not derived from the sale of intoxicants is to be taken into consideration. The construction placed on this language in the judgment of Farwell, L.J., appears to me to fail to give that meaning to the word "increased" of which the expression is naturally susceptible. Moreover, his construction, which is that really underlying the entire argument of the respondents, would lead to the escape of many hotels and restaurants from duty on anything like the scale on which other licensed premises have to pay, the diminution of the rate being altogether inadequately guarded against by the provisions as to minimum duties in section 45 and in the schedule. I do not think that such an intention is to be attributed to those who framed the statute if, as I think it does, the language of the proviso lends itself naturally to a different construction.

For the reasons I have assigned, I think that the contention on the point before us of the appellants is right, . . . that on the true construction of sub-section 2 of section 44 the premises known as the Eagle public-house fall within the words "hotels or other premises used for purposes other than the sale of intoxicating liquor," and that the words "no increased value" mean increased value due to the licence although arising from profits not derived from the sale of intoxicating liquor. I move accordingly.

EARL LOREBURN — In view of the full examination to which the provision at the end of section 44, sub-section 2, has been subjected in the Court of Appeal and in the opinions of your Lordships, which I have had the advantage of seeing in print, I need say very little. In my opinion the "increased value" which according to the statute must not be taken into consideration is that increment in the value of the premises "arising from profits not derived from the sale of alcoholic liquor" which is caused by the fact that the premises are licensed. A man may let more bedrooms or sell more mineral waters, for example, and at better prices, because he has also a

licence. If this is not the meaning, then the word "increased" might be omitted without affecting the sense, and though that would not necessarily be a conclusive, yet it is a weighty argument. I cannot account for the presence of that word "increased" unless it means what I have said.

LORD ATKINSON—The sole question for decision in this case is the proper construction of the concluding clause of section 44, sub-section 2, of the Finance (1909-10) Act 1910; and that question again resolves itself into this, what is the particular thing, described in the clause as "increased value," which is to be left out of consideration in arriving, in accordance with the provisions of the sub-section, at the annual licence value of licensed premises and beer-houses.

The clause to be construed only applies to cases where some trade is carried on in the licensed premises in addition to the trade in intoxicants, or some commodities are sold other than intoxicants, and the initial step in the operation to which this clause refers is identical with that which must, under the provision of the 20th section of the Licensing Consolidation Act 1910, be gone through in order to ascertain the amount of compensation to be paid to a publican the renewal of whose licence is refused, and, under the provisions of the 14th section of the same statute, be also gone through in order to ascertain the so-called monopoly value which is to be secured to the public. The third occasion on which the operation must be performed is when, under this sub-section 2 of section 44, the annual licence value is to be determined.

The operation consists in deducting the value of the licensed premises as unlicensed from their value as licensed. In each of these instances it is, I think, contemplated that the value of the premises as licensed will exceed their value as unlicensed. Section 44, sub-section 2, provides that the annual licence value shall be taken to be the amount by which the annual value of "the premises as licensed premises exceeds the annual value which the premises would bear if they were not licensed premises." It is therefore clear that in the contemplation of this sub-section at all events an increased value is given to the premises by reason of the licence and the rights and privileges it confers, and the sub-section shows that one of the elements which contributes to this increased value, or what is the same thing, this increase in the value conferred by the licence, is, in the case of mixed trading, to be found in profits arising otherwise than from the sale of intoxicants.

It would appear to me the divergence in the view taken of the construction of this final clause of the sub-section is due to the fact that it has not been kept steadily in view that the problem with which the sub-section is conversant is the fixing of the annual licence value of the premises. And I have myself from the first been quite unable to understand why any increase in value arising from something not in any way due to the licence—something which may have existed before the licence was given and may remain after the renewal of the licence has been refused—should be regarded or taken into account in estimating either the monopoly value of the licence or the annual licence value of the premises. Increases in value arising from something unconnected with the licence do not appear to me to be germane to the authorised inquiry.

The annual value of the premises as licensed is ascertained, I presume, by estimating what a hypothetical tenant would be willing to pay for the privileges of using and occupying them with all their advantages and possibilities. I include in that all the privileges conferred by the licence, and amongst others the privilege of selling in them intoxicants, as well as that of selling in them other commodities. And the value of the same premises if unlicensed is, I presume, to be ascertained by the same method, namely, by estimating what the hypothetical tenant would give to possess and enjoy them with all their capacities and possibilities in their unlicensed state, including in that their fitness for carrying on in them of a trade other than a trade in intoxicants. If the carrying on of this trade should not be the most profitable use to which they could be put, then the hypothetical tenant would presumably have regard to the more profitable use of which they were capable. Their value would be enhanced by their capacity for it, but the statute appears to assume that the increased value which the licence confers is ascertained by the prescribed comparison of the two values mentioned.

Now in the case where a mixed trade is carried on two classes of pecuniary benefit may flow from the possession of the licence and be directly due to it. First, the profits derived from the sale on the licensed premises of intoxicants, and second, the enhanced profits derived from the sale there of non-intoxicants. The fact that these two profits may be thus realised, and are both due to the possession of the licence, would necessarily be taken into account by the hypothetical tenant in offering for the licensed premises, and would necessarily increase the value of the premises as licensed premises. Neither of these kinds of profit, or the increased value the opportunity of earning them gives to the premises as licensed, are excluded from consideration when compensation is to be estimated, because by the loss of the licence the publican loses the benefit of both of them, but out of consideration for the publican this increased value given to the licensed premises by reason of the realisation of the second class of profit is, in my view, to be left out of consideration in estimating both the monopoly value and the annual licence value.

This is, I think, the rational construction of the sub-section, and I have from the first been quite unable to understand why it should be deemed necessary to direct that the value which profits derived from the trade in non-intoxicants, to the realisation of which the existence of the licence contributes nothing and in no way affects, should be left out of consideration in ascertaining either the monopoly value or the

annual licence value. These profits are *ex hypothesi* not increased by the grant of the licence nor lessened by the loss of it. The power of earning them is not conferred by the licence, nor taken away when its renewal is refused. No direction was necessary for their exclusion, because they were unconnected with the licence. The very nature of the problem to be solved by itself excluded them. In my opinion, therefore, as I have said, what is on the true construction of this sub-section to be excluded from consideration is the increase in the value of the premises as licensed compared with their value as unlicensed, which is due to the extra profits realised in a trade other than the trade in intoxicants owing to its being carried on in licensed premises. That extra value is due to the licence. It is an increased value, and but for this direction would, I think, be properly taken into account in fixing both the monopoly value and the annual licence value as it is taken into account in assessing compensation. I express no opinion either upon the correctness of the figures mentioned in the case or of the methods by which they have been ascertained.

The decision of the majority of the Court of Appeal was therefore, in my opinion, erroneous and should be overruled, and that of Hamilton, J., restored, and this appeal allowed.

Lord Shaw—I am so satisfied with the judgment of Hamilton, J., in this case that I should have been very willing to content myself with adhering to that learned Judge's opinion. But out of respect for the majority of the Court of Appeal I think it right to set forth in my own words my conclusions—in agreement with those of Kennedy, L.J.—on the particular point of construction of the statute which formed the only question under discussion.

Section 44 (2) of the Finance Act 1910 provides—"It shall be the duty of the Commissioners to prepare and to keep corrected a register showing the annual licence value of all fully licensed premises and all beerhouses"; it also provides that this annual licence value should be fixed and certified by the Commissioners of Inland Revenue, and rights of appeal are given against that fixture and certificate. It is under that procedure that the case comes before your Lordships' House.

The respondents are the owners and tenants of a public-house in Great College Street, in the north-western district of London, known as the Eagle. On the 21st July 1911 the Commissioners issued their certificate, finding (*a*) that "the annual value as licensed premises" was £1503; (*b*) that the annual value which the premises would bear if not licensed was £300; and (*c*) that the annual licence value, arrived at by deduction of (*b*) from (*a*) was of course £1203. The appellants, according to the judgment of Hamilton, J., would have been justified upon the facts proved in entering a larger value than this. That Judge set the annual value as licensed premises at £1545, and from his figure the Court of Appeal docked £97, leaving a net result of £1448 as the value of the licensed premises, and reducing accordingly the annual licence value to £1148. No importance attaches to the particular figures, but very considerable importance is said to attach to the principle upon which the Court of Appeal on the one hand, and Hamilton, J., on the other, proceeded.

This requires a careful scrutiny of the subsection already mentioned, namely, subsection 2 of section 44 of the Finance Act Act 1910. As stated, it requires the preparation of a register showing the annual licence value. It goes on to prescribe that this annual licence value "shall be taken to be the amount by which the annual value of the premises as licensed premises exceeds the annual value which the premises would bear if they were not licensed premises," and it then sets forth that the values are to be calculated on the same basis as that on which the amount to be paid as compensation under the Licensing Act of 1904 is calculated. The Licensing Act of 1904 has along with other statutes been codified by the existing Licensing Consolidation Act (10 Edw. VII, cap. 24), and section 14 (1) does not add any new idea as to the mode or fresh element as to the material of calculating what is called the monopoly value which is by that statute to be secured to the public. For that monopoly value is to be represented "by the difference between the value which the premises will bear in the opinion of the justices when licensed, and the value of the same premises if they were not licensed." The idea throughout in the two statutes is to compare the value of unlicensed with the value of licensed premises, and the assumption of both statutes is that the latter will exceed the former. In so far as it does so, this is the annual licence value.

But in getting at the annual licence value there may be ground for not inconsiderable confusion unless care is taken with regard to what I may call the gross element of the computation, namely, the annual value of the whole premises as licensed premises; and the ascertainment of that figure is of great and separate importance. In arriving, accordingly, at an estimate of the annual value as licensed premises, it is necessary to attend particularly to what the statute prescribes on that subject. Its language is as follows—"In estimating for that purpose"—*i.e.*, for the purpose of getting at the annual licence value—"the value as licensed premises of hotels or other premises used for purposes other than the sale of intoxicating liquor, no increased value arising from profits not derived from the sale of intoxicating liquor shall be taken into consideration." The same sub-section has already prescribed the operation of deduction from the gross value of the premises as licensed of their annual value if they were not licensed, but that does not conclude, in the view of the statute, the operation until one first says how, in putting down the gross value of the premises as licensed, you are to proceed. The statute, accordingly, in the passage cited, declares that no increased value arising from profits

not derived from the sale of intoxicants shall be taken into consideration. In my opinion it means thereby that the non-intoxicant trade may by reason of the licence be a larger or more profitable trade than it would have been without the licence; that the ordinary unlicensed trade in non-intoxicants might yield a certain amount of profit, and that amount of profit would be an element in the value of the premises as unlicensed; but that with regard to a business yielding profits not derived from the sale of intoxicants, though conducted on licensed premises, more trade, extra consumption, and larger profits might not unnaturally result, and these are solely to be attributed to the licence itself. It is this extra, enhanced, or "increased" value which the passage cited from the statute expressly declares is not to be taken into consideration in estimating the gross value as licensed premises.

Analogies, figures, and even illustrations often fail to elucidate a subject, but the illustration which has struck my mind as the most helpful is as follows:—I take the familiar case of a temperance hotel for which a licence to sell intoxicants is afterwards obtained. The premises were suitable for either kind of business. When unlicensed the determining factor as to their annual value was the amount of profit derived from the business as a whole, which might be from residential accommodation, from goods supplied—from what may be generically termed non-intoxicant business.

But the annual value of the same premises when licensed depends not upon one but upon three determining factors—(*a*) To begin with, there are profits from the sale of intoxicants as authorised by the licence; but there are two other factors, namely (*b*) that there are the same profits arising from non-intoxicant business as before; while there is a third factor, namely, this (*c*) the increased profits derived from non-intoxicant business by reason of the premises having obtained the facilities and conveniences of a licence. A familiar illustration is that mineral waters may be sold in larger quantity than before, and at, perhaps, double the price. This last element (*c*) is not a profit depending upon the licence in the sense that that business would have been illegitimate without the licence, but it is dependent upon the licence in the other and practical sense, that had the premises in which it was conducted not obtained the licence, the increased overturn and increased profit would not have been obtained. What the statute does is to say that that element, which is thus practically dependent from a business point of view upon the licence, is not to be included in the gross annual value of the licensed premises when you are engaged in making the calculation with regard to the annual licence value. The statute does not permit the whole value of non-intoxicant business to be excluded from the annual value of the licensed premises, but only the increased value which the licence in practice has given to such non-intoxicant business. Thereafter when the annual value of the licensed premises had been adjusted in this way, then the operation takes place of deducting from that what would have been the value of the premises as unlicensed. If the gross value had been £1000, item (*a*)—its profits from the sale of intoxicants—might have been £400; item (*b*)—its profits as an unlicensed house—might have been £500; and item (*c*)—its increased profits not derived from intoxicants, but increased in value or profit by reason of the licence as described—would have been £100. While the gross value was £1000, the statute declares that, when engaged in the operation of getting at the annual licence value, the gross value must not include item (*c*). The £1000, accordingly, must not include the £100, and will stand at £900. Then comes the process of deduction. You are to deduct from that figure the value which the premises would have been worth if unlicensed, namely, £500, and the net annual licence value is thus £400.

The consequence of this calculation is to disentangle completely the annual licence value, and to confine it rigidly to such value as is derived from the sale of intoxicants within the premises.

The argument of the respondents was that in stating the gross annual value you had to exclude not the "increased value" as the statute prescribes, but all the value derived from non-intoxicant business. If you did that in the illustration given, you would exclude not only item (*c*), but item (*b*), and £600 would be taken off the gross £1000, and £400 would be entered as the annual value of the licensed premises. The statute, however, prescribes that you are thereafter to deduct from that figure their annual value when unlicensed. That was £500. The operation is impossible. I am not prepared to say that such impossibility demonstrates that the respondents' contention is unsound, but I think it fairly illustrates the danger of eliminating from the term "increased value" the word "increased." When that elimination takes place, confusion ensues; when the word "increased" is given proper effect to, the calculations proceed with smoothness. In my view they ought so to proceed, and I do not myself see much difficulty in applying to this Act the ordinary principle of the interpretation of statutes, viz., due effect must be given to all the terms employed except in cases of repugnancy or logical impossibility.

For these reasons I am of opinion that the principle of the judgment of Hamilton, J., should be reverted to, and the judgment of the Court of Appeal reversed.

Lord Moulton—By section 44 of the Finance (1909-10) Act 1910 a duty is imposed on the Commissioners of Inland Revenue to prepare and to keep corrected a register showing the "annual licence value" of all fully licensed premises and all beerhouses. By the same section it is provided that the "annual licence value" is to be taken to be the amount by which the "annual value of the premises as licensed premises exceeds the annual value which the premises would bear if they were not licensed premises."

By a further provision in the same section the Commissioners are directed to send to the licence-holders a certificate stating the two annual values above mentioned, by reference to which the "annual licence value" has been arrived at. The question for our decision in the present case is as to the proper mode of performing the duty thus laid upon the Commissioners.

No difficulty arises in connection with "the annual value which the premises would bear if they were not licensed premises." This would be determined by application of the ordinary principles of rating. But the same is not the case with the ascertainment of the "annual value of the premises as licensed premises." With regard to this there is a special proviso in the Act in the case of "hotels and other premises used for purposes other than the sale of intoxicating liquor." In these cases the statute provides that "no increased value arising from profits not derived from the sale of intoxicating liquor shall be taken into consideration." The dispute between the appellants and the respondents is as to the meaning and effect of this provision, and your Lordships are asked to decide what is its proper interpretation.

So stated I do not think that the answer to the question raised by this case is either doubtful or difficult to arrive at. The length and intricacy of the arguments have in my opinion arisen from the fact that the parties have by agreement adopted certain figures as representing the numerical results which would follow from the acceptance of their several contentions. These numerical results are based upon figures appearing in the evidence of certain expert witnesses who have valued the premises by the methods in ordinary use. No doubt in practice these methods give approximate values which may safely be relied on by persons wishing to sell or buy licensed houses, but they are not based on any correct or exhaustive analysis of the legal incidents of rating. In this way the argument on the interpretation of the statute has insensibly been led astray by considerations wholly foreign to it. I propose to confine myself to the question of the true interpretation of the provisions of the statute, and having determined this I shall proceed to indicate what consequences it will have in the present case in view of the agreements between the parties without in any way expressing my approval of the figures adopted or the mode in which they have been arrived at.

In order to arrive at the annual value of the premises when licensed, *i.e.*, the rent which the hypothetical tenant will give to occupy them, I shall proceed to consider in the first place what are the advantages that he acquires by their possession. For the purposes of the present case they may conveniently be classed under the following three heads—(1) The possession and use of the fabric, and the enjoyment of all its capacities for earning profits in trades which do not require a licence. (2) The opportunity of obtaining enhanced profits in trades which do not require a licence due to the fact that the premises are licensed and that alcoholic liquors are sold thereon. It is common ground that this is a very real and substantial portion of the advantages of possessing a licence. For example, mineral waters can be sold on unlicensed premises, but if those premises acquire a licence the holder will be able to sell mineral waters in larger quantities and at a higher price than he otherwise could. I cite this only as an illustration. It was admitted before us by both parties that similar conditions apply to other trades. (3) The opportunity of making profits from the sale of alcoholic liquors. These exhaust the advantages possessed by the occupier of licensed premises. We have now to ascertain the annual value of the possession of these advantages.

The annual value of (1) is easy to arrive at. The advantages there set out are precisely those possessed by the unlicensed premises, and therefore their annual value is equal to the "annual value which the premises would bear if they were not licensed premises."

It might well be a very difficult problem to ascertain the annual value of (2), but we are saved this difficulty. The proviso in the statute enacts that in valuing the licensed premises for the purposes of this statute this head of advantages due to the licence shall not be taken into consideration. We may therefore dismiss (2) entirely.

There remains (3), *i.e.*, the profits derived from the sale of alcoholic liquors. The annual value of the opportunity of making these profits is easily determined in the ordinary way.

Summing up, therefore, we find that the "annual value of the premises as licensed premises" when estimated according to the provisions of the Act is equal to the "annual value which the premises would bear if they were not licensed premises," plus the increase in that annual value due to the possibility of making the profits of the trade in alcoholic liquors. Now in order to obtain the "annual licence value" the statute directs us to deduct from the above "the annual value which the premises would bear if they were not licensed premises." On doing so, there is left only the added value due to the possibility of earning the profits of the trade in alcoholic liquors. It follows, therefore, logically and necessarily, that (although not so expressed in the Act) the "annual licence value" is equal to the additional rent which a hypothetical tenant of the premises would give for the privilege of making the profits due solely to the trade in alcoholic liquors.

This result makes the calculation of the "annual licence value" very simple. But it is also very just. The licence-holder cannot complain that the "annual licence value" is based on the profits of the trade in alcoholic liquors, because no portion of that trade could be carried on without the licence. But at the same time it preserves to him the full benefit of the very generous concession made by the Legislature in directing that the enhancement of the profit of other trades which is due to the existence of the licence should not be taken into

consideration in ascertaining the "annual licence value." Moreover, it entirely gets rid of the anomalies which were suggested in the course of the argument, whereby on certain interpretations of the statute large hotels might have no "annual licence value." Whatever be the nature of the house or of the other purposes for which it is used, all licensed premises will have the "annual licence value" which is due to the alcoholic liquor consumed thereon and to nothing else.

It will be seen that in the above I have adopted the construction of the proviso contended for by the appellants. I am of opinion that this interpretation is clearly the correct one. The section deals throughout with the contrast between the annual value of premises with and without a licence, and the "increased value" of which the proviso speaks relates, to my mind, undoubtedly to such increase as is due to the existence of the licence.

The contention put forward by the respondents amounts to omitting the word "increased" and reading the proviso as though it were "no value arising from profits not derived from the sale of intoxicating liquor shall be taken into consideration." Apart from the fact that these are not the words of the statute, it is easy to see that such an interpretation would lead to absurd conclusions and gross injustice in many cases which are not of an exceptional or anomalous type. Suppose, for instance, that there is a large hotel, the annual value of which without a licence would be £5000 a-year, and suppose that with a licence it would do an alcoholic trade which in itself would justify an annual value of £2000 a-year and no more. Counsel for the respondents would have us reject everything but the £2000 per year in arriving at the "annual value of the premises as licensed premises." But in order to obtain "the annual licence value" we must deduct from this the "annual value which the premises would bear if they were not licensed premises," *i.e.*, £5000. We might thus arrive at the conclusion that the "annual licence value" of such premises was less than nothing.

I now turn to the question of the form of the judgment that this House should give in this case. The substantial purpose of the litigation was to arrive at the correct interpretation of the statutory proviso. As I have already stated, the contention of the appellants on this point is in my opinion correct, and that of the respondents is incorrect, so that the appellants have substantially succeeded and the appeal must be allowed. It follows that I agree with the declaration proposed by the Lord Chancellor and consider that nothing further is needed. But it would seem that the importance to the parties and to the public generally of the principle thus established is great, but the amount involved is in this instance small. Accordingly (as I learn from the statements of counsel at the Bar) the parties at an earlier stage of the proceedings came to an agreement that if the appellants' contention were accepted the annual licence value should be taken as £1203, the amount fixed by the Commissioners, and that if the respondents' contention were accepted the annual licence value should be reduced to £1148. I treat these figures as purely symbolic, adopted to save the expense of a possible reference back in respect of a matter of such small pecuniary value. For these reasons, and solely on this account, I am content that in allowing the appeal we should (in conformity with the arrangements made between the parties) formally dismiss the petition, thus leaving the annual licence value at £1203 as fixed by the Commissioners.

LORD PARKER—The substantial question on this appeal is the true construction of sub-section 2 of section 44 of the Finance (1909-10) Act 1910, which I will call the Finance Act 1910. The words of the sub-section are so familiar to your Lordships that I will not read it.

If attention be confined in the first instance to the words actually used, it appears to me that the words "no increased value" must mean "no increased annual value of the premises," and that the word "increased" most aptly refers to an increase over the annual value which the premises would bear if unlicensed, and therefore to an increase due to the licence.

The sub-section clearly assumes that the annual value of the premises as licensed premises, which I would call A, will exceed the annual value of the premises without the licence, which I will call B. Those values are to be ascertained on the same basis as that on which compensation is calculated under section 20 of the Licensing (Consolidation) Act 1910 (formerly section 2 of the Licensing Act 1894).

On reference to section 20 of the Licensing (Consolidation) Act 1910 it will be found that the compensation referred to is measured by the amount which the value of the premises as licensed premises exceeds their value without the licence, and these values (which are capital and not annual values) are to be determined in the same manner as the value of an estate for the purposes of estate duty under section 7 of the Finance Act 1894. In other words, these values are respectively the prices which the premises would fetch in the open market (1) as licensed premises, and (2) as unlicensed premises. It follows that the annual values A and B to be ascertained for the purposes of section 44, sub-section 2, of the Finance Act 1910 are respectively the rents which the premises would fetch in the open market (1) as licensed premises, and (2) as unlicensed premises. There is no difficulty as to B. It is simply a market rental value ascertained in the usual way without reference to any particular mode in which the premises are to be used, but with reference, of course, to all the various purposes for which the premises are available. A also is a market rental value, but in the case of A the premises are available for an additional purpose by reason of the licence. A therefore, though it must include B, includes something more, and that something is the additional rental a tenant would give for the benefits conferred by the licence.

Now the licence may confer a benefit in two ways. First, it may, and in ordinary course does, enable the tenant to make a profit by the sale of intoxicating liquor which he could not sell without a licence. This may be called the direct benefit of the licence. Secondly, it may enable the tenant to make more profit in other ways. This may be called the indirect benefit of the licence. In ascertaining compensation both these benefits must be taken into account, and the question is, what additional capital sum a tenant would pay for them beyond the price which he would give for the premises without the licence. In the case, however, of the annual licence value, the clause which your Lordships are considering appears to preclude the second or indirect benefit from being taken into account. The only question therefore is, what additional annual rental the tenant would pay for the first or direct benefit beyond the rent he would pay for the premises without the licence. By way of illustration, assume that he would be willing to pay by the year £100 more for the first or direct benefit and £50 more for the second or indirect benefit. Then but for the clause in question A would be equal to B plus £150, but having regard to this clause, A would be equal to B plus £100 only. The £50 is, in the words of the clause, the "increased annual value of the premises arising from profits not derived from the sale of intoxicating liquor." It is, therefore, to be excluded in calculating the annual value of the premises as licensed premises.

Not only does this seem the natural interpretation of the clause, but it is an interpretation which, so far as I can see, involves no hardship or anomaly, and it is an interpretation which without hardship or anomaly could be adopted in the case of the corresponding clause contained in section 14 of the Licensing (Consolidation) Act 1910, which relates to monopoly value.

It was said that both in the case of monopoly value under section 14 of the last-mentioned Act, and annual licence value under section 44 (2) of the Finance Act 1910, it is assumed that the annual value of the premises as licensed premises will be first ascertained, and that you will then proceed to ascertain the annual value of the premises without the licence, and deduct the latter value from the former. Even if this course be taken, the result will be the same, for in order to ascertain B after having ascertained A, you will have to split up A into two factors, of which the first will represent the annual value of the premises due to the licence, and the second will represent the value of the premises without the licence. The actual amount of this latter factor is really of little importance in the ultimate result, for it is eliminated in the process of deducting B from A.

During the course of the argument and re-argument I entertained considerable doubt—indeed I am still in doubt—whether this interpretation of section 44 (2) of the Finance Act 1910 will in this particular case lead to the result contended for by the law officers or that contended for by Sir Alfred Cripps. It seems to me that there was some misconception underlying the contentions on either side. Both parties referred to the case of *Ex parte Ashby's Cobham Brewery Company and Ex parte Ashby's Staines Brewery Company*, (1906) 2 K.B. 754. I take that case to decide that for compensation purposes, in estimating the price which licensed premises would fetch in the open market, allowance must be made for the fact that brewers would be probable, if not the most probable purchasers, and that to a brewer the premises might be more valuable than to a person unconnected with the brewing trade, because not only could he let the premises to a tenant, but by tying the premises to his brewery he could derive profit from supplying such tenant with intoxicating liquor. Calculations were therefore allowed both as to the brewer's profit from supplying liquor to the tenant, and as to the tenant's profit from retailing the liquor so supplied, and, assuming the case was rightly decided, similar calculations may have to be made for the purpose of ascertaining annual licence value under section 44 (2) of the Finance Act 1910.

But the case itself had nothing whatever to do with profits derived otherwise than by supplying or retailing intoxicating liquors. It did not, as the arguments of counsel on both sides seemed to suggest, either expressly or impliedly decide that for the purpose of ascertaining the value of licensed premises you must treat them as part of a going concern making ascertained profits, or that the true criterion of value was what a purchaser would give for this going concern. In calculating compensation it is the premises which are to be valued, and not the businesses carried on in the premises. The valuation is for the purpose of arriving at the amount of compensation payable, and not for the purpose of ascertaining the loss in respect of which the compensation is provided. If for compensation purposes it is ever necessary to consider the actual or probable profits derived otherwise than by the sale of intoxicants, it can only be because this is one way of arriving at the increase in annual value indirectly due to the licence. For the purpose of annual licence value from which this increase is to be included, it is unnecessary to consider these profits at all.

On the interpretation which I think ought to be placed upon section 44 (2) of the Finance Act 1910, the annual value which ought to be attributed to the premises the subject of this appeal as licensed premises should be a sum made up of (1) £300 (the value of the premises without a licence)—a figure as to which there is no dispute—and (2) the additional annual rent a tenant would give in the open market for the chance of making what profit he could by selling intoxicating liquor. The £300 includes all value arising from profits not derived from the sale of intoxicating liquor which ought to be taken into account at all. The parties, however, agreed that it will be sufficient if a declaration be made as to the true construction of the Act. I should myself propose to declare that according to the true construction of section 44 (2) of the Finance Act 1910 the annual value of the premises known as the

Eagle is £300, with the addition of such further annual sum as a tenant would give in the open market for the chance of making profit from the sale thereon of intoxicating liquor, but with no further addition in respect of increased annual value due to the licence. I am of opinion, however, that the declaration proposed by the Lord Chancellor will have the same effect.

Their Lordships made the declaration proposed by the Lord Chancellor.

Counsel for the Appellants—The Attorney-General (Sir Rufus Isaacs, K.C.)—The Solicitor-General (Sir John Simon, K.C.)—C. F. Lowenthal. Agents — Solicitor of Inland Revenue.

Counsel for the Respondents—Sir Alfred Cripps, K.C. — Ryde, K.C. — Konstam. Agents—Godden, Son, & Holme, Solicitors.

PRIVY COUNCIL.

Tuesday, July 10, 1913.

(Before the Right Hons. the Lord Chancellor (Haldane), Lords Shaw, De Villiers, and Moulton, and Sir Samuel Griffith.)

MEYER & COMPANY, LIMITED *v.* SZE HAI TONG BANKING AND INSURANCE COMPANY, LIMITED.

(On Appeal from the Supreme Court of the Straits Settlements.)

Reparation—Fraud—Principal and Agent —Payment by a Banker of Crossed Cheque —Bills of Exchange Act 1882 (45 *and* 46 *Vict. cap.* 61), *sec.* 79—*Personal Bar.*

Where the appellants' cashier induced the respondent bank from time to time to give him in exchange for cheques drawn upon the respondents in favour of the appellants or bearer and crossed generally, other cheques drawn on another bank in favour of the appellants or bearer and crossed generally, and these cheques were misappropriated by the appellants' cashier, *held* that this amounted to payment within the meaning of section 79 (2) of the Bills of Exchange Act 1882, leaving the respondents liable for any loss, but that the appellants were barred from denying their cashier's authority to receive payment from the respondents, and so not entitled to claim damages.

The *facts* are detailed in their Lordships' considered judgment, which was delivered by

Lord De Villiers—This is an appeal from a judgment of the Supreme Court of the Straits Settlements affirming a judgment of the Chief-Justice in favour of the defendants in the action. The plaintiffs were dealers in opium and other goods, and the defendants were bankers, and the claim was for 18,069 dollars, being the total amount of four cheques drawn on the defendants in favour of the plaintiffs or bearer and crossed generally. The plaintiffs kept current accounts with the Netherlands Trading Society as well as with the defendants, and they had in their service as cashier and collector a man named Jacob Abed, who kept a current account on his own behalf with the Netherlands Trading Society. It appears that during the two years immediately preceding that in which the four cheques now in question were drawn, it had been a frequent practice in the plaintiffs' office for the plaintiffs' cashier, instead of receiving cash for cheques drawn on the defendants, to obtain from the defendants cheques of corresponding amounts drawn by them on another bank in favour of the plaintiffs or bearer and crossed generally. This was done because the Trading Society refused to collect for their customers cheques drawn upon the defendants. It further appears that during the two years just mentioned a considerable number of the cheques thus drawn by the defendants on other banks had been misappropriated by Jacob Abed, who paid the proceeds into his own current account with the Netherlands Trading Society. The four cheques now in question were dealt with in a similar way, and the plaintiffs in this action, relying upon the provisions of the 79th section of the Bills of Exchange Act 1882, claimed the amount of these cheques as damages sustained owing to such cheques having been paid otherwise than to a banker.

The section enacts that "where the banker on whom a cheque is drawn . . . pays a cheque crossed generally otherwise than to a banker . . . he is liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid." It was suggested to their Lordships in argument that there had been a mere exchange of securities and not a payment of the cheques in question, but they are clearly of opinion that the handing over to Abed of fresh cheques drawn by the defendants on another bank should in law be treated as payment to him.

In the view which their Lordships take of this case special circumstances exist which disentitle the plaintiffs to relief, not because the damages are too remote—as held by the learned Chief-Justice — but because the plaintiffs are estopped from denying Abed's authority to receive payment of the cheques from the defendants. The point was distinctly raised by the defendants' statement of defence, and there are passages in the Chief-Justice's reasons from which it might be inferred that he really supported this defence. There has, however, been no direct finding on the point, and their Lordships have given anxious consideration to the question whether the case should not be remitted to the Court below to decide whether Abed had or had not ostensible authority to receive the proceeds of the cheques from the defendants. It appears, however, that the chief witness who could throw further light on the matter has left the colony, and as there is uncontradicted evidence on the record to support the existence of such ostensible authority, their Lordships feel justified in arriving at a decision without