

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
John McGrath v. The Bench of Justices
for the Adelaide Licensing District, from
the Supreme Court of South Australia ;
delivered the 17th July 1908.*

Present at the Hearing :

LORD ROBERTSON.

LORD ATKINSON.

LORD COLLINS.

SIR ARTHUR WILSON.

[Delivered by Sir Arthur Wilson.]

This is an Appeal from an order of the Supreme Court of South Australia, dated the 19th December 1906, which discharged an order to show cause why a writ of prohibition should not issue, restraining the Justices for the Adelaide Licensing District from proceeding to determine, whether the Publican's Licence held by the Appellant should or should not be renewed.

The controversy arises out of the Local Option Legislation of the Colony. The Act at present in force, regulating the working of Local Option, is that of 1905, No. 897.

The general object of the Act appears to be to enable the voters in a Local Option District, under certain conditions, and with certain limitations, to limit, if they so think fit, the number of licences of the classes specified to be issued or renewed within their district, for the sale of alcoholic liquors.

The process provided is that proceedings are to be initiated by a petition. On receipt of the petition, and after its due verification, the Governor in Council is to direct the returning officer of the electoral district, comprising the Local Option District concerned, to cause a poll of the electors to be taken.

Section 5 (2) is as follows :—

“ The Minister shall upon the presentation of any
 “ such petition fix a number (which shall be two-thirds
 “ or the nearest integer not less than two-thirds), which
 “ number is hereinafter called the integer of two-thirds,
 “ and a number (which shall be five-sixths or the
 “ nearest integer not less than five-sixths), which
 “ number is hereinafter called the integer of five-sixths,
 “ of each one of the following classes of licences
 “ which shall at the time of the receipt of the petition
 “ be current in respect of premises situate within
 “ such local option district, that is to say, (1) publicans’
 “ licences ; (2) wine licences ; (3) storekeepers’
 “ Colonial wine licences ; (4) storekeepers’ licences ;
 “ (5) club licences. The decision of the Minister in
 “ fixing the integer of two-thirds and the integer of
 “ five-sixths shall be final ; and a certificate under
 “ the hand of the Minister that he has fixed such
 “ integer shall be conclusive evidence in all Courts
 “ that such integer was properly fixed and that such
 “ number was the correct number.

“ (3) At every poll the following resolutions shall
 “ be submitted to electors in respect of each of the
 “ above-mentioned classes of licences subject however
 “ to sub-section 6 of this section :—

“ 1. That the number of licences be reduced from
 “ the present number to the integer of two-thirds ;

“ 2. That the number of licences be reduced from
 “ the present number to the integer of five-sixths ;

“ 3. That the number of licences be not increased
 “ or reduced ;

“ 4. That the number of licences be increased in
 “ the discretion of the Licensing Bench ;

“ The above resolutions are hereinafter referred
 “ to as the first, second, third, and fourth resolutions
 “ respectively.”

Sub-section (4) directs that a separate ballot paper in the prescribed form shall be issued to each elector in respect of each of the above-mentioned classes of licences.

The form of the Minister's certificate, as prescribed by regulations, states in one column the existing number of licences in each of the enumerated classes, and in two other columns the two integers for each class which the Act requires him to fix.

A poll was taken in the Port Adelaide Local Option District, and similar polls in other districts, and the Licensing Justices were proceeding to act, as the law required them to act, upon the result of those polls, when objections were raised in many instances to the validity of what had been done. Applications were made to the Supreme Court for writs of prohibition to restrain the proceedings of the Licensing Bench.

The learned Judges of the Supreme Court, in one set of judgments, disposed of a number of such applications, in some of which they made absolute the rule for a prohibition, while, in the case of the present Appellant, they discharged the rule.

In the judgments out of which this Appeal arises the learned Judges held, after a careful examination of the Acts bearing upon the matter, that, although the Act provides for separate voting in respect of the several classes of licences, an illegality with respect to one class invalidated the whole poll with respect to all classes of licences.

The specific illegality, alleged to have occurred in the present case, was this:—The Appellant was the holder of a Publican's Licence. It was not said that there was any irregularity in the official documents relating to Publicans'

Licences. The same thing is true with regard to Wine Licences, and Storekeepers' Colonial Wine Licences, and Club Licences, but it was said, that under the fourth heading, "Storekeepers' Licences," two licences were omitted from the number, which ought to have been included therein. Those two licences were "Brewers' Colonial Ale Licences," issued under the Act of 1901, No. 773. The learned Judges held that such licences were not Storekeepers' Licences within the meaning of the Act of 1905, and that therefore their omission from the number of such licences did not invalidate the poll. The correctness of that decision was the principal subject of discussion on the argument of the Appeal before their Lordships

The actual question is, whether a Brewer's Colonial Ale Licence is a Storekeeper's Licence within the meaning of the Act of 1905, section 5 (2). But to solve that question it is necessary to go further back. Of the kinds of licences mentioned in the sub-section, the first, Publicans' Licences, are governed by the Licensed Victuallers Act, 1880, No. 191. Such a licence authorizes the person licensed to sell liquor in any quantity on the premises therein specified. The second class mentioned in the sub-section authorizes the licensee to sell wine and certain other liquors, as defined in the Act, for consumption on and off the premises. The third class, Storekeepers' Colonial Wine Licences, authorized the sale of wine and other liquors, as defined, in quantities not below a reputed quart, not to be consumed on the premises. The fifth class, Club Licences, need not be further noticed. The question arises with regard to No. 4, Storekeepers' Licences. They are governed by section 10 of the Act of 1880. Such a licence authorizes the person licensed (to state

it shortly) to sell liquor not to be consumed on the premises, in quantities not less than a gallon.

So far the licences to be considered are provided for by the Act of 1880.

In 1901 another Act was passed, No. 773. It was incorporated with the Act of 1880 and with all other Acts incorporated therewith. It said in section 2 that—

“ In addition to licences provided to be granted,
 “ there shall be one to be denominated ‘Brewer’s
 “ Colonial Ale Licence’ which shall be granted only
 “ to brewers . . . and shall be in the form
 “ of the Schedule X. to this Act.”

Section 4 prescribes that the brewer thus licensed may sell in quantities not less than two gallons.

Section 5 enacts that—

“ No person while holding a Brewer’s Colonial Ale
 “ Licence shall be capable of holding a Storekeeper’s
 “ Licence or a Wine Licence.”

By section 6—

“ All the provisions of the Acts read and incor-
 “ porated herewith, referring to or dealing with
 “ Storekeepers’ Licences, shall, except where incon-
 “ sistent herewith or inapplicable hereto, apply to a
 “ Brewer’s Colonial Ale Licence in the same manner
 “ as if a provision had been made in such sections
 “ for such licences in addition to Storekeepers’
 “ Licences.”

If these had been the only Acts to be considered, it would have been difficult to say that a Brewer’s Colonial Ale Licence could be called a Storekeeper’s Licence.

The two licences are authorized by different Acts, they are obtainable by different people, the sales licensed by the two are different, and the Act of 1901 treats them as separate and distinct things. But much stress was laid in argument upon another Act passed in 1902, No. 784, which enacted (section 3) that a Storekeeper’s Licence, if issued to a distiller, should authorize the sale

of liquor not less than two gallons not to be drunk on the premises, these conditions being the same as those of the Brewer's Colonial Ale Licence.

Section 5 enacts that no distiller while holding such a licence shall hold a Storekeeper's Licence, or a Wine Licence. Section 6 enacts that all the provisions of the incorporated Acts applicable to a Storekeeper's Licence shall apply to a licence under the Act.

The language of this Act is very different from that of the Act of 1901; for it clearly treats the licences with which it deals as Storekeepers' Licences; and its enactment ought not, in their Lordships' opinion, to be so applied as to alter the character of licences under the Act of 1901.

It was argued that it should be assumed that the intention of the Legislature, when passing the Act of 1905, was to bring all classes of licences within the scope of Local Option, but that is a somewhat dangerous mode of argument. The real question is, whether the Legislature, in the language which it has used, has expressed the intention of bringing the class of licences in question within the operation of Local Option.

Their Lordships are of opinion that the learned Judges of the Supreme Court were right in holding that Brewers' Colonial Ale Licences are not Storekeepers' Licences within the meaning of section 5 (2) of the Act of 1905.

The view which their Lordships take upon the foregoing question makes it unnecessary to consider any of the other questions raised upon the argument of the Appeal. Their Lordships will humbly advise His Majesty that the Appeal should be dismissed. The Appellant will pay the costs.
